

STATE OF SOUTH CAROLINA

21825

In The Court of Appeals

ORIGINAL

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

RECEIVED

MAY 13 2015

SC Court of Appeals

RESPONDENT,

THE STATE,

V.

DOMINIQUE JULIUS AGURS,

APPELLANT

APPELLATE CASE NO. 2014- 000960

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARY W. LEDDON
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
Moss Justice Center
1675 York Highway, Ste. 1-A
York, SC 29745-7495
(803) 628-3020

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
TESTIMONY	
MICHAEL TUMBLIN	
Direct Examination by Mr. Shelton (In Camera).....	7
Cross Examination by Mr. Matthews (In Camera).....	15
Redirect Examination by Mr. Shelton (In Camera).....	15
INVESTIGATOR LELAND HARRELSON	
Direct Examination by Mr. Shelton (In Camera).....	17
Cross Examination by Mr. Matthews (In Camera).....	24
MICHAEL TUMBLIN	
Direct Examination by Mr. Shelton	36
Cross Examination by Mr. Matthews	76
INVESTIGATOR LELAND HARRELSON	
Direct Examination by Mr. Shelton	110
Cross Examination by Mr. Matthews	160
Redirect Examination by Mr. Shelton.....	177
JAMES LONG	
Direct Examination by Mr. Shelton	181
CYNTHIA MITCHUM	
Direct Examination by Mr. Shelton	186
Cross Examination by Mr. Matthews	194
Redirect Examination by Mr. Shelton.....	196
CLOSING ARGUMENT.....	206
VERDICT	235
SENTENCING	236
INDICTMENT	244
CERTIFICATE OF COUNSEL.....	246

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #2 (CD OF AUDIO/VIDEO DRUG BUY)

STATE'S EXHIBIT #3 (PHOTO FROM VIDEO)

STATE'S EXHIBIT #4 (3 PAGE PHOTO LINEUP)

STATE'S EXHIBIT #7 (PHOTO)

STATE'S EXHIBIT #8 (PHOTO)

State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No.: 2013-GS-4602448
)
 County of York.)
 _____)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Dominique Julius Agurs.,)
)
 Defendant. _____)

April 21, 22, 2014
 York, South Carolina

B E F O R E:

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

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

Mr. Matthew Shelton
 Assistant Solicitor
 1675-1A York H-way
 York, South Carolina 29745-7422
 803-628-3020
 803-628-3025Matthews
mshelton@yorkcountygov.org
 For the Plaintiff

ORIGINAL

Mr. Michael G. Matthews
 Attorney at Law
 P.O. Box 36668
 1420 Ebenezer Road, Suite 104
 Rock Hill, South Carolina 29732
 803-329-5999
 803-329-5994
matthews@rhattorney.com
 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III
 Sixteenth Judicial Circuit
 Union and York Counties

1 motion.

2 Your Honor, the only other thing is that I was shown
3 here today, I was aware they were planning on using it but
4 I thought they were going to use it for a completely
5 different reason was - but there is a photograph of my
6 client that they plan on putting into evidence.

7 My understanding is they were going to put it into
8 evidence because the previous two times we were having
9 trial, my client was not going to be able to be present and
10 they were going to put - submit the photograph in to assist
11 with identification and today they're telling me they're
12 going to submit it in anyway. But my client is present and
13 here for the jury to see him to compare to the video, so I
14 would object to my client's, for lack of a better term,
15 mugshot that they are planning on putting into evidence.

16 SOLICITOR SHELTON: Your Honor, these are what have
17 been marked as - for identification State's Number Seven
18 and Eight. These are photographs that we obtained from the
19 Detention Center when Mr. Agurs was booked in on June 21st
20 - excuse me, March 21st of 2013 on this charge.

21 This incident occurred on March 5th of 2013. We do
22 have a video and he is clearly shown on the video but since
23 there has been a sixteen day gap in time, the case agent,
24 Investigator Harrelson, who made this case, also executed
25 the arrest and was the booking officer, he can testify that

1 this is how Mr. Agurs appeared on the day that he was
2 arrested on this charge and booked in.

3 I think it serves - it can serve the jury in helping
4 them to identify - helping them to find that he has been
5 properly identified, Mr. Agurs as the individual who sold
6 the crack on the day alleged.

7 THE COURT: And your objection again is based on
8 simply your client is here and we don't need the
9 photograph?

10 MR. MATTHEWS: Pretty much, Your Honor. They don't
11 need photographs. They have the opportunity to look at my
12 photo - my client and with him being present if that piece
13 of evidence comes in at this point, Your Honor.

14 THE COURT: All right. Well, I overrule the
15 objection, I'll allow it in. Anything else?

16 MR. MATTHEWS: Your Honor, just some things I need to
17 put on the record based on previous agreements with the
18 State as to evidence.

19 First is what's kind of call in layman's term the
20 "reveal the deal" aspect. I had a motion to reveal. They
21 have revealed to me the basis of the CI's cooperation
22 involving this case, my understanding is based on some
23 traffic violations and they actually have assisted with
24 obtaining the funds for those traffic violations to be
25 paid. That's the extent of the reveal the deal that I have

1 SOLICITOR SHELTON: Your Honor, we also would move to
2 determine whether or not the defense has complied with the
3 reciprocal Rule 5 discovery motion that was filed with the
4 Clerk and served on defense prior to trial.

5 MR. MATTHEWS: Your Honor, at this point in time, I've
6 looking at the alibi defense, I've interviewed witnesses
7 and such of that nature. At this point in time, we've
8 complied with what we can - what I've submitted over. The
9 witness list, I've given to them, and it is my client if he
10 wishes to testify. As to the affirmative defenses, I
11 believe we've complied with the Rule 5 reciprocally.

12 SOLICITOR SHELTON: Your Honor, we also need to have a
13 Biggers hearing, but before we do that, I would like to put
14 a couple of things on the record just so we have a
15 consistent record. We've had many hearings in this
16 particular case over the last few months. As I eluded to
17 earlier, we were trying to work this case out.

18 January 22nd 2014, Mr. Agurs rejected his original
19 plea offer of twelve years in front of Your Honor. Ms.
20 Wanda Nelson was the court reporter.

21 At the defense's request, we reopened the
22 investigation February 27th, 2014. He was given a chance
23 to change his mind with the twelve year offer. He again
24 rejected it this time in front of Judge Hill. Ms. Aminah
25 Hardy was the court reporter.

1 At that time the State served Mr. Agurs with Notice of
2 Intent to seek life without parole if he were convicted of
3 this, this being his third conviction. Again, Ms. Hardy
4 was the court reporter and that Notice has been filed with
5 the Clerk of Court on February 24th, 2014 and it was
6 personally served on Mr. Matthews and Mr. Agurs in the
7 courtroom at that time.

8 We had the case set for trial March 10th, 2014. In
9 preparation for that, Mr. Matthews and I entered into a
10 consent protection order regarding the CI video and the CI
11 information. That was signed by Judge Alford on March 3rd,
12 2014; filed with the Clerk's office the following day. I
13 gave a copy of that to Mr. Matthews. It's basically the
14 standard consent order that we seek in these type cases,
15 Your Honor. I know you are familiar with it.

16 The Defendant failed to appear for court on March 10th
17 and March 31st. We intended to try him in his absence.
18 Did not reach those - reach trial either one of those
19 court dates because of scheduling.

20 On April 12th, 2014, he was arrested on bench warrants
21 for failure to appear. He is currently being held on those
22 bench warrants.

23 April 15th, Mr. Matthews talked with Mr. Agurs in the
24 jail. We had agreed on a revised offer of twenty years.

25 It is my indication that Tuesday morning Mr. Agurs was

1 going to take that deal. We had it schedule for a plea
2 this past Thursday, April 17th, in the morning in front of
3 Your Honor.

4 Prior to coming in front of Your Honor, Mr. Agurs
5 changed his mind; did not enter his guilty plea.

6 He specifically rejected the State's attempts to
7 resolve this case and I put on the record at that time, and
8 I believe Ms. Nelson was the court reporter if my memory
9 serves correct, that there are no offers. If he is
10 convicted at trial, he is looking at life without parole,
11 this being - We will seek life without parole, this being
12 his third strike and that the trial was scheduled to begin
13 today.

14 I just wanted to be very clear since we've had a
15 number of hearings so we keep the record consistent.

16 THE COURT: Any comment on the record, Mr. Matthews?

17 MR. MATTHEWS: Your Honor, we've put it on the record
18 each time the rejection. There was an eighteen-year offer
19 at one point in between the twelve and the twenty-year
20 scenario.

21 I've informed my client that when we appear at trial
22 today, if the jury convicts him, that he would receive life
23 without the possibility of parole in this matter. That
24 information has been conveyed on numerous occasions to my
25 client.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

-20-

1 THE COURT: All right.

2 SOLICITOR SHELTON: Your Honor, at this time if it
3 pleases the Court, we would go ahead and do the Biggers
4 hearing.

5 THE COURT: All right. Call your first witness.

6 SOLICITOR SHELTON: We need Michael Tumblin on the
7 witness stand.

8 MADAM CLERK: Raise your right hand, place your left
9 hand on the Bible.

10 (WHEREUPON, MICHAEL TUMBLIN,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAM CLERK: Thank you. Please have a seat.

13 DIRECT EXAMINATION

14 MICHAEL TUMBLIN BY SOLICITOR SHELTON:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. Please state your name for the record.

18 A. Michael Tumblin.

19 Q. How old are you, sir?

20 A. I'm fifty-four.

21 Q. Are you presently employed?

22 A. Yes, sir.

23 Q. How far did you go in school?

24 A. I graduated high school.

25 Q. In March of 2013, did you meet with officers of the

1 Drug Unit for York County to discuss working as a
2 confidential informant with them?

3 A. Yes, sir, I did.

4 Q. Were you able to set up a crack cocaine buy deal on
5 March 5th, 2013?

6 A. Yes, sir.

7 Q. Did you tell officers from the Drug Unit who you could
8 buy from that day?

9 A. Yes, I did.

10 Q. So they didn't tell you who to buy from; you told them
11 who you could buy from; is that correct?

12 A. That's correct, sir.

13 Q. And prior to the deal, what description, if any, did
14 you provide the officers about the person you said you
15 could buy crack from on March 5th, 2013?

16 A. It was a black guy that goes by the name of D.J.

17 Q. And did you know this guy D.J.'s full name or last
18 name at that time?

19 A. No, sir. I just knowd he was D.J.

20 Q. Did you have a phone number for him?

21 A. Yes, sir, I did.

22 Q. Did you call that number on March 5th, 2013?

23 A. Yes, sir, I did.

24 Q. Approximately how many times prior to that day, that
25 day being March 5th, 2013, had you met with this guy, D.J.,

1 in person?

2 A. Five, six times at least.

3 Q. And at those meetings, about how long were you in his
4 presence at each time?

5 A. Sometimes five minutes. Two to five minutes probably.

6 Q. And could you clearly see his face during those
7 meetings?

8 A. Yes, sir.

9 Q. And did you - So we're clear, did you know him before
10 this day?

11 A. Yes, sir.

12 Q. About how long had you known him?

13 A. I'd known him probably five or six months. Yes, sir.

14 Q. And on March 5th, 2013, did you purchase crack cocaine
15 from that same black male you knew as D.J. as part of the
16 Drug Unit's investigation?

17 A. Yes, I did.

18 Q. Was that video recorded?

19 A. Yes, sir.

20 Q. And was that recorded by equipment that DEU officers
21 had hid on your person?

22 A. Yes, it was.

23 Q. And after the buy deal on March 5th, did Office
24 Harrelson from the Drug Unit show you a collection of
25 photographs?

1 A. Yes, sir, he did.

2 Q. Excuse me?

3 A. Yes, sir, he did.

4 Q. I'm going to show you, Mr. Tumblin, what's been marked
5 for trial as State's Exhibit Number Five - or excuse me,
6 State's Exhibit Number Four. If you'll just take a quick
7 second to look at this, please.

8 (WITNESS REVIEWING EXHIBIT.)

9 Q. Mr. Tumblin, are there three pages in that document?

10 A. Yes, sir, There are.

11 Q. And were you - So we're clear, were you shown the
12 first page only?

13 A. That's correct. Yes, sir, I was.

14 Q. And is this the photo lineup you were shown that day?

15 A. Yes, sir, it was.

16 Q. These are the photos that officers from the Drug Unit
17 showed you?

18 A. Yes, sir.

19 Q. Where were you when they showed you the photos?

20 A. I was at the Drug Unit at the Rock Hill Police
21 Department.

22 SOLICITOR SHELTON: Your Honor, I don't know if you
23 would like me to put a copy in as a Court's Exhibit or just
24 simply show you the lineup that's been marked for
25 identification.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

-24-

1 THE COURT: You're asking me what I want. I mean, I
2 just - What I want is what you plan to do as far as proving
3 your case.

4 SOLICITOR SHELTON: Yes, sir. I will show Mr. Tumblin
5 a copy of this.

6 Q. Mr. Tumblin, I'm going to hand you a second document.

7 SOLICITOR SHELTON: Let me mark this as Court's
8 Exhibit Number One, please.

9 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, PREMARKED FOR
10 IDENTIFICATION.)

11 Q. Mr. Tumblin, can you please compare what's marked as
12 Court's Exhibit Number One with what's been marked as
13 State's Exhibit Number Four.

14 A. Yes, sir. They're identical.

15 Q. So that appears to be an accurate and true copy of the
16 original State's Number Four?

17 A. Yes, sir, it is.

18 Q. Okay. So when I'm asking you these questions, I'm
19 referring to both of these documents, since there is the
20 original and a copy.

21 A. Yes, sir. They're the same. Yes, sir.

22 MR. MATTHEWS: Your Honor, I'm going to object. I'm
23 not real sure why making this a Court's Exhibit would
24 proffer moving forward with his motion that established
25 under Biggers whether or not this photo lineup was done

1 properly or not, so I would object to making it a Court's
2 Exhibit.

3 THE COURT: I'm not sure I understand why you're
4 objecting it being a Court's Exhibit during a hearing but I
5 overrule your objection.

6 SOLICITOR SHELTON: Your Honor, at this time since Mr.
7 Tumblin has identified this as an exact copy, I would move
8 this in as Court's Exhibit Number One.

9 THE COURT: In over objection.

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

12 SOLICITOR SHELTON: And, Your Honor, if I can hand both
13 of these up to you so you can look at them while I'm
14 talking with Mr. Tumblin.

15 (EXHIBITS RECEIVED UP BY THE COURT.)

16 Q. Mr. Tumblin, do you remember anyone else being with
17 you in the room when you were shown those photographs?

18 A. No, sir.

19 Q. So it was just you and Office Harrelson?

20 A. Yes, sir.

21 Q. And what, if any thing, do you remember Officer
22 Harrelson telling you prior to viewing these photographs?

23 A. Go over and see if I recognize anyone - anybody's
24 photograph.

25 Q. Did he tell you that anyone in particular was in that

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

-26-

1 group of photos?

2 A. No, sir.

3 Q. Did he say anything that would influence or suggest to
4 you which photograph to select?

5 A. No, sir, he did not.

6 Q. Was this the only lineup or grouping of photos you
7 were shown?

8 A. Yes, sir.

9 Q. Did you select a photograph?

10 A. Yes, I did.

11 Q. Did you mark your selection somehow?

12 A. Yes. I circled and put my initials on it.

13 Q. And did you also write the date underneath it?

14 A. Yes, I did.

15 Q. And do you recall from looking at that document just a
16 moment ago, did you write the date as being March 5th,
17 2012?

18 A. Yes, sir, I did.

19 Q. Was it actually 2013?

20 A. It was actually 2013 it sure was.

21 Q. So you had written the wrong date?

22 A. Yes, sir. Just the wrong year. I read the wrong year
23 on it.

24 Q. Yes, sir. But it was March 5th 2013?

25 A. Correct. Yes, sir.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

-27-

1 Q. And you also signed at the bottom of that document?

2 A. Yes, sir.

3 Q. And did you sign a statement indicating that your
4 selection was freely and voluntarily made?

5 A. I did, yes, sir.

6 Q. Was that on a separate piece of paper?

7 A. Yes, sir, it was.

8 Q. And is it one of those three pages that you just
9 looked at, State's Number Four and Court's Number One?

10 A. Yes, sir.

11 Q. The person you selected, is that the same person who
12 sold you crack cocaine on March 5th, 2013?

13 A. Yes, sir., it is.

14 Q. Is that the man you knew prior to this as D.J.?

15 A. Yes, sir, it was.

16 Q. Do you see him in the courtroom today?

17 A. Yes, sir.

18 Q. Could you please point him out?

19 A. D.J., sitting right here.

20 SOLICITOR SHELTON: Your Honor, I would ask that the
21 record reflect that Mr. Tumblin has pointed to the
22 defendant, to the individual sitting next to Mr. Matthews
23 at defense counsel table.

24 (WITNESS INDICATED TO DEFENDANT.)

25 SOLICITOR SHELTON: I have no further questions for

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS - IN CAMERA
REDIRECT BY SOLICITOR SHELTON - IN CAMERA

-28-

1 this witness.

2 THE COURT: Mr. Matthews.

3 CROSS EXAMINATION

4 MICHAEL TUMBLIN BY MR. MATTHEWS

5 Q. You said you - If I understood what you just said, you
6 said you believed it's the gentleman sitting --

7 A. No, sir. I said that's him sitting right there. I
8 didn't say believe.

9 Q. Okay. Can you tell us specifically when on the day in
10 question on March 5th, you actually saw these photographs?

11 A. The day of before I went and made the drug buy.

12 Q. Before you went and made the drug buy?

13 A. Yes, sir.

14 Q. All right. So you made this - picked this out before
15 you went out to the drug buy?

16 A. I picked the picture out.

17 Q. All right.

18 MR. MATTHEWS: Your Honor, no further questions at
19 this point.

20 REDIRECT EXAMINATION

21 MICHAEL Tumblin BY SOLICITOR SHELTON:

22 Q. Mr. Tumblin, have you been shown the buy video before
23 you were show this photo lineup?

24 A. Sir?

25 Q. Have you been shown the video that was produced with

MICHAEL TUMBLIN: REDIRECT BY SOLICITOR SHELTON - IN CAMERA

-29-

1 the drug unit equipment before you were shown this lineup?

2 A. No, sir.

3 Q. And in fact, have you seen it once - a couple times
4 before coming into court for trial?

5 A. Yes, sir.

6 Q. Was that a few weeks ago the first time you saw it?

7 A. Yes, sir, it was.

8 Q. A year ago after this investigation was the first time
9 you had seen the buy video?

10 A. Yes, sir, it was.

11 SOLICITOR SHELTON: Nothing further from this witness,
12 Your Honor.

13 MR. MATTHEWS: Your Honor, at this time I would move
14 to suppress the photo lineup. The witness has indicated
15 that he --

16 THE COURT: I'm not sure they are through with all
17 their witnesses.

18 SOLICITOR SHELTON: No, sir. We are not.

19 MR. MATTHEWS: All right. I apologize, Your Honor.

20 THE COURT: Thank you. You can step down. Thank you.
21 You can go back and have a seat.

22 (WITNESS LEAVING WITNESS STAND.)

23 SOLICITOR SHELTON: Your Honor, the next witness we
24 would call would be Investigator Leland Harrelson.

25 (WHEREUPON, LELAND HARRELSON,

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-30-

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

2 DIRECT EXAMINATION

3 INVESTIGATOR LELAND HARRELSON BY SOLICITOR SHELTON:

4 Q. Please state your name for the record.

5 A. Hugh Leland Harrelson, Junior.

6 Q. Do you work for the Drug Unit?

7 A. Yes, I do.

8 Q. All right. Have long have you been with the DEU?

9 A. I've been with the Drug Unit approximately four years.

10 Q. During those years, have you participated in
11 controlled drug buy investigations?

12 A. I have. Yes, sir.

13 Q. And investigations that involve confidential
14 informants?

15 A. Yes, sir.

16 Q. On March 5th, 2013, did you meet with Michael Tumblin
17 during an investigation while he was working as a CI for
18 the Drug Unit?

19 A. Yes, sir, I did.

20 Q. And did Mr. Tumblin set up a crack cocaine deal on
21 that day, on the date of March 5th, 2013?

22 A. Yes, sir, he did.

23 Q. Prior to the deal, what description, if any, did
24 Tumblin provide you about the person he would be buying the
25 crack from?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-31-

1 A. He said the suspect went by the name of D.J. He was a
2 black male.

3 Q. Did he know any full name or did he simply know him
4 by D.J.?

5 A. He just simply knew him as D.J.

6 Q. So we are clear, did you all tell him who he should
7 buy from or did he tell you who he could buy from?

8 A. No, sir. Mr. Tumblin came to us and stated he could
9 buy from D.J.

10 Q. And did Mr. Tumblin call this guy D.J. to set up a
11 drug deal?

12 A. Yes, he did.

13 Q. Did he have the guy's phone number?

14 A. Yes, he did.

15 Q. Did he call that number from his phone?

16 A. Yes, he did.

17 Q. And was that phone call recorded?

18 A. Yes, sir, it was.

19 Q. Did Tumblin indicate that he had bought crack from the
20 guy that day?

21 A. Excuse me?

22 Q. Did Tumblin indicate he had bought crack from that guy
23 D.J. that day?

24 A. Yes, sir, he did.

25 Q. And was the investigation where he bought crack

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-32-

1 recorded?

2 A. Yes, it was.

3 Q. Did you review the video recording after the crack
4 deal?

5 A. Correct. Yes, sir.

6 Q. And after reviewing the video, were you able to tell
7 the identity of the person who sold crack cocaine to
8 Tumblin on March 5th, 2013?

9 A. I was.

10 Q. Who was it?

11 A. Dominique Agurs.

12 Q. Is his middle name Julius?

13 A. Yes, it is.

14 Q. At that time, did you know him as Dominique or D.J.?

15 A. I knew him previously. I had dealt with him back when
16 I was an officer with the City of Rock Hill.

17 Q. And approximately how many dealing did you have with
18 him in person prior to that?

19 A. I believe two.

20 Q. And did you get a good look at him during those
21 dealings?

22 A. Yes, sir, I did.

23 Q. So when you saw - When you looked at the video, were
24 you able to tell that Dominique Julius Agurs was the other
25 man on the video?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-33-

1 A. Yes, sir. When I saw the video, I recognized him. I
2 went back through some police records; I located a picture
3 of him and compared the picture with the picture on the
4 video.

5 Q. And after looking at the videos - After looking at the
6 videos in this case, were you then able to prepare a photo
7 lineup?

8 A. I was, yes, sir.

9 Q. Is that how you knew what picture to put in the photo
10 lineup?

11 A. Yes, sir.

12 Q. Do you see Dominique Agurs in the courtroom today?

13 A. Yes, sir, I do.

14 Q. Please point him out.

15 A. It's the gentleman in the black and red shirt.

16 Q. Sitting next to Mr. Matthews?

17 A. Correct.

18 SOLICITOR SHELTON: Your Honor, if I could hold those
19 Exhibits there.

20 Q. Investigator, I'm going to show you what has been
21 marked as State's Exhibit Number Four for trial and what
22 has been entered as Court's Exhibit Number One for this
23 hearing. Are those the same - Is one the original and the
24 other a copy of the same document?

25 A. Yes, sir, it is.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-34-

1 Q. And what is it?

2 A. It is the photo lineup I showed Mr. Tumblin.

3 Q. Is the one marked State's Number Four the original?

4 A. Yes, sir, it is.

5 Q. And Court's Exhibit Number One is the copy?

6 A. That is correct.

7 Q. And how did you generate this six pack of photo
8 lineups?

9 A. It was through a police computer program. If you - I
10 knew my suspect. I chose him and then it randomly chooses
11 me, you know, several hundred people that matches age and
12 description, and then out of those people I am able to
13 chose five other individuals that closely match him.

14 Q. And on what date did you show Tumblin this lineup?

15 A. It was the day after we had made the crack purchase.

16 Q. And were there any identifying markings on the lineup
17 when you showed it to him?

18 A. No, sir, there were not.

19 Q. Did you show the lineup before or after the drug buy?

20 A. It was after the drug buy when we had returned to the
21 office.

22 Q. And were you at the drug unit when you showed him the
23 photos?

24 A. Yes, sir, I was.

25 Q. Was anyone else with the two of you at that time?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON.
IN CAMERA

-35-

1 A. No, sir.

2 Q. What, if anything, do you remember telling Tumblin
3 prior to showing him those photographs?

4 A. I told Mr. Tumblin there were six photos on this page.
5 The suspect may or may not be on there. Look at each photo
6 carefully. Look at facial features because his weight and
7 age may be different from what he remembers.

8 Q. Did any of the other officers who participated in this
9 investigation help you prepare the lineup?

10 A. No, sir.

11 Q. Did you or any other officers influence or suggest to
12 Tumblin which photos to select?

13 A. No, sir.

14 Q. Was this the one and only lineup you showed Tumblin?

15 A. That is correct.

16 Q. And did he select a photograph?

17 A. He did.

18 Q. How do you know?

19 A. He circled it. Also, I asked him to initial it and
20 sign it and place the date.

21 Q. And are those markings - the written markings found on
22 these exhibits?

23 A. Yes, sir, they are.

24 Q. And was the year actually 2013?

25 A. Yes, sir. That is correct.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
IN CAMERA

-36-

1 Q. He just simply wrote down the wrong year on the date?

2 A. Yes, sir.

3 Q. Did he indicate to you the person he'd selected as the
4 person that sold crack cocaine to him on March 5th, 2013?

5 A. Yes, sir, he did.

6 Q. And was Dominique Agurs charged with the crime of
7 distributing crack cocaine on March 5th, 2013?

8 A. Yes, sir, he was.

9 Q. And an arrest warrant obtained?

10 A. That is correct.

11 Q. Were you the affiant?

12 A. I was.

13 Q. And it was signed by a judge?

14 A. Yes, sir.

15 Q. Did you participate in his arrest on March 21st or
16 22nd of 2013 on that charge?

17 A. I did. Yes, sir.

18 Q. And were you also the booking officer?

19 A. I was.

20 Q. Did this happen in York County?

21 A. It did. Yes, sir.

22 SOLICITOR SHELTON: Nothing further, Your Honor.

23 THE COURT: Cross.

24 MR. MATTHEWS: May I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
IN CAMERA

-37-

1 MR. MATTHEWS: May I see the original?

2 INVESTIGATOR HARRELSON: Yes, sir.

3 CROSS-EXAMINATION

4 INVESTIGATOR LELAND HARRELSON BY MR. MATTHEWS:

5 Q. Whenever looking at this document, the original in
6 front of you, when we say that he put the wrong year down,
7 what year did he put down on the piece of paper?

8 A. A 12.

9 Q. So he put down March what, of 20 - put March 5th,
10 2012?

11 A. Yes, sir.

12 Q. And did you review what he had initialed and reviewed
13 whenever you saw him write that down? Did you review it
14 before putting it in your file?

15 A. Yes, sir. I did not catch the error of the date.

16 Q. And so there is the wrong date on there?

17 A. Correct.

18 Q. Now just to make sure, your testimony - was your
19 testimony as to the second page that's on the Exhibit where
20 it says names and addresses and dates. When was that
21 attached to the photo lineup?

22 A. It goes in my case folder. I did not show him this
23 page. He simply sees the first page with just the
24 pictures.

25 Q. Now let me refer you to the first page, the one that

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
IN CAMERA

-38-

1 is marked Photographic Lineup.

2 A. Yes, sir.

3 Q. Okay. Now, this is the one - Whose signature is on
4 this page?

5 A. Mr. Tumblin.

6 Q. And then he prints his name out. Right?

7 A. That is correct.

8 Q. Is there any date listed on there?

9 A. No, sir, there is not.

10 Q. Okay. Is there any other information on this sheet?

11 A. No, sir, there is not.

12 Q. Okay. You didn't put your name down? It says officer
13 signature and print name. You didn't put your information
14 there?

15 A. No, sir. It was a clerical issue.

16 Q. Okay. So the only information that we have as to this
17 photo lineup is it's dated March 5th, 2012, and then on the
18 last page no officer witnessing his signature?

19 A. That is correct.

20 Q. And my understanding, you said that the pictures were
21 pulled up. You were given a list or a showing of different
22 pictures you could pull from from the computer?

23 A. That is correct.

24 Q. But you're still responsible for pulling out the
25 different pictures?

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
IN CAMERA

-39-

1 A. That is correct.

2 Q. And you would agree with me that on this photo lineup,
3 there is at least two out of the six individuals that we
4 would consider to be lighter skinned individuals?

5 Number one - if you're going down the list on the
6 first column, number one and number three?

7 A. There is a little bit of difference there.

8 Q. Okay. Well the reason I asked is because the rest of
9 them, they are darker. You know, no disrespect to my
10 client, but they are darker skinned in nature to the point
11 they kind of blend in with the background because these are
12 black and white pictures. Is that - Would you say there is
13 a difference between those four and the two that I am
14 referring to?

15 A. Yes, sir.

16 Q. So would you agree with me that the - really and
17 truthfully that Mr. - the CI in this case, Mr. Tumblin,
18 really only has selection of four individuals?

19 A. No, sir. There are six individuals. I go through the
20 pictures that I have presented to me and pick out the ones
21 that I can closely match, you know, to my suspect. Every
22 picture is not going to be perfect, you know, as far as
23 skin color, but I try to get as close as I can.

24 Q. Okay. How many photographs are you given at one time
25 by the computer?

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
IN CAMERA

-40-

1 A. It's a couple of hundred.

2 Q. A couple a hundred?

3 A. Yes, sir.

4 Q. Okay. And you're saying these six, or these five
5 other individuals on here, or these six, are the closest
6 that you could come out of two hundred that resemble my
7 client?

8 A. Yes, sir. At the time when I went through the
9 program, these were the photos that I chose.

10 Q. I understand that you chose them but you're saying out
11 of the two hundred there were not at least another two of
12 them that were similar in - to my client in his color,
13 being lighter versus dark?

14 A. No. I did not go through the entire two hundred. I
15 went through until I chose five pictures that I felt like
16 resembled him.

17 Q. So again, we have this computer program but you are
18 the sole person that chooses these pictures?

19 A. Yes, sir, the officer does.

20 Q. And if there was any other officers in the room, they
21 would need to sign that sheet of paper; is that correct, on
22 page three?

23 A. Yes, and there were no other - I was the only other
24 officer in the room.

25 Q. Okay. So other than yourself, if they were in the

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
IN CAMERA

-41-

1 room, they would have had to have signed this document?

2 A. Yes, sir.

3 Q. And this is the same document that you didn't sign
4 either. Correct?

5 A. Correct. Yes, sir.

6 MR. MATTHEWS: No further questions, Your Honor.

7 THE COURT: All right. Redirect?

8 SOLICITOR SHELTON: No, sir.

9 THE COURT: All right. You can step down. Thank you.

10 (WITNESS LEAVING WITNESS STAND.)

11 SOLICITOR SHELTON: Your Honor, that's the State's
12 proffer. We would ask you to consider --

13 THE COURT: Will you hand me those exhibits?

14 (EXHIBITS RECEIVED UP BY THE COURT.)

15 THE COURT: We just simply ask you to consider what's
16 been entered as Court's Number One, a copy of what's marked
17 as State's Number Four, which is the original lineup.

18 THE COURT: Mr. Matthews?

19 MR. MATTHEWS: Your Honor, I'm referring to the
20 standard that has been placed on -- we commonly call it the
21 Biggers hearing, Neal versus Biggers, a U.S. Supreme Court
22 case that is also mentioned in several cases, the most
23 recent one being the State versus Lewis from 2005 in that
24 case.

25 Your Honor, there are a couple things I want to

1 mention for purposes of consideration of admissibility of
2 this photo lineup.

3 One, the CI himself is the one who actually did the
4 photo lineup indicated clearly on both direct and cross-
5 examination that he did this prior to any drug transaction
6 that occurred, so, Your Honor, I would ask that you
7 consider that.

8 The second thing is that the officer testified that he
9 receives approximately two hundred pictures from the
10 computer. The computer being hopefully the most non-biased
11 way of picking out photographs, but he's still the one who
12 picks out the six photographs that go on the photo lineup.

13 I would submit to Your Honor these are black and
14 white. These are the ones that I was shown on the original
15 as well as in the copies. Black and white. We did not
16 have the color photos. I'm assuming that at the same time
17 Mr. Tumblin did not have the color photos; he had these
18 black and whites. Two individuals on there clearly
19 lighter skinned than the other four and therefore, I would
20 submit to Your Honor my client was not allowed to have a
21 full-photo lineup. He only had a photo lineup that showed
22 four individuals and did not have the benefit of a full
23 lineup, these two being lighter in skin color at that
24 point.

25 And then the third piece of information I give to Your

1 Honor or the third piece of information is that in doing
2 this case, very serious case, Mr. Tumblin dated this 2012.

3 Your Honor, this is the same individual who had said
4 that he did this prior to a drug transaction.

5 And then the final thing that I would point out to you
6 is that on the third page, proper procedure was not taken.
7 I would submit that the reason why I'm pointing this out is
8 that it shows that the entire process was not properly
9 done. That the officer did not sign or print his name, put
10 any information on here. This document was not dated. It
11 was just attached to as page three to the photo lineup.

