

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM YORK COUNTY
General Sessions Court

SEP 24 2015
SC Court of Appeals

Honorable Judge John C. Hayes, III, General Sessions Court Judge

2013-GS-46-04422

The State,

Respondent

v.

Darnell Keri Slaton,

Appellant

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

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State of South Carolina.,)
)
)
County of York.)

In the General Sessions
Court of York
Case No.: 2013-GS-46-04422

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
Darnell Keri Slaton.,)
)
Defendant.)
_____)

Transcript of Record

April 20, 21, 2015
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge, and a jury.

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COPY

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

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Solicitor Jones

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION MONDAY, APRIL 20, 2015 AT 02:36
2 P.M..)

3 THE COURT: Is the State ready?

4 SOLICITOR SHELTON: Yes, sir, your Honor.

5 THE COURT: Call your case.

6 SOLICITOR SHELTON: May it please the Court, your
7 Honor. The State calls the case of the *State of South*
8 *Carolina versus Darnell Slaton*.

9 And, Melissa, am I pronouncing his name correct, is it
10 Slaton? S-l-a-t-o-n. It's true-billed Indictment Number
11 2013-GS-46-04422, alleging one count of distribution of
12 marijuana. This indictment has been true-billed by the
13 York County Grand Jury in December of 2013, on the 12th of
14 December, 2013. And we have some pretrial matters, and I
15 believe the jury is coming in at three o'clock, your Honor,
16 for selection.

17 THE COURT: We've got motions in limine by the
18 Defense, so let's go through them. Have you got - you got
19 those in-hand?

20 SOLICITOR SHELTON: Yes, sir.

21 THE COURT: Number one is discovery. Has the State
22 complied with all the discovery requirements?

23 SOLICITOR SHELTON: Yes, sir, we have. We've
24 actually, Ms. Inzerillo and I have been double-checking all
25 of that stuff. Just recently, I've confirmed with her that

1 she received all of the discovery. Just for the record,
2 your Honor, we have - this is a case involving a
3 confidential informant, so, as is our office's policy
4 during - during plea negotiations, the State did not reveal
5 the identity of the CI, or give a copy of any buy videos
6 associated with this investigation. That was a condition
7 of the plea offer, which has been rejected by the
8 defendant, and I'll - I'm going to actually address that on
9 the record at the appropriate - at the appropriate time.

10 THE COURT: You can put it on the record right now.

11 SOLICITOR SHELTON: Sure. Let's go into it. The -
12 I've got - I actually have this - a summary of the
13 conversation I had with Ms. Inzerillo and her client,
14 Friday, April 10th, in emails. It kind of breaks down,
15 just so we know, with certainty, that there was a
16 conversation had, and the date and everything, relating to
17 Mr. Slaton's knowing and intelligent rejection of the
18 State's plea offer. I want to go ahead and mark this as
19 Court's Exhibit Number One.

20 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
21 MARKED, RECEIVED INTO EVIDENCE.)

22 SOLICITOR SHELTON: May I approach, your Honor?

23 THE COURT: All right.

24 SOLICITOR SHELTON: And your Honor, as you'll find, in
25 Court's Number One, Ms. Inzerillo and I discussed -

1 actually, we were going to go on the record with a hearing
2 in front of Judge Benjamin on that day, Friday, April 10th,
3 which was the day that Mr. Slaton's offer expired. He was
4 offered a plea to distribution of marijuana, first offense,
5 for a negotiated three years, which would have been parole-
6 eligible. He expressed to me that he wanted to reject that
7 offer and go to trial.

8 During the conversation, Ms. Inzerillo had told me she
9 had a conversation with her client more than once about the
10 minimums and the maximums. In this instance, if he is
11 found guilty by the jury, he's facing a mandatory minimum
12 of five, up to twenty. The five cannot be suspended, per
13 the statute, because of prior convictions, and it would be
14 no parole - no-parole time, per the statute, 56-5 - or
15 44-53-370, I believe it is, the statute that's listed in
16 the indictment.

17 And your Honor, so I just made sure that he understood
18 all of that, make sure that he understood we were - we were
19 following the case to trial today, that we would proceed,
20 whether or not he was here, we would move for a TIA if he
21 wasn't here, and also told him that, if he rejected the
22 offer, and requested the identity of the CI and the buy
23 videos, we were asking for a Rule 5 protection order in
24 that regard, which, the parties have agreed to, was signed
25 by Judge Benjamin, and filed with the Clerk, to limit the

1 release of any CI information, even in trial posture. But
2 I wanted to make sure that he understood that, if he forced
3 the State to reveal the identity of the CI and turn over
4 that information, he would not get a plea offer back. He
5 indicated to me, with Ms. Inzerillo right there, he
6 understood all of that, and that he was rejecting the
7 offer, and wished to proceed to trial.

8 We entered into the *Rule 5* protective order, signed by
9 Judge Benjamin, filed with the Court, and I produced all of
10 the trial discovery, and that was ten days before today's
11 date, including a copy of the two buy videos in this case,
12 a copy of the confidential informant, Thomas - Timothy
13 Jacob Ballard, and a copy of his rap sheet, along with
14 various other things, the surveillance notes from the Drug
15 Unit, and I believe, also, the - an un-redacted copy of the
16 photo lineup.

17 So, in short, we have now fully complied with *Rule 5*
18 and *Brady*. I just wanted to be clear that there was a
19 little bit of a distinction we made, since this is a
20 confidential informant case.

21 THE COURT: All right. Any comment, Ms. Inzerillo?

22 MS. INZERILLO: No, your Honor.

23 THE COURT: All right. Prior record for impeachment.

24 SOLICITOR SHELTON: Yes, sir, your Honor. I have
25 certified copies of Mr. Slaton's prior convictions, as well

1 as a summary from South Carolina Department of Corrections,
2 related to his last incarceration, and I've provided a copy
3 of all of this to Ms. Inzerillo for her file.

4 And on January 22nd, 2003, in front of your Honor, Mr.
5 Slaton was convicted of distribution of crack cocaine,
6 first offense, Indictment Number 2003-GS-46-404. He was
7 sentenced to one hundred and one days - oh, excuse me -
8 five years, with one hundred and one days credit for time
9 served. He was also convicted of distribution of crack
10 cocaine in proximity of a school, for, looks like, the
11 same, ten - ten years, suspended on five years, concurrent
12 to the other one. That's Indictment 2003-GS-46-405. And I
13 would like to go ahead and mark these Court's Exhibits.

14 (WHEREUPON, COURT EXHIBIT NUMBER TWO, IDENTIFIED AND
15 MARKED, RECEIVED INTO THE RECORD.)

16 SOLICITOR SHELTON: And your Honor, looking at Rule
17 609, with the ten-year requirement for the convictions to
18 be within the past ten years, I've been able to determine,
19 through my investigation with South Carolina Department of
20 Corrections, and I have a report from them obtained by one
21 of our investigators that, on September 30th of 2005, Mr.
22 Slaton's sentence for those convictions expired. It says,
23 "expiration of sentence, status, release" on their records
24 here.

25 So, I would argue that those two charges should be -

1 we should be allowed to impeach the defendant, based on
2 convictions for those two charges, as charges that carried
3 more than a year. And we could simply limit to that in
4 front of the jury, taking in *Rule 403* into consideration.
5 And I can make a copy of this SCDC record as a Court's
6 exhibit, as well.

7 SOLICITOR SHELTON: So, that would put -- with the
8 release date being September 30th, 2005, today's date being
9 April 20th, 2015, that would put it within the ten-year
10 window. And *Rule 609* talks about release from
11 incarceration, so that would put it in the ten-year window.

12 WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
13 AND MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR SHELTON: If I may approach, I'll hand this
15 to you.

16 THE COURT: Any others?

17 SOLICITOR SHELTON: Yes, sir. I'm just going to go
18 ahead and put all of these on the record now, but I'm going
19 to concede that this next one is not impeachable, but it
20 does count as a prior conviction for possession of crack
21 cocaine, first offense, Indictment 2002-GS-46-1231,
22 sentence date, June 14, 2002. Looks like he received a
23 probationary sentence on this one, so I believe this would
24 be outside of the ten-year window. So, we would not tend
25 to use this - intend to use this one for impeachment, but I

1 want to make it part of the record.

2 (WHEREUPON, COURT'S EXHIBIT NUMBER FOUR, IDENTIFIED
3 AND MARKED, RECEIVED INTO THE RECORD.)

4 SOLICITOR SHELTON: And then, likewise, the next two
5 would not be used for impeachment purposes, but simply as
6 qualifying prior drug offenses, if it becomes relevant at
7 sentencing. 2012-GS-46-2512, conviction date January 7,
8 2013, in front of your Honor, for possession of marijuana,
9 first offense. And the disposition date of March 27th,
10 2002, in front of Judge Davenport in Catawba Ebenezer
11 Township Magistrate Court for simple possession of
12 marijuana, first offense. I would like these marked as
13 Court's exhibits, as well.

14 But again we wouldn't intend to introduce these for
15 their impeachment value, they'd only be for sentencing if
16 it becomes relevant.

17 (WHEREUPON, COURT'S EXHIBIT NUMBER FIVE AND SIX,
18 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR SHELTON: But again, we wouldn't intend to
20 introduce these for their impeachment value. They would
21 only be for sentencing, if it becomes relevant. So, we
22 only have the two - the two from 2003, I believe it was,
23 that carried into 2005 with the sentence that we would -
24 you would call crimes that carried more than a year.

25 THE COURT: Next is criminal history of non-law

1 enforcement. I believe you said you've already given the
2 CI's information to Ms. Inzerillo.

3 SOLICITOR SHELTON: Yes, sir, your Honor. We do need
4 to address a matter on that. Beg the Court's indulgence.

5 (PAUSE.)

6 SOLICITOR SHELTON: When I released the CI's
7 information on April 10th of 2015, I provided Ms. Inzerillo
8 with a copy of Timothy Jacob, known as Jake, Ballard's NCIC
9 report. It shows, and I've been able to confirm that he
10 was convicted of two counts of breaking and entering
11 automobiles, two separate counts, and one count of criminal
12 conspiracy. Those are both - all three of those being
13 five-year felonies.

14 The - He was sentenced to probation that began on 5/14
15 of 2009. The sentence was a *Youthful Offender Act*, not to
16 exceed five years, suspended on five years of probation. I
17 have checked - Ms. Inzerillo and I have checked with the
18 probation agent prior to going on the record, and I've been
19 able to confirm that Mr. Ballard's probation was ended
20 early on 5/13 of 2011. So, he - I had asked him about that
21 last week. He confirmed the same to me. He said he did
22 everything he was supposed to do, paid all of his fees, and
23 they ended his probation case early.

24 I believe Ms. Inzerillo's investigation revealed a
25 different end date, but speaking with the probation agent,

1 who is here in the courtroom, that was the information we
2 received from their system a little while ago. So, I just
3 wanted to put that on the record, and I guess we can
4 discuss it any way we need to.

5 MS. INZERILLO: Your Honor, last week, I spoke to
6 Agent Wilson with the - or, I didn't speak to her; I
7 communicated with her, via email regarding Mr. Ballard, and
8 she indicated to me that his case closed May of 2014, with
9 no violations.

10 Your Honor, that would be important to the Defense
11 upon several reasons. One, in terms of cross-examination
12 at the time that Mr. Ballard became a confidential
13 informant for the DEU, he had two pending charges. Of
14 course, as the Court is aware, that would involve
15 information violation. I believe that a further line of
16 cross could involve with that extensive five-year
17 probationary sentence, that if he picked up any other
18 charges while he was also working for the DEU. I know the
19 State may object to that, but that would also, perhaps,
20 open up some other relevant lines in cross-examination,
21 pursuant to any benefit he may have gotten from becoming a
22 confidential informant.

23 So, I did, through my own investigation, try to
24 confirm with probation the dates, and they did confirm to
25 me those dates, and the fact that he was not violated for

1 the charges. I have spoken with the agent, who is in the
2 courtroom. She - she was getting Agent Wilson, so we just
3 - that - We bring this up to your Honor right now, because
4 that kind of feeds into a couple of other motions that I
5 would have before your Honor and it may streamline some
6 things. So, we just wanted to get a clarification from
7 probation about that before we went any further.

8 SOLICITOR SHELTON: Your Honor, at this time, I would
9 propose that we hear from the probation agent. They can
10 speak to this, its up to the Court, and let you know what
11 their system reflects.

12 THE COURT: All right. Ms. Wilson, you want to come
13 forward and put your left hand on the *Bible*, and raise your
14 right.

15 (WHEREUPON, SHERESE WILSON,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 MADAM CLERK: Thank you.

18 THE COURT: Have seat.

19 DIRECT EXAMINATION - IN CAMERA

20 AGENT SHERESE WILSON BY MS. INZERILLO:

21 Q. Agent Wilson, thank you for coming.

22 A. Thank you.

23 Q. Do you have a file on a Timothy Jacob Ballard, who
24 also may be listed as Jake Ballard?

25 A. I do. I do not have the entire file.

1 Q. Um-hmm.

2 A. His file was purged.

3 Q. Okay.

4 A. And placed in our central office.

5 Q. Okay. Can you tell me for the charge for which he was
6 on probation?

7 A. He was on probation for criminal conspiracy and
8 breaking and entering auto, with two counts.

9 Q. And the - Can you confirm for the Court the date on
10 which he was placed on probation?

11 A. He was placed on probation May 14, 2009.

12 Q. And can you confirm the terms and conditions? I
13 believe there was a PTUC condition on that.

14 A. Yes. PTUC after two years' payment and restitution.

15 Q. Was that condition satisfied?

16 A. It was.

17 Q. Okay. So, what was his end date? When was he
18 terminated from probation?

19 A. He - Our records state that he was, indeed, terminated
20 on May 13th of 2011.

21 Q. And was he violating any - or anything during that
22 time?

23 A. Yes.

24 Q. Okay. Any pending charges?

25 A. No.

1 Q. Was he on probation with probation during the time
2 frame of --

3 MS. INZERILLO: Your Honor, I would ask permission to
4 consult with the State.

5 (SIDE BAR BETWEEN ATTORNEYS OFF THE RECORD.)

6 THE COURT: Yes.

7 BY MS. INZERILLO:

8 Q. Was he on - Mr. Ballard on probation during the dates
9 of July 31, 2012, to the end of the calendar year of 2013?

10 A. No.

11 Q. He was not. Okay.

12 MS. INZERILLO: Thank you, your Honor. I have no
13 further questions.

14 THE COURT: Anything from the State?

15 SOLICITOR JONES: Yes, sir. I just want to clarify
16 one thing.

17 CROSS-EXAMINATION

18 AGENT SHERESE WILSON BY SOLICITOR SHELTON:

19 Q. Ms. Wilson, you were asked if Mr. Ballard had violated
20 his probation during that time at all. I believe you
21 answered, yes.

22 A. Yes.

23 Q. Can you explain that? I just want to be clear,
24 because I think that would not be something the Defense
25 could go in on cross. I just wanted to clarify that. Can

1 you tell me what the violation was?

2 A. Yes. The nature of his first violation was March -
3 excuse me - was January 27, 2010. He - he picked up a open
4 container charge from Rock Hill P.D. He was continued with
5 supervision at that time. His next violation was in March
6 of 2010, where he - he plead guilty to a driving under
7 suspension, and he was, again, continued on probation at
8 that time.

9 Q. Okay.

10 SOLICITOR SHELTON: I have no further questions on
11 that.

12 THE COURT: You can step down and be excused. Thank
13 you.

14 SHERESE WILSON: Thank you.

15 SOLICITOR SHELTON: Your Honor, while it's fresh on
16 our minds, I would make a motion to exclude the Defense
17 from questioning Mr. Ballard regarding any probationary
18 violations. I think that the law is pretty clear on what
19 he could be impeached on, simply the fact that he has prior
20 convictions.

21 THE COURT: Ms. Inzerillo.

22 MS. INZERILLO: Your Honor, he does have those two
23 convictions for criminal conspiracy and breaking and
24 entering. I think breaking and entering would be a crime
25 of dishonesty. So, I would ask the Court for permission,

1 and I do believe I'm allowed to have to cross-examine him
2 specifically on that. However --

3 THE COURT: You may. Those two I think are within
4 the --

5 MS. INZERILLO: Your Honor, I light of Agent Wilson's
6 testimony, though, I will refrain from testimony - or
7 questioning about his potential violations.

8 THE COURT: Motion to sequester. That will be
9 reciprocally granted. Any Lyle testimony from the State?

10 SOLICITOR SHELTON: No, sir. But your Honor, right
11 now, we have Mr. Ballard in the courtroom. Would you like
12 us to have him step out for the remainder of the
13 proceedings? Is that --

14 THE COURT: That would probably be a good idea.

15 SOLICITOR SHELTON: Okay.

16 THE COURT: All right. We have admissibility of any
17 statements. That is, do we need a *Jackson versus Denno*
18 hearing?

19 SOLICITOR SHELTON: Your Honor, we do not have any
20 Lyle testimony that we intend to introduce. I do want to
21 just note, for the record, advise the State's witnesses,
22 namely Mr. Ballard and Mr. - and Officer Rainier, not to go
23 into any other buys or any other dealings with Mr. Slaton.
24 As you'll hear in the testimony, Mr. Ballard had known Mr.
25 Slaton for a period of time, and I've instructed him to

1 limit his testimony as to this investigation on October 19,
2 2012. Officer Rainier has been instructed the same.

3 There are two other buys that we're not calling at
4 this time, that we do not intend to reference. In fact,
5 we've gone so far as to redact out case numbers from a copy
6 of the photo lineup for the jury to consider. We'll note
7 that in a minute. There were three DEU case numbers
8 referenced on that lineup. We've redacted out the first
9 two, leaving only the third one, which is this case, so as
10 not to suggest anything to the jury about any other prior
11 dealings. I've also instructed Officer Rainier not to talk
12 about any prior arrests or knowledge like that, as to how
13 he would know him from any prior police dealings, if that -
14 - if that is the case.

15 THE COURT: What about statements by the defendant?

16 SOLICITOR SHELTON: No statements for the purposes of
17 *Jackson versus Denno*. There were statements made to the -
18 between the CI and the defendant, obviously, but that's not
19 custodial, nor is it to officers.

20 THE COURT: *Neal versus Biggers*.

21 SOLICITOR SHELTON: We do need to have a *Biggers*
22 hearing.

23 THE COURT: All right. We'll come back to that. Were
24 any deals made to informants, including contract signed
25 with DEU.

1 SOLICITOR JONES: We have done that, your Honor. And
2 just for the record, as we've alluded to, Jake Ballard, the
3 CI, was arrested for driving under suspension, simple
4 possession of marijuana. They were both municipal court
5 charges, both 30-day offenses, in Rock Hill Police - by
6 Rock Hill Police Department, at the end of July, 2012.

7 The day after he was arrested by Sergeant Green of the
8 Rock Hill Police Department, he made contact with Officer
9 Rainier, who is the case agent in this case, about working
10 as a confidential informant. He was not made any promises.
11 He was not threatened in any way. Mr. Ballard will testify
12 - has told me and Ms. Inzerillo, in her independent
13 investigation earlier today, that he was hoping to work off
14 the charges, but no promises have been made to him.

15 It did come to light, in my investigation, those two
16 charges have since been dismissed by the Rock Hill P.D.,
17 but Mr. Ballard wasn't aware of that until me or my last
18 meeting with him this past Friday. He's - As you've heard,
19 he was not on probation at the time, or it terminated
20 early, and we've given a copy of the CI agreement to the
21 Defense, where he's indicated he understands the policies
22 and procedures of working as a CI.

23 THE COURT: All right.

24 SOLICITOR SHELTON: And your Honor, as to Mr. - just
25 for the record, Ms. Inzerillo and I have - she wants - she

1 had some questions about how long Mr. Ballard had worked,
2 what other cases he may have investigated on. We haven't
3 revealed any details on any of his other work as a
4 confidential informant, because those details are
5 confidential. There are other cases - may have - may be
6 other cases he's involved with that I'm not aware of, or
7 may be aware of, that are not relevant to this matter.

8 He did sign on as a CI at the end of July, and we were
9 able to flush out that, through this buy and various
10 housekeeping matters with the Drug Unit, his CI agreement,
11 as far as being an active CI, was satisfied towards the end
12 of the year 2013.

13 THE COURT: Signed on in July of what year?

14 SOLICITOR SHELTON: Of 2012, your Honor. So, I - and
15 let me - it would have been - I got my years wrong. July
16 2012, through the end of the year of July 2012, is my
17 understanding.

18 THE COURT: Starting on - starting on July 12th, and
19 ended on July 12th?

20 SOLICITOR SHELTON: No. I'm sorry. I'm talking
21 myself in circles here, your Honor. I beg - I beg your -
22 starting in --

23 THE COURT: Well, let's - Let me, can I help? You
24 said July 12th of 2012. This occurred in October of 2012?

25 SOLICITOR SHELTON: Yes, sir.

1 THE COURT: So, he was subject to - the contract was
2 entered before this buy.

3 SOLICITOR SHELTON: Correct, your Honor. The date is
4 on the contract that we've provided. I believe it is July
5 31st of 2012. He obviously worked through this buy, and
6 sometime after this, into the end of the calendar year.

7 THE COURT: Okay. All right. Are you ready to
8 present your witnesses on *Neal versus Biggers*?

9 SOLICITOR SHELTON: Yes, sir, your Honor. We'll need
10 a --

11 SOLICITOR JONES: The State calls Officer Rainier.

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

14 MADAM CLERK: Thank you.

15 DIRECT EXAMINATION - IN CAMERA

16 SERGEANT JOHN RAINIER BY SOLICITOR JONES:

17 Q. Officer, please state your name, for the record.

18 A. John Rainier.

19 Q. And where are you currently working?

20 A. I'm a sergeant with the Rock Hill Police Department.

21 Q. And where were you working in October of 2012?

22 A. I was assigned as an investigator with the York County
23 Multi-Jurisdictional Drug Enforcement Unit.

24 Q. That's also known as the DEU?

25 A. Yes, sir.

1 Q. And in October of 2012, with the DEU, were you
2 assigned an investigation of the defendant, Mr. Darnell
3 Slaton?

4 A. Yes, sir.

5 Q. In that particular case, did you conduct a photo
6 lineup?

7 A. Yes, I did.

8 Q. And what date and time did that photo lineup take
9 place?

10 A. The date was the day that we did the deal. I believe
11 it was October 19th, but the time was shortly after we had
12 purchased the drugs. I don't know the exact time.

13 Q. Was that October 19th, 2012?

14 A. Yes, sir.

15 Q. And do you remember if it was daytime or nighttime?
16 Do you know when it was?

17 A. It was daytime. It was still light out.

18 Q. Was still light out. Okay. And where did it take
19 place?

20 A. In my assigned work vehicle.

21 Q. Okay. And can you be less specific than that? What
22 area?

23 A. It was shortly - it was in close proximity to where we
24 bought the drugs. It was in another apartment complex
25 called . . .

1 Q. Okay. So, it was in an apartment complex. Can you
2 repeat that, for a second?

3 A.

4 Q. Okay. And is that in York
5 County?

6 A. Yes, it is.

7 Q. And how did you get the name of the defendant for the
8 - this particular lineup?

9 A. The confidential informant had shown us his vehicle.
10 We ran the vehicle. I think it had North Carolina tags at
11 the time, however, we were able to cross-reference, with
12 all our utilities and City utilities and the DMV, and we
13 were able to develop a lineup from there.

14 Q. Okay. And by using the license plate that the
15 confidential informant showed you and the utilities, what
16 name did you come up with?

17 A. Darnell Slaton.

18 Q. Darnell Slaton. And for this particular lineup, how
19 many photos were used?

20 A. Six.

21 Q. And were the people in the photographs similar in
22 physical description?

23 A. Yes, sir.

24 Q. And were the photos marked in any way?

25 A. No, just the photo.

1 Q. Just the photo. So, was there any wording or names,
2 or identifying information on any of the photographs?

3 A. Not on that sheet, no.

4 Q. And who participated in this photo lineup?

5 A. Myself and the CI.

6 Q. And how many lineups did you show the confidential
7 informant?

8 A. Just one.

9 Q. And was anybody else present, that you were aware of?

10 A. There was another investigator. I don't remember
11 which one it was. I think it was either Sergeant Lubben,
12 Investigator Harrelson, or Investigator Rayford.

13 Q. And how did you present the lineup to the
14 confidential informant?

15 A. I usually kind of give 'em a brief statement. I'll
16 tell them the person that - that's involved may or may not
17 be in this photo lineup. Why don't you take a look at it.
18 When you identify 'em, let me know. In this case, he
19 identified 'em. I told him to circle the - circle the
20 photograph of the person they identified, draw a line out
21 to the - it was to the left, and then put their initials
22 next to that line.

23 Q. And in what form did you show the photographs? Was it
24 on a screen, or was it on paper, or?

25 A. It was on a piece of paper.

1 Q. A piece of paper. Did you or any other person
2 influence the decision of the confidential informant ---

3 A. No, sir.

4 Q. --- in the selection?

5 A. No, sir.

6 Q. Did you point or suggest or comment on the photos in
7 any way?

8 A. No.

9 Q. Did the confidential informant select a photo from the
10 lineup?

11 A. Yes, he did.

12 Q. Do you remember what photo he selected?

13 A. The photograph of the defendant.

14 Q. And do you remember how long it took the confidential
15 informant to select that particular photo?

16 A. It was pretty quick. It was almost immediately.

17 Q. Do you remember the confidential informant saying
18 anything to you before or during the selection of the
19 photograph?

20 A. Just that he had picked the person out.

21 SOLICITOR JONES: Beg the Court's indulgence.

22 May I approach the witness, your Honor?

23 THE COURT: Yes.

24 SOLICITOR JONES: I need to mark this State's Exhibit.

25 Or, Court's Exhibit, excuse me.

1 (WHEREUPON, COURT'S EXHIBIT NUMBER SEVEN, PREMARKED
2 FOR IDENTIFICATION.)

3 BY SOLICITOR JONES:

4 Q. Officer, I'm handing you what's been marked Court's
5 Exhibit Seven. Will you take a look at that for me?

6 A. Yes, sir.

7 (WITNESS COMPLIES.)

8 Q. Take a look at all three pieces of paper for Court's
9 Exhibit Seven.

10 A. Okay.

11 Q. Do you recognize that?

12 A. Yes, sir.

13 Q. Can you tell the Court what it is?

14 A. This is the photo lineup that we presented to the
15 confidential informant. Picked the defendant out, and this
16 is - the first page is a photographic lineup. It just
17 basically says - This is what we tell the CI.

18 "I have freely, voluntarily, and without
19 threats or promise, viewed a photographic lineup as
20 shown by the officer listed below. The officer in no
21 way suggested any particular photograph. I am
22 positive, without a doubt, that the person I
23 picked is the responsible party. I have initialed and
24 attached the photograph."

25 The witness will sign and date it. The investigator

1 involved with the case will sign and date it. And then,
2 there's some page numbers, date and time when it was done.

3 Q. Okay. And what's the second page?

4 A. The second page is the actual confidential - I'm
5 sorry, is the actual photographic lineup we presented to
6 the confidential informant.

7 Q. Okay. Is Court's Exhibit Seven, does that fairly and
8 accurately represent the photo lineup that you showed the
9 confidential informant on October 19th?

10 A. Yes, sir, it does.

11 Q. Has it changed or been altered in any way?

12 A. It doesn't appear to be.

13 SOLICITOR JONES: Your Honor, at this time, I'd like
14 to move Court's Exhibit Seven into evidence.

15 THE COURT: Any objections?

16 MS. INZERILLO: None, for the purposes of this
17 hearing.

18 THE COURT: Entered as Court's Exhibit. I don't
19 remember which one.

20 SOLICITOR JONES: Court's Exhibit Seven.

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

23 BY SOLICITOR JONES:

24 Q. And referring back to Court's Exhibit Seven, who did
25 the confidential informant identify as the person who he

1 had just bought marijuana from?

2 A. Darnell Slaton.

3 SOLICITOR JONES: Beg the Court's indulgence, your
4 Honor.

5 (PAUSE.)

6 SOLICITOR JONES: May I approach the witness, your
7 Honor?

8 THE COURT: You may.

9 SOLICITOR JONES: Another Court's exhibit.

10 (WHEREUPON, COURT'S EXHIBIT NUMBER EIGHT, PREMARKED
11 FOR IDENTIFICATION.)

12 BY SOLICITOR JONES:

13 Q. Officer, I'm handing you Court's Exhibit Eight. Can
14 you take a look at that for me?

15 A. Uh-huh.

16 Q. Do you recognize that?

17 A. Yes.

18 Q. And can you tell the Court what that is, please?

19 A. It's a DVD of video and audio of him - of the
20 confidential informant picking out the defendant in a
21 photographic lineup.

22 Q. And how do you know that?

23 A. I've watched it.

24 Q. Is there anything indicating that on the particular
25 disc?

1 A. Plus, it says on the front, *D. Slaton, clip for*
2 *Biggers hearing*, and then, my initials right there.

3 Q. Right. Okay. So, you've initialed that?

4 A. Yes, sir.

5 Q. And does that fairly and accurately portray the
6 events of that particular day?

7 A. Yes, sir.

8 Q. Was it altered in any way?

9 A. It doesn't appear to be.

10 SOLICITOR JONES: Your Honor, at this point, I would
11 like to move Court's Exhibit Eight into evidence.

12 MS. INZERILLO: No objection at this time.

13 THE COURT: In without objection.

14 (WHEREUPON, COURT'S EXHIBIT NUMBER EIGHT, IDENTIFIED
15 AND MARKED, RECEIVED INTO EVIDENCE.)

16 SOLICITOR JONES: Your Honor, I'd like to publish it
17 for your Honor.

18 THE COURT: Okay.

19 (COURT'S EXHIBIT NUMBER EIGHT PUBLISHED TO THE COURT.)

20 SOLICITOR JONES: Brief followup, your Honor.

21 Q. Officer, we went through, you got the name of the
22 defendant from the confidential informant?

23 A. Yes, sir.

24 Q. Through the DMV and utilities. But what name did the
25 - was the confidential informant able to give you? What

1 did the confidential informant know the defendant as?

2 A. He just gave a nickname of Dough.

3 Q. A nickname of Dough.

4 A. Yes, sir.

5 SOLICITOR JONES: No further questions.

6 THE COURT: Ms. Inzerillo?

7 MS. INZERILLO: May it please the Court, your Honor?

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION - IN CAMERA

10 SERGEANT JOHN RAINIER BY MS. INZERILLO:

11 Q. Officer Rainier, up until this point, you had gotten
12 any information about the defendant through utility
13 records; is that right?

14 A. Right. DMV.

15 Q. Found in the DMV. Okay. So, you did not walk in with
16 Mr. Ballard and - when he was inside the apartment, or ---

17 A. No.

18 Q. --- view Mr. Slaton, or anything like that?

19 A. No. No, ma'am.

20 Q. At any point, did the CI give you a physical
21 description of the person he was dealing with he called
22 Dough?

23 A. I don't remember.

24 Q. You indicated, under Mr. Jones' questioning, that the
25 photo lineup that you did, they all had similar physical

1 descriptions; is that right?

2 A. Correct.

3 Q. But you had never seen Mr. Slaton?

4 A. No, ma'am. Not physically, like face-to-face, or
5 anything like that. Just through, you know, video.

6 Q. And the lineup that you have, that's been entered as a
7 Court exhibit, that's the actual lineup that you showed Mr.
8 Ballard?

9 A. Yes, ma'am.

10 Q. And in that lineup, there are six pictures?

11 A. Correct.

12 Q. Is that right?

13 A. Yes, ma'am.

14 Q. Mr. Slaton is the third picture, which is the - it's
15 listed as a third, if you're looking at the name page.

16 A. Can I look at it?

17 Q. Sure. Go ahead.

18 A. Okay. Thank you.

19 (WITNESS REVIEWING LINEUP PHOTO PAGE.)

20 Q. But it's the second picture in the first column down.

21 A. Right.

22 Q. Am I describing that correctly?

23 A. Yes.

24 Q. Of the six pictures, Mr. Slaton is the only light-
25 skinned black male; is that correct?

1 A. Appears to be.

2 Q. Okay.

3 A. It's a black and white photo.

4 Q. Okay. But that's the photo that you gave him; is that
5 right?

6 A. Yeah. Yes, ma'am.

7 Q. The - That is the picture, and you indicated that the
8 video that we heard was the - was accurate. You didn't
9 alter that video or anything?

10 A. No, ma'am.

11 Q. And Mr. Ballard automatically and very quickly goes to
12 that one picture; is that correct?

13 A. Correct.

14 Q. Okay.

15 A. Yes, ma'am.

16 Q. Did you review this before you gave it to him?

17 A. The photo lineup?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. Did you ask for them to redo the lineup so that
21 six light-skinned black males would be placed in the
22 lineup?

23 A. No.

24 Q. Is Mr. Ballard black or white?

25 A. Mr. Ballard?

SERGEANT JOHN RAINIER: CROSS BY MS. INZERILLO - IN CAMERA
REDIRECT BY SOLICITOR JONES - IN CAMERA
RECROSS BY MS. INZERILLO - IN CAMERA

-35-

1 Q. Yes.

2 A. He's a white male.

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

5 THE COURT: Re-direct?

6 SOLICITOR JONES: Briefly, your Honor.

7 REDIRECT EXAMINATION - IN CAMERA

8 SERGEANT JOHN RAINIER BY SOLICITOR JONES:

9 Q. Officer, what - Do you remember the address that you
10 had for the utilities check?

11 A. 151 Clegan - Clegan Road, Apartment 105, 1-0-5.

12 Q. Okay.

13 A. It was Rock Hill.

14 Q. And what was the address where the buy took place?

15 A. 151 Clegan Road, Apartment 1-0-5, Rock Hill.

16 SOLICITOR JONES: Thank you, your Honor. No further
17 questions.

18 THE COURT: Ms. Inzerillo?

19 RECROSS-EXAMINATION - IN CAMERA

20 SERGEANT JOHN RAINIER BY MS. INZERILLO:

21 Q. Did you pull that information and keep it in a file?
22 Or do you just remember that?

23 A. Ma'am?

24 Q. Did you pull that information, that utility
25 information, or DMV information, or you just remembered

1 that?

2 A. Well, I mean, it was in all the reports that we wrote
3 for, you know, buys and stuff.

4 Q. Okay. But you came to that information through your
5 own investigation.

6 A. Right.

7 Q. Did you - And you indicated you pulled it from the DMV
8 and from utilities. Did you print that and put it in a
9 file?

10 A. No.

11 Q. Okay.

12 MS. INZERILLO: I have no further questions.

13 THE COURT: Okay. You can step down. Thank you.

14 OFFICER JOHN RAINIER: Yes, sir. Thank you, Judge.

15 THE COURT: Is this the case agent?

16 SOLICITOR JONES: Yes, your Honor.

17 THE COURT: He will be able to stay in?

18 SOLICITOR JONES: Yes, your Honor.

19 THE COURT: You can stay in.

20 SERGEANT RAINIER: Yes, sir.

21 (WITNESS LEAVING WITNESS STAND.)

22 SOLICITOR JONES: Your Honor, State - pardon?

23 THE COURT: I was going to say call your next witness.

24 SOLICITOR JONES: The State calls Mr. Jake Ballard,
25 please.

1 MADAM CLERK: Raise your right hand.

2 (WHEREUPON, JAKE BALLARD,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 MADAM CLERK: Thank you, please have seat.

5 DIRECT EXAMINATION - IN CAMERA

6 JAKE BALLARD BY SOLICITOR JONES:

7 Q. Please state your name, sir.

8 A. Jake Ballard.

9 Q. Mr. Ballard, have you ever been a witness before?

10 A. No, sir.

11 Q. Have you ever testified in court before?

12 A. No, sir.

13 Q. How far did you go in school?

14 A. I got my GED.

15 Q. GED. On October 19th of 2012, did you meet with
16 Officer Rainier with the DEU?

17 A. Yes, sir.

18 Q. And what were you doing immediately before meeting -
19 you met with the officer?

20 A. Just at the house, hanging out, not doing a whole lot.

21 Q. And when you met with the officer, was anybody else
22 with you?

23 A. It was just me.

24 Q. And after you met with Officer Rainier, what did you
25 do?

1 A. Went and made the deal.

2 Q. Okay. And you say you went and made the deal. Can
3 you - You went and met the defendant; isn't that right?

4 A. Yes, sir.

5 Q. Okay. And can you tell the Court where that occurred?

6 A. I walked in, and it took place in his kitchen.

7 Q. Okay. Do you remember the address?

8 A. It was "

9 Q. Okay. Apartment

10 A. Apartment

11 Q. Can you describe the lighting when you saw the
12 defendant?

13 A. It as well-lit.

14 Q. Well-lit? Was it daytime or nighttime?

15 A. Daytime.

16 Q. And was there any light coming through the windows,
17 as well?

18 A. Yeah, it was sunlight.

19 Q. And how long did - How long were you able to see the
20 defendant for this purchase?

21 A. It was two, three minutes.

22 Q. And tell the Court how close you were to the defendant
23 when it took place, when you saw the defendant.

24 A. Within reaching distance.

25 Q. And how long had you known the defendant before this

1 particular day?

2 A. I'd say around a year.

3 Q. Around a year. Did you have his phone number?

4 A. Yes, sir.

5 Q. About how many times would you say you saw the
6 defendant, prior to October 19th?

7 A. I'd say like ten times, somewhere around there.

8 Q. And did you tell law enforcement any distinguishing
9 features about this particular defendant?

10 A. Other than just the way he looks.

11 Q. And what did you know the defendant as?

12 A. Dough.

13 Q. What's his name?

14 A. Dough.

15 Q. Dough. Okay. So, were you able to give law
16 enforcement a particular name - an actual name, or was it
17 just this --

18 A. I only know him as Dough.

19 Q. Dough. Okay. And were you able to - Did law
20 enforcement show you a photo lineup?

21 A. Yes, they did.

22 Q. Do you remember what law enforcement told you before
23 the - they showed you the lineup?

24 A. That he may or may not be in the lineup. To point him
25 out, draw a line, write his name. Or, I'm sorry, initial

1 my name and circle the picture.

2 Q. And how long after the - you purchased the marijuana
3 from - How long from the time you purchased the marijuana
4 to the time you performed the photo lineup? How long was
5 that?

6 A. Less than a minute.

7 Q. Okay. So, it was fairly quickly?

8 A. Yeah, as soon as I got in the vehicle.

9 Q. Okay. Who was present during this procedure?

10 A. It was Officer Rainier and whoever his partner was
11 that day. I don't recall his name.

12 Q. Okay. Did anybody suggest or point to any particular
13 photograph in the lineup?

14 A. No, they didn't.

15 Q. Did anybody identify the particular defendant prior to
16 the lineup?

17 A. No, sir.

18 SOLICITOR JONES: May I approach the witness, your
19 Honor?

20 MADAM COURT REPORTER: Which one do you want?

21 SOLICITOR JONES: Seven.

22 MADAM COURT REPORTER: Yes, sir.

23 BY SOLICITOR JONES:

24 Q. Mr. Ballard, I'm showing you State's Exhibit Seven.
25 Will you take a look at that for me?

1 (WITNESS COMPLIES.)

2 Q. Look through all three pages, please.

3 All right. Do you recognize that?

4 A. Yes, sir.

5 Q. Okay. And tell the Court what that is.

6 A. This is the photo lineup where I identified him, and
7 this is the photo lineup of the agreement where I signed it
8 saying that I freely volunteered and all that.

9 Q. Okay. So, that's the photo lineup where you
10 identified the defendant?

11 A. Yes, sir.

12 Q. And when law enforcement showed you that lineup, how
13 long did it take you to pick out that particular photo?

14 A. Immediately, I was able to point him out.

15 Q. Okay. And how sure were you that the photograph was
16 the person you just bought marijuana from?

17 A. I was a hundred percent sure.

18 Q. Was there any difference in the description, what you
19 told law enforcement and what the photograph appeared to
20 be?

21 A. Same. It was the same.

22 Q. So, had his appearance changed at all from what you
23 just saw?

24 A. No, he was exactly as I knew him, and he was . . .

25 SOLICITOR JONES: Beg the Court's indulgence.

1 (PAUSE.)

2 SOLICITOR JONES: Just briefly.

3 Q. Now, what, exactly, were you shown there? Were you
4 shown - of those three pages?

5 A. I was only shown these two.

6 Q. Okay. So, you were just shown pictures.

7 A. This.

8 Q. You weren't shown any identification, or anything
9 like that?

10 A. This is the first time I've ever seen this piece of
11 paper.

12 Q. Okay. So, just to be clear, you were shown just the
13 photographs, and you were not shown any identification
14 information?

15 A. No, sir.

16 Q. And do you see the person you picked out in the lineup
17 and the person you bought marijuana from in the courtroom
18 today?

19 A. Yes.

20 Q. Can you point to him, please?

21 A. Right there.

22 SOLICITOR JONES: Let the record reflect, the witness
23 pointed to the defendant.

24 (WITNESS INDICATED TO DEFENDANT AT DEFENSE TABLE.)

25 SOLICITOR JONES: Beg the Court's indulgence.

1 (PAUSE.)

2 SOLICITOR JONES: Your Honor, would you like to take a
3 look at the photo lineup?

4 THE COURT: I would have to, at some point, yes.

5 SOLICITOR JONES: Okay, your Honor.

6 THE COURT: I've got it.

7 SOLICITOR JONES: Okay. No further questions, your
8 Honor.

9 THE COURT: Ms. Inzerillo?

10 MS. INZERILLO: Thank you, your Honor. May it please
11 the Court?

12 CROSS-EXAMINATION - IN CAMERA

13 JAKE BALLARD BY MS. INZERILLO:

14 Q. Mr. Ballard, what was the description you gave to the
15 officers of Dough?

16 A. African-American, heavy-set, beard, full beard.

17 Q. Was it full beard?

18 A. It was - Yeah, full, like, you know, all this, kind of
19 scuffley.

20 Q. Anything else?

21 A. That was it.

22 Q. The pictures that you were just shown, was that the
23 actual lineup that you saw in the car on that day?

24 A. Yeah, it is.

25 Q. And you indicated that you chose the picture that's

- 1 the second picture down?
- 2 A. Uh-huh.
- 3 Q. Is that - Am I right on that?
- 4 A. The second picture down, on the left?
- 5 Q. Yes.
- 6 A. Yes.
- 7 Q. Okay. And that's your initials next to that?
- 8 A. Yes, it is.
- 9 Q. And that's the first pic - I mean, that's the picture
- 10 you immediately go for?
- 11 A. Yes.
- 12 Q. Okay. Now, you have indicated that you had seen the
- 13 person you know as Dough about ten times the previous year?
- 14 A. Roughly, somewhere in there.
- 15 Q. Okay. You live in the same apartment complex as him?
- 16 A Uh-huh.
- 17 THE COURT: You got to say yes or no.
- 18 A. Oh. Yes.
- 19 Yes, ma'am.
- 20 Q. Okay. Smoke weed with him?
- 21 A. Have I ever smoked weed with him?
- 22 Q. Uh-huh.
- 23 A No si - No, ma'am.
- 24 Q. Been around him when you've been high?
- 25 A. Uh-huh.

1 THE COURT: Is that a yes or no?

2 A. Yes.

3 Yes, ma'am.

4 Q. How many times?

5 A. How many times, what?

6 Q. Have you been high when you've been around Dough?

7 A. I really - I guess, a couple. I don't know.

8 Q. A couple, being more than five, or less than five?

9 A. Less than five.

10 Q. When you spoke to Officer Rainier, the name that you
11 gave them was Dough; is that right?

12 A. Yes.

13 Q. And Officer Rainier did not go with you on this date,
14 when you went inside the apartment.

15 A. No.

16 Q. It was just you.

17 A. It was just me.

18 Q. Okay. No officer went in with you?

19 A. No, ma'am.

20 Q. Okay. And you indicated that, while you were inside
21 the apartment, you, sort of, interacted with Dough, and
22 spoke with him for about two to three minutes; is that
23 right?

24 A. Yes, ma'am.

25 Q. Have you had a chance, in this case, to watch that -

1 the recording of that interaction?

2 A. Yeah, I've watched it.

3 Q. Okay. Was that video altered or changed in any way?

4 A. No, ma'am.

5 Q. So, if that interaction showed about a thirty or forty
6 second interaction, would that be truer than your
7 recollection?

8 A. Well, from the time that I left the vehicle, the
9 actual deal itself that took place in the kitchen was only
10 a couple minutes.

11 Q. Okay. You're sure it was a couple minutes? I mean,
12 are you saying a couple minutes from the time you got out
13 of Officer Rainier's car, walked into the apartment, and
14 then went back to the car?

15 A. No. Once I walked through the front door and walked
16 in his kitchen, I was in his house for a couple minutes.

17 Q. A couple of minutes. That's your recollection?

18 A. Yes.

19 Q. So, if that tape said something significantly less
20 than that two minutes, the tape would be wrong.

21 A. No. The tape would still be right.

22 MS. INZERILLO: Your Honor, I have no further
23 questions.

24 SOLICITOR JONES: Just briefly, your Honor.

25 RE-DIRECT EXAMINATION - IN CAMERA

1 JAKE BALLARD BY SOLICITOR JONES:

2 Q. Were you shown the video prior to you selecting the
3 photograph in the lineup?

4 A. No.

5 SOLICITOR JONES: No further questions, your Honor.

6 THE COURT: You can step down, and go back and have a
7 seat.

8 (WITNESS LEAVING WITNESS STAND.)

9 SOLICITOR JONES: Your Honor, that would be all of the
10 witnesses the State has.

11 THE COURT: Defense have any witnesses?

12 MS. INZERILLO: None, your Honor.

13 THE COURT: Ms. Inzerillo, what's your position?

14 MS. INZERILLO: Your Honor, for purposes of this
15 hearing, I would ask the Court to make findings where - I
16 would just make just a few points.

17 I would ask the Court to take into consideration the
18 photographs that has been provided and placed into evidence
19 by the State. Mr. Slaton, who was the third photograph by
20 the page that is listed as Image 3, or the second
21 photograph for the first column, is the only light-skinned
22 black male in the six-pack lineup. It's been testified to
23 by both witnesses that that is the only picture of both -
24 that the confidential informant focused in on and went to.
25 We would ask the Court to take that into consideration as

1 to the suggestibility of that photograph.

2 Officer Rainier despite looking at the photo - the
3 lineup, did not go back and ask for it to be redone in any
4 way. He had not seen Mr. Slaton before, that - that the
5 skin tones between the remaining pictures and Mr. Slaton is
6 significant enough as to, I believe, rise to the level of
7 suggestibility.

8 Mr. Ballard did indicate he had interacted with the
9 person he knows as Dough prior to this. The only
10 description, however, that he gave to officers was an
11 African-American, heavy-set man, full beard and scruffy.
12 So, no height weight description, nothing else that would
13 help the officers narrow down any particular description.

14 Moreover, your Honor, in his own - and in his
15 testimony he gave the ten prior instances. Less than five
16 of those, he was under the influence of marijuana when
17 interacting with the person he knows as Dough. I would ask
18 the Court to take that into consideration in terms of any
19 findings of suggestibility in the identification procedure
20 in this case.

21 SOLICITOR JONES: Briefly, your Honor. I think the
22 witness testified that nobody suggested who he should pick
23 out when this occurred. He picked out a photo immediately
24 after the buy took place. The law enforcement got the name
25 of this particular defendant and got this particular photo

1 through a DMV search and a utility search of that
2 particular apartment. Again, nothing that either witness
3 has testified to would suggest that anybody was suggesting
4 the witness pick anybody.

5 Law enforcement said that the person may or may not be
6 on this list. And again, the confidential informant
7 indicated he was one hundred percent certain that the
8 person he picked out in this photo lineup was the person he
9 had just bought marijuana from, your Honor. So, I ask that
10 you find that the lineup is not overly-suggestive.

11 Thank you, your Honor.

12 THE COURT: Well, you never have six identical-looking
13 individuals. In this particular lineup, Mr. Slaton does
14 have lighter skin and a fuller beard. But looking at the
15 totality of the circumstances I cannot find - or, I find
16 that the Defense has not shown, by a preponderance of the
17 evidence, that the identification procedure was
18 impermissibly suggestive.

19 The procedure includes not just the photo lineup, but
20 the way it's presented, and I find that, while there is a
21 difference in the skin tone and the amount of facial hair
22 on Mr. - or, the one who was circled by Mr. Ballard as
23 being the - being Dough, I'm not sure how you spell that,
24 but I find that it was - it's not impermissibly suggestive
25 looking at the totality of the entire procedure.

1 And I find that in looking at the totality of the
2 procedure and the circumstances, there is not a substantial
3 likelihood of irreparable mis-identification. So, I find
4 that Defense has failed to carry its burden of proof and
5 prove that the procedure was suggestive.

6 Also, even had I found that the lineup was suggest -
7 impermissibly suggestive, looking at the factors that,
8 then, are to be considered, in determining whether or not
9 the identification is reliable, I do find that the
10 identification is reliable. When you look at the - Mr.
11 Ballard's opportunity to view the defendant at the time of
12 the offense, his degree of attention, his proximity, the
13 level of certainty in confrontation, which we actually for
14 once have on video, which is almost instantaneous, the fact
15 that Mr. Ballard had prior dealings, and the issue of
16 whether or not he was intoxicated during some of those
17 would go the weight of his testimony, not its - not the
18 question of the admissible - of the reliability of the
19 photo lineup.

20 The lighting, he indicated, was good, and like I said,
21 he had prior knowledge of Mr. Slaton. So, I find that the
22 identification by Mr. Ballard of Mr. Slaton, based on both
23 his face-to-face confrontation with Mr. Slaton, and, the
24 identification of Mr. Slaton from the photo lineup are
25 reliable; and therefore, I would allow him to identify Mr.

1 Slaton as the individual with whom he allegedly was
2 involved in this alleged drug deal on October 19, 2012.

3 All right. Anything else before we get the jury up?

4 SOLICITOR SHELTON: Your Honor, I want to put one
5 thing on the record real quick. In light of a recent Court
6 of Appeals case, I just want to be very clear on the record
7 at this point. No other plea offers or negotiations have
8 ever been made by the State, other than the three years for
9 the parole-eligible offense that Mr. Slaton rejected.

10 Jennifer Colton, from our office, had this case
11 before. I believe a plea offer went unaccepted, and
12 automatically expired in November or December of this past
13 year, 2014.

14 I took over the case, for the purposes of trying it,
15 but prior to doing that, I renewed the offer, re-opened
16 negotiations, so as to make sure that Ms. In - myself, make
17 sure Ms. Inzerillo had talked with her client, had a full
18 opportunity to discuss all the - all the ins and outs of
19 the offer and the ramifications.

20 Also, I don't know that I mentioned this before. I
21 gave still photos from the buy video, in this case, to Ms.
22 Inzerillo, as part of the plea - the plea offer, where he
23 only had to plead to this charge, and the other two would
24 be dismissed, per the agreement.

25 And I also showed the entire buy video for this case

1 and the other two cases to Ms. Inzerillo, subject to Rule 5
2 protective orders, during plea negotiations. That was
3 separate to us releasing it when we were in trial posture
4 on the 10th of April, but I just wanted to be clear on
5 that. All those orders were filed with the Court as to the
6 times that they were entered into. I just want to be
7 clear, for the purposes of the record.

8 THE COURT: All right. I will note that, on the
9 photographic lineup, with a statement, which is signed by
10 Jake Ballard, Exhibit Number Seven, there are three case
11 numbers listed.

12 SOLICITOR SHELTON: Yes, sir, your Honor. We
13 mentioned that earlier, in our scrambled talk about all the
14 wild stuff. We have a separate copy that we've redacted
15 out the first two case numbers. Only the third case
16 number, that would be what we'd introduce to the jury.

17 THE COURT: Okay. All right. We'll get the jury up,
18 and we'll - and then, when the jury comes up, we can get
19 started.

20 SOLICITOR SHELTON: And your Honor, as far as
21 scheduling goes, I would propose that we just pick our jury
22 and wait to swear them in the morning, and start fresh in
23 the morning. We should only - We should be able to start
24 and finish this trial tomorrow, at least the State's
25 portion of it, if that suits the Court.

1 THE COURT: All right. Make opening statements?

2 SOLICITOR SHELTON: We can, if you want.

3 THE COURT: I think - Let's see how the time goes.
4 It's twenty 'til four. If we have time -We'll see, but we
5 won't start testimony until in the morning.

6 SOLICITOR SHELTON: Okay.

7 THE COURT: And Mr. Slaton is in custody until the end
8 of the trial.

9 SOLICITOR SHELTON: Your Honor, can we bring Mr.
10 Ballard in, so the jury can see him, and see if they know
11 him?

12 THE COURT: Yes.

13 SOLICITOR SHELTON: Okay.

14 (COURT IN RECESS AT 03:41 P.M..)

15 (JURY ENTERS COURTROOM AT 03:50 P.M..)

16 (COURT BACK IN SESSION AT 03:52 P.M..)

17 THE COURT: Thank you, you may take your seats.

18 Good afternoon, members of the jury panel, I'm John
19 Hayes, I'm not related to Mark Hayes, who was with you
20 this morning, I am from Rock Hill. I am one of the judges
21 along with Judge Dan Hall, who are assigned to the
22 Sixteenth Circuit, and I am starting a trial, the first
23 trial for this courtroom for the week, at this time.

24 That is, the case of the *State of South Carolina*
25 *versus Darnell Keri Slaton.*

1 Mr. Slaton, would you please stand, so the jury can
2 see who you are?

3 (DEFENDANT STOOD.)

4 THE COURT: Mr. Slaton. This is Mr. Slaton. He's
5 represented by Ms. Inzerillo.

6 The State is represented by Mr. Shelton and Mr. Jones.
7 You may be seated.

8 Mr. Slaton is charged with the offense of distribution
9 of marijuana. It's alleged, on October 19, 2012, he did
10 distribute marijuana in violation of the laws of this
11 state. To this charge, he has entered a plea of not
12 guilty, which places on the State the burden of proving his
13 guilt beyond a reasonable doubt.

14 Sort of like the questions that Judge - the other
15 Judge Hayes asked this morning, I'm going to go through
16 some questions. What I want to do is ask that if you need
17 to respond to any of these if you'll just stand up, and
18 we'll have a dialogue from where I am here to where you
19 are. So, if you need to discuss any of these matters with
20 me, let me know. Stand up.

21 First, any of you know Mr. Slaton? Are you related to
22 him, or you know him from any source whatsoever? If so,
23 please stand.

24 No one stands.

25 Have any of you been represented - You or a member of

1 your family been represented by or a witness for either our
2 Solicitor's Office, Mr. Kevin Brackett, or our Public
3 Defender's Office, the head of that is Mr. Harry Dest?.

4 Any of you worked with them in any way whatsoever? If
5 so, please stand.

6 No one stands.

7 Do any of you know anything about this case? Any of
8 you heard about it from any source whatsoever? Or have any
9 of you formed or expressed an opinion about any matter or
10 issue which would be involved in this case? If so, please
11 stand.

12 No one stands.

13 Were any of you members of the Grand Jury which passed
14 on this indictment at an earlier time, if so, please stand?

15 No one stands.

16 Are any of you or a member of your immediate family
17 involved in law enforcement at any level, or in the
18 prosecution of criminal cases at any level? Anything from
19 military police, judge advocate general, air marshal,
20 sheriff's deputy, solicitor, anything like that?

21 (WHITE FEMALE STANDS.)

22 THE COURT: Yes, ma'am, your name and number?

23 A. One eighty-five, Patricia Raby.

24 THE COURT: And --

25 MS. RABY: Brian Overcare is a step-son-in-law.

1 THE COURT: Your step-son-in-law does what?

2 MS. RABY: He's here at Moss Justice Center. He's a
3 deputy I guess. I don't, you know I know he works here.

4 THE COURT: What's the name again? What's his name?

5 MS. RABY: Brian Longcare.

6 THE COURT: Okay. All right. Would that fact affect
7 your ability to be fair and impartial in this trial?

8 MS. RABY: No, sir.

9 THE COURT: Okay. Thank you. You may be seated.

10 (WHITE FEMALE STANDS.)

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

12 A. Elaine McDaniel. My number is one fifty-four. I have
13 a nephew that's at the York Police Department. He's a
14 lieutenant.

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

17 MS. MCDANIEL: No, sir.

18 THE COURT: All right. Thank you.

19 (WHITE MALE STANDS.)

20 THE COURT: Yes, sir.

21 A. James Underwood, two thirty-one. I have a nephew
22 that's a police officer in Lancaster County.

23 THE COURT: Would that affect your ability in --

24 MR. UNDERWOOD: No, sir.

25 THE COURT: You would still be able to be fair and

1 impartial.

2 MR. UNDERWOOD: Yes, sir.

3 THE COURT: All right. Thank you. You may be seated.

4 Are any of you or a member of your immediate family
5 involved in organizations or contributors to organizations
6 such as Mothers Against Drunk Drivers, Students Against
7 Drunk Drivers, Citizens Against Violence, Trooper's
8 Association, Sheriff's Association, or Fraternal Order of
9 Police; if so, please stand.

10 No one stands.

11 The next question is somewhat sensitive, I guess, is
12 the right way to say it. So, I'm not going to ask you to
13 tell me why you're standing. I'm simply going to ask you
14 to stand, and based on your standing, I will then ask
15 whether or not you can be fair and impartial. But I don't
16 want you to go into why you're standing.

17 But have any of you, or a member your family, been
18 adversely affected by illegal substances? Either had a
19 drug problem, or been a victim of a crime based on somebody
20 else that had a drug problem, anything like that? Again,
21 I'm not going to ask you to go into particulars, but if
22 that's the case, please stand. All right.

23 (WHITE FEMALE STANDS.)

24 THE COURT: Yes, ma'am, your name and number.

25 A. Jan Harris, ninety-three.

1 THE COURT: All right. Would you - Would you, in this
2 case, be able to be fair and impartial?

3 MS. HARRIS: Yes, sir.

4 THE COURT: Okay. Thank you.

5 Do any of you have any beliefs or philosophies,
6 medical or moral reason why you could not sit as a fair and
7 impartial juror in the trial of this particular case; if
8 so, please stand.

9 No one stands.

10 Anything further? Oh. The following are possible
11 witnesses in this case. I don't know that all of these
12 will testify, but even if they don't testify, their name
13 may come up. So, if you are related, of course, or if you
14 know any of these individuals, please stand.

15 John Rainier of the Rock Hill Police Department.
16 Jamie Faulkenberry of the Rock Hill Police Department. Jim
17 Lubben of the Rock Hill Police Department. Patrick
18 Patterson with York County Sheriff's Office Evidence.
19 Cynthia Mitchum, the York County Sheriff's Department,
20 chemist. Cheryl Guzman, York County Sheriff's Office,
21 Detention Division Personnel. James Long, also of the
22 Detention Division Personnel. And Timothy Jacob, also
23 known as Jake Ballard. That's Mr. Ballard.

24 Anybody know any of these individuals; if so, please
25 stand.

1 No one stands.

2 Anything further from the State?

3 SOLICITOR SHELTON: Nothing from the State, your
4 Honor.

5 THE COURT: Anything further from the Defense?

6 MS. INZERILLO: Your Honor, Defense would request that
7 Court ask Number Nine, the defendant request to voir dire.

8 THE COURT: All right.

9 Have any of you had any contact with the Drug
10 Enforcement Unit, whether it dealt with an arrest, or
11 whether it dealt as a witness, or any contact or
12 association whatsoever with the York County Drug
13 Enforcement Unit, in their capacity as the Drug Unit; if
14 so, please stand.

15 (HISPANIC FEMALE STANDS.)

16 THE COURT: All right.

17 A. I'm a retired officer, and I was involved in drug
18 extradition and all that.

19 THE COURT: All right. Your name and number?

20 A. Maytee Florido, and Seventy-nine.

21 THE COURT: And where were you involved?

22 MS. FLORIDO: Customs.

23 THE COURT: Customs.

24 MS. FLORIDO: Homeland Security.

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

1 to be fair and impartial in this trial?

2 MS. FLORIDO: No.

3 THE COURT: Okay. Thank you. You may be seated.

4 All right. The way - Anybody know of any reason
5 whatsoever why they could not or should not serve as a fair
6 and impartial juror in the trial of this case; if so,
7 please stand?

8 No one stands.

9 Now, the way we're going to do this is, if you hear
10 your name called, please, just stand where you are. And
11 the Solicitor, one of the Solicitors will say either
12 present the juror, or excuse the juror. If you hear the
13 term - words, excuse the juror, just simply have a seat.

14 If you hear the words, present the juror, turn and
15 face the table where Mr. Slaton and his attorney are
16 seated, and Ms. Inzerillo will say either, excuse the
17 juror, which again, means you just may sit back down; or
18 may say, swear the juror. If you hear the words, swear the
19 juror, make your way out into the aisle, come forward, and
20 the bailiffs will tell you where to have a seat.

21 Are the strikes five and five?

22 All right. Everybody agrees. All right. Please
23 stand up when you hear - if you hear your name called.

24 MADAM CLERK: Number thirty-two, Leslie Boutot.

25 (WHITE FEMALE STANDS.)

1 MADAM CLERK: What say you for the State?
2 SOLICITOR SHELTON: Please present the juror.
3 MADAM CLERK: Defense?
4 MS. INZERILLO: Please swear the juror.
5 MADAM CLERK: Please have a seat in the jury box.
6 Number Twenty-one, Wayne Barschow.
7 (WHITE MALE STANDS.)
8 MADAM CLERK: What say you for the State?
9 SOLICITOR SHELTON: Please present the juror.
10 MADAM CLERK: Defense?
11 MS. INZERILLO: Please swear the juror.
12 MADAM CLERK: Please have a seat in the jury box.
13 Number One twenty-nine, Robyn Lawton.
14 (WHITE FEMALE STANDS.)
15 MADAM CLERK: What say you for the State?
16 SOLICITOR SHELTON: Please present the juror.
17 MADAM CLERK: Defense?
18 MS. INZERILLO: Please swear the juror.
19 MADAM CLERK: Please have a seat in the jury box.
20 Number 2-0-3, Ed Sahl.
21 (WHITE MALE STANDS.)
22 MADAM CLERK: What say you for the State?
23 SOLICITOR SHELTON: Please present the juror.
24 MADAM CLERK: Defense?
25 MS. INZERILLO: Please swear the juror.

1 MADAM CLERK: Please have a seat in the jury box.
2 Number one thirty-two, Benjamin Leppard.
3 (WHITE MALE STANDS.)
4 MADAM CLERK: What say you for the State?
5 SOLICITOR SHELTON: Beg the Court's indulgence.
6 (PAUSE.)
7 SOLICITOR SHELTON: Please present the juror.
8 MADAM CLERK: Defense?
9 MS. INZERILLO: Please swear the juror.
10 MADAM CLERK: Please have a seat in the jury box.
11 Number one thirty-three, Kelli Lewis.
12 (WHITE FEMALE STANDS.)
13 MADAM CLERK: What say for the State?
14 SOLICITOR SHELTON: Please present the juror.
15 MADAM CLERK: Defense?
16 MS. INZERILLO: Please excuse the juror.
17 MADAM CLERK: You are excused from this case.
18 Number One fifteen, Beth Jenkins.
19 (WHITE FEMALE STANDS.)
20 MADAM CLERK: What say you for the State?
21 SOLICITOR JONES: Please present the juror.
22 MADAM CLERK: Defense?
23 MS. INZERILLO: Swear the juror.
24 MADAM CLERK: Please have a seat in the jury box.
25 Number 237, Chad Webster.

1 (WHITE MALE STANDS.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR SHELTON: Please excuse the juror.

4 MADAM CLERK: You are excused from this case.

5 Number Fifty-three, Joshua Clawson.

6 (WHITE MALE STANDS.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR SHELTON: Please present the juror.

9 MADAM CLERK: Defense?

10 MS. INZERILLO: Please swear the juror.

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

12 Number Ninety-three, Jan Harris.

13 (WHITE FEMALE STANDS.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR SHELTON: Please present the juror.

16 MADAM CLERK: Defense?

17 MS. INZERILLO: Please excuse the juror.

18 MADAM CLERK: You are excused from this case.

19 Number Two thirty-one, James Underwood.

20 (WHITE MALE STANDS.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR SHELTON: Please present the juror.

23 MADAM CLERK: Defense?

24 MS. INZERILLO: Please excuse the juror.

25 MADAM CLERK: You are excused from this case.

1 Number Seventy-four, Carrie Eyre.
2 (WHITE FEMALE STANDS.)
3 MADAM CLERK: What say you for the State?
4 SOLICITOR SHELTON: Please present the juror.
5 MADAM CLERK: Defense?
6 MS. INZERILLO: Please swear the juror.
7 MADAM CLERK: Please have a seat in the jury box.
8 Number One sixteen, Flora Johnson.
9 (----- FEMALE STANDS.)
10 MADAM CLERK: What say you for the State?
11 SOLICITOR SHELTON: Please present the juror.
12 MADAM CLERK: Defense?
13 MS. INZERILLO: Please swear the juror.
14 MADAM CLERK: Please have a seat in the jury box.
15 Number Twenty-seen, Rickey Blackwell.
16 (WHITE MALES STANDS.)
17 MADAM CLERK: What say you for the State?
18 SOLICITOR SHELTON: Please excuse the juror.
19 MADAM CLERK: You are excused from this case.
20 Number One fifty-four, Elaine McDaniel.
21 (WHITE FEMALE STANDS.)
22 MADAM CLERK: What say you for the State?
23 SOLICITOR SHELTON: Please present the juror.
24 MADAM CLERK: Defense?
25 MS. INZERILLO: Please excuse the juror.

1 MADAM CLERK: You are excused from this case.

2 Number One ninety-nine, Ronald Russell.

3 (WHITE MALE STANDS.)

4 MADAM CLERK: What say you for the State?

5 SOLICITOR SHELTON: Please present the juror.

6 MADAM CLERK: Defense?

7 MS. INZERILLO: Please swear the juror.

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

9 Number Eighty-five, Sherrie Gogoski.

10 (WHITE FEMALE STANDS.)

11 MADAM CLERK: What say you for the State?

12 SOLICITOR SHELTON: Please present the juror.

13 MADAM CLERK: Defense?

14 MS. INZERILLO: Please swear the juror.

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

16 Number Seventy-nine, Maytee Florido.

17 (HISPANIC FEMALE STANDS.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR SHELTON: Please present the juror.

20 MADAM CLERK: Defense?

21 MS. INZERILLO: Please excuse the juror.

22 MADAM CLERK: You are excused from this case.

23 Number Two forty-one, Richard White.

24 (WHITE MALE STANDS.)

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 One twenty-one, Janice Junker.

4 (WHITE FEMALE STANDS.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR SHELTON: Please present the juror.

7 MADAM CLERK: Defense?

8 MS. INZERILLO: Please swear the juror.

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

10 THE COURT: We'll draw one alternate strikes will be
11 one and two.

12 MADAM CLERK: Number Thirty-five, Christopher
13 Bradford.

14 (WHITE MALE STANDS.)

15 MADAM CLERK: What say you for the State?

16 SOLICITOR SHELTON: Please present the juror.

17 MADAM CLERK: Defense?

18 MS. INZERILLO: Please swear the juror.

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

20 THE COURT: Anything from the State involving the
21 striking of the panel?

22 SOLICITOR SHELTON: None from the State, your Honor.

23 THE COURT: Anything from the Defense?

24 MS. INZERILLO: No, your Honor.

25 THE COURT: Those of you who were not chosen, I'm going

1 to allow you to leave. Please call back tonight after
2 seven and follow whatever instructions you receive. The
3 instructions -- wait just -- whoa, whoa, whoa, whoa.

4 Follow whatever instructions you receive. It may be
5 to come - come back at a certain time. It may be to just
6 call back at a certain time. It's very important that you
7 follow those instructions, because if you're not here when
8 you're supposed to be, I have to ask the Sheriff to find
9 out why you're not. And I don't mean it as a threat, but
10 that's just my job requires that.

11 If you have trouble being on time - I hope none of you
12 have any emergency - but if you have an emergency, give us
13 a call. We can deal with that. So, have a pleasant
14 evening, and call back after seven and follow the
15 instructions. Thank you.

16 (JURY EXITS COURTROOM AT 04:13 P.M..)

17 THE COURT: Those of you who were sworn - chosen, if
18 you will please stand, the clerk is gonna administer the
19 oath.

20 MADAM CLERK: Please raise your right hand.

21 (WHEREUPON, PETIT JURY SWORN AT
22 04:13 P.M..)

23 MADAM CLERK: Thank you. Please be seated.

24 THE COURT: All right, you can have a seat.

25 We are going to, this afternoon, I'm going to chat

1 with you for a little bit and then, the attorneys can make
2 their opening statements and then we'll stop and start in
3 with the testimony at ten on the morning.

4 I have a few things to talk to you about, starting off
5 with what I've already said once, and that is that Mr.
6 Slaton has plead not guilty to this charge of distributing
7 marijuana, and he is presumed, by our law, innocent of that
8 charge, and the State must, in order for him to be found
9 guilty, prove his guilt to your satisfaction unanimously
10 beyond a reasonable doubt.

11 I have three primary jobs, and I'll tell you about
12 those in just a moment.

13 When the attorneys come before you and make their
14 opening statements, they are simply giving you an outline
15 or a blue print of the the trial. They're not trying to
16 convince you that your verdict should be a certain verdict.
17 They, at a later time, will have the opportunity to do
18 that. What they will be doing at this point is just
19 telling you what they see as the issues in this case, and
20 tell you a little bit about what they expect to come out
21 during the trial.

22 The three primary jobs I have are, one, I am the
23 logistics person. I make sure we taking breaks, and one
24 person is talking at a time, the mechanical part of the
25 trial. My second job is that I rule on questions of

1 evidence. If one side, based on a rule or a case, believes
2 that certain evidence the other side wishes to present is
3 not admissible, it's up to me to make a ruling as to
4 whether it is admissible or not. My third job is that I am
5 the sole judge of the law in this case.

6 Your oath requires you to take, accept, and apply the
7 law as I charge it. This is true, even if you think I
8 charge law in error, or even if you think the law should be
9 different. Your oath requires you to take, accept, and
10 apply the law as I charge it.

11 I am giving you a few legal principles now. During
12 the trial, I may give you some, but at the end of the
13 trial, I will give you a precise and comprehensive charge
14 on the law, which you are to apply to the facts as you
15 determine the facts to be.

16 You are not to infer from anything I have, at any
17 time, say or do as indicating an opinion of mine on the
18 facts. Our law does not allow a trial judge to formulate
19 or to express to a jury any opinion on the facts. That is
20 solely your job, it is solely your job to examine the
21 evidence, and give to the evidence the effect, the value,
22 the weight, and the truth you believe the evidence should
23 have.

24 In doing this, you may believe one witness as opposed
25 to several, several witness as opposed to one. You may

1 believe all or part of one witness's testimony. Use your
2 common sense, your sense of logic, your sense of reason and
3 use your experiences in life as you analyze the evidence.

4 As judges of the facts, you necessarily must judge the
5 credibility, that is, the believability of the witnesses
6 who testify. In assessing believability, use the things
7 that I've talk about. Use the things that you find in your
8 day-to-day life as being indicative of truthfulness in an
9 individual, and you can use certain evaluators. How the
10 witness acts on the stand; are they hesitant or
11 straightforward? Is their testimony consistent or
12 inconsistent? Do they have any bias or prejudice, that is,
13 any reason to help or hurt one side or the other? And
14 consider the opportunity a witness had to know those things
15 to which the witness testified. All these things you
16 consider and you will be in a position to determine the
17 true facts, and, if you will apply the law, your verdict
18 will speak the truth.

19 If you can't see or you can't hear, let me know. Cup
20 your ear, or give me a nudging gesture, a voice-raising
21 gesture, and I'll try to correct that problem.

22 Do not discuss the case among yourselves or try to
23 make up your own mind until we've reached the point in the
24 trial where I instruct you to jointly deliberate and return
25 a unanimous verdict. Prior to that time you do not have

1 all the tools you need to make a fair and reasonable
2 decision. So, don't discuss the case and try to make up
3 your mind until we reach that point.

4 Do not let anyone discuss this case with you outside
5 the courtroom. If anyone tries to discuss this case with
6 you, tell them you cannot, as you're serving as a juror,
7 and report that back and hopefully giving me that person's
8 identity.

9 Do not let yourself be exposed to any news coverage,
10 if there is any. I do not know that there would be, but if
11 anything catches your eye or hear that could remotely deals
12 with this trial, don't let yourself be exposed to it.

13 Do not use any electronic means to obtain any
14 information about court procedure, about the parties, about
15 the judge, about evidence. Don't use electronic sources
16 such as Google, or anything else to learn anything, or do
17 any research involving this trial. Your verdict must be
18 based solely on the evidence that's presented here in this
19 courtroom and the law, as I charge it. So, do not do any
20 independent research. Particularly, do not do any through
21 electronic means.

22 And do not go on Facebook or one of those type of
23 social medias and say, hey, guess what, I'm serving on a
24 jury. That doesn't sound - that sounds innocent enough but
25 someone may respond by making some comment that just

1 wouldn't be good for a juror to be engaged in so, don't do
2 that.

3 We take breaks about every hour and a half. I find
4 that is a good time to take breaks but if you need a break
5 at any time, just raise your right hand and with no
6 questions asked, we'll take a break. We start tomorrow at
7 ten and I'll probably tell you that one more time and we
8 usually try to stop about 5:30 or 6:00, at the latest.

9 Now, when you - I'm not going to ask you to shuffle
10 your seats right now because I'm going to have - let the
11 attorneys make their opening statements and then we'll stop
12 for the day.

13 But, Ms. Lawton, I'm going to ask you to be the
14 foreperson. When you come in tomorrow, you will take this
15 first seat. The alternate will take that first seat on the
16 back, and the rest of you will just sit wherever you happen
17 to be in line.

18 Counsel.

19 SOLICITOR JONES: Thank you, your Honor, Ms.
20 Inzerillo.

21 On October 19 of 2012, law enforcement, with the DEU,
22 the Drug Enforcement Unit, met with a confidential
23 informant. They put a video recorder on him, audio
24 recorder and that confidential informant went to the
25 defendant's apartment. The confidential informant gave the

1 defendant money, and the defendant gave the confidential
2 informant marijuana.

3 Immediately after that, the confidential informant met
4 back with the officer, gave the marijuana to the officer.
5 The officer showed him a lineup, six photographs, and said,
6 pick the one that just sold you this marijuana. The
7 confidential informant picked the defendant. It's as
8 simple as that, ladies and gentlemen.

9 In a lot of cases, a jury will only have the witnesses
10 to come and testify. Maybe an eyewitness or two, the
11 officer who responded to the scene, and investigator who
12 put it all together, maybe a few other witnesses, maybe
13 some photographs of the scene of the crime, but you all
14 actually get to watch a video of the defendant committing
15 the crime. We're going to show it to you. You'll see the
16 defendant's face right on that screen. You'll hear the
17 conversation between the defendant and the confidential
18 informant.

19 You're going to hear from the officer. He's going to
20 tell you he searched the confidential informant, why he
21 does that. He searched him before the confidential
22 informant went over to the defendant's apartment, why he
23 does that, if he found anything. He gave him the money,
24 how much money did he give him. How long did it take the
25 confidential informant to go from the officer to the

1 defendant's apartment and back to the officer? What did
2 the officer do with the marijuana after he got it?

3 You're also going to hear from the confidential
4 informant. He's going to tell you what happened.

5 You're going to hear from a chemist. How do we know
6 it was marijuana? The chemist tested it. What are her
7 predictions? How does she know it is what she says it is?

8 The defendant is charged with distribution of
9 marijuana. Now, at the end of the trial, the judge is
10 going to go into great detail, and tell you every element
11 the State has to prove. Well, what does it mean,
12 distribution of marijuana? He sold marijuana.

13 Now, at the end of the State's case, after you've
14 watched the video, listened to the officer testify,
15 listened to the confidential informant, listen to the
16 chemist, the only true verdict will be a guilty verdict.

17 Thank you for your time, and I look forward to
18 presenting the case.

19 MS. INZERILLO: May it please the Court, your Honor?

20 THE COURT: Yes, ma'am.

21 MS. INZERILLO: Mr. Slaton, today, is charged with
22 distribution of marijuana. And to some extent Mr. Jones is
23 correct that this case is unlike some other cases you may
24 have been involved in it is on video. But as Judge Hayes
25 told you, this case still comes down to the credibility of

1 witnesses. It is your job to assess the evidence that
2 you're going to see, and I'll tell you right now, you may
3 not be able to see everything on that video.

4 So, is this going to be a case where you're going to
5 come back tomorrow, and you're going to be able to pop some
6 popcorn and be able to watch nice, crisp video on the
7 screen, and you're going to see everything that you think
8 you need to see to meet all the elements of distribution of
9 marijuana? This is still a case of a confidential
10 informant who will have to take the stand and testify, and
11 that's what this case comes down to, ladies and gentlemen.

12 Mr. Slaton is charged with distribution of marijuana.
13 Very succinctly, he's charged with selling marijuana. The
14 only person that can testify to that is the confidential
15 informant. He's called that for a reason. He was working
16 with the police. And as Judge Hayes just told you, your
17 job, as the jury, is to determine, when someone takes the
18 stand, what might be their motivation. What would make
19 someone work with the police? That is something you can
20 take into consideration.

21 This case still comes down to the word and the
22 testimony of that person. It's not what you see on
23 Dateline, or on T.V., where it's perfectly clear, and you
24 might see something panning back and forth, it's still
25 going to take some testimony and supplementation.

1 Mr. Slaton is not guilty of distribution of marijuana.
2 He didn't distribute that day. And as Judge Hayes told
3 you, he's plead not guilty, and he stands before you
4 innocent of the charge. It is the burden of the State to
5 prove him guilty of that.

6 And you will hear witnesses come before you, maybe
7 over the next day or so, through the duration of this case.
8 Listen to their testimony. Listen to why they're saying
9 what they're saying. Listen to what they saw and what they
10 didn't see. That's your job as jurors, to see that the
11 State has met their burden. The State won't be able to
12 meet that burden, ladies and gentlemen. Mr. Slaton is not
13 guilty of distribution of marijuana. Thank you.

14 THE COURT: Thank you. We will stop today. The
15 bailiff will take you out this door, and tell you how to
16 get in and out in the morning. Know how to get out this
17 afternoon and how to get in in the morning. We'll see you
18 back, and we'll try to start promptly at ten as we can. I
19 have a couple of matters before this one, but I scheduled
20 them earlier so we should be able to start at ten or close
21 thereto.

22 Ms. Lawton, remember you will take the Forelady's
23 seat, and Mr. Bradford, you will take the alternate seat.

24 So, have a pleasant evening, and we'll see you in the
25 morning.

1 (JURY EXITS COURTROOM 04:27 P.M..)

2 THE COURT: Anything from the State before we stop for
3 the day?

4 SOLICITOR SHELTON: No, sir.

5 THE COURT: Defense?

6 MS. INZERILLO: Yes, your Honor. I do wish to place a
7 matter on the record. The Court, at pretrial, did grant
8 the Defense's motion for sequestration, and at the end of
9 the jury qualification and going straight into the judge,
10 your Honor's charge, as well as the opening statement, Mr.
11 Ballard has been present in the courtroom, and I believe he
12 would be subject to your Honor's order of sequestration.

13 I certainly understand that we have not taken any
14 testimony yet, and - but I did wish to make the motion, so
15 it would be timely, for the record. My concern is, now,
16 Mr. Ballard has heard both versions of what both sides wish
17 to place before the jury, including, maybe, some insight
18 into the Defense's proposed strategy, and that certainly
19 infringes on the sequestration and the reason why we have
20 sequestration.

21 Certainly, also, hearing your Honor's legal principles
22 that was put before the jury about credibility of witnesses
23 and what they are to look for, that could possibly impact
24 any testimony he may give, as well as how he acts on the
25 stand.

1 And so, your Honor, at this time, I would bring that
2 to the attention of the Court. I would - I believe the
3 proper remedy would be that Mr. Ballard be excluded from
4 testimony, as that has been violated, at this point, but I
5 would make the motion at this time.

6 THE COURT: All right. Well, I'm not going to exclude
7 Mr. Ballard from testifying. He hadn't been - he hadn't
8 heard any witnesses testify, so, I am not going to grant
9 the motion to exclude Mr. Ballard's testimony.

10 All right. Anything else?

11 MS. INZERILLO: No, your Honor. Thank you.

12 THE COURT: We'll see you all in the morning. I think
13 I got some things at 9:15, 9:30 with other attorneys but
14 try to get this one at ten.

15 MS. INZERILLO: Thank you, your Honor.

16 (COURT IN RECESS AT 04:36 A.M..)

17 (COURT BACK IN SESSION TUESDAY, APRIL 21, 2015, AT
18 09:42 WITH PLEAS/ATTORNEY APPOINTMENTS/ COURT IN RECESS AT
19 10:07 A.M./COURT BACK IN SESSION AT 10:14 A.M. IN THE
20 MATTER OF STATE VERSUS DARNELL SLATON.)

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

22 State ready?

23 SOLICITOR SHELTON: We are, your Honor. We would like
24 to put a couple things on the record.

25 THE COURT: Certainly.

1 SOLICITOR SHELTON: Just to make sure we're - we're
2 clear on some things.

3 What has been pre-marked as State's Number Three is
4 the redacted photo lineup that we mentioned yesterday;
5 redacted the first two report numbers. The third one,
6 being this case, is visible. At the Defense's request, we
7 are only submitting the statement page, signed by the CI,
8 the identifier, and the photos. We're not submitting the
9 last page that includes the biographical information of
10 individuals involved.

11 There is some ID's, some identification-sensitive
12 information; dates of birth, social security numbers,
13 addresses, that sort of thing, that probably don't want
14 disseminated out. We - Our case agent can still talk about
15 it being a known photo, and who that photo that was
16 selected was referenced to. But rather than just
17 redacting, you know, basically sending a redacted document,
18 we have just agreed to take out that bio page, and only
19 submit the first two pages. The original, of course, is a
20 Court's Exhibit entered during the *Biggers* hearing in the
21 pretrial. This is what the jury would actually see during
22 the trial.

23 THE COURT: Okay.

24 SOLICITOR SHELTON: The other thing, your Honor, in
25 the interim, after we adjourned yesterday, Ms. Inzerillo

1 and I discussed prior convictions of Jake Ballard, the CI
2 in this case, who will be the State's first witness. We
3 have - there were a couple of things we thought we had
4 sorted out yesterday But then, Ms. Inzerillo did a little
5 more investigation, and called a couple of details into
6 question.

7 We are in agreement on what she could use to impeach
8 the CI. I just want to put on the record, since it's
9 slightly different than what we noted yesterday.

10 In 2009, Mr. Ballard was convicted of two counts of B
11 and E, auto, which I believe your Honor has indicated could
12 be termed crimes of dishonesty. He was also convicted of
13 one count of criminal conspiracy which is an offense --

14 THE COURT: As opposed to a crime of dishonesty, would
15 it not just be a crime that carried more than one year?

16 SOLICITOR SHELTON: That would be the State's
17 position. I thought your Honor had made a ruling.

18 THE COURT: No, I think I ruled it out.

19 SOLICITOR SHELTON: Okay.

20 THE COURT: On that one, I think, I mean obviously I
21 think breaking in an automobile is a dishonest act, but I
22 don't think under the way we categorize offenses, I think
23 it would be accurate to be.

24 Ms. Inzerillo, what's your take of it?

25 MS. INZERILLO: Your Honor --

1 THE COURT: I mean if it comes in the jury is not
2 going to be told, either way. But the question, I would
3 think, would be to couch whether or not,

4 Mr. Ballard, whether or not you have been convicted in
5 such-and-such a year for a crime which carried a punishment
6 of receiving one year imprisonment. And the answer would
7 be yes.

8 SOLICITOR SHELTON: So, as opposed to those being
9 termed as crimes of dishonesty. I just want to be clear.

10 MS. INZERILLO: Your Honor, my position is that it is
11 a crime of dishonesty. The crime itself is characterized
12 from the statute as a larceny. The statute itself is
13 defined as breaking into a motor vehicle with an intent to
14 steal, which, I think, is the very definition of stealing.
15 In our case law and under our statutes, it is the very
16 definition of dishonesty.

17 THE COURT: Well, I'll allow you to ask it like that.
18 I'll allow you to ask him.

19 SOLICITOR JONES: As a crime of dishonesty, your
20 Honor? So, just to be clear, will they be able to name the
21 offenses, or just refer to them as --

22 THE COURT: Just crimes of dishonesty, not name it.

23 SOLICITOR JONES: But of course, if we choose to name
24 it --

25 THE COURT: Wait a minute, wait a minute, wait a

1 minute. I'm getting myself confused. You can name it.

2 Yeah. He's just a witness; he's not a defendant.

3 SOLICITOR SHELTON: Very good. That was my
4 understanding, too. I just wanted to make it clear.

5 THE COURT: Yeah. No, she can do that.

6 SOLICITOR SHELTON: Okay. Let's see. And then, also,
7 your Honor, we have confirmed one detail we were not aware
8 of yesterday, based on the NCIC. But the Public Index
9 supports this, so I agree with Ms. Inzerillo.

10 In this same series of events, this same course of
11 events in the same plea of 2009, Mr. Ballard was charged
12 and pled guilty to two separate counts of petty larceny.
13 They are thirty-day misdemeanors, but they are clearly
14 couched as crimes of dishonesty.

15 THE COURT: Okay.

16 SOLICITOR SHELTON: So, I think that certainly is fair
17 game.

18 As to the charges that Mr. Ballard was arrested on in
19 July of 2012, the day before he met with the Drug Unit and
20 became a confidential informant, we were not clear as to
21 the sentence on - or excuse me - not - we were not clear as
22 to the offense level of those charges. Therefore, the
23 maximum sentence, we were - I thought they were first
24 offenses. Ms. Inzerillo pointed out that he does have a
25 prior conviction for DUS, and a prior conviction for simple

1 possession of marijuana. So, both of these would be second
2 offenses. We agree with that. We just - And I think the
3 questioning could go, what are the mandatory or maximum
4 sentences involved if you were convicted of those. I would
5 specifically ask the Court to limit the Defense from
6 referring to them as second offense, only referring to them
7 by their nature, Driving Under Suspension carries up to
8 blah, blah, blah. Possession of marijuana carries up to a
9 year, and up to a \$1,000.00 fine.

10 I think calling them second offense would be unfairly
11 prejudicial to the State's case looking at Rule 403 and
12 Rule 404, suggesting a prior - prior convictions that would
13 otherwise not be admissible for impeachment. The
14 impeachment value here is, simply, what were the - what
15 charges was he looking at, and what was the maximum
16 punishment? There's no other impeachment value that could
17 be afforded under the rules of these pending charges when
18 he became a CI.

19 THE COURT: All right. What's your position on that,
20 Ms. Inzerillo?

21 MS. INZERILLO: Your Honor, I would - I mean,
22 generally we cross on as-charged, and if that would be more
23 specific for the record that that's what I'm crossing on,
24 the exact sentence, then I would ask for permission to do
25 that, and the jury can --

1 THE COURT: Yeah, I'll allow it. Ask him if he was
2 charged with a second and then that's what went away.

3 MS. INZERILLO: Now, your Honor, just for
4 clarification of the record, because I do want to make sure
5 I'm explicitly clear, he does have a prior DUS, and I
6 believe Mr. Shelton indicated he has a prior marijuana
7 charge. He actually does not have a prior marijuana
8 charge. And I don't want to find myself, as an officer of
9 the Court, accidentally misrepresenting anything to the
10 jury.

11 He was charged with a possession of marijuana second,
12 so I do wish to still cross-examine him as to, at the time
13 of his arrest, that's what he believe - he was charged
14 with, and as we was laboring under the assumption of.
15 However, for your Honor's full knowledge of the case, he
16 was not actually charged with a prior on that charge.

17 THE COURT: I follow you, and he was improperly
18 charged with a second.

19 MS. INZERILLO: Correct.

20 THE COURT: But that's - The question for the jury is,
21 what was he facing, and what was in his mind at the time he
22 entered into this agreement? So, I think you can ask him,
23 understanding, I don't think that's dis - intellectually
24 dishonest, because you're asking him what was he charged
25 with. Well, we didn't charge him. Law enforcement charged

1 him. So, if they made a mistake, what was in his mind at
2 the time.

3 MS. INZERILLO: Thank you, your Honor.

4 SOLICITOR JONES: Your Honor, actually, I need to
5 clarify that. He - Ms. Inzerillo and I talked about this
6 earlier. This is a little bit of a complicated topic --

7 THE COURT: Well, are you making it too complicated?

8 SOLICITOR JONES: I am making it a little more
9 complicated. I just want to be clear. He does have a
10 prior possession of marijuana that could be used to
11 enhance. It was charged as a second. That doesn't show up
12 on his NCIC, so, when Assistant Solicitor Chris Epting saw
13 it, he remanded it as a first.

14 I'm putting that on the record, because that was not
15 part of any deal to get Mr. Ballard to cooperate as a CI.
16 That was a decision that the Solicitor made, and it
17 appeared to be a first, and was sent back to Magistrate's
18 Court. I want to clarify that, as it pertains to reveal
19 the deal, but I certainly agree that it was charged as a
20 second, and potentially could have been prosecuted as a
21 second.

22 He has a 2009 possession of marijuana conviction
23 showing on the Public Index, but not on his NCIC. So, it
24 looks like it was a courtesy summons ticket where he wasn't
25 booked in on, so it didn't get reported to NCIC. But I

1 just wanted to clarify that. I think Ms. Inzerillo is
2 perfectly within her balance to refer to as a first by its
3 nature, let alone the CI's subjective understanding.

4 THE COURT: And it took five minutes to explain what
5 we'd already decided.

6 SOLICITOR SHELTON: Yes, sir. I specifically wanted
7 to be clear about the CI agreement. The remand by the
8 Solicitor's Office had nothing to do with any agreement to
9 get him to work as a CI.

10 THE COURT: Now, anything else?

11 SOLICITOR SHELTON: No, sir, that's it.

12 THE COURT: Ms. Inzerillo?

13 MS. INZERILLO: No, your Honor.

14 THE COURT: Okay. Bring in the jury.

15 MADAM COURT REPORTER: Mr. Solicitor, are you going to
16 use that podium?

17 SOLICITOR SHELTON: I believe so.

18 COURT REPORTER: Thank you. I cannot see Mr. Jones.

19 SOLICITOR JONES: Is that a short joke?

20 MADAM COURT REPORTER: No, sir. No, sir. But if you
21 say something, I like to look directly at you, because I
22 understand you better if I'm looking directly at you, sir.
23 Sorry, I do not mean to imply that you were short. Sorry.

24 (JURY ENTERS COURTROOM 10:26 A.M..)

25 THE COURT: Call your first witness.

1 Good morning by the way.

2 All right. Call your witness.

3 SOLICITOR SHELTON: Thank you, your Honor, may it
4 please the Court. The State calls Timothy Jacob "Jake"
5 Ballard.

6 MADAM CLERK: Sir, please raise your right hand.

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

9 MADAM CLERK: Thank you. You may have a seat.

10 DIRECT EXAMINATION

11 JACOB "JAKE" BALLARD BY SOLICITOR SHELTON:

12 Q. Good morning.

13 A. Good morning.

14 Q. Would you please state your name?

15 A. Jake Ballard.

16 Q. Can you spell your last name, for the record, please?

17 A. B-a-l-l-a-r-d.

18 Q. Mr. Ballard, is your full name Timothy Jacob Ballard?

19 A. Yes, sir.

20 Q. And you go by Jake?

21 A. Yes, sir.

22 Q. How far did you go in school, Jake?

23 A. I was - Got my GED.

24 Q. And do you currently have a job?

25 A. Yes, sir, I do.

1 Q. How long have you been a working man?

2 A. A year.

3 Q. Did you have any employment before that?

4 A. Oh, yes, sir. Yes, sir, I've had multiple jobs.

5 Q. And how old are you?

6 A. I'm twenty-three.

7 Q. Jake, have you ever been convicted of a crime?

8 A. Yes, sir.

9 Q. Specifically, were you convicted of two counts of
10 breaking and entering an automobile, one count of criminal
11 conspiracy, and two counts of petty larceny in the year
12 2009?

13 A. Yes, sir.

14 Q. And the breaking and entering, or B and E, automobile
15 charges, as well as the petty larcenies, are those called
16 crimes of dishonesty?

17 A. Yes, sir.

18 Q. And the criminal conspiracy, does that - is that a
19 crime that carries more than a year as a maximum sentence?

20 A. Yes, sir.

21 Q. How old were you when those events occurred?

22 A. Seventeen.

23 Q. Were you sentenced under the *Youthful Offender Act* to
24 a probationary sentence?

25 A. Yes, sir, I was.

1 Q. And what month and year did that probationary sentence
2 end?

3 A. Ended in 2012.

4 Q. Was it 2011?

5 A. 2011.

6 Q. May of 2011?

7 A. Yes, sir.

8 Q. Mr. Ballard, were you arrested at the end of July
9 2012?

10 A. Yes, sir.

11 Q. And were you charged with possession of marijuana,
12 second offense, and driving under suspension, second
13 offense?

14 A. Yes, sir.

15 Q. And are those both misdemeanor charges?

16 A. Yes, sir.

17 Q. The possession of marijuana, does it carry a maximum
18 sentence of up to one year in prison, and/or up to a
19 thousand dollar fine?

20 A. Yes, sir.

21 Q. And the driving under suspension, does it carry a
22 sentence of sixty days and/or several hundred dollars in
23 fines?

24 A. Yes, sir.

25 Q. And just to be clear, this was the end of July, 2012.

1 Were you on probation at that time, still?

2 A. No, sir, I wasn't.

3 Q. Jake, were you a user of marijuana during this time
4 period?

5 A. During?

6 Q. During the time period we were just discussing.

7 A When I got in trouble, when I was younger? What --

8 Q. Specifically, during the July 2012 time period, were
9 you a user of marijuana?

10 A. No, sir.

11 Q. Have you ever used marijuana?

12 A. Yes, sir.

13 Q. When's the last time you used?

14 A. On the day of 2012, whenever I got pulled over.

15 Q. Okay. So, that's what I wanted to be clear on. When
16 you were arrested at the end of July 2012, you had
17 marijuana on you. Right?

18 A. Yes.

19 Q. Were you a user of marijuana during that time?

20 A. I was at that time. Yes, sir.

21 Q. Were you a seller of marijuana?

22 A. No, sir, I wasn't.

23 Q. And after your arrest for the possession of marijuana
24 and driving under suspension charges at the end of July
25 2012, did you meet with officers from the York County Drug

1 Unit?

2 A. Yes, sir.

3 Q. And specifically, did you meet with them to discuss
4 working as a confidential informant, commonly known as a
5 CI?

6 A. Yes, sir.

7 Q. During or after that meeting, did you agree to work
8 with the Drug Unit as a CI?

9 A. Yes, sir.

10 Q. Were you hoping to get any benefit from working as a
11 CI?

12 A. Yes, sir. I was hoping to do away with my charges.

13 Q. The DUS and possession of marijuana?

14 A. Yes, sir.

15 Q. Were you promised any benefit in regards to those
16 charges?

17 A. No, sir.

18 Q. But your end goal, your hope was, that they would help
19 you out, and they'd give you - they'd talk to the officer
20 involved, and you'd get a break on those charges.

21 A. Yes, sir.

22 Q. The officer who arrested you on those charges, was
23 that Sergeant Breeden with Rock Hill Police Department?

24 A. Yes, sir.

25 Q. And he was not with the Drug Unit at the time.

1 Correct?

2 A. Correct.

3 Q. So, you talked with another officer, Officer Rainier,
4 with the Drug Unit.

5 A. Right.

6 Q. And when talking with Officer Rainier, was it your
7 understanding you'd at least get some credit for an honest
8 effort?

9 A. Yes, sir.

10 Q. Even if the buy wasn't successful, and you - it
11 wasn't your fault?

12 A. Yes, sir.

13 Q. I want to turn your attention, specifically, to the
14 day in question, October 19, 2012. Were you working with
15 the Drug Unit as a CI on that day? October 19, 2012?

16 A. That's the day that I got pulled over?

17 Q. No, sir. That was at the end of July.

18 A. Okay.

19 Q. This case, October 19, 2012.

20 A. Oh, yes, I was. Yes.

21 Q. You were working as a CI. And were you involved in a
22 Drug Unit investigation where you were the CI?

23 A. Yes, sir.

24 Q. On that day.

25 A. Yes, sir.

1 Q. Did you meet with Drug Unit officers that day?

2 A. Yes, sir.

3 Q. And where did you meet with them?

4 A. In the .

5 Q. And is that in Rock Hill?

6 A. Yes, sir.

7 Q. And is there another apartment complex close to that
8 place?

9 A. .

10 Q. And -- but you met in the
11 adjacent apartments, . Is that --

12 A. The one next to those.

13 Q. Okay. And when you met with the Drug Unit officers,
14 did they search you?

15 A. Yes.

16 Q. Did they wire you up, putting hidden cameras on your
17 person?

18 A Yes, sir.

19 Q. And were there two separate cameras?

20 A. Yes, sir.

21 Q. And did you ride with the Drug Unit officers to the
22 drop-off location so you could walk to the controlled buy?

23 A. Yes, sir.

24 Q. And were you dropped off next to

25 Apartments?

1 A. Yes, sir.

2 Q. Did you tell the Drug Unit officers that you could buy
3 drugs from someone?

4 MS. INZERILLO: Your Honor, I'm going to object to the
5 leading.

6 THE COURT: Rephrase your question, so it's not
7 leading.

8 SOLICITOR SHELTON: Okay.

9 Q. That particular day, were - were you in a position to
10 buy drugs from someone?

11 A. Yes, sir.

12 Q. Who?

13 A. Dough.

14 Q. What kind of drugs?

15 A. Marijuana.

16 Q. Did you know Dough's real name?

17 A. No, sir.

18 Q. Did you know how to get in touch with him?

19 A. Yes, sir.

20 Q. Did you have his phone number?

21 A. Yes, sir.

22 Q. So, the Drug Unit didn't give you his phone number.

23 A. No, sir.

24 Q. And they didn't tell you who to buy from.

25 A. No, sir.

1 Q. On the day in question, October 19, 2012, did you make
2 contact with Dough?

3 A. Yes, sir.

4 Q. Why?

5 A. To set up a deal so I could go buy marijuana from him.

6 Q. And how did you contact him?

7 A. I think it was through a phone call and texts.

8 Q. From your cell phone?

9 A. From my cell phone.

10 Q. And did you ask for a certain amount of marijuana?

11 A. Yes, sir.

12 Q. Do you recall how much?

13 A. Two grams.

14 Q. And how much would that have been worth?

15 A. Forty dollars.

16 Q. And did you all agree to meet somewhere?

17 A. In his house.

18 Q. Which is where?

19 A.

20 Q. And did you know where he lived?

21 A. Yes, sir.

22 Q. It is a house or an apartment?

23 A. Apartment.

24 Q. Do you know the address?

25 A.

1 Q. And you say that's the

2 A. Yes, sir.

3 Q. Is that in Rock Hill, South Carolina?

4 A. Yes, sir.

5 Q. Okay. So, let's back up. Let's take this one step at
6 a time. When you met with the Drug Unit officers, and they
7 prepared you for the buy, did they search you prior to
8 letting you walk to Dough's apartment?

9 A. Yes, sir.

10 Q. And did you have anything illegal on you?

11 A. No, sir, I didn't.

12 Q. And did they also give you forty dollars with which to
13 buy the marijuana?

14 A. Yes, sir.

15 Q. Did you have any other money on you?

16 A. No, sir.

17 Q. And you rode with the Drug Unit officers to the drop-
18 off location?

19 A. Right.

20 Q. Was that in your vehicle or their vehicle?

21 A. Their vehicle.

22 Q. And when they dropped you off outside of the apartment
23 complex, did you walk to those apartments?

24 A. Yes, sir.

25 Q. Did you walk straight there?

1 A. Yes, sir.

2 Q. Did you stop and talk with anyone along the way?

3 A. No, sir.

4 Q. Did you stop and retrieve anything hidden along the
5 way?

6 A. No, sir.

7 Q. Prior to them dropping you off and you walking, and
8 they hid the two different cameras on your person, did they
9 tell you where the cameras were?

10 A. One was a watch, I believe, and I think another one
11 was on the shirt.

12 Q. But - So, you were aware that there were cameras on
13 you, recording?

14 A. Right, yes.

15 Q. And was an audio/video recording produced by that
16 equipment?

17 A. Yes.

18 Q. In fact, were there two separate audio/video
19 recordings produced by the two separate cameras?

20 A. Um-hmm.

21 Q. And have you watched the recordings?

22 A. Yes, sir, I have.

23 Q. Mr. Ballard, I'm handing you what has been pre-marked,
24 for identification purposes, as State's Exhibits Number One
25 and State's Exhibits Number Two.

1 Do you recognize those items?

2 A. Yes, sir.

3 Q. Are they DVD's?

4 A. Yes, sir.

5 Q. Two separate DVD's?

6 A. Yes, sir.

7 Q. Is there a video recording on each of the two discs?

8 A. Yes, sir.

9 Q. Have you watched the video recording on both discs?

10 A. Yes, sir.

11 Q. Are those recordings true and accurate, as to the
12 events that took place during this investigation?

13 A. Yes, sir.

14 SOLICITOR SHELTON: Your Honor, I would move State's
15 One and Two into evidence.

16 MS. INZERILLO: No objection.

17 THE COURT: In without objection.

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

20 SOLICITOR SHELTON: Your Honor, at this time, I would
21 like to publish one of these two videos.

22 THE COURT: All right. You may.

23 MS. INZERILLO: Actually, your Honor, I do have an
24 objection to a segment of one of the tapes.

25 THE COURT: Well --

1 MS. INZERILLO: Subject to previous motion that we had
2 earlier.

3 THE COURT: Maybe we better let the jury go out.

4 SOLICITOR SHELTON: Okay.

5 THE COURT: Let me let the jury go out for a minute
6 while we take up this matter.

7 (JURY EXITS COURTROOM 10:38 A.M..)

8 THE COURT: Yes, ma'am. What's the second --

9 MS. INZERILLO: I apologize, your Honor. One of the -
10 As we saw in pretrial, the *Neal v. Biggers*, the
11 identification procedure is on both tapes. He is not
12 questioning this witness about that, and we don't have any
13 objections to that. And obviously, I would object to that
14 line of questioning and that testimony. And so, if it's
15 going to come into the tape, I would take the time to
16 object to it, since it's going to be published to the jury
17 at this time, and renew my previous objection to that. And
18 I wasn't sure if the State was going to stop short of that
19 to continue questioning, but I didn't want to miss a chance
20 to object to that.

21 SOLICITOR SHELTON: We intend to publish the whole
22 video. He's testified it's a fair and accurate
23 representation of the events that took place. It's on
24 there. We'll ask him about that identification later, but
25 I'll go in and ask specifics about the video. He's

1 authenticated the recording, so I believe we should be
2 allowed to play that.

3 THE COURT: I overrule the objection.

4 MS. INZERILLO: Thank you, your Honor.

5 THE COURT: Bring the jury back out.

6 (JURY ENTERS COURTROOM 10:42 A.M..)

7 THE COURT: You may proceed.

8 SOLICITOR SHELTON: May it please the Court, your
9 Honor? At this time, I would renew my motion to publish
10 the video for the jury. Specifically it's State's Exhibit
11 Number Two.

12 THE COURT: You may.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO PUBLISHED TO
14 THE JURY AT 10:43 A.M..)

15 BY SOLICITOR SHELTON:

16 Q. Jake, the other video, State's Exhibit Number One, is
17 it a recording of the exact same events that were captured
18 on State's Number Two?

19 A. Yes, sir.

20 Q. And that was from the other camera?

21 A. Yes, sir.

22 Q. So, it's just a different angle of the exact same
23 events we just saw?

24 A. Yes, sir.

25 Q. After you got out of the Drug Unit vehicle, who did

1 you talk with? Who were you talking with while you were
2 walking?

3 A. On - Dough called me.

4 Q. On your phone? And what was that conversation about?

5 A. He just let me know that everything was good, and the
6 door would be open, come on in.

7 Q. And did you talk to someone else after that?

8 A. Yes, sir.

9 Q. Who did you talk with next?

10 A. Officer Rainier.

11 Q. And why did he call?

12 A. Just to check in.

13 Q. And then, after you left Dough's apartment, did you
14 talk with someone?

15 A. After I left, Officer Rainier called me.

16 Q. For the same reason as before, just to check in?

17 A. Uh-huh. Yes, sir.

18 Q. Did you meet with the man you know as Dough at his
19 apartment that afternoon?

20 A. Yes, sir.

21 Q. And what was his address?

22 A.

23 Q. Had you been there before?

24 A. Yes, sir.

25 Q. Did you knock on the door when you got there?

- 1 A. I walked in.
- 2 Q. So, he was expecting you?
- 3 A. Yes, sir.
- 4 Q. In fact, didn't you just testify he told you the door
5 was open, come on in?
- 6 A. Yes, sir.
- 7 Q. And you walked in?
- 8 A. Yes, sir.
- 9 Q. Was Dough inside?
- 10 A. Yes, sir.
- 11 Q. Was anyone else inside, that you were aware of?
- 12 A. No, sir.
- 13 Q. And was that Dough you were talking with, inside the
14 apartment?
- 15 A. Yes, sir.
- 16 Q. And what area of the apartment was that?
- 17 A. Kitchen.
- 18 Q. Is that just inside the front door?
- 19 A. Yes, sir.
- 20 Q. Did you go anywhere else inside the apartment?
- 21 A. No, sir.
- 22 Q. You were in there for a couple minutes?
- 23 A. Yes, sir.
- 24 Q. Describe the lighting in Dough's kitchen.
- 25 A. I'd say it was well-lit.

1 Q. And how close were you to him?

2 A. Reaching distance.

3 Q. Did you get a good look at him?

4 A. Yes, sir.

5 Q. Did he hand you anything during your meeting?

6 A. Yes, sir.

7 Q. What did he hand you?

8 A. The marijuana.

9 Q. Was it loose, or in a plastic baggie?

10 A. A plastic baggie.

11 Q. Did it appear to be what you had ordered?

12 A. Yes, sir.

13 Q. Did you hand Dough anything during the meeting?

14 A. Yes, sir.

15 Q. What did you hand him?

16 A. The money.

17 Q. The forty dollars?

18 A. The forty dollars.

19 Q. And just to be clear, is that the money that Drug Unit
20 officers had given you earlier?

21 A. Yes, sir.

22 Q. And you and Dough talked about - were talking about
23 something in the kitchen. What were you all talking about?

24 A. We was talking about quality of the marijuana.

25 Q. So, you used the word, fire. What does that mean?

1 A. It just means it's good quality.

2 Q. Good quality? And the man you know as Dough said,
3 "tastes like water". What does that mean?

4 A. I guess it just means it tastes good and it smokes
5 good.

6 Q. So, it has to do with quality?

7 A. Quality.

8 Q. He also said, "wait until you blow it". What does
9 that mean?

10 A. Smoking it.

11 Q. And "it tastes like fruit." What does that mean?

12 A. It's a good taste to it when you smoke it.

13 Q. It tastes like water, tastes like fruit, it's good?

14 A. Right.

15 Q. So, specifically, you and he were talking about the
16 quality of the marijuana.

17 A. Right.

18 Q. That he had just handed you.

19 A. Yes, sir.

20 Q. And to blow means to smoke.

21 A. Yes, sir.

22 Q. So, when you said, "later, I may be back, depending on
23 how much I blow" you were talking about how much I smoke?

24 A. Yes, sir.

25 Q. What did you do after the deal was done at Dough's

1 apartment?

2 A. I went back to my apartment.

3 Q. No, immediately after, what did you do?

4 A. Oh. I went and met with Officer Rainier.

5 Q. And did you walk straight back to the agreed-upon
6 meeting place?

7 A. Yes, sir.

8 Q. Is that the same place from where they dropped you
9 off?

10 A. Yes, sir.

11 Q. And did you meet with them in -- did you go back to
12 their Drug Unit vehicle?

13 A. Yes, sir.

14 Q. Did you stop along the way?

15 A. No, sir.

16 Q. Did you talk with anyone along the way back?

17 A. No, sir.

18 Q. Did you pick up something that you - that may have
19 been hidden somewhere on the way back?

20 A. No, sir.

21 Q. What did you do with the marijuana?

22 A. Gave it to Officer Rainier.

23 Q. Was it still in the plastic baggie?

24 A. Yes, sir.

25 Q. Did you give Officer Rainier all of the marijuana you

1 bought from Dough?

2 A. Yes, sir.

3 Q. To be clear, did you have anything hidden on your
4 person anywhere that they weren't aware of?

5 A. No, sir.

6 Q. That the Drug Unit wasn't aware of, that is. So, you
7 didn't have any marijuana stashed anywhere that you didn't
8 tell them about, and they didn't find when they searched
9 you?

10 A. No, sir, I didn't.

11 Q. The marijuana you gave Rainier was the marijuana that
12 you had just bought from Dough.

13 A. Yes, sir.

14 Q. Did you give a sworn statement about these events to
15 the Drug Unit officers?

16 A. Yes, sir.

17 Q. Immediately after the buy, did Officer Rainier show
18 you a group of six pictures?

19 A. Yes, sir.

20 Q. And was that in the Drug Unit vehicle, that he showed
21 you those pictures?

22 A. Yes, sir.

23 Q. What did Rainier say to you, if anything, before
24 showing you the six pictures?

25 A. That he was --

1 MS. INZERILLO: Your Honor, I'm going to renew my
2 previous objection to this line of questioning.

3 THE COURT: Overruled.

4 BY SOLICITOR SHELTON:

5 Q. Let me repeat the question, please. What did Rainier
6 say to you, if anything, before showing you the six
7 pictures?

8 A. He said that he may or may not be in the photo lineup.
9 If I see him, then, point him out.

10 Q. And he asked you to take a look at the pictures, to
11 see if the guy you just bought from was in there?

12 A. Yes, sir.

13 Q. Was one of the pictures in that group of six of the
14 guy you know as Dough?

15 A. Yes, sir.

16 Q. Did you mark your selection?

17 A. Yes, sir.

18 Q. How did you mark your selection?

19 A. I circled it, drew a line out, put my initials and the
20 date.

21 Q. Had Officer Rainier or the other officer, or anyone
22 else, told you the names of the people in the six pictures?

23 A. No, sir.

24 Q. Did Rainier or anyone else suggest to you which
25 picture, if any, might be Dough?

1 A. No, sir.

2 Q. Had you seen the buy video we just watched or the
3 other one, prior to making your selection?

4 A. No, sir.

5 Q. Were you threatened in any way?

6 A. No, sir.

7 Q. Were you promised anything by anyone to influence your
8 selection?

9 A. No, sir.

10 Q. And did you also sign a statement indicating the photo
11 you selected was your selection?

12 A. Yes, sir.

13 Q. And specifically, that was your identification of the
14 person you had just bought from that you knew as Dough?

15 A. Yes, sir.

16 Q. Jake, I'm going to show you what's been marked for
17 identification as State's Exhibit Number Three.

18 This is two pages stapled together. Just take a
19 second to look at that. I'm going to ask you a couple
20 questions.

21 (WITNESS COMPLIES.)

22 Q. Do you recognize that?

23 A. Yes, sir.

24 Q. What is it?

25 A. The photo lineup I was shown that day and the

1 agreement I signed.

2 Q. The statement you signed indicating that that was your
3 selection?

4 A. Yes, sir.

5 Q. All right. The statement is Page One?

6 A. Yes, sir.

7 Q. Page Two, is that the six photos?

8 A. Yes, sir.

9 Q. There appear to be some markings on that Page Two, the
10 photos. Did you make those markings?

11 A. Yes, I did.

12 Q. Specifically, there's a circle around the picture on
13 the left, second row?

14 A. Uh-huh.

15 Q. Correct?

16 A. Yes, sir.

17 Q. And a line drawn out next to it?

18 A. Yes, sir.

19 Q. Did you make those marks?

20 A. Yes, I did.

21 Q. And there are initials, J. B. Are those your
22 initials?

23 A. Yes, sir.

24 Q. And then, there are a couple of numbers. What are
25 those numbers?

1 A. 10/19.

2 Q. Was that the date that day?

3 A. Yes, sir.

4 Q. Jake, do you see the person you know as Dough in the
5 courtroom today?

6 A. Yes.

7 Q. Would you please point him out for the jury?

8 SOLICITOR SHELTON: Your Honor, please let the record
9 reflect, he's pointed to the defendant in the white shirt,
10 blue tie.

11 (WITNESS INDICATED TO DEFENDANT AT DEFENSE TABLE.)

12 SOLICITOR SHELTON: Please answer any questions the
13 Defense attorney may have for you.

14 MS. INZERILLO: May it please the Court, your Honor?

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 JACOB "JAKE" BALLARD BY MS. INZERILLO:

18 Q. So, Jake, you got arrested on two charges in July of
19 2012; is that right?

20 A. Yes, ma'am.

21 Q. Okay. And that was six months after coming off
22 probation?

23 A. Uh-huh.

24 Q. Is that right?

25 A. Uh-huh.

1 Q. You have to say, yes.

2 THE COURT: You've got to say yes or no.

3 A Yes, ma'am. Okay.

4 Q. Okay. And you were on probation for breaking into
5 cars?

6 A. Yes, ma'am.

7 Q. For doing that twice.

8 A. Uh-huh. Yes, ma'am.

9 Q. And you were on probation for criminal conspiracy,
10 which is doing that with somebody else.

11 A. Yes, ma'am.

12 Q. Right?

13 A. Uh-huh.

14 Q. Now, you had also pled to a petty larceny, which is a
15 fancy legal term for stealing something. Right?

16 A. Right.

17 Q. So, you pled to being a thief.

18 A. Right.

19 Q. Okay. Now, Mr. Shelton questioned you about being on
20 probation for breaking into cars and for criminal
21 conspiracy, but on the petty larceny, you had done five
22 days in jail for that.

23 A. Right.

24 Q. Right?

25 A Uh-huh

1 Q. And --

2 THE COURT: You've got to --

3 A. Oh.

4 Yes, ma'am.

5 Q. Okay. And you knew, when you were arrested in July,
6 you were looking at more jail time.

7 A. Yes, ma'am.

8 Q. Right? You were looking at a year on a weed charge.
9 Right?

10 A. Yes, ma'am.

11 Q. And you were looking at two months in jail on driving
12 under suspension.

13 A. Yes, ma'am.

14 Q. Right? You don't want to go to jail.

15 A. No, I don't.

16 Q. Okay. So, you came up with the idea of contacting the
17 DEU and trading names to work off your charges?

18 A. That's true.

19 Q. That's true. Okay. So, the way this works is, you
20 contact someone, in this case Officer Rainier, and you say,
21 I can work for you, and I hope, or I want you to work off
22 my - I want my charges to go away; is that right?

23 A. I was hoping, yes.

24 Q. Okay. All right. So, you were hoping - they don't
25 make you any promises, but what ultimately happens is that

1 your charges go away: is that right?

2 A. Yes, ma'am.

3 Q. Okay. So, as of today, you've never had to go to jail
4 for possession of marijuana. Right?

5 A. I went to jail that night for that.

6 Q. Okay.

7 A. Or, for possession and driving under suspension.

8 Q. Okay. But that's it.

9 A. That's it.

10 Q. So, once you started talking to Officer Rainier, you
11 haven't been to jail for that.

12 A. No, I haven't.

13 Q. Okay. And you haven't been to jail for driving under
14 suspension.

15 A. No, I haven't.

16 Q. Okay. So, what you hoped happened, and what they
17 didn't promise you what happened, actually happened.

18 Right? Your charges were dismissed.

19 A. Right.

20 Q. Okay. So, you contacted Rainier, and you said, I know
21 this guy, Dough, I'm gonna buy weed from him.

22 A. Uh-huh.

23 Q. Right?

24 A. True.

25 Q. Okay. And on October 19th, you met with Rainier to do

1 that.

2 A. Correct.

3 Q. Is that correct? Okay. Now, you just testified,
4 under oath, that you set up a deal with the person you know
5 as Dough for two grams for forty dollars. Right?

6 A. Right.

7 Q. Can I see the phone call that it happened?

8 A. I don't have the phone calls.

9 Q. Okay. Can I see the text message where that happened?

10 A. I don't have those, either.

11 Q. Okay. So, all we have is your word, someone who's
12 been convicted for stealing, that this deal was supposed to
13 happen; is that right?

14 A. That's right.

15 Q. Okay. Now, so, you contact Rainier on October 19th,
16 and you guys go to this apartment complex. Right?

17 A. Uh-huh.

18 Q. And he goes there, based on your word that this deal
19 can happen.

20 A. Yes.

21 Q. Right? You don't pick up the phone and say, look,
22 Officer Rainier, I'm going to make true to my word; I'm
23 going to call him back; I'm going to text him right now;
24 I'm going to show him I can make good on this. You didn't
25 do that. Right?

1 A. Can you rephrase that?

2 Q. You didn't call him, so he could record a
3 conversation.

4 A. Call who?

5 Q. Saying - Dough. Saying, look, man, remember I told
6 you, we were going to do two grams and forty dollars, is
7 that still the case? That's not recorded anywhere.

8 A. Not to my knowledge.

9 Q. Okay. So, they - You meet up with him, and he
10 searches you. Right?

11 A. Yes.

12 Q. Okay. He searches you, because your gonna go in by
13 yourself.

14 A. Uh-huh. That's true.

15 Q. Right? Okay. Officer Rainier's not going in with
16 you.

17 A. No, ma'am.

18 Q. No. No other officer goes in with you.

19 A. No, ma'am.

20 Q. Right? So, he pats you down, searches you, doesn't
21 find any weed, doesn't find any money on you; is that
22 right?

23 A. That's true.

24 Q. Okay. And then, he puts recording devices on you; is
25 that right?

1 A. Right.

2 Q. And you testified under direct that you knew where the
3 recording devices were. Right?

4 A. Right.

5 Q. Okay. Now, you then proceed to walk up to the person
6 you know as Dough's apartment. Right?

7 A. Right.

8 Q. Now, you know you have what, a camera on your wrist
9 and a camera somewhere on your shirt.

10 A. Right.

11 Q. Right? You know that, when you walk into that room,
12 you want to work off your charges. Right?

13 A. Right.

14 Q. You know you don't want to go back to jail.

15 A Uh-huh.

16 Q. Right?

17 A. True.

18 Q. And yet, you don't, at any time, take that camera and
19 point it towards any of the marijuana that you say you
20 bought from Dough.

21 A. No, I didn't. I tried. I guess it didn't work good.

22 Q. Okay. All right. So, all this moving around, where
23 you're moving your arm, and all this video you just saw, at
24 no point were you trying to focus. We never see any of
25 that.

1 A. There's only so much you can do.

2 Q. Right, right. So, holding your arms straight, you
3 can't do that either?

4 A. Yeah, I can't do like this when --

5 Q. Right. Uh-huh.

6 A. That would be obvious.

7 Q. Sure. So, when you're walking away from the
8 apartment, and you've allegedly got all the stuff in your
9 hand, you can't sort of hold it up like this, to be like,
10 hey, Rainier, here's what he sold me. Dough's not around,
11 right ---

12 A. Right.

13 Q. --- at that point? We see a significant period of
14 time where you're walking, supposedly by yourself, back to
15 the truck. Right?

16 A. Right.

17 Q. You can't sort of hold it up and say, hey, Rainier,
18 here's what he just sold me. No? None of that?

19 A. I wasn't instructed to do that.

20 Q. Oh, okay. But yet, you have an interest in not
21 wanting to go back to jail.

22 A. True.

23 Q. Right? Okay. Now, you - When you're in the house -
24 today, you're testifying about buyer and blow and all this
25 stuff, and you seemed like, somewhat confused about some of

1 that. But at the time, you never say, hey, man, here's the
2 forty, thanks. That's not ever on the tape, either. Am I
3 correct on that?

4 A. You're correct.

5 Q. Okay. And when you get into the truck with Rainier,
6 Rainier says, "good job, man". Did you hear that?

7 A. Yes, ma'am.

8 Q. Okay. You didn't say, hey, here's the stuff that I
9 just bought from Dough; is that right?

10 A. Right.

11 Q. So, when you're in the truck with Rainier, you don't
12 mention at all buying any marijuana from Dough. You go -
13 you get in, and then you go into the --

14 A. Well, I think, after I left his house I spoke with him
15 on the phone, and we was speaking on the phone and said
16 everything went well, you know.

17 Q. He said, are you on your way? You said, yes, I'm on
18 my way back. Do you recall that?

19 A. I think he said, did everything go well; and I said,
20 yes.

21 Q. Okay. You didn't say, I got the weed from, I got the
22 weed on me, nothing like that?

23 A. No.

24 Q. Okay. So, the first time you mention anything about
25 buying weed is in the sworn - is in the statement that Mr.

1 Sheldon mentioned -- Shelton mentioned, that you signed
2 later.

3 A. Uh-huh.

4 Q. Do you recall that?

5 A. Yes.

6 Q. Did you review that statement?

7 A. Yes.

8 Q. Okay. And that was a statement that Officer Rainier
9 prepared for you, and that you signed.

10 A. True.

11 Q. Okay. Now, part of the arrangement that you have with
12 the DEU is - or that you sort of set up, is that you have
13 to come in today and testify; is that right?

14 A. Right.

15 Q. That's part of the contract that you signed with the
16 DEU.

17 A. Right.

18 Q. Okay. And this part - So, it doesn't end when the
19 charges go away. This part is part of what you have to do
20 to, sort of, save your neck; is that right?

21 A. I'm not sure.

22 Q. Okay. But you still have an interest in not wanting
23 to go to jail.

24 A. True. I don't want to go to jail.

25 Q. Okay.

1 MS. INZERILLO: Your Honor, I have no further
2 questions.

3 THE COURT: Any re-direct?

4 REDIRECT EXAMINATION

5 JACOB "JAKE" BALLARD BY SOLICITOR SHELTON:

6 Q. Jake, were you subpoenaed to be here today?

7 A. By - No, sir. Or, by you.

8 Q. Yes.

9 A Yes, sir.

10 Q. Yeah, by Harrellson, at my - by Officer Harrellson, at
11 my direction, were you served with a subpoena?

12 A. Yes, sir.

13 Q. Do you particularly want to be here?

14 A. No, sir.

15 SOLICITOR SHELTON: Nothing further.

16 THE COURT: Re-cross?

17 MS. INZERILLO: No, your Honor.

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

19 (WITNESS LEAVING WITNESS STAND.)

20 SOLICITOR SHELTON: Your Honor, at this time, I'd ask
21 that Mr. Ballard be excused.

22 THE COURT: You can be excused. Appreciate your time.
23 Thank you.

24 Call your next witness.

25 SOLICITOR SHELTON: Next witness --

1 SOLICITOR JONES: The State calls Officer Rainier.

2 SOLICITOR SHELTON: Your Honor, do you want to take a
3 break before we call this witness?

4 THE COURT: This would be a good idea. This testimony
5 will be a little lengthy. We'll take a break at this time,
6 take about a ten-minute refreshment break.

7 (JURY EXITS COURTROOM AT 11:18 A.M..)

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

9 (COURT BACK IN SESSION AT 11:34 A.M..)

10 THE COURT: Take your seats.

11 Is the state ready?

12 SOLICITOR JONES: Yes, Your Honor.

13 THE COURT: Defense?

14 MS. INZERILLO: Yes, your Honor.

15 THE COURT: All right. Bring in the jury.

16 (JURY REENTERS COURTROOM AT 11:35 A.M..)

17 THE COURT: You may call your next witness.

18 SOLICITOR JONES: The State calls Officer Rainier.

19 THE COURT: Please come up to be sworn.

20 MADAM CLERK: Please raise your right hand.

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

23 MADAM CLERK: Thank you. You may have a seat.

24 DIRECT EXAMINATION

25 SERGEANT JOHN RAINIER BY SOLICITOR JONES:

1 Q. Please state your name, sir.

2 A. John Rainier.

3 Q. And where do you currently work?

4 A. I'm a sergeant with the Rock Hill Police Department.

5 Q. And where did you work in October of 2012?

6 A. I was assigned as an investigator with the York County
7 Drug Enforcement Unit.

8 Q. And what were some of your duties as an investigator
9 with the Drug Enforcement Unit?

10 A. Investigating and enforcing narcotics crimes and vice
11 crimes. Like, gambling, prostitution, drugs. I'm sorry,
12 guns.

13 Q. Can you tell the jury what a controlled buy is?

14 A. A controlled buy is where we - where we will either
15 send a confidential informant in, or we will act as an
16 undercover officer, and go in and buy narcotics from a
17 potential target.

18 Q. And what's a confidential informant?

19 A. A confidential informant ranges from people, you know,
20 like concerned citizens who have information, that just
21 give us information, and then we work investigations from
22 it. It also involves people who may have a criminal
23 charge, and they want to try and help themselves in a
24 reduction or an elimination of that charge. And then, the
25 last one is people who we will actually pay to come in and

1 do work for us. And they're not actually working a
2 criminal charge off; they're just actually getting a
3 financial gain from it.

4 Q. And you briefly touched on this, but how does the DEU
5 use a confidential informant?

6 A. There's multitudes of ways. Some of them - some of it
7 will just be gather information. There's a lot of people
8 out there that just, like I said, they're concerned
9 citizens, and they want to just, you know, tell them what
10 they know - tell us what they know, and then we work
11 investigations off from there. And then, we'll utilize
12 them to go in and buy drugs, go in to purchase weapons -
13 illegal weapons, any type of prostitution-type of things.
14 All - it's a magnitude. It can range from just about -
15 just about everything, any type of crime there is.

16 Q. And in 2012, were you involved in a narcotics
17 investigation of Darnell Slaton?

18 A. Yes, sir.

19 Q. What type of informant was used in that case?

20 A. An informant who was working off criminal charges.

21 Q. And did you meet with the confidential informant on
22 October 19, 2012?

23 A. I did.

24 Q. And what was the purpose of that meeting?

25 A. To purchase marijuana.

1 Q. And what was the name of the confidential informant?

2 A. Timothy Jake Ballard. Timothy Jacob Ballard. He went
3 by Jake.

4 Q. Are there procedures in place the DEU follows
5 regarding confidential informants and controlled buys?

6 A. There are.

7 Q. Can you tell the jury a little bit about what those
8 procedures are?

9 A. A lot of times what we'll do is, when someone wishes
10 to work off charges, we'll kind of look into what kind of
11 charges they - they're trying to work off. You know,
12 there's some times we've turned just as many people away
13 than we have allowed people come in. We'll interview them,
14 find out what they know, if it's beneficial to them and to
15 us.

16 We'll also go, once we - once we've established that
17 they're going to work for us, we give them - there's a
18 checklist, and I don't have it with me, and have to refer
19 to it. There's like, a page - it might even be longer now
20 - I've been out of the Drug Unit for a couple years now -
21 of things that they are not allowed to do, period. And
22 then, they have to sign and initial all of that, and they
23 have to follow those rules while they are with us. During
24 investigations we'll constantly, kind of, stay on top of
25 them, make sure they're, you know, still acting within

1 those - those rules. And then, once we've established an
2 investigation, we'll start. It depends on - it depends on
3 what they know and who they know. It kind of depends on
4 how we proceed with an investigation.

5 Q. And when you met with Mr. Ballard on October 19th of
6 2012, did you follow the proper procedures?

7 A. Yes, I did.

8 Q. And tell the jury, briefly, what you did when you met
9 with Mr. Ballard.

10 A. This was an ongoing investigation, so I, you know,
11 told, you know, Jake that, if he had made any type of
12 arrangements, just to let me know and then I would, you
13 know, make sure that we took care of it. He came in - he
14 called me and said that he, in fact, could purchase nar --
15 marijuana from the defendant. I told him I'd meet him at
16 the - a known location, which was

17 , which is next to - next to the defendant's
18 apartment complex. And then, that's where we met, and then
19 that's when we went through kind of of our checklist of
20 things to do prior to sending them off to buy marijuana.

21 Q. Is one of those things on the checklist searching the
22 confidential informant?

23 A. Yes. They are searched. Their vehicles, if they're -
24 if that's applicable. If they rode a bicycle or a
25 motorcycle, that's searched. They're searched before, and

1 then immediately after, as well.

2 Q. So, did you search Mr. Ballard?

3 A. Yes, I did.

4 Q. Did you find anything on his person?

5 A. No, sir.

6 Q. And when he called you and said that he, you know,
7 could purchase this marijuana, besides searching him, do
8 you give him anything, or do you equip him with anything?

9 Tell the jury about that.

10 A. Okay. Once - Once they meet with us, we'll search
11 'em. If they have any money on them, we will hold onto it.
12 All the money that we will give an informant to go buy
13 whatever it is they're going to purchase, it's all through
14 us. We video - or, I'm sorry, we photograph it, and we
15 keep track of it. So, any type of money that they have, I
16 will immediately put it in a zip lock bag and hold onto it,
17 so it doesn't get mixed up with what we're letting them use
18 to purchase the drugs.

19 Once they're searched, we'll put them on - we'll put a
20 audio and video recording devices on 'em. Depends on how
21 many. Depends on the situation. We'll give them the
22 money. And then, depending upon how it kind of works, in
23 this case, we were just able to send him straight to the
24 house. We may, at some times - we may sometimes have -
25 shoot a phone call, prior to him leaving our custody. We

1 may have them send them a text message. And in this case,
2 it really - it didn't matter, so we went ahead and sent him
3 off to the - to the defendant's residence.

4 Q. This might sound kind of silly, but what was the
5 purpose of putting a video and audio recorder on the CI?

6 A. Well, one, it's for preservation of evidence, as
7 you've already witnessed. Another is to ensure - We try
8 and maintain care and custody of the entire situation from
9 the second they leave, however they leave.

10 In this case, he left out of my - out of my assigned
11 vehicle. We put people in certain locations to where we
12 maintain - we try and maintain constant visual identity of
13 the CI. And it's also to ensure that nothing in between,
14 where we're not actually able to see 'em, the CI, that
15 they're not doing anything that they're not supposed to be
16 doing.

17 Q. So after you met with Mr. Ballard, the CI, then you
18 said you searched him and equipped him with a recording
19 device. You said you gave him money. Where did Mr.
20 Ballard go?

21 A. He went to the defendant's residence. And we also
22 have equipment to where we can hear. We can't see, but we
23 can hear what's going on the entire time. Sometimes, that
24 equipment will get, depending upon where we're at in the
25 county, or depending upon what kind of building they go

1 into, we may lose a little bit of the ability to hear, but
2 most of the times, we have audio surveillance equipment in
3 our vehicle that's giving us real-time - a real-time feed.

4 Q. Okay. So, as the confidential informant left where
5 you were, and went to the defendant's residence, you had a
6 live audio feed the entire time?

7 A. Yes.

8 Q. Did you ever lose contact with him?

9 A. Visual contact? When he went inside?

10 Q. Audio contact.

11 A. I don't think in this case, no.

12 Q. How long was - About how long was the confidential
13 informant out of your sight, from when he left your
14 position from --

15 A. Out of mine - Out of me, particular?

16 Q. Yes.

17 A. Because like, I mean, he left my car, so, where I was
18 parked, I lost him, probably, within a minute or two,
19 because he had walked around some buildings. Other agents
20 that were there, I mean, we had - we pretty much kept
21 visual - a visual sight on him until he walked into the
22 breeze way of the - of the premises.

23 MS. INZERILLO: Objection to speculation as to --

24 THE COURT: I sustain the objection. Unless he
25 actually maintained visual contact.

1 SOLICITOR JONES: Okay, your Honor.

2 Q. The question was, how long, from the time that the CI
3 got out of your car, when he went in to purchase the
4 marijuana, when he came back, how long was he - that
5 process?

6 A. Oh, the time. Five, ten minutes.

7 Q. And after the confidential informant purchased the
8 marijuana, where did he meet you? Where did you see him
9 again?

10 A. Once he came out of that breeze way, I was able to
11 pick him up. And then, he came directly back to my car. I
12 didn't - I didn't move from my spot.

13 Q. And did the confidential informant give you anything
14 when he got into your vehicle?

15 A. He gave me a bag of marijuana.

16 Q. And did you search Mr. Ballard when he got back into
17 your car?

18 A. Yes, we did.

19 Q. What was the purpose of that?

20 A. To ensure that he - To ensure that he didn't, what we
21 call, pinching off, where he might have taken a little bit
22 from it, or anything like that. We've - we make sure he
23 leaves with the - the same way that he came back to us.

24 SOLICITOR JONES: May I approach the witness, your
25 Honor?

1 Q. I'm handing you State's Exhibits One and Two.

2 Will you take a look at those for me?

3 A. Yes, sir.

4 (WITNESS COMPLIES.)

5 Q. Can you tell the jury what those are?

6 A. That is the video - these are the videos that were
7 placed - these are the video - This is the DVD's of what we
8 burned from the video that was placed on the confidential
9 informant.

10 Q. Okay. Have you watched those videos?

11 A. I have.

12 SOLICITOR JONES: May I approach the witness, your
13 Honor?

14 THE COURT: Yes, sir.

15 Q. Officer, I'm handing you State's Exhibits Five and
16 Six. Will you take a look at those for me, please, sir?

17 (WITNESS COMPLIES.)

18 Q. Do you recognize those?

19 A. Yes, I do.

20 Q. And what do they depict?

21 A. State's Evidence Five is a still photo of part of the
22 surveillance - or, I'm sorry, part of the video that were
23 placed --

24 Q. Part of what video?

25 A. The video that we put on the confidential informant.

1 This is a still photo of the defendant.

2 MS. INZERILLO: Objection, your Honor. Your Honor, I
3 don't believe this witness can testify - can identify the
4 defendant.

5 THE COURT: Well, re - I sustain the objection.

6 Ask the question a different way.

7 BY SOLICITOR JONES:

8 Q. Do you recognize the photograph?

9 A. Yes.

10 Q. And --

11 THE COURT: And disregard his testimony about the
12 photograph of the defendant. He can't testify to that.

13 BY SOLICITOR JONES:

14 Q. So, you testified, you do recognize the photo. Is
15 that a photo from the video that was just published to the
16 jury?

17 A. Yes, sir.

18 Q. Is it a true and accurate photograph from that?

19 A. Yes.

20 Q. A still photo from that?

21 A. Yes.

22 SOLICITOR JONES: Your Honor, at this time, I would
23 move to admit State's Exhibit Five and Six into evidence.

24 MS. INZERILLO: Your Honor, I would object to the
25 admission of this.

1 THE COURT: Objection overruled.

2 MS. INZERILLO: Thank you, your Honor.

3 THE COURT: In over objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBERS FIVE AND SIX,
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR JONES: Your Honor, at this time, I would
7 like to publish Five and Six to the jury.

8 THE COURT: You may.

9 (WHEREUPON, STATE'S EXHIBIT NUMBERS FIVE AND SIX
10 PUBLISHED TO THE JURY AT 11:49 A.M..)
11 BY SOLICITOR JONES:

12 Q. Officer Rainier, to go back briefly, after the
13 controlled buy, when Mr. Ballard, the confidential
14 informant, came into your vehicle, was there any money on
15 him, besides what you gave him when he left to go make the
16 purchase?

17 A. No. Like, I said, prior to, when we search 'em, and
18 we search 'em pretty - we get pretty personal with them.
19 We'll check their wallets. We check everything. It's part
20 of the agreement that they are allowed to be searched.
21 Anything that - any - any money would have been collected
22 by me, put in a zip lock bag, and probably put in my glove
23 box just for safe keeping.

24 Q. So, you gave him forty dollars initially?

25 A. Yes.

1 Q. And when he - After he went to the defendant's home
2 and came back, did he have that forty dollars on him any
3 more?

4 A. No, sir.

5 Q. And what did you do with the drugs you recovered from
6 Mr. Ballard?

7 A. Put 'em in our locked evidence locker that's located
8 in our office.

9 Q. And what happens - What would happen to the drugs
10 after you put it into the evidence locker? Describe that
11 process.

12 A. It sits until one of the evidence technicians from the
13 York County Sheriff's Department comes over and takes all
14 the evidence. The evidence locker, it's not real big. I
15 mean, it's probably eight or nine drawers with different -
16 for different cases and stuff, but it's - that's kind of on
17 their - their time. I'm not sure if they do it.

18 Q. And after you place it into the evidence locker, do you
19 have access to it?

20 A. No.

21 Q. Now, after you recovered the drugs from the defendant,
22 and before you put them into evidence, do you do anything
23 else with the marijuana?

24 THE COURT: All right, wait. You asked him if he
25 obtained the drugs from the defendant. I don't believe

1 that's the --

2 SOLICITOR JONES: I'm sorry. I mis-spoke.

3 Q. After you obtained the drugs from the confidential
4 informant.

5 SOLICITOR JONES: I apologize. Thank you, your Honor.

6 Q. After you obtained the drugs from the confidential
7 informant, did you do anything with them prior to placing
8 them into the evidence locker?

9 A. Yeah. I secured it. I seized the - I seized the
10 evidence. Once - Once we get back to the office, we'll
11 weigh it, and then we'll properly bag it. We time-stamp it
12 and then once it goes through, once we've filled out the
13 proper evidence reports, and did all the proper work on the
14 actual bag itself, we'll hand it to a supervisor. A
15 supervisor will check off on it, make sure everything's,
16 you know, that all the I's are dotted, and the T's are
17 crossed. And then, that's when we'll enter it into
18 evidence.

19 Q. And then, you say you place it into an evidence bag?

20 A. An evidence bag, yes.

21 Q. And is it properly sealed?

22 A. Yes.

23 Q. And when was the next time you saw the marijuana?

24 A. This morning.

25 SOLICITOR JONES: May I approach the witness, your

1 Honor?

2 THE COURT: Yes, sir.

3 Q. Officer, I'm handing you State's Exhibit Four.

4 Will you take a look at that for me?

5 (WITNESS COMPLIES.)

6 Q. Do you recognize that?

7 A. Yes, I do.

8 Q. And how do you recognize it?

9 A. This is the evidence bag that contains the marijuana
10 from - what the CI purchased.

11 Q. I'm sorry. And what is it?

12 A. The inner bag - the inner bag is just our - our
13 packaging bag that says DEU on it.

14 MS. INZERILLO: Your Honor, I would ask the witness
15 not publish it to the jury.

16 THE COURT: It's not in evidence yet.

17 SOLICITOR JONES: That's right, your Honor.

18 A Okay. It's just - It's a bag that - it's two of our
19 evidence bags. And then, this is the - this outer bag is
20 from the York County Sheriff's Department. This is part of
21 their processing.

22 Q. But is that the marijuana you placed into evidence
23 from this case?

24 A. Yes, sir.

25 Q. Now, in this case did you do a photo lineup?

1 A. Yes, sir.

2 Q. And tell the jury when that occurred, and who was
3 present.

4 A. It occurred right after the purchase of the marijuana,
5 and it happened in the back of my car.

6 Q. And where, in - where was that? The location that you
7 - is there a specific address, or?

8 A. It was just - out - it was just a short distance from
9

10 Q. And who was present at the time of the
11 photo lineup?

12 A. It was me. I think it was Investigator Harrellson
13 because I think he was driving my car. And then, it was
14 the confidential informant.

15 Q. And how long after the purchase of the marijuana did
16 this take place?

17 A. As soon as he got in my car we kind of drove off.

18 Q. Can you give an estimate, the best you can, as to
19 minutes?

20 A. A couple a minutes.

21 Q. Tell the jury how you prepared the photo lineup.

22 MS. INZERILLO: Your Honor, I would, again, renew the
23 previous objections to this line of questioning.

24 THE COURT: I sustained - I overrule the objection,
25 based on earlier ruling.

1 BY SOLICITOR JONES:

2 Q. Tell the jury, please, how you prepared the photo
3 lineup.

4 A. In the initial sit-down with the confidential
5 informant, we actually drove him by, and he pointed out the
6 defendant's vehicle. Through the tag - through the license
7 plate, and then through a bunch of resources that we have,
8 utilities, DMV, all that, that's how we're able to locate
9 the photo lineup.

10 Q. Okay. So, that's how you were able to get a
11 photograph of the defendant?

12 A. Yes, sir.

13 Q. Okay. Was the confidential informant able to give you
14 a name of the defendant?

15 A. Just a - just a nickname of Dough.

16 Q. Dough. Okay. So, you didn't have a name, but you had
17 to use utility checks and the DMV to get a photograph?

18 A. License plate, all that.

19 Q. And what residence - When you say you checked
20 utilities, what residence did you check for utilities?

21 A. Once we were able to determine a name, the utilities
22 came back to Rock Hill,
23 South Carolina.

24 Q. And how many photos were used in this lineup?

25 A. Six.

1 Q. And were the photographs marked in any way?

2 A. No.

3 Q. Were any names or identification information attached
4 to the photographs?

5 A. Not on that page that we showed the confidential
6 informant.

7 Q. How many lineups did you show the confidential
8 informant?

9 A. Just one.

10 Q. Tell the jury, briefly, what you told the confidential
11 informant prior to showing him the lineup.

12 A. We kind of go through a list of instructions. One is
13 that - that I'm going to show him the lineup. Two, the
14 person in question may or may not be in the lineup and when
15 they identify that person, to let me know. Then, I also
16 kind of - Then, we also go into - afterwards, we'll go into
17 the - we have them sign a sheet that says that who they
18 picked out was, you know, they were positive that was the
19 person, and that we did not coerce them in any way to pick
20 this individual out.

21 Q. Did you suggest anything to the confidential
22 informant?

23 A. No, sir.

24 Q. Did you show the confidential informant any other
25 photographs of the defendant prior to the lineup?

1 A. No, sir.

2 Q. Did you let the confidential informant watch the video
3 of the buy prior to the lineup?

4 A. No.

5 Q. Did the confidential informant select a photo?

6 A. I'm sorry.

7 Q. Did the confidential informant select a photo in the
8 lineup?

9 A. Yes. Yes, he did.

10 Q. And who did he select?

11 A. The defendant.

12 MS. INZERILLO: Your Honor, I would ask that that last
13 response be stricken as that's not responsive to the
14 question.

15 THE COURT: Yeah, I sustain the objection. He can't
16 testify that he picked out the defendant. He can testify
17 which photograph, on the lineup, he picked out. So,
18 disregard that part of testimony where he said that the
19 person he picked out was the defendant.

20 SOLICITOR JONES: May I approach the witness, your
21 Honor?

22 THE COURT: Yes, sir.

23 BY SOLICITOR JONES:

24 Q. Officer, I'm handing you State's Exhibit Three.

25 Will you take a look at that for me, please, sir?

1 (WITNESS COMPLIES.)

2 Q. Do you recognize that?

3 A. I do.

4 Q. And tell the jury what State's Exhibit Three is,
5 please.

6 A. The first page is the - it's the agreement that
7 basically says that they're freely and voluntarily, without
8 threats or promise, viewing a photograph line - a
9 photographic lineup, and that they've - that have, without
10 a doubt have picked the person that is the responsible
11 party in this. The informant will sign it, the officer
12 presenting the photo lineup will sign it, and then there's
13 case numbers, dates, and times that it actually occurred.

14 The second page - Excuse me - the second page is the
15 actual photo lineup.

16 Q. Okay. Is that a fair and accurate representation of
17 the photo lineup you showed the confidential informant?

18 A. It is.

19 SOLICITOR JONES: Your Honor, at this point, I would
20 like to move State's Exhibit Three into evidence.

21 MS. INZERILLO: Renew previous objection.

22 THE COURT: Overruled. Over objection, subject to
23 based on earlier rulings, it's allowed into evidence.

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

1 BY SOLICITOR JONES:

2 Q. And I asked you this previously, but what photograph
3 on State's Exhibit Three did the confidential informant
4 pick out?

5 A. The second set, the one on the left. What we would
6 call Number Three.

7 Q. Okay. Number Three. And from the information you
8 had, who was that a picture of?

9 A. The - There's another sheet that the confidential
10 informant does not see that has a list of information in it
11 identified as Darnell Keri Slaton.

12 Q. And do you remember the date of birth of Darnell
13 Slaton?

14 A. It was December 28th, 1982.

15 Q. And after the confidential informant picked the
16 defendant out of the lineup, what did you do?

17 A. We turned off all the equipment, and then came back
18 and did statements. I'm sorry, when I say came back, we
19 went back to our office, the DEU East Office and started
20 working on paperwork and did a statement with the
21 informant.

22 Q. And did all of this occur in York County?

23 A. Yes, it did.

24 Q. And after you - After the confidential informant
25 picked the defendant out of the lineup, was a warrant taken

1 out for the defendant's arrest?

2 A. Yes.

3 SOLICITOR JONES: No further questions, your Honor.

4 THE COURT: Cross?

5 MS. INZERILLO: Thank you, your Honor. May it please
6 the Court?

7 CROSS-EXAMINATION

8 SERGEANT JOHN RAINIER BY MS. INZERILLO:

9 Q. Officer Rainier, you were the officer that was
10 essentially handling Jake Ballard on October 19th of 2012;
11 is that right?

12 A. Yes, ma'am.

13 Q. Okay. And in that capacity, you're working with him
14 in his capacity as a CI.

15 A. He's a CI; I'm the lead investigator.

16 Q. Right.

17 A. Yes.

18 Q. So, when I say handling, that's the relationship that
19 you guys have; is that right?

20 A. Yeah. I'm pretty much the one responsible for him.
21 Anything happens, he needs to call me. I'm a - yes, I'm
22 his handler.

23 Q. Okay. So, he wants something to happen, he calls you.

24 A. Correct.

25 Q. Okay. And in your capacity as his, I guess, his

1 handler, I don't know of a better way to put it, but ---

2 A. Probably the best way.

3 Q. --- as his handler, you're familiar with his
4 situation, that he had pending charges and all of that?

5 A. Absolutely.

6 Q. Okay. So, you testified that on October 19th you
7 followed the protocol that's pretty standard for the
8 officer in your position in dealing with a confidential
9 informant.

10 A. Right.

11 Q. Searching them, mic'ing them, that kind of thing.

12 A. In this case, I pretty much handled the whole thing.
13 There are times - There have been times in past
14 investigations where I've had to, you know, divvy out
15 responsibilities to other investigators. However, I'm
16 overall responsible, because it's my case.

17 Q. Okay. So, on this day you got involved because he had
18 contacted you about doing a deal with the person he calls
19 Dough.

20 A. Right.

21 Q. Okay.

22 A. Yes, ma'am.

23 Q. And so, you guys meet up like you've testified and you
24 start the protocol with the search, and the giving of the
25 money, and all that. Okay. And you, I think, testified

1 that you searched him pretty well, to make sure he doesn't
2 have any money on him and that kind of thing. Right?

3 A. Right.

4 Q. You look in his wallet, that kind of thing.

5 A. It's --

6 Q. Is that right?

7 A. Yeah, it's a little bit more than just looking in his
8 wallet.

9 Q. Okay. You test - Is it a thorough search?

10 A. It's a thorough search. It's not a strip-search, but
11 it's very close.

12 Q. Okay. So, when you're testifying that noth - that you
13 searched him and nothing was - you didn't find anything,
14 that's just it, you didn't find anything.

15 A. Correct.

16 Q. Okay.

17 A. Nothing illegal.

18 Q. Okay. And on this particular day, you, at 4:11 in the
19 afternoon, you searched him and you mic'd him; is that
20 right?

21 A. Correct. We put audio and video surveillance
22 equipment on him.

23 Q. Okay. And - And then, I think, at 4:12, you gave him
24 money, which is called governmental funds, I think you all
25 call it.

1 A. Yes, sir. Yes, ma'am.

2 Q. Is that right?

3 A. Correct.

4 Q. Okay. And that's the money that he's supposed to take
5 in and do the deal with.

6 A. Yes, ma'am.

7 Q. Okay. So, you let him know he's got recording devices
8 on him?

9 A. Right.

10 Q. All right. You don't go in with him.

11 A. No. Not in this case, no, ma'am.

12 Q. Okay. And - But that recording equipment, the design
13 is, it's to go the whole time?

14 A. Not the whole time. I mean, it has a battery life,
15 and it's - you know, we're talking about very small
16 batteries. So, you know, the length, the duration is -
17 varies between pieces of equipment.

18 Q. But the design is to record everything that's going
19 on?

20 A. Yes. Yes, ma'am.

21 Q. Okay. So, you know, outside of some sort of technical
22 failure your hope sitting in the car is that it records
23 everything.

24 A. Correct.

25 Q. Okay. Correct.

1 A. Yes.

2 Q. And you indicated you wanted that for preservation of
3 evidence, so that we can put it up on the screen and watch
4 it. Right?

5 A. That, and make sure that the informant isn't doing
6 anything wrong.

7 Q. Absolutely. Because you're aware, as the handler, as
8 the investigating officer, of the person that you're
9 dealing with.

10 A. Correct.

11 Q. Okay.

12 MS. INZERILLO: All right. I have no further
13 questions, your Honor.

14 THE COURT: All right.

15 RE-DIRECT EXAMINATION

16 SERGEANT JOHN RAINIER BY SOLICITOR JONES:

17 Q. Officer Rainier, briefly. You watched the videos of
18 the controlled buy, and you were listening in live during
19 the controlled buy. Did the confidential informant do
20 anything questionable during this time?

21 A. Can I clarify? Whenever we watch a video, it's after.
22 The audio is real time. The video, we have to go back,
23 turn off the equipment, download it, and then watch it.

24 Q. Right.

25 A. So, yes.

1 Q. Do you --

2 A Yes, that's how it happened in - the way you commented
3 it sounded like we were doing it like real time, no.

4 Q. No.

5 A Audio is real time; the video we have to go download
6 and then watch.

7 Q. Sorry.

8 A But it's always reviewed. Excuse me. Shortly after
9 the deal, it is always reviewed, to ensure that there is no
10 - there are no issues.

11 MS. INZERILLO: Your Honor, I would actually object to
12 this questioning, asking the witness to comment on the
13 evidence.

14 THE COURT: I overrule the objection.

15 BY SOLICITOR JONES:

16 Q. Procedurally, did the confidential informant do
17 anything wrong?

18 A. No, sir.

19 Q. Okay.

20 SOLICITOR JONES: No further questions. Thank you.

21 RE-CROSS-EXAMINATION

22 SERGEANT JOHN RAINIER BY MS. INZERILLO:

23 Q. Officer Rainier, can you see everything that the CI
24 does on that video?

25 A. No, ma'am.

1 Q. Okay.

2 MS. INZERILLO: No further questions, your Honor.

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

4 SERGEANT JOHN RAINIER: Yes, sir.

5 THE COURT: Thank you.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Call your next witness.

8 SOLICITOR SHELTON: Your Honor, the next witness for
9 the State is Cynthia Mitchum.

10 THE COURT: Put your left hand on the *Bible*, and raise
11 your right hand.

12 (WHEREUPON, CYNTHIA MITCHUM, BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you.

15 DIRECT EXAMINATION

16 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

17 Q. Good afternoon, ma'am.

18 A. Good afternoon.

19 Q. Could you please state your name?

20 A. Cynthia Mitchum.

21 Q. Ms. Mitchum, how are you presently employed?

22 A. I'm employed with the York County Sheriff's Office, in
23 the drug analysis laboratory as a drug chemist.

24 Q. How long have you done that job?

25 A. I've been here at the Sheriff's Office now for almost

1 fifteen years.

2 Q. Please explain to the jury what your job entails.

3 A. My job entails receiving evidence, and I'll analyze
4 the evidence for controlled and non-controlled substances.

5 Q. Did you receive any education, training, and, or, have
6 the job experience qualifying you as an analyst in the
7 field of chemical and drug analysis for identification?

8 A. Yes.

9 Q. Would you please explain?

10 A. I have a bachelor of science degree in chemistry,
11 which I received from Winthrop University in 1990. And
12 prior to working with the Sheriff's Office, I was with
13 South Carolina Law Enforcement Division, commonly known as
14 SLED, in Columbia, South Carolina. I was there for seven
15 and a half years.

16 Q. Have you ever been qualified in court as an expert in
17 the field of chemical and drug analysis for identification?

18 A. Yes, I have.

19 Q. Approximately, how many time?

20 A. In excess of two hundred times.

21 Q. And in your career, approximately how many samples
22 have you tested in that capacity?

23 A. Usually, I have samples of probably about two thousand
24 samples a year. So, twenty-two years times two thousand is
25 a lot of samples.

1 Q. A whole lot.

2 A. A whole lot.

3 SOLICITOR SHELTON: Your Honor, at this time, I would
4 offer Ms. Mitchum as an expert in the field of chemical
5 drug analysis and identification.

6 THE COURT: Any voir dire?

7 MS. INZERILLO: No objection.

8 THE COURT: I find she is qualified.

9 BY SOLICITOR SHELTON:

10 Q. Ma'am, at this time, I want to show you what's been
11 marked for identification as State's Exhibit Number Four.

12 If you would, please, take a moment to inspect that
13 item.

14 (WITNESS COMPLIES.)

15 A. Okay.

16 Q. Have you ever seen that item before?

17 A. Yes, I have.

18 Q. And how do you recognize it?

19 A. I can recognize it through the chain of custody here
20 on the front of the inner bag, and I received this from
21 Patrick Patterson on August the 13th of 2013.

22 Q. And who is Patrick Patterson?

23 A. He is evidence custodian in the evidence department at
24 the Sheriff's Office.

25 Q. And are you familiar with that - what that job

1 entails, and what the evidence department is?

2 A. Yes.

3 Q. Would you please explain to the jury what Mr.
4 Patterson does, who he works with, and what the evidence
5 department is like?

6 A. Basically, the evidence department is where all of the
7 evidence for the Sheriff's Office is stored. And Patrick
8 is one of the evidence custodians that would go and
9 retrieve evidence, and there's a couple of different areas
10 in the county that he can get it from. Bring that evidence
11 back to the evidence department, store it there, log it
12 into their computer system. And then, at the time if I
13 should need it, or any of the other departments may need
14 the evidence, he can check that out to me. And in this
15 case, he checked this certain piece of evidence out to me.

16 Q. And is it your understanding that - or, are you aware
17 of whether or not the evidence facility is a secured
18 facility?

19 A. Yes, it is.

20 Q. Who all works there?

21 A. Right now, there's three individuals that work in that
22 department.

23 Q. Will you name them, please?

24 A. Yes. It's Patrick Patterson, Jimmy Styles, and
25 Lieutenant Pete Mitchum.

1 Q. And are they the only three people who have access to
2 the evidence room?

3 A. That is correct.

4 Q. Is that facility here at Moss Justice Center?

5 A. Yes. It's in the basement over at the Moss Justice
6 Center.

7 Q. And your lab is also in Moss Justice Center, in the
8 basement, correct?

9 A. Yes.

10 Q. Approximately how far from the evidence room is your
11 lab?

12 A. It's straight across the back door of the evidence
13 room, but that back door also stays locked.

14 Q. So, a short - a short distance.

15 A. Yes.

16 Q. And you received State's Number Four directly from Mr.
17 Patterson?

18 A. Yes, I did.

19 Q. And why did you take custody of that item?

20 A. To do the analysis on the substance with inside the
21 bag here.

22 Q. And did you, in fact, analyze the substance inside the
23 bag?

24 A. Yes, I did.

25 Q. And what day was it that you took possession from Mr.

1 Patterson?

2 A. August the 13th, of 2013.

3 Q. What condition was the evidence bag in when you
4 received it?

5 A. The bag I originally received is the inner bag here,
6 with the blue fillagree on the outside of it, and that was
7 sealed. And I know this, because I have, okay, the date,
8 and my initials marked on that bag. And I will check every
9 bag that comes into the evidence room to make sure that it
10 is sealed and intact.

11 Q. And so you specifically made sure that the evidence
12 seal was intact?

13 A. Yes.

14 Q. And noted it, for your records?

15 A. Correct.

16 Q. And was there any evidence that the seal on this
17 evidence bag had been tampered with or opened in any way?

18 A. No.

19 Q. And if it had been, you would have noted it.

20 A. Yes.

21 Q. What did you do with the item when you received it
22 directly from Mr. Patterson?

23 A. Once I receive the item, then, I will then store it in
24 a locked facility that I have within my laboratory that I
25 have the only key for. And then, when I have a chance to

1 I will open the evidence and do my analysis, and re-seal
2 it, and then return it back to evidence.

3 Q. And was the item continuously in your custody and
4 control while it was in your possession?

5 A. Yes.

6 Q. And what day did you analyze the contents?

7 A. Eleven - November the 13th of 2013.

8 Q. So, for exactly three months from the time you
9 received it from Patterson to the time you tested it,
10 during that entire time, was it in a locked room at your --
11 in your lab, that you just mentioned?

12 A. Yes.

13 Q. And you have the only key to that room.

14 A. Well, no, I have the only key to - I have a storage
15 locker in there that - that remains locked, and I have the
16 only key to it, yes.

17 Q. Okay. So, specifically, where was that item during
18 that three-month period?

19 A. In the storage locker. It's basically a filing
20 cabinet. It's a higher-security filing cabinet that I keep
21 locked.

22 Q. Very good. And on the - on that day in November,
23 explain the process of analyzing and testing, what you do,
24 from start to finish, please.

25 A. With this particular item, this is what's called a

1 green plant material. What we do is a microscopic and a
2 chemical analysis on it. I will look for certain
3 characteristics under the microscope to see if they're all
4 there. And then, I would also use a sample to drop
5 chemicals on to look for a chemical color reaction. If
6 those two are positive together, than I can call it
7 marijuana.

8 Q. And in order to test and analyze the substance, the
9 green plant-like substance, you had to open the evidence
10 bag. Correct?

11 A. That is correct.

12 Q. And can you explain to the jury how you open the bag?

13 A. Along the blue fillagree bag, at the bottom, the bag
14 is one complete circle in it, and the officers can put the
15 evidence in the top, and they seal it. So, I will open it
16 at the bottom so that that seal still remains intact. And
17 so, I opened it here at the bottom, removed the zip lock
18 bag with the green plant material in it, took my samples,
19 and then re-sealed it in this outer bag.

20 Q. So, the seal on the inner evidence bag is in the exact
21 position as when you received it.

22 A. That is correct.

23 Q. And after you analyze the substance, explain how it
24 gets into that sealed bag, that sealed outer bag.

25 A. I place it - the bag and the substance that I analyzed

1 into that sealed bag. And then, I will heat-seal it with
2 the date that I sealed it, which is the date that I also do
3 my analysis.

4 Q. And the --

5 A. And that's still intact today.

6 Q. And the contents, you have a green, plant-like
7 material, is there also some sort of other material inside
8 there?

9 A. There's some small, little, like, tied, plastic corner
10 bags.

11 Q. Is that - Was the substance packaged inside of those?

12 A. Yes, they were. I think there were three little tied
13 plastic bags. And then I took samples from each one of
14 them, and then weighed it all together once I did my
15 analysis.

16 Q. And did you weigh the green plant-like material?

17 A. Yes.

18 Q. I think you just touched on this, but after you were
19 finished and sealed it all up, what was the condition of
20 the outer bag when it left your possession?

21 A. It is still intact today, with my seal and my initials
22 and date that I sealed it.

23 Q. And who did you return it to?

24 A. I returned it back to Patrick Patterson on 7/29 of
25 2014.

1 Q. And as best you can tell, he then logged it into the
2 evidence room?

3 A. Correct.

4 Q. Where it was, again, in the secure location we've
5 already mentioned?

6 A. Correct.

7 Q. Were you able to determine, through your analysis,
8 what the green, plant-like substance contained, inside
9 State's Number Four?

10 A. Yes.

11 Q. And what is it?

12 A. State's Exhibit Number Four, which was Item Number One
13 in this case, was found to be marijuana, with a combined
14 weight of 2.52 grams, and that is a Control One Substance.

15 Q. And did you perform your analysis of the substance in
16 accordance with your training and experience?

17 A. Yes.

18 Q. And did you make sure that the analysis was in a
19 controlled setting, meaning that you didn't have any
20 contamination from other substances?

21 A. That's correct.

22 Q. Did you prepare a report from your findings?

23 A. Yes.

24 Q. And did you bring a copy of that report with you to
25 court?

1 A. I did.

2 Q. May I hold it, please?

3 MR. SHELTON: Your Honor, I'd like to mark this as
4 State's Exhibit Number Seven, I believe, is where we are.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER SEVEN, PREMARKED
6 FOR IDENTIFICATION.

7 BY SOLICITOR SHELTON:

8 Q. I'm going to hand you back your report that is now
9 marked as State's Exhibit Number Seven.

10 A. Okay.

11 Q. Is that a complete report of your findings?

12 A. Yes, it is.

13 Q. And does that include the findings that you just
14 articulated when I asked you, what is the substance?

15 A. Yes, it is.

16 Q. And you prepared that report.

17 A. Yes, I did.

18 MR. SHELTON: Your Honor, at this time I would move
19 State's Number Seven Four and Number Seven into evidence.

20 THE COURT: Any objections?

21 MS. INZERILLO: No, your Honor.

22 THE COURT: In without objection.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER'S FOUR AND SEVEN,
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 BY SOLICITOR SHELTON:

1 SOLICITOR SHELTON: Ms. Mitchum, please answer any
2 questions Ms. Inzerillo may have, please.

3 A. Okay.

4 CROSS-EXAMINATION

5 CYNTHIA MITCHUM BY MS. INZERILLO:

6 Q. Good afternoon, Ms. Mitchum.

7 A. Good afternoon.

8 Q. The bag that you have in your hand, the evidence bag,
9 that's in the same condition today as it is the last time
10 you saw it.

11 A. Yes, it is.

12 Q. Okay. And the marijuana, the substance that we're
13 just gonna to call marijuana now.

14 A. Okay.

15 Q. Sorry about that. That has a - That's in the same
16 condition now as when you first received it, to test it.

17 A. When I received it to test it, it would have been in
18 the three smaller bags.

19 Q. Okay.

20 A. And now, I've cut those open. Of course, I can't get
21 the stuff back in those small bags.

22 Q. Okay.

23 A. So, now, it's all together as one.

24 Q. Okay. But you didn't smoke any of it; you didn't
25 pinch any of it off?

1 A. No.

2 Q. Okay. And the amount that you found was 2.5 grams.
3 Right?

4 A. Correct.

5 Q. Not two grams.

6 A. Correct.

7 Q. Okay. And you - You didn't add anything to the three
8 baggies that were originally in there; is that right?

9 A. No, I did not.

10 Q. Okay. So, what you originally brought in is all the
11 marijuana that was given to you in this case.

12 A. That is correct.

13 Q. You didn't add or delete.

14 A. No.

15 Q. Okay. The -In your report, and there's an entry for
16 the - and you kind of go through, and you say, *investigated*
17 *by a submission agency*. And then, underneath that, it
18 says, *delivery method, hand-to-hand*.

19 A. Correct.

20 Q. Is that how you receive it from Patrick?

21 A. That is correct.

22 Q. Okay.

23 A. He brought it straight to me.

24 Q. Okay. Because your role in this is to test the drugs.
25 You don't go out with officers, or investigate cases

1 outside of testing the drugs?

2 A. That's correct.

3 Q. Okay. You are, however, pretty adept at reading the
4 outside of the evidence bag; is that correct?

5 A. Yes.

6 Q. Okay. And so, I think you had testified under direct
7 that the bag had come in, and Patrick had taken it, and you
8 had taken it from Patrick and given it back; is that right?

9 A. That is correct.

10 Q. And on the outside of that bag, there's some
11 signatures that reflect that.

12 A. Correct.

13 Q. Some of them look like scribble scratch, but
14 essentially, that's what that is; is that right?

15 A. That's correct.

16 Q. And that log - those signatures log everywhere that
17 bag goes. So, if it goes from Officer Rainier to Patrick,
18 that's signed. If it goes from Patrick to you, that's
19 signed, and back again; is that right?

20 A. That's correct.

21 Q. Do you see any indication that that bag went to
22 anybody at forensics to be fingerprinted?

23 A. No, it did not.

24 Q. Okay. And you, in your experience, could see that.
25 Would be able to read that and see from the outside of the

1 bag.

2 A. Yes.

3 Q. Okay.

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

6 MR. SHELTON: No re-direct. We would ask if Ms.
7 Mitchum could be excused?

8 THE COURT: You can be excused. We appreciate your
9 time. Thank you.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 MR. SHELTON: Your Honor, at this time, our next
13 witness will be here at 1:30. He worked nights last night.

14 Can we take a lunch break?

15 THE COURT: We'll break 'til 1:45. It's - We'll take
16 a break 'til 1:45. So, have a pleasant lunch, and we'll
17 see you back at 1:45.

18 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:22 P.M..)

19 THE COURT: We'll be at ease until 1:45.

20 (COURT IN LUNCH RECESS AT 12:22 P.M..)

21 (COURT BACK IN SESSION AT 01:48 P.M..)

22 THE COURT: Thank you. You may take your seats.
23 Good afternoon. All right, is the State ready?

24 SOLICITOR JONES: Yes, sir.

25 THE COURT: Is the Defense ready?

1 MS. INZERILLO: Yes, your Honor.

2 THE COURT: Call your next witness.

3 COURT REPORTER: You gonna get the jury, Judge?

4 THE COURT: Let's get the jury in first.

5 COURT REPORTER: I'm sorry.

6 THE COURT: No, I'm glad you did. I'm moving too fast
7 this afternoon.

8 MADAM COURT REPORTER: You are. You're on a roll.

9 I appreciate that.

10 (JURY REENTERS COURTROOM AT 01:49 P.M..)

11 THE COURT: Call your next witness.

12 MR. SHELTON: May it please the Court, your Honor,
13 the State calls Jamie Faulkenberry.

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

16 MADAM CLERK: Thank you.

17 DIRECT EXAMINATION

18 JAMIE FAULKENBERRY BY SOLICITOR SHELTON:

19 Q. Please state your name, sir.

20 A. Jamie Faulkenberry.

21 Q. And are you a police officer?

22 A. Yes, sir.

23 Q. Where are you currently assigned?

24 A. The City of Rock Hill Police Department.

25 Q. And were you working with the Drug Unit in 2013?

1 A. Yes, sir.

2 Q. And are you the officer who booked Defendant Darnell
3 Slaton, on or about July 25, 2013?

4 A. Yes, sir.

5 Q. At that time, did you serve him with an arrest warrant
6 for distribution of marijuana, from October 13, 2012?

7 A. Yes, sir.

8 Q. Excuse me, I believe it's October 19, 2012. Yeah, I -
9 I apologize, October 19, 2012.

10 A. Yes, sir.

11 Q. And as part of the booking process, did you ask Slaton
12 for his address?

13 A. Yes, sir.

14 Q. Do you recall his answer?

15 A. I'd have to check the booking slip.

16 Q. Would you have documented that on a booking report?

17 A. Yes, sir.

18 Q. Commonly known as a booking slip?

19 A. Yes, sir.

20 Q. And would looking at that document possibly help
21 refresh your recollection, as to his answer to that
22 question?

23 A. Yes, sir. His address at that time was 151 Clegan
24 Road, Apartment 105, in Rock Hill.

25 Q. Thank you, sir. Is that in York County?

1 A. Yes, sir.

2 Q. And all the events you've described, your
3 participation in this case, occurred in York County, as
4 well?

5 A. Yes, sir.

6 MR. SHELTON: Nothing further.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 OFFICER JAMIE FAULKENBERRY BY MS. INZERILLO:

10 Q. Officer Faulkenberry, you asked him that question
11 7/25/13?

12 A. I believe so. I - It's on top of the booking slip.
13 Yes, ma'am.

14 Q. Okay.

15 MS. INZERILLO: May I approach the witness, your
16 Honor?

17 THE COURT: Yes.

18 BY MS. INZERILLO:

19 Q. I'll just show you the same booking slip.

20 A That's fine. Sure. Thank you. Yes, ma'am.

21 Q. Okay. 7/25/13?

22 A. Yes, ma'am.

23 Q. All right.

24 MS. INZERILLO: No further questions, your Honor.

25 MR. SHELTON: No re-direct.

1 THE COURT: You can step down and be excused.

2 We appreciate your time.

3 JAMIE FAULKENBERRY: Thank you, sir.

4 THE COURT: Thank you.

5 (WITNESS LEAVING WITNESS STAND.)

6 MR. SHELTON: Your Honor, the State rests its case.

7 THE COURT: All right. Members of the jury panel,
8 that's the last witness for the State. So, even though
9 you've only been in here a short time, we have to take a
10 brief - take up matters of law before we move forward. So,
11 I'll let you go back to the jury room for just a few
12 minutes.

13 (JURY EXITS COURTROOM 01:53 P.M..)

14 THE COURT: Anything from the State?

15 SOLICITOR SHELTON: Not at this time.

16 THE COURT: Ms. Inzerillo?

17 MS. INZERILLO: Thank you, your Honnor.

18 May it please the Court? Your Honor, at this time, we
19 would renew all previous motions and objections. And at
20 this time, we would move for a directed verdict.

21 THE COURT: I deny the motion. I believe there's
22 substantial direct evidence or plenty of direct evidence
23 from which a jury could conclude that a distribution of
24 marijuana took place, and that Mr. Slaton was, in fact, the
25 individual involved in distributing the marijuana to Mr.

1 Ballard on the date and that the time and place in
2 question, so I deny the motion for a directed verdict.

3 Mr. Slaton, can you hear me?

4 MR. SLATON: Yes, sir.

5 THE COURT: We've reached the point where you have a
6 right to present a defense, if you wish, but you don't have
7 to call any witnesses. You are presumed innocent of the
8 charge, and you don't have to prove your innocence. The
9 State must prove your guilt beyond a reasonable doubt. You
10 can call witnesses, if you wish, but you don't have to.
11 You can testify, if you wish. If you testify, the State
12 will - you will be under oath, and you would have to
13 respond truthfully to the questions, and the State would be
14 able to ask you about your prior record, as we discussed in
15 your presence earlier yesterday and perhaps a little bit
16 this morning.

17 If you choose to remain silent, exercise your
18 constitutional right to remain silent, I will tell the jury
19 that you have, in fact, exercised that right. I'll tell
20 the jury that they cannot, in any way, use that against you
21 in any way whatsoever. They cannot discuss in the jury
22 room you're exercise of your right to remain silent, and
23 they cannot factor it into their own consideration. I, of
24 course, will tell them you are presumed innocent. You need
25 not have to prove your innocence, but the State must prove

1 your guilt beyond a reasonable doubt. Do you understand
2 all that?

3 MR. SLATON: Yes, sir.

4 THE COURT: Do you have any questions about that?

5 MR. SLATON: No, sir.

6 THE COURT: Have you explained that to him, Ms.
7 Inzerillo?

8 MS. INZERILLO: I have, your Honor.

9 THE COURT: And you believe he understands?

10 MS. INZERILLO: I do, your Honor.

11 THE COURT: Do you intend to testify, or exercise your
12 right to remain silent?

13 MR. SLATON: I will remain silent.

14 THE COURT: All right. Do you have any witnesses?

15 MS. INZERILLO: No, your Honor.

16 THE COURT: All right. Well, the State will have to
17 open and the Defense will have the right to close.

18 You may be seated. I think my clerk has gone over
19 with you the charge. I don't think there are any lesser
20 included's on distribution. So, any comments on the
21 charge?

22 SOLICITOR SHELTON: Looks fine to the State, your
23 Honor.

24 MS. INZERILLO: No objections from the Defense.

25 THE COURT: All right. Is the State ready to proceed?

1 SOLICITOR SHELTON: Yes, sir.

2 THE COURT: Is the Defense ready?

3 MS. INZERILLO: Yes, your Honor.

4 THE COURT: All right. Bring in the jury.

5 (JURY ENTERS COURTROOM 01:57 P.M..)

6 THE COURT: Members of the jury panel, when you went
7 out, the State had rested. The Defense has also rested.
8 So, now, we're in the place in the trial where the
9 attorneys will make, before you, their closing arguments.

10 Unlike the opening statements, where they were just
11 outlining the trial, they now will be taking the evidence,
12 telling you why they believe your verdict should be a
13 certain verdict. They will be giving you some legal
14 principles, and they know the charge I'm going to give on
15 the law, so they will, most likely, be giving you correct
16 legal principles.

17 Keep in mind that the - I am the judge of the law, and
18 you have to apply the law as I charge it.

19 Counsel.

20 SOLICITOR SHELTON: May it please the Court, your
21 Honor?

22 Madam Clerk, will you dim the lights, please?

23 Ladies and gentlemen, the defendant, Darnell Slaton,
24 is charged with distribution of marijuana. And as you'll
25 see this projection, this is kind of a convoluted set of

1 legal concepts associated with this charge that's in the
2 indictment. And what it breaks down to is, simply - one
3 moment - what it breaks down to is simply this. A person
4 who distributes, or delivers, marijuana to another person
5 in the State of South Carolina has committed a crime.
6 That's what we have here. That's what we've been talking
7 about.

8 Yesterday afternoon, you heard Mr. Jones and Ms.
9 Inzerillo give you their outline of the case, and you heard
10 all the evidence in the case through the State's witnesses
11 on this witness stand, the exhibits that are in evidence,
12 including the photos that you watched on that - or excuse
13 me - including the photos, including the videos that you
14 watched on that screen. You have the evidence before you.

15 I'd argue to you, there are two main questions. It's
16 very clear this happened in York County. It's very clear
17 it was marijuana. You heard Ms. Mitchum testify, with her
18 vast experience, she tested it, and it was marijuana. The
19 question is, was this a drug deal, and was Darnell Slaton
20 the one who distributed the marijuana?

21 The first question. Was this a drug deal? And the
22 answer to that, given the facts, is, yes, this was a drug
23 deal. How do we know? Jake Ballard, the CI, told officers
24 from the Drug Unit he could buy marijuana, and agreed to
25 work as a confidential informant with the Drug Unit.

1 Now, you heard about Mr. Ballard's prior record. When
2 he was seventeen years old, he got arrested and was
3 convicted of breaking into two cars, stealing some stuff
4 from in them, from inside, and doing it with somebody else.
5 He was seventeen. He was sentenced under the *Youthful*
6 *Offender Act* to a probationary sentence, and he made that
7 probationary sentence. He was not on probation when he got
8 in trouble again, a few years later, in his - I guess, his
9 early twenties. He's still in his early 20's.

10 Ballard is a user of marijuana; he told you that. Or
11 at least was a user of marijuana, when he answered my
12 question. And he knows who sells it.

13 Ladies and gentlemen, the Drug Unit cannot send a
14 school teacher to buy drugs. What school teacher is going
15 to sign up to buy drugs, in the first place, and how are
16 they going to know where to go? They have to use - utilize
17 people who are users, who know who to talk to, who know who
18 to call, who know where to get drugs.

19 Yes, Jake Ballard had a pending - had two pending
20 misdemeanor charges: possession of marijuana, he's a user;
21 driving under suspension, from the same arrest. And he was
22 hoping to get a deal. He was hoping to get a break. We'll
23 talk about that in a minute, his motivation to work as a
24 CI.

25 And Ballard met with Officer Rainier of the Drug Unit,

1 and said, I can buy marijuana from this guy I know as
2 Dough. Ballard had Dough's phone number, contacted Dough,
3 and set up the deal, all before meeting up with Rainier.

4 And there's more evidence proving this was a drug
5 deal. You heard Officer Rainier talk about a controlled
6 buy, that that's a Drug Unit, I guess, tactic, for lack of
7 better words, that sometimes they utilize CI's, and send
8 them out, wired up, searching them, making sure they don't
9 have any drugs, making sure they don't have any other money
10 on them, searching them, sending them out to a - in a
11 controlled way, where they're listening through an audio
12 feed, to do the buy, and then come straight back.

13 They've got video and audio of the buy. They've got
14 drugs in their hand, and there's nothing else. That's the
15 general nature of a controlled buy. It's very important
16 for the Drug Unit to do it that way. That's because they
17 know what's going in, and they know what comes out, and
18 that supports what is on the audio and video.

19 So, Officer Rainier testified that he searched Ballard
20 before the deal. On cross-examination, Ms. Inzerillo asked
21 him, you know, it was just a little search, right? Rainier
22 said, well, it was just short of a strip search. So,
23 pretty fair to say this was a very thorough search of the
24 CI. The CI also testified, he didn't have anything hidden
25 on him, and the marijuana that he bought was from Slaton.

1 Rainier drove Ballard to the drug deal unit in a drug
2 - to the deal in a Drug Unit vehicle. That's important,
3 too. It's a Drug Unit vehicle. You think they're gonna
4 have drugs hidden in there? Of course, not. Another
5 controlled variable. Plus, they've got - they're searching
6 him before they send him out. They're making sure he's not
7 getting this marijuana from somewhere else.

8 So, before the deal, Ballard was given forty dollars
9 by the Drug Unit. Rainier testified if he got any other
10 money he would have secured it. He goes in with only forth
11 dollars and no drugs. Nothing illegal, no drugs. No
12 marijuana, nothing. And he's searched again after the deal
13 at Slaton's apartment.

14 After the deal, Ballard had marijuana and no money,
15 and there's the marijuana that was recovered. You see the
16 nice little plastic baggy in that photograph, which is, I
17 argue to you, this right here. And you can see for
18 yourself, this is exactly what is depicted in - on my
19 projection right here. State's Exhibit Number Four, the
20 marijuana. You can see the plastic baggies. Ms. Mitchum
21 testified that they were - they were tied up, that she had
22 to cut into them to - in order to test the substances
23 inside. So, it was packaged for sale.

24 And then, there's the video, State's Number One and
25 Two, two different videos. We showed you one video, and

1 you heard Mr. Ballard testify there are two cameras.
2 Rainier testified he put two cameras. They are the exact
3 same videos, just different vantage points. We showed one
4 to you. Both are in evidence. You want to look at the
5 other ones, you can. You want to watch the other one,
6 watch both of them, you can. Put them side-by-side.
7 Compare them. It's the same - it's the same events from
8 October -- the afternoon of October 19, 2012, just a
9 different vantage point.

10 Let's talk about the buy video, as we call it, the
11 video of the buy.

12 And let me back up one second. When I was telling you
13 or showing you a breakdown of the distribution law, the
14 State's not required to prove that there was a sale. You
15 will not hear Judge Hayes tell you, in the charge on the
16 law, that we must prove that a drug deal occurred, that a
17 drug sale occurred. What we have to prove is that
18 marijuana passed from Slaton to Ballard. That's it. He
19 could have just given it to him, and that would be
20 distribution. So, it's a common misconception to think we
21 have to prove that there was a sale. We have to prove that
22 it was given from Slaton to Ballard. And the fact that
23 there was money involved corroborates that. Stuff isn't
24 free.

25 So, the Drug Unit - Remember the Drug Unit drove

1 Ballard to and from the buy, in their Drug Unit vehicle,
2 and you'll see the beginning and the ending of that on the
3 video, the video includes the drug deal at Slaton's
4 apartment. And you also see a point of view, a vantage
5 point of Slaton as he's walking. Now, it's kind of swishy.
6 Remember, he's got a video here, and one somewhere here,
7 and it's moving as he's walking, so it's a little jumpy.

8 But you can see, looking at that video, that he does
9 not make any stops to or from, and he does not bend down or
10 reach anywhere to try to recover anything. He's walking a
11 normal pace, to and from, no stops along the way. He
12 doesn't interact with anybody. He doesn't stop and open up
13 a container anywhere. This is a very controlled delivery,
14 controlled distribution.

15 Officer Rainier, in his experi - with all the
16 experience he has as a Drug Unit officer, he reviewed the
17 video. He's listening to a live, real-time audio feed. He
18 reviewed the video after the fact, and he testified that
19 the CI didn't do anything outside of the procedures. But
20 one thing we don't have in here and I argue that the
21 Defense attorney will make a point of - and maybe their
22 only real point in their argument is, you don't see the
23 hand-to-hand exchange. There is so much evidence
24 corroborating the fact that it was a hand-to-hand exchange,
25 and we'll get into that in a second. So, the evidence, up

1 to, after, and around the hand-to-hand exchange, shows you
2 the marijuana did not come from somewhere else, and the
3 video confirms that.

4 The CI also testified. He testified he got the
5 marijuana straight from Slaton. He was within arm's reach
6 of him. You could see all the - you can see all the things
7 with your own eyes, where they were, in the kitchen. You
8 can see how close they were, that he has a good - an
9 opportunity to view. Slaton's face is right there on the
10 video, point blank.

11 The CI testified that he did not have marijuana hidden
12 somewhere that the Drug Unit didn't find. The Drug Unit
13 searched him before and after, a very thorough search. The
14 video confirms he didn't have a stash somewhere. The
15 evidence all supports his testimony, the CI's testimony.
16 You don't have to believe him on his word. You don't have
17 to take him on his word. You have corroborating evidence
18 to support what he's telling you, things outside of his
19 testimony that support his testimony. And that goes to his
20 credibility on that witness stand, telling you what
21 happened. The other evidence supports his testimony.

22 Let's take a look at the deal in Slaton's apartment.

23 (STATE'S EXHIBIT OF DRUG BUY PUBLISHED TO THE JURY.)

24 MR. SHELTON: Ladies and gentlemen, I have to go
25 first. That's just the way it is in the courtroom. I

1 argue first. Ms. Inzerillo gets to argue second, so.
2 There are some things that I'm going to anticipate Ms.
3 Inzerillo may argue. She may not, but there are some
4 things that she may, especially based on the questions that
5 she's asked, already, throughout the course of this trial.

6 One of the things she may argue to you is, hey, you
7 don't see the guy the State says is Mr. Slaton, my client.
8 You don't see him actually hand marijuana to that CI, Jake,
9 on the video. And because you can't see the hand-to-hand
10 between the two guys, then the State just has not proven it
11 was a drug deal.

12 Ladies and gentlemen, that - what the Defense wants
13 you to believe is, I argue the Defense wants you to
14 believe, they want you to believe that you must have a
15 perfect case, with a bow on top, in order to convict
16 somebody, and that's simply not the standard of law in this
17 state. The State must prove beyond a reasonable doubt, all
18 of the elements of the charge, and the two key ones being
19 that we talked - that we're talking about, because you can
20 agree, York County, marijuana. Two key ones being, is that
21 Slaton; was this a drug deal.

22 Beyond a reasonable doubt, you're going to hear Judge
23 Hayes on what those legal principles are, and it's kind of
24 abstract. It has to be a one size fits all, but it's very,
25 very fundamentally important. It's a Constitutional right

1 that guarantees a fair trial, and it goes in line with the
2 presumption of innocence, as you've already been made
3 aware.

4 The State must prove beyond a reasonable doubt each
5 and every element. What is a reasonable doubt? It's the
6 kind of - A reasonable doubt is the kind of doubt that
7 would cause a reasonable person to hesitate to act. You
8 twelve, plus you, Mr. Alternate, our alternate, are
9 presumed to be reasonable people. You wouldn't be here if
10 you weren't reasonable, average, normal people. You would
11 have been weeded out during the process. So, do you - Are
12 you hesitating to act when you're deliberating? That's not
13 the same thing as deliberating. That's not the same thing
14 as discussing. That's your job, is to analyze the facts
15 and the law, and reach a true and just verdict. But do you
16 just have that feeling going, oh, I just don't know, even
17 after full deliberation. That's reasonable doubt.

18 The flip side, proof beyond a reasonable doubt, is the
19 kind of proof that leaves you firmly convinced, that after
20 your deliberations, you twelve, unanimously, can say, all
21 right, that's what happened. We're confident that's what
22 happened. And the State can rely on direct and
23 circumstantial evidence. The law makes no distinction.
24 The evidence we have points to - must point conclusively to
25 guilt, in order for the presumption of innocence to be

1 lifted, proof beyond a reasonable doubt.

2 That's not proof beyond any and all doubt. That's not
3 a requirement of a perfect case with no wrinkles or
4 variables. You have a job to do. You have to decide what
5 occurred, and the evidence is overwhelming that it was a
6 drug distribution involving marijuana and Darnell Slaton.

7 Ladies and gentlemen, this is a search for truth.
8 This is not a search for doubt. Your job is to find the
9 truth, not find doubt.

10 The Defense is - what I anticipate they'll argue -
11 that, because you can't see a hand-to-hand, we haven't
12 proven the case, completely ignores what the video does
13 show. You just heard it again. Think about that
14 conversation between Ballard and Slaton during the buy.

15 Ballard says to Slaton, "man, that's some fire, ain't
16 it?" What's fire? Good weed, good marijuana. He
17 testified that's slang. Slaton replied, "hell, yeah, that
18 stuff smells like water. Wait 'til you blow it" - smoke
19 it. "Tastes like fruit." It's good. It's good. I'm
20 peddling my ware. I'm selling you on the product here.
21 It's good stuff. You're going to be happy.

22 And then, Ballard later said to Slaton, as he was
23 leaving, "I'll hit you up later, depending on how much I'm
24 blowing on it." How much I'm smoking of this. It's
25 marijuana they're talking about. What else are they

1 talking about?

2 And the meeting was less than two minutes. Jake
3 Ballard walks across the parking lot, the other side of the
4 apartment complex, to a guy's apartment who he knows. The
5 door's open, because he's expecting him. He's told him,
6 door's open; come on in. He walks in. They stand in the
7 kitchen, just the two of them, chewing the fat about his
8 car troubles. "Oh, man, this is good weed." "Thanks, man.
9 See you later." Two minutes, I'm gone. Why is that?
10 Because it was a drug deal. What else do they have to talk
11 about? Their business is concluded.

12 And ladies and gentlemen, the slang is important, too.
13 Why is the slang important? Somebody who uses marijuana,
14 and he's going to buy marijuana - let's be reasonable here
15 for a second - I argue to you, Slaton would have been
16 suspicious if Ballard said, hey, man, your name is Darnell
17 Slaton, and I'm Jake Ballard. Can I buy approximately two
18 grams of marijuana from you for forty dollars? That is
19 simply not the way they talk. Well, hey, thanks for the
20 marijuana, buddy, Darnell, Dough. Thanks for giving me the
21 marijuana. Here's your forty dollars. Wait, wait, before
22 you hand it to me, let me adjust my watch, so I can record
23 it. Seriously? That's what I'm talking about. That's not
24 reasonable doubt. That's just the facts of the case.

25 Mr. Ballard testified, he tried to get everything on

1 video. And I argue you he did a pretty good job. He got a
2 good face shot. You can see who the other guy was. You
3 can compare him to the man sitting here in the courtroom,
4 who's been identified as Dough by the CI. You, the finders
5 of fact, can make your own determination. He's been
6 identified as Dough by Ballard and Darnell Slaton during
7 the police investigation on the, you know, all the facts
8 and circumstances leading to the photo lineup that he was
9 picked out of. And the photo lineup is a known photo of
10 the identity of Darnell Slaton. They can't charge somebody
11 named Dough. They have to know his name.

12 So, the facts and circumstances also give us a little
13 bit more about the proof that it was a drug deal and the
14 deal was set ahead of time. Slaton was expecting him. He
15 had it pre-packaged. He had it ready to go. The order had
16 already been placed. He'd already ordered two grams of
17 marijuana.

18 Ms. Inzerillo asked Ms. Mitchum, it's 2.52 grams, not
19 two grams? So, Slaton hooked him up. That doesn't
20 disprove anything. Or doesn't show anything, however you
21 want to slice it. The meeting was less than two minutes.
22 They just needed a little bit of time to complete the deal.
23 Slaton had the marijuana, ready to give Ballard. Ballard
24 knew how much money to give Slaton, and he had it ready.
25 In fact, he'd been given it by the Drug Unit, and that's

1 the only money he had. They talked about how good the
2 marijuana was, and Ballard walked all the way to Slaton's
3 apartment in, say, less than two minutes. This wasn't an
4 innocent meeting; it was a marijuana deal.

5 Question two, was this Darnell Slaton? Yes, it's
6 Slaton. How do we know? Well, this is how you know
7 Ballard - one of the reasons you know Ballard told the
8 truth. Let me back up here.

9 Another thing the Defense attorney may argue to you
10 is, you can't believe what Ballard's saying. He's been
11 convicted of all those crimes. He's got these charges
12 pending. He may just be out there to help himself. So, he
13 does have a record from when he was seventeen. He got in a
14 little bit more trouble, and was trying to help himself.
15 Not unreasonable that a working man would try to keep
16 himself out of more trouble by doing what he needs to do,
17 to look out for himself. That's not doubt, either.

18 So, some of the ways we know Ballard told the truth
19 are in the circumstances. Even though Ballard didn't know
20 a full name, he knew the man as Dough, and that man has
21 been linked to the name, Darnell Slaton, the defendant in
22 this case. Ballard knew Slaton, already had his phone
23 number. He immediately picked Slaton out of that photo
24 lineup. When you heard the talk about, you know, Rainier
25 and other officers didn't suggest which photo to pick. It

1 was the blank sheet of six photos. The marking on State
2 Three are his markings, his circle and line, and you know -
3 - you have it on video. I'm going to show you these
4 pictures. He may or may not be in there. Immediately,
5 that's him. Where? Okay. Circle it, draw a line on it,
6 initial it, date it. Document your selection. Without
7 hesitation. He testified he was a hundred percent certain
8 that that man is Dough.

9 And Ballard was not shown the video before the lineup.
10 That's very important. He was not shown any other
11 photographs. He was only shown the lineup. So, let's
12 watch the segment of Ballard being shown the lineup on
13 State's One and Two.

14 (STATE'S EXHIBIT NUMBERS THREE, PUBLISHED TO THE
15 JURY.)

16 MR. SHELTON: That was the - about the lineup
17 State's Number Three.

18 Ladies and gentlemen, ask yourselves, why would Jake
19 Ballard lie? His misdemeanor charges were ultimately
20 dismissed, the charge of possession of marijuana and
21 driving under suspension, carrying up to a year and some
22 fines - sixty days and some fines. But those charges were
23 not dismissed until after the buy. He hadn't been promised
24 anything. He was hoping to get a benefit. Why would he
25 lie if he's trying to help himself? And there's nothing

1 more in it for him now. Those charges have been dismissed.
2 He was subpoenaed to be here, and he told you he doesn't
3 want to be here, but he's got to be here. And he also
4 testified he would have gotten credit for working, whether
5 he actually made a buy or not.

6 Now, folks, Ballard, why did - What was his motivation
7 to become a CI? He testified he had a job. He testified
8 he didn't want to go back to jail, didn't want to get in
9 any more trouble. He's trying to help himself out. Who
10 can blame him? This case is not about the CI. This case
11 is about Darnell Slaton, the one charged with selling
12 marijuana. And why would Ballard lie, when the Drug Unit
13 is listening to a live audio feed and watches the video
14 when it's done? If he's lying, they're going to catch him
15 up in it, and he'd be in a lot more trouble than simply a
16 couple of misdemeanor charges.

17 Yes, it's Darnell Slaton. State's Number Five, from
18 the buy video, compare that to the man sitting at Counsel
19 table, who's been identified as Dough, by Ballard. It's
20 the same man. Yes, it's Slaton. confirming
21 what Ballard testified, confirming what Rainier testified
22 when he ran the utilities records and the DMV check on the
23 license plate from Dough's vehicle, that Ballard showed
24 beforehand. All of that pointed to Darnell Keri Slaton,
25 with a birthday,

1 And later, he told Faulkenberry, that's his address. That
2 corroborates the identification.

3 So, let's just -Let's wrap it up. Thank you for your
4 attention here. Just in summary, yes, it's a drug deal.
5 Ballard's a user, knew who to buy from, knew how much to
6 pay for it and that's his purpose of working as a CI with
7 the Drug Unit. During the buy, they use drug slang. Blow,
8 blow, and fire, fruit, water. They're not saying, excuse
9 me, sir, may I please have some marijuana? People just
10 don't talk like that. They talk about quality, again with
11 the slang. Ballard gives Slaton forty dollars, what he
12 agreed upon. Well, he said it was two grams, but it came
13 out, it's a little over 2.5.

14 It's a controlled buy. The Drug Unit took Ballard to
15 the deal in their vehicle. He walked to and from the
16 apartment. Less than two minutes, he was at the apartment.
17 Didn't need to be any longer. The deal had already been
18 set, and the drugs were ready for pickup. That even gave
19 him a little bit of time to chitchat about Slaton's car.

20 Before the deal, Ballard had forty dollars and no
21 drugs. After the deal, Ballard had what - what has to be a
22 little over two and a half grams of marijuana and no money.
23 Nothing else. Controlled buy, no stops going to or from
24 buy. Marijuana came from Slaton and no other place.

25 Yes, it's Slaton. Ballard told you, it's Slaton. He

1 knew him, knew him as Dough. Knew his phone number,
2 contacted him, picked him out of a photo lineup, without
3 having seen the video. Same facial features that he has
4 now, same facial hair, same person. He's Slaton. Same
5 address and apartment number, apartment where the drug deal
6 occurred that day. Same apartment where he was arrested on
7 the 25th, or where he said that he was, and same address
8 and apartment number he says was his address. Yes, it is a
9 drug deal, and yes, it's Slaton. Yes, Slaton is guilty, as
10 charged. Thank you.

11 THE COURT: Ms. Inzerillo?

12 MS. INZERILLO: May it please the Court, your Honor?

13 THE COURT: Yes, ma'am.

14 MS. INZERILLO: When the State stood before you
15 yesterday --

16 THE COURT: Let's get them to take that down??

17 SOLICITOR. SHELTON: I'm sorry, your Honor.

18 THE COURT: All right. Go ahead.

19 MS. INZERILLO: When the State stood before you
20 yesterday, they presented a case that was very neatly put
21 together. It was like a prepackaged. And they stood
22 before you, and they said there was going to be a video,
23 and there was going to be a CI, and there was going to be
24 officers, and it all seemed to fit together very neatly.

25 But ladies and gentlemen, it doesn't fit together very

1 neatly.

2 I'm going to make a statement I don't say very often
3 in the years that I've been a defense attorney, and that is
4 that I will agree with some of the things that Mr. Shelton
5 says. And I will agree that these events allegedly
6 happened in York County. And that, really, the issue in
7 this case is, was it a drug deal. That's really what it
8 comes down to. You can look at the pictures. You've heard
9 people come in and out of here and say, Dough, and point to
10 the picture, and say, Darnell Slaton. And look here, this
11 is the same person. You can make your own assessment about
12 that.

13 I will tell you what we know about that is, the person
14 sitting next to me, and the person who has been sitting
15 next to me the whole time, his name is Darnell Slaton. You
16 heard that. You've heard that various times. You can
17 decide if you see that same person on the screen. You can
18 decide if you believe the people that have taken the stand
19 that identified him as Dough, or Darnell Slaton. You can
20 decide what you take or leave from that.

21 But the argument of the charge against the person
22 sitting next to me at this table is distribution. And
23 distribution, in the State of South Carolina, comes down
24 to, did Darnell Slaton give - or in this case, the factual
25 allegation that's been placed on him - sell drugs to Jake

1 Ballard on October 19, 2012? That's really what it is.

2 The drugs are marijuana. You won't hear any argument
3 from me on that. Ms. Mitchum came in and said they were,
4 so we can set that aside. The real issue is, was there a
5 drug deal? And the first nice piece of the puzzle that you
6 heard was the video. They were going to bring in a video,
7 and it was going to show you the events of that day. Well,
8 now, you've seen the video, and you will have both of them
9 with you to see both, and you've seen what's been captured,
10 to cover the events of that day. And I think, a lot of
11 times in our daily lives, we think of television as like,
12 this oracle, and it will show us everything that we want to
13 see, and that happened that day.

14 And what happened in this is that, it does not show
15 you everything. You can see that with your own eyes.
16 Officer Rainier also agreed with that. It does not show
17 you everything the police said the CI did on that day. The
18 way the positioning of the cameras, the way he's moving his
19 hands, something. But I think you get vertigo watching
20 some parts of that video. What you don't see is - and I
21 know they made light of this, in the anticipation of I'm
22 going to argue - the hand-to-hand, and why is that
23 important? That is the distribution. That is the gramnet
24 in the defense against Mr. Slaton.

25 What do we know about the events? What do you see on

1 the video? You see some shaky video. You see them walk
2 in. You hear some conversation. You see him leave. You
3 hear that identification procedure, and that's all you see.
4 The conversation that you hear about fire and fruit, here's
5 how I want you to think about that. If you were to walk
6 into this room, and you didn't know anything else, you just
7 walked in, and you sat down, and you heard that
8 conversation, would you think there was a distribution of
9 marijuana going on?

10 The State wants you to think there is, because of the
11 context, but if you just heard that conversation, there are
12 no words in there about buying, selling, thank you, here's
13 your money. I'm not alleging he needs to walk in there and
14 say, hi; my name is Jake Ballard. It's a pleasure doing
15 business with you today. But there is nothing in there -
16 if you talk about fruit - even Jake had some issues
17 explaining the terminology, but if you just heard that
18 conversation, would you know there was a drug deal? So,
19 you take that out of it, that's the only conversation.

20 Other than that, what is the other critical piece of
21 evidence against Mr. Slaton? It's Mr. Ballard. It is his
22 word as to what happened. And the reason that's important
23 is because it's his eyes, and it's what he wants you to
24 believe what happened.

25 And Judge Hayes will tell you again, just like he told

1 you at the beginning, part of your job is assessing the
2 credibility and assessing the motivation of people that
3 take the stand. And the reason that's important is
4 because, when you walk into this courtroom, we don't stop
5 being human. You don't stop - you don't leave your common
6 sense at the door. If you were to have a conversation with
7 someone, and you were assessing why they were telling you
8 something, you would think, is he trying to get one over on
9 me? Why is he telling me this? You use this skill in your
10 everyday life, and sitting as a juror in that box is no
11 different.

12 Mr. Ballard took the stand, and he seemed proud of the
13 fact that he was working off those charges. He freely
14 admitted, he was not going back to jail. He had done jail
15 time, and he was not going back to jail. He completed his
16 probation but six months later picked up new charges. He
17 was not going back to jail, and he knew how to get himself
18 out of trouble. This wasn't something where the officers
19 came to him, and they pushed him into this. Oh, no, this
20 was his idea. It was going to get himself out of trouble.
21 He was going to save his own neck, and the way he was going
22 to do this was through this man. That's motivation. That
23 is bias.

24 Mr. Shelton asked, well, what would make him come in
25 today? The charges were already dismissed. Do you think

1 he's going to come in today and say something different? I
2 don't know if it would be a matter of pride, or a matter of
3 just not saying something different. You heard when he got
4 back in the car, and they said, good job, man, good job.
5 He did the deal. He did the deal he needed to do to work
6 this off. There's definite jail time. He was definitely
7 looking at going to jail, and he was not going to do that
8 again. And ladies and gentlemen, I can tell you that that
9 is a huge deterrent, and you can see it on his face. He
10 had made that decision, and he was comfortable with that
11 decision. That's his motivation.

12 And the thing about the decisions that you make in
13 life, sometimes they spawn other decisions. When you -
14 When he gets on the scene, there were some questions about
15 how he was searched. I asked Mr. Ballard, so, Officer
16 Rainier searched you, patted you down. And I did like
17 this, rubbed hands, tapped my clothing, like this. He
18 said, yes. Officer Rainier then tried to say, no, no, no,
19 no, no. It was - It was a deep search. It was a deep
20 search. It wasn't a strip search, but it was a deep
21 search. But if you heard the answer to my subsequent
22 questions, at 4:11 in the afternoon, over the span of one
23 minute, he searched and he mic'd. At 4:12, he was given
24 the government funds, or the forty dollars to do this.
25 They did not find anything.

1 Now, is it more likely that this happened, or that
2 there was a deep search? And if you're the person that's
3 getting patted down, and you have the most motivation to
4 make something happen, I put this in front of you, I know
5 where the mic's are. I know the videos here, let's say,
6 and here, let's say. I'm walking like this. I pull
7 something out of here. Am I gonna to see this on the -
8 Rainier gonna to see this on the video? Can you clearly
9 see, on the video, what I'm doing over here? You can't.

10 The only thing that's been presented to you is that
11 forty dollars was given, in testimony, and that marijuana
12 was taken back out. That marijuana was never
13 fingerprinted. We have testimony to that. It was taken
14 into evidence, and it was tested as marijuana, but it was
15 never fingerprinted. There was talk of forty dollars, but
16 it was never copied. We don't have any proof of forty
17 dollars.

18 If I had the motivation to not go back to jail, what
19 would that motivation make me do? I know what I miced. I
20 know what they can see. I walk into a person's apartment,
21 and I have a conversation with them that has nothing to do
22 with drug buying. When I get back into an officer's car, I
23 don't mention anything about buying drugs. The only time I
24 mention doing a deal is later on, when that officer drafts
25 my statement, and I sign it. That's the first time a drug

1 deal is mentioned.

2 Motivation can be a strong, strong thing. That's why
3 those facts are important. That's why his credibility is
4 important. He is the eyes. He is the ball that gets
5 things rolling. He says, this started on this day, because
6 I called Rainier and said I could do this deal. He could
7 produce no phone calls. He could produce no text messages.
8 It does seem like dumb points, and they seem like ticky-
9 tack, and why is that stupid defense attorney just getting
10 up there and nit-picking on everything? Why is that
11 important? Because it's a forty dollar deal for two grams
12 of marijuana that came back 2.5 grams.

13 How many drug dealers are gonna to give you more than
14 what you paid for? Doesn't it seem more likely you might
15 come back one and a half? Maybe you get shafted a little
16 bit, because maybe they want to make a little money off of
17 you. How many drug dealers give you more? That's why the
18 proof is important. We know he's a thief. We know he's
19 not credible. And while the State may want to write off
20 and say, well, he's had these things and he was seventeen.
21 Maybe you can think that. Maybe you think he's a dumb kid,
22 and he did something. But look at what happened after
23 that. He did - got in trouble again, and when he got in
24 trouble, he did anything he could to get out of it. And in
25 trying to get out of it, he came into here and said this

1 man sold him drugs. A kid which we know has pled to
2 stealing, pled breaking into cars, pled to criminal
3 conspiracy, and then, went out and broke the law again.
4 Although those charges may not mean anything, the important
5 thing is, he broke the law again. That's his motivation.

6 The State has gone to great lengths to try to
7 corroborate what he says. They went so far as to put
8 Officer Faulkenberry on the stand, to try to say that what,
9 eight - seven, eight, nine months after this deal allegedly
10 happened, my client told them he still lived at Clegan Road
11 Apartment. That is a long way to go to try to corroborate
12 something that the CI has told you from the State. Because
13 what has the CI told you? I walked in, I have, I set up a
14 drug deal for forty dollars, two grams. That's not
15 corroborated by what we know because it's more than that.
16 I went in there, and I did the deal. We don't know where
17 it came from. It's not on video. I walked out. There's
18 no dispute, he knows this person as Dough. So the fact
19 that he can identify him is neither here nor there. I may
20 know Mr. Shelton. I may have known him for years. But
21 just because I can pick him out of a lineup doesn't stop me
22 from putting the light on him. That piece of evidence is
23 neither here nor there.

24 The credibility is important, because the video does
25 not show you what happened. The case still comes down to

1 him. And you can put as many people on the stand, as they
2 have tried to do, to try to corroborate. Officer Rainier
3 did not go in with him. Officer Rainier can't tell you
4 what happened, and he didn't try to tell you what happened,
5 because he wasn't there. He can't show you that. All he
6 can say is, I gave him the forty; I got weed back. But he
7 also said, that video doesn't show everything that CI did.
8 There's your limitation. That's why his word is important.

9 And so, while it may seem a minor point, or it may
10 seem nit-picking, or it may seem like, oh, this is just
11 what the Defense is going to argue, that you don't see a
12 hand-to-hand on the video, that is why it is important,
13 because the crux of this case is hand-to-hand. The crux of
14 this case is distribution. That is what he's charged with.
15 That is what he pled guilty - I mean, not guilty to.

16 That is what the State has to prove beyond a
17 reasonable doubt. And while it may not have to be a pretty
18 case and all tied up in a bow, it has to be beyond a
19 reasonable doubt. You have to take into account the
20 credibility of the witnesses. If any of these witnesses -
21 if Jake Ballard, tried to sell you a car, would you buy it?
22 That's what this comes down to.

23 You can say words like, firmly convinced, and all of
24 this, but the reality is, they have the burden of proving
25 him guilty beyond a reasonable doubt, and they can't do

1 that. I ask that you find Mr. Slaton not guilty. Thank
2 you.

3 THE COURT: Members of the jury panel, I appreciate
4 the attention you've given to me and to the witnesses and
5 to the attorneys. I will now ask you to give me your
6 attention for a few more minutes, and I'm going to charge
7 you the law which you are to apply to the facts, as you
8 determine them to be, in this case..

9 Mr. Slaton is charged in this indictment with
10 distribution of marijuana. It's alleged this happened in
11 York County, on October 19, 2012. With you in the jury
12 room, you will have this indictment. This indictment is
13 not any evidence. It is the paperwork by way of which this
14 case is processed through our court system, will ultimately
15 have the unanimous verdict that you reach enrolled on it,
16 and it contains the charge against Mr. Slaton. It is not
17 any evidence whatsoever. The fact that he has been charged
18 is not evidence that he committed this offense. That's the
19 way our system works. When someone is thought to have
20 committed an offense, they are charged and brought to
21 trial. But that is not evidence that he committed this
22 offense.

23 He, in fact, is presumed innocent of this charge.
24 Anyone charged with a criminal offense in our judicial
25 system is presumed innocent of that charge until the State

1 can, if it can, prove that person's guilt beyond a
2 reasonable doubt.

3 Now, this presumption of innocence is a substantial
4 right. It's an important part of our judicial process. It
5 is not a mere legal theory or a mere legal phrase. Again,
6 it is a substantial right. This right of presumption of
7 innocence attaches to an individual when they are arrested,
8 and remains with them as their case is processed through
9 our court system.

10 The presumption of innocence remains in Mr. Slaton's
11 favor as I speak, and remains with him as you deliberate.
12 The presumption of innocence in Mr. Slaton's favor is
13 removed if and when, and, only if and when you, as trial
14 jury in this case, are convinced that the State has proven
15 his guilt beyond a reasonable doubt.

16 Now, the State is not required to prove his guilt
17 beyond all or beyond every doubt, but beyond a reasonable
18 doubt. Our courts have defined a reasonable doubt as the
19 kind of doubt that would cause a reasonable person to
20 hesitate to act. Proof beyond a reasonable doubt is proof
21 that leaves you firmly convinced of someone's guilt.

22 As I said, there are very few things in our world that
23 we can know with absolute certainty, and the law, in
24 criminal cases, does not require proof by the State that
25 overcomes every possible doubt. If, based on your

1 consideration of the evidence, you are firmly convinced
2 that Mr. Slaton is guilty of the charge, you would find him
3 guilty. On the other hand, if you think there is a real
4 possibility that he is not guilty, you would give him the
5 benefit of that doubt, and find him not guilty. He is
6 entitled to the benefit of any reasonable doubt you have as
7 to any issue in this case.

8 I remind you that I am the sole judge of the law in
9 this case, and that you must take, accept, and apply the
10 law as I charge it. I remind you that that is the law, and
11 you must do that, under your oath, whether you think I
12 charge the law in error, or whether you think the law
13 should be different. As I said, your oath requires you to
14 take, accept, and apply the law as I charge it.

15 You are not imply from anything or infer from anything
16 I say or do at any time during this trial as being an
17 opinion of mine on the facts. Our law does not allow a
18 trial judge to formulate or express to a jury any opinion
19 on the facts. It's up to you, as the trial jury in this
20 case, it's solely up to you as the trial jury in this case,
21 to examine the evidence, give to the evidence the effect,
22 the value, the weight, and the truth you believe it should
23 have.

24 In doing this, you may believe one witness as opposed
25 to several, several witnesses as opposed to one. You may

1 believe all, part, or none of a witness's testimony. Use
2 your common sense, your sense of logic, your sense of
3 reason. Use your experiences in life as you analyze the
4 evidence.

5 As judges of the facts, you necessarily must judge the
6 credibility of the witnesses who have testified. In
7 assessing credibility, use those things I've talked about.
8 Use the things that you, in your day-to-day life, find as
9 being indicators of truthfulness in individuals, and you
10 can use certain evaluators. Whether or not someone has a
11 criminal record, their demeanor on the stand. Are they
12 hesitant or straightforward? Is their testimony consistent
13 or inconsistent? Do they have any bias or prejudice? That
14 is, any reason to help or hurt one side or the other. And
15 you can consider the opportunity a witness had to know
16 those things about which they testified. All of these
17 things you consider to determine the true facts, and be
18 able to return a verdict that speaks the truth.

19 In this case, Ms. Mitchum was qualified as an expert
20 in the field of drug analysis. Generally, individuals can
21 only testify as to something they have observed with one of
22 their five senses. It's usually something someone has seen
23 or heard, but it could be taste, touch, or smell. However,
24 where an individual has certain education, training and
25 experience in a certain area, that person is allowed to

1 take facts and from those facts render an opinion.

2 Now, the opinion of an expert witness, such as Ms.
3 Mitchum, is allowed into evidence to assist you; it's not
4 binding on you. You may accept or reject Ms. Mitchum's
5 testimony, in whole or in part. Again, her testimony is
6 allowed to assist you, it is not binding on you. As to the
7 expert, Ms. Mitchum, look at her testimony through the lens
8 that you look at all the witnesses.

9 All the things that I've gone over about other
10 witnesses, you look at her with her testimony in that same
11 light. And also, as to her testimony, you determine
12 whether she had the qualifications. Even though I
13 qualified her as an expert, you determine whether you, as
14 the trial jury in this case, believe she had the expertise
15 to reach the opinion she reached, and you may also consider
16 the reasons she gave for the opinion she reached. Again,
17 you may take, accept, or reject any part or all of an
18 expert's testimony.

19 Now, in cases such as this, there are generally two
20 types of evidence that are presented, direct and
21 circumstantial evidence. Direct evidence is evidence which
22 directly proves the existence of a fact, and does not
23 require any deduction. Circumstantial evidence is proof of
24 a chain of facts and circumstances which indicate the
25 existence of a fact.

1 Crimes may be proven by circumstantial evidence,
2 direct evidence, or a combination of the two. Our law
3 makes no distinction between the weight or value to be
4 given either direct or circumstantial evidence. However,
5 to the extent the State relies on circumstantial evidence,
6 all of the circumstances must be consistent with each
7 other, and when taken together, point conclusively to the
8 guilt of the accused beyond a reasonable doubt. If these
9 circumstances merely portray a defendant's behavior as
10 suspicious, then the State's proof has failed.

11 The State has proven - has the burden of proving Mr.
12 Slaton's guilt beyond a reasonable doubt, as I have told
13 you. This burden rests with the State, regardless of
14 whether the State relies on direct, circumstantial, or a
15 combination of the two types of evidence.

16 Now, the fact that Mr. Slaton has exercised his
17 *Constitutional* right to remain silent cannot be used
18 against him in any way whatsoever. He had that right, and
19 he exercised that right, and it cannot mitigate against him
20 in any degree. You cannot discuss, in the jury room, the
21 fact that he exercised his right to remain silent. You
22 cannot factor into your own consideration of how this case
23 may - or how you intend - how you determine to resolve this
24 case. You cannot factor it into your own mind the fact
25 that he exercised his Constitutional right to remain

1 silent. He, like anyone charged with an offense, in our
2 system, has an absolute right to remain silent.

3 He is as I told you a couple of times, presumed
4 innocent. He need not prove anything. He does not need to
5 prove his innocence. The State must, as I have told you,
6 also, prove his guilt beyond a reasonable doubt before you
7 could convict Mr. Slaton, and find him guilty of the
8 charge.

9 In this case, the identification of Mr. Slaton as the
10 person who committed this offense is an issue. The State
11 has the burden of proving one's identity beyond a
12 reasonable doubt. You must be satisfied beyond a
13 reasonable doubt the accuracy of the identification of Mr.
14 Slaton before you may convict him. Identification
15 testimony is an expression of belief or an impression by a
16 witness. You must determine the accuracy of the
17 identification of Mr. Slaton as the individual involved by
18 Mr. Ballard.

19 You must consider the believability of the
20 identification witnesses in the same way that you look at
21 all the other witnesses' testimony, as I have already
22 talked to you about. You may also consider whether the
23 witness, the supposed eyewitness, had an adequate
24 opportunity to observe the person alleged to be the
25 offender at the time of the alleged offense. This will be

1 affected by things like how long or short a time was
2 available, how far or close a witness was, the lighting
3 conditions where the alleged encounter took place, whether
4 the witness had a chance to see or know the person, prior
5 to the time of the charge at hand.

6 I instruct you again, the burden of proof to prove Mr.
7 Slaton was, in fact, the person that is alleged to have
8 committed this crime, is on the State to prove beyond a
9 reasonable doubt. If, after examining all of the
10 testimony, you have a reasonable doubt as to the accuracy
11 of the identification of Mr. Slaton as the person involved,
12 you would find him not guilty.

13 Mr. Slaton is charged with the statutory offense of
14 distribution of marijuana. Here, the State must prove
15 beyond a reasonable doubt that Mr. Slaton, in fact, did
16 distribute marijuana. Distribute means to deliver, or to
17 actually constructively, or attempt to transfer a drug,
18 other than by administering or dispensing.

19 The State, of course, must also prove that the
20 substance involved was, in fact, marijuana. To deliver
21 means to actually constructively or attempt to transfer a
22 drug. A transfer can involve an exchange of money. It may
23 be a barter or a gift, but there does not have to be
24 anything given in exchange for a drug to constitute
25 distribution.

1 Now, there are two possible verdicts in this case. If
2 the State has failed to prove Mr. Slaton guilty beyond a
3 reasonable doubt, the offense of distribution of marijuana,
4 your verdict would be not guilty. On the other hand, if
5 you determine the State has proven his guilt beyond a
6 reasonable doubt, your verdict would be guilty. I'm going
7 to talk to you a little bit more about that in just a
8 moment, Ms. Forelady, so I can show you how to enroll that
9 on the indictment. And keep it in mind, the indictment is
10 not evidence.

11 Your verdict cannot be based on - based on passion,
12 prejudice, sympathy, or matters outside the record. While
13 you're deliberating, if you have any questions, please
14 write them down, and send them out, by way of the bailiff.
15 I may be doing some more work, but I will, as quickly as
16 possible, review your question with the attorneys and
17 respond. It may be that I can write an answer to any
18 question on the note itself. If I send the note back in,
19 please keep that note, and turn it in with the exhibits at
20 the end, Madam Forelady, because it has to be part of the
21 record. It may be that I'll have to bring you back here,
22 in open court, and answer any questions you may have.

23 The - We should be able to get a laptop in for you to
24 play the video, if you wish. They are in evidence. If you
25 - If we're unable to get a laptop in to you, or if, for

1 some reason - all of you are older than my grandchildren,
2 so I don't know how much luck you'd have operating a
3 laptop, but we can bring you back here, in open court, and
4 play it here, on the screen, with no one making any
5 comment. That is, if you want to see a portion or all of
6 the video and need to, we can bring you back in here, if we
7 don't get a laptop to you, and show it here, without
8 comment. But you're entitled to see it.

9 Once you have reached a verdict, please knock on the
10 door, and tell the bailiff. The bailiff will tell me, and
11 again I may be doing some other work, but I will send for
12 you as promptly as I can, and bring you back here in the
13 courtroom to have you announce your verdict.

14 Mr. Bradford, you will remain with us as the
15 alternate. You will not go back when the jury goes back at
16 this time. When you go into your jury room at this time,
17 Madam Forelady, and members of the jury panel, do not start
18 deliberating. I must go over my charge with the attorneys.
19 I have told you, you have to follow my charge as I gave it,
20 so I must make sure that I have made it correctly. So, I
21 will go over it with the attorneys. If I made an error, I
22 will bring you back in and correct it. If I have not made
23 any errors or need to make any additions, I will send in to
24 you the indictment and the exhibits, and the bailiff will
25 tell you to start your deliberation. But do not start

1 until you get the exhibits and the indictment, and the
2 bailiff tells you to start deliberating, because we may
3 have to bring you back in, if I have made an error. So,
4 wait until you get that signal before you start
5 deliberating.

6 We can have testimony replayed, if you wish. So, if
7 you need to hear any testimony, let us know. We do have to
8 bring you back in here to do that.

9 Madam Forelady, on the bottom left-hand side of the
10 back of the indictment, you will see the word, verdict, and
11 four lines below. The bottom line is for you to sign,
12 there is a place for the date. Today is the 21st. And one
13 of the lines above where you sign, you will write the
14 verdict unanimously agreed-upon by the jury.

15 If that verdict is that the State has failed to prove
16 Mr. Slaton guilty beyond a reasonable doubt, then you would
17 write two words, not guilty. If, on the other hand, the
18 State has proven to you're unanimous satisfaction Mr.
19 Slaton is guilt beyond a reasonable doubt, you would write
20 on one of those lines one word, guilty.

21 I'm going to let you go to the jury room at this time
22 but do not start deliberating.

23 (JURY EXITS COURTROOM TO DELIBERATE AT 02:58 P.M..)

24 THE COURT: Just have a seat. I'll be with you in
25 just a minute.

1 Anything from the State?

2 MR. SHELTON: No, sir, your Honor.

3 THE COURT: From the Defense?

4 MS. INZERILLO: No, your Honor.

5 THE COURT: All right. Take a - just - Do you need to
6 get some stuff out of there?

7 ALTERNATE JUROR: I do have a book in there I read on
8 break.

9 THE COURT: Okay. When we go - When they take the
10 exhibits in, we'll get the - Let me do it like this. Mr.
11 Dunlap will take you in there now to get it. Of course,
12 don't have any discussions with anybody.

13 ALTERNATE JUROR: Of course.

14 THE COURT: And you're free to leave. Call back
15 tonight after seven. Mr. Dunlap, after you get him on his
16 way, you can come on back in.

17 MR. DUNLAP: All right.

18 ALTERNATE JUROR: Thank you, your Honor.

19 THE COURT: Yes, sir. Thank you.

20 All right. Check the exhibits, and make sure they're
21 in order. And does the State have a laptop they can send
22 in?

23 MR. SHELTON: Yes, sir. We're - Mr. Jones can go get
24 it.

25 THE COURT: All right. We need the indictment.

1 MADAM COURT REPORTER: State's One through Seven.

2 THE COURT: All right. We'll be at ease.

3 (COURT AT EASE AT 02:59 P.M..)

4 (COURT BACK IN SESSION AT 04:03 P.M..)

5 THE COURT: Thank you. I understand from the jury
6 that they have reached a verdict. Is the State ready?

7 SOLICITOR SHELTON: Yes, sir.

8 THE COURT: Defense?

9 MS. INZERILLO: Yes, your Honor.

10 THE COURT: You may be seated. Ready for the jury.

11 (JURY REENTERS COURTROOM 04:07 P.M..)

12 THE COURT: Madam Forelady, I understand the jury has
13 reached a verdict?

14 MADAM FORELADY: Yes, sir.

15 THE COURT: If you will hand it to the bailiff, they
16 will bring it up to me.

17 (VERDICT RECEIVED UP BY THE COURT.)

18 MADAM CLERK: In the State of South Carolina versus
19 Darnell Keri Slaton, with the Indictment 2013-GS-46-4422,
20 for the charge of distribution marijuana, the verdict is
21 guilty, signed by the Foreperson this day.

22 If this so be your verdict, so say you all by raising
23 your right hand?

24 Let the record show all affirm.

25 (ALL JURORS AFFIRMED VERDICT.)

1 THE COURT: Anything from the State before the jury is
2 dismissed?

3 SOLICITOR SHELTON: No, sir, not at this time.

4 THE COURT: Anything from --

5 MS. INZERILLO: No, your Honor.

6 THE COURT: All right. Members of the jury panel, I'm
7 going to allow you to leave at this time. Thank you for
8 your diligence and good work on this case, and call back
9 tonight after seven, and you will find out what your
10 instructions are, and please follow them. So we may have
11 you back tomorrow or sometime this week. Right now, I
12 don't know what our schedule is, so I - or else, I'd tell
13 you. But call back tonight after seven. Thank you.

14 BAILIFF DUNLOP: The foreperson have to sign the
15 paperwork?

16 THE COURT: She's already got it. Thank you.

17 (JURY DISMISSED AT 04:08 P.M..)

18 THE COURT: Anything, Ms. Inzerillo?

19 MS. INZERILLO: Yes, your Honor. At this time, we
20 would renew all the previous motions and objections. We
21 would also move for a new trial.

22 THE COURT: The motion for a new trial is denied. I
23 think the evidence, as I said, when I sent it to the jury,
24 is sufficiently strong enough for the jury to reach the
25 conclusion that they reached, based on the testimony and

1 the exhibits, so, I deny the motion. All right.

2 What offense is this?

3 SOLICITOR SHELTON: Third offense, your Honor. And
4 your Honor, we entered in as Court's Exhibits earlier,
5 certified copies of the prior records, Mr. Slaton's prior
6 convictions, that is. He has two prior convictions for
7 possession of marijuana, one prior conviction for
8 possession of crack cocaine, I believe it was, and one
9 prior conviction for distribution of cocaine, crack
10 cocaine.

11 Under 44-53-47-370, my understanding, that the
12 mandatory five years is not suspendable, and it would be a
13 no-parole five years, so, he's looking at up to twenty.

14 And your Honor, I think we marked non-violent on the
15 sentencing sheet. I believe it is a non-violent offense.

16 THE COURT: I don't have it --

17 MR. SHELTON: The clerk has it right there, your
18 Honor.

19 THE COURT: I know, but on my sheet, I do not have it
20 as violent.

21 MR. SHELTON: Okay. Very good.

22 THE COURT: Ms. Inzerillo, anything you want to say,
23 in regard to mitigation, before sentencing?

24 MS. INZERILLO: Yes, your Honor, if I may. I believe
25 the Court has heard Mr. Slaton's record. There is a prior

1 distribution that was several years ago. He was much
2 younger then. The other priors on his record are simple
3 possession level. We would ask the Court to take that into
4 consideration. So, while it was a third offense, the
5 intervening charges have been under simple possession.

6 He is here today with his parents, as well as his
7 wife. And I think they're too upset to speak, but on
8 behalf of them, we would ask the Court to consider
9 something close to the mandatory minimum in this case. On
10 the distribution charge that Mr. Slaton got several years
11 ago, he did not spend any significant time in jail. So,
12 just in the course of intervening simple possessions, I
13 think he got fines and those type of sentences. So, no
14 significant time in jail. And so, certainly, a no-parole
15 sentence would be significant, in and of itself.

16 Mr. Slaton - I have represented Mr. Slaton since his
17 arrest and appointment to our office in October of 2013.
18 He has made all of his appointments with me. Despite this
19 charge, he's had several conversations with me about that,
20 he was working at the time, and despite working multiple
21 shifts sometimes and then a lot of times over night shifts,
22 would always come to my office early in the mornings and
23 meet with me.

24 So, I would ask the Court to take that into
25 consideration in terms of the sentencing, and ask the Court

1 to sentence him to something close to the mandatory
2 minimum, your Honor.

3 THE COURT: Has he spent any time in jail already?

4 MS. INZERILLO: Your Honor, he - I think he's only
5 spent overnight, prior to this trial.

6 THE COURT: Mr. Slaton, anything you want to say?

7 MR. SLATON: No, your Honor.

8 THE COURT: All right. The sentence is twelve years.

9 I'll give him credit for one day. Thank you.

10 FEMALE IN COURTROOM: Oh, my God, no. Twelve?
11 Twelve? Come on, twelve? He has a family. Oh my God.
12 That's not right. That's not right. I can't leave him. I
13 can't leave him.

14 MR. SLATON: That man give me twelve years.

15 It ain't right, sir.

16 OFFICER NEAL: Come on, sir.

17 FEMALE IN COURTROOM: That's not right. That's not
18 right. They can do anything they want a do.

19 (WHEREUPON, COURT EXHIBIT NUMBERS NINE AND TEN,
20 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 (COURT IN RECESS AT 04:15 P.M..)

22 (END OF TRANSCRIPT OF RECORD.)
23
24
25

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 20TH, 21ST, day(s) of April, 2015.

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:

July 18, 2015

County: YorkDate: April 20-21, 2015**VOIR DIRE/BATSON SHEET**Case No.: 2013- GS-46-04422Judge: Honorable John C. Hayes IIIPl./State: State of South CarolinaPl.State Atty's.: Solicitor Matthew Shelton
Solicitor Christopher JonesDefendant: Darnell Keri SlatonDefense Atty: P.D. Melissa InzerilloCourt Reporter: Wanda Nelson

<u>Juror No.</u>	<u>Name</u>	<u>Race</u>	<u>Sex</u>	<u>STRIKES</u>			
				<u>*Court</u>	<u>Plaintiff</u>	<u>Defense</u>	<u>Accept</u>
32	Leslie A. Boutot	W	F				X
21	Wayne A. Barschow	W	M				X
129 **	Robyn J. Lawton	W	F				X
203	Ed J. Sehl	W	M				X
132	Benjamin T. Leppard	W	M				X
133	Kelli M. Lewis	W	F			X	
115	Beth M. Jenkins	W	F				X
237	Chad E. Webster	W	M		X		
53	Joshua D. Clawson	W	M				X
93	Jan R. Harris	W	F			X	
231	James G. Underwood	W	M			X	
74	Carie L. Eyre	W	F				x
116	Flora J. Johnson	U/N	F				X
27	Rickey E. Blackwell	W	M		X		
154	Elaine W. McDaniel	W	F			X	
199	Ronald B. Russell	W	M				X
85	Sherrie A. Gegoski	W	F				X
79	Maytee Florido	H	F			X	
241	Richard White	W	M		X		
121	Janice W. Junker	W	F				X
35	Christopher C. Bradfor	W	M				X

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

York Circuit Court RANDOM STRIKE SHEET

-245-

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

PANEL ID : 4-20 CRT 1

COURTROOM CRI

3:00 PM

DESCRIPTION : 4-20 CRT 1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
Boutot, Leslie A	32	W	F	()	()	()	Seated -1
Barschow, Wayne A Jr.	21	W	M	()	()	()	Seated -2
Lawton, Robyn J <i>for person</i>	129	W	F	()	()	()	Seated -3
Sehl, Ed J	203	W	M	()	()	()	Seated -4
Leppard, Benjamin T	132	W	M	()	()	()	Seated -5
Lewis, Kelli M	133	W	F	()	(X)-1	()	Excused
Jenkins, Beth M	115	W	M <i>7</i>	()	()	()	Seated -6
Webster, Chad E	237	W	M	(X)-1	()	()	Excused
Clawson, Joshua D	53	W	M	()	()	()	Seated -7
Harris, Jan R	93	W	F	()	(X)-2	()	Excused
Underwood, James G	231	W	M	()	(X)-3	()	Excused
Eyre, Carrie L	74	W	F	()	()	()	Seated -8
Johnson, Flora J	116		F	()	()	()	Seated -9
Blackwell, Rickey E	27	W	M	(X)-2	()	()	Excused
McDaniel, Elaine W	154	W	F	()	(X)-4	()	Excused
Russell, Ronald B	199	W	M	()	()	()	Seated -10
Gegoski, Sherrie A	85	W	F	()	()	()	Seated -11
Florida, Maytee	79	H	F	()	(X)-5	()	Excused
White, Richard	241	W	M	(X)-3	()	()	Excused
Junker, Janice W	121	W	F	()	()	()	Seated -12
Bradford, Christopher C	35	W	M	()	()	()	Seated -13
Dudash, Erik C	69	W	M	()	()	()	
Applegate, Scott D	9	W	M	()	()	()	
Jones, James T	120	W	M	()	()	()	

216

**York Circuit Court
RANDOM STRIKE SHEET**

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

PANEL ID : 4-20 CRT 1

COURTROOM CRI

DESCRIPTION : 4-20 CRT 1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
Moss, Stephen L	164	W	M	()	()	()	
Rea, Jennifer A	190	W	F	()	()	()	
Raby, Patricia T	185	W	F	()	()	()	
Mccarter, Beatrice R	149	W	F	()	()	()	
Robinson, Carolyn G	193	W	F	()	()	()	
Broughton, Andrew C	40	W	M	()	()	()	
Fox, David D	80	W	M	()	()	()	
Myers, Kiolina L	165	B	F	()	()	()	
Bowlin, Samuel C	33	W	M	()	()	()	
Aebly, Aaron J	4	W	M	()	()	()	
Willey, Paul B	242	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

CERTIFICATE OF COUNCIL

I, William G. Yarborough, III, certify that on this date September 21, 2015 I served an INITIAL Brief in this action upon: (1) Jennie Abbott Kitchings, Clerk of Court, Court of Appeals of South Carolina; and (2) Mr. Alan McCrory Wilson at the S.C. Attorney General's Office by mailing it to the Government Agents at their work addresses; depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

The Honorable Alan Wilson
P.O. Box 11549
Columbia, S.C. 29211

RECEIVED
SEP 24 2015
SC Court of Appeals

Sworn to before me this 21st
day of September, 2015

Theresa Norton-Rum
Notary Public for South Carolina

My commission expires: 9/20/24

William G. Yarborough
William G. Yarborough, III

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 24 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY
General Sessions Court

Honorable Judge John C. Hayes, III, General Sessions Court Judge

2013-GS-46-04422

The State,

Respondent

v.

Darnell Keri Slaton,

Appellant

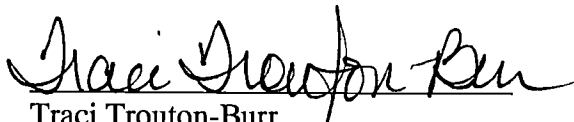
AFFIDAVIT OF SERVICE
BY MAIL

I, Traci Trouton-Burr, certify on this date September 21, 2015 , I served an Initial Brief and Designation of Matter in this action, dated September 21, 2015 by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

The Honorable Alan Wilson
P.O. Box 11549
Columbia, S.C. 29211

Respectfully submitted,



Traci Trouton-Burr

Paralegal to William C. Yarborough, Esquire

SWORN TO before this 21
Day of September, 2015



Notary Public for South Carolina

My Commission expires: 4/9/24



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SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
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PO Box 11629
Columbia, SC 29211

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111 North Church Street
Columbia, SC 29601