

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

R. Lawton McIntosh, Circuit Court Judge

ELDER PRESCOTT LEACH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001972

APPENDIX

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

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

May 12-14, 2014
York, South Carolina

B E F O R E:

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

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Official Court Reporter
Sixteenth Judicial Circuit
To Honorable John C. Hayes, III

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I-N-D-E-X - CON'T

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

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

4 THE COURT: Good afternoon. You may take your seats.
5 Yes, sir.

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

8 THE COURT: All right.

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

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

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

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

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

1 The defense is represented by Mr. Michael Brown.

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

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

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

15 Were these in the City of Rock Hill?

16 SOLICITOR SHELTON: Yes, sir.

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

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

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

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

3 If so, please stand.

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

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

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

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

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

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

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

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

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

20 If so, please stand.

21 No one stands.

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

1 . If so, please stand.

2 No one stands.

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

8 If so, please stand.

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

10 A. Patrick Hall, number 37.

11 THE COURT: All right. What organization?

12 MR. HALL: MADD.

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

15 MR. HALL: Quite possibly, sir.

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

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

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

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

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

24 MS. BERRY: Charlotte. Charlotte Mecklenburg.

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

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1 to be fair and impartial?

2 MS. BERRY: Yes, sir.

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

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

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

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

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

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

20 THE COURT: All right. ?

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

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

23 MS. WHITE: Okay.

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

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

1 that are York County officers.

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

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

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

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

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

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

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

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

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

25 A. Deborah Farrow, Number 66.

-13-

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

2 A. Allison Flowers, Number 69.

3 A. Chris Pitzer, Number 184.

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

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

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

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

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

16 MR. BROWN: 184.

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

21 No one stand.

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

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

6 All right. Thank you.

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

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

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

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

20 No one stands.

21 Anything further from the State?

22 SOLICITOR SHELTON: No, sir, Your Honor.

23 THE COURT: The Defense?

24 MR. BROWN: No, sir.

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

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

4 No one stand.

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

20 Strikes are five and five?

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

22 THE COURT: Yes, sir.

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

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

1 MADAM CLERK: Number 41, Charles Cooley.
2 (WHITE MALE COMES FORWARD.)
3 MADAME CLERK: What say you for the State?
4 SOLICITOR SHELTON: Please present the juror.
5 MADAM CLERK: And the defense?
6 MR. BROWN: Swear the juror.
7 MADAM CLERK: Please have a seat in the jury box.
8 Number 225, Sunil Talusani.
9 MADAM CLERK: Number again, Madam Clerk.
10 MADAM CLERK: Number 225.
11 (INDIAN MALE COMES FORWARD.)
12 MADAM CLERK: What say you for the State?
13 SOLICITOR SHELTON: Please present the juror.
14 MADAM CLERK: And the defense?
15 MR. BROWN: Swear the juror.
16 MADAM CLERK: Please have a seat in the jury box.
17 Number 117, Krista J. Coster.
18 (WHITE FEMALE COMES FORWARD.)
19 MADAM CLERK: What say you for the State?
20 SOLICITOR SHELTON: Please excuse the juror.
21 MADAME CLERK: You are excused from this case.
22 Number 29, Sean A. Brown.
23 (WHITE MALE COMES FORWARD.)
24 MADAM CLERK: What say you for the State?
25 SOLICITOR SHELTON: Please present the juror.

1 MADAM CLERK: And the defense.

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

4 MADAM CLERK: You are excused from this case.

5 Number 1, David W. Adams.

6 (WHITE MALE COMES FORWARD.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR SHELTON: Please present the juror.

9 MADAM CLERK: And the defense?

10 MR. BROWN: Please seat the juror.

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

12 Number 14, Bethany S. Deloach.

13 (WHITE FEMALE COMES FORWARD.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR SHELTON: Please present the juror.

16 MADAM CLERK: And the defense?

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

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

19 Number 189, David M. Pritchard.

20 (WHITE MALE COMES FORWARD.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR SHELTON: Please present the juror.

23 MADAM CLERK: And the defense.

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

1 MADAM CLERK: You are excused from this case.
2 Number 77, Christopher S. Garrison.
3 (WHITE MALE COMES FORWARD.)
4 MADAM CLERK: What say you for the State?
5 SOLICITOR SHELTON: Please present the juror.
6 MADAME CLERK: And the defense?
7 MR. BROWN: Swear the juror.
8 MADAM CLERK: Please have a seat in the jury box.
9 Number 59, Barbara D. Dover.
10 (WHITE FEMALE COMES FORWARD.)
11 MADAM CLERK: What say you for the State?
12 SOLICITOR SHELTON: Please present the juror.
13 MADAM CLERK: And the defense?
14 MR. BROWN: Excuse the juror in this particular case.
15 MADAM CLERK: You are excused from this case.
16 Number 204, Kristen N. Sanderson.
17 (WHITE FEMALE COMES FORWARD.)
18 MADAM CLERK: What say you for the State?
19 SOLICITOR SHELTON: Please present the juror.
20 MADAME CLERK: And the defense?
21 MR. BROWN: Please swear the juror.
22 MADAM CLERK: Please have a seat in the jury box.
23 Number 140, Winston R. Martinez.
24 (HISPANIC MALE COMES FORWARD.)
25 MADAM CLERK: What say you for the State?

-19-

1 SOLICITOR SHELTON: Please excuse the juror.

2 MADAM CLERK: You are excused from this case.

3 Number 6, Richard L. Arnold, Junior.

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

6 MADAM CLERK: Number 6.

7 (WHITE MALE COMES FORWARD.)

8 MADAM CLERK: What say you for the State?

9 SOLICITOR SHELTON: Please present the juror.

10 MADAM CLERK: And the defense?

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

13 MADAM CLERK: You are excused from this case.

14 Number 172, Mark G. Oakes.

15 (WHITE MALE COMES FORWARD.)

16 MADAM CLERK: What say you for the State?

17 SOLICITOR SHELTON: Please excuse the juror.

18 MADAM CLERK: You are excused from this case.

19 Number 100, Tammy L. Huddenall.

20 (WHITE FEMALE COMES FORWARD.)

21 MADAM CLERK: What say you for the State?

22 SOLICITOR SHELTON: Please present the juror.

23 MADAM CLERK: And the defense?

24 MR. BROWN: Please swear the juror.

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

1 Number 162, Neha V. Muppala.
2 (INDIAN FEMALE COMES FORWARD.)
3 MADAM CLERK: What say you for the State?
4 SOLICITOR SHELTON: Please present the juror.
5 MADAM CLERK: And the defense?
6 MR. BROWN: Please swear the juror.
7 MADAM CLERK: Please have a seat in the jury box.
8 Number 103, Karen H. Isaac.
9 (BLACK FEMALE COMES FORWARD.)
10 MADAM CLERK: What say you for the State?
11 SOLICITOR SHELTON: Please present the juror.
12 MADAM CLERK: And the defense?
13 MR. BROWN: Please swear the juror.
14 MADAM CLERK: Please have a seat in the jury box.
15 Number 191, William T. Prosser.
16 MR. BROWN: Number again, Madam Clerk?
17 MADAM CLERK: Number 191.
18 MR. BROWN: 191.
19 (WHITE MALE COMES FORWARD.)
20 MADAM CLERK: What say you for the State?
21 SOLICITOR SHELTON: Please present the juror.
22 MADAM CLERK: And the defense?
23 MR. BROWN: Please swear the juror.
24 MADAM CLERK: Please have a seat in the jury box.
25 Number 178, Angelia Parsons.

1 (WHITE FEMALE COMES FORWARD.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR SHELTON: Please present the juror.

4 MADAM CLERK: And the defense?

5 MR. BROWN: Swear the juror.

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

7 Number 61, Robert E. Eastwood, Junior.

8 (WHITE MALE COMES FORWARD.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR SHELTON: Please present the juror.

11 MADAM CLERK: And the defense?

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

14 MADAM CLERK: You are excused from this case.

15 Number 246, Christopher D. Wilbanks.

16 (WHITE MALE COMES FORWARD.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR SHELTON: Please present the juror.

19 MR. BROWN: Swear the juror.

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

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

23 MADAM CLERK: Number 237, Joshua Vann.

24 (WHITE MALE COMES FORWARD.)

25 MADAM CLERK: What say you for the State?

1 SOLICITOR SHELTON: Please excuse the juror.

2 MADAM CLERK: You are excused from this case.

3 Number 202, Ann Rollings.

4 (WHITE FEMALE COMES FORWARD.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR SHELTON: Please present the juror.

7 MADAM CLERK: And the defense?

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

10 MADAM CLERK: You are excused from this case.

11 Number 95, Christopher P. Hilton.

12 (WHITE MALE COMES FORWARD.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR SHELTON: Please present the juror.

15 MADAM CLERK: And the defense?

16 MR. BROWN: Swear the juror.

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

18 Juror Number 76, Shannon Young Gardner.

19 SOLICITOR SHELDON: Madam Clerk, is that 76?

20 MADAM CLERK: Yes.

21 (WHITE FEMALE COMES FORWARD.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR SHELTON: Please present the juror.

24 MADAM CLERK: And the defense?

25 MR. BROWN: Swear the juror.

-23-

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

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

4 SOLICITOR SHELTON: No, sir, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. BROWN: Nothing other -

7 THE COURT: Other than what we talked about?

8 MR. BROWN: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT: All right.

23 Can we get the door closed?

24 (COURT REPORTER CLOSED COURTROOM DOOR.)

25 THE COURT: For the record before we started

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

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

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

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

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

1 THE COURT: All right. We've taken care of that.

2 What's next?

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

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

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

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

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

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

24 SOLICITOR SHELTON: Okay, Your Honor.

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

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

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

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

16 MR. BROWN: 2012 or 2002?

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

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

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

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

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

13 It is our position that that should --

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

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

19 But that's our position regarding that motion.

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

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

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

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

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

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

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

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

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

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

25 So, --

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

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

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

14 SOLICITOR SHELTON: Okay.

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

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

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

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

10 All right. What's next?

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

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

25 The distribution of crack, I believe is a third

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

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

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

13 THE COURT: Has he been indicted?

14 SOLICITOR SHELTON: Yes, sir.

15 THE COURT: What was he indicted for?

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

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

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

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

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

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

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

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

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

16 MR. BROWN: That's my understanding.

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

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

23 SOLICITOR SHELTON: I did, Your Honor.

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

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

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

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

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

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

8 THE COURT: Yes, sir.

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

10 THE COURT: Oh. Okay.

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

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

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

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

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

20 THE COURT: All right.

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

25 THE COURT: All right. Granted.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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

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

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

6 DIRECT EXAMINATION - IN CAMERA

7 TEZO ERVIN BY SOLICITOR SHELTON:

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

10 A. Tezo Ervin.

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

13 A. Tezo Ervin.

14 Q. How old are you?

15 A. Thirty-four.

16 Q. How far did you go in school?

17 A. Twelve.

18 Q. Excuse me?

19 A. Twelve.

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

21 A. Yes, sir.

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

23 A. Basically all my life.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 with the York County Drug Unit?

2 A. Yes, sir.

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

5 A. Yes, sir.

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

9 A. Picked out of a lineup?

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

13 A. Oh, yes, sir.

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

15 A. Yes, sir.

16 Q. Who was that?

17 A. Louis Picken.

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

19 A. Yes, sir.

20 Q. What gender is Elder Leach?

21 A. Male.

22 Q. Is he black or white?

23 A. White.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 A. Yes, sir.

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

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

5 Q. How long have you known him?

6 A. Like twelve years.

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

8 A. Cell phone.

9 Q. Did you have his number?

10 A. Yes, sir.

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

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

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

15 A. Yes, sir.

16 Q. Do you recognize him on sight?

17 A. Yes, sir.

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

20 A. Yes, sir.

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

23 A. Drove my vehicle.

24 Q. Your vehicle?

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 Q. What about on June 19th?

2 A. My vehicle.

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

5 A. Yes, sir.

6 Q. Both times?

7 A. Yes, sir.

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

10 A. Yes, sir.

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

13 A. Yes, sir.

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

16 A. Yes.

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

18 A. I think it was after.

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

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

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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

2 A. Yes, sir.

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

4 A. Yes, sir.

5 Q. And by Officer Rainier in particular?

6 A. Uh-huh.

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

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

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

13 A. No, sir.

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

16 A. Yes, sir.

17 Q. Did you select a photograph?

18 A. Yes, sir.

19 Q. How do you know?

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

21 Q. And did you also circle the picture?

22 A. Yes, and I circled it.

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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

3 A. Yes, sir.

4 Q. And on June 19th, 2013?

5 A. Yes, sir.

6 Q. And who is the person you selected?

7 A. Elder Leach.

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

9 A. Right there.

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

13 (WITNESS INDICATED TO DEFENDANT.)

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

16 MR. BROWN: No questions.

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

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

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

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

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

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

2 THE COURT: Just call your witness.

3 SOLICITOR SHELTON: Okay.

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

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

6 (WITNESS LEAVES WITNESS STAND.)

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

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

14 THE COURT: Or whether it was suggestive.

15 SOLICITOR SHELTON: Excuse me.

16 THE COURT: Whether it was suggestive?

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

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

21 DIRECT EXAMINATION - IN CAMERA

22 SERGEANT JOHN RAINIER:

23 Q. Please identify yourself for the record.

24 A. John Rainier.

25 Q. What is your occupation?

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

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

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

3 A. Yes, sir.

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

6 A. Yes, sir.

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

9 A. Yes, sir, I did.

10 Q. When did you prepare the lineup?

11 A. On April 26th.

12 Q. Of 2013?

13 A. Yes, sir.

14 Q. And how did you prepare the lineup?

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

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

19 A. Six.

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

22 A. Yes, sir.

23 Q. Were the photos marked in any way?

24 A. No.

25 Q. Was there any wording associated with them?

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

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

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

6 A. Yes, sir.

7 Q. Okay.

8 A. May I look at it -

9 Q. Sure.

10 A. --- just to make sure?

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

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

14 A. Our confidential informant.

15 Q. What's his name?

16 A. Tezo Ervin.

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

19 A. Yes, sir.

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

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

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

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

1 showed him the lineup?

2 A. Yes, sir.

3 Q. Who was present.

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

8 Q. And those are all police officers?

9 A. Yes, sir.

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

12 A. No, sir.

13 Q. Did he select a photo?

14 A. Yes, he did.

15 Q. Which photo did he select?

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

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

19 A. It was almost immediate.

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

22 A. Yes, sir, it is.

23 Q. Is your signature on there?

24 A. It is on the second page.

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

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

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

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

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

7 THE COURT: In without objection.

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

10 Q. Are you familiar with Elder Leach?

11 A. Not personally, no.

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

13 A. Not by face, but by name.

14 SOLICITOR SHELTON: Nothing further, Your Honor.

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

16 MR. BROWN: Very briefly.

17 CROSS-EXAMINATION - IN CAMERA

18 SERGEANT JOHN RAINIER BY MR. BROWN:

19 Q. Is it Investigator or Sergeant?

20 A. It's Sergeant now.

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

23 A. Yes, sir.

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

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN - IN CAMERA

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1 A. Yes.

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

5 A. Correct.

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

7 A. Yes. I think so.

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

9 A. Yes, sir.

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

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

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

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

19 MR. BROWN: I have no further questions.

20 SOLICITOR SHELTON: Nothing further.

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

22 SOLICITOR SHELTON: Yes, sir, Your Honor.

23 (EXHIBIT RECEIVED UP BY THE COURT.)

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

25 SERGEANT RAINIER: Yes, sir.

1 (WITNESS LEAVING WITNESS STAND.)

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

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

7 THE COURT: Okay. That's that.

8 All right. What else you got?

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

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

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

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

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

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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

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

13 (SIDE BAR BETWEEN THE ATTORNEYS.)

14 THE COURT: Let's move on.

15 SOLICITOR SHELTON: Yes, sir.

16 DIRECT EXAMINATION - IN CAMERA

17 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

18 Q. Please identify yourself.

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

20 Q. What's your occupation?

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

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

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 A. Yes, sir, I was.

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

4 A. Yes, sir, I was.

5 Q. Was Elder Leach arrested that day?

6 A. Yes, sir.

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

8 A. He was.

9 Q. By whom?

10 A. By myself.

11 Q. And how did you advise him?

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

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

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

17 A. Yes, sir, I do.

18 Q. What is it?

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

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

22 A. Yes, sir, That is correct.

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

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 MR. BROWN: No objection.

2 THE COURT: In without objection.

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

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

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

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

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

22 Q. Was he under arrest at this time?

23 A. Yes, sir, he was.

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

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 you?

2 A. No, sir, I did not.

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

5 A. No, sir.

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

8 A. I did.

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

10 A. Yes, sir, I was.

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

13 A. No, sir.

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

16 A. Yes, sir.

17 Q. Did he ask for an attorney?

18 A. No, sir, he did not.

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

20 A. No, sir, he did not.

21 Q. And did you ask him any questions?

22 A. No, sir, I did not.

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

OFFICER LELAND HARRESON: CROSS BY MR. BROWN
IN CAMERA

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CROSS-EXAMINATION - IN CAMERA

OFFICER LELAND HARRELSON BY MR. BROWN:

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

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

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

Q. So you mirandized him where?

A. At the scene.

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

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

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

A. No, sir, I did not.

Q. Did you search his vehicle there?

A. No, sir, I did not.

MR. BROWN: No further questions.

THE COURT: You may step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

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

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

COMMANDER MARVIN BROWN: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 should be in shortly.

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

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

5 DIRECT EXAMINATION - IN CAMERA

6 COMMANDER MARVIN BROWN BY SOLICITOR SHELTON:

7 Q. Please identify yourself for the record.

8 A. Marvin Brown.

9 Q. Are you commander of the Drug Unit?

10 A. I am.

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

12 A. I did.

13 Q. Where were you?

14 A. At the Rock Hill Police Department.

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

17 A. Yes.

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

20 A. He had.

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

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

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

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

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1 A. No, I did not.

2 Q. Did he ask for an attorney?

3 A. No, he did not.

4 Q. And what did you ask him?

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

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

11 THE COURT: Any cross?

12 CROSS-EXAMINATION - IN CAMERA

13 COMMANDER MARVIN BROWN BY MR. BROWN:

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

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

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

22 A. I wasn't at the scene.

23 Q. You weren't there?

24 A. No I was not.

25 Q. Okay.

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

3 THE COURT: You can step down.

4 (WITNESS LEAVING WITNESS STAND.)

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

8 THE COURT: Okay.

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

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

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

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

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

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

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

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

20 THE COURT: Yes, sir.

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

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

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

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

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

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

15 THE COURT: Mr. Shelton.

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

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

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

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

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

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

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

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1 that's when it came to my attention.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Anything else?

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

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

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

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

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

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

9 You got it synchronized yet?

10 SOLICITOR SHELDON: Not -

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

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

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

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

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

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

3 Is that pretty much cover that?

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

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

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

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

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

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

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

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

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

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

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

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

9 I'm gonna sustain the objection on that.

10 Anything else?

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

13 THE COURT: Mr. Brown?

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

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

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

1 about 5:15 or 5:30.

2 He can remain in custody. Mr. Leach.

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

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

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

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

8 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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1 witnesses.

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

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

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

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

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

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

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

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

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

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

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

25 You can also use certain evaluators, how a witness

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

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

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

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

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

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

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

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

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

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

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

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1 or two.

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

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

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

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

19 THE COURT: Yes, sir.

20 SOLICITOR SHELTON: Good afternoon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Thank you.

9 MR. BROWN: May it please the Court?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 I thank you again.

4 THE COURT: Call your first witness.

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

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

9 DIRECT EXAMINATION

10 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Please state your name and occupation.

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

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

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

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

22 A. Approximately four years.

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

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

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

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

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

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

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

20 A. Yes, sir, I have.

21 Q. Approximately how many times?

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

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

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

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

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

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

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

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1 to them.

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

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

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

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

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

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

4 A. Yes, sir, I was.

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

7 A. Yes, sir, he was.

8 Q. What is that person's name?

9 A. The informant was Tezo Ervin.

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

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

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

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

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

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

22 Q. A car or a truck?

23 A. It was a car.

24 Q. And did you search that vehicle?

25 A. Yes, sir, I did.

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

3 A. No, sir, they were not.

4 Q. Where did you search it?

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

7 Q. When did you search it?

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

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

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

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1 you search it a second time that day?

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

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

10 A. Yes, I did.

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

13 A. No, sir, I did not.

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

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

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

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

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

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1 vehicle that morning?

2 A. No, sir, I did not.

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

5 A. No, sir, I did not.

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

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

9 Q. Can you explain what that is?

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

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

16 A. Yes, sir, there were.

17 Q. Do you remember who?

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

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

22 A. Yes, sir, I did.

23 Q. Where did you hide it?

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

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

4 A. Yes, sir, it did.

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

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

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

17 A. Yes, sir, it did.

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

20 A. Yes, sir, I was.

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

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

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

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

2 A. Yes, sir, I have.

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

5 A. I have.

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

8 A. Yes, sir, they are.

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

11 BY SOLICITOR SHELTON:

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

15 (WITNESS COMPLIES).

16 Q. And are there recordings on those discs?

17 A. Yes, sir, they are.

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

20 A. Yes, sir, I have.

21 Q. And are they relevant to this case?

22 A. Yes, sir, they are.

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

25 A. Yes, sir, it is.

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

3 A. Yes, sir, it is.

4 Q. To your knowledge was the buy successful?

5 A. Yes, sir, it was.

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

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

11 BY SOLICITOR SHELTON:

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

13 A. Yes, sir, he was.

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

15 A. Yes, sir, he was.

16 Q. By whom?

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

18 Q. What happened to Tezo Ervin?

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

20 Q. What happened to Ervin's vehicle?

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

23 Q. Was that Officer Dantzler?

24 A. Yes, sir, it was.

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

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

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

6 A. Yes, sir, it was.

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

8 A. No, sir, I did not.

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

11 A. Yes, sir, it did.

12 SOLICITOR SHELTON: Nothing further at this time.

13 CROSS-EXAMINATION

14 OFFICER LELAND HARRELSON BY MR. BROWN:

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

17 A. Yes, sir, that is correct.

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

19 A. No, sir, I am not.

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

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

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

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

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1 holder.

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

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

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

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

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

13 A. That is correct.

14 Q. And where did that search take place?

15 A. At the Rock Hill Law Center.

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

18 A. That is correct.

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

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

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

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

8 A. Yes, sir, it is.

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

12 A. Yes, sir, it was.

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

16 A. Twelve grams?

17 Q. Yeah, how big would that be?

18 A. Twelve grams may be something like that.

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

20 (WITNESS COMPLIES).

21 Q. And about what, that thick?

22 A. It could be yes, sir.

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

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

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

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

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

7 A. It was on the main floor.

8 Q. The first floor?

9 A. That is correct.

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

11 A. Yes, sir, it is lit.

12 Q. It's lit during the day?

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

14 Q. Okay. Let me rephrase the question.

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

16 Q. When did you do the search?

17 A. It was in the morning.

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

20 A. I can't recall.

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

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

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

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1 make or anything?

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

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

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

5 Correct?

6 A. That is correct.

7 Q. Looked under where else, sir?

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

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

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

22 Q. Right.

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

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

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

5 A. That is correct.

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

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

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

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

12 Q. Was the spare tire in the trunk?

13 A. I do not recall.

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

16 A. Yes, sir, that is correct.

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

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

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

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

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

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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

3 SOLICITOR SHELTON: Objection.

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

6 MR. BROWN: Yes, sir.

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

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

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

20 A. Yes, sir, that is correct.

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

23 A. Yes, sir, that is correct.

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

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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1 A. That is correct.

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

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

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

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

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

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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1 Correct?

2 A. Yes, sir, that is correct.

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

4 Correct?

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

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

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

13 Q. Yes, sir.

14 A. I'm not sure.

15 Q. Yes, sir.

16 A. Eight. Eight officers, I believe.

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

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

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

22 A. Not on this particular case.

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

25 A. That is correct.

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

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

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

7 A. I did search his vehicle.

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

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

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

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

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

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

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

24 A. Sir?

25 Q. Was Mr. Tezo in his car?

OFFICER LELAND HARRELSON: CROSS BY MR. BROWN

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

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

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

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

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

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

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

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

14 A. That - That is correct.

15 Q. Okay.

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

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

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

20 THE COURT: Redirect?

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

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 OFFICER LELAND HARRELSON BY SOLICITOR SHELTON:

OFFICER LELAND HARRELSON: REDIRECT BY SOLICITOR SHELTON

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

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

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

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

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

14 A. No, sir, I did not.

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

19 A. That is correct.

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

22 A. Yes, sir, that is correct.

23 Q. And you were monitoring that feed?

24 A. Yes, sir, that is correct.

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

OFFICER LELAND HARRELSON: REDIRECT BY SOLICITOR SHELTON

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1 anything that went on suggesting something was awry?

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

3 SOLICITOR SHELTON: No further questions.

4 MR. BROWN: Nothing further.

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

7 OFFICER HARRELSON: Yes, Your Honor.

8 (WITNESS LEAVING WITNESS STAND.)

9 SOLICITOR SHELTON: Your Honor, may we approach?

10 THE COURT: Yeah.

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

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

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

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

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

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

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

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

14 THE COURT: He's gonna remain incarcerated.

15 SOLICITOR SHELDON: Yes, sir. Thank you.

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

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

19 (OKEVIUS BIGGER BOND MATTER WITH NATHAN SHELDON.)

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

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

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

25 THE COURT: Is the State ready?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 SOLICITOR SHELTON: Yes, sir.

2 THE COURT: Is the Defense ready?

3 MR. BROWN: Yes, sir.

4 THE COURT: Bring in the jury.

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

6 THE COURT: Good morning.

7 THE COURT: Call your next witness.

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

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

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

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

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

18 DIRECT EXAMINATION

19 TEZO ERVIN BY SOLICITOR SHELTON:

20 Q. Good morning.

21 A. Good morning.

22 Q. Please introduce yourself to the jury.

23 A. I'm Tezo Nevada Ervin.

24 Q. How old are you?

25 A. Thirty-four.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Where are you from?

2 A. Rock Hill, South Carolina.

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

4 A. Basically all my life.

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

6 A. Several. Yes, sir.

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

9 A. Yes, sir.

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

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

15 SOLICITOR SHELTON: Oh. Yes, sir.

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

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

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

23 A. Yes, sir.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 in 2002?

2 A. Yes, sir.

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

5 SOLICITOR SHELTON: Okay.

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

9 A. Yes, sir.

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

12 A. Yes, sir.

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

15 A. Yes, sir.

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

17 A. Yes, sir.

18 Q. Were you charged with trafficking crack cocaine?

19 A. Yes, sir.

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

22 A. Yes, sir.

23 Q. Were you charged with manufacturing crack cocaine?

24 A. Yes, sir.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 school or park?

2 A. Yes, sir.

3 Q. Within the proximity of school or park?

4 A. Yes, sir.

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

6 A. Yes, sir.

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

9 A. Yes, sir.

10 Q. Does it carry up to thirty years?

11 A. Yes, sir.

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

14 A. I believe, yes, sir.

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

16 A. Yes, sir.

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

18 A. Yes.

19 Q. Are all of those charges pending currently?

20 A. Yes, sir.

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

23 A. May something. May 11, 2012.

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

3 A. Yes, sir.

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

6 A. Yes, sir.

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

8 A. No, sir.

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

11 A. Yes, sir.

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

13 A. Yes, sir.

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

16 A. Yes, sir.

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

19 A. Yes, sir.

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

22 A. No, sir.

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. I'm sorry. Can you repeat that?

2 A. Yes, sir.

3 Q. Were you working in the role as an undercover
4 confidential informant?

5 A. Yes, sir.

6 Q. Where did you meet with Drug Unit officers that day?

7 A. Rock Hill.

8 Q. Was that the Law Center in Rock Hill?

9 A. Yes, sir.

10 Q. Did you tell the officers you could buy drugs that
11 day?

12 A. Yes, sir.

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

14 A. Yes, sir.

15 Q. Who did you tell them you could buy from?

16 A. Elder Leach.

17 Q. Did you know Elder Leach before that day, June 19th,
18 2013?

19 A. Yes, sir.

20 Q. Approximately