12 I would submit to Your Honor under the five standards
13 or under Biggers, that this photo lineup does not meet
14 standard and I would ask that it would be suppressed.

15 SOLICITOR SHELTON: I would ask you to consider
16 Investigator Harrelson's testimony. He testified he was
17 the only officer in the room. He testified he was present
18 when the photo lineup was shown to Mr. Tumblin and it was
19 not suggestive. He said there were no other officers. The
20 fact that he didn't fill out a form indicating he was
21 present does not negate the fact that he was present and
22 his testimony is, is he was the only officer that was
23 there.

24 As for the date, 2012 by Mr. Tumblin, that's simply a
25 clerical mistake. Investigator Harrelson noted he hadn't

1 even noticed it until some time after the statement had
2 been signed, so it was just simply a mistake. There is no
3 question this was done in 2013.

4 Harrelson's recollection and in his testimony was that
5 he showed Mr. Tumblin the lineup after the buy. In fact,
6 Harrelson said that he had to look at the video first to
7 determine who this person D.J. was. He knew this guy as
8 Dominique Agurs from looking at the video. That's how he
9 was able to know who to add in as one of the six photos.

10 He did not - I'd also say that Mr. Tumblin did not
11 testify on direct that he was shown the lineup prior to the
12 drug deal. He testified that on cross and it appeared to
13 me like he was confused as to the question but his answer
14 is his answer and Your Honor can consider what has been
15 presented before you today.

16 There is ample evidence to find that it was not in
17 violation of Biggers.

18 THE COURT: All right. I find by a preponderance of
19 the evidence that the identification procedure was not
20 informissibly suggestive. In looking under the totality of
21 the circumstance, there is not a substantial likelihood of
22 irrepreible misidentification. Whether or not this was one
23 prior or whether or not the witness testified that it was
24 done prior to or after the buy is certainly fodder for
25 cross-examination, but the testimony from Officer Harrelson

1 was it was not prepared until after the buy, so I think
2 that by the preponderance of the evidence shows that it was
3 done after the buy although you certainly can explore that
4 on cross-examination as far as the jury's consideration.

5 As to the four that - or the two that were not the
6 same skin tone, that is - there is some varying degree of
7 facial - or skin tone on the photographs, I do not find
8 that they are substantially such that they would taint the
9 liability which is what we look at of the identification
10 procedure. The skin tone may be somewhat different but the
11 haircuts are the same. The other facial features, eyes,
12 nose, lips, are very similar on all six so I do not find
13 that there was any impermissible suggestiveness in the
14 lineup itself.

15 There are flaws in the clerical side of the procedure,
16 no doubt. The date being one and the form not being
17 completely filled out as to date, time and witness. Those
18 are certainly also fodder for cross-examination but they
19 are not required elements of the Court's consideration of
20 whether or not the lineup and the out of court
21 identification based on it was inadmissibly suggestive and
22 I find that it is not, so I'm going to allow the CI to make
23 an identification based on the photo lineup.

24 Anything else before we get the jury up?

25 SOLICITOR SHELTON: No, sir. There is nothing else.

1 You were correct earlier that there were a couple of
2 matters scheduled. I think we have gone over that
3 scheduled time but I think they are prepared to --

4 THE COURT: All right. Let's go forward with a couple
5 of matters and then while the jury is coming up, we'll take
6 a break. All right. First.

7 (COURT IN RECESS AT 02:35 P.M..)

8 (JURY ENTERS COURTROOM AT 02:38 P.M..)

9 (COURT BACK IN SESSION AT 02:42 P.M..)

10 THE COURT: Thank you. Take your seats.

11 Members of the jury panel, I'm John Hayes. I of
12 course did not get a chance to meet you this morning.
13 Judge Alford handled that part of what we do when we have
14 trial court.

15 I am now going to start the first trial in this
16 Courtroom for the week, and that is the case of the *State*
17 *versus Dominique Julius Agurs*.

18 Mr. Agurs, would you stand up and let the jury see who
19 you are.

20 (DEFENDANT STOOD.)

21 THE COURT: This is Mr. Agurs. Mr. Agurs is charged
22 with distribution of crack cocaine on March 5th, 2013 in
23 York County, South Carolina. You may be seated.

24 He is represented by Mr. Michael Matthews.

25 (ATTORNEY MATTHEWS STOOD.)

1 As judges of the facts, you necessarily must judge the
2 credibility, believability of the witnesses who testify.
3 In assessing credibility, use the things that I have
4 already talked. Use the things that you, in your day to
5 day life, find as indicators of truthfulness in an
6 individual and you can use certain evaluators - a witness'
7 demeanor, how they act on the stand. Are they hesitant or
8 straightforward. Look at consistencies or inconsistencies
9 in their testimony. Look to see if they have any bias or
10 prejudice, that is, whether they wish to help or hurt one
11 side or the other, and you can consider the opportunity a
12 witness has to know those things to which the witness
13 testifies.

14 All these things you consider, determine the true
15 facts, apply the law and your verdict will be one that
16 speaks the truth.

17 You are not to make up your mind or discuss the case
18 among yourselves until I instruct you to jointly deliberate
19 and return a unanimous verdict. Prior to that time, you do
20 not have all the tools you need to make a fair and
21 reasonable decision.

22 Do not let anyone discuss this case with you outside
23 the courtroom. If anyone tries to discuss this case with
24 you, report that back to me. I will have to deal with that
25 person for having talked to a seated juror. So don't talk

1 or initiate a conversation with anyone and don't let anyone
2 initiate a conversation with you.

3 Do not do any kind of independent research on this
4 case. Particularly do not use any electronic means to
5 obtain any information that could deal with this case.
6 Don't go to Google or any of those social - Cloud or
7 anything, to find out anything about the law or about the
8 rules of evidence, about me, about the attorneys involved,
9 about Mr. Agurs. Do not do any independent research and
10 particularly do not do any through any electronic device.

11 Don't even go on Facebook and use that while you are
12 serving as a juror. You may think it's - there's no
13 problem with that, but you may if you were to put on
14 Facebook that you were serving as a juror, receive some
15 information back from somebody that would not be fair for
16 you to hear during the trial of this case.

17 Do not let yourself be exposed to any news coverage,
18 if there is anything in new coverage. Don't let yourself
19 be exposed to it. Don't read about, watch or listen to
20 anything that can remotely deals with this trial.

21 If anything catches your eye or ear, don't let - don't
22 pay any attention to it. You have got to base your verdict
23 solely on the law and the evidence that's developed in the
24 trial.

25 You don't need to take notes. We take breaks about

1 every hour and a half; I find a good comfort level time,
2 but if any of you need a break at any time just raise your
3 right hand and with no questions asked we'll take a break.
4 I know you won't be able to pay attention if you are not
5 comfortable so if you need a break, let me know and we'll
6 take a break. And I extend that to counsel and to Mr.
7 Agurs also.

8 If you can't see or you can't hear, let me know. Cup
9 your ear or give me a voice raising gesture. If something
10 is in your way, give me a moving gesture and I will see
11 that whatever is blocking your view will be relocated.

12 I'm going to ask you to listen attentively at this
13 time. I'm going to turn it over to the attorneys to make
14 their opening statements.

15 SOLICITOR SHELTON: May it please the Court, Your
16 Honor.

17 THE COURT: Yes, sir.

18 SOLICITOR SHELTON: Good afternoon.

19 This case is about selling drugs. Dominique Agurs is
20 on trial charged with one count of distribution of crack
21 cocaine. It is alleged that this occurred on March 5th,
22 2013 in York County.

23 It's alleged that Mr. Agurs sold crack cocaine to a
24 man named Michael Tumblin. You will hear from Mr. Tumblin
25 testify. Mr. Tumblin was working with the Multi-

-66-

1 Jurisdictional Drug Enforcement Unit or the DEU as it's
2 commonly called. You may hear it called the Drug Unit. He
3 was working with them as a confidential informant or a CI.

4 Basically his role in the investigation was to go
5 undercover and attempt to purchase crack cocaine on March
6 5th, 2013. I posit to you the evidence will show that that
7 was done. Mr. Agurs sold crack cocaine to Mr. Tumblin on
8 that day. It was recovered as evidence. It was tested by
9 a chemist who works for the sheriff's department, Ms.
10 Mitchum. The drug deal was recorded on hidden audio/video
11 surveillance equipment. You will get to see a video and you
12 will get to hear things that were said and done throughout
13 the deal.

14 You will also hear a phone call setting up the deal.

15 You will hear from officers who had direct
16 participation in the investigation. You will hear from
17 Investigator Jim Lubben. You will hear from Investigator
18 Tanya Ervin and you will hear from the case agent, Mr.
19 Leland Harrelson. He is an investigator with the Drug Unit
20 as well.

21 At the end of the evidence - let me back up a second.
22 After every officer or every witness testifies, Mr.
23 Matthews will have an opportunity to cross examine them,
24 ask them his own questions.

25 At the conclusion of the evidence, we will stand up

1 and argue our positions to you. At the end of this trial,
2 you will have all of the information you need to make a
3 fair and informed decision. And your decision must be
4 unanimous as Judge Hayes indicated earlier and I posit to
5 you that when the evidence concludes in this case, your
6 verdict will be guilty as charged.

7 Thank you.

8 THE COURT: Mr. Matthews.

9 MR. MATTHEWS: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. MATTHEWS: My name is Michael Matthews. I'm an
12 attorney here in York County. I am representing Dominique
13 Agurs in this matter and what you need to do is a little
14 bit more than what you have heard so far.

15 Your job is - It sounds egregious when it's explained
16 to you by the solicitor's office, but if you pay attention
17 to the evidence, what your job is to do is to look at
18 inconsistencies of the evidence being presented to you and
19 does it in fact show what he claims it shows.

20 See, as his Honor told you, the presentation by the
21 Solicitor is not evidence. What's evidence is what you
22 hear or see coming from the stand.

23 And what you have to consider for a case like this is
24 you are deciding, all twelve members of the jury, are
25 deciding whether or not my client beyond a reasonable doubt

1 did what they are alleging he did.

2 The burden of proof stays solely in camp at this
3 table. It is never, ever transferred to this table.

4 The State must meet it's burden of proof and I would
5 submit to you, once you start seeing the inconsistencies,
6 start seeing the little bits and pieces that you see
7 throughout this, that it all starts to fall apart.

8 And what I would ask you is to pay close attention to
9 evidence. Are you seeing or are you hearing what the
10 solicitor is suggesting to you happened. If not, it's over
11 and you decide unanimously that my client is not guilty of
12 the charge.

13 So it is a lot more to it than just hearing what the
14 charge is. Each individual person that ever steps into
15 this courtroom or any other courtroom within this Country,
16 has the right to come in and say, stop. I want a jury of
17 my peers to consider the evidence and show that they
18 haven't met their burden. That what the State initially
19 tells you in opening statements didn't happen. And that's
20 what my client is asking of the jury, is to look and break
21 the evidence down and look at everything with a fine tooth
22 comb and start noticing that this is not as simple as this
23 case is about selling drugs.

24 And as you go through it, pay attention to what
25 witnesses say, what evidence shows you, what it does not

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-69-

1 show you, and the credibility of such evidence. That's the
2 crux of what needs to be done here today.

3 With that, we appreciate the time you are going to
4 give us. I wish it could go as quickly as some times we
5 see on TV, but I will say we're not in California either so
6 we're not going to take two or three weeks of your time.
7 But we are going to take the remainder of today and some of
8 tomorrow to do this, so we appreciate the time and effort
9 that you are going to put into it.

10 Thank you.

11 THE COURT: Call your first witness.

12 SOLICITOR SHELDON: May it please the Court, Your
13 Honor. The State calls Investigator James Lubben.

14 I believe he is out in the hallway.

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

17 DIRECT EXAMINATION

18 SERGEANT JIM LUBBEN BY SOLICITOR SHELTON:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Would you please identify yourself for the jury?

22 A. My name is Jim Lubben.

23 Q. And what is your occupation?

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

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

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-70-

1 A. Approximately seventeen years.

2 Q. And did you or do you currently work with the drug
3 enforcement unit?

4 A. I did for approximately thirteen years.

5 Q. What do you do now?

6 A. I am the sergeant over homicide and cold cases for the
7 Rock Hill Police Department.

8 Q. Were you working with the drug unit in March of 2013?

9 A. Yes, I was.

10 Q. And what was your rank with the Drug Unit at that
11 time?

12 A. I was one of the line commanders for the drug
13 enforcement unit. The drug enforcement unit has four
14 commanders. You have a Senior Commander who is over the
15 entire drug enforcement unit. And then you have three line
16 commanders, basically like a junior commander. We have
17 three offices. One here with the York County Sheriff's
18 Office, one in Rock Hill, and then one in Fort Mill. I was
19 one of the line commanders who was over the Rock Hill
20 office.

21 Q. So were you the supervisor at that office?

22 A. Yes, I was.

23 Q. Will you please explain to this jury what is the drug
24 enforcement unit?

25 A. The drug enforcement unit was designed to conduct

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-71-

1 narcotic investigations along with gambling or prostitution
2 and other violent crimes. Each local law enforcement
3 agency within York County has investigators assigned to the
4 unit along with the Solicitor's office. Each investigator
5 has county-wide jurisdiction.

6 Q. During your time with the drug unit, did you
7 participate in controlled drug buys?

8 A. Yes, I did.

9 Q. Approximately how many?

10 A. It is hard to say. Over thirteen years making several
11 buys almost everyday you're talking hundreds of buys.
12 There is no way I can put a number on it.

13 Q. Will you please explain what is a controlled drug buy?

14 A. A controlled buy is where law enforcement tries - has
15 control over the buy. What they do is they bring in either
16 a confidential informant or utilize an undercover officer
17 to purchase drugs or guns or other - like stolen property.
18 We search the informants before the buys are made. We give
19 the informants law enforcement funds that are issued by the
20 government. And then we also search the informants after
21 the buy when they come back. They also have guidelines
22 they have to follow, kind of do's and don'ts, that they're
23 instructed to do.

24 Q. Is that the informants you are instructing to do? Is
25 that what you are saying?

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-72-

1 A. Yes. I'm sorry.

2 Q. And so these procedures for searching and so on and so
3 forth, is that in order to keep this buy controlled as
4 you're suggesting?

5 A. Yes, sir. That way we know when the informant, or
6 whoever leaves our presence, they don't have anything on
7 them. There is nothing on their person; there is nothing
8 in their vehicle when they leave. When they meet the
9 person and come back, we know that they bought whatever
10 they're buying that came from that person.

11 Q. And please explain what is a confidential informant?

12 A. A confidential informant is somebody who is
13 cooperating with law enforcement. It could be somebody who
14 just calls in information, or they can take a more active
15 role where they actually go out and make buys for law
16 enforcement. They can either be paid to do that for law
17 enforcement, or also if they have gotten in trouble and
18 they're seeking some type of assistance on their charges.

19 Q. Were you involved in a drug investigation on March
20 5th, 2013, that led to the arrest of Dominique Julius
21 Agurs?

22 A. Yes, I was.

23 Q. Was a confidential informant used in that
24 investigation?

25 A. Yes.

1 Q. Was he more of an active confidential informant?

2 A. Yes.

3 Q. And is his name Michael Tumblin?

4 A. Yes, it is.

5 Q. And did you have a role in that investigation?

6 A. Yes. I searched the informant before the buy. I was
7 also part of the surveillance team, and I also assisted
8 Officer Harrelson with providing the informant with a body
9 wire and the undercover video surveillance.

10 Q. So you said you conducted a search of Mr. Tumblin.
11 Would you please describe that in a little more detail?

12 A. Yeah. It is a pretty thorough search. Basically you
13 go into all their pockets. Search all their pockets, check
14 their waistband, shake their clothes, make them take their
15 shoes off, take their socks off, check everything. Check
16 their groin area and check their shirts, and all parts of
17 their body.

18 Q. And where did this search take place?

19 A. At the Rock Hill Law Enforcement Office.

20 Q. Was that on the day of the controlled buy?

21 A. Yes, it was.

22 Q. Approximately how soon before leaving, before sending
23 the CI out for the buy was the search done?

24 A. They had been right before we left to go make the buy.

25 Q. And do you all do these things the same way every

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-74-

1 time?

2 A. Yes. The informant's searched just before leaving to
3 make the purchase.

4 Q. During that search, did you make sure that Mr. Tumblin
5 did not have anything on him?

6 A. Yes, I did.

7 Q. Did you search him thoroughly?

8 A. Yes, I did.

9 Q. And did you search him in the manner you just
10 described the normal way of searching a CI?

11 A. Yes, I did.

12 Q. Was anyone else present during this search?

13 A. I don't remember. Officer Harrelson was in and out at
14 the time. He was the case agent. He could have been
15 there, but I don't recall if he was in there at the time.

16 Q. And I think you mentioned you did something else as
17 part of this investigation as well?

18 A. I assisted Officer Harrelson with providing the
19 informant with undercover video surveillance. And also as
20 part of the surveillance team, monitoring the buy.

21 Q. Why do you provide them with audio and video
22 surveillance equipment, the CI's that is?

23 A. So we can verify what's going on. When they come
24 back, we have good video of the person and hopefully we do
25 have the transaction on video. It helps us identify the

1 suspects that we are dealing with in case it's somebody we
2 do not know, and also to use in court.

3 Q. So is it an evidence gathering technique?

4 A. Yes, it is.

5 Q. And is it also to make sure that you are not just
6 relying on the confidential informant?

7 MR. MATTHEWS: Your Honor.

8 THE COURT: That was a leading questions, please ---

9 SOLICITOR SHELDON: Yes, sir.

10 THE COURT: --- in a different fashion.

11 BY SOLICITOR SHELTON:

12 Q. And what is the surveillance team?

13 A. Basically, it's officers who go out and monitor the
14 controlled purchase. We have a body wire that we can hear
15 what's going on. We cannot always see the buy occurring,
16 but we can hear it over the body wire, so that way we can
17 confirm and verify that they are meeting with somebody and
18 the transaction is taking place, or if it is not taking
19 place. And it's also for - so we can record it for court
20 proceedings and also for the informant's safety so we can
21 be there if something happens to them.

22 Q. So this - The audio and video recording equipment,
23 does it also include a live-wire feed?

24 A. Yes, it's live.

25 Q. And were you, as part of the surveillance team,

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-76-

1 listening to that live audio feed during this
2 investigation?

3 A. Yes, I was.

4 Q. How did Tumblin get to the buy location?

5 A. Officer Ervin drove him to the location.

6 Q. What vehicle did she drive?

7 A. We have an undercover vehicle that we use on
8 operations such as this if a person doesn't have
9 transportation. In this case, Officer Ervin drove our
10 undercover vehicle to the buy.

11 Q. And was that vehicle regularly maintained and
12 vacuumed?

13 A. Yes, it is.

14 Q. Was it kept on city or county property?

15 A. Yes.

16 Q. Was it kept at the law center in Rock Hill?

17 A. Yes.

18 Q. Is it used by Drug Unit officers for Drug Unit
19 business?

20 A. Yes. It is only used by the narcotics unit. Nobody
21 else uses it.

22 Q. Is it ever loaned out to confidential informants who
23 do not have their own transportation?

24 A. Yes, it is.

25 Q. If it is loaned out to informants, would that have

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON

-77-

1 only been as part of an investigation?

2 MR. MATTHEWS: Your Honor, objection.

3 THE COURT: You're going back into leading questions.
4 Start over.

5 BY SOLICITOR SHELTON:

6 Q. For what purpose would you loan a - the Drug Unit
7 vehicle to an informant?

8 A. In case they don't have transportation. If they don't
9 have a vehicle to drive, we will provide the vehicle for
10 them.

11 Q. And that would be during Drug Unit investigations?

12 A. Yes. It would only be for a Drug Unit investigations.

13 Q. Would it have been thoroughly searched before and
14 after?

15 A. Yes.

16 Q. Why?

17 A. To make sure when they leave again that when they
18 meet with the target that what they are buying from the
19 target is actually from them and it's not hidden or placed
20 anywhere inside a vehicle or on their person so when they
21 come back, we know that it actually came from them.

22 Q. What other officers were involved in this
23 investigation?

24 A. Officer Harrelson, Officer Ervin, Officer
25 Faulkenberry, and Commander Brown.

SERGEANT JIM LUBBEN: DIRECT BY SOLICITOR SHELDON
CROSS BY MR. MATTHEWS

-78-

1 Q. Do you recall what each of their roles was in this
2 investigation?

3 A. Commander Brown was part of the surveillance team.
4 Officer Ervin drove the informant from the police
5 department to the buy and then back to the police
6 department. Officer Faulkenberry was just part of the
7 surveillance team. Officer Harrelson was the case agent,
8 he had control over the informant. He was also there for
9 the buy. I believe he searched the informant after the buy
10 was made. And then of course myself, part of the
11 surveillance team and searching the informant before the
12 buy.

13 Q. To your knowledge was the buy successful?

14 A. Yes, it was.

15 Q. And to your knowledge, did Tumblin return with
16 Investigator Ervin to the Drug Unit after the buy?

17 A. Yes, he did.

18 Q. Did the entire investigation occur in York County,
19 South Carolina?

20 A. Yes.

21 MR. SHELTON: Nothing further.

22 CROSS-EXAMINATION

23 SERGEANT JIM LUBBEN BY MR. MATTHEWS:

24 Q. Do you remember what time Mr. Tumblin got to the Rock
25 Hill Police Department?

1 A. I believe it was just after two o'clock p.m., around
2 that time frame. Two, 2:30.

3 Q. From two o'clock when did you do the search of this
4 person?

5 A. 2:43 p.m.

6 Q. So he got there at two o'clock and then you did a full
7 search at 2:43?

8 A. Yes, sir.

9 Q. And without stating the obvious, that means he's been
10 sitting - he was sitting somewhere in Rock Hill PD for a
11 little over forty minutes?

12 A. He would have been in our office.

13 Q. All right. And did he meet with anybody during that
14 period of time?

15 A. He met with Officer Harrelson?

16 Q. Now, he met with Officer Harrelson before you did the
17 search of him at 2:43?

18 A. Yes.

19 Q. Now, you said you did a full search. That means does
20 he - without getting too graphic - does he just strip down
21 and you search him, or how does that process work?

22 A. No. We don't do strip searches. Their clothes are
23 on, but we go through everything. All of their clothing
24 and things like that. We don't do body cavity searches.
25 Body cavity searches are against drug unit policy, Rock

SERGEANT JIM LUBBEN: CROSS BY MR. MATTHEWS

-80-

1 Hill Police Department policy. I believe every law
2 enforcement agency's policy we can't do body cavity
3 searches, but only a medical physician can do that. You
4 can cause severe bodily injury if you do a body cavity
5 search, so that's against our policy to do a body cavity
6 search. But we do do a full body search with their clothes
7 on.

8 Q. Okay. So you're patting them down?

9 A. Well, it is more than just a pat down. We're grabbing
10 their clothing, going in their pockets. If they have a
11 wallet, we take the wallet out and go through the wallet.
12 If they have a purse, we go through everything in their
13 purse. We are pretty hands on. It's not just a pat down.
14 We make them take their shoes off and go through their
15 shoes and go through their socks. Things like that.

16 Q. Okay. And did you - In your experiences, is it common
17 for people to hide drugs in their underwear or in the
18 crotch area of their pants or anything like that?

19 A. Yes, that has occurred.

20 Q. And do you check for that?

21 A. Yes.

22 Q. And your testimony is there was nothing there?

23 A. That is correct. Nothing there.

24 Q. All right. Do you remember what he was wearing that
25 day?

1 is that correct?

2 A. Right. I assisted on providing the informant with an
3 undercover video camera.

4 Q. Do you remember where you placed that camera on him?

5 A. It would have been on his body.

6 Q. Okay. Where specifically?

7 A. Around the chest area.

8 Q. Around the chest area? Now, would you clip it to
9 something or how - I mean what does it look like?

10 A. You can basically - It goes through like a buttonhole.

11 Q. Okay. But it's strictly limited by where the
12 direction it's pointed?

13 A. Yes. That's correct.

14 Q. And you only see his - See on the camera what? If he
15 is moving back and forth, where that camera is pointing?

16 A. Yes.

17 Q. Where is the microphone at?

18 A. It's part of the camera.

19 Q. As part of the camera. All right.

20 Now, when you are monitoring, are you monitoring the
21 audio or are you monitoring the video, or both?

22 A. We are just monitoring the audio.

23 Q. So you are not seeing what he's seeing in realtime?

24 A. That's correct.

25 Q. Now, you indicated that normally this vehicle that was

SERGEANT JIM LUBBEN: CROSS BY MR. MATTHEWS

-83-

1 used - What kind of vehicle was used in this particular
2 case?

3 A. It's an undercover vehicle.

4 Q. What kind?

5 A. It's a truck.

6 Q. And you said the officer driving the truck was who?

7 A. Officer Tanya Ervin.

8 Q. And is that a male or female?

9 A. Female.

10 Q. And - And the CI, is that a male or female?

11 A. Male.

12 Q. Now the - The vehicle you said you loaned out to
13 confidential informants; is that correct?

14 A. We have in the past.

15 Q. Oh you have in the past. And do you know when was the
16 last time this vehicle - you personally know when this
17 vehicle was last loaned out to a confidential informant?

18 A. No, I do not remember

19 Q. At the time of this incident, did you personally
20 search this vehicle?

21 A. No, I did not.

22 Q. Do you know who searched the vehicle after it was last
23 used by a CI?

24 A. I would have to look at that case to see who searched
25 it.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-86-

1 rooms.

2 THE COURT: Come up here and put your left hand on
3 this Bible and raise your right.

4 (WHEREUPON, MICHAEL TUMBLIN,
5 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 THE COURT: Have a seat up here on the witness stand.

7 DIRECT EXAMINATION

8 MICHAEL TUMBLIN BY SOLICITOR SHELTON:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Would you please introduce yourself to the jury?

12 A. I'm Michael Tumblin.

13 Q. Do you go by Mike?

14 A. Yes, sir, I go by Mike.

15 Q. Where are you from Mike?

16 A. I live in Rock Hill, South Carolina.

17 Q. How long have you lived here?

18 A. I've lived here since 2006.

19 Q. And how old are you?

20 A. I'm fifty-four years old.

21 Q. Do you have a job?

22 A. Yes, I do.

23 Q. What do you do?

24 A. I help a tree company here in Rock Hill. We cut
25 trees, do tree work yes, sir.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-87-

1 Q. Mr. Tumblin, have you ever been convicted of a crime?

2 A. Yes, sir, I have.

3 Q. Were you convicted of obtaining prescription drugs by
4 fraud, arrested on January 15th, 2014.

5 A. Yes, sir.

6 Q. Is that a misdemeanor?

7 A. Yes, sir.

8 Q. And were you sentenced to six months in prison on
9 that?

10 A. Yes, I was.

11 Q. And the same day, January 15th, 2004, were you
12 arrested for - seven counts of violation of the drug
13 distribution law?

14 A. Yes, sir, I was.

15 Q. Was that in Greenville County?

16 A. Yes, sir.

17 Q. Were those felony charges?

18 A. Yes, sir.

19 Q. And were you sentenced to probation on those cases?

20 A. Yes, sir, I was.

21 Q. July 14th, 2004, were you convicted of another four
22 counts of violation of drug distribution law on charges
23 from South Carolina and Department of Health and
24 Environmental Control?

25 A. Yes, sir.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-88-

1 Q. Are those felony charges?

2 A. Yes, sir.

3 Q. Were you sentenced to three years in prison on those
4 charges?

5 A. Yes, sir, I was.

6 Q. In 2005, 2007, and 2009, were you convicted of grand
7 larceny?

8 A. Yes, sir, I was.

9 Q. Were all three of those separate convictions? Are
10 those three separate convictions?

11 A. Yes, sir, they were.

12 Q. Are they felony charges?

13 A. Yes, sir, they were.

14 Q. And were you sentenced to one year - excuse me, one
15 year in prison on the 2005 conviction?

16 A. Yes, sir, I was.

17 Q. Were you sentenced to thirty days and probation on the
18 2007 conviction?

19 A. Yes, sir, I was.

20 Q. And were you convicted - sentenced to three years in
21 prison on the 2009 conviction?

22 A. Yes, sir, I was.

23 Q. In 2012 and 2013, were you convicted of shoplifting?

24 A. Yes, sir, I was.

25 Q. Were those in city court in Rock Hill?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-89-

1 A. Yes, sir.

2 Q. Were those misdemeanor charges?

3 A. Yes, sir.

4 Q. And were you made to pay a fine on those two
5 convictions?

6 A. Yes, sir, I was.

7 Q. Mr. Tumblin, are you or were you a user of crack
8 cocaine?

9 A. Yes, sir, I have been. Yes, sir.

10 Q. How long did you use crack?

11 A. Several years, several years of my life. It was many
12 years.

13 Q. Do you still use?

14 A. No, sir. I have been clean for over a year now.

15 Q. Mr. Tumblin, in February of 2013, were you charged
16 with traffic offenses, driving under suspension, license
17 plate violation, failure to possess registration card, and
18 failure to maintain proof of motor vehicle insurance?

19 A. Yes, sir, I was.

20 Q. And were those traffic offenses in Magistrate Court?

21 A. Yes, sir, they were.

22 Q. They were in York County?

23 A. Yes, sir.

24 Q. Did each of those carry up to thirty days in jail and
25 or fine?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-90-

1 A. Yes, sir, they did.

2 Q. Did you meet with officers from the Drug Enforcement
3 Unit after you were arrested on those traffic charges?

4 A. Yes, sir, I did.

5 Q. Was that around the beginning of March 2013?

6 A. Yes, it was.

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

9 A. Yes, sir, I did.

10 Q. Were you hoping to work off traffic charges?

11 A. Yes, sir.

12 Q. And in particular, those traffic charges from February
13 2013 I just named?

14 A. Yes, sir, exactly. Yes, sir.

15 Q. Would you have gotten credit toward working off those
16 charges whether or not you had been able to buy drugs?

17 A. Yes, sir.

18 Q. Was that your understanding from talking with the
19 officers?

20 A. Yes, sir, it was.

21 Q. And would you have been given credit for honest effort
22 to buy drugs even if it wasn't successful?

23 A. Yes, sir.

24 Q. And that was your understanding of the agreement with
25 the drug unit?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-91-

1 A. Yes, sir. The understanding I had with them.

2 Q. Are those traffic charges still pending?

3 A. No, sir, they are not.

4 Q. Were three of those charges dismissed?

5 A. Yes, sir.

6 Q. And were you given \$30.00 or \$35.00 to pay - to pay
7 the fine on the fourth one?

8 A. Yes, sir, I was.

9 Q. And was that the result of you working for the Drug
10 Unit as a CI?

11 A. Yes, sir.

12 Q. And in particular in March of 2013?

13 A. Yes, sir.

14 Q. Mr. Tumblin, were you arrested again in August of
15 2013?

16 A. Yes, sir, I was.

17 Q. Were you charged with shoplifting and receiving stolen
18 goods then?

19 A. Yes, sir.

20 Q. And were those felony charges?

21 A. Yes, sir.

22 Q. Did you plead guilty of those charges?

23 A. Yes, sir, I did.

24 Q. And were you sentenced to one year in prison
25 concurrent as part of the plea deal on those charges?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-92-

1 A. Yes, sir.

2 Q. Mr. Tumblin, did Drug Unit officers or anyone else
3 make you any promises or have anything to do with those
4 charges from August of 2013?

5 A. No, Sir.

6 Q. So just so we are clear, those August 2013 charges
7 were handled separately from the work you did with the Drug
8 Unit in March of 2013?

9 A. Yes, sir.

10 Q. And in fact had you already completed your work as a
11 CI by that time?

12 A. Yes, sir.

13 Q. And had those traffic charges already been resolved by
14 that time?

15 A. Yes, sir, they have been.

16 Q. Mr. Tumblin, on March 5th, 2013, were you involved in
17 an investigation with the Drug Unit where you worked
18 undercover as a confidential informant?

