

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

JAN 17 2014

S.C. Supreme Court

DERRICK TYRONE BLAKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001196

A P P E N D I X

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STATE OF SOUTH CAROLINA)
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COUNTY OF YORK)

IN THE GENERAL SESSIONS
COURT OF YORK

CASE NO.: 2008-GS-46-3045
2008-GS-46-3048

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
)
 -V-)
)
 DERICK TYRONE BLAKE)
)
 DEFENDANT.)

TRANSCRIPT OF RECORD

DECEMBER 2, 3, 2008
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE JOHN C. HAYES, III, judge and a jury.

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

Mr. E. B. SPRINGS
ASSISTANT SOLICITOR
SIXTEEN JUDICIAL CIRCUIT
FOR THE PLAINTIFF

MR. JAMES BOYD
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FOR THE DEFENDANT

ORIGINAL

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE

I-N-D-E-X

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REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK
COUNTY CLERK OF COURT'S OFFICE.

000205

1 (ON THE RECORD AT 11:30 A. M..)

2 THE COURT: Is the State ready to call another case?

3 MR. SPRINGS: Yes, your Honor. May it please the
4 court, the next matter before His Honorable Court is the
5 State of South Carolina versus Derick Tyrone Blake. I am
6 holding two indictments which have been true billed by our
7 York County Grand Jury. The first charge is Derick Tyrone
8 Blake for distribution of cocaine base otherwise known as
9 crack cocaine on Number 2008-GS-46-3048. With this is
10 distribution of that same crack cocaine within proximity of
11 a public park and the number there is 2008-GS-46-3045. Mr.
12 Blake is present in the room with his attorney Mr. James
13 Boyd.

14 Mr. Boyd, how does he plead to those two charges, sir?

15 MR. BOYD: Not guilty.

16 MR. SPRINGS: The State is ready to pick a jury your
17 Honor in this case to try the case.

18 THE COURT: Mr. Boyd, you ready to proceed?

19 MR. BOYD: We're ready to proceed.

20 THE COURT: Any pretrial motions?

21 MR. BOYD: None at this time, your Honor.

22 MR. SPRINGS: Your Honor, I have handed up some
23 request of voir dire from the State and I would ask - I
24 have copied it to the Defense - I would ask the Defense if
25 there is any objection to our voir dire?

1 MR. BOYD: No, sir, I don't have any objection to
2 those questions and I would ask that the court inquire as
3 to a lay relationship with law enforcement?

4 THE COURT: I usually do and I will.

5 MR. SPRINGS: Your Honor, the State has handing up a
6 State's witness list and we would ask if there is a defense
7 witness list?

8 MR. BOYD: No, sir.

9 MR. SPRINGS: And finally we have complied fully with
10 the discovery freely in this matter and we did a reciprocal
11 discovery motion and I would ask if the Defense has
12 complied with their obligations under our reciprocal
13 discovery motion?

14 MR. BOYD: Yes, sir.

15 MR. SPRINGS: And finally I would ask that pursuant to
16 the law of State versus Mizzell 563 SE 2nd 315 of the
17 Supreme Court of South Carolina that the defense not - in
18 front of the jury - mention the potential sentence in this
19 case. It's prejudicial to the State and irrelevant to
20 whether he did these crimes.

21 MR. BOYD: Your Honor, I don't intend to do that
22 however the issue may come up. I think there is an
23 informant who was -- is - looks -- potentially being
24 charged with the same thing he's charged and I think under
25 the law I am entitled to bring up to him that he's facing

1 that.

2 THE COURT: If he is in fact facing it yes.

3 MR. SPRINGS: I think Mr. Boyd is fully entitled to
4 ask the informant all the ramifications of what he's
5 facing. I would just ask that he's explicit and that is
6 the same charge that Mr. Blake is on trial for and not
7 himself.

8 MR. BOYD: I won't intend to do that.

9 THE COURT: Okay.

10 MR. SPRINGS: Thank you. Nothing further from the
11 State.

12 THE COURT: All right let's bring in the panel.

13 MR. BOYD: Okay.

14 THE COURT: I am going to step out for a minute while
15 we're waiting.

16 (COURT LEFT THE BENCH MOMENTARILY AT 11:45 A. M..)

17 (JURY PANEL ENTERING THE COURTROOM AT 11:55 A. M..)

18 THE BAILIFF: The court is now in session.

19 THE COURT: Thank you, take your seats.

20 Members of the jury panel, we are going to start our
21 second trial here in this courtroom for the week and it is
22 the case of the State versus Derick Tyrone Blake.

23 Mr. Blake, would you please stand and let the jury see
24 who you are? This is Derick Tyrone Blake he is represented
25 by Mr. James Boyd. You may be seated. The State will be

1 represented by Mr. E.B. Springs.

2 Some of the jurors -- someone is motioning to get
3 somebody's attention, one of the jurors.

4 Just wait and listen to what I have to say and then if
5 you need to stand up we'll take care of it at that time.

6 Mr. Blake is charged with two counts; two separate
7 indictments. One is distribution of crack cocaine called
8 cocaine base. And a second charge that he did that within
9 one half mile of Lige Street Park a public park in Rock
10 Hill. Our legislature has designated that as a separate
11 offense that is distribution of a controlled substance
12 within one half mile of a public park or a play ground.

13 It's alleged that this occurred on February 20th 2008
14 here in York County. First are any of you related by blood
15 or marriage or are you a close personal friend of Mr.
16 Blake, if so please stand?

17 All right your name?

18 A. Roosevelt Parrott, Junior.

19 THE COURT: Do you know Mr. Blake?

20 JUROR ROOSEVELT PARROTT: Yes, sir.

21 THE COURT: Would that affect your ability to be fair
22 and impartial?

23 JUROR ROOSEVELT PARROTT: Yes, sir.

24 THE COURT: All right you can be seated thank you.

25 Don't leave.

1 Yes, ma'am, your name and number?

2 A. I know the family, I know him.

3 THE COURT: Would that affect your ability to be fair
4 and impartial?

5 A. No.

6 THE COURT: Would you be able to base your verdict
7 solely on the law and the evidence in the trial?

8 A. Yes.

9 THE COURT: Ma'am, we didn't get your name.

10 A. Ada C. McRae.

11 THE COURT: Okay. Yes, sir, you name and number.

12 A. Michael Anthony, Juror Number One.

13 THE COURT: Do you know Mr. Blake?

14 JUROR MICHAEL ANTHONY: Yea.

15 THE COURT: Would that affect your ability to be fair
16 and impartial in this trial?

17 JUROR NUMBER ONE: No, sir.

18 THE COURT: Would you be able to base your verdict on
19 the law and the evidence?

20 JUROR NUMBER ONE: Yes, sir.

21 THE COURT: All right you can be seated then. All
22 right you will remain with us. Next have any of you been
23 represented by Mr. Boyd or anyone from the York County
24 Solicitor's Office, Sixteenth Circuit Solicitor's Office,
25 Mr. Kevin Brackett or formerly Mr. Tommy Pope? Or have any

1 of you been associated with the Solicitor's Office through
2 the Witnesses' Assistance as a witness of anything any
3 association whatsoever?

4 All right, yes, sir.

5 A. Justin Trapp. I was an intern for the Solicitor's
6 Office in '06, E.B. Springs.

7 THE COURT: All right, your name and number.

8 A. Justin Trapp, Number Two-Thirty Seven.

9 THE COURT: Would that affect your ability to be fair
10 and impartial in this trial?

11 JUROR JUSTIN TRAPP: No.

12 THE COURT: All right you can be seated.

13 Yes, ma'am, your name and number.

14 MADAME COURT REPORTER: I can't hear her, Judge, I'm
15 sorry.

16 THE COURT: You've got to speak up.

17 A. Marie Maynor, Number One-Forty Six. I was a victim of
18 a crime.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in this trial?

21 JUROR MARIE MAYNOR: No, sir.

22 THE COURT: Okay thank you. Are any of you members of
23 the Grand Jury which passed on this indictment at an
24 earlier time if so please stand? No one stands. Do any of
25 you know anything about this case; you heard about it from

1 any source whatsoever or have any of you formed or
2 expressed any opinion about any matter or issue which will
3 be resolved in this case if so please stand. No one
4 stands. Are any of you related by blood or marriage or are
5 you a close personal friend or acquaintance or are you
6 yourself involved in law enforcement at any level or in the
7 prosecution of criminal cases at any level; that is
8 anything from the MP's to the Judge Advocate General to
9 local sheriff, local police, district attorney, solicitor
10 or anything like that? Are any of you or yourself of any
11 relation to any of those if so please stand?

12 All right your name and number.

13 A. Jill Green, Number Ninety. My husband works in the
14 Sheriff's Department.

15 THE COURT: This is not a sheriff's case I don't
16 believe. I believe it's a City of Rock Hill case.

17 MR. SPRINGS: This is a Multi-Jurisdictional Drug
18 Enforcement Unit Case involving Rock Hill officers.

19 THE COURT: Okay. Well wait just a minute I'm
20 thinking. It takes me a while. All right I'm going to get
21 back to you in just a second.

22 Go ahead, your name and number.

23 A. My name is Anita Hall, I'm juror number Ninety-Five
24 and my son is on the Rock Hill Police force.

25 THE COURT: All right. I think I am going to excuse

1 both of you. Don't leave just have a seat because I
2 believe that relationship is such that I am going to ask
3 that you just have a seat both of you. Any of you members
4 of or contributors to organizations such as Student's
5 Against Drunk Drivers, Mother's Against Drunk Drivers,
6 Citizens Against Violence, Trooper's Association; Sheriff's
7 Association; the Paternal Order of Police, if so please
8 stand?

9 All right. Yes, sir, your name and number.

10 A. Number Nine, Beaver. Member of the Trooper's
11 Association.

12 THE COURT: Would that affect your ability to be fair
13 and impartial in the trial of this case?

14 JUROR NUMBER NINE: I don't believe so.

15 THE COURT: Okay. Thank you, you may be seated.

16 The following are possible witnesses in this case.
17 Officer Robert Cashier, Officer Mark Schurig, Officer Jim
18 Lubben, Special Agent Mike Doherty, Mr. Antwan Benjamin,
19 Ms. Cynthia Mitchum, Ms. Barbie Traylor. If you are
20 related by blood or marriage or if any of you are close
21 personal friends or acquaintances of any of those
22 individuals if so please stand? No one stands.

23 Have any of you - and I am not going to ask you to go
24 into great particulars about this because it would be
25 somewhat sensitive but I am going to ask you to stand if

1 you or a member of your family have been involved -- or
2 affected by might be a better way -- of the use of illegal
3 drugs, that is if some of your family has been prosecuted
4 or you have been affected by some crime that you felt was
5 related or a drug related offense, if so please stand? And
6 again I'm not going to ask you to tell me the particulars
7 because that would be somewhat personal so I am going to
8 ask you to just give me your name and number.

9 A. Brenda Hyatt Neal, Number One Eleven.

10 THE COURT: All right. Would that affect - the fact
11 that you are standing would that affect your ability to be
12 fair and impartial in the trial of this case?

13 JUROR BRENDA NEAL: It may.

14 THE COURT: All right. Well I'll excuse you from
15 serving just have a seat.

16 Yes, ma'am, your name and number.

17 A. Cynthia Carter, Number Thirty-Seven.

18 THE COURT: Would the fact that you're standing in
19 response to this question would that affect your ability to
20 be fair and impartial in the trial of this case?

21 JUROR CYNTHIA CARTER: No, sir.

22 THE COURT: All right. You will remain with us have a
23 seat. Thank you.

24 Do any of you have any philosophical, religious or
25 deep personal feelings or beliefs that would prevent you

1 from being fair and impartial in a trial such as this, if
2 so please stand? No one stands.

3 Anything further from the State?

4 MR. SPRINGS: Nothing from the State.

5 THE COURT: The Defense?

6 MR. BOYD: Nothing from the Defense, your Honor.

7 THE COURT: Do any of you know of any reason
8 whatsoever why you could not or should not serve as a fair
9 and impartial juror in the trial of this case, if so please
10 stand? No one stands.

11 Now the way we draw jury's in this court is as
12 follows. Please come forward, the Bailiff will be standing
13 there, if you come - if you hear your name called please
14 come forward and bring with you your personal belongings
15 that you may if it's a possibility of a coat, and stand
16 next to the Bailiff, turn around and face the table where
17 Mr. Springs is seated. He will say either present the
18 juror or excuse the juror. If he says excuse the juror you
19 may return to your seat. If he says present the juror turn
20 and face the table where Mr. Blake and his attorney are
21 seated. Mr. Boyd will say either excuse the juror which
22 again means you may return to your seat or swear the juror
23 which means you will take a seat in the jury box. The
24 Bailiff will tell you to have a seat and go over or have
25 how to situation yourself in the jury box.

1 Strikes five and five?

2 MR. SPRINGS: Yes, sir.

3 THE COURT: All right. Do both sides consent to the
4 clerk drawing the jury?

5 MR. SPRINGS: The State agrees.

6 MR. BOYD: Yes, sir.

7 THE COURT: All right. Your name and number again.

8 A. My name is Roosevelt Parrott, Junior.

9 THE COURT: Roosevelt what?

10 A. Parrott, Junior, Number One Eighty-Two.

11 THE COURT: Okay. Thank you. And the lady behind you
12 that had the relationship with law enforcement your name
13 again.

14 A. Anita Hall.

15 THE COURT: Okay. Thank you. The acoustics in here
16 aren't the best and I apologize for having to ask you to
17 stand again. All right please come forward if your name is
18 called.

19 MADAME CLERK: Number Two Thirty-Seven, Justin Trapp.

20 (NOTE: WHITE MALE.)

21 What say the State?

22 MR. SPRINGS: Please present the juror.

23 MADAME CLERK: Defense?

24 MR. BOYD: Please excuse the juror.

25 MADAME CLERK: You're excused from this case.

1 Number Sixty-Three, Christine Drutis.

2 (NOTE: WHITE FEMALE.)

3 MADAME CLERK: What say you for the State?

4 MR. SPRINGS: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. BOYD: Swear the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number Thirty-Seven, Cynthia Carner.

9 (NOTE: WHITE FEMALE.)

10 MADAME CLERK: What say you for the State?

11 MR. SPRINGS: Please present the juror.

12 MADAME CLERK: Defense?

13 MR. BOYD: Excuse the juror.

14 MADAME CLERK: You are excused from this case.

15 Number One, Michael Anthony.

16 (NOTE: BLACK MALE.)

17 MADAME CLERK: What say you for the State?

18 MR. SPRINGS: Please excuse the juror.

19 MADAME CLERK: You've been excused from this case.

20 Number One Eighty-Eight, Brenda Perrill.

21 (NOTE: WHITE FEMALE.)

22 MADAME CLERK: What say you for the State?

23 MR. SPRINGS: Please present the juror.

24 MADAME CLERK: Defense?

25 MR. BOYD: Excuse the juror.

1 MADAME CLERK: You've been excused from this case.

2 Number Nine, James Beaver.

3 (NOTE: WHITE MALE.)

4 MADAME CLERK: What say you for the State?

5 MR. SPRINGS: Present the juror.

6 MADAME CLERK: Defense?

7 MR. BOYD: Swear the juror.

8 MADAME CLERK: Please have a seat in the jury box.

9 Number One Fifty-Three, Ada McRae.

10 (NOTE: BLACK FEMALE.)

11 MADAME CLERK: What say you for the State?

12 MR. SPRINGS: Please excuse the juror.

13 MADAME CLERK: You've been excused from this case.

14 Number Eighty-Eight, Craig Grant.

15 (NOTE: WHITE MALE.)

16 MADAME CLERK: What say you for the State?

17 MR. SPRINGS: Please present the juror.

18 MADAME CLERK: Defense?

19 MR. BOYD: Swear the juror.

20 MADAME CLERK: Please have a seat in the jury box.

21 Number Thirty-Four, Steven Callahan.

22 (NOTE: WHITE MALE.)

23 MADAME CLERK: What say you for the State?

24 MR. SPRINGS: Please excuse the juror.

25 MADAME CLERK: You've been excused from this case.

1 Number Fifty-Nine, Ann Deesy.
2 (NOTE: NO RESPONSE.)
3 THE COURT: Ms. Deesy, Fifty-Nine.
4 (NOTE: WHITE FEMALE.)
5 MADAME CLERK: What say you for the State?
6 MR. SPRINGS: Please present the juror.
7 MADAME CLERK: Defense?
8 MR. BOYD: Swear the juror.
9 MADAME CLERK: Please have a seat in the jury box.
10 Number Ten, Thomas Began.
11 (NOTE: WHITE MALE.)
12 MADAME CLERK: What say you for the State?
13 MR. SPRINGS: Please present the juror.
14 MADAME CLERK: Defense?
15 MR. BOYD: Excuse the juror.
16 MADAME CLERK: You've been excused from this case.
17 Number One Eighty-Three, Gary Partlow.
18 (NOTE: WHITE MALE.)
19 MADAME CLERK: What say you for the State?
20 MR. SPRINGS: Please present the juror.
21 MADAME CLERK: Defense?
22 MR. BOYD: Swear the juror.
23 MADAME CLERK: Please have a seat in the jury box.
24 Number One Sixty-One, Shawanya Moise.
25 (NOTE: BLACK FEMALE.)

1 MADAME CLERK: What say you for the State?

2 MR. SPRINGS: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. BOYD: Swear the juror.

5 MADAME CLERK: Please have a seat in the jury box.

6 Number Sixty-Six, Nancy Edwards.

7 (NOTE: WHITE FEMALE.)

8 MADAME CLERK: What say you for the State?

9 MR. SPRINGS: Please present the juror.

10 MADAME CLERK: Defense?

11 MR. BOYD: Please excuse the juror.

12 MADAME CLERK: You've been excused from this case.

13 Strikes are three for the State and five for the

14 Defense. Number One Twenty-Eight, David La Roach.

15 (NOTE: WHITE MALE.)

16 MADAME CLERK: What say you for the State?

17 MR. SPRINGS: Please present the juror.

18 MADAME CLERK: Defense?

19 MR. BOYD: Swear the juror.

20 MADAME CLERK: Please have a seat in the jury box.

21 Number One Thirty-Two, William Lergen.

22 (NOTE: WHITE MALE.)

23 MADAME CLERK: What say you for the State?

24 MR. SPRINGS: Please present the juror.

25 MADAME CLERK: Defense?

1 MR. BOYD: Swear the juror.

2 MADAME CLERK: Please have a seat in the jury box.

3 Number Seventy-Nine, Karla Frey.

4 (NOTE: WHITE FEMALE.)

5 MADAME CLERK: What say you for the State?

6 MR. SPRINGS: Please excuse the juror.

7 MADAME CLERK: You've been excused in this case.

8 Number Two-Fifty, Beverly Zatur.

9 (NOTE: WHITE FEMALE.)

10 MADAME CLERK: What say you for the State?

11 MR. SPRINGS: Please present the juror.

12 MADAME CLERK: Defense?

13 MR. BOYD: Swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number One Seventy-Three, Christopher Neville.

16 (NOTE: WHITE MALE.)

17 MADAME CLERK: What say you for the State?

18 MR. SPRINGS: Please present the juror.

19 MADAME CLERK: Defense?

20 MR. BOYD: Swear the juror.

21 MADAME CLERK: Please have a seat in the jury box.

22 Number Two Forty-Seven, Marva Williams.

23 (NOTE: BLACK FEMALE.)

24 MADAME CLERK: What say you for the State?

25 MR. SPRINGS: Please present the juror.

1 MADAME CLERK: Defense?

2 MR. BOYD: Swear the juror.

3 MADAME CLERK: Please have a seat in the jury box.

4 Number One Forty-Six, Marie Maynor.

5 (NOTE: WHITE FEMALE.)

6 MADAME CLERK: What say you for the State?

7 MR. SPRINGS: Please present the juror.

8 MADAME CLERK: Defense?

9 MR. BOYD: Swear the juror.

10 MADAME CLERK: Please have a seat in the jury box.

11 THE COURT: Strikes on the alternate will be one and

12 two.

13 MADAME CLERK: Number One Twenty-Five, Rebecca Klein.

14 (NOTE: WHITE FEMALE.)

15 MADAME CLERK: What say you for the State?

16 MR. SPRINGS: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. BOYD: Excuse the juror.

19 MADAME CLERK: You've been excused in this case.

20 Number Sixty-Nine, Paul Fisher.

21 MR. BOYD: What number?

22 MADAME CLERK: Sixty-Nine.

23 What say you for the State?

24 MR. SPRINGS: Please present the juror.

25 MADAME CLERK: Defense?

1 MR. BOYD: Swear the juror.

2 MADAME CLERK: Please have a seat in the jury box.

3 THE COURT: Anything from the State regarding the
4 striking of the panel?

5 MR. SPRINGS: Nothing from the State?

6 THE COURT: Anything from Defense?

7 MR. BOYD: No, sir.

8 THE COURT: Those of you who were not chosen I am
9 going to allow you to leave and ask you to call back
10 tonight after seven and remember whatever instructions you
11 receive please follow them. I am going to ask you to leave
12 quietly so we can start working with this panel. Thank
13 you.

14 (NOTE: JURY POOL DISMISSED AT 12:30 P. M..)

15 THE COURT: Those of you who were chosen if you would
16 please stand. The Clerk is going to administer the oath
17 and when you sit down, Mr. Partlow, I am going to ask you
18 and Ms. Moise to swap seats and have you be the foreman.
19 In fact I'll go ahead and do that now.

20 MADAME CLERK: Could you all please raise your right
21 hand.

22 (WHEREUPON: JURY PANEL DULY SWORN AT 12:00 P.M..)

23 MADAME CLERK: You can be seated.

24 THE COURT: Members of the jury panel, I am going to
25 talk to you just for a few minutes and then we'll break for

1 lunch and when we come back the attorneys will have an
2 opportunity to come before you and make opening statements.
3 At that time they will not be arguing their case and they
4 are not witnesses so they will not be giving you testimony.
5 What they will be doing is giving you a blue print or a
6 roadmap of the trial. They will tell you what this trial
7 entails.

8 Mr. Blake has entered pleas of not guilty to these two
9 charges and that leaves those pleas of not guilty places on
10 the State the burden of proving his guilt beyond a
11 reasonable doubt. He Mr. Blake is presumed innocent of
12 both of these charges and he is so presumed until such time
13 as you in your deliberations in a later point in the trial
14 determine that the State has presented evidence which
15 convince you of his guilt beyond a reasonable doubt. I
16 have several jobs in this trial. I am the logistics person
17 to make sure we take breaks and things like eat lunch; one
18 person speaks at the time, the mechanical part. I also
19 rule on questions on the admissibility of evidence if one
20 individual or one side thinks certain evidence should come
21 into the record and the other for some legal reason thinks
22 it should not I am called upon to rule on that. I also am
23 the sole judge of the law. I am giving you some legal
24 principals now and I may give you some during the trial.
25 At the end of the trial I will give you a precise and

1 comprehensive charge on the law which you are to apply to
2 the facts as you determine them to be in this case.

3 It is solely up to you as the trial jury in this case
4 to examine the evidence and give to the evidence the effect
5 and the value or weight the truth you believe the evidence
6 should have. During this you may believe one witness as
7 opposed to several; several witnesses as opposed to one.
8 You may believe all or part of another witness's testimony.
9 In analyzing the evidence use your common sense, your sense
10 of logic, your experiences in life. As judges of the facts
11 you must judge the believability that is the credibility of
12 the witnesses who testify. In accessing believability use
13 the things we just talked about; use the things that you
14 find in your day to day life as indicators as to the
15 truthfulness of a person. And you can use certain
16 evaluators; how a witness acts on the stand, their
17 demeanor, are they hesitant or straight forward, is their
18 testimony consistent or inconsistent, do they have any bias
19 or prejudice that is do they desire to help or hurt one
20 side or the other. And you can consider the opportunity a
21 witness had to actually know those things to which the
22 witness testified. All these things you consider to
23 determine the true fact apply the law and you will be able
24 to render a verdict that speaks the truth.

25 Do not try to make up your own mind or discuss the

1 case before you reached the point in the trial where I
2 instruct you to jointly deliberate and return a unanimous
3 verdict. Prior to that time you are not equipped with all
4 the tools you need to make a fair and reasonable decision.
5 We will take breaks, don't let anyone discuss the case with
6 you, don't initiate a conversation with anyone about the
7 case, don't let anyone initiate a conversation with you.
8 If anyone does try to discuss this case with you tell you
9 cannot as you are serving as a juror and report that back
10 to me because I will have to take action against anyone
11 trying to discuss the case with a juror.

12 This case will probably go over into the morning so
13 over night or during lunch don't let yourself be exposed to
14 anything outside the courtroom. Don't watch anything,
15 listen to anything or read anything that could deal with
16 this trial. Anything that catches your eye or ear that
17 remotely deals with this trial don't let yourself be
18 exposed to it. Also do not do any independent
19 investigation. There is no need for you to go check out
20 the location in fact it would be wrong for you to do that.
21 Also don't go on the internet and try to find out anything
22 about the law or anything about controlled substances or
23 any of that because that would not be proper either for you
24 to do any fact finding or law finding or any investigation
25 but rather you have to rely on the evidence presented

1 during the trial.

2 If you can't see or hear let me know. You don't need
3 to take notes but cup your ear or give a voice raising
4 gesture or a nudging gesture and we will try to make sure
5 that you can see and hear. It's not fair to ask you to
6 resolve this matter and not let you see and hear what you
7 need to see and hear. We take breaks about every hour and
8 half. I find that's a good break time but if at any time
9 any of you need a break for any reason whatsoever just
10 raise your right hand and with no questions ask we will
11 take a break. It's hard to pay attention if you are not
12 comfortable and if you need a break we will take one and I
13 extend that to counsel and Mr. Blake.

14 We will usually start at 9:30 or so in the morning.
15 Tomorrow morning we won't be able to start until 10:00
16 because of a conflict. I am pretty sure we will go into
17 the morning. We try to stop around 5:30. It depends on
18 where we are with the witness. We may stop a little
19 earlier we may stop a little late. That will help you with
20 scheduling your time and scheduling about whether you will
21 be required to be here.

22 Anything else before the jury is sent to the jury
23 room?

24 MR. SPRINGS: Nothing from the State.

25 MR. BOYD: Nothing, your Honor.

1 THE COURT: All right. Mr. Foreman, you will be the
2 liaison between the jury and myself. You will preside over
3 the deliberations and ultimately sign the unanimous
4 verdict. I will let you go to lunch now but before you do
5 that I am going to let the bailiff direct you to the jury
6 room show you where it is let you go in and find your way
7 around. He will show you how to get in and out while you
8 are serving on the jury panel during this trial. And I
9 will ask you to be back at two o'clock and we will try to
10 start as promptly at two as we can so have a pleasant lunch
11 and we will see you around two o'clock.

12 (JURY PANEL DISMISSED FOR LUNCH AT 12:35 P. M..)

13 THE COURT: Anything from the State before we break
14 for lunch?

15 MR. SPRINGS: Yes, sir, I ask that Mr. Blake be taken
16 into custody since we started this trial?

17 THE COURT: Anything from the Defense?

18 MR. BOYD: Your Honor, I certainly -- I neglected to
19 say this during pretrial but I would ask that the witnesses
20 be sequestered.

21 THE COURT: We will sequester the witnesses and I will
22 require Mr. Blake to remain incarcerated until the end of
23 the trial. All right we will be at ease then until two
24 o'clock.

25 (DISMISSED FOR LUNCH AT 12:36 P.M. .)

1 (ON THE RECORD AT 2:10 P. M..)

2 THE COURT: Have a seat.

3 Is the State ready?

4 MR. SPRING: Yes, sir.

5 THE COURT: All right let's get Mr. Blake out.

6 (PAUSE.)

7 THE COURT: Bring in the jury.

8 (JURY ENTERING COURTROOM AT 2:12 P. M..)

9 THE COURT: Have a seat. It's not going to matter
10 that much but Mr. Fisher,

11 MR. FISHER: Yes.

12 THE COURT: Okay. Just stay where you are but from
13 now on - I should have talked to you earlier - the
14 alternate always sits at the very end but this gentleman is
15 seated wrong, that's Mr. Partlow's seat, that's the
16 foreman's seat and everyone else has no assigned seating
17 but we're not going to disrupt everything by changing
18 things. That's kind of the way we do things.

19 All right, Mr. Springs, do you want to make an opening
20 statement?

21 MR. SPRINGS: Thank you very much, Judge Hayes. May
22 it please the court.

23 Ladies and gentlemen of the jury, this is a drug
24 distribution case, crack cocaine. You have heard of crack
25 cocaine so I won't go into those issues. Derick Blake sold

1 some crack cocaine on February the 20th of this year 2008.
2 He was unlucky enough to sell it to a policeman informant a
3 police informant that was wearing a tape recorder. It was
4 not Derick Blakes lucky day. The case is very simple. We
5 will get right to it in just a minute and we won't waste a
6 minute of your time. And here is the case in a nut shell.
7 The narcotics unit, the county narcotics unit, the task
8 force caught a drug dealer; caught a petty drug dealer
9 named Antwan Benjamin. And similar to what you sometimes
10 see on TV the narcotics unit said Mr. Benjamin we have
11 caught you and would you like to help us and then we will
12 help you. And Mr. Benjamin being no fool said yea I'll
13 help you and he's helped them with their investigation.
14 And on February the 20th 2008 in the afternoon he called up
15 Derick Blake and said he wanted to buy and eight ball of
16 crack cocaine. An eight ball. Drugs are laid out in the
17 metric system for whatever reason you've heard about kilos
18 in the movies. A kilo is a thousand grams. An ounce, a
19 good ole American ounce that we are use to working with is
20 twenty eight grams. An eight ball is street slang drug
21 slang for an eigth of an ounce. It's about three and a
22 half grams. So the petty dealer they got caught Mr.
23 Benjamin called up Derick Blake and said I want to buy an
24 eight ball and they talked about the pricings, it depended
25 on the quality; it ended up being a hundred and fifty

1 dollars for an eight ball of crack cocaine. And you will
2 hear that an eight ball is about thirty dozes of crack to
3 an addict. It's about thirty dozes.

4 So Mr. Benjamin calls Derick Blake and sets it up. He
5 meets with narcotics officers they go over to the FBI
6 office; the FBI assisted on this. And very generously gave
7 Mr. Benjamin the money to go use in the deal providing Mr.
8 Benjamin with a hundred and eighty dollars because the
9 price is going to depend on the last minute quality of the
10 crack. It was going to vary somewhere from a hundred and
11 fifty to a hundred and eighty dollars for an eight ball of
12 crack. So Mr. Benjamin is over at the FBI office and the
13 local narcotics unit is there. One of the officers sits
14 right here Bob Cashier, York County Narcotic's Officer.
15 And they search Mr. Benjamin to make sure he is clean and
16 he doesn't have any drugs on him before he goes out to work
17 as an informant for them and to make sure he's not carrying
18 any weapons because they don't allow their informants to
19 carry weapons. They search the car he is going to drive
20 over there to make sure it's clean no drugs are in it no
21 weapons are in it. And then they do what you see on the
22 movies they put a tape recorder on him. A tape recorder
23 and a movie camera a very tiny movie camera that looks like
24 a button on his shirt. And Derick Blake is over at his
25 house over in the city of Rock Hill; Mr. Benjamin drives

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1 over there he meets with him they talk and it turns out Mr.
2 Blake is waiting for his connection to arrive. Mr. Blake
3 is going to be the middle man in that deal. And his
4 connection drives up; Mr. Benjamin is waiting, Derick Blake
5 walks around his house there in his yard and meets with his
6 connection and comes back to the police informant Mr.
7 Benjamin. He's got the crack and the deal becomes a
8 hundred and fifty dollars. And Mr. Blake gets a hundred
9 and sixty dollars from Mr. Benjamin and he doesn't have
10 change. So he gets twenty back and he says you owe me ten
11 bucks. He ends up getting a hundred and forty dollars out
12 of it. All the informant had was twenties. The case is as
13 simple as that. The informant goes to his house he's there
14 they meet in the yard. His connection drives up he goes
15 around the house and meets with that connection comes back
16 gives the police informant the crack. The police informant
17 gives him some money and the police informant comes back to
18 the FBI office and gives him the crack. The police had
19 been around the corner they followed him over there stopped
20 before he actually got in the yard so they wouldn't be seen
21 and then when he left they followed him back to the FBI
22 office he got the crack cocaine. This is the way they make
23 most of their cases. This is the way they catch somebody
24 in the act they send an informant over. The case is that
25 simple.

1 After you hear all of the evidence in this case you
2 will have no problem judging this man's behavior. That's
3 what you are going to judge. You are going to be like an
4 umpire. You look at his behavior. YOU are not going to
5 judge his sole or whether he's a nice person or a bad
6 person. Did he do this by hand? Did he sell that cocaine?
7 You will judge that and you will have no problem judging.
8 By the way there was a park right next to his house and
9 that's the second charge. It was well within a half mile
10 of his house. You will have no problem with that as well.
11 I thank you for your time.

12 MR. BOYD: Ladies and gentlemen, you are not judging
13 his behavior. You're judging whether he engaged in the
14 behavior to begin with. What happened in this case is that
15 well the first thing that Derick knows is that Antwan
16 Benjamin got caught. He got caught apparently distributing
17 some crack. As a result the law enforcement got a search
18 warrant and they default to another case another case
19 against him as a result of what they found in the search
20 warrant for possession of marijuana with intent to
21 distribute. So Mr. Benjamin has charges for distributing
22 crack -- not charges. Let me back up. He's got a
23 potential charge for distributing crack; a potential charge
24 for possession with intent to distribute marijuana so two
25 kinds of drugs and he's got a big problem. So they make

1 him an offer and he takes them up on the offer that he's
2 got to basically he's got to work with them as an under
3 cover informant. And he's got to basically produce for
4 them in order to keep himself out of jail and that's what
5 he does.

6 Now the thing about this case is he even goes to
7 Derick Blake's home on that occasion. There's no question
8 about that you will see it. What happens there is another
9 question. Antwan Benjamin is given a microphone or some
10 kind device to record - that records. He's also like Mr.
11 Springs says given some kind of camera that is hidden on
12 him and he has - Antwan Benjamin has no control over the
13 camera or angle of the camera but he does have control over
14 what he's able -- the angle that he has of what is shown on
15 the camera. And he also has control over the conversation
16 that he makes and where he wants to lead the conversation.
17 What you won't see on this tape is Derick Blake give any
18 crack cocaine to Antwan Benjamin. You will not see Antwan
19 Benjamin give any money to Derick Blake. That's going to
20 depend on the testimony of Antwan Benjamin as to what
21 happened. What you will see is there is a lot of
22 conversation about drugs and about people they know who
23 deal drugs. And Mr. Benjamin has Derick on a number of
24 occasions about where he can get drugs and how he can get
25 powder cocaine and various things he talks about. But I

1 submit to you what's on the tape that you will see is not a
2 distribution of crack from Derick Blake to Antwan Benjamin.

3 Now you will have an opportunity to see the tape and
4 you will have an opportunity to hear what was said. I ask
5 you to keep an open mind until you have heard all of the
6 evidence in this case because the first thing you've heard
7 Mr. Springs say Derick Blake distributed crack cocaine. It
8 sounds serious it is serious. It's a serious crime and it's
9 a serious crime to be accused of distributing within the
10 proximity of a public park. But the question is not
11 whether it's a bad thing to do. The question is not
12 whether it's a serious matter. The question is did he do
13 it or did he not do it.

14 And there's something in this country called the
15 presumption of innocence and what that means is it's up to
16 the State to prove to you as jurors that he did it. It's
17 not up to Derick Blake to come into this courtroom and
18 prove to you that he didn't do it and that's an important
19 distinction. In other words they have to prove he's
20 guilty. He doesn't have to prove to you that he is not
21 guilty. That's what the presumption of innocence means.
22 And you have heard about the presumption of innocence as
23 you've gone through life and you know you hear about it in
24 school and throughout your entire life. But you know our
25 natural inclination is when we hear that somebody's been

1 accused of something or hear that somebody has been accused
2 of something and say well they must be guilty or they've
3 got the person that did that. But you as the jurors have
4 to come into it with a blank slate. The board is clean.
5 The State has to come into here and prove to you that
6 Derick Blake distributed crack cocaine on February the 20th
7 of 2008.

8 And they have a certain burden of proof they have to
9 meet and that's what's called proof beyond a reasonable
10 doubt. It's not up to the Defense to prove or establish
11 reasonable doubt. It's up to the State to prove their case
12 beyond a reasonable doubt. Not feel suspicion of guilt,
13 not to a maybe he did it, not to a probability that he did
14 it but beyond any reasonable doubt in your mind. And under
15 our law if the State cannot reach that burden you have a
16 duty to render a verdict of not guilty.

17 The one thing Mr. Springs said that's absolutely
18 correct you are not judging Mr. Blake's moral character.
19 You are judging whether on this date he distributed crack
20 cocaine. Now you will hear some things on that tape and I
21 will tell you he's no angle. You will see on that tape
22 that on the tape he's using some marijuana right on that
23 tape. No question about he he was doing that. He was
24 using an illegal drug and we don't dispute that. We don't
25 dispute that he knew people that are dealers and they talk

1 about them on that tape. But we dispute the fact that he
2 was out there selling crack and we are disputing the fact
3 that on February the 20th 2008 he sold some crack to Antwan
4 Benjamin. I'm asking you right now to come into this case
5 with a blank slate and wait until you have heard all of the
6 evidence in this case. The natural inclination again is
7 the first thing you hear is what gets in your mind and you
8 have the tendency to just keep that in your mind and judge
9 something on the first impression. But it's important you
10 keep the slate clean and wait until you've heard everything
11 and then make up your mind after you've heard that and
12 after you've heard the law as the judge would give you.
13 And I submit after you've heard everything you will see
14 that the State has not proven guilt in this case beyond a
15 reasonable doubt and for that reason after you've heard
16 everything your verdict should be not guilty. Thank you.

17 THE COURT: Call your first witness.

18 MR. SPRINGS: We call Officer Robert Cashier.

19 MADAME CLERK: Please raise your right hand and place
20 your left hand on the Bible.

21 (WHEREUPON: OFFICER ROBERT
22 CASHIER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
23 FOLLOWS:)

24 MADAME CLERK: Thank you.

25 DIRECT EXAMINATION

1 OFFICER ROBERT CASHIER BY MR. SPRINGS:

2 Q. Officer, I'm going to ask you to keep your voice up
3 nice and loud so everyone can hear you and tell the jury
4 your name, sir.

5 A. Robert Cashier.

6 Q. Are you a police officer?

7 A. Yes I am.

8 Q. How many years have you been a police officer?

9 A. A little over eleven years.

10 Q. How many of those eleven years have you worked for
11 narcotics?

12 A. Over seven and a half years now.

13 Q. Are you part of the county task force known as the
14 Multi-Jurisdictional Drug Enforcement Unit?

15 A. Yes.

16 Q. Were you involved in a narcotics investigation on the
17 afternoon of February the 20th of this year?

18 A. Yes I was.

19 Q. And this investigation did it involve all law
20 enforcement officers or did you have any civilians
21 involved?

22 A. Yes we had a civilian involved.

23 Q. So one civilian?

24 A. Yes one civilian.

25 Q. And was that person working in any kind of official

1 capacity as a reserved police officer, a constable,
2 anything like an officer?

3 A. No, sir.

4 Q. What job, what role did that civilian have in the
5 investigation you did on the afternoon of February the 20th?
6 What was his primary job?

7 A. They were the person that was -- I guess the best way
8 to answer that they were the person that was helping set up
9 the deal and contact with the defendant Mr. Blake.

10 Q. Okay. And what was the deal for? What kind of drug?

11 A. Crack cocaine.

12 Q. And why would you use a civilian somebody's that's not
13 a law enforcement officer? Why use a civilian at all in
14 what surely is a dangerous job?

15 A. In cases like these drug investigations the person who
16 knows a drug dealer and knows somebody else obviously they
17 would be able to buy the drugs and be effective in doing
18 that job than somebody like myself who doesn't have
19 personal knowledge or a personal relationship with that
20 person. And being a smaller town like Rock Hill is I'm a
21 pretty well known guy to go up and like on TV sometimes and
22 everything it would be hard for me myself to go in and buy
23 drugs from them.

24 Q. All right. So you were going to use a civilian when
25 the civilian was to meet with Mr. Blake were you going to

1 be by his side with him at all the time?

2 A. No, sir.

3 Q. Was there any potential of risk to this civilian to do
4 that to go off on his own for you?

5 A. Yes definite.

6 Q. Did you give this civilian a gun for his own
7 protection?

8 A. No.

9 Q. Did you give him any kind of weapons?

10 A. No weapons at all.

11 Q. Did you give him any safety; did you do what you could
12 for his safety?

13 A. At that time absolutely yes.

14 Q. All right what if someone like this civilian -- let me
15 ask you, this civilian you used in this case what is his
16 name?

17 A. Antwan Benjamin.

18 Q. Why does a civilian somebody that's not a police
19 officer why would they help you? Why was he helping you?

20 A. He was helping us - he is someone what we call a
21 confidential informant. In his particular circumstance he
22 was caught. He was arrested for some other drug charges
23 and trying to gain leniency or for the hope of leniency on
24 those charges he cooperated with law enforcement.

25 Q. All right. He's already been convicted for drug

1 dealing has he not?

2 A. In the past yes.

3 Q. Would it be fair to say that you've had him pretty
4 well cornered?

5 A. Yes, sir.

6 Q. I'm curious. What are some of the other reasons that
7 civilian's non-police officers help you?

8 A. Civilians on occasion they contact us pretty
9 regularly. For money people do help us for money. They
10 get paid for their service for they help with us. Some
11 people are just concerned citizens in the neighborhood that
12 would contact us if they see activity going on like at a
13 neighbor's house or they hear about -- for example people
14 contact us and assist us in that way.

15 Q. Crime stopper's type?

16 A. Yes. Yea crime stopper's and anonymous tips calls to
17 the police.

18 Q. All right. Now after you called the informant Mr.
19 Benjamin did you make a deal with him? Tell us about that
20 discussion when you called him when you had him.

21 A. We spoke with Mr. Benjamin on the night that we called
22 him. He had indicated that he wanted to cooperate with law
23 enforcement. We followed normal protocol and he did assist
24 us. Based on that his charges are still pending.

25 Q. Did you make him any promises?

1 A. No.

2 Q. Now tell us about - you said you took his safety
3 seriously - tell us about the safety precautions. What
4 could you do? He was going by himself to meet Mr. Blake
5 what could you do to help keep him safe if possible?

6 A. There's a couple of different things that we do. We
7 involve several different officers there that are in
8 different vehicles trying to stay as close to the informant
9 as possible. It's a reactionary time and if something were
10 to happen we try to get to that vehicle and be able to get
11 to that person as rapidly as possible meaning we stay
12 close. Not so close that we would jeopardize the operation
13 or the actual drug deal by not going or going close enough
14 that we can get there quickly and effectively to try to
15 maintain this person's safety. It's very important. The
16 safety is very important to us. Another thing that we do
17 is we have a recording system that transmits actually a
18 transmitter that we put on a person that we can hear things
19 real time so we know what is occurring and what is going on
20 as things are going. If things start to sound bad we can
21 do a couple of different things to try to maintain this
22 person's safety. Sometimes we tighten the group to keep
23 them closer, tighten up the reactionary gap, or we can
24 contact the CI sometimes and have them forget the deal and
25 come on out. There's been times we've had to respond in

1 the middle of the deal because things weren't going good.

2 Q. How would you call him on his cell phone?

3 A. On his cell phone yes, sir.

4 Q. All right. So on this afternoon February the 20th as
5 you prepared the informant to assist you in this case the
6 Derick Blake case how did you get started? What were the
7 steps that you took to get him stated?

8 A. We had to give him the phone call.

9 Q. Don't tell us what was said but who the calls were to
10 or from do you know? To your own knowledge do you know who
11 the call was to or from?

12 A. No just what they said he told us. I don't know.

13 Q. All right. How many phone calls do you know of that
14 afternoon?

15 A. There was three phone calls that were made. One of
16 them was able to be recorded.

17 Q. You recorded one of the three?

18 A. Yes, sir.

19 Q. All right. Have you heard the tape recording?

20 A. Yes I have, sir.

21 Q. So phone calls were made and then what?

22 A. The informant told us that - -

23 Q. You can't tell us what he said but tell us what - -

24 A. Yes, sir. What it is - -

25 Q. Let me back up I forgot to ask you. The last phone

1 call where were you located when the last phone call came
2 in or went out?

3 A. We were in the FBI office Agent Doherty's office.

4 Q. Is that in Rock Hill?

5 A. It is.

6 Q. Was Mr. Benjamin there with you?

7 A. Yes.

8 Q. Did he speak on the phone?

9 A. Yes he did.

10 Q. Which call of the three did you record?

11 A. The last phone call.

12 Q. Okay. At the FBI office?

13 A. Yes, sir.

14 Q. Okay. So that call was made and then what did you do
15 to prepare him?

16 A. The confidential informant was searched, his vehicle
17 was searched. He was provided with identifiable government
18 funds of a hundred and eighty dollars. We placed
19 surveillance equipment on him. A video system and a radio
20 transmittal system was placed on his person.

21 Q. Is that the one that you can hear from your radio?

22 A. Yes that's a transmitter that goes right to our
23 radios. Everybody that's involved in the operation can
24 hear real time what's going on.

25 Q. So you searched him?

- 1 A. Yes thoroughly.
- 2 Q. You say you searched the car?
- 3 A. Yes we searched his car thoroughly.
- 4 Q. Did he have any drugs or guns or knives or bazookas?
- 5 A. No he doesn't have any of that. Any time we've
- 6 actually had incidences in the past that informant's have
- 7 come to investigations or come to operations they've
- 8 actually had drugs concealed on themselves or some remnants
- 9 of drugs in their vehicles. They understand that -- they
- 10 are charged for that so we search them completely before
- 11 and after an operation. We search their vehicles before
- 12 and after every operation.
- 13 Q. Would you continue using an informant that had drugs
- 14 or a weapon on them?
- 15 A. Absolutely not.
- 16 Q. You would stop - you would stop the deal?
- 17 A. Yes.
- 18 Q. All right so you search him and you search the car and
- 19 you gave him I think you said a hundred and eighty dollars?
- 20 A. Yes, sir.
- 21 Q. Whose money was that?
- 22 A. Agent Daughtry, FBI Agent Daughtry.
- 23 Q. Tell us about what else you did in the way of wiring,
- 24 body wires, electronics, what else?
- 25 A. There is a wired recorder and a video transmitter or a

1 video recorder.

2 Q. A movie camera?

3 A. Yea a movie camera.

4 Q. Was it obvious to somebody looking at Mr. Benjamin
5 that he was wearing a video camera?

6 A. No it's not like what people see on TV. It's not like
7 that at all but it's the best we can do.

8 Q. You've got me curious now. Tell me about the camera.
9 How big is it?

10 A. It's small. It's really small. It's placed on the
11 person.

12 Q. Is there sound to go with the movie that the camera
13 makes?

14 A. Yes it's audio and video.

15 Q. Okay. So you search him and give him the money; the
16 FBI gives him the money. You wire him up; you put a movie
17 camera on him and then where did he go? Do you know?

18 A. Yes. We followed him to Mr. Blake's house.

19 Q. Okay. What street does Mr. Blake live on?

20 A. Well his drive way is on Vine Street but his actual
21 physical address is Street.

22 Q. Lige Street, L-i-g-e.

23 A. Yea. I'm sorry, I apologize.

24 Q. All right. If you would come down here and we have an
25 aerial photograph. Do you recognize what's depicted in

1 that aerial photograph?

2 A. Yes.

3 Q. And could you point out to the jury Mr. Derick Blake's
4 house?

5 A. Yes. It's right here.

6 Q. Okay. Are there any public parks anywhere near that
7 house?

8 A. Yes. This is a public park that's right here. This
9 is a ball field; a little sand pit area, a pavilion. This
10 is the parameter of the park that comes around it and
11 connects to the back of the residence.

12 Q. Is that a public park?

13 A. Yes it is.

14 Q. What is it called?

15 A. Lige Street Park.

16 Q. And where is Derick Blake's house?

17 A. It's right here.

18 Q. Do the two properties butt together?

19 A. Yea right there.

20 Q. So going to the edge of Derick Blake's lot furthest
21 from that park the furthest part of his house lot from that
22 park would it be closer or further than that big bronze
23 statute of a police officer out in that parking lot?

24 A. I would say closer.

25 Q. Closer than that?

- 1 A. Yea.
- 2 Q. Would you estimate it in yards?
- 3 A. I mean it's the back yard touches - -
- 4 Q. The furthest part of his lot.
- 5 A. Probably forty.
- 6 Q. Forty yards?
- 7 A. Yes.
- 8 Q. All right you can put the pointer up. So did you and
- 9 the FBI and the informant discuss what the plan was, what
- 10 Mr. Benjamin was to do for you?
- 11 A. Yes absolutely.
- 12 Q. And the plan was he was to do what? Let's spell it
- 13 out and make it real clear. What was the plan you had for
- 14 Mr. Benjamin in this investigation?
- 15 A. He was to go to Mr. Blake's house and meet with Mr.
- 16 Blake where he was going to purchase approximately an eight
- 17 ball of crack.
- 18 Q. Now an eight ball describe for the jury what that
- 19 means. It's obviously some kind of slang word. What is
- 20 it?
- 21 Q. It's common jargon for drug sales. It's an eight
- 22 ball, it's an eighth of an ounce which is three and a half
- 23 grams approximately.
- 24 Q. All right.
- 25 A. It's pretty common terminology especially in dealing

1 with crack.

2 Q. And how many years did you say you had worked

3 narcotics?

4 A. Seven and a half.

5 Q. Have you worked very many crack cocaine cases?

6 A. Yes. Unfortunately we have an abundance of crack.

7 Q. All right. And have you become familiar with what

8 here in York County where you work what is the typical

9 intoxicating dose is for a crack addict trying to get this
10 hit, these drugs?

11 A. Typically a one rock of crack is one tenth to two
12 tenths of a gram.

13 Q. Okay. And an eight ball what are the grams again?

14 A. Three and a half grams.

15 Q. Three point five?

16 A. Yes, sir.

17 Q. And a hit dose could be one tenth of the point two?

18 A. Yes, sir.

19 Q. Thirty-five or seventeen to thirty-five doses in an
20 eight ball?

21 A. Yes, sir, typically.

22 Q. What does a dose or hit of crack cocaine typically
23 cost out on the corner of a street here in York County?

24 A. Twenty dollars.

25 Q. And what are the slang terms for that intoxicating

- 1 dose?
- 2 A. A dove or a twenty.
- 3 Q. So did Mr. Benjamin leave the FBI office?
- 4 A. Yes, sir, he did.
- 5 Q. And was he alone in his car he was driving?
- 6 A. Yes, sir.
- 7 Q. Did any of you officer's follow?
- 8 A. Yes, sir.
- 9 Q. And did he in fact go to Derick Blake's house?
- 10 A. Yes, sir.
- 11 Q. How close did you go to the house?
- 12 A. We rode as close as we could get to them right where
- 13 Lyge Street comes in.
- 14 Q. Can you point at it?
- 15 A. I can.
- 16 Q. Please take the pointer and point it out. Start with
- 17 once again where is his house?
- 18 A. Right here is Mr. Blake's house.
- 19 Q. How close did you get?
- 20 A. Without compromising the operation this is Lyge Street
- 21 it comes here. This is Heckle, this is Saluda right here.
- 22 See I turned off of Saluda and came down Lyge Street. As
- 23 the CI passed here we were behind him. We made this turn
- 24 and went back onto Heckle Boulevard. Because of that area
- 25 and because our vehicle are pretty well known and I am a

1 pretty well known person it's pretty difficult for us to
2 hang around in an area like this. This is an area where we
3 make a lot of drug investigations so it's pretty difficult
4 for us to try to blend and hide in this area. So as he was
5 getting to the driveway we kind of peeled off.

6 Q. And did you have him in sight all the way from the FBI
7 office to that point?

8 A. Yes, sir.

9 Q. All right. All right thank you. Retake your seat
10 please.

11 A. Thank you.

12 Q. Now the real time transmitter that went to your radio
13 was it working? Could you hear it?

14 A. Yes, sir.

15 Q. And during the course of the operation was there any
16 problems or any danger or anything come up?

17 A. No. Things went smoothly.

18 Q. And you could hear what was going on?

19 A. Yes, sir.

20 Q. How long would you estimate -- I know this is a guess
21 but how long would you guestimate he was there at Derick
22 Blake's residence?

23 A. I would say probably approximately thirteen minutes.
24 Thirteen minutes, twelve to fifteen minutes.

25 Q. And then did he leave?

- 1 A. Yes.
- 2 Q. And did you regain your view of him?
- 3 A. Yes. He was followed back to the FBI office.
- 4 Q. Okay. On the trip to the FBI office or over you said
- 5 you had him in sight the whole time. Did he stop, did he
- 6 run in a grocery store, did he make any stops?
- 7 A. No. If he had we would have just stopped the
- 8 operation immediately.
- 9 Q. Okay. Coming back to the FBI office did he stop and
- 10 run into a convenient store or did he not?
- 11 A. No he did not.
- 12 Q. He made no stops?
- 13 A. From point A to point B and back to point A.
- 14 Q. Now you pointed to Derick Blake's house a couple of
- 15 times. Is his entire house in York in the County of York?
- 16 A. Yes, sir.
- 17 Q. Now you said you put a movie camera on him. Did you
- 18 make a movie?
- 19 A. Yes it did.
- 20 Q. Have you seen it?
- 21 A. Yes, sir.
- 22 Q. Do you know who Derick Blake is?
- 23 A. Yes, sir.
- 24 Q. I would ask you to please look around this room. If
- 25 you see Derick Blake please point him out for the jury.

OFFICER ROBERT CASHIER: DIRECT EXAMINATION BY MR. SPRINGS
CROSS EXAMINATION BY MR. BOYD

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1 A. He's sitting right there at the table in the black
2 shirt.

3 Q. Let the record show that Officer Cashier is pointing
4 to the Defendant Derick Tyrone Blake.

5 Thank you, Officer, please answer any questions Mr.
6 Defense Attorney has for you.

7 A. Certainly.

8 CROSS EXAMINATION

9 OFFICER ROBERT CASHIER BY MR. BOYD:

10 Q. Officer Cashier, you said that Mr. Benjamin had been
11 or Antwan Benjamin had been basically caught with the
12 distribution -- you said it was some drug charges is that
13 correct?

14 A. Yes, sir.

15 Q. Actually he was caught with a distribution of crack is
16 that correct?

17 A. No it wasn't those charges. He was not charged with
18 distribution.

19 Q. I understand he wasn't charged he was actually though
20 a buy was made from him, an undercover buy is that correct?

21 A. Yes, sir.

22 Q. Okay. And as a result you all also obtained a search
23 warrant is that correct?

24 A. Yes, sir.

25 Q. Okay. And you developed from the search warrant a

1 potential case for distri -- for possession of marijuana
2 with intent to distribute, is that correct?

3 A. Yes, sir, that's correct.

4 Q. Okay. And I believe Mr. Spring's ask you he had also
5 been in trouble in the past for drugs, is that correct?

6 A. Yes, sir, he had prior convictions.

7 Q. He had prior conviction for among other things for
8 distribution of crack cocaine, is that correct?

9 A. Yes, sir.

10 Q. Okay. So he was in a lot of trouble, is that correct?

11 A. He was in serious circumstances.

12 Q. Okay. And as a matter of fact has he ever been
13 charged with that distribution of crack that we referred to
14 a second ago?

15 A. No.

16 Q. Okay. Does he have any pending charges at this time?

17 A. He does.

18 Q. And what are those for?

19 A. That would be the PWID Crack. I'm sorry, the crack --
20 the marijuana. PWID marijuana we recovered from his house
21 five grams of marijuana

22 Q. Okay.

23 A. And I believe it was point zero one grams of crack.

24 Q. Okay. So that's a pending charge at this time?

25 A. Those are pending.

1 Q. But he has not been to court for those charges at this
2 point?

3 A. No, sir.

4 Q. And basically he agreed to work with you as other
5 informants have done in the past, is that correct?

6 A. Yes, sir.

7 Q. And basically when you work with an undercover
8 informant you actually have a written contract with the
9 informant. Is that generally the case?

10 A. Yes, sir.

11 Q. Okay. And basically the job for lack of a better word
12 of under - of the informant you will send the informant out
13 to make buys and that type of thing, is that correct?

14 A. Yes. This doesn't get you to the drug dealers.

15 Q. And you mentioned the reason people volunteer to do
16 things for the drug unit you said some people do it for
17 money, is that correct?

18 A. That is yes, sir.

19 Q. That wasn't the case with Mr. Benjamin?

20 A. No, sir.

21 Q. And some people do it as a concerned citizen, is that
22 correct?

23 A. Yes, sir.

24 Q. And that certainly wasn't the case with Mr. Benjamin
25 was it?

1 A. No, sir.

2 Q. And in fact Mr. Benjamin was basically doing it hoping
3 that he would get something in return, is that correct?

4 A. Leniency yes, sir.

5 Q. Basically some hope of leniency on the charge and the
6 potential charge you could have made on him?

7 A. Yes that's correct.

8 Q. Okay. The -- now he in setting up a deal basically is
9 that supposed to be done by an informant? Let me word it
10 like this. Is the informant supposed to go out and do
11 things on his own or is it all supposed to be controlled?

12 A. Do you mean - -

13 Q. Well is the informant supposed to set up a deal on his
14 own?

15 A. Preliminarily it's very common we have informants
16 though to call people that they know that they've already
17 given us information about that they know to say you know
18 ha do you have any drugs today or something like that.
19 That's pretty common. We maintain a conversation and
20 contact with those informants while they do that. But they
21 are not allowed absolutely in no way to go over to someone
22 else's house and buy drugs unless they are working with us
23 directly if we are there and they've been searched before
24 and after.

25 Q. Okay. So basically Mr. Benjamin can say to you I

1 think I can buy drugs from this person and come to you and
2 you all will help him. You will set up the equipment and
3 give him the means to try to that, is that correct?

4 A. Yes, sir, that's correct.

5 Q. Now you mentioned before the reason you perform
6 searches is you have actually had informants before that
7 have shown up to make a deal and you've discovered drugs on
8 them, is that correct?

9 A. Yes in their vehicles. Usually it's in their vehicles
10 yes, sir.

11 Q. And it's usually in their vehicles. Thank you. And
12 as far as the search you did on Mr. Benjamin did you all
13 actually have him take off his clothes and do a full strip
14 search of him?

15 A. No we don't do strip searches. We search - we search
16 the informants as thoroughly as we search suspects on the
17 street or suspects after being arrested.

18 Q. Okay.

19 A. We search them as thoroughly as we can when we find
20 crack on them.

21 Q. And basically that involves a pat down of their
22 clothes is that correct?

23 A. Yes.

24 Q. Searching in their pockets is that correct?

25 A. Checking in their you know the groin area, pockets, or

1 mouths, hats if their wearing hats.

2 Q. But you don't ask them to pull down their pants or
3 anything like that?

4 A. No we don't.

5 Q. Okay. And you didn't do that in Mr. Benjamin's case?

6 A. No, sir.

7 Q. Okay. Now as far as the car Mr. Benjamin drove to Mr.
8 Blake's residence in his own car, is that correct?

9 A. Yes, sir.

10 Q. And he drove that car to the FBI office too is that
11 correct?

12 A. Yes, sir.

13 Q. Okay. According to some records I was given by Mr.
14 Springs in discovery -- I'm not sure I have the time but do
15 you remember what time Mr. Blake arrived at the FBI office?

16 A. Mr. Benjamin?

17 Q. I'm sorry Mr. Benjamin yes.

18 A. I don't recall that off the top of my head.

19 Q. Now it looks like Mr. Benjamin a camera was placed on
20 him, is that correct?

21 A. Yes, sir.

22 Q. And a listening device. And then Mr. Benjamin -- you
23 and I believe Agent Doherty went out to search the car, is
24 that correct?

25 A. Yes, sir.

- 1 Q. Okay. And according to the taped I've reviewed - I
2 ask if this is correct - it looks like there is a search of
3 car it lasted approximately two minutes and eighteen
4 seconds. Would that be approximately correct?
- 5 A. Yea it could be.
- 6 Q. And I believe Mr. Benjamin makes a comment to you all
7 at some point my car is pretty messy, is that correct?
- 8 A. It typically didn't have a lot of stuff in it but yea
9 its dirty with papers in it or something like that.
- 10 Q. Was this the first deal Mr. Benjamin had worked for
11 ya'll?
- 12 A. No, sir.
- 13 Q. It was not.
- 14 Q. No it wasn't.
- 15 Q. So he was familiar with what goes on and how things
16 work with you all.
- 17 A. Yes, sir.
- 18 Q. Okay. So he had done other deals for you before this?
- 19 A. He's cooperated with us before yes, sir.
- 20 Q. One of the things that was done with Mr. Benjamin he
21 was given marked money, is that correct?
- 22 A. Yes, sir, identifiable.
- 23 Q. And that was by serial number?
- 24 A. Typically yes, sir.
- 25 Q. All right. And the - so he was given a hundred and

1 eighty dollars in marked money?

2 A. Yes, sir.

3 Q. All right. And he was -- you followed him to the area
4 where Mr. Blake lives, is that correct?

5 A. Yes, sir.

6 Q. And when Mr. -- I believe you stated you turned off on
7 a side street and went down to Heckle Boulevard as he got
8 near the Blake residence.

9 A. As he was pulling into the driveway.

10 Q. When you got onto Heckle I assumed you just didn't
11 park on Heckle.

12 A. No.

13 Q. Not a good idea.

14 A. No.

15 Q. Did you ride back or did you ride around in the area?

16 A. Yes. We stay as close as we can of course without
17 compromising the operation.

18 Q. And you say we. Were there other officers in other
19 cars in the vicinity?

20 A. Yes, sir.

21 Q. Okay. And where were they located?

22 A. I don't know where they were at, sir.

23 Q. Were they following you with -- you were behind the
24 Benjamin vehicle - - -

25 A. Yes, sir.

1 Q. - - - is that correct? Were they behind you the other
2 officers?

3 A. Typically the officers can go different routes. They
4 can go different ways to get there be it before us or
5 after. I don't know if they were following directly behind
6 us or not, sir.

7 Q. You don't remember in this particular case?

8 A. I don't, sir.

9 Q. How many cars were there going to the area?

10 A. I believe two be it two of our like police cars with
11 two two-men vehicles.

12 Q. Okay. So there was you and who was with you Officer
13 Shirley?

14 A. Officer Shirley yes, sir.

15 Q. Okay. And then who was then in the other car?

16 A. I believe Officer Lubben and Officer Schurig were
17 together. I don't recall. I don't recall.

18 Q. Okay. And you wasn't able to actually observe the
19 contact between Derick Blake and Antwan Benjamin, is that
20 correct?

21 A. Other than the video no, sir.

22 Q. Okay. You didn't actually see Derick Blake on that
23 occasion?

24 A. No not real time no. Not before seeing the video no,
25 sir.

1 Q. I believe Mr. Blake wasn't arrested on these charges
2 on that date this date February the 20th was he?

3 A. No, sir.

4 Q. It was some time a pretty good time later, is that
5 correct?

6 A. Yes, sir.

7 Q. All right. So you didn't go in and immediately do a
8 search of his residence or anything of that nature?

9 A. No, sir.

10 Q. Okay. You didn't recover any marked money from him is
11 that correct?

12 A. No, sir.

13 Q. When you got back to the FBI office you followed
14 Benjamin back at that point, is that correct?

15 A. No, sir.

16 Q. You did not?

17 A. No. Myself and Officer Schurig actually tried to find
18 the other vehicle that was involved in the deal. You will
19 hear them describe a black car that meet Mr. Blake
20 supposedly meet with. We tried to intercept and get that
21 vehicle identified.

22 Q. Okay.

23 A. Officer Lubben actually followed and was with the
24 officer that followed the confidential informant back to
25 the FBI office.

OFFICER ROBERT CASHIER: CROSS EXAMINATION BY MR. BOYD
REDIRECT EXAMINATION BY MR. SPRINGS

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1 Q. Okay. So you were looking for a black car?

2 A. Yes, sir, the vehicle.

3 Q. Did you find a black car?

4 A. No we did not.

5 Q. All right. If you will indulge me one moment.

6 Thank you that's all the questions I have.

7 THE COURT: Redirect?

8 MR. SPRINGS: Just one follow up.

9 REDIRECT EXAMINATION

10 OFFICER ROBERT CASHIER:

11 Q. Officer Cashier, you said you waited some days a good
12 while before you arrested Derick Blake for this. What's
13 the advantage to you and or the informant to wait some
14 days?

15 A. This particular confidential informant was involved in
16 several large investigations. To arrest Mr. Blake
17 immediately would have potentially restricted his ability
18 to help us catch these other folks.

19 Q. Burn him?

20 A. Yes. It would heat him up and people would know that
21 he had cooperated with law enforcement. Once that happens
22 it's obviously very difficult for him to cooperate with us
23 any further.

24 Q. All right thank you. Nothing else.

25 MR. BOYD: That's all.

1 THE COURT: You can step down. Thank you.

2 OFFICER CASHIER: Thank you, sir.

3 THE COURT: Call your next witness.

4 MR. SPRINGS: Mr. Cashier, would you step out and
5 bring in Mr. Benjamin?

6 OFFICER CASHIER: Absolutely.

7 MR. SPRINGS: Come around here up to the Clerk she has
8 a bible.

9 THE CLERK: Please raise your right hand and place
10 your left hand on the bible.

11 (WHEREUPON: ANTWAN BENJAMIN,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 ANTWAN BENJAMIN BY MR. SPRINGS:

15 Q. Good afternoon. I am going to ask you, sir, to keep
16 your voice up nice and loud so everyone including old folks
17 including older folks like myself can hear you. Sort of
18 speak toward the microphone and tell this jury your name,
19 sir.

20 A. My name is Antwan Benjamin.

21 Q. Are you a police officer?

22 A. No, sir.

23 Q. Have you helped the police out?

24 A. Yes, sir.

25 Q. Have you been a drug dealer in the past?

1 A. Yes, sir.

2 Q. Did the narcotics unit catch you selling some drugs?

3 A. Yes, sir.

4 Q. And did you agree to assist them in their
5 investigations after they caught you?

6 A. Yes, sir.

7 Q. And did you help them?

8 A. Yes, sir.

9 Q. What kind of a deal or promise did they make you when
10 they caught you? Did you make a deal with them?

11 A. There was no deal made, sir.

12 Q. What were you hoping was going to happen -- well you
13 still hope is going to happen?

14 A. Maybe for some kind of leniency in my pending case.

15 Q. Mr. Benjamin, do you know somebody named Derick Blake?

16 A. Yes, sir.

17 Q. How long have you known Derick Blake?

18 A. For about seven or eight years.

19 Q. So for those seven or eight years you met with him and
20 talked with him face to face?

21 A. Yes, sir.

22 Q. I am going to ask you things that happened on February
23 the 20th of this year in the afternoon. Did you set up a
24 drug deal that afternoon for the police?

25 A. Yes, sir.

- 1 Q. Who did you set it up with?
- 2 A. With Derick Blake.
- 3 Q. Deals have a buyer and seller and in the deal you set
- 4 up with the police were you going to be the person selling
- 5 drugs or the person that was going to buy drugs?
- 6 A. I was going to be buying the drugs.
- 7 Q. So in the afternoon of February the 20th starting the
- 8 first of the afternoon did you have a phone call with
- 9 someone?
- 10 A. Yes, sir.
- 11 Q. Who was that?
- 12 A. It was Derick Blake.
- 13 Q. And what did you and Derick Blake talk about in that
- 14 first phone call?
- 15 A. In our initial phone call we discussed the prices and
- 16 the value of an eight ball.
- 17 Q. And what was the price range going to be do you
- 18 recall?
- 19 A. Between a hundred and fifty and a hundred and eighty
- 20 bucks.
- 21 Q. Now that first call that you made or had with Derick
- 22 Blake did you call him or did he call you on that first
- 23 call do you recall?
- 24 A. On the initial phone call I called him, sir.
- 25 Q. Okay. Was it on a cell phone? Were you using a cell

1 phone?

2 A. Yes, sir.

3 Q. Then you with the police at that point in the first
4 call?

5 A. No, sir.

6 Q. Was the first call tape recorded?

7 A. No, sir.

8 Q. Okay. And after that first call did you meet up with
9 the police the narcotics unit?

10 A. Yes, sir.

11 Q. And while you were meeting with them did you receive a
12 phone call on your cell phone?

13 A. Yes, sir.

14 Q. This would be the second call. Who was that from?

15 A. It was from Mr. Blake.

16 Q. Had the unit the narcotics folks had they set up their
17 tape recorders and such when that call came in?

18 A. Yes, sir.

19 Q. The second call?

20 A. Yes, sir.

21 Q. All right. And did you talk to Derick Blake?

22 A. Yes, sir.

23 Q. All right. And was there another call a third call?

24 A. Not that I can remember, sir.

25 Q. All right. The last call that was made was it tape

- 1 recorded?
- 2 A. Yes, sir.
- 3 Q. Have you heard the tape recording?
- 4 A. Yes, sir, I have.
- 5 Q. And then you said in the first call that you had with
- 6 Derick Blake you discussed the price of an eight ball of
- 7 crack a hundred and fifty to a hundred and eighty dollars.
- 8 In the other call what did you talk about in that call?
- 9 A. We talked about a regular time and a place to meet up
- 10 to make the deal happen.
- 11 Q. All right. Was it going to be that same day or some
- 12 other day?
- 13 A. No, sir, it was going to be the same day.
- 14 Q. Was it going to very soon or hours and hours away?
- 15 A. Very soon.
- 16 Q. Do you remember approximately how soon it was supposed
- 17 to come down?
- 18 A. About ten minutes after the second phone call came in.
- 19 Q. I am going to show you a tape recording that's been
- 20 marked State's Exhibit One for identification. Do you
- 21 recognize that tape?
- 22 A. Yes, sir, I do.
- 23 Q. Is that the phone call?
- 24 A. Yes, sir.
- 25 Q. Have you heard the tape?

1 A. Yes, sir, I have.

2 Q. And is it a true and accurate recording of the phone
3 conversation that last conversation you had with Derick
4 Blake?

5 A. Yes, sir.

6 Q. Nothing

7 A. No, sir.

8 Q. Your Honor, we do offer State's Exhibit One into
9 evidence and we would like to publish it.

10 MR. BOYD: No objection.

11 THE COURT: Will be received without objection.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE MARKED AND
13 IDENTIFIED, ENTERED INTO EVIDENCE.)

14 BY MR. SPRINGS:

15 Q. Is it real nice and clear like on TV shows?

16 A. It's fairly clear.

17 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY.)

18 Q. That's it. You set it up from about ten minutes from
19 that phone call?

20 A. Yes, sir, that phone call.

21 Q. So did the police do some things to get you ready for
22 that meeting with Mr. Blake?

23 A. Yes, sir, they did.

24 Q. Did they search you?

25 A. Yes.

- 1 Q. Did they search your car?
- 2 A. Yes, sir.
- 3 Q. Were you clean? No guns, no drugs?
- 4 A. Yes, sir.
- 5 Q. And did they put a wire on you at some time?
- 6 A. Yes, sir they did.
- 7 Q. And did they give you any money?
- 8 A. Yes, sir.
- 9 Q. Do you recall how much money they gave you?
- 10 A. One hundred and eighty dollars marked.
- 11 Q. What denomination bills ten's, twenties, five's or a
- 12 mixture do you remember?
- 13 A. Twenties, sir.
- 14 Q. And how much dope were you to buy from Derick Blake
- 15 that was the deal you had set up on the phone with him?
- 16 A. An eight ball.
- 17 Q. Okay. So did you go ahead and get in your car and
- 18 head out for Mr. Blake's house?
- 19 A. Yes, sir.
- 20 Q. And did you drive straight on over there?
- 21 A. Yes, sir, I did.
- 22 Q. And when you first got there who did you see first
- 23 when you got there?
- 24 A. I seen Mr. Blake.
- 25 Q. Okay. And did you go up and talk to him?

- 1 A. Yes, sir.
- 2 Q. And did he have drugs for you at that point?
- 3 A. No, sir, he didn't.
- 4 Q. Why not?
- 5 A. He was waiting for somebody else to bring them to him.
- 6 Q. Okay. And did you have to wait a long time for that
- 7 to happen?
- 8 A. No, sir, not really. It didn't take very long.
- 9 Q. All right. Tell us about when that person arrived
- 10 what did you -- what did -- where were you and when the
- 11 other person arrived what did you see about where Mr. Blake
- 12 went and the other person and their car? Tell us about
- 13 that.
- 14 A. Well I was more at the back side of the yard. When
- 15 the other person arrived Mr. Blake left my field of vision
- 16 and went around the house and I got into my car and then he
- 17 came back with the drugs in his hand.
- 18 Q. Okay. All right. Did you get out of the car or did
- 19 you stay in the car?
- 20 A. No, sir, I stayed in the car.
- 21 Q. Okay. All right. And what anatomy of your body was
- 22 the lens of the camera was, do you recall?
- 23 A. Somewhere around the middle of my chest.
- 24 Q. Okay. So you moved it?
- 25 A. Yes, sir.

1 Q. Up, down and left and right?

2 A. Yes, sir.

3 Q. When he came back with the drugs did you give him some
4 money?

5 A. Yes, sir. He handed me the drugs and I took a look at
6 them and agreed top what I saw and handed him some money.

7 Q. All right. What was the final price?

8 A. It would have been a hundred and fifty dollars.

9 Q. Okay. We talked about that little movie camera you
10 were wearing. Did it in fact make a movie?

11 A. Yea it made a pretty decent video, sir.

12 Q. All right. Have you watched the movie yourself?

13 A. Yes, sir.

14 Q. I'm showing you what's been marked State's Exhibit Two
15 for identification. Do you recognize that video disc?

16 A. Yes, sir.

17 Q. Is that the movie that your little hidden camera made?

18 A. Yes, sir.

19 Q. Is it a true and accurate movie picture and sound of
20 what you were hearing and seeing with your own eyes and
21 ears that day?

22 A. Yes, sir, it is.

23 Q. We do, your Honor, offer State's Exhibit Two into
24 evidence.

25 MR. BOYD: No objection.

1 THE COURT: Be received.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO IDENTIFIED AND
3 MARKED, ENTERED INTO EVIDENCE.)

4 BY MR. SPRINGS:

5 Q. So after you got the drugs from Mr. Blake did you
6 leave his house? Did you drive away?

7 A. Not immediately.

8 Q. Okay. What did you do? What did you talk to him
9 about if you stayed?

10 A. We just stood around and talked a little bit more
11 about the different situations that happen, different
12 drugs, just something to pass the time.

13 Q. All right. And was it a real - in your mind was it a
14 serious conversation or were doing some play acting?

15 A. It was nothing real serious.

16 Q. Is it fair to say you were sort of hamming it up for
17 the - - -

18 A. Yes, sir.

19 Q. - - - for the camera?

20 Madame Clerk, would you dim the lights?

21 Mr. Benjamin, I am going to play this movie if I can
22 get this box to work and while it plays I may ask you some
23 questions. I will pause it before I ask you a question.

24 Can you see alright from there?

25 A. Yes, sir.

1 Q. All right. Your Honor, I am going to bend down a
2 little bit that I don't block any juror's sight; might I
3 sit in this chair right here, sir?

4 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY.)

5 (NOTE: VIDEO STOPPED AT 1.27.03 TIME STAMP.)

6 Q. Now here we are at the beginning. Where are you there
7 at the beginning?

8 A. I was at a location where I met the officers at to be
9 set up for this controlled buy?

10 Q. All right. Mr. Benjamin, I am going to fast forward
11 Is that you in your car?

12 (NOTE: VIDEO STOPPED AT 1.30.44 TIME STAMP.)

13 A. Yes, sir.

14 Q. All right. And where are you headed now in that car?

15 A. I'm going to Mr. Blake's residence.

16 (NOTE: VIDEO STOPPED AT 1.39.08 TIME STAMP.)

17 Q. All right. Where is that place?

18 A. That's Derick Blake's residence, sir.

19 Q. All right. It looks like you stepped out of the car?

20 A. Yes, sir.

21 Q. All right. Is that a dog?

22 (NOTE: VIDEO STOPPED AT 1.40.00 TIME STAMP.)

23 A. Yes, sir, he had the dog in the car with him.

24 Q. Who else was in the car with the dog?

25 A. Derick Blake.

1 (NOTE: VIDEO STOPPED AT 1.40.42 TIME STAMP.)

2 Q. What did Derick Blake say there?

3 A. He was telling me that the guy was about one minute
4 away from where we were at.

5 Q. All right.

6 (NOTE: VIDEO STOPPED AT 1.42.58 TIME STAMP.)

7 Q. Now who were you talking to here, Mr. Benjamin?

8 A. I was talking to Officer Cashier.

9 Q. All right. You all were on a cell phone?

10 A. Yes, sir.

11 Q. Was Derick Blake close enough to hear you talking on
12 the cell phone to the officer?

13 A. No, sir, he was still sitting inside the car.

14 (NOTE: VIDEO STOPPED AT 1.43.06 TIME STAMP.)

15 Q. Who's that fellow right there?

16 A. That's Mr. Blake.

17 Q. Does he have the dog on a leash?

18 A. Yes, sir.

19 Q. What's he smoking?

20 A. He's probably smoking a joint.

21 (NOTE: VIDEO STOPPED AT 1.44.07 TIME STAMP.)

22 Q. All right. Are you back in your car now?

23 A. Yes, sir.

24 Q. Alone? Did Mr. Blake - -

25 A. Yes, sir, by myself.

1 Q. All right.

2 (NOTE: VIDEO STOPPED AT 1.44.46 TIME STAMP.)

3 Q. Now where is Mr. Blake now? Could you tell?

4 A. From when I seen him he went around to the front of
5 the house. The camera doesn't see him but he went to the
6 other side of the house. There's another guy that pulled
7 up that he was talking to.

8 Q. All right.

9 (NOTE: VIDEO STOPPED AT 1.44.55 TIME STAMP.)

10 Q. What's going back and forth there?

11 A. Just now he was -- I was sitting inside the car when
12 he came back. He had the eight ball of dope that I had
13 asked for -- just inside of the car he handed me the dope.

14 (NOTE: VIDEO STOPPED AT 1.46.08 TIME STAMP.)

15 Q. What was that about the ten dollars?

16 A. First he was asking me to pay a hundred and fifty
17 dollars.

18 Q. Yes, sir.

19 A. And I gave him a hundred and sixty.

20 Q. Okay. Just to make it clear you said he handed you
21 the crack and you handed him the money?

22 A. Yes, sir.

23 (NOTE: VIDEO STOPPED AT 1.46.48 TIME STAMP.)

24 Q. Is this where you said you were kind of hamming it up?

25 A. Yes, sir. We was just kind of chit chat'n now.

1 Q. All right we're going to fast forward and move on.

2 (NOTE: VIDEO STOPPED AT 1.47.50 TIME STAMP.)

3 Q. Mr. Benjamin while this is fast forwarding let me ask
4 you the drugs or crack Derick Blake handed you through that
5 car window, what did you do with it? Who did you give it
6 all to?

7 A. I give it to one of the officers back at the original
8 meeting spot.

9 Q. Do you remember which officer you handed it to?

10 A. I can't remember his last name. I know they call him
11 Jim.

12 (NOTE: VIDEO STOPPED AT 2.00.00 TIME STAMP.)

13 Q. Are you back at the meeting location?

14 A. Yes, sir.

15 (NOTE: VIDEO STOPPED AT 2.13.20 TIME STAMP.)

16 Q. Is that one of the officers?

17 A. Yes, sir, it is.

18 (NOTE: VIDEO STOPPED AT 2.23.50 TIME STAMP.)

19 Q. Have you already handed the drugs to the officer or do
20 you remember?

21 A. Yes, sir, the exchange happened in the elevator.

22 Q. Okay. All right. We'll take the lights back on now,
23 Madame Clerk.

24 Mr. Benjamin, have you told the truth here today?

25 A. Yes, sir.

1 Q. Mr. Benjamin, if you would please answer any questions
2 the Defense attorney has for you. Thank you, sir.

3 THE COURT: Why don't we take our afternoon break
4 before we get into cross examination?

5 We'll take about a ten minute break. You can go to
6 the jury room. Everybody else remain seated please.

7 (JURY LEAVING COURTROOM AT 3:35 P. M..)

8 THE COURT: We will be at ease and Mr. Benjamin, you
9 can get up and get a drink of water or use the restroom but
10 you can't discuss your testimony with anyone since you are
11 subject to cross examination.

12 MR. BENJAMIN: Yes, sir.

13 MR. SPRINGS: Mr. Benjamin, you can also stay there if
14 you want to.

15 (RECESS AT 3:36 P. M..)

16 (BACK ON THE RECORD AT 3:50 P. M..)

17 THE COURT: All right take your seats.
18 Bring in the jury.

19 (JURY ENTERING COURTROOM AT 3:51 P. M..)

20 THE COURT: All right, Mr. Boyd.

21 MR. BOYD: Thank you.

22 CROSS EXAMINATION

23 ANTWAN BENJAMIN BY MR. BOYD:

24 Q. Mr. Benjamin, I'm Jim Boyd, I'm going to be asking you
25 some questions okay. Now the - basically you started

1 working with the drug agency as an informant, is that
2 correct?

3 A. Yes.

4 Q. Okay. And basically it all began they caught you with
5 a distribution of some crack, is that correct?

6 A. Yes.

7 Q. Okay. And as a result of that they also got a search
8 warrant and they conducted a search of your residence, is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And basically they found evidence there that
12 resulted in a charge of possession with intent to
13 distribute marijuana, is that correct?

14 A. Yes.

15 Q. Okay. And basically back on April the 20th of 2005 you
16 had pled guilty to distribution of crack cocaine, is that
17 correct?

18 A. Yes.

19 Q. That's back in 2005 before all that happened?

20 A. Yes.

21 Q. Okay. And you also at the same time pled guilty to
22 distribution of crack cocaine within proximity of a park,
23 is that correct?

24 A. Yes.

25 Q. And so as a result of a distribution of crack you got

1 caught with more recently you understood you were facing a
2 second drug offense is that correct?

3 A. Yes.

4 Q. Okay. You were facing distribution of crack 2nd
5 offense, is that correct?

6 A. Yes.

7 Q. And you understand that the time you were facing you
8 were facing up to twenty-five years in jail, is that
9 correct?

10 A. I don't know exactly how much time but it wasn't a
11 second offense, sir.

12 Q. You understand you were facing a fine of not less than
13 fifty thousand dollars?

14 A. I had no idea what the charge was or the fine.

15 Q. Okay. And you understand it can be no suspension and
16 no probation granted for that sentence?

17 A. Again I wasn't aware of the specifics but I was aware
18 that it would have been a second offense.

19 Q. Okay. Also you are aware that your possession with
20 intent to distribute marijuana would be considered a second
21 drug offense also, is that correct?

22 A. Yes, sir.

23 Q. Okay. And on that charge you understand in fact since
24 you are actually charged with that is that correct? You
25 actually have been charged with that, is that correct?

1 A. If I am not mistaken they are all the same charge,
2 sir.

3 Q. Okay. So it's your understanding you are also charged
4 with the crack?

5 A. Yes, sir.

6 Q. Okay. Has an arrest warrant actually been served on
7 you for that?

8 A. Not at this time, sir.

9 Q. Okay. How about the possession with intent to
10 distribute marijuana has an arrest warrant been served on
11 you for that?

12 A. Not at this time, sir.

13 Q. Okay. So you haven't been arrested or booked on
14 either of those charges?

15 A. Currently no, sir.

16 Q. All right. And you - but on the possession with
17 intent to distribute marijuana did you understand you were
18 facing up to ten years for that?

19 A. I wasn't aware of the time frame given out for it but
20 I knew it was another drug charge.

21 Q. Okay. And you understood there is no suspension or
22 probation to that charge?

23 A. Yes, sir.

24 Q. Okay. So suffice it to say you potentially are
25 looking at a great deal of time in jail, is that correct?

1 A. Yes, sir.

2 Q. And the reason you decided to become an undercover
3 informant and to work with the police is to try to keep
4 from getting a load of time isn't that correct?

5 A. Once again I wasn't aware of how much time I would
6 have got on it. Just helping me try to get some kind of
7 leniency in my case whatever the outcome may be.

8 Q. Okay. I mean basically you're wanting to stay out of
9 jail is that correct, that's your ideal situation?

10 A. It would be nice but I don't know the outcome, sir.

11 Q. Okay. And if you are going to go to jail you want to
12 do as little time as possible, isn't that correct?

13 A. Yes, sir.

14 Q. All right. So basically you agreed that you would
15 work with them, you would make under cover buys with - for
16 the drug enforcement unit?

17 A. Yes, sir.

18 Q. And as part of that you understood you would have to
19 actually go out and make buys - - -

20 A. Yes, sir.

21 Q. - - - in controlled circumstances?

22 A. Yes, sir.

23 Q. All right. And you understand that basically that the
24 more you did hopefully the better off you were going to
25 come out on your pending charges?

1 A. Yes, sir.

2 Q. All right. And in order to get the benefit of what
3 you were doing basically to get the benefit you needed to
4 produce what they wanted, is that correct?

5 A. Yes, sir.

6 Q. And one of the things you were asked to do or that
7 basically you initially set up - you said you called Derick
8 Blake earlier that day, is that right?

9 A. Yes, sir.

10 Q. Also I believe back in another state on May the 9th of
11 2001 you pled guilty or were convicted of petit larceny, is
12 that correct?

13 A. Yes, sir.

14 Q. Okay. And you were - when - you had made - before
15 being involved on February the 20th of 2008 you had done
16 some transactions prior to that for the Drug Enforcement
17 Unit, is that correct?

18 A. Yes, sir.

19 Q. Okay. Derick Blake wasn't your first one?

20 A. No, sir.

21 Q. So basically you knew how the routine worked to do it
22 is that correct?

23 A. Yes, sir.

24 Q. I mean you knew basically that you would be searched,
25 is that correct?

- 1 A. Yes, sir.
- 2 Q. You knew your car would be searched?
- 3 A. Yes, sir.
- 4 Q. And you knew that you would be sent out and when you
- 5 got back you would be searched again and your car would be
- 6 searched again?
- 7 A. Yes, sir.
- 8 Q. Now when you went on this occasion you said there was
- 9 a phone call from you to Derick Blake?
- 10 A. Yes.
- 11 Q. You didn't actually -- of course that phone call
- 12 wasn't recorded or anything is that correct?
- 13 A. Yes, sir, it was not recorded.
- 14 Q. Okay. And was that from your cell phone?
- 15 A. Yes, sir.
- 16 Q. All right. And was the call you were making to Derick
- 17 Blake's cell phone if you know?
- 18 A. Yes, sir, if I'm not mistaken I did call from my cell
- 19 phone.
- 20 Q. Now let me - we saw you there that was at the FBI
- 21 building is that correct, from the FBI office where you met
- 22 up with the officers is that correct?
- 23 A. Yes, sir.
- 24 Q. Okay. Let me ask you I just want to show you and ask
- 25 you a few questions about what's going on there and if

1 someone can dim the lights. I am going to try to stand
2 here. All right let me ask you who are the people going
3 out the door there?

4 A. Those were the officers from the narcotics force.

5 Q. And do you remember their names?

6 A. That was Mr. Cashier.

7 Q. Who is seated here, is that correct?

8 A. Yes, sir.

9 Q. Okay.

10 A. Mr. Doherty.

11 Q. Okay. And he's with the FBI, is that right?

12 A. Yes, sir.

13 Q. So you all are about to go out; that's the front door,
14 is that correct?

15 A. Yes, sir.

16 Q. And they're going out at this point to search your
17 car, is that correct?

18 A. Yes, sir.

19 Q. Okay. And that looks like they're walking out there
20 about 1.27.27, is that correct?

21 A. Yes, sir.

22 Q. All right.

23 (NOTE: VIDEO STOPPED AT 1.27.40 TIME STAMP.)

24 Q. And you're standing at the door there. That's your
25 camera looking out, is that correct?

1 A. Yes, sir.

2 (NOTE: VIDEO STOPPED AT 1.29.04 TIME STAMP.)

3 Q. Now here you make a comment about your car. You are
4 making a comment?

5 A. Yes, sir.

6 Q. And you're talking about you got all kinds of junk in
7 there?

8 A. Yes, sir.

9 Q. Okay. So at that point their searching your car and
10 you're making a comment about how much stuff you have in
11 the car.

12 A. Yes, sir.

13 (NOTE: VIDEO STOPPED AT 1.29.20 TIME STAMP.)

14 Q. All right. And here you make a comment about
15 something.

16 "You all think I would set somebody up?"

17 A. I don't remember what the particular conversation was
18 that day.

19 Q. Did you hear - - -

20 A. Yes, sir.

21 Q. - - - yourself just say that?

22 A. Yes, sir.

23 Q. Okay. But you made a comment -- did you just hear the
24 comment that you made?

25 "You all think I would set somebody up?"

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1 A. I don't know if that's the exact words I said that
2 day, sir.

3 Q. Well let's see if we can go back and do it again.

4 (NOTE: VIDEO STOPPED AT 1.29.20 TIME STAMP.)

5 Q. It seems to be skipping around some.

6 MADAME COURT REPORTER: Mr. Boyd.

7 MR. BOYD: Yes.

8 MADAME COURT REPORTER: It was at 1 minute, 29.04 when
9 you ask him about the car.

10 MR. BOYD: Was that it? Did you say it was 1.29?

11 MADAME COURT REPORTER: And it was 1.29.20 when you
12 ask him about what he said.

13 MR. BOYD: Okay.

14 MADAME COURT REPORTER: It's right at 1.29. 1.29.04
15 is when you ask him about his car. 1.29.20 when you ask
16 him about what he said.

17 (NOTE: VIDEO STOPPED AT 1.29.20 TIME STAMP.)

18 BY MR. BOYD:

19 Q. Okay. Did you hear it that time?

20 A. I still heard it but I don't know exactly what was
21 said, sir.

22 Q. Okay.

23 A. I heard about the set'in up.

24 Q. Okay. Now I'm going to freeze it there a second. You
25 got in the car after that, is that correct?

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1 A. Yes, sir.

2 Q. Okay. Let me just go . . .

3 (NOTE: VIDEO STOPPED AT 1.29.50 TIME STAMP.)

4 Q. Okay. At this point the officers are walking away
5 from the car; they finished the search, is that correct?

6 A. Correct.

7 Q. Okay. And that looks like 1.29.50. Is that
8 approximate? They had just finished a little bit; a few
9 seconds before that, is that right?

10 A. Yes, sir.

11 Q. Okay. Now you got in the car after that?

12 A. Right.

13 (NOTE: VIDEO STOPPED AT 1.30.25 TIME STAMP.)

14 Q. Now you are in the car here, is that correct?

15 A. Yes, sir.

16 Q. Okay.

17 (NOTE: VIDEO STOPPED AT 1.30.44 TIME STAMP.)

18 Q. Now just then you covered -- you covered the camera
19 with your hand, is that correct?

20 A. Yes, sir.

21 Q. Do you know what you were doing then and why?

22 A. I believe I'm taking to light a cigarette.

23 Q. Okay. I am going to try to fast forward this.

24 (NOTE: VIDEO STOPPED AT 1.40.10 TIME STAMP.)

25 Q. Let me stop you. You had just seen Mr. Blake in the

1 car. And I believe -- was it a joint he was rolling at the
2 time?

3 A. Yes, sir.

4 Q. Okay. So that was a joint. There wasn't any cocaine
5 there, is that correct?

6 A. To my knowledge -- I can't remember, sir.

7 Q. Okay. But you make a comment I believe after that
8 that he was rolling a joint.

9 A. Yes, sir.

10 Q. And he was smoking the joint outside, is that correct?

11 A. Yes, sir.

12 Q. All right. I am going to pause it. You had watched
13 the tape here.

14 (NOTE: VIDEO STOPPED AT 1.41.09 TIME STAMP.)

15 Q. All right now you're getting back in your car at this
16 point, is that right? Or you appear to be - -

17 THE COURT: Mr. Boyd, you need to keep your voice up
18 so everyone can hear you.

19 MR. BOYD: I'm sorry.

20 You appear to be getting in the car or leaning into
21 the car at that point, is that correct?

22 A. Yes, sir, I wasn't getting back in there. I think I
23 was reaching in to retrieve something.

24 Q. All right you reached in. Let's see.

25 (NOTE: VIDEO STOPPED AT 1.41.15 TIME STAMP.)

1 Q. Okay. You pick up some kind of object. Do you know
2 what you just picked up?

3 A. A pack of Newport.

4 Q. Newport? That's a cigarette?

5 A. Yes, sir.

6 Q. A cigarette pack okay.

7 (NOTE: VIDEO STOPPED AT 1.41.56 TIME STAMP.)

8 Q. Now you have seen this up to that section and you
9 touched the tree, is that correct?

10 A. Yes, sir.

11 Q. Okay.

12 (NOTE: VIDEO STOPPED AT 2.01.50 TIME STAMP.)

13 Q. And this is when you're back at the FBI building is
14 that right?

15 A. Yes, sir.

16 Q. What you just said do you know a lot of people of all
17 races, colors and creeds, were you talking about people you
18 could potentially make buys from?

19 A. No, sir, I was just talking about people in general,
20 people that I knew.

21 Q. So you weren't talking about trying to set up people
22 at that point?

23 A. No, sir.

24 Q. Now you can get the lights if you would.

25 Let me ask you, when you got back to the station you

1 made -- basically you sat down with Officer Cashier, is
2 that correct?

3 A. Yes, sir.

4 Q. Okay. And he interviewed you about what had happened,
5 is that right?

6 A. Correct.

7 Q. Okay. And didn't he type up basically a statement
8 that you signed?

9 A. Yes, sir.

10 Q. Okay. And let me ask you is this the statement that
11 he - -

12 A. Yes, sir, it is.

13 Q. Okay. Is that your signature on that statement?

14 A. Yes, sir.

15 Q. All right. Now in this statement and I will show you
16 this. I want to make clear that you recognize this.
17 Didn't you say we talked referring to when you were at
18 Derick's house and he was outside?

19 "We talked for a little bit and he -- he told
20 me that he was going to go around front to the Lige
21 Street side of the house."

22 Do you remember saying that?

23 A. Yes, sir.

24 Q. Okay. And basically when he went around you said
25 that's when he went to somebody that had pulled up, is that

1 correct?

2 A. Correct, sir.

3 Q. Okay. And the next sentence you said,

4 "I handed him the one hundred and sixty dollars
5 of the money the officers gave me".

6 Did you say that?

7 A. Yes, sir.

8 Q. Okay. And then you said,

9 "I sat in my car."

10 Do you remember saying that?

11 A. Yes, sir.

12 Q. Okay.

13 "After a couple of minutes Derick came over and
14 knocked on my window".

15 Is that correct?

16 A. That's correct again.

17 Q. And "I put it down and he handed me a bag of crack and
18 handed me twenty dollars."

19 Is that correct?

20 A. Yes, sir.

21 Q. So in this statement -- this statement was made
22 immediately after you had gotten back to the FBI office on
23 February the 20th of 2008, is that correct?

24 A. Yes, sir.

25 Q. Okay. So everything that happened at that point was

1 fresh in your mind.

2 A. Yes, sir..

3 Q. Okay. But in this you stated that you handed him the
4 hundred and sixty dollars and then waited in the car for
5 him to bring the crack back to you.

6 A. That's the way the statements wrote up. Maybe one of
7 the officers got it wrong but tape plainly shows him
8 handing me the crack and then me handing him the money.

9 Q. Well maybe that's your interpretation of it but in
10 this statement you said I handed him money, is that
11 correct?

12 A. That's correct.

13 Q. Just read those three sentences out loud starting at
14 we talked right here. Do you see?

15 A. Yes, sir..

16 "We talked for a little bit and he told me he was
17 going to go around front to the Lige side of the
18 house. I handed him one hundred and sixty dollars of
19 the money the officer gave me. I sat in the car,
20 after a couple of minutes Derick came over and knocked
21 on my window. I put it down and he handed me a bag of
22 crack and he handed me twenty dollars".

23 Q. Okay. So in this statement which you signed it states
24 that you handed him the money and then he went to the front
25 of the house, you sat in the car and he brought the crack

1 back to you.

2 A. Yes, sir.

3 Q. Okay. But your testimony today is different from what
4 is in this statement?

5 A. Yes, sir.

6 Q. Now the recording that was made from the call the
7 initial call -- well not the initial call but the call
8 where you said that Derick called you and you were at the --
9 -- with the officers. Do you remember that?

10 A. Yes, sir.

11 Q. Okay. And basically in that there's nothing said
12 about drugs in that conversation is it?

13 A. Just that I needed to meet him and tell me where to
14 meet him at.

15 Q. Okay. But there's no mention of drugs is it?

16 A. Yes, sir, there is if I'm not mistaken. He asked me
17 how much I wanted and I said a eight ball which is the
18 drugs itself.

19 Q. All right. You think you said that?

20 A. Yes, sir.

21 Q. You sure that's not an earlier conversation that
22 wasn't recorded?

23 A. I'm not a hundred percent positive. We did have
24 several conversations.

25 Q. Now you -- on the camera were -- was the camera on

1 you, right?

2 A. Right.

3 Q. Okay. You know what's -- and you know you're being
4 recorded, is that correct?

5 A. Yes, sir.

6 Q. Okay. So you know that everything you say out there
7 is being recorded and the officers are going to be able to
8 hear it?

9 A. Yes, sir.

10 Q. Okay. And you do several cell phone calls, is that
11 correct?

12 A. Yes, sir.

13 Q. One time you talked to the officers, is that right?

14 A. Yes, sir.

15 Q. It looks like one time you're talking to somebody
16 else, is that correct?

17 A. I don't remember. Maybe.

18 Q. Okay. And then at the actual time that you say that
19 Derick hands you something you can't actually see on that
20 camera what he hands you can you?

21 A. You can't see exactly what it is but you do see him
22 handing me the powder.

23 Q. You see him handing you something but it doesn't --
24 the tape does not identify what that is?

25 A. No, sir.

- 1 Q. Okay. The -- do you -- well when you were going back
2 you stated that there was a black car, is that correct?
- 3 A. When I was going back towards - -
- 4 Q. No when -- right after you got back in the car after -
5 when you were about to leave - - -
- 6 A. Yes, sir.
- 7 Q. - - - Derick's house okay?
- 8 A. Yes.
- 9 Q. You said -- you make some statement about a black car,
10 is that correct?
- 11 A. That's correct.
- 12 Q. Okay. And you even state saying something about
13 partial of a license's number, is that correct?
- 14 A. Yes, sir.
- 15 Q. Okay. Now the black car is no where on the tape is
16 it?
- 17 A. No, sir.
- 18 Q. Okay. How was this crack packaged?
- 19 A. It was packed in a piece of a plastic bag maybe like a
20 folded trash bag, a white plastic bag.
- 21 Q. Okay. And when you got it from him before when you
22 went back to the FBI office did you put it in your pocket
23 beforehand?
- 24 A. Yes, sir.
- 25 Q. You didn't or did or did not?

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REDIRECT EXAMINATION BY MR. SPRINGS

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1 A. I did, sir.

2 Q. Okay you kept it in your hand?

3 A. No, sir, I put it in my pocket.

4 Q. Oh you did put it in your pocket. I'm sorry I
5 misunderstood you. So you kept it in your pocket?

6 A. Yes, sir.

7 Q. Or when you got in the car you put it in your pocket.

8 A. Right.

9 Q. And basically what it's about that size, is that
10 correct?

11 A. It may not even be that big. Smaller.

12 Q. Smaller than that? About that?

13 A. Yes, sir.

14 Q. So it's not very big at all is it?

15 A. No, sir.

16 Q. Okay. Something easy to hide isn't that correct?

17 A. If you were trying to hide it I guess it would be yes,
18 sir.

19 Q. That's all I have.

20 THE COURT: Redirect?

21 MR. SPRINGS: Just briefly.

22 REDIRECT EXAMINATION

23 ANTWAN BENJAMIN BY MR. SPRINGS:

24 Q. Mr. Benjamin, when you made your statement did they
25 give you a typewriter and say type up your own statement?

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1 Are you a typist?

2 A. No, sir, they didn't and no I'm not.

3 Q. Somebody else typed it up?

4 A. Yes, sir.

5 Q. All right that's all.

6 THE COURT: You can step down. I appreciate your time
7 and you can be excused and thank you.

8 Call your next witness.

9 MR. SPRINGS: Mr. Miskelly, would you ask Officer Jim
10 Lubben to come in? He's either in the hall or in one of
11 the waiting rooms.

12 MADAME CLERK: Please raise your right hand and place
13 your left hand on the bible.

14 (WHEREUPON: JAMISON LUBBEN,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 OFFICER JAMISON LUBBEN BY MR. SPRINGS:

18 Q. Officer, I will ask you to keep your voice up nice and
19 loud and tell the jury your name, sir.

20 A. Jamison Lubben.

21 Q. Are you a police officer?

22 A. Yes, sir, I am.

23 Q. How many years have you been a police officer?

24 A. Close to twelve years.

25 Q. Out of those twelve years how many years have you

1 worked in narcotics?

2 A. Approximately seven and a half years.

3 Q. Are you a part of the county wide task force?

4 A. Yes, sir.

5 Q. Are you familiar with the Derick Blake investigation
6 that took place the afternoon of February 20th of 2008?

7 A. Yes I am.

8 Q. Do you remember seeing a man named Antwan Benjamin
9 that afternoon?

10 A. Yes.

11 Q. Were you one of the officers who worked on the case
12 that involved Mr. Benjamin and so forth?

13 A. Yes I was.

14 Q. Now are you familiar with Mr. Benjamin returning from
15 a drug buy on Hames Street?

16 A. Yes I am.

17 Q. And did you meet up with him after that buy on Hames
18 Street?

19 A. Yes. I met with him at the FBI office in Rock Hill.

20 Q. All right. And when you met with him did he give you
21 anything?

22 A. Yes he gave a kind of a piece of plastic containing
23 crack.

24 Q. All right. And were you inside the FBI building or
25 outside the building when he gave it to you?

1 A. We were inside actually in the elevator.

2 Q. All right. After you got that from Mr. Benjamin did
3 you package it up in some way yourself?

4 A. Yes I did. I put it in an evidence bag and I sealed
5 it.

6 Q. I mark this as State's Exhibit Three.

7 (WHEREUPON: STATE'S EXHIBIT THREE MARKED FOR
8 IDENTIFICATION.)

9 Q. Officer Lubben, take a look at what's been marked
10 State's Exhibit Three for Identification and see if you
11 recognize what's in that package.

12 A. This is the crack that Mr. Benjamin gave me at the FBI
13 office.

14 Q. Okay. And Mr. Benjamin passed it from his hand into
15 your hand?

16 A. Yes, sir, he did.

17 Q. And did you then put it in an evidence bag?

18 A. Yes I did.

19 Q. And did you seal up that evidence bag?

20 A. Yes I did.

21 Q. Did you put some identifying writing on it?

22 A. I put my initials and the date on that bag that I
23 sealed up.

24 Q. Is an evidence bag a special kind of bag or just any
25 ole kind of bag?

1 A. It's a special bag as far as when we put it in the
2 plastic bag to test for drugs.

3 Q. Okay. You sealed it all up?

4 A. Yes I do.

5 Q. And what did you do with it and where did you take it
6 and put it?

7 A. After we finished our investigation I took it to the
8 Rock Hill Police Department in the narcotics office where
9 we have an evidence locker. I put it in an evidence locker
10 where it's locked up and nobody can get inside of it.

11 Q. All right. Is that evidence locker at the Rock Hill
12 Police Department in a secure facility?

13 A. Yes it is.

14 Q. Once you put it in can you get it back out?

15 A. No I can't.

16 Q. Like a US mail box basically?

17 A. Right. It's got a little metal slide and something as
18 thin as this you just slide it through and you can't get
19 back in.

20 Q. From the time you took it from Mr. Benjamin's hand was
21 it in your care, custody and control until you put it into
22 that evidence locker?

23 A. Yes it was.

24 Q. Thank you, sir. If you would just lay that package
25 there on the counter in some convenience immediate location

1 the defense may want to ask you some questions.

2 A. Thank you.

3 CROSS EXAMINATION

4 OFFICER JAMISON LUBBEN BY MR. BOYD:

5 Q. Were you at the FBI office when the informant Antwan
6 Benjamin came in?

7 A. Yes I was.

8 Q. I thought I saw you on the camera. And did you go out
9 to the area where this sale was to take place?

10 A. Yes I did.

11 Q. Okay. Are you familiar with this area?

12 A. Yes.

13 Q. Okay. Could you step down a minute?

14 (WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

15 A. I just -- Try not to be in front of the jury but is
16 this Mr. Blake's residence here?

17 A. That would -- Correct.

18 Q. Okay. And I believe this is Heckle Boulevard?

19 A. Right.

20 Q. And that's Saluda Street here?

21 A. That's what it appears to be yes.

22 Q. And is that - - -

23 A. Lyge Street.

24 Q. - - - Lyge right here? Where were you during that
25 period of time?

- 1 A. Basically what we do myself and Agent Doherty was
2 riding; we kind of circle the area. We didn't necessarily
3 sit in one spot. We got close enough to hear what' going
4 on but we wanted to stay out of sight so nobody could see
5 us.
- 6 Q. Okay. So you never actually saw Mr. Blake, is that
7 correct?
- 8 A. Correct.
- 9 Q. And so would it be fair to say - correct me if I'm
10 wrong - you were riding up in this area around in here or
11 is there a particular area you stayed in?
- 12 A. I would say more up in this area. Right in that area.
- 13 Q. And - you can have a seat again. Did you recall
14 hearing Mr. Benjamin say something about a black car?
- 15 A. Yes I do vaguely.
- 16 Q. Okay. And did you ever see that black car?
- 17 A. No I did not.
- 18 Q. Okay. Did you look for that black car?
- 19 A. No I did not. I followed Mr. Benjamin back to the FBI
20 office.
- 21 Q. Now this is the bag the evidence has been put in and
22 sealed, is that correct?
- 23 A. That is correct.
- 24 Q. Now the actual that's white that's in the corner down
25 here?

OFFICER JAMISON LUBBEN: CROSS EXAMINATION BY MR. BOYD
BARBARA TRAYLOR: DIRECT EXAMINATION BY MR. SPRINGS

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1 A. Yes.

2 Q. Okay. And is it in a plastic appears to be some
3 plastic wrapping around it?

4 A. Yes. It's like a baggie like a sandwich bag or
5 something like that.

6 Q. Okay. And that is -- is that in the bag it was in
7 when you received it?

8 A. Yes it was.

9 Q. Okay. I have no further questions.

10 MR. SPRINGS: Nothing further. Thank you, Officer.

11 THE COURT: Step down and be excused and we appreciate
12 your time.

13 Call your next witness.

14 MR. SPRINGS: Mr. Miskelly, would you ask Barbie
15 Traylor to come in please. Barbie Traylor.

16 Ms. Traylor, come in please and be sworn in to be a
17 witness.

18 MADAME CLERK: Please raise your right hand and place
19 your left hand on the bible.

20 (WHEREUPON: BARBIE TRAYLOR,
21 BEING CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 BARBARA TRAYLOR BY MR. SPRINGS:

24 Q. Tell us your name, ma'am.

25 A. Barbara D. Traylor.

1 Q. Ms. Traylor, do you work in the evidence room here at
2 the Moss Justice Center?

3 A. I do.

4 Q. You work inside the evidence room?

5 A. I do.

6 Q. You handle evidence?

7 A. I do.

8 Q. As part of your duties do you sometimes transport
9 evidence from the police departments in other parts of the
10 county to your evidence room?

11 A. I do.

12 Q. Do you sometimes pick up from the Rock Hill Police
13 Department?

14 A. I do.

15 Q. How would you describe the facility, the vault at the
16 Rock Hill Police Department you pick up from? Is it
17 formal, secure, what's it like?

18 A. We have different size lockers and each one of them
19 has a pad lock on it but only we have the key to it and
20 it's inside the police department.

21 Q. Is it made of steel?

22 A. Yes.

23 Q. I'm showing you what's been marked State's Exhibit
24 Three for Identification. Look at that and examine it to
25 your hearts content and then I'm going to ask you some

- 1 questions about it. Have you ever done business with that
2 package before?
- 3 A. I have.
- 4 Q. Did you pick it up from the Rock Hill Evidence Locker?
- 5 A. I did.
- 6 Q. When you picked it up was the evidence bag intact or
7 did it look like it had been tampered with any way?
- 8 A. It was intact when I picked it up.
- 9 Q. And where did you take it to?
- 10 A. In our evidence room here at the Moss Justice Center.
- 11 Q. Did you come straight back with it?
- 12 A. Yes.
- 13 Q. Did you take it to lunch or Kmart?
- 14 A. No.
- 15 Q. And did you bring it inside your evidence room?
- 16 A. I did.
- 17 Q. Is your evidence room secure?
- 18 A. It is.
- 19 Q. Do you keep it locked?
- 20 A. Yes.
- 21 Q. And once you got it back to the evidence room did you
22 log it in?
- 23 A. Yes.
- 24 Q. All right. Thank you. Answer any questions the
25 defense attorney may have for you.

CYNTHIA MITCHUM: DIRECT EXAMINATION BY MR. SPRINGS

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1 MR. BOYD: I have no questions.

2 THE COURT: You can step down and be excused. We
3 appreciate your time.

4 MR. SPRINGS: Thank you, Ms. Traylor.

5 THE COURT: All your next witness.

6 MR. SPRINGS: Would you ask Ms. Cynthia Mitchum to
7 come in, Mr. Myskelly?

8 Ms. Mitchum, if you would step up and take the oath.

9 (WHEREUPON: CYNTHIA MITCHUM,

10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 CYNTHIA MITCHUM BY MR. SPRINGS:

13 Q. What's your name, ma'am?

14 A. Cynthia Mitchum.

15 Q. Where do you work?

16 A. I work at the York County Sheriff's Office in the Drug
17 Analysis Laboratory.

18 Q. Is that attached to the evidence room?

19 A. Yes.

20 Q. Is part of your work in the drug lab?

21 A. That's correct.

22 Q. Do you analyze and identify illegal drugs and
23 controlled substances?

24 A. Yes I do.

25 Q. Are you what's known as a chemist?

1 A. Yes.

2 Q. What kind of training and education do you have that
3 would qualify you as a chemist that analyzes and identifies
4 illegal drugs and controlled substances?

5 A. I have a Bachelor of Science in chemistry for which I
6 received from Winthrop University in 1990. And prior to
7 working here at the Sheriff's office I worked for the South
8 Carolina Law Enforcement Division commonly known as SLED in
9 Columbia. I was there a little over seven years also in
10 the drug analysis department.

11 Q. Have you ever been qualified as and testified as an
12 expert witness in a court of record just like this as an
13 expert in the identification and analysis of illegal drugs
14 and controlled substances?

15 A. Yes I have.

16 Q. All right how many times have you qualified as an
17 expert and testified as an expert?

18 MR. BOYD: Your Honor, I'm sorry. I believe her
19 qualifications and I will stipulate that she's an expert.

20 THE COURT: In drug analysis?

21 MR. BOYD: Yes, sir.

22 THE COURT: I find that she is.

23 BY MR. SPRINGS:

24 Q. Ms. Mitchum, if you would take a look at what's been
25 marked State's Exhibit Three for identification and take

1 your time and tell us if you've ever done business with
2 that package.

3 A. Yes I have.

4 Q. Where did you first come into contact with that
5 package?

6 A. I received this from Barbie Traylor on 7/2 of 2008.

7 Q. And whereabouts where you when you took possession of
8 that package from Barbie Traylor?

9 A. Probably outside the evidence room.

10 Q. And when you received it from Barbie Traylor did the
11 package look like it had been opened or tampered with in
12 any way?

13 A. No. The package I received is this inner bag with the
14 blue silvery on each side and that was sealed and I got
15 okay the day I received it and my initials.

16 Q. Okay. And after you received the package did you at
17 some point after it came into your possession open it up
18 and analyze the stuff that was inside?

19 A. Yes I did.

20 Q. And did you prepare a written report of what you found
21 that stuff to be?

22 A. Yes.

23 Q. Did you bring your report?

24 A. Yes.

25 Q. Would you please mark this as State's Exhibit Four?

1 (WHEREUPON: STATE'S EXHIBIT NUMBER FOUR MARKED FOR
2 IDENTIFICATION.)

3 BY MR. SPRINGS:

4 Q. Tell the jury please what your testing and analysis
5 found that stuff inside the bags State's Exhibit Three, 2 B
6 and what it weighed?

7 A. State's Exhibit Number Three which is Item Number One
8 in this case was found to be cocaine base also known as
9 crack in the amount of three point three one grams or
10 fifty-one point zero seven grains and it's a controlled two
11 substance.

12 Q. A little less than three and a half grams?

13 A. Correct.

14 Q. After you tested it and analyzed it and weighed it did
15 you bag it back up?

16 A. Yes I did. I bagged it in this outside bag and that's
17 still intact today with my initials and the date I sealed
18 it in this heat seal at the bottom.

19 Q. Okay. So let me get this straight. You received an
20 evidence bag, you tested what was in the evidence bag and
21 then you put the old evidence bag and everything inside
22 your bag?

23 A. That's correct.

24 Q. Okay. And it's still sealed up and intact the way you
25 sealed it up?

1 A. Yes.

2 Q. And from the time you got it and tested it and until
3 the time you sealed it all back up intact as it is today
4 was it in your custody and control?

5 A. Yes. The only time it left was after I sealed it and
6 it went back to the evidence room where it remained until
7 it come to court.

8 Q. Very good. Your Honor, at this time we offer into
9 evidence State's Exhibit Three, the drugs and Four the
10 report.

11 MR. BOYD: No objection.

12 THE COURT: Be received without objection.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE AND FOUR
14 MARKED AND IDENTIFIED, ENTERED INTO EVIDENCE.)

15 BY MR. SPRINGS:

16 Q. Thank you, Ms. Mitchum. If you would please answer
17 any questions the defense attorney has.

18 MR. BOYD: I have no questions.

19 THE COURT: You can step down and be excused. We
20 appreciate your time.

21 Call your next witness.

22 MR. SPRINGS: We rest our case.

23 THE COURT: All right. Members of the jury panel, the
24 State has rested its case that is it's presented its
25 evidence. Under certain circumstances it has the right to

1 present further evidence. I am going to let you go to the
2 jury room right now while we take up some matters.

3 (NOTE: JURY PANEL LEAVING COURTROOM AT 4:48 P. M..)

4 THE COURT: It's getting close to five o'clock so I
5 don't know if you want to start into the defense's case
6 this afternoon. But let me go ahead and do it this way.
7 Is there anything from the State at this point?

8 MR. SPRINGS: Nothing.

9 THE COURT: Anything, Mr. Boyd?

10 MR. BOYD: Your Honor, at this time I would move for a
11 directed verdict based on the evidence has failed to
12 establish that my client distributed cocaine to Mr.
13 Benjamin based on lack of evidence in the tape of the lack
14 of credibility of his testimony I would move for a directed
15 verdict on that ground.

16 THE COURT: Well of course credibility is for the
17 jury. He being the witness Mr. Benjamin said that the
18 defendant in fact gave him crack cocaine in exchange or
19 transferred to him in exchange for a certain -- the fact
20 that it doesn't show on the tape is arguable to the jury
21 but is of no value in regard to a motion for a directed
22 verdict so your motion is denied.

23 MR. BOYD: Yes, sir.

24 THE COURT: Mr. Blake, can you hear me?

25 MR. BLAKE: Yes, sir.

1 THE COURT: All right we've reached a point in the
2 trial where you have a right to present a defense if you
3 wish. You do not have to present a defense because you are
4 presumed innocent. The State is required to prove your
5 guilt beyond a reasonable doubt before you can be
6 convicted. You can present witnesses if you wish but
7 that's up to you. If you do present any evidence you will
8 not be able - your attorney will not be able to make a
9 final argument in the trial. If you do not present any
10 evidence the State would have to make the opening argument
11 and your attorney then would go last. If you exercise your
12 right to remain silent that is if you chose not to testify
13 I will tell the jury that you have exercised your
14 constitutional right to remain silent. I will tell them
15 that they cannot use that against you that you are presumed
16 innocent and you do not have to prove that that the State
17 however must prove your guilt beyond a reasonable doubt
18 before this jury can convict you of this charge - these
19 charges. Do you understand all of that?

20 MR. BLAKE: Yes, sir.

21 THE COURT: Do you have any questions about it?

22 MR. BLAKE: No, sir.

23 THE COURT: Mr. Boyd, have you explained it to him?

24 MR. BOYD: Yes, sir.

25 THE COURT: Do you believe he understands it?

1 MR. BOYD: Yes, sir.

2 THE COURT: Mr. Blake, this is your decision it's not
3 your attorneys and of course not the state's or mine. You
4 can obtain such advice as you wish but ultimately it's your
5 decision as to whether to testify or not do you understand
6 that?

7 MR. BLAKE: Yes, sir.

8 THE COURT: All right. Well let's remain in here and
9 we'll bring the jury back in and I'll dismiss them until
10 ten. Is that - -

11 MR. BOYD: Yes, sir. Your Honor, we might be able to
12 take up one matter. I would just like to know what the
13 State contends they might use, what they contend or any
14 impeachable records of my client.

15 MR. SPRINGS: His prior drug convictions are not
16 looked favorably on for impeachable by the State. We won't
17 impeach him with anything.

18 MR. BOYD: Okay. Thank you.

19 THE COURT: Let's get the jury in and we'll dismiss
20 them until ten in the morning and then if the solicitor has
21 some other business . . .

22 (NOTE: JURY ENTERING COURTROOM AT 4:52 P. M..)

23 THE COURT: Members of the jury panel it's almost five
24 o'clock. Rather than move forward we are going to stop for
25 the day. I can do some other things that don't require the

1 use of the jury for the rest of the day. We will ask you
2 to be back at ten in the morning and report to this jury
3 room here on this floor where you did after lunch. Not to
4 the jury assembly room and not to this room. Keep in mind
5 what I told you about not discussing this case; not making
6 up your own mind, not letting anyone discuss the case with
7 you, not going on the internet, all of those things and
8 we'll see you at ten in the morning and have a pleasant
9 evening.

10 (NOTE: JURY DISMISSED AT 4:53 P. M..)

11 THE COURT: All right Mr. Blake will remain
12 incarcerated and we'll start back at ten in the morning.
13 Thank you.

14 (COURT RECESSED AT 5:00 P. M..)

15 (ON THE RECORD DECEMBER 3, 2008 AT 10:19 A. M..)

16 THE COURT: Is the State ready?

17 MR. SPRINGS: The State is ready.

18 THE COURT: Defense?

19 MR. BOYD: Defense is ready.

20 THE COURT: You may be seated. Mr. Blake, are you
21 going to testify or exercise your right not to testify?

22 MR. BLAKE: Testify.

23 THE COURT: All right bring in the jury.

24 (JURY ENTERING THE COURTROOM AT 10:20 A. M..)

25 THE COURT: Good morning.

1 Call your witness.

2 MR. BOYD: Defense calls Derick Blake.

3 THE COURT: Please come up and be sworn.

4 (WHEREUPON: DERICK TYRONE

5 BLAKE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

6 FOLLOWS:)

7 MADAME CLERK: Please have a seat in the witness box.

8 DIRECT EXAMINATION

9 DERICK TYRONE BLAKE BY MR. BOYD:

10 Q. State your name please.

11 A. Derick Blake.

12 Q. Okay. And Mr. Blake, how old are you?

13 A. Forty-four.

14 Q. Okay. And do you live in Rock Hill?

15 A. Yes, sir.

16 Q. Where do you live?

17 A. Street.

18 Q. And how long have you lived there?

19 A. Well my family's been there since 1965; I been back
20 for approximately nine years.

21 Q. Okay. And let me ask you do you know Antwan
22 Benjamin?

23 A. Yes I do.

24 Q. How long have you known him?

25 A. Maybe five or six years.

1 Q. Okay. And you have been in the courtroom I believe
2 when this case has been going on, is that correct?

3 A. Correct.

4 Q. Okay. And you've seen the video tape that was played
5 yesterday, is that correct?

6 A. I have.

7 Q. Okay. And let me ask you this incident occurred on
8 February 20th of 2008. When before that date did you see
9 Antwan Benjamin, last see him before then?

10 A. Before the 20th?

11 Q. Yes. Or before he came to your house on that date?

12 A. On the 19th.

13 Q. Okay. Just describe what happened on that date?

14 A. He just came by -- came by about around between 11:30
15 or 12:00 that night tapped on my window and I walked
16 outside and had a conversation with him. He had someone in
17 the car with him he wanted to spend some time with in the
18 yard and I told him all right just pull up here and I just
19 went back in the house.

20 Q. So he was in a car in your yard?

21 A. Yes, sir.

22 Q. Was it a man or a woman in the car?

23 A. A female.

24 Q. And then did you -- let me ask you, when is the next
25 time you saw him?

1 A. On the 20th.

2 Q. Okay. Between the time -- did you have any contact
3 with him between the time that you saw him that night and
4 when you saw him on the 20th?

5 A. No.

6 Q. Okay. Do you recall any telephone conversations with
7 him during that time?

8 A. No.

9 Q. Are you saying there wasn't any or you just don't
10 remember?

11 A. I don't remember having any conversations with him at
12 all.

13 Q. Now he did come to your house on the 20th, is that
14 correct?

15 A. Correct.

16 Q. Okay. And I believe that was shown on the video tape,
17 is that correct?

18 A. Yes it is.

19 Q. I want to go through this video tape with you. I'm
20 going to pause it at certain points and I am going to ask
21 you some questions during the tape okay.

22 A. No problem.

23 Q. Hoping it works right. All right I'm going to pause
24 now.

25 (VIDEO STOPPED AT 1.39.07 TIME STAMP.)

1 What does that depict at that point? What does that
2 show?

3 A. Him pulling into my yard and getting out of the car.
4 That building right there is the church that is actually in
5 front of my house.

6 Q. Okay.

7 (VIDEO STOPPED AT 1.39.38 TIME STAMP.)

8 Okay that shows something in your hand. What are you
9 doing there?

10 A. I'm rolling it up.

11 Q. Okay. And that's a joint of marijuana?

12 A. Correct.

13 (VIDEO STOPPED AT 1.40.04 TIME STAMP.)

14 Q. All right. It was just a conversation; it says
15 something about a minute away. Can you explain what that
16 conversation is about?

17 A. It's a blue car coming down the road and I've actually
18 put the bag in my mouth when I'm talking here. And I said
19 he's saying about a minute away from here.

20 Q. Okay.

21 A. He pointed at the car that was going down the road. I
22 thought he knew the guy.

23 (VIDEO STOPPED AT 1.40.23 TIME STAMP.)

24 Q. Let me stop it a second and ask you why are you
25 outside at that point and what were you doing?

1 A. I took my dog outside to use the restroom. Because
2 she's a house dog and I just took her outside and even when
3 I had her outside I decided that I was going to smoke a
4 joint.

5 Q. And was your dog in any particular condition at this
6 time?

7 A. She was coming into heat. She started to have a
8 cycle.

9 Q. Okay.

10 (VIDEO STOPPED AT 1.41.51 TIME STAMP.)

11 Now where is that in your yard?

12 A. In the back part of my yard is a plum tree I have
13 right there in my yard and it's in the back part of the
14 yard and it may be ten feet to eleven and that's where he
15 actually had parked that night the night before this.

16 Q. About twelve feet from there?

17 A. Yea about ten to twelve feet from that tree is where
18 he actually had parked.

19 (VIDEO STOPPED AT 1.42.49 TIME STAMP.)

20 Q. All right. Now you are referring to somebody that got
21 busted with about three pounds of weed, what are you all
22 talking about?

23 A. This guy is a mutual friend named Pete who got busted
24 with weed in North Carolina and he was doing some time for
25 it.

1 (VIDEO STOPPED AT 1.43.06 TIME STAMP.)

2 Q. Okay. Are you -- you are smoking something there. Is
3 that the joint that you rolled earlier?

4 A. One of the two joints I rolled.

5 (VIDEO STOPPED AT 1.43.48 TIME STAMP.)

6 Q. All right. What is the conversation there? What's
7 happening there?

8 A. I'm telling him I'm coming right back. A stray dog
9 that's been like around the house since my dog is going
10 into heat and the dog was coming across the church parking
11 lot. The only way it can get into my yard is to come
12 across and come up and I was going down behind the house to
13 make sure he didn't come up in the yard.

14 (VIDEO STOPPED AT 1.44.53 TIME STAMP.)

15 Q. Okay. Now it looks like he's at the door and you hand
16 him something. This is where he said you handed him some
17 crack. What is happening here?

18 A. I actually hand him a piece of a joint that I had.

19 (VIDEO STOPPED AT 1.45.04 TIME STAMP.)

20 Q. All right what was just said there? He said
21 something.

22 A. I mean this is a couple of spots where me and him were
23 talking to each other and we were talking about two totally
24 two different things. He ask me a question. I'm asking a
25 question and while I'm asking the question he'll ask the

1 second question like I don't know what he's talking about
2 right there. I actually just gave him a joint. I was
3 telling him somebody else had got some and he said it
4 looked like baking soda too.

5 Q. Did you think it was odd that he started talking about
6 baking soda?

7 A. Knowing him anything pretty much possible with him.

8 MR. SPRINGS: Could the defendant speak up a little
9 but I'm having trouble hearing him.

10 (VIDEO STOPPED AT 1.45.11 TIME FRAME.)

11 BY MR. BOYD:

12 Q. Who were you talking about last night?

13 A. Jamo.

14 Q. Who?

15 A. Jamo.

16 Q. Okay who is that?

17 A. Just a mutual friend.

18 Q. And what are you talking about to him?

19 A. Smoking some weed.

20 (VIDEO STOPPED AT 1.45.47 TIME FRAME.)

21 Q. Here you are talking about somebody named Bain.

22 What's that conversation about?

23 A. In reference to what he was asking me for about the
24 baking soda thing. I told him the only person I knew was a
25 guy named Bain but he didn't want to talk - -

1 THE COURT: I can't hardly hear him. You need to
2 speak up or speak into the microphone or something.

3 A. In reference to what he was talking about the baking
4 soda. It was a guy that we both - that I know that could
5 have possibly helped him out with that.

6 Q. And his name?

7 A. Bain.

8 (VIDEO STOPPED AT 1.46.03 TIME FRAME.)

9 Q. Now what's happening there?

10 A. I don't really know. He's standing there talking.

11 (VIDEO STOPPED AT 1.46.10 TIME FRAME.)

12 Q. Now he rolls up the window and you appear to walk away
13 from the car. What's happening there?

14 A. I thought he was getting ready to leave actually.

15 (VIDEO STOPPED AT 1.47.10 TIME FRAME.)

16 Q. Where were you when this is going on?

17 A. Right by the trash can. That's right down . . .

18 (VIDEO STOPPED AT 1.47.32 TIME FRAME.)

19 Q. All right you tell him he owes you ten dollars.

20 Explain that conversation.

21 A. We met at the same house two weeks prior to this was
22 on February the 9th and he wanted to buy some weed and I was
23 buying some weed and he was ten dollars short so I let him
24 borrow ten dollars to get the weed and I told him he owed
25 me ten dollars and I was reminding him that he owed me ten

1 dollars.

2 (VIDEO STOPPED AT 1.47.42 TIME FRAME.)

3 q. All right now you say he ask you about powder. What's
4 going on between the conversation there?

5 A. He is basically saying he needed some and I was just
6 basically telling him the only person that even knew about
7 it was in Kulp County.

8 Q. What is Kulp County?

9 A. Actually it's a street that's in Chester, outside
10 Chester County but they call it Kulp County and I don't
11 have no idea why they call it Kulp County. That's just the
12 name of the street.

13 (VIDEO STOPPED AT 1.48.29 TIME FRAME.)

14 Q. And he's asking about somebody named Pop and you're
15 talking about Pop. Explain what's - -

16 A. The same mutual friend who we referred to earlier as
17 Pea. He was in jail at the time and I was just telling him
18 he was in jail at the time and he wouldn't be around for a
19 couple of weeks.

20 (VIDEO STOPPED AT 1.51.11 TIME FRAME.)

21 Q. Do you know what was being the conversation there at
22 the end?

23 A. Nothing. We was talking about I was going in the
24 house. As far as I was concerned he kept asking the
25 question that I already answered so I assumed he would keep

DERICK TYRONE BLAKE: DIRECT EXAMINATION BY MR. BOYD
CROSS EXAMINATION BY MR. SPRINGS

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1 asking the same questions twice so I just started walking
2 in the house.

3 Q. After you reviewed the tape is that the best of your
4 recollection what you testified to and what happened on
5 that occasion?

6 A. Yes it is.

7 Q. Was it unusual for him to come by your house like
8 that?

9 A. Not really no. I mean like I said I've known him, I
10 know his father and I know his brother better than I know
11 him but I do know he is and for him to come by there
12 wouldn't be out of the ordinary no.

13 Q. At any time that day did you hand him any crack
14 cocaine?

15 A. No I did not.

16 Q. And were you involved in a sale of crack cocaine
17 between he and anybody else?

18 A. No I was not.

19 Q. Are you guilty of distributing crack cocaine?

20 A. No I am not.

21 Q. Thank you. Answer any questions Mr. Springs has.

22 CROSS EXAMINATION

23 DERICK TYRONE BLAKE BY MR. SPRINGS:

24 Q. Good morning, Mr. Blake, how are you doing, sir?

25 A. I'm fine. Yourself?

- 1 Q. Very good thank you. So you say that Mr. Benjamin
2 drove over to your house the night before about what time?
- 3 A. Between 11:30 and 12:00.
- 4 Q. Twelve midnight?
- 5 A. Correct.
- 6 Q. What kind of car was he driving?
- 7 A. A gray Ford Taurus. Maybe like his girlfriend the
8 same gray Ford Taurus he was driving on the 20th.
- 9 Q. And who was in the car with him that night between
10 11:30 and 12:00?
- 11 A. I don't know the females name.
- 12 Q. Did you get a look at her or you just didn't recognize
13 her?
- 14 A. I just saw that it was a female. I didn't really care
15 who she was and at that time it didn't give me no concern.
- 16 Q. So you're saying he came by between 11:30 and 12:00.
17 Are you pretty sure about that?
- 18 A. Yes.
- 19 Q. And what did he want when he came by between 11:30 and
20 12:00 that night?
- 21 A. He just wanted to have for lack of a better way of
22 putting it I guess relations with the lady and he didn't
23 want to take her home. He didn't want to get a motel room
24 so he wanted to just back up in the yard and spent some
25 time with her.

1 Q. And what did you say to him about that?

2 A. I told him I had no problem with it.

3 Q. All right. And did you notice what part of the yard
4 he parked in? You don't have to describe it but did you
5 notice what part of your yard he parked in?

6 A. Yes.

7 Q. You did?

8 A. Yes. He had the car parked when he came and knocked
9 on my window.

10 Q. So he didn't have to move it it was already parked?

11 A. He parked the car and then he got out of the car and
12 came and knocked on my window. I came out of the house and
13 spoke with him on the porch and I went back in the house.

14 Q. I got you. I got you. So this was February the 19th
15 the day before?

16 A. Correct.

17 Q. All right what was he wearing?

18 A. A pair of blue jeans and a sweat shirt like a hoody
19 and a pair of tennis shoes.

20 Q. So the next day he came back in the daylight. On this
21 movie what was he wearing there?

22 A. A pair of blue jeans and a jacket. I couldn't tell
23 what color shirt because he had the jacket zipped up.

24 Q. All right. Now you told the defense attorney your
25 attorney that you don't remember any phone calls to Mr.

1 Benjamin between the night before February the 19th and when
2 you met him, is that right?

3 A. Say it one more time.

4 Q. Let me ask you a question. Between the night when he
5 drove up and you say he came the night before which would
6 be February the 19th between 11:30 and 12:00 and he was
7 wearing blue jeans and a hoody he came and he wanted to
8 park in your yard. Between that time and when he's on the
9 movie here the next day afternoon did you have a phone
10 conversation with him?

11 A. Not that I remember no.

12 Q. Is it possible that you did and you've forgotten it?

13 A. I think I would have remembered that because it was
14 like seven days before my birthday when this whole incident
15 happened so I think I would remember it.

16 Q. I am going to play a tape recording for you. If you
17 would just listen to it and then I'm going to ask you one
18 or two questions.

19 (STATE'S EXHIBIT ONE PLAYED.)

20 Q. Did you hear a person say I'm waiting on you? Do you
21 want me to play it again? Let me play it again.

22 (STATE'S EXHIBIT ONE PLAYED.)

23 Q. Now that voice that says you don't have to go that far
24 and the other voice on the phone do you recognize that
25 voice?

1 A. The one that says - I recognize one voice on there
2 yea.

3 Q. There are two voices would you agree?

4 A. I recognize Antwan Benjamin.

5 Q. You do? What about that other voice? Do you
6 recognize that other voice?

7 A. No I do not.

8 Q. That's you isn't it? You don't recognize your own
9 voice?

10 A. No. If you say it's me I guess I don't but I don't
11 recognize that voice.

12 Q. Okay. Is there any way that could be your voice?

13 A. I don't think so no.

14 Q. You don't think that's you?

15 A. No.

16 Q. Do you want me to play it again so you can be sure?

17 A. I'm sure now.

18 Q. This is pretty important. You're sure that's not your
19 voice? That's not you?

20 A. Yes, sir. I'm sure as I possibly can be. I don't
21 recollect having a phone conversation with him that day at
22 all.

23 Q. That was State's Exhibit One we played and that's you
24 say not your voice on the other end talking to Mr.
25 Benjamin?

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DERICK TYRONE BLAKE: CROSS EXAMINATION BY MR. SPRINGS

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1 A. I do not remember having a phone conversation with Mr.
2 Benjamin.

3 Q. Well I'm not trying to be technical but we've gone
4 past whether you remember you had a phone conversation, is
5 that your voice on that tape talking to Mr. Benjamin?

6 A. I don't believe it is sir, no.

7 Q. All right I'm not trying to fool you. Believe me if
8 anything I've ask you is confusing you tell me. I'm just
9 trying to get to the truth here. Now on the movie you tell
10 Mr. Benjamin he's about a minute away and who was about a
11 minute away?

12 A. That's not what I said.

13 Q. Okay tell us what you said and what you're talking
14 about.

15 A. When he taps on the window I'm rolling a joint and I
16 have a bag in my hand. I put the bag in my mouth and he's
17 pointing at a car that goes down the road and I said the
18 guy stays about a minute away.

19 Q. Okay.

20 A. And I said it like three times.

21 Q. All right.

22 A. He's pointing at a car.

23 Q. You can't see him on the movie pointing at that car
24 though would you agree?

25 A. No but he ask the officers about the same car that he

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1 pointed at.

2 Q. Okay. So he silently pointing to a car, is that
3 right?

4 A. I mean I don't think he would be. I mean he's
5 pointing as the car going down the road.

6 Q. He didn't say ha there's a car? He's silently
7 pointing at a car.

8 A. He just pointed at the car.

9 Q. And you just said well he's about a minute away right?

10 A. I said he lives about a minute away. Well I said he
11 stays about a minute away - - -

12 Q. Right.

13 A. - - - is the right word. He stays about a minute
14 away.

15 Q. All right he points at the car why do you think you
16 had to tell him how far away the guy lives?

17 A. Well I thought he knew the guy.

18 Q. Okay. Now you told the defense attorney that Mr.
19 Benjamin the night before when you say he came to see you
20 between 11:30 and 12:00 midnight and wearing blue jeans and
21 a hoody that you pointed near that tree that one particular
22 tree on the movie, is that right?

23 A. Say it again.

24 Q. You told your defense attorney there was a tree.

25 A. Yea Plum tree.

1 Q. Yes. And you said he parked near that tree the night
2 before is that right?

3 A. Correct.

4 Q. And then you had to go around the house because of
5 why?

6 A. My dog was coming into heat there had been a stray dog
7 and it's been around the house for a couple of days prior
8 to that and I was just making sure the dog wasn't working
9 it's way back up into the yard.

10 Q. Okay.

11 A. So I went to throw a rock at the dog to get him to
12 leave from around the fence because the fence runs all the
13 way to the road on both sides of my house.

14 Q. So you had your dog on a leash?

15 A. Correct.

16 Q. And you and your dog go to look for the stray dog?

17 A. Not to go look for him. I just walked to the edge
18 behind the house and threw a rock if I saw him. I wasn't
19 looking for him. I actually saw the dog coming across the
20 yard.

21 Q. All right. Then you mentioned you handed Mr. Benjamin
22 ten dollars and you owed him ten dollars for what reason?

23 A. I didn't owe him ten dollars. He owed me ten dollars.

24 Q. I'm sorry. See you got to correct me when I'm wrong.
25 I'm getting old. Okay so he owed you ten dollars and why

1 did he owe you ten dollars?

2 A. From the transaction that me and him had prior to that
3 day.

4 Q. Okay. How much prior to this February 20th was it?

5 A. It happened on the 9th of February which was a
6 Saturday.

7 Q. And he gave you ten dollars. Tell us about that
8 transaction and about the ten dollars.

9 A. He - we met and we happened by chance to meet at this
10 same house to buy some weed and the guy that was selling
11 the weed only had a twenty-five dollar bag and he was ten
12 dollars short so I gave him the ten dollars. So I let him
13 borrow ten dollars and I give him ten dollars.

14 Q. Okay. So that's why you said on the movie that
15 Benjamin owed you ten dollars?

16 A. Correct.

17 Q. And then when you're talking about Benjamin says he
18 wants to do big big things and talking about powder and the
19 only person you knew dealing in powder was in Kolb County?

20 A. It was - -

21 Q. He was talking about powder, asking you about powder
22 wanting to get a hold of powder. Is that powder cocaine?

23 A. I assume that's what he was talking about yes.

24 Q. Okay. And you said the only person you knew dealing
25 with powder was down in Kolb County it's hard to get?

1 A. I said I told him that's where someone said he got it.
2 I didn't say I knew anyone there. I just said someone said
3 he got it from somebody in Kolb County.

4 Q. And you were arrested on June the 4th of 2008.

5 A. Correct.

6 Q. Three or four months after this.

7 A. Correct.

8 Q. You've got a good memory.

9 A. Six, seven days before my birthday it wasn't very
10 long.

11 Q. Your memory gets better before your birthday?

12 A. Excuse me.

13 Q. Your memory gets better before your birthday?

14 A. No. It's just not hard to remember things when
15 they're around your birthday. I'm pretty sure you can
16 remember things around your birthday can't you?

17 Q. No I got a terrible memory. I sure can't remember
18 three or four months ago. So you remember three or four
19 months prior when you were arrested June the 4th of 2008.
20 Eventually came by February the 19th between 11:30 and 12:00
21 midnight no doubt about that. Do you remember that?

22 A. Yes I remember that.

23 Q. Do you remember the time he came by your house three
24 or four months earlier?

25 A. He came by my house the day before. Yea the day

1 before. I was looking at the paperwork, the 20th on the
2 paperwork.

3 Q. And you were looking at the paperwork something like
4 this warrant that you were arrested on, right? Do you
5 remember the arrest warrant?

6 A. Yes.

7 Q. When you arrested June the 4th and you say oh he was by
8 my house the night before this between 11:30 and 12:00
9 midnight wearing blue jeans and a hoody and you remember
10 that?

11 A. I didn't tell the officers that no.

12 Q. But you remember that?

13 A. They didn't ask me that question.

14 Q. I just ask if you remember that. You do remember
15 that?

16 A. Yes I do.

17 Q. When he came and he what he was wearing three or four
18 months before. If the police hadn't arrested you you
19 didn't know you had any problems until June the 4th did you?

20 A. Excuse me.

21 Q. You didn't have any problems with the police arresting
22 you if the police hadn't come to see you until June the 4th
23 is that right?

24 A. Correct.

25 Q. And you remember where he parked and you remember the

1 tree where he parked.

2 A. I remember where he parked sir, because it's as I said
3 before it was two junk cars, two broken down cars in the
4 yard. There's only one place he could have parked.

5 Q. I see. But you don't remember whether or not you had
6 a phone conversation with him between when he came by on
7 February 19th between 11:30 and 12:00 midnight where he
8 parked between then and the next day on the movie you don't
9 remember if you had a phone conversation with him?

10 A. I said I do not remember having one at all with him.

11 Q. Are you saying By God I didn't have a phone
12 conversation with him?

13 A. I'm saying I do not remember having a phone call with
14 him at all.

15 Q. Okay. Did you - you might have but you don't remember
16 that's what I'm trying to pin down. Would you have had a
17 phone contact - -

18 A. I do not remember having a phone conversation with him
19 at all.

20 Q. Okay so that means you might have and you forgot?

21 A. It means I do not remember.

22 Q. There you go. That's all I needed. So you had
23 forgotten whether you might have had a phone call or not
24 fair enough?

25 A. I do not remember.

1 Q. Okay. All right. And that's not your voice on the
2 tape that we just played State's Exhibit One?

3 A. I do not think so.

4 Q. Now how many times have you seen the movie here, Mr.
5 Blake? How many times have you watched and listened to it?

6 MR. BOYD: Your Honor, I am going to object to that.
7 I think that goes into attorney client privileges he has
8 seen it with me.

9 THE COURT: I will over rule the objection.

10 MR. SPRINGS: Thank you, sir.

11 How many times have you watched and listened to
12 because there's an audio on have you watched this movie?

13 A. I think I saw it three times. Twice yesterday and
14 once today. Maybe six.

15 Q. So you've never seen it before yesterday?

16 A. I said maybe six. I saw it twice yesterday and once
17 today and then three times prior to that.

18 Q. Okay. About six times. And there were areas in the
19 movie that you felt like you needed to explain are there
20 not?

21 A. That I felt like that I needed to explain?

22 Q. That you wanted to explain that you felt like you had
23 to explain? Is that a fair question?

24 A. I knew those areas in it that needed to be clarified I
25 would agree with that yes.

DERICK TYRONE BLAKE: CROSS EXAMINATION BY MR. SPRINGS

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1 Q. Well I mean he is about a minute away. You felt like
2 you needed to explain that didn't you?

3 A. I didn't say he was about a minute away.

4 Q. Well you did on the movie. He comes up to the car and
5 you say yea he's about a minute away?

6 A. He stays about a minute away.

7 Q. And you felt like you needed to explain that?

8 A. It's two different things.

9 Q. Okay. And the ten dollars you felt like you needed to
10 explain why Benjamin owed you ten dollars did you not feel
11 like you had to explain that?

12 A. It was said on the tape that he owed me ten dollars.

13 Q. Right. And you felt the need to explain that?

14 A. I mean I wanted my money that's why I said it to him
15 on the tape. I wanted my money.

16 Q. Actually Mr. Blake, Mr. Benjamin didn't come to your
17 house the night before did he?

18 A. Yes he did.

19 Q. Actually he came to your house that afternoon after he
20 talked to you on the phone on that tape recorded
21 conversation and he met with you there in the yard did he
22 not?

23 A. He came on the 20th but he also came on the 19th yes.

24 Q. And he came up and he ask you well what are we going
25 to do here and you say he's about a minute away. You're

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1 talking about your connection, you supplier the guy that's
2 bringing you the crack he was about a minute away. That's
3 who you were talking about isn't that the truth?

4 A. Incorrect. It's not the truth.

5 Q. And when you walk around the house there wasn't any
6 stray dog. Your supplier had arrived and you went over and
7 you got that eight ball of crack from your supplier, isn't
8 that the truth?

9 A. Incorrect.

10 Q. And when you came back the deal was for a hundred and
11 fifty dollars, isn't that the truth?

12 A. Incorrect.

13 Q. And Mr. Benjamin gave you a hundred and sixty dollars
14 because all he had was twenties. You handed him a twenty
15 back and said you owe me ten, isn't that the truth?

16 A. That is not true.

17 Q. And he ask you and your attorney didn't play this he
18 told you he wanted to meet your contact. He wanted to meet
19 your supplier and said I want to meet him, isn't that the
20 truth?

21 A. It was on the tape?

22 Q. Yea. Yea he wanted to meet your guy and you said no.
23 You didn't want him to meet your contact did you?

24 A. Excuse me.

25 Q. You did not want him to meet your supplier the guy

DERICK TYRONE BLAKE: CROSS EXAMINATION BY MR. SPRINGS

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1 that came you did not want Benjamin to meet him did you?

2 A. I had nothing to do with Benjamin meeting anybody,
3 sir.

4 Q. Yea Benjamin asked can I meet this guy and you said no
5 no.

6 A. I said no the guy won't talk to anybody. I didn't say
7 anything about meeting him. I couldn't care less if he met
8 him or if he knowed him or not.

9 Q. Actually the truth is you didn't want to be cut out of
10 the middle. You wanted your cut you wanted to stay in the
11 middle. If Benjamin goes to your supplier he no longer
12 would need you, isn't that the truth?

13 A. Say if I was in the middle why would I be owed ten
14 dollars? I cut myself out?

15 Q. He gave you a hundred and sixty dollars and for
16 whatever reason you gave him twenty back so he just owed
17 you ten.

18 A. I put my money in on a drug deal with him is that what
19 you're saying? My money out of my pocket - - -

20 A. I don't know what you paid the supplier.

21 A. - - - is that what you're saying?

22 Q. What did you pay the supplier when the guy came up in
23 the car?

24 A. There was no one in the car. And no one came up in
25 the car period.

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1 Q. That's all I have.

2 THE COURT: Redirect?

3 MR. BOYD: You can come down.

4 THE COURT: All right call your next witness.

5 MR. BOYD: That's the defense case.

6 THE COURT: Anything in reply?

7 MR. SPRINGS: No, sir.

8 THE COURT: All right. Members of the jury panel, you
9 have now heard all the evidence -- all the testimony
10 received all the evidence. At this point I have take up
11 matters of law outside of your presence. You are not in a
12 position really to discuss the case and try to make up your
13 own mind. When you come back in you will hear the
14 attorneys closing arguments and my charge on the law and
15 then at that time you will be in a position to deliberate
16 and return a unanimous verdict. So we will take about a
17 ten or twelve minute break.

18 (JURY LEAVING COURTROOM AT 11:10 A. M..)

19 THE COURT: The jury is out anything from the State?

20 MR. SPRINGS: No, sir.

21 THE COURT: Any from the Defense?

22 MR. BOYD: I renew my prior motion.

23 THE COURT: Motion is denied. As I stated earlier I
24 believe there is evidence in which a jury could conclude
25 that Mr. Blake did in fact engage in a transaction

1 involving the distribution of crack cocaine and that not
2 only but it was within one half mile of a public park or a
3 an area in the park.

4 Now any request to charge from the State?

5 MR. SPRINGS: No, sir.

6 THE COURT: Any from the Defense?

7 MR. BOYD: No.

8 THE COURT: My analysis is that there is no lesser
9 included. He either distributed or he did not. It's not a
10 constructive possession or anything like that where there
11 might be a simple possession of lesser included so I don't
12 intend to submit anything other than the two charges set
13 forth in the indictments. Any thoughts on that?

14 MR. SPRINGS: I agree. He denies having any
15 involvement so it's the charge.

16 MR. BOYD: That's correct.

17 THE COURT: All right we'll take about a ten minute
18 break and then we'll come back and be ready to argue and
19 the charge. The State waives opening?

20 MR. SPRINGS: We do.

21 (SHORT RECESS AT 11:12 A. M..)

22 (BACK ON THE RECORD AT 11:20 A. M..)

23 THE COURT: Thank you, take your seats. Is the State
24 ready?

25 MR. SPRINGS: Yes, sir.

CLOSING: BY: MR. BOYD

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1 THE COURT: The Defense ready?

2 MR. BOYD: Defense is ready.

3 THE COURT: Bring in the jury.

4 (JURY ENTERING COURTROOM AT 11:25 A. M..)

5 THE COURT: Mr. Boyd.

6 MR. BOYD: May it please the court. Good morning
7 Ladies and Gentlemen. This case is based on a video tape.
8 You have basically two versions of what happened or
9 interpretations from two people as to what happened on this
10 video tape. You have Antwan Benjamin what he said about
11 it. You have Derick Blake what he said about it. But one
12 thing I would like you to remember in judging between the
13 two it is not an even scale in judging. Basically the
14 burden is upon the State to prove their case. The burden
15 is upon the State to prove that Antwan Benjamin's version
16 of what happened is what happened. It's not up to us to
17 prove that Derick Blake's version of what happened is what
18 happened. They've got to prove that he distributed that
19 Derick Blake distributed crack on that date and occasion.
20 So it's up to them to prove that what Antwan Benjamin said
21 was happening on that tape is what was in fact happened.
22 They have to prove that beyond a reasonable doubt. And I
23 would like to just look at some of this and give you some
24 things to consider when judging this case.

25 The Judge will tell you one thing about reasonable

000343

CLOSING: BY: MR. BOYD

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1 doubt it's the kind of doubt that will make somebody
2 hesitate to act. And I want to point out some things a
3 good number of things that I submit to you should make you
4 hesitate to convict Derick Blake. This case all starts
5 with Antwan Benjamin. Antwan Benjamin gets not arrested
6 but he gets caught selling crack. As a result of that
7 there is a further investigation a search warrant is issued
8 and they find evidence that is enough to charge him with
9 possession with intent to distribute marijuana. So he has
10 two serious charges particularly selling the crack. It's
11 more serious for him even because in the past he has been
12 convicted of distribution of crack. He's also been in the
13 same incident convicted of distributing the crack within
14 the proximity of a park. So this is his second go round at
15 getting caught dealing crack. So he agrees and they talk
16 to him. They obviously would like to use him to help them
17 and get some drug dealers. Get some bigger drug dealers.
18 And he's anxious to help because he wants to get out of
19 what he's into. I'm sure he would like to get it all taken
20 care of and not have anything happen to him but if he's
21 going to have to do time he's certainly wanting to do as
22 less time as he can. Now I submit to you he's willing to
23 do anything he can to help himself on that. And I submit
24 that he's willing to do anything even if it gets to the
25 point if he can't -- if he can make a buy of crack from

000344

CLOSING: BY: MR. BOYD

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1 somebody or any other kind of drug for that matter he will
2 do it in order to help himself out. Even if he can't he'll
3 set somebody up. I don't think he has any regret about
4 setting someone who's innocent up if it's going to help
5 himself. Remember he's not a very credible person. He's
6 at least a two time drug dealer. And he has a record for
7 petit larceny also. Now that's a minor offense but what it
8 does show as far as judging his credibility I mean he's
9 been convicted of stealing before and I submit if you will
10 steal you will lie. Now as he testified as Antwan Benjamin
11 testified you know he has to produce. He has to make cases
12 for them in order to help himself out. And the more cases
13 he is to make the better off he's going to be. You know
14 he's going to be a lot better off if he can make ten cases
15 than if he can make one case. So that's just for a
16 scenario that leads up to this situation. Antwan Benjamin
17 as I say will do anything. And if you know people in that
18 situation would set somebody up or do something like that
19 just listen to what Officer Cashier says. They do a search
20 of people before they send them out to make a buy. And he
21 has in the past actually discovered informants hiding drugs
22 in their cars. So it's not unheard for them to try to do
23 it. In most cases fortunately they found the drugs in the
24 informant's car before they were able to set somebody up.
25 But what if they miss it? What if they don't find the

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CLOSING: BY: MR. BOYD

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1 drugs in the car? Which brings me to the point how
2 adequate was the search of Antwan Benjamin as to what kind
3 of search did you do? Well on his person first of all.
4 They didn't do a strip search. I mean this is a tiny you
5 don't have any - you know this is something very small. It
6 would be easy to hide. They didn't do a strip search on
7 him. But even more importantly the search of the car and
8 you all saw on the tape how more time they took doing that.
9 Antwan Benjamin says on the tape my car is a mess. And
10 they spend what I calculated you can look at it and see
11 what you calculate but about two minutes and eighteen
12 seconds doing that search. I submit to you that's not
13 adequate search to search a car to find out if something
14 that's tiny in it. I mean you know I sit in my office and
15 sometimes there'll be something on my desk I know good and
16 well is there and it takes me more than two minutes to find
17 it sitting in my office. That doesn't say much for how
18 organized I am but that's the case. You know my car I have
19 to guess but my car's always a mess. It takes me you know
20 finding something in my car that I know is there sometimes
21 it sure takes a lot longer than two or three minutes
22 talking or cleaning it out. Lord knows how long it takes.
23 But the point is it's just not adequate in something that's
24 important to do a search in that short of an amount of
25 time. And I submit to you that wasn't a thorough and

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1 adequate search to begin with.

2 Now let's back up a minute before the time of the
3 search. They see some phone calls were made. Derick Blake
4 says he doesn't remember making that phone call but if
5 there is no - I submit to you there is no proof that Derick
6 Blake made any of those phone calls. If the State and they
7 have the burden of proof and wants to prove that Derick
8 Blake made a phone call to Antwan Benjamin wouldn't it be a
9 simple matter to get the cell phone records? It would be
10 on there. That would be proof. The State has the burden
11 of proof but they didn't produce that so that's missing
12 from this case. I submit to you that's a reasonable doubt.

13 During the whole time that Antwan Benjamin is in the
14 car and at the scene he's got the camera. That camera has
15 a limited view, where he reaches in that car, where he
16 reaches on his person we don't know. He at least if you
17 look at the tape twice he covers up the camera with his
18 hand for what reason I'm not entirely sure. But he could
19 easily have something hidden in his car such as crack and
20 take the crack out for some hidden location. Look at him
21 on the scene when he's at Derick Blake's house. At one
22 point he gets in the car the camera shows him bending over.
23 It doesn't show where his hands are and then it shows him
24 picking up some kind of package which he says is a pack of
25 cigarettes. Well I wonder if the officers searched inside

CLOSING: BY: MR. BOYD

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1 of the pack. You know that's just one thing; that's just
2 one place. Now he gets to Derick Blake's house and that's
3 where it comes in this conversation between them and
4 there's talk about drugs between them. But the point is is
5 there a drug transaction. What evidence is there of that?
6 Now you heard Antwan Benjamin say yea he had somebody come
7 and he went around and brought the crack back to him and
8 I'll pay you money. That's Antwan Benjamin's words.
9 That's what the State has to prove is true that what Antwan
10 Benjamin said about that is true. Derick Blake says
11 something different about it. He says it didn't happen
12 that way. And it's not our burden to prove to you that
13 what Derick Blake is saying about that is true. It's up to
14 the State to prove what he's saying is not true. But
15 there's things on the tape about drugs. But the number one
16 thing Antwan Benjamin knows he's been recorded. This isn't
17 a secret recording that's being done between two people who
18 don't know their being recorded. One doesn't know he's
19 being recorded but the other Antwan Benjamin does so Antwan
20 Benjamin can say anything knowing it's being recorded into
21 that tape to make sound like something is happening or not.
22 An example I'll give you when Derick Blake hands him
23 something through the window. Now this is the key dispute
24 in this case. Is it crack; is it a joint? Derick Blake
25 says it's a joint; Antwan Benjamin says its crack. Antwan

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CLOSING: BY: MR. BOYD

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1 Benjamin says it looks like baking soda and you would think
2 well why would he be saying that if it was a joint. Well I
3 submit to you because he can say anything he wants to make
4 it look like what he wants the officers to think it is.
5 He's able to steer the conversation where he wants it to
6 go. One thing you don't see on the tape you don't see what
7 was handed to him. YOU don't see him - you don't see crack
8 on that tape or a bag of crack or even think anything that
9 looks like a bag of crack on that tape. Benjamin knows
10 he's being - he's got a camera on him. It would be a
11 simple matter if there was crack handed to him just to hold
12 it up like that right in the angle that it would have been
13 that would have showed it on the tape at the scene but you
14 don't see that on the tape. Likewise he changed his story
15 when he went back - when he went back to the station or to
16 the FBI and gave a statement that he signed about what
17 happened he said he gave Derick Blake money. Derick Blake
18 walked around to the front of the house that Derick Blake
19 came back and he said that Derick Blake handed him the
20 crack then. He gave Derick the money Derick came back with
21 the crack. Well in his testimony he said he gave Derick
22 the money after he came back to the car and gave him the
23 crack. Well the tape doesn't show him handing money at any
24 time but I submit to you why he changed his story is he's
25 watched the tape. He said he had watched the tape prior to

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CLOSING: BY: MR. BOYD

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1 coming to court and he saw -- what you can see on the tape
2 is before he comes back to the car their never close enough
3 together for Benjamin to have handed Derick Blake anything.
4 They are about ten feet apart most of the time. And
5 there's nothing on that tape that would indicate that he
6 handed him any money before going to the front of the
7 house. And why is that important? It's important because
8 that's the detail that Antwan Benjamin said in a signed
9 statement was true and then he comes to court and says no
10 it didn't happen that way. He's having to back up on his
11 story because the tape doesn't verify what he says.

12 Now Antwan Benjamin claims that he got this - there
13 was a black car that Derick Blake went over and somebody
14 was in there that gave him the crack and he brought it back
15 to Benjamin. Well where's the black car? It's not shown
16 on the tape. Now he said he could see the black car but
17 the tape you can't see everything he sees on the tape. I
18 mean it's a more narrow view but take into consideration
19 it's never - the black car - it would be easy for him to
20 get in a position where the black car would at least
21 briefly on the tape but it never does. It's a complete
22 absence of proof as to the black car. You also have two
23 officers in the area, four officers actually, but two cars
24 with officers in them riding around the area they look for
25 a black car and don't find the black car so where is this

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CLOSING: BY: MR. BOYD

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1 black car. It's not there. It's a total absence of proof;
2 a total lack of corroboration on what Antwan Benjamin is
3 saying. Another thing that doesn't make a whole lot of
4 sense and this came back and forth between Mr. Springs and
5 Mr. Blake when Mr. Springs was cross examining him. Now
6 what would have been in it for Derick Blake to do this?
7 According to Antwan Benjamin he gives Derick Blake a
8 hundred and sixty dollars. Derick Blake goes over to the
9 car brings him back the crack and twenty dollars. And if
10 that's the case Derick Blake if he's owing him ten dollars
11 for this he had to take ten dollars from his pocket because
12 the crack cost a hundred and fifty dollars and paid the guy
13 in the black car out of his own pocket an extra ten and
14 bring back Benjamin twenty. What's Blake getting out of
15 this if that's the case? And even if he's doing it as a
16 favor wouldn't it make more sense if he - if Benjamin is
17 giving him a hundred and sixty dollars and just give the
18 guy in the black car a hundred and sixty dollars and bring
19 back the crack. You're out of ten dollars because you
20 didn't have the right change. It just doesn't make sense.
21 That's just a small thing. That's just something that
22 doesn't make a whole lot of sense as to why he would do
23 that if that's the situation that Benjamin claimed.
24 Another thing about the change of the twenty dollars that
25 was handed back. I think you heard testimony from officers

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CLOSING: BY: MR. BOYD

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1 and particularly Officer Lubben that they got back to the
2 station or the FBI office they went into the office and at
3 that point in the elevator he gave him some - a bag of
4 crack cocaine. Now what about the twenty dollar bill? Is
5 there any testimony or any evidence presented that the
6 twenty dollar bill was given back to the officers? They
7 talk about getting the crack but they don't talk about
8 getting the twenty back. If what Antwan Benjamin said
9 happened he should have brought them back twenty dollars of
10 their marked money but we don't have that into evidence and
11 we don't have any testimony from them that that is in fact
12 what happened. And I submit that's an important detail
13 that's completely absent in this case.

14 You will see in this plastic bag there is a baggie.
15 It's a baggie that Benjamin claims Derick Blake handed him.
16 Is there any testimony that they tried to take fingerprints
17 from that baggie? Maybe they would have got prints and
18 maybe they wouldn't but there is no testimony they even
19 tried. That certainly would corroborate their case if they
20 found Derick Blake's fingerprints on the baggie. There's
21 so much here that's missing; so much here that is not proof
22 in this case. Now I know that you hear about crack cocaine
23 and they admitted there was a serious problem and certainly
24 I don't like it. I am a citizen of this county like
25 everybody else and I have two children. I have an eleven

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CLOSING: BY: MR. BOYD

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1 year old and a seven year old and I certainly don't like
2 the idea of people out dealing drugs in Rock Hill where I
3 live or in this county. But I don't like the idea of
4 someone being convicted who may be innocent either. And I
5 certainly think it's important that the job law enforcement
6 does in conducting these cases and in getting the people
7 who are dealing drugs to be done in the correct manner. I
8 want them to have the proof. I want them to have it locked
9 down. I want them to do - I want them to do adequate
10 searches of informants before they send them out. I don't
11 want no stones left unturned. There's too many stones left
12 unturned in this case, the search, the lack of phone
13 records. I mean it goes on and on and on and on. Derick
14 Blake has come in here and basically put his future in your
15 hands. He has said he is not guilty of this. He's
16 admitted to some other things. He certainly knows people
17 that deal drugs. They talk about that on the tape. He
18 used marijuana he admits that. Handed Antwan Benjamin
19 marijuana he admits that. So you know he's done some wrong
20 things as far as the marijuana goes. Knowing people that
21 deal drugs is not illegal. But he is presumed to be
22 innocent of these charges. What that means as I said
23 earlier the State has the burden of proving that to you
24 beyond any reasonable doubt. They have the burden of
25 proving what Antwan Benjamin said about that what happened

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CLOSING: BY: MR. BOYD
BY: MR. SPRINGS

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1 on that tape is true and correct. They have the burden of
2 proving that beyond a reasonable doubt. It's not enough
3 for them to present a suspicion that if what Antwan
4 Benjamin says may be true. Its' not enough for them to say
5 that it's probably true that's not enough. In our system
6 of justice guilt has to be proven beyond any reasonable
7 doubt. If there is any reasonable possibility that Derick
8 Blake is innocent of these charges then he is entitled for
9 a verdict of not guilty. Our system of law is based on the
10 proposition that it's better to take a chance of a guilty
11 person going free than to take a chance of an innocent
12 person going to jail. And our system is not perfect.
13 Errors are made both ways unfortunately in our court
14 system. But we try to have the burden on the State to
15 prove the case beyond a reasonable doubt before mistakes
16 are being made and innocent people going to jail. I submit
17 to you that the State has left too many unanswered
18 questions in this case. They have left too many things
19 that just haven't been done that should have been done in
20 this investigation. I submit to you that they have not
21 proven beyond a reasonable doubt that what Antwan Benjamin
22 says is true. And for that reason I am asking from you for
23 a verdict of not guilty. Thank you.

24 MR. SPRINGS: That was a great closing argument and I
25 mean that from the heart. The defense attorney gave a

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1 tough row to hoe in a case like this. It would be even
2 tougher for him before Mr. Blake got on the stand but after
3 Mr. Blake got on the stand it was real tough to deny your
4 own voice and he had a very distinctive voice. It's proof
5 that everyone in this room has done a good job. The
6 defense attorney has done a great job. His job is to try
7 to sew the seeds of reasonable doubt in your mind and in
8 that great closing argument he did the best he could with
9 what he had to work with. Someone once said trying to stir
10 up reasonable doubt is like taking a stick and a pool of
11 water that has fish in it and you stir up the bottom and
12 the mud comes up and you can't see the fish anymore but the
13 fish are still there. This is a good case. It's not a
14 perfect case. No case will ever be perfect that's made by
15 human beings but the police and the narcotics unit did a
16 great job. I've done my best to prosecute it. The clerk's
17 have done a good job the Judge has done a good job. Now
18 it's going to be your turn and you're going to be like the
19 umpire that judges what happened. You are going to call it
20 like you see it. The police caught Antwan Benjamin, they
21 caught a petit drug dealer and they used him. Is that
22 desirable? No. But who else are they going to use? Who
23 else is not going to incur suspicion? This guy can't go up
24 and knock on somebody's door and say Hi I want to buy an
25 eight ball of crack. They can't go to Belmont Avenue and

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CLOSING: BY: MR. SPRINGS

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1 pick up Sister Angeline a catholic nun and bring her over
2 and ask her to go knock on the door. That ain't gonna
3 work. They got to get someone that will not be suspected.
4 And if they can get somebody that is a player, somebody
5 like Antwan Benjamin, and if they can work him in case
6 after case after case and they've used him on a lot of
7 cases you've heard that. It's distasteful but yea that's
8 what you use. You use a thief to catch a thief. The
9 little fish to catch the big fish. And they use him and he
10 was effective. They made what is called a controlled buy.
11 How does the police catch somebody in the act? They send
12 somebody like Antwan Benjamin over to try and actually buy
13 drugs and they are caught in the act. They search him;
14 they search his car. He is trying to help. He's in a
15 world of hurt. He's trying to help them and he wants to do
16 as much work and as much assistance as he can as risky as
17 it is. He's not going to jeopardize that by setting up one
18 out of many dealers. He's not going to jeopardize that.
19 This wasn't the first deal he had done and it wasn't the
20 last. He wants to do as much as possible to incur as much
21 good will as many brownie points with these guys as he can.
22 He's not going to jeopardize that by setting up one person
23 out of a series. But the police put as many controls on it
24 as possible. They search him and they search his car. You
25 can see his car in the movie. Actually my car is messier

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CLOSING: BY: MR. SPRINGS

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1 than his. It wasn't that messy but at any rate they search
2 it and this is what they do for a living. The FBI agent
3 and one of the narcotics guys search he's clean. They wire
4 him up and you're lucky. In the old days they didn't have
5 the movie camera. All they had was body wire a tape
6 recorder and all you would be hearing in this case would be
7 the voices. You've got the benefit of a movie camera and
8 it doesn't catch everything. But it makes a pretty darn
9 good movie. I wish it had caught the actual hand to hand
10 but it's mounted up on his body somewhere high enough so
11 that when they are doing the hand to hand out of the window
12 it doesn't catch it. When Benjamin comes back with the
13 drugs and hands it to the narcotics officer in the elevator
14 it didn't catch that either. But is there any doubt that
15 happened? Use your common sense in this whole case from
16 the beginning to the end. I think the Judge will tell you
17 to do that to use common sense. And look at all the
18 evidence. They wire him up, they follow him over there, he
19 meets with Blake, knocks on the window and when he's in the
20 car they've already had the phone call. And you've heard
21 Blake's voice on that tape. You've heard his voice on the
22 stand. It's very distinctive that's him clear as a bell.
23 And you get to make that judgment. You're judging the
24 facts here. You are the tryer's, the judge of the facts.
25 This man gives you the rules. He gives you the law and you

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CLOSING: BY: MR. SPRINGS

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1 judge the facts. Just like a baseball umpire who takes the
2 baseball commissioner's rules and he applies it to the
3 facts what he sees. That's all you have to do here. And
4 Benjamin meets with him he says I'll be here in a minute.
5 And shortly thereafter Benjamin says the car arrives he
6 goes around the house and he comes back and the quality is
7 at the low end of the price scale and it's going to be from
8 a hundred and fifty to a hundred and eighty. And the first
9 phone call that wasn't tape recorded they talk about the
10 price range the quality is low. Benjamin says it looks
11 like baking soda or baking powder so it's a hundred and
12 fifty. What is Blake paying his source at the car? We
13 don't know we will never know. It doesn't matter we don't
14 need to know that. It's certainly not dollar for dollar as
15 the defense attorney would like to have you speak. This is
16 a business man. This isn't a punk kid eighteen years old
17 standing on a corner. This is a forty-four year old
18 business man. Benjamin says I want to meet your guy. He
19 says you're not going to meet my guy. He's not going to
20 cut himself out. He's not going to do that he is a
21 business man. He's in this for the money. It's all about
22 him. It's not about the lives that that crack is going to
23 affect. This isn't just about the addict. This is about
24 the families; it's about the people they steal from, it's
25 about the rent that doesn't get paid, the food that doesn't

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1 get put on the table and the electricity bill that doesn't
2 get paid. It's about the clerk that gets robbed or shot.
3 So he comes back to the car and he gives Benjamin the crack
4 and the hundred and fifty dollars. The police have given
5 Benjamin twenties. So he gives him a hundred and sixty and
6 he gives him a twenty back and he says you owe me ten
7 dollars. When is he going to pay his source? What is his
8 arrangement with his source? Is his source giving him this
9 on assignment concerning him fronting him? You will never
10 know it doesn't matter. That doesn't matter. What we do
11 know using your common sense and hearing the testimony and
12 looking at the movie and you will have the TV with a DVD
13 player back there that is simple to operate and you can
14 look at it all you want and use your common sense and say
15 yea of course this is a drug dealer. They're talking about
16 all kinds of drug dealing here. Put it in context. And
17 then think about Blake getting up here and trying to
18 explain tying himself in knots in trying to explain the
19 damning parts of that video. He's remembering something
20 from four months before he's arrested. And why did the
21 officers say they wait not to arrest him? Not to burn the
22 informant. People they don't remember details like the
23 night of February and the 19th. Oh yea Benjamin came to me
24 at 11:30 and midnight and he was wearing blue jeans and a
25 hoody that night four months before I know I'm caught and

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1 I've got trouble. That's ridiculous. Hand to hand at the
2 window on the movie things are going back and forth. You
3 owe me ten dollars. Oh that's from a marijuana deal from
4 February the 9th right before my birthday. My memory is
5 good right before my birthday except I can't remember if I
6 make phone calls and that's not my voice. He tries to
7 explain it all. He would have been better off not to do
8 that. He just set himself backwards. When you deny your
9 own voice -- that's not my voice -- that is a big red flag.
10 We had to prove this to you beyond a reasonable doubt.
11 Not beyond all doubt beyond a reasonable doubt and there's
12 been a lot of definitions of reasonable doubt. Reasonable
13 doubt the one that is fashionable now is as Mr. Boyd said
14 it a reasonable doubt is the kind of doubt that would cause
15 a reasonable person to hesitate to act. To hesitate to
16 act. Now that doesn't mean you are not supposed to go back
17 and go over this evidence and deliberate. That's why they
18 got chairs back there for you, refreshments. That's not
19 the kind of hesitation that definition is talking about. Go
20 back there and deliberate, watch the movie and listen to
21 the tape and go through it and see if I am not correct that
22 you will conclude of course, of course this is what
23 happened. This guy was unlucky enough to make that drug
24 sale sell that eight ball to a police informant and get
25 tape recorded. He just plain got caught. You can judge

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CLOSING: BY: MR. SPRINGS
CHARGE

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1 this. You took an oath that you can judge this. You told
2 the Judge several times that yea I can do this. You are
3 going to judge his behavior here. You represent all of
4 York County today. We're doing everything we can to keep
5 this off the streets of York County because it's not just
6 about them. It is about the way this stuff spreads like a
7 tentacle or a spider web. It touches so many lives none
8 for the better none for the better. I ask you please just
9 to do the right thing. Weigh the evidence in this case use
10 your good common sense and tell Derick Blake we are not
11 going to stand for this. Thank you.

12 THE COURT: Members of the jury panel, I appreciate
13 your attention you have given to all of us at this point.
14 I'm now am going to ask you to give me your attention for a
15 few more minutes while I charge you the law which you are
16 to apply to the facts as you determine them to be in this
17 case.

18 These indictments that you will have with you in the
19 jury room are not evidence. They are paperwork by way of
20 which this case has been processed through our court
21 system.

22 Mr. Foreman, as I will tell you later there is where
23 you will enroll your unanimous verdict of the jury. They
24 contain the charge but they are not evidence. You are not
25 to consider them as such. The charges are distribution of

CHARGE

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1 cocaine base which is also called crack cocaine. And the
2 second indictment alleges that that occurred within one
3 half mile of Lyge Street Park in Rock Hill a public park
4 and it's alleged that occurred on February the 20th 2008.
5 The fact that Mr. Blake has been arrested and charged and
6 indicted is not evidence. This is no evidence that he
7 committed these offenses. That's just simply the way our
8 system works. It does not bear any inference of guilt. As
9 I said these documents the indictments are simply the
10 paperwork along which the case is processed through our
11 court system. The fact that he has two charges is of no
12 importance either. That is each is - the fact that there
13 are two does not give more weight to one than the other.
14 And the fact that he has two charges is not to be -
15 consider any inference that he is guilty of either or both.
16 The only way the two do relate is that you cannot find Mr.
17 Blake guilty of distribution of crack cocaine within the
18 proximity of Lige Street Park if you find him not guilty of
19 distribution of crack cocaine. That is he couldn't
20 distribute it in one half mile of Lige Street Park if he
21 was found not to distribute it. So that's the only
22 connection that the two have otherwise each must rise and
23 stand or fall on their own merits. That is based on the
24 evidence presented and the law as I charge it.

25 As I told you earlier Mr. Blake is presumed of each of

000362

1 these charges. In our system of law everyone charged with
2 any offense is presumed innocent of that charge. This
3 presumption of innocence is not a mere legal theory or a
4 mere legal phrase it is a substantial right. The
5 presumption of innocence attaches to an individual at the
6 time they are arrested it remains with them as their case
7 is processed through our court system. The presumption of
8 innocence in Mr. Blake's favor exists at this moment. In
9 fact it exists even as you deliberate. The presumption in
10 favor of innocence that ensures to Mr. Blake continues as
11 you deliberate and is removed if and when and only if and
12 when you find that the State has proven his guilt beyond a
13 reasonable doubt. Now the State is not required to prove
14 his guilt beyond all or beyond every doubt. Of course
15 there are very few things in our world that we can know
16 with absolute certainty.

17 A reasonable doubt has been described by our courts as
18 the kind of doubt that would cause a reasonable person to
19 hesitate to act. Proof beyond a reasonable doubt is proof
20 that leaves you firmly convinced of someone's guilt. If
21 based on your consideration of the evidence you are firmly
22 convinced that Mr. Blake is guilty of one or both of these
23 offenses you would find him guilty. On the other hand if
24 you think there is a real possibility that he is not guilty
25 of one or both you must give him the benefit of that doubt

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1 and find him not guilty. He is entitled to the benefit of
2 any reasonable doubt you have as to any issue in this case.
3 I remind you that I am the sole judge of the law in this
4 case you must take and accept and apply the law as I charge
5 it. This is true even if you think I charge the law in
6 error or even if you think the law should be different.
7 Your oath requires that you apply the law as I charge it.
8 You are not to infer from anything that I have said or done
9 or anything I now say or do as indicating an opinion of
10 mine on the facts. Our law does not allow a trial judge to
11 formulate or express to a jury any opinion on the facts.
12 It is solely your job to examine the evidence and to give
13 to the evidence the effect, the value, the weight and the
14 truth you believe it should have. In doing this you may
15 believe one witness as opposed to several, several
16 witnesses as opposed to one. You may believe all, part, or
17 none of a witnesses testimony. In analyzing the evidence
18 use your common sense, your sense of logic, your sense of
19 reason, use your experiences in life. As judges of the
20 facts you necessarily must judge the credibility that is
21 the believability of the witnesses who have testified. In
22 accessing the believability you use the things I've just
23 mentioned. Use the things that you find in your day to day
24 life as indicating to you the truthfulness in an
25 individual. And you can use certain evaluators a witness's

1 demeanor, how they act on the stand. Are they hesitant or
2 straight forward? Is their testimony consistent or
3 inconsistent? Do they have any bias or prejudice? That is
4 do they have any reason to wish to help or hurt one side or
5 the other. And you can consider the opportunity a witness
6 had to know those things about which the witness testified.
7 You also can consider any criminal record of a witness in
8 determining what credibility to give that witness's
9 testimony.

10 In this case we've had an individual who testified as
11 to her opinion as to whether or not this substance that was
12 allegedly distributed by Mr. Blake was in fact crack
13 cocaine. Normally a person in a trial cannot render an
14 opinion but rather must testify as to something they've
15 observed with one of their five senses. However where an
16 individual has certain knowledge, training, skill and
17 experience in a certain area that person can take facts and
18 from those facts reach and render an opinion. An opinion
19 is allowed into evidence to assist you. It is not binding
20 on you. You may accept or reject in whole or in part an
21 expert witnesses opinion. You can use their opinion in
22 fashion you wish. You look at the expert's testimony and
23 credibility just like you look at the testimony of the
24 other witnesses. As to the experts you also look at the
25 qualifications that the expert has to render the opinion

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1 and the reason the opinion has been reached by the expert.
2 Again that is to assist you. An expert's opinion is not
3 binding on you.

4 Mr. Blake is charged under two statutory offenses in
5 South Carolina law. That is the laws that have been
6 enacted by our legislature. He is charged with
7 distribution of cocaine base which is called crack cocaine.
8 The State must prove beyond a reasonable doubt that Mr.
9 Blake did in fact distribute that controlled substance. Of
10 course they must prove that the substance in fact was crack
11 cocaine. They must also prove that he distributed it.
12 Distribute means to deliver or to actually or
13 constructively attempt to transfer a drug to another
14 individual. A transfer can involve in exchange for money
15 but there does not have to be anything given in exchange
16 for the drugs for there to be a distribution. So simply
17 put the State must prove beyond a reasonable doubt that the
18 substance involved alleged to have been transferred was in
19 fact crack cocaine. And secondly the State must prove that
20 Mr. Blake distributed that is gave it to another person.

21 The second charge is a second offense under our law
22 and that is distribution of a controlled substance and I
23 tell you that crack cocaine is in fact under our law a
24 controlled substance within the proximity of school or a
25 park. The State must prove beyond a reasonable doubt in

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1 this case that Mr. Blake distributed crack cocaine while on
2 or within one half mile of the grounds of a public play
3 ground or a park. The State must prove those elements
4 beyond a reasonable doubt before you can convict Mr. Blake
5 of that offense.

6 Now your verdict must be unanimous. All twelve of you
7 jurors must agree on the verdict. Once you have the
8 Foreman is authorized to write the verdict on your behalf.
9 You are not to be swayed or take into consideration public
10 opinion, sympathy, passion or prejudice or matters outside
11 the record. If during your deliberations you have any
12 questions, Mr. Foreman, write them down and knock on the
13 door and give them to the bailiff. The bailiff will bring
14 them to me. I will consult with counsel. I may be able to
15 respond to your question by writing an answer on the note
16 or I may need to bring you back here in the courtroom and
17 answer it in here. We can have testimony replayed if you
18 wish. You will have the ability to watch the video there
19 in the jury room if you wish. If you have problems doing
20 that we can always bring you back here into the courtroom
21 and play it here for you. In South Carolina we do not send
22 in a written charge on the law but if you wish for me to go
23 over any part or all of the law let me know and I will
24 bring you back and recharge you the law here in the
25 courtroom. When you reached a verdict knock on the door

CHARGE

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1 tell the bailiff the bailiff will come and get us and we
2 will send for you as promptly as we can. I have ordered
3 lunch so you will be able to deliberate and eat lunch. You
4 may take a break to eat lunch or you may deliberate while
5 you eat lunch. Whatever you do all twelve of you need to
6 be working or all twelve of you need to be on break. Your
7 verdict must be unanimous so two or three of you can't take
8 a break and the other ten or nine continue to work. You
9 either all are on break or you all are working. When you
10 first go into the jury room do not start deliberating. I
11 have to go over with the attorneys my charge. If I have
12 made an error I have to bring you back in and correct it.
13 If I have not I will send in to you the indictments and the
14 exhibits and the bailiff will tell you to start
15 deliberating at that time. Initially if you want to take a
16 break sometime during the day just let the bailiff know and
17 we will accommodate you for that. Again you're either all
18 on break or you are all working.

19 On the back of each indictment, Mr. Foreman, you will
20 see the word verdict in the bottom left hand corner four
21 lines beneath it on the bottom line you will sign your name
22 and below that you will place the date. Today is the 3rd of
23 December. On one of the lines above you will write the
24 unanimous verdict of the jury. If the State has failed to
25 prove Mr. Blake guilty of one or more of the indictments

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1 you will write on that line the words not guilty. If on
2 the other hand the State has proven to the jury's unanimous
3 satisfaction Mr. Blake guilty of one or both of these
4 indictments as to that indictment you would write or
5 indictments you would write the one word guilty. Now I
6 will let you go to the jury room everybody but the
7 alternate.

8 Mr. Fisher, is that right? If you will remain with us
9 I will let everyone else go to the jury room but don't
10 start deliberating and don't get too comfortable because if
11 I have to send for you it will be in just a few minutes.

12 (JURY LEAVING COURTROOM AT 12:15 A. M..)

13 THE COURT: Mr. Fisher, I will be with you in
14 just a minute.

15 Anything from the State?

16 MR. SPRINGS: No, sir.

17 THE COURT: Anything from the Defense?

18 MR. BOYD: Nothing, your Honor.

19 THE COURT: All right if you will look at the
20 indictments and the evidence and we will send it back in
21 and have them start deliberating. We've got lunch ordered
22 for the jury. Let me find out, Mr. Fisher what's - -

23 You are to call back after seven and you will receive
24 instructions about what next to do. It may be to call or
25 it may be to report. We do have pizza if you want to wait

1 and get your share of the pizza you can certainly do that
2 or you can leave it's up to you. When you go out don't go
3 back in the jury room if you wish to have some pizza just
4 let the bailiff know. I don't even think it's here yet but
5 leave your badge on that chair but you are free to go and
6 thanks for your help and call back tonight after seven

7 (ALTERNATE JUROR DISMISSED AT 12:17 P. M..)

8 THE COURT: Before that goes back yes, sir.

9 MR. BOYD: Your Honor, I just ask that duplicates of
10 the indictments be sent in. It looks like from the back
11 they've been folder over it looks like it's signed the
12 guilty plea as far as being signed.

13 THE COURT: Okay. We'll send in - we'll get that in
14 just a minute - we'll send in the indictments.

15 MR. SPRINGS: You want me to copy it?

16 THE COURT: Well let's wait just a minute before we
17 get too confused here.

18 THE BAILIFF: This?

19 That and the cord. Yea that will be a good way to do
20 it. All right.

21 If either of you -- we are going to make copies of
22 that -- if either of you are going to lunch just let us
23 know where we can find you. And I may have misheard and I
24 love Mr. Spring's flowery closing arguments I hope I didn't
25 hear him refer to me as the old judge.

1 MR. BOYD: I thought I heard that too.

2 MR. SPRINGS: You're not an old judge.

3 THE COURT: It's on the record. All right we will be
4 at ease.

5 (COURT RECESSED AT 12:20 P. M..)

6 (BACK ON THE RECORD AT 2:12 P. M..)

7 THE COURT: All right we have a verdict in the Blake
8 case.

9 You can bring in the jury.

10 (JURY ENTERING COURTROOM AT 2:15 P. M..)

11 THE COURT: Mr. Foreman, you have sent in before the
12 indictments indicating you have reached a verdict, is that
13 correct?

14 MR. FOREMAN: That's correct.

15 THE COURT: All right. I am going to hand it down
16 I've already looked at it and let the clerk . . .

17 MADAME CLERK: Indictment 2008-GS-45-3045 the State
18 versus Derick Blake Indictment for Distribution of Crack
19 Cocaine within the Proximity the verdict guilty signed by
20 the Foreperson dated today's date.

21 Indictment 2008-GS-46-3048 the State versus Derick
22 Blake Indictment for Distribution of Cocaine Base verdict
23 guilty signed by the Foreperson dated today's date.

24 Ladies and Gentlemen of the jury, if that be your
25 verdict so say you all by raising your right hand.

1 Let the record reflect all jurors affirmed this
2 verdict.

3 THE COURT: Anything from the State before the jury is
4 dismissed?

5 MR. SPRINGS: No, sir.

6 THE COURT: Anything from the Defense?

7 MR. BOYD: No, sir.

8 THE COURT: All right. Mr. Foreman, I am going to get
9 you to come look at copies, I am going to get you to come
10 up when you get ready to leave in just one second and sign.
11 The Clerk will show you how to sign the same thing on the
12 originals. The rest of you can call back tonight after
13 seven and find out your next instructions. I appreciate
14 your assistance on this trial. I do not require a jury to
15 stay while I go through the sentencing process but if any
16 of you wish to go out and come around the Bailiff will show
17 you how to come in and go clear to those last two rows. If
18 any of you want to come in and hear anything more about the
19 case and hear the sentence you certainly can do that. All
20 right you are dismissed. Thank you.

21 (JURY DISMISSED AT 2:17 P. M..)

22 THE COURT: All right let's bring Mr. Blake around.

23 But first before we do that any motions, Mr. Boyd?

24 MR. BOYD: Yes, sir. Your Honor, I would move for a
25 new trial and, Judge, understanding the verdict based on

1 the same grounds I've made before and any on the grounds of
2 a new trial for any objections made that were over ruled
3 during the trial.

4 THE COURT: That motion is denied. I stated earlier
5 and I still firmly believe the jury can question the
6 credibility just as the jury was told and really believed -
7 I can't remember his name now - but they believed the
8 informant. So if you will bring Mr. - -

9 Make sure that last row back there is open in case any
10 of the jurors come back in. Let's wait just a minute and
11 see if we have any.

12 Mr. Springs, you got the sentencing sheets?

13 MR. SPRINGS: I do, your Honor. They are signed at
14 this time. I'll wait until they do that so Mr. Boyd can
15 concentrate on what I say. We started this trial your
16 Honor with Mr. Boyd under the understanding that Mr. Blake
17 had a previous conviction one drug conviction for
18 possession of powder cocaine in 2002. I had been chasing
19 or my paralegal had some sort of evidence one way or
20 another on a prior marijuana charge and once the trial
21 started we finally got it and it showed that on a date he
22 was convicted of simple possession of marijuana. Out of
23 fairness to Mr. Boyd who started this thinking he had a
24 second offense I put second offense on that sentence sheet
25 and I would ask the court to sentence him under the range

1 for second offense if all of that makes sense.

2 THE COURT: I'm just making sure we got the CDR Code
3 on that second. All right any other records?

4 MR. SPRINGS: No. I'm sorry Officer Cashier isn't
5 here. Officer Cashier knows of Mr. Blake well and I would
6 have ask him to speak to it and I am not going to try to
7 stand in for him. Mr. Blake has been known for a long time
8 by law enforcement and they will be glad that he has been
9 brought to justice finally.

10 THE COURT: All right. Mr. Boyd, be glad to hear from
11 you and then from Mr. Blake.

12 MR. BOYD: Your Honor, Mr. Blake he's forty-four years
13 old lived in Rock Hill I think most of his life. He has
14 Your Honor concerning that I appreciate Mr. Springs saying
15 this is a second offense. My understanding actually these
16 -- the marijuana and the cocaine charge happened at the
17 same time and actually they were two different sentence
18 dates but they actually happened at the same time based on
19 my discussion with him. Ms. Stacy Green was the solicitor
20 that handled that then and he said it was dope involved.
21 Your Honor, I can't do much about the reintegrating the
22 facts of it but I would ask the court to take into
23 consideration his prior offense was for possession. He's
24 never been convicted of a distribution offense. It appears
25 in this case and based on the evidence that the state

1 presented that he acted as a go between between somebody
2 based on that evidence. Of course Mr. Blake denied it
3 happened at all. And I would ask the court to take that
4 into consideration. His family is here.

5 I would just ask that if any of his family members
6 wish to speak in his behalf? They are in the courtroom.

7 A. If I may, your Honor.

8 THE COURT: Please come forward so we can hear you and
9 tell us who you are.

10 A. My name is Beverly Harmon and I'm Derick Blake's
11 sister. I just listened to the Solicitor talk about my
12 brother as he's been well known to law enforcement. The
13 picture that they have of him in that respect I don't know
14 who this individual is. He lives with my grandmother who's
15 eighty years old and his sole support is through my
16 grandmother and my mother and his family members. So I
17 don't understand this concept that he's this big dealer
18 that's creating all these transactions all over York
19 County. While there is a law of the land I do understand
20 that there's always a law of the land and when the law is
21 broken there are consequences. But as far as my brother
22 reaping some type of benefit or being some type of business
23 man he's not, your Honor. He doesn't have a checking
24 account. He doesn't have a savings account. He has no
25 vehicle. He uses his mother's vehicle which was the one

1 that was in the yard that was broken down. You know while
2 he hasn't done very well for himself he still does have a
3 lot of life ahead of him to make those changes and to do
4 those things you know. He knows a lot of people not all of
5 them are the right people in which we've heard today. Some
6 of those people I've never heard of in my life you know.
7 But as far as him being this big business man you know
8 who's running drugs and York County would be better off
9 without him on the street I disagree with that. Because
10 he's not this person that is out here distributing to young
11 people and this buying on every corner and this being a
12 menace to society. And I just ask that your Honor take
13 that into consideration. As I said before he lives with my
14 grandmother. She's eighty years old and his dog and he
15 takes care of her. He gives her eighty percent to ninety
16 percent of her care. And this is the Derick Blake that I
17 know and have known all of my life. This individual that
18 they're talking about I don't have any idea who it is and I
19 see him on a daily basis everyday.

20 THE COURT: You said that he doesn't work?

21 MS. HARMON: He works with me. I have my own cleaning
22 business and he works with me three days a week. He helps
23 me. I clean officer buildings. I've had my business for
24 fifteen years in York County.

25 THE COURT: Thank you.

1 MS. HARMON: Thank you.

2 THE COURT: Mr. Boyd, anything else?

3 MR. BOYD: No.

4 THE COURT: Mr. Blake, anything you want to say?

5 MR. BLAKE: I don't know where this that I been this
6 somebody they been looking at me for so many years I don't
7 know where that comes from. I been in Rock Hill maybe nine
8 years. My family's been here since 1965 or before. I
9 lived in Columbia most of my life. And Officer Cashier
10 knows me as well as I know him. That's not it at all. I
11 couldn't tell you nothing I did ten years ago. Couldn't
12 tell you where I living ten years ago. But yet they're
13 going to say that I been doing this for ever and ever. I
14 mean I disagree with it and I listened to it when I was on
15 the stand and I disagree with it now.

16 THE COURT: All right. Well I'm not going to take
17 into consideration that you had some reputation among law
18 enforcement that's neither here nor there to me. But I am
19 concerned that this is your second drug offense and
20 therefore as to both of these I am going to sentence you to
21 fifteen years on each to run concurrent. And I am going to
22 recommend you to treatment for addiction while you're
23 incarcerated. Thank you.

24 - END OF TRANSCRIPT -

25 - END OF TRIAL -

STATE OF SOUTH CAROLINA)

)

) C-E-R-T-I-F-I-C-A-T-E

)

COUNTY OF YORK)

I, WANDA NELSON, OFFICIAL COURT REPORTER, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC, DO HERBY CERTIFY THE FOREGOING HEARING WAS HEARD AND TRANSCRIBED UNDER MY SUPERVISION AND THAT THE FOREGOING ONE-HUNDRED AND SEVENTY-SIX (176) PAGES CONSTITUTE A VERBATIM TRANSCRIPTION OF THE PROCEEDING HEREIN.

I DO FUTHER CERTIFY THAT I AM NOT OF COUNSEL FOR OR IN THE EMPLOYMENT OF ANY OF THE PARTIES TO THIS ACTION, NOR DO I HAVE ANY INTEREST, FINANCIAL OR OTHERWISE, IN THE OUTCOME HEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 13TH DAY OF MARCH, 2009.

Wanda Nelson

WANDA NELSON
OFFICIAL COURT REPORTER
CERTIFIED VERBATIM REPORTER
AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA.

MY COMMISSION EXPIRES:
12/06/2010

County: York
 Date: December 2, 3, 2008

VOIR DIRE

Case No.: 2008 - GS - 46 - 3045,3048 Judge: John C. Hayes, III
 Pl./State: State of South Carolina Pl./State Atty's.: Assistant Solicitor E.B. Springs
 Defendant: Derick Tyrone Blake Defense Atty: Mr. James Boyd
 Court Reporter: Wanda Nelson, CVR

Juror No.	Name	Race	Sex	STRIKES			
				*Court	Plaintiff	Defense	Accept
95	Anita R. Hall	W	F	X			
237	Justin J. Trapp	W	M			X	
63	Christine M. Drutis	W	F				X
37	Cynthia F. Carner	W	F			X	
1	Michael R. Anthony	B	M		X		
111	Brenda D. Neal Hyatt	F	W	X			
188	Brenda G. Perrill	W	F			X	
9	James M. Beaver	W	M				X
182	Roosevelt Parrott, Jr.	B	M	X			
153	Ada C. McRae	B	F		X		
88	Craig A. Grant	W	M				X
34	Steven C. Callahan	W	M		X		
59	Ann S. Decsy	W	F				X
10	Thomas J. Began	W	M				X
183 **	Gary A. Partlow	W	M				X
161	Shawanya Moise	B	F				X
66	Nancy B. Edwards	W	F			X	
128	David J. LaRoach	W	M				X
132	William H. Largen	W	M				X
79	Karla N. Frey	W	F		X		
250	Beverly M. Zatum	W	F				X
173	Christopher S. Neville	W	M				
247	Marva C. Williams	B	F				X
146	Marie R. Maynor	W	F				X
125	Rebecca L. Klein	W	F			X	
69 (alt.)	Paul W. Fisher, III	W	M				X

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

000379

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERICK TYRONE BLAKE,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in overruling the defense objection to the prosecution's questioning of appellant where the questioning intruded on the attorney-client privilege?
2. Did the trial judge err in denying the defense motion for a directed verdict?

STATEMENT OF THE CASE

Derrick Tyrone Blake, appellant, was indicted by the York County Grand Jury for Distribution of Crack Cocaine and for Distribution of Crack Cocaine within Proximity of a public park or playground. On December 2, 2008, appellant proceeded to trial before the Honorable John C. Hayes, III and a jury. The jury found appellant guilty as charged; Judge Hayes sentenced him to incarceration for fifteen years, concurrent, on each conviction.

ARGUMENT

I. The trial judge erred in overruling the defense objection to the prosecution's questioning of appellant where the questioning intruded on the attorney-client privilege.

The State's case centered on a videotape, supposedly depicting appellant's handing Antwan Benjamin, the State's CI, an eight ball of crack cocaine. The videotape was provided to defense counsel pre-trial so that appellant could examine the videotape with his attorney. During cross-examination of appellant, he testified that he knew one of the voices on the tape to be that of Antwan Benjamin but that he did not recognize the other voice on the tape as his own voice. (R. p. 127; 134). Appellant testified that he did not remember speaking to Benjamin by phone and that he did not think the voice on the tape was his. (R. p. 135).

The prosecutor asked, "Now, how many times have you seen the movie here, Mr. Blake? How many times have you watched and listened to it?" (R. p. 135, lines 1-5). At that point, defense counsel objected, "Your Honor, I am going to object to that. I think that goes into attorney client privileges he has seen it with me." (R. p. 135, lines 6-8). The court erroneously overruled the objection. Therefore, the prosecution was allowed to again inquire of the accused how many times he and his attorney had viewed and listened to the videotape prior to trial. Appellant's testimony indicated that he had viewed the video a total of six times, including twice the day before trial and once on the day of trial. (R. p. 135). Appellant testified that it was important for him to explain certain areas in the video tape which he was not sure could be clearly understood. (R. p. 135, lines 16-25). However, the trial judge erred in allowing, over objection, the State to question the accused regarding his reviewing the State's evidence with his trial counsel.

The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications. Love, 275 S.C. at 59, 271 S.E.2d at 112; State v. Owens 309 S.C. 402, 407-408, 424 S.E.2d 473, 476 - 477 (1992). The privilege is strictly construed to protect only confidences disclosed within the relationship. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Here, defense counsel plainly told the trial judge that the areas he was allowing the State to explore intruded upon the areas of attorney client privilege. However, the trial judge erroneously overruled the defense motion and improperly allowed the questioning into matters of privilege to continue.

II. The trial judge erred in denying the defense motion for a directed verdict.

Upon the State's resting its case, counsel for appellant moved for a directed verdict. Counsel argued that a directed verdict was warranted due to the State's failure to establish by direct or substantial circumstantial evidence that appellant distributed cocaine to the undercover confidential informant. Defense counsel argued that the State had failed to establish the alleged distribution through the video tape where the tape did not show an actual exchange. Counsel further argued that, given the taped evidence's failure to capture the alleged distribution, the State's entire case rested on the testimony of the CI, Benjamin.

Benjamin had conceded that he cooperated with the authorities in the hopes of reducing his own drug charges.

Defense counsel argued that where Benjamin's contradictory testimony was unworthy of belief and that, due to the State's failure to establish that Benjamin was credible, a directed verdict was warranted. Defense counsel further argued that, if accurate, the prosecution's theory of the case would have been borne out by the cell phone records. Appellant testified that he had been friends with Benjamin for years, but that he could not remember talking to Benjamin over the phone. Thus, Defense counsel argued that the State could have presented evidence of the cell phone records to confirm Benjamin's account that he spoke with appellant by cell phone. However, where the State presented no proof of cell phone records or any other convincing proof, the trial judge erred in denying the defense motion for directed verdict. (R. pp. 109-110).

Upon resting the defense case, defense counsel renewed his motion for a directed verdict. The trial judge denied the renewed motion for directed verdict. The judge ruled, "Motion is denied. As I stated earlier, I believe there is evidence in which a jury could conclude that Mr. Blake did in fact engage in a transaction involving the distribution of crack cocaine and that not only but it was within one half mile of a public park or an area in the park." (Tr. p. 139, line 22-p. 140, line 3).

As argued, this prosecution was based on a video tape taken by the CI's hidden video camera and on the testimony of officers indicating that the CI and his car were searched prior to the encounter with appellant. The prosecution presented the tape and the testimony of the CI, Benjamin, to interpret for the jury what was happening on the video tape. Predictably, Benjamin testified that the videotape depicted appellant's handing him an

eight ball of crack cocaine and appellant's indicating that Benjamin owed him \$10. (R. p. 131). However, given Benjamin's record and his motivation to testify falsely, defense counsel rightly argued that the State had failed to present direct or circumstantial evidence to establish that appellant actually gave Benjamin crack cocaine or that the ten dollar debt was related to crack cocaine rather than a prior marijuana incident.

Appellant testified to the contrary that Benjamin had come to see him on February 19, 2008, the night before the alleged distribution. Appellant recalled that Benjamin came over and parked his car with an unidentified female in appellant's yard the night before the incident alleged by the State. Appellant testified that, at that point, Benjamin owed him \$10 for a pre-existing loan. Appellant indicated that in early February 2008, he and Benjamin were purchasing marijuana from a dealer at the same time. Appellant recalled that the dealer did not have sufficient change so that appellant was called upon to make up the difference by loaning Benjamin \$10. Appellant testified that Benjamin owed him ten dollars, but that he did not pay him back when he came to visit on February 19th or 20th. (R. p. 131). Appellant testified that he and Benjamin stood around talking about their friends and former associates, principally people involved in drugs.

While Benjamin testified that, as a black car drove down appellant's street on the night of February 20, 2008, the occupant was appellant's approaching crack contact, and that appellant told him, "He's two minutes away." In contrast, appellant testified that the man in the black car lived down the street from him and that, when Benjamin inquired about the driver of the black car, he responded, "He stays about two minutes away." (R. p. 129).

The CI, Benjamin, conceded that his car is a mess. He agreed that there were many containers and nooks and crannies in his untidy car. Therefore, given the condition of the

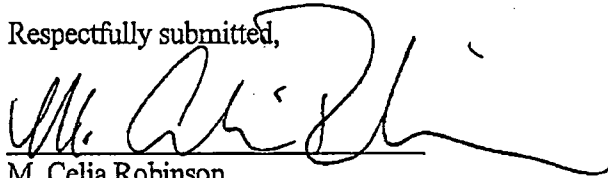
CI's car, defense counsel argued that it would have been impossible for officers to so thoroughly search every corner of that car. Therefore, the State failed to prove that, because the CI and his car were searched before encountering appellant and no crack cocaine was detected, the crack cocaine the CI turned over to authorities must have been provided to him by appellant.

A case should be submitted to the jury only if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App. 2008). A directed verdict motion should be granted when the evidence presented merely raises a suspicion of guilt. State v. Frazier, 375 S.C. 575, 583, 654 S.E.2d 280, 284 (2007). The trial judge erred in denying the motion for directed verdict where the State could not present direct or any substantial circumstantial evidence to establish that its informant was credible, that the CI was crack-free prior to his encounter with appellant, or that appellant did distribute crack to the CI as the CI had claimed.

CONCLUSION

For all the forgoing reasons, appellant's conviction should be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of November, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERICK TYRONE BLAKE,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Derick Tyrone Blake states:

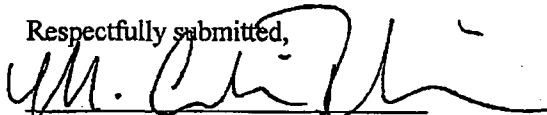
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge John C. Hayes, III, which was held on 12-3-08, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Derick Tyrone Blake.

Respectfully submitted,



M. Celia Robinson
Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of November, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 18, 2009

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

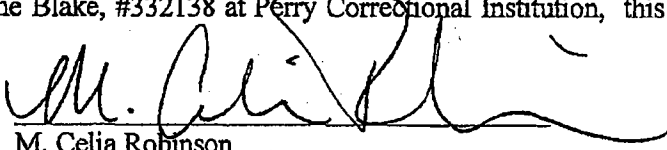
V.

DERICK TYRONE BLAKE,

APPELLANT

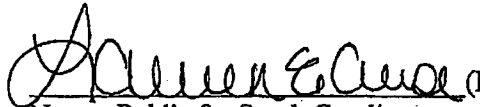
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Derick Tyrone Blake, #332138 at Perry Correctional Institution, this 18th day of November, 2009.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 18th day of November, 2009.


(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Derick Tyrone Blake, Appellant.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2011-UP-054
Submitted January 4, 2011 – Filed February 10, 2011

APPEAL DISMISSED

Appellate Defender M. Celia Robinson, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, all of Columbia; and Solicitor
Kevin Scott Brackett, of York, for Respondent.

PER CURIAM: Derick Tyrone Blake appeals his convictions for distribution of crack-cocaine and distribution of crack-cocaine within proximity of a park, and his corresponding concurrent fifteen-year sentences. Blake's counsel argues the trial court erred in allowing the State to question Blake in violation of their attorney-client privilege and in denying Blake's directed verdict motion. Blake filed a pro se brief alleging prosecutorial misconduct, due process violations, and lack of subject matter jurisdiction. After a thorough review of the record and both briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss^[1] the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

THOMAS, PIEPER, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of York)Derrick Tyson Blake 332138
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011 CP 46 3430

APPLICATION FOR

POST-CONVICTION RELIEF

2011 SEP -7 AM 11:59

CERTIFIED TRUE COPY

SEP -8 PM 3:40

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCINSTRUCTIONS - READ CAREFULLY

For this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence York County
Miss Justice Center
3. Name(s) of co-defendant(s) (if any) Antwan BENJAMIN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006 CS-46-03045
 - (b) 2006 CS-46-03048

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 3, 2006
- (b) 15 YEARS Distribution Cocaine Base (Crack)
- (c) 15 YEARS Distribution Crack Cocaine Proximity of Park
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2/18/11
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- Ineffective Assistance of Trial Counsel/Failure to investigate indictment.
 - Failure to Challenge Chain of Custody, Failure to object
 - to statement by the prosecution that were not in evidence.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Failure to investigate racketeers Subject matter jurisdiction
 - Failure to Challenge each step in the Chain of Custody
 - Failure to object to statement by prosecution in Closing Argument.
12. Prior to this application have you filed with respect to this conviction:
- any petition in a State Court under South Carolina Law? NO
 - any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- the specific nature thereof:
 - NONE
 - _____
 - _____
 - _____
 - the name and location of the Court in which each was filed:
 - NONE
 - _____
 - _____
 - _____

(c) the disposition thereof:

- i. None
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. None
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. None
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

None

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. None
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. None
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is my first chance to discuss these
 (b) matters.
 (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. James W. Boyd.
Rock Hill S.C. 29686
 ii. M. Celia Robinson
P.O. Box 11584 Columbia S.C. 29211-1584
 iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. James W. Boyd / Trial & Sentencing
 ii. M. Celia Robinson / Appeals Court
 iii. _____

19. State clearly the relief you seek in filing this application:

To Have my Sentence vacated And I get
A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, DERICK TYRON BLAKE, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

DERICK J. BLAKE

SWORN to and subscribed before me this 2
 day of Sept

Eugene Kutt (L.S.)
 Notary Public

My Commission Expires: My Commission Expires April 4, 2010

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Derrick Tyrone Blake, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Derrick T. Blake
Applicant

SWORN or affirmed to and subscribed before me this

2 day of Sept, 2011.

Eugene Keatts
Notary Public

My Commission Expires April 4, 2016

My Commission Expires: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	CL SIXTEENTH JUDICIAL CIRCUIT
)	EE-RECEIVED
)	2012 SEP 24 AM 11:50
Derrick Tyrone Blake, #332138,)	2011-CP-46-3430
)	C.C.C.P. & GS
Applicant,)	YORK COUNTY, SC
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed September 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2008 term of the York County Grand Jury for Distribution of Cocaine Base (2008-GS-46-3048) and Distribution of Crack Cocaine within proximity of a park. He was represented by Jim Boyd, Esq. On December 3, 2008, Applicant was tried by a jury and convicted of both charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for fifteen (15) years for each charge. The sentences run concurrently.

Thereafter, the Applicant appealed his conviction and sentence. A brief was filed on his behalf pursuant to Anders¹. The South Carolina Court of Appeals affirmed his conviction. State v. Blake, 2011-UP-54 (filed February 10, 2011). The Remittitur was issued on March 1, 2011.

¹ Anders v. California, 386 U.S. 738 (1967).

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the appellate records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel/ Failure to investigate indictments"
 - a. "failure to investigate indictments subject matter jurisdiction"
2. "Failure to challenge chain of custody"
 - a. "failure to challenge steps in the chain of custody"
3. "[F]ailure to object to statement by the prosecutor that were(sic) not in evidence"
 - a. "failure to object to statement by prosecutor in closing argument"

III.

The Respondent interprets Applicant's allegations to claim that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

ALAN WILSON
Attorney General

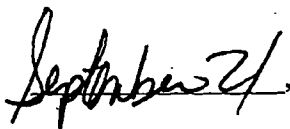
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

 2012

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ED-RECEIVED IN THE COURT OF COMMON PLEAS

2012 SEP 24 AM 11:50

2011-CP-46-3430

DERRICK T. BLAKE, 332138 YORK COUNTY, SC

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

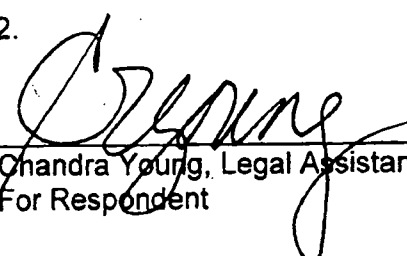
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody
 235 East Main Street; Suite 100
 Rock Hill, SC 29730

DATED this 21ST day of September, 2012.


 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 DERRICK TYRONE BLAKE,

4 Appellant,

5 Case No.

6 -against-

2011-DR-46-3430

7 STATE OF SOUTH CAROLINA,

8 Respondent.

9 -----x

10 October 9, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON

15

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

17 LEAH MOODY, Esquire

18 Attorney for the Applicant

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for the Respondent

22

23

24 Aileen Butler

25 Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	DERRICK BLAKE				
4	Ms. Moody	5			
5	Mr. Johnson		31		
6					
7	JAMES BOYD				
8	Ms. Moody	40		52	
9	Mr. Johnson		42		
10					
11					
12					
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25					

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Petitioner 1	Chain of custody	11	
Petitioner 2	Drug Lab report	13	
Petitioner 3	Drug Analysis report	13	
Petitioner 4	Report	18	42
Petitioner 5	Terms of court doc.	26	

1 MR. JOHNSON: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: This the case of Derrick Brake
4 versus State of South Carolina. It is case
5 number 2011-CP-46-3430.

6 Mr. Blake was indicted the August 2008 term
7 of York County Grand Jury for distribution
8 cocaine base and distribution of cocaine base
9 within proximity of a park.

10 On December 3, 2008 he was tried by a jury
11 and convicted of both charges as indicted. The
12 Honorable John C. Hayes, III sentenced Mr.
13 Blake to confinement for 15 years for each charge
14 to run currently.

15 Thereafter there was an appeal filed on Mr.
16 Blake's behalf and there was a brief pursuant --
17 submitted pursuant to Anders v California. South
18 Carolina Court of appeals affirmed his conviction
19 and a Remittitur was thereafter issued on
20 March 1, 2011.

21 Mr. Blake filed a timely PCR on September 7,
22 2011. The State filed its return on September
23 21, 2012 and he is represented here today by Miss
24 Leah Moody.

25 MS. MOODY: Good morning.

1 THE COURT: How are you?

2 MS. MOODY: I am fine, yourself?

3 THE COURT: I am doing well, thank you.

4 Another good day in York,.

5 You all ready to go forward?

6 MS. MOODY: Yes, sir Your Honor.

7 THE COURT: Okay. Call your first witness
8 please, ma'am.

9 MS. MOODY: I call Derrick T. Blake.

10 THE COURT: Okay.

11 DERRICK TYRONE BLAKE, called as a witness,
12 having been duly sworn by The Clerk, was examined
13 and testified as follows:

14 THE COURT: Good morning Mr. Blake.

15 THE WITNESS: Good morning.

16 THE COURT: Your witness.

17 MS. MOODY: Thank you, Your Honor. May it
18 please the Court.

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MS. MOODY:

22 Q. Mr. Blake could you please stated your full name
23 for the record?

24 A. Derrick Tyrone Blake.

25 Q. And you are here today for your PCR. Can you

1 tell the Court where you are currently being held in
2 detention?

3 A. Kershaw Correctional Institution.

4 Q. All right, and you were charged and went through
5 a trial. Can you please state your charges for the
6 Court?

7 A. Distribution of crack cocaine and distribution of
8 crack cocaine in proximity to a park.

9 Q. And with those charges you had a trial. Who was
10 your attorney?

11 A. James Boyd.

12 Q. And did you have an opportunity to meet with Mr.
13 Boyd before your trial?

14 A. Yes, I did.

15 Q. How often did you meet with him?

16 A. The initial meeting to discuss price. After the
17 initial meeting three other meetings.

18 Q. And I am going to skip forward to bring us -- to
19 give the Court some idea.

20 You went through a trial with Mr. Boyd and today
21 you have your PCR relief that you are seeking from the
22 Court.

23 What is the basis of your PCR application?

24 A. I think ineffective assistance of counsel.

25 Q. And can you specifically tell the Court, what you

1 found to be ineffective with your counsel?

2 A. Failure to investigate chain of custody, failure
3 to object to statements made and failure to investigate
4 the indictments.

5 Q. Now, as to failure to object to the chain of
6 custody. Can you be tell the Court what issues in the
7 chain of custody you wanted your attorney to object to?

8 A. The physical chain of custody was not objected to
9 and it is actually a person that is missing from the
10 physical chain of custody.

11 Q. Well, when you say the physical chain of custody.
12 This is the chain of custody for the drugs in the case?

13 A. Drugs, yes.

14 Q. And so you wanted your attorney to object to an
15 individual that was in that chain?

16 A. Yes.

17 Q. And is there any other chain issues?

18 A. The monies that the government funds they said
19 were used in that case.

20 Q. Now, the second issue that you brought up you
21 indicated was objecting to the prosecutor's closing
22 argument?

23 A. Yes.

24 Q. And what about that closing argument is it the
25 comments?

1 A. Yes.

2 Q. What about the comments in the closing argument
3 that you took issue with?

4 A. He made personnel comments in reference to things
5 that were not in evidence that would be strictly to
6 plead to the passion of the jury.

7 Q. And then the third issue you stated was the
8 subject matter jurisdiction?

9 A. Of the indictments.

10 Q. And can you please elaborate on that for the
11 Court?

12 A. I was indicted on August the 21st, 2008 and you
13 have to be indicted on a term of General Session Court.
14 There was no General Sessions Court in York County on
15 August the 28th, (sic), thus at this time it would be
16 impossible for the Grand Jury to proceed because there
17 was no presiding judge at this time.

18 MR. JOHNSON: Your Honor, at this time I do
19 object because there is a statute, and I will
20 have to look it up for you that the says the
21 State of South Carolina a Grand Jury can meet
22 during a term of of Common Pleas and vice versa.
23 So even though Mr. Blake claims it didn't meet on
24 a certain day there is no -- as you know, there
25 is no recording in a Grand Jury, but in South

1 Carolina they are allowed to meet during a term
2 of Common Pleas. It was true billed stamped,
3 Indicted.

4 MS. MOODY: At this time I would object to
5 his objection.

6 THE COURT: All right.

7 Mr. Johnson, I understand your objection and
8 you we can go over that later on.

9 MR. JOHNSON: All right.

10 THE COURT: And so, Miss Moody you can
11 go forward with your questions.

12 MS. MOODY: Your Honor, well Mr. Blake again
13 we are just trying to lay out why you are here
14 today.

15 BY MS. MOODY:

16 Q. The three things if I may recant. The first
17 issue you have is your lawyer's failure to object to the
18 chain of custody as to the drugs?

19 A. Yes.

20 Q. And as to the money?

21 A. Correct.

22 Q. And the second issue would be your attorney's
23 failure to object to the closing argument statements by
24 the prosecutor?

25 A. Yes.

1 Q. And the third issue would be as to the subject
2 matter jurisdiction as it relates to the true bill
3 indictment?

4 A. Yes.

5 Q. Now, lets take each of those issues and address
6 those. Okay?

7 A. All right.

8 Q. Now, as to the drug analysis. Can you tell the
9 Court what exactly your attorney did not -- what did
10 your attorney not do as to chain of custody?

11 A. He didn't object to the physical chain of custody
12 about making them prove it, the chain of custody.

13 Q. What do you mean by that? Can you give me some
14 specifics?

15 A. If you look at the B.E.S.T. bag it has dates on
16 it when one person has it, to the next person had it,
17 and on the 2nd of July, 2008 it was given from Barbara
18 Traylor (Phonetics) to Cynthia Mitchum. Cynthia Mitchum
19 had it from that point and she testified she tested and
20 sealed the bag on the 25th which is 23 days later. But
21 no one says where it was between that time and whether
22 it was in a secure place between that time.

23 The test analysis actually showed the test was
24 ran on the 29th, not the 25th, and it was never put back
25 into the evidence locker again until August the 8th.

1 Q. So let me get this correct. You are saying that
2 Cynthia Mitchum received the drugs on --

3 A. August -- I mean July the 2nd, 2008.

4 Q. Okay. And the drugs were tested?

5 A. She testified they were tested. She tested and
6 sealed it on July 25th, 23 days after she received this.

7 Q. Okay. And you know this because on the B.E.S.T.
8 bag?

9 A. Yes.

10 Q. At the time of the trial did you have information
11 regarding the dates of the test done?

12 A. No. I never seen that. I got that information
13 once I was incarcerated by writing the Clerk of Court.

14 MS. MOODY: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 (Petitioner's Exhibit 1, Chain of Possession,
18 marked for identification as of this date.)

19 Q. Mr. Blake, I am handing you what has been mark as
20 Petition's Exhibit 1.

21 Is that B.E.S.T. bag that you are talking about?

22 A. Correct.

23 Q. And on that document it has that Miss Mitchum
24 received it on July the 2nd, 2008?

25 A. Yes.

1 Q. And that up until July 25th, 2008 the drugs were
2 not tested?

3 A. Yes. You can actually see the date sealed on
4 7/25/08 and her initials C.J.M. on the bottom of the
5 bag.

6 Q. And then when was a test actually run? Does it
7 say on that document?

8 A. No, it does not. But I have from the Clerk of
9 Court I wrote them and they actually sent me a copy of
10 of a test that we never had at the time of trial and the
11 test has July the 29th on the top at the time of the
12 results.

13 MS. MOODY: Your Honor, my I approach?

14 THE COURT: You may. Are those the test
15 results that were introduced?

16 MS. MOODY: Yes, sir -- well, no, they
17 haven't been introduced.

18 THE COURT: No. No. At trial?

19 MS. MOODY: Yes. No, they were not
20 introduced at the trial that she testified.

21 THE COURT: Okay.

22 MS. MOODY: I will come back through it.

23 MR. JOHNSON: Your Honor, they were
24 introduced at trial. Page 109.

25 MS. MOODY: She testified as to the results

1 of it. Cynthia mentioned it.

2 (Petitioner's Exhibit 2 and 3, Drug Lab
3 and drug analysis marked for identification
4 as of this date.)

5 BY MS. MOODY:

6 Q. Mr. Blake.

7 A. Yes.

8 Q. The documents I handed to you that are marked
9 Petitioner's Exhibit 2 and 3, can you please identify
10 those documents?

11 A. This is the actual one the Clerk of Court sent me
12 as far as the test was concerned with the date that has
13 been --

14 MR. JOHNSON: Can you speak up, sir.

15 A. This is the actual copy of the test that I
16 received from the Clerk of Court.

17 THE COURT: Is that two?

18 THE WITNESS: Yes, sir.

19 THE COURT: And this is what you received
20 from the Clerk of Court?

21 THE WITNESS: Yes, sir.

22 THE COURT: And that is suppose to be the
23 test results?

24 THE WITNESS: Yes, sir, and it says here the
25 date of July the 29th, 2008.

1 BY MS. MOODY:

2 Q. So Mr. Blake, when you previous testified a few
3 minutes ago you said you did not have any documents as
4 to the drugs and the chain, is that correct?

5 A. Correct.

6 Q. And when you received a copy of the test results
7 and the chain you noticed a difference in the dates?

8 A. Correct.

9 Q. And the difference of the date was that on -- she
10 tested the drugs or opened and sealed the drugs on
11 7-25-2008?

12 A. Correct.

13 Q. And then she ran a test of the sample on 7-29-08?

14 A. Correct.

15 Q. Okay. Then there is, well - - I didn't ask you
16 that.

17 What if anything did you notice from 7-25-08
18 going forward as it relates to the drugs?

19 A. That it was no one says anything in reference to
20 where it was. She said she tested and sealed it on the
21 25th, but the sample was somewhere to the 29th. And it
22 was never entered back into the evidence locker until
23 August the 8th.

24 Q. And is this what you wanted your attorney to
25 object to?

1 A. He couldn't object to it because he never
2 challenged it.

3 Q. I am coming to that. So had you known this
4 information or had your attorney had these documents he
5 could have objected to the chain?

6 A. Correct. Correct.

7 Q. And as a result of him not having examined the
8 chain of evidence he did not object to the chain?

9 A. No.

10 Q. Did he stipulate to the chain?

11 A. No. He stipulated to her being an expert in her
12 field, but he never stipulated to the chain of custody,
13 no.

14 Q. And so at any point during the trial was there
15 any objection that the drugs should not come in?

16 A. No.

17 Q. Now, as it relates to money, can you tell the
18 Court what you would have liked your attorney to object
19 to as it relates to the money?

20 A. They made reference to identifiable funds that
21 was given to the C.I. by identifiable government funds
22 but no funds was ever admitted as evidence. So you
23 making a statement about something that is -- you are
24 saying you have identifiable funds but then you can not
25 show you had identifiable funds.

1 Q. Let's break this down a little bit further. In
2 the trial testimony was given about the C.I. being
3 searched, correct.

4 A. Yes.

5 Q. And the C.I. being given an amount of money?

6 A. \$180.

7 Q. So he received a \$180 and then in the trial there
8 was testimony that he then gave you the \$180?

9 A. No, he said he said gave me \$160 of identifiable
10 funds. I in turn gave him dope and \$20 of the money of
11 the \$160 back.

12 Q. So when you say they did not introduce that
13 money, they did not introduce the money that was from
14 the control?

15 A. No.

16 Q. And it is your position that the control proceeds
17 would have --

18 MR. JOHNSON: Objection, Your Honor it is
19 leading.

20 THE COURT: I will allow her to go ahead and
21 ask it. Go ahead.

22 Q. Are you saying that funds would have had a
23 control number on them?

24 A. Correct. It should have been some sort of
25 physical chain of custody for the money also.

1 Q. And was that ever -- any of those allegations --
2 well, any of the testimony about the money was it ever
3 objected too?

4 A. No.

5 Q. Did you inform your attorney of this information?

6 A. I asked him -- I made a comment that they didn't
7 have any money. No money was turned in. How could they
8 say there was money when they have no money.

9 Q. Now, when your attorney was preparing for your
10 trial did he have any -- what, if any, assistance did he
11 have preparing your trial?

12 A. A private investigator was hired.

13 Q. And that private investigator what did he invest?

14 A. He was to investigate. Look over the video tape,
15 the audio tape and make any suggestions as to things
16 that would be helpful in my defense.

17 Q. And to your knowledge did that occur?

18 A. He looked at the tapes, yes.

19 Q. And did you have an opportunity to meet with the
20 investigator along with your attorney?

21 A. Yes. He discussed some things but none of the
22 things were ever used in the trial.

23 Q. Okay. What was your understanding of the use of
24 the investigator during the trial?

25 A. He was -- I thought of him as expert. We hired

1 him to do an investigation. I thought he would also
2 testify as to what he found in his investigation.

3 Q. Why would you say that he was expert? Did he
4 have some kind of background?

5 A. He was a ex-narcotics agent for 12 years, so he
6 says.

7 MS. MOODY: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, ma'am.

10 THE WITNESS: He worked for the same people
11 that arrested me so ---

12 (Petitioner's Exhibit 4, report, marked for
13 identification as of this date.)

14 BY MS. MOODY:

15 Q. Can you please identify what has been marked as
16 Petitioner's Number 4?

17 A. The case worker did that.

18 Q. And if you look at that report would it identify
19 what issues the investigator found?

20 A. Yes.

21 Q. And do you recall any of the specific issues that
22 he talked about?

23 A. About the money for one. About the control buy.
24 Phone conversations not being recorded.

25 Q. So none of this information was used in your

1 trial?

2 A. No.

3 Q. And the investigator was not called to testify on
4 your behalf?

5 A. No.

6 Q. Now, we are going to go into the video and the
7 phone calls. You mentioned that there were no phone
8 calls recorded?

9 A. It was a phone call recorded, but the phone call
10 that the C.I. testified to that he initially set up the
11 drug buy, there is no recording of it.

12 Q. Okay. And did anything come out at the trial
13 regarding the phone call?

14 A. I don't know what you mean.

15 Q. Did anything come out at the trial about how the
16 buy was set up?

17 A. He testified that he called me on his way to meet
18 with the police department.

19 Q. Now, hold up. When you say "he" --

20 A. The C.I.

21 Q. The C.I. testified that he called you.

22 A. On the way to meet with him so he would have been
23 doing something that he was not instructed to do or
24 under their supervision at the time. So he has a
25 contract he can only do things under their supervision.

1 Q. Was that objected to?

2 A. No.

3 Q. So, then was there any other phone call that was
4 recorded?

5 A. When he was at the FBI office there was a phone
6 call that was recorded, yes.

7 Q. And did you have opportunity to hear that phone
8 call?

9 A. Yes, I did.

10 Q. And what was on that phone call?

11 A. Well, before trial, I guess in the motion of
12 Discovery that was sent to Mr. Boyd we sat down and
13 listened to a tape and it was really distorted and in
14 background you can hear the officers telling the C.I.
15 you have to make him say his name. You have to make him
16 say his name and then the phone hangs up and then the
17 C.I. says that was Derrick Blake on the phone.

18 Q. So there was a recording in the room where you
19 could hear the C.I. talking and the officer is talking
20 at the same time.

21 A. Correct.

22 Q. But there was no recording with you speaking, any
23 audible --

24 A. The tape is distorted. You can hear the officer.
25 You can hear him and they said it was me on the tape and

1 I said I don't remember having a phone conversation with
2 them. They said it was me on the tape saying I am
3 waiting on you.

4 Q. But was your name ever mentioned on the tape?

5 A. No. No.

6 Q. Were there any other recordings played at the
7 trial?

8 A. Yes, there was one played at the trial and it was
9 suppose to be the same one that we received, however the
10 one in the trial had no background noise. It was as
11 clear as I am talking to you right now.

12 Q. And on that did your attorney object to that
13 tape?

14 A. No, he did not.

15 Q. And on that audio, or that tape, did it have your
16 name on it?

17 A. No, it did not.

18 Q. Did it have your voice on on it?

19 A. It had two voices. One voice saying I am waiting
20 on you and one voice saying that I will be there in a
21 minute.

22 Q. And your attorney did not object to it?

23 A. No, he did not.

24 Q. Do you know prior to going into the trial whether
25 your attorney stipulated to any of the video/audio?

1 A. No.

2 Q. In any pretrial motions?

3 A. No.

4 MS. MOODY: Beg the Court'S indulgence.

5 THE COURT: Take your time.

6 BY MS. MOODY:

7 Q. Now, going to the closing statement. The closing
8 arguments. The prosecutor made statements or comments
9 in his closing.

10 Can you tell the Court what comments were made
11 that your attorney should have objected to? You feel
12 your attorney should have objected to?

13 A. He made reference to --

14 Q. First let me ask you to tell the Court what page.

15 A. I am trying to find it right now. It starts on
16 page 157.

17 Q. How about it we go page one 156, line 21. Do you
18 have a copy of 156.

19 A. Line 21, yes.

20 Q. Can you read what statements you felt your
21 attorney should have objected to?

22 A. "He said it is all about him. It is not the
23 live's that the crack is going to affect. This is a not
24 about the the family, the phone bills that are going to
25 get paid. People that steal. The food not on the

1 table. The electric bill that doesn't get paid. The
2 clerk that will get shot by a robber. It has nothing to
3 do with the case."

4 Q. And so your attorney didn't object obviously from
5 this transcript?

6 A. No.

7 Q. And why do you feel like he should have objected?

8 A. Because he was making statements that were not in
9 evidence for one and that is inflamed the passion of the
10 jury. That was his personal opinions. He is
11 interjecting his personal opinions in the closing
12 arguments.

13 Q. And were there any other statements?

14 A. He makes a statement about the video, where he
15 says -- it is on page 158.

16 Q. Can you tell us the line please?

17 A. It starts on page -- that is not it.

18 Q. Page 158, line?

19 A. That is not it. Hold on.

20 MS. MOODY: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 Q. One page 158, line one that is what you are
24 talking about?

25 A. No, that is not it. They made a control buy.

1 Q. Page 154.

2 A. Line ten where they talk about they made a
3 control buy.

4 Q. One fifty-four, line ten.

5 A. And on page 158 he is talking about a hand-to-hand
6 transaction that is not on the video.

7 THE COURT: You need to speak up.

8 THE WITNESS: On 158 starts line one and
9 ends on line three, but he says about a hand-to-
10 hand transaction at a window, but there is
11 nothing on the film showing a hand-to-hand
12 anything.

13 Q. So, let me make sure this is clear. You are
14 saying your attorney should have objected to comments
15 made on page 158, line one?

16 A. Yes.

17 Q. And the comment that you feel he should have
18 objected to was the hand-to-hand at the window and the
19 moving things are going back and forth?

20 A. Yes.

21 Q. And your saying on the video that was not shown?

22 A. It it don't show anything going hand-to-hand. It
23 just shows two people talk.

24 Q. And then on 154 are you saying that there was a
25 comment there?

1 A. When he said -- it said they made what is called
2 a controlled buy.

3 Q. And your issue with that is?

4 A. I mean a control buy would consist of funds that
5 were identifiable and there was no funds that were
6 identifiable.

7 Q. Is there anything else as it relates to the
8 objections that your attorney should have made regarding
9 the closing?

10 A. Yes. When he makes a comment on page 156,
11 starting at line 15 he says, "This is a business, man.
12 This is not some punk kid standing on the corner but a
13 40-year old businessman.

14 Q. Is that it?

15 A. Yes.

16 Q. Now, of all these things, is this why you feel
17 your attorney was ineffective in assisting you in your
18 trial?

19 A. Correct.

20 Q. So just to recap. It is based on the drug
21 analysis, the chain of custody?

22 A. Correct.

23 Q. The money that was not objected to?

24 A. Correct.

25 Q. That was not introduced?

1 A. Yes.

2 Q. And a chain proven for?

3 A. Yes.

4 Q. And also the video that you heard in the trial
5 was not objected to and the testimony regarding the
6 phone call to you to set up the deal?

7 A. Correct.

8 Q. And then the other portion was the prosecutor's
9 closing statements. Your attorney did not object to?

10 A. Yes.

11 Q. Now, in addition to that earlier you were stating
12 about the subject matter jurisdiction?

13 A. Yes.

14 Q. Lets talk about that. Earlier you indicated that
15 your true bill indictment was done August --

16 A. August 28, 2008.

17 Q. Are you looking at the indictment?

18 THE COURT: You may help him if you want
19 to.

20 MS. MOODY: Okay.

21 Q. True bill indictment was done when?

22 A. August the 21st, 2008.

23 Q. Okay. And you have --

24 A. Certified copy from the court administration
25 showing the court terms for the month of August in York

1 County, the 16th circuit, and it shows no term of court,
2 on the 21st in August.

3 Q. Well, is there any term of court?

4 A. From the 18th to the 25th, no, there is not.

5 Q. So there is no Common Pleas Court there either?

6 A. No court, period.

7 Q. Okay.

8 MS. MOODY: May I have these marked.

9 (Petitioner's Exhibit 5, terms of court
10 document, marked for identification as of
11 this date.)

12 BY MS. MOODY:

13 Q. Now, I have handed you what has been marked as
14 Petition Number 5. Can you please identify that
15 document one more time for me?

16 A. This is the document that I received from the
17 court administration in reference to the 16th circuit
18 for the month of August in 2008 showing the court docket
19 dates.

20 Q. And so there was no court of any kind?

21 A. No court of any kind.

22 Q. In York County?

23 A. No, ma'am, none at all.

24 Q. And your argument today is that your indictment
25 -- well, tell the Court what your argument is as it

1 relates to your indictment?

2 A. You can only be indicted as far as 14-9-170 and
3 14-9-210 say the only time you can be --

4 Q. Mr. Blake, can you talk a little bit slower and
5 into that microphone so she can get what you are saying.
6 You she?

7 A. 14-9-170, 14-9-210 state that the only time the
8 Grand Jury can convene is during the term of general
9 sessions court and the reason being is because the judge
10 that presides over general session court also presides
11 over the Grand Jury.

12 Statute 14-5-820 gives the legislative dates for
13 the 16th circuit as far as the dates in York County they
14 both have common plea court and both general sessions
15 court. The last date for the month of August -- I mean
16 the last date for the general sessions court in the 16th
17 circuit is the last week of July, and looking at an
18 atlas that would be the 28th. That would have been 28th
19 of July, 2008, and it carries over. There is nothing
20 showing on this calendar as far the 21st when I was
21 indicted.

22 Q. And so, at any time in the pretrial motions was
23 an objection made to the indictment?

24 A. No, not to my knowledge, no.

25 Q. And this was -- there was no objection made

1 before the jury was sworn in?

2 A. No, there wasn't and according to Evans versus
3 State it can be brought up before the jury is sworn in
4 or it can be brought up before PCR proceedings.

5 Q. And so that is the third issue that you bring up
6 in terms of ineffective assistance of counsel?

7 A. Correct.

8 Q. Is there anything else related to the subject
9 matter jurisdiction you want the Court to be aware of?

10 A. It is not -- it is not arguing that the Court had
11 no jurisdiction that sentenced me, it is arguing that
12 the Grand Jury convened outside of legislative intent
13 which was the date set forth by legislature for them to
14 convene.

15 Q. So what you are essentially saying is that true
16 bill indictment was null and void?

17 A. Yeah, it could not have been indicted during the
18 court term of general sessions or as it states on the
19 back of the indictment upon our oath during the term of
20 general sessions --

21 Q. Can you slow down and speak into the mic so the
22 court reporter can take it down.

23 A. It states on the back of indictment, "At a term
24 of general sessions Court on August the 21st, 2008, upon
25 a oath we true bill indict this."

1 Q. And so you are saying that didn't occur?

2 A. It is impossible for that to occur according to
3 the court docket set forth by court administration.

4 Q. Now, filing this post conviction relief
5 application you are asking the Court for relief?

6 A. Correct.

7 Q. Can you please tell the Court what type of relief
8 you are seeking?

9 A. Ideally the original plea. I would be good with
10 that.

11 Q. Now when you say the original plea, what was
12 original plea?

13 A. The five years.

14 Q. You do understand that the Court can't give you
15 --

16 A. I understand.

17 Q. -- that original plea here today.

18 A. Yeah, I understand that.

19 Q. And when you say you would like the original plea
20 you are speaking of with the solicitor's office?

21 A. Correct.

22 Q. And so you are asking the Court to grant you a
23 right to a new trial?

24 A. Yes, I am.

25 Q. Is there any other relief you are seeking?

1 A. No.

2 Q. Is there anything else you would like to convey
3 to the Court today?

4 A. No.

5 MS. MOODY: Thank you. No further questions
6 for this witness, Your Honor. Please answer any
7 questions the assistant solicitor has.

8 THE COURT: Your witness.

9 MR. JOHNSON: Thank you, Your Honor, may it
10 please the Court.

11 THE COURT: Yes.

12 CROSS EXAMINATION

13 BY MR. JOHNSON:

14 Q. Mr. Blake, you have been doing some research,
15 huh?

16 MS. MOODY: Objection Your Honor?

17 THE COURT: Ma'am.

18 MS. MOODY: Objection.

19 Q. It sounds like you got a good argument?

20 THE COURT: Overrule the objection. Go
21 ahead.

22 Q. Mr. Blake, this is not the first time you dabbled
23 in crack cocaine, is it?

24 A. Excuse me?

25 Q. This is not the first time you dabbled in

1 cocaine, is it? As a matter of fact you have a prior
2 conviction of possession of powder cocaine in 2002?

3 MS. MOODY: Objection, Your Honor,
4 relevance?

5 THE COURT: What is the relevance of this?

6 MR. JOHNSON: First, it is the basis for the
7 second offense that he was charged. That he
8 was convicted of.

9 MS. MOODY: Your Honor, I believe we are not
10 here to determine what level offense he should
11 have been charged with. The proper argument that
12 we are here for is ineffective assistance of
13 counsel.

14 MR. JOHNSON: It also goes to the lack of
15 mistake.

16 THE COURT: All right, I will let him to go
17 forward over your objection.

18 MS. MOODY: Thank you, Your Honor.

19 Q. Let's start from the top Mr. Blake. You say that
20 counsel did not object to the physical chain of custody,
21 because you are objecting to the dates that Cynthia
22 Mitchum signed on the chain of custody evidence; is that
23 correct?

24 A. (No response.)

25 Q. You are saying that she took and tested I guess

1 it was July of 2008, July 25th and then then the next
2 date that was written on the bag was the 28th?

3 A. No.

4 Q. Is that is what you were bringing up?

5 A. No.

6 Q. What were you bringing up?

7 A. She said she tested and sealed the bag on the
8 July the 25th. The test that she actually ran that I
9 received results from, copies of from the Clerk of Court
10 states that the test were done on the July the 29th not
11 the 25th.

12 Q. Okay.

13 A. It was never entered back into evidence again
14 until August the 8th.

15 Q. Sorry, I didn't mean to get the dates mixed up.

16 A. That is fine.

17 Q. Are you aware there is testimony from Miss
18 Mitchum that she said she received it from Barbara
19 Traylor on July 2nd.

20 She thereafter tested --

21 MR. JOHNSON: Your Honor, for your reference
22 it is pages 107 through 109?

23 THE COURT: Got it.

24 BY MR. JOHNSON:

25 Q. And then on page 109 line five she said yes, the

1 only time it left was after I sealed it it went back to
2 the evidence room where it remained there until it came
3 to Court. So the chain is complete.

4 A. No, it is not complete.

5 Q. Okay.

6 A. If she tested it -- if she tested the bag on the
7 25th and sealed it on the 25th.

8 Q. That is fine.

9 Q. You also stated your attorney didn't object to
10 the money being referenced. Are you aware that money
11 was never entered into evidence? The money that you
12 talked about, for a while, it was never entered into
13 evidence?

14 A. Yeah, I am well aware of that.

15 Q. So there is no reason to object to it; do you
16 understand that?

17 A. They made -- well, why would you make reference
18 to something you couldn't prove.

19 Q. It is part of the testimony?

20 A. Excuse me?

21 Q. It was part of the testimony, but it was never
22 entered into evidence? Would you agree with that?

23 A. It was never entered into evidence.

24 Q. Both the confidential informant and the officer
25 testified there was a control buy. They gave the C.I.

1 the money. It was in the control of the D.E.U. and they
2 allegedly -- according to your account, sold you, or you
3 sold them crack cocaine for money; isn't that the
4 testimony?

5 A. That is their testimony.

6 Q. All right. But that money was never entered into
7 evidence, was it?

8 A. No, it was never entered into evidence.

9 Q. Okay.

10 A. But that was a part of the objection because it
11 should have been an objection to them even mentioning
12 something that they never had no evidence of.

13 Q. Sir, there is also testimony from the
14 confidential informant himself that he knew isn't you;
15 isn't that right.

16 A. Yes, it is.

17 Q. And that you also say that solicitor improperly
18 commented in the closing argument that there was a hand-
19 to-hand transaction on the video, but are you aware that
20 the C.I. actually testified to that so the solicitor was
21 correct in commenting on that evidence.

22 A. (No response.)

23 MR. JOHNSON: Your Honor, that is page 74,
24 75.

25 THE COURT: All right.

1 MR. JOHNSON: Page 74, lines 12 and 13.

2 THE WITNESS: The video didn't show no hand-
3 to-hand either.

4 BY MR. JOHNSON:

5 Q. But sir, there was testimony that the video
6 showed that from the confident informant.

7 MR. JOHNSON: Beg the Court's indulgence,
8 Your Honor.

9 THE COURT: Take your time.

10 BY MR. JOHNSON:

11 Q. There is also testimony from the officer that he
12 knew you; isn't that correct?

13 A. Excuse me?

14 Q. That Mr. - - lieutenant officer Robert Cashue
15 (phonetics) knew you?

16 A. I mean, I don't know him. I can't say what he
17 thought.

18 Q. On page 50 there is testimony that he knew you
19 and he identifies you in Court; isn't that correct?

20 A. If it is in the transcript I guess, but that
21 doesn't prove he knows me.

22 Q. But there is testimony to that effect, isn't
23 there?

24 MR. JOHNSON: Your Honor, I have no more
25 questions for this witness.

1 THE COURT: All right. Anything on
2 redirect.

3 MS. MOODY: Yes, sir Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. MOODY:

6 Q. To clarify the point about the money, the chain,
7 you testified earlier that your attorney did not
8 question them about the money or he didn't object to the
9 comment about money being given to you?

10 A. Correct.

11 Q. Also on the video from what you recall was there
12 anything that showed that you received money on the
13 video?

14 A. No.

15 Q. And I believe in the transcript where counsel
16 references page 74 a hand-to-hand was that hand-to-hand
17 transaction shown on the video?

18 A. No, it was not.

19 Q. It is just where the C.I. after six months
20 testified what he recalled happening ay that point on
21 the video?

22 A. Correct.

23 Q. And your attorney didn't object to any of that?

24 A. No, he did not..

25 Q. And as as far as the officer knowing you, did you

1 ever have a run in with this officer where you sold him
2 any drugs?

3 A. No, I did not.

4 Q. Now, as to the chain related to the drugs, your
5 argument or your testimony from today, is it your
6 testimony that you do not understand where the drugs --
7 the drug sample that Miss Mitchum tested where it was
8 located?

9 A. Correct.

10 Q. Okay. But you understand where the drugs -- the
11 remaining amount of drugs in the bag was located?

12 A. Correct.

13 Q. Okay. And so at any point did your attorney
14 object to any parts of the chain?

15 A. No, he did not.

16 Q. As specifically going, who checked the drugs out
17 of custody for trial?

18 A. Clara Panner. (Phonetics)

19 Q. Did that person testify?

20 A. She did not testify and no sworn statement and no
21 one ever mentioned her name.

22 Q. And so there is a gap in between where the sample
23 was between 7-29-08 and August 8, 2008; correct?

24 A. Yes, but actually there is a gap between July the
25 2nd to August the 8th because she does never really say

1 where it is. She just -- I mean, it is suppose to be in
2 a secure place that no one can get to but her. It
3 doesn't say anything about that at all.

4 Q. Did your attorney ask any of those kinds of
5 questions?

6 A. No, he did not.

7 Q. And he didn't object at the end of the States
8 offering the drugs and the test results of the drugs
9 into evidence does he object to anything?

10 A. No.

11 Q. And that is the point you are trying to make?

12 A. Correct.

13 MS. MOODY: No further questions for this
14 witness Your Honor.

15 THE COURT: Anything on recross.

16 JOHNSON: No, sir.

17 THE COURT: Thank you, sir. You may step
18 down.

19 MS. MOODY: Your Honor, at this time I would
20 like to move these documents into evidence.

21 MR. JOHNSON: There are some objections,
22 Your Honor, if I can actually go through them one
23 by one.

24 THE COURT: Okay.

25 MR. JOHNSON: One specifically, number 4,

1 Your Honor, she says this is the investigator's
2 document, however it has not been authenticated.
3 Applicant has said it is his but the guy is not
4 here to testify therefore it cannot be
5 authenticated.

6 MS. MOODY: Your Honor, I can call him,
7 James Boyd and have him authenticate it because
8 he is the person that gave it to my client.

9 THE COURT: Very good. One, two, three and
10 five are okay.

11 MR. THOMPSON: Yes.

12 MS. MOODY: Your Honor, at this time I
13 call James Boyd to the stand.

14 JAMES BOYD, called as a witness, having
15 been duly sworn by The Clerk, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MOODY:

19 Q. Good morning, Mr Boyd?

20 A. Good morning.

21 Q. Can you please state your full name.

22 A. James W. Boyd.

23 Q. And you are aware why we are here today?

24 A. Yes.

25 Q. Okay. And you represented Mr. Blake?

1 A. I did.

2 Q. And you were the trial attorney in this case that
3 occurred in December of 2008?

4 A. That is correct.

5 Q. I am going to --

6 MS. MOODY: May I approach, Your Honor?

7 THE COURT: You may.

8 Q. Hand you what has been marked as Petitioner's
9 Exhibit Number 4. Do you recognize that document?

10 A. Yes, that was a report prepared by a private
11 investigator that was retained to assist in Mr. Blake's
12 defense.

13 Q. And who retained this investigator?

14 A. I contacted the investigator. I am thinking -- I
15 am thinking he was paid directly by Mr. Blake, but I am
16 the one that made the contact and got him on board.

17 MS. MOODY: No further questions for this
18 witness, Your Honor.

19 I would like to move this document into
20 evidence.

21 MR. JOHNSON: Mr. Boyd may testify that this
22 is what the investigator did however we don't
23 know for a fact that the investigator actually
24 made that copy.

25 THE COURT: Well --

1 MS. MOODY: He would have gotten a copy.

2 THE COURT: I would ask the question, Mr.
3 Boyd is that a true and accurate copy of the
4 report that you received from the investigator.

5 THE WITNESS: It is.

6 THE COURT: Okay. I will let it in. Thank
7 you.

8 MS. MOODY: Thank you. No further questions
9 for this witness.

10 THE COURT: Okay. All right. Mr. Johnson
11 your witness.

12 MR. THOMPSON: May it please the Court.

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. JOHNSON:

16 Q. Mr. Boyd, how long have you been practicing law?

17 A. Since November of 1977.

18 Q. And how much of that has been criminal law?

19 A. A great deal of it. I was -- I have been trying
20 criminal cases -- handling criminal cases since shortly
21 after I was admitted to the bar and I was a public
22 defender for York County for a little over six years and
23 also worked with the solicitor's office on a part time
24 basis for a little over three years. And I have since
25 that time also probably at least half my practice is

1 criminal defense.

2 Q. So, would be fair to say that you tried a few
3 criminal cases?

4 A. Yes, I tried numerous criminal cases.

5 Q. Have you tried drug cases before?

6 A. Yes.

7 Q. Roughly how many drug cases have you tried?

8 A. That would be hard to say. I mean, well into the
9 double digits. I have been trying drug cases for -- I
10 think the first case I ever tried was a drug case so it
11 has been numerous drug cases.

12 Q. And I guess to give us a little background. How
13 did you become involved in this case?

14 A. Mr. Blake retained me to represent him.

15 Q. About how many times did you meet with Mr. Blake?

16 A. I don't recall the exact number of times. I know
17 I meet with him on several occasions. I also had
18 meeting with the investigator present with Mr. Blake. I
19 remember we went over the video. I think Mr. Blake
20 reviewed the video. Made comments about it. So it was
21 a number of times we meet.

22 Q. So you did hire a private investigator?

23 A. That's correct.

24 Q. And what role did he play in this investigation?

25 A. Well, he was a former narcotic's officer. He --

1 basically his job was to look at the case, look at the
2 video, review the evidence and point out any weaknesses
3 in the case that may exist.

4 Q. And in meeting with Mr. Blake himself did you
5 discuss the charges against him?

6 A. I did.

7 Q. Did you come up with a defense theory of this
8 case?

9 A. Well, what Mr. Blake told me happen we based the
10 trial on his defense of what had actually he contended
11 happened.

12 Q. And what did he contend happened?

13 A. He contended that he did meet with the informant.
14 That he -- what was handed to the informant was I
15 believe a joint of marijuana as opposed to crack
16 cocaine.

17 Q. And of course the C.I.'s testimony was that it
18 was an actually crack instead marijuana?

19 A. That's correct.

20 Q. And that Mr. Blake was smoking a joint shortly
21 before the transaction occurred?

22 A. Based on my memory, yes.

23 Q. Okay. And actually Mr. Blake did have a chance
24 to testify at this trial, didn't he?

25 A. He did testify.

1 Q. And he did testify and he gave his story that he
2 was going around the building. There was no
3 transaction. He did meet with the dealer. He was going
4 around the side of this house to shoo a dog away because
5 his dog was in heat?

6 A. I believe that is correct.

7 Q. Okay. But he admits to meeting with the dealer,
8 correct.

9 A. He did.

10 Q. Meeting with the confidential informant?

11 A. That is correct.

12 Q. Do you remember what discovery items that the
13 State would have given you?

14 A. I had the reports. I think certainly the drug
15 analysis. Of course the most important thing I had
16 copies of the -- I think I had copies of the audio tape
17 and the video tape. The video tape was the wire the
18 informant was wearing at the time of the transaction.

19 Q. And we will go ahead and deal with the issue.
20 Mr. Blake says that the first audio tape is muddled,
21 distorted, you hear background noise. You here
22 officers, the FBI talking to confidential informant and
23 then the tape at trial that was presented was clear as a
24 bell.

25 Did you notice the differences?

1 A. At this point I can't remember. I just -- I
2 don't remember whether there was background noise on the
3 original one or not at this point. And I don't remember
4 the quality of the one played at trial this point
5 either. It has been four years.

6 Q. But in your practice would it have been something
7 that you would have noticed?

8 A. I would think so.

9 Q. And would you have brought it out had you noticed
10 it?

11 A. Well, if it was something significant, yes,
12 depending on what was said in the background at that
13 type of thing, at this point I don't remember. It maybe
14 that I didn't like what was said in the background and
15 didn't want that said -- heard by the jury. But at this
16 point I really don't remember that. I mean, that is an
17 issue I would have dealt with if I thought it was
18 prejudicial to the client.

19 Q. Would you have moved to have it excluded from the
20 record?

21 A. I would have objected to it being entered or
22 moved in some other way so that the original be played
23 instead of the -- any redacted tape, but at this point I
24 don't remember if it was redacted or not.

25 Q. Were you able to interview any witnesses in the

1 case; officers, confident informant?

2 A. Not that I recall.

3 Q. I believe you argued in closing arguments there
4 was just not enough evidence in this case; is that
5 correct?

6 A. That's correct.

7 Q. Now dealing with the solicitor's closing
8 argument, did you find anything objectionable in the
9 argument?

10 A. When I went back over the transcript looking at
11 what Mr. Blake said about that, I think Mr. Springs made
12 those comments in the context of Mr. Blake stating -- I
13 am sorry the informant stating that he wanted to meet
14 Mr. Blake's supplier and Mr. Blake refusing to allow him
15 to meet with his supplier and then Mr. Spring goes into
16 he is a businessman and he doesn't care about those
17 other things.

18 Conceivably that is Mr. Springs went into an area
19 that you could argue is improper, however, you always
20 have a question in a trial of whether you object at that
21 point once it is said and perhaps emphasis it to the
22 jury. And you know, it was a few sentences, so do you
23 want to object and bring that to the attention of the
24 jury. Do you want to appear rude and object to
25 somebody's closing argument.

1 I don't like to object to somebody's closing
2 argument unless it is really egregious just because I
3 think it can backfire on you. But certainly an argument
4 could be made either way on that issue.

5 Q. So you made a trial strategy decision not to
6 re-ring the bell?

7 A. Well, that's what I think. I mean at this point
8 it is difficult to remember the exact thought process
9 that was going through my mind at that time. But that's
10 my general philosophy about objecting during arguments.
11 It is something I don't like to do unless it is
12 something egregious because especially if the judge does
13 not sustain the objection it makes you really look bad
14 in front of the jury and it really emphasizes it to
15 them. So I want to be dead certain that I am going to
16 get a favorable ruling if I do object.

17 MR. JOHNSON: The Court's indulgence, Your
18 Honor.

19 THE COURT: Take your time, Mr. Johnson.

20 BY MR. JOHNSON:

21 Q. Dealing with the true bill indictment issue, did
22 you see anything objectionable about the indictments?

23 A. I didn't at that time, no.

24 Q. Have you ever had cases before where the date
25 doesn't match up on the indictments as to when the State

1 -- the Grand Jury met?

2 A. Well, the date on the indictment, when the true
3 bill was when the Grand Jury met. As far as the issue
4 of when the Grand Jury could properly meet during that
5 time I have -- that's not something I looked into.
6 Generally, I assume the Grand Jury met at the proper
7 time.

8 I have many years ago raised an issue in a murder
9 case concerning an indictment and the time the Grand
10 Jury passed on the indictment, but that was many years
11 ago and the laws have changed concerning that since that
12 time.

13 Q. Moving to the chain of custody which seems to be
14 a point of contention here, did you see anything
15 objectionable in the chain of custody?

16 A. I did not at the time, no.

17 Q. If you had seen something would you have brought
18 it to the attention of the Court?

19 A. I would have, yes.

20 Q. Would you have objected to it?

21 A. Yes.

22 Q. Would you have cross examined their witnesses?

23 A. Most probably yes, if I had seen something on
24 that issue.

25 Q. Would you have moved for a mistrial or dismissal

1 of the case?

2 A. Well, I think the proper -- if they -- if there
3 would have been an objection to the drug report and the
4 evidence of the drugs being admitted into evidence in
5 that case if they weren't admitted into evidence it
6 would have been a situation for a directed verdict at
7 that point.

8 Q. But you didn't see that in this case?

9 A. I did not.

10 Q. Looking back at the file do you see it now or is
11 it still not an issue for you?

12 A. The -- well, I didn't see anything in the file or
13 the testimony. I didn't quite follow the dates and
14 everything that they were referring to in testimony
15 earlier so --

16 Q. Do you think that the chain of custody was
17 complete in this case?

18 A. It seemed to be. I mean Cynthia Mitchum
19 testified, the chemist testified that she had control
20 and possession of it from the time she got it until the
21 time of Court was basically my understanding.

22 Q. Mr. Blake also claimed that you didn't object to
23 the drugs coming into evidence. Did you see any reason
24 to object?

25 A. No, I didn't.

1 Q. There is testimony about money that was
2 introduced, but the money was actually not introduced
3 into evidence. Did you see any issue concerning that
4 about the State not presenting this marked money?

5 A. No, I didn't. They didn't have the money any
6 more because the money had allegedly been paid to Mr.
7 Blake. So, the the money wouldn't be available to put
8 into evidence. I mean that is very typical of drug
9 cases that the money is not in possession of law
10 enforcement any more. So they can certainly -- I don't
11 see any issue with him testifying or the informant
12 testifying about money that doesn't have to be
13 introduced into evidence for them to testify concerning
14 it.

15 Q. Mr. Blake brought up a plea offer of five years
16 and he said that is what he really wants is a plea
17 offer. Do you recall a plea offer in this case?

18 A. I do not, but I am sure there was a plea offer
19 that I discussed with Mr. Blake and he rejected and
20 choose to go to trial.

21 I don't remember the exact number of years but it
22 was less than what he got.

23 Q. So it is Mr. Blakes decision to reject that offer
24 and to go to trial?

25 A. Absolutely.

1 Q. Your Honor I think that is all I have at this
2 time thank you?

3 Q. Anything on redirect?

4 MS. MOODY: Yes.

5 THE COURT: Okay, you called him.

6 MS. MOODY: I know. I didn't realize he was
7 going to go into proving his case.

8 THE COURT: That was at my direction, Miss
9 Moody. Rather than have him call him later.

10 MS. MOODY: Okay.

11 REDIRECT EXAMINATION

12 BY MS. MOODY:

13 Q. Mr. Boyd, as to the chain of custody, you
14 indicated you didn't see anything wrong with the chain
15 of custody?

16 A. That is correct.

17 Q. Okay. Did you have anything that showed you
18 exactly the chain that you reviewed?

19 A. I reviewed the evidence packets.

20 Q. Prior to the trial?

21 A. I don't know if it I went over them and looked at
22 them prior to trial or not. I certainly reviewed them
23 prior to them being admitted into evidence.

24 Q. You would agree with me at the time of trial you
25 don't have the same amount of time to scrutinize the

1 evidence as you would if you had copies of them at your
2 office?

3 MR. JOHNSON: Objection. She is leading.
4 This is redirect.

5 THE COURT: I understand that it is redirect
6 but because of the nature of the way we
7 called the witnesses I will let her go forward
8 and do that. Thank you.

9 MR. JOHNSON: Thank you.

10 THE COURT: You may answer that question.

11 A. The answer is no, I wouldn't have the same amount
12 of time. However I think it is certainly sufficient.
13 It doesn't take that long to read evidence tags.

14 Q. Did you notice any of the inconsistencies that
15 Mr. Blake has testified here today?

16 A. Not that I recall.

17 Q. Did you notice that there was another witness
18 that they did not call as to the complete chain?

19 A. Not that I recall.

20 Q. Did you ask them about Miss Payner?

21 A. Not that I remember.

22 Q. As it relates to the money, you do recall that
23 there was forty dollars that was still in the custody or
24 in possession of the C.I.?

25 A. I don't recall that, but I have no reason to

1 doubt that.

2 Q. Okay. In the testimony the C.I. received \$180
3 from the narcotics unit and he purchased the amount of
4 crack from Mr. Blake and there was a comment in closing
5 about Mr. Blake indicating that the C.I. owed him money.

6 A. I don't recall that. If it is in the transcript
7 it is there.

8 Q. All right. So there could have been some money
9 that could have been presented at the trial that showed
10 there was money returned, if it is in transcript?

11 A. I suppose they could.

12 Q. And that would have been money that would have
13 identifiable by the narcotics unit?

14 A. Yes.

15 Q. And that money never came in?

16 A. They never attempted to introduce that into
17 evidence.

18 Q. Did you ask them about it?

19 A. No, I didn't see how that would be in Mr. Blake's
20 interest to have left over money introduced into
21 evidence.

22 Q. But couldn't it go both ways, if they didn't have
23 any money then he might not have received any money from
24 Mr. Blake, the sale money back?

25 A. I am not following that, but - -

1 Q. I guess I am saying if they have a series of
2 money that they issued to the C.I.?

3 A. Right.

4 Q. And if the C.I. statements about he receiving
5 money back was correct, they would have that money and
6 if they didn't have that money back what would have
7 happened to the money?

8 A. If they did not have the money back --

9 MR. JOHNSON: Your Honor, I have to put on
10 the record, first of all counsel is
11 testifying. Second of all it is speculation as
12 to what would have happened to the money.

13 THE COURT: I understand it is speculation,
14 and I will let Mr. Boyd try and answer the
15 question however he feels comfortable doing.

16 THE WITNESS: I am somewhat confused. If
17 you are saying the informant had money, that he
18 didn't spend all the money on the drug
19 transaction that allegedly occurred, that he had
20 basically change left over, I would assume that
21 should be turned back in to law enforcement.

22 BY MS. MOODY:

23 Q. I guess what I am getting at is if there was no
24 -- on the video Mr. Blake testified that he didn't see
25 where the money exchanged?

1 A. Okay.

2 Q. On the video?

3 A. There was no showing of the hands handing money
4 or anything like that. Unfortunately, there was some
5 money shown on the video because in the -- either the
6 mirror of the car or the windshield of the car there was
7 a reflection of some money.

8 Q. But was that money during the time they were
9 exchanging money or that was C.I.'s money?

10 A. It was during the time of the transaction, yes.

11 Q. As to the true bill indictment you didn't see any
12 reason to object, you indicated that there is some laws
13 that have changed. What laws?

14 A. I can't even remember. There use to be statutory
15 terms of Court and I think the indictments had to be --
16 I think I am misstating that now.

17 The case I was thinking about actually someone
18 had to be tried during -- it dealt with statutory terms
19 of Court that no longer exist. The exact details I
20 can't remember any more. But the laws been changed
21 regarding that. There's not the statutory terms of
22 Court.

23 Q. That is not a trick question. I am just trying
24 to understand when you say the laws have changed, are
25 you saying the laws have changed as to what is on the

1 indictment?

2 A. No. No, not on the indictment. It is about the
3 time of the indictment, I think.

4 Q. And based on that you are saying you would have
5 looked at the indictment to confirm the times of the
6 true bill?

7 A. No. I was answering the question because have I
8 ever objected to about the time of the indictment. I
9 wanted to answer that question truthfully. So I said
10 there was a time many years ago when I did raise that
11 issue. The law was changed on that I think a long time
12 before Mr. Blake's trial, so it didn't really have any
13 relevance to this situation.

14 Q. Okay. Now, as to trial strategy and in going
15 forward in a trial, you have an strategy you have a
16 theory of the case?

17 A. That's correct.

18 Q. But also in the trial the purpose of objections
19 is to preserve the record if necessary for appeal?

20 A. That's correct.

21 Q. Okay. And so as it relates to the testimony that
22 came through you would agree that there were no
23 objections made to the issues we raised here today; like
24 the chain, the video, or what have you, throughout the
25 record?

1 A. That is correct.

2 Q. Okay. And I understand what you are saying that
3 you at that point in terms of the closing argument you
4 were concerned about whether or not the jurors would
5 hold it against your client and find him guilty because
6 you made an objection in the closing?

7 A. I don't know if I go so far as to find him guilty
8 only for that reason. I mean -- I mean there's
9 questions do you -- is it going to harm your case or not
10 to do it at that time.

11 I mean there is two theories about that. One is
12 you object to everything and you try the case for the
13 record and you don't worry about whether you are getting
14 the jury irritated at you or not. Another theory is you
15 try it for the jury not for the appeal. I mean there is
16 a balance between those two things and every case you
17 have to try to balance that based on what is coming up.
18 Certainly an argument can be made either way on those
19 type of situations.

20 MS. MOODY: I beg the Court's indulgence.

21 THE COURT: Take your time.

22 BY MS. MOODY:

23 Q. Okay, going to the investigator, was that part of
24 your strategy not to use him at all in the trial?

25 A. There was never, to my memory, a question about

1 calling him as a witness or having him testify as a
2 expert. His basic purpose was to try to find weaknesses
3 in the case from his perspective as an investigator not
4 to have him testify as an expert or anything of that
5 nature.

6 Q. And looking at this, Petitioner's Exhibit Number
7 4 -- I will hand this to you.

8 In that report do you see if there were any
9 points that you could have brought up or that you
10 actually brought up in the trial?

11 A. You want me to look through the entire report?

12 Q. Do you recall any points?

13 A. Well, one of the things I think the big point is,
14 the search of the -- they searched the informant's car
15 before the transaction to make sure nothing was in it.
16 No drugs or anything of that nature. He talked about
17 having all kinds of junk in the car and then the search
18 lasted about two minutes and eighteen seconds. I think
19 that is something I brought up concerning that. That it
20 wasn't secure. The search wasn't sufficient to show
21 that he didn't have anything in the car.

22 The -- you know, without really going through the
23 transcript and looking at testimony and comparing it to
24 what is in this report, it has been a long time since I
25 reviewed. I really can't remember anything else. But I

1 think that was a big point about the search of the car.

2 Q. How so?

3 A. What?

4 Q. How so, when you say I believe if I correctly
5 rephrasing what you said, the search was about two
6 minutes long and you are saying that it it wasn't a
7 secure search. Secure search as to what other drugs?
8 Other money?

9 A. Well, that is what they do in every case. When
10 they send an informant out to make a buy they search the
11 informant and search the informant's vehicle that he is
12 going to be driving. Certainly, it would be easy for an
13 informant to set someone up. He could just go out and
14 claim he made a buy and he has drugs in the car right
15 there. So they search the car to make sure the
16 informant hasn't done that.

17 You got to explain if the informant is being
18 under surveillance and he comes back and hands the
19 officers cocaine or an illegal substance, you are going
20 to wonder where did that come from. They are trying to
21 exclude any possibility except him making the buy.

22 My argument is if it is in the -- you know, the
23 informant could have had it in his car wanting to set
24 Mr. Blake up because. The officer's didn't do a
25 thorough enough search of the car to rule out him having

1 it already in the car and doing that to set Mr. Blake
2 up.

3 The whole theory was the informant, he was caught
4 for I think distributing crack himself. He had a prior
5 record. He was facing a lot of time. So, he was doing
6 this to try to avoid that. So it was in his interest to
7 set people up. And I trying to show that it was
8 possible for him to set Mr. Blake up on this.

9 Q. Okay. And also and I understand that theory, but
10 also on the video was there no other persons that you
11 could hear on the video?

12 A. What video?

13 Q. The audio/video of the actual transaction?

14 A. I don't remember another person. I mean --

15 Q. You don't recall hearing a third voice on that
16 video?

17 A. I don't recall that. I am not saying it wasn't.
18 I just don't recall it.

19 Q. And then, as far as the -- when your client gave
20 you what happened, Mr. Blake said that he went around
21 the house. I mean, did the video possibly corroborate
22 that he went around the house shooting the dog?

23 A. It didn't give any information on what he did.
24 You know, but the informant claims somebody drove up in
25 a black car and he apparently got the cocaine from the

1 individual in the black car.

2 I did make the argument that since the informant
3 had a video camera on he should have positioned himself
4 if that was true to show that there was a black car.
5 There was no evidence. No officer saw the black car.
6 There was no evidence except the informant's testimony
7 that that black car existed.

8 Q. So, the black car was not on the video?

9 A. It was not.

10 Q. What kind of black car was it?

11 A. I don't remember. I mean, it would be in the
12 transcript. I don't remember what kind.

13 Q. Okay. Did the the investigator that you talked
14 to did he make mention about those issues of the third
15 person being on the video, or is that something that
16 you're saying that is what your theory was independent
17 of that report?

18 A. My theory is independent of that. I don't
19 remember -- I don't remember if he mentions a third
20 person being on the video or not. I don't recall a
21 third person.

22 Q. Or a third voice?

23 A. Or a third voice.

24 Q. So your theory was not -- your theory of the case
25 was based off of somewhat of what your client's told

1 you, Mr. Blake, and then at least one point out of that
2 investigator's report and then just your impression of
3 the case?

4 A. Well, the whole theory was that -- the theory of
5 the case was Mr. Blake did not sell crack to him. He
6 handed him a joint and that the State had not proved
7 otherwise and has insufficient proof to should
8 otherwise.

9 Q. Now, as to Mr. Blake's testimony, did he state he
10 was meeting up with the C.I. or that he met up with the
11 C.I. like he was at a location and the C.I. comes and he
12 does not deny talking to the C.I.?

13 A. He didn't deny. I believe it is at Mr. Blake's
14 home. He didn't denied meeting with the C.I..

15 Q. I guess I am trying to like -- like he had a --
16 did he ever tell you that he had a meeting scheduled? I
17 guess that is the best way for me to say it. A meeting
18 scheduled with the C.I. or was it a chance meeting with
19 the C.I.?

20 A. I think -- if I recall I think the C.I. just
21 showed up according to Mr. Blake.

22 Q. And so did you ever ask or bring up the fact that
23 there is no recording of this alleged set up drug deal
24 that is suppose to go down with Mr. Blake and the C.I.?

25 A. Well, they had a -- like you referred to earlier

1 a suppose phone conversation, I believe.

2 Q. And so I understand there was something they
3 didn't introduce. Did you attempt to try and to
4 introduce the phone call?

5 A. I didn't try to introduce any phone calls, no.

6 Q. Did you file an an appeal in this case?

7 A. I am sure I did.

8 Q. And as to the plea offer with Mr. Blake, did you
9 approximate what was your advice to Mr. Blake it terms
10 of whether he should accept the offer?

11 Q. My memory of talking with Mr. Blake is, you know,
12 first off what I tell everybody is, it is there
13 decision. I told him we had a hard road to go because
14 of the video showed there was some sort of transaction
15 between he and the individual. That, you know, we were
16 facing possibly an up-hill battle. But it was his
17 decision whether to accept it or not?

18 MS. MOODY: Beg the Court's indulgence. No
19 further questions?

20 THE COURT: Anything on recross?

21 MR. JOHNSON: No, Your Honor.

22 THE COURT: Thank you, sir, you may step
23 down.

24 All right, Ms. Moody, call your next
25 witness.

1 MS. MOODY: No more witnesses.

2 THE COURT: All right. Mr. Johnson.

3 MR. JOHNSON: The State has no further
4 witnesses, Your Honor.

5 THE COURT: All right. All right, Mr.
6 Johnson the only thing that I was looking over
7 the record that I have, it notes that there was
8 an appeal, but I don't have copy of those appeal
9 documents.

10 MR. JOHNSON: Your Honor, actually it was
11 an Ander's brief.

12 THE COURT: All right.

13 MR. JOHNSON: So the Court had reviewed
14 all the evidence and found there is no issue that
15 has merit.

16 THE COURT: Okay.

17 MR. JOHNSON: If you like me to send you any
18 of the briefs I can do that.

19 THE COURT: I would like to see them if you
20 don't mind.

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Okay, and if you provide a copy
23 to Miss Moody as well.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Okay. But what I will do is I

1 will have look over the information that I have
2 been provided and I will get back with you all
3 with my decision.

4 MS. MOODY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. JOHNSON: Thank you.

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Family Court for York County, South Carolina, on the 9th day of October, 2012.

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

August 14, 2013

Aileen Butler

Glue Line

Glue Line

CASE #: 2008-00005606
 ROCK SUBSTANCE
 LOC/BIN: PROP/
 Date Received: 02/22/2008



0035046

Y

02-20-08
 06 07-02-08
 UCM

EVIDENCE Case No. 200800005606Item No. 1Evidence Description CrackPlace Evidence Found From CIDate & Time of Recovery 2-20-08 / 2:04PMSuspect Derick Tyrone Blake Offense VDL

Victim _____

Evidence Recovered By LubbenBadge/I.D. No. L-6584

CHAIN OF POSSESSION OF EVIDENCE

Signatures Required

From

To

Date

Time

<u>J. L. Hill</u>	<u>RH Evidence (rev)</u>	<u>2-20-08</u>	<u>2:50PM</u>
<u>RH Evidence</u>	<u>Barbara D. Maylor</u>	<u>3/22/08</u>	<u>1405</u>
<u>Barbara D. Maylor</u>	<u>C. Mitchum</u>	<u>7/12/08</u>	<u>1015</u>

0001 10/00/00

CHAIN OF POSSESSION OF EVIDENCE

(SIGNATURES REQUIRED)

FROM:	TO:	DATE:	TIME:
C. Mitchum	Eol MJC Evidence	8-8-08	1447
<i>(Signature)</i>	<i>(Signature)</i>	12-2-08	903
Didn't show up in court or is there any this in the way of my paper work about her this is The Break in the chain Thank GOD!!			

8/8/08
10:03
PM

1 CHECK EVIDENCE TAGS FOR IMPRINTS

07-25-08

NOTES:

CRIME LAB CASE NO. _____

☐ SEALED ☐ OTHER _____

CONDITION OF EVIDENCE BAG UPON RECEIPT AT LAB: _____

SEALED 07-25-08 CCM

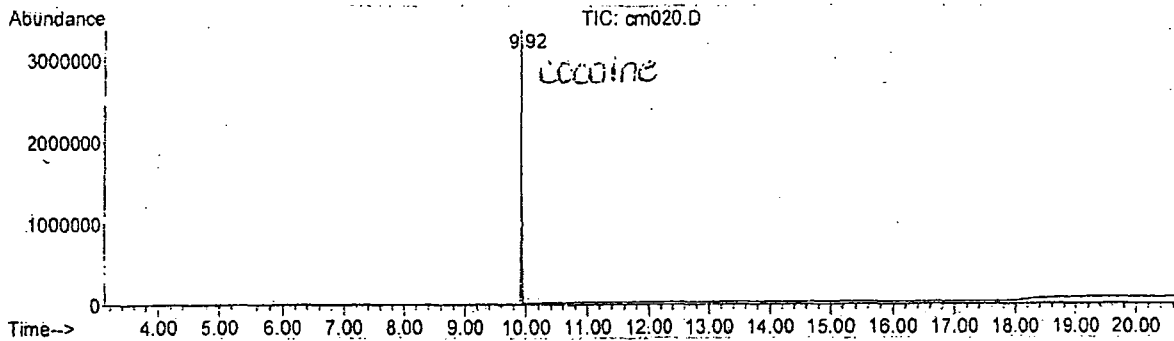


York County Drug Laboratory

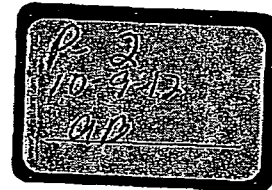
Information from Data File:

File Name : D:\DATA\cm072808\cm020.D
Operator : Cynthia Mitchum
~~Date Acquired : 2008-07-29 01:14:13~~
Sample Name : 200800005606-1
Misc. Info :
Vial Number : 18
AcquisitionMeth: GEN20

C. Mitchum



Ret. Time	Area	Area %	Ratio %
9.922	30298838	100.00	100.00



DRUG ANALYSIS WORKSHEET

York County Sheriff's Office

Date: July 25, 2008

Suspect(s): Biake, Derick Tyrone

Case Number: 200800005406

Received From: Traylor 07-02-08

Seal(s): ☒ Intact ☐ Broken

Analyst: CJM

Item#	Weight	Barcode	Micro.	Dug/Levine	Cobalt	SnCl			Extract
1	3.31g	0035046			lt. blue	blue			hexane

NOTES:

zip lock → tied pb to rock

Ⓢ cocaine base

Rock substance

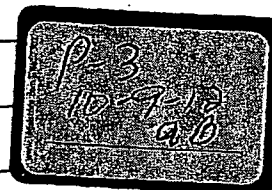
NOTES:

NOTES:

NOTES:

RESULTS:

Ⓢ cocaine base (Rock) found 3.31 grams (51.07 grains), CII



CASETECH INVESTIGATIVE AGENCY

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ROCK HILL, SOUTH CAROLINA 29732

OFFICE: (803) 366-8067 FACSIMILE: (803) 366-4229

Casetech@comporium.net

SLED# 1651

=====

Derrick Blake

Report of Review



**Attorney:
James Boyd**

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**CASETECH INVESTIGATIVE
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=====

Derrick Blake

Audio Tape Review

Benjamin calls Blake and they talk about an arrival time. Blake tells Benjamin he is waiting on him and wants to know when he might arrive. Blake tells Benjamin, "my guy was wanting to know."

Benjamin tells Blake he will arrive in about ten minutes. The conversation ends.

dblakeaudio

Points
of
Interest

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=====

Derrick Blake

Video Review

The videotape begins while Antwan Benjamin and the police are still in the F.B.I. office building, located off Anderson Road.

01:26:48: They are in the elevator.

01:27:05: One officer is advising Benjamin about the positioning of the body camera and how to get Blake on tape.

Notice the position is deliberately facing upward, which makes any recording of hand-to-hand transactions difficult.

01:27:31: Officers exit to search Benjamin's vehicle.

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01:28:52: Benjamin exits the building and waits.

01:28:59: Benjamin talks of having "all kinds of junk" in the car.

1. This should extend the length of the search.

01:29:16: Benjamin: "What are y'all doing? Y'all think I'll set somebody up?"

01:29:48: Benjamin is walking to his car.

1. The search lasted approximately 2 minutes, eighteen seconds.

01:30:14: He is leaving.

01:31:48: Benjamin covers the camera; reason?

1. Note he is stationary at a traffic light (tree in left side of the tape shows he is not moving).

01:36:35: On the phone with police.

01:37:57: One the phone again; he only listens. There is no relevant conversation. It does not appear to be a conversation with the police.

01:38:24: He is arriving at Blake's home. He parks and exits, then walks to a car. Blake is sitting in the passenger seat. Benjamin knocks on the glass, then opens the door.

Blake is rolling a marijuana cigarette.

01:39:53: The door is closed, but they have a conversation.

Blake: "He about a minute away...he say he about one minute away from here..."

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Benjamin: "Oh, he coming here?"

01:40:08: Benjamin is standing and waiting.

01:41:12: Benjamin walks to his car and takes an unidentifiable item from the front seat of the car.

01:41:38: You can hear him shaking an item.

01:42:24: He is striking something against a surface.

01:42:38: Blake exits the car.

01:42:50: His back is to Benjamin.

01:42:55: Blake is about 10 feet from Benjamin.

01:43:00: Blake appears to be trying to light the marijuana.

01:43:04: Benjamin covers the camera with his hand.

01:43:17: Blake continues to light the marijuana.

01:43:27: Blake is away from Benjamin.

01:43:41: Blake is walking away and toward the home. He tells Benjamin to stay where he is.

01:43:57: Benjamin walks to his car and sits in the driver's seat.

1. Note: There has been no money exchange at this point. In Benjamin's statement, he claims he gave Blake \$160.00 and Blake walked away.
2. He has not been close enough to Blake to do the transaction.

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3. There has been no comment by Benjamin about anyone else arriving.

01:44:40: Blake is approaching Benjamin's driver's window.

01:44:45: Blake knocks on the window. Benjamin rolls it down.

Blake hands him an unidentifiable item at the window's edge. Benjamin appears to be holding the item just beneath the camera's view.

A conversation ensues:

Benjamin: "What the hell's this?"

Blake: "It's pretty good."

Benjamin: "Shit. Looks like raw baking soda."

Blake: "It's pretty good. I'm telling you...they rock on it last night. He got rid of --- (inaudible) right quick last night."

Benjamin: "Man..."

Blake: "You probably know the nigger."

Benjamin: "Who?"

Blake: "Mane..."

Benjamin: "Mane?"

Blake: "He's thirty years old..."

Benjamin: "Mane..."

Blake: "Mane..."

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Benjamin: "Where he stay at?"

Blake: "...over by Boyd Hill..."

Benjamin: "...it's all there..."

Blake: "Yeah...get a ball of it..."

1. This is partially audible.

Benjamin: "Man, tell him to come here...bring a load..."

Blake: "He ain't gonna do that. He don't like to talk to nobody..."

Benjamin: "Hell, he might make some more money."

Blake: "He ain't gonna sell no more in the car."

01:45:52: It sounds as if Benjamin is counting out money.

1. Notice the reflection in the CDs, located on the sun visor. It also appears it is money he is counting.

01:46:02: Blake: "What is this here?"

Benjamin's comment is inaudible.

Blake: "Ten dollars."

01:46:06: Blake walks away. Benjamin remains in the car.

01:46:43: Benjamin exits the car.

A conversation ensues:

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01:47:18: Benjamin: "I don't know him. That's an Altima, ain't it?"

Blake has walked to the area of Benjamin.

Benjamin: "That's an Altima, ain't it?"

Blake: "Uh-huh."

Benjamin: "I don't know him."

01:47:26: Blake: "You owe me ten dollars, man."

Benjamin: "I owe you ten dollars? Oh, okay."

Blake: "He didn't have no change."

Benjamin: "Alright, I'll bring it back."

1. Note: The camera does not record Blake handing anything to Benjamin (the \$20.00).

01:47:33: Benjamin: "What I really need is some powder."

Blake: "That powder's hard to find. He went to --- (inaudible) county and got it..."

01:48:10: Benjamin is questioning Blake about "Pop" and getting him to supply drugs. He talks about needing to generate about six thousand dollars. Blake informs Benjamin "Pop" will not be available for about two weeks.

01:51:14: Benjamin returns to his car and leaves.

01:51:34: He is talking about the sale. He speaks of the black Altima with tinted windows. He gives a partial tag of 344- _TJ. He cannot provide the first letter.

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01:52:57: On the phone with law enforcement.

01:54:40: On the phone with his girlfriend.

01:59:29: He arrives at the F.B.I building, parks and waits in the car.

02:00:20: Exiting the car and walking with law enforcement.

02:00:37: Entering the building.

02:01:01: As they wait for the elevator, it appears (from conversation) Benjamin shows the officer the drugs.

Officer: "...make sure you got it..."

Benjamin: "...didn't leave it in no car..."

02:03:25: Entering the F.B.I. office.

02:04:11: The camera has been removed and the picture is dark.

02:04:20: The tape ends.

dblakevideo

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SLED# 1651

=====

Derrick Blake

Points of Interest

1. Benjamin calls Blake, without law enforcement's participation, and sets a potential deal.
 - a. Is this proper procedure?
 - b. Is this proper, given the C.I. Agreement form?
 1. He has conspired to buy drugs? It is an uncontrolled arrangement for a drug deal.
 2. Violates the agreement; paragraph 1.
 - c. How do we know Benjamin did not coerce Blake in some fashion?

page 2

- d. How do we know Benjamin did not promise some type of reward to Blake?
2. When was money discussed (with Blake)?
- a. There are no remarks about the pre-arranged price of the dope in the reports.
 - b. How did law enforcement know the amount of funds to give Benjamin?
 - c. There are no comments in Benjamin's statement about money.
3. What did Benjamin take out of his car?
4. On the Surveillance Report, a listing states, "Chronological Account Of Events Observed By Shurig.
- a. At 1:50p.m., he talks of the crack transaction:
 - 1. Did he actually observe this? Earlier in his report, he claims only to see Benjamin turning onto Lige Street.
 - 2. If he could see the transaction, why couldn't he see the Altima arrive and leave?
 - b. The actual transaction moment, according to the time counter on the tape, occurs about twelve minutes after arriving at the location.

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1. Shurig, according to his surveillance report, claims it occurs seven minutes after arriving.
2. There is a four minute discrepancy for the time of the transaction.
5. In Benjamin's statement, he comments the police searched him and his car after the sale.
 - a. How does he know his car was searched?
 - b. He was inside the building and likely giving the statement.
6. In the Summary, Shurig, the author, states " a confidential, reliable informant told... THEY COULD BUY CRACK'..."
 - a. Who is "they?"
7. Shurig also claims they were at the Rock Hill Police Department when the call came in from Blake.
 - a. According to the surveillance report, the call came in at 1:27p.m.
 - b. They attached the device to Benjamin at 1:34p.m.
 - c. Benjamin leaves at 1:35p.m.
 - d. Benjamin actually leaves from the F.B.I. building on Anderson Road.
 1. Surveillance report is not correct.

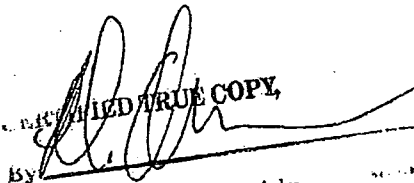
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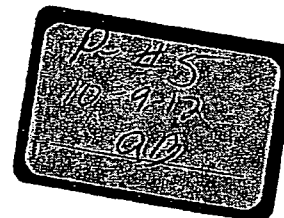
2. May trap the guys who searched the car into stating they did it at R.H.P.D.
8. In the Summary, Shurig also states Blake took the money and walked around the house, then returned with the dope.
 - a. Incorrect. The money transaction happens after Blake allegedly gives the product to Benjamin.
9. Given the discussion regarding Blake giving Benjamin marijuana, instead of crack:
 - a. It is suggested this not occur, because of the conversation that ensues after an item is handed to Benjamin.
 1. He talks of the quality of the item.
 2. The talk of the coloring suggests it is crack.

dblakepoints

Terms of Circuit and Family Court August 2008

Circuit Number	8/4/2008	8/11/2008	8/18/2008	8/25/2008
16	General Sessions York Alford, Lee WATTS General Sessions York Hayes, John C. NO CR NEEDED 4 RICH 5, 6 NO CR NEEDED	Common Pleas York Alford, Lee WATTS General Sessions Union Hayes, John C. NELSON 11, 12, 13, 14 NO CR NEEDED 15 Common Pleas Non- Jury 12, 13, 14 York Kimball, S. BARRETT 12, 13, 14 Common Pleas Non- Jury/PCR 13, 14, 15 Barber, James BROOM 13, 14, 15		General Sessions York Alford, Lee WATTS General Sessions York Few, John RICH Common Pleas Non- Jury 25 York Kimball, S. NO CR NEEDED 25


 FILED TRUE COPY,
 by _____
 South Carolina Court Adm.



STATE OF SOUTH CAROLINA
COUNTY OF YORK

Derrick Tyrone Blake, #332138,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-3430

ORDER OF DISMISSAL

FILED-RECEIVED
2013 MAY -3 AM 11:15
CLERK OF COURT
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 7, 2011. The Respondent made its Return on September 21, 2012. An evidentiary hearing into the matter was convened on October 9, 2012, at the Moss Justice Center in York, SC. Leah Moody, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Jim Boyd, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2008 term of the York County Grand Jury for Distribution of Cocaine Base (2008-GS-46-3048) and Distribution of Crack Cocaine within proximity of a park. He was represented by Jim Boyd, Esq. On December 3, 2008, Applicant was tried by a jury and convicted of both charges as

indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for fifteen (15) years for each charge. The sentences run concurrently.

Thereafter, the Applicant appealed his conviction and sentence. A brief was filed on his behalf pursuant to Anders v. California¹. The South Carolina Court of Appeals affirmed his conviction. State v. Blake, 2011-UP-54 (filed February 10, 2011). The Remittitur was issued on March 1, 2011.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel/ Failure to investigate indictments"
 - a. "failure to investigate indictments subject matter jurisdiction"
2. "Failure to challenge chain of custody"
 - a. "failure to challenge steps in the chain of custody"
3. "[F]ailure to object to statement by the prosecutor that were(sic) not in evidence"
 - a. "failure to object to statement by prosecutor in closing argument"

At the hearing, the Applicant proceeded on his claims of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility. The Court finds the testimony of Jim Boyd, Applicant's trial counsel, very credible. This Court finds the Applicant's testimony concerning ineffectiveness of trial counsel is not credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

¹ Anders v. California, 386 U.S. 738 (1967).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to challenge the chain of custody

The Applicant alleges Counsel was ineffective for failing to challenge the chain of custody of the narcotics found during a controlled drug buy set up by the Multi-Jurisdictional Drug Enforcement

Unit involving a confidential informant (CI) and the Applicant.

At the PCR hearing, the Applicant testified Counsel (Boyd) failed to object to the physical chain of custody of the crack cocaine in this case. Specifically, the Applicant stated Counsel failed to object to the dates listed on the "Best Bag." The Applicant also stated Counsel did not stipulate to the chain of custody and did not object to the drugs being admitted into evidence.

Counsel testified he has been practicing law since 1977. Counsel stated he has dealt a great deal with criminal law, having been a Public Defender for six years and a part-time solicitor for three years. Counsel testified he has tried numerous drug cases. He also stated his current practice consists of fifty percent criminal law. Counsel testified he reviewed the discovery packet prior to trial and found nothing objectionable about the chain of custody. Counsel also stated if he had discovered something objectionable, he would have made an objection. Counsel further asserted the chain of custody was complete, and he found no reason to object to the introduction of the crack cocaine.

Counsel also testified he based his trial strategy on the Applicant's theory of the incident. The theory was that the Applicant met with the CI, but the CI handed him a marijuana cigarette and not crack cocaine. He also stated on the video, produced at trial, there was no showing of a hand-to-hand transaction. In the trial transcript, Counsel moved for a directed verdict on the basis of the State's failure to prove any exchange occurred on the video. Additionally, in the transcript, Counsel argued the CI lacked credibility, had motive to set up the Applicant, and the State failed to prove the CI and the Applicant exchanged crack cocaine. Counsel attacked the completeness of the video along with the insufficient search of the CI. Further, Counsel argued no bag of crack cocaine was ever seen on the video as well as the State could not prove the Applicant called the CI on the audio

tape.

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Additionally, "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information" Strickland, at 691, 104 S.Ct. at 2066.

This Court finds the Applicant has failed to show that the outcome of his case would have been different had Counsel objected to the admission of the crack cocaine. Cherry, supra. Counsel stated his strategy was to attack the State's case by showing the CI and the Applicant exchanged marijuana, but not crack cocaine. This was based on the information the Applicant provided to him. Counsel is clearly permitted to base the defense theory of the case on the information the Applicant provides. Counsel also testified he reviewed the discovery packet and found nothing objectionable. Counsel further testified had he found an objectionable issue, he would have made an objection. This Court finds Counsel was effective in his representation of the Applicant. Further, the Applicant has failed to prove any resulting prejudice from Counsel's failure to object to the chain of custody in this case. Accordingly, this allegation is denied.

Failure to object to the Solicitor's closing argument

The Applicant also alleges Counsel was ineffective for not objecting to the Solicitor's closing

argument.

The Applicant testified Counsel should have objected to the Solicitor's closing argument as the Applicant asserts the Solicitor's comments inflamed the jury, and the Solicitor also argued evidence not supported by the record. Specifically, the Applicant stated Counsel should have objected to the comments on pages 154 line 10, where the Solicitor references a "controlled buy," page 156 lines 17-18, where the Solicitor refers to the Applicant as a "forty-four year old business man," and page 158, where the Solicitor alluded to a hand-to-hand transaction between the CI and the Applicant. Counsel testified while the comment about the Applicant being a business man might have been improper, the Solicitor made the comments in context. The drug exchange was for financial gain which could be construed as a business transaction, albeit an illegal one.

The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Additionally, the solicitor's closing argument must not appeal to the personal biases of the jurors. Id. "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Smith v. State, 375 S.C. 507, 523, 654 S.E.2d 523, 531-32 (2007) (quoting Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004)). Further, to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001).

This Court finds Counsel was not ineffective for objecting to the Solicitor's closing argument. First, the record and the evidence at trial support the Solicitor's version of the facts and the allowable inferences therefrom. As to the comment about a controlled buy, the State presented

evidence that law enforcement initiated this transaction, through the CI, to buy crack cocaine from the Applicant. Law enforcement equipped the CI with video and audio recording devices, searched the CI, provided the CI with money to purchase the drugs, monitored the situation, and retrieved the drugs from the CI after the transaction. *See* Tr. pp. 40-43, 47-50, 63-75. Clearly, there is evidence of a "controlled buy" to support the Solicitor's closing argument. As to the comment about the Applicant being a businessman, there is evidence in the record that the Applicant sold crack cocaine for one hundred and fifty dollars to the CI. *See* Tr. p. 63-66, 68-70. Therefore, there is testimony to support the Solicitor's comments that a transaction made where the Applicant sold the CI drugs for money; hence, the reasonable inference that the Applicant is a form of a businessman, or one who engages in the activity of buying and selling². As to the comment that there was a hand-to-hand transaction, although the transaction was not recorded by the video camera, the CI testified, "Yes, sir. [the Applicant] handed me the drugs and I took a look at them and agreed to what I saw and handed him some money." (Tr. p. 70 lines 5-6). Undoubtedly, the Solicitor had the right to reference a hand-to-hand transaction of the crack cocaine.

For the reasons above, this Court finds the Applicant has failed to meet his burden of proving the outcome of his trial would have been different had Counsel objected to the Solicitor's comments. Cherry, supra. This Court also finds the Solicitor's comments did not infect the trial with unfairness as to make the Applicant's conviction a denial of due process. Hamilton, supra. This Court further finds no resulting prejudice in Counsel's alleged failure in this case. Accordingly, this allegation is denied.

Failure to object to the True-billed Indictments

² According to Webster's II *New Riverside Dictionary* 97 (Rev'd 1996), business is defined as "trade; commerce."

The Applicant further alleges Counsel was ineffective for failing to object to the true-billed indictments in this case.

The Applicant claims the indictments were signed by the foreperson of the grand jury on a day that no grand jury was scheduled to meet. Counsel testified he did not see anything objectionable about the indictments as they were properly presented to and signed by the grand jury.

"Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood..." S.C. Code Ann. § 17-19-20 (1962). "In the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986). Additionally, the chief administrative judges have been encouraged to convene the grand jury when the court of general session is not in session pursuant to an Administrative Order of the Chief Justice. Brown v. State, 316 S.C. 258, 260, 449 S.E.2d 494, 495 (1994).

This Court finds this allegation is wholly meritless. The Applicant's indictments were true-billed on August 21, 2008 and signed by the foreperson of the grand jury. The indictments are sufficient and proper pursuant to § 17-19-20. While there was no general sessions term that week, pursuant to the Administrative Order, the chief administrative judge was acting in accordance with an administrative order of the Chief Justice, and the assembling of the grand jury was proper. Thus, Counsel was not ineffective for not objecting to the indictments. The Applicant has failed to produce any evidence to the contrary. Counsel was not ineffective for failing to object to the indictments as

they were properly true-billed. The Applicant can prove no prejudice from counsel's alleged failure.

Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

April 18, 2013

Orangeburg, South Carolina

ARREST WARRANT

J-165259

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

FILED-RECEIVED

York

2008 JUN -9

THE STATE

20080005606

Jk Tyrone Blake

against

DAVID HAMILTON
C.C.C.P. & ASSOCIATES
YORK COUNTY, SC

Description of Offense Drugs / Distribution of Crack Proximity to a Park

0100

Rock Hill, SC 29730-

SSN:

M Race: B Height: 6 Weight: 280

DL #:

Agency ORI #: SC0460000

Issuing Agency: York County Sheriff

Issuing Officer: Mark A Schurig - S5779

Re: Drugs / Distribution of Crack Proximity to a Park

Se Code: 0107

Ordinance Sec: 44-53-0445(B)(1)

Warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

The accused

is be arrested and brought before me to be

with according to the law.

(L.S.)

Signature of Judge

RETURN

py of this arrest warrant was delivered to
dant Derick Tyrone Blake

06-04-2008

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

ORIGINAL

ORIGINAL

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ORIGINAL

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

Personally appeared before me the affiant

Mark A Schurig

who

being sworn deposes and says that defendant

Derick Tyrone Blake

State of South Carolina (or ordinance of)

02/20/2008

violate the criminal laws of the

State of South Carolina (or ordinance of)

County/ ☐ Municipality of

York

Description of Offense Drugs / Distribution of Crack Proximity to a Park

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on February 20, 2008, the Defendant did willfully and unlawfully violate South Carolina Drug Laws by distributing a quantity of Crack to another, while at St, Rock Hill, York County, South Carolina. This incident occurred within one-half mile of Lige Street Park.

Police Investigation

Seized Evidence

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address

Sd(a. Coll Schurig)
York, SC 00000--000

Affiant's Telephone

(803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/20/2008

defendant Derick Tyrone Blake

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribution of Crack Proximity to a Park

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 03/12/2008

Judge's Address

529 South Cherry Road
Rock Hill, SC 29730-3412

Signature of Issuing Judge

Robert Davenport Jr.

Judge's Telephone

(803)909-7600

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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105

WITNESSES

USChung

ARREST WARRANT NUMBER

165259

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Meas

Representor of Grand Jury

8/21/08

VERDICT

Guilty

Representor of Petit Jury
Date: 12/13/08
Wayne A. Patterson

DOCKET NO. 2008-GS-46-03045

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 21, Term 2008

THE STATE

vs.

DERICK TYRONE BLAKE

C.C.C. PLG AND G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

DISTRIBUTION OF CRACK COCAINE WITHIN PROXIMITY OF A PARK

SC Code: § 44-53-445
CDR Code: 108

CERTIFIED TRUE COPY
2011 SEP 12 AM 9:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

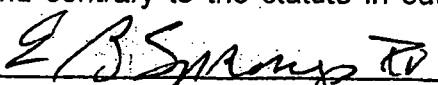
INDICTMENT

At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE WITHIN PROXIMITY OF A PARK

That on or about February 20, 2008, in York County, South Carolina, the Defendant, Derick Tyrone Blake, did distribute and/or sell crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, within a one-half mile radius of the grounds of Lige Street Park, a public park located in Rock Hill, South Carolina, such not having been authorized by law, all in violation of Section 44-53-445, 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

SOUTH CAROLINA

York

VS.

Derick Tyrone Blake

IN THE COURT OF GENERAL SESSIONS

307

INDICTMENT/CASE#: 2008GS4603047

A/W#: J165259

Date of Offense: 2/20/2008

S.C. Code § : 44-53-0445

CDR Code #: 108

SENTENCE SHEET #2

Race: B Sex: M Age: 44

DOB: - SS#:

Address: St.

Rock Hill, SC 29730

DL#: - SID#: SC00976613

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: DISTRIBUTION CRACK COCAINE PROXIMITY OF PARK

in violation of § 44-53-0445 of the S.C. Code of Laws, bearing CDR Code # 108

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Springs, C.B.

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/3/08☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 230

David Hamilton

Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2101419

Sentence Date: 12-3-08

SCCA/217 (07/2008)

ARREST WARRANT

J-165260

STATE OF SOUTH CAROLINA
County/ Municipality of☒ County/ ☐ Municipality of

FILED-RECEIVED

DAVID HAMMILL
S.C. CLERK OF COURT
YORK COUNTY, SCMark A Schurig
Derick Tyrone Blake

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

York

THE STATE 20080005506

against

Jk Tyrone Blake

DAVID HAMMILL
S.C. CLERK OF COURT
YORK COUNTY, SC

3015

violate the criminal laws of the

In the presence of

Drugs/ Distribution of Crack - 2nd offense

3015

violate the criminal laws of the

Rock Hill, SC 29730-

SSN: 6 1 Weight: 280

M Race: B Height: 6 1 Weight: 280

DL # SC DL # Agency ORI #: SC0460000

Citing Agency: York County Sheriff

Citing Officer: Mark A Schurig - SS779

Re: Drugs/ Distribution of Crack - 2nd offense

Se Code: 3015

Ordinance Sec: 44-53-0375 (B) (2)

Warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

be arrested and brought before me to be

with according to the law.

(L.S.)

Signature of Judge

RETURN

py of this arrest warrant was delivered to

clerk Derick Tyrone Blake

010-04-2008

Signature of Constable/Law Enforcement Officer

JRN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

York

Mark A Schurig

Derick Tyrone Blake

02/20/2008

County/ Municipality of

York

York

violate the criminal laws of the

In the presence of

Drugs/ Distribution of Crack - 2nd offense

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DOCKET NO. 2008-GS-46-03048

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

309
WITNESSES
EUSchurig

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

August 21, Term 2008

hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

165260

Defendant

THE STATE

vs.

C.C.C. Pl AND G.S.

DERICK TYRONE BLAKE

ACTION OF GRAND JURY

TRUE BILL

Latricia B. Moore
reperson of Grand Jury

8/24/08

VERDICT

24/17

Indictment for

DISTRIBUTION OF COCAINE BASE (CRACK)

SC Code: § 44-53-375
CDR Code: 3015

reperson of Petit Jury
ite: 12/13/08
Harry W. Patterson

2011 SEP 12 AM 9:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA)

INDICTMENT

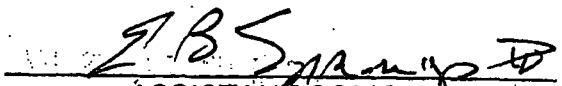
COUNTY OF YORK)

At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF COCAINE BASE (CRACK)

That on or about February 20, 2008, in York County, South Carolina, the Defendant, Derick Tyrone Blake, did distribute, dispense, or deliver cocaine base, or otherwise conspire with an un-named person to distribute, dispense, or deliver a quantity of cocaine base, otherwise known as crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law, all in violation of Section 44-53-375, 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

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
 STATE VS.
Derick Tyrone Blake

AKA: _____
 Race: B Sex: M Age: 44
 DOB: _____ SS#: _____

Address: Rock Hill, SC 29730

DL#: _____ SID#: SC00976613

INDICTMENT/CASE#: 2008GS4603048A/W#: J165260Date of Offense: 2/20/2008S.C. Code § : 44-53-375CDR Code #: 3015

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: DISTRIBUTION COCAINE BASE (CRACK), 2nd offense

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3015

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

GB Sprague
 Solicitor Springs, E.B.

Defendant

Jamie W. Boyd
 Attorney for Defendant SC Bar# 824

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCA Surcharge) \$5 \$ 5

TOTAL \$ 230

David Hamilton
 Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 710 14 19Sentence Date: 12-3-08

SCCA/217 (07/2008)