

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

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Aug 04 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUSTIN GORDON HUNTER,

APPELLANT.

APPELLATE CASE NO. 2019-000469

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

2016-GS-47-0002

STATE OF SOUTH CAROLINA)

-vs-)

JUSTIN GORDON HUNTER,)

Defendant.)

TRANSCRIPT OF RECORD

June 29, 2017

Moncks Corner, South Carolina

B E F O R E:

The Honorable Deadra Jefferson, Judge.

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

For the State:

Joshua Underwood, Attorney

For the Defendant:

Theresa N. Johns, Attorney

For Lassain Dixon Johnson:

Lori S. Murray, Attorney

For Rosemary Quezada:

Eck Niravong, Attorney

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

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COURT EXHIBITS

NO.	DESCRIPTION	MARKED	RECEIVED
1	Search Warrant	6	--
2	Affidavit	15	--

1 P R O C E E D I N G S

2 (June 29, 2017, 9:15 a.m.)

3 THE COURT: This is state grand jury case
4 2016-GS-47-0002, and Defendant Johnson filed a motion to
5 suppress. I don't have a file date on that.

6 For the benefit of the court reporter, would each
7 counsel identify themselves for the record and who you're
8 representing.

9 MS. MURRAY: Lori Murray, and I represent Lassain
10 Dixon Johnson.

11 MR. NIRAVONG: Eck Niravong for Rosemary Quezada.

12 MR. UNDERWOOD: And Joshua Underwood from the
13 Attorney General's office representing the State.

14 THE COURT: Ms. Johns, you're here representing --

15 MS. JOHNS: Justin Hunter, Your Honor.

16 THE COURT: You're just here to observe, correct?

17 MS. JOHNS: I think since this is a conspiracy
18 case that I want to join the motion in the event --

19 THE COURT: Okay.

20 MS. JOHNS: And I represent, again, Justin Hunter,
21 for the record.

22 THE COURT: Okay. And basically, the basis for
23 this motion is there was no probable cause. Is that it in a
24 nutshell?

25 MS. MURRAY: That's correct, Your Honor. I just

1 believe the affidavit did not include cause that rose to the
2 level of probable cause.

3 THE COURT: All right. Ready to proceed,
4 Mr. Underwood?

5 MR. UNDERWOOD: Yes, Your Honor.

6 THE COURT: You may proceed.

7 MR. UNDERWOOD: The State would call Special Agent
8 Justin Wingo.

9 THE COURT: Actually, he can testify from counsel
10 table. It might be a little easier for everybody to see
11 him.

12 JUSTIN WINGO
13 having been called as a witness for the State, was sworn and
14 testified as follows:

15 THE COURT: State your full name for the record,
16 spelling your last name for the court reporter.

17 THE WITNESS: Justin Wingo, W-i-n-g-o.

18 THE COURT: Mr. Wingo, I'm going to need you to
19 speak up a little bit more for me, please. You can take a
20 seat, and there's a mike there, if you could speak directly
21 into it for the benefit of the court reporter.

22 Mr. Underwood, you may proceed when you're ready.

23 MR. UNDERWOOD: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 DIRECT EXAMINATION BY MR. UNDERWOOD:

1 Q. Good morning, Agent Wingo. If you would please
2 advise the Court where you're currently employed.

3 A. I'm currently employed with SLED, the State Law
4 Enforcement Division.

5 Q. What is your capacity at SLED?

6 A. I'm a narcotics agent.

7 Q. And what division are you currently assigned to at
8 SLED?

9 A. State grand jury task force.

10 Q. And in general terms, what are your job duties?

11 A. I target narcotics organizations that have a
12 multi-county impact.

13 Q. And what is your relationship to this state grand
14 jury investigation that is named Footloose?

15 A. I'm the primary case agent.

16 Q. What does it mean to be the primary case agent?

17 A. I'm responsible for leading the investigation,
18 identifying the targets, and conducting the controlled buys.

19 Q. So, essentially, are you the primary point person
20 for this investigation?

21 A. Yes, sir.

22 Q. As part of your investigation in this case, did
23 you have an opportunity to seek a search warrant for a
24 search of Apartment [REDACTED], [REDACTED] Bear Island Road in
25 Summerville, South Carolina?

1 A. Yes, sir, I did.

2 MR. UNDERWOOD: May I have this marked as a
3 Court's exhibit?

4 THE COURT: Any exception?

5 MS. MURRAY: No, Your Honor.

6 THE COURT: Marked without exception.

7 (Court's Exhibit 1 was marked for identification.)

8 BY MR. UNDERWOOD:

9 Q. I'm handing you Court's Exhibit No. 1. Do you
10 recognize that?

11 A. Yes, sir.

12 Q. What is that?

13 A. That is a search warrant for [REDACTED] Bear Island
14 Road, Apartment [REDACTED], in Summerville.

15 Q. And were you the agent that obtained that search
16 warrant?

17 A. Yes, sir, I was.

18 Q. Which Court did you receive that search warrant?

19 A. Judge Newman of circuit court.

20 Q. Is that Judge Clifton Newman?

21 A. Yes, sir.

22 Q. And at the time, was Judge Clifton Newman the
23 administrative judge and presiding judge over the state
24 grand jury?

25 A. Yes, sir, he was.

1 Q. When was that search warrant obtained?

2 A. February 5th, 2016.

3 Q. I would ask you to briefly review that search
4 warrant, and has Judge Clifton Newman signed in all the
5 appropriate places of that document?

6 A. Yes, sir, he has.

7 Q. And were you the affiant for obtaining the search
8 warrant as well as the person who was responsible for
9 getting it?

10 A. Yes, sir, I was.

11 Q. And did Judge Newman place you under oath?

12 A. Yes, sir, he did.

13 Q. After being placed under oath by Judge Newman, did
14 you present to him and swear to the affidavit that is part
15 of this search warrant?

16 A. Yes, sir, I did.

17 Q. And, Agent Wingo, the beginning portion of that
18 search warrant -- and, to make it clear, for the record, I'm
19 referring to in the affidavit the paragraphs that are marked
20 as lower case letters. Could you just briefly summarize
21 what the purposes of those paragraphs are in explaining the
22 case and building probable cause? Just in general terms, as
23 a whole, what is the purpose of those paragraphs.

24 A. To show my past experience and the purpose of the
25 search warrant and what we would be looking for in the

1 search warrant.

2 Q. And in those paragraphs, do you explain in general
3 terms the kind of behaviors and conduct of individuals
4 involved in drug trafficking organizations?

5 A. Yes, sir.

6 Q. And was the purpose of presenting that information
7 under oath to the judge that he would be aware of the nature
8 of the type of evidence and conduct you were investigating?

9 A. Yes, sir.

10 Q. All right. In that affidavit, following the
11 paragraph that's letter O, you then entered into other
12 paragraphs beginning first in some general terms and then
13 into some numbered paragraphs. Was this the portion of the
14 affidavit that dealt directly with probable cause for this
15 particular location?

16 A. Yes, sir, it was.

17 Q. And if you could, please -- and you don't need to
18 read the whole thing. The Court will have the opportunity
19 to review the search warrant itself, but can you summarize
20 the information that is in the unnumbered paragraphs?

21 A. We conducted -- within 72 hours of obtaining this
22 search warrant, we conducted a controlled purchase of \$100
23 worth of methamphetamine from a female, Ms. Quezada,
24 utilizing a confidential informant. We were able to watch
25 Ms. Quezada with other personnel, watch Ms. Quezada leave

1 the apartment, walk to Azalea Square, conduct the deal with
2 our CI, and we were able to successfully follow her back to
3 that apartment.

4 Q. Now, Agent Wingo, in the affidavit, do you
5 identify the target of that controlled purchase as someone
6 that was known at that time as Sissy, or Cici? I'm not sure
7 how to pronounce that.

8 THE COURT: Spell that for the court reporter,
9 please.

10 THE WITNESS: S-i-s-s-y.

11 BY MR. UNDERWOOD:

12 Q. And, Agent Wingo, for clarification, for the
13 Court's understanding, since obtaining the search warrant
14 have you been able to identify that individual?

15 A. Yes, sir.

16 Q. And who is that individual?

17 A. It's Rosemary Quezada.

18 Q. And is that one of the defendants in this case?

19 A. Yes, it is.

20 Q. Agent Wingo, in addition to the language that is
21 printed in the affidavit, did you provide any sworn
22 information under oath to Judge Newman explaining that
23 transaction?

24 A. Yes, sir.

25 Q. And what explanation did you provide to Judge

1 Newman while you were under oath?

2 A. I explained what was in this affidavit to him.

3 Q. And what exactly did you tell him?

4 A. What was in the affidavit. I just explained the
5 buy to him as it was listed in the affidavit.

6 Q. All right. Now, during that operation, was the
7 individual that is listed as Sissy in the affidavit under
8 visual surveillance the entire time of that operation?

9 A. Yes, sir, it was.

10 Q. Was that information relayed to Judge Newman?

11 A. Yes, sir, it was.

12 Q. And if you could, please describe exactly how that
13 transpired, using the same terms that you used with Judge
14 Newman.

15 A. That we were able to successfully observe her
16 leave the apartment, observe her walk to meet our
17 confidential informant, observe her conduct the deal, and
18 observe her walk back to that apartment.

19 Q. Okay. Now, while you were discussing the matter
20 with Judge Newman, did you relay to him if there were any
21 other individuals present with the target, Sissy?

22 A. Other than -- I told him what was in this
23 affidavit.

24 Q. So you referred to the unidentified black male
25 that was with her?

1 A. Yes, sir.

2 Q. That information that was also discussed with
3 Judge Newman while you were under oath?

4 A. Yes, sir.

5 Q. And that's in addition to what's printed in the
6 affidavit, correct?

7 A. No. It's just what was in that affidavit.

8 Q. There was verbal discussion in addition to the
9 piece of paper that was presented to the judge; is that
10 correct?

11 A. Yes, sir.

12 Q. To date, has law enforcement been able to confirm
13 who that black male was?

14 A. No, sir.

15 Q. Were you a part of that investigation?

16 A. Yes, sir, I was.

17 Q. And did you advise Judge Newman of that fact?

18 A. Yes, sir, I did.

19 Q. And did you tell Judge Newman where you were
20 physically located during that controlled purchase
21 operation?

22 A. I told him I was part of that operation and I was
23 observing the deal.

24 Q. Did you advise Judge Newman of what you saw?

25 A. What was listed in this affidavit is what I saw.

1 Q. And were you able to make a visual identification
2 of the female individual that was the target of that
3 investigation?

4 A. Yes, sir, I was.

5 Q. And did you recognize that person?

6 A. Yes, sir, I did.

7 Q. And who was that person?

8 A. It was Rosemary Quezada.

9 Q. Were you close enough to personally observe her?

10 A. Yes, sir, I was.

11 Q. Moving on, paragraph two, what was thein nature of
12 that paragraph?

13 A. That was to show the reliability of the informant
14 as well as show how we were able to identify Ms. Quezada.

15 Q. And what is the -- generally describe what's in
16 that paragraph and what information you related to Judge
17 Newman in addition to it, if any.

18 A. So Dorchester County conducted a controlled buy at
19 another address utilizing the same confidential informant
20 that we utilized in the buy used to obtain the search
21 warrant. The CI, the confidential informant, met with
22 Ms. Quezada. This was audio and video recorded, and
23 Ms. Quezada is seen on this film selling our confidential
24 informant heroin. Judge Newman was relayed everything that
25 was in this affidavit.

1 Q. And during your discussion with Judge Newman while
2 you were under oath, did you explain to him how this
3 paragraph was relevant to the search warrant that's in the
4 other paragraphs?

5 A. Yes, sir. Well -- yes, sir. All right. There
6 was everything that was in this affidavit explained to him
7 that it was the same person that we utilized the reliability
8 of the CI as well as the same defendant.

9 Q. And did you explain to Judge Newman how the
10 defendant you've identified as Rosemary Quezada fit into the
11 organization that was under investigation?

12 A. That was relayed, yes, sir, as she was listed in
13 this affidavit.

14 Q. And moving to paragraph number three, what is the
15 significance of the information in this paragraph?

16 A. That shows how we found this location and why we
17 had surveillance personnel in this apartment complex because
18 it was related to Mr. Hunter.

19 Q. And how did you identify this particular location?

20 A. With a mobile tracking device where we were able
21 to show that the vehicle that Mr. Hunter was driving was at
22 this apartment at numerous times.

23 Q. And is that combining paragraphs three and four?

24 A. Yes, sir, it is.

25 Q. How did you obtain authorization to place a mobile

1 tracking device on Mr. Hunter's car?

2 A. Through an order to obtain a tracking device.

3 Q. And Judge Newman issued that?

4 A. Yes, sir.

5 Q. The same judge who issued this search warrant?

6 A. Yes, sir.

7 Q. In order to obtain the order for the GPS tracking
8 device, did you present a separate affidavit to Judge
9 Newman?

10 A. Yes, sir, I did.

11 MR. UNDERWOOD: And, Your Honor, if I may have
12 this marked as another Court's exhibit.

13 THE COURT: Any objection?

14 MS. MURRAY: I do object to that, Your Honor. I
15 don't think that has any relevance to this search warrant
16 because it was done at the same time as this search warrant
17 investigation.

18 THE COURT: It's part of the continuum. That's
19 why they went to the apartment. I think they see it as one
20 continuous activity.

21 MS. MURRAY: I don't know that the judge would
22 have put that together because it wasn't referenced in this
23 affidavit.

24 THE COURT: I think that's speculative, what the
25 judge was thinking, and I don't know that it's germane to

1 the issue. Yes.

2 Overruled. Marked as a Court's exhibit.

3 MS. MURRAY: I'll preserve it.

4 (Court's Exhibit 2 was marked for identification.)

5 BY MR. UNDERWOOD:

6 Q. Agent Wingo, what's been marked as Court's
7 Exhibit 2, is that the affidavit you presented to Judge
8 Newman in order to get the GPS tracking device?

9 A. Yes, sir, it was.

10 Q. And that is for the same tracking device that was
11 referenced in the affidavit for the search warrant?

12 A. Yes, sir, it was.

13 Q. On what date did you present this affidavit under
14 oath to Judge Newman?

15 A. The 7th of January.

16 Q. Of what year?

17 A. 2016.

18 Q. Is that affidavit also signed by yourself and
19 Judge Newman?

20 A. Yes, sir, it was.

21 Q. Is it the same Judge Newman that issued the search
22 warrant?

23 A. Yes, sir, it is.

24 Q. If you could provide what information in this
25 affidavit is relevant and explain how it relates to the

1 request for the search warrant.

2 A. This affidavit was a request for a mobile
3 trafficking device on the car belonging to Justin Gordon
4 Hunter, which is a gray BMW 7 series. We had identified
5 that that was his car due to him conducting multiple drug
6 deals with that car being present and multiple drug
7 transactions utilizing confidential informants.

8 After observing the tracker data, we were able to
9 observe that the car and Mr. Hunter had been visiting the
10 address of [REDACTED] Bear Island Road and were able to
11 successfully conduct surveillance to show which apartment
12 Mr. Hunter was entering. He visited this address one, two,
13 three, four, five, six, seven, eight, nine, ten, eleven --
14 twelve times within a five-day period.

15 Q. And how long did he typically stay for each of
16 those visits?

17 A. The times would vary anywhere from five minutes to
18 an hour.

19 Q. And are such frequent, short visits consistent
20 with drug dealing operations?

21 MS. MURRAY: Objection.

22 THE COURT: Basis?

23 MS. MURRAY: Calls for speculation.

24 THE COURT: It's within the ambit of what he does.
25 He's a drug agent. That's what he does. Overruled.

1 It's within his rational perception and his
2 training?

3 THE WITNESS: Yes, sir, it is.

4 BY MR. UNDERWOOD:

5 Q. And did you explain to Judge Newman both while
6 seeking the GPS tracking device and seeking the search
7 warrant?

8 MS. MURRAY: Objection.

9 THE COURT: And you need to stand when you address
10 the Court.

11 MS. MURRAY: I'm sorry, Your Honor. I would
12 object to that.

13 THE COURT: What's the basis for the objection?

14 MS. MURRAY: He asked if it was explained to Judge
15 Newman with regard to seeking this application, but he
16 doesn't have that information prior to seeking this
17 application.

18 THE COURT: Unless I misunderstood his testimony,
19 he did --

20 MS. MURRAY: My understanding of his question is
21 that these short visits were conducive of drug activity, but
22 the short visits were documented based on the GPS that he's
23 applying for.

24 MR. UNDERWOOD: I can rephrase my question.

25 THE COURT: I think you need to, yes, because

1 that's not how I understood the question.

2 BY MR. UNDERWOOD:

3 Q. Agent Wingo, first, in regards to the affidavit to
4 seek a GPS tracking device, did you explain to Judge Newman
5 the type of behaviors and conduct that you were seeking to
6 investigate and why you were asking for the GPS tracking
7 device?

8 A. Yes, sir. Based on my past experiences with
9 utilizing mobile tracking devices in other large scale
10 conspiracy cases, I did explain to Judge Newman while we
11 were looking for -- asking for a mobile tracking device.

12 Q. And in this affidavit and while under oath with
13 Judge Newman seeking a GPS tracking device, did you explain
14 that same type of conduct we just described as far as the
15 frequent short visits being consistent with drug trafficking
16 activity?

17 A. I explained to him what was in this affidavit.

18 Q. And, Agent Wingo, in relation to the affidavit for
19 the search warrant, did you then explain to Judge Newman how
20 the information you offered in paragraphs three and four
21 related to the drug activity you were investigating and how
22 it related to the GPS tracking device that was issued in his
23 order?

24 A. Yes. It includes the affidavit for the search
25 warrant. It shows the vehicle. It shows the further

1 analysis of the data that -- and showing that Mr. Hunter had
2 visited that location, again, 12 times, for anywhere between
3 five minutes to an hour-and-a-half, and it showed, again,
4 why we were in that apartment complex that day conducting
5 surveillance.

6 Q. Did you explain to Judge Newman the significance
7 of those types of visits and how they are consistent with
8 drug trafficking activity?

9 A. I explained to him everything that was in this
10 affidavit.

11 Q. And did you relate the two together?

12 A. Yes, sir. I related the mobile tracking device to
13 the order that he had previously signed.

14 Q. And, again, both the affidavit for the GPS
15 tracking device and the affidavit for the search warrant and
16 the search warrant were all presented to and signed off on
17 by the same circuit court judge, Clifton Newman?

18 A. Yes, sir, they were.

19 Q. Agent Wingo, as the lead case agent in this case,
20 are you familiar with the items that were found during the
21 execution of this search warrant?

22 A. Yes, sir, I was.

23 Q. During the execution of this search warrant, were
24 drivers' licenses found for both Defendants Rosemary Quezada
25 and Lassain Johnson?

1 A. Yes, sir I believe so.

2 Q. What state was Mr. Johnson's driver's license
3 issued from?

4 A. Georgia, sir.

5 Q. And the apartment that was be searched, that was
6 in Summerville, South Carolina?

7 A. Yes, sir, it was.

8 Q. The driver's license from Ms. Quezada, do you
9 recall if it was the same address at this apartment or was
10 it a different address?

11 A. It was a different address.

12 Q. So her driver's license had a different address
13 than the apartment that was being searched pursuant to this
14 search warrant?

15 A. Yes, sir, it did.

16 Q. Are you also familiar with the information that
17 the defendants provided upon their arrest when they were
18 being booked as to their home addresses?

19 A. I don't remember the exact address, but it was
20 Arno.

21 Q. Was that for Ms. Quezada?

22 A. Yes, sir, I believe so.

23 THE COURT: I need you to spell that for the court
24 reporter.

25 THE WITNESS: I believe it's A-r-n-o.

1 BY MR. UNDERWOOD:

2 Q. So she provided a different address to the jail as
3 her home address?

4 A. Yes, sir.

5 Q. And what about Mr. Johnson? Did he also provide a
6 different address than the location that was being searched?

7 A. Yes, sir.

8 Q. During the search of the apartment, were numerous
9 documents with various addressees and mailing addresses
10 located?

11 A. Yes, sir.

12 Q. Out of all those documents, were there any
13 documents that had the name of Lassain Johnson connected to
14 the address of this apartment?

15 A. I don't know.

16 Q. All right. Were there any documents that listed
17 Ms. Quezada as a resident of this apartment?

18 A. I don't know. There was stuff inside that
19 apartment that had their name on it, though.

20 Q. But were there any documents that had their name
21 and that address on them?

22 A. I don't know.

23 Q. Were there any documents that listed another
24 individual associated with that apartment?

25 A. Yes, sir.

1 Q. And who was that individual?

2 A. Justin Gordon Hunter.

3 Q. Agent Wingo, is there any additional information
4 that you provided under oath to Judge Newman either during
5 the time you were seeking the GPS tracking device or while
6 you were seeking this search warrant?

7 A. No, sir, only what was in these two affidavits.

8 Q. And, again, just to show a connection, in the
9 search warrant affidavit, the transaction that you referred
10 to that located -- or that took place within 72 hours prior
11 to the issuance of this search warrant, was that conduct
12 later indicted in this case as a controlled purchase
13 distribution charging both Justin Hunter and Rosemary
14 Quezada?

15 A. Yes, sir, I believe so.

16 Q. All right. And did that take place approximately
17 two days prior to obtaining this search warrant?

18 A. Yes, sir, it did.

19 Q. In that transaction, how was the drug deal set up?

20 A. We called or placed a text message to Justin
21 Hunter, also known as Moe, and after that, he directed our
22 confidential informant to meet with Sissy, later identified
23 as Ms. Quezada, at the Azalea Square shopping center.

24 Q. And the information that you had from the GPS
25 tracking device, is that how you knew to be observing the

1 apartment complex at [REDACTED] Bear Island Road?

2 A. Yes, sir, it was.

3 Q. Is that information included in your affidavit to
4 Judge Newman?

5 A. Yes, sir, it was.

6 Q. All right.

7 MR. UNDERWOOD: Thank you, Agent Wingo. That's
8 all the questions I have.

9 THE COURT: Any questions for the witness,
10 Ms. Murray?

11 MS. MURRAY: Yes, Your Honor. Thank you very
12 much.

13 THE COURT: You're welcome.

14 CROSS-EXAMINATION BY MS. MURRAY:

15 Q. Agent Wingo, the information that is included in
16 this affidavit -- and, again, I'm assuming this affidavit
17 for the, tracking device, was anything that's outside of
18 these two affidavits presented to Judge Newman?

19 A. No, ma'am.

20 Q. And for the purposes of this search warrant, were
21 you present and you took an oath with Judge Newman when you
22 presented this affidavit?

23 A. Yes, ma'am. I was present and took an oath under
24 Judge Newman.

25 Q. And did you receive a signed search warrant at

1 that time and then take that back with you?

2 A. Yes, sir.

3 Q. He signed it while you were standing there, in
4 other words?

5 A. Yes, ma'am.

6 Q. With regard to -- and I'm looking at it. I'm
7 assuming that the first paragraph -- they're numbered two
8 through four, but the first one, is that supposed to be
9 paragraph one, so I can refer to it, where it says over the
10 past four months, does that start paragraph one?

11 A. Of the affidavit itself, yes, ma'am, or of the
12 probable cause.

13 Q. Probable cause, yes. So starting with paragraph
14 one, did Ms. Quezada, or Sissy, was a car driven to this
15 Azalea shopping center?

16 A. No, ma'am. She walked.

17 Q. And how far is that?

18 A. I'm not sure of the exact distance. It's just
19 across the street from the shopping center.

20 Q. I Google mapped it yesterday. It looked to be
21 about a half mile. Does that sound accurate?

22 A. Yes, ma'am.

23 Q. All right. Were you observing this apartment at
24 that point or were you looking for the sale?

25 A. I was on the surveillance team that was observing

1 the confidential informant. There was three other
2 surveillance teams that spanned from the apartment complex
3 itself and were scattered throughout that shopping center.

4 Q. Okay. Their observations were not part of this
5 affidavit, are they? Again, this is your information --

6 A. The CI was also seen by law enforcement entering
7 the location. It was relayed to me by law enforcement that
8 saw Ms. Quezada leave that location. I observed her conduct
9 the deal, and then it was relayed to me as she walked back
10 into that location.

11 Q. Had anybody at any time other than, I guess,
12 Ms. Quezada been inside the apartment? Had the agents been
13 inside the apartment?

14 A. No, ma'am, not at that time.

15 Q. Had the CI and was the CI ever inside that
16 apartment?

17 A. Was the CI -- no, ma'am.

18 Q. So nobody had -- based on your knowledge and prior
19 to this affidavit, nobody had been inside that apartment?
20 Nobody --

21 A. Not from a law enforcement standpoint.

22 Q. Okay. And so therefore nobody could place
23 narcotics inside the apartment; is that correct?

24 A. That's correct.

25 Q. Okay. With regard to paragraph two, this happened

1 six months prior to the application for the search warrant;
2 is that correct?

3 A. Yes, ma'am.

4 Q. And this did not have any connection with the
5 apartment, did it?

6 A. No, ma'am, it did not.

7 Q. So the only purpose of paragraph two would be to
8 connect, I'm assuming, Ms. Quezada to another sale to the
9 CI?

10 A. To show the reliability of the confidential
11 informant as well as to show another means of how we
12 identified Ms. Quezada as the person who sold us the ice, or
13 methamphetamine, that day.

14 Q. But you don't know on this date where she came
15 from, do you?

16 A. On September 9th?

17 Q. Yes.

18 A. Ma'am, she was at that address of [REDACTED] -- I don't
19 know where she came from prior to entering that address, but
20 it was told to me by Dorchester County as well shown on
21 video Ms. Quezada standing in that address.

22 Q. Okay. But she had not been at Azalea Drive that
23 day, or at Bear Island Road that day?

24 A. I don't know.

25 Q. As of September 9th, 2015, Bear Island Road was

1 not on your radar, was it?

2 A. That's correct.

3 Q. Okay. Then moving on to paragraph three, we have
4 an application for a tracking device to be put on Hunter's
5 car, and I think that brings us to this affidavit for the
6 tracking device, but there's no other information in
7 paragraph three in the application for this tracking device
8 that ties it to the apartment on Bear Island Road, is there?

9 A. In this affidavit -- the search warrant affidavit
10 or the tracking?

11 Q. In either affidavit.

12 A. There is -- in the affidavit, there is an
13 apartment that shows times of -- complex on Bear Island Road
14 in the search warrant affidavit; yes, ma'am, there is.

15 Q. You're talking about paragraph four?

16 A. Oh, yes, ma'am. I'm sorry. Yes, ma'am.

17 No, ma'am. In paragraph three, it says
18 observation of this mobile tracking device has shown Hunter
19 frequently visiting Vista Sands Apartment Complex located at
20 [REDACTED] Bear Island Road in Summerville, South Carolina.

21 Q. My apologies then. Paragraph four just further
22 explains that last sentence?

23 A. Yes, ma'am. It shows when and how long -- how
24 many times and how long he stayed at that location.

25 Q. Did anybody ever observe Mr. Hunter going in with

1 a bag or leaving with a bag?

2 A. I don't know?

3 Q. Did anybody ever search the trash out of this
4 apartment?

5 A. I don't know.

6 Q. Did -- if the trash had been searched, would that
7 have not been included in the reports?

8 A. If there had been a trash pull done, yes, ma'am.

9 Q. So trash pull we can assume was not done?

10 A. Yes, ma'am, to my knowledge. To my knowledge,
11 there was no trash pulled. I never did a trash pull on
12 there.

13 Q. But it would have been included, and they would
14 have reported back to you, would they not have?

15 A. Yes, ma'am.

16 Q. So, again, we can assume it was not done?

17 A. Yes, ma'am.

18 Q. So, again, if you observed -- was he under
19 constant surveillance, Mr. Hunter, at this time?

20 A. With that mobile tracking device, we were able to
21 look and see where he was at at any time, so if you want to
22 consider that constant surveillance, yes, ma'am.

23 Q. Well, I guess my question is, were officers
24 watching him at all times?

25 A. Yes, ma'am. We were frequently looking up this

1 location, or wherever he was on that tracking device, and
2 going to observe him and conducting surveillance on him,
3 yes, ma'am; as well as once we saw where he was at on this
4 Vista Sands place, we were able to start doing surveillance
5 on there as well.

6 Q. And if you were to watch this apartment, would you
7 agree with me that somebody coming out of an apartment
8 carrying a duffle bag who didn't live there would have been
9 suspicious behavior?

10 A. Yes, ma'am.

11 Q. So that probably would have been noted in the
12 record as well, correct?

13 A. I would assume, yes, ma'am.

14 Q. And that was never noted in the record, was it?

15 A. To Judge Newman?

16 Q. No, in your files, in your notes, or even in this
17 affidavit, any of it.

18 A. In this affidavit, no, ma'am, it was not, and it
19 was not noted that we ever saw anyone coming out of that
20 apartment with a duffle bag.

21 Q. So basically the extent of your observation of
22 Mr. Hunter was that he visited there, he entered, and he
23 exited; is that correct?

24 A. Yes, ma'am. I mean, he stayed somewhere for five
25 minutes.

1 Q. Do drug dealers normally carry to stash houses? I
2 mean, we got this -- I'm going to go back. We have a
3 paragraph, or a couple pages, of common behavior of drug
4 dealers, but do drug dealers normally carry their narcotics
5 in duffle bags or some kind of bags when they transport it?

6 A. Not necessarily.

7 Q. If we're dealing in large quantities of drugs,
8 would they normally carry it in a bag?

9 A. Not necessarily.

10 Q. Where would they carry it if not in a bag?

11 A. Basically, in my experience, I've seen it put in
12 wooden boxes, shoeboxes; you know, containers, food
13 containers, Tupperware containers. It doesn't have to be a
14 duffle bag.

15 Q. Okay. Any of those items, was Mr. Hunter ever
16 seen, observed, or noted to have been coming in or out of
17 that apartment with any of those items?

18 A. No, ma'am, not to my knowledge.

19 Q. And that information is not included in the
20 information, is it, he was seen carrying any of those items
21 in and out of the building?

22 A. No, ma'am, not to my knowledge. No, ma'am, it's
23 not in this affidavit.

24 Q. Did he visit anybody else?

25 A. Mr. Hunter?

1 Q. Mr. Hunter.

2 A. When?

3 Q. At any point while you were surveilling him under
4 the GPS?

5 A. I mean, he would go all over the place. He had
6 all kinds of locations that he would go to.

7 Q. And did you apply for a search warrant for any of
8 those other places?

9 A. Yes, ma'am, I did.

10 Q. Which places?

11 A. Patriot Boulevard, and then he went to another
12 place, Summer Creek Drive, but we also had a controlled buy
13 out of that place as well.

14 Q. So all of the places he visited, you requested
15 warrants?

16 A. Yes, ma'am.

17 Q. And all of those were granted?

18 A. Yes, ma'am.

19 Q. Just on the basis, basically, on the fact
20 Mr. Hunter visited there?

21 A. No, ma'am, based on we had controlled buys out of
22 those two locations, and the third was his residence.

23 Q. And which of those two did you have buys out of?

24 A. [REDACTED] Bear Island Road, Apartment [REDACTED], and I
25 believe it's [REDACTED] Summer Creek Drive.

1 Q. Were you -- I'm sorry. I didn't mean to cut you
2 off. Are you done?

3 A. Yes, ma'am.

4 Q. You would agree with me that the buy you're
5 stating came out of Bear Island Road was not actually out of
6 Bear Island Road, it was Azalea shopping center?

7 A. Yes, ma'am, but the defendant came out of Bear
8 Island Road.

9 Q. Okay. And you mentioned that there was video
10 surveillance. Have you made that video surveillance
11 available to defense counsel?

12 A. Yes, ma'am.

13 Q. Are you aware that video surveillance is
14 unwatchable?

15 A. Which buy, ma'am?

16 Q. All of them.

17 A. Unwatchable?

18 Q. Uh-huh?

19 A. I just watched the one that's listed in this
20 affidavit as September 9th two days ago.

21 MS. MURRAY: And, Your Honor, we would have to
22 reserve an objection to that because I personally and
23 Ms. Johnson has personally gone over to see that video, and
24 there's no video, but that is another issue.

25 THE COURT: You'll have to deal with that, but I

1 don't know if that has any basis for a search warrant for
2 probable cause. I don't think they're required to have
3 video or audio.

4 And I haven't read the affidavit, so I don't even
5 know if that was the basis for the affidavit, so I don't
6 know if it's germane to that.

7 MS. MURRAY: That just popped into my head. That
8 is a discovery issue.

9 BY MS. MURRAY:

10 Q. And you would agree with me then, Agent Wingo,
11 that a tracking device really provides no evidence as to
12 what's inside one's residence, does it?

13 A. I mean, it doesn't go in the house, no, ma'am. It
14 doesn't show what's in there, but it shows the activity of
15 the known drug trafficker, and based on my previous
16 experience with traffickers, that leads to where they
17 usually keep their drugs.

18 MS. MURRAY: Beg the Court's indulgence.

19 Thank you, Your Honor. That's all the questions I
20 have.

21 THE COURT: Mr. Niravong, any questions?

22 MR. NIRAVONG: No, ma'am.

23 THE COURT: Any redirect?

24 MR. UNDERWOOD: Did Ms. Johns have any questions?

25 THE COURT: Ms. Johns didn't file a motion. She

1 said if it's granted, she's joining in it, so I don't know
2 if she has any standing at this point to ask questions or
3 whether she plans to file a motion either in writing or
4 orally so the Court can know what the basis of her motion
5 is.

6 She basically said, I'm throwing my hat in the
7 ring if, in fact, it's granted because her client is alleged
8 to be part of the conspiracy.

9 MS. JOHNS: Your Honor, at this time, I'm going to
10 just put the government on notice that I will be filing a
11 written motion for this reason: It appears that the bulk of
12 this investigation is based on a GPS tracking device for my
13 client which implies that he is transporting drugs to this
14 location or this residence for which he did not live.

15 THE COURT: I think you would have known that long
16 before now, wouldn't you, when you've gotten all this stuff
17 in discovery?

18 MS. JOHNS: I knew he didn't live there.

19 THE COURT: You knew what the basis of their
20 search warrant was. You knew they had a tracking device
21 under your client's car.

22 MS. JOHNS: Yes, I did, Your Honor.

23 THE COURT: You would have had to have read the
24 affidavits, right?

25 MS. JOHNS: Oh, yeah, I read them.

1 THE COURT: Then this doesn't come as any surprise
2 to you, does it?

3 MS. JOHNS: Well, in that case, Your Honor, I'd
4 like to be able to cross-examine this witness.

5 THE COURT: Are you now making an oral motion to
6 suppress or do you plan to file one?

7 MS. JOHNS: I'm going to make an oral request to
8 move to suppress this, and I would like the opportunity to
9 cross-examine this witness.

10 THE COURT: Then you may cross-examine the
11 witness. Proceed.

12 MS. JOHNS: Thank you.

13 THE COURT: Welcome.

14 CROSS-EXAMINATION BY MS. JOHNS:

15 Q. Mr. Wingo, this tracking device, you stated on
16 both your direct and cross-examination with Ms. Murray that
17 you were following Mr. Hunter through a computerized system;
18 is that correct?

19 A. Yes, ma'am.

20 Q. Did you have visual on him the entire time that
21 you were tracking him, or were you relying on a computer?

22 A. We were relying on a computer.

23 Q. Okay. So the times that he may have stopped at
24 Ms. Quezada's house, then you didn't have a visual on him at
25 any of those times, did you?

1 A. No, ma'am.

2 Q. And you did not have an agent, whether that's
3 through your confidential informant or somebody else, ever
4 enter this residence, did you?

5 A. The residence of Bear Island Road?

6 Q. Yes.

7 A. No, ma'am.

8 Q. And you stated earlier that Mr. Hunter -- you
9 found some documentation inside the residence that belonged
10 to Mr. Hunter; is that correct?

11 A. Yes, ma'am.

12 Q. And after your search at this residence, you
13 realized Mr. Hunter was not living there; is that right?

14 A. Ma'am, we knew Mr. Hunter was not living at that
15 residence. He was living at -- I believe the address is
16 [REDACTED] Patriot, at another apartment, but the mobile tracker
17 showed that he frequented this residence quite a bit.

18 Q. Okay. Do you know whether or not Mr. Hunter had a
19 job he frequented?

20 A. No, ma'am. I don't know.

21 Q. And as Ms. Murray had asked you on
22 cross-examination, did he frequent other residences other
23 than the other two residences you obtained the search
24 warrant for?

25 A. Yes, ma'am.

1 Q. Okay. And were you able to monitor his movement
2 through the computer system?

3 A. Explain your question, ma'am?

4 Q. Were you able to monitor his movement through the
5 mobile tracking device?

6 A. Yes, ma'am, I was.

7 Q. And can you tell me another residence where he may
8 have stayed longer than five minutes, other than his own?

9 A. Ma'am, I'd have to refer to the tracking device
10 itself.

11 Q. There were other houses other than these three
12 houses, correct?

13 A. I would have to review the tracking device.

14 Q. Based on your general memory of this case, he did
15 visit other houses, correct?

16 A. Based on my general memory, yes, ma'am, but I
17 would have to refer to the tracking device to give you
18 specific examples.

19 Q. Barring the specific examples, did you obtain a
20 search warrant for the other houses that are not listed in
21 the investigation of this case?

22 A. No, ma'am, I did not.

23 Q. And was Mr. Hunter a part of this buy at Azalea
24 plaza?

25 A. Yes, ma'am. He is the one that coordinated it

1 because we text the phone number that we knew -- give me one
2 second, ma'am.

3 It says in the affidavit I wrote utilizing phone
4 number (843) 990- [REDACTED]

5 THE COURT: You need to slow down for the court
6 reporter. I feel her tensing up. I need you to slow down,
7 please.

8 THE WITNESS: I apologize. Believed by law
9 enforcement to be owned and utilized by Justin Gordon
10 Hunter. The CI placed a documented text message to Justin
11 Gordon Hunter, also known as Moe, and was directed by Moe to
12 meet Sissy at the Azalea Square shopping center located on
13 Main Street in Summerville.

14 BY MS. JOHNS:

15 Q. So does that portion of your affidavit include the
16 fact that Mr. Hunter met Sissy at Azalea -- at the Azalea
17 center?

18 A. That Mr. Hunter met with Ms. Quezada?

19 Q. Yes.

20 A. I don't know.

21 Q. And in that affidavit you said law enforcement
22 believed it belonged to Justin Gordon Hunter?

23 A. Yes, ma'am.

24 Q. And are telephones transferrable from one person
25 to another?

1 A. Yes, ma'am, they are.

2 Q. So it may be that this phone number that belonged
3 to this telephone could have been in the hands of someone
4 else, correct?

5 A. Correct.

6 Q. And Mr. Hunter did not make an appearance at
7 either the residence or at the Azalea store; is that
8 correct?

9 A. Not during this buy.

10 Q. Not during this buy?

11 A. Yes, ma'am.

12 Q. Which is the basis of this affidavit?

13 A. Yes, ma'am.

14 MS. JOHNS: Nothing further.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION BY MR. UNDERWOOD:

17 Q. As to the most recent line of questioning, during
18 the observation of Apartment [REDACTED] at [REDACTED] Bear Island, did
19 surveillance personnel also observe a black male leave the
20 apartment with Ms. Quezada?

21 A. Yes, sir.

22 Q. And was that black male ever identified?

23 A. No, sir.

24 Q. Is Justin Hunter a black male?

25 A. Yes, sir.

1 Q. Is Lassain Johnson also a black male?

2 A. Yes, sir.

3 Q. And to date, has law enforcement been able to
4 confirm whether that black male was either of them or
5 someone else?

6 A. We have not been able to confirm who it was.

7 Q. As far as the travels of the GPS tracker, would
8 the fact that an individual made multiple short visits to
9 various locations affect the likelihood that drug evidence
10 would be at any one of those locations?

11 A. Based on my previous experience with those, yes,
12 sir.

13 Q. So is it possible that -- I shouldn't say
14 possible. Is it common for individuals who are involved in
15 trafficking drugs to make these types of short, frequent
16 visits to multiple locations?

17 A. Yes, sir.

18 Q. As far as the amounts of substance that would
19 qualify as trafficking in heroin, does trafficking in heroin
20 begin at four grams or more?

21 A. Yes, sir.

22 Q. And is four grams or more, or even the highest
23 level, 28 grams or more, is that easy to conceal in
24 someone's pants pocket?

25 A. Yes, sir, it is.

1 Q. Is that a fairly small, as far as volume is
2 concerned, substance?

3 A. Yes, sir, it is.

4 Q. Would it be necessary -- for a person to carry
5 trafficking weights of heroin or even methamphetamine into a
6 location, would they need a box to do that?

7 A. No, sir.

8 Q. Would they need a duffle bag to do that?

9 A. No, sir.

10 Q. Could trafficking amounts of heroin, cocaine, or
11 heroin all be carried within a pocket?

12 A. Yes, sir.

13 Q. You mentioned you also obtained a search warrant
14 for 116 Summer Creek. Whose residence was that?

15 A. Emory Roberts was staying there when we conducted
16 the buy as well as the search warrant.

17 Q. And is Emory Roberts a co-defendant in the
18 conspiracy with Mr. Hunter, Mr. Johnson, and Ms. Quezada?

19 A. Yes, sir.

20 Q. All right. When you were -- when did you obtain
21 the search warrant for 116 Summer Creek?

22 MS. JOHNS: Your Honor, I'm going to object
23 because this is not relevant to this particular search
24 warrant. This is a completely different issue. We're not
25 even objecting to the probable cause for that search.

1 MR. UNDERWOOD: Your Honor, the agent was asked
2 about obtaining these other warrants and how is that related
3 to the travels of Mr. Hunter. That's where I was going with
4 that.

5 THE COURT: I'll give him some latitude.
6 Overruled.

7 BY MR. UNDERWOOD:

8 Q. When did you obtain the search warrant for 116
9 Summer Creek?

10 A. I believe it was either the 5th of February or the
11 7th of February. I would have to refer back.

12 Q. If I showed you a copy of it, would that refresh
13 your memory?

14 A. Yes, sir, it would.

15 Q. Just to refresh your memory, I'm handing you a
16 certified copy of a search warrant for 116 Summer Creek
17 Drive?

18 A. Yes, sir.

19 Q. When did you obtain that search warrant?

20 A. February 5th, 2016.

21 Q. And did you present your affidavit for that search
22 warrant at the same time you presented the affidavit for
23 search warrant at [REDACTED] Bear Island?

24 A. Yes, sir, I did.

25 Q. Were these two warrants applied for together?

1 A. Yes, sir.

2 Q. And during the presentation of these, did you
3 explain -- was it also issued by Judge Newman?

4 A. Yes, sir, it was.

5 Q. And during your presentation of these affidavits
6 and applying for these warrants, did you explain to Judge
7 Newman how these co-defendants were linked together? In
8 your general explanation of the case, while you were under
9 oath to Judge Newman, did you explain to him how these
10 addresses and individuals were conducted to each other?

11 A. I explained to him what was in that affidavit.

12 Q. During your discussion with Judge Newman, did you
13 explain to him that these individuals were being
14 investigated as coconspirators?

15 A. I explained that Mr. Roberts was part of the same
16 heroin trafficking conspiracy.

17 Q. And that's the same conspiracy with Mr. Hunter,
18 Mr. Johnson, and Ms. Quezada?

19 A. Yes, sir.

20 Q. Now, in the affidavit for the search warrant at
21 issue in this case, in paragraph two where you were
22 discussing a controlled purchase that happened in September
23 of, I believe, 2015, you were asked on cross-examination
24 about if there was any connection to this address involving
25 that purchase. I would like to ask you is there any

1 connection between --

2 MS. JOHNS: Your Honor, I object at this time, if
3 the government could please clarify what this address is
4 because we're working with two addresses now and I want the
5 record to be clear.

6 MR. UNDERWOOD: Your Honor, the address of [REDACTED]
7 Bear Island.

8 THE COURT: You may proceed.

9 BY MR. UNDERWOOD:

10 Q. In paragraph two, does it connect the individuals
11 who were under investigation in this case?

12 A. Paragraph two is the buy that we conducted on
13 Ms. Quezada at the other address, at the [REDACTED] Arno Drive.

14 Q. Who else was present at that address during that
15 transaction?

16 A. In that video, you can see Mr. Roberts as well.

17 Q. So that purchase that was described in paragraph
18 two may not address the address of [REDACTED] Bear Island Road,
19 but it does address --

20 MS. JOHNS: Your Honor, I object to the leading.
21 He's been doing it all morning. I was going to try to let
22 it go.

23 THE COURT: Overruled. It's just me. There's not
24 a jury. You may proceed.

25 BY MR. UNDERWOOD:

1 Q. Does this include the individuals under
2 investigation?

3 A. Yes, sir, it does.

4 Q. And was all that information available to Judge
5 Newman at the time he making a determination of probable
6 cause for this search warrant?

7 A. That buy was listed in the affidavit.

8 Q. Agent Wingo, during the controlled purchase
9 described in the first paragraph of this search warrant for
10 [REDACTED] Bear Island Road, you mentioned earlier there were
11 multiple surveillance teams. Was Ms. Quezada observed
12 continuously leaving the apartment, going directly to the
13 buy, and then directly back to the apartment?

14 A. Yes, sir.

15 Q. So the drugs came directly from that apartment to
16 the confidential informant; is that correct?

17 MS. JOHNS: Objection, Your Honor.

18 THE COURT: Basis?

19 MS. JOHNS: That's not the testimony.

20 THE COURT: Actually, that was his testimony.

21 MS. JOHNS: No, that there was a black man
22 present.

23 THE COURT: His testimony was there were multiple
24 surveillance teams, and certain teams were reporting certain
25 things. They were all stationed along the route from the

1 apartment to Azalea Square. And while he was not visually
2 present to see the entire route, that information was
3 reported to him, and he was able to verify that she left the
4 apartment, proceeded from the apartment to Azalea Square.

5 That is his testimony, and that is as I understand
6 the question. The objection is overruled, and, in the
7 future, don't argue with the Court, whether you agree or
8 disagree. I heard your motion, and I ruled on it.

9 Proceed. And I would also instruct you to watch
10 your facial movements and your body language, because I
11 would hate for you to be subject to a contempt citation.

12 BY MR. UNDERWOOD:

13 Q. And, Agent Wingo, again, all the information you
14 testified to today, was all that information presented to
15 Judge Newman under oath prior to him making his
16 determination of probable cause for this search warrant?

17 A. Yes, sir. It's listed in this affidavit.

18 Q. As well as the other affidavits and your verbal
19 testimony all combined together?

20 A. Yes, sir.

21 MR. UNDERWOOD: Thank you. No further questions,
22 Your Honor.

23 THE COURT: Any further witnesses from the State?

24 MR. UNDERWOOD: None, Your Honor.

25 THE COURT: Any witnesses from the defense?

1 MS. MURRAY: No, Your Honor, but I do have one
2 question that I do need to clarify based on testimony he
3 elicited during his redirect.

4 THE COURT: All right. I'll give you some
5 latitude.

6 MS. MURRAY: Thank you, Your Honor.

7 RECROSS-EXAMINATION BY MS. MURRAY:

8 Q. Agent Wingo, you did testify and mention that in
9 that -- within this past 72 hours buy, which is in the first
10 paragraph, that there was a black male that walked from --
11 or was with Ms. Quezada during this alleged sale?

12 A. That left the apartment with her.

13 Q. Okay. Great. Thank you. And you did mention
14 that that black male was not identified, correct?

15 A. That's correct.

16 Q. And I think there was some questions as to whether
17 it was identified as Mr. Hunter or Mr. Johnson. You
18 testified no, and then the question was, but they're both
19 black males, but there are a million, or millions, of other
20 black males it could have been, correct?

21 A. Yes, ma'am.

22 MS. MURRAY: Thank you. That's all the questions
23 I have.

24 THE COURT: Any further questions as a result of
25 the questions, Mr. Underwood?

1 MR. UNDERWOOD: One brief moment, please, Your
2 Honor.

3 REDIRECT EXAMINATION BY MR. UNDERWOOD:

4 Q. Just to clarify, the unidentified black male, did
5 he travel all the way to the buy location with Ms. Quezada
6 or did he go a different direction after leaving the
7 apartment?

8 A. He went a different direction.

9 MR. UNDERWOOD: Nothing further, Your Honor.

10 THE COURT: Any further witnesses, from the State?

11 MR. UNDERWOOD: None, Your Honor.

12 THE COURT: Any witnesses from the defense?

13 MS. MURRAY: No, Your Honor.

14 THE COURT: Ms. --

15 MS. JOHNS: No, Your Honor.

16 THE COURT: All right. I'll be glad to hear any
17 argument.

18 MS. MURRAY: Thank you, ma'am. I'm assuming I get
19 to go first.

20 THE COURT: And he gets the last say. He has the
21 burden of proof.

22 MS. MURRAY: That's right. Your Honor, I think
23 that what we have in this affidavit, and I think that based
24 on the testimony of Agent Wingo who testified that he
25 applied for two affidavits but did not recall applying for

1 them on the same day, I think we have to assume that the
2 only information that we can -- that was adequately
3 presented to Judge Newman on that day was the information
4 that's included in that affidavit, including the fact that
5 Agent Wingo testified, I explained to him what was in the
6 affidavit.

7 So I think that we're presented with an affidavit
8 that is on its face the evidence that was presented to Judge
9 Newman for approval of this search warrant, and based on
10 that information, Your Honor, there are technically three,
11 arguably four paragraphs, so the only information that was
12 included for Judge Newman to review at this point was a sale
13 by someone who was alleged to have been Ms. Quezada having
14 left the apartment with a black male and walking over to
15 this apartment -- or this shopping center, and then
16 returning back, and I don't see any evidence in the
17 affidavit, and I did not have a chance to adequately review
18 it quickly again, but I don't see any evidence that the
19 black male left and went a different way.

20 But in any case, Your Honor, there is a black male
21 with Ms. Quezada who is unidentified could have been
22 possessing of the drugs that were sold to the CI. There is
23 no evidence that Ms. Quezada had those drugs on her person.

24 THE COURT: How else would have the buy been
25 consummated?

1 MS. MURRAY: Because there was a black male there
2 with her.

3 THE COURT: That's not what his testimony was.

4 MS. MURRAY: That's what's included in the
5 affidavit.

6 THE COURT: I'll read the affidavit, but based on
7 the testimony that I've heard, that's a mischaracterization
8 of the testimony. His testimony is that he observed a buy
9 and that she -- he identified her as a person who
10 consummated the buy.

11 MS. MURRAY: And, again, this is where we get into
12 that evidence of -- the video evidence and being unable to
13 view that as we have been, but I do think that in any case
14 there is some argument to be made with a black male being
15 present that he could have handed her the drugs --

16 THE COURT: Isn't that a weight issue you would
17 argue to a jury regarding the foundation and the
18 completeness of the investigation of this matter? They
19 don't have to indict every coconspirator.

20 MS. MURRAY: I understand that, and that's not
21 what I'm arguing, Your Honor. What I would point out is
22 there is no evidence that the drugs necessarily came from
23 inside that apartment, that that black male left that
24 apartment with her, then the drugs could have come from the
25 black male and not necessarily be in that apartment, so that

1 would be my argument with regard to that first sale as being
2 questionable and lacking in probable cause.

3 There's at least a question there that those drugs
4 came from that apartment, and then you move into the second
5 paragraph of the affidavit, Your Honor, which is basically
6 just the sale six months prior, which I would allege is far
7 past stale evidence at this point, but this is six months
8 prior at a completely different address. I think the
9 information there is used only to connect Ms. Quezada to
10 Mr. Hunter, and then the fact that Mr. Hunter visited this
11 apartment on numerous occasions based on paragraph four of
12 the affidavit.

13 So we have one sale that was made after somebody
14 left the apartment and the residence to be searched, and
15 then you have visits to the apartment by a friend of the
16 person who made that -- or allegedly made that sale, and,
17 Your Honor, I think that that is just very thin evidence
18 that -- we're talking about Mr. Hunter making visits, and
19 yes, they did search other places, but if Mr. Hunter visited
20 Walmart ten times and stayed for five minutes, we're not
21 going to search Walmart.

22 Agent Wingo also testified there were other
23 residences that Justin Hunter visited that were not
24 searched, and the fact that Mr. Hunter visited these -- this
25 apartment is no evidence that there's actually drugs in the

1 apartment. And case law, based on the Fourth Circuit says
2 that we have to have that nexus, not just that there is
3 suspicion of this person being a drug dealer, but there were
4 actually drugs to be found in this residence, and hindsight
5 is 20/20, Your Honor, but at that time Judge Newman did not
6 have that hindsight.

7 What he had was the information that was before
8 him, and at that point in time, I don't believe that that
9 nexus between the suspects at issue with regard to whether
10 they were dealing drugs or not was adequately tied to this
11 particular residence, and, Your Honor, basically, I think
12 that if we have visits to a place as being our sole
13 evidence, and looking at the bare bones of this affidavit,
14 it's insufficient to establish probable cause.

15 There also, Your Honor, could have been additional
16 things that the agents could have done to perhaps obtain
17 probable cause, like video surveillance instead of just GPS
18 surveillance. There could have been trash dumps. There
19 could have been questions of bringing one person in and
20 questioning that person. If you have a confidential
21 informant, we could have tried to get the confidential
22 informant make a buy directly from the residence so that
23 they could have some eyes and ears inside the residence.

24 Your Honor, I will point again just to one case,
25 which is United States v. Lalor, which states that the

1 target -- it's not whether or not the target of a search is
2 suspected of a crime, but whether it's reasonable to believe
3 the items to be seized would be found in the place to be
4 searched.

5 And, Your Honor, I just don't think having one
6 person who left the apartment and made a sale, especially
7 when there is another unidentified person with her, is
8 sufficient enough to warrant an intrusion of the level of
9 going into an apartment into somebody's home based on our
10 Fourth Amendment protections, and I would rest on that.

11 THE COURT: Let's see. Mr. Niravong, do you wish
12 to make any argument?

13 MR. NIRAVONG: We just want to make it known --

14 THE COURT: I need you to stand, sir, when you're
15 addressing the Court.

16 MR. NIRAVONG: We just support what Attorney
17 Murray just said.

18 THE COURT: Okay. Ms. Johns, do you wish to make
19 any argument?

20 MS. JOHNS: Your Honor, I would just rely on State
21 vs. McKnight.

22 THE COURT: And, Mr. Underwood, would you like to
23 respond?

24 MR. UNDERWOOD: Very briefly, Your Honor. First,
25 as to the sufficiency of probable cause presented to Judge

1 Newman, for him to make a determination of probable cause,
2 again, Your Honor, the proper standard is whether or not
3 there was sufficient evidence provided to Judge Newman that
4 there would be probable cause that the type of evidence
5 sought would be found at that location.

6 It was correctly stated that the issue is not the
7 guilt or not guilt of any particular individual but whether
8 or not evidence of a particular nature would be found at the
9 location. Your Honor, the information provided, not only in
10 this search warrant affidavit but in the affidavit for the
11 GPS tracking device, combined with the verbal testimony that
12 was given to Judge Newman during those applications, when
13 you take all of that information provided to Judge Newman as
14 a whole, there is more than sufficient information to
15 establish probable cause that drug evidence as well as the
16 other evidence that was being sought pursuant to the search
17 warrant would be found in that location.

18 The earlier parts of the affidavit, Agent Wingo
19 describes throughout the lettered paragraphs the typical
20 conduct of individuals who are involved in drug trafficking
21 activities and how certain types of evidence, in addition to
22 the illegal drugs themselves, but documents that might show
23 money transfers and travel and things of that nature would
24 also likely be in such a location.

25 The first numbered paragraph -- the number one is

1 actually missing, it's a typo, Your Honor -- where it's
2 establishing the probable cause talking about the controlled
3 purchase that happens at the Azalea shopping center, Your
4 Honor, in this paragraph alone sufficient probable cause
5 exists.

6 We have evidence where officers have observed an
7 individual sell drugs that came directly from the location
8 to be searched, which was Apartment [REDACTED] at [REDACTED] Bear Island
9 Road. The officers had continual observation of the
10 individual come from that apartment and go directly to where
11 the transaction happened, observe the transaction happen,
12 and the person returned directly to that address -- to that
13 apartment.

14 Also, Your Honor, when you combine that with the
15 GPS trafficking information that shows that an individual,
16 who is a part of this conspiracy, is making frequent, short
17 trips that are consistent with drug trafficking activities,
18 that goes to show that there is a likelihood that that type
19 of evidence would be found at that location.

20 Again, Your Honor, you can't break down any one
21 part of the affidavit or information provided to the judge.
22 It has to be looked at as a whole, and in the totality of
23 all that information, there is more than sufficient
24 information to establish probable cause, not only that drug
25 evidence would be found, but that other documentary evidence

1 or other evidence could also be found at that location which
2 subsequently was.

3 Your Honor, the information shows there were
4 multiple controlled purchases that may not have happened at
5 that location. It shows the connection of the individuals,
6 and all that information was presented to Judge Newman for
7 him to consider if there was sufficient probable cause, both
8 for the drug evidence and the other types of evidence that
9 were being sought as well.

10 Also, Your Honor, I would note that out of all the
11 evidence that was presented during this hearing, I don't
12 believe that any of the three defendants have shown any
13 sufficient evidence that there is a legitimate reasonable
14 expectation of privacy. Your Honor, in order for a
15 defendant to be able to object to the sufficiency of a
16 search warrant, they have to have a legitimate reasonable
17 expectation of privacy.

18 Ms. Johns expressed to the Court that her client,
19 Mr. Hunter, did not live at this address. Both Mr. Johnson
20 and Ms. Quezada have drivers' licenses that indicate that
21 their residences were somewhere else. Their booking
22 information at the detention center shows that their home
23 address was somewhere else. Your Honor, no evidence was
24 provided during this hearing to show that any of these three
25 individuals even had an expectation of privacy at that

1 apartment, so I would argue, first, that there is sufficient
2 probable cause for the search warrant and also that none of
3 the defendants have an expectation of privacy to challenge
4 this search warrant in the first place. I would argue both
5 arguments, Your Honor.

6 MS. MURRAY: Your Honor, I just want to address
7 his argument and reply to that, if possible, if it please
8 the Court.

9 THE COURT: Uh-huh.

10 MS. MURRAY: I don't want to belittle this,
11 because I know we've been over it several times, but, you
12 know, to bare bones state the probable cause that was used
13 for this affidavit, we have a sale when another person was
14 present from this apartment. She's connected to Justin
15 Hunter, and then the fact that Justin Hunter visited the
16 apartment, that's the bare bones probable cause, and I think
17 that that offends the Fourth Amendment right to privacy, and
18 if they're going to talk about --

19 THE COURT: You've got a right to privacy
20 somewhere you don't have an expectation of privacy that you
21 deny is your residence?

22 MS. MURRAY: You know, Your Honor, at this point
23 nobody has made any allegation of that -- of denying that
24 that is their residence. I understand that they may have
25 gave different addresses to the jail, but we're not in a

1 court proceeding at this point, and if he's going to argue
2 that they didn't live there, then I would ask that he be --
3 that he continue that argument through the full trial of
4 this case.

5 THE COURT: I don't think he's bound by this
6 hearing. We're in a motion hearing. He has a valid point
7 regarding standing, and he's raised it, and if you want to
8 address it, you can. You have to have an expectation of
9 privacy to argue that somebody invaded it, don't you?

10 MS. MURRAY: Well, Your Honor, you're in a
11 residence --

12 THE COURT: Whose residence was it? You have to
13 have standing to challenge coming into my residence. You
14 have to have some expectation of privacy that you reside
15 there.

16 MS. MURRAY: If you're giving him the benefit of
17 the doubt to make both arguments whether -- at trial that
18 they did live there --

19 THE COURT: I don't know what he's going to argue
20 at trial. I'm in a motion hearing.

21 MS. MURRAY: And that's my point. So for that
22 purposes, let's allege at this point that yes, that is his
23 residence, but if we have the opportunity to change both
24 those theories at trial versus here, then we're going to
25 allege that's his residence and he does have an expectation

1 of privacy. They are indicating in their argument, or in
2 Agent Wingo's testimony, that there were items with both
3 addresses found in the apartment, so therefore he has a
4 right to privacy.

5 THE COURT: No, it wasn't really clear what they
6 found in the residence. That was a little vague, and as I
7 listen to your arguments, I recognize that. There's some
8 indication that licenses were found in the residence.
9 There's been a reference to documentary evidence found in
10 the residence, but there really is no clarity as to what was
11 found.

12 Can you elucidate that point? What was found in
13 the residence?

14 MR. UNDERWOOD: Your Honor, I believe Agent Wingo
15 testified that drivers' licenses were found for both
16 defendants, and those drivers' licenses indicated different
17 addresses for each defendant.

18 THE COURT: I heard that part, but that's only the
19 only thing he testified to, and he made reference to
20 document -- which usually means, like, light bills, medical
21 bills; usually people's transcripts -- things that tie you
22 to a residence, that people who live there generally would
23 leave in a residence.

24 Lots of times you will have individuals who say
25 they live someplace else, but then when you go to the

1 residence and they claim it's not theirs, you find other
2 things from the other residence in that residence. Like,
3 you find the light bill for the other residence in the
4 residence they say isn't theirs.

5 You find things that people generally keep on
6 their person because it's important to them, that they need
7 to function, and so is that all you're saying that was found
8 in the residence, is their drivers' licenses?

9 MR. UNDERWOOD: The testimony Agent Wingo gave,
10 Your Honor, was that he did not recall any documentary
11 evidence that would indicate either Mr. Hunter or
12 Ms. Quezada was connected to that address.

13 THE COURT: Other than the drivers' licenses.

14 MR. UNDERWOOD: Other than the drivers' licenses
15 which showed had other addresses. He did testify that there
16 was documentary evidence found in the apartment that did
17 have Justin Hunter's name and that address located on it.

18 THE COURT: Yeah, I wasn't clear about that.

19 MR. UNDERWOOD: He also testified, Your Honor,
20 about the booking information that was provided by him.

21 THE COURT: I heard it. I've been listening.

22 MS. MURRAY: And, Your Honor, I will disagree. I
23 believe that he said there was other mail that was found in
24 the apartment.

25 THE COURT: I just don't think it was ever really

1 clear, but now it is, I guess.

2 MS. MURRAY: In any case, Your Honor, I think if
3 we have the ability to argue both, you know, and change our
4 arguments and theories at trial, then for purposes of this
5 hearing, yes, he lived there. If we're going to --

6 THE COURT: I think that's a little disingenuous.

7 MS. MURRAY: Well, I understand that.

8 THE COURT: The State is not bound -- they don't
9 owe you any fidelity in their theory.

10 MS. MURRAY: I understand that --

11 THE COURT: People change theories in the middle
12 of a case all the time. They have the burden of proof. As
13 the case develops, they change all the time.

14 MS. MURRAY: Why does that mean that we can't
15 change ours?

16 THE COURT: I don't know what you can do, but I
17 can tell you this: He only has to meet his burden in this
18 proceeding by a preponderance of the evidence. He has to
19 meet it beyond a reasonable doubt before a jury, and I've
20 been doing this long enough to know that theories change and
21 that they're not written in stone, and people say one thing
22 outside of court. When they're under oath, they say
23 something else, and things change and all theories are
24 dependent on the facts, and I don't know what their theory
25 is going to be. I haven't heard any arguments on that. I'm

1 dealing with a motion to suppress and whether there's
2 probable cause based on the totality of the circumstances.

3 MS. MURRAY: I understand, Your Honor.

4 THE COURT: And he's raised an issue of standing,
5 and I've given you the opportunity to respond to it, if
6 you'd like. I think it's an interesting theory.

7 MS. MURRAY: Your Honor, at this time we would
8 assert that Mr. Johnson has a right to privacy within that
9 residence.

10 THE COURT: Based on?

11 MS. MURRAY: Based on the fact that his mail and
12 his --

13 THE COURT: Mr. Johnson, you said?

14 MS. MURRAY: Yes. Correct.

15 THE COURT: And what mail of Mr. Johnson's was
16 found in the address?

17 MS. MURRAY: There was, first of all, his
18 identification card.

19 THE COURT: It was a license, was it not?

20 MS. MURRAY: Yes, Your Honor. A health insurance
21 card was found there, and there were also other items of
22 mail that were found there.

23 THE COURT: What other items of mail?

24 MS. MURRAY: There was, I believe, a State Farm
25 letter.

1 THE COURT: Was it addressed to him at that
2 address?

3 MS. MURRAY: It was addressed to him, I believe,
4 at the old address.

5 THE COURT: Which is the Patriot Boulevard?

6 MS. MURRAY: The Arno Drive.

7 My client has also informed me based on the return
8 that there was a Comcast bill that was in there as well.

9 THE COURT: And that was addressed to this
10 residence with his name on it?

11 MS. MURRAY: No, Your Honor. I believe all of the
12 mail that was in there was addressed to Arno Drive.

13 THE COURT: So that was not a cable bill for that
14 address. It was a cable bill for the Arno Drive?

15 MS. MURRAY: No bills were found in that apartment
16 that were bills for that apartment.

17 THE COURT: Anything further? I'm talking to
18 Ms. Hunter -- I mean, Ms. Murray. Did you have anything
19 further?

20 MS. MURRAY: No, ma'am. Thank you.

21 THE COURT: I saw you stand up. Was there
22 something?

23 MS. JOHNS: Yes, Your Honor. Your Honor, I would
24 like to reserve my argument to a brief that I can provide to
25 the Court within ten days.

1 THE COURT: You should have come prepared. You
2 knew what we were arguing today, and you certainly knew you
3 were going to join in this argument. I did this early for a
4 reason. I took time out of my day, out of my schedule in
5 Charleston, to handle this, and you should have -- it's not
6 like it's novel. It's black letter precedent. There is
7 nothing new under the sun.

8 You should be able to articulate your client's
9 position. I am, however, a little -- concerned may be too
10 strong a word, but your client's not here. Are you waiving
11 his presence?

12 MS. JOHNS: Let me address the issue about this
13 hearing that's scheduled today. I found out yesterday at
14 5:00 p.m. this hearing was scheduled today.

15 THE COURT: Please don't make me get my secretary
16 on the phone and disprove that because we've been planning
17 this for a long time, and I made sure she made everybody
18 aware of it because I assumed that everybody would have some
19 interest, even if they didn't argue a position, that they
20 would want to be present to hear it.

21 MS. JOHNS: I could be stood corrected, Your
22 Honor --

23 THE COURT: I think you will cause she does
24 everything at my direction. She doesn't do anything
25 independently. When she speaks, she speaks for me, and if I

1 directed her to do it, it was done, and I was standing there
2 while she was doing it, so I know that more than adequate
3 notice was given.

4 MS. JOHNS: Well, that being said --

5 THE COURT: It's been a minute, hasn't it? I
6 think we scheduled this right after we had the guilty plea,
7 or the rejection of the offers.

8 MS. MURRAY: I believe we had a date in mind, but
9 I think that that was during the first week --

10 THE COURT: And my secretary continued to work on
11 the date because all of you were unavailable.

12 MS. MURRAY: That's correct, and I think we
13 finally got this date as of last week.

14 THE COURT: To accommodate all counsel's
15 schedules.

16 MS. MURRAY: Much appreciated. My daughter had
17 surgery, so I'm grateful for that.

18 MS. JOHNS: I'm letting the Court know that I
19 found out about this based on Ms. Murray's phone call to me
20 last night, and if the Court is denying me the ability to
21 provide a brief on these two issues, I'll live by that
22 order.

23 Thank you.

24 THE COURT: Are there going to be any other issues
25 at trial? Were there any statements alleged to have been

1 made by these defendants? Are we going to need any sort of
2 Jackson vs. Denno hearings?

3 MR. UNDERWOOD: Your Honor, I believe there was
4 some very brief verbal statements that may have been made by
5 some of the defendants. I'm not aware of any written
6 statements by them.

7 THE COURT: Are any of the defendants going to be
8 asserting or finding the necessity for a Jackson vs. Denno
9 hearing?

10 MS. MURRAY: Your Honor, at this time, no, but --
11 because there were not any written statements, but as the
12 need progresses --

13 THE COURT: I'm going to need to know in advance
14 because I'm going to have all these hearings in advance.
15 I'm not waiting till the day of trial to do pretrial.

16 MS. MURRAY: I just need the opportunity to review
17 the file.

18 THE COURT: Okay. Do you plan to utilize any of
19 these verbal statements?

20 MR. UNDERWOOD: I believe that there was a
21 short -- it comes short of calling it a confession, Your
22 Honor, but some statements made by Mr. Hunter when he was
23 arrested. Off the top of my head, I don't recall statements
24 from the other defendants. I'd have to look through the
25 file again as well, Your Honor.

1 THE COURT: So that would be -- I need y'all to
2 let me know because, again, as I indicated, I plan to do all
3 of this pretrial in advance of us beginning trial. I'm not
4 going to be spending -- you know, it's different when you
5 don't have a judge assigned to a case. They have certain
6 limitations because they then have to do things right
7 before -- at the call of the jury and all that, but I don't
8 have those limitations, and we're going to do all that in
9 advance because I'm not going to be expending jury time
10 doing any of that.

11 Are there going to be any Biggers issues? Are
12 there going to be any identification issues that are going
13 to need to be heard ahead of trial?

14 MR. UNDERWOOD: I know there was at least one
15 photo lineup, possibly two, that were conducted through the
16 investigation as well as some different, as Agent Wingo
17 testified, personal observations from law enforcement
18 observing these individuals as well as testimony that would
19 be given in court of identification by confidential
20 informant and such, Your Honor. Whether or not any of the
21 defendants are choosing to challenge those identifications
22 I've not yet been notified.

23 THE COURT: Are we going to need any Biggers
24 hearings?

25 MS. JOHNS: Your Honor, based on the discovery

1 that I've got, the identification of my client comes from
2 law enforcement, and a photo lineup may have been conducted
3 with the original CI, so -- but as far as him being Justin
4 Hunter, no, but him being the one that's distributing drugs,
5 I think that's a jury question.

6 THE COURT: Again, my question again is, are we
7 going to need a Biggers hearing?

8 MS. JOHNS: No, Your Honor.

9 MS. MURRAY: No, Your Honor.

10 THE COURT: Is there going to be any type of Lyle
11 testimony that the State is going to be seeking to introduce
12 that is going to require a hearing?

13 MR. UNDERWOOD: Your Honor, the State is intending
14 to try all the Berkeley County charges from the entire
15 indictment together, and that's due to the nature of the
16 charges being joined together. I don't know whether that
17 would be considered Lyle evidence.

18 THE COURT: No, I'm talking about the prior bad
19 acts. The subject of a conviction and not subject of a
20 conviction that fit within any of those Lyle criteria:
21 Motive, intent, knowledge, absence of mistake, et cetera.

22 MR. UNDERWOOD: I don't believe so at this time.
23 If something develops, I'll advise the Court as soon as
24 possible.

25 THE COURT: And that's y'all's understanding as

1 well?

2 MS. JOHNS: Yes, Your Honor, for Mr. Hunter.

3 THE COURT: I'm trying to think if there is
4 anything else that we would need to handle pretrial. Does
5 the State plan to call any expert witnesses?

6 MR. UNDERWOOD: Only to the extent any drug
7 investigators may be qualified as experts in chemicals as
8 well as chemists.

9 THE COURT: And I assume you are familiar with the
10 witnesses they would be calling from SLED, and there would
11 be no issues with that?

12 MS. JOHNS: I'm sorry, Your Honor. Repeat that.

13 THE COURT: I had my head down. I apologize. The
14 individuals that will be calling from SLED, the drug
15 analysts, we all know most of them. Are there going to be
16 any issues regarding their qualifications? Are there going
17 to be any chain issues regarding any of that that need to be
18 heard in advance?

19 MS. JOHNS: Qualifications, no, Your Honor. Chain
20 evidence I guess will be from the testimony from the witness
21 stand.

22 THE COURT: But do you all anticipate any issues
23 with the chain other than perfunctory motions that you need
24 to make?

25 MS. MURRAY: No, Your Honor.

1 MS. JOHNS: No.

2 MR. NIRAVONG: No, Your Honor.

3 THE COURT: All right. How many witnesses does
4 the State anticipate calling? Just give me a rough
5 estimate.

6 MR. UNDERWOOD: I'm really not sure, Your Honor.

7 THE COURT: I'm going for -- I have to plan, so I
8 need to know -- just give me a round estimate.

9 MR. UNDERWOOD: May I confer with my agent for
10 just one moment?

11 THE COURT: Sure. While we're talking about that
12 is there going to be any defenses like alibi or otherwise
13 that require notice to the State?

14 MS. MURRAY: If we do -- and I don't anticipate
15 it, but if we do, we'll provide that notice, Your Honor.

16 THE COURT: You all have been provided with your
17 clients' records, I assume?

18 MS. MURRAY: Yes, Your Honor.

19 THE COURT: And do you have any issues regarding
20 their records? Is what was provided to you accurate?

21 MS. JOHNS: As far as I know, Your Honor. Mine
22 appears to be accurate for Mr. Hunter.

23 MS. MURRAY: Mine appears to being accurate well.

24 MR. NIRAVONG: Same.

25 MR. UNDERWOOD: And I believe at the beginning of

1 this hearing it was mentioned about one or two individuals
2 may not have seen one of the videos.

3 THE COURT: I'm going to deal with that.

4 MR. UNDERWOOD: I have them here today present if
5 anyone wants to view them. I have them with me if anyone
6 wants to review the list.

7 THE COURT: We're back to my original question,
8 which is how many witnesses do you estimate?

9 MR. UNDERWOOD: Your Honor, I would estimate at
10 least -- approximately 15 witnesses. Some of the law
11 enforcement witnesses might be duplicative. I haven't met
12 with all of them yet, so I may be able to cut some of them
13 down, but there would be at least one co-defendant witness,
14 possibly, if anyone decides to plea now and then more
15 confidential informants as well as our analysis experts,
16 Your Honor.

17 THE COURT: How many witnesses, Ms. Murray, do you
18 anticipate you will be calling?

19 MS. MURRAY: Your Honor, I cannot give you that
20 information at this time. I have not reviewed it or
21 discussed it with my client, so I don't know at this point.

22 THE COURT: You can give me an estimate. I'm
23 asking for planning purposes.

24 MS. MURRAY: Less than five.

25 THE COURT: Mr. Niravong?

1 MR. NIRAVONG: Same, if there is any.

2 THE COURT: Okay. And Ms. Johns?

3 MS. JOHNS: Potentially three.

4 THE COURT: Okay. So we should be able to
5 comfortably do this in a week, I'm thinking.

6 MR. UNDERWOOD: And just for planning purposes,
7 since there are a number of controlled purchases in the
8 case, there were a number of videos that would probably be
9 admitted into evidence. Some of them might be rather
10 lengthy --

11 THE COURT: Could you provide those to me in
12 advance so I could watch them?

13 MR. UNDERWOOD: I can, Your Honor, and also I was
14 going to discuss prior to trial with opposing counsel about
15 whether or not certain videos, just the pertinent parts to
16 be published to save time during the trial?

17 THE COURT: And that's the next thing I was going
18 to deal with, is exhibits. If there are any exhibits that
19 you all can agree upon and premark, if you could do that and
20 find out -- I don't know who my court reporter is going to
21 be that week.

22 MS. MURRAY: Which week are we looking at?

23 THE COURT: July --

24 MR. UNDERWOOD: It's the 24th.

25 THE COURT: If you all have exhibits that you have

1 agreed upon -- well, premark everything, but come to court
2 prepared to let me know what exhibits you've agreed upon so
3 those could be admitted without having to go through all the
4 gymnastics for that because it makes it easier for y'all and
5 makes it easier for the court reporter instead of having to
6 come and document if you have already agreed upon it.
7 Anything you haven't agreed upon, mark for ID only and we'll
8 take up contemporaneous objections on those when you seek to
9 admit it.

10 The next thing is I was going to ask about the
11 videos because normally there is dead time in videos that is
12 just irrelevant to anything, and if y'all could look at the
13 videos and agree as to what -- I assume y'all are going to
14 make an objection to the videos, but to the extent that they
15 come in, I would suggest you get with Mr. Underwood and
16 agree as to what can come in so that those can be edited
17 prior to trial instead of us having to wait because, worst
18 scenario, they come in and they're already edited. Best
19 case scenario, they don't come in, no harm, no foul. It's a
20 time-saving measure.

21 Yes, ma'am?

22 MS. MURRAY: And, Your Honor, if appropriate, I
23 would like to address the issue of these videos right now.

24 THE COURT: What issue is that?

25 MS. MURRAY: The fact that I went over

1 specifically to his office to review these videos. It's my
2 understanding that they're over four hours long.

3 THE COURT: Okay.

4 MS. MURRAY: And none of it played, none of it
5 played.

6 THE COURT: Probably because it needed special
7 software. Whose software were you using?

8 MS. MURRAY: Theirs. He had to have an assistant
9 in his office come down to try and play, and she could not
10 get them to play. So my understanding at that point was
11 that they would not be admitted, and now he's saying that he
12 has the videos, and in every discussion that we've had up
13 until this point is they have no video evidence, and he's
14 not contradicted that.

15 THE COURT: No, that's not what he told me.

16 MS. MURRAY: I understand --

17 THE COURT: During all of our status conferences,
18 it's always been clear that video was being used.

19 MS. MURRAY: Until he realized that they were not
20 able to be played, so every time I've discussed it with him,
21 since the day I left his office, it's been, well, we don't
22 have video evidence, and he kind of concedes to that point,
23 and now understanding that you have it, which is fine,
24 but --

25 THE COURT: Well, you all can watch it before you

1 leave today.

2 MS. MURRAY: Well, I don't have time to watch it
3 before I leave today, is my problem --

4 THE COURT: Make arrangements to go to his office.
5 I mean, like, I've seen a lot of videos: Some of them,
6 people walking upside down, walking down the street; I mean,
7 some of it just doesn't really amount to anything.

8 MS. MURRAY: I understand that. My request, Your
9 Honor, would that as he's making you copies for you to view,
10 please make us copies to view as well so that we don't have
11 to spend time --

12 THE COURT: Unless it's going to let you know who
13 the CI is and you're going to be able to show it to your
14 clients, and I'm not going to run the risk of anybody's
15 safety being jeopardized.

16 MS. MURRAY: I can say, Your Honor, they already
17 know who the CI is. They do.

18 THE COURT: Oh, okay. Well, then is there an
19 issue?

20 MR. UNDERWOOD: I don't think so, Your Honor.

21 THE COURT: So then can you provide them with
22 copies?

23 MR. UNDERWOOD: We can get copies made.

24 THE COURT: That works. Now, if there is some
25 special software, I need to know.

1 MR. UNDERWOOD: There is, and if I can address
2 Ms. Murray's concern, when Ms. Murray did come the first
3 time to our office, I did meet with Ms. Murray. We were
4 having trouble trying to get some of the technology to work.
5 That's when I learned there was special software.

6 I was under the impression Ms. Murray was informed
7 that we had fixed that situation. Apparently she was not,
8 but yes, Your Honor, the videos only run with certain
9 software, but what we have found will work is if we put each
10 video on a separate disk with that software, that's the only
11 way we can make it run.

12 THE COURT: That's usually how it's done.

13 MR. UNDERWOOD: Working from our server, it did
14 not work.

15 THE COURT: So if you could do that for me too,
16 and I need it in advance because if it requires the download
17 of software, I'm going to have to get my IT people to give
18 me authorization to download it.

19 MR. UNDERWOOD: That would run off the disk, Your
20 Honor.

21 THE COURT: So how long is it going to take to get
22 them copies?

23 MR. UNDERWOOD: I believe we could probably get
24 those out next week, Your Honor.

25 THE COURT: Well, you believe. I need a

1 definitive timeline.

2 MR. UNDERWOOD: Well, I'd state that I know
3 Tuesday is a holiday.

4 THE COURT: I doesn't matter.

5 MR. UNDERWOOD: By mid-week, Your Honor, we would
6 have those out.

7 THE COURT: All right. Is that sufficient,
8 Ms. Murray?

9 MS. MURRAY: Yes, Your Honor.

10 THE COURT: Is that sufficient, Ms. Johnson?

11 MS. JOHNS: Yes, Your Honor.

12 THE COURT: Is that sufficient, Mr. Niravong?

13 MR. NIRAVONG: Sure, Your Honor. Yes.

14 THE COURT: All right. So I assume y'all are in
15 Columbia, so do you want to pick it up or do y'all want me
16 to mail it to you?

17 MS. MURRAY: I'll pick it up.

18 MR. UNDERWOOD: I'll pick it up.

19 THE COURT: I guess y'all are going to have to
20 have it mailed to you unless you get somebody in Columbia to
21 pick it up from here? It should only take a day. We hope.
22 All right.

23 And you're going to mail it to us as well,
24 Mr. Underwood?

25 MR. UNDERWOOD: Yes, Your Honor.

1 THE COURT: How many videos are there? And is the
2 audio that you've received the same audio as the video or
3 are there separate audio files as well?

4 MR. UNDERWOOD: Most of it, Your Honor, I believe
5 is connected to the video, and there is also audio from
6 recorded phone calls that is audio only.

7 THE COURT: And you're going to provide that to
8 them as well?

9 MR. UNDERWOOD: Yes, Your Honor. And, Your Honor,
10 one of the videos, and I believe this would be the one that
11 pertains to Ms. Murray's client, the video portion of the
12 recording device froze; however, the audio continues
13 throughout, just to note that to the Court that there isn't
14 a problem with your software when you get it. There's a
15 problem with the recording itself.

16 THE COURT: All right.

17 MR. UNDERWOOD: By quick count, I got 32 disks,
18 which includes audios from transactions themselves as well
19 as the phone calls. That's how many I brought with me
20 today.

21 THE COURT: That is how many you'll duplicate.

22 MR. UNDERWOOD: Yes, ma'am.

23 THE COURT: So you'll have those next week, you'll
24 let them know if you need to mail those to us?

25 MR. UNDERWOOD: Yes, Your Honor.

1 THE COURT: And when I say us, I mean me and
2 Mr. Niravong.

3 Yes, ma'am?

4 MS. MURRAY: I apologize, Your Honor.

5 My client, who, as you see, is present in the
6 courtroom, has indicated to me that because of my
7 representations to him that there was no video evidence,
8 which is one of the reasons and the strongest reasons why he
9 turned down the plea offer, he --

10 THE COURT: Does he want to reconsider it?

11 MS. MURRAY: He wants to reconsider.

12 THE COURT: Do you need time to talk to him about
13 it?

14 MS. MURRAY: I do.

15 THE COURT: All right. We'll be at ease for a few
16 moments.

17 And, Ms. Johns, I owe you a profuse apology. My
18 secretary, for some reason, did not notify you. Never be it
19 said that I don't know when to fall on my sword when it's
20 appropriate. And I apologize to you, and I have told her
21 very sternly my displeasure with that because I specifically
22 told her to notify you because my assumption was that you
23 would be interested, and if you need additional time to
24 respond, I will give you that, but I would prefer you give
25 it to me in five days.

1 Do you think -- I know Tuesday is a holiday. I,
2 unfortunately, have no life and work too much, according to
3 my family. I am going to try and take the 4th off, but if
4 you could get it to me -- this is my thought process: I
5 know sometimes it might seem like I'm just very sort of
6 strict, but I feel like it benefits you all. It keeps me on
7 track. We do so much. We have so much before us that when
8 something is fresh in my mind, I need to study it, deal with
9 it, get you a ruling because then that gets you prepared for
10 where you need to go in your trial preparation, and that's
11 why I'm doing all of these things ahead of time, because I
12 just believe that cases are tried better when people have
13 adequate time to prepare.

14 It doesn't take as much time for me to prepare. I
15 mean, I get up to speed. Y'all know it better than I do. I
16 learn a lot during the course of a trial, but I feel like
17 the more time I give y'all to get prepared, the more relaxed
18 you are, the more relaxed your client is, and the more faith
19 people have in the system. So if it seems like it's very
20 structured, it's really selfish on my part to keep me on
21 track, but if you could get it to me by the end of the week,
22 that would be helpful, because I do plan to issue a written
23 ruling from the hearing, so if you could get that to me in
24 five days, I appreciate it, and, again, I apologize to you.

25 MS. JOHNS: So at the end of the week?

1 THE COURT: Yeah, Friday.

2 MS. JOHNS: I don't have any problem doing that,
3 Your Honor.

4 THE COURT: Okay. Go ahead and talk to your
5 client. We'll be at ease for a few minutes.

6 - - -

7 (10:50, the proceedings were concluded.)

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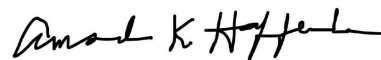
24

25

1 I, the undersigned, Amanda Kelly Haffenden, RPR,
2 CRR, Circuit Court Reporter for the Ninth Judicial Circuit
3 of the State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced in
6 the trial of the captioned case, relative to appeal, in the
7 Circuit Court in Berkeley County, South Carolina, on the
8 29th of June, 2017.

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

11 June 6, 2020

12
13
14 

15 _____
16 Circuit Court Reporter
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2016-GS-47-0002
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
EMORY WARREN ROBERTS, JUSTIN	)	
GORDON HUNTER	)	
	)	
Defendants	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

July 19, 2017
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, JUDGE

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1 PROCEEDINGS

2 THE COURT: Yes sir Mr. Griffith, have you had
3 sufficient time to talk with Emory Roberts?

4 MR. GRIFFITH: I had time to speak with him, Your
5 Honor.

6 THE COURT: Okay.

7 MR. GRIFFITH: If it please the court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. GRIFFITH: Mr. Roberts does not wish for me to
10 represent him.

11 THE COURT: Okay. What does he want to do? He
12 wants to represent himself?

13 MR. GRIFFITH: We would like the court to address
14 that by allowing him to let the court know. But he wants
15 to have another attorney appointed ---

16 THE COURT: --- no ---

17 MR. GRIFFITH: --- he says his family may be able
18 to get him an attorney ---

19 THE COURT: --- well they need to hire whoever
20 they're hiring today and the person needs to know the
21 trial is going forward on Monday. There will be no
22 delay. I need him to be clear about that. The charge
23 has been pending a long time and he had a long time to do
24 what he was going to do.

25 MR. GRIFFITH: Well, Your Honor, it was ---

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1 THE COURT: --- I'm not delaying it. This is the
2 only Grand Jury term. It was set a year ago and that's
3 that. When was he indicted?

4 MR. UNDERWOOD: April 13, 2015, Your Honor.

5 THE COURT: Yes, it's been past a year. He had
6 many attempts to make decisions. I can't entertain when
7 you're the architect of your own dilemma.

8 MS. JOHNS: Your Honor?

9 THE COURT: Yes, ma'am? We're going to deal with
10 your motions in just a moment. And I've issued a bench
11 warrant for your client's arrest.

12 MS. JOHNS: Okay. Can we approach the bench?

13 THE COURT: Sure.

14 [Whereupon, an off the record bench conference is
15 held]

16 MR. ROBERTS: Excuse me, Your Honor?

17 THE COURT: Yes, sir. I'll be with you in just a
18 moment, sir. Now, Doctor -- first, let's deal with Mr.
19 Griffith. Mr. Griffith, you had some concerns about your
20 client's competency, is that correct?

21 MR. GRIFFITH: Yes, Your Honor.

22 THE COURT: And what was that based upon?

23 MR. GRIFFITH: Your Honor, based upon speaking with
24 Mr. Roberts I was unable to gain his cooperation and I
25 felt perhaps for his benefit and to protect his rights

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1 that I should have an evaluation ordered by the court.
2 Doctor Maddox went to the detention center and spoke
3 somewhat with Mr. Roberts and has spoken with him again.
4 I would like the court to hear her ---

5 THE COURT: --- I'm going to deal with that. I'm
6 going to do this step by step. So originally you had
7 some concerns because he was non-communicative with you
8 and you had concerns about being able to mount a defense
9 for him. Is that it in a nutshell?

10 MR. GRIFFITH: Yes, Your Honor. I was unable to
11 gain his cooperation in his own defense.

12 THE COURT: Okay. Now in your subsequent
13 conversations with him do you have any concerns about his
14 competency? In other words does he know where he is,
15 does he know what's going on or is his non-communication
16 simply a deliberate act on his part?

17 MR. GRIFFITH: Your Honor, I'm not a psychiatrist
18 or ---

19 THE COURT: --- yes, but we're lawyers and we have
20 to make certain determinations about whether people can
21 understand us or not. I used to do probate work and I
22 always had to make a decision about whether somebody knew
23 where they were, whether they were clear about time and
24 place before I had them execute a will or a power of
25 attorney. I think common sense dictates some of that.

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1 I'm not asking as a professional; I've got a doctor here
2 for that.

3 MR. GRIFFITH: Yes, Your Honor. I have concerns
4 about his capability to understand really what's going on
5 and I would like the court to address those in the
6 evaluation.

7 THE COURT: Okay. Now, originally a doctor was --
8 there was an order to have Mr. Roberts evaluated at the
9 Medical University of South Carolina. But due to his
10 behavioral issues that had to be cancelled due to an
11 assault that was perpetrated on a correctional detention
12 officer.

13 Subsequent to that I issued an additional order to
14 have him evaluated by Doctor Maddox and I arranged for
15 that to take place at the Berkeley County Detention
16 Center. Doctor Maddox, can you tell me what happened on
17 that date that you came to evaluate Mr. Roberts?

18 DOCTOR MADDUX: Yes, ma'am. Mr. Roberts, he did
19 not know I was coming on that day or ---

20 THE COURT: --- yes, they wouldn't have notified
21 him for security purposes.

22 MR. GRIFFITH: If it please the court, Your Honor?

23 THE COURT: Yes, sir.

24 MR. GRIFFITH: I had informed him that she would be
25 coming at some point but not exactly when.

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1 THE COURT: Okay.

2 DOCTOR MADDIX: Yes, ma'am. I was escorted to his
3 cell. He was very pleasant. He was very polite. He
4 refused a formal evaluation and was very consistent about
5 that. But he was very pleasant. He took a lot of time
6 to make sure that I got this and I want to quote this for
7 him. He stated that he has the UCC-1308 code is the
8 reason for his refusal.

9 And what he continuously stated to me, and I hope I
10 have this correct, I reserve my right not to be compelled
11 to perform under any compact or commercial agreement that
12 I do not enter knowingly, voluntarily, or intentionally.
13 I do not accept the liability of any compelled benefit or
14 any unrevealed contract or commercial agreement for UCC-
15 1308.

16 And what he told me is that there were no warrants
17 against him. He absolutely -- I'm not able to render
18 opinions, Your Honor because we weren't able to proceed.
19 All ---

20 THE COURT: --- absolutely ---

21 DOCTOR MADDIX: --- I could do was get
22 observations. I witnessed directly today he cannot work
23 with his attorney. And I don't think that is all
24 volitional on his part. He clearly does not trust his
25 attorney. He, and Mr. Roberts I apologize; I'm going to

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1 put it on the record if it's okay, he believes his
2 attorney has threatened him and used racial epitaphs
3 against him at an earlier hearing which I was not ---

4 THE COURT: --- what hearing would that have been
5 because we've never had a hearing with him.

6 MR. ROBERTS: It was at the jail ---

7 DOCTOR MADDOX: --- oh, excuse me I'm sorry, Your
8 Honor.

9 MR. ROBERTS: Second visit, Your Honor.

10 THE COURT: Huh?

11 MR. ROBERTS: The second visit that he came to the
12 jail.

13 THE COURT: So it was not in court? It was at the
14 jail?

15 MR. ROBERTS: Yes.

16 THE COURT: Okay.

17 DOCTOR MADDOX: And I watched him today. Mr.
18 Griffith tried to engage him and tried to talk about and
19 even offered today to put him on the stand. He has some
20 things that he would like to address with the court and
21 Mr. Griffith even offered to put him on the stand to let
22 him. And he refuses to even do that. He does not trust
23 him. He did tell me that he's got other people that are
24 trying to arrange for him to have an attorney. He has a
25 basic mistrust, Your Honor I think of the judicial system

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1 right now. He has -- his concern is, and I'm no lawyer,
2 but he stated that the Grand Jury met after he was
3 arrested. He's not really sure how that happened. He
4 feels many of his rights have been violated. He's
5 cooperative with me as much as he can. He's exercising
6 his rights but he's pleasant. I'm able to diffuse him.
7 He's able to work with me at some level. So I don't know
8 how much is volitional.

9 But I do not think he has the capacity to work with
10 Mr. Griffith right now. His attorney is trying and it's
11 not going to happen. I don't think all of it is
12 volitional. He got very agitated, not with me, but
13 certainly whenever he is dealing with his attorney he
14 gets quite agitated and feels threatened. He also felt
15 he was tricked into going to this hearing today. He said
16 it was a special appearance and he thought ---

17 THE COURT: --- we don't ever tell people when they
18 are going to court. It's for security reasons. We can't
19 run the risk that you might try to arrange -- not you,
20 but I've had people try to arrange people to come try and
21 break them out and things. Even when you're in Columbia
22 and you're in their custody they don't tell you when
23 you're going anywhere. They just come and pick you up
24 and take you. That's the way the system works. It's not
25 a big conspiracy; it's a matter of policy. It's about

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1 security. You are in our custody. You're at our
2 disposal. You don't really have -- you have nothing else
3 planned for that day other than what is at the jail and
4 any hearings are for your benefit. And that's why it is
5 important that you communicate with your lawyer.

6 But no secured facility that I'm aware of in this
7 state or any other state ever tells you when you're going
8 somewhere. It's just a matter of their policy. So it's
9 not some conspiracy not to let you know where you're
10 going. They do it deliberately so that you can't really
11 tell anybody where you're going to be.

12 And that's why it's important that you communicate
13 with your lawyer because then your lawyer can call your
14 loved ones and tell them if they need them there.
15 Usually you only need a loved one there for or a support
16 system when you're having a trial or a sentencing.

17 Other than that we're not too peculiar about having
18 folk here because it's not a good situation. It creates
19 volatility that we are not designed to handle. And
20 people tend to get themselves in very precarious
21 situations and that's why it's done that way. So I just
22 wanted to explain that to you so that you don't think
23 it's some conspiracy about why you're not told ---

24 MR. ROBERTS: --- I was just ---

25 THE COURT: --- I'm going to give you a chance to

1 address the court. I just need -- everything in our
2 process -- there is a process. It's done step by step.
3 And I tend to be a bit methodical, and I do it that way
4 for a reason. I do that so that I won't skip any steps
5 and I won't abridge your rights in any way, okay. So
6 just let me do this step by step as we need to do it.
7 Doctor Maddox is there anything else you would like to
8 share -- do you think he would comply with an evaluation
9 today?

10 DOCTOR MADDOX: No, Your Honor.

11 THE COURT: Okay.

12 DOCTOR MADDOX: And I'll stand corrected if ---

13 THE COURT: --- and why do you think that?

14 DOCTOR MADDOX: Again, he doesn't believe that the
15 court has any jurisdiction. He does not believe that
16 these charges are genuine. And any cooperation on his
17 part will constitute consent and he will not do that.

18 THE COURT: And you've explained to him that this
19 is in his best interest?

20 DOCTOR MADDOX: Oh, yes ma'am, when I went to the
21 jail I told him the court was concerned enough to send me
22 there. And he was very polite about it but very politely
23 refused. And he was friendly. And as today, Your Honor,
24 you see he pays attention. He does have understanding of
25 some legal proceedings. And I think one of the reasons

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1 he is upset about not being notified he carries his legal
2 work with him and he was not able to have that with him
3 today. So I think his concerns have been ---

4 THE COURT: --- yes, and just so he understands
5 there is no hybrid representation. Either you have a
6 lawyer or you don't. So it really doesn't matter that
7 you have any legal documents with you because you would
8 not have the ability to address the court.

9 And again that's for your benefit because anything
10 you say can be used against you. So it's best for you to
11 let the person who is equipped with knowledge of the
12 rules to talk for you. And it's best for you to be
13 silent. That's why we don't have hybrid representation.

14 Now if you want to represent yourself you can talk
15 all you want to. But you have to do it with your eyes
16 wide open knowing that everything you say can be used
17 against your best interest. This is an adversarial
18 system. And that's why it's always better -- I'm a
19 lawyer and if I need help I hire somebody to represent
20 me. I cannot be objective about my life. I'm too
21 emotionally attached.

22 So even if I have -- somebody rear ended me last
23 year. I hired a lawyer. Even though I am more than
24 equipped to negotiate a settlement damaging my car and
25 negotiating depreciation I hired somebody because I can't

1 be objective about that. It's just the nature of human
2 emotion. So, it's always best to take advantage of legal
3 counsel because they can see your blind side. They're
4 not emotionally attached. They can be very objective
5 about what's going on in your situation and that's
6 important. So that's why we do it the way that it's
7 done. Now tell me; you said that you believe he has some
8 knowledge of the legal system? It sounds like he does.

9 DOCTOR MADDUX: Yes, ma'am. And he's certainly
10 cognitively he's able to represent himself or stand
11 trial. He follows, he listens, he engages ---

12 MR. ROBERTS: --- I'm not that understanding of it.
13 I really don't understand what's going on now.

14 THE COURT: Well, I'll give you an opportunity to
15 address the court. Yes ma'am, continue.

16 DOCTOR MADDUX: He's got the cognitive capacity to
17 pay attention and assist. But, Your Honor I suspect and
18 again, he's not cooperated but there is a paranoid flavor
19 between he and his attorney's relationship. And I'm not
20 sure if that's a pathological one or if it is functional
21 given some of his views. I'm sorry; I wish I could ---

22 THE COURT: --- no, you don't have to apologize.

23 DOCTOR MADDUX: All I can tell you in my
24 interactions with him he relates to me, he has good eye
25 contact; he's trying to get his point across. We are

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1 able to communicate and I understand. It's my
2 understanding he does not like his attorney, he does not
3 trust him and he feels threatened by him. And that his
4 words to me were that he had people that were trying to
5 get him an attorney and he does not believe he has been
6 properly -- these warrants are not genuine. I think he
7 can better say some of them because ---

8 THE COURT: --- well, he wrote to the court and he
9 should be disabused of that knowledge because we totally,
10 I had my secretary and my law clerk totally research the
11 records and send him copies of his indictments and give
12 him a chronological breakdown of what has happened since
13 he was arrested. So I don't think he should have any
14 vague idea as to what happened or didn't happen.

15 What he made inquiry of was the Department of Public
16 Safety, which is the highway department which they sent
17 him a note back and said he has no record, which he
18 doesn't apparently have any tickets or otherwise. But I
19 don't believe for a moment that he doesn't know that he
20 was arrested on that date, processed, and served with a
21 warrant from the Grand -- yes I just -- yes.

22 DOCTOR MADDUX: The only recommendation, Your Honor
23 is ---

24 THE COURT: --- out of an abundance of caution we
25 sent him everything and that was over a month ago. It

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1 might be longer than that; I can't remember. Mr.
2 Griffith I sent you a copy I'm sure. I just don't
3 remember when it was.

4 MR. GRIFFITH: If it please the court, Your Honor.
5 I have also provided him with all of the discovery sent
6 to us from the Attorney General's office.

7 THE COURT: That was my next -- let me -- Doctor
8 Maddox, is there anything else you want to share with me?

9 DOCTOR MADDOX: If the court wanted to issue I
10 think maybe something to consider at some point would be
11 to have a guardian ad litem appointed to represent him to
12 interface if he continues with the same attorney. That
13 may be something that maybe ---

14 THE COURT: --- I'm hoping after talking with him
15 today that he will be compliant and be willing to
16 cooperate because it's in his best interest. But again,
17 if you could just indulge me by staying I'll cross that
18 bridge when I get to it.

19 DOCTOR MADDOX: Absolutely.

20 THE COURT: How many times have you met with your
21 client, Mr. Griffith?

22 MR. GRIFFITH: Your Honor, I've come down here I
23 believe it would be three times or four times and this
24 would be the fifth. I've communicated with him and he's
25 sent me some letters. But when I come down it's been

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1 difficult to communicate with him in that he would not
2 speak with me. After the first time I visited him he
3 told me that he did not want me to represent him and that
4 his family would be getting the lawyer. I then called
5 his family who said that they would not be getting that
6 lawyer. I continued to try to work with him and speak
7 with him but he refused to speak with me at all generally
8 after that first time.

9 THE COURT: Okay. Now you said you've given him
10 all the discovery, is that correct?

11 MR. GRIFFITH: Yes, Your Honor.

12 THE COURT: Thank you, sir. Now sir, stand for me
13 please and tell me your name for the record?

14 [Whereupon, the defendant stands]

15 THE COURT: What is your name, sir?

16 MR. ROBERTS: Excuse me?

17 THE COURT: What is your name?

18 MR. ROBERTS: They call me W.

19 THE COURT: I need to know your legal name, your
20 government name as the guys would say.

21 MR. ROBERTS: This court doesn't have jurisdiction
22 over me, Your Honor. I don't want to give the court
23 jurisdiction. I don't ---

24 THE COURT: --- sir, we already have jurisdiction
25 over you; you've been indicted. So what I need to know

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1 is your full name Emory Warren Roberts?

2 MR. ROBERTS: That is what is located on the
3 charging instrument.

4 THE COURT: Is that on your birth certification?

5 MR. ROBERTS: That's a legal fiction. That's an
6 article of commerce, Your Honor.

7 THE COURT: Sir, I hate to -- it sounds like you've
8 been talking to some folks that have giving you some
9 false ideas. And they are very good at convincing people
10 that these concepts are applicable. They're not; they
11 are not recognized. These are what we call commercial
12 concepts that deal with bulk transfers and commercial
13 goods.

14 They don't deal with people. In a commercial goods
15 situation like say if you owned a car dealership or if
16 you owned some bulk transfer company like you owned a
17 company that dealt with the port or otherwise that was
18 transporting goods some of these things would be
19 applicable. But they would only be applicable to
20 something that is inanimate; goods, things we buy and
21 sell.

22 We don't buy and sell people. People are human
23 beings. They are flesh and blood. And so these concepts
24 -- I'm trying to break this down as much as I can for you
25 because I need for you to be clear so that you can act in

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1 your best interest because right now you're not acting in
2 your best interest. And the system believe it or not is
3 designed to help you. The system's only job is to seek
4 the truth. We have no interest in convicting people who
5 did not commit crimes.

6 It costs us 40,000 dollars a year to take care of
7 somebody in the system. The State doesn't want to spend
8 that kind of money on somebody who is not convicted and
9 who is not guilty. And in addition to that our system
10 thrives on the fact that people who are innocent -- well,
11 not innocent because that is a legal fiction, who are not
12 guilty are found not guilty and it happens all the time.

13 And people who are found guilty where it is a
14 legitimate conviction are found guilty. The State has no
15 interest in what you would call an illegitimate
16 conviction. It clogs up the system. It expends
17 resources and frankly we have no -- and I say we meaning
18 the State has no interest in having innocent folk in
19 jail. It just makes no sense.

20 But you have to help yourself because everybody in
21 this room has a purpose. The State's purpose is to
22 prosecute the case but Mr. Underwood takes an oath. If
23 he comes across some evidence during the course of this
24 trial that exculpates you, in other words says you're not
25 guilty of this crime he is under an ethical obligation to

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1 make the court aware of that and say Your Honor, we're
2 going to dismiss these charges because I've come across
3 this information. I've shared it with counsel, I've
4 shared it with the defendant and it proves that he didn't
5 do this so we are going to dismiss the charges. He has
6 an ethical responsibility.

7 And I can assure you Mr. Underwood is not going to
8 lose his license over one person; worked too hard for it.
9 So then the other part of the system is for you to help
10 defend yourself. Your lawyer cannot ask appropriate
11 questions. He cannot exercise your right of
12 confrontation by questioning witnesses. He can't even
13 mount a defense for you if you don't talk to him.

14 For example, if you weren't where they said you were
15 that's an alibi. You need to tell him because the rules
16 require him to file an appropriate notice to put the
17 State on notice that you have a legitimate alibi. And
18 you know why they do that under the rules? So that the
19 State has enough time to investigate it so that in the
20 event you have witnesses that say you were someplace else
21 so they can drop the charges against you. They are not
22 interested in an unwarranted prosecution.

23 So you have to -- if you don't talk to your lawyer
24 and you don't fully advise him of everything he can't do
25 what needs to be done because he has a function.

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1 MR. ROBERTS: That's not my lawyer, Your Honor.

2 THE COURT: And then the clerks -- well, he is your
3 lawyer because that's who we have appointed unless you
4 plan to hire somebody else or unless you plan to
5 represent yourself ---

6 MR. ROBERTS: --- that's what I wanted to make note
7 of if I had a chance ---

8 THE COURT: --- well, you're going to have to hire
9 him by Monday because that's when this trial is going to
10 start. And I'm not delaying starting this trial because
11 you've had since April 13th of 2016 to hire somebody.
12 And Mr. Griffith says he had talked to your family and
13 they say they have no intention of hiring a lawyer.

14 MR. ROBERTS: He's talked to his mother and my
15 sister. That does not consist of my whole family.

16 THE COURT: Well, they should have done something
17 by now shouldn't they? They've had a year and almost a
18 half.

19 MR. ROBERTS: It's kind of hard you know. Money
20 don't grow on trees, Your Honor.

21 THE COURT: It doesn't but when it's important to
22 me I find it. We all make sacrifices. There are lots of
23 things I go without to do what is important.

24 MR. ROBERTS: I don't consent to any of this.
25 That's not my name. That's an article -- that's a straw

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1 man, a legal fiction and he can't represent me unless
2 it's for a whole settlement and closure in a transaction.
3 And I don't consent to prosecution or my incarceration.

4 THE COURT: Sir, how old are you?

5 MR. ROBERTS: That's immaterial, Your Honor.

6 THE COURT: How old are you? It is material. It
7 goes to your competency and whether you understand what
8 is going on and whether your age and discretion to
9 understand where you are and what you are doing. How old
10 are you?

11 MR. ROBERTS: The court is lacking jurisdiction,
12 Your Honor. It's immaterial ---

13 THE COURT: --- have you had a job in the past, Mr.
14 Roberts?

15 MR. ROBERTS: That's immaterial, Your Honor.

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

17 MR. ROBERTS: That's immaterial, Your Honor.

18 THE COURT: Okay. Sir, is there anything else
19 that you would like to share with the court in advance of
20 trial which is set to begin on Monday?

21 MR. ROBERTS: I mean if I am allowed to speak.

22 THE COURT: I asked you a question. It assumes an
23 answer would be forthcoming.

24 MR. ROBERTS: I would just like to state I'm locked
25 up without a warrant. They say it ---

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1 THE COURT: --- sir, did you not receive the
2 warrants and the indictments that we sent you? We sent
3 you copies of everything.

4 MR. ROBERTS: I have a writ of habeas corpus. They
5 sent me a copy of a Dorchester County warrant that is not
6 signed ---

7 THE COURT: --- no, sir. My secretary sent you all
8 of the State Grand Jury indictments and warrants with a
9 letter and copied your lawyer on it and copied the State.

10 MR. ROBERTS: Your Honor, those indictments are not
11 even certified. According to the State Grand Jury act
12 they are supposed to be certified.

13 [Whereupon, the court confers with the Clerk]

14 THE COURT: That's all that is required, sir that
15 they be filed. There is no certification that goes on
16 those things. You only certify orders which has a
17 judge's official signature on it. And you only certify
18 them when they are going out of state usually for another
19 state to recognize them. You rarely get certified
20 documents for any purpose ---

21 MR. ROBERTS: --- I still don't understand what is
22 going on and I don't consent.

23 THE COURT: All right. Anything further you want
24 to tell me.

25 MR. ROBERTS: No.

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1 THE COURT: All right. I do not perceive that he
2 is incompetent. I think he has a more than adequate
3 understanding of the system. As a matter of fact he
4 probably has a better grasp of it than others. I
5 perceive he is being dilatory hoping that this will in
6 some way delay these proceedings. These proceedings have
7 been pending since April 13th of 2016. It has been over
8 a year. If he had planned to hire counsel he could have
9 done so and he has not. I've already explained to him
10 how the uniform commercial code works and that it is
11 inapplicable to these proceedings.

12 And I have no reason to believe that Mr. Roberts is
13 anyone other than whom his birth certificate reflects
14 which is Emory Warren Roberts. And out of an abundance
15 of caution when he wrote -- I believe he wrote Judge
16 Hughston or Judge Young, I can't remember. But he
17 attached a copy of a document from the highway department
18 or the Department of Public Safety ---

19 MR. ROBERTS: --- may I say something ---

20 THE COURT: --- indicating -- not while I'm
21 talking, sir -- indicating that he did not have any
22 traffic tickets, which probably was accurate. But out of
23 an abundance of caution I had my staff research his
24 entire situation, send him copies of his warrants as well
25 as his indictments so that he would be clear of what was,

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1 in fact, pending against him. His lawyer has indicated
2 that he likewise provided him with that information as
3 well as all of the available discovery in this case. And
4 there is a difference between being incompetent which is
5 the inability to understand the proceedings and assist in
6 the adversarial process versus a -- let me state that
7 another way.

8 I do not perceive that he has some cognitive
9 deficits that prevent him from doing what he needs to do.
10 I do not perceive that he is below average I.Q. In fact,
11 I think he is probably average standard if not slightly
12 above average I.Q. Although we don't have any tests
13 I've been doing this 20 years; I can tell when somebody
14 understands the proceedings and doesn't. And I've dealt
15 with people enough to have enough discernment to know.

16 Now whether he may have some other issue that may
17 require -- again I'm not a medical professional so I'm
18 not even going to delve into any other facets of this.
19 But he is no different than anyone else who has convinced
20 themselves that the uniform commercial code is applicable
21 in a criminal situation when it is not, hoping that that
22 will somehow salvage or delay the proceedings and prevent
23 the court from proceeding. This court clearly has the
24 authority and jurisdiction to preside over his matter and
25 will preside over the matter and continue. It is up to

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1 him as to whether he wants to communicate with his lawyer
2 or not. He has a very competent lawyer who has been
3 appointed to represent him and the court is not going to
4 appoint someone else. This is the second appointment in
5 his case and I perceive that the next person will be
6 unsuitable as well as the next person and the next person
7 and I'm not going to indulge in that folly.

8 Now sir, you have an option. You can allow Mr.
9 Griffith to represent you. You can take advantage of
10 what he has to offer you because there are motions and
11 other things that other defendants in this case have
12 filed which you probably need to file in your own behalf
13 as well regarding sufficiency of certain documents and to
14 gain information about other information within the
15 context of the rules.

16 And if you want to avail yourself of that, that's
17 fine. If you don't, that's fine. As long as you're
18 comfortable, I'm comfortable whatever you feel is acting
19 in your best interest. I've explained to you how the
20 system works and that we all -- the only goal we have is
21 to make sure everybody has a fair trial.

22 So what you need to let me know is whether you plan
23 to hire somebody by Monday and whether they are going to
24 -- well, really you need to hire them this week so they
25 can get up to speed and whether they are going to file a

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1 notice of appearance relieving Mr. Griffith, whether you
2 plan to cooperate with Mr. Griffith and talk to Doctor
3 Maddox or whether you plan to represent yourself. Either
4 way I'm fine. Whatever decision you make is on you. You
5 just need to let me know what you want to do.

6 MR. ROBERTS: I don't know. I mean I don't
7 understand.

8 THE COURT: Do you want Mr. Griffith you represent
9 you?

10 MR. ROBERTS: I'm only here for full settlement and
11 the court ---

12 THE COURT: --- sir, I've told you that that does
13 not apply here. It is not a concept that is recognized
14 by this court.

15 MR. ROBERTS: He can't -- how can he represent me?

16 THE COURT: If you tell him what's going on he can
17 represent you. He can explain the process to you and
18 mount a defense on your behalf.

19 MR. ROBERTS: I don't understand, Your Honor. This
20 is ---

21 THE COURT: --- sir, I don't believe that. Now you
22 can answer my questions or not answer them. Do you want
23 Mr. Griffith to represent you?

24 MR. ROBERTS: I don't understand, Your Honor.

25 THE COURT: Do you want to hire a lawyer to

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1 represent you?

2 MR. ROBERTS: Your Honor, I don't understand --

3 THE COURT: I'm sorry, I can't hear you.

4 MR. ROBERTS: I don't understand.

5 THE COURT: Do you want to cooperate and have
6 Doctor Maddox evaluate you today?

7 MR. ROBERTS: For what purpose? I don't
8 understand.

9 THE COURT: To make sure that you don't need some
10 medication, to make sure you don't need some counseling
11 or assistance, to make sure that you're not grappling
12 with something that needs attention; to help you. She's
13 not -- she doesn't -- she's not affiliated with any of
14 us. She's completely independent; she's a doctor. She
15 has an oath that she has to abide by as well which is to
16 act in your best interest and in the interest of what
17 medically is helpful to you.

18 MR. GRIFFITH: If it please the court, Your Honor?

19 THE COURT: Yes, sir.

20 MR. GRIFFITH: Mr. Roberts and I had spoken some
21 and he has given me the impression that he believes that
22 I work with the Attorney General's office in opposition
23 to him. I have tried to explain to him that I don't even
24 work for the State. Although I was appointed I am a
25 private ---

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1 THE COURT: --- you are just an involuntary
2 servitude that we enforce upon you to meet your
3 requirements of being a member of the bar.

4 MR. GRIFFITH: Well, no I actually volunteered to
5 do it ---

6 THE COURT: --- wow ---

7 MR. GRIFFITH: --- I'm on a contract and I like
8 helping other people ---

9 THE COURT: --- I'm impressed ---

10 MR. GRIFFITH: --- and that's why I became a
11 lawyer.

12 THE COURT: I'm impressed because most people come
13 kicking and screaming so I appreciate that.

14 MR. GRIFFITH: But Your Honor I've tried to impress
15 upon him that I would be very happy to protect his rights
16 and I want to protect his rights and that if I can get
17 his cooperation I certainly have information that I
18 believe would help him. And I would ask the court merely
19 to express to him that to their knowledge I do not work
20 with or for the Attorney General's office.

21 THE COURT: That's why I was trying to explain
22 everybody's role in the process. Mr. Underwood, could
23 you please -- do you have any affiliation with Mr.
24 Griffith?

25 MR. UNDERWOOD: I do not, Your Honor.

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1 THE COURT: Do y'all work together at all? Have
2 y'all ever met before?

3 MR. UNDERWOOD: Not prior to this case.

4 THE COURT: There is another question I wanted to
5 ask. In terms of culpability where does Mr. Roberts
6 fall?

7 MR. UNDERWOOD: Extremely culpable, Your Honor.

8 THE COURT: Okay. I needed -- I haven't seen any
9 of the discovery regarding him so I wouldn't know. Okay.
10 Now sir, I'll ask again do you want Mr. Griffith to
11 represent you. He's already indicated if you cooperate
12 with him he believes he can mount a viable defense that
13 is in your best interest?

14 MR. ROBERTS: I don't understand what's going on,
15 Your Honor.

16 THE COURT: Okay. Do you want to hire an attorney
17 as you've indicated? You said your mom and sister are
18 not your family. So who is it that was going to hire a
19 lawyer for you ---

20 MR. ROBERTS: --- family, Your Honor.

21 THE COURT: Pardon me?

22 MR. ROBERTS: I didn't say they wasn't my family.

23 THE COURT: Okay, so who is it -- well, that's what
24 you said to you. You said they aren't your only family.

25 MR. ROBERTS: I don't understand what you're saying

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1 Your Honor. I don't consent and I don't understand.

2 THE COURT: Do you want to have Doctor Maddox to
3 evaluate you?

4 MR. ROBERTS: I don't understand, Your Honor.

5 THE COURT: All right. The court finds that all of
6 those answers are disingenuous, that they are not
7 accurate and that they are designed to try to delay these
8 proceedings. I will mark them for the record but we will
9 be proceeding. Now Mr. Griffith, what do you want to do?
10 Do you want to sit as shadow counsel and help him out
11 best you can or what do you want to do?

12 MR. GRIFFITH: Your Honor, if he would communicate
13 with me I would not mind in any fashion or form either
14 representing him or helping him in his own defense. And
15 in that capacity, Your Honor I have some motions that I
16 would like to prepare for court that I've presented to
17 him and he told me ---

18 THE COURT: --- you can file them. I think you can
19 file them.

20 MR. GRIFFITH: He told me that he would not like me
21 to but I would ---

22 THE COURT: --- I don't think it's his decision.
23 The case law is very clear ---

24 MR. GRIFFITH: --- absolutely ---

25 THE COURT: --- that you can discuss strategy with

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1 a client. They don't have to agree with it. You are
2 bound to do what is in their best interest. So if you
3 have some motions you want to file ---

4 MR. ROBERTS: --- he threatened, Your Honor. How
5 can he represent me?

6 THE COURT: Because he's doing what's in your best
7 interest. What motions are they, Mr. Griffith?

8 MR. GRIFFITH: Your Honor, I have looked at some of
9 the motions presented and also would like to ask for a
10 motion that any deal made with Mr. Thomas Sekula be
11 revealed.

12 THE COURT: Who is that? Spell his last name for
13 me.

14 MR. GRIFFITH: S-E-K-U-L-A, I believe Your Honor.

15 THE COURT: Is that the C-I?

16 MR. GRIFFITH: That's the C-I.

17 THE COURT: You weren't in here when we were
18 talking about that and I apologize. The State has a
19 redacted copy of that document and they are going to
20 provide it to Ms. Johns and likewise I'll have them
21 provide it to you.

22 MR. GRIFFITH: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. GRIFFITH: I would also move requesting the
25 record of all lay witnesses. I did hear you address ---

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1 THE COURT: --- I'm sorry, and we'll do the same as
2 we're doing for Ms. Johns.

3 MR. GRIFFITH: Also, Your Honor, I would of course
4 move to suppress any warrants issued during the
5 investigation and or proceedings against which ---

6 THE COURT: --- do you want to just join in with
7 Ms. Johns' motion?

8 MR. GRIFFITH: I would join with her and add his
9 name to her motion, Your Honor.

10 THE COURT: Okay. That will work.

11 MR. GRIFFITH: I would also join in asking that
12 witnesses be sequestered.

13 THE COURT: And we've granted that except the case
14 agent will be present and of course your client will be
15 present.

16 MR. GRIFFITH: As far as Mr. Emory Roberts' record
17 is concerned, Your Honor I would just want to have --
18 certainly want a clear ---

19 THE COURT: --- what is his record Mr. Underwood?
20 What does Mr. Roberts reflect as a record?

21 MR. UNDERWOOD: He has a conviction from 1996 for
22 menacing second degree with a weapon which was in the
23 state of New York.

24 THE COURT: I was about to say -- is that like the
25 same as pointing and presenting?

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1 MR. UNDERWOOD: I believe so, Your Honor.

2 THE COURT: I think it's comparable.

3 MR. UNDERWOOD: There are a number of arrests and
4 the way that the state of New York records them it's a
5 bit convoluted so I'm trying to sort them out just ---

6 THE COURT: --- do you have a -- what does your
7 record reflect?

8 MR. GRIFFITH: If it pleases the court, Your Honor
9 that would be why I was asking for ---

10 THE COURT: --- when you have NCIC's from out of
11 state sometimes they are very difficult. Ours can be
12 difficult as well but sometimes theirs are very difficult
13 to sort of weed through where there are actual
14 convictions.

15 MR. UNDERWOOD: And Your Honor?

16 THE COURT: Why don't you ---

17 MR. UNDERWOOD: --- if Mr. Griffith doesn't already
18 have a copy we can get a copy to him if he doesn't
19 already have one.

20 THE COURT: Do you have a copy of his record?

21 MR. GRIFFITH: I believe I do, Your Honor.

22 THE COURT: I'll tell you what. In the interest of
23 time Mr. Underwood you can take some time to go through
24 that and then you and Mr. Griffith can reconcile what his
25 actual record is and come to a conclusion about that

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1 prior to us beginning on Monday. Does that work?

2 MR. UNDERWOOD: Yes, Your Honor.

3 THE COURT: And other than ---

4 MR. GRIFFITH: --- thank you, Your Honor ---

5 THE COURT: you're welcome. Were there any
6 statements alleged to have been made by Mr. Roberts that
7 we need a Jackson v Denno?

8 MR. UNDERWOOD: I do not believe so, Your Honor.

9 THE COURT: And I assume for either one of them
10 there are no Biggers issues, is that correct?

11 MR. GRIFFITH: There is no what, Your Honor?

12 THE COURT: Biggers. Neil v Biggers; I.D.?

13 MR. GRIFFITH: No, Your Honor.

14 MR. UNDERWOOD: And Your Honor, if I may I do
15 believe that there was at least one photographic lineup
16 used during the investigation. I don't know if it is
17 being challenged pursuant to Neil v Biggers. But I want
18 the court to be aware that there was at least one photo
19 lineup done.

20 THE COURT: Who was it that identified anyone from
21 a lineup? I know that might have been not as clear as I
22 intended for it to be. In what way was the lineup
23 utilized? That's a better way to put it.

24 MR. UNDERWOOD: There was a six person photographic
25 lineup, Your Honor.

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1 THE COURT: I mean who used it for what purpose?

2 MR. UNDERWOOD: If I may consult with my case agent
3 for just one moment, Your Honor?

4 THE COURT: Yes.

5 [Whereupon, Mr. Underwood confers with case agent]

6 THE COURT: Because if you're not introducing it at
7 trial I don't know that it...

8 MR. UNDERWOOD: Your Honor, the individual who --
9 the witness who was shown the photographic lineup was the
10 co-defendant William Brown who identified his co-
11 defendants.

12 THE COURT: But he knew them, didn't he?

13 MR. UNDERWOOD: Yes, Your Honor.

14 THE COURT: So are you really going to utilize the
15 lineup?

16 MR. UNDERWOOD: I don't know that it will be
17 necessary but I just wanted the court to be aware that in
18 the event that we did intent to introduce those lineups
19 as well as any in court identifications. If there were a
20 Neil v Biggers hearing I would ---

21 THE COURT: --- we can do that at trial if you plan
22 to introduce it. Are y'all challenging the validity of
23 any of the lineups that were utilized with William Brown?

24 MS. JOHNS: No, Your Honor. I believe that Mr.
25 Hunter is known to Mr. Brown and known to the C-I Thomas

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1 Sekula.

2 MR. GRIFFITH: I have no challenge, Your Honor.

3 THE COURT: Okay, that works. So that just leaves
4 the suppression, the Jackson v Denno for Mr. Hunter and
5 the suppression for Hunter and Roberts, is that correct?

6 MS. JOHNS: Yes, Your Honor.

7 MR. GRIFFITH: Yes, Your Honor.

8 THE COURT: Okay. Is the State ready to proceed
9 with the Jackson v Denno?

10 MR. UNDERWOOD: Yes, Your Honor.

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Jackson v Denno Hearing-Justin Wingo-Direct Examination by Mr. Underwood
July 19, 2017

1 MR. UNDERWOOD: The State calls Special Agent
2 Justin Wingo.

3 THE COURT: Sir, if you would come to the stand to
4 be sworn.

5 [Whereupon, Agent Wingo comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Please state your name for the
9 court reporter.

10 THE WITNESS: Justin Wingo.

11 THE COURT: Could you spell your last name for the
12 court reporter, please?

13 THE WITNESS: W-I-N-G-O.

14 THE COURT: Thank you. You may proceed.

15 MR. UNDERWOOD: Thank you, Your Honor.

16 - - - - -

17 JUSTIN WINGO,

18 Having been first duly sworn,

19 Was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. UNDERWOOD:

22 Q. Agent Wingo, if you would please advise the court
23 very briefly of your current occupation and position.

24 A. I am a Special Agent with the South Carolina Law
25 Enforcement Division, SLED. I investigate large scale

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1 multi-county drug organizations, narcotics.

2 Q. How long have you been working in law enforcement?

3 A. Almost three years.

4 Q. And have you been in the same capacity all three of
5 those years?

6 A. Yes sir, I have.

7 Q. What is your connection to this investigation
8 concerning Justin Hunter?

9 A. I'm the case agent.

10 Q. And what does that mean to be the case agent?

11 A. I make all major decisions in this case as well as
12 testify in court, conduct controlled buys. I also act as
13 the affiant for all warrants, search warrants.

14 Q. And during the course of this investigation into the
15 alleged drug activities of Justin Hunter did you seek any
16 search warrants for his residence?

17 A. Yes sir, I did.

18 Q. And where was that residence located?

19 A. I believe its [REDACTED] Patriot Boulevard apartment [REDACTED].

20 Q. And were you successful in obtaining a search
21 warrant for that residence?

22 A. Yes sir, I was.

23 Q. And were you present at the time that search warrant
24 was going to be executed, the search to be executed
25 pursuant to that warrant?

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1 A. Yes, sir.

2 Q. When did that take place?

3 A. February 8, 2016.

4 THE COURT: I'm sorry; please repeat that date.

5 THE WITNESS: February 8th, 2016.

6 THE COURT: Thank you.

7 Q. [Mr. Underwood] What other law enforcement officers
8 were present with you when you first arrived, directly
9 with you?

10 A. Lieutenant Max Dorsey of SLED and I believe Sergeant
11 or Corporal Daniel Lundenberg [phonetic] of the
12 Dorchester County Sheriff's Office.

13 Q. When you arrived at the location to be searched did
14 you have an opportunity to interact with the defendant in
15 this case, Justin Hunter?

16 A. Yes sir, I did. He was getting out of his car as we
17 arrived at that location.

18 Q. If you would please describe what you were doing as
19 you arrived and encountered him.

20 A. We pulled up as Mr. Hunter was exiting his vehicle
21 and walking across the parking lot. We exited the
22 vehicle in full body armor with police and SLED on it.
23 Mr. Hunter saw us and turned. We placed Mr. Hunter in
24 investigative detention.

25 Q. Why was he placed in investigative detention?

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1 A. He was being hostile towards law enforcement.

2 Q. Can you describe what he was doing that made you
3 describe him as hostile?

4 A. It appeared he was probably about to run or fight
5 us. Just his body language in general; he more or less
6 squared up on us as we approached him.

7 Q. And this was at the beginning of the search warrant?

8 A. Yes, sir.

9 Q. When you first approached him and you placed him in
10 investigative detention what exactly did you do?

11 A. After placing him in investigative detention meaning
12 I put handcuffs on him I then advised him of his Miranda
13 rights from the card that I always use to advise subjects
14 of their Miranda rights.

15 Q. Where was he located at the time that you advised
16 him of his Miranda rights?

17 A. He was placed into the front seat of either Corporal
18 or Sergeant Lundenberg's [phonetic] truck and we took him
19 to a parking lot in the same apartment complex.

20 Q. And he was handcuffed at the time?

21 A. Yes sir, he was.

22 Q. Was he under arrest at that time?

23 A. No sir, he was in investigative detention.

24 Q. What did you tell him his status was?

25 A. That he was in investigative detention.

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1 Q. Did you explain to him what that meant?

2 A. Yes, sir.

3 Q. And what did you tell him that meant?

4 A. That he was being placed into investigative
5 detention and that we would like to talk to him. This
6 was after he was advised of his Miranda rights. He was
7 advised he was in investigative detention; I Mirandized
8 him and then told him that we would like to talk to him.

9 Q. And you mentioned that you Mirandized him and read
10 him his rights. Did you recite those rights from memory?

11 A. No sir, I did not. I have a card in my credentials
12 case that I always have on me.

13 Q. Do you carry that all the time?

14 A. Yes sir, I do.

15 Q. Do you have it on you today?

16 A. Yes sir, I do.

17 MR. UNDERWOOD: Your Honor, if I may have an exhibit
18 marked?

19 THE COURT: Court's exhibit.

20 [Whereupon, court's exhibit number 1 is marked by
21 the court reporter]

22 MR. ROBERTS: Your Honor, my -- jurisdiction is
23 this action being taken against me?

24 THE COURT: Sir, I've already heard your argument
25 and I've already ---

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1 MR. ROBERTS: --- it's my 6th Amendment Right to
2 know the nature and cause of the action being taken ---

3 THE COURT: --- sir I've already told you what the
4 nature of these proceedings are. This deals with Mr.
5 Hunter so you don't have any standing to object.

6 MR. ROBERTS: Then why am I here?

7 THE COURT: Because we're going to have a hearing
8 about the suppression of the search warrants after I hear
9 this testimony and that does involve your rights to due
10 process and otherwise which is in your best interest.

11 MR. ROBERTS: But my right was violated ---

12 THE COURT: --- I've already ruled, sir. I would
13 suggest you assist Mr. Griffith if you feel your rights
14 were abridged during the execution of the search warrant
15 or the issuance of the search warrant you need to tell
16 him that so that he can effectively cross-examine the
17 witness.

18 MR. ROBERTS: --- I will ---

19 THE COURT: --- talk to your lawyer ---

20 MR. ROBERTS: --- I will not be cooperating ---

21 THE COURT: --- that's fine. That's your choice.
22 I've told you what's in your best interest.

23 MR. UNDERWOOD: Thank you, Your Honor.

24 Q. [Mr. Underwood] Agent Wingo, I'm handing you what
25 has been marked as court's exhibit number 1. What is

1 that?

2 [Whereupon, the witness is shown document]

3 A. That is the copy of the Miranda card that I carry in
4 my credentials case.

5 Q. And if you would please recite for the court the
6 rights that are listed on that card exactly as you read
7 them to Mr. Hunter.

8 A. [Reading] This is your Miranda warning. You have
9 the right to remain silent. Anything you say can and
10 will be used against you in a court of law. You have the
11 right to talk to a lawyer and have him present with you
12 while you're being questioned.

13 If you cannot afford to hire a lawyer, one will be
14 appointed to represent you before any questioning if you
15 wish. You can decide at anytime to exercise these rights
16 and not answer any questions or make any statements.

17 Do you understand each of these rights as I have
18 explained to you? Having these rights in mind do you
19 wish to talk to us now?

20 Q. And is that exactly how you read those rights to him
21 at that time?

22 A. Yes, sir.

23 Q. Under the question in line number 6 do you
24 understand each of these rights as I have explained to
25 you did Mr. Hunter provide a response to that question?

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1 A. He said yes.

2 Q. As to the question in line number 7 having these
3 rights in mind do you wish to talk to us now, did he
4 provide a response?

5 A. He voluntarily agreed to cooperate.

6 Q. And at that time did you advise him the nature of
7 your investigation?

8 A. Yes, sir.

9 Q. What did you tell him was the nature of your
10 investigation?

11 A. I told him that we were investigating a large scale
12 heroin trafficking organization and that he was involved
13 in it.

14 Q. Is that before he provided any statements to you?

15 A. Yes sir, it was.

16 Q. After that did you have occasion then to conduct a
17 short interview with Mr. Hunter?

18 A. Yes sir, I did.

19 Q. Where did that interview take place?

20 A. In the front seat of Corporal or Sergeant
21 Lundenberg's truck with the Dorchester County Sheriff's
22 Office in that same parking lot that we had taken Mr.
23 Hunter to within that same apartment complex.

24 Q. How long was this encounter with Mr. Hunter?

25 A. Fifteen minutes, twenty minutes tops.

1 Q. During that time did he ask to take any breaks?

2 A. Not that I can recall, no sir.

3 Q. Did he ask at any time to speak with an attorney?

4 A. Yes, sir. Towards the end he provided some stuff
5 and then he told us that he wanted a lawyer. Once he
6 told us that he wanted a lawyer we placed him under
7 arrest and he was transported to Alvin S. Glenn.

8 Q. And why was he placed under arrest?

9 A. We had warrants sworn out against Mr. Hunter for
10 involvement in this heroin trafficking organization.

11 Q. So there was already an arrest warrant in place at
12 that time?

13 A. Yes, sir.

14 Q. That warrant wasn't served on him until after the
15 encounter and his statements?

16 A. That's correct, sir.

17 Q. Do you recall in summary fashion what Mr. Hunter
18 told you during that interview?

19 A. Mr. Hunter told me that in approximately the winter
20 of 2015 that he has been involved in heroin trafficking
21 in Dorchester and the surrounding counties.

22 He stated that he began through a connection that he
23 made down here through a female named Sonya who
24 introduced him to a black male known as R. He purchased
25 a small quantity of heroin and more or less sold it back

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1 to Sonya. He then began purchasing heroin from another
2 individual that is in the area of Dorchester, Berkeley,
3 Charleston county area by the name of B.K. and that he
4 would go once a month for about approximately six months
5 and purchase heroin from him.

6 He said then in the summer of 2015 he started going
7 to Long Island, New York where he would meet -- he would
8 go to the Gateway Inn. He would meet I'm assuming a male
9 named Fresh at a hotel. He would purchase the heroin and
10 then have a female transport the heroin back to South
11 Carolina.

12 He also told me that prior to this interview that he
13 was in Long Island for two weeks. And then he provided a
14 short list of customers.

15 Q. Was that information reduced to writing for him to
16 sign?

17 A. No sir, it was not.

18 Q. Why not? Did he advise that he wanted to stop
19 cooperating at some point?

20 A. Yes sir, he did.

21 Q. Is that the reason why it was not produced to a
22 written statement?

23 A. Yes, sir. He started crying and then told us that
24 he wanted a lawyer. And once that happened we respected
25 his wishes and placed him under arrest and took him to

1 jail where he was able to obtain an attorney.

2 Q. Now you testified here from memory in summary
3 fashion as to what he stated. Closer to that time did
4 you create a memorandum of that interview to more fully
5 summarize that information?

6 A. Yes sir, I did.

7 Q. Was that interview ever shown to Mr. Hunter, that
8 memorandum of interview?

9 A. No sir, not by me. Maybe by Ms. Johns but not by
10 me.

11 Q. So that memorandum of interview was just from your
12 recollection of what he said at that time?

13 A. Yes, sir.

14 Q. Now you mentioned that he became emotional at the
15 end of the interview.

16 A. Yes, sir.

17 Q. At the beginning of the interview what was his
18 emotional state?

19 A. Calm, somewhat a little standoffish but calm.

20 Q. Based on your observations did you see or hear
21 anything that would indicate to you that he was under the
22 influence of alcohol or drugs at that time?

23 A. No sir, I did not.

24 Q. Was there anything you observed that would give you
25 concern that he was mentally or emotionally unable to

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1 understand what was taking place?

2 A. No sir, I did not.

3 Q. Agent Wingo, to the best of your ability is it your
4 belief that Mr. Hunter gave that information to you
5 knowingly and voluntarily?

6 A. Yes sir, I do.

7 Q. You placed Mr. Hunter into investigative detention
8 and you testified earlier you explained to him what that
9 meant, is that correct?

10 A. Yes, sir.

11 Q. Did you coerce him in any way to give you
12 information?

13 A. No sir, I did not.

14 Q. Did you threaten him that he would be arrested if he
15 did not give you information?

16 A. No sir, I did not.

17 Q. Did any of the other law enforcement officers who
18 were there do that?

19 A. No, sir.

20 Q. Did anyone threaten or coerce him in any way to give
21 that information?

22 A. No, sir.

23 Q. Did anyone offer him any promises of reward to give
24 that information?

25 A. No, sir.

1 Q. Were any promises made to him whatsoever?

2 A. No, sir.

3 Q. Were any threats made to him whatsoever?

4 A. No, sir.

5 Q. And again from your observations did he freely and
6 voluntarily give that information?

7 A. Yes, sir.

8 Q. And did he seem to understand exactly what was going
9 on?

10 A. Yes, sir.

11 Q. And all this was after being advised of his Miranda
12 rights?

13 A. Yes, sir.

14 Q. Thank you. Please answer any questions Ms. Johns
15 has.

16 THE COURT: Ms. Johns?

17 MS. JOHNS: Thank you, Your Honor. May it please
18 the court?

19 THE COURT: Yes, ma'am.

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1 CROSS-EXAMINATION

2 BY MS. JOHNS:

3 Q. Agent Wingo, when you filed this memorandum of
4 interview recorded interview did you state in this
5 memorandum that Mr. Hunter had squared off with law
6 enforcement?

7 A. No, ma'am. I stated that he was placed into
8 investigative detention.

9 Q. In this report that you are referring to regarding
10 the statement Mr. Hunter gave you is there a supplemental
11 incident report where you stated that Mr. Hunter squared
12 off with law enforcement on approach?

13 A. No, ma'am.

14 Q. And you also had and maybe you did mention this at
15 the time that you and another agent or another law
16 enforcement officer approached Mr. Hunter did you search
17 Mr. Hunter?

18 A. Yes ma'am, we did. We provided a pat down for
19 weapons.

20 Q. Okay. Did you find any weapons?

21 A. No, ma'am.

22 Q. Did you remove the personal belongings from Mr.
23 Hunter's person prior to putting him into the police
24 officer's car or truck?

25 A. His cell phone was taken and put -- it wasn't

1 removed; it was put on the console beside me.

2 Q. Okay. And was it just one cell phone?

3 A. From what I recall, yes ma'am.

4 Q. And can you describe that telephone?

5 A. I don't remember.

6 Q. Let me ask you in this fashion. Was it a smart
7 phone or was it a flip phone?

8 A. I don't remember. I don't know.

9 Q. Did you take these personal items into custody and
10 provide that to the Statewide Grand Jury evidence
11 custodian?

12 A. I believe so, yes ma'am.

13 Q. Okay. Now with regard to his statement you stated
14 that you had told him that you just wanted to talk to
15 him, is that correct?

16 A. Yes, ma'am.

17 Q. And you did not tell him that there was an
18 outstanding warrant, isn't that right?

19 A. At that time, no ma'am. I stated hey man, let's
20 talk for a second. I just...

21 Q. And at that time you stated that you had placed
22 handcuffs on him, is that right?

23 A. He was placed in investigative detention, yes ma'am.

24 Q. Okay. And he was not free to leave according to
25 your standards of placing him in handcuffs and putting

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1 him in the vehicle, is that right?
2 A. Yes, ma'am.
3 Q. He did not sign a waiver waiving any of his rights
4 under Miranda v Arizona, correct?
5 A. I assume you're talking about a Miranda waiver?
6 Q. Yes.
7 A. No ma'am, he did not.
8 Q. Did you have those forms available to you?
9 A. Not at that time, no ma'am.
10 Q. Did you have a recording device available to you at
11 that time?
12 A. No, ma'am.
13 Q. Did you have a cell phone at the time?
14 A. Yes, ma'am. I had my cell phone.
15 Q. Did you inform Mr. Hunter that you had a search
16 warrant for apartment [REDACTED]?
17 A. [REDACTED] ma'am or [REDACTED]?
18 Q. [REDACTED]; excuse me.
19 A. Yes ma'am, I did.
20 Q. Did you ask him if he lived there?
21 A. Yes, ma'am. That was his residence. I don't
22 recall -- I don't know if I asked him that or not ma'am.
23 Q. Did you mention the arrest of any of the other
24 occupants that may have resided at [REDACTED]?
25 A. No, ma'am. I did not.

1 Q. You stated on direct examination that Mr. Hunter
2 became tearful?

3 A. He began crying and wanting a lawyer.

4 Q. Do you know why he started crying?

5 A. No, ma'am.

6 Q. Do you know what prompted him crying?

7 A. No, ma'am.

8 Q. Do you know what you said directly prior to his
9 crying?

10 A. I don't ma'am.

11 Q. Okay. Would that have involved any kind of promise
12 with regards to any cooperation?

13 A. No, ma'am.

14 Q. Would that involve any threats to any of the members
15 of his family?

16 A. No, ma'am.

17 MS. JOHNS: Your Honor, nothing further. Thank you.

18 THE COURT: You're welcome. Any redirect?

19 MR. UNDERWOOD: Very briefly, Your Honor.
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1 REDIRECT EXAMINATION

2 BY MR. UNDERWOOD:

3 Q. Agent Wingo, at any time did you deny Mr. Hunter the
4 right to have an attorney before any questioning?

5 A. No sir, I did not.

6 Q. At the time that he asked for an attorney did that
7 end the interview?

8 A. Yes sir, it did.

9 Q. Were all of his rights respected?

10 A. Yes sir, they were.

11 Q. And prior to him giving information was he advised
12 of all those rights?

13 A. Yes sir, he was.

14 Q. And did he agree to waive those rights knowingly and
15 voluntarily?

16 A. Yes sir, he did.

17 MR. UNDERWOOD: Thank you. Nothing further, Your
18 Honor.

19 THE COURT: Sir, you may step down.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Anything further from the State?

23 MR. UNDERWOOD: No, Your Honor.

24 THE COURT: Any witnesses, Ms. Johns?

25 MS. JOHNS: No, Your Honor.

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1 THE COURT: Any argument on the motion? I think
2 you argue first Ms. Johns. He has the burden of proof.
3 He gets to -- to save steps he can just respond to the
4 argument.
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State v Emory Warren Roberts, Justin Gordon Hunter
Jackson v Denno Hearing-Argument of Counsel by Ms. Johns
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1 ARGUMENT OF COUNSEL

2 BY MS. JOHNS:

3 Your Honor, I would move that these statements are
4 not voluntary in nature and that the law enforcement had
5 the opportunity to place Mr. Hunter under arrest.

6 THE COURT: Did they have to?

7 MS. JOHNS: They did not. They had an opportunity
8 to do so and they did not do that. Mr. Hunter was unable
9 to free himself from the investigative purposes of the
10 interview. Mr. Hunter exercised his right to an
11 attorney. The information that was obtained was not
12 voluntary in nature in that Mr. Hunter was not free to
13 leave and that in and of itself is coercive in nature.
14 And we would move that these statements that were
15 allegedly made by Mr. Hunter were not voluntarily made.

16 THE COURT: Mr. Underwood?

17 MR. UNDERWOOD: Very briefly, Your Honor.
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July 19, 2017

ARGUMENT OF COUNSEL

BY MR. UNDERWOOD:

The fact that an individual is in any type of custody prior to giving a statement does not necessarily mean coercion. What that means is that individual would then need to be advised of their rights pursuant to Miranda.

In this case Mr. Hunter was advised of those Miranda rights. He was not under arrest at that time. And more importantly, Your Honor, he did not know that he was about to be placed under arrest. Again, Your Honor, it's not whether or not law enforcement could arrest him, it's what did he understand the situation to be prior to giving these statements. He was not advised that he was about to be placed under arrest. He was advised that he was in investigative detention for safety purposes.

He was advised of his Miranda rights and he demonstrated that he understood those rights by at some point ending the interview and asking to speak with his attorney and that request was respected by law enforcement. He was advised of those rights. He voluntarily waived those rights.

The testimony of Agent Wingo would indicate that he understood what those rights meant at the time he was waiving them and agreed to the interview. Therefore,

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1 Your Honor, all statements made by Mr. Hunter at that
2 time were made knowingly and voluntarily. And we would
3 ask that they be admissible at trial.

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State v Emory Warren Roberts, Justin Gordon Hunter
Jackson v Denno Hearing-Ruling by the Court
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1 THE COURT: The State has met their burden of proof
2 by a preponderance of the evidence that the statements
3 were made freely, voluntarily, knowingly and
4 intelligently. It is not dispositive -- well I guess to
5 some extent it is important that he was in a custodial
6 interrogation situation but normally my experience is
7 that when they are in detention they are not Mirandized.
8 So I commend the police for Mirandizing him as soon as
9 they put him in handcuffs or even before when they
10 anticipated he was going to make -- that they were going
11 to elicit inculpatory statements from him.

12 So I can see no deficits in their behavior. He was
13 combative. I find the officer's testimony credible in
14 that regard. And they had warrants and they had no duty
15 to advise him that they had warrants really. Reasonable
16 deception is used by the police all the time and there is
17 nothing that prevents them from doing that.

18 But what is dispositive is once he was put in
19 custody, once his freedom was restrained, once he could
20 not leave that they advised him of his Miranda rights.
21 And clearly he was not, and again I find the officer's
22 testimony credible he was not impaired in any way. He
23 was not under the influence. He was not coerced. He
24 wasn't denied any basic rights such as food, going to the
25 restroom, comfort; other things. And he clearly

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1 understood his rights because he invoked them. And once
2 they were invoked that invocation of his rights was
3 respected and any continued questioning of him was
4 terminated. So the motion to suppress the statement is
5 denied and the statement is admissible. And it doesn't
6 have to be reduced to writing.

7 I think it is impractical to think that every time
8 there is a custodial situation and the officer's are
9 going to be able to have a Miranda waiver form on the
10 side of the road or in an apartment complex to have it
11 initialed and filled out or to have audio and video that
12 is more practical when you're taking someone to a police
13 station and you sit them down and you Mirandize them and
14 they initial the sheet and then you sit down for the
15 purpose of taking a written statement or a recorded
16 statement or either a video or audio statement.

17 And depending on the type of the offense makes those
18 mechanisms more amenable and usable. But in most
19 instances like this it is unreasonable to think that they
20 would have a written piece of paper in an apartment
21 complex parking lot for him to initial. And I find the
22 officer's testimony credible that he did in fact
23 Mirandize him and that he understood the rights and
24 waived them and voluntarily entered into making a
25 statement. After which I would imagine he understood the

1 gravity of his situation and began to cry and then
2 indicated he wanted an attorney, which was respected and
3 the questioning stopped.
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1 THE COURT: Okay, the next is the motion to
2 suppress, is that correct?

3 MR. UNDERWOOD: I believe so, Your Honor.

4 THE COURT: How long do you think -- last time it
5 took what 30 minutes for his testimony, 20 minutes, 15
6 minutes; I can't remember.

7 MR. UNDERWOOD: I honestly don't recall exactly how
8 long it took.

9 THE COURT: I think it was about 15 minutes. We'll
10 take a very brief restroom break. Mr. Roberts, do you
11 need to go to the restroom?

12 MR. ROBERTS: No, but I object to being here. I
13 don't consent. They don't have no jurisdiction over me.
14 That's not me on the charging instruments ---

15 THE COURT: --- okay sir. I'll note that for the
16 record and overrule it. I've advised you that we do in
17 fact have jurisdiction. There are valid indictments.
18 And this motion to suppress is in your best interest and
19 we're going to proceed with it. We'll be out about five
20 minutes after which we will resume testimony.

21 MR. UNDERWOOD: Your Honor, could we have about 30
22 minutes so I could have a chance to prepare a little bit?

23 THE COURT: I've got to be back in Charleston to
24 close and charge a jury at 1:30, which means I've got to
25 leave here at 12:15 at the latest ---

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1 MR. UNDERWOOD: --- understood, Your Honor ---

2 MR. ROBERTS: --- Your Honor ---

3 THE COURT: --- with all that traffic there were
4 three accidents on the interstate this morning. Traffic
5 was backed up to Jedburg when I was coming here. There
6 were five or six fire trucks. There were two very bad
7 accidents going back towards Charleston and there is a
8 very bad accident on 52 where a car jackknifed coming
9 back onto the interstate. So I'm hoping they cleared all
10 of that up but I have to give my court reporter time to
11 get something to eat and be refreshed and set her
12 equipment up and close and charge in Charleston.

13 MR. UNDERWOOD: Yes, Your Honor. I may be on the
14 fly but we'll get it done.

15 THE COURT: And I had to accommodate and I
16 appreciate Doctor Maddox coming here because she is going
17 out of the country tomorrow and I needed, and she'll be
18 gone for several days and I needed to, which will be over
19 the span of this trial and I needed to accommodate her
20 schedule.

21 MR. GRIFFITH: If it please the court? May she be
22 excused?

23 THE COURT: Absolutely. Was there anything else
24 you wanted to share with us based on your observations?

25 DOCTOR MADDOX: No, ma'am. I don't know if Mr.

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1 Roberts would maybe like a pad or pencil so that he could
2 take notes. I don't know if that is something if he gets
3 a new lawyer he would want that.

4 THE COURT: And Mr. Roberts are you certain that
5 you do not want Doctor Maddox to evaluate you before she
6 goes back to her home, which is about three hours away
7 from her.

8 MR. ROBERTS: Your Honor, my name is W and I don't
9 consent to ---

10 THE COURT: --- sir I just need a yes or no answer
11 ---

12 MR. ROBERTS: --- to cooperating ---

13 THE COURT: --- do you want Doctor Roberts to
14 evaluate -- I mean ---

15 MR. ROBERTS: --- I don't consent ---

16 THE COURT: --- Doctor Maddox to evaluate you while
17 she is here?

18 MR. ROBERTS: I don't consent to this prosecution,
19 Your Honor and ---

20 THE COURT: --- sir, I asked a yes or no question.
21 Do you want Doctor Maddox to evaluate you while she is
22 here?

23 MR. ROBERTS: I don't know what's going on, Your
24 Honor.

25 THE COURT: All right. Then the answer for the

1 record is no. Thank you, Doctor Maddox. Have a good
2 day, be safe, and have a good trip.

3 DOCTOR MADDOX: Thank you.

4 [Whereupon, court is in recess from 11:05 a.m. until
5 11:10 a.m.]

6 THE COURT: Are we ready to proceed? Is the State
7 ready?

8 MR. UNDERWOOD: Yes, Your Honor. We'd just ask the
9 court for a little bit of leave because like I said we're
10 kind of ---

11 THE COURT: --- well, I've read her motion and it
12 pretty much mirrors Ms. Murray's that we've heard
13 already. That was a cursory review but that's basically
14 what I read. Is that accurate Ms. Johns?

15 MS. JOHNS: I haven't read Ms. Murray's ---

16 THE COURT: --- she didn't file anything in writing
17 but you were present for the hearing.

18 MS. JOHNS: I was, Your Honor. Mine is a little
19 more detailed and what I -- if I may?

20 THE COURT: Uh Huh.

21 MS. JOHNS: The way that I wrote this memorandum,
22 Your Honor, I did it backwards. I did the search of the
23 apartment first versus the seizure of the defendant. So
24 we've just had Jackson v Denno ---

25 THE COURT: --- I think that covered any

1 suppression of the -- really there is no argument that he
2 wasn't seized appropriately. There was a warrant that
3 was issued and the validity of his arrest really can't be
4 questioned. And I think all of that part of your memo
5 was covered by the hearing we just had.

6 MS. JOHNS: Well, Your Honor, I'd like to make a
7 record of it if you will just allow me a little bit of
8 leeway. I won't be long with the issue. I have filed a
9 memorandum and I've provided a copy of it.

10 THE COURT: Yes. Your memo speaks for itself and
11 I'll read it.

12 MS. JOHNS: Very well.

13 THE COURT: If I need additional argument I'll ask.
14 But I think any arguments that were encompassed in this
15 writing were encompassed by this hearing. And I do not
16 perceive that any constitutional rights of his were
17 abridged in him being taken into custody.

18 Now I've already said that if I find that the other
19 part of your issue which deals with the suppression of
20 the search warrant, well that has a domino effect but
21 I'll have to hear the testimony and see. But just based
22 on the bald face of what you're saying about him being
23 taken into custody and arrested I've already ruled on
24 that. I think them taking him into custody for a myriad
25 of reasons based on the officer's testimony was more than

1 valid. They could have taken him into custody because he
2 was confrontational, he squared up, he was combative for
3 their own safety. They could have taken him into custody
4 because they knew they had a warrant. They had no duty
5 to disclose that to him. Reasonable deception is
6 appropriate and it is used all the time.

7 They did not have to disclose to him that they had
8 the other people in the apartment under arrest. They
9 didn't have to do any of that. They could have simply
10 walked up to him and said we have a warrant and we're
11 arresting you and Mirandized him. But they didn't have
12 to. Frankly, in Charleston they wouldn't have even
13 Mirandized him. They just would have put him in the car,
14 turned on the camera, and let him talk himself. That's
15 what they generally do.

16 So I commend them for having Mirandized him. And
17 I'm not criticizing Charleston. I'm just saying that
18 every police jurisdiction does thing differently. And
19 they take the position they don't have to. When he's in
20 the back of that car and he starts talking and the camera
21 is on that's on him.

22 And to some extent they have some validity to that
23 argument. And I have shared with them I don't think it's
24 prudent to do it that way. But I commend them for having
25 Mirandized him. Now the other part of it that may deal

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1 with the sufficiency of any warrants, that's another
2 thing and I'll hear that in just a moment and then I'll
3 make a contemporaneous ruling regarding that. So it sort
4 of ties in together to some extent based on what I've
5 read but that portion of it deals with what I've already
6 addressed we don't need to rehash.

7 But the part that deals with sufficiency of the
8 warrant your assertions that there were only conclusory
9 statements and other things in support of the warrant
10 we'll hear that testimony and go from there, all right.
11 And you have a writing that memorializes your arguments.

12 MS. JOHNS: Very well. Thank you.

13 THE COURT: Which I assume you gave the Clerk a
14 copy for filing?

15 MS. JOHNS: Yes, I did.

16 THE COURT: All right. Yes, sir.

17 MR. UNDERWOOD: Your Honor, before I call Agent
18 Wingo just for clarification I know that Mr. Griffith was
19 joining in on the motion -- I guess for the separate
20 motion as well. Just to be clear before I begin
21 testimony are we dealing with the search warrant only at
22 Patriot Boulevard or at both Patriot's Boulevard and
23 Summer Creek Drive?

24 MR. GRIFFITH: Your Honor, we would ask the court
25 consider Summer Creek Drive as well as the ---

1 THE COURT: --- Patriot Boulevard?

2 MR. GRIFFITH: Yes, ma'am.

3 THE COURT: Okay.

4 MR. UNDERWOOD: Thank you, Your Honor.

5 THE COURT: You're welcome.

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1 MR. UNDERWOOD: Your Honor, at this time the State
2 calls Special Agent Justin Wingo.

3 THE COURT: Sir, if you will take the stand.

4 [Whereupon, Agent Wingo comes forward]

5 THE COURT: I remind you you're still under oath
6 and just state your name for the record.

7 THE WITNESS: I'm Special Agent Justin Wingo with
8 SLED.

9 THE COURT: You may proceed.

10 MR. UNDERWOOD: Thank you, Your Honor. And Your
11 Honor for the sake of brevity would it be appropriate to
12 ask the court to consider Agent Wingo's prior testimony
13 and ---

14 THE COURT: --- yes. We can incorporate that into
15 this portion of the record. I don't think we need to
16 rehash what he does for a living and all that.

17 MR. UNDERWOOD: As well as the subsequent
18 information that was testified at that time?

19 THE COURT: You mean about the investigation?

20 MR. UNDERWOOD: About the investigation and what
21 he did ---

22 THE COURT: --- yes we were all here ---

23 MR. UNDERWOOD: --- all warrants were presented at
24 the same time.

25 THE COURT: Yes, you can pick up where you left

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1 off.

2 MR. UNDERWOOD: Thank you, Your Honor.

3 - - - - -

4 JUSTIN WINGO,

5 Having been previously duly sworn,

6 Was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. UNDERWOOD:

9 Q. Agent Wingo, earlier you had testified regarding a
10 suppression motion concerning a search warrant that was
11 obtained to search an apartment on Bear Island Road in
12 Summerville.

13 We're now going to move on to two other search
14 warrants that were obtained at that same time that you
15 briefly mentioned in that earlier testimony ---

16 THE COURT: --- let me interrupt you one second.
17 You're talking about the sufficiency of the arrest
18 warrants as well Ms. Johns or just the search warrants?

19 MS. JOHNS: No Your Honor, just the search
20 warrants.

21 THE COURT: Okay. I just wanted to make sure.
22 All right, continue.

23 Q. [Mr. Underwood] Agent Wingo, did you obtain all
24 three search warrants at the same time?

25 A. No sir, I did not.

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1 Q. Did you obtain the search warrant for Summer Creek
2 Drive at the same time as the earlier search warrant?

3 A. I would have to look at the documents.

4 THE COURT: Why don't you just ask him what dates
5 did he obtain the search warrants.

6 MR. UNDERWOOD: Your Honor, if I could just have
7 the search warrants marked as court's exhibits?

8 THE COURT: Certainly.

9 MR. UNDERWOOD: I think that might make things
10 easier.

11 THE COURT: And then he can refer to them.

12 [Whereupon, court's exhibit numbers 2 and 3 are
13 marked by the court reporter]

14 Q. [Mr. Underwood] Agent Wingo, I'm now handing you
15 what have been marked as court's exhibits 2 and 3. Could
16 you identify those for the record please?

17 [Whereupon, the witness is shown documents]

18 A. Yes, sir. Court's exhibit 2 is the search warrant
19 for [REDACTED] Patriot Boulevard apartment [REDACTED], Summerville,
20 South Carolina on February 8th, 2016.

21 And Court's exhibit 3 is search warrant for [REDACTED]
22 Summer Creek Drive, Summerville, South Carolina signed on
23 February 5, 2016.

24 Q. Agent Wingo, Court's exhibit number 3 search warrant
25 for [REDACTED] Summer Creek Drive.

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1 A. Yes, sir.

2 Q. Did you obtain that at the same time you obtained a
3 search warrant for Bear Island Road on February 5th,
4 2016?

5 A. Yes sir, I did.

6 Q. And did you provide your testimony as well as your
7 affidavit for probable cause to Judge Clifton Newman at
8 the same time for both search warrants?

9 A. Yes sir, I did.

10 Q. So you would be able to incorporate all that
11 information together?

12 A. Yes sir, I would.

13 Q. And prior to the testimony given for those search
14 warrants had you obtained a GPS tracking device order
15 from Judge Clifton Newman?

16 A. Yes sir, I had.

17 Q. And was that a device that was placed on Justin
18 Hunter's vehicle?

19 A. Yes sir, it was.

20 Q. And was that device utilized for further
21 surveillance of Mr. Hunter?

22 A. Yes sir, it was.

23 Q. Was that information provided to Judge Newman at the
24 time you obtained these search warrants?

25 A. Yes sir, it was.

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1 Q. Agent Wingo, referring to Court's exhibit number 3
2 the probable cause portion of your affidavit there are
3 number of paragraphs that are labeled with letters, lower
4 case letters.

5 Following that you began another paragraph without a
6 number that I believe would have been number 1? And the
7 beginning of that paragraph says within the past 72 hours
8 SLED agents with assistance of a confidential informant.
9 Do you see that?

10 [Whereupon, the witness reviews document]

11 A. Yes sir, I do.

12 Q. What is the purpose of that paragraph?

13 A. To establish probable cause of why I'm obtaining the
14 search warrant.

15 Q. And what about that paragraph establishes probably
16 cause for a search of 116 Summer Creek?

17 A. That within the past 72 hours SLED agents with the
18 assistance of a confidential informant purchased heroin
19 from that address 116 Summer Creek Drive.

20 Q. And in that paragraph did you identify who the
21 individual was that heroin was purchased from?

22 A. Yes sir, Emory Roberts or Q.

23 Q. And that was within 72 hours of obtaining this
24 search warrant?

25 A. Yes sir, it was.

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1 Q. And that occurred at the place to be searched?

2 A. Yes sir, it did.

3 Q. What about paragraph 2? What did you advise Judge
4 Newman under paragraph 2?

5 A. That on January 7, 2016 the CI under the direction
6 of -- SLED agents arranged for a black male known to him
7 or her as Q who was later identified by law enforcement
8 to be Emory Roberts to sell a quantity of heroin.

9 The controlled purchase occurred at the Roberts
10 residence located at Lot 116 Summer Creek Drive,
11 Summerville, SC 29483 located inside the Summer Creek
12 mobile home park, that the CI was searched with negative
13 results. We gave him the money to make the purchase.
14 That we accompanied him to the residence, watched him
15 enter the residence.

16 He stayed inside the residence for a short period of
17 time and returned with a substance believed to be heroin.
18 He was then searched again with negative results and then
19 we obtained a search warrant for the residence on January
20 7th but we did not serve it.

21 Q. And who was that search warrant obtained from?

22 A. Judge Newman.

23 Q. So Judge Newman had already heard information for a
24 search warrant after the January 7, 2016 incident, is
25 that correct?

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1 A. Yes, sir.

2 Q. And was that information provided by you to him
3 under oath?

4 A. Yes sir, it was.

5 Q. But for investigative purposes you chose not to
6 execute that search warrant?

7 A. Yes, sir.

8 Q. At that time for the earlier search warrant that was
9 not served did you provide any additional information
10 under oath to Judge Newman?

11 A. Only what was in the affidavit. The judge was
12 already familiar with the case.

13 Q. And why was the judge already familiar with the
14 case?

15 A. This was an ongoing investigation. The judge had
16 signed tracker orders and other documents of that nature.

17 Q. And was that information all presented to him under
18 oath?

19 A. Yes sir, it was.

20 Q. And is that because at that time Judge Clifton
21 Newman was the administrative judge presiding over the
22 State Grand Jury?

23 A. Yes sir, it was.

24 Q. Had arrest warrants at that time been obtained from
25 Judge Newman?

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1 A. On January 7th, sir?

2 Q. Prior -- I'm sorry, come back to February 5th. Were
3 arrest warrants obtained from Judge Newman?

4 A. I don't recall what date the arrest warrants were
5 obtained.

6 Q. Well suffice to say that Judge Newman had received
7 sworn information from you on numerous occasions about
8 this case?

9 A. Yes sir, he has.

10 Q. And during those various interactions did you
11 explain to him while under oath how the individuals in
12 this investigation and all of their conduct was connected
13 with each other?

14 A. Yes sir, I did.

15 Q. And is it accurate to say that in this affidavit on
16 Court's exhibit number 3 that you do explain to Judge
17 Newman that there were two incidents, at least two
18 incidents, you're under oath that drugs were purchased
19 from defendant Emory Roberts at this location to be
20 searched?

21 A. Yes sir, I did.

22 Q. And that one of those took place within 72 hours of
23 obtaining the search warrant?

24 A. Yes sir, I did.

25 Q. Moving on now to Court's exhibit number 2 the search

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1 of [REDACTED] Patriot's Boulevard apartment [REDACTED]. Agent Wingo,
2 did you obtain that search warrant from the same Judge
3 Clifton Newman?

4 A. Yes sir, I did.

5 Q. And on both exhibits number 2 and number 3 were all
6 portions of the search warrant properly executed and
7 signed by yourself as the affiant and the judge?

8 A. Yes sir, they were.

9 Q. So chronologically speaking exhibit number 3 was
10 obtained prior to exhibit number 2, which was October
11 8th?

12 A. Yes, sir.

13 Q. So Judge Newman at the time of examining the search
14 warrant for Patriot's Boulevard would have had all the
15 information that was presented for the Summer Creek
16 search warrant as well as the Bear Island Road search
17 warrant, is that correct?

18 A. Yes, sir.

19 Q. And all that was presented to him under oath?

20 A. Yes, sir.

21 Q. So all that information would have been incorporated
22 together?

23 A. Yes, sir.

24 Q. In exhibit number 2 if you would and it is reduced
25 to writing in your affidavit I'm going to ask you to be

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1 very brief but could you summarize the information you
2 presented to Judge Newman while under oath of obtaining
3 this search warrant?

4 A. So everything that was in this affidavit over the
5 past four months SLED agents along with investigators of
6 the Dorchester County Sheriff's Office that we had been
7 conducting a criminal investigation into a heroin
8 trafficking organization operating in Berkeley and
9 Dorchester ---

10 THE COURT REPORTER: --- slow down just a little
11 bit.

12 THE WITNESS: I'm sorry.

13 A. A heroin trafficking organization operating in
14 Berkeley and Dorchester counties. We utilized a
15 cooperating informant to conduct numerous drug purchases
16 from several members of this conspiracy primarily from an
17 individual named Justin Gordon Hunter also known as Mo.

18 I then listed the buys as well as an interview that
19 we conducted with the CI. And I explain in this
20 affidavit that we placed a court authorized mobile
21 tracking device onto a grey in color BMW and I provided
22 the VIN for it registered to Justin Gordon Hunter.

23 I stated that we had observed Hunter operating this
24 vehicle on numerous occasions. I stated in the affidavit
25 it was stated that the tracker was placed at the Abberly

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1 Crossing Apartment complex located at [REDACTED] Patriot's
2 Boulevard which is Hunter's residence. And on September
3 17th Detective Daniel Lundberg and Nas Yanko [phonetic]
4 with the Dorchester County Sheriff's office conducted a
5 trash pull outside of apartment [REDACTED].

6 After reviewing the items they discovered several
7 Western Union receipts with Justin Gordon Hunter's name
8 on them showing him to be wiring money to an individual
9 in New York.

10 We also discovered South Carolina DMV paperwork or
11 detectives also discovered South Carolina DMV paperwork
12 with Hunter's name on it. I stated that the
13 investigation revealed that Hunter purchased an airplane
14 ticket to New York on Tuesday, January 19, 2016 for a
15 flight that departed Charleston at 10:05.

16 And then I stated that Mr. Hunter's criminal record
17 or criminal convictions as well as the after placing the
18 MTV, mobile tracking device on Hunter's vehicle law
19 enforcement has observed that on numerous occasions the
20 vehicle has stayed overnight at [REDACTED] Patriot's Boulevard.
21 And then I list the dates, four dates that he had stayed
22 at that residence.

23 Q. What explanation did you provide to Judge Newman
24 while you were under oath explaining the significance of
25 connections to New York with Western Union receipts that

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1 were found as well as the travel? What is the
2 significance of that?

3 A. Just to show -- it shows that he had a connection
4 with New York as well as that this affiant is aware of
5 members in -- I believe it is point ten of the affidavit
6 it states that this affiant is aware of members of heroin
7 trafficking organizations operating in South Carolina
8 over the past five years who have travelled to the
9 northeastern part of the United States to purchase bulk
10 quantities of heroin.

11 This heroin is then transported back to South
12 Carolina for sale to users and retail sellers. This
13 affiant is aware that the northeast of the United States
14 is an area known to be a source for heroin.

15 We had at that time another case that was operating
16 within SLED where they were getting their heroin from New
17 York. Mr. Hunter was making trips to New York and then
18 it shows that he is from New York as well.

19 Q. And was that information provided to Judge Newman to
20 show that that conduct was consistent with importing
21 heroin?

22 A. It was in the affidavit.

23 Q. Was that the purpose of including that information
24 to Judge Newman?

25 A. Yes, sir.

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1 Q. So is it fair to say that your affidavit includes
2 drug transactions involving Justin Hunter over a several
3 months period?

4 A. Yes, sir.

5 Q. So this would be a long term continuing operation?

6 A. Yes, sir. The first one that was listed starts on
7 September 30th of 2015 and the last one on that within
8 the affidavit itself shows that on January 14th, 2016 was
9 the last time we had purchased heroin from Mr. Hunter.

10 Q. And that occasion on January 14, 2016 again did you
11 provide information under oath to Judge Newman that Mr.
12 Hunter was observed going directly from the apartment
13 that was to be searched to the transaction and back?

14 A. Yes, sir.

15 Q. And that was roughly two weeks prior to the search
16 warrant being obtained?

17 A. Approximately, yes sir.

18 Q. But there had been other transactions for a period
19 of several months?

20 A. Yes, sir.

21 Q. And again all the testimony from the prior search
22 warrants as well as the affidavit to receive the tracking
23 device this was all with the same judge, Clifton Newman?

24 A. Yes, sir.

25 Q. And he was aware of all that sworn testimony?

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1 A. Yes, sir.

2 Q. At the time he issued each of these search warrants?

3 A. Yes, sir.

4 Q. Thank you. Please answer any questions Ms. Johns
5 has.

6 THE COURT: Who wants -- you want to go in order of
7 Mr. Griffith since we dealt with his search warrant first
8 or do you want her to go first?

9 MR. GRIFFITH: I would rather she go first.

10 THE COURT: Yes, ma'am.

11 MR. GRIFFITH: He mentioned Mr. Hunter more than
12 they did Mr. Roberts.

13 THE COURT: That's fine. He just dealt with the
14 first search warrant which was Summer Creek Drive and
15 then Patriot's Boulevard. But either way y'all are
16 comfortable with I'm fine with. Ms. Johns you may
17 proceed.

18 MS. JOHNS: Thank you, Your Honor. May it please
19 the court?

20 THE COURT: Yes, ma'am.

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1 CROSS-EXAMINATION

2 BY MS. JOHNS:

3 Q. Agent Wingo, did you have any information that you
4 had provided to Judge Newman regarding a buy that was
5 made at [REDACTED] apartment [REDACTED] Patriot's Boulevard?

6 A. A buy that occurred at that residence?

7 Q. Yes, sir.

8 A. No, ma'am. On January 14th we saw him leave that
9 residence. We were able to observe him leave the
10 residence, meet and then go back to the residence. But
11 the buy did not occur there.

12 Q. Yes, sir. So the answer to my question would be no,
13 you did not provide any information about anybody buying
14 anything out of that apartment within the last 72 hours,
15 correct?

16 A. That is correct.

17 Q. Okay. Now at any time did you provide any
18 information to Judge Newman that a confidential informant
19 had ever been in the residence at [REDACTED] Patriot's
20 Boulevard?

21 A. No ma'am, I did not.

22 Q. Okay. Did you ever have any witness that provided
23 any information to you about ever being in apartment
24 number [REDACTED] of [REDACTED] Patriot's Boulevard?

25 A. No ma'am, I did not.

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1 Q. And with regards to -- you stated in your affidavit
2 that on September the 17th 2015 that there was a
3 Dorchester County deputy that found trash outside of this
4 apartment is that correct?

5 A. Yes, ma'am.

6 Q. And that was some three maybe four months prior to
7 the search warrant application, is that right?

8 A. Yes, ma'am.

9 Q. Okay. And out of that trash that was abandoned you
10 were provided with documents that had Mr. Justin Hunter's
11 name on it, correct?

12 A. Yes, ma'am. Several Western Union receipts as well
13 as South Carolina DMV paperwork with Hunter's name on it.

14 Q. Did you inform Mr. Newman that Mr. Hunter had a
15 child that lived in New York?

16 A. I was unaware of it when I asked for the affidavit,
17 ma'am.

18 Q. Okay. Did you inform Judge Newman that Mr. Hunter
19 was from New York in your affidavit?

20 A. It shows that he has all criminal convictions
21 related to narcotics from the State of New York.

22 Q. Okay. So you provided information to Judge Newman
23 that Mr. Hunter had lived in New York at one time?

24 A. As well as that he had purchased a plane ticket from
25 Charleston airport on Tuesday, January 19th to New York.

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1 Q. Okay. And you don't know the real reason why that
2 plane ticket was purchased, isn't that right?

3 A. Yes ma'am, that's correct; just that he had
4 purchased it.

5 Q. Okay. And it would make sense to you would it not
6 that if he had a daughter living in New York that he
7 would maybe go visit her, is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And you also stated in there that it was your
10 experience, your work experience that you perhaps had
11 another case where heroin was being transported from New
12 York down into the state of South Carolina, is that
13 right?

14 A. I was aware that over the past five years
15 individuals have travelled to the northeastern part of
16 the United States. I don't specifically say New York but
17 the northeastern part of the United States, yes ma'am.

18 Q. You're right, it's didn't say New York. But this is
19 based on your own work experience based on another case.

20 A. Yes ma'am, that's correct.

21 Q. Okay. And in that other case Mr. Hunter was not
22 involved in that, isn't that right?

23 A. No, ma'am.

24 Q. Do you have specific knowledge based on your work
25 experience or any of your other training that would lead

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1 you to believe that heroin is distributed or sold in
2 other states of the United States?

3 A. Yes, ma'am.

4 Q. And would that encompass all other 49 states?

5 A. Yes, ma'am.

6 Q. So the fact that Mr. Hunter went to New York to
7 specifically pick up heroin is not a fact known to you,
8 is that right?

9 A. Yes, ma'am.

10 Q. Now, with regard to...

11 THE COURT: We need to interrupt you just one
12 second. Mr. Roberts needs to go to the restroom.

13 [Whereupon, Mr. Roberts exits the courtroom]

14 THE COURT: Mr. Griffith, do we need your client
15 present to proceed with Ms. Johns' challenge of this
16 warrant?

17 MR. GRIFFITH: Your Honor ---

18 THE COURT: --- of the warrant at the residence
19 where your client was not?

20 MR. GRIFFITH: My client, Mr. Roberts, may at some
21 point want to be aware of some of this. I asked him a
22 couple of days ---

23 THE COURT: --- we'll wait. Hopefully it won't
24 take him long.

25 [Off the record momentarily]

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1 [Whereupon, the defendant returns to courtroom]

2 THE COURT: Ms. Johns, you may resume your
3 questions.

4 MS. JOHNS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 Q. [Ms. Johns] Mr. Wingo, in referring to your
7 affidavit there has been a date -- not really a date
8 stamp but a Bates stamp that indicates page numbers on
9 your affidavit and going from page number 805 through a
10 portion of 809.

11 A. Ma'am, I don't have that one on mine.

12 Q. You don't have numbers?

13 A. No ma'am, I do not.

14 Q. Let me rephrase ---

15 THE COURT: --- those Bates stamps were probably
16 provided by Mr. Underwood for discovery purposes but it
17 wouldn't have been a part of our file.

18 MS. JOHNS: Okay, Your Honor.

19 MR. UNDERWOOD: That's correct, Your Honor.

20 THE COURT: I don't mean our file; I mean the State
21 Grand Jury's file.

22 Q. [Ms. Johns] Let me rephrase. In the body of your
23 affidavit after you I guess started by saying in support
24 of the attached application for search warrants affiant
25 being duly sworn deposes and says. The next several

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1 paragraphs which would include four and a half pages from
2 little number I believe A through O you provided some
3 general conclusory statements regarding your knowledge of
4 how drug traffickers and drug dealers behave, is that
5 correct?

6 A. Yes, ma'am.

7 Q. And some of that conclusory statements would include
8 certain items that they might store in a storage area, a
9 home, a car or anything regarding that is that right?

10 A. Yes, ma'am.

11 Q. Okay. And to your knowledge based on items A
12 through O do you have any specific facts that have been
13 given to you by an informant by any other witness that
14 Mr. Hunter had any drugs or any other illicit evidence
15 stored at [REDACTED] Patriot's Boulevard?

16 A. Did I have any information from a specific
17 confidential informant that anything listed in this
18 affidavit was at that residence?

19 Q. Correct.

20 A. Not from a confidential informant, no ma'am.

21 Q. How about from a witness other than yourself?

22 A. No, ma'am.

23 Q. And with regard to the rest of the affidavit which
24 begins with your four month investigation regarding
25 controlled buys all of those controlled buys had a

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1 resident that was not [REDACTED] Patriot's Boulevard, correct?

2 A. Yes ma'am, that's correct.

3 Q. And just for sake of brevity you did file a return
4 for items that were seized from this particular
5 apartment, is that correct?

6 A. Yes ma'am, I did. I left -- yes, ma'am.

7 Q. And in that list of items that you retrieved from
8 this apartment is there anything there that would
9 indicate any measurement of heroin?

10 A. Two plastic containers of brown residue but other
11 than that no ma'am.

12 Q. And was that residue collected and analyzed?

13 A. I don't know. I'd have to refer to the search
14 warrant report, ma'am.

15 Q. That's all I have.

16 MS. JOHNS: Thank you, Your Honor.

17 THE COURT: Mr. Griffith? You may proceed when
18 you're ready.

19 MR. GRIFFITH: If it please the court, Your Honor?

20 THE COURT: Yes, sir.

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1 CROSS-EXAMINATION

2 BY MR. GRIFFITH:

3 Q. Mr. Wingo -- Agent Wingo, excuse me, as to the
4 warrants issued for 116 Summer Creek, the residence or
5 wherever you had conducted some of your investigation
6 were you provided -- did you provide any info to the
7 judge at the issuance of those warrants for the purchase
8 of drugs at that residence?

9 A. It's listed in the application that there were two
10 drug transactions that occurred at that residence.

11 Q. Was there any prior knowledge before the issuance of
12 these warrants that Mr. Roberts was involved with any
13 out-of-state purchases of heroin either from New York or
14 some other state?

15 A. Not -- I'm sorry; repeat. I need some clarification
16 on that. That Mr. Roberts was going out of state to
17 purchase heroin?

18 Q. Or that he was involved in any purchase of heroin?

19 A. Like a conspiracy?

20 Q. Involvement and/or ---

21 A. --- yes, sir. There is knowledge that he was
22 involved within the conspiracy.

23 Q. And what kind of knowledge was that?

24 A. That Mr. Roberts was operating with Mr. Hunter in a
25 heroin trafficking conspiracy to sell heroin in

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1 Dorchester and other counties.

2 Q. And was that provided by a confidential informant or
3 a witness or who?

4 A. It was provided by buys conducted with a
5 confidential informant as well as testimony -- I
6 apologize, not testimony, interviews.

7 Q. And they informed you that Mr. Roberts was involved
8 with out-of-state purchase?

9 A. No sir, they didn't inform me that he was involved
10 in out-of-state.

11 Q. Did you have any evidence at all that prior to the
12 issuance of that warrant that drugs were being stored at
13 116 Summer Creek?

14 A. Yes sir, I did. There was a buy that occurred on
15 January 7th of 2016. This search warrant was issued on
16 February 5th.

17 Q. And you said you didn't execute that warrant that is
18 you didn't serve that warrant at that time when it was
19 issued.

20 A. Yes sir, that's correct.

21 Q. Did you at any time later serve that warrant?

22 A. No sir, I got a new one, which was this one right
23 here [indicates].

24 Q. And as to the second warrant did you provide the
25 same affidavit as you did the first warrant?

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1 A. I included -- I redid it to include within the past
2 72 hours the most recent drug transaction that occurred
3 at that residence.

4 Q. And it was from the same judge, Judge Newman?

5 A. Yes sir, it was.

6 MR. GRIFFITH: I have no further questions, Your
7 Honor.

8 THE COURT: Any redirect?

9 MR. UNDERWOOD: Briefly, Your Honor.

10 THE COURT: You may proceed.
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REDIRECT EXAMINATION

BY MR. UNDERWOOD:

Q. Agent Wingo, as to the search warrant for Patriot's Boulevard you included in your affidavit that there was documentary evidence located during a trash pull, isn't that correct?

A. Yes sir, two Western Union receipts and some South Carolina DMV paperwork.

Q. And was that trash pull from the location to be searched at Patriot's Boulevard?

A. Yes sir, it was.

Q. And were those documents connected to this defendant Justin Hunter?

A. Yes sir, they were. They had Mr. Hunter's name on them that showed him wiring money to an individual in New York as well as the DMV paperwork that had his name on it as well.

Q. And based upon the GPS tracking information that was available to you and given to Judge Newman was it shown as just prior to the issuance of this search warrant Mr. Hunter was still frequenting that address?

A. The MTV shows that it was in this affidavit was January 24th through January 25 and this was on February 8th.

Q. Therefore, was it relayed to Judge Newman that it

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1 was reasonable that there would still be a chance of
2 collecting similar documentary evidence?

3 A. Yes, sir.

4 Q. Do you mention that some of those documents
5 connected the defendant to the state of New York? On
6 cross you were asked about possible reasons to visit New
7 York. Did you have any reason to think that perhaps he
8 would be going to New York to purchase drugs?

9 A. It says in the affidavit I was aware of other heroin
10 trafficking organizations that would go to the northeast
11 to purchase drugs.

12 Q. And in fact does Mr. Hunter have convictions for
13 drugs in the state of New York?

14 A. Yes sir, he does.

15 Q. So would it be reasonable for Judge Newman to infer
16 that his travels to New York could in fact be drug
17 related based on his history?

18 A. Yes sir, they could.

19 Q. Has all of your testimony both to Judge Newman as
20 well as during these hearings been truthful?

21 A. Yes sir, it has.

22 MR. UNDERWOOD: Thank you. No further questions,
23 Your Honor.

24 THE COURT: Sir, you may step down.

25 MS. JOHNS: Your Honor?

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1 THE COURT: Yes?

2 MS. JOHNS: May it please the court? I just have a
3 few ---

4 THE COURT: --- I'll give you limited latitude and
5 limit it to redirect.

6 MS. JOHNS: Thank you, Your Honor.

7 THE COURT: There is cross, there is direct, cross,
8 and redirect. They've got the burden of proof; they get
9 the last say.

10 MS. JOHNS: Thank you, Your Honor.

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BY MS. JOHNS:

Q. With regard to the mobile tracking device Agent Wingo in your affidavit you stated that on January 18th through January 25th the car in question was at the residence of Patriot's Boulevard, is that right?

A. Yes, ma'am.

Q. Well isn't that the same time that you're stating that Mr. Hunter was in New York?

A. He purchased a flight on January -- he purchased a ticket on January 19th. Now...

Q. So the 19th is inclusive ---

A. --- ma'am, it shows that he purchased a ticket. It never says that he went.

Q. Okay. So then he didn't go?

A. I don't know, ma'am.

Q. And lastly with regard to his convictions in New York a flight ticket to New York that he may or may not have gone and the fact that you are of the opinion that heroin can be purchased through the state of New York that has nothing to do with what is in that apartment, right?

A. So can you repeat that for me again, ma'am?

Q. Let me rephrase. The fact that Mr. Hunter has a conviction from New York has nothing to do with what

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1 might be in that apartment, is that correct?

2 A. That's correct. It shows his connection to New
3 York.

4 Q. That's correct. It shows his connection to New
5 York; not a connection to narcotics or illicit ---

6 A. --- it shows connections to narcotics in New York --
7 or that he was convicted of narcotics from the state of
8 New York.

9 Q. Okay. But it doesn't indicate to the judge that
10 narcotics were in that apartment?

11 A. It shows that the person living in that apartment
12 has connections or ties to narcotics.

13 Q. Thank you. That's all I have.

14 THE COURT: Any redirect?

15 MR. UNDERWOOD: Nothing further, Your Honor.

16 THE COURT: Sir, you may step down.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 THE COURT: Any argument?

20 MS. JOHNS: May it please the court, Your Honor?

21 THE COURT: Yes, ma'am.

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ARGUMENT OF COUNSEL

BY MS. JOHNS:

Your Honor, on behalf of Mr. Hunter I would argue in supplementation of my written memorandum of law several things. One, that there is no connection between this apartment and anything provided in the affidavit that would indicate to any judge or any magistrate that drugs were located in that apartment. There is not an informant that saw any drugs in there within the past 72 hours.

There is not any witness that says that there was any indication that drugs would be located there or any other illicit evidence. That the apartment itself had not been seen by anybody over this four month period of the investigation and nothing was given to the issuing judge regarding probable cause for this search warrant to be issued. And based on that, Your Honor, I would ask that all evidence from apartment [REDACTED] at [REDACTED] Patriot's Boulevard be suppressed.

And further, Your Honor, I just want to put this on the record. With regard to the seizure of the defendant I'll let my memorandum speak to that but I just wanted to get that on the record so I wouldn't ---

THE COURT: --- is there anything other than dealing with his Mirandized statements that we've already

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1 dealt with? I can't -- I guess I'm strained to figure
2 what good faith argument you would have about him being
3 taken into custody pursuant to a lawful arrest warrant.

4 MS. JOHNS: Well, Your Honor it wasn't in pursuant
5 to a lawful arrest. It was the detention or seizure ---

6 THE COURT: --- they could have stopped him for any
7 reason. They could have stopped him to talk to him.
8 They could have stopped him because they wanted to know
9 his name. They could have done a field interview. They
10 were clearly coming there to execute the search warrant
11 and to execute the arrest warrant. He got combative so I
12 don't think there is any real good faith argument with
13 any merit that he was taken into custody illegally.

14 MS. JOHNS: Well, for that reason, Your Honor I
15 will stand on my memorandum ---

16 THE COURT: --- I don't think they needed a warrant
17 to take him into custody based on what happened. They
18 could have taken him into custody just for their safety.

19 MS. JOHNS: Your Honor, they may have restrained
20 him for that ---

21 THE COURT: --- they can take him into custody for
22 their safety if he is combative. They can restrain him
23 or do whatever they think common sense dictates to
24 protect themselves and the public.

25 MS. JOHNS: I understand the court's ruling, Your

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1 Honor.

2 THE COURT: Is there anything -- well, Mr. Griffith
3 I'll hear from you and then I'll let Mr. Underwood
4 address everything. You may proceed.

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1 ARGUMENT OF COUNSEL

2 BY MR. GRIFFITH:

3 Your Honor, Agent Wingo did state that the second
4 warrant was issued within 72 hours of a controlled buy.
5 But we would just argue that in that the first warrant
6 was issued without there having been a buy. That it
7 would taint any further warrant obtained ---

8 THE COURT: --- I need you to start over for me
9 because I lost you just in the middle of that sentence.
10 Accommodate me and if you could start your argument over
11 for me. I appreciate you accommodating me.

12 MR. GRIFFITH: We understand that the second
13 warrant was issued within 72 hours of a controlled buy.
14 The first warrant was issued without prior evidence. And
15 it would be prejudicial that the judge had already signed
16 a warrant prior concerning that residence, the same judge
17 being aware that the investigation was going on. And I
18 think it would have prejudiced any decision made to issue
19 that second warrant that is to have proved that second
20 warrant.

21 THE COURT: Did I misunderstand the testimony or
22 did two buys take place. It was my understanding that
23 the first buy took place and they got a warrant and they
24 chose not to execute it ---

25 MR. GRIFFITH: --- that's correct ---

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1 THE COURT: --- then another buy took place and
2 within 72 hours they got a warrant and chose to execute
3 it. So that's where I'm sort of lost in your argument
4 unless I misunderstood the facts, which is possible.

5 MR. GRIFFITH: Well, it wasn't clear I don't
6 believe as to how long it was after that first buy ---

7 THE COURT: --- does it really matter?

8 MR. GRIFFITH: Whether it was within 72 hours or
9 not?

10 THE COURT: I mean if a confidential buy took place
11 isn't that in and of itself probable cause? That's
12 certainly evidence that criminal activity is afoot.

13 MR. GRIFFITH: It certainly is Your Honor but we
14 would ask that it be suppressed in that the second one
15 was prejudiced, prejudiced the judge that issued from the
16 first warrant. And the first one was never served.

17 THE COURT: How would he have been prejudiced by
18 them not executing a warrant that was validly given?

19 MR. GRIFFITH: In that he had knowledge of the
20 first warrant and having had knowledge of the first
21 warrant may have had a preconceived idea in his mind as
22 to what was the probable cause although there was
23 probable cause for the second buy; I do concede to that
24 but just ---

25 THE COURT: --- there wasn't probable cause from

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1 the first buy?

2 MR. GRIFFITH: There was probable cause but it
3 wasn't clear as to how far it was from the first buy to
4 the warrant.

5 THE COURT: Okay.

6 MR. GRIFFITH: From his testimony.

7 THE COURT: All right. Anything further?

8 MR. GRIFFITH: No, Your Honor.

9 THE COURT: I'll be glad to hear from the State.

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ARGUMENT OF COUNSEL

BY MR. UNDERWOOD:

Very briefly, Your Honor. First as to Summer Creek search warrant, Your Honor, as Your Honor very well stated the fact that a controlled purchase took place there 72 hours prior to the search warrant that in and of itself is sufficient probable cause for a search warrant. I believe the affidavit there and Agent Wingo's testimony speaks for itself that there was sufficient probable cause to search the residence at [REDACTED] Summer Creek Drive.

As to the Patriot's Boulevard search warrant Your Honor there was evidence presented to Judge Newman that would connect drugs to that apartment. Agent Wingo provided in his affidavit and testified that there was direct surveillance by law enforcement of the defendant, Justin Hunter leaving from that apartment going directly to a controlled purchase where he sold heroin to a confidential informant and then returning directly back to the apartment.

So that does connect that apartment to illegal drug activity and provided probable cause to search that apartment. Furthermore, Your Honor the search warrant is also looking for other types of evidence; documentary evidence, things that would reflect the existence of a drug conspiracy and an ongoing drug trafficking

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1 organization. There was evidence presented in the
2 affidavit that on a prior trash pull that very type of
3 evidence had been found at that location. Then there was
4 evidence connecting the defendant on a continual basis to
5 this location that was in fact his residence. Therefore
6 there is probable cause that the type of evidence that
7 was being searched for that there was a likelihood that
8 that type of evidence would be located at the place to be
9 searched.

10 And that is the appropriate legal standard. It's
11 not a matter of guilt or innocence to any particular
12 person but rather whether or not the type of evidence
13 that is being sought whether there is a likelihood that
14 that evidence would be at the location to be searched.
15 And Your Honor on its face the affidavit clearly states
16 there is such probable cause that that evidence would be
17 there as well as the testimony that was supplemented by
18 Special Agent Wingo.

19 Therefore, I believe that all search warrants were
20 proper. There is sufficient probable cause for each of
21 them and that all the evidence that was obtained as a
22 result of those search warrants as well as the search
23 warrant from the prior suppression hearing that all of
24 that evidence should be properly admitted.
25

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1 THE COURT: I will take the warrants in their --
2 well, I'll make some general statements about the law and
3 then I will take each warrant in the order that the
4 testimony was presented. I think we're all clear that a
5 search warrant is supported by probable cause if given
6 the totality of the circumstances. And totality of the
7 circumstances being the operative language set forth in
8 the affidavit that there is a fair probability that
9 contraband or evidence of a crime will be found in a
10 particular place.

11 And again as I've indicated the dispositive language
12 is totality of the circumstances because the court does
13 not look at one isolated sentence or one isolated
14 paragraph in an affidavit, a search warrant affidavit.
15 It must look to the totality of the circumstances. In
16 addition to that the court is required to give
17 substantial deference to the issuing judge's findings and
18 who considered the sworn testimony of the officers or
19 officer in issuing the warrants.

20 In addition to that a warrant establishes probable
21 cause necessary for the issuance of a search warrant; not
22 necessarily just dealing with a residence but when
23 related to the purchase and distribution of drugs if it
24 independently sets forth facts that are more than mere
25 suspicion of drug activity but based on the totality of

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1 the circumstances. In some of those totality of the
2 circumstances that our courts have articulated are
3 numerous tips including drug activity, those who are
4 probably present at the residence who are selling drugs,
5 subsequent surveillance of the residence during which
6 seemingly related drug behavior has been observed and the
7 like. And clearly in this case there was probable cause
8 for the issuance of both warrants and I will take them in
9 the order that they were issued.

10 The first being which is Court exhibit number 2 --
11 well, actually number three. Even though they were
12 marked in opposite order they were dealt with in opposite
13 order. I hope that wasn't too convoluted but unless I
14 have it wrong, and Ms. Joy you can correct me, but
15 Court's 3 is the Summer Creek Drive affidavit. And while
16 Mr. Griffith has indicated that by execution of one
17 warrant that was, by the issuance of a warrant that was
18 not executed that somehow his client -- the court may
19 have been prejudiced in issuing another warrant.

20 I can state with sufficient confidence that two
21 controlled buys would be sufficient enough to establish
22 in a court's mind probable cause for the issuance of a
23 warrant without anything else. And certainly that is
24 evidence that criminal activity is afoot at a particular
25 residence and that it is likely that the fruits of that

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1 activity will be found in the residence. So certainly
2 there was more than adequate support presented to Judge
3 Newman as well as what was found in the affidavits to
4 support it, the execution -- the issuance of both
5 warrants. And for whatever reason the State didn't issue
6 the first warrant as far as I'm concerned that inured to
7 the benefit of Mr. Roberts under those circumstances.

8 As it regards the Patriot's Boulevard address and to
9 some extent I'm relying on the testimony from our other
10 hearing and I don't think that prejudices your client Ms.
11 Johns because you were present and I think I may have
12 even given you an opportunity to question -- maybe I
13 didn't.

14 MS. JOHNS: You did.

15 THE COURT: I couldn't recall; I'm sorry.

16 MS. JOHNS: You did, Your Honor.

17 THE COURT: I'm done so much substance since then
18 my memory is kind of hazy on me. But at that time there
19 was testimony regarding how these transactions took
20 place. In other words they did not actually take place
21 at the residence. A call would be dispatched or a text
22 arranging a meeting whereby the sale would be consummated
23 in the parking lot of a strip mall parking -- I mean a
24 shopping center of sorts that was in close proximity to
25 the residence. And that along the points of ingress and

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1 egress that there were officers stationed to watch the
2 person leave the residence at different points to get to
3 the parking lot to transact business and then return to
4 the residence.

5 So when you look at the entire totality of the
6 events without isolating one or two events out clearly
7 based on the totality of the circumstances there is more
8 than sufficient evidence to have established probable
9 cause in the minds of the issuing court that criminal
10 activity was afoot and that again the fruits of that
11 activity would be located in the residence.

12 And I agree with Ms. Johns. In and of themselves
13 somebody buying a plane ticket that's not enough.
14 Somebody sending money which you know it has always
15 befuddled me why people would spend money to send my
16 money to somebody. I've never used Western Union in my
17 life and just on principle I never will unless I'm
18 stranded somewhere and somebody has to send me money.
19 But I just don't ever foresee that happening.

20 People say never say never but I have just never
21 understood the validity of paying somebody to send my
22 money to somebody else. But there are a lot of people
23 who utilize it as a means of paying their bills, as a
24 means of sending money to relatives. So those things in
25 and of themselves granted I agree might amount to mere

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1 suspicion. But when you look at the entire totality of
2 these events and you combine them together without them
3 being isolated there was more than adequate probable
4 cause for the issuance of his arrest warrant as well as
5 the search warrants and therefore the motion to suppress
6 is denied on both counts. Now is there anything else
7 that we need to take up before we adjourn from the State?

8 MR. UNDERWOOD: I don't believe so, Your Honor.

9 THE COURT: Ms. Johns?

10 MS. JOHNS: No, Your Honor, just note exception to
11 the ruling.

12 THE COURT: I don't think you need to say that. I
13 allowed you to argue it, I denied it; it is preserved.

14 MS. JOHNS: Thank you.

15 THE COURT: Yes, sir?

16 MR. GRIFFITH: Nothing further.

17 THE COURT: Thank you. Now, I have a few
18 housekeeping things. We have issued the bench warrant
19 for Mr. Hunter. I have advised the Clerk or asked her
20 assistance in making sure that his bond paperwork is
21 present on Monday so I can establish a record that he was
22 advised of his right to be present at trial and if he
23 voluntarily absented himself that he would be tried in
24 his absence. So we will deal with that on Monday morning
25 at the call of the case because I'm going to give him an

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1 opportunity to show up. In the event Ms. Johns that your
2 client is taken into custody over the weekend please
3 arrange for his relatives to bring him some suitable
4 clothes for trial. And please have those here by 8:30
5 would be wonderful so that they can dress him
6 appropriately. I'm a proponent of people being dressed
7 appropriately for court so that they feel that they are
8 suitably dressed.

9 Now Mr. Griffith likewise and Mr. Roberts if you
10 have some clothing that you want for trial on Monday you
11 need to let Mr. Griffith know who to call so that they
12 can bring some clothes to you on Monday morning by 8:30
13 or if you need some other things to groom yourself please
14 let him know. And Mr. Griffith if you have the number
15 for his mother and sister I think you should just -- I
16 mean that's his momma.

17 I can't imagine that she wouldn't take whatever
18 action she would want to take to help him out if she is
19 inclined to or his sister. Or they may know somebody
20 else that he is connected to that may -- somebody that he
21 might have been friends with or otherwise that may have
22 possession of his clothing and may want to out of their
23 own largesse bring some stuff up here at 8:30 on Monday
24 for him to be dressed out.

25 MR. GRIFFITH: Your Honor, I will attempt to ---

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1 THE COURT: --- so if you could accommodate the
2 court I would appreciate it. If you can reach somebody
3 fine, if not again I'm a proponent of folks being dressed
4 appropriately for court if we can. If you want to I
5 don't know if the Public Defender's office here does it
6 but in Charleston they have a wardrobe of different sizes
7 of clothing and when folk -- some people just can't
8 afford clothes or their stuff has been lost and they
9 don't have anything. You might want to check with the
10 P.D.'s office here and see if they have some clothing
11 that would fit him in the event that you can't reach
12 anyone. And I'm sure they would be more than willing to
13 help you out.

14 MR. GRIFFITH: Thank you, Your Honor.

15 THE COURT: You're welcome. Is there anything else
16 that we need to do before we adjourn Mr. Underwood?

17 MR. UNDERWOOD: Very briefly Your Honor, just to
18 be clear as to the representation status ---

19 THE COURT: --- I've not relieved Mr. Griffith.
20 And if Mr. Roberts decides he doesn't want his help I'm
21 going to ask Mr. Griffith to be kind enough to just sit
22 in as shadow counsel to help him in the event that he
23 wants some help. If somebody shows up here on Monday
24 I'll cross that bridge when I come to it. But Mr.
25 Roberts if you decide to hire somebody you need to let

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1 them know that trial is on Monday and you need to make
2 sure they get in touch with Mr. Griffith to get all the
3 discovery and everything they would need to be prepared
4 for trial. Anything else?

5 MR. UNDERWOOD: Just to be clear, Your Honor, what
6 time would you like everyone here on Monday?

7 THE COURT: Roll call; whatever time roll call
8 starts you're going to need to be here.

9 MR. UNDERWOOD: I didn't know if you wanted any
10 pretrial conferences ---

11 THE COURT: --- we wouldn't have time because roll
12 call usually starts at 9 or 9:30. I just can't remember
13 right now off the top of my head. So you're going to
14 need to be here for roll call. And then right after roll
15 call, which is about 30 minutes I'm going to qualify the
16 jury and we will proceed with jury selection.

17 MR. UNDERWOOD: Thank you, Your Honor.

18 THE COURT: And then we'll deal with anything else
19 if we need to. Now I assume you're going to notify
20 everybody else. A notice was sent to everybody else at
21 trial but you're cooperating folk you need to make them
22 aware that they need to be here with their lawyers. All
23 right Ms. Johns, anything further?

24 MS. JOHNS: No, Your Honor.

25 THE COURT: Mr. Griffith, anything further?

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1 MR. GRIFFITH: No, Your Honor.

2 THE COURT: Wonderful. Thank you all for being so
3 accommodating. Have a good day.

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State v Emory Warren Roberts, Justin Gordon Hunter
Certificate of the Court Reporter
July 19, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 19th day of July, 2017.

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

October 27, 2017


Joyce C. Rueger, CVR-M
Court Reporter

 **COPY**

Certified Transcript provided to SCCID, Office of
Appellate Defense

25

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15		Gordon Hunter, includes		
16		a 2005 Audi A4, License		
17		Plate LSF-█; a 2007		
18		BMW 5 Series with		
19		license plate LMQ-█;		
20		and a 2006 BMW 7 Series		
21		with a license plate		
22		LTQ-█		
23				
24				
25				

1 (State's Exhibit 1 through 33, disks, were marked
2 for identification.)

3 (State's Exhibit 34 through 41, photos, were
4 marked for identification.)

5 (State's Exhibit 42, US passport, was marked for
6 identification.)

7 THE COURT: Mr. Griffith, do you think your client
8 is going to want a formal arraignment?

9 MR. GRIFFITH: Your Honor, my client has decided
10 that he would like to represent himself.

11 THE COURT: Which is fine, but I'm going to leave
12 you as shadow counsel. Have you explained to him what an
13 arraignment is?

14 MR. GRIFFITH: I have not.

15 THE COURT: If you can explain that to him so he
16 can tell me whether he wants it or not.

17 MR. GRIFFITH: Your Honor, I have explained to him
18 what an arraignment is.

19 THE COURT: And does he wish to have a formal
20 arraignment or not?

21 MR. GRIFFITH: Your Honor, he says he doesn't
22 understand why he would need an arraignment right now.

23 THE COURT: So does that mean he waives it?

24 THE DEFENDANT: I don't waive it. I just never
25 had -- it's been 17 months.

1 THE COURT: He just explained it to you. An
2 arraignment wouldn't be applicable until now. It's just a
3 matter whether you want me to read what the nature of the
4 charges are or whether you want the clerk to read to you
5 what the nature of the charges are.

6 THE DEFENDANT: So this is where the
7 misunderstanding is. I thought once the presiding judge of
8 the State Grand Jury had found that it was in accordance
9 with the provisions of Order 15, that it be transferred to
10 venue where appropriate. And that's where the warrant --

11 THE COURT: Sir, the Supreme Court does that. And
12 they've given me jurisdiction over this case.

13 THE DEFENDANT: All right. Well --

14 THE COURT: So the judge that deals with it in
15 Columbia, they rarely, if ever, try these cases. They parse
16 them out to other judges.

17 THE DEFENDANT: I'm thought once it was transferred
18 to here, I thought I would have a formal arraignment then.

19 THE COURT: No, sir. That's not what happens.
20 That's not how South Carolina works. People watch a lot of
21 television, and that's not how it works. Every state is
22 different.

23 THE DEFENDANT: Can I see that?

24 THE COURT: Only thing that happens in an
25 arraignment, some people do it, it really is perfunctory.

1 There's no reason for it. The clerk of court will read you
2 the charges and ask you do you want to be tried by God and
3 your country, and you say yes. That's all a formal
4 arraignment involves.

5 THE DEFENDANT: All right, Judge. But the Sixth
6 Amendment says I have a right to be --

7 THE COURT: Sir, my office sent you your
8 indictment. So you know what your indictments include. And
9 your lawyer has gone over the discovery with you. So I
10 don't find it plausible that you don't know what you are
11 charged with.

12 THE DEFENDANT: What does discovery consist of?

13 THE COURT: Evidence against you.

14 THE DEFENDANT: I didn't get that. All I got was
15 an indictment.

16 THE COURT: Mr. Griffith, you said you went over
17 the discovery with him; is that right?

18 MR. GRIFFITH: I did provide him with all of the
19 discovery that was sent to us, Your Honor.

20 THE COURT: I will have him go over it with you
21 again at lunch so that you --

22 THE DEFENDANT: I appreciate it. As well, pursuant
23 to Rule 5, continuing disclosure, I haven't seen any audios,
24 any tapes or --

25 THE COURT: Because of the confidentiality of the

1 CI and the way state law works, your lawyer goes and looks
2 at those. But at trial, you will have the opportunity to
3 look at them. And if you would like to look at them, I will
4 give Mr. Griffith the opportunity to do that as well.

5 THE DEFENDANT: I would also like the State Grand
6 Jury minutes.

7 THE COURT: You don't get those, sir. In South
8 Carolina, all Grand Jury proceedings are secret. Nobody
9 gets those.

10 THE DEFENDANT: Well, I have a document from Judge
11 Newman that's to be made public record.

12 THE COURT: Is that correct?

13 THE DEFENDANT: Yes. Oh, you are talking --

14 MR. UNDERWOOD: Your Honor, the transcript from the
15 State Grand Jury do not become a public record. The
16 defendant is able to read them. However, we do not give
17 them a copy. They would have to get them from the court
18 reporter who takes those transcripts.

19 THE COURT: Sir, you would have to order it from
20 the court reporter and pay for it.

21 THE DEFENDANT: I tried that.

22 THE COURT: You have to pay her in advance. She's
23 not going to provide it to you without paying.

24 THE DEFENDANT: I understand, but they say they do
25 not have that. They have none of that.

1 THE COURT: Who did you write?

2 THE DEFENDANT: South Carolina Court
3 Administration.

4 THE COURT: They don't. You have to write the
5 individual court reporter.

6 THE DEFENDANT: Desiree Allen, I did that too.

7 THE COURT: Desiree Allen, she's in charge of the
8 court reporters. You have the responsibility to write the
9 actual court reporter that did it. She then sends you an
10 estimate of what it costs to produce the transcript. You
11 then have to pay her in advance, and then she produces the
12 transcript.

13 THE DEFENDANT: All right. I have a letter to that
14 effect that says that --

15 THE COURT: Who did you send it to?

16 THE DEFENDANT: South Carolina Court
17 Administration.

18 THE COURT: They are not going to do that for you.
19 That's not their responsibility. All they do is scheduling.

20 THE DEFENDANT: I thought everything goes through
21 the South Carolina Court Administration.

22 THE COURT: Only the scheduling. They don't have
23 any responsibility to do anything else. Each court reporter
24 is responsible for their own records. They supervise court
25 reporters, but they don't produce transcripts.

1 THE DEFENDANT: Okay. I also have a motion that
2 was provided to me that says that I have to get this
3 information from the court reporter of South Carolina Court
4 Administration.

5 THE COURT: Yeah, and you have to write that
6 particular court reporter. Like, Ms. Andersen is taking
7 down these proceedings, if any of these lawyers want that,
8 they have to write her. She gets the letter. She then
9 tells you the transcript is this many pages. This how much
10 is charged per page. This is how much it costs. Within
11 this many days, you need to have my money to me in certified
12 funds. After which this many days, I will provide you with
13 a transcript. That's what you have to do.

14 THE DEFENDANT: I understand, but who would you
15 write for that?

16 THE COURT: You would have to know the name of the
17 court reporter. And if you ask court administration, they
18 will give you that, or you would have gotten that
19 from probably the State Grand Jury clerk.

20 THE DEFENDANT: All right. Can I provide you with
21 the letter to show that I've done that?

22 THE COURT: I don't have any reason to doubt your
23 word, but I don't know that court administration -- who is
24 the State Grand Jury court reporters? How does that work?
25 They freelance, don't they? He would have to have written

1 you to get that court reporter's name?

2 You would have to have gotten that from the State
3 Grand Jury clerk. Because those reporters that do that are
4 freelance reporters. They are not under court
5 administration.

6 THE DEFENDANT: I have a letter to that effect to,
7 and she told me to contact my attorney. I also have a
8 letter from the State Grand Jury which is no record is
9 charged.

10 THE COURT: No. You have a letter from the
11 Department of Public Safety that says that.

12 THE DEFENDANT: No, I have a letter from the State
13 Grand Jury.

14 THE COURT: That says what?

15 THE DEFENDANT: There's no record of said charge.

16 THE COURT: Of what said charge?

17 THE DEFENDANT: Any charges, these charges.

18 THE COURT: Who did you write to?

19 THE DEFENDANT: I wrote to State Grand Jury in
20 Columbia.

21 THE COURT: Where do you have a letter that says
22 that?

23 You have a letter from the Department of Public
24 Safety which you sent to my office that says they have no
25 record of any charges against you. That's the Highway

1 Department.

2 THE DEFENDANT: All right. I have that too, but
3 they access South Carolina Code and Annex 30/4 --

4 THE COURT: Let's just say for argument's sake that
5 all that happened. I sent you copies of your indictments.
6 They exist.

7 THE DEFENDANT: All right.

8 THE COURT: I guess I'm trying to figure out what
9 is it that you think you would be able to use from the State
10 Grand Jury record?

11 THE DEFENDANT: Well, I'm actually going to show
12 that no State Grand Jury even occurred.

13 THE COURT: Oh, it happened because I have the
14 indictments.

15 THE DEFENDANT: I have the papers, but that doesn't
16 say it happened.

17 THE COURT: It happened. I have the indictments
18 that are certified. That's why I sent them to you. And you
19 said you didn't have them. I wanted to make sure you had
20 them.

21 THE DEFENDANT: Also said that it wasn't certified.
22 On July 19th, you said they didn't have to be. All they had
23 to be was filed. So are they certified now?

24 THE COURT: They were filed -- once something is in
25 a court order, sir, it's already certified. You only

1 certify documents when you send them out of state to prove
2 that they are authentic. You would never, under any
3 circumstances that I can think of, send certified
4 indictments to anybody.

5 THE DEFENDANT: All right. May I address a
6 question to the Court?

7 THE COURT: Sure.

8 THE DEFENDANT: If South Carolina Code Annex
9 30-4-30, I believe, 50, is to access information that's
10 supposed to be readily available to the public under the
11 Freedom of Information, because it comes from --

12 THE COURT: Grand Jury notes are not Freedom of
13 Information. That's probably why, I guess, you got an order
14 from Judge Newman allowing you to get your Grand Jury notes.

15 THE DEFENDANT: No. I have a letter from Judge
16 Newman stating that this will be made, the indictment,
17 public information as of May 4th, 2016.

18 THE COURT: The indictment, not the Grand Jury
19 notes.

20 THE DEFENDANT: All right. Then just the
21 indictment, all right, this is what I'm talking about, the
22 indictment. I can show you from the Department of Public
23 Safety --

24 THE COURT: The Department of Public Safety is the
25 Highway Department, sir. They don't keep record of criminal

1 offenses in South Carolina. They only keep record of
2 traffic tickets, suspensions, and other things.

3 I have your indictments in my hand. They were
4 filed.

5 THE DEFENDANT: I can show you that they actually
6 used this --

7 THE COURT: Public safety is not responsible for
8 keeping court records.

9 THE DEFENDANT: It's Freedom of Information form
10 that I can show you.

11 THE COURT: The Department of Public Safety only
12 keeps track of traffic tickets and suspensions. That's it.
13 They do not have records of your offenses.

14 THE DEFENDANT: I think that that's just a building
15 that the person --

16 THE COURT: No. That's where the Highway
17 Department is housed. And their only responsibility under
18 statute is to keep track of offenses.

19 THE DEFENDANT: All right. Can I provide this as
20 evidence to the Court for clarification?

21 THE COURT: Sir, I don't need you to provide me
22 with knowledge of the code. I've been doing this for 20
23 years. I know what the code provides.

24 THE DEFENDANT: I wouldn't doubt that, Your Honor,
25 but --

1 THE COURT: I know what each department is
2 responsible for by regulation. And the Department of Public
3 Safety is not responsible for keeping charges that are
4 pending. They would have no way of doing that. We got --
5 we have so many counties, each county has different
6 mechanisms by which each circuit keeps their indictments.
7 The State Grand Jury operates differently. They would have
8 no record of any of it. So that's not dispositive. I've
9 sent you -- when you first raised that issue, I had my staff
10 research it, even though it was not their responsibility,
11 and send you a full record and continuum of your charges.

12 THE DEFENDANT: Can I have a moment, Your Honor, if
13 you don't mind?

14 THE COURT: Yes, yes, certainly.

15 THE DEFENDANT: He's supposed to shadow me, right?

16 THE COURT: Well, I would suggest to you that you
17 keep him as your attorney, because he knows the rules and
18 you don't. And you tell him what questions you want asked
19 of witnesses so that he can phrase them the way that they
20 should be phrased so that you don't inadvertently
21 incriminate yourself in anything. And I would strongly
22 suggest you take advantage of a very seasoned criminal
23 record.

24 THE DEFENDANT: But he's not working in my
25 interest, so --

1 THE COURT: Oh, I think he's working in your
2 interest.

3 THE DEFENDANT: I don't believe that.

4 THE COURT: How would it benefit him to work
5 against your interest? He's not going to lose his legal
6 license for you. I wouldn't. I've never met anybody
7 important enough for me to lose my law license. That's my
8 independence. That's my way to make a living. No lawyer is
9 going to lose their license to collaborate with the State.
10 How long have you been doing defense work,
11 Mr. Griffith?

12 MR. GRIFFITH: Your Honor, since 2008.

13 THE COURT: Yes, a long time. You don't want to
14 lose your license over any of this, do you?

15 MR. GRIFFITH: No, Your Honor.

16 THE DEFENDANT: Your Honor, I've been unlawfully
17 imprisoned for 17 months. I have to question that, if you
18 don't mind.

19 THE COURT: You haven't been unlawful imprisoned.
20 You were arrested pursuant to a law enforcement warrant.
21 You were indicted. And your bail was set. And you, for
22 whatever reason, you couldn't make bond. And so you are
23 not --

24 THE DEFENDANT: Also, have a bond letter that
25 states that I have no bond in violation of 8th Amendment.

1 THE COURT: I'm sorry. I can't hear you.

2 THE DEFENDANT: According to this, bond has not
3 been set. And it's in violation of the 8th Amendment. They
4 keep saying I have a bond. I do not have a bond.

5 THE COURT: Under certain circumstances, they don't
6 have to grant one. The Court doesn't have to give you a
7 bond. If they feel you are a risk of flight or danger, they
8 don't have to set one.

9 THE DEFENDANT: But they gave me a bond, Your
10 Honor.

11 THE COURT: Well, that's your responsibility then
12 to make it.

13 THE DEFENDANT: If it's in the computer that says I
14 have no bond, how can I make bond?

15 THE COURT: Because the clerk of court has those
16 papers, the same way everybody else in this case that wanted
17 to make bond --

18 THE DEFENDANT: Court says they have no
19 jurisdiction, Your Honor.

20 THE COURT: That's not true. If you wanted to post
21 bond, they would have more than accommodated your bondsman
22 to post your bond.

23 THE DEFENDANT: All right, Your Honor. So if I
24 wanted to post bond, in this system it says --

25 THE COURT: That probably means that you haven't

1 posted bond. That doesn't mean you don't have --

2 THE DEFENDANT: Says bond not set, Your Honor.

3 THE COURT: That could be --

4 THE DEFENDANT: Can you look at it for me, please?

5 THE COURT: No. It could mean a myriad things.

6 Could mean you just never posted your bond. I don't know
7 how they entered it into the system. But I'm having the
8 clerk enter -- your bond was set at \$250,000 surety on May
9 4th of 2016.

10 THE DEFENDANT: Exactly.

11 THE COURT: And you were allowed to post 10 percent
12 if you were able to. And that bond was set by Judge Newman
13 on February 9th of 2016. It required that you have GPS
14 monitoring, that you report weekly, that you be placed on
15 house arrest. And let's see here. Oh, that was on 2/19 of
16 '16, he denied bond. But on May 4th of 2016, he set your
17 bond at \$250,000. And you were allowed to post 10 percent.

18 THE DEFENDANT: Your Honor --

19 THE COURT: So your bond was set. I don't know why
20 you didn't have the ability to make it.

21 THE DEFENDANT: Because --

22 THE COURT: But it was set. They wouldn't have --
23 they don't have anything to do with your bond. If you
24 wanted to post bond at 10 percent, you would have -- the
25 bondsman would have known the mechanism to follow and you

1 could have set your bond.

2 THE DEFENDANT: This was signed by an attorney.

3 THE COURT: Sir, that has nothing to do with your
4 bond being set.

5 THE DEFENDANT: No, no. Attorney tried to have his
6 bonds people bail me out and this says bond not set.

7 THE COURT: That doesn't matter. He would know how
8 to go about setting your bond?

9 THE DEFENDANT: Can I bring up a point about the
10 bond?

11 THE COURT: Sir, I don't know that it's relevant
12 now. We are about to have a trial. It's not relevant to
13 anything. How is a bond relevant to your trial?

14 THE DEFENDANT: Because you just said bond was --

15 THE COURT: It's not relevant. Doesn't matter. We
16 are about to have a trial now.

17 THE DEFENDANT: All right. Look, you said bail was
18 set.

19 THE COURT: It was set. It was set on May 4th --

20 State Grand Jury person indicted by the State Grand
21 Jury for aailable offense must have a bond hearing before
22 the end of the second business day following the day he was
23 arrested.

24 THE COURT: Sir, you had both bond hearings.

25 THE DEFENDANT: This alleged Grand Jury indictment

1 is April 13th. That would have put --

2 THE COURT: Sir, you had two bond hearings before
3 Judge Newman. I don't know that a bond -- it doesn't
4 matter. It doesn't have any effect on your trial.

5 THE DEFENDANT: All right. May I have a moment to
6 ask something before we --

7 THE COURT: Sure.

8 Which of these counts in these indictments apply to
9 Mr. Roberts and Mr. Hunter? 2016-GS-4703 applies to
10 Mr. Roberts?

11 THE CLERK: I believe one applies to him.

12 THE COURT: This is the only one that applies to
13 him? This one does not?

14 THE CLERK: That one does.

15 THE COURT: Do you know what counts apply to him?

16 THE CLERK: Not off the top of my head.

17 Gosh, do you know?

18 MR. UNDERWOOD: As to which defendant, Your Honor?

19 THE COURT: Mr. Roberts and Mr. Hunter, do
20 Mr. Roberts first, then do Mr. Roberts.

21 MR. UNDERWOOD: Mr. Roberts is charged under count
22 1, count 11, 12, 13, 14, 15 and 16. And, Your Honor, that's
23 indictment 2016-GS-4702 for which we are here today.

24 THE COURT: I know 03 applies to him only. Which
25 of the counts apply to Mr. Hunter?

1 MR. UNDERWOOD: Mr. Hunter is charged under count
2 1, count 2, count 3, count 4, count 5 and count 6, Your
3 Honor.

4 And just to advise the Court, Your Honor, today we
5 are not here for Indictment No. 3, since that was venued in
6 Dorchester County.

7 THE COURT: What do you plan to do? It doesn't
8 matter, does it? It's a State Grand Jury case, the venue,
9 we are not going to Dorchester to try this.

10 MR. UNDERWOOD: At this time it's currently -- it
11 was venued by Judge Newman to Dorchester County, because
12 that was where the substantive offense occurred.

13 THE COURT: Yeah, but once it's assigned, both were
14 assigned to me. So you are saying you plan to go to
15 Dorchester and try it?

16 MR. UNDERWOOD: Depending on the results of this
17 trial, that may not be necessary, Your Honor.

18 THE COURT: So I don't need to publish
19 2016-GS-4703?

20 MR. UNDERWOOD: Correct, Judge.

21 THE COURT: Are any of these witnesses on this list
22 that you handed to me inapplicable?

23 MR. UNDERWOOD: Excuse me, Your Honor?

24 THE COURT: Are any of these witnesses under your
25 proposed witnesses list the ones listed under Dorchester

1 County, do you plan to call any of those witnesses?

2 MR. UNDERWOOD: Yes, Your Honor.

3 THE COURT: Miss Johns, are you ready to proceed
4 with jury selection?

5 MS. JOHNS: I am, Your Honor.

6 THE COURT: Mr. Griffith, are you ready to proceed
7 with jury selection?

8 MR. GRIFFITH: Your Honor, Mr. Roberts is prepared
9 to go forward.

10 THE COURT: I am not going to relieve you, I don't
11 think, at this late stage or juncture. He can assist you,
12 but I don't think it's prudent to relieve you as counsel.

13 MR. GRIFFITH: As the Court sees fit, Your Honor.

14 THE COURT: Yeah. I need somebody to really
15 advocate for his best interest.

16 THE DEFENDANT: Your Honor --

17 THE COURT: While he's allowed, constitutionally,
18 to represent himself, I do not perceive he has sufficient
19 grasps of the rules such that he would be able to protect
20 his own interests. And I am not going to relieve you as
21 counsel.

22 THE DEFENDANT: Your Honor, doing that is going to
23 incapacitate --

24 THE COURT: No, it's not. You can tell him
25 everything you want to say. And he will put it in the

1 context of the rules so that your interests will be
2 protected.

3 THE DEFENDANT: And he will be destroying my
4 questions to mean something else.

5 THE COURT: No. You tell him what the questions
6 are. Most of the questions you probably want to ask you
7 won't be able to ask because they won't be in the format
8 they need to be.

9 THE DEFENDANT: I took very care to make sure --

10 THE COURT: You need to tell him exactly what you
11 want asked. And if he misses anything, I will take a break
12 and you can ask him what you need asked.

13 THE DEFENDANT: I don't consent.

14 THE COURT: That's fine. It doesn't require your
15 consent. I've noted your objection for the record.

16 Bring in the jury.

17 THE DEFENDANT: Can I preserve that?

18 THE COURT: It's already preserved. That's why
19 we've got a court reporter. She takes down everything we
20 say.

21 THE DEFENDANT: Thank you.

22 (Whereupon, the Venire returns.)

23 THE DEFENDANT: Excuse me, Your Honor. I'm
24 alleging constitutional --

25 THE COURT: Sir, I need you to be quiet for me

1 while we select a jury. We will take back up what you are
2 talking about in a moment, because it doesn't affect jury
3 selection.

4 Ladies and gentlemen, we appreciate your patience.
5 I know it was a little warm out there, but the Court had
6 some matters of law it needed to take care of. And we,
7 again, have to protect at all times your impartiality as the
8 finders of the facts in this case.

9 We are going to try the cases of the State of South
10 Carolina vs. Justin Gordon Hunter and Emory Warren Roberts.
11 And those indictments allege -- the indictment alleges as
12 follows: As to count one, trafficking in illegal drugs,
13 heroin, 28 grams or more; conspiracy, that Justin Gordon
14 Hunter, also known as Mo, Emory Roberts, also known as Q,
15 and other persons whose names are both known and unknown to
16 the State Grand Jury did in Berkeley County and Dorchester
17 County, South Carolina, from January 1st, 2015, to the
18 present, knowingly and intentionally provide financial
19 assistance or otherwise aid, abet or conspired to sell,
20 manufacture, cultivate, deliver, purchase or bring into this
21 state 28 grams or more of heroin, a controlled substance,
22 under provisions 44-53-110 of the Code of Laws as amended,
23 such conduct not being authorized by law, and such activity
24 occurring and/or having significance in more than one county
25 of this state or arising out of or in connection with a

1 crime having significance in more than one county of this
2 state.

3 And count two, that Justin Gordon Hunter, also
4 known as Mo, did in Berkeley County, on or about September
5 30th of 2015, knowingly sell, manufacture, cultivate,
6 deliver, purchase or bring into this state or provide
7 financial assistance, or otherwise aid, abet, attempt or
8 conspire to sell, manufacture, cultivate, deliver, purchase,
9 or bring into this state, or knowingly become in actual or
10 constructive possession, or knowingly attempt to become in
11 actual or constructive possession of 4 grams or more but
12 less than 14 grams of heroin, a controlled substance
13 pursuant to 44-53-110 of the Code of Laws as amended. Such
14 conduct not having been authorized by law. And such
15 activity occurring or having significance in more than one
16 county of this state or arising out of or in connection with
17 a crime having significance in more than one county of this
18 state.

19 And count three, trafficking in illegal drugs,
20 heroin, 14 to 28 grams. That Justin Gordon Hunter, also
21 known as Mo, did in Berkeley County, on or about October
22 28th, 2015, knowingly sell, manufacture, cultivate, deliver,
23 purchase or bring into this state or provide financial
24 assistance, or otherwise aid, abet, attempt or conspire to
25 sell, manufacture, cultivate, deliver, purchase or bring

1 into this state, or knowingly become in actual or
2 constructive possession, or knowingly attempt to become in
3 actual or constructive possession of 14 grams or more, but
4 less than 28 grams of heroin, a controlled substance,
5 pursuant to 44-53-110 of the Code of Laws as amended.

6 And count four, distribution of heroin, that Justin
7 Gordon Hunter, also known as Mo, did in Berkeley County, on
8 or about December 14th, 2015, knowingly and intentionally
9 distribute, dispense, and/or deliver, or did aid, abet,
10 attempt, or conspire to distribute or dispense a quantity of
11 heroin, a controlled substance pursuant to 44-53-110 of the
12 case laws as amended.

13 And count five, distribution of heroin, that Justin
14 Gordon Hunter, also known as Mo, did in Berkeley County, on
15 or about January 14th, 2016, knowingly and intentionally
16 distribute, dispense, and/or deliver, or did aid, abet,
17 attempt or conspire to distribute, dispense, and/or deliver
18 a quantity of heroin, a controlled substance as defined by
19 Code Section 44-53-110 of the Code of Laws as amended.

20 And count six, distribution of methamphetamine,
21 that Justin Gordon Hunter, also known as Mo, did in Berkeley
22 County, on or about February 3rd, 2016, knowingly
23 manufacture, distribute, dispense, deliver, purchase, or
24 aid, abet, attempt or conspire to manufacture, distribute,
25 dispense, deliver or purchase or possess with intent to

1 distribute, dispense or deliver methamphetamine, also known
2 as ice or crank, a controlled substance pursuant to
3 44-53-110 of the code of laws as amended. And alleging
4 these actions to be against the peace and dignity of the
5 State of South Carolina.

6 And count 11, distribution of heroin, that Emory
7 Warren Roberts, also known as Q, did in Berkeley County, on
8 or about January 7th, 2016, knowingly and intentionally
9 distribute, dispense and/or deliver, or did aid, abet,
10 attempt or conspire to deliver or dispense or deliver a
11 quantity of heroin, a controlled substance pursuant to
12 44-53-110 of the Code of Laws as amended.

13 And count 12, that Emory Warren Roberts, also known
14 as Q, did, in Berkeley County, on or about January 19th,
15 2016, knowingly and intentionally distribute, dispense
16 and/or deliver, or did aid, abet, attempt or conspire to
17 distribute, dispense and/or deliver a quantity of heroin, a
18 controlled substance under Section 44-53-110 of the Code of
19 Laws as amended.

20 And count 13, that Emory Roberts, also known as
21 Q -- Emory Warren Roberts, also known as Q, did in Berkeley
22 County, on or about February 2nd, 2016, knowingly and
23 intentionally distribute, dispense and/or deliver, or did
24 aid, abet, attempt or conspire to deliver, dispense or
25 deliver a quantity of heroin, a controlled substance

1 pursuant to 44-53-110 of the Code of Laws as amended.

2 And count 14, that Emory Warren Roberts, also known
3 as Q, did in Berkeley County, on or about February 8th,
4 2016, knowingly sell, manufacture, cultivate, deliver,
5 purchase or bring into this state or provide financial
6 assistance or otherwise aid, abet, attempt or conspire to
7 sell, manufacture, cultivate, deliver, purchase or bring
8 into this state, or knowingly become in actual or
9 constructive possession, or knowingly attempt to become in
10 actual or constructive possession of 4 grams but less than
11 14 grams of heroin, a controlled substance pursuant to
12 44-53-110 of the Code of Laws as amended.

13 And count 15, that Emory Warren Roberts, also known
14 as Q, did in Berkeley County, on or about February 8, 2016,
15 possess or visibly display a firearm during the commission
16 of or attempt to commit a violent crime, to wit, trafficking
17 in illegal drugs, that being heroin, alleging violation of
18 Code Section 16-23-490 of the Code of Laws as amended.

19 And count 16, that Emory Warren Roberts, also known
20 as Q, did in Berkeley County, on or about February 8th,
21 2016, knowingly manufacture, distribute, dispense, deliver,
22 purchase or aid, abet, attempt or conspire to manufacture,
23 distribute, dispense, deliver or purchase, or possess with
24 the intent to distribute, dispense or deliver,
25 methamphetamine, also known as ice or crank, a controlled

1 substance pursuant to 44-53-110 of the Code of Laws as
2 amended, and alleging these activities to be against the
3 peace and dignity of the state of South Carolina.

4 Ladies and gentlemen, we are going to go through a
5 process called voir dire, which is simply a legal term
6 meaning that I'm going to ask you some questions, so that
7 the attorneys in this case can more effectively exercise
8 their preemptory challenges in jury selection. If a
9 question applies to you, please stand, and in a loud and
10 clear voice, give me your name, your juror number, and
11 answer to the question if applicable. And remain standing
12 until I have completed questioning you.

13 Before we begin that process, I'm going to have
14 counsel for the State to stand and introduce himself, tell
15 us the names of the lawyers in his office, and anyone who
16 will be assisting him in the trial of this case, and have
17 counsel for the State -- I mean, for the defense to stand,
18 face the panel, tell us your name, the name of the lawyers
19 in your offices, and also have Mr. Roberts stand and face
20 the panel.

21 You may proceed, Mr. Underwood.

22 MR. UNDERWOOD: Thank you, Your Honor. Hello,
23 everyone. My name is Joshua Underwood. I'm a prosecutor
24 with the South Carolina Attorney General's Office. With me
25 here today is David Fernandez. He's another assistant

1 attorney general who will be assisting the prosecution of
2 this case.

3 THE COURT: And names of the lawyers in your
4 office, to the best of your knowledge.

5 MR. UNDERWOOD: Your Honor, the entire office?

6 THE COURT: As many as you can remember. That will
7 be helpful.

8 MR. UNDERWOOD: It's about 100, Your Honor.

9 THE COURT: The ones you can remember. Just give
10 us an example. That will be helpful.

11 MR. UNDERWOOD: In the criminal division, other
12 attorneys in the office are Deputy Attorney General Heather
13 Weiss, Assistant Deputy Attorney General Creighton Waters,
14 Assistant Deputy Attorney General Meg Burchstead, Assistant
15 Attorney General LaRone Washington, Assistant Attorney
16 General Kelvin Bright, Assistant Attorney General Kin Abee,
17 Assistant Attorney General Joel Kozak, Assistant Attorney
18 General Brook Beder (ph.), Assistant Attorney General Nick
19 Smith, Assistant Attorney General Clay Mitchell, Assistant
20 Attorney General Brian Petrano, Assistant Attorney General
21 Mike Ross.

22 THE COURT: Thank you, sir. Ms. Johns.

23 MS. JOHNS: Good afternoon. My name is Theresa
24 Johns. I'm a member of the South Carolina Bar. I represent
25 Justin Hunter.

1 THE COURT: Mr. Griffith.

2 MR. GRIFFITH: Good afternoon. My name is Timothy
3 Griffith. I'm an attorney with the South Carolina Bar. I
4 represent Mr. Emory Roberts.

5 THE COURT: You both are in solo practice; is that
6 correct?

7 MS. JOHNS: Yes, Your Honor, I am.

8 MR. GRIFFITH: Yes, Your Honor.

9 THE COURT: Mr. Roberts, please stand and face the
10 panel for me, please.

11 THE DEFENDANT: Ladies and gentlemen, how are you
12 doing? My name is Emory Roberts. I do not particularly --

13 THE COURT: Thank you, sir. You may take your
14 seat.

15 THE DEFENDANT: -- constitutionally --

16 THE COURT: Thank you, sir. You may take your
17 seat.

18 Ladies and gentlemen, again, if a question applies
19 to you, please stand, and in a loud and clear voice, tell me
20 your name and your juror number and answer to the question,
21 if applicable. And remain standing until I've completed
22 questioning you.

23 Is there any member of the panel related by blood
24 or marriage to Justin Gordon Hunter or Emory Warren Roberts?
25 If so, please stand at this time.

1 (No response from the jury.)

2 THE COURT: Does any member of the panel have a
3 close personal or social relationship with Justin Gordon
4 Hunter or Emory Warren Roberts? If so, please stand at this
5 time.

6 (No response from the jury.)

7 THE COURT: Please listen carefully. The following
8 are lists of potential witnesses in this case.

9 Agent Justin Wingo, Agent Ryan Shipley, Lieutenant
10 Rawl, Max Dorsey, Agent Sal Cirensione, Agent Rhett Holden,
11 Agent Latisha Walker, Lieutenant David Leslie, Agent Trevor
12 Howlett, Agent Quincey Ford, Agent Michael Vasquez, Agent
13 Jason Wells, Agent Regiane Douge, Agent Rod Greene, Agent
14 Lewis Stoertz, Agent Charles Miles, Agent Seth Jarrell,
15 Agent John Neele, Agent Zack Perry, Lawrence Zivkovich,
16 Willie C. Smith, III, Shana B. Sorrells, Maribeth C.
17 McCormack, Douglas Robinson, Lynn Black, Doris Yarbrough,
18 Amy Stephens, Jackie Davis, Agents Daniel -- all of the
19 South Carolina Law Enforcement Division.

20 Agent Daniel Lundberg, Department of Homeland
21 Security, Sergeant Brandon Allen, Naz Yangco, Lieutenant
22 Frank Thompson, PFC Barrineau, Jody Maida, all of the
23 Charleston County Sheriff's Department.

24 Who are these other individuals; what entity: Jeff
25 Willaims, Woodring, Horney and Powell?

1 MR. UNDERWOOD: They are with SLED, Your Honor.

2 THE COURT: Agent Jeff Williams, Agent Tyler
3 Woodring, Agent Chandler Horney, Agent Katherine Powell, all
4 South Carolina Law Enforcement Division.

5 Jennifer Aycock, what agency is she with?

6 MR. UNDERWOOD: She's formerly of SLED, Your Honor.

7 THE COURT: Formerly of the South Carolina Law
8 Enforcement Division.

9 Corporal King, Colleton County Sheriff's Office,
10 Chris Hollowell, Stephanie Stover, J.J. Evans, Tommy Sekula,
11 William Brown, Rosemarie Quezada, Shirley Renee Silvis,
12 Craig Valentine, Sean Gibbons, Lason Dickson-Johnson, also
13 known as BG, William Orlando Brown, IV, also known as Will.

14 Is there any member of the panel related by blood
15 or marriage to any of the people that I've just listed, or
16 does anyone have a close personal or social relationship
17 with any of these individuals? If so, please stand at this
18 time.

19 Yes, ma'am, tell me your name and juror number.

20 JUROR 198: Kirstin Tanner, 198.

21 THE COURT: And who are you related to, ma'am?

22 JUROR 198: I am not.

23 THE COURT: Who do you have a friendship with?

24 JUROR 198: Several.

25 THE COURT: I need you to tell me who they are.

1 JUROR 198: Sean Gibbons, Frank Thompson, Daniel
2 Lundberg. Oh, my goodness. You said several.

3 THE COURT: Would you consider them acquaintances
4 or close friends?

5 JUROR 198: Close friends.

6 THE COURT: If you will remain standing.

7 Yes, ma'am.

8 JUROR 78: Juror 78.

9 THE COURT: Who are you affiliated with?

10 JUROR 78: Agent Quincey Ford is a close family
11 friend.

12 THE COURT: As a result of these experiences, do
13 you all feel that you can remain fair and impartial and
14 render a fair and impartial decision in this case based
15 solely on the evidence as it will be presented and on the
16 law as the Court will instruct? If your answer is yes,
17 please take your seat.

18 Let the record reflect that 198 cannot be fair and
19 impartial. She will be excused from the trial of this case.

20 78 indicated she could be fair and impartial.

21 Has any member of the panel ever been represented
22 by any of the attorneys involved in this case or any of the
23 lawyers with whom they practice? If so, please stand at
24 this time.

25 (No response from the jury.)

1 THE COURT: Is there any member of the panel
2 related by blood or marriage to or have a close personal or
3 social or business relationship with any of the attorneys
4 involved in this case, any of the lawyers with whom they
5 practice law or anyone employed in any capacity whatsoever
6 in their offices? If so, please stand at this time.

7 (No response from the jury.)

8 THE COURT: Has any member of the panel formed or
9 expressed an opinion about any issue or matter involved in
10 this case? If so, please stand at this time.

11 Yes, ma'am. Tell me your name and your juror
12 number.

13 JUROR 182: Kim Sanderson, Juror No. 182.

14 THE COURT: What would be the basis of forming an
15 opinion, ma'am, without going into too much detail?

16 JUROR 182: Someone close to me has been affected
17 by this type of crime.

18 THE COURT: Are you telling me you cannot be fair
19 and impartial?

20 JUROR 182: No.

21 THE COURT: You will be excused from the trial of
22 this case only. You may take your seat.

23 JUROR 202: Robert C. Taylor, Jr, Juror No. 202.
24 Spent 21 years in law enforcement. I have a son that's a
25 law enforcement officer. I tend to side with them.

1 THE COURT: So you can't be fair and impartial?

2 JUROR 202: Yes, ma'am.

3 THE COURT: You are excused from the trial of this
4 case only. Take your seat.

5 JUROR 121: Juror 121.

6 THE COURT: Your name, sir?

7 JUROR 121: Ermine Kearse.

8 THE COURT: Yes, sir.

9 JUROR 121: I have family member that is --

10 THE COURT: You don't need to go into detail. You
11 are telling me as a result of that, you can't be fair and
12 impartial?

13 JUROR 121: Yes, ma'am.

14 THE COURT: You will be excused from the trial of
15 this case only.

16 JUROR 28: I'm Juror 28, Gale Chappelle. I have an
17 8-year-old. I have an 8-year-old living with me because
18 of --

19 THE COURT: Because of this type situation?

20 JUROR 28: Yes.

21 THE COURT: Can you not be fair and impartial?

22 JUROR 28: I cannot right now.

23 THE COURT: Thank you, ma'am. You will be excused
24 from the trial of this case only. You may take your seat.

25 Has any member of the panel read, watched or

1 listened to any media accounts about this case? That
2 includes anything that could have been in the newspaper,
3 radio, television, or on the Internet? If so, please stand
4 at this time.

5 (No response from the jury.)

6 THE COURT: Is any member of the panel aware of any
7 bias or prejudice for either the State or the defense in
8 this case? If so, please stand at this time.

9 (No response from the jury.)

10 THE COURT: Is there any member of the panel who is
11 a member of the Grand Jury which issued the indictments in
12 this case? If so, please stand at this time.

13 (No response from the jury.)

14 THE COURT: Is any member of the panel a member of
15 any type group which has its primary concern -- is there any
16 member of the panel who is a member of or contributor to any
17 group which has as its primary concern the enforcement of
18 victims' rights? These groups would include, but are not
19 limited to, Mothers Against Drunk Driving, Students Against
20 Drunk Driving, Citizens Against Rape, Citizens Advocating a
21 Return to Decency and Ethics, Parents Empowered to Save
22 Teens, or any other type community watch group? If so,
23 please stand at this time.

24 (No response from the jury.)

25 THE COURT: Is there any member of the panel who

1 has a moral, philosophical or religious opposition to
2 sitting in judgment with a fellow human being? If so,
3 please stand at this time.

4 (No response from the jury.)

5 THE COURT: Is there any member of the panel who
6 has a moral, philosophical or religious opposition to the
7 consumption of illicit substances or alcohol? If so, please
8 stand at this time.

9 Yes, ma'am, tell me your name and juror number.

10 JUROR 130: Elaine Marchena, Juror 130.

11 THE COURT: And, ma'am, as a result of this
12 predisposition, would you be able to set that aside and
13 follow the law as the Court instructors?

14 JUROR 130: I don't think so.

15 THE COURT: Okay. You will be excused from the
16 trial of this case only.

17 JUROR 82: My name is Ryan Gimple. My number is
18 82. I'm not sure if I fully understood what you said.

19 THE COURT: What I'm asking is if you have a moral,
20 philosophical or religious opposition to the use of drugs or
21 alcohol.

22 JUROR 82: Yes, yes.

23 THE COURT: Would you be able to set that
24 predisposition aside and follow the law as the Court
25 instructs and be fair and impartial?

1 JUROR 82: I believe to be fair and impartial, I
2 cannot set that aside.

3 THE COURT: Okay. Sir, you will be excused from
4 the trial of this case only. You may take your seat.

5 Is there any member of the panel who feels morally,
6 philosophically and/or for some moral or philosophical
7 reason feels that marijuana should be legalized? If so,
8 please stand at this time.

9 Yes, sir, tell me your name and juror number.

10 JUROR 44: Joe Krause, 44.

11 THE COURT: Sir, as a result of this belief, do you
12 feel you can remain fair and impartial?

13 JUROR 44: Yes, I do.

14 THE COURT: Do you feel you can render a fair and
15 impartial decision in this case based solely on the evidence
16 as it will be presented and on the law as the Court will
17 instruct?

18 JUROR 44: Yes, I do.

19 THE COURT: Thank you, sir. You may stay in your
20 seat.

21 Is there any member of the panel who has ever been
22 the victim of a violent crime? If so, please stand at this
23 time.

24 THE COURT: Tell me your name and -- tell me your
25 name and juror number.

1 JUROR 78: 78.

2 THE COURT: You were the victim of a violent crime?

3 JUROR 78: Yes.

4 THE COURT: As a result of this experience, do you
5 feel that you can remain fair and impartial and render a
6 fair and impartial decision in this case based solely on the
7 evidence as it will be presented and on the law as the Court
8 will instruct?

9 JUROR 78: No.

10 THE COURT: Ma'am, you will be excused from the
11 trial of this case only.

12 And I need you to listen carefully to this
13 question, because it refers to former employment, not
14 current employment.

15 Is there any member of the panel who was formerly
16 employed in law enforcement? If so, please stand at this
17 time.

18 I've already excused you, but if you will tell us
19 name and juror number.

20 JUROR 202 Robert Taylor, 202.

21 THE COURT: Tell me your name and juror number.

22 JUROR 1: Juror No. 1, Austen Adcock. Can you
23 repeat the question?

24 THE COURT: Were you formerly employed in any
25 capacity in law enforcement, not your current employment,

1 but former?

2 JUROR 1: Okay. Never mind.

3 THE COURT: Thank you, sir.

4 JUROR 119: 119, Brian Johnson. I used to be a
5 prosecutor with the South Carolina Attorney General's
6 Office.

7 THE COURT: As a result of this experience, do you
8 feel that you can remain fair and impartial and render a
9 fair and impartial decision in this case based solely on the
10 evidence as it will be presented and on the law as the Court
11 will instruct?

12 JUROR 119: Yes.

13 THE COURT: Thank you, sir. You may take your
14 seat.

15 Is there any member of the panel who has a family
16 member who is employed in law enforcement? If so, please
17 stand at this time.

18 We will start over here. I need you to give me
19 your name and juror number and what member of your family it
20 is and what agency. And remain standing.

21 JUROR 66: Allen Falkowski, Juror No. 66. Kenny
22 Harris, Berkeley County Sheriff's Office, he's my cousin.
23 And Stacey Harris, Berkeley County Sheriff's Office, he's my
24 cousin.

25 JUROR 18: No. 18, James Breaux. My son, he's with

1 the detention center.

2 THE COURT: In Charleston?

3 JUROR 18: In Charleston, Al Cannon.

4 JUROR 201: Rebecca Taylor, Juror 201. My uncle is
5 a police officer in Hampton County.

6 JUROR 86: Colleen Gray, 86. My brother is NYPD.

7 THE COURT: You said NYPD?

8 JUROR 86: Yes.

9 JUROR 199: My brother is a police officer in
10 Hampton County.

11 THE COURT: You said Hampton?

12 JUROR 199: Yes, ma'am.

13 THE COURT: Tell me your name and juror number.

14 JUROR 199: Mary Taylor, 199.

15 JUROR 1: Juror No. 1, Austen Adcock. My grandpa
16 worked at Lieber prison.

17 JUROR 43: Laura Croft, Juror 43. My husband is a
18 police officer with the State Port Authority.

19 JUROR 118: My name is Roy Jenrich, No. 118. My
20 daughter-in-law is an attorney with the Secret Service.

21 THE COURT: Attorney with who?

22 JUROR 118: Secret Service out of Washington, DC.

23 JUROR 67: Eva Bresney, Juror No. 67. My uncle is
24 in Buncombe County, North Carolina and my cousin is a state
25 trooper in North Carolina.

1 THE COURT: You said your cousin is a state trooper
2 for South Carolina?

3 JUROR 67: North Carolina.

4 THE COURT: And did you say someone else as well?

5 JUROR 67: My uncle is a sheriff in Buncombe
6 County, North Carolina.

7 JUROR 108: Selicia Holmes-Langford, Juror 108. My
8 sister works for South Carolina Probation and Parole in
9 Berkeley County.

10 THE COURT: As a result of these experiences, do
11 you all feel that you can remain fair and impartial, and
12 render a fair and impartial decision in this case based
13 solely on the evidence as it will be presented and on the
14 law as the Court will instruct? If your answer is yes,
15 please take your seat.

16 Let the record reflect that all answered yes.

17 Does any member of the panel know of any reason
18 whatsoever why he or she should not serve as a juror in this
19 case, with particular emphasis being placed on your ability
20 to be fair and impartial to both the State and the defense?
21 If so, please stand at this time.

22 (No response from the jury.)

23 THE COURT: Are there any additional questions from
24 the State, Mr. Underwood?

25 MR. UNDERWOOD: None, Your Honor.

1 THE COURT: From the defense, Ms. Johns?

2 MS. JOHNS: No, Your Honor.

3 THE COURT: From the defense, Mr. Griffith?

4 MR. GRIFFITH: No, Your Honor.

5 THE COURT: The strikes will be five for the
6 State --

7 MR. UNDERWOOD: It would be five for the State and
8 total of ten for the defense.

9 THE COURT: Well, they got five of each. Yes.

10 All right. Who is going to demonstrate for me?

11 Ladies and gentlemen, if your name is called,
12 please come forward with all of your personal belongings.
13 Stand where the bailiff is standing until we seat or excuse
14 you as a juror. If someone has to come from the inside of
15 the bench, please be courteous and slide down.

16 We list your names randomly. And we do that by
17 computer. If you give us a moment, please.

18 THE COURT: Is the State ready to proceed?

19 MR. UNDERWOOD: Yes, ma'am.

20 THE COURT: Defendants ready to proceed?

21 MS. JOHNS: Yes, ma'am.

22 MR. GRIFFITH: Yes.

23 THE CLERK: Juror No. 172, Hassan Rezzoug, please
24 come forth and bring your personal belongings.

25 What says the State?

1 MR. UNDERWOOD: Please excuse the juror.

2 THE CLERK: Excuse the juror.

3 Juror No. 225, William Withers.

4 What says the State?

5 MR. UNDERWOOD: Please present this juror.

6 THE CLERK: What says the defendant Hunter?

7 MS. JOHNS: Please seat the juror.

8 THE CLERK: What says the defendant Roberts?

9 MR. GRIFFITH: Seat the juror.

10 THE CLERK: Seat the juror.

11 Juror 65, Evan Fabian. What says the State?

12 MR. UNDERWOOD: Please present this juror.

13 THE CLERK: What says the defendant Hunter?

14 MS. JOHNS: Please seat the juror.

15 THE CLERK: What says the defendant Robert?

16 MR. GRIFFITH: Excuse the juror.

17 THE CLERK: Excuse the juror.

18 Juror 114, Jary Hulst. What says the State?

19 MR. UNDERWOOD: Please present this juror.

20 THE CLERK: What says the defendant Hunter?

21 MS. JOHNS: Please excuse the juror.

22 THE CLERK: Excuse the juror.

23 Juror 113, Catina Hughes. What says the State?

24 MR. UNDERWOOD: Please present this juror.

25 THE CLERK: What says the defendant Hunter?

1 MS. JOHNS: Please seat the juror.

2 THE CLERK: What says the defendant Roberts?

3 MR. GRIFFITH: Seat the juror.

4 THE COURT: Wait a second. Does he want to
5 excuse --

6 THE DEFENDANT: I want to represent myself.

7 THE COURT: Sir, I've already told you, we settled
8 that. Is the juror to be seated or excused?

9 MR. GRIFFITH: Please seat the juror, Your Honor.

10 THE CLERK: Juror 166, Jason Phillips. What says
11 the State?

12 MR. UNDERWOOD: Please present this juror.

13 THE CLERK: What says the defendant Hunter?

14 MS. JOHNS: Please seat the juror.

15 THE CLERK: What says the defendant Roberts?

16 MR. GRIFFITH: Seat the juror.

17 THE CLERK: Seat the juror.

18 Juror 159, Richard Novak. What says the State?

19 MR. UNDERWOOD: Please present this juror.

20 THE CLERK: What says the defendant Hunter?

21 MS. JOHNS: Please swear the juror.

22 THE CLERK: What says the defendant Roberts?

23 MR. GRIFFITH: Please seat the juror.

24 THE CLERK: Seat the juror.

25 THE COURT: Number 103, are you present? Sir, did

1 you tell me you had a real estate closing on Friday? I'm
2 sorry. I just needed clarity on that, because I neglected
3 to tell my deputy clerks that.

4 Juror 163, Felix Petrowski. What says the State?

5 MR. UNDERWOOD: Please present this juror.

6 THE CLERK: What says the defendant Hunter?

7 MS. JOHNS: Please swear the juror.

8 THE COURT: What says the defendant Roberts?

9 MR. GRIFFITH: Swear the juror.

10 THE COURT: 23, Patrick Bumgarner. What says the
11 State?

12 MR. UNDERWOOD: Excuse the juror.

13 THE CLERK: Excuse the juror.

14 Juror 98, Brandee Harris. What says the State?

15 MR. UNDERWOOD: Please present this juror.

16 THE CLERK: What says the defendant Hunter?

17 MS. JOHNS: Please excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 32, Allison Clay. What says the State?

20 MR. UNDERWOOD: Please present this juror.

21 THE CLERK: What says the defendant Hunter?

22 MS. JOHNS: Please swear the juror.

23 THE CLERK: What says the defendant Roberts?

24 MR. GRIFFITH: Please swear the juror.

25 THE CLERK: Seat the juror.

1 Juror 199, Mary Taylor. What says the State?
2 MR. UNDERWOOD: Please present this juror.
3 THE CLERK: What says the defendant Hunter.
4 MS. JOHNS: Please swear the juror.
5 THE CLERK: What says defendant Roberts?
6 MR. GRIFFITH: Excuse the juror.
7 THE CLERK: Excuse the juror.
8 Juror 96, Jenair Hamilton. What says the State?
9 MR. UNDERWOOD: Please present this juror.
10 THE CLERK: What says the defendant Hunter?
11 MS. JOHNS: Please swear the juror.
12 THE CLERK: What says the defendant Roberts?
13 MR. GRIFFITH: Please swear the juror.
14 THE CLERK: Seat the juror.
15 Juror 210, Karenda Walker. What says the State?
16 MR. UNDERWOOD: Please present this juror.
17 THE CLERK: What says the defendant Hunter?
18 MS. JOHNS: Please swear the juror.
19 THE CLERK: What says the defendant Roberts?
20 MR. GRIFFITH: Please swear the juror.
21 THE CLERK: Seat the juror.
22 Juror 144, Brady Miller, III. What says the State?
23 MR. UNDERWOOD: Please present this juror.
24 THE CLERK: What says the defendant Hunter?
25 MS. JOHNS: Please swear the juror.

1 THE CLERK: What says the defendant Roberts?
2 MR. GRIFFITH: Please dismiss the juror.
3 THE CLERK: Dismiss the juror.
4 Juror 68, Sheila Fernandez. What says the State?
5 MR. UNDERWOOD: Please present this juror.
6 THE CLERK: What says the defendant Hunter?
7 MS. JOHNS: Please swear the juror.
8 THE CLERK: What says the defendant Roberts?
9 MR. GRIFFITH: Please present this juror.
10 THE CLERK: Seat the juror.
11 Juror 70, Steven Fish. What says the State?
12 MR. UNDERWOOD: Please present this juror.
13 THE CLERK: What says the defendant Hunter?
14 MS. JOHNS: Please excuse the juror.
15 THE CLERK: Excuse the juror.
16 Juror 67, Bresney Fanning. What says the State?
17 MR. UNDERWOOD: Please present this juror.
18 THE CLERK: What says the defendant Hunter?
19 MS. JOHNS: Please excuse the juror.
20 THE CLERK: Excuse the juror.
21 Juror 26, Dorothy Carter.
22 MS. JOHNS: Madam Clerk, do you mind repeating the
23 number?
24 THE CLERK: 26. What says the State?
25 MR. UNDERWOOD: Please present this juror.

1 THE CLERK: What says the defendant Hunter?

2 MS. JOHNS: Please swear the juror.

3 THE CLERK: What says the defendant Roberts?

4 MR. GRIFFITH: Please swear the juror.

5 THE CLERK: Juror 213, Brian Watkins. What says
6 the State?

7 MR. UNDERWOOD: Please present this juror.

8 THE CLERK: What says the defendant Hunter?

9 MS. JOHNS: Please excuse the juror.

10 THE CLERK: Excuse the juror.

11 THE COURT: Defendant Hunter has exhausted its
12 strikes.

13 MS. JOHNS: I'm sorry, Your Honor?

14 THE COURT: You've exhausted your strikes.

15 MS. JOHNS: Yes, Your Honor.

16 THE CLERK: Juror 162, Shyam Patel. What says the
17 State?

18 MR. UNDERWOOD: Please excuse the juror.

19 THE CLERK: Excuse the juror.

20 Juror 66, Allen Falkowski. What says the State?

21 MR. UNDERWOOD: Please present this juror.

22 THE CLERK: Any challenge from the defendant
23 Hunter?

24 MS. JOHNS: No, ma'am.

25 THE COURT: What says defendant Roberts?

1 MR. GRIFFITH: Please excuse the juror.

2 THE COURT: Excuse the juror.

3 Juror 214, Ashley Watson. What says the State?

4 MR. UNDERWOOD: Please present this juror.

5 THE CLERK: Any challenge from defendant Hunter?

6 MS. JOHNS: No, ma'am.

7 THE COURT: What says defendant Roberts?

8 MR. GRIFFITH: Please seat the juror.

9 THE CLERK: Seat the juror.

10 Juror No. 9, Tracy Bell. What says the State?

11 MR. UNDERWOOD: Please present this juror.

12 THE CLERK: Any challenge for cause from defendant

13 Hunter?

14 MS. JOHNS: No, ma'am.

15 THE COURT: What says defendant Roberts?

16 MR. GRIFFITH: Please seat the juror.

17 THE CLERK: Seat the juror.

18 THE COURT: Two alternates, one and two.

19 THE CLERK: Juror 146, Annette Mims. Was says the

20 State.

21 MR. UNDERWOOD: Please present this juror.

22 THE CLERK: What says the defendant Hunter?

23 MS. JOHNS: Please excuse the juror in this case.

24 THE CLERK: Excuse the juror.

25 Juror 40, George Craven. What says the State?

1 MR. UNDERWOOD: Please present this juror.

2 THE CLERK: Any challenge?

3 MS. JOHNS: No.

4 THE COURT: What says defendant Roberts?

5 MR. GRIFFITH: Please seat the juror.

6 THE CLERK: Seat the juror.

7 Next alternate, Juror 104, Jonathan Hendrix. What
8 says the State?

9 MR. UNDERWOOD: Please excuse the juror.

10 THE CLERK: Excuse the juror.

11 Juror 37, Scott Cooper. Any challenge from the
12 State?

13 MR. UNDERWOOD: No, ma'am.

14 THE COURT: What says defendant Hunter?

15 MS. JOHNS: Please swear the juror.

16 THE CLERK: What says the defendant Roberts?

17 MR. GRIFFITH: Please excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 108, Selicia Holmes-Lankford. Any challenge
20 from the State?

21 MR. UNDERWOOD: No, ma'am.

22 THE COURT: What says the defendant Hunter?

23 MS. JOHNS: Please swear the juror.

24 THE CLERK: Any challenge for cause from the
25 defendant Roberts?

1 MR. GRIFFITH: Please swear the juror.

2 THE CLERK: Seat the juror.

3 THE COURT: Any motions regarding selection of the
4 jury from the State?

5 MR. UNDERWOOD: None from the State, Your Honor.

6 THE COURT: From the defendant Hunter?

7 MS. JOHNS: No, Your Honor.

8 THE COURT: From the defendant Roberts?

9 MR. GRIFFITH: No, Your Honor.

10 THE COURT: To the balance of the panel, we are
11 sorry that it's taken a little longer than expected this
12 morning. You are excused for lunch. I need you to return
13 to the jury assembly room at two o'clock, at which time
14 Judge Harrington will select her jury, and then we will be
15 done for the day. Appreciate your patience. Have a good
16 lunch. See you at two o'clock.

17 (Whereupon, the venire leaves.)

18 THE COURT: Ladies and gentlemen, please stand and
19 raise your right hands so the clerk can swear you.

20 (Whereupon, the jury is sworn.)

21 THE COURT: Ladies and gentlemen, I'm going to send
22 you to your jury room for a few moments so I can discuss
23 scheduling with counsel. During this break, please do not
24 discuss the case in any manner whatsoever. Please don't
25 speculate as to what you think it may or could be about.

1 The bailiffs will also get your cell phone numbers
2 in the event that we need to reach out to you during the
3 course of the trial. I suspect we are going to go to lunch.
4 I just need to know how long we are going to take for lunch.
5 If you will go with the bailiffs for me please, I appreciate
6 your patience in advance.

7 (Whereupon, the jury leaves open court at 12:48
8 p.m.)

9 MR. GRIFFITH: If it please the Court, Your
10 Honor --

11 THE COURT: I have something else I need to do
12 first, if you hold that for me.

13 As regards the defendant Justin Gordon Hunter, we
14 held motions in this case last Wednesday. He failed to
15 appear after appropriate notice regarding the proceedings as
16 they were his motions that were filed with the court to be
17 disposed of. Subsequent to the call of the motions,
18 Mr. Roberts joined in the motions likewise.

19 Mr. Hunter, and I'm referring to Justin Gordon
20 Hunter, had a bond set on December 14th of 2016. That bond
21 was set in the amount of \$300,000. He was not allowed to
22 post 10 percent. There were other conditions that he
23 initialed regarding that bond document. The relevant
24 portion, however, is paragraph 10, which reads as follows:
25 The defendant understands that he or she has the right to be

1 present at trial of his or her case; that it is his or her
2 responsibility to make contact with his attorney and the
3 clerk of court in order to know the date that the trial of
4 his case is scheduled for. The defendant further
5 understands this order acts as a notice of his right to be
6 present at trial, and that the trial will proceed in his
7 absence upon a failure to attend court.

8 And he initialed and signed the document. And that
9 was on 12/14 of '16. That was set by Judge McMahon. It
10 appears with Sinkler Southeast Bonding in Columbia, posted
11 his surety on December 22nd of 2016. And also on that same
12 date, he likewise initialed that he would be tried: I
13 understand and have been informed that I have a right and
14 obligation to be present at trial. And should I fail to
15 attend the court, the trial will proceed in my absence. And
16 it has been explained to me that if I fail to appear before
17 the court as required, a warrant for my arrest will be
18 issued. And, likewise, he signed, as well as Ms. Johns, on
19 12/14 of '16. He failed to appear. A bench warrant has
20 been issued for his arrest. And we will proceed with the
21 trial in his absence.

22 Has anyone notified Sinkler Southeast Bonding? Ms.
23 Johns, did you try to contact his bonding company to see if
24 they have any contact with him?

25 MS. JOHNS: I have not.

1 MR. UNDERWOOD: I have not.

2 THE COURT: Any reason nobody contacted the bonding
3 company to see if they can find him?

4 MS. JOHNS: Your Honor, I attempted to contact
5 Mr. Hunter directly.

6 THE COURT: Yeah, but I would think he owes them
7 money. They keep a tight leash. Nobody thought it prudent
8 to call them? Maybe I will give them -- do we have their
9 phone number? I would think during the break, somebody
10 would want to do that, especially in light of the fact that
11 their money is going to start being distributed. It is
12 Sinkler Southeast Bonding, 443D Meeting Street, West
13 Columbia, 29169; Palmetto Surety Corp., 109 Riverlanding,
14 Suite 200, Charleston, 29492.

15 I'm going to make copies of these documents as a
16 court's exhibit.

17 Okay. Now, Mr. Roberts, you want to tell me
18 something?

19 THE DEFENDANT: Yes.

20 MR. GRIFFITH: First, Your Honor --

21 THE COURT: I'm sorry, I meant to say
22 Mr. Griffith.

23 MR. GRIFFITH: If it please the Court, Your Honor,
24 I would move for a mistrial in that during the jury -- while
25 the jury panel was all in here, Mr. Roberts did stand up and

1 object to being represented. I just wanted to put that on
2 the record.

3 THE COURT: I will note it and overrule it. A
4 mistrial is an extreme remedy and should only be granted
5 when a curative instruction cannot suffice. When you are
6 the architect of your own dilemma, that does not posture for
7 a mistrial. Motion is denied. If necessary, I will give a
8 curative instruction.

9 But, Mr. Roberts, I will instruct you that if you
10 make any other outbursts, I'm making arrangements to have a
11 monitor put in a separate room where you and your lawyer
12 will view the trial. So it would be in your best interest
13 that you not have any further outbursts. Because I'm not
14 going to have you being disruptive during the course of
15 these proceedings. There's a decorum that we all must
16 follow. There's rules in place that make sure this is an
17 ordinarily process. They also make sure that your
18 constitutional rights are protected. So I would strongly
19 suggest that you go over those with your counsel. No one
20 has a problem with you making an objection. In fact, in a
21 trial there should be lots of objections. But there's a way
22 it has to be done. And I expect you to follow those rules.

23 THE DEFENDANT: Can I make an objection now?

24 THE COURT: No, sir. You need to make your lawyer
25 aware of it and then I will be glad to hear anything that

1 you tell him. But I'm not rehashing any of that stuff about
2 us not having jurisdiction and any of that. I've already
3 dealt with that for about a couple of hours last week. And
4 I am not entertaining that any further. I made you clear as
5 to what the law is in South Carolina.

6 THE DEFENDANT: All right. So being that you
7 brought that up, the letter that I have from the court clerk
8 saying there's no jurisdiction --

9 THE COURT: Sir, I told you that is invalid and
10 that your reliance on that is misplaced.

11 THE DEFENDANT: All right. Constitutionally, I can
12 represent myself.

13 THE COURT: Sir, I've already denied that request
14 as well. And for the record, I would note that I do not
15 believe that you understand the significant jeopardy that
16 you are placing yourself in by asking to represent yourself.
17 I do not perceive that you have any grasp of the rules of
18 evidence or procedure. I find for the record that that
19 would be a substantial constitutional deprivation of your
20 rights. So, therefore, I am not going to grant your motion
21 to relieve your attorney and allow you to represent
22 yourself, because I don't believe you understand the
23 consequences of your decision to proceed without a lawyer.
24 However, I have instructed your counsel and I am certain
25 that he will assist in your representation.

1 And contrary to what Dr. Maddox observed, I have
2 deliberately taken a conscious and concerted effort to
3 observe your behavior. You are more than qualified and
4 adaptable and aware of what is going on. And you have more
5 than adequate ability to assist your counsel. As a matter
6 of fact, you've been actively involved in all the
7 proceedings. And you have more than the ability to
8 communicate with Mr. Griffith.

9 And I've instructed Mr. Griffith to take into
10 account anything that you've requested. Based on my
11 observations, he has been incredibly amenable during jury
12 selection. Everyone you asked to be struck, he exercised
13 that strike. But I need to advise you that you need to
14 discuss certain strategies with him. He's required to
15 consider what you think, but if it's adverse to your
16 interest, he doesn't have to do it. So I would strongly
17 suggest that you listen very carefully to what he tells you,
18 because he is aware and adept at the rules. And you need to
19 take advantage of that advice.

20 And I will give you extra time if you need to go
21 over questions and other things with him. In fact, I'm
22 contemplating letting you have time to go over the discovery
23 again with him this afternoon before we proceed with any
24 substantive testimony.

25 THE DEFENDANT: I am not trying to act

1 contemptuous.

2 THE COURT: No, I am not taking it that way. I'm
3 listening.

4 THE DEFENDANT: In regards to the questions, I sat
5 here and I wrote all the appropriate questions for the
6 objective that I'm trying to reach in spite of my life.

7 THE COURT: You will have time to go over that with
8 him. That is not the appropriate time. We are picking a
9 jury.

10 THE DEFENDANT: All right. I want to make sure.
11 If anything, because I stated I feel threatened by him. We
12 do not --

13 THE COURT: I don't perceive that, sir. And I
14 don't think that's valid. I think that's a dilatory attempt
15 to delay these proceedings.

16 THE DEFENDANT: I said this since the first time I
17 met him.

18 What I'm saying is this, I'm supposed to rely on
19 him to ask my questions exactly how I wrote them?

20 THE COURT: Well, if they are legally appropriate,
21 yes. But he doesn't have to ask them if you put them in a
22 form that we don't recognize in the rules. There are rules
23 we have to follow. You need him to go over the rules with
24 you. Some of your questions may -- if they are not written
25 the way the rules are required, he can't ask them.

1 What I believe you need to do is make him aware of
2 the general subject matter of the questions you have. If
3 there's anything that you think falls under the category of
4 impeachment stuff, things that deal with credibility of
5 witnesses, you need to make him fully aware of the context
6 you want asked. And then he can advise you whether that is
7 within the context of how our rules allow questions to be
8 asked.

9 THE DEFENDANT: I understand that format. And it's
10 written to that extent. I understand that facts. Now, I
11 also ask that the assistant attorney general have a
12 subordinate in place because I would like to question him.

13 THE COURT: You can't question him. He can't be a
14 witness, sir.

15 THE DEFENDANT: All right. Your Honor, I'm trying
16 to prove corruption on the part of the Office of Attorney
17 General. And I can show that.

18 THE COURT: Well, then you need to ask the officer
19 that did the investigation. But Mr. Underwood doesn't
20 investigate. And that's not his posture and he can't be a
21 witness.

22 THE DEFENDANT: All right. So what about the clerk
23 of the State Grand Jury?

24 THE COURT: If you want to subpoena that person,
25 you can subpoena them, but it's unlikely they would be able

1 to answer anything you ask them.

2 THE DEFENDANT: All right. Can I ask you to just
3 review a little bit of information why I'm saying this?

4 THE COURT: Sure.

5 THE DEFENDANT: All right. The indictment
6 allegedly happened on April 13th. There are warrants that
7 are fallible because the State Grand Jury, the clerk's
8 office, one month before time, same exact document failed
9 twice, one with the stamp on it --

10 THE COURT: Sir --

11 THE DEFENDANT: What I'm saying, these things
12 happened before the actual investigation.

13 THE COURT: Doesn't matter. An indictment is a
14 notice document. It's just like a summons and complaint.
15 Like, in a civil case, you serve a summons and complaint. I
16 don't have to put everything in it. I just have to tell you
17 why you are being sued so you can know how to defend
18 yourself.

19 THE DEFENDANT: Beforehand, though?

20 THE COURT: Yes. An indictment is purely a notice
21 document to tell you why you are in court and what you have
22 to answer to.

23 THE DEFENDANT: Not that part. What I'm saying is,
24 if somebody -- how could a warrant be issued before -- say a
25 crime didn't occur, right? And somebody issued --

1 THE COURT: I don't know -- I don't know that it
2 didn't occur. And the court would have to send
3 information --

4 THE DEFENDANT: Excuse me. I'm sorry.

5 THE COURT: That's okay.

6 THE DEFENDANT: According to the date that the
7 State Grand Jury was impaneled, all right, for one, warrants
8 was issued and stamped by the State Grand Jury's office
9 before that even happened.

10 THE COURT: I don't know what their warrant is for,
11 sir.

12 THE DEFENDANT: I mean, one was for a search
13 warrant. One was for my arrest that's not signed by --

14 THE COURT: Those comes before indictments, sir.

15 THE DEFENDANT: Those come before indictments. All
16 right. So how would a Fifth Circuit judge with a --
17 according to the State Grand Jury provisions be in
18 accordance with the provisions, how could you issue or have
19 statewide jurisdiction to issue that warrant two months and
20 five days before the actual impanelment of State Grand
21 Jury.

22 THE COURT: Because that's how it works. We get
23 warrants and search warrants all the time before anybody is
24 ever indicted. That's called the investigation process.
25 They don't know whether they are going to need a Grand Jury

1 until they do all that.

2 THE DEFENDANT: But it says in the law, it says
3 that they have to find probable cause.

4 THE COURT: That's what a judge found when he
5 signed the warrant.

6 THE DEFENDANT: No, State Grand Jury.

7 THE COURT: That's different. You are mixing
8 apples and oranges. There's a process. You get search
9 warrants. You find evidence. A judge has to sign a search
10 warrant, which means he has to find that there must be some
11 evidence there based on some corroboration from the officer
12 that criminal activity is present. He signed it. He
13 believed that to be the case.

14 THE DEFENDANT: But from the 5th District.

15 THE COURT: No. It's a statewide Grand Jury.

16 THE DEFENDANT: But the Grand Jury hadn't even sat
17 yet.

18 THE COURT: Doesn't matter. State Grand Jury sits
19 all year.

20 THE DEFENDANT: I wasn't indicted yet. How would
21 he have --

22 THE COURT: They don't have to indict you before
23 they do search warrant and arrest warrants.

24 THE DEFENDANT: So if he's presiding --

25 THE COURT: That's all ahead of time.

1 THE DEFENDANT: If he's presiding judge, he's a
2 part of that investigation.

3 THE COURT: No, he's not. He's performing a
4 ceremonial function.

5 THE DEFENDANT: So he's --

6 THE COURT: We don't go out in the field and
7 investigate, sir. We rely on what people tell us. They are
8 under oath. And if we believe their testimony and their
9 affidavit, we issue what we feel is appropriate.

10 THE DEFENDANT: So Judge Newman, being presiding
11 judge of the State Grand Jury would be considered impartial?

12 THE COURT: Yes, absolutely. Judges don't care one
13 way or another whether an arrest takes place.

14 THE DEFENDANT: I am not questioning that part.
15 What I'm questioning is this is the 9th District. He's in
16 the 5th District.

17 THE COURT: The Grand Jury is state-wide, sir.
18 It's a state-wide mechanism. We can do it anywhere. He
19 just happens to be the person that sits as a central figure
20 that does that. And that rotates depending on who is in
21 that circuit to do that. And once everything is indicted,
22 then the Supreme Court, chief justice decides who each case
23 is going to be assigned to. In this instance, it was
24 assigned to me. I've had other cases assigned to me that
25 originated in lots of other place, that originated in

1 Conway, originated in Columbia. Doesn't have to
2 originate --

3 THE DEFENDANT: My personal value was taken to
4 Columbia. Article 1, Section 11, states that no person
5 should be held against any crime in a jurisdiction over
6 which is not a part of the --

7 THE COURT: Sir, we have special legislation that's
8 been passed that deals with the State Grand Jury.
9 Everything they did to you was permissible.

10 THE DEFENDANT: To return indictments, though, Your
11 Honor.

12 THE COURT: To do anything, sir.

13 THE DEFENDANT: I would like to see that.

14 THE COURT: You need to ask Mr. Griffith to provide
15 you with that.

16 THE DEFENDANT: I would like to see that.

17 THE COURT: That's a foregone conclusion. I need
18 to deal with things germane to this trial. Anything else
19 you need to share with me before I let the jury go to lunch
20 and we start? Do you need to go over all the discovery with
21 him again?

22 THE DEFENDANT: All I have is the indictment
23 paper.

24 THE COURT: I don't believe that. I believe he
25 gave you everything.

1 But, Mr. Griffith, do you need time to go over all
2 this stuff with him?

3 MR. GRIFFITH: If it please the Court.

4 THE COURT: How long is it going to take the State
5 to present their case?

6 MR. UNDERWOOD: As to that, Your Honor, I had a
7 brief conversation with both opposing counsel prior to
8 selecting the jury. It's my understanding that they were
9 both willing to stipulate that the chain of custody for all
10 the evidence has been established. And they are not going
11 to challenge it, which would greatly truncate the list of
12 witnesses.

13 THE COURT: I would imagine it would.

14 MR. UNDERWOOD: I just would like to confirm that
15 is, in fact, the case.

16 THE COURT: Is that correct, Ms. Johns?

17 MS. JOHNS: Your Honor, from what I've reviewed --

18 THE COURT: You really don't have a good faith
19 challenge to the chain, correct?

20 MS. JOHNS: Mr. Underwood provided me with
21 everything. Internally, it looks like to me like the chain
22 of custody has been met. So I would not be challenging
23 that. And I think that will ferret down that long witness
24 list.

25 THE COURT: Mr. Griffith?

1 MR. GRIFFITH: Your Honor, having reviewed the same
2 document provided by Mr. Underwood --

3 THE COURT: There's no really good faith basis to
4 challenge the chain.

5 MR. GRIFFITH: -- I would not be challenging.

6 THE COURT: So how long is it going to take the
7 State to present their case?

8 MR. UNDERWOOD: Your Honor, I believe that we may
9 be able to finish by the end of Wednesday. I would note to
10 the Court, as far as scheduling for this afternoon, I do
11 have one witness who is a federal agent from out of state
12 who was granted special leave from his superiors to be here
13 today. If there's any way possible --

14 THE COURT: I will try to do opening instruction,
15 opening argument and that witness. But I do, out of
16 abundance of caution, I need Mr. Griffith to give him time
17 to go over everything with Mr. Roberts. So that if
18 Mr. Roberts has additional questions he wants Mr. Griffith
19 to ask or otherwise, that he has more than abundant time to
20 do that. So I anticipate breaking short of five o'clock to
21 give him that opportunity. Because after the day, you are
22 just weary. and I need him to be able to understand what's
23 going on with him.

24 Are you going to need equipment to watch the videos
25 or do you have a laptop?

1 MR. GRIFFITH: I have a laptop, Your Honor.

2 THE COURT: And you have the videos?

3 MR. GRIFFITH: I do have the videos in my car.

4 THE COURT: All right. So I'm anticipating
5 maybe -- let's see. We will go to lunch until 2:10. I've
6 got 1:05. That clock is a little fast. It's five minutes
7 fast. Let's see. I'm thinking like 3:15. Does that give
8 you enough time.

9 MR. GRIFFITH: I believe so. I'm organized very
10 well. I believe we should be able to get through the
11 videos.

12 THE COURT: Do we have a place we can put them that
13 they can talk so they can have privacy?

14 All right. Bring in the jury. I'm appointing No.
15 32 as the foreperson. And we also, after lunch, will need
16 notepads for the panel.

17 (Whereupon, the jury returns to open court at 1:06
18 p.m.)

19 THE COURT: Ladies and gentlemen, you've been
20 selected for the case of the State of South Carolina v.
21 Justin Gordon Hunter and Emory Warren Roberts. We are going
22 to break for lunch until 2:15. That gives you about an hour
23 and ten minutes, give or take, for lunch. During this
24 break, please do not discuss the case among yourself or with
25 anyone else. Please don't read, watch or listen to media

1 accounts, if any. Please don't have any contact with
2 anybody in or about the courthouse as you return.

3 The bailiffs will show you how to leave the
4 courthouse and how to return back to a jury room. Also,
5 please, don't make any comments regarding your jury service
6 on any social networking sites. That includes Facebook,
7 Twitter, IG. I forget. There's so many now. But people
8 read those who are not on jury duty, and they are only too
9 happy to call us and let us know what you said. Out of
10 abundance of caution, so that no comments are
11 misinterpreted, I would ask that you refrain from doing that
12 as well.

13 You have been incredibly patient with us today and
14 we appreciate that. We appreciate that. Enjoy your lunch.
15 We will see you at 2:15.

16 (Whereupon, the jury leaves open court at 1:08
17 p.m.)

18 THE COURT: Is there anything before we break for
19 lunch from the State?

20 MR. UNDERWOOD: No. Just if -- the plan was to end
21 court at approximately --

22 THE COURT: I'm going to play it by ear. But I
23 only plan to call one witness to accommodate your person who
24 is from out of town.

25 MR. UNDERWOOD: Just so I know how quickly to try

1 to speed through.

2 THE COURT: Whenever we finish is when we finish,
3 but I want to have adequate time for Mr. Griffith to go
4 through all of that discovery with Mr. Roberts.

5 MR. UNDERWOOD: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Anything else, Ms. Johns, before we break for
8 lunch?

9 MS. JOHNS: No, Your Honor.

10 THE COURT: Mr. Griffith, anything before we break
11 for lunch?

12 MR. GRIFFITH: No, Your Honor. I just want to
13 clarify that you wanted me to go over the stuff with him
14 before we brought the jury back?

15 THE COURT: No, when we break after the first
16 witness. And at lunch, you can go over with him what that
17 witness will testify to in the event he has any questions.

18 Who is that witness?

19 MR. UNDERWOOD: Special Agent Lundberg, Your Honor.

20 THE COURT: And that will be Special Agent
21 Lundberg.

22 MR. GRIFFITH: Thank you, Your Honor.

23 All right. See y'all at 2:15.

24 (Whereupon, a recess transpired.)

25 (Court's Exh. 1, Bond, was marked for

1 identification.)

2 (Whereupon, a recess transpired.)

3 THE COURT: When the jury comes and goes out, y'all
4 need stand. Do we have notebooks for the jury and pens or
5 pads for the jury?

6 Is the State ready to proceed?

7 MR. UNDERWOOD: Yes, Your Honor.

8 THE COURT: Is the defense, Ms. Johns?

9 MS. JOHNS: Yes, Your Honor.

10 THE COURT: And, Mr. Griffith, are you ready to
11 proceed?

12 MR. GRIFFITH: Yes, Your Honor.

13 THE COURT: Y'all give me one moment. I needed to
14 get pads and pens for the jury. The bailiff is doing that.
15 As soon as he's done doing that, we will resume.

16 Were any exhibits pre-marked?

17 (Whereupon, a brief recess is taken.)

18 THE COURT: Are there any exceptions to State's 1
19 through 42 from Mr. Johns?

20 MS. JOHNS: No, Your Honor. I reviewed all of them
21 and I think they are appropriate.

22 THE COURT: Any objection, Mr. Griffith?

23 MR. GRIFFITH: No, Your Honor.

24 MR. UNDERWOOD: And, Your Honor, I actually just
25 pre-marked a few more. The drug evidence we just got out of

1 lock-up, can I show those to opposing counsel because they
2 will be introduced through the first witness?

3 THE COURT: Ask them right quick.

4 And State's 1 through 42 will be marked and
5 admitted without objection.

6 (State's Exh. 1 through 42, are received in
7 evidence.)

8 THE COURT: What are those numbers?

9 MR. UNDERWOOD: 43 through 48.

10 THE COURT: Any objection, Ms. Johns?

11 MS. JOHNS: No, Your Honor.

12 THE COURT: Any objection, Mr. Griffith?

13 MR. GRIFFITH: No, Your Honor.

14 (State's Exh. 43, Drug sealed on 8/8/2015, is
15 received in evidence.)

16 (State's Exh. 44, Drug labeled L15-12524, is
17 received in evidence.)

18 (State's Exh. 45, Drug labeled L15-12537, is
19 received in evidence.)

20 (State's Exh. 46, Drug labeled L15-12523, is
21 received in evidence.)

22 (State's Exh. 47, Drug labeled L15-12520, is
23 received in evidence.)

24 (State's Exh. 48, Drug labeled L15-13649, is
25 received in evidence.)

1 THE COURT: Now, I meant to ask this earlier and I
2 apologize that I didn't. Did the State extend any offers to
3 Mr. Roberts?

4 MR. UNDERWOOD: Yes, Your Honor, he was given a
5 plea offer.

6 THE COURT: What was extended to him?

7 MR. UNDERWOOD: Beg the Court's indulgence, Your
8 Honor.

9 Your Honor, I believe the plea agreement from the
10 State was that several of the charges would be reduced and
11 that the State's recommendation would be a sentence range of
12 13 to 15 years, all to run concurrent.

13 THE COURT: And that was reduced to writing?

14 MR. UNDERWOOD: Yes, Your Honor.

15 THE COURT: Did you provide that to Mr. Griffith?

16 MR. UNDERWOOD: Yes, Your Honor.

17 THE COURT: Mr. Griffith, did you have a full
18 opportunity to go over that written offer with Mr. Roberts?

19 MR. GRIFFITH: Your Honor, that first offer I did
20 present to Mr. Roberts on our first engagement.
21 Subsequently, another offer was presented, but I was unable
22 to present that to him until today.

23 THE COURT: What was the other offer?

24 MR. GRIFFITH: At that time, the attorney general
25 was talking about the fact that he had provided an offer of

1 7 to 10.

2 THE COURT: Yeah, to Mr. --

3 MR. GRIFFITH: -- cap of 10. And Mr. Roberts was
4 only today able to provide him with that information.
5 Although the attorney general has said that we would have to
6 talk about whether that had been withdrawn.

7 THE COURT: The reason I'm asking these questions
8 is -- who was the gentleman that pled the other day that
9 received eight years?

10 MR. UNDERWOOD: Sean Johnson, Your Honor.

11 THE COURT: Okay. I didn't know an offer similarly
12 had been offered to Mr. Roberts. And with the machinations
13 we had to go through, I really wasn't certain that
14 Mr. Griffith has had a meaningful opportunity to discuss it
15 with him, with him having an open mind about it. And I was
16 going to suggest, though you are not bound by the objection,
17 that you give him the opportunity to fully explore that with
18 his client now that I think he is more informed as to how
19 the system works and is more open to listening to what
20 Mr. Griffith has to say. Would the State be willing to do
21 that?

22 MR. UNDERWOOD: I would be willing to reopen
23 negotiation with Mr. Griffith once that report is --

24 THE COURT: I think once he has -- and I'm
25 referring to Mr. Roberts -- once he has a chance now with a

1 more clear head to go through the discovery with
2 Mr. Griffith, I think he might be in a different posture
3 regarding any negotiations as well.

4 The Court takes no position one way or the other.
5 But I'm always concerned for PCR purposes when there have
6 sort of been a lot of issues, for lack of a better word,
7 swirling around, and somebody hasn't really taken the time
8 to consider something that might be beneficial to them
9 because of other things. I think that's acceptable to the
10 both of you.

11 MR. GRIFFITH: I will certainly discuss that with
12 him.

13 THE COURT: And, sir, I would suggest -- you don't
14 have to agree. You don't have to agree, it's your choice.
15 But if there's something that's been offered that's
16 beneficial to you, I would strongly suggest that you take
17 advantage of your lawyer's voice and really listen to what
18 he's saying to you, and really take into consideration the
19 strength or weakness of the State's case against you and
20 whether you really want to roll the dice and have a trial.
21 Doesn't matter to me whether you take it or reject it. When
22 people reject thing sort of out of hand without thinking
23 about it, it concerns me. So I want to make sure you've
24 thought about it carefully before you reject it. And,
25 normally, at this stage or juncture, the State would not be

1 amenable to anything. But I think as a courtesy to the
2 Court, they are re-opening the lines of negotiation. And I
3 would strongly suggest you take advantage of it if you are
4 inclined to. If you are not, no harm, no foul. It's your
5 choice.

6 THE DEFENDANT: I was just speaking to the attorney
7 and I was telling him the other issue being the violation of
8 my speedy trial --

9 THE COURT: It's a moot issue now, sir. The only
10 remedy for a speedy trial motion is to set a trial date.
11 And you have one. And I can assure, you under South
12 Carolina law, that hadn't been violated. There have been
13 people sitting in jail a lot longer than you. 18 months is
14 not a long time. I've got over 200 in Charleston sitting
15 over two years waiting on a murder trial.

16 THE DEFENDANT: I'm not on a murder trial.

17 THE COURT: On all kinds of trials. Murder trial
18 is just at the top of my list because I'm just remembering
19 what's there. They got a jail full of people that have been
20 sitting there two plus years waiting on jury trials.

21 THE DEFENDANT: On a demand for a speedy trial?

22 THE COURT: Yes. I deny them all the time because
23 case law just isn't in your favor. But the remedy for a
24 speedy trial is to set a trial date and you have a trial.
25 So it's a moot issue. There's no other remedy. Remedy for

1 speedy trial is not to dismiss your charges. Doesn't make
2 them go away. Purpose of speedy trial is to get you in
3 front of a court and get you to trial. Cases don't get away
4 or get dismissed on a speedy trial motion.

5 THE DEFENDANT: I asked to challenge the
6 jurisdiction of the State Grand Jury. Nothing.

7 THE COURT: You have no basis to challenge it.

8 THE DEFENDANT: What about the seizure?

9 THE COURT: We did that. We had a whole hearing on
10 that the other day and I ruled on it.

11 THE DEFENDANT: On the State Grand Jury seizure?

12 THE COURT: No, sufficiency of the search warrants.
13 Grand Jury does not issue search warrants.

14 THE DEFENDANT: So I was talking about the
15 procedure of the State Grand Jury.

16 THE COURT: You would need to tell me some
17 procedure was violated. And a blanket statement like that
18 doesn't rise to the level of --

19 THE DEFENDANT: I tried to bring it to your
20 attention earlier --

21 THE COURT: The remedy is just to re-present your
22 indictments. It's not going to make your case go away.

23 THE DEFENDANT: So various constitutional
24 violations just happen and it just remedies is cured?

25 THE COURT: You've called constitutional

1 violations. Everything you've presented to the court has
2 not been a constitutional violation. You've raised to the
3 Court's attention what are called ceremonial duties, that
4 all of them have ways they can be corrected. And they don't
5 amount to anything that would cause these charges to be
6 dismissed.

7 THE DEFENDANT: So not having a preliminary hearing
8 or the lack of --

9 THE COURT: A preliminary hearing wouldn't have
10 made these cases go away.

11 THE DEFENDANT: I'm talking about as far as being
12 reversible error or not.

13 THE COURT: It's not reversible error. Preliminary
14 hearing, burden of proof is so minimal, it's rare anything
15 is going to happen at a prelim that's going to dismiss your
16 charges. But did you request one?

17 THE DEFENDANT: Yes.

18 THE COURT: When?

19 THE DEFENDANT: In February.

20 THE COURT: Did you do it within 10 days of your
21 arrest?

22 THE DEFENDANT: Yes. I have all of that
23 information.

24 THE COURT: I don't know why there wasn't a prelim,
25 but I don't know that it wouldn't have made a difference.

1 THE DEFENDANT: How was I in Richland County? I
2 never been arraigned of it.

3 THE COURT: That's where you were taken into
4 custody and then eventually you were placed.

5 THE DEFENDANT: I was taken into custody here.

6 THE COURT: Yeah, but you can be taken to Richland
7 County to be in front of the Chief Judge. I don't know why
8 that was done, but I then gave strict instructions it wasn't
9 to be done anymore.

10 THE DEFENDANT: But that's a violation of the
11 Constitution.

12 THE COURT: It's not a violation. Under State
13 Grand Jury rules, you can go before the State Grand Jury
14 judge at any time.

15 THE DEFENDANT: It was my understanding they had
16 state-wide jurisdiction to return indictments not to
17 return --

18 THE COURT: They have state-wide jurisdiction to do
19 everything until a judge is appointed. And they still have
20 jurisdiction to set bonds and deal with bond matters even
21 once I've been appointed. Generally, we don't do that in
22 deference to one another, but sometimes it's done, but it's
23 not a violation.

24 THE DEFENDANT: So the initiation of the
25 impanelment doesn't start the investigation?

1 THE COURT: No. Investigation happened long before
2 that.

3 THE DEFENDANT: I don't see how that would make any
4 sense.

5 THE COURT: Makes complete sense. You don't have
6 anything to present to a Grand Jury. It's not the Grand
7 Jury's job to investigate. The Grand Jury's job is to
8 determine the sufficiency of the evidence and determine
9 whether there is probable cause for a case to go forward.
10 That's it. It's really perfunctory in its nature. If not,
11 it's rare anything is going to be no billed.

12 THE DEFENDANT: Like you just said, determine
13 probable cause so whether a case should go forward. I was
14 arrested two months and five days --

15 THE COURT: Because a judge had already determined
16 there was probable cause to arrest you. You are mixing sort
17 of apples and oranges and concepts. Everybody has a
18 different procedure as it goes along, a different role in
19 the procedure as it goes along. And everybody performed
20 their duties as they were supposed to.

21 I don't have to wait for a Grand Jury to sign an
22 arrest warrant for you to be indicted. That's putting the
23 cart before the horse.

24 THE DEFENDANT: All right. So --

25 THE COURT: The only time you do that is when

1 there's a direct indictment. And that happens very
2 infrequently.

3 THE DEFENDANT: I have a letter from Ms. Johns
4 saying that we were directly indicted, that's why we weren't
5 allowed a preliminary hearing.

6 THE COURT: Whatever Ms. Johns presented to you, I
7 don't know what that's about. And, really, none of it makes
8 a difference now. We have a trial. That's the whole
9 purpose of all of this. Court has jurisdiction. The whole
10 purpose unless you want it heard nonjury, which is, of
11 course, up to you, and make sure all your procedural
12 guarantees are protected and you have the right to confront
13 those that are accusing you and present any defense you may
14 have to these charges.

15 THE DEFENDANT: All right. So constitutional
16 violation --

17 THE COURT: Sir, there aren't any constitutional
18 violations.

19 THE DEFENDANT: All right. Of course, I am not
20 just going to sit here. If I think something is a
21 violation, I don't have a right to challenge it because --

22 THE COURT: You've already challenged it and I told
23 you there's no validity or merit to the argument. There's
24 no logic to what you're telling me. There's no basis in the
25 law to grant any relief. There's no basis to dismiss your

1 charges based on anything you've said. And even if I did
2 dismiss them, they are just going to go back and do another
3 indictment. We are just going to end up right back here.
4 There's sufficient evidence for you to have been charged.
5 There's sufficient basis for you to have been arrested. And
6 what happens is, generally, they do control buys, which are
7 recorded. They then go get a search warrant to search the
8 premises. They then get a warrant for your arrest. Then
9 all of that is presented to a Grand Jury. It's not the
10 other way around.

11 THE DEFENDANT: I understand. All right. I still
12 challenge the State Grand Jury's jurisdiction, as having
13 impact in more than one county.

14 THE COURT: Statewide Grand Jury is in every
15 county. It's not bound by that. You are talking -- you are
16 confusing jurisdiction and venue, two different concepts.

17 THE DEFENDANT: I'm talking about now the
18 jurisdiction of the State Grand Jury.

19 THE COURT: And what basis are you challenging
20 jurisdiction of the State Grand Jury?

21 THE DEFENDANT: That it didn't have multi-county
22 impact.

23 THE COURT: It does have multi-county jurisdiction.
24 You are talking about venue, two different concepts.

25 THE DEFENDANT: I was talking about venue brought

1 out there. Now the jurisdiction --

2 THE COURT: State Grand Jury judge has the right to
3 have anybody brought in any county to have hearings in
4 Richland County.

5 THE DEFENDANT: All right. The jurisdiction of the
6 State Grand Jury as far as proving multi-county impact.

7 THE COURT: I don't understand what you are saying.

8 THE DEFENDANT: It says here that you have to have
9 multi- -- they have to affect --

10 THE COURT: There is multi-county impact. They are
11 alleging these actions happened in Dorchester and Berkeley
12 County. Usually I try them all in one county. Usually
13 people waive venue. I'm a little befuddled as to why we are
14 not proceeding on Dorchester County charges, but it really
15 doesn't matter, because I think they think they are going to
16 get a sufficient enough conviction where they are probably
17 going to nolle pros that indictment. And it's negotiation
18 to become a moot issue, if I understand, Mr. Underwood's
19 statement.

20 THE DEFENDANT: All right. It says the facts
21 stated in Grand Jury's jurisdiction must be set forth on
22 indictment.

23 THE COURT: It was stated.

24 THE DEFENDANT: The facts.

25 THE COURT: They were stated. I read them to the

1 jury.

2 THE DEFENDANT: All right.

3 THE COURT: What I was reading was the indictment,
4 the facts that a sale took place on a particular date. It's
5 stated in the language of the indictment -- I mean, of the
6 statute, and that's exactly what they did. And even if they
7 didn't, an indictment is simply a notice document. It's
8 just to let you know you are being charged and what defenses
9 you need to provide for yourself. Doesn't have to be
10 without any errors. Doesn't require jurisdiction to hear
11 your case.

12 THE DEFENDANT: So the probable cause with unsigned
13 warrants is just --

14 THE COURT: I don't know what you are referring to.

15 THE DEFENDANT: I have a bunch of warrants that's
16 unsigned. There's no -- I'm being held at Hill-Finklea.

17 THE COURT: The ones that were signed are the basis
18 of -- that's what we had the hearing on last week. All of
19 the issues were addressed, the sufficiency of the warrant,
20 the underlying basis of the warrant being issued, and
21 probable cause.

22 THE DEFENDANT: What I'm saying, if a signature of
23 an issuing judge --

24 THE COURT: They may not have done those warrants.
25 I don't know. But the ones that they proceeded on in this

1 case were signed. And they were made court's exhibits
2 during the hearing last week.

3 THE DEFENDANT: Can I compel the Court to show me
4 those? I have warrants that's not signed.

5 THE COURT: Do you have copies of the warrants,
6 Mr. Griffith?

7 MR. GRIFFITH: I have copies of the warrants right
8 here.

9 THE COURT: Are they all signed?

10 MR. GRIFFITH: I have signed copies of warrants,
11 Your Honor.

12 THE DEFENDANT: Can I see them?

13 MR. UNDERWOOD: Your Honor, if I may just also
14 point out, if there were any defects in any arrest warrants,
15 those would have been cured by the indictment.

16 THE COURT: Uh-huh.

17 MS. JOHNS: Your Honor, may I be heard? Maybe I
18 can help this out a little bit. When Judge Newman signed
19 these warrants, what he did is, he signed on a line that
20 basically said that he accepted sworn testimony from the
21 agent, instead of signing underneath there where it had been
22 issued by a judge. But he did sign the warrant. It's just
23 in a different place than what usually is expected. That's
24 why there's confusion.

25 THE COURT: Okay. Thank you for that

1 clarification.

2 THE DEFENDANT: It said signature of issuing judge
3 and the judge -- all that is blank.

4 THE COURT: Didn't matter. He signed it. He
5 issued it. It's called a scrivener's error. I sign on the
6 wrong line of things all of the time, especially when I do
7 bonds. I actually put it on the warrant. Sometimes I put
8 it in the wrong place. That doesn't make it any less
9 effective. I issued a bond and I signed it.

10 THE DEFENDANT: So you have two warrants in one.
11 You have a Columbia address with a Dorchester County
12 warrant.

13 THE COURT: He can do that. The actions took place
14 in multi-counties. That's the purpose of the State Grand
15 Jury, when you have multi-county involvement.

16 THE DEFENDANT: That's what I was trying to
17 challenge. How is this multi-county?

18 THE COURT: Because they are alleging some of the
19 sales took place in Dorchester and some took place here.
20 And I assume they have video and audio of all of them. And
21 your lawyer is going to show them to you.

22 All right. Mr. Griffith, are you ready to proceed?

23 MR. GRIFFITH: Yes, Your Honor.

24 THE COURT: Ms. Johnson, are you ready to proceed?

25 MS. JOHNS: Yes, Your Honor.

1 THE COURT: Please bring in the jury.

2 (Whereupon, the jury returns to open court at 2:39
3 p.m.)

4 THE COURT: Ladies and gentlemen, we appreciate
5 your patience. We had some matters -- I apologize for the
6 feedback on this mic. I'm going to see if we can do the
7 best we can with it. I want to make sure you hear the
8 opening instructions of the Court.

9 You've been selected for the cases of Hunter --
10 State of South Carolina v. Hunter and Roberts. I'm going to
11 give you some preliminary instructions regarding the trial
12 of this case so that you may better understand how we will
13 be proceeding in this trial.

14 Each of you has a notebook. On the front page of
15 that notebook, you should write your juror number so that
16 you will know which notepad belongs to you. We will secure
17 those during breaks and recess. So, please, know that no
18 one will be reading your notes. I will give you some
19 additional instructions regarding the notetaking near the
20 conclusion of these instructions.

21 As I've indicated, I appreciate your patience. We
22 had some matters of law we needed to dispose of before
23 beginning this process. So, please, know that we do not
24 take your time for granted.

25 As I've already explained, this is merely an

1 explanation of the procedures that we will follow in the
2 trial of this case so that you may better understand what is
3 happening.

4 The defendants in this case are charged by an
5 indictment with several offenses, the elements of which I
6 will explain to you at the conclusion of the case when I
7 give you the instruction on the law applicable to this case.

8 The indictment, ladies and gentlemen, is simply the
9 charge by which the case is brought in to court. It is not
10 in any sense evidence of any of the allegations that it may
11 contain. The defendants have pled not guilty to the
12 indictment. The State, therefore, has the burden of proving
13 each and every element of each offense beyond a reasonable
14 doubt. And it will be your duty, ladies and gentlemen, to
15 decide whether the State has met their burden or not.

16 Your purpose as jurors is to find and determine the
17 facts. Each and every one of you is the sole judges of the
18 facts in this case. If at any time I make any comment
19 regarding the facts, you must disregard it. You are to
20 determine the facts from the testimony you hear from the
21 evidence that will be introduced into this record. It is
22 then up to you to decide the inferences which you feel may
23 be properly drawn from the evidence. It is especially
24 important that you perform your duty of determining the
25 facts diligently and conscientiously, because, ordinarily,

1 there is no way to correct an erroneous determination of
2 facts made by a trial jury.

3 On the other hand, and with equal emphasis, the
4 same law that makes you the judges of the facts, makes me
5 the judge of the law. The law as given by the Court is the
6 only law you must consider. You must accept and follow it,
7 even though you may disagree with it. The Court cannot tell
8 you what the facts are, and you cannot disagree with the
9 Court as to what the law is or what the law should be. Your
10 responsibility, ladies and gentlemen, is to take the law as
11 it is instructed and apply it to the facts as you find them
12 from the testimony of the sworn witnesses and any other
13 evidence that will be introduced during the course of this
14 trial. After doing that, you will render your verdict, a
15 true and just verdict under the solemn oath that you've
16 taken as jurors in this case.

17 Until I advise you to begin your deliberations, you
18 must not discuss this case with anyone, that includes among
19 your fellow jurors, your friends, family members or anyone
20 involved in the case. After the case is submitted to you,
21 you must discuss it only in the jury room among your fellow
22 jurors.

23 The attorneys and the parties in this case have
24 been advised that they are not to speak with you at all. So
25 if you should see any of them around the courthouse, during

1 lunchtime or even in the parking area as you exit the
2 courthouse, and they don't speak with you, please don't
3 think they are being unfriendly or untoward. They are
4 simply following the Court's instruction. Again, we would
5 not want an innocent conversation to be observed and
6 misinterpreted.

7 During the trial, you are not to read, listen to or
8 watch any news reports about this case. That includes
9 anything that might be in the newspaper, radio, television
10 or Internet. And you are strictly instructed not to do any
11 independent research of any type on the Internet or
12 otherwise. You are bound by your oath to decide this case
13 according to the testimony that you will hear and the other
14 evidence that is introduced. You must not consider anything
15 that you may have read or heard about this case outside the
16 courtroom, whether it is before or during the course of this
17 trial. It is essential that you maintain an open mind and
18 not decide any issue in this case until all of the evidence
19 has been presented, the parties have made their closing
20 arguments and I have instructed you on the law.

21 It is your solemn responsibility to determine
22 whether the State has met their burden of proof or not. And
23 your verdict must be based solely on the evidence as it is
24 presented to you in the trial and on the law as I will
25 instruct you during and at the close of the trial.

1 In just a moment, the assistant attorney general
2 will make what is called an opening statement, in which he
3 will outline for you what he believes the issues in this
4 case will be or what they will show. The attorneys for the
5 defendants may also make opening statements, although they
6 are not required to do so. Keep in mind that what the
7 attorneys say during their opening statements is not
8 evidence in this case. It is only their contention as to
9 what they believe the evidence will show in this case.

10 The evidence in this case will be presented to you
11 by the testimony of sworn witnesses from the witness stand
12 and by exhibits that may be introduced into evidence. From
13 time to time during the trial, you will hear the attorneys
14 say, Your Honor, I object. Just as in sports, business or
15 any other structured activity, there are certain rules that
16 we must obey in the presentation of evidence. These rules
17 have a definite purpose. They ensure that you receive the
18 most trustworthy and reliable evidence available. An
19 objection is the procedure that an attorney uses to call a
20 possible violation of these rules to my attention as the
21 judge of the court. And for this reason, you should never
22 hold an attorney's objection against them, nor should you
23 conclude from the Court overruling or sustaining an
24 objection that I favor one side or the other. In essence --
25 in fact, you should expect many objections. And that is

1 normal in a trial. And, again, you should not hold an
2 attorney's objection against them.

3 Also, from time to time, you will also hear the
4 attorneys say, Your Honor, we have a matter of law to
5 discuss. They may ask to approach the bench. I may ask
6 them to approach the bench, or it might even be necessary
7 some time for us to excuse you from the courtroom for a
8 short while we discuss matters of law. The reason we do
9 this, ladies and gentlemen, is because you are the finders
10 of the facts. And sometimes when I'm discussing matters of
11 law with counsel, it might be necessary for me to make some
12 comment about the facts in connection with a ruling. And
13 for that reason, we exclude you from the courtroom so that
14 in no way will you be influenced by anything the Court may
15 say or do in connection with the facts of this case.

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

23 In deciding whether to believe a witness, you have
24 the right to consider the interest of any witness, the bias
25 of any witness, the prejudice of any witness, the

1 opportunity for the witness to have seen the matters and
2 things about which the witness may testify, and the way the
3 witness acts on the witness stand, what we commonly refer to
4 as their demeanor. You have a right to consider anything
5 that is in the record that will help you evaluate the
6 testimony of the witnesses. That means, ladies and
7 gentlemen, that it is your duty to pay close attention to
8 the witnesses, to observe them, to listen to them and to pay
9 close attention to counsel and to the Court.

10 Please do not allow your thoughts to wander, but
11 give strict attention to the testimony so that at the end of
12 testimony, after the arguments of counsel and the charge or
13 instructions on the law as given by the Court, you will then
14 be in a position to determine what the true facts are and,
15 thus, render a true and just verdict in this case.

16 During the course of this trial, you will be given
17 the opportunity to take notes. Notetaking is a privilege
18 that you may choose to exercise or choose not to exercise.
19 Please don't feel you are required to take notes. Not
20 everyone finds notetaking helpful to them. If you should
21 decide to take notes, please don't try to record everything
22 that is said. It's are physically impossible. The average
23 person speaks at over 200 words a minute and that's a
24 moderate speaker. That's not somebody that talks very fast.
25 And as you can well imagine, that would be impossible for

1 you to take down verbatim. And only reason the court
2 reporter can do it is she's trained in a very complex and
3 specialized form of shorthand that allows her to take down
4 what we say phonetically, along with the assistance of her
5 trustee transcription machine, which is so overly simplistic
6 because it is now a very complex computer. But even with
7 that, before she produces a transcript, she listens to her
8 digital recording to make sure she's taking down everything
9 exactly as it was said. So, please, don't try to record
10 everything that is said.

11 In addition, we don't want notetaking to become a
12 distraction to you, because as I've explained, as the
13 finders of the fact, you must rely on your powers of
14 observation. So don't allow notetaking to become a
15 distraction to you. You may want to keep an outline of the
16 main points that are being made and the main arguments that
17 are being made by counsel. So that when you retire to
18 deliberate regarding this case, you can allow your notes to
19 serve as a mechanism to refresh your memory.

20 Please be reminded that your notes are for your
21 specific and your individual purposes. They are not to be
22 shared with anyone else. They are only to be used to
23 refresh your own memory.

24 During breaks and recess, we will leave your notes
25 in your seats and will secure them during the evening

1 recesses to make sure there's no premature temptation to
2 deliberate prematurely.

3 In addition, ladies and gentlemen, I would remind
4 you that your notes are not to be considered any more
5 reliable than the memory of a fellow juror. A fellow
6 juror's memory should be considered just as reliable as
7 notes that may have been taken by a fellow juror.

8 It is your added duty, Madam Forelady, to fill out
9 verdict forms and to write out any questions that the jury
10 may have during deliberations. And I will give you further
11 instructions regarding that at the conclusion of the case.

12 Ladies and gentlemen, the foreperson is purely an
13 administrative function. That person does not have any
14 greater vote or voice than any other juror. It's simply
15 that we need someone to fill out the verdict form and write
16 out any questions that you all may have during the jury
17 deliberation process. It's a purely random process. I wish
18 we had some scientific method to do it, but we don't. And
19 it's purely random. But, again, that person does not have
20 any greater vote or voice than you do.

21 In order to preserve everyone's rights, I'm going
22 to give counsel the opportunity to take exception to
23 anything that the Court has said by way of opening
24 instruction.

25 Any exceptions from the State?

1 MR. UNDERWOOD: None, Your Honor.

2 THE COURT: From the defense?

3 MR. GRIFFITH: None, Your Honor.

4 MS. JOHNS: None, Your Honor.

5 THE COURT: Thank you all very much.

6 Mr. Underwood, you may proceed with opening, after
7 which we will follow with Mr. Griffith and then Ms. Jones.

8 MR. UNDERWOOD: Thank you, Your Honor. May it
9 please the Court.

10 Heroin, cocaine, methamphetamine, those three
11 dangerous drugs are what bring us all here today. We are
12 here today for a jury trial as a result of a long-term
13 investigation into a drug trafficking organization. This is
14 an investigation involving numerous law enforcement agencies
15 from multiple jurisdictions. The focus of which was a drug
16 trafficking organization primarily dealing with heroin. A
17 heroin trafficking organization that operated not only in
18 Berkeley County, but in Dorchester County and touching into
19 Charleston County.

20 We are here because a number of individuals,
21 particularly the defendants in this trial, Justin Gordon
22 Hunter, also known as Mo, Emory Warren Roberts, also known
23 as Q, that these two individuals, along with others,
24 combined together in a drug trafficking organization to
25 bring heroin, cocaine and methamphetamine into Dorchester

1 and Berkeley Counties.

2 Now, in this trial, you are going to hear a lot of
3 new information that you may not be familiar with,
4 investigation into investigative techniques that law
5 enforcement uses when investigating large-scale drug
6 organizations. You are also going to hear about other
7 techniques that are your more standard drug investigative
8 techniques.

9 You are going to hear about a case where an
10 individual became what's called a cooperating informant.
11 This is a person who is not a police officer, but a person
12 who works with the police to, essentially, work undercover
13 to try to get other people to sell them illegal drugs. You
14 are going to hear how that investigation spawned a larger
15 investigation that revealed an actual organization beyond
16 your typical street-level drug deal.

17 We are going to prove to you in this trial that
18 Justin Gordon Hunter and Emory Warren Roberts worked
19 together, along with others, to bring these illegal drugs to
20 South Carolina and to distribute them. Now, it's important
21 that idea that they are working together. The very first
22 charge that the judge read to you was trafficking heroin by
23 conspiracy. What does that mean? Well, at the end of the
24 case, the judge is going to give you a full definition of
25 that. But suffice it to say for now, it's when two or more

1 people agree to work together for an illegal goal, to commit
2 an unlawful act. And that unlawful act in this case was
3 trafficking heroin.

4 You are going to hear testimony from individuals
5 who actually dealt in this organization. You are going to
6 hear testimony from a confidential informant. Now,
7 unfortunately, heroin is a very addictive drug. And you
8 might see some people in this trial, hear testimony from
9 people who have become addicted to that terrible drug. I
10 wish that when we were presenting these cases to you, the
11 only people I would be presenting are teachers and preachers
12 and well-known upstanding people in the community.
13 Unfortunately, those are not the kind of people who have
14 information about drug trafficking organizations. The
15 people who know about drug trafficking organizations are
16 drug users and drug dealers. They are the people that have
17 the information that you need to reach a proper verdict.

18 In addition to proving that there was an agreement
19 between Justin Hunter and Emory Roberts to traffic this
20 heroin, we are going to prove to you that they actually did
21 it. In addition to hearing testimony from people involved
22 in their group talking about what was happened historically
23 over a period of time, you are going to have plenty of
24 evidence of what's called controlled purchases of drugs.
25 This is where the confidential informant wears a wire, audio

1 device or a camera, goes undercover for target of an
2 investigation to sell illegal drugs. You are going to be
3 presented with numerous controlled buy evidence, videos,
4 audio, pictures. You are going to see drug evidence that's
5 introduced in this case of actual heroin that was purchased
6 as part of this investigation.

7 You are going to see evidence that not only did
8 Justin Hunter and Emory Roberts agree to traffic heroin,
9 that they actually did, and that the amount that they
10 trafficked is well beyond what would be deemed trafficking
11 amounts of heroin. We are talking about large amounts of
12 heroin over a period of time.

13 You are also going to hear evidence that this
14 organization dabbled in other drugs as well. You are going
15 to hear evidence of at least one methamphetamine
16 transaction, where a defendant in the case, with the
17 assistance of Justin Hunter, sold methamphetamine to the
18 confidential informant. And this is in addition to the
19 heroin.

20 You are going to hear testimony how search warrants
21 were used in this case. So we don't only have people coming
22 to tell you about what happened. We have the controlled
23 buys, which is video and audio evidence of actual drug
24 deals. We also have evidence that was found in the
25 defendants' homes, evidence that shows that they had drugs,

1 that they were prepared to package, deliver and sell those
2 drugs as part of this drug trafficking organization. So you
3 have all three types of evidence that you would normally
4 expect in a drug case. You are going to be exposed to all
5 three in this trial.

6 Now, as the judge has told you, and you will hear
7 more at the end of this case, the State has what's called
8 the burden of proof. That means that myself, Mr. Fernandez,
9 law enforcement officers, people that come up here and
10 present evidence to you, it is our burden to prove that
11 Justin Hunter and Emory Roberts are guilty. I submit to you
12 that we are going to give you more than enough evidence for
13 you to come to that conclusion. After you have seen and
14 heard all of the evidence in this case, it will be your job
15 to deliberate and consider that evidence.

16 I submit to you that when you consider that
17 evidence, you will find Justin Hunter and Emory Roberts
18 guilty of all counts charged. Thank you.

19 THE COURT: Mr. Griffith, you may proceed.

20 MR. GRIFFITH: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Yes, sir.

23 MR. GRIFFITH: Ladies and gentlemen of the jury,
24 thank you very much for participating in this function. If
25 it were not for you, of course, we couldn't find any kind of

1 justice. It is your service that we depend upon to find the
2 facts in this case. And that's what we are looking for. We
3 are looking for the facts in this case.

4 There are elements of the crimes that my client,
5 Mr. Roberts, is accused of committing. And the State has
6 the burden to show that all of those elements are met. If
7 all of those elements are not met, then Mr. Roberts is not
8 guilty of that crime. And in order to show that all of
9 those elements have been met, of course, they are going to
10 present evidence, but Mr. Roberts and I will have the
11 opportunity to question those witnesses and to try to
12 clarify what it is that we believe they are trying to say,
13 and that they must prove beyond a reasonable doubt in your
14 mind that those things that he is accused of he's actually
15 done.

16 Being present at a scene where a crime occurs is
17 not a crime. Merely being present is not a crime at all.
18 In fact, I have a nephew who lived with my mother and he
19 brought drugs into her house, but my mother never committed
20 a crime, drug dealing or anything like that. Knowing
21 criminals is not a crime. There are probably many of us who
22 are aware of other criminals and know criminals, but just
23 knowing criminals is not a crime. Does not make you part of
24 their conspiracy, part of their criminal activity.

25 And Mr. Roberts is presumed to be innocent until

1 the State or if the State were to prove him guilty beyond a
2 reasonable doubt. But he sits here right now presumed
3 innocent. And, of course, our system of law would like for
4 you to continue to presume he is innocent throughout this
5 trial until all of the evidence is given and you can weigh
6 all of that evidence and make a determination of whether or
7 not you believe there is reason to say that he is not
8 innocent beyond a reasonable doubt. If doubt arises, of
9 course, then he is not guilty.

10 The attorney general, what he said up here, of
11 course, is not testimony. I didn't have a chance to
12 question him or to ask what he meant by certain things or to
13 challenge what he said. But Mr. Roberts has an opportunity
14 as each witness comes up to challenge what they have to say
15 and to bring out his version, or that is to say, try to show
16 his side of what they are saying to show that he is not part
17 of what they are convinced that he is guilty of.

18 The AG -- the attorney general, I'm sorry -- has
19 the opportunity and will present a witness who is what's
20 called a confidential informant. That confidential
21 informant is not necessarily your nicest person. As he
22 said, they are going to try to present people who know about
23 crimes and things like that. But at the same time, he is a
24 tainted person. And he has an incentive to please the
25 Attorney General's Office. He has an incentive. And they

1 are giving him something in order to, and we will show, that
2 in order for him to testify, there was some kind of exchange
3 that went on.

4 And so, ladies and gentlemen, I would ask that you
5 listen to the whole trial. Don't make up your minds until
6 the end of the trial, until all of the evidence has been
7 presented, and to weigh the witnesses. Of course, there are
8 some law enforcement people. I have the highest respect for
9 every law enforcement person there is. But there are also
10 other witnesses for whom we can have questions in our mind
11 as to whether the truthfulness. And law enforcement
12 agencies, unfortunately, depend on those people to get their
13 information.

14 So if you will listen carefully and don't decide
15 what you are going to find as being the truth in this matter
16 until the end of the matter, until it's all over with and
17 we've heard all of the evidence. And if you do not find --
18 if you find that there is some doubt, that you cannot find
19 no reasonable doubt, then you must find Mr. Roberts not
20 guilty of this crime.

21 Thank you, ladies and gentlemen.

22 THE COURT: Ms. Johns.

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

25 THE COURT: Yes, ma'am. You may proceed.

1 MS. JOHNS: Good afternoon. I introduced myself at
2 the very beginning when y'all were here this morning. I am
3 Theresa Johns.

4 One question, is it too late for me to say I'm
5 sorry that you are serving jury duty? I do know that it's a
6 large sacrifice for you to give up your day to come into
7 this court, to sit in judgment of what law enforcement and
8 the State Law Enforcement Division, Dorchester County
9 Sheriff's Department, Attorney General's Office, to sit and
10 give them, give me and give my co-defendants's counsel the
11 attention necessary in order for everybody to get a fair
12 trial.

13 Now, I only took one business class when I was in
14 college. And it was a lot about sales and delivery. And a
15 lot of times, the trial is the same way. Basically, the
16 Prosecutor's Office have something to sell to you and they
17 should, in fact, deliver. And if anybody has had any
18 experience in sales and delivery, you know that when you are
19 listening to HSN or QVC or looking at something on line or
20 somebody is trying to sell something to you, you order it,
21 it comes in the mail and you go, oh, this is just not what I
22 expected. They sold it to you. They oversold to you and
23 they underdelivered what you expected. That's kind of what
24 this criminal trial is.

25 They are selling you something. And it's your job

1 to determine whether or not what it is they are selling you
2 is going to actually be delivered, because you can oversell
3 and underdeliver.

4 And in this case, I am with everyone else with
5 regards to respect we have for our law enforcement officers.
6 This is not an easy job. This job requires commitment. It
7 requires passion. It requires hours and hours away from
8 their family. It requires dedication. And either you are
9 really good at it and you can present these cases, or you
10 really should find something else to do. These law
11 enforcement officers that are going to be presented to you
12 today, I have the utmost respect for. They work so hard.
13 Those cases are long, ongoing case, has taken many months to
14 put together. And a lot of it that they have brought to you
15 will, in fact, show that there was a drug trafficking
16 organization, drug trafficking sales, drug trafficking
17 deliveries. And it's not pretty.

18 And what they have done is, they have employed, not
19 necessarily by payment, but they have employed certain lay
20 people that have to go in and they have to actually
21 communicate with people who are selling drugs. And that's
22 the nature of this business. You have to be able to trust
23 somebody that's going to go in and going to be able to be
24 trusted by people who are selling drugs in order for the
25 drugs to be sold to them. So this person may have had

1 experience. These people that are coming in as lay people
2 to testify to you as to what they saw, who they saw, when
3 they saw it, how much they got paid, all supplemented with
4 the technology of audio recording and video recording.

5 Now, the reason for the audio and video recording
6 is that it helps enhance the believability of somebody who
7 may be a drug addict. Makes sense. We have the technology
8 today. Many people have the ability to audio or video
9 anything on their cell phone, on their laptop, on their
10 tablet, whatever that may be. So that is here and we are
11 going to rely on that technology.

12 But when you look and listen to the technology,
13 there is one thing you have to ask yourself. The person
14 that they have recorded, the people that they have listened
15 to, the people that they have followed, who are these
16 people? It's not that there isn't drug trafficking going on
17 state-wide, nation-wide. It's not that heroin is not a
18 terrible, terrible thing.

19 It starts from pharmaceuticals. You will hear from
20 a witness that says he started with pain pills and then he
21 moved on to heroin. I don't want you to come in here and
22 sympathize with the fact that there is a drug addict that
23 the State had to use in order to get information from. That
24 is a by-product of his choice. I don't want you to
25 sympathize with the fact that heroin and pain pills is a

1 nation-wide epidemic. It is. But if you are going to blame
2 somebody, there are so many people to blame. And you have
3 to look to see who takes that witness stand, who is
4 credible, who is believable, what is in it for them, and why
5 did they agree to help law enforcement? And what are they
6 expecting to get out of it? Are they going to not get
7 arrested for their participation in this drug trafficking
8 organization? Are they going to get rewarded in some other
9 way? Are they not going to get prosecuted or are they going
10 to get time cut off of their sentence? We've got to know
11 the reason why.

12 And while you are sitting listening to the evidence
13 and the witnesses, I want you to think about what it is that
14 motivates this person to come and have to do this work.
15 Because it's challenging. It's challenging for a layperson
16 at any rate. I want you to ask yourself why. And I want
17 you to ask yourself, when you are looking at the evidence
18 that they presented to you based on the technology, can you
19 tell who this person is who sold these drugs to the
20 informant? That's what you have to do. You have to look.
21 You have to listen. You have to leave your biases about
22 heroin addiction, drug addiction and all of those other
23 prejudices that you bring to you every day life, you have to
24 leave that outside of this courtroom. You have to be
25 objectionable. You have to be smart. You have to be

1 attentive. And we chose you. I chose you based on the
2 answers that you gave in court, based on the fact that you
3 can give Justin Hunter a fair trial. And we are relying on
4 that.

5 So when you listen to the evidence in this case, I
6 want you to specifically ask yourself if you can tell who it
7 is that's on that video. Is that person Justin Hunter?

8 And when you conclude at the close of the State's
9 evidence, you will figure out that the State has failed to
10 provide to you that the person on the video is, in fact,
11 Justin Hunter.

12 Thank you.

13 THE COURT: The State may proceed.

14 MR. UNDERWOOD: The State calls Special Agent
15 Daniel Lundberg.

16 DANIEL LUNDBERG,
17 having been duly sworn, testifies as follows:

18 THE CLERK: State your name for the the court
19 reporter.

20 THE WITNESS: Daniel Lundberg.

21 THE COURT: Spell your last name, please.

22 THE WITNESS: L-u-n-d-b-e-r-g.

23 THE COURT: Thank you. You may proceed.

24 DIRECT EXAMINATION

25 BY MR. UNDERWOOD:

1 Q. Good afternoon, Agent Lundberg. If you would,
2 please, introduce yourself to the members of the jury. Tell
3 them where it is you currently work and about your history
4 in law enforcement.

5 A. Yes, sir. I am Daniel Lundberg. I'm currently a
6 special agent with Homeland Security investigations under
7 the Department of Homeland Security. Before that, in 2006,
8 I graduated from the college called Western Illinois
9 University where I received my bachelor's degree in criminal
10 justice.

11 And then in 2007, I was employed by the Dorchester
12 County Sheriff's Office as a patrol deputy, where I worked
13 as a patrol deputy until about 2010.

14 In 2010, I was given an opportunity somewhat
15 promoted to be a criminal investigator in the narcotics
16 unit, where I worked in narcotics unit until I left in
17 December of 2016, when I took this job in Homeland Security.

18 During that time, I was responsible for
19 investigating, obviously, drug-related crimes, as well as I
20 was promoted to a sergeant over the unit in the early months
21 of 2016, and I was responsible for other kinds of training
22 within the department.

23 Q. Specifically as relates to this investigation, what
24 were your job duties as a corporal and then sergeant in the
25 narcotics unit?

1 A. We were responsible to investigate, like I said,
2 drug-related crimes, whether it be from information that we
3 gained from our own investigations. A lot of times we
4 received drug complaints from citizens, maybe neighbors or
5 something, they smell a funny smell coming on, you know,
6 late at night and think maybe its meth related, so we would
7 investigate it; or they notice that maybe there's a lot of
8 traffic coming in and out of the neighbor's house. Again,
9 we would kind of go and see what's go on, see if we can give
10 the complaint any relevance or dismiss it as not being
11 suspicious activity. In which the case I was involved with
12 the case we are here for today in reference to investigating
13 a drug trafficking organization that was operating within
14 Dorchester County as well as the tri-county areas, Berkeley
15 and Charleston.

16 Q. Agent Lundberg, how did you begin your
17 investigation into this drug trafficking investigation,
18 primarily focused on heroin?

19 A. In the early months of 2015, I started receiving
20 information from individuals about an organization that was
21 possibly located in Dorchester County in a certain area that
22 I was familiar with that was in the Ladson area
23 specifically. So I started to kind of dig into that area,
24 because my whole time from 2007 until I became an
25 investigator, we had certain areas where we work. So I was

1 really familiar with this area, because I had been there my
2 whole career. And I knew a lot of the people in the area,
3 you know, a lot of younger kids that have grown up and a lot
4 of people still living there. So I kind of had a good
5 familiarity with the area to kind of look into things. So I
6 started to try to kind of build up that information that I
7 was getting, try to corroborate it.

8 Going into the heroin, I was working another case
9 in, which we often do, we often have multiple things that we
10 are doing at one time, in which I was using a confidential
11 informant. And this confidential informant was purchasing
12 quantities of heroin from an individual known as Thomas
13 Sekula, in which we did multiple deals. I built up a case
14 on the distribution of heroin, which led us to --
15 eventually, I approached Thomas Sekula when I felt that my
16 case was at a good point to kind of go further. Because I
17 could kind of tell that he wasn't the one that was, you
18 know, providing the larger quantities. He was kind of what
19 you would consider a middleman, a lower class person. And
20 the goal that we have is to kind of stop the head people
21 from supplying the lower, essentially cut the head off the
22 snake.

23 So I approached him to see if he would be willing
24 to work with the sheriff's office and provide information
25 and really just cooperate.

1 Q. And was that in capacity as a confidential
2 informant?

3 A. That would have been in the capacity of coming on
4 to sheriff's office as being a confidential informant for
5 the sheriff's office.

6 Q. If you could briefly explain to the jury what a
7 confidential informant is and the reasons why a person might
8 become a confidential informant?

9 A. Basically, a confidential informant is a person
10 that is cooperating with law enforcement in a confidential
11 nature. When we do our paperwork and things like that, we
12 are required and feel it necessary to protect this
13 individual from these people that may be involved, to try to
14 protect them from harm that may come of them at a later
15 date, since they are not law enforcement. They are just
16 normal people. And a lot of times, people are worried
17 about, you know, what will happen afterwards if we put their
18 actual name and address and everything on the paperwork.
19 So, basically, a confidential informant could be anybody.
20 It could be one of you. It could just be somebody with
21 information, or it could be somebody that maybe has had
22 charges and they are working off charges or they could be
23 somebody that is seeking to get paid.

24 We do provide currency to these individuals for
25 information or controlled purchases. And by controlled

1 purchases is where we will set the individual up with an
2 audio and video recorder and give them our money that's
3 pre-recorded. And we will let them go and buy the
4 controlled substance.

5 Q. Now, you mentioned one of the motivations for a
6 person to become a confidential informant was working off
7 charges. Can you explain what that means in general and how
8 the Dorchester County Sheriff's Office would approach that
9 subject?

10 A. Yes, sir. Basically, working off charges would be
11 somebody that has not a serious crime, nothing as far as,
12 you know, any kind of murder or child pornography, anything
13 like that. But more than likely, it would be a drug crime,
14 in which they have relevant knowledge to drug activity going
15 on and which they will cooperate in the hopes of getting
16 help on what charge they may be looking at. And when we
17 deal with the cooperating individuals, it's clear to them
18 that we can't promise them anything. And they know this
19 beforehand that just because they do something for us,
20 provide us information, doesn't mean that the charge is just
21 going to go away. It's just basically in hopes that it can
22 help them out for whatever they are looking at in the
23 future.

24 And if the person is reliable and person, you know,
25 cooperates and does what we ask them and does things

1 legally, then we make our recommendations to the prosecuting
2 entity. And by that, it could be, depending on -- maybe
3 it's a smaller ticket that an officer wrote them, and we can
4 approach the officer and see if they would be willing to
5 help, or if it is a warrant that has went to the solicitor's
6 office, we will approach the solicitor and tell them, this
7 is what this individual has done and, you know, would you be
8 willing to help since they have cooperated.

9 Q. Agent Lundberg, is it necessary to develop
10 individuals who sometimes have these criminal charges
11 pending or that could possibly be pending in order to
12 infiltrate drug trafficking organization?

13 A. Yes, sir. Unfortunately, individuals like this are
14 sometimes necessary. I personally wish that I could keep
15 them out, due to the physical harm that could possibly come
16 after. I do feel a necessary need to, you know, attempt to
17 protect them from what will happen. If I could do it
18 myself, I would much rather be the person that would go in
19 and do it myself, but I don't always have that inner working
20 or that knowledge or have the ability to kind of get myself
21 into these groups and make these purchases.

22 As was mentioned earlier about, it would be good to
23 have school teachers and pastors and somebody do these buys
24 for us, but, unfortunately, those just aren't the people
25 that were involved with people who deal drugs.

1 THE COURT: Let me interrupt. Madam Forelady,
2 ladies and gentlemen of the jury, we need to take a brief
3 restroom break. During the break, please do not discuss the
4 case and please leave your notepads in your seats.

5 (Whereupon, the jury leaves open court at 3:21
6 p.m.)

7 THE COURT: The State ready to proceed?

8 MR. UNDERWOOD: Yes, Your Honor.

9 THE COURT: Defense ready to proceed?

10 MS. JOHNS: Yes, Your Honor.

11 MR. GRIFFITH: Yes, Your Honor. Sorry.

12 THE COURT: Please bring in the jury.

13 (Whereupon, the jury returns to open court at 3:33
14 p.m.)

15 THE COURT: We will now resume testimony.

16 You may proceed, Mr. Underwood.

17 BY MR. UNDERWOOD:

18 Q. A few minutes ago, we were discussing how you
19 confronted an individual named Tommy Sekula about becoming a
20 confidential informant. As you approached him, did he agree
21 to become a confidential informant?

22 A. After I had approached him, basically, identified
23 ourselves and kind of went through the whole procedure of,
24 you know, that whole temporary detainment to see what was
25 going on, we began to talk. And which while I was

1 explaining who I was, because at the time I had a longer
2 beard and longer hair, that, you know, I had been working a
3 case on him for distribution of heroin, and to which I kind
4 of laid out the groundwork of how long I had been doing it
5 and what exactly I had against him at that time, in which he
6 then showed interest in cooperating at that time, and to
7 which we went back to our office and went further into it.

8 Q. Earlier you mentioned that you had information
9 about a trafficking organization that was operating in
10 Dorchester and Berkeley Counties. Did Mr. Sekula offer you
11 any information at that time related to that
12 investigation?

13 A. Yes, sir. Going back on that information, I just
14 kind of had that on the side burner, still trying to look
15 into it and develop more information. When we got back and
16 really started to kind of talk to Thomas about what had been
17 going on over the period of time where we had been working
18 this case, and a supplier of his for, namely, heroin, along
19 with other things, he did mention to me that there was the
20 group that he frequented in the Ladson and College Park area
21 that sold heroin.

22 As he explained it to me, he nicknamed a male by
23 the name of Q, which I was familiar hearing when I was
24 attempting to identify, as well as some other things about
25 that description of where the house was and a description of

1 Q. I kind of started matching up to the information that I
2 had previously from other information that I had gathered.

3 Q. That other information, is that from other
4 interviews of individuals?

5 A. Yes, other interviews of people that had been
6 arrested for drugs.

7 Q. And after that confrontation, did you sign up
8 Thomas Sekula as a confidential informant?

9 A. Yes. After we had that talk and kind of debriefed
10 him a little bit, debriefed, meaning get the story of who,
11 what, when, where, all of that information, we did sign him
12 up as a confidential informant in which we have an
13 agreement, which is just kind of almost like a contract,
14 where it goes through and spells out all the things that
15 confidential informant can and can't do and what they can
16 expect as far as when they are operating with us to do these
17 controlled purchases.

18 Q. And what did you explain to Mr. Sekula that he
19 could expect as a result of becoming a confidential
20 informant?

21 A. I explained to him, kind of like I explained
22 earlier, that there was no guarantee that the charges that I
23 had on him would be taken care of. I couldn't promise that.
24 However, I did promise that I would at least, you know, keep
25 the solicitor up-to-date on what he was doing and where it

1 was going, to just kind of keep them in the loop of things
2 to try to get him some help for the help that he was
3 providing the sheriff's office.

4 Q. And you mentioned the solicitor. At that time in
5 your investigation, was the Attorney General's Office
6 involved in the case?

7 A. Not at that time.

8 Q. After you signed up Thomas Sekula as a confidential
9 informant, what things did he do as a confidential informant
10 to further your investigation?

11 A. Basically, it all started, when we debriefed him,
12 we found out that Thomas owed an amount of money already.
13 Was considered fronting, is where a drug dealer will give
14 the person drugs without payment. And then expect payment
15 after, they will go and sell it. Found out that he had been
16 fronted an amount of heroin. And he owed this Q individual,
17 who was later identified as Emory Roberts, an amount of
18 money.

19 And due to the information that I heard and how
20 long I had been trying to work into the group, I felt that
21 it was necessary to kind of jump on it then, since I had
22 already been able corroborate a lot of the information,
23 which we placed a recorded telephone call to the number that
24 I was told was to Q, and which we went into a discussion.

25 As we did it, I could hear the conversation happen

1 as it was going, in which I heard Thomas speaking to Q about
2 the money that was owed and about coming through where he
3 lived to get an additional quantity of heroin.

4 And once that was all set up, we went further from
5 there, which Thomas was equipped with audio and video
6 transmitter. So we could not only record the controlled
7 purchase, but we could hear it as it occurred. And he was
8 issued a pre-recorded amount of US currency, in which all
9 the serial numbers are recorded for the money we provide him
10 to use for the drug deal.

11 MR. UNDERWOOD: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 BY MR. UNDERWOOD:

15 Q. Agent Lundberg, I'm showing you what's been
16 admitted as State's Exhibit 1 and 2. Do you recognize
17 those?

18 A. Yes, sir.

19 Q. What are those?

20 A. They are audio recordings from, I believe, phone
21 calls that were made.

22 Q. Are these phone calls that you just described?

23 A. Yes, sir.

24 Q. And whose initials appear on those disks?

25 A. Those are mine.

1 Q. Is there another set of initials as well in
2 addition?

3 A. Yes, yes.

4 Q. The initials you placed on those disks, what do
5 those initials mean?

6 A. DL, my initials Daniel Lundberg.

7 Q. The fact that your initials appear on those disk,
8 what does that represent?

9 A. That I did have a chance to review them and that
10 that is correct information.

11 Q. Are these recordings complete and accurate as to
12 what you heard at the time?

13 A. Yes, sir, they are complete and accurate.

14 Q. Agent Lundberg, if you could, please explain the
15 standard procedure that Dorchester County Sheriff's Office
16 would use when starting a controlled purchase operation.

17 A. Initially, when we will meet with confidential
18 informant, we always meet in pairs. We won't meet them
19 alone by ourselves. We will always have another detective
20 with us, in which we will perform a strip search. And,
21 obviously, if it's female, we will have either a female
22 detective or a female officer meet us and conduct that. But
23 in this case, it was a male. And we conduct a strip search
24 just to ensure there is no contraband being brought in hopes
25 of maybe framing this individual or, you know, any hopes of

1 maybe falsely accusing. So we are assured that there is
2 no -- nothing being brought.

3 So we will strip search them. And then we will
4 outfit them with an audio and video recorder. After we do
5 that, we will test it. And then we will do a brief
6 monologue where we will set it up, which includes the date,
7 the time, you know, how much money we are giving the
8 confidential informant, where we are going. And then we
9 will go from there.

10 Q. Is that the same procedure you used with Thomas
11 Sekula?

12 A. That is.

13 Q. Did Thomas Sekula perform more than one controlled
14 purchase?

15 A. Yes, sir, he did.

16 Q. Off the top of your head, do you know how many he
17 performed?

18 A. A number? He performed six just with the
19 Dorchester County Sheriff's Office. And then when SLED got
20 involved, he did a number more.

21 Q. And was the same procedure followed when SLED
22 became involved as well?

23 A. Yes, sir. We were involved with it throughout the
24 entirety of the case, in which we did the same thing every
25 time.

1 Q. When Thomas Sekula would be doing a controlled
2 purchase, how would he get to the deal location?

3 A. Due to Thomas not having a valid driver's license,
4 we would have an agent or detective who would operate in an
5 undercover capacity and drive an undercover vehicle with
6 Thomas to the area, in which Thomas would be dropped off,
7 you know, just a couple houses down from where he was going.
8 And Thomas would then walk up on foot to the house where he
9 was going.

10 Q. What is the purpose of the undercover officer not
11 going all the way to the location?

12 A. A lot of times, from my experience, when a drug
13 dealer is not familiar with somebody who just shows up and
14 drops them off, they become very suspicious and almost
15 confrontational. Just to avoid any kind of confrontation,
16 we felt it was safer just to let him walk up on foot, which
17 is more normal. It's just kind of one of those safety
18 things.

19 Q. At the conclusion of each of the controlled
20 purchases, what did Mr. Sekula do with the drug evidence?

21 A. As we would hear the control purchase conclude, you
22 could hear usually Thomas coming out. We would then radio
23 the undercover detective to come by. In which, he would
24 pick up Thomas. And then once in the car, Thomas would
25 relinquish custody of those drugs to the undercover

1 detective, in which he would then take custody of them.

2 Q. At the conclusion of a controlled-buy operation,
3 would a confidential informant be searched again?

4 A. Yes. After it was all said and done, we would go
5 back to our undisclosed meeting location, usually where we
6 will set it up at, get it started, like I explained, which
7 again, the audio and video is removed. And we will search
8 him a final time to ensure that there's nothing else on him.

9 Q. Is that a strip search as well?

10 A. That is also a strip search.

11 Q. During any of the searches of Thomas Sekula, either
12 before or after any of these buys, was he ever found to be
13 hiding drug evidence?

14 A. No, he was never found to have anything on him.

15 Q. If you will, I also want to hand you a few more
16 exhibits. These are going to be State's Exhibit 21, 24, 5,
17 16, 10, 11, 12, 13, 14, 15. Now, Agent Lundberg, have you
18 reviewed all of these disks?

19 A. Yes, sir.

20 Q. And all of these have been pre-admitted without
21 objection. Do you recognize your initials on each of these
22 exhibits?

23 A. Yes, sir, I do.

24 Q. And what do these exhibits represent?

25 A. These are audios from recorded phone calls that

1 were placed.

2 Q. Are these in connection to several different
3 controlled buy transactions?

4 A. Yes, sir.

5 Q. Are some of these before SLED was involved and some
6 after?

7 A. Yes, sir.

8 Q. Are all of those recordings fair and complete and
9 accurate of what was happening at the time?

10 A. Yes, sir.

11 Q. During these controlled purchase transactions, were
12 you the undercover officer that drove Mr. Sekula?

13 A. No, sir, I was not.

14 Q. Who was?

15 A. Detective Brandon Allen.

16 Q. What role did you play into these transactions?

17 A. I began as the case agent, which I was in charge of
18 the overall case.

19 Q. And during the transactions themselves, did you
20 participate in some way?

21 A. I did. I was there usually in the beginning to get
22 everything started as far as the search, the phone call,
23 issuing the money in there. And then throughout the
24 controlled purchase, I would be on surveillance, in which we
25 would either be in the area or be on a stationary point

1 where we could have an advantage of seeing the controlled
2 purchase.

3 Q. Aside from the potential to see the controlled
4 purchase, what's the purpose of having surveillance agents
5 in addition to the undercover effort?

6 A. A lot of it is safety. Safety is our number one
7 priority when we are doing things like that, not just you
8 see on the outside, but also responsible for the safety of
9 the confidential informant, as well as furthering
10 investigation too. We can also see other things happening,
11 people coming and going as well as the confidential
12 informant and other things of that nature.

13 Q. At times during these transactions, were you ever
14 in a position close enough to see the people that Thomas
15 Sekula was interacting with?

16 A. On occasion, yes. During the course of the whole
17 thing, there had been times where I was close enough to
18 see.

19 Q. Were you able to identify the faces of the people
20 he was dealing with?

21 A. On occasions, yes, two in specific.

22 Q. Who were the individuals that you were able to
23 identify based on your own observations?

24 A. One occasion, I was able to identify a male that I
25 knew as Will. That was identified as William Brown. On a

1 second occasion, I was able to identify Mo as Justin Hunter.
2 Through my investigation, I was familiar with him
3 beforehand. And then I was able to see their faces out in
4 public.

5 Q. And which transaction do you recall that you saw
6 Justin Hunter?

7 A. I don't remember the exact buy, but I remember that
8 it occurred at the gas station on College Park near the
9 McDonald's. I don't remember the exact date.

10 Q. Was that transaction during daylight or nighttime?

11 A. It was during the daylight.

12 Q. Was there another occasion where there was a
13 controlled purchase from Justin Hunter at that gas station?

14 A. Yes. There was also an additional one that
15 happened there.

16 Q. And what time of day was that?

17 A. That was at night.

18 Q. Was there a video made from your perspective using
19 a cell phone at that time?

20 A. During the night deal, yes, there was cell phone
21 video that was taken.

22 Q. What was the purpose of that cell phone video?

23 A. Just to further gather information, be able to show
24 Hunter's vehicle come in and meet with confidential
25 informant, where you can observe the confidential informant

1 exit the vehicle and then you watch as Hunter's BMW leave
2 the parking lot.

3 Q. Throughout the course of your investigation, were
4 you able to confirm that that was, in fact, Justin Hunter's
5 BMW?

6 A. Yes, sir. I spent numerous hours conducting
7 surveillance on Mr. Roberts and Mr. Hunter.

8 Q. And you personally observed Mr. Hunter driving that
9 BMW?

10 A. On numerous occasion.

11 Q. Was that BMW registered to him at the DMV?

12 A. Yes, sir.

13 Q. I'm going to hand you State's Exhibit 26. Do you
14 recognize that?

15 A. Yes, sir.

16 Q. What is that?

17 A. That is a buy video from Mo.

18 Q. Is this the cell phone video we were just
19 discussing?

20 A. Yes, sir.

21 Q. And does it bear your initials as did the other
22 exhibits?

23 A. Yes, sir, it does.

24 Q. Does that signify that this is a fair recording of
25 what you saw at that time?

1 A. Yes, sir.

2 MR. UNDERWOOD: Your Honor, may I publish?

3 (Video playing.)

4 Q. Whose voice was that we were hearing?

5 A. That was mine.

6 Q. And whose car was that depicted in that video?

7 A. That was my undercover truck.

8 Q. And the vehicle that was seen backing up and
9 pulling out?

10 A. That was Hunter's vehicle.

11 Q. During the video, you mentioned the name Charlie.
12 What does that name mean?

13 A. Basically, Charlie is just a name that we will use
14 for the confidential informant instead of saying informant
15 over the radio, we will say Charlie, just in case somebody
16 else is able to hear.

17 Q. And the confidential informant that was used in
18 that transaction was that Thomas Sekula?

19 A. That was Thomas Sekula.

20 Q. Agent Lundberg, you mentioned you were in a
21 position at least one, if not numerous occasions, to observe
22 Justin Hunter?

23 A. Yes.

24 Q. And you've had an opportunity to see what he looked
25 like?

1 A. Yes, sir.

2 Q. I want to hand you State's Exhibit 42, which was
3 already admitted into evidence. Do you recognize that?

4 A. That's a U.S. passport.

5 Q. And, specifically, whose passport is that?

6 A. Justin Hunter's.

7 Q. Is that a picture of Justin Hunter in that
8 passport?

9 A. That is.

10 Q. And do you recognize the person in that picture to
11 be the same person you observed in these transactions that
12 you know as Justin Hunter?

13 A. Yes, it is Justin Hunter.

14 MR. UNDERWOOD: Permission to publish, Your Honor.

15 THE COURT: You may.

16 BY MR. UNDERWOOD:

17 Q. And, again, that's the individual that you know as
18 Justin Hunter?

19 A. Yes, sir.

20 Q. And you saw him perform these drug deals?

21 A. On the occasions we spoke of, yes.

22 Q. Have you had other opportunities to interact with
23 Justin Hunter?

24 A. I have.

25 Q. Before I get to those, were there any other

1 techniques you used to gather information into this drug
2 trafficking organization other than controlled purchases?

3 A. Yes, sir. I used a number of law enforcement
4 database, as well as trash pulls and other surveillance.

5 Q. What is a trash pull?

6 A. A trash pull, basically, is when someone puts their
7 trash out, essentially to the curb. They kind of are
8 discarding it and give up ownership of it for the trash
9 company to come and pick it up. A lot of times for a house,
10 it will be out at the road away, off the curtilage. By
11 curtilage I mean not like up against the garage, but on the
12 roadside for pickup.

13 And in this case, the specific apartment complex
14 that Hunter lived at, they had their own trash company. So
15 what they would do is they would essentially put trash cans
16 outside the door. And the trash company would come and pick
17 up their trash, put a new bag in it, and then the people
18 would just bring their cans back inside. It's craziest
19 thing I've seen. But it was a nice apartment complex. It
20 was the first time that I had actually seen something like
21 that happen. Instead of actually bringing your own garbage
22 to the dumpster, somebody comes and gets it.

23 Q. What apartment complex are you referring to?

24 A. Abberly Crossing. It's off of Patriot Boulevard.
25 I believe the address is [REDACTED] Patriot Boulevard.

1 Q. Do you recall what apartment number off the top of
2 your head?

3 A. Building [REDACTED], Apartment [REDACTED].

4 Q. Do you recall when you performed this trash pull?

5 A. I don't remember the exact date off the top of my
6 head. It's in my notes. I know it was in September.

7 Obviously, it was at nighttime.

8 Q. Was this in September 2015?

9 A. Yes, sir.

10 Q. As a result of that trash pull, did you find
11 anything you found to be significant evidence for your
12 investigation?

13 A. Yes, sir. During the trash pull, we just took the
14 bag from the can, went back and went to my truck, and we
15 went back to my office. Upon inspection of the contents
16 inside the bag, found Western Union receipts where Justin
17 Hunter had shipped money, wired money through Western Union
18 at a local Food Lion. I believe we found two of those
19 receipts when he had done so, he wired money to New York,
20 which had listed his name on there and then who it was going
21 to and amount of money.

22 And then we also located small quantity of
23 marijuana in there, in which we field tested it. By field
24 test, I mean, we've got these little kits where you can put
25 the drugs in. And you break the chemicals open, and if it's

1 that specific drug for that test kit, it will react and turn
2 a certain color so will let you know that it's field testing
3 positive for that drug, as well as some other paperwork. We
4 located paperwork for an individual at an additional
5 apartment complex which we knew them to have ties to, but
6 just hadn't been able to prove it yet. There was actually
7 mail in there for another individual from that apartment as
8 well as some other paperwork for the family that lived there
9 with kids.

10 Q. Did you find any evidence of prepaid debit cards?

11 A. I believe we might have. I would have to look at
12 the notes.

13 Q. Did you photograph the items that you recovered
14 from the trash pull?

15 A. We did. We photographed all the evidence.

16 Q. I want to show you what's been marked first as
17 State's Exhibit 34 and 35. Do you recognize those
18 photographs?

19 A. Yes.

20 Q. What are those?

21 A. They look like the paper to a prepaid Visa card.

22 Q. What's the significant of prepaid debits cards in
23 the drug trafficking world?

24 A. Basically, it's just a way to transfer money
25 inconspicuously.

1 Q. Earlier you mentioned mail to another apartment
2 complex. I'm going to show you State's Exhibit 36. Do you
3 recognize that photograph?

4 A. Yes, I do.

5 Q. What is that?

6 A. That is mail that is addressed to [REDACTED] Bear Island
7 Road Apartment [REDACTED], Summerville, South Carolina, which is
8 the apartment complex that I believe them to have ties to,
9 which is the Vista Sands.

10 Q. Now showing you State's Exhibit 41, what is in that
11 photograph?

12 A. It is mail. It's Primerica, which is an insurance
13 company, which is addressed to an Alonzo Stony at [REDACTED] Bear
14 Island Road Apartment [REDACTED], Summerville, South Carolina.

15 Q. And, again, is that the same apartment that you at
16 that time suspected this organization had connections to?

17 A. Yes, it is.

18 Q. Later in the investigation, were you able to
19 confirm that there were connections to that apartment?

20 A. I was.

21 Q. At this time, I want to show you Exhibits 37 and
22 38. Do you recognize those photographs?

23 A. I do.

24 Q. What do those depict?

25 A. Those are the South Carolina Department of Motor

1 Vehicles, they are essentially receipts where Mr. Hunter had
2 paid for a service at the DMV.

3 Q. What address is listed for Mr. Hunter on that
4 receipt?

5 A. On this receipt, it's [REDACTED] Wilhite Drive, Ladson,
6 South Carolina, 29456.

7 Q. Where was this item recovered from?

8 A. Trash at Abberly Crossing, which was the [REDACTED]
9 Patriot Boulevard.

10 Q. Now I want to show you State's Exhibit 39 and 40.
11 Do you recognize those?

12 A. I do.

13 Q. What are those?

14 A. Those are the Western Union receipts.

15 Q. Again, what's the significance of Western Union
16 receipts?

17 A. Again, it's an easy way to, essentially, transfer
18 money without actually having to do it personally, actually
19 doing the hand-to-hand. You can wire it.

20 MR. UNDERWOOD: Permission to publish, Your Honor.

21 THE COURT: You may proceed. What number is that?

22 MR. UNDERWOOD: Beginning with State's Exhibit 34
23 and 35.

24 Q. Agent, are these the prepaid debit card
25 packaging?

1 A. Yes.

2 Q. Are these depicting the front and the back?

3 A. Yes.

4 Q. Exhibit 36, is this one of the items of mail to

5 [REDACTED] Bear Island Road?

6 A. Yes.

7 Q. Exhibit 39 and Exhibit 40, these are the Western
8 Union receipts, correct?

9 A. Yes.

10 Q. Exhibits 38 and 37, what is that?

11 A. Those were the DMV printout receipts.

12 Q. And the address that's listed on that receipt, is
13 that different from the address where it was found?

14 A. That is different.

15 Q. And then State's Exhibit 41, is this the other item
16 of mail to [REDACTED] Bear Island Road, Apartment [REDACTED]

17 A. Yes, it is.

18 Q. Agent Lundberg, after the first several purchases
19 where you utilized Thomas Sekula, I believe it was mentioned
20 it was six, what was the next step in your investigation?

21 A. Basically, the next step, we had identified that
22 there was a large number of people involved. And it was
23 hard for us with jurisdiction, and by jurisdiction, seeing
24 as I worked in Dorchester County, I am allowed to their
25 things in Dorchester County. And they were operating in the

1 tri-county area. So we were attempting to try to set up,
2 you know, with all these other agencies. And it was a
3 bigger organization, in which we reached out to SLED and to
4 see maybe if they would be interested in helping us due to
5 this trafficking organization operating in the Lowcountry.

6 Q. And SLED is a state-wide agency, but they have
7 jurisdiction in all counties?

8 A. They do.

9 Q. Is that part of the reason you asked for their
10 assistance?

11 A. It is.

12 Q. Were additional controlled purchases done between
13 the sheriff's office and SLED using Thomas Sekula after that
14 point?

15 A. Yes, sir, there was.

16 Q. Did they follow the same procedures you described
17 earlier?

18 A. Yes, I was there on all of them.

19 Q. And just to be clear, prior to all of the
20 controlled purchase, was Thomas Sekula strip searched?

21 A. Yes.

22 Q. And did he have drugs at that time?

23 A. No.

24 Q. At the conclusion of the operation, did he return
25 to the undercover officer with drugs?

1 A. He returned to the undercover, yes, with drugs.

2 Q. Was he wearing a wire at all times?

3 A. Yes.

4 Q. The recording equipment that is used by the
5 confidential informant, is it perfect?

6 A. No.

7 Q. What kind of problems can be expected during
8 controlled purchase?

9 A. There's a number of given issues. It's technology.
10 I, today, the older I get, the harder it is. With the new
11 technology coming out, there's always something that seems
12 to be going wrong. But there could be a number of things.
13 There could be wires that short out. It could get too hot
14 and shut off. It may not see things clearly, depending on
15 what lens you use. If you go from outside to inside, it
16 doesn't adjust well. You might not see the person just due
17 to the lens. If we had a different lens on it, it may be
18 more clear. The transmitter cuts out. Sometimes you will
19 just hear bits and pieces of it due to like the radio
20 frequencies in the air. A lot of technical issues that I am
21 not even an expert to sit here and explain, but all those
22 issues do happen.

23 Q. Does the video and the audio record independently?

24 A. They can. They can do both. We try to set them up
25 to both record same time.

1 Q. Are there times that one might fail while the other
2 does not?

3 A. Yes.

4 Q. What kind of training are the confidential
5 informants given in using that equipment?

6 A. As much as you would expect. I mean, we don't
7 divulge all the information about what it can do, just
8 because we've come into the problem that, you know, in the
9 future, if this person somehow, you know, decides that they
10 are done with this and they don't want to keep cooperating,
11 and they tell other individuals about the things that we
12 use, it could be a problem. And we've seen it in the past,
13 where somebody has obviously known about what kind of device
14 we are using. And it was more than evident that that's what
15 happened. So it's kind of a safety thing. So just bear
16 minimum of how it works, just try to get them to square up
17 and talk loudly.

18 Q. Is it fair to say that the confidential informants
19 are not professional cameramen?

20 A. Yes.

21 Q. Agent Lundberg, at the conclusion of the controlled
22 purchases, what happened to the drug evidence?

23 A. At the conclusion, depending on which one it was,
24 we will bring it back to our secure office, which we will go
25 ahead and we will process it. By process it, I mean, we

1 will take photographs of it. We will weigh it. And then we
2 will go ahead and field test it to make sure that it is
3 presumptive for whatever we purchased. After we do all
4 that, we package it. And then put it into what is a SLED
5 BEST kit, which is a sealed plastic envelope. And which we
6 then submit into the Dorchester County Sheriff's Office in
7 to a locked drug box until the drug technician or the
8 evidence technician comes and gets it out of the box.

9 Q. And then procedurally what do they do with it?

10 A. Then they take it up to their office and begin to
11 process it and make sure all the paperwork is necessary to
12 go to SLED, do their own thing, and then they eventually end
13 up taking it to SLED.

14 Q. Does it remain in the custody of law enforcement
15 the entire time?

16 A. Yes.

17 Q. And is that in a secured facility?

18 A. Yes.

19 Q. You mentioned the BEST kit, that it was a sealed
20 packaging. What is the purpose of it being sealed?

21 A. Just to show it hadn't been tampered with. You
22 can't open it. The tape just sticks. If you accidentally
23 do it, you have to throw the bag away and get it. Once it's
24 stuck, it's stuck.

25 Q. The drug evidence that was recovered by yourself

1 and -- there was a Detective Brandon Allen, the
2 undercover?

3 A. Yes.

4 Q. The drug evidence recovered by yourself and
5 Investigator Allen, did the two of you personally ensure
6 that that drug evidence was photographed and placed into the
7 BEST kits?

8 A. Yes.

9 Q. Is there any way to signify that one or the other
10 of you had put those into the BEST kits?

11 A. Yes. When you fill out the BEST kit, it has the
12 name of who is submitting the BEST kit, which will print our
13 names and sign.

14 Q. And I want to show you State's Exhibit 43, 44, 45,
15 46, 47 and 48. Do you recognize each of those items?

16 A. I do.

17 Q. What are they?

18 A. They are SLED BEST kits.

19 Q. Are these the BEST kits that were completed by
20 yourself and Brandon Allen?

21 A. Yes.

22 Q. Are these from the first six controlled purchases
23 that Dorchester County did involving this investigation?

24 A. Yes.

25 Q. After these items were placed in the BEST kit, did

1 they undergo that same procedure that you described earlier?

2 A. Yes, they did.

3 Q. And were they kept in these sealed containers for
4 the purpose of establishing a clean chain of custody?

5 A. Yes.

6 Q. And where were they eventually sent for testing?

7 A. I believe they were sent to SLED for testing.

8 Q. And to your knowledge, was there any tampering of
9 any of that evidence?

10 A. Not to my knowledge.

11 Q. Agent Lundberg, do you recall the individuals that
12 this drug evidence was purchased from?

13 A. Yes.

14 Q. Do you recall which was which?

15 A. I do.

16 Q. If you could, to the best of your recollection,
17 beginning with State's Exhibit 43, what transaction was that
18 from?

19 A. This was the transaction that was sealed on 8/8 of
20 2015. This transaction actually began at 8/7, but went past
21 midnight. So the time it was sealed was actually 8/8, but
22 this was the first controlled purchase with Mr. Roberts.

23 Q. That's the individual commonly referred to as Q?

24 A. Q.

25 Q. You were later able to identify Q as Emory Roberts?

1 A. Yes, sir.

2 Q. Now, State's Exhibit 44, do you recall that
3 transaction?

4 A. I do. This will be the second transaction that
5 occurred on 8/11/2015, which we purchased the narcotics from
6 Mr. Roberts.

7 Q. State's Exhibit 45, do you remember that
8 transaction?

9 A. I do.

10 Q. What was the nature of that transaction?

11 A. We had initially set it up with who I believed to
12 be Mr. Roberts. Upon getting there to the address [REDACTED]
13 Margaret Drive which is in Ladson where these all occurred,
14 County of Dorchester, it appeared that Mr. Roberts was
15 asleep or something was going on with him, and which we
16 dealt with Mr. Hunter.

17 Q. That's the individual known as Mo?

18 A. Mo.

19 Q. The location you mentioned [REDACTED] Market Street,
20 that's in Ladson?

21 A. Ladson.

22 Q. What county is that in?

23 A. Dorchester.

24 Q. Did all of these occur at that same location?

25 A. All of those were [REDACTED] Margaret Drive, Ladson.

1 Q. Now moving to State's Exhibit 46, do you recall
2 that transaction?

3 A. Yes. This occurred on August 27th, 2015, which we
4 purchased heroin from Mr. Roberts.

5 Q. And where did that take place?

6 A. [REDACTED] Margaret Drive.

7 Q. State's Exhibit 47?

8 A. This occurred on September 9th, 2015. At this
9 time, we did go ahead and set it up with Mr. Roberts. When
10 we got there, there was a female by the nickname that we
11 knew her at the time as Cicci. She took part in the
12 controlled purchase. Eventually they, when they got there,
13 they were all there and they had conversation in which she
14 went and collected the heroin, in which she weighed it in
15 front of the confidential informant, Mr. Sekula. And then
16 we exchanged it with her.

17 Q. Was Emory Roberts present during that transaction
18 as well?

19 A. Yes.

20 Q. Do you know this from reviewing the video footage?

21 A. Yes.

22 Q. State's Exhibit 48, what do you remember about that
23 transaction?

24 A. That was again [REDACTED] Margaret Drive, which we
25 exchanged with Mr. Roberts.

1 Q. And all of this drug evidence was turned into SLED
2 for analysis?

3 A. Yes.

4 Q. Agent Lundberg, after SLED became involved and you
5 continued doing undercover purchases, were there other
6 individuals from whom you bought suspected drug evidence?

7 A. There was.

8 Q. Who were they?

9 A. There was a number of people. There was an
10 individual by the alias of G that we purchased from. There
11 was an individual by the alias of Keith. As well as, again,
12 we purchased some more narcotics from Cicci and Q,
13 Mr. Roberts and Mo, Mr. Hunter.

14 Q. In those transactions, was it the same process that
15 was used as far as the procedure to the operation?

16 A. Yes.

17 Q. Did Brandon Allen continue to function as the
18 undercover driver?

19 A. Yes.

20 Q. Were those operations successful in getting drug
21 evidence?

22 A. Yeah, they were successful.

23 Q. You mentioned an individual by the nickname G. Do
24 you remember the circumstance of that controlled purchase?

25 A. It did -- it ended up occurring, I believe, at the

1 Sunoco Gas Station, which the video that we saw earlier
2 occurred at, which they went inside and did the controlled
3 purchase.

4 Q. Where is that gas station?

5 A. On College Park Road.

6 Q. Is that in Berkeley County or Dorchester County?

7 A. That's in Berkeley.

8 Q. Do you remember where at the gas station it took
9 place?

10 A. Inside somewhere, maybe the bathroom. I stayed on
11 the outside, but I believe it was the bathroom.

12 Q. Do you remember what type of vehicle the individual
13 drove?

14 A. I have it in my notes. I don't remember off the
15 top of my head exactly what car he was in. I believe it was
16 a tag out of Georgia.

17 Q. Was that documented by other agents as well?

18 A. I believe so, yes.

19 Q. You mentioned an individual named Keith. What were
20 the circumstances of that purchase?

21 A. It occurred in Berkeley County. There was the
22 additional address location in the College Park area where
23 they seemed to operate out of. And when you would call,
24 they kind of dictated where they wanted you to go. Due to
25 the way it seemed, is they were all working together. So if

1 one area didn't have the drugs, they would tell you to go to
2 another one. And if this area didn't have it, they would
3 tell you to go to another one. That's why SLED came in
4 pretty handy, because trying to get that all on the fly was
5 almost impossible to do.

6 So we were directed to go to the College Park area,
7 in which we went into the neighborhood. And it pretty much
8 was a main street that led you in and a bunch of streets
9 that just kind of broke off that were all eventually
10 deadends, but it was one way in, one way out, which Thomas
11 was led out of the vehicle, as he was prior in all the other
12 controlled purchase. And the male, Keith, had cut through
13 some backyards and come up on another side street.

14 Q. Did the transaction then take place?

15 A. The transaction did take place there on the
16 roadway.

17 Q. And you mentioned it seemed that these individuals
18 were working together. What evidence was there that made
19 you think they were working together?

20 A. Due to the information that I obtained beforehand,
21 just about the group of individuals in Ladson and College
22 Park, corroborating that with Mr. Sekula, Tommy, he would
23 tell me about that group and this group. And then when you
24 call them, they would tell you on the phone, go see them in
25 Ladson or, you know, go see them in College Park. They

1 would direct you. So if they weren't working together and
2 knowing that they had the heroin, I mean, that is how it
3 appeared to me.

4 Q. Earlier you testified about part of the procedure
5 being, when possible, to make a phone call to set up the
6 deal. Were there times that the phone call would be made
7 and a different person would answer than was expected?

8 A. Yes. It was quite often where they would call a
9 main number, in which that was -- almost initially being
10 kind of like a hotline. Like, you would call and they would
11 tell you where to go, in which we were having to deal with
12 that.

13 Q. Were you ever in a position to observe the
14 defendant, Emory Roberts, known as Q, during the course of
15 your investigation?

16 A. During the investigation, yes, I did observe him.

17 Q. And were you close enough that you would be able to
18 recognize him if you saw him again?

19 A. Yes.

20 Q. Is that individual Emory Roberts, also known as Q,
21 in the courtroom today?

22 A. Yes, he is.

23 Q. Will you point him out here?

24 A. He's sitting at the defense table.

25 Q. Would you describe what he's wearing?

1 A. Black male wearing a blue shirt with long braids
2 pulled back.

3 MR. UNDERWOOD: Your Honor, I ask the record to
4 reflect the proper identification of the defendant, Emory
5 Roberts.

6 THE COURT: You may proceed.

7 BY MR. UNDERWOOD:

8 Q. Agent Lundberg, during the time you were using
9 Thomas Sekula as a confidential informant, did he ever
10 commit any misconduct during any of your operations?

11 A. No, not during.

12 Q. And each of those operations, was he able to
13 acquire drug evidence from one of the suspects?

14 A. Yes.

15 Q. And it was confirmed the location where that came
16 from based on a search prior to and immediately after?

17 A. Yes. Beforehand he was searched, and he was not
18 LET out of our custody until we dropped him off and he went
19 to that location. And then as soon as he was done, he was
20 back in our custody and with us until we searched him
21 again.

22 Q. And you've reviewed all of the audio and video
23 evidence?

24 A. I have.

25 Q. Is there anything in that evidence that would make

1 you believe or cause you to suspect that the drug evidence
2 came from any source other than the targets of the
3 investigation?

4 A. No.

5 MR. UNDERWOOD: Thank you. Please answer any
6 questions the defense has.

7 THE COURT: Mr. Griffith.

8 MR. GRIFFITH: Thank you. May it please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. GRIFFITH:

12 Q. Mr. Thomas Sekula -- how do you pronounce it?

13 A. Sekula.

14 Q. Sekula, the CI, you said that you determined that
15 he was a middleman. Is that what you said?

16 A. That's what it appeared to me, that he was on the
17 lower end of the spectrum.

18 Q. So was he a drug user?

19 A. As far as I know, yep.

20 Q. And did he sell drugs?

21 A. Yes.

22 Q. And so he was a drug user and a dealer, wouldn't
23 you say so?

24 A. Yes.

25 Q. And so, when you offered to hire him, basically, to

1 be your confidential informant, what kind of crimes were you
2 helping him with at the time? You said that you were
3 helping him, that you would help him with certain problems
4 he was having that he was accused of. What types of crimes
5 were you helping him with?

6 A. I wasn't going to help him with a crime. I was
7 going to help him with the charges that he had acquired for
8 the crimes that he had committed, not helping him.

9 Q. I understood you weren't going to actually commit
10 the crime. I'm sorry. Let me rephrase it. What types of
11 crimes were you going to give him aid in not being charged
12 with?

13 A. I was going to suggest aid for the crimes of
14 distribution of heroin.

15 Q. The distribution of heroin?

16 A. Yes.

17 Q. Same crime for which these defendants are also
18 accused and some of which --

19 A. Some of it, but some were charged with trafficking
20 and conspiracy of trafficking.

21 Q. During the time you were using this CI, did he
22 continue to use drugs?

23 A. Not in my presence.

24 Q. Not in your presence. To your knowledge, did he
25 continue to use drugs?

1 A. I never was there when he did it. You would have
2 to ask him. I never saw him use drugs.

3 Q. Did you have knowledge that he was using drugs
4 during the time that you were using him as a confidential
5 informant?

6 A. I never personally could say that he was using
7 drugs. I mean, was it possible? Yeah. But I never saw him
8 physically do it and I never caught him with it.

9 Q. Do you have any knowledge that he was committing
10 other crimes during the time that he was working with you as
11 a confidential informant?

12 A. Yes, I believe he did get in trouble for
13 shoplifting. I think that was during the time.

14 Q. Were there other crimes besides just shoplifting
15 that he was accused of?

16 A. That's all I remember now, to be honest with you.

17 Q. Would it surprise you to find out that he was
18 arrested for burglary?

19 A. Was that prior?

20 Q. During the course of this investigation, would that
21 surprise you?

22 A. I don't remember that. Sorry.

23 Q. And you observed -- you said that you identified
24 the -- the CI identified a person that was buying from him
25 known as Q. And during that time, among other people, and

1 you have said that you finally had a chance to meet

2 Mr. Roberts. Who identified him to you as Q?

3 A. Who identified Mr. Roberts as Q?

4 Q. Being Q.

5 A. Oh, Thomas Sekula.

6 Q. So the same guy, the drug dealer/user that you were
7 using identified Mr. Roberts as being one of the people that
8 was selling drugs; is that correct?

9 A. Yes.

10 Q. And so during the time that he was a drug dealer
11 and user and that you were helping him -- I don't mean
12 helping him to commit crimes, again, but that's when he was
13 identifying other people, according to you, that he was
14 telling you were doing drugs, did you actually ever see
15 Mr. Roberts, personally see him with your own eyes, sell any
16 drugs?

17 A. No, not in person; on video.

18 Q. Did you -- you said at the gas station you stayed
19 in your car while some drugs were sold inside, possibly in
20 the bathroom?

21 A. Right.

22 Q. So did you ever see with your own eyes any drugs
23 being sold by Mr. Roberts?

24 A. No.

25 Q. So you really have no knowledge yourself of

1 actually seeing a crime committed by Mr. Roberts at all?

2 A. Besides the audio and video, no, I did not
3 personally see it. But that's essentially why we use audio
4 and video, due to the probability of him selling drugs with
5 me right there is not very likely, in my experience.

6 MR. GRIFFITH: Please answer any questions Ms.
7 Johns may have for you.

8 THE COURT: Ms. Johns.

9 MS. JOHNS: Thank you, Your Honor. May it please
10 the Court.

11 THE COURT: You're welcome.

12 CROSS-EXAMINATION

13 BY MS. JOHNS:

14 Q. Hello, Agent Lundberg. My pleasure. I wanted to
15 start with your years of experience with Dorchester County
16 Sheriff's Department. What was the extent, was it a couple
17 of years, three years? I didn't get that.

18 A. For?

19 Q. How long were you employed with them?

20 A. I was employed February 2007 to December of 2016.

21 Q. Okay. And how many of those years were narcotics?

22 A. From 2010 to the time I left, so almost seven, six.

23 Q. Six years, years. Okay. Now, you had mentioned
24 that there were some recorded phone calls that were made to
25 certain individuals; is that correct?

1 A. Yes, ma'am, there was recorded phone calls.

2 Q. Okay. And you had also mentioned on direct
3 examination that some of these phone calls would be answered
4 by other people.

5 A. Yes.

6 Q. Correct?

7 A. Yes, that's correct.

8 Q. So if you were to call out -- if Tommy Sekula was
9 to call a specific number, did you know who might answer
10 that phone?

11 A. Later on, we started calling to direct numbers.
12 There was just one number in specific where it was kind of
13 unsure of where -- who you were going to get. But as the
14 investigation went on, we did start contacting direct phone
15 numbers.

16 Q. Okay. During the time there was one phone that was
17 being used, was that prior to SLED getting involved?

18 A. It was.

19 Q. Was that during the time that you were
20 investigating Mr. Roberts and several other members of this
21 drug trafficking organization?

22 A. Yes, it was. We did start specifically calling
23 Mr. Roberts on his own phone before SLED actually got
24 involved, but, yes.

25 Q. And as to Mr. Hunter, when did you start calling

1 him directly?

2 A. After SLED got involved.

3 Q. Okay. Now, this phone call that you put or that
4 your confidential informant, Tommy, put in, did you verify
5 that that phone belonged to Mr. Hunter?

6 A. Not at the time, no. But we did, during the phone
7 calls, you can hear him kind of make sure that it is who
8 he's talking to. There was a number of times that he
9 confirmed that it was Mr. Hunter on the phone.

10 Q. Okay. And what about the other times that it
11 wasn't confirmed, because somebody else was responding to
12 the call?

13 A. At that time, no.

14 Q. Were you able to -- using the intelligence of law
15 enforcement, were you able to determine who was responding
16 to any text messages to any of the phones?

17 A. No. I mean, it went to the phone where you would
18 send the text, and then that person would show up. So I
19 would assume that that was the person that you were talking
20 to.

21 Q. Now, repeat that again. You said that when you
22 send the text, when Tommy would send a text, he would send
23 it to a phone number, right?

24 A. Right.

25 Q. And that phone number would respond; is that

1 correct?

2 A. Essentially, yeah.

3 Q. And then a person would show up; is that right?

4 A. Yes. Example of, if we sent a text to Mo saying
5 that they wanted to do a controlled purchase, I mean, Mo
6 would show up. So I would assume that it was probable that
7 Mo was the other one on the end of the line.

8 Q. But you don't know that for sure?

9 A. I wasn't there with Mo to take the call, so I can't
10 say for sure.

11 Q. And Tommy was the one that told you he was calling
12 Mo's phone; is that correct?

13 A. Essentially, he said that number was Mo's. I was
14 actually sometimes the one that actually entered in the
15 number, just to ensure what number we were calling.

16 Q. And out of the numbers that you entered in, were
17 you able to verify that that phone belonged to Mo?

18 A. Not at that time, no.

19 Q. How about at a later time?

20 A. No.

21 Q. Now, you had started talking about Tommy Sekula.

22 He's your confidential informant?

23 A. Yes, ma'am.

24 Q. Now, let me ask you, when did you start building a
25 rapport with him again?

1 A. Sometime in the spring, going into the summer of
2 2015.

3 Q. Okay. Had you met him prior to this time?

4 A. Just not met him, as where I was developing my case
5 that led me to Thomas Sekula.

6 Q. So then you were able to ascertain from certain
7 incident reports that Mr. Tommy Sekula was stopped in
8 September 2014, with a needle on him, wasn't he?

9 A. I would -- I can't say for sure that I read it.
10 That was before I got involved. I didn't get involved with
11 Tommy Sekula until 2014.

12 Q. If Mr. Tommy Sekula was caught with a hypodermic
13 needle and some scales in his car, would you be notified of
14 this in 2015?

15 A. Maybe. There's no specific -- sometimes the --
16 if -- depends on, one, where it's at. Obviously, if it
17 happens in a different county, I am not going to get
18 notified in Dorchester. Two, it kinds of depends on the
19 officer. Sometimes they notify us. Sometimes they don't.
20 There's people who get arrested that, you know, come in with
21 drugs and nobody tells us about until after they are gone.
22 Sometimes it's too late. Sometimes they feel like they
23 don't want to wake us up and call us at night if they feel
24 it's not important. I mean, so there's no real, you know,
25 for certain.

1 Q. Would it be fair to say that Tommy Sekula was
2 already on your radar as drug dealer in 2015, right?

3 A. In 2015, yes. I was purchasing --

4 Q. And also, that Tommy Sekula was actually arrested
5 in April of 2015 for possession of heroin, correct? You
6 don't know?

7 A. I don't recall.

8 Q. Now, let's talk about Tommy's distribution habits.
9 Okay? You were involved in actually investigating him. And
10 there was a controlled purchase made by another confidential
11 informant where he bought from Tommy. And that location was
12 in a convenience store; is that correct?

13 A. I believe one of them, yes, was in a convenience
14 store.

15 Q. And it was sometime around June of 2015 where he
16 had told or you had found out that he had placed some heroin
17 on top of a soda can?

18 A. Right.

19 Q. And then following week, in June 9th, 2015, then
20 you also had surveillance on Tommy Sekula inside the Publix;
21 is that correct?

22 A. That's correct.

23 Q. And that's when Tommy had put some heroin on a
24 yogurt container, correct?

25 A. Uh-huh.

1 Q. And the CI was actually under surveillance by some
2 of your officers inside the Publix, correct?

3 A. Right.

4 Q. So you knew it was Tommy that left the heroin on
5 the yogurt container, right?

6 A. Yes, we set it up that way. Tommy again would kind
7 of dictate how it was done, where he wanted to meet and what
8 was going on. And that was kind of one of the things to not
9 draw suspicion, to do the, per se, hand-to-hand, where
10 people could see, was to drop it somewhere where the
11 confidential informant would be able to pick it up and it
12 would not look suspicious.

13 Q. You had enough people helping you with this
14 investigation that you sent a live person, an investigator,
15 in there to maintain continued surveillance on your CI
16 inside a Publix, right?

17 A. Yes.

18 Q. And then on June the 17th of 2015, then there was
19 another transaction where he put the heroin in a package of
20 gum; is that right?

21 A. Sounds right.

22 Q. And then passed it outside of another store
23 somewhere; is that right?

24 A. Sounds right. I can't say for sure the dates, but
25 it does sound familiar with this way --

1 Q. And then finally this last one was in July, on July
2 31st of 2015. You actually went to his home based on a
3 search warrant; is that right?

4 A. Again, I can't say for sure on the date, but, yeah,
5 we did go to where he was staying.

6 Q. This is Winter Drive, right?

7 A. Yes.

8 Q. That's a trailer park, right?

9 A. That is a trailer park.

10 Q. And do you remember what you found in his house?

11 A. No, I don't, not off the top of my head.

12 Q. Now, we have at least four distributions that are
13 recorded during the summer of 2015; would you agree?

14 A. I think that's a safe number to say.

15 Q. Okay. Now, let me ask you if you are aware of a
16 female by the name of Amber Ross?

17 A. I am.

18 Q. And who is she?

19 A. That is Thomas Sekula's significant other.

20 Q. Okay. And you are also familiar with man by the
21 name of Michael Sekula, correct?

22 A. I am.

23 Q. And you are aware that on September the 4th of
24 2015, there was a home invasion --

25 MR. UNDERWOOD: Objection, Your Honor.

1 Relevancy.

2 THE COURT: Please approach.

3 (Whereupon, a bench conference takes place off the
4 record.)

5 THE COURT: Madam Forelady, ladies and gentlemen, I
6 have a matter of law to take up outside your presence.
7 During the break, please do not discuss the case and please
8 leave your notepads in your seats.

9 (Whereupon, the jury leaves open court at 4:38
10 p.m.)

11 THE COURT: How is this relevant? Can you prove by
12 clear and convincing evidence they actually were involved in
13 this, because that's the first hurdle you have to clear
14 before you can even mention it. It's the prior bad act not
15 the subject of the conviction.

16 MS. JOHNS: Your Honor, it goes to credibility.

17 THE COURT: That is not my question. My question
18 is can you prove -- doesn't matter what it goes to. There's
19 several stages of this. In order for you to introduce a
20 prior bad act that is not the subject of the conviction, you
21 have to be able to prove by clear and convincing evidence
22 these individuals were actually involved in it. Then we go
23 to the rest of it about whether it's relevant, whether it's
24 more probative than prejudicial and whether you can connect
25 the dots. And I need to know whether you can prove other

1 than just sort of throwing it out there.

2 MS. JOHNS: I will tell you what I have. I have an
3 incident report that is dated 9/4/2015, which involves this
4 home invasion burglary, stealing of a motor vehicle. There
5 were several individuals that were interviewed at the time.
6 One of them was the significant other of Tommy Sekula by the
7 name of Amber Ross, who states that she was not involved in
8 the actual burglary, but that Tommy and his brother was.

9 THE COURT: But what does that have to do with
10 Mr. Sekula?

11 MS. JOHNS: Mr. Sekula is the confidential
12 informant who has agreed --

13 THE COURT: No, then I must have misunderstood the
14 testimony.

15 MS. JOHNS: Michael is his brother.

16 THE COURT: Yeah, but he said she's the significant
17 other of Tommy, not Michael.

18 MS. JOHNS: Okay.

19 THE COURT: So you just said to me that she said
20 that his brother Tommy was the subject of this home
21 invasion.

22 MS. JOHNS: Maybe it's the girlfriend of Michael
23 Sekula who was also a suspect, Your Honor. And when they
24 interviewed her --

25 THE COURT: How do I know she's telling the truth

1 and she's not just trying to exculpate herself.

2 MS. JOHNS: We don't know that.

3 THE COURT: Yeah, but that's your burden to prove.

4 MS. JOHNS: Well, if you are asking me --

5 THE COURT: I'm not asking you to do anything the
6 Supreme Court has not instructed that you must do, which
7 means, basically, you have to have a mini-trial within a
8 trial to prove by clear and convincing evidence that it
9 happened.

10 MS. JOHNS: I'm saying there's an accusation that
11 he was involved with his brother in this burglary. And he
12 had already signed an agreement with law enforcement that
13 said he would not be committing other crimes during the time
14 that he's working as a CI.

15 THE COURT: How is that relevant?

16 MS. JOHNS: It's relevant if he's --

17 THE COURT: Only relevant if you can prove that
18 they are going to give him deference on that and the charges
19 are going to be dismissed and she's going to be subject to
20 some reduced penalty; otherwise, it's character.

21 MS. JOHNS: That's right.

22 THE COURT: Pardon me?

23 MS. JOHNS: That's correct, Judge.

24 THE COURT: So how can you prove that he's going to
25 get something in exchange for that?

1 MS. JOHNS: I wouldn't know that, Judge, until I
2 ask the question.

3 THE COURT: Then ask the question in-camera and
4 then I will make that determination. Otherwise, it's
5 character and it's not permissible.

6 MS. JOHNS: Very well, Judge.

7 BY MS. JOHNS:

8 Q. Agent Lundberg, were you aware of --

9 MS. JOHNS: Can I just lay some groundwork?

10 THE COURT: I need you to create a proffer. Ask
11 the questions you were going to ask.

12 MS. JOHNS: I'm going to lay extra groundwork
13 instead of just going to the point.

14 BY MS. JOHNS:

15 Q. You are who Michael Sekula is, correct?

16 A. I do know who Michael Sekula is.

17 Q. And he's the brother of Tommy Sekula, the CI?

18 A. Yes.

19 Q. And he's also a drug addict; is that right?

20 A. As far as, I know. I haven't personally had any
21 contact with him as far as that, but as far as what I know
22 of him, just hearsay.

23 Q. Did you interview Tommy Sekula during the course of
24 your investigation?

25 A. Yes.

1 Q. Did he list Michael Sekula as somebody he would
2 sell drugs to?

3 A. I believe that he said that Michael does use
4 heroin.

5 Q. Okay. Would it help if I give you the --

6 THE COURT: He's not going to be able to rely on
7 that. It's hearsay. You are going to have to ask Tommy
8 Sekula those questions.

9 BY MS. JOHNS:

10 Q. So you are not aware of a burglary?

11 A. I believe I know which one you are talking about,
12 where I believe the brother was arrested for it, but they --
13 I don't think they ever charged Thomas Sekula, not that I
14 know of. Nobody ever approached me about it. I know
15 nothing about it. But I do know Michael got in trouble for
16 something like that.

17 MS. JOHNS: Okay. That's the point I would
18 proffer.

19 THE COURT: How is that relevant?

20 MS. JOHNS: Your Honor, I understand the Court's
21 ruling that you are saying --

22 THE COURT: I haven't ruled yet. I've been waiting
23 for you to answer questions so I can make a reasonable
24 ruling based on case law, contemporaneous ruling based on
25 case law.

1 MS. JOHNS: Very well. The reason that I want to
2 get this out is because Michael Sekula, Tommy Sekula, by way
3 of his interview, Tommy Sekula's interview, that they were
4 all involved in using, buying drugs. And --

5 THE COURT: I don't think there's any contention
6 that Mr. Sekula was involved until using drugs and he's
7 working off charges.

8 MS. JOHNS: Okay. He was working off charges, Your
9 Honor.

10 THE COURT: That's what the witness already
11 testified to.

12 MS. JOHNS: I want to know whether or not this
13 agent knows of whether or not the burglary first was one of
14 the charges that --

15 THE COURT: He just said that to his knowledge he
16 wasn't charged, that Michael Sekula was charged.

17 MS. JOHNS: Okay. I will move on.

18 THE COURT: What's the State's position regarding
19 his testimony?

20 MR. UNDERWOOD: Your Honor, I believe that would be
21 improper. There is no clear and convincing evidence that
22 Thomas Sekula was involved in such an incident. The only
23 evidence that there is is that Michael Sekula, his brother,
24 may have been arrested for a charge. That's not relevant to
25 Thomas Sekula. It does not go to Thomas Sekula's

1 reliability as a confidential informant, nor does it go to
2 his truthfulness; therefore, I believe it would be improper
3 to mention this before the jury.

4 THE COURT: Mr. Griffith, do you have any position?

5 MR. GRIFFITH: Your Honor, I think that it would be
6 advantageous for the jury to know the kind of person that
7 was doing the investigation for the Attorney General's
8 Office and for SLED. I agree with Ms. Johns that I think
9 that it's relevant as to his character. Of course, we would
10 have to show that he actually was involved and that these
11 were dismissed or not prosecuted. And if there was evidence
12 of that, it should be allowed in, in my opinion, Your Honor.

13 THE COURT: Anything further, Ms. Johns?

14 MS. JOHNS: No, Your Honor.

15 THE COURT: The objection is sustained. One, you
16 cannot prove by clear and convincing evidence that the event
17 that you are questioning this witness about ever took place.

18 Two, you cannot prove by clear and convincing
19 evidence that Mr. Sekula, that being Tommy, was involved in
20 this offense. At most, you can only imply that Michael
21 Sekula was involved, and based on hearsay, that he was in
22 fact arrested. This witness has testified he has no direct
23 knowledge of Tommy Sekula being charged with the event. He
24 has some knowledge of the event but no knowledge that Tommy
25 Sekula was involved.

1 While I agree with both defense counsel, the
2 credibility, especially in a case of this type, of the CI is
3 always relevant and is not prejudicial. However, under
4 these circumstances, there's absolutely no testimony to tie
5 this witness to that event. There's absolutely no testimony
6 to tie it to the fact that he would receive any deference
7 from the State, that being any reduction in charge or any
8 reduction in the current charges he's facing as a result of
9 any cooperation on this offense. And, therefore, I'm
10 hard-pressed to find that it is relevant or probative. So I
11 would find that it's -- any probative value is outweighed by
12 its potential prejudice.

13 You can question somebody's credibility, but you
14 can't put their character in evidence unless they put it in
15 first. So the objection is sustained.

16 Are we ready to proceed?

17 MS. JOHNS: Yes, Your Honor.

18 (Whereupon, the jury returns to open court at 4:50
19 p.m.)

20 THE COURT: We appreciate your patience. We will
21 now resume the witness's testimony.

22 Ms. Johns, you may proceed.

23 Ladies and gentlemen, you are to disregard Ms.
24 Johns's last question and any potential answers from the
25 witness. You are to give it absolutely no consideration in

1 your deliberations. You may proceed.

2 MS. JOHNS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 BY MS. JOHNS:

5 Q. Agent Lundberg, when you discussed Tommy Sekula
6 with any prosecuting agency, did you discuss this with the
7 Dorchester County Solicitor's Office or did you do the
8 tri-county solicitor's office?

9 A. It was the Dorchester County, because it was for my
10 charges that I had, which all occurred in Dorchester
11 County.

12 Q. And what was your understanding of what they would
13 do for him?

14 A. We didn't come to an actual conclusion at the time.
15 We were still trying to see what was coming of it. And then
16 SLED got involved. And to be honest, I really didn't have
17 too much of a discussion with them after that.

18 Q. And, normally, if you had Mr. Sekula not become a
19 cooperating defendant for you, you would have four warrants
20 for distribution of heroin; is that correct?

21 A. That's correct.

22 Q. Now, you had provided a lengthy interview with
23 Mr. Sekula about his -- where he may have been getting his
24 drugs from; isn't that right?

25 A. I believe, yeah, I might have -- I know we did

1 multiple interviews throughout the time. I know SLED was
2 involved with one. I was involved.

3 Q. And you have had an opportunity to review that
4 interview; is that right?

5 A. No.

6 Q. No?

7 A. No.

8 Q. Well, let me provide this for you just to help.
9 Let me ask you the question first. And if you can't answer,
10 then I will provide this to you. Do you recall whether or
11 not in the interview with Tommy Sekula, whether you had
12 listed Justin Hunter as a supplier to Tommy?

13 A. Yes.

14 Q. Okay. And had you or had you not?

15 A. Can you say that one more time? I don't
16 understand.

17 Q. Did you have Justin Hunter listed as a source of
18 supply for Tommy?

19 A. Yes.

20 Q. Did you also have a list of -- a number of other
21 people that is not Justin Hunter?

22 A. Yes.

23 Q. And approximately how many other people had you had
24 listed?

25 A. I can't say an exact number without looking, but

1 there's multiple that were involved in the drug trafficking
2 organization that I was undercovering, so to say.

3 Q. Would you say -- would you agree with me that was
4 probably in excess of 10 people?

5 A. In excess of 10 people?

6 Q. More than 10?

7 A. I mean, I don't know.

8 Q. Was it less than 10?

9 A. Maybe somewhere around 10, a little less, a little
10 more. I would have to look at what you are looking at to
11 say for sure.

12 Q. And when you asked Tommy Sekula who he had been
13 selling to, did he reveal to you everybody he had been
14 selling to?

15 A. I don't remember, to be honest with you. I don't
16 recall exactly what we had without reviewing my notes. It's
17 a long time ago.

18 Q. At any time, did Tommy Sekula tell you that he
19 bought drugs from Justin Hunter at Patriot Boulevard?

20 A. Specifically, I don't recall him saying. He did
21 tell me that there was an apartment, but he was unable to
22 provide exactly which one that was at, to say for sure that
23 one in specific. I don't remember him disclosing that exact
24 Patriot apartment.

25 Q. Now, you had a written agreement with Tommy Sekula,

1 correct?

2 A. Yes.

3 Q. And one of the major things in that written
4 agreement is that he's not allowed to commit other offenses,
5 correct?

6 A. Correct.

7 Q. And shoplifting would be one, correct?

8 A. That's correct.

9 Q. And actually buying heroin would also be a crime,
10 right?

11 A. Outside of doing it with us, yes.

12 Q. Right. Now, he started working with you sometime
13 in the summer of 2015, right?

14 A. Yes, essentially, August 2015.

15 Q. And he worked through January or February; is that
16 fair to say?

17 A. The next year, yeah, I believe that's fair to
18 say.

19 Q. Okay. And which agent did you assign to Tommy
20 Sekula when he wasn't working in a confidential informant
21 capacity?

22 A. I don't understand what you are asking.

23 Q. Did you have an agent with Tommy Sekula during the
24 entire six or seven months of your investigation?

25 A. Agent with him?

1 Q. Yes, with him, surveilling him, being with him,
2 watching what he does?

3 A. No.

4 Q. So my point is that law enforcement was not
5 continuously with Tommy Sekula 24 hours a day, seven days a
6 week?

7 A. No.

8 Q. For six months; is that right?

9 A. No, they don't --

10 Q. What Tommy Sekula was doing outside the presence of
11 law enforcement, you do not know?

12 A. I don't know.

13 Q. Now, sometime later during this investigation of
14 the distribution of heroin, you and SLED were still
15 working -- you were still working on the case, even though
16 SLED got involved; is that correct?

17 A. Yes. I was there just to kind of facilitate
18 things, a place to meet and some of the equipment and things
19 like that.

20 Q. And so you had mentioned on direct examination that
21 you had met with Tommy and you understood that there was a
22 debt that was owed to Q; is that right?

23 A. Yeah, when we first started.

24 Q. Now, how many other debts did you pay off for
25 Tommy?

1 A. Just that one, I believe.

2 Q. So there was not a debt owed to anybody at Summer
3 Creek Road?

4 A. I don't remember exactly.

5 Q. The money that you provided to Tommy Sekula was
6 money that was the government's money that you used for him
7 to make the purchase of heroin or some other drug, right?

8 A. Initially, yeah, that first time, which is common.
9 You know, without being able to make that debt good, they
10 most likely, in my experience, wouldn't deal with Thomas.
11 And due to the potential of how big this organization is, my
12 supervisors cleared it that we would go ahead and pay off
13 this debt to get into the organization, to exactly see how
14 big they are.

15 Q. Okay. And would you be surprised then if in your
16 investigation, you realized that there was another debt that
17 was paid off during the course of him working as a
18 confidential informant?

19 A. I mean, without looking at specifically what you
20 are talking about, I can't say for sure. I don't recall.

21 Q. All right. Now, you had mentioned that there was a
22 report by Tommy that he had been to Q's home in Ladson,
23 which is the Margaret Drive residence; is that right?

24 A. Yeah, that's right.

25 Q. And that he had told you that he was not able to

1 buy from Q. And he one time bought from Cicci; is that
2 right? When he was at Q's house, Tommy bought from Cicci
3 because Q was asleep?

4 A. No.

5 Q. Who did Tommy buy from when Q was asleep?

6 A. I believe the specific one that you are talking
7 about was on August 17th, 2015. I believe that's what you
8 are talking to, in which we purchased from Justin Hunter.

9 Q. Okay. Now, what evidence do you have other than
10 Tommy saying so that it was Justin Hunter?

11 A. The audio and video that we had on Tommy as he went
12 in. The video, again, like I mentioned, some of the
13 problems with the equipment coming from light to dark,
14 sometimes it's hard to see. So in the video, it was clear
15 that it was a different individual, but it was hard to make
16 out that individual.

17 Q. And was that a different voice? Would you agree
18 with that?

19 A. Yeah.

20 Q. And do you have a photograph, a still photograph
21 from this transaction showing that it was Justin Hunter?

22 A. I don't personally remember if I do.

23 Q. Other than that, do you have anything else to prove
24 that it was Justin Hunter?

25 A. No, just the testimony that Thomas had given to me.

1 He told me that he bought from Justin Hunter. He described
2 Mr. Roberts being passed out. And he described Will being
3 there. And he said that he bought it from Justin.

4 Q. Now, you had mentioned that there was a trash pull
5 in front of [REDACTED] Abberly Crossing Apartment?

6 A. Abberly Crossing, yes, ma'am.

7 Q. And there was other documents entered that didn't
8 belong to Mr. Hunter; is that right?

9 A. Right, there was other mail in there.

10 Q. And the mail for [REDACTED] Bear Island Road, was that
11 addressed to anybody specifically?

12 A. One of them it was.

13 Q. Who was that?

14 A. I believe his name was Alfonzo Stoney.

15 Q. Had you made an arrest of Alfonzo Stoney?

16 A. No.

17 Q. Do you know how Alfonzo Stoney is related to Justin
18 Hunter?

19 A. I don't know exactly how they are related, no.

20 Q. Do you know whether or not Alfonzo Stoney was ever
21 a resident at Bear Island Drive or Road?

22 A. I can't say for sure it was him. During my
23 surveillance, I did see one or two different black males
24 there that I couldn't make out that I didn't see before
25 speaking with people who work at Vista Sands. I believe

1 Mr. Stoney's sister was the tenant that was on the lease.
2 However, they disclosed to me that they don't believe she
3 stays there. They said that there was an incident where
4 there was a female that came to drop off the rent that
5 wasn't on the lease. And, again, they said that they don't
6 ever see the female that was on the lease. So they felt
7 like it was kind of a third-party thing.

8 Q. Okay. Let's talk about this gift card for a
9 minute. You said that you found the remnants of a gift
10 card. Do you know the amount of the gift card?

11 A. I don't. I don't think it was on there.

12 Q. And this is actually a gift card. You can pick
13 that up from Walmart, Bed, Bath and Beyond, and it's one of
14 those gift cards you take to the register and put money
15 on?

16 A. Right. It was a specific -- it was a Visa. It
17 wasn't like a Bed, Bath and Beyond, where you can only use
18 it as Bed, Bath and Beyond. But I think you could get
19 something like that at Walgreens to put money on. It's just
20 a prepaid card.

21 Q. You are not aware of the amount of money?

22 A. Not sure.

23 Q. Could have been 50, could have been 5 grand? We
24 don't know?

25 A. Right. I think there's a limit on them.

1 Q. What's the limit?

2 A. I don't know, but I think there is one.

3 Q. Now, you also said that there was some Western
4 Union receipts that were put into evidence.

5 A. Yes, ma'am.

6 Q. Either of those over \$200?

7 A. I don't remember the exact amount on there, but I
8 know it's on there, if we could look at it again.

9 MS. JOHNS: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 BY MS. JOHNS:

12 Q. Looking at State's Exhibit No. 40, which is the
13 Western Union receipt, can you see what amount is down
14 there?

15 A. I believe it says \$270 was transferred.

16 Q. And looking at State's Exhibit No. 39, can you tell
17 me how much money is on that?

18 A. That one was \$150.

19 Q. \$150. Then I want to show you State's Exhibit 42,
20 which is the passport belonging to Justin Hunter. Can you
21 give me the state of residence for Mr. Hunter?

22 A. State of residence or state of birth?

23 Q. State of birth, excuse me.

24 A. New York.

25 Q. And the Western Union wires were sent to New York;

1 is that right?

2 A. That's correct.

3 Q. And it was \$200-some, 270 and then 150?

4 A. That's correct.

5 Q. Now, would it surprise you that Mr. Hunter might
6 have some family that lives in New York, like children or
7 whatever?

8 A. No, I could believe that.

9 Q. So the fact that there was a transaction made is
10 just an assumption that it was for drugs; is that right?

11 A. Well, it could be. I didn't specifically talk to
12 him about that wire transfer. However, it was disclosed by
13 Mr. Hunter that he purchased drugs in New York.

14 Q. Right. All right. Now, with regard to the strip
15 searches of Tommy, who conducted those strip searches?

16 A. There were usually two of us there. Just depended
17 on the day.

18 Q. When you say strip search, do you mean even cavity
19 searches?

20 A. I mean, yeah, squat and cough, like something that
21 would be in a jail, to make sure that there's nothing shoved
22 up the rectal. Usually, like, if they will have you squat
23 and cough, I guess your muscles let it go.

24 Q. Just wanted to make sure.

25 A. Okay.

1 Q. Whenever you said that you would or your undercover
2 agent, Mr. Bryant, was it -- no, I'm sorry, Brandon -- no,
3 the undercover agent that would drop Tommy off --

4 A. Brandon Allen, yes.

5 Q. Agent Allen?

6 A. Yes, ma'am.

7 Q. When he dropped him off at a certain location, who
8 followed him or watched him walk to the door of the house?

9 A. It would usually be somebody out there doing
10 surveillance. What we would try to do is when we had a
11 location set up, we would try to get out there and do
12 pre-surveillance, see who is in the area, see what cars are
13 there. And we would usually try to get a fixed location,
14 because that's the best. We sit there and watch the whole
15 thing. If not, we would have multiple people driving by at
16 different times just to confirm and check on things, make
17 sure everything is all right.

18 Q. How long would the transactions work?

19 A. Short, matter of minutes.

20 Q. And how long would the walk from the house back to
21 the undercover car last?

22 A. Matter of minutes.

23 Q. Five minutes?

24 A. Depending on where exactly they went or how fast
25 they walked or ...

1 Q. Would you know whether or not Tommy would have
2 thrown down any money or thrown down any kind of dope during
3 this walk within his path?

4 A. I couldn't say for sure without watching him 100
5 percent of the time. However, you can see from the videos
6 that they go in and purchase it, and then he brings back
7 that amount similar to what we do purchase. So, I mean, I
8 would say it's unlikely.

9 Q. Would you agree there were hundreds of people
10 affected by Tommy Sekula's drug dealing, Tommy Sekula's use
11 and Tommy Sekula's sales in this organization, hundreds of
12 people?

13 A. I couldn't say that, not hundreds.

14 Q. Would you say there's more than 25?

15 A. Are we talking about for Tommy or for the
16 organization --

17 Q. I'm sorry. I didn't mean to cut you off.

18 A. No, because for the organization, yeah, I could say
19 definitely around 100, because I sat and watched multiple
20 people come in and out. Tommy, I couldn't say 100 for sure.
21 Because the only thing I knew really of seeing Tommy was the
22 one that I had with my confidential informant.

23 Q. Okay. But when you debriefed him, he told you
24 everybody he bought from that you know of and everybody he
25 sold to; is that right?

1 A. I don't know if that was in my debrief or it was in
2 SLED's.

3 MS. JOHNS: I don't have anything further. Thank
4 you, Your Honor.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. UNDERWOOD:

8 Q. Agent Lundberg, during the controlled purchase
9 operations using Thomas Sekula, did he ever appear high to
10 you?

11 A. No, he didn't ever appear high. Sometimes it
12 looked like he was not feeling good. Sometimes I had to go
13 and find him, just because his phone and him not having a
14 place to live, but ...

15 Q. Now, on cross-examination, you were asked about
16 being able to identify Justin Hunter from the audio video
17 evidence. Were there any images that were clear of his face
18 in those videos?

19 A. Video in particular?

20 Q. Yes.

21 A. I can't say for sure without reviewing on that
22 specific one if I could see his face or not.

23 Q. Is his voice captured in audio recordings on both
24 phone calls and the controlled purchase?

25 A. Yes, on some of the further ones, definitely.

1 Q. And have you reviewed those recordings?

2 A. Yes.

3 Q. Now, it was established by looking at his passport
4 that he's from the state of New York, correct?

5 A. Yes.

6 Q. Does he have a strong accent?

7 A. Yes.

8 Q. Have you had an opportunity to speak with Justin
9 Hunter outside of these operation?

10 A. I have.

11 Q. What was the circumstances of that?

12 A. Upon the finalizing of the case, we served multiple
13 search warrants and arrest warrants and different things, in
14 which myself and Special Agent Wingo with SLED, we had an
15 opportunity to sit down and talk with Mr. Hunter.

16 Q. In general summary fashion, what did he tell you in
17 that discussion?

18 A. Basically, he disclosed that he was selling heroin.
19 He disclosed that he did go to New York to get it. I can't
20 say exactly the exact amount he said, but I believe it was
21 somewhere in the ounces range, that he would go up there and
22 come back with it and that he would sell in Charleston, in
23 South Carolina area.

24 Q. And as a result of that conversation that you've
25 had with him, were you able to recognize his voice in

1 recordings?

2 A. Yeah, I can tell if it's clear.

3 MR. UNDERWOOD: Permission to publish State's
4 Exhibit 24.

5 THE COURT: Any objection, Ms. Johns?

6 MS. JOHNS: No, Your Honor. It's already in
7 evidence.

8 THE COURT: Mr. Griffith?

9 MR. GRIFFITH: No objection, Your Honor.

10 THE COURT: Proceed.

11 (Whereupon, audio is played.)

12 BY MR. UNDERWOOD:

13 Q. Do you recognize the three voices in that
14 recording?

15 A. Yes.

16 Q. Whose voices are they?

17 A. Myself, Thomas Sekula and Justin Hunter.

18 MR. UNDERWOOD: Thank you. That's all the
19 questions I have, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MR. UNDERWOOD: None, Your Honor.

23 THE COURT: From the defense, Mr. Griffith?

24 MR. GRIFFITH: No, Your Honor.

25 THE COURT: From the defense, Ms. Johns?

1 MS. JOHNS: No, Your Honor.

2 THE COURT: Sir, you are excused.

3 (Whereupon, a bench conference takes place off the
4 record.)

5 THE COURT: Madam Forelady, ladies and gentlemen,
6 we are going to take advantage of this break in testimony to
7 take our evening recess. During the break, please do not
8 discuss the case in any manner whatsoever. Please do not
9 read, watch or listen to any media accounts about this case.
10 And please do not do any independent research on the
11 Internet regarding any issue or matter involved in this
12 case. As I've already indicated, you are bound by your oath
13 to decide this case according to the sworn testimony and the
14 other evidence that will be introduced.

15 When you come to the courthouse in the morning, you
16 will come directly to your -- you will follow their
17 instructions on how where you need to congregate. I think
18 y'all meet downstairs and then you bring them up here.

19 We will resume in the morning at 10. We are going
20 to start a little bit later because we have some matters of
21 law that we need to dispose of and I don't want y'all
22 waiting while we are doing that. So we appreciate your
23 patience. We will see you in the morning at 10. Please
24 stack your notepads on the edge of the banister as you leave
25 so we can secure those during the evening recess. Have a

1 great evening. We will see you in the morning at 10.

2 (Whereupon, the jury leaves open court at 5:14
3 p.m.)

4 THE COURT: Is there anything else before we
5 adjourn for the evening from the State?

6 MR. UNDERWOOD: Nothing from the State, Your Honor.

7 THE COURT: From the defense, Mr. Griffith?

8 MR. GRIFFITH: Nothing from Mr. Roberts.

9 MS. JOHNS: No.

10 THE COURT: You can leave your stuff in here. It's
11 locked, so you don't have to worry about anybody going
12 through your things and you don't have to take stuff unless
13 you feel like it. See you all in the morning at 10.

14 (Whereupon, proceedings are adjourned.)

15

16 (Whereupon, the trial continues on July 25, 2017.)

17 THE COURT: Did you have an interim opportunity to
18 go over all the discovery with your client?

19 MR. GRIFFITH: Of course, I did not go over all
20 the --

21 THE COURT: Well, the highlights, yeah.

22 MR. GRIFFITH: I did have an opportunity to show
23 him where he appeared in the video and where they spoke his
24 name. And also went over some of the written discovery, the
25 reports from the officers, but then to discuss --

1 THE COURT: The plea offer.

2 MR. GRIFFITH: -- the plea offer.

3 THE COURT: Did you all have plea negotiations?

4 MR. GRIFFITH: I did speak with Mr. Roberts
5 concerning the prior agreement and --

6 THE DEFENDANT: He mentioned to me, Your Honor,
7 but --

8 THE COURT: I don't want you to, like, compromise
9 yourself and tell me anything like that y'all said.

10 THE DEFENDANT: I was just --

11 MR. GRIFFITH: Let me just ask.

12 THE DEFENDANT: I know how to pose --

13 THE COURT: I'm just trying to protect your
14 interests.

15 THE DEFENDANT: I was really basing that
16 consideration off of what you said yesterday when he had a
17 time to actually view whatever was --

18 THE COURT: The most damaging evidence against you
19 is what I contemplated him showing you.

20 THE DEFENDANT: I didn't see anything. That's what
21 I'm saying. He mentioned it to me and he showed me the
22 video, but I didn't see anything incriminating what I'm
23 saying.

24 THE COURT: Okay.

25 THE DEFENDANT: In consideration of the plea, I

1 thought that the opportunity was to give consideration to
2 once I view the most highlights or incriminating parts,
3 which I didn't see.

4 THE COURT: If you think it's worth -- you have to
5 make the decision, because you have to live with the
6 consequences. If you are happy with your decision, I'm
7 happy with your decision.

8 THE DEFENDANT: My grandmother is 82 years old. If
9 I take a plea right now, I'LL never see her again in my
10 life. She's 82 with heart congestion failure, Your Honor.

11 THE COURT: Well, I'll tell you what. I've seen
12 people go in Hospice and tell people they don't have but
13 five days to live and they come out and live five more
14 years. You just never know what's going to happen in life.

15 I just always have to look at worst scenarios. And
16 I think what you are looking at is mandatory 25, which at 85
17 is -- my math isn't good. That's why I went to law school.
18 That is 21.25 years? Sir, how old are you?

19 THE DEFENDANT: 38.

20 THE COURT: Worst case scenario, you would almost
21 be 60. So you would have to decide -- what did you all
22 offer him, Mr. Underwood?

23 MR. GRIFFITH: Your Honor, if it please the Court.
24 That is not the worst case scenario.

25 THE COURT: That's sort of the tip of the iceberg,

1 isn't it?

2 MR. GRIFFITH: That's the lowest mandatory is what
3 he could be -- that carries 25 to 40. And the other two
4 charges carry 7 to 25 and 25, respectively. So there's a
5 significant amount of more time.

6 THE DEFENDANT: So the plea, you said 7 with a 10
7 cap, right? Is this nonviolent?

8 THE COURT: I don't know. Is it nonviolent?

9 MR. UNDERWOOD: They are violent and serious, Your
10 Honor.

11 THE COURT: But if you have a range of 7 to 25,
12 your lawyer can argue for 7, and they can argue for 25. I
13 am not -- like I told you, I'm not particularly good at
14 math, but it would seem to me the odds on that are better
15 than the straight whatever else you are facing. But you've
16 got to evaluate the evidence.

17 THE DEFENDANT: Yeah, I was just -- not just based
18 on the evidence.

19 THE COURT: I don't know that I would leave my
20 faith to 12 people. I'm just --

21 THE DEFENDANT: My faith is in the Court's hands
22 regardless --

23 THE COURT: I don't make the decision. The 12
24 folks make the decision.

25 THE DEFENDANT: I understand that, but the

1 presumption is there. I was trying to understand the plea.

2 Cap means --

3 THE COURT: Cap means the most you could get is
4 whatever the cap they've offered you. And the minimum is
5 the minimum, which would require them to reduce your thirds
6 to seconds.

7 Right? Is that what you would have to reduce it
8 to? You have to reduce his thirds to seconds? I can't
9 remember.

10 MR. UNDERWOOD: I'm sorry, Your Honor, I missed the
11 first part of the question.

12 THE COURT: What y'all have offered him, the range,
13 requires that you reduce his charges, correct?

14 MR. UNDERWOOD: Correct.

15 THE COURT: From thirds to seconds.

16 MR. UNDERWOOD: Might have been actually to
17 first.

18 THE COURT: Oh, yeah.

19 THE DEFENDANT: It would be nonviolent, right?

20 THE COURT: I don't know. Would it be violent?

21 MR. UNDERWOOD: Trafficking is violent and serious,
22 Your Honor.

23 THE COURT: Okay. And what did the other gentleman
24 receive the other day? What did you all do with him?

25 MR. UNDERWOOD: He was sentenced to eight years.

1 THE COURT: Yeah, but what did you all offer him?
2 Was it negotiated eight or was it a cap.

3 MR. UNDERWOOD: It was a recommended cap, Your
4 Honor.

5 THE COURT: The recommended cap was eight years?

6 MR. UNDERWOOD: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. UNDERWOOD: And the offer in this case, Your
9 Honor, would have been -- the discussions I had with
10 Mr. Griffith prior was a cap of 10 years with some
11 cooperation.

12 THE COURT: Oh.

13 MR. UNDERWOOD: And that was -- we were still in
14 discussions. And that was what led to last night, the
15 opportunity for them to speak some more, Your Honor.

16 THE COURT: So are you -- what would he be
17 discussing with his client, I guess, is what I'm asking?
18 The 10?

19 MR. UNDERWOOD: Best case scenario would have been
20 a cap of 10 years with cooperation from the defense.

21 THE COURT: Okay. And that would go then, the
22 cooperation would go beyond Mr. Hunter; or what is the
23 extent of Mr. Hunter?

24 MR. UNDERWOOD: Well, at this point, other
25 individuals in the organization, Your Honor.

1 THE COURT: Okay. So the first offer was a minimum
2 of seven and a cap of --

3 MR. UNDERWOOD: The very first offer, Your Honor, I
4 believe was 13 to 15 or 13 to 16, somewhere in that range.

5 THE COURT: So is the offer of the cap of 10 still
6 available to him with cooperation?

7 MR. UNDERWOOD: It wasn't quite a firm offer.
8 Mr. Griffith and I were discussing that as a possible
9 option.

10 THE COURT: I was just trying to be clear what it
11 was he needed to discuss with him.

12 MR. UNDERWOOD: But if that was an offer,
13 cooperation would be a key component on that.

14 THE COURT: Absolutely. I would imagine it would
15 be.

16 MR. GRIFFITH: Your Honor, Mr. Roberts asked me
17 that if he were to plead guilty, could he then file an
18 appeal on the constitutional grounds that he has --

19 THE DEFENDANT: Not an appeal, a writ.

20 THE COURT: It would be an appeal, sir. It
21 wouldn't be a writ. A writ is what you file in federal
22 court.

23 THE DEFENDANT: For constitutional violation --

24 THE COURT: They don't have any jurisdiction over
25 this. They kick that back. You would have to go to our

1 Court of Appeals. And once a decision is rendered there, if
2 you didn't like it, you would have to go to the Supreme
3 Court, if they accept it, sir.

4 THE DEFENDANT: And so, yeah --

5 THE COURT: And at a minimum, you are looking at
6 six years before any of that gets resolved, which you would
7 already have maxed out what they were offering you, pretty
8 much.

9 THE DEFENDANT: All right. Because I have a
10 petition right now in federal court.

11 THE COURT: They are going to kick it back. You
12 haven't even had a conviction yet. And it's going to take
13 them probably forever to do it. So if you are hanging your
14 hat on those hopes, you know -- they are not going to do
15 anything until you've exhausted all of your State court
16 remedies. And you really -- I mean, again, I can't give you
17 legal advice, but I can tell you all of your arguments don't
18 have any merit. The ones you presented to the Court, if
19 they had any merit, I would have granted relief on it.

20 MR. GRIFFITH: As his attorney, Your Honor, I can
21 tell him that the Court, this Court, has already heard his
22 arguments and has ruled on those arguments. And those
23 arguments are no longer before the Court.

24 THE COURT: That's correct. So now they are
25 preserved for appeal purposes. So once we get done with

1 this trial, it would have to be appealed to the Court of
2 Appeals. And you have to assume that they would see if
3 there was any merit once they reviewed the record. And the
4 appellate defense might look at this, the entirety of this
5 record, and say there's no grounds and dismiss it and say to
6 the court, it's a waste of their time to look at it, in
7 which case it's done. And you could conceivably file a writ
8 with the federal court, but they are not going to -- they
9 are just going to kick it back with a form order.

10 THE DEFENDANT: That brings me back to the
11 consideration of the plea provided that I see incriminating
12 evidence on -- can I see something?

13 THE COURT: I believe he's gone over with you
14 everything that they have against you.

15 You do recognize that your co-defendants are coming
16 to testify against you? All of them have already pled
17 guilty and their pleas are contingent on cooperation. And
18 they plan to come and testify, correct; or am I incorrect?

19 MR. UNDERWOOD: Your Honor, co-defendant William
20 Brown is scheduled to testify tomorrow morning. The last
21 meeting that I had with Ms. Quezada did not go very well.
22 Her attorney was going to meet with her again and get back
23 to me.

24 THE COURT: And then Mr. Brown said he wasn't
25 going to cooperate?

1 MR. UNDERWOOD: Mr. Johnson was not cooperating.
2 He's already been sentenced, Your Honor.

3 THE COURT: I suspect Ms. Quezada will come around,
4 because when I am done with this trial, I'm sentencing
5 everyone who is involved. I am not waiting. So you need to
6 make them aware that they all need to be here at the
7 conclusion of this case, because I'm disposing of it all so
8 I can write a letter to the Supreme Court to tell me it's
9 done with. All right?

10 Now, what do you want to do? Do you want to talk
11 to your lawyer more and make a decision? Whatever decision
12 you make, I can live with. None of us can make that
13 decision for you, because none of us will have to live with
14 your consequences. I'm just not a betting person. I like
15 dealing in things that are empirical and certain. So you
16 have to weigh and you have to decide.

17 There's really is no good outcome because you can't
18 go home. So now you have to decide whether 7 is palatable
19 to you, the 7 to 25, or the 10 with cooperation, or whether
20 you just want to roll the dice.

21 THE DEFENDANT: They didn't say that yesterday.
22 They said 7 with a 10 cap.

23 THE COURT: I think they said 7 with -- what now?
24 Your lawyer and I think what Mr. Underwood is saying is that
25 they would be willing to discuss a ten-year cap as long as

1 you cooperated.

2 THE DEFENDANT: They didn't say nothing about
3 cooperation.

4 THE COURT: Well, any deal is going to include
5 cooperation unless they are going to ask for the high-end of
6 whatever they are looking for. Now, that doesn't mean they
7 are going to get it. They can ask. I don't know what I'm
8 going to do.

9 MR. GRIFFITH: Your Honor, if it please the Court,
10 I wonder if I can speak to Mr. Underwood just for a
11 moment.

12 THE COURT: Sure. Go right ahead.

13 (Whereupon, an off-the-record discussion takes
14 place.)

15 MR. GRIFFITH: If it please the Court, Your Honor,
16 I've discussed the plea offer. There are two that they
17 offered. They've offered a cap of 10 if he would cooperate.

18 Mr. Roberts said that he just doesn't feel it would
19 be honorable for him to cooperate and testify against other
20 people.

21 THE COURT: That's the position that Mr. -- I
22 forget the other gentleman's name -- took as well. That's
23 his decision.

24 MR. GRIFFITH: But they had said they would observe
25 18, straight 18 if he were to plead without any cooperation.

1 Of course, we were arguing that nobody else in this case got
2 anything like 18.

3 THE COURT: Yeah. My other question is, why
4 wouldn't he just extend -- based on what I discussed with
5 y'all yesterday -- the original offer, since he really
6 didn't have a meaningful conversation with his lawyer about
7 that one? At least I don't perceive that he had a
8 meaningful conversation with him about it, because he
9 wouldn't talk to him.

10 MR. UNDERWOOD: Your Honor, my understanding was
11 the original offer was communicated. It was the second
12 offer that was not communicated.

13 THE COURT: I'm sorry. I might have my continuum
14 confused. What was the first offer?

15 MR. UNDERWOOD: It was a range in the teens, Your
16 Honor.

17 MR. GRIFFITH: 15 to 17.

18 THE COURT: And what was the second offer?

19 MR. UNDERWOOD: Second offer was the cap of 10 with
20 cooperation.

21 MR. GRIFFITH: With cooperation.

22 THE COURT: So where did I get a minimum of 7 and a
23 cap of 25?

24 MR. GRIFFITH: That's the statutory -- it was 7 to
25 10 with the cooperation.

1 THE COURT: Okay. I got you. Now, what statutory
2 range would that be for, what offense?

3 MR. UNDERWOOD: The offense of trafficking heroin,
4 4 to 14 grams as a first offense carries 7 to 25 years.

5 THE COURT: That's not what he's facing.

6 MR. UNDERWOOD: If he were to plead, that is the
7 level he would be pleading to.

8 THE COURT: Yeah, but if he's convicted, that's not
9 first.

10 MR. UNDERWOOD: If he's convicted on the top count
11 it would be a minimum of 25 up to 40, Your Honor.

12 THE COURT: 25 to 40. Now, are you all willing to
13 negotiate in the range of 7 to 25 on the first if he pleads,
14 or some range of that, or some combination of the charges?

15 MR. UNDERWOOD: I'm not sure if I understand what
16 you mean by the combination, Your Honor.

17 THE COURT: Well, he has seven counts. That's what
18 I'm referring to.

19 MR. GRIFFITH: Your Honor, statutorily, if he were
20 to plead to one that is 7 to 25, it would be at the
21 discretion of the Court to determine whether it was 7 or 25
22 or someplace between there.

23 THE COURT: That's correct.

24 MR. GRIFFITH: And so if he's going to --

25 THE COURT: But they would have to extend the plea

1 to him to let him do it as a first, wouldn't they. Because
2 isn't it a first? I don't know his record. What's his
3 record?

4 THE DEFENDANT: This is a first, Your Honor.

5 THE COURT: Do you know your client's record,
6 Mr. Griffith?

7 MR. GRIFFITH: As far as I know, he has no record
8 here in South Carolina.

9 THE COURT: But does he have a record in other
10 states?

11 MR. GRIFFITH: His New York record is not
12 significant.

13 THE COURT: Doesn't include any drug offenses?

14 MR. GRIFFITH: Doesn't include any.

15 MR. UNDERWOOD: If I can beg the Court's
16 indulgence, I'm going to pull his rap sheet.

17 THE COURT: Are you aware of anything that would
18 amount to an enhancement?

19 MR. GRIFFITH: I am not, Your Honor.

20 THE COURT: Okay. Are we ready?

21 MR. UNDERWOOD: He does have a prior conviction
22 from New York. I'm trying to see if it serves as an
23 enhancement, Your Honor.

24 THE COURT: What level? What was he convicted?

25 MR. UNDERWOOD: It's listed as criminal possession

1 of controlled substance, fifth degree. I can't remember the
2 exact definition of that. I know there are at least seven
3 degrees in New York.

4 THE COURT: I would have to plead ignorance. I
5 have no idea.

6 MR. GRIFFITH: That was 2002.

7 THE DEFENDANT: That was 2002. And it was crack
8 cocaine.

9 THE COURT: Yeah, but would it be like a simple
10 possession?

11 THE DEFENDANT: Yeah, it was possession.

12 THE COURT: It would still count as an enhancement
13 in South Carolina.

14 THE DEFENDANT: Oh, I thought 10 years it was
15 gone.

16 THE COURT: No. 10 years is used against you to
17 impeach you, but a drug offense couldn't be used to impeach
18 you anyway, because the Supreme Court said that doesn't
19 prove whether you are truthful or not. But it can be used
20 to enhance your offenses if it's higher than a magistrate
21 level offense where you were counseled and you had a lawyer.
22 So that would make these seconds, which increases the
23 penalty range. What do you want to do?

24 MR. GRIFFITH: Your Honor, any time he pled guilty,
25 I just wanted to clarify -- he just needs some

1 clarification. He doesn't understand the process really.
2 The judge always decides what the sentence will be. It's up
3 to the judge within the statutory limits.

4 THE COURT: Absolutely. Y'all can each argue for
5 what you want, but it's ultimately the Court's decision,
6 unless it's a negotiated plea where y'all agree to what it's
7 going to be. And then I can either honor it or reject it.

8 MR. GRIFFITH: Thank you, Your Honor. So our plea
9 agreement we've been talking about now is what we just
10 discussed.

11 THE COURT: Which is the 7 to 25?

12 MR. GRIFFITH: Cap of 10 if he would cooperate; 18
13 recommendation if he does not cooperate. And then we just
14 discussed whether they would let him plead to a trafficking,
15 first offense trafficking, which carries 7 to 25. And I
16 believe they have said that they are not willing to let him
17 plead in that case straight up on --

18 MR. UNDERWOOD: No, Your Honor. We feel that with
19 his criminal history and his involvement and his propensity
20 for violence, Your Honor, we think 18 years would be an
21 appropriate sentence. And we would stand with that
22 recommendation should we go with a plea.

23 THE COURT: If these are firsts, you can't stop him
24 from pleading straight up on all of them, can you? What
25 would be the range?

1 MR. UNDERWOOD: If he were to plead straight up to
2 count one, Your Honor, that's a mandatory minimum of 25
3 years.

4 MR. GRIFFITH: Yes. He has the other charge of
5 trafficking 28 grams or greater, which is 25 to 40.

6 THE COURT: Yeah.

7 MR. UNDERWOOD: And the trafficking of 4 to 14
8 grams, Your Honor, if it's a second offense, that would also
9 have the mandatory 25 as a second offense.

10 THE COURT: Yeah. We have to figure out what it
11 is.

12 MR. UNDERWOOD: But count one, it would be 25
13 regardless straight up.

14 THE COURT: If I'm facing 25 and you are offering
15 me 18, what incentive do I have to plead guilty? I might as
16 well roll the dice. Isn't that many more years. I'm just
17 thinking the way they think. I'm thinking the way I would
18 think. I've got a 50/50 chance. Your video is up there.
19 I've never seen a video that's clear, ever. Most on them
20 just show me the sidewalk and some steering wheels. I've
21 been doing this a long time.

22 So you've got to figure out whether, you know,
23 how -- the strength of your evidence. And you have to
24 determine just how clear your co-defendants are going to be,
25 because it wouldn't be the first time they walk along the

1 stand and try to protect themselves and try to keep their
2 street credibility and sort of cooperate with the deal. No,
3 you've got to weigh all those things.

4 MR. UNDERWOOD: I've considered those, Your Honor.
5 Our recommendation, if there were a plea, would be for a
6 sentence of 18 years.

7 THE COURT: All right. What do you want to do?
8 Who is the State's next witness?

9 MR. UNDERWOOD: Your Honor, our next witness is
10 Lieutenant Max Dorsey from SLED.

11 THE COURT: What number is that on your list?

12 MR. UNDERWOOD: Your Honor, that would be number
13 4.

14 THE COURT: Number 4. And then who would be after
15 that?

16 MR. UNDERWOOD: After that, we anticipate calling
17 Tommy Sekula, who's number 47.

18 THE COURT: That's number what?

19 MR. UNDERWOOD: 47, Your Honor.

20 THE COURT: Okay. And then who would be after
21 that?

22 MR. UNDERWOOD: After him would be Sergeant Brandon
23 Allen, number 35.

24 THE COURT: Number 35.

25 Who on this list are you not going to be calling?

1 I need to know for planning purposes. You are going to call
2 Mr. Wingo. Number two, Ryan Shipley, will you be calling
3 him?

4 MR. UNDERWOOD: I don't anticipate calling him.

5 THE COURT: Number 3?

6 MR. UNDERWOOD: Yes, Your Honor.

7 THE COURT: Number 5?

8 MR. UNDERWOOD: No, Your Honor.

9 THE COURT: Number 6?

10 MR. UNDERWOOD: Your Honor, it may be shorter if I
11 tell you who I actually do plan to call. It's rather
12 short.

13 THE COURT: It would be easier for me to just knock
14 off, because that will give me my ultimate number.

15 Number 6?

16 MR. UNDERWOOD: No, Your Honor.

17 THE COURT: Number 7?

18 MR. UNDERWOOD: No, Your Honor.

19 THE COURT: Number 8?

20 MR. UNDERWOOD: No, Your Honor.

21 THE COURT: Number 9?

22 MR. UNDERWOOD: No, Your Honor.

23 THE COURT: 10?

24 MR. UNDERWOOD: No, Your Honor.

25 THE COURT: 11?

1 MR. UNDERWOOD: Yes, Your Honor.
2 THE COURT: 12?
3 MR. UNDERWOOD: Yes, Your Honor.
4 THE COURT: 13?
5 MR. UNDERWOOD: No, Your Honor.
6 THE COURT: 14?
7 MR. UNDERWOOD: No, Your Honor.
8 THE COURT: 15?
9 MR. UNDERWOOD: No, Your Honor.
10 THE COURT: 16?
11 MR. UNDERWOOD: No, Your Honor.
12 THE COURT: 17?
13 MR. UNDERWOOD: No, Your Honor.
14 THE COURT: 18?
15 MR. UNDERWOOD: No, Your Honor.
16 THE COURT: 19?
17 MR. UNDERWOOD: No, Your Honor.
18 THE COURT: 20?
19 MR. UNDERWOOD: No, Your Honor.
20 THE COURT: 21?
21 MR. UNDERWOOD: No, Your Honor.
22 THE COURT: 22?
23 MR. UNDERWOOD: No, Your Honor.
24 THE COURT: 23?
25 MR. UNDERWOOD: No, Your Honor.

1 THE COURT: 24?
2 MR. UNDERWOOD: Yes, Your Honor.
3 THE COURT: 25?
4 MR. UNDERWOOD: Yes, Your Honor
5 THE COURT: 26?
6 MR. UNDERWOOD: Yes, Your Honor.
7 THE COURT: 27?
8 MR. UNDERWOOD: Yes, Your Honor.
9 THE COURT: 28?
10 MR. UNDERWOOD: Yes, Your Honor.
11 THE COURT: 29?
12 MR. UNDERWOOD: Yes, Your Honor.
13 THE COURT: 30?
14 MR. UNDERWOOD: No, Your Honor.
15 THE COURT: 31?
16 MR. UNDERWOOD: No, Your Honor.
17 THE COURT: 32?
18 MR. UNDERWOOD: No, Your Honor.
19 THE COURT: 33?
20 MR. UNDERWOOD: No, Your Honor.
21 THE COURT: Let's see. 36?
22 MR. UNDERWOOD: No, Your Honor.
23 THE COURT: 37?
24 MR. UNDERWOOD: No, Your Honor.
25 THE COURT: 38?

1 MR. UNDERWOOD: No, Your Honor.

2 THE COURT: 39?

3 MR. UNDERWOOD: No, Your Honor.

4 THE COURT: 40?

5 MR. UNDERWOOD: No, Your Honor.

6 THE COURT: 41?

7 MR. UNDERWOOD: No, Your Honor.

8 THE COURT: 42?

9 MR. UNDERWOOD: No, Your Honor.

10 THE COURT: 43?

11 MR. UNDERWOOD: Assuming that our evidence comes in
12 through another witness, no, Your Honor.

13 THE COURT: 44?

14 MR. UNDERWOOD: Same. Assuming our evidence comes
15 in through another witness, no, Your Honor.

16 THE COURT: And 45?

17 MR. UNDERWOOD: Same, Your Honor. If evidence
18 comes in through another witness, then no.

19 THE COURT: 46?

20 MR. UNDERWOOD: The same, Your Honor, if our
21 evidence comes in, no.

22 THE COURT: They are all chain witnesses?

23 MR. UNDERWOOD: And also who were involved in the
24 search warrant.

25 THE COURT: William Brown?

1 MR. UNDERWOOD: Yes, Your Honor.

2 THE COURT: Rosemarie Quezada, pretty much figure
3 she will eventually or not, but on the safe side, say she
4 is?

5 MR. UNDERWOOD: Yes, Your Honor.

6 THE COURT: Shirley Silvis.

7 MR. UNDERWOOD: No, Your Honor.

8 THE COURT: Craig Valentine?

9 MR. UNDERWOOD: Yes, Your Honor.

10 THE COURT: And 52, Sean Gibbons?

11 MR. UNDERWOOD: No, Your Honor.

12 THE COURT: Mr. Griffith, what do you want to do?

13 MR. GRIFFITH: Your Honor, he's asking what the
14 incentive is. And I tried to explain to him that a
15 minimum --

16 THE COURT: Well, the incentive is 25 to 40 years
17 is a long time --

18 MR. GRIFFITH: It's a long time.

19 THE COURT: -- versus 18 times 85 percent, which is
20 about --

21 MR. GRIFFITH: with their recommendation of 18,
22 Your Honor, of course, we would argue --

23 THE COURT: It's 15 years, give or take.

24 THE DEFENDANT: That's with the enhancement, Your
25 Honor? That's what I'm trying to consider.

1 THE COURT: I think they are going to let you plead
2 to first. Enhancements mean that your minimum is raised.
3 They get greater. The penalty gets greater if that drug
4 offense in New York comes against you. That's a matter of
5 law for the Court to determine if it's an enhancement on
6 your sentence.

7 THE DEFENDANT: All right. What I was trying to
8 ask him was on the -- I'm going to ask it this way.

9 THE COURT: Sure.

10 THE DEFENDANT: If I pled to the 7 and 25 --

11 THE COURT: I don't think that's available to you.

12 THE DEFENDANT: All right. Then I can't. Oh,
13 yeah.

14 THE COURT: Only offer on the table is 18.

15 THE DEFENDANT: Oh, no.

16 THE COURT: And at 85 percent, that's 15.3 years.
17 Of course, I don't calculate sentences. And then you would
18 get credit for the time you've already served. And I
19 stopped trying to figure out what the Department of
20 Corrections does. Because one time I gave somebody seven
21 years and I had a bunch of anxiety about it, and they let
22 him out after four months. I stopped thinking about it.

23 THE DEFENDANT: Four months?

24 THE COURT: I just used that as an example, but
25 under regulation and statute, they have the ability to

1 calculate sentences and determine when they are going to let
2 folk out. And I just don't have anxiety about those things
3 anymore. I just do what I think is appropriate. And it's
4 up to them to determine how they calculate your sentence. I
5 don't want you to think there's any guarantees. I'm just
6 saying, worst case is 15.3 years. But you never know what
7 they'll do once you're there. I have no idea, but you
8 certainly would get credit for the time you already served
9 at the detention center.

10 MR. GRIFFITH: And, of course, any sentencing is at
11 Your Honor's discretion.

12 THE COURT: The Court's discretion. We all have a
13 role to play.

14 THE DEFENDANT: But I just need this --

15 THE COURT: Sir, we just need a final decision from
16 you whether you want to do it or not, so we can proceed with
17 the trial if you don't want to.

18 THE DEFENDANT: The discretion of 18 years?

19 THE COURT: I think that's what the State is
20 offering.

21 I guess I'm trying to figure out, are you all
22 asking him to enter a negotiated plea of 18 years, or are
23 you going to be asking for 18 years? Because I don't think
24 any of these offenses carry 18 years; do they?

25 MR. GRIFFITH: Except for count one.

1 THE COURT: That carries 25.

2 MR. GRIFFITH: The other -- the next one down
3 carries 7 to 25.

4 THE COURT: Which is the trafficking?

5 MR. GRIFFITH: Trafficking less than 14 grams.

6 THE COURT: The 4 to 14 grams carries 7 to 25
7 years.

8 The second offense is a mandatory 25 years.

9 So, sir, if the drug offense in New York
10 constitutes an enhancement, you would be facing a mandatory
11 25 on that, and \$100,000 fine.

12 14 to 28 grams is a mandatory 25 years.

13 28 grams or more is 25 to 40 years. And no part
14 may be suspended nor probation granted.

15 So based on what y'all are telling me, if he pleads
16 straight up to the 4 to 14 grams, that's 7 to 25. 14 to 28
17 is a mandatory 25, unless y'all reduce the quantity and
18 agree to the 18, I guess. Is that what you are telling me?

19 MR. UNDERWOOD: I'm sorry, Your Honor?

20 THE COURT: I said, how do you come to the 18-year
21 offer, is what I'm asking?

22 MR. UNDERWOOD: That's the number that we think is
23 fair.

24 THE COURT: That's not my question. How are you
25 going to deal with the charges to make that fit, because one

1 of them is a mandatory 25.

2 MR. UNDERWOOD: He would plead to as a first
3 offense. All the trafficking charges would be reduced to 4
4 to 14 grams.

5 THE COURT: I got you. That was the question I was
6 asking. Okay.

7 That means they are going to take enhancement off
8 the table, basically. If you agree to 18, it's 18. Because
9 they are going to reduce them all. In consideration for
10 them offering you the 18, they are going to reduce all of
11 the weights down to that range, because, otherwise, they are
12 all mandatory 25. One of them is a 25 to 40. The 28 grams
13 or more is 25 to 40.

14 Which count is that?

15 Sir, the most serious count you are facing is count
16 one, which is the 28 or more grams, which carries the range
17 of 25 to 40 years.

18 Then the distribution of heroins are not more than
19 15 years, if they are first, but the minimum of five and max
20 of 30 if they are seconds.

21 The trafficking 4 to 14 is 7 to 25 years. If it's
22 a second, it's a mandatory 25.

23 The possession of a weapon is a mandatory five
24 years.

25 And the PWID meth is 0 to 15, or if it's a second,

1 five to 30.

2 THE DEFENDANT: Can I say something?

3 THE COURT: Sure.

4 THE DEFENDANT: Johnson, right, the plea range,
5 right --

6 MR. GRIFFITH: That's not up to the judge.

7 THE DEFENDANT: I know.

8 THE COURT: Mr. Johnson got in the boat earlier.
9 That's the deficit you had. You waited a long time. The
10 longer you wait to do things, the more hard their stance
11 get. Mr. Johnson over a week ago or couple week ago decided
12 he was going to plead guilty. So then their position on him
13 was different. The longer you wait, the more their position
14 changes. Because now they've had to get ready for trial and
15 do other things. And they feel like that's just --

16 THE DEFENDANT: That's what I'm saying. So I have
17 no incentive if I take 7 to 25 because I took long. I don't
18 have no incentive?

19 THE COURT: No, just means their posture changes.
20 I don't know why their posture changes. It just does.

21 How many sales did Mr. Johnson have? I can't
22 remember.

23 MR. UNDERWOOD: Mr. Johnson? He had one.

24 THE COURT: Yeah. Mr. Johnson only had one sale.
25 And you had sales on 1/7, /1/19, 2/2, 2/8 and -- yeah, 2/8.

1 So that's, one, two, three, four. And that might be why
2 they took the position they took with him. I'm not sure.

3 MS. JOHNS: Your Honor, Mr. Johnson was the one
4 found with a big amount of cocaine in his apartment in Bear
5 Island. Remember? They had over 28 grams.

6 THE COURT: But they reduced it, didn't they?

7 MS. JOHNS: Uh-huh.

8 THE COURT: I don't know. What was -- I can't
9 remember.

10 All right. Mr. Roberts, what do you want to do?
11 Time is ticking away and I've got a jury waiting and I need
12 to proceed with these witnesses.

13 THE DEFENDANT: I'm sorry, Your Honor. I was just
14 trying to -- now if -- I mean, that's crazy. I'm going to
15 have to go to trial. I can't -- because I feel like --

16 THE COURT: You don't have to explain to me.

17 THE DEFENDANT: I just want to be fair. If it can
18 be around that.

19 THE COURT: Around what?

20 THE DEFENDANT: That area of 8, 7 area, but as I'm
21 feeling that, because I worked to this point, I'm trying to
22 defend myself that it's going to be more, 7, 25 --

23 THE COURT: I'm sorry. I didn't hear you. Repeat
24 that.

25 THE DEFENDANT: I don't want to come across as

1 being a difficult person.

2 THE COURT: Oh, I don't think that at all. You
3 know, as I sit and do my job every day, I am very sincere
4 when I tell people I'm a great believer in the trial system,
5 because I am. I never try to anticipate what a jury will
6 do, because you never know what 12 people will do. People
7 have been found guilty that I never thought would be found
8 guilty. People have been exonerated that I never thought
9 would be exonerated. So I quit -- I really take seriously
10 the State Constitution that says I can have no position
11 about the facts. I don't.

12 It's up -- I sat in the family court for six years
13 where I was the finder of fact. It is a great luxury and
14 relief to me that 12 people make the decision now, that I
15 don't to make it. All I have to do is make calls about
16 questions of law. So I'm acutely aware of what it's like to
17 be a finder of fact. You have 12 different people with 12
18 different backgrounds deciding what the facts are in a case.
19 And you never know what they are going to do.

20 So only you can make that decision. And I mean it
21 wholeheartedly when I say it, whether I'm trying this case
22 or another one, that's what I'm going to be doing today or
23 tomorrow. Because if your case gets resolved, we finish
24 this one, I will pick another one. So whether you plead or
25 don't plead, it's up to you. Because, ultimately, you need

1 to make that decision because you are the only one that has
2 to deal with the consequences. If you can deal with 25
3 years, I can deal with 25 years. If you can deal with 18
4 years, I can deal with 18 years. It's your decision.

5 MR. ROBERTS: I'm just saying reasonable to a
6 person whose life is in jeopardy from the 7 to 25, my --

7 THE COURT: They are not willing to offer that at
8 this point. And I have no control over what they offer.

9 THE DEFENDANT: All right.

10 THE COURT: So now your decision you have to make
11 is whether you want to have a certainty of 18 and have the
12 reduction of these charges, or whether you want to face a
13 minimum of 25 to 40. And I'm certain they are probably
14 going to ask for a lot more than 25 if you are convicted.
15 Your sentencing is up to me. And I believe people should
16 be -- I don't believe in, like, retaliatory behavior because
17 people have a trial.

18 Sometimes people get higher ranges after a trial.
19 And that's because the facts are more developed and the
20 Court gets to see more of what happened. You know, in a
21 plea, you get a little snapshot of what happened. But in a
22 trial, you get to hear all the details. And sometimes that
23 enhances the penalty because the Court gets to hear all the
24 details.

25 But I don't believe in punishing people because

1 they exercised their constitutional right. It's your right
2 to have a trial. That's why we are here. That's why we
3 have jurors.

4 THE DEFENDANT: That's what I'm saying. I don't
5 know if you can, but I was just looking to be treated
6 fairly. You said 7 to 25 --

7 THE COURT: But you can't compare yourself to
8 somebody else, because I don't know what their circumstances
9 were. And every case is fact-driven. And I don't know what
10 they had against Mr. Johnson. And I don't know what
11 evidence they had against him. I don't know how weak or
12 strong their indication is. All that stuff plays into the
13 offer that is made. Also, how quickly people get onboard
14 plays into it, because that's a lot less preparation.
15 That's one less thing I have to attend to. And that part of
16 my file is closed and I can move on to the next part of it.

17 So as has been my experience, and I've been in -- I
18 think I've been in every county except three in South
19 Carolina, or four. I can't remember at this point. It has
20 been my experience, with the exception of a couple of
21 solicitor's offices, that the longer you wait, the more the
22 penalties become enhanced. The deals get higher and higher
23 the longer you wait to take advantage of it.

24 THE DEFENDANT: Yeah, but 18 is no different than
25 life for me.

1 THE COURT: Well, I'm going tell you, 25 years is a
2 lot longer than 18. And 40 is a lot longer than 18. That's
3 a long time.

4 THE DEFENDANT: I understand that, but 18 is -- I
5 don't see the difference, like. Once I'm there, 18 is --

6 THE COURT: Well, you got 18, which comes down to
7 15. And you will get credit for a year, five months and
8 seventeen days. So then you would sit down with your
9 counselor, and they would tell you what your expected
10 max-out date is. But it's up to you.

11 THE DEFENDANT: No, we can go to trial.

12 THE COURT: All right. Let's proceed. Get the
13 jury for me, please.

14 MR. UNDERWOOD: Your Honor, if I may briefly, just
15 to clarify, the plea was being offered as a recommendation,
16 not a negotiation. I'm not sure if that was --

17 THE COURT: So he could get less than 18?

18 MR. UNDERWOOD: It would be within your discretion,
19 but we are recommending 18.

20 THE COURT: Hold up. I misunderstood. I
21 misapprehended what you said to me. I'm sorry.

22 You could argue for less than 18.

23 THE DEFENDANT: Okay. Can we --

24 THE COURT: I can't give you any guarantees,
25 though. I don't know what I'm going to do until I hear it

1 all. That's why I never talk to lawyers in chambers about
2 their clients. Because then people come back on PCR and
3 say, judge said that I was going -- I don't know what I'm
4 going to do. I change my mind 10 times while I'm listening
5 to you all talk.

6 THE DEFENDANT: What do you mean, I can argue for
7 it?

8 THE COURT: Your lawyer can ask for less than 18.

9 THE DEFENDANT: Oh.

10 (Whereupon, an off-the-record discussion takes
11 place.)

12 MR. GRIFFITH: Your Honor, we are ready to move
13 forward.

14 THE COURT: What do you want to do?

15 MR. GRIFFITH: He does not wish to plea. He wishes
16 to proceed to trial.

17 THE COURT: You recognize your lawyer can ask the
18 Court for less than 18 years? I'm asking this for PCR
19 purposes, because I don't want you coming back later and
20 saying Mr. Griffith didn't explain it to you; you didn't
21 understand. Hindsight is always 20/20. I need you to make
22 sure you are doing this with your eyes wide open and you
23 know exactly what is being offered to you and you are freely
24 and voluntarily rejecting it.

25 THE DEFENDANT: One question.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: How it was explained to me, that
3 they wouldn't have nothing to do with it because I took
4 longer --

5 THE COURT: They are going to ask for 18. Your
6 lawyer is going to ask for less.

7 THE DEFENDANT: All right.

8 THE COURT: That's the bottom line. That's it in a
9 nutshell. So do you want to take advantage of that and face
10 the mandatory minimum of 25 and continue with the trial or
11 do you want to take advantage of the plea offer where the
12 State is going to ask for 18 and your lawyer can ask for
13 less than 18?

14 THE DEFENDANT: All right. I will take the plea.

15 THE COURT: All right. Stand up for me, sir.
16 Raise your right hand to be sworn. I need the plea sheets.

17 MR. UNDERWOOD: I have to make --

18 THE COURT: Which range is he pleading to for the
19 18? He's pleading to first on everything?

20 MR. UNDERWOOD: Yes, Your Honor.

21 THE COURT: So that would be --

22 MR. UNDERWOOD: Well, on the trafficking charges,
23 Your Honor.

24 THE COURT: So tell me which count he would be
25 pleading to under this plea deal. Because count one is a

1 mandatory 25. So you are going to reduce the quantity of
2 that to the 7 to 25?

3 MR. UNDERWOOD: May I have just one second, Your
4 Honor?

5 THE COURT: Ah-huh. Bear with us one second, sir.
6 We need to make sure so I can be clear of the range of
7 penalty.

8 THE DEFENDANT: And it's no enhancement, right?

9 THE COURT: Not if they let you plead to first and
10 reduce the amount of quantity of drugs, which is what they
11 are going to do.

12 THE DEFENDANT: Your Honor, I have another
13 question.

14 THE COURT: Sure.

15 THE DEFENDANT: So I have to waive my right to
16 appeal?

17 THE COURT: You are not waiving your right to
18 appeal. You can appeal a guilty plea, but it's unlikely if
19 ever the Supreme Court is going to grant anything on it.
20 And if you file a PCR back on it later, it probably isn't
21 going to be granted.

22 Either you are going to plead guilty and you are
23 certain of that, or you are not. If you want a trial, we're
24 going to go forward with the trial.

25 THE DEFENDANT: I will go forward with a trial.

1 I'm sorry.

2 THE COURT: I mean, why would you file an appeal of
3 a guilty plea? You know, I'm going to ask you that you can
4 appeal it, but the Supreme Court is not going to reverse a
5 guilty plea. You can file a PCR, speak to Mr. Griffith, but
6 unless you're out of your mind and you didn't know what you
7 were doing, it's not going to be reversed. I believe in
8 being honest. It's an exercise in futility to file an
9 appeal on a guilty plea.

10 MR. GRIFFITH: I believe, Your Honor, he is
11 concerned about filing an appeal.

12 THE COURT: He wants a guarantee. He wants to file
13 an appeal if he doesn't get what he wants. And that's the
14 bottom line.

15 MR. GRIFFITH: He's talking about appealing on all
16 those constitutional --

17 THE COURT: You waive all of that. And you are not
18 really waiving anything because there are no constitutional
19 grounds for you to pursue. And I don't know who you've been
20 listening to, but they have been misleading you. And I am a
21 real direct person. I don't believe in being flowery with
22 people. I'm real direct.

23 The problem is, when you have a lot of time on your
24 hands and you are listening to armchair lawyers who think
25 they know what they're talking about and they do not, they

1 can put your life in jeopardy. You are listening to folk
2 that don't know what they are talking about, who don't have
3 a law degree.

4 THE DEFENDANT: I'm talking about the case law.

5 THE COURT: There is no case law to support your
6 posture. And anybody that's told you that is misleading
7 you. And there's a whole group of people over in that
8 detention center that have been listening to those folk, and
9 they put their lives in jeopardy. And I can tell you five
10 off the top of my head that had wonderful plea deals, that
11 were in the five-year range, and ended up taking 25, because
12 they were listening to them who don't know anything about
13 the law. Don't put yourself in jeopardy listening to folk
14 that don't have a law degree and never practiced law.
15 Because it sounds beautiful in theory, but it's not reality.
16 Now, I'm just trying to be real honest. As young people
17 say, I'm keeping it 100. Okay? Because I am not -- that's
18 probably one of my deficits as a woman. I'm very direct. I
19 grew up in a family that's very direct. We don't lie to
20 each other. We could tell each other the truth and still
21 love each other. And I believe that is how you are with
22 folk. You tell them the truth so that they are never
23 unclear about what is going on. And you need to be clear
24 about what's going on.

25 If you plead guilty, you are waiving -- basically,

1 you can appeal it. I'm going to ask you if you know you can
2 appeal it in 10 days. But the likelihood of any court of
3 appeal in this state reversing a guilty plea is about zero.

4 Now, you can file a PCR and say that you didn't
5 know what you were doing. That's unlikely that's going to
6 be granted either. Because, basically, by virtue of
7 entering the plea, you are telling me you are doing it
8 freely and voluntarily, that you know all your rights, you
9 know you are waiving all of your rights. So you can file
10 it, but it's an exercise in futility.

11 So it's up to you. And it's up to you whether you
12 want to go from being able to argue for less than 18 years
13 to facing a mandatory 25. I have no discretion of mandatory
14 minimums. They get imposed if you are convicted.

15 THE DEFENDANT: All right. We will do the plea.
16 I'm just -- I'm just looking at it like the -- what I was
17 looking at as a constitutional violation --

18 THE COURT: What constitutional violation are you
19 looking at that you think has --

20 THE DEFENDANT: Took me to Columbia.

21 THE COURT: That has no validity. Under the State
22 Grand Jury rules, they can take you wherever the State Grand
23 Jury Chief Judge is sitting to do whatever he wants to do.
24 Whether it's to set a bond, have you serve your indictments,
25 they are not restricted that way. They take you to Columbia

1 because the Chief Judge in the State Grand Jury sits there.
2 And that's where you get -- that's where you get taken until
3 the case is assigned to a judge in whichever circuit it is
4 determined the case is going to be tried.

5 Right now if they ask for a bond, they can take you
6 to Columbia to Judge Newman right now. They don't have to
7 defer to me. He's never -- whoever, I don't know if it's
8 Judge McMahon or Judge Newman or Judge Benjamin or Judge
9 Lee, they are not deprived of their jurisdiction just
10 because you are in Berkeley County. And in the grand scheme
11 of things, it really doesn't matter. It's not going to
12 change anything. It's not going to cause a dismissal of
13 charges.

14 Let's just say that we take your argument they
15 shouldn't have taken you to Columbia, what difference do you
16 think that's going to make?

17 THE DEFENDANT: I was looking at the part that I
18 was prejudiced from a speedy trial from there. I have a
19 right to be tried in another county where the crime was
20 committed.

21 THE COURT: Berkeley County. They already
22 established venue.

23 MR. GRIFFITH: You know, you do a speedy trial,
24 it's a trial.

25 THE COURT: And I looked it up yesterday after you

1 made -- I was assigned this case on May 20th of 2016. I was
2 prepared to try it within six months. I gave deference to
3 the lawyers in this case. That's why we are trying it now,
4 to their schedules, otherwise, because I don't let grass
5 grow under my feet. When something is assigned to me, I
6 dispose of it usually within six months. Even a death
7 penalty, I dispose within a year. Because the longer you
8 wait on stuff, the longer it takes to do it. The more
9 string you give lawyers, the more excuses they are going to
10 have why you can't come to court. And I do that to keep me
11 honest, because I don't like stuff on my desk. If it's
12 assigned to me, I deal with it.

13 I was assigned this case on May 20th. I
14 immediately had status conferences and set a scheduling for
15 this case. So you don't have -- and the remedy for a speedy
16 trial motion is to have a trial. And you are having one.
17 There's no other remedy. Speedy trials is not going to
18 result in a dismissal of your charges. What you get if you
19 make a speedy trial motion is the judge says, set a trial
20 date. That's your remedy on a speedy trial. That's the
21 only remedy on a speedy trial. Your charges are not going
22 to be dismissed. So if that was your belief set, that's not
23 correct.

24 THE DEFENDANT: My Fourth Amendment rights was --

25 THE COURT: What Fourth Amendment rights?

1 THE DEFENDANT: That he was -- it's not a neutrally
2 attached magistrate who issued the warrant.

3 THE COURT: I already heard those motions and ruled
4 on them.

5 MR. GRIFFITH: Your Honor, just to help him
6 understand, if he pleads today, he can still appeal. And
7 many of us present, our opinion, that appeal would not be
8 successful. However, he may appeal and --

9 THE COURT: But Indigent Defense might do an
10 Andrews brief and say it's a waste of the court's time and
11 there aren't any violations.

12 MR. GRIFFITH: But he still has the right to
13 appeal.

14 THE COURT: Oh, absolutely.

15 MR. GRIFFITH: And it would be up to the Appeal's
16 Court, not to us.

17 THE COURT: That's correct.

18 MR. GRIFFITH: Whether we have an opinion or not.

19 THE COURT: I agree. And they will issue an
20 opinion one way or another.

21 Mr. Roberts, I need to know what you want to do,
22 because I've been dealing with this since ten o'clock and
23 it's 11:25. An hour and 25 minutes I've had a jury sitting
24 in a jury room, hour and 20 minutes longer than I ever would
25 allow. So I need to know. I've given you great deference.

1 I've given you time to discuss it with your lawyer. I've
2 given you time to make a reasonable decision and I need to
3 know what you want to do.

4 THE DEFENDANT: I'm going to go.

5 THE COURT: Okay. Get the jury. Let's roll.

6 Are you withdrawing the offer, Mr. Underwood?

7 MR. UNDERWOOD: Yes, Your Honor.

8 THE COURT: Sir, do you understand that this offer
9 is off the table now? It's not going to be offered to you
10 again? You can't come back an hour from now and tell me you
11 want the deal, because at this moment, if you tell me no,
12 it's done. There is no more deal. Do you understand that?

13 THE DEFENDANT: It's 18 discretionary, right?

14 THE COURT: That's correct. They can argue for 18.
15 Your lawyer can argue for less.

16 THE DEFENDANT: I'm ready, Your Honor.

17 THE COURT: All right. You understand it's off the
18 table, period. You can't come back to me an hour from now
19 or tomorrow and say, I want the deal back. I need you to
20 say yes or no?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you doing that freely and
23 voluntarily and of your own will?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you suffering from any mental

1 disability or under the influence of any drugs or alcohol?

2 THE DEFENDANT: No.

3 THE COURT: Did anybody force you to reject the
4 deal?

5 THE DEFENDANT: No.

6 THE COURT: All right. Let's roll. Get the jury
7 for me, please. Is your witness ready?

8 MR. UNDERWOOD: Yes, Your Honor.

9 THE COURT: All right. Let's try to go through as
10 many of these as we can before lunch.

11 (Whereupon, a recess transpired.)

12 THE COURT: The State ready to proceed?

13 MR. UNDERWOOD: Yes, Your Honor.

14 THE COURT: Defense ready to proceed?

15 MR. GRIFFITH: Yes, Your Honor.

16 MS. JOHNS: Yes, Your Honor.

17 THE COURT: Mr. Griffith, let me ask one additional
18 question. Is Mr. Roberts rejecting this deal with or
19 against your advice?

20 MR. GRIFFITH: I'm sorry, Your Honor?

21 THE COURT: Did Mr. Roberts reject the deal with or
22 against your advice?

23 MR. GRIFFITH: Against my advice, Your Honor.

24 THE COURT: I just ask that for PCR purposes.

25 (Whereupon, the jury returns to open court at 11:31

1 a.m.)

2 THE COURT: Ladies and gentlemen, we appreciate
3 your patience. We were working through some matters of law
4 this morning. Took a little longer than anticipated. So
5 please know I do not take your time for granted. I would
6 ask the State to call its next witness.

7 MR. UNDERWOOD: May it please the Court, Your
8 Honor. The State calls Lieutenant Max Dorsey.

9 DONALD MAX DORSEY, II,
10 having been duly sworn, testifies as follows:?

11 THE CLERK: State your name for the court reporter
12 and spell your last name.

13 THE WITNESS: My name is Donald Max Dorsey, II,
14 D-o-r-s-e-y.

15 DIRECT EXAMINATION

16 BY MR. UNDERWOOD:

17 Q. Please introduce yourself to the jury and tell them
18 and little bit about your career and training in law
19 enforcement.

20 A. Yes, sir. Good morning, everyone. My name is Max
21 Dorsey. I'm a lieutenant and supervisor, special agent with
22 the South Carolina Law Enforcement Division, commonly
23 referred to as SLED. I've worked in the narcotics
24 investigations field for the majority of my career.
25 September it will be 20 years I've been a special agent

1 either working or supervising majority of narcotics
2 investigations here in various parts of South Carolina.

3 Q. And what type of education and training do you have
4 both in law enforcement, and in narcotics investigations
5 particularly?

6 A. Well, I'm a graduate of the University of South
7 Carolina. I had a major in political science, graduated
8 from South Carolina Criminal Justice Academy in Columbia.
9 And after that, I've attended numerous narcotics training
10 classes, to include the narcotics commander school here in
11 South Carolina. I'm actually an instructor there. I have
12 been since mid-2000s. I have attended other training
13 classes, whether it be on managing narcotics investigations,
14 technical surveillance, just a wide variety of training
15 classes that I've attended.

16 Q. Lieutenant Dorsey, as far as your career at SLED
17 working in narcotics, is there a particular type of
18 investigation you specialize in?

19 A. Well, for some reason, I have kind of resonated to
20 specializing in narcotics trafficking conspiracies, most of
21 which I have multi-county impact. But I found a niche in
22 that. I enjoy doing that. I've done that the majority of
23 my career.

24 Q. Have you ever been qualified as an expert in any
25 South Carolina courts?

1 A. Yes, sir, I have, on at least one occasion in a
2 trial in Greenville County back in the mid-2000s.

3 Q. And what field were you qualified as an expert?

4 A. Narcotics trafficking conspiracy investigations.

5 Q. Have you ever presented any testimony to Congress
6 or any other legislative body?

7 A. Yes, I have. I actually testified before
8 congressional committee in Washington in 2012. I've
9 testified before the State legislature regarding
10 narcotics -- well, narcotics laws and investigations.

11 MR. UNDERWOOD: Your Honor, at this time, the State
12 would present Lieutenant Dorsey as an expert witness in the
13 field of narcotics trafficking, conspiracy investigations.

14 THE COURT: Any exceptions or questions,
15 Mr. Griffith?

16 MR. GRIFFITH: I have no questions, Your Honor.

17 THE COURT: Any exceptions? Any exceptions to him
18 being qualified as an expert?

19 MR. GRIFFITH: I accept his testimony as being
20 qualified.

21 THE COURT: As an expert.

22 Ms. Johns?

23 MS. JOHNS: I do have a couple of questions.

24 THE COURT: Proceed.

25 VOIR DIRE EXAMINATION

1 BY MS. JOHNS:

2 Q. Lieutenant Dorsey, did you say that you are being
3 offered as an expert in conspiracies or narcotics?

4 A. Narcotics trafficking conspiracy investigations or
5 narcotic trafficking investigation, which in the statute,
6 actually, conspiracy is in the wording of that statute.

7 Q. So are you qualified in your knowledge of what a
8 conspiracy consists of, or is it just your experience as a
9 narcotics officer?

10 A. I would say both.

11 Q. And you said you were qualified as an expert in
12 general sessions court and one of the courts in South
13 Carolina?

14 A. Yes, ma'am.

15 Q. Do you know what year that was?

16 A. It would have been mid-2000. It was Judge
17 Macaulay, was the trial judge. And it would have been in
18 2006 or '07, I believe.

19 Q. Okay. And the specialized knowledge is based on
20 some sort of education?

21 A. Education and experience.

22 Q. And what's the education, sir?

23 A. Formal education? I've attended -- I've
24 attended -- I can't remember any specific training, any
25 formal specific training on conspiracy investigations. I

1 cannot recall. I cannot recall.

2 Q. Do you remember when you were qualified as a law
3 enforcement officer at SLED?

4 A. I was sworn in in September of 1997.

5 Q. 1997?

6 A. Yes, ma'am.

7 Q. And within SLED then, you've had other training,
8 other seminars that you've attended; is that right?

9 A. Yes, ma'am.

10 Q. And a lot of those involved narcotics observation
11 and surveillance and that sort of thing, right?

12 A. That's correct, yes.

13 Q. Do you remember the last time that you attended one
14 of those seminars?

15 A. I instructed at the narcotics commander school last
16 year. I'm sorry, that wasn't narcotics school. That was
17 the commanders school last year. I instructed the year
18 before. I sit on the law enforcement coordinating committee
19 at U.S. Attorney's Office as a drug subcommittee and we
20 sponsor the drug narcotics commander school. Several years
21 ago, we decided to alternate. Every other year, we do a
22 narcotics commander school. And the other years, we do a
23 commander school, a general commanders school. And so I've
24 been a part of that committee for several years, been an
25 instructor at that school.

1 Q. How long have you been an instructor?

2 A. Since the mid-2000s, since around 2005.

3 Q. How often do you instruct?

4 A. I instructed almost every year up until we started
5 alternating. And I did not instruct last year at the
6 commanders school, although I was still a part of the
7 committee.

8 Q. What is the topic of your instruction?

9 A. Search warrants, money in evidence and raid
10 planning.

11 Q. Raid?

12 A. Yes, ma'am, search warrants and raid planning.

13 Q. Based on that, does that give you any specialty
14 with regards to narcotic sales? Because you are talking
15 about the law of a search warrants, correct?

16 A. Correct.

17 Q. And you are talking about how to functionally
18 choreograph a raid into --

19 A. Correct, that's an element of it, yeah.

20 Q. And with regard to any kind of narcotics
21 recognition, you don't have any other special expertise than
22 any other officer at SLED?

23 A. I'm sorry. Say that again.

24 Q. You don't have any other expertise that you can
25 offer than any other officer within SLED that's in the

1 narcotics division?

2 A. No, ma'am, I would disagree with that.

3 Q. Okay. Then tell us what they are.

4 A. Like I said, this September it will be 20 years.
5 The majority of my time at SLED have been assigned to
6 narcotics investigations, of which I have been the lead on
7 multiple State Grand Jury investigations. I have supervised
8 multiple State Grand Jury investigations. During the course
9 of all of that, I have the basis of -- majority of those
10 investigations have been conspiracies. We work drug
11 organizations. We try to identify and completely work --
12 disrupt those organizations.

13 So during the course of all of that, I've gained an
14 enormous amount of experience. And not just actually doing
15 those things, but the people I've worked with, I've learned
16 an enormous amount of information from those people who also
17 have been working those investigations. So, again, I am not
18 trying to sound -- well, I'm explaining to you what my
19 qualifications are. And I would say I'm one of the most
20 experienced narcotics agents in the agency.

21 MS. JOHNS: Your Honor, I don't have any further
22 questions; however, I do take exception --

23 THE COURT: No speaking objections. Madam
24 Forelady, ladies and gentlemen, I have a brief matter of law
25 to take up. During the break, please do not discuss the

1 case and please leave your notepads in your seats. Thank
2 you in advance for your patience.

3 (Whereupon, the jury leaves open court at 11:42
4 a.m..)

5 THE COURT: You may proceed, Ms. Johns. What's the
6 basis of the objection?

7 MS. JOHNS: I would object based on the fact that
8 the Court must act as a gatekeeper with regards to who
9 should be qualified as an expert and offered as your expert,
10 because as we know, expert testimony that's offered is
11 usually given a higher degree of weight, for lack of a
12 better word, for the jury. What this witness has said is
13 that he's got a lot of experience and that he's headed a lot
14 of the investigations involved in narcotics investigations
15 in the state. I don't think that the number of years of
16 experience really amounts to the fact that someone could
17 call themselves an expert.

18 His training, Your Honor, is basic educational law
19 enforcement training he received in the 1990. Of course, he
20 has mentioned that he has attended future seminars or
21 further seminars with regards to that. You know, the fact
22 that he's worked there are for 20 years and has instructed
23 other law enforcement officers, I don't think fits him as
24 being more of an expert in narcotics investigation than any
25 other qualified officer.

1 THE COURT: Mr. Underwood?

2 MR. UNDERWOOD: Your Honor, the rule as to
3 qualifications of an expert provides that the individual
4 must have some sort of specialized knowledge.

5 THE COURT: Well, there are facets to that. It's
6 education, training and experience. But it's beyond
7 experience. The only case that supports simply having
8 experience is the coon dog case, which there was no
9 specialized training. But in this instance, there are
10 classes he can take and there are other things. He
11 indicates he didn't take any classes.

12 But my concern -- I guess I'm trying to figure out,
13 what purpose did you call this witness? What does he make
14 more or less probable in this case?

15 MR. UNDERWOOD: To explain how organizations of
16 individuals who are dealing drugs function, what types of
17 investigative techniques are used on organizational
18 investigations rather than individual investigations and
19 what types of things law enforcement looks for and what
20 types of things can be seen as evidence of an organization
21 rather than an individual who happens to be dealing drugs.

22 THE COURT: I guess my other question becomes,
23 aren't you going to call other witnesses who actually were
24 involved in this case on that as well?

25 MR. UNDERWOOD: Your Honor, Lieutenant Dorsey is

1 actually the supervisor of our case agent, Special Agent
2 Wingo.

3 THE COURT: Well, then why didn't you elicit that?

4 MR. UNDERWOOD: I was going to get into the case
5 specific portion later in his testimony, Your Honor.

6 THE COURT: Okay. So what exactly -- what exactly
7 are you going -- so you are going to speak in generalities,
8 not about this specific case?

9 MR. UNDERWOOD: Yes, Your Honor, what types of
10 things would law enforcement find in the investigation of a
11 drug trafficking organization. I was not going to elicit an
12 opinion as to this particular case, but rather, the types of
13 evidence that would be used.

14 THE COURT: With that clarity, do you still have an
15 objection?

16 MS. JOHNS: Well, Your Honor, my concern is if he's
17 not going to elicit an expert opinion, why would he offer --

18 THE COURT: No, he's eliciting an expert opinion,
19 but expert opinions cannot be -- it's almost like never have
20 a person that testifies about sexual abuse dynamics. They
21 can't talk about the specific case. They can only talk in
22 generalities. So that's my understanding of what he's going
23 to ask this witness.

24 MS. JOHNS: Well, that coupled with the fact that
25 Lieutenant Dorsey is Agent Wingo's supervisor, would he be

1 acting in the supervising roll over this case and make an
2 opinion as to this case?

3 THE COURT: Are you eliciting an opinion?

4 MS. JOHNS: I wasn't going to elicit an opinion on
5 the ultimate issue, Your Honor, only as to what type of
6 evidence are found in drug trafficking organizations. And
7 also, Your Honor, just to discuss the qualifications of
8 Lieutenant Dorsey, he has mentioned he has actually been an
9 instructor in this schools of narcotics investigation --

10 THE COURT: Actually, the areas that he said he
11 instructed on were search warrants, money in evidence and
12 raid planning.

13 MR. UNDERWOOD: I believe that was just for one
14 year. I believe that the topics changed. Also, Your Honor,
15 the fact he has been recognized by a circuit court judge --

16 THE COURT: That was a long time ago.

17 MR. UNDERWOOD: He's been recognized by the United
18 States Congress as an expert in this field, as well as our
19 state legislature, providing testimony to both.

20 THE COURT: But I don't know what topics in
21 Congress. Nobody has elicited that.

22 MR. GRIFFITH: If it please the Court, Your Honor,
23 I would object to his testimony as well because it would
24 draw the jury to believe that this organization acted
25 exactly as he were to describe some kind of organization

1 basically because he was supervising in this investigation
2 of Mr. Wingo. I think it would prejudice the jury.

3 THE COURT: Let me ask another question, because I
4 was thinking through that as you mentioned that. If there's
5 no reference to him being Mr. Wingo's supervisor, do you all
6 have an objection to him testifying in general, I don't mean
7 to sound redundant, but the dynamics of how a conspiracy
8 works?

9 MR. GRIFFITH: I would object, Your Honor, if he's
10 not going to specifically address this particular case. He
11 said he's not going to talk about this case.

12 THE COURT: Well, I think it's prejudicial for your
13 client to talk about this particular case. I think that's
14 bolstering. I don't think he can do that.

15 MR. GRIFFITH: I would object to him talking about
16 this case --

17 THE COURT: I think he can talk in generalities if
18 he's qualified, these are the characteristics we look for.
19 But I don't think he can talk to this case. And I don't
20 think Mr. Underwood could argue that, because it would be
21 bolstering and it would be improper.

22 MR. GRIFFITH: Having him up there is really just
23 adding more confusion to the jury. If they are going to
24 listen to somebody talk about what an organization does and
25 then he's not going to apply it to this case, why are we

1 having his testimony? So I would object to his testimony on
2 those grounds. And if he's going to be identified either
3 now or later as Mr. Wingo's supervisor, then that would lead
4 credence to --

5 THE COURT: I'm thinking about them not making any
6 reference to that.

7 MR. GRIFFITH: Well, if they don't make a reference
8 to it, why would we need his testimony? It's an additional
9 load on the jury's mind.

10 THE COURT: I think Mr. Underwood would argue that
11 most people don't know how a drug organization works. And
12 so that it would aid in giving clarity to the jury on that
13 issue, as that would not be within the ambit of the average
14 person's knowledge. However, with all these new TV shows
15 and other things, I don't know anybody's life who hasn't
16 been touched by drugs, really, whether people stand up
17 during voir dire or not. I think most people probably know
18 on the periphery how drug organizations works.

19 But I think their argument would be -- I don't mean
20 to supplant your argument, you can correct me if I'm
21 inaccurate -- is that, for general educational purposes,
22 that's why they would be offering it. I would never let
23 them say as it applies to know particular case, because that
24 would not be appropriate.

25 MR. GRIFFITH: Your Honor, I would argue that the

1 jury is going to -- here we are in this case. They are
2 going to assume that his testimony applies to this case
3 automatically.

4 THE COURT: Well, if that's the case, you could
5 never have anybody talk about the dynamics of sex abuse,
6 because that's what we allow and what the Supreme Court has
7 allowed. You can talk in generalities about things that a
8 jury doesn't have general knowledge of. You just can't
9 apply specifically to the case, because then that does
10 bolster and add and sort of comment on the veracity of the
11 State's case. But I think you can talk in generalities. I
12 think you just can't go beyond that. You can't say in this
13 case, therefore, in this case, my opinion is valid. I think
14 in terms of generalities, you can talk about things that a
15 jury would not have common knowledge of.

16 MR. GRIFFITH: Your Honor, if he were to
17 specifically say, I am not talking about this case, I'm
18 talking in generalities, for instance, perhaps that would
19 help the jury to understand that he's not here to testify
20 about what happened in this case. I would object
21 otherwise --

22 THE COURT: Then the other problem you run into,
23 Mr. Underwood, and there's a case -- and last week I tried a
24 case on sex abuse, that's the only reason I'm sort of more
25 attuned to this issue, there's a case that's up on cert

1 right now where the solicitor's office called the actual
2 person who was involved in this case to talk about the
3 dynamics of sex abuse. And the Court of Appeals said that
4 was okay. Supreme Court has accepted cert. I'm not
5 clairvoyant, but I suspect they are going to reverse it.
6 They are going to say the general principle is okay, but
7 nobody connected to the case should be talking about it,
8 because it adds an indicia of credibility to their
9 testimony, because they are involved in it.

10 The whole line of cases that say you can call a
11 totally detached expert, like -- again, my best example is
12 in the dynamics of sex abuse, you generally call a therapist
13 who knows nothing about the case, who has never seen
14 anybody, who just comes in and says, listen, kids delay
15 reporting. That's just the nature of it. They have fear.
16 They have other things. Is it unusual for them to be around
17 the person they are accusing of abusing them? No, not at
18 all. These are the dynamics of what happens, why people
19 delay, why they bathe, why they do all these other things.
20 And that's okay.

21 But in this case that I read last week that the
22 Supreme Court has accepted cert on, they allowed the person
23 who actually examined the child and who was the supervisor
24 to render that opinion and to qualify it and say, well, you
25 know, this doesn't apply to this case, but I'm going to

1 render this detached opinion.

2 And I think it's sort of an oxymoron to say that
3 somebody involved in the case can offer a detached opinion.
4 I think it's probably going to end up getting reversed. I
5 am not clairvoyant, but I can read the tea leaves coming.

6 MR. UNDERWOOD: If it can aid matters, I can
7 refrain from discussing any of Lieutenant Dorsey's actual
8 involvement in this particular case.

9 MS. JOHNS: Your Honor, I'm going to rely on Rule
10 702, the testimony of expert witness, D: The expert has
11 reliably applied the principles and methods to the facts of
12 the case.

13 THE COURT: Experts, I think our view of expert
14 testimony has gone beyond that definition, because our
15 Supreme Court has said that you can render opinions. As a
16 matter of fact, they endorse rendering opinions where the
17 person is not attached to the case because they don't want
18 to add an indicia of reliability to their testimony. And
19 they do not want the jury to tie that to this particular
20 case.

21 And then you couple that with certain rules of --
22 what's the word I'm looking for? Like, for example,
23 therapists that render opinions of this type, ethically,
24 they can't say it's tied to that person, because they can
25 lose their license for doing that. Ethically, they are

1 bound not to do that. And other disciplines, it's the same
2 thing.

3 So I guess I'm trying to -- why would you want him
4 to be able to tie it to this case?

5 MS. JOHNS: That's --

6 THE COURT: I think that gives him an added indicia
7 of reliability and it hurts your client. I think it's
8 prejudicial.

9 MS. JOHNS: I agree with that, Your Honor, but I
10 was just following the rule here under the testimony by
11 expert witnesses. I think that in the case where you are
12 talking about a young person being sexually assaulted, that
13 a scientist could come in or therapist or psychologist could
14 come in and they can render an expert opinion as to how that
15 science would apply --

16 THE COURT: I think the Supreme Court hasn't
17 limited it just to science. It's any area of any topic that
18 requires specialized education, training and knowledge that
19 is beyond the average person's knowledge that helps
20 illuminate for them the subject matter they are considering.
21 So I don't think the case law would confine it just to an
22 area of science. Because, like I said, you've got coon dog
23 case. There's no specialize training that you get in
24 breeding a coon dog. But the State has recognized that a
25 person can, based on your experience, render opinions about

1 how you breed those dogs, how you sell them, their value,
2 all of that. So I think it's an ever-expanding area, but
3 you do have to have sufficient education, training and
4 experience to render an opinion.

5 So now what I need to know at a basic level, do you
6 all object -- because you've got two separate thing. You
7 have whether he's qualified. And then you have the extent
8 of his opinion. So if you don't -- I need to know if you
9 object to his expertise?

10 MS. JOHNS: Yes, I do.

11 THE COURT: And do you object to the opinion?

12 MR. GRIFFITH: Your Honor, I object to his
13 opinion.

14 THE COURT: So you don't object to his expertise?
15 You just object to him rendering the opinion?

16 MR. GRIFFITH: I defer that to Ms. Johns as far as
17 his expertise. What he is aware of as a person who has
18 worked a long time in these particular areas is irrelevant
19 to me as far as the fact that I think that it's just
20 throwing a lot into the jury's mind that is not going to add
21 to the case. But they are going to assume, just by hearing
22 it, why was he put on the stand? He was put on the stand so
23 that they could hear about theses things, and automatically
24 associate that with this case.

25 If Mr. Wingo is going to testify about how things

1 happened in this case, in this particular, if it was an
2 organization, then he can tell what happened. He can tell
3 that they did this and that. I really don't understand why
4 he would have to fill the jury's mind with more information
5 for them to process and cloud the issue as to whether this
6 is exactly what this group or these persons are accused of
7 doing.

8 THE COURT: Mr. Underwood?

9 MR. UNDERWOOD: Again, Your Honor, the purpose of
10 Lieutenant Dorsey's testimony would be to educate the jury
11 in a field that the average layperson would have limited
12 knowledge.

13 THE COURT: But isn't Agent Wingo going to say the
14 same thing?

15 MR. UNDERWOOD: Not to the extent of Lieutenant
16 Dorsey as far as the education aspects, Your Honor.

17 THE COURT: What do you mean education aspects?

18 MR. UNDERWOOD: How the investigation works and the
19 type of things one would expect to find in these types of
20 investigation. I was not going to elicit an opinion from
21 Lieutenant Dorsey as to this particular case, rather, only
22 to educate what drug trafficking organizations are and how
23 they operate and how they are investigated.

24 MS. JOHNS: And that doesn't make him an expert, I
25 don't think.

1 MR. GRIFFITH: I would also join in objecting to
2 him as an expert as she elaborated upon some of the items
3 she did in that he's had no truly specialized training as an
4 investigator of these particular organizations that we
5 heard. He's worked in it for a long time. That makes him
6 experienced, but it doesn't make him an expert. I would
7 join in her objection, Your Honor.

8 THE COURT: I need to study it a little bit. I'm
9 going to take it under advisement. You can call your next
10 witness.

11 Sir, you may step down subject to recall. Thank
12 you for your patience.

13 Bring in the jury for me, please.

14 THE COURT: You need to call your next witness.

15 MR. UNDERWOOD: The State's next witness is Tommy
16 Sekula.

17 (Whereupon, the jury returns to open court at 11:59
18 a.m.)

19 THE COURT: Ladies and gentlemen, we appreciate
20 your patience. The State may proceed.

21 MR. UNDERWOOD: Your Honor, the State calls Thomas
22 Sekula.

23 THE COURT: Sir, if you will come forward to be
24 sworn.

25 THOMAS SEKULA,

1 having been duly sworn, testifies as follows:

2 THE CLERK: Say your name and spell your name for
3 the court reporter.

4 THE WITNESS: Thomas Sekula, T-h-o-m-a-s,
5 S-e-k-u-l-a.

6 THE COURT: You may proceed, Mr. Underwood.

7 MR. UNDERWOOD: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. UNDERWOOD:

10 Q. Good afternoon, Mr. Sekula. Mr. Sekula, how old
11 are you?

12 A. 33.

13 Q. Where are you from?

14 A. Summerville.

15 Q. Have you lived in Summerville your whole life?

16 A. Other than the seven years that I lived in
17 Bluffton.

18 Q. How far did you go in school?

19 A. Two years of college.

20 Q. Where did you go to school?

21 A. College of Charleston and then Trident.

22 Q. Are you currently employed?

23 A. I'm doing some work under the table doing
24 installation of heating and air units.

25 Q. Did you used to have a regular job?

1 A. Absolutely. I was a manager at Walmart.

2 Q. How long were you a manager at Walmart?

3 A. As a hourly manager, seven years, and assistant for
4 a couple of months.

5 Q. Mr. Sekula, have you ever had a problem with
6 abusing drugs?

7 A. Yes, most of my life.

8 Q. How did that begin?

9 A. Started smoking weed and drinking alcohol when I
10 was in college. And then when I moved back in from my
11 grandparent's house to my mom's house, I didn't really have
12 the relationship with my brother that I wanted, and he was
13 hanging out with my mom's boyfriend's stepson and nephew.
14 And they were involved in smoking and drinking. And in
15 order to hang out with my brother, I kind of got tied up in
16 those things.

17 Q. Did you ever move on to different drugs?

18 A. Yes, as they were exposed to us, just to try them
19 and see what they were all about.

20 Q. What other drugs were you exposed to?

21 A. I've done cocaine. I've tried Ecstasy at a party,
22 heroin, opiates, you know, weed.

23 Q. How were you introduced to opiates and heroin?

24 A. The first time I ever took an opiate was when I had
25 my wisdom teeth removed and got them from the doctor,

1 Lortabs and stuff. And then through the years, mainly from
2 the doctor, until I got a little older. They would come up
3 occasionally. People would have them. You just -- somebody
4 would give you one and you buy one, you know. Nothing crazy
5 at all.

6 Q. Did you develop an addiction to opioid pills?

7 A. Absolutely.

8 Q. How old were you then?

9 A. When I truly got addicted, I would say, it was when
10 I was about 26 years old.

11 Q. How old are you now?

12 A. 33.

13 Q. Did you ever move from pills to heroin?

14 A. Yes.

15 Q. How did that happen?

16 A. When I was living in Bluffton, after I had a knee
17 surgery, I had really started getting heavy into the pills.
18 And the guy that I got them from, I contacted him to get
19 some, and he said he didn't have any. And he sent me a text
20 message that said dope. And I told him no at first. But
21 after not being able to get any pills and being sick, I
22 finally said yes.

23 Q. And that was in Bluffton?

24 A. Yeah.

25 Q. So did that person introduce you to heroin?

1 A. More or less, yeah, but -- it was the first time I
2 had ever tried it, yeah.

3 Q. Since that time, have you continued to use heroin?

4 A. Yes.

5 Q. Would you consider yourself to be addicted to
6 heroin?

7 A. Yeah.

8 Q. How long would you say you've been addicted to
9 heroin?

10 A. Four or five years, about five years.

11 Q. And in that time, have you been able to hold steady
12 employment?

13 A. Not steady. The longest I've had since I've
14 actually been using, I would say it was about six months,
15 the longest job I've held, and that was when I was still in
16 Bluffton.

17 Q. How has your addiction to heroin affected your
18 life?

19 A. Negatively. I mean, overall, it's caused problems
20 with my family. It's caused problems with work. It caused
21 problems with legal issues. It's just been a monkey on my
22 back, you know, so to speak.

23 Q. And you mentioned legal issues. Have you gotten in
24 trouble with the law because of your addiction?

25 A. Yeah, absolutely.

1 Q. As a result of that, have you been involved in
2 incidents of shoplifting?

3 A. Yeah.

4 Q. Have you actually been convicted of that?

5 A. Yeah.

6 Q. In your capacity as a user of heroin, did you ever
7 get heroin for other people?

8 A. Yeah. It kind of goes without saying in that
9 lifestyle. When you are using, you are around other people
10 that use. And when you start to recognize how it wreaks
11 havoc on your own life and others when you don't have it as
12 much as it does when you do and you are sick and can't
13 function, you help each other out. If I don't have
14 something and I need something, somebody would help me. And
15 if I needed something and they didn't have it, I would help
16 them.

17 Q. By help them, what do you mean?

18 A. I would locate it and use their money to get it for
19 them.

20 Q. So you would buy heroin on behalf of other people?

21 A. I have, yes.

22 Q. And they would do the same for you?

23 A. Absolutely.

24 Q. Have you ever combined your money with other people
25 to purchase heroin?

1 A. Uh-huh, yes.

2 Q. How does that arrangement work?

3 A. Just like you say, I find out how much money you
4 had. If you contact me and if I have money, then we go get
5 it, whatever we can afford.

6 Q. Where would you go get it?

7 A. Most of the time, after I moved back to the
8 Summerville area, when I started to really get involved with
9 heroin, I only had one connection that I could go to
10 directly. And that was known as The Boys. I mean, that's
11 where I went.

12 Q. What are, as you call, The Boys?

13 A. It was a group of guys that I was introduced to
14 through other friends that used. And they were the ones
15 that most consistently and, really, the only people I knew
16 that had anything. And they were known as the CP Boys as
17 first, just what the guys that introduced me to called them.
18 It was just a group of guys that sold heroin.

19 Q. What does CP stand for?

20 A. College Park.

21 Q. Is that a reference to College Park Road?

22 A. Uh-huh.

23 Q. Who introduced you to The Boys?

24 A. Matt Simpson, Dave, Bengi, a couple of guys that I
25 would actually go to initially to go get the stuff. They

1 would take me first.

2 Q. Were The Boys who supplied Dave and Bengi and
3 Matt?

4 A. Yeah.

5 Q. Would you travel with Dave and Bengi and Matt to
6 The Boys to get heroin?

7 A. Oftentimes, I would be their ride.

8 Q. How does that arrangement work?

9 A. Nine times out of ten, it would be them taking my
10 money, and me taking them to get it. Wherever they have to
11 go, they would just hop out of the car wherever, go get it
12 and come back. They would always take their cut, either in
13 drugs or money. Nothing is free, you know. Nobody does
14 anything for free.

15 Q. When did you start going to The Boys with these
16 other friends of yours?

17 A. Whenever I moved back to Summerville and found out
18 that it was just as hard to get pills here as it was in
19 Bluffton.

20 Q. Do you remember what year that was?

21 A. End of 2012, more like the end of 2013, after I got
22 settled in.

23 Q. How long was it after you got settled in that you
24 were introduced to The Boys?

25 A. Almost immediately. I would say I was back here

1 six months, less than six months. So by June of 2013, I was
2 introduced to them some way or another.

3 Q. At the beginning, when you said you were going with
4 these other people, were you able to go by yourself to get
5 heroin?

6 A. No, not initially, no.

7 Q. Why not?

8 A. Because I didn't have that relationship with them.
9 I didn't know them personally. I never deal with them or
10 buy from them in that manner. It was always somebody else's
11 connection.

12 Q. What does that mean for someone to have a
13 connection?

14 A. They basically have the ability to go somewhere and
15 buy something you don't. Just as somebody here may pay to
16 go to Costco. I don't have that ability. I've never paid
17 to do that. I have not got that opportunity given to me,
18 you know.

19 Q. So was there someone sense of exclusivity?

20 A. Yeah, absolutely.

21 Q. At some point, were you introduced to The Boys?

22 A. At some point, I was -- they had seen my car so
23 many times. And, specifically, one individual, the one that
24 would in the beginning drive around and meet everybody, had
25 seen my vehicle so many times. And the number was in my

1 phone. So I just went ahead and called him myself and
2 explained who I was. And that was the way that I was able
3 to just cut everybody else out, all the middlemen, so to
4 speak.

5 Q. Let's backtrack that just a little bit. You
6 mentioned a particular person, who is that?

7 A. That would have been Mo.

8 Q. Do you know Mo's real name?

9 A. Justin Hunter.

10 Q. How was his number in your phone?

11 A. It was used by one of the previous individuals to
12 call and set up a meet.

13 Q. So it was saved on your phone from somebody else
14 contacting him?

15 A. Uh-huh.

16 Q. Did your friends know that you were contacting
17 Justin Hunter directly?

18 A. Not initially, but they knew rather quickly when I
19 told them, you know. I wasn't calling them anymore to go do
20 what we were doing.

21 Q. Is that what you mean by cutting them out?

22 A. Yeah.

23 Q. You no longer had to go through them to get supply?

24 A. Absolutely, yeah.

25 Q. Okay. How would, at that juncture, at that time

1 period, how would it work for you to get heroin? What was
2 the arrangement?

3 A. With those individuals?

4 Q. Yes.

5 A. I would have to call them, make sure they were
6 available. And then they would have to make a phone call
7 and make sure that they were available on the other end,
8 that either Mo or whoever was on, was available and had
9 something. And then if all of that worked out and there
10 wasn't other people involved who had money that they were
11 trying to help out, I could actually go pick them up and go,
12 you know, meet and get what we were getting.

13 Q. When you first started dealing directly with The
14 Boys, as you called them, how much heroin were you buying at
15 a time?

16 A. Anywhere from a gram to a ball. I was working
17 landscaping then, so I had pretty decent money. So --

18 Q. You mentioned the term "a ball", what is that?

19 A. Three and a half grams.

20 Q. Is that -- that term "ball", is that short for 8
21 ball?

22 A. Yes.

23 Q. Is that because three and a half grams is a 8th of
24 an ounce?

25 A. Yeah.

1 Q. And that's the drug user/dealer terminology, call
2 it a ball?

3 A. Uh-huh.

4 Q. So you would buy from a gram to three and a half
5 grams at a time?

6 A. Yes.

7 Q. How often would you do that?

8 A. If it was a lower, like, amount of a gram, it would
9 be almost every day. If it was a ball, it would be every
10 couple of days, however long it took to use that, you know,
11 between, you know, me and one other person mainly.

12 Q. You mentioned another person. Why was there
13 another person involved?

14 A. Of me using?

15 Q. Yes.

16 A. Because my other half, my girlfriend, has been kind
17 of caught up in this the way that I have for some time, and
18 taking care of two habits.

19 Q. At that time, did you ever sell heroin to other
20 people?

21 A. There were occasions where I had friends that were
22 using as well that would be looking. And the same people
23 that would call me to go get it for them, if I had it, I
24 would come off of it for them, yes.

25 Q. At that time, how many different people would you

1 sell heroin to?

2 A. On a regular basis, not very many a day, but there
3 were several people that I knew that would get it from me.
4 I don't know a specific count.

5 Q. How long were you buying heroin from The Boys at
6 that rate of one to three and a half grams at a time?

7 A. For a long time, up until they were no longer
8 available, really. It was something --

9 Q. Did you ever buy larger amounts then?

10 A. Yes.

11 Q. When did you start buying larger amounts?

12 A. There were just occasions of where we would have
13 extra money or something like that that we would do that.
14 And then really whenever I bought the larger amounts of,
15 like, a half ounce or something was when I got involved in
16 what I'm doing here.

17 Q. What was the largest amount, before you worked with
18 law enforcement, what was the largest amount you would buy
19 from The Boys?

20 A. I largest amount I ever bought from them at one
21 time was 21 grams.

22 Q. How long ago was that?

23 A. 2014 some time, probably just after -- probably
24 right around January -- no, it would have been early
25 January, 2015.

1 Q. Who did you buy that 21 grams from?

2 A. Specifically, I believe that came from Keith.

3 Q. Do you know Keith's real name, full name?

4 A. I do not.

5 Q. You've mentioned the group collectively as The
6 Boys, who were the individuals that make up this group The
7 Boys?

8 A. There were 11 that I can remember specifically. I
9 believe there was Munch, Mo, Black, Keith, Jacob, Omar, Q,
10 Chris, Cici. She's obviously not a boy. John, Shorty at
11 one time. And there may even be a few more that have come
12 in and out. There was a lot of individuals throughout the
13 four years.

14 Q. Was there an individual named G?

15 A. Yeah, there were twoGs, actually.

16 Q. What was the difference between the two of them?

17 A. One guy was a smaller individual compared to the
18 other and he had dreads. The other guy was a larger
19 individual, male, just a big guy, light-skinned
20 complexion.

21 Q. Did you have dealing with both of them?

22 A. Yes.

23 Q. By dealings, buying heroin from them?

24 A. Yes.

25 Q. You mentioned someone named Q. Who is Q?

1 A. He happens to be the defendant that's here today.

2 Q. He's in the courtroom today?

3 A. Yeah.

4 Q. Could you identify him, please?

5 A. He's sitting right there.

6 Q. What's he wearing?

7 A. Blue-collared shirt.

8 MR. UNDERWOOD: Let the record reflect he
9 identified the defendant.

10 THE COURT: You may proceed.

11 BY MR. UNDERWOOD:

12 Q. Do you know his real name?

13 A. Emory Roberts.

14 Q. Mr. Sekula, who was the head of this organization
15 that called itself The Boys?

16 A. As far as I always understood it and from the way
17 things were structured, Mo.

18 Q. Again, Mo is who?

19 A. Justin Hunter.

20 Q. Did you deal directly with Mo?

21 A. On multiple occasions.

22 Q. Was that the normal way that would work? Would you
23 normally deal directly with him?

24 A. In the beginning, certainly. It was almost always
25 Mo.

1 Q. When did that change?

2 A. There was -- I don't know the specific date, but
3 there was a time where he started just bringing people in,
4 so to speak. And I guess he had gotten busy or busier or
5 trying to expand. I don't know. But three people showed up
6 that were at the trailer that he would have us go to. And
7 he was no longer just the one that was there. When he was
8 out doing things, people could go there and still get what
9 they were looking for, you know, basically.

10 Q. Where was this trailer?

11 A. Off of Arno, over in -- off of Gleason on College
12 Park Road, Caromi.

13 Q. Who would be at that trailer?

14 A. Pretty much all of the individuals I named earlier.
15 At first, after Mo brought people on, Keith Jacob and G were
16 the first three that were there typically.

17 Q. And later on, did it continue to be them?

18 A. Yeah, they were there. And then other people were
19 added to it.

20 Q. Who were those other people?

21 A. Omar would be over there, Chris, the other G. Q
22 wasn't really ever at the trailer on College Park over on
23 Caromi. He was always off of Ladson Road or in Summer
24 Creek, different locations.

25 Q. You said -- what were those two locations, first

1 the one in Ladson?

2 A. Over in Fairlawn off of Margaret. The other was in
3 Summer Creek Trailer Park off of College Park as well, but
4 just not the same location.

5 Q. So it was a different trailer?

6 A. Uh-huh.

7 Q. At the height of your dealing with this group
8 called The Boys, how much would you buy at a time and how
9 often?

10 A. The most I would buy at a time, like, probably
11 seven grams would be the most consistent amount that was a
12 higher amount. I mean, I bought more and less. But
13 consistently for a while, seven was a pretty decent number
14 that I was buying regularly, almost every day when I just
15 happened to have money available like that.

16 Q. How long did that last that you were buying seven
17 grams a day?

18 A. Probably about a month, a little longer, maybe six
19 weeks to two months. I just, like I said, I had money that
20 I didn't expect to have and it got ran through pretty
21 quickly.

22 Q. How often were you getting this 7 grams?

23 A. Every day at first, yeah, whenever I could. Like I
24 said, when the money was at my disposal, I was using
25 ridiculous amounts. And it was every day.

1 Q. Going beyond your girlfriend, did you ever buy
2 heroin for other people? Ever resell to other people?

3 A. Yeah, absolutely.

4 Q. When did you start reselling to people?

5 A. When people started -- pretty much right then, at
6 the most. But when I started having extra on me and people
7 would call me to go get them something, rather than just
8 going to get it for them, if I had, I would just sell it to
9 them then. That way, I didn't have to travel and take the
10 risk of doing all that. Although I took another risk,
11 obviously, I wasn't thinking about at the time, just selling
12 it in general. Being that person, that was a risk.

13 Q. You mentioned that you were getting 7 grams a day
14 while you had money, but it didn't last.

15 A. Uh-huh.

16 Q. What happened when the money ran out?

17 A. The little bit of money that I was able to save
18 got -- went through quite quickly. And then looking to
19 other means to get money to feed the addiction, whether it
20 be side jobs or just pawning things, or as you mentioned
21 earlier, shoplifting sometimes.

22 Q. Did you ever have to make heroin sales to support
23 your own habit?

24 A. Oh, that's the primary way that it happens, is you
25 wait for somebody to contact you. And if it does, you go

1 get them something and you are able to get yourself well by
2 doing that, you know. That's the main way people that don't
3 have money and do heroin try to maintain from being sick, is
4 middleman.

5 Q. So when you say middleman, that's when you are
6 buying for someone else?

7 A. Yeah.

8 Q. At some point, did you get into trouble with the
9 police as a result of your heroin activities?

10 A. Yeah.

11 Q. What happened?

12 A. I was at my brother's house. And we had gotten
13 some stuff to party with that night. And his girlfriend was
14 unhappy with something that had happened between them. And
15 she called the law on us for a party in her house, even
16 though she was part of the party. And around three o'clock
17 in the morning or so, about 15 officers came in to the house
18 and found drugs on the table and took all of us to jail.

19 Q. What happened after that?

20 A. After that, I went to Dorchester County. And they
21 were released on a PR bond. We all were, but I had a bench
22 warrant to sit on for paraphernalia. So I had to ride that
23 time out. And I got out and, unfortunately, went right back
24 to the same things. And somebody, evidently, got in trouble
25 themselves and used me as their fall guy. And put me in a

1 predicament to where they were watching me. And then I got
2 caught with heroin again.

3 Q. Let me ask you a question. You said "made you a
4 fall guy," what does that mean?

5 A. Basically, they got in trouble and they moved up
6 the ladder to me.

7 Q. How did they move up the ladder? What did they
8 do?

9 A. They bought from me.

10 Q. So you sold drugs to someone else?

11 A. Uh-huh.

12 Q. And was that someone working as a confidential
13 informant for the police?

14 A. Yes.

15 Q. Does the fact that they were a confidential
16 informant for the police change the fact that you sold them
17 heroin?

18 A. No.

19 Q. Did the police come and confront you about that?

20 A. Eventually, yes.

21 Q. What happened with that confrontation?

22 A. I was given my options and explained in a very
23 plain manner what was going to happen and what was going on
24 and what had happened to me. And I chose to take an option
25 out and do as was done to me. And I went and bought from

1 somebody to try alleviate my situation. Because what I was
2 facing was really a bad scenario and would not have occurred
3 had I not been in the situation I was with the drugs
4 themselves, if I was not addicted to heroin.

5 Q. At that time, did you sign up as a confidential
6 informant?

7 A. I did.

8 Q. What was your understanding of the agreement that
9 you entered into for that?

10 A. That I would have to purchase heroin from somebody
11 which was already been predetermined for me, more or less,
12 because I had been watched. And it was understood what was
13 going on. So I had to make a buy. And as long as there was
14 a conviction or I followed through with everything that was
15 asked on me, I would have my charges disposed of.

16 Q. Is that what your expectation -- were you
17 specifically promised that?

18 A. Yes.

19 Q. So your motivation in being a confidential
20 informant was to try to work off your problem charges?

21 A. Yeah, my charges, yes, as well as my girlfriend's
22 that she was in the house that first time. I didn't want
23 anything to happen to her, you know.

24 Q. Did you do more than one buy from somebody for the
25 police?

1 A. Absolutely. I did multiple buys.

2 Q. Before you started doing the buys, did you agree to
3 be interviewed and tell the police everything you knew about
4 trafficking of heroin?

5 A. I told them everything that I knew about my life
6 and everything I've done related to drugs. That was
7 something that was a requirement.

8 Q. Did that discussion you had help determine who your
9 target was going to be for your controlled buys?

10 A. No, not really. That was almost determined
11 beforehand because they had watched me and seen me already.
12 They had investigated me to some extent and already kind of
13 knew who I was going through, that I didn't have a whole a
14 lot of options as it was. I pretty much had the one. And
15 they knew where I was getting it from. So, I mean, I just
16 pretty much confirmed what they knew with the story with my
17 life, the information I gave them.

18 Q. Who was the first person you bought heroin from for
19 law enforcement?

20 A. Q.

21 Q. The defendant in this trial, Emory Roberts?

22 A. Yes.

23 Q. Why was he the one chose to be the first person to
24 buy from?

25 A. Well, first, his phone was on. He was -- why did I

1 choose to or why did law enforcement choose?

2 Q. Why was the choice made?

3 A. Why was the choice made that night?

4 Q. Yes.

5 A. Because he was on and his phone was the one that I
6 was told to go to.

7 Q. You mentioned his phone was on. When you would
8 contact this group, who was your point of contact?

9 A. Typically, it was The Boys' phone. It was a hub
10 phone that somebody would have. It could have been Mo.
11 Could have been Keith. Could have been any of the guys.
12 And they would pretty much tell you where to go. They would
13 tell you CP or Ladson. And if their phone wasn't on and I
14 couldn't contact Mo directly, I could contact Q's phone
15 directly and go see him.

16 Q. So there's Mo's phone, Q's phone and what you call
17 the hub phone?

18 A. Yeah, The Boys' phone.

19 Q. So The Boys' phone, is that a cell phone?

20 A. Uh-huh, yeah.

21 Q. And it was rotated around?

22 A. Yeah. It was the phone that was the primary phone
23 to begin with. It was the only number you ever called.

24 Q. So when you were able to get Mo's phone number or
25 Q's phone number, that was a more exclusive relationship

1 than general?

2 A. Than some people had, yes, absolutely. Not
3 everybody dealt with Mo all the time or with -- you had to
4 pretty much got to a certain point that Mo was only going to
5 deal with people for certain amounts, unless he had The
6 Boys' phone, that is when he would be doing that work. And
7 Q wasn't always around. And when he did come around, he had
8 his own number, sometimes he would be able to do something
9 when the other guys couldn't.

10 Q. At the time of this first buy that you did, did you
11 owe Q any money?

12 A. No, I didn't owe Q any money, not him specifically.
13 If I owed anybody money, it would have been Mo.

14 Q. Are you familiar with this term "fronting"?

15 A. Yeah.

16 Q. What is that?

17 A. Where you get your product or drugs up front before
18 you've paid for them, basically with credit.

19 Q. What's the expectation by getting the drugs on
20 credit?

21 A. That before you get more, you pay that off.

22 Q. How would you normally get more money if you didn't
23 have a job?

24 A. At that point in time with the stuff fronted, you
25 would sell it if you could. People needed something, a lot

1 of times when you ask for a front, you already have the
2 expectation that you have people that wanted something.

3 Q. And by people that wanted something, other heroin
4 customers?

5 A. Absolutely, that or you do as I had to do again,
6 like I said, with the shoplifting thing. When your habit
7 gets in the way and you have to make up the money somewhere,
8 and you get a front. And then you are able to go operate
9 and make money because you are not sick. That's why we ask
10 for a front, so we can get well before we try to get our
11 jobs or whatever it is we are doing done. Because,
12 otherwise, you are sick. You're throwing up and you can't
13 really function.

14 Q. Is that as a result of withdrawal?

15 A. Absolutely.

16 Q. What was the procedure that you would follow when
17 you would do these drug buys for law enforcement?

18 A. I would be contacted during the day some time
19 that -- to make sure it was -- I was available and that I
20 could meet with these guys at a predetermined location to
21 where we could -- I could be searched, strip searched, full
22 search. So I didn't bring anything, money or anything with
23 me or whatever. And then I would be wired up or fitted up
24 with an audio device and visual device. And then I would be
25 made to make a phone call. But I wouldn't dial with my

1 phone. They would use a phone to call with. And then it
2 would transport the call to my phone so that they could
3 record the conversations. And I would be told how much to
4 ask for. Then they would give me the quantity of money that
5 was marked or maybe photocopied or whatever, taken. It was
6 tracked. And make sure that I could set that up with
7 whatever they wanted me to get.

8 And then, like I said, I would call and find out
9 where to go. And then I would ride with a specific
10 detective each time, the same one every time, to wherever
11 the meet location was to pick up the heroin. I would either
12 get dropped off or walked to a house or we would wait
13 somewhere for the arrival of whichever individual was
14 bringing the heroin.

15 And whenever they got there, I got to the house, I
16 would get out, go get it, do the business and transaction.
17 And then I would come directly back to the detective, give
18 him the heroin immediately. We would ride back to the same
19 location that we met at. And I would then be strip searched
20 again. All the equipment would be taken off. And then I
21 would have to give a statement of exactly what it is that
22 occurred in that situation.

23 Q. And you did this multiple times?

24 A. Yes.

25 Q. Did you do this with agents only from Dorchester

1 County Sheriff's Office?

2 A. No. Initially, I did. But after a couple buys,
3 SLED got involved.

4 Q. And was it then those two agencies working
5 together?

6 A. Yes.

7 Q. Do you recall who the primary agents were both from
8 the county and from SLED that you worked with?

9 A. I do.

10 Q. Who were they?

11 A. For Dorchester County, the main agent was Danny.
12 Brandon and Gaz, I worked with the three of them. And then
13 primarily from SLED, it was Special Agent Wingo.

14 Q. Now, you mentioned earlier that you were fitted
15 with recording devices?

16 A. Uh-huh.

17 Q. Have you had an opportunity after all of this was
18 said and done to review those recordings?

19 A. I have.

20 MR. UNDERWOOD: Permission to approach, Your Honor.

21 Q. Mr. Sekula, I've got a lot of disks here I want to
22 show you. This is State's Exhibit 1 through, I believe it's
23 32. If you could please take a moment to review each of
24 those disks.

25 Mr. Sekula, are these the same disks that you've

1 reviewed?

2 A. Yes. They each have my initials on them, as I did
3 the disk after I reviewed them.

4 Q. By signing your initials, what does that signify?

5 A. That either the audio or the visual on that disk
6 occurred exactly as it played out, as I remember.

7 Q. So each of these are fair and accurate recordings
8 of what happened?

9 A. Absolutely, yeah.

10 MR. UNDERWOOD: Your Honor, with the Court's
11 permission, may I publish these while going through direct?

12 THE COURT: What are the numbers again?

13 MR. UNDERWOOD: Should I just call them out as I go
14 for each one, Your Honor?

15 THE COURT: I just need you to tell me the number.
16 Are they sequential.

17 MR. UNDERWOOD: Yes, Your Honor. I believe it's 1
18 through 32.

19 THE COURT: You may proceed.

20 MR. UNDERWOOD: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 BY MR. UNDERWOOD:

23 Q. You mentioned at the beginning of the transactions
24 you would typically make a phone call; is that right?

25 A. Yes.

1 Q. I'm now playing for you what's been entered into
2 evidence as Exhibit 1.

3 (Whereupon, audio is played.)

4 BY MR. UNDERWOOD:

5 Q. Whose voices are in that recording?

6 A. Mine and Mo.

7 Q. You mentioned 190 --

8 THE COURT: You need to make sure, what disk is
9 that? What State's exhibit are you referring to?

10 MR. UNDERWOOD: Your Honor, this is State's Exhibit
11 No. 1.

12 THE COURT: Thank you.

13 BY MR. UNDERWOOD:

14 Q. You mentioned 190. What was that for?

15 A. There was a front.

16 Q. So you had purchased heroin from Mo and got money
17 for that?

18 A. Yes.

19 Q. How much money did you get for that 190?

20 A. It was part of a debt, because it would have been a
21 whole one, 150 or whatever. But just under 2 grams would
22 have been 190.

23 Q. What was the price scale for heroin that you would
24 purchase from the boys?

25 A. 50 a half; 100 a whole; 300 a ball. They changed,

1 though, over time.

2 Q. You mentioned those terms "half" and a "whole"?

3 A. Half gram, whole gram.

4 Q. But those prices would change over time?

5 A. Yes. At one point in time, I may have paid \$100
6 all the way up for a half ounce; whereas, in the end, it was
7 \$1,000.

8 Q. Mr. Sekula, was there a transaction that followed
9 that phone call?

10 A. Yes, there was.

11 Q. Do you remember who that transaction was made with?

12 A. I believe that one was made actually with Q over in
13 Margaret.

14 Q. That's Margaret Street in Ladson, the Ladson area?

15 A. Yes, over in Fairlawn.

16 Q. Was there another call that was made prior to the
17 transaction itself?

18 A. There probably was of me approaching or getting
19 close to the house, I would imagine.

20 Q. At times, would they also make audio recordings
21 when they were giving you the money?

22 A. Oh, absolutely, yeah. Whenever -- before the money
23 was given to me, it would be counted out and whatnot so it
24 was on record.

25 MR. UNDERWOOD: At this time, Your Honor,

1 publishing Exhibit Number 2.

2 (Whereupon, audio is played.)

3 BY MR. UNDERWOOD:

4 Q. Is that the same recording as before?

5 A. Yeah, that was the same one.

6 Q. We will now move to State's Exhibit No. 3. And,
7 Mr. Sekula, if you can turn your chair to see the screen.

8 Mr. Sekula, when they would first wire you up,
9 would they test the equipment before the actual transaction?

10 A. Yes, they had a sound test.

11 Q. I'm looking now as first track one. Is that one of
12 those sound checks?

13 A. Yes.

14 Q. And then track 2.

15 (Whereupon, audio is played.)

16 BY MR. UNDERWOOD:

17 Q. Is that another check?

18 A. Yes, sir.

19 Q. Track 3.

20 (Whereupon, audio is played.)

21 BY MR. UNDERWOOD:.

22 Q. Mr. Sekula, whose voice is that?

23 A. That is Danny.

24 Q. That was the agent from Dorchester County?

25 A. Yes.

1 Q. And that's him giving you the money for the buy?

2 A. Yes.

3 Q. Now, going to track four.

4 (Whereupon, audio is played.)

5 BY MR. UNDERWOOD:

6 Q. Is that your voice?

7 A. Yes.

8 Q. Who are you talking to?

9 A. Detective Allen.

10 Q. What time of day was this?

11 A. That's at night.

12 Q. What's happening during this part of it?

13 A. In transition from the meet location to the house
14 in Fairlawn riding in the car.

15 MR. UNDERWOOD: Your Honor, with the Court's
16 permission, I can fast-forward to the relevant portion.

17 THE COURT: That's fine.

18 (Whereupon, audio is played.)

19 BY MR. UNDERWOOD:

20 Q. Mr. Sekula, who was that individual we just saw on
21 the screen?

22 A. That was Q.

23 (Whereupon, audio is played.)

24 BY MR. UNDERWOOD:

25 Q. Again, for the record, that was Exhibit No. 3.

1 Mr. Sekula, in that transaction, there was talk of
2 the numbers 190, 140 and 150 and 340, or somewhere
3 thereabouts. What was that whole transaction about?

4 A. The 190 was for the debt. The 150 was for a gram
5 and a half. And the other number would have been 340. That
6 was total.

7 Q. So in that transaction, you paid off your debt?

8 A. Uh-huh.

9 Q. You purchased another gram and a half?

10 A. Yes.

11 Q. And the total for that was \$340?

12 A. Yes.

13 Q. And the individual that you purchased that from,
14 who was that?

15 A. Q.

16 Q. Was that the only controlled purchase you did for
17 law enforcement involving Q?

18 A. No.

19 Q. Were there other transactions that were attempted
20 between Q and Mo?

21 A. Yes.

22 Q. Now, every time that you were going to do one of
23 these buys, were you always able to make contact by phone
24 prior to, or sometimes was it set up in advance?

25 A. We always contacted by phone. But I would make

1 sure beforehand that they were on or available throughout
2 the day so that it wouldn't be a waste of everybody's
3 time.

4 Q. So it wasn't just a cold call?

5 A. No, not all the time. There were times that that
6 happened.

7 Q. Were there ever times that you communicated with
8 them by text message?

9 A. Quite often. There were times where they wouldn't
10 answer the phone. Mo a lot of times wouldn't answer the
11 phone or couldn't get ahold on them. And they would just
12 text instead.

13 Q. Did you ever leave voice messages for them?

14 A. Yes. Well, I don't know that I actually left a
15 voice message, but we called and got their voicemail.
16 Sometimes the voice message wasn't set up.

17 Q. Did you do -- again, did you do another transaction
18 involving Q on August 11th, 2015?

19 A. Yes.

20 Q. If I may publish State's Exhibit No. 4.

21 (Whereupon, audio is played.)

22 BY MR. UNDERWOOD:

23 Q. Beginning with track 1, was that just an equipment
24 check?

25 A. Yes.

1 Q. Track 2.

2 (Whereupon, audio is played.)

3 BY MR. UNDERWOOD:.

4 Q. Was that recording of you getting buy money?

5 A. Yes.

6 Q. Track 3.

7 (Whereupon, audio is played.)

8 BY MR. UNDERWOOD:

9 Q. Does this begin with you riding in the car with the
10 undercover officer?

11 A. Yes.

12 MR. UNDERWOOD: Your Honor, if I may fast-forward.

13 BY MR. UNDERWOOD:.

14 Q. Mr. Sekula, whose face is that you see? Can you
15 tell?

16 A. It's Q.

17 Q. It's Q?

18 A. It's easier when it's moving.

19 MR. GRIFFITH: Objection, Your Honor, he's leading
20 the witness.

21 THE COURT: Sustained, leading, rephrase. We don't
22 need him to annotate the video. It speaks for itself. I
23 will give you some latitude, but be careful.

24 (Whereupon, audio is played.)

25 BY MR. UNDERWOOD:

1 Q. Mr. Sekula, who is the other individual you are
2 talking to?

3 A. They call him Unc. He lives over in the
4 neighborhood.

5 THE COURT: Can you repeat that answer?

6 THE WITNESS: I apologize. They call him Unc. I
7 don't know his real name, but he's just a gentleman that
8 lives in the neighborhood that hung out over there.

9 (Whereupon, audio is played.)

10 BY MR. UNDERWOOD:

11 Q. Mr. Sekula, who else was in the house?

12 A. Will.

13 Q. Who's Will?

14 A. Just one of the guys that was hanging over at Q's
15 house from time to time helping out with things.

16 Q. What role, if any, did Will play in the
17 organization of The Boys?

18 A. There were times when Q would be sleeping, or
19 something like that, and he would help out over there.
20 Like, he would answer the door and take care of me on a
21 couple of occasions or just kind of hung out over there.

22 Q. When you say take care of you, what do you mean?

23 A. Serve me a couple of times.

24 Q. By serve you, what do you mean?

25 A. Buy heroin from him.

1 Q. Now, Mr. Sekula, that transaction we just watched,
2 where did it take place?

3 A. Off of Margaret in Fairlawn.

4 Q. Do you remember the exact address?

5 A. I do not remember the exact address.

6 Q. Did you do another controlled purchase on August
7 17th, 2015?

8 THE COURT: We are going to break for lunch. Madam
9 Forelady, ladies and gentlemen, we are going to take
10 advantage of this break in testimony to take our lunch
11 recess. We will resume at two o'clock. It's one o'clock
12 now. During the break, please do not discuss the case.
13 Please leave your notebooks in your seats. And we will
14 return at two once everyone has returned. You can go with
15 the bailiffs, please. Have a good lunch.

16 (Whereupon, the jury leaves open court at 1:00
17 p.m.)

18 THE COURT: Sir, during the lunch recess, you
19 cannot discuss your testimony with anyone. Do you
20 understand?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. Thank you, sir. You may step
23 down. Anything before we adjourn for lunch from the State?

24 MR. UNDERWOOD: Nothing, Your Honor.

25 THE COURT: From the defense?

1 THE DEFENDANT: Yes. I want to go over something.
2 I want to know --

3 THE COURT: With who?

4 THE DEFENDANT: Just when I'm sitting back there
5 for lunch.

6 THE COURT: That's fine.

7 Anything, Ms. Johns?

8 MS. JOHNS: No, Your Honor.

9 THE COURT: Have a good lunch. See y'all -- I
10 don't pay attention to no clock in no courthouse. They are
11 always wrong. So you might want to synchronize your
12 watches. I have 1:01. We will be back at 2.

13 (Luncheon recess was taken.)

14 THE COURT: The State ready to proceed?

15 MR. UNDERWOOD: We have about 30 seconds to move
16 some of these exhibits out of the way.

17 THE COURT: The State ready to proceed?

18 MR. UNDERWOOD: Just about, Your Honor.

19 The State is ready, Your Honor.

20 THE COURT: Mr. Griffith, are you ready to proceed?

21 MR. GRIFFITH: Ready, Your Honor.

22 THE COURT: Ms. Johns, are you ready to proceed?

23 MS. JOHNS: Yes, ma'am.

24 THE COURT: I will remind you you are still under
25 oath?

1 THE WITNESS: Yes, ma'am.

2 (Whereupon, the jury returns to open court at 2:11
3 p.m.)

4 THE COURT: Ladies and gentlemen, I hope y'all had
5 a pleasant lunch. We will now resume testimony.

6 The State may proceed.

7 MR. UNDERWOOD: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 BY MR. UNDERWOOD:

10 Q. Mr. Sekula, just before we broke for lunch, we were
11 talking about the date of August 17th. Did you perform
12 another controlled transaction for a heroin buy on that
13 date?

14 A. Yes, sir.

15 MR. UNDERWOOD: Your Honor, I was about to publish
16 State's Exhibit No. 5.

17 THE COURT: Proceed.

18 (Whereupon, audio is played.)

19 BY MR. UNDERWOOD:

20 Q. Whose voices were in that recording?

21 A. That was my voice and Mo's voice.

22 Q. And who was the third voice?

23 A. Danny, previously.

24 Q. From Dorchester County?

25 A. Yes, sir.

1 Q. Were you able to make a transaction following that
2 call?

3 A. Yes.

4 MR. UNDERWOOD: Your Honor, I would now like to
5 publish State's Exhibit No. 6.

6 THE COURT: Proceed.

7 MR. UNDERWOOD: Beginning with track number 2.

8 (Whereupon, audio is played.)

9 MR. UNDERWOOD: Now track 3.

10 (Whereupon, audio is played.)

11 MR. UNDERWOOD: Your Honor, if I may
12 fast-forward.

13 THE COURT: Uh-huh.

14 BY MR. UNDERWOOD:

15 Q. Who is that individual?

16 A. Will.

17 Q. At this point in the video, Mr. Sekula, how many
18 people are there?

19 A. Three.

20 Q. Who are they?

21 A. You have Q sleeping on the couch. Mo in the back
22 room, just came out, and Will.

23 Q. Which one is Will and which one is Mo, based on
24 their clothing?

25 A. Mo had a black shirt and Will had on a white shirt.

1 Q. Mr. Sekula, during the latter part of that video,
2 while you were walking back, there was in cursing involved.
3 What happened?

4 A. I broke my cigarette.

5 Q. Is that why you were making those expletives?

6 A. Yes. I was a little upset. It was the only
7 cigarette I had.

8 Q. Now, during the time you were in the house, there
9 was a lot of motion on the camera. Please tell the jury
10 what was happening. Who was doing what?

11 A. Q was sleeping. I was talking to Mo. And Will was
12 fixing the product.

13 Q. On whose behalf was he fixing the product?

14 MS. JOHNS: Your Honor, I object.

15 THE COURT: Basis?

16 MS. JOHNS: He has to have --

17 THE COURT: No speaking objection. What is the
18 basis of the objection?

19 MS. JOHNS: Speculation, Your Honor.

20 THE COURT: Sustained. You have not led the
21 appropriate foundation that that was within his rational
22 perception. Rephrase.

23 BY MR. UNDERWOOD:

24 Q. Who did you arrange the drug deal with?

25 A. I called Mo.

1 Q. Was Mo present when Will was preparing the drugs?

2 A. Yes.

3 Q. Again, did you give the drugs directly to the
4 undercover agent as you described earlier?

5 A. Yeah.

6 Q. Did you conduct another controlled purchase
7 transaction on August 27th, 2015?

8 A. Yes, sir.

9 MR. UNDERWOOD: Permission to publish Exhibit No.
10 7, Your Honor.

11 THE COURT: Proceed.

12 MR. UNDERWOOD: Track 2.

13 (Whereupon, audio is played.)

14 MR. UNDERWOOD: Track 3.

15 (Whereupon, audio is played.)

16 MR. UNDERWOOD: Permission to fast-forward, Your
17 Honor.

18 THE COURT: Yes, sir.

19 (Whereupon, audio is played.)

20 BY MR. UNDERWOOD:

21 Q. Mr. Sekula, the video is a little bit dark when you
22 went in the house. Please tell the jury who was with you
23 and what happened.

24 A. Q was there. I got the dope and left, simple as
25 that.

1 Q. Did he hand it to you? Did you pick it up
2 somewhere?

3 A. I gave him the money and he gave it to me.

4 Q. What was the discussion about concerning the
5 brother?

6 A. Apparently, my brother was hanging out with another
7 individual, a female that knew Q, and had hung out with him
8 from time to time. And he and her conspired to -- for him
9 to contact Q to go get something, because I wasn't helping
10 him out that day. And he went over there under his own
11 initiative and made that happen, apparently. And it was
12 thought that I had given him permission or told him to go
13 over there on my behalf and vouch for him, basically. And I
14 never did that.

15 Q. Why would that be an issue whether or not you would
16 vouch for him?

17 A. Well, you don't normally want just strangers
18 showing up at your house and serving them drugs without
19 somebody who's been coming through letting them know who you
20 are.

21 Q. Why is that?

22 A. Because of things like this and because they could
23 rob you or -- it just puts you at risk.

24 Q. When you were in the house, did you ever notice any
25 of the target silhouettes hanging on the walls?

1 A. Yes. They have the target practice, picture of a
2 dummy or whatever on the wall as you go into the left in the
3 dining room area. There was one there. And at one point
4 there was one by the front door as well as.

5 Q. Did you ever see guns at Q's house?

6 A. I've seen guns with Q before, yes.

7 Q. How many guns?

8 A. I couldn't put a number on it. And there was just
9 different guns at different times.

10 Q. Do you know what they did with the guns?

11 A. I mean, it was my understanding that they were
12 sold, a lot of them. Some were held on to.

13 Q. Do you know where they got the guns?

14 A. Different customers, a lot of times, for the most
15 part. It's very well-known amongst people that do --

16 MS. JOHNS: Your Honor, I'm going to object.

17 THE COURT: Sustained. Relevance, prior bad acts.

18 Ladies and gentlemen, you are to disregard the last
19 question and its answer in its entirety. You are to give
20 absolutely no consideration to it in your deliberations.

21 Proceed.

22 BY MR. UNDERWOOD:

23 Q. Without going into any speculation, Mr. Sekula, do
24 you have any firsthand knowledge --

25 THE COURT: It's still a prior bad act, not the

1 subject of a conviction. It raises character. Move on.

2 BY MR. UNDERWOOD:

3 Q. Were there ever any other methods of payment other
4 than cash for the drugs?

5 A. Yeah, merchandise, as far as guns or electronics,
6 anything of value would be traded for heroin.

7 Q. Mr. Sekula, did you ever feel afraid when you were
8 at Q's house?

9 A. I mean, there were times, absolutely. He had to
10 ask me if I had ever eaten a bullet before over a
11 confrontation that had occurred. There was a time when he
12 shorted me intentionally because somebody had knocked on his
13 front door. And I had to call Mo to correct it. And when I
14 went back to pick up what I was shorted, he threw it at me
15 and threatened me if I ever went over his head again, I
16 would regret it.

17 Q. Why was he characterizing it as going over his head
18 when you had to talk to Mo?

19 A. Because Q wasn't going to make it right on the
20 purchase, but Mo had the autonomy to do that. He could have
21 told him to fix it.

22 Q. Was Mo Q's boss?

23 MS. JOHNS: Objection, Your Honor.

24 THE COURT: Basis?

25 MS. JOHNS: He's also speculating.