19 A. Yes, sir.

20 Q. Did you go to the Drug Unit office that day?

21 A. Yes, sir, I did.

22 MR. MATTHEWS: Your Honor, I'm gonna, again, we are
23 leading the questions. I respectfully request that the
24 questions be limited to non-leading questions of this
25 witness. Let the witness testify.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-93-

1 THE COURT: Just don't ask leading questions.

2 BY SOLICITOR SHELTON:

3 Q. Mr. Tumblin, did you indicate to Drug Unit officers
4 whether or not you could buy drugs from someone that day?

5 MR. MATTHEWS: Again, , Your Honor, this is a leading
6 question.

7 THE COURT: That is a leading question. You need to
8 rephrase your questions.

9 BY SOLICITOR SHELTON:

10 Q. Why did you meet with the Drug Unit on March 5th,
11 2013?

12 A. I was hoping I could work off some of them traffic
13 tickets yes, sir.

14 Q. Did you tell them you could do anything?

15 A. Yes, sir, I told em I could buy crack cocaine.

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

17 A. Yes, sir.

18 Q. Who?

19 A. A black guy named D.J.

20 Q. This guy D.J., did you know him?

21 A. Yes, I knew him.

22 Q. Did you know him before that day?

23 A. Yes, I knew him before that day.

24 Q. Approximately how long had you known him?

25 A. I'd known him for six months or better.

- 1 Q. Had you seen him in person before that day?
- 2 A. Yes, sir.
- 3 Q. Approximately how many times?
- 4 A. A half of dozen or more yes, sir.
- 5 Q. Did you know his last name at that time?
- 6 A. No, nobody called him by his last name.
- 7 Q. Did you know how to get in touch with him?
- 8 A. Yes, sir.
- 9 Q. Did you know his phone number?
- 10 A. Yes, sir.
- 11 Q. Did you call that number on March 5th, 2013?
- 12 A. Yes, sir, I did.
- 13 Q. Why did you call that number?
- 14 A. To set up a drug deal - - -
- 15 Q. Was that ---
- 16 A. --- for crack cocaine.
- 17 Q. I'm sorry.
- 18 A. To set up a crack - a drug deal for crack cocaine for
- 19 the undercover unit.
- 20 Q. Did you make the call from your cell phone?
- 21 A. Yes, sir, I did.
- 22 Q. And where were you when you made that call?
- 23 A. I was at Rock Hill Police Department.
- 24 Q. Was that phone call recorded?
- 25 A. Yes, sir, it was.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-95-

1 Q. By Drug Unit officers?

2 A. Yes, it was.

3 Q. Have you had a chance to listen to that call prior to
4 testifying in court today?

5 A. Yes, sir, I have.

6 Q. Mr. Tumblin, I am going to show you what is the marked
7 for identification as State's Exhibit Number One.

8 Will you please take a moment to look at this?

9 A. Yes, sir.

10 Q. Do you recognize this disc?

11 A. Yes, I do.

12 Q. Is there a recording on it?

13 A. Yes, sir, there are.

14 Q. Have you listened to the audio recording on this disc
15 prior to coming to court today?

16 A. Yes, sir, I have.

17 Q. What's it a recording of?

18 A. It's a recording of the conversation I had on the
19 telephone with D.J.

20 Q. On March 5th, 2013?

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

22 Q. And is it true and accurate as to that phone call?

23 A. Yes, sir, it is.

24 MR. SHELTON: Your Honor, I move to have State's
25 Number One entered as evidence.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-96-

1 THE COURT: Mr. Matthew, any objection?

2 MR. MATTHEW: Your Honor, the objection is, there is
3 incomplete foundation set. He just says he mentions
4 somebody D.J., but he has not identified who that person is
5 as to who he talked to.

6 THE COURT: All right. I over rule your objection.

7 It's in over objection.

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

10 MR. SHELTON: I request to publish this call.

11 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY AT
12 03:52 P.M..)

13 Q. Mr. Tumblin, were you able to hear that recording that
14 was published for the jury?

15 A. Yes, sir, I did.

16 Q. Was that your voice on there?

17 A. Yes, sir, it was.

18 Q. Did you ask the other man on the call for something?

19 A. Yes, sir, I did.

20 Q. What did you ask for?

21 A. A whole one which is a whole gram of crack cocaine.

22 Q. And how much is a whole one? A gram?

23 A. A gram. Yes, that's slang talk for a gram of cocaine.
24 Yes, sir, a whole one.

25 Q. Is it also known as a G?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-97-

1 A. Yes, it's known as a G too. Yes, sir.

2 Q. After that phone conversation, did you have an
3 understanding as to whether or not this other guy would you
4 sell you a gram of crack?

5 MR. MATTHEWS: Objection, Your Honor. Again, leading
6 questions. Just ask what his understanding was.

7 THE COURT: I over rule the objection.

8 You may answer the question.

9 A. Yes, sir, my understanding that I was gonna to get a
10 gram of crack cocaine from him yes, sir.

11 Q. Did you know how much you had to pay for that?

12 A. Usually Eighty Dollars yes, sir.

13 Q. And did you agree to meet this other man somewhere?

14 A. Yes, sir, I did.

15 Q. Where?

16 A. McCullum Street.

17 Q. Did you go to meet him after this call?

18 A. Yes, sir, we did. Yes, sir, I did.

19 Q. Did you go by yourself or with anyone else?

20 A. No, sir. I went with an officer from the Drug Unit.
21 Transported me over there.

22 Q. Do you remember who?

23 A. Yes, it was a lady. It was Tammy.

24 Q. Tanya?

25 A. Tanya.

1 Q. Was that investigator Tanya Ervin?

2 A. Yes, sir, with the Drug Unit. Yes, sir.

3 Q. Did you drive your vehicle, or did you ride in hers.

4 A. Rode in hers.

5 MR. MATTHEWS: Your Honor, we're still - we're
6 gradually heading back into leading questions again.

7 THE COURT: Well, that's getting close, but I overrule
8 the objection on this.

9 Just watch how you phrase your questions.

10 A. Yes, sir, we rode in her Drug Unit vehicle.

11 Q. Were you searched before you left?

12 A. Yes, sir, I was.

13 Q. Who searched you?

14 A. Officer Harrelson with the Drug Unit.

15 Q. Were you given any money before you left?

16 A. Yes, sir, I was given Eighty Dollars. Yes, sir.

17 Q. Who gave it to you?

18 A. Officer Harrelson with the Drug Unit.

19 Q. Did Drug Unit officers hide an audio video recording
20 equipment on you?

21 A. Yes, sir, they did.

22 Q. To your knowledge, was it recording everything that
23 happened after it was turned on until they took it off you?

24 A. Yes, sir, it was.

25 Q. Did that equipment produce a recording?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-99-

1 A. Yes, sir, it did.

2 Q. Have you had a chance to watch that recording?

3 A. Yes, sir, I have.

4 Q. Did you watch it prior to coming to court to testify
5 today?

6 A. Yes, sir, I have.

7 Q. Mr. Tumblin, I am showing you what's been marked for
8 identification as State's Exhibit Number Two.

9 Do you recognize this?

10 A. Yes.

11 Q. Is there a recording on this disc?

12 A. Yes, sir.

13 Q. Have you watched the recording on this disc?

14 A. Yes, sir, I have.

15 Q. Is it an audio video recording?

16 A. Yes, sir.

17 Q. And what is on it?

18 A. The transaction of the drug buy.

19 Q. Have you watched the whole thing prior to testifying
20 here today?

21 A. Yes, sir, I have.

22 Q. And is it true and accurate as to the events from your
23 perspective that happened that day?

24 A. Yes, sir, it is.

25 MR. SHELTON: Your Honor, I would move this into

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-100-

1 evidence.

2 THE COURT: Any objection?

3 MR. MATTHEWS: Your Honor, I am going to object based
4 on the foundation he wasn't the one that did the recording.

5 I think there needs to be other testimony before -
6 from whoever the officers were that were operating it
7 before it can be entered into evidence.

8 THE COURT: I overrule that objection.

9 It's in over objection.

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

12 MR. SHELTON: Your Honor, I would like permission to
13 publish this to the jury?

14 THE COURT: You may.

15 (PAUSE.)

16 MR. SHELTON: Your Honor, I'm having some technical
17 difficulties. This is not my forte. Can we have a brief
18 minute to get this sorted out?

19 THE COURT: We will go ahead and take about a ten to
20 twelve minute break. We will get refreshed and we'll send
21 for you when we get this working.

22 (JURY EXITS COURTROOM AT 03:56 P.M.)

23 THE COURT: Mr. Shelton, let me know when it's
24 operable.

25 SOLICITOR SHELTON: Yes, sir.

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-102-

1 MICHAEL TUMBLIN BY SOLICITOR SHELTON:

2 Q. Mr. Tumblin, who were you talking with on the phone
3 during the ride to Dollar General?

4 A. D.J.

5 Q. During those calls, was the meeting location changed?

6 A. Yes, sir. Yes, sir, it was.

7 Q. Where was it changed to?

8 A. Burger King there on Saluda Street.

9 Q. That's still in Rock Hill. Right?

10 A. Yes, sir. It's still in Rock Hill and it's still just
11 a few blocks from Collins Street.

12 Q. Where did Officer Ervin park the truck?

13 A. At the Dollar General. Yes, sir.

14 Q. Was that right across the street?

15 A. Yes, sir. Right across the street from Burger King.

16 Q. Is that where you got out of the vehicle?

17 A. Yes, sir.

18 Q. Where did you go once you got out of the vehicle?

19 A. I walked across the intersection and walked over to
20 the Burger King and stood out - out there on the side of
21 the building.

22 Q. Did you make any stops along the way to the Burger
23 King?

24 A. No, sir.

25 Q. Did you meet with anyone on the way?

1 A. No, sir.

2 Q. Did you go inside the restaurant?

3 A. No, sir.

4 Q. Did you meet with anyone outside the restaurant?

5 A. No, sir.

6 Q. Did you make a phone call while you were outside the
7 restaurant?

8 A. Yes, sir, I did.

9 Q. Who did you call?

10 A. I called D.J.

11 Q. Who was driving the white car that pulled up?

12 A. That was D.J.

13 Q. Was that the same car you got in?

14 A. Yes, sir, it was.

15 Q. Was anyone with him?

16 A. No, sir. He was by his self.

17 Q. What, if anything, did you see inside the car when you
18 got in?

19 A. I seen the crack cocaine laying there in between the
20 seats in a little console there..

21 Q. What did you do when you saw that?

22 A. I handed D.J. Eighty bucks and he nodded toward the
23 crack there and I picked it up so I made a transaction.

24 Q. Please describe what the crack looked like.

25 A. Well, it was just a little round white crack rock kind

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-104-

1 of - I mean it weighted a gram. It was just a crack rock.

2 Q. Was it loose or was it wrapped in anything.

3 A. It was wrapped in clear plastic. He just like balled
4 it up. I mean, it wasn't wrapped - I believe it was just
5 wrapped enough to contain it in it.

6 Q. Was there any conversation between you and D.J. in the
7 car?

8 A. I think I asked him was the weight right and he said
9 yeah, it weighed 1.2 grams.

10 Q. So is that more or less than what you had ordered?

11 A. It was like .2 grams - .2 grams over. Just a little
12 bit over a gram.

13 Q. And is that what D.J. told you it weighed?

14 A. Yes, sir. That's what he told me it weighed. Yes,
15 sir.

16 Q. Did you have any scales with you?

17 A. No, sir. I didn't have any scales.

18 Q. So you had no way to check the weight?

19 A. No, sir.

20 Q. What did you do after that?

21 A. I put the crack in my hand and walked back across the
22 road to the female undercover agent that works with the
23 Drug Unit. Got back in the truck with her and we rode back
24 to the Rock Hill Police Department and once I got there, I
25 gave the crack to Officer Harrelson.

1 Q. What did D.J. do after you got out of the car?

2 A. He backed up and went out the exit and straight across
3 to the car wash and went behind the car wash and I guess
4 it's a little back road back up to McCullough Street there,
5 back where maybe he just slept.

6 Q. Mr. Tumblin, on your way back from the meeting
7 location, did you make any stops along the way?

8 A. No, sir, I did not.

9 Q. Did you meet with anyone on your way back to meet with
10 Ervin?

11 A. No, sir, I did not.

12 Q. What did you do with the crack?

13 A. I held it in my hand and when we got to the - back to
14 Rock Hill Police Department, I give it to Officer Harrelson
15 with the Drug Unit.

16 Q. Did the crack leave your possession during that time
17 before you gave it to Harrelson?

18 A. No, sir.

19 Q. And did you hold it in your hand the whole time?

20 A. Yes, sir, I did.

21 Q. Is that what officers instructed you to do?

22 A. Yes, sir.

23 Q. Were you searched again back at the DEU?

24 A. Yes, sir, I was.

25 Q. Mr. Tumblin, were you shown a photo lineup on March

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-106-

1 5th 2013 after this deal?

2 A. Yes, sir, I was.

3 Q. Who showed you that photo lineup?

4 A. Officer Harrelson.

5 Q. Did anyone show you that video before they showed you
6 the lineup?

7 A. No, sir.

8 Q. Where were you when you were shown the photo lineup?

9 A. Sir?

10 Q. Where were you when they showed you the photos?

11 A. I was still inside the Drug Unit in the little office
12 they have there. Yes, sir.

13 Q. Was anyone else with you?

14 A. Officer Harrelson.

15 Q. Mr. Tumblin, I'm showing you what has been marked for
16 identification as State's Exhibit Number Four. You can
17 hold onto that. Do you recognize that, sir?

18 A. Yes, sir, I do.

19 Q. What is it?

20 A. This is the lineup that Officer Harrelson showed me
21 that day on the purchase.

22 Q. Is this the only lineup you were shown?

23 A. Yes, sir.

24 Q. How many pictures are on that lineup?

25 A. There's six individual pictures on here.

1 Q. And how many pages are in that Exhibit?

2 A. There are three in this one today. Three.

3 Q. Were you shown the first page only?

4 A. Yes, sir. First page only.

5 Q. Is there a second page that has names and identifying
6 information on it?

7 A. Yes, sir, there are.

8 Q. Were you shown that page when you were shown the
9 lineup?

10 A. No, sir, I was not.

11 Q. And did the pictures you were shown have any names or
12 identifying information on them?

13 A. No, sir, they did not.

14 Q. Did anyone tell you who to pick out, who not to pick
15 out?

16 A. No, sir, he did not.

17 Q. Did anyone say or do anything to suggest to you what
18 picture you should select?

19 A. No, sir, he did not.

20 Q. Did you select a picture?

21 A. Yes, sir, I did.

22 Q. Which one of those pictures did you select?

23 A. I selected the picture of D.J. He's the guy known as
24 D.J.

25 Q. And did you mark your selection?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON:

-108-

1 A. Yes. I circled it and then I put my initials up under
2 it and then in the bottom I signed it.

3 Q. Did you write the date on there?

4 A. Yes, sir, I did.

5 Q. What date did you write on there?

6 A. I wrote 3-5-12 on it.

7 Q. Was that the correct date?

8 A. No, sir. It was 3-5-13.

9 Q. So we're clear, did you write down the wrong year?

10 A. Yes, sir, I did write the wrong year down. The months
11 spelled --

12 Q. I'm sorry. I don't mean to interrupt you.

13 A. It was March the 5th, 2013.

14 Q. That's when this actually occurred?

15 A. That was the actual date this happened. Yes, sir.

16 Q. And on that video we just watched, did we see a date
17 on there?

18 A. Yes, sir. I seen a date on there.

19 Q. Was that the correct date on there?

20 A. No, sir, it was not.

21 Q. Did you give a sworn statement to Drug Unit officers
22 after the buy was done?

23 A. Yes, sir, I did.

24 Q. Mr. Tumblin, do you see the person here in court today
25 that you know as D.J.?

MICHAEL TUMBLIN: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. MATTHEWS

-109-

1 A. Yes, sir, I do.

2 Q. Can you please point him out for the jury.

3 A. That's D.J. sitting right there beside his attorney.

4 SOLICITOR SHELTON: Your Honor, please let the record
5 reflect the witness has pointed to the defendant sitting
6 next to Mr. Matthews.

7 (WITNESS INDICATED TOWARD DEFENDANT.)

8 SOLICITOR SHELTON: No further questions, Your Honor.

9 THE COURT: Mr. Matthews.

10 CROSS-EXAMINATION

11 MICHAEL TUMBLIN BY MR. MATTHEWS:

12 Q. As I understand from when we started your questioning,
13 Mr. Tumblin, when we started the questioning earlier today,
14 that you went through this list of your criminal history.

15 Right?

16 A. Yes, sir.

17 Q. And that is your criminal history?

18 A. Yes, sir, it's my criminal history.

19 Q. Okay. And you, if I understand the testimony
20 correctly, you approached the police. Correct?

21 A. Yes, sir.

22 Q. And the reason why you approached the police is
23 because you wanted help with your charges that were pending
24 at the time?

25 A. Yes, sir.

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-110-

1 Q. And you knew they could do that for you?

2 A. I knew it was a possibility.

3 Q. So your intention as you placed yourself in this
4 situation, your intention was if I did something for the
5 police; hopefully they'll do something for me?

6 A. It was a possibility. Yes, sir.

7 Q. Now, other than us hearing you on the tape, we don't
8 hear anybody. We hear somebody on the other side of the
9 phone call, correct, that you made to a person named D.J.?

10 A. Yes, sir.

11 Q. All right. But we don't have anything other than your
12 testimony that the person on the other side of that was my
13 client? Is that right?

14 A. Sir?

15 Q. We don't have anything else other than your testimony
16 indicating that the person you called was my client?

17 A. No, sir.

18 Q. Okay. You don't have any phone records showing that
19 the number you called from your phone was in fact to my
20 client?

21 A. I had it programmed in my phone listed under D.J. Yes
22 I do.

23 Q. But do you have phone records here to show that to us
24 today?

25 A. No, I don't have any phone records.

1 Q. Do you have any phone records to indicate that the
2 date that you are saying this happened, March 5th, was in
3 fact March 5th of 2013?

4 A. No, sir, I don't.

5 Q. Okay. What were you wearing that day?

6 A. What was I wearing that day?

7 Q. Yes, sir.

8 A. I had on a pair of blue jeans and I had on a shirt
9 similar to this and I had a pull over shirt that the
10 narcotics unit supplied me with a camera in it on one of
11 the buttons.

12 Q. Anything else?

13 A. Socks and shoes.

14 Q. Were you wearing a jacket?

15 A. I didn't wear no jacket to make the buy. No, sir.

16 Q. Okay. The reason why I ask, on the video we see what
17 looks like a zipper covering up the camera at some point in
18 time.

19 A. Yes, sir. Button - is a shirt with just a little
20 buttons here and the camera was in the button.

21 Q. Okay. Were you searched before you put that shirt on?

22 A. Yes, sir, I was.

23 Q. Were you given any instructions about what to do with
24 the video or audio?

25 A. No, sir.

-MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-112-

1 Q. Did you meet with the Officer Harrelson before you
2 were searched?

3 A. Other than just coming in I mean - Did I meet with
4 him? No, sir. I was coming in to maybe get suited up and
5 searched and go make the buy.

6 Q. What time did you get to the Rock Hill Police
7 Department?

8 A. It was after lunch.

9 Q. Okay. How long were you there before you were
10 searched?

11 A. Just about immediately when I got there I was
12 searched.

13 Q. So as soon as you got to the Rock Hill Police
14 Department you were searched?

15 A. Pretty much. Yes, sir.

16 Q. Now, you indicated - When did you indicate in your
17 testimony that you saw a photo lineup?

18 A. I indicated in this one here that it was after the
19 purchase. I knowed D.J. before I seen him in the lineup.
20 I knowed him after I seen him in the lineup. There's no
21 question of whether it was before or after. I might have
22 got confused on whether it was before or after but
23 regardless, I knowed D.J. either way before or after.

24 Q. The only question I asked you was, when did you see
25 the photo lineup?

1 A. When did I see the photo lineup? I stated earlier it
2 might have been before, but I'm pretty sure it had to be
3 afterwards.

4 Q. All right. So you admit to earlier today you said you
5 saw the photo lineup before you were searched?

6 A. Well that's been over a year ago. I never checked
7 that part. The impression in my mind was before or after
8 because either way, I have knowed D.J. regardless of seeing
9 him in a lineup so I didn't say well was it before or after
10 till you asked me that question off guard there and I just
11 acknowledged knowing him in the lineup.

12 Q. So again, you acknowledged previously that you saw him
13 before you went in?

14 A. I might have. Yes, sir.

15 Q. Okay. And who showed it to you?

16 A. Officer Harrelson with the Drug Unit.

17 Q. Were you given any instructions when you saw it?

18 A. No, sir.

19 Q. Okay. And now your testimony is that you saw it
20 after?

21 A. I believe it was after. Yes, sir. Like I say, I
22 never dwelled on putting that part in my mind that was it
23 before or after because I knew D.J. either way. I knowed
24 him before and after, so that may have been what I got
25 confused on that. That confused you but if I did, it is

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-114-

1 just something that I didn't try to remember because I
2 already knew D.J. either way, so I mean, there was nothing
3 that stuck out there to me, but.

4 Q. When you went out, you were let out at the - which
5 store were you let out at?

6 A. I was let at the Dollar General.

7 Q. Okay. And when you went by - were walking across the
8 street. Correct?

9 A. Yes. I walked across the street. Yes, sir.

10 Q. All right. In the video we see a person getting in a
11 red vehicle. Did that person hand you anything out of that
12 red vehicle?

13 A. A red vehicle? I don't recall seeing a red vehicle.
14 I recall seeing a white vehicle, I believe, no one handed
15 me nothing.

16 Q. Okay. When you walk across the street, you don't
17 actually cross from Dollar General across the street
18 towards Burger King. You actually go toward the car wash?

19 A. No. I go towards the Citgo filling station there on
20 the corner and then I crossed over yes, sir.

21 Q. Okay. And that used to be called the Old Tomato
22 Place. Right?

23 A. I have no idea. I know the Citgo filling station
24 there.

25 Q. Okay. When you walked toward that, do you remember

1 passing by a person who was getting in a vehicle?

2 A. I seen a guy walk out and get in a vehicle. I seen it
3 in a film. I have no idea who that was.

4 Q. Okay. Are you saying that you didn't get handed
5 anything from that person?

6 A. No, sir.

7 Q. Okay. When you crossed over to Burger King, do you
8 remember seeing a car cranking up and leaving right where
9 you were standing?

10 A. I don't actually remember dwelling on it but I'm sure
11 there was because there was traffic in and out. I mean, it
12 was busy. It was shortly after lunch. I'm sure there;s
13 plenty of cars coming and going while I was standing there.

14 Q. Okay. But in this particular video, we're talking
15 about this video, do you remember seeing that car pull out
16 and leave?

17 A. I mean, I didn't dwell on it. I'm sure there was. I
18 mean --

19 Q. Are you telling the jury that you didn't get handed
20 anything by that person?

21 A. No, sir. I didn't get handed anything by no one
22 whatsoever.

23 Q. All right. We also see a gray van, where somebody
24 gets in a gray van on the video while you were at the
25 Burger King. Are you saying you didn't get handed anything

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-116-

1

--

2

A. No. We had the video right here. Did any of you all see them hand me anything?

4

THE COURT: Just -- he's asking you.

5

A. No, sir. No one handed me anything.

6

Q. Okay. Now, you acknowledged already that you had signed or dated your photo lineup on March 5th 2012.

7

8

Correct?

9

A. That's correct. Yes, sir.

10

Q. Okay. And you are indicating to the jury that's a mistake?

11

12

A. The year is a mistake. Yes, sir. Instead of 13 I put 12 and that's not the first time I've done that.

13

14

Q. All right. And then you indicated the January 16th, 2007 date that is on the video, you indicated that was wrong?

15

16

17

A. Well, that's not the date that it happened. That's what was on the video, on the camera. I guess they had it programmed and reset it or whatever they do to it but I noticed that on the video yes, sir.

18

19

20

21

Q. Okay. And so in your position that was a mistake whether unintentional or intentional?

22

23

A. Yes, sir. Sure was.

24

25

Q. On the video itself, I'm asking for you, watching that video yourself, did you see a drug transaction on that

1 video?

2 A. Yes, sir, I did.

3 Q. You saw a transaction on the video there?

4 A. Yes, sir.

5 Q. We see you get into a car but where did we see you -
6 just point it out to us where we can look at it, point out
7 where did you get the drugs --

8 A. The drugs was laying in between the console between
9 the two seats there. D.J. nodded towards the drugs. I
10 grabbed the drugs and handed him the money.

11 Q. Now understand that you're being videoed. You know
12 that it's very important to get everything on video
13 according to what you have been instructed by the police.

14 Correct?

15 A. I - I mean, I know there is a video. I mean he didn't
16 give me no certain instructions to do any certain thing a
17 certain way. No, sir, they didn't.

18 Q. Well, I mean, you've presented yourself to the police
19 as a confidential informant.

20 A. Right.

21 Q. Okay. Based on your testimony, you are saying that
22 you put yourself out there so that a drug transaction could
23 be caught on video. Correct?

24 A. Uh-huh.

25 Q. And you know that's what the police are wanting.

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-118-

1 A. Right.

2 Q. Correct?

3 A. Uh-huh.

4 Q. All right.

5 THE COURT: Try to say yes or no instead of uh-huh.

6 A. Yes, sir. Yes, sir.

7 Q. Okay. So you didn't position yourself to see whatever
8 transaction that may have occurred in the car?

9 A. Well, I took it that the camera was picking up
10 everything. I mean, it looked like to me it did a pretty
11 good job at it.

12 Q. And you said that it was in the console?

13 A. Just a little - it wasn't a console. It was just a
14 little change there or something to keep change in there
15 between the seats.

16 Q. Okay. And so you're saying that it was in the
17 console.

18 A. No, it wasn't in a console. It was just an open area
19 there. Just maybe a three by four area there to keep
20 change or whatever. It's not inside the console. No, sir.

21 Q. Okay. And you are saying that it was in this open
22 area.

23 A. Yes, sir.

24 Q. You handed Eighty dollars supposedly to my client, he
25 nodded to the area, ---

1 A. Uh-huh.

2 Q. --- and then you picked it up and left?

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

4 Q. And you indicated here just a few minutes ago that you
5 gave a statement to the police. Correct?

6 A. Yes, sir.

7 Q. Okay. And you described it as you handed D.J. the
8 Eighty dollars and D.J. handed me the crack.

9 A. He nodded at it and I got the crack. Yes, sir.

10 Q. I just want to make sure because you've already
11 indicated several mistakes have been made. I want to make
12 sure which one is it. Is it it was on the console or he
13 handed it to you?

14 A. I handed D.J. the money. I got the crack out the
15 console. Got out and shut the door and D.J. left.

16 Q. Okay. And on this video, you're saying that's on that
17 video?

18 A. Yes, sir, it's on the video.

19 Q. Okay. You agree that we've gotten whatever is on the
20 video is there and you are saying you picking it up out of
21 that console is on the video?

22 A. Yes, sir.

23 Q. And that after everything is said and done, you leave
24 the Burger King parking lot?

25 A. Yes - no. Yes, sir.

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-120-

1 Q. Are you sure?

2 A. I really wasn't in the parking lot. I was down the
3 sidewalk and back across the road to the Family Dollar. I
4 wasn't standing out in the parking lot. He pulled up and
5 parked by the walkway. I walked and got in his car and
6 made the transaction. He backed out and I walked back
7 across to the Family Dollar store.

8 Q. Okay. So you cross over the road and then you crossed
9 again to go towards Burger King - I mean, towards the
10 Dollar General store?

11 A. That's correct. Yes, sir.

12 Q. And if I understand what was on the video, you
13 actually walked past the Dollar General store?

14 A. Uh-huh.

15 Q. And you turn around?

16 A. Yes, sir.

17 Q. And no body was there that you met whenever you went
18 down there to the Dollar General store?

19 A. Actually she let me out behind the Dollar General
20 store so I thought that's where she was going to be parked.
21 When I walked by there, she had parked around the front
22 side, so I just turned around and walked back to the front
23 side and there she was parked. Uh-huh.

24 Q. And you got in the car at that point?

25 A. I got in the truck at that point. Yes, sir.

1 Q. And there was no conversation at all during the time
2 you got in the truck until you got there about any
3 transaction?

4 A. There was very little. I mean, it was very little.
5 She didn't ask any questions. She just asked what kind of
6 car was he driving and I told her that I had the crack in
7 my hand and I told her what kind of car he was driving. I
8 mean, other than conversation.

9 Q. All right. So you are saying you showed her what was
10 in your hand?

11 A. I just said - I showed her I got the buy yeah.

12 Q. Did she make any comment? I want to make sure what's
13 on the video.

14 A. She just asked me what he was driving. I told her a
15 white Cadillac and was he by his self and I told her yes.

16 Q. She didn't make any comment about the fact you showed
17 her crack in your hand?

18 A. No, sir, she didn't.

19 Q. Did you put your hands in your pockets at all during
20 the drive back?

21 A. Never did. No, sir.

22 Q. And you are saying all the time that you were walking
23 back to the car you had it in your hand?

24 A. Yes, sir, I did.

25 Q. Do you remember what the weather was that day?

MICHAEL TUMBLIN: CROSS BY MR. MATTHEWS

-122-

1 A. It was kind of cloudy. Yes, sir. It was kind of a
2 cloudy day. I mean, it wasn't raining or anything, but it
3 was just overcast.

4 Q. Okay. What kind of temperature was it? Do you
5 remember?

6 A. I don't know. I mean, it wasn't cold, cold, cold, but
7 it wasn't hot. It was just - I'd say - temperature wise I
8 would say it was in the low fifties.

9 Q. Okay. Going back to - Now, you are gone and you go
10 back to the Rock Hill Police Department. Correct?

11 A. Uh-huh. Yes, sir.

12 Q. And you'd agree with me, on the video we don't ever
13 see you get searched again do we?

14 A. No. We - I wasn't video searched. No, sir.

15 Q. Okay. And there was no video of you getting searched
16 beforehand?

17 A. Not that I'm aware of. No, sir.

18 Q. Okay. Who searched you beforehand?

19 A. Officer Harrelson.

20 Q. Harrelson did?

21 A. Uh-huh.

22 Q. And that was right as you got there to the scene?

23 A. Yes, sir.

24 MR. MATTHEWS: One moment, Your Honor.

25 (PAUSE AT 05:05 P.M..)

1 Q. Now when you got to the Rock Hill Police Department,
2 how long did it take you to - before you could leave?

3 A. It wasn't long at all. I'd say within - probably
4 within thirty to forty-five minutes.

5 Q. Thirty to forty-five minutes after you got back to the
6 Rock Hill Police Department?

7 A. I'm just guessing. Yes, sir.

8 MR. MATTHEWS: One moment, Your Honor.

9 No further questions, Your Honor.

10 THE COURT: Redirect?

11 SOLICITOR SHELTON: No, sir.

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

14 MR. TUMBLIN: Thank you, Your Honor.

15 (WITNESS LEAVING WITNESS STAND.)

16 THE COURT: Members of the jury panel, we're going to
17 stop for the day. We'll start back at ten in the morning.
18 I have a couple of hearings in the morning so I may be a
19 few minutes after ten, but you please be here by ten and
20 we'll try to start as promptly as we can.

21 Have a pleasant evening and keep in mind those things
22 I've told you about, not letting yourself be exposed to
23 anything about this case or discussing the case or making
24 up your own mind.

25 Have a pleasant evening and we'll see you back at ten

OFFICER TANYA ERVIN: DIRECT BY SOLICITOR SHELDON

-127-

1 investigation.

2 A. Mr. Tumblin came in and he didn't have a driver's
3 license so he needed transportation. We have a undercover
4 Drug Unit vehicle that is maintained by the Drug Unit and
5 my responsibility that day was to search the drug unit to
6 make sure nobody had left anything in there, any kind of
7 contraband, and then to drive the confidential informant to
8 the location, the drug deal.

9 Q. So to be clear it up. You search the Drug Unit
10 vehicle; is that correct?

11 A. That's correct.

12 Q. And were you also part of what's called the
13 surveillance team?

14 A. Yes.

15 Q. So let's talk about that vehicle that you drove for a
16 second. This was a Drug Unit vehicle?

17 A. That's correct.

18 Q. This was not your personal vehicle?

19 A. No, it was not.

20 Q. And was it a vehicle kept on city or county property?

21 A. It was kept on city property. Yes.

22 Q. Was it kept under lock and key?

23 A. Yes.

24 Q. And was it used for Drug Unit purposes?

25 A. Yes.

1 Q. Was the vehicle regularly maintained and vacuumed?

2 A. Yes.

3 Q. Was it kept cleaned out?

4 A. Yes. Commander Brown kept that vehicle maintained.

5 Q. And on March 5th, 2013 was the vehicle cleaned out?

6 A. Yes.

7 Q. Was that prior to you searching it?

8 A. Yes, it was.

9 Q. All right. And did you in fact search that vehicle
10 that day?

11 A. I did.

12 Q. Where were you when you searched it?

13 A. In the parking lot at the Rock Hill Police Department.

14 Q. And was anyone else with you during the search of the
15 vehicle?

16 A. Not that I recall.

17 Q. Explain to the jury how you conducted the search,
18 please.

19 A. I would open the driver's side door, look under the
20 seats. Look under the console in the center or - the door
21 consoles, the center console. Go to the passenger side of
22 the vehicle. It was a pick up truck so I would - it only
23 had two doors on it so I would look up under the passenger
24 side. Look in the glove box and in any type of area that
25 something might be hidden.

OFFICER TANYA ERVIN: DIRECT BY SOLICITOR SHELDON

-129-

1 Q. And what were you looking for?

2 A. I was looking for any type of contraband.

3 Q. Such as?

4 A. Marijuana, crack, cocaine, any pills.

5 Q. Would you have also been keeping an eye out for any
6 money or anything like that?

7 A. Yes.

8 Q. And why did you conduct that search?

9 A. We wanted to make sure that there is no question
10 whenever we are making a buy that there was anything in the
11 vehicle or somebody could claim that there was something in
12 the vehicle.

13 Q. And that's something you all do as procedure even
14 though it was a Drug Unit vehicle?

15 A. Yes. We do it on every vehicle that's used in
16 undercover buys.

17 Q. Did you find any drugs or contraband or money in the
18 vehicle?

19 A. I did not.

20 Q. Did you maintain control of the vehicle after you
21 searched it?

22 A. I did.

23 Q. Can you explain exactly what we mean by maintaining
24 control?

25 A. I had the only set of keys. After I searched the

1 vehicle, I locked the vehicle. Went back to the office
2 with the vehicle locked and waited for everyone to prepare
3 to leave and when they left, I went and picked up the
4 truck. Brought it down and picked up the CI at the door
5 and the truck was with me the entire time. And when we got
6 back with the CI after the drug buy, I searched the vehicle
7 again and I did not find anything in the vehicle.

8 Q. And after you locked - After you searched the vehicle
9 and locked it back up, you said you went back inside the
10 Drug Unit?

11 A. Yes.

12 Q. Were the windows rolled up or were they down?

13 A. Yes. The vehicle was secure.

14 Q. And I just want to be clear on this. Did anyone else
15 get in the truck or put anything in the truck before you
16 left the drug unit to your knowledge?

17 A. No. No one else entered that vehicle.

18 Q. Did you drive Mr. Tumblin to the buy location?

19 A. I did.

20 Q. And where were you all headed when you left the Drug
21 Unit?

22 A. We were going to a Dollar General store at the corner
23 of Heckle and - I'm trying to remember the name of that
24 road - Saluda, I believe.

25 Q. And why were you going to the Dollar General?

OFFICER TANYA ERVIN: DIRECT BY SOLICITOR SHELDON

-131-

1 A. I was going to drop the CI off to meet with a drug
2 dealer to buy crack.

3 Q. Why didn't you just drive him to the buy location?

4 A. Didn't want him to see me and think that I was a
5 police officer.

6 Q. During the time when you were driving from the drug
7 unit to Dollar General, was the buy location changed?

8 A. It was.

9 Q. And was that changed during a conversation that Mr.
10 Tumblin had with another person on the phone?

11 A. Yes, it did.

12 Q. Where was the --

13 A. We were in route --

14 Q. I'm sorry?

15 A. We were in route to Dollar General when it changed.

16 Q. And where was the location changed to?

17 A. It was changed to the Burger King which is kind of
18 diagonally across the street from Dollar General on Saluda.

19 Q. So your drop off point was -- you could still keep your
20 drop off point at Dollar General the same?

21 A. Yes.

22 Q. And was Burger King within walking distance of that
23 Dollar General?

24 A. Yes. That's what he did. He got out of the vehicle
25 and walked across the street to the Burger King.

1 Q. And when the buy location changed on the way to Dollar
2 General, did you let other officers from the drug unit know
3 that?

4 A. Yes. We all had surveillance or hand-held radios and
5 I radioed everyone to let them know where the deal was
6 going to happen.

7 Q. And when you got to the Dollar General, what's the
8 first thing you did?

9 A. I let the CI out of the vehicle - Well first of all, I
10 parked in a parking space and let him out of the vehicle
11 and watched him walked across the street. And at that
12 point, I believe the surveillance term was getting in place
13 before he made it across the street. But I watched him
14 walk over to the Burger King.

15 Q. So you watched Mr. Tumblin walk from the Drug Unit
16 vehicle all the way over to the Burger King?

17 A. Yes.

18 Q. Did you stay with the truck at the Dollar General
19 parking lot?

20 A. I stayed with the truck and in the truck. Never left
21 the truck.

22 Q. And were you able to see whether or not Mr. Tumblin
23 had any contact with anyone on the way to Burger King?

24 A. Yes. He didn't. He went straight to Burger King. He
25 didn't stop and talk with anyone or go any other place.

OFFICER TANYA ERVIN: DIRECT BY SOLICITOR SHELDON

-133-

1 Q. Could you see him outside of the Burger King in the
2 little walkway area?

3 A. Yes.

4 Q. Did he meet with anyone there?

5 A. He met with someone there. We could hear him on
6 surveillance video recordings, you could hear him meeting
7 with someone.

8 Q. And that would have been the target or the person he
9 was intending to buy from?

10 A. That's correct.

11 Q. And when you were listening to that, did you hear any
12 kind of music of anything playing leading up to that
13 encounter?

14 A. I believe so.

15 Q. And was that the only encounter he had with anyone
16 else ---

17 A. Yes.

18 Q. --- while he was at Burger King?

19 A. Yes.

20 Q. And so you indicated you were listening in. Were you
21 able to listen to a live audio feed coming from the CI's
22 wire?

23 A. Yes.

24 Q. You and the other members of the surveillance team?

25 A. Yes.

1 Q. And in your experience and training, did anything
2 unusual or out of the ordinary occur during this time
3 frame?

4 A. No. Everything went smoothly.

5 Q. I'm sorry. I missed that last word.

6 A. Everything went smoothly.

7 Q. Thank you. And did you wait with the truck or in the
8 truck at Dollar General for Tumblin to return?

9 A. I did.

10 Q. Did he return?

11 A. He did.

12 Q. Did he get back in the truck?

13 A. He got back in the truck.

14 Q. When he got back in the truck, did he say anything to
15 you?

16 A. He may have.

17 Q. Did he have anything in his hand?

18 A. He did. He had some crack cocaine in his hand.

19 Q. Did you get the impression at that point that the buy
20 was successful?

21 A. Oh, yes. Absolutely.

22 Q. Did you take possession of the crack?

23 A. I did not. Mr. Tumblin maintained possession until we
24 got back to the office.

25 Q. Can you explain how he maintained possession?

OFFICER TANYA ERVIN: DIRECT BY SOLICITOR SHELDON

-135-

1 A. He was riding in the passenger seat and he was holding
2 it in his hand.

3 Q. And you were in the driver's seat and he was in the
4 passenger's seat?

5 A. Correct.

6 Q. Were you able to kind of keep an eye on him as you
7 were driving back?

8 A. Absolutely. He was right beside me yes, sir.

9 Q. Did he make any motions as if he was trying to hide
10 anything?

11 A. No.

12 Q. Did he make any motions as if he was trying to
13 retrieve anything?

14 A. No.

15 Q. Did you see the crack in his hand the whole time or
16 that he had it in his hand the whole time?

17 A. Yeah I could see that he had it in his hand.

18 Q. And you drove straight back to the drug unit?

19 A. I did.

20 Q. And is that - Just so we're clear, that's at the Rock
21 Hill Police Department. Correct?

22 A. Yes, it is.

23 Q. And when you all got back there, did you get out of
24 the truck?

25 A. I backed the truck up and the other officers that were

1 with us on surveillance, opened the door and let him in, at
2 which time I think Harrelson may have taken possession. I
3 can't really testify to that because I stayed in the truck
4 and went and searched the truck and parked it back in the
5 parking spot after I let him out.

6 Q. You say you searched the truck after the buy as well?

7 A. Yes, sir.

8 Q. Did you find anything in the truck?

9 A. I did not.

10 Q. And did you search in the same manner that you
11 described earlier?

12 A. Yes, I did.

13 Q. And you were looking for the same things?

14 A. I was.

15 Q. And what's the purpose of searching it again after the
16 buy?

17 A. To make sure there wasn't anything in the vehicle that
18 - any contraband or any money in the vehicle.

19 Q. Did all of these events occur in the city limits of
20 Rock Hill?

21 A. Yes, they did.

22 Q. In York County, South Carolina?

23 A. Yes, sir.

24 SOLICITOR SHELTON: I have nothing further, Your
25 Honor.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -145-

1 THE COURT: Call your next witness.

2 SOLICITOR SHELTON: Your Honor, the State's next
3 witness is Investigator Leland Harrelson.

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

6 DIRECT EXAMINATION

7 INVESTIGATOR LELAND HARRELSON BY SOLICITOR SHELTON:

8 Q. Good morning.

9 A. Good morning.

10 Q. Please introduce yourself to the jury.

11 A. My name is Hugh Leland Harrison, Junior.

12 Q. And what do you do for a living?

13 A. I'm a police officer for the City of Rock Hill. I've
14 been with them approximately six years. I'm currently
15 assigned to the York County Multi-Jurisdictional Drug
16 Enforcement Unit and I've been with them for approximately
17 four years.

18 Q. What prior law enforcement experience did you have
19 before that?

20 A. None.

21 Q. Were you working with the Drug Unit in March of 2013?

22 A. Yes, sir, I was.

23 Q. And during your time with the unit, have you been
24 involved in the investigation of any drug crimes?

25 A. Yes, sir, I have.

1 Q. Approximately how many?

2 A. I would say four hundred plus. We do, you know,
3 approximately four hundred plus deals a year of which I'm
4 involved in. Some that you are, you know, the case agent;
5 that you are leading up the investigation. Others you may
6 be a supporting role, such as in surveillance or searching
7 someone.

8 Q. And would you have also been involved in other
9 investigations such as search warrant executions and that
10 sort of thing?

11 A. Yes. As part of our duties, we do execute search
12 warrants. We also help locate wanted fugitives. We have a
13 variety of tasks from the Drug Unit.

14 Q. And do any of those drug investigations involve crack
15 cocaine?

16 A. Yes, they have.

17 Q. Have you ever seen crack cocaine before?

18 A. I have.

19 Q. Had you seen it before March 2013?

20 A. Yes, sir, I have.

21 Q. During your time with the Drug Unit, have you
22 participated in what are known as controlled drug buy
23 investigations?

24 A. Yes, sir, I have.

25 Q. And during those investigations, did they involve

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -147-

1 confidential informants?

2 A. Yes. We utilize a lot of confidential informants in
3 our work. Also, we sometimes use undercover officers, so
4 we do both roles.

5 Q. So approximately how many investigations involved
6 confidential informants?

7 A. The majority of our investigations involve
8 confidential informants. You know, I would say probably a
9 small five percentage where we actually use an undercover
10 officer.

11 Q. Why is that?

12 A. You know, I mean Rock Hill in York County is such a
13 small town that, you know, when you are out there in the
14 public, and everybody starts off in the uniform division,
15 no matter what department you are with and you really get
16 to know the people, you know, in the city and where you
17 work and, you know, a majority of the people that I arrest
18 know me just because we've had interaction.

19 And, you know, we're not like Charlotte and they're a
20 big enough city where you could work in one section of the
21 city and go do undercover police work in another. Rock
22 Hill is just so small where we don't have that luxury.
23 When we do have to use confidential informants to do our
24 work just because we are known just due to the size of Rock
25 Hill and York County.

1 Q. Does the Drug Unit have procedures regarding
2 controlled drug buys?

3 A. Yes, we do.

4 Q. And specifically ones that involve CI.'s?

5 A. Yes, sir.

6 Q. Are you familiar with those procedures?

7 A. I am, yes.

8 Q. Can you explain how a controlled drug buy using a CI
9 works?

10 A. A typical controlled drug buy is we'll have that
11 informant come meet us at the Rock Hill Police Department
12 and we'll kind of talk about what we want to do. We'll ask
13 him, you know, they have to have the information, you know,
14 who can you buy from. You know, we'll talk to the
15 individual about it and we'll kind of put, you know,
16 together a game plan, because, you know, we want to try to
17 have all our bases covered.

18 We'll also have the informant at times make a phone
19 call, you know, to that individual to try to set up a deal.
20 Sometimes they'll make the call beforehand but a lot of
21 times we'll also shoot a call so we can record it.

22 You know, we search the informant. We want to make
23 sure they don't have any contraband with them before we
24 leave. I know Sergeant Lubben went over how he searched
25 him beforehand. We issue the confidential informant police

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -149-

1 government funds, to give them the money, to actually go
2 out and purchase the drugs for us. And we give them some
3 video equipment and also a wire so we can listen to the
4 deal.

5 And the biggest reason we give them a wire is to help
6 us maintain control of the deal. Because you try your best
7 to keep a visual on them at all times, but you know, you
8 have traffic and other things in the city and you can't
9 watch them, you know, every second so we are listening to
10 what's going on. And also for the safety of our informant.
11 We don't want anything to happen to him if the drug deal
12 happens to turn bad, you know, we'll take some kind of
13 action at that point.

14 But we get him ready and then we'll have a small
15 briefing to make sure everybody on the unit who is
16 participating in the deal is on the same page. And also
17 they search the vehicle beforehand before we leave.

18 We'll go out and everybody kind of has an assignment -
19 they know what they are doing - and we'll go out to do the
20 deal.

21 In the drug world things change all the time and I
22 rarely will have a deal that happens exactly, you know, the
23 time and place it's suppose to happen. A lot of the guys
24 that we deal with typically will change up, you know, the
25 time and the place when they show up. And they're looking

1 for police. You know, they are looking to see if police
2 are in the area, so we do have to be kind of cautious of
3 that.

4 So as in this case, we were going to the deal; the
5 location changed, which is not uncommon; so we kind of -
6 you know, we regroup and just kind of put another little
7 plan into action so it's not uncommon for us to do that.

8 So in this case, the location did change at the last
9 minute. We regrouped and, you know, had the informant, you
10 know, proceed to our new location. And, you know, we'll
11 drop the informant off and of course this informant walked
12 across the street, made the drug transaction and then met
13 back up with out officer. And then after the deal is done,
14 we all regroup back at the police department.

15 We'll, you know, recover the evidence from our
16 informant and of course we re-search them, re-search the
17 vehicle and we'll take a statement from the informant, you
18 know, explaining in their own words what they saw and what
19 happened and then there's some various paperwork that we do
20 for the deal.

21 Q. And all the searching of the vehicle and the CI,
22 what's the purpose of that?

23 A. Just to make sure they don't bring any contraband, to
24 make sure drugs aren't in the vehicle and make sure they
25 don't bring any weapons. You know, we don't want them

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -151-

1 bringing weapons to a drug deal. So we want to make sure
2 that they don't have any crack on them, that they're not
3 bringing it, and also we want to make sure that they didn't
4 take any crack from which they purchased to try to hide in
5 the vehicle or on themselves.

6 Q. Investigator, during your career in law enforcement,
7 especially your time with the drug unit, have you ever
8 interviewed users of crack cocaine and/or sellers of crack
9 cocaine?

10 A. Yes, I have.

11 Q. Approximately how many interviews have you
12 participated in?

13 A. I've probably participated in, you know, a hundred and
14 fifty plus interviews.

15 Q. And based on the experience from those interviews, do
16 drug users and drug dealers use different terminology than
17 normal people may use?

18 A. They do. They have their own language and if you are
19 not familiar with it, it is a little bit different. But,
20 you know, as you would go to McDonald's and you order a Big
21 Mac you ask for a Big Mac. But when somebody is dealing
22 they are not going to ask for crack or a crack rock. They
23 just use slang terms and some of the slang terms that are
24 used that I've seen in my, you know, years on the drug
25 service are, you know, they'll say a twenty or they'll want

1 one or a G, and it all kind of means the same thing and
2 everybody is a little bit different but there are a lot of
3 slang terms that are used in the drug world.

4 Q. What about a whole one?

5 A. A whole one is another one and that's referring to a
6 whole gram of crack.

7 Q. What does crack cocaine look like?

8 A. Crack is typically a white rock. It's just a small
9 rock. It's very small. It's probably just a little bit
10 smaller than my fingernail and it's very soft. The way
11 they make it, they boil it in water and mix it with another
12 chemical to actually form the crack so when it's made, it
13 is actually wet. You can purchase wet crack. It's just
14 because it's been manufactured recently and, you know, it
15 takes time to dry that out.

16 So crack to me is kind of like a little small piece of
17 chalk that you've kind of broken off and sometimes if it's
18 wet, I mean, if you smush it, it will smush right down. It
19 doesn't take much. And usually if it's dried out, you
20 know, it's rather brittle and it just kind of - you know,
21 you could squeeze it in your hands just like you could a
22 small piece of chalk and it would just, you know, just kind
23 of crush and crumble.

24 Q. And what amounts or quantities is crack cocaine
25 commonly sold on the streets?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -153-

1 A. It's sold everywhere from, you know, you can buy
2 ounces, kilos. You can buy, you know, just a couple of
3 grams or just a crack rock. A crack rock in our area
4 typically goes for about Twenty Dollars.

5 Q. How big is a twenty?

6 A. A twenty is - like it's probably just no bigger than
7 the size of my fingernail. It's very small. It's like
8 just a real small pebble.

9 Q. What about a G or a whole one?

10 A. It's a little bit bigger. It's going to be close to a
11 gram, so it is probably double, you know, that little size.

12 Q. And a twenty, what's the approximate weight on a
13 twenty?

14 A. It kind of varies. I mean, you are not going to get
15 exact weights out there, but a twenty is around .5 grams.

16 Q. How is crack commonly packaged for sale?

17 A. Typically they will use just a small corner of a
18 plastic baggy and package it that way.

19 Q. And in your experience, is Eighty Dollars a fair price
20 for a gram or a G of crack?

21 A. It is.

22 Q. And in your experience, do drug dealers always give
23 their clients the amount they say they are going to give
24 them?

25 A. No, they do not.

1 Q. Can you explain that?

2 A. You know, these guys - people that sell the drugs are
3 in it to make money and they are going to maximize their, I
4 guess, profits the best they can and it is very common for
5 us to go out and for us to expect to get a gram and it's
6 not uncommon for us to be shorted because typically users
7 do not carry a scale around with them. They're not going
8 to go out and weigh the crack, you know, before they
9 purchase it. They are going to see it and of course just
10 purchase whatever, you know, they have to sell to them.

11 Q. You said shorted. Is that what you mean by giving
12 them less than what they agreed on?

13 A. Yes. There would, you know, they'll give less.
14 They're still getting their full, you know, money.
15 Whatever they agree how much they are going to sell it for,
16 but then the product is typically a little bit less.

17 Q. On March 5th, 2013, did you meet with a man named
18 Michael Tumblin?

19 A. Yes, sir, I did.

20 Q. Was he working with the Drug Unit as a CI at that
21 time?

22 A. Yes, sir, he was.

23 Q. Where did you meet with him that day?

24 A. I met with him at our office at the Rock Hill Law
25 Center.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -155-

1 Q. To your knowledge, was there some kind of an agreement
2 between the Drug Unit and Tumblin at that time regarding
3 his work with the Unit as a CI?

4 A. Yes. He had signed what's called a Confidential
5 Informant Agreement, so he was set up to work with us as a
6 confidential informant.

7 Q. And was he hoping to get any benefit for his work as a
8 CI?

9 A. Yes, he was.

10 Q. What is your understanding of what he was hoping to
11 gain from working as a CI?

12 A. Mr. Tumblin had some traffic violations and he was
13 hoping to get some help with his traffic citations.

14 Q. Is that sometimes referred to as getting credit on a
15 charge?

16 A. Yes, sir, it is. Now we don't promise them anything.
17 You know, if they come and work for us, we will go back to
18 the officer or the attorney who made the charge and speak
19 with them about it, but we can't promise that if they do
20 come in and work that, that citation would just be dropped.

21 Q. And are they at least given some credit for a good-
22 faith honest effort to make a buy?

23 A. Yes. If he goes out there and puts forth a good
24 effort, not every buy goes, we do give them credit for it.

25 Q. Please explain - What do you mean, not every buy goes?

1 A. Sometimes we'll set up an actual buy and go out there
2 and, you know, nobody shows up. That's very common so, you
3 know, he lived up to his end of the deal. He made the
4 call. You know, we tried to set it up and go out there.
5 It just didn't happen so we still do give him credit
6 because, you know, he did his part, what we had asked him
7 to do, so he will still get credit for his attempt.

8 Q. And by giving credit, you mean you would speak to the
9 officer or the attorney handling the case on his behalf?

10 A. That's correct.

11 Q. And what if the drugs - What if the buy was successful
12 and the drugs turn out to be fake?

13 A. We would still give him credit. We would still go
14 back and speak to the attorney and, you know, state that
15 the informant had done what we asked him to do.

16 Q. But your testimony is Tumblin was not promised
17 anything?

18 A. That is correct.

19 Q. Do you know if he was actually given credit on those
20 traffic charges?

21 A. Yes, he was.

22 Q. And what credit was he given?

23 A. I think some traffic charges were dropped for him and
24 I think he received a little money to help him pay out his
25 traffic citation.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -157-

1 Q. Would that have been like Thirty or Thirty-five
2 Dollars to pay for the tickets?

3 A. I think that is correct.

4 Q. On March 5th, 2013, you testified Tumblin came to the
5 Drug Unit. Why was he there?

6 A. He was there to go out and purchased crack from -
7 crack from somebody for us. When he got there, we briefly
8 talked. He stated he could purchase crack from a black
9 male that he knew as D.J. and then from that point, you
10 know, we started preparing and getting ready for our deal.

11 Q. Did Tumblin know how to get in contact with that guy,
12 D.J.?

13 A. He did. Mr. Tumblin had his phone number.

14 Q. You guys didn't give him the number?

15 A. No, sir, we did not.

16 Q. And did Tumblin make a phone call?

17 A. He did. I witnessed and also recorded the phone call
18 that he made.

19 Q. And did he indicate who he was calling?

20 A. He stated he was going to call D.J.

21 Q. And did you document any where the number that he
22 called?

23 A. I did. I put it in my paperwork the phone number who,
24 you know, he had for D.J.

25 Q. Do you recall that number off the top of your head?

1 A. I have it right here in my paperwork.

2 Q. Would looking at it help you recall what it is?

3 A. Yes, sir. The phone number we called is 803-554-0295.

4 Q. And that phone call was recorded?

5 A. It was.

6 Q. Have you listened to that recording?

7 A. I have.

8 Q. That was State's Exhibit Number One?

9 A. I believe, yes, sir.

10 Q. And during that call, did Tumblin ask the other party
11 to the call for something?

12 A. Yes, sir, he did.

13 Q. What did he ask for?

14 A. I believe he - it was either a G or a whole one, which
15 is referring to a gram of crack?

16 Q. And a fair price for a gram of crack would be Eighty
17 Dollars?

18 A. Yes, sir, it is.

19 Q. And after the phone call, did Tumblin indicate or did
20 you get the impression as to whether or not he could
21 purchase crack cocaine from this guy?

22 MR. MATTHEWS: Your Honor, I'm going to object on the
23 leading question.

24 THE COURT: I sustain the question.

25 SOLICITOR SHELTON: I'll withdraw it.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-159-

1 Q. What did you do next?

2 A. After we placed the phone call, Sergeant Lubben
3 searched Mr. Tumblin to make sure he didn't have any
4 contraband. We also got his government funds ready. Also
5 Sergeant Lubben and myself placed a wire and a camera on
6 Mr. Tumblin so he could record the deal and also so we
7 could listen to the deal. We issued Mr. Tumblin the
8 government funds.

9 During that time, Investigator Ervin had searched the
10 vehicle and then we all kind of regrouped together once we
11 were all ready to go and just had a small briefing. Just
12 kind of, you know, to make sure everybody's on the same
13 page and then we left at that point to go meet for the drug
14 deal.

15 Q. Investigator Lubben is the officer who searched
16 Tumblin prior to the deal?

17 A. That is correct.

18 Q. Did you witness that search?

19 A. No, I did not.

20 Q. And during the whole time that Tumblin was at the Drug
21 Unit, was he constantly in the presence of a Drug Unit
22 officer?

23 A. Yes, he was. We have a conference room which we
24 typically will meet with our informants in and there is
25 always an officer in there, you know, meeting with him. So

1 if one guy comes out to do something else, we typically
2 will send another officer in to either sit with them or,
3 you know, do another part of the investigation.

4 Q. And did you assist in putting the recording devices on
5 Tumblin during this investigation?

6 A. Yes, sir, I did.

7 Q. Were the devices hidden on his person somewhere?

8 A. Yes, they were.

9 Q. Why were they hidden?

10 A. Of course we don't want the guy that we're going to
11 meet to know that he's working with law enforcement, so
12 we'll hide a camera on him and we'll also hide a recording
13 device so we can also listen to the transaction and listen
14 to everything that's going on.

15 Q. Did Tumblin know where it was hidden?

16 A. Yes, he did.

17 Q. Did he know how it worked?

18 A. He didn't know how to turn it on or off. We
19 typically, you know, just place it on them and then we'll
20 activate everything ourselves. We don't go into with them
21 or how to turn on or off the equipment.

22 Q. Did he know how broad or narrow the scope of the lens
23 was?

24 A. No, he didn't. I do kind of tell them, you know, I'm
25 placing a camera on your body, this is where it is. You

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -161-

1 try to tell them to turn the best that they can because
2 you're hoping to get the best video that you can because
3 there's a lot of variables in there. You know, you may
4 stand up and meet with somebody or you may sit down in a
5 vehicle, so of course that changes the view of your camera
6 and, of course, Mr. Tumblin is not an expert at this and,
7 you know, neither am I because you don't do this every day.
8 I go in with them a little of detail on how I would like
9 for them to try to position their body just due to I'm
10 hoping to get the best video that I possibly can.

11 Q. Was he allowed to manipulate that camera? Like move
12 it, put it in a different location or anything like that?

13 A. No, he was not.

14 Q. And was Tumblin given money with which to buy the
15 crack?

16 A. Yes, he was.

17 Q. Was a photocopy of that money made first?

18 A. Yes. We make a photocopy of all the identifiable
19 government funds when we issue somebody. We'll make a
20 photocopy of them so we do have the serial numbers on
21 record.

22 Q. And is that for record keeping purposes?

23 A. That is correct.

24 Q. Investigator, I want to hand to you what's been marked
25 as State's Exhibit Number Six for identification.

1 A. Yes, sir.

2 Q. Do you recognize that?

3 A. Yes, sir, I do.

4 Q. What is it?

5 A. It's a photocopy of the money that was made before we
6 issued it to Mr. Tumblin.

7 Q. Is it a true and accurate copy of the money that was
8 issued to Mr. Tumblin for the buy in this case?

9 A. Yes, sir, it is.

10 SOLICITOR SHELTON: Your Honor, I would move to have
11 State's Exhibit Number Six entered as evidence.

12 MR. MATTHEWS: No objection, Your Honor.

13 THE COURT: In without objection.

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

16 Q. All the preparations for the buy, were those done at
17 the Drug Unit office?

18 A. Yes, they were.

19 Q. Was that at the Law Center at Rock Hill Police
20 Department?

21 A. That is correct.

22 Q. Was the audio/video recording equipment turned on
23 prior to Investigator Ervin and Tumblin leaving the office?

24 A. Yes. That is correct.

25 Q. What did you do after Ervin and Tumblin left the

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -163-

1 office?

2 A. I left myself in my vehicle and I was part of the
3 surveillance team. That was when - We also will follow
4 them even though they are in a police vehicle. We will
5 follow them to the actual location and then of course we'll
6 all kind of spread out around the area and try to get the
7 best view that we can of the - of, you know, where they're
8 going to meet our target.

9 Q. And what factors does the surveillance team have to
10 take into account when positioning for a buy?

11 A. There's a lot of different factors. There's traffic.
12 You do want to stay far enough back, you know, so he
13 doesn't, you know, notice that law enforcement is in the
14 area. Of course, if he sees us, he's not going to show up.
15 So we do have to try to blend in with our environment.

16 Q. And what officers other than Ervin were part of the
17 surveillance team?

18 A. Can I look at my notes?

19 Q. Sure.

20 A. The surveillance was myself, Investigator
21 Faulkenberry, Commander Brown, Sergeant Lubben and
22 Investigator Ervin.

23 Q. And you may have already mentioned this but I want to
24 be clear. What's the purpose of the surveillance team?

25 A. It's to watch the confidential informant. You know we

1 want to maintain a safety and also the integrity of our
2 buy.

3 Q. And during transport when Ervin was driving Tumblin to
4 the buy location, did the location change on the way there?

5 A. It did. We had originally we were going to meet on -
6 he was going to go to McCullough Street and meet him. On
7 the way there when they almost got, you know, around the
8 area, there was a phone call. You know, then they changed
9 it to meet at a Burger King, which is fine with us. It
10 happens all the time. So at that point, we just kind of
11 shifted on what our roles were, where we were going to be
12 and people just kind of would go out and scout out a
13 different location for them to see it so they could just
14 blend into the area and also keep an eye on the drug deal.

15 Q. So does it take the surveillance team time to adjust?

16 A. It does take us, you know, a few minutes to adjust.

17 Q. Is it common or uncommon for a buy location to change?

18 A. It's very common.

19 Q. So at some point, did you and the surveillance team
20 set up to monitor the Burger King buy location?

21 A. Yes, we did.

22 Q. And please describe where you were in relation to the
23 Burger King.

24 A. Okay. If you are familiar with Burger King, it's
25 right at the intersection of Saluda Road and its 901 Heckle

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -165-

1 Boulevard, so I was down at an angle just a little bit
2 further down Saluda Road like towards - you're going out
3 towards Mount Holly and towards the Chester area and there
4 was a daycare center which is right down there and I simply
5 just pulled in the parking lot of the daycare center so I
6 could see the front of the Burger King where Mr. Tumblin
7 was going to meet our target in front of.

8 Q. Were you able to see the parking lot of Dollar General
9 from there?

10 A. Yes, I could.

11 Q. Where were the other officers in relation to your
12 position?

13 A. I don't recall where everybody else set up. I know
14 Investigator Ervin, who drove Mr. Tumblin out there, was in
15 the parking lot of the Family Dollar. As to the other
16 surveillance team, I don't recall exactly where they were
17 set up.

18 Q. And when you had gotten in position at the daycare,
19 were you able to make visual contact with Tumblin?

20 A. Yes. Now, I didn't see Tumblin get out of
21 Investigator Ervin's vehicle at that time because he had
22 already got out while I'm trying to set up into a different
23 location and he had already walked across the parking lot
24 so when I parked, I could see him standing in front of the
25 Burger King there. Now I can't see him like we can see

1 each other. I'm probably about a half a block away but
2 with some binoculars I can make out, you know, that that's
3 him of course standing in front of the Burger King.

4 Q. And were you able to see him walk back from the Burger
5 King to the Dollar General to meet back up with Ervin?

6 A. Yes, I did. After the deal was done, he started to
7 walk back. As he crossed the street, I kind of broke off
8 contact at that point. I wanted to follow our target to
9 make sure he wasn't following, you know, our CI, you know,
10 going back to meet Investigator Ervin in our police
11 vehicle, you know, which is an undercover vehicle, so kind
12 of at that point when he was headed back to her direction,
13 I had broke off to see where our target had - was driving
14 off to.

15 Q. And where did the target drive to after the buy?

16 A. He drove kind of across the street. There's a car
17 wash and there's another street right across there. He
18 went down, I believe down that street in that general area.
19 We just want to make sure after the deal that everybody
20 kind of goes their separate ways. We, of course, don't
21 want them to see, you know, him get in the vehicle with
22 whomever and return to the Rock Hill Police Department.
23 That would kind of give everything away, so we do make sure
24 both parties kind of split so, you know, we're taking him
25 back to a secure location at the police department and we

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-167-

1 want to make sure that our target doesn't know still that
2 they are cooperating with law enforcement.

3 Q. Does the Drug Unit have any interest in protecting
4 CI's?

5 A. Yes, we do.

6 Q. And is that - Never mind. Were you and the other
7 officers listening to a live audio feed from the
8 audio/video equipment hidden on Tumblin?

9 A. Yes, sir. We could hear everything that Mr. Tumblin
10 said.

11 Q. Did you have a visual feed as well or just an audio
12 feed?

13 A. No. We just have an audio feed. The camera that we
14 use is simply - it's just a camera. It's recording
15 everything to a little small micro disk that's actually
16 inside the camera.

17 Q. Did you hear anything unusual or out of the ordinary
18 during this investigation on that audio feed?

19 A. No. The deal went pretty much as normal. You know,
20 there was some loud music, you know, when he entered our
21 target's vehicle. You know, that of course kind of makes
22 it difficult to hear, but as a whole, the deal was just
23 kind of a regular deal for us. There was nothing unusual.

24 Q. Did you hear anything that would suggest he'd stopped
25 and met with anyone else?

1 A. No, I did not.

2 Q. And did you see him stop and meet with anyone else
3 when you had visual contact on him?

4 A. I did not.

5 Q. Did he meet with anyone else other than the target at
6 Burger King?

7 A. He did not.

8 Q. Had Tumblin been instructed not to stop and talk with
9 anyone else?

10 A. Yes, he had. We do talk to them about what we want
11 them to do so, you know, he knew when he got out of the
12 vehicle he was suppose to walk over to the location. Not
13 talk or meet with anybody. Not even go into the
14 restaurant. You know, he was suppose to just wait for him
15 outside, which he did. And of course whenever he's done,
16 he's suppose to return back and meet with Investigator
17 Ervin in our vehicle.

18 Q. And did he meet with someone who you describe as the
19 target at Burger King?

20 A. Yes, sir, he did.

21 Q. Was that person on foot or in a vehicle?

22 A. He was in a vehicle. He was in a white Cadillac.

23 Q. Were you able to see the actual meeting between
24 Tumblin and the man in the vehicle?

25 A. I could see some of it. I observed the white Cadillac

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -169-

1 pull in and circle the parking lot and pull into a parking
2 space and I observed Mr. Tumblin walk over and get inside
3 the vehicle. Now at that point I can't see exactly what
4 they're doing. I am kind of - I'm a half a block down the
5 road but I could see him get inside the vehicle. I could
6 hear, you know, them talking to each other and making an
7 exchange or interaction. And of course I observed him, Mr.
8 Tumblin, get out of the vehicle and start back across the
9 street over to where Investigator Ervin was waiting in the
10 vehicle.

11 Q. But you couldn't see inside the car from where you
12 were?

13 A. No, I could not.

14 Q. Could you see the driver of the car from where you
15 were?

16 A. I mean, I could see there was somebody driving the
17 vehicle. I could not make out who it was.

18 Q. How long was Tumblin in the car?

19 A. It was just a few seconds.

20 Q. Did the driver ever get out of the car?

21 A. No, he did not.

22 Q. Specifically at the Burger King?

23 A. That is correct.

24 Q. Shortly after Tumblin got back to the Dollar General
25 to meet up with Ervin, did you receive a radio call from

1 Ervin?

2 A. Yes. She stated that she had him back and that they
3 were going to proceed back to the - our meeting point,
4 which was at the Rock Hill Law Center.

5 Q. Were you given any identifying information as to the
6 vehicle that the target had been in?

7 A. She also stated that he was in a white Cadillac, which
8 was the target.

9 Q. And what did you do after you received that call from
10 Ervin?

11 A. At that point, of course, we were - I was looking for
12 the white Cadillac to make sure we were going to split off
13 into two separate directions. So I kind of hung around for
14 a few minutes and I was looking for the Cadillac and as
15 soon as I saw the Cadillac was going in the opposite
16 direction that we were going, then I broke off from that
17 and then met everybody back up at the Rock Hill Law Center.

18 Q. And at that point when you were following the
19 Cadillac, were you able to identify the driver at that
20 point?

21 A. I was not.

22 Q. Did you go back to the Drug Unit?

23 A. I did. I returned back to the office. And part of my
24 role, I met with Mr. Tumblin and I recovered the evidence
25 from him which I placed in an evidence bag. And I also

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -171-

1 searched Mr. Tumblin and I searched Mr. Tumblin in the same
2 fashion that Sergeant Lubber does. We all kind of do it
3 the same way. And I'll search his, you know, his shirt.
4 You know, pull it out. I search his waist band. Also I
5 search inside of his belt and I check inside of his pockets
6 and if he has anything in his pockets, a wallet, cigarette
7 pack, whatever it may be, I'll search that also and I also
8 ask them to take their shoes and socks off. So we search
9 them thoroughly to make sure that they didn't keep any
10 contraband on them, to make sure that we are getting
11 exactly, you know, the crack back that we had purchased
12 from the individual.

13 THE COURT: Mr. Shelton, this may be a good time for
14 us to take a short break.

15 SOLICITOR SHELTON: Okay.

16 THE COURT: Let the jury go to the jury room for a
17 break at this time.

18 (JURY EXITS COURTROOM AT 11:25 A.M.)

19 THE COURT: We'll be at ease for about ten to twelve
20 minutes.

21 (COURT IN RECESS AT 11:26 A.M..)

22 (COURT BACK IN SESSION AT 11:36 A.M..)

23 THE COURT: Thank you. Take your seats.
24 Bring in the jury.

25 (JURY ENTERS COURTROOM AT 11:38 A.M.)

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON

-172-

1 THE COURT: Mr. Shelton.

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

4 DIRECT EXAMINATION

5 INVESTIGATOR HUGH HARRELSON BY SOLICITOR SHELTON:

6 Q. Investigator Harrelson, before the break we were
7 talking about you returning to the Drug Unit after the buy.

8 A. Yes.

9 Q. When you got back there, did you meet with Tumblin and
10 Ervin?

11 A. Yes, I did. When I got back I met with Mr. Tumblin.
12 I recovered the evidence, the crack, from him and placed it
13 in a evidence bag that we use at the police department.

14 Q. And can you describe what the item of evidence you
15 recovered looked like?

16 A. The item I recovered was - looked - you know crack and
17 it was also inside of a small plastic baggy.

18 Q. And did Tumblin have that in his hand?

19 A. He did.

20 Q. Had he been instructed to hold it in his hand the
21 entire time?

22 A. Yes, he had. He had been instructed to keep it with
23 him until an officer recovered it from him, which I did
24 that whenever we returned back to the Rock Hill Law Center.

25 Q. And the crack, was it - You testified it appeared to

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-173-

1 be in rock form?

2 A. Yes, sir. It was one solid piece of crack. It wasn't
3 in little bits.

4 Q. I believe you have with you what's been marked as
5 State's Exhibit Number Nine.

6 A. Yes, sir, I do.

7 Q. Would you please retrieve that?

8 A. Yes, sir.

9 Q. And would you please describe to the jury what that
10 item of evidence is?

11 A. Yes, sir. This is - I know it's hard to see. Down
12 here inside of these two plastic baggies is a smaller
13 plastic baggy and I placed the crack and also the plastic
14 baggy that came with it inside of that and I marked DEU on
15 it so we know that that particular bag is our's; it came
16 from the Drug Unit. And then we take it and we place it
17 inside of this - this is actually our evidence bag. This
18 outer bag is something that the chemist does whenever she
19 takes a sample, but inside of our evidence bag here, the
20 top here opens up and I'll place it down inside of there
21 and then I'll seal the top. It has some self-adhesive to
22 it.

23 And also if you can see it, I'll initial it that I'm
24 the one that sealed it and I'll place the date on it, the
25 date that I actually sealed everything up. And then on the

1 front here, I put all the information that's pertaining to
2 the case. I place our case number. I place what it is I
3 put inside of there, which I put crack. Also where I found
4 the evidence, which was from our confidential informant's
5 hand, and I place the date and the time that I actually
6 recovered it from our confidential informant. I put
7 whoever our suspect is, which is Dominique Agurs, and also
8 the offense which is violation of drug law.

9 I put who recovered it which is my name, Harrelson,
10 and also I put my badge number there and then I actually
11 sign it over. I sign it over from myself to the evidence
12 locker. In our office, we have our own set of evidence
13 locker, which is under control of the York County evidence,
14 so after this we will do an evidence sheet and I'll sign it
15 and say I'll put this actually in the locker at 3-5-2013 at
16 5:00 P.M., so that's the time that I placed it inside of
17 the locker, which is a secure area.

18 So once I place it in there, I'm unable to retrieve
19 it. Only an evidence technician with the county is able to
20 retrieve the evidence and they come by periodically and
21 gather the evidence and bring it here to the Moss Justice
22 Center where they store it and also where they take samples
23 of the crack to make sure it is crack.

24 MR. MATTHEWS: Your Honor, I'm going to object. He
25 keeps referring to the information, the item in the bag is

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -175-

1 crack, but at this point in time there is no evidence of
2 any testing of the material..

3 THE COURT: I sustain the objection.

4 Just refer to it as substance obtained through the
5 buy.

6 A. Yes, Your Honor.

7 THE COURT: You may proceed.

8 SOLICITOR SHELTON: Thank you, Your Honor.

9 Q. Mr. Harrelson, was that bag sealed after you recovered
10 the substance?

11 A. Yes, it was. I sealed it right here and I placed my
12 initials and also the date that I sealed the bag.

13 Q. And the substance that you put in the sealed bag, is
14 that what you recovered straight from Tumblin's hand?

15 A. Yes, it is.

16 Q. And was that on March 5th, 2013?

17 A. Yes, sir, it was.

18 Q. Was it continuously in your custody and control before
19 you put it in the evidence drop locker?

20 A. Yes, sir, it was.

21 Q. And once it was in the drop locker, did you have
22 access to it again?

23 A. No, sir, I did not.

24 Q. Who has access to that locker?

25 A. The evidence custodians with the York County Sheriff's

1 Office.

2 Q. Is Patrick Patterson one of those men?

3 MR. MATTHEWS: Your Honor, I object to the leading
4 question.

5 THE COURT: That's a leading question. Rephrase your
6 question.

7 Q. Who are the evidence technicians?

8 A. I believe they have three evidence technicians at the
9 York County Sheriff's Office. I know one of them is
10 Patrick Patterson.

11 Q. Did you take this item back in your possession for
12 court?

13 A. I did. Yes, sir..

14 Q. Was it in a sealed bag?

15 A. Yes, sir. It was sealed up just like it is today.

16 Q. And when did you first take it back in your possession
17 for court?

18 A. I took it out - I retrieved it from the evidence
19 locker 4-2-2014 at 9:10 in the morning.

20 Q. And did you return it to the evidence locker some time
21 after that?

22 A. I did. I returned it back to the evidence locker at
23 4-3-2014 at 13:30.

24 Q. Why did you have it in your possession during that
25 time frame?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -177-

1 A. We were scheduled to go to trial on this case. I had
2 retrieved it from the evidence locker and had it in my
3 possession. I was involved in another case. When I got
4 through, the evidence - they close at five. They had
5 already closed so I secured the evidence inside of my
6 vehicle and then the following day when I came back and
7 finished with court, I returned this to the evidence locker
8 - to the evidence custodians.

9 Q. Was it continuously in your custody and control during
10 that time period?

11 A. Yes, sir, it was.

12 Q. And did you recover it again yesterday before court?

13 A. I did. Yes, sir.

14 Q. And have you had it ever since?

15 A. No, sir. Yesterday they were still open so I went
16 back down to the evidence locker and I entered it back in.
17 They held onto it overnight and I actually went back this
18 morning and checked it back out for court.

19 Q. So during the time that you had it for court, was it
20 continuously in your custody and control?

21 A. Yes, it is.

22 Q. And if you will take a moment to inspect the substance
23 inside the evidence bags, is that the condition the
24 substance was in when you recovered it from Tumblin's hand?

25 A. No, sir, it's not. The substance now, as you can see,

1 has just fallen apart. It can be due to a couple different
2 reasons. A lot of times in my experience you can buy
3 what's called wet crack, which is - it's just been cooked
4 up and it has a lot of moisture in it and just over a
5 period of time that moisture will evaporate and of course
6 just make it into just a harder brittle type substance.

7 Sometimes we do buy crack that doesn't have any
8 moisture in it and it's very easy to break or to pull
9 apart the crack rock, so at this point obviously some type
10 of pressure had just been on the bag and the rock has just
11 fell a part, which is all sealed and contained inside the
12 smaller bag which I had placed it in whenever I recovered
13 it.

14 Q. And during the time frame that you had the evidence
15 bag in your possession for court, was it in a sealed bag,
16 the state that it's currently in?

17 A. Yes. It has always been inside this sealed bag.

18 Q. I'm going to hand you what has been marked for
19 identification as State's Exhibit Number Eleven.

20 Do you recognize that item?

21 A. Yes, sir, I do.

22 Q. What is it?

23 A. It is the crack the way it was - excuse me, it's the
24 substance that we had purchased in it's original state when
25 I had I guess placed everything inside the evidence bag.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -179-

1 It's there as one piece and also the plastic baggy in which
2 it came in.

3 Q. And would that photograph have been taken some time
4 prior to these court proceedings?

5 A. Yes, sir, it would have.

6 Q. And so is that the state that it was in in the
7 evidence bags after you placed it into evidence?

8 A. Yes, it was.

9 SOLICITOR SHELTON: Your Honor, I would move to admit
10 what's been marked as State's Exhibit Number Eleven into
11 evidence.

12 MR. MATTHEWS: Your Honor, I object under Rule 901 as
13 in the authentication of this photograph. There is no
14 information at all in the photograph that showed that this
15 is in fact the substance that was taken in at the time they
16 placed it into the bag.

17 THE COURT: I overrule the objection. I think he's
18 testified it is.

19 SOLICITOR SHELTON: Your Honor, at this time --

20 THE COURT: In over objection.

21 Go ahead.

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

24 SOLICITOR SHELTON: Your Honor, at this time, I would
25 like to publish that picture to the jury.

1 THE COURT: Okay.

2 (STATE'S EXHIBIT NUMBER ELEVEN, PUBLISHED TO THE JURY
3 AT 11:50 A.M..)

4 Q. Is that a projection of the photograph in your hand,
5 you are holding in your hand that's been admitted as
6 State's Exhibit Number Eleven?

7 A. Yes, sir, it is.

8 Q. And is that the condition the substance was in when
9 you retrieved it from Tumblin?

10 A. Yes, sir, it is.

11 Q. And we see kind of a hazy image at the bottom towards
12 the right hand corner of that picture. What is that?

13 A. That is the plastic baggy in which the substance came
14 in.

15 Q. And the top left hand corner, is that the chalky
16 substance that appears to be crack cocaine?

17 A. Yes, sir, it is.

18 SOLICITOR SHELTON: Thank you.

19 May I approach?

20 Q. And were you able to weigh that substance after you
21 retrieved it from Tumblin?

22 A. Yes, sir, I did.

23 Q. And was that an approximate weight?

24 A. It is. We have scales in our office. They are not
25 calibrated. They are just kind of over the counter scales.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -181-

1 When it is sent to the laboratory to be tested, that's
2 where the official weight is weighed.

3 Q. And why do you weigh substances prior to submitted
4 them into evidence?

5 A. We weigh it because sometimes you can be charged on
6 the weight of the drug. It would change your charge. So
7 if it weighs over so many grams, you may be charged a
8 different type of charge, so we weigh it to make sure it is
9 in the approximate range so we do make the appropriate
10 charge.

11 Q. And what was the approximate weight of this substance?

12 A. May I look at my notes?

13 Q. Sure.

14 A. When I weighed it, it was approximately .8 grams.

15 Q. Was Tumblin searched after he gave you the substance?

16 A. Yes, he was.

17 Q. And did you search him?

18 A. I did.

19 Q. Did you search him in the manner you described
20 earlier?

21 A. Yes, I did. I searched, you know, searched his chest
22 area, his shirt. If he has any pockets inside his shirt.
23 If he had a jacket on, I would have searched his jacket.
24 Again, his waistband, his belt, pockets, and move all the
25 way down and I search his, you know, his legs and I also

1 search his socks and shoes.

2 Q. Was he continuously in the presence of Drug Unit
3 officers before you searched him?

4 A. Yes, ---

5 MR. MATTHEWS: I objection to leading questions.

6 THE COURT: I sustain the objection.

7 Rephrase your question.

8 Q. Was anyone with him prior to you searching him?

9 A. Yes, he was. Somebody was with Mr. Tumblin the entire
10 time.

11 Q. Who? Who would that somebody have been with?

12 A. It was myself and also I believe Sergeant Lubben was
13 in there at one point. I recovered the crack, Sergeant
14 Lubben went in --

15 MR. MATTHEWS: Your Honor, objection to the referring
16 of crack.

17 THE COURT: Rephrase your answer.

18 A. I'm sorry. I recovered the substance that we had
19 purchased, placed it in the evidence bag. And he was with
20 Sergeant Lubben until I went back into the conference room
21 and then Sergeant Lubben left and at that point I searched
22 him again and also took a statement.

23 Q. Did you find any contraband or drugs on him?

24 A. I did not.

25 Q. Did you find any money on him?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-183-

1 A. No, I did not.

2 Q. Was the audio/video recording equipment removed from
3 his person?

4 A. Yes, sir, it was.

5 Q. And did that equipment produce a video recording?

6 A. Yes, sir, it did.

7 Q. Have you watched that video?

8 A. I did.

9 Q. Is that what's been entered as State's Exhibit Number
10 Two?

11 A. Yes, sir.

12 Q. Did you notice a time stamp on that video?

13 A. We do have the time stamp on our videos but we do not
14 use them. It's kind of like your VCR clock. A lot of
15 times, you know, if the battery dies on our equipment, you
16 would have to go in and reset it so just having to do that
17 multiple times due to it's not like a VCR. The buttons
18 are on it. You have to plug it into the computer and kind
19 of program every thing. We just do not use the time and
20 date stamp on any of our recording equipment in the Drug
21 Unit.

22 Q. What date did this investigation actually occur?

23 A. This date occurred on March the 5th, 2013.

24 SOLICITOR SHELTON: Beg the Court's indulgence..

25 (PAUSE.)

1 Q. Investigator, I'm handing up to you what's been marked
2 for identification as State's Number Three, Five and Nine.
3 Would you please take a moment to look at those.

4 Do you recognize those items?

5 A. I do. Yes, sir.

6 Q. And what are they?

7 A. One picture is a still shot from our camera which
8 captured Mr. Agurs inside of his vehicle --

9 MR. MATTHEWS: Your Honor, I'm going to object. He is
10 publishing a photograph that has not been entered into
11 evidence; just to the jury.

12 THE COURT: I sustain the objection. They are not in
13 evidence so don't publish them at this point.

14 Q. Investigator, if you would please, you simply look at
15 those and answer my questions and then if they are
16 admitted, we will show them to the jury.

17 A. Yes, sir.

18 Q. Continue.

19 A. One is a picture of Mr. Agurs taken from a still shot
20 of our video camera. Another picture is a picture of the
21 money that we had issued our informant. Another picture is
22 a hand with a substance that we had purchased from Mr.
23 Agurs.

24 Q. And you said that they are still shots. What does
25 that mean?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -185-

1 A. It's just a frame from our video that we made. Just
2 made it into a picture.

3 Q. So it's like pausing the video and making a picture of
4 it from the video?

5 A. Correct. Yes, sir.

6 Q. So these pictures are actually from the video that's
7 in evidence as State's Number Two?

8 A. That is correct.

9 Q. And Number Three - Well hang on just a second. Before
10 I ask you questions about it, are the pictures true and
11 accurate as pictures from the video in State's Number Two?

12 A. Yes, they are.

13 SOLICITOR SHELTON: Your Honor, at this time I would
14 move to admit these as State's Exhibits.

15 MR. MATTHEWS: Your Honor, I'm going to object. I
16 have some issues to take outside in camera on these.

17 THE COURT: I'm going to let the jury go to the jury
18 room while we take up some matters of law.

19 (JURY EXITS COURTROOM AT 11:54 A.M.)

20 THE COURT: All right.

21 MR. MATTHEWS: Your Honor, before we go into these
22 issues, he has not stated on the record that he was the one
23 that drew these photographs off of the video. Also, the
24 video is very clear that there is a time stamp on it. At
25 least two of those photographs do not have any time stamps

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -186-

1 on it at all, which would indicate the third picture, which
2 is the last picture, does actually have the time stamp from
3 the video on it. Those first two pictures do not have at
4 all - any indication at all that they came from this video.
5 He has not testified whether or not he was the one who took
6 the still pictures off the video.

7 I would submit under Rule 901, he has not testified to
8 the information that would authenticate these photographs
9 from this video.

10 SOLICITOR SHELTON: Your Honor -

11 THE COURT: Would the State make a proffer?

12 SOLICITOR SHELTON: Excuse me?

13 THE COURT: Would you like to make a proffer?

14 SOLICITOR SHELTON: Make a proffer? Yes, sir. I can
15 but I as a matter of law I think if you allow me to argue
16 in response, I don't believe --

17 THE COURT: Go ahead. Go ahead.

18 SOLICITOR SHELTON: I don't believe there's anything
19 in the rules that require any showing of who made the
20 stills. Investigator Harrelson testified that he watched
21 the video and he's testified that these are still shots
22 from that video. It's very clear that they are from the
23 same video. The video was published to the jury before.
24 The only one that would - it was so quick it's hard to see
25 is the last one that does have the time stamp, the picture

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-187-

1 of who we believe to be Mr. Agurs and the picture of money
2 are on the screen for a period of time where anyone
3 watching the video can see that this is simply for the
4 convenience of the jury and being able to present the
5 State's case in a useable, presentable manner since these
6 videos are so swift some times.

7 THE COURT: I believe he did testify that these did
8 come from Exhibit Number Two, which was the video. I don't
9 think he has to testify that he is the one who captured
10 them, so to speak, but he has testified that that's where
11 they came from. If you have some evidence that they did
12 not and you can certainly use that in cross examination so
13 I overrule your objection.

14 Bring in the jury. Bring in the jury.

15 MR. MATTHEWS: Your Honor, while we are on the record
16 before the jury comes in, I would ask that he refrain from
17 his statement that the first picture was the picture of Mr.
18 Agurs. Identification solely to their --

19 THE COURT: I sustain the objection. I tried to
20 interject earlier because I agree.

21 MR. MATTHEWS: Yes, sir, I understand.

22 THE COURT: I agree, I cannot refer to that as Mr.
23 Agurs because nobody has identified that as Mr. Agurs to
24 this point so that objection is sustained.

25 OFFICER HARRELSON: Do I need to rephrase?

1 THE COURT: I can't coach.

2 OFFICER HARRELSON: Yes, sir. I'm sorry.

3 (JURY REENTERS COURTROOM AT 11:59 A.M.)

4 THE COURT: You may proceed.

5 SOLICITOR SHELTON: Thank you, Your Honor.

6 Q. Investigator Harrelson, --

7 SOLICITOR SHELTON: Your Honor, for the record, I
8 would like to move State's Exhibit's Number Three, Five and
9 Nine into evidence.

10 THE COURT: Over objection they are admitted into
11 evidence.

12 (WHEREUPON, STATE'S EXHIBIT NUMBERS THREE, FIVE AND
13 NINE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR SHELTON: At this time, I would like to
15 publish those exhibits to the jury.

16 THE COURT: You may.

17 (WHEREUPON, STATE'S EXHIBITS NUMBER THREE, FIVE AND
18 NINE PUBLISHED TO THE JURY.)

19 Q. Investigator, I'm showing what's been entered as
20 State's Number Five. Do you recognize this?

21 A. Yes, sir. It's a picture of some of the confidential
22 funds that were issued to the confidential informant.

23 Q. Is this picture from the buy video that's State's
24 Number Two?

25 A. Yes, sir, it is.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-189-

1 Q. And having reviewed that video, can you tell the jury
2 what part of the time line this picture is from?

3 A. Time line?

4 Q. Yeah. In particular, who, what, when, where is kind
5 of what I am getting at. What part of the video is this
6 picture from?

7 A. Yes. I believe this is when our informant was inside
8 the vehicle with our target.

9 Q. And in your review of the video, would these funds
10 have been - whose hands were these funds in at the time of
11 this picture?

12 A. Our confidential informant.

13 Q. I'm now showing what's been entered as State's Number
14 Nine. Do you recognize this?

15 A. Yes, sir. That is a picture of the substance that we
16 had purchased.

17 Q. And do you know where in the video this picture was
18 retrieved from? What part of the video?

19 A. It was towards the end when the confidential informant
20 was in the vehicle with Officer Ervin.

21 Q. And in your review of the video, are you able to
22 determine whose hand that is holding the substance?

23 A. Yes. That is our confidential informant's hand.

24 Q. Did you watch the buy video that day?

25 A. Yes, I did.

1 Q. And were you able to identify the driver of the
2 vehicle?

3 A. Yes, sir, I was.

4 Q. Did you know that individual prior to that day?

5 A. Yes. I had dealt with him before when I was on the
6 Street Crimes Unit with the City of Rock Hill.

7 MR. MATTHEWS: Objection, Your Honor. Based on prior
8 ruling I have a motion.

9 THE COURT: All right. Let me let the jury go to the
10 jury room again while I take up a matter of law.

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

12 THE COURT: Mr. Matthews.

13 MR. MATTHEWS: Your Honor, prior to the trial being
14 started there was a discussion in the pre-trial motions
15 about - no discussions about any prior contact or prior
16 knowledge of my client other than they knew him. The CI
17 was instructed specifically not to testify that he knew him
18 from prior drug transactions or anything of that nature, or
19 anybody to discuss prior contact other than just the
20 general idea of prior contact.

21 This officer is now brought into the issue before any
22 decisions were made whether or not my client is going to
23 testify or not as to the issue that he has had prior
24 contact with my client because through the street crimes
25 division. And Your Honor, that I would submit is very

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON -191-

1 prejudicial and is against the prior discussions and
2 rulings that we've had in this case. Therefore, Your
3 Honor, I am going to ask that the - that we declare a
4 mistrial because he's brought in information that - as to
5 my client's past history.

6 THE COURT: Mr. Shelton, he makes a good point.

7 SOLICITOR SHELTON: Your Honor, I would call the
8 courts attention to exactly what was said. Knew him from
9 prior dealings with street crimes unit. He didn't say in
10 what context.

11 THE COURT: Street crimes? I mean how much more of
12 context do you need?

13 SOLICITOR SHELTON: Well - he could have been a
14 witness. He could - like there is any number of things. I
15 mean there's no indication of any prior drug activity.
16 There is no indication of any - any prior crimes at all. I
17 would suggest that if a curative instruction could remedy
18 any proceeding prejudice, there has been simply no
19 suggestion that Mr. Agur's was accused of any other crime
20 in any of those prior dealings.

21 Officers have contact with individuals on a daily
22 basis that are not charged with crimes. So there is
23 nothing in what he said prior dealings with him - as an
24 officer of the street crimes unit that - that says he was a
25 - a criminal or convicted, or even charged with anything in

1 those dealings.

2 THE COURT: I don't agree with that. I think it's
3 pretty - The implication - he didn't mean it as an
4 implication to the jury - is certainly that his - He is a
5 law enforcement officer and dealing with street crimes. He
6 dealt with the Defendant in that context so I - I don't buy
7 that the jury would think well he just happened to see him
8 when he run out for ice cream or something. But, I am not
9 going to grant a mistrial because I don't believe there is
10 any manifest necessity based on that one interjection.

11 I will be glad to give a curative instruction although
12 I don't - Well, I'm not going to give a curative
13 instruction, because I believe that would just call
14 attention to it. But I am going to deny the Motion for a
15 Mistrial. I don't believe there is any manifest necessity
16 based on that one comment.

17 MR. MATTHEWS: Your Honor, if I may, in the context of
18 the ruling. Your Honor, the issue is that I agree that
19 common jurors being common folks is going to infer that
20 there has been prior - the prior contact that in an arrest
21 and therefore that information is more prejudicial than
22 probative. I agree with the Court that a curative
23 instruction would only bring it - bring it back to their
24 attention. However, I think that with the cat out of the
25 bag, I think that because we don't have a curative

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -193-

1 instruction that the jury will consider those, that piece
2 of information in deciding whether or not my client is
3 guilty of the charge or not.

4 The severity of the possible sentencing - or not the
5 possible sentencing, the sentencing in this case if
6 convicted is severe enough that in all abundance of
7 caution, I would request that a mistrial so that we have a
8 clean record before the jury for them to make a decision
9 without any undue influence by a statement of prior
10 connection with the Street Crimes Division.

11 THE COURT: Well you took the inference one step
12 further than I take it, and you indicated that you felt
13 that that would - be an inference that he was arrested. I
14 don't think it's quite an inference that he was arrested,
15 just that there was interaction between this officer and
16 Mr. Agurs regarding street crimes.

17 I don't know that that in of itself, we suppose these
18 are in the jury's mind or we suppose that there was an
19 arrest made, but I'm going to deny the motion. Again, I
20 don't feel a manifest necessity to grant a mistrial. But I
21 will ask the witness not to make any such references again
22 or there will be a mistrial.

23 OFFICER HARRELSON: Yes, Your Honor.

24 THE COURT: Bring in the jury.

25 And after that last comment, unless the door is open

1 to make such a comment.

2 MR. MATTHEWS: I understand.

3 (JURY REENTERS COURTROOM AT 12:09 P.M..)

4 THE COURT: You may proceed.

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

7 THE COURT: Yes.

8 BY SOLICITOR SHELTON:

9 Q. Investigator, you testified that you have known the
10 person convicted in the video - the other person. How long
11 had you known that person?

12 A. Five years approximately.

13 Q. Did you know that person's name?

14 A. Yes I did.

15 Q. And what was that name?

16 A. Dominique Agurs.

17 Q. Had you seen him face to face prior to March 5th,
18 2013?

19 A. Yes, sir, I have.

20 Q. And did you get a good look at him?

21 A. Yes, I did.

22 Q. Do you see the man you know as Dominique Agurs in the
23 courtroom today?

24 A. Yes, sir, I do.

25 Q. Please point him out for the jury.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -195-

1 A. The gentleman there in the white - excuse me - the
2 black, red and gray striped shirt.

3 Q. And is it your testimony that that's the same man you
4 saw in the video State's Number Two.

5 A. Yes, sir, it is.

6 Q. Prior to watching the video, did you know the identity
7 of the person Tumblin described as D.J.?

8 A. No, I did not.

9 Q. After watching the video, did you know that person's
10 identity?

11 A. Yes, sir, I did.

12 A. And did you prepare group of six photographs for
13 Tumblin to view?

14 A. Yes, sir, I did.

15 Q. Was one of those photographs a picture of Dominique
16 Julius Agurs?

17 A. Yes, sir, it was.

18 Q. Is that collection of six photographs commonly
19 referred to as a photo lineup?

20 A. Yes, sir, it is.

21 Q. Investigator, I'm handing to you what's been marked
22 for identification in State's Exhibit Number Four.

23 Please take a moment to look over that item.

24 A. Yes, sir.

25 Q. Do you recognize that item?

1 A. Yes, sir, I do.

2 Q. What is it?

3 A. It's the photograph lineup that I had shown our
4 confidential informant.

5 Q. Is this the original lineup?

6 A. Yes, sir, it is.

7 Q. And is it the actual lineup you showed Tumblin on
8 March 5th, 2013?

9 A. Yes, sir, it is.

10 Q. How many pages are in that exhibit?

11 A. There's three pages.

12 Q. And the first page, is that the page that includes the
13 photographs?

14 A. Yes, sir, it is.

15 Q. Is that the only page you showed Tumblin?

16 A. Yes, sir, it is. I did show him the last page
17 afterwards. It is a - a page that's the Drug Unit that we
18 actually do stating that he freely and voluntarily picked
19 out - whoever he picked out out of the lineup, that we did
20 not force or coerce him.

21 Q. Was he shown that last page after making a selection
22 from those six photographs?

23 A. Yes, sir, he was.

24 Q. And did he sign that last page?

25 A. Yes, sir, he did.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -197-

1 Q. The first page, does it appear to have any markings on
2 it?

3 A. Yes, sir, it does.

4 Q. Were those markings there when you handed it
5 originally to Tumblin?

6 A. No, sir.

7 Q. Who made those markings?

8 A. Mr. Tumblin did.

9 Q. And what do those markings reflect?

10 A. He circled the photograph that he picked out. He also
11 initialed it and then signed it at the bottom and placed
12 the date.

13 Q. And did you take possession of that picture page after
14 he indicated his selection?

15 A. Yes, sir; I did.

16 Q. And at that time is that when you showed him the third
17 page regarding the statement and about free and voluntarily
18 selecting?

19 A. Yes, sir, that is correct.

20 Q. And he signed that third page?

21 A. Yes, sir, he did.

22 Q. What is the second page?

23 A. The second page is a list of the names and
24 descriptions of all the suspects in our lineup.

25 Q. Was he - Was Tumblin ever shown that page?

1 A. No, sir, he was not.

2 Q. Was that for your record keeping purposes?

3 A. Yes, sir, it is.

4 Q. And did you add that page into what's marked as
5 State's Number Four after Tumblin made his selection?

6 A. Yes, sir, that is correct.

7 Q. And is that the same condition now as when you
8 finalized the packet for your case file?

9 A. Yes, sir. it is.

10 SOLICITOR SHELTON: Your Honor, I would move to have
11 this exhibit admitted into evidence.

12 MR. MATTHEW: Your Honor, still the same objection
13 made based on Neil versus Biggers.

14 THE COURT: Over objection I allow it in.

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

17 SOLICITOR SHELTON: Your Honor, at this time I would
18 request to publish the photo page of State's Number Four.

19 THE COURT: You may.

20 (STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO THE JURY AT
21 12:15 P.M..)

22 Q. Investigator Harrelson, I'm showing on the projector
23 what's been admitted as State's Number Four.

24 Is this the photo page that you showed Mr. Tumblin?

25 A. Yes, sir, it is.

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON -199-

1 Q. And is the photo on the bottom right corner the
2 selection he made?

3 A. Yes, sir, it is.

4 Q. And is there a date underneath the signature line
5 there?

6 A. Yes, sir. Mr. Tumblin put 3-5 of 2012, which at the
7 time I did not catch it and it was actually - the date was
8 2013 instead of 2012.

9 Q. So it was still 3-5-13?

10 A. Correct. Yes, sir.

11 Q. How did you prepare this lineup?

12 A. When I recognized the gentlemen in our video I can
13 plug into - his name into our computer database, and it
14 will actually bring up some two hundred odd pictures
15 matching his description. And then out of those pictures,
16 I will select the ones that closely resemble him as far as
17 - you know - skin tone, facial features, hair style, and I
18 will put that lineup together and then it prints it - both
19 pages out for me.

20 Q. Did you show Tumblin the buy video prior to showing
21 him the lineup?

22 A. No, sir, I did not.

23 Q. Where were you when you showed - where were you and
24 Tumblin when you showed him the lineup?

25 A. We were in a conference room together.

1 Q. At the Rock Hill Police Department?

2 A. Yes, sir, we were.

3 Q. At the Drug Unit?

4 A. Yes, sir.

5 Q. And did you have him show - see the lineup that same
6 day?

7 A. Yes, I did.

8 Q. Did you show him the lineup before or after the drug
9 buy?

10 A. It was after the buy.

11 Q. Was anyone else present with you when you showed him
12 the lineup?

13 A. No, sir, they were not.

14 Q. What, if anything, did you say to Tumblin before
15 showing him this lineup?

16 A. I simply asked him to take a look at these six photos.
17 The suspect may or may not be in the photos; to look at his
18 facial features, that the age or of course weight may be a
19 little bit different than what he had just remembered.

20 Q. Did you say or do anything to suggest to Tumblin what
21 photo to select?

22 A. No, sir.

23 Q. Did anyone else?

24 A. No, sir.

25 Q. Whose photograph did Tumblin select?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-201-

1 A. Dominique Agurs.

2 Q. After the buy and the lineup, did you seek an arrest
3 warrant for Dominique Julius Agurs?

4 A. Yes, sir, I did.

5 Q. Was that for the charge of distribution of crack
6 cocaine from March 5th, 2013?

7 A. Yes, sir.

8 Q. Were you the affiant on that warrant?

9 A. I am.

10 Q. Was it signed by a magistrate or a municipal judge?

11 A. Yes, sir. It was signed by a magistrate.

12 Q. And was Agurs arrested on that warrant?

13 A. Yes, at a later date.

14 Q. What date was that?

15 A. May I go back to my notes?

16 Q. Of course.

17 A. He was arrested on 3-21-2013.

18 Q. Were you the arresting officer?

19 A. I was.

20 Q. Was he was booked into the jail?

21 A. Yes, he was.

22 Q. Was that at the Law Center in Rock Hill or at Moss
23 Justice?

24 A. He's booked in at the Moss Justice Center. We take
25 him back to the Rock Hill Police Department in which we

1 work out of to complete all of our paperwork, and then he
2 is placed in the holding facility at the Rock Hill Police
3 Department and then he's transferred to the Moss Justice
4 Center where he's actually booked in.

5 Q. And were you the booking agent at the jail at Moss
6 Justice Center?

7 A. Not at the Moss Justice Center. No.

8 Q. At the Rock Hill Law Center?

9 A. At the Rock Hill Police Department, I was. I fill out
10 a booking sheet.

11 Q. Okay. And during that booking process, are there a
12 series of standard questions that you ask individuals who
13 have been arrested?

14 A. Yes. Yes, sir.

15 Q. And did you ask Agurs that series of standard
16 questions?

17 A. I did.

18 Q. And are those questions more like identifying
19 questions?

20 A. Yes, they are.

21 Q. And was that information documented?

22 A. It was.

23 Q. Did the man arrested identify himself?

24 A. He did. He identified himself as Dominique Agurs.

25 Q. What's his middle name?

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON

-203-

1 A. Julius.

2 Q. Did he give you - Hang on just a second.

3 Investigator, I want to show you what's been marked as
4 State's Exhibits Number Seven and Eight. Please take a
5 look at those without showing them to the jury.

6 Do you recognize those photographs?

7 A. Yes, sir, I do.

8 Q. Do you recognize the person in those photographs?

9 A. Yes, sir, I do.

10 Q. And is the - Are both exhibits the photograph of the
11 same person?

12 A. Yes, they are.

13 Q. Who is that person?

14 A. Dominique Julius Agurs.

15 Q. And is it a fair and accurate photograph of how Mr.
16 Agurs looked when you arrested him on March 21st, 2013?

17 A. Yes, sir, it is.

18 Q. During the booking process, did Mr. Agurs tell you a
19 phone number?

20 A. Yes, sir, he did.

21 Q. And indicating it was his phone number?

22 A. Yes, sir.

23 Q. Is that one of the standard booking questions?

24 A. It is. Yes, sir.

25 Q. And did you document that number on the booking

INVESTIGATOR LELAND HARRELSON: DIRECT BY SOLICITOR SHELDON
CROSS BY MR. MATTHEWS

-204-

1 report?

2 A. Yes, sir, I did.

3 Q. What number did he give you?

4 A. Can I look at my notes?

5 Q. Sure.

6 A. The number he gave me was 554-0295.

7 Q. And is that the same number Mr. Tumblin had called on
8 March 5th, 2013 to set up the drug deal?

9 A. Yes, sir, it was.

10 Q. Did all these events occur within the city limits of
11 Rock Hill?

12 A. Yes, they did.

13 Q. In York County, South Carolina?

14 A. Yes, sir.

15 SOLICITOR SHELTON: Thank you. Please answer any
16 questions Mr. Matthews may have for you.

17 THE COURT: Mr. Matthews.

18 CROSS-EXAMINATION

19 INVESTIGATOR LELAND HARRELSON BY MR. MATTHEWS:

20 Q. I believe we had already established that whenever you
21 were involved in the case that Mr. Tumblin wanted some
22 benefit from working with the police; is that correct?

23 A. That is correct.

24 Q. And that you all searched him; didn't have anything on
25 him?

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-205-

1 A. That is correct.

2 Q. What time did he get to the Rock Hill Police
3 Department?

4 A. May I take a look at my notes?

5 Q. Sure.

6 A. He arrived at the police department just a little bit
7 after two in the afternoon.

8 Q. Okay. And when was he searched?

9 A. He was searched at approximately 2:43 in the
10 afternoon.

11 Q. So he was there approximately thirty to forty minutes?

12 A. Yes, sir.

13 Q. And did you meet with him at all during that period of
14 time?

15 A. Yes, sir, I did.

16 Q. And you indicated you were not involved in the search
17 previous to him going to the truck where Officer Ervin was
18 located?

19 A. That is correct.

20 Q. Do you know who was involved in that search?

21 A. Sergeant Lubben.

22 Q. Was anybody with him?

23 A. Not to my knowledge.

24 Q. Was there any documentations placed in your file or
25 anybody's file indicating how they searched him and whether

1 they found anything?

2 A. No, sir.

3 Q. Okay. So there is nothing to document either visually
4 or in documentation how that search occurred?

5 A. No, sir. We simply - we document on our paperwork
6 that he was searched and who he was searched by.

7 Q. But that's it?

8 A. Yes, sir. That is correct.

9 Q. And that there is no documentation or audio, visual or
10 documentation, as to when in the procedures when Ervin
11 checked the truck?

12 A. Again, we go back on the same paperwork and document
13 who searched the vehicle and at what time.

14 Q. But there is no other paperwork that would just show
15 that where she searched, what she did, and what she found
16 or didn't find?

17 A. No, sir.

18 Q. It's the same thing with a search of the CI. There is
19 nothing to show how they searched him, what he was wearing,
20 what his condition was, what they searched, and whether
21 they found anything?

22 A. We do documents - No. That is correct.

23 Q. Okay. Now, you indicated that your involvement once
24 he gets, once Mr. Tumblin gets in the truck, you get into
25 your vehicle and follow him?

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-207-

1 A. That is correct.

2 Q. And you indicated to the jury earlier that you are in
3 your vehicle. Is anybody else in your vehicle?

4 A. Yes, sir.

5 Q. Who else is in your vehicle?

6 A. I had another officer with me, Investigator
7 Faulkenberry.

8 Q. Okay. So Officer Faulkenberry is in the vehicle with
9 you but you are the driver?

10 A. That is correct.

11 Q. All right. And you indicate you parked at the daycare
12 center on - a little bit further down Saluda Road?

13 A. Yes, sir. That is correct.

14 Q. Now, isn't it true or help me understand, there is a
15 car wash on the corner of Heckle and Saluda Road. Correct?

16 A. I think it's a gas station at the corner of Heckle and
17 Saluda.

18 Q. Well, there's a gas - there is a car wash right behind
19 it?

20 A. That is correct. Yes, sir.

21 Q. Okay. And it used to be called and may still be
22 called the Tomato Place.

23 A. I'm not sure about that.

24 Q. Okay. Well, you've been here for how - you said you
25 worked for six years at Rock Hill Police Department.

1 Correct?

2 A. That is correct.

3 Q. All right. Now, and you are familiar that right down
4 from the car wash is there any obstruction, any trees or
5 anything like that between the car wash and the daycare
6 center?

7 A. Yes, sir. There are some trees.

8 Q. Okay. And we have the daycare center. How far off
9 the road is the daycare center sitting?

10 A. It's right on the - The parking lot is right in front
11 up close to the road and then the building sits back off of
12 it just a little bit.

13 Q. Now in that parking lot, that parking lot extends
14 through the whole front of the building. Correct?

15 A. That is correct.

16 Q. And where was your vehicle at?

17 A. In the front parking lot of the daycare center.

18 Q. Okay. But where in the front parking lot? Closer to
19 the trees or to the other side of the parking lot?

20 A. I don't recall exactly, the exact location of where I
21 had parked in the parking lot.

22 Q. And but your intent was that not - was there any other
23 cars in the parking lot?

24 A. Yes, sir, there were.

25 Q. Was there any children in the daycare center?

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-209-

1 A. No, sir. There weren't any children out in the
2 parking lot.

3 Q. All right. So you are sitting at the parking lot and
4 are you facing the road or parked away from the road?

5 A. My vehicle is - I'm parked where my rear of my vehicle
6 is facing the road.

7 Q. Okay. So the rear of your vehicle is facing the road
8 and so would you agree with me that the daycare center is
9 further down Saluda Street than Burger King is?

10 A. Yes, sir. That is correct.

11 Q. All right. So you are sitting in the driver's seat.
12 Correct?

13 A. That is correct.

14 Q. That seat would be the farthest away from Burger King?

15 A. Yes, sir. That is correct.

16 Q. And so you would have to twist around and look out the
17 back window or the back passenger window to be able to see
18 anything in the parking lot?

19 A. Yes, sir. I laid my seat all the way down to where
20 I'm able to kind of swivel over and look out of the rear
21 window of my vehicle.

22 Q. Okay. And how far away would you say you were?

23 A. Approximately half a block.

24 Q. And where was Mr. Tumblin standing at the Burger King?

25 A. In the front of the Burger King.

1 Q. And that's what you're saying we are going to see in
2 the video itself?

3 A. Yes, sir. It was the side that was facing Saluda
4 Street.

5 Q. And you saw a vehicle drive up?

6 A. Yes, sir, I did.

7 Q. Okay. Now, if I remember correctly, and please
8 correct me if I'm wrong, but earlier you indicated that
9 because the change up, you got to the parking lot, Mr.
10 Tumblin had already gotten to the Burger King?

11 A. That is correct.

12 Q. So you saw nothing that happened from the time he left
13 the Dollar General as he walked down the street and went to
14 the Burger King?

15 A. That is correct.

16 Q. And you indicated that after everything was said and
17 done, your focus was on the vehicle that was leaving?

18 A. That is correct.

19 Q. So while you are watching that vehicle, is your
20 attention directed away from Mr. Tumblin walking down back
21 down toward the Dollar General?

22 A. I saw Mr. Tumblin leave and then I was focused on the
23 vehicle and that's why we have multiple units out on the
24 surveillance team so another surveillance - another officer
25 would pick up something else if I had to focus my attention

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-211-

1 on something else and vice versa if they had to do the
2 same.

3 Q. But you indicated when you testified earlier, that you
4 indicated whenever you saw Mr. Tumblin at - you saw a car
5 drive up and you saw him getting in the car.

6 A. That is correct.

7 Q. But you couldn't see who was in the car.

8 A. That is correct.

9 Q. How you mentioned you saw an exchange but you are so
10 far away if you didn't - that's not accurate. You couldn't
11 see what was inside the car. Correct?

12 A. I don't believe I said I saw an exchange. I believe I
13 said I heard on the audio what was to be an exchange.

14 Q. All right. But you heard loud music?

15 A. Yes, sir, I did.

16 Q. You don't have an automatic feed on the video.
17 Correct?

18 A. No, sir, we do not.

19 Q. So you couldn't see what was going on inside the car?

20 A. That is correct.

21 Q. You couldn't see who the person was in the driver's
22 seat?

23 A. That is correct.

24 Q. Now, you indicated through your testimony that when
25 you answered questions about the video camera, the video

1 camera was placed on Mr. Tumblin by who?

2 A. By myself and Sergeant Lubben.

3 Q. Okay. And that you gave Mr. Tumblin instructions
4 about what you all wanted to see on the video. Correct?

5 A. Yes, sir. We try to tell him how to point the best
6 that he can. We don't want him to be too obvious, but try
7 to tell him to direct his body into the location where the
8 person is sitting.

9 Q. Okay. And to try to get as much information on the
10 video as possible?

11 A. Yes, sir, that is correct.

12 Q. And you indicated - Of course, he is not an expert,
13 but did you give him instructions about trying to get
14 whatever drugs he may be getting in front of the camera so
15 it can be seen?

16 A. No, sir, I didn't. I don't go into a lot of detail
17 because he has a lot that's going on, so I really just try
18 to tell him to position his body to where whoever he's
19 dealing with, that he's facing.

20 Q. But you would agree that would be the best scenario
21 would it not?

22 A. It would be, but at the time, you know, there is a lot
23 that's going on. You know, he's working with the police.
24 The stress of that. The stress of, you know, him being
25 found out that he is cooperating with law enforcement. I

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-213-

1 try to point them in a general area. I don't want to
2 overload them with too much information, but I want them to
3 try to capture the best possible video that they can.

4 Q. Now, you indicated that the arrest was made on March
5 21st. Correct?

6 A. Yes, sir, that is correct.

7 Q. About seventeen days later?

8 A. Yes, sir.

9 Q. And the photograph of the funds that you've entered
10 into evidence, that was taken prior to any transaction that
11 may have occurred?

12 A. Yes, sir, that is correct.

13 Q. The substance that you indicated that you took into
14 evidence, was it field tested?

15 A. No, sir, it was not.

16 Q. Okay. And explain to the jury what is field testing.

17 A. We do have a small kit that we can put a sample inside
18 of the field test and actually test to see if it tests
19 positive for cocaine or not.

20 Q. And in this particular situation, it was not field
21 tested?

22 A. No, it was not. With my training and experience, I
23 believe that that substance was crack.

24 Q. But it was not verified at the time of this particular
25 - when you searched Mr. Tumblin?

- 1 A. Can you repeat that, please?
- 2 Q. You didn't verify it. You didn't do a field test?
- 3 A. When I searched Mr. Tumblin?
- 4 Q. When you searched him after everything was said and
5 done and you put the substance in, before you put it into
6 the baggy, you didn't verify it?
- 7 A. That is correct. I did not field test it.
- 8 Q. Now you would agree with me that the video that was
9 shown I believe yesterday during trial, there is a time
10 stamp on it. I believe you testified to it a few minutes
11 ago.
- 12 A. Yes, sir, that is correct.
- 13 Q. And it showed January 16th, 2007?
- 14 A. I'm not sure of the date, but the date does not match
15 up on when we did the video.
- 16 Q. Okay. All right. So that's at the bottom, very
17 prominent at the bottom of the video. Correct?
- 18 A. Yes, sir, it is.
- 19 Q. Is there anything else on that video at any point in
20 time that would indicate that it was March 15th of 2013?
- 21 A. No, sir. Not to my knowledge.
- 22 Q. Knowing that the time stamp is wrong - Well, let me
23 ask this. You knew before the video was cut on, that the
24 time stamp would be wrong?.
- 25 A. Yes, sir, that is correct.

1 Q. Okay. At no point in time during that video you all
2 didn't hold up a sign or anything else that would indicate
3 this was March 15th, 2013?

4 A. No, sir. It's not a common practice that we do that.

5 Q. But you understand why - You understand the concern.
6 The concern is that the burden of proof is here and there
7 is nothing on this video indicating the time.

8 A. Yes, sir. Our command staff has decided that we are
9 not going to go back and reset the time/date stamp on every
10 single time just due for time.

11 Q. Well, I understand not setting it for every single
12 time. You've indicated you do four hundred of these in a
13 given year so it would be cumbersome, but you know, someone
14 stating on the front end of the video this is March 15th,
15 2013 or --

16 SOLICITOR SHELDON: Objection. Is there a question?

17 THE COURT: Rephrase it. Put a question mark on it.

18 MR. MATTHEWS: Yes, sir.

19 Q. So you all made the decision - Is it my understanding
20 that you all made the decision not to put any
21 identification on this video or any video as to the date?

22 A. It is not a common practice that we do at this point.

23 Q. On the two photographs that were put into evidence
24 which, and let me make sure I state for the record which
25 one.

1 MR. MATTHEWS: May I approach, Your Honor.

2 Q. On State's Exhibit Number Three, is there a time stamp
3 at the bottom of that photograph?

4 A. No, sir, there is not.

5 Q. And on Exhibit Number Five, is there a time stamp at
6 the bottom of that photograph?

7 A. No, sir, there is not.

8 Q. But you are indicating to the jury that those two
9 photographs were taken from this particular video?

10 A. That is correct. I am not the one that took the
11 photos.

12 Q. You are not the one that took the photos did you?

13 A. I am not the one that made these still copies.

14 Q. Okay. But wouldn't you agree that if they came from
15 this video that the time stamps would be on those
16 photographs?

17 A. I would have to go back and review the video with the
18 software that was used. I can imagine maybe it would have
19 been cut out. I'm not sure because again, I'm not the one
20 that made the pictures.

21 Q. So these photographs, you're saying - Well then, how
22 do you know those photographs came from this video if you
23 didn't take those pictures?

24 A. It looked - From the video that I watched after the
25 buy and also what I reviewed before court, it appears to be

1 from the video that was made on the date.

2 Q. Is there anything on those videos -- on those two
3 pictures, that indicate that they came from March 15th of
4 2013?

5 A. No, sir, there is not.

6 Q. Is there -- Is the time stamp from this video on those
7 two photographs?

8 A. No, sir. Not those two photographs.

9 Q. Now, on Exhibit Number --

10 MR. MATTHEWS: I apologize, Your Honor.

11 Q. On Exhibit Number Five, can you look at that
12 photograph for me please?

13 A. Yes, sir.

14 Q. Now, what kind of car did you all indicate was the
15 type vehicle that was used? That -- Let me rephrase it.
16 Let me be more specific.

17 The car that drove up to the Burger King that you
18 testified Mr. Tumblin got in, what kind of car was it?

19 A. It was a Cadillac.

20 Q. Can you look at that Exhibit Number Five for me?

21 A. Yes, sir.

22 Q. Can you tell us whether or not the key fob in that
23 picture is a Cadillac key fob?

24 A. No, sir, I cannot.

25 Q. Can you see the hand that's in the picture?

1 A. No, sir, I cannot.

2 Q. The hand that's in the picture.

3 A. No, sir. There is not a hand in this particular
4 picture.

5 MR. MATTHEWS: One moment, Your Honor.

6 Q. I want to show you another picture, okay, and I want
7 you to compare the two if you don't mind. Okay?

8 A. Yes, sir.

9 SOLICITOR SHELTON: Your Honor, may we approach.

10 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
11 THE JURY AT 12:40 P.M..)

12 BY MR. MATTHEWS:

13 Q. And I show you a picture for identification.

14 A. Yes, sir.

15 Q. Can you identify the picture I just handed you?

16 A. It is just a smaller copy of the original picture that
17 I had. This is kind of zoomed out a little bit.

18 Q. It's zoomed out a little bit?

19 A. Yes, sir, it is.

20 MR. MATTHEWS: Your Honor, I would like to submit this
21 picture as an exhibit for the defense.

22 SOLICITOR SHELTON: May I look at it, sir?

23 (SOLICITOR SHELTON REVIEWING EXHIBIT.)

24 SOLICITOR SHELTON: No objection, Your Honor.

25 THE COURT: In without objection.

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS

-219-

1 MR. MATTHEWS: It would be marked as Number One, Your
2 Honor.

3 (WHEREUPON, DEFENSE EXHIBIT NUMBER ONE, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 BY MR. MATTHEWS:

6 Q. Defense Number, Exhibit Number One you said was an
7 expanded picture of the one that's been marked as Number
8 Five for the State; is that correct?

9 A. Yes, sir, that is correct.

10 Q. In that photograph, do you see a hand?

11 A. Yes, sir, I do.

12 Q. In Defense Exhibit Number One, can you indicate the
13 color of a hand of the person's - of the person's hand in
14 that photograph?

15 A. A white, Caucasian person.

16 Q. Is it based on your view of that picture, does it
17 appear that the hand is on the driver's side of the
18 vehicle?

19 A. Yes, sir, it is. Seeing this different picture now,
20 it appears to me that this picture was taken inside the
21 confidential - excuse me, the vehicle that was used with
22 the confidential informant instead of the vehicle where the
23 buy actually took place.

24 Q. So you are now indicating that that was not a
25 photograph from inside the white Cadillac?

1 A. Yes, sir, that is correct.

2 Q. So you were mistaken previously?

3 A. Yes, sir, that is correct.

4 Q. Now on the photo lineup that you had, you indicated
5 that you had approximately two hundred pictures that kind
6 of met the criteria that you put into the computer?

7 A. Yes, sir, that is correct.

8 Q. Now, the computer to get these two hundred pictures,
9 why do you ask for two hundred pictures?

10 A. I don't. It's just what the computer gives me.

11 Q. Do you know why the computer gives you two hundred
12 photographs?

13 A. I would imagine that two hundred some-odd photographs
14 that match the description that you are looking for.

15 Q. But the final process is you pick the five pictures
16 out.

17 A. Yes, sir, that is correct.

18 Q. And you make the final decision which five pictures,
19 or actually which six pictures you are going to use.

20 Correct?

21 A. Well, one picture is chosen for me of the suspect and
22 I choose the other five.

23 Q. All right. And you agree that you are trying your
24 best to get as many photographs in that photo lineup that
25 are similar in nature. Correct?

1 A. Yes, sir, that is correct.

2 Q. And looking at the photo lineup that's been placed
3 into evidence, would you not agree with me that there are
4 two individuals in that photo lineup that are lighter
5 skinned than the other four?

6 A. Yes, sir, that is correct.

7 Q. But out of two hundred, you could have picked five
8 individuals that are very similar in nature?

9 A. I try to pick five individuals that match. I'm
10 looking at skin tone, hair style, facial features, so it's
11 just not strictly one item I'm looking at. I'm looking at
12 a lot of different items.

13 Q. I understand, but the most obviously feature to look
14 at an individual is the skin tone. Correct?

15 A. Well I feel like hair, facial hair, as well. You
16 know, its very obvious, so those are things also that I try
17 to match. I try to match them all in general that they do
18 resemble the suspect. No every picture is going to be
19 perfect.

20 Q. Okay. But you agree that there is out of the six
21 individuals in that photo lineup, only four are, with all
22 due respect, are considered darker skinned individuals.

23 Correct?

24 A. I will say that those two are a little bit lighter
25 skinned than the other four photographs.

INVESTIGATOR LELAND HARRELSON: CROSS BY MR. MATTHEWS
REDIRECT BY SOLICITOR SHELTON

-222-

1 Q. And that would mean that Mr. Tumblin really only had a
2 choice of four individuals to look at?

3 A. No, sir, he had a total of six.

4 Q. Were you with Officer Ervin whenever she checked the
5 truck out?

6 A. No, sir, I was not.

7 Q. Okay. And were you with her - Was there anyone else
8 with the vehicle during the time frame that she indicated
9 she left the vehicle alone?

10 A. Not to my knowledge.

11 Q. And you were the only one that did the search of Mr.
12 Tumblin at the end of the day?

13 A. That is correct. At the end when we returned back to
14 the Law Center, I am the one that searched him.

15 MR. MATTHEWS: One moment, Your Honor.

16 THE COURT: Okay.

17 (PAUSE.)

18 MR. MATTHEWS: No further questions, Your Honor.

19 THE COURT: Redirect?

20 SOLICITOR SHELTON: Yes, sir, Your Honor.

21 May it please the Court.

22 REDIRECT EXAMINATION

23 INVESTIGATOR LELAND HARRELSON BY SOLICITOR SHELTON:

24 Q. Investigator, there seemed to be some confusion as to
25 where in the video State's Number Five and Defense Number

INVESTIGATOR LELAND HARRELSON: REDIRECT BY SOLICITOR SHELTON -223-

1 One came from?

2 A. Yes, sir.

3 Q. Would it be helpful for you to look at the video with
4 the jury here to determine where those still shots came
5 from in the video?

6 A. Yes, sir, it would.

7 SOLICITOR SHELTON: Your Honor, I'd like to publish
8 State's Number Two for Investigator Harrelson to review.

9 THE COURT: You gonna do the whole thing?

10 SOLICITOR SHELTON: No, sir. I actually will just
11 focus on the relevant time period.

12 THE COURT: Okay.

13 SOLICITOR SHELTON: I just need a moment to cue this
14 up, Your Honor.

15 Your Honor, for the record I'd like to note that I'm
16 beginning this video at the 17 minute, 12 second mark of
17 State's Exhibit Number Twelve[sic] and I'll play it through
18 just for a couple of moments.

19 THE COURT: Okay. The lights.

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

21 Q. Investigator Harrelson, I paused this video at the 18
22 minute, 35 second mark. Seeing this video, does that
23 refresh your recollection where State's Number Five and
24 Defense Number One are from in the video?

25 A. Yes, it does. It was the vehicle that the target was

1 in.

2 SOLICITOR SHELTON: I have no further questions, Your
3 Honor.

4 MR. MATTHEWS: Nothing further, Your Honor.

5 THE COURT: All right. You can step down. You may be
6 excused. Appreciate your time.

7 (WITNESS LEAVING WITNESS STAND.)

8 SOLICITOR SHELTON: Your Honor, we can call our next
9 witness or we can take a lunch break.

10 THE COURT: We're gonna break for lunch.

11 It's ten till one so we're gonna break until 2:15, so
12 have a pleasant lunch and we'll see you back at 2:15.

13 Thank you.

14 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:51 P.M..)

15 THE COURT: This can be off the record.

16 (COURT IN LUNCH RECESS AT 12:52 P.M..)

17 (COURT BACK IN SESSION AT 02:18 P.M..)

18 THE COURT: Thank you. Take your seats.

19 Is the State ready?

20 SOLICITOR SHELDON: Yes, sir.

21 THE COURT: Is the Defense ready?

22 MR. MATTHEWS: Yes, Your Honor.

23 THE COURT: Bring in the jury. Bring in the jury.

24 (JURY REENTERS COURTROOM AT 02:20 P.M..)

25 THE COURT: You may call your next witness.

JAMES LONG: DIRECT BY SOLICITOR SHELTON

-225-

1 SOLICITOR SHELTON: Your Honor, the State's next
2 witness is James Long.

3 MADAME CLERK: Please raise your right hand and place
4 your left hand on the Bible.

5 (WHEREUPON, JAMES LONG, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 MADAME CLERK: Thank you. You may have a seat.

8 DIRECT EXAMINATION

9 JAMES LONG BY SOLICITOR SHELTON

10 Q. Good afternoon, sir.

11 A. Good afternoon.

12 Q. Would you please introduce yourself to the jury?

13 A. My name is James Long. I am the systems technician
14 for York County Detention Center. I've been with the
15 County for fourteen years.

16 Q. I'm sorry. I missed your job title. What was that?

17 A. System technician. I'm the assistant to the keeper of
18 the records.

19 Q. And who is that?

20 A. Lieutenant Cheryl Guzman.

21 Q. And what duties do you have in that role?

22 A. I am responsible for maintaining all of our computer
23 equipment, security systems, expungements, assisting with
24 quality control on records, taking the photographs,
25 fingerprints, et cetera on an as needed basis.

1 Q. And do photographs and fingerprints have to do with
2 the booking process?

3 A. Yes, they do.

4 Q. And that's here at Moss Justice Center?

5 A. Yes.

6 Q. How long have you been in this job?

7 A. A year and three months, twenty-two days.

8 Q. Were you working this job in March of 2013?

9 A. Yes.

10 Q. And do you have access to the records kept as part of
11 your job in the booking department with the detention
12 center?

13 A. Yes, I do.

14 Q. And would you have access to records going back,
15 farther back than when you were employed in this job?

16 A. Yes.

17 Q. Was your direct supervisor Lieutenant Guzman served
18 with a subpoena for booking records related to this case?

19 A. Yes.

20 Q. And to be clear, was that in relationship to the
21 booking of Dominique Julius Agurs in March of 2013?

22 A. Yes.

23 Q. And to your knowledge, did she comply with that
24 subpoena?

25 A. She did.

JAMES LONG: DIRECT BY SOLICITOR SHELDON

-227-

1 Q. Did her - Did she send documents to the Solicitor's
2 office?

3 MR. MATTHEWS: Your Honor, I object to leading
4 questions again.

5 THE COURT: Rephrase your question.

6 SOLICITOR SHELTON: Okay.

7 Q. How did she comply?

8 A. She sent the documents via email.

9 Q. And the documents, were they photographs?

10 A. Yes.

11 Q. And are they photographs from booking?

12 A. Yes, they are from his 2013 booking.

13 Q. I want to show you what has been marked for
14 identification as State's Exhibit Number Seven and Eight.
15 Without showing this to the jury, please look at them.

16 (WITNESS REVIEWING EXHIBITS.)

17 Q. Do you recognize those photos?

18 A. Yes.

19 Q. Are those photos from the booking office?

20 A. Yes, they are.

21 Q. Are those photos kept in the normal course of
22 business?

23 A. Yes.

24 Q. And are those photos of Dominique Julius Agurs?

25 A. Yes, they are.

1 Q. Are they fair and accurate as to the photographs kept
2 on file with the detention center?

3 A. Yes.

4 Q. And were these photos that would have been taken
5 during the booking process?

6 A. Yes, they would.

7 Q. And what day was that approximately?

8 A. I would have to look at the computer. I'm not sure
9 off the top of my head. Whenever he was - Directly
10 basically the day he was brought in was the day that they
11 were taken.

12 Q. Okay.

13 A. So.

14 SOLICITOR SHELTON: Your Honor, I would move to have
15 these admitted as State's Exhibits.

16 MR. MATTHEWS: Your Honor, I state on the record the
17 same objections I had yesterday as to these photographs
18 coming in and I object thereto.

19 THE COURT: All right. Objection overruled. They're
20 in over objection.

21 (WHEREUPON, STATE'S EXHIBITS NUMBER SEVEN AND EIGHT,
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 SOLICITOR SHELTON: Your Honor, at this point I would
24 request permission to publish these photos to the jury.

25 THE COURT: All right.

JAMES LONG: DIRECT BY SOLICITOR SHELTON

-229-

1 (STATE'S EXHIBITS SEVEN AND EIGHT PUBLISHED TO THE
2 JURY.)

3 BY SOLICITOR SHELTON:

4 Q. Officer, is this photograph you are holding,
5 projection of a photograph you hold in your hand State's
6 Number Seven?

7 A. Yes, it is.

8 Q. And is this a projection of the photograph you hold in
9 your hand State's Number Eight?

10 A. Yes, it is.

11 SOLICITOR SHELTON: No further questions, Your Honor.

12 MR. MATTHEWS: No questions for this witness, Your
13 Honor.

14 THE COURT: You can step down and be excused. We
15 appreciate your time.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Thank you.

18 Call your next witness.

19 Q. SOLICITOR SHELTON: Your Honor, if it please the
20 Court. The next witness the State calls is Patrick
21 Patterson.

22 (WHEREUPON, PATRICK PATTERSON,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 MADAME CLERK: Thank you. You may have a seat.

25 DIRECT EXAMINATION

PATRICK PATTERSON: REDIRECT BY SOLICITOR SHELTON
CYNTHIA MITCHAM: DIRECT BY SOLICITOR SHELTON

-239-

1 evidence do you think you've handled?

2 A. Hundreds, if not thousands.

3 Q. Is there anything about this item of evidence that you
4 specifically recall from handling it on March 8th, 2013?

5 A. Nothing that I recall other than my signature being on
6 it.

7 Q. So you don't have a specific recollection as to what
8 condition it was in on that day?

9 A. My only recollection, I know that the seal was intact
10 on it.

11 SOLICITOR SHELTON: Nothing further.

12 THE COURT: Recross?

13 MR. MATTHEWS: Nothing further, Your Honor.

14 THE COURT: You can step down and be excused. We
15 appreciate your time.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR SHELTON: Okay. The next witness is Cynthia
19 Mitcham.

20 (WHEREUPON, CYNTHIA MITCHAM, BEING
21 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 CYNTHIA MITCHAM BY SOLICITOR SHELTON:

24 Q. Good afternoon.

25 A. Good afternoon.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

-240-

1 Q. Would you please identify yourself to the jury?

2 A. I'm Cynthia Mitchum.

3 Q. Ms. Mitchum, what do you do for a living?

4 A. I work with the York County Sheriff's Office in the
5 drug analysis laboratory.

6 Q. How long have you been working in that job?

7 A. In May it'll be fourteen years at the Sheriff's
8 office.

9 Q. Do you have any prior experience in that field?

10 A. Yes. Prior to working for the Sheriff's office, I
11 worked for the South Carolina Law Enforcement Division
12 commonly known as SLED in Columbia, South Carolina, also in
13 their drug analysis laboratory and I was there for seven
14 and a half years.

15 Q. What type of duties do you perform in your job?

16 A. I receive in evidence and I will analyze the evidence
17 for controlled and non-controlled substances and then make
18 a report out to the officers so they can go forth with
19 their case.

20 Q. Did you receive any education, training, anything like
21 that that would qualify you for this job?

22 A. Yes.

23 Q. Could you please explain that?

24 A. I have a Bachelor's of Science in Chemistry which I
25 received from Winthrop University in 1990. And I've also

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

-241-

1 through various instrumentation experience through SLED and
2 through the Sheriff's office.

3 Q. Have you received any certifications from your
4 training in that field?

5 A. No. Not - I'm not sure what you're asking.

6 Q. I'll withdraw that question. Have you ever been
7 qualified in court as an expert in the field of chemical
8 and drug analysis and identification?

9 A. Yes.

10 Q. Approximately how many times?

11 A. In excess of two hundred times.

12 Q. Approximately how many samples have you tested during
13 your career?

14 A. Usually around - it's around two hundred - two
15 thousand items of evidence a year, so you take that and
16 multiply it by twenty-one years. A lot.

17 SOLICITOR SHELTON: Your Honor, we would offer Ms.
18 Mitchum as an expert in the field of chemical and drug
19 analysis and identification.

20 THE COURT: Any voir dire?

21 MR. MATTHEWS: No, Your Honor.

22 THE COURT: I find she is qualified.

23 BY SOLICITOR SHELTON:

24 Q. Ms. Mitchum, if you'll take a look at the item of
25 evidence in front of you on the bar there, it's been marked

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

-242-

1 as State's Number Ten. Have you ever seen that before?

2 A. Yes, I have.

3 Q. And how do you recognize it?

4 A. I recognize it through the signatures. My signature
5 is in the chain of custody and my initials on the evidence
6 itself.

7 Q. And did you analyze the substance in the bag?

8 A. Yes, I did.

9 Q. Please describe how it came to be in your possession
10 for analysis.

11 A. I received this from Patrick Patterson on 07-22 of
12 2013.

13 Q. Did you receive it directly from him?

14 A. Yes.

15 Q. What did you do with it when you received it?

16 A. Once I received it, then I signed it in and checked it
17 to make sure it was sealed and everything and then I put
18 that into a lock box that I have in the drug analysis
19 laboratory until the time I had to be able to open it and
20 do my analysis on it.

21 Q. What condition was it in when you received it?

22 A. The condition I originally received it was this inner
23 bag with the blue fillabree and that was intact and I know
24 this because I got Okay, the date I received it and my
25 initials.

1 Q. So the seal was intact?

2 A. Yes.

3 Q. Did it appear to have been tampered with in any way
4 prior to you receiving it?

5 A. No.

6 Q. Was the item continuously under your custody and
7 control while you had it in your possession?

8 A. Yes.

9 Q. Explain how you analyzed and tested the contents of
10 the bag, please.

11 A. What I did was I cut the bottom open of the bag and
12 removed the substance and then I did what's called a
13 chemical test and an instrumental test on the substance
14 itself and then I resealed it back in this outer bag which
15 is a bag I have in the laboratory.

16 Q. And what did you do with it after that?

17 A. I sealed it until the time I could return it back to
18 evidence.

19 Q. And did you return it back to evidence?

20 A. Yes, and it's still in that condition, the seal and
21 the date that I sealed it in the heat seal.

22 Q. Okay. On what date did you seal it?

23 A. I sealed it on 10-31 of 2013.

24 Q. And when did you return it to the evidence room?

25 A. On January 21st of 2014.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

-244-

1 Q. And during the intermediary time frame, what did you
2 do with it?

3 A. It stays in my custody back in the lock box in the
4 drug lab.

5 Q. Does anyone else have access to that lock box?

6 A. No.

7 Q. Is the evidence bag, the outer bag, State's Number
8 Ten, in the same condition now as when it left your
9 possession?

10 A. Yes, it is.

11 Q. Did you mark your name on the chain?

12 A. Yes.

13 Q. And is that indicating when you received it and when
14 you returned it?

15 A. Yes.

16 Q. And is your signature on there?

17 A. Yes.

18 Q. Were you able to determine through your analysis what
19 the substance is?

20 A. Yes, I did.

21 Q. What is it?

22 A. State's Exhibit Number Ten, which is Item Number One
23 in this case, was found to be cocaine base, also known as
24 crack, in the amount of 0.53 grams or 8.17 grains and that
25 it is a controlled two substance.

1 Q. Did you perform your analysis of the substance in
2 accordance with your training?

3 A. Yes.

4 Q. Did you prepare a report of your findings?

5 A. Yes, I did.

6 Q. Did you when you weighed the substance, can you
7 describe what - your scales in that process?

8 A. I have a balance that I use and the balance is
9 calibrated monthly and also every six months by an outside
10 agency and what I'll do is I'll take my sample and then put
11 the sample in the balance to get my weight.

12 Q. And, Ms. Mitchum, did you bring a copy of your report
13 to court today?

14 A. Yes. I brought the original.

15 Q. May I hold that, please?

16 A. Yes.

17 SOLICITOR SHELTON: Your Honor, I would like to have
18 this marked for identification as State's Exhibit Number
19 Eleven, please.

20 I'm sorry. I think I might be on Number Twelve.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE PREMARKED
22 FOR IDENTIFICATION.)

23 Q. Ms. Mitchum, I'm handing you back what's now been
24 marked as State's Exhibit Number Twelve. Is this the
25 original report you made of your findings in this case?

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

-246-

1 A. Yes, it is.

2 SOLICITOR SHELTON: Your Honor, I'd offer Ms.
3 Mitchum's report into evidence.

4 MR. MATTHEWS: No objection, Your Honor.

5 THE COURT: In without objection.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR SHELTON: And at this point I would offer
9 State's Number Ten in evidence.

10 THE COURT: What's that? The bag?

11 SOLICITOR SHELTON: Yes, sir.

12 MR. MATTHEWS: Your Honor, I object based on the fact
13 that during the chain testimony there was indication there
14 was the possibility that two other people could have been
15 involved in that chain.

16 THE COURT: I overrule the objection. You can
17 certainly use that ---

18 MR. MATTHEWS: Yes, sir.

19 THE COURT --- for whatever value it has but I over
20 rule the objection.

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

23 SOLICITOR SHELTON: Your Honor, I have no further
24 questions of this witness.

25 CROSS-EXAMINATION

1 CYNTHIA MITCHUM BY MR. MATTHEWS:

2 Q. Ms. Mitchum, can you state again for the record how
3 many tests you do during the course of say a month?

4 A. The course of a month, I probably do over two hundred
5 items of evidence.

6 Q. And so obviously that's in excess of about an average
7 of a thousand over a year. Correct?

8 A. Correct.

9 Q. And the condition of the substance that you tested in
10 this evidence Number Ten, is it in the same condition as
11 when you saw it when it first came to you?

12 A. When it first came to me, it was in this fillagree
13 bag. It was a zip lock bag inside of that, so it was
14 inside of a plastic bag that was in there. And I had
15 probably taken the evidence out of that smaller plastic bag
16 and just couldn't get it back into there so I just put it
17 all into a zip lock bag so that might be the only
18 difference.

19 Q. I understand about the bag, but I'm talking about the
20 actual substance in the bag. Is it in the same condition
21 as when you received it?

22 A. Pretty much. It might be a little bit more broken
23 apart because - and it's like a rock substance but it's not
24 like a diamond rock substance. It's more like chalk type
25 so it's easily to come apart when I'm doing my analysis.

CYNTHIA MITCHUM: CROSS BY MR. MATTHEWS

-248-

1 Q. Okay. But are you for sure?

2 A. No. I'm not for sure. I couldn't tell you if it was
3 like one rock or two rocks or if it was in this one.

4 Q. Okay. If I'm understanding correctly, when did you
5 actually receive the item to be tested?

6 A. On 7-22 of 2013.

7 Q. Okay. And based on the information that you have,
8 when was it taken to the actual evidence locker at Rock
9 Hill P.D.?

10 A. The chain here says on March - let's see, March the
11 5th, 2013, and then from Rock Hill to the York County
12 evidence on March the 8th of 2013.

13 Q. But you never received it until July 22nd, 2013?

14 A. That's correct.

15 Q. And when did you actually do the test?

16 A. I did the test - My analysis was October the 31st of
17 2013.

18 Q. The report that was put into evidence is dated when?

19 A. Now, which date?

20 Q. On the Number Twelve, your report.

21 A. Now the report here is March the 5th of 2014. That's
22 just simply when they asked me to do the report, so that
23 date's just simply when I printed this actual report.

24 Q. Okay. But you received the sample on July 22nd, but
25 you didn't do the testing until October 31st?

CYNTHIA MITCHUM: CROSS BY MR. MATTHEWS
REDIRECT BY SOLICITOR SHELTON

-249-

1 A. That's correct.

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

3 SOLICITOR SHELTON: Yes, sir. On redirect, please.

4 REDIRECT EXAMINATION

5 CYNTHIA MITCHAM BY SOLICITOR SHELTON:

6 Q. Ms. Mitchum, State's Number Twelve, is that what you
7 might call your official report?

8 A. Yes.

9 Q. Do you prepare an official report for every case?

10 A. No, I did not.

11 Q. Do you prepare a worksheet for every case?

12 A. Yes.

13 Q. When do you prepare the official report?

14 A. When the case is actually gonna go forth to court.

15 Q. And you prepared your official report on March 5th,
16 2014?

17 A. Correct.

18 SOLICITOR SHELTON: No further questions, Your Honor.

19 THE COURT: Recross?

20 MR. MATTHEWS: Nothing further on recross.

21 THE COURT: You may step down. Thank you. We
22 appreciate your time. You can be excused.

23 (WITNESS LEAVING WITNESS STAND.)

24 THE COURT: Call your next witness.

25 SOLICITOR SHELTON: Your Honor, the State rests it's

1. case.

2. THE COURT: Members of the jury panel, the State is
3. resting; that means the State has presented it's evidence.
4. We have to take up some matters of law outside your
5. presence at this time.

6. You are not yet in a position to make up your mind or
7. discuss the case. We haven't reached that point, but we do
8. need to take a break at this time so I'll let you follow
9. the Bailiff to the jury room.

10. (JURY EXITS COURTROOM AT 02:49 P.M..)

11. THE COURT: Anything from the State?

12. SOLICITOR SHELTON: No, sir.

13. THE COURT: Defense?

14. MR. MATTHEWS: Your Honor, Motion on Directed Verdict
15. taken the evidence most favorable in light of the State and
16. I would ask that the case not be sent to the jury based on
17. insufficient evidence at this point.

18. THE COURT: I find there is substantial evidence -
19. enough sufficient evidence from which a jury could make a
20. decision that the State has proven it's case of Mr. Agurs
21. having been involved in this transaction, that the
22. transaction took place and that the substance involved was
23. crack cocaine and therefore I deny the Motion for Directed
24. Verdict.

25. MR. MATTHEWS: Your Honor, if I may have just a few

1 THE COURT: All right. It looks like it's based on
2 the Logan that you would be entitled to the Logan charge so
3 I'll hear that.

4 All right. We'll take about a ten minute break.

5 (COURT IN RECESS AT 02:55 P.M..)

6 (NOTE FROM JURY AT 03:04 P.M..)

7 (COURT BACK IN SESSION AT 03:04 P.M..)

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

9 Mr. Agurs, I understand from your attorney that you
10 are going to exercise your right to remain silent and not
11 to testify.

12 MR. AGURS: Yes, sir.

13 THE COURT: Thank you. You may be seated.

14 Now we received your note that says there is a
15 question about the photos of the defendant. Was it allowed
16 and if so, it was not published to the jury.

17 The photos are so much of a concern as the fact that
18 they already got a question and they are not suppose to be
19 discussing the case.

20 Any comments by the State?

21 SOLICITOR SHELTON: No, sir, Your Honor. I can't
22 think of anything.

23 THE COURT: Defense?

24 MR. MATTHEWS: Yes, Your Honor. I feel that the only
25 way that I can remedy this situation is I'm going to have

-256-

1 to request a motion for a mistrial because your
2 instructions were very clear at the very beginning of this
3 trial that the jury was not to consider or discuss this
4 case not only with people outside the jury room but between
5 themselves here in this case until we hand it to them which
6 does not occur until after arguing and charging of the
7 jury.

8 Obviously this jury has already started deliberations
9 based on the fact that they are sending out a question,
10 they put it in writing actually, a question referring to
11 evidence of what photographs have been put into evidence,
12 why weren't they published. They are already having those
13 conversations before we even get to the final stage of the
14 case, which is in direct violation of the instructions that
15 you gave them.

16 I do not believe a curative instruction would save the
17 impartiality of the process for this jury. I believe they
18 have already started that process.

19 It is therefore, Your Honor, based on those grounds, I
20 am going to ask for a mistrial and schedule this for a new
21 trial with a new jury.

22 SOLICITOR SHELTON: Your Honor, I think that the only
23 appropriate way to handle this is just to ask the jury have
24 they begun deliberations and instruct them not to do so. I
25 think the note itself doesn't indicate that they have.

1 THE COURT: I definitely - I'm going to take the
2 motion under advisement after I talk to the jury. Now,
3 help me think this out.

4 Do we call just the foreman in or do we call the whole
5 jury in and quiz the foreman in front of the jury? Anybody
6 have any --

7 MR. MATTHEWS: I hate to do with all of them, but I
8 think that's the only way we can make sure we get - make
9 sure we get everything on the record is to quiz them with
10 everybody present so that if somebody disagrees with what
11 the foreman says, they can be - their opinion can be
12 voiced.

13 THE COURT: I agree.

14 Bring in the jury.

15 (JURY RETURNS TO THE COURTROOM AT 03:08 P.M..)

16 THE COURT: Members of the jury panel, I've received a
17 note and I'm not going to get to the substance of the note
18 at this point.

19 My main concern is that I had instructed you not to
20 deliberate and there is a question in my mind as to how a
21 question could come up regarding evidence if there wasn't
22 some sort of discussion about the case. I instructed you
23 several times not to discuss the case, so Mr. Foreman, I
24 hate to put you on the spot, but has the jury been
25 discussing the case?

1 MR. FOREMAN: No, sir.

2 THE COURT: Well how did this question come up?

3 MR. FOREMAN: There was no question that came up in
4 any discussions.

5 THE COURT: Well but it says here there is a question
6 about the photos of the defendant, was it allowed and if
7 so, it was not published to the jury. Did that come from
8 the jury? That was from the alternate?

9 ALTERNATE JUROR: It was just a question that I had
10 myself, Your Honor.

11 THE COURT: Okay. Did you write the note?

12 ALTERNATE JUROR: Yes, sir.

13 THE COURT: Okay. Well then - And there was no
14 further discussion?

15 ALTERNATE JUROR: No, sir.

16 THE COURT: All right. Well, you are the alternate
17 anyway so I'm going to go ahead and excuse you at this
18 time. That's not going to encourage anybody else to write
19 a note.

20 (ALTERNATE JUROR DISMISSED AT 03:09 P.M..)

21 THE COURT: But anything before I move forward?

22 SOLICITOR SHELTON: No, sir, not from the State.

23 MR. MATTHEWS: Not anything further from the defense
24 on this situation.

25 THE COURT: Okay. Well let me let you go to the jury

1 room one minute and don't discuss the case. You got me gun
2 shy now. So if any of the lawyers they want to put on the
3 record about what I have just taken care of, I'll let them
4 do that outside your presence.

5 I'm going to let you go to the jury room. When you
6 come back, you'll be in a position to hear the closing
7 statements of the attorneys.

8 (JURY EXITS COURTROOM AT 03:10 P.M..)

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

11 THE COURT: All right. Any comments by the State?

12 SOLICITOR SHELTON: No, sir.

13 THE COURT: Defense?

14 MR. MATTHEWS: Your Honor, let me clarify my previous
15 statement. My previous statement I still - I understand
16 what was said and the alternate's indicated that he solely
17 wrote it. I would still put my motion forward for the
18 request of a mistrial.

19 THE COURT: All right. That motion is denied. I
20 think whatever issues there were have been resolved by -
21 and again, the alternate's here.

22 (ALTERNATE JUROR ENTERS IN THE BACK OF THE COURTROOM.)

23 THE COURT: I'm not going to fuss at you. You can
24 come on in and you can still watch the closing arguments
25 and I appreciate you being honest and telling me that you

1 were the one who did it.

2 So I deny the motion for mistrial. I think everything
3 has been cured. Whatever was problematic has just been
4 cured, so we'll go forward with closing.

5 MR. MATTHEWS: Your Honor, as to the issue of closing,
6 my presentation does not involve a demonstrative
7 presentation.

8 My understanding from the State is that they have a
9 demonstrative presentation would be a Power Point
10 presentation. I've asked to see that. I have not seen it
11 yet to see if there is anything objectionable to prevent
12 objection during the closing argument and would like to ask
13 if I could see those slides real quick to make sure that
14 there is nothing in there that would be objectionable to
15 the defense.

16 THE COURT: How long will that take?

17 SOLICITOR SHELTON: I've got them printed out.

18 THE COURT: All right. Show them to him.

19 SOLICITOR SHELTON: Yeah. I don't have no problems,
20 no secrets here. Some of these I removed so let me --

21 (SIDE BAR DISCUSSION BETWEEN SOLICITOR SHELTON AND MR.
22 MATTHEWS OFF THE RECORD AT 03:12 P.M..)

23 THE COURT: All right. Now, Mr. Matthews, I may have
24 made a mistake in letting you do this because I am not
25 requiring you to tell me what you are going to say in your

1 closing arguments, and also what you are doing now is
2 having an opportunity to in your opening statements address
3 things that are going to be coming up in his because I
4 notice you are taking notes.

5 MR. MATTHEWS: Your Honor, all I'm taking notes is so
6 that I can refer to them specifically so he can see which
7 ones I am referring to.

8 Mainly the ones I am objecting to - he has cut out a
9 couple of them that kind of go down the road I was going
10 to, but he's referring to either attributing a statement to
11 Mr. Agurs which is solely to the discretion of their's but
12 he's putting quotes, statements in there. He playing the
13 video and playing the audio in here, but he's putting
14 quotes of what was said in his presentation and I would
15 object to that because they are going to hear what they are
16 going to hear.

17 THE COURT: If it's in there, he's got a right to do
18 it. He can quote it if it's in there just as good as he
19 can just say it out of his mouth. I mean, you just need to
20 object as we go along because I can't ask him to tailor his
21 closing argument to suit you. And so if there's anything
22 objectionable, you'll just have to object as we go along
23 because really what I have done is put the State in a - I'm
24 not sure a disadvantage - but I've put them in a situation
25 where now they get the right to close but I've given you

-262-

1 the right to see what they are going to say just as if they
2 had opened. So I kind of correct myself and we'll go
3 forward.

4 SOLICITOR SHELTON: Judge, I would -

5 THE COURT: If there is anything you need to object
6 to, just do it when it comes up.

7 SOLICITOR SHELTON: I will say for the record, Judge,
8 I will be showing clips from the video but they are clips
9 that are from the video that's entered into evidence so
10 rather than thumbing through the video itself, it's clips
11 of the exact video they will have for their own
12 consideration, the phone calls, that sort of thing, so I
13 don't know if that's - I don't perceive that as being
14 objectionable at all. It's in evidence and anything I'm
15 gonna talk about quotes or whatever, just discussing what's
16 in there.

17 THE COURT: You can't tell him what's not
18 objectionable just like --

19 SOLICITOR SHELTON: Yes, sir. I just wanted to up
20 front - I mean, --

21 THE COURT: Mr. Matthews, as I've told you, object to
22 whatever you feel is objectionable ---

23 MR. MATTHEWS: I will.

24 THE COURT: --- whether Mr. Shelton says it is or is
25 not.

CLOSING ARGUMENT: BY MR. MATTHEWS

-263-

1 All right. Bring in the jury.

2 (JURY RE-ENTERS COURTROOM AT 03:18 P.M..)

3 THE COURT: We will now have the closing arguments of
4 counsel. Mr. Matthews will go on behalf of Mr. Agurs first
5 and then the State will go last.

6 Counsel.

7 MR. MATTHEWS: Ladies and gentlemen of the jury, I do
8 appreciate the fact that you've been here now for the
9 better part of two days listening to the testimony that we
10 have here today.

11 As I stated in my opening statement, the most
12 important thing for a jury to do is to keep an open mind.
13 You cannot walk into a situation with preconceived notions
14 or any type of presentation before you have all the
15 evidence and heard everything.

16 And in this case, the best way that whenever I was
17 thinking through this case it was in evaluating the
18 testimony that you have heard today and yesterday was
19 inconsistencies. And that is a very important part of the
20 presentation, is that you have to consider everything and
21 have to consider the credibility of the witnesses and the
22 inconsistencies between each of the witnesses. The
23 witnesses were kept apart as part of the process to make
24 sure that nobody talked to each other during the testimony.

25 And because of that, you saw inconsistencies

CLOSING ARGUMENT: BY MR. MATTHEWS

-264-

1 throughout the entire case that I would submit to you are
2 very important for your consideration.

3 And what I'm asking on behalf of Mr. Agurs, is that
4 when you consider those inconsistencies, is there a
5 constant flow of inconsistencies that would lead to a
6 consideration that has the State in fact met it's burden of
7 proof.

8 Now, you heard yesterday in the beginning and then you
9 are going to hear today about burden of proof. Let me
10 explain that a little bit for you and you are going to hear
11 His Honor explain it to you a little bit better.

12 One is a definition that has been thrown around is a
13 reasonable doubt is a doubt which would make a person to
14 hesitate to act. Okay. That is a definition that is used
15 to describe reasonable doubt.

16 It means that the State has a tremendous burden that
17 they have to meet. In other courtrooms that I practice in,
18 that burden is not as common. In family court, it is not
19 as high as beyond a reasonable doubt.

20 In civil court where we are in front of the jury
21 asking juries to consider whether it's a car wreck or a
22 medical malpractice case or something like that where we
23 are talking about financial issues, the burden is
24 substantially lower.

25 But in criminal court, because we are talking about

1 the most important aspects of a person's life, we have set
2 that bar extremely high. And the reason why we did that is
3 because if you go back in history in England the standard
4 was reversed.

5 When you went before the Barrister or you went before
6 the Solicitor, or whom ever that you appeared before in a
7 courtroom, a person who's is charged with something, had
8 the burden to show that I'm not guilty. And the State at
9 that point in time didn't have a high burden so we changed
10 that.

11 We changed it to such that when we go in front of a
12 jury, the State has to meet their burden of proof. My
13 client has no burden to present.

14 Now, so when you are looking at that burden, you are
15 looking at direct and circumstantial evidence. Those are
16 the two types of evidence that we present.

17 Direct evidence His Honor will explain to you is
18 evidence that you pretty much see, touch. And then
19 circumstantial evidence, a series of events.

20 But it's not when we look at that burden of proof, we
21 are not just talking about the charge. Each charge has
22 certain elements. And His Honor is going to explain to you
23 what the elements are for this particular charge that my
24 client is facing as presented to you for consideration.
25 There's different elements and each one of those elements

CLOSING ARGUMENT: BY MR. MATTHEWS

-266-

1 must meet that proof.

2 So it is not like, well we - they met the burden on
3 element number one, two and five; but they really didn't do
4 it on three and four; but we're going to find him guilty
5 because the overall case we think they met.

6 That's not how it works. Each element, if three and
7 four - the third and fourth elements of the crime, and I'm
8 just using these numbers as an illustration, third and four
9 don't meet that burden, then the responsibility is to rule
10 in favor of Mr. Agurs.

11 So let's talk about the inconsistencies. And the
12 inconsistencies go to several matters. It goes to the
13 elements and it also goes to credibility. The credibility
14 of witnesses or the credibility of evidence or the
15 credibility of what happened to evidence has to be factored
16 in and that's where the inconsistencies come into play.

17 Let's first start off with Mr. Tumblin. Now, both the
18 State and the defense presented information that Mr.
19 Tumblin came to the police because he wanted a favor. So
20 you get to consider what was his motives. Why was he
21 there. What was he doing. And he was trying to help
22 benefit himself. But he was inconsistent.

23 During the questioning he and I had he talks about the
24 issue of - I asked him when did he do the photo lineup and
25 he said afterwards. After the transaction that he alleged

CLOSING ARGUMENT: BY MR. MATTHEWS

-267-

1 to have occurred and then I asked him some more about it
2 and then he said, well I know I said before, but I didn't
3 mean it. You get to consider the inconsistencies there.

4 You get to consider the inconsistencies of how a photo
5 lineup is set up and there are certain restrictions that we
6 have to have and credibility of, did he really have the
7 ability to have - did my client truly have a credible
8 lineup to be put in there so that there was a possibility
9 that Mr. Tumblin could have picked someone else in the
10 photo lineup.

11 We also have a discrepancy among witnesses. Did the
12 CI have just a pair of pants and clothes on, a shirt on, or
13 did he have a jacket on or did he have multiple layers on
14 because that's important because the issue is is the drugs
15 that or the items that were tested and supposedly came up
16 as drugs. Sergeant Lubben says there is a procedure to be
17 done to make sure but because this event happened a year
18 ago, he wasn't sure about where things were at and how many
19 clothes were on and the CI said he had multiple layers on.

20 Also, the CI says that he - Mr. Tumblin says that he
21 got there right before the search. The officers all
22 indicated that beforehand he got there about forty minutes
23 ahead of time and that they met with him during that period
24 of time.

25 Is it possible that they met with him as he stated,

CLOSING ARGUMENT: BY MR. MATTHEWS

-268-

1 the possibility he met before he went in or after about the
2 photo lineup.

3 They talked about the searches. They talked about the
4 searching of the person and the search of the vehicle.
5 This is important. The reason why it's important is
6 because there has to be established by the State that the
7 items that were tested by the chemist was in fact what they
8 took from the CI at the time of March 5th, 2013. And then
9 they have to establish there was no other way for him to
10 get the drugs from anybody else.

11 A couple things. One is, if it's that important, if
12 the police know it's that important for them to make sure
13 that there is nothing in the car and nothing on the CI, why
14 didn't they video tape it or document it and have
15 documentation to present to you as a juror? And you can
16 consider the lack thereof of evidence and there is nothing
17 there.

18 There is not even a situation of where they have a
19 second officer present during the searches to have what we
20 call a corroborating witness to substantiate what's being
21 told.

22 Only one officer did the search of Mr. Tumblin.
23 Nobody else was there or they don't remember if anybody
24 else was there. No video documentation.

25 Then the search of the truck. Officer Ervin says she

CLOSING ARGUMENT: BY MR. MATTHEWS

-269-

1 goes in and searches the truck, locks it up and leaves it
2 for about twenty minutes.

3 Again, make absolutely sure that there is nobody else
4 that gets in an ungated parking lot accessible to other
5 people.

6 The State has indicated - Well whenever I ask her if
7 the car was locked or the windows busted out before it came
8 back and she indicated no, but again, it's left unlocked.
9 Is there a possibility that somebody went into that vehicle
10 ahead of time? She didn't check it when she came back.
11 She left it completely by itself for twenty minutes and
12 didn't check it when she came back.

13 Again, Officer Harrelson and Sergeant Lubben made a
14 big deal about the fact of procedure, procedure, procedure.
15 If it's that important to make sure that there's nothing in
16 the vehicle, why didn't they check when she came back after
17 she left it alone. Why wasn't it videoed taped? Why
18 wasn't there documentation, a checklist, anything or a
19 second officer with her to corroborate what she did. And
20 then again the search afterwards.

21 Now, you were shown a picture of what appeared to be
22 the substance that they claim they took off of Mr. Tumblin
23 after the events of March 5th, 2013 and they show you a
24 substance, I think Harrelson referred to it as about the
25 size of a thumbnail or a little bit bigger. But then when

CLOSING ARGUMENT: BY MR. MATTHEWS

-270-

1 they present evidence here today, and you will be able to
2 look at it back in the back, it's all crushed.

3 The evidence manager from the York County Sheriff's
4 Department indicated to you that it's in the same condition
5 that it was when he first got it. Now when we were on
6 cross examination, and now he doesn't remember - or on
7 redirect he doesn't remember. But initially when asked, he
8 indicated it was in the condition and he got it three days
9 after on March 8th. Is it the same substance?

10 There is no evidence to indicate to you - again burden
11 of proof - No indication has been given to you to indicate
12 that this is the same substance. There was no field test.

13 That whole questioning about the field testing is
14 this: Officer Harrelson indicated that they do have the
15 ability to field test. Now, remember what was said about
16 the weight. He said that whenever he weighed it on his
17 scales at the Rock Hill Police Department it came out to .8
18 grams. Didn't field test it so we have no indication at
19 that time that what they had in their possession was drugs.

20 March, April, May, June, July. Late July, July 22nd
21 Ms. Mitchum says she received the packet at that time.
22 Believes but she is not sure, but believes it was in that
23 same condition as you see it here today and tested it at
24 that time. Four months later. Actually, she got it in
25 July and then tested it in October, late October. August,

CLOSING ARGUMENT: BY MR. MATTHEWS

-271-

1 September, October. Late October. Like on the 31st I
2 believe she said. The weight at that time, .53. Actually
3 it's on - if I'm off on 3, it's on the sheet. A different
4 weight. Consideration is is this the same - is what's in
5 that bag the same stuff, substance that they took back on
6 March 5th of 2013.

7 The other thing that would indicate not only that but
8 let's move forward to the events at Burger King. And I
9 want you to consider again where people are located and
10 what they could see or not see.

11 The - Office Harrelson indicates he's at the daycare -
12 which if you drive down before you get - before you get to
13 - headed toward Chester on 72 where Saluda Street comes in,
14 Heckle comes kind of - runs right into Saluda and then if
15 you turn to your right, you are headed toward Chester -
16 sitting at that daycare in that parking lot. Says the back
17 end of his vehicle is facing the road.

18 He has got another officer in the car with him, that
19 officer didn't come in today or yesterday. Another officer
20 and he's laying back and he's watching what's at Burger
21 King. Doesn't see Mr. Tumblin walking from the Dollar
22 General up to the Burger King. Doesn't see all that. And
23 you have what you have in evidence. Didn't see there was a
24 vehicle over here and somebody was in it had gotten out and
25 was getting into it or come around and got into it and

CLOSING ARGUMENT: BY MR. MATTHEWS

-272-

1 didn't see whether or not there was a non-verbal
2 communication with that person, between Mr. Tumblin and
3 that individual. Didn't see him walking back either. And
4 didn't really mention anything about the people who were
5 right at where he was at getting in the vehicle.

6 But the one thing he focused in - on was a white
7 vehicle, but he couldn't tell you who was in the car.
8 Couldn't tell you what happened in the car, so he really
9 didn't have a viewpoint from that perspective.

10 Then we have Officer Ervin. Officer Ervin is at the
11 Dollar General. She's parked in face forward in the
12 parking space. She had already let him off, parked in
13 there and she said she was watching him.

14 My question is for a jury to consider is in listening
15 to the audio tape - or excuse me, to the audio part of the
16 video, is she testified she saw a white - what she saw was
17 a white Caddy with an individual driving up. If she saw
18 that, why is she on the video asking the CI what color was
19 the vehicle and was anybody in it. If she saw what she
20 says she saw on the stand, why is she asking those two
21 questions to Mr. Tumblin?

22 Then the video itself. Now the officer had indicated
23 that he had - that - and we saw it up here, the time stamp
24 on the video. One of the things that's being presented is
25 that an event occurred on March 5th of 2013. There is

CLOSING ARGUMENT: BY MR. MATTHEWS

-273-

1 nothing on the video. Despite what may appear to be on
2 that video, there is nothing on the video that indicates
3 when that video was taken. Nothing at all. No - He said
4 the reason why they did it is because they don't want to
5 time stamp every time they use it. Okay, but nobody held
6 up a card, a little post card, events from March 5th, 2013
7 to make absolutely sure that we all knew that that was that
8 date. There was no newspaper held up to show what the date
9 was on that video. There was nothing at all distinctive on
10 the video to show that that video occurred on that day.
11 And this is their major piece of information they are
12 giving to you and they are saying this is what happened on
13 that day but nothing to show us that.

14 Nothing on the photographs to indicate it was from
15 that day. Nothing. And there was nobody, or at least
16 nobody presented here in the last couple of days, that
17 would indicate they were close enough to see what happened.

18 And then there was a - During the ride, there was a
19 phone call brought in. Not about going to Burger King or
20 anything like that, but a phone call come in from
21 completely somebody we don't know who they are.

22 Don't know what was said. Don't know what it was
23 about. Officer Ervin didn't ask him what it was about, and
24 so my question is, is that somebody else that was suppose
25 to be - that was there? We don't know because we don't

CLOSING ARGUMENT: BY MR. MATTHEWS

-274-

1 have any information from anybody to explain that phone
2 call.

3 I would submit to you that because of the
4 inconsistencies, because of no corroborating evidence as to
5 the time, because of no information about why what Officer
6 Harrelson indicated he was taking into evidence is
7 different not only in weight but also in appearance, is
8 completely different than what was actually tested.

9 There is no - There is inconsistencies or people
10 testifying well it happened a year ago so I don't remember
11 everything that happened. This is important. Very
12 important. This is very important to Dominique. So what I
13 am asking on his behalf is as you are deliberating,
14 consider the credibility. Consider the inconsistencies,
15 whether they are ones I pointed out or they are ones that
16 are considered during deliberations, and those
17 inconsistencies and that information does not rise to the
18 level of beyond reasonable doubt. Because the presumption,
19 and His Honor will explain this to you, presumption is
20 innocence. That's the start. Now after your
21 deliberations, my request on Mr. Agurs' behalf for a
22 verdict of not guilty.

23 SOLICITOR SHELTON: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

1 SOLICITOR SHELTON: Ladies and Gentlemen, what Mr.
2 Matthews is characterizing as inconsistencies, I posit to
3 you it was smoking mirrors. The State's case is clear, the
4 evidence is clear, and I going to ask you to consider
5 everything as a whole in your deliberations.

6 At this time I want to walk you through what the State
7 has presented and argue the State's position.

8 Mr. Agurs is accused of distribution of crack cocaine.
9 You are going to hear Judge Hayes instruct you on a big
10 convoluted law. What's important is a person who
11 distributes or delivers cocaine base in the state of South
12 Carolina has committed the crime of distribution of crack
13 cocaine.

14 It's alleged that this occurred on March 5th, 2013,
15 and it's alleged that Dominique Julius Agurs was the person
16 who committed the crime and the evidence supports those
17 allegations.

18 Two main questions: Was this a drug deal and was it
19 Dominique Julius Agurs? So let's start with the first one.

20 Was this a drug deal? The answer is yes this was a
21 drug deal. Mr. Tumblin told officers from the Drug Unit he
22 could buy crack. He agreed to work as a confidential
23 informant. Mr. Tumblin testified he's a user of crack and
24 he knows who sells it. Mr. Tumblin met with the Drug Unit
25 and gave Investigator Harrelson a description of a man he

CLOSING ARGUMENT: BY SOLICITOR SHELTON

-276-

1 knew his nickname D.J. He described him as a black male,
2 named that he knows D.J. He knew his phone number and he
3 called him, Dominique Julius Agurs, D.J.

4 Mr. Tumblin called D.J., this man he says he calls
5 D.J., to set up a drug deal, and I would like you to listen
6 to that again please.

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

8 SOLICITOR SHELTON: The phone call shows this is a
9 drug deal. You hear Tumblin say, "Hey D.J., this is Mike."
10 You hear the other man who he says is D.J. who the State
11 believes is Agurs. We believe the evidence shows it's
12 Agurs. He responds, "Yeah." He does not say, "Hey man,
13 this ain't D.J., who you calling?" he says "yeah." So he's
14 talking to D.J.

15 Tumblin says, "I am ready to do something man." Agurs
16 says, "I'm over here on McCullough Street." That's where
17 the deal was originally set up. Tumblin asked, "Where is
18 that at?" Agurs says, "Off Heckle beside the apartments,"
19 the area where they end up. Agurs asked, "What you want?"
20 And Tumblin says, "Probably a whole."

21 You heard him testify and you have heard Investigator
22 Harrelson testify a whole one is referencing a gram of
23 crack cocaine. Agurs says, "All right." He does not say,
24 "What do you mean," he says "All right." The deal is
25 struck right there you all.

1 Your Honor, I beg the court's indulgence. I need to
2 double check and make sure I redacted the next slide out.

3 (PAUSE.)

4 SOLICITOR SHELTON: So the conversation - The slang
5 words in the conversation are what indicates the deal is
6 struck. "I am ready to do something." "What you want?"
7 "A whole one." "All right." The drug deal is set there.

8 Mr. Matthews tends to suggest that we don't know what
9 they are talking about here. We don't hear things like
10 crack cocaine or things like that. We don't hear him say,
11 "Hey is this Dominique Julius Agurs? This is Michael
12 Tumblin."

13 Folks, people just don't talk like that. People use
14 slang words in every day conversation, and the words they
15 are using are referencing drug activity, crack cocaine in
16 particular. But there's more evidence proving this is a
17 drug deal. You heard that this was a controlled
18 investigation. Officers searched Tumblin and the truck
19 that was a Drug Unit truck before the deal. Before the
20 deal, Tumblin was given \$80.00 and he had no drugs on him.
21 Tumblin was searched again after the deal. After the deal,
22 Tumblin had in his hand a rock of crack cocaine and no
23 money.

24 And then there's the video - State's Exhibit Number
25 Two. In that video, you see evidence of what testimony is

CLOSING ARGUMENT: BY SOLICITOR SHELTON

-278-

1 shown. Ervin drove Tumblin to and from the buy in the Drug
2 Unit vehicle. The drug unit vehicle that she had searched
3 before, that had been maintained at the drug unit that they
4 keep cleaned out, that there was nothing in it.

5 Agurs calls Tumblin on the way. The buy location's
6 changed. The deal is confirmed. The crack order is ready.
7 The video includes the drug deal in the car at Burger King
8 and it includes Tumblin walking straight to the buy and
9 straight back. You see from the video he makes no stops
10 along the way except to wait for cars passing so he doesn't
11 walk out in traffic - to or from - and he does not meet
12 with anyone going to or from. There is simply no evidence
13 that he met with anyone else to or from this buy.

14 Phone call: There were phone calls during the ride to
15 the buy location. Agurs called Tumblin two times back to
16 back. The first call they agreed to meet at Burger King on
17 Saluda Street instead which is near McCullough Street. The
18 second call they got the order straight. And now the
19 second call came immediately after the first call. Tumblin
20 confirmed he wants a "G" or "a whole one," and Agurs said
21 he had it weighed out. They're talking about the crack.

22 So lets listen to those - calls.

23 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY AT
24 04:52 P.M..)

25 SOLICITOR SHELTON: Here is the second call that came

1 right after that.

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

3 SOLICITOR SHELTON: So during those conversations you
4 hear Tumblin speaking with Tanya Ervin who's driving.
5 She's indicating it's him that called, "We're going to
6 Burger King." He says he's got a way out. Who else is
7 that man talking about than D.J.? That's who he called
8 earlier, that's who's calling him, that's who he's
9 indicating is meeting him, and guess what? D.J. met him
10 there. Everything adds up. The phone calls support the
11 eventual drug buy at Burger King.. How else does Dominique
12 Agurs know where to go to sell his crack to this man?

13 Then there is the actual drug deal - on the video.

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

15 SOLICITOR SHELTON: Ladies and Gentlemen, the defense
16 team seems to want you to believe that just because you
17 cannot see a hand to hand occur on that video that that's
18 somehow not evidence that a transaction was completed in
19 that call. That completely ignores what the video does
20 show.

21 You see in the video, Tumblin had the buy money in his
22 hand. He had it out in Agurs' car, and that's a State's
23 Exhibit. There was some question on that whether it was -
24 what time frame it was from the video, but we cleared that
25 up on re-direct with Investigator Harrelson. You also have

CLOSING ARGUMENT: BY SOLICITOR SHELTON

-280-

1 the State's Exhibit, be a photograph of the buy money that
2 was handed. It's the same money the Drug Unit gave him.
3 The same exact serial numbers on one of the bills on the
4 left as compared to the one on the right. That confirms -
5 That alone confirms that this investigation occurred on the
6 day that the drug officers say it does. They photographed
7 the bills before they gave it to Mr. Tumblin. That alone
8 shows us this video is from that day.

9 And you also see from this video Tumblin reached down
10 in the center console, I believe he described it as like a
11 coin area in between the seats, he reached down and that's
12 where he said the crack cocaine was in the plastic baggy
13 and reached down and retrieved it.

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

15 SOLICITOR SHELTON: You see his arm reach down right
16 where he said it was. And there is conversation during
17 that deal. Tumblin asked Agurs if the weight was right and
18 Agurs tells Tumblin it's 1.2 which he explained was
19 referencing grams of crack cocaine. He ordered a whole
20 one, a whole gram. Agurs told him it was more than a gram.

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

22 SOLICITOR SHELTON: What else do they talk about if
23 they're not talking about crack? Folks, this meeting was
24 thirty-six seconds long from start to finish. That in and
25 of itself shows this was a drug deal. The deal was already

CLOSING ARGUMENT: BY SOLICITOR SHELDON

-281-

1 set in the phone calls. They only needed a little bit of
2 time to complete the deal. Agurs had indicated to Tumblin
3 that he already had it weighed out. Tumblin knew how much
4 to give - how much money to give to Agurs and he had it
5 ready. You see evidence of an exchange taking place on the
6 video. May not be a hand to hand, but you heard Tumblin's
7 testimony on where the crack was, that Agurs nodded towards
8 it when he handed him the money he reached down and grabbed
9 it. You see the buy money and you see Tumblin reach down
10 in the center console.

11 The only thing they talked about in this meeting was
12 weight. And neither man went inside the restaurant they
13 were parked in front of. Agurs didn't even get out of the
14 car. In fact, Harrelson said he went across the street to
15 the car wash. He did not even go through the drive
16 through.

17 This was not some innocent meeting. It was a crack
18 cocaine deal. And you see evidence of what Tumblin
19 testified earlier that he kept the crack in his hands.
20 This is a picture from the video, State's Number Two. At
21 the very end of the video, you can see the bar at the very
22 end of the video how it's almost the very end of the video.
23 And this is as Tumblin is getting out of the passenger side
24 of the vehicle, that's a shot of his hand. It's very
25 quick, and it's something that can be missed. That's why

CLOSING ARGUMENT: BY SOLICITOR SHELDON

-282-

1 one of the reasons we want to put this in as an Exhibit.
2 But you can see what he described. It's a little plastic
3 baggy with the crack substance in it, and it's in his hand.

4 Let's talk about the weight of the crack. You heard
5 testimony there's differing weights that you've heard. You
6 heard Tumblin ask for a "G" or "a whole one." You heard
7 Agurs say it's 1.2. You heard Harrelson say he weighed it
8 at the Drug Unit and it was .8. And you heard Ms. Mitchum
9 say it was .53. I posit to you what Ms. Mitchum says is
10 the most reliable weight. Her scales are calibrated.

11 I posit to you that what Harrelson says, he's
12 indicated that's an estimation. They - They use that for
13 charging purposes. It's not something that is as reliable
14 as the chemist's weight on the certified scales.

15 And he also testified, Mr. Harrelson did, that it is
16 not uncommon for drug dealers to short their clients. They
17 are trying to make money. And Mr. Tumblin testified he
18 didn't walk to that deal with a set of scales so he doesn't
19 get to check the weight. He's taking Agurs' word for it.
20 That's what the evidence suggests here. The evidence
21 suggests that Agurs shorted Tumblin. Again, the Drug Unit
22 weights were estimates, Ms. Mitchum's weight is what
23 counts, and Tumblin did not have scales to weigh the drugs
24 to confirm what Agurs told him.

25 Also, we know that this is the correct - these are the

1 drugs that he got from Agurs that day because the control
2 nature of the buy. The control nature of the drug buy and
3 the testimony of the agents from the Drug Unit support what
4 Tumblin's testimony is, that he got the crack from Agurs
5 and he gave it to the Drug Unit officers. He was searched
6 before and after the deal, and you heard the officers talk
7 about how he was searched, a very thorough search. They
8 were searching jackets, outer shirts, pockets; they are
9 feeling around, they are going all the way down to their
10 shoes and socks. I mean he ain't hiding anything from
11 those Drug Unit officers. And they did that. That's the
12 procedure that they have. They follow their procedure, and
13 they did it at the beginning and afterwards.

14 Based on what those officer's testimony is, I posit to
15 you that's very reliable evidence. They do this on a daily
16 basis. Lubben and Harrelson have been doing this for
17 years. They have searched many people, conducted many
18 buys, they know what they are doing, and they did not find
19 any drugs on Tumblin before or after.

20 So that's one of the variables that they control in
21 the controlled buy. They are eliminating the possibility
22 that the CI is bringing drugs to the deal, or holding drugs
23 out after the deal. They eliminated that variable, and
24 their testimony is evidence to that effect.

25 The Drug Unit truck was in the Drug Unit's custody and

CLOSING ARGUMENT: BY SOLICITOR SHELDON

-284-

1 control. It was on city or county property. It was locked
2 up. The windows were up. It was regularly vacuumed.
3 Tanya Ervin searched it before she went on the buy. She
4 locked it back up. She had the keys. The windows were up.
5 Nobody busted out the windows. Nobody got in that truck
6 and put anything in that truck. She took Tumblin straight
7 to that truck. Drove him straight to the buy location.
8 Stayed with the truck. Waited for him to come back. Drove
9 him straight back to the Drug Unit. He met with Harrelson.
10 Gave Harrelson the crack. Harrelson searched him again.
11 Ervin searched the truck again.

12 Ervin found nothing in that truck before or after.
13 That's another variable that they eliminated. They were
14 not talking about Mr. Tumblin's car or truck here. They're
15 talking about the Drug Unit's truck. And Investigator
16 Ervin was with Tumblin the entire time there and back.
17 It's a truck. He's in the passenger front seat and she's
18 in the driver seat, and she testified she could see him.
19 And especially on the way back she could see that he had
20 the crack in his hand the whole time, and didn't break any
21 off, or hide any, or eat anything, or anything like that.
22 There was no testimony to that effect. It was in his hand
23 the whole time and he gave the crack directly to Harrelson
24 back at the Drug Unit.

25 And, folks, are there things that the officers could

1 have done to document all of these searches a little
2 better? Sure there are, but that does not negate what
3 their testimony is. There's simply nothing to discredit
4 what they've testified, their procedures, they follow those
5 procedures. There is simply nothing to negate that. I
6 posit to you that all of that would of, could of, should of
7 stuff, smoking mirrors. Don't loose sight of the forest
8 from the trees.

9 And I want to argue this point to you as well. Even
10 if somehow you believe maybe Tumblin, maybe, there is no
11 evidence to suggest this, but maybe Tumblin left something
12 in the truck - some of the crack he got from Agurs. Maybe
13 that's why it's like - But there's no evidence to that. If
14 you somehow believe that, ask this question. Why would
15 Tumblin leave crack cocaine in a Drug Unit truck? He
16 cannot get back into that truck, and they are gonna find
17 it. Why would he leave it there? There is simply no
18 reason. It doesn't make any sense.

19 And furthermore, there's nothing in the law requiring
20 that the State prove a certain weight of drugs involved to
21 meet the elements of this charge. The simple fact is was
22 this crack cocaine? Did it come from Agurs to Tumblin?
23 Everything else is smoking mirrors.

24 So let's move on to question number two. Was this
25 Dominique Agurs? Yes, it was Dominique Julius Agurs. The

CLOSING ARGUMENT: BY SOLICITOR SHELDON

-286-

1 defense attorney may suggest to you that we don't know that
2 this is Agurs independent of Tumblin's identification from
3 the photo lineup, and what he says and is this guy D.J.,
4 but Officer Harrelson knew him as well. Officer Harrelson
5 identified him as Dominique Julius Agurs.

6 Let's talk real quick about Mr. Tumblin before I
7 forget. Folks, Mr. Tumblin, he has a bad record. He had a
8 drug problem and he got in a lot of trouble.

9 Folks, you can't send a school teacher to buy crack
10 cocaine. It takes a person who's used to that kind of
11 thing, who knows the language, and the people involved. It
12 takes that kind of person to go in and buy drugs. The
13 narcotics officers can't do it. These guys know who they
14 are. They have to utilize people like Tumblin to make
15 these undercover buys.

16 And, folks, the police do not entirely trust Agurs -
17 excuse me - the police don't entirely trust Tumblin.
18 That's why they wired him up with a live audio feed and a
19 audio visual feed. That's one of the reasons they record
20 everything that happened and listened in in his part of the
21 investigation and listened in on live feed. That's why he
22 is searched before and after. They want to make sure
23 everything's on the up and up, and they want to make sure
24 he didn't have a chance to make something up or fabricate
25 evidence or whatever. And in this case, there is simply no

1 evidence to that effect. This was a controlled buy. The
2 police eliminated all the other variables that could cast
3 out in this case. It was a clean buy.

4 And we talked about the weight. The evidence
5 suggested Agurs shortened Tumblin. There's simply nothing
6 in the evidence to suggests anything other than that.

7 This is not a case about whether Tumblin got a fair
8 deal or not. In fact, under the law, we don't even have to
9 prove that money exchanged hands, we simply have to prove
10 that drugs were given from one person's possession and
11 control to another. And the evidence supports that Agurs
12 gave drugs to Tumblin. Crack cocaine in particular.

13 The evidence presented suggests that Mr. Tumblin is
14 telling the truth. Even though he didn't know a full name,
15 he knew this man as D.J., and that man is Dominique Julius
16 Agurs. You heard Harrelson testify that's the man. He
17 didn't know him as D.J., he knew him as Dominique. But
18 after looking at the video, he knew who it was. Tumblin
19 had met Agurs in person before. He had his phone number.
20 He immediately picked Agurs out of a photo lineup and he
21 was not shown the buy video before the lineup. And the
22 video confirms Tumblin told the truth.

23 There is a snapshot on the left from the video that's
24 State's Number Three, and on the right is State's Number
25 Seven. Those are all - all the pictures are in evidence.

CLOSING ARGUMENT: BY SOLICITOR SHELDON

-288-

1 I apologize. I believe that the date up there, April 23rd,
2 I believe that's a typo. I think it was March 21st is the
3 testimony from when he was arrested and booked. I
4 apologize for that typo. So you see a front profile and a
5 side profile. On the right is another photo. On the left
6 is a photo from the drug buy. Yes, it's a drug deal. Yes,
7 it's Agurs. Yes, Agurs is guilty.

8 Ladies and Gentlemen, one other point I wanted to
9 touch on. You're going to hear Judge Hayes instruct you on
10 the law and he's gonna instruct you on what the law is
11 regarding reasonable doubt.

12 Reasonable doubt is not any and all doubt. The State
13 does not have to prove its case beyond a shadow of a doubt.
14 The State has to prove its case and present proof through
15 evidence of each element to you, the kind of proof that
16 leaves you firmly convinced that the crime that's alleged
17 occurred.

18 You heard Mr. Matthews talk about hesitation to act.
19 The other definition is the kind of proof that leaves you
20 further convinced. Please do not consider hesitation to
21 act with you doing your job as a jury. It's your job to
22 deliberate on the evidence. It's your job to discuss this
23 and make an informed decision, because your decision has to
24 be unanimous. And I posit to you that at the end of your
25 deliberations you simply, to carry out your role in this

JURY CHARGE

-289-

1 process, you must consider all of the evidence, you must
2 consider the law as Judges Hayes gives it to you, and you
3 must render a verdict that speaks the truth and that is
4 guilty as charged.

5 THE COURT: Thank you. I appreciate the attention
6 you have given the witnesses, the attorneys, and me to this
7 point. It's now my duty to charge you on the law which you
8 are to apply to the facts that you determine them to be in
9 this case.

10 I remind you Mr. Agurs is charged for distribution of
11 crack cocaine. The State alleges this occurred in York
12 County on March 5th, 2013, and that it was in violation of
13 the laws of our state.

14 The fact that Mr. Agurs has been charged, the fact
15 that he has been indicted, raises no inference of guilt.
16 That's just the way our system works. When someone is
17 thought to have committed an offence and violated the laws
18 of our state, that's the way it works. They are arrested,
19 they are indicted, and then they come to trial, and it is
20 up to a jury to determine whether that person is guilty
21 based on the State having to prove that person's guilty
22 beyond a reasonable doubt.

23 This indictment is a written document which is the -
24 which contains the charge against Mr. Agurs, and is the
25 formal document by way of which this case has been

-299-

1 right, and then we will be at ease. All right, we're at
2 ease.

3 (COURT IN RECESS AT 04:23 P.M..)

4 (WHEREUPON, COURT'S EXHIBITS THREE, AND FOUR
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 (COURT BACK IN SESSION AT 05:20 P.M..)

7 (BACK ON THE RECORD AT 5:17 P.M.)

8 THE COURT: Thank you. Take your seats. We're gonna
9 replay at the jurors request, thirty-six seconds in the
10 Cadillac. Any comment on that before we --

11 SOLICITOR SHELTON: No, sir, Your Honor. Simply I
12 have the video State's Number Two cued up to where the
13 vehicle is pulling into the parking lot, so I guess - I'm
14 assuming after Mr. Tumblin gets out is as far as they
15 wanted to see?

16 THE COURT: Yes. I mean, I guess. It says thirty-six
17 seconds. I think you are the one who put something up that
18 said thirty-six seconds so ---

19 SOLICITOR SHELTON: Yes, sir.

20 THE COURT: --- you know better than anybody else
21 what thirty-six seconds we're talking about.

22 SOLICITOR SHELTON: That's my assumption, Your Honor,
23 is the actual deal in the car.

24 THE COURT: Mr. Matthews?

25 MR. MATTHEWS: The only comment I would have on behalf

1 of the defense is that the video from start to end be free
2 flowing and not stopped to show any particular frames.

3 SOLICITOR SHELTON: Absolutely.

4 THE COURT: No. No, no, no. It's going to be shown
5 as a video.

6 MR. MATTHEWS: Yes, sir.

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

8 (JURY REENTERS TO COURTROOM AT 5:22 P.M.)

9 THE COURT: Mr. Foreman, I'm sorry. The computer
10 isn't cooperating. We've got thirty-six seconds cued up
11 and we'll play it over and over if you'd like. We'll play
12 it once and then if you want us to play it again, we'll
13 play it again. Let's go ahead and cue it up and play it.

14 (STATE'S EXHIBIT TWO, THIRTY-SIX SECONDS, PUBLISHED TO
15 THE JURY.)

16 THE COURT: Would you like it being shown one more
17 time while you are in here? I mean, you all - Okay,
18 somebody's saying yes. Let's cue it back up and redo it.

19 (STATE'S EXHIBIT TWO, THIRTY-SIX SECONDS, PUBLISHED TO
20 THE JURY.)

21 THE COURT: Is that enough for right now? Okay. Just
22 let me know if you want to see it again. I'm gonna let you
23 go back to deliberations.

24 (JURY EXITS COURTROOM AT 5:25 P.M.)

25 THE COURT: Anything from the State?

JURY VERDICT

-302-

1 MADAME CLERK: The State of South Carolina versus
2 Dominique Julius Agurs under Indictment 2013-GS-46-04248
3 for distribution of crack cocaine, the jury finds the
4 defendant guilty. Signed by the foreperson dated today's
5 date.

6 If this be your verdict so say you all by raising your
7 right hand.

8 Let the record show all jurors confirm this verdict.

9 (ALL JURORS AFFIRMED THE VERDICT.)

10 THE COURT: Anything from the State before the jury is
11 dismissed?

12 SOLICITOR SHELTON: No, sir, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. MATTHEWS: No, Your Honor.

15 THE COURT: Members of the jury panel, thank you for
16 your help. I'm told we're not gonna start another trial in
17 the morning. We may still start another for the week
18 later, so call tomorrow after one and receive your
19 instructions as to what to do about whether to call or
20 whether to come in at a certain time, so I'm going to let
21 you leave at this time and thank you so much for your help.

22 Thank you.

23 (JURY DISMISSED AT 5:38 P.M.)

24 THE COURT: Anything from the State?

25 SOLICITOR SHELTON: Your Honor, as we stated earlier I

1 do have a matter to take up regarding sentencing.

2 THE COURT: Yeah, but right - before we get to that
3 cause --

4 SOLICITOR SHELTON: Not at this time, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. MATTHEWS: Your Honor, I would ask based on the
7 evidence presented during the trial, I ask that the verdict
8 of the jury be set aside based on it's found based on
9 information presented.

10 THE COURT: Well I deny the motion. I find the
11 verdict supports just like I did at the directed verdict
12 stage, I find that the evidence certainly supports the
13 finding of the jury that there is ample evidence from which
14 a jury could believe or disbelieve that the substance
15 involved was crack cocaine. That there was an eye witness
16 which is always except for the argument, I instructed the
17 jury as to how to consider eye witness testimony and there
18 was testimony of someone who the CI who dealt with the
19 defendant before so I find there is ample evidence to
20 support the verdict, so if you'd bring Mr. Agurs around for
21 sentencing.

22 (DEFENDANT APPROACHES THE BAR.)

23 THE COURT: Mr. Shelton.

24 SOLICITOR SHELTON: Your Honor, may it please the
25 Court. As I mentioned at the start of this trial, Mr.

SENTENCE OF THE COURT

-304-

1 Agurs was noticed for life without parole if he was
2 convicted of this offense.

3 This charge is a qualifying offense under the three
4 strikes statute - I believe that's 17-25-45 - and he has
5 been found guilty of that. He has prior convictions that
6 are strikes as well and I outlined those earlier when we
7 were going over what would be impeachment eligible offenses
8 but I also put in for the record, and I have certified
9 copies from our Clerk's office to make part of the Court's
10 record regarding these.

11 I also have a certified copy of the Notice that was
12 filed with the Court. I would make it part of - a Court's
13 exhibit at this point.

14 Your Honor, Mr. Agurs was convicted of possession with
15 intent to distribute crack cocaine in 2005, two separate
16 counts, 2005-GS-46-4-5-6-7 and 4-5-6-8.

17 He was also convicted of a companion charge of
18 possession with intent to distribute crack cocaine within
19 proximity of a school or a park that same year, 2006-GS-46-
20 4-5-6-9. Those were all part of one plea and sentencing so
21 that would have been one of the strikes being the proximity
22 and the other one is a conviction for trafficking crack
23 cocaine, 2008-GS-46-1-6-1-6 and a companion charge of
24 proximity, possession with intent to distribute within
25 proximity of a school or park, crack cocaine, 2008-GS-46-1-

1 6-1-5. Those were convictions at the same time, sentencing
2 at the same time. That would be the second strike; this
3 conviction being the third strike, so at this time I would
4 present these are Court's exhibits and hand them up for
5 your review if you would like.

6 THE COURT: Just make them part of the record.

7 SOLICITOR SHELTON: Yes, sir. And I'm also including
8 a copy of the Notice that's one file with the Clerk's
9 office.

10 THE COURT: Anything else from the State?

11 SOLICITOR SHELTON: No, sir.

12 THE COURT: Mr. Matthews?

13 MR. MATTHEWS: Your Honor, if I could ask the State to
14 do one clarification for us. On the record I know he
15 mentioned the strike, and if he could state on the record
16 which ones were considered serious and which ones were
17 serious and most serious for purposes of clarification.

18 SOLICITOR SHELTON: The priors of, definitely the PWID
19 proximity, is one strike of being a serious offense. The
20 trafficking crack is a strike, as well as the proximity.
21 The trafficking I believe is a violent crime and the
22 proximity is a serious strike. And this is a serious
23 strike under the statute.

24 THE COURT: Three serious and one most serious?

25 SOLICITOR SHELTON: Yes, sir.

SENTENCE OF THE COURT

-306-

1 THE COURT: All right, Mr. Matthews.

2 MR. MATTHEWS: Your Honor, this particular situation,
3 Your Honor, I would respectfully request under, for the
4 record, under the Eighth Amendment for cruel and unusual
5 punishment, I would request Your Honor to consider the
6 possibility that the statute that has been presented, 17-
7 25-45 which says that a person must be sentenced to a term
8 of life in prison without the possibility of parole be
9 deemed subject to unconstitutionality under the U.S.
10 Constitution Eighth Amendment.

11 And what I am referring to is a case that was decided
12 in 2013 where the State Supreme Court did set out an
13 evaluation under the evaluation determining compassionality
14 of the case, determining whether it was grossly exceeding
15 the norms of today's society.

16 One of those is that this charge if it was - went to
17 trial and was convicted on as a third offense, carries ten
18 to thirty.

19 The U.S. Supreme Court has considered the mandatory
20 life without the possibility of parole in kinship with a
21 sentence of a death penalty sentence and considers it very
22 seriously.

23 It has become such an issue right now that the South
24 Carolina Supreme Court decided their case in 2013 when they
25 established a standard there --

1 THE COURT: You got a copy of that case?

2 MR. MATTHEWS: Yes, sir, right here. I asked the
3 public defender's office to make me a copy of it.

4 In that case, and being candor with the Court, they
5 did set a standard but in that case they did rule that the
6 statute did meet the constitutional boundaries in that
7 case. But I also want to mention to you as well is that on
8 the federal level, the federal system is seriously looking
9 into the issue of whether or not to change their mandatory
10 life sentences based on the issue of fairness and
11 proportionality.

12 In this case, my client could have received a ten to
13 third year sentence in this case if he was sentenced, and I
14 would submit to the Court that that potential sentence is
15 sufficient punishment for the charge he has been convicted
16 of and to be sentenced to life with out the possibility of
17 parole, gives absolutely no ability for my client at his
18 young age to rehabilitate.

19 So, Your Honor, I would ask that the life sentence
20 would not be imposed and that he receive a sentence under
21 the statute for crack cocaine, 44-53-375, for a third
22 offense of ten to thirty years. There is no parole. He
23 would have to do a minimum of eighty-five percent and would
24 be sufficient to punish him for these charges.

25 THE COURT: Mr. Shelton, do you have any comment on

SENTENCE OF THE COURT

-308-

1 that?

2 SOLICITOR SHELTON: No, sir, Your Honor. My
3 understanding is that the statute in play is still law of
4 the land.

5 THE COURT: I agree with the State. The statute's
6 clear and fortunately or unfortunately Mr. Agurs was well
7 aware. He was put on notice of life without parole was a
8 possible punishment and he had every right to go to trial
9 which he did, but I do not find that the seriousness of
10 three serious drug offenses - had this just been a
11 distribution that was not enhanced by two previous serious
12 offenses, I would inclined to agree with you. Of course,
13 it wouldn't even apply.

14 But the difference in your analogy is up to thirty
15 years and life without parole, he had had two simple
16 marijuana possessions, I think, but he could have had some
17 prior non-serious, non-most serious offenses which would
18 have enhanced this charge to a third, which would not have
19 thrown it into life without parole, so I don't think this
20 is an extreme punishment for someone who is a repeated drug
21 offender.

22 So, Mr. Agurs is there anything you want to say at
23 this time before you are sentenced?

24 MR. AGURS: I'm fine with it.

25 THE COURT: Okay. Sentence is life without parole.

1 Thank you.

2 (DEFENDANT

3 MR. MATTHEWS: For clarification of another, there is
4 and it's just book keeping issues, there were several bench
5 warrants that I ask to make copies by the Clerk of Court, I
6 need for those to be lifted.

7 THE COURT: We'll lift the bench warrants.

8 SOLICITOR SHELTON: Yes, sir.

9 MR. MATTHEWS: And then for purposes of my court order
10 of appointment, I need to know what the intention of the
11 State is on the other charges.

12 SOLICITOR SHELTON: Your Honor, the other charges will
13 be dismissed. There is no sense in going forward in light
14 of the jury's finding and the sentence in this case.

15 THE COURT: Well, okay, I'll lift the bench warrant.
16 I've got no role in what happens to the other charges. I
17 would like for it to be in the record, and I'm sure it's
18 already in evidence somewhere, the Notice of Life without
19 Parole. I know its been served on him but it ought to be
20 made a part of his record. You already have it. Okay.
21 Good.

22 MR. MATTHEWS: Yes, sir.

23 THE COURT: I do think even though the other charges
24 are from to be apparently noll prossed which means that if
25 this somehow got overturned, it possibly could be and this

SENTENCE OF THE COURT

-310-

1 case comes back, I don't know what the State's intention as
2 far as that they could be resurrected if they were noll
3 prosed - Anyway, that's not my business but I do think that
4 your obligation continues at least to the extent of filing
5 a Notice of Intent to Appeal.

6 MR. MATTHEWS: And I am planning on doing that
7 immediately, Your Honor.

8 THE COURT: I figured you would. We're trying to kind
9 of lay everything out on the table because again, it's none
10 of my business.

11 MR. MATTHEWS: Oh, I understand.

12 THE COURT: Okay. All right. We'll lift the bench
13 warrants and appreciate again everybody's courtesies and we
14 will be at ease until ten in the morning.

15 (COURT ADJOURNED AT 5:50 P.M.)

16 (END OF TRANSCRIPT OF RECORD.)
17
18
19
20
21
22
23
24
25

WITNESSES

DEU Harrelson

sgb

ARREST WARRANT NUMBER

G-777564

ACTION OF GRAND JURY

Angie C. Tucker
Foreperson of Grand Jury

Date: 12-12-13

VERDICT

Guilty

James P. Sumner
Foreperson of Petit Jury

Date: 4/22/14

DOCKET NO. 2013-GS-46-04248

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

December 12, Term 2013

THE STATE

vs.

DOMINIQUE JULIUS AGURS

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375(B)

CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on December 12, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

On or about March 5, 2013, the Defendant, Dominique Julius Agurs, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

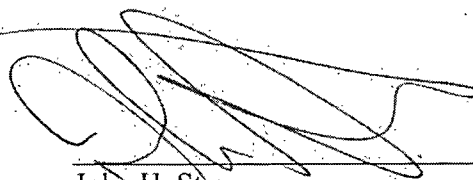


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 13th, 2015



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 13th, 2015



John H. Strom
Appellate Defender

RECEIVED
MAY 13 2015
SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT