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May 25 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDAL SMITH,

APPELLANT

APPELLATE CASE NO. 2021-000939

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD) and STATE'S EXHIBIT #3 (PHOTOGRAPH)**

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Brandal Smith,) 2019-GS-42-03346;03347
6 Defendant.) August 23 - 25, 2021
7) Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13
14

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

16 KATRYNA BEVIS OWENS, ESQUIRE
17 Attorney for the State

18 E. JOSHUA SCHULTZ, ESQUIRE
19 Attorney for the Defendant
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	D.V.D.	62	136
S-2	Drugs	88	179
S-3	Photograph	130	132

Jury qualification

1 (Proceedings August 23, 2021)

2 (The following takes place at the Spartanburg Memorial
3 Auditorium.)

4 THE COURT: Good morning, ladies and gentlemen of the
5 jury panel.

6 As the bailiff has told you, my name is Derham Cole.
7 I'm a resident judge here in Spartanburg. I'm going to be
8 presiding over a term of general sessions court. That's
9 the criminal side of the circuit court.

10 Any case for which you are asked to participate in my
11 courtroom will be one of a criminal nature, that is someone
12 is going to be accused of having committed some type of
13 criminal offense.

14 And where that person enters a plea of not guilty the
15 jury is selected for the purpose of considering all of the
16 evidence, deciding the facts, applying the law and
17 determining whether or not that person's guilt has been
18 proven beyond a reasonable doubt.

19 The first case that we have that's going to be tried
20 in my courtroom is the case of the State vs. Brandal Smith.

21 Mr. Smith has been charged with two separate and
22 distinct criminal offenses, although they are alleged to
23 have arisen out of one particular event or a course of
24 events which the state alleges occurred on or about
25 February the 20th of 2018.

Jury qualification

1 When a person is charged with a crime in the general
2 sessions court they're charged by way of documents referred
3 to as indictments. The indictments set forth the charges
4 brought against the individual designated as the defendant.

5 In this particular case the defendant, the person
6 charged, is Brandal Smith, and he's charged with having
7 committed the offenses of trafficking in an illegal drug,
8 that being fentanyl, and also distribution of the drug
9 fentanyl within a half-mile of a school or park.

10 The state alleges in the indictments that Mr. Smith
11 did here in Spartanburg County on or February the 20th of
12 2018 knowingly have in his actual or constructive
13 possession approximately 4 grams or more, but less than
14 14 grams, of the drug fentanyl, which is a morphine, opium
15 salt, isomere or salt thereof, in violation of a particular
16 section of law.

17 The second indictment charges Mr. Smith with having on
18 the same date or time or course of events, having committed
19 the crime of distribution, selling, purchasing,
20 manufacturing or unlawfully possessing with intent to
21 distribute a quantity of fentanyl while in or within a
22 one-half-mile radius of the grounds of a public park,
23 school or university. And they specifically allege it was
24 Cleveland Park located on Cleveland Park Drive here in the
25 City of Spartanburg.

Jury qualification

1 Now, as to those allegations and as to each of those
2 charges Mr. Smith has entered a plea of not guilty, and a
3 plea of not guilty therefore places upon the state the
4 burden of proving the allegations that they have made by
5 way of each of these indictments, the burden of proving
6 each of the essential elements that make up the crimes that
7 are alleged in each of these separate indictments; and
8 therefore the burden is upon the state to establish the
9 defendant's guilt to the satisfaction of 12 jurors beyond a
10 reasonable doubt before a verdict of guilty could be
11 returned as to either of the separate charges.

12 Now, before we begin with the jury selection I've got
13 some folks that I'm going to introduce to you, and that
14 would include the defendant, that would include the
15 lawyers, that would include any potential witness that
16 might be called during the trial of the case.

17 And the purpose of these introductions, as you might
18 already be aware, is to find out if you have any type of
19 connection with them. Are you related by blood or
20 marriage; do you have a social connection, an employment
21 connection, a school connection or any other connection
22 with any person that's going to be introduced, as well as
23 any members of their respective families should you happen
24 to know a family member.

25 And so as these people are introduced -- all are not

Jury qualification

1 present here in this room, but if you know somebody that
2 has that name but you're not sure if it's the same person
3 that I'm reciting the name of, please stand and let me know
4 of that fact so that we can try to narrow the
5 identification for your benefit and determine whether or
6 not you have a connection with anybody involved in this
7 case. And of course we need to find out if that connection
8 would have any bearing upon any decision that you might
9 make if you were called upon to serve as a juror.

10 Now, first of all, as I told you, the defendant, that
11 is the person who has been accused of having committed each
12 of these criminal offenses, is Brandal Smith.

13 Mr. Smith, if you will, please stand and face the jury
14 panel and remove your mask so that they may see who you
15 are.

16 (Whereupon, the defendant stood.)

17 THE COURT: All right. Thank you. Be seated.

18 Representing Mr. Smith, his lawyer, is Josh Schultz.
19 He's a lawyer here in Spartanburg. He'll be assisting
20 Mr. Smith during the trial of this case.

21 (Whereupon, Mr. Schultz stood.)

22 THE COURT: Thank you. Be seated.

23 Presenting the case on behalf of the state is Katrina
24 Owens who is an assistant circuit solicitor for the
25 Seventh Judicial Circuit. That's Spartanburg and Cherokee

Jury qualification

1 counties. She'll be presenting the state's case.

2 (Whereupon, Mr. Owens stood.)

3 THE COURT: Potential witnesses to be called during
4 the trial of the case include Daniel Swad who was formerly
5 with the Spartanburg County Sheriff's Department; Jim Ruane
6 who is with the Spartanburg County Sheriff's Department;
7 Robert Rosenberg who is also with the Spartanburg County
8 Sheriff's Department; Holly Tobias who was formerly with
9 the Spartanburg County Sheriff's Department as a crime lab
10 chemist or analyst; and Germaine Lamont Smith.

11 Are there any other potential witnesses on behalf of
12 the state?

13 MS. OWENS: Not from the state, Your Honor.

14 THE COURT: The defendant.

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Does anybody know anybody
17 who's just been introduced?

18 And since Ms. Owens works in the solicitor's office, I
19 also need to know if you know anybody else, aside from her,
20 who is employed in the Seventh Judicial Circuit Solicitor's
21 Office. So do you have any connection with any of those
22 people who have been introduced? If so, please stand.

23 (No response.)

24 THE COURT: All right. As I told you by reading the
25 allegations in the indictments, this is an event which

Jury qualification

1 occurred back on February the 20th of 2018, and it is
2 alleged to have occurred on or about 121 North Cleveland
3 Park Drive located here in the City of Spartanburg.

4 Does any juror think you might have heard or seen or
5 read or been exposed to any type of information that might
6 relate to this particular case? Do you have any
7 information from any source whatsoever about the case? If
8 so, please stand.

9 (No response.)

10 THE COURT: Is there anything about the nature of the
11 case, that is the charge that has been made against this
12 defendant? Is there anything about the nature of the case
13 that would prevent any juror from being able to be fair and
14 impartial if you were selected as a juror in this
15 particular case? If so, please stand.

16 (No response.)

17 THE COURT: Is any juror related by blood or marriage
18 to any type of law enforcement officer, not just the
19 sheriff's department, but a city police department, a town
20 or municipal law enforcement agency, the department of
21 corrections, probation or parole, local detention facility,
22 state law enforcement division, F.B.I., C.I.A., INTERPOL,
23 any kind of law enforcement agency? Are you related by
24 blood or marriage to any such person who is employed in any
25 of those agencies? If so, please stand. And also have you

Jury qualification

1 or any members of your immediate family ever been employed
2 as a law enforcement officer.

3 All right. We'll start in the back. Your name and
4 number, please.

5 JUROR NO. 53: Kiana Edmond, 53.

6 THE COURT: What's your number?

7 JUROR NO. 53: Fifty-three.

8 THE COURT: Fifty-three. And how does that question
9 relate to you?

10 THE COURT REPORTER: I can't hear any of that.

11 THE COURT: All right. Your mother works --

12 JUROR NO. 53: Yes.

13 THE COURT: -- for what agency?

14 JUROR NO. 53: Yes. Works presently.

15 THE COURT: What agency?

16 JUROR NO. 53: Charleston Police Department.

17 THE COURT: All right. Is there anything about that
18 connection or that fact that would affect your judgment in
19 this case?

20 JUROR NO. 53: I'm honestly not sure. I don't think
21 so.

22 THE COURT: Well, I mean, you're the only one that can
23 answer the question. Your mother is a police officer?

24 JUROR NO. 53: She works with, like -- like, drug
25 busts and all of that.

Jury qualification

1 THE COURT: Okay. All right. And so and this case
2 involves allegations of drug activity. So because your
3 mother is a Charleston police officer would that cause you
4 to automatically side with the state or be biased against
5 the defendant or be pro-defendant against the state? Any
6 bias whatsoever?

7 JUROR NO. 53: (Inaudible.)

8 THE COURT: Ma'am?

9 JUROR NO. 53: I don't think I'd be biased against.

10 THE COURT: You don't think you could be biased? Is
11 that what you said?

12 JUROR NO. 53: I'm not -- I'm not -- I'm not sure. I
13 don't -- I'm not sure how to answer the question.

14 THE COURT: Okay. Well, maybe you don't understand
15 it, but it's -- the question is simply because your mother
16 is a law enforcement officer, would that prevent you in any
17 way from being fair to both sides in this case if you were
18 serving in this particular case?

19 JUROR NO. 53: No. I don't have.

20 THE COURT: Ma'am?

21 JUROR NO. 53: No. I guess not.

22 THE COURT: Well, we can't guess about it. We've got
23 to be fairly certain.

24 JUROR NO. 53: No, sir.

25 THE COURT: No, sir? You could be fair and impartial?

Jury qualification

1 JUROR NO. 53: Yes.

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

3 Next.

4 JUROR NO. 50: Juror No. 50. I was a reserve officer
5 in Frankenmuth, Michigan, for about five years.

6 THE COURT: All right. Would that have any bearing in
7 your decision in this case?

8 JUROR NO. 50: No, sir.

9 THE COURT: Thank you. Be seated.

10 JUROR NO. 130: My name is Christopher Phillips. My
11 father and my uncle were both police officers.

12 THE COURT: Where?

13 JUROR NO. 130: My father was a Spartanburg city
14 police officer for -- and my uncle was police chief in
15 Ayden County, North Carolina.

16 THE COURT: Police chief where?

17 JUROR NO. 130: Ayden County, North Carolina.

18 THE COURT: Aiken County?

19 JUROR NO. 130: Ayden.

20 THE COURT: Ayden County, North Carolina.

21 JUROR NO. 130: Yes, sir. Right outside Greenville.

22 THE COURT: Okay. And your number is what?

23 THE DEFENDANT: Juror No. 130.

24 THE COURT: 130?

25 JUROR NO. 130: Yes, sir.

Jury qualification

1 THE COURT: All right. Would either of those
2 connections have any bearing in your decision in this case?

3 JUROR NO. 130: I do not believe so, sir.

4 THE COURT: Well, can you perceive that there's any
5 probability that it would?

6 JUROR NO. 130: I can perceive of it, sir, yes, sir.

7 THE COURT: Sir?

8 JUROR NO. 130: I can perceive, sir.

9 THE COURT: You can?

10 JUROR NO. 130: I can, yes.

11 THE COURT: You can do what?

12 JUROR NO. 130: Proceed.

13 THE COURT: Well, my question is can you be fair and
14 impartial.

15 JUROR NO. 130: Yes, sir.

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

17 Next.

18 JUROR NO. 107: Terry Meadows, Juror 107.

19 THE COURT: All right.

20 JUROR NO. 107: Step-daughter, Spartanburg County, and
21 her husband is Homeland Security.

22 THE COURT: All right. Is there anything about those
23 connections that would have any bearing in your decision in
24 this case if you were selected to serve?

25 JUROR NO. 107: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 JUROR NO. 140: I'm No. 140, Deborah Robinson. I was
3 raised by my stepfather and my mother, and he was with the
4 F.B.I. for 31 years in San Francisco.

5 THE COURT: All right. Would that have any bearing in
6 your decision in this case?

7 JUROR NO. 140: No, sir.

8 THE COURT: Thank you. Be seated.

9 JUROR NO. 32: Juror No. 32. My father-in-law, which
10 is deceased, was a Greenville county-city police officer.

11 THE COURT: And would that have any bearing in your
12 decision if you were selected?

13 JUROR NO. 32: No, sir.

14 THE COURT: Thank you. Be seated.

15 Has any juror already formed an opinion as to how you
16 think the case ought to be decided based upon what you've
17 heard up to this point or based upon any other
18 consideration?

19 Have you already made up your mind as to the ultimate
20 outcome? If so, please stand.

21 (No response.)

22 THE COURT: Does any juror know of any reason
23 whatsoever why you believe you could not be fair and
24 impartial if you were selected to serve as a juror in this
25 particular case? If you have any reason at all why you

Jury qualification

1 think you could not be fair and impartial in this
2 particular case, please let me know by standing.

3 (No response.)

4 THE COURT: None responding.

5 Any other questions requested by the state?

6 MS. OWENS: None from the state, Your Honor.

7 THE COURT: By the defendant?

8 MR. SCHULTZ: None from the defense.

9 THE COURT: All right. We're going to select a jury.
10 Now, it's different than it was previously in a civil
11 case. That's done on paper.

12 Here we do it by asking you to come forward as your
13 name is called. The computer still makes the selection,
14 and it does it from the names in the computer. But as your
15 name is called you'll be asked to come forward, stand out
16 here in front of me and face the lawyers so they can see
17 who you are.

18 Each side has an opportunity to have you accepted or
19 seated for service in the case, or they may ask that you be
20 excused from serving in this particular case.

21 If either side asks that you be excused from serving,
22 just simply go back and have a seat where you are now.

23 If both agreed to have you seated for service in the
24 case you'll be having a seat in the -- well, we'll call
25 that a jury box over there, but it's to your left and to my

1 right.

2 So please come forward as your name is called, and
3 you'll be instructed whether you have been accepted for
4 service in the case or been excused from serving in the
5 case.

6 We'll have two alternates.

7 THE CLERK: Yes, sir.

8 THE COURT: The computer is going to select -- make a
9 list. Once it's selected, then we'll begin with the jury
10 selection process.

11 Everybody receive these? No. Not yet? Well, you're
12 going to. The yellow one is for the ones who are selected
13 and the blue one for those who have not been. You'll be
14 calling back. But be sure you get one of those slips
15 before you leave.

16 All right. The clerk's going to call your name. As I
17 say, when it's called come forward towards me. Let the
18 lawyers have a look and then they'll tell you if you've
19 been seated or excused from serving.

20 THE CLERK: Juror No. 2, Allison Addington.
21 What says the state?

22 MS. OWENS: Please present Ms. Addington.

23 THE CLERK: What says defense?

24 MR. SCHULTZ: Please present the juror.

25 THE CLERK: Juror No. 130, Christopher Phillips.

Jury qualification

1 what says the state?

2 MS. OWENS: Please present Mr. Phillips.

3 THE CLERK: what says defense?

4 MR. SCHULTZ: Please excuse Mr. Phillips.

5 THE CLERK: Forty-seven, Michael Dill.

6 what says the state?

7 MS. OWENS: Please present Mr. Dill.

8 THE CLERK: what says defense?

9 MR. SCHULTZ: Please excuse the juror.

10 THE CLERK: No. 50, Brandon Drews.

11 what says the state?

12 MS. OWENS: Please present Mr. Drews.

13 THE CLERK: what says defense?

14 MR. SCHULTZ: Please excuse the juror.

15 THE CLERK: No. 72, Andrew Hall.

16 what says the state?

17 MS. OWENS: Please present Mr. Hall.

18 THE CLERK: what says defense?

19 MR. SCHULTZ: Please seat the juror.

20 THE CLERK: 157, Jason Sprouse.

21 what says the state?

22 MS. OWENS: Please present Mr. Sprouse.

23 THE CLERK: what says defense?

24 MR. SCHULTZ: Please seat the juror.

25 THE CLERK: No. 9, Robert Ballard.

Jury qualification

1 what says the state?

2 MS. OWENS: Please excuse Mr. Ballard.

3 THE CLERK: 160, Julie Stone.

4 what says the state?

5 MS. OWENS: Please present Ms. Stone.

6 THE CLERK: what says defense?

7 MR. SCHULTZ: Please seat the juror.

8 THE CLERK: Seventy-eight, Angela Hill.

9 what says the state?

10 MS. OWENS: Please present Ms. Hill.

11 MR. SCHULTZ: what number again, Madam Clerk?

12 THE CLERK: Seventy-eight.

13 MR. SCHULTZ: Thank you.

14 THE CLERK: what says defense?

15 MR. SCHULTZ: Please seat the juror.

16 THE CLERK: 155, Zachary Smith.

17 what says the state?

18 MS. OWENS: Please present Mr. Smith.

19 THE CLERK: what says defense?

20 MR. SCHULTZ: Please seat the juror.

21 THE CLERK: Seventeen, Gena Bowers.

22 what says the state?

23 MS. OWENS: Please present Ms. Bowers.

24 THE CLERK: what says defense?

25 MR. SCHULTZ: Please seat the juror.

Jury qualification

1 THE CLERK: Sixty-nine, Justin Greene.

2 what says the state?

3 MS. OWENS: Please present Mr. Greene.

4 THE CLERK: what says defense?

5 MR. SCHULTZ: Please seat the juror.

6 THE CLERK: Fifty-eight, Amanda Evans.

7 what says the state?

8 MS. OWENS: Please present Ms. Evans.

9 THE CLERK: what says defense?

10 MR. SCHULTZ: Please seat the juror.

11 THE CLERK: 144, Joseph Rose.

12 what says the state?

13 MS. OWENS: Please excuse Mr. Rose.

14 THE CLERK: Fifty-three, Kiana Edmond.

15 what says the state?

16 MS. OWENS: Please present Ms. Edmond.

17 THE CLERK: what says defense?

18 MR. SCHULTZ: Please seat the juror.

19 THE CLERK: Twenty-nine, Robert Cato.

20 what says the state?

21 MS. OWENS: Please present Mr. Cato.

22 THE CLERK: what says defense?

23 MR. SCHULTZ: Please seat the juror.

24 THE CLERK: 162, Matthew Swofford.

25 what says the state?

1 MS. OWENS: Please present Mr. Swofford.

2 THE CLERK: What says defense?

3 MR. SCHULTZ: Please seat the juror.

4 THE CLERK: This is for the first alternate.

5 No. 11, Danielle Batson.

6 What says the state?

7 MS. OWENS: Please present Ms. Batson.

8 THE CLERK: What says defense?

9 MR. SCHULTZ: Please seat juror.

10 THE CLERK: 164, Logan Tucker.

11 What says the state?

12 MS. OWENS: Please present Mr. Tucker.

13 THE CLERK: What says defense?

14 MR. SCHULTZ: Please seat the juror.

15 (Whereupon, a jury was impaneled.)

16 THE COURT: Are there any matters to be addressed

17 regarding jury selection by the state?

18 MS. OWENS: None from the state, Your Honor.

19 THE COURT: By the defendant?

20 MR. SCHULTZ: None from the defense.

21 THE COURT: All right.

22 (Whereupon, the remaining members of the jury venire
23 were excused.)

24 THE COURT: Now, those who have been selected, I've
25 got -- during the course of the week a judge handles both

1 jury and nonjury matters. And we try to schedule those in
2 blocks of time so that we don't interfere with your time
3 any more than is absolutely necessary.

4 And so for the balance of today I've got matters that
5 I've got to address that do not require your participation.
6 So you're going to be excused for the balance of today, but
7 you are going to be asked to report to the courthouse, the
8 Spartanburg County Courthouse on Magnolia Street.

9 Is there anybody that doesn't know where with the
10 courthouse is? Anybody that does not know where the
11 courthouse is?

12 All right. Yeah. You'll be reporting to the
13 courthouse at 9:30 tomorrow morning; 9:30 tomorrow morning.

14 If you're facing the courthouse on Magnolia Street, on
15 the right-hand side is a brand new parking garage. You
16 can't miss it if you know where the courthouse is. And you
17 can park in that garage, and that's on Library Street.

18 And then directly across from Library Street from that
19 parking garage is the courthouse. You can come in that
20 side entrance, the Library Street side entrance. And
21 somebody will meet you there to escort you to a jury room.
22 And from there you'll be taken to the courtroom when the
23 trial starts. So be sure that you are -- have reported to
24 the courthouse not later than 9:30 tomorrow morning so that
25 we can begin with the trial at that time.

1 Now, I know, based upon your answers to the questions,
2 that you don't know anything about this case, and you're
3 not supposed to know anything about it. And also you're
4 not supposed to gather any information from any source
5 whatsoever outside of the case.

6 In other words, you have to base your decision upon
7 what you see and hear during the trial, and you cannot
8 gather information or be influenced by any outside or
9 extraneous information or other matters.

10 So don't do any research, don't do any investigation,
11 don't do any talking to other people, even among
12 yourselves, until deliberations take place at the trial's
13 conclusion, because your decision has to be based, as I
14 say, by what you see and hear during the trial. You can't
15 be influenced by any outside or extraneous information.

16 So no research; no investigation; no media coverage
17 should there be any; and no discussions with anybody,
18 including your fellow jurors, until deliberation time takes
19 place. And, as I say, that won't be until the end of the
20 trial after all of the evidence has been received and I've
21 instructed you on the law and ask you to begin
22 deliberations.

23 So thank you for your participation. You're excused
24 for the balance of the afternoon. Please report to the
25 courthouse at not later than 9:30 in the morning at which

1 time we'll begin with the trial of the case.

2 Okay. You'll get one of these before you leave. Be
3 sure you do. It gives you some information.

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

6 THE COURT: Mr. Smith, you're on bond. Someone has
7 signed your bond, and so at least for the moment you're
8 going to remain on bond. But understand you must, in
9 compliance with the conditions of your bond, report back to
10 court at any time that you have been told to do so.

11 You'll be going with Mr. Schultz now, but he'll tell
12 you when to get back. But for my purposes, for my purposes
13 in this case, it will be 9:30 in the morning.

14 Mr. Schultz may need you for something else. So but
15 as far as I'm concerned you've got to be back here at the
16 courthouse not later than 9:30 in the morning.

17 MR. SCHULTZ: He's had no violations on bond, Your
18 Honor.

19 THE COURT: That's good.

20 All right. And if y'all need to talk to me this
21 afternoon I'm going to be back at the courthouse at 2:30.

22 MR. SCHULTZ: Thank you, Judge.

23 THE COURT: All right. Court's in recess until 2:30.

24 END OF PROCEEDINGS AUGUST 23, 2021

25

1 (Proceedings August 24, 2021)

2 (The following takes place at the Spartanburg County
3 Courthouse.)

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

6 THE COURT: Are there any matters that need to be
7 addressed before the jury is sworn?

8 MS. OWENS: Nothing from the state, Your Honor.

9 MR. SCHULTZ: Just a couple of housekeeping things.

10 I don't know if the Court wants me to get into this
11 right now or later on when the witness could potentially be
12 proffered there.

13 I have filed a written notice under Rule 609(b) to use
14 convictions outside of the 10-year limit on the state's
15 cooperating witness.

16 I have looked at the N.C.I.C. that was provided to me
17 by the state. I have a couple of convictions that he -- he
18 has a couple of convictions that I'm referring to --
19 Jermaine Smith, a/k/a Jermaine Lamont Smith, or a/k/a
20 Germaine with a "G" Lamont Smith. And he has several
21 convictions outside of the 10-year limit as promulgated
22 under 609(b).

23 Again, I've served written notice on the state. And
24 the state provided me or actually made available to me the
25 N.C.I.C. for Mr. Smith.

1 But at the same time, Your Honor, I took a look at
2 that yesterday. I did my research. He has a conviction.
3 He has convictions going back to 1995, which could be
4 relevant to the case.

5 At this time what I intend to do is when he testifies,
6 either in proffer or in front of the jury, is that he has a
7 1998 possession with intent to distribute Xanax, two counts
8 of possession with intent to distribute powder cocaine, two
9 counts of that, both in 1998; 2010, failed to stop for a
10 blue light, common-law robbery and a manufacturing drug,
11 possession with intent to distribute, Schedule I(b)(c),
12 Schedule II, cocaine first.

13 I intend to produce -- or excuse me -- present that in
14 impeachment against the witness should he testify.

15 THE COURT: All right. Ms. Owens.

16 MS. OWENS: Your Honor, as I shared with the Court in
17 chambers, I have attempted to determine the viability of
18 the 1995 convictions for, first, contraband, prisoners, and
19 possession of cocaine base.

20 I have not been able to locate any record of those
21 convictions. They are noted on the N.C.I.C. criminal
22 history as having occurred here in Spartanburg County.

23 The circuit's case management system keeps records of
24 the disposition and existence, of course, of any charges,
25 and in my experience, of this age.

1 I have no idea whether those cases exist, and to the
2 extent that I cannot verify, nor have I received any
3 indication, that certified convictions exist for those
4 offenses, I would object to the 1995 charges being a basis
5 for impeachment of Mr. Smith's testimony.

6 Likewise, the 1996 accessory before the fact is
7 similarly situated. I cannot verify its existence, nor
8 have I been provided with certified convictions to -- to
9 give any validity or accuracy to what's reported on
10 N.C.I.C.

11 To the extent that the 1998 conviction for possession
12 with intent to distribute marijuana is an offense which
13 carries more than one year, it is of course subject to this
14 Court's evaluation of the probative value of that -- that
15 conviction regarding the witness' impeachment.

16 It's the state's position that the substance in this
17 case is purported to have been fentanyl, not marijuana, and
18 is not relevant. There's no probative value to the
19 witness' conviction for that offense.

20 Similarly, the 1998 conviction for possession with
21 intent to distribute cocaine involves a substance that is
22 not at issue. Though it carries a potential penalty of
23 more than one year, I don't believe that there's any
24 probative value, particularly in light of the fact that
25 there are convictions within the past ten years that

1 sufficiently address the potential affect that this
2 witness' criminal convictions have on his credibility,
3 specifically this 2010 conviction for failure to stop,
4 strong-arm robbery and distribution of cocaine.

5 I believe that the defendant was still under
6 supervision within the last ten years, and of course it's
7 the state's position that, given at least with respect to
8 the robbery, that there is -- as I understand it, the
9 Court's position in State vs. Bryant, that conviction, in
10 particular, directly affects the witness' propensity to
11 tell the truth. I certainly have no objection to that
12 conviction to use in the impeachment.

13 But the other two, they're inside ten years and carry
14 more than one year. I believe that those are appropriate
15 for the Court to evaluate the potential probative value
16 they have on the witness' propensity for telling the truth.

17 So that, in sum, the state's position is that the 1995
18 and 1996 convictions cannot be verified and should not be
19 used as impeachment and that the 1998 convictions do not
20 have sufficient probative value to consider their inclusion
21 in light of their age beyond ten years.

22 THE COURT: well, let me ask you.

23 what's your -- what do you perceive to be the
24 difference between the 1998 convictions and the 2010
25 conviction?

1 MS. OWENS: Well, to the extent that the 2010
2 conviction is inside the 10-year period the state defers to
3 the Court's analysis under 609(a) regarding the -- the
4 probative value of -- of a distribution of cocaine
5 conviction in light of this witness' testimony regarding
6 the specific distribution of a controlled substance.

7 I feel similarly that since the substance involved in
8 this case is fentanyl, this conviction having been cocaine,
9 again, makes its relevance more tenuous.

10 Nonetheless, as it is inside ten years I believe that
11 there's a -- a lower bar for this Court's consideration of
12 its relevance and probative value given its age.

13 MR. SCHULTZ: And, Your Honor, if I may.

14 I received the N.C.I.C., obviously, yesterday, as I
15 said on the record there a couple of minutes ago. And
16 certainly I haven't confirmed, I guess, for lack of a
17 better word, the convictions in 1993 -- excuse me -- 1995.

18 I -- I don't have the sentencing sheets for that. I
19 asked the clerk of court for that information. They don't
20 have it. It probably -- it probably is in another place.

21 But at the same time, Your Honor, I'm going by the
22 N.C.I.C. And as the Court knows, N.C.I.C.s are introduced
23 in almost every guilty plea, almost every court proceeding
24 that the -- that, Your Honor, takes place and any circuit
25 judge has.

1 So I'm looking at a conviction in 1995 for carrying a
2 pistol, and very difficult. Sometimes these things are
3 very difficult to read because sometimes what happens is a
4 person is convicted in, say, one year and then sentenced on
5 a probation matter the next year. But those two warrants
6 are listed almost at the same, concurrently. So it's
7 sometimes difficult to distinguish between two charges on
8 the same N.C.I.C.

9 But what I did in drafting my motion here is I pretty
10 much consolidated all of the things that I believe are
11 relevant under 609(b) in this case.

12 So I have, like I said before, like I put on the
13 record before, 1995, 1996, 1998, 2010.

14 I don't have the information yet for the 1996
15 conviction as to what the felony could have been. I don't
16 know. It could have been a violent charge; could have been
17 a nonviolent charge. So I don't have that.

18 THE COURT: Do you know if it's before or after?

19 MR. SCHULTZ: It says before. The N.C.I.C. clearly
20 says before, which, as the Court knows, the -- that carries
21 the same criminal liability as the principle effects.

22 For instance, if you're charged with accessory before
23 the fact of murder you're looking at 30 to life as opposed
24 to accessory after the fact of murder which is, I believe,
25 zero to 15. And it's a nonviolent charge.

1 So I'm looking at that. I can understand the state's
2 position in regards to the convictions in 1995 and 1996.

3 I do intend to introduce the 1998 convictions, and
4 Ms. Owens just said something under --

5 THE COURT: I'm sorry. I think I misunderstood.
6 what did you just say about the 1995 and 1996?

7 MR. SCHULTZ: I can understand the state's position on
8 1995 and 1996.

9 THE COURT: well, if they're not verified?

10 MR. SCHULTZ: well, they're verified but through the
11 N.C.I.C. That's the problem that we're having.

12 THE COURT: well, their position is they haven't been
13 verified. That's why she's objecting to them, and I guess
14 remote too, but.

15 MR. SCHULTZ: well, to me, and I'll be truthful with
16 the Court -- I'm an officer of the Court -- I haven't
17 verified them either by looking -- looking at a sentencing
18 sheet or an indictment or anything like that.

19 THE COURT: I understand.

20 MR. SCHULTZ: The only verification that I have is in
21 the N.C.I.C., but my point is N.C.I.C. is used all of the
22 time in any court of record that we have in this state to
23 read out a prior record for a defendant.

24 THE COURT: They are unless something is shown to be
25 likely inaccurate but-and there's nothing here so far

1 that's been shown to me that would indicate that the record
2 is inaccurate.

3 Now, that might can be cleared up by either conducting
4 research in the clerk's records or talking to Mr. Smith who
5 is the one who's supposed to have the conviction. I assume
6 he perhaps has a memory of it. He might not. But he could
7 verify it or not.

8 But I am going to assume that the record, the N.C.I.C.
9 record, that the state has provided to the defense is
10 accurate unless there's some reason I should believe it to
11 be inaccurate.

12 In other words, I'm not going to require that the
13 defendant produce certified copies of conviction records.
14 The N.C.I.C., which the state has provided, says he's been
15 convicted, and so I'm going to accept that as being
16 accurate unless it's shown not to be or there's some
17 indication that it's not.

18 In other words, if Mr. Smith said, no, I've never been
19 convicted of those crimes, then we might have to do some
20 more research in order for them to be admissible.

21 Do we need to take that step?

22 MS. OWENS: Well, Your Honor, it depends on the
23 Court's ruling about whether those would be admissible
24 despite their remote nature.

25 THE COURT: Okay. Well, Rule 609 says that evidence

1 that a witness other than an accused has been convicted of
2 a crime shall be admitted subject to 403. And 403 says it
3 may be excluded if the probative value is substantially
4 outweighed by the danger of unfair prejudice and some other
5 circumstances that aren't applicable.

6 I don't -- from what I hear and what's going to be
7 admitted and based on his history that is admissible that's
8 not objected to, I can't see how those convictions would
9 be -- how the probative value would be substantially
10 outweighed by the danger of unfair prejudice if they are,
11 in fact, his convictions and his history.

12 I mean, I think it's clearly going to establish that
13 Mr. Smith is a criminal defendant. That won't be hard. So
14 the number -- I don't know that the number will make any
15 difference. Some things might make a difference, but I
16 don't see how these would.

17 So that's my ruling. So now what do you want to do
18 about that?

19 MS. OWENS: Your Honor, I don't know that it's
20 necessary to undertake the --

21 THE COURT: I wouldn't think so.

22 MS. OWENS: -- proffer at this stage, but when we
23 reach Mr. Smith's testimony we could, of course, revisit
24 it.

25 THE COURT: All right. If you like.

1 MR. SCHULTZ: Would the proffer happen right before
2 Mr. Smith's testimony, I assume?

3 THE COURT: Who is going to do the proffer?

4 MR. SCHULTZ: I believe the state would do that.

5 THE COURT: I'm allowing them --

6 MR. SCHULTZ: Yes, sir.

7 THE COURT: -- unless, as I say unless, Ms. Owens
8 wants to do the research and tell me that they're not his
9 convictions or Mr. Smith says they're not.

10 MR. SCHULTZ: That's fine. Thank you.

11 THE COURT: And I assume Mr. File and Mr. Smith can
12 tell me that. And if you don't trust them, we can research
13 it.

14 MR. SCHULTZ: Yes, sir. Thank you, Judge.

15 THE COURT: Okay. Anything else?

16 MR. SCHULTZ: The only other thing, Your Honor, was --
17 this is not really a 609 issue. But/and maybe the Court
18 can hear this even when we do proffer Germaine Smith. I
19 just want to be clear because my client's --

20 THE COURT: Yeah. We will need to make that clear
21 during the course of the trial itself.

22 MR. SCHULTZ: Yes, sir. But Mr. Smith, Germaine
23 Smith, also has a current charge right now of, I believe,
24 trafficking that he got charged with in 2019. I do not
25 believe that has a disposition. So it doesn't fall under

1 Rule 609(b), but I think I can clearly ask that.

2 THE COURT: Falls under bias.

3 MR. SCHULTZ: Yes, sir. That's all I have, Judge.

4 THE COURT: Do you want to be heard on that,

5 Ms. Owens?

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

7 THE COURT: Okay. All right. Are we ready for the
8 jury now?

9 MR. SCHULTZ: The defense is ready.

10 THE COURT: Bring them in and ask Ms. Hill to take the
11 foreperson's seat.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good morning, ladies and gentlemen.

15 We are ready to begin with the trial for which each of
16 you have been selected.

17 Ms. Hill, I'm going to ask you to serve as the
18 foreperson of the jury. And as the foreperson you have
19 three specific duties that the other jurors do not have.

20 First of all, you'll be asked to serve as the
21 spokesperson for the jury, and that just means if something
22 arises during the trial that needs to be brought to my
23 attention -- you or one of your fellow jurors has some
24 difficulty, problem or question -- you're going to be the
25 person to let me know of that fact.

1 You can do that directly if you're in the courtroom.
2 You do it through the bailiff if you're outside of the
3 courtroom.

4 Secondly, you'll be called upon to preside over jury
5 deliberations when that time comes at the end of the trial
6 after all of the evidence has been received and I have
7 instructed you on the law that's applicable in the case.

8 When the jury goes back to begin jury deliberations
9 you are tasked with the responsibility of presiding over
10 that process simply to ensure that those deliberations are
11 carried out in some orderly fashion.

12 And, thirdly, you'll be asked to actually write the
13 verdicts or the decisions of the jury, and you'll do that
14 on verdict forms that I will provide you at the trial's
15 conclusion on which you will indicate the jury's unanimous
16 decision as to each of the separate indictments.

17 Now, the foreperson has those specific duties that
18 I've just indicated, but that does not mean that she is any
19 more important than any of you other jurors, and that's
20 because the decision of a jury is the unanimous consensus
21 opinion of all 12 jurors. And so all of you and each of
22 you will have an equal say and an equal vote in what the
23 ultimate decisions will be in this case.

24 Someone simply needs to be delegated those
25 responsibilities that I've just indicated, and I have

Jury sworn

1 delegated those to Ms. Hill in appointing her as the
2 foreperson. But all of you jurors are equally important so
3 far as the ultimate decisions are concerned, because, as
4 I've stated, the verdicts have to be unanimous. All of you
5 must be in agreement.

6 Now, Ms. Batson and Mr. Tucker, each of you have been
7 selected as alternate jurors, and the function of an
8 alternate juror is to take the place of one of the original
9 12 jurors if during the trial of this case some juror is
10 unable to continue due to an illness or an emergency or
11 some other circumstance that prevents them from continuing
12 to participate.

13 In that event one or both of you would be called upon
14 to take the place of that juror or those jurors. In that
15 event you would become the twelfth juror, and in that event
16 you would participate throughout the trial including the
17 jury deliberations at the trial's conclusion.

18 If however when the time does come for jury
19 deliberations the original 12 are able to perform that
20 function, then the alternate jurors no longer serve. And
21 that's because the decision of a jury is that of 12, and no
22 more than 12 are permitted to engage in that deliberation
23 process. But it is important that each of you pay just as
24 careful attention as we ask of all of the jurors in the
25 case because it does occur from time to time for one reason

1 or another one or two of these jurors may be called away.
2 In that event one or both of you would be called upon to
3 become the twelfth.

4 So we do appreciate your participation as alternate
5 jurors, just as we appreciate the participation of each of
6 you jurors who have been selected for the purpose of
7 deciding the verdicts in this particular case.

8 You may swear the panel.

9 (Whereupon, the jury was duly sworn.)

10 THE COURT: All right. Ladies and gentlemen, as you
11 know, you have been selected to decide the verdicts in the
12 case of the State vs. Brandal Smith.

13 As you also know, Mr. Smith has been charged with two
14 separate and distinct criminal offenses, although they are
15 alleged to have arisen out of one particular event or a
16 course of events which the state alleges occurred back on
17 February the 20th of 2018.

18 But there are separate charges. You consider them
19 separately as to the evidence that relates to each and then
20 the law that's applicable to each. And in the end after
21 you deliberate and decide the case your verdicts could be
22 the same as to both indictments. They could be different.
23 That of course would depend upon your determination of fact
24 as it relates to the allegations made and then your
25 application of the law that I will have provided to you in

1 order for you to make that decision.

2 But the indictments allege in one that Brandal Smith
3 did here in Spartanburg County on or about February the
4 20th of 2018 distribute a quantity of fentanyl, which is a
5 scheduled controlled drug in South Carolina.

6 They allege that he distributed that fentanyl within,
7 or while on or within, a one-half-mile radius of the
8 grounds of a public playground, park or school. In this
9 case they allege it was Cleveland Park.

10 The separate indictment charges Mr. Smith with the
11 crime of trafficking in fentanyl, and the state alleges
12 that on February the 20th of 2018 Mr. Smith did have in his
13 actual or constructive possession 4 grams or more, but less
14 than 14 grams, of fentanyl in violation of a particular
15 section of law.

16 Now, as to those allegations and as to each of those
17 charges Mr. Smith has entered a plea of not guilty. A plea
18 of not guilty places upon the state, because they made the
19 charge, they brought the indictments to court, to prove the
20 allegations that they have made by way of the indictments,
21 the burden of proving each of the essential elements that
22 are alleged in each of the separate indictments; and
23 therefore the burden is upon the state to establish the
24 defendant's guilt to the satisfaction of you 12 jurors
25 beyond a reasonable doubt before any verdict of guilty

1 could be returned as to either of the indictments.

2 Every person who is accused of a crime -- and it
3 doesn't matter how serious the offense might be for which
4 that person stands charged -- every person accused of a
5 crime is presumed to be innocent of that charge.

6 That presumption of innocence remains with every
7 defendant, as it does with this defendant, from the time
8 that he is placed under arrest and throughout the course of
9 the criminal process and even throughout the course of the
10 actual trial in the case.

11 That presumption of innocence will be with Mr. Smith
12 even as go back at this trial's conclusion to the jury room
13 to begin with your deliberations in the case, and that
14 presumption of innocence will be with him in that jury
15 room, and it'll be with him forever unless you 12 jurors
16 determine that he is no longer entitled to that presumption
17 of innocence.

18 In other words, after you have carefully considered
19 all of the evidence introduced during the course of the
20 trial, and from that evidence you have been able to
21 determine the facts as they relate to the allegations made
22 by way of each of the separate indictments, and after
23 deciding those facts you apply the law that I will have
24 provided you as it relates to each, if you 12 jurors
25 unanimously determine that his guilt as to a charge has

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

8 Now, the way the trial will proceed is that in a
9 moment the lawyers are going to address you in what are
10 called opening statements.

11 There are two occasions in the trial of a case where
12 lawyers are permitted to address the jury directly, and
13 that is at the beginning of the trial before any evidence
14 is introduced, then again at the conclusion of the trial
15 after all of the evidence has been received.

16 But keep in mind, as I've just indicated, the evidence
17 upon which you will base your decision is introduced and
18 received between the opening and the closing statements
19 accomplished by the lawyers; and therefore what the lawyers
20 tell you in their statements is not to be considered by you
21 as any evidence upon which you will base your decision.

22 That's because the lawyers aren't witnesses to
23 anything. They don't know anything about this case of
24 their own personal knowledge or perception like witnesses
25 will be testifying to when they take the witness stand and

1 testify under oath before you.

2 The lawyers aren't going to take the witness. They're
3 not going to be placed under oath and they're not going to
4 be subjected to direct and cross-examination like each of
5 the witnesses will be that testify during the course of the
6 trial.

7 And so what the lawyers tell you should not be
8 considered by you as any evidence upon which you will base
9 your decision, but you should listen to what the lawyers
10 have to say because those statements do serve a purpose.

11 The opening statements serve to provide you with a
12 basic understanding as to what this case is about from both
13 the perspective of the state, as well as the defense, so
14 that you'll have some context in which to place the
15 evidence that we will be receiving shortly thereafter.

16 The closing statements occur after the evidence has
17 been received. But, again, while those statements are not
18 evidence, it does afford the lawyers an opportunity to
19 discuss with you the evidence that you have seen and heard
20 during the course of this trial. And through that
21 discussion each will be trying to persuade you or to
22 convince you that the evidence in the case does or does not
23 support a particular decision. And it's in between those
24 opening and the closing statements that we actually receive
25 the evidence upon which you will base your decision.

1 The state has the burden of proof because the state
2 has brought the charge. They made the accusation. They
3 brought the indictment to court. And so the state has the
4 burden of proving the defendant guilty beyond a reasonable
5 doubt, and so the state has to present evidence. They've
6 got to go forward first in their presentation. Otherwise,
7 there would be nothing upon which you could base a
8 conviction.

9 After the state has presented its evidence any person
10 charged with a crime has an opportunity to take the witness
11 stand and testify or to call additional witnesses or
12 introduce additional evidence, but a defendant in a
13 criminal case is never under any obligation to testify or
14 to call a witness or to produce evidence, because the
15 burden is always upon the state to prove a person guilty
16 beyond a reasonable doubt.

17 The burden is never upon a defendant to prove that he
18 or she is not guilty or to prove that he or she is innocent
19 because in some cases that might not be possible. But
20 every defendant in a criminal trial is afforded an
21 opportunity to testify or call additional witnesses or
22 introduce additional evidence but is never required to do
23 so.

24 And if a defendant doesn't testify or doesn't call any
25 more witnesses or doesn't introduce any other evidence,

1 that's not a fact or circumstance that the jury may
2 consider in the slightest degree against the defendant.
3 You may not consider that in any way whatsoever during your
4 deliberations or in your determination as to whether or not
5 the evidence in the case supports a verdict of guilty or
6 not.

7 So after all of the evidence has been received, as I
8 say, you're going to hear the final summations of the
9 lawyers, and then I will instruct you fully on the law as
10 it relates to the criminal law generally and as it relates
11 to these two specific crimes particularly.

12 And after that you'll be asked to go back and to begin
13 with your deliberation. And through that process and
14 through the exercise of good judgment and common sense
15 conscientiously applied to the testimony and evidence
16 presented during the trial you're going to be called upon
17 where you can to determine the facts that relate to the
18 allegations.

19 If you're able to do that, you decide the facts, you
20 then apply the law that I will have provided you, and you
21 determine whether or not the defendant has been proven
22 guilty of a crime beyond a reasonable doubt. And if he
23 has, then your verdict would be guilty as to that
24 particular charge. And if he has not, then your verdict
25 would be not guilty as to that particular charge.

1 Now, all that we ask for you to do is to pay careful
2 attention throughout the course of the trial. It's not
3 going to be lengthy, but there are several witnesses, and
4 you have to decide the facts based upon the evidence
5 presented. And part of that evidence includes testimony of
6 witnesses. And sometimes testimony received in court is
7 conflicted.

8 In other words, one witness testifies one way; some
9 other witness may testify in conflict or contrary to that
10 witness' testimony.

11 Where that occurs you are the judges of the facts. So
12 in your determination as to what the facts are you also
13 judge the credibility and the believability of each witness
14 that testifies during the trial.

15 You can believe everything that a witness testified
16 to; you can reject everything a witness testified to. You
17 can believe some portion of a witness' testimony and reject
18 some other portion of that same witness' testimony.

19 In a given case you could believe one as opposed to
20 several, or several as opposed to one. But in order for
21 you to be in a proper position to fairly evaluate and
22 assess a witness' credibility and the reliability of the
23 information they're providing you have to watch them and
24 listen to them while they testify so that when you do go
25 back you'll be in a proper position to fairly evaluate each

opening statements

1 witness' testimony in light of not just that witness'
2 testimony but in light of all of the testimony and all of
3 the evidence received during the course of the trial.

4 And of course it's also important that you keep an
5 open mind throughout the course of the trial, and that
6 simply means that you are not to begin making up your minds
7 or formulating your opinions as to what you think the
8 ultimate decisions in this case ought to be until all of
9 the evidence has been received, until I have instructed you
10 on the law that's applicable in the case and until you've
11 been asked to go back and to begin with your deliberations
12 at the trial's conclusion.

13 That is the process that has been designed over the
14 last 240-some-odd years to ensure that you can arrive at a
15 fair and impartial decision in any case that you're called
16 upon to participate in.

17 So I do want to thank you in advance for your
18 participation, as well as for your careful attention. I
19 would ask that you please give the lawyers your attention
20 now as they give you their opening statements.

21 Ms. Owens.

22 MS. OWENS: Thank you, Your Honor. May it please the
23 Court.

24 Good morning, ladies and gentlemen.

25 As you heard yesterday, my name is Katrina Owens, and

Opening statements

1 I prosecute criminal cases here in Spartanburg County.

2 Now, before we begin the trial of this case I want to
3 very briefly tell you three things -- what this case is
4 about, what the state is required and intends to prove, and
5 how we intend to prove it.

6 During the late afternoon hours of February 20th of
7 2018 a witness working with deputies at the Spartanburg
8 County Sheriff's Office made contact with this defendant,
9 Brandal Smith, for the purpose of purchasing drugs.

10 That witness was provided with \$400 in sheriff's
11 office funds and was outfitted with an audio and video
12 recording device.

13 That witness arranged to meet this defendant at a gas
14 station on Howard Street, and deputies followed. Once at
15 that gas station this defendant took from the witness the
16 \$400 in sheriff's office funds and in exchange gave the
17 witness just over 5 grams of fentanyl. It is that
18 transaction that brings us to trial here today.

19 Now, as you've heard from the judge, the defendant is
20 charged with two separate criminal offenses.

21 The first of those is trafficking in illegal drugs.
22 To prove that the defendant is guilty of that crime the
23 state must prove three things. First, that the defendant
24 sold, delivered or brought into this state a substance;
25 that the defendant aided, abetted, attempted or assisted

Opening statements

1 anyone to sell, deliver or bring into this state a
2 substance; or that the defendant conspired to sell, deliver
3 or bring into this state a substance; or that the defendant
4 possessed the substance.

5 The state must prove that the defendant knowingly did
6 any one of those things with respect to a substance that is
7 more than 4 grams of a substance classified as an opiate.
8 In this case fentanyl.

9 The state must prove that the defendant did any one of
10 those things with respect to this substance classified as
11 an opiate here in Spartanburg County.

12 The defendant is also charged with distribution of
13 fentanyl within a half-mile of a school or park. To prove
14 that the defendant is guilty of that crime the state must
15 prove two things.

16 First, that the defendant distributed or possessed
17 with intent to distribute a substance that is classified as
18 a control substance and that that transaction occurred
19 within a half-mile of a school or park. In this case
20 Cleveland park.

21 Now, to prove that the defendant is guilty of both of
22 those crimes you're going to hear testimony from several
23 witnesses.

24 First you'll hear from Sergeant Jim Ruane who is a
25 supervisor with the narcotics division at the Spartanburg

Opening statements

1 County Sheriff's Office.

2 Sergeant Ruane will testify about how deputies with
3 narcotics division undertake controlled transactions like
4 this one, ones that are recorded, ones used -- using the
5 assistance of a witness like the one in this case.

6 Sergeant Ruane will testify about what happened on
7 February 20th of 2018 and his role in the investigation.

8 You'll also hear from Mr. Dan Swad who has since
9 retired but was at the time an investigator with the
10 narcotics division at the sheriff's office.

11 Mr. Swad will testify about his role in this
12 transaction and what he observed on February 20th of 2018.

13 You'll also hear from Germaine Smith who is the
14 witness working with deputies at the sheriff's office on
15 February 20th.

16 Mr. Smith will testify about what he did that day, and
17 you will have an opportunity to view the video recording of
18 the entire transaction captured by Mr. Germaine Smith.

19 After that you'll also hear testimony from Holly
20 Tobias who is a forensic chemist. Ms. Tobias will testify
21 about how she analyzed the drugs that this defendant
22 delivered to police on February 20th and the results of her
23 analysis.

24 Ladies and gentlemen, the evidence in this case is
25 straightforward, and the trial of this case is likely to be

opening statements

1 very brief.

2 After you've had an opportunity to hear from all of
3 the witnesses involved in this investigation and to view
4 for yourself exactly what happened in the parking lot of
5 this gas station on February 20th of 2018 I will ask you to
6 return a verdict that the defendant is guilty of both
7 trafficking in illegal drugs and distributing a controlled
8 substance within half-mile of a school or park. Thank you.

9 THE COURT: Mr. Schultz.

10 MR. SCHULTZ: Thank you, Your Honor. May it please
11 the Court -- counsel.

12 Good morning, everybody. My name is Attorney Joshua
13 Schultz. I represent Brandal -- Brandal Smith. He's
14 accused of two crimes here that allegedly occurred in
15 Spartanburg County a couple of years ago.

16 First off, I want to thank all, I guess, 14 people
17 here for your service here. Some of you may have served on
18 juries before; some of you may not have served on juries
19 before. But it is a very important part of our democracy,
20 very important part of what makes this country great.

21 I hope at end of this process and I hope during this
22 process you find your service is worth something and I hope
23 you find this case interesting, because I believe -- and I
24 stand in opposition to my opposition here, Ms. Owens. She
25 said a couple of minutes ago that this case is

Opening statements

1 straightforward. I present to you in the next few hours or
2 potentially all day that this case is not straightforward.
3 It is anything but straightforward.

4 This is a case involving what is known as a
5 confidential informant for the police. You're going to
6 hear the officers testify say, oh, yeah, you know,
7 outfitted this gentleman with sheriff's office funds and
8 things like that -- auto-video-recording device.

9 Very few crimes, very few incidents, are actually seen
10 on video. Driving under the influence cases are one of
11 them.

12 In this state what -- what happens is there's a law
13 that says when you stop somebody for a driving under the
14 influence charge you have to video tape it and you have to
15 video tape the conduct at the scene when you stop them on
16 the side of 85 or the side of 26, side, whatever road.

17 This is an interesting case because you're going to
18 see the video of what happened. You're going to see it up
19 on that screen, and I suppose probably this screen too. We
20 have a lot of screens here. But you're going to see what
21 happened that day back in 2018.

22 And it is my belief that after you see that tape and
23 hear from the state's witnesses that you're not going to be
24 firmly convinced of Brandal's guilt. In fact, it is my
25 belief that you will find him not guilty on the two

opening statements

1 charges.

2 The state, the folks over here sitting at this table,
3 have, as Judge Cole said about 20 minutes ago, a burden of
4 proof. They're the ones that have to present their case
5 and they're the ones that have to find -- or excuse me --
6 have to convince you to find him guilty or not guilty.

7 They have their burden of proof. They go first, so
8 they're going to present their witnesses. They're going to
9 present the video tape. They're going to present
10 everything, and they're going to attempt to try to convince
11 you that this happened on this date.

12 Now, I am going to be allowed to cross-examine all of
13 the state's witnesses, and cross-examination -- one great
14 historical figure once said -- is the greatest agent for
15 the elicitation of truth that the world has ever
16 formulated. So you're going to hear me cross-examine them
17 in order to, again, poke holes in the state's burden of
18 proof.

19 Now, we -- meaning the defense, Brandal and I -- we
20 don't have to present anything. We don't have to present a
21 case.

22 He doesn't have to get up on the stand. He does not
23 have to do -- do that. We don't have to present witnesses.
24 The reason why that is is that the defense, the defendant,
25 we don't have a burden of proof. It's not our case to

Jim Ruane
Direct examination by Ms. Owens

1 prove, not our case to prove at all. So I want you to
2 remember that. We don't have to do anything except
3 question these people up on the stand, question the
4 validity of the state's case, question the validity of the
5 video.

6 You're going to see this. You're going to see for
7 yourself exactly what happened. And I know y'all are going
8 to have doubts at the end of this that this actually
9 occurred. You're going to have doubts as to the
10 informant -- his veracity, his believability, his
11 credibility. So where do we stand at the end of all of
12 this?

13 Now, this is opening statements. This is not
14 evidence. This is where I get to address y'all for the
15 first time, and then maybe today, maybe tomorrow, sometime,
16 Ms. Owens and I are going to argue again in front of y'all
17 at the close of all of the evidence in the case. And then
18 she's, obviously, going to ask you to do what she just said
19 a couple of minutes ago, ask for a guilty verdict.

20 I am going to ask you for a not-guilty verdict and I'm
21 going to lay out a couple of reasons -- actually several
22 reasons -- why you can't find him guilty of the charge.

23 And those reasons are called reasonable doubt. And
24 you probably heard the term reasonable doubt before in T.V.
25 shows, Law and Order, in movies and things like that, any

Jim Ruane
Direct examination by Ms. Owens

1 media presentation of our judicial process. But today
2 those words -- reasonable doubt -- is a reality.

3 You probably think what's reasonable doubt, what does
4 that mean. Well, reasonable doubt is what causes a
5 reasonable person some hesitation to act. And you are all
6 reasonable people here. You are all reasonable persons.

7 And if you have not five, not four, not three, not
8 two, not -- but just one -- one reasonable doubt as to
9 Brandal's guilt, you can't find him guilty.

10 I just want to say that again. If you have one
11 reasonable doubt as to his guilt you can't find him guilty.
12 Judge Cole is going to instruct you on that at the end of
13 this.

14 So, again, I thank you for your participation. I look
15 forward to this. And, again, I'm going to argue in a
16 couple of hours, whenever it is, for a not-guilty verdict
17 on both counts. Thank you very much for your time.

18 THE COURT: Ms. Owens.

19 MS. OWENS: Your Honor, may it please the Court.

20 The state calls Sergeant Jim Ruane.

21 Sergeant, if you would, please, come up and be sworn.

22 JIM RUANE, having been first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MS. OWENS

25 Q Sergeant, I'm going to stand way back here to be sure

1 that if I can hear you the jurors can hear you. Okay?

2 A Yes, ma'am.

3 Q would you please tell the jury where you work?

4 A The Spartanburg County Sheriff's Office.

5 Q How long have you worked there?

6 A Around 18 years.

7 Q What's your current assignment at the sheriff's
8 office?

9 A I am currently assigned as a sergeant in the narcotics
10 unit.

11 Q What does that mean practically? What are your
12 responsibilities?

13 A To supervise the guys that are in the unit and ladies
14 in the unit, oversee the investigations, answer any
15 questions, approve reports, approve search warrants.

16 Q What kind of work does the narcotics division do?

17 A We develop informants and investigate all the drug
18 violations in the county, also vice and narcotics that are
19 going on in Spartanburg County.

20 Q About how many deputies are assigned to the narcotics
21 division right now?

22 A Ten maybe; maybe twelve.

23 Q Now, day to day what does it -- what does your role
24 look like as a supervisor for the unit?

25 A Day to day it's usually, you know, helping out any

Jim Ruane
Direct examination by Ms. Owens

1 investigator that needs help on a buy, going over search
2 warrants, reading reports.

3 Q Were you working in that same capacity back in
4 February of 2018?

5 A Yes, ma'am.

6 Q Now, you alluded to this just a second ago, but I was
7 hoping you would explain to the jury. What -- what are
8 controlled buys? What are these controlled transactions that
9 the narcotics division undertakes?

10 A A controlled buy is when an informant would call an
11 investigator. That informant has been signed up through
12 the sheriff's office.

13 We'll -- the informant would, you know, I guess inform
14 the investigator that he or she can buy drugs off a person.

15 The investigator would sign out money from the
16 sheriff's office, go meet the informant at a predetermined
17 location.

18 At that time the -- the informant would be searched;
19 the informant's vehicle would be searched. The investigator
20 would provide the informant with the money that they signed
21 out and also an audio-video recording device to record the
22 transaction.

23 Q Are all of these transactions recorded?

24 A We try to. Some due to equipment malfunction or
25 placement or changes, some of them are not, but we try to

1 record every one that we do.

2 Q Do either you or the deputies in your unit buy drugs
3 in an undercover capacity?

4 A Occasionally, we do. It just depends on what the
5 informant can do. We try to get an offer introduced. Some
6 people will not sell drugs to people they don't know or
7 have never dealt with before. So it just depends on the
8 target of that investigation.

9 Q How frequently would you estimate that you utilize the
10 assistance of these informants to conduct controlled drug
11 transactions?

12 A Quite frequently if not daily.

13 Q On February 20th of 2018 did you enlist the assistance
14 of an informant to execute a controlled transaction?

15 A Yes, ma'am.

16 Q Who was that?

17 A Germaine Smith.

18 Q What was the relationship between Germaine Smith and
19 the sheriff's office at that time?

20 A He was a signed-up informant with the sheriff's
21 office.

22 Q What does that process look like? What does an
23 informant have to do in order sign up to be an informant
24 for the sheriff's office?

25 A The -- the informant has to go through and meet with

Jim Ruane
Direct examination by Ms. Owens

1 the investigators. They then fill out a C.I. packet, what
2 we have. It goes over rules and regulations, goes over
3 their past drug history and information like that.

4 Q would those informants suggest targets of these drug
5 transactions to deputies?

6 A Yes, ma'am.

7 Q At some point did the sheriff's office and Germaine
8 Smith attempt to purchase drugs from this defendant, Brandal
9 Smith?

10 MR. SCHULTZ: Objection, Your Honor. I believe that's
11 hearsay.

12 THE COURT: Rephrase it.

13 Q Did deputies with the sheriff's office make an
14 arrangement with Germaine Smith to purchase drugs from
15 Brandal Smith?

16 MR. SCHULTZ: Objection, Your Honor. I believe that
17 he doesn't have any personal information about that
18 specifically.

19 THE COURT: Does he have personal information?

20 MS. OWENS: Certainly, Your Honor. It's my
21 anticipation that he's involved in this transaction.

22 THE COURT: Okay. If you have personal information,
23 you can answer the question.

24 A I do know that we met with Germaine Smith for the
25 infer -- or for the purpose of purchasing drugs from

Jim Ruane
Direct examination by Ms. Owens

1 Mr. Brandal Smith.

2 Q As you recall, how did Germaine Smith make contact
3 with Brandal Smith, the defendant?

4 A I personally don't have the information because I was
5 not the controlling investigator of the C.I.

6 Q Nonetheless, did you -- when this transaction was
7 ultimately scheduled, did you participate?

8 A Yes, ma'am. I assisted Investigator Swad.

9 Q What did you do?

10 A I drove. Mr. Swad and I drove and met with the
11 informant, Mr. Germaine Smith. I then searched
12 Mr. Germaine Smith. I searched his pockets. If he had a
13 cap on, I would search his cap. I searched the vehicle,
14 glove box just like I would on a traffic stop to see if
15 there's anything illegal in the car or on his person.

16 Q Why did you do that?

17 A To make sure that he didn't bring the drugs to this
18 deal.

19 Q Why is that important?

20 A In my opinion, you know, if we search him and his
21 vehicle, there's no drugs, we watch, go meet and then come
22 back and provides us drugs, you know, we can say, you know,
23 he purchased drugs from the person that we were meeting at
24 that time.

25 Q After this search do you recall any indication that

Jim Ruane
Direct examination by Ms. Owens

1 there were drugs in Mr. Germaine Smith's possession or in
2 Mr. Smith's car before this transaction happened?

3 A Not before the transaction.

4 Q Where did Mr. Germaine Smith agree to meet the
5 defendant, Brandal Smith?

6 A They met at the Li'L Cricket on Howard Street, I
7 believe.

8 MR. SCHULTZ: I would object to this. I don't think,
9 again, he has personal knowledge of actually what happened.

10 THE COURT: Okay. Well, be sure to limit your
11 testimony as to what you know personally.

12 A I know we followed the -- the informant to 955. I
13 believe it's 955 California Avenue. The Li'L Cricket there
14 on Howard Street.

15 Q Did you allow Mr. Germaine Smith, the informant, to
16 drive his own car?

17 A Yes, ma'am.

18 Q Did you follow separately in a sheriff's office car?

19 A Yes, ma'am. We followed in our undercover vehicles.

20 Q Did you lose sight of Mr. Germaine Smith from the time
21 that you finished searching him until he arrived at this
22 Li'L Cricket gas station?

23 A I -- I don't recall if we did. If we did, it would
24 only have been briefly.

25 Q Did you park nearby or otherwise monitor what was

Jim Ruane
Direct examination by Ms. Owens

1 happening in the Li'L Cricket parking lot?

2 A Yeah. We -- we parked close by where we can see the
3 parking lot at the Li'L Cricket and the informant's
4 vehicle.

5 Q Do you recall how much money you had given the
6 informant, Mr. Smith, before he traveled to the gas
7 station?

8 A I don't recall because I believe Investigator Swad
9 signed out the money and provided it to the informant.

10 Q Nonetheless, was he given cash before he went to the
11 gas station?

12 A Yes.

13 Q You mentioned earlier that these transactions would be
14 recorded. How was this transaction recorded?

15 A We have several devices that we use that have
16 audio-video recording on them. Mr. Swad or Investigator
17 Swad prepped the tape, and then we provided it to the
18 informant to carry with him for his transaction.

19 Q Are these devices obvious recording devices, for lack
20 of a better word?

21 A No, ma'am.

22 Q What are some samples of the devices that the
23 sheriff's office might use?

24 A A key fob, cell phones, cell phone cases, stuff like
25 that, pretty much everyday equipment or things that no one

Jim Ruane
Direct examination by Ms. Owens

1 would think that there would be a device in there.

2 Q When you arrived at this neighboring business, what
3 did you see happen?

4 A I remember parking. I remember the C.I. parking. And
5 I believe after a while Mr. Smith walked up to the -- to
6 the C.I.'s vehicle.

7 Q Were you close enough to identify who was at
8 Mr. Germaine Smith's car?

9 A I cannot recall identifying him.

10 (D.V.D. marked State's Exhibit No. 1 for
11 Identification.)

12 Q Sergeant, I'm showing you what's been marked as
13 State's Exhibit 1. Do you recognize that item?

14 A It would be the buy video.

15 Q Have you had an opportunity to review that recording?

16 A Yes, ma'am.

17 Q As you understand it, does this recording capture the
18 entire transaction from the time that you fitted
19 Mr. Germaine Smith with the device until he returned to you
20 after the transaction?

21 A Yes, ma'am.

22 Q Now, there is a date and timestamp on that video
23 recording. Is that date and time accurate?

24 A No, ma'am. It is not. It's just like, you know, when
25 the time changes on your microwave. Obviously, we didn't

Jim Ruane
Direct examination by Ms. Owens

1 go back and change the time or the date on it, because you
2 have to internally hook it up and go back and reset the
3 time and date.

4 Q So despite what's stamped on the screen, is that
5 recording from February 20th of 2018?

6 A Yes, ma'am.

7 Q Now, after you watched from the parking lot
8 Mr. Germaine Smith and someone approach his car, what
9 happened next?

10 A I believe he was there for a little while. Then that
11 time I remember following Mr. Germaine Smith. The C.I.
12 then backed out. And then Investigator Swad and I followed
13 him and met him at a predetermined location.

14 Q How do you decide where to go after a controlled drug
15 transaction?

16 A It depends. There are several factors. Usually, we
17 try to pick a spot where we meet before and after and just
18 go back in the same spot. But it also depends on after the
19 buy.

20 The target of that particular investigation, you know,
21 obviously, we don't want him to be following the C.I.,
22 following us. So it just depends. But normally we will try
23 to meet where we met them before the transaction.

24 Q So based on your conversations with Germaine Smith
25 about the transaction, did he know where to go?

Jim Ruane
Direct examination by Ms. Owens

1 A Yes, ma'am.

2 Q And did he meet you there?

3 A Yes, ma'am.

4 Q What happened when the three of you met there at this
5 predetermined location?

6 A Investigator Swad recovered the recording device,
7 recovered the drugs. And then I searched the C.I. and the
8 C.I.'s vehicle again to see if there was any more drugs
9 either on his person or in his vehicle.

10 Q Why do you do that?

11 A To make sure that, you know, we get everything that we
12 purchased from the target.

13 Q Did you find any cash on Mr. Germaine Smith or in his
14 car?

15 A I don't recall finding any cash.

16 Q Did you find any additional drugs on Mr. Germaine
17 Smith or in the car?

18 A No, ma'am.

19 Q Now, there's been some discussion about this
20 transaction happening at a gas station on Howard Street.
21 What's -- what's nearby this area of town?

22 A Charlie's Used Cars is across the street, and that's
23 actually where we parked. And then Cleveland Park is
24 pretty much behind the Li'L Cricket on Howard Street.

25 Q Is it within a half mile of this location?

Jim Ruane
Direct examination by Ms. Owens

1 A Yes, ma'am.

2 Q Is there a public playground at Cleveland Park?

3 A Yes, ma'am.

4 Q And is the area of this buy, this gas station, this
5 Li'L Cricket, is that inside of Spartanburg County?

6 A Yes, ma'am.

7 Q At this point in an investigation what happens with
8 the suspected drugs that you've received in a controlled
9 transaction?

10 A Depending on the investigation and where it's going to
11 go, it is either field tested right then to see if it's a
12 positive result or it's -- we will package it in a BEST
13 bag, do a chain of custody and then turn it into a lab --
14 or into evidence to be turned into a lab to be tested by
15 the chemist.

16 Q Does the sheriff's office have a particular policy
17 with field testing fentanyl in particular?

18 A Unless it's, I guess, paramount with fentanyl due to
19 overdoses and that we -- we normally would just package it
20 and send it to evidence to get tested in the lab just for
21 our safety.

22 Q Now, after this transaction is over and you have
23 received what you suspect to be drugs from Germaine Smith
24 who you've watched meet with this defendant in the Li'L
25 Cricket gas station, did you go arrest Brandal Smith right

Jim Ruane
Cross-examination by Mr. Schultz

1 away?

2 A No, ma'am.

3 Q why not?

4 A I believe -- well, that would be up to Investigator
5 Swad because this was his investigation. If we don't
6 arrest someone right away we try to further the
7 investigation and try to see, you know, if we can find out
8 where they're getting their drugs from also.

9 Q Is it possible that an -- an instant arrest might
10 alert the defendant of who has just purchased drugs from
11 him?

12 A It -- it could. So normally to try, you know, the
13 normal -- the longer we wait to try to protect the C.I.s
14 and try not to let the defendant know who actually was
15 working with the sheriff's office.

16 Q After this transaction was complete and after the
17 drugs had been packaged and the video recording received
18 from Mr. Germaine Smith, did you have any other involvement
19 in the investigation of this case?

20 A No, ma'am.

21 Q Okay. If you would answer, any questions that
22 Mr. Schultz may have for you.

23 A Yes, ma'am.

24

25

1 CROSS-EXAMINATION

2 BY MR. SCHULTZ

3 Q Officer, you still work for the sheriff's office?

4 A Yes, sir.

5 Q All right. And were you the principal officer --
6 officer in this case?

7 A No, sir.

8 Q And who was that? Who was the principal officer?

9 A Dan swab.

10 MR. SCHULTZ: Your Honor, can I use the podium up
11 there?

12 THE COURT: Yes, sir.

13 Q But you...

14 MR. SCHULTZ: Beg the Court's patience.

15 Q Did you sign the warrant against my client?

16 A No, sir.

17 Q All right. And who was that? What officer was that?

18 A Dan Swad.

19 Q All right. Now, let me ask you this. The so-called
20 controlled buys that you conduct, you have conducted, for
21 lack of a better word, probably hundreds of controlled buys
22 at this point?

23 A Yeah. I've conducted a lot.

24 Q And you still do that to this day, correct?

25 A Yes, sir.

Jim Ruane
Cross-examination by Mr. Schultz

1 Q Okay. You said something interesting to Ms. Owens
2 there about the recording devices that you have there. Do
3 you remember saying that?

4 A We mentioned the recording devices. I don't know what
5 in particular you're referencing.

6 Q Well, I'm referencing the fact that you have several
7 types of recording devices, correct?

8 A Yes, sir.

9 Q Do you remember the one that you used in this
10 transaction?

11 A I do not.

12 Q Okay. Do you remember at the time in 2018 what kind
13 of recording devices you did use?

14 A Yeah. We had several. We had a fob, a watch. And I
15 can't -- I cannot recall all the ones we've had. But I
16 know those were two one -- two of the main ones we had, was
17 a key fob and a -- and a watch.

18 Q And when you're -- and I guess for lack of a better
19 word, why do you use recording devices? Why can't you just
20 take the informant's word?

21 A Because it's always better to have it on audio and
22 video so we can show in court.

23 Q And the reason for that is so that you get a clear
24 hand-to-hand transaction between the parties.

25 A We try to.

Jim Ruane
Cross-examination by Mr. Schultz

1 Q You try to. Okay. Are y'all successful in this?

2 A Somewhat.

3 Q Okay. Give me a percentage.

4 A I -- I don't have a percentage on top of my head.

5 Q Well, you've been working for narcotics for a long
6 time, right?

7 A Yes, sir.

8 Q Okay. How many successful control buys have you --
9 have you conducted in your time at the sheriff's office, do
10 you know?

11 A A lot.

12 Q Okay. All right. So how many are successful and how
13 many are not successful? It's a fair question to ask, is
14 it not?

15 A Are you talking about controlled buys?

16 Q Yes.

17 A 50-50 or something. We try to set them up, but, you
18 know, there's other factors that affect it, you know. They
19 can't meet, the C.I. can't meet, something happens. I
20 mean, as far as giving you a percentage?

21 Q Well, you just said 50-50. Is that -- is that fair
22 and accurate?

23 A I would assume 50-50.

24 Q Okay. Let's go with that.

25 Now, you also said that you personally followed the --

Jim Ruane
Cross-examination by Mr. Schultz

1 the informant up to the location, is that correct?

2 A Yeah. we followed the -- we followed the informant's
3 vehicle.

4 Q All right. Were you in a marked car or were you in an
5 unmarked car?

6 A We were in our unmarked narcotics vehicle.

7 Q Okay. Was it just you or another officer?

8 A Myself and Investigator Swad.

9 Q All right. And when you -- and you -- you had
10 followed him all the way, right?

11 A Yes, sir.

12 Q Okay. At least your remembrance of that is correct.
13 I know it's been a long time.

14 A Yeah, it's been a long time, but, you know, as far as
15 I recall I know we -- we followed them to and from the
16 buys.

17 Q All right. Now, you, according to your testimony
18 there with Ms. Owens you, parked across the street, right?

19 A Yes, sir.

20 Q Okay. And what way was -- what way were the cars or
21 car facing when you allegedly observed this transaction?

22 A I believe the informant was pulled face forward facing
23 the Li'L Cricket in a parking space.

24 Q Okay. So he was perpendicular to the Li'L Cricket?

25 A Yeah. He was pulled in, you know, facing the front of

1 the Li'L Cricket.

2 Q Okay. Did you notice anybody else approaching the
3 informant?

4 A I cannot recall.

5 Q No. Nobody?

6 A I remember reviewing the buy video. There was other
7 people outside. You know, there's other people walking
8 around the Li'L Cricket.

9 Q Okay. And you -- you stated before that you observed
10 mostly the informant walking around, right, or no? I don't
11 want to put words in your mouth.

12 A Like I say, I -- I -- if he walked around, I didn't
13 say he walked around.

14 Q Okay. So he never walked around. He just stayed in
15 his car?

16 A I mean, I don't -- I can't. I would have to review
17 the buy video to see if he got out while he was at the Li'L
18 Cricket or not.

19 Q Well, it's your case. It was your informant, right?

20 A Well, I was assisting Investigator Swad, yes.

21 Q Okay. Well, you were on the case, right?

22 A Yes, sir.

23 Q Okay. And you were observing, right?

24 A Yes, sir.

25 Q Okay. And your testimony here today is that the

Jim Ruane
Cross-examination by Mr. Schultz

1 nearest -- your recollection -- again, I'm not trying to
2 put words in your mouth -- that you never lost sight of
3 this guy?

4 A Well, I said if we did it was briefly because I
5 believe he walked into a store.

6 Q Okay. So he walked into the store. You -- and you
7 didn't know what he was doing in the store, right, Officer?

8 A No, sir. We did not follow in there.

9 Q Okay. So he could have been doing anything in that
10 store, right?

11 A Yeah, yes, sir.

12 Q He could have -- he could have picked up dope from
13 somebody in that store, right?

14 A It's possible.

15 Q How many people did he talk to in that store?

16 A I honestly can't remember.

17 Q Okay. But you -- you had no personal observations
18 when this was going on, right?

19 A Correct. We were not in the store with them.

20 Q How long was he in the store for?

21 A Five or ten minutes, maybe.

22 Q That's quite a long time, isn't it?

23 A It's a fair amount of time.

24 Q Okay. And so tell me again why this is a controlled
25 buy. When you lost sight of this guy for five to ten

1 minutes, how -- how -- how is that a controlled?

2 A well, they're called controlled buys, but, you know,
3 obviously, we try to plan for everything, but we can't plan
4 for -- we can't plan for everything.

5 Q well, let me ask you this. You do this a lot. You do
6 controlled buys all of the time, right?

7 A Yes, sir.

8 Q And would it be best to say to your informant, hey, by
9 the way, stay -- stay in your -- your car? Because that
10 makes a better case, right?

11 A Yes, sir.

12 Q Okay. Did you do it in this case? Did you tell him
13 sit your butt in the car, don't go out, don't do your own
14 thing?

15 A I don't know if we specifically told him to sit in his
16 car and not leave it.

17 Q Okay. But -- but he walked to the store, right? For
18 five to ten minutes to your recollection, right?

19 A Yes, sir. I know he did walk in the store.

20 Q All right. And there's a possibility that he could --
21 he could be doing anything in that store, right?

22 A Yes, sir.

23 Q All right. Thank you.

24 So, again, let me ask you this question. Let me get
25 this straight.

Jim Ruane
Cross-examination by Mr. Schultz

1 You lost sight of the guy. You said you had a
2 controlled buy. So how in the world would this be
3 classified even as a controlled buy?

4 A Every buy that we do using an informant is considered
5 a controlled buy by the sheriff's office.

6 Q Well, I know what you call it but how -- how can this
7 transaction be considered a controlled buy when you clearly
8 never had control of him?

9 A Well, we try to -- we try to plan for everything, but,
10 obviously, we can't.

11 Q You try it.

12 A Yes, sir.

13 Q Is that your testimony? You tried to do a controlled
14 buy, but you couldn't, right? Is that fair?

15 A But we did do a buy, you know. They're called control
16 buys because that's how we -- that's how we call them at
17 the sheriff's office.

18 Q Okay. Well, understand if you call something a
19 controlled buy, but what I'm asking you to say here is how
20 can you call that a controlled buy if you lost sight of
21 your informant for five to ten minutes?

22 A All of the buys that we -- we do are considered
23 controlled buys, and that's how we do them.

24 Q No. I'm not talking about every other buy that you've
25 done. I'm talking about this buy specifically. How can

1 you even call that a controlled buy, sir?

2 A That's just what -- that's what we call them at the
3 sheriff's office. That's -- I know. Yes. Did he get out
4 and leave? Yes.

5 Q So how is that a controlled buy?

6 A Well, we controlled it as much as we possibly could.

7 Q Okay. As much as you possibly could.

8 All right. How about any other people that your
9 informant talked to? Did you ever identify them?

10 A He's not my informant, so I didn't have -- I didn't
11 have direct contact with him.

12 Q Okay. Well, how about -- you said you personally
13 observed it, didn't you?

14 A Was that speak to someone out there?

15 Q Yeah.

16 A No, sir.

17 Q No, sir. You didn't see that. Okay. So --

18 A Or -- no, I didn't. The people -- I'm sorry. The
19 people out there in the parking lot know I -- we did not
20 identify people in the parking lot at the Li'L Cricket.

21 Q All right. You ever note that in your report?

22 A I do not believe it's noted in the report.

23 Q Okay. Did you write a report for this?

24 A Investigator Swad wrote the report.

25 Q You never wrote a wrote for this?

Jim Ruane
Cross-examination by Mr. Schultz

1 A For this --

2 Q Yeah.

3 A -- case? No. Investigator Swad was the one who --
4 who wrote the report.

5 Q Okay. All right. But you never report a wrote in
6 this.

7 A No, sir.

8 Q Okay. You never identified any of the -- these other
9 guys that were hanging around in the parking lot, right?

10 A No, sir.

11 Q Okay. Was this at night or was this during the
12 afternoon?

13 A I believe it was afternoon.

14 Q Okay. So, you know, Howard Street there about a mile
15 and a half away from here is a pretty busy place in the
16 afternoon, isn't it?

17 A Yes, sir.

18 Q Okay. A lot of people around there, right?

19 A Yes, sir.

20 Q In fact, a lot of people getting gas too.

21 A It's a busy store. Yes.

22 Q Yeah. Busy store, isn't it? Okay. You ever
23 identified any of the people in that store?

24 A No, sir.

25 Q Okay. Did you ever identify anybody in the parking

1 lot?

2 A No, sir.

3 Q Okay. Ms. Owens briefly got into this. Did you
4 arrest my client at -- that day? Did you?

5 A No, sir.

6 Q Okay. Did you personally ever effectuate an arrest on
7 my client?

8 A Not that I recall.

9 Q Okay. So after you -- you left that scene you were
10 following your informant. That was -- your involvement in
11 that case ceased, right?

12 A Yes, sir.

13 Q Okay. How fast were you going down the road after you
14 followed the informant after he left this scene here?

15 A I -- I don't recall how fast I -- we were driving.

16 Q Do you remember the informant accelerating to a high
17 degree?

18 A No, sir.

19 Q No? No don't remember that at all?

20 A No, sir.

21 Q Okay. All right. When you do -- I don't even want to
22 call it controlled buy any more. When you attempt to do
23 this you -- you search your informant, correct?

24 A Yes, sir.

25 Q Okay. Do you -- do you do a full-body-cavity search

Jim Ruane
Cross-examination by Mr. Schultz

1 of your informant?

2 A No, sir.

3 Q All right. Tell me what you do when you search the
4 car.

5 A When you search a car? I will search all of the door
6 pockets, the center console, the glove box, underneath the
7 seats, the trunk area, the visors. If there's cigarette
8 packs in there, you know, I'd open up the cigarette packs,
9 just check and see what was in there and basically search
10 the whole car.

11 Q All right. What about -- what about the -- the person
12 the -- have you ever like searched him?

13 A Yes, sir. We would search, sir, you know, their
14 pockets, front and back. If they're wearing shorts, you
15 know, I'd -- you know, just tug up on their -- on their
16 pants, go down each leg. If they have pockets on the
17 search -- or on their shirt, I would search the shirt. And
18 if they had a hat on, I would take the hat off and search
19 the brim of the hat.

20 Q What about his mouth?

21 A No, sir. I've never searched the mouth.

22 Q Okay. What about anywhere around his crotch area?

23 A I would pat it down, like I would. But as far as
24 physically going in there and searching that or any other
25 cavities, no.

1 Q All right. You mentioned a cavity there. I don't
2 want to be gross, but did you search the anus?

3 A No, sir. Search what?

4 Q His anus.

5 A No, sir.

6 Q Okay. All right. What about any other areas in the
7 car? Did you search inside the heater?

8 A No, sir.

9 Q Okay. Did you search inside the coolant or whatever
10 blows out air in the car?

11 A No, sir.

12 Q Do you remember the type of car that your informant
13 drove?

14 A No, sir.

15 Q Okay. But you don't have any idea of what -- what he
16 drove?

17 A I -- I do not remember.

18 Q Okay. You work -- you've worked here how many years
19 in the Spartanburg County Sheriff's Office in drugs?

20 A With drugs? I mean, I've been with the sheriff's
21 office around 18 years.

22 Q Eighteen years. Okay. So you know that drug dealers
23 hide stuff in their cars, right?

24 A Yes, sir.

25 Q Okay. Where do they hide stuff in their car?

Jim Ruane
Cross-examination by Mr. Schultz

1 A It depends. I mean, some cars have traps, yes. Some
2 cars, you know, they just keep it forever.

3 Q Okay. Let me ask you this, more specific. You've
4 done searches on cars on 85, right, or cars on 26, right?

5 A Yes, sir.

6 Q Okay. Do you often find drugs, either a large amount
7 or small amount, in the -- in the panels of cars like the
8 door panels of cars?

9 A We have located some, yes. We have located drugs in
10 door panels.

11 Q Right. Did you search the door panel in this case?

12 A No, sir.

13 Q Okay. There's -- do you remember how many doors that
14 this -- this guy had?

15 A I believe it was four.

16 Q Okay. Did you search every door panel?

17 A No, sir.

18 Q Okay. All right. Do you remember if the car was
19 messy or clean?

20 A I don't. I don't remember.

21 Q Okay. Nevertheless, you believe you did a thorough
22 search?

23 A Yeah. Personally, I believe I did a thorough search.

24 Q Okay. But you never checked any of the panels, never
25 checked any of the heater or anything like that?

Dan Swad
Direct examination by Ms. Owens

1 A No, sir.

2 Q Okay. Now, this guy's conduct when he was on the
3 video, it's -- it's -- everything that he was doing in the
4 car to the incident location, that's not on the video,
5 right?

6 A What do you mean by everything?

7 Q If he was reaching inside his heater to pull out
8 something like fentanyl, that's not on video, is that
9 right?

10 A The only thing it will record was where the actual
11 camera was -- was facing.

12 Q Okay. And, again, you don't know what kind of cameras
13 this guy used, right?

14 A No, sir. I don't remember.

15 Q Okay. Could have been a key fob, could be anything.
16 Could be a button cam, right?

17 A I don't believe we had a button camera at that time.
18 We had -- we had several pieces of recording equipment.

19 Q All right.

20 MR. SCHULTZ: Beg the Court's patience, Your Honor.
21 Beg the Court's patience.

22 THE COURT: I heard you.

23 (Pause.)

24 MR. SCHULTZ: That's all I have, Judge. Thank you.

25 MS. OWENS: No redirect, Your Honor.

Dan Swad
Direct examination by Ms. Owens

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 MS. OWENS: The state calls Mr. Dan Swad.

4 Mr. Swad, if you would, sir, please come up and be
5 sworn.

6 DAN SWAD, having been first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. OWENS

9 Q Mr. Swad, where do you work?

10 A I am retired from the sheriff's office.

11 Q How long have you been retired?

12 A Since April of 2019.

13 Q Before retiring what was your assignment at the
14 sheriff's office?

15 A I was assigned as an investigator in the narcotics
16 division at the sheriff's office.

17 Q How long did you work at the sheriff's office?

18 A Thirty-six years and one day.

19 Q How much of that was in the narcotics division?

20 A Probably about 20 to 25 of that -- 25 years.

21 Q Were you working in that capacity in February of 2018?

22 A Yes, ma'am.

23 Q Did you participate in what we've all heard described
24 as this control drug transaction on February 20th?

25 A Yes, ma'am. I did.

1 Q would you please describe for the jury a little bit
2 about how that transaction came about? what happened?

3 A I was contacted by the confidential informant, now
4 known as Germaine Smith. Said that he had a subject he
5 could purchase a quantity of fentanyl from. I got the name
6 from him, went.

7 And when we sign out money we have to have the name of
8 who we're going to buy from. I went to Investigator Ruane.
9 My regular partner was off. Investigator Ruane was just
10 standing in. Or Sergeant Ruane. Sorry.

11 I checked out some money, retrieved a recording device.
12 This particular one was a watch disguised as a recording --
13 disguised as a watch.

14 Then I got Investigator or -- excuse me -- Sergeant
15 Ruane to go with me because we required two people to deal
16 with informants.

17 We then met the C.I. at a prearranged location. We
18 discussed what was going to take place, where it was
19 supposed to be. And it was set up for the Li'L Cricket on
20 Howard Street, which the address is 955 Howard Street.

21 The C.I. was searched. The car was searched. And
22 these searches cover the things that are immediately
23 available. Yes. There are places you can hide stuff in
24 the -- in them that would take some -- some effort to get
25 to. But the places that, you know, somebody can immediately

Dan Swad
Direct examination by Ms. Owens

1 get to are searched.

2 Then we drove to the meeting location. The C.I. pulled
3 up facing the building. Investigator or Sergeant Ruane and
4 I parked on the back side of Charlie's Used Cars. We were
5 looking over the top of cars. We were in a pickup truck, so
6 it was up high.

7 I had binoculars. We were parked, I guess you'd call
8 it, parallel to the store. So Investigator Ruane was to my
9 left. I was facing the store if I -- if I -- if I turned in
10 my seat.

11 Do you want me to go on with --

12 Q Certainly. What -- what did you observe from that
13 advantage point?

14 A The C.I. called. We had phone contact. So the C.I.
15 called and said that the guy wasn't close, that he was at
16 another location, he'd be there in a little bit.

17 Once Brandal Smith pulled up he was parked beside the
18 C.I. He got out of the car. They spoke to some people.
19 And, yes, this was a convenience store. So there was foot
20 traffic. He spoke to him.

21 Brandal Smith went to his trunk of his car, opened the
22 trunk. And his car was facing the building. Him facing his
23 trunk, he reached into the right side over there, bent over
24 and did a little something. He was doing something in the
25 trunk. Could not see that.

1 Then he left that area and went back over to the C.I.'s
2 vehicle, and I could see his arm go in. Come back out and
3 they parted. He left.

4 Q At that point did the informant also leave the gas
5 station?

6 A Yes.

7 Q Did you and Sergeant Ruane follow the informant from
8 the gas station to the location you agreed to meet him?

9 A Yes, ma'am.

10 Q How did he know where to go?

11 A We had already arranged that before we had left when
12 we had our initial meeting. But we also had cell phone
13 contact, and we talked to each other, okay, we're going
14 back to the same place, yeah, yeah, and then we hang up and
15 go.

16 Q Did, based on your observations from that day -- did
17 the -- did Germaine Smith, the informant, go anywhere else
18 between the Li'L Cricket gas station and the location where
19 you met him?

20 A No.

21 Q And backing up a little bit, I didn't want to
22 interrupt you earlier, but just to make sure we covered it,
23 when you left -- when you met the informant before the
24 transaction and gave him the sheriff's office money and
25 gave him this watch-recording device, did you follow

Dan Swad
Direct examination by Ms. Owens

1 Germaine Smith from that location to the gas station?

2 A Yes, ma'am.

3 Q Did he go anywhere else in between?

4 A No.

5 Q And was that recording device recording from the
6 moment you left with him until the moment you met with him
7 after the transaction was over?

8 A Yes, ma'am. It was a continuous recording, yeah.

9 Q Now, just to address that recording, how does that
10 recording device work? How does it capture its footage?

11 A They're small devices. Like about everything, they're
12 made in China. Their recording format -- while it's
13 recording if it's an extend -- sometimes they'll last up to
14 two hours recording time based on the battery, but
15 sometimes it breaks it up into segments. And I forget the
16 technical name for it. But because of limits on the
17 platform to record it on, it breaks it up into segments.

18 Q So has this recording been broken up into segments?

19 A I -- I don't recall. It could have. I've had many of
20 them that were, and-but I don't know. It may be. I don't
21 recall.

22 Q Now, you mentioned early on that when you withdraw
23 sheriff's office money to conduct a -- a transaction you
24 must give the name of a specific target.

25 A Yes, ma'am.

1 Q Right. Did you at that point have a name for who was
2 going to sell drugs to your informant on February 20th?

3 A Based upon what the C.I. had told me, yes, ma'am.

4 Q And what was -- who was it your understanding was
5 going to sell the informant fentanyl that day?

6 A Brandal Smith.

7 Q All right. Now, once you met after this transaction
8 is over, once you met Mr. Germaine Smith, the informant,
9 back at this prearranged location, what happened?

10 A After we met back at the location?

11 Q Yes, sir. After the transaction.

12 A Well, another reason we have two -- two officers there
13 is that one will conduct a search of the car and the C.I.
14 The other will retrieve the drugs or the illegal substance,
15 whatever it is. Retrieve the recording device and debrief
16 the informant.

17 Q After speaking, without discussing what Mr. Germaine
18 Smith told you -- after speaking with Germaine Smith was it
19 your understanding that he had met Brandal Smith, the
20 defendant, for this transaction?

21 A Yes, ma'am.

22 Q Did he deliver to you a quantity of suspected
23 narcotics?

24 A Yes. He did.

25 Q What did you do with that item?

Dan Swad
Direct examination by Ms. Owens

1 A Based upon what type substance it is, I placed it in
2 an envelope, glassine bag, plastic zip-lock bag, whatever
3 you want to call it. And then I turned it into the
4 sheriff's office. I packaged it properly. It's a process.
5 We have certain kind of evidence bags. Took it to the
6 sheriff's office and put it in an evidence locker.

7 Q Do you seal it before you deliver it to the staff at
8 the evidence locker?

9 A Yes, ma'am. It is sealed.

10 Q Why do you do that?

11 A So that you can -- chain of custody so that you can
12 tell if it's been tampered with.

13 Q Once you turned it into the storage facility at
14 evidence was it sealed?

15 A Yes, ma'am.

16 Q And have you had any contact with that item after
17 dropping it off at evidence storage?

18 A No.

19 Q Okay.

20 (Drugs marked State's Exhibit No. 2 for
21 Identification.)

22 Q I'm going to show you State's Exhibit 2. Do you
23 recognize that item?

24 A Yes, ma'am.

25 Q How do you recognize it?

Dan Swad
Cross-examination by Mr. Schultz

1 A Well, it has my signature on it.

2 Q What does that mean?

3 A It says signature of person sealing envelope and has
4 the date of February 20, 2018. It has the case number on
5 it. It's called a BEST bag. And best is B-E-S-T. It
6 stands for some kind of evidence, the best evidence. Maybe
7 the lab lady can explain that.

8 Q Nonetheless, is that the sealed package that you
9 turned into property and evidence related to this case?

10 A Yes. This blue one right here. The lab seals it in
11 this part. But, yeah, this part right here, the blue
12 envelope, which is actually about eight-and-a-half by 11,
13 we seal that up.

14 Q And is this evidence storage facility a secured
15 location?

16 A Yes, ma'am. It's within the sheriff's office, and
17 there are many security levels.

18 Q Once you deposit evidence at this secure storage
19 location, do you have access to it?

20 A No. I mean, not without going and checking it out and
21 all of that stuff, but.

22 Q After you submitted State's Exhibit 2 to the storage
23 facility for testing, did you have any other involvement in
24 the case?

25 A I did the incident report and then I signed the arrest

Dan Swad
Cross-examination by Mr. Schultz

1 warrants sometime later.

2 Q After completing the paperwork components of the case
3 was there any additional investigation?

4 A No.

5 Q All right, sir. If you would, answer any questions
6 that Mr. Schultz may have for you.

7 CROSS-EXAMINATION

8 BY MR. SCHULTZ

9 Q Officer, you've since retired, correct?

10 A Yes, sir.

11 Q Okay. And how long have you been retired?

12 A Two years, four months.

13 Q So you retired I guess -- this is August of 2021 --
14 two years and four months, you said? So you retired in
15 2019?

16 A April of 2019.

17 Q April of 2019. Okay. And so actually this was -- I
18 don't want to say one of your last cases but it was -- it
19 was getting up there. I mean, it was one of your last
20 cases, right?

21 A It was towards the end of my career, yes, sir.

22 Q Towards the end of your career. Okay. And previous
23 to your retirement how long did you work for Spartanburg
24 County?

25 A Thirty-six years.

1 Q Thirty-six years. Okay. Were you mainly in
2 narcotics?

3 A A lot of the time, yes, sir, off and on. I do eight
4 years there and do something else, eight more. So I did
5 other things.

6 Q Well, what were some of the other things that you did?

7 A I was the chief helicopter pilot even while I did
8 those other things. I actually had obtained the rank of
9 captain at one time. I was captain over the investigative
10 unit for three years. Patrol. Over that for one year. I
11 was in training for six years. Trained young officers as
12 they start, give them their initial training.

13 Q All right. And this happened approximately -- this is
14 2018. So this is awhile ago?

15 A Uh-huh. Yes, sir.

16 Q Okay. And a lot has happened since 2018. Would that
17 be a fair statement said? I mean, you retired.

18 A It's been all right. Yes, sir.

19 Q All right. And so your memory of this transaction is
20 not as -- not as clear as it would have been, say, in 2017
21 prior to your retirement, right?

22 A I remember some things just like anything in life.
23 You remember key points and forget some key points, but.

24 Q All right. And let's go back to when you searched
25 this informant, I guess, pre-location.

Dan Swad
Cross-examination by Mr. Schultz

1 what is your standard practice of searching an
2 informant down?

3 A what is my --

4 Q Your standard practice of searching an informant down.

5 A well, you're doing it out in a public place, number
6 one. But you pat them down. Have them turn their pockets
7 inside out. You know, just check those places that are,
8 like I say, easily accessible, readily accessible, if
9 someone was not, like, standing right beside you.

10 Q You -- you mentioned that, and maybe I misunderstood
11 you. You said you do the search in a public place, or not
12 necessarily public?

13 A It's not, let's say, within the confines of the
14 sheriff's office --

15 Q Okay.

16 A -- where you could go into a private room, and-but
17 yes. It's -- these places are -- we work out in
18 Spartanburg County.

19 Q Okay. And is there any reason why that you would
20 search your informant or alleged informant in a public
21 area?

22 A I guess when I say public area you might see -- you
23 might see the middle of the park or something. When I say
24 public, it might be behind a building.

25 Q Okay.

1 A But that's a public area in my mind.

2 Q Right. Do you remember what -- where you searched
3 this informant?

4 A I do.

5 Q where?

6 A It was behind an old shopping center near Hearon
7 Circle.

8 Q Okay. And do you remember searching this guy's car?

9 A I did not. I was -- I guess you call it --
10 prebriefing with the informant. Inv -- or Sergeant Ruane
11 searched the car.

12 Q So you didn't search the car to your recollection,
13 right?

14 A That's correct.

15 Q Okay. All right. Did you -- do you believe that you
16 did a thorough search of this guy's person?

17 A Again, I did not search him.

18 Q Okay. I'm sorry. I don't want to put words in your
19 mouth there.

20 So you -- you did not search him, correct? You
21 individually did not search this informant, right?

22 A That's correct, yes, sir.

23 Q And you didn't search the car, right?

24 A That is correct.

25 Q Okay. Did you do any search of this informant

Dan Swad
Cross-examination by Mr. Schultz

1 whatsoever?

2 A I stated I did not.

3 Q You did not. Okay. Thank you.

4 All right. Now, when you -- you said you were
5 following this informant to the Li'L Cricket there on Howard
6 Street, right?

7 A Yes, sir. I was the passenger and Sergeant Ruane was
8 driving.

9 Q Okay. Thank you.

10 You were not driving. You were the passenger, right?

11 A Yes, sir.

12 Q All right. All right. And about how far is that just
13 generally?

14 A Oh, I guess that's about a mile. Depends on if I have
15 to run it or walk or drive it.

16 Q All right.

17 A Seem longer.

18 Q And you followed him and was it -- was it your car or
19 was it the other officer's car?

20 A Sergeant Ruane's vehicle, assigned vehicle.

21 Q Assigned vehicle. Okay. Was it -- was it his -- his
22 car that he owned, or was it owned by the sheriff's office?

23 A It was an issued vehicle from Spartanburg County.
24 Spartanburg County owns the vehicle.

25 Q Okay. And so you get to this incident location,

1 right? And you -- you go behind the street -- or excuse
2 me. You're across the street, right?

3 A Yes.

4 Q Okay. All right. Were you ever in that parking lot
5 to observe this transaction up close?

6 A In the Li'L Cricket parking lot?

7 Q Oh, yeah.

8 A No, sir.

9 Q Okay. Did you notice other people around not only --
10 well, did you notice other people around the informant?

11 A No, sir.

12 Q Okay.

13 A There were people up on the sidewalk. He's sitting in
14 the car. So it just depends on what you consider close.
15 Is it this close or is it right next to him up in his
16 face -- no.

17 Q Let me ask you this. Did you lose sight of this
18 information in the Li'L Cricket?

19 A He did go inside the store for a few minutes. I don't
20 believe it was very long.

21 Q Okay. Just take a guess. About how long?

22 A A couple of minutes.

23 Q A couple of minutes. So not five to ten minutes?

24 A No, sir.

25 Q Okay.

Dan Swad
Cross-examination by Mr. Schultz

1 A I don't -- I do not believe so.

2 Q Okay. All right. I understand. Okay. But,
3 nevertheless, you lost sight of this guy, right?

4 A He went inside the store.

5 Q Okay. Why do you call this -- when you were working
6 for the sheriff's office, why do you call this a controlled
7 buy? Just give the jury sort of the definition of what a
8 controlled buy is. Why do you call it a controlled buy?

9 A You put certain measures into place to ensure that you
10 have evidence of what was going on.

11 Q Okay. So let me -- let me elaborate that a little
12 bit.

13 When you say a controlled buy, meaning the sheriff's
14 office or law enforcement controls this individual, would
15 you say that's fair?

16 A Yes, sir.

17 Q Okay. About as far as you could possibly go, right,
18 in your control?

19 A Yes.

20 Q Did you tell them in this incident don't get outta the
21 car?

22 A If it's not specifically said, it's usually not
23 preferred to do that, yes.

24 Q Not preferred to get outta the car in a controlled
25 buy.

1 A Yes, sir.

2 Q Because that would stop the whole basis of it. It
3 wouldn't be a controlled buy, right?

4 A No. We did have one device that would assist us in
5 knowing what went on.

6 Q You say you have one device?

7 A Yes. He was wearing a recording device, so anything
8 that went on even if he was out of sight, we would have
9 some evidence, at least audio if not visual evidence.

10 Q When you did lose sight of this guy, you can't say
11 that he was complying with the buy, right? You can't say
12 that he was complying with a controlled buy, right?

13 A He -- he -- it would have been preferred for him not
14 to get out of the car.

15 Q Okay. Thank you. Okay.

16 A He did not leave the premises though.

17 Q Well --

18 A Went in and purchased something.

19 Q Well, I understand that. But let me ask you this.

20 In your debriefing with this guy did you tell him what
21 were you thinking getting outta the car? Did you say that
22 at all?

23 A I don't recall.

24 Q Because that could --

25 A If I didn't, I probably should have.

Dan Swad
Cross-examination by Mr. Schultz

1 Q Right. You should have. In fact, that could void the
2 whole working agreement that you sat up with this guy,
3 right?

4 A Fortunately, we had the recording device.

5 Q Okay. I understand you had the recording device.
6 But, again, he got outta the car. You lost sight of this
7 guy, right?

8 A Yes, sir.

9 Q Okay. Do you ever say to your partner where you're
10 looking at this guy what is this guy doing? Initially,
11 your recollection.

12 A I don't recall saying that.

13 Q I'm sorry to interrupt. What's that?

14 A I don't recall saying that.

15 Q Okay. Is it true that about 50-50 of your controlled
16 buys are successful?

17 A I'm not going to put a percentage on it. I don't
18 know. I haven't measured it. I haven't calculated it. I
19 cannot put a percentage on it.

20 Q Okay. Are most of your buys successful or...

21 A Sir?

22 Q Are most when you -- when you were employed by the
23 sheriff's and you did a lot of controlled buys, or you at
24 least attempted to do them, were some of them successful,
25 most of them unsuccessful? I don't want to put words in

1 your mouth. Just give me a general idea.

2 A Most of them were successful.

3 Q Most of them were successful.

4 Okay. The -- the device -- and you said this a couple
5 of minutes ago. And, again, I don't want to put words in
6 your mouth. The device you gave this informant was a watch?

7 A Yes, sir.

8 Q Okay. Had he used the watch before?

9 A Yes, sir.

10 Q Okay. You mentioned that it was Chinese manufactured?

11 A I think so. They're not good quality American stuff,
12 but.

13 Q Good quality.

14 A Yeah.

15 Q And they're not good quality American things, not made
16 in America, right, sir? It wasn't made in America, right?

17 A Yes, sir.

18 Q Okay. It was made in China, right, or at least as far
19 as you know?

20 A Yes, sir.

21 Q Okay. All right. When you retired in 2019 was the
22 sheriff's office still using those cheap Chinese watches?

23 A Yes, sir.

24 Q Okay. And you're still continuing to do them today as
25 far as you know? I know you're retired.

Dan Swad
Cross-examination by Mr. Schultz

1 A I have no idea.

2 Q Okay. When -- when you attempt to do these buys
3 what -- what other instructions do you use to give to
4 informants?

5 A If you go on the internet you can find anything you
6 want -- key fobs, phones, Bibles, sanitary alcohol stuff,
7 any kind of.

8 Q Bibles?

9 A What?

10 Q Bibles? Did you say Bibles?

11 A Books.

12 Q Oh, books.

13 A Whatever. You can have -- you can have these things
14 in anything now.

15 Q Books with videos in them, video recording devices?

16 A Yeah. Mountain Dew bottles.

17 Q Mountain Dew bottles.

18 A Clorox bottles, anything.

19 Q What -- what's the most reliable one that you've seen
20 in your experience?

21 A I don't have -- I don't have an opinion on them.
22 They're just --

23 Q You don't?

24 A No, sir.

25 Q Okay.

1 MR. SCHULTZ: Approach the witness?

2 Q What does H.D.T. stand for on this? Referring to
3 State's Exhibit 2.

4 A That would have to be something for the lab. That's
5 their writing.

6 Q Okay. But that's not your concern, right?

7 A I didn't write that. I don't know. That's -- that's
8 something the lab did.

9 Q Okay. All right. The lab where?

10 A Spartanburg County Sheriff's Office.

11 Q Not in Columbia but the lab in the --

12 A Yes, sir.

13 Q Okay.

14 MR. SCHULTZ: Beg the Court's patience.

15 (Pause.)

16 Q Did you do an undercover buy report in this
17 transaction?

18 A Yes, sir.

19 Q Okay. And is that your usual practice to do an
20 undercover buy report?

21 A Yes, sir.

22 Q All right. And when you did this -- what is your
23 usual practice? Do you do the undercover buy report while
24 you're doing the investigation or after you go back to your
25 office?

Dan Swad
Cross-examination by Mr. Schultz

1 A After you go back to the office. It's done on a
2 computer.

3 Q Okay. And when you did this undercover buy report, is
4 there any reason why you did not notate when there was a
5 buy time?

6 A If there's not in it -- I believe I put the date and
7 time in there.

8 Q Okay.

9 MR. SCHULTZ: May I approach, Judge?

10 Q Officer, is this your handwriting here?

11 A I have to have some glasses for that.

12 Q Yes, sir.

13 A Yeah. Well, it -- it took place. Here's the arrival
14 time on scene, which was 1555, which would be 3:55, five
15 minutes till 4:00. And then this is 1616, which would be
16 about a quarter after 4:00. So sometime within that
17 20-minute period right there.

18 Q Okay. But why is -- why is there a space for buy time
19 on that?

20 A To fill out if we know the exact time that it
21 happened.

22 Q But you don't --

23 A If not, it's within that parameter.

24 Q All right. But you don't -- you don't know the exact
25 time that this buy happened, right?

1 A No, sir.

2 Q Okay.

3 A Sometime between five minutes till 4:00 and 15 minutes
4 after 4:00.

5 Q So you -- okay. well, let me ask you this.

6 when you do these types of controlled situations --
7 right -- controlled transaction or at least attempted
8 controlled transactions -- isn't it important to put when
9 the allegation or the crime actually occurred?

10 A well, actually, that crime occurred in that whole
11 period.

12 Q well, I understand that. But why wouldn't you put buy
13 time on there? That's really important, isn't it, Officer?

14 A That specific time that the crime took place, within
15 that 20-minute period.

16 Q Okay. But you can review the tape, right? You can
17 review the buy video, right?

18 A Yes, sir.

19 Q Okay. To find out exactly when you think the buy
20 happened, right?

21 A well, when I think it happened was between that 20
22 minutes.

23 Q Oh, I understand when you think what happened. But
24 that's why you have -- that's why you outfit an informant
25 with that kind of equipment, right? That's the whole

Dan Swad
Cross-examination by Mr. Schultz

1 reason to do it.

2 A The reason to outfit the informant with that equipment
3 is to procure evidence of the crime.

4 Q Okay. After you -- when you fill out this undercover
5 buy report is there any explanation -- again, I don't want
6 to belabor the point -- why you didn't put a buy time?

7 A I didn't have the specific time.

8 Q Okay. You followed Mr. Smith, Germaine Smith, back to
9 the original location, is that right?

10 A Yes, sir, our prebuy meeting, yeah.

11 Q Do you remember accelerating trying to follow him?

12 A Seems like getting out onto the Asheville Highway we
13 went out through Cleveland Park, because it was right there
14 next to the store down the hill. We went out to the
15 Asheville Highway. It seems like we had to get out in
16 traffic. But do I remember specifically accelerating? No.
17 We may had to -- may have had to.

18 Q Did you -- I mean, you were looking at this alleged
19 transaction through binoculars, right?

20 A Yes, sir.

21 Q Okay. About how many cars were between you and the
22 front of the Li'L Cricket? Because you were in a used-car
23 parking lot.

24 A Yeah. We were right at the back of it. I don't
25 know -- 20 or 30. I don't have a specific number. It's --

Dan Swad
Cross-examination by Mr. Schultz

1 they were a bunch of them.

2 Q Yeah. Suffice it to say --

3 A I wasn't looking through the cars. I was looking over
4 the top of them.

5 Q Okay. All right. So you were how many yards away, a
6 hundred yards, 200 yards?

7 A Fifty.

8 Q Sir?

9 A Fifty.

10 Q Fifty yards. Okay. Fifty yards. Okay. So not
11 necessarily through cars but over cars and then across
12 Howard Street, right?

13 A Yes, sir.

14 Q Okay. And then, so not only were you there in your
15 partner's pickup truck, where you parked in that pickup
16 truck, okay, you also had to look through -- not look
17 through but look over all of these cars, about 20 to 30,
18 right, across Howard Street and then across a parking lot
19 to observe this go on, right?

20 A That's a good description, yes, sir.

21 Q Thank you.

22 Did you arrest my client that day?

23 A No, sir.

24 Q Okay. Why didn't you do that?

25 A A lot of time we delay the arrest of the suspects

Dan Swad
Cross-examination by Mr. Schultz

1 based upon using the C.I., so his identification is not
2 divulged.

3 Q Okay.

4 A Trying to keep it, you know, confidential so we can
5 use them again.

6 Q All right. I understand that. But did you arrest him
7 the next month?

8 A No, sir.

9 Q Okay. And that was in March, right, March of 2018?

10 A February of '18 was when this incident took place.

11 Q Okay. Did you arrest him in March?

12 A No, sir.

13 Q Did you arrest in him in April?

14 A No, sir.

15 Q Did you arrest him in May of 2018?

16 A No, sir.

17 Q Okay. Did you arrest him in June?

18 A I'm not sure when the arrest was, did take place. I
19 did not arrest him.

20 Q Okay. Did you get a warrant for his arrest?

21 A I did.

22 Q All right. When did you get the warrant for his
23 arrest?

24 A Sometime in July of '18, I believe.

25 Q Sometime in July? So this happened in the winter and

1 then you waited until July to get a warrant for his arrest?

2 MS. OWENS: Your Honor, can we approach very briefly?

3 THE COURT: Yes, ma'am.

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

6 MR. SCHULTZ: Your Honor, can we approach again?

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

9 Q Officer, the working agreement you had with the
10 informant, do you remember doing that?

11 A Yes, sir.

12 Q Okay. Were -- were you the principal officer on that
13 working agreement?

14 A I think so, yes, sir.

15 Q Okay. Do you remember meeting with him prior to this
16 transaction happening?

17 A Yes, sir.

18 Q Okay. All right. And about how many times did you
19 meet with him prior to February of 2018, do you remember?

20 A I do not remember.

21 Q Okay.

22 A Multiple times.

23 Q Multiple times. Okay. All right. And do you
24 remember what the motivation was for him, the informant, to
25 assist law enforcement?

Dan Swad
Cross-examination by Mr. Schultz

1 A Initially?

2 Q Yeah.

3 A For assistance on charges of somebody else.

4 Q Somebody else?

5 A Yeah.

6 Q All right. Can you elaborate on that?

7 A He wasn't working off charges for himself.

8 Q Okay. Could you explain that a little bit more
9 detailed to the jury? Like working off charges, what does
10 that mean?

11 A Sometimes when you catch suspects in criminal acts,
12 working through the solicitor's office they're given
13 consideration, I guess, for their sentence, the time. They
14 may get a reduced sentence for assisting the sheriff's
15 office.

16 Q Okay. And this is the deal that you cut with this
17 guy, right?

18 A Ask that again, please.

19 Q Okay. Germaine Smith, the informant that you used in
20 this, okay, he was working for you not out of the kindness
21 of his heart, right?

22 A That's correct.

23 Q Okay. He was working and contracted with y'all,
24 right?

25 A Correct.

1 Q You kinda rolled your eyes there. Did -- is -- am I
2 saying that correctly?

3 A We can use the word contract. I guess that's correct.

4 Q Okay. He was trying to work off charges that another
5 person had, right?

6 A Yes, sir.

7 Q Who was that person, do you know?

8 A I do. I don't know their name right now, but I do
9 know who the person was.

10 Q Okay.

11 A I could find out.

12 Q All right. Who did -- did Germaine Smith contact you
13 or did you contact Germaine Smith?

14 A On this day?

15 Q No. For the working agreement.

16 A He contacted the solicitor's office.

17 Q Okay. And the solicitor's office contacted you?

18 A Yes, sir.

19 Q Okay. And then you contacted him?

20 A Yes.

21 Q Okay. And what did you say to him?

22 A What have you got, what can you help me with.

23 Q Okay. All right. So again --

24 A I'm paraphrasing. I don't know specifically what I
25 said.

Dan Swad
Cross-examination by Mr. Schultz

1 Q well, let me ask you. what do you usually say
2 to perspective --

3 A what can you help me with.

4 Q sir?

5 A what can you help me with.

6 Q okay. what did he say?

7 A Gave out a list of people he knew.

8 Q okay. All right. And he signed the agreement with
9 y'all, right?

10 A Yes.

11 Q okay. Now, and he initialed all of these paragraphs
12 of the agreement, right?

13 A okay.

14 Q Did he?

15 A I -- let me look at it. I'll see.

16 MR. SCHULTZ: I apologize, Your Honor. Could I
17 approach?

18 A Yes, sir.

19 Q okay. Looking in the second page there, is that your
20 signature as well?

21 A Yes, sir, yeah.

22 Q All right. So he was your informant, sir, right?

23 A Uh-huh, yes, sir.

24 Q All right. So he was -- he was working for you.
25 would that be a fair and accurate way to say that?

1 A At the time I -- I had another partner, Phillip Davis,
2 who mainly contacted him.

3 Q Okay. All right. But that's clearly your signature
4 on there, right?

5 A Yes, sir.

6 Q Okay. All right. Now, looking at this, could you
7 read that out to the jury there, that first paragraph under
8 the working agreement there?

9 A Says, "I understand that I am not a police officer or
10 an employee of the Spartanburg County Sheriff's Office. I
11 will not represent myself to others as a police officer or
12 representative of the Spartanburg County Sheriff's Office.
13 I understand that I have no police power and that I cannot
14 make any arrest, searches or seizures. I have no authority
15 to carry a firearm or weapon while assisting the
16 Spartanburg County Sheriff's Office."

17 Q All right. Thank you.

18 I hate to belabor the point there. Could you read the
19 first sentence in paragraph two under the working agreement?

20 A "I will not violate any criminal laws while gathering
21 information or providing services for the Spartanburg
22 County Sheriff's Office."

23 Q All right. How long did Mr. Smith work for you?

24 A I don't know. A year maybe. I don't recall.

25 Q Okay. Were you aware of his arrest in 2019?

Dan Swad
Redirect examination by Ms. Owens

1 A No.

2 Q You weren't aware of his arrest in 2019 for drug
3 trafficking?

4 A I don't recall that.

5 Q Okay.

6 A I probably have to know a date. I retired in April of
7 '19, so.

8 Q I understand. Okay. To your information, was he
9 still working in 2019?

10 A Sir?

11 Q Was he still working upon the date of your retirement?

12 A I'd have to look at some files to see what cases were
13 made.

14 MR. SCHULTZ: Beg the Court's patience.

15 (Pause.)

16 Q A couple of other questions with the pre search and
17 post search. Was he drug tested? Was your informant drug
18 tested?

19 A No, sir.

20 Q Okay. Is that the usual practice, to drug test an
21 informant?

22 A No, sir.

23 Q Okay. All right.

24 A I mean, we could, I guess, but who's going to pay for
25 it?

Dan Swad
Recross-examination by Mr. Schultz

1 Q Okay. What about, did he have a license, do you know?

2 I mean --

3 A A driver's license?

4 Q Yeah.

5 A I believe so.

6 Q Okay.

7 MR. SCHULTZ: That's all I have, Judge. Thank you.

8 MS. OWENS: Very briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. OWENS

11 Q Mr. Swad, what makes a good informant?

12 A Well, that's a big question. A lot of things.

13 Reliable, they show up. Just -- just a lot of things. If
14 they -- if they show up when they say they're going to show
15 up. You know, again, a good informant is somebody that can
16 go out within the drug culture and purchase drugs. It has
17 to be somebody that's in that culture.

18 Q Does that necessarily mean that an informant might use
19 drugs themselves?

20 A Yes.

21 Q Is that unusual in your experience?

22 A No. I mean, people out there that sell drugs aren't
23 going to deal with people that don't do drugs.

24 Q And just one additional question.

25 Based on your direct personal observation of what

1 happened in the Li'L Cricket gas station parking lot did
2 anyone else reach inside the informant's car except this
3 defendant, Brandal Smith?

4 A No, ma'am.

5 MS. OWENS: I don't any additional questions, Your
6 Honor.

7 MR. SCHULTZ: Briefly.

8 RECROSS-EXAMINATION

9 BY MR. SCHULTZ

10 Q You just asked a couple of seconds -- she just asked a
11 couple of questions seconds ago what makes a reliable
12 informant.

13 A Yes, sir.

14 Q Okay. Does -- does a reliable informant go inside a
15 store where you lose track of them for a couple of minutes
16 and then go back inside his car? Is that a reliable
17 informant in your opinion?

18 A It happens -- it happens.

19 Q Is it a reliable informant in your opinion?

20 A It's one thing that you prefer they not to do, but,
21 again, the recording device covers what they're doing.

22 Q And after your -- your practice is whatever you do,
23 don't leave the car, right? You -- you may have said that
24 to him, right?

25 A I told you I -- before I told you I didn't say that to

1 him specifically.

2 Q Okay.

3 A I don't recall saying that to him.

4 Q Thank you, Judge.

5 MS. OWENS: No additional questions Your Honor.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you.

8 We're going to take a break before we continue.

9 I'll ask you to please go your jury room. Please
10 understand that you can't discuss the case among yourselves
11 until deliberation time begins, and that's not now. So
12 don't discuss the case in any fashion. You can talk about
13 anything else you want to, but don't talk about the case.
14 You can't do that except and until deliberations take
15 place.

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

18 THE COURT: Mr. Schultz, has there been any
19 arrangement with the surety about the continuance of the
20 bond while this trial is in progress?

21 MR. SCHULTZ: Your Honor, the surety is Giggie's, as
22 we said yesterday. The Court was kind enough to allow the
23 defendant to go back -- or not back on his bond -- but
24 continue on his bond.

25 I can't remember exactly what happened or when the

1 date of this, but I know that Ms. Owens sent a direct
2 indictment to the grand jury and he was actually arraigned
3 on that, on the trafficking and the charge, but he -- he
4 showed up for that. And Giggie's has agreed to remain
5 on -- on that.

6 THE COURT: well, that's my point. Have they agreed
7 to stay on the bond now that we've begun the trial and the
8 jury's been sworn?

9 MR. SCHULTZ: Giggie's has not specifically done --
10 said that.

11 THE COURT: well, then he's going to be in custody
12 until such time as --

13 MR. SCHULTZ: Your Honor, if it pleases the Court. If
14 I could contact Giggie's at this time and get some kind of
15 affidavit or email would the Court reconsider its position?

16 THE COURT: well, I haven't made a decision. I'm just
17 saying until such time as I get that information he's got
18 to be in custody.

19 MR. SCHULTZ: That's fine. Thank you, Judge.

20 MS. OWENS: Your Honor, recess for --

21 THE COURT: Fifteen minutes.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. We ready for the jury?

24 MS. OWENS: Your Honor, two things very briefly.

25 First, Mr. Swad has an appointment to get to this

1 afternoon. I wanted to ask that he be excused from his
2 subpoena.

3 THE COURT: May Mr. Swad be excused from his subpoena?

4 MR. SCHULTZ: Yes, sir.

5 THE COURT: You're excused from your subpoena,
6 Mr. Swad. Thank you for coming.

7 THE WITNESS: Thank you, sir.

8 (Whereupon, the witness was excused.)

9 MS. OWENS: The next issue, Your Honor, is just
10 logistics.

11 The next witness I expect to be lengthy. The video of
12 the transaction is itself 35 minutes long. I'd be happy to
13 begin the direct examination.

14 THE COURT: We'll start. We'll just get to a stopping
15 point around 1:00 o'clock, and we'll break it up.

16 MS. OWENS: Okay. My assistant has gone upstairs to
17 retrieve him. He should be downstairs momentarily.

18 MR. SCHULTZ: Your Honor, as far as Mr. Smith goes, as
19 far as the bond goes, if I could be heard on that.

20 Okay. I have contacted Giggie's. Right, Brandal?
21 Okay. Brandal's told me he's contacted them every week
22 with his bond. The last email correspondence that I got
23 with them was back in November of 2020. And they said,
24 yes, we will continue on Mr. Smith's bond. I received that
25 from --

Germaine Smith
Direct examination by Ms. Owens

1 THE COURT: Well, I get all of that and I know he's
2 not violated, but we're in a totally different position
3 right now.

4 MR. SCHULTZ: I understand, Judge. And what I did
5 is -- I just wanted to tell the court. I wrote them an
6 email at 12:02. Says, "Will you continue to remain on Mr.
7 Smith's bond now that the case is called for trial? Thank
8 you." And they haven't written back to me yet.

9 THE COURT: Okay.

10 MR. SCHULTZ: So I just -- I want to inquire of the
11 Court if I get a response from them can Mr. Smith remain
12 out on bond.

13 THE COURT: We'll address that when the time comes.

14 MR. SCHULTZ: Yes, sir. Thank you.

15 THE COURT: All right. You can bring with the jury
16 in.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: The jury is present. You may continue.

20 MS. OWENS: May it please the Court, Your Honor.

21 The state calls Mr. Germaine Smith.

22 Mr. Smith, if you will, please, come up and be sworn.
23
24
25

Germaine Smith
Direct examination by Ms. Owens

1 Q Do you work?

2 A Yes, ma'am. I do.

3 Q Where do you work?

4 A Colgate-Palmolive.

5 Q How long had you lived in Spartanburg before you
6 relocated?

7 A Pretty much since I was 14 years old.

8 Q Did you go to school here in Spartanburg?

9 A Yes, ma'am.

10 Q Over the course of your life have you used drugs?

11 A Yes, ma'am. I have.

12 Q What kind of drugs?

13 A I have did cocaine and experimented with heroin.

14 Q How frequently would you say that you used drugs over
15 your life?

16 A Pretty much my early, my 20s, and life after that, but
17 now I'm not. I'm no longer on drugs.

18 Q At some point while you were still living in
19 Spartanburg did you decide to work for the sheriff's
20 office?

21 A Yes. I did, ma'am.

22 Q Why?

23 A A sister of mine, she was in trouble and -- and I
24 helped her out.

25 Q What did you do to help her out?

1 A I -- because of my past drug history I knew things of
2 people, and when I did I corroborated with the Spartanburg
3 County Narcotics and helped them.

4 Q Did you buy drugs for the sheriff's office?

5 A Yes, I did, ma'am.

6 Q How many times in your estimation?

7 A A lot of times. Maybe over 25 times.

8 Q Do you remember when you would have done that work?

9 A Yes, ma'am. It was during two thousand and maybe --
10 started 2017 or 2018 all the way up to two thousand and --
11 no. I take that back. It was like two thousand and maybe
12 16 all the way to maybe 2020. Maybe something like that.

13 Q What was your understanding of what you had to do to
14 work with the sheriff's office?

15 A My understanding was, you know, to -- to buy from
16 known people that was selling narcotics.

17 Q Did you allow them to search you before those
18 transactions?

19 A Oh, yeah, every time. Yeah. That's -- that's how it
20 goes. They made sure there was nothing on my person or
21 on -- in the vehicle I used to go, and sometimes they'd be
22 the ones that take me to -- to go to do the buys.

23 Q Did you agree to wear recording devices?

24 A Yes, ma'am. Several different types.

25 Q Did you understand that as a result of your work with

Germaine Smith
Direct examination by Ms. Owens

1 the sheriff's office that you might have to come to court
2 and testify like today?

3 A Yes, ma'am. I was fully aware of that.

4 Q Now, focusing in on the trial that's the subject or
5 the case that's the subject of this trial, do you remember
6 agreeing to purchase drugs back in February of 2018?

7 A Yes, ma'am.

8 Q In February of 2018 did you know the defendant,
9 Brandal Smith?

10 A Yes. I did.

11 Q What was your relationship with him?

12 A I just met him through a mutual friend.

13 Q Did you have a social relationship?

14 A Not -- not really, you know, besides I just know him
15 from -- you know, he sold drugs.

16 Q Did you know him by a nickname?

17 A Rock.

18 Q Did you speak with him enough to recognize his voice?

19 A Oh, yeah, yeah, yeah.

20 Q Did you have his phone number?

21 A Yes. I did.

22 Q On February 20th of 2018 did you meet up with the
23 sheriff's office deputies?

24 A Yes. I did.

25 Q Do you remember how that happened?

1 A Yes. I supposed to make a buy for them for the front
2 on him -- from Brandal -- and met up with them and they
3 gave me the recording, audio and video, devices. And they
4 gave me money from Spartanburg County, their money to go
5 purchase on fentanyl from Mr. Brandal.

6 Q When you met with them did you make a phone call to
7 the defendant?

8 A Oh, yes, I did. And they have that, yes. And I
9 recorded it. Well, it was recorded phone call setting up
10 the buy.

11 Q Were the deputies there when you made this phone call?

12 A Yes, ma'am. It was two of them.

13 Q Did you ask the defendant at that point on that day if
14 you could purchase drugs?

15 A Yes.

16 Q Did you specifically ask him what kind of drugs you
17 wanted to purchase?

18 A Yes, yeah. That was already understood, yes.

19 Q What did you want to purchase from the defendant?

20 A Fentanyl.

21 Q Did you specifically ask for Fentanyl?

22 A Yes, well, yes, yes.

23 Q So after you made that phone call, what happened next?

24 A Told me to meet him over there at the Li'L Cricket
25 over there off of Howard Street across from Charlie's Used

Germaine Smith
Direct examination by Ms. Owens

1 Cars. And then I had to hold up and wait for a second or
2 two. And then I was -- and it took me a while to get to
3 that location. And then when he came to the car we
4 briefly, you know, talked, and we talked about a price I
5 believe of four or five hundred dollars. I thought it was
6 four. It was five hundred or something. It was the price
7 of something. And then -- then he came back to the car,
8 and that's the way it went. That's what happened.

9 Q Before you went to the Li'L Cricket did the deputies
10 search you?

11 A Yes, yes.

12 Q Did they search your pockets?

13 A Yes. They fully -- fully -- fully searched -- fully
14 searched the vehicle that I was using and everything and
15 made sure -- and made sure I didn't have my own money or no
16 money except for their money that was issued. It was very
17 thorough with that.

18 Q Did you have any other quantities of drugs concealed
19 on your body?

20 A No. There's no way I could have had anything
21 concealed. Even if I wanted to, you know, they would have
22 found it.

23 Q Did you have any other drugs concealed in your car?

24 A No, ma'am, none. None at all.

25 Q Do you remember what kind of recording device you were

1 wearing this particular day, February 20th?

2 A Yeah. It's a watch.

3 Q How did that watch work?

4 A It's like it's a watch and you kind of -- and it's --
5 you know, you kind of angle it whenever, you know, you
6 trying to be inconcicuous [sic], I mean, you know, being
7 that obvious at the same time that you got a camera on your
8 watch when you doing that.

9 Q Did you ever take it off of your wrist?

10 A No, no, no, ma'am.

11 Q Did you ever stop the recording?

12 A No, uh-uh, and just...

13 Q You mentioned that it took a little while to get to
14 the Li'L Cricket. But once you got there, what happened?

15 A I parked, and the whole time the audio and stuff
16 going. So I pretty much just like narrating the whole
17 situation. I'm stopping. I pulled up. He came to the
18 window just now and told me to hold up. You know, I think
19 I got this -- I think I got a good picture. You know,
20 like, I was communicating with them through the audio while
21 I was there waiting for him to come back with the rest -- I
22 mean, with the drugs.

23 Q Do you remember going inside the store before the
24 defendant arrived?

25 A Yes. I had went inside the store.

Germaine Smith
Direct examination by Ms. Owens

1 Q why?

2 A I think I was going to get me a drink or something,
3 you know. It was going to be a wait because sometimes, you
4 know, when those things like that happen, it just don't be
5 no pull-up and just get it. You know, sometimes you have
6 to wait for them to -- you know, to come or something like
7 that.

8 Q When you were inside the store did you get drugs from
9 anybody inside that store?

10 A No. But the whole time the recording devices and
11 stuff is still hooked on me and stuff. So they would have
12 seen if that was the case. But no.

13 Q Now, you mentioned that when the defendant first
14 arrived he came to the window and the two of you had a
15 discussion, is that right?

16 A Yes, ma'am.

17 Q What did you talk about during that first
18 conversation?

19 A Pretty much about the price, you know, and stuff like
20 that. You know, general just -- and conversations didn't
21 really have nothing to do with the deal, you know, because
22 we kinda, you know, knew each other before, like, you know,
23 I was just, like, basically, just a basic, you know,
24 general how you doing type of conversation, along with the
25 prices was discussed. They told me to hold up.

1 Q Once you agreed on a price, what happened?

2 A Some other people who was talking -- I believe it was
3 some other people. I don't know. There was some other
4 people that was there that he was talking to. Then I
5 waited and he came back. So I believe he went to his car.
6 I don't know, you know, because I was sitting there.

7 Q Did you see what happened while he was at his car?

8 A Yeah. He went in the trunk and lifted up the trunk
9 and then he came back and whatever, you know, and then he
10 called me in the car and gave me the stuff and he got the
11 money.

12 Q Did you give him all of the money that the sheriff's
13 office had given you?

14 A Yes. I had. Yes. I did.

15 Q What did he give you in exchange?

16 A The fentanyl.

17 Q Do you know how much it was or how much it was
18 supposed to be?

19 A It was, like, I think it was about -- I think it was
20 7 grams, something like that. Usually it be that amount.

21 Q Now, after he has given you the drugs that you asked
22 for and you've given him the money, what do you do next?

23 A You know what? Can I say something? Forgot exactly
24 how much it was -- the amount.

25 Q Okay. It's okay if you don't remember.

Germaine Smith
Direct examination by Ms. Owens

1 A But, okay, yeah, because I don't wanna -- yeah,
2 because it's been a while. It's been a couple of years
3 back. But I -- but I do know I purchased fentanyl from
4 him. And I can't remember exactly how much it was.

5 Q Yes, sir. I understand. After you delivered the
6 money to the defendant and he gave you what you ordered,
7 what did you do next?

8 A I immediately, you know, let them, you know, on the
9 recording, let them know that I got it and -- and -- and go
10 back to the spot that we supposed to met, and met with the
11 officers and -- and they, you know, searched the car again,
12 you know, and got the stuff that I purchased. You know,
13 searched me, you know, me trying not to keep none, you
14 know, stuff like that and -- and took the equipment off me.

15 Q Did you give them everything that this defendant had
16 given you?

17 A Yes, ma'am.

18 Q Did you hide any other drugs in the car?

19 A No, ma'am.

20 Q How did you know where to go after you had received
21 the drugs that you ordered?

22 A Because it was the same spot that we went to where it
23 usually be the same spot wherever we met before. We meet
24 the person that -- you know, that -- that I need to go meet
25 to go purchase the drugs. And I go right back to the

Germaine Smith
Direct examination by Ms. Owens

1 location. Maybe every now and then it be -- it might
2 change up or something like that though. So pretty much
3 wherever I meet them at, you know, that's where I need to
4 go back to immediately, no stops.

5 Q So it's typically the same location before and after.

6 A Yeah, uh-huh.

7 Q Okay. Did you go straight there?

8 A Yes, ma'am.

9 Q Do you know whether they followed you?

10 A Who followed me?

11 Q I'm sorry. Do you know whether the deputies followed
12 you?

13 A Oh, yeah. They always there. It's a whole team of
14 them.

15 Q Is the person who came to your car and gave you
16 fentanyl in exchange for \$400 in the courtroom today?

17 A Yes, ma'am.

18 Q Could you identify him for the jury?

19 A Yes, ma'am.

20 Q Could you point to him for the jury?

21 A Yes, ma'am. Right there.

22 Q Is that the defendant, Brandal Smith? Is that the
23 person you know as Rock?

24 A Yeah. That's Rock.

25 Q And is the defendant the person that came to your car

Germaine Smith
Direct examination by Ms. Owens

1 and gave you fentanyl on February 20th of 2018?

2 A Yes, ma'am, yeah.

3 Q Okay. I'm going to show you State's Exhibit 2. Do
4 you recognize what's inside of those plastic bags?

5 A Oh, yeah.

6 Q what do you -- what is it?

7 A It's the fentanyl.

8 Q Does that look like the fentanyl that the defendant
9 gave you to February 20th?

10 A Yes. That's it.

11 (Photograph marked State's Exhibit No. 3 for
12 Identification.)

13 Q Mr. Smith, you testified that you were wearing a
14 recording device for the entire transaction, is that right?

15 A Yes, ma'am, video.

16 Q Have you had an opportunity to review that recording?

17 A Yes, ma'am. I have.

18 Q Is it an accurate recording of everything that you
19 remember happening from the time you met with deputies
20 until the time you met with deputies and handed over the
21 drugs?

22 A Yeah, yes, ma'am.

23 Q Do you know about how long that recording is?

24 A It's probably 15 or 30 minutes or something like that.
25 It's pretty long because before, you know, I had arrived.

1 You know, it was a pretty long recording.

2 Q And you testified earlier --

3 THE COURT: Excuse me just a minute.

4 Be sure you keep your voice up. Don't let it fall.

5 THE WITNESS: Yes, sir.

6 Q You testified earlier that you tried to aim the watch
7 that you were wearing in a way to record this transaction.

8 A Yeah, because it -- it doesn't stay steady. You know,
9 I mean you know, cause when you trying to talk and, you
10 know, and, you know, like that without being obvious that
11 you're recording them, so, you know, you might get up and
12 down and side, you know, but then you -- they'll come in
13 the picture or then they -- yes, ma'am. Then they'll leave
14 outta the picture.

15 Q So are you doing your best to capture?

16 A Yeah. That's all -- that's mainly how I be doing,
17 like if I'm talking or like -- like I'm talking with my
18 hands, and that's how, you know, so it's not really steady.

19 Q Mr. Smith, I'm going to show you State's Exhibit 3.
20 Did you recognize that item?

21 A Yes, ma'am.

22 Q What is it?

23 A It's Mr. Brandal.

24 Q Is that a still image from the recording that you
25 captured?

Germaine Smith
Direct examination by Ms. Owens

1 A Yes, ma'am.

2 Q Is that an accurate representation of the image that
3 you captured with that recording device?

4 A Yes, ma'am.

5 MS. OWENS: Your Honor, at this point the state offers
6 State's Exhibit 3 into evidence.

7 MR. SCHULTZ: No objection.

8 THE COURT: It's admitted.

9 (Photograph marked State's Exhibit No. 3.)

10 MS. OWENS: With the Court's permission I'd like to
11 publish it.

12 THE COURT: You may.

13 MS. OWENS: Could I ask the Court to direct Mr. Smith
14 to remove his face covering?

15 THE COURT: Remove your mask, please.

16 (Whereupon, the defendant complied.)

17 Q Now, Mr. Smith, you testified that you used drugs over
18 the course of your life.

19 A Yes.

20 Q Were you convicted in 1998 for possession with intent
21 to distribute marijuana and possession with intent to
22 distribute cocaine?

23 A Yes, ma'am, yes, ma'am. I was.

24 Q Were you convicted in 2010 for failure to stop for a
25 blue light and strong arm robbery?

Germaine Smith
Direct examination by Ms. Owens

1 A Yes, ma'am. I was.

2 Q In 2013 were you convicted of two counts of
3 distribution of crack and possessing a firearm after having
4 been convicted of a crime of violence?

5 A Yes, ma'am.

6 Q Since the time of this transaction in 2018 have you
7 been again arrested and charged with a crime?

8 A No, ma'am. I wasn't in trouble at the time when this
9 incident happened.

10 Q Yes, sir. Let me -- let me be clear.

11 Since the time this happened in 2018, have you since
12 that time been arrested and charged with another crime?

13 A Oh, yeah. Since -- since then, yes, I have been,
14 ma'am.

15 Q Has that criminal case been resolved yet?

16 A No, ma'am. It's still pending.

17 Q Has anyone made any promises to you about what would
18 happen to that case?

19 A No, ma'am. I have not been made any promises on that
20 case.

21 Q Has anyone told you to testify -- how to testify here
22 today?

23 A No, ma'am.

24 Q Have you been asked to testify in any way other than
25 to tell the truth?

Germaine Smith
Direct examination by Ms. Owens

1 A Yes, ma'am, other than to tell the truth, yeah. And
2 it wasn't even brought up because this incident happened
3 before I got in trouble. So it wasn't even brought up, you
4 know.

5 Q Yes, sir. So at the time of this in 2018 --

6 A Yeah. I was not in trouble.

7 Q And, finally, I'm going to show you State's Exhibit 1.
8 Have you had an opportunity to review what's contained on
9 State's Exhibit 1?

10 A Yes, ma'am. Is that the video that -- from the
11 picture?

12 Q Yes, sir. There's been testimony that State's
13 Exhibit 1 is the recording that was captured on the
14 recording device. Have you rereviewed that entire
15 recording?

16 A Yes, ma'am.

17 Q And is it an accurate representation of the entire
18 transaction on February 20th of 2018?

19 A Yes, ma'am.

20 MS. OWENS: Your Honor, at this point I would admit
21 State's Exhibit 1.

22 THE COURT: All right. And the length is?

23 MS. OWENS: Just over 30 minutes, Your Honor.

24 THE COURT: well, I think this is a good time to break
25 for lunch, and then we'll start with that after lunch.

Germaine Smith
Direct examination by Ms. Owens

1 MS. OWENS: Yes, sir.

2 THE COURT: Mr. Smith, you can step down and have a
3 seat right over there by the prosecutor's table.

4 We will recess for lunch. I'll ask the jury to
5 remember my caution. No discussions about the case.

6 Please return to your jury room at 2:30, at 2:30 this
7 afternoon.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Mr. Germaine Smith, you are still on the
11 witness stand, so you cannot discuss your testimony with
12 anyone during the lunch recess.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Court is in recess until 2:30.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. We ready for the jury?

17 MR. SCHULTZ: The defense is ready, Judge.

18 MS. OWENS: The state is ready to proceed, Your Honor.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Good afternoon, ladies and gentlemen.
22 We're going to continue with the examination of
23 Mr. Smith.

24 Mr. Smith, you'll come back around. Of course you're
25 still under oath.

Germaine Smith
Cross-examination by Mr. Schultz

1 MS. OWENS: May it please the Court, Your Honor.

2 AS I recall where we left off the video recording,
3 State's Exhibit No. 1, has been admitted into evidence and
4 the state's prepared to publish that recording to the jury.

5 THE COURT: There was no objection to its admission?

6 MR. SCHULTZ: No objection.

7 (D.V.D. marked State's Exhibit No. 1.)

8 THE COURT: It's going to project everywhere?

9 MS. OWENS: No, sir, Your Honor. It'll be played on
10 this large screen television that I'm about to reposition.

11 THE COURT: Well, that's what I say. Oh, but just on
12 that one?

13 MS. OWENS: Yes, sir.

14 THE COURT: Okay. Okay. It's going to be difficult
15 for the witness to see it if you need him to.

16 MS. OWENS: Yes, sir. I don't anticipate asking
17 Mr. Smith any questions at this point.

18 THE COURT: Okay.

19 (Whereupon, the video was played for the jury.)

20 Q Mr. Smith, I don't have any additional questions for
21 you. If you would, answer any questions that Mr. Schultz
22 may have.

23 MR. SCHULTZ: Judge, with the Court's permission I
24 would like to bring that podium back there.

25 THE COURT: You may.

Germaine Smith
Cross-examination by Mr. Schultz

1 CROSS-EXAMINATION

2 BY MR. SCHULTZ

3 Q Is it Germaine Smith?

4 A Yes, sir.

5 Q How old are you, sir?

6 A Forty-five years old, sir.

7 Q All right. Are you currently on probation?

8 A No, sir.

9 Q You're currently on parole?

10 A No, sir.

11 Q Okay. Do you currently have any charges pending in
12 Spartanburg County?

13 A Yes, I do, sir.

14 Q All right. And what is that?

15 A It's a -- it's a drug charge.

16 Q Is it a certain type of drug charge?

17 A It's a heroin charge, sir.

18 Q Heroin.

19 A Yes, sir.

20 Q Okay. And have you ever dealt with fentanyl and
21 heroin before?

22 A Yes, sir.

23 Q All right.

24 A I was once -- I was once addicted to the drug.

25 Q Okay. That's a pretty bad drug, isn't it?

1 A Yes, sir.

2 Q Okay. At any point did you traffic in heroin?

3 A Yes, sir.

4 Q You did?

5 A Yes, sir.

6 Q Okay.

7 A That was the last -- that was the charge I'm charged
8 with now. It was after.

9 Q And it's the same sort of allegation, at least
10 contained in this trial, correct?

11 A Yes, sir. That happened after the fact. My charge
12 happened after that right there.

13 Q Okay.

14 A So I wasn't in trouble when that happened.

15 Q Do you remember the date that you were charged with
16 trafficking fentanyl?

17 A 2019, sometime, sir.

18 Q All right. And --

19 A No. This was -- I was not charged with trafficking in
20 fentanyl. It was heroin, sir.

21 Q Okay. It was fentanyl and heroin?

22 A No, sir. If they mix it and cut it with heroin, it
23 could be fentanyl in it, but no, sir.

24 Q It could be.

25 A Yes, sir.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q Okay. Didn't mean to interrupt you.

2 A Okay. I'm sorry.

3 Q Did you get finished with all that you were saying?

4 A No. I'm -- I mean, I'm charged with trafficking
5 heroin, not trafficking fentanyl.

6 Q Okay. Let me ask you this, Germaine.

7 You signed a working agreement with the police there?

8 A Sir?

9 Q Did you sign a working agreement with the police?

10 A A working agreement? What do you mean by a working
11 agreement? I did sign some papers to be a confidential
12 informant, but I don't know about a work agreement.

13 Q All right.

14 A It's a different term.

15 Q Did you sign a confidential source of information
16 agreement with the Spartanburg County Sheriff's Office?

17 A Yes. I believe so.

18 Q Okay. Now, did you also understand that you were
19 bound by some conditions when you signed this -- this
20 agreement, Germaine, right?

21 A Yes, sir.

22 Q Okay. One of the agreements that you made is that you
23 understand that you can't tell others that you're a police
24 officer, right?

25 A I'm not a -- I wasn't a police officer. I was an

1 informant.

2 Q Okay.

3 A And --

4 Q One of the conditions is that you can't tell other
5 people that you were a police officer. Do you acknowledge
6 that?

7 A Yes, sir. I'm informant. I'm not a police officer.

8 Q Well, I understand that. Okay.

9 A Am I understanding your question right? Because I'm
10 confused right now, sir, and I don't want to, you know, be
11 misquoted from what I said, but I was the informant for the
12 Spartanburg County, and I never been an officer from
13 Spartanburg County at all. So I cooperated with the
14 Spartanburg County narcotics initially to help my sister
15 with her case, and I kept on helping them out after she --
16 case got taken care of.

17 Q Initially, you said something interesting there. You
18 said initially.

19 A Maybe I used the wrong -- yes. Initially.

20 Q Okay. You know what that means. You initially
21 started helping them out because of your sister, correct?

22 A Right, yes, sir.

23 Q Okay. So why are you helping them out now?

24 A Because they asked me to keep going, I guess. I mean,
25 I'm not helping them out now, but at that time when this

1 incident happened I was still helping them out, and so I
2 don't know.

3 Q All right.

4 A Are you supposed to stopped? I don't know.

5 Q Sir?

6 A I said do it supposed to have stopped.

7 Q Are you asking me?

8 A I'm asking you, yeah.

9 Q Okay. well, I don't know that. You're the informant.
10 Are you doing -- are you still doing work for them? Yes or
11 no.

12 A No, sir.

13 Q No. Okay. All right. So you got what you wanted out
14 of them and then you're moving on, is basically what you're
15 saying, right?

16 A No, sir.

17 Q No? You're not?

18 A No, sir.

19 Q So what are you saying?

20 A I'm not saying none of that. I'm not really
21 understanding your question like I got what I wanted. what
22 did I supposed to get from them?

23 Q You're trying to help out your sister.

24 A I mean, yeah, at first. Yeah. They needed some
25 information, yes, sir.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q You keep saying that. You said initially a couple of
2 seconds ago.

3 A But they -- they is the Spartanburg County.

4 Q No. Let me finish.

5 Okay. You said initially a couple of seconds ago, and
6 then you said at first.

7 A That's the same thing and -- for my understanding.

8 And so maybe it means different things, but from my
9 understanding at first when I was brought, when I first
10 started working with the Spartanburg County narcotics, it
11 was to help out my sister.

12 Q Okay.

13 A Because I knew information on -- on, you know, drug
14 activity.

15 Q Okay. So you helped them out in regards to your
16 sister, right?

17 A Right.

18 Q Okay. What were you promised in regards to your
19 sister?

20 A I was promy -- I was promised nothing.

21 Q You were promised nothing.

22 A Nothing.

23 Q Okay. So when they said, hey, you --

24 A Nothing -- nothing.

25 Q Let me finish.

1 A Okay.

2 Q Hey, if you do this many deals we're going to help out
3 your sister. They never said anything like that to you?

4 A Nothing like that, sir.

5 Q Nothing like that to you.

6 A Nothing.

7 Q Okay. What was your original motivation to be an
8 informant?

9 A I -- I been going through -- I was going through
10 drugs, that situation, and I felt like that was a way that
11 I can help out with the community to pay some of my debts
12 to society. And also she was in a situation and it -- I
13 didn't -- it ended up being a longer term thing than what
14 I'd signed up for. And that is just the God's honest
15 truth, you know. I mean, I wasn't out to try to hurt no
16 one or, you know, had on different motivation behind that,
17 so.

18 MR. SCHULTZ: May I approach, Judge?

19 THE COURT: Yes, sir.

20 Q Showing you an agreement here. Do you remember seeing
21 that?

22 A Let me see. 2011. This may be part of the paperwork.
23 This may be. I don't know for sure, because, you know, if
24 you sign something, and it being so long since I signed it,
25 I can't really just, you know, put my hand on the Bible and

Germaine Smith
Cross-examination by Mr. Schultz

1 say that I can remember exactly what this paper came from.

2 Q Okay. That was 2017.

3 A Okay.

4 Q Okay. So, and I appreciate your honesty there. So
5 you don't even remember that, to signing that?

6 A Yes. I mean, it's my signature, so evidently. I
7 mean, where is my signature? Nah. My signature, it's not
8 on this paper, sir. So it's not -- my signature is not on
9 it.

10 Q Is that your signature right there?

11 A Not -- okay. This is other color paper, yes. That's
12 my signature.

13 Q That's part of the paper.

14 A Okay.

15 Q So you recognize that.

16 A Yes, I do.

17 Q Okay. All right.

18 A And, okay, yeah. I recognize my signature.

19 Q What does that say right there?

20 A It says with charges --

21 THE COURT: Excuse me just a minute.

22 That document is not in evidence.

23 MR. SCHULTZ: Yes, sir.

24 A Okay. Well, I mean.

25 THE COURT: Wait for the next question.

1 THE WITNESS: Okay.

2 MR. SCHULTZ: Yes, sir.

3 Q Now, do you remember saying to the police or actually
4 signing a document that you can't violate any laws while
5 you were an informant?

6 A Is that what that paper says? Because evidently,
7 yeah, that's -- that's what I must've signed. But, I mean,
8 what was your question? You say did I -- do I remember
9 doing what? Because it's like I'm confused now because you
10 were saying something about that paper and I didn't see
11 that on that paper that I just -- you showed me that I
12 signed to be an informant or something like that.

13 Q It's a simple question.

14 A Yeah.

15 Q Did you promise the officers that worked you not to
16 violate any laws when you were an informant?

17 A Yes, sir.

18 Q Okay. And you broke that promise, correct?

19 A Yes. I did break that promise.

20 Q By doing what?

21 A Trafficking heroin if that's what -- if that's the
22 answer that you're looking for. But during the time when
23 this case was going on I had not done that yet. So that's
24 why I'm facing my -- what I -- when I'm told to do but
25 don't have nothing to do to try to get outta trouble with

1 what he got going on with his situation, because that was
2 over a year or two after the fact. So at that time I
3 didn't violate the contract or the law or whatever you was
4 saying that I evidently had signed right there.

5 Q All right. Let me ask you this.

6 A So if that means anything.

7 Q Were you done?

8 A No. I'm through, sir.

9 Q Germaine, you also have a past record of drugs.

10 A Oh, yes, sir, I do. I has a past. I do have a past
11 record with dealing with drugs.

12 Q What year does that go back to?

13 A It goes back to -- I can't recall right now, but yes.
14 I have been in trouble before in the past for drugs.

15 Q Okay.

16 A But I done paid my debt to society for those charges.

17 Q Well, what about this, this recent charge? You didn't
18 pay any debt to society on this charge, did you?

19 A I'm still -- I'm still waiting to go to trial.

20 Q 1998, possession with intent to distribute Xanax,
21 correct?

22 A Yes.

23 Q You were -- you were convicted of that, correct?

24 A Okay. Yes, sir.

25 Q No. I'm asking you.

1 A I mean, I --

2 Q Answer that.

3 A For Xanax, I never -- I mean, I was convicted for
4 selling Xanaxes? I mean no, sir. I mean, I'm just -- I'm
5 just -- my mind's just somewhere else right now. But you
6 say 1998, '98?

7 Q Yes, sir.

8 A Okay. '98. I mean, that been so long ago and it may
9 have been -- I might have had a conviction of Xanaxes in
10 '98. Yes, sir. I -- you may be right.

11 Q All right. Now, you said something interesting there,
12 sir. You said your mind is somewhere else?

13 A Right now my mind is somewhere else because I'm
14 confused, like what do the Xanax, I mean, the drug charge
15 that I had in '98 have to do with the situation while I'm
16 here now. So I'm like I'm trying to figure out like, you
17 know.

18 Q The jury's assessing your credibility, sir.

19 A Okay.

20 Q You're a convicted drug dealer.

21 A Okay.

22 Q What about possession with intent to distribute powder
23 cocaine? Do you remember that charge from the late 90's?

24 A Yes, yes. I do.

25 Q How many counts were you convicted of?

Germaine Smith
Cross-examination by Mr. Schultz

1 A Cocaine, one.

2 Q Just one?

3 A I mean, just had at that time -- I mean, I have a
4 previous drug record. I had a drug habit. So I have more
5 than one drug charge on my record. And as far as if I know
6 the -- the year exactly that it took place, I'm not for
7 sure. I can't quote you on that one. But I have a couple
8 in my past on my record. And I'm 45 years old, and I was
9 younger when most of that happened. But yes, sir. I do
10 have previous drug convictions on my record. It's no
11 secret.

12 Q Well, that's not an excuse. You keep getting arrested
13 for drugs.

14 A I was on drugs.

15 Q Is that correct, or no?

16 A I was -- I kept getting arrested for drugs, yes, sir.

17 Q Yeah.

18 A Yes. You're right.

19 Q You just got arrested year after last for trafficking.

20 A Yes. I did.

21 Q Okay. What about failing to stop for blue light?
22 Convicted of that?

23 A Yes, sir. I did. Yes, sir. I was.

24 Q What about common-law robbery?

25 A That's the same related incident, yes, sir. I was.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q Okay. What about manufacturing, distribution or
2 possession with intent to distribute drug Schedule I(b)(C),
3 Schedule II, contain?

4 A See, all that's just one incident but yes, sir. That
5 was -- yes, sir. That was.

6 Q Okay. All of that was one incident.

7 A Some of those charges that you're naming off was, you
8 know, when the incident happened. It was -- I was charged
9 with multiple charges, but it was not like -- it was like
10 separate incidents, like back to back, to back, to back.

11 Q Okay. So you were -- let me get you straight here,
12 Germaine. You were arrested for failing to stop for blue
13 light, common-law robbery and distribution of cocaine at
14 the same time? Is that what you're saying, or no?

15 A No.

16 Q No. Okay. Explain to the jury what -- when you were
17 arrested.

18 MS. OWENS: Objection, Your Honor.

19 The -- the purpose of this line of examination is to
20 evaluate the defendant's prior criminal history. The
21 details and the nature of the timeline of the arrest is not
22 relevant.

23 THE COURT: Are you trying to get details of the
24 convictions or just the convictions themselves?

25 MR. SCHULTZ: I'm trying to get the convictions.

Germaine Smith
Cross-examination by Mr. Schultz

1 THE COURT: All right. Because that's what you're
2 limited to.

3 MR. SCHULTZ: Yes, sir.

4 Q Now, inside ten years have you ever been convicted of
5 any crimes, Germaine? Yes or no.

6 A Inside of ten years?

7 Q Inside of ten years.

8 A Yes. I have.

9 Q Okay. What are those?

10 A Probably the cocaine charge that you mentioned.

11 Q I didn't mention that before.

12 A You just asked me was I charged with cocaine. And
13 that was, I believe, the last charge. I just -- I wasn't
14 in trouble for a -- for a while before this incident
15 happened when I got in trouble recently.

16 So, you know, I haven't -- you know, as far as I'm
17 being -- I mean, done been in trouble before for drugs,
18 that's a fact and that's the truth. But as far as being
19 very detailed on the month and the year, you know, I just
20 don't have that.

21 I mean, I can sit -- take some time to think about it
22 and come up with the fact, you know, but just off the top of
23 my head, I couldn't, you know.

24 Q Well, let me help you. Okay.

25 A Okay.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q All right. Were you convicted back in 2013 of
2 weapons, sale or delivery of a pistol, to possession by a
3 certain person unlawful, stolen pistol. Yes or no?

4 A No. I mean, I was charged with a stolen pistol but
5 not the way that you just read it off. You read it off
6 totally differently. But I was charged with someone was in
7 my car and they had a pistol. And everybody was charged
8 with the car. Because the car was in my name, I was
9 charged with the pistol, but they ended up re -- I don't
10 know what happened to that, but yeah. Yes. I was charged
11 with a pistol and it was a stolen pistol.

12 Q Were you convicted of it?

13 A Yes. I was convicted of it.

14 Q Okay. Thank you.

15 A Okay.

16 Q Were you convicted of another distribution of cocaine
17 second offense?

18 A Yes. I was.

19 Q 2013.

20 A The same -- the same -- I went to court for all of
21 those charges right there, yes, sir, at the same time.
22 Yes. The same incident.

23 Q So you had a gun and cocaine at the same time.

24 A No. I did not have a gun and cocaine at the same
25 time. I didn't have a gun at all.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q You pled guilty to it.

2 A Yes. I did pled guilty to it.

3 MR. SCHULTZ: Beg the Court's patience.

4 (Pause.)

5 Q Were you convicted at the same time of another
6 distribution of cocaine base second offense? Yes or no.

7 A Yes, sir. Same time. I did my debt to -- I paid
8 my -- went and did my time and paid my debt to society on
9 those charges that you're reading off.

10 Q Okay. Now, what we've been doing the last couple of
11 minutes, can you -- how many times have you been convicted
12 of selling or distributing drugs?

13 A Three times, two times.

14 Q Two times altogether?

15 A Two. I was charged with the different charge, I mean,
16 well, yeah, two times, because they say if I had cocaine
17 and/or something or Xanaxes in the possession at the same
18 time, that's still the same. It's two different charges,
19 but it was the same -- on the same conviction. So I did
20 time for the same -- I did time for everything at that one
21 time from my understanding.

22 Q Okay.

23 A But yes. I don't been --

24 Q Well, let me clarify this.

25 You seem to be confused about how many times you've

1 been convicted of distribution of drugs, is that -- is that
2 correct?

3 A No. I'm confused about how you questioning me about,
4 you know, I mean, you clearly asking me -- asking me
5 questions that you already know the answer to as far as my
6 past drug record, and all of that is true.

7 So, you know, I feel like you trying to get me hung up
8 on my words and -- and see that I doesn't -- I don't really
9 talk that very well. I'm doing the best I can to
10 communicate with your people and answer your questions to
11 the best of my ability. But, yes, I have been convicted of
12 previous drug charges, sir. Okay.

13 Q All right. That's all I'm asking you.

14 A Okay.

15 Q Okay. All right. I'm just trying to clarify things.
16 Okay?

17 A Yes, sir.

18 Q I'm not trying to put you under pressure or anything
19 like that. Okay?

20 A I am.

21 Q Now, let's go -- did you watch that video just now?

22 A Yes. I have watched it before. Yes, sir.

23 Q You watched it before?

24 A I was in the video before and, you know, it's the
25 video. Yes. I watched the video. But as far as when you

Germaine Smith
Cross-examination by Mr. Schultz

1 just showed in the courtroom, I didn't see it just now, but
2 I have seen the video before you showed it to the jury.

3 Q Okay. You've seen -- you've seen that video before.
4 who showed you that video?

5 A The -- the -- the prosecutor side of the table.

6 Q Okay. All right. Now, how long did that video last
7 for?

8 A Man, I'm saying about 30 minutes or so, you know,
9 probably, you know, give and take. I don't -- I didn't
10 really just time the video, but, you know, it was -- you
11 talking about the whole video of the -- the whole
12 transaction? Because usually, I mean, it -- it -- because
13 I had to go meet and had to wait. So it was a pretty
14 lengthy video in my opinion.

15 Q Okay. When you pulled up to the Li'L Cricket, do you
16 remember that?

17 A Yes. The Li'L Cricket on Howard Street.

18 Q Okay. All right. You pulled up there. Okay. You
19 decided at some point to get out of the car, correct?

20 A Yes. To go inside the store, but, yes, sir.

21 Q In your debriefing with the officers did the officers
22 say whatever you do, don't go elsewhere except the car?

23 A Nah, no.

24 Q They never said that?

25 A No. They don't never say. No. They ain't never said

1 that. No. You know, what I'm saying.

2 Now, the only time I'm not supposed to go nowhere else
3 once I get the -- the deal been made, but far as waiting to
4 make the deal, because sometimes, you know what I'm saying,
5 if you're sitting somewhere and waiting to make the deal,
6 they can change and be, oh, I got -- I'm going to be 20
7 minutes later or something that.

8 And it's hot in the car. So quite naturally you go in
9 the store and might get you, you know, something -- you
10 smoke cigarettes or something, you know, or something to
11 drink or something. You know, a bag of chips. I don't
12 know, you know, or stand outside the car for a second, you
13 know, but -- but the only thing I have on me at that time is
14 the Spartanburg County's money. So once I got the drugs
15 from whoever drugs it is then, I cannot go. But once I get
16 the drugs in my possession, then I have to go straight back
17 to the officers, straight back to them. I can't -- no
18 stops. But no.

19 But far as waiting for the deal they didn't -- they
20 didn't say I can't stay -- I can't stay out there -- stay
21 out, you know. They can't say. And then I'm wired up. I
22 got a video and audio on me.

23 So, you know, but no. I was never told that that's
24 against the rules. What's against the rules is once you get
25 the product you need to bring that product straight back.

1 Q I just asked you if you went in the store.

2 A No. I went in the store before the transaction.

3 Q Okay.

4 A Way before. I was waiting on him to pull up.

5 Q Now, you went in the store. Did you know that the
6 police did not have eyes on you inside the store?

7 A Maybe they did; maybe they didn't. They was right
8 there probably in the parking -- they usually always be in
9 the facility, you know, a whole bunch of them, you know.
10 So somebody probably -- you know I'm saying -- you know how
11 technology is. I don't know. I can't answer that
12 question.

13 Q Okay. Did you greet several people in the store?

14 A Oh, yeah, people, hey, how you doing, you know, so far
15 as that, but not greeting as in transaction. Walk by, you
16 know, paying for my stuff, you know, hey, Dick, Tom and
17 Harry.

18 Q Who walked by? What do you mean by walk by?

19 A Oh, walking by someone or, you know, if you see
20 somebody in Aisle 3 and you in Aisle 2 and you're going to
21 pay, hey, you know.

22 Q It's about carrying on a mission. You had contact
23 with other people outside, right?

24 A No, no contact. So if I'm speaking to you right now,
25 is that contact?

1 Q It is.

2 A Oh, well. Well, evidently then I had contact with
3 someone then if I spoke to them.

4 Q Okay. You spoke to them. But, nevertheless, you did
5 not -- the police did not observe you doing this, right?

6 A I can't say that because ask the officers, you know
7 what I'm saying, because, you know, they're -- they posted
8 update. They got eyes on it.

9 They're not going to let me out their eyesight. It's
10 not like they sitting -- they may be some sitting across the
11 street. One may be standing at the pay phone at the store.
12 One may be buying a bag of chips in the store. It'd been
13 different situations since I been working with them, but
14 they around.

15 Q Now, there's a lot of fidgeting around when you're in
16 the front seat.

17 A Oh, yeah. Well, when -- when a camera is on your arm
18 unless you just right here to keep them straight still with
19 every position, you know what I'm saying, you driving or if
20 you talking. See, I talk with my arms. It's going to
21 move.

22 So that's why this ain't -- you know, that's why it
23 look like that. But still when you just really, just normal
24 moving in the watch, you know what I'm saying, it's going
25 to -- it's going to -- the camera is not at a stable thing.

1 So, yeah, that was -- that was -- explains that right
2 there, because it's kind of hard when you have a watch than
3 if you had like a cell phone and you can hold a cell phone
4 up like this, kind of still.

5 Q Then in the second clip there you -- you actually got
6 outta the car again, is that correct?

7 A Got out of the car again what? I probably --

8 Q walked around for a little bit.

9 A Like stood beside the car?

10 Q Yeah.

11 A waiting for the -- him to pull up?

12 Q Yes.

13 A Yes. I did. But notice if you look in that video,
14 once I got them drugs from him I never got back outta that
15 car and I took it straight to the officers like I supposed
16 to.

17 But waiting and for him to get outta the car. And
18 then, like I said, I got the video and audio. So you seen
19 me outside the car, you seen that I didn't go nowhere. You
20 seen that, you know, I -- there's no way that I could have
21 got anything.

22 I see what you're indicating, that it's a possibility
23 that I could have got something from someone else. But did
24 you see me talk to anyone, I mean, like in arm's length of
25 the facility or anyone? No. That was -- that was a clean

1 deal.

2 Q I didn't -- I didn't say. I didn't ask you about
3 that. You brought that up.

4 A I did bring that up. That was -- that was looked like
5 you was indicating.

6 Q But you have a guilty conscience about that?

7 A No, just to ask you --

8 Q No?

9 A -- to indicate the question doesn't mean I got a
10 guilty conscience.

11 Q You said -- you said a couple of seconds ago you're --
12 you're saying there's a possibility that you would --

13 A No. I didn't use that word possibility.

14 Q -- have got that from somebody else. I didn't say
15 that. You did.

16 A No. I say I see what you was aiming at -- did you get
17 outta the car, did you have contact with someone in the
18 store, do you have -- do you get outta the car.

19 words like that makes me think that you're trying to
20 say that, you know. That's -- that's what makes me feel
21 that. And I could be wrong. But -- but far as the guilty
22 conscience or anything like that, no, sir.

23 Q All right. You may remember this; you may not.

24 The video stops in the middle of your debriefing, is
25 that correct? The last shot that we see, correct?

1 A You talking about when I dropped -- when I met up,
2 back up, with the officers?

3 Q Yes.

4 A Okay.

5 Q Okay. Is that correct?

6 A What -- what is correct?

7 Q The video stops in the middle of your debriefing.

8 A No. The video stops actually at the end, because
9 before they take the equipment off they asked me what
10 happened, and I tell them.

11 I was, like, well, I bought this amount of drugs from
12 this person and it might've took this long and this and
13 that.

14 And then once they get that, then they take the
15 equipment. So if it stop right there that means that they
16 took the equipment off me and then it cut off, you know,
17 once they turned it off because there was no use to use the
18 equipment no more.

19 Q Okay. Now, you had -- do you remember what kind of
20 watch this was?

21 A Oh, man. It be different types of watches we used.

22 It was probably the one -- I mean, man, this is a
23 couple of years ago, but it was a watch probably similar to
24 this, a good big-face watch. And it might have been the one
25 with the red rubber band. It looks like two -- two

1 different ones, two or three different ones, you know,
2 watches that you used, you know, different devices they have
3 to give.

4 Q On that video -- or let me ask you this. Did you
5 display the alleged fentanyl?

6 A To display the alleged fentanyl with the watch on my
7 arm, you know what I'm saying, and if you -- if I'm buying
8 from you -- buying from you and I don't want you to see
9 that I'm filming you, you know what I'm saying, so it's
10 kinda hard to maneuver, you know what I'm saying, and --
11 and the way that I was holding my arm I was trying to get
12 the transaction the best way that I could.

13 Q But you never got the transaction, did you?

14 A I didn't know if I got the transaction or not till
15 after the -- after the video, I mean, until after I turned
16 the video equipment in. But, you know -- but, as you heard
17 on the video, I was telling them that I was, you know,
18 doing the best way -- thing the way that I could.

19 Q You watched the video, now, didn't you?

20 A Huh?

21 Q You watched the video, did you, didn't you?

22 A Yeah.

23 Q Did you see a clear hand-to-hand transaction on that
24 video?

25 A I seen a clear that he reached his hand in the car

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Cross-examination by Mr. Schultz

1 after he -- from the trunk. And he reached his hand in the
2 car, you know what I'm saying, and handed to me when he --
3 and came back up with the money in his hand and walked off.
4 It was a clip if you paused it. And that's what I seen.
5 If you just paused it and freezed in that one little frame,
6 you could have seen that. But it was so quick, you know
7 what I'm saying, but unless you freeze it -- that's what I
8 saw. I could be wrong though.

9 Q All right. Let me ask you this. You're -- you go
10 speeding away down Howard Street.

11 A No. That's -- no. That's just how the -- see that
12 that's -- that's how those Challengers sound, the certain
13 ones with the engine like that.

14 Q Well, it seemed like you put the pedal to the metal
15 there, my friend.

16 A Nah. That's just how they sound. They loud like
17 that.

18 Q Okay. All right. Well, seemed like you were going
19 pretty fast.

20 A Nah. I'm not.

21 Q That's not true?

22 A Nah. It's not true. That's just how they sound if
23 you familiar with them type of cars.

24 Q All right. Well, let me ask you this. You're --
25 you're out of Howard Street at this point, right?

1 A I don't know at what point you talking about.

2 Q Okay. You're out of Howard Street after this alleged
3 transaction is done, right, or no?

4 A I mean, I don't understand what you're saying.

5 Q Okay. You're -- you're in the car and you're on your
6 way to talk to the officers, right?

7 A Okay. Yeah. Just I did that.

8 Q Okay. All right. And it appears to me that you sped
9 off, but you're saying that that's not true, right?

10 A Nah. Look at the video. If I sped off that means the
11 footage be going fast, right, but still you hearing the
12 sound. That's just how that engine sound.

13 You can sit down, you know what I'm saying, and just
14 mash the gas just lightly. Going boom. You know what I'm
15 saying? That's just how it sounds. But speeding off, you
16 know what I'm saying, you would've seen the cars going by
17 you fast if I'm passing them or something like that, you
18 know what I'm saying. I didn't speed off. But I headed
19 straight back to -- to drop that stuff off with non-stop.

20 Q All right. Did you ever once with your camera on your
21 watch go -- go like this on the video?

22 A Yeah. Just showed them where it was.

23 Q On the video?

24 A Well, if it didn't pick up, it didn't pick up, but
25 still if I don't -- if I didn't ever gain a lick or

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1 something like that I still show where I put it at in the
2 car. And sometimes, like I said, you know what I'm saying,
3 I don't know if it's recording it or not but if I -- if I
4 try to record it and if it didn't catch it, it's no. I
5 don't have a T.V. screen, I mean a monitor, showing where
6 the video is going, you know what I'm saying, but, I mean,
7 it is what it is. It happened.

8 Q Yeah. It certainly is what it is, isn't it?

9 A Yeah, I mean.

10 Q Were you drug tested that day?

11 A No, I wasn't drug tested that day.

12 Q Are you under the influence of anything now?

13 A No, I'm not under the influence of anything now.

14 Q Can you pass a drug test today?

15 A Yeah, yeah. I could pass a drug test right now.

16 Q All right. Did you have a license at that time?

17 A Yes, I did have a license at that time.

18 Q Do you have a license today?

19 A No, I don't have license today, which is recently
20 suspended on the 18th of July. But I have a ride. I
21 rode -- I have a ride that brought me up here today. But,
22 no, I don't have a license at the time. I need to pay a
23 reinstatement fee, you know, and no. I don't.

24 Q Were you a user at that time?

25 A Was I a user at -- at the time of the --

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1 Q In 2018, early 2018. Were you using drugs?

2 A I was -- I was still dealing with addiction in 2018.

3 Q Okay.

4 A Sure was.

5 Q Were you under the influence then in February of 2018?

6 A No. And if I was under the influence, the officer
7 wouldn't -- wouldn't even go for that right there, because,
8 you know what I'm saying, that -- that was -- I was not
9 under the influence at the time.

10 MR. SCHULTZ: Beg the Court's patience, Judge.

11 (Pause.)

12 Q When you say you were addicted to drugs at that time,
13 what kind of drugs were you addicted to in early 2018?

14 A It was probably cocaine. It was cocaine.

15 Q Okay. Well, you're not sure, are you?

16 A I'm sure. I just used the word probably. It was
17 cocaine.

18 Q It was cocaine. All right. But by your own admission
19 you have messed with -- messed around with fentanyl and
20 heroin, correct?

21 A I never messed around with no fentanyl, you know what
22 I'm saying, but I have experimented with heroin in a -- in
23 a different timeframe. But, yes, I have done that and I've
24 smoked marijuana, you know, too, you know what I'm saying,
25 if you want and -- and drank a little bit too at different

1 times. But I don't deal with those demons no more. At
2 different times in my life I dealt with different demons,
3 and at that time I was dealing with cocaine.

4 Q Does heroin sometimes contain fentanyl?

5 A From my understanding of the -- of the heroin, you
6 know what I'm saying, that that fentanyl is a whole
7 different drug and -- and they been using fentanyl to cut
8 heroin with some people. Hell, they use fentanyl to cut
9 cocaine if you want to be technical. But fentanyl is -- is
10 different from heroin.

11 Q You said something interesting there. At the time you
12 were addicted to cocaine, right?

13 A Yeah, but yeah. They use -- I mean, I just use that
14 as example, but I say I didn't -- the only reason why I
15 bought the fentanyl, if you referring about buying
16 fentanyl, see, I didn't know people. I just knew people
17 through word of mouth from people that I used to know.

18 I knew this man sold fentanyl. I hadn't never seen
19 fentanyl a day in my life, you know what I'm saying, but
20 through a mutual friend how I know this guy, I mean, through
21 a mutual friend.

22 I was like, well, hey, I know someone that I probably
23 can get some fentanyl from and -- and then, you know what
24 I'm saying, so that's what I told. And then they said,
25 well, you can get some from him, you know what I'm saying,

1 see can you get some from him.

2 And then, you know, I went around, hung around a little
3 bit, you know what I'm saying, and, you know, and then asked
4 a mutual friend to ask, you know, and got comfortable with
5 me being around. And then, so, I was like, hey, man, if I
6 came up with a couple of hundred dollars or whatever could
7 you get me some. And that's how it happened.

8 You know, I never really even knew this to ask. I
9 never really know this man like that, you know what I'm
10 saying. Just being around in that environment from my past
11 addictions I know people that do different -- different
12 things. But, you know what I'm saying, but fentanyl was
13 fairly new. I done heard about it afterwards. It done
14 became more of a bigger thing now, but at that time I never
15 heard or seen fentanyl.

16 Q Were you promised anything for your testimony today?

17 A No, sir. I was not promised nothing.

18 Q Let me finish. I just want to make sure.

19 Were you promised anything for your testimony here
20 today?

21 A No, sir.

22 Q Okay. Now, you have -- I think we've already
23 established this fact. I don't mean to belabor the point.
24 But you have a pending trafficking charge, correct?

25 A Right.

Germaine Smith
Cross-examination by Mr. Schultz

1 Q Okay. Now, you know you can go prison for that,
2 correct?

3 A Oh, yes, sir. Very much so.

4 Q Are you hoping your testimony here today will help you
5 in that charge?

6 A From my understanding is this right here, you know.
7 This happened before I got in trouble. Usually with people
8 who get in trouble, I guess they have opportunity to
9 cooperate with authorities, you know. But I was already
10 cooperating with the authorities before I even got dealing
11 with my matter right here.

12 So I don't -- I wouldn't even expect for them to even
13 try to make this count towards my case because it was years
14 before I even caught my case. So, I mean, but I was not
15 promised nothing and I'm not in here to, you know, ask them
16 to do that for me.

17 Q All right. So -- so you're not even hoping for any
18 kind of leniency? I think you established the fact that
19 you weren't promised anything. You were not promised. But
20 are you hoping?

21 A I don't understand -- I don't understand where you're
22 going with the questioning, you know.

23 Q It's a simple question. Are you hoping to not go to
24 prison?

25 A I'm not going to answer that question right there.

Robert Rosenberg
Direct examination by Ms. Owens

1 Do I have to answer that question?

2 I'm not going to answer that question because now I
3 feel like you're putting me on the offensive, and I don't
4 think that's right, sir, you know what I'm saying, with my
5 personal feelings. Like, I don't want to discuss my case if
6 that's possible, please.

7 Q You don't want to discuss it. Are you pleading the
8 Fifth right now?

9 A No. I don't want to discuss my future case right now,
10 what I feel. But haven't nobody promised me nothing in
11 regards of my testimony.

12 Q I didn't ask you that.

13 A Yes. You did.

14 Q I did not ask you that.

15 A You asked me have anybody promised.

16 Q I said are you hoping for leniency with your case. Is
17 it yes or no?

18 A I don't want to answer that question, sir, because
19 it's not pertaining.

20 MR. SCHULTZ: That's all I have, Judge.

21 A I don't want to answer that question. What that got
22 to do with me?

23 MS. OWENS: No questions on redirect, Your Honor.

24 THE COURT: Okay. You can step down.

25 THE WITNESS: All right. Thank you.

Robert Rosenberg
Direct examination by Ms. Owens

1 MS. OWENS: With the Court's permission can
2 Mr. Germaine Smith be excused from his subpoena?

3 THE COURT: Mr. --

4 MS. OWENS: Mr. Germaine Smith.

5 THE COURT: Oh, yes. Mr. Smith?

6 MS. OWENS: Yes, sir.

7 THE COURT: Yes.

8 MR. SCHULTZ: No objection.

9 (Whereupon, the witness was excused.)

10 MS. OWENS: May it please the Court, Your Honor. The
11 state calls Deputy Robert Rosenberg.

12 Deputy, will you please come up and be sworn?

13 ROBERT ROSENBERG, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. OWENS

16 Q Deputy, where are you employed?

17 A I work for the Spartanburg County Sheriff's Office.

18 Q And where do you work in the sheriff's office?

19 A I'm currently assigned to the evidence custodian.

20 Q How long have you worked as an evidence custodian?

21 A Approximately 20 years.

22 Q What are your responsibilities as an evidence
23 custodian?

24 A They will bring me evidence to my office. I will take
25 them, log them into a computer in the store and keep them

1 in a secure and safe area.

2 Q How many people have access to this secure facility?

3 A I have another coworker that works with me, and I
4 believe one supervisor has a key to it.

5 Q So just the three of you.

6 A Yes, sir.

7 Q What happens when you receive an item of evidence from
8 an office at the sheriff's office?

9 A If it's after hours we have some secured lockers
10 outside. They place them in there. We go out in the
11 morning, pick it up, bring it in and enter it into the
12 computer. We also fill out a chain that comes with it.
13 And then we place it on the shelf and store it.

14 Q Are you responsible for storing evidence until the lab
15 tests that evidence?

16 A Yes, ma'am.

17 Q And do you continue to store that evidence after
18 testing until trial just like this?

19 A Yes. We do.

20 Q If you were to receive evidence either in the secure
21 locker at the front desk during business hours and it's not
22 sealed, what do you do?

23 A We would contact the officer and advise them that
24 there's an issue that needs to be addressed that's not
25 sealed.

Robert Rosenberg
Direct examination by Ms. Owens

1 Q would you ever accept drugs into evidence that aren't
2 sealed?

3 A No.

4 Q I'm going to show you State's Exhibit 2 and ask if you
5 recognize this item.

6 A Yes. I do.

7 Q How do you recognize it?

8 A It is a BEST bag. The interior, this blue bag, comes
9 in an envelope, a brown envelope, with a chain in it. We
10 fill out the chain, and I put the person's name on the BEST
11 bag, and I add a sticker, which is underneath this one
12 right here, showing it's on standby. It's been entered
13 into the computer.

14 Q So you would have affixed that sticker to State's
15 Exhibit 2.

16 A Yes.

17 Q Does that sticker bear a bar code that helps you track
18 that piece of evidence?

19 A Yes.

20 Q So the interior bag, this BEST bag as you described
21 it, is that what the officer gives to you?

22 A He gives me a brown envelope that has BEST bag in the
23 chain down inside of it.

24 Q And is that interior BEST bag sealed when the officer
25 gives it to you?

1 A Yes. It is.

2 Q If you ever have cause to break the seal, how do you
3 handle that situation?

4 A I do not break the seal on drugs.

5 Q Is there any -- any indication that the seal on that
6 BEST bag has been broken by anyone other than lab analysis?

7 A No. The lab will take the BEST bag and place it
8 inside a clear bag, which is like -- which is this. And
9 they seal it and they return it to us.

10 Q So as indicated by State's Exhibit 2, was that item
11 sealed when you received it?

12 A Yes, ma'am.

13 Q And is it sealed now?

14 A Yes, ma'am.

15 Q All right. I don't believe I have any additional
16 questions. If you would, answer any questions Mr. Schultz
17 may have of you.

18 MR. SCHULTZ: No questions for this witness, Judge.

19 THE COURT: You may step down. You may also be
20 excused.

21 THE WITNESS: Thank you, sir.

22 (Whereupon, the witness was excused.)

23 MS. OWENS: The state calls Ms. Holly Tobias.

24 Ms. Tobias, if you would, please, come up and be
25 sworn.

Holly Tobias
Direct examination by Ms. Owens

1 HOLLY TOBIAS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. OWENS

4 Q Ms. Tobias, where do you work?

5 A I work for York County Sheriff's Office.

6 Q How long have you been at the sheriff's office in York
7 County?

8 A November will be three years.

9 Q What's your position there?

10 A I am a forensic chemist.

11 Q Before going to the York County Sheriff's Office where
12 were you employed?

13 A I was employed for Spartanburg County Sheriff's
14 Office.

15 Q And what was your capacity for Spartanburg County?

16 A I was also a forensic chemist.

17 Q Would you have been a forensic chemist back in
18 February of 2018?

19 A That is correct.

20 Q All total between your time at Spartanburg and York,
21 and anywhere else for that matter, how long have you been a
22 forensic chemist?

23 A December will be six years.

24 Q Now, what type of training or education did you
25 receive before becoming a forensic chemist?

1 A Prior to starting at the sheriff's, obviously, I
2 attended regular school. And then from there I went to
3 Wofford College where I received a bachelor of science in
4 chemistry. And while I was at Wofford College obtaining
5 this degree I interned with Spartanburg County, learned
6 what they did. Once they had an opening available, I
7 applied and started working there.

8 Q Now, do you still receive training and participate in
9 continuing education while you're working?

10 A Yes. Every year we receive training conferences,
11 local training, on-line training. It's a continuous thing
12 because there's constantly new things coming out in the
13 world.

14 Q Now, what specifically are the tasks that you would
15 perform as a forensic chemist?

16 A As a forensic chemist we receive evidence that's
17 believed to be controlled substances. It could be a
18 powder; it could be tablets; it could be a rock-like
19 substance, a mixture of anything. And officers will submit
20 it; we receive it; we analyze it; and we determine what it
21 is.

22 Q Do -- ultimately, do you determine whether a substance
23 is a narcotic substance?

24 A I will determine if a controlled substance is present.

25 Q Now, over the years that you've worked as a forensic

Holly Tobias
Direct examination by Ms. Owens

1 chemist in approximately how many cases have you been asked
2 to analyze a suspected substance?

3 A I would say over almost six years a few thousand
4 cases, easy probably.

5 Q And how many times as best you can recall have you
6 testified about the results of your analysis in any given
7 case?

8 A I have testified nine times.

9 Q Have you ever been qualified by the Court as an expert
10 in the field of chemical analysis?

11 A Every one of those nine times, I have.

12 Q Have you ever not been qualified as an expert in the
13 field of chemical analysis?

14 A That has not happened.

15 MS. OWENS: Your Honor, at this point the state offers
16 Ms. Holly Tobias as an expert in the field of chemical
17 analysis.

18 MR. SCHULTZ: No objection.

19 THE COURT: She is so qualified.

20 Q Ms. Tobias, were you asked to analyze the substance in
21 this case?

22 A Yes. I was.

23 Q How did you obtain the substance that you tested?

24 A At Spartanburg County I would go walk down the hall.
25 Evidence is right down the hall. walk up to the window and

1 receive the drug evidence from the evidence room and
2 immediately walk it right back to the lab.

3 Q would you conduct the testing immediately?

4 A Once I got back in the lab I would enter it into our
5 system. At that time it was me and my boss who is in the
6 lab.

7 we would split the cases. And then once we got them
8 into the system under our names we would start analyzing
9 from that point.

10 Q Now, in front you on the podium there on the witness
11 stand is State's Exhibit 2. Do you recognize that item?

12 A I do.

13 Q How do you recognize it?

14 A I have my initials on multiple -- on the BEST bag, the
15 clear bag and on the evidence itself.

16 Q would you have broken the seal on that inner bag to
17 conduct your analysis?

18 A On the inner bag once I received it into there and
19 make sure it is sealed, I will cut the bottom of the bag
20 open to retrieve the evidences out of it.

21 Q And the fact that your initials are on that bag, does
22 that indicate that the bag was sealed when you received it
23 and that you did have to cut it open?

24 A That is correct. If it is not sealed when I get the
25 evidence, I will not accept any of the drug evidence.

1 Q Well, moving to the actual analysis, what -- what did
2 you do to analyze the substance that's inside of State's
3 Exhibit 2?

4 A So once I receive the evidence, like I had said
5 previously, I enter it into our system, and then at my
6 bench -- we each had our own bench in two separate rooms.
7 That way, you know, there's no issues with another case
8 being open at that time. It's strictly one case at a time.

9 From there I would open the case in the computer, start
10 typing about the bag. I would cut the bottom of this inside
11 bag, retrieve what was inside of it out.

12 And from there I would remove the substance from
13 whatever bag it's in, and then from there I would do a color
14 test or presumptive test. And then I would also do a
15 confirmatory, which is known as a gas chromatograph-mass
16 spectrometer analysis which is also known as G.C.M.S.

17 Q Why did you conduct a presumptive test?

18 A Presumptive is to help us know a possibility of what
19 it could be depending on certain colors that could appear.
20 And that lets us know what to -- if we need to extract it
21 in a different solution.

22 Q So what happens after you complete your testing?

23 A Once a testing is complete and we receive the data
24 we'll finish our notes with the findings, and then we will
25 write a report. And then once that is complete the other

1 chemist reviews the case before we release it.

2 Q what do you do with the physical substance that you
3 tested?

4 A The substance, once I'm done, I will take the BEST
5 bag, inside bag, and put it in a clear bag. I will take
6 the substance, stick it down in there. Everything has the
7 case number, my initials and the date. And then I will
8 seal it. And then once all of that is done it will
9 eventually get returned to evidence.

10 MS. OWENS: Your Honor, at this point the state offers
11 Exhibit 2 into evidence.

12 MR. SCHULTZ: Is that the bag? No objection.

13 THE COURT: It's admitted.

14 (Drugs marked State's Exhibit No. 2.)

15 Q Tell the jury the results of your analysis.

16 A For my analysis I found the substance to contain
17 fentanyl at a weight of 5.25 grams.

18 Q I don't believe I have any additional questions. If
19 you would, answer any questions Mr. Schultz may have for
20 you.

21 CROSS-EXAMINATION

22 BY MR. SCHULTZ

23 Q Did you test the whole sample?

24 A When I take the sample out I will test a small
25 quantity of it. I do not analyze the entire sample because

Holly Tobias
Cross-examination by Mr. Schultz

1 there would be nothing left.

2 Q And when you do test it you destroy a certain amount
3 of the substance that you're testing, correct?

4 A That is correct.

5 Q Okay. All right. So there could be the possibility,
6 in fact, that the rest of the substance could not be
7 fentanyl, correct?

8 A I analyzed a portion. I dumped the substance out.
9 It's already mixed together. I take a small sample
10 typically out of the dead middle of it, and that is what I
11 run.

12 Q So the answer to that question is yes, there could be
13 a possibility.

14 A There could be.

15 Q There could be? I didn't get that.

16 A I guess so since I did not analyze every piece of it.

17 Q All right. Are you familiar with what flex is?

18 A We don't really use that in the lab but binders and
19 stuff like that? Is that what you're asking?

20 Q Yeah. I'm sorry.

21 A Sorry. Is that what you're asking, like a binder,
22 what they cut it with or anything?

23 Q Yes.

24 A Okay.

25 Q Okay. Could you explain to the jury what a binder or

1 flex is in common terms?

2 A A binder or flex could be you have a substance --
3 let's just say in this case like fentanyl. They could
4 take -- the person who cut it up could take acetaminophen,
5 take something that's not controlled, take another
6 substance that is controlled, and mix it up and make the
7 whole substance. It gives weight without the entire thing
8 being that. It's cut, I guess is another term for it.

9 Q And why would people do that, do you know?

10 A People, typically, I believe, do it just so they can
11 get more product out of what they originally had.

12 Q Okay. In order to sell it on the street?

13 A Yes.

14 Q Okay. All right. And what are some -- you've been
15 doing this for a while. You've been qualified to testify
16 in how many cases?

17 A Nine.

18 Q Nine. I'm sorry. This would be the tenth, right?

19 A That's correct.

20 Q And have you measured the flex before and have you
21 analyzed flex or anything?

22 A I have received cases that the bag was strictly a
23 binder, it hadn't been cut yet, and there was no controlled
24 substance found. So I would say in cases like that that
25 would be correct.

1 Q In this case is there a possibility -- and you may
2 have already answered this -- but is there a possibility
3 that the substance that you didn't test could be -- could
4 have been binder and/or flex?

5 A There could be some in there.

6 Q Okay. which would not make 5.25 grams of fentanyl.

7 MS. OWENS: Objection, Your Honor. I believe it may
8 be prudent if we approach.

9 THE COURT: Okay.

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

12 Q So what you said in your laboratory report indicated
13 5.25 grams of fentanyl final, correct?

14 A I report the controlled substance, correct.

15 Q Okay. All right. But that does not necessarily --
16 does not necessarily mean that five and a quarter grams of
17 fentanyl were found in that sample that you received,
18 correct?

19 A All I do is I analyze the sample and take the
20 substance and analyze a small sample. And that is what I
21 found.

22 Q All right. So what you do is you instead extrapolate
23 based upon your sample for the whole size of the sample,
24 correct?

25 A That is correct.

1 Q Okay.

2 MR. SCHULTZ: That's all I have. Judge, thank you.

3 MS. OWENS: No questions on redirect, Your Honor.

4 THE COURT: You may step down. You may also be
5 excused.

6 (Whereupon, the witness was excused.)

7 MR. SCHULTZ: No objection, Judge.

8 THE COURT: Okay.

9 MS. OWENS: Your Honor the state rests.

10 THE COURT: All right. Ladies and gentlemen, that is
11 all of the testimony or other evidence to be offered by the
12 state, at least in their case in chief.

13 Before we go further I've got some matters I have to
14 address with the lawyers, and it will take a little while.

15 So what we'll do is recess for the afternoon. We'll
16 resume in the morning beginning at 10:00 o'clock.

17 So keep in mind during the overnight recess you can't
18 discuss the case, can't conduct any research. Don't do
19 your own investigation into any issue.

20 You have to base your decision upon what you see and
21 hear during the trial. You can't supplement your wealth of
22 knowledge by doing any outside research. And of course no
23 discussions with anyone, including yourselves, until
24 deliberations take place.

25 With that, have a good evening. I'll see you in the

1 morning at 10:00 o'clock -- 10:00 o'clock in the morning.

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

4 THE COURT: Mr. Schultz, have you and Mr. Smith
5 discussed his right to testify, as well as not testify?

6 MR. SCHULTZ: We have, Your Honor.

7 THE COURT: Has he indicated to you a preference?

8 MR. SCHULTZ: He has.

9 THE COURT: And do you want to tell me what it is?

10 MR. SCHULTZ: His preference is not to testify.

11 THE COURT: Okay. All right. Mr. Smith, you've heard
12 Mr. Schultz tell me that you and he have talked about your
13 right to testify, as well as not, and that he says of right
14 now you've made a decision not to testify.

15 Do you understand that you have an absolute right to
16 remain silent if you wish to?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you also understand that you have a
19 right to testify if you wish to?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you understand that the decision as
22 to whether or not you will testify is your decision and
23 only you can make it?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Do you understand that if you make the

1 decision to testify you have to answer not just your
2 lawyer's questions but you'll have to answer the
3 prosecutor's questions to the extent that they are relevant
4 even if the responses to those questions might tend to
5 prove you guilty of a crime the state claims you committed?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you also understand that if you elect
8 not to testify that if you request it I'm going to instruct
9 the jury they can't consider it, they can't allow it to
10 weigh in their decision in the slightest degree?

11 They have to base their decision upon what they've
12 seen and heard, and they can't consider the fact that you
13 have not testified during the trial in that decision.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that even if you choose
16 not to testify your lawyer could still call other witnesses
17 or introduce other evidence?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any other evidence or
20 witnesses that you wish for him to call?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: Okay. Have you and Mr. Schultz discussed
23 the advantages and disadvantages of testifying, as well as
24 not testifying?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you appreciate what those
2 advantages and disadvantages are?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: And have you had time to reflect upon your
5 decision about whether or not you will testify?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: And have you arrived at a decision now?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you had a sufficient time to
10 reflect on it?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: And what is your decision?

13 THE DEFENDANT: I do not want to testify.

14 THE COURT: Okay. Now, I'm going to accept that as
15 being your position, but you understand if, during the
16 overnight recess, you change your mind, you can do that?
17 But if you do change your mind you and/or Mr. Schultz are
18 going to have to tell me that you've changed your mind.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Otherwise, I'm going to assume that you
21 are sticking with the decision that you told me right now,
22 which is that you will not testify.

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: So if you want to in the morning you'll
25 have to say that you want to. Okay?

1 THE DEFENDANT: Okay.

2 THE COURT: All right. Anything else to address
3 before we recess?

4 MR. SCHULTZ: Your Honor, if it pleases the Court, and
5 I understand the Court's position as far as putting the --
6 my client in custody.

7 Your Honor, at 2:08 p.m. I received an email from
8 Giggie's or Geegee's Bonding, and I asked them a question.

9 I said, "I represent Mr. Brandal Smith. Mr. Smith's
10 case was called for trial. The Court, as well as myself,
11 would like to know if your bonding company will stay on the
12 bond during the pendency of Brandal Smith's trial."

13 They wrote me back at 2:08 p.m., like I said. Says,
14 "Yes. We will be happy to stay on his bond. Mr. Smith has
15 been in compliance with his bond up to this point with
16 weekly call-in checks. I have also called and left a
17 message for you at your office to let you know we will stay
18 on this bond." And that was an email from Stella Fagan,
19 court liaison at Giggie's Bonding Company.

20 THE COURT: Did she sign the bond?

21 MR. SCHULTZ: Sir?

22 THE COURT: Did she actually execute the bond?

23 MR. SCHULTZ: Well, I know Giggie's did, Your Honor.

24 THE COURT: I'm talking about the person that says
25 that they want to stay on the bond. Did they execute the

1 bond?

2 MR. SCHULTZ: Beg the Court's patience.

3 THE COURT: Sure.

4 (Pause.)

5 THE COURT: well, that's just -- you know, I'm just
6 curious about that, but, at the same time, the answer is
7 not going to really matter because I can't just base a bond
8 commitment on an email from a surety. I've got to have a
9 document. I've got to have something for the record.

10 MR. SCHULTZ: well, Your Honor, I also wrote them at
11 3:01. "Could you be present at the Spartanburg County
12 Courthouse?" And she -- Stella -- again wrote me back.
13 "Sorry. I won't be able to make that. Our agents are in
14 the field doing bonds currently. We are not able to attend
15 this hearing on short notice. I am in the office until
16 5:30 if the judge would like to call me."

17 THE COURT: That's not the way this works, as you
18 know.

19 MR. SCHULTZ: I understand that, Judge.

20 THE COURT: It's not uncommon. I mean, I've often
21 heard sureties tell the lawyers that they're willing to
22 stay on a bond. But when I ask them to come to court and
23 tell me, they don't. So I'm not surprised by that. Might
24 be that they would. But I have -- and the reason I'm a
25 stickler for this is because I've had occasions where a

1 surety told a lawyer they would stay on the bond and then
2 when there was an issue about the bond, the bondsman told
3 me that they had not committed and they hadn't signed
4 anything committing to continuing the bond. And so that's
5 why I have to have those affidavits or a bond order or
6 something to commit the surety to continuing on the bond.

7 So, in any event, it's not going to be long. But, in
8 any event, he'll have to be in custody tonight.

9 All right. Anything else?

10 MR. SCHULTZ: Your Honor, if I get some sort of
11 document in the next 20 minutes or so would the Court
12 reconsider it?

13 THE COURT: well, probably going to be too late by
14 then. So I'll consider it tomorrow if we need to. Okay.

15 THE BAILIFF: They're good.

16 THE COURT: Okay. All right. Anything else?

17 MR. SCHULTZ: No, sir. Thank you, Judge.

18 THE COURT: Court is in recess until 10:00 o'clock in
19 the morning.

20 END OF PROCEEDINGS AUGUST 24, 2021
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23
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25

1 (Proceedings August 25, 2021)

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

4 THE COURT: All right. All are present.

5 Mr. Schultz, the state has rested in their
6 presentation.

7 Do you have any motions or others matters to address?

8 MR. SCHULTZ: Your Honor, one matter to address here
9 is I've talked to my -- or my client actually contemplated
10 testifying.

11 At this time unless this changed within the last
12 couple of minutes, he does not plan on testifying. I don't
13 know if you want me to put that on the record.

14 THE COURT: I'll talk about that in a minute.

15 MR. SCHULTZ: All right. Number two, I believe the
16 state's rested now. We would move for a directed verdict
17 at this time based upon the facts into evidence. We would
18 ask that the Court direct a verdict of not guilty on both
19 counts.

20 THE COURT: Any specific ground?

21 MR. SCHULTZ: Your Honor, what we have here is we have
22 the informant who did not appear to be believable.

23 We have the chemist that testified yesterday afternoon
24 around 4:00 o'clock. She said that the controlled
25 substances that she tested may not even be controlled

1 substances based upon her analysis of it. She tested a
2 sample. She didn't test the whole thing. So that would be
3 the basis of my directed verdict.

4 THE COURT: All right. Ms. Owens.

5 MS. OWENS: Your Honor, viewing the light in the
6 evidence [sic] most favorable to the state there's
7 certainly evidence from which this jury could conclude the
8 defendant distributed, specifically, fentanyl, a -- a
9 section -- Schedule II opiate.

10 As the Court knows, the statute does not require that
11 the state present any measure of purity with regard to any
12 controlled substance, and there was testimony from which
13 this jury could conclude both that a sale happened and that
14 that sale was fentanyl.

15 Likewise, there is evidence that the jury could
16 conclude that sale occurred within half-mile of Cleveland
17 Park.

18 So it's the state's position that there was certainly
19 more than sufficient evidence for this jury to evaluate
20 the -- the state's evidence and find the defendant guilty.

21 THE COURT: Any reply?

22 MR. SCHULTZ: No, sir.

23 THE COURT: All right. Motion for a directed verdict
24 is denied.

25 Mr. Schultz, does the defendant intend to offer any

1 additional evidence?

2 MR. SCHULTZ: We do not, Your Honor.

3 I have talked to Brandal about this several times.
4 You know, this is obviously an older case. It probably
5 would have been settled before the coronavirus, but,
6 nevertheless, we've met several times about his right to
7 testify. He does not plan to testify unless that's changed
8 within the last couple of minutes. And we do not plan to
9 present any evidence.

10 THE COURT: All right. Mr. Smith, you heard what
11 Mr. Schultz just told me. Is that accurate?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You do not wish to testify?

14 THE DEFENDANT: I do not wish to testify.

15 THE COURT: And you do not wish to call any additional
16 witness.

17 THE DEFENDANT: I do not wish to.

18 THE COURT: Okay. Thank you.

19 MR. SCHULTZ: Thank you, Judge.

20 THE COURT: All right. Jury-instruction requests?
21 Renew your motions?

22 MR. SCHULTZ: Yes, sir, renew my motion.

23 THE COURT: We'll do it in front of the jury, but the
24 motion is denied.

25 Instruction requests?

1 MS. OWENS: Your Honor, the state would defer to the
2 Court's standard charge with respect to possession and
3 circumstantial evidence and reasonable doubt.

4 The only special request for charge would be the
5 language included in Section 44-53-392 regarding the weight
6 of a controlled substance, being a mixture or in any pure
7 form or any mixture thereof of, the substance, whatever
8 language the Court decides. But I believe the language of
9 the statute is certainly sufficient.

10 THE COURT: All right. Mr. Schultz.

11 MR. SCHULTZ: Nothing specific from the defense, but I
12 would like to see the proposed instruction that the state
13 is requesting under Title 44.

14 THE COURT: She said it's in 44-53-392, but I think
15 it's in the statute itself that charges trafficking.

16 MR. SCHULTZ: Thank you.

17 THE COURT: And maybe others.

18 (Pause.)

19 MR. SCHULTZ: And I'm just reading the statute here,
20 Your Honor. It is 44-53-392, weight of controlled
21 substance. Notwithstanding any other provision of this
22 article, the weight of any controlled substance referenced
23 in this article is the weight of that substance in pure
24 form or any compound and mixture thereof.

25 Is that what the Court is intending to instruct the

closing arguments

1 jury on?

2 THE COURT: Yes, sir.

3 MR. SCHULTZ: All right. That's fine, Judge.

4 THE COURT: All right. If nothing else, we'll bring
5 the jury in.

6 Mr. Schultz, you'll need to rest in front of the jury.

7 MR. SCHULTZ: Yes, sir.

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

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday the state had
12 concluded in its presentation of evidence.

13 So we'll now proceed with any that might be offered by
14 the defendant.

15 MR. SCHULTZ: May it please the Court.

16 THE COURT: Mr. Schultz.

17 MR. SCHULTZ: At this time the defense rests.

18 THE COURT: All right. That is all of the testimony
19 or other evidence to be offered in the trial of the case,
20 and therefore what remains to be done are the lawyers'
21 final summations, after which I'll instruct you on the law,
22 and then you'll begin with your deliberations.

23 So please give the lawyers your attention now as they
24 give you their final summations.

25 Ms. Owens.

closing arguments

1 MS. OWENS: May it please the Court, Your Honor.

2 Good morning, ladies and gentlemen. As I told you
3 yesterday at the beginning of this trial, the trial would
4 be brief and the evidence would be straightforward. And I
5 stand by that characterization, because despite all of the
6 engineered outrage and manufactured theatrics about issues
7 in this case designed to distract you, the truth is that
8 this case is very simple.

9 An informant, a witness, working with deputies at the
10 Spartanburg County Sheriff's Office contacted this
11 defendant, Brandal Smith, to purchase drugs.

12 This defendant agreed to meet that witness at a gas
13 station on Howard Street for the purpose of selling him
14 drugs. This defendant arrived at that gas station for the
15 purpose of selling that witness drugs.

16 This defendant discussed with that witness grams and
17 prices about the sell of those drugs. And this defendant
18 after retrieving the drugs from his trunk walked to the
19 informant's car, reached in to deposit those drugs and
20 withdrew cash. It is as simple as that.

21 There are no other distractions; there are no other
22 nefarious secrets about this case. And at the end of the
23 day you have the opportunity to view for yourselves exactly
24 what happened between the time that informant left police
25 after having been searched and outfitted with this

closing arguments

1 recording watch until he arrived straight back. That is
2 the entire case.

3 Now, the judge is going to instruct you in just a few
4 minutes about the law, specifically as it relates to
5 reasonable doubt. So I want to talk a little bit about
6 what reasonable doubt means and maybe help you work through
7 it as you deliberate the facts of this case.

8 You will sometimes hear reasonable doubt described as
9 evidence that leaves you firmly convinced of the
10 defendant's guilt.

11 Ladies and gentlemen, there are very few things in
12 this world that we know with absolute certainty, and the
13 law does not require proof that overcomes all possible
14 doubt. Instead, after reviewing the evidence you are
15 firmly convinced of the defendant's guilt, you should find
16 the defendant guilty.

17 Reasonable doubt is not any possible alternative --
18 alternative reality. Instead, it is a doubt to which you
19 can assign a reason. It is a doubt that is based on common
20 sense, the actual evidence, something that you can point to
21 that is supported by rational thought.

22 So let's talk about what that might mean. There was
23 an intimation earlier on when the officers were testifying
24 that the informant's car had not been searched for hidden
25 compartments, that it was possible that this quantity of

closing arguments

1 fentanyl, State's Exhibit 2, was concealed in the
2 informant's car or inside the defendant's body.

3 Let's talk about why that is not reasonable to
4 conclude that that's a possibility.

5 You have the opportunity to inspect these drugs.
6 These bags are clear. You can see them. They have not
7 been repackaged.

8 The testimony was that the bag that was delivered from
9 Germaine Smith, the informant, to police is the same bag
10 that was packaged by deputies and turned into property and
11 evidence. After it was tested it was packaged in this
12 larger sealed bag.

13 Look at these bags. Do they appear to have been
14 inside someone's body? Is it reasonable to conclude that
15 these drugs came from anywhere else other than Brandal
16 Smith's hand after he got them out of his trunk?

17 To believe that they did, to believe that that
18 quantity of fentanyl came from the teller at the Li'L
19 Cricket, a hidden compartment, some other person who
20 somehow avoided being captured on camera, you also have to
21 believe that this defendant who can be heard on the
22 recording speaking with Germaine Smith about meeting him,
23 asking where -- where we meeting, that the phone call made
24 to order these drugs was never realized, that the defendant
25 showed up at the location that was discussed and had no

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1 actual plan to sell those drugs and didn't do the thing
2 that the two discussed on the phone, you also have to
3 believe -- if you believe that these drugs came from
4 somewhere other than this defendant's hand -- you have to
5 believe that the defendant walked to this informant's car,
6 which you can see with your own eyes on video, quoting
7 grams and dollars, it will be 5 grams, \$400, there's a
8 discussion what's eight times four, what's eight times
9 five, that he quoted all of those prices and grams for no
10 reason.

11 You also have to believe, if you believe that these
12 drugs came from somewhere else other than this defendant's
13 hand, that he reached into the car and took cash for some
14 other reason, because that's plain as day on the tape.

15 But more than that, you also have to believe that this
16 informant, Germaine Smith, was comfortable letting the
17 actual person who sold him these drugs continue to walk
18 free and claim instead that this defendant is the one that
19 sold him those drugs.

20 why would you do that? You've heard no evidence that
21 there is any bad relationship between these two. The
22 testimony that you heard was that they had a friendly
23 rapport, they had mutual friends. You can hear the two of
24 them on the phone. It's a friendly conversation. You can
25 see how the two interact. There's no animus; there's no

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1 agenda; there's no reason for this informant to allow the
2 actual source of these drugs to continue to walk free and
3 make up that this defendant gave them to him that day.

4 The informant testified repeatedly he knew the police
5 were watching, and you heard testimony from Mr. Swad
6 yesterday about everything he saw.

7 He saw the defendant walk up to the informant's car,
8 go back to his car, reach into the trunk, which is
9 difficult to see on video, but it's on the video, and then
10 come back to the informant's car and reach inside. You
11 don't have to believe the informant. It's on tape.

12 Then Investigator Swad told you that he saw this from
13 across the parking lot. If you believe, if you give any
14 validity, to the idea that these drugs came from somewhere
15 else to suggest that there is any reasonable doubt in this
16 case, those are all of the things that you have to believe
17 as well, and that's what makes them unreasonable, because
18 in some alternate reality where all of these other rational
19 factors exist, it's a possibility.

20 But that's not what the law says. The law says that a
21 reasonable doubt is based on a doubt which, to which, you
22 can assign a reason. And that means that it's supported by
23 common sense. That means it's supported by rational
24 thought and it's supported by all of the other
25 circumstances. And none of those circumstances add up.

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1 At the end of the day you would have to get in line
2 with so many unreasonable things to conclude that this
3 defendant made the phone call, showed up where he was
4 supposed to, discussed prices in grams, put his hand inside
5 the car, took cash, all for nothing.

6 Now, I imagine that you will hear from Mr. Schultz
7 shortly about the C.I.'s credibility, that he is
8 incredible, that he cannot be believed, that he is an
9 admitted drug user and drug seller and for that reason we
10 shouldn't believe anything that he told you.

11 You don't have to. Everything that he did that day is
12 on tape. No one's asking you to take his word for
13 anything.

14 I asked Mr. Swad, if you recall, yesterday at the very
15 end of his testimony what makes a good informant, and he
16 said that it's somebody who can actually buy drugs.

17 Brandal Smith's not going to sell drugs to Mr. Dan
18 Swad or Sergeant Ruane. Brandal Smith is going to sell
19 drugs to someone that he has a relationship with, someone
20 that he's familiar with, someone that he's friendly with.

21 That's why these kind of cases can only be
22 investigated by people who find themselves in the drug
23 trade, and that's the reality of this kind of criminal
24 investigation, that we use and rely on individuals who are
25 themselves involved in the drug trade to help us solve

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1 crime about the drug trade.

2 I'd ask you to consider likewise how Germaine Smith
3 behaved on the stand. I think it's important that you
4 evaluate the demeanor of witnesses, how they testified.
5 Did it seem to you that Germaine Smith wanted to be here?
6 Did he seem excited about being able to come into this
7 courtroom and point out Mr. Brandal Smith as the person
8 that sold him drugs? Did he seem to have any pleasure
9 having to be involved in this trial?

10 Those things matter. It matters when you're
11 evaluating whether someone can be believed and whether you
12 believe that the state has met its burden.

13 Now, as I told you at the beginning of this trial, the
14 defendant is charged with two separate offenses, and the
15 judge is going to go over those again with you. But I
16 wanted to reiterate what I believe the state is required to
17 prove to convince you that the defendant is guilty of both
18 of these crimes.

19 The first of those is, of course, trafficking in
20 illegal drugs. Now, after you've seen the evidence you
21 know that the -- the part of the elements that applies to
22 this case are selling, distributing, delivering narcotics.
23 That's what makes this trafficking that on February 20th of
24 2018 Brandal Smith sold, delivered, dispensed this quantity
25 of fentanyl.

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1 Now, there's also evidence that the defendant
2 possessed this quantity of fentanyl. He necessarily had to
3 have it in his possession before he gave it to the
4 informant.

5 So there are two different ways at least from which
6 you could find Mr. Brandal Smith is guilty of trafficking
7 in illegal drugs.

8 I told you also that in order for this offense to be
9 classified as trafficking the state had to prove the
10 defendant did that sale, distribution, delivery or
11 possession with respect to more than 4 grams of a substance
12 classified as an opiate.

13 And you'll hear from the judge about how fentanyl is
14 classified according to our law here in South Carolina.
15 That the chemist's testimony that she found after analyzing
16 the substance to be fentanyl is the basis for you to find
17 that the defendant was in possession of this Schedule II
18 controlled substance.

19 And of course the state has to prove that the offense
20 occurred in Spartanburg County. You heard from a few
21 different individuals that the location of this sale on
22 Howard Street is inside of Spartanburg County.

23 The second offense, the second crime with which the
24 defendant is charged, is distribution of this substance
25 within a half-mile of a school or park. And you heard

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1 testimony that the park involved is Cleveland Park where
2 there is a public playground.

3 I told you at the beginning of this trial the state
4 has to prove that the defendant knowingly was in -- was
5 within a half-mile of this playground.

6 On the very first clip of the recording, that first
7 painful 15 minutes where there's not a lot happening,
8 there's a phone call between Germaine Smith and the
9 defendant, Brandal Smith. And you hear the defendant say
10 is that the one over by the park. He knows exactly where
11 the park is. He knows exactly that he's right on the other
12 side of Cleveland Park doing this transaction. That's how
13 the state has met its burden with respect to this
14 distribution of fentanyl occurring within a half-mile of a
15 public playground.

16 I will not have another opportunity to speak to you
17 after this argument, so I hope that you will consider the
18 evidence that you've heard in light of your own common
19 sense and not be distracted by these manufacturing issues
20 that simply don't exist.

21 At the end of the day the case is straightforward.
22 The evidence is simple. And between this video recording
23 that you have the opportunity to view yourself and the
24 plain-as-day capture of this defendant's face in the middle
25 of that transaction there is no reasonable doubt that

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1 anyone other than Brandal Smith distributed, sold,
2 delivered, possessed just over 5 grams of fentanyl.

3 One final thing I want to address. The last witness
4 you heard from yesterday was Ms. Tobias. She testified
5 about how she tested the fentanyl in this case.

6 She mentioned she took a sample of it, weighed it,
7 weighed the entire amount, tested a sample of it and
8 determined that it was fentanyl.

9 And there was a little bit of an exchange about, for
10 lack of a better word, the purity of that sample. What is
11 the rest of those 5 grams, contained other things, Tylenol
12 or other drugs?

13 The judge is going to instruct you in a few minutes
14 about the state's burden with respect to purity of any
15 particular drug.

16 What the law in South Carolina says is that any
17 mixture thereof is the entire controlled substance. That's
18 the law. The law does not require the state to prove that
19 all 5.26 grams were themselves fentanyl.

20 The law that you took an oath to apply in this case
21 says that any mixture thereof. That's why the chemist
22 doesn't test every single gram and consume the entire
23 sample so that there's nothing left for you to see at
24 trial.

25 The reality is it doesn't matter whether this is pure

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1 fentanyl. The fact that any part of it was fentanyl is
2 what makes it possible for you to conclude that the
3 defendant distributed more than 4 grams of it on that day.

4 So based on that evidence and the application of your
5 common sense, I ask you to find that the defendant is
6 guilty of both trafficking in illegal drugs and
7 distribution of fentanyl within half mile. Thank you.

8 THE COURT: Mr. Schultz.

9 MR. SCHULTZ: Thank you, Your Honor. May it please
10 the Court. Counsel.

11 Ladies and gentlemen, first off, good morning. Thank
12 you, again, for your service in this case. I hope it's
13 been a good experience for everybody involved here.

14 Some of you, as I said yesterday, may have served on
15 juries before. Some of you may have not served on juries
16 before. But, again, I hope it was a worthwhile experience.

17 And it is a very important part of our civil
18 democracy. Other than voting, jury service is the -- one
19 of the best services a citizen of this great country can
20 do. A citizen can render service on a jury and exercise
21 their judgment, their good judgment, and adjudicate and
22 figure out what to do with the case.

23 Now, yesterday I talked about what the state -- what
24 their burden has been -- their burden of proof. It is
25 their burden. They have to carry this case.

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1 Now, about a little more than 20 minutes ago the Court
2 asked me, Mr. Schultz, do you have any evidence to present,
3 and I said no, the defense rests.

4 Okay. I said this to you about, I would say about, 24
5 hours ago. I don't have to prove a thing. Let me repeat
6 that. I don't have to prove anything.

7 Brandal and I don't have to show evidence; we don't
8 have to produce witnesses; we don't have to produce
9 evidence. We don't have to do any of that because it's not
10 our burden of proof to carry the case.

11 It's the state's, these folks right here -- the
12 officers, the informant and Ms. Owens. They're the ones
13 whose jobs it is to convince you that Brandal did this
14 beyond a reasonable doubt.

15 Now, you've heard those words before. I think Ms.
16 Owens went into this a little bit, but I'm going to give
17 you a definition that the Court will give you in a couple
18 of minutes as well. And I know I gave you this definition
19 of what reasonable doubt means about 24 hours ago when I
20 first addressed you.

21 Reasonable doubt is a doubt that causes a reasonable
22 person some hesitation to act. Some hesitation to act
23 means that -- and this is why I picked y'all. Y'all are
24 reasonable people here. Okay. And if you have one doubt,
25 one reasonable doubt, as to the guilt of Brandal, then you

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1 have to come back and give him the benefit of that
2 reasonable doubt and find him not guilty.

3 Okay. So if you find one reasonable doubt as to his
4 guilt. And that's what the Court is going to instruct you;
5 that's what Ms. Owens alluded to; and I am telling you that
6 right now, that that's your job. You have to do that.

7 Now, some attorneys, they get up here and give you a
8 couple of reasonable doubt. I have about a dozen. Okay.
9 Going to give you about a dozen to go back into your jury
10 deliberation room. And I want you to listen to doubts,
11 reasonable doubts, that I have here.

12 Number one, we heard from this guy, the informant,
13 yesterday. His motivation. What was his motivation? To
14 work for Spartanburg County Sheriff's Office. What was his
15 motivation?

16 Well, he said, initially he said, it was for his
17 sister, and then later on when I was cross-examining him --
18 that's what's called a cross-examination when the defense
19 attorney gets up there and tests somebody's credibility,
20 test somebody's believability.

21 He said I don't want to answer it. If I was hoping to
22 avoid going to prison, I don't want to answer that. Then I
23 stopped. Okay. He said I don't want to answer that. He
24 said nobody ever promised him anything. That was clear.
25 But I said, hey, are you hoping not to go to prison. Oh,

closing arguments

1 no. I don't want to answer that. Okay. Of course he's
2 hoping not to go to prison. Who does want to go to prison?
3 Okay. Nobody. Nobody wants to go to prison. Okay. And
4 he's hoping not to go to prison. Of course so he agreed to
5 cooperate. Of course he did. Okay. That's motivation
6 enough.

7 That's also motivation to lie. That's motivation to
8 shade the truth. It's my experience almost anybody would
9 lie, anybody would do anything in their power not -- to
10 avoid going to the Department of Corrections. I can assure
11 you of that.

12 Number two, reasonable doubt. By the informant's own
13 admission -- this is -- this is not my words. This is not
14 manufactured as the state says. I'm not manufacturing
15 anything. I just asked him these questions. I'm just
16 asking questions.

17 By the informant's own admission he was an addict at
18 the time of this incident. In fact, he admitted on the
19 stand there yesterday. And you can actually listen to his
20 testimony again if you want. You can rehear all of his
21 testimony, a recording of it. She's taking notes on it,
22 but we have a recording of this. You can hear this
23 testimony again if you want to listen to it.

24 He said, oh, yeah, I was doing cocaine back then too.
25 And I said does cocaine have fentanyl in it. Yeah, yeah,

closing arguments

1 it does.

2 Now, wasn't in this -- this -- this bag because
3 what -- what there is is there's -- let's see. There's --
4 you can see this when you go back there. There's one bag
5 here, and then there's another bag, and then there's
6 another bag, and then there's another -- it's like one of
7 these Russian dolls that you see, you know. One bag here,
8 one bag there, one bag there. Okay. It was small. Small
9 enough to conceal.

10 Okay. Again, I'm not manufacturing that. Okay. You
11 heard, you saw with your own eyes, with your own ears, him
12 rustling around in -- in the -- in the car there, a car
13 that he got out a couple of times, not once but twice. Get
14 into that a little later.

15 Number three, I asked him is number three reasonable
16 doubt. I asked the informant, okay, well, who did you talk
17 to in the store. Oh, well, I -- you know, I talked to some
18 people. Talk to anybody in the parking lot. Yeah. Okay.

19 And then he said, well, I didn't get -- I didn't get
20 the drugs from anywhere else. I didn't mention that. He
21 said it. And I said what's your problem, you got a guilty
22 mind, you got a guilty conscience. Oh, I don't -- I don't
23 like what you're trying to do. I didn't bring that up. He
24 did. He brought that up. Not me.

25 He sat up there and said if that's what you're saying

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1 I -- I didn't do that, I know I didn't do that. I'm not
2 saying it. He just said it. Think about that.

3 Number four, reasonable doubt. I went over it quite
4 in detail. I said did you promise to abide by the terms
5 and conditions and requirements of your agreement as an
6 informant working for the police. Oh, yeah, yeah. I did
7 everything, did everything.

8 Okay. Well, then after this incident happened in 2018
9 he goes, well, I -- I -- you know, I can do whatever the
10 hell I want.

11 So what did he get arrested for? I asked him there up
12 on the stand. Did he get arrested for just a little bit of
13 possession? No. Simple possession? No. Possession with
14 intent to distribute? No.

15 Folks, he got arrested for trafficking. He got
16 arrested for trafficking heroin. Okay. So not only this
17 guy, this informant, is working for the police, and he also
18 decided to do some dealing on his own.

19 Again, this is -- this is -- this is not
20 manufacturing. This is not me just pulling this outta the
21 clouds. This is not manufacturing. This is -- this is --
22 this is just how it is. Okay. And he admitted to it. He
23 admitted, oh, yeah, I'm an informant but, you know, I just
24 got arrested for trafficking.

25 Okay. I present to you that that is unbelievable or

closing arguments

1 incredible. Not credible. If he was so credible, then he
2 would be coming in here with a clean record. He's not.

3 Then I went into his past record. It goes -- it goes
4 over ten years. 1998, possession with intent to distribute
5 Xanax. And he was confused by it at first. Oh, well,
6 yeah. I think -- I think that. Okay. Yeah. Possession
7 with intent to distribute powder cocaine.

8 Okay. And then in 2010 failed to stop for blue light,
9 common-law robbery, and then another drug charge, another
10 drug possession with intent to distribute.

11 And then in the last ten years he was arrested for a
12 gun and then another possession with intent to distribute,
13 another conviction for selling drugs, for dealing drugs,
14 for distributing drugs.

15 Okay. Folks, he's a drug dealer. Okay. He's sneaky.
16 He wants to stay outta prison. He wants to stay outta
17 jail. Okay. Motivation to lie. He has a clear motivation
18 to lie. He is -- he is not a credible person, and you
19 shouldn't believe him. You can't believe this guy.

20 Number five, reasonable doubt. We heard from two
21 officers yesterday. One is still here. The other officer
22 is retired. We heard them talk about a -- what is known as
23 a controlled buy.

24 Folks, this is anything but a controlled buy. What's
25 the definition in addition of controlled? Well, something

closing arguments

1 that you exercise dominion over, something that you
2 exercise your power over.

3 Okay. So let's talk about that, what a controlled buy
4 is. Okay. Send the informant up there. Okay. He not
5 only decides to just do things his way, to not stay in the
6 car. He decides to go into a store where they lose sight
7 of him. Okay. Not once but twice. This was anything but
8 a controlled buy -- anything but a controlled buy.

9 The whole reason why we -- why they say, oh, we call
10 them controlled buys, is that they have control over their
11 employee. Okay. They have control over the guy that they
12 send out to do the job for them. Okay. They didn't have
13 control over him, over that day.

14 Okay. And then the officer said, oh, yeah. We looked
15 at him through the binoculars -- through the binoculars
16 over a used car lot with 20 to 30 cars in between not only
17 the Li'L Cricket but also Howard Street.

18 So we are to believe that this officer had control
19 over this guy who decided just to go into the store, across
20 the street, then across the parking lot and then observe
21 what was going on. Okay. That's -- that's just not
22 believable. That's not a controlled buy. You should
23 expect better from the police in this matter.

24 Number six, reasonable doubt. And I think both
25 officers testified to this. I asked both officers, said

closing arguments

1 what -- what -- did you tell him not to leave, leave the --
2 leave the car? Oh, well, I can't remember specifically.
3 Okay. Well, would you say that? I can't remember. Okay.
4 Then I said, well, so what you telling me. I can't
5 remember. And they said something.

6 I believe both officers said it would have been my
7 preference had he not left the car. Okay. Again, with a
8 controlled buy, you don't leave the car, you don't leave
9 anywhere, okay, because this informant knew that that --
10 those officers were looking at him. Okay. They lost sight
11 of him.

12 Number seven. I briefly alluded to this. Informant's
13 past record. And he was confused about that too, among
14 others things.

15 I said how many times were you arrested. Oh, let's
16 see. A couple of those in the 90s. I can't -- I don't
17 know. Maybe -- lost -- he -- the simple fact of the matter
18 is he -- he lost track of how many times he's -- he's been
19 arrested, charged and convicted.

20 Okay. I know that if I ever got arrested and charged
21 or convicted of something that's not something I would ever
22 forget for the rest of my life, and I think each of the 14
23 of y'all -- 12 of y'all -- would be in that position as
24 well. He's lost track of it.

25 Okay. What else is he losing track of? Picking up

closing arguments

1 fentanyl from somebody in the parking lot, picking up
2 fentanyl from somebody in the store, picking up fentanyl in
3 between the seats in order to avoid going to prison? Sure.
4 Believable.

5 And why -- why is he losing track of all of this
6 stuff? Because that's what he does. He's an addict; he's
7 a drug user. And also he apparently uses quite a lot of
8 the product because he's a convicted drug dealer. He's a
9 drug seller.

10 Reasonable doubt number eight. Well, did they arrest
11 him there? I -- I thought they had more than enough
12 evidence. No. They waited.

13 Reasonable doubt number nine. Come to testify. Could
14 it be a possibility that was not a controlled substance?
15 Sure.

16 Ladies and gentlemen, this is an interesting case
17 because I spoke to you about this yesterday. A lot of
18 cases that we have that are going around in Spartanburg
19 County or anywhere, they're not on tape, they're not on
20 video.

21 Driving under the influence charges usually are --
22 usually aren't. But not a lot of cases that we have are on
23 tape.

24 So I challenge you. Okay. Go back there and look at
25 the tape. Okay. Takes -- takes about 30 minutes. You can

closing arguments

1 look at a little bit of it; you can look at the whole thing
2 again. Okay. And you're going to have that. That's
3 already entered into evidence as State's Exhibit 1, I
4 believe.

5 Take a look at this tape. Put it -- put it in your
6 computer. You're going to be provided a computer when you
7 go back there and deliberate. Okay. Take a look at it.
8 Play the video.

9 Where is this baggie in the video? I didn't see it.
10 I watched it. I was back there watching the video. Okay.

11 And that's my last reasonable doubt. Go back there
12 and watch with the video. If you don't see the drugs,
13 they're sweeping somebody or something under the rug. You
14 don't see it.

15 They say, oh, well. And -- and I agree with what
16 Ms. Owens said a couple of minutes ago there. Said you
17 don't have to believe the informant. Yeah. You don't have
18 to believe the informant. And you shouldn't believe the
19 informant. He's a liar; he's a drug dealer; he's a seller;
20 he's a user; and he's not to be believed.

21 The whole case goes down to his credibility, his
22 believability. You saw him up there yesterday shifting
23 back and forth, you know, uncomfortable.

24 I agree with Ms. Owens. He was -- he was
25 uncomfortable. He was uncomfortable because he was lying.

Jury charge

1 Also, another thing I agree with her. You do have the
2 opportunity to view this video. I just said a couple of
3 seconds ago. View it. Go back there. You have the
4 opportunity to do it. That's your job.

5 So folks I'm going to wrap up right now. Ladies and
6 gentlemen, it's a very important job that you do. It's
7 probably one of the most important jobs that a citizen has
8 other than exercising your right to vote.

9 This goes back -- the jury system in this country is
10 used all over in every -- all over the country in the
11 federal system, also in the state system, has jury trials
12 going on all over the country. It's been a challenging
13 year. It's been a challenging year and a half now with the
14 virus and everything.

15 So I do appreciate your consideration in this fact for
16 these two charges. We are asking, Brandal and I are
17 asking, for a not-guilty verdict, not-guilty verdicts on
18 both counts.

19 The state hasn't met their burden of proof, and I
20 think it's very clear to say. The informant clearly not
21 credible. And that's what this case comes down to. It
22 comes down to a question of what's on the video and what
23 you perceive to be the informant's credibility. And he's
24 not credible, folks. Thank you.

25 THE COURT: Madam forelady and ladies and gentlemen of

Jury charge

1 the jury, you of course have heard and seen all of the
2 evidence now. You've also heard the final summations of
3 the lawyers, and therefore it now becomes my duty and
4 obligation to instruct you on the law that's applicable.

5 You'll then be asked to go back and to begin with your
6 deliberations. And through that process and through the
7 exercise of good judgment and common sense you're going to
8 be called upon to evaluate the testimony, consider the
9 evidence, from that evidence determine the facts that
10 relate to the allegations, once you determine the facts
11 apply the law, and you will tell us whether or not the
12 defendant has been proven guilty of a crime beyond a
13 reasonable doubt.

14 It is your exclusive duty to determine what the facts
15 are, and you do that through your own common sense
16 examination and evaluation of all of the testimony and
17 other evidence received during the course of this trial.

18 You 12 jurors alone will decide what weight, value and
19 effect to give to any particular testimony or other
20 evidence in the case. Your sole objective of course is to
21 render a fair and impartial decision based upon the
22 evidence presented and the law that's applicable as I will
23 have provided it to you.

24 Now, in this case, as you know, the defendant has been
25 charged with two separate and distinct crimes. They're

Jury charge

1 alleged in two separate indictments, although they are
2 alleged to have arisen out of one event or a course of
3 events which the state alleges occurred back on February
4 the 20th of 2018.

5 But as I told you from the outset, the charges are
6 separate, and you'll be considering those charges
7 separately based upon the evidence presented as it relates
8 to that particular charge in a particular indictment and
9 the law that's applicable to that particular indictment.

10 And as I stated previously, your verdicts as to the
11 two charges may be the same or they may be different. That
12 of course depends upon your decision as to the facts and
13 then your application of the law as it relates to that
14 particular indictment.

15 The indictments will be in the jury room. They are
16 not evidence in the case, however. They're not to be
17 considered as any evidence because they don't prove
18 anything. The proof comes in through the evidence
19 presented.

20 But the indictments will be in the jury room, Madam
21 Forelady, because the indictments will serve as the verdict
22 form. On the back of each indictment in the lower
23 left-hand corner you're going to see the word verdict, and
24 it's beneath that word that you'll indicate the jury's
25 unanimous decision as it relates to that particular

Jury charge

1 indictment.

2 But the two indictments are trafficking in illegal
3 drugs and distribution of fentanyl within one-half mile of
4 a public park or playground.

5 I'll begin with the trafficking in illegal drugs.

6 That indictment alleges that on February the 20th of
7 2018 Mr. Brandal Smith, the defendant, did knowingly sell,
8 manufacture, deliver, purchase or bring into the state, or
9 did provide financial assistance, or did otherwise aid,
10 abet, attempt or conspire to sell, manufacture, deliver,
11 purchase or bring into the state, or did knowingly,
12 actually or constructively possess 4 grams or more, but
13 less than 14 grams, of fentanyl, a morphine, opium, salt
14 isomer or salt of an isomer thereof as described in Section
15 44-54 -- excuse me -- 44-53-190 or 44-53-210. And that's
16 all in violation of another section, 44-53-370, of the Code
17 of Laws of South Carolina.

18 The second indictment charges him with violation of a
19 separate code section, and that is for the crime of
20 distribution of fentanyl within one-half mile of a public
21 school, park, playground and such as described in the
22 indictment -- excuse me -- as described in the statute.

23 But this indictment alleges that Brandal Smith did
24 here in Spartanburg County on or about February 20th of
25 2018 distribute, sell, purchase, manufacture, or did

Jury charge

1 unlawfully possess with intent to distribute a quantity of
2 fentanyl, a Schedule II controlled substance, while in, on
3 or within a one-half-mile radius of the grounds of a public
4 playground or park, public or private elementary, middle or
5 secondary school, public vocational or trade school or a
6 technical education center or a public or private college
7 or university.

8 And they in this indictment specifically allege that
9 the pertinent part of that statute was that he did
10 distribute fentanyl within one-half-mile radius of the
11 Cleveland Park located on Cleveland Park Drive here in the
12 City of Spartanburg.

13 Now, as to those allegations and as to each of the
14 charges contained in those indictments the defendant has
15 entered a plea of not guilty.

16 As I told you, that plea of not guilty has placed upon
17 the state the burden of proving the allegations that they
18 have made by way of the indictments, the burden of proving
19 each of the essential elements of the crimes that have been
20 alleged in each of those indictments; and therefore the
21 burden is upon the state to establish the defendant's guilt
22 as to a particular charge to your satisfaction beyond a
23 reasonable doubt before a verdict of guilty could be
24 returned as to that particular charge.

25 The burden is never upon a defendant to prove that he

Jury charge

1 or she is not guilty or to prove that he or she is innocent
2 because in some cases that might not be possible.

3 It is a vital, important and cardinal rule of law that
4 every defendant in a criminal trial, no matter how serious
5 the offense might be for which that person stands charged,
6 that person shall always be presumed innocent of that
7 charge, and, as I told you, that presumption of innocence
8 remains with every defendant, as it does with this
9 defendant, from the time that he is placed under arrest and
10 throughout the course of the criminal process and even
11 throughout the course of the trial.

12 And as I told you, that presumption of innocence is
13 going to be with Mr. Smith even as you go back into the
14 jury room to begin with your deliberations at the
15 conclusion of my instruction.

16 That presumption of innocence is going to be with him
17 in that jury room, and it'll be with him forever unless you
18 12 jurors unanimously determine that his guilt as to a
19 particular charge has been proven beyond a reasonable
20 doubt.

21 And therefore if you find the defendant has been
22 proven guilty of a crime contained in one of these
23 indictments, then he would no longer be entitled to the
24 presumption of innocence as it relates to that particular
25 charge. But it is only if, unless and until you are

Jury charge

1 satisfied of his guilt beyond a reasonable doubt that the
2 presumption of innocence would no longer be applicable.

3 Now, the same law that provides that you are the
4 judges of the facts also provides that I am the judge of
5 the law, and that simply means that nobody is going to tell
6 you how to arrive at your determination of fact in this
7 case.

8 As I've said, you decide the facts from the evidence
9 using your own good judgment and common sense
10 conscientiously applied to the testimony and the evidence
11 received during the course of the trial in order to decide
12 what the facts are that relate to the allegations made in
13 the case.

14 But under your oath as a juror you must accept the law
15 as I provide it to you as being the law that you are to
16 apply in the case. In other words, you're not to concern
17 yourself with what you thought the law was before you came
18 to serve as a juror this week or what you think the law
19 ought to be.

20 Under your oath as a juror you must simply accept the
21 law as I provide it to you as being the law that you are to
22 apply in the case, and then you take that law and you apply
23 it to the facts as you 12 jurors have determine those facts
24 to be based upon the evidence presented during the course
25 of the trial.

Jury charge

1 Now, as I told you, the state has the burden of
2 proving the defendant guilty beyond a reasonable doubt.
3 This does not mean that the state has to prove his guilt
4 beyond all doubt or beyond any possible doubt, but it does
5 require the state to prove his guilt to your satisfaction
6 beyond a reasonable doubt.

7 The term reasonable doubt should be given its plain
8 and ordinary meaning. A reasonable doubt is the kind of
9 doubt that would cause a reasonable person to hesitate to
10 act upon the information provided, and a defendant in a
11 criminal trial is entitled to any reasonable doubt that
12 arises from the evidence, or lack of evidence, in a case.

13 And if, upon any factual issue essential to a finding
14 of a verdict of guilty, you have some reasonable doubt as
15 to how that issue should be resolved, it would be your duty
16 to resolve that reasonable doubt in favor of the defendant.

17 Now, while there are various forms of evidence such as
18 testimony, photographs, documents, charts and other types
19 of physical exhibits, there are really only two types of
20 evidence, either or both of which may be used independently
21 or in combination to prove a fact in issue.

22 But the two types of evidence are direct evidence and
23 circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 testifies from actual knowledge of that fact. It is

Jury charge

1 testimony by a person who has perceived the existence of
2 some fact by means of his or her senses and then they come
3 into court and they testify as to what they have previously
4 perceived.

5 Direct evidence proves the existence of a fact
6 directly and does not require any deduction or inference in
7 order to establish that fact.

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

13 An inference is simply a deduction of fact that may
14 logically and reasonably be drawn from the proof of some
15 other fact or set of facts.

16 It is a fact not proven by the direct testimony of a
17 witness based upon that person's perception, but it is a
18 conclusion which might reasonably be drawn from the proof
19 of other facts.

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

25 The commission of a crime and any particular element

Jury charge

1 necessary to prove a crime may be proven by direct evidence
2 or by circumstantial evidence or by a combination of both
3 direct and circumstantial evidence.

4 The law makes no distinction between the weight or
5 value to be given to direct evidence or circumstantial
6 evidence, however to the extent that the state relies upon
7 circumstantial evidence to establish the commission of a
8 crime, all of the circumstances proven must be consistent
9 with each other and when taken together point conclusively
10 to the guilt of the accused beyond a reasonable doubt.

11 If these circumstances merely portray the defendant's
12 behavior as suspicious the proof is insufficient and it
13 fails. The burden rests with the state regardless of
14 whether the state relies upon direct evidence or
15 circumstantial evidence or some combination of the two
16 types of evidence to prove the defendant guilty beyond a
17 reasonable doubt.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the defendant's guilt. There are
20 very few things in this world that we know with absolute
21 certainty, and in the criminal cases the law does not
22 require proof that overcomes every possible doubt.

23 If, based on your consideration of the evidence in the
24 case, you are firmly convinced that the defendant is guilty
25 of a crime with which he is charged, you must find the

Jury charge

1 defendant guilty of that particular crime.

2 If, on the other hand, you think there is a real
3 possibility that the defendant is not guilty of a crime
4 with which he is charged, then you must give him the
5 benefit of that reasonable doubt and find him not guilty.

6 Now, as you know, there are two separate charges.
7 Those are two separate statutory offenses. I'll begin with
8 the trafficking indictment and then secondly instruct you
9 on the law as it relates to the distribution indictment.

10 But in Indictment 2019-03347 the defendant is charged
11 with the offense of trafficking in illegal drugs occurring
12 on or about February the 20th of 2018, and they allege that
13 he did knowingly sell -- and I'm going to only refer to the
14 relevant portions of the law and the allegations in the
15 indictment, because some allegations are not pertinent to
16 this case.

17 But in this case the state is alleging that the
18 defendant did knowingly sell or deliver and/or have in his
19 possession 4 grams or more, but less than 14 grams, of
20 fentanyl, a morphine, opium, salt isomer or salt of an
21 isomer thereof as classified in Sections 44-53-190 or
22 44-53-210, and that being in violation of Section
23 44-53-370.

24 Now, the relevant part or parts of Section 44-53-370
25 provides that any person who knowingly sells, delivers or

Jury charge

1 who is knowingly in possession of 4 grams or more of any
2 morphine, opium, salt isomer or salt of an isomer thereof,
3 or 4 grams or more of any mixture containing any of these
4 substances, is guilty of trafficking in illegal drugs
5 unless otherwise authorized to do so by some statutory
6 provision, law, rule or regulation.

7 The relevant portion of the statute which the state
8 alleges was violated in this case is the defendant, Brandal
9 Smith, did traffic in more than 4 grams of a morphine,
10 opium, salt or isomer of such as described in 44-53-210 in
11 that he did knowingly sell, deliver or knowingly possess
12 4 grams of fentanyl and was not authorized to sell or
13 deliver or possess that substance under the law.

14 Section 44-53-370(c) provides that it shall be
15 unlawful for any person to knowingly or intentionally
16 possess a controlled substance unless that substance was
17 obtained directly from or pursuant to a valid prescription
18 or an order of a practitioner while acting in the course of
19 his or her professional practice.

20 The law further provides that fentanyl is classified
21 in Section 44-53-210 of the Code of Laws of South Carolina
22 as an opiate and a Schedule II narcotic controlled
23 substance. And the weight of any controlled substance
24 includes that substance in its pure form or any compound or
25 any mixture which contains that substance.

Jury charge

1 And the law defines knowingly as having awareness and
2 knowledge of that fact. It is an act which is done
3 wilfully, purposefully, consciously and intentionally.

4 The term sell or deliver means with reference to sell,
5 it means to transfer a substance to another person in
6 exchange for money or for other valuable consideration.

7 The term deliver means to transfer the substance from
8 one person to another whether or not the transfer was in
9 exchange for money or any other consideration, even though
10 there may be evidence of such consideration being provided.

11 And possession of a substance occurs when the
12 substance is shown to have been in the actual physical
13 custody or control of the person charged with its
14 possession so long as it is also shown they have knowledge
15 of its character and presence and the person charged with
16 that possession is not authorized by law to possess it.

17 A person has possession of a controlled substance
18 within the meaning of the law when he has both the power
19 and the ability and the intent to control the disposition
20 or use of that substance.

21 The act of possessing or of selling or of delivering,
22 as well as the elements of knowledge and intent, may be
23 proven by either direct evidence or circumstantial evidence
24 or by a combination of both types of evidence.

25 And you are permitted to infer the act of possession

Jury charge

1 of a controlled substance, as well as the elements of
2 knowledge and intent, from evidence of acts, declarations
3 or conduct of the person charged, as well as any other
4 circumstances established by the evidence in the case which
5 would reasonably warrant your arriving at such a conclusion
6 as often the state of a person's mind can only be proven by
7 evidence which is circumstantial in nature.

8 Before the defendant could be found guilty of
9 trafficking in fentanyl, in this case, it would therefore
10 be necessary that it be proven beyond a reasonable doubt
11 that the defendant did knowingly have in his possession
12 and/or he did knowingly sell and/or deliver a quantity of
13 4 grams or more of fentanyl or any mixture containing
14 fentanyl in the amount of 4 grams or more and that the
15 possession and/or the sale and/or the delivery of that
16 controlled substance was not in compliance with legal
17 requirements.

18 The second indictment charges the defendant with
19 distribution of fentanyl within one-half-mile radius of a
20 public playground or park.

21 Section 44-53-445 provides that it shall be a separate
22 criminal offense for a person to distribute, sell,
23 purchase, manufacture or to unlawfully possess with intent
24 to distribute a controlled substance while in, on or within
25 a one-half-mile radius of the grounds of a public or

Jury charge

1 private school, playground, park, vocational trade center
2 or technical education or other public or private
3 university.

4 To distribute means to transfer a controlled substance
5 from one person to another, whether or not in exchange for
6 money or any other consideration or thing of value.

7 Again, to sell means to transfer a controlled
8 substance from one person to another in exchange for money
9 or any other consideration or thing of value. And, again,
10 fentanyl is classified in Section 44-53-210 as a Schedule
11 II opiate, narcotic controlled substance.

12 And therefore in order for the defendant to be found
13 guilty of a violation of this particular section of law it
14 would be necessary that the state has proven beyond a
15 reasonable doubt that the defendant had knowledge that he
16 was in, on or within the one-half-mile radius of the
17 grounds of a public playground or park and that the
18 defendant actually did distribute, sell or possess with
19 intent to distribute a controlled substance while within
20 one-half-mile radius of the grounds of a public park or
21 playground.

22 And therefore the state must prove that the defendant,
23 knowing he was within a one-half-mile radius of a public
24 playground or park, did unlawfully distribute or sell or
25 possess with intent to distribute a quantity of fentanyl in

Jury charge

1 its pure form or in any mixture of substances which contain
2 the substance fentanyl.

3 Now, I have told you that you are the judges of the
4 facts, and because you judge the facts you also judge the
5 credibility of witnesses that have testified during the
6 case.

7 There are several factors you're to consider in
8 assessing a witness' credibility. I'm going to list those
9 for you.

10 You may consider the demeanor of the witness. That is
11 how they appeared while they testified from the witness
12 stand, were they straightforward in responding or were they
13 hesitant in responding.

14 Simply put, did the witness appear to you to be
15 telling the truth and to have knowledge of the facts to
16 which that witness has testified.

17 You should also consider whether or not the testimony
18 of a witness was consistent or inconsistent with the
19 witness' own testimony or with other testimony or other
20 evidence received during the trial.

21 You should also consider how the witness came to know
22 the facts to which that witness testified. In other words,
23 what was that witness' opportunity and ability to perceive
24 the existence of those facts to which they have testified
25 and what is their ability to be able to come into court and

Jury charge

1 to accurately recollect to you as to what they have
2 previously perceived.

3 You may also consider any bias or prejudice or
4 interest that a witness might have in the outcome of the
5 case. In other words, do you find some reason that a
6 particular witness would testify one way or another to help
7 or hurt one side or the other, and do they have some
8 interest in the outcome of the case, and, if they do, would
9 that interest bear upon that particular witness'
10 credibility. And where a witness has been shown to have
11 been convicted of a criminal offense you may consider those
12 convictions if you determine those to be probative on the
13 issue as to that particular witness' credibility.

14 And as I've already told you, you can believe all of
15 what a witness has said; you can believe none of it; you
16 can believe part of it and reject some other portion of it.

17 You are further instructed, and I do emphasize to you,
18 the fact that where a defendant in a criminal trial does
19 not take the witness stand and testify during the course of
20 that trial, that's not a fact or circumstance that may be
21 considered by the jury in any way whatsoever.

22 It cannot be held in the slightest degree against a
23 defendant because, as I told you, the burden is never upon
24 a person accused of a crime to prove that they are not
25 guilty or to prove that they are innocent because in some

Jury charge

1 cases that might not be possible.

2 The burden is on the state to prove that person guilty
3 beyond a reasonable doubt, and therefore you are not to
4 draw any inference nor reach any conclusion from the fact
5 that a defendant does not testify during the trial, nor may
6 that fact even be discussed by the jury during your
7 deliberations in the case.

8 Now, Madam Forelady and ladies and gentlemen of the
9 jury, I am not in any way concerned with what your
10 decisions are, but you are instructed that the decision you
11 reach must be unanimous. All 12 must be in agreement.

12 Madam Forelady, as I told you, you'll have these two
13 indictments in the jury room. One is for trafficking; the
14 other for distribution within a half mile. The verdicts
15 may be the same; they may be different, as I've stated.

16 Whatever that decision is, Madam Forelady, on the back
17 of the indictment, lower left-hand corner, you'll see the
18 word verdict, and it's going to be under that word that
19 you'll indicate the jury's decision as it relates to that
20 particular indictment.

21 As it relates to each indictment you have two
22 potential verdict forms. Those verdict forms are guilty
23 and not guilty. So whatever that decision is, insert it in
24 the space provided, sign your name as the foreperson.
25 You're the only person that needs to sign the verdict form.

Jury charge

1 And place the appropriate date. Today is the 25th of
2 August.

3 Madam Forelady, once y'all have reached your decisions
4 and you've completed the verdict forms, knock on the door
5 and notify the bailiff you've reached a decision.

6 You may give the bailiff the evidence. You will hold
7 onto the verdict forms. I'll receive those from you after
8 you come back into the courtroom, at which time we'll
9 receive that decision.

10 Now, during your deliberations there may come a time
11 where you have a question about the evidence in the case or
12 the testimony that's been presented. You may even think
13 there's something else out there that would help you.

14 Please understand that all of the evidence that's
15 going to be introduced in this case has been introduced.
16 The evidence period is closed, and therefore no additional
17 evidence can be received, whether it exists or not.

18 So if an item -- if something that you think would be
19 helpful but has not been introduced, don't ask me about it,
20 because I couldn't provide it to you even if it did exist.

21 If something that was introduced is not back there --
22 and everybody's going to verify their exhibits, and
23 hopefully we'll get all of that right -- but if, as you
24 deliberate, you think you were supposed to have something
25 because it was introduced but you don't have it, you let us

Jury charge

1 know. We'll be certain to provide it to you. But all of
2 the exhibits that have been introduced will be submitted to
3 you.

4 One of the exhibits has been testified that's a
5 controlled substance -- fentanyl. It's in a sealed
6 container, a sealed bag. Do not open the bag. If there's
7 some reason why you think you need to open it to look at
8 something, you let me know and I'll make arrangements for
9 that. But don't open it unless you discuss that with me
10 first.

11 You will have a computer on which you can look at the
12 disc that was introduced into evidence, and I don't think
13 there's complicated measure that has been taken to look at
14 it, although all of this is complicated as far as I'm
15 concerned.

16 Nevertheless, the 12 of you ought to be able to figure
17 it out. But if you can't, let me know and I'll get one of
18 my grandchildren down here to help you with it.

19 If you smoke, you can't smoke in the courthouse, but
20 you can smoke during deliberations if you want to. If you
21 want to you have to be taken outside for that purpose. So
22 if anybody wants to smoke, let the bailiff know, and
23 they'll take those outside to accomplish that. But you are
24 instructed that deliberations may only take place while all
25 12 jurors are present in the jury room.

Jury charge

1 So if at any time a juror is absent for some
2 authorized purpose the deliberations must stop, and they
3 may only resume when all 12 are present so that all can
4 participate.

5 Now, it's not lunchtime yet, but I don't have the
6 slightest idea, nor do you, how long it will take you to
7 deliberate the case. So what I will tell you is if you get
8 to a point in your deliberations where you think it's
9 appropriate to have lunch, you'll need to let me know of
10 that fact, and I will have it ordered, prepared and brought
11 to the courthouse for your benefit.

12 It usually takes about an hour, maybe a little bit
13 more, to have the lunch ordered, prepared and brought to
14 the courthouse. So keep that timeframe in mind as you
15 begin deliberations. And if you determine that you would
16 like to have lunch ordered, you'll let the bailiff know and
17 the -- one of the clerk of court staff will come to the
18 jury room to take your lunch orders.

19 Madam Forelady, if at any time you ever have an issue
20 that you need help with -- not deliberations but technical
21 things or you have a question about something -- let me
22 know by writing it on a piece of paper, giving it to the
23 bailiff. Then he or she will give that to me and I'll
24 respond accordingly.

25 As it relates to testimony, if you have a question

Jury charge

1 about a witness' testimony and you think it can be answered
2 by having that testimony replayed in whole or in part, we
3 can do that.

4 I don't have transcripts of witnesses' testimony, so I
5 can't send transcripts back. But if you need to rehear the
6 testimony, you let me know about that, and we'll bring you
7 back into the courtroom for the purpose of having their
8 testimony replayed by the court reporter.

9 If at any time you have a question about the law
10 that's applicable in the case, I am permitted to answer
11 those questions. And if you need a complete
12 re-instruction, I can do that. If you don't need a
13 complete re-instruction but you need some explanation or
14 clarification of some point that I've already provided, I'm
15 happy to provide that additional explanation or
16 clarification.

17 So, as I say, if at any time you have a question about
18 anything write it on a piece of paper. Give it to the
19 bailiff. He'll give it to me and I'll respond accordingly.

20 I think that covers everything, but if it doesn't I'm
21 sure one of these lawyers will point it out to me. And if
22 I need to bring you back for any reason, I will.

23 If I do not need to bring you back for any reason the
24 bailiff will bring to the jury room all of the exhibits
25 which have been introduced including a computer to play the

verdict

1 disc with.

2 And to you, Madam Forelady, he'll also bring the -- or
3 she will bring the indictments which will serve as the
4 verdict form.

5 So I'll ask the 12 primary jurors -- the two
6 alternates will stay in the courtroom with me. The 12
7 primary jurors will retire to the jury room. But do not
8 begin deliberations until I send you word to do so.

9 Follow the bailiff.

10 (Whereupon, the jury retired to deliberate at
11 11:25 a.m.)

12 (Whereupon, the alternate jurors were excused.)

13 THE COURT: Let me ask the lawyers to verify the
14 exhibits, please.

15 (Pause.)

16 THE COURT: Are there exceptions taken to the
17 instruction or request for additions to the instruction by
18 the state?

19 MS. OWENS: None from the state, Your Honor.

20 THE COURT: By the defendant?

21 MR. SCHULTZ: None from the defendant.

22 THE COURT: Have y'all verified the exhibits?

23 MS. OWENS: Yes, sir, Your Honor.

24 MR. SCHULTZ: We have.

25 THE COURT: Okay. Well, Madam Bailiff, there are the

Verdict

1 exhibits. Will you take those back, and the verdict form?
2 Give them to the jury and tell them they can begin their
3 deliberations and notify us when they've concluded. And
4 we've got a computer coming. It will be here shortly, so
5 we'll give it to them as soon as it arrives.

6 we'll be at ease while the jury is deliberating.

7 (Whereupon, a recess was taken.)

8 THE COURT: I'm told the jury has reached their
9 decision. Are we ready to receive it?

10 MS. OWENS: The state is ready to proceed, Your Honor.

11 MR. SCHULTZ: The defense is ready, Judge.

12 THE COURT: All right. Bring them in, please.

13 (Whereupon, the jury returned to the courtroom at
14 12:15 p.m. to reports its verdict.)

15 THE COURT: Madam Forelady, have you and your fellow
16 jurors reached unanimous decisions as to each of the
17 separate indictments?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Have you reflected those decisions on the
20 indictments?

21 THE FOREPERSON: Yes, sir.

22 THE COURT: And did you sign your name as the
23 foreperson?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: And date it today?

verdict

1 THE FOREPERSON: Yes, sir.

2 THE COURT: If you will, hand those verdict forms up
3 by way of the bailiff, please.

4 You may publish the verdicts.

5 THE CLERK: In the State of South Carolina, in the
6 Court of General Sessions, Indictment No. 2019-GS-42-3347,
7 indictment for trafficking in illegal drugs, the State of
8 South Carolina vs. Brandal Smith, verdict guilty.

9 Signed by the foreperson August the 25th of 2021.

10 Indictment No. 2019-GS-42-3346, in the Court of
11 General Sessions, the State of South Carolina vs. Brandal
12 Smith, indictment for distribution of fentanyl within
13 half-mile, guilty.

14 Signed by the foreperson August the 25th of 2021.

15 Ladies and gentlemen of the jury, is this your verdict
16 and still your verdict? If so, please raise your right
17 hand.

18 (Whereupon, all jurors responded in the affirmative.)

19 THE CLERK: So say you all.

20 THE COURT: All have responded in the affirmative.

21 Are there any other matters to be addressed with the
22 jury present?

23 MR. SCHULTZ: Request a poll.

24 THE COURT: All right. The jury will be polled.

25 THE CLERK: Ladies and gentlemen of the jury, at this

verdict

1 time I'll pose a question, my question being is this your
2 verdict and still your verdict.

3 Once your juror name and number is called, please
4 stand and respond to the question.

5 Juror No. 2, Allison Addison.

6 THE JUROR: Yes.

7 THE CLERK: Thank you.

8 Juror No. 72, Andrew Hall.

9 THE JUROR: Yes.

10 THE CLERK: 157, Jason Sprouse.

11 THE JUROR: Yes.

12 THE CLERK: 160, Julie Stone.

13 THE JUROR: Yes.

14 THE CLERK: 78, Angela Hill.

15 THE JUROR: Yes.

16 THE CLERK: 155, Zachary Smith.

17 THE JUROR: Yes.

18 THE CLERK: 17, Gena Bowers.

19 THE JUROR: Yes.

20 THE CLERK: 69, Justin Greene.

21 THE JUROR: Yes.

22 THE CLERK: 58, Amanda Evans.

23 THE JUROR: Yes.

24 THE CLERK: 53, Kiana Edmond.

25 THE JUROR: Yes.

Sentence

1 THE CLERK: 29, Robert Cato.

2 THE JUROR: Yes.

3 THE CLERK: 162, Matthew Swofford.

4 THE JUROR: Yes.

5 THE CLERK: Your Honor, the ladies and gentlemen of
6 the jury has been polled.

7 THE COURT: Okay. Any other matters we need to
8 address with the jury present?

9 MS. OWENS: None from the state, Your Honor.

10 MR. SCHULTZ: None from the defense.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: Any other matters to address prior to the
13 imposition of sentence?

14 MS. OWENS: State's ready to proceed with sentencing,
15 Your Honor.

16 MR. SCHULTZ: No, sir.

17 THE COURT: Okay.

18 MR. SCHULTZ: Your Honor, would you like for us to
19 come up here?

20 THE COURT: You can stay right there.

21 MR. SCHULTZ: Yes, sir.

22 THE COURT: Mr. Schultz, you got any matters we need
23 to address prior to the imposition?

24 MR. SCHULTZ: Your Honor, I would move for a new trial
25 based upon all objections noted on the record.

Sentence

1 THE COURT: All right. That motion is denied.
2 Anything else?

3 MR. SCHULTZ: No, sir.

4 THE COURT: All right. Does the state have anything?

5 MS. OWENS: Your Honor, to the extent that this is a
6 second offense, I would share with the Court the
7 defendant's criminal history to support the basis for that
8 enhancement.

9 The defendant was convicted in 2000 of five counts of
10 distribution of cocaine base for which he received an
11 8-year sentence; a 2003 conviction for possession of
12 marijuana; 2009 conviction for two counts of distribution
13 of cocaine base and two counts of distribution within a
14 half-mile of a school to which the defendant was sentenced
15 to 15 years. That's the extent of his criminal history.

16 THE COURT: And so this is -- as far as the
17 trafficking case goes, this is a mandatory 25?

18 MS. OWENS: Yes. That's correct, Your Honor. The
19 bench warrant -- the only sentence is 25 years and a fine.
20 There's no range on a second offense.

21 THE COURT: All right. Do you agree with that,
22 Mr. Schultz?

23 MR. SCHULTZ: My understanding of the statute is that
24 it's mandatory 25, Your Honor. There's no range.

25 THE COURT: Exactly. All right. Anything else y'all

Sentence

1 want to tell me?

2 MR. SCHULTZ: Your Honor, as you can see -- well, as
3 you could have seen, there are several family members here
4 in support of my client there.

5 we, obviously -- unfortunately, the jury felt
6 differently with this case.

7 Mr. Smith has been my client since around 2019, early
8 2019. He's been an ideal client in every respect. I can't
9 say enough good things about Mr. Smith.

10 THE BAILIFF: She's lost a set of keys. She remembers
11 putting them out there to come through the door, but she
12 doesn't know whether she brought them in here or not.

13 (Pause.)

14 THE COURT: Excuse me, Mr. Schultz. Proceed.

15 MR. SCHULTZ: Thank you, Your Honor.

16 For like I was saying, Your Honor, Mr. Smith retained
17 me in 2019 to represent him on this case. Obviously, we --
18 we felt the jury could have reached a different decision,
19 but, unfortunately, they did not.

20 Obviously, Your Honor, there is no sentencing range.
21 We would, obviously, ask for the minimal sentence, but
22 there is no minimal sentence in this -- this category of
23 drug offense.

24 But I -- I do want to put this on the record for the
25 benefit of Brandal there, and I mean this sincerely. He's

Sentence

1 been an ideal client. We've gone over his evidence
2 probably several, several times, and not only in my office
3 but even today. Me and him were strategizing about the
4 closing arguments and everything like that. He's been a
5 very good client.

6 He has not been in trouble since this offense
7 actually. So he went through 2019 and 2020 and now 2021,
8 which we're half way through, without committing any new
9 crimes. So we would -- I know that in any mandatory
10 minimum sentencing according to this new case that came out
11 in January that home detention is not available to the
12 Court. I wish it was.

13 Maybe some day that case may be overruled but-or maybe
14 a different case will come up where home detention is
15 available. So I don't think I can argue for a portion of
16 that sentence to be served on house arrest.

17 But, obviously, I would -- I would ask that it would
18 be. But the State vs. Simpson that came out in January of
19 last year indicates that otherwise, unfortunately. But I
20 can't say enough good things about Brandal.

21 As the Court can tell he has a very good support
22 network. I think he has a newborn kid as well. So we,
23 obviously, would ask you to take that into consideration
24 when rendering sentence, Your Honor, because I think there
25 is a range in regards to the possession with intent to

Sentence

1 distribute within half-mile of a school. I believe that's
2 zero to ten, Your Honor. So we would ask for the
3 applicable guideline and also for the distribution within
4 half-mile to be run concurrent with any sentence that the
5 Court sees fit to give. Thank you.

6 THE COURT: Mr. Smith, do you have anything you'd like
7 to add to what your lawyer has told me?

8 THE DEFENDANT: No.

9 THE COURT: All right. On Indictment 2019-03347,
10 that's the indictment for trafficking, wherein the jury has
11 found you guilty of that offense, Sentence of the court is
12 you, Brandal Smith, be confined to the South Carolina
13 Department of Corrections for a period of 25 years and pay
14 a fine of \$100,000.

15 Indictment 2019-03346, an indictment for distribution
16 within a half-mile of a public playground or park, wherein
17 the jury has found you guilty, Sentence of the Court is you
18 be confined to the South Carolina Department of Corrections
19 for a period of ten years. Those sentences are concurrent.

20 Mr. Smith, you have a right to appeal the verdicts of
21 the jury and the Sentence of the court, but you must file
22 any notice of your intent to appeal those decisions within
23 ten days of today's date.

24 Mr. Schultz, I need for you and Mr. Smith to sign the
25 sentencing sheets.

1 MR. SCHULTZ: Yes, sir.

2 Your Honor, it is our intention to file a notice. I
3 just wanted to put that on the record for Mr. Smith's
4 benefit.

5 THE COURT: All right. Mr. Smith, Mr. Schultz will
6 help you with that.

7 MR. SCHULTZ: Thank you, Judge.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 23rd, 24th and 25th days of August 2021.

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

November 22, 2021

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

WITNESSES

Spartanburg County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2018A4210101987

AMENDED INDICTMENT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Foreperson of Petit Jury
Date:

Guilty
Angela B. Hill
8/25/2021

DOCKET NO. -

19-GS-42- 3346

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 20 2020

TERM

THE STATE
vs.

Brandal Smith

Indictment for

DISTRIBUTION OF FENTANYL WITHIN
ONE-HALF MILE
SC Code: 44-53-445

A CERTIFIED COPY

Amy W. Cox

CLERK OF COURT
SPARTANBURG COUNTY
BY: *T. Camp* D.C.

DATED *8/25/21*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 25 2020, the

Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF FENTANYL WITHIN ONE-HALF MILE

That Brandal Smith, did in Spartanburg County on or about February 20, 2018, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Fentanyl, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public playground or park; public or private elementary, middle or secondary school; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Cleveland Park, located at 121 N. Cleveland Park Drive, Spartanburg, SC, under provisions of § 44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Brandal Smith

AKA:

Race: BLACK Sex: M Age: 38DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] AveCity, State, Zip: Spartanburg, SC 29303DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

UP to 10 yrs w/ or up to \$10,000INDICTMENT/CASE#: 2019GS4203346A/W#: 2018A4210101987Date of Offense: 2/20/2018S.C. Code § : 44-53-0445(A)CDR Code #: 0107

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: DISTRIBUTION OF ILLEGAL DRUGS WITHIN 1/2 MILE OF SCHOOLin violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:[Signature]
OWENS, KATRYNA BEVIS73989
SC Bar#Brandal Smith
Defendant[Signature]
Schultz, E. Joshua
Attorney for DefendantSCB74518
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years/Time-Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ provided that upon the service of days/months/years/Time-Served and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

WITNESSES

Spartanburg County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2018A4210101986

DIRECT INDICTMENT

ACTION OF GRAND JURY

[Stamp]

[Signature]
Foreperson of Grand Jury
Date:

SEP 25 2021

VERDICT

**CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX**

Guilty

Foreperson of Petit Jury
Date:

*Angela R. Hill
8/25/2021*

DOCKET NO. **19-GS-42-3347**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 23 2021

TERM

**THE STATE
vs.**

BRANDAL SMITH

Indictment for

TRAFFICKING IN ILLEGAL DRUGS

SC Code: 44-53-0370
CDR: 2361

A CERTIFIED COPY

Amy W. Cox
CLERK OF COURT
SPARTANBURG COUNTY
D.C.
FILED *8/25/21*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 20 2020, the
 Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN ILLEGAL DRUGS

That the Defendant Brandal Smith, did in Spartanburg County on February 20, 2018, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (4) four grams or more, but less than (14) fourteen grams of Fentanyl, a morphine, opium, salt, isomer, or salt of an isomer thereof as described in Section 44-54-190 or 44-53-210, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Brandal Smith

AKA:

Race: BLACK Sex: M Age: 38DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] AveCity, State, Zip: Spartanburg, SC 29303DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

25 yrs and \$100,000INDICTMENT/CASE#: 2019GS4203347A/W#: 2018A4210101986Date of Offense: 2/20/2018S.C. Code § : 44-53-0370(e)(3)(a)2CDR Code #: 0156

SENTENCE SHEET

RECEIVED**Aug 26 2021****SC Court of Appeals***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ **Guilty** of ☐ **Not Guilty** or ☐ **PLEADS**TO: TRAFFICKING IN ILLEGAL DRUGS 4-14 GRAMS 2ND OFFENSEin violation of § 44-53-0370(e)(3)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0156☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:[Signature]
OWENS, KATRYNA BEVIS73989
SC Bar#[Signature]
Defendant[Signature]
Schultz, E. Joshua
Attorney for DefendantSCB74518
SC Bar#WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,for a determinate term of 25 days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed yearsand/or to pay a fine of \$ 100,000 provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ **CONCURRENT** or ☐ **CONSECUTIVE** to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

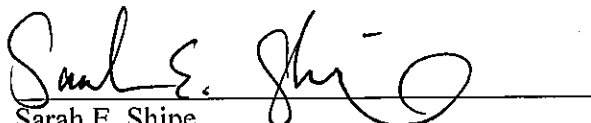
Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED
May 25 2022
SC Court of Appeals

Respectfully Submitted,


Sarah E. Shipe
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 25th day of May, 2022.

