

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKEY HEWINS MACK,

APPELLANT

APPELLATE CASE NO. 2012-213390

RECORD ON APPEAL

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SC Court of Appeals

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

The State,) TRANSCRIPT OF RECORD
-vs-) 2010-GS-42-02216, -02217,
Ricky Hewins Mack,) -02218
Defendant.) October 24, 25 and 31, 2012
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE; and a jury

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

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Margaret A. Woods
Circuit Court Reporter

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV</u>
1				
2				
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1 of this jury.

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

4 (Photographs marked State's Exhibit Nos. 1, 2 and 3 for
5 identification.)

6 THE COURT: I might have asked the question, if not, is
7 there anything concerning the manner or method of selection of
8 the jury from the State?

9 MR. HOLLIDAY: Nothin' from the State, Your Honor.

10 THE COURT: Any from the defense?

11 MR. POOLE: No, sir.

12 THE COURT: Alright, thank you. Yes, sir, we have a
13 pretrial motion?

14 MR. HOLLIDAY: And, Judge, just briefly somethin' that
15 that the State would like to put on the record before we begin
16 the trial, Judge. It's the State's position that these are
17 trafficking third offenses on cocaine and the crack charges,
18 Judge. He has prior convictions from 1997: trafficking crack
19 cocaine and 2008 PWID marijuana. Judge, it's our position
20 that while he was incarcerated that when he was released would
21 be within the 10-year period so this would be a third offense.
22 Judge, an offer was made to plea to trafficking first offense
23 which carry 3 to 10, that offer has been rejected.

24 MR. POOLE: Your Honor, what, the last part of what
25 Mr. Holliday said is true but as far as what the the the level

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1 of offense I would ask that we -- the Court defer making a
2 decision on that until we've had time to thoroughly discuss it
3 either later on in the trial or at the end of the trial if
4 necessary, ---

5 THE COURT: Okay.

6 MR. POOLE: --- okay?

7 THE COURT: Alright, even if they're are third are to be
8 considered third offenses, that fact would not come out during
9 the course of the trial, ---

10 MR. HOLLIDAY: It's -- no, sir, Your Honor, I I just ---

11 THE COURT: --- you know. Okay, so we we can decide on
12 that because it might be just an academic discussion 'cause if
13 he's not found guilty of these charges ---

14 MR. HOLLIDAY: Yes, sir, and I ---

15 THE COURT: --- doesn't care if it's the tenth one.

16 MR. POOLE: Yes.

17 THE COURT: Okay. Alright.

18 MR. POOLE: Okay, may it please the Court.

19 THE COURT: Um-hum.

20 MR. POOLE: Your Honor, I have a motion to suppress with
21 regard to Indictment Number 10-GS-42-2216, that's the
22 trafficking in methamphetamine charge. By way of what I
23 anticipate the State to show is that on November 5th 2009 a
24 CRI was -- who is working with the county narcotics department
25 had made arrangements for the delivery of certain of marijuana

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1 to a particular place and one Keith Johnson was the individual
2 who the CRI was dealing with. The facts would, as developed
3 by the State, would show that Mr. Mack and Mr. Johnson came to
4 the particular scene where the CRI was waiting in an Acura
5 automobile. The CRI was there in what was called a "Dually"
6 truck, it's one of those Ford or Chevrolet, I don't know,
7 they've got the wide axle in the back and there was some
8 discussion and the law enforcement came in at a particular
9 time and made the arrests of Mr. Mack and the other individual
10 Keith Johnson, handcuffed them and basically taken into
11 custody and placed either on the sidewalk or in the patrol
12 car. After that law enforcement went to the Acura and in the
13 incident report it says inventoried it, quote/unquote, and
14 found underneath or within a console the methamphetamine that
15 I'm talking about. I would like, if I may, to submit into the
16 record, this this is what was prepared by Mr. Mack and he has
17 asked and I have agreed to present this to the Court, he's
18 filed it with the clerk of court on August 16th 2012, I would
19 ask that it be marked as Plaintiff's Exhibit for purposes of
20 this motion and made part of the record.

21 (Whereupon, counsel handed the document to the Court.)

22 THE COURT: Alright, we'll, uh, ---

23 MR. POOLE: The ---

24 THE COURT: --- have this marked as the defense exhibit
25 to the motion and it pertains -- now it doesn't only pertain

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1 to the crack cocaine, doesn't pertain to the marijuana or the
2 cocaine charge.

3 MR. POOLE: That's correct, Your Honor.

4 THE COURT: Okay. Alright.

5 (Motion to suppress marked Defendant's Exhibit No. 1 for
6 identification.)

7 MR. POOLE: So it's our position that the the the crack
8 cocaine, methamphetamine should not come into evidence, should
9 be suppressed because the defendant was away from the car,
10 there was no threat to any law enforcement officers, he was
11 not near the vicinity of it and that it was a warrantless
12 search, the -- and that's prohibited of course by the Fourth
13 Amendment and I would like to submit for the Court's referral
14 the case of *Arizona vs. Gant*, cite is 556 U.S. 332 129 Supreme
15 Court 1710, a copy of which I have here. I would ask the
16 Court to take that case as an apposite, if not controlling
17 case on this issue. I have one copy if the Court wishes to
18 have it.

19 THE COURT: I do.

20 MR. POOLE: You got it.

21 (Whereupon, counsel handed the document to the Court.)

22 THE COURT: Thank you, sir.

23 MR. POOLE: Yes, sir. And of course that case refers
24 back to the line of cases that begin with *Chimel*, it discusses
25 and distinguishes the *Belton* case, talks about the *Belton* case

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1 and and others, so basically a warrantless search shouldn't
2 come in and we re --- rely upon *Arizona vs. Gant* and prior
3 decisions.

4 MR. HOLLIDAY: Thank you, Your Honor. Judge, basically,
5 I don't think we're in any disagreement on the the facts at
6 least with regards to this motion. The -- basically the way
7 this went down is a an individual drives up in a Dually truck,
8 he's got a quantity of marijuana in that vehicle, this
9 defendant and co-defendant arrive in a separate Acura vehicle,
10 they get outta that car, get into the truck, that's when the
11 bust is made while they're in the truck. Obviously the drugs
12 that are found in the truck are not a parta this motion but
13 the the cocaine and the marijuana are found in the Dually
14 truck. I believe what the basis of this motion is the crack
15 cocaine which was found in the center console of the Acura
16 which the defendant drove to this location and, Judge, our our
17 argument would be that under the inevitable discovery rule
18 both the defendant and the co-defendant who drove that vehicle
19 were taken into custody and the car would have had to been
20 inventoried and towed at that point, the officers couldn't
21 simply left it out there in the parking lot and due to
22 inevitable discovery those items would eventually been found
23 and that would cure any potential defect of any warrantless
24 search that may have occurred but again, Judge, our position
25 is that that was an inventory of the vehicle and that

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1 suppression is not not warranted in this case.

2 THE COURT: And the State does not wish to offer
3 testimony?

4 MR. HOLLIDAY: Well, Judge, the the State would be happy
5 to put up testimony. I I don't believe the facts are in
6 dispute but but the officer's here and we can put him up on
7 the stand if if need be.

8 MR. POOLE: Your Honor, I think where the methamphetamine
9 was found is important. I'm ---

10 MR. HOLLIDAY: Yes, sir, we'll we'll -- Your Honor, in
11 that case the State would call Paul Norris with the
12 Spartanburg County Sheriff's Office.

13 THE COURT: Sir, just come right on up and let the clerk
14 swear you in.

15 PAUL ANTHONY NORRIS, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. HOLLIDAY:

18 Q. Mr. Norris, can you please state your name for us.

19 A. Paul Anthony Norris.

20 Q. And where are you currently employed?

21 A. I'm employed with the Spartanburg County Sheriff's
22 Office.

23 Q. And on November 5th of 2009 were you employed in that
24 same capacity, uh, ---

25 A. Yes, sir, I was.

MOTIONS AND MATTERS

1 Q. And what did you do for the sheriff's office?

2 A. At the time I was a narcotics investigator.

3 Q. You were involved in the arrest of Mr., a Ricky Mack
4 seated here in the courtroom today?

5 A. Yes, sir, I was.

6 Q. And you were present at the scene on November 5th 2009?

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

8 Q. Can you just briefly tell us how that came to be.

9 A. We had some information in reference to the CRI provided
10 in reference to a a delivery was to take place for some
11 marijuana that had already been previously set up. We
12 conducted surveillance of that area, two individuals showed
13 up, were later divi -- later identified as a Ricky Mack and
14 Keith Johnson, individuals got into the truck with CRI where
15 the marijuana was located. After that take down was done on
16 the truck where two individuals were located in the vehicle,
17 Mr. Mack was in the backseat of the truck, Mr. Johnson the
18 other suspect was located in the front passenger seat. As
19 soon as that occurred we separated both of 'em, they're both
20 detained, one was put on the corner or on the sidewalk, the
21 other one was I think put back in the patrol car. At that
22 point in time, neither one of 'em was being cooperative in
23 reference to the investigation of what was goin' on so that
24 point in time we located the marijuana inside the vehicle,
25 also upon searching the the truck located a quantity of pot or

MOTIONS AND MATTERS

1 cocaine in the backseat where Mr. Mack was at, also some cash,
2 U.S. currency on Mr. Mack and also up under the, think, I
3 think center console, I believe it was the front seat then
4 upon inventoryin' of the vehicle where Mr. Mack was observed
5 drivin' to the location in the center console there was a
6 cookied shape which tested positive for crack cocaine.

7 Q. The -- now you you said that you -- can you -- just what
8 drugs were found in the we we call it a Dually truck,
9 what kinda ---

10 A. It's ---

11 Q. --- drugs were found in ---

12 A. --- it's a Dually ---

13 Q. --- the Dually truck?

14 A. --- pickup truck. The marijuana was in the Dually pickup
15 truck and then the the powder cocaine was in the backseat in
16 like a a pouch or purse, I think we called it a purse in the
17 report.

18 Q. And so you you placed the two individuals Mr. Mack and
19 Mr. Johnson under arrest?

20 A. That's correct.

21 Q. And at that point you then proceeded to the Acura.

22 A. That's correct.

23 Q. Why did you proceed to the Acura?

24 A. For one, we knew that those sets the mode that they
25 arrived in 'cause we observed them both getting out of the car

MOTIONS AND MATTERS

1 and going into the truck and then once they were arrested we
2 knew we just gonna have to tow it so we wanted it to be
3 inventoried before it was towed.

4 Q. And I'm I'm gonna show you, wanna show you these three
5 photographs, ask if you can identify those for us.

6 A. Yes, sir, it looks like the center console of the
7 vehicle, it was an Acura if I'm not mistaken, that was driven
8 there and that would be the center console of the vehicle and
9 inside the console was what we located was a plastic wrap,
10 inside the plastic wrap is what we believed at the time to be
11 crack cocaine.

12 Q. Now the the center console had a latch over it, you did
13 have to unlatch ---

14 A. That's correct, it was.

15 Q. So it it was not ---

16 A. It wasn't -- it was not just viewable by opening up the
17 door looking in there, there's actually a latch or a a cover,
18 if you will, that you woulda had to open up and look inside.

19 Q. But in in a normal course of inventorying a vehicle,
20 would you check inside the center console?

21 A. Yes, you need to make sure there's any valuables and try
22 to write down the inventory with when it was towed.

23 Q. Your Honor, I have these marked State's Exhibit 1, 2 and
24 3 for the purposes of this hearing and and again, Investigator
25 Norris, you you said -- can you identify where those pictures

MOTIONS AND MATTERS

1 came from.

2 A. Those were pictures that we took at the scene on November
3 I believe it was the 5th.

4 Q. And those are photographs of the the vehicle which the
5 defendant ---

6 A. Yes, sir, ---

7 Q. --- drove ---

8 A. --- that's ---

9 Q. --- up ---

10 A. --- correct.

11 Q. Okay. I have no further questions. Please answer any
12 questions the defense might have.

13 THE COURT: So you're just gonna mark those for
14 identification?

15 MR. HOLLIDAY: Well, Judge, at this point the State would
16 would have to move these entered as part of the record for the
17 purpose of this hearing.

18 MR. POOLE: No objection.

19 THE COURT: Without objection be parta the record ---

20 MR. HOLLIDAY: Yes.

21 THE COURT: --- for this hearing.

22 CROSS-EXAMINATION BY MR. POOLE:

23 Q. Investigator Norris, so when you went over to the Acura
24 and started looking around in it, Mr. Mack was already under
25 arrest, wasn't he?

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- 1 A. Yes, sir, he was.
- 2 Q. And he was handcuffed, wasn't he?
- 3 A. Yes, sir, he was.
- 4 Q. And he was a far distance from the automobile, wasn't
- 5 he?
- 6 A. He was actually in between his Acura and then maybe one
- 7 car, one car length over in the parking space from where the
- 8 truck was at.
- 9 Q. Okay, and so that he was not within reach of any of the
- 10 area of the interior of the car, ---
- 11 A. No, sir, he was not.
- 12 Q. --- is that right?
- 13 A. That's correct.
- 14 Q. And no law enforcement officer was under the threat of
- 15 him obtaining a weapon or anything like that outta the car.
- 16 A. No, sir, that's correct.
- 17 Q. And so the safety of all law enforcement, the personnel
- 18 that were there was, pretty good, it was safe ---
- 19 A. Yes.
- 20 Q. --- as far as the car is concerned.
- 21 A. Yes, sir.
- 22 Q. And you said that, uh, it -- but you -- during the
- 23 process of inventorying the car let me ask you this: Ya had a
- 24 wrecker been called before the car was, quote;unquote,
- 25 inventoried.

MOTIONS AND MATTERS

1 A. I can't recall.

2 Q. Did you make the call?

3 A. No, it was probably someone else 'cause at the point in
4 time I was most likely interviewin' either Mr. Mack or
5 Mr. Johnson at the ---

6 Q. Okay.

7 A. --- time.

8 Q. And you went to the car where the console was, depressed
9 the mechanism that latches it and brought the top of the
10 console up, ---

11 A. Yes, sir, that's what we had happen, yes.

12 Q. --- is that what you did?

13 A. Yes.

14 Q. And that's where inside the console which was enclosed
15 was where the methamphetamine was found, is that right?

16 A. Yes, sir, the crack cocaine, yes.

17 Q. Alright. And and you said this was part of an
18 inventory?

19 A. Yes, sir. Once once we know we gonna have to tow the
20 vehicle 'cause there was no one gonna pick the vehicle up, we
21 need to go through the car, make sure there's any valuables,
22 anything like that prior to its be being towed so we didn't
23 wanna ---

24 Q. Well did ya ask Mr. Mack if somebody could come pick
25 up the car?

MOTIONS AND MATTERS

1 A. At that point in time Mr. Mack was not cooperating in
2 investigation.

3 Q. Well had you not by that time run a a check to see who
4 owned the car?

5 A. Assumin' at that point in time I'm sure the tag was run
6 but I don't recall who had owned the car, no, sir.

7 Q. And the car was not owned by him, is that right?

8 A. I -- at the later time I don't believe it was.

9 Q. It was owned by his sister.

10 A. Someone, I'm not sure who it was.

11 Q. Okay, so it could have been, a call could have been made
12 to the owner of the car to come get it thus not necessitating
13 the need for an inventory, ---

14 A. Yes, sir, that ---

15 Q. --- am I right on that?

16 A. Yes, sir, he coulda done that.

17 Q. Alright, but that was not done.

18 A. No, sir, not to my knowledge.

19 Q. And your te -- you further testified that during the
20 course of any routine inventory a search is made of various
21 portions of the interior of the car and the interior of
22 compartments to see if there valuables there?

23 A. Yes.

24 Q. Okay, so you're looking for valuables?

25 A. Well, it coulda been CDs, coulda been anything, you just

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1 wanna make sure it's, if it's listed on a tow sheet, that way
2 if the vehicle was towed to whatever lot, whoever was -- most
3 likely woulda been the on call tow service, that's who we
4 would call unless it was specified by the individual drivin'
5 the car, list it and that way it's not, if it gets towed and
6 that individual goes back picks it up that, Hey, I had a CD
7 player in here and or whatever it may have been.

8 Q. Okay, well but with reference to a CD player that's
9 obviously visible ---

10 A. Yes, ---

11 Q. --- is it?

12 A. --- I mean, it coulda been anything else in there as
13 well, that's ---

14 Q. It's what I thought. You mention CDs, do you go --
15 you're not saying that during the course of an inventory that
16 names of CDs are are listed.

17 A. No, sir. No, not at all.

18 Q. And, you know, isn't the -- isn't it the case that in a
19 and inventory and under these circumstances with law
20 enforcement involved that you actually do not go and look for
21 what's inside the glove compartment, what's inside the console
22 and what's inside the trunk or any any any enclosed areas like
23 that, you don't really do that every time, do you?

24 A. I -- most the time that we've always done it just to make
25 sure there's nothin' of value inside the car that ---

MOTIONS AND MATTERS

1 Q. Well actually what you're doin' is looking for something
2 that's contraband or illegal, aren't you?

3 A. No, sir, I mean, you may wanna look at it that way but
4 it's tryin' to make sure there's nothin' of value ---

5 Q. Well that's exactly what I'm trying to say, yes, sir, and
6 I think you understand what I am trying to say is that this
7 was actually a search instead of an inventory, do you agree
8 with me on that?

9 A. No, sir, I don't but I understand where you're comin'
10 from but, you know, again, we're just doin' the inventory for
11 the vehicle.

12 Q. Okay, well how is it different than a search if you're
13 looking through the interior of an interior of a compartment
14 in a car?

15 A. Again, it's just like, yeah, we just wanna make sure
16 there's nothin' of value inside the vehicle taken in.

17 Q. Okay, so the -- to ensure that there's nothing of value
18 and is that to protect the ownership rights of whomever the --
19 to whomever the property belongs to?

20 A. That would be the owner, whoever owned the car, whoever
21 drove that car to that location, where it was being towed ---

22 Q. Okay, ---

23 A. --- from.

24 Q. --- so if you find something valuable in there you write
25 it down.

MOTIONS AND MATTERS

1 A. Yes, sir.

2 Q. Okay. How many times durin' the course of a, quote,
3 inventory, end quote, inventory of a situation like this have
4 you written down the nature of valuables and their owners?

5 A. I -- me personally?

6 Q. Yes, sir.

7 A. I couldn't recall be honest with you.

8 Q. Well zero?

9 A. More than zero. I mean, I've been here for thirteen
10 years, it's more than once I'm sure.

11 Q. Well you can recall ---

12 A. Not ---

13 Q. --- some.

14 A. --- not thirteen years. I don't recall for after
15 thirteen years of law enforcement how many times I've actually
16 done it.

17 Q. Five?

18 A. Maybe five, maybe ten, maybe fifty, I I'll be honest so I
19 can't give ya a number.

20 Q. Okay. Alright. How many times when you've done an
21 inventory had found out that a -- an object is of value and
22 you ascertained who the owner was, did you contact the owner
23 and say, We have this in such and such possession, in our
24 possession ---

25 A. Well a lotta ---

MOTIONS AND MATTERS

1 Q. --- or in the possession of the towing company?

2 A. Yes, sir, a lotta times what would be happen, what would
3 happen that there's something' of value, it woulda been taken
4 into custody for evidence -- not for evidence but placed into
5 evidence for them to come pick up so in the case for instance
6 a year last April there was another car I had to tow, it was a
7 drug case and there was items, fishing items, fishing'
8 equipment, stuff like that that had to be taken outta the car
9 because the three individuals that were arrested couldn't
10 drive the car away so it had to be inventoried and placed into
11 evidence and so at later time they could come back and pick it
12 up.

13 MR. POOLE: That's all the questions I have.

14 THE COURT: Any redirect limited to what he went into?

15 MR. HOLLIDAY: Just brief redirect, Your Honor.

16 REDIRECT EXAMINATION BY MR. HOLLIDAY:

17 Q. Investigator, this car was in fact eventually towed, is
18 that correct?

19 A. Yes, sir, it was.

20 Q. And when it arrives at the sheriff's office is it the
21 routine practice of the sheriff's office impounding to search
22 a vehicle and make an inventory?

23 A. Yes.

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

25 MR. POOLE: Let me follow up.

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1 RE CROSS-EXAMINATION BY MR. POOLE:

2 Q. And is it not also the case that when towing companies
3 get automobiles or any type of vehicle that they do their own
4 inventory?

5 A. I guess it's up to their, whatever their policy may be,
6 I'm not sure.

7 Q. Okay.

8 THE COURT: Thank you, sir, you may step down.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Any other witnesses on this issue?

11 MR. HOLLIDAY: Nothin' from the State, Your Honor.

12 THE COURT: Alright. You have any citations to the -- to
13 your position on the inevitable search?

14 MR. HOLLIDAY: No case law to present, Your Honor, but
15 just brief argument.

16 THE COURT: Alright.

17 MR. HOLLIDAY: Judge, I I I believe clearly had this
18 automobile not belonged to these individuals and had someone
19 been there to to take that automobile, this clearly would've
20 been a warrantless search. I -- Arizona v. Gant clearly
21 states that that the automobile exception does not extend that
22 far. Had they been driving this vehicle it woulda been a
23 different different occasion but but this was a vehicle they
24 arrived in the location and then they got outta the vehicle,
25 got in another car where the bust was made but, Judge, due to

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1 the fact the car was to be inventoried and it was in fact
2 inventoried, discovery of this material crack cocaine would be
3 inevitable, any taint of the search, even if it is a a search
4 for the officers it it's would be cured by inevitability of
5 discovery and, Judge, it's just our position that due to that,
6 suppression is not the appropriate remedy in this case and we
7 we believe that the crack cocaine found in the, in the Acura
8 would in fact be admissible.

9 MR. POOLE: What we're dealing here, Your Honor, is with
10 a very fundamental Fourth Amendment right and it it's
11 important that the Court consider at least the way we look at
12 the situation and that is a warrantless search. It wo -- it
13 was not necessary whatsoever to go into that console to see
14 what was in there, it it is in violation of the -- any
15 expectation of privacy provisions and all of the other stuff
16 that hangs onto the Fourth Amendment and again, I I invite the
17 Court's attention to the case that I have submitted, I
18 would -- what what is called an inventory is pretextual for
19 what was really a search and a seizure.

20 THE COURT: Alright, thank you very much. I will let you
21 know. Any other motions prior to lunch?

22 MR. POOLE: No, sir.

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

24 THE COURT: Alright. I'm havin' the jury come back at
25 12:30, why don't we come back at about twenty after one.

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

2 MR. POOLE: Okay, you're having the jury come back at
3 1:30?

4 THE COURT: Um-hum.

5 MR. POOLE: Good, yes, sir, and we'll be back at twenty
6 after one.

7 THE COURT: Yeah, and the -- ya'll can sit back in the
8 gallery now wherever you'd like.

9 UNIDENTIFIED MAN: Okay, thank you.

10 THE COURT: Alright, thank you, we'll step down.

11 (Whereupon, a recess was taken.)

12 (Photographs marked State's Exhibit Nos. 4, 5, 6, 7, 8;
13 cell phone and purse marked State's Exhibit No. 9 and drugs
14 marked State's Exhibit No. 10 for identification.)

15 (Whereupon, a discussion was held off the record.)

16 THE COURT: Alright, we'll go back on the record. The
17 issue that was presented to the Court was the exclusion of the
18 trafficking in cocaine -- I mean, trafficking in crack
19 substance based on the unlawful, an allegation of a unlawful
20 search. Basing -- I am not going to grant the motion. I'm
21 not granting the motion 'cause I do believe that the State has
22 met its burden by a preponderance of the evidence of
23 establishing that an inventory search would have resulted in
24 that particular compartment of the car being looked at and
25 examined so I've got two cases that I happen to probably have

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1 left on my desk that I will -- that I reviewed but left on my
2 desk that I will supplement the record with later and give
3 ya'll the cites so that we will, so that those'll be, so
4 we'll have those in the record but I believe that -- I'm I'm
5 not going to grant the motion, I believe the State's met its
6 burden on on that search. Okay, anything else before we bring
7 the jury back?

8 MR. POOLE: Just that the record note my exception to the
9 Court's ruling.

10 THE COURT: I think you're very, very protected on the
11 record with the the arguments been presented, the plaintiff's
12 document that was admitted into evidence for purposes of the
13 motion I think you're protected yes, sir. Anything else
14 before we bring the jury back?

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

16 THE COURT: Is is that other witness Mr. Ori gonna be
17 with us?

18 MR. HOLLIDAY: Sir, as of this point we have not located
19 him. I do not plan to mention any portion of his testimony in
20 my opening. Should we find him before the rest of the State's
21 case, I would plan to introduce his testimony but obviously we
22 will not make any mention of any hearsay statements that he
23 would put forth in his testimony unless he's here.

24 THE COURT: Okay.

25 MR. POOLE: I I I lost -- I was busy speaking to my

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1 client, would -- could -- you mind repeating that, ---

2 MR. HOLLIDAY: Uh, ---

3 MR. POOLE: --- Mr. Holliday?

4 MR. HOLLIDAY: --- yeah, the the confidential informant
5 in this case is not present in the courtroom. At this time
6 the State while we do still intend to call him if he -- if we
7 can locate him before the the rest of the State's case, we
8 will not make mention of any hearsay testimony that would have
9 been introduced had he been present.

10 THE COURT: Okay. Alright, let's bring the jury in.

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

12 THE COURT: Madam forewoman, ladies and gentlemen of the
13 jury, we're now ready to begin the trial of the State of
14 Sou -- of the State of South Carolina vs. Ricky Mack. Before
15 we actually begin the presentation of the evidence, I need for
16 you to be sworn in as jurors so please stand and raise your
17 right hand, listen to the clerk of court.

18 (Whereupon, the jury was sworn.)

19 THE CLERK: Thank you.

20 THE COURT: Thank you may be seated. Ladies and
21 gentlemen, again, this is the case of the State of South
22 Carolina vs. Ricky Mack defendant and before we begin this
23 trial I want to tell you that this trial probably will be
24 different from what you might expect. Many people have not
25 had the chance to attend an actual court session as you're

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1 doing now and may think from watching televisions or movies or
2 reading books that trials are always full of high drama,
3 intense action and riveting circumstances. Now while all of
4 these things may be true at times this trial, however, is not
5 for entertainment, it is a fundamental part of our Democracy,
6 a search for the truth an effort to make sure that justice is
7 done before the parties that are presently before the Court
8 and searching for the truth and making sure that justice is
9 done is often slow, deliberate and repetitive, just the
10 opposite of what you may have seen on television or in movies
11 or read about in books. This courtroom is a place of honor
12 dedicated to the protection and preservation of citizen's
13 rights through what many have called the greatest justice
14 system ever created. The attorneys that are appearing before
15 you or advocates for the parties that they represent but first
16 and foremost they are officers of the court sworn to uphold
17 the integrity and fairness of our judicial system and to help
18 you in a search for the truth. You should expect them to be
19 professional, competent and ethical in the representation of
20 their client's interest but remember that you have taken an
21 oath to try this case and reach a fair and just verdict and
22 you are also expected to be professional, reasonable and
23 ethical but I do wanna thank you for accepting the re --
24 important responsibility of jury service and also for your
25 contribution today to our justice system but what I will say

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1 now is intended to serve as an introduction to the trial of
2 this case, my remarks are not a charge on the law applicable
3 to the case. I will instruct you on the law applicable to
4 this case at the end of the trial before you retire to consider
5 your verdict, this is merely an explanation of the procedures
6 that we will follow in this trial, in the trial of this case
7 so that you may better understand what is happening.

8 The defendant in this case is charged with trafficking in
9 cocaine, trafficking in marijuana and trafficking in crack
10 cocaine. The elements will be explained to you later in this
11 trial. The indictments are simply the charge by which the
12 case is brought into court and it is not in any sense evidence
13 of any of the allegations contained in the indictment. The
14 defendant he has pled not guilty to these indictments and the
15 State, therefore, has the burden of proving each of the
16 elements of the indictment beyond a reasonable doubt and it
17 will be your duty, ladies and gentlemen, to decide whether or
18 not the State has met that burden. Your purpose as jurors is
19 to find and determine the facts. You are the sole judge of
20 the facts of this case. If at any time I make any comment
21 regarding the facts, you must disregard my comments. You are
22 to determine the facts from the testimony you hear and the
23 other evidence introduced in this court, it is up to you to
24 determine the inferences which you feel may properly be drawn
25 from the evidence that is presented during the course of this

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1 trial, it is especially important that you perform your duty
2 determining the facts diligently and conscientiously because
3 ordinarily there is no way to correct an erroneous
4 determination of facts that's made by a jury. On the other
5 hand and with equal emphasis, the same law that makes you the
6 judge of the facts makes me the judge of the law. The law as
7 given by the Court is the only law you may consider. You must
8 accept and follow it even though you may disagree with it. I
9 cannot tell you what the facts are and you cannot disagree
10 with me about what the law is or should be. Your job is to
11 take the law as I give it to you and apply it to the facts as
12 you find them from the testimony of the witnesses and any
13 other evidence as introduced during this trial, after doing
14 that you will render a verdict, a true and just verdict under
15 the solemn oath that you just took as jurors.

16 Now until I advise you to begin your deliberations you
17 must not discuss the case with anyone including your fellow
18 jurors, friends, family members and anyone involved in this
19 case and as I've already told you that that prohibition from
20 having discussions with anyone includes face-to-face contact,
21 by telephone, email, text, blog or any other types of
22 communication. You may not use a computer, cell phone or
23 electronic device with communication capabilities at any time
24 while you're in this courtroom or during your deliberations.
25 During the breaks for meals or overnight, if it's necessary,

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1 you may use these devices, however, you may not at any time
2 use these devices to get or send information about this case.
3 During this trial I do not expect there to be any type of
4 television or newspaper coverage but if there is do not read,
5 listen to, watch any news reports about the case, this
6 includes anything that might have been in the newspaper or on
7 the internet, radio or television. You must not consider
8 anything you may have read about or heard about the case
9 outside of the courtroom whether before or during the trial.

10 Now after the case is submitted to you you must discuss
11 it only in the jury room with your fellow jurors. The
12 attorneys and the parties in the case have been advised that
13 they are not to talk to you at all so if you see anyone in
14 this case and they do not even say hello to you as you come
15 and go from the courthouse, do not think that those people are
16 being rude, they're simply following my instructions.

17 It is important that you keep an open mind and not decide
18 any issue in the case until all of the evidence has been
19 presented to you, the parties have made their closing
20 arguments and I have instructed you on the law applicable to
21 the case. It is your solemn responsibility to determine the
22 guilt or innocence of the defendant and your verdict must be
23 based solely on the evidence at is is -- as it is presented to
24 you in this trial and on the law as I instruct you during and
25 at the closing of the trial.

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1 Now in just a moment the solicitor will make what is
2 called an "opening statement" in which the solicitor will
3 explain to you the issues in this case or at least what the
4 solicitor thinks the issues are in the case, the attorney for
5 the defendant may also make an opening statement although he
6 is not required to do so. What the attorneys tell you during
7 their opening statements is not evidence in the case, it is
8 only their contention as to what the issues are. The evidence
9 in the case will be presented to you by testimony of sworn
10 witnesses from that (indicating) witness stand and any exhibit
11 that and an -- any exhibits that may be introduced during the
12 course of this trial. From time to time during this trial,
13 you may hear one of the lawyers say something like, Your
14 Honor, I believe we have a question of law or a matter of law
15 to discuss with you or they may say, Your Honor, may we
16 approach the bench or sometimes I myself may find it necessary
17 to excuse ya from the courtroom for a short while so that the
18 attorneys and I can discuss what is called "matters of law".
19 The reason for this is because you are the judges of the facts
20 and sometimes when I am discussing matters of law with the
21 attorneys it may be necessary for me to make some type of
22 comments regarding the facts in connection with ruling on
23 whether or not a particular law applies. I'm not supposed to
24 tell you what the facts are and so when I will excuse you from
25 the courtroom while we have these conversations so that you

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1 will in in no way be influenced by anything that I say in
2 rulings on matters of law as to the facts of the case.

3 Now in determining what the true facts are, you must
4 decide whether or not the testimony of a witness is
5 believable. It will be my responsibility to rule as a matter
6 of law as to whether or not the testimony is admissible at all
7 or not, once the testimony is admitted whether or not you
8 believe it is solely for you to determine. In deciding
9 whether to believe a witness, you have the right to consider
10 the interest of any witness, the bias of any witness, the
11 prejudice of any witness, the opportunity for the witness to
12 have seen the matters and things about which the witness may
13 testify and the way the witness acts on the witness stand.
14 You have a right to consider anything that is in the record
15 that will help you evaluate the testimony of the witnesses,
16 that means that it is your duty to pay close attention to the
17 witnesses, to observe the witnesses, to listen to the
18 witnesses and pay close attention to the attorneys and to the
19 Court. Do not let your thoughts wander but give strict
20 attention to the testimony in this case so that at the end of
21 the testimony after the arguments of counsel have been
22 presented to you and charge on the law given to you by the
23 Court you will then be in position to determine what the true
24 facts are and apply that law to those facts and render a true
25 and just verdict. It is your added duty, madam forewoman, to

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1 preside in the jury room and to be the jury spokesperson here
2 in this courtroom if that becomes necessary, it will also be
3 your added duty to write the jury's verdict at -- once they
4 have concluded their deliberations but I will give you further
5 instructions on that at the end of this case.

6 Now in order to preserve everyone's rights, I will give
7 the parties an opportunity to object to anything that I've
8 said during these instructions. Any objections from the
9 State?

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

11 THE COURT: Any from the defense?

12 MR. POOLE: No, sir.

13 THE COURT: We will now receive the opening statements
14 from counsel.

15 MR. HOLLIDAY: Your Honor, please the Court.

16 THE COURT: Um-hum.

17 MR. HOLLIDAY: Ladies and gentlemen, again, my name is
18 Hayes Holliday, I am s -- a assistant solicitor for
19 Spartanburg County and for those of you who probably aren't
20 that familiar with the criminal justice system it's my job to
21 present evidence to you so that you can take that evidence and
22 and weigh the guilt or innocence of the defendant Mr. Ricky
23 Mack. It's our burden to prove beyond a reasonable doubt that
24 the defendant did commit the crimes we've alleged and I
25 believe that through the testimony and evidence that you'll

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1 see today we'll meet that burden. Three charges: trafficking
2 in cocaine, trafficking in cocaine base which is commonly
3 known as crack and trafficking in marijuana and it's our
4 position today that at the close of this trial based on all
5 evidence that you'll see that you will be satisfied beyond a
6 reasonable doubt that Mr. Mack seated over here (indicating)
7 at defense table is guilty of all three of those charges.

8 Now the way all this rose about and why we're here today
9 is that back in November of 2009 a deputy working for the
10 Spartanburg County Sheriff's Office Narcotics Division got in
11 touch with an individual by the name of Bryan Reo and Mr. Reo
12 was working in an informant capacity for the sheriff's office.
13 He through the sheriff's office sets up a buy, a drug deal,
14 with the defendant Mr. Ricky Mack and another individual
15 Mr. Keith Johnson who is associated with Mr. Mack. Mr. Reo
16 sets up this buy that the sheriff's office directs him to do
17 that and the sheriff's office gives Mr. Reo 13.74 pounds of
18 marijuana to sell to Mr. Mack. They arrange a location off
19 Highway 101 in Spartanburg and the sheriff's office gets there
20 beforehand and they set up some surveillance and they're
21 sittin' there watchin'. Mr. Reo drives up in his truck with
22 the marijuana that the sheriff's office has already given him
23 and Mr. Mack and Mr. Johnson arrive in the car together,
24 Mr. Mack is the driver of the vehicle. They get outta their
25 car, get into the truck with the informant, the drug deal goes

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1 down. At that the point the narcotics officers converge on
2 the truck, make a bust, what we call it, and the drugs are
3 seized. Not only do they seize the marijuana that was done in
4 that deal, but they also found 12 grams of of cocaine and then
5 when they searched the defendant's vehicle, the Acura he drove
6 up in, in the center console they also found 20.15 grams of
7 crack cocaine and, ladies and gentlemen, that that is, that is
8 basically our case is that the defendant was involved in these
9 drug transactions, we've got the the evidence here in the
10 courtroom to present to you, you'll hear from the narcotics
11 officer and and from the chemical analyst who will testify
12 that those drugs were in fact what they're claimed to be and
13 based on that I don't really think there's any reasonable
14 doubt in my mind or at the end of trial in your mind that
15 Mr. Mack is guilty of trafficking cocaine, crack and
16 marijuana.

17 MR. POOLE: Ladies and gentlemen, my name is Roger Poole,
18 I represent Mr. Mack, thank you for being here. I know a lot
19 of you don't wanna be here today, you've already served on
20 juries this week, it's been a busy week in court for everyone
21 but thank ya, thank your for your patience and thank you for
22 your attention. The, uh, when I saw the number of people that
23 already sat on juries this week, I saw a number of hands go up
24 so I'm not gonna belabor the the fact that in this courtroom
25 that the State does have to prove each and every element of

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1 every case beyond a reasonable doubt. Those of you who have
2 raised your hands and sat through a full trial have heard a
3 lot about reasonable doubt and what it is and I'm submittin'
4 to you there is plenty of reasonable doubt in this case. When
5 the witnesses take the witness stand for the State, I want you
6 to pay attention not only to what is said but what is not
7 said, not only to what is shown but what is not shown.
8 Sometimes things that are not heard or seen speak louder than
9 what the evidence supposedly shows.

10 Now Mr. Mack is innocent, he, of these charges, he's
11 asked for a jury trial, a trial by his peers to compel the
12 State to prove the cases against him beyond a reasonable
13 doubt, it's a case where he was at the wrong place at the
14 wrong time and that's why he's here. At the end of the day
15 it's our position that what you will find is that Mr. Mack is
16 innocent, he's innocent because the State has not proved his
17 guilt beyond a reasonable doubt. He does not have to prove a
18 thing, burden is completely on the State and once again thank
19 you for being here.

20 THE COURT: Is the State ready to call their first
21 witness?

22 MR. HOLLIDAY: Yes, sir, Your Honor. State calls Paul
23 Norris to the stand.

24 THE COURT: Come around, sir, and let the bailiff -- I
25 mean, let the clerk swear you in.

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 (Whereupon, the witness came forward.)

2 PAUL ANTHONY NORRIS, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. HOLLIDAY:

5 Q. Could you ta -- could you please state your name again
6 for us and tell us where you're employed.

7 A. It's Paul Anthony Norris, I'm employed with the
8 Spartanburg County Sheriff's Office.

9 Q. And, Investigator Norris, how long have you worked at the
10 sheriff's office?

11 A. About twelve and a half years.

12 Q. Okay. In what capacities have you served as an
13 officer?

14 A. I worked uniform patrol, from there with car break task
15 force, white collar, from white collar I worked narcotics for
16 six years and then now I'm currently in property crimes.

17 Q. And during October and November of 2009 where in the
18 sheriff's office were you working?

19 A. I was the investigator in narcotics.

20 Q. And have have you ever had the chance to encounter
21 Mr. Mr. Mack before?

22 A. Yes, sir, on November the 5th 2009.

23 Q. And could you identify him in the courtroom today for us.

24 A. He's the gentleman sittin' beside Mr. Poole in a white
25 button-up shirt.

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. Can you tell us what led to the events that occurred on
2 November 5th 2009.

3 A. Yes, sir, it was an investigation and sort of a ongoing
4 investigation in reference to purchasing or selling a large
5 quantity of marijuana to individual identified as Ricky
6 Mack -- I mean, correction, Keith Johnson. During the
7 investigation I instructed the CI, once things developed, a a
8 deal was made, I instructed the CI in this case ---

9 Q. I I'm sorry, Investigator, when you say CI, can you
10 explain to us what you mean by ---

11 A. It's ---

12 Q. --- that.

13 A. --- confidential informant.

14 Q. Okay.

15 A. The confidential informant we chose the location, the
16 time, where this would occur. We chose this location based on
17 where it is, it's away from people, away from certain
18 elements. We chose the time where they were to meet, a round
19 about time, so we control everything in reference to this buy
20 bust. The CI was provided with the marijuana which was
21 packaged by us, weighed by us prior to going. Vehicles were
22 searched by us and CI was driven just behind the location of
23 where this took place to a parkin' place where officers were
24 already in location conducting surveillance at this location,
25 the buy bust location, and so basically once that occurred it

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 was a matter of just waiting. Once Mr. Johnson and Mr. Mack
2 arrived, they exit the vehicle which Mr. Mack drove, it was a
3 Acura, beige Acura, they get out, go to the vehicle which was
4 supplied by the sheriff's office and got into the vehicle.
5 Mr. Johnson gets into the front seat of the vehicle which is
6 a, is a white Ford Dually 4-door, Mr. Mack gets in the
7 backseat right behind Mr. Johnson on the passenger side.
8 During this time we have an open phone line so I can hear
9 what's goin' on just in case somethin' went bad if it's a
10 robbery, sometimes it has occurred so it's something you
11 need -- we always need to be aware of, so we have an open
12 phone line between myself, my supervisor's sittin' in the
13 vehicle with me so he can make a decision just in case
14 somethin' happened and they -- with the CI that's in the
15 vehicle. Once the CI, the CIs instructed you do not allow
16 them to open anything, to look at anything until you know,
17 verify the money is there; for one, to know that it's not a
18 robbery situation so once the CI saw that money basically was
19 a okay, yeah, I got the money or somethin' like that, I can't
20 recall exactly what the code was that day but it was more or
21 less, Yeah, the money looks good or somethin' like that and
22 then he allowed them to take that package, look at it,
23 whatever they wanted to do. At that point in time we knew the
24 money was exchanged for the marijuana that he was given so
25 therefore after that we all approached that vehicle, we're

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 surrounded the vehicle, we're actually just parked maybe two
2 cars over from where the CIs actually parked out so we can get
3 outta the car, block the car in, approach the vehicle quickly,
4 get everybody outta the vehicle and on this time both-of 'em
5 happen to be sittin' on the same side a the vehicle which was
6 sorta made it easy, get them outta the car and go ahead and
7 detain 'em and secure them and then search the vehicle.

8 Q. Now, Investigator, where, can you tell us where exactly,
9 what location you picked and where this all went down.

10 A. It's the Burger King on Highway 101.

11 Q. And that is in Spartanburg ---

12 A. In Spartanburg ---

13 Q. --- County?

14 A. --- County, sir.

15 Q. Okay. So how far away were you when ya'll watched all
16 this happen?

17 A. I would say probably from here (indicating) to the front
18 row this gentlemen sittin' right there (indicating).

19 Q. So ya had, ya had a clear clear shot of what happened.

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

21 Q. Who was driving the --- you said that defendant and
22 Mr. Johnson drove up in an Acura?

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

24 Q. Who who was drivin' that vehicle?

25 A. Mr. Mack was drivin' the vehicle.

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. Did you run the license plate of that vehicle?

2 A. After after the takedown took place yes, sir, we did.

3 Q. Did you determine who that vehicle was registered to?

4 A. I believe it was registered to his sister.

5 Q. Mr. Mack's sister?

6 A. Yes, sir.

7 Q. When you approached the the Dually truck after you heard
8 the buzz word that the sale had gone down, what did you see?

9 A. Once we secured everyone there's a duffel bag which we
10 supplied the CI that had I believe it was still five wrapped
11 bags of, uh, there actually would be vac. -- should be vacuumed
12 sealed marijuana, one was in the backseat where Mr. Mack was
13 located. Also upon searching the same area where he was
14 sitting at is what I would consider a purse or a little bag,
15 it's a little zip bag pouch and inside that pouch at that time
16 we located a white powder substance which we at that time we
17 believed to be powder cocaine.

18 Q. And now the the Dually truck before you you sent the
19 informant to do the the drug deal did you search the truck?

20 A. Correct. Before this deal took place the CI's person and
21 the vehicle which it was ours was searched. Even though it's
22 our vehicle, we still search the vehicle, that way we can
23 verify in court that there was nothin' illegal in the car,
24 also on the CI and again, from the distance where the CI drove
25 from, it's just a very short distance, he was followed to that

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 parking place and then he was under continuous surveillance
2 the entire time.

3 Q. Okay. When you searched the truck, did ya find any
4 illegal substances in the truck?

5 A. No, there was no illegal substance.

6 Q. And before you approached the truck what illegal
7 substances did you expect to find?

8 A. Before?

9 Q. Well before when when the buy happens, you approach the
10 truck, obviously you provided him with with the marijuana to
11 do, to do the buy, did you expect to find any other drugs?

12 A. No, sir, not at all, just the marijuana that was
13 provided.

14 Q. Now speaking about the marijuana I'm gonna hand you this
15 this box here and ask you if you can identify this this for
16 us.

17 A. It's a Banker Box in which the evidence was placed in on
18 on the night the buy bust took place.

19 Q. Okay, and can you tell us what what is inside that box.

20 A. Inside the box is the marijuana that was packaged by the
21 sheriff's office and given to the CI and there's probably also
22 the black bag I would imagine, I'm not sure without openin'
23 it.

24 Q. When you seized the the marijuana bag, what did you do
25 with the marijuana?

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 A. Once we get it back we seize it and then it's weighed in,
2 fill out the marijuana bag chain of custody and then place it
3 into evidence which would be at the sheriff's office.

4 Q. And what di -- what what sort of packaging did you, did
5 you place the marijuana in?

6 A. They're already, if not mistaken, they should be already
7 pre-vacuum sealed.

8 Q. Okay. If you wouldn't mind, could you go ahead and and
9 open that up for us and show us what's inside and just make
10 sure that that is in fact what you placed in there.

11 A. May need a knife.

12 OFFICER SMITH: I have one on me.

13 MR. POOLE: Your Honor, while the the officer's doing
14 that may we approach the bench just ---

15 THE COURT: Alright.

16 (Whereupon, a bench conference was held off the record.)

17 BY MR. HOLLIDAY:

18 Q. Okay, Officer, if you can, go ahead and open that up and
19 just take a look inside without pulling anything out.

20 A. Okay.

21 Q. Can you, can you tell us what you see in there.

22 A. Multiple bags of plant material which is the marijuana
23 vacuum seal.

24 Q. And do you recognize those bags?

25 A. I do.

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. And are are those the bags that you placed in there after
2 you -- first off, you you recover -- you personally recovered
3 the marijuana in the truck?

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

5 Q. And then you placed 'em into those bags?

6 A. They're already in the bags but yes, we recovered them
7 and then placed them into this box.

8 Q. And then, and then what did you do with that marijuana?

9 A. It was then placed into evidence for it to have been
10 analyzed by the chemist.

11 Q. Okay. So you you put it into the I guess you call it a
12 "best bag"?

13 A. Well it's actually for this it's a marijuana bag,
14 it's ---

15 Q. A marijuana bag, ---

16 A. Yes.

17 Q. --- okay.

18 A. Well since you can't fit all this in there ---

19 Q. It's a lotta marijuana, ---

20 A. --- we just -- yes.

21 Q. Yeah. And so you dropped it off at at evidence at the
22 sheriff's office.

23 A. Yes.

24 Q. Okay.

25 MR. HOLLIDAY: Your Honor, at this time can we have this

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 marked State's Exhibit -- well there's how many -- this ---

2 THE COURT: You want the box admitted?

3 MR. HOLLIDAY: I I would -- the bags probably or it --
4 the box's, just the box and its contents.

5 THE COURT: Alright, the box and its contents be marked
6 as State's Exhibit ---

7 COURT REPORTER: Eleven.

8 MR. POOLE: For identification ---

9 THE COURT: Eleven.

10 MR. HOLLIDAY: For identification purposes.

11 THE COURT: Alright, State's 11.

12 (Box of 6 baggies of marijuana labeled A through F,
13 marked State's Exhibit No. 11 for identification.)

14 BY MR. HOLLIDAY:

15 Q. Okay, so after you you approached the truck you obviously
16 recovered the marijuana that you supplied the informant; you
17 said you discovered something in in in a purse, can you tell
18 us about that.

19 A. Yes, it's a like I say, it was a purse and it had some
20 markings on it or some kind of writing or somethin', it was in
21 the backseat where Mr. Mack was located and then you unzip a
22 purse and then inside this purse pouch is a bag of white
23 powder substance which we believed at the time to be ---

24 Q. I'm gonna hand ---

25 A. --- powder cocaine.

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. --- hand you this (indicating) bag here. If you would go
2 ahead and open that up for us. And can you identify the
3 contents of that bag.

4 A. There's a cell phone and also a brown purse pouch.

5 Q. And is that the purse you recovered from the ---

6 A. It ---

7 Q. --- vehicle that evening?

8 A. --- it is.

9 Q. When you look, when you looked in the purse, what did you
10 see inside the purse?

11 A. A a bag with white powder substance and it was a clear
12 plastic bag.

13 Q. I'm gonna hand you this (indicating), it's been premarked
14 State's Exhibit 10, ask if you could identify that for us.

15 A. Yes, sir, it was not quite as, course it's been a couple
16 years but the white powder substance here that's in this bag
17 would be it, was in it or is it.

18 Q. And that's the bag and so once you took possession of
19 that what did you do with the, with the white powder
20 substance?

21 A. What woulda been done we also taken it back to our
22 office, test -- tested it with Voltox (phonetic) which would
23 have shown if it was tested positive for presence of cocaine
24 would turn blue which what it did and then this woulda been
25 placed into this best bag that you see here, actually it's the

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 best bag's inside this bag 'cause it's been tested along with
2 this other drug, it's sealed, all the information is placed
3 inside, it's also taken to the sheriff's office, placed into
4 the evidence locker which I'm sure at this time a night it
5 woulda been placed in the evidence locker and then woulda been
6 picked up the next day by e -- evidence custodian and later
7 tested by our chemist.

8 Q. Okay, thank you. I'm gonna ask you to take a look at
9 these (indicating) two pictures, State's Exhibit 7 and 8, see
10 if you can identify those for us.

11 A. Yes, sir, that's the the bag in which the powder cocaine
12 was located in, uh, this is the bag that came out of it and
13 that's another shot where it shows that it's inside the the
14 bag.

15 MR. HOLLIDAY: Your Honor, at this time State would move
16 Exhibits 7 and 8 into evidence.

17 MR. POOLE: For identification or ---

18 MR. HOLLIDAY: No, ---

19 MR. POOLE: --- or photos photos?

20 MR. HOLLIDAY: --- put the photographs into evidence.

21 MR. POOLE: Okay. That's 7 and 8?

22 MR. HOLLIDAY: Yeah.

23 MR. POOLE: No objection.

24 THE COURT: Without objection be State's 7 and 8.

25 (State's Exhibit Nos. 7 and 8, photographs, admitted into

PAUL ANTHONY NORRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 evidence.)

2 BY MR. HOLLIDAY:

3 Q. So you collected the marijuana, you collected the white
4 powder substance that you placed into the bag, then what did
5 you do?

6 A. At that time we attempted to interview the two
7 suspects, no one was cooperatin' in reference to investigation
8 so we had to have the vehicle towed in which they drove up in
9 which is the '97 Acura. Prior to havin' it towed and I don't
10 recall if it was, I I believe it was probably next on call
11 rotation so prior to doin' that we inventoried the vehicle for
12 any valuables and upon searchin' inside the car or and then
13 doin' the inventory or the search inside the car, inside the
14 center console was a another clear bag and it contained what
15 what looks like a actual cookie but it's actually a cookie of
16 crack cocaine.

17 Q. And I'm gonna let you again take a look at what's been
18 premarked State's Exhibit 10, I believe it's got another bag
19 within that same larger bag, can you identify that for us.

20 A. Yes, sir, this is what we located inside of the, what we
21 located inside the center console of the vehicle.

22 Q. The item that looks like a cookie.

23 MR. POOLE: Your Honor, this is subject to previous
24 objection raised.

25 THE COURT: Alright. You may proceed.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 BY MR. HOLLIDAY:

2 Q. And again, what what did you do with that item once you
3 took it into your possession?

4 A. Again, it would -- we woulda taken it into custody,
5 com -- covered it, weighed it, again, done a presumptive test
6 on it in reference to containing cocaine with Voltox
7 (phonetic) which it did, it it was placed in the same bag as
8 the powder cocaine was, the "best bag", paperwork completed,
9 sealed and then placed into a evidence locker at the sheriff's
10 office.

11 Q. Okay.

12 MR. HOLLIDAY: Beg the Court's indulgence, Your Honor.
13 No further questions at this time. Please answer any
14 questions the defendant may have.

15 CROSS-EXAMINATION BY MR. POOLE:

16 Q. Investigator Norris, let's talk about the the Acura, the
17 car.

18 A. Yes, sir.

19 Q. Now when you went into that car Mr. Johnson and Mr. Mack
20 they had already been taken into custody, is is that right?

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

22 Q. And they were far away from the car.

23 A. Like I say, probably if their car was parked in where
24 Mr. Mack was sittin' at was probly maybe a quarter, a parking
25 slot distance wise so I guess what you consider a car length

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 maybe in between the two parking places.

2 Q. Okay, so they were not, neither one of 'em were near the
3 car to where they could secure a weapon that could be a threat
4 to law enforcement.

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

6 Q. Okay, and did you run a license check on ---

7 A. At some ---

8 Q. --- this car?

9 A. --- at some point in time yes, sir.

10 Q. And did you find out that it wa -- belonged to a
11 Levictory Hewens Mack?

12 A. Yes, sir.

13 Q. And that was the defendant's sister?

14 A. Yes, sir, that's my understanding yes, sir.

15 Q. Okay. And why was she not called to come pick up the
16 car?

17 A. I didn't make contact with her, I'm not sure if someone
18 else did. I remember seeing on the tow sheet that her --
19 there's a phone number for her but I don't know how that got
20 provided on on the tow sheet.

21 Q. Okay, alright. Now you call this an inventory ---

22 A. Yes, that's correct.

23 Q. --- and and I would prefer to call it a warrantless
24 search. Do you understand what I'm saying?

25 MR. HOLLIDAY: Objection, Your Honor.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 MR. POOLE: The que ---

2 THE COURT: No, he's on cross-examination, he's got a
3 little bitta leeway.

4 THE WITNESS: Yes, sir, I understand what you're saying.

5 BY MR. POOLE:

6 Q. And the Fourth Amendment of the United States
7 Constitution and the corresponding amendment of the South
8 Carolina Constitution prohibits a warrantless search, does it
9 not?

10 A. Yes, it does.

11 Q. And this was found within a console that was latched,
12 right, ---

13 A. Yes, that's correct.

14 Q. --- on the interior of the car, is that right?

15 A. That's correct.

16 Q. And it's your testimony that this was a so-called
17 inventory when you went in to look in that console, is that
18 correct?

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

20 Q. And you call it an infor -- inventory notwithstanding the
21 fact that these individuals who were under arrest were nowhere
22 near the car to pose a threat to law enforcement by reaching
23 for something within the car, is that right?

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

25 Q. And you know that's an exception to the warrantless

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 search rule, are you aware of that?

2 A. Yes.

3 Q. Okay. In other words, if somebody's in the car, you can
4 kinda look around, poke around, do what anything you need to
5 do for your safety, is that right?

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

7 Q. You understand that.

8 A. I do.

9 Q. That's basic training, isn't it?

10 A. Yes, sir.

11 Q. And so this was done, again, while they were handcuffed
12 and after the what I'm gonna call the Dually truck and a
13 Dually truck by the way is one of those trucks that has a wide
14 rear axle base, it's got about eight, what, four four wheels
15 on the back ---

16 A. Yes, sir, it does.

17 Q. --- or eight? And no one called the owner of the car as
18 far as you know.

19 A. No, as far as I know no, sir.

20 Q. Okay. And you still say this was not a warrantless
21 search.

22 A. No, sir, it was a inventory search and for the vehicle.

23 Q. Okay, but do you al -- how long you been in law
24 enforcement?

25 A. Twelve and a half years.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 Q. How often do you go into consoles of cars that do not
2 pose a threat by the fact that somebody could enter the car
3 and get something to use against law enforcement in in a ---

4 A. If we tow a vehicle and there's no other means then we
5 need to do, we have to do an inventory of the vehicle.

6 Q. How long you been in law enforcement?

7 A. Twelve and a half years.

8 Q. How many times have you done that gone into a console?

9 A. I can't recall in twelve and a half years, I don't,
10 couldn't give you a number.

11 Q. Well ever ---

12 A. Oh, no.

13 Q. --- or was this the only time?

14 A. No, it's not the only time.

15 Q. Um-hum. Well you don't have any idea?

16 A. No, sir, not in twelve and a half years, I couldn't give
17 you an exact number for twelve and a half years ---

18 Q. How 'bout a hundred times? You ne -- you never done it a
19 hundred times, have you?

20 A. I wouldn't think so.

21 Q. You haven't done more than five times maybe have you ---

22 A. I ---

23 Q. --- ever?

24 A. --- more, maybe more than that but I don't know. Like I
25 say, I can't give you an exact number.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

- 1 Q. Okay, well do you go into the trunk and look for
2 valuables in there?
- 3 A. Yes, at times we have.
- 4 Q. At times but ---
- 5 A. If there's a trunk to go into, that has been done.
- 6 Q. Okay, it has been done but what about glove compartments?
- 7 A. Yes, sir.
- 8 Q. What about various other recesses ---
- 9 A. Yes, sir.
- 10 Q. --- that go, just just go into, just look around?
- 11 A. To note the inventory, yes, sir.
- 12 Q. To -- in an inventory and and you understand again you
13 and I fundamentally disagree on this, you call it an
14 inventory, I call it a search, you understand that?
- 15 A. Yes, sir, I do understand that.
- 16 Q. Okay. And you understand the importance of the Fourth
17 Amendment, don't you?
- 18 A. Yes, sir, I do.
- 19 Q. And you've had to go get warrants before to get search
20 warrants, haven't you?
- 21 A. I have yes, sir.
- 22 Q. Okay. And this is one of those situations you didn't
23 think was necessary.
- 24 A. No, sir, not at the time.
- 25 Q. Okay. Wouldn't it have been better be on the safe side

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 to do that?

2 A. Probably yeah.

3 Q. You agree with me on that, ---

4 A. Yeah.

5 Q. --- that it woulda been a better practice in ---

6 A. Yes, ---

7 Q. --- this case?

8 A. --- if I thought I needed a search warrant, yes.

9 Q. In this case. I think you just said yes you agree with
10 me that it woulda been better to go get a search warrant in
11 this case than to go into that console.

12 A. If I thought I needed a search warrant.

13 Q. I thought your answer was yes, you agree with me.

14 A. No, I thought if I, thought if I needed a search warrant
15 yes, that's what we were ---

16 Q. Okay.

17 A. --- discussing.

18 Q. Well have you ever gone to get a search warrant to search
19 in the inside of a car?

20 A. Sir?

21 Q. Have you ever had to go get a search warrant from the
22 magistrate to search the inside of a car?

23 MR. HOLLIDAY: Your Honor, I'm gonna object to how that's
24 relevant in this case.

25 THE COURT: Alright, I've, uh, I'm going to sustain the

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 the objection, I believe we've been through this. We need to
2 move on.

3 BY MR. POOLE:

4 Q. What's the nature of an informant? One who informs,
5 right?

6 A. One who informs yes, sir. It could -- go ahead, I'm
7 sorry.

8 Q. Okay, why do they do that?

9 A. It could be several different reasons. We have, we've
10 had informants that work for, they provide information and
11 they are paid and we also have informants that provide
12 information that work off charges or or given the
13 consideration to work off charges.

14 Q. Okay, so they're informants are people who are afoul of
15 the law, right, ---

16 A. Yes.

17 Q. --- in just about every case?

18 A. Not every case.

19 Q. Okay. Well a confident reliable informant and in this
20 and and when we use that term that's not, they're not an
21 anonymous tipster, are they?

22 A. No, sir, they're not.

23 Q. They're actively working.

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

25 Q. And they're working for a reason.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 A. Yes.

2 Q. And that reason is to mo -- it's for money or to work off
3 charges?

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

5 Q. And what do we mean by working off charges?

6 A. It means if they have pending charges and of course it
7 would be most likely drug charges and they would be given
8 consideration for.

9 Q. Okay, so we, are we talking about -- so we're talking
10 about informants who are motivated by some sort of reward be
11 it monetary or protecting their liberty interest by not being
12 convicted and sent to prison, right?

13 A. Correct, and way we always work it is if you're getting
14 consideration for charges, we move up the food chain, means
15 whatever you may have your pending charges of, you need to go
16 up several steps.

17 Q. Okay, but nevertheless they're motivated, right?

18 A. Correct.

19 Q. And some of, some of 'em are drug drug addicts?

20 A. Yes.

21 Q. Some have extensive records, don't they?

22 A. Yes.

23 Q. And it's fair to say that most of 'em are desperate.

24 A. I wouldn't say most of 'em are desperate no, sir.

25 Q. Okay, well they're moted enough, motivated enough to try

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 to work off charges or get money fo -- those are the only two
2 reasons, aren't they?

3 A. Yes.

4 Q. Okay, so you agree with me they're they're highly
5 motivated to get money or work off charges, right?

6 A. I can't speak for 'em but yes, sir.

7 Q. But you deal with 'em all the time, don't ya?

8 A. I have, yes.

9 Q. Okay. Now most of the time are they not wired with a
10 video component?

11 A. Not necessarily all the time, no.

12 Q. I know not necessarily all the time but most of the time
13 they are, aren't they?

14 A. It all depends on the situation. There are times which
15 they are provided a recording device of some sort.

16 Q. Or video.

17 A. Video or audio or just audio.

18 Q. Okay, there was no video in this case, right?

19 A. No, sir, there's not.

20 Q. And you did not observe what happened inside that truck,
21 did you?

22 A. That's correct, I did not.

23 Q. So you don't know what happened inside that truck, do
24 you?

25 A. No, sir.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 Q. And the only thing you can testify to is what of course
2 you observed.

3 A. That's correct.

4 Q. And what time of day was this?

5 A. I don't remember the exact time, do believe it was at
6 night, I don't know exactly what time a night it was.

7 Q. Okay, alright. And who was with, who who was with you
8 when you were doing the observing?

9 A. There is the Investigator Beck, Sergeant Pharis,
10 Investigator Hutchins, I wanna say it was Investigator
11 McJunkin and one other investigator, Investigator Cantrell.

12 Q. Okay. Where was the marijuana found?

13 A. It was on the front seat, if I'm not mistaken the bag,
14 there was several sealed bags still left in the duffel bag and
15 then there was one was located in the backseat still sealed in
16 a vacuum sealed bag.

17 Q. Okay, and where was the cocaine found?

18 A. Cocaine was also located in the backseat.

19 Q. Okay. Anything found in the bed of the truck?

20 A. No, sir.

21 (Attorney/client discussion held off the record.)

22 BY MR. POOLE:

23 Q. How long was the Dually truck observed before the Acura
24 pulled up?

25 A. Couldn't give you an exact number; I would say no more

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

1 than thirty minutes.

2 Q. Okay. Wasn't there another car that pulled up to the
3 Dually while you were observing?

4 A. Yes.

5 Q. Okay. Was it like a Cadillac?

6 A. Yes.

7 Q. How did it pull up to the Dually?

8 A. Pulled up behind the Dually if I'm not mistaken or beside
9 the Dually.

10 Q. And did somebody get outta that car?

11 A. Yes.

12 Q. Do you know who it was?

13 A. I believe it was Investigator Beck.

14 Q. Okay. You don't know?

15 A. Yes, I believe it was In -- was Investigator Beck if I'm
16 not mistaken.

17 Q. Okay, did he put anything in the truck?

18 A. Yeah, I think he did end up puttin' the that's -- he had
19 the marijuana that he would kept just in case the -- it was a
20 robbery, we wanted to make sure that they end up havin' the
21 money in the vehicle.

22 Q. I'm sorry, I didn't hear ya.

23 A. We wanted to make sure that it was not a robbery so we
24 made verified that the money was on the inside the vehicle
25 before we delivered the marijuana.

PAUL ANTHONY NORRIS - CROSS-EXAMINATION BY MR. POOLE

- 1 Q. The money was inside the vehicle?
- 2 A. Inside the truck with the CI, the two individuals.
- 3 Q. Okay, but before the Acura pulled up, the the
- 4 Cadillac -- before the Acura pulled up near the vicinity of
- 5 the Dually, ---
- 6 A. Yes.
- 7 Q. --- the Cadillac pulled up, is that right?
- 8 A. Uh, yes ---
- 9 Q. Alright.
- 10 A. --- if I recall, yes.
- 11 Q. And Inves -- Investigator Beck was in this car?
- 12 A. I believe so, yes.
- 13 Q. And what did he do?
- 14 A. If I'm not my mistaken, he's the one that brought in the
- 15 marijuana to the vehicle.
- 16 Q. Did you see where he put it?
- 17 A. He woulda given it to the CI.
- 18 Q. So we don't know where it was placed.
- 19 A. In with with the CI, inside the vehicle.
- 20 Q. The -- your dealings with the CI were primarily related
- 21 to Mr. Keith Johnson, is that right?
- 22 A. Yes, that's correct.
- 23 Q. And and your dealings with the CI never involve any
- 24 dealings with Ricky Mack, is that right?
- 25 A. That's correct.

PAUL ANTHONY NORRIS - REDIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. Okay. So Keith Johnson was the one that was
2 expected, ---

3 A. Yes, sir, that is corre ---

4 Q. --- is that right?

5 A. --- that is correct, yes.

6 Q. Okay.

7 (Attorney/client discussion held off the record.)

8 MR. POOLE: That's all the questions I got.

9 THE COURT: Any redirect limited to what he went into?

10 MR. HOLLIDAY: Just brief redirect, Your Honor.

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION BY MR. HOLLIDAY:

13 Q. Investigator Norris, he asked you, he asked you you
14 didn't know what happened in the truck, correct, ---

15 A. Yes, correct.

16 Q. --- but you recovered some items from the truck.

17 A. That's correct.

18 Q. And you said you recovered an amounta cash, do you
19 remember exactly how much cash you recovered from the truck?

20 A. It was a total of \$13,650.

21 Q. And was that cash in the truck or given to the informant
22 before the buy?

23 A. It was not in the truck prior to the buy, it was never
24 given to the informant.

25 Q. Okay. And he asked you about CI and your response was we

JACK WESTMORELAND - DIRECT EXAMINATION BY MR. HOLLIDAY

1 use them to get I believe you said bigger fish.

2 A. Yes.

3 Q. You were, you were expecting to bring in Mr. Keith
4 Johnson?

5 A. Yes, sir, that's who we were dealin' with prior to
6 this.

7 Q. And when this deal went down you also got Mr. Mack.

8 A. That's correct.

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

10 THE COURT: Thank you, sir, you may step down.

11 (Whereupon the witness left the stand.)

12 THE COURT: State ready to call their next witness?

13 MR. HOLLIDAY: Yes, sir, Your Honor, State calls Deputy
14 Jack Westmoreland of the Spartanburg County Sheriff's Office.

15 THE COURT: Mr. Bailiff, if you'll get Mr. Westmoreland.
16 If you will, sir, just step up to the -- there (indicating)
17 and let the clerk swear you in.

18 (Whereupon, the witness came forward.)

19 JACK WESTMORELAND, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. HOLLIDAY:

22 Q. Deputy, afternoon.

23 A. Hey.

24 Q. Could you please state your name for the record for me.

25 A. Jack Westmoreland.

JACK WESTMORELAND - DIRECT EXAMINATION BY MR. HOLLIDAY

1 Q. And, Deputy, where are you currently employed?

2 A. Spartanburg County Sheriff's Office.

3 Q. And in November of 2009 were you also employed in that
4 same capacity?

5 A. I was.

6 Q. And where were you working within the sheriff's office at
7 that point in time?

8 A. I was assigned to evidence.

9 Q. And so what what would be your role working in
10 evidence?

11 A. I received the items that were brought into evidence then
12 stored them secured area.

13 Q. And this was just rou -- routine capacity, you basically
14 exchanged -- they bring in what they give you and you put it
15 up?

16 A. Yes, sir.

17 Q. On November 6th 2009, I'm gonna show you what's been
18 premarked as State's Exhibit 10, and ask you if do you
19 receive, do do you recall receiving those those items that are
20 in that bag?

21 A. I do.

22 Q. And what did you do with those items when you received
23 them or where did you receive them from?

24 A. Out of the evidence locker at the sheriff's office.

25 Q. Okay, and then what did you do with those items?

JACK WESTMORELAND - DIRECT EXAMINATION BY MR. HOLLIDAY

1 A. I brought 'em into the office, enter 'em into the
2 computer system and placed 'em in the drug room.

3 Q. Okay. Did you in any way alter them, did you, did you
4 break any seals, did you do anything in any way to alter the
5 contents of the bag?

6 A. I did not.

7 Q. Okay. I'm gonna ask ya also take a look at this box here
8 that's been marked as State's Exhibit 11. If you would, take
9 a look in there see if you recognize that.

10 A. When I got it, it woulda been sealed. This woulda
11 been ---

12 Q. Okay, so you didn't even look in the box.

13 A. No, I did not.

14 Q. So when you got it was it -- it was sealed?

15 A. It was sealed when I got it.

16 Q. And what did you do with the box?

17 A. I entered the computer system, assigned a number to it,
18 placed it in the drug room.

19 Q. And you didn't tamper it, open it, anything like that?

20 A. I did not.

21 Q. Okay. No further questions. Please answer any questions
22 defense may have.

23 MR. POOLE: No questions of this witness.

24 THE COURT: Any reason why the witness cannot be excused?

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

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 THE COURT: Thank you, sir, you may step down and be
2 excused as well.

3 THE WITNESS: Thank, sir.

4 (Whereupon, the witness left the stand.)

5 THE COURT: State ready to call their next witness?

6 MR. HOLLIDAY: Yes, sir, Your Honor, at this point the
7 State would call Ashley Harris of the sheriff's office.

8 THE COURT: Come right up here, sir, and let the clerk
9 swear you in, please.

10 THE WITNESS: Yes, sir.

11 (Whereupon, the witness came forward.)

12 ASHLEY HARRIS, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. HOLLIDAY:

15 Q. Sir, could you please state your name for us.

16 A. Yes, it's Ashley Harris.

17 Q. And, Mr. Harris, what what is your occupation?

18 A. I am a forensic chemist with Spartanburg County Sheriff's
19 Office.

20 Q. And how long have you been employed in that capacity?

21 A. I've been with the sheriff's office for almost thirteen
22 and a half years and prior to that I was with the South
23 Carolina State Law Enforcement Division in Columbia as a
24 forensic drug chemist.

25 Q. What do -- what what does a -- what what does that, what

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 does that mean?

2 A. A forensic drug chemist we're responsible for testing
3 anything that is submitted to the lab for analysis. If
4 someone believes they have seized cocaine, marijuana, whatever
5 controlled substance, they send it to us, we determine what it
6 is and then we determine how much it weighs and produce a
7 report showing those findings for court purposes.

8 Q. Can you tell us a little bit about your education.

9 A. Yes, sir, I have a Bachelor of Science in chemistry from
10 Wofford College here in Spartanburg. After finishing Wofford
11 I started working on my PHD in analytical chemistry at
12 University of South Carolina in Columbia. After a short
13 period of time I left there to take a job with SLED as a
14 forensic drug chemist, continuing education all the way
15 through and in 1999 took a job with Spartanburg to open their
16 forensic lab for them. Again, we we are maintained, we have
17 to maintain our certification so we do approximately forty
18 hours of training each year in each one of our certification.
19 After being at the sheriff's office for a short period a time
20 went back and got my master's degree from Furman University in
21 analytical chemistry and after completing that I have
22 continued to take classes in everything from the
23 instrumentation utilized to a new D -- new DEA, DEA approved
24 techniques and SLED approved techniques in forensic drug
25 chemistry and I actually teach a criminalistics course at SMC

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 to kinda stay up on what the new things are.

2 Q. Have you ever testified in court before as as a a expert
3 witness?

4 A. Yes, sir. Prior to today I think I've been qualified a
5 hundred and, hundred and seven or hundred and eight times as
6 an expert in drug chemistry analysis.

7 MR. HOLLIDAY: Your Honor, at this time the State would
8 seek to have Ashley Harris designated as an expert in chemical
9 analysis.

10 MR. POOLE: No objection.

11 THE COURT: Alright, ladies and gentlemen, normally a
12 person cannot give opinion testimony. Normally when a person
13 testifies they must testify as to either what they saw, heard,
14 sensed by smell or something of that nature, however, there is
15 an exception when someone is qualified because of education or
16 experience they are permitted to give their opinion in certain
17 areas if the Court qualifies them that way. This witness will
18 be qualified in the area of chemical analysis ---

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

20 THE COURT: --- to give opinion testimony in that area,
21 that does not mean that you must accept the opinion but it is
22 evidence for you to use in any way that you see fit and give
23 it the weight and credibility you believe is appropriate.

24 BY MR. HOLLIDAY:

25 Q. Now Mr. Harris, I'm gonna let you take a look at what's

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 been marked as State's Exhibit 10 and also contents of State's
2 Exhibit 11 and ask if you can identify those for us, please.

3 A. Yes, sir. State's Exhi -- Exhibit 10 is a heat sealed
4 bag that I have actually sealed that contains a best bag that
5 was submitted on Case Number 09110247 involving a Ricky Mack
6 and a Keith Johnson. As I stated this outer bag is one that I
7 repacked in after testing and this box is green plant material
8 that was submitted in this cardboard box from the same case
9 number and on the same defendants submitted on the same day on
10 November the 6th 2009.

11 Q. Okay, and when you -- where did you gather that -- tho --
12 those items from when you collected them?

13 A. I received these from our evidence department.

14 Q. And what was their condition when you got them from
15 evidence?

16 A. The best bag, the tamper evident bags within here was
17 sealed and contained Items 1 through 3 that can be seen
18 through the back of this envelope. This box was sealed with
19 evidence tape and it was susan -- substantially the same
20 condition it is now, it's just after I completed my testing I
21 placed a a different type of tape on the outside to reseal it.

22 Q. And is there any way for you to to tell if the bag had
23 been tampered with or anything like that?

24 A. Yes, sir, we, the reason we use the heat sealed bag
25 specifically after we analyze something that's been placed in

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 a best bag 'cause we have the ability to write our initials,
2 the date in which we analyzed it and put the actual lab number
3 within the seal so if anyone tries to open it or tamper with,
4 tampers with it after we an -- analyze it it would be obvious
5 and this has not been tampered with, it still has my initials,
6 the date and the lab number within the seal. The box, I
7 actually was in the courtroom when Investigator Norris opened
8 the box, the box is sealed with a tamper-evident tape. This
9 particular tape, the tape it was originally sealed with breaks
10 very, very easily and when you try to take it off it just rips
11 to shreds, this particular tape when you try to take it off
12 leaves red residue and cannot be re -- resealed so they're
13 both tamper-evident, not gonna keep anybody with a pocket
14 knife out but they're gonna let us know if someone has tried
15 to get in and the taped box appears that to be sealed in the
16 same way it was and as, and as I stated, I watched
17 Investigator Norris actually open it a few minutes ago.

18 Q. Absolute. When you received these items from evidence,
19 did you perform any sort of chemical analysis on them?

20 A. Yes, sir, our standard procedure when we pick up a piece
21 of evidence the first thing we do is we look at the outside of
22 it to make sure it hasn't been tampered with. We won't
23 receive a piece of evidence if it has been tampered with, if
24 it's not properly sealed. For our standards that something
25 has to be perfectly sealed before we'll take custody of it, if

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 not that officer has to be ma -- come back in, they have to
2 say, Yeah, this is what it was supposed to be and yeah, I
3 messed up the seal. These were both sealed, the the items
4 that were marked State's Exhibit Number 10 were within the
5 best bag, the best bag showed no signs of being tampered with,
6 same with the box: checked it out, make sure it had no signs
7 of being tampered with. Both of 'em were taken back to the
8 lab and assigned lab numbers. Basically they were put in a
9 queue until until it was their turn to be tested. Upon
10 testing the first thing we do is actually I go over the bag
11 again to make sure I didn't miss anything the first time, more
12 of a, the first one's more of a cursory search, this one's a
13 an in-depth search. If I see any tampering, again, it's
14 returned back and officer has to come in and fake -- make it
15 right. If it shows not evidence of tampering, I'll write the
16 letters OK on the outside of it, my initials and the date in
17 which I'm opening on the outside of the best bag so it is
18 searched at least twice make sure there -- it is sealed and in
19 both times this was found to be sealed and the items inside it
20 were tested, same thing with the, with the box, look at it, a
21 cursory search, get back to the lab, assign a lab number and
22 the day that I actually analyze the evidence, look over it one
23 more time, make sure I didn't miss anything the first time
24 before opening in it and proceeding test it.
25 Q. And so you you tested these compounds ---

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 A. Yes, sir.

2 Q. --- and what were the results of your test? Can you
3 tell us a little bit about how you did that.

4 A. Yes, sir. Marijuana is tested very differently from just
5 about every other thing that's submitted in the lab for
6 analysis. With suspected marijuana cases, green plant
7 material, it's pretty simple test, we take it out, we look at
8 it under a microscope to look for three characteristic hairs
9 that are present only on marijuana, no no no other known
10 substance has those three independent hairs. Each one of the
11 bags was individually tested within this case, if I can refer
12 to the notes. Thank you. There were six ba -- pi -- six
13 packages all heat sealed within the the box. They were each
14 individually tested: looked at under a microscope, sample
15 from each one was looked at under a microscope. Once all of
16 those hairs are seen in the microscope the second test, it's a
17 two-prong test for the presence of marijuana, the second test
18 is a chemical test, we place some chemicals on it, look for a
19 color change, again, no known chemical is known to produce the
20 exact color change except for Tetrahydrocannabinol which is
21 the active ingredient in marijuana. If it passes both of
22 those tests, it is marijuana and again, this one did, did the
23 microscopic test on it, had all three of the hairs for each
24 sample, from each one of the packs and then did the chemical
25 test and it has a positive chemical test. The -- each

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 individual package was weighed and then those individual
2 weights were all combined to come up with a total weight of
3 6,231.90 grams which to put it back in a number that most
4 people in the United States are used to that would be a little
5 over 200 and some odd ounces and around 13 pounds, just a
6 little over 13 pounds.

7 Q. Okay, and so the the items that are in State's Exhibit 11
8 that you examined what was the result of your analysis?

9 A. That each one of the packages contained marijuana. I
10 labeled them A through F and each bag was like I said
11 individually analyzed and individually weighed. Bag A -- if I
12 may stand up.

13 Q. Yeah, here you go.

14 A. Thank you. Bag A was found to be marijuana, had a total
15 weight of 1177.79 grams; Item B again tested positive for
16 marijuana with a total weight of 1130.01 grams; Item C was
17 marijuana, the total weight of 1315.28 grams; Item D again was
18 marijuana a total weight of 1402.74 grams; Item E was
19 marijuana with a total weight of 608.29 grams and Item F was
20 marijuana with a total weight of 597.79 grams and so each one
21 was tested individually, removed from its package and then a
22 weight was obtained and then those were combined for a total
23 of 6231.90 grams.

24 Q. And which again one more time in pounds is how, 'bout how
25 much?

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 A. I did the calculation so I could have an exact number,
2 it's 219.82 ounces or 13.73 pounds.

3 MR. HOLLIDAY: Okay, Your Honor, this time State would
4 seek to have the contents of State's Exhibit 11 introduced
5 into evidence.

6 MR. POOLE: No objection.

7 THE COURT: Without objection and for purposes of the
8 record the bags as the officer was stating has those letters
9 on them?

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

11 THE WITNESS: Yes, sir, each one is labeled A through F.

12 THE COURT: You need to mark each one of the bags?

13 COURT REPORTER: No, I guess not.

14 THE COURT: Okay.

15 (State's Exhibit No. 11, box of 6 baggies of marijuana
16 labeled A through F, admitted into evidence.)

17 THE WITNESS: In reference to the best bag and the other
18 items that were submitted, the items were were simply labeled
19 Items 1 through 3. Item 1 was an off white powder that, and
20 again if I refer to my report notes, white powder tested
21 positive for cocaine with a total weight of 12.02 grams; Item
22 Number 2 what appears to be a kinda yellowish looking cookie
23 tested positive for cocaine base which is more commonly known
24 as crack, it's the free base form of cocaine, it's a
25 modification of cocaine and it tested positive for crack and

ASHLEY HARRIS - DIRECT EXAMINATION BY MR. HOLLIDAY

1 it was a total weight of 20.15 grams. There was also a
2 partially smoked cigarette butt but that was not analyzed, it
3 was just included on the inventory and tabled as Item
4 Number 3.

5 MR. HOLLIDAY: And, Your Honor, at this time the State
6 would seek to introduce the contents of State's Exhibit 10
7 into evidence.

8 MR. POOLE: No objection.

9 THE COURT: Without objection be State's 10.

10 (State's Exhibit No. 10, drugs, admitted into evidence.)

11 BY MR. HOLLIDAY:

12 Q. Thank you, Mr. Harris, I have no further questions for
13 you. Please answer any questions the defense has.

14 MR. POOLE: No questions of this witness, Your Honor.

15 THE COURT: Thank you, sir, you may step down. Lawyers
16 approach a moment.

17 (Whereupon, the witness left the stand.)

18 (Whereupon, a bench conference was held off the record.)

19 MR. HOLLIDAY: Your Honor, at this point the State rests.

20 THE COURT: Alright, thank you, sir. Ladies and
21 gentlemen, at -- this is one of those times that I've
22 explained in my introduction where I have to take up matters
23 of law with the attorneys. I wanna appreciate your attention
24 while we went through this parta the trial, it's also a good
25 time for ya'll to take a break as well. I need to remind you

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1 not to have any discussions among yourselves about anything
2 that involves the trial but I'll let you go with the bailiff
3 back to the jury deliberation room and we will get you back
4 after I address these issues of law with the attorneys but you
5 may go with the bailiff.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Anything before we step down?

9 MR. HOLLIDAY: Judge, I would just ask that Mr. Harris be
10 allowed to be released from subpoena.

11 THE COURT: Any objection Mr. Harris being released?

12 MR. POOLE: No, sir.

13 THE COURT: Alright, thank you, sir, you may be
14 excused.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Alright, we're gonna step down just for a
17 moment, I believe the officer might have some information
18 about that issue you raised.

19 MR. POOLE: Thank -- yes, sir.

20 THE COURT: And we'll check back fifteen minutes, give us
21 an idea of what's goin' on?

22 MR. POOLE: Yes, sir, could you give me maybe twenty at
23 the outside.

24 THE COURT: Sure, absolutely.

25 MR. POOLE: Okay.

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1 THE COURT: We'll step down.

2 (Whereupon, a recess was taken.)

3 THE COURT: Alright, we'll go back on the, on the record.
4 In regards to the cases that I referred to earlier the ones
5 that that we reviewed in my office was *State vs. Jenkins*, 727
6 S.E.2d 761 and also *State vs. Brown*, 430 -- I'm I'm sorry, 698
7 S.E.2d 80 -- 811, alright, what we're gonna do at this time
8 since Mr. Poole needs to do some more investigation, I believe
9 it would be fair to allow him more more time to actually do
10 that and given the hour that it is and I would like to bring
11 the forelady out and tell her that we're going to not take
12 anymore testimony today and ask the jury to be back in the
13 courtroom at, back in the deliberation room at 9:30 in the
14 morning, is that agreeable, gentlemen?

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

16 MR. POOLE: Yes, sir.

17 THE COURT: Alright, we'll bring the forelady out.

18 (The following takes place in the presence of the jury
19 forelady.)

20 THE COURT: Ms. Younger, this is one of those special
21 duties as foreperson that you get to perform, I need you to be
22 the Court spokesperson in the jury room. In working with the
23 attorneys on issues that have to be resolved outside of ya'lls
24 presence, I am of the opinion that we need to cease taking
25 testimony today and ask ya'll to come back in the morning at

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1 9:30, that way we're just now keeping you sitting in the back
2 while we're doing the stuff out here because it might be a
3 little bitta time before we get through. What I would like
4 for you to do is to tell the jury that they are, to extend
5 everybody's appreciation for their work today, ask them,
6 remind them of my instruction to them not to have any
7 conversations with anyone and also for them not to do any type
8 of independent research or investigation and ask them to
9 please be back in the jury deliberation room by 9:30 in the
10 morning. Do you think you can do that for me?

11 JURY FORELADY: Yes, sir.

12 THE COURT: Thank you, ma'am, and I hope ya have a good
13 evening.

14 JURY FORELADY: Thank you.

15 THE COURT: Alright, I will step down and await word in
16 the back for me, the lawyers for any further developments.
17 Where are ya -- we can stand at ease and go off the record.

18 (Proceedings October 25, 2012)

19 THE COURT: May be seated. We'll go back on the record.
20 Any motions that need to be made?

21 MR. POOLE: Your Honor, at this time I would make a
22 motion on behalf of Mr. Mack for a directed verdict of not
23 guilty. He's charged with trafficking marijuana, trafficking
24 cocaine and trafficking cocaine base and it's our position
25 that the State there's no evidence whatsoever to uphold any of

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1 these trafficking charges or show that Mr. Mack had any
2 knowledge of -- any knowledge or possession of any one of
3 these controlled substances much less trafficking in them.
4 The evidence that was presented yesterday was basically one
5 where Mr. Mack was present in a Dually truck with the
6 marijuana and the cocaine within it. What happened within the
7 Dually truck by way of conversation, deal making, conspiracy,
8 attempt to possess or trafficking, there's no evidence of any
9 of that. He was merely there. Same argument with the crack
10 cocaine found in the Acura automobile. The automobile
11 belonged to Mr. Mack's sister, it was found within the car,
12 away from his presence, there is no indication or any evidence
13 that Mr. Mack had any knowledge of or possession of, knowledge
14 of the presence of or possession, constructive or otherwise of
15 the crack cocaine found in the automobile which we contend was
16 obtained pursuant to a warrantless search and I understand the
17 Court's prior ruling on that and at this time we're we're
18 re -- renewing our motion for to have that suppressed that was
19 made pretrial. At best what the State has is a mere suspicion
20 and that's not enough to go forward. A mere suspicion is not
21 enough evidence or no evidence at all for the case to go
22 forward. Also, the confidential informant was not present,
23 did not testify and there is a basic right to confront
24 witnesses that Mr. Mack has and that right has not been met.
25 The CI would have been the one that could have, if so inclined

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1 and if present and so inclined, to put the gaps into the
2 evidence on behalf of the State that would show whether or not
3 Mr. Mack had the knowledge of the presence of, participated in
4 and/or had constructive or actual possession of the drugs in
5 question, based upon all that we ask for a directed verdict of
6 not guilty.

7 THE COURT: Thank you, sir.

8 MR. HOLLIDAY: Yes, sir, Your Honor. State's put up
9 evidence that the defendant was at the scene, he was in
10 actual, if not constructive possession of the drugs, there was
11 a transaction of drugs he participated in and, Your Honor,
12 based on that we believe there's at least a scintilla of
13 evidence sufficient to submit this case to the jury.

14 THE COURT: Any reply?

15 MR. POOLE: No, sir.

16 THE COURT: Alright. The defense makes some substantial
17 arguments but the standard that I have to apply in viewing the
18 evidence is one that I have to view it in a light most
19 favorably to the State. I have to view the inferences which
20 can reasonably be drawn from the evidence the light most
21 favorably to the State and when I do that I have to deny the
22 motion and also if it needs to, in regards to the renewal of
23 the motion that was made pretrial that's reasserted here, I
24 will have to deny that as well. Okay, so the State has rest,
25 the defense ready to go forward?

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1 MR. POOLE: Yes, sir, but we -- may we approach the
2 bench ---

3 THE COURT: Yes.

4 MR. POOLE: --- for one probably final issue before ---

5 THE COURT: Um-hum.

6 MR. POOLE: --- we get started.

7 (Whereupon, a bench conference was held off the record.)

8 MR. HOLLIDAY: Judge, can I approach briefly?

9 THE COURT: (No audible response.)

10 (Whereupon, a bench conference was held off the record.)

11 THE COURT: Alright, we've had a, let the record reflect
12 we've had a bench conference to reu -- to review the prior
13 record of the defendant and also of the, of a person who I've
14 been informed potentially may be called as a witness on behalf
15 of the defense and and ya'll wish for me to ask this person,
16 advise him of his Fifth Amendment rights?

17 MR. HOLLIDAY: Yes, sir, Your Honor. I would just
18 request that the Court make him aware that anything he says
19 could be used against him and that any testimony he gives that
20 is inconsistent with prior testimony could be used for perjury
21 purposes.

22 MR. POOLE: Same here, Your Honor.

23 THE COURT: Alright, and tell me who this person is.

24 MR. POOLE: It's a Keith Anthony Johnson.

25 THE COURT: Alright, and I believe that Mr. Johnson was

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1 previously represented by Mr. Crane of the Greenville Bar.

2 MR. HOLLIDAY: Yes, sir, Your Honor. He, Mr. Crane
3 represented him on charges relating after this incident.

4 THE COURT: Alright, and and I was ad -- advised that
5 he's had an opportunity to speak with his lawyer, is that
6 ya'lls understanding?

7 MR. POOLE: Yes, my my understanding is that he spoke
8 with Mr. Crane yesterday evening and Mr. Crane explained to
9 him of the potential consequences of him testifying today.

10 THE COURT: Okay, alright.

11 MR. POOLE: We approach the bench on one more matter,
12 please?

13 THE COURT: Um-hum.

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: Alright, let's bring Mr. Johnson in if you
16 would.

17 MR. HOLLIDAY: Mr. Johnson.

18 THE COURT: Johnson.

19 MR. POOLE: Keith Johnson.

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: Mr. Johnson, just come right up here
22 (indicating) if you would, sir, just right up here. I'm
23 gonna -- I ne -- I need the clerk of court to swear you in and
24 I need to ask you some questions, okay?

25 THE WITNESS: Yes, sir.

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1 KEITH ANTHONY JOHNSON, having
2 been first duly sworn, testified as follows:

3 THE COURT: Okay, if you can, sir, watch your step but
4 sit in that (indicating) chair and slide the chair up to the
5 microphone. How are you today?

6 THE WITNESS: Fine.

7 THE COURT: Thank you, sir. If you would, Mr. Johnson,
8 give us your full name.

9 THE WITNESS: Keith Anthony Johnson.

10 THE COURT: Alright, Mr. Johnson. Mr. Johnson, I have
11 been advised that you may be called as a witness in the
12 present case and I now need to advise you that as a witness
13 you have the right to invoke the protections given to you by
14 the Fifth Amendment to the Constitution of the United States.
15 This amendment provides in part that no person shall be
16 compelled in any criminal case to be a witness against
17 himself. This provision means that you cannot be required to
18 be a witness against yourself, this is a personal right which
19 you can only be -- which can only be claimed by you. You have
20 the right to refuse to answer any questions asked of you which
21 you think gives reasonable cause to believe that the answer to
22 the question if given might tend to incriminate you. If you
23 wish to exercise this right when a question's asked, you will
24 still -- you will state to this court that you, quote, refuse
25 to answer the question because the answer may tend to

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1 incriminate me, close quote. I also advise you that you are
2 not the final decision maker on the issue of whether an answer
3 to a question will violate the protection afforded to you by
4 the Fifth Amendment, it is for the Court to determine if
5 silence on your part is justified. Now do you understand what
6 I've just explained to you?

7 THE WITNESS: Yes, sir.

8 THE COURT: Alright. And do you have any questions about
9 what I've explained to you?

10 THE WITNESS: No, sir.

11 THE COURT: And, sir, I believe that you had an
12 opportunity to speak to Mr. Crane about your testifying, is
13 that correct?

14 THE WITNESS: Yes, sir.

15 THE COURT: Alright. And, sir, I also need to let you
16 know that as as any witness that testifies in in a court of
17 law you can be subject to cross-examination and if you have
18 any type of criminal record which this court believes and
19 which the lawyers bring up and wanna impeach you on and it
20 falls within the rules allow for impeachment, they would be
21 able to bring up any prior record as well, you understand
22 that?

23 THE WITNESS: Yes, sir.

24 THE COURT: And you also understand that if you've given
25 any prior in -- prior statements earlier that's inconsistent

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1 with what you give today that they could use those types of
2 prior statements to impeach your testimony, you understand
3 that?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Alright. Alright, and, sir,
6 it -- does does it remain your desire to be a witness in this
7 case?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. Alright, well thank you very much,
10 sir. Alright, if you would, Mr. Johnson, what I've got to do
11 is I've got to bring the jury back in here so I'm gonna ask
12 the officer to take you back to the room and and then if the
13 lawyer desires desires to use you as a witness we'll come get
14 you, okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 (Whereupon, the witness left the courtroom.)

18 THE COURT: Alright, and does the defense desire to
19 proceed with this witness?

20 MR. POOLE: Yes, sir.

21 THE COURT: Alright. Okay, what I would propose is
22 let's -- is it the State's intent to call this witness first
23 in its case?

24 MR. POOLE: It's our witness, Your Honor, we will call
25 him.

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1 THE COURT: I mean, you're gonna call him first?

2 MR. POOLE: Yes, sir.

3 THE COURT: Alright, then I I would suggest that we do
4 this witness and then I will inquire of whether or not the
5 defendant wishes to testify after we hear this witness ---

6 MR. POOLE: Yes, sir.

7 THE COURT: --- and go through that. Alright, you --
8 State ready?

9 MR. HOLLIDAY: The State's ready, Your Honor.

10 THE COURT: Alright, let's bring the jury back in.

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

12 THE COURT: Is the defense ready to proceed?

13 MR. POOLE: Yes, sir.

14 THE COURT: Yes, sir.

15 MR. POOLE: Your Honor, the defense would call Keith
16 Anthony Johnson to the witness stand.

17 THE COURT: Alright, we can ge -- have Mr. Keith Anthony
18 Johnson. Mr. Johnson, just come right up here (indicating) to
19 the witness stand and let the clerk of court swear you in.

20 (Whereupon, the witness came forward.)

21 KEITH ANTHONY JOHNSON, having been
22 first duly sworn, testified as follows:

23 THE COURT: If you will just have a seat in that chair
24 and watch out for the step, pull the chair up to the
25 microphone if you would. Yes, sir.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 MR. POOLE: May it please the Court.

2 DIRECT EXAMINATION BY MR. POOLE:

3 Q. You're Mr. Keith Anthony Johnson, ---

4 A. Yes, sir.

5 Q. --- is that right?

6 Q. And Mr. Johnson, where are you currently housed?

7 A. McCormick Correctional Institute.

8 Q. Okay, and for what?

9 A. A felony DUI with bodily injury, failure to stop for blue
10 light, resistin' arrest, um, trafficking marijuana, uh, ---

11 Q. Let me ask you about that one trafficking marijuana.

12 A. Yes, sir.

13 Q. Does that -- did you plead guilty to that charge?

14 A. Yes, sir.

15 Q. And is that the charge that arose out of a certain
16 circumstances that occurred on November 5, 2009?

17 A. Yes, sir.

18 Q. Okay. And are you also known as Slick?

19 A. Yes, sir.

20 Q. Okay, and do you remember the details of that day?

21 A. (The witness nodded in the affirmative.)

22 Q. Alright, now ---

23 THE COURT: Sir, if you will give verbal response.

24 THE WITNESS: Oh, yes, sir.

25 THE COURT: Thank you.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 BY MR. POOLE:

2 Q. Okay. I'm gonna move first of all to a a statement that
3 you gave to law enforcement, ---

4 A. Yes, sir.

5 Q. --- that would be Investigator Paul Norris and Sergeant
6 Pharis, do you recall that, the statement ---

7 A. Yeah.

8 Q. --- that you gave?

9 A. Yes, sir, I think it was three individuals.

10 Q. Okay, and in that statement did you not say that you were
11 a middle man for a marijuana transaction?

12 A. Yes, sir.

13 Q. And did you not say that the amount of the marijuana was
14 about 15 pounds?

15 A. Yes, sir.

16 Q. Okay, and did you not say that the transaction was
17 through one Reo and Ricky Mack?

18 A. Yes, sir.

19 Q. And did you not say that Ricky Mack was involved in this
20 transaction?

21 A. Yes, sir.

22 Q. Where did you give this statement?

23 A. Well in a a Ford F-150 pickup truck that the narcotics
24 agents was drivin'.

25 Q. Okay, ---

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

- 1 A. Um, ---
- 2 Q. --- let me ask ya this: How was the statement taken
- 3 inside of a pickup truck?
- 4 A. He had a little tape recorder.
- 5 Q. Okay, and in -- was that statement true?
- 6 A. No, sir.
- 7 Q. Are you sure?
- 8 A. Yes, sir.
- 9 Q. You understand you're under oath?
- 10 A. Yes, sir.
- 11 Q. Why did you tell them that?
- 12 A. It was, it was really coerced.
- 13 Q. In what way?
- 14 A. When -- well can I explain like how it got to ---
- 15 Q. Well let me just ask you just a few preliminary
- 16 questions. Do you know Ricky Mack?
- 17 A. Yes, sir.
- 18 Q. Okay, were you with him on November 5, 2009?
- 19 A. Yes, sir.
- 20 Q. And when did you get up with him?
- 21 A. Probly like 1:30 earlier that day 'cause I, uh, a friend
- 22 girl a mine stayed in Greenville and then I knew and she
- 23 dropped me off over there so we sat over his house, you know,
- 24 played the video game most a the day and I asked him to take
- 25 me -- well he said that he would take me home, know, later on

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 that day.

2 Q. Okay, where was home for ya at that time?

3 A. Spartanburg.

4 Q. Okay. Alright, go ahead.

5 A. And so I went there, I went and like, uh, asked him to
6 take me home but at the same time I had a friend guy who I was
7 supposed to been meetin' on the way home so I called a guy
8 that's supposed to been a friend guy a mine, I guess come to
9 find out he was a confidential informants for narcotic or
10 whatever ---

11 Q. Is this ---

12 A. --- so ---

13 Q. --- Re -- is this Reo?

14 A. Yes, sir.

15 Q. Okay.

16 A. So I told him, he said he would meet me right there and
17 then I would get in the truck with him.

18 Q. Right where?

19 A. At a, um, it's a I think it's a Exxon with a Burger King
20 like gas station hooked on together right off exit on Highway
21 101 when you get right off a 85 and so Ricky was takin' me
22 there so I was goin' and I was actually gettin' in the truck
23 with Reo and Reo was supposed to take me on to Spartanburg so
24 we got there and so I was goin' ---

25 Q. Let let let me, let me interrupt you for just a minute,

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 okay, to clarify somethin'. You were supposed to meet Reo who
2 you later found out to be a confidential informant.

3 MR. HOLLIDAY: Objection, Your Honor, leading the
4 witness.

5 THE COURT: I'll have to sustain the objection. You
6 wanna rephrase it?

7 MR. POOLE: Okay..

8 BY MR. POOLE:

9 Q. Okay, how did you know Reo?

10 A. I met him through a mutual friend and I like I probly had
11 known Reo probly about like nine months ---

12 Q. Um-hum.

13 A. --- and I met him through a mutual friend, ---

14 Q. Um-hum.

15 A. --- you know, I used to go, we use today go play video
16 games, smoke marijuana together, he used to come to my house,
17 we sit at my house play video games, smoke marijuana, that
18 typa thing, drink a couple beers, go out to the bar, know,
19 things like that.

20 Q. Okay, did you talk to Reo on the telephone on November 5,
21 2009?

22 A. Yes, sir.

23 Q. And as a result of that conversation what were you to
24 do?

25 A. Well, I had met Reo two days prior like maybe two, three

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 days prior to the incident that happened on November 5th to
2 see the quality of some marijuana that he supposedly had for
3 purchase, okay, so just so happened I been in Greenville, had
4 stayed at a friend girl a my house that night and so I had
5 called him, you know, well and then so my phone was goin' dead
6 and so I had called and talked to him and so he was like, he
7 was tellin' me he was in Anderson and he was like he had to go
8 meet somebody up in Greer and so by this time I asked Ricky
9 would he drop me off, you know, sayin' where Reo was at.

10 Q. Okay, now this was at -- well for what purpose were you
11 to be dropped off to meet Reo?

12 A. Well I was goin' check out some marijuana that ---

13 Q. On ---

14 A. --- Reo supposedly had.

15 Q. --- on November 5?

16 A. Yes, sir.

17 Q. Were you going to buy it?

18 A. Yes, sir.

19 Q. Okay. You gonna check it out and buy it.

20 A. Yes, sir.

21 Q. And this was near a a gas station near the

22 A. It was at a ga ---

23 Q. --- DMV area?

24 A. Yeah, it was, it was a gas station, ---

25 Q. Alright.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

- 1 A. --- a Exxon I think that's what it was.
- 2 Q. Okay, now what kinda car was he drivin'?
- 3 A. He was in a a brown Acura.
- 4 Q. Okay, and when you pulled up did you see Reo's vehicle?
- 5 A. Well yeah 'cause I was on the phone with him when we were
- 6 pullin' up, askin' him where he was at. He wa -- told me he
- 7 was in a white truck 'cause he wasn't in the usual car that he
- 8 usually drove.
- 9 Q. Was that a Dually truck?
- 10 A. Yes, sir.
- 11 Q. Okay, then did you ask Mr. Mack to to go to the truck or
- 12 did Mr. Mack go to the gas ---
- 13 A. No, ---
- 14 Q. --- pump ---
- 15 A. --- he ---
- 16 Q. --- or do anything or what?
- 17 A. No, Ricky went to the gas pump and I s -- and I got out
- 18 the car, say I'm gonna come over here to this gas tru I say, I
- 19 was tellin' him I supposed to be leavin' with him to see was
- 20 he still gonna -- was I gonna still ride on to Spartanburg
- 21 with him, you know, make sure I'm okay, ---
- 22 Q. Okay.
- 23 A. --- so I got out and I went over to the truck where Reo
- 24 was in ---
- 25 Q. Alright, let me stop ya right there. Up to this point

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 did Ricky Mack know who Reo was?

2 A. No, sir.

3 Q. Did he know the reason that you were going to meet with
4 Reo?

5 A. No, sir.

6 Q. Okay, continue.

7 A. And so I get in the truck with Reo and I give him some
8 money to count so 'cause the purchase was really, I mean, from
9 my, on my motion of discovery and like my lawyer's supposedly
10 had like heard a conversation that me and the guy had on the
11 phone, we were purchasin' 10 pounds of marijuana, not 15. I
12 was comin' to purchase 10 pounds of marijuana, not 15 pound a
13 marijuana, so I get out, I go, I get in the car, I count some
14 money out but by now Ricky pulls over beside us so they didn't
15 know each other so, I mean, both of 'em pretty good friend
16 guys a mine and so he came like, you straight, you know, you
17 ride on so I say, Reo, you gonna go and take, he was like
18 yeah, so I was like, Man, come I want you to meet a friend guy
19 so he tell me to tell Ricky to come around to driver side so
20 he got in so by now he was still countin', Reo was still
21 countin' my money so Ricky in the backseat, he don't really
22 see what's goin' on so he was like, You owe me 200 so I got
23 out the car, went to the car, I had left my a pouch a mine up
24 under the driver seat ---

25 Q. What ---

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 A. --- and ---

2 Q. Well ---

3 A. --- I had money ---

4 Q. --- let me excuse you right when you say car what car?

5 A. Well I went to the car that me and Ricky drove in, came
6 in.

7 Q. Okay.

8 A. So I was goin' to the car to get a pouch that I had from
9 up under the, I reached across the driver seat and got a pouch
10 from up under the seat ---

11 Q. Okay.

12 A. --- that had my money in it.

13 Q. Okay. I ask the Court's indulgence.

14 (Attorney/client discussion held off the record.)

15 MR. POOLE: Please bear with me just a minute, Your
16 Honor.

17 BY MR. POOLE:

18 Q. I'll show you what's been marked for as State's Exhibit
19 Number 9, I believe it's been marked for identification, and
20 ask you if you could recognize this (indicating).

21 A. Yes, sir.

22 Q. Is that the pouch you're talking about?

23 A. Yes, sir.

24 Q. Is that your pouch?

25 A. Yes, sir.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 Q. Did you get outta the Dually to go to the Acura to get
2 that pouch?

3 A. Yes, sir.

4 Q. What was in that pouch?

5 A. Some money and a bag a cocaine.

6 Q. Did Ricky know the presence of this cou -- pouch inside
7 the Acura?

8 A. No, sir.

9 Q. He had no idea?

10 A. No, sir.

11 Q. Okay. Could you stand, could you stand up just a moment,
12 please.

13 (Whereupon, the witness complied.)

14 And do you see these (indicating) bags of marijuana ---

15 A. Yes, sir.

16 Q. --- that have been introduced into evidence?

17 A. Yes, sir.

18 Q. Did Mr. Mack know that you were tryin' to purchase
19 10 pounds of marijuana?

20 A. No, sir.

21 Q. Okay, now let's back up, may sit down, ---

22 (Whereupon, the witness complied.)

23 --- to where you get out of the Dually you go to the
24 Acura and you get that pouch, okay, ---

25 A. Yes, sir.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 Q. --- wha'd ya do with it?

2 A. I gots \$200 that Reo said that I was short, owed him ---

3 Q. Okay.

4 A. --- and by then Reo phone's ringin'. He get on the phone
5 like, Yeah, everything's o -- okay so he -- a Cadillac pulls
6 up behind our truck, he get out the car and walks to a
7 Cadillac, comes back with a duffel bag so on the way back he
8 open the back, the door behind the driver seat and throw the
9 the duffel bag on the seat.

10 Q. Who does?

11 A. Reo does.

12 Q. Do you know here -- where he got this duffel bag from?

13 A. He got it outta the Cadillac.

14 Q. Was it given to him by an individual or did you see ---

15 A. Well ---

16 Q. --- an individual?

17 A. --- I I just, I seen him walk to the Cadillac door. The
18 Cadillac pulls up, he get out, he just say that he just got
19 off the phone with the guy supposedly in the Cadillac. He get
20 outs the driver seat, he walks to the Cadillac, he opened the
21 back door to the Cadillac, grabs the duffle bag, come back,
22 puts the duffel bag on the backseat, he gets back in the front
23 seat. I reach over to grab the duffel bag to try to look, I
24 didn't even get to look in the duffel bag. By the time I I'm
25 tryin' to lift the duffel bag over the backseat and next thing

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 I know was narcotics agents everywhere.

2 Q. Okay. Now is it fair to say that Ricky Mack was just
3 briefly inside the Dually truck?

4 A. Yeah, he wasn't in the truck no more than, not even
5 three, four minutes, five at the tops.

6 Q. Did he know what was going on?

7 A. No, sir.

8 Q. Did -- was he assisting in your attempted buy of drugs?

9 A. No, sir.

10 Q. Where does the cocaine come in?

11 A. The cocaine was in the pouch that I had, ---

12 Q. Okay.

13 A. --- the little pouch that you just showed me. The
14 cocaine, I had cocaine and money in that pouch.

15 Q. Were you hiding these items from him so that ---

16 A. He ---

17 Q. --- he wouldn't know?

18 A. --- I mean, no. I mean, I I wasn't, I wasn't like hidin'
19 it from him but, I mean, I ain't just say like, Hey, look what
20 I got, Nah, I I mean, I wouldn't -- I didn't -- nah, he didn't
21 know what I had. He ---

22 Q. What about the -- let me ask you this, show you what is
23 listed as State's Exhibit Number 10, see if you can identify
24 that (indicating).

25 A. Yes, sir.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 Q. What is that?

2 A. Looks like crack cocaine.

3 Q. Is that yours?

4 A. Yeah. Yes, sir.

5 Q. Where was it?

6 A. I left it in the arm rest in in the car that we was
7 ridin' in.

8 Q. Okay. Was that going to be part of the deal?

9 A. No, sir. No, sir.

10 Q. Okay. Did Ricky Mack know the presence of the crack
11 cocaine in the Acura?

12 A. No, sir.

13 Q. Did he know it it was there?

14 A. No, sir. Like before we -- when we left he had stopped
15 by the store to get some I think some bread and some eggs or
16 sumtin' for his mother and when he stopped by the house I had
17 just, I had a lotta stuff in my pockets and so I just slide it
18 in there and I, you know, I was sayin' I get it out when I got
19 to where I was goin'.

20 Q. Okay. So after you were arrested ---

21 A. Yes, sir.

22 Q. --- what happened then?

23 A. Like two a the narcotics took me to a a SUV that they was
24 ridin' in and I was talkin' to the two and I was like, they
25 was like, well you know you facin' a lotta time for havin'

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 these drugs on you and I was like, Yeah, I was like, you know,
2 what can I do to help myself out and I guess from previous
3 from me havin' talkin' like they supposedly had like audio
4 from me talkin' to a confidential informant and they really
5 wanted another guy who I was talkin' to the confidential
6 informative about so like can you help us get this guy, I'm
7 like, Yeah, I would like but I can't go to jail, I like, If I
8 go to jail I won't, I aint gonna have no way to bond outta
9 jail so they was like, Well we can get around that so then
10 I -- they called like I think there was a lieutenant was over
11 I guess the high rankin' out of the narcotics agent and he
12 come ask me was like, Like, yeah, well you know we gotta do
13 this right so we -- they they took Ricky away in a Crown
14 Victoria so we got out of a Chevy TrailBlazer, got into a Ford
15 F-150 pickup truck so they takin' me, they're not takin' me to
16 jail, they takin' me to my grandmother's house only this time
17 my grandmother she was in the hospital at Mary Black, she had
18 a stroke and was in ICU for pneumonia, she passed on November
19 18th and there was a lotta reason I was scared I, you know, I
20 couldn't get locked up, my grandmother's in jail and I was
21 tryin' to put all my fault ways off on someone else so we get
22 in the F-150, we comin' down, we get on 85, get off on
23 Business 85 so one a the guys like, We might need to get a, do
24 a little recordin' real quick because they was like, they was
25 goin' to some kinda convention and they didn't have time to do

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 the paperwork and I supposed to got with them Monday so they
2 dropped me off at my grandmother's house on 189 Weepin' Oak
3 Drive, told me to see them Monday. I had roll call, had to
4 come up here for roll call Monday so Monday I never I I I I I
5 I I went on the run from the cops and that's, you know, and I,
6 and I, and I ran from the cops and I got charged with this
7 charge for, like March or February a last year, they never
8 brought me to jail on November the 5th. I was never brought
9 to the jail and my, and my motion of discovery states and I'm
10 pretty sure he'll say that me and my co-defendant was brought
11 to jail the 950 California Avenue where I was never taken to
12 950 California Avenue Avenue on November 5th. I was charged
13 and given a bond. I can't remember the exact date because I
14 came from Cherokee County, I had to come to Spartanburg County
15 for a, uh, for family court. They came with a paper sayin'
16 I'm charged with trafficking crack and marijuana and I guess
17 they by me not holdin' up my end of the bargain sayin' that I
18 would help them set some other guys up they decide to charge
19 me with the charge and, I mean, I pled to the marijuana charge
20 and my wo -- and my my lawyer got the trafficking throwed out,
21 he said it was due to they were droppin' the trafficking
22 charge because I agreed to plead to the trafficking marijuana
23 charge.

24 Q. Okay. Now you gave a statement though and you swore that
25 it was the truth. I mean, as -- you didn't sign a statement,

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 did you? Is that right, you did not sign a written
2 statement?

3 A. No, sir.

4 Q. Okay, but did you swear that that what you told law
5 enforcement was the truth on November 5, 2011?

6 A. Like like like I, like I told you, that statement is on
7 the tape recorder. I read some a the statement from 'cause
8 Mr. Crane gave me a copy of the statement yesterday and like,
9 I mean, you can see like discrepancies in it where you can see
10 like it's a conversation goin' on and and, I mean, I mean, I
11 I'm pretty sure they got the tape, they can play the tape, I
12 mean, I'm I'm I'm I'm pretty sure that because like the ---

13 Q. Well ---

14 A. --- the statement was given on the tape recorder.

15 Q. --- let me ask you this: ---

16 A. Yes, sir.

17 Q. --- Did you implicate Ricky Mack in your conversations
18 with law enforcement? Did you, did you say that he was
19 involved in this?

20 A. On that statement?

21 Q. Yes, sir.

22 A. Yes, sir, I did.

23 Q. Alright, so that's a lie.

24 A. Yes, sir.

25 Q. Okay.

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

- 1 A. Yes, sir, it wa -- like they was like well we wanna see
2 how you gonna play ball then, you know, 'cause they 'cause the
3 guy said, the the the I think it was a lieutenant somebody
4 like I'm gonna take a gamble with you, I'm gonna see how you
5 gonna play ball so he had me say this stuff on him.
- 6 Q. Okay, did the CI in this case, that is Ray, ever meet or
7 know Ricky Mack?
- 8 A. Who Reo?
- 9 Q. Reo, ---
- 10 A. No ---
- 11 Q. --- yeah.
- 12 A. --- no, sir, except when I pulled up when I would try to
13 introduce him, you know, like this my friend he, you know,
14 make sure I was get home okay.
- 15 Q. Okay. Did Ricky Mack ever have possession of marijuana,
16 cocaine or crack cocaine?
- 17 A. No, sir.
- 18 Q. Okay. And you were there to buy the marijuana, ---
- 19 A. Yes, sir.
- 20 Q. --- you had the cash, ---
- 21 A. Yes, sir.
- 22 Q. --- cocaine was yours ---
- 23 A. Yes, sir.
- 24 Q. --- and he didn't know the presence of the crack cocaine
25 in the Acura, ---

KEITH ANTHONY JOHNSON - DIRECT EXAMINATION BY MR. POOLE

1 A. No, sir.

2 Q. --- is that right?

3 A. Yes, sir.

4 Q. Is that the truth?

5 A. Yes, sir.

6 Q. Why should this jury believe ya now?

7 A. Because, I mean, Ricky Mack was a real good friend a
8 mine, I mean, and I was bein' selfish at the time. I was
9 goin' through things, like I said, my grandmother was sick and
10 yeah, I was scared at the, at at the time and I, and I took my
11 wrong faults and put 'em on somebody else and somebody that's
12 always been a good friend a mine, I mean, and they, and they
13 kinda like that I know that, I mean, we're we're known it
14 kinda like wrecked our friendship and, I mean, friendship is
15 sumtin' that's, you know, it's hard to come by now a day and
16 I, and and and and I just wanna, I just wanna take
17 responsibility for my actions and I don't want nobody else to
18 get in no trouble behind sumtin' that I've done. I mean, I
19 just, you know, I just wanna s -- he he had nothin' to do with
20 nothin'. He didn't know, he was takin' me -- he wasn't even
21 takin' me to take me all the way to Spartanburg, he was
22 droppin' me off to the guy that was supposed to been the
23 confidential informant and the thing, I mean, like I say, oh,
24 pretty sure 'cause when my lawyer he tell me he heard the tape
25 that the solicitor supposed to play for him where he's sayin'

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 I have a conversation with the CI, the whole conversation on
2 the phone was supposed to be like yeah, we discussed this and
3 that and I'm pretty sure on the same phone conversation I'm on
4 the phone with the CI say well, I'm gonna get a ride wit you,
5 we gonna stop by a bar and get us a couple drinks then go on
6 to Spartanburg. I mean, I don't know if ya'll been aware of
7 all this or that, I mean, but I just wanna take my
8 responsibility and I don't want him to be faulted for nuttin'
9 that I did. I mean, I feel like I'm in the wrong for puttin'
10 him in the predicament that I got him in, I -- 'cause he had
11 nothin' to do with nothin' that was goin' on at the time, he
12 was droppin' me off. I was leavin' with the guy that was
13 supposed to be my friend but turns out to be a confidential
14 informant and it's ---

15 Q. Thank you, Mr. Johnson, answer any questions that
16 Mr. Holliday has for you.

17 CROSS-EXAMINATION BY MR. HOLLIDAY:

18 Q. Mr. Johnson, you said you're you're good friends with
19 Mr. Mack ---

20 A. Yes, sir.

21 Q. --- and you're here today to help him.

22 A. I'm here today to tell the truth.

23 Q. Well when when it's convenient you tell the truth.

24 A. I mean, what what that supposed to mean?

25 Q. Like when you're facin' jail time ---

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

- 1 A. How how is that ---
- 2 Q. --- and you don't want to be arrested, you tell them that
- 3 it's Mr. Mack but now in court you tell 'em it's not.
- 4 A. See, I don't, I mean, I don't really know you, I mean,
- 5 what's your name, sir?
- 6 Q. You answer my questions.
- 7 A. Okay. Now because as I'm gonna tell you it's like you
- 8 you got investigators that's out there right, I guess they
- 9 come and tell you stuff and I guess you bein' the prosecutor
- 10 you take that and you run with it so, I mean, like your cops
- 11 tell lies. Your cop said I went to jail November 5th, it's in
- 12 black and white, so is it right for your cops or investigators
- 13 to tell you a lie?
- 14 Q. I don't know what you're talkin' about but ---
- 15 A. Oh, okay.
- 16 Q. When you were arrested, um, ---
- 17 A. Well I wasn't arrested that night now.
- 18 Q. Okay, I'm sorry. I'm sorry.
- 19 A. I wasn't arrested that night ---
- 20 Q. When the officers approached you that evening, ---
- 21 A. Yes, sir.
- 22 Q. --- they found marijuana, ---
- 23 A. Yes, sir.
- 24 Q. --- they found cocaine, ---
- 25 A. Yes, sir.

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

- 1 Q. --- and they found crack and previously we had testimony
2 that it was 13.73 pounds of marijuana, 12.02 grams of cocaine
3 and 20.15 grams of crack, is it your testimony today that all
4 of those drugs were under your control and dominion ---
- 5 A. Yes, sir.
- 6 Q. --- and they belonged to you ---
- 7 A. Yes, sir.
- 8 Q. --- and you're claimin' full responsibility over ---
- 9 A. Yes, sir.
- 10 Q. --- those drugs? Where are you -- you said you you're
11 currently incarcerated?
- 12 A. Yes, sir.
- 13 Q. What are you incarcerated for?
- 14 A. Um, ---
- 15 Q. Trafficking marijuana?
- 16 A. Yes, sir.
- 17 Q. Assault and battery of a high and aggravated nature?
- 18 A. Yes, sir.
- 19 Q. Possession of a weapon during the commission of a violent
20 crime?
- 21 A. Yes, sir.
- 22 Q. Escape?
- 23 A. Yes, sir.
- 24 Q. And felony DUI?
- 25 A. Yes, sir.

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

- 1 Q. And how much time are you doin' on those charges?
- 2 A. Fifteen years.
- 3 Q. And when did you go in?
- 4 A. I was sentenced June 28th of 2012.
- 5 Q. So you got a lotta time left to do.
- 6 A. Yes, sir.
- 7 Q. So by takin' responsibility for these other drugs -- you
- 8 you pled to marijuana charge, is that right?
- 9 A. Yes, sir.
- 10 Q. And today you're takin' responsibility for these other
- 11 drugs.
- 12 A. Yes, sir.
- 13 Q. And you're doin' 15 years already?
- 14 A. Yes, sir.
- 15 Q. So you don't really have that much to lose by takin'
- 16 responsibility off a Mr. Mack and puttin' it on you, do you?
- 17 A. I I mean, I have a lot to lose.
- 18 Q. Like what?
- 19 A. I mean, I have a lot to lose: ---
- 20 Q. You're ---
- 21 A. --- my integrity, ---
- 22 Q. --- 15 years in jail.
- 23 A. --- my integrity. I mean, c'mon. I mean, ---
- 24 Q. Mis ---
- 25 A. --- it's ---

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

- 1 Q. --- Mr. Johnson, your integrity?
- 2 A. I mean, like, I mean, like you you, I mean, you don't,
- 3 you don't, I mean, don't, don't sit up here like, I mean, it's
- 4 like you tryin' to just sit there like downgrade the -- I
- 5 mean, I don't, I I didn't, I didn't come here -- I came here
- 6 to tell the truth, that's what I came here to do.
- 7 Q. You came in here to help Mr. Mack.
- 8 A. No, sir.
- 9 Q. You came in here to take responsibility for those
- 10 drugs ---
- 11 A. For what I did.
- 12 Q. --- because he was partners with you to go buy the drugs.
- 13 A. No, sir.
- 14 Q. Why'd he get in the truck? Why'd he get outta the
- 15 Acura?
- 16 A. 'Cause I was introducin' him to another friend a mine.
- 17 Q. And he gets in the truck with him?
- 18 A. Yes, sir.
- 19 Q. He didn't just stand outside or shake hands or -- why'd
- 20 ya'll meet in a parking lot?
- 21 A. That's where Reo wanted to meet at.
- 22 Q. Okay, that's where Reo wanted to meet at. How did you
- 23 know Reo?
- 24 A. I ta -- met him through a mutual friend.
- 25 Q. Okay, and had you had some conversations with Mr. Reo

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 leading up to this point?

2 A. Yes, sir.

3 Q. 'Bout how many times had you met with Mr. Reo?

4 A. How many times I met with him?

5 Q. How how -- when you see him, how often did you see him?

6 A. Probly about two or three times a week 'cause he was
7 workin', he was workin' as a chef at Ruby's Tuesday and one
8 time he was workin' as a chef at Moe's Grill on Pelham Road.

9 Q. Okay, how did this this marijuana buy come to be?

10 A. Like I said, Reo I just go to apartment, we play video
11 games. I used to sell Reo marijuana, you might, you know, I
12 just let him borrow money or whatever, he'll pay me back
13 whenever he get his check so he was like, Well I got some
14 Mexican friends a mine who I be trafficking on, waitin'
15 marijuana for, I say, I was like, Well, you know, try to hook
16 sumtin' up for me so I can, you know, try to get on my feet.

17 Q. Okay, 13 sumtin' pounds a marijuana, 'bout how much does
18 that sell for?

19 A. I don't know 'cause I wasn't purchasing 13 pounds, I was
20 purchasin' 10 pounds a marijuana, ---

21 Q. Oh, okay ---

22 A. --- he was chargin' me \$850 a pound.

23 Q. Eight hundred fifty dollars a pound so that be ---

24 A. Eighty-five hundred dollars.

25 Q. --- \$8500. Okay, so how much money did you bring to the

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 drug buy?

2 A. Well like I said, I had gave Reo some money to count, he
3 said I was like 200 short ---

4 Q. Okay.

5 A. --- so I got the pouch and I had some more money and got
6 it from there.

7 Q. So how much money did you have?

8 A. Probly about \$11,000, somewhere around there.

9 Q. About \$11,000, okay.

10 A. Yes, sir.

11 Q. Um, how how long do you know Mr. Mack?

12 A. Been knowin' him for about then at the time probly about
13 like 2012, nah, I been knowin' him, we met 2000, probly 'bout
14 nine years.

15 Q. 'Bout nine years. And you took him along with you to do
16 a drug buy just so he could give ya a ride?

17 A. No, no. Oh, no, no, no, no, no. I was in
18 Greenville, ---

19 Q. Okay.

20 A. --- at a friend girl a my house. I just called 'cause I
21 was over there, I hadn't seen him in a couple month. What you
22 doin', like nothin' nothin', I'm like, Well, I'm over in you
23 area, you know, come by hang out wit ya for a little while, I
24 like well I might need a ride to Spartanburg later on, he was
25 like, You know, you need to get home, I get you home, so I

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 went over there, we sat over there, played video games, smoked
2 a little marijuana, you know, boom, so now Reo done started
3 callin' me, he's tellin' me he in Anderson so that's when I
4 tell him -- well he was like come, you know, for people. Like
5 I say, I had met him like two or three days prior to that at
6 the same location so finally then I went awhile but I'm tryin'
7 to call him back, he aint answerin' the phone so he's like he
8 had to come to Greer, he like had to come to Greer and talk to
9 somebody in Greer, he was like, Can you meet me, um, where you
10 met me the other day, I said, Yeah, I say but, um, I'm I'm
11 over a friend guys a my house, I say, know what I'm sayin',
12 I'll meet you there you'll go ahead and bring me back to
13 Spartanburg, he was like, Yeah, I'll take you can ride on back
14 to Spartanburg with me so that's when I asked Ricky, Yo, I'm
15 ready to go, you know, take me right here to meet this guy,
16 meet my friend guy, my other friend guy, ---

17 Q. Who's that?

18 A. --- I say he gonna give me a ride on back to Spartanburg
19 which was Reo.

20 Q. And the friend guy was gonna sell you the 10 pounds a
21 marijuana?

22 A. Yeah.

23 Q. And Mr. Mack had no idea that was gonna happen?

24 A. No, sir.

25 Q. That's your testimony here today?

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

- 1 A. No, sir.
- 2 Q. And you expect this jury to believe that and you know
- 3 you're under ---
- 4 A. Yes.
- 5 Q. --- oath?
- 6 A. Yes, sir.
- 7 Q. Okay. After the the bi -- the buy happens and and the
- 8 bust happened and you're givin' a statement to the officers
- 9 you told them that you were and I quote, I was the middleman
- 10 for a marijuana transaction.
- 11 A. Yes, sir.
- 12 Q. And then they said who who was the transaction through
- 13 and you said Reo and Ricky.
- 14 A. Yes, sir.
- 15 Q. Who were you referring to?
- 16 A. Reo and Ricky.
- 17 Q. Mr. Bryan Reo and Mr. Ricky Mack?
- 18 A. Yes, sir.
- 19 Q. Okay. Why did you tell them that that day?
- 20 A. Because I told you the whole thing was coerced before a
- 21 tape interview. Can you -- di -- can you play the tape
- 22 instead a my havin' to go ---
- 23 Q. It's ---
- 24 A. --- through that? Can you play it?
- 25 Q. --- it was coerced?

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 A. Yeah, it was coerced. We talked about, me and the
2 investigators talked about this before they played the tape
3 recorder.

4 Q. So why were you charged?

5 A. Hum?

6 Q. If you, if you ---

7 A. Because I didn't, because I guess 'cause I took off
8 runnin'. They didn't charge me that night, ---

9 Q. 'Cause you took off ---

10 A. --- sir.

11 Q. --- runnin'.

12 A. No, they did -- they never took me to jail. I agreed to
13 become an informant for the narcotics.

14 Q. So you ---

15 A. They never took me to to jail.

16 Q. You weren't tryin' to keep yourself from gettin' charged
17 that night?

18 A. Hum?

19 Q. You weren't tryin' to keep yourself from gettin' charged
20 that night when you gave a statement or were you trying to
21 keep yourself from being charged that night? Did you, did you
22 give -- why'd you give that statement?

23 A. 'Cause they told me that they would be able to help me
24 out.

25 Q. Okay, how did they help you out?

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY.

1 A. I mean, they didn't because I never -- when -- I never
2 helped them get nobody else.

3 Q. Where'd ya get the crack from?

4 A. Hum?

5 Q. Where'd you get the crack cocaine from?

6 A. That's irrelevant I think.

7 Q. I I don't ---

8 A. I mean, I ---

9 Q. --- think it is.

10 A. --- I I mean, I I I think that's irrelevant.

11 Q. Where'd you get the crack cocaine? You don't know ---

12 A. From another, ---

13 Q. --- 'cause it wasn't yours.

14 A. --- from from ---

15 Q. You don't know where you got it because it wasn't yours.

16 A. It was ---

17 MR. POOLE: Your Honor, ---

18 THE WITNESS: --- mine.

19 MR. POOLE: --- excuse me, but I think if he wishes to
20 invoke the Fifth he can on that question.

21 THE COURT: Well if he's saying it's irrelevant, he needs
22 to answer.

23 THE WITNESS: Hum?

24 THE COURT: You need to answer the solicitor's questions
25 if you would.

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 BY MR. HOLLIDAY:

2 Q. Where'd you get the crack from?

3 A. From a friend guy, another guy that I was dealin' with.

4 Q. Another friend guy. Okay, where'd you get the cash
5 from?

6 A. From sellin' drugs.

7 Q. From sellin' drugs you got \$11,000?

8 A. From sellin' drugs.

9 Q. And the \$11,000 was all the cash you brought to the
10 deal?

11 A. I think so.

12 Q. Okay. The crack cocaine you said it was a friend guy,
13 what's his name?

14 A. I plead the Fifth.

15 Q. What's his name?

16 A. I plead the Fifth.

17 Q. How's that gonna help you? You're con -- you're
18 incriminating someone else, you're not incriminating yourself.

19 A. I mean, I mean, I ain't, I aint gonna sit up here and
20 give you a guy name ---

21 MR. POOLE: Your Honor, if he invokes the Fifth ---

22 THE WITNESS: --- that hadn't been incarcerated.

23 MR. POOLE: --- then I think, I think it ---

24 THE COURT: Sir, ---

25 MR. POOLE: --- stops.

KEITH ANTHONY JOHNSON - CROSS-EXAMINATION BY MR. HOLLIDAY

1 THE COURT: --- I believe it's my determinations as to
2 whether or not that is a proper indication of the Fifth
3 Amendment. I don't believe that it is not and you need to
4 answer the solicitor's question.

5 THE WITNESS: Your Honor, ---

6 THE COURT: Sir, I instruct you to answer the solicitor's
7 question.

8 THE WITNESS: I plead the Fifth.

9 THE COURT: I've instructed you to answer the solicitor's
10 question.

11 BY MR. HOLLIDAY:

12 Q. You're protecting the person you brought those drugs from
13 just like you're protecting Mr. Ricky Mack here today, aren't
14 you, 'cause it's all a conspiracy and you're all in it
15 together ---

16 A. Um-hum.

17 Q. --- and you know you're doin' 15 years in jail and you're
18 not gonna get much more ---

19 A. You know I'm ---

20 Q. --- time to take possession of these drugs but you're
21 here today to try to get Mr. Mack outta this, aren't you?

22 A. No, sir. I'm here to take my responsibility for what I
23 did, that's why I pled to the marijuana, it was parta my plea
24 agreement.. If I was tryin' to get outta sumtin', I woulda
25 never pled to the marijuana charge.

KEITH ANTHONY JOHNSON - REDIRECT EXAMINATION BY MR. POOLE

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

2 THE COURT: Okay, any redirect limited to what he went
3 into?

4 MR. POOLE: Yes, sir.

5 REDIRECT EXAMINATION BY MR. POOLE:

6 Q. You were asked a lot of times, Mr. Johnson, about what
7 you had to lose, you're doing -- how old are you?

8 A. I'm 36-years-old.

9 Q. Okay, and you're doing a 15-year sentence?

10 A. Yes, sir.

11 Q. Okay, you ---

12 A. I have a da -- I gotta daughter that'll be 2 months
13 years old Monday. I got a lot to lose, I done lost a lot by
14 bein' incarcerated my my kids.

15 Q. Do you understand that you could be charged with perjury,
16 sir?

17 A. Yes, sir.

18 Q. Do you understand that you could be charged with the
19 trafficking cocaine?

20 A. Yes, sir.

21 Q. Do you understand that you could be charged with
22 trafficking crack?

23 A. I already been charged with those charges.

24 Q. Do you know that you could be recharged?

25 A. I mean, you ---

KEITH ANTHONY JOHNSON - REDIRECT EXAMINATION BY MR. POOLE

1 Q. Did your lawyer tell ya that?

2 A. Nah, he didn't tell me that ---

3 Q. Well ---

4 A. --- 'cause ---

5 Q. --- isn't ---

6 A. --- I asked him, ---

7 Q. --- is ---

8 A. --- no, listen, listen, no, listen. I asked him, I said
9 why did they drop my crack cocaine charge. You know what he
10 told me? because you pled to the marijuana, it was parta your
11 plea agreement. He didn't tell me no they can recharge you
12 'cause he told me that I I could probly get charged with
13 perjury.

14 Q. Okay. Alright, so you do have a lot to lose, don't
15 you?

16 A. Yes, sir.

17 Q. Okay, thank you.

18 MR. HOLLIDAY: Nothin' further, Your Honor.

19 THE COURT: Thank you, sir, you may step down.

20 (Whereupon, the witness left the stand.)

21 THE COURT: The lawyers approach.

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Alright, ladies and gentlemen, I've got to
24 take a brief matter of law up with the attorneys that has to
25 be done outside of your presence. I continue to remind you

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1 not to have any discussions among yourselves about anything
2 involving the case but if you would please retire to the jury
3 deliberation room, we'll get you back just in a moment.

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

6 (Attorney/client conference held off the record.)

7 THE COURT: I tell you what, let -- I'm gonna step down
8 for a few minutes.

9 MR. POOLE: Thank you, Your Honor.

10 THE COURT: Um.

11 (Whereupon, a recess was taken.)

12 THE COURT: Alright, Mr. Mack, if you will please stand
13 and let the clerk of court swear you in, I need to ask you
14 some questions.

15 RICKY HEWENS MACK, having been
16 first duly sworn, testified as follows:

17 THE COURT: Alright, thank you, Mr. Mack. Mr. Mack, at
18 this time I'm going to explain to you certain of your rights
19 and if you do not understand anything that I say, please let
20 me know and if you want me to explain anything in more detail,
21 please let me know that as well, do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay, and if ever durin' this process if you
24 can't hear me, let me know and I'll speak up. I need you to
25 speak up too because this lady over here (indicating) to my

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1 right, she's taking down everything that's said and you don't
2 have the benefit of a microphone like I do, okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you. We have now reached the stage of
5 the trial where you may present your defense. You have the
6 right to claim protections given to you by the Fifth Amendment
7 to the Constitution of the United States. This amendment
8 states in part no person shall be compelled in any criminal
9 case to be a witness against himself, this means that you
10 cannot be required to testify in this case. You have the
11 right to testify on your own behalf, however, no one can make
12 you testify, this is a personal right and no one can waive
13 this right except you. If you decide to testify, you will be
14 subject to the same rules that govern other witness and you
15 may be examined and cross-examined on any relevant issue in
16 this case. In addition, if you have any convictions involving
17 dishonesty or false statements or for crimes punishable by
18 imprisonment for more than one year and the Court determines
19 that the probative value of admitting this evidence outweighs
20 its prejudicial effect to you then the solicitor's office
21 would be able to introduce your record to attack your
22 credibility. If you decide to testify, this decision on your
23 part must be freely, voluntarily, knowingly and intellectually
24 made by you with knowledge of the protections given to you by
25 the Fifth Amendment and the consequence of your decision. Now

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1 if you decide not to testify, I will instruct the jurors that
2 they cannot give that fact that you did not testify any
3 consideration whatsoever and there is to be absolutely no
4 prejudice to you because you did not testify, it is left
5 entirely up to you whether or not you testify. You may talk
6 with your attorney, your family, your friends and anyone else,
7 the final decision will be left entirely up to you. Do you
8 understand what I've just explained to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions about what I have
11 explained to you?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you discussed with your lawyer whether
14 you should or should not testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish or do you feel like you need to
17 talk to your lawyer anymore about this whether you'll testify
18 or not?

19 THE DEFENDANT: No, sir.

20 THE COURT: And, sir, ha -- do you wish to testify in
21 this trial?

22 THE DEFENDANT: No, sir.

23 THE COURT: Alright. Has anybody promised you anything
24 or threatened you in any way in order to get you to make the
25 decision not to testify?

MOTIONS AND MATTERS

1 THE DEFENDANT: No, sir.

2 THE COURT: Alright. Alright, alright, thank you, sir.
3 If ever during this process -- well if you need to ever speak
4 to your lawyer again about it before we proceed, just let me
5 know and I'll allow you to do so in private but we'll proceed
6 on. Thank you, sir, you may be seated. Alright,
7 what -- and the defense has no other witnesses.

8 MR. POOLE: That's correct, Your Honor.

9 THE COURT: Okay, what I would say let's bring the jury
10 back, let the defense rest in front of the jury. Is the
11 State, State have any reply?

12 MR. HOLLIDAY: No reply, Your Honor.

13 THE COURT: I'll ask the State that question and then
14 I'll send the jury to lunch.

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

16 THE COURT: Defense wish to proceed?

17 MR. POOLE: Your Honor, at this time the defense rests.

18 THE COURT: And the State intend to call any reply?

19 MR. HOLLIDAY: No, Your Honor, the State has no reply.

20 THE COURT: Alright, madam forelady, ladies and gentlemen
21 of the jury, all of the evidence has now been presented to you
22 that will, that will be a basis of your consideration, your
23 deliberations. Given the hour that it is I am going to let
24 you have a lunch break at this time then we will return back
25 from lunch we'll receive the closing arguments from the

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1 attorneys and then I will instruct you on the law applicable
2 to the case and then you will retire to begin your
3 deliberations. At this, at this juncture as it is throughout
4 the trial but especially at at this juncture, do not do any
5 type of independent research or investigation into anything
6 involving the case while you're at your lunch break as well as
7 do not have and start any discussions with anyone about
8 anything involving the case. I would ask, let me take a look
9 at that clock up there a -- ta -- ask if you would to please
10 be back in the jury deliberation room by 1:45 and then we will
11 begin with the closing arguments but you may go with the
12 bailiff. Thank you very much.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Any motions?

16 MR. POOLE: Yes, sir. At this time we'd renew our
17 exception to the denial of our pretrial motion to suppress,
18 also a renewal of the motion for a directed verdict based upon
19 grounds I've already stated and the fact that the arguments
20 has been enhanced by the presentation of the defense
21 witness.

22 THE COURT: Alright, and again, based upon the standard
23 that this court has to apply even if assuming the position of
24 the defense has been enhanced, it still would be a matter of
25 for the jury when the evidence is viewed in the light most

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1 favorably to the State again drawing the, drawing the
2 inferences in favor of the State from the evidence that I
3 would have to deny the motion based upon the standard this
4 court has to apply based on what this court recalls the e --
5 the testimony to be.

6 Alright, I've received the jury charges from the
7 attorneys, we'll see ya'll back maybe if we could reconvene
8 maybe a few minutes before 1:45 just to see if there's any
9 final matters.

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

11 THE COURT: Now since the defense presented evidence,
12 that means that the State will go last. You gonna require
13 them to open too?

14 MR. POOLE: No, sir.

15 THE COURT: Okay. Alright, how long do you think for
16 arguments?

17 MR. HOLLIDAY: Brief and 15, 20 minutes max.

18 MR. POOLE: The same.

19 THE COURT: Okay, so we can probly get it to the jury by
20 three, okay. Okay. Alright, thank you very much. We'll step
21 down.

22 (Whereupon, a recess was taken.)

23 THE COURT: Can I see the lawyers for a moment?

24 (Whereupon, a bench conference was held off the record.)

25 THE COURT: Alright, I've had a bench conference

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1 concerning the jury charges with the lawyers, they've reviewed
2 the verdict form. After the charges are presented if any of
3 the lawyers wish to take exception to the charges, they may.
4 Anything else before we bring the jury back?

5 MR. HOLLIDAY: Nothin' from the State, Your Honor.

6 MR. POOLE: Nothing here.

7 THE COURT: Bring the jury back.

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

9 THE COURT: Madam forelady, ladies and gentlemen,
10 parties have presented their evidence in this case, it is now
11 time for the attorneys to make what is called their "closing
12 arguments" to you. The arguments of the attorneys are not
13 evidence in this case. Their statements and arguments are
14 meant to help you understand the evidence that has been
15 presented and apply the law to that evidence. You should
16 disregard any remark, statement or argument which is not
17 supported by the evidence presented during this trial or the
18 the law that I will explain to you after the arguments. At
19 this time we will receive the closing arguments from the
20 attorneys.

21 MR. POOLE: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. POOLE: I wanna thank ya'll, folks, again for paying
24 attention and being here for what has turned out to be a
25 little longer than probably anticipated by everyone and I'm

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1 certain anticipated by ya'll. The -- to briefly reiterate a
2 couple things, Mr. Mack doesn't have to prove anything, that
3 is so important, he doesn't have to prove anything whatsoever.
4 The burden is on the State to prove that Mr. Mack is guilty
5 beyond a reasonable doubt and you'll hear enough about that
6 and a lot of you already heard enough about it probly you can
7 quote in your sleep but you'll here a lot about reasonable
8 doubt later on from the judge so having said all that I I
9 would like to, I think I can would like to point out that the
10 presentation of this entire case, that is, both State's case
11 and the defense is clearly marked by a dividing line and you
12 can draw a line just straight through this case and it's right
13 down the middle, it separates the State's case from what the
14 defendant presented which was the witness Mr. Keith Anthony
15 Johnson. Now if we take the State's case, let me talk briefly
16 about that and what it consists of and what it does not
17 consist of, I submit to ya, ladies and gentlemen, that if law
18 enforcement is going to get into the business of selling drugs
19 in order to secure convictions then law enforcement oughta do
20 a better job of getting their evidence together and giving it
21 to a solicitor so that a solicitor can secure convictions
22 against those who deserve convictions, that is guilty people,
23 okay, but what we got here if you remember the very first
24 witness was Investigator Norris right here (indicating), he
25 testified as to what he saw, alright. He testified that he

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1 had some contact with the CI, I wanna talk about the CI in a
2 minute, but he had contact with this CI and the only reference
3 made to any name whatsoever was Slick, a/k/a Keith Johnson,
4 alright. Ricky Mack was not mentioned at all in the
5 conversations between or communications Mr. Norris,
6 Investigator Norris had with the CI, okay. Now typically when
7 you have a CI you've got a wire, okay. Where is any audio or
8 visual in this case? None nowhere.

9 THE COURT: Excuse me.

10 MR. POOLE: Zilch, nada, nothin'. Where's the CI? I
11 will talk about that in just a minute but all we got and and
12 and Investigator Norris just saw along with others what was
13 going on outside this Dually and outside the Acura, that's
14 all, they saw what was going on around. No evidence has been
15 presented by the State as to what was goin' down inside of the
16 Dually, okay, nothing whatsoever about what kinda transaction
17 was going on, who knew what was in there, who had possession
18 of drugs, be it cocaine, marijuana or crack cocaine and I
19 don't even like to look at this junk, I don't even like to
20 touch it, I don't like to even be around it but that's what
21 we're here about. The state is trying to to -- tie this
22 evidence in with Mr. Mack, okay, now and then Mr. Norris he
23 goes over to the Acura and under the pretext of doing an
24 inventory, you know, and opens up a console inside an
25 automobile that belongs to someone other than Mr. Mack and

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1 finds the crack cocaine instead of getting a a search warrant
2 in order to be able to legally effect such a search which is
3 done all the time but he did not do so so that piece a junk is
4 in here, okay. Now just because all this stuff is in this box
5 and was allegedly at the scene still does not tie Mr. Ricky
6 Mack into the case at all. We have only what we have is what
7 Mr. Investigator Paul Norris stated. He was this first
8 witness. Those other witnesses were fine, there was no need
9 for me to ask them any questions whatsoever, they're the
10 technicians, they're the ones that are important in
11 ascertaining weight, nature, quantitative, qualitative
12 analysis, they all are experts in that so there's nothing
13 contesting about the fact that these items are what they are.

14 Now where is the CI, you know? Where's Waldo? Where's
15 Waldo? Where is he or she? Why aren't they here? They dead?
16 Unavailable? Didn't wanna come to court? Didn't wanna come
17 to court because they didn't wanna testify in this case
18 because Mr. Mack is innocent? Where is he or she? You hardly
19 have these cases when you have a CI, a CRI or CI, whatever you
20 wanna call it, you have an a informant and the State goes
21 forward without them, it's astounding absolutely.

22 Now there was one thing I asked Mr. Investigator Norris
23 about at the toward the end of his testimony and that was
24 about the Cadillac coming up. Now I think that's important
25 because it seems that the marijuana came on scene, on the

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1 scene just like that. Somebody pulls up in a Cadillac as a
2 result of a trigger phone call, if I've got my, if I'm
3 listening right, as a result of a triggering phone call comes
4 the -- throws the marijuana in the Dually and it happens just
5 like that in a flash but that wasn't mentioned on direct
6 examination, it was only mentioned after I started asking
7 about it to Investigator Norris. Alright, so what what
8 difference does all that make? So let's jump across the line
9 and go to the defense and the defense is bas -- it's all this
10 this witness that came in today whose doing a 15-year sentence
11 dressed in orange, chained, shackled, poweled and he comes in
12 and he testifies that he's known Ricky Mack, that he's friends
13 with him, you know, well you don't hang around with people you
14 usually don't know and that the events of the day was that he
15 happened to be over in Greenville although he lives in
16 Spartanburg, he being Mr. Anthony, and they were play --
17 Mr. Mack living over in Greenville they hook up, he says, I'll
18 give you a ride back over to Spartanburg, alright, and so they
19 come over near this area where the prearranged meeting between
20 Reo and Mr. Anthony is gonna take place. Mr. Mack doesn't
21 know what's goin' on, he just stops to get gas although
22 Anthony tells Mr. Mack to stop in this area. Mr. Anthony goes
23 over to the Dually, starts doin' the deal, okay, and then
24 Mr. Anthony asks Mr. Mack, said, Come here, I got somebody I
25 want you to meet, that's all. Mr. Mack goes over, makes the

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1 mistake of getting in the car not knowing what's going on and
2 then, bang, the triggering phone call is made, the duffel
3 bag's literally thrown in there, everybody comes outta the
4 woodwork, both are arrested, Mr. Mack is handcuffed, I don't
5 even know if Mr. Anthony was, they knew what Anthony was up to
6 and then they go over to the Acura, rummage around and come up
7 with the crack, alright. You saw this man, you saw him
8 testify. He gave contradictory statements. He told law
9 enforcement something different than what he said today and
10 the judge is gonna tell you about what the law is on
11 inconsistent statements and all that but I submit to ya'll
12 that somebody who is willing to come in here even though
13 they're doing a 15-year sentence for trafficking marijuana,
14 which is one of the charges that Mr. Mack is charged with,
15 comes in here and has children and tells something different
16 under oath, well that's perjury and he's convicted himself out
17 of his own mouth under oath on possession of crack cocaine and
18 possession of cocaine, he's already pled to the marijuana.
19 Ya'll saw him, he talked to you, he looked at ya, he told the
20 truth today, that's the defense. If he's in his thirties and
21 he's convicted himself by his own testimony, we don't even
22 know could -- if he'll see the light of day outside the
23 Department of Corrections so he put it on the line, he put it
24 on the line. Sure he's friends with Ricky Mack but I'm not so
25 sure I good enough friends with anybody to where I put the

CLOSING ARGUMENTS

1 rest of my life on the line by comin' into a courtroom after
2 I'm already doin' time when I don't have a thing to gain, not
3 one thing but everything to lose. There ya are, that's what
4 you got, this case is that, it's heart attack serious, it's a
5 very serious offense. I don't like the presence of these
6 drugs in our community any better than anybody else does but
7 this is not the way to go about tryin' to secure a conviction
8 when somebody has to be, happens to be merely present,
9 happened to be merely there without knowledge of what's going
10 on, without possession, either actual or constructive of the
11 drugs, without possession of the drug money used in the
12 transaction and that's what you gotta have, you gotta have a
13 guilty act associated with a guilty mind, ya have to have a
14 criminal intent associated with a criminal act. Mr. Mack was
15 merely present and mere presence is the law that Judge Hayes
16 is going to talk to you about. I ask ya that after you have
17 heard the solicitor and after you've heard the jury
18 instructions from Judge Hayes that you consider all these
19 things but the presentation of this entire case falls, it
20 falls against Mr. Mack. What I mean by that it fails and
21 falls and stumbles and comes down at the end a the State's
22 case when they rested, okay. The CI is not here, I can't say
23 that enough, the CI is not here. Where is he or she? Why why
24 are they absent? It fails and then we bring in someone who
25 puts everything on the line with everything to lose and

CLOSING ARGUMENTS

1 nothin' to gain, serious business. I appreciate your
2 consideration but what I ask for you to do in this case is
3 find Ricky Mack not guilty because that is a verdict that
4 speaks the truth, it is the truth and always will be the
5 truth but we can't come back after this day and say, Well,
6 maybe something was lacking, maybe there was a mistake or
7 something, this is the hour, this will be an hour of decision
8 in a very serious case. If I said anything else, I think I'd
9 be either boring you or repeating myself but thanks a lot, I
10 trust you'll do the right thing.

11 MR. HOLLIDAY: Ladies and gentlemen, thank you again for
12 your service, you're an important part of our judicial system,
13 it's juries in cases like this and the judge is gonna instruct
14 you on on what exactly that means. Basically what you're here
15 for is you're you are the final finders of fact in this case
16 and the way that works is you hear testimony, you see evidence
17 and you take that, you weigh credibility of witnesses and you
18 come up and and you get to decide what's the truth and that's
19 parta your job and the judge in a minute is gonna instruct you
20 on what the law is in the case and the way that you arrive at
21 your verdict is you take the truth of the witnesses and the
22 evidence that you find useful, you take the law and you apply
23 that to determine whether or not the defendant is guilty or
24 innocent and I believe with the evidence we presented over the
25 past two days that that should be no doubt in your mind that

CLOSING ARGUMENTS

1 Mr. Mack is guilty of trafficking in marijuana, cocaine and
2 crack.

3 Basically what we have here is the CI, Mr. Reo, somehow
4 gets in contact with the narcotics officer, we can assume
5 that's 'cause he got in trouble, and he agrees to do a drug
6 transaction for them so yeah, was Mr. Johnson and Mr. Mack set
7 up? absolutely they were set up. They, the CI contacted
8 them, said, Hey, I've got some marijuana I guess over
9 10 pounds, they ended up with about 13 pounds but he says, Got
10 some marijuana for you to buy. Obviously Mr. Johnson was
11 interested, he he actually set up a buy but the the thing is
12 he brought Mr. Mack along with them. He says that they were
13 in Greenville hangin' out at a friend's house, that he was
14 givin' him a ride so they get in the car, they come to to the
15 buy location and they both get outta the car. Mr. Mack was
16 supposed to be leaving 'cause he was just giving Mr. Johnson,
17 Mr. Keith Johnson a ride there and Mr. Mack got outta the car
18 too and then Mr. Mack gets into the truck with with the CI,
19 Mr. Reo, and that's when the drug deal goes down. Now yes,
20 there's confusion about when the marijuana was brought in but
21 ultimately the marijuana was brought in and the drug deal did
22 happen. My question for you is if the the tr -- now I I don't
23 think there's any doubt that Mr. Johnson is claiming the
24 marijuana, he's pled to that charge but that doesn't mean that
25 Mr. Mr. Mack was also not involved in that. Where did all

CLOSING ARGUMENTS

1 that money come from? Mr. Johnson now he he may not remember
2 it but he said it was about \$11,000. The officers actually
3 recovered \$13,650 so he couldn't -- he didn't know exactly how
4 much money he brought 'cause he didn't bring it all. I submit
5 to you Mr. Mack and Mr. Johnson were partners in a business
6 deal where they both rode up together and they both planned to
7 buy these drugs and sell 'em. Mr. Johnson says that he was
8 going to give a ride with Mr. Reo, well if that's true why did
9 he leave his belongings in the car that Mr. Mack drove, the
10 Acura, why did he leave his extra cash and if those drugs were
11 his why would he have left them in the car? He was planning
12 to leave, don't ya think he woulda taken that stuff with him?
13 Don't ya think he woulda taken his drugs, I mean, who's gonna
14 leave your, I don't know, I don't know the street value of
15 those drugs but I would assume they're they're fairly large,
16 if if I'm gonna get in the car and take off and go ride with
17 somebody else, I'm not gonna leave my drugs in the center
18 console of somebody else's car and and that's in reference to
19 the crack cocaine that was found in the center console of the
20 Acura which Mr. Mack was driving and belonged to Mr. Mack's
21 sister. I think there's sufficient evidence to point at least
22 to the crack cocaine at this point to Mr. Mack. He was
23 driving the car, his sister's car, it was in the center
24 console.

25 With regards to the cocaine, it was found in in the, in

CLOSING ARGUMENTS

1 in a purse in the backseat of the Dually. Again, the the
2 judge is gonna instruct you on what it means but there's a a
3 legal term it's called "hand of one" and that means that if
4 one person is committing a crime and another person is aiding
5 or abetting in that crime at all, they're both guilty. It
6 doesn't matter that you had it, as long as you were acting
7 together and in unison or you had a common scheme or a common
8 plan to make a drug deald -- deal go down, you don't actually
9 have to hold the money or you don't actually have to hold the
10 drugs, you're still guilty of it just as if you had done it
11 and and Judge Hayes is gonna explain that legal philosophy to
12 you but I charge you it's your duty to take that and apply it
13 to the facts in this case, I think when you do, you'll see
14 that this again was a, was a business partnership, Mr. Mack
15 and Mr. Johnson acting in the concert and that brings me to my
16 point about Mr. Johnson. He's here today, he's servin' a
17 15-year sentence in the Department of Corrections. He's only,
18 he's only done less than a year of that so far. He's got
19 nothin' to lose by claimin' those drugs, matter a fact, he
20 already did, that's why he's in jail. He has absolutely
21 nothing to lose by claiming these drugs. He thinks that if he
22 takes it, Mr. Mack gets off free and he's just tryin' to help
23 out his buddy who he probably knows he got in trouble with.
24 He says they're friends, they probably are. He's tryin' to
25 help a buddy out who he knows is lookin' at goin' to jail. He

CLOSING ARGUMENTS

1 doesn't want, you know, he's he's he figures if I take the
2 blame for it, I'm already in jail, there's nothin', you know,
3 they can't hurt me, I'm already there. Mr. Mr. Mack over here
4 I can help him out, I can help my buddy out. Mr. Johnson says
5 he was up here to to work on his integrity. He he's just,
6 he's at some or another he's tellin' a lie. Whether he's
7 lyin' today, he was lyin' yesterday, his credibility is
8 severely damaged by what he's done in the past and he's just
9 here today because he thinks he can help get his buddy off a
10 crime that they both committed together.

11 Now I I wanna talk to you about what what is trafficking
12 'cause you hear these terms trafficking marijuana, trafficking
13 cocaine, trafficking crack and ya think trafficking to mean
14 you have to move the drugs or or whatever but the way it works
15 is trafficking just means that you have a certain amount, you
16 had and and in this case you've got marijuana, crack and
17 cocaine. For marijuana you have to have more than 10 pounds
18 of marijuana and in this case, uh, I believe Ashley Harris,
19 the chemist, testified that there were 13.73 pounds so clearly
20 that prong of the test is met, there was way more or
21 substantially more than 10 pounds of marijuana so if someone
22 was exercising dominion and control or attempting to buy or
23 attempting to sell or even just had possession of that kind of
24 amount of marijuana, they're guilty of trafficking marijuana
25 and the same thing applies for the crack cocaine and for the

CLOSING ARGUMENTS

1 cocaine, powder cocaine substance. Now these may be smaller
2 the, you know, 15 or 10 pounds of marijuana but they're still
3 trafficking levels and what the law says with regards to these
4 is if you have more than 10 grams of cocaine or more than 10
5 grams of crack which is also known as a cocaine base, cocaine
6 base is the legal term for crack but everybody just calls it
7 crack, if you have more than 10 grams and you're in possession
8 of it or you try to buy it or you try to sell it, anything
9 like that you're guilty of trafficking those drugs. In this
10 case the lab came back with 12 grams of cocaine and 20 grams
11 of crack, both of those would be trafficking level offenses.
12 Very serious charges, obviously this is a very important case
13 for both the State and the defendant, you know, it's very
14 important that that we present to you every element that's
15 charged and I would submit to you that we have. It's clear
16 that that Mr. Mack may not been in on the initial transaction
17 with with the confidential informant but it's our position and
18 our belief and I would submit to you it's the truth that
19 Mr. Johnson got together with Mr. Mack, drove to that location
20 to purchase that marijuana and Mr. Mack also had on his person
21 cocaine and in his center console crack. Why he had those,
22 why he brought those to the drug deal, I don't know, maybe he
23 planned to sell them later when he sold the marijuana but he
24 did, he had those and I would submit to you that he is in fact
25 guilty of trafficking cocaine, trafficking marijuana and

JURY CHARGE

1 trafficking in crack.

2 Ladies and gentlemen, when you go back to that
3 deliberation room after hearing the judge's charge on the law,
4 you're gonna have to determine; number one, the credibility of
5 the witnesses, the credibility of the officer, credibility of
6 Mr. Johnson and credibility of the lab chemist and in the the
7 chain a custody witnesses. The defense has said those are the
8 drugs, that's clearly not an issue. The issue for you to
9 decide when you go back in that jury room is did Mr. Mack know
10 that a drug deal was goin' down and was he purchased anything
11 and I would submit to you the evidence in this case clearly
12 suggests that he not only knew it, he was participating in it
13 with regards to marijuana and he also had those other drugs on
14 him that he claims at a later point in time and I would ask
15 you find him guilty on all three counts. Thank you.

16 THE COURT: That microphone again. Ladies and gentlemen,
17 I need to remind you that during this trial you and I have
18 certain duties to perform. As the trial judge, it is my
19 responsibility to preside over the trial of this case, I also
20 have the duty to rule on the admissibility of evidence offered
21 during this trial. You are to consider only the competent
22 evidence that is before you. You are to consider only the
23 testimony which has been presented from the witness stand and
24 any exhibits which have been made part of the record of this
25 case. Now I have the additional duty to charge you the law

JURY CHARGE

1 applicable to this case. As the presiding judge, I am the
2 sole judge of the law of this case and it is your duty as
3 jurors to accept and apply the law as I now state it to you.
4 If you already have any ideas as to what the law is or what
5 the law ought to be and it does not now agree with what I tell
6 you the law is, you must abandon that idea because you are
7 sworn to accept the law and apply it as exactly as I state it
8 to you now.

9 In every case tried in this court before a jury, the
10 judge becomes the sole and exclusive judge of the facts -- I'm
11 sorry, try a jur -- let me start over with that paragraph. In
12 every case tried in this court before a jury, the jury becomes
13 the sole and exclusive judge of the facts in a case. A trial
14 judge cannot intimate, state, comment on or make any statement
15 to a trial jury about the facts of a case. Since you, the
16 jury, are the sole judge of the facts in the case, you are not
17 to infer from what I've said during the progress of this trial
18 and ruling upon the admissibility of evidence or otherwise or
19 anything that I say to you now during the course of this
20 instruction that I have any opinion about the facts in this
21 case. The law does not allow me to have an opinion about the
22 facts. This is a matter solely for you, the jury, to
23 determine. As jurors it is your duty to determine the effect,
24 value, weight and truth of the evidence presented during this
25 trial.

JURY CHARGE

1 The indictments in this case, they charge the defendant
2 with trafficking in marijuana 10 pounds or more but less than
3 100 hundred pounds, trafficking in crack 10 grams or more but
4 less than 28 grams, trafficking in cocaine 10 grams or more
5 but less than 28 grams. I remind you that the fact that the
6 defendant was arrested, charged and indicted in this case is
7 not evidence in this case and cannot be considered by you as
8 evidence of guilt in this, in this case nor does it create any
9 presumption or or inference of guilt. These documents are
10 simply the formal written instruments which contain the
11 charges made against the defendant, they are the formal
12 documents by which the case is brought into court. Each of
13 the indictment charges a separate and distinct offense. You
14 must decide each indictment separately on the evidence and the
15 law applicable to it uninfluenced by your decision as to any
16 other of the indictments. The defendant may be convicted or
17 acquitted on any or all the offenses charged. You will be
18 asked to write a separate verdict of guilt or not guilty on
19 each of the indictments.

20 Now the defendant has pled not guilty to the indictments
21 and that plea puts the burden on the State to prove the
22 defendant guilty. A person charged with committing a criminal
23 offense in South Carolina is never required to prove himself
24 innocent. I charge you that it is an important rule of law
25 that the defendant in a criminal trial no matter what the

JURY CHARGE

1 seriousness of the the charge may be will always be presumed
2 to be innocent of the crime for which the indictment was
3 issued unless guilt has been proven by evidence satisfying you
4 of that guilt beyond a reasonable doubt. This presumption of
5 innocence does not end when you begin your deliberations but
6 it accompanies the defendant throughout the trial until you
7 reach a verdict of guilt based on evidence satisfying you of
8 that guilt beyond a reasonable doubt. The presumption of
9 innocence it is like a robe of righteousness placed about the
10 shoulders of the defendant which remains with the defendant
11 until it has been stripped from the defendant by evidence
12 satisfying you of the defendant's guilt beyond a reasonable
13 doubt. This presumption of innocence is not mere legal
14 theory, it is not just a legal phrase, it is a substantial
15 right to which every defendant is entitled unless you, the
16 jury, are satisfied from the evidence of the defendant's guilt
17 beyond a reasonable doubt.

18 What is reasonable doubt in the law? A reasonable doubt
19 is the kinda doubt that would cause a reasonable person to
20 hesitate to act. The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt and some of you may
22 have served in as jurors in civil cases where you were told
23 that it is only necessary to prove that a fact is more likely
24 true than not true such as by the greater weight or the
25 preponderance of the evidence. In criminal cases the State's

JURY CHARGE

1 proof must be more powerful than that, it must be beyond a
2 reasonable doubt. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the defendant's guilt.
4 There are very few things in this world that we know with
5 absolute certainty and in criminal cases the law does not
6 require proof that overcomes every possible doubt. If based
7 on your consideration of the evidence you are firmly convinced
8 that the defendant is guilty of the crimes charged, you must
9 find the defendant guilty. If, on the other hand, you think
10 there is a real possibility that the defendant is not guilty,
11 you must give the defendant the benefit of the doubt and find
12 him not guilty.

13 There are two types of evidence which are generally
14 presented during a trial: direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact such as an
17 eyewitness, it is evidence which immediately establishes the
18 main fact to be proved. Circumstantial evidence is proof of a
19 chain of facts and circumstances indicating the existence of a
20 fact, it is evidence which immediately establishes collateral
21 facts from which the main fact may be inferred.
22 Circumstantial evidence is based upon inference and not on
23 personal knowledge or observation. The law makes absolutely
24 no distinction between the weight or value to be given either
25 direct or circumstantial evidence nor is a greater degree of

JURY CHARGE

1 certainty required of circumstantial evidence than of direct
2 evidence. You should weigh all of the evidence in the case,
3 after weighing all the evidence, if you are not convinced of
4 the guilt of the defendant beyond a reasonable doubt, you must
5 find the defendant not guilty. Necessarily, you must
6 determine the credibility of the witnesses who have testified
7 in this case. Credibility it simply means believability. It
8 becomes your duty as jurors to analyze and to evaluate the
9 evidence and determine which evidence convinces you of its
10 truth. In determining the believability of witnesses who have
11 testified, you may believe one witness over several or several
12 witnesses over one. You may believe a part of the testimony
13 of a witness and reject the remaining part of the testimony of
14 that same witness. You may believe the testimony of a witness
15 in its entirety or reject the testimony in its entirety. You
16 may consider whether any witness has exhibited to you any
17 interest, bias, prejudice or other motive in the case. You
18 may also consider the appearance and the manner in which the
19 witness acted on the witness stand.

20 Rules of evidence ordinarily do not permit witnesses to
21 testify to opinion or conclusions, an exception to this rule
22 exists where the evidence is called it is presented from what
23 we call an "expert witness". A witness who by education or
24 experience has become an expert in some art, science,
25 profession or calling may state an opinion as to relevant and

JURY CHARGE

1 material matters in which the witness claims to be an expert
2 may also state the reasons for that opinion. You should
3 consider any expert opinion received into -- in evidence in
4 this case and like any other evidence give it the weight you
5 think it deserves. If you decide that the opinion of an
6 expert is not based on sufficient education and experience or
7 if you conclude that the reasons given in support of the
8 opinion are not sound or that the opinion is outweighed by
9 other other evidence, you may disregard the opinion in its
10 entirety. An expert witness's testimony is not to be given
11 any greater weight than of any other witness simply because
12 the witness is an expert, further, you are not required to
13 accept the expert's opinion even though it is uncontradicted.

14 Now, ladies and gentlemen, there had been evidence
15 presented that a witness made prior statements which are not
16 consistent with the witness's present testimony; you may use
17 it -- this evidence to decide whether to believe the witness,
18 you may also use evidence of the earlier contradictory
19 statements to determine the truth of those statements. It is
20 up to you to decide whether to believe the earlier statements
21 or the the testimony given at trial. If a witness is is shown
22 to have knowingly testified untruthfully concerning any
23 material matter, you may consider this in determining whether
24 to trust the witness's testimony as to other matters: You may
25 reject all of the testimony of that witness or give all or

JURY CHARGE

1 part of testimony the weight you think that it deserves.

2 Now, ladies and gentlemen, I instruct you and emphasize
3 to you that the fact that the defendant did not testify is not
4 a factor to be considered by you in any way in your
5 deliberations and in your consideration on the question of
6 guilt or innocence of the defendant, it must not e-- it must
7 not be considered by you in any manner whatsoever. A
8 defendant has the constitutional right to remain silent and
9 the assertion of this right must not be considered by you in
10 your deliberation. Now I repeat, under your oath you are to
11 draw no conclusion whatsoever from the fact that the defendant
12 in this case did not testify. The fact that the defendant did
13 not testify should not even be discussed in the jury room by
14 you. The burden of proof as I stated to you is on the State.
15 The defendant is not required to prove himself innocent. The
16 burden of proof remains on the State to prove guilt beyond a
17 reasonable doubt.

18 Now the defendant is charged with trafficking in
19 marijuana. The State must prove beyond a reasonable doubt
20 that the defendant knowingly, knowingly sold, manufactured,
21 cultivated, delivered, purchased, brought into this state,
22 provided financial assistance or otherwise abetted, aided,
23 attempted or conspired to sell, manufacturer, cultivate
24 deliver, purchase or bring into the state was knowingly in
25 actual or constructive possession, knowingly attempted to

JURY CHARGE

1 become in actual a -- or constructive possession of marijuana.
2 The State must also prove beyond a reasonable doubt that the
3 amount of marijuana was 10 pounds or more but less than 100
4 pounds. The defendant is also charged with trafficking in
5 crack. The State must prove beyond a reasonable doubt that
6 the defendant knowingly sold, manufactured, cultivated,
7 delivered, purchased, brought into this state, provided
8 financial assistance or otherwise aid, abetted, attempted or
9 conspired to sell, manufacturer, cultivate, deliver, purchase
10 or bring into the state, was knowingly in actual or
11 constructive possession, knowingly attempted to become in
12 actual constructive possession of crack. The State must also
13 prove beyond a reasonable doubt that the amount of crack was
14 10 grams or more but less than 28 grams. The defendant is
15 charged is also charged with trafficking cocaine. The State
16 must prove beyond a reasonable doubt that the defendant
17 knowingly sold, manufactured, cultivated, delivered,
18 purchased, brought into the state, provided financial
19 assistance or otherwise aided, abetted, attempted or conspired
20 to sell, manufacture, cultivate, deliver, purchase or bring
21 into the state, was knowingly in actual or constructive
22 possession, knowingly attempted to become in actual
23 constructive possession of cocaine. The State must also prove
24 beyond a reasonable doubt the amount of cocaine was 10 grams
25 or more but less than 28 grams.

JURY CHARGE

1 Ladies and gentlemen, mere presence at the scene is not
2 sufficient to prove someone guilty of a crime. A defendant's
3 presence, a defendant's presence where a crime is being
4 committed or mere association with a person who commits a
5 crime does not make a defendant an accomplice or an aider and
6 abetter of the person committing the crime. The burden is on
7 the State to prove every element of the crime charged. If you
8 find after reviewing all of the evidence that the State has
9 proved that the defendant was gui -- that the defendant was
10 only present at the scene of the crime and that they have not
11 proved beyond a reasonable doubt any other participation in
12 the crime then you must find the defendant not guilty. The
13 law is that proof of at the scene of the crime is not
14 sufficient to find someone guilty. If a crime is committed by
15 two or more people who are acting together in committing a
16 crime, the act of one is the act of all. A person who joins
17 with another to commit an unlawful act is criminally
18 responsible for everything done by the other person which
19 happens as a probable or natural consequence of the acts done
20 in carrying out the common plan and purpose. For example, two
21 people can be guilty of killing another person when only one
22 of the two have a gun, there was only one bullet and only one
23 of the two fired the shot that caused the death. If two or
24 more people are together, acting together, assisting each
25 other in committing the offense, the act of one is the act of

JURY CHARGE

1 all or as it is sometimes said the hand of one is the hand of
2 all. Prior knowledge that a crime is going to be committed
3 without more is not sufficient to make a person guilty of that
4 crime. Mere knowledge that another person is going to commit
5 a crime even if the defendant is present when the crime is
6 committed is not sufficient to convict the defendant as a
7 principle. Guilt as a principle is shown by actual or
8 constructive presence at the scene as a result of prior
9 arrangement; therefore, a finding of a prior arranged plan or
10 common scheme is necessary for a finding guilt as a principle.
11 The State must prove beyond a reasonable doubt by competent
12 evidence the theory of the hand of one is the hand of all. A
13 principle in a crime is one who either actually commits the
14 crime or who is present aiding, abetting or assisting in
15 committing the crime. When a person does an act in the
16 presence of and with the assistance of another, the act is
17 done by both. Where two or more acting with a common plan or
18 intent are present at the commission of a crime, it does not
19 matter who actually commits the crime, all are guilty, the
20 hand of one is the hand of all. Presence at the commission of
21 a crime means to be sufficiently near, to aid and abet and
22 assist in the commission of the crime; however, mere presence
23 at the scene of a crime is not sufficient to convict one as a
24 principle on the theory of aiding and abetting, intent is also
25 a necessary element for there must have been a common desire

JURY CHARGE

1 or intent to commit the crime and the crime must have been
2 committed pursuant thereto with the person aiding and abetting
3 by some overt act. Intent means intending the result which
4 actually occurs, not accidentally or involuntary. Intent may
5 be shown by acts and conduct of the defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent, the State must prove these elements beyond a
8 reasonable doubt.

9 Now there are three different charges in this case as I's
10 indica -- as I have indicated because the defendant was
11 charged with three different indictments. On each of the
12 charges there are are two possible results that the jury could
13 reach, the fact that I've listed one before the other should
14 not be seen as any significant; it's simply that I had to list
15 one before the order in order to print up the document. Each,
16 as I've already indicated, each one of these charges should be
17 considered independently and and valued on its own worth
18 independent of your consideration of the other charges. Madam
19 forelady, the jury's verdict must be unanimous on each one of
20 these charges. The jury's verdict cannot be based on passion,
21 capriciousness or or any other consideration not supported by
22 the record in this case. Madam forelady, once the jury has
23 has reached their verdict then it will be your responsibility
24 to write the verdict on each one of these charges. The jury's
25 deliberations they need to be conducted in the jury

JURY CHARGE

1 deliberation room only when all twelve members of the jury are
2 present. There becomes a time when one of the jurors has to
3 go to the restroom or make a telephone call or something of
4 that nature, the deliberations need to cease and they should
5 not resume again until all twelve are present. Once you have
6 concluded your deliberations please not knock on the door to
7 the jury room and let the bailiff know that you've reached
8 your decision. At this time I'm gonna ask if you would to
9 please retire back to the jury deliberation room but do not
10 begin your deliberation because I still have to take a few
11 matters of law up with the attorneys but the bailiff will tell
12 you shortly to begin your deliberations but you may retire
13 back to the jury room.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Any exceptions to the charge from the State?

17 MR. HOLLIDAY: None, Your Honor.

18 THE COURT: Any from the defense?

19 MR. POOLE: No, sir.

20 THE COURT: Alright, if ya'll would what do you wanna do
21 about the alternate? I could have her placed in Judge Cole's
22 jury room and held and then in the event that we have a juror
23 to be, have to be removed she could then be transplanted or I
24 can have an agreement to proceed with less than twelve in the
25 event that becomes necessary.

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1 MR. HOLLIDAY: Your Honor, I I'm -- the State's fine with
2 presenting with less than twelve but if if necessary we can
3 keep her here.

4 MR. POOLE: I I think we need to preserve the alternate.

5 THE COURT: Alright, when the appropriate time ask if you
6 will take the alternate into the Judge Cole's jury room.

7 THE BAILIFF: Alright, sir.

8 THE COURT: If ya'll would, check to be sure that we,
9 some of those were marked for identification and others were
10 marked as evidence, ---

11 MR. HOLLIDAY: Yes, sir.

12 THE COURT: --- make sure we have those correct.

13 (Whereupon, a discussion was held off the record.)

14 THE COURT: So all those on top a the box?

15 MR. HOLLIDAY: Yes, sir, that that that is in evidence,
16 everything else is not.

17 THE COURT: Alright. Maxie, I'll let you have the
18 verdict forms and you may give them that box of evidence, tell
19 them to begin ---

20 THE BAILIFF: Okay, I will.

21 THE COURT: --- and take the alternate across the hall.

22 THE BAILIFF: Yes, sir.

23 THE COURT: You gonna bring her through here or take her
24 out the back?

25 THE BAILIFF: Whichever way you want me to? You want me

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1 to bring her through here or take her out back?

2 THE COURT: Take her out back.

3 THE BAILIFF: Okay.

4 (Whereupon, the jury began deliberations at 2:47 p.m.)

5 THE COURT: Alright, we'll stand at ease. If ya'll go
6 any -- ya'll go anywhere, we need telephone numbers, we need
7 to find you.

8 (Whereupon, a recess was taken.)

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: Alright, we have a note from the forelady.
11 She writes, (1) "Can we see the 'pouch' or 'purse'," (2), "Can
12 we read the transcript from Detective Norris from yesterday,"
13 signed forelady. The purse or the pouch was not admitted into
14 evidence so they don't have it back there. It was admitted
15 for ID. We don't have written transcripts at this point but
16 we do have the ability to play back the testimony.

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: It went from 1:51 to 2:27 so it be 50, it be
19 about 30, about 35 to 40 minutes wortha testimony played back.
20 We can let 'em look at it the purse or the pouch if ya'll want
21 to, if not, we don't have to, that's just a solution if ya'll
22 wanted one but if it's not admitted into evidence, they don't
23 get it, that's my rule. On the transcript I would propose
24 that I bring the forelady into the courtroom, I'll let her
25 know that we don't have written transcripts, that we have the

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1 ability to play back the testimony, that what that would
2 require would be everybody on the jury coming back into the
3 courtroom and that by our calculation they would sit, they
4 would listen to approximately 40 more minutes again of
5 testimony if they wanted to and then let her go back and see
6 what they want. Any suggestions?

7 MR. POOLE: Your Honor, I think that's appropriate and
8 fine with the defense.

9 MR. HOLLIDAY: I concur.

10 THE COURT: Okay. Alright, so we won't -- I'll just let
11 her know that the pouch or the purse was not admitted into
12 evidence and then offer the listening to the transcript.
13 Okay, bring the forelady.

14 THE BAILIFF: Yes, sir.

15 (The following takes place in the presence of the jury
16 forelady.)

17 THE COURT: Ms. Younger, we received your note and thank
18 you for giving us the note. In regards to the pouch or the
19 purse, the pouch, the pouch or the purse was not admitted into
20 evidence, it was marked for identification purposes only so we
21 could not allow ya'll to have that since it wasn't actually
22 admitted into evidence. The second question, we do not at
23 this point have a transcript to give you, ---

24 JURY FORELADY: Um-hum.

25 THE COURT: --- we do have the ability to bring the

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1 entire jury back into the courtroom and let the court reporter
2 play back the officer's testimony. According to my notes that
3 would be about 40 minutes worth of testimony so we do have
4 that as an option but we do not have a transcript.

5 JURY FORELADY: Okay.

6 THE COURT: Now you can take that information back to the
7 jury, let them -- and then if ya'll want to continue your
8 deliberations, continue but if you wish to hear the testimony,
9 let the bailiff know and we will get it lined up and let ya'll
10 come back in and listen to it again.

11 JURY FORELADY: Thank you, sir.

12 THE COURT: Okay, thank you.

13 (The following takes place outside the presence of the
14 jury forelady.)

15 THE COURT: We'll mark the note.

16 (Note from the jury marked Court's Exhibit No. 1 for
17 identification.)

18 THE COURT: We'll step down till further order.

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Alright, she's written a note to clarify
21 their request, "We want to hear Detective Norris's testimony
22 as to the events after the defendant is on the truck until
23 they are taken into custody." Now my initial reaction since
24 testimony is subject to direct and cross-examination and the
25 cross-examination is not focused on an issue is that we sorta

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1 can't break it up for 'em, we gotta let 'em hear it all or
2 nothing because then I'm put into a position and ya'll are put
3 into a position of of picking and choosing the testimony.

4 MR. HOLLIDAY: I I agree, Judge. I think we need to play
5 the whole thing.

6 MR. POOLE: It's like it's gotta be complete or nothing I
7 think.

8 THE COURT: Yeah. Alright, you wanna bring just the
9 forelady back.

10 THE BAILIFF: Yes.

11 (Note from the jury marked Court's Exhibit No. 2 for
12 identification.)

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

15 THE COURT: Ms. Younger, thank you for your additional
16 note. It is -- we do not want to know what's going on in the
17 jury's mind in the back ---

18 JURY FORELADY: Um-hum.

19 THE COURT: --- but it is the nature of direct
20 examination and cross-examination that goes on in the
21 courtroom does not lend itself for us outside of the jury room
22 to be able to go in and and say, Okay, this is what they must
23 wanna hear or this is what they must wanna hear and then, and
24 then if we are lucky enough to actually identify what is it
25 they wanna hear on direct to then say as part of the cross-

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1 examination that certain parts of the cross-examination should
2 be heard and certain should not, we then get into a role of,
3 in my opinion, stepping into the shoes of the fact finder.
4 What we can do with this testimony is that we are more than,
5 we have it set up to do it, is to more than happy to bring the
6 jury in and let you hear all of the testimony but I I I do not
7 feel that it would be wise for us out here to dissect the
8 testimony and and give it to ya'll like that.

9 JURY FORELADY: Yes, sir, then I think we're prepared to
10 listen to all of it then, sir.

11 THE COURT: Okay, then if you would, retire -- return
12 back to the jury room and we'll get you all out here.

13 JURY FORELADY: Thank you.

14 (Pause.)

15 THE COURT: Alright, let's bring 'em back.

16 THE BAILIFF: Okay.

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

18 (Whereupon, the testimony of Detective Paul Norris was
19 played for the jury.)

20 THE COURT: Alright, madam forelady, you all may return
21 back to the jury room and continue your deliberations.

22 JURY FORELADY: Thank you.

23 THE COURT: We'll step down.

24 (Whereupon, a recess was taken.)

25 (Whereupon, a verdict was reached at 4:58 p.m.)

VERDICT

1 THE COURT: I'm told that we have a verdict. Anything
2 before we bring the jury back?

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

4 MR. POOLE: No, sir.

5 THE COURT: Bring 'em back.

6 THE BAILIFF: Your Honor, can I go bring the alternate
7 in?

8 THE COURT: Um. (Nodded in the affirmative.)

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

10 THE COURT: Madam forelady, we're -- I'm informed that
11 the jury reached a verdict, is that correct?

12 JURY FORELADY: Yes, sir.

13 THE COURT: If you will, give the verdict form to the
14 bailiff.

15 (Whereupon, the jury forelady complied.)

16 THE COURT: Madam clerk, please publish the verdicts.

17 THE CLERK: In the court of general sessions Seventh
18 Judicial Circuit Indictment Number 2010-GS-42-2217 State of
19 South Carolina, County of Spartanburg, the State of South
20 Carolina vs. Ricky Hewins Mack, we, the jury, unanimously find
21 the defendant Ricky Hewins Mack guilty of trafficking in
22 cocaine in the amount of 10 grams or more but less than
23 28 grams, it is signed by the foreperson and dated today's
24 date. Indictment Number 2010-GS-42-2216 the State of South
25 Carolina vs. Ricky Hewins Mack, we, the jury, unanimously find

VERDICT

1 the defendant Ricky Hewins Mack guilty of trafficking in crack
2 10 grams or more but less than 28 grams, it is signed by the
3 foreperson and dated today's date. Indictment Number
4 2010-GS-42-2218 the State of South Carolina vs. Ricky Hewins
5 Mack, we, the jury, unanimously find the defendant Ricky
6 Hewins Mack guilty of trafficking in marijuana 10 pounds or
7 more but less than 100 hundred pounds, it is signed by the
8 foreperson and dated today's date. Ladies and gentlemen of
9 the jury, if this is your verdicts and still your verdicts
10 still right -- please raise your right hand. So say you all.

11 THE COURT: Anything before I dismiss the jury?

12 MR. HOLLIDAY: Not from the State, Your Honor.

13 MR. POOLE: No, sir.

14 THE COURT: Alright, well, madam forelady, ladies and
15 gentlemen of the jury, I, when we started this trial I gave
16 you a A brief introductory statement as to and thanked you for
17 your service not only to this community but also to your
18 contribution to our democracy, those were nice introductory
19 words but they were sincere on my part. We have a, we do have
20 a justice system in this country that many have called the
21 greatest justice system ever created and vital to our justice
22 system is the role that people like you perform as jurors. In
23 in communities all across every county in all fifty states of
24 this country, people like you come in and sit and do your
25 service for your country and it's been said many times that

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1 the hardest service that a citizen does for their country
2 outside of active wartime duty is that to sit on a jury as you
3 have done. It's not an accident that we have this system of
4 justice in our country, it was developed by our forefathers
5 way back in the, ya know, late 1700s, they actually studied
6 the ancient societies of Greek and Rome to come up with the
7 idea that we would have somebody like me that would be the
8 judge of the law, there would be somebody like you that would
9 be the judge of the facts and that's unique about the American
10 judicial system and I wanna thank you for your service because
11 without you we wouldn't have this great country that we have.
12 You may be excused. Madam forelady, I need for you to wait in
13 the jury room, we need for you to sign a couple documents. Be
14 sure you turn in your badge and and that way the bailiff will
15 be sure that he'll -- she'll -- he will notify the clerk of
16 court and she will send you that tremendous check that you get
17 for your jurors -- jury service this week but again thank you
18 very much, you may retire to the jury deliberation room.

19 UNIDENTIFIED JUROR: Are we dismissed for the week?

20 THE COURT: You are dismissed for the week.

21 THE BAILIFF: Come with me, please.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Any reason why we should not proceed with
25 sentencing?

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1 MR. HOLLIDAY: Your Honor, I would request we maybe
2 perhaps defer sentencing until next week, I know Your Honor's
3 not gonna be here tomorrow. Judge, there's several issues
4 that may determine whether or not this is a a third or
5 subsequent offense and due to the serious nature of the
6 charges and the potential jail sentences involved, I would ask
7 that we have a a day or two to prepare a memorandum or or get
8 certified convictions ready for the Court.

9 MR. POOLE: That's correct, Your Honor. Right now we're
10 in a a state where there's -- we don't have any firm
11 documentation as to what conviction this would be and this is
12 vitally important ---

13 THE COURT: Alright.

14 MR. POOLE: --- and we'd ask that you defer sentencing
15 until next week.

16 THE COURT: Any post-trial motions that you ---

17 MR. POOLE: Yes, sir. Your Honor, at this point in time
18 I would move for a new trial that's based upon the prior
19 motions made to the trial of this case, a motion to suppress
20 base upon the motion for a directed verdict at the close of
21 the State's case and renewed at the end of the defense case.
22 It's our position that the the evidence is overwhelmingly in
23 favor of the defendant and that he is entitled to a new trial
24 based on all of the evidence and all of the motions that have
25 been made.

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1 THE COURT: Alright, any response?

2 MR. HOLLIDAY: Judge, I I believe that there's sufficient
3 evidence put forth, the jury rendered a verdict based on that
4 evidence and I believe that should stand, Your Honor.

5 THE COURT: Alright, I'm going to have to deny the
6 motion. I I -- again, there there is a standard to which this
7 court has to apply in reviewing such motions and reviewing
8 such motions under that standard I would have to deny the
9 motions. I believe that, you know, based on the theory that
10 was presented by the State as well as the defense's theory
11 that that they've presented that there was sufficient evidence
12 to to meet all of the elements and to link this defendant in
13 with the transaction that occurred in the, in the, I believe
14 it was Dually truck, in the Dually truck at the time so I will
15 deny the motions, and also sufficient evidence to link him to
16 the substances that were in the car as well after the time of
17 arrest. We will, if I can see the, see the lawyers and one of
18 the police officers at the bench but we will look forward to
19 receiving the motions and hearing them next week.

20 (Proceedings October 31, 2012)

21 MR. HOLLIDAY: Ricky Mack.

22 (Whereupon, the defendant came forward.)

23 MR. HOLLIDAY: Your Honor, before you is Ricky Hewins
24 Mack. Judge, he's here on Indictments 2010-GS-42-2218,
25 2010-GS-42-2217, 2010-GS-42-2216. Your Honor, Mr. Mack was

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1 tried before this court last week and was convicted by a jury
2 on October 25th 2012, Your Honor. Judge he is here today for
3 sentencing. Judge, with regards to Indictment 2010-2218
4 trafficking marijuana charge, Judge, that is being sentenced
5 under a third offense. Judge, on the trafficking cocaine
6 Indictment 2010-2217, Your Honor, while the State believes it
7 would have an argument that would be a third offense is
8 allowing the defendant to be sentenced as a second offense
9 giving the benefit of the doubt on that and I'll explain that
10 further, Your Honor. On Indictment 2010-GS-42-2216
11 trafficking crack or cocaine base, Your Honor, again, the
12 State is allowing him to be sentenced as a second offense.
13 While we believe we have the basis to argue for a third
14 offense, Judge, we will allow him to be sentenced under a
15 second offense.

16 Your Honor, briefly just to put the facts on the record
17 of the case, Judge, on November 5th 2009 Spartanburg County
18 Sheriff's Office Narcotics Unit was provided information from
19 a confidential reliable informant that the defendant Ricky
20 Hewins Mack and another co-defendant Keith Anthony Johnson
21 would be attempting to purchase a large quantity of marijuana.
22 Officers set up surveillance at 1599 Highway 101 in
23 Spartanburg County and observed the defendant and co-defendant
24 drive up to this location in a beige Acura. Both subjects
25 exited their vehicle and got into the -- a white Ford Dually

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1 truck in which the CRI was waiting. At that point in time the
2 subjects exchanged approximately \$13,000 in cash with the CRI
3 for approximately 13 pounds of marijuana. Narcotics officers
4 then approached the vehicle and placed the suspects under
5 arrest. Officers found 13.73 pounds of marijuana, 12.02 grams
6 of co -- of powder cocaine in the Dually truck. The truck had
7 been searched prior to the CRI executing the drug deal and no
8 cash or narcotics other than the marijuana was located in the
9 vehicle. During inventory of the defendant's Acura, officers
10 also discovered 20.15 grams of crack cocaine hidden in the
11 center console, Your Honor. Judge, I have -- the reason for
12 the delay in sentencing is that the State wanted to have the
13 certified copy of the prior convictions from Greenville County
14 and I've shared those with the defense and I would like to
15 make those part of the record, Your Honor.

16 Judge, his prior record consists of a 1991 discharging a
17 firearm into a city; 1991 assault and battery with intent to
18 kill; 1994 public disorderly conduct; 1994 resisting arrest,
19 1994 malicious injury to personal property, 1994 possession of
20 marijuana; 1997 trafficking crack; 1997 possession with intent
21 to distribute marijuana; 2004 assault and battery; 2006
22 malicious injury to personal property; 2007 two counts of
23 criminal domestic violence; 2011 possession with intent to
24 distribute marijuana, 2011 possession with intent to
25 distribute heroin, 2011 criminal domestic violence and a 2011

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1 malicious injury to personal property charge, Your Honor.
2 Judge, and just briefly I addressed early about the the
3 second and third offense, Judge, the defendant was was
4 sentenced on -- in in 1997 to trafficking crack, Your Honor,
5 and I pass a copy a that conviction up, Judge. We requested
6 from the Department of Corrections a certified copy of of the
7 date that that defendant Mr. Mack was released from jail, I've
8 shared this with defense, Your Honor, also make would like to
9 make it part of the record it states he was released from
10 prison on June 7th of 2002, Judge, and I previously provided
11 the Court with a copy of the statute dealing with a second or
12 subsequent convictions, Your Honor, but Section 44-53-470 of
13 the drug code provides in Subsection (B) that if the person is
14 sentenced to confinement as a result of conviction pursuant to
15 this article, the time period specified in the section begins
16 on the date of conviction or the date the person is released
17 from confinement imposed for the conviction, whichever is
18 later. Judge, in this case he while he was sentenced in 1997,
19 he was released from prison in June of 2002, obviously it's
20 October of 2012 but, Your Honor, at this point we believe that
21 we we could argue that the violation date of 2009 would be
22 within that 10-year window, Judge, but given the severity of
23 these charges and any appellate issues that the State is going
24 to waive going forward as a third and allow the defendant to
25 be sentenced under a second with regards to Indictments

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1 2010-2217 and 2010-2216, Judge.

2 THE COURT: Alright, I've reviewed the certified true
3 copy of the South Carolina Department of Corrections Offender
4 Management System Inmate Transfer and Court Transfer History,
5 we will make that the Court's Exhibit to the proceeding, I've
6 also gonna make copy, gonna make an attachment or an exhibit
7 to the proceeding a copy of Code Section 44-53-470, also a
8 copy, I've reviewed the copies of, the certified true copies
9 of the defendant's prior convictions for trafficking in
10 heroin, trafficking in crack, possession with intent to
11 distribute marijuana and also another charge of petition --
12 and possession with intent to distribute marijuana, those are
13 certified true copies, I will make those also Court's exhibit
14 to the proceeding as well.

15 Alright, before I hear from counsel, let me ask Mr. Mack
16 a few questions. Sir, if you will please raise your right
17 hand and let the clerk swear you in.

18 RICKY HEWINS MACK, having
19 been first duly sworn, testified as follows:

20 EXAMINATION BY THE COURT:

21 Q. Thank you, sir. Mr. Mack, how old are ya?

22 A. I'll be 39 in December, I'm 38.

23 Q. And how far did you go in school?

24 A. Um, tenth grade. I'm previously in locked up in
25 Department of Correction gettin' ready to take my pre-GED in

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1 December.

2 Q. Are ya married? single? divorced, widowed?

3 A. Single.

4 Q. Do ya have children?

5 A. Yes, sir, I have four kids: a 18-year-old daughter, a
6 17-year-old daughter, a 17-year-old son an a 18-year -- a
7 8-year old daughter.

8 Q. And prior to being arrested on these charges and the
9 other charges what type work did you do?

10 A. Basically nuttin', Your Honor.

11 Q. Ever serve in the military?

12 A. No, sir.

13 Q. And on these charges how long have you been in jail?

14 A. I've been locked up well I was extradited back from Las
15 Vegas, Nevada in October ---

16 Q. Of ---

17 A. --- and ---

18 Q. --- 2011?

19 A. Yes, sir, and I got sentenced in December but they gave
20 me my time for the two months I did in the county jail so
21 basically a whole year now in October.

22 MR. POOLE: The sentence start date, Your Honor, for
23 purposes of this would be October 19, 2011.

24 MR. HOLLIDAY: And we would concur with that, Your Honor.

25 THE COURT: Alright, thank you, Mr. Mack. Yes, sir,

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1 Mr. Poole.

2 MR. POOLE: May it please the Court. Your Honor, at this
3 point I would feel like I need to once again for the record
4 raise my prior motions for that were heard pretrial at the end
5 of of the State's case and my motion for a new trial. I would
6 again raise those motions again for purposes of preserving the
7 record and ask that a new trial be granted on the basis of the
8 reasons already stated.

9 THE COURT: Alright, I will consider those raised and
10 based on the same reasons that I've articulated previously I I
11 would have to deny the motions.

12 MR. POOLE: Okay, thank you. As far as sentencing is
13 concerned, we take issue with the indictment of regarding the
14 marijuana third offense. We would contend that it would be a
15 second offense. First of all, the release date from the 1997
16 offenses, I believe he pled on January 8, 1997, he was
17 released from the DOC on June 7, 2002 if I heard and saw
18 correctly and he was convicted on this case last week, October
19 25, which is outside of the 10-year period and as I've always
20 been under the impression that is the conviction date that
21 controls. I also have some arguments that I would like to
22 make with regard to Section 44-53-470, specifically we would
23 contend that that code section is unconstitutional in that it
24 constitutes cruel, it can constitute cruel and unusual
25 punishment as in this case under the Eighth Amendment of the

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1 United States Constitution and under Article I Section 15 the
2 corresponding aspect of our state Constitution under
3 Declaration of Rights. It would be easy to envision a
4 situation where a simple user of marijuana for a 4-year
5 consecutive period would be convicted and could be sentenced
6 to 30 days in jail if they were not enhanced having having
7 pled for two first convictions and then on the fourth or the
8 fifth time or the fourth or the fifth year he could be looking
9 at 25 years in prison under the language of certain portions
10 of the -- this section. Secondly, I'm unaware of any other
11 provision in the law, although it may exist, where under
12 44-53-470 subsection (b) a time period specified of this
13 section begins on the date of the conviction or on the date a
14 person is released from confinement imposed for the
15 conviction, whichever is later. That type of lookback
16 provision that allows to look at the release date as
17 controlling I I've not seen. For instance, in the DUI scheme
18 of enhancement it's a 10-year period and it's the date of
19 conviction and and you don't look back as to the release date
20 and that in in and of itself can give rise to the
21 constitutional argument I'm trying to make. This man pled
22 on -- in January 3, 1997 and he was released on June 7, 2002
23 outside the 10-year period. The statute is unconstitutional
24 for the reasons that I've stated and I would like the Court to
25 treat this as a second subsequent rather than a third.

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1 MR. HOLLIDAY: Yes, sir, Your Honor. Judge, in response
2 to that I would just point to the language of the statute
3 44-53-470 Subsection (A) it states, "An offense is considered
4 a second or subsequent convi -- offense if:", I'm skipping
5 down to Subsection 2, Subsection 1 addresses simple possession
6 cases marijuana, Your Honor, and, Judge, we would stipulate
7 that he does have a simple possession charge 1994 and under
8 the language of this statute, that would be outside the 5-year
9 period and would not be counted as a prior conviction for
10 pur -- for the purposes of sentencing today, Judge. But with
11 Subsection (2) under (A) it says, For an offense involving
12 marijuana pursuant to the provisions of this article if the
13 offender has at any time been convicted of a first, second, or
14 subsequent violation of marijuana offense provision of this
15 article or of any other state or federal statute relating to
16 marijuana offenses, except a first offense violation for
17 possession of marijuana provisions of this article would be
18 under state or federal statute relating to marijuana. Judge,
19 basically, under the language of that statute his 1994
20 conviction for possession of marijuana would would be knocked
21 off, not considered for the purpose of this hearing; however,
22 the 1997 possession with intent to distribute is clearly not a
23 simple possession, Judge, that that conviction would count as
24 a, as a prior and, Judge, clearly the 2011 possession with
25 intent to distribute charge counts as well, therefore he has

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1 two prior convictions making this a third conviction.

2 THE COURT: Now and only if I understand it correct
3 that marijuana only enhances marijuana.

4 MR. HOLLIDAY: That's correct, Your Honor.

5 THE COURT: Marijuana charges can't be used to enhance
6 the other drug charges?

7 MR. HOLLIDAY: The marijuana charges can only be enhanced
8 to -- can only be allowed to enhance marijuana charges, the
9 same applies to any other drugs, they cannot be used to
10 enhance the marijuana charges, there's, if you will, a
11 firewall between those two sets of charges. And and, Judge,
12 uh, I don't think there's any argument that the cocaine and
13 the crack charges are at least second offenses. He clearly
14 has a 2001 possession with intent to distribute heroin charge
15 and I think that defense would be agree that those are at
16 least second offenses, Your Honor.

17 THE COURT: At least second offenses on those?

18 MR. POOLE: Yes, sir.

19 THE COURT: And what does the trafficking marijuana third
20 that carries a straight 25 years and a \$25,000 fine?

21 MR. HOLLIDAY: That's correct, Your Honor.

22 THE COURT: And the trafficking in crack and cra --
23 trafficking in cocaine second offenses what are those ranges?

24 MR. HOLLIDAY: Those are 5 to 30 years, Your Honor, and a
25 a fine of \$50,000 no part of which may be suspended or

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1 probation granted.

2 THE COURT: Is it a mandatory fine of 50,000 or is it ---

3 MR. HOLLIDAY: Yes, sir, Your Honor, it is not
4 discretionary, it is a mandatory fine.

5 THE COURT: Alright, Mr. Poole, I -- you are protected on
6 the record for purposes of your constitutional arguments. I
7 am not reading the statute as just a cold reading of the
8 statute as saying that the statute would be cruel and unusual
9 punishment but you are protected on the record and I'm I'm
10 ready proceed with the sentencing under a trafficking
11 marijuana third and also a trafficking in cocaine second drug
12 offense and trafficking crack a second offense. Do you wish
13 to present any issues of -- in mitigation?

14 MR. POOLE: Your Honor, I I would just simply ask you,
15 stand up please, Mr. Mack, that you sentence him to the
16 minimum and that's because the, uh, it's been 1997 since the
17 1997 and then last year he got into some trouble and I'm not
18 arguing with that but sentence him to the minimum given his
19 age of about 39, 40-years-old and and let the charges run
20 concurrent, I'd ask that.

21 THE COURT: Mr. Mack, were ya able to hear the statements
22 that were made by your lawyer?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you agree with those statements?

25 THE DEFENDANT: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: Let me -- does the State wish to ar -- argue
2 anything of ---

3 MR. HOLLIDAY: Judge, we would just have no opposition to
4 running the charges concurrent.

5 THE COURT: Alright. Mr. Mack, is there anything that
6 you would like for me to know or wish for me to consider?

7 THE DEFENDANT: Well, Your Honor, basically I know I've
8 been out here in this, you know, in this world doin' wrong and
9 I got to pay for my actions, you know, and I'm not saying
10 that, you know, that I shouldn't do time for my wrongdoin' but
11 like my my lawyer said I'm almost 40 and I'm tryin' to get
12 back out there to my family, especially my kids 'cause they
13 really need me and by me bein' in prison again there's one of
14 'em that really want me out there, that's my little daughter,
15 and I'm basically tryin' to get back there to her and I wish
16 you'd be lenient on me so I can get back out there to her
17 'cause right now she think I'm comin' home in seven years. I
18 told her right now I'm goin' through some things, that I might
19 be home in seven or I might not so right now basically workin'
20 try to get back to her. My other kids they're they're grown
21 now, she don't understand about me bein' locked up right now,
22 she don't understand nuttin' about this 'cause I will not let
23 her come see me behind the fences so I hope that you will be
24 lenient on me, Your Honor, show me some kind of or simply
25 whatever you choose to do I'll be really appreciate it.

SENTENCE

1 THE COURT: Thank you, sir. Alright, this was a trial so
2 I do not have to officially accept the plea, I'm also goin',
3 I'm also goin' to make a exhibit to this proceeding these
4 sentencing information summary that was provided by the
5 solicitor's office prior to coming on taking the bench. On
6 these charges, these will be, while the Court has the
7 discretion and the authority to issue consecutive sentences on
8 these cases, uh, I -- the Court does recall the testimony of
9 the trial, also considering the mitigation information that
10 was presented to the Court, the Court is going to issue
11 concurrent sentences on these cases, these will be a like
12 sentence on the trafficking in the crack and also trafficking
13 in the cocaine, those will be 25-year sentences and the
14 payment of \$50,000, those will run concurrent with the 25-year
15 sentence on the trafficking in marijuana charge which also
16 carries a mandatory fine \$25,000. I've indicated on each of
17 the sentencing sheet that the start date for these sentences
18 will be October the 19th 2011. Good luck to you, sir.

19 (Copies of Indictment Nos. 96-0816, 0817, 004781 marked
20 Court's Exhibit No. 1, copy of Indictment No. 08-009596 marked
21 Court's Exhibit No. 2, SCDC Offender Management System marked
22 Court's Exhibit No. 3, SC Statute 44-53-470 marked Court's
23 Exhibit No. 4 and sentencing summary marked Court's Exhibit
24 No. 5 for identification.)
25

1
2
3 CERTIFICATE OF REPORTER

4 I, Margaret A. Woods, Court Reporter in and for the State
5 of South Carolina at Large, hereby certify that I reported the
6 preceding case on October 24, 25 and 31, 2012 at the time and
7 place heretofore set forth; and that the foregoing pages
8 numbered from 5 through 189, inclusive, constitute a true and
9 accurate transcription of my stenographic notes of the said
10 proceeding.

11 I further certify that I am neither attorney nor counsel
12 for, nor related to or employed by any of the parties
13 connected to the action, nor am I financially interested in
14 the action.

15 January 16, 2013

16 Margaret A. Woods

17 Margaret A. Woods, Court Reporter
18 in and for the State of South Carolina at Large.
19
20
21
22
23
24
25

WITNESSES

1. SENTENCE MADE

2. RETURNED

3. RETURNED

SPARTANBURG COUNTY SHERIFF'S OFFICE

ARREST WARRANT NUMBER

M420279

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 7/25/10

VERDICT

Guilty

Foreperson of Petit Jury

Date: 10-25-12

DOCKET

10-GS-42-2216

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 24 2010

TERM

THE STATE
vs.

RICKY HEWINS MACK

FTA Bench Warrant to Re-arrest
A+M CLK SK 4/17/12

Chad Walker

Indictment for

TRAFFICKING IN
METHAMPHETAMINE OR
COCAINE BASE

SC Code: 44-53-375

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 APR -1 PM 4:03

RECEIVED
NOV 09 2012

SC Court of Appeals

00

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 25 2010 the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE OR COCAINE BASE

That Ricky Hewins Mack did in Spartanburg County on or about November 5, 2009, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Methamphetamine or Cocaine Base, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. **10-GS-42-2218**

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 APR -1 PM 4:04

WITNESSES

1. SENTENCED TO

2. REPT

SPARTANBURG CO SHERIFF'S OFFICE

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

April 2nd 2010

TERM

ARREST WARRANT NUMBER

M420276

THE STATE

VS.

ACTION OF GRAND JURY

RICKY HEWINS MACK

FTA Bench Warrant to
Remain Active Chad 4/17/10
Chad Graham

Representative of Grand Jury
Date: 3/25/10

VERDICT

Guilty

Indictment for

TRAFFICKING IN MARIJUANA

SC Code: 44-53-370

Representative of Petit Jury

Date:

10-05-12

70

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

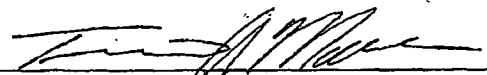
INDICTMENT

At a Court of General Sessions, convened on July 7, 2009 the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN MARIJUANA

That Ricky Hewins Mack did in Spartanburg County on or about November 5, 2009, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten pounds of Marijuana, a schedule I controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES.

SENT BY MAIL

SPTBG CO SHERIFF'S OFFICE

RECORDED

INDEXED

ADDITIONAL COPIES

TRAVELER INFORMATION COPY

ARREST WARRANT NUMBER

M420278

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/25/10

VERDICT

Guilty

Foreperson of Petit Jury

Date: 10-25-12

DOCKET NO.

10-GS-42-2017

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 29 2010

TERM

THE STATE

vs.

RICKY HEWINS MACK

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 APR -1 PM 4:03

20

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 7 2009 the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Ricky Hewins Mack did in Spartanburg County on or about November 5, 2009, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

SPARTANBURG
VS.
Ricky Hewins Mack

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS4202216

A/W#: M420279

Date of Offense: 11/5/2009

S.C. Code §: 44-53-0375(C)

CDR Code #: 0451

SENTENCE SHEET

Race: Sex: M Age: 38

DOB:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS..

TO: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 2nd offense (5 - 30 years & \$50,000)

in violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code # 0451

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HOLLIDAY, HAYES

SC Bar# 79791

Defendant

Attorney for Defendant

SC Bar# 4499

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 50,000; 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. Start Oct. 19, 2011

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$50,000.00
§ 14-1-206 (Assessments 107.5 %) \$53,750.00
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$150.00
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00
3% to County (if paid in installments) \$3117.90
TOTAL \$107,447.90

PTUP _____ 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,
§ 47.12 requires \$500 be paid to Clerk
during probation

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2132

Sentence Date: 10-3-12

NO. 1

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OF SPARTANBURG
VS.
Ricky Hewins Mack

INDICTMENT/CASE#: 2010GS4202217

A/W#: M420278

Date of Offense: 11/5/2009

S.C. Code §: 44-53-0370(e)

CDR Code #: 0387

AKA:

Race: Sex: M. Age: 38

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Drugs / Trafficking in cocaine. 10 g or more, but less than 28 g - 2nd offense (3 - 30 years & \$50,000)

in violation of § 44-53-0370(e) of the S.C. Code of Laws. bearing CDR Code # 0387

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HOLLIDAY, HAYES

SC Bar# 7771

Defendant

Attorney for Defendant

SC Bar# 4499

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
(and/or to pay a fine of \$ 50,000 ; 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. Oct 19 2011☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$50,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$53,750.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3117.90
TOTAL		\$107,447.90

PTUP _____

_____ 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,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2132

Sentence Date: 10/31/12

SPARTANBURG
VS.
Ricky Hewins Mack

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS4202218

A/W#: M420276

Date of Offense: 11/5/2009

S.C. Code §: 44-53-0370(e)

CDR Code #: 0402

SENTENCE SHEET

AKA:

Race: Sex: M Age: 38

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / Trafficking in marijuana, 10 lbs or more, but less than 100 lbs - 3rd offense (25 years & \$25,000)

in violation of § 44-53-0370(e) of the S.C. Code of Laws, bearing CDR Code # 0145

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HOLLIDAY, HAYES

SC Bar# 79791

Defendant

Attorney for Defendant

SC Bar# 4499

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 25,000; 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. Oct 19 2011 start☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$100	\$2577.65
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$2603.65
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$2703.65
§ 56-5-2995 (DUI Assessment)	\$12	\$2715.65
§ 56-1-286 (DUI Breath Test)	\$25	\$2740.65
Proviso 47.9 (Public Def/Prob)	\$500	\$3240.65
§ 14-1-212 (Law Enforce. Funding)	\$25	\$3265.65
§ 14-1-213 (Drug Court Surcharge)	\$150	\$3415.65
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$3465.65
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$3505.65
Proviso 90.5 (SCCJA Surcharge)	\$5	\$3510.65
3% to County (if paid in installments)		\$3616.65
TOTAL		\$3616.65

PTUP

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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2132

Sentence Date: 10-31-12

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
Ricky H. Mack, #240070,) SEVENTH JUDICIAL CIRCUIT
Petitioner,)
vs.) MOTION TO SUPPRESS
The State of South Carolina,)
Defendants.)

YOU WILL PLEASE TAKE NOTICE that the above named Petitioner, now moves this Honorable Court to be heard on his "Motion to Suppress" the drugs seized in the above captioned case. Petitioner asserts that this motion is based on U.S. Constitutional protections against unreasonable search and seizures.

ARGUMENT IN SUPPORT

After Petitioner was arrested, handcuffed, and secured, police officers searched his car and discovered crack cocaine in the car's console, which was not in plain view. Because Petitioner could not have accessed his car to retrieve weapons or evidence, i.e. crack cocaine, at the time of the search, the search-incident-to arrest exception to the Fourth Amendment's warrant requirement, as defined in Chimel v. California, 395 U.S. 754 (1969), and applied to vehicle searches in New York v. Belton, 453 U.S. 454 (1981), did not justify the search in this case.

Under Chimel, police may search incident to arrest "only the space within petitioner's 'immediate control'", meaning "the area from which he might gain possession of a weapon or destructible evidence." 395 U.S. 754.

South Carolina has held the same. In U.S. v. German, 664 F.Supp.2d 614 (D.S.C.2009), it holds that "warrantless search of a defendant's vehicle after he was handcuffed and placed in the back of police car was not incident to lawful arrest; defendant had already been secured and was not within reaching distance of vehicle or any compartments within the vehicle."

CONCLUSION

For the foregoing reasons and in accordance with the Supreme Court decision of Arizona v. Gant, 129 S.Ct. 1710 (2009), Petitioner's "Motion to Suppress" must be granted.

August 9, 2012



/s/ Ricky H. Mack
Ricky H. Mack, #240070
Kershaw Corr. Inst./ PA-11
4848 Goldmine Hwy.
Kershaw, SC 29067

FILED
2012 AUG 16 PM 3:24
M. HOPE BLACKLEY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

January 21st, 2014


Kathrine H. Hudgins
Appellate Defender

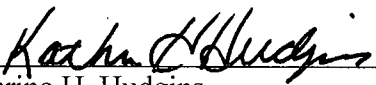
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

January 21st, 2014


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

ORIGINAL

RECEIVED

JAN 21 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

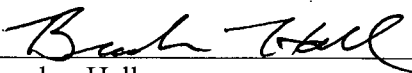
RICKEY HEWINS MACK,

APPELLANT

APPELLATE CASE NO. 2012-213390

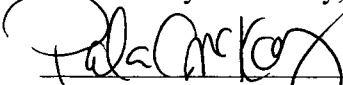
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Juile Kate Keeney, Esquire, at the RembertE Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 21st day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of January, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.