

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Brooks P. Goldsmith, Circuit Court Judge

LEXIE JAMES TURNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000648

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LEXIE JAMES TURNER,) 2011-GS-46-02872
7 JR.,) 2011-GS-46-04278
8) FEBRUARY 26, 2013
9) YORK, SOUTH CAROLINA
10 DEFENDANT.

11 (VOLUME I)

12 B E F O R E:

13 THE HONORABLE STEVEN H. JOHN, JUDGE. ; And a Jury.

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

15 CHRISTOPHER W. EPTING, ASSISTANT SOLICITOR
16 JENNY DESCH, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
19 ATTORNEY FOR THE DEFENDANT

20
21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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(FEBRUARY 26, 2013)

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1 (PROCEEDINGS, FEBRUARY 26, 2013)

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: Good morning, ladies and gentlemen.
5 What we are going to do is pick the jury in the case of the
6 State of South Carolina versus Lexie James Turner, Jr..

7 The State intends to proceed on two charges, is
8 that correct, solicitor?

9 MR. EPTING: That's correct, Your Honor.

10 THE COURT: All right, sir.

11 The State has charged the defendant with the crime
12 of possession with intent to distribute crack cocaine and
13 distribution of crack cocaine.

14 Now, the indictments are merely the charging
15 documents, the documents by which the matter is brought to
16 court. It is not evidence, can't be considered by anyone as
17 evidence in the case.

18 The only reason I'm going to read anything from
19 you from the charges is to see if you happen to know
20 anything about this case, have any information about this
21 case that you need to bring to court's attention.

22 So, regarding the indictment or charge against
23 Lexie James Turner, Jr. For possession with intent to
24 distribute crack cocaine, the indictment indicates that on
25 or about May 18th, 2012, the defendant, Lexie James Turner,

1 did manufacture, distribute, dispense, deliver, purchase, or
2 otherwise aid, abet, attempt, or conspire to manufacture,
3 distribute, dispense, deliver, or purchase, or possess with
4 intent to distribute, dispense, or deliver crack cocaine, a
5 cocaine base, in violation of the Code of Laws, State of
6 South Carolina, 1976, as amended, in York County, South
7 Carolina.

8 Regarding the indictment or charge for
9 distribution of crack cocaine, the indictment indicates that
10 on or about May 18th, 2012, the defendant, Lexie James
11 Turner, did distribute, dispense, deliver, purchase or
12 otherwise aid, abet, attempt, or conspire to distribute,
13 dispense, deliver, or purchase, or possess with intent to
14 distribute, dispense, or deliver crack cocaine, a cocaine
15 base, in violation of the Code of Laws, State of South
16 Carolina, 1976, as amended, this incident happening in York
17 County, South Carolina.

18 So, is there any member of the jury panel that
19 knows anything about this particular case, has any
20 information about this case, that they need to bring to the
21 court's attention at this time?

22 (No response)

23 THE COURT: All right. Now, regarding this
24 particular matter, there are several potential or possible
25 witnesses. This does not mean that all of these individuals

1 will be called, but there is the potential that they can be
2 called. And, therefore, what I'm going to do is go over
3 their names with you and then I'll ask you a question about
4 that.

5 Commander Marvin Brown of the DEU.

6 Sammy Figueiroa.

7 Officer Jamie Faulkenberry, DEU.

8 Officer Tanya Ervin, DEU.

9 Cheryl Guzman, York County detention center.

10 Ben Junior Quick.

11 Cheryl Guzman, York County detention center.

12 George Weeks.

13 Jimmy Stiles, York County sheriff's office.

14 Patrick Patterson, York County sheriff's office.

15 Latonia DeWalt, York County sheriff's office.

16 Lexie James Spratt Turner.

17 Any member of the jury panel that's related by
18 blood or marriage, close personal friends, acquaintances of
19 any of these possible or potential witnesses? If so, please
20 stand.

21 (No response)

22 THE COURT: All right. Regarding this particular
23 circuit, this is the Sixteenth Circuit, and it covers York
24 and Union Counties, all right. The solicitor's office that
25 prosecutes the case covers both counties, so when I am

1 talking about that, I am talking about both counties.

2 Do any members of the jury panel, that either you,
3 yourself, or a member of your immediate family have ever had
4 anything handled in any way, any matter touched by the
5 Sixteenth Circuit Solicitor's Office, either here in York
6 County, or in Union County? If so, please stand.

7 (No response)

8 THE COURT: Any member of the jury panel or a
9 member of your immediate family has ever had any matter of
10 any kind handled by the York County Public Defender's
11 office? If so, please stand.

12 (No response)

13 THE COURT: Is anybody related by blood or
14 marriage, close friends, or acquaintances of anybody
15 employed at the Sixteenth Circuit Solicitor's Office,
16 whether here in York County or in Union County?

17 (No response)

18 THE COURT: Any member of the jury panel that's
19 related by blood or marriage, close personal friends,
20 acquaintances of anybody employed at the York County Public
21 Defender's office?

22 (No response)

23 THE COURT: All right. Is there any member of the
24 jury panel that you believe that you may have some kind of
25 personal, political, religious, philosophical belief that

1 you believe would prevent you from being a fair and
2 impartial juror in this case? If so, please stand.

3 (No response)

4 THE COURT: All right. The next question, ladies
5 and gentlemen, I'm going to ask whether you, yourself, were
6 a former law enforcement officer, or you got a current
7 family member who is now in law enforcement, or was in the
8 past in law enforcement?

9 So any member of the jury panel that either you,
10 yourself, or a member of law enforcement in the past, you
11 got a current family member in law enforcement now or in the
12 past? All right.

13 Yes, sir, let me have your name and juror number,
14 please.

15 JUROR NUMBER 19: Juror number 19, Bob Blees,
16 B-L-E-E-S.

17 THE COURT: Yes, sir. And was it yourself or a
18 family member?

19 JUROR NUMBER 19: My son is currently a State
20 Department diplomat security special agent.

21 THE COURT: Can you give to the State of South
22 Carolina and to the defendant a fair and impartial trial?
23 Can you be a fair and impartial juror in this case?

24 JUROR NUMBER 19: Yes.

25 THE COURT: Thank you very much.

1 All right, yes, ma'am.

2 JUROR NUMBER 78: Juror number 78, Karen Fritz.
3 My uncle, deceased, was a police officer for Bergen County,
4 New Jersey.

5 THE COURT: All right, ma'am. Can you give to the
6 State of South Carolina and to the defendant a fair and
7 impartial trial? Can you be a fair and impartial juror in
8 this case?

9 JUROR NUMBER 78: Yes, sir.

10 THE COURT: Thank you very much, ma'am.

11 All right. Going to this side. Yes, ma'am?

12 JUROR NUMBER 94: 94. My cousin is a police
13 officer for the City of Rock Hill.

14 THE COURT: The City of Rock Hill?

15 JUROR NUMBER 94: Yes.

16 THE COURT: All right. Can you give to the State
17 of South Carolina and to the defendant a fair and impartial
18 trial? Can you be a fair and impartial juror in this case?

19 JUROR NUMBER 94: Yes.

20 THE COURT: All right, thank you, ma'am.

21 All right. Yes, ma'am, right there.

22 JUROR NUMBER 164: Juror number 164, Pamela
23 Miller.

24 I have a cousin in Carbondale, Illinois police
25 officer, and I also have a brother-in-law in Kansas City,

1 Kansas police officer.

2 THE COURT: Very good. Can you give the State of
3 South Carolina and to the defendant a fair and impartial
4 trial? Can you be a fair and impartial juror in this case?

5 JUROR NUMBER 164: Yes, sir.

6 THE COURT: Thank you very much, ma'am.

7 Yes, sir.

8 JUROR 142: Juror 142, George McClellan.

9 I have got a nephew that's he's -- he was in the
10 Rock Hill Police Department and he moved to the York County
11 police department. Now he's out on sick leave.

12 THE COURT: All right, sir. Can you give the
13 State of South Carolina and to the defendant a fair and
14 impartial trial? Can you be a fair and impartial juror in
15 this case?

16 JUROR NUMBER 142: Yes, sir.

17 THE COURT: Thank you very much.

18 All right. Yes, sir.

19 JUROR NUMBER 181: 181, Terry Premo.

20 A graduate of the California State Police Academy
21 and I worked with the Federal Police Corridor in
22 California.

23 THE COURT: All right, sir.

24 Can you give to the State of South Carolina and to
25 the defendant a fair and impartial trial in this case? Can

1 you be a fair and impartial juror in this case?

2 JUROR NUMBER 181: Yes, sir.

3 THE COURT: Thank you very much.

4 All right, ladies and gentlemen, the next question
5 is whether you, yourself, or a member of your immediate
6 family has been a member of any kind of victims rights or
7 law enforcement support organization?

8 Let me give you a couple of examples. This is not
9 an exhaustive list of any kind. I'm just trying to give you
10 some examples of what I'm talking about here. I'm talking
11 about like the Citizens Against Violent Crime, or Mothers
12 Against Drunk Driving, or the South Carolina Law Enforcement
13 Officers Association, or the South Carolina Sheriffs
14 Association. Just some kind of victims rights or law
15 enforcement support organization, either you, yourself, or a
16 member of your immediate family. If so, please stand.

17 All right. Yes, ma'am, your name and juror number
18 again, please?

19 JUROR NUMBER 31: Juror 31, Charmaine Carpenter.
20 I have donated to MADD.

21 THE COURT: All right, very good.

22 Can you give to the State of South Carolina and to
23 the defendant a fair and impartial trial? Can you be a fair
24 and impartial juror in this case?

25 JUROR NUMBER 31: Yes.

1 THE COURT: Thank you very much.

2 All right. Now, this next question, ladies and
3 gentlemen, I'm going to ask you whether you, yourself, or a
4 member of your immediate family, has ever been the victim of
5 a crime? I am not going to ask you what occurred. I do not
6 want you to volunteer any information to me about what
7 occurred. The question is going to be straightforward. Was
8 it yourself or a family member and then I'll ask the
9 qualification question.

10 So is there any member of the jury panel, either
11 you, yourself, or a member of your immediate family, has
12 ever been the victim of a crime? If so, please stand.

13 All right. We will start in the front row, ma'am.
14 Your name and juror number, please?

15 JUROR NUMBER 58: Jodie Detamore, number 58.

16 THE COURT: Was it you or a family member?

17 JUROR NUMBER 58: It was family.

18 THE COURT: Family member.

19 All right. Can you give to the State of South
20 Carolina and to the defendant a fair and impartial trial?
21 Can you be a fair and impartial juror in this case?

22 JUROR NUMBER 58: Yes.

23 THE COURT: Thank you very much, ma'am.

24 Yes, sir.

25 JUROR NUMBER 239: Thomas White, juror 239.

1 THE COURT: All right, sir. Yourself or a family
2 member?

3 JUROR NUMBER 239: Both.

4 THE COURT: Can you give to the State of South
5 Carolina and to the defendant a fair and impartial trial?
6 Can you be a fair and impartial juror in this case?

7 JUROR NUMBER 239: Yes.

8 THE COURT: Thank you very much.

9 All right. Start right here.

10 JUROR NUMBER 19: Bob Blee, juror number 19.

11 THE COURT: Yourself or a family member?

12 JUROR NUMBER 19: Family member.

13 THE COURT: Family member.

14 Can you give to the State of South Carolina and to
15 the defendant a fair and impartial trial? Can you be a fair
16 and impartial juror in this case?

17 JUROR NUMBER 19: Yes.

18 THE COURT: Thank you very much.

19 All right, yes, sir, right next to him.

20 JUROR NUMBER 214: Reginald Swain, juror number
21 214.

22 THE COURT: Yourself or family member.

23 JUROR NUMBER 214: Both, sir.

24 THE COURT: All right, sir, very good.

25 Can you give to the State of South Carolina and to

1 the defendant a fair and impartial trial? Can you be a fair
2 and impartial juror in this case?

3 JUROR NUMBER 214: Yes, sir.

4 THE COURT: Thank you very much.

5 All right, yes, ma'am.

6 JUROR NUMBER 78: Karen Fritz, juror number 78.

7 Myself.

8 THE COURT: Yourself. All right.

9 Can you give to the State of South Carolina and to
10 the defendant a fair and impartial trial? Can you be a fair
11 and impartial juror in this case?

12 JUROR NUMBER 78: Yes, sir.

13 THE COURT: Thank you very much, ma'am.

14 All right, yes, ma'am.

15 JUROR NUMBER 31: Charmaine Carpenter, juror
16 number 31. A family member.

17 THE COURT: Can you give to the State of South
18 Carolina and to the defendant a fair and impartial trial?
19 Can you be a fair and impartial juror in this case?

20 JUROR NUMBER 31: Yes.

21 THE COURT: Thank you very much, ma'am.

22 Yes, ma'am.

23 JUROR NUMBER 94: 94, Lisa Quarles. Family
24 member.

25 THE COURT: Can you give to the State of South

1 Carolina and to the defendant a fair and impartial trial?
2 Can you be a fair and impartial juror in this case?

3 JUROR NUMBER 94: Yes.

4 THE COURT: Thank you very much.

5 All right, yes, sir.

6 JUROR NUMBER 55: Todd Deese, juror number 55.
7 Family member.

8 THE COURT: Can you give to the State of South
9 Carolina and to the defendant a fair and impartial trial?
10 Can you be a fair and impartial juror in this case?

11 JUROR NUMBER 55: Yes, sir.

12 THE COURT: Thank you very much.

13 All right, yes, ma'am.

14 JUROR NUMBER 62: Gigi Douglas, number 62.

15 THE COURT: And yourself or family member?

16 JUROR NUMBER 62: Myself.

17 THE COURT: Very good.

18 Can you give to the State of South Carolina and to
19 the defendant a fair and impartial trial? Can you be a fair
20 and impartial juror in this case?

21 JUROR NUMBER 62: Yes, sir.

22 THE COURT: Thank you very much.

23 All right, ladies and gentlemen, I'm going to ask
24 you what I classify as my general or catchall question. Do
25 you know of any reason, have any question in your mind, any

1 doubt in your mind that you believe that you cannot give to
2 the State of South Carolina and to the defendant a fair and
3 impartial trial? That is for any reason whatsoever you
4 believe that you could not be a fair and impartial juror in
5 this case? If so, please stand?

6 (No response)

7 THE COURT: Further questions from the State?

8 MR. EPTING: Nothing from the State, Your Honor.

9 THE COURT: Further questions from the defense?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,
12 what's going to happen is in a random order the Clerk of
13 Court is going to call out a juror's name. When that
14 happens, you will come forward and you will come basically
15 to a position right in front of the clerk's bench, right
16 here where those young ladies are seated right here, and you
17 turn and you face to the back of the courtroom, basically
18 from whence you came.

19 The Clerk will then inquire of the State to
20 present or excuse the juror. If you are excused, obviously
21 you go back and have a seat.

22 If you are presented by the State, the clerk will
23 inquire of the defense to seat or excuse the juror. If you
24 are seated by the defense, the clerk will instruct you to go
25 over and have a seat in the jury box. And obviously if you

1 are excused, you go back and have a seat from whence you
2 came.

3 Now, if you happen to have a purse, book, whatever
4 the item is with you now, if and when your name is called,
5 please bring it along with you. In case you are selected,
6 you can go straight to the jury box.

7 All right. Is the State ready to proceed?

8 MR. EPTING: State is ready, Your Honor.

9 THE COURT: Defense?

10 MS. INZERILLO: Yes, Your Honor.

11 THE COURT: All right, Madam Clerk.

12 THE CLERK: Number 97, Ricky Harvell.

13 What say you for the State?

14 MR. EPTING: Please present the juror, Your Honor.

15 THE CLERK: Defense?

16 MS. INZERILLO: Please swear the juror.

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

18 Number 142, George McClellan.

19 What say you for the State?

20 MR. EPTING: Please present the juror.

21 THE CLERK: Defense?

22 MS. INZERILLO: Please excuse the juror.

23 THE CLERK: You are excused from this case.

24 Number 19, Robert Blee.

25 What say you for the State?

1 MR. EPTING: Please present the juror.
2 THE CLERK: Defense?
3 MS. INZERILLO: Please swear the juror.
4 THE CLERK: Please have a seat in the jury box.
5 Number 31, Charmaine Carpenter.
6 What say you for the State?
7 MR. EPTING: Please present the juror.
8 THE CLERK: Defense?
9 MS. INZERILLO: Please excuse the juror.
10 THE CLERK: You are excused from this case.
11 Number 62, Gigi Douglas.
12 What say you for the State?
13 MR. EPTING: Please present this juror.
14 THE CLERK: Defense?
15 MS. INZERILLO: Please swear the juror.
16 THE CLERK: Please have a seat in the jury box.
17 Number 238, Rhonda White.
18 What say you for the State?
19 MR. EPTING: Please present this juror.
20 THE CLERK: Defense?
21 MS. INZERILLO: Please swear the juror.
22 THE CLERK: Please have a seat in the jury box.
23 Number 186, Kathy Reynolds.
24 What say for the State?
25 MR. EPTING: Please present this juror.

1 THE CLERK: Defense?

2 MS. INZERILLO: Please swear the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Number 98, Darrell Haught.

5 What say you for the State?

6 MR. EPTING: Please present this juror.

7 THE CLERK: Defense?

8 MS. INZERILLO: Please swear the juror.

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

10 Number 94, Lisa Quarles.

11 What say you for the State?

12 MR. EPTING: Please present this juror.

13 THE CLERK: Defense?

14 MS. INZERILLO: Madam Clerk, could you repeat the

15 number?

16 THE CLERK: 94.

17 MS. INZERILLO: Please excuse the juror.

18 THE CLERK: You are excused from this case.

19 Number 3, Susan Adkins.

20 What say you for the State?

21 MR. EPTING: Please present this juror.

22 THE CLERK: Defense?

23 MS. INZERILLO: Please swear the juror.

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

25 Number 63, Jonathan Drakeford.

1 What say you for the State?
2 MR. EPTING: Please present this juror.
3 THE CLERK: Defense?
4 MS. INZERILLO: Please swear the juror.
5 THE CLERK: Please have a seat in the jury box.
6 Number 78, Karen Fritz.
7 What say you for the State?
8 MR. EPTING: Please present this juror.
9 THE CLERK: Defense?
10 MS. INZERILLO: Please swear the juror.
11 THE CLERK: Please have a seat in the jury box.
12 Number 101, Glenda Hinson.
13 What say you for the State?
14 MR. EPTING: Please excuse this juror.
15 THE CLERK: You are excused from this case.
16 Number 128, John Lesslie.
17 What say you for the State?
18 MR. EPTING: Please present this juror.
19 THE CLERK: Defense?
20 MS. INZERILLO: Please swear the juror.
21 THE CLERK: Please have a seat in the jury box.
22 Number 190, Glenda Roberts.
23 What say you for the State?
24 MR. EPTING: Please present this juror.
25 THE CLERK: Defense?

1 MS. INZERILLO: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box.
3 Number 55, Todd Deese.

4 What say you for the State?

5 MR. EPTING: Please present this juror.

6 THE CLERK: Defense?

7 MS. INZERILLO: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.
9 This would be for the alternate.

10 Number 207, Carolina Stewart.

11 What say you for the State?

12 MR. EPTING: Please present this juror.

13 THE CLERK: Defense?

14 MS. INZERILLO: Please swear the juror.

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

16 THE COURT: All right, Ms. Stewart, as indicated,
17 you are the alternate in this particular case, all right?

18 JUROR NUMBER 207: Yes.

19 THE COURT: Thank you, ma'am.

20 Any objections to the jury as impaneled, from the
21 State?

22 MR. EPTIN: Nothing from the State, Your Honor.

23 THE COURT: From the defense?

24 MS. INZERILLO: No, Your Honor.

25 THE COURT: All right. I find the jury panel is

1 proper pursuant to Batson v. Kentucky and Jefferies v. Alabama.

2 All right, ladies and gentlemen of the jury panel
3 in this case, I'm going to ask that you go out in just a few
4 moments to your jury room and do one thing for me, and that
5 is select your foreperson for this particular jury.

6 Let me tell you very briefly what the
7 foreperson's duties and responsibilities are.

8 If we are here in the courtroom and there is
9 something that the jury needs attention to, the witness
10 needs to speak up, the lawyers need to speak up, whatever it
11 is, whatever the situation is, the foreperson will raise
12 their hand, gets the court's attention and then we will
13 handle the matter, whatever it is.

14 If you are back in the jury room and there is
15 something that the jury needs attention to, you will take
16 the pad and pen provided, you will write out a note. The
17 foreperson will sign it and give it to the bailiff. It will
18 come to me and, again, we will handle the matter, whatever
19 it may be.

20 Now, when we have gone through the evidentiary
21 portion of the trial, we have heard all the witnesses, all
22 the evidence has been presented in this matter, then we have
23 gone through the closing arguments of the attorneys, and
24 then I have given you the law that you will apply to the
25 facts and evidence that you find to be true in this case,

1 and then I submit the case to you for your deliberations and
2 your unanimous decision in this particular matter, the
3 foreperson's duties and responsibilities change in this
4 regard. The foreperson is going to act like the chairman at
5 a meeting, to guide the discussions, if necessary. An
6 important duty that the foreperson has is to make sure that
7 everybody that wants to speak has an opportunity to do so.
8 Everybody's voice has an opportunity to be heard.

9 Now, the foreperson's voice and vote carries no
10 more weight than any other member of the jury panel.
11 Everybody is on an equal plane in that regard, but somebody
12 does need to be in charge, hopefully not necessary to keep
13 good order, but to be in charge. And, again, if there is
14 some question that you have or some matter that you need
15 attended to, again, write out the note, sign it and give it
16 to the bailiff. It will come to me and again we will handle
17 the matter, whatever it is.

18 The final duty and responsibility of the
19 foreperson, once the jury has well and truly deliberated in
20 this case and you have reached your unanimous decision in
21 this particular matter, the foreperson will take the verdict
22 form that the court will provide to you, check the
23 appropriate block or write out the appropriate word and
24 thereafter sign their name as the foreperson, putting the
25 correct date on there indicating that that indeed is the

1 unanimous verdict of all the members of the jury in this
2 particular panel.

3 So, with that understanding of the foreperson's
4 duties, I'm going to ask that you go back to the jury room,
5 select your foreperson, knock on the door, let the bailiff
6 know who that foreperson is.

7 Now, Ms. Stewart, as the alternate you can vote on
8 the foreperson, but obviously being the alternate you can't
9 be the foreperson. All right. Thank you very much.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. For the jury panel that --
13 for the members of the jury panel that were not selected for
14 this particular case, what I'm going to do is excuse you for
15 the balance of today. I'm going to have you call back that
16 juror information line tonight after six p.m.. Follow those
17 instructions, whatever they may be. So, whatever -- just
18 call that juror information line tonight after six p.m. and
19 follow those instructions. With that you are now excused.
20 Thank you very much.

21 (Whereupon, the Petit Jury Panel left the
22 courtroom)

23 THE COURT: All right. So that I can give the
24 jury panel for this particular case some peace and idea of
25 when to come back and they are not just sitting there

1 waiting for us, I have looked at the -- I have looked at the
2 motions that y'all have presented and --

3 All right. The State had several motions in
4 limine, is that correct?

5 MR. EPTING: That's correct, Your Honor.

6 THE COURT: All right. And then the -- and then
7 the defense had a number of -- a number of motions, some of
8 those in limine, and then obviously we had the Jackson v.
9 Denno and the Neal v. Biggers matter, correct?

10 MS. INZERILLO: Your Honor, we have just submitted
11 a Jackson v. Denno.

12 I had a conversation with the solicitor yesterday.
13 It was my understanding that there may -- at this point they
14 don't anticipate any lay witness identification --

15 THE COURT: Okay.

16 MS. INZERILLO: -- testimony, and so at this time
17 we are not submitting a Neal v. Biggers hearing, but we may
18 request leave from the court that if that were to change, we
19 may --

20 THE COURT: If it comes up in reply, or whatever,
21 certainly. Oh, absolutely.

22 That's your understanding or how you intend to
23 proceed, solicitor?

24 MR. EPTING: That's correct, Your Honor.

25 THE COURT: All right, very good.

1 All right. So the Jackson v. Denno Hearing.

2 I think the motions in limine, we can go through
3 those fairly quickly. How many witnesses in that hearing?
4 How many --

5 MR. EPTING: Just one, Your Honor.

6 THE COURT: Just one?

7 MR. EPTING: Yes.

8 THE COURT: All right. We can't really send them
9 outside if it's raining like that. Why don't we -- why
10 don't we see when they we will find out -- are they supposed
11 to knock on the door and let them know who the foreperson
12 is, or how are we going to do that?

13 THE BAILIFF: Sometimes the judge picks a
14 foreperson here.

15 THE COURT: Well, I didn't, but I told them to
16 select it, so hopefully they will.

17 THE BAILIFF: I'll ask them to respond.

18 THE COURT: Let them know -- yeah, knock on the
19 door and let us know who they have picked as the foreperson,
20 okay?

21 All right, the State's motions in limine.

22 You had one, a motion to preclude the defense from
23 mentioning any potential sentence to the jury.

24 MR. EPTING: That is correct, Your Honor. That's
25 a standard motion. I don't believe Ms. Inzerillo would do

1 this, but it's more a shot across the bow to the defendant
2 in case he should decide to testify. Obviously I think the
3 case law is very clear that it's improper for the jury to
4 hear the sentence, the potential sentence, on the case.
5 That's outside of their purview as a jury, but that's more
6 so a precautionary measure than it is anything that I expect
7 to actually come up, Your Honor.

8 THE COURT: Do you expect there to be any issues
9 with that, Ms. Inzerillo?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: Very good.

12 Motion to preclude defense from mentioning the
13 confidential informant Ben Quick's murder conviction in
14 1996. All right.

15 MR. EPTING: Your Honor, as it stands now, it
16 appears that the confidential informant is out of state,
17 possibly in a rehab facility in Minnesota. We don't
18 anticipate calling him as a witness.

19 Even if he were to be called as a witness, we
20 think a conviction for murder would not weigh -- it would
21 not affect his credibility. That's not a crime of
22 dishonesty, but it's very, very prejudicial to the State.

23 THE COURT: Okay. I appreciate that.

24 Why don't we -- why don't we wait and see if he
25 does appear, that he is going to be a witness, then we will

1 deal with that matter at that point in time. Okay?

2 MR. EPTING: All right. And, Your Honor, in the
3 absence of him testifying, obviously we would request a
4 ruling that that does not come in.

5 THE COURT: I can't imagine how it would. I mean,
6 it's -- it would have to have -- the only way that it could
7 would be if there was some mention of it by the State that
8 was followed up by the defense. I can't imagine that
9 otherwise it would be coming up.

10 MR. EPTING: Thank you.

11 THE COURT: All right. Motion to determine
12 whether reciprocal discovery has been complied with. I
13 think both y'all had some kind of motion like that, so I'm
14 assuming the State turned over everything to the defense?

15 MR. EPTING: We have, Your Honor. We have turned
16 over all Brady and all materials that are required under
17 Rule Five.

18 THE COURT: All right.

19 MS. INZERILLO: And, Your Honor, I did discuss
20 this with Mr. Epting this morning. We have a witness on the
21 list. Right now we are not really sure if we are going to
22 call her. She has some documents in her position that she
23 printed out and then went out of town over the weekend.

24 Mr. Epting is aware of essentially the general
25 nature of those documents. She's just to bring those with

1 her to court today. We have actually not seen those
2 documents. We know generally what they contain. I have
3 made Mr. Epting aware of what they contain.

4 THE COURT: All right. So, as soon as then you
5 get them, then --

6 MS. INZERILLO: Yes, sir.

7 THE COURT: -- you will get them over to the
8 State?

9 MS. INZERILLO: Yes.

10 MR. EPTING: Your Honor, I believe I have obtained
11 those same documents the other day, so I consider -- I
12 consider reciprocal discovery has been provided with. I
13 have what she said --

14 THE COURT: Well, y'all can compare it when she
15 gets here and y'all make sure that y'all are on the same
16 page, okay?

17 MR. EPTING: Your Honor, just as a housekeeping
18 matter, I agreed, when we spoke earlier, to stipulate to the
19 introduction of those documents to prevent her from having
20 to call that witness. It's my understanding that would be
21 the only thing getting that witness here today. If she
22 wishes to enter them, either in my case in chief, or
23 separately, I would stipulate to their entry into evidence
24 as to --

25 THE COURT: So why don't y'all work on that then,

1 and if y'all come to an agreement, then you can get the
2 court reporter to mark them, if that's the case, okay?

3 MS. INZERILLO: Thank you, Your Honor.

4 MR. EPTING: Thank you, Your Honor.

5 THE COURT: All right. And then you got here a
6 motion to preclude mention of former Officer Figueuroa's
7 termination regarding a pending DUI charge.

8 Yes, sir.

9 MR. EPTING: Your Honor, it's my understanding
10 that one of the officers on this case, Figueuroa, was either
11 terminated or resigned from the police department after
12 being arrested for a driving under the influence first
13 offense charge. It's my understanding that is the only
14 conviction -- that is the only charge he has on his record.
15 I don't believe -- I don't intend to call him as a witness.
16 He is no longer in law enforcement is what my understanding
17 is. I don't think it's relevant to this case. And what
18 little relevance I can think of would -- what I would argue
19 would be substantially outweighed by the prejudicial effect.
20 It's not a crime of dishonesty that would reflect on him in
21 that way, and, therefore, we move to be irrelevant.

22 THE COURT: All right. Ms. Inzerillo, is there --

23 MS. INZERILLO: Your Honor --

24 THE COURT: -- any issue about that?

25 MS. INZERILLO: -- the only thing I would request

1 is that Officer Figueuroa -- as the court is aware, there is
2 a PWID charge and Officer Figueuroa is listed actually on
3 both charges as the case agent.

4 THE COURT: Okay.

5 MS. INZERILLO: Certainly he's not here as the
6 case agent. Commander Brown is sort of stepping in on that.

7 THE COURT: All right.

8 MS. INZERILLO: Certainly I believe it's relevant
9 to explain Officer Figueuroa's absence.

10 THE COURT: Okay.

11 MS. INZERILLO: Possibly not so far as to the
12 underlying reason for the termination. I think --

13 THE COURT: But I think the absence is he's no
14 longer with the police department.

15 MS. INZERILLO: Exactly.

16 THE COURT: I think -- I think that could be
17 clearly made, you know, that -- but I'm assuming, you know,
18 that if it comes up or can be mentioned at some time during
19 the course of the investigation, or thereafter, that
20 Commander Brown took over the case after Officer Figueuroa
21 left the police department. All right?

22 MR. EPTING: I agree, Your Honor. Thank you.

23 THE COURT: All right. Very good.

24 All right. We have -- the foreperson is -- John
25 Lesslie is the foreman of the jury, counsel.

1 Do you want to give them -- I don't know how we
2 can give them a break for about a half hour. I don't know
3 where they can go.

4 THE BAILIFF: Certainly. They do have snacks and
5 cokes and coffee in there, so it's probably as comfortable
6 there as --

7 THE COURT: All right. So why don't we just make
8 sure and just tell them that there are some pretrial matters
9 that the court is going over and we will be with them as
10 quickly as we can. How about telling them that?

11 THE BAILIFF: Yes, sir.

12 THE COURT: All right.

13 All right. So looking at then the defense motions
14 we got here -- well, the first one is a motion to determine
15 if the State has complied with Rule Five and Brady.

16 The State has already certified that they have
17 done so. Obviously if some issue comes up, then we will
18 deal with it at the time.

19 It says motion to determine the prior record of
20 the defendant the State would intend to introduce, should he
21 choose to testify.

22 It would be my intention, ma'am, that once the
23 State has finished its case and if the court does not
24 obviously grant any motion for a directed verdict and we
25 proceed, that we will question the defendant at that time

1 point in time about his Constitutional Rights and we will
2 cover all those issues at that point in time. All right?

3 MS. INZERILLO: Thank you, Your Honor.

4 THE COURT: All right. Solicitor, have you turned
5 over any criminal histories of any non-law enforcement
6 witnesses?

7 MR. EPTING: I have, Your Honor, with the
8 exception of Sammy Figueiroa, but I believe by agreement --
9 by speaking with law enforcement, his only prior criminal
10 charge is a pending DUI.

11 THE COURT: So there are no convictions?

12 MR. EPTING: That's correct.

13 THE COURT: All right. Very good.

14 All right, the motion to sequester witnesses for
15 the State and the defense. Is there any objection to that?

16 MR. EPTING: No objection to that, Your Honor.

17 THE COURT: All right. So except for the
18 investigating office then? You are going to have Commander
19 Brown in here the whole time?

20 MR. EPTING: That is correct, Your Honor.

21 THE COURT: All right.

22 MS. INZERILLO: Your Honor, I would just ask that
23 that apply in any evidentiary hearing occurring during the
24 pretrial, if that be acceptable to the court.

25 THE COURT: Is there any problem with that from

1 the State?

2 MR. EPTING: Your Honor, I have no problem with
3 that, just on the grounds that Officer Faulkenberry is here
4 as a just-in-case witness.

5 THE COURT: Okay.

6 MR. EPTING: I think he would go to chain. I
7 would like to -- this is the only thing keeping him here
8 today. If possible, I would like for him to be released
9 until he's needed later in the morning, probably later in
10 the afternoon, basically how I anticipate the case going.

11 THE COURT: Do you have -- is there any problem
12 with that?

13 MS. INZERILLO: Asking that he just --

14 THE COURT: Basically --

15 MR. EPTING: He not be needed for pretrial.

16 MS. INZERILLO: Oh, I'm fine with that. I just
17 didn't want the officer sitting in here.

18 THE COURT: All right, very good. All right. So,
19 good.

20 MR. EPTING: Thank you, Your Honor.

21 THE COURT: And let's see, you said motion to
22 determine the existence and admissibility of any prior bad
23 acts the State may intend to introduce as Lyle testimony.
24 Is that going to be an issue in this case.

25 MR. EPTING: We do not intend to introduce any

1 404(b) or Lyle testimony. However, obviously if the door is
2 opened in questioning, then at that point we would ask leave
3 to revisit that issue.

4 THE COURT: All right. Very good.

5 MS. INZERILLO: Your Honor, if I may --

6 THE COURT: Yes, sir.

7 MS. INZERILLO: -- very briefly, I understand it's
8 not probably going to be intentionally elicited, I just
9 wanted to state just a concern on the record. My
10 understanding is probably until the identification
11 testimony, that Mr. Turner is essentially known to law
12 enforcement through some prior dealings. And I just wanted
13 to make sure that that testimony is not elicited or not --
14 certainly we are not going to elicit that testimony, and I
15 just wanted to ask the court to caution that anything like
16 that not be stated --

17 THE COURT: Okay.

18 MS. INZERILLO: -- because we are not going to
19 proffer Neal v. Biggers hearing, but, I mean, I anticipate
20 probably that a law enforcement officer is going to handle
21 the identification, and I wanted to make sure that that
22 wouldn't be any testimony that I know him from, you know,
23 such and such time when I arrested him for whatever.

24 THE COURT: Solicitor?

25 MR. EPTING: I do not intend to introduce on my

1 questions any testimony about how long Commander Brown has
2 known him.

3 THE COURT: Okay.

4 MR. EPTING: Just as a shot across the bow,
5 Commander Brown has known Mr. Turner for fifteen, twenty
6 years.

7 THE COURT: Right.

8 MR. EPTING: So I would ask that defense
9 counsel -- I would ask the court to instruct defense counsel
10 very carefully tailor their questions.

11 THE COURT: Well, I mean, that's -- that's -- you
12 know, that's up to them. If they find that they need to go
13 into a particular area and they ask the question, they ask
14 the question. I mean, that's -- that's just their choice,
15 but I'm not going to tell them how to do their -- how to do
16 their work. But, you know, everybody understands what could
17 be the consequence of asking that particular question.

18 All right. Then you got a Jackson v. Denno.

19 Then the last one here is a motion to preclude any
20 witness from calling the drug recovered in this case crack
21 or crack cocaine until the chemist essentially testifies.

22 I appreciate your concern from the defense's
23 perspective, ma'am, but if ultimately the chemist doesn't
24 testify it's an illegal drug, they don't have a case. So --
25 I mean, that's going to be the end of the case. So I -- I

1 would ask the State not to overly emphasize it, but if it --
2 you know, in the seizure of it they suspected it to be crack
3 cocaine, or they suspected it to be some, you know, drug,
4 I'm not going to prohibit them from saying that, but
5 obviously, you know -- we will -- you know, if the chemist
6 never testifies or doesn't testify it's an illegal drug,
7 then obviously we are not going to be here very long. So --
8 all right.

9 MR. EPTING: Your Honor, if I may be heard on one
10 additional matter --

11 THE COURT: Yes.

12 MR. EPTING: -- I have unfortunately neglected to
13 put on my written motion in limine. We anticipate the CI is
14 not coming in here to testify, as I stated earlier. As a
15 result, I'm -- to comply with Crawford and Crawford's
16 progeny we have redacted the audio out of the videos in this
17 case, both on the surveillance and on the -- and on the
18 camera that the CI had on his person. That is obviously to
19 comply with the law as it stands. I don't believe we have
20 Mr. Turner's voice on any of those. It's simply the CI and
21 another individual at one point talking. I believe that
22 without either of those people here, there would be
23 confrontation issues, and, therefore, as an officer of the
24 court, we're in compliance with the Constitutional case law.
25 I did remove that audio. I would ask that defense counsel

1 agrees not to use that as a sword against me with the jury,
2 as far as obviously that something was said and yet it's
3 been taken out.

4 THE COURT: Well, I -- it would seem to be -- I'm
5 not sure how that argument would be made, unless the
6 question was asked in direct or cross-examination. Then if
7 the question is asked, let's say on cross-examination, then
8 you would be welcome to try and, you know, combat the
9 inference in, you know, the proper evidentiary fashion after
10 that. But, again, I'm not going to micromanage the State or
11 the defense.

12 Now, if you have an objection about something that
13 is going on, I expect the State and defense to bring it up
14 to me at that point in time. You have got -- if you think
15 there is, you know, some matter that needs to be resolved,
16 you know -- usually you don't see it much in opening and
17 closing arguments, but if there is, you know a -- you
18 believe there be to an impermissible argument on the State
19 or defense's part, then I expect y'all to bring that to my
20 attention. All right?

21 MR. EPTING: I certainly will, Your Honor.

22 THE COURT: All right, great.

23 MR. EPTING: And there is one last matter, and I
24 apologize.

25 THE COURT: That's all right.

1 MR. EPTING: In reviewing these tapes with law
2 enforcement, there is approximately a minute where the CI,
3 before the tape cuts off, removes a wire from his person,
4 reveals the location where he moved it, before he removed
5 it.

6 THE COURT: Okay.

7 MR. EPTING: We believe -- at law enforcement's
8 request I removed that out of the version of one of the
9 videos on the grounds that it's irrelevant to the case and
10 possibly could reveal trade secrets, as far as where the
11 wires are placed.

12 I understand Ms. Inzerillo has an objection to
13 revealing the tape with that redaction out there. I have
14 prepared a copy with -- the full amount and I have prepared
15 a copy with that part cut out.

16 THE COURT: Okay.

17 MR. EPTING: And --

18 THE COURT: Ma'am, I'll be glad to hear from you.

19 MS. INZERILLO: Well, my objection, one, goes to I
20 don't see where it's revealing any trade secrets,
21 essentially. And the court is free to view the video, but
22 essentially what you see on the video is the confidential
23 informant is back inside a truck, which I believe is the DEU
24 truck, and he's taking off all the equipment.

25 THE COURT: Okay.

1 MS. INZERILLO: Certainly I don't see that that's
2 a trade secret of the DEU, or anything like that, showing
3 anything like that that would bar showing that.

4 And certainly not having the jury see that would,
5 in my view, impair one of the potential defense arguments
6 that we could possibly make at closing.

7 I would ask the court not to -- to allow that tape
8 to run and to allow the jury to see all of the CI's
9 movements until the end of the tape, because the tape does
10 end and shows all of the CI's activities up until the end of
11 the tape, and that's -- he takes it off and then he sits and
12 then the tape ends. So I think --

13 THE COURT: I appreciate the State's concern, but
14 I -- at this point in time I don't see any reason that the
15 entirety of the tape should not be played for a jury. All
16 right?

17 MR. EPTING: Thank you, Your Honor.

18 THE COURT: All right. So the Jackson v. Denno,
19 what witness do we have?

20 MR. EPTING: As to the Jackson v. Denno, the State
21 would call Commander Marvin Brown.

22 THE COURT: All right, sir. Please come around
23 and be sworn, sir.

24
25 COMMANDER MARVIN BROWN, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. EPTING:

3 Q. Commander Brown, if you would, please state your full
4 name for the record.

5 A. It's Marvin Brown.

6 Q. And what's your occupation?

7 A. I'm the commander of the York County
8 Multi-Jurisdictional Drug Enforcement Unit.

9 Q. And were you involved in the arrest of Lexie Turner on
10 May 18th of 2012?

11 A. I was.

12 Q. And at some point during that arrest did you hear him
13 speak or speak with him directly?

14 A. I did.

15 Q. Okay. Could you briefly explain to the court when you
16 spoke with him first?

17 A. I spoke with -- we approached the car. I spoke with
18 Lexie and had him step out of the car.

19 I looked into the car. Officer Figueiroa was dealing
20 with the passenger. I heard him ask the passenger for
21 consent to search the vehicle.

22 Officer Figueiroa leaned in the car to search the
23 vehicle. I looked in and in plain view in a little
24 indentation in the console was a bag of crack cocaine. I
25 pointed it out to Officer Figueiroa. He picked up bag of

1 crack cocaine.

2 At that point I read the driver, Travis Moore, and Mr.
3 Lexie Turner their rights, my rights card that I have in my
4 wallet.

5 Q. Okay.

6 A. Go ahead.

7 Q. And did you -- do you commonly read that? Is that a
8 common procedure?

9 A. Yes, all the drug agents are required to carry a rights
10 card on their person.

11 Q. And after the fact do you do anything else with the
12 card after the arrest has been made and is secured?

13 A. Yes, downtown at the police department I photocopied my
14 card, the one that I have in my wallet, and I put a date and
15 time on that, in which I -- who I read the rights to and
16 what the date and time I read the rights.

17 Q. And did you do that in this case?

18 A. I did.

19 MR. EPTIN: Your Honor, may I approach the
20 witness?

21 THE COURT: Absolutely.

22 MR. EPTING: And, Your Honor, if I could inquire,
23 Court's Exhibit or State's Exhibit?

24 THE COURT: It would just be State's Exhibit for
25 the motion.

1 (Miranda Rights Form marked as State's Exhibit No.
2 1 for identification)

3 BY MR. EPTING:

4 Q. Commander Brown, for the record I'm going to hand you
5 State's Exhibit 1 for identification.

6 Commander Brown, do you recognize State's Exhibit 1?

7 A. I do.

8 Q. What do you recognize that to be?

9 A. It's a photocopy of my rights card. And in my
10 handwriting down below some notes about what time I read the
11 rights, who I read them to, and who was present.

12 Q. And is that the card that you keep in your wallet?

13 A. It is. It's my card.

14 Q. Both sides?

15 A. Yes.

16 Q. Okay. Who else was present when you read the card,
17 when you read the Miranda Rights?

18 A. Officer Figueiroa, Mr. Lexie Turner, and Travis Moore.

19 Q. And did the defendant appear to understand your
20 advisement?

21 A. Yes, he did.

22 Q. Okay. Did he appear to be grossly intoxicated or have
23 any other impediment that would prevent him from
24 understanding his rights?

25 A. No, he did not.

1 Q. Did the defendant invoke his right to remain silent?

2 A. He did not.

3 Q. Did he invoke his right to an attorney?

4 A. He did not.

5 Q. And what was the statement that he gave you after you
6 read his rights?

7 A. I just -- after I read him the rights, I said "who does
8 the crack belong to?"

9 And Travis Moore was standing there and Lexie was
10 standing there and Lexie said "it's my crack."

11 Q. He said it's his crack.

12 At that point was he under arrest?

13 A. Yes, Lexie was under arrest, placed under arrest, and
14 Travis Moore was released.

15 Q. While you were speaking to him and asking him these
16 questions and reading Miranda, did you guys have your
17 weapons drawn?

18 A. No, I did not.

19 Q. Make any promises?

20 A. No.

21 Q. Any threats whatsoever?

22 A. Did not.

23 Q. Was that the only time that you spoke with him that
24 day?

25 A. No, he made another statement downtown.

1 Q. Okay. And approximately how long after the first
2 statement was that?

3 A. Twenty minutes, maybe.

4 Q. Did you say it was downtown?

5 A. It was during the booking process.

6 Q. During the booking process?

7 A. Yes.

8 Q. How big of a room is that?

9 A. I'm sorry?

10 Q. How big of a room was that?

11 A. It's a conference room. It has one, two, three --
12 either six or eight chairs.

13 Q. And without telling me the statement yet, did he make a
14 second statement?

15 A. Yes, he did.

16 Q. And when he made that second statement, did you promise
17 or threaten him?

18 A. I did not.

19 Q. Did you have your weapons drawn?

20 A. No.

21 Q. Did he at that time appear grossly intoxicated or
22 unable to remember the Miranda Rights that you had read to
23 him previously?

24 A. No, he was fine. Lexie was fine.

25 Q. And what did he say to you at that time?

1 A. It's common practice for me to ask the weight of the
2 crack to the persons arrested, because usually the person
3 who owns the crack knows their weight, so I asked him "how
4 much did the crack weigh?"

5 And his response was "about two grams."

6 Q. Okay.

7 MR. EPTING: Your Honor, I have nothing further
8 for this witness.

9 At this time I would ask Commander Marvin Brown,
10 that you answer any questions Ms. Inzerillo may have.

11 THE COURT: Cross-examination.

12 MS. INZERILLO: Thank you, Your Honor.

13 CROSS EXAMINATION BY MS. INZERILLO:

14 Q. How are you doing?

15 A. Hey.

16 Q. Essentially you approached Mr. Turner after doing
17 surveillance on the parking lot, is that right?

18 A. Yes, ma'am.

19 Q. Okay. And so when you approached the Suburban that he
20 was riding in, that's when you engaged Mr. Turner, correct?

21 A. Yes.

22 Q. Okay. And when -- so at that point that approached
23 them, you, you were not going to let them leave, because you
24 suspected them of doing something?

25 A. That's correct.

1 Q. All right. And your testimony is that you approached
2 the car and you saw the drugs in plain sight?

3 A. Yes, when I saw the drugs, they were on the console in
4 plain sight.

5 Lexie and I were standing on the passenger's side.
6 Officer Figueuroa had been looking in the truck, and I looked
7 in and saw the drugs from the outside of the vehicle and
8 drew it to Officer Figueuroa's attention, and Officer
9 Figueuroa reached back in and picked up the drugs.

10 Q. All right. And then at that point is when you placed
11 Mr. Turner under arrest?

12 A. Ma'am?

13 Q. And at that point you placed Mr. Turner under arrest?

14 A. I placed him under arrest for the possession with
15 intent. The drugs -- I actually had handcuffed him right
16 before that, because he was just involved in a twenty-dollar
17 rock transaction. So I handcuffed him to the edge of the --
18 to a little security bar in the car for two reasons.

19 One, I had probable cause to arrest.

20 And, two, Lexie is known to run, so I handcuffed him to
21 the car so I wouldn't have to chase him across the parking
22 lot.

23 Q. Okay. So you approached the truck and engaged with
24 Lexie. Did you pull him out of the truck at that point?

25 A. We pulled Mr. -- we asked Mr. Moore to step out.

1 Lexie had went into store and came back out.

2 Q. Okay.

3 A. And to be quite honest, I don't know if he was able --
4 I think he sat back in the car and I asked him to step out.
5 He had just gotten back into the car and they were about to
6 leave when we pulled up.

7 I waited for Lexie to come out of the store before we
8 approached the vehicle, because I didn't want to approach
9 him inside the store.

10 Q. Okay. So when he came out of the store was when you --
11 is that when you cuffed him to the car?

12 A. He -- he -- if I remember correctly, he was in the car.
13 I asked him to step out. And there is a little handle there
14 that you can use to help get out of the Suburban --

15 Q. Uh-huh.

16 A. -- and I just handcuffed one hand to the handle,
17 because we was -- it was two on two, two officers and two
18 persons, so I handcuffed Lexie to that little piece on the
19 car so he couldn't take off running.

20 Q. Okay. So when you cuffed him in the car, that's when
21 Officer Figueuroa was sort of searching the car and you saw
22 the crack?

23 A. Yes.

24 Q. Okay. And then did you have any conversations with
25 Lexie prior to finding the crack?

1 A. Other than asking him to step out of the car, I told
2 him we suspected there was crack cocaine in the car.

3 Q. Okay. Did he make any statements to you, based on
4 that?

5 A. No.

6 Q. And when you found the crack, is that when you
7 Mirandized him?

8 A. Yes, a minute later.

9 Q. Okay. Did you ask him anything prior to -- anything in
10 that minute prior to Miranda?

11 A. No, I just pulled -- well, I immediately read --

12 I pulled my card out of my wallet and I read the
13 Miranda. It takes about a minute to read it. I read the
14 Constitutional Rights and Miranda to Lexie, and I read it
15 to -- I talk loud anyway. I read it to Mr. Moore also.

16 Q. And after that you indicated that you transported Mr.
17 Turner?

18 A. Yes. Mr. Moore was not arrested, only Mr. Turner.

19 Q. And then, other than saying the crack was his, did he
20 make any other statements at the liquor store that day?

21 A. Not that I can recall.

22 Q. Okay. So at that point you transported him to where,
23 to the Rock Hill PD?

24 A. Yeah, the closest office was the Rock Hill Police
25 Department.

1 Q. Okay. And then your testimony was that you took him
2 into a booking room?

3 A. It was a conference room, but, yeah, we use it to --
4 it's not in the jail. It's in a conference room. It's a
5 fairly large conference room.

6 Q. Okay. And then at that point did you continue the
7 conversation with him?

8 A. Well, during the booking process I just asked him "how
9 much did the crack weigh?"

10 He said "about two grams."

11 Q. Did you ask him anything else?

12 A. I asked him -- we asked him his name, address, things
13 like that.

14 Q. Okay. Did you ask him anything else pertaining to this
15 case, the crack, or anything else?

16 A. No, not that I recall.

17 Q. All right. Did he ever give you a written statement?

18 A. No.

19 Q. All right. Were any of the statements video or audio
20 recorded?

21 A. No.

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

24 THE COURT: All right. Thank you.

25 Any redirect?

1 MR. EPTING: No, Your Honor.

2 THE COURT: All right, you may step down, sir.

3 THE WITNESS: Thank you.

4 THE COURT: Any further presentation on the
5 Jackson v. Denno matter?

6 MR. EPTING: No, Your Honor.

7 THE COURT: All right. Any presentation from the
8 defense?

9 MS. INZERILLO: No, Your Honor. At this time we
10 would just ask the court to make a finding.

11 THE COURT: All right.

12 All right. In this particular matter I do find
13 that the defendant, his freedom was constrained. He was
14 detained.

15 He was given his Miranda Warnings. It appears
16 that they were properly done and that the defendant
17 understood them; that he was not under the influence of
18 anything; that he did not -- he was not incapacitated in any
19 fashion and he knew what he was doing and had full knowledge
20 of his Constitutional Rights. He responded to a question by
21 the police officer voluntarily with the knowledge of his
22 rights and the knowledge that he did not have to answer the
23 questions.

24 And so, therefore, I do find that, first, law
25 enforcement complied with the requirements of Miranda and

1 that the defendant received them, understood them. And I'm
2 going to allow -- and then made a statement with that
3 knowledge, and I'm going to allow the statement into
4 evidence at this point in time.

5 And obviously it would be up to the jury to
6 ultimately decide whether it was voluntary or not, and I
7 will so instruct them regarding the statement, but I'm going
8 to allow it into evidence. All right.

9 MR. EPTING: Thank you, Your Honor.

10 MS. INZERILLO: Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. INZERILLO: May I address the court on just
13 one quick point?

14 THE COURT: Yes, ma'am, please.

15 MS. INZERILLO: During the officer's testimony,
16 and I do anticipate this could possibly come out in front of
17 the jury --

18 THE COURT: Sure.

19 MS. INZERILLO: -- there was a comment made that
20 Mr. Turner was handcuffed to the truck because he is known
21 to run.

22 THE COURT: Right.

23 MS. INZERILLO: And, of course, that would involve
24 some prior dealings with Mr. Turner.

25 THE COURT: Right.

1 So, officer, it's not a problem that you felt for,
2 you know, officers safety, or it was proper under the
3 circumstances to handcuff him to the hand-hold on the
4 vehicle, but do not follow that up with that the defendant
5 is known to run in the direct examination by the State.

6 You know, obviously, you know, if the defense --
7 and I'm sure you won't, ma'am, but obviously if you ask a
8 question that could lead to that answer, then you know what
9 would come in. All right?

10 THE WITNESS: Okay.

11 THE COURT: All right, anything else from the
12 State then?

13 MR. EPTING: Just one brief thing and --

14 THE COURT: Sure.

15 MR. EPTING: -- possibly this won't continue. I
16 noticed a motion coming from my left side while Marvin Brown
17 was testifying. It appeared that Mr. Turner was shaking his
18 head vigorously at some of the things that were said. I
19 would ask the court to instruct him not to do that in front
20 of the jury.

21 THE COURT: All right. Mr. Turner, you will have
22 an opportunity, if you so choose, and we will cover that at
23 the time of the presentation of the defense, to testify, but
24 nonverbal testimony, reaction to statements by any witness,
25 that's not proper. You can certainly talk to your attorney.

1 You can make notes, you know, to either questions and stuff
2 like that, but not such that the jury would see that you
3 were visibly disagreeing or upset with the testimony. Okay?

4 THE DEFENDANT: I won't do that.

5 THE COURT: That's all right. That's fine.

6 Let me cover one thing real quick, counsel.

7 The indictment for distribution of crack cocaine
8 says Lexie James Spratt Turner.

9 The indictment for possession with intent to
10 distribute crack cocaine says Lexie James Turner, Jr., all
11 right? So, does the State wish to do something about that,
12 or --

13 MR. EPTING: I would ask that the defense confirm
14 Mr. Turner's correct name, and I would move to amend those
15 names to be the same. I believe it's Lexie James Turner,
16 Jr..

17 THE COURT: Ms. Inzerillo?

18 MS. INZERILLO: Your Honor, Mr. Turner indicates
19 that the proper indication is Lexie James Turner, Jr..

20 THE COURT: Okay. So Lexie James Turner, Jr..

21 So it is proper heading in the possession with
22 intent to distribute crack cocaine, and we need to change
23 the distribution of crack cocaine to Lexie James Turner,
24 Jr.. All right. So --

25 MR. EPTING: Thank you, Your Honor. I apologize.

1 THE COURT: We will do so at this point in time
2 then. All right?

3 MR. EPTING: Yes, Your Honor.

4 THE COURT: All right. I wanted to make sure that
5 when -- if it comes to that point in time and we were doing
6 the verdict form properly, if it comes, all right?

7 MS. INZERILLO: Your Honor, may we take just a
8 short break?

9 THE COURT: Yes, I was going to say that we were.
10 Yeah, we are going to take a short break and then we will
11 come back in and get started. All right. Thank y'all.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 (Photograph marked as State's Exhibit No. 2 for
15 identification)

16 (Photograph marked as State's Exhibit No. 3 for
17 identification)

18 (Photograph marked as State's Exhibit No. 4 for
19 identification)

20 (Photograph marked as State's Exhibit No. 5 for
21 identification)

22 (Videotape marked as State's Exhibit No. 6 for
23 identification)

24 (Videotape marked as State's Exhibit No. 7 for
25 identification)

1 THE COURT: Thank you very much. You may be
2 seated.

3 All right, is the State ready for the jury?

4 MR. EPTING: The State is ready, Your Honor.

5 THE COURT: Defense?

6 MS. INZERILLO: Yes, Your Honor.

7 THE COURT: Very good.

8 Ask the jury to come in, please.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: All right. Mr. Lesslie, you have been
12 selected by the jury panel to be the foreperson in this
13 case, is that correct?

14 JURY FOREPERSON: Yes, sir.

15 THE COURT: All right, very good.

16 I see you brought the notepad and a pen and I
17 should have instructed y'all about that. Normally we don't
18 allow taking of notes by the jury, and I'll explain that to
19 you, except if the trial is going to be rather lengthy or
20 there is going to be a multitude of witnesses and things
21 like that. And the main reason is we find that sometimes
22 jurors, when they are taking notes, are concentrating on
23 what they are writing and not the next question and the
24 answer, which could be as important, or more important, than
25 what's being taken down at the time, and it is the

1 collective wisdom of the jury that we are looking for in
2 this. So I don't believe this to be a case that would
3 involve the taking of notes, because I don't think that, as
4 far as the number of the witnesses and the length of it,
5 would require that we do so. So we will just rely on our
6 common sense understanding of what's been testified. All
7 right?

8 So the very first thing that's going to happen is
9 the Clerk of Court is going to administer your oath to you.
10 So if you would all please stand at the time.

11 THE CLERK: All right. If you will raise your
12 right hand.

13 You shall and well and truly try and in true
14 deliverance make between the State of South Carolina and the
15 defendant at the bar whom you shall have in charge and a
16 true verdict give, according to the evidence and the law, so
17 help you God.

18 Please respond by saying I will.

19 JURY PANEL: (Collectively said I will)

20 THE COURT: Y'all have a seat. Thank you very
21 much.

22 All right. Is there any member of the jury panel
23 that did not affirmatively take the oath as given by the
24 clerk? If so, please stand.

25 (No response)

1 THE COURT: I find no member of the jury panel
2 standing; therefore, the jury is properly sworn in this
3 particular matter.

4 All right, ladies and gentlemen, as I indicated to
5 you at the very beginning, and you remember I read to you
6 the charges against the defendant in the indictments, and
7 you remember I told you those are merely the charges the
8 State has levied or brought against the defendant. They're
9 not evidence. You are going to hear the evidence in this
10 case. It's coming from the witness stand and documents and
11 evidence that are introduced before you through particular
12 persons who testify.

13 To that charge, though, to both charges that the
14 State has levied or brought against the defendant the
15 defendant has pled not guilty. That puts the burden of
16 proof on the State of South Carolina to prove the defendant
17 guilty beyond a reasonable doubt.

18 The defendant is presumed innocent of the charges,
19 and I'll explain this more fully at the end when I give you
20 the full explanation of the law, but the defendant has
21 nothing to show to you. The defendant has nothing to prove
22 to you in any case. As a matter of fact, the defendant need
23 not even show up for trial, if they don't want to, because
24 they don't have to prove anything to you. They don't have
25 to show anything to you. The State has to prove the

1 defendant guilty of the charges brought against him beyond a
2 reasonable doubt.

3 Collectively you will be the judges of the facts
4 of this particular case. I will not indicate to you in any
5 way what I think the facts of this case are, because it's
6 not my job, not my responsibility. It's your job and your
7 responsibility to listen to all the facts and evidence
8 presented here. Find that evidence which convinces you of
9 its truth, and then you take that evidence you find to be
10 true and you weigh it against the State's burden to prove
11 the defendant guilty of the crime or crimes charged beyond a
12 reasonable doubt.

13 In being the judges of the facts, one of the other
14 duties that you will have will be to judge the credibility
15 and the believability of witnesses that come before you.
16 You may be thinking how am I going to judge somebody's
17 credibility or believability when they are testifying under
18 oath over here? You do it every single day of your life.
19 When somebody tells you something, you are automatically
20 judging whether or not you believe them. You use your good
21 common sense, you use your good judgment that you use in
22 conducting your own daily affairs. Use that good common
23 sense. Apply it to the facts and evidence that you hear.
24 Find that evidence which convinces you it's true. And,
25 again, then you weigh that evidence against the State's

1 burden to prove the defendant guilty beyond a reasonable
2 doubt.

3 How the trial will proceed when I get done with
4 these brief statements, the attorneys will have their
5 opening statements for you.

6 Now, opening statements and closing statements by
7 counsel are not evidence. They're important, but they are
8 not evidence. The evidence comes from the witness stand and
9 the documents. We will have that next after the opening
10 statements, have all the evidence would be presented through
11 the testimony. We will have the closing arguments, and then
12 we will have the charge on the law. I will give you the law
13 that you will apply to the facts and evidence that you find
14 to be true, and then I'll submit the case to you for your
15 discussions, your deliberations, and then your unanimous
16 decision on the two charges brought against the defendant.

17 During the course of the trial if the attorneys
18 bring forth any motions or they object to some matter,
19 please remember one of my jobs obviously is to govern the
20 conduct of the trial, how the things will proceed. If I
21 rule on a matter that they present to the court, an
22 objection, or a motion, or whatever it is, I don't send you
23 back to the jury room to discuss it further with them,
24 please remember I'm telling the lawyers how the trial will
25 be conducted. I'm not, again, making any comments on the

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

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

6 MR. EPTING: Thank you, Your Honor.

7 May it please the court?

8 THE COURT: Yes, sir.

9 MR. EPTING: Defense counsel.

10 Ladies and gentlemen of the jury, good morning.

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

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

25 They read the defendant his Miranda Rights. At

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

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

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

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

21 That's not all he was marked with.

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

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

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

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

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

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

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

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

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

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

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

1 THE COURT: All right. Ma'am.

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

4 THE COURT: Yes, ma'am.

5 MS. INZERILLO: Good morning.

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

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

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

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

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

15 MR. EPTING: Thank you, Your Honor.

16 The State calls Marvin Brown to the stand.

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

19 THE WITNESS: Yes, sir.

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

22 DIRECT EXAMINATION BY MR. EPTING:

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

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

1 Q. Okay. You are commander of the drug unit?

2 A. I am. York County Multi-Jurisdictional Drug
3 Enforcement Unit, or the York County Drug Unit here in York
4 County.

5 Q. And how many years have been involved with the Drug
6 Enforcement Unit?

7 A. We formed the unit in 1998, and I was the original
8 commander. I'm still here.

9 Q. And could you explain a little bit to the jury the type
10 of things that the Drug Enforcement Unit does?

11 A. In 1998, every law enforcement agency in this county
12 come together to form one large drug unit. It's eight
13 agencies; sheriff's office, Rock Hill City -- all the cities
14 within the York County. So there is eight different
15 agencies on the drug unit. It's about twenty-five of us.
16 We have a couple clerical people and there is a chemist
17 located down at the sheriff's office.

18 Q. And how many years have been in law enforcement?

19 A. Just over thirty-seven.

20 Q. And would it be fair to say that you have investigated
21 a large number of drug crimes?

22 A. I have. All through the nineties I was a lieutenant
23 with the Rock Hill Police Department, and in '96 I
24 transported over to York County, so I have been involved in
25 drug enforcement -- my first search warrant was in 1977.

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

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

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

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

9 A. I was.

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

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

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

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

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

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

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

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

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

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

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

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

13 MS. INZERILLO: Yes, Your Honor.

14 THE COURT: All right. Go ahead.

15 BY MR. EPTING:

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

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

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

22 A. Yes, we photocopy it.

23 Q. Is that done in every case?

24 A. Yes.

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

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

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

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

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

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

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

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

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

22 A. I'm sorry?

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

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

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

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

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

8 MR. EPTING: All right.

9 Well, I'll move on.

10 BY MR. EPTING:

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

13 A. Yes.

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

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

17 Q. Where did he go?

18 A. Minnesota.

19 MS. INZERILLO: Objection, hearsay.

20 THE COURT: Sustained.

21 Go ahead.

22 BY MR. EPTING:

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

25 A. Correct.

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

3 A. Yes.

4 Q. He's wired up, as I said earlier.

5 What happens then?

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

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

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

15 Q. And is that in York County?

16 A. It is, York County.

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

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

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

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

25 A. I'm sorry?

1 Q. Did you hear over the radio --

2 MS. INZERILLO: Objection to the hearsay, Your
3 Honor.

4 THE COURT: He didn't understand the question.

5 THE WITNESS: I didn't understand the question.

6 THE COURT: I'm going to allow the question.

7 Go ahead and ask the question, solicitor.

8 BY MR. EPTING:

9 Q. At some point did you hear over the radio that the CI
10 was arriving?

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

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

14 Go ahead.

15 A. I saw him arrive.

16 BY MR. EPTING:

17 Q. You saw him arrive?

18 A. Yeah, he pulled up in the county truck and got out and
19 stood on the side of the building, as instructed.

20 Q. Okay. And, if you would, tell the jury what happened
21 in that parking lot, starting from when the CI arrived to
22 when the deal was culminated.

23 A. Mr. Quick arrived. He parked the county truck on the
24 side of the vehicle -- not on the side of the vehicle, I'm
25 sorry. On the side of the building. He got out of the

1 vehicle.

2 He was instructed to stay outside and stand on the side
3 of the building so I could see him clearly, and he stood
4 there on the side of the building just waiting.

5 Q. Approximately how long did he wait?

6 A. I don't know. Fifteen minutes, maybe. It was a little
7 while, fifteen, twenty minutes.

8 And during that time people were coming in and out of
9 the liquor store.

10 He did have a conversation with one guy. There was --
11 nothing exchanged hands. They had a conversation.

12 Then that guy talked to another person.

13 MS. INZERILLO: Objection, Your Honor.

14 Again, only if Mr. Brown was a party to it or was
15 actually present for it. We would ask that his testimony be
16 limited to only what he saw. Anything that would be
17 speculation or --

18 MR. EPTING: Your Honor, he's testifying about
19 what he observed.

20 THE COURT: Gentlemen -- counsel.

21 As I understand it, counsel, the officer is
22 testifying as to what he observed, what took place in his
23 presence, and I would allow that. Thank you.

24 A. I was across the street, which is just Cherry Road. I
25 had a pair of binoculars. I'm looking through the

1 binoculars. I saw Mr. Quick arrive, saw him park, saw him
2 get out. I saw him stand beside the building.

3 I saw another young man come out. They were -- they
4 had a conversation. I was through the binoculars. I could
5 see them very well. It was daylight. It was a sunny day.
6 They were talking. The young man -- I could see -- I could
7 see them. I couldn't hear what they were saying. I could
8 see them talking.

9 He went to another car. Walked away from that car, got
10 in another car and left. That was the young man.

11 Mr. Quick stood on the side of the store and stood
12 there the entire time.

13 Fifteen, twenty minutes later Lexie pulled up.

14 Q. Okay. And at some point -- were you equipped with --
15 you said -- I believe you said earlier you had binoculars
16 and a camera?

17 A. Yes. I had the binoculars at first. And when the
18 young man walked up, I put the binoculars down and I turned
19 on the video camera. From that point on I just let the
20 video camera run, because someone had made contact with him,
21 so I wanted to video from that point on.

22 Q. And then you said at some point an SUV containing Lexie
23 Turner pulled up?

24 A. Yes. After the young man left, a Suburban came from
25 the lower end, some apartments behind the liquor store. A

1 Suburban came up. It's a Suburban or a Tahoe. I believe
2 it's a Suburban came up. Travis Moore was driving. Lexie
3 Turner was on the passenger's side, and Mr. Quick walked up
4 passenger side window.

5 Q. Okay. Anything conspire at that window?

6 A. Yes. Based on my experience, they did a transaction --

7 MS. INZERILLO: Objection, Your Honor. Again --

8 A. -- and what I saw.

9 THE COURT: Just a second.

10 A. Sir?

11 THE COURT: If there is an objection, please stop.

12 All right?

13 Again, I'm going to allow the testimony, based
14 upon the officer's observation of what occurred in his
15 presence.

16 You may continue.

17 BY MR. EPTING:

18 Q. So you observed what in your experience is a drug
19 transaction happening?

20 A. Yes, it's on videotape. I videotape what I observed
21 and thought to be a drug transaction.

22 Then the plan was to let the vehicle go and just follow
23 it and get a tag number, but they pulled into the liquor
24 store and Lexie got out and went into the liquor store, so I
25 changed the plan in mid stream. We decided just to pull up

1 and get out with them, so we did.

2 We pulled in behind the Suburban. It was parked in
3 front of the store, not on the side of the store. It was
4 parked right in front. We pulled up. Lexie come out of the
5 store. Travis Moore was still behind the driver's seat.
6 Lexie, I believe, got into the vehicle, because I asked him
7 to step right back out again.

8 Officer Figueuroa was on the driver's side. He asked
9 Travis Moore to step out of the car.

10 So you got Officer Figueuroa on the driver's side. I'm
11 on the passenger's side with Lexie.

12 Q. Before we have get any further into your encounter with
13 those two, at what point did you --

14 So, if I understand your testimony, you began to film
15 when he was talking with -- the informant was talking with
16 another individual in the parking lot, is that correct?

17 A. Yes.

18 Q. And when did you stop that?

19 A. Well, I stopped when the Suburban pulled off, because
20 the plan was to follow the Suburban and get the tag number.
21 That was my plan. So I stopped the video tape, but when
22 they pulled into the liquor store and Lexie got out and went
23 in, I changed the plan and I decided just to go up and
24 approach them.

25 Q. Okay.

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

2 THE COURT: That's all right.

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

4 THE COURT: That's not a problem.

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

7 THE COURT: Yes, sir.

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

10 BY MR. EPTING:

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

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

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

15 A. I have.

16 Q. Is it a fair and accurate depiction?

17 A. Of what happened that day, yes.

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

20 THE COURT: Any objection?

21 MS. INZERILLO: No, Your Honor.

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

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

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

1 publish?

2 THE COURT: You may do so.

3 MR. EPTING: Thank you, Your Honor.

4 BY MR. EPTING:

5 Q. Commander Brown, if you -- while this is playing, so
6 that the record is clear, if you wish to make a comment
7 about what's playing on the video, just raise your hand so
8 that I know I need to stop. I'll pause the video and at
9 that time you can make whatever comments you would like to
10 make.

11 A. Okay.

12 MS. INZERILLO: Your Honor, I would ask that the
13 video just be allowed to play, because I believe that is the
14 best evidence.

15 THE COURT: I appreciate that, but if the -- if
16 there is a question or comment, I'm going to allow it. We
17 will not be playing the video during the question or the
18 answer.

19 MS. INZERILLO: Thank you, Your Honor.

20 MR. EPTING: And, Your Honor, for the record,
21 State's Exhibit 7 is now being played on the projector.

22 THE COURT: Yes, sir.

23 (Whereupon, the videotape was played)

24 (Whereupon, the videotape was stopped)

25 MR. EPTING: And if I may pause it at this time.

1 BY MR. EPTING:

2 Q. Commander Brown, is the that individual that you were
3 referring to who is speaking with the informant?

4 A. Yes. Mr. Quick is on the left. He's dialing his
5 phone. And the individual is on the right just come out of
6 the liquor store and just talked to him for a moment.

7 Q. Does it appear Mr. Quick is holding the camera that he
8 was issued?

9 A. He's got a cell phone in one hand. The camera would be
10 in the left hand.

11 Q. Thank you.

12 (Whereupon, the videotape was played)

13 (Whereupon, the videotape was stopped)

14 BY MR. EPTING:

15 Q. What is happening here, commander?

16 A. The young man is leaving and Quick is starting to walk
17 towards the Suburban. You can see the Suburban in just a
18 second. It's starting to come up from the back side of the
19 apartments. There it is there.

20 (Whereupon, the videotape was started)

21 (Whereupon, the videotape was stopped)

22 BY MR. EPTING:

23 Q. Now, I'll ask you again, Commander Brown, in your
24 experience as an officer, was that a drug transaction?

25 A. Yes, it was. It was reaching both ways.

1 (Whereupon, the videotape was started)

2 (Whereupon, the videotape was stopped)

3 BY MR. EPTING:

4 Q. And why does the filming stop there, Commander Brown?

5 A. Why did the video stop?

6 Q. Uh-huh.

7 A. We were about to move and you can't -- it's hard to
8 video while the car is moving, and they pulled into a
9 parking place, so I made the decision to drive across the
10 street and get out with them.

11 Q. That wasn't the original plan, correct?

12 A. No, the original plan was to follow the vehicle and
13 just get a tag number, what we call a buy-walk, but since
14 they pulled into the liquor store and stopped the vehicle,
15 we didn't want to get involved in a high speed chase or
16 anything like that. Since they stopped on their own, I
17 decided to approach them.

18 Q. Okay. And during the stop, did any other officers
19 arrive to assist?

20 A. Yes. Officer Figueuroa and myself pulled up, and
21 Officer Jamie Faulkenberry and Tanya Ervin had left and they
22 were following Mr. Quick, but they came back, since we got
23 out with them.

24 Q. Okay. And what role was -- what was going to be their
25 role?

1 A. Backup.

2 Q. Backup.

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

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

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

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

19 Q. Okay. And what happened then?

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

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

1 Q. And was that for your safety?

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

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

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

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

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

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

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

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

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

25 I then pulled a rights card, Constitutional Rights,

1 some people call it Miranda, a rights card out of my pocket
2 and I read the rights card, the rights to Lexie and to
3 Travis. Both of them -- I talk loud anyway, but they were
4 both standing right there and I got their attention and I
5 read them both their rights.

6 Q. Did they appear --

7 MS. INZERILLO: Your Honor, I would just renew the
8 previous motion on this.

9 THE COURT: All right. I'm going to allow it.
10 You may proceed.

11 BY MR. EPTING:

12 Q. Did they appear to understand the rights that you read
13 them?

14 A. Yes. This was about five o'clock on a Friday afternoon
15 and both appeared to be fine, not under the influence, and
16 it was a clear day. It's not that much noise. They heard
17 what I said and they said they understood.

18 Q. Did you promise or threaten them in any way to get them
19 to talk?

20 A. No, I did not promise or threaten them.

21 MR. EPTING: Your Honor, at this time the State
22 would move to enter State's Exhibit 1 into evidence.

23 THE COURT: The -- show that to -- have you shown
24 that to the witness already?

25 MR. EPTING: I have, Your Honor.

1 THE COURT: Okay. All right.

2 Any objection to that?

3 (Off the record)

4 (Back on the record)

5 BY MR. EPTING:

6 Q. I will ask you a few further questions.

7 Commander Brown, you say that you keep it in your
8 wallet?

9 A. I do. All drug units keep rights cards in their
10 wallet. We read them. We don't recite them.

11 Q. Okay. Is there a purpose for that?

12 A. Yes. Yes. You don't -- we don't recite. We read. If
13 you recite, you might miss a line or miss something, but if
14 you read it, you should read it word for word, sentence for
15 sentence.

16 Q. And is that what you did in this case?

17 A. I did. I read the card.

18 MR. EPTING: Your Honor, at this time I would
19 renew my motion to enter State's Exhibit 1 into evidence.

20 MS. INZERILLO: No objection.

21 THE COURT: All right. State's 1 is in evidence
22 without objection.

23 (Whereupon, State's Exhibit No. 1 was admitted
24 into the record as evidence)

25 MR. EPTING: Your Honor, permission to publish?

1 THE COURT: You may do so.

2 MR. EPTING: Your Honor, I will withdraw that.

3 THE COURT: All right, sir.

4 BY MR. EPTING:

5 Q. So he's been read his rights. He appears to understand
6 them.

7 Did you threaten or promise him to get him to say
8 anything?

9 A. No, and the rights were read to both Travis and Lexie.

10 Q. What, if anything, did the defendant say?

11 A. I actually asked him a question. The question was
12 directed to both and I asked them "who does the crack belong
13 to?"

14 Lexie said "the crack was mine," so Lexie was placed
15 under arrest for the crack.

16 It was right between both of them and Travis was
17 allowed to leave.

18 Q. All right. So you are speaking with Lexie next to the
19 Suburban for some time, is that correct?

20 A. Sir?

21 Q. You speak with Lexie for a short amount of time next to
22 the Suburban, is that correct?

23 A. Yes.

24 Q. For the record, I'm handing you what's been marked as
25 State's Exhibit 2. If you would look over that.

1 A. I'm sorry, I got it.

2 Okay.

3 Q. Do you recognize that photo?

4 A. Yes, I do.

5 Q. What is it?

6 A. It's actually a photo I took myself on Lexie -- I took
7 a picture of Travis and I took a picture of Lexie standing
8 out in front of the store. You can see the store behind
9 him. It's a picture of Lexie standing there with the
10 T-shirt on.

11 Q. Okay.

12 MR. EPTING: At this time, Your Honor, the State
13 moves to enter State's Exhibit 2 into evidence.

14 THE COURT: Any objection?

15 MS. INZERILLO: No, Your Honor.

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

17 (Whereupon, State's Exhibit No. 2 was entered into
18 the record as evidence)

19 BY MR. EPTING:

20 Q. During the course of your stop did you take note of the
21 tag of the vehicle?

22 A. I did.

23 Q. Who was that car registered to?

24 A. Lexie Turner's wife, girlfriend, common law wife. He
25 calls her his wife, but I'm not sure if they are married or

1 not, but it's --

2 MS. INZERILLO: Objection to the hearsay, Your
3 Honor.

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

5 BY MR. EPTING:

6 Q. All right. So we talked a little bit about the crack
7 cocaine that was recovered.

8 A. Yes, sir.

9 Q. At some point did you go back to the station with the
10 evidence?

11 A. Yes. Actually Lexie rode in the car with Officer
12 Figueuroa and myself and we went back -- Rock Hill Police
13 Department is our closest office, so we went to the Rock
14 Hill Police Department, and we had Lexie and the crack
15 cocaine in the car with us.

16 Q. Okay. And so y'all go back to the station with the
17 evidence --

18 A. Yes.

19 Q. -- is that correct?

20 A. Yes.

21 Q. And Lexie?

22 A. Yes.

23 Q. And at some point at the station did Mr. Turner make
24 another statement to you?

25 A. Yes, during the booking process we just fill out

1 information about their name, address, that type of thing.
2 Lexie did make another statement, his response to a question
3 I asked him.

4 Q. What was your question and what was the response?

5 A. I asked him "how much did the crack weigh," because
6 people who own crack usually know how much their crack
7 weighs.

8 His response was "about two grams."

9 Q. Was that approximately the weight of the crack in this
10 case?

11 A. Yes.

12 Q. At any point did you photograph the evidence that you
13 took back to the station?

14 A. I did. I photographed the crack that was in the
15 Suburban.

16 Q. And once you got back to the station, was there any
17 other items of evidence that you recovered from Mr. Turner?

18 A. Yes, Lexie had seventy-two dollars on his person.
19 Fifty-two was in his right pocket and the marked twenty
20 dollar bill was all by itself in his left front pant's
21 pocket.

22 Q. Okay.

23 A. And I photographed that twenty dollar bill.

24 Q. And those serial numbers matched up to the ones in the
25 file?

1 A. Yes. The photocopy we had -- before we went out, we
2 photocopied it. Then when I pulled it out of Lexie's
3 pocket, I photographed it. You can tell one is a photocopy
4 and one is a photograph. I photographed the twenty dollar
5 bill and the serial numbers matched. It was the only twenty
6 dollar bill on his person. The other fifty-two dollars was
7 not -- there was no twenty dollar bill involved.

8 Q. Okay.

9 MR. EPTING: Beg the court's indulgence, Your
10 Honor.

11 MS. INZERILLO: Yes, sir.

12 (Off the record)

13 (Back on the record)

14 MR. EPTING: May I approach the witness, Your
15 Honor.

16 THE COURT: Yes, sir, you may.

17 (Drugs marked as State's Exhibit No. 8 for
18 identification)

19 MR. EPTING: For the record I am handing the
20 witness State's Exhibits 4, 5, and 8 for identification
21 purposes only.

22 THE COURT: All right, sir.

23 BY MR. EPTING:

24 Q. Commander Brown, if you would review State's 4 --

25 If you would, review the exhibits that I just handed

1 you and tell me when you are done reviewing them.

2 A. I'm good.

3 Q. Okay. What are those? What -- go through them one by
4 one.

5 A. This is the crack cocaine in the -- it's a ziplock
6 baggy and it's got DEU wrote on it. That's my writing, DEU.

7 Officer Figueuroa dropped this bag. He and I were
8 present at the round table in the detective -- in the narc
9 unit. We sealed this bag and then dropped it into an
10 evidence drop locker, but this is the actual crack cocaine
11 itself that was in Lexie's car.

12 Q. Okay. So that was sealed and then dropped in the lock
13 box, is that correct?

14 A. Yes, we -- we seized it about five o'clock and we
15 dropped it -- actually it's got the exact times on it.

16 We seized it at 4:48 p.m., and we dropped it at six
17 p.m..

18 Q. Okay. Just to be clear, which exhibit is that?

19 A. This is the baggy with the eleven rocks of crack
20 cocaine that was in Lexie's car.

21 Q. Exhibit 8?

22 A. Yes, it is. Exhibit 8, I'm sorry.

23 Q. All right. So from recovery -- upon recovery, if I'm
24 hearing your testimony correctly, you put it in a smaller
25 plastic ziplock bag?

1 A. Yes. I actually put DEU on the bag and Officer
2 Figueuroa dropped it in the bag and I sealed it.

3 Q. Do you recognize your handwriting?

4 A. Yes, my handwriting is on that little ziplock baggy.

5 Q. Okay. At some point was -- at some point was the
6 evidence taken out and photographed?

7 A. Yes, down at the police department there is a set of
8 scales and a table there. We took it out of that baggy,
9 photographed it, and put it back in the baggy and sealed it
10 in this bag --

11 Q. Okay.

12 A. -- just to photograph it.

13 Q. And when you say this bag, is that -- can you explain
14 more about the bag that you put it in, once you are doing
15 taking pictures of it?

16 A. Yes, the little ziplock baggy, we can take it in and
17 out. We put it in that bag. We took it out and
18 photographed it and put it back in.

19 Once you put it inside the evidence bag, it's tamper
20 proof. You seal it, there is no getting it back out of that
21 bag.

22 So once we photographed it, we dropped it into the
23 tamper-proof bag and sealed it sitting at the table. And
24 you can tell the photograph was at the table. And we sealed
25 it at the table.

1 And once we finished the paperwork, the evidence drop
2 locker is in the same -- it's from me to you. We walked
3 over and just dropped it. It's a slide, like a mailbox. We
4 just dropped it right in that slide. And once we drop it in
5 there, it's locked. We cannot get back to it. We do not
6 have the key to the mailbox.

7 Q. The tamper-proof bag, the second plastic bag that you
8 put it in --

9 A. Yes.

10 Q. -- is anyone able to open it?

11 A. No, you can't open it. If you open it, you can tell
12 that we opened it, and Sammy Figueiroa put his initials on it
13 and the date. Once he sealed it, he put his initials and
14 date on there, so if I would open it, you could tell. And
15 it was laying on the table while we were doing the
16 paperwork. At six p.m. we walked over and just dropped it.
17 He walked over. I was standing right there and he dropped
18 it into the evidence drop.

19 Q. Does the tamper-proof bag that you put in there appear
20 to be in any different condition than it was when you last
21 saw it?

22 A. No, the little ziplock baggy I got has got DEU wrote at
23 the top. It's here. It the same bag that I put my initials
24 on.

25 Q. Okay. All right.

1 And as to the other exhibits, the picture of the crack
2 and the picture of the money that you testified that you
3 took?

4 A. Yes, we took the crack out of the ziplock baggy. Sammy
5 and I were sitting at the round table, and this is the
6 table. It's not that great of a picture, but I took a
7 photograph of it with my cell phone, and the flash flashed
8 back just a little bit, but this is a picture of the crack
9 cocaine that was in Lexie's car.

10 Q. Okay. And the next exhibit, the money?

11 A. This is an actual -- this is not the photocopy. This
12 is a photograph at the same table, and it's the
13 photograph -- a photograph of the twenty dollar bill that
14 was in Lexie's left front pant's pocket. It was all by
15 itself in his pocket.

16 Q. And is that the bill that matched up to the photocopied
17 bill?

18 A. Yes, this is the buy money.

19 Q. Okay.

20 MR. EPTING: Your Honor, at this time the State
21 would seek to introduce State's Exhibit 5 and 4.

22 THE COURT: Is there any objection to State's 4
23 and 5 coming into evidence?

24 MS. INZERILLO: Your Honor, I do have an objection
25 to --

1 THE COURT: All right. Do you want to make an
2 argument then?

3 MS. INZERILLO: Yes, Your Honor.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, go to your jury room for just a few
6 minutes.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: Solicitor, could you recover State's 1
10 and 5 from the witness and let me see them while I hear the
11 argument?

12 Go ahead, Ms. Inzerillo.

13 MS. INZERILLO: Your Honor, I do -- he's moving
14 all the -- do you want me to --

15 MR. EPTING: Just the picture.

16 THE COURT: He's not moving in the drugs at this
17 point in time, the State's 8. He is moving in --

18 What is 4, so we are clear?

19 MS. INZERILLO: 4 is the picture of the crack
20 cocaine that was taken at the station.

21 THE COURT: All right.

22 MR. EPTING: And 5 is the picture of the money
23 that was taken at the station.

24 THE COURT: That's what he's moving into evidence,
25 those two photographs that this witness took.

1 MS. INZERILLO: My -- well, my argument I think
2 would primarily be to the money, Your Honor. Obviously they
3 did have the money in their possession. Under the best
4 evidence rule, my argument would be the best evidence would
5 be the money that they did have in their possession.

6 I argue -- I believe you will hear the testimony
7 was they gave back to Mr. Turner, and my argument would be
8 mainly that the photograph of the money is in possession at
9 this time to come in under that pretty much would be
10 argument on the evidence as to the money, Your Honor. Yes,
11 as to the money.

12 THE COURT: All right. Solicitor, any argument
13 you want to make?

14 MR. EPTING: Your Honor, the money was
15 photographed. I believe under the best evidence rule,
16 unless there is some reason to believe that it's been
17 altered or tampered in some way, that a photograph, or a
18 photocopy, or some other means of reproduction is still
19 admissible.

20 MS. INZERILLO: I'm sorry, Your Honor, I would
21 also -- there has been no foundation laid, and I think I
22 would actually put this more initially to the money. He is
23 saying it's the buy money, but there has been no additional
24 foundation as to how he knows it's the buy money, no
25 connection to the serial numbers, or anything like that, and

1 how he's making that connection. No proper foundation has
2 been made.

3 Also in terms -- also in terms at the same time
4 make that argument in terms of State's Exhibit 5, how he
5 knows it's crack and no proper foundation is laid.

6 THE COURT: I would overrule the objection based
7 upon the -- what I believe the testimony would be that the
8 officer had examined the -- I think he testified that he
9 examined the buy money before he gave it to the confidential
10 informant, Mr. Quick.

11 And then when they arrested the defendant, he
12 found the money in the pockets, the fifty-two in one pocket
13 and the twenty in the other. He examined the twenty with
14 the information that he had before. He said it was the
15 same. He said he looked at the serial numbers and it was
16 the same. So -- I appreciate that.

17 And then the crack cocaine, I believe it to be
18 proper that he took a photograph of the items that were
19 seized in evidence from the defendant, and, therefore, I
20 find it to be proper, and I'm going to allow State's 4 and 5
21 into evidence over the objection of the defense. All right.

22 (Whereupon, State's Exhibit No. 4 was admitted
23 into the record as evidence)

24 (Whereupon, State's Exhibit No. 5 was admitted
25 into the record as evidence)

1 MR. EPTING: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

18 THE COURT: All right. Thank you.

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

21 MR. EPTING: Certainly, Your Honor.

22 BY MR. EPTING:

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

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

1 1976.

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

4 Several narcotic classes throughout the years.

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

7 Basic Narcotics. Asset Forfeiture. Forfeiture.

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

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

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

15 I have made hundreds of crack cocaine cases.

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

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

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

24 A. Yes.

25 Q. Involve identifying drug paraphernalia?

1 A. Yes.

2 Q. The various ways that drugs are packaged?

3 A. Yes.

4 Q. Street values of drugs?

5 A. Yes, sir.

6 Q. Narcotic transactions?

7 A. Yes, sir.

8 Q. Approximately how many crack cocaine drug arrests have

9 you made over the course of your career?

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

11 hundreds.

12 Q. Okay. And have you conducted interviews with drug

13 users?

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

15 arrested.

16 Q. Okay.

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

18 Q. If you had to guesttimate a number?

19 A. Hundreds.

20 Q. Okay. And what about -- so you interview drug users.

21 What about drug dealers?

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

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

24 A. We target dealers. I probably have interviewed more

25 dealers than users, but, yeah, a lot.

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

3 A. Yes.

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

6 A. Twice.

7 Q. How many times in state courts?

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

9 Q. Okay.

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

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

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

16 MR. EPTING: May I approach?

17 THE COURT: Yes, sir.

18 THE COURT: I think --

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

22 MS. INZERILLO: No, Your Honor.

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

25 I --

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

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

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

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

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

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

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

23 THE COURT: That probably would be better.

24 Go ahead, ma'am.

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

1 to Commander Brown being qualified as an expert.

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

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

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

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

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

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

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

3 MR. EPTING: Certainly, Your Honor.

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

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

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

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

12 THE COURT: Defense?

13 MS. INZERILLO: Yes, Your Honor.

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

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

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

19 MR. EPTING: Thank you, Your Honor.

20 BY MR. EPTING:

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

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

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

4 BY MR. EPTING:

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

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

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

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

14 The state also put on two Commanders Schools.

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

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

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

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

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

1 future.

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

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

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

10 A. Yes.

11 Q. Identifying drug paraphernalia?

12 A. Yes, sir.

13 Q. Identifying how drugs are packaged?

14 A. Yes, sir.

15 Q. Identifying the street value of drugs?

16 A. Yes, sir.

17 Q. The general study of narcotics transactions?

18 A. Yes, sir.

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

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

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

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

1 you have interviews with users of crack cocaine?

2 A. Yes, sir.

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

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

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

11 A. Hundreds, thousands.

12 Q. Drug dealers?

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

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

18 A. Yes, sir.

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

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

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

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

2 Q. At the state level?

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

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

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

12 MS. INZERILLO: No, Your Honor.

13 THE COURT: All right. Do you --

14 MS. INZERILLO: We would renew our objection.

15 THE COURT: Very good.

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

19 You may continue, sir.

20 MR. EPTING: Thank you, Your Honor.

21 BY MR. EPTING:

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

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

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

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

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

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

19 Q. Okay.

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

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

1 intoxicating dose is?

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

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

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

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

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

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

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

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

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

7 MS. INZERILLO: Thank you, Your Honor.

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

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

15 BY MR. EPTING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 You may continue.

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

7 BY MR. EPTING:

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

9 A. I have.

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

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

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

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

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

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

3 A. Yes.

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

5 (Off the record)

6 (Back on the record)

7 BY MR. EPTING:

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

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

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

11 MS. INZERILLO: Thank you, Your Honor.

12 May it please the court?

13 CROSS EXAMINATION BY MS. INZERILLO:

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

16 A. Yes, ma'am.

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

19 A. It is.

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

24 A. Yes.

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

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

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

7 A. Yes, ma'am.

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

9 (Whereupon, the videotape was started)

10 BY MS. INZERILLO:

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

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

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

15 A. That's what I see.

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

18 A. No.

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

21 A. No.

22 Q. Right?

23 A. That's correct.

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

1 A. That's correct.

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

4 A. I'm across the street.

5 Q. Across the street. Got it.

6 A. Uh-huh.

7 Q. So at this point --

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

10 A. Yes.

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

13 A. Yes.

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

16 A. Yes, ma'am.

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

20 A. Yes, ma'am.

21 Q. This African American guy?

22 A. Yes, ma'am.

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

24 A. Yes, ma'am.

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

1 A. (No response).

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

3 A. Okay.

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

6 A. Yes, ma'am.

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

9 A. Yes, ma'am.

10 Q. This identified person.

11 And do you see your informant look down?

12 A. He's on the --

13 Q. He's --

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

18 Q. Is that what this is right here?

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

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

25 A. Yes, ma'am.

1 Q. Okay. All right.

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

4 A. Yes, ma'am.

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

6 A. Yes, ma'am.

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

8 They're around here.

9 You are keeping an eye on this pretty closely, right?
10 And then I'm going to fast forward it a little bit.

11 Computers aren't really my forte.

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

15 A. Yes, ma'am.

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

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

20 Q. Right.

21 And there is people in the car?

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

24 Q. Right, at about the 138 mark?

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

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

2 A. Yes, ma'am.

3 Q. All right?

4 A. Yes, ma'am.

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

8 A. Yes, ma'am.

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

10 A. Okay.

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

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

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

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

17 Q. Okay. Not in this situation?

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

19 Q. Right.

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

23 Q. Right. Okay.

24 So he walks away from the car, right?

25 A. Yes, ma'am.

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

2 A. Okay.

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

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

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

6 A. Yes, ma'am.

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

8 A. Yes, ma'am.

9 Q. -- right? Okay.

10 And they are still there, right?

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

13 A. Yes.

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

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

16 Q. Right. Okay.

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

20 A. That's correct.

21 Q. Okay. So he has --

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

24 (Whereupon, the videotape was stopped)

25 BY MS. INZERILLO:

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

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

5 Q. Right.

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

9 A. Yes.

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

12 A. Well --

13 Q. You ended up arresting Lexie that day?

14 A. Because they stopped on their own.

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

19 Q. Okay.

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

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

24 A. That's correct.

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

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

3 A. It was in his left pocket.

4 Q. Right.

5 That's your testimony, right?

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

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

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

11 Q. Right.

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

13 Q. Okay.

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

16 THE COURT: Yes, ma'am.

17 BY MS. INZERILLO:

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

19 A. Okay.

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

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

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

24 A. Yes, ma'am.

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

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

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

7 MS. INZERILLO: All right.

8 BY MS. INZERILLO:

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

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

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

16 Q. Twenty dollars in his left?

17 A. Yes.

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

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

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

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

25 MS. INZERILLO: Well --

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

4 MR. EPTING: Okay.

5 BY MS. INZERILLO:

6 Q. Is that correct?

7 A. It's seventy-two dollars.

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

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

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

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

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

18 A. It was seventy-two dollars.

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

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

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

1 Q. Right. Okay.

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

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

7 Q. Right.

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

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

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

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

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

15 A. Yes, I think I did.

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

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

20 Q. Okay.

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

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

25 A. I don't remember.

1 Q. Okay.

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

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

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

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

13 A. For possession with intent to sell?

14 Q. Uh-huh.

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

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

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

23 Q. Okay. But you could see that?

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

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

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

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

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

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

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

15 MR. EPTING: Thank you, Your Honor.

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

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

19 BY MS. INZERILLO:

20 Q. Sure.

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

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

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

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

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

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

11 A. Yes, ma'am.

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

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

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

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

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

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

1 repackaged?

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

5 Q. Okay.

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

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

11 A. I did.

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

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

22 Q. Okay.

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

25 Q. Okay.

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

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

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

6 A. Yes, ma'am.

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

9 He said "me", is that right?

10 A. And we let Travis go.

11 Q. And you let Travis go?

12 A. Okay.

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

16 A. I always do that.

17 Q. -- still the rendition?

18 A. Yes.

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

22 A. Audio equipment?

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

24 A. Yes.

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

1 statements?

2 A. No.

3 Q. Okay.

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

6 THE COURT: All right. Any redirect?

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

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION BY MR. EPTING:

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

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

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

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

1 He said "about two grams."

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

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

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

9 A. To the informant Ben Quick.

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

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

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

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

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

22 Q. All right.

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

24 THE COURT: Yes, sir.

25 (Off the record)

1 (Back on the record)

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

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

5 MS. INZERILLO: No, Your Honor.

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

7 THE WITNESS: Thank you.

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

10 MR. EPTING: Sure.

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

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

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

1 and you know the law that will apply to the facts and
2 evidence in the case. So with that I'll see you back about
3 five to two. Thank you very much.

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

6 THE COURT: All right. Solicitor, anything before
7 we break for lunch?

8 MR. EPTING: Nothing from the State, Your Honor.

9 THE COURT: Anything from the defense?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: All right. Thank you, ma'am.

12 All right, we will see y'all back about five to
13 two then. Y'all be in your seats ready to go. Thank you.

14 (Photograph marked as State's Exhibit No. 9 for
15 identification)

16 (Drugs marked as State's Exhibit No. 10 for
17 identification)

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: Solicitor and Ms. Inzerillo, the
21 alternate sent me a note saying that she has school at York
22 Technical College at five o'clock on Tuesdays and Thursdays.
23 Now, nobody told me, she didn't tell me, so I'm not sure
24 that we can accommodate her, but I just wanted to let you
25 know. That's the alternate.

1 MR. EPTING: Your Honor, for what it's worth, I
2 believe that we would be done with our case in chief
3 approximately four o'clock with the witnesses that we have
4 left. Unless the defense chooses to put up a case, that
5 might be a good time to actually break.

6 THE COURT: Okay.

7 MR. EPTING: Or if the defense testifies, I don't
8 anticipate that would be terribly long. I just wanted to
9 lay that on the table.

10 THE COURT: Well, we will just see. I just wanted
11 to let y'all know that I got that communication.

12 All right. Is the State ready for the jury?

13 MR. EPTING: The State is ready, Your Honor.

14 THE COURT: Defense?

15 MS. INZERILLO: Yes, Your Honor.

16 THE COURT: All right. Very good.

17 Ask the jury to come in.

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

20 THE COURT: All right, solicitor, your next
21 witness, please, sir.

22 MR. EPTING: Your Honor, the State calls Jamie
23 Faulkenberry to the stand.

24 THE COURT: All right. Please come around and be
25 sworn up here by the clerk.

1 OFFICER JAMIE FAULKENBERRY, having been first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. EPTING:

4 Q. How are you doing, Mr. Faulkenberry?

5 A. How are you, sir?

6 Q. Would you please state for the jury your occupation?

7 A. I'm an investigator with the York County sheriff's
8 office, assigned to the Multi-Jurisdictional Drug
9 Enforcement Unit.

10 Q. And could you briefly describe some of your duties in
11 the DEU?

12 A. We investigate all complaints of drug activities.

13 We also investigate intels given from other officers,
14 community members of drug activities, and we also work with
15 other agencies in adopting cases, helping them with cases,
16 seizures in relation to drug activities, and things like
17 that.

18 Q. Okay. Now, Officer Faulkenberry, were you involved in
19 the investigation of Lexie Turner on May 18th, 2012?

20 A. Yes, sir.

21 Q. Would you please tell the jury the extent of your
22 involvement?

23 A. I was assisting the case agent in the controlled buy
24 that were set up.

25 Q. Okay. And starting that day, did you meet other

1 officers at Rock Hill PD?

2 A. Yes, sir.

3 Q. Tell the jury about that. Who all was there?

4 A. Myself, Officer Ervin, Commander Brown, and Officer
5 Figueuroa all met with each other at the office in order to
6 do the undercover buys.

7 Q. Okay. And at some point did the undercover informant
8 show up?

9 A. Yes, sir.

10 Q. What was his name?

11 A. Mr. Quick.

12 Q. Mr. Quick.

13 And what, if anything, did you do in preparation to
14 make this buy by Mr. Quick?

15 A. Like in all buys, we always search the informant prior
16 to leaving, make sure there is no contraband on him before
17 we get started.

18 MS. INZERILLO: Objection, Your Honor. I would
19 just ask that the testimony be limited to just what the
20 witness did in this case.

21 THE COURT: And what took place in his presence.

22 THE WITNESS: Right.

23 THE COURT: Go ahead.

24 BY MR. EPTING:

25 Q. And before we proceed, this search, did it occur in

1 your presence?

2 A. Yes.

3 Q. Please continue. Please continue describing the
4 search.

5 A. Okay. What we do, like I said, is we search the
6 informant, Officer Figueuroa and I, to make sure there was no
7 contraband on their person before we left.

8 The informant was then equipped with surveillance
9 equipment to record the transaction, as well as so officers
10 could monitor it in realtime to make sure there was no
11 issues at the moment.

12 The informant was then given money that was
13 identifiable from our issued money. Each officer is issued
14 a certain amount of money, so we have to use that money, and
15 only that money, to do any kind of buys with.

16 Q. Who was the primary issuer of that money?

17 A. Officer Figueuroa.

18 Q. And do you have some secondary review procedural monies
19 issued to confidential informants?

20 A. Yes.

21 Q. And please explain that very briefly, if you would.

22 A. Okay. Every time we issue money to an informant, or
23 use any of our money for any reason, we have to fill out a
24 form and get that transaction verified by another officer.
25 So if money is given to someone, you have a secondary

1 officer to verify everything. It's kind of a checks and
2 balances system to make sure the money is being used where
3 it's supposed to be used.

4 MR. EPTING: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 MR. EPTING: Please let the record reflect I'm
8 handing Officer Faulkenberry a copy of State's Exhibit 9 for
9 identification at this time.

10 BY MR. EPTING:

11 Q. Officer Faulkenberry, do you recognize State's Exhibit
12 9?

13 A. Yes, sir, I do.

14 Q. What do you recognize that as?

15 A. That was the marked twenty dollar bill that was issued
16 to the confidential informant prior to the deal.

17 MR. EPTING: Your Honor, at this time the State
18 would move to enter State's Exhibit 9 into evidence.

19 THE COURT: Any objection.

20 MS. INZERILLO: No objection, Your Honor.

21 THE COURT: All right, in evidence without
22 objection.

23 (Whereupon, State's Exhibit No. 9 was entered into
24 the record as evidence)

25 THE COURT: You may proceed.

1 BY MR. EPTING:

2 Q. Was any other money issued to the informant?

3 A. I'm not sure at that time.

4 Q. Okay. Could you clarify? What was your
5 understanding -- what was the agreement between the
6 informant and the DEU for making this purchase?

7 A. Essentially this is what we call a paid informant,
8 which means he didn't have any other issues with the drug
9 unit, any other prior dealings with the drug unit, so he
10 volunteered his time. And in return some informants are
11 paid for their services for going out and doing undercover
12 buys for the unit.

13 Q. How much was this informant paid?

14 A. Thirty dollars.

15 Q. Thirty dollars?

16 A. Uh-huh.

17 Q. And I believe you testified previously that he was
18 given a camera and he was wired up to try to record the
19 transaction, is that correct?

20 A. Yes, sir.

21 Q. Okay. Could you briefly describe the camera that was
22 used?

23 A. One of our cameras that we have, the one that was
24 issued in this case was a small covert camera that's hidden
25 in a key fob.

1 Q. Okay. And how does that record?

2 A. What do you mean?

3 Q. If I wanted to -- if I wanted to take a picture with a
4 key fob, how would it -- are you comfortable explaining how
5 it records?

6 A. Yes. Essentially you turn it on with one button. Once
7 there is a green -- or a colored light that tells you that
8 it's activated, you push the button again. There is a
9 vibration mode, so you can feel that the camera is operating
10 instead of just looking at it. At that time the device is
11 recording.

12 Then when you shut the camera off, again you press the
13 button again. It will vibrate again to tell you that it's
14 shutting off, and it will stay in standby mode for
15 approximately thirty seconds until it shuts off
16 automatically.

17 Q. What was the plan for the CI to get to the dealer? Was
18 he to arrive with y'all, or somehow else?

19 A. We have a vehicle that is -- that we keep in our motor
20 pool for the drug unit and we allowed him to operate that
21 vehicle.

22 Q. Okay. You allowed him to operate that vehicle?

23 A. Yes, sir.

24 Q. And who owns that vehicle?

25 A. The sheriff's office.

1 Q. When it's not in use, where is it stored?

2 A. It's stored in the motor pool at the Rock Hill Police
3 Department.

4 Q. Is it ever cleaned and inspected?

5 A. Uh-huh.

6 THE COURT: You need to answer yes or no.

7 A. Yes, sir.

8 BY MR. EPTING:

9 Q. And for whose primary benefit are these cars, these
10 seized cars?

11 A. They are primarily used by officers.

12 Q. Okay. So he's wired up, he's got the money, he leaves
13 in the county-provided car. Who are you with?

14 A. I was with Officer Ervin.

15 Q. Okay. And did anyone else go along with you?

16 A. We were in my vehicle. We were the only people in our
17 vehicle.

18 Q. Okay. And did anyone accompany you to conduct the
19 operation?

20 A. Yes, yes, Commander Brown and Officer Figueuroa also
21 followed in I believe Commander Brown's vehicle.

22 Q. Okay. Did you follow the CI?

23 A. Yes, sir.

24 Q. Where did you follow the CI to?

25 A. We followed the CI to a predetermined location nearby.

1 We picked -- went to the colosseum, since it was close by
2 the area where the transaction was supposed to take place.

3 Q. And what occurred at Winthrop Colosseum?

4 A. At that time we met the CI there. We activated all the
5 cameras and the equipment from there, and then we followed
6 the CI to the area where he was supposed to make the
7 transaction.

8 Q. On the road from the Rock Hill PD to Winthrop Colosseum
9 did you ever lose sight of the CI?

10 A. No, sir.

11 Q. Okay. And after he was wired up and he's ready at
12 Winthrop Colosseum, what happens then?

13 A. We followed the CI, like I said, to an extent. Just
14 before he arrived at his location we stopped short of that.
15 And then we watched the CI until he got out of sight and
16 that's when we waited for confirmation from Commander Brown
17 and Officer Figueuroa that he had arrived at the location
18 that he was supposed to meet the dealer at.

19 Q. Did they confirm?

20 A. Yes, sir.

21 Q. How long between losing sight of him and then
22 confirming?

23 A. Less than a minute. It wasn't very long at all.

24 Q. And you don't have to say exactly what street you were
25 on, but approximately how far away were you from where the

1 deal took place?

2 A. Less than a half mile.

3 Q. What was your understanding of what your role would be
4 in the operation at this point?

5 A. Our role is a support role to both the informant and to
6 the officers that are nearby.

7 Q. Okay. Was the plan to arrest Lexie that day?

8 A. No, sir.

9 Q. What was the plan?

10 A. The plan was we were going to do what we call a
11 buy-walk, where we allow the transaction to take place and
12 then we allow the person we buy from to leave from there and
13 then we pursue warrants on that and arrest him at a later
14 time.

15 Q. Is that the plan that actually occurred that day?

16 A. No, sir.

17 Q. Please tell the jury what occurred.

18 A. As soon as we got confirmation the transaction had been
19 completed and the informant was leaving, we proceeded to the
20 main road to follow the informant back so we could retrieve
21 the evidence, retrieve our equipment, that type of thing.

22 As we were turning onto Cherry Road we saw Commander Brown's
23 vehicle pull into the parking lot where the transaction took
24 place. We thought something had gone wrong or something
25 else had occurred, so we turned around to go back them up in

1 case something else was going on.

2 Q. Approximately how long did you stay there?

3 A. A few minutes.

4 Q. Okay. At some point did you meet -- at some point did
5 you meet the CI again that day?

6 A. Yes.

7 Q. Where did you meet the CI at?

8 A. Shortly after Commander Brown called and said
9 everything was under control and we weren't needed, we met
10 back at Winthrop Colosseum, met with the CI there.

11 Q. Okay. And tell the jury about that interaction.

12 A. When we pulled in the parking lot, the informant was
13 already there waiting on us. We met with him, retrieved the
14 evidence that he had purchased. We retrieved all of our
15 equipment.

16 MS. INZERILLO: Objection, Your Honor, to the
17 allegations that he had purchased without the witness'
18 specific knowledge as to that and his personal knowledge.

19 THE COURT: I'm going to allow it. It's based on
20 the testimony and evidence already presented, so I'm going
21 allow it. Thank you.

22 MS. INZERILLO: Thank you, Your Honor.

23 BY MR. EPTING:

24 Q. So he hands over the crack cocaine to you?

25 A. Yes, sir.

1 Q. And what condition was the crack cocaine in?

2 A. It was in a clear plastic baggy.

3 Q. Okay. And what did you do with the crack cocaine at
4 that time?

5 A. It was placed in a small ziplock bag, so it doesn't get
6 out, fall out. We don't want to set it in a cup holder of
7 the car, because it will, you know, obviously fall out in
8 the carpet and that kind of thing. So in order to keep
9 control of it, it was placed in a small ziplock baggy.

10 Q. Was anything additionally done with that small ziplock
11 baggy to --

12 A. Yes, since -- since it's not the baggy that we -- or
13 it's not the package we receive it in, we want to label it,
14 so for evidence purposes they know it's our baggy and this
15 is not how it was presented to us, so we mark DEU on the
16 ziplock baggy before we place it in evidence.

17 Q. And what, if anything, did you do with the baggy that
18 was in the smaller ziplock baggy marked DEU?

19 A. Once we got back to the office, I obtained an evidence
20 bag, which is a sealed evidence bag, which is tamper
21 resistant. So I placed it into that bag, sealed it,
22 initialed the bag and placed it in evidence.

23 Q. Is that the heat-sealed bag?

24 A. Yes, sir.

25 Q. Is it possible to open those heat-sealed bags without

1 destroying the bag itself?

2 A. No, sir, the seal of the bag is actually stronger than
3 the bag itself, so you would have to essentially dismantle
4 the bag and cut it open to get it out.

5 Q. So once -- once you put it in that heat-sealed bag that
6 can't be opened without being destroyed, what, if anything,
7 did you do with it?

8 A. It was placed into evidence in a secure locking
9 evidence locker at the Rock Hill Police Department.

10 Q. Okay. And could you briefly describe that locker to
11 the jury, please, in case they may not be aware of it?

12 A. It's a large locker and it's got different doors on it
13 for different sizes, if you have small items or bigger
14 items. Each one is equipped with a padlock. Once you place
15 evidence into the locker, you take the padlock out, lock
16 that door. None of us have keys to that locker. It's only
17 accessible by evidence personnel when they come to empty out
18 the lockers.

19 Q. Okay.

20 MR. EPTING: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. EPTING: For the record I'm handing Officer
24 Faulkenberry what's been marked for identification as
25 State's Exhibit 10.

1 BY MR. EPTING:

2 Q. Please look over that and look up when you are done.

3 A. Okay.

4 Q. Officer Faulkenberry, do you recognize State's Exhibit
5 10?

6 A. Yes, sir, I do.

7 Q. What is it?

8 A. This is the evidence that I received from the CI that
9 was placed in the evidence bag.

10 Q. Okay. Is it in the original evidence bag that you
11 placed it in, or has it been altered in any way?

12 A. This one has actually been altered.

13 Q. Okay. And does it -- is it open right now, or is it
14 sealed within another bag?

15 A. It's sealed within a secondary package.

16 Q. And do you see any other signature on the secondary
17 package?

18 A. Yes, sir.

19 Q. And do you recognize that signature?

20 A. Yes, sir, the first signature is Ms. Mitchum.

21 Q. Okay. Who is Ms. Mitchum?

22 A. She's our chemist.

23 Q. Okay. And you can put that back in there, please.

24 MR. EPTING: Your Honor, may I approach the
25 witness one more time?

1 THE COURT: Yes, sir.

2 BY MR. EPTING:

3 Q. Officer Faulkenberry, I am handing you what's been
4 marked as State's Exhibit 6. Would you please look over
5 that?

6 Officer, do you recognize State's Exhibit 6?

7 A. Yes, sir, I do.

8 Q. What is that?

9 A. It's a video from our key fob camera.

10 Q. Is it a fair and accurate depiction?

11 A. Yes, sir.

12 MR. EPTING: Your Honor, at this time the State
13 would move to enter State's Exhibit 6 into evidence.

14 THE COURT: Any objection?

15 MS. INZERILLO: Your Honor, I would have an
16 objection that the witness cannot provide a foundation
17 because he was not on the scene during this alleged
18 distribution and cannot authenticate what it purports to
19 show.

20 THE COURT: I would allow it into evidence.

21 (Whereupon, State's Exhibit No. 6 was entered into
22 the record as evidence)

23 MS. INZERILLO: Thank you, Your Honor.

24 MR. EPTING: Thank you, Your Honor.

25 Your Honor, I would request at this time

1 permission to publish State's Exhibit 6.

2 THE COURT: You may do so.

3 State's Exhibit 6 is in evidence over the
4 objection of defense.

5 MR. EPTING: Your Honor, I apologize. Every time
6 this turns on and off it makes a loud beep.

7 THE COURT: That's not a problem.

8 BY MR. EPTING:

9 Q. Officer Faulkenberry, if at any time you feel the need
10 to speak up about something that relates to your testimony
11 in this video, please just signal me and I will stop the
12 tape.

13 A. Okay.

14 MS. INZERILLO: Your Honor, I would, again, as
15 previously objected to, ask the witness not be allowed to do
16 that, because the best evidence would be the tape.

17 THE COURT: I appreciate that. If there is a
18 question, then, solicitor, you will just stop the video and
19 I'll allow the question and the answer, but I'm going to
20 allow that.

21 MR. EPTING: Thank you, Your Honor.

22 MS. INZERILLO: Thank you.

23 (Whereupon, the videotape was started)

24 (Whereupon, the videotape was stopped)

25 MR. EPTING: Your Honor, in the interests of time,

1 it's my understanding there is a lot of dead space on here.
2 I would ask permission, unless defense counsel objects, to
3 fast forwarding the tape to the part that it actually occurs
4 relative to the case.

5 THE COURT: Ma'am, what do you prefer?

6 MS. INZERILLO: I don't have any objection to
7 that, Your Honor.

8 THE COURT: All right.

9 (Whereupon, the videotape was started)

10 (Whereupon, the videotape was stopped)

11 BY MR. EPTING:

12 Q. Just so we are clear, what are we looking at here,
13 Officer Faulkenberry?

14 A. We are looking at video from the key fob that the
15 informant was given.

16 Q. Okay. And what does this show?

17 A. It appears to be the informant's shirt.

18 Q. All right.

19 (Whereupon, the videotape was started)

20 (Whereupon, the videotape was stopped)

21 BY MR. EPTING:

22 Q. Officer Faulkenberry, do you recognize the area?

23 A. Yes, sir.

24 Q. What area is that?

25 A. That's the front parking lot of Winthrop Colosseum.

1 Q. Is that the same place that you met him the first time?

2 A. Yes, sir.

3 (Whereupon, the videotape was started)

4 (Whereupon, the videotape was stopped)

5 BY MR. EPTING:

6 Q. Officer Faulkenberry, so far as you can tell, what's
7 happening here?

8 A. The CI is sitting in the vehicle we issued him.

9 Q. Uh-huh.

10 A. And -- he's sitting in the vehicle.

11 Q. What else is he doing?

12 A. He appears to be emptying out his pockets.

13 (Whereupon, the videotape was started)

14 (Whereupon, the videotape was stopped)

15 BY MR. EPTING:

16 Q. What does he appear to be doing now?

17 A. I believe he's removed the wire device we placed on
18 him.

19 Q. Okay. And is it uncommon for CI's to remove their own
20 equipment?

21 A. No, sir, it's not uncommon.

22 Q. And why typically do they remove it?

23 A. Well, primarily it's for simplicity purposes. I think
24 they are trying to help us out and give us an extra hand
25 sometimes, but a lot of times if they have the device on for

1 a long period of time, it's powered by batteries, and over a
2 long period of time they can start to get hot,
3 uncomfortable, not to mention the carrier that holds it is
4 rather uncomfortable too. So if it's on bare skin, a lot of
5 times they will take it off, just for comfort purposes.

6 (Whereupon, the videotaped was started)

7 (Whereupon, the videotape was stopped)

8 BY MR. EPTING:

9 Q. And what did we just see?

10 A. That's the strap that's used to hold the body wire.

11 Q. And for what purpose -- and you said a body wire.

12 Could you explain a body wire to the jury?

13 A. What it is, it's a radio transmitter we placed on the
14 informant so that we can hear, via our radios in our cars,
15 so that we can hear everything that's going on to make sure
16 there is no issues, there is no -- the informant doesn't get
17 attacked or robbed or do anything that he's not supposed to
18 be doing. We can monitor the audio realtime to make sure
19 they are doing what they are supposed to be doing and they
20 are safe while doing so.

21 (Whereupon, the videotape was started)

22 (Whereupon, the videotape was stopped)

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

24 THE COURT: Yes, sir.

25 MR. EPTING: Your Honor, I would seek to publish

1 the exhibit of the marked money beforehand. I believe that
2 is State's Exhibit 9.

3 THE COURT: All right, State's 9 is in evidence,
4 right?

5 MR. EPTING: That's correct, Your Honor.

6 THE COURT: All right, sir, you may do so.

7 MR. EPTING: All right.

8 BY MR. EPTING:

9 Q. Would you tell the jury what that is, Mr. Faulkenberry?

10 A. That is the twenty dollar bill that was issued to the
11 informant to make the purchase with.

12 Q. I have just one final question. You testified earlier
13 that the understanding of the CI was that he was to make a
14 crack purchase and receive thirty dollars?

15 A. That's correct.

16 Q. That was to be expected?

17 A. That's correct.

18 Q. Was that thirty dollar payment conditioned upon him
19 buying from Lexie Turner specifically?

20 A. No, sir.

21 Q. Could he have bought from anyone and got that same
22 thirty?

23 A. Yes, sir.

24 Q. Could he have not bought crack and got that thirty?

25 A. Yes, sir.

1 MR. EPTING: I have no further questions.

2 THE COURT: All right, cross-examination.

3 MS. INZERILLO: Thank you, Your Honor.

4 May it please the court?

5 CROSS EXAMINATION BY MR. EPTING:

6 Q. Officer Faulkenberry, you were present when the paid
7 informant was searched, is that right?

8 A. Yes, ma'am.

9 Q. And it was Mr. Figueuroa that did the search?

10 A. Yes, ma'am.

11 Q. Okay. And when the CI's are searched, their pockets
12 are searched, and I believe we saw the CI had like jeans or
13 something like that on?

14 A. Yes, ma'am. The initial search is done, all pockets
15 and all clothing, waistline, shoes, socks, that was done.

16 Q. And essentially searched them to make sure they don't
17 have any drugs on them?

18 A. Yes, ma'am.

19 Q. That they could hide in their pockets and stuff like
20 that?

21 A. Yes, ma'am.

22 Q. That's where you searched his pockets, front and back.
23 You said shoes and socks too?

24 A. Yes, ma'am.

25 Q. And then you indicated that you and Officer Ervin was

1 sort of a team, and Mr. Brown and Officer Figueuroa were a
2 team --

3 A. Yes, ma'am.

4 Q. -- on this particular day?

5 A. Yes, ma'am.

6 Q. And that the CI was allowed to drive himself
7 essentially to the liquor store on Cherry Road?

8 A. Yes, ma'am.

9 Q. Okay. And you guys were behind him?

10 A. Yes, ma'am.

11 Q. So he was in the car unattended while he was driving to
12 the liquor store?

13 A. Yes, ma'am.

14 Q. And y'all sort of backed off and were not in the
15 parking lot with the -- while he was at the liquor store?

16 A. No, ma'am.

17 Q. Okay. And then afterwards your understanding of the
18 part of the events of that day was that you were going to
19 sort of double back and meet up again with him at the
20 colosseum, until you saw Mr. Brown's car take a little
21 detour and you popped in to see what was going on?

22 A. Yes, ma'am.

23 Q. Okay. So while that was going on, the paid informant
24 had already left the parking lot?

25 A. Yes, ma'am.

1 Q. Okay. And you were with Mr. Brown for about a couple
2 minutes you said?

3 A. Yes, ma'am, we stayed in the vicinity for a couple --
4 for a few minutes.

5 Q. Okay. And then after that you sort of doubled back and
6 went to where the paid informant was? I believe it was
7 Winthrop Colosseum?

8 A. Yes, ma'am.

9 MS. INZERILLO: I have no further questions, Your
10 Honor.

11 THE COURT: Thank you.

12 Redirect?

13 MR. EPTING: Very briefly, Your Honor.

14 REDIRECT EXAMINATION BY MR. EPTING:

15 Q. Did you search the CI at the Winthrop Colosseum?

16 A. Yes, sir.

17 Q. Did he have any contraband, other than the contraband
18 he handed over to you?

19 A. No, sir.

20 Q. Was the vehicle searched?

21 A. Yes, sir.

22 Q. By who?

23 A. Officer Ervin.

24 Q. Was any contraband discovered during that search?

25 A. No, ma'am -- no, sir.

1 Q. Ms. Inzerillo asked you if the paid informant was
2 unattended going to the deal. I believe the previous
3 testimony was that you followed him from Winthrop Colosseum,
4 is that correct?

5 A. Yes, sir.

6 Q. How long was he unattended between you following him
7 from Winthrop Colosseum to him arriving at The Party Store?

8 A. Less than a minute.

9 Q. Less than a minute?

10 A. Uh-huh.

11 MR. EPTING: That's all I have.

12 THE COURT: All right. Anything on those
13 questions, ma'am?

14 MS. INZERILLO: No, Your Honor.

15 THE COURT: All right, you may step down.
16 Do you wish this witness to be excused?

17 MR. EPTING: Yes, Your Honor.

18 THE COURT: Any objection?

19 MS. INZERILLO: No, Your Honor.

20 THE COURT: All right, sir, you are released from
21 your subpoena. You may go back to your regular duties.

22 All right, solicitor, your next witness, please.

23 MR. EPTING: Thank you, Your Honor.

24 The State calls Tanya Ervin.
25

1 OFFICER TANYA ERVIN, having been first duly sworn,
2 testified as follows:

3 THE COURT: Have seat please, ma'am.

4 THE WITNESS: Thank you, sir.

5 DIRECT EXAMINATION BY MR. EPTING:

6 Q. Good afternoon, Officer Ervin.

7 A. Good afternoon, sir.

8 Q. Would you please state your full name for the record?

9 A. Tanya Ervin.

10 Q. What do you do for a living?

11 A. I work with the York County Drug Unit.

12 Q. Okay. And were you involved in the investigation of
13 Lexie Turner on May 18th of 2012?

14 A. Yes, sir, I was.

15 Q. All right. If you would, please explain your
16 involvement in that case to the jury, starting back at the
17 station house.

18 A. Okay. At the station house we all gathered in our
19 vehicles and followed the CI to a meeting place.

20 Q. When you say we all, can you give us --

21 A. The officers. I think Marvin Brown was there. Officer
22 Figueiroa, Officer Faulkenberry, and myself.

23 Q. Okay. And who rode with who?

24 A. I rode with Faulkenberry, and I believe Marvin Brown
25 and Sammy Figueiroa were together.

1 Q. Okay. And did the CI drive alone?

2 A. Yes, he did.

3 Q. Are you familiar with the car or truck that the CI was
4 driving?

5 A. Yes, I am very familiar with it.

6 Q. Could you describe that to the jury?

7 A. It is a silver Dodge pickup, dual cab.

8 Q. And who is that owned by?

9 A. Pardon me?

10 Q. Who is that owned and maintained by?

11 A. By the Drug Unit, I believe.

12 Q. Okay. So when it's not in use, where is it stored?

13 A. At the Rock Hill Police Department.

14 Q. To your knowledge, is it cleaned regularly?

15 A. Yes. Marvin Brown does a fine job keeping our CI
16 vehicles clean.

17 Q. Does he personally clean it at any time?

18 A. Absolutely.

19 Q. Do you ever clean it?

20 A. I try not to. I have done some maintenance, but no
21 cleaning.

22 Q. But if I understand your testimony correctly, they are
23 maintained?

24 A. Absolutely.

25 Q. And he was riding in that truck?

1 A. Pardon me?

2 Q. He was riding in that truck?

3 A. Yes.

4 Q. The CI?

5 A. Yes, that's the truck the CI was using that day.

6 Q. Primarily who uses vehicles like the truck that are in
7 the possession and ownership of the county?

8 A. Usually if an undercover officer's vehicle is out of
9 service, they will use that vehicle. Other than that,
10 occasionally a CI will use it.

11 Q. Okay. So occasionally a CI will use it, but otherwise
12 it's officers?

13 A. Right.

14 Q. Did you and -- were you driving or were you riding?

15 A. I was riding with Officer Faulkenberry as a passenger.

16 Q. And where did y'all go?

17 A. We went to the colosseum at Winthrop, the parking lot
18 there --

19 Q. Uh-huh.

20 A. -- where we met. We followed the CI there. We met him
21 there.

22 I believe Officer Faulkenberry turned on some
23 surveillance equipment and then sent him on his way, and we
24 staged up on Bradley Street, which is across the street from
25 where the transaction was to occur.

1 Q. And did you follow the CI to Cherry Road?

2 A. We followed him to Cherry Road and then turned into
3 Bradley Street --

4 Q. Okay.

5 A. -- prior to Cherry Road.

6 Q. Okay. And did you radio out that the CI was on his
7 way?

8 A. Yes.

9 Q. Did you receive some type of response that he had
10 actually arrived?

11 A. I do not recall. I believe Officer Faulkenberry may
12 have been on the radio --

13 Q. Okay.

14 A. -- that day.

15 Q. Okay. All right.

16 Approximately how long was that between y'all waiting
17 there in a backup role and hearing anything?

18 A. Probably twenty, thirty minutes.

19 Q. Okay. And then what happened after that twenty or
20 thirty minutes?

21 A. I believe -- I believe Marvin Brown may have told us --
22 Commander Brown may have told us that the target had
23 arrived --

24 MS. INZERILLO: Objection, Your Honor, to the
25 hearsay.

1 THE COURT: I would allow that.

2 A. -- on the radio.

3 THE COURT: I would allow that. Thank you.

4 BY MR. EPTING:

5 Q. Marvin said the target had arrived?

6 A. Yes, sir, over the radio.

7 Q. What happened?

8 A. You could hear the surveillance equipment. You could
9 hear the --

10 Q. Okay.

11 A. -- two meeting.

12 Q. And that's the wire?

13 A. That's correct, the wire, the body wire.

14 Q. For the CI's safety?

15 A. Yes.

16 Q. At some point -- at some point did the CI leave the buy
17 location?

18 A. Pardon me?

19 Q. At some point did the CI leave The Party Shop location
20 where the buy was to take place?

21 A. Yes, he did. After the transaction was complete, the
22 CI left.

23 Q. What actions did you and Jamie Faulkenberry take?

24 A. Officer Faulkenberry and I were to follow the CI back
25 to the Winthrop Colosseum and take the surveillance

1 equipment, but that's not quite how it worked out that day.

2 Q. Just to go back -- just to go back for just a second, I
3 don't want to interrupt you.

4 A. Okay.

5 Q. What was the original plan on this case?

6 A. The original plan was a buy-walk, where the CI buys the
7 dope and the target that sells the dope gets to walk away
8 and we obtain warrants later and pick him up later.

9 Q. It sound like your testimony that something changed?

10 A. It did. Something changed that day.

11 Q. And tell the jury what you saw and what you did.

12 A. Okay. When we were told that the transaction was
13 complete, Officer Faulkenberry and I headed back to the
14 colosseum. And before we got there we heard Commander Brown
15 and Officer Figeuroa saying they were out with the vehicle
16 that had sold the -- Lexie Turner in the vehicle. So for
17 officer's safety reasons we circled back around and went to
18 make sure they were okay. It was only two of them and there
19 were, I believe, two in the vehicle.

20 Once we made sure they were secure, we went back to the
21 colosseum to meet back with the CI.

22 Q. Did y'all recover the surveillance equipment?

23 A. Officer Faulkenberry recovered the dope and the
24 equipment. And while he was dealing with that, I was
25 searching the vehicle to make sure there was nothing else in

1 there, and I didn't find anything in the vehicle.

2 Q. Did you find anything that looked out of sorts in any
3 way whatsoever?

4 A. Nothing whatsoever.

5 Q. Okay.

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

7 THE COURT: Yes, sir.

8 (Off the record)

9 (Back on the record)

10 MR. EPTING: I have no further questions for Ms.
11 Ervin at this time.

12 Please answer any questions that Ms. Inzerillo may
13 have for you.

14 THE COURT: Cross-examination, please.

15 MS. INZERILLO: Thank you, Your Honor.

16 May it please the court?

17 CROSS EXAMINATION BY MS. INZERILLO:

18 Q. So, Investigator Ervin, you were sort of paired up with
19 Investigator Faulkenberry on this day, is that right?

20 A. That's correct.

21 Q. Okay. And y'all were essentially in the car together?

22 A. Correct.

23 Q. And so the CI was riding -- the paid informant was
24 riding alone in his truck?

25 A. In our vehicle.

1 Q. Right.

2 A. Our --

3 Q. But the car he was given --

4 A. Uh-huh.

5 Q. -- to ride along with?

6 A. Yeah, we were following him.

7 Q. But y'all weren't in car with him?

8 A. Pardon me?

9 Q. Y'all weren't in the car with him?

10 A. No, no, no, he was driving the vehicle himself.

11 Q. Okay. And y'all weren't physically in the parking lot
12 with him?

13 A. Yes, we were physically in the parking lot with him.

14 Q. Not standing with him? Y'all were still in your car?

15 A. No, when -- when we turned on the surveillance
16 equipment, we got out of our vehicle and we were with the
17 CI, standing with the CI.

18 Q. Okay, but you weren't standing next to him? I mean, we
19 have been watching videos. You weren't standing next to
20 him --

21 A. I don't understand.

22 Q. -- in the parking --

23 MR. EPTING: Your Honor, I object. I believe the
24 phrasing of the question is confusing.

25 THE COURT: Well --

1 MS. INZERILLO: I'll rephrase it, Your Honor.

2 THE COURT: Yeah, let's just rephrase the question
3 so the witness understands it.

4 BY MS. INZERILLO:

5 Q. All right, let me ask it another way.

6 You indicated that you were on Bradley Street, is that
7 right?

8 A. After we met with the CI at Winthrop.

9 Q. Okay. And then you followed him? He went to the
10 parking lot?

11 A. He went to The Party Shop, I believe it's called, on
12 Cherry Road. That's when we staged up on Bradley.

13 Q. Okay?

14 A. Okay.

15 Q. And then when he left, y'all left?

16 A. When he left Winthrop Colosseum?

17 Q. No, when he left The Party Shop, the liquor store,
18 y'all left?

19 A. We left when we were told by Commander Brown that the
20 deal was complete. So we went back en route to the
21 colosseum to meet back with the CI, yes.

22 Q. Okay. And then that's when y'all sort of essentially
23 doubled back when you saw Commander Brown not go where y'all
24 thought he was going to go?

25 A. When he radioed that he was going to be out with Lexie

1 Brown (sic), then, yes, we -- Lexie Turner, I apologize. We
2 doubled back around before we got to the colosseum and
3 checked on them and then went straight back to the
4 colosseum, that's correct.

5 Q. Okay. All right. That's what I was trying to get.
6 I'm sorry. It confused both of us.

7 A. Yes, ma'am.

8 Q. And then you said you went back to the colosseum?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. INZERILLO: No further questions.

12 A. Thank you.

13 THE COURT: All right. Any redirect?

14 MR. EPTING: Nothing from the State, Your Honor.

15 THE COURT: Do you wish the witness to be excused?

16 MR. EPTING: I do, Your Honor.

17 THE COURT: Any objection?

18 MS. INZERILLO: No, Your Honor.

19 THE COURT: All right, ma'am, you are excused and
20 released from your subpoena. You may go back to regular
21 activities.

22 THE WITNESS: Thank you, judge.

23 THE COURT: All right, solicitor, your next
24 witness, please.

25 MR. EPTING: Thank you, Your Honor.

1 If I see a Pat Patterson.

2 THE COURT: If you would come right up here to the
3 clerk to be sworn, sir.

4 OFFICER PATRICK PATTERSON, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. EPTING:

7 Q. Good afternoon.

8 A. Good morning.

9 Q. Would you please state your name for the record?

10 A. Patrick R. Patterson.

11 Q. How are you employed, Mr. Patterson?

12 A. I'm an evidence technician with the York County
13 Sheriff's Office.

14 Q. Could you explain to the jury your present duties as an
15 evidence technician at the sheriff's office?

16 A. We take in evidence that the officers turn in to us.
17 We make sure that evidence is secured while it's in our
18 possession. And when it's needed, we sign it out.

19 MR. EPTING: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, sir.

22 MR. EPTING: For the record, I'm going to show Mr.
23 Patterson what has been marked as State's Exhibit 8 and 10.

24 BY MR. EPTING:

25 Q. If you would, Mr. Patterson, please look those over.

1 A. All right.

2 Q. All right, Mr. Patterson, we will start with State's
3 Exhibit 8. Do you recognize State's Exhibit 8?

4 A. Yes, sir.

5 Q. What is it?

6 A. It's evidence of crack cocaine.

7 Q. And how do you recognize that?

8 A. Let's see, it was -- I received it from Rock Hill PD
9 evidence drop on May the 21st, 2012.

10 Q. And are you the only person, the only evidence tech,
11 who goes and retrieves these from Rock Hill?

12 A. Not always, but most of the time, yes.

13 Q. Okay. And is it in the same condition as it was when
14 you last saw it?

15 How about when you last saw it when you picked it up
16 from the Rock Hill evidence?

17 A. No, it's been tested by the chemist since I picked it
18 up from Rock Hill.

19 Q. Any other alterations that you can see that would
20 indicate tampering, or anything like that?

21 A. Nothing more than what the chemist has done.

22 Q. Okay. And you mentioned -- and you mentioned access to
23 a drop box --

24 A. Yes, sir.

25 Q. -- or a locker at Rock Hill PD. Who has access to that

1 locker?

2 A. Myself, I have the keys, my co-worker and our
3 supervisor in the evidence room.

4 Q. Anyone else?

5 A. No, sir.

6 Q. And when you go to pick up the drugs from the Rock Hill
7 PD drop box, does anyone else customarily ride with you, or
8 do you ride alone?

9 A. It's usually alone.

10 Q. Is it within your custody and control the entire time
11 that you take it from Rock Hill PD delivering it to York
12 County --

13 A. Yes.

14 Q. -- to Moss Justice?

15 A. Yes.

16 Q. Okay. And what did you do with that after you picked
17 it up from Rock Hill PD and brought it back to the Moss
18 Justice Center?

19 A. I took it into our evidence room here at Moss Justice.

20 Q. Okay. And once it's in the evidence room at Moss
21 Justice Center, who has access to it?

22 A. The same three people.

23 Q. Okay.

24 A. Our co-workers.

25 Q. All right. Does it indicate that that -- does it

1 indicate by signature that that -- that those -- that
2 State's Exhibit 8 was given to anyone else?

3 A. It was given to Cynthia Mitchum.

4 Q. Okay. Is that the only other person on State's Exhibit
5 8?

6 A. Yes, until it was signed over to Marvin Brown to come
7 to court today.

8 Q. Very good.

9 Moving onto State's Exhibit 10, the same questions. Do
10 you recognize State's Exhibit 10?

11 A. Yes, sir.

12 Q. And how do you recognize it?

13 A. It's a piece of evidence I picked up also from Rock
14 Hill PD on May the 21st, 2012.

15 Q. When you picked up these items, do you do anything
16 special to mark them to let them know that you got it?

17 A. Only my signature.

18 Q. So you signed it?

19 A. Yes.

20 Q. Okay. And if I heard you correctly, you got that from
21 the Rock Hill PD drop box as well?

22 A. Yes, sir.

23 Q. Is that subject to the same three people having keys to
24 that that was looking at State's Exhibit 8?

25 A. Yes.

1 Q. Is that in the same condition as it was when you last
2 saw it?

3 A. It is, other than being opened by the chemist for
4 testing.

5 Q. Okay. And the same answers apply, as far as someone
6 riding with you from Rock Hill PD and taking it back to Moss
7 Justice? You usually ride alone?

8 A. Yes, sir, usually.

9 Q. And what did you do with State's Exhibit 10 after you
10 picked it up?

11 A. Brought it back to Moss Justice into our evidence room.

12 Q. Okay. And, again, the same as State's Exhibit 8, did
13 the same three people have access to State's Exhibit 10 as
14 did State's Exhibit 8?

15 A. Yes, sir.

16 Q. All right. And what does -- and the report indicates
17 that you dropped that off at the evidence room, is that
18 correct?

19 A. Yes, it was turned into our evidence room.

20 Q. Does it indicate that it was picked out by anybody
21 else?

22 A. It was signed out to Cynthia Mitchum, the chemist.

23 Q. Okay. Very good.

24 MR. EPTING: Your Honor, that's all the questions
25 that I have for Mr. Patterson.

1 THE COURT: Cross-examination.

2 MS. INZERILLO: Thank you, Your Honor.

3 CROSS EXAMINATION BY MS. INZERILLO:

4 Q. Mr. Patterson, did you alter, or add, or delete any of
5 the signatures that are anywhere on those packages?

6 A. No, ma'am.

7 Q. Is there any indication on any of those packages that
8 it was ever signed out for Forensic Services?

9 A. No, ma'am.

10 MS. INZERILLO: I have no further questions, Your
11 Honor.

12 THE COURT: Any redirect?

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

14 THE COURT: And do you wish the witness to be
15 excused?

16 MR. EPTING: I do, Your Honor.

17 THE COURT: Any objection?

18 MS. INZERILLO: No, Your Honor.

19 THE COURT: All right, sir. If you would leave
20 the exhibits here, you are excused and released from your
21 subpoena and you may go back to your regular activities.

22 MR. EPTING: Your Honor, the State calls Jimmy
23 Stiles to the stand.

24 THE COURT: All right, very good.

25 MR. EPTING: May I approach that evidence briefly,

1 Your Honor?

2 THE COURT: Yes, sir.

3 Come right here to the clerk. Thank you, sir.

4 OFFICER JIMMY STILES, having been first duly
5 sworn, testified as follows:

6 THE COURT: Go ahead, solicitor.

7 DIRECT EXAMINATION BY MR. EPTING:

8 Q. Please state your name for the record.

9 A. Jimmy Stiles.

10 Q. How are you employed, Mr. Stiles?

11 A. I'm sorry?

12 Q. How are you employed?

13 A. The York County Sheriff's Office.

14 Q. And what are some of the duties of your job?

15 A. Taking in evidence and filing and placing it in correct
16 locations in evidence.

17 Q. I'm going to ask you about one specific exhibit,
18 State's Exhibit 10.

19 A. Okay.

20 Q. It should be sitting up there next to you on the bar.
21 Have you got it?

22 A. No. 2?

23 Q. Sir?

24 State's Exhibit 10.

25 A. I have 8 and 10.

1 Q. 10 is the one that you want.

2 A. Okay.

3 Q. Would you please look that over and look up when you
4 are done?

5 A. Yes, that's my name.

6 Q. Have you had -- and you are anticipating my question.
7 Have you had any involvement with State's Exhibit 10?

8 A. Yes, sir, just signing it out to the drug person to
9 test.

10 Q. And do you know the drug person's name off the top of
11 your head?

12 A. Cynthia Mitchum.

13 Q. Okay. And that is your signature and you delivered it
14 to her?

15 A. Yes, sir.

16 Q. Okay. And you were -- where did you retrieve that
17 from?

18 A. From the evidence room itself.

19 Q. Is that a secure area?

20 A. Yes, sir.

21 Q. Who all has access to the evidence room?

22 A. Myself, Patrick Patterson, and our lieutenant.

23 Q. Okay. And no one else?

24 A. That's correct.

25 Q. Okay.

1 MR. EPTING: Your Honor, that's all the questions
2 that I have for this witness at this time.

3 THE COURT: Cross-examination?

4 MS. INZERILLO: Thank you, Your Honor.

5 CROSS EXAMINATION BY MS. INZERILLO:

6 Q. Mr. Stiles, did you alter or change any of the
7 signatures on that document in any way?

8 A. No, ma'am.

9 MS. INZERILLO: I have no further questions, Your
10 Honor.

11 THE COURT: Do you wish the witness to be excused?

12 MR. EPTING: I do, Your Honor.

13 THE COURT: All right, sir, you may step down and
14 you are released from your subpoena and you may go back to
15 your regular activities.

16 THE WITNESS: Thank you.

17 MR. EPTING: The State calls Cynthia Mitchum to
18 the stand.

19 THE COURT: Please come around up here to meet the
20 clerk, ma'am.

21 CYNTHIA MITCHUM, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION BY MR. EPTING:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. How are you doing?

2 A. I'm good. How are you?

3 Q. I'm pretty good.

4 Could you please state your full name and occupation
5 for the record?

6 A. I'm Cynthia Mitchum and I'm the drug chemist for the
7 York County sheriff's office.

8 Q. How long have you been a chemist for the sheriff's
9 office?

10 A. I have been here almost thirteen years.

11 Q. And prior to working for York County, were you employed
12 anywhere else as a chemist?

13 A. Yes, I was employed with the South Carolina Law
14 Enforcement Division, commonly known as SLED, in Columbia,
15 South Carolina, and I was there for a little over seven
16 years.

17 Q. What sort of training and education do you have to have
18 in order to be a chemist?

19 A. I have a Bachelor of Science Degree in Chemistry, which
20 I received from Winthrop University in 1990.

21 And I have also gone through training through SLED for
22 drug analysis.

23 Q. And are analyzing narcotics and other illegal drugs a
24 part of your daily duties?

25 A. Yes, it is.

1 Q. All right. Have you ever analyzed substances to
2 determine whether or not the substances were crack cocaine?

3 A. Yes.

4 Q. Approximately how many time have you had to do it?

5 A. Oh, gosh, I have been doing this for twenty years and
6 crack is one of my major ones I get. Probably in excess of
7 five thousand.

8 Q. And how many times have you been qualified as an
9 expert?

10 A. In excess of two hundred times.

11 Q. Okay.

12 MR. EPTING: Your Honor, at this time I would move
13 to declare this witness as an expert in the field of
14 chemistry and the analysis and weighing of narcotics.

15 THE COURT: All right. Do you wish to voir dire
16 the witness as to her qualifications?

17 MS. INZERILLO: No, Your Honor, we have no
18 objection.

19 THE COURT: All right. Very good. I'm going to
20 qualify her to give her opinion in the fields offered by the
21 State.

22 MR. EPTING: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, sir.

25 MR. EPTING: Please let the record reflect that I

1 am handing Ms. Mitchum what has been marked as State's
2 Exhibit 8.

3 BY MR. EPTING:

4 Q. Ms. Mitchum, if you would, please look over that and
5 look up when you are done.

6 A. Okay.

7 Q. Do you recognize this?

8 A. Yes, I do.

9 Q. What is it?

10 A. This is evidence that was given to me on 6-7 of 2012.

11 Q. Okay. And from where did you get it?

12 A. I received this from Patrick Patterson.

13 Q. Okay. And what condition was it in when you received
14 it?

15 A. It was in a sealed condition, and I know this -- and
16 what I received first was this inside bag that has the blue
17 filigree about it. On here I have "okay" and my initials,
18 and that means that the bag was intact when I received it.

19 Q. When you received it, did it appear to have been
20 tampered with in any way?

21 A. No.

22 Q. And what did you do with it when you received it?

23 A. Once I received it, then I would take it back to the
24 lab where I can store it in a secure area until I have a
25 chance to do my analysis.

1 Q. Okay. And prior to you doing your analysis, it is
2 continuously -- is it continuously and constantly in your
3 custody and control?

4 A. Yes. I have a lock box back there. It's basically a
5 filing cabinet, and I have the only keys to that filing
6 cabinet.

7 Q. At some point did you do an examination?

8 A. Yes, I did.

9 Q. Okay. And what did you do with the drugs after you
10 completed your examination?

11 A. Okay, once I finished my examination, I sealed it in
12 this outer bag, which is in the laboratory, and then I
13 retained custody of it until I could return it back to
14 evidence. And the date that I sealed it and my initials are
15 here in this heat seal and that's still intact today.

16 Q. And so the bag is in the same condition as it was when
17 it left you?

18 A. Correct.

19 Q. Okay. And during your tests did you make a
20 determination of what the substance is and what its weight
21 was?

22 A. Yes, I did.

23 Q. And what did you determine the substance to be?

24 A. Okay. On State's Exhibit No. 8, which is Item 1 in
25 this case, I found to be cocaine base, also known as crack.

1 Do you want me to go ahead and read the --

2 Q. What about the weight?

3 A. 2.44 grams, or 37.64 grains, and that is a Controlled
4 II substance.

5 Q. Okay. And did you prepare a report of your findings?

6 A. Yes.

7 MR. EPTING: I would ask that that report, that
8 your report be marked as State's Exhibit 11.

9 A. Do you want to go ahead and mark the other one, or wait
10 until after I read it?

11 (Drug Report marked as State's Exhibit No. 11 for
12 identification)

13 (Drug Report marked as State's Exhibit No. 12 for
14 identification)

15 MR. EPTING: Your Honor, the State would move
16 State's Exhibit 11 into evidence.

17 THE COURT: Any objection?

18 MS. INZERILLO: No, Your Honor.

19 THE COURT: All right, State's 11 is in evidence
20 without objection.

21 (Whereupon, State's Exhibit No. 11 was entered
22 into the record as evidence)

23 MR. EPTING: All right.

24 THE COURT: You may proceed.

25 BY MR. EPTING:

1 Q. Now we are going to move our attention to State's
2 Exhibit 10.

3 I have handed you prior to walking back to my station
4 State's Exhibit 10. Do you recognize State's Exhibit 10?

5 A. Yes, I do.

6 Q. Can you tell the jury what it is?

7 A. This is the substance I received for analysis on
8 9-11-2012 from Jimmy Styles.

9 Q. Okay. You got that from Jimmy Stiles?

10 A. Yes.

11 Q. What condition was it in when you received it?

12 A. When I received it, it was in the blue filigree bag and
13 it was sealed, and I note it "okay", the date I received it,
14 and my initials are here at the top part.

15 Q. Did that State's Exhibit appear to have been tampered
16 with in any way when you received it?

17 A. No.

18 Q. Okay. What did you do with it when you received it?

19 A. Once I received it, I took it back to the laboratory
20 and stored it until a chance I had to do an analysis on it.

21 Q. And, again, when it was being stored, was it in your
22 custody continuously?

23 A. Correct.

24 Q. Was it at the same lock box that you have the only key
25 to?

1 A. Yes.

2 Q. Okay. And at some point did you perform an analysis on
3 that substance?

4 A. Yes, I did.

5 Q. And before we get to the results of that analysis, what
6 was the condition --

7 And after you performed your analysis, what did you do
8 with the drugs?

9 A. I put the substance and the bag in this outer bag,
10 sealed it, and it has the date I sealed it and my initials
11 in the heat seal there in and that's still intact today.

12 Q. So it's in the same condition as it was when it left
13 you?

14 A. Yes.

15 Q. Okay. Did you make a determination of what the
16 substance you were testing was, as well as its weight?

17 A. Yes, I did.

18 Q. And what did you determine the substance and weight to
19 be?

20 A. In this item, State's Exhibit No. 10, which is Item No.
21 1 in this case, was found to be cocaine base, also known as
22 crack, in the amount of 0.06 grams, or 0.92 grains,
23 Controlled II substance.

24 Q. Did you prepare a report of your findings, like on the
25 last one?

1 A. Yes.

2 Q. All right. And is this State's Exhibit 12?

3 A. Yes.

4 MR. EPTING: Your Honor, at this time the State
5 would move State's Exhibit 12 into evidence.

6 THE COURT: Any objection?

7 MS. INZERILLO: No, Your Honor.

8 THE COURT: All right, State's 12 is in evidence.

9 (Whereupon, State's Exhibit No. 12 was entered
10 into the record as evidence)

11 MR. EPTING: Your Honor, the State would also move
12 in -- would move to move in State's Exhibit 8 and 10 into
13 evidence.

14 THE COURT: Any objection to 8 and 10 coming into
15 evidence?

16 MS. INZERILLO: I do have objections to both, Your
17 Honor.

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen of the jury, go to your jury room for a little
20 bit, please.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: All right, ma'am, I'll be glad to hear
24 from you.

25 MS. INZERILLO: Thank you, Your Honor.

1 May it please the court, Your Honor, both State's
2 8 and 10 are, as the court is aware, the crack obtained in
3 this case. In both of those cases the person from which the
4 origination point of the crack, both of those witnesses are
5 missing.

6 And in the crack that is State's 8, which is the
7 crack that originated from the car, Sammy Figueuroa found
8 that crack. He is the person who had custody and control
9 over that crack and turned that into evidence and he's the
10 first link in the chain. He has not testified. And,
11 therefore, the State is missing that link in the chain
12 regarding State's 8.

13 On State's 10, Your Honor --

14 THE COURT: Let's deal with them one at a time.

15 MS. INZERILLO: I'm sorry, Your Honor.

16 THE COURT: That's all right.

17 MS. INZERILLO: I'll start with State's 8.

18 The testimony thus far, Your Honor, regarding
19 State's 8 is that pursuant to a search of the car, even
20 though it was Commander Brown that identified and saw the
21 drugs in the car, it was Mr. Figueuroa that took custody and
22 control of the drugs, that he had sole custody and control
23 of the drugs as they were being transported to Rock Hill PD.
24 That upon cross-examination by the defense, that even though
25 it was in packaging and Mr. Brown was present, that the

1 packaging was undone, that the crack was taken out of the
2 packaging and photographed. Pursuant to cross-examination,
3 Mr. Brown testified that the crack cocaine was in Mr.
4 Figueuroa's custody and control the entire time.

5 If I could approach the witness, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. INZERILLO: For purposes of --

8 And I would explain to the court as well on the
9 State's Exhibit 8, it also shows that the evidence was
10 recovered by Mr. Figueuroa. He is the person who signed it
11 in. That's the first link in the chain. It moved from him
12 to evidence that he released on 5-18-2012, at six p.m., so
13 he is first link in the chain, Your Honor.

14 It is position of the defense that because he has
15 not testified and has not verified that the drugs were not
16 tampered with, and certainly -- that that is fatal to the
17 chain in this case.

18 I know current case law, Your Honor, does dictate
19 that the State must show essentially as far as practicable
20 that the chain, the drugs had not been tampered with, but I
21 would point out to the court, Your Honor, in several of
22 those cases they deal with essentially down in -- they don't
23 deal with the origination point of the drug. And I believe,
24 Your Honor, that that is because that is the point when
25 arguably the possibility for tampering is the highest and it

1 is the most unsecured.

2 As the court has heard and it has seen pictures of
3 it, arguably it is just wrapped up in a plastic bag. It's
4 not in the heat resistant bags, heat sealed bags at that
5 point. It's in an uncontrolled environment. It is not in
6 an evidence locker, or anything at that point, and so it's
7 the defense's position that of all the witnesses for the
8 defense -- I mean for the State to have not called and to
9 have not had testified about having control and custody and
10 having not tampered with the crack in this case, that the
11 person from who at which point the crack originates is the
12 most fatal, and we would ask the court to find that the
13 State has not met their burden in establishing a chain of
14 custody.

15 I would cite a couple of cases mainly for the
16 premise, Your Honor, that if the chain has a missing link,
17 then the drugs are inadmissible. I would cite State v.
18 Carter, which is 344 S.C. 419 mainly for that premise.

19 Again, I believe factually that deals more with
20 once it got down to SLED, I believe there was a couple of
21 people missing, once it got down to SLED, that the court
22 held, at that point some other testimony would come in,
23 because they were in heat-resistant bags, that was not held
24 to be fatal, but it does cite that premise that if the chain
25 has a missing link, then the drugs are inadmissible.

1 And I would argue, Your Honor, that in this case,
2 because it is a very first point in the chain, that in this
3 case it is fatal, and I would argue that the drugs should be
4 inadmissible.

5 THE COURT: All right, solicitor.

6 MR. EPTING: Your Honor, the State's position is
7 that we do not, in fact, have a missing link, because we
8 have had testimony that Sammy Figueuroa actually was
9 witnessed picking up those drugs.

10 I believe Marvin Brown's testimony was that he was
11 with Sammy Figueuroa every step of the way, up to and
12 including emptying the bags -- emptying the bags to take
13 pictures at the DEU, and then putting those bags -- putting
14 those bags in the best evidence bag.

15 Mr. Brown, my understanding, testified that he was
16 with Mr. Figueuroa up until the point it was even dropped
17 into the drop box. At no time was Sammy left alone with
18 those drugs, and, therefore, we believe that we have
19 established the chain.

20 He's not a missing link. We know exactly who he
21 is, and I think the case law is clear that we don't have to
22 call every known link in a chain to come and testify, and I
23 don't believe we had to, particularly in this case when
24 Marvin Brown was with Mr. Figueuroa the entire way.

25 THE COURT: All right, sir.

1 All right, regarding the chain of custody
2 regarding fungible items, those fungible items being
3 examples of drugs, or blood, blood samples that are not
4 readily identifiable and may be easily tampered with,
5 harboring the party offering such items, then the evidence
6 must establish a chain of custody as far as practicable.

7 Where the analyzed substance is passed through
8 several hands, the evidence must not leave it to conjecture
9 as to who had it and what was done with it between the
10 taking and the analysis.

11 While the party offering the evidence need not
12 negate all possibility of tampering, a complete chain of
13 custody tracing possession of the substance from the time it
14 is taken to the time of final analysis must be established,
15 as far as practicable. The identity of persons who have
16 handled the evidence must be established.

17 With that I do find that the State has, in
18 reviewing now with State's Exhibit 8, has exhibited a proper
19 chain of custody.

20 There was testimony tracing the drugs from their
21 receipt in the beginning from the vehicle, that they were in
22 the observation of and the officer knew where the drugs were
23 at all times. He was able to see whether or not they would
24 have been tampered with or changed in any way. He was
25 present at all times when they were taken out, photographed,

1 sealed, put in the locker. And then we have had all the
2 witnesses that have taken them from the locker to the
3 chemist and then the resealing.

4 So regarding State's Exhibit 8, I do find that a
5 proper chain of custody has been established, and,
6 therefore, the motion to suppress that evidence is denied.

7 All right, ma'am, you wanted to argue about 10?

8 MS. INZERILLO: Yes, Your Honor.

9 Your Honor, State's Exhibit 10 originated with
10 essentially the confidential informant. He is the first
11 link in the chain.

12 Essentially the evidence is, which I believe is
13 undisputed, that the CI had the drugs; that he was at the
14 scene; that he was unattended for some period of time. I
15 believe one of the DEU officers indicated that it was at
16 least a few minutes of time while they were going to assist
17 Commander Brown with what they thought was a traffic stop;
18 that he was unattended with the drugs; and then it was only
19 at that point that he was assisted by officers and the drugs
20 recovered.

21 Your Honor, I would again point out on State's
22 Exhibit 10 that the -- as it has been logged in, the
23 evidence was recovered by Officer Faulkenberry, who did
24 testify, and that it's logged in at the place the evidence
25 was found was the CI's hand, that that was the origination

1 point.

2 Your Honor, my argument on Exhibit 10 is
3 essentially extremely similar to Exhibit 8, that the
4 origination point, that is where the highest tampering or
5 allegation of tampering could occur, especially when you
6 are, in this case, dealing with a lay witness. He's
7 unattended. He's dealing with essentially an open bag of
8 crack. There is no one that had eyes on him, either when he
9 was in the truck driving from the parking lot. When he was
10 driving to Winthrop Colosseum, he was essentially
11 unattended. And at that point, as the testimony has shown,
12 that was prior to whenever it went into heat-resistant bags
13 when it was in the hands of the officers, and that person
14 has not come in and testified as to not tampering with the
15 drugs. Because the officers were under video surveillance,
16 but none of them were actually in any of the vehicles doing
17 the buy, you can see on the videos they were not actually
18 physically present next to the CI when they could eyeball
19 the evidence as it was handed over, as it was in the CI's
20 hand.

21 You could see from the video when the CI is in the
22 car taking off all the stuff, you never see any video
23 evidence of what the crack looked like at the time it was
24 handed over to the officers. So there is no other extrinsic
25 evidence the court can see as to the state of the crack

1 before it gets into the chain.

2 Again, Your Honor, at that point is the time when
3 it can be tampered with. He is -- there has been no
4 evidence it wasn't tampered with. He has not come in to
5 testify. We have no idea how it was handed to him. No one
6 has testified as to what it looked like, if it did, in fact,
7 come from Mr. Turner's hand. No one testified, you know,
8 again, that came, you know, from his hand, I saw it in this
9 condition, and it was in that same condition when it came
10 from Mr. Quick's had to Officer Faulkenberry's hand. We
11 don't even have the link from that end.

12 Your Honor, so for that reason, and since it
13 echoes the reasons I just stated for State's 8, I would ask
14 the court to suppress the drug for State's 10 as well.

15 THE COURT: All right, solicitor, let me hear from
16 you.

17 MR. EPTING: Your Honor, I believe that the
18 majority of Ms. Inzerillo's arguments go to the weight of
19 the evidence rather than the admissibility.

20 We do have corroboration that he was followed from
21 the station in a car, that's a State's car, which is
22 searched regularly. He, himself, was searched and has no
23 crack cocaine. They do not lose line of sight of him at all
24 from Winthrop -- from the station to Winthrop Colosseum, and
25 then only very briefly lose line of sight of him as he pulls

1 to Cherry Road and goes to The Party Shop.

2 All the corroborating evidence we have is that the
3 chain was created at the moment that he purchased it from
4 Mr. Turner. Mr. Turner was found with the twenty dollar
5 bill in his pocket, which I think is very powerful evidence
6 that he did, in fact, purchase something from him.

7 And, Your Honor, again, this is a state-issued
8 car. It was a very brief amount of time that he was allowed
9 to sit in the Winthrop Colosseum parking lot. And to that
10 matter, the camera that was left shows that he didn't stop
11 anywhere else. He didn't -- he didn't do anything visibly
12 on the camera to alter or to tamper with the crack cocaine.
13 Everything corroborates that he bought a crack rock from Mr.
14 Turner. And, Your Honor, I believe that goes to the
15 weakness of the chain, rather than whether it's a missing
16 link, which would require us to keep this out as admissible
17 evidence.

18 MS. INZERILLO: Your Honor, if I may respond?

19 THE COURT: Yes, ma'am, please.

20 MS. INZERILLO: Your Honor, I believe the State's
21 argument goes mainly to essentially their case as to a
22 distribution. My argument goes to the missing link in the
23 chain.

24 There is nothing to say that if the State has
25 presented evidence as to whether there is a distribution.

1 My argument is without that missing link, we don't know if
2 in that unattended two to three minute period the state of
3 the crack cocaine that the CI received would have, for all
4 the benefit, put it in his mouth. We know the state of the
5 search that he got. They searched his pockets, but I
6 believe the reason that the State has to establish chain of
7 custody is to establish that the crack cocaine that he
8 received was not tampered with, not whether that he received
9 it. That's a separate issue. And what the State cannot
10 show, because of this missing link, because there has been
11 no testimony from Mr. Quick, is that it is the same
12 condition that he allegedly received in that sale, because
13 no one saw the condition when he received it. All they got
14 was the crack that he handed the officers. We don't know if
15 he -- and you can see the crack that's been, you know, sort
16 of testified to. It's torn into little pieces. We don't
17 know if it's been tampered with, if someone has put it in
18 his mouth. If he messed with it in any way, we don't know
19 that. And so for that reason, Your Honor, that that is the
20 importance of the chain of custody requirements by the
21 State, and because they cannot show that it was not tampered
22 with, which is the burden of the State, I believe it has to
23 be suppressed, or ruled inadmissible.

24 THE COURT: All right. Solicitor, do you
25 understand the argument is that you don't have the CI, so

1 you don't have somebody that says that State's 10, that
2 there is State's 10, "I got State's 10 from the defendant."

3 MR. EPTING: Uh-huh.

4 THE COURT: "I put it in my pocket. It stayed
5 there. I didn't do anything with it in any shape, manner,
6 or form, and then I turned it over to the officer at the
7 Winthrop parking lot." You don't have that person saying "I
8 didn't to anything with it."

9 And you can't -- you don't have an officer saying
10 "from the liquor store parking lot to the Winthrop parking
11 lot that he was under surveillance the whole time."

12 So you can't negate the possibility of something
13 happening. So what do you say to that?

14 MR. EPTING: I don't think we have to negate every
15 possibility of tampering. We just have to prove our chain
16 of custody as far as practicable.

17 In this case, we used cameras to try to do that.
18 In this case we tried to find the CI, which we couldn't, but
19 if it would help, Your Honor, I have found a case where a CI
20 was known, did not testify, was missing from the site for
21 approximately ten minutes from the officers and the court
22 still, nonetheless, found that it was admissible.

23 THE COURT: I will be glad to receive it from you.
24 Have you got a copy for opposing counsel?

25 MR. EPTING: I sure do.

1 THE COURT: All right.

2 Why don't we take a short break for about five
3 minutes, okay?

4 MR. EPTING: Thank you, Your Honor.

5 THE COURT: Thank you all.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right. The objection to State's
9 10 in this regard, I do find that the objection should be
10 denied at this -- or should be denied, and I will decline to
11 grant the motion to suppress.

12 I think two cases, South Carolina Supreme Court
13 cases, that are helpful in explaining the court's ruling are
14 State v. Valentine, found at 386 S.C. 499, 689 S.E. 2d 608,
15 2010 case; and State v. Hatcher, found at 392 S.C. 86, 2011.

16 There was before it State v. Sweet at 647 S.E. 2d
17 202, 2007, but I don't believe the circumstances of the
18 State v. Sweet were present here, but the analysis flows
19 through all three that I think allows the introduction at
20 this point in time.

21 In this particular case the identity of all of the
22 persons who handled State's Exhibit 10 have been established
23 by the State.

24 The State has established some evidence that shows
25 that State's 10 came from the defendant to Mr. Quick. They

1 did have a video camera on Mr. Quick that allowed the jury
2 to observe his activities prior to and after receipt of
3 State's 10. He was searched before. The vehicle was
4 searched before. He was searched afterwards. The vehicle
5 was searched afterwards. He gave the State's 10 to the
6 police at the Winthrop parking lot.

7 So I do find that the State has established a
8 chain of custody as far as practicable, as far as they are
9 able to do so, that establishes every single person
10 specifically who handled the item, as well as giving the
11 jury an ability -- even without the CI testifying, there was
12 actual video evidence of what was transpiring through the
13 camera that was on the CI. Even though we do not have the
14 testimony of the CI, it is not necessary. We do not have
15 the testimony of Mr. Quick. It is not necessary, and that
16 is not the law that every person who has touched it has to
17 testify, but there has to be sufficient evidence, and I do
18 so find that there is, that demonstrates and shows the
19 identity of everybody who handled it and reasonably
20 demonstrates the manner of handling the evidence from the
21 beginning to the end. I mean, there is obviously no
22 question about it from the time that it went from Mr. Quick
23 to the officers. There is obviously no question there. The
24 question was before that, but I find that there is
25 sufficient evidence under the cases that I have cited to

1 allow it into evidence, that being Valentine and Hatcher.
2 All right.

3 Further motions by the defense regarding
4 introduction of State's 8 and 10?

5 MS. INZERILLO: No other motions, Your Honor.

6 THE COURT: All right. Is the State ready for a
7 jury to come back?

8 MR. EPTING: The State is ready, Your Honor.

9 THE COURT: Defense?

10 MS. INZERILLO: Yes, Your Honor.

11 THE COURT: All right. Ask the jury to come back
12 in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: All right, I'm going to allow State's -
16 8 and 10 into evidence over the objection of defense.

17 (Whereupon, State's Exhibit No. 8 was entered into
18 the record as evidence)

19 (Whereupon, State's Exhibit No. 10 was entered
20 into the record as evidence)

21 You may proceed, solicitor.

22 MR. EPTING: Thank you, Your Honor.

23 I have no further questions of this witness.

24 THE COURT: Cross-examination.

25 MS. INZERILLO: Thank you, Your Honor.

1 May it please the court?

2 THE COURT: Yes, ma'am.

3 CROSS EXAMINATION BY MS. INZERILLO:

4 Q. Hi, Ms. Mitchum.

5 A. Hello.

6 Q. Your role in this case was just to test the drugs, is
7 that right?

8 A. That is correct.

9 Q. So you don't have no idea where they came from?

10 A. Correct, other than the paperwork, I have no personal
11 knowledge.

12 Q. Okay.

13 MS. INZERILLO: No further questions, Your Honor.

14 THE COURT: All right. Any redirect?

15 MR. EPTING: Nothing from the State, Your Honor.

16 THE COURT: All right, sir.

17 Do you wish the witness to be excused?

18 MR. EPTING: I do, Your Honor.

19 THE COURT: Any objection?

20 MS. INZERILLO: No, Your Honor.

21 THE COURT: All right, ma'am, you are released
22 from your subpoena. You may go back to your regular
23 activities.

24 All right, further witnesses on behalf of the
25 State?

1 MR. EPTING: Your Honor, the State rests.

2 THE COURT: All right, are there motions by the
3 defense at this point in time?

4 MS. INZERILLO: Yes, Your Honor, we do have some
5 motions.

6 THE COURT: All right, very good.

7 Y'all come up and talk with me just one second,
8 please, before we do something.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 THE COURT: All right, ladies and gentlemen, there
12 are matters of law that I have to take up outside of your
13 presence. I have had you back in the jury room for some
14 extended periods of time today because of those matters and
15 I don't want to keep you here longer than it's necessary, so
16 what I'm going to do is I'm going to send y'all home for the
17 evening and have you come back tomorrow morning at 9:30. At
18 that point in time we will resume the trial. I will fully
19 explain where we are at that point in time, but I'll take --
20 we will take up with the counsel all the matters that we
21 need to take up outside of your presence today so that we
22 are done with that and we can move along in the morning.

23 Now, when you go home tonight and see your
24 husband, boyfriend, wife, girlfriend, person down the street
25 and they happen to know you are on a jury, that's great, you

1 can't talk about the case. They can't talk to you about it.
2 You can't give them what's going on. You can only make your
3 decision solely and completely on the facts and evidence you
4 hear in the courtroom, no other source. You can't elicit
5 somebody else's opinion about this.

6 The jury panel as a whole will have all the time
7 you deem necessary to talk about this case when I submit it
8 to you at the end for your deliberations and your unanimous
9 decision at that point in time. So until then, please
10 remember you're not investigators, you are receiving
11 evidence in the courtroom. Don't be trying to search
12 anything on the Internet or look up something or whatever.
13 You are making the decision on what you hear in the
14 courtroom. All right.

15 I'll see y'all back tomorrow morning at 9:30,
16 please. Thank you very much.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right, Ms. Inzerillo, you have
20 motions for the defense at this point in time?

21 MS. INZERILLO: I do, Your Honor.

22 Your Honor, specifically --

23 Well, for the record I would make a general motion
24 for a directed verdict on the possession with intent to
25 distribute. I would just make that one for the record.

1 I would renew all previous objections and motions.

2 In regards to the distribution, Your Honor, I
3 would raise a specific motion for a directed verdict on that
4 one. It is the position of the defense that the evidence
5 that's been presented only raises a mere suspicion of the
6 defendant's guilt in this case. The evidence that's been
7 presented, both in live testimony and on video, essentially
8 just shows the confidential informant walking up to the side
9 of the car. There is no video evidence showing any
10 hand-to-hand transaction. There is no evidence essentially
11 showing any distribution.

12 There has been testimony regarding a distribution,
13 but from witnesses that were not at the scene but that were
14 very far away. And our position is that that only raises a
15 mere suspicion of guilt and not -- it does not rise to the
16 level of submission to a jury, so we would move for a
17 directed verdict on that charge as well, Your Honor.

18 THE COURT: All right.

19 Yes, solicitor.

20 MR. EPTING: Your Honor, we believe there is
21 substantial circumstantial evidence as to the distribution,
22 both on the videos themselves and the opinion of the
23 officers who saw them, who said in their experience it's
24 consistent with a drug transaction, on top of the twenty
25 dollar bill that was marked money found in the defendant's

1 pocket, on top of the approximately five hundred dollars
2 worth of crack that was found in the car afterwards. I
3 think those two things read together, particularly that the
4 CI was searched beforehand, his car was searched, and he
5 returned with the crack and handed those over to officers at
6 that time. We believe all that, particularly in the light
7 most favorable to the State, should allow this to go to the
8 jury.

9 MS. INZERILLO: And, Your Honor, I failed to --

10 THE COURT: Yes, ma'am.

11 MS. INZERILLO: I do note one other element as
12 well. As the court has seen, there were two people in the
13 car and the State has not established beyond a mere
14 suspicion that any distribution was done specifically with
15 Mr. Turner. He was identified as the person in the car.
16 And, of course, you know, obviously the buy money was found
17 in his pocket, but because there has been no testimony by
18 the other person in the deal, there has been no testimony
19 beyond a mere suspicion of guilt that the deal was actually
20 done with Mr. Turner, and we would ask for a finding of
21 directed verdict on as well.

22 THE COURT: Thank you.

23 All right, just as to the basic law as to a
24 directed verdict, it's been indicated that a defendant is
25 entitled to a directed verdict when the State fails to

1 produce evidence of the offense charged.

2 Again, the trial judge is concerned with the
3 existence of evidence, not with its weight. If there is any
4 kind of direct evidence or substantial circumstantial
5 evidence reasonably tending to prove the guilt of accused,
6 then it properly goes to the jury. The trial judge grants a
7 directed verdict motion when the evidence merely raises a
8 suspicion that the accused is guilty.

9 Here you have evidence, first regarding the
10 possession with intent to distribute, you have the
11 statements of the defendant. You have also the presumption
12 regarding the weight, and obviously the testimony of the
13 officer.

14 Regarding the distribution charge, there is the
15 video evidence, the evidence of the money, the observations
16 of the officers regarding the transactions.

17 So I do find that there is direct evidence and
18 substantial circumstantial evidence that reasonably tends to
19 prove the guilt of the accused. And, therefore, I
20 respectfully decline to grant your motion for a directed
21 verdict on either the distribution charge or the possession
22 with intent to distribute charge.

23 MS. INZERILLO: Thank you, Your Honor.

24 MR. EPTING: Thank you, Your Honor.

25 THE COURT: Further motions on behalf of the

1 defense?

2 MS. INZERILLO: Not at this time, Your Honor.

3 THE COURT: All right.

4 Regarding the testimony of the defendant, is your
5 client at this point in time prepared to talk to me about
6 his Constitutional Rights and make a decision as to whether
7 he wants to testify?

8 MS. INZERILLO: He is, Your Honor.

9 THE COURT: All right, very good.

10 All right, sir, could you stand, and Madam Clerk,
11 could you place him under oath?

12 LEXIE JAMES TURNER, having been first duly sworn,
13 testified as follows:

14 THE COURT: All right, sir.

15 Now, Mr. Turner, at this point in time I'm going
16 to explain to you certain of your Constitutional Rights. If
17 at any point in time you don't understand anything I say, or
18 understand what we are talking about, or you got a question
19 about it in any way, I need for you to let me know. You can
20 raise your hand, you can tell your attorney, but you got to
21 indicate to me in some way you don't understand or you got a
22 question about what's going on. All right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, sir.

25 Now, we have reached the stage of the trial where

1 you can present a defense.

2 You have the right to claim the protection granted
3 to you by the Fifth Amendment to the Constitution of the
4 United States of America, which says, in part, that no
5 person shall be compelled in any criminal prosecution to be
6 a witness against themselves. That means nobody can make
7 you testify in this criminal case. You can testify if you
8 want to, but it's your choice. Nobody can make you do it,
9 but if you want to, it's your choice to do so. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, sir.

13 Now, if you decide to testify, you are going to be
14 subject to the same rules that you have seen all the other
15 witnesses that have come in before you in this trial. You
16 will be asked some questions by your attorney, direct
17 examination, and then you will be cross-examined by the
18 State as to any area of the case that the court deems
19 relevant.

20 Is there a prior record of any that the State
21 would intend to want to impeach the defendant about?

22 MR. EPTING: Your Honor, the defendant does have
23 two convictions; one count of conspiracy to commit burglary,
24 one count of burglary second degree, violent.

25 I believe under 609 we would have to limit that;

1 rather than asking the specific charge, asking something
2 perhaps in the range of "isn't it true that you have been
3 convicted of a crime that carries over one year sentence?"

4 I don't believe that burglary is a crime of
5 dishonesty.

6 THE COURT: All right, very good.

7 All right, do you object to that procedure?

8 MS. INZERILLO: No, Your Honor.

9 THE COURT: All right. If you decide to testify,
10 the State would be able to ask you, you know, a basic
11 question if you have been convicted of the crimes that carry
12 more than one year in the past. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, sir.

15 Now, if you decide to testify, it's got to be your
16 decision. You can ask your attorney for whatever advice
17 that you want from her and discuss the matter with her, but
18 it's your decision. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right, sir.

21 And you got to understand the protections given to
22 you by the Fifth Amendment and to make your decision freely
23 and voluntarily.

24 Now, if you decide not to testify, I would tell
25 that jury that they can't give that fact any consideration

1 whatsoever. I will tell them they can't even talk about it
2 in the jury room. They shouldn't use it mentally in any way
3 to try and make their decision in this case. That is not
4 part of this case. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right, sir.

7 Do you understand everything that we have talked
8 about?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, sir. Do you want to ask
11 your attorney any questions at this point in time?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right, sir. Do you wish to
14 testify in this case?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Thank you very much.

17 All right. So that we can -- we will certainly do
18 this again in front of the jury tomorrow morning, but with
19 that would the defense rest?

20 MS. INZERILLO: Yes, Your Honor.

21 THE COURT: All right. Would you like to renew
22 your motions then for a directed verdict at this time?

23 MS. INZERILLO: I would, Your Honor.

24 THE COURT: Based upon the prior arguments made by
25 counsel and the court's ruling on the previous directed

1 verdict motions and the court's prior rulings in this
2 matter, I would respectfully decline to grant the motions
3 for a directed verdict on behalf of the defense in this
4 particular matter, again, finding that there is direct
5 evidence and substantial circumstantial evidence reasonably
6 tending to prove the guilt of the accused of both crimes
7 charged by the State of South Carolina.

8 All right. Let me go over the potential requests
9 to charge that I've put together so far and we will go over
10 and see if y'all have any objections or deletions or
11 additions to that.

12 All right. We will talk to the jury about what we
13 normally are talking about in virtually every criminal case;
14 credibility, believability.

15 We'll explain about direct evidence and
16 circumstantial evidence, basically that the law doesn't make
17 any distinction between weight or value to be given either
18 one of them; a greater degree of certainty is not required;
19 they weigh all the evidence the same.

20 Regarding expert witnesses or witnesses I
21 qualified to give their opinion, they will be instructed
22 that they give it the weight they think it deserves, but
23 that you don't give it any special consideration or special
24 weight because the court qualified to give them to give
25 their opinions. It has no greater weight than any other

1 witness and they are just to weigh all the evidence and find
2 that evidence which convinces them of its truth.

3 I will -- as I told Mr. Turner, I'll tell the jury
4 that the fact that the defendant did not testify is not a
5 factor to be considered by them in any way in their
6 deliberations and in their consideration of the State's
7 burden of proof in this matter, and it can't be considered
8 by them in any manner whatsoever.

9 Regarding the statement of the defendant, the
10 statement alleged to have been made by the defendant has
11 been admitted into evidence. And I'll tell them that they
12 make the ultimate decision of whether or not the defendant
13 made it. If he did, whether it was voluntarily of his own
14 free will, you know, not caused by pressure, force, fear,
15 threats, coercion, intimidation, hope of reward of any kind.
16 And, again, obviously the State has the burden of proving
17 beyond a reasonable doubt the alleged statement was
18 voluntary. And obviously that they take into consideration
19 the advice, or lack thereof, of the defendant's
20 Constitutional Rights.

21 The presumption of innocence.

22 Reasonable doubt, the kind of doubt that would
23 cause an ordinary reasonable person to hesitate to act.

24 And then I intend to charge them possession with
25 intent to distribute crack cocaine.

1 And that with the possession of more than one gram
2 creates an inference that the defendant possessed the crack
3 cocaine with the intent to distribute it.

4 The inference does not relieve the State from
5 proving beyond a reasonable doubt that the defendant had the
6 intent to distribute. It is simply an evidentiary fact to
7 be taken into consideration.

8 We will, in compliance with recent changes, make
9 sure that we tell the jury, you know, mere presence at the
10 scene where the drugs were not found is not enough to prove
11 possession.

12 And we will not talk about anything about the, you
13 know, knowledge of the presence is strong evidence of
14 defendant's intent to control disposition and use.
15 Obviously we are not going to talk about that.

16 The defendant's knowledge, however, may be
17 inferred when the substance is found on the property under
18 the defendant's control, but it's an inference, it's an
19 evidentiary fact taken into consideration along with other
20 evidence to be given the weight that they decide to give, if
21 any.

22 Regarding that particular charge, is defense
23 requesting a lesser included?

24 MS. INZERILLO: We are, Your Honor. We are
25 requesting simple possession.

1 THE COURT: All right. Is there an objection to
2 that from the defense?

3 MR. EPTING: Not on the PWID charge. We would
4 object on the distribution charge.

5 THE COURT: Well, the court intends to charge it
6 regarding the possession with intent to distribute, so that
7 will be included.

8 So then we will go onto the distribution that, you
9 know --

10 Oh, I'm sorry, and obviously the greater or lesser
11 offense charge about if you got any reasonable doubt as to
12 whether the defendant is guilty of the greater or lesser,
13 it's your duty to resolve that doubt in favor of the
14 defendant and find him guilty of the lesser offense, if
15 that's their view of the evidence and it has been proven to
16 them beyond a reasonable doubt, since there has been
17 evidence to the greater or lesser offense charges necessary.

18 Then we would have the distribution of crack
19 cocaine charge.

20 So that would be the court's intention at this
21 point in time regarding the charge.

22 Any additions, deletions, exceptions to that, from
23 the State?

24 MR. EPTING: The only addition, I didn't include a
25 written charge to this, some judges also include a charge

1 that if the evidence leaves you firmly convinced of the
2 defendant's guilt, then you may find him guilty. I don't
3 know Your Honor's --

4 THE COURT: Well, okay. I'll just -- I'll just
5 read the reasonable doubt charge to you so that y'all got
6 it. It's really short.

7 Reasonable doubt is the kind doubt that would
8 cause a reasonable person to hesitate to act.

9 The State has the burden of proving the defendant
10 guilty beyond a reasonable doubt.

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

13 And usually I'll tell them there are very few
14 things we know with absolute certainty. The law doesn't
15 require the State to give you that kind of proof.

16 What is required is that if, based upon their
17 consideration of the evidence, they are firmly convinced
18 that the defendant is guilty of the crime charged, they must
19 find the defendant guilty.

20 On the other hand, if they are not firmly
21 convinced that the defendant is guilty of the crime charged,
22 then they must give the defendant the benefit of the doubt
23 and find him not guilty.

24 That would be my intention regarding reasonable
25 doubt. Okay?

1 MR. EPTING: I think that's satisfactory with the
2 State, Your Honor.

3 THE COURT: All right, very good.

4 All right, Ms. Inzerillo, from the defense?

5 MS. INZERILLO: Your Honor, the only question I
6 would have is regarding the State's distribution charge.

7 THE COURT: Yes, ma'am.

8 MS. INZERILLO: There hasn't been any evidence
9 presented of any aiding and abetting, or anything like that,
10 and I didn't know if the court had that type of language in
11 it.

12 THE COURT: Aiding and abetting.

13 MS. INZERILLO: I know the statute --

14 THE COURT: In the distribution, no.

15 MR. EPTING: And I think the indictment we
16 presented tracks the statute pretty generally.

17 If Your Honor is doing a verdict form, then that
18 would -- that would cause -- that would take away some of
19 the complications from the indictment.

20 THE COURT: Well, I have got a verdict form, but
21 as far as the distribution of crack cocaine, I mean, it's --
22 that charge is really short and straightforward. It
23 basically is the defendant is charged with distribution of
24 crack cocaine.

25 The State must prove beyond a reasonable doubt

1 that the defendant distributed crack cocaine.

2 Distribute means to deliver or to actually,
3 constructively, or attempt to transfer a drug.

4 Delivery means to actually, constructively, or
5 attempt to transfer.

6 A transfer can involve an exchange for money, a
7 barter, or a gift. It does not have to be anything given in
8 exchange for the drugs for a transfer to constitute
9 distribution.

10 That's going to be the entirety of that particular
11 charge.

12 MS. INZERILLO: I'm good with that, judge. Thank
13 you.

14 THE COURT: All right. And I don't think it's an
15 issue, but I just wanted to be clear that I was on the same
16 page with the State and the defense regarding the -- the
17 distribution is based upon the single transaction, and the
18 PWID is based upon the drugs that are in the vehicle,
19 correct?

20 MR. EPTING: That is correct, Your Honor.

21 THE COURT: All right. So it's your -- your
22 distinct position is there is two separate transactions?
23 It's not all one combined transaction or one occurrence
24 whereby you couldn't charge the defendant with basically --

25 MR. EPTING: That's correct.

1 Our position was that the deal was for twenty
2 dollars and the amount that he brought afterwards was a
3 completely separate matter, and, therefore, a separate
4 violation.

5 THE COURT: All right. Okay. I just wanted to be
6 clear. That's what I was assuming, but I wanted to be clear
7 that's what the State's position was.

8 And I think the -- there is certainly evidence to
9 that. Now, whether or not the jury -- that's going to be
10 their job, but, I mean, there is evidence that would support
11 that theory.

12 All right. If y'all want to come up, why don't
13 you come up and look at the verdict form that we've had
14 prepared so that y'all can look at that and make sure that
15 you don't have any issues.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion

18 THE COURT: All right. So anything else that we
19 need to cover from the State at this point in time?

20 MR. EPTING: The only housekeeping issue we have,
21 I conferred with Ms. Inzerillo during a break and I believe
22 that we would like to enter -- to show what redactions were
23 made, an un-redacted copy of both of the videos; the CI
24 video, as well as the surveillance video as a Court's
25 Exhibit in this case.

1 THE COURT: All right, very good.

2 MR. EPTING: And that's the only issue that I
3 think we have outstanding.

4 THE COURT: All right, very good. So do you
5 have -- do you have those that you can get those marked?

6 MR. EPTING: I do not have those ready, but I can
7 have those ready by tomorrow morning.

8 THE COURT: That would be fine. So if y'all -- if
9 you just cover that with the defense counsel in the morning
10 and y'all make sure and just get them marked by the court
11 reporter and then you can put that on the record in the
12 morning.

13 MR. EPTING: Certainly.

14 THE COURT: All right. So when we come back
15 tomorrow morning, what we will do or how we will proceed
16 with that is after we call the jury back in, then Ms.
17 Inzerillo, I'll ask you what's the position of the defense.
18 You can tell me the defense rests at that point in time.
19 And then I'll kind of go over briefly at that point in time
20 where we are with the jury, as far as they have heard the
21 evidence, we are going into the closing arguments.

22 Then obviously the defense has not produced any
23 evidence or testimony, so the State will obviously need to
24 open and -- I mean make your full presentation. And then we
25 will turn to defense and they will make their presentation

1 and then we will charge the law and give it to the jury at
2 that point in time. All right?

3 MR. EPTING: Very good.

4 THE COURT: All right. I'll see y'all tomorrow
5 morning then.

6 MR. EPTING: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 MR. EPTING: 9:30?

9 THE COURT: Yeah, 9:30.

10 I would like for y'all to be here so we can get
11 started right at 9:30. So if y'all kind of get here at
12 least by 9:15 and get organized and make sure that you are
13 here and ready to go, okay? In case something comes up, we
14 have some time to deal with. All right?

15 MR. EPTING: Thank you, Your Honor.

16 (Whereupon, Proceedings were adjourned to February
17 27, 2013)

18

19

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21

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24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LEXIE JAMES TURNER,) 2011-GS-46-02872
7 JR.,) 2011-GS-46-04278
8) FEBRUARY 27, 2013
9) YORK, SOUTH CAROLINA
10
11 DEFENDANT.

12 (VOLUME II)

13 B E F O R E:

14 THE HONORABLE STEVEN H. JOHN, JUDGE. ; And a Jury.

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

16 CHRISTOPHER W. EPTING, ASSISTANT SOLICITOR
17 JENNY DESCH, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
20 ATTORNEY FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, FEBRUARY 27, 2013)

2 (Videotape marked as Court's Exhibit No. 1 for
3 identification)

4 (Videotape marked as Court's Exhibit No. 2 for
5 identification)

6 THE COURT: Before we ask the jury to come in, is
7 there anything further from the State at this point in time?

8 MR. EPTING: Nothing from the State, Your Honor.

9 THE COURT: From the defense?

10 MS. INZERILLO: Your Honor, at the end of the day
11 yesterday the State and I had mentioned entering two
12 exhibits, court exhibits. I just wanted to note for the
13 record that those have been brought to the court this
14 morning and those have been entered with the court's
15 permission as Court Exhibit 1 and 2.

16 THE COURT: All right, great. So they are so
17 ordered.

18 MS. INZERILLO: Thank you, Your Honor.

19 THE COURT: And the evidence is for the purposes
20 of the record Court's Exhibit 1 and 2.

21 MS. INZERILLO: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Is the State then ready for the jury?

24 MR. EPTING: The State is ready, Your Honor.

25 THE COURT: And the defense?

1 MS. INZERILLO: Yes, Your Honor.

2 THE COURT: All right. And as I indicated, when
3 we bring the jury out, I'll just ask you the -- let's see,
4 probably the best way to do that is just to ask you what's
5 the defense's position at this point in time and you can
6 just tell me the defense rests and go on from there, okay?

7 MS. INZERILLO: Yes, Your Honor.

8 THE COURT: Great.

9 All right, ask the jury to come in.

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

12 THE COURT: All right, good morning, ladies and
13 gentlemen.

14 All right, Ms. Inzerillo, the position of the
15 defense at this point in time?

16 MS. INZERILLO: The defense rests, Your Honor.

17 THE COURT: All right. Thank you very much.

18 All right, ladies and gentlemen, we have gone
19 through or we have finished the evidentiary portion of the
20 trial. That does not conclude this matter, obviously. What
21 remains now are the closing arguments of the attorneys, then
22 the charge on the law, and then I will submit the case to
23 you for your deliberations and your unanimous decision on
24 this particular matter.

25 As I told you before, the opening statements, the

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

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

8 So with that, solicitor?

9 MR. EPTING: Thank you, Your Honor.

10 May it please the court?

11 THE COURT: Yes, sir.

12 MR. EPTING: Defense counsel.

13 Ladies and gentlemen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And the defendant has to be the person who

1 committed these acts.

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

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

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

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

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

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

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

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

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

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

25 Five separate facts I want you to remember when

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

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

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

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

1 was given to the informant. What a coincidence.

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

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

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

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

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

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

5 There are two main issues to consider.

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

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

11 (Whereupon, the videotape was started)

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

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

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

22 (Whereupon, the videotape was stopped)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 There is in the law something called the inference

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 I thank you for your time and attention.

14 THE COURT: All right, Ms. Inzerillo.

15 MS. INZERILLO: Thank you, Your Honor.

16 May it please the court?

17 THE COURT: Yes, ma'am.

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

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

6 Let's look at the distribution charge.

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

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

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

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

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

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

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

25 On the distribution charge, ladies and gentlemen,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 That's it?

2 No other indication of an intent to distribute?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 any kind.

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

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

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

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

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

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

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

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

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

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

1 know with absolute certainty.

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

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

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

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

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

21 And possession can either be actual or
22 constructive.

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

25 Constructive possession means the defendant has

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

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

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

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

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

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

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

1 factors you deem important.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Not guilty, or guilty.

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

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

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

1 that one and go on to the distribution.

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

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

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

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

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

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

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

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

23 Not guilty, or guilty.

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

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

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

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

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

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

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

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

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

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

4 THE COURT: All right. Ms. Inzerillo?

5 MS. INZERILLO: No, Your Honor.

6 THE COURT: All right, very good.

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

13 ALTERNATE JUROR: Thank you.

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

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

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

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

21 THE COURT: From the defense?

22 MS. INZERILLO: No, Your Honor.

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

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

1 and that is representing the interests of both your clients.
2 You did exactly what I would hope and expect y'all to do and
3 I want to commend both of y'all for the job that you did in
4 this case. Thank you very much.

5 MR. EPTING: Thank you, Your Honor.

6 MS. INZERILLO: Thank you, Your Honor.

7 THE COURT: So y'all look at the exhibits. Make
8 sure we have got all the exhibits. We will send them in and
9 then we will be at ease until they come and get us.

10 (Whereupon, at 11:46 a.m., the jury panel was
11 instructed to begin deliberations)

12 (Whereupon, at 11:46 a.m., proceedings were
13 recessed, pending the verdict of the jury panel)

14 (Whereupon, at 2:43 p.m., proceedings were
15 reconvened)

16 THE COURT: Is the State ready for the jury?

17 MR. EPTING: Yes.

18 THE COURT: Defense?

19 MS. INZERILLO: Yes.

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

21 (Whereupon, at 2:44 p.m., the jury panel returned
22 to the courtroom)

23 THE COURT: All right, Mr. Foreman, ladies and
24 gentlemen of the jury, I want to apologize for the delay in
25 bringing you out. As things work out, when I was ready to

1 bring you out, another matter arose in the other trial that
2 required my immediate attention, so I apologize, but we are
3 prepared.

4 Now, the solicitor is going to play the video.

5 Mr. Foreman, on behalf of the jury, if you want it
6 stopped at any point in time, you please so indicate. If
7 you want it replayed, as many times as you want it replayed.
8 If you want to go forward to another part of it, you know,
9 please let us know and we will accommodate you as best we
10 can. All right?

11 JURY FOREPERSON: Yes, sir.

12 THE COURT: Go ahead, solicitor.

13 (Whereupon, the videotape was played)

14 (Whereupon, the videotape was stopped)

15 JURY FOREPERSON: Slower?

16 THE COURT: If it possible to do it slower?

17 MR. EPTING: Your Honor, what I can do is press
18 play and pause and that will by affect slow it down, if that
19 will help.

20 THE COURT: All right, sir.

21 (Whereupon, the videotape was played)

22 (Whereupon, the videotape was stopped)

23 JURY FOREPERSON: Can you back it up again and
24 play it again, please?

25 (Whereupon, the videotape was played)

1 (Whereupon, the videotape was stopped)

2 MR. EPTING: Do you want some more or replay again

3 or --

4 JURY FOREPERSON: Play it where the hand is
5 showing in the frame.

6 MR. EPTING: Sure.

7 (Whereupon, the videotape was played)

8 (Whereupon, the videotape was stopped)

9 MR. EPTING: Your Honor, may I inquire of the jury
10 a question?

11 THE COURT: Mr. Foreman, do you have any
12 instructions that you would like to give at this point in
13 time, as far as playing it?

14 JURY FOREPERSON: One second.

15 (Off the record)

16 (Back on the record)

17 JURY FOREPERSON: All right. If we can -- if we
18 can slow it as much as possible from this point to where we
19 see the hand fully in the frame.

20 THE COURT: All right, solicitor, go ahead.

21 MR. EPTING: Your Honor, may I ask the court to
22 ask the jury whose hand?

23 THE COURT: No, he just wants --

24 From now on just slow it down as much as you can
25 until the very end. It's not, you know, a long

1 presentation. Just from now on slow it down as much as you
2 can, all right? Just do that.

3 MR. EPTING: Very well, Your Honor.

4 (Whereupon, the videotape was started)

5 (Whereupon, the videotape was stopped)

6 JURY FOREPERSON: I think we are satisfied with
7 that.

8 THE COURT: All right, sir. Would you -- would
9 you like it -- because it's not a very long scene, would you
10 like it played one time in its entirety without slowing it
11 down, just one more time, or not? And if you don't, that's
12 fine.

13 (No response)

14 THE COURT: All right, very good. Thank you. All
15 right, just go back and resume your deliberations. Thank
16 you.

17 (Whereupon, at 2:51 p.m., the jury panel returned
18 to the jury room to continue deliberations)

19 THE COURT: All right, anything further from the
20 State?

21 MR. EPTING: Nothing from the State, Your Honor.

22 THE COURT: Anything else from the defense?

23 MS. INZERILLO: No, Your Honor.

24 THE COURT: All right. We will be at ease until
25 the jury needs us. Thank you.

1 (Whereupon, at 2:53 p.m., proceedings were
2 recessed, pending the verdict of the jury panel)

3 (Whereupon, at 4:13 p.m., proceedings were
4 reconvened)

5 THE COURT: I understand the jury has reached a
6 verdict in the other matter.

7 Is the State ready to receive it?

8 MR. EPTING: The State is ready, Your Honor.

9 THE COURT: And we will need to bring the
10 defendant in, please, and -- Mr. Turner, you can bring him
11 in.

12 And with that, would the defense be ready as soon
13 as Mr. Turner is in?

14 MS. INZERILLO: Yes, Your Honor.

15 THE COURT: All right, thank you.

16 (Whereupon, the defendant was brought into the
17 courtroom)

18 THE COURT: All right, we are ready for the jury.

19 (Whereupon, at 4:17 p.m., the jury panel returned
20 to open court to report its verdict)

21 THE COURT: All right, Mr. Foreman, has the jury
22 reached a verdict in this matter?

23 JURY FOREPERSON: Yes, sir.

24 THE COURT: All right. Could you hand the verdict
25 form to the bailiff, please, sir?

1 Thank you, sir.

2 All right, Madam Clerk, you may publish the
3 verdict.

4 THE CLERK: 2012-GS-46-02872, the State of South
5 Carolina versus Lexie Turner, on the charge of possession
6 with intent to distribute cocaine base, we, the jury, by
7 unanimous consent find the defendant guilty.

8 2012-GS-46-04278, the State of South Carolina
9 versus Lexie Turner, on the charge of distribution of
10 cocaine base, we, the jury, by unanimous consent find the
11 defendant not guilty.

12 Ladies and gentlemen of the jury, if that be your
13 verdict, so say you all by raising your right hand.

14 Let the record show that all jurors affirm this
15 verdict.

16 THE COURT: The jury having affirmed their verdict
17 by raising of the right hand, does the State wish the jury
18 polled?

19 MR. EPTING: The State does not, Your Honor.

20 THE COURT: Does the defense?

21 MS. INZERILLO: No, Your Honor.

22 THE COURT: All right. Very good.

23 Anything further as to the jury itself, from the
24 State?

25 MR. EPTING: Nothing from the State, Your Honor.

1 THE COURT: As to the jury itself, from the
2 defense?

3 MS. INZERILLO: No, Your Honor.

4 THE COURT: All right, very good.

5 All right, Mr. Foreman, ladies and gentlemen of
6 the jury, I appreciate your hard work in this matter, the
7 effort that you put into it. You did everything that the
8 court expected you to do, and that is to reach a true and
9 just verdict in this matter. I want to thank you for your
10 service.

11 I'm going to excuse you for the balance of the
12 week. You have earned your exemption now for a three year
13 term from coming back here to Circuit Court. We appreciate
14 your service, and with that you are now excused. Thank you
15 very much.

16 (Whereupon, at 4:20 p.m., the jury panel was
17 discharged)

18 (Jury Note marked as Court's Exhibit No. 3 for
19 identification)

20 (Jury Note marked as Court's Exhibit No. 4 for
21 identification)

22 (Jury Note marked as Court's Exhibit No. 5 for
23 identification)

24 (Jury Note marked as Court's Exhibit No. 6 for
25 identification)

1 (Jury Note marked as Court's Exhibit No. 7 for
2 identification)

3 THE COURT: All right. Is the State ready to
4 proceed with the sentencing?

5 MR. EPTING: The State is ready, Your Honor.

6 THE COURT: All right. Defense?

7 MS. INZERILLO: Yes, Your Honor.

8 THE COURT: All right. Very good.

9 MR. EPTING: May it please the court?

10 THE COURT: Yes, sir, please.

11 MR. EPTING: Your Honor, for the record I have
12 obtained certified copies of Mr. Turner's prior two drug
13 offenses. One was pled to possession of crack cocaine with
14 intent to distribute within proximity of a park.

15 His other plea appears to have been pled -- well,
16 he pled as a possession of cocaine.

17 They were pled on the same date, but it's clear
18 from the indictment they were from two separate factual
19 incidents. Those would be his two prior enhancing drug
20 offenses.

21 THE COURT: All right.

22 MR. EPTING: I can have these marked as Court's
23 Exhibits, if Your Honor.

24 THE COURT: Yes, sir, that would be fine. We'll
25 do that.

1 And defense counsel -- you have shown those to
2 defense counsel?

3 MR. EPTING: I have shown and provided them prior
4 to this trial date today, Your Honor.

5 THE COURT: All right, very good.

6 (Sentencing Sheet marked as Court's Exhibit No. 8
7 for identification)

8 (Sentencing Sheet marked as Court's Exhibit No. 9
9 for identification)

10 MR. EPTING: Your Honor, aside from the prior PWID
11 within a park conviction and possession of crack conviction,
12 he does have numerous other criminal convictions, which I
13 would let the court know of at the appropriate time.

14 THE COURT: Why don't you just go ahead and do
15 that now.

16 MR. EPTING: Very well, Your Honor.

17 In 1998 he was convicted of possession of crack,
18 first offense, as well as PWID crack within proximity of a
19 school, park, or playground. Those indictments are before
20 Your Honor.

21 He was also convicted in 2007 of unlawful carrying
22 of a pistol.

23 In 2009 he was convicted of burglary second,
24 violent, as well as a conspiracy to commit a burglary, for
25 which he received a prison sentence of five years.

1 THE COURT: All right. Yes, ma'am, I'll be glad
2 to hear from you.

3 MS. INZERILLO: Thank you, Your Honor.

4 May it please the court?

5 Your Honor, Mr. Turner is before you on a third
6 offense. I won't rehash the facts of this case, as the
7 court did preside over the trial.

8 As you can see from his record, Your Honor,
9 essentially the two priors came in 1998. He's not had any
10 extensive -- any other really extensive drug record since
11 then. If my recollection serves, essentially those two
12 priors happened essentially within a three month period in
13 1998. So no really extensive drug priors, just enough to
14 get him into a third offense here before Your Honor today.

15 He did go down the road on the burglary second,
16 violent. When he came out, Your Honor, he essentially
17 explained to me that he had hoped to sort of turn his life
18 around. He reconnected with an old girlfriend, who is the
19 mother of one of his children, and married her. I think
20 he's maintained contact with her while he's been
21 incarcerated on these charges. Unfortunately we were having
22 a little trouble. I don't know if it was a phone issue in
23 getting in touch with her during the pendency of this trial,
24 but I know he's been very, very proud of his status as a
25 husband and father in this stage of his life, and I know he

1 would want me to convey that to the court, Your Honor. He's
2 always commented to me about that.

3 As the court can see, the longest he's really
4 spent in jail is that five year stint, Your Honor. With
5 this he will serve eighty-five percent of the mandatory
6 minimum of ten years.

7 He has served two hundred and ten days
8 continuously on this set of charges he is in for now. I
9 believe he may have served some time on this set of charges
10 prior to that and then bonded out. Essentially what
11 happened was he was served with the PWID warrant. The other
12 warrants were held and then -- and not disclosed. And then
13 he made bond on those and then the other warrants were
14 served on him. And so he was re-arrested on the warrant and
15 he's been incarcerated to those warrants ever since. So two
16 hundred and ten days were on the service of the distribution
17 warrant.

18 And I apologize for not having the calculation on
19 the PWID warrant, but I would ask for credit for all the
20 time that he's been incarcerated since August 23rd, which is
21 the service of the warrants, as well as any time prior to
22 that on the PWID warrant, for which he had served time
23 before bonding out.

24 Your Honor, I would ask -- the court knows the
25 sentencing range in this case is ten to thirty years. I

1 would ask the court to consider the low end of that range,
2 possibly the mandatory minimum of the ten years in this case
3 for him, Your Honor.

4 THE COURT: Thank you, ma'am.

5 All right, 2012-GS-46-2872, State of South
6 Carolina, County of York, versus Lexie James Spratt Turner,
7 regarding possession with intent to distribute crack
8 cocaine, third, the court takes into consideration obviously
9 all the facts and evidence presented at trial, when the
10 prior drug convictions are basically from -- cases from --
11 or case named 1998, and then his prior record in '07 and
12 '09. Based upon that, the court hereby sentences the
13 defendant. The defendant is committed to the State
14 Department of Corrections for a determinate term of eleven
15 years.

16 The defendant is given credit for any time that he
17 has already served.

18 Thank you very much.

19 MS. INZERILLO: Thank you, Your Honor.

20 MR. EPTING: Thank you, Your Honor.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Counsel, y'all come here and talk to
24 me for a second, please.

25 (Whereupon, the attorneys approached the bench for

1 an off-the-record discussion)

2 THE COURT: All right, Ms. Inzerillo, I'll be glad
3 to hear from you now.

4 MS. INZERILLO: Thank you, Your Honor.

5 May it please the court, Your Honor, at this time
6 for the record we would renew all previous motions and
7 objections and we would move for a new trial.

8 THE COURT: Thank you, ma'am.

9 All right, regarding the prior rulings the court
10 made during the course of the trial in this matter, I
11 reaffirmed and reiterate those as the court so ruled in
12 those matters.

13 Regarding the motion for a new trial, it's
14 available if the court believes that there is no competent
15 evidence that would sustain the jury's verdict.

16 In that I do find that there was more than
17 sufficient evidence and more than sufficient competent
18 evidence to sustain the jury's verdict in this matter on the
19 crime for which he was convicted, and, therefore, the court
20 respectfully declines to grant your motion for a new trial.

21 Thank y'all very much.

22 MS. INZERILLO: Thank you, Your Honor.

23 MR. EPTING: Thank you, Your Honor.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 26th and 27th days of February, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JULY 15, 2013



Michael R. Watts
Circuit Court Reporter

FORM 5

2015CP96-1593

STATE OF SOUTH CAROLINA

FILED - RECEIVED

17

IN THE COURT OF COMMON PLEAS

County of York

MAY 26 PM 1:55

Lexie James Turner #249878DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
2015 MAY 28 AM 8:27
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCINSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Tyger River Correctional Institution
2. Name and location of Court which imposed sentence York County General Sessions - 1675 York Hwy / York, SC 29745
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) indictment # 2012-GS-46-02872 Possession with intent to distribute Crack

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Feb 27, 2013
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard Feb 10, 2015 - Filed April 1st, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion NO. 2015-UP-168
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Insufficient Council
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) ON reverse side of page
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Insufficient Council - I never was informed until now that I could present.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Mellisa Inzerillo - 16th Judicial Circuit Public Defender
Office Moss Justice Center P.O. Box 691, 1675-1E York Hwy. York, SC 29745

ii. Christopher S. Leonard, of Kendrick + Leonard P.C.
1916 Barnwell St, Columbia, SC 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Mellisa Inzerillo - trial

ii. Christopher S. Leonard - Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

~~dismiss~~ dismiss charge

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Lexie Turner, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

LEXIE TURNER

SWORN to and subscribed before me this 20
day of MAY, 2015.

Paul Owen Cook (L.S.)
Notary Public

My Commission Expires: Dec. 10, 2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Lexie Turner, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lexie Turner
Applicant

SWORN or affirmed to and subscribed before me this
22 day of MAY, 2015.

Patricia C. Cull
Notary Public

My Commission Expires: Dec 10, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-1593
Lexie James Turner,	)	
S.C.D.C. No. 249878,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 28, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Possession With Intent to Distribute Crack Cocaine (2012-GS-46-2872) and Distribution of Cocaine Base (2012-GS-46-4278). Applicant was represented by Melissa Inzerillo, Esquire. On February 26, 2013, Applicant proceeded to a jury trial before the Honorable Steven H. John, after which he was found guilty of Possession With Intent to Distribute Cocaine Base and not guilty of Distribution of Cocaine Base. Judge John sentenced Applicant to eleven years imprisonment.

Applicant timely filed a notice of appeal and an appeal was perfected by Christopher Leonard, Esquire, and Chief Appellate Defender Robert M. Pachak. The South Carolina Court of Appeals affirmed the conviction and sentence on April 1, 2015. State v. Turner, Op. No. 2015-UP-168 (Ct. App. filed April 1, 2015). The Remittitur was issued April 17, 2015.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2015-CP-46-1593

LEXIE JAMES TURNER, #249878)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

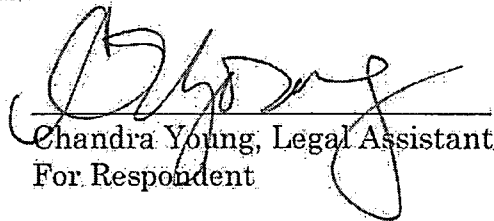
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Nathan J. Sheldon
PO Box 36682
Rock Hill, SC 29732

DATED this 22nd day of October, 2015.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA.

2 -----x

3 LEXIE JAMES TURNER,

4 Petitioner,

5 Case No.

6 -against-

2015-CP-46-1593

7 STATE,

8 Respondent.

9 -----x

10 November 4, 2015

11 Spartanburg, S.C.

12

13 B E F O R E:

14 HONORABLE WESLEY BROWN, Judge.

15

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

17 JUSTIN HUNTER, Esquire

18 Attorney for the State

19

20 NATHAN J. SHELDON, Esquire

21 Attorney for the Defendant

22

23

24 Aileen Butler

25 Official Court Reporter

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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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2				
3	Melissa Inzerillo			
4	Mr. Sheldon	5		
5	Mr. Hunter		13	
6	Lexie James Turner			
7	Mr. Sheldon	18		
8	Mr. Hunter		25	
9	Travis Moore			
10	Mr. Sheldon	27		
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1 MR. HUNTER: May it please the Court, Your Honor.
2 This is Lexie James Turner versus the State of South
3 Carolina, 2015-CP-46-1593. Your Honor, he was
4 indicted by the York County Grand Jury for possession
5 with intent to distribute cocaine base, third offense,
6 2011-GS-46-2872 and distribution of cocaine base
7 2011-GS-46-4278. He was represented by Miss Melissa
8 Inzerillo.

9 Your Honor, on February 26th through the 27th, 2013
10 he underwent a jury trial before the Honorable Steven
11 John. He was found guilty of possession with intent
12 to distribute cocaine base, third offense and found
13 not guilty on distribution.

14 Your Honor, he file a notice of appeal. Briefs
15 were file and oral argument was held. The Court of
16 Appeals affirmed the conviction and sentence by
17 unpublished opinion April 1, 2015. The remittitur was
18 sent April 17, 2015. He filed this current action
19 October 7, 2014 alleging ineffective assistance of
20 counsel. A return was filed. He is present today
21 represented by Nathan Sheldon.

22 THE COURT: Mr. Sheldon.

23 MR. SHELTON: May it please the Court, Your Honor.
24 That's, correct and we are ready to get started if
25 the Court is.

1 THE COURT: Yes.

2 MR. SHELDON: We call Miss Inzerillo to the stand
3 please.

4 MELISSA INZERILLO, called as a witness, having
5 been duly sworn by The Clerk, was examined and
6 testified as follows:

7 MR. SHELDON: May it please the Court.

8 THE COURT: Certainly.

9 DIRECT EXAMINATION

10 BY MR. SHELDON:

11 Q Miss Inzerillo, please state your name for the record?

12 A Melissa Inzerillo.

13 Q And you were the defense attorney for Lexie James
14 Turner, is that correct?

15 A Yes, I was.

16 Q And just so the judge gets a little bit of background
17 is it fair to say there was possession of intent to distribute
18 charge and a distribution charge, is that right?

19 A There was.

20 Q And basically there were two separate incidents that
21 occurred at the same time, one a controlled buy for the
22 distribution and one because there was actually crack found in
23 the vehicle, is that right?

24 A That's correct.

25 Q So the controlled buy with the C.I. was the one that

1 got a not guilty. The guilty was for the actual crack that was
2 found in the car?

3 A That's correct.

4 Q Okay. Did you have, in your opinion, did you have
5 ample time to meet with Mr. Turner prior to trial?

6 A Yes, I did.

7 Q Did you discuss all the offers that the State made and
8 things like that?

9 A I did.

10 Q Describe what were the actual offers in this case, do
11 you remember?

12 A I do. There were several offers made. According to my
13 notes on October 23rd it was, the initial offer was ten years on
14 third because he was charged with third offenses. On 12-6 of
15 2012 the offer was amended to 15 on seconds because it may have
16 helped him with some parole he eligibility. The offer was then
17 amended on January 14th to ten on seconds.

18 Mr. Turner indicate to me he wished to have have a range of
19 seven to ten on non-violent time which would be first offenses,
20 so I spoke to the solicitor about that and the next day the
21 solicitor contacted me and said he would amend the offer. He
22 would not do seven to ten but he would do 15 on first and I
23 conveyed that offer to Mr. Turner on the 18th of January.

24 Q And Mr. Turner at the time procedurally he was charged
25 with several counts over a period of time; is that right?

1 A Well, what ended up happening was the D.E.U. only
2 served him with one set of warrants and he bonded out on those
3 warrants and then they ended up serving him with the other set
4 of warrants and so it looks like he is out on bond and picked up
5 new charges but he actually didn't. They had withheld some of
6 the warrants.

7 Q But ultimately there is only two warrants that end
8 going to trial, is that right?

9 A That's true, yes.

10 Q And were those other warrants dismissed by the
11 solicitor and dismissed at prelim or combination of both?

12 A I believe they were dismissed by the solicitor. He did
13 not go forward on the proximity.

14 Q What did -- so Mr. Turner did all those offers were
15 conveyed and he rejected each one of them is that right?

16 A Yes.

17 Q Okay. So at trial there is two issues I want to focus
18 on today. The first issue is at trial the State qualified the
19 common Commander Marvin Brown as an expert in the field of
20 intoxicating dosages and essentially being able to qualify as an
21 expert to be able to tell the difference between somebody who is
22 possessing drugs for their personnel use and somebody possessing
23 drugs to sell them, is that right?

24 A That's correct.

25 Q And were you aware that the State was going to at

1 attempt to do that with Commander Brown?

2 A I don't know specifically. I know it's a common
3 practice up here for them to call Mr. Brown to the stand but the
4 extent of the testimony I don't think I was aware of.

5 Q So you have Jackson v. Denno Hearing in this case
6 because Mr. Turner gave a statement to law enforcement
7 essentially saying the drugs were his, is that right?

8 A That's correct.

9 Q The drugs in the car were his?

10 A That's correct.

11 Q And at that Jackson v. Denno Hearing the judge allows
12 that statement in, is that right?

13 A That's correct.

14 Q So this case was never really -- and Mr. Turner
15 acknowledged to you in your essentially attorney/client
16 conversations that he had in fact did make that statement is
17 that correct?

18 A He did.

19 Q And so you knew going in to trial the drugs in the car
20 were going to be problematic in that you -- is that there was
21 really no dispute who is drugs they were, is that right?

22 A Well, let me answer that this way. I spoke to him
23 about the statement and I spoke to him about the possibility of
24 simple possession. I also spoke to him about the possibility of
25 interviewing the driver because certainly he and someone else is

1 in the car. Even by Mr. Turner's own omission that the drugs
2 were originally found in the center console, so I had at least
3 two full conversations with with Mr. Turner regarding speaking
4 to the driver. Would I be allowed to speak to him to ascertain
5 what happened in the car as a potential witness. Perhaps he
6 could give some information to help us out and also to
7 potentially call him as witness. I mean if if he knew the drugs
8 were there or anything like that to help deflect some of the
9 things.

10 So, on the first point with the simple possession Mr. Turner
11 was adamant he did not want me to ask for simple possession from
12 the jury. He wanted me to argue to the jury to find him not
13 guilty across the board which explains my closing argument. I
14 thought simple possession was the better argument so I asked for
15 that in addition to asking for a straight not guilty. And then
16 secondly, because he was adamant to me he did not want Mr. Moore
17 involved in had case. He did not want me to contact him. That
18 was why I did not pursue that option either.

19 Q So you discussed the possibility of calling Mr. Moore
20 and discussing further but Mr. Turner essentially told you don't
21 do that?

22 A Yes. In fact we discussed it twice and around the end
23 January and again right before trial and he was adamant that he
24 did not want Mr. Moore involved.

25 Q You had a Jackson v Denno hearing in this case and in

1 the middle of trial essentially had en camera argument as to
2 suppression of the drugs based on a lack of chain of custody.
3 Essentially the State didn't meet the requirements proving the
4 chain, is that right?

5 A That's correct.

6 Q And the judge denied that, but you didn't actually have
7 a suppression hearing on whether or not the drugs were found?
8 Whether there was consent to search the car or the drugs were
9 found in plain view, et cetera, is that right?

10 A I don't think that I did because I think the car was
11 searched pursuant to an arrest. So I don't recall making that
12 argument.

13 Q Okay. But it seems like we had two different things
14 going on in the transcript. So you had essentially what may or
15 may not have been the lead investigator, Officer Figurorro,
16 (phonetics) and then have you Commander Brown and there was
17 testimony from Commander Brown that he found the drugs with a
18 flashlight looking into the car after Mr. Turner handcuffed
19 essentially to the door it sounds like, but that he also said
20 that Officer Figurorro got consent to search the car from the
21 other person in the car, is that right?

22 A I will agree with you.

23 Q And so don't you think that given that factual pattern
24 -- so there's really no -- there's really no testimony elicited
25 at any point that the search of the car is pursuant incident to

1 arrest or anything, is that right?

2 A No. That was sort of my take on the case. I know
3 essentially the facts are he pulled away from the drug deal they
4 had charged him with. He was under surveillance the whole time.
5 The original plan was to let him drive away and when he stops
6 and go in the store they decide to -- they decide to stop the
7 car, interact with him and essentially arrest him. And so
8 immediately when he is taken out of the car he is handcuffed to
9 the car and then they find the drugs if the car.

10 Q So, in a case like this, even if that is true, would it
11 still be proper to have a hearing on whether or not the drugs
12 that were found should suppressed or not? Is that not something
13 that you commonly do?

14 A I can't say that commonly because it's kind of
15 factually based, but in this case I did not.

16 Q But there was a Jackson v. Denno Hearing. So it would
17 be appropriate to always have a Jackson v. Denno Hearing but not
18 to always have a suppression hearing?

19 A That's true. Depends on the facts of the case.

20 Q Let's go back to the argument about the simple
21 possession versus possession with intent to distribute. In your
22 closing argument you do argue simple possession, or possession
23 for personal use -- whatever you want to call it -- to the jury,
24 is that right?

25 A That's correct.

1 Q And the judge charges possession, doesn't he?

2 A Yes.

3 Q And so -- but you have, at trial during the testimony,
4 you have Commander Brown giving expert testimony as to
5 intoxicating doses and things like that, is that right?

6 A Yes, that's what he did.

7 Q But you called no expert to counteract that, is that
8 right?

9 A That's correct.

10 Q Have you ever used an expert to counteract the DEU
11 expert?

12 A No, not for that. I don't think I ever have actually.

13 Q Don't you agree that an expert as to -- your own expert
14 as to possession, simple possession and possession with intent
15 to distribute would have been helpful in arguing -- in
16 ultimately arguing what you argued at closing which is simple
17 possession?

18 A I don't know that it would have because essentially
19 what your -- what we rely on in making that argument is sort of
20 a street knowledge idea. I know Mr. Brown comes in and he
21 testifies as to dosage but inherent in PWID is also indicia of
22 distribution which was not present in this case. So I felt the
23 better argument was to point that out to the jury that they
24 didn't find any scales, or anything like that in the car because
25 that was all through the case and so I would rather do that and

1 like I indicated before Mr. Turner didn't want me to argue
2 simple possession at all. So kind of making that argument
3 throughout the case to draw the the jurors attention to that.

4 Q But if you are going to argue simple possession
5 ultimately you need to try to have the facts to support that,
6 wouldn't you agree?

7 A Yes, I think we pulled facts out of the cross
8 examination out of the witnesses to support it.

9 MR. SHELDON: Judge, I don't have any more
10 questions for this witness.

11 THE COURT: All right. Cross examination.

12 MR. HUNTER: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. HUNTER:

15 Q As far as the suppression hearing, you said you didn't
16 see any reason to have one in this case?

17 A No, I did not.

18 Q Is it fair to say the officer's statements I believe it
19 was Figueroa and Officer Brown who were on the scene is it fair
20 to say that there statement essentially took care of that?

21 A Yes.

22 Q Okay. And as far as simple possession goes you were
23 able to bring out the fact that there were no bags, no pipes,
24 scales, that essentially just the crack, isn't that correct?

25 A That's correct.

1 Q And do you feel like an expert would add anything to
2 your case as far as what you were arguing?

3 A No, I don't.

4 Q And you said you have never in the past had one before
5 although it is dependent on the facts?

6 A Right.

7 Q Now, did he ever provide you with any witnesses,
8 defenses other than -- I mean, because he stated it was his?

9 A Right.

10 Q So aside from that statement getting through with the
11 Denno Hearing, was there anything else that he assisted you with
12 as far as the defense of his case goes?

13 A No. Like I said, we talked about the driver whether to
14 even interview him and place him on the stand because I thought
15 he would be the closest witness and Mr. Turner did not wish for
16 me to do that. He had information about the confidential
17 informant and we discussed that, but of course the confidential
18 informant was out of pocket. I think it was a lot of stuff that
19 happened afterwards not pertinent to the case. So no, there was
20 nothing else that he gave me sort of to act on.

21 Q So other than attacking the I guess paraphernalia if
22 you will, and arguing that this amount could be used personally,
23 did you really have any other have viable defense in this case?

24 A No. There was an interesting fact in Mr. Turner's case
25 with the video, where at least on the distribution you see the

1 C.I. go up to at least another car and seem to do the
2 hand-to-hand as well, which I thought was interesting, but on
3 the PWID in particular, no, I didn't see -- I didn't see
4 anything else and I do think the possession argument was the
5 best because even Mr. Turner's statement was that he knew how
6 much was there. There was no other statements about, you know,
7 distribution or anything. But also we had to keep in mind the
8 PWID was in the context of a distribution that had just happened
9 a few seconds before and so certainly I was cognizant of that to
10 try and isolate the PWID and his statement on that.

11 Q Right, and to go back to something you said a second
12 ago about the weight. Essentially what he claimed, the amount
13 that he claimed to have had was corroborated by the testing,
14 essentially?

15 A Right. I think the statement was he indicated it was
16 about two grams in the car.

17 Q And that was corroborated?

18 MR. HUNTER: Beg the Court's indulgence once
19 second.

20 THE COURT: All right.

21 MR. HUNTER: I have no more questions, Your Honor.

22 THE COURT: Redirect.

23 MR. SHELDON: Very briefly.

24 REDIRECT EXAMINATION

25 BY MR. SHELDON:

1 Q Miss Inzerillo, the attorney general just asked you
2 about statements that Officer Figueroa made, but Officer
3 Figueroa didn't actually testify at trial, is that right?

4 A That's correct.

5 Q And he had been I guess dismissed because of being
6 arrested for something or other, is that right?

7 A That's correct.

8 Q So at trial there is no statements made by the lead
9 investigator, at least the co-lead investigator in the case, is
10 that right?

11 A Not that I recall. I recall Mr. Brown continually
12 testifying against -- about these that I thought were hearsay
13 essentially an attempt to try and cover the fact that Figueroa
14 wasn't there and I objected to that, but Judge John did admit
15 them.

16 Q And then just very, very, briefly, did the argument of
17 no bags, no scales and everything you raised but the biggest
18 issue from the expert's standpoint, from Commander Brown's
19 standpoint was the fact there were no pipes found in the car or
20 one of the main issues?

21 A The State did counter with that.

22 Q And so it's possible that an expert would have been
23 able to explain away, you know, essentially personal use and not
24 having pipes in the car versus distribution -- I'm sorry,
25 possession with intent to distribute, is that right?

1 A I don't know of any expert that could explain that.
2 Like I say I think the better strategy was to put that before
3 the jury and let them discern based on what the judge would
4 charge them about the indicia and the inference level. I mean
5 Mr. Turner had the amount over the inference level and so I
6 think the better argument was to just explain that none of that
7 was there because that was cold hard facts. It wouldn't have
8 been some extrapolating thing. That was something that the jury
9 could hold on to. That was cold hard facts in the case.

10 MR. SHELDON: Your Honor, I no more questions.

11 THE COURT: Recross.

12 MR. HUNTER: Just a question or two, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. HUNTER:

15 Q Miss Inzerillo, is it safe to say that Officer Brown
16 was the lead investigator in this case?

17 A He is commander of the drug unit that they call it.

18 Q And is it fair to say that you objected many times when
19 he stated about what he saw and heard? That was overruled
20 because I believe the judge let a lot in from his experience and
21 his overview of the case?

22 A Yeah. I'm sorry, yes. Even before he was qualified as
23 an expert he -- the judge did overrule all my objections to
24 anything that was said. I think Mr. Brown even got into some
25 things that maybe were questionable about what he saw and I

1 objected to that and Judge John overrule the objections.

2 Q And you vigorously objected whenever that came up?

3 A Yes.

4 MR. HUNTER: I don't have anything else.

5 THE COURT: Thank you, ma'am, you may step down.

6 All right, call your next witness.

7 MR. SHELDON: Thank you, Your Honor, we call Lexie
8 Turner to the stand.

9 LEXIE JAMES TURNER, called as a witness, having
10 been duly sworn by the clerk, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHELDON:

14 Q Mr. Turner please state your name for the record?

15 A Lexie James Turner.

16 Q And you were the defendant in the case, possession with
17 intent to distribution back in 2013, is that right?

18 A Yes, sir.

19 Q And you are currently incarcerated in SCDC?

20 A Yes, sir.

21 Q And you received a sentence of 11 years, is that right?

22 A Yes, sir.

23 Q And that's on possession with intent to distribute
24 third offense?

25 A Yes, sir.

1 Q You heard the testimony of Miss Inzerillo your trial
2 attorney. I want to start kind of from the beginning.

3 Did you have ample time to meet with her and discuss the case
4 with her?

5 A Like I say, the first time that I seen her for like
6 initial appearance, we talked about like she said about me
7 admitting to her that I stated what I stated or whatever, and
8 she was like the State was offering seven years for the charge.
9 So, I mean -- and I was like you know, we discussed that I just
10 got married and expecting a child. I was asking, you know, can
11 she like prolong or whatever. But after that I didn't see her
12 anymore. So the next appearance I came to she wasn't in or
13 however she was out somewhere so I had to go down to the public
14 defender's office and fill out a piece of paper to give my
15 information and let them know that I came. So after that I
16 called. You know left messages asked her to get back in touch
17 with me. But I never heard anything from her. I would call her
18 from work. But like I said, again, I never heard from her again
19 until they arrested me. That's the next time I heard from her.

20 Q This case goes to trial at the end of February 2013, is
21 that right?

22 A Uh-huh.

23 Q At what point did you decide that you didn't want to
24 take any of the things the State was offering and proceed to
25 trial?

1 A I mean you said --

2 Q Was it after that last offer that you said that you
3 just -- when did you decide you wanted to go to trial?

4 A When she came like -- when they had -- let me see.
5 When she had did a preliminary hearing for the five distribution
6 they were having me come with she was still -- she came to me
7 explaining to me that she had did a preliminary hearing for the
8 on PWID, proximity of a park and it got dismissed. She informed
9 me that the State was still offering seven years for the PWID
10 and they wanted to add three additional years for the five new
11 charges that they had in. And she said they wanted a total of
12 ten years with 85 percent and I was like no. I felt like it was
13 too much. So, we didn't go in for the preliminary hearing
14 because she said they just brought the evidence in, so we didn't
15 go in it. I happened to go back on the time I spoke to her
16 again was like when -- about like she came about a -- the time
17 to go to trial, that they, you know, about the video.

18 Q Who was the a -- who would was the other person in the
19 car that night?

20 A Travis Moore.

21 Q And was he the passenger or the driver?

22 A The driver.

23 Q And he wasn't charged with anything, is that right?

24 A No, he wasn't.

25 Q Okay. So what did you tell your attorney, Miss

1 Inzerillo about Mr. Moore and whether or not you wanted him to
2 be a part of this case?

3 A I stated to Miss Inzerillo that I written Mr. Moore to
4 get in contact with him but he didn't respond back to any
5 letters. So she was like asking for an address to go to to send
6 an investigator to see his people and at that moment of time I
7 felt like I didn't feel comfortable giving it to her, so that's
8 to honest I didn't feel comfortable giving it to her at that
9 time because I hadn't heard anything from him so ---

10 Q Who gave consent to search the car in this case?

11 A Well, according to Mr. Brown he said Travis Moore gave
12 him consent to the search the vehicle.

13 Q And you were present when the car was searched
14 obviously, right?

15 A Yes, sir.

16 Q You were handcuffed?

17 A I was handcuffed right there.

18 Q Did you hear Mr. Moore give consent to search the car?

19 A No, sir.

20 Q Did you give consent to the search the car?

21 A No, sir.

22 Q Were the drugs found in plain view?

23 A To be honest with that situation, sir, when Mr.
24 Figueroa was searching the vehicle Mr. Figueroa moved the drugs
25 from the console. He set them in the driver's seat. When he

1 was putting everything back in the console he left the drugs in
2 the driver's seat. Mr. Brown when he seen the drugs they was in
3 the driver's seat. He pointed to Mr. Figueroa because Mr.
4 Figueroa is now searching the back of the vehicle. And he was
5 like is that drugs like their so Mr. Figueroa came back around
6 and picked them up.

7 Q And according to all the according to Mr. Brown the
8 consent to search the car was given by Mr. Moore, is that right?

9 A Yes, sir.

10 Q It wasn't given by you?

11 A No, sir.

12 Q Okay. Did you discuss the possibility of a lesser
13 included offense of possession as opposed to possession with
14 intent to distribute with Miss Inzerillo?

15 A If we did it probably was like somewhere during the
16 discussion about going to trial. I can't remember talking to
17 her about it anywhere before hand.

18 Q So, did she ever come to you and say a better defense
19 in this case is to just argue that the drugs were for personal
20 use?

21 A I don't recall us discussing that. Like I said I don't
22 recall a discussion about that.

23 Q But you did acknowledge that the drugs were yours to
24 her, right?

25 A Yes, sir, I did.

1 Q Were you adamant that she try to get a not guilty on
2 the possession with intent to distribute as opposed to being
3 found guilty on the possession charge?

4 A I don't know what you are getting by adamant sir.

5 Q Did you want her to try to get a not guilty outright?

6 A Yes, sir.

7 Q Did you -- if she couldn't do that did you want her to
8 try to get you a possession charge at trial?

9 A If she could have, yes.

10 Q Were you willing to plead to a possession charge?

11 A Yes, if she would been -- excuse me, let me get it
12 correct. Yes, I would have.

13 Q Were there any baggies or scales found in the car?

14 A No, sir.

15 Q How much crack was actually found in the car?

16 A Well, according to them they said I gave him two grams
17 but on the piece of paper they got two point one.

18 Q Okay, so two to two point one grams of grams of crack
19 were found.

20 Were you explained prior to trial what how much weight was
21 needed in crack in order to infer that there was a possession
22 with intent to distribute?

23 A No. No, its just with that prima facie evidence thing
24 that's all I was basically informed of.

25 Q Okay. And did you ask Miss Inzerillo to have a prelim

1 on all these cases?

2 A Yes.

3 Q Did she have a prelim on all the cases?

4 A Well, for the first one I didn't know of because like I
5 said during the time the second initial appearance I went to see
6 her and when I kept calling to ask her to get in touch with me
7 and let me know what is going on, and that amount of time she
8 had a prelim but I never was informed of it.

9 Q Was there an expert witness hired to try and combat the
10 State's expert witness?

11 A No, sir.

12 Q Do you believe that had you hired an expert witness to
13 combat the State's expert that the outcome of the trial could be
14 different?

15 A I do. I believe it would have give the jury a
16 different aspect to look at things.

17 Q How were the drugs packaged in this case? Was it one
18 big rock?

19 A No, it was individual.

20 Q Were they in individual bags?

21 A No, sir, it was all in one bag.

22 Q So you had several individual --

23 A Pieces.

24 Q -- pieces all in the same bag, is that right?

25 A Yes, sir.

1 Q And is it fair to say that at trial those several
2 individual pieces became crucial testimony for the State?

3 A I really don't know much about that sir.

4 Q Was it Commander Brown's position that because they
5 were individual pieces those were individual intoxicating
6 dosages?

7 A Yes. Yes, he did.

8 MR. SHELDON: Thank you, Your Honor. I don't have
9 any more questions.

10 THE COURT: Cross examination.

11 MR. HUNTER: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. HUNTER:

14 Q So you stated that you definitely wanted to go to trial
15 and not take any of the State's offers, that's why you rejected
16 them?

17 A Yes, sir.

18 Q And as far as your defense theory now you are saying
19 that you would have liked a simple possession charge but you
20 disagreed that you wanted to go not guilty the whole way?

21 A Yes, I did want to go not guilty the whole way.

22 Q Okay. And did you provide Miss Inzerillo with any
23 leads, witnesses, defenses? Did you assist in your defense and
24 give her any information she could use that would have been
25 helpful?

1 A Like I said, I explained to her that about the fact how
2 Mr. -- came involved with the drugs being found by Mr. Brown.

3 Q They did find that in what they said an indentation in
4 the console?

5 A Well again, actually he didn't find in the center of
6 the console. As like I said, Mr. Figueroa as he was searching
7 he removed the drugs along with some CD's from the console and
8 placed the things in the driver's seat. As he was putting the
9 CD's back on top of the console he left the drugs in the seat.
10 He moved on to the back of the vehicle and started searching.
11 The only time Mr. Brown seen the drugs is when he came back on
12 my side and looked in. That's when he seen them laying in the
13 drivers seated and he pointed to Mr. Figueroa.

14 Q So he found them after they been discovered?

15 A That's what I am saying. Mr. Figueroa, evidently he
16 didn't see them. He just as he was set them there he didn't see
17 them somehow but he put everything back beside the drug and they
18 were sitting out. As Mr. Brown came around he seen them laying
19 in the driver's seat and he just pointed it out.

20 Q Okay, that was the search they conducted after your --

21 A The transaction occurred.

22 Q Okay. As far as an expert is concerned you stated that
23 you would have liked to have an expert on your side?

24 A It would have been nice to have an expert to give his
25 point of view. He'd agree with Mr. Brown or disagree.

1 Q Do you have expert here today? I mean, do you know
2 what an expert specifically would have said? Do you have a
3 specific expert in mind?

4 A No, I can't say what he would have said.

5 MR. HUNTER: I have nothing else, Your Honor.

6 THE COURT: Anything else.

7 MR. SHELDON: No redirect.

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

9 MR. SHELDON: Our last witness we would call Mr.
10 Travis Moore to the stand.

11 TRAVIS MOORE, called as a witness, having been
12 duly sworn by the clerk, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SHELDON:

16 Q Mr. Moore, please state your name for the record?

17 A Travis Lamont Moore.

18 Q And Mr. Moore were you with Lexie Turner on the night
19 that it he was arrested for the distribution and possession with
20 intent to distribute crack?

21 A Yes, I was.

22 Q And were you the passenger or the driver the car?

23 A The driver.

24 Q And whose car was it?

25 A It was his girlfriend.

1 Q Mr. Turner's girlfriend?

2 A Well, wife.

3 Q And were you in the car when the cops blue-lighted you,
4 I guess?

5 A They didn't blue-light.

6 Q How did the police approach?

7 A Well, I had put the car in reverse. When Lexie Turner
8 came out of the store I had put the car in reverse and the two
9 guys walked up on my side. They said you don't see the car
10 behind you. I was like, you don't see my reverse lights on.
11 Move out of the way and that's when he said he is with the
12 narcotics force. Well, I guess that was Marvin Brown that said
13 he was with the narcotics force. Don't know which one is one.
14 And then he said step out the car. So I step out the car and he
15 came to the side of the car and was talking to me. That's when
16 Marvin Brown went around to the other side of the car and opened
17 the door and started talking to Lexie and handcuffed him to the
18 seat right there. I mean handcuffed him to the handrail. Then
19 he walked me back around the car.

20 Q Wait. Hold on. Let me stop you. Who walked you back
21 around the car?

22 A I think it was at baldheaded dude.

23 Q Not Commander Brown?

24 A No.

25 Q Not Marvin Brown, a different officer?

1 A Yeah, a different officer.

2 Q And did he ask you if he could search the car?

3 A No, he did not.

4 Q And did you consent to search the car?

5 A No, I did not.

6 Q Were you contacted at any point -- at any point after
7 that by a member of the public defender's office or by Mr.
8 Turner's attorney or investigator or anybody?

9 A No, I did not.

10 Q Mr. Turner said he sent you letters. Did you receive
11 those letters?

12 A I received the letters.

13 Q And were you to contact -- did you make -- but you
14 never made any contact with anybody from the public defender's
15 office?

16 A No, I did not.

17 Q But ultimately you gave no consent to search the car
18 that you were driving, is that right?

19 A I gave no consent.

20 MR. SHELDON: Thank you, Your Honor. No more
21 questions.

22 THE COURT: Redirect/

23 MR. HUNTER: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. HUNTER:

1 Q Did you ever contact Mr. Turner or his lawyer about
2 when his trial is coming up and whether or not you could testify
3 in it?

4 A No, I did not. A man had come to my house like last
5 week. I was at work, at my second job. Well, before I was
6 going to my second job I had called because my aunt had told
7 that some man came by and dropped a paper off to call him as
8 soon as possible. So that's what I did. I met him at
9 Manchester, at the movie theater in Rock Hill and I'm like
10 what's is this in regard. It's a legal case. Then I said,
11 well, what is it for? He wouldn't tell me. That's when I seen
12 the Mr. Turner's name on there.

13 Q So you are aware that someone had tried to contact you
14 about him?

15 A Nobody tried to contact me. Like I said, the man came
16 to my house and dropped the paper. He told me that it's better
17 for me to do this then the sheriff to bring it to your house and
18 serve you 'with it.

19 Q Okay. Did you ever try to get in contact with him,
20 with Mr. Turner yourself?

21 A No.

22 Q Okay, and you knew that he had these charges pending?

23 A I didn't know he had the charges pending on him.

24 Q All right. So you just didn't talk to him at all after
25 this?

1 A I don't know nothing.

2 Q Okay.

3 MR. HUNTER: I don't have anything else?

4 MR. SHELDON: Nothing further?

5 THE COURT: Thank you. You may stand down.

6 MR. SHELDON: No more witnesses, Your Honor.

7 THE COURT: Applicant rests.

8 MR. HUNTER: The State does as well.

9 THE COURT: State rests. Be glad to hear argument
10 then.

11 MR. SHELDON: Thank you, Your Honor. May it
12 please the Court. This trial lasted about maybe a
13 day, day and a half. As you heard the testimony there
14 was a Jackson v Denno Hearing. I don't think there
15 was any issue regarding the voluntariness of the
16 statement in this case, however, there was no pretrial
17 suppression of the drugs held. The only suppression
18 motion that was ever made was to suppress the drugs
19 based on lack of establishing a chain of custody in
20 this case halfway through trial.

21 Your Honor, we believe that it is -- it's
22 definitely professional norm in a drug case where
23 drugs are found pursuant to some sort of search of a
24 house, car or person to have the suppression hearing
25 similar to any Jackson v Denno Hearing you are going

1 to have to suppress a statement. And the fact that
2 there was no suppression hearing held in this case
3 rises to ineffective assistance of counsel, Your
4 Honor.

5 The other issue obviously that we raised is the
6 defense failing to hire some sort of expert to combat
7 the State's expert as to personal use versus
8 possession with intent to distribute. There was a lot
9 of testimony in this trial about intoxicating doses
10 and how there were no pipes found in the car.

11 Your Honor, we believe that an expert -- had the
12 defense hired an expert then they would have been able
13 to combat a lot of that testimony since there were no
14 other clear indicator of possession with intent to
15 distribute like scales, baggies, cutting agents, large
16 sums of cash, et cetera. So Your Honor, we believe
17 that failing to hire an expert to try to combat the
18 possession with intent to distribute testimony by the
19 State's expert also rises to the level of ineffective
20 substance.

21 Furthermore, Your Honor, it's clear that through
22 cross examination Miss Inzerillo testified that she
23 was able to elicit specific things from the drug
24 enforcement unit regarding the difference between
25 possession with intent to distribute and possession.

1 So, essentially you have a trial where even if Mr.
2 Turner wanted to get a not guilty outright and said I
3 don't want possession the defense argued possession at
4 trial. It was argued through cross examination on the
5 difference between possession and possession with
6 intent to distribute. It was argued in closing
7 argument and it was charged to jury. So therefore
8 even if he didn't want it was argued at trial. She
9 should have been more prepared to combat the State's
10 expert on those issues.

11 Thank you, Your Honor.

12 THE COURT: All right, thank you Mr. Sheldon.

13 MR. HUNTER: May it please the Court.

14 As far as the suppression motion goes, Your Honor,
15 the State contends that Miss Inzerillo did make an
16 strategy decision at the time given the information
17 she was provided. Even the applicant admitted that he
18 told her that it was his and provided absolutely no
19 evidence to the contrary. So Your Honor, the State
20 believes that she -- it was best -- honestly the best
21 she could do with the information she was provided.
22 There was no other evidence to show that it was --
23 that it was anything wrong with the search. That he
24 didn't give consent, and Your Honor, the State would
25 believe Miss Inzerillo when she says that he wouldn't

1 let her contact Mr. Moore. And Your Honor, as far as
2 the expert goes, they don't have an expert here. It's
3 simply just speculation. Densy (phonetics) verses
4 State, said a PCR applicant can not show that he was
5 prejudiced by counsel's failure to call a favorable
6 witness to testify at trial if the witness is not
7 there to testify at the PCR hearing or otherwise offer
8 testimony within the rules of evidence. That also
9 cites a case Porter versus State, saying mere
10 speculation of a witness's testimony may be
11 insufficient to satisfy the burden of showing
12 prejudice for PCR.

13 Your Honor, it's easy to say what someone would
14 have said but in fact we don't know and for that
15 reason and the reason stated before, Your Honor, the
16 State believes that Miss Inzerillo none of her actions
17 rose to ineffective assistance of counsel. Even if
18 they had, Your Honor, there was no prejudice shown and
19 for those reasons we ask you to deny it.

20 THE COURT: Thank you Mr. Hunter. Mr. Sheldon,
21 the Court agrees with the position of the attorney
22 general on this matter and finds that the appellant
23 has failed to meet the applicant's burden of proof
24 therefore the applicant's motion for post conviction
25 relief is denied.

1 Mr. Hunter will you please prepare an Order.

2 MR. HUNTER: Yes, Your Honor.

3 MR. SHELDON: Thank you.

4 MR. HUNTER: Thank you, Your Honor.

5 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 4th day of November, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 3, 2016

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-1593
Lexie James Turner,	)	
S.C.D.C. No. 249878,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-RECEIVED
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DAVID H. HILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 28, 2015. Respondent made its Return on or about October 26, 2015. An evidentiary hearing into the matter was convened on November 3, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Melissa Inzerillo, Esquire, testified. Travis Moore also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Possession With Intent to Distribute Crack Cocaine (2012-GS-46-2872) and Distribution of Cocaine Base (2012-GS-46-4278). Applicant was represented by Melissa Inzerillo, Esquire

(hereinafter referred to as "Counsel"). On February 26, 2013, Applicant proceeded to a jury trial before the Honorable Steven H. John, after which he was found guilty of Possession With Intent to Distribute Cocaine Base and not guilty of Distribution of Cocaine Base. Judge John sentenced Applicant to eleven years imprisonment.

Applicant timely filed a notice of appeal and an appeal was perfected by Christopher Leonard, Esquire, and Chief Appellate Defender Robert M. Pachak. The South Carolina Court of Appeals affirmed the conviction and sentence on April 1, 2015. State v. Turner, Op. No. 2015-UP-168 (Ct. App. filed April 1, 2015). The Remittitur was issued April 17, 2015.

In this action, Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel, alleging specifically that Counsel should have employed an expert to testify at trial on Applicant's behalf and to counter the State's expert.

II. SUMMARY OF THE TESTIMONY

Counsel's Testimony

Counsel testified that she discussed all plea offers with Applicant. Specifically, she testified that she received an offer from the State on October 23, 2012 for ten years incarceration for a third offense plea, an offer on December 6, 2012 for fifteen years incarceration for a second offense plea, and an offer on January 14, 2013 for ten years incarceration for a second offense plea. She testified that Applicant rejected all of the plea offers and wanted a seven to ten year offer for a non-violent offense. She testified that she does not recall if she knew prior to trial that Commander Marvin Brown would be qualified and testify as an expert in the packaging, price, dose, habits, and sale of crack cocaine. Counsel testified that she has never used an expert to counter the State's drug expert before and that she did not believe it was necessary in this case

because she believed the better argument would be to argue that there was no indicia of drug distribution found in the car.

Counsel testified that she spoke to Applicant about the statement he gave officers and about interviewing Travis Moore (the driver of the vehicle), however Applicant did not want Mr. Moore to be involved in his case. She testified that a Jackson v. Denno hearing took place prior to trial. She also testified that she argued in camera during the trial regarding the suppression of the crack cocaine found. She testified that there was no need for a suppression hearing because the crack cocaine was found via a search incident to arrest. She testified that Applicant did not want her to argue for a simple possession but rather argue for a not guilty verdict on both charges. Counsel testified that she argued that there was no paraphernalia or other indicia of distribution. She further testified that Applicant did not give her any leads or defenses to act on.

Applicant's Testimony

Applicant testified that he decided to go to trial because he thought ten years incarceration was too high a sentence for him to agree to plead guilty. He testified that Mr. Moore did not give consent to search the car, contrary to what officers testified to at the trial. He testified that he could not remember discussions with Counsel regarding the difference between simple possession and possession with intent to distribute. Applicant further testified that he would have been willing to plead to simple possession. Applicant also testified that he wanted to proceed to a trial over pleading guilty and wanted Counsel to argue that he was not guilty of either charge. Applicant testified that he believes that expert testimony would have changed the outcome of his case. He further testified that he does not have a particular expert to testify at the PCR hearing, nor does he have knowledge of what an expert would testify to had one been retained at trial.

Travis Moore's Testimony

Mr. Moore testified that officers did not ask for his permission to search the vehicle and that he did not give consent to the officers to search his car. He further testified that he never contacted Applicant or Counsel prior to trial about providing testimony.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. This Court finds that Counsel's decision not to call an expert to counter the State's expert was a valid strategic decision. Counsel testified that she has never retained an expert to counter a State's drug expert and that she did not believe it was necessary in this case because she believed the better argument would be to argue that there was no indicia of drug distribution found in the car.

Furthermore, this Court finds that Applicant has failed to show that he suffered prejudice by Counsel's failure to call an expert witness. The South Carolina Supreme Court has held that "a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish



prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original). The Court further held that "[t]he applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. As Applicant has failed to present an expert witness at the PCR hearing, this Court can only speculate as to what the expert would have testified to at trial. Accordingly, Applicant has failed to meet his burden of showing that the result of his trial would have been different.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

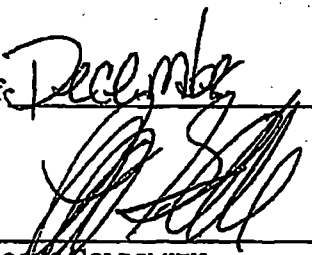
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of December, 2015.


BROOKS GOLDSMITH
Presiding Judge
Sixteenth Judicial Circuit


_____, South Carolina

WITNESSES

EU/Figueroa

ARREST WARRANT NUMBER

A-604755

ACTION OF GRAND JURY

TRUE BILL

VERDICT

guilty

Foreperson of Grand Jury

Date: 8/16/12

Foreperson of Petit Jury

Date: 2/27/13

DOCKET NO. 2012-GS-46-02872

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 16, Term 2012

THE STATE

vs.

LEXIE JAMES TURNER, JR.

Indictment for

**POSSESSION WITH INTENT TO DISTRIBUTE
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)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 16, 2012, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

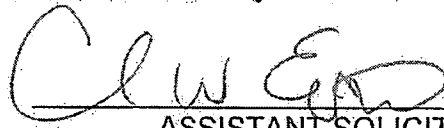
On or about May 18, 2012, the Defendant, Lexie James Tuner, Jr., did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, 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).

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2015 JUN -1 AM 9:19

CERTIFIED TRUE COPY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR