

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ELDER PRESCOTT LEACH

APPELLANT

APPELLATE CASE NO. 2014-001158

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH
THIS COURT:**

STATE'S EXHIBIT 6 (Photo – baggies)

STATE'S EXHIBIT 7 (Photo – Digital scales & white substance)

STATE'S EXHIBIT 8 (Photo – plastic baggies w.white substance)

STATE'S EXHIBIT 9 (Photo – digital scales on console)

State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No.: 2014-GS-00678
) Case No.: 2014-GS-00679
)
County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Elder Prescott Leach.,)
)
Defendant.)

May 12-14, 2014
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III., Judge, and a jury.

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 To Honorable John C. Hayes, III

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All Exhibits were filed with the York County Clerk of Court's Office			

1 (JURY ENTERS COURTROOM AT 02:07 P.M..)

2 (COURT IN SESSION IN THE MATTER OF STATE VERSUS LEACH
3 ON MONDAY, MAY 12, 2014 AT 2:11 P.M..)

4 THE COURT: Good afternoon. You may take your seats.

5 Yes, sir.

6 SOLICITOR SHELTON: Your Honor, may it please the
7 Court, I'll call the case.

8 THE COURT: All right.

9 SOLICITOR SHELTON: Your Honor, the State of South
10 Carolina calls the case of *State versus Elder Prescott*
11 *Leach*. There are two separate charges in this case.

12 2014-GS-46-0-6-7-8 alleges one count of trafficking in
13 crack cocaine, weight ten grams or more.

14 2014-GS-46-0-6-7-9 alleges one count of trafficking in
15 crack cocaine, weight 28 grams or more.

16 Both charges have been true billed by the York County
17 Grand Jury and the State is ready to proceed to trial.

18 THE COURT: All right. Members of the jury panel, I'm
19 John Hayes. While Judge Addy from Greenwood, we're glad to
20 have him here with us, was qualifying you this morning, I
21 was working on matters up here in the courtroom but we are
22 now starting the first trial in this courtroom for the week
23 and that is the one the court was just made aware by
24 Solicitor Shelton and he is assisted by Ms. Robinson with
25 the Solicitor's office.

1 The defense is represented by Mr. Michael Brown.

2 This is the case of the *State versus Elder Prescott*
3 *Leach*.

4 Mr. Leach, would you please stand and let the jury see
5 who you are. This is Mr. Leach. You may be seated. Thank
6 you.

7 He is charged with two offenses that occurred on the
8 same date, both involving crack cocaine, both on what are
9 called trafficking in crack cocaine. It's alleged that on
10 that date he was involved in some activity involving crack
11 cocaine in certain amounts. Those of you who are selected
12 on the jury, I will tell you more about that at a later
13 time but all you need to know now is these happened on June
14 19th, 2013 here in York County.

15 Were these in the City of Rock Hill?

16 SOLICITOR SHELTON: Yes, sir.

17 THE COURT: In the City of Rock Hill involving Mr.
18 Leach.

19 Are any of you - I'll ask some questions similar to
20 Judge Eddy's questions this morning. I will not ask you to
21 come up forward after we go through this list of questions.
22 What I'll do is as I go through, you need to respond to any
23 of my statements or questions, please stand at the time and
24 we'll discuss it at that time from here to where you are.

25 First, are any of you related by blood or marriage to

1 any of the four individuals to whom you have just been
2 introduced, the two solicitors, Mr. Brown or Mr. Leach.

3 If so, please stand.

4 All right. Yes, sir. Your name and number?

5 A. My name is Curtarus Kirk, I'm number 113.

6 THE COURT: All right. And how are you - Are you
7 related or know one of these

8 MR. KIRK: I'm kin to Mr. Leach. Cousin.

9 THE COURT: You are a cousin of Mr. Leach?

10 All right. How close of a cousin? Here in the South
11 we have second, third, fourth, fifth, seventeenth cousin.

12 MR. KIRK: I'm a third cousin.

13 THE COURT: Third, okay. Would that affect your
14 ability to be fair in this case? I'm gonna excuse you
15 since you are a third cousin. Don't leave but you can have
16 a seat. But thank you for telling us that.

17 Were any of you members of the grand jury which passed
18 on this indictment at an earlier time, or these two
19 indictments at an earlier time.

20 If so, please stand.

21 No one stands.

22 Have any of you heard about this case from any source
23 whatsoever or have any of you formed or express an opinion
24 about any matter or issue that would be involved in this
25 particular case?

1 . If so, please stand.

2 No one stands.

3 Are any of you members of or contributors to
4 organizations such as Students Against Drunk Drivers;
5 Mothers Against Drunk Drivers; Citizens Against Violence;
6 Troopers Association; Sheriff's Association or Fraternal
7 Order of Police?

8 If so, please stand.

9 All right. Yes, sir. Your name and number?

10 A. Patrick Hall, number 37.

11 THE COURT: All right. What organization?

12 MR. HALL: MADD.

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

15 MR. HALL: Quite possibly, sir.

16 THE COURT: All right. I'll excuse you. Again, don't
17 leave but you can have a seat. Thank you.

18 Again we don't ask these questions just to be asking.

19 Yes, ma'am. Your name and number?

20 A. I'm Brady Berry, Number 17. I do have a family member
21 that's in law enforcement but I do believe it would -

22 THE COURT: All right. Where are they in law
23 enforcement?

24 MS. BERRY: Charlotte. Charlotte Mecklenburg.

25 THE COURT: All right. Would that effect your ability

1 to be fair and impartial?

2 MS. BERRY: Yes, sir.

3 THE COURT: All right. Well I will excuse you also.
4 I hadn't got to that question but that's what I'm gonna ask
5 next so you're ahead of me.

6 MS. BERRY: Oh, I'm sorry.

7 THE COURT: That way you don't have to get up this
8 time. You've already gotten up. No one else stands on
9 that question.

10 The next question is, are any of you, or a member of
11 your family, involved at any level in law enforcement or in
12 the prosecution of criminal cases? Law enforcement at any
13 level, either Federal Marshals, military police or
14 prosecution at any level, from the solicitor to the U.S.
15 Attorney, anything like that, if so, please stand?

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

17 A. My name is Erica White and my number is 245. I have
18 a cousin who is a retired detective out of Salisbury and he
19 is a private investigator.

20 THE COURT: All right. ?

21 MS. WHITE: I don't think so.

22 THE COURT: Okay. Well you will remain with us then.

23 MS. WHITE: Okay.

24 THE COURT: Yes, sir. Your name and number?

25 A. Number 77, Scott Garrison. I have two son-in-laws

1 that are York County officers.

2 THE COURT: All right. This is a City case; not a
3 County case. Would that effect your ability to be fair and
4 impartial in this case?

5 MR. GARRISON: I don't think so.

6 THE COURT: Okay. You'll remain with us then.

7 Now the next question is sort of sensitive so I'm not
8 going to ask you to give me any great particularity of
9 information with this. I simply want to know if any of you
10 have any experience that you related - any adverse
11 experience that you relate to somebody being involved with
12 the use of illegal substance, either have a family member
13 who has had the experience of being effected by that, or,
14 having some event in your life effected such as maybe a
15 burglary or an automobile accident or something like that.

16 If you've had any experience that you consider an
17 adverse experience and you it consider it was caused or
18 related to illegal - a controlled substances, please stand.

19 All right. You just stood but you have got to give us
20 your name and number again.

21 MS. WHITE: Erica White and my number is 245.

22 THE COURT: All right. I'm not going to ask you to go
23 into particulars. Just remain standing.

24 Yes, ma'am. We'll start over here.

25 A. Deborah Farrow, Number 66.

1 THE COURT: All right. Yes, ma'am.

2 A. Allison Flowers, Number 69.

3 A. Chris Pitzer, Number 184.

4 THE COURT: All right. I need to know what that noise
5 is. I keep hearing a little buzz. We need to get that
6 out of here somehow.

7 But anyway, the four of you that are standing, if that
8 experience would effect your ability to fair and impartial
9 in this trial, raise your right hand.

10 All right. All four do. All right, all four of you
11 will be excused from this trial. Don't leave. Just have a
12 seat.

13 MR. BROWN: Madam Clerk, what were those numbers
14 again?

15 MADAM CLERK: 245, 66, 69 and 184.

16 MR. BROWN: 184.

17 THE COURT: Thank you. Do any of you have any sort of
18 religious, psychological or any kind of beliefs that would
19 prevent you from being fair and impartial in the trial of
20 this particular case, if so, please stand?

21 No one stand.

22 The following is a list of witnesses. These are
23 people who may testify. I don't know that all of them will
24 testify but even if they don't testify, their names may
25 come up.

1 Before I ask that, let me ask this. Are any of you
2 related by blood or marriage to anyone who works for our
3 solicitor's office, or have any of you been used as - have
4 any of you used as an attorney Mr. Brown, Mr. Cronin and
5 his law office as attorneys, if so, please stand.

6 All right. Thank you.

7 Now the following will be the witnesses. From the
8 Rock Hill Police Department John Rainier. From the York
9 County Multi-Drug Enforcement Unit, Leland Harrelson, Robin
10 Gander, Marvin Brown, Jack Dantzler, Vince Holland, Jim
11 Lubben.

12 From the York County Sheriff's Office, Patrick
13 Patterson, Cynthia Mitchum, Cheryl Guzman, James Long.

14 For the South Carolina Department of Motor Vehicles,
15 Clarissa Mack. From the FBI, Alan Sosebee. Individuals
16 who are not connected with any governmental entity that I
17 am aware, Jamie Faulkenberry and Tezo Nevada Ervin.

18 Anybody related by blood or marriage or even know any
19 of those individual, if so, please stand?

20 No one stands.

21 Anything further from the State?

22 SOLICITOR SHELTON: No, sir, Your Honor.

23 THE COURT: The Defense?

24 MR. BROWN: No, sir.

25 THE COURT: Members of the jury panel, do any of you

1 know of any reason whatsoever why you could not or should
2 not serve as a fair and impartial juror in the trial of
3 this particular case, if so, please stand?

4 No one stand.

5 Now the way we call jurors in this type of court is
6 that the bailiff will be standing out here in the middle of
7 the floor, and if you hear your name called, please come
8 forward and bring with you a book, if you have any books or
9 jackets or anything like that. When you get to where the
10 bailiff is, turn around and face first the table where Mr.
11 Shelton and Ms. Robinson are seated. One of them will say
12 either present the juror or excuse the juror. If you hear
13 the words excuse the juror, return to your seat. If you
14 hear the words present the juror, turn, face the table
15 where Mr. Leach is seated and his attorney, Mr. Brown, will
16 say either excuse the juror. Again that means you may
17 return to your seat or he will say swear the juror. If you
18 hear the words swear the juror, you can walk over to the
19 jury box and the bailiff will tell you were to sit.

20 Strikes are five and five?

21 MR. BROWN: Your Honor, may we approach?

22 THE COURT: Yes, sir.

23 (BENCH CONFERENCE OFF THE RECORD AT 02:22 P.M..)

24 THE COURT: If you hear your name called like I
25 advised you, please come forward.

1 MADAM CLERK: Number 41, Charles Cooley.

2 (WHITE MALE COMES FORWARD.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR SHELTON: Please present the juror.

5 MADAM CLERK: And the defense?

6 MR. BROWN: Swear the juror.

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

8 Number 225, Sunil Talusani.

9 MADAM CLERK: Number again, Madam Clerk.

10 MADAM CLERK: Number 225.

11 (INDIAN MALE COMES FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR SHELTON: Please present the juror.

14 MADAM CLERK: And the defense?

15 MR. BROWN: Swear the juror.

16 MADAM CLERK: Please have a seat in the jury box.

17 Number 117, Krista J. Coster.

18 (WHITE FEMALE COMES FORWARD.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR SHELTON: Please excuse the juror.

21 MADAME CLERK: You are excused from this case.

22 Number 29, Sean A. Brown.

23 (WHITE MALE COMES FORWARD.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR SHELTON: Please present the juror.

1 MADAM CLERK: And the defense.

2 MR. BROWN: Please excuse the juror in this particular
3 case.

4 MADAM CLERK: You are excused from this case.

5 Number 1, David W. Adams.

6 (WHITE MALE COMES FORWARD.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR SHELTON: Please present the juror.

9 MADAM CLERK: And the defense?

10 MR. BROWN: Please seat the juror.

11 MADAM CLERK: Please have a seat in the jury box.

12 Number 14, Bethany S. Deloach.

13 (WHITE FEMALE COMES FORWARD.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR SHELTON: Please present the juror.

16 MADAM CLERK: And the defense?

17 MR. BROWN: Seat the juror. Swear the juror.

18 MADAM CLERK: Please have a seat in the jury box.

19 Number 189, David M. Pritchard.

20 (WHITE MALE COMES FORWARD.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR SHELTON: Please present the juror.

23 MADAM CLERK: And the defense.

24 MR. BROWN: Please excuse the juror in this particular
25 case.

1 MADAM CLERK: You are excused from this case.

2 Number 77, Christopher S. Garrison.

3 (WHITE MALE COMES FORWARD.)

4 MADAM CLERK: What say you for the State?

5 SOLICITOR SHELTON: Please present the juror.

6 MADAME CLERK: And the defense?

7 MR. BROWN: Swear the juror.

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

9 Number 59, Barbara D. Dover.

10 (WHITE FEMALE COMES FORWARD.)

11 MADAM CLERK: What say you for the State?

12 SOLICITOR SHELTON: Please present the juror.

13 MADAM CLERK: And the defense?

14 MR. BROWN: Excuse the juror in this particular case.

15 MADAM CLERK: You are excused from this case.

16 Number 204, Kristen N. Sanderson.

17 (WHITE FEMALE COMES FORWARD.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR SHELTON: Please present the juror.

20 MADAME CLERK: And the defense?

21 MR. BROWN: Please swear the juror.

22 MADAM CLERK: Please have a seat in the jury box.

23 Number 140, Winston R. Martinez.

24 (HISPANIC MALE COMES FORWARD.)

25 MADAM CLERK: What say you for the State?

1 SOLICITOR SHELTON: Please excuse the juror.

2 MADAM CLERK: You are excused from this case.

3 Number 6, Richard L. Arnold, Junior.

4 SOLICITOR ROBINSON: Would you please repeat that
5 number.

6 MADAM CLERK: Number 6.

7 (WHITE MALE COMES FORWARD.)

8 MADAM CLERK: What say you for the State?

9 SOLICITOR SHELTON: Please present the juror.

10 MADAM CLERK: And the defense?

11 MR. BROWN: Please excuse the juror from this
12 particular case.

13 MADAM CLERK: You are excused from this case.

14 Number 172, Mark G. Oakes.

15 (WHITE MALE COMES FORWARD.)

16 MADAM CLERK: What say you for the State?

17 SOLICITOR SHELTON: Please excuse the juror.

18 MADAM CLERK: You are excused from this case.

19 Number 100, Tammy L. Huddenall.

20 (WHITE FEMALE COMES FORWARD.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR SHELTON: Please present the juror.

23 MADAM CLERK: And the defense?

24 MR. BROWN: Please swear the juror.

25 MADAM CLERK: Please have a seat in the jury box.

1 Number 162, Neha V. Muppala.

2 (INDIAN FEMALE COMES FORWARD.)

3 MADAM CLERK: What say you for the State?

4 SOLICITOR SHELTON: Please present the juror.

5 MADAM CLERK: And the defense?

6 MR. BROWN: Please swear the juror.

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

8 Number 103, Karen H. Isaac.

9 (BLACK FEMALE COMES FORWARD.)

10 MADAM CLERK: What say you for the State?

11 SOLICITOR SHELTON: Please present the juror.

12 MADAM CLERK: And the defense?

13 MR. BROWN: Please swear the juror.

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

15 Number 191, William T. Prosser.

16 MR. BROWN: Number again, Madam Clerk?

17 MADAM CLERK: Number 191.

18 MR. BROWN: 191.

19 (WHITE MALE COMES FORWARD.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR SHELTON: Please present the juror.

22 MADAM CLERK: And the defense?

23 MR. BROWN: Please swear the juror.

24 MADAM CLERK: Please have a seat in the jury box.

25 Number 178, Angelia Parsons.

1 (WHITE FEMALE COMES FORWARD.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR SHELTON: Please present the juror.

4 MADAM CLERK: And the defense?

5 MR. BROWN: Swear the juror.

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

7 Number 61, Robert E. Eastwood, Junior.

8 (WHITE MALE COMES FORWARD.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR SHELTON: Please present the juror.

11 MADAM CLERK: And the defense?

12 MR. BROWN: Please excuse the juror in this particular
13 case.

14 MADAM CLERK: You are excused from this case.

15 Number 246, Christopher D. Wilbanks.

16 (WHITE MALE COMES FORWARD.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR SHELTON: Please present the juror.

19 MR. BROWN: Swear the juror.

20 THE COURT: All right. We will draw two alternates.

21 Strikes will be one for the State as to each and two for
22 the defense as to each.

23 MADAM CLERK: Number 237, Joshua Vann.

24 (WHITE MALE COMES FORWARD.)

25 MADAM CLERK: What say you for the State?

1 SOLICITOR SHELTON: Please excuse the juror.

2 MADAME CLERK: You are excused from this case.

3 Number 202, Ann Rollings.

4 (WHITE FEMALE COMES FORWARD.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR SHELTON: Please present the juror.

7 MADAM CLERK: And the defense?

8 MR. BROWN: Please excuse the juror in this particular
9 case.

10 MADAM CLERK: You are excused from this case.

11 Number 95, Christopher P. Hilton.

12 (WHITE MALE COMES FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR SHELTON: Please present the juror.

15 MADAM CLERK: And the defense?

16 MR. BROWN: Swear the juror.

17 MADAM CLERK: Please have a seat in the jury box.

18 Juror Number 76, Shannon Young Gardner.

19 SOLICITOR SHELDON: Madam Clerk, is that 76?

20 MADAM CLERK: Yes.

21 (WHITE FEMALE COMES FORWARD.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR SHELTON: Please present the juror.

24 MADAM CLERK: And the defense?

25 MR. BROWN: Swear the juror.

1 MADAM CLERK: Please have a seat in the jury box.

2 THE COURT: Anything from the State involving striking
3 this panel?

4 SOLICITOR SHELTON: No, sir, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. BROWN: Nothing other -

7 THE COURT: Other than what we talked about?

8 MR. BROWN: Yes, sir.

9 THE COURT: Those of you who were not chosen, I'm
10 going to allow you to leave at this time and call back
11 tonight after seven. It's very important, I'm sure as
12 Judge Eddy told you, that you follow whatever instructions
13 you receive, whether it's to call back or to report. So
14 have a pleasant evening and call back tonight after seven
15 and I may see you again sometime this week.

16 Please leave quietly so I can start talking to this
17 group.

18 (JURY DISMISSED AT 02:37 P.M.)

19 THE COURT: Those of you who were chosen, if you would
20 please stand, the Clerk is going to administer the oath.
21 And it may be a little awkward but we do it all the time --

22 SOLICITOR SHELTON: Your Honor, may we approach real
23 quick? I'm sorry to interrupt.

24 (SIDE BAR OFF THE RECORD AT 02:37 P.M.)

25 THE COURT: All right. Let me let you go to the jury

1 room while you are standing. Don't sit back down. I'm
2 going to let you go to the jury room and we've got some
3 matters to take up outside of your presence. We are not
4 going to swear you in but you are on the jury panel, so you
5 cannot discuss the case.

6 I'll tell you more about this later, but you cannot
7 discuss the case until I instruct you to jointly deliberate
8 and return a unanimous verdict. You should not even try to
9 make up your own mind until we reach that point and again,
10 I'll discuss that later.

11 So don't start discussing the case. You really don't
12 know anything about it and don't try to make up your own
13 mind. Again, you don't know anything about it.

14 Now, Mr. Isaac, I'm going to ask you to be the
15 foreperson of the jury. When you come back in, you'll take
16 this first seat on the front row. You have that assigned
17 seat; the two alternates have those assigned seats. There
18 is no other assigned seating.

19 So I'm going to let you go to the jury room at this
20 time while we take up some matters outside your presence.

21 (PETIT JURY EXITS COURTROOM AT 02:38 P.M..)

22 THE COURT: All right.

23 Can we get the door closed?

24 (COURT REPORTER CLOSED COURTROOM DOOR.)

25 THE COURT: For the record before we started

1 empaneling the jury, counsel for each side approached the
2 bench and the request of Mr. Brown and the request was that
3 the defendant Mr. Leach be given ten strikes instead of
4 five even though the particular trafficking charges are
5 listed as being entitled to that number of strikes since
6 this is a case where Mr. Leach is facing life without
7 parole again if he's convicted Mr. Brown requested to have
8 ten peremptory strikes and informed me that that has been
9 on other occasions granted by the presiding judge.

10 I did not grant that request. I'll be glad now, Mr.
11 Brown, to go ahead and put on the record what you want
12 about that and then Mr. Sheldon.

13 MR. BROWN: Your Honor, I think that succinctly states
14 my motion.

15 THE COURT: All right. Mr. Sheldon, do you have
16 anything you want to say about that?

17 SOLICITOR SHELDON: Your Honor, just the statute in
18 question for the record is 14-7-1110 and we agree with Your
19 Honor's interpretation. I think its very clear what's
20 spelled out, he's entitled to ten strikes. It's based on
21 the charge. Ironically breach of trust gets ten strikes
22 but a number of other cases do not. I don't think that has
23 anything to do with sentencing. It specifically listed in
24 the statute what the charges get ten strikes and which ones
25 get five and trafficking is not in the ten strike.

1 THE COURT: All right. We've taken care of that.
2 What's next?

3 SOLICITOR SHELTON: Your Honor, if it please the
4 court. I want to put a couple things on the record.

5 We had a hearing involving Mr. Leach back on February
6 27, 2014 in front of Your Honor, I believe Ms. Nelson was
7 the court reporter, at which time Mr. Leach rejected the
8 State's plea offer and he was noticed for life without
9 parole if he is convicted of either one of these charges,
10 that is where we would fall but we'll deal with that at the
11 appropriate time.

12 We also have a Rule 5 protective order that's in play
13 regarding a number of things. It's on file with the Clerk
14 of Court and it's signed by Judge Alford, April 11, 2014.

15 The State's complied with Rule 5. I've met with Mr.
16 Brown on a number of occasions and made sure that he has
17 everything that's in my file. I'm confident that we're
18 there.

19 And I do have a few motions. I wanted to try to flush
20 out some of the things to avoid any delays throughout the
21 trial if Your Honor wants to hear my motions and then we
22 can go into anything --

23 THE COURT: Let's let you go first.

24 SOLICITOR SHELTON: Okay, Your Honor.

25 The first motion, we have a Motion in Limine to

1 determine the scope of impeachment of the CI Tezo Ervin
2 under Rule 9 dealing with his prior record.

3 Specifically, Your Honor, Mr. Brown and I have
4 discussed this. I've given him a copy of Mr. Ervin's rap
5 sheet as well as certified copies of prior convictions
6 related to Mr. Ervin. And what's showing as prior
7 convictions are a charge from September 6, 2001. On that
8 date, he was convicted of possession with intent to
9 distribute marijuana. It's a five year felony, he was
10 sentenced to a probationary period, five years suspended on
11 three years of probation and then he violated that
12 probation, so the fact that he ended up serving a five year
13 sentence as a violation ropes it into the ten year range.

14 And then February 25th, 2012, he was convicted all on
15 the same day of possession with intent to distribute crack.

16 MR. BROWN: 2012 or 2002?

17 SOLICITOR SHELTON: Sorry, 2002. Your Honor, I may
18 have misspoken. February 25th, 2002, PWID crack, sentenced
19 to ten years concurrent. Proximity, ten years concurrent.
20 Habitual traffic offender, five years concurrent. And
21 driving under suspension, third offense, three years
22 concurrent.

23 The State's position as to those, they fall within the
24 ten year time bar under the statute, so we're not
25 challenging that. What I specifically am asking for a

1 ruling on is to what extent that it can be mentioned in
2 impeachment. And I believe that Rule 609 is very clear
3 that it talks about evidence that a person - a witness
4 other than an accused have been convicted of a crime, shall
5 be admitted subject to Rule 403 if the crime is punishable
6 by death or imprisonment in excess of one year under the
7 law which the witness was convicted.

8 The State's position is that the extent would be in
9 September of 2001, you are convicted of a crime that
10 carries more than a year.

11 In February 2002, you are convicted of four crimes
12 that carry more than one year.

13 It is our position that that should --

14 THE COURT: Being under suspension carry more than one
15 year?

16 SOLICITOR SHELTON: It was a third offense. He was
17 sentenced to three years. That was kind of shocking to me
18 as well. Regardless, it was run concurrent.

19 But that's our position regarding that motion.

20 THE COURT: All right. Mr. Brown, any comments on
21 that?

22 MR. BROWN: Your Honor, I think they're all fair game.
23 The sentence itself, by the rule its clear but as far as
24 the federal rule, if the sentence itself carries within a
25 ten year window then it can be used.

1 THE COURT: Well, yeah, there's no question he's
2 conceding that. The only question would be he's taking -
3 Mr. Shelton is taking the position that you can't refer to
4 the offense but you can only refer to the fact that he
5 received - he either pled or he was convicted of two
6 offenses which carried in excess of one year.

7 MR. BROWN: Can I defer to offense? Is that the
8 question?

9 THE COURT: Yeah. Well his position is you cannot.

10 MR. BROWN: I consider that I can. I think the jury
11 is entitled to know that.

12 THE COURT: Do you have any law that supports that,
13 Mr. Shelton?

14 SOLICITOR SHELTON: I do not, Your Honor. I'm just
15 looking at Rule 609 and just looking at it it says if the
16 crime is punishable in excess of one year, so I would just
17 - I mean -

18 THE COURT: Read the sentence in front of that one.
19 I don't have it in front of me.

20 SOLICITOR SHELTON: That's 609(a)(1), evidence that a
21 witness other than the accused has been convicted of a
22 crime, shall be admitted subject to Rule 403 if the crime
23 was punishable by death or imprisonment in excess of one
24 year under the law under which the witness was convicted.

25 So, --

1 THE COURT: You're reading it different from me. To
2 me it says if a crime that carries over one year and does
3 not restrict the defense or anybody else from impeaching a
4 witness, including the State, if you will be taking that
5 other adverse argument were otherwise, can ask exactly what
6 the offenses were.

7 SOLICITOR SHELTON: Okay. So just to be clear, he can
8 call the PWID, marijuana conviction that carried more than
9 a year.

10 THE COURT: I can't tailor how he asks his questions
11 but he can ask were you not in the year 2001 convicted of
12 possession with intent to distribute marijuana and so
13 forth.

14 SOLICITOR SHELDON: Okay.

15 THE COURT: In 2002, were you or were you not
16 convicted of possession with intent to distribute crack.
17 Have you done that within the proximity of a park or a
18 school. Driving while an habitual offender under the State
19 of South Carolina law and driving an automobile while
20 suspended. Were you convicted of those or were you not? I
21 think he can ask that.

22 SOLICITOR SHELTON: Okay. Can he go into the sentence
23 that was imposed?

24 THE COURT: I don't know that the sentence has any
25 value because every sentence that carries more than one it

1 has to do with the crime. It doesn't talk about - The only
2 language in there that deals with sentencing establishes
3 the criteria for which they are admissible. It says the
4 crime - The sentence is not part the crime. The sentence
5 is something that you receive as a result of committing the
6 crime and in fact there some statutes that - the penalty
7 statutes are different from the section that defines the
8 crime. So you cannot go into - I rule you cannot go into a
9 sentence he may receive.

10 All right. What's next?

11 SOLICITOR SHELDON: Next, Your Honor, we would need to
12 flush out the extent of any impeachment by the defense -
13 make a motion to determine the scope of impeachment based
14 on pending charges of Tezo Ervin. He is a confidential
15 informant who was working while the charges were pending.

16 I agreed that Mr. Brown would be allowed to explore
17 the range of penalties, I believe. Under the sentences
18 that are pending, we had some disagreement over whether or
19 not what the sentences would carry and we've gone over Mr.
20 Ervin's record and you heard that just a moment ago what
21 his record was, Your Honor. He has pending charges of
22 trafficking crack cocaine, distribution of crack cocaine
23 and two counts of proximity and a possession of a weapon
24 during the commission of a violent crime.

25 The distribution of crack, I believe is a third

1 offense because of the PWID marijuana and the PWID crack
2 prior convictions, making the third offense.

3 The distribution statute is a little bit different.
4 It doesn't limit what kind of prior drug convictions can
5 enhance distribution level defenses.

6 The trafficking and possession statute, on the other
7 hand, 44-53-470, limits the drugs to the same like in
8 common, or in more specifically it excludes prior marijuana
9 convictions for enhancement of subsequent trafficking
10 charges, so the State's position there is it's a
11 trafficking crack cocaine second offense that carries five
12 to thirty.

13 THE COURT: Has he been indicted?

14 SOLICITOR SHELTON: Yes, sir.

15 THE COURT: What was he indicted for?

16 SOLICITOR SHELTON: It was incorrectly indicted as a
17 third offense. That's --

18 THE COURT: It states in here with a third, saying you
19 charge him with a third offense, but you don't want them to
20 go into and he's facing a third?

21 What's pending right now? Has that be amended or
22 nolle prossed?

23 SOLICITOR SHELTON: It has not been amended but --

24 THE COURT: Well he can ask him if he's facing that
25 charge, because that's what you charged him with.

1 SOLICITOR SHELTON: Well, Your Honor, I guess in
2 looking back at his record though it would not be a third
3 offense so -

4 THE COURT: That's you all's fault. Not - That's what
5 he is facing. You can't charge somebody and - I mean you
6 can't manipulate the sentences when it's time to - when
7 it's for you his third, when it's against him it's a third,
8 when its for him its all of a sudden a second. I mean,
9 anyway, no, he can ask him if he's facing those charges.
10 That's a true fact. That's what he's facing right now.

11 SOLICITOR SHELTON: Okay. So then the trafficking
12 carries twenty-five to thirty, so he can explore
13 trafficking third offense carries twenty-five to thirty?

14 THE COURT: Whatever it carries. I don't have it
15 in front of me. Yeah.

16 MR. BROWN: That's my understanding.

17 SOLICITOR SHELTON: It does carry that, but I'll
18 concede that but - And my argument, I know you have made
19 your position, but my argument is there is no way he could
20 be prosecuted and sentenced as a third offense.

21 THE COURT: Well, I understand what your argument is,
22 but you all are the ones - Who signed the indictment?

23 SOLICITOR SHELTON: I did, Your Honor.

24 THE COURT: Okay. Let's see it.

25 SOLICITOR SHELTON: It was one of my first cases I

1 indicted. I made a mistake on it, so I understand. I
2 accept that, Your Honor.

3 THE COURT: All right. What's next?

4 SOLICITOR SHELTON: We need to have a couple of
5 hearings, Your Honor, dealing with — We need to have a
6 *Biggers* hearing and a *Jackson versus Denno* hearing.

7 MR. BROWN: Can I step outside for two seconds?

8 THE COURT: Yes, sir.

9 MR. BROWN: It's embarrassing. I left my hearing aid.

10 THE COURT: Oh. Okay.

11 SOLICITOR SHELTON: Your Honor, we need to get Mr.
12 Ervin in here.

13 THE COURT: All right. You can go ahead and get him
14 in here.

15 (COURT AT EASE AT 02:51 P.M..)

16 THE COURT: All right. What do you want to start with
17 first, Mr. Shelton?

18 SOLICITOR SHELTON: Your Honor, we'll start with the
19 *Biggers* hearing.

20 THE COURT: All right.

21 MR. BROWN: Your Honor, we'll sequester the witnesses.
22 I understand he is entitled to have his case agent in here
23 which I understand this is this gentleman sitting back here
24 in uniform.

25 THE COURT: All right. Granted.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 MADAM CLERK: Please raise your right hand, place
2 your left hand on the Bible.

3 (WHEREUPON, TEZO ERVIN,
4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MADAM CLERK: Thank you. Have a seat right up there.

6 DIRECT EXAMINATION - IN CAMERA

7 TEZO ERVIN BY SOLICITOR SHELTON:

8 Q. Good afternoon. Would you please identify yourself
9 for the record?

10 A. Tezo Ervin.

11 Q. Tezo, you are going to need to speak up because the
12 lady there has to record everything you are saying.

13 A. Tezo Ervin.

14 Q. How old are you?

15 A. Thirty-four.

16 Q. How far did you go in school?

17 A. Twelve.

18 Q. Excuse me?

19 A. Twelve.

20 Q. And have you ever lived in York County?

21 A. Yes, sir.

22 Q. How long did you live in York County?

23 A. Basically all my life.

24 Q. In May of 2012, did you meet with officers from the
25 Drug Unit and the FBI to discuss working as an informant

1 with the York County Drug Unit?

2 A. Yes, sir.

3 Q. Were you able to set up crack cocaine deals on April
4 26th, 2013, and then a separate one on June 19th of 2013?

5 A. Yes, sir.

6 Q. Prior to the April 26th deal, what description, if
7 any, did you provide law enforcement about the person you
8 would be able to buy crack from on April 26th, 2013?

9 A. Picked out of a lineup?

10 Q. No, sir. I'm asking did you prior to going out for
11 the deal, did you tell law enforcement that you could buy
12 from somebody?

13 A. Oh, yes, sir.

14 Q. Did you tell them who you could buy from?

15 A. Yes, sir.

16 Q. Who was that?

17 A. Louis Picken.

18 Q. Did you tell them you could buy from Elder Leach?

19 A. Yes, sir.

20 Q. What gender is Elder Leach?

21 A. Male.

22 Q. Is he black or white?

23 A. White.

24 Q. And did you set up a deal on April 26th, 2013, to buy
25 from him?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 A. Yes, sir.

2 Q. Did you tell the FBI and the Drug Unit that you could
3 buy from him or did they tell you to buy from him?

4 A. I told them I could buy from him.

5 Q. How long have you known him?

6 A. Like twelve years.

7 Q. How were you able to get in touch with him?

8 A. Cell phone.

9 Q. Did you have his number?

10 A. Yes, sir.

11 Q. And approximately how many times prior to April 26th,
12 2013, had you met him in person?

13 A. A few times. I mean three or four.

14 Q. And did you get a good look at him at those meetings?

15 A. Yes, sir.

16 Q. Do you recognize him on sight?

17 A. Yes, sir.

18 Q. Did you also set up a deal to buy from him on June
19 19th of 2013?

20 A. Yes, sir.

21 Q. And how did you - How did you get to the buy on April
22 26th?

23 A. Drove my vehicle.

24 Q. Your vehicle?

25 A. Yes, sir.

1 Q. What about on June 19th?

2 A. My vehicle.

3 Q. And did Drug Unit officers put a device in your car
4 that could record video?

5 A. Yes, sir.

6 Q. Both times?

7 A. Yes, sir.

8 Q. On April 26th, did you purchase crack cocaine from
9 Elder Leach?

10 A. Yes, sir.

11 Q. On June 19th, did you purchase crack cocaine from
12 Elder Leach?

13 A. Yes, sir.

14 Q. On April 26th, 2013, did Investigator Rainier with the
15 Drug Unit show you a collection of photographs?

16 A. Yes.

17 Q. Was that before or after the drug deal that day?

18 A. I think it was after.

19 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE PREMARKED FOR
20 IDENTIFICATION.)

21 MR. BROWN: For purposes of this hearing, without
22 objection.

23 Q. Mr. Ervin, I'm going to hand to you what's been marked
24 as Court's Exhibit Number One. Do you recognize that?

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 Q. Is that the lineup you were shown on April 26th?

2 A. Yes, sir.

3 Q. Were you shown that lineup by Drug Unit officers?

4 A. Yes, sir.

5 Q. And by Officer Rainier in particular?

6 A. Uh-huh.

7 Q. Did he say anything to you prior to showing you the
8 lineup?

9 A. No. Pretty much he was just showed me a lineup. Can
10 I pick out the person.

11 Q. And did he influence you or suggest who you should
12 pick?

13 A. No, sir.

14 Q. Is this the only lineup you were shown from this
15 investigation?

16 A. Yes, sir.

17 Q. Did you select a photograph?

18 A. Yes, sir.

19 Q. How do you know?

20 A. It's got my initial and date on it.

21 Q. And did you also circle the picture?

22 A. Yes, and I circled it.

23 Q. And the person you selected from - Is that a group of
24 six photos there?

25 A. Yes, sir.

1 Q. The person you selected, is it the person that sold
2 you crack cocaine on April 26th 2013?

3 A. Yes, sir.

4 Q. And on June 19th, 2013?

5 A. Yes, sir.

6 Q. And who is the person you selected?

7 A. Elder Leach.

8 Q. Do you see Elder Leach present in the courtroom today?

9 A. Right there.

10 SOLICITOR SHELTON: Your Honor, please let the record
11 reflect he's pointing to the defendant sitting next to Mr.
12 Brown.

13 (WITNESS INDICATED TO DEFENDANT.)

14 SOLICITOR SHELTON: Nothing further of this witness
15 right now, Your Honor.

16 MR. BROWN: No questions.

17 SOLICITOR SHELTON: Your Honor, I'll put up
18 Investigator Rainier next.

19 THE COURT: What's the issue for the Court? I'm kind
20 of lost as to what you want me to rule on.

21 SOLICITOR SHELTON: I was going to show you the lineup
22 when we get to that, but just basically that this lineup
23 from April 26th did not some how suggest or influence his
24 in-court identification.

25 We could probably - If you are prepared to make a

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON - IN CAMERA -41-

1 ruling now, we may not need to put up --

2 THE COURT: Just call your witness.

3 SOLICITOR SHELTON: Okay.

4 THE COURT: The gentleman is facing life in prison.

5 SOLICITOR SHELTON: Yes, sir. You can step down, sir.

6 (WITNESS LEAVES WITNESS STAND.)

7 SOLICITOR SHELTON: Your Honor, I want to be clear on
8 the record. The State does not intend to go into any of
9 that dealing with April 26th in front of the jury. This is
10 simply to preserve the record.

11 I feel like that we need to have - The court needs to
12 make a finding as to whether or not this lineup in some way
13 tainted or influenced Mr. Ervin's identification.

14 THE COURT: Or whether it was suggestive.

15 SOLICITOR SHELTON: Excuse me.

16 THE COURT: Whether it was suggestive?

17 SOLICITOR SHELTON: Yes, sir. Your Honor, next we
18 would call Investigator John Rainier.

19 (WHEREUPON, JOHN RAINIER,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION - IN CAMERA

22 SERGEANT JOHN RAINIER:

23 Q. Please identify yourself for the record.

24 A. John Rainier.

25 Q. What is your occupation?

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON - IN CAMERA -42-

1 A. I am a sergeant with the Rock Hill Police Department.

2 Q. Do you ever work with the Drug Unit?

3 A. Yes, sir.

4 Q. Did you work with the Drug Unit in April of 2013 and
5 June of 2013?

6 A. Yes, sir.

7 Q. Did you prepare a photo lineup associated with the
8 investigation of Elder Leach?

9 A. Yes, sir, I did.

10 Q. When did you prepare the lineup?

11 A. On April 26th.

12 Q. Of 2013?

13 A. Yes, sir.

14 Q. And how did you prepare the lineup?

15 A. I went to our division, it's a computer based system
16 through the police department and retrieved photos from
17 that system.

18 Q. And how many photos did you compile for the lineup?

19 A. Six.

20 Q. Were the persons in the photographs in your opinion
21 all similar in physical description?

22 A. Yes, sir.

23 Q. Were the photos marked in any way?

24 A. No.

25 Q. Was there any wording associated with them?

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON - IN CAMERA -43-

1 A. No. Only on the second page which is our sign off
2 sheet that says they've picked it and we haven't coerced
3 anybody or anything like that and we sign it.

4 Q. So in Court's Exhibit Number Two, the second page is
5 basically the statement?

6 A. Yes, sir.

7 Q. Okay.

8 A. May I look at it -

9 Q. Sure.

10 A. --- just to make sure?

11 A. Page Two. Yes. It's our photographic lineup sign off
12 sheet.

13 Q. And who did you show the lineup to?

14 A. Our confidential informant.

15 Q. What's his name?

16 A. Tezo Ervin.

17 Q. Was this the one and only lineup used in this
18 investigation?

19 A. Yes, sir.

20 Q. And how did you present the lineup to him?

21 A. When I created it, I went and put it in front of him
22 and I told him that the person that we are possibly are
23 going to buy the crack from may or may not be in these
24 series of photographs.

25 Q. Was anyone else present with you and Ervin when you

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON - IN CAMERA -44-

1 showed him the lineup?

2 A. Yes, sir.

3 Q. Who was present.

4 A. Deputy Faulkenberry, Marvin Brown, the Commander - I'm
5 sorry. Sergeant Jim Lubben who was my direct supervisor
6 with the Drug Unit and Alan Sosebee with the Federal Bureau
7 of Investigations.

8 Q. And those are all police officers?

9 A. Yes, sir.

10 Q. Did you or any of those officers say anything to Ervin
11 to suggest which photo he should pick?

12 A. No, sir.

13 Q. Did he select a photo?

14 A. Yes, he did.

15 Q. Which photo did he select?

16 A. Which we would label as number one, but it ended up
17 being the defendant, Elder Leach.

18 Q. How long did it take him to select the photo?

19 A. It was almost immediate.

20 Q. Court's Exhibit Number One, is that the original
21 lineup shown in this investigation?

22 A. Yes, sir, it is.

23 Q. Is your signature on there?

24 A. It is on the second page.

25 Q. And is Ervin's signature on the second page?

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON - IN CAMERA -45-
CROSS BY MR. BROWN - IN CAMERA

1 A. He's got - I think he put his initials and the date.

2 SOLICITOR SHELTON: Your Honor, I would enter this as
3 a Court's Exhibit at this point for the purpose of this
4 hearing.

5 MR. BROWN: With no objection for purposes of this
6 hearing.

7 THE COURT: In without objection.

8 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
9 MARKED, RECEIVED INTO THE RECORD.)

10 Q. Are you familiar with Elder Leach?

11 A. Not personally, no.

12 Q. Did you know who he was prior to this?

13 A. Not by face, but by name.

14 SOLICITOR SHELTON: Nothing further, Your Honor.

15 THE COURT: Mr. Brown, do you have any questions?

16 MR. BROWN: Very briefly.

17 CROSS-EXAMINATION - IN CAMERA

18 SERGEANT JOHN RAINIER BY MR. BROWN:

19 Q. Is it Investigator or Sergeant?

20 A. It's Sergeant now.

21 Q. Okay. Sergeant Rainier, you are the case agent on
22 this case are you not, sir?

23 A. Yes, sir.

24 Q. And you ran this confidential informant from day one;
25 is that correct?

1 A. Yes.

2 Q. And for purposes of this motion, there were two prior
3 occasions when you sent him out for dealing from Elder
4 Leach; is that correct?

5 A. Correct.

6 Q. And these were prior to April 26th; is that correct?

7 A. Yes. I think so.

8 Q. Okay. To the best of your memory?

9 A. Yes, sir.

10 Q. Why did you do a photo lineup after two bust buys
11 already?

12 A. When I identified the person in question, I wanted to
13 make sure that we were correct and that we were effecting.

14 Q. So the two prior ones, you don't have any video or
15 audio of him or anything do you?

16 A. I think we have video. I'm not -- For the purposes of
17 this case, I didn't review the previous stuff so I don't
18 know how good that video is.

19 MR. BROWN: I have no further questions.

20 SOLICITOR SHELTON: Nothing further.

21 THE COURT: Can I see what I am suppose to look at?

22 SOLICITOR SHELTON: Yes, sir, Your Honor.

23 (EXHIBIT RECEIVED UP BY THE COURT.)

24 THE COURT: You can step down and have a seat.

25 SERGEANT RAINIER: Yes, sir.

1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: Mr. Brown, what's your position on this
3 situation?

4 MR. BROWN: Your Honor, if he doesn't intend to
5 introduce it in front of the jury I have no objection, no
6 argument whatsoever.

7 THE COURT: Okay. That's that.

8 All right. What else you got?

9 SOLICITOR SHELTON: Your Honor, next we need to have a
10 *Jackson versus Denno* hearing. There was one statement of
11 Mr. Leach we intend to admit at trial. I'm going to need
12 Investigator Harrelson for that.

13 (WHEREUPON, LELAND HARRELSON,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 SOLICITOR SHELTON: Your Honor, before we go into
16 that, I don't know if you need to just for the -- for the
17 purpose of the record, I don't know if you need to make an
18 actual finding about the Biggers hearing as to whether --

19 THE COURT: I don't know what's before me. That's
20 what -- Whatever you intend to do with the line up and that
21 testimony, there has been no objection so there is nothing
22 for me to rule on.

23 I've looked at the -- I think the burden is on the
24 defense to show that it is suggestive and they are not
25 taking that position. I looked at it and I don't find it

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 to be suggestive. But if that's what you are wanting to
2 say that the line up is not appear to be suggestive. It
3 appears that the individuals are of course their not all a
4 set of sextuplets - can't pronounce it - but they are
5 similar in skin tone and facial features and haircuts and
6 those sort of things. I can affirmatively find that -
7 although I don't know what's really before me - I can
8 affirmatively find that the lineup is not suggestive.

9 SOLICITOR SHELTON: Your Honor, that's what we were
10 getting at. Just to make that out of an abundance of
11 caution since it was shown to the witness at some point
12 prior to the actual in court identification.

13 (SIDE BAR BETWEEN THE ATTORNEYS.)

14 THE COURT: Let's move on.

15 SOLICITOR SHELTON: Yes, sir.

16 DIRECT EXAMINATION - IN CAMERA

17 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

18 Q. Please identify yourself.

19 A. My name is Hugh Leland Harrelson, Junior.

20 Q. What's your occupation?

21 A. I'm a police officer for the City of Rock Hill and I'm
22 currently assigned to the York County Multi-jurisdictional
23 Drug Enforcement Unit.

24 Q. Were you working in that role on June 19th, 2013?

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 A. Yes, sir, I was.

2 Q. Were part of the investigation in this case on that
3 day?

4 A. Yes, sir, I was.

5 Q. Was Elder Leach arrested that day?

6 A. Yes, sir.

7 Q. Was he advised of his *Miranda* warnings?

8 A. He was.

9 Q. By whom?

10 A. By myself.

11 Q. And how did you advise him?

12 A. I read it from a card that I keep in my wallet.

13 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO PREMARKED FOR
14 IDENTIFICATION.)

15 Q. Investigator, I'm handing what's been marked Court's
16 Number Two. Do you recognize that?

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. It is a copy of the *Miranda* card that I have.

20 Q. And is it a copy of the card that you read Elder
21 Leach's advisements from on that day?

22 A. Yes, sir, That is correct.

23 SOLICITOR SHELTON: Your Honor, I move to admit this
24 as a Court's exhibit.

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 MR. BROWN: No objection.

2 THE COURT: In without objection.

3 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Investigator, please read the language that you
6 advised Mr. Leach that day.

7 A. Yes, sir. The heading says, "Suspect's Right, *Miranda*
8 Warning." It has, "You have the right to remain silent.
9 Anything you say can and will be used against you in a
10 court of law. You have the right to talk to an attorney
11 and have him or her present with you while you are being
12 questioned. If you cannot afford to hire an attorney, one
13 will be appointed to represent you before any questioning
14 if you want. You can decide at any time to exercise these
15 rights and not answer any questions or make any statements.
16 Do you understand the rights I have explained to you?
17 Having these rights in mind, do you wish to talk to us
18 now?"

19 Q. And where were you and Leach when you advised him of
20 these rights?

21 A. This was on the scene at Wildcat Creek Road.

22 Q. Was he under arrest at this time?

23 A. Yes, sir, he was.

24 Q. Did you threaten him in any way to get him to talk to

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 you?

2 A. No, sir, I did not.

3 Q. Did you promise him anything to get him to talk to
4 you?

5 A. No, sir.

6 Q. Did you identify yourself as a law enforcement
7 officer?

8 A. I did.

9 Q. Were you wearing a badge as you are today?

10 A. Yes, sir, I was.

11 Q. Did he appear to be under the influence of any drugs
12 or alcohol at the time?

13 A. No, sir.

14 Q. Did he appear to understand the rights as you advised
15 him?

16 A. Yes, sir.

17 Q. Did he ask for an attorney?

18 A. No, sir, he did not.

19 Q. Did he ask you any questions about those rights?

20 A. No, sir, he did not.

21 Q. And did you ask him any questions?

22 A. No, sir, I did not.

23 SOLICITOR SHELTON: Nothing further from this witness,
24 Your Honor.

OFFICER LELAND HARRESON: CROSS BY MR. BROWN
IN CAMERA

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CROSS-EXAMINATION - IN CAMERA

OFFICER LELAND HARRELSON BY MR. BROWN:

Q. At the scene you took possession of Mr. Leach.

Correct? When I say possession, I mean you incarcerated him in your car; is that correct?

A. No, sir. I did not place the handcuffs on him. I just read him his *Miranda* rights.

Q. So you mirandized him where?

A. At the scene.

Q. Where at the scene? Next to his car? Next to the CI's car, your car or what?

A. I believe it might have been next to his vehicle.

Q. All right. And did you go back and invenstory his vehicle?

A. No, sir, I did not.

Q. Did you search his vehicle there?

A. No, sir, I did not.

MR. BROWN: No further questions.

THE COURT: You may step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

SOLICITOR SHELTON: Your Honor, next we will have Commander Marvin Brown.

SOLICITOR SHELTON: Your Honor, I apologize for the delay. We've got a number of things we are trying to juggle with security and the witness and everything so he

COMMANDER MARVIN BROWN: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 should be in shortly.

2 THE COURT: If you'll come up and be sworn.

3 (WHEREUPON, MARVIN BROWN, BEING
4 CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 DIRECT EXAMINATION - IN CAMERA

6 COMMANDER MARVIN BROWN BY SOLICITOR SHELTON:

7 Q. Please identify yourself for the record.

8 A. Marvin Brown.

9 Q. Are you commander of the Drug Unit?

10 A. I am.

11 Q. Did you speak with Elder Leach on June 19th, 2013?

12 A. I did.

13 Q. Where were you?

14 A. At the Rock Hill Police Department.

15 Q. Was this after he was arrested in the buy bust that
16 day?

17 A. Yes.

18 Q. Had he been advised of his *Miranda* rights at that
19 time?

20 A. He had.

21 Q. Was he willing to talk with you and answer any
22 questions?

23 A. I basically just asked him one - I talked briefly
24 about his car. Yes.

25 Q. Okay. Did you make any threats or promises?

COMMANDER MARVIN BROWN: DIRECT BY SOLICITOR SHELTON
IN CAMERA
CROSS BY MR. BROWN - IN CAMERA

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1 A. No, I did not.

2 Q. Did he ask for an attorney?

3 A. No, he did not.

4 Q. And what did you ask him?

5 A. I've known Elder to drive a white SUV and he was
6 driving a Volkswagon that day and I asked him was it his
7 car and he said that it was and I retrieved some paperwork
8 out of the car with his name on it.

9 SOLICITOR SHELTON: Your Honor, that's the extent of
10 our proffer on this subject.

11 THE COURT: Any cross?

12 CROSS-EXAMINATION - IN CAMERA

13 COMMANDER MARVIN BROWN BY MR. BROWN:

14 Q. Let me clarify one thing. Who transported the
15 defendant from the scene to the police department?

16 A. I don't know. I was at the police department when
17 they brought him in. I was in the office and thirty
18 minutes later I had a short conversation with him and I
19 walked out and looked at his car.

20 Q. All right. You were not at the scene when the actual
21 arrest took down?

22 A. I wasn't at the scene.

23 Q. You weren't there?

24 A. No I was not.

25 Q. Okay.

1 MR. BROWN: I don't have any further questions. I do
2 have an objection though.

3 THE COURT: You can step down.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR SHELTON: Your Honor, the State is prepared
6 to hear Mr. Brown's position on this if he wants to go
7 ahead and voice his objection.

8 THE COURT: Okay.

9 MR. BROWN: Your Honor, I was given this statement
10 this morning. I think it is highly prejudicial to my case
11 to be given so late in the proceedings. Discovery was
12 filed July 11, 2013 in this case and pursuant to Rule 5,
13 I'm going to move to suppress it.

14 THE COURT: Why is it so late in the process?

15 SOLICITOR SHELTON: Your Honor, there is a separate
16 forfeiture action pending that there were some documents in
17 there related to the ownership of the car. I became aware
18 of that sometime mid-week last week and gave Mr. Brown a
19 full copy of everything that's in there and it relates to
20 the ownership of the vehicle titled in Mr. Leach's name,
21 insurance, that sort of thing.

22 We are going to move to introduce that in as evidence
23 but this morning during trial prep when I was speaking with
24 Commander Brown about it, he had indicated to me that Leach
25 told him that he owned the car.

1 Prior to finding that stuff last week and talking with
2 Commander Brown, I really didn't know that he was going to
3 be involved in this case. His name's not even really on
4 the Summary, so as soon as I discovered it, I let Mr. Brown
5 know that there's evidence in this case that really doesn't
6 call into question the fact it - let me rephrase that.

7 The fact that it's Mr. Leach's car isn't a question
8 that I think the evidence is going to present as being in
9 dispute. This is just something that goes further to
10 corroborate the fact that it was his car and as soon as I
11 found out about it, I let Mr. Brown know.

12 THE COURT: If it is only related to him this morning,
13 I'm going to suppress it. It just bothers me that you had
14 the case go on - What was the date of the arrest according
15 to the indictment. The offense was almost a year ago and
16 the morning of the trial it's just a little too late to be
17 coming up with new evidence so I'll suppress it.

18 MR. BROWN: Your Honor, may we approach with
19 something?

20 THE COURT: Yes, sir.

21 (BENCH CONFERENCE OFF THE RECORD AT 03:20 P.M..)

22 MR. BROWN: Your Honor, in keeping with our sidebar, I
23 would like to also go ahead and move pursuant to Rule 5 and
24 *Brady v. Maryland* and subsequent litney of cases that are
25 well related to discovery, again, I filed a discovery

1 motion, Brady and Rule 5, on July 11th, 2013.

2 This case has been pending for almost a year now.

3 Last week I received documentation from a forfeiture action
4 which was readily available to the State so I'm assuming
5 they are doing the forfeiture action I received last week.

6 This is very crucial to my defense. Just prior to
7 that, I received no discovery that established Mr. Leach
8 had ownership or control of that vehicle. It was a vehicle
9 that was at the scene that was confiscated. This late in
10 the ballgame, I would submit it is not timely discovery.
11 The State did the foreclosure and I'll move to suppress the
12 written evidence, i.e., the forfeiture action, I'm talking
13 about the documentation from that, also is a violation of
14 Rule 5 and Brady and discovery in general.

15 THE COURT: Mr. Shelton.

16 SOLICITOR SHELTON: Your Honor, that as I stated
17 earlier, the forfeiture action is a completely separate
18 matter. The way that these cases are filed, there is an
19 original file kept with the Drug Unit and a copy of it is
20 given to the solicitor's office

21 My copy did not have any of these documents in it..
22 There is no actual filing on this forfeiture except for the
23 seizure warrant that was obtained and signed by a circuit
24 court judge shortly after the vehicle was seized, but no
25 civil action has been filed, no summons and complaint is

1 what I'm trying to say, so as soon as I discovered that the
2 Drug Unit's forfeiture file contained some photographs and
3 documents recovered from the vehicle. It was actually
4 about 5:30, I think it was last Wednesday, I scanned that
5 information and emailed it directly to Michael Brown. I
6 followed up with him the following morning so he's had it
7 for the better part of last week.

8 We talked about it prior to coming into court so I
9 respectfully posit that we have complied with Rule 5 in
10 that respect. As soon as I turned it over I literally gave
11 him everything I had as soon as I discovered it and it
12 wasn't - I was not aware of it until I found it last
13 Wednesday evening.

14 THE COURT: Well, does your office not handle the
15 forfeitures?

16 SOLICITOR SHELTON: We do, Your Honor, but you know
17 like I said, we - the original file is kept with the Drug
18 Unit. I don't have any reason to go down there to look in
19 those files until a Summons and Complaint is filed or in
20 preparation of that.

21 We are given notice that a seizure has been contested
22 and at the appropriate time - Really our policy is we don't
23 do anything with it while the criminal charges are pending,
24 so it just so happens I was looking through that file just
25 to make sure I had everything, was aware of everything, and

1 that's when it came to my attention.

2 THE COURT: What's the position of the prejudice, Mr.
3 Brown?

4 MR. BROWN: Your Honor, he's facing two charges here.
5 One for crack cocaine, 28 plus; one for 10 plus.

6 The 10 plus comes from the car. The automobile that
7 was allegedly his. Discovery was filed a year ago. Marvin
8 Brown has an office down at their office. This stuff was
9 readily available under his control.

10 I think considering the penalty, life without parole,
11 we didn't have time to go back and combat this or go search
12 the records at the Highway Department for any alternative
13 resolution of this.

14 I think they have had more than ample time to give me
15 this. Not two day, two working day, before trial.

16 SOLICITOR SHELTON: Your Honor, may I put one other
17 thing on the record.

18 Like I eluded to earlier, you will see it in the trial
19 on the buy bust video, Mr. Leach mentions this crack being
20 in his car, so there is really no - There is no dispute
21 that it's his crack in the car and that it is his car. You
22 can his own words - the own words from his mouth on the buy
23 bust video.

24 The only thing that we are looking at here is just
25 corroborating that statement.

1 THE COURT: Who took it out of the car? Who took the
2 documents out of the car?

3 SOLICITOR SHELTON: Commander Brown recovered it and
4 put it in the seizure file.

5 THE COURT: And he is the head knocker for the drug
6 people and he didn't tell you that he had done this?

7 SOLICITOR SHELTON: I was not aware that those
8 documents were recovered, no, sir.

9 THE COURT: I'm going to grant the motion on that too.
10 I'm going to suppress those documents.

11 Anything else?

12 SOLICITOR SHELTON: Your Honor, I do want to note for
13 the record that Mr. Brown and I had agreed to a number of
14 redactions on what will be State's Number Two and State's
15 Number Three, the buy bust video and the audio recording.
16 I don't think we have any disagreement over any of that.

17 I think there are some noticeable gaps that are just
18 silence. We didn't cut it out of any of the recordings
19 except for the very end. We cut some of the irrelevant
20 stuff off from the very end, but there are some pockets of
21 time there will be deal silence for about a minute.

22 I think it may be wise to instruct the jury --

23 THE COURT: I usually in those circumstances just tell
24 them the reasons that are not important to their
25 deliberation. That any silence or muting was done for the

1 purposes, legitimate purposes, or any way purposes not.
2 important to them.

3 MR. BROWN: On this same issue, Your Honor, I would
4 have some objections outside the scope of what we agreed
5 upon that's hearsay. And if the court wants to listen to
6 the tape - it's really not that long - but in a nutshell,
7 at five minutes into the audio recording and the time's
8 different on the two.

9 You got it synchronized yet?

10 SOLICITOR SHELDON: Not -

11 MR. BROWN: On the audio recording; there is an audio
12 recording, there's a video with an audio. For the court's
13 clarification the audio recording its much easier to
14 understand the audio on the video, so the time frame I am
15 making reference to at the present time is as to the audio
16 recording.

17 Five minutes into the audio recording, the - Tezo, the
18 alleged CI, does hearsay by saying, "He told me to come to
19 Wildcat. He said he would be there in five minutes."

20 From 7:10 to 7:15 he said, "He would be at Wildcat
21 here in a few minutes."

22 At 15:25 he says, "He wants me to come to Wildcat."

23 And I would submit that as hearsay upon hearsay
24 because all you hear is the confidential informant's voice.
25 I assume talking to a law enforcement officer on the

1 telephone but it is not clear from the video but I think we
2 can make that assumption.

3 Is that pretty much cover that?

4 SOLICITOR SHELTON: Yeah, that's my understanding.

5 MR. BROWN: And as I understand the facts will show
6 that, and I will submit those statements repeated by the
7 confidential informant are hearsay.

8 Secondly, they are not relevant to the issue at hand
9 as to whether or not this gentleman had crack cocaine.

10 THE COURT: What's the State's position?

11 SOLICITOR SHELTON: Your Honor, all three of those
12 statements we feel that they are hearsay exceptions. Under
13 the Rules of Evidence they are statements of a party
14 opponent. They are relayed --

15 THE COURT: I thought these were made by the CI.

16 SOLICITOR SHELTON: Yes, sir, but they're --

17 THE COURT: He's not a party opponent.

18 SOLICITOR SHELTON: Yes, sir. I agree with you, but
19 it's the word -- The agreement between these two men relayed
20 to law enforcement is the hearsay, so the State's Number
21 One, recorded phone call, they set up a deal at Wildcat.

22 And then in State's Two and Three, there are phone
23 calls exchanged and they are one sided phone calls. All
24 you can hear is the CI's perspective confirming the
25 location. And when he is saying, "He told me just to come

1 to Wildcat," the State's position is Mr. Ervin is relaying
2 statements of a party opponent in that they are statements
3 from Mr. Leach.

4 THE COURT: I understand it. I got that, but Mr. -
5 the CI is not an party so he has no party opponent. If
6 they were made to an officer I could - The CI was working
7 in some agency capacity but I don't believe he's rises to
8 the level of fitting into that category.

9 I'm gonna sustain the objection on that.

10 Anything else?

11 SOLICITOR SHELTON: I have nothing further, Your
12 Honor.

13 THE COURT: Mr. Brown?

14 MR. BROWN: I know - Normally I would like to do this
15 pretrial but I think in these set of facts, Your Honor, a
16 motion to suppress be made to forfeit the introduction of
17 evidence so I really don't know what testimony is
18 necessarily coming as to the crack cocaine found at the
19 scene and the crack cocaine found in his car, so I would
20 like to reserve - I would like to expedite this but I don't
21 see how can because I don't know what the CI's gonna say.

22 THE COURT: All right. Let's take about a five minute
23 refresher break and then you can tell the jury --

24 Tell the jury I'm going to send for them in about five
25 minutes and then we can come in and stay - hopefully go to

1 about 5:15 or 5:30.

2 He can remain in custody. Mr. Leach.

3 (COURT IN RECESS AT 03:30 P.M..)

4 (DEFENDANT REENTERS COURTROOM AT 03:53 P.M..)

5 (COURT BACK IN SESSION AT 03:57 P.M..)

6 SOLICITOR SHELTON: Your Honor, may we approach real
7 quick?

8 THE COURT: Yes, sir.

9 (BENCH CONFERENCE OFF THE RECORD AT 03:57 P.M..)

10 THE COURT: All right, bring in the jury.

11 (JURY RE-ENTERS THE COURTROOM AT 03:58 P.M..)

12 THE COURT: Now, that you're all comfortably seated,
13 I'm going to ask you to stand and the Clerk will administer
14 the oath.

15 MADAM CLERK: You all please raise your right hand.

16 (PETIT JURY SWORN AT 04:00 P.M..)

17 MADAM CLERK: Thank you. You may be seated.

18 THE COURT: Thank you. I'm sorry we took a little
19 while, but we were moving matters out of the way that will
20 hopefully help the case go quicker rather than have to stop
21 it at various times. We took care of several matters while
22 you were out.

23 In just a few minutes, the attorneys have a right to
24 come before you and make opening statements. These opening
25 statements are not testimony, because the attorneys are not

1 witnesses.

2 The attorneys are not arguing their case at this time,
3 they are simply giving you an outline or a blueprint of the
4 trial. They are telling you what they believe the case is
5 about and what they believe the evidence will show.

6 Mr. Leach has to these two charges entered pleas of
7 not guilty. These pleas of not guilty place on the State
8 the burden of proving his guilt beyond a reasonable doubt
9 before you as the trial jury in this case can convict him
10 of either, or, of those charges.

11 I have three primary jobs in this trial. One is I am
12 the logistics person. Sometimes, I call it the wagon
13 master. I make sure we take our seats at the right time,
14 that we break for lunch, that one person speaks at a time,
15 the mechanical part of the trial.

16 The second job of mine, as with any trial judge, is
17 that I rule on questions of the admissibility of evidence.
18 If one side believes certain evidence should be allowed in
19 the record for your, the jury's consideration, I have to
20 make a determination and a ruling as to whether that
21 evidence is allowable or not.

22 My third job is that I am the sole judge of the law in
23 this case. You must take, accept and apply the law as I
24 charge it. This is true even if you think I charge the law
25 in error, or, even if you think the law should be

1 different. Your oath requires you to take, accept and
2 apply the law as I charge it.

3 I am be giving you a few legal principals now and may
4 during the trial give you some legal principals but at the
5 end of the trial, I will give you a concise and
6 comprehensive charge on the law that you are to apply to
7 the facts as you determine them to be.

8 You're not to infer from anything I say or do as
9 indicating an opinion of mine on the facts. A trial judge
10 is not allowed to formulate or express to a jury any
11 opinion on the facts. It is solely up to you to examine
12 the evidence, give to the evidence the effect, the value,
13 the weight, and the truth you believe it should have.

14 In doing this, you may believe one witness as opposed
15 to several; several witnesses as opposed to one. You may
16 believe all, part, or none of a witness' testimony.

17 Use your commonsense, your sense of logic, your sense
18 of reason. Use your experiences in life as you analyze the
19 evidence. In analyzing the evidence and determine the true
20 facts, use certain - the things that I've talked about in
21 determining the credibility, that is believability.

22 In addition, use what you find in your day-to-day life
23 as being indicative or things that are indicative of
24 truthfulness in an individual.

25 You can also use certain evaluators, how a witness

1 acts on the stand, their demeanor. Are they hesitant or
2 straightforward in responding to questions.

3 You can look at the consistencies and inconsistencies
4 of a witnesses' testimony. Consider the opportunity a
5 witness had to know those things to which the witness
6 testified. And you can look and determine whether or not a
7 witness has any reason to help or hurt one side or the
8 other, that is, whether a witness has any bias or
9 prejudice.

10 All of these things you consider and you will be in a
11 position to determine the true facts, apply the law as I
12 charge it, and return a verdict that speaks the truth.

13 Madam Forelady, you will be the liaison between the
14 jury and myself, preside over the jury deliberation and
15 ultimately sign the jury's unanimous verdict.

16 Now, I told you earlier you're not to discuss the case
17 or try to make up your own mind until we reach the point in
18 the trial where I instruct you to jointly deliberate and
19 return a unanimous verdict.

20 Prior till that time, you do not have all the tools
21 you need to make a fair and reasonable decision, so don't
22 try to make up your mind and don't discuss the case among
23 yourselves until we reach that point.

24 Don't let anyone discuss this case with you outside
25 the courtroom. If anyone tries to discuss this case with

1 you, tell them you cannot do so as you are serving as a
2 juror and report back to me, hopefully, with the identity
3 of any such individual if anyone tries to discuss this case
4 with you outside the courtroom.

5 Do not do any independent research about this case.
6 Do not go to the location where the testimony indicates it
7 took place. Now, there's no -- probably no reason for you
8 to go there, and you must base your verdict solely on the
9 facts as you determine from the evidence presented in the
10 trial, so do not go to the scene to do any independent
11 research.

12 Do not use any electronic media to do any research or
13 look up anything about this case, about court procedure,
14 about me, about the lawyers, about Mr. Leach. Again, your
15 verdict must be based solely on the law and the evidence
16 developed in the trial. So do not access Cloud or go to
17 Google or do anything regard - on any electronic - use any
18 electronic methods to explore any aspect of this trial and
19 that includes social media.

20 You may think it's not -- it would not be any problem
21 in putting out on a Tweet or on Facebook that you are
22 serving as a juror, but do not do that, because someone may
23 Tweet back or send something on your Facebook that would
24 disrupt your ability to be fair and impartial and we don't
25 want that to happen, so just stay away from that for a day

1 or two.

2 I do not know that this case will be - receive any
3 news coverage but if it does, do not let yourself be
4 exposed to it, don't read about it, listen to anything or
5 watch anything that could remotely deal with this trial.

6 You do not need to take notes during this trial. We
7 take breaks about every hour-and-a-half. I think that
8 that's a good break time. I have found over the twenty
9 years I've done this that that's a good break time, but if
10 any of you need a break at any time, simply raise your
11 right hand and with no questions asked, we'll take a break.
12 I extend that to Counsel and Mr. Leach. We want to move
13 the case along, but we're not in such a hurry that we won't
14 take a break if one is needed.

15 Now, at this time, I'm going to turn it over to the
16 attorneys to make their opening statements?

17 SOLICITOR SHELTON: May it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR SHELTON: Good afternoon.

21 Ladies and gentlemen, there are two charges in this
22 case. The State alleges and will prove the elements of
23 each of these charges.

24 Charge one, trafficking in crack cocaine, weight 10
25 grams or more.

1 Charge two, trafficking in crack cocaine, weight 28
2 grams or more.

3 The defendant on both charges is the man who stands
4 accused in this courtroom Mr. Elder Leach.

5 You're going to hear the Judge instruct you on the
6 elements of those charges and the State must prove to you
7 each of the elements of those charges beyond a reasonable
8 doubt.

9 As for the 10 grams or more, the State will prove that
10 Mr. Leach was in possession of those drugs.

11 As to the 28 grams or more, the State will prove that
12 Mr. Leach did sell or distribute those drugs to another
13 person.

14 The State has to prove the weight in each of those
15 charges beyond a reasonable doubt that it was 10-plus
16 grams, 28-plus grams and the State has to prove that it was
17 crack cocaine.

18 For those - those last two things, the weight and the
19 crack, you're going to hear from a certified chemist. A
20 lady named Cynthia Mitchum, who works for the Sheriff's
21 Department, and you're going to hear about her process for
22 evaluating and testing the substance that was recovered as
23 evidence.

24 We also have to prove that this all - it all occurred
25 in York County, South Carolina.

1 These charges are the result of an investigation by
2 the drug -- the York County Multi-jurisdictional Drug
3 Enforcement Unit, or the DEU, or Drug Unit, as you may hear
4 it called.

5 Investigator Rainier who is now Sergeant Rainier, was
6 the case agent on this particular case. You're going to
7 hear from other officers who were involved in the
8 investigation. You're also going to hear from the man who
9 was working as a confidential informant. He was
10 undercover, not a law enforcement officer, who had
11 recording equipment in his vehicle and on his person. And
12 the events that transpired, there is recordings from the
13 events that transpired which you get to see and hear during
14 these proceedings.

15 So you'll hear testimony from the individuals
16 involved, but you'll also get to see things from kind of a
17 firsthand perspective, because there's - there's recordings
18 involved. And at the end of the day, I would expect this
19 trial to certainly go into tomorrow, possibly Wednesday
20 depending on how things move along, these things do take
21 time.

22 At the end of the presentation of all the evidence,
23 Mr. Brown and myself will have an opportunity to argue our
24 positions in what's called closing arguments.

25 After all that is said and done, you get the case and

1 you get to decide what happens. You're the finders of
2 fact. You have to make a unanimous decision as to what
3 happened in this case. Did the State prove each and every
4 element alleged beyond a reasonable doubt?

5 At the end of this trial, I am confident you will
6 render a verdict that speaks the truth, guilty on both
7 charges.

8 Thank you.

9 MR. BROWN: May it please the Court?

10 Ladies and gentlemen of the jury, Mr. Judge, my name
11 is Michael Brown. I represent Mr. Leach who's seated next
12 to me today.

13 First off I want to thank you for being on jury duty.
14 Jury duty can be varying degrees of inconvenience for you.
15 Some of you may or may not have wanted to be here this
16 week. But thirty-one years ago when I was in law school I
17 read a treatise written by Benjamin Franklin, and he wrote
18 that jury duty is the greatest civic duty you can do for
19 your country outside of military service during time of
20 warfare. And he went on to expand on that, because without
21 juries under our system of justice, we have no justice.
22 You, collectively, will make a decision.

23 There are four major participants in this trial.
24 They're really quite simple when you break it down. As
25 Judge Hayes told you, he's a judge. He's the sole judge of

1 the law and part of the oath you just took is to uphold the
2 law as he gives it to you.

3 Mr. Shelton here, his job is to prosecute that case
4 and his job is to prosecute it to the best of his ability
5 within ethical bounds.

6 Obviously, my job is to defend the case; defend Mr.
7 Leach to the best of my ability within the ethical bounds.

8 You fourteen, collectively, have the most important
9 job in this case. You fourteen must decide what the facts
10 are. And once you decide what the facts are, you - then it
11 becomes your job after hearing all the evidence and all the
12 testimony to apply it to the law as Judge Hayes gives it to
13 you.

14 Now, some of you may or may not have been on jury duty
15 in the past, but really if you break our law down in this
16 country, we have two forms of law and they're really quite
17 simple when you break them down.

18 We have civil law and in every civil case whether it
19 be in this court or in the United States Supreme Court,
20 there's a simple burden of proof. It's called a
21 preponderance of the evidence and that's where someone sues
22 someone for economic gain and both sides have to present
23 evidence. And if after hearing both sides you believe one
24 side slightly more than the other, say fifty-one percent
25 versus forty-nine percent, you vote that way.

1 Criminal law is the second form of law we have and
2 that's what we're dealing with here. Criminal law is
3 completely different than civil law. Criminal law occurs
4 when someone makes an allegation against another person
5 that gives rise to what we call criminal liability.

6 And to put it in the simplistic context of this case,
7 the State through Mr. Shelton and these officers have made
8 that allegation against Mr. Leach. When that occurs, we
9 have certain cardinal principals of law that come into play
10 and Judge Hayes will touch on these now and later on and
11 when he gives the charge.

12 The first one is, anyone charged with a crime is
13 presumed innocent and that presumption of innocence stays
14 with them throughout the course of his trial only until
15 such time as the State brings to you evidence, not just
16 allegations, but it must be believable, credible evidence
17 to convince you to a certain standard. And I'm sure all of
18 you have heard that standard at some point in time
19 throughout your lives, Social Studies or whatever, that
20 standard is proof not to, but it's proof beyond a
21 reasonable doubt.

22 What is a reasonable doubt? I'm sure all of you've
23 heard that term. Our Supreme Court has succinctly narrowed
24 that down to one sentence. A reasonable doubt is the kind
25 of doubt that would cause a reasonable person to hesitate

1 to act. It is evidence that leaves you firmly convinced of
2 the defendant's guilt.

3 Mr. Shelton is correct on what the charge is. There's
4 two counts here, trafficking cocaine, and he's correct, it
5 all weighs on the amount.

6 The only thing that I ask of you is as you go through
7 the course of trial, is that you place the evidence you
8 hear in the context of this question. Do I believe that
9 beyond a reasonable doubt; do I believe that beyond any
10 doubt that would cause me to hesitate to act. Because when
11 you come in a jury room, you don't throw away your good
12 commonsense.

13 People - Different people have different motives for
14 testifying. I am going to tell you that the State's star
15 witness in this case who's motive for testifying is to
16 avoid the minimum twenty-five years without parole
17 incarceration. Now ask yourself when you listen to him
18 testify, if this man knocked on my door, would I believe
19 him beyond a reasonable doubt.

20 As you go through the course of this trial together,
21 please pay close attention to all the evidence and all the
22 testimony from that witness stand, and once you do that and
23 you come back has the State convinced me beyond a
24 reasonable doubt, beyond any doubt that would cause me to
25 hesitate to act. Am I firmly convinced. Whether your

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1 verdict be guilty or not guilty, you will discharge your
2 duty as jurors.

3 I thank you again.

4 THE COURT: Call your first witness.

5 SOLICITOR SHELTON: Thank you, Your Honor. The State
6 calls Investigator Leland Harrelson.

7 (WHEREUPON, LELAND HARRELSON,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION

10 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Please state your name and occupation.

14 A. My name is Hugh Leland Harrelson, Junior. I'm a
15 police officer with the City of Rock Hill, and I am
16 currently assigned as an investigator with the York County
17 Multi-jurisdictional Drug Enforcement Unit.

18 Q. How long have you worked in law enforcement?

19 A. I've been in law enforcement for approximately six
20 years.

21 Q. How long have you worked with the Drug Unit?

22 A. Approximately four years.

23 Q. Explain to this jury, please, what is the Drug Unit?

24 A. The Drug Unit is made up of officers from all over
25 York County. We have officers from Rock Hill, the

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1 Sheriff's Office here, Fort Mill, Tega Cay, York and
2 Clover, and we work together collectively as a team.

3 We actually have three different offices. We have one
4 which is out of the Rock Hill Police Department; another
5 which is out at the Moss Justice Center which is here and
6 one that's out of the Fort Mill Police Department, and we
7 primarily work on drug sales.

8 We do everything from a street-level drug dealer to
9 somebody that's moving, you know, a high-level drug dealer.

10 We also concentrate on alcohol enforcement and
11 prostitution. As - In our drug enforcement side, we do
12 everything from using confidential informants to go out and
13 purchase drugs for us to doing surveillance on a particular
14 residence that, you know, you may receive a tip that is
15 selling drugs, so we do work drugs in many different
16 aspects.

17 Q. During your time with the Drug Unit have you
18 participate - have you participated in what's known as a
19 controlled drug buy?

20 A. Yes, sir, I have.

21 Q. Approximately how many times?

22 A. I would say ballpark, we probably do a hundred-plus
23 deals a year, so I've been there approximately four years,
24 so somewhere around four hundred-plus confidential
25 informant buys.

1 Q. Are you - Let me ask you this. Can you explain to the
2 jury what is a controlled drug buy?

3 A. Yes. A controlled buy and - Is where we utilize a
4 confidential informant, someone that's in the drug world,
5 to actually go out and to buy drugs for us.

6 The reason that we do that is Rock Hill in York County
7 is relatively pretty small and as a police officer in your
8 career, people do get to know you, so it would be very
9 difficult for myself or other officers that I work with to
10 go out in a undercover capacity to purchase drugs, so we
11 utilize a confidential informant.

12 So you'll meet with that informant in our office and
13 the informant will tell you, you know, the people that they
14 can go out and buy drugs from.

15 So, you know, you'll shoot a phone call to that
16 particular person to set up an actual drug deal. Before
17 you leave, you'll - the - you'll search the confidential
18 informant to make sure they don't have any weapons or
19 contraband on their person.

20 We'll also search the vehicle that the confidential
21 informant will either be riding in or that he is going to
22 drive, again to make sure there is no weapons or contraband
23 inside the vehicle. And we'll actually give the informant
24 the money to go actually and purchase the drugs for us.
25 We'll make photocopies before we actually issue the money

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1 to them.

2 We will place a - some type of listening device on the
3 informant and we'll also use some - some cameras. We may
4 place the camera on the informant himself or put it inside
5 the vehicle.

6 Once we kind of do all that, we'll go out and actually
7 do the drug deal. Now, we just don't send him out on his
8 own to do it. We do go with him in some capacity.

9 He'll go out and do it and in our vehicles, we can
10 actually listen to everything that's going on, so we can
11 hear the interaction that the informant has with the - the
12 person that he's going to buy from. And we run just a
13 surveillance operation. We're kind of out in unmarked
14 vehicles and plain clothes following him as he goes along.
15 Now, when he actually does the buy, you know, we can't pull
16 up next to him, but we're kind of a block, you know, we're
17 around in case anything happens, you know, we can go in to
18 assist our informant.

19 Once he's made the transaction, we'll meet the
20 informant at a predetermined meeting location and we'll
21 recover the drugs that he purchased for us, and then we'll
22 go back and search our informant again to make sure that we
23 got all the drugs that he gave us and we search his vehicle
24 again, and then we take a statement from him and that's
25 basically just he tells us what happens in his own words,

1 and then we'll kind of concluded it at that point.

2 Q. Were you involved in the investigation of Elder
3 Prescott Leach on June 19th, 2013?

4 A. Yes, sir, I was.

5 Q. Was a confidential informant used in that
6 investigation?

7 A. Yes, sir, he was.

8 Q. What is that person's name?

9 A. The informant was Tezo Ervin.

10 Q. And what role did you have in that investigation?

11 A. I searched Mr. Ervin before we actually left to go do
12 the deal and also, I searched the vehicle that Mr. Ervin
13 drove and also I placed the electronic surveillance
14 equipment, the wire, on Mr. Ervin's body and also the video
15 camera inside of his vehicle.

16 Q. What type of vehicle did Ervin drive to the buy?

17 A. Can I look at my notes? I'm not sure of the exact
18 make and model.

19 Q. Sure. Will it help refresh your memory?

20 A. Yes, sir, it would. I don't have the exact make and
21 model. I know it was a small four-door type vehicle.

22 Q. A car or a truck?

23 A. It was a car.

24 Q. And did you search that vehicle?

25 A. Yes, sir, I did.

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1 Q. Was anyone else present with you during the search of
2 the vehicle?

3 A. No, sir, they were not.

4 Q. Where did you search it?

5 A. The vehicle was parked in the parking deck which is
6 directly across the street from the Rock Hill Law Center.

7 Q. When did you search it?

8 A. When Mr. Ervin first arrived I searched the vehicle.
9 We were actually going to do the deal earlier in the
10 morning. I searched the vehicle at that point. And to
11 tell you a little bit about how we search - how I search a
12 vehicle, and I kind of start at the front and kind of move
13 to the back, and you want to check inside the compartment,
14 you know, where they sit. We look up underneath the seat,
15 the floor mats, above the visor, the center console,
16 anywhere you think someone could hide any type of
17 contraband or a weapon.

18 I also check in between the seats, and then I move to
19 the backseat and do the same thing, check under the floor
20 mats. If there is any items in there, we go through those
21 such as a book bag or clothing. And also I'll check inside
22 the trunk of the vehicle to make sure there aren't any
23 items that don't need - do not need to be taken along to
24 our deal.

25 Q. So you mentioned searching early in the morning. Did

1 you search it a second time that day?

2 A. Yes, I did. We didn't leave directly into the morning
3 so once I searched the vehicle, I had locked the vehicle
4 and later on in the morning when the deal was going to go
5 again since there was a lapse in time, I re-searched the
6 vehicle and then I placed the recording equipment which was
7 inside the vehicle.

8 Q. And after you locked the vehicle, did you have the
9 keys?

10 A. Yes, I did.

11 Q. And did you allow anyone else to get into the vehicle
12 after you searched it?

13 A. No, sir, I did not.

14 Q. Why do you search vehicles in these part - at this
15 point in these investigations?

16 A. We want to make sure that he's not bringing any
17 contraband such as a drugs to a drug deal. We want to make
18 sure that we get the drugs that we purchased. Also a
19 weapon, we do not want our informant to bring a weapon
20 along to a drug deal.

21 Q. So these - The vehicle search is in preparation for
22 the buy?

23 A. That is correct. This all takes place before we
24 actually leave to go do the buy.

25 Q. Did you find any drugs or contraband in Ervin's

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1 vehicle that morning?

2 A. No, sir, I did not.

3 Q. Did you find anything in his vehicle at all before he
4 left for the buy?

5 A. No, sir, I did not.

6 Q. Now, what other roles, if any, did you have in this
7 investigation?

8 A. Also, I was on the surveillance team.

9 Q. Can you explain what that is?

10 A. Yes. When he left, we'll run surveillance. We'll
11 kind of follow him. Whenever they do do the deal, we're
12 kind of, you know, maybe a block or two away to monitor the
13 transaction of the deal.

14 Q. Were any other officers a part of the surveillance
15 team in this case?

16 A. Yes, sir, there were.

17 Q. Do you remember who?

18 A. I know Sergeant Rainier was an officer that was
19 involved. Investigator Gander, Investigator Faulkenberry.

20 Q. And did you also hide audio, video surveillance
21 equipment in his vehicle?

22 A. Yes, sir, I did.

23 Q. Where did you hide it?

24 A. I placed a small camera inside the cup holder, which
25 is in the center console of the vehicle.

1 Q. And did the - did that equipment produce an
2 audio/video recording of the events that took - that took
3 place during this investigation?

4 A. Yes, sir, it did.

5 Q. Did you hide any audio or video surveillance equipment
6 on Ervin's person?

7 A. I did. I placed what we call a wire which is a device
8 so we can listen in in our vehicles to the conversation
9 that he's having. Also, I placed a small digital recorder
10 inside his pocket so he could just record the audio of the
11 conversation just in case if our video, which is primarily
12 designed to pick up good video if it doesn't get good
13 audio, we just have a backup.

14 Q. So the wire, did it - did it, in fact, provide a live
15 audio feed to law enforcement officers participating in
16 this investigation?

17 A. Yes, sir, it did.

18 Q. Were you able to monitor that live audio feed during
19 this investigation?

20 A. Yes, sir, I was.

21 Q. And I think you mentioned it, was that feed also
22 recorded in this case?

23 A. Yes, by a small digital recorder which was placed on
24 Mr. Ervin's person.

25 Q. Have you reviewed the audio/video recording from the

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1 camera and the audio recording from the live audio feed?

2 A. Yes, sir, I have.

3 Q. And have you listened to those recordings in their
4 entirety?

5 A. I have.

6 Q. Are they true and accurate as to the events that took
7 place to your knowledge?

8 A. Yes, sir, they are.

9 MR. BROWN: Your Honor, I would have an objection to
10 certain parts of this.

11 BY SOLICITOR SHELTON:

12 Q. Investigator, I'm going to show what's been marked as
13 State's Number Two and Three. If you would, take a look at
14 those, please?

15 (WITNESS COMPLIES).

16 Q. And are there recordings on those discs?

17 A. Yes, sir, they are.

18 Q. Have you reviewed the recordings that are on those
19 discs?

20 A. Yes, sir, I have.

21 Q. And are they relevant to this case?

22 A. Yes, sir, they are.

23 Q. And, specifically, State's Number Two, is this the
24 audio/video recording from the camera in the car?

25 A. Yes, sir, it is.

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1 Q. And what's marked as State's Number Three, is this the
2 audio, live wire feed?

3 A. Yes, sir, it is.

4 Q. To your knowledge was the buy successful?

5 A. Yes, sir, it was.

6 MR. BROWN: Objection, Your Honor. It calls for a
7 conclusion.

8 THE COURT: I sustain the objection. Just disregard
9 that. There hadn't - Somebody else will have to testify to
10 that.

11 BY SOLICITOR SHELTON:

12 Q. Was Elder Leach taken into custody that afternoon?

13 A. Yes, sir, he was.

14 Q. Okay. Was he read his *Miranda* rights?

15 A. Yes, sir, he was.

16 Q. By whom?

17 A. By my - I read him his *Miranda* rights.

18 Q. What happened to Tezo Ervin?

19 A. He was transported back to the Rock Hill Law Center.

20 Q. What happened to Ervin's vehicle?

21 A. We had an officer drove his vehicle back to the Rock
22 Hill Law Center.

23 Q. Was that Officer Dantzler?

24 A. Yes, sir, it was.

25 Q. Was Ervin's vehicle searched again after the buy?

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1 A. Yes, sir. I - I searched, or I searched his vehicle
2 after the buy at the Rock Hill Law Center, which is our
3 office.

4 Q. Was it searched in the same manner that you described
5 earlier?

6 A. Yes, sir, it was.

7 Q. And did you find anything during that search?

8 A. No, sir, I did not.

9 Q. Did this entire investigation occur in York County,
10 South Carolina?

11 A. Yes, sir, it did.

12 SOLICITOR SHELTON: Nothing further at this time.

13 CROSS-EXAMINATION

14 OFFICER LELAND HARRELSON BY MR. BROWN:

15 Q. So I take it, Mr. - Officer Harrelson, that you were
16 in charge of audio and video surveillance of this case?

17 A. Yes, sir, that is correct.

18 Q. And you aren't the case agent, though, were you?

19 A. No, sir, I am not.

20 Q. So you placed the camera and the audio recording
21 equipment in Mr. Tezo's car?

22 A. I placed the video equipment in Mr. Tezo's car. I
23 placed the audio equipment on Mr. Tezo's person.

24 Q. Okay. And you put the camera where in his car?

25 A. In the center console of the vehicle inside of the cup

1 holder.

2 Q. Inside the cup holder. Now, what - what type camera
3 was that?

4 A. Just a - it was a small digital camera that we use
5 which is - it doesn't really look like a camera.

6 Q. And the purpose of that is to deceive the person that
7 there is not a camera there. Correct?

8 A. Correct. So the person will not know that law
9 enforcement is involved.

10 Q. Okay. Now, you - And I believe you testified under
11 standard operating procedure that you searched the CI
12 before you sent him out. Correct?

13 A. That is correct.

14 Q. And where did that search take place?

15 A. At the Rock Hill Law Center.

16 Q. All right. So he's down in you all's office, I
17 assume?

18 A. That is correct.

19 Q. And you searched him by pat down or what?

20 A. No, sir. It's a little bit more of a pat down. It's
21 not a body cavity search. That is against our policy. But
22 the way I search somebody is I'll start at the top and I'll
23 pat their chest down. If they have any pockets or if they
24 happen to have a coat on, I will check inside those pockets
25 and also, I'll check his back. Also, I check his waistband

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1 and also even inside the belt to make sure there are -
2 there is not any contraband inside of there. We'll check
3 his front pockets, his back pockets, his coin pocket and
4 also we'll pat down the sides of his legs to make sure he
5 doesn't have anything concealed on his legs and at the end,
6 we'll have them take their shoes off and also their socks.

7 Q. Okay. And that's the extent of your search. Correct?

8 A. Yes, sir, it is.

9 Q. Now, with this search or this undercover operation,
10 for lack of a better term, was to - well, dealing with
11 crack cocaine. Correct?

12 A. Yes, sir, it was.

13 Q. And crack cocaine comes in - a very large amount could
14 be in a very small quantity. Correct? Like 12 grams
15 wouldn't be much at all, would it?

16 A. Twelve grams?

17 Q. Yeah, how big would that be?

18 A. Twelve grams may be something like that.

19 Q. Hold that up to the jury, please sir.

20 (WITNESS COMPLIES).

21 Q. And about what, that thick?

22 A. It could be yes, sir.

23 Q. Okay. After you searched him, did you go -- you
24 testified that you subsequently went and searched T - is it
25 Tezo, Mr. Tezo's car?

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

2 Q. And did you do it at the police department or across
3 the way at the parking deck?

4 A. It was parked in the parking deck which is directly
5 across the street from the Rock Hill Law Center.

6 Q. What floor was he on in the parking center?

7 A. It was on the main floor.

8 Q. The first floor?

9 A. That is correct.

10 Q. That place is not lit, is it?

11 A. Yes, sir, it is lit.

12 Q. It's lit during the day?

13 A. I know in the evening it is. I can't --

14 Q. Okay. Let me rephrase the question.

15 A. I'm not sure if there is lights on during the day.

16 Q. When did you do the search?

17 A. It was in the morning.

18 Q. Okay. Were any - And do you know whether or not it
19 was lit in the morning or not?

20 A. I can't recall.

21 Q. All right. And when you searched his - what - What
22 kind of vehicle was this again?

23 A. I know it was a four-door. I believe a four-door
24 sedan or a small - it was a small compact vehicle.

25 Q. You don't know what kind of car it was, a brand or no

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1 make or anything?

2 A. No, sir, I don't recall.

3 Q. All right. So you open the car door, I assume.

4 Right? I believe you testified you looked under the visor.

5 Correct?

6 A. That is correct.

7 Q. Looked under where else, sir?

8 A. I looked under the driver's seat, also the passenger's
9 seat. I'll look up underneath the floor mats. Again, I'll
10 look up underneath both visors. I'll check the center
11 console area, you know, up underneath the dash, and then
12 I'll move to the backseat and do the same thing, check up
13 underneath the passenger's floor mats. Check the passenger
14 seats. If it has, you know, a thing that folds down, we'll
15 also check that as well, and then check the back of the
16 vehicle in the very --

17 Q. I don't mean to interrupt you. When you say the back
18 of the vehicle, what do you mean the back of the vehicle?
19 Are you talking about the back seat?

20 A. The back seat and, you know, I guess, I don't know
21 what call it, where the windshield comes down ---

22 Q. Right.

23 A. --- you have that little ledge there. You know, if
24 there is any items up in there. A lot of times people will
25 place items in there. If there's any items in there, we'll

1 check that as well. And we'll go through any items that
2 are left in the vehicle such as a book bag or clothing.

3 Q. And, I believe, you also testified that you searched
4 the trunk; is that correct?

5 A. That is correct.

6 Q. Okay. And you went through the trunk and looked if
7 there's any compartments or anything; is that correct?

8 A. That is correct, and if there's any items inside the
9 trunk, we'll go through those as well.

10 Q. Where was the spare tire on this car?

11 A. I do not recall where the spare tire was.

12 Q. Was the spare tire in the trunk?

13 A. I do not recall.

14 Q. Okay. But that's where you searched, I mean you
15 searched the interior and the trunk. Correct?

16 A. Yes, sir, that is correct.

17 Q. Okay. You didn't find anything. Correct?

18 A. That is correct. I did not find any contraband or any
19 weapons inside the vehicle.

20 Q. And the reason you search these people for contraband
21 is they're not trustworthy are they?

22 A. We want to make sure they don't bring any drugs or
23 weapons, you know, to a deal that we're doing.

24 Q. Well, let me rephrase the question. Mr. Tezo is under
25 arrest and indicted in this county for trafficking cocaine,

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1 third offense, which carries a twenty-five years minimum
2 without parole. Would you trust him?

3 SOLICITOR SHELTON: Objection.

4 THE COURT: I sustain the objection. That's up to - a
5 question for the jury to determine credibility.

6 MR. BROWN: Yes, sir.

7 Q. The reason you search is you want to make sure they
8 don't put drugs in there to set somebody up unlawfully or
9 illegally. Correct?

10 A. We do that because we want to control the deal. We
11 want it to be a controlled deal under law enforcement, so
12 we want to make sure that the deal happens the way that we
13 want to and also the deal happens the way we said it did,
14 so we -- that's why we try to cover every base we can.
15 That is why we search our informant and also we search the
16 vehicle so we know that he's not taking drugs or a weapon
17 to the drug deal.

18 Q. You want to make sure he's not violating the law as
19 you try to set somebody else up. Correct?

20 A. Yes, sir, that is correct.

21 Q. And I may have missed this, you were on the
22 surveillance team?

23 A. Yes, sir, that is correct.

24 Q. And I believe you testified you all stayed back one or
25 two blocks; is that correct?

1 A. That is correct.

2 Q. And when you say one or two blocks, you are one or two
3 blocks behind the confidential informant in the car; is
4 that correct?

5 A. Yeah. And now it varies just depending on your
6 location. You know, if you're in the City, you can be
7 right around the corner. If you do get out in the country
8 a little bit, you do have to be further back, because a lot
9 of people that sell drugs, they do counter-surveillance to
10 look to see if, you know, that person is cooperating with
11 law enforcement or if that person is, you know, going to
12 rob them.

13 Q. I got you. So he -- you're one or two blocks back
14 following the CI, and I believe he calls ahead and says
15 where he's going; is that correct?

16 A. No. We plan ahead where we're going to go. Now, not
17 every deal is perfect, so it may change. That is just the
18 nature of buying drugs. A lot of times they'll set a
19 location and when you're in route to that location, the
20 person that you're buying it from may call your informant
21 back and change the location. Now, we'll still go with it.
22 You know, we just - we kind of - Sometimes you just have to
23 play it by ear. That's just the nature of this business.

24 Q. And that's why you lay one or two blocks back, because
25 you don't want to be seen by whoever you're trying to bust.

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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1 Correct?

2 A. Yes, sir, that is correct.

3 Q. And, of course, the CI is out of sight for a while.

4 Correct?

5 A. Yes. We try to maintain a visual contact on the CI
6 the majority of the time, but not all the times can we, you
7 know, have somebody that can see them just due to traffic
8 or due to the location to wherever the deal is going to
9 take place.

10 Q. How many people were on this surveillance besides
11 yourself, sir?

12 A. Can I take a look at my notes?

13 Q. Yes, sir.

14 A. I'm not sure.

15 Q. Yes, sir.

16 A. Eight. Eight officers, I believe.

17 Q. Okay. All of 'em in eight different cars or four
18 different cars or how was it?

19 A. I don't recall. A lot of times, we double up. We
20 have two officers to a vehicle.

21 Q. You don't remember on this particular occasion?

22 A. Not on this particular case.

23 Q. After the arrest, Mr. Tezo - Tezo was placed under
24 arrest at the scene. Correct?

25 A. That is correct.

1 Q. And where was -- How was he transported back to the
2 law enforcement facility?

3 A. I'm not sure. I wasn't a part of that. I had a
4 different role during the - that - that part of the take
5 down.

6 Q. I thought you searched the car after the fact?

7 A. I did search his vehicle.

8 Q. All right. Was that at the scene where this occurred
9 or back at the law enforcement center or where?

10 A. No. We had an officer drove Mr. Ervin's vehicle back
11 to the Rock Hill Law Center, and then I re-searched the
12 vehicle when it was back at the Rock Hill Law Center.

13 Q. Okay. Was Mr. Ervin in that vehicle when they drove
14 him back?

15 A. To my knowledge, no. There was an officer. It was
16 Officer Dantzler actually drove the vehicle from the scene
17 back to the Rock Hill Law Center.

18 Q. I'm talking about Mr. Tezo's vehicle. And Mr. Tezo
19 was not in his vehicle when they left the scene back to the
20 police department. Correct?

21 A. An officer drove him. Now, I cannot tell you exactly
22 what officer.

23 Q. No, but at - He was in his car is my question?

24 A. Sir?

25 Q. Was Mr. Tezo in his car?

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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1 A. No, sir. Mr. Tezo was driven back by an officer in
2 that officer's vehicle.

3 Q. Okay. Where was the second search conducted?

4 A. Again, it was back in the parking deck right across
5 the street from the Rock Hill Law Center.

6 MR. BROWN: I beg the Court's indulgence for one
7 second.

8 (PAUSE AT 04:40 P.M..)

9 Q. I'm going to show you a report in this. Can you tell
10 me who did this report? It's a Case Summary. Would that
11 be Agent Rainier or Sergeant Rain -- Sergeant Rainier?

12 A. Yes, sir. It was Sergeant Rainier.

13 Q. So he did all that report. Correct?

14 A. That - That is correct.

15 Q. Okay.

16 MR. BROWN: I beg the Court's indulgence.

17 (PAUSE AT 04:42 P.M..)

18 MR. BROWN: I don't think I have any further
19 questions, Your Honor.

20 THE COURT: Redirect?

21 SOLICITOR SHELTON: Your Honor, briefly. May it
22 please the Court?

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

1 Q. Investigator, you testified that you looked around in
2 the car. Did you all - Would you feel around in the car
3 during your search or just look with your eyes?

4 A. No. You feel with - I mean, you look with my eyes and
5 also I'm moving items with my hands, inside items. I, you
6 know, pick up the floor mat and, you know, put your hands
7 in between the seats, things like that.

8 Q. So when you're looking under a seat, for example, you
9 may look, and then reach under as well?

10 A. That is correct. And also, I have a flashlight with
11 me.

12 Q. So do you recall having any trouble seeing or feeling
13 the areas that you were searching in this vehicle?

14 A. No, sir, I did not.

15 Q. And there was testimony about the surveillance team
16 and having to stay back a distance. I believe you also
17 testified that at times you do lose sight of the CI's
18 vehicle due to the fact that you have to stay back.

19 A. That is correct.

20 Q. Is that also - Well let me ask you this. Is that one
21 of the reasons why you have a live audio feed as well?

22 A. Yes, sir, that is correct.

23 Q. And you were monitoring that feed?

24 A. Yes, sir, that is correct.

25 Q. And in your training and experience, was there

OFFICER LELAND HARRELSON: REDIRECT BY SOLICITOR SHELTON

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1 anything that went on suggesting something was awry?

2 A. No, sir. This particular deal went just as planned.

3 SOLICITOR SHELTON: No further questions.

4 MR. BROWN: Nothing further.

5 THE COURT: You can step down and be excused. We
6 appreciate your time.

7 OFFICER HARRELSON: Yes, Your Honor.

8 (WITNESS LEAVING WITNESS STAND.)

9 SOLICITOR SHELTON: Your Honor, may we approach?

10 THE COURT: Yeah.

11 (BENCH CONFERENCE OFF THE RECORD AT 04:43 P.M., OUT OF
12 THE HEARING OF THE JURY.)

13 THE COURT: Members of the jury panel, we usually go
14 until five or 5:30. It's not quite that time yet, but the
15 next witness, I understand, is going to be fairly lengthy
16 and I have to stop at 5:30 today, because I have a
17 different kind of court I hold on some Monday nights and
18 this is one of those Monday nights. So we're going to stop
19 a little earlier than we usually do, and we'll start at ten
20 in the morning.

21 Keep in mind what I told you about what not to do. Do
22 not discuss the case or make up your mind or do research or
23 go online or be exposed to any news coverage or talk to
24 anybody. So have a pleasant evening.

25 The bailiffs will tell you how to come in and out

1 while you're serving as a juror and we'll see you back at
2 ten in the morning, and we'll try to start as prompt - I
3 have two or three other matters starting at about 9:15. I
4 think I can be through with them by ten. So I may be
5 running a few minutes late, but I hope to be through with
6 my other matters by ten, so we can start promptly at ten.
7 If I'm running a few minutes late, I apologize in advance,
8 so we'll see you at ten in the morning.

9 (JURY EXITS THE COURTROOM AT 04:40 P.M..)

10 THE COURT: We'll be at ease until ten in the morning.

11 SOLICITOR SHELTON: Your Honor, I'm sorry to
12 interrupt, but I think this was already address, Mr. Leach
13 is --

14 THE COURT: He's gonna remain incarcerated.

15 SOLICITOR SHELTON: Yes, sir. Thank you.

16 (COURT IN RECESS AT 04:42 P.M..)

17 (COURT BACK IN SESSION TUESDAY, MAY 13, 2014 AT 10:00
18 A.M..)

19 (OKEVIUS BIGGER BOND MATTER WITH NATHAN SHELTON.)

20 (COURT AT EASE AT 10:00 A.M..)

21 (DEFENDANT ELDER PRESCOTT LEACH, REENTERS COURTROOM AT
22 10:13 A.M..)

23 (COURT IN SESSION AND ON THE RECORD IN THE MATTER OF
24 STATE V. ELDER PRESCOTT LEACH, AT 10:17 A.M..)

25 THE COURT: Is the State ready?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 SOLICITOR SHELTON: Yes, sir.

2 THE COURT: Is the Defense ready?

3 MR. BROWN: Yes, sir.

4 THE COURT: Bring in the jury.

5 (JURY REENTERS COURTROOM AT 10:20 A.M..)

6 THE COURT: Good morning.

7 THE COURT: Call your next witness.

8 SOLICITOR SHELTON: Thank you, Your Honor. May it
9 please the court. The State calls Tezo Nevada Ervin.

10 THE COURT: Please come up and be sworn, Mr. Ervin.

11 MADAM CLERK: Please raise your right hand and place
12 your left hand on the Bible.

13 (WHEREUPON, TEZO NEVADA
14 ERVIN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
15 FOLLOWS:)

16 MADAM CLERK: Thank you, you may have a seat right up
17 there.

18 DIRECT EXAMINATION

19 TEZO ERVIN BY SOLICITOR SHELTON:

20 Q. Good morning.

21 A. Good morning.

22 Q. Please introduce yourself to the jury.

23 A. I'm Tezo Nevada Ervin.

24 Q. How old are you?

25 A. Thirty-four.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Where are you from?

2 A. Rock Hill, South Carolina.

3 Q. And how long have you lived in Rock Hill?

4 A. Basically all my life.

5 Q. Mr. Ervin, have you ever been convicted of a crime?

6 A. Several. Yes, sir.

7 Q. Were you convicted of PWID marijuana in September of
8 2001?

9 A. Yes, sir.

10 Q. Were you convicted of PWID crack cocaine and a
11 companion proximity charge, along with a habitual traffic
12 offender?

13 THE COURT: We all, this side of the group know what
14 PWID means.

15 SOLICITOR SHELTON: Oh. Yes, sir.

16 THE COURT: I'm not so sure the jury knows what PWID
17 means.

18 SOLICITOR SHELTON: Yes, sir. I'll spell it out. My
19 apologies.

20 Q. Let me start over, Mr. Ervin. Were you convicted of
21 possession with intent to distribute marijuana in September
22 of 2001?

23 A. Yes, sir.

24 Q. Were you convicted of possession with intent to
25 distribute crack cocaine and a companion proximity charge

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 in 2002?

2 A. Yes, sir.

3 THE COURT: I'm not sure the jury understands what a
4 proximity charge is either.

5 SOLICITOR SHELTON: Okay.

6 Q. The proximity being possession with intent to
7 distribute crack cocaine with proximity of a school or
8 park.

9 A. Yes, sir.

10 Q. Were you convicted of habitual traffic offender and
11 driving under suspension in 2012?

12 A. Yes, sir.

13 Q. Mr. Ervin, were you arrested on or about May 11th,
14 2012?

15 A. Yes, sir.

16 Q. And were you charged with five different charges?

17 A. Yes, sir.

18 Q. Were you charged with trafficking crack cocaine?

19 A. Yes, sir.

20 Q. Were you charged with trafficking within proximity of
21 a school or park?

22 A. Yes, sir.

23 Q. Were you charged with manufacturing crack cocaine?

24 A. Yes, sir.

25 Q. And were you charged with manufacturing crack within a

1 school or park?

2 A. Yes, sir.

3 Q. Within the proximity of school or park?

4 A. Yes, sir.

5 Q. Were you charged with a weapons charge, as well?

6 A. Yes, sir.

7 Q. Was the trafficking crack cocaine charge carry
8 mandatory minimum twenty-five years no parole?

9 A. Yes, sir.

10 Q. Does it carry up to thirty years?

11 A. Yes, sir.

12 Q. Does the manufacturing crack charge carry a mandatory
13 minimum of ten years, no parole, up to thirty years?

14 A. I believe, yes, sir.

15 Q. And do the proximity charges carry zero to ten years?

16 A. Yes, sir.

17 Q. And the weapons charge, does it carry five years?

18 A. Yes.

19 Q. Are all of those charges pending currently?

20 A. Yes, sir.

21 Q. When did you meet with officers from the Drug Unit
22 about working as a confidential informant?

23 A. May something. May 11, 2012.

24 Q. Was it after you were arrested on those five charges?

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you agree to work with the Drug Unit as a
2 confidential informant?

3 A. Yes, sir.

4 Q. Are you hoping to get any benefit from working as an
5 informant?

6 A. Yes, sir.

7 Q. Have you been promised anything for that work?

8 A. No, sir.

9 Q. Was it your understanding you'd at least get some
10 credit for an honest effort?

11 A. Yes, sir.

12 Q. Even if the - an attempted buy was unsuccessful?

13 A. Yes, sir.

14 Q. And to be clear, the work you were agreeing to do was
15 to buy drugs; is that correct?

16 A. Yes, sir.

17 Q. Was it your understanding that you'd get credit or
18 benefit if the drugs you bought were real or fake?

19 A. Yes, sir.

20 Q. But again, have you been promised anything in relation
21 to your charges or your work as a CI?

22 A. No, sir.

23 Q. On June 19th, 2013, were you involved in an
24 investigation with the Drug Unit?

25 A. Yes, sir.

- 1 Q. I'm sorry. Can you repeat that?
- 2 A. Yes, sir.
- 3 Q. Were you working in the role as an undercover
- 4 confidential informant?
- 5 A. Yes, sir.
- 6 Q. Where did you meet with Drug Unit officers that day?
- 7 A. Rock Hill.
- 8 Q. Was that the Law Center in Rock Hill?
- 9 A. Yes, sir.
- 10 Q. Did you tell the officers you could buy drugs that
- 11 day?
- 12 A. Yes, sir.
- 13 Q. Did you tell them who you could buy from?
- 14 A. Yes, sir.
- 15 Q. Who did you tell them you could buy from?
- 16 A. Elder Leach.
- 17 Q. Did you know Elder Leach before that day, June 19th,
- 18 2013?
- 19 A. Yes, sir.
- 20 Q. Approximately how long had you known him?
- 21 A. I've known him for over twenty years.
- 22 Q. Did you know him well enough to recognize him on
- 23 sight?
- 24 A. Yes, sir.
- 25 Q. Did you know how to get in touch with him?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 A. Yes.

2 Q. Did you know his phone number?

3 A. Yes.

4 Q. On June 19th, 2013, did you call Leach?

5 A. Yes I called him.

6 Q. Why?

7 A. To buy three ounces of crack cocaine.

8 Q. Did you call him from your cell phone?

9 A. Yes, sir.

10 Q. And where were you when you called him that day?

11 A. At the Rock Hill Law Enforcement Center.

12 Q. Is that in York County?

13 A. Yes, sir.

14 Q. Was that phone call recorded by Drug Unit officers?

15 A. Yes, sir.

16 Q. Have you had the chance to listen to that call?

17 A. Yes, sir.

18 Q. Mr. Ervin, I'm going to show you what has been marked
19 for identification - what's been marked for identification
20 as State's Exhibit Number One. If you would take a moment
21 to look at this.

22 (WITNESS REVIEWS DOCUMENT.)

23 Q. Do you recognize that item you're holding in your
24 hand?

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Is it a CD?

2 A. Yes, sir.

3 Q. Is there an audio recording on that CD?

4 A. Yes, sir, from my understanding.

5 Q. Have you listened to the recording on that disk?

6 A. Yes, sir.

7 Q. What is it a recording of?

8 A. The conversation between me and Elder Leach.

9 Q. That phone call you were talking about?

10 A. Yes, sir.

11 Q. Is it a true and accurate recording of that phone call
12 you had with Leach on June 19th, 2013?

13 A. Yes, sir.

14 SOLICITOR SHELTON: Your Honor, at this time I would
15 move State's Exhibit Number One into evidence.

16 MR. BROWN: Without objection.

17 THE COURT: In without objection.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
19 MARKED, RECEIVED INTO EVIDENCE.)

20 SOLICITOR SHELTON: At this time, Your Honor, I would
21 request permission to publish the audio to the jury.

22 THE COURT: You may.

23 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY AT
24 10:30 A.M..

25 Q. Mr. Ervin, what was that phone call about?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 MR. BROWN: Objection, Your Honor. Best evidence
2 rule, it speaks for itself.

3 THE COURT: I sustain the objection.

4 BY SOLICITOR SHELTON:

5 Q. Mr. Ervin, who were you talking with during that call?

6 A. Elder Leach.

7 Q. What does the whole three mean?

8 MR. BROWN: Objection, Your Honor. Same objection as
9 before.

10 THE COURT: Who said it? If he said it, I think - I
11 over rule the objection.

12 BY SOLICITOR SHELTON:

13 Q. Let me repeat the question, please. What does the
14 whole three mean?

15 SOLICITOR SHELTON: Hang on.

16 THE COURT: What does whole three mean to you.

17 SOLICITOR SHELTON: Your Honor, real quick, may we
18 approach.

19 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
20 THE JURY AT 10:33 A.M..)

21 MR. BROWN: Your Honor, same objection before as to
22 the next question.

23 THE COURT: All right. Overruled.

24 BY SOLICITOR SHELTON:

25 Q. Mr. Ervin, let me rephrase my question. What does the

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 term whole three mean to you?

2 A. When you making a drug buy, people kind of just use
3 slang terms. Like a whole three is a whole three ounces of
4 crack cocaine.

5 Q. And how much would you have had to pay for that?

6 A. Thirty-three Hundred.

7 Q. Did you and Leach agree to meet somewhere?

8 A. Yes, sir.

9 Q. Where was that?

10 A. Out on Wildcat Road.

11 Q. And is that in Rock Hill?

12 A. South Carolina. Yes, sir.

13 Q. In York County?

14 A. Yes, sir.

15 Q. Were you with Drug Unit officers during this time when
16 you made the call?

17 A. Yes, sir.

18 Q. Were you searched by officers after the call?

19 A. Yes, sir.

20 Q. Were you searched in preparation for the buy?

21 A. Yes, sir.

22 Q. Were you given money to buy the drugs?

23 A. Yes, sir.

24 Q. How much money were you given?

25 A. Thirty-four Hundred dollars.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. And did Officer Rainier give that to you?

2 A. Yes, sir.

3 Q. How did you get to Wildcat?

4 A. My vehicle.

5 Q. Did you drive?

6 A. Yes, sir.

7 Q. Was anyone else with you?

8 A. No, sir.

9 Q. Did Office Harrelson with the Drug Unit hide audio and
10 video recording equipment in your vehicle?

11 A. Yes, sir.

12 Q. To your knowledge, is he the one that turned it on?

13 A. Yes, sir.

14 Q. And was there audio and video recording produced by
15 that equipment?

16 A. Yes, sir.

17 Q. Have you watched the video recording?

18 A. Yes, sir.

19 MR. BROWN: Beg the court's indulgence one second.

20 (ATTORNEYS IN SIDEBAR DISCUSSION OFF THE RECORD.)

21 BY SOLICITOR SHELTON:

22 Q. Mr. Ervin, I'm going to hand you what has been pre-
23 marked for identification as State's Exhibit Number Two.

24 Please take a moment to inspect that exhibit.

25 (WITNESS COMPLIES.)

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Do you recognize that disk?

2 A. Yes, sir.

3 Q. Is it a DVD?

4 A. Yes, sir.

5 Q. And is there a video recording with both audio and
6 video on that disk?

7 A. Yes, sir.

8 Q. Have you watched the recording on that disk?

9 A. Yes, sir.

10 Q. And listened to the audio?

11 A. Yes, sir.

12 Q. Is the recording of — Is this a recording of the
13 events that took place during the investigation?

14 A. Yes, sir.

15 Q. Is it true and accurate as to what happened that day?

16 A. To my knowledge yes, sir.

17 SOLICITOR SHELTON: Your Honor, I would move to admit
18 State's Exhibit Number Two as evidence.

19 MR. BROWN: Without objection.

20 THE COURT: In without objection.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, IDENTIFIED AND
22 MARKED, RECEIVED INTO EVIDENCE.)

23 SOLICITOR SHELTON: Your Honor, at this time I would
24 request to publish State's Number Two.

25 THE COURT: You may.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
2 10:36 A.M./STOPS AT 11:01 A.M..)

3 SOLICITOR SHELTON: Your Honor, may we approach real
4 quick?

5 THE COURT: Yes, sir.

6 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
7 THE JURY AT 11:02 A.M..)

8 THE COURT: I'm being told this is a good time to take
9 a little break before we get into the next piece of
10 evidence so we'll take about a ten minute refresher break.

11 Thank you.

12 (JURY EXITS COURTROOM AT 11:02 A.M..)

13 THE COURT: Mr. Ervin, if you want to step down and
14 stretch and use the restroom and get some water now would
15 be a good time to do it.

16 (WITNESS LEAVES WITNESS STAND.)

17 (DEFENDANT EXITS COURTROOM.)

18 (COURT IN RECESS AT 11:03 A.M..)

19 (COURT BACK IN SESSION AT 11:22 A.M..)

20 THE COURT: Thank you. You may take your seats.

21 Is the State ready?

22 SOLICITOR SHELTON: Yes, Your Honor. Before we bring
23 out the jury --

24 THE COURT: Well let's get the defendant out.

25 SOLICITOR SHELDON: Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 (DEFENDANT REENTERS COURTROOM)

2 SOLICITOR SHELTON: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 SOLICITOR SHELTON: Your Honor, I just wanted - Mr.
6 Brown and I were talking during the break. This may be a
7 good time if you would be inclined to give the jury just a
8 little preliminary instruction about the agreed upon
9 redactions.

10 THE COURT: Okay.

11 SOLICITOR SHELTON: I saw a couple of them --

12 THE COURT: I made myself a note to do it later, but I
13 can do it now.

14 SOLICITOR SHELTON: Very good. Thank you, sir.

15 THE COURT: Bring in the jury.

16 (JURY REENTERS COURTROOM AT 11:24 A.M.)

17 THE COURT: Members of the jury panel, I understand
18 the next exhibit is actually an audio tape that's going to
19 be played. In there you will hear breaks, silence, where
20 part of the tape had been muted. That is of no importance.
21 It is not muted for any ulterior motive. It's just where
22 there are certain parts that were not relevant to this case
23 and so by agreement of the parties, and in order not to
24 create perhaps confusion, certain parts have been blipped I
25 guess really muted but like they would on TV, but you are

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 not to give any thought to that or worry about that. It's
2 not for your consideration. It's just the way we have done
3 it to make the tape more appropriate for use in this trial.

4 SOLICITOR SHELTON: May it please the court, Your
5 Honor.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION - CON'T

8 TEZO ERVIN BY SOLICITOR SHELTON:

9 Q. Mr. Ervin, did this buy happen on June 19th, 2013?

10 A. Yes, sir.

11 Q. Was an audio recording of the events that day also
12 produced?

13 A. Yes, sir.

14 Q. Have you listened to that recording?

15 A. Yes, sir.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, PREMARKED
17 FOR IDENTIFICATION.)

18 MR. BROWN: Without objection, Your Honor.

19 Q. Mr. Ervin, I'm going to hand to you what's been shown
20 as State's Exhibit Number Three. Do you recognize that?

21 A. Yes, sir.

22 Q. Is it a CD?

23 A. Yes, sir.

24 Q. Is there a recording on it?

25 A. Yes, sir. To my knowledge.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Have you listened to the recording on the disk?

2 A. Yes, sir.

3 Q. Is it an audio recording of the events that took place
4 on June 19th, 2013?

5 A. Yes, sir.

6 Q. During this investigation?

7 A. Yes, sir.

8 Q. Is it true and accurate as to what happened?

9 A. Yes, sir.

10 SOLICITOR SHELTON: Your Honor, I'd move this into
11 evidence as State's Exhibit Number Three.

12 THE COURT: Any objection?

13 MR. BROWN: No objection, Your Honor.

14 THE COURT: In without objection.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
16 AND MARKED, RECEIVED INTO EVIDENCE.)

17 SOLICITOR SHELTON: At this time, Your Honor, I'd
18 request permission to publish.

19 THE COURT: You may.

20 (STATE'S EXHIBIT NUMBER THREE PUBLISHED TO THE JURY AT
21 11:27 A.M..) (STOP AT 11:48 A.M..)

22 BY SOLICITOR SHELTON:

23 Q. Mr. Ervin.

24 A. Yes, sir.

25 Q. On the way to Wild Cat, did you make or receive any

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 phone calls?

2 A. Yes.

3 Q. Who were you talking with during those calls?

4 A. Couple a officers.

5 Q. Anyone else?

6 A. No, sir.

7 Q. Did any of those calls relate to Mr. Leach?

8 A. Yes, sir.

9 Q. What were those conversations about?

10 A. Basically meets spots, time frame, and stuff like
11 that. Basically, we was trying to be together --

12 MR. BROWN: Your Honor, again I'm going to object to
13 best evidence. The tape speaks for itself.

14 THE COURT: I agree. Sustained.

15 BY SOLICITOR SHELTON:

16 Q. Mr. Ervin, were you having any car trouble along the
17 way to Wild Cat?

18 A. No, sir. I just stopped and pulled over beside the
19 road and raised my hood just to basically stall for time
20 and wait on him.

21 MR. BROWN: I'm sorry, would he repeat that answer. I
22 didn't hear it all.

23 A. I basically just got out and stalled waitin on him.

24 Q. And did you say you popped your hood?

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you retrieve anything from underneath the hood?

2 A. No, sir.

3 Q. Did you retrieve anything from the trunk of the car?

4 A. No, sir.

5 Q. Any other hidden compartments that you could access
6 from outside the car?

7 A. No, sir.

8 Q. At one point it sounded like you mentioned something
9 about somebody's sister?

10 A. Oh. Well, a guy I know sister stay along that road
11 and she seen me - probably seen me with my hood popped, she
12 might a stopped and I had trouble, car trouble or anything.

13 Q. And who were you talking to on the phone about seeing
14 that person's sister?

15 A. Officer Rainier.

16 Q. Did you meet with Elder Leach on Wild Cat Creek Road
17 in Rock Hill on June 19th, 2013?

18 A. Yes, sir.

19 Q. Where were you during the meeting?

20 A. In the car talking to him.

21 Q. Were you in the driver's seat?

22 A. Driver's seat. Yes, sir.

23 Q. Sitting in the driver's seat inside the car?

24 A. Yes, sir.

25 Q. Where was Leach?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 A. Leaning inside the passenger door.

2 Q. Was anyone else there other than you two?

3 A. No, sir.

4 Q. Did Leach get there in a car?

5 A. Yes, sir.

6 Q. And was anyone else in that car with him?

7 A. Not to my knowledge.

8 Q. Did Leach hand you anything during the meeting?

9 A. Yes. He handed me three rocks of crack cocaine.

10 Q. Was it in any kind of packaging?

11 A. Yes. It was wrapped up in brown plastic.

12 Q. Like a grocery type bag?

13 A. Yeah, like a grocery bag.

14 Q. Did you look inside the grocery bag?

15 A. Yes, sir. I opened it.

16 Q. Did you smell inside the grocery bag?

17 A. Yes, sir.

18 Q. What did it appear was inside the bag?

19 A. Crack cocaine.

20 Q. Did it appear to be straight or what you had asked
21 for?

22 A. Yes, sir.

23 Q. And in your — To your knowledge, did it appear to be
24 the whole three?

25 MR. BROWN: Objection. Your Honor, he just said was

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 what he asked for.

2 THE COURT: I sustain the objection.

3 BY SOLICITOR SHELTON:

4 Q. Did you hand Leach anything during the meeting?

5 A. Yes, sir. I handed him Thirty-three Hundred dollars.

6 Q. And was that the money officers had given you earlier?

7 A. Yes, sir.

8 Q. After that deal, did Leach say something about thirty
9 more grams?

10 A. Yes.

11 MR. BROWN: Objection, Your Honor. Again the tape
12 speaks for itself.

13 THE COURT: The tape speaks for itself. I sustain the
14 objection.

15 SOLICITOR SHELTON: Okay.

16 Q. What was your impression that he was taking about?

17 MR. BROWN: Same objection, Your Honor.

18 THE COURT: That's up to the jury to decide. What's
19 on the tape is on the tape. The jury can decide what they
20 hear and what it means.

21 BY SOLICITOR SHELTON:

22 Q. Mr. Ervin, what happened at the end of the video after
23 the deal was done?

24 A. Narcotics swooped in driving mostly different vehicles
25 and just basically arrested both of us.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 Q. What happened to the drugs in the brown grocery bag?

2 A. I was told to place it on the ground. Just basically
3 open the door when they pull up and place it on the ground
4 and I placed it on the ground.

5 Q. And that's what you did, you placed it on the ground?

6 A. Yes, sir.

7 Q. Outside of your vehicle?

8 A. Outside the vehicle.

9 Q. And what happened to you after that?

10 A. I basically just put in handcuffs, put in the car and
11 took away.

12 Q. And were you taken away in a different vehicle?

13 A. Yes, sir.

14 Q. Did your vehicle remain there?

15 A. Yes, sir.

16 Q. Did you give a sworn statement about these events?

17 A. Yes, sir.

18 Q. Did you give that statement to a Drug Unit officer
19 after the buy?

20 A. Yes, sir.

21 Q. And was that at the Law Center?

22 A. Yes, sir.

23 Q. Do you see the person who you know as Elder Leach in
24 the courtroom today?

25 A. Yes, sir.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. And please point him out for the jury.

2 A. Guy sitting right there.

3 SOLICITOR SHELTON: Your Honor, please let the record
4 reflect he's pointed to the man sitting next to Mr. Brown
5 at the counsel table to his left.

6 (WITNESS INDICATED TO WITNESS TABLE.)

7 SOLICITOR SHELTON: No further questions.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 TEZO ERVIN BY MR. BROWN:

11 Q. Mr. Ervin, I want to make sure I understand some of
12 your direct testimony about your past. In this court on
13 September 6th, 2001, you plead guilty to possession with
14 intent to distribute marijuana. Correct?

15 A. Yes, sir.

16 Q. And you had enough marijuana to distribute at that
17 time. Correct?

18 A. Yes, sir.

19 Q. Were you placed on probation then?

20 A. Yes, sir.

21 SOLICITOR SHELTON: Objection.

22 THE COURT: I sustain the objection. The question of
23 whether or not he pled or was convicted of the offense and
24 not what sentence he may have received.

25 MR. BROWN: Your Honor, may we approach.

TEZO ERVIN: CROSS BY MR. BROWN

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1 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
2 THE JURY AT 12:00 P.M..)

3 BY MR. BROWN:

4 Q. Then subsequently in November 28th - excuse me.
5 February 25th, 2002, you came in here and pled to driving
6 under suspension, third offense and subsequent. Correct?

7 A. Yes, sir.

8 Q. On February 25th, 2002, you came in here, this very
9 courtroom, and plead to possession of crack cocaine with
10 intent to distribute within the proximity of a park.

11 Correct?

12 A. Yes, sir.

13 Q. And on the same date in this courtroom you plead
14 guilty in front of Judge Hayes, habitual traffic offender.
15 Correct?

16 A. Yes, sir.

17 Q. February 25th, 2002. And also in front of Judge Hayes
18 on February 25th, 2002, you plead guilty to possession of
19 crack cocaine with intent to distribute, third offense.

20 A. Yes, sir.

21 Q. How old were you when this happened?

22 A. Maybe twenty.

23 Q. How old?

24 A. Maybe twenty years old.

25 Q. How old are you now?

TEZO ERVIN: CROSS BY MR. BROWN

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1 A. Thirty-four.

2 Q. Twelve years ago you would have been twenty-two.

3 Right?

4 (PAUSE.)

5 Q. And you were currently indicted in this county for
6 trafficking crack cocaine, third offense. Correct?

7 A. Yes, sir.

8 Q. That carries twenty-five years minimum mandatory
9 without parole up to thirty years without minimum mandatory
10 parole. Correct?

11 A. Yes, sir.

12 Q. So you are thirty-four. If you got twenty-five, you'd
13 be fifty-nine coming out. Right?

14 A. Yes, sir.

15 Q. All right. And you did these things. Right?

16 A. Yes, sir.

17 SOLICITOR SHELTON: Objection.

18 THE COURT: Well I --

19 MR. BROWN: Cross examination, Your Honor.

20 THE COURT: Well, I know but these are the ones that
21 he's charged with but not plead or found guilty of.

22 MR. BROWN: No, sir.

23 SOLICITOR SHELTON: Your Honor, may we approach.

24 THE COURT: Okay.

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF

TEZO ERVIN: CROSS BY MR. BROWN

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1 THE JURY AT 12:03 P.M..)

2 THE COURT: All right. Go ahead.

3 BY MR. BROWN:

4 Q. On May 11th, 2012, the defendant, Tezo Nevada Ervin,
5 did knowingly sell, manufacture, deliver, purchase or bring
6 it into this State, or did provide financial assistance, or
7 otherwise aid, abet, attempt or conspire to sell,
8 manufacture, deliver, purchase or bring into this State or
9 was knowingly in actual or constructive possession or
10 knowingly intended to become in actual or constructive
11 possession of ten grams or more of crack cocaine.

12 Is that you?

13 A. Yes. That's what the paper says.

14 Q. And you did that?

15 A. That's what the paper said.

16 Q. Now did you do it? Yes or no. Is this true?

17 A. Is that true?

18 Q. Is that true what I just read?

19 A. That's what the paper read.

20 Q. I'm asking you whether you did this or not, yes or no,
21 and then you can explain your answer.

22 THE COURT: He has a Fifth Amendment right to remain
23 silent.

24 Do you want to remain silent as to that?

25 A. I'm not on trial for that right there.

TEZO ERVIN: CROSS BY MR. BROWN

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1 THE COURT: That's right.

2 BY MR. BROWN:

3 Q. Are you asserting your Fifth Amendment privilege?

4 A. Yes, sir.

5 Q. Excuse me?

6 A. Yes, sir.

7 Q. Manufacture of crack cocaine. Manufacture means make.
8 cCrrrect?

9 A. Yes, sir.

10 Q. On May 11th, 2012, you did manufacture crack cocaine.
11 Is that true or not?

12 A. That's what I'm being charged for.

13 Q. Are you taking the Fifth on this too?

14 A. Yes, sir.

15 Q. And the worst of all, you were within a half mile of a
16 school or park when you did this. Correct?

17 A. Yes, sir, I guess.

18 Q. Say again.

19 A. I said, I guess yes, sir.

20 Q. And you had a gun on you while you were doing this
21 because you were also charged with possession of a weapon
22 during the commission of a violent crime. Then on May
23 11th, 2012, while committing the crime of trafficking
24 cocaine, a crime of violence, you had in your possession a
25 pistol. Is that true?

TEZO ERVIN: CROSS BY MR. BROWN.

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1 A. I'll take the Fifth.

2 Q. And you are also charged on the same date with
3 possession with intent to distribute crack cocaine also;
4 is that correct?

5 A. I take the Fifth.

6 Q. You take the Fifth when it suits you don't you?

7 SOLICITOR SHELTON: Objection.

8 THE COURT: Sustained. Again, he has the absolute
9 constitutional right to remain silent.

10 BY MR. BROWN:

11 Q. Let's total all this up, Mr. Ervin. You're looking at
12 twenty-five to thirty years without parole on the
13 trafficking charge. Correct?

14 A. That's what the cops says?

15 Q. Let's say you got the minimum you would be fifty-nine.
16 And on the manufacturing, you are looking at ten to thirty
17 years without parole. Correct?

18 A. Yeah I guess so.

19 Q. So you would be sixty-nine if you got the minimum
20 coming out. Right?

21 And on top of that, you're looking at ten years on two
22 counts for the half mile of a school or proximity of a park
23 are you not?

24 A. Yes, sir.

25 Q. Of course, you would get parole on that and by that

1 point in time you would be seventy-nine. And then you've
2 got five years, no parole, for the weapon. Correct?

3 A. Yes, sir.

4 Q. So you would be eighty-four coming out if you go the
5 minimums. Correct?

6 A. Yes, sir.

7 Q. Did you ever tell a lie in your past?

8 A. Pretty much.

9 Q. And you did that to benefit yourself didn't you?

10 A. I guess if you want to say that.

11 Q. Excuse me? Speak up.

12 A. I said, I guess if you want to say that.

13 Q. Well you tell me. I'm asking you.

14 A. I think everybody in the world done told a lie ---

15 Q. Sure they do.

16 A. --- to benefit themself.

17 Q. Sure they do. What's the most minute thing you lied
18 about?

19 A. Age, I guess.

20 Q. Huh?

21 A. I say I guess you can say age.

22 Q. Age. How old you were to some woman or something?

23 A. Yeah.

24 Q. Okay. And why did you do that?

25 A. I pretty much guess it was something I did when I was

TEZO ERVIN: CROSS BY MR. BROWN

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1 young. Just something to do.

2 Q. Would you lie to save six months of your life?

3 A. . Pretty much, no.

4 Q. No?

5 A. No.

6 Q. You wouldn't do that?

7 A. Six months.

8 Q. Six months. How about one year?

9 A. No.

10 Q. Two years?

11 A. No.

12 Q. Three years?

13 A. No.

14 Q. How much?

15 A. Pretty much no.

16 Q. You wouldn't lie about it to save your life would you?

17 A. No.

18 Q. But you lied to a girl about your age?

19 A. Yeah. Just something simple.

20 Q. Let me ask you about this statement. I'm going to go
21 back through the chain of events that day. You placed a
22 phone call, I believe Mr. Shelton asked you about this,
23 when you stopped at the - was it the Moose Lodge or the
24 Elk's Lodge? I can't remember.

25 A. The Elk's Lodge.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. In the parking lot there?

2 A. Parking lot.

3 Q. And you are on the phone with a cop telling him where
4 you are. Correct?

5 A. Yes, sir.

6 Q. Okay. So they eventually lost you in following and
7 you had to tell them where you were. Is that basically
8 what happened?

9 A. No. We ain't never lose them.

10 Q. Well you had to tell them you were in the Moose
11 parking lot didn't you?

12 A. I basically just told em.

13 Q. Huh?

14 A. I basically just keep in contact with them at all
15 times.

16 Q. Okay. So you told them, hey I stopped at the Moose
17 lodge - Elk's Lodge parking lot. Correct?

18 A. Yes, sir.

19 Q. All right. And this statement you gave under oath to
20 - Well, let me give it to you. Who did you give this
21 statement to that Mr. Shelton asked you about, about what
22 happened that day?

23 A. I can't remember. You'll have to let me see the
24 paper.

25 Q. You gave it in front of a Notary. Right?

TEZO ERVIN: CROSS BY MR. BROWN

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1 It's notarized. You swore under oath this was true.
2 Right?

3 A. Yes, sir.

4 Q. You state in here that he started to count the money
5 and handed me back three hundred dollars. Correct?

6 A. Yes, sir.

7 Q. That's not on the tape though is it?

8 A. Well, it was laying in the seat of the car.

9 Q. You couldn't see that?

10 A. Evidently.

11 Q. So you said you're saying on that tape he gave you
12 back three hundred bucks?

13 A. Yes.

14 Q. All right. You've been in the crack business a long
15 time haven't you?

16 A. Yes, sir.

17 Q. I mean, you know the in's and out's and the pricing of
18 crack. Correct?

19 A. Yes, sir.

20 Q. Okay. And an normal ounce of crack cocaine goes for
21 what?

22 A. Maybe from eight hundred to --

23 Q. Eight Hundred to what?

24 A. Eight hundred dollars to maybe Thirteen Hundred
25 dollars.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. Okay. So between Eight and Thirteen Hundred bucks
2 per ounce. Correct?

3 A. Yes, sir.

4 Q. All right. And you know how to weigh the stuff out
5 and you know to not get it short changed. Correct?

6 A. Yes.

7 Q. You were there when Officer Harrelson installed the
8 camera. Correct?

9 A. Was I there?

10 Q. You were present when he put the camera in your car.
11 Correct?

12 A. Yeah.

13 Q. So you knew where the camera was. Right?

14 A. Actually, I didn't actually know where exactly the
15 camera was. I was on the scene but I was a car down so I
16 was sitting in the police car waiting on him to install the
17 camera.

18 Q. So he didn't instruct you at all like, the camera's
19 right here. Don't block it or anything?

20 A. Pretty much, no.

21 Q. Seriously.

22 A. No.

23 Q. And then you knew where the audio device was cause it
24 was on you. Right?

25 A. Yes.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. Nobody else was present when this alleged transaction
2 took place. Right?

3 A. No, sir.

4 Q. Okay. Just you and he were the only people that could
5 see it. Correct?

6 A. And the camera.

7 Q. All right. And you know the difference between
8 thirty-eight grams of crack and three ounces don't you?

9 A. Do I know the difference ---

10 Q. Yeah.

11 A. --- between thirty-eight and three?

12 Q. Thirty-eight grams and three ounces.

13 A. Yeah.

14 Q. Is there a term in the crack dealing business such as
15 fronting crack?

16 A. Oh yes.

17 Q. In other words, somebody owes somebody some money,
18 after they front you crack they give you the dope up front.
19 Correct?

20 A. Yes.

21 Q. And you go sell the dope?

22 A. Yes, sir. And bring them the money.

23 Q. And then you bring the money back to them. Right?

24 A. Yeah.

25 Q. How often in your life have you been fronted crack?

TEZO ERVIN: CROSS BY MR. BROWN

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1 A hundred?

2 A. No.

3 Q. Fifty?

4 A. No.

5 Q. Well, you've been in the crack business from 2001 to
6 2012, that's eleven years --

7 SOLICITOR SHELTON: Objection.

8 MR. BROWN: I'll withdraw the question.

9 Q. In your time dealing crack, how many times were you
10 fronted crack?

11 A. Couple a times, two.

12 Q. Just a couple?

13 A. Yeah.

14 Q. Normally you have to pay up front for it?

15 A. Yeah.

16 Q. That's why you had the gun that day in the park?

17 SOLICITOR SHELDON: Objection.

18 THE COURT: Yeah, just --

19 MR. BROWN: Withdraw the question.

20 Q. What do you expect to happen to you?

21 A. What do I expect to happen to me?

22 Q. Uh-huh.

23 A. About what?

24 Q. Well you cooperating with the police. Correct?

25 A. Uh-huh.

TEZO ERVIN: REDIRECT BY SOLICITOR SHELTON

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1 Q. You expect something good to happen out of this.
2 Right?

3 A. Yes.

4 Q. You don't expect to come out of jail at eighty-four at
5 the bear minimum you are facing?

6 A. No, sir.

7 Q. But you wouldn't lie about that would you?

8 A. Do what?

9 Q. You wouldn't lie about that would you?

10 A. Lie about what?

11 Q. You wouldn't lie to save yourself some time in jail
12 would you?

13 A. No.

14 Q. You wouldn't do that but you would lie to some girl?

15 A. It's simple.

16 Q. Eight-four years old. You wouldn't lie about that?
17 That's your testimony under oath?

18 A. No.

19 Q. Okay.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 TEZO ERVIN BY SOLICITOR SHELTON:

24 Q. Mr. Ervin, the math that you and Mr. Brown just went
25 through there on the pending charges, and he categorizes

TEZO ERVIN: RE CROSS BY MR. BROWN

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1 that as you would be eighty-four years old when you get out
2 prison. Does that involve those sentences running
3 consecutive?

4 A. I guess. I don't know.

5 Q. So how old are you right now? Thirty-four?

6 A. Yes, sir.

7 Q. Okay. To get to eighty-four you would have to get a
8 fifty year sentence; is that correct?

9 A. Yes, sir.

10 Q. Have you been given any promises or even any plea
11 offers related to your pending charges?

12 A. No, sir.

13 Q. Are you familiar with the term concurrent sentencing?

14 A. Yes, sir.

15 Q. So if you got concurrent sentencing on those charges,
16 you would be looking at twenty-five to thirty. Correct?

17 A. Yes, sir.

18 Q. Have you been threatened in any way related to those
19 charges to get you to cooperate or testify?

20 A. No, sir.

21 SOLICITOR SHELTON: Nothing further, Your Honor.

22 MR. BROWN: Just one quick question.

23 RE CROSS-EXAMINATION

24 TEZO ERVIN BY MR. BROWN:

25 Q. So if you got concurrent sentences, I want to make

TEZO ERVIN: CROSS BY MR. BROWN
OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 sure I understand this right. The gun law is five years.
2 The possession of a violent weapon that's consecutive. If
3 you got the minimum, twenty-five plus five, thirty without
4 parole, you would be sixty-four coming out. Correct?

5 SOLICITOR SHELTON: Your Honor, I objection. May we
6 approach?

7 THE COURT: No. Go ahead. You ask him about
8 sentencing.

9 Go ahead.

10 A. Could you repeat the question?

11 Q. If you got concurrent sentences, you are going to be
12 sixty-four coming out because you get twenty-five years on
13 the trafficking crack, third offense, and the gun that you
14 had in the park there when you got busted, which is
15 consecutive by law so you'll only be sixty-four. If you're
16 thirty-four, plus thirty equals sixty-four. Correct?

17 A. I guess.

18 Q. You guess? You don't know?

19 A. You doing the math.

20 Q. You hadn't thought about this at all?

21 A. Oh, yeah. I think about it every day.

22 Q. Okay. Well thirty-four plus thirty is sixty-four.

23 Right?

24 A. Okay, yes.

25 Q. Do you agree with that?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. I agree with that.

2 MR. BROWN: No further questions.

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

4 SOLICITOR SHELTON: Your Honor, at this time we ask
5 that Mr. Ervin be excused.

6 MR. BROWN: Without objection, Your Honor.

7 THE COURT: You may be excused.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR SHELTON: Your Honor, the State's next
11 witness is Officer Robin Gander.

12 MADAM CLERK: Please raise your right hand and place
13 your left hand on the Bible.

14 (WHEREUPON, ROBIN GANDER,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

16 MADAM CLERK: Thank you. Please have a seat.

17 DIRECT EXAMINATION

18 OFFICER ROBIN GANDER BY SOLICITOR SHELTON

19 Q. Good afternoon. Please state your name and
20 occupation.

21 A. Robin Gander. Police officer.

22 Q. And what agency do you work with?

23 A. City of Rock Hill.

24 Q. Are you a member of the Drug Unit?

25 A. Yes, I am.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Q. How long have you been in law enforcement?

2 A. Five years.

3 Q. And how long have you worked with the Drug Unit?

4 A. Approximately three.

5 Q. Were you involved in the investigation of Elder
6 Prescott Leach on June 19th, 2013?

7 A. Yes, I was.

8 Q. Please explain your role in that case.

9 A. I was involved on the surveillance team as well as the
10 take down team and I drove - I was to drive the suspect
11 people back if needed.

12 Q. And did you recover any evidence?

13 A. I did.

14 MR. BROWN: I'm going to object. Right now, Your
15 Honor, I have a motion to suppress as to those findings.

16 THE COURT: All right. I am going to let the jury go
17 to the jury room while we take up a matter of law.

18 (JURY EXITS COURTROOM AT 12:16 P.M.)

19 THE COURT: We've got to remind the bailiff's to close
20 that door.

21 All right. Yes, sir.

22 MR. BROWN: Your Honor, for the record, it was twelve
23 point some odd grams allegedly found in allegedly this
24 defendant's car. I move to suppress that at the present
25 time.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Do you want me to go first or do you?

2 SOLICITOR SHELTON: Go ahead.

3 MR. BROWN: Okay.

4 DIRECT-EXAMINATION - IN CAMERA

5 OFFICER ROBIN GANDER BY MR. BROWN

6 Q. Officer Gander.

7 A. Yes, sir.

8 Q. You were at the take down scene. Correct?

9 A. Yes, sir, I was on the team.

10 Q. All right. Are you the inventory officer for the Rock
11 Hill PD?

12 A. For the Rock Hill PD?

13 Q. Yeah.

14 A. No, sir.

15 Q. You are not the inventory officer there?

16 A. Not for specifically Rock Hill PD.

17 Q. All right. Did you have a search warrant when you
18 went in the defendant's alleged vehicle?

19 A. Explain again.

20 Q. Did you have a search warrant when you went in the
21 vehicle that's alleged to be defendant's?

22 A. No.

23 Q. Okay. When you went in the vehicle, was the defendant
24 already handcuffed in another patrol car?

25 A. I cannot recall.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Q. Huh?

2 A. I cannot recall. I did not see the defendant.

3 Q. I can't hear you.

4 A. I did not see the defendant.

5 Q. Okay. You never saw him at all?

6 A. Not there. I was handling a different issue off to
7 the side.

8 Q. How long was the different issue taking?

9 A. Few minutes or so.

10 Q. What issue were you handling?

11 A. I was handling additional evidence that was on the
12 ground next to --

13 Q. Which evidence was that, ma'am?

14 A. That was a brown plastic bag.

15 Q. Okay. The alleged drugs of this transaction. Would
16 that be correct?

17 A. Yes.

18 Q. All right. So how long did it take you to do that?

19 A. Two minutes.

20 Q. Did you see the defendant, Elder Leach, after that?

21 A. Did I see him?

22 Q. Yeah.

23 A. No.

24 Q. Was he anywhere near his vehicle?

25 A. He was near it.

OFFICER ROBIN GANDER: CROSS BY SOLICITOR SHELTON
IN CAMERA

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1 Q. Was he handcuffed?

2 A. I did not see him get handcuffed.

3 Q. You can't say one way or the other?

4 A. I cannot.

5 MR. BROWN: Beg the Court's indulgence.

6 SOLICITOR SHELTON: Your Honor, we'll stipulate that
7 Mr. Leach was put in cuffs at the buy bust you can hear on
8 video. There was a take down and he was put in cuffs
9 almost immediately. Rather than have to proffer another
10 witness to that effect, we'll stipulate he was in
11 handcuffs.

12 THE COURT: Okay.

13 BY MR. BROWN:

14 Q. You did not have a search warrant when you went in the
15 car. Correct?

16 A. Correct.

17 MR. BROWN: Due to the stipulation, I have no further
18 questions.

19 THE COURT: Is there a motion?

20 SOLICITOR SHELTON: Your Honor, can I just clarify?

21 THE COURT: I'm sorry. Go ahead.

22 CROSS EXAMINATION - IN CAMERA

23 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

24 Q. Investigator, the drugs you recovered was the buy
25 drugs?

OFFICER ROBIN GANDER: CROSS BY SOLICITOR SHELTON
IN CAMERA

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1 A. Correct.

2 Q. And you took possession of Leach's vehicle and drove
3 it back to the Law Center?

4 A. I did.

5 Q. And were there drugs and contraband in the front seat
6 of that vehicle?

7 A. There was. In plain view.

8 Q. Can you explain.

9 A. As soon as you sit down you look in the driver's side
10 door to get in, you could clearly see a digital scale in
11 the center console of the vehicle as well as on the
12 passenger seat you can clearly see a bag of crack - I
13 cannot say how much it was - as well as package materials.

14 Q. And those items were in plain view?

15 A. Yes.

16 Q. Did anyone else get into the car before you?

17 A. No.

18 Q. Were you in charge of making sure the vehicle was
19 secure?

20 A. Yes.

21 Q. And you drove it straight back to the Law Center?

22 A. Yes.

23 Q. Did you meet with Investigator Faulkenberry back
24 there?

25 A. Yes.

1 Q. Did he take photographs of the evidence that was in
2 plain view?

3 A. Yes.

4 Q. Did he take those photos before he disturbed any of
5 the items?

6 A. Yes.

7 Q. And then he ultimately collected them as evidence.
8 Correct?

9 A. Yes.

10 Q. And the buy drugs, you put into an evidence bag?

11 A. I did.

12 Q. And then gave it to Faulkenberry because he was the
13 evidence guy?

14 A. Yes.

15 Q. But you hadn't sealed them at that point?

16 A. Correct.

17 SOLICITOR SHELTON: Your Honor, that's the extent of
18 the recovery.

19 THE COURT: What's the motion?

20 MR. BROWN: We ask, Your Honor, we would suppress any
21 drugs that she found in this vehicle pursuant to *State v.*
22 *Brown* or *State v. Tindall* which I'm handing up to the
23 court.

24 THE COURT: All right.

25 MR. BROWN: The *State v. Tindall* case, Your Honor, it

1 involved a search of the vehicle after the reason for a
2 traffic stop had occurred. The officer continues the
3 encounter after he had written a warning ticket. Cocaine
4 was subsequently found in - I believe in a McDonald bag in
5 the backseat of the vehicle.

6 The Supreme Court suppressed that stating the reason
7 for the stop had been over. In conjunction with *State v.*
8 *Danny Cortez Brown*, which is a similar nature, this is a
9 search incident to arrest case which is right on point.

10 And police may search a vehicle incident to a recent
11 occupant's arrest only if the arrestee is within striking
12 distance of the passenger compartment at the time of the
13 search or is reasonable to believe that the vehicle
14 contains evidence of the arrest, when these justifications
15 are absent, a search of an arrestee's vehicle will be
16 unreasonable unless police obtain a warrant to show that
17 exception to the warrant requirement applies.

18 In this case, Your Honor, it has been stipulated Mr.
19 Leach is in custody. He is nowhere near and can reach in
20 the vehicle. He is not within reaching distance. There is
21 no warrant here, Your Honor, and there is no reason to
22 believe that there will be evidence of the arrest in there
23 because allegedly the drug transaction has already taken
24 place.

25 THE COURT: Well I deny the motion to suppress. I

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 don't believe the *Tindall* case, the *Terry Tindall* case is
2 actually on point because we don't have a stop here. You
3 have a little different fact of the situation.

4 And in the other case, the *Brown* case, at Head note
5 [10] and [11], the court states "a warrantless searches and
6 seizures are unreasonable absent a recognized exception to
7 the ... warrant requirement."

8 These exceptions include the following: "search
9 incident to a lawful arrest." We don't have that here.
10 "Hot pursuit," we don't have that here. "Stop and frisk,"
11 we don't have that here. I don't believe this really is an
12 automobile exception, but Number five is the plain view
13 doctrine where you've consent and abandonment, but
14 according to the officer's testimony, the drugs were in
15 plain view and so I deny the motion.

16 MR. BROWN: Yes, sir.

17 THE COURT: Bring in the jury.

18 (JURY REENTERS COURTROOM AT 12:25 P.M.)

19 THE COURT: You may proceed.

20 SOLICITOR SHELTON: May it please the court, Your
21 Honor.

22 DIRECT EXAMINATION

23 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

24 Q. Investigator, did you recover any evidence in this
25 case?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON.

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1 A. I did.

2 Q. What did you recover?

3 A. It was a brown plastic --

4 MR. BROWN: Subject to my previous objection, Your
5 Honor, for the record.

6 THE COURT: Over ruled.

7 BY SOLICITOR SHELTON:

8 Q. What did you recover?

9 A. It was a brown plastic bag that contained crack.

10 Q. Where was it when you recovered it?

11 A. It was approximately two or three feet from the
12 driver's side door on the ground of Tezo's vehicle.

13 Q. So it was outside the driver's side door of Tezo's
14 vehicle?

15 A. Yes, I was.

16 Q. On the ground?

17 A. Yes.

18 Q. Did you open the plastic grocery bag to look inside?

19 A. I did.

20 Q. What did you do with that evidence?

21 A. I secured it. Maintained control of it. I placed it
22 into an evidence bag and maintained control until I then
23 gave it to Officer Faulkenberry.

24 Q. And was that back at the Law Center when you gave it
25 to Faulkenberry?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. Yes it was.

2 Q. Was it continuously under your custody and control
3 before you gave it to Faulkenberry?

4 A. Yes.

5 Q. And you put it in an evidence bag. Did you seal that
6 bag?

7 A. I did not.

8 Q. Was Faulkenberry the evidence guy?

9 A. Yes.

10 Q. So was he in charge of documenting the evidence and
11 sealing everything up for submission?

12 A. Yes, he was.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, PREMARKED FOR
14 IDENTIFICATION.)

15 MR. BROWN: Subject to my previous objection, Your
16 Honor.

17 THE COURT: Well he hadn't offered it yet but your
18 objection is on the record.

19 MR. BROWN: Just for the record, Your Honor.

20 THE COURT: Go ahead.

21 BY SOLICITOR SHELTON:

22 Q. Investigator, I'm handing you what's been marked as
23 State's Exhibit Number Four. Please take a moment to
24 inspect that.

25 A. Okay.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. Do you recognize that item?

2 A. I do.

3 Q. And what is it?

4 A. It is the item that I recovered, the brown plastic bag
5 with the crack that was contained inside.

6 Q. And is this what you recovered outside of Tezo's car?

7 A. Yes it was.

8 Q. Thank you. You can set that off to the side.

9 And just to be clear, is that the evidence bag you put
10 it in?

11 A. Yes, it is.

12 Q. And it was unsealed when you put it in there?

13 A. Yes.

14 Q. And then you handed everything to Faulkenberry in that
15 bag?

16 A. Yes.

17 Q. Was Leach's vehicle at Wild Cat Creek Road when you
18 got there?

19 A. It was.

20 Q. What kind of vehicle was it?

21 A. It was a silver Volkswagen.

22 Q. Was it a car? Truck?

23 A. Car.

24 Q. Did you look inside of that vehicle?

25 A. Yes, I did.

1 Q. Please describe what you saw inside of the vehicle.

2 A. In the center console --

3 MR. BROWN: For the record my objection.

4 THE COURT: All right. Overruled.

5 A. In the center console you could clearly see a digital
6 scale and on the passenger seat you can see packaging
7 material as well as crack.

8 MR. BROWN: Objection, Your Honor, the packaging
9 material, what she saw.

10 THE COURT: All right.

11 MR. BROWN: What she saw wasn't in fact. Her
12 interpretation is irrelevant.

13 THE COURT: Yeah. You can't identify it as crack
14 because you didn't analyze it so I sustain the objection.

15 BY SOLICITOR SHELTON:

16 Q. Investigator, when you are referencing things that you
17 saw, please refer to them as what they appear to be based
18 on your training and experience.

19 A. Yes. Through my training and experience, I believed
20 it to be crack cocaine.

21 Q. And you had eluded to some sort of packaging material.
22 Can you explain what that is?

23 A. Plastic bags.

24 Q. And in your training and experience are plastic
25 baggies commonly used to package drugs?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. They are.

2 Q. What happened to Leach's vehicle?

3 A. I drove it back to the Rock Hill Law Center.

4 Q. Were you by yourself?

5 A. I was.

6 Q. What happened to the items you described that were in
7 plain view inside of this vehicle?

8 A. They were photographed by Officer Faulkenberry, at
9 which time he then recovered them and placed them into
10 evidence.

11 Q. Did you touch any of the items before Faulkenberry
12 photographed them?

13 A. No, I did not.

14 Q. And where did he photograph them?

15 A. At the Rock Hill Law Center.

16 Q. So the photographs that he took, were they true and
17 accurate as to where those items were sitting in the car?

18 A. Yes.

19 Q. And did he collect the items as evidence?

20 A. Yes, he did.

21 Q. That's Faulkenberry. Correct?

22 A. Yes.

23 Q. Was that also at the Law Center?

24 A. Yes it was.

25 Q. And where at the Law Center were you all when this was

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 going on?

2 A. In the back parking lot.

3 MR. BROWN: Same objection as previous, Your Honor.

4 SOLICITOR SHELTON: That's to the next exhibit, sir.

5 (WHEREUPON, STATE'S EXHIBIT NUMBERS SIX, SEVEN, EIGHT
6 AND NINE PREMARKED FOR IDENTIFICATION.)

7 Q. I am going to hand you what's been marked as State's
8 Six, Seven, Eight and Nine for identification purposes.
9 Please take a second to look through those.

10 (WITNESS COMPLIES.)

11 Q. Do you recognize those items?

12 A. I do.

13 Q. What are they?

14 A. You can see what we believed to be was the crack
15 cocaine, the packaging material and the plastic bags.

16 MR. BROWN: Again, objection, Your Honor.

17 SOLICITOR SHELTON: Hang on. Let me rephrase the
18 question.

19 Q. Are they pictures?

20 A. Yes.

21 Q. Four separate pictures?

22 A. Yes.

23 Q. Where were these pictures taken?

24 A. At the Rock Hill Law Center.

25 Q. When were they taken?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. They were taken after I transported the vehicle back
2 from Wild Cat.

3 Q. So after the buy?

4 A. Yes.

5 Q. Are they true and accurate as to what you saw in the
6 car at Wild Cat and then also back at the Law Center?

7 A. Yes they are.

8 Q. Did you take these pictures?

9 A. I did not.

10 Q. Did Faulkenberry take these pictures?

11 A. Yes, he did.

12 Q. But these pictures are true and accurate as to what
13 you saw at that time?

14 A. Yes.

15 SOLICITOR SHELTON: Your Honor, I move to admit these
16 four exhibits as evidence.

17 MR. BROWN: I'm going to object until they are
18 authenticated.

19 THE COURT: She said they show what she saw so I'll
20 overrule the objection.

21 (WHEREUPON, STATE'S EXHIBITS SIX, SEVEN, EIGHT AND
22 NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 SOLICITOR SHELTON: At this time, I would request
24 permission to publish these four exhibits.

25 THE COURT: You can.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. We'll start with State's Number Six.

2 Madam Clerk, would you dim the lights, please?

3 (STATE'S EXHIBIT SIX PUBLISHED TO THE JURY AT 12:33

4 P.M..)

5 Q. Investigator Gander, can you explain what we are
6 looking at in State's Number Six?

7 A. This is the front passenger seat of the vehicle which
8 I drove and you can see the plastic bags. I believe that's
9 a cell phone. You can see the corner of what we believe to
10 be crack cocaine wrapped in a plastic bag.

11 Q. And what about closer to the seat back on the left
12 hand side of this picture as we're look at it?

13 MR. BROWN: Your Honor, again I'm going to object a
14 third time. The picture speaks for itself. Her
15 interpretation does not matter.

16 THE COURT: I sustain the objection.

17 You can ask her about it, but be careful about how you
18 phrase your questions also.

19 SOLICITOR SHELTON: Yes, sir.

20 Q. Let's move on to State's Number Six, please - I mean,
21 State's Number Seven.

22 (STATE'S EXHIBIT SEVEN PUBLISHED TO THE JURY.)

23 Q. What is this?

24 A. Through my training and experience, I believe this to
25 be crack cocaine.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. And is it packaged in anything?

2 A. In a plastic bag.

3 Q. State's Number Eight, please.

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

5 Q. And what about the items depicted in State's Number
6 Eight?

7 A. Again, through my training and experience, I believe
8 it to be crack cocaine wrapped in a plastic bag.

9 Q. And State's Number Nine.

10 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY.)

11 A. This was a black digital scale that was in the center
12 console of the vehicle.

13 (WHEREUPON, STATE'S EXHIBIT NUMBERS TEN, ELEVEN AND
14 TWELVE, PREMARKED FOR IDENTIFICATION.)

15 Q. Investigator, I'm going to hand you what's been marked
16 as State's Exhibit Number Ten, Eleven and Twelve. Please
17 take a moment to look at those exhibits.

18 (WITNESS COMPLIES.)

19 Q. What are those items?

20 A. This would be the black digital scale, packaging
21 materials, as well as what through our training and
22 experience we believe to be crack cocaine.

23 Q. So to be clear, packaging materials are those. Was
24 anything inside of what you are calling the packaging
25 materials or are they just loose ---

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 A. Loose.

2 Q. --- items?

3 A. Loose items.

4 Q. Loose plastic bags?

5 A. Yes.

6 Q. And the items you believe to be crack cocaine from
7 through your training and experience, were they collected
8 with the plastic bags still around them?

9 A. Yes they were.

10 Q. And are these the actual items that you saw sitting in
11 the front seat?

12 A. Yes they were.

13 Q. And these are the actual items collected by
14 Faulkenberry after he photographed State's Exhibits Six
15 through Nine?

16 A. Yes.

17 Q. And while you were traveling in Leach's car from Wild
18 Cat Circle to the Law Center, were these items continuously
19 under your custody and control?

20 A. Yes.

21 Q. Did anyone else have access to them other than you
22 during that trip?

23 A. No.

24 Q. Did anyone else have access to them at Wild Cat?

25 A. No.

OFFICER ROBIN GANDER: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON
RECROSS BY MR. BROWN

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1 Q. Other than you?

2 A. No.

3 Q. Did all these events you've described happen in York
4 County, South Carolina?

5 A. Yes they did.

6 SOLICITOR SHELTON: Nothing further, Your Honor.

7 CROSS-EXAMINATION

8 OFFICER ROBIN GANDER BY MR. BROWN:

9 Q. Officer Gander, have you reviewed the case summary for
10 this matter ---

11 A. . I have.

12 Q. --- before you came to court? And are you familiar
13 with it?

14 A. Yes, sir.

15 Q. Okay. Do you have a copy with you, ma'am?

16 A. I do not.

17 Q. All right. Is that the Case Summary that starts on
18 the page earlier please, ma'am? The one from June 19th?

19 A. Yes, sir.

20 Q. All right. And on Page 3, fourth line from the
21 bottom, it says "Investigator Gander located brown paper
22 bag that contained plastic with approximately 90.2 grams of
23 crack in it." Is that correct?

24 A. I located --

25 Q. Is that what it says? Yes or no.

OFFICER ROBIN GANDER: RECROSS BY MR. BROWN

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1 A. That's what it says. Yes.

2 MR. BROWN: No further questions.

3 REDIRECT EXAMINATION

4 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

5 Q. Investigator, did you prepare that summary?

6 A. I did not.

7 Q. Did you weigh the crack you recovered?

8 A. I did not.

9 Q. Do you know if it was weighed?

10 A. Yes it was weighed.

11 Q. Do you know who weighed it?

12 A. Officer Faulkenberry.

13 Q. And is that part of the normal evidence inventory
14 process?

15 A. Yes.

16 Q. He was the evidence guy so that was part of his job?

17 A. Yes.

18 SOLICITOR SHELTON: Nothing further.

19 RECROSS EXAMINATION

20 OFFICER ROBIN GANDER BY MR. BROWN:

21 Q. So who came up with the 90.2 grams? You say it was
22 Investigator Faulkenberry; is that correct?

23 A. Yes, sir.

24 Q. Okay.

25 MR. BROWN: No further questions.

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: We'll break for lunch. It's about almost
5 a quarter to one so we'll break until two o'clock. Have a
6 pleasant lunch and we'll see you back at two o'clock.

7 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:40 P.M.)

8 THE COURT: We'll be on lunch break until two o'clock.

9 (COURT IN LUNCH RECESS AT 12:40 P.M.)

10 (COURT BACK IN SESSION AT 02:04 P.M..)

11 THE COURT: Thank you. You may take your seats.

12 Is the State ready?

13 SOLICITOR SHELTON: Yes, sir.

14 THE COURT: Defense ready?

15 MR. BROWN: Yes, sir.

16 THE COURT: Bring in the jury.

17 Do we have a bond hearing scheduled?

18 MADAM COURT REPORTER: Yes, sir, you do with the
19 Attorney General's Office.

20 THE COURT: I've got something I was unaware of. It
21 will be a couple of more minutes. That's my fault.

22 Thank you.

23 SOLICITOR SHELTON: Your Honor, the Attorney General's
24 representative just told me they're not sure where the
25 Defense attorney is so they are not prepared to -

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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1. THE COURT: Bring them back in then.

2. Who is the Defense attorney? We'll just have to wait
3. until break now. Hang around outside and we'll take care
4. of you later. Sorry.

5. (JURY REENTERS COURTROOM AT 2:06 P.M.)

6. THE COURT: I apologize. They told me I had something
7. then they told me I didn't have something so I got us.

8. SOLICITOR SHELTON: May it please the court, Your
9. Honor?

10. THE COURT: Yes, sir.

11. SOLICITOR SHELTON: Your Honor, the next witness for
12. the State is Officer Todd - excuse me, Officer Jack
13. Dantzler.

14. (WHEREUPON, JACK DANTZLER,
15. BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16. DIRECT EXAMINATION

17. OFFICER JACK DANTZLER BY SOLICITOR SHELTON:

18. Q. Good afternoon, sir.

19. A. Good afternoon.

20. Q. Please identify yourself for the jury.

21. A. I'm Officer Jack Dantzler with the Rock Hill Police
22. Department.

23. Q. How long have you been working in law enforcement?

24. A. Five years.

25. Q. Did you work with the Drug Unit for a time?

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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1 A. Yes, sir.

2 Q. For how long?

3 A. Two and a half years.

4 Q. Were you working with the Drug Unit in June 2013?

5 A. Yes, sir.

6 Q. Were you involved in the investigation of Elder
7 Prescott Leach on June 19th, 2013?

8 A. Yes, sir.

9 Q. And what was your role in that investigation?

10 A. I was part of the surveillance team.

11 Q. Was there a car you took control of at Wild Cat Creek?

12 A. Yes, sir.

13 Q. Whose car was that?

14 A. Mr. Ervin's.

15 MR. BROWN: I'm sorry. Mr. Who?

16 A. Ervin's.

17 Q. And to be clear, is that a CI?

18 A. Yes, sir.

19 Q. And to your knowledge, was there any evidence in the
20 car when you got in it?

21 A. No, sir.

22 Q. No, there was not?

23 A. No, sir.

24 Q. Okay. Did you touch anything inside of his car other
25 than then gear shift and the steering wheel and the

1 ignition?

2 A. No, sir.

3 Q. Where did you take the car?

4 A. I took it the parking deck across from Rock Hill Law
5 Center.

6 Q. And were there any other officers there waiting for
7 you?

8 A. Yes, sir.

9 Q. Who was there?

10 A. Officer Harrelson was there.

11 Q. Was anyone else with you at the time when you were
12 driving it back?

13 A. No, sir.

14 Q. Did Harrelson take control of Tezo Ervin's car from
15 you?

16 A. Yes, sir.

17 Q. And to your knowledge, did Harrelson then search
18 Ervin's car?

19 A. To my knowledge, yes, sir.

20 Q. Did you have any other active role in this
21 investigation?

22 A. No, sir.

23 SOLICITOR SHELTON: No further questions, Your Honor.

24 MR. BROWN: Just one.

25 CROSS-EXAMINATION

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN
JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 OFFICER JACK DANTZLER BY MR. BROWN:

2 Q. When you looked in the car or got in the car, there
3 was nothing in plain view?

4 A. As far as - No, sir.

5 MR. BROWN: No further questions.

6 THE COURT: All right. You can step down and be
7 excused. We appreciate your time. Thank you.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR SHELTON: The next witness is Officer Jamie
11 Faulkenberry - former Officer Jamie Faulkenberry.

12 (WHEREUPON, JAMIE FAULKENBERRY,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 DIRECT EXAMINATION

15 JAMIE FAULKENBERRY BY SOLICITOR SHELTON:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Please identify yourself for the jury.

19 A. Jamie Faulkenberry.

20 Q. What is your current occupation?

21 A. Currently I am the training director for a private
22 security company in Charlotte.

23 Q. Prior to this job, did you have a career in law
24 enforcement?

25 A. Yes, sir.

1 Q. For how long?

2 A. Nine years.

3 Q. And did you work with the Drug Unit for York County
4 during that time?

5 A. Yes, sir, I did.

6 Q. From when to when?

7 A. From February of 2011 until two months ago.

8 Q. So was the Drug Unit your last assignment prior to
9 going into private security?

10 A. Yes, sir.

11 Q. Were you involved in the investigation of Elder
12 Prescott Leach on June 19th, 2013?

13 A. Yes, sir.

14 Q. What role did you have in that investigation?

15 A. I assisted Officer Rainier with the investigation and
16 with recovery of evidence primarily.

17 Q. Were you part of what's known as the surveillance
18 team?

19 A. Yes, sir.

20 Q. In that role, were you monitoring a live audio feed?

21 A. Yes, sir.

22 Q. And was that live wire on the CI Tezo Ervin's person
23 during the investigation?

24 A. Yes, sir.

25 Q. And were recordings produced from that live audio

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 feed?

2 A. Yes, sir.

3 Q. Was there also a video recording produced from a
4 camera hidden inside of Ervin's car?

5 A. Yes, sir.

6 Q. Have you had a chance to review the recordings?

7 A. Yes, sir.

8 Q. Both the audio feed and the video?

9 A. Yes, sir.

10 Q. And are they true and accurate as to the events that
11 you heard on the live audio feed that day?

12 A. Yes, sir.

13 MR. BROWN: Your Honor, I'm going to object as to the
14 video feed unless he saw the whole thing.

15 SOLICITOR SHELTON: Okay. I'll rephrase.

16 Q. The audio feed, is it true and accurate as to what you
17 heard on the live wire?

18 A. Yes, sir.

19 Q. Were you one of the officers that moved in on Ervin
20 and Leach at Wild Cat Creek after the buy?

21 A. Yes, sir.

22 Q. Is that known as the take down team?

23 A. Yes, sir.

24 Q. Do you know Elder Leach on sight?

25 A. Yes, sir.

1 Q. Do you see him in the courtroom?

2 A. Yes, sir.

3 Q. Would you please point him out?

4 A. Yes, sir. He's right over there.

5 SOLICITOR SHELTON: Your Honor, please let the record
6 reflect that he's pointed to the man sitting to the left of
7 Mr. Brown, his attorney.

8 (WITNESS INDICATED TOWARD DEFENDANT.)

9 Q. Did you recover the buy money used in this
10 investigation?

11 A. Yes, sir, I did.

12 Q. Where was it when you recovered it?

13 A. It was on the ground underneath the vehicle.

14 Q. Whose vehicle?

15 A. Mr. Leach's.

16 Q. Was that at Wild Cat Creek?

17 A. Yes, sir.

18 Q. And do you know how it got there?

19 A. Yes, sir.

20 Q. How did it get there?

21 A. As we were pulling up to initiate the take down, I
22 observed Mr. Leach drop the money underneath the back of
23 the vehicle.

24 Q. And did you inspect that money?

25 A. Yes, sir.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you count it?

2 A. Yes, sir.

3 Q. Did you look at all the serial numbers?

4 A. Yes, sir.

5 Q. And was it the buy money?

6 A. Yes, sir.

7 Q. How do you know that?

8 A. Prior to any time we do a deal that concerns money, we
9 make photocopies of all the money so that we have records
10 of the exact serial numbers that we used so we know that no
11 private money was used in buying drugs. We had to go back
12 once this was over and compare all the bills that we found
13 to all the bills that we used to buy the drugs with and
14 compared it to make sure (a) it was the money that was used
15 and (b) we got all of it back and made sure it was
16 accounted for.

17 Q. Do you recall if the full Thirty-three Hundred dollars
18 was on the ground?

19 A. I don't remember. I'm not sure.

20 Q. Was all of the money, the entire Thirty-three Hundred
21 dollars, accounted for at the end of this investigation?

22 A. Yes, sir. Yes, it was.

23 Q. And approximately how much money was on the ground?

24 A. Approximately Three Thousand dollars.

25 Q. And what did you do with the money after you compared

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 it to the photocopies?

2 A. The money was given back to the FBI. It was their
3 money that we used.

4 Q. And did you do the comparison back at the Law Center?

5 A. Yes, sir.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE, PREMARKED FOR
7 IDENTIFICATION.)

8 Q. Mr. Faulkenberry, I'm going to hand you what's been
9 marked for identification as State's Number Five.

10 Please take a minute to look at that exhibit.

11 (WITNESS COMPLIES.)

12 Q. What is that?

13 A. Copies of the money that was used for the buy.

14 Q. Is it copies of the entire Thirty-three Hundred
15 dollars?

16 A. I believe so. Yes, sir.

17 Q. It's all accounted for in those photos, photocopies?

18 A. Yes, sir.

19 Q. Who made those photocopies?

20 A. I did.

21 Q. Did you - I'm assuming you photocopied the actual
22 currency.

23 A. Yes, sir.

24 Q. Before it was given to Ervin?

25 A. Yes, sir.

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1 Q. And what you are holding in your hand, State's Number
2 Five, is it a true and accurate copy of the buy money given
3 to Ervin in this investigation?

4 A. Yes, sir, it is.

5 Q. Is it also a true and accurate copy of at least Three
6 Thousand of the money Leach threw down on the ground at
7 Wild Cat?

8 A. Yes.

9 Q. But again, the entire Thirty-three Hundred dollars was
10 accounted for at the end of this investigation?

11 A. Yes, sir, it was.

12 SOLICITOR SHELTON: Your Honor, I move to admit
13 State's Five as evidence.

14 MR. BROWN: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE IDENTIFIED AND
17 MARKED, RECEIVED INTO EVIDENCE.)

18 SOLICITOR SHELTON: You can set it down, sir.

19 Q. Mr. Faulkenberry, did you recover any other evidence
20 in this investigation?

21 A. Yes, sir, I did.

22 Q. From where?

23 A. There were some items inside Mr. Leach's vehicle that
24 I recovered.

25 Q. And where was it that you recovered the items?

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 A. The front passenger seat.

2 Q. And what location in reference to the Rock Hill Law
3 Center?

4 A. I actually recovered them from the Law Center.

5 Q. In the parking lot?

6 A. Yes, sir.

7 Q. How did the vehicle -- Was this the same vehicle that
8 was at Wild Cat?

9 A. Yes, sir.

10 Q. Did you see the vehicle at Wild Cat?

11 A. Yes, sir.

12 Q. What kind of vehicle was it?

13 A. It's a silver Volkswagen -- not sure what brand it was.

14 Q. Some sort of car or sedan?

15 A. Yes, sir.

16 Q. Okay. And how did that vehicle get back to the Law
17 Center?

18 A. One of the other officers drove it back.

19 Q. Do you recall who?

20 A. I think it was Officer Gander.

21 Q. And what items of evidence did you recover from that
22 vehicle?

23 A. I remember recovering some crack --

24 MR. BROWN: Objection, Your Honor.

25 THE COURT: I sustain the objection.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 BY SOLICITOR SHELTON:

2 Q. Mr. Faulkenberry, when you are answering questions
3 related to any substances, you can refer to your training
4 and experience that relate to them as what you believed
5 them to be at the time.

6 A. Okay.

7 Q. So if you'll start over again, what items of evidence
8 did you recover from the car?

9 A. I recovered digital scales; what I believed to be was
10 packaging materials, clear plastic bags and what I believed
11 to be crack at the time.

12 Q. And those beliefs, are they based on your training and
13 experience in law enforcement?

14 A. Yes, sir.

15 Q. And where were these items in the car?

16 A. The front passenger seat.

17 Q. Were they hidden or were they in plain view?

18 A. They were just sitting in the seat.

19 Q. Did you take pictures of the items before collecting
20 them?

21 A. Yes, sir, we did.

22 Q. I'm going to show you what's already been admitted as
23 evidence, State's Numbers Six, Seven, Eight and Nine.

24 Please take a look at these four pictures.

25 (WITNESS COMPLIES.)

1 Q. Do you recognize those pictures?

2 A. Yes, sir, I do.

3 Q. Did you take those pictures?

4 A. Yes, sir.

5 Q. And what are those pictures of?

6 A. The front seat of Mr. Leach's vehicle.

7 Q. Specifically are they in reference to the items you
8 described that were on the front seat?

9 A. Yes, sir.

10 Q. All right. You can set those off to the side, sir.

11 Okay, I'm going to show you now what's been marked for
12 identification as State's Numbers Ten, Eleven and Twelve.

13 Take just a moment please to look at these items.

14 (WITNESS COMPLIES.)

15 Q. Before I ask you about those, there's one other
16 question I wanted to ask you about Six, Seven, Eight and
17 Nine. These pictures that you looked at just a moment ago,
18 did you move anything in this car before you took these
19 pictures?

20 A. No, sir.

21 Q. So this is the exact condition it was in when Gander
22 showed up with the vehicle?

23 A. Yes, sir.

24 Q. Okay. I would like to turn your attention back to
25 Ten, Eleven and Twelve that you are holding in your hand;

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 what's been marked for identification as Ten, Eleven and
2 Twelve. Do you recognize those items?

3 A. Yes, sir, I do.

4 Q. And how do you recognize them?

5 A. I recovered them, placed them in these packages and
6 sealed them up.

7 Q. And were they recovered during this investigation?

8 A. Yes, sir, they were.

9 Q. And where were they recovered from?

10 A. Two of them were recovered from the front passenger
11 seat and the other from the center console.

12 Q. Which one of the three was recovered from the center
13 console?

14 A. The digital scale. Item Number Twelve. State's
15 Exhibit Twelve.

16 Q. So the other two items, which you believe to be
17 packaging materials and crack, were on the seat, passenger
18 side seat?

19 A. Yes, sir.

20 Q. And are these the same items you had taken pictures
21 of, States Six, Seven, Eight and Nine, prior to collecting?

22 A. Yes, sir.

23 Q. Describe what you did with each of these three items
24 when you collected them.

25 A. Once the photographs were taken, I seized each item,

1 it was placed into an evidence bag. Each evidence bag -
2 Well, first the digital scale and what I believe to be
3 packaging materials were placed into evidence bags and
4 sealed up. What I believed to contain crack was each
5 weighed, the quantity was added and then they were placed
6 into a drug bag and were sealed.

7 Q. So it looks like you have two different kinds of
8 evidence bags there.

9 A. Yes, sir.

10 Q. What's the different in those two bags - two kinds of
11 bags?

12 A. The paper bags are simply for miscellaneous evidence
13 items. The plastic bags are for what we believe to be
14 drugs anytime we have those because of the way they have to
15 cut open the bags and test all the products and close them
16 back up.

17 Q. So the plastic bag that's State's Number Ten, is it
18 fair to say that's to preserve the evidence a little bit?

19 A. Yes.

20 Q. More scyncly, more definitely?

21 A. Yes, sir.

22 Q. And the items in those type bags, are they submitted
23 for testing at some point?

24 A. Yes, sir.

25 Q. By a chemist?

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1 A. Yes, sir.

2 Q. Did you weigh the substance believed to be crack found
3 in State's Number Ten prior to putting it in the evidence
4 bag?

5 A. Yes, sir, I did.

6 Q. Where did you weigh it?

7 A. At the narcotics office in Rock Hill.

8 Q. Did you weigh it inside or outside of the plastic
9 baggies it was in?

10 A. Usually we weigh it in the baggies, usually.

11 Q. And so we are clear, is the substance as well as the
12 packing materials it was in contained in State's Number
13 Ten?

14 A. Yes, sir.

15 Q. And what was the estimated weight of the substance,
16 the total estimated weight of the substance found on the
17 front seat of the car?

18 A. I don't remember the exact number we came up with.

19 Q. Would that have been recorded in the Case Summary?

20 A. Yes, sir, it would.

21 Q. Would looking at the Case Summary possibly help
22 refresh your recollection?

23 A. Yes, sir. Are you asking about the items that I
24 recovered solely?

25 Q. From the car. Yes, sir.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 A. Okay. It looks like it weighed approximately .28
2 grams.

3 MR. BROWN: Approximately what?

4 BY SOLICITOR SHELTON:

5 Q. Could you repeat your answer, please?

6 A. Twenty-eight grams.

7 Q. And do you know how many grams are in an ounce?

8 A. Twenty-eight grams.

9 Q. So in other words, it was approximately one ounce?

10 A. Yes, sir.

11 Q. Are the scales you weighed the substances combined on
12 at the drug - excuse me, at the Law Center, are those
13 calibrated for accuracy?

14 A. I'm not sure if they are or not. I don't believe so.
15 I'm not sure.

16 Q. Is --

17 MR. BROWN: Objection. If he doesn't know, he doesn't
18 know.

19 THE COURT: He said he didn't know.

20 MR. BROWN: Okay.

21 BY SOLICITOR SHELTON:

22 Q. Is it Drug Unit policy to consider those estimated
23 weights?

24 A. Yes, sir.

25 Q. And can weights of substances believed to be

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 controlled substances such as crack be relevant for
2 chalking?

3 A. Yes, sir.

4 Q. Is that one of the reasons you weigh them on the front
5 end before submitting them into evidence?

6 A. Yes, sir.

7 Q. And so after you put the scales and what you believed
8 to be packing materials, sealed them up in the bags and
9 then put the other substance, weighed it and put it in the
10 evidence bag, what did you do with that substance then?

11 A. They were placed into a secure locker at the Rock Hill
12 Law Center. We have a pad lock on each. We don't have a
13 key to those. Only evidence tech's have a key to those
14 locks. Once we lock it, we have to wait for the evidence
15 tech's to come get it, take it to Moss and log it into
16 their evidence.

17 Q. And is that drop box at the Rock Hill Law Center?

18 A. Yes, sir.

19 Q. And just to be clear, did you submit all three items,
20 State's Ten, Eleven and Twelve, into that drop box?

21 A. Yes, sir.

22 Q. And did you seal the plastic evidence bag containing
23 what you believed to be crack prior to submitting it into
24 the evidence drop box?

25 A. Yes, sir.

1 Q. And the other two items were sealed as well?

2 A. Yes, sir.

3 Q. In the envelopes?

4 A. Yes, sir.

5 Q. At this time I'm going to turn your attention to
6 what's been marked for identification as State's Exhibit
7 Number Four.

8 (WITNESS REVIEWING STATE'S EXHIBIT FOUR.)

9 Q. Do you recognize this item?

10 A. Yes, sir.

11 Q. How do you recognize it?

12 A. Officer Gander gave it to me back at the Law Center?

13 Q. And was this during this investigation on June 19th.
14 2013?

15 A. Yes, sir, it was.

16 Q. And to your knowledge, how did it come to be in her
17 possession?

18 A. According to this, she located it on the ground at the
19 scene.

20 Q. The scene being Wild Cat?

21 A. Yes, sir.

22 Q. What condition was it in when you received it from
23 Gander?

24 A. Everything was inside the brown shopping bag.

25 Q. Was it inside of the evidence bag you hold in your

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 Hand?

2 A. Yes. Yes. I'm sorry. I misunderstand the question.

3 Q. Had Gander sealed that bag yet?

4 A. No, sir.

5 Q. Did you ultimately seal that bag?

6 A. Yes, sir.

7 Q. And you were the evidence guy in this investigation.

8 Right?

9 A. Yes, sir.

10 Q. In your experience - Let me back up a second. Did you
11 inspect the contents of the plastic - the brown, plastic,
12 grocery type bag?

13 A. Yes, sir.

14 Q. And in your training and experience, what did you
15 believe the contents to be?

16 A. I believed that it contained packaging materials with
17 crack cocaine.

18 Q. And did you weigh the substance you believed to be
19 crack as in State's Number Four?

20 A. Yes, sir, we did.

21 Q. Where did you weigh it?

22 A. At the Rock Hill Law Center.

23 Q. And was that prior to sealing it up inside of the
24 evidence bag?

25 A. Yes, sir.

1 Q. And did you have the drugs and packaging material
2 outside of the evidence bag when you weighed it?

3 A. Yes, sir.

4 Q. Were the sub --

5 MR. BROWN: Your Honor, I'm gonna object to leading.

6 THE COURT: Yeah, you're asking leading question.

7 SOLICITOR SHELTON: Yes, sir.

8 Q. Were the substances you believed to be crack inside or
9 outside the packing materials when you weighed it?

10 A. Usually inside.

11 Q. And what was the estimated weight of the substances in
12 State's Number Four? And if you need to look back at the
13 Summary again, that's fine.

14 A. This one was approximately 90.2 grams.

15 Q. So in other measures, is that a little more than three
16 ounces?

17 A. Yes, sir.

18 Q. And looking at the contents of State's Number Four, is
19 there anything that appears to be packaging material
20 contained inside the evidence bag?

21 A. Yes, sir.

22 Q. Please describe.

23 A. What we believe is packaging material was the clear
24 plastic baggies.

25 Q. Was there also a brown, plastic baggy in there?

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 A. Yes, sir.

2 Q. Is it larger than the other clear, plastic baggies?

3 A. Yes, sir.

4 Q. And does it appear to be some kind of grocery bag?

5 A. Yes, sir.

6 Q. And was that what everything was wrapped up inside of

7 ---

8 A. Yes, sir.

9 Q. --- when you received it?

10 A. Yes, sir.

11 Q. So State's Number Four along with the other three,
12 what did you do with State's Number Four at that time?

13 A. After we weighed it?

14 Q. Yes, sir. Start at the weighing.

15 A. After it was weighed it was returned to this bag. The
16 bag was sealed. I signed the seal and it was placed in
17 evidence along with the other evidence.

18 Q. So to be clear, State's Number Four, Ten, Eleven and
19 Twelve were all submitted into the drop location at Rock
20 Hill P.D.?

21 A. Yes, sir.

22 Q. Were they all submitted on the same day?

23 A. Yes, sir.

24 Q. What day was that?

25 A. June 19th.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN.

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1 Q. Was that the day of the investigation?

2 A. Yes, sir.

3 Q. Approximately what time?

4 A. About 1:30 in the afternoon.

5 Q. Approximately how long after --

6 A. Excuse me. I'm sorry. I'm sorry. I apologize. It
7 was dropped into evidence at four. I received it from
8 Officer Gander at 1:30 and it was dropped into evidence at
9 four.

10 Q. So approximately - At four o'clock, approximately how
11 long after the investigation at Wild Cat Creek was that?

12 A. About a little less than three hours.

13 Q. So at 1:30 when you received it from Gander, about
14 possibly how long after the investigation had concluded?

15 A. That was about twenty minutes, give or take.

16 Q. Were all four exhibits in evidence, State's Four, Ten,
17 Eleven and Twelve, were they all continuously in your
18 custody and control after you took possession of them?

19 A. Yes, sir.

20 Q. And were they all in sealed bags when you dropped them
21 in the locker?

22 A. Yes, sir.

23 Q. Did you submit a request for chemical testings of the
24 substances in State's Four and Ten?

25 A. Yes, sir, we did.

JAMIE FAULKENBERRY: CROSS BY MR. BROWN

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1 Q. Did all of this occur in York County, South Carolina?

2 A. Yes, sir.

3 SOLICITOR SHELDON: Nothing further.

4 CROSS-EXAMINATION

5 JAMIE FAULKENBERRY BY MR. BROWN:

6 Q. These scales you have down at the police department -
7 excuse me, that you used to have down at the police
8 department, I know you've moved on now, they are digital
9 scales. Right?

10 A. Yes, sir.

11 Q. And based on the amount you weigh those drugs in, you
12 come up with a charge against the defendant. Correct?

13 A. Yes, sir.

14 Q. And based on the weight as far as trafficking goes,
15 that can make a major difference. Correct?

16 A. Yes, sir.

17 Q. And ten to twenty-eight grams in one category, a
18 category of trafficking is it not?

19 A. Uh-huh.

20 Q. And twenty-eight to a hundred is one category of
21 trafficking. Right?

22 A. I believe so.

23 Q. And of course you being in law enforcement and with
24 the DEU, the Drug Enforcement Unit, as long as you were,
25 you know that the weight of other substances don't count.

1 You just weigh the drugs. Right?

2 A. Yes, sir.

3 Q. All right. And you say sometimes you would leave the
4 packaging on and sometime you take it off. Correct?

5 A. Yes, sir.

6 Q. Wouldn't - Don't you most of the time take the
7 packaging out so you just get the weight of the drugs so
8 you know the correct charge?

9 A. Sometimes we do.

10 Q. Okay. Why would you not do that? Wouldn't you be
11 charging somebody with an over amount?

12 A. Usually if we don't take it out, it's because the
13 manipulation of it in case they want to do other
14 processing.

15 Q. I'm sorry, manipulation?

16 A. If we have to manipulate it too much to open it up, if
17 they request other processing for things, then us
18 manipulating it too much would mess it up so it's a little
19 easier to just weigh it in the packaging material itself.

20 Q. And the drugs were allegedly found - Do you have that
21 report with you, sir?

22 A. I've got the ---

23 Q. Case summary?

24 A. --- Case summary. Yes, sir.

25 Q. He was asking about earlier?

JAMIE FAULKENBERRY: CROSS BY MR. BROWN

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1 A. Yes, sir.

2 Q. I'll refer you to the fourth line from the bottom on
3 page three. Investigator Gander located a brown paper bag
4 that contained plastic with approximately 90.2 grams of
5 crack in it. Correct?

6 Is that what it says?

7 A. Yes, sir.

8 Q. That's not a paper bag is it?

9 A. No, sir.

10 Q. Okay. And that's what you weighed to be 90.2 grams.
11 Correct?

12 A. Yes, sir.

13 Q. Okay. Investigator Faulkenberry, you located
14 approximately twenty-eight grams of crack.. Is that you -
15 you found that. Right?

16 A. Yes, sir.

17 Q. And that is this right here. Correct?

18 A. Yes, sir.

19 Q. And that's what you weighed it with digital scales.
20 Right?

21 A. Yes, sir.

22 Q. Now if you took the - I believe you testified, sir,
23 that you took the pictures of this money; is that correct?

24 A. Yes, sir.

25 Q. Okay. And you did that when?

JAMIE FAULKENBERRY: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON

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1 A. Prior to the deal.

2 Q. Okay. Tell me how that works. Where does the money
3 come from? How do you get it? What did you take a picture
4 of it with?

5 A. The money in this case was furnished by the FBI. What
6 they do, is they do an account at their office and they
7 bring it to us since we're the ones that are gonna be in
8 control of it. They have us count it as well to make sure
9 we come up with the same count. Since we are going to be
10 the ones to actually use the money and do the deal, we make
11 copies of it as well for our records for case purposes. We
12 go back and we Xerox every bill on a copier so that we have
13 copies of all the serial numbers for later comparisons.

14 Q. And that's what was shown as State's Exhibit Number
15 Five. Correct?

16 A. Yes, sir.

17 Q. And that's the Thirty-three Hundred dollars you took
18 care of. Correct?

19 A. Yes, sir.

20 Q. So you took this picture at the Law Center I assume?

21 A. Yes, sir.

22 Q. All right. And you recovered the money on the ground.
23 Correct?

24 A. Yes, sir.

25 Q. And that was the Thirty-three Hundred dollars.

JAMIE FAULKENBERRY: REDIRECT BY SOLICITOR SHELTON
RE CROSS BY MR. BROWN

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1 Correct?

2 A. Yes, sir.

3 MR. BROWN: No further questions.

4 SOLICITOR SHELTON: Brief redirect, Your Honor.

5 May it please the court.

6 REDIRECT EXAMINATION

7 JAMIE FAULKENBERRY BY SOLICITOR SHELTON:

8 Q. Mr. Faulkenberry, in your experience, is packaging
9 material very heavy?

10 A. No, sir.

11 MR. BROWN: I'm going to object to that, Your Honor.
12 It's not responsive to anything I asked. I didn't ask
13 anything about weights. I just asked him what he wrote in
14 his report.

15 THE COURT: All right. Meanwhile, I overrule the
16 objection. Let's stick to what was brought out.

17 SOLICITOR SHELTON: Yes, sir. Yes, sir.

18 Q. The other processing you mentioned on cross, is that
19 things such as fingerprint analysis, DNA testing, that
20 sort of thing?

21 A. Yes, sir.

22 Q. And to your knowledge was any of that done in this
23 case?

24 A. As far as I know, no, sir.

25 Q. And did you prepare the GS Summary you've been looking

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 at?

2 A. No, sir. I don't believe so.

3 Q. And looking at the item in evidence, State's Number
4 Four, would you refer to this brown bag as paper or
5 plastic?

6 A. Plastic.

7 SOLICITOR SHELTON: Nothing further.

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

9 MR. BROWN: Just one question.

10 THE COURT: I'm sorry. Go ahead.

11 RE CROSS-EXAMINATION

12 JAMIE FAULKENBERRY BY MR. BROWN:

13 Q. I know you didn't do that report, but you gave the
14 weights to Officer Rainier did you not?

15 A. Yes, sir.

16 Q. It's from your weight?

17 A. Yes, sir.

18 MR. BROWN: No further questions, Your Honor.

19 THE COURT: All right, you can step down and be
20 excused quietly. Thank you.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Call your next witness.

23 SOLICITOR SHELTON: Thank you, Your Honor. The next
24 witness is Mr. Patrick Patterson.

25 (WHEREUPON, PATRICK

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 PATTERSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
2 FOLLOWS:)

3 DIRECT EXAMINATION

4 PATRICK PATTERSON BY SOLICITOR SHELTON:

5 Q. Good afternoon, sir.

6 A. Hello.

7 Q. Please identify yourself for the jury.

8 A. Patrick Patterson.

9 Q. And where do you work, sir?

10 A. York County Sheriff's Office.

11 Q. What job do you do there?

12 A. Evidence control technician.

13 Q. How long have you been doing that job?

14 A. Three and a half years.

15 Q. Were you working in that job in June of 2013 and on?

16 A. Yes, sir.

17 Q. What are your present duties?

18 A. As evidence control technician, we take possession of
19 evidence. We secure it in our evidence room. We log it
20 in. We maintain that security until the time it leaves our
21 custody.

22 Q. And taking possession of the evidence, does that
23 include you going to law enforcement drop sites throughout
24 York County to recover evidence?

25 A. It does.

1 Q. Is that evidence that's been submitted by law
2 enforcement officers?

3 A. It has. It's been locked in a locker that only I and
4 my co-workers have keys to. We pick it up and transport it
5 to our evidence room here.

6 Q. Is there an evidence drop box at the Rock Hill Police
7 Department at the Law Center?

8 A. Yes, sir.

9 Q. Is that a secure location?

10 A. Yes, it is.

11 Q. Is it under lock and key?

12 A. Yes, sir.

13 Q. Is that one of those places that only you and the
14 other tech's have access to?

15 A. Yes, sir.

16 Q. If you'll take a look at some of these items of
17 evidence that are sitting next to you.

18 First let's look at what's been marked as State's
19 Number Four right here. I'm also going to have you look at
20 these other three in turn.

21 Here's Ten, Eleven and Twelve. Just so you can see
22 what we are talking about here. Take a second if you
23 please, sir, to inspect those items.

24 (WITNESS REVIEWS STATE'S EXHIBITS FOUR)

25 Q. If you'll look at the other three, as well.

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1 (WITNESS REVIEWS STATE'S EXHIBITS TEN, ELEVEN AND
2 TWELVE.)

3 Q. Have you seen these four items before?

4 A. Yes, sir.

5 Q. And how do you recognize them?

6 A. I signed these items out from the evidence drop in
7 Rock Hill on June 21st, 2013.

8 Q. And are these items that you recovered from that
9 location?

10 A. They are. I took possession of them then and
11 transported them back to our evidence room here.

12 Q. And that was while you were working in your job
13 duties?

14 A. Yes, sir.

15 Q. How did you transport them back here?

16 A. In a vehicle. Just drove 'em back to York.

17 Q. And did you bring them back here the same day that you
18 recovered them from the drop location?

19 A. Yes, sir.

20 Q. Were the items of evidence contained in those four
21 exhibits, were they in sealed evidence bags when you
22 recovered them?

23 A. Yes, they were.

24 Q. Did the seals appear to have been tampered with in any
25 way?

1 A. No, sir.

2 MR. BROWN: Your Honor, I hate to object to leading,
3 leading, leading.

4 THE COURT: Me too. Don't lead. Just ask him.

5 BY SOLICITOR SHELTON:

6 Q. What was the condition of the seals when you recovered
7 them?

8 A. The seals were intact and had signatures on them.

9 Q. What did you do with the items while you had them in
10 your possession?

11 A. I only transported them from that location here to our
12 evidence room.

13 Q. Were they continuously under your custody and care
14 while in your possession?

15 A. Yes, sir.

16 Q. Who all has access to the evidence room at the Moss
17 Justice Center?

18 A. Only myself and two co-workers.

19 Q. Is it a secure location?

20 A. Yes, sir.

21 Q. And were these four items of evidence brought back to
22 that secure location?

23 A. Yes, sir.

24 Q. Did anyone else take possession of State's Number Four
25 and Ten on January 21st, 2014?

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 A. No, sir. Only myself.

2 Q. On that day January - Did you pass them off to another
3 person at some point?

4 A. On January 21st?

5 Q. Yes, sir.

6 A. Yes, sir. I did. I signed these items over to our
7 chemist, Cynthia Mitchum.

8 Q. How about State's Number Eleven and Twelve?

9 A. These items were in our possession until May the 12th,
10 2014. I signed them to John Rainier.

11 Q. That being yesterday?

12 A. That was yesterday.

13 Q. And between the time that you brought 'em back and
14 yesterday, did they remain in the custody of the storage
15 room at Moss Justice Center, evidence storage?

16 A. Yes, sir. These two items did.

17 Q. Those two items you are holding in your hands, what
18 are the exhibit numbers there?

19 A. Eleven and Twelve.

20 Q. And were they sealed? Were there seals on those bags?

21 A. Yes, sir.

22 Q. Were they intact when you recovered them?

23 A. Yes, sir.

24 Q. Are they still in tact?

25 A. Yes, they are.

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CROSS BY MR. BROWN

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1 Q. Turn your attention back to State's Number Four and
2 Ten. Did you give those two evidence bags directly to Ms.
3 Mitchum the day in question?

4 A. Yes, sir, I did.

5 Q. And were the seals on both of those bags still intact
6 at that time?

7 A. Yes, sir.

8 Q. Were those two items returned back to the evidence
9 room at some point?

10 A. They were returned on March 19th, 2014.

11 Q. And who returned them?

12 A. Cynthia Mitchum signed them over to me.

13 Q. Did she give them directly to you?

14 A. Yes, sir.

15 Q. And what did you do with those two items once they
16 were back in possession of the evidence?

17 A. They were secured in our evidence room.

18 Q. And are those two items, State's Four and Ten, in the
19 same condition now as when you put them back into storage?

20 A. Yes, sir.

21 Q. After you received them from Ms. Mitchum?

22 A. Yes, sir.

23 Q. And all four of those items, Four, Ten, Eleven and
24 Twelve, were they checked out of the evidence locker
25 recently?

PATRICK PATTERSON: CROSS BY MR. BROWN

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1 A. They were checked out this morning. I signed them
2 over to John Rainier.

3 Q. Were they also checked out yesterday?

4 A. They were.

5 Q. Signed over to John Rainier, as well?

6 A. Yes, sir.

7 Q. And was that for court?

8 A. That was.

9 Q. And the seals on those evidence bags, were they still
10 intact when they left the evidence room both days?

11 A. Yes, sir.

12 SOLICITOR SHELTON: Nothing further.

13 CROSS-EXAMINATION

14 PATRICK PATTERSON BY MR. BROWN:

15 Q. When you say you are the evidence technician, all you
16 do is deal with evidence. Correct?

17 A. Yes, sir.

18 Q. And you hold it until somebody from lab comes over and
19 gets it. Correct?

20 A. Yes, sir.

21 Q. Or the processing we've heard in this courtroom. So
22 how close are you to the lab?

23 A. It's from one door to another.

24 Q. You're right next door?

25 A. Two steps.

1 Q. Gotcha, gotcha. And as a matter of fact, the
2 sheriff's department or the county just got a brand new lab
3 with all kinds of new facilities. Correct? About two
4 years ago?

5 A. Repeat that please.

6 Q. Didn't the sheriff's department get a brand new lab
7 with a bunch of new equipment about two years ago?

8 A. For the drug lab?

9 Q. Well, the drug lab, DNA lab, et cetera.

10 A. Yes, sir.

11 Q. And all of that was in the last couple of years.
12 Correct?

13 A. Right.

14 Q. To your knowledge, has anybody checked this stuff out
15 other than to do drug testing?

16 A. No, sir.

17 Q. Okay.

18 MR. BROWN: I don't have any further questions.

19 SOLICITOR SHELTON: Your Honor, I would just move to
20 admit State's Number Eleven and Twelve as evidence.

21 MR. BROWN: Without objection.

22 THE COURT: In without objection.

23 (WHEREUPON, STATE'S EXHIBIT NUMBERS ELEVEN AND TWELVE
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 SOLICITOR SHELTON: I have no further questions at

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 this time.

2 THE COURT: You can step down and be excused. Thank
3 you.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR SHELTON: The next witness for the State is
6 Ms. Cynthia Mitchum.

7 (WHEREUPON, CYNTHIA MITCHUM,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION

10 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

11 Q. Good afternoon, ma'am.

12 A. Good afternoon.

13 Q. Please identify yourself for the jury.

14 A. I'm Cynthia Mitchum, M-I-t-c-h-u-m.

15 Q. And how are you employed?

16 A. I'm employed with the York County Sheriff's Office in
17 the drug analysis laboratory.

18 Q. How long have you been in that job?

19 A. This month will be fourteen years at the sheriff's
20 office.

21 Q. And do you work at Moss Justice?

22 A. Yes.

23 Q. And you have a laboratory or an office?

24 A. Yes. I have a laboratory.

25 Q. And what do you do in your lab?

1 A. I receive in evidence and I'll do analysis on the
2 evidence for controlled and non-controlled substances.

3 Q. Do you have any prior experience in this field that
4 qualifies you for your job?

5 A. Yes.

6 Q. Please explain.

7 A. I have a Bachelor's of Science in Chemistry which I
8 received from Winthrop University in 1990. Prior to
9 working with the sheriff's office, I was with the South
10 Carolina Law Enforcement Division, commonly known as SLED,
11 in Columbia, South Carolina, for seven and a half years.
12 And I've also gone through instrumentation training and
13 various schools.

14 Q. And all this training and experience, does this
15 qualify you as an analyst in the field of chemical drug
16 analysis identification?

17 A. Yes.

18 Q. Have you ever been qualified in a court of law as an
19 expert in the field of chemical or drug analysis and
20 identification?

21 A. Yes, I have.

22 Q. Approximately how many times?

23 A. In excess of two hundred times.

24 Q. And during your career both in law enforcement at the
25 sheriff's department and before, approximately how many

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 samples have you tested?

2 A. Typically, I usually test around two thousand to
3 twenty-five hundred items a year, so you multiply that by
4 twenty-one years. It's a lot of samples.

5 SOLICITOR SHELTON: Your Honor, at this time I would
6 offer Ms. Mitchum as an expert in the field of chemical and
7 drug analysis and identification.

8 THE COURT: Voir dire?

9 MR. BROWN: No, sir.

10 THE COURT: You may proceed.

11 BY SOLICITOR SHELTON:

12 Q. Ms. Mitchum, sitting there next to you is State's
13 Number Four and Eleven - excuse me, what's been marked as
14 State's Number Four and Ten for identification. Have you
15 ever seen these items before?

16 A. Yes, I have.

17 Q. And how do you recognize them?

18 A. I recognize them through that I have my initials and
19 signature in the chain of custody and on the bags and I
20 also recognize the case number and the bar code number.

21 Q. Did you analyze the substances contained inside of
22 these two evidence bags?

23 A. Yes, I did.

24 Q. Please describe how these two items of evidence came
25 to be in your possession for analysis.

1 A. They became in my possession from Pat Patterson on
2 January 21st of 2014.

3 Q. Both items?

4 A. Yes.

5 Q. What condition were they in when you received them?

6 A. They were sealed and I know this because on both bags
7 on the inside I got, Okay, the date I received them and my
8 initials, and that's on both of the bags.

9 Q. Did the seals on either of those bags appear to be
10 tampered with in any way?

11 A. No.

12 Q. And what did you do with them when you got them?

13 A. Once I received them, I then placed them in the
14 laboratory in a secure area until I had a chance to do my
15 analysis on them.

16 Q. During that time and during your analysis, were they
17 continuously under your custody and control while in your
18 possession?

19 A. Yes.

20 Q. Did you in fact analyze and test the contents of the
21 two bags?

22 A. Yes, I did.

23 Q. When did you conduct your analysis and testing?

24 A. On March the 10th of 2014.

25 Q. And between the time of receiving them and testing

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 them, where were the items?

2 A. They were in the evidence room at the sheriff's
3 office.

4 Q. Let me rephrase that. When you got possession of
5 them, between the time you took possession and the time you
6 actually analyzed and tested them, were they stored any
7 where?

8 A. Yes. They were stored in the drug analysis
9 laboratory.

10 Q. And is that a secured location?

11 A. Yes.

12 Q. Under lock and key?

13 A. Yes.

14 Q. And is it connected with your laboratory?

15 A. Yes.

16 Q. Does anyone else have access to that room?

17 A. Yes, they do but not to the drug box where I keep
18 these particular items. I have the only keys to that box.

19 Q. Please explain the process of analysis and testing
20 these items.

21 A. What I would do is take the substance and then what I
22 do is what's called a color test and then an instrumental
23 test on these.

24 The color test is basically I take a portion of the
25 sample and I'll put reagents on it and I will look for a

1 color change. That color change will then give me an idea
2 of what class of compounds I would be looking at.

3 And then I would take another portion of the substance
4 and dissolve it in a reagent and then run it through an
5 instrument and then from the instrument, it would give me
6 results that I compare to known results to make sure that
7 what I am calling it is correct.

8 Q. And the substances in these two bags, were they wet or
9 dry when you first opened the bags?

10 A. These were very wet when I opened them. There's three
11 bags in here. They are tied plastic bags and they were
12 very wet. Almost the consistency of a wet cake batter.

13 Q. And did you have to do anything with the substances
14 prior to testing?

15 A. Yes. What I did is when I opened them, I noticed they
16 had immediately started drying so I put them under a hood.
17 I have a hood in the laboratory which I can put things
18 under, chemicals and stuff, so I don't have to constantly
19 smell them. So I put them under there and then I let them
20 sit for a couple of hours and dry until I could be able to
21 get them out of the bag easier because they were just
22 really sticking to the plastic bag so then I could work
23 with the item better. I could actually scrape it out of
24 the bag.

25 Q. So is it your testimony they were difficult to remove

1 the items from the bag prior to drying them out?

2 A. That is correct.

3 Q. Did you weigh the substances in State's Four and Ten
4 prior to drying them out?

5 A. No, I did not. I did my weight after I dried them.

6 Q. And is that your common procedure, to weigh after
7 testing?

8 A. Yes.

9 Q. And if you will look inside the actual evidence bag,
10 are there some sort of markings, some sort of markings on
11 smaller baggies inside of that?

12 A. Are you talking about this green writing?

13 Q. Yes, ma'am.

14 A. Yeah, that's my writing for - I would distinguish bag
15 one, bag two, so that when I looked at my worksheet and was
16 comparing my results, I knew exactly which bag went with
17 which one.

18 Q. Okay. Very good. So the substances in these bags
19 were packaged in different baggies; is that correct?

20 A. Correct. There was one plastic bag and there was
21 three separate tied plastic bags that had each of the
22 substances in, so there was actually three bags of
23 substance.

24 Q. And that's in Number Four?

25 A. Yes, State's Exhibit Number Four.

1 Q. Did you weigh the substances after you tested them?

2 A. Yes, I did.

3 Q. And that was after the drying process?

4 A. That is correct.

5 Q. And did you document those weights somewhere?

6 A. Yes, I did.

7 Q. And are the scales you use calibrated for accuracy?

8 A. Yes, they are.

9 Q. Please explain that.

10 A. They are calibrated once a month with standardized
11 weights and they are also calibrated by an outside agency
12 once every six months.

13 Q. Do you recall when the last time they were calibrated
14 before you weighed the substances in this case?

15 A. No. I couldn't give you the specific date on when
16 they were without looking at the book to my - when the
17 weights were. Usually I usually calibrate the instrument
18 right around the fifteenth of the month.

19 Q. For each month?

20 A. Yes.

21 Q. And what day of the month were these items weighed
22 after drying?

23 A. These would have been on 3-10-2014.

24 Q. And after you analyzed and tested the substances, what
25 did you do with the substances in Four and Ten?

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1 A. What I did is then I repack - they were - they began
2 in this blue fillagree bag which is inside so I folded all
3 that up and put it in this outside bag which has been
4 sealed. This is a laboratory bag that I have and it has
5 the seal, it has the date I sealed it and my initials
6 within the heat seal and both of those are still in tact
7 today with the date of March the 10th, 2014 and the seal.

8 Q. And when did you return the newly sealed bags to the
9 evidence room?

10 A. On March the 19th of 2014.

11 Q. Who did you give them to?

12 A. Patrick Patterson.

13 Q. And the outer sealed evidence bags, the repackaged
14 bags if you will, are they in the same condition now as
15 when they left your possession?

16 A. Yes, they are. They are still sealed.

17 Q. Were you able to determine through your analysis and
18 testing what the substances in the two evidence bags,
19 State's Number Four and Ten, are?

20 A. . Yes, I did.

21 Q. And what were your conclusions?

22 A. State's Exhibit Number Four, which is Item Number One
23 in this case, was found to be cocaine base, also known as
24 crack. A total weight of 38.03 grams or 586.80 grains,
25 control two substance.

1 And then State's Exhibit Number Ten, which is Item
2 Number Two in this case, was found to be cocaine base, also
3 known as crack, in the amount of total weight of 12.55
4 grams, or 193.64 grains, control two substance.

5 Q. . Do you have a breakdown of how much each of the three
6 baggies in Number's Four, State's Number Four, weighed
7 independent?

8 A. Yes, I do on my worksheet.

9 Q. Okay. Can you look back at that?

10 A. I sure can.

11 MR. BROWN: Your Honor, may we approach?

12 THE COURT: Yes, sir.

13 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
14 THE JURY AT 03:00 P.M..)

15 THE COURT: All right. Let me let the jury go to the
16 jury room for a minute while we take up a matter of law.

17 (JURY EXITS COURTROOM AT 3:00 P.M.)

18 THE COURT: All right, why don't you all step down and
19 we'll do this bond while you all are doing that.

20 You mind just sitting there?

21 MS. MITCHUM: Yeah, I'll be fine.

22 (DEFENDANT EXITS COURTROOM.)

23 (COURT AT EASE IN THE MATTER OF STATE V. ELDER LEACH.)

24 (COURT IN SESSION IN THE MATTER OF STATE V. KEITH
25 BURGESS WITH ATTORNEY GENERAL STEPHANIE MILES.)

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 THE COURT: All right, we'll take a real quick
2 refresher break for the staff about two or three minutes
3 and then we'll get the jury back in and move forward when
4 we find the attorneys.

5 (COURT IN RECESS AT 03:10 P.M..)

6 (COURT BACK IN SESSION AT 3:16 P.M.)

7 THE COURT: Take your seats.

8 All right. Yes.

9 SOLICITOR SHELTON: Your Honor, before the break there
10 was some discussion about the worksheet that Ms. Mitchum
11 was referencing. Mr. Brown and I conversed and he has been
12 provided a copy of what is called the Initial Drug Report.
13 It's labeled Drug Analysis Worksheet at the top.

14 He was provided a copy of that in discovery as well as
15 the official Court Exhibit Drug Report that Ms. Mitchum has
16 the original of here, but I think we probably need to - I
17 probably need to proffer a quick little bit of information
18 from Ms. Mitchum to make sure we are on the same page with
19 what she means by worksheet.

20 I have a document that was provided in discovery that
21 says Drug Analysis Worksheet and I'm not sure if she is
22 talking about the same thing. I probably will move to
23 admit this as evidence as well as the official drug report.

24 THE COURT: Go ahead and ask her about it.

25 SOLICITOR SHELTON: Yes, sir.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON -- IN CAMERA

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DIRECT EXAMINATION - IN CAMERA

CYNTHIA MITCHUM BY SOLICITOR SHELTON:

Q. Ms. Mitchum, I'm holding in my hand a document captioned in the title Drug Analysis Worksheet, York County Sheriff's Office. Can you take a look at this?

A. Yes.

Q. And is that a true and accurate copy of your initial drug report or your Drug Report Worksheet that you do when you test items for evidence?

A. It is but it's not for this case.

SOLICITOR SHELTON: Wait. What?

MR. BROWN: He got the wrong case.

SOLICITOR SHELTON: I've got a copy here.

Q. Okay. Case number 2013-2-0-2-2-5.

A. Yes.

Q. Is this a copy of that same report?

A. Yes, it is.

Q. And you have the original worksheet in your file?

A. Yes, I do.

Q. Okay. So this copy I hold in my hand is what would have been sent from you to the Solicitor's office to document your findings?

A. That's correct.

SOLICITOR SHELTON: And Judge, for the record, this copy is what I sent to Mr. Brown as discovery. That's why

1 I was referring to a copy.

2 THE COURT: Do you have any questions, Mr. Brown?

3 MR. BROWN: I don't have any questions. I just have
4 an objection at to this issue.

5 THE COURT: All right. What's the -

6 MR. BROWN: As to this issue.

7 THE COURT: What's the objection?

8 MR. BROWN: Your Honor, pursuant to Rule 6, Broken
9 Chemical Analysis Chain of Custody, you can enter a report
10 that's certified and verified by SLED procedures, which I
11 submit is this report. I have no objection to this coming
12 in. Her work product, I do. It contains extraneous facts
13 does not relate to Rule 6.

14 It also carries a description of what she deemed the
15 crack to be, very wet, dried under hood, damp, dried under
16 hood, cocaine base, cocaine base. I submit to you under
17 Rule 6 she is entitled just to submit her report as to what
18 she found, not extraneous material as to the description or
19 whatever.

20 THE COURT: Well Rule 6 applies to, I think, and I'm
21 just skimming it, and I always thought that it applied to
22 the introduction of a report without the chemist actually
23 testifying. I think that is what it's for because the last
24 sentence says if an objection is properly made the trial
25 judge shall require the chemist or analysis or analyst to

1 be present at the trial for purposes of a person
2 testifying. So the report of chemical analysis under
3 number 6(a) allows for the introduction without the actual
4 testimony, but, I do have concerns about, and maybe you
5 ought to ask her, what is the official report as opposed to
6 a worksheet.

7 SOLICITOR SHELTON: Okay. The official report is what
8 will be marked as State's Thirteen. What I was referring
9 to in this proffer is the worksheet which will show initial
10 findings but they do have some more detail in them as to
11 description of the number of bags and the weights
12 associated with those as well as her initial impressions of
13 the substances when she first --

14 THE COURT: Do you object to that?

15 MR. BROWN: Yes, I do.

16 THE COURT: I sustain it. The question is what it was
17 and how much it weighed.

18 SOLICITOR SHELTON: Okay. Very good.

19 THE COURT: You ready for the jury?

20 SOLICITOR SHELTON: Yes, sir.

21 THE COURT: All right. Bring in the jury.

22 Wait a minute. We forgot Mr. Leach.

23 SOLICITOR SHELTON: Your Honor, can I ask one other
24 question. I had a question presented that what were the
25 weights of each of the three individual baggies in Number

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 Four. Can she refer to her worksheet and testify --

2 THE COURT: If she needs to refresh her memory. You
3 know how to do that.

4 SOLICITOR SHELTON: Yes, sir.

5 (DEFENDANT REENTERS COURTROOM AT 03:21 P.M..)

6 THE COURT: All right. Bring in the jury.

7 (JURY REENTERS COURTROOM AT 3:22 P.M.)

8 THE COURT: All right. You may proceed.

9 SOLICITOR SHELTON: Thank you, Your Honor. May it
10 please the court.

11 DIRECT EXAMINATION

12 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

13 Q. Ms. Mitchum, prior to the break I had asked you a
14 question about State's Number Four, specifically if you had
15 weighed each of the three baggies contained therein
16 separately.

17 A. Yes.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. Did you document your findings as to those weights?

21 A. Yes.

22 Q. And do you recall the exact weights off the top of
23 your head?

24 A. Not off the top of my head. I would have to refer to
25 my notes.

1 Q. Would referring to your notes help refresh your
2 memory?

3 A. Yes.

4 Q. Please do so.

5 A. Okay.

6 Q. And what were the weights of the three individual
7 bags?

8 A. Bag one was 13.0 grams; bag two was 13.59 grams; and
9 bag three was 11.14 grams.

10 Q. And the total weight of those three combined?

11 A. 38.03 grams.

12 Q. Thank you, ma'am. Did you perform your analysis and
13 testing of the substances in State's Four and Ten in
14 accordance with your training?

15 A. Yes, I did.

16 Q. And did you prepare a report of your findings?

17 A. Yes, I did.

18 Q. And you have the original report with you in the
19 courtroom?

20 A. Yes.

21 Q. May I hold that, please. Thank you.

22 MR. BROWN: Without objection, Your Honor.

23 THE COURT: In without objection.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN, PREMARKED
25 FOR IDENTIFIED.)

CYNTHIA MITCHUM: CROSS BY MR. BROWN

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1 Q. I'm going to hand back to you what's now been marked
2 as State's Thirteen. Is that your original report?

3 A. Yes, it is.

4 SOLICITOR SHELTON: Your Honor, I move this into
5 evidence..

6 MR. BROWN: Without objection.

7 THE COURT: In without objection.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN,
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 SOLICITOR SHELTON: Your Honor, I also move State's
11 Number Four and Ten into evidence.

12 THE COURT: What is that? That's the -

13 MR. BROWN: Without objection.

14 THE COURT: In without objection.

15 (WHEREUPON, STATE'S EXHIBIT NUMBERS FOUR AND TEN,
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 SOLICITOR SHELTON: Nothing further from this witness,
18 Your Honor.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 CYNTHIA MITCHUM BY MR. BROWN:

22 Q. Ms. Mitchum, you have been down in the lab for how
23 long again?

24 A. Twenty-one years.

25 Q. In York County?

1 A. Fourteen years in York County.

2 Q. Fourteen in York County. And you don't decide what
3 kind of tests to perform on these drugs. Somebody asks you
4 to perform a certain test. Correct?

5 A. No. I decide what test to perform on it. They just
6 tell me that this is the suspected substance I have and
7 then I'll bring it in the laboratory and then I will
8 perform a series of tests on them to determine if that's
9 what it really is or not.

10 Q. Let me rephrase my question. They ask you to test it
11 for drugs, for substance. Right? They don't ask you to
12 test for fingerprints, DNA or anything. Correct?

13 A. That's correct. Just drugs.

14 Q. Other people in the lab do that. Right?

15 A. Correct. Not in my laboratory but different labs.

16 Q. . But whoever brings the alleged contraband into the lab
17 or right next door to Mr. Patterson's shop so to speak,
18 they decide what kind of test they want run. Correct?

19 A. That's correct.

20 Q. All right. And you were instructed in this test just
21 to run an analysis for contraband or illicit drugs?

22 A. Correct.

23 Q. Okay. Now when you run this test, or when you ran
24 this particular test, what method did you use?

25 Q. Now, what do you mean by what method?

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REDIRECT BY SOLICITOR SHELTON

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1 Q. Well, chemical or --

2 A. Okay. I did a color test. So I started out with a
3 color test and then I also ran --

4 Q. Slow down a little bit. Explain to the jury what a
5 color test is.

6 A. Okay. A color test is where I take a portion of the
7 substance and then I'll add reagents and look for a color
8 change then that color change will give me an idea of what
9 class of compounds I might be looking at.

10 Q. And would that color change or color test be the same
11 thing you use on powder cocaine?

12 A. Yes.

13 Q. Okay. What other test did you use?

14 A. Then I also used an instrumental test.

15 Q. Explain to the jury.

16 A. An instrumental test, I take another portion of the
17 sample, dissolve it in the reagent and then put that on the
18 instrument. It will run the sample and then it will give
19 me some results. From those results, I compare those to
20 known results to make sure I've got what I think it is.

21 Q. Okay. And that's the same test also used on powder
22 cocaine. Correct?

23 A. That is correct.

24 Q. Were there any other tests you ran on this particular
25 alleged contraband?

CYNTHIA MITCHUM: REDIRECT BY SOLICITOR SHELTON
SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 A. No.

2 Q. Do you know how crack is made from your experience?

3 A. Yes. I have a very slight idea of how crack is made.

4 Q. And basically you wind up cooking it don't you?

5 A. That's correct.

6 Q. You stick it in the oven.

7 A. You can stick it in the oven, you can use a microwave.

8 Q. Anything to heat it up?

9 A. That's correct.

10 Q. And that's the final product. Correct?

11 A. That is correct.

12 MR. BROWN: I don't have any further questions.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

16 Q. Ms. Mitchum, in your understanding of how crack is
17 made is water or some other liquid solvent used in the
18 manufacture of crack cocaine?

19 A. Yes, it is.

20 Q. And in your opinion, could that account for why this
21 was wet?

22 A. Yes, it could.

23 Q. In your opinion, did that account for why it's wet?

24 MR. BROWN: Objection, Your Honor. How could she
25 possibly know that -

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1 SOLICITOR SHELTON: I withdraw.

2 THE COURT: I sustain the objection.

3 SOLICITOR SHELTON: I'll withdraw.

4 SOLICITOR SHELTON: Nothing further.

5 THE COURT: All right. You can step down and be
6 excused. We appreciate your time. Thank you.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR SHELTON: Your Honor, the State's next
10 witness is Sergeant John Rainier.

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

13 DIRECT EXAMINATION

14 SERGEANT JOHN RAINIER BY SOLICITOR SHELTON:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. Please identify yourself to the jury.

18 A. My name is John Rainier.

19 Q. And what do you do for a living?

20 A. I'm a police officer with the Rock Hill Police
21 Department.

22 Q. And what rank are you at the Rock Hill P.D.?

23 A. I was promoted to Sergeant in July of 2013.

24 Q. How long have you worked in law enforcement.

25 A. I think I'm on year nineteen right now.

1 Q. And did you work with the Drug Unit for a time?

2 A. Yes, I did.

3 Q. How long?

4 A. A little over five years.

5 Q. And when did you - When was your assignment changed
6 from the Drug Unit?

7 A. July 1st, 2013.

8 Q. During your time with the Drug Unit, did you
9 particular in any investigations involving crack cocaine?

10 A. Yes, sir, I did.

11 Q. Did you investigate any controlled buys?

12 A. Yes, sir, I did.

13 Q. Approximately how many investigations?

14 A. Several hundred probably.

15 Q. Did you have occasion to interview any folks who deal
16 crack?

17 A. Yes, sir.

18 Q. Any addicts?

19 A. Yes, sir.

20 Q. Can you give an approximate number of how many
21 interviews you participated in?

22 A. Probably over a hundred.

23 Q. And in those interviews, were you able to get any kind
24 of idea as to how crack cocaine is made?

25 A. Yes, sir.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. And what is your understanding of how crack cocaine is
2 made?

3 A. Basically the cocaine is mixed with usually water and
4 it's heated up on - in a stove or in a microwave. And
5 usually what they will do is take some other kind of other
6 agent and usually typically baking soda and mix it in with
7 that and then once they are done boiling it, take it off,
8 let it harden to where it turns into a rock form.

9 Q. Sergeant, were you involved in the investigation of
10 Elder Prescott Leach on June 19th, 2013?

11 A. Yes, sir, I was.

12 Q. Are you what's known as the case agent for this
13 investigation?

14 A. Yes, I am.

15 Q. Please explain the role that you had in this
16 investigation.

17 A. We developed a confidential informant and I was pretty
18 much the one that interviewed that informant and basically
19 took kind of care and custody of them and just kind of led
20 the investigation. And then if I ever needed anything, I
21 had two supervisors in that office with me to assist me
22 with whatever I needed.

23 Q. And the confidential informant you are referring to,
24 is that Tezo Ervin?

25 A. Yes, it is.

1 Q. And on June 19th, 2013, did Tezo Ervin indicate to you
2 he could buy crack cocaine?

3 A. Yes, he could.

4 Q. Did he indicate who he could buy it from?

5 A. Yes, he did.

6 Q. Who did he say he could buy it from?

7 A. Elder Leach.

8 Q. And was he searched? Was his person searched prior to
9 going to buy the crack?

10 A. Yes, sir.

11 Q. And where was the search conducted?

12 A. At that time at the Rock Hill Police Department in our
13 Narcotics Bureau office.

14 Q. Who conducted the search?

15 A. I think it was me. Before we left for the buy, it was
16 me.

17 Q. Are you certain that you are the one that conducted
18 the search?

19 A. Yes, sir.

20 Q. Describe the manner in which you conducted the search
21 of Tezo Ervin's person.

22 A. I will - If there weren't any type of outer clothing,
23 jackets or anything like that, I would take it off. I will
24 manipulate the pockets, go through them, and hoodies and
25 stuff like that. Hats, if they're wearing hats, I'll take

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 it off, go around the inter band and then I will kind of
2 section off the person as I search them into quarters and
3 then I will go through their pockets and stuff.

4 If they are a male and they are wearing pants, I will
5 have them unbuckle their pants and shake their pants out
6 real quick to make sure they don't have anything up in
7 their groin area. If they are wearing tennis shoes or
8 boots or anything like that, I'll make them take them off.
9 I'll take the soles - not the soles, but the inner liner of
10 the shoe, take it out and make sure nothing's in there. It
11 is a thorough search but it is minus a body cavity search.

12 Q. I missed that last part. You said you do not do a
13 body cavity search?

14 A. No, I do not.

15 Q. Do you recall what Tezo Ervin was wearing that day?

16 A. I don't.

17 Q. This was June 19th, 2013?

18 A. Yes, sir.

19 Q. Do you recall, was he wearing any outer clothing,
20 shirt, jacket, anything like that?

21 A. I don't think he was.

22 Q. If he had been, it would have been searched?

23 A. Yes.

24 Q. And you testified shoes, socks, pockets, that sort of
25 thing, was all searched thoroughly?

1 A. Right. If - And I forgot to go a little bit further.
2 The socks, I make them take their socks off, produce the -
3 show the bottom of their feet and spread their toes to make
4 sure there is nothing packed up underneath in between the
5 toes or anything like that.

6 Q. And why do you do that?

7 A. Just to ensure that there's a, I guess for lack of
8 term, sterile environment to make sure that he does not -
9 the informant doesn't have any type of contraband to create
10 any issues with our case that we are trying to investigate.

11 Q. Is that one of the outside variables you are trying to
12 account for for control?

13 A. Yes.

14 Q. So you know what he's going in with?

15 A. Yes, sir.

16 Q. And so in those searches, specifically what are you
17 looking for?

18 A. Weapons, any type of illegal narcotics, currency.
19 When we are doing controlled buys, any type of currency
20 that that person is carrying, we will secure because we
21 don't want it to get mixed up with any of the money that we
22 are going to provide them.

23 Q. And when you say secure, what do you mean? Secure
24 their money, what do you mean?

25 A. We'll lock it in a locker or we will hold onto it.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you find anything on Tezo Ervin that day?

2 A. No, we did not.

3 Q. Did you give him any money to buy crack?

4 A. Yes, we did.

5 Q. Did you personally give it to him?

6 A. Yes. I think I did.

7 Q. How much money was it?

8 A. Three thousand, Three Hundred dollars.

9 Q. Will you take a look at State's Exhibit Number Five.

10 Does this appear to be an accurate representation of
11 the money you gave him?

12 (WITNESS REVIEWING STATE'S EXHIBIT FIVE.)

13 A. Yes, it does.

14 Q. And do you give CI's, in particular did you give Tezo
15 Ervin any instructions prior to him leaving for the buy on
16 June 19th?

17 A. Yes, I did.

18 Q. Please explain.

19 A. Because of where we were going, what we call rolling
20 surveillance where we are following the informant, I will
21 tell them to kind of give me updates as to where they are
22 because we're not following directly behind them or
23 anything like that.

24 You know we're a few hundred yards away. We'll be
25 caught up by traffic lights, stop signs, you know, other

1 traffic and stuff like that, so normally I will tell them
2 to call me and let me know where they are because since -
3 because of the nature of this case, we were trying to -
4 There were so many vehicles, I mean, other surveillance
5 vehicles and other officers, I wanted to make sure that
6 they were close by but not directly on top of the
7 informant.

8 Q. And prior to him leaving the Law Center for the buy,
9 is that when the phone call - sometime before that was when
10 the phone call was made?

11 A. To Elder Leach?

12 Q. Yes, sir. That's what I mean.

13 A. Yes, sir.

14 Q. When specifically Tezo called Leach?

15 A. Yes, sir.

16 Q. And that was recorded?

17 A. Yes, sir.

18 Q. And that's State's Number One?

19 (SOLICITOR INDICATED TO STATE'S EXHIBIT ONE.)

20 A. Yeah. Yes, sir. Sorry.

21 Q. And were you part of the surveillance team?

22 A. Yes, I was.

23 Q. During that time were you listening to live audio wire
24 that was on Ervin's person?

25 A. Yes, I was.

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1 Q. Have you listened to the other two recordings in this
2 case, State's Number Two and State's Number Three?

3 A. Yes.

4 Q. And that's the audio/video and then just the audio
5 feed?

6 A. Yes, sir.

7 Q. You've watched and listened to those?

8 A. Yes, sir.

9 Q. And as to the audio, is it consistent to what you
10 heard on the live wire from that day?

11 A. Yes, it was.

12 Q. Did anything out of the ordinary occur during this
13 investigation?

14 A. Other than Mr. Ervin's car kind of overheating, you
15 know, he had to pull over for a minute, everything went
16 kind of according to plan.

17 Q. Did you speak with Tezo Ervin on the phone while he
18 was driving to the buy location?

19 A. Yes, sir.

20 Q. And to be clear, the buy location was where?

21 A. On Wildcat.

22 Q. And is that in Rock Hill?

23 A. Yes.

24 Q. In York County?

25 A. Yes, sir.

1 Q. And what were the nature of those phones calls from
2 Tezo to you?

3 A. I was trying to make sure he was giving me the updates
4 of where he was and stuff like that and he had - one phone
5 call he had called me and told me about a person that knew
6 him had passed by and he thought that that individual was
7 turning around to come check on him, but I guess they
8 didn't. And I was just making sure that he was giving me
9 his updates. I'm a little OCD so I wanted to make sure the
10 case went as smooth as possible, so I called him and he
11 called me.

12 Q. And as for State's Number Two, the video, did you
13 watch that video?

14 A. Yes, I have.

15 Q. Is there a time stamp on that video?

16 A. Yes.

17 Q. Is that - Is it the date and time that's shown on the
18 video?

19 A. No, it's not.

20 Q. Please explain that.

21 A. Our video equipment is kind of sensitive and somewhat
22 fragile unfortunately and if a battery dies during
23 anything, even if it's just in stationary mode that, you
24 know, we're talking about a device that is very, very small
25 and the battery is very small, so it doesn't have a very

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1 long life to it.

2 If the battery dies, it kind of resets and it kind of
3 - and you have to reset it through a program on the
4 computer. The previous night we had used it and I thought
5 it was properly charged and we charged it over night and we
6 had left it on and it had died so we had to go back and
7 recharge it and when it did, it produced a different time
8 stamp.

9 Q. So to be clear, was this investigation the afternoon
10 of June 19th, 2013?

11 A. Yes.

12 Q. And the time stamp on the video is not correct?

13 A. Yes.

14 Q. Did you - Were you part of the take down team at
15 Wildcat?

16 A. Yes, sir, I was.

17 Q. Can you describe what happened?

18 A. Once we had kind of gotten the word that, you know,
19 everything had - the transaction had occurred, we started
20 to move in. Wildcat Creek is kind of a - it's a country
21 road and it's got some turns in it and stuff and the
22 driveway wasn't - it's not like a regular City of Rock Hill
23 type driveway. It's a little bit longer.

24 When I pulled in, I wasn't the first vehicle. I think
25 I was the second or third vehicle, and when we pulled in we

1 had seen Mr. Leach walking from the passenger side of Mr.
2 Ervin's vehicle and he had started to walk towards his -
3 kind of towards his vehicle and then that's when we exited
4 our vehicles. We were pretty close. I mean, we were kind
5 of caravanning kind of close and that's when we got out and
6 effected the arrest on Mr. Leach.

7 Q. In this area of Wildcat, how far from Elk's Lodge is
8 that?

9 A. Quarter of a mile.

10 Q. And just to be clear, where is Elk's Lodge?

11 A. It's off Ogden Road just south of Squire.

12 Q. So it takes a matter of a minute or two to get from
13 Elk's Lodge to where you are describing?

14 A. Yeah, I'd say. Depending upon how fast you were
15 driving.

16 Q. And you had indicated you were the third vehicle that
17 arrived. Are you referencing Drug Unit vehicles?

18 A. Yes, sir.

19 Q. Were there any other vehicles already there that were
20 not Drug Unit vehicles?

21 A. Yes.

22 A. How many?

23 Q. Two.

24 A. And I believe you said that it was Ervin's vehicle and
25 Leach's vehicle?

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1 Q. Yes, sir.

2 MR. BROWN: I'm going to object to the reference to
3 Mr. Leach's vehicle. Nobody's established that.

4 THE COURT: Well he's leading questions too.

5 Rephrase your question. I sustain the objection.

6 BY SOLICITOR SHELTON:

7 Q. How were the vehicles positioned?

8 A. As the drive comes in, it goes towards a residence and
9 the drive - I don't know if it's - it's not like it's a
10 looping driveway. It wasn't a manicured lawn or anything
11 like that. Mr. Ervin's vehicle was parallel with the
12 residence and the other vehicle in question was kind of -
13 looked like it was pointed face in like if you were to
14 drive straight, it would drive straight into the house and
15 it almost in an L - kind of in an L shape I guess.

16 Q. I have a white board here. Do you think it might help
17 to assist the jury for you to kind of draw a rough diagram
18 of what you are describing?

19 A. Yes, sir.

20 Q. If you would, please, step down here while I set this
21 up. You may have to help me with this thing.

22 (WITNESS LEAVES WITNESS STAND.)

23 Q. Let's position it right up here so we can move it
24 further.

25 MADAM COURT REPORTER: Move in close to the mic. Move

1 over close to the over head mic, Mr. Solicitor, so I can
2 hear him. He's gonna have his back to me, please.

3 SOLICITOR SHELTON: Okay. Yea, ma'am.

4 MADAM COURT REPORTER: Thank you, sir.

5 (WITNESS SKETCHING ON BOARD.)

6 Q. Please explain to the jury what this sketch
7 represents.

8 A. This is the - kind of the overall area when Mr. Ervin
9 was talking about the Elk's Lodge where he was kind of - He
10 had to cool his car down he was right here and this is
11 Ogden Road. This is Squire and this is Wildcat. It's not
12 to scale so I apologize. When we pulled in, this right
13 here, the CI vehicle, and this is the unknown vehicle in
14 question. The point is basically the front of the car so
15 that's kind of how they were facing. This is just - This
16 was the residence that - this is the yard that the incident
17 took place

18 Q. So to be clear here, when you arrived and you said you
19 saw Leach walking to the passenger side of this CI vehicle?

20 A. When I saw him, he was about right here at the back
21 quarter panel of the other car and was walking. And we're
22 talking a distance of maybe twenty-five, thirty feet.

23 Q. And was he walking in the direction of the other car?

24 A. To this unknown silver, Volkswagen Passat.

25 Q. And other than the CI and Mr. Leach, were there any

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 other individuals in that general area?

2 A. No, sir... Wildcat, it's a dead end road and it's kind
3 of, you know, there's not very many houses on there. I
4 think may be five or six.

5 Q. All right. Thank you.

6 (WITNESS RETURNED TO WITNESS STAND.)

7 Q. So was Elder Leach arrested that day at Wildcat Creek
8 Road?

9 A. Yes, he was.

10 Q. What happened to Tezo Ervin?

11 A. We handcuffed him and transported him back to the Law
12 Center as well, the Rock Hill Law Center.

13 Q. And did you meet back up with Tezo at the Law Center?

14 A. Yes, I did.

15 Q. After the buy at Wildcat, did you search Tezo again at
16 the Law Center?

17 A. Yes, sir, I did.

18 Q. Did you search him in the same manner as you described
19 earlier?

20 A. Yes.

21 Q. Did you find anything on him?

22 A. No, sir.

23 Q. Did you find any drugs?

24 A. No, sir.

25 Q. Did you find any money?

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1 A. No, sir.

2 Q. Did this entire investigation occurred in York County,
3 South Carolina?

4 A. Yes, sir, it did.

5 SOLICITOR SHELTON: Nothing further.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 SERGEANT JOHN RAINIER BY MR. BROWN:

9 Q. Whose residence was all this happening in front of?

10 A. I don't know, sir.

11 Q. Was anybody at home or do you know?

12 A. No one came outside.

13 Q. Well there was a car in the driveway though wasn't it?

14 A. Yes. Well --

15 Q. Well, two cars there plus two cars in the driveway?

16 A. No. What I remember is two cars, Tezo and then the
17 silver Passat.

18 Q. And there wasn't a car in the driveway?

19 A. Not that I remember.

20 Q. And how far off the road was this particular
21 residence?

22 A. It's kind of a country residence. I mean I'd say --

23 Q. Best guesstimate.

24 A. A hundred and fifty feet.

25 Q. Hundred and fifty feet. And how many -- Wildcat Road,

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN

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1 how many houses, did you say five or ten?

2 A. I'd say less than ten. It's a very - It's a dead end
3 road and it's - I think it's kind of family, you know.

4 Q. Was any cars parked on the road that day or do you
5 remember?

6 A. Not that I remember.

7 Q. Is it unusual for cars to park on that road or do you
8 know?

9 A. Sir?

10 Q. Is it unusual for cars to park on that road. Like
11 people park in front of their houses.

12 A. I think all the times I've been down there, all the
13 cars have been, you know, in a house. They were parked in
14 the yard.

15 Q. You wrote the Summary up for this case did you not,
16 sir?

17 A. Yeah, I did.

18 Q. Do you have a copy of that, sir?

19 A. No, I don't. I'm sorry.

20 Q. Starting on the fourth line to the bottom of page
21 three. "Investigator Gander located a brown paper bag that
22 contained plastic with approximately 90.2 grams of crack in
23 it." Correct?

24 A. I'm sorry. I'm not --

25 Q. Let me show you, sir.

1 A. I'm sorry.

2 Q. Right here. Starting right there. Fourth line from
3 the bottom.

4 A. Yeah. I'm sorry. There you go. Yeah.

5 Q. So State's Investigator Gander located a brown paper
6 bag that contained plastic with approximately 90.2 grams of
7 crack in it. Correct?

8 A. Yes.

9 Q. And you got that weight from, I'm assuming from
10 previous testimony, Officer Faulkenberry?

11 A. Yes, sir.

12 Q. And those are digital scales you use down at the DEU
13 Unit. Correct?

14 A. Yes, sir.

15 Q. And the purpose of these scales - when I say digital,
16 explain to the jury what that means as opposed to the old
17 postal scales or whatever.

18 A. It gives us a digital readout. It's like going home
19 and weighing yourself on your home scale and it's got a
20 digital readout to it.

21 Q. Okay. And they are pretty accurate. Right?

22 A. Yeah. Yes, sir.

23 Q. As a matter of fact, you use these to weigh drugs to
24 charge people?

25 A. Yes, sir.

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1 Q. Based on the weight, they get different charges that
2 carries different penalties.

3 A. That's correct.

4 Q. And you would agree with me the higher the weight, the
5 more higher the penalty?

6 A. Correct.

7 Q. "In the front passenger seat of Leach's Volkswagen
8 Investigator Faulkenberry located approximately 28 grams of
9 crack and packaging material." Correct?

10 A. Yes, sir.

11 Q. Okay. And that again was you got that weight from
12 Investigator Faulkenberry. Correct?

13 A. Yes, sir.

14 Q. And I believe you testified that Mr. Ervin stopped
15 because his car was over heating?

16 A. I'm sorry.

17 Q. You testified that he told you that he stopped because
18 his car was over heating?

19 A. Yeah that and to give us a little bit of time because
20 he had said that Mr. Leach had not --

21 Q. I didn't ask you what he said. Did he tell you that
22 he was stopped because his car was over heating? Yes or
23 no.

24 A. Yes, sir.

25 Q. Okay. And as you testified to, of course, you are not

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REDIRECT BY SOLICITOR SHELTON

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1 right behind him, you're updating. Where are you, what's
2 going on now? Right?

3 A. Yes.

4 Q. And that was the phone calls I heard back and forth.
5 Correct?

6 A. That's correct.

7 Q. All right. As a matter of fact, Mr. Ervin didn't come
8 straight back to the police department from this drug deal
9 did he?

10 A. Uh --

11 Q. He didn't come straight to the police department did
12 he?

13 A. Well, we transferred him back.

14 Q. Well, you didn't go by Jack in the Box first? Didn't
15 one of your officers take him by Jack in the Box and buy
16 him lunch?

17 A. I don't know.

18 Q. Did Officer Holland take him by Jack in the Box?

19 A. He might have. I don't recall.

20 MR. BROWN: I beg the court's indulgence one second.

21 (PAUSE.)

22 Q. You didn't see this transaction, per se, did you
23 yourself?

24 A. The transaction --

25 Q. Between Mr. Leach - Alleged transaction between Mr.

SERGEANT JOHN RAINIER: REDIRECT BY SOLICITOR SHELTON

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1 Leach and Mr. Ervin?

2 A. No, sir. No, sir.

3 MR. BROWN: I have no further questions.

4 REDIRECT EXAMINATION

5 SERGEANT JOHN RAINIER BY SOLICITOR SHELTON:

6 Q. Sergeant, is there a reason under Drug Unit procedures
7 for lack of a better word why you might have taken a detour
8 or Holland might have taken a detour in bringing Ervin back
9 to the Law Center after the buy?

10 A. He was probably hungry if he stopped at Jack in the
11 Box. Originally the deal was suppose to go earlier in the
12 day and it didn't and I didn't want to loose chain and
13 custody of my informant, so I can't speculate on what Vince
14 did, but if he took him to Jack in the Box, I can imagine
15 he was hungry.

16 Q. Let's take a look at State's Number Four real quick.

17 (WITNESS REVIEWS STATE'S EXHIBIT FOUR.)

18 A. Yes.

19 Q. Is there a bag in there? A brown bag?

20 A. Yes.

21 Q. Is it paper or plastic?

22 A. It looks plastic.

23 Q. So when you wrote the Summary, could you have written
24 down the wrong type bag in the Summary?

25 A. Yes.

1 SOLICITOR SHELTON: Nothing further.

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

3 THE COURT: You can step down and be excused. We
4 appreciate - Well, you are the case agent. You can stay
5 here.

6 SERGEANT RAINIER: Yes, sir. Yes, sir, all right.

7 (WITNESS LEAVING WITNESS STAND.)

8 SOLICITOR SHELTON: Your Honor, the State rests it's
9 case.

10 THE COURT: All right. Members of the jury panel, the
11 State has rested it's case and telling us that its
12 presented it's evidence. We're gonna stop for the day.
13 And we've got some legal matters we always have to take up
14 at this point so rather than keep you back in the jury room
15 for a while and also so we don't run into later in the
16 evening, we are going to go ahead and stop and start back
17 at ten in the morning so have a pleasant evening.

18 And you are not in the position yet to make up your
19 mind or discuss the case and don't let yourself be exposed
20 to anything outside the courtroom regarding or even
21 remotely coming close to regarding this case. So have a
22 pleasant evening and we'll see you back at 10:00 a.m. in
23 the morning.

24 (JURY EXITS COURTROOM AT 3:55 P.M.)

25 THE COURT: Anything from the State?

1 SOLICITOR SHELTON: Nothing from the State, sir.

2 THE COURT: Defense?

3 MR. BROWN: Your Honor, at this time at the close of
4 State's evidence I would make a motion for directed verdict
5 on these two charges. Reasonable trier of fact could not
6 conclude that there's evidence here to prove guilty beyond
7 a reasonable doubt on either charge, my first motion,
8 general motion.

9 Second motion is the testimony from the chemist in
10 this case is that the same test that tested positive for
11 crack cocaine is also the exact same test used for powder
12 cocaine. She never differentiated between the two.

13 I asked specifically on cross examination that's the
14 same test used to test powder cocaine. I would move for a
15 direct verdict as to the crack cocaine charges. The charge
16 should be dismissed because nobody has clearly established
17 this is crack cocaine versus powder cocaine.

18 THE COURT: All right. The first motion, I deny. I
19 think there is sufficient evidence from which a jury could
20 reach the conclusion the State has proven beyond a
21 reasonable doubt that Mr. Leach is guilty of one or both of
22 these offenses, so I deny that motion.

23 I thought she testified that this was crack and gave
24 certain weights, grams 38.01, 38 point something and 12
25 point something on the other and I'd have to see a report

1 to see what it says.

2 Could you hand it to me, Mr. Sheldon.

3 She -

4 MADAME COURT REPORTER: The exhibit, States Thirteen,
5 correct, Judge?

6 THE COURT: I have no idea. That's why I asked Mr.
7 Shelton to give it to me.

8 SOLICITOR SHELTON: Okay. Yes, sir.

9 THE COURT: All right. Items of Evidence. Item One,
10 result one is cocaine base a gram of crack. The result two
11 are cocaine base crack. You did ask her that and I
12 certainly think that's fair game to argue to the jury that
13 the State has not proven that it was crack. It may very
14 well just be powder cocaine but I think the evidence from
15 her was that it was crack.

16 I deny that motion also.

17 MR. BROWN: Thank you, Your Honor.

18 THE COURT: And, Mr. Leach, can you hear me?

19 MR. LEACH: Yes, sir.

20 THE COURT: We've reach the point in the trial where
21 you have a right to present a defense if you wish. You can
22 call witnesses on your behalf but you do not have to. The
23 State has to prove your guilt beyond a reasonable doubt.
24 You do not have to prove anything. You are presumed
25 innocent of the charges. I will tell the jury that

1 probably more than once during the - my Charge.

2 You have a right to testify. If you exercise that
3 right and testify, you can be cross-examined.

4 Does he have any impeachable offenses?

5 SOLICITOR SHELTON: Yes, sir.

6 THE COURT: If you testify, you will have to answer
7 truthfully. You would be under oath. The State can ask
8 you about the events of this particular day. They can also
9 use for what's called impeachment, that is, an effort to
10 show that you may not be as truthful as someone who doesn't
11 have a criminal record, to call the jury's attention to
12 certain criminal offenses you have on your record.

13 I'm going to ask Mr. Shelton, the Solicitor, at this
14 time to tell me what they are.

15 SOLICITOR SHELTON: Yes, sir, Your Honor. Some of
16 these are very old indictments so it's kind of hard to
17 engage. In 1992, he was convicted of distribution of crack
18 in the proximity of a park. He was sentenced to fifteen
19 years in prison. I believe that takes it within the ten
20 year frame. I believe if we call it what it is and not
21 reference the sentence based on previous rulings.

22 THE COURT: What was the charge again?

23 SOLICITOR SHELTON: Distribution of crack within
24 proximity of a park and then there is also distribution of
25 crack. He received a twenty year sentence for that in

1 1992. A twenty year sentence on the distribution and it
2 says fifteen years for the proximity charge from 1992.

3 THE COURT: But you know he didn't serve fifteen
4 years. It depends on when his sentences expired and that
5 would be when he maxed out.

6 SOLICITOR SHELTON: Okay.

7 THE COURT: If he maxed out before 2004, May of 2004,
8 then I would say they could not be used.

9 SOLICITOR SHELTON: Okay.

10 THE COURT: And also if it's a prior drug charge, I
11 ask that you not reference it as a drug charge but just as
12 a charge for which you could receive punishment that
13 exceeded one year imprisonment.

14 SOLICITOR SHELTON: Okay. I'd have to do some
15 research, Judge, to see if he had maxed that out or not.
16 That's a potential charge.

17 And then in 1999, he was convicted of possession of
18 crack cocaine, third offense. He received a ten year
19 sentence, subject to the same limitations you discussed.

20 THE COURT: Why don't you look at those. We'll talk
21 about that in the morning.

22 SOLICITOR SHELTON: Okay. Very good.

23 THE COURT: Anyway, they can ask you even if you
24 testify about your prior offenses, if they have occurred
25 within the last ten years and carry more than one year in

1 jail. Or they have what we call an element of dishonesty
2 about it such as stealing or shoplifting or something like
3 that.

4 Now, you have the absolute Constitutional right to
5 remain silent also, Mr. Leach. If you exercise that right,
6 I will tell the jury that you have exercised your right to
7 remain silent and they cannot use that against you in any
8 way whatsoever. They cannot discuss that in the jury room
9 and they cannot factor it into their own deliberations.
10 It is your decision to exercise your Constitutional right
11 to remain silent.

12 Do you understand all that?

13 MR. LEACH: Yes, sir.

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

15 MR. LEACH: No.

16 THE COURT: Now the option to testify or not is
17 your's, it's not your attorney's or - and Mr. Cronin's.
18 It's not the State's, of course. It's not mine. Now you
19 can obtain on break over night, I know it's difficult from
20 where you stand to communicate with others, but you have a
21 right to discuss the case and determine whether or not you
22 wish to testify or not but ultimately it's Mr. Leach's
23 decision.

24 Do you understand that?

25 MR. LEACH: Yes, sir.

1 THE COURT: All right. Well, I'll ask you in the
2 morning. Just so the lawyers can do some planning, its
3 your intention, and if you change your mind one way or the
4 other, but right now so I'll know and be getting ready for
5 tomorrow and the State will know, do you intend to testify
6 or exercise your right to remain silent?

7 MR. LEACH: I'd like to talk it over with my attorney.

8 THE COURT: Okay. You certainly have that right and
9 I'm going to give you that right.

10 But I will go ahead and ask the attorneys if they have
11 any request to charge, please hand them up to me. And on
12 the charge of 28 grams or more, whether there is a lesser
13 included because you charged him with a certain amount.

14 SOLICITOR SHELTON: Your Honor, I do believe that he
15 would be entitled to the lesser included of ten grams to
16 twenty-eight grams, but there is a recent case, I think its
17 *Gore* is what it's called. As long as there is substantial
18 evidence to support the trafficking charge, the defense is
19 not entitled to any possession charges on either of those.

20 THE COURT: I think possession is out. And I knew
21 there was a case. I could not recall whether or not it
22 also dealt with the issue of whether or not if the only
23 evidence, and as to one that was the 38 grams, whether or
24 not since that was the only evidence the jury had to find
25 them guilty or not guilty of that. But we've got a verdict

1 form that includes the lesser and we'll show you that in
2 the morning.

3 SOLICITOR SHELTON: Your Honor, do you want to
4 potentially get together a little bit earlier tomorrow and
5 go over the charge?

6 THE COURT: Yeah. About 9:30, please.

7 SOLICITOR SHELTON: Okay.

8 MR. BROWN: And, Your Honor, for the record, I would
9 request to charge, I would ask that he be charged with
10 simple possession of crack cocaine and simple possession of
11 powder cocaine. Let me withdraw that. I withdraw that
12 because that's not a lesser include offense to simple
13 possession of crack.

14 I would ask that it be charged down to simple
15 possession of crack, for the record.

16 THE COURT: Okay. Simple possession of crack.

17 MR. BROWN: I would ask that it be charged
18 trafficking, lesser include trafficking, PWID, and
19 possession of crack.

20 THE COURT: All right. Well I'm going to ask the
21 Solicitor to give me that case. But I think there is some
22 law on that.

23 SOLICITOR SHELTON: Yes, sir. It's a 2012 case. I'll
24 pull it and bring it to you tomorrow.

25 THE COURT: All right. And we'll get together at

1 9:30.

2 Yes, sir, Mr. Brown

3 MR. BROWN: We will do it at 9:30 tomorrow any
4 additional requests that I have?

5 THE COURT: If you have, yes.

6 MR. BROWN: Yes, sir. I think I'm just going to have
7 one. Excuse me. 9:30, Your Honor?

8 THE COURT: 9:30 in the morning. Have a pleasant
9 evening.

10 (COURT IN RECESS AT 04:10 P.M..)

11 (COURT BACK IN SESSION WEDNESDAY, MAY 14, 2014 AT
12 10:00 A.M..)

13 (STATE VERSUS DAVONTA BLAKE PLEA WITH ATTORNEY TWANA
14 BURRIS.)

15 (COURT IN RECESS AT 10:25 A.M.)

16 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
17 ELDER PRESCOTT LEACH AT 10:30 A.M..)

18 THE COURT: Thank you. Take your seats.

19 You ready to proceed?

20 MR. BROWN: Yes, sir.

21 THE COURT: All right. The first issue is we have a
22 juror who called in sick. We discussed that with Counsel
23 in chambers and my proposal, based on my belief, the juror
24 is being up front with us and she has indicated she has a
25 doctor's appointment tomorrow, could not get one today and

1 will send us a doctor's statement at such time - at that
2 time, but I'm ready to go forward with pulling an
3 alternate.

4 What's the State's position?

5 SOLICITOR SHELTON: Your Honor, I'll leave it in your
6 discretion.

7 THE COURT: Defense?

8 MR. BROWN: Yes, Your Honor. Just draw what we talked
9 about back in chambers.

10 THE COURT: All right. We've got two names and I'll
11 ask, Mr. Kruger, would you please come draw a lot for us?

12 MR. KRUGER: Yes, sir.

13 THE COURT: Thank you. All right. Mr. Kruger has
14 drawn a tightly wrapped piece of paper that says Number 95,
15 Christopher Hilton will be seated with the panel now.

16 All right. We've gone over - The next thing will be
17 the - We're at the point where the Defense has a right to
18 present a defense. Does the Defense intend to call any
19 witnesses?

20 MR. BROWN: Defense rests, Your Honor.

21 THE COURT: All right. Mr. Leach, you exercise your
22 right to remain silent; is that correct?

23 MR. LEACH: Yes, sir.

24 THE COURT: All right. Then, you will have - Go
25 ahead.

1 SOLICITOR SHELTON: Also I would renew my previous
2 motions for a Directive Verdict at this time at the close
3 of the evidence ---

4 THE COURT: All right. That motion -

5 SOLICITOR SHELTON: --- for the record.

6 THE COURT: That motion is denied. I, again, think
7 there is sufficient evidence from which the jury could
8 find, they may not, but could find Mr. Leach guilty beyond
9 a reasonable doubt on one or both of these charges.

10 Now, we have gone over our request to charge in
11 chambers and I think we've got that fleshed out very well.
12 The only issue may be and I've got it resolved, but I want
13 to let anybody put on the record anything they want, the
14 question of whether or not there are any lesser included
15 offenses. I have read the cases handed up by the State,
16 *State versus Gore*, *State versus Brown*, and I think *State*
17 *versus* - and I left them on my desk, and I think *State*
18 *versus Gandy*. Anyway the Defendant ---

19 SOLICITOR SHELTON: Your Honor, I'm sorry to
20 interrupt. The other one was *Sellers*.

21 THE COURT: *Sellers*. The case makes it clear that
22 where the - there is uncontradicted evidence that the
23 amounts of the alleged controlled substance cocaine or, in
24 this case, crack cocaine, exceed the trafficking level,
25 it's uncontroverted that the - there is no lesser included,

1 it's trafficking or not. As to the 28 grams or more, we do
2 have the - I don't know if you call it a lesser included
3 offense, but the jury will be given the option of 28 grams
4 or more or 10 grams or more which have the effect of being
5 somewhat of a lesser included, although I don't know that
6 technically that would be what it's called, but we will go
7 ahead and be submitting that.

8 Anything else on the charge? You got all the verdict
9 forms from the State?

10 SOLICITOR SHELTON: The verdict form, I would just
11 request to take a look at it, consistent with what we
12 talked about and make sure there are two separate forms ---

13 THE COURT: All right.

14 SOLICITOR SHELTON: --- to make sure the indictment
15 numbers are correct.

16 THE COURT: All right. You want to do that?

17 Mr. Brown, you can come up too.

18 MR. BROWN: Yes, sir.

19 (BENCH CONFERENCE OFF THE RECORD AT 10:36 A.M..)

20 THE COURT: The State waive - well, not waive, the
21 State has to open and Defense has a right to close.
22 Anything else before we get the jury in?

23 MR. BROWN: Yes, sir. Your Honor, just for the record,
24 I would also request of the Court, I understand the Court's
25 ruling, I just want to put it on the record, less - I would

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 request that the Court charge lesser-included offense to
2 include possession with intent to distribute crack cocaine
3 on both charges and simple possession of crack cocaine on
4 both charges. I understand the Court's ruling and I just
5 want to put that on the record.

6 THE COURT: Well, I - We discussed that and I think
7 the case is very clear and on the one of 10 grams or more,
8 it would actually not even be possession with intent to
9 distribute. If there was a lesser, it would actually be a
10 distribution because charging that is that the CI was
11 actually handed to - or put into the possession of the CI.

12 SOLICITOR SHELTON: Your Honor, just so the record.
13 That's actually the 28 or more trafficking or distribution
14 level.

15 THE COURT: Oh, the 28 or more. I got it backwards.

16 SOLICITOR SHELTON: Yes, sir.

17 THE COURT: Okay. I'm sorry. All right. Anything
18 else before we get the jury in?

19 SOLICITOR SHELTON: Nothing from the State, sir.

20 MR. BROWN: No, ma'am - No, sir.

21 THE COURT: Bring in the jury.

22 (JURY REENTERS COURTROOM AT 10:39 A.M..)

23 THE COURT: Mr. Hilton, you are an alternate no more.
24 We've lost one juror because she was ill, we're sorry to
25 hear that, so as a result we have seated you and now

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 instead of being an alternate, you are one of the twelve
2 jurors. Ms. Gardner, of course, remains the other -- the
3 only other alternate at this time.

4 The State, as you know, has rested. The Defense has
5 rested and not - as it has a right of not presenting any
6 further evidence by either side, so at this time, the State
7 will open with their closing argument, and then the Defense
8 will have the last closing argument, and then I will charge
9 you the law that you are to apply to the facts of this case
10 as you determine as you determine the facts that do exist.

11 Counsel.

12 SOLICITOR SHELTON: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 SOLICITOR SHELTON: Good morning.

16 Ladies and Gentlemen, Elder Prescott Leach is charged
17 with two separate counts of trafficking in crack cocaine.
18 You're going to hear Judge Hayes explain to you what the
19 charge is and it's this - what the law defines that charge
20 as, and it's this lengthy legalese listing of a set of
21 circumstances, and there is a set amount of weight that we
22 have to prove, but these are two separate charges and they
23 can be broken down pretty simply.

24 First, there is trafficking by distribution, so you
25 have a person who knowingly sells and delivers, or

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 conspires to sell and deliver, 28 grams or more of crack
2 cocaine which is a cocaine base. That's as simple as the
3 first charge actually is.

4 And the second charge is trafficking in crack cocaine,
5 trafficking by possession. A person who is knowingly in
6 actual or constructive possession of 10 grams or more of
7 crack cocaine which is a cocaine base. Again, that charge
8 breaks down pretty simply. There are some legal terms in
9 there that you're going to hear Judge Hayes instruct you on
10 some of the facets, especially with the possession charge.
11 The words knowingly, we - The State always has to prove
12 that Mr. Leach knew what he was doing. That he knew this
13 was crack. And actual or constructive possession, there's
14 two different ways the State can demonstrate he was in
15 possession of both.

16 I'll explain that in a little bit more detail and then
17 at the end, at the close of both arguments, Judge Hayes
18 will instruct you on what the law is on those concepts.

19 And then finally we - So that goes to the possession
20 element and we have to prove the weight element and we have
21 to prove it's crack.

22 So the trafficking by distribution, I argue it breaks
23 down to two key questions: One, was this a drug deal and
24 two, was it Elder Leach? So the first question, was this a
25 drug deal? Yes, this was a drug deal. How do we know?

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 Tezo Ervin told Drug Unit officers he could buy crack. He
2 agreed to work as a confidential informant. Ervin knows
3 who sells it.

4 In this case, he knows that Elder Leach sells it 'cause he
5 says right off the bat, I can buy it from Elder Leach, and
6 he sets up a meeting. He knew Leach's phone number. He
7 called him from his cell phone and that call was recorded,
8 State's Number One, we're going to listen to it in a
9 second, and a meeting was set up at Wildcat and that's
10 where the meeting took place.

11 So Ervin called Elder Leach and set up the drug deal
12 and he testified that's the person that he called on the
13 phone, and you can hear both men's voices on the phone. So
14 that's important. I ask you to pay careful attention to
15 the voices you hear on the call, if you haven't already
16 during the trial, you're going to hear the same voices on
17 the other recordings.

18 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY AT 10:44
19 A.M..)

20 SOLICITOR SHELTON: Ladies and gentlemen, ya'll are
21 the finders of the fact. What you believe is what matters.
22 What you decide the facts are is what matters. My argument
23 to you is that phone call demonstrates that these two men
24 knew each other and they knew each other well enough to
25 where there wasn't a hey, who is this, it was hey, what's

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 happening, man?

2 Tezo Ervin testified he's known Elder Leach for
3 twenty-plus years and he's from Rock Hill. He's familiar
4 enough that he can make a phone call to Elder and Elder
5 knows who's calling. And I'm also going to breakdown my
6 understanding of what that conversation is. Again, you're
7 the trier's of the fact. What you hear, what you decide
8 the facts are is what is important in the trial, but this
9 is my argument as to what that conversation said.

10 The phone call shows it's a drug deal. Leach answered
11 and said, "What's happening?" Not who is this, "What's
12 happening?" Ervin said, "What's going on?" Leach asked,
13 "You ready for this?" "Ready for what?" "The crack."
14 Ervin said, "Yeah, yeah, I'm going to buy the crack from
15 you." Leach said stop -- something about stop by and pick
16 it up and bring it a little closer. Ervin asks, "Where you
17 want to meet," so they're setting up a meeting location.

18 Why are they setting up a meeting location? Cause
19 there's going to be a crack deal. Leach said, "Come to
20 Wildcat and I'll be there in about twenty-five minutes."
21 Ervin said, "All right." And he didn't say where is
22 Wildcat we talking about? He said come to Wildcat, okay,
23 go to Wildcat. Leach asked, "You want the whole three?"
24 Three ounces of crack cocaine as Tezo Ervin testified.

25 Ervin said, "Yeah," and Leach confirmed, "All right.

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 I'll be there in about twenty-five minutes." The deal is
2 struck right there. If that was all the evidence the State
3 had, we've proved that there is a conspiracy to distribute
4 three ounces of crack cocaine, 28 plus grams of crack right
5 there. Ervin confirms it, we got a deal.

6 I beg the Court's indulgence real quick.

7 (PAUSE AT 10:48 A.M..)

8 SOLICITOR SHELTON: All right. Now Mr. Brown may
9 argue to you when it's his time - I don't know what he's
10 going to argue to you, but he may argue some points to you
11 that I'm trying to anticipate. I go first; he goes second.
12 We have to go in some kind of order, so I'm anticipating
13 what he might argue to you about the phone call.

14 He might argue to you that you don't hear the words
15 crack cocaine to that guy that we say is Mr. Leach, that
16 the State says is Mr. Leach on the phone call; therefore,
17 there is just no way we can prove that was a phone call
18 setting up a crack cocaine deal.

19 Think about the words that were used and recall Tezo
20 Ervin's testimony. Look at the circumstances as a whole.
21 This phone call was about buying crack cocaine, in
22 particular about Elder Leach selling crack cocaine to Tezo
23 Ervin.

24 And the slang words they use prove it's a drug deal.
25 Leach asked, "You ready for this?" Ervin says, "Yes." "You

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 want the whole three?" Ervin says, "Yeah." "Come to
2 Wildcat, I'll be there in about twenty-five minutes." "All
3 right." They set up the drug deal during that
4 conversation. They didn't have to spell out what they were
5 talking about, they both knew.

6 This was a controlled buy as you heard the Drug Unit
7 officers tell you. The officers control variables. They
8 control what the CI took to the deal and controlled buys,
9 in general, are they control what CI's take to the deal,
10 the Confidential Informants bring with them. They put
11 audio/video recording equipment in vehicles. Live wire on
12 the person. They do that to monitor what's going on so
13 they know what happened and is happening. And it's also
14 evidence-gathering purposes.

15 And they also search their informants, as well as the
16 cars they take to the buy before they go to the b buy.
17 They're controlling the situation. This is their
18 investigation. They want to know what the informants,
19 their cooperating witnesses, their agents, whatever you
20 want to call them, they want to know what they're taking to
21 the deal.

22 And they give them money to buy the drugs. The
23 controlled buy on this day, June 19th, 2013, Tezo Ervin was
24 the Confidential Informant. He was thoroughly searched
25 before the deal: no drugs, no money, no weapons. Sergeant

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 Rainier told you yesterday he did a thorough search. He
2 described the way he searched him to going all the way down
3 into the liners of his shoes and taking his socks off.

4 Ervin didn't take anything to the deal that they
5 didn't give him, and the only thing they gave him was the
6 money.

7 His car was thoroughly searched twice before the deal.
8 Remember Harrelson talking about that Monday afternoon.
9 The car was in his custody and control, that being
10 Harrelson, prior to the deal; no drugs, no money and no
11 weapons in the car. Ervin was given Thirty-three Hundred
12 dollars by the Drug Unit to buy the drugs. That's all he
13 took with him.

14 And then the same day after the buy, Ervin was
15 thoroughly searched after the deal. He was driven from
16 Wildcat by Officer Holland of the Drug Unit. Searched
17 again by Rainier at the law center and no drugs, no money,
18 no weapons. Ervin's car was thoroughly searched after the
19 deal. Nothing was in plain view in the car per Dantzler.
20 He drove it from Wildcat back to the parking deck across
21 from Rock Hill P.D.. Harrelson was waiting for the car,
22 took possession of it, thoroughly searched the car; again,
23 no drugs, no money, no weapons. He didn't take anything
24 with him other than money, and he didn't come back with
25 anything. He didn't even come back with the money or the

1 drugs, and we'll get to that in a second.

2 And then on top of those, the nature of the
3 investigation and the phone calls, we have the recordings,
4 the audio/video recording and the live wire recording, and
5 we're going to go through some parts of those that are very
6 relevant. The buy video, in general, and you see on the
7 video Tezo's drive into Wildcat and he - he's confirming
8 the meeting location along the way.

9 Now, Tezo stops at Elks Lodge for a minute and he gets
10 out of his car and he opened his hood, and he told you guys
11 all about that. He says he was stalling for time. Rainier
12 says that he had been having car trouble around the time.
13 Whichever one it was, Tezo has testified he didn't recover
14 anything from the outside of his car. Harrelson had
15 checked the trunk of his car in any hidden compartments
16 that there were and there was no - there is no evidence
17 that suggests that he recovered anything from his car
18 during this stop.

19 In fact, the evidence is almost incontroverted to the
20 contrary when you see the buy video. But just keep that in
21 mind. That's the only other thing that could have maybe
22 been the place where Ervin got the drugs, but there is
23 simply no evidence to suggest he recovered the drugs from
24 under the hood of his car.

25 Leach, in fact, meets up - Leach meets up with Ervin

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 at Wildcat. You remember he - Leach says on the video,
2 "You're already here?" Ervin was already at the meeting
3 location when Leach showed up. You see a hand-to-hand
4 exchange of crack cocaine in the grocery bag and money
5 between these two men. You hear Leach and Ervin talk about
6 the crack. Both men appear pleased with the deal and agree
7 things are straight, in their words, everything's good.
8 They're satisfied. The deal has been - has been
9 successful.

10 All right. Here's the video or a clip of the video,
11 States Number Two.

12 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
13 10:54 A.M..)

14 SOLICITOR SHELTON: Now, that video doesn't have the
15 greatest sound, but you can still hear what's going on. A
16 live wire sounds pretty good. You remember that's on Tezo
17 Ervin's person. Let's listen to that same moment in time
18 through the live wire.

19 (AUDIO PUBLISHED TO THE JURY AT 10:55 A.M..)

20 SOLICITOR SHELTON: Now remember the live wire is what
21 the cops were listening to when this was going down. They
22 know Tezo Ervin, so they can hear that that's his voice and
23 you -- you'd already heard Elder Leach's voice on the
24 recording. You actually heard both these men's voices.
25 Think about are those the same voices. Think about the

1 things you hear in the background too. Does that sound
2 like a plastic bag crinkling when he saying, "Oh, that
3 smells good."

4 The evidence that you have before you all supports
5 itself. It all corroborates itself. The Defense, it's
6 their job to attack the State's evidence and they may try
7 to suggest to you that there's all these holes in our case.
8 There's all these inconsistencies. A lot of that I argue
9 to you is just smoke and mirrors. Don't lose sight of what
10 the facts really are.

11 And, again, I don't know what Mr. Brown is going to
12 say in his argument, but I'm anticipating he may argue
13 something like this. We don't see any crack on that video.
14 We don't see who the guy who they say is my client, Mr.
15 Leach, handing the crack to that other guy who they say is
16 their informant Mr. Ervin. We don't see that with our own
17 eyes, so the State just can't prove that it's a drug deal.

18 Well, folks, that ignores, completely ignores, if that
19 is his argument, what the video does show. The video does
20 show a big plastic brown grocery bag of crack, State's
21 Number Four. And you're going to have a chance to look at
22 this back in the jury room. You're going to get a chance
23 to take a good look at this brown plastic grocery bag.

24 And look right here. That's it right there on the
25 video. It ignores the fact that you got Mr. Leach passing

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1 the drugs across the passenger side to the driver side
2 where Mr. Ervin is sitting, and Mr. Ervin, with a wad of
3 money in his hand to exchange and he gives it to Mr. Leach,
4 and Mr. Leach counts it and Mr. Leach is happy, 'cause he
5 got all of his money.

6 Leach had actual possession of that bag of drugs. It
7 was in his hand. He knowingly and intentionally possessed
8 it. He possessed it to sell it to Ervin, and he exerted
9 control over it by selling it to Ervin..

10 So let's break down the conversation during the deal
11 and again, this is what I'm arguing to you is on those
12 videos and that audio recording. You are the trier's of
13 fact. You have to listen to it and gauge for yourself what
14 you heard. This is my argument as to what takes place.

15 Ervin asked Leach, "How's everything look?" We got a
16 deal struck.. "Everything good?" Leach replies, "We
17 straight." We're good. Everything's as we agreed on.
18 It's all like we said it would be. Ervin said, "it look
19 good. Oh, she smells good."

20 Now, he used some different words that I'm not going
21 to repeat, 'cause what's the point, but this is the time
22 that he's checking the bag; looking inside that grocery
23 bag. Now, remember he testified that he looked inside the
24 bag and in his experience, he has experience with crack.
25 In his experience, that was crack and he believed that he

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1 got what he was paying for. And, in fact, he's excited
2 about it. This smells great. And Leach, after counting
3 his money that he got from Ervin, is happy, too.

4 Everything's straight.

5 Let's talk about the brown grocery bag that's in --
6 that's in State's Number Four here. The brown grocery bag
7 with 28 grams of crack in it that Leach handed to Ervin
8 during the deal is the same brown grocery bag with 28 grams
9 of crack in it that Ervin sat down outside of - outside of
10 his car at the bust when the cops moved in. And it's the
11 same brown grocery bag with 28 grams that Investigator
12 Ervin[sic] recovered from right outside of Ervin's vehicle
13 a couple of feet outside of the vehicle when she arrived on
14 the scene to help recover the evidence.

15 And this is all in a very short period of time. You
16 can hear from the recordings the bust is going on. You can
17 even - you can hear what I believe is a female voice
18 shouting, a little bit octave above, "Get down on the
19 ground." And Officer Danzler is a female, remember? And
20 so here we go again. This is - it's the same bag that is
21 in evidence. It's the same bag that had the crack in it.
22 This wasn't an innocent meeting. It was a crack cocaine
23 deal. And all of the evidence the State has presented to
24 this effect is consistent with itself. There is nothing
25 that contradicts itself.

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1 You're going to hear talk about the burden of proof
2 and that's a very, very important concept. It's one of the
3 bedrock principles of our legal system. And you're going
4 to hear legal phrases like proof beyond a reasonable doubt
5 is the kind of proof that leaves you firmly convinced. The
6 flip side proof that doesn't rise to the level of beyond a
7 reasonable doubt is the type of doubt that would cause a
8 reasonable person to hesitate to act. What both of those
9 concepts are not is proof beyond any and all doubt.

10 There is no - There are very, very few things in this
11 life that are absolutely certain and the criminal justice
12 system does not require the State to prove the elements to
13 you beyond any and all doubt beyond - to every degree of
14 certainty. We must prove it to you beyond a reasonable
15 doubt. We must leave you firmly convinced and that is what
16 the evidence shows.

17 Let's talk about the buy money real quick. Drug Unit
18 officers gave Ervin the Thirty-three Hundred dollars buy
19 money - buy money at the Law Center before he went to the
20 deal. Ervin handed Leach the stack of money in exchange
21 for the grocery bag of crack. You saw it on the video.
22 Leach counted the money and said it's straight. You see
23 that on the video and hear it on the audio feed as well.

24 Leach threw down the money at the bust. Faulkenberry
25 saw him do it. Faulkenberry recovered the money on the

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1 ground behind Leach's car, the car he was walking towards
2 at the - at the bust; the only other car that was out there
3 other than Ervin's. And those are the only two men that
4 were out there. Faulkenberry compared the serial numbers
5 from all the bills that he collected that were recovered
6 from this investigation. Photo - they had - photocopies
7 had been taken before it was given to Ervin. Remember,
8 State's Number Five? He compared all the bills and all of
9 the money was accounted for.

10 So even if Elder - Even if Elder did give Tezo Three
11 Hundred dollars back as Tezo testified his recollection was
12 of events that occurred almost a year ago, and what he put
13 in his statement to the police, Mr. Brown fleshed that out
14 on cross-examination. Even if that's true, and Tezo didn't
15 deny that being in his statement, he said that's what
16 happened. So even if that's what happened and Faulkenberry
17 only picked up Three Thousand dollars of the buy money that
18 Leach threw down on the ground at the bust, all the money
19 as accounted for at the end. So if there is that extra
20 Three Hundred dollars that Ervin remembers setting down
21 because Leach gave back to him, that - if that's not - if
22 that wasn't recovered from what was on the ground, it's
23 still accounted for on the back end.

24 What I'm getting at is, Tezo Ervin didn't keep any of
25 the money. All the money was accounted for and it was

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1 returned to the Feds. And the money in the video is the
2 same money in State's Number Five, the photocopies.
3 Faulkenberry counted - looked - compared every single
4 serial number and he counted it even on the stand. You saw
5 him go through and count it all out to make sure that those
6 photocopies were - the photocopies were accounting for
7 everything that he'd already counted during the
8 investigation.

9 All right. There is some discrepancy about weight in
10 this case and, again, I anticipate Mr. Brown may argue to
11 you that the weights are off, therefore, the State's case
12 fails, 'cause you heard - you heard him talk about a
13 three-ounce deal, 90 grams being weighed at the Drug Unit
14 and Ms. Mitchum weighed it at 38 grams in her laboratory.

15 There is a reasonable logical, consistent explanation
16 for those weights. First off, the - what the law requires
17 in the trafficking by distribution charge, it requires the
18 State to prove a quantity of crack cocaine was involved in
19 that charge and the quantity was in excess of 28 grams. It
20 doesn't say 90 grams. It doesn't say 38 grams. It says 28
21 or more. So even with the lowest weight we have evidence
22 of, the 38 grams, the State has met that element of the
23 distribution and trafficking charge.

24 And there is a logical reason why the crack that was
25 sold from Leach to Ervin weighed less when Ms. Mitchum

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1 weighed it. She had to dry it out first. Remember her
2 testimony about that? And the evidence present - presented
3 about these drugs, none of it contradicts itself. It all
4 makes logical sense. Water is used to make crack. Ms.
5 Mitchum is familiar with the basic concepts and Sergeant
6 Rainier has interviewed people who make, sell, or use crack
7 and he's testified in his experience water's used to make
8 crack. Crack in State's Number Four and Number Ten,
9 according to Ms. Mitchum, was too wet to test without
10 drying. She described it as I remember, what you remember
11 is what's important, she described it as it was more like
12 cake batter when she opened the evidence bag initially to
13 get it out for testing. So she had to dry it out in order
14 to be able to test it, to confirm it is what it is, 'cause
15 that's one of the things we have to prove that it is, in
16 fact, crack.

17 Tezo Ervin believes it's crack. Elder Leach believes
18 it's crack. All the cops believe it's crack. Unless we
19 have somebody who comes in on that witness stand as an
20 expert witness, a chemist, Ms. Mitchum, to say yes, I
21 tested it, I tested it in a matter that I always test
22 drugs, the way I'm trained to do, and I can confirm it is
23 crack cocaine and crack cocaine base, we can't prove that
24 element. She said that it is crack cocaine and all the
25 other evidence supports that conclusion.

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1 And she weighed it after she tested it, so she weighed
2 it after it was dried out. Of course, it's going to weigh
3 less. It was wet. Water has weight. The Drug Unit
4 weighed it. They're estimate weights, but it corroborates
5 90 grams, three ounces. That's pretty consistent. Their
6 scales are still accurate. They're used to determine
7 appropriate charges. Mr. Brown fleshed out that that's
8 important. And Faulkenberry testified he weighed the wet
9 crack before it was dried out by Mitchum prior to testing.
10 He weighed it before he sealed those evidence bags on June
11 19th, 2013, and his weights at the Drug Unit for State's
12 Number Four, the distribution crack, the 90.2 grams and
13 State's Number Ten was 28 grams.

14 All right. There's another angle you can analyze the
15 trafficking by distribution charge on. The conspiracy
16 angle. Remember when I talked to you a minute about the
17 phone call, the deal is struck in the phone call. A
18 conspiracy is an agreement or an understanding or a deal.
19 The agreement, the conspiracy between Leach and Ervin was
20 for three ounces of crack, the whole three and there is a
21 conspiracy element in the trafficking charge. The amount
22 of the money paid Thirty-three Hundred dollars shows both
23 Leach and Ervin were dealing with - were dealing for three
24 ounces of crack, both were satisfied with the deal. It was
25 straight. Neither one of them felt like they had been

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1 ripped off. And namely Ervin didn't feel like he'd been
2 ripped off. He was excited.

3 Ms. Mitchum testified it is crack cocaine. She was
4 qualified as an expert in the field of chemical and drug
5 analysis by identification. She's been certified trained.
6 She has years of experience, has testified thousands of
7 samples. She's testified in court, I believe she said,
8 roughly two hundred times. She tested the substances in
9 both numbers four - State's Number Four and Number Ten, and
10 her testimony was she confirmed both as being crack
11 cocaine. Crack cocaine is a cocaine base. She used the
12 appropriate testing methods. She followed her procedures,
13 and she prepared a report of her findings, State Number
14 Thirteen.

15 Now, Mr. Brown may try to confuse you with some talk,
16 if you remember on cross-examination, he was trying to say,
17 well, did you use the same test that you use for powder
18 cocaine. So he may try to argue to you that somehow that
19 invalidates Ms. Mitchum's procedures, somehow that it
20 invalidates her testimony.

21 Her testimony was she tested the substance the way she
22 would test it. It was suspected to be crack cocaine. She
23 used the proper procedures and methods that she was trained
24 to do, and it tested positive as crack cocaine which is a
25 cocaine base. Simply because she could have used the same

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1 test for crack as she would for suspected powder cocaine
2 does not discredit that. Her testimony, her conclusions
3 were definitive. She definitively found this was crack
4 cocaine in both State's Number Four and State's Number Ten
5 and she prepared a report of her findings.

6 This is in evidence for you to review. State's Number
7 Thirteen, Item Number 1, rock substance. Result One,
8 cocaine base, crack. Found total weight, 38.03 grams or
9 586.80 grains and it's a Schedule 2 - C-2 of the controlled
10 substance Schedule 2, and so that's the distribution weight
11 that was the 90 grams dried out weighed 38 grams.

12 Item Number 2, the trafficking by possession that
13 we're going to talk about in a second. Rock substance,
14 result, two cocaine base, crack. Found total weight 12.55
15 grams or 193.64 grains and, again, it's a controlled
16 substance in Schedule 2. She signed it, she dated it --
17 she dated when she reached these conclusions and has
18 prepared this report, and it's been admitted as evidence
19 for your consideration, and I argue to this. I argue to
20 you this is definitive proof that what we're talking about
21 is crack cocaine.

22 You heard mentioned throughout the testimony of the
23 officers had to say it was the substance they believed to
24 be crack cocaine. You know, it appeared to be all that
25 stuff. And that's important, because they're not trained

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1 chemist like Ms. Mitchum is, and Ms. Mitchum is a trained
2 chemist, she says it's crack cocaine. There is simply no
3 evidence to contradict that.

4 Okay. Question Number Two. Was this Elder Leach?
5 Take a look at the video and take a look at that man
6 sitting right there who was identified by a number of
7 people in this courtroom, Tezo Ervin, Mr. Faulkenberry.
8 And there is no question, the same features, the same
9 appearances. There's no question it's the same man that I
10 argue to you but that's for you to consider. You're going
11 to hear Judge Hayes charge you on the law of
12 identification, so I ask you to pay attention to that.
13 But that's one thing you have to decide in your
14 deliberation. But, again, I don't think that's really in
15 dispute.

16 Ervin testified he's known Elder for twenty-plus
17 years. He knows him on sight. He pointed him out in the
18 courtroom. Faulkenberry knows him and pointed him out in
19 the courtroom, and you saw him with your own eyes
20 throughout this trial and you can look at him right now.

21 Okay. Trafficking by distribution. Let's put this
22 charge to the side and we can argue on this one. Yes, it's
23 a crack deal involving 28 grams. Yes, it's Leach who sold
24 the crack. Yes, Leach is guilty of trafficking crack 28
25 plus grams.

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1 Let's talk about the trafficking by possession charge.
2 It's almost like this was a separate investigation in a
3 way. Leach told Ervin, "I got thirty, expletive, grams of
4 this stuff left. I got it in the hole waiting on you."
5 What's he talking about? He's talking about crack. In
6 what other context can you take that in? They're - they
7 are involved - they had just completed a crack cocaine
8 deal. It's obvious he's talking about crack, the extra
9 crack he's trying to sell to Ervin. He's trying to make an
10 additional deal. He's got crack he wants to get rid of.
11 He doesn't like it. A lot of people don't like it; some
12 people do, most people don't.

13 He might make Three or Four dollars out of it. Three
14 Hundred dollars, if Ervin, his recollection was correct,
15 the Three Hundred dollars that Leach had set back down for
16 him. Leach may get it right back if he can make this deal.
17 And Drug Unit officers found 10 plus grams of crack
18 cocaine, packaging materials in the front seat of Leach's
19 car in plain view. And plain view obviously means, you
20 look in and you can see it without having to move things
21 around if you look in and you see it just by looking in.

22 Oh, I forgot one thing I needed to talk to you about.
23 Before we get much further here, I'm going to back - I told
24 you I was done with the distribution and trafficking
25 charge, and I apologize, I need to talk with you about Mr.

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1 Ervin for a minute.

2 Yes, Tezo Ervin has a criminal record. He was in
3 possession with intent to distribute marijuana in 2001. He
4 was in possession with intent to distribute crack in 2002.
5 He was in his early twenties. That was twelve years ago.

6 He is currently indicted on drug charges. He's
7 indicted for trafficking crack, third offense. It carries
8 twenty-five to thirty years, mandatory minimum, no parole.
9 He's indicted for manufacturing crack, third offense. It
10 carries ten to thirty years, no parole. He's indicted on
11 two counts of either manufacturing or what's possession
12 with intent to distribute, but it goes with the trafficking
13 charge of crack within proximity of a school or park and
14 both of those charge carry - both of those charges carry up
15 to ten years.

16 And he's indicted of possessing a weapon while he had
17 trafficking weight of crack and that carries five years.
18 Tezo Ervin could be looking at a lot of prison time if he's
19 convicted on those pending charges. Now, there was some
20 back and forth over, you know, consecutive sentencing and
21 concurrent sentencing. The fact of the matter is however
22 you want to slice it, five, ten, twenty-five years until
23 he's eighty-four years old is prison time. It's a lot of
24 time he's looking at. No question.

25 But just because he may have had reason to lie does

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1 not mean he did lie. Tezo Ervin tried to help himself out
2 by working as a Confidential Informant with the Drug Unit.
3 He testified that he went in and talked to them about
4 working almost immediately after he was arrested I believe
5 his testimony was. Who can blame him? He's looking at a
6 lot of prison time and he's been in trouble before. Who
7 can blame him for trying to help himself out. He was not
8 promised anything. He was not threatened in any way.

9 He hopes to get credit on his charges, but he's been
10 guaranteed nothing. He told you yesterday morning, he
11 thinks about these charges every day. He hopes to get a
12 benefit on it. Who wouldn't? But he's not been promised
13 anything or threatened anything.

14 And recall, these charges are pending on Tezo Ervin.
15 He is innocent until proven guilty. Tezo Ervin has an
16 absolute constitution right to not incriminate himself
17 regarding those charges, the Fifth Amendment. Tezo Ervin
18 invoked the Fifth Amendment when Mr. Brown tried to get him
19 to admit to the charges. That's his right. He has an
20 absolute right in this country under the Constitution to
21 not incriminate himself. Please do not hold that against
22 him for exercising his right. Tezo Ervin will get his day
23 in court. That day is not today. You don't even know
24 anything about that case. You just know that he has
25 pending charges.

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1 And, folks, the Drug Unit cannot send a school teacher
2 to buy crack cocaine. It'd be wonderful if we could bring
3 in an informant that had no record but that's simply not
4 the reality of the situation. You heard Officer Harrelson
5 explain that Monday afternoon. It takes a person who's
6 used to this kind of stuff, who knows the language, knows
7 the people involved. That's the kind of person that is
8 able to buy drugs as an undercover agent.

9 Harrelson explained, "Drug Unit officers sometimes go
10 undercover to make buys, but this is a small community."
11 York County, Rock Hill, these are relatively small
12 communities. People know each other. These officers are
13 out working every day. They could easily be made or be
14 identified and have no success. They'd just be wasting
15 their time. They have to utilize people like Tezo Ervin.

16 What's very important, if you haven't already
17 comprehended this, Tezo Ervin's testimony does not stand on
18 its own. The State's evidence supports it and State's
19 evidence corroborates it. You don't have to believe
20 Ervin's testimony by itself. Everything was recorded. The
21 case is consistent. Everything supports itself including
22 Tezo Ervin's testimony and the other way around from the
23 inside and the out.

24 The Drug Unit does not base its investigations on the
25 word of a Confidential Informant alone. That's one of the

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1 reasons they wire the informant. That's one of the reasons
2 they record everything that happens and listen in on a live
3 audio feed, and that's one of the reasons they search the
4 CI's before and after the buys.

5 The police want to make sure their CI's are on the up
6 and up. They want to make sure they have a chance to make
7 - they don't have a chance, the CI's, don't have a chance
8 to make something up, fabricate it, whatever.

9 They want to make sure they're perfect - in control of
10 their investigation. And in this case, there is simply no
11 evidence that Tezo Ervin did anything other than what the
12 Drug Unit officers asked him to do. This was a controlled
13 buy. He didn't take anything to it. He didn't try to
14 sneak anything to the buy. He stayed in touch with the
15 officers as he was supposed to, as he was instructed to do,
16 checking in with Rainier.

17 Rainier said he's a little OCD on that kind of stuff,
18 but they're checking in. The police have eliminated all of
19 the other variables that could cast doubt on the
20 distribution - trafficking by distribution. It's a clean
21 buy.

22 And, in fact, Ervin was told not to stop and meet with
23 anybody or do anything. He called Rainier just 'cause he
24 saw somebody that might have recognized him. He was
25 talking about some guy's sister that he saw, and he's

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1 checking in with Rainier just to make sure he knows what's
2 going on.

3 Okay. Let's get back. Stay with me and let's flip
4 you back to the trafficking by possession charge. All
5 right. The weight of that crack was in dispute. Remember,
6 again, Ms. Mitchum's - or the Defense may argue it's in
7 dispute. There's some evidence - What I'm saying is, the
8 crack was very wet. Ms. Mitchum had to dry it out and
9 weighed it after testing after drying it out. Drug Unit
10 weights are estimates, but their estimates were the weight
11 of the wet crack before it was dried out.

12 Leach said he had it set aside for Ervin. He wanted
13 Ervin to buy it. It was packed for sale. There were
14 scales and packaging material in the front seat of Leach's
15 car. He said it was 30,31 grams, I think something he was
16 talking about. The Drug Unit estimated the weight at 28
17 grams. That's pretty close. That's consistent and - Oh,
18 I've already got there. Here's the - Let's look at the
19 video and listen to the audio one more time about the drugs
20 that were set aside.

21 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY AT 11:23
22 A.M..)

23 SOLICITOR SHELTON: All right. And then let's listen
24 to that same moment in time on the audio feed just so it's
25 a little clearer audio. Again, this is what the cops were

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1 listening to.

2 (STATE'S EXHIBIT THREE PUBLISHED TO THE JURY AT 11:24
3 A.M..)

4 SOLICITOR SHELTON: So what's he talking about? He's
5 talking about the evidence that's in plain view in the
6 front seat of his car, the silver Volkswagen. The car, the
7 sedan, the only other vehicle at Wildcat. It was not a
8 Drug Unit vehicle, there were other Drug Unit vehicles that
9 pulled in. Ervin said he was - Ervin was already there.
10 Leach pulled up in that car. They're the only two men that
11 are there before the Drug Unit officers get there. No one
12 came in with Leach. No one else is present. No other cars
13 parking on the road or in that driveway.

14 Gander secured Leach's vehicle after she saw the drugs
15 in plain view on the seat. She didn't disturb anything.
16 She drove it right back to the law center. Faulkenberry
17 took the photographs, State's Six, Seven, Eight and Nine.
18 Collected the evidence, weighed it, sealed it for Court and
19 that's State's Ten.

20 Mitchum tested those drugs positive as being crack
21 cocaine, which is cocaine base. Her weight after drying
22 and testing was 12.55 which is in excess of 10 grams. And
23 here are those pictures, State's Number Six, crack, crack.
24 There is State's Seven, closer up to the crack. And you
25 look at this, but I argue this looks like the cover to the

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BY MR. BROWN

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1 scale that they found and you'll be able to look at the
2 wording on there. What I see is "turn off the scale.
3 Press and hold the" something "keys at the same time" and
4 that's the instruction, the cover for the scale is what it
5 appears to be to me.

6 The pictures speak for themselves. There's the other
7 crack sitting on the front seat closer to the back of the
8 seat. There's the console and the drugs are down here and
9 there is that scale with some sort of residue on it.

10 MR. BROWN: Objection, Your Honor.

11 THE COURT: I sustain the objection. Just let the
12 jury determine what the pictured shows.

13 SOLICITOR SHELTON: Yes, sir.

14 Yes, it's 10 plus grams of crack. Yes, it was in
15 Leach's car, and yes, Leach is guilty of trafficking in
16 excess of 10 grams.

17 Ladies and gentlemen, Mr. Brown will now have a chance
18 to talk to you. I ask you to pay careful consideration to
19 him. Remember, it's his job to try to attack the State's
20 case. It's your job to decide the facts and you have to
21 decide them unanimously beyond a reasonable doubt. All
22 twelve of you jurors have to agree beyond a reasonable
23 doubt to all the elements that are listed and all the
24 things you're going to hear Judge Hayes reference that are
25 matters of law related to the elements. At the end of the

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1 day when you've done your duty, you fulfilled your oath, I
2 am confident you will render a verdict that speaks the
3 truth and that's guilty of both charges as charged.

4 MR. BROWN: May it please the Court.

5 Ladies and gentlemen of the jury, before I give you my
6 view of the evidence, I again want to thank you for being
7 on jury duty. As I said in my opening statement, jury duty
8 may be a very inconvenience or inconvenience for you. Some
9 of you may or may not want to be here, but like I said in
10 my opening statement one of the best civic duties you can
11 do.

12 Before I go into my view of the evidence, I'm going to
13 refer back to something I said in my opening statement. If
14 you recall, I compared civil law versus criminal law. We
15 have two forms of law in this country. They are really
16 quite simple.

17 Civil law occurs when someone sues someone for
18 economic gain. In that case, we have a general rule of
19 evidence called preponderance of the evidence where both
20 sides are required to present evidence.

21 What happens there is you believe one side, fifty-one
22 percent versus forty-nine percent, you vote that way.

23 Criminal law is very completely different. And please
24 pay close attention when Judge Hayes charges you with the
25 law in this case because it becomes your job at that point

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1 in time to apply the law to the facts as you decide them to
2 be. Not what I think they are, not what Mr. Shelton thinks
3 they are, but what you thirteen decide them to be.

4 It's almost like a mathematical formula. Decide what
5 the facts are and apply it to the law.

6 Unlike civil law, criminal law is completely
7 different. Anyone charged with a crime including the
8 context of this case, the State, through Officer Rainier
9 and Matthew Shelton has made an accusation of two counts of
10 trafficking against Mr. Leach. When that occurs, we have
11 some cardinal bedrock principles of law that are applicable
12 whether it be in this courtroom or any other courtroom
13 throughout the United States and all the way up to the
14 Supreme Court.

15 The first one is that anyone charged with a crime is
16 presumed innocent. Right now, Mr. Leach is innocent. That
17 presumption of innocence is as strong and real as any fact
18 that you believe beyond any doubt that you've heard in this
19 courtroom. And he stays innocent only until such time as
20 the State has brought before you believable, credible
21 evidence to convince you to a certain standard. Listen
22 closely to what that standard of burden of proof is because
23 they carry this burden of proof.

24 Unlike a civil case, a defendant in a criminal case
25 has to prove nothing. They carry the sole burden of proof

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1 and that proof is not by the preponderance of the evidence,
2 it's not proof to a reasonable doubt, it is proof beyond a
3 reasonable doubt. Please listen closely when Judge Hayes
4 defines what a reasonable doubt is.

5 A reasonable doubt is the kind of doubt that would
6 cause a reasonable person to hesitate to act. It is
7 evidence that leaves you firmly convinced of someone's
8 guilt.

9 What is a reasonable doubt? A doubt that would cause
10 you to hesitate to act. To put it in the context of this
11 case or any other case, if you are hesitating or thinking
12 twice about voting for a conviction, that is a reasonable
13 doubt because you are hesitating. And if you've got
14 hesitation in your mind, that is reasonable doubt, and Mr.
15 Leach is entitled to a verdict of not guilty.

16 Likewise, if you have no doubt, no hesitation, your
17 obligation and duty is to return a verdict of guilty.

18 The specific charge in this case is two counts of
19 trafficking. I'm going to deal with them factually as we
20 went through the testimony chronologically. And he is
21 correct in his definition of trafficking.

22 And the first one is he's alleging conspiracy and the
23 actual distribution of crack cocaine. And the second one,
24 he's alleging constructive possession of crack cocaine.

25 The first one as you all know by now, is the alleged

1 deal between Mr. Tezo Ervin and Mr. Leach. And the second
2 one is the drugs found in the Volkswagen automobile at the
3 scene.

4 The Judge is also going to charge you about certain
5 kinds of evidence and under the law, there's two forms of
6 evidence.

7 One is direct, you see it. And the other one is
8 circumstantial evidence. And circumstantial evidence
9 applies in this case because the simple fact is they are
10 trying to get you to believe a certain set of facts
11 occurred with no other possibilities. And circumstantial
12 evidence, every event must lead to a logical conclusion.
13 If there is another answer, another conclusion, then you
14 must return a verdict of not guilty.

15 If the circumstances merely portray the defendant's
16 behavior suspicious the proof has failed. The State has
17 the same burden of proof to be guilty beyond a reasonable
18 doubt whether it be circumstantial or direct evidence.

19 He is also going to charge you constructive
20 possession. And why is that important in this case? It's
21 the card, the second charge, the alleged ten to twenty-
22 eight grams found in the Volkswagen. Nobody had that in
23 their possession.

24 Your Honor is going to charge you what constructive
25 possession is. And he's also going to tell you that the

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1 mere presence at the scene of a crime is not enough. They
2 must show that Mr. Ervin had dominion and control over that
3 crack in the Volkswagen.

4 Let's go through the testimony in this case and if I
5 misquote any of the testimony you thirteen remember it as
6 you heard it because there's thirteen of you all and one of
7 me and my memory is not perfect compared to your's.

8 The first witness was Officer Leland Harrelson of the
9 Drug Unit. He testified that he installed the camera, also
10 the listening device on Mr. Ervin. He also testified that
11 he searched the car and I asked him in great detail about
12 that search. He said he searched the trunk. He said he
13 searched the back of the car and the front of the car.
14 What's the one place he didn't search? He didn't search
15 under the hood. We'll come back to that. But you heard
16 the testimony. Didn't search under the hood.

17 And then the next witness we have is Mr. Tezo Ervin.
18 His career is dealing and selling crack cocaine. You know,
19 thirty-one years in this business, it always kind of amuses
20 me. The State wants to bring him in here dressed up and
21 serve you Boone's Farm and tell you its Dom Perignon.

22 I don't know if any of you all remember the episode of
23 Andy Griffith show, there was a character in that show
24 named Ernest T. Bass. And he would come down out of the
25 mountains every so often and throw rocks through windows.

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1 In one episode Andy and Barney decided they were going
2 to fix Ernest T. up and take him to Ms. Wiley's social.
3 And they dressed him up and got him prettied up and took
4 him there and for the first half of the social, he was
5 fine. How do you do, Mrs. Wiley. Thank you very much,
6 Mrs. Wylie.

7 Well eventually, his true colors came out. He threw a
8 rock through the window, grabbed the woman and hauled her
9 outside and threw her in the bushes. My point is, the
10 State's doing the same thing to you with Tezo Ervin. They
11 are trying to tell you that Boone's Farm is Dom Perignon.

12 I'm not going to sit here and insult your intelligence
13 because his record speaks for itself. The man is a career
14 criminal. Would you believe this man, beyond a reasonable
15 doubt, of anything he told you? Would you believe him
16 beyond any doubt that would cause you to hesitate to act?
17 Think about it. Of course you wouldn't.

18 He has prior convictions. Possession with intent to
19 distribute crack, third offense, 2001. Habitual traffic
20 offender, possession with intent to distribute crack in the
21 proximity of a school or a park, meaning where kids are.
22 DUS, driving under suspension. Possession with intent to
23 distribute marijuana. And what's he got pending?
24 Trafficking crack, not first offense, not second offence.
25 Third offense. Manufacturing crack. Possession with

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1 intent to distribute crack in the proximity of a school.

2 Manufacturing crack in the proximity of a school.

3 Possession of a pistol.

4 At a bare minimum, at a bare minimum if he got
5 concurrent sentences as Mr. Sheldon pointed out, he would
6 be coming out at sixty-four. If he's convicted of
7 everything, he will be coming out in a box or if he lives
8 to be that old because the total number of years he is
9 looking at is seventy-five. Unless he is going to live to
10 be a 109, he is coming out in a box.

11 If you don't think he wouldn't say or do anything
12 under this sun to get out of that trap he would, he would,
13 and the State's case turns on him.

14 Now they can talk about all the surveillance and all
15 the stuff they did. Oh, and one last thing about that.
16 You know, it's kind of funny he wants to come in here and
17 yes this is what happened, this what happened, but his own
18 involvement with crack, I'm going to take the Fifth, which
19 is his right. Which is his right. But if you are going to
20 become a good guy and a reformed citizen, come in here and
21 tell the whole truth. Don't hide behind, which it is his
22 Constitutional right to hide behind the Fifth Amendment.
23 They didn't know exactly what you all did - what he did.
24 Tell you all what he did and he won't do that. He's
25 hiding.

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1 SOLICITOR SHELTON: I'm going to object, Your Honor.

2 THE COURT: What's the objection?

3 SOLICITOR SHELTON: He has the Fifth Amendment right
4 to remain silent.

5 MR. BROWN: I agree.

6 THE COURT: Everybody agrees on that. I'm not quite
7 sure what your objection is, but I overrule it.

8 MR. BROWN: The man is involved in a lifelong crack
9 business. He's been in the crack business at least we know
10 from the first conviction when he was twenty-two and now at
11 thirty-four, he's got trafficking crack, third offense.
12 He's a career crack dealer.

13 Remember the video. If you watch this real closely,
14 you can see his reflection getting out of the car here.

15 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
16 11:40 A.M..)

17 MR. BROWN: Right there. He stays there for over six
18 minutes out of the view of any surveillance of any police
19 officers under no supervision and what does he open? The
20 trunk. Circumstantial evidence to the exclusion of all
21 other theories.

22 You don't think for five seconds he wouldn't plant
23 dope under the hood of that car? Think about it. Of
24 course he would because he does not want to spend the rest
25 of his natural life in jail.

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1 He tells you that he was just buying time. Why was he
2 buying time? I'm confused on that too. Buying time for
3 what? The deal is already set. He's suppose to go to
4 Wildcat Road. I can tell you what he's doing. He pulled
5 off out of the view of those officers to pick up crack and
6 he brought the crack. This is what this deal was about.

7 Desperate men will do desperate things and I submit to
8 you, he had to come up with some bust because if he didn't,
9 he's going to jail for a long time.

10 Now I'm not going to sit up here and tell you that Mr.
11 Leach is some saint. I'm not going tell you obviously from
12 the conversations he has been involved in crack in the
13 past. I'm not sitting here telling you that at all. I'm
14 not telling he's some saint, but what I am telling you,
15 this deal is flawed as the day is long.

16 You can convict him of other crimes, but this one they
17 have not proved it beyond a reasonable doubt.

18 The currency. Mr. Ervin under oath said he had Three
19 Hundred dollars in currency. I think we now know that's
20 not true. Three Hundred Dollars was not found in the seat.
21 Three Hundred Dollars was not taken off of him and all
22 Thirty-three Hundred dollars was found on the side of the
23 vehicle, allegedly.

24 Lastly, Mr. Shelton wants to explain the weights to
25 you and I don't blame him. That's kind of hard to explain.

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1 Ninety point two grams or three ounces. This was three
2 ounces. This is what's confusing. A veteran crack dealer,
3 Mr. Ervin, is going to know the difference between three
4 ounces and 38 grams.

5 And they can talk all day about crack being wet. When
6 you come on jury duty, you don't throw away your good
7 common sense. You smoke crack. You can't smoke something
8 that's wet. You cook it. When you cook it, it comes out
9 hard as a rock, there's no more water in it. Think about
10 it. How did it get wet? We've had no explanation on that.
11 And crack's not sold wet. Go back to Mr. Ervin in that
12 stop, that six and half minute period when he's not under
13 supervision. He's not in sight and he goes to the one
14 place in that car, the one place they didn't search. And
15 you see how small that is. You see how small that is. How
16 easy would that be to hide under the hood? It would be
17 simplistic. It would be simplistic.

18 To convict on the first count I submit to you that you
19 have to believe Mr. Ervin's testimony beyond a reasonable
20 doubt. This is a circumstance evidence case. I'm not
21 saying they didn't have some dealings in the past, but I'm
22 submitting to you what they brought before you today is
23 not. It's not.

24 There is a better way to prove this case though.
25 Reasonable doubt, and the Judge will instruct you can arise

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1 from the evidence you hear. You know, I questioned now
2 whether that's true or not or the lack of evidence. That's
3 important in this case because the lack of evidence occurs
4 when they fail to answer your questions. When they fail to
5 bring forward the necessary evidence you need to be firmly
6 convinced, to believe, not to hesitate, to think twice
7 about it. Firmly convinced.

8 Let's talk about the phone calls. If I'm going to
9 come into a courtroom and prove to you that two cell phone
10 calls existed, what's the first thing I am going to bring?
11 We all get it. We got one. The cell phone records. Here
12 is a call from Tezo to Leach. Here's a call from Leach to
13 Tezo. There is a reason, and I don't know what it is, I
14 have no earthly idea what it is or the rational behind
15 that, but if I was going to prove that to you, I'd bring
16 you those phone records. At 12:08 this phone call took
17 place from Ervin's phone to Leach's phone. At 12:10, this
18 phone call took place from Leach to Ervin's phone.

19 You have not seen, they have not produced, one phone
20 record. The simplest way to prove communication. Shoot,
21 in the pictures, you see his cell phone. Allegedly what
22 people are gonna think to be his cell phone. They don't
23 produce that. They haven't produced any copies of the
24 calls or a phone record to corroborate. They just want you
25 to believe Tezo Ervin.

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1 Do you believe Tezo Ervin beyond any doubt that would
2 cause you to hesitate to act? Are you firmly convinced of
3 anything he would tell you? Of course the obvious answer
4 is no.

5 You heard Mr. Patterson testify, the lab technician.
6 As he told you the last two years that they do, they have a
7 state of art lab down there. They can do DNA and
8 fingerprints. Again, lack of evidence. If you have this
9 super facility down there and there is an agreement where
10 you want to bring a career criminal, a career crack dealer,
11 in to testify under oath, I believe I would bolster that
12 testimony by bringing some fingerprints in on that crack or
13 some DNA. You have not heard one scientific piece of
14 evidence that links Elder Leach to that crack cocaine.

15 The only thing you've got is him on the camera picking
16 up a garbage bag that's plastic. And I'm a little confused
17 about that because their report I gave made reference to a
18 brown paper bag. Do people make mistakes? Yes. I agree.
19 Is that mistake crucial? Yes, when someone is on trial for
20 trafficking crack cocaine.

21 You are the sole judges of the fact. You and you
22 alone will decide whether that's important or not.

23 Lastly, you had this big surveillance team all over
24 the place. They were at Wildcat Road. They knew where
25 they were going. What else did you hear? You didn't hear

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1 one police officer come in and testify, yes I saw Elder
2 Leach get out of the car and walk over with a bag in his
3 hand and hand it to Tezo Ervin. Not one person testified
4 to that in this case and you would think if they had that,
5 you would have heard it.

6 Again, reasonable doubt. Evidence, lack of evidence,
7 because it didn't happen that way.

8 And they talk about the date and they are trying to
9 explain it's June 20th but it allegedly happened on June
10 19th. You know you would think if the battery went out, it
11 would be a date backwards; not jump a day forward. That
12 makes no sense either. Their explanation makes no sense
13 whatsoever.

14 The recording is from June 20th to June 19th. Now I
15 don't know why. I don't have the answer to that but I
16 don't have to explain that they do. And to say the battery
17 ran out, that it jumped forward a day makes no sense. Use
18 your good God given common sense to reach a decision on
19 that.

20 Lastly, their one claim on the separate charge that
21 the dope in the car is Mr. Ervin's. Well to establish
22 that, they need to establish that's Mr. Ervin's car. They
23 have not. You have not heard one piece of testimony
24 confirming that was his car. You have not heard one piece
25 of testimony saying that he drove there. You have not seen

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1 or heard on piece of testimony saying that he got out of
2 the car, unless you want to count believing Mr. Ervin which
3 I'm sure it speaks for itself.

4 And he is right, Mr. Shelton is right, they have to
5 convince you beyond a reasonable doubt that the drugs have
6 been tested for crack cocaine. She ran two tests. The
7 same test you run for powder cocaine. We don't know if
8 that's crack or powder beyond a reasonable doubt. Just
9 because she says it's crack doesn't make it crack. Crack's
10 not wet. You can't smoke wet crack. Crack's dry. You
11 have to believe beyond all reasonable doubt, firmly
12 convinced beyond a reasonable doubt that that was crack
13 cocaine. There was no follow up question to explain the
14 difference.

15 She just made the assumption it was crack cocaine.
16 It's something that gets us all in trouble. Instead of
17 during further tests to say, this is why it's crack versus
18 powder. If you have a doubt as to whether that was crack
19 or powder, then you must return a verdict of not guilty.

20 That issue can be tried another day but as to this
21 charge, he is entitled to a verdict of not guilty.

22 I thank you for your time. You've been very patient
23 in listening to me. And I want to submit to you one thing.
24 On both charges, bring all the evidence out and consider
25 the lack of evidence. Do not believe beyond a reasonable

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1 doubt that would cause anyone to hesitate to act that Elder
2 Leach is guilty of trafficking, I submit to you he is
3 entitled to a verdict of not guilty because to convict him,
4 you have to be firmly convinced, you have to believe beyond
5 a reasonable doubt, i.e., any doubt that would cause you to
6 hesitate to act, that Tezo Ervin was telling the truth.
7 And I submit to you his record and his actions speak for
8 themselves and he's entitled to a verdict of not guilty.

9 Thank you.

10 THE COURT: Members of the jury panel, we'll take
11 about a five minute refresher break before I will charge
12 you on the law but you are not yet in the position to
13 discuss the case or try to make up your own mind but I
14 think we probably need about a five minute just refresher
15 break so we'll send for you in just a few minutes.

16 (JURY EXITS COURTROOM AT 11:50 A.M..)

17 THE COURT: We'll take a short break.

18 (COURT IN RECESS AT 11:50 A.M.)

19 (COURT BACK IN SESSION AT 12:05)

20 THE COURT: Can we get Mr. Leach in.

21 (DEFENDANT ELDER LEACH REENTERS COURTROOM.)

22 THE COURT: All right. Bring in the jury.

23 (JURY REENTERS COURTROOM AT 12:07 P.M.)

24 THE COURT: Members of the jury panel, I appreciate
25 the attention you have given to me and to the attorneys and

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1 to the witnesses to this point in the trial.

2 I'll now ask you to turn your attention to me for a
3 few minutes while I charge you on the law which you are to
4 apply the facts as you determine the facts to exist in this
5 trial.

6 Mr. Leach is charged with two counts of trafficking in
7 crack cocaine. The charges are for trafficking in two
8 different amounts: One alleges that he trafficked in an
9 amount in excess of ten grams and the second is that he
10 trafficked in crack cocaine in an amount in excess of 28
11 grams. I'll talk to you more about that in a little bit.

12 Now the fact that he has two indictments is of no
13 importance. That is, the State has just determined that
14 they thought over the facts of this case, or the facts of
15 what they determined as they see 'em that he is guilty of
16 two offenses. But the fact that he is charged with two
17 offenses does not give this case any more weight on the
18 State's behalf as opposed to if he only had one offense.

19 And as to these offenses, you would examine each
20 independently. That is, your verdict does not to be the
21 same as to each charge. That is, each charge must rise or
22 fall on it's own merits, on it's own facts, and the law as
23 I charge it to you.

24 You will have with you in the jury room the
25 indictments. These indictments are not evidence; they are

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1 simply the paperwork by way of which this case is processed
2 throughout our court system and they contain the charges
3 against Mr. Leach. They also are where the verdicts will
4 ultimately - unanimous verdict of the jury will announced
5 record of the jury will ultimately be enrolled.

6 As to these charges, Mr. Leach has entered pleas of
7 not guilty. His pleas of not guilty place on the State the
8 burden of proving his guilt beyond a reasonable doubt. The
9 State must prove his guilt beyond a reasonable doubt before
10 you could find him guilty of either of the charges.

11 This presumption of innocence in Mr. Leach's favor
12 attached at the time of his arrest, remains with him as his
13 case is processed throughout our court system, remains with
14 him at this moment.

15 The presumption of innocence in his favor exists even
16 as you deliberate. The presumption of innocence in Mr.
17 Leach's favor is removed if and when, and only if and when,
18 you as the trial jury unanimously determine the State has
19 proven his guilt beyond a reasonable doubt.

20 This is not just a mere - The presumption innocence is
21 not just a mere legal theory or a merely theory or a mere
22 legal phrase. It is a substantial right.

23 Now, the State does not have to prove Mr. Leach's
24 guilt all or beyond every doubt, but beyond a reasonable
25 doubt.

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1 Our courts have defined a reasonable doubt as the kind
2 of doubt that would cause a reasonable person to hesitate
3 to act. Reasonable doubt can arise from evidence in the
4 case or from a lack of evidence in the case.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of someone's guilt.

7 There are very few things as I've said in our world
8 that we can know with absolute certainty and our law does
9 not require that in criminal cases.

10 If based on your consideration of the evidence you are
11 firmly convinced that Mr. Leach is guilty of one or both of
12 the charges, you would find him guilty.

13 If on the other hand you think there is a real
14 possibility that he is not guilty of one or both of the
15 charges, you would give him the benefit of that doubt and
16 find him not guilty.

17 He is entitled to the benefit of any reasonable doubt
18 you have in regard to the charges against him.

19 I told you at the first of the trial that I have
20 certain jobs and the one I am exercising now is charging
21 you the law that you are to apply to the facts as you
22 determine them to be.

23 You are not to infer from anything I have said or done
24 during the trial or now say or do as indicating an opinion
25 of mine on the facts. Our law does not allow a trial judge

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1 to formulate or express to a jury any opinion on the facts.
2 It is solely your job as the trial jury in this case to
3 examine the evidence and give to the evidence the effect,
4 the value, the weight, and truth you believe it should
5 have.

6 In doing this you may believe one witness as opposed
7 to several; 'several witnesses' as opposed to one. You may
8 believe all, or part, or none of a witnesses' testimony.

9 Use your common sense, your sense of logic, your sense
10 of reason and your experiences in life as you analyze the
11 evidence.

12 As judges of the facts, you necessarily must judge the
13 credibility, that is the believability of the witnesses who
14 have testified.

15 In assessing credibility, use the things I just talked
16 about. Use the thing that you find in your day-to-day life
17 as being indicative of truthfulness. And you can use
18 certain evaluators. How a witness acts on the stand. Are
19 they hesitate or straightforward in responding to
20 questions.

21 Look at consistencies or inconsistencies in a witness'
22 testimony. Look at any bias or prejudice a witness may
23 have, that is, whether a witness would wish to help or hurt
24 one side or the other. All these things you consider and
25 you will be in a position to determine the true facts and

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1 return a verdict that speaks the truth.

2 Ms. Mitchum testified in this case as what we call an
3 expert witness. Generally, individuals are only able to
4 testify as to something they've seen or experienced with
5 one of their five senses. Something they've seen or heard;
6 it could be taste, touch or smell, but usually it's
7 something someone has seen or heard.

8 However, where a certain witnesses has or where a
9 witness had certain education, skill, knowledge and
10 training in a certain area, that witness is allowed to take
11 facts and from those facts reach an opinion.

12 The opinion of expert witnesses is allowed in the
13 record and is allowed to be presented to the jury for your
14 consideration to assist you. You are not bound by an
15 expert witness's testimony. You look at an expert
16 witness's testimony through the same lense that you look at
17 other witness. And in addition, you look at an expert's
18 testimony and in weighing it you can look and you
19 determine, even though the court has found Ms. Mitchum to
20 be an expert in regard to chemical analysis, you determine
21 whether she had the criteria to be such an expert.

22 You also may consider and look at in determining what
23 use, if any, to give her expert opinions the reasons she
24 came to the opinion she reached.

25 The opinion of experts are allowed in evidence to

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1 assist you. Again, you can disregard them, use them in
2 whole or in part. They are again for your assistance.
3 They are not binding on you.

4 In this case Mr. Leach has exercised his
5 Constitutional right to remain silent. This is a
6 fundamental Constitutional right of our's and his exercise
7 of that cannot be used against him in any way whatsoever.
8 You cannot in the jury room discuss the fact that Mr. Leach
9 exercised his right to remain silent. You cannot even
10 factor it into your own deliberation. You cannot use in
11 any way whatsoever to mitigate against Mr. Leach the fact
12 that he exercised his constitutional right to remain
13 silent. He is, as I told you earlier, presumed innocent.
14 The State must prove his guilt beyond a reasonable doubt.
15 He need not prove his innocence.

16 Now, there are two types of evidence which are
17 generally presented in cases such as this, circumstantial
18 and direct evidence.

19 Direct evidence is evidence which directly proves the
20 existence of a fact and does not need any deduction.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances which indicate the existence of a fact.

23 Crimes may be proven by circumstance evidence. Our
24 law makes no distinction between the weight or value to be
25 given to the direct or circumstantial evidence. However,

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1 to the extent the State relies on circumstantial evidence,
2 all of the circumstances must be consistent with each other
3 and when taken together point conclusively to the guilt of
4 the accused beyond a reasonable doubt. If these
5 circumstances merely portray the defendant's behavior as
6 suspicious, the proof has failed.

7 The State has the burden of proving Mr. Leach guilty
8 beyond a reasonable doubt. This burden rests with the
9 State regardless of whether the State relies on direct
10 evidence, circumstantial evidence, or some combination of
11 the two. What you should do is weigh all of the evidence
12 and determine the verdict that you should render.

13 Now, in this case there have been, as you recall, in
14 the audio I mentioned earlier that there were gaps, in TV
15 language parts were blipped; here they were just muted.
16 You are not to give that any consideration whatsoever.
17 They were taken out of that audio because they had no value
18 to this case, no relevance to this case and may have caused
19 confusion in this case. So don't be concerned about the
20 fact that there are certain portions of the audio which
21 were removed.

22 In this case the identification of Mr. Leach as the
23 individual involved in this alleged event is an issue. The
24 State has the burden of proving Mr. Leach's identify beyond
25 a reasonable doubt. You must be satisfied beyond a

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1 reasonable doubt of the accuracy of the identification of
2 Mr. Leach as the person involved before you may convict
3 him.

4 Identification testimony is an expression of belief or
5 impression by a witness. You must determine the accuracy
6 of the identification of a witness of the defendant.

7 You must consider the believability of any
8 identification witness in the same way as you look at the
9 testimony of other witnesses as I have already talked to
10 you about.

11 You may consider whether the witness had an
12 adequate opportunity to observe the offender at the time of
13 the offense, and this will be affected by things such as
14 how long or short a time was available. How far or close
15 the witness was to the alleged perpetrator.

16 You can consider the lighting conditions. Whether the
17 witness had a chance to know or see the person in the past.
18 I instruct you that the burden of proof extends to the
19 State to prove every element of the charge of the crime
20 beyond a reasonable doubt and this includes proving beyond
21 a reasonable doubt Mr. Leach to have been the person who
22 committed this alleged offense.

23 If after examining the testimony you have a reasonable
24 doubt as to the accuracy of the witness' identification,
25 you would find Mr. Leach not guilty.

1 Mr. Leach is charged with trafficking in crack
2 cocaine. Here the State must prove beyond a reasonable
3 doubt as to both of these indictments that the defendant
4 either knowingly sold, manufactured, cultivated, delivered,
5 purchased, brought into this State, provided financial
6 assistance or otherwise aided, abetted, attempted, or
7 conspired to sell, manufacture, cultivate, deliver,
8 purchase, or bring into this State, or that the defendant
9 was knowingly in actual or constructive possession, or
10 knowingly attempted to become in actual constructive
11 possession of crack cocaine.

12 The State must prove that the substance involved was
13 in fact crack cocaine and the State has to prove what
14 amount is involved as to the two separate indictments and I
15 will talk to you more about that in just a moment.

16 Knowledge, of course, knowingly actually means with
17 knowledge. That is, not accidental or unknowingly.

18 Actual possession means that the crack cocaine or
19 alleged crack cocaine was in the actual physical custody of
20 an individual, here Mr. Leach.

21 Constructive possession means that a defendant had
22 dominion and control, or, the right to exercise dominion
23 and control over either the drug itself or the property
24 where the drug was found, the cocaine, crack cocaine.

25 Mere presence at a scene where drugs are found is not

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1 enough alone to prove possession. Actual knowledge of the
2 presence of crack cocaine is strong evidence of a
3 defendant's intent to control it's disposition of use.

4 A defendant's knowledge of possession may be inferred
5 when a substance is found on property under that person's
6 control. However, this inference is simply an evidentiary
7 fact to be taken into consideration while you along with
8 other evidence in this case and give it such weight, if
9 any, you decide it should have.

10 Now, I told you the State must prove that the
11 substance involved was in fact crack cocaine. Of course,
12 all these things just be proven beyond a reasonable doubt.

13 There are two indictments here. One charges that Mr.
14 Leach was in possession of 28 grams or more, or not in
15 possession, that he trafficked it in as I defined it for
16 you. And the language I used about sale, manufacture, et
17 cetera, even though I told you the indictments are not
18 evidence, the indictments do have that language in them.

19 The State has charged Mr. Leach in one indictment with
20 being in actual constructive possession, or distributing or
21 delivering 28 grams or more of crack cocaine. And in the
22 other indictment, alleges that he either did one of the
23 things prohibited as to ten grams or more.

24 Now as to that second charge, the State must prove
25 that as to that charge that the amount of crack cocaine

CHARGE TO THE JURY:

-304-

1 involved was ten grams or more. And as to that indictment,
2 that would be the simple - what you would have to return,
3 whether or not he trafficked in crack cocaine and whether
4 the State has proved beyond a reasonable doubt that the
5 amount was ten grams or more.

6 Now as to the other indictment where he is charged
7 with being in possession of or being involved in the
8 trafficking of 28 grams or more, the State must prove
9 beyond a reasonable doubt for you to convict him of being
10 involved with trafficking in 28 grams or more, that the
11 weight of the substance involved in that event was 28 grams
12 or more.

13 However, in that charge, if you find that the State
14 has failed to prove that he trafficked in 28 grams or more,
15 did traffic in ten grams or more, you could find him guilty
16 of trafficking in the lesser amount.

17 They charged him with 28 grams or more but under our
18 law you can examine the evidence and if you determine that
19 the weight was not - After you determine it was crack
20 cocaine and determine unanimously that Mr. Leach was in
21 fact involved, as to the charge with 28 grams or more, you
22 can determine and consider whether or not the amount was
23 not 28 grams but less than 28 grams but more than 10 grams.

24 I have verdict forms. As a verdict form as to the
25 trafficking in crack cocaine as to the charge of 28 grams

CHARGE TO THE JURY:

-305-

1 or more, and on that there are two options. The first
2 option has a sub-option. The fact that these are in this
3 particular order is of no importance. I have to put them
4 in some order, so I put them in this order. That is, the
5 options.

6 The first option is, we find the defendant guilty of
7 trafficking crack cocaine. And as to this indictment
8 involving 28 grams or more, then you would have to
9 determine whether or not the State has proven not only that
10 he trafficked in crack cocaine, but the weight in which he
11 trafficked, 28 grams or more or ten grams or more.

12 If you find that the State has proven him guilty of
13 trafficking, you would put an X mark or a check in front of
14 that line and then you would put an X mark or check by the
15 amount you determine was involved.

16 If you find the State has failed to prove Mr. Leach
17 guilty under that indictment, you would put an X or check
18 on the second line that says, we find the defendant not
19 guilty of trafficking crack cocaine. There is a place for
20 you to sign, Madame Forelady, you of course will preside
21 over the jury deliberations. And there is a place for you
22 to date and today's the 14th.

23 As to the indictment for trafficking in crack cocaine
24 in ten grams or more, you would see there is no verdict
25 form with that because you can simply write the verdict on

CHARGE TO THE JURY:

-306-

1 the back of the indictment.

2 You will see there the word verdict several lines
3 below it. On the bottom line you sign, and there is a
4 place for you to date, and on one of the other three lines
5 above your signature, you would write the verdict, the
6 unanimous verdict, of the jury.

7 If as to that charge of ten grams or more the State
8 has failed to prove Mr. Leach guilty of trafficking in ten
9 grams or more of crack cocaine, you would write the two
10 words not guilty.

11 If the State has proven Mr. Leach to your unanimous
12 satisfaction guilty of trafficking in ten grams or more,
13 you would write the word guilty.

14 Now your verdict must be unanimous; all twelve jurors
15 must agree. Once all twelve jurors have agreed, the
16 Forelady will enroll the verdict on your behalf.

17 Your verdict cannot be based on sympathy, passion,
18 prejudice, or matters outside the record. We do not send
19 in in South Carolina a written charge to you on the law,
20 but if you wish for me to go over any part or all of my
21 charge on the law, please let me know and I'll bring you
22 back in here in open court and recharge you on any part or
23 all of the law.

24 If you have questions, write them down. Knock on the
25 door, give them to the bailiff and the bailiff will bring

CHARGE TO THE JURY:

-307-

1 them to me and I will consult with the attorneys. And I
2 will try to - I will respond. I may be able to write an
3 answer to the note on the note itself. If I do that and
4 return the note, please keep it and turn it in with the
5 evidence at the end of the trial because it has to be part
6 of the record in this case.

7 If I cannot answer it by writing an answer on the note
8 itself, I will bring you out here in open court and answer
9 whatever the question is.

10 We can have testimony replayed if you wish. There are
11 - The audio and video are into evidence.. We will make -
12 provide you with a laptop that has nothing else on it so
13 that you can use it to review the audio and video.

14 If you wish to have testimony replayed, let us know
15 and we can bring you back in here in open court and do
16 that.

17 Now, Ms. Gardner, as an alternate, you will remain in
18 the courtroom as the jury exits this time and when you do
19 exit this time, do not start deliberating.

20 I have to go over with the attorneys my charge. If I
21 have made an error, I will send for you and bring you back
22 in and correct it.

23 If I have not made any error, I will send in the
24 exhibits, the indictments, and the verdict form and the
25 bailiff will tell you to go ahead and start deliberating.

CHARGE TO THE JURY:

-308-

1 When you have reached a verdict, knock on the door,
2 tell the bailiff. The bailiff will inform me that you have
3 reached a verdict. I'm starting another trial fairly soon,
4 but I will break in that trial as quickly as I can to
5 accept your verdict when you reach one. And I will do the
6 same when I receive any notes from you.

7 We have ordered pizza to be here around one so you
8 don't have to worry about lunch and a meal. You can take a
9 break and eat lunch or you can work while you are eating
10 lunch. Although since the verdict has to be unanimous I'm
11 going to need all twelve of you to be working or all twelve
12 of you not working, so with that said, I'm going to let you
13 go out and wait. Go back to the jury room. Do not start
14 deliberating at this time, everybody but Ms. Gardner.

15 (JURY EXITS COURTROOM AT 12:28 P.M.)

16 THE COURT: Anything from the State regarding the
17 Charge?

18 SOLICITOR SHELTON: No, sir.

19 THE COURT: Anything from the defense?

20 MR. BROWN: No, sir.

21 THE COURT: All right. Check the exhibits and make
22 sure you have the computer that they can use.

23 Check with the exhibits and the verdict forms and we
24 will send them in and tell the jury to start deliberating.

25 Ms. Gardner, I'm going to - We've already got a panel

1 for the next trial, so you don't need to stick around for
2 that, but you can call tonight after seven and you will
3 receive whatever instructions they are. You can stay
4 around if you wish. We will give you some pizza too if
5 you'd like. We'll make arrangements for you to have that
6 in private if you would like to wait and see what the
7 verdict is or you can leave. That's your choice, but you
8 are free from this panel. You are excused, so thank you so
9 much for your help.

10 (ALTERNATE JUROR DISMISSED AT 12:29 P.M.)

11 THE COURT: Mr. Brown, you want to check the exhibits?

12 Mr. Brown, do you want to check the exhibits and make
13 sure?

14 All right, we'll be at ease.

15 (COURT IN RECESS AT 12:30 P.M.)

16 (WHEREUPON, COURT'S EXHIBITS THREE AND FOUR,
17 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.

18 (COURT BACK IN SESSION AT 02:40 P.M., IN THE BOND
19 HEARING MATTER FOR TAPLIN WALDEN WITH MICHAEL BROWN.)

20 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
21 ELDER LEACH.)

22 (JURY NOTE RECEIVED UP BY THE COURT AT 02:48 P.M..)

23 (WHEREUPON, COURT'S EXHIBIT NUMBER FIVE, IDENTIFIED
24 AND MARKED, RECEIVED INTO THE RECORD.)

25 (DEFENDANT ELDER LEACH REENTERS COURTROOM AT 02:51

VERDICT:

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1 P.M..)

2 THE COURT: All right, I understand we have a verdict
3 in Mr. Leach's case.

4 I don't know what the verdict is, but I am going to in
5 advance tell anyone who is present who does not believe
6 they can control their emotions, regardless of what the
7 verdict is, that they should leave now because if we have
8 any outbursts regarding the jury verdict, the person
9 responsible for that would be escorted by one of these
10 gentlemen in a grey shirt to a holding cell for a thirty
11 day period of incarceration for being in contempt of court
12 and disrupting court. So if you don't think you can handle
13 whatever the verdict might be, I suggest you leave now
14 through the back door instead of leaving later through the
15 holding cell.

16 All right. Bring in the jury.

17 (JURY REENTERS COURTROOM AT 02:54 P.M..)

18 THE COURT: Madam Forelady, I understand the jury has
19 reached a verdict.

20 MADAM FORELADY: Yes, Your Honor, we have.

21 THE COURT: If you will hand it up to the bailiff,
22 the bailiff will hand it up to me.

23 (VERDICT RECEIVED UP BY THE COURT.)

24 THE COURT: Thank you.

25 MADAM CLERK: Indictment 2013-GS-46-6-7-9 the State

VERDICT:

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1 *versus Elder Prescott Leach*, indictment for trafficking
2 crack cocaine, we find the defendant guilty of trafficking
3 in crack cocaine, 28 grams or more, signed by the
4 foreperson, dated today's date.

5 Indictment 2014-GS-46-678, State versus Elder Prescott
6 Leach, indictment for trafficking in crack cocaine,
7 verdict, guilty, signed by the foreperson, dated today's
8 date.

9 Ladies and gentlemen of the jury, if that be that your
10 verdict so say you all by raising your right hand.

11 Let the record show all jurors affirmed this verdict.

12 (ALL JURORS RESPONDED AFFIRMATIVELY.)

13 THE COURT: Anything from the State before the jury is
14 dismissed?

15 SOLICITOR SHELTON: No, sir, Your Honor.

16 THE COURT: Defense?

17 MR. BROWN: No, sir.

18 THE COURT: All right. I'm going to let you go and we
19 will - to call back tonight after seven and follow those
20 instructions.

21 Madam Forelady, if you'll meet with the Clerk for a
22 minute, she will show you where you need to fill in on the
23 other indictment that you had the verdict form on, so we
24 appreciate your assistance. We'll make that back row
25 available - Mr. Kruger - if any of you want to stay for the

SENTENCING:

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1 sentencing. I don't require juries to stay for the
2 sentencing but if you would like to, you can go out this
3 way and the bailiff will make sure you have a place to sit
4 in the back, safe and comfortable, and you can be here when
5 I sentence Mr. Leach but you don't have to. You can go and
6 call back tonight after seven.

7 Madam Forelady, if you will meet just two seconds with
8 the Clerk.

9 Thank you. Now, yes, ma'am.

10 (JURY DISMISSED AT 02:56 P.M..)

11 THE COURT: All right, the jury has been dismissed.

12 Anything from the State before we get into the
13 sentencing?

14 SOLICITOR SHELTON: No, sir.

15 THE COURT: I mean we'll get into the record and LWOP
16 and all that in just a minute but just regarding the trial.

17 MR. BROWN: Your Honor, I would move for a new trial
18 based on all my previous motions made throughout the course
19 of the trial and my motion for directed verdict at the
20 close of the State's case and at the close of the evidence.

21 THE COURT: All right. The motion is denied. As I
22 have stated several times, there is sufficient evidence,
23 direct and substantial circumstantial evidence from which a
24 jury could and did conclude that Mr. Leach committed these
25 offenses.

SENTENCING:

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1 All right, if you'd bring Mr. Leach around.

2 (DEFENDANT ELDER LEACH AND DEFENSE ATTORNEY MICHAEL
3 BROWN APPROACH THE BAR.)

4 THE COURT: All right, Mr. Shelton, I'll let you go
5 forward now and tell me, I understand that - and make sure
6 we put on the record what I understand to be the case -
7 that this is a third or more serious offense or a
8 combination of three serious and most serious offenses, and
9 that Mr. Leach has been earlier served with a Notice of
10 Life Without Parole, so go over all of that and his record
11 and the - I don't know if you actually call them enhancing
12 but the - I guess they would be a form of enhancing - but
13 the prior verdicts, prior convictions that lead to this
14 being a third or subsequent serious or most serious
15 offense.

16 SOLICITOR SHELTON: Yes, sir, Your Honor. You are
17 correct, Your Honor. Mr. Leach was served with Notice of
18 the State's intention to seek life without parole under the
19 three strikes recidivism statute. Let's see, that's, for
20 the record, 17-25-45. He has prior convictions that are
21 serious or violent offenses prior to this.

22 Mr. Leach was notified of this intention, of the
23 state's intention to seek life without the possibility of
24 parole if he was convicted on February 27th, 2014. I had
25 filed my Notice with the Clerk of Court and I served Mr.

SENTENCING:

-314-

1 Leach in person that day in the courtroom. I believe it
2 was in front of Your Honor, with Ms. Nelson as the court
3 reporter, and Sean Cronin was standing in for Mr. Brown as
4 he was on medical leave at the time.

5 I do have a copy of the State's Notice, a certified
6 copy, I would like to make a part of the Court's Exhibit as
7 a court record. It does also outline what the State - what
8 Mr. Leach's prior serious and violent offenses are.

9 I also have certified copies of his prior drug
10 convictions. Some of those being serious crime offenses.

11 In 1991, Mr. Leach was convicted of possession of
12 crack, second offense. 1992 he was convicted of
13 distribution of crack and distribution within the proximity
14 of a school - excuse me, within the proximity of a park.
15 That's 1992-GS-46-4-0-9-9 is the proximity charge. That is
16 a serious strike so that's his first strike.

17 In 1999, Mr. Leach was convicted of possession of
18 crack, third offense. In 2005, Mr. Leach was convicted of
19 trafficking crack cocaine between the weights of 10 and 28
20 grams, second offense. That was indictment 2005-GS-46-
21 0-6-9-4. That conviction constitutes a violent and a
22 serious strike.

23 He was also convicted of a companion proximity charge
24 from the same incident, 2005-GS-46-0-6-9-5 and that is a
25 serious strike.

SENTENCING:

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1 Those constitute his two priors and then of course
2 both of the charges the jury just found him guilty, both
3 trafficking's, are serious and violent offenses, making him
4 life without parole.

5 THE COURT: All right, Mr. Brown.

6 SOLICITOR SHELTON: And Your Honor, just for the
7 record I will make all these Court's Exhibits, these
8 certified copies.

9 THE COURT: Okay. All right, Mr. Brown.

10 MR. BROWN: Your Honor, I don't dispute that. He has
11 provided that to me.

12 THE COURT: All right, anything you want to say on
13 behalf of Mr. Leach?

14 MR. LEACH: Yes, sir, Your Honor, I'd like to say
15 something. On the offense in 1992 that he's discussing,
16 that was my first ever drug offense and I was tried for a
17 third offense charge and was not tried for no first offense
18 charge. I was tried for a third offense charge. It wasn't
19 for a first offense charge.

20 Now they are changing it. They are trying to say it
21 is a first offense. Now it's a first offense. Then it was
22 a third offense. And I figured by it being they changed it
23 to first offense, it's not a most serious offense. Them
24 charges over twenty years old.

25 THE COURT: Well the length of the charges there is

SENTENCING:

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1 no sort of statute of limitations on when serious offenses
2 run their course. The record reflects as presented to me
3 and undisputed, uncontradicted, unchallenged; that you have
4 three serious offenses which would substitute a life
5 without parole.

6 MR. LEACH: No, Your Honor. That one in 2005 if
7 that's included. The '92 offense and then 2005 offense.

8 THE COURT: And this would be number three.

9 MR. LEACH: This would be number three but I'm just
10 saying that offense, I was tried as a third offense. In
11 all actuality, it should have been a first offense. It's
12 like I'm back on trial again for that offense again right
13 now today.

14 THE COURT: Well I have a little trouble following
15 you as to how that would affect anything that I'm doing
16 today because regardless of what you are trying to tell me
17 it boils down to you having three serious offenses today
18 which is what I have to include on the sentencing.

19 Anything else, Mr. Brown?

20 MR. BROWN: No, sir.

21 THE COURT: All right. Mr. Leach, on both of these,
22 these are to run concurrent. They are life without parole
23 under Section 17-25-45 as provided under the laws of this
24 State.

25 Thank you.

1 MR. LEACH: Love ya'll.

2 (DEFENDANT EXITS COURTROOM.)

3 THE COURT: All right.

4 (WHEREUPON, COURT'S EXHIBIT NUMBERS SIX, SEVEN, EIGHT,
5 AND NINE IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

6 (COURT ADJOURNED IN THE MATTER OF STATE VERSUS ELDER
7 PRESCOTT LEACH AT 03:19 P.M..)

8 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 11th and 12th days of August, 2010.

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

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 7, 2014

County: YorkDate: May 12-14, 2014**VOIR DIRE/BATSON SHEET**Case No.: 2014-GS-46-00678;00679Judge: Honorable John C. Hayes, IIIPl./State: State of South CarolinaPl./State Atty's.: Solicitor Matthew SheltonSolicitor Leslie RobinsonDefendant: Elder Prescott LeachDefense Atty's: Mr. Michael L. BrownMr. Sean CroninCourt Reporter: Wanda Nelson, CVR-M

Juror No.	Name	Race	Sex	STRIKES			
				*Court	Plaintiff	Defense	Accept
41	Charles D. Cooley	W	M				X
225	Sunil R. Talusani	I	M				X
117	Krista J. Koster	W	F		X		
29	Shaun A. Brown	M	W			X	
1	David W. Adams	W	M				X
14	Bethany S. Belote	W	F				X
189	David M. Pritchard	W	M			X	
66	Deborah A. Farrow	F	W	X			
17	Brady A. Berry	F	W	X			
77	Christopher S. Garrison	M	W				X
59	Barbara D. Dover	F	W			X	
184	Christopher R. Pitzer	M	W	X			
204	Kristen N. Sanderson	F	W				X
140	Winston R. Martinez	M	H		X		
6	Richard L. Arnold, Jr.	M	W			X	
172	Mark G. Oakes	M	W		X		
100	Tammy L. Hudnall	F	W				X
162	Neha V. Muppala	F	I				X
103 **	Karen H. Isaac	F	B				X
191	William T. Prosser	M	W				X
178	Angelia Parsons	F	W				X
61	Robert E. Eastwood	M	W			X	
246	Christopher Wilbanks	M	W				X
37	Patrick J. Coffey	M	W	X			
69	Allison Flowers	F	W	X			
237	Joshua B. Vann	M	W		X		
202	Annie M. Rollings	F	W			X	
95 *	Christopher P. Hilton	M	W				X
245	Erica L. White	F	W	X			
76 *	Shannon M. Gardner	F	W				x

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

York Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

EL ID : 5-12 CRT 1 2014

COURTROOM CRT1

DESCRIPTION : 5-12 CRT 1

Sorted by: Random Nbr

Trial

State -v- Elder Prescott & Doe

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Cooley, Charles D	41	W	M	()	()	()	Seated -1
2 Talusani, Sunil R	225	I	M	()	()	()	Seated -2
3 Koster, Krista J	117	W	F	(x)-1	()	()	excused
4 Brown, Shaun A	29	W	M	()	(x)-1	()	excused
5 Adams, David W	1	W	M	()	()	()	Seated -3
6 Belote, Bethany S	14	W	F	()	()	()	Seated -4
7 Pritchard, David M	189	W	M	()	(x)-2	()	excused
8 Farrow, Deborah A	66	W	F	()	()	(x)-5	excused
9 Berry, Brady A	17	W	F	()	()	(x)-3	excused
10 Garrison, Christopher S	77	W	M	()	()	()	Seated -5
11 Dover, Barbara D	59	W	F	()	(x)-3	()	excused
12 Pitzer, Christopher R	184	W	M	()	()	(x)-7	excused
13 Sanderson, Kristen N	204	W	F	()	()	()	Seated -6
14 Martinez, Winston R	140	H	M	(x)-2	()	()	excused
15 Arnold, Richard L Jr.	6	W	M	()	(x)-4	()	excused
16 Oakes, Mark G	172	W	M	(x)-3	()	()	excused
17 Hudnall, Tammy L	100	W	F	()	()	()	Seated -7
18 Muppala, Neha V	162	I	F	()	()	()	Seated -8
19 Isaac, Karen H <i>for persons</i>	103	B	F	()	()	()	Seated -9
20 Prosser, William T	191	W	M	()	()	()	Seated -10
21 Parsons, Angelia	178	W	F	()	()	()	Seated -11
22 Eastwood, Robert E Jr.	61	W	M	()	(x)-6	()	excused
Wilbanks, Christopher D	246	W	M	()	()	()	Seated -12
24 Coffey, Patrick J	37	W	M	()	()	(x)-2	excused

York Circuit Court
RANDOM STRIKE SHEET

321

JUDGE NAME : Hayes, III, John C.

CASE TYPE : Criminal

FILE ID : 5-12 CRT 1

COURTROOM CRT1

DESCRIPTION : 5-12 CRT 1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Flowers, Allison	69	W	F	()	()	(X)-6	
26 Vann, Joshua B	237	W	M	(X)-4	()	()	excused
27 Rollings, Annie M	202	W	F	()	(X)-1	()	excused
28 Hilton, Christopher P	95	W	M	()	()	()	Seated -13
29 White, Erica L	245	W	F	()	()	(X)-4	
30 Gardner, Shannon M	76	W	F	()	()	()	Seated -14
31 Kirk, Curtarus T	113	B	M	()	()	(X)-1	
32 Adair, Kendall M	163	W	F	()	()	()	
33 Mccollum, Derek K	144	W	M	()	()	()	
34 Barnes, Joseph C	10	W	M	()	()	()	
35 Turner, William J	236	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

1
/

WITNESSES

DEJ Harrelson

sgb

ARREST WARRANT NUMBER

2013A4610200840

ACTION OF GRAND JURY

TRUE BILL

Ronnie B. Sadler

Foreperson of Grand Jury

Date: 3/20/2014

VERDICT

Guilty

Karen Hiltner Shoo

Foreperson of Petit Jury

Date: May 14, 2014

DOCKET NO. 2014-GS-46-00678

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 20, Term 2014

THE STATE

vs.

ELDER PRESCOTT LEACH

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375(C)(1)

CDR Code: 0452

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

322

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

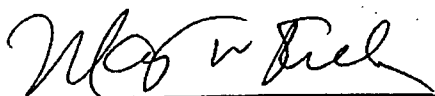
INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

On or about June 19, 2013, the Defendant, Elder Prescott Leach, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of crack cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

324 SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
Elder Prescott Leach
AKA:
Race: BLACK Sex: M Age: 50
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#: SC00360312

INDICTMENT/CASE#: 2014GS4600678
A/W#: 2013A4610200840
Date of Offense: 6/19/2013
S.C. Code §: 44-53-0375(C)(1)(c)
CDR Code #: 0452

SENTENCE: ORIGINAL

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Crack Cocaine (10-28 grams), 3rd Offense

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 1st or 1st Act) § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Matthew W. Shelton 74785 Elder Prescott Leach Matthew W. Shelton 74785
Shelton, Matthew W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$
TOTAL \$ 280

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge Johanna
Judge Code: 2049
Sentence Date: 6.14.14

DOCKET NO. 2014-GS-46-00679

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

DEU Harrelson

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

March 20, Term 2014

I hereby appear in my own proper person and plead guilty to the within indictment or to

sgb

ARREST WARRANT NUMBER

2013A4610200841

Defendant

THE STATE

vs.

Witness:

G.C.C. PLS AND G.S.

ACTION OF GRAND JURY

ELDER PRESCOTT LEACH

TRUE BILL

Roanne B. Sadeu

Foreperson of Grand Jury

Date: 3/20/2014

VERDICT

Guilty

Trafficking 28 g or more

Karen Huttons have

Foreperson of Petit Jury

Date: May 14, 14

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375(C)(2)

CDR Code: 0349

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

On or about June 19, 2013, the Defendant, Elder Prescott Leach, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of crack cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

York

VS.

Elder Prescott Leach

AKA:

Race: BLACK Sex: M Age: 50

DOB: SS#

Address:

City, State, Zip:

DL#: SID#: SC00360312

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Crack Cocaine (28-100 grams), 3rd offensein violation of § 44-53-0375(C)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0349
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Shelton, Matthew W 74785 Elder Leach 983
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/14/14
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service EmploymentPayment Terms: ☐ Obtain GED ☐☐ Set by SCDPPPS ☐ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150

§ 50-21-114 (BU1 Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ _____

TOTAL \$ 280Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge: John C. HamiltonJudge Code: 2049Sentence Date: 5-14-14

IN THE COURT OF GENERAL SESSIONS

327

INDICTMENT/CASE#: 2014GS4600679

A/W#: 2013A4610200841

Date of Offense: 6/19/2013

S.C. Code § 44-53-0375(C)(2)(c)

CDR Code #: 0349

SENTENCE ORIGINAL #2

☒ CONVICTED OF or ☐ PLEADS

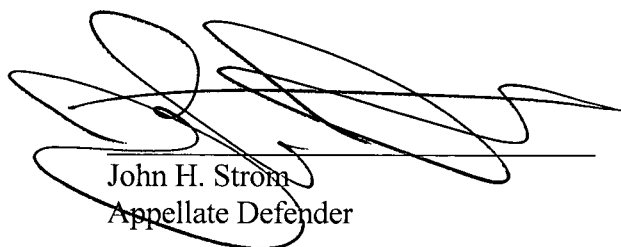
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 9th, 2015



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

RECEIVED

FEB 09 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

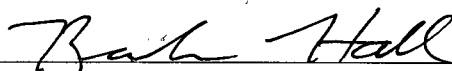
ELDER PRESCOTT LEACH

APPELLANT

APPELLATE CASE NO. 2014-001158

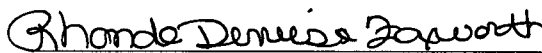
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, Senior Assistant Deputy Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of February, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021