

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Steven H. John, Circuit Court Judge

Case No. 2013-445

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SC Court of Appeals

THE STATE,.....Respondent,

v.

LEXIE JAMES TURNER, JR.....Appellant.

RECORD ON APPEAL

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1 facts. That, again, is not my job. That is your job, that
2 is your responsibility, to listen to the facts and evidence
3 and find that evidence which convinces you of its truth.

4 All right. So with that I'll turn it over to the
5 State for their opening statements.

6 MR. EPTING: Thank you, Your Honor.

7 May it please the court?

8 THE COURT: Yes, sir.

9 MR. EPTING: Defense counsel.

10 Ladies and gentlemen of the jury, good morning.

11 The evidence will show in this case that on May
12 18th of last year the defendant in this case, Mr. Turner,
13 seated over there at counsel table, met with an individual
14 named Ben Quick. He met with him in the parking lot outside
15 of a liquor store off of Cherry Road called The Party Shop,
16 and that of during that meeting Mr. Quick gave the defendant
17 a twenty dollar bill and he received a relatively small
18 amount of crack cocaine in return. At that point Mr. Quick
19 left.

20 The car in which Mr. Turner was a passenger pulled
21 into the parking lot and parked. And at that time officers
22 approached him. They searched the car and inside that car
23 the testimony will show that they found approximately five
24 hundred dollars worth of crack cocaine.

25 They read the defendant his Miranda Rights. At

1 that time he admitted "the crack was mine," though he didn't
2 go further than that.

3 On the ride to the station -- or back at the
4 station he did admit to Officer Brown that he knew it was
5 approximately two grams.

6 I have talked to little bit about what he knew.
7 There are several things he didn't know that day. One of
8 those things, as some of you may have guessed, is that Ben
9 Quick was an informant. He was working for the police. And
10 before he met with the defendant that day he was searched.
11 No contraband was found. He wasn't allowed to ride in his
12 own car. He was given a county-owned car, which was
13 searched regularly. No contraband was found.

14 That's not all he was given. He was given a
15 twenty dollar bill that was marked. When I say marked, no
16 special markings was put on it. It was marked. It had been
17 noted. As is common procedure, as will be testified to,
18 they took a photocopy of that twenty dollar bill in the
19 hopes that sometime later they would recover that bill and
20 they would be able to match it up.

21 That's not all he was marked with.

22 Well, and as speaking to that twenty dollar bill,
23 when Mr. Turner was arrested with that five hundred dollars
24 worth of crack, guess what he had in his pocket?

25 The informant, Mr. Quick, was given a camera and

1 he used the camera that day during that meeting. You will
2 see the video played up there on that screen. It shows part
3 but not all of the deal.

4 You will hear that there was another thing that
5 Mr. Turner didn't know and that was that the police
6 department was across the street. Commander Marvin Brown
7 and another officer was parked across the street and at some
8 point turned on the video. They videoed part, but not all,
9 of that transaction as well, and that was their basis for
10 moving in and arresting Mr. Turner and searching him and
11 finding that five hundred dollars worth of crack cocaine.
12 That's one charge. One count of distribution for the crack
13 cocaine that was given to Mr. Quick.

14 We are not just letting him walk with five
15 hundred, there is a separate charge for that, because it is
16 also unlawful -- it's a separate violation of law, in fact,
17 to possess crack cocaine with the intent to distribute, and
18 you will hear a great deal of testimony on how to determine
19 that intent, because when you are looking at intent, you are
20 going inside someone's mind.

21 You will hear testimony about the significance of
22 the weight and value of the drugs. You will hear testimony
23 about the significance of how it's packaged. You will hear
24 the significance of the absence of certain things. Was
25 there a pipe to smoke that crack, if it was for personal

1 use? And you will hear the significance of the value of
2 that drug.

3 Ladies and gentlemen, you will hear -- I don't
4 anticipate this will be a long trial, but that doesn't mean
5 it's not an important. I anticipate that at the latest we
6 will be done tomorrow morning, but, like I said, because
7 it's a short trial doesn't mean it's not important.

8 The judge told you before he swore you that it is
9 the State's burden to prove these cases to you,
10 distribution, possession with intent to distribute, beyond a
11 reasonable doubt. We embrace that burden, because it's not
12 an impossible burden. It is not proof -- it is not proof
13 beyond any doubt, because there are very few things in life
14 that you could know with absolute zero doubt. It is proof
15 beyond a reasonable doubt.

16 Ladies and gentlemen, I do implore you to use your
17 common sense, to use your reason. That's why juries are
18 here. That's why juries are masters of the fact. Look at
19 the evidence, evaluate it, and at the close of the case
20 return the only verdict in this case that meets the facts,
21 that meets the evidence, and that's a verdict of guilty of
22 distribution of crack cocaine and guilty of possession with
23 intent to distribute.

24 I thank you ahead of time for your time and
25 attention.

1 THE COURT: All right. Ma'am.

2 MS. INZERILLO: May it please the court, Your
3 Honor?

4 THE COURT: Yes, ma'am.

5 MS. INZERILLO: Good morning.

6 I'll echo a little bit about what the solicitor
7 just indicated and what the judge has indicated to you.
8 This case may not take very long, but it's an important
9 case, and it's an important case because the State has the
10 burden to prove Mr. Turner guilty of both charges.

11 I'm not very good with sports analogies. In fact,
12 I don't quite understand what some sportscasters say, but I
13 do find one that is pretty helpful, and it's in football.
14 And we all watch the Super Bowl, and ball games, all
15 college, professional, and we all see when they got to run
16 towards the end zone and they are running, running, and
17 running and hits it to the one yard line. To me that's a
18 really good example of reasonable doubt. The State can't
19 make it to the one yard line. They have to make it all the
20 way into the end zone. They can't get close enough, or sort
21 of, or maybe. They have to get all the way into the end
22 zone. And that means that every single witness they put up,
23 every sort of piece of evidence they put in has to convince
24 you beyond a reasonable doubt that Mr. Turner is guilty of
25 both of these charges.

1 Now, I ask you through the course of this trial to
2 not only look at what they are entering into evidence or the
3 testimony that you are hearing, but also give special
4 attention to what you are not hearing, because a lot of
5 times in this room that could speak volumes as well.

6 I'll give you an example. I don't believe in this
7 case you are going to see the buy money in this case. That
8 is one piece of evidence you won't see. There may be other
9 pieces of evidence, but I ask you to pay attention to that
10 as well, because, ladies and gentlemen, at the one yard line
11 is not going to cut it. The State has to go all the way
12 into the end zone. Thank you.

13 THE COURT: All right, solicitor, the first
14 witness for the State, please.

15 MR. EPTING: Thank you, Your Honor.

16 The State calls Marvin Brown to the stand.

17 THE COURT: All right, please come around and be
18 sworn, sir.

19 THE WITNESS: Yes, sir.

20 COMMANDER MARVIN BROWN, having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. EPTING:

23 Q. Please state your full name and rank for the record.

24 A. My name is Marvin Brown. I'm the commander of the drug
25 unit. It's the same as a captain rank.

1 Q. Have you been involved in many crack investigations?

2 A. Yes. Crack came to York County in 1990. As a matter
3 of fact, I made the very first crack case. It was two guys
4 out of New York.

5 Q. We will get back to that a little bit later.

6 Let's talk about the facts of this case. Were you
7 involved in the investigation and arrest of Lexie Turner on
8 May 18th, 2012?

9 A. I was.

10 Q. Could you please tell the jury your involvement in that
11 investigation?

12 A. There was four of us in the drug unit that day. We
13 were going to go do a simple twenty dollar buy-walk, meaning
14 we were going to buy drugs and just let it go. The four of
15 us went out to Cherry Road to a liquor store.

16 Q. And if I could interrupt you, who were the four that
17 were with you?

18 A. It was myself, Officer Jamie Faulkenberry, Officer
19 Tanya Ervin, and Officer Figeuroa.

20 Q. Okay. So y'all were at the station?

21 A. We have three different offices here in the county; one
22 in Fort Mill, Rock Hill, and York. We were at the Rock Hill
23 office that particular day.

24 Q. Okay. And at some point did Ben Quick come into the
25 office?

1 A. Yes, Ben Quick was a cooperating source and he came
2 into the office.

3 Q. Okay. What, if anything, was done with Ben Quick?

4 A. Ben Quick was going to make the buy. We wired him up,
5 put a device on him and a video device and we gave him a
6 twenty dollar bill to buy a twenty dollar rock of crack
7 cocaine.

8 MS. INZERILLO: Objection, Your Honor. I would
9 ask the testimony only be limited to what Mr. Brown did
10 himself.

11 THE COURT: Well, what he observed, was present to
12 see and oversee.

13 MS. INZERILLO: Yes, Your Honor.

14 THE COURT: All right. Go ahead.

15 BY MR. EPTING:

16 Q. And was he given any other funds other than the twenty
17 dollars?

18 A. No, the only funds he had on his person was the twenty
19 dollar bill, our twenty dollar bill.

20 Q. To your knowledge, was any -- is there a protocol
21 regarding that money giving out to purchase drugs?

22 A. Yes, we photocopy it.

23 Q. Is that done in every case?

24 A. Yes.

25 Q. And what's the purpose of that?

1 A. To identify it at a later time if we run across it
2 again.

3 Q. Okay. So he's given money, he's given a camera, and
4 he's wired up. Is he provided with a vehicle?

5 A. Yes, he's given one of our -- we have a spare vehicle
6 that we drive, and he was actually issued the keys and given
7 a -- it's a pickup truck that we have in the drug unit. We
8 allowed him to drive it.

9 Q. What kind of maintenance is done with that pickup
10 truck?

11 A. We do all the maintenance. We gas, oil, clean it up.
12 I actually wash it myself sometimes. I take it down to the
13 quarter wash and wash it. It's a spare vehicle. If my car
14 was to break down, I could drive it at night, drive it home,
15 so we keep it clean and maintained.

16 Q. And for whom is that car primarily reserved for?

17 A. It's reserved for officers as a spare vehicle, but on
18 occasion we will let the cooperating source drive it, if
19 need be, and then on this day we let Mr. Quick drive it.

20 Q. Do you know what, if any, compensation, the informant
21 in this case received?

22 A. I'm sorry?

23 Q. Do you know what, if any, compensation the informant in
24 this case received?

25 A. Yes, we paid Ben thirty dollars for doing this buy.

1 Q. Okay. Was that contingent on him buying from Lexie?

2 MS. INZERILLO: Objection, Your Honor. Unless Mr.
3 Brown has any specific knowledge about any alleged drug deal
4 in this case, either observed, it would be speculation that
5 Mr. Brown would be testifying to any --

6 THE COURT: All right, just -- how about
7 rephrasing your question, solicitor?

8 MR. EPTING: All right.

9 Well, I'll move on.

10 BY MR. EPTING:

11 Q. So you said Ben Quick was the confidential informant
12 that was being utilized that day?

13 A. Yes.

14 Q. Do you know where Ben Quick is today?

15 A. I talked to him on the phone. I can tell you where he
16 told me he was at.

17 Q. Where did he go?

18 A. Minnesota.

19 MS. INZERILLO: Objection, hearsay.

20 THE COURT: Sustained.

21 Go ahead.

22 BY MR. EPTING:

23 Q. So at some point the CI is wired up, he's given the
24 funds. Only twenty dollars, correct?

25 A. Correct.

1 Q. He is given a county car, which was cleaned by you
2 guys?

3 A. Yes.

4 Q. He's wired up, as I said earlier.
5 What happens then?

6 A. We followed him. We went out -- I went to a liquor
7 store where there was the location we were to meet. Two of
8 the officers went to the colosseum, stopped of at Winthrop
9 Colosseum.

10 Q. Do you remember the name of that liquor store?

11 A. I call it The Party Shop. It's the 1300 block. It's
12 near the Shrimp Boat. It's on the left side. It used to be
13 Brand's Party Shop years ago. It's a liquor store. It's
14 two little buildings side by side. It's 1325, maybe.

15 Q. And is that in York County?

16 A. It is, York County.

17 Q. And who was with you when you pull up to surveil that
18 parking lot?

19 A. It's in Rock Hill city limits, but in York County.

20 Officer Figueiroa and myself were together. Officer
21 Figueiroa was driving and I was on the passenger side and I
22 had a set of binoculars and a video camera.

23 Q. Okay. And did you hear over the radio from anyone else
24 that the CI was arriving?

25 A. I'm sorry?

1 MR. EPTING: And, Your Honor, I apologize.

2 THE COURT: That's all right.

3 MR. EPTING: It beeps every time you turn it on.

4 THE COURT: That's not a problem.

5 MR. EPTING: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, sir.

8 MR. EPTING: For the record, I'm handing what has
9 been marked for identification as State's Exhibit 7.

10 BY MR. EPTING:

11 Q. Commander Brown, if you would, look over that and tell
12 me if you recognize that.

13 A. It's a CD, and I have -- it says surveillance on it.

14 Q. Have you reviewed a copy of that CD?

15 A. I have.

16 Q. Is it a fair and accurate depiction?

17 A. Of what happened that day, yes.

18 MR. EPTING: Your Honor, at this time the State
19 would move to enter State's Exhibit 7 into evidence.

20 THE COURT: Any objection?

21 MS. INZERILLO: No, Your Honor.

22 THE COURT: It's in evidence without objection.

23 (Whereupon, State's Exhibit No. 7 was entered into
24 the record as evidence)

25 MR. EPTING: Your Honor, I would ask permission to

1 A. Backup.

2 Q. Backup.

3 All right. You spoke a little bit about your encounter
4 with Lexie. If we can, I would like to start over with that
5 from the beginning.

6 Going from the end of the tape to where you make the
7 decision to change the plan, you approach them, what happens
8 then?

9 A. Well, Lexie got out and went into the store, so we
10 didn't approach the Suburban right off. We waited until
11 Lexie -- I didn't want to approach Lexie in the store, so we
12 waited for him to come back out. And when he walked to the
13 Suburban, I saw him walk up to the Suburban. I'm almost
14 positive he got into the Suburban.

15 We pulled up behind them so they could not leave. We
16 got out. Officer Figueiroa went to the driver's side where
17 Travis Moore was at, and I went to the passenger side where
18 Lexie was at.

19 Q. Okay. And what happened then?

20 A. We asked -- I asked Lexie to step out. Officer
21 Figueiroa asked Travis to step out.

22 And when Lexie stepped out, I put one handcuff on one
23 arm, and it's a handle that you use to get out of the
24 Suburban. I just handcuffed it to the little thing on the
25 Suburban while Lexie and I were talking.

1 Q. And was that for your safety?

2 A. For safety reasons and also I just witnessed a drug
3 transaction.

4 Q. Okay. And at that point what steps do you and Figueuroa
5 take?

6 A. Officer Figueuroa, since Mr. -- since Travis Moore was
7 driving the vehicle, Officer Figueuroa, in my presence, I
8 could hear him, asked Travis Moore could we search the
9 vehicle..

10 MS. INZERILLO: Objection to the hearsay, Your
11 Honor.

12 THE COURT: I'm going to allow that.

13 A. Travis Moore allowed us to search the vehicle. Officer
14 Figueuroa started searching the vehicle.

15 And from standing outside the vehicle, Travis -- with
16 Lexie -- the console had like a little indentation it in and I
17 saw a bag of what I thought to be crack cocaine in the
18 little indentation and I pointed it out to Officer Figueuroa
19 and he picked it up.

20 Q. Okay. And at that point what was done with it?

21 A. Actually it was placed in a little square envelope and
22 I put -- I wrote the initials DEU on the envelope in my
23 handwriting to show -- and we just kind of sealed that
24 little plastic bag.

25 I then pulled a rights card, Constitutional Rights,

1 MR. EPTING: Thank you, Your Honor.

2 I anticipate next we plan to qualify him as an
3 expert, Your Honor. There are often motions that go
4 alongside with that. While the jury is out, I don't know
5 what Ms. Inzerillo wants to voice her objection to his
6 qualifications or that's better done during voir dire.

7 THE COURT: Well -- okay, I'm sorry, what do you
8 intend to qualify him as an expert, in what field?

9 MR. EPTING: In the field of -- well, the case --
10 I actually have a case that bolsters this as to this
11 particular witness, Your Honor. How crack cocaine is
12 packaged, sold, going price, the intoxicating dose, and the
13 different habits between the typical dealer and the user.

14 Your Honor, I do have a case where Mr. Brown was
15 upheld as an expert on those grounds. It's State v. Jomar
16 Robinson that I would be happy to provide to the court.

17 THE COURT: I appreciate it, but -- I'm sorry, but
18 what is it that you intend to ask him that we have the
19 necessity of going into the field of whether he's an expert
20 in a particular field? What --

21 MR. EPTING: I would like for him to testify as to
22 a typical intoxicating dose of crack cocaine; how it's used;
23 the typical going price rate for the intoxicating dose; what
24 is, in his mind, typical of a person who intends to
25 distribute the cocaine versus the person who intends solely

1 to use it; things like the absence of pipes; and his
2 experience as an officer, the way it's packaged, what that
3 indicates to him; and things of that nature.

4 THE COURT: All right, let me hear from you,
5 ma'am.

6 MS. INZERILLO: Your Honor, I would have an
7 objection to Mr. Brown being certified as an expert.

8 One, particularly for that, I don't think that
9 necessitates an expert qualification. I think a lot of that
10 he can testify to that in extent of his law enforcement
11 experience, since he's already been listed by the State.

12 Two, I'm not exactly clear on what would be
13 elicited by the State in terms of any sort of an
14 intoxicating effect or typical habit between drug dealers.
15 I think that might be used to bolster the State's case, but
16 I would need more information from the State before I could
17 formulate an argument on that.

18 THE COURT: All right. Thank you.

19 All right, why don't you go ahead and proffer the
20 testimony first. Go ahead, sir.

21 MR. EPTING: Certainly, Your Honor.

22 BY MR. EPTING:

23 Q. Commander Brown, could you please list for the court
24 what formal training you have had in the area of narcotics?

25 A. I graduated from the South Carolina Police Academy in

1 1976.

2 I attended the Federal Commander Class, Level I and II,
3 State Drug Commander Class.

4 Several narcotic classes throughout the years.

5 I have also been a guest instructor at the Federal
6 Commander Class about how to put a drug unit together.

7 Basic Narcotics. Asset Forfeiture. Forfeiture.

8 And I do teach three one-hour blocks; Basic Narcotics,
9 Search and Seizure, and Asset Forfeiture to new recruits,
10 new officers.

11 I did one minor publication for the U.S. Attorney's
12 Office.

13 I have been in law enforcement for thirty-seven years.
14 Most of that has been in narcotic work.

15 I have made hundreds of crack cocaine cases.

16 The unit makes about a hundred and fifty cases a month,
17 and probably twelve to fifteen hundred cases a year, and a
18 large majority of that is crack cocaine cases.

19 I have been qualified as an expert twice in Federal
20 Court, and probably about eight to ten times in state court,
21 that I can recall.

22 Q. And does that training or teaching experience involve
23 identifying narcotics?

24 A. Yes.

25 Q. Involve identifying drug paraphernalia?

1 A. Yes.

2 Q. The various ways that drugs are packaged?

3 A. Yes.

4 Q. Street values of drugs?

5 A. Yes, sir.

6 Q. Narcotic transactions?

7 A. Yes, sir.

8 Q. Approximately how many crack cocaine drug arrests have
9 you made over the course of your career?

10 A. It would be thousands. It would be more than just
11 hundreds.

12 Q. Okay. And have you conducted interviews with drug
13 users?

14 A. We conduct interviews, try to, of every person
15 arrested.

16 Q. Okay.

17 A. So, yes. The answer is yes.

18 Q. If you had to guesttimate a number?

19 A. Hundreds.

20 Q. Okay. And what about -- so you interview drug users.
21 What about drug dealers?

22 A. Yes, we interview drug dealers also, specifically.

23 Q. Would that be approximately the same number that --

24 A. We target dealers. I probably have interviewed more
25 dealers than users, but, yeah, a lot.

1 Q. Okay. And through those interviews have you learned
2 about recreational drug use and street level drug dealing?

3 A. Yes.

4 Q. And how many times have you been qualified as an expert
5 on this matter in Federal Court?

6 A. Twice.

7 Q. How many times in state courts?

8 A. I'm not sure. Ten -- eight, ten, twelve.

9 Q. Okay.

10 MR. EPTING: Your Honor, that would be the basis
11 of how I would qualify him as an expert, based upon those
12 grounds.

13 I do have a case, Your Honor, that I would like
14 the court to see.

15 THE COURT: I would be glad for you to do that.

16 MR. EPTING: May I approach?

17 THE COURT: Yes, sir.

18 THE COURT: I think --

19 Well, first, ma'am, do you want to question him as
20 to his expertise, his qualifications? Do you wish to do
21 that?

22 MS. INZERILLO: No, Your Honor.

23 THE COURT: All right. Obviously you are going to
24 need to do this in front of the jury again.

25 I --

1 MS. INZERILLO: Your Honor, I would have an
2 argument on it. I mean, I don't have any questions for him,
3 but I would have an argument as to --

4 THE COURT: Right. No, I appreciate that. I'm
5 just trying to think through the process.

6 And I would be glad for you in just a minute to
7 make your arguments about whether or not the court should
8 qualify him as an expert.

9 I think you need to tell me specifically first,
10 solicitor, what areas you intend to ask the court to qualify
11 him as an expert in. So what are those areas?

12 MR. EPTING: Crack cocaine packaging; the going
13 price; the typical intoxicating dose; and the different
14 habits between the typical addict and the typical drug
15 dealer.

16 Essentially it would be phrased as "in your expert
17 opinion, based upon your experience, is possession of this
18 amount of crack cocaine without a pipe more typical of a
19 user or a dealer?"

20 Or I could ask him "in your experience, have you
21 encountered an individual with this much crack cocaine
22 without a pipe for its use?"

23 THE COURT: That probably would be better.

24 Go ahead, ma'am.

25 MS. INZERILLO: Your Honor, I would still object

1 to Commander Brown being qualified as an expert.

2 The qualifications that have been submitted by the
3 State essentially go to his law enforcement experience.
4 Normally I would give deference to someone being qualified
5 as an expert before, but in this case he doesn't have any
6 extra qualifications that lend itself to any particular
7 expertise, not to say that Mr. Brown doesn't have extensive
8 expertise in the field of law enforcement. I'm certainly
9 not saying that, but in the specific qualifications of an
10 expert, just simply because we hold them to a higher
11 standard, we allow them to bring their expertise into a
12 courtroom. It's a little bit more incumbent to the purpose
13 of offering -- to decide to proffer the person as an expert
14 to be a little more qualified than just someone who has a
15 lot of experience in a particular field.

16 Granted, Mr. Brown can certainly just testify as
17 his experience. He has seen crack. He knows that it's
18 crack. He's pretty much testified to that so far that he
19 took something into evidence, that he noticed it was crack,
20 and he has been allowed to testify to that so far. And
21 his -- his qualifications has been supported and proffered
22 so far by the State essentially to support that, so I don't
23 see the need to qualify him additionally as an expert and
24 give the jury the impression that he is somewhat more
25 qualified than that, or has some additional expertise or

1 learning than what he has already essentially testified to
2 before them.

3 I would additionally note I would have some
4 objection to him just being allowed to testify, you know, to
5 the last -- the State's last proposed question about the
6 type of -- you know, the amount of drugs that are seen as
7 typically more of a user than of a dealer. I think that
8 question might hit more of speculation than any sort of
9 expertise, but I would ask -- you know, I would ask the
10 court to comment on that before the jury comes in as well.

11 THE COURT: All right. I'm going to -- assuming
12 the proper foundation is laid, I'm going to allow him to be
13 qualified as an expert in these particular areas; assuming
14 you go over his experience again and the -- his expertise in
15 seeing how drugs have been packaged; his knowledge about the
16 price; what they have to give the confidential informants to
17 make sure that they are -- you know, have the right amount
18 of money, you know, to purchase drugs and what they get for
19 the money.

20 I think rather than a general open-ended question,
21 I think you need to zero in on his expertise and experience,
22 if you are going to be asking him questions about any more
23 experience in all the cases that you have seen, what an
24 amount of drugs is. I think you need to -- rather than some
25 open-ended question. I think there may be an issue there if

1 you are asking open-ended questions rather than making him
2 rely upon his experience in the field. All right?

3 MR. EPTING: Certainly, Your Honor.

4 THE COURT: All right. Well, the jury has been in
5 there. Why don't we just take five minutes and we will come
6 back in and continue on. Okay. Thank y'all.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: All right, are you ready for the jury,
10 solicitor?

11 MR. EPTING: The State is ready, Your Honor?

12 THE COURT: Defense?

13 MS. INZERILLO: Yes, Your Honor.

14 THE COURT: Ask the jury to come in, please.

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

17 THE COURT: All right, solicitor. You may
18 continue, sir.

19 MR. EPTING: Thank you, Your Honor.

20 BY MR. EPTING:

21 Q. Commander Brown, could you point out the person that
22 you arrested at The Party Shop that day that you have been
23 identifying as Lexie Turner? Is he present here in this
24 courtroom?

25 A. Yes, sir, Lexie is seated here with the white shirt on.

1 MR. EPTING: Okay. Please let the record reflect
2 that Commander Brown identified the defendant Lexie Turner
3 at counsel table as the person he arrested that day.

4 BY MR. EPTING:

5 Q. I would like to talk with you -- we have touched on it
6 earlier, but I would like to talk with you a little bit more
7 about your training.

8 Do you have any formal training in the area of
9 narcotics?

10 A. I graduated from the South Carolina Police Academy in
11 1976.

12 I attended a Federal Commanders School, Level I, and a
13 Federal Commanders School, Level 11.

14 The state also put on two Commanders Schools.

15 I have been to Basic Narcotics I and II, Level I and
16 II.

17 Many different drug schools throughout the years. I
18 have been working narcotics most of those years.

19 I have actually participated in the Commanders Schools
20 as an instructor.

21 I do teach sometimes one-hour blocks on asset
22 forfeiture, search and seizure, basic narcotics.

23 I have been doing this many -- I was a lieutenant at
24 the Rock Hill Police Department for several years over their
25 narcotic unit, and now I'm the captain over this drug

1 future.

2 We have made thousands of cases over the years. The
3 Drug Unit normally makes between twelve to fifteen hundred
4 cases a year. I'm directly involved in most of those, so
5 thousands of cases made over the years.

6 Training goes into much more detail than that, but --

7 Q. Now, during your training, your teaching experience, as
8 well as your experience investigating drugs that you just
9 alluded to, did that include identifying narcotics?

10 A. Yes.

11 Q. Identifying drug paraphernalia?

12 A. Yes, sir.

13 Q. Identifying how drugs are packaged?

14 A. Yes, sir.

15 Q. Identifying the street value of drugs?

16 A. Yes, sir.

17 Q. The general study of narcotics transactions?

18 A. Yes, sir.

19 Q. You got into how many arrests the unit was involved in.

20 How many drug arrests involving crack cocaine,
21 particularly, have you been involved in during the course of
22 your career?

23 A. Since 1990, thousands. It's more than a few -- a
24 couple hundred. It's up in the thousands.

25 Q. All right. And during -- and making those cases, did

1 you have interviews with users of crack cocaine?

2 A. Yes, sir.

3 Q. Did you have interviews with dealers of crack cocaine?

4 A. Yes, sir. We try to interview everyone we arrest. We
5 bring them in, if they allow us. We try to interview people
6 that we arrest and talk to them about their habits and try
7 to go up the ladder.

8 Q. And if you could put a number -- if you could put a
9 number to the interviews as to -- we will start with drug
10 users. What would you say? How many?

11 A. Hundreds, thousands.

12 Q. Drug dealers?

13 A. The same. Probably a little more, because we target
14 the drug dealers. We go after the drug dealers, not so much
15 the drug users.

16 Q. During those interviews with both the crack users and
17 crack dealers --

18 A.. Yes, sir.

19 Q. -- have you learned about recreational drug use and
20 street level drug dealing?

21 A. Yes, sir, we have actually had videos, undercover
22 videos. Yes, I have learned about that, yes, sir, over the
23 years.

24 Q. How many times have you been qualified as an expert at
25 the federal level?

1 A. Twice. In federal level, in Federal Court, twice.

2 Q. At the state level?

3 A. I'm not sure. More than a half a dozen, up to about a
4 dozen, somewhere in that -- eight, ten.

5 MR. EPTING: Your Honor, at this time I would move
6 to admit Commander Marvin Brown as an expert in how crack
7 cocaine is packaged, how it's sold, the going price, the
8 typical intoxicating dose, and the different habits between
9 the typical addict and the typical drug dealer.

10 THE COURT: Does the defense wish to voir dire the
11 witness as to his qualifications?

12 MS. INZERILLO: No, Your Honor.

13 THE COURT: All right. Do you --

14 MS. INZERILLO: We would renew our objection.

15 THE COURT: Very good.

16 Based upon the court's prior ruling, I'm going to
17 allow the witness to testify and give his opinion in the
18 fields of packaging, price, dose, habits, and sale.

19 You may continue, sir.

20 MR. EPTING: Thank you, Your Honor.

21 BY MR. EPTING:

22 Q. Based upon your training and your experience, could you
23 describe to the jury, who may not be familiar, the general
24 appearance of crack cocaine?

25 A. Crack cocaine, they call it rocks, because it's fairly

1 hard. Sometimes it's the color of peanut brittle, or a
2 little bit lighter, and it's hard enough where one can place
3 it in their mouth and it wouldn't dissolve for an extended
4 period of time, or you can hold it in your hand and it's
5 like little pieces of almost like candy. It will break with
6 the fingernail, but you have to break it, but it's hard in
7 texture. It's just not powder. It just wouldn't fall
8 through your hands, so peanut brittle is the best example I
9 can give of crack cocaine.

10 Q. Okay. How is the typical -- based upon your experience
11 and your training, how is it typically packaged?

12 A. It's typically packaged in a baggy with several rocks
13 or several pieces, because they are not individually
14 packaged.

15 When it first came out in the nineties, they put it in
16 vials or little square baggies, but they stopped doing that
17 many years ago. It's basically just put in a baggy and you
18 can just reach in and pull out what you want.

19 Q. Okay.

20 A. Now, large amounts we are talking different, but street
21 level amounts is just like you might put, twenty, thirty,
22 forty rocks in one bag together and just pull them out one
23 at a time.

24 Q. Now, I want to talk with you a little bit about the
25 intoxicating dose. Could you explain to the jury what an

1 intoxicating dose is?

2 A. Intoxicating dose is a dose of crack cocaine that you
3 would smoke. Crack cocaine is just a smokeable form of
4 cocaine, and it's usually a tenth of a gram. So you can get
5 ten of those in a gram, but a tenth of a gram is an
6 intoxicating dose. You would put it on the end of a pipe
7 with some steel wool. Put some flame to it and suck the
8 fumes back through the pipe.

9 And one twenty dollar rock, which is a tenth of a gram,
10 is usually an intoxicating dose. I equate it to like a
11 bottle of a half a pint of liquor, or something. It gets
12 you high. One twenty dollar rock, a tenth of a gram, is an
13 intoxicating dose.

14 Q. Okay. And if you could compare it to alcohol, would a
15 six pack be an intoxicating dose, based upon your training
16 and experience?

17 A. I like to go more with a bottle of liquor, because you
18 can drink a beer and not get intoxicated, but you can smoke
19 a rock of crack and get intoxicated. So it's more than --
20 you know, it would -- however many beers it takes you to get
21 intoxicated, so I wouldn't call it the same as beer.

22 Q. Based upon your training and experience, your street
23 experience particularly, how many doses would you expect a
24 recreational user to have, typically?

25 A. Recreational users usually have one to three rocks, up

1 to maybe six max, because they buy them like going to the
2 store and buying it.

3 MS. INZERILLO: Your Honor, I would again object
4 to the line of questioning.

5 THE COURT: All right. I am going to allow the
6 testimony, based on the officer's experience.

7 MS. INZERILLO: Thank you, Your Honor.

8 A. It's twenty dollars a rock for a tenth of a gram. So
9 users buy normally like that, so they would only have three
10 or four rocks at the time.

11 A dealer, when -- we are talking two and a half grams,
12 is five hundred dollars worth of crack cocaine. A user
13 would not be walking around with five hundred dollars of
14 crack cocaine in his pocket.

15 BY MR. EPTING:

16 Q. Based upon your training, and, again, particularly your
17 street experience, what items would you expect to find on a
18 drug user of crack cocaine?

19 A. Drug users, you have to have the pipe. It's called a
20 crack pipe; steel wool; and they these little one dollar,
21 two dollars, what they call BIC lighters, because you have
22 to put the flame straight to the crack cocaine, so it's
23 common for BIC lighters to be all over the place or have one
24 or two in their pocket, along with crack pipes down in their
25 sock or in their pocket. So you would -- a crack pipe, some

1 steel wool, and the lighters. You got to have those three
2 items to smoke crack cocaine.

3 Q. Okay. Have you investigated cases in your experience
4 where crack cocaine has been sold out of an automobile?

5 A. Yes, every day, pretty much. Almost every day.

6 Q. In your experience, is it typical to find a scale in
7 those cars?

8 A. No, scales are used for upper level deals and we
9 normally don't get scales in cars when they are making
10 deliveries. The scales are at homes and in motel rooms.

11 Q. I think you have already addressed this, but is
12 packaging materials commonly found, in your experience, when
13 someone is selling out of a car?

14 A. No, you are not going to find baggies and that type of
15 thing, not with crack cocaine.

16 Q. Based upon your experience and your training as an
17 officer, would twenty-five dosage units be more typical in
18 your mind of a crack user or a crack dealer?

19 A. A crack dealer is five hundred -- that's five hundred
20 dollars worth of crack cocaine, sold as twenty dollar rocks,
21 like we purchased that particular day.

22 MR. EPTING: Your Honor, at this time I would ask
23 to publish I believe it is State Exhibit 5 -- or State
24 Exhibit -- I'm sorry, State Exhibit 4 to the jury.

25 THE COURT: All right, you may do so.

1 I have indicated previously State's 4 and 5 are in
2 evidence over the objection of the defense.

3 You may continue.

4 MR. EPTING: For the record, State's Exhibit 5 is
5 being put up on the overhead. There is also a paper copy
6 entered into evidence.

7 BY MR. EPTING:

8 Q. Have you had a chance to review State's Exhibit 5?

9 A. I have.

10 Q. All right. Could you explain -- based upon your
11 training and experience, could you explain to the jury what
12 we are seeing here?

13 A. Yes, that's eleven rocks of crack cocaine. The top
14 rock would be more indicative of a dosage unit. That's
15 about a tenth of a gram.

16 The other rocks are more along the line of forty dollar
17 rock, but you break them in half to get your twenty dollar
18 rock. So that -- what you see there could be ten, twenty,
19 twenty-one dosage units on the screen, because, as you can
20 tell, the top one is smaller than the others ones. So --
21 you can sell it like that for twenty dollars, but that's
22 more crack than is normally sold for a twenty dollar rock,
23 but that's -- it's broken down for sale.

24 Q. And how many rocks are actually on the screen? I know
25 there is a glare.

1 A. It's hard to tell, but I believe it's eleven.

2 Q. Okay. Ten of the forty and one of the twenty?

3 A. Yes.

4 MR. EPTING: I beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 BY MR. EPTING: -

8 Q. I have no further questions for you at this time.

9 Please answer any questions that Ms. Inzerillo may have for.

10 THE COURT: All right, cross-examination, please.

11 MS. INZERILLO: Thank you, Your Honor.

12 May it please the court?

13 CROSS EXAMINATION BY MS. INZERILLO:

14 Q. Now, Mr. Brown, on May 18th your position was across
15 Cherry Road, is that right?

16 A. Yes, ma'am.

17 Q. Okay. And as we all know, Cherry Road in Rock Hill is
18 essentially like a four-lane road?

19 A. It is.

20 Q. Okay. And as you described -- you did a much better
21 job than I could in describing it geographically,
22 essentially it's old Brands Liquor Store that sits right
23 next to the Shrimp Boat?

24 A. Yes.

25 Q. Okay. And so you were across the street from that?

1 A. Yes, and I was a little bit elevated, because that
2 parking lot goes up, but I was across the street, and Brands
3 is kind of down lower, so I had a decent vantage point, but
4 I was across the street.

5 Q. Okay. So I'm going to show you the video that we
6 watched and that the State showed you on direct, okay?

7 A. Yes, ma'am.

8 Q. So is it fair to say that --

9 (Whereupon, the videotape was started)

10 BY MS. INZERILLO:

11 Q. -- you are not standing anywhere in this frame?

12 A. I'm across the street holding the video camera.

13 Q. All right. So I'm -- this is essentially your vantage
14 point looking at that?

15 A. That's what I see.

16 Q. Okay. So this guy right here, this black guy, he's not
17 you?

18 A. No.

19 Q. And this guy, the African American guy, he's not you
20 either?

21 A. No.

22 Q. Right?

23 A. That's correct.

24 Q. Okay. And you are not anywhere in this frame, is that
25 right?

1 A. That's correct.

2 Q. Okay. In fact, you are not anywhere in this parking
3 log?

4 A. I'm across the street.

5 Q. Across the street. Got it.

6 A. Uh-huh.

7 Q. So at this point --

8 And essentially your vantage point, there is cars
9 driving up and down the road?

10 A. Yes.

11 Q. You can see one right here, this red little Nissan,
12 right?

13 A. Yes.

14 Q. Okay. And at this point -- and I have paused the video
15 right at the one second mark. Do you see that?

16 A. Yes, ma'am.

17 Q. And you have mentioned that there was another sort of a
18 third party that sort of got involved in your little scene
19 here, this unidentified person here in the white T-shirt?

20 A. Yes, ma'am.

21 Q. This African American guy?

22 A. Yes, ma'am.

23 Q. Okay. His back is to you, is that right?

24 A. Yes, ma'am.

25 Q. And that's at the one second mark, right?

1 A. (No response).

2 Q. Do you see it right there, one second?

3 A. Okay.

4 Q. Okay. And the person he's talking to is this paid
5 informant guy?

6 A. Yes, ma'am.

7 Q. All right. So you are watching, watching.
8 Back still to you, right?

9 A. Yes, ma'am.

10 Q. This identified person.

11 And do you see your informant look down?

12 A. He's on the --

13 Q. He's --

14 A. He has a phone in one hand and he has the video camera
15 in his left hand. It's hard for you to see it, but I know
16 he's got the video camera in his left hand, because we give
17 it to him.

18 Q. Is that what this is right here?

19 A. I can't -- I don't -- I know he's got a video camera in
20 his left hand, and I know that the other gentleman has two
21 things in his hands also, but that's correct. His back to
22 me.

23 Q. But you don't know that. I mean, for two seconds his
24 back is to you, is that right?

25 A. Yes, ma'am.

1 Q. Okay. All right.

2 Let's play this again. For two seconds we have a --
3 for part of that we have a car in the way?

4 A. Yes, ma'am.

5 Q. And for two seconds his back is to you?

6 A. Yes, ma'am.

7 Q. All right. So we play a little bit more.

8 They're around here.

9 You are keeping an eye on this pretty closely, right?

10 And then I'm going to fast forward it a little bit.

11 Computers aren't really my forte.

12 Still have cars going back and forth, right? Cherry
13 Road is pretty busy? For anybody who lives in Rock Hill, we
14 all know that, right?

15 A. Yes, ma'am.

16 Q. Okay. And they are all hanging around this blue car,
17 is that right?

18 A. I don't know if they are hanging around the car. That
19 car is parked there.

20 Q. Right.

21 And there is people in the car?

22 A. I think the young man in the white T-shirt walks around
23 and talks to them at some point.

24 Q. Right, at about the 138 mark?

25 A. Okay. And there are other officers in the lot also.

1 Q. But I just want to talk about what you can see.

2 A. Yes, ma'am.

3 Q. All right?

4 A. Yes, ma'am.

5 Q. So at this point, at about 126, we actually see this
6 unidentified person walk over to the blue car, is that
7 right?

8 A. Yes, ma'am.

9 Q. Okay. And he's at the window, right?

10 A. Okay.

11 Q. Which you described in all of your experience indicates
12 a hand to hand?

13 A. It's a little bit more than that.

14 Q. Right, but you just testified that in your experience
15 that's a hand to hand?

16 A. No, ma'am, I didn't testify to that.

17 Q. Okay. Not in this situation?

18 A. Not -- you got to have more than that.

19 Q. Right.

20 A. People meet people at windows and talk all the time.
21 He's walking around the parking lot and just talking to all
22 kinds of people.

23 Q. Right. Okay.

24 So he walks away from the car, right?

25 A. Yes, ma'am.

1 Q. And then he walks back over to the CI?

2 A. Okay.

3 Q. Okay. I mean, I'm right on that, right?

4 A. Yeah, he walks back over to him.

5 Q. I mean, because we have got video, right?

6 A. Yes, ma'am.

7 Q. I mean, that's what we are looking at --

8 A. Yes, ma'am.

9 Q. -- right? Okay.

10 And they are still there, right?

11 And then our little friend, the white T-shirt guy,
12 walks away --

13 A. Yes.

14 Q. -- and gets in the car, right?

15 A. And that's when Mr. Quick walks down to Lexie.

16 Q. Right. Okay.

17 Now, all of this time, this guy, the paid informant,
18 none of your officers are standing with him, is that right?
19 He's by himself?

20 A. That's correct.

21 Q. Okay. So he has --

22 MS. INZERILLO: Well, okay. You can turn the
23 lights on.

24 (Whereupon, the videotape was stopped)

25 BY MS. INZERILLO:

1 Q. Now, you indicated that the original plan was to
2 essentially just try to get the tag number off of the truck
3 that Lexie was in?

4 A. To do a buy-walk, yes.

5 Q. Right.

6 And that essentially means you would try to -- then you
7 let them go, right? Walk? The walk part of that means you
8 let them go?

9 A. Yes.

10 Q. Okay. But in this case you deviated from the plan, in
11 that you didn't let them go?

12 A. Well --

13 Q. You ended up arresting Lexie that day?

14 A. Because they stopped on their own.

15 Yes, I made the decision to approach them at that point
16 rather than trying to -- a buy-walk, when they hit Cherry
17 Road we was going to do the tag number. Not try a traffic
18 stop, just let them go.

19 Q. Okay.

20 A. But since they stopped and Lexie got out and went into
21 the store, I changed the plan to walk up and talk to him.

22 Q. Okay. So to answer my question, you didn't let them
23 go? You arrested him that day?

24 A. That's correct.

25 Q. And you, as part of the arrest, testified that you

1 actually found the money on his person that you claim is the
2 money, that's the buy money in this case?

3 A. It was in his left pocket.

4 Q. Right.

5 That's your testimony, right?

6 A. I'm not claiming. It was in his left front pant's
7 pocket.

8 Q. Okay. But that's your testimony?

9 A. Yes. Actually I filled out a sheet in my handwriting
10 that says where that money was at.

11 Q. Right.

12 A. It says left front pant's pocket.

13 Q. Okay.

14 MS. INZERILLO: May I approach the witness, Your
15 Honor.

16 THE COURT: Yes, ma'am.

17 BY MS. INZERILLO:

18 Q. All right, I'm going to show you that sheet.

19 A. Okay.

20 Q. That's the sheet that you filled out, right?

21 A. I did, yes, ma'am. I filled it out.

22 Q. And you indicated that on Lexie's person that day was
23 seventy-two dollars, right?

24 A. Yes, ma'am.

25 MR. EPTING: Your Honor, at this point I'm going

1 to have to object. She's wanting him to read from the
2 sheet. I believe that needs to be entered into evidence.

3 THE COURT: All right. If you want him to
4 testify -- you can obviously ask him questions. If you need
5 to refresh his memory, you may do so, but if the document is
6 not in evidence, you can't quote from it.

7 MS. INZERILLO: All right.

8 BY MS. INZERILLO:

9 Q. Okay, let me ask you this then. You recovered
10 seventy-two dollars -- well, you --

11 When you arrested Mr. Lexie and you came into contact
12 with him on this day, he had seventy-two dollars on his
13 person, is that right?

14 A. Yes, fifty-two in the right pocket, twenty dollars in
15 the left pocket.

16 Q. Twenty dollars in his left?

17 A. Yes.

18 Q. Okay. And the denominations of that money was ones,
19 fives, tens, and a twenty?

20 A. Yeah, one twenty dollar bill that was in his left
21 pocket.

22 Q. Okay. And ones, fives, and tens?

23 MR. EPTING: Your Honor, I'm going to object.
24 That's essentially reading from the sheet. That needs --

25 MS. INZERILLO: Well --

1 THE COURT: I appreciate it. She's asking him
2 questions. I'm going to allow her to ask questions. Thank
3 you very much.

4 MR. EPTING: Okay.

5 BY MS. INZERILLO:

6 Q. Is that correct?

7 A. It's seventy-two dollars.

8 Q. Okay. But do you remember the denominations of that
9 were ones, fives, and tens?

10 A. Yes, and one twenty dollar bill, which was the marked
11 twenty dollar bill.

12 Q. Okay. In fact, during the course of this case you took
13 pictures of all the money that was found on his person too?

14 A. I laid the money on the table and I took one overall
15 photograph of all the money so we could document how much
16 money it was, because we didn't intend to keep it.

17 Q. Okay. So you gave all that money back to Mr. Turner?

18 A. It was seventy-two dollars.

19 Yes, I had two reasons, and I did give it back.

20 Q. Okay. Now, when you pulled up behind the Suburban that
21 Mr. Turner was riding in, that's when you essentially had a
22 conversation with Mr. Turner? I mean, just to sort of
23 distill that whole scenario down, you essentially talked to
24 Mr. Turner?

25 A. Yeah, I walked up to the car on his side.

1 Q. Right. Okay.

2 And the crack that was found, or the drugs that were
3 found, they were found in the center console of the car?

4 A. It was not down in the console. It was like a cut-out.
5 The Suburban has like a cut-out portion. I could see it
6 from the outside.

7 Q. Right.

8 But the crack wasn't found in his pocket?

9 A. No, it was on the console between Travis and Lexie.

10 Q. Right, that's what I'm saying, it was in the center
11 part of the car?

12 A. Yes, it was right dead between them.

13 Q. Okay. And as part of your investigation of this case
14 you looked at Lexie's cell phone? Do you recall doing that?

15 A. Yes, I think I did.

16 Q. Okay. And you didn't pull any text messages off his
17 cell phone?

18 A. I -- I don't remember. I think I took some photographs
19 of some of his -- of some of the text messages.

20 Q. Okay.

21 A. I would have to look at the file to know for sure.

22 Q. Okay. You didn't find any -- let me rephrase it. You
23 didn't find any text messages indicating any drug dealing on
24 the cell phone?

25 A. I don't remember.

1 Q. Okay.

2 A. And it's common to delete them anyway.

3 Q. Okay. But you -- you know from all of your
4 investigations in the drug cases that it's also common habit
5 of the DEU that if you find someone with a cell phone that
6 indicates drug dealing, you also take pictures of those text
7 messages?

8 A. Yes. Yes, and I don't -- I don't remember exactly what
9 the deal was with the text messages on Lexie's phone.

10 Q. Okay. It's also common habit of the DEU that if
11 someone is found with a scale, then that's also noted that
12 they are arrested for PWID?

13 A. For possession with intent to sell?

14 Q. Uh-huh.

15 A. Yeah, if they have scales, I would indicate that he had
16 scales. Lexie and Travis didn't have any scales on them
17 that day in the car.

18 Q. Okay. So that's not so far fetched that if you do come
19 across someone that has drugs in the car, they may have the
20 scales with them, is that right?

21 A. It's not that common in cars. It's in the homes and
22 motel rooms, but we don't get scales out of cars much.

23 Q. Okay. But you could see that?

24 A. I have seen it, but it's not common.

25 Q. Okay. And you do also arrest people, I mean, and you

1 are aware that your officers do, for having extra baggies
2 for distribution?

3 A. Marijuana, yes. Cocaine, yes. Crack, typically no,
4 unless you are dealing in large amounts, and then they would
5 be in different baggies. The street dealer wouldn't be like
6 that.

7 Q. But you are also aware that your officers routinely
8 arrest people on crack charges for PWID where they also take
9 bags --

10 MR. EPTING: Your Honor, I'm going to object to
11 her bringing up what other officers do.

12 THE COURT: I'm going to -- I qualified him as an
13 expert in the field and he can answer the questions, if he
14 can or not --

15 MR. EPTING: Thank you, Your Honor.

16 THE COURT: -- so I'm going to allow the question.
17 Thank you very much.

18 A. I'm sorry, can you ask it again?

19 BY MS. INZERILLO:

20 Q. Sure.

21 You are also aware that your officers routinely arrest
22 people on PWID charges when -- and note that they have
23 baggies with them as an indicia of an intent to sell?

24 A. Yes, we do get them sometimes with baggies, but, again,
25 that's usually in the homes and the motel rooms. It's not

1 that common to get baggies that they have used. Normally
2 it's in the trash at their homes, because they cut the
3 corners out sometimes and use the baggies.

4 But this answer is sometimes, but not that common.

5 Q. All right. I'm going to turn your attention to --
6 on -- the solicitor asked you several questions about this,
7 what's been marked as State's Exhibit 8. I'll give that
8 back to you in case you need that.

9 And State's Exhibit 8, that is the drugs that you
10 indicated were found in the Suburban, is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And you testified fairly extensively that you
13 had noticed that the drugs were in the car, is that right?
14 And you pointed it out to Figueuroa?

15 A. I said I saw it in plain view from outside and I
16 pointed it out and Officer Figueuroa picked it up.

17 Q. Okay. And you also testified that you had, I believe,
18 opened up the package, is that right, which resulted in the
19 picture taken that's State's Exhibit 4?

20 A. Well, Officer Figueuroa and I did at the round table.
21 There is four chairs at the round table. He and I were
22 sitting there.

23 Yes, we did take it out and I took photographs.

24 Q. Okay. So this picture is after you guys, which you are
25 now saying both of you opened this, and then it was

1 repackaged?

2 A. We just put it back in that bag. We didn't take the
3 photographs at the scene. We took the photographs at the
4 police department. It was placed in a bag at the scene.

5 Q. Okay.

6 A. At the police department, it was taken out,
7 photographed, placed right back in the bag after we weighed
8 it.

9 Q. Okay. And you indicated that you placed the DEU
10 letters that are on this little?

11 A. I did.

12 Q. Okay. And at no point on this property log-in did you
13 ever note that you had touched the evidence?

14 A. It was in Figueiroa's control and my control, but, yes,
15 he filled out the property slip that it was in his control,
16 but I'm sitting there with him and he's taking it out of the
17 bag. I'm photographing it. He's putting it back in the
18 bag. He places it on the scales and I photograph it. We
19 are together on that. He placed it into the bag. I wrote
20 the -- I had the bag. I keep them with me. I wrote DEU on
21 the bag and he drops it in the bag. He takes control of it.

22 Q. Okay.

23 A. He keeps it. He dumps it out and I take a photograph
24 and he puts it back in.

25 Q. Okay.

1 A. It's in front of us, both of us, the whole time.

2 Q. Okay. Now, just a couple of final questions.

3 You had indicated that there were two points at which
4 Lexie talked with you about the drugs that were recovered
5 out of the car?

6 A. Yes, ma'am.

7 Q. That at one point on the scene you asked him "who did
8 the crack belong to?"

9 He said "me", is that right?

10 A. And we let Travis go.

11 Q. And you let Travis go?

12 A. Okay.

13 Q. And then at the station you asked him something about
14 "how much did it weigh", and he gave you a number, is
15 that --

16 A. I always do that.

17 Q. -- still the rendition?

18 A. Yes.

19 Q. Now, we know from watching this video that you had
20 video and audio equipment with you at the scene, is that
21 right?

22 A. Audio equipment?

23 Q. And video, because we just saw it, right?

24 A. Yes.

25 Q. Okay. And at no point did you video or audio these

1 statements?

2 A. No.

3 Q. Okay.

4 MS. INZERILLO: I have no further questions, Your
5 Honor.

6 THE COURT: All right. Any redirect?

7 MR. EPTING: Just very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION BY MR. EPTING:

10 Q. Ms. Inzerillo asked if why you did not audio these
11 statements. In your experience, what effect does recording,
12 under audio or visually, a suspect's statement at on their
13 willingness to make that statement?

14 A. Well, that particularly the statement at the -- on the
15 scene, we were standing out in the parking lot. And then
16 when we got back to the room, if you place a camera up or a
17 tape recorder up on the table, people are reluctant to talk
18 because of that.

19 We are looking at our procedures of when and at what
20 point should we record these conversations or maybe setting
21 up a permanent camera, but we are following the FBI's
22 protocol, so to speak, right now.

23 In the interview room, I sat down with doing booking
24 process and I just asked him one casual question, "do you
25 know how much the crack weighed?"

1 He said "about two grams."

2 Q. Ms. Inzerillo brought up the possibility of the other
3 individual possibly being involved in drug transactions in
4 the parking lot. Just to reiterate, from whom did you get
5 the marked twenty dollar bill?

6 A. Lexie's left front pant's pocket.

7 Q. And that was -- and to whom was that twenty dollar bill
8 initially issued?

9 A. To the informant Ben Quick.

10 Q. You said that you did not believe that the actions of
11 the individual that was talking with Ben Quick was
12 consistent with drug activity. Could you explain that?

13 A. Well, the -- it's got to be a little bit more.

14 He heads back to us at one point standing there talking
15 to Ben Quick, and could they have done something? Maybe,
16 but that's why we put all these other protocols in place.

17 When he went to talk to the people in the car, it's
18 common to talk to people in the car.

19 At Lexie's car, he walked up to the car and it does --
20 an exchange change took place, which is just more than just
21 conversation. Something happened between the two of them.

22 Q. All right.

23 MR. EPTING: Beg the court's indulgence.

24 THE COURT: Yes, sir.

25 (Off the record)

1 (Back on the record)

2 MR. EPTING: No further questions, Your Honor.

3 THE COURT: Anything on those particular questions
4 that were just asked?

5 MS. INZERILLO: No, Your Honor.

6 THE COURT: All right. You may step down, sir.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Solicitor, could y'all
9 come up and just talk to me for just a second, please?

10 MR. EPTING: Sure.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 THE COURT: All right, ladies and gentlemen, we
14 are going to break for lunch at this point in time. It
15 appears the next witness that will be some length anyway.
16 Anyway, it's not of such length that we can get it done,
17 both direct and cross-examination, before one o'clock, so
18 what I'm going to ask that you do is if y'all would be
19 back in the jury room by -- y'all be in there by -- try to
20 get in there about five to two, if we could, okay? Five to
21 two. All right.

22 Now, don't talk about the case. Don't allow
23 anybody to talk to you about the case. Nobody else has an
24 opinion about this case. I don't want y'all to be
25 discussing the case until you have heard all the evidence

1 closing statements, are not evidence. We have heard all the
2 evidence.

3 The closing statements are important. They are
4 each side's summation to you of what they believe the
5 evidence has shown to you during the course of the trial,
6 remembering, of course, that you are the judges of the facts
7 in this particular case.

8 So with that, solicitor?

9 MR. EPTING: Thank you, Your Honor.

10 May it please the court?

11 THE COURT: Yes, sir.

12 MR. EPTING: Defense counsel.

13 Ladies and gentlemen.

14 Ladies and gentlemen, all the evidence is in. You
15 have heard all the testimony that's going to be given. You
16 have seen all the physical exhibits that are going to be
17 given. So, in short, pretty soon you are not going to have
18 to hear me or any other people talking any more, which I'm
19 sure is a great relief. You get to go on with your life.

20 Ladies and gentlemen, in any case that's been
21 brought before your attention, and several times by the
22 defense counsel, it's the State's burden to prove this case
23 to you beyond a reasonable doubt.

24 Being a lawyer, the State loves to define the same
25 term five different ways, and this term is no other. This

1 term is not any different than any other. There are several
2 different definitions.

3 One way to define reasonable doubt, it is a doubt
4 which causes you to hesitate to act. But, again, what does
5 that mean? That's kind of vague. You hesitate to act in
6 any important matter in your life. That doesn't mean that
7 because when you go in that jury room and you are going to
8 hesitate that you must acquit the defendant. No person
9 would make an important decision -- and I asked for both of
10 our sake at the beginning of this case, this is an important
11 decision. No party would make an important decision briefly
12 without hesitating to act, without hesitating to consider
13 things. I encourage you to hesitate. I encourage you to
14 hesitate and look at the evidence, look at what's been
15 proven, look at what's been presented from that witness
16 stand. Share your doubts. There are chairs and tables in
17 the jury room. Why would those be there if you weren't
18 meant to hesitate at least a little bit to examine the case,
19 to examine what you have, to see if the State has met their
20 burden?

21 I have told you there are multiple different ways
22 to define it. One way that you will hear is proof beyond a
23 reasonable doubt is proof that leaves you firmly convinced.

24 There is not -- we do not have to prove this case
25 to you beyond any doubt, beyond a shadow of a doubt. We

1 don't have to make a touchdown, as Ms. Inzerillo stated in
2 opening statements, because that's beyond any doubt. We
3 have to prove to you beyond a reasonable doubt. People get
4 convicted all the time when there are doubts, because as I
5 said before, there are very few things in life that you know
6 with no doubt whatsoever, and I don't expect this case to be
7 any different.

8 After hearing all the evidence, are you convinced
9 beyond a reasonable doubt that the defendant intended to
10 distribute that crack that was found and that he did
11 distribute it?

12 First before I get into the elements I want to
13 talk to you about your role as jurors. I have often heard
14 it compared to an umpire at a baseball game. What goes
15 through an umpire's head when he's deciding what decision to
16 make, because y'all are just like umpires. Y'all are just
17 like judges. A person goes to first, he slides in, it's a
18 close call. Is that umpire thinking about is the runner a
19 good person or a bad person? Is he thinking about whether
20 the first baseman is a good person or a bad person? Is he
21 wondering about what effect this will have on this runner's
22 career? Is he wondering about what effect this is going to
23 have on the umpire's career? No, he's not thinking of any
24 of those things. That is all outside the purview of what he
25 is considering.

1 Your sole consideration today is did the defendant
2 violate the law. Did he distribute crack cocaine? Did he
3 possess crack cocaine with intent to distribute? Is he
4 safe? Is he out? We are not here to judge his soul. We
5 are not judge the officers or the job that they did. Is he
6 safe or is he out?

7 So with that said, granted that it's our burden to
8 prove to you these cases beyond a reasonable doubt, what
9 must the State show? What are the elements of these
10 offenses?

11 Well, there are several elements in common. It
12 has to occur in York County. That makes sense, because if
13 it didn't occur in York County, this wouldn't be tried in
14 York County. It would be tried in some other county.

15 There must be some act accompanying it. There are
16 two acts that we are considering here today. One is
17 possession with intent to distribute. That is from the
18 crack that was found in the car that the defendant claimed,
19 five hundred dollars worth of crack.

20 There is also a second act that he's on trial for.
21 That is the distribution to Ben Quick where he gave twenty
22 dollars worth of crack.

23 It has to be crack cocaine, obviously, or else it
24 would be under another statute.

25 And the defendant has to be the person who

1 committed these acts.

2 Well, I would submit to you that some of these
3 elements are met quite easily. Clearly that is Lexie Turner
4 on the tape. This defendant is seated right here, you have
5 had an ample opportunity to see him. You have seen the
6 tape. Obviously it's him. He's arrested right after, taken
7 to the station. There is no question it's him.

8 Well, clearly it's in York County. You heard
9 Officer Marvin Brown testify that that street is in York
10 County. Some of y'all may be familiar with that location
11 off of Cherry Road. It's shown on the video. Clearly
12 that's in York County. Those elements, you can just go
13 ahead and put them away.

14 Was it crack cocaine? I don't think -- we heard
15 from the chemist on both the crack that was distributed and
16 also the crack that was found in the car. It's
17 scientifically proven to be crack cocaine. No question
18 there.

19 On the left we have the crack that was sold, that
20 was distributed. On the right we have the report from the
21 crack that was found in the car.

22 Again, cocaine base, or crack, the same thing, .06
23 grams on the distribution.

24 Cocaine base crack, again the same thing, 2.44.

25 And at this time I will draw it to your attention

1 that what a coincidence that it is that the crack that Mr.
2 Turner is alleged to have sold and possessed adds up to an
3 even 2.5 grams? Remember Marvin Brown's testimony, they
4 weigh it at home and then they bust it up into rocks that
5 are evenly weighed and take those out in one single bag and
6 sell them in their car.

7 I will not have a chance at the close of this to
8 get up and argue to you again. Once Ms. Inzerillo gets up,
9 unless she says something evidentially improper, I won't be
10 able to get up and address you any more, so I have to at
11 this point kind of anticipate what she's going to say, kind
12 of put myself in the role of defense attorney and try to
13 address some of the things that she's going to bring before
14 you.

15 Defense attorneys like to focus on that a great
16 deal. They like to focus on problems in a case and make you
17 look at those in isolation. They look at the fact the CI is
18 not here. They look at the fact that the twenty dollar bill
19 is not kept. They look at all the small problems in a case.
20 And at the end of the day they take those to you and say
21 this is reasonable doubt, this is reasonable acquittal.
22 That's not how we make -- that's not how we make important
23 decisions in our lives. We don't look at things in
24 isolation. We look at the big picture, at the whole.

25 Five separate facts I want you to remember when

1 she pulls apart, when she puts those isolated problems in
2 front of you.

3 One subject is that the informant was issued
4 marked money. I don't think there is any fight about that.
5 That money was photocopied before it was given to him,
6 serial numbers shown.

7 The defendant met with the CI in a suspicious way.
8 Y'all seen those videos, and you will see them again in a
9 second. Is that the best tape in the world? I don't think
10 they would win an Oscar or an Emmy for the taping that was
11 done that day. However, I think at the very least we have
12 to say that the link between the informant and between Lexie
13 on the passenger side of the vehicle is highly suspicious.
14 No conversation. Puts his hand in, scoops something out,
15 hands over the twenty and leaves. I would say common sense,
16 much less Marvin Brown's expert testimony, leads you to
17 believe that some type of transaction occurred. Consider
18 that.

19 The defendant has that marked money in his
20 possession upon arrest. What a coincidence that this
21 person, B.J. Quick, is given this marked money, sent to this
22 location where they think a drug deal is going to go down
23 with him, with Lexie Turner, and all of the sudden Lexie
24 Turner has this twenty dollar bill that matches the serial
25 numbers of the money that was given to the defendant -- that

1 was given to the informant. What a coincidence.

2 The defendant was arrested in his car with a large
3 quantity of crack. I don't think there is any denying that.
4 Over five hundred grams (sic) in the console. Marvin Brown
5 testified that was his wife's car.

6 And the testimony was also given that he admitted
7 both that he possessed that crack, although as I said
8 earlier, you can go further, because he doesn't yet know
9 that Ben Quick is an informant. And that he admitted on the
10 way to the station that he knew that it was two grams of
11 crack, that that was not his crack. How in the world does
12 he know how much it weighed? Even an approximate weight.
13 Knowledge is evidence that he intended to possess. The
14 informant had no reason to lie.

15 Officer Faulkenberry got up there and testified on
16 my recross. Remember what he said, this guy is not working
17 off criminal charges. He's not going to jail if he doesn't
18 make this deal at the end of the day. What's he getting for
19 this buy? He's getting thirty bucks. Thirty bucks.

20 I asked Officer Faulkenberry does it matter who he
21 buys it from? No, it doesn't matter.

22 Ms. Inzerillo on cross brought up that individual
23 that he supposedly met with and that could have possibly
24 given the informant the crack cocaine in the parking lot
25 right under the police nose. Why in the world would the CI

1 lie about that? He could have gained himself sixty bucks if
2 he could have got crack from that person and from Lexie
3 Turner. Why in the world would he not admit that to
4 officers? Why would he lie?

5 There are two main issues to consider.

6 The act. We have already established the other
7 elements, that it was done in York County, that it was crack
8 cocaine, and that it was done by Lexie Turner.

9 Well, there are more. I'm going to play the
10 videos for you here. I ask that you pay attention to them.

11 (Whereupon, the videotape was started)

12 MR. EPTING: He had the camera in his right hand,
13 money in the left.

14 Let's see it one more time. Camera in the right
15 hand, money in his left hand. He's scooping something from
16 Lexie Turner's hands. You can see Lexie Turner in there.
17 You can see it's Lexie Turner's mouth moving. Is he saying
18 "who are you? What are doing at my car?" No.

19 Something is scooped from his hand, holds out his
20 hand, drive away. Total of five seconds. Suspicious at the
21 worst.

22 (Whereupon, the videotape was stopped)

23 MR. EPTING: Marvin Brown testified in his expert
24 opinion and in his experience as an officer that that was a
25 drug deal.

1 You have seen it with your own eyes. As I said
2 before, Steven Spielberg-esk cinematography? No. But think
3 about it from the informant's perspective. He has a camera
4 on his hand. He's doing the best he can to try to get -- to
5 try to get a video. He could, I suppose, walk up to the
6 window and do like that. What is Mr. Turner going to say
7 when he's doing that? He's going to know. So instead he
8 has it at his side. He does his best. He rests his hand on
9 the car window and he gets what he thinks is a good video.

10 There are two possible solutions. As I said, I'm
11 not going to be able to stand up once she's arguing and
12 argue back.

13 One possibility, the defendant sold crack to the
14 informant. You saw the video. As I said, at worst highly
15 suspicious. Beyond a reasonable doubt, I would submit to
16 you a drug transaction. That's one.

17 Here is the same clip slowed down. Direct your
18 attention to the hand here. Again, obviously Lexie Turner.
19 Look at his hand. Is it not highly significant that it is
20 scooped? It's not that he just dropped something in there
21 and is pulling his hand out. It is scooped. And you will
22 see when you have that -- when you have the drugs in front
23 of you and you are considering them that it fits in the palm
24 of your hand. Very small amount.

25 You will also see that it appears to be the same

1 type of baggy that was found -- that was found in Lexie's
2 car, the one that he claimed. The same type of baggy.

3 So some type of hand-to-hand transaction at the
4 window of the car. That's our argument. We argue beyond a
5 reasonable doubt that that's evidence of a drug deal,
6 particularly given everything else that we know. The CI was
7 searched beforehand. The car was searched beforehand, no
8 drugs. The car was searched after. The CI was searched
9 after. Twenty dollar rock, exactly what they planned on
10 going there to get.

11 On the other hand is that maybe that money got
12 there because the informant gave over the marked twenty to
13 the defendant for no reason whatsoever. Is that reasonable?
14 Is that reasonable to think that he would just drop money in
15 this person's hand, in the defendant's hand, with no remark,
16 with no reaction? I submit to you that is not a reasonable
17 explanation.

18 Speaking of that twenty dollar bill, we talked
19 about it a great deal. It wasn't published to you earlier.
20 This is the confidential twenty dollar bill that they said
21 as the policy photocopied before any deal in the hopes that
22 when they later make the arrest, that the serial numbers
23 will match up and they will be able to corroborate the
24 people after. This is the close-up. Both of these are in
25 evidence. This is a close-up of the twenty that was found

1 in Lexie's left pocket separate from his other money. I
2 would also note Marvin Brown testified to that as well.
3 What's the significance? Look at those two sequences of
4 numbers.

5 What are the chances that Lexie Turner is innocent
6 of selling that crack cocaine, yet has that marked twenty
7 dollar bill in his pocket upon his arrest ten minutes later?

8 It's a more reasonable conclusion that the
9 informant was searched prior to the deal, his car was county
10 owned and searched and he had crack afterwards. He didn't
11 have it before. Now he has it after meeting Lexie Turner;
12 or, that the informant bought the crack from someone else
13 right under the police's nose and for some reason lied about
14 it?

15 Remember what Jamie Faulkenberry testified on
16 recross. It doesn't matter where he got the crack from, he
17 was paid thirty bucks for a crack buy, for a paid crack buy.
18 It stands to reason that if he bought from the other
19 individual in the parking lot as well as Lexie, he would
20 make sixty bucks.

21 Jamie even went so far as to say that if he made
22 no crack deal that day, he made a good effort to try and
23 stood up or something happened, he would still get the
24 thirty bucks. Why in the world would the informant lie?
25 Why would he try to trick the police? He has no motive, no

1 financial motive, no criminal motive, no motive whatsoever.

2 Finally, what are the chances that this CI meets
3 with Lexie Turner at the passenger side of that window and
4 Lexie is caught less than ten minutes later; crack he admits
5 is his, in his wife's car; and that in the opinion of Marvin
6 Brown is an amount that is typical of a deal? What are the
7 chances? What is the more reasonable conclusion?

8 I would submit to you the only reasonable
9 conclusion from that is that it's exactly what it looks
10 like. The CI informant, Mr. Quick, give him that twenty.
11 He was searched. The car was searched. He met with Lexie,
12 as was the plan, got twenty dollars worth of crack rock from
13 him, left, met with officers, gave them that, and then left
14 shortly after. He bought that crack from Mr. Turner beyond
15 a reasonable doubt, ladies and gentlemen, regardless of what
16 the video shows. The video doesn't exonerate Mr. Turner.
17 All it is is ambiguous, because the CI is not a professional
18 camera man and didn't want to blow his cover by pointing the
19 camera straight down.

20 The next issue to consider, did the defendant
21 possess crack with intent to distribute? That's the second
22 way he violated the law. On one hand distribution, one hand
23 possession with intent to distribute.

24 And there are two acts, too, because one was made
25 to the informant. The other was made separately.

1 The deal was for twenty. That was testified to
2 over and over again. Not for the rest, not for the five
3 hundred dollars worth of crack that Mr. Turner was found
4 with when he was stopped by police.

5 Did the defendant possess crack cocaine? That's
6 one of the elements of the offense. It's in his custody and
7 control in his wife's car. Everybody knows that it's
8 reasonable common sense that if you are driving in your
9 wife's car, you have got custody and control over the car.

10 There was talk of Travis Moore, the driver of the
11 car, the person who actually drove it. You are driving your
12 wife's wife -- riding in your wife's car and someone is
13 driving it, you know legally you have the right to kick that
14 person out. It's your wife's car. It's your car. If your
15 wife tried to report it stolen, she couldn't. Your car,
16 too. It's your wife's. He can kick anyone out he wanted
17 to. He could access any area of the car that he wanted to.
18 He has control of the premise, control, and that allows you,
19 but it does not require you, to infer that he had custody
20 and possession of the drugs that were found inside the car.

21 Not only that, Marvin Brown approaches him, reads
22 him his rights. He reads him them from a card every single
23 time and that card is in evidence exactly what he read him.
24 Lexie says "that crack was mine." He doesn't say "I'm a
25 drug dealer. Yeah, the crack was mine and I was intending

1 to sell it." He just says "the crack was mine," because he
2 doesn't know what all we know at this time. All he knows is
3 they are searching his car and they found dope.

4 More than that, back at booking, as I stated
5 earlier, he knows how much it is. If he doesn't possess it
6 and that wasn't his, how in the world does he know how much
7 it is? The knowledge of the drugs is evidence of intent to
8 possess it and possession. That alone is possession.

9 Look at the crack cocaine itself. The picture
10 that you -- the paper picture that you have is actually
11 better, but here on the screen. Marvin Brown testified from
12 the paper picture ten forty dollar rocks, one twenty dollar
13 rock. Isn't it highly coincidental that we have ten bigger
14 rocks and one smaller rock, which Marvin Brown testified was
15 approximately twenty dollar rock? How coincidental that a
16 twenty dollar rock was -- that a twenty dollar deal was just
17 made? It does not bear to reason that that is half of the
18 crack rock that Mr. Turner gave to the informant,
19 particularly given that the numbers match up, .06 to 2.4.
20 Exactly 2.5. Look at the other rocks. It's approximately
21 half. Bears to reason.

22 Look at the bag. That is very similar to the bag
23 of the crack that you guys will have in evidence, the crack
24 that he sold to the informant.

25 There is in the law something called the inference

1 level, inference, where it says that if you find a person in
2 possession of one gram, or more, of crack cocaine, you are
3 allowed to, but not required to, infer, since it's so much,
4 that they intended to possess those drugs with the intent to
5 distribute.

6 I ask you again in this case, how much crack?
7 2.44. Approximately 2.5 times the level that the
8 legislature says that you may permissibly infer he intends
9 to sell it. That's another consideration. Did he intend to
10 sell it? You may infer based upon the evidence.

11 Do you remember Marvin Brown's testimony? That
12 also bears to whether it's possession with intent to
13 distribute. He's commander of the Drug Enforcement Unit,
14 has prosecuted hundreds -- excuse me, has investigated
15 hundreds of thousands of crack cases at every level. He
16 testified that he made the first crack case in York County.
17 What did he testify to? He testified to weight and how that
18 factors into whether a person is a user or is a dealer. He
19 did it in terms of intoxicating dosage. You remember his
20 testimony about intoxicating doses. He would expect the
21 average user to have between three and six intoxicating
22 doses and no more? And why? That's common sense. They are
23 users. They spend their money on crack and they don't buy
24 in bulk. Do you remember intoxicating dose is like a six
25 pack of beer or smaller bottle of liquor.

1 He also talks about the value of that bag of
2 crack. Simple math. Twenty dollars for intoxicating dose.
3 Intoxicating dose is .1 grams. He has approximately 2.5, so
4 he had about five hundred bucks worth of crack cocaine in
5 that bag. It will blow your mind when you see the bag.
6 It's about that big. Expensive stuff.

7 Just use your common sense, the same common sense
8 that the judge appealed to you and that we have appealed to
9 you. Assume you are in the grocery store. Intoxicating
10 dose of alcohol that most of us are familiar with is a six
11 pack. But if you are shopping and see somebody with five
12 six packs in their cart, what are you thinking? Sports
13 night; they are having a busy weekend; they are going to do
14 some drinking; maybe camping, maybe something like that.

15 Ten six packs. Um, maybe a really, really crazy
16 weekend. Maybe they have a drinking problem.

17 Fifteen? Oh certainly it's definitely a drinking
18 problem.

19 But we get beyond that. Twenty, twenty-five. At
20 that point you know they have too much for one person to
21 consume, and you can tell just by the amount that they have.
22 They are going to give some to somebody. That's not all for
23 them.

24 The judge will instruct you distribution is not
25 required that it be for money. It doesn't require that it

1 be for consideration whatsoever. If I have a crack rock in
2 my hand and I give it to Ms. Desch, I'm guilty of
3 distribution, regardless of whether she gave me a penny of
4 that.

5 Twenty-five intoxicating doses. I would submit to
6 you those were not all for Lexie Turner. Those were not at
7 all for Lexie Turner. Those were packaged for sale.

8 Again, playing devil's advocate, because I won't
9 be able to respond to Ms. Inzerillo, what is the evidence
10 that he intended to sell that crack? The inference level.
11 A lot of intoxicating doses. We just went over that.

12 They searched the car and found no pipe or any
13 paraphernalia to use it. It was his wife's car, which
14 allows you to infer that he possessed it, but it doesn't
15 require you to.

16 The most important piece of evidence in my mind is
17 that he actually sold a small amount of that crack cocaine
18 shortly before his arrest for the PWID level crack. The
19 best indicator of future use is past behavior. He has just
20 sold crack. What do you think he's doing with the rest of
21 the crack that he has?

22 Playing devil's advocate. Maybe he was just a
23 user. What evidence do we have of that. Remember, no
24 lighter. Nothing to use it with. If he is a user, Marvin
25 Brown testified it's very unusual for a crack user to have

1 any amount of crack and not a pipe. They want to buy it and
2 smoke it.

3 Maybe it wasn't his whatsoever. But, again, those
4 stubborn facts. The CI being searched beforehand. The CI
5 having crack afterwards, and having that twenty dollar bill
6 in his pocket that marked funds specifically to buy crack at
7 the meeting, received at the only possible location, the
8 meeting site where that deal was to go down.

9 Stubborn facts, ladies and gentlemen. The only
10 reasonable resolution of that, the only reasonable
11 conclusion is that Lexie Turner possessed that crack cocaine
12 with the intent to distribute. There is no credible
13 evidence to say that he did not claim it that day. There is
14 no credible evidence to say that he did not claim it, in
15 fact he did not make this remark back at the booking station
16 where he said it was approximately two grams of crack.

17 In conclusion, all the evidence points to one
18 conclusion beyond a reasonable doubt. The crack was found
19 in the area of his custody and control and in his wife's
20 vehicle. He had -- that vehicle was his, regardless of who
21 was driving. The defendant claimed possession of crack and
22 he went beyond that and knew how much it was. Again,
23 knowledge is evidence that he actually possessed it, because
24 if he didn't possess it, how in the world would he know how
25 much it weighs? Not just that I know there is crack in that

1 car, that's Travis', or whatever, but I know how much it
2 weighs. Approximately two grams. He was right.

3 The amount of the crack was worth five hundred
4 dollars. There were 2.5 times the inference level. Crack
5 dealer. No indicia of use by the defendant. No pipes.
6 Nothing possible that he could have used that drug for. And
7 on top of that, on top of that, the deal that occurred
8 shortly before he was found in his car proves the
9 distribution.

10 Remember, the informant was searched back at the
11 station. The car was searched. Nothing. No crack. The
12 informant had a marked twenty dollar bill. Look up there on
13 the screen. We marked it -- we marked the serial numbers.
14 He left that meeting with missing one thing and gaining one
15 thing. Twenty dollar rock of crack, missing the twenty
16 dollar bill, the same bill that was recovered from the
17 defendant's pocket.

18 Ladies and gentlemen, I appeal to your common
19 sense. I appeal to your reasoning. Don't look at this case
20 in isolation. Yes, there are problems. There are problems
21 with any case. I wish he would have captured the deal. I
22 wish he would have pointed that camera down just a little
23 bit, but we do not have a professional doing it. We are not
24 professional photographers taking a close-up camera. That
25 is not reasonable doubt, ladies and gentlemen.

1 There is no reasonable doubt that Lexie Turner
2 sold twenty dollars worth of crack to the informant that
3 day, or that he possessed the crack that was found in his
4 wife's vehicle, which he claimed, which he admitted
5 knowledge of, with the intent to distribute.

6 After you deliberate and after you hear the
7 closing arguments, after you hear the judge's charge, I ask
8 that you return the only verdict that speak the truth and
9 the only verdict that is reasonable, given the evidence that
10 you have seen, that you have been presented, and that is
11 guilty of distribution and guilty of possession with intent
12 to distribute.

13 I thank you for your time and attention.

14 THE COURT: All right, Ms. Inzerillo.

15 MS. INZERILLO: Thank you, Your Honor.

16 May it please the court?

17 THE COURT: Yes, ma'am.

18 MS. INZERILLO: When I stood before you yesterday
19 morning I told you that essentially the State could not make
20 it to the one yard line. They had to get all the way to the
21 end zone. And I would respectfully disagree with my
22 colleague, the solicitor, and I would tell you that in this
23 case the end zone is beyond a reasonable doubt. In this
24 case, ladies and gentlemen, they can't make it to the one
25 yard line. They have to get all the way into the end zone.

1 Mr. Turner is charged with two crimes. He's
2 charged with distribution of crack cocaine and he's charged
3 with separately possessing a quantity of crack cocaine with
4 an intent to distribute it. Two separate and distinct
5 crimes.

6 Let's look at the distribution charge.

7 Now, the State was very eloquent in their closing
8 and he tried to anticipate what I may argue to you and he
9 tried to gloss over a lot of issues in the case, but he
10 neglected to discuss one glaring omission in his case, one
11 glaring piece of the puzzle that was never presented, and
12 that was the person who allegedly bought crack cocaine from
13 Mr. Turner.

14 All day yesterday we saw a parade of witnesses,
15 mostly law enforcement, almost entirely law enforcement,
16 take this stand, starting with Mr. Brown, and tell you there
17 was a drug deal. Over and over and over. But, ladies and
18 gentlemen, just because they tell you there was a drug deal,
19 that doesn't mean there was a drug deal.

20 Mr. Brown was sitting across Cherry Road, a
21 four-lane road in Rock Hill. And you could see from the
22 videos that we saw yesterday there was traffic on that road,
23 there was cars in the parking lot. And you have scene the
24 videos and you saw it again in the State's closing. You saw
25 it during my cross, and you saw it during the direct, so I'm

1 not going to play it for you again. You will have it with
2 you in the jury room. You see what he saw, which is someone
3 talk walked up to a Suburban and walk away. And I sure
4 appreciate it us being able to see it in the State's closing
5 slowly. Just because he calls it a drug deal, because of
6 his experience, doesn't make it a drug deal.

7 There was one person, one person, who could say it
8 was a drug deal. There was one person who could walk into
9 this courtroom and affirmatively say that "Lexie Turner gave
10 me drugs, gave me these drugs," and that person was not
11 here. That was the CI. That was the person that was paid
12 to stand in that parking lot and do a deal.

13 And there was a lot of talk about he could have
14 gotten drugs from anybody, and there is a lot of speculation
15 about that, so why would he lie? We don't know why, because
16 he's not here to explain it to us. We don't know if he knew
17 he could have gotten sixty dollars that day, or thirty
18 dollars here. We don't know that. We know what you have
19 been presented with by the State.

20 And you have heard both of us, the State and me,
21 telling you about beyond a reasonable doubt, and there is a
22 reason for that, because in this courtroom the burden is on
23 the State to prove Mr. Turner guilty of both charges, every
24 element of both charges, beyond a reasonable doubt.

25 On the distribution charge, ladies and gentlemen,

1 they have failed to produce the witness that would prove
2 that charge. That confidential informant did not take the
3 stand and tell you he bought drugs from Lexie Turner.

4 I will tell you in the State of South Carolina it
5 is not illegal to have government marked money in your
6 pocket. That is not illegal. I told you yesterday morning
7 they did not have the buy money. They had taken pictures of
8 it.

9 We heard extensive testimony yesterday about the
10 fact that originally they were supposed to see the deal and
11 then let him go. That would be a really good reason for why
12 we don't have a twenty dollar bill here for you to look at.
13 In this courtroom you deserve to see the best evidence at
14 your disposal. You are the jury. They brought the crack.
15 They didn't take pictures of this and just throw this at you
16 and say "well, we didn't really have the crack. We just
17 took a picture of it."

18 They interacted with Lexie on the scene. They
19 looked through his pockets. We heard testimony about how
20 much money he had in his pockets, the denominations of it,
21 the placement exactly of where the twenty dollar bill was,
22 and yet they did not take the money back from him. They
23 gave him back the money. They did not bring in that piece
24 of evidence for you to look at.

25 What do we see on this video? Does the CI have

1 three hands, because when the State explains it, he's
2 holding a camera in one hand, he's getting a twenty in
3 another, and he's got drugs in the third. That's what they
4 expect you to see in this sort of two second clip of him
5 standing next to Lexie Turner's window.

6 And the State wants you to believe that I'm going
7 to stand up and say well, maybe there were some other reason
8 Lexie has twenty dollars in pocket. That's right, I am
9 going to argue that, because the CI never took the stand to
10 tell you why Lexie Turner has twenty dollars in his pocket.
11 Maybe the CI owes Lexie Turner twenty dollars and gave him
12 the money, because the simple fact that he had that money in
13 his pocket is not illegal. That is not distribution of
14 crack. Distribution of crack is that Lexie Turner sold him
15 crack cocaine, or distributed it to him in some way. That
16 has not been proven. That witness is the eyewitness. That
17 is the person that could come in the courtroom and prove it
18 to you, and he is not here.

19 What do we see in these surveillance videos? We
20 see the CI, this paid informant, talking to a third person,
21 this guy in a white T-shirt, that's very quick to be brushed
22 aside by the officers, which interestingly the same
23 explanation that they use to try to convict Lexie is not the
24 same explanation that can be used on this guy in the white
25 T-shirt. They want you to believe that because the CI

1 walked up to Lexie in a car, did something and walked away,
2 that's clearly a drug deal, clearly. But then not a minute
3 earlier in the tape we see an unidentified third person walk
4 up to the CI, this paid informant, walk over to -- with his
5 back turned, to another car, stand at the window and then
6 walk back over to the CI, back turned to the officers, we
7 don't know what he's doing, and then get into a car and
8 drive away. But that suspicious behavior, that interaction
9 with an unknown third person in a car, that's clearly not a
10 drug deal. Why not? Because that doesn't fit the facts.
11 That doesn't convict Lexie. We are just going to disregard
12 it.

13 We didn't hear any testimony that they excluded
14 that person, that they excluded the fact that maybe the
15 drugs came from that person, because what's the other thing
16 you are didn't hear? One of the evidence techs told you
17 that at no point was this piece of evidence ever sent to
18 forensics for fingerprinting. If they are alleging a hand
19 to hand and Lexie Turner touched it, where is the prints?
20 If you want to exclude someone or you want to include
21 someone, test it. That was not presented to you either.

22 The State has failed to prove Lexie guilty of
23 distribution. And just because multiple officers come in
24 and say he's guilty doesn't make it so.

25 And I'll say one final part on that charge and

1 then I'll move on. Your recollection may be different, and,
2 of course, when you go back in the jury room, talk amongst
3 yourselves, you will have the evidence here for you to
4 review, but there was a lot of discussion yesterday about
5 the search of the car; before the CI left, when he got back.
6 I heard a lot of discussion about who got in the car, the CI
7 has used the car, undercover officers used the car, Marvin
8 Brown does an excellent job cleaning up the car, it's a
9 clean car. I heard one person, one officer, Officer Ervin,
10 say "I searched the car when the CI got back." I didn't
11 hear any testimony that when the CI got in the car, that the
12 car was searched. I heard testimony that his pockets were
13 searched, but not that the car was searched. I ask you to
14 keep that in mind.

15 Now, Lexie is also charged with PWID crack
16 cocaine. As you heard testified, and you essentially saw,
17 officers approached the car, and as we saw was video
18 equipment running, which conveniently gets turned off when
19 they want to approach and talk to Lexie.

20 Now, there are two main things, as I see it, on
21 the PWID. One, the statements they say that he made. Now,
22 they go into great detail and great lengths to record
23 everything going on in the parking lot. They approach the
24 Suburban and they said "well, we didn't want to turn it on,"
25 etcetera, etcetera. Leave it rolling. You just approached

1 someone you think may have just done a drug buy, leave the
2 video rolling. Wouldn't that be awesome if he says
3 something perhaps you would like to catch on video or audio?
4 You have the cameras there. Leave it rolling. But, again,
5 they claim he makes these statements, which conveniently
6 enough claim the drugs. Why? He's in a car with someone
7 else. The drugs aren't found on him. They are not in his
8 pocket. They are not on his person. They are in a console.
9 What do we need? A statement. So conveniently there is a
10 statement, but also conveniently it's not recorded, even
11 though all the time prior to that everything is recorded.

12 There was also a lot of testimony about what drug
13 dealers do, and intoxicating doses, and how things are
14 packaged. And you heard some testimony on direct about when
15 you find scales, and when you find -- how bags are found,
16 and typically not in a car. And then you heard some things
17 on cross about, well, a lot of times DEU or sometimes DEU
18 will arrest and there are scales found and then sometimes
19 can be bags found. It's pretty convenient usually bags
20 aren't found in a car, and yet he just did a drug deal in a
21 bag. That's pretty convenient.

22 And that conveniently this is five hundred dollars
23 worth of crack cocaine. I mean, Lexie must be a high
24 roller. Five hundred dollars worth of crack cocaine? And
25 he gets busted with seventy-two dollars in his pocket?

1 That's it?

2 No other indication of an intent to distribute?

3 No other indication for you to know how did you know he was
4 intending to distribute? They didn't find any text messages
5 on his phone intending to distribute. Did they find
6 anything else in his car intending to distribute?

7 Now, the State pointed out, well, he didn't have
8 any pipes to smoke it. Does that mean he wasn't necessarily
9 going to do it later?

10 Now, the judge will tell you that the one gram is
11 an inference level that you can reject. Just because he had
12 more than a gram doesn't mean you have to accept that as
13 PWID.

14 The judge will also tell you that one of the
15 charges you can consider on PWID is simple possession; that
16 if the State has not met its burden on PWID, you can
17 consider a verdict of amongst yourselves on simple
18 possession, if they have not proven to you an intent to
19 distribute those drugs.

20 Mr. Turner is asking for a verdict of not guilty
21 on both charges. Thank you.

22 (Whereupon, at 10:25 p.m. the Court charged the
23 law to the Jury Panel)

24 THE COURT: All right, ladies and gentlemen, it's
25 my duty and responsibility now to give you the law that you

1 are going to apply to the facts and evidence you find to be
2 true in this case.

3 As you have seen, you basically are going to have
4 to decide two different cases. I told you from the very
5 beginning the State has charged the defendant with two
6 offenses and that y'all will need to make your decision on
7 both charges. Your decision on one does not govern your
8 decision on the other. These are two independent matters.
9 You must make your decision independently on each case.

10 I told you at the very beginning I wouldn't
11 indicate to you what I thought the law is -- or what I
12 thought the facts of the case were, or what I believed the
13 evidence should be in this particular case, because that's
14 your job and your responsibility.

15 If you came into the courtroom with any
16 preconceived ideas of what the law is, what it ought to be,
17 what it should be, you will disregard that. You will take
18 the law as I now give it to you and apply it to the facts
19 and evidence you find to be true.

20 Remember I told you that one of your jobs as the
21 judge of the facts is to judge the credibility and
22 believability of the witnesses that have presented
23 themselves to you under oath. You can believe one witness
24 against several, several against one. You can believe a
25 portion of what witness says, disregard the remaining

1 portion of it. If you have got a good and sound reason for
2 doing so, you could disregard it in its entirety the
3 testimony of a particular witness.

4 You consider whether the witness has exhibited to
5 you any kind of interests, motive, bias, prejudice they
6 might have in giving you the testimony they gave you from
7 the witness stand.

8 Obviously you consider the opportunity for
9 knowledge; how did they come about that information that
10 they gave you from the witness stand.

11 This is a mental process that you have to look and
12 weigh the evidence and find that evidence which convinces of
13 its truth. You don't have any friends to reward. You don't
14 have any enemies to punish. You have heard it can't be the
15 result of any kind of passion, prejudice, or sympathy. It
16 has to be an examination of the facts and evidence and find
17 that evidence which convinces you of its truth.

18 There is two types of evidence that are presented
19 in virtually every case tried. They are called direct and
20 circumstantial evidence. The law doesn't make any
21 distinction between the two or greater degree of proof is
22 not required of one over the other.

23 Direct evidence. That's testimony by a witness of
24 something they saw, they observed, something that took place
25 in their presence.

1 Circumstantial evidence. That's proof of a chain
2 of facts indicating the existence of a fact.

3 And, again, the law doesn't make any distinction
4 between the two. You weigh all the evidence the same. You
5 look at all the evidence. You find that evidence which
6 convinces you of its truth.

7 Now, after weighing all the evidence, if you are
8 not convinced of the guilt of the defendant beyond a
9 reasonable doubt, then you would have to find the defendant
10 not guilty.

11 I qualified two witnesses in this case to give
12 their opinion. Sometimes they are called expert witnesses.
13 Sometimes the court qualifies people because of their
14 training, experience, education, their work in a certain
15 area to be qualified to give their opinion. Normally we
16 won't allow people to give their opinion, what they think.
17 You have to testify to what you saw, what you heard, what
18 took place in your presence. But just because the court
19 qualified the witnesses to give their opinion does not mean
20 or does not give them any special status.

21 Again, you weigh all the evidence the same. You
22 look at all the evidence the same. You find that evidence
23 which convinces of its truth.

24 Now, in this case the defendant did not testify.
25 I emphasize to you, I instruct you that this is not a factor

1 for you to consider in any way. It is not to be considered
2 by you in the jury room. It's not to be talked about by you
3 in a jury room. You cannot use it mentally to make a
4 decision in this case. Every person charged with a criminal
5 offense has the right to remain silent and that right cannot
6 be used against them.

7 I told you at the very beginning the State has to
8 prove the case to you beyond a reasonable doubt. The State
9 always has the burden of proof. I told you at the very
10 beginning the defendant need not even show up for trial,
11 because they don't have anything to prove to you. They
12 don't have anything to show to you. The State has to prove
13 the guilt of the defendant, if they can, from evidence that
14 convinces you of its truth of the guilt of the defendant
15 beyond a reasonable doubt.

16 A statement of the defendant has been admitted
17 into evidence in this case. Now, while the court determined
18 that it was proper evidence to be received in the case, you,
19 the jury, make the ultimate decision of whether or not, a
20 couple things, did the defendant make the statement. If the
21 defendant made the statement, you must determine whether or
22 not the statement was made by him voluntarily of his own
23 free will. That means the statement was not caused by
24 pressure, or force, or fear, threats, coercion, he wasn't
25 promised anything, or for hope, or leniency, or reward of

1 any kind.

2 You consider the characteristics of the defendant,
3 the details of the questioning. You may, if you want to,
4 consider somebody's age; education, or lack thereof; their
5 mental ability or mental capacity; the defendant's
6 background and environment; place and length of detention;
7 the nature of the questioning; and, finally, the advice, or
8 lack thereof, to the defendant of their Constitutional
9 Rights, including, but not limited to, the right to remain
10 silent; that any statement can be used against you in a
11 court of law; that you have the right to have a lawyer
12 present; that if you cannot afford a lawyer, one will be
13 appointed to represent you; and that you can stop making a
14 statement at any time you choose.

15 The State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was voluntary,
17 the defendant made it, it was voluntary.

18 If you determine that it was the defendant's
19 statement and it was voluntary, then you give it any further
20 consideration you deem proper. You decide the weight.
21 Again, you weigh the evidence. You decide the weight, if
22 any, that it should have.

23 Obviously, for some reason -- or -- yeah, you
24 determine, based upon the facts of this case, you determine
25 that the statement is not the statement of the defendant and

1 ti was not voluntarily given, then you can disregard it in
2 its entirety.

3 Presumption of innocence. I told you at the very
4 beginning the State charged the defendant with two crimes.
5 He pled not guilty, put the burden of proof on the State of
6 South Carolina. That means he's presumed innocent. His
7 presumption of innocence didn't end at the beginning of the
8 trial. It hadn't ended now. It does not end until you, the
9 jury, believe that the State has proven to you by the facts
10 and evidence presented the guilt of the defendant beyond a
11 reasonable doubt.

12 This presumption of innocence is not just some
13 legal theory. It's not some legal phrase. It's a
14 substantial right to which every American, to which every
15 defendant is entitled, and it stays with the defendant until
16 and unless the jury is satisfied from the evidence presented
17 by the State of the defendant's guilt beyond a reasonable
18 doubt.

19 So, reasonable doubt, what is that? The kind of
20 doubt that would cause an ordinary reasonable person to
21 hesitate to act.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.

24 The State of South Carolina is not required to
25 bring to you absolute proof. There are very few things we

1 know with absolute certainty.

2 What is required is if, based upon your
3 consideration of the evidence, you are firmly convinced the
4 defendant is guilty of the crime or the crimes charged, you
5 must find the defendant guilty.

6 On the other hand, based upon your view and
7 consideration of the evidence, if you are not firmly
8 convinced of the guilt of the defendant of the crime or
9 crimes charged, you must give the defendant the benefit of
10 the doubt and find him not guilty.

11 All right, two crimes that the defendant is
12 charged with. One of them is possession with intent to
13 distribute crack cocaine.

14 The State must prove beyond a reasonable doubt
15 that the defendant possessed crack cocaine with intent to
16 distribute.

17 To prove, first, possession, the State must prove
18 beyond a reasonable doubt that the defendant had both the
19 power and intent to control the disposition or use of the
20 crack cocaine.

21 And possession can either be actual or
22 constructive.

23 Actual means the crack cocaine is in the actual
24 physical custody of the defendant.

25 Constructive possession means the defendant has

1 the dominion, the control, or the right to exercise the
2 dominion or control of either the crack cocaine itself or
3 the property in which the crack cocaine was found.

4 Now, mere presence at the scene where drugs are
5 found is not enough to prove possession.

6 The defendant's knowledge and possession may be
7 inferred when a substance is found on property under the
8 defendant's control. However, this is an inference. It's
9 simply an evidentiary fact that you take into consideration,
10 along with all the other evidence, and you give it the
11 weight you decide it should have, if any at all.

12 The State must also prove to you beyond a
13 reasonable doubt that the defendant intended to distribute
14 the crack cocaine.

15 Distribute means to deliver, other than by
16 dispensing a drug, like at a pharmacy.

17 Intent may be shown by acts and conduct of the
18 defendant and other circumstances from which you could
19 naturally and reasonably infer intent.

20 In determining whether the defendant had the
21 intent to distribute the crack cocaine, you consider the
22 circumstances surrounding the defendant's possession of it.
23 You may consider the amount of the substance alleged to have
24 been possessed, the manner in which it was allegedly
25 possessed, the place where it was possessed, and any other

1 factors you deem important.

2 You must find that the defendant did not intend to
3 have the crack cocaine solely for his own use.

4 Now, possession of more than one gram of crack
5 cocaine creates an inference that the defendant possessed
6 the crack cocaine with intent to distribute.

7 Now, this inference does not relieve the State
8 from proving beyond a reasonable doubt that the defendant
9 had the intent to distribute. Again, it's an evidentiary
10 fact you take into consideration, along with all the other
11 evidence, and you give it the weight you decide it should
12 have, if any.

13 Now, if you find that the State has failed to you
14 to prove to you beyond a reasonable doubt the defendant is
15 guilty of possession with intent to distribute crack
16 cocaine, you then can consider what's called a lesser
17 included offense of simple possession of crack cocaine.

18 For simple possession of crack cocaine the State
19 must prove beyond a reasonable doubt that the defendant
20 knowingly or intentionally possessed the crack cocaine.

21 Knowingly means with knowledge, consciously, not
22 accidentally.

23 Intentionally means willfully intending the result
24 which actually occurs. Not by accident, not involuntarily.

25 Intent can be shown by the acts and conduct of the

1 defendant and other circumstances from which you could infer
2 intent.

3 Now, if you have got a reasonable doubt as to
4 whether or not a defendant is guilty of a greater or a
5 lesser offense, it's your duty to resolve that doubt in
6 favor of the defendant and find him guilty of the lesser
7 offense, if that's your view of the evidence, and, again, it
8 has been proved to you beyond a reasonable doubt.

9 Remember, the State has got to prove whether it's
10 the crime they charged him with, or lesser included offense.
11 The State has the burden of proof on everything to prove the
12 defendant guilty beyond a reasonable doubt.

13 The other crime, the separate crime, that the
14 defendant is charged with by the State of South Carolina is
15 called distribution of crack cocaine. Again, this is a
16 separate offense.

17 The State must prove beyond a reasonable doubt
18 that the defendant distributed crack cocaine.

19 Distribute means to deliver, or to actually,
20 constructively, or attempt to transfer a drug, again, other
21 than by dispensing, like at a pharmacy.

22 Deliverer means to actually, constructively, or
23 attempt to transfer a drug.

24 A transfer can involve an exchange for money, a
25 barter, or a gift, but there does not have to be anything

1 given in exchange for drugs for a transfer to constitute
2 distribution.

3 That, ladies and gentlemen, is the law that you
4 are going to apply to the facts and evidence you find to be
5 true.

6 Now, the court has prepared for you a verdict form
7 regarding the two charges that the defendant is facing in
8 this matter, and the verdict forms are very straightforward.

9 They have got a caption of the case. On the first
10 page it's got possession with intent to distribute crack
11 cocaine.

12 On the charge of possession with intent to
13 distribute cocaine base, or crack cocaine. Remember, those
14 are the one in the same, the same thing. Cocaine base,
15 crack cocaine, the same thing, we, the jury, by unanimous
16 consent find the defendant:

17 Two choices. One is before the other. Obviously
18 don't assign anything to that.

19 Not guilty, or guilty.

20 A line for the foreman to sign. Put today's date.

21 Now, if you find the defendant not guilty of
22 possession with intent to distribute cocaine base, or crack
23 cocaine, you go to that lesser included offense of
24 possession of cocaine base, or crack cocaine.

25 Now, if you find him guilty, obviously you skip

1 that one and go on to the distribution.

2 But, again, if you have found the defendant not
3 guilty of possession with intent to distribute cocaine base,
4 you have got then the lesser included possession of cocaine
5 base.

6 Again, on a charge of possession of cocaine base,
7 crack cocaine, we, the jury, by unanimous consent find the
8 defendant:

9 Two choices again. One before the other. Don't
10 assign anything to that.

11 Whatever the verdict is, Mr. Foreman, you indicate
12 that on the form, check the block, sign your name, put
13 today's date.

14 Now, when you are done with that, you go on to the
15 other charge.

16 Remember again, you have got two offenses. You
17 have got to decide both of them in some fashion.

18 The caption of the case, distribution of cocaine
19 base, crack cocaine.

20 On the charge of distribution of cocaine base,
21 crack cocaine, we, the jury, by unanimous consent find the
22 defendant, two choices:

23 Not guilty, or guilty.

24 Whatever the choice is, Mr. Foreman, you check the
25 appropriate block, sign your name and put today's date.

1 And when you are done with that, then y'all knock
2 on the door and let the bailiff know that you have reached a
3 unanimous verdict in this matter.

4 So, I have said I don't know how many times
5 unanimous. I have said it a bunch of times. It means
6 exactly what you think it means. It means 12-0. It doesn't
7 mean 11-1, 10-2, any combination thereof.

8 So, Mr. Foreman, you check one of those blocks,
9 you sign your name, you put today's date. Knock on the door
10 and let the bailiff know that the jury has reached a
11 verdict. That means every single member of the jury agrees
12 with what you have put on these verdict forms. Everybody
13 agrees.

14 All right. So what I'm going to have you do is,
15 Mr. Foreman, except for you, Madam Alternate, that's Ms.
16 Stewart, if you will stay with us.

17 If you would, Mr. Bailiff, take the jury to the
18 jury room. Do not begin your deliberations until the
19 bailiff brings to you in all the exhibits and the verdict
20 form. When the bailiff brings those in, then y'all can
21 begin your deliberations. Please go to your jury room.

22 (Whereupon, at 11:41 a.m., the Jury Panel went to
23 the jury room, awaiting instructions to begin deliberations)

24 THE COURT: All right. First, as to the
25 alternate, Ms. Stewart, any reason from the State that the

1 court should not excuse Ms. Stewart at this time?

2 MR. EPTING: The State can think of no reason she
3 shouldn't be excused.

4 THE COURT: All right. Ms. Inzerillo?

5 MS. INZERILLO: No, Your Honor.

6 THE COURT: All right, very good.

7 Ms. Stewart, I appreciate your service in this
8 particular case. There is only one other case to be tried.
9 We have already got a panel coming in for that, so I'm going
10 to excuse you for the balance of the week. We appreciate
11 your service. I'm glad it worked out so you could go to
12 school last night.

13 ALTERNATE JUROR: Thank you.

14 THE COURT: And so you will have the rest of the
15 week to yourself. Thank you very much for your service.

16 (Whereupon, the alternate juror was discharged
17 from further service)

18 THE COURT: All right. Exceptions, deletions,
19 additions to the charge, from the State?

20 MR. EPTING: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MS. INZERILLO: No, Your Honor.

23 THE COURT: All right. Thank y'all.

24 Solicitor, Ms. Inzerillo, I want to thank both of
25 you for doing what the court would have expected you to do,

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 complied 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."

March 19th, 2014

By: CS Leonard

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Attorneys For Appellant

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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Case No. 2013-445

RECEIVED

MAR 19 2014

SC Court of Appeals

The State

Respondent,

v.

Lexie James Turner, Jr.

Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the **Record on Appeal** on Respondent on March 19, 2014, addressed to the attorney of record, Ian Weschler, Esq., South Carolina Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

By: Robert M. Dudek
Robert M. Dudek
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SUBSCRIBED AND SWORN TO before me
this 19th day of March, 2014.

[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: August 21, 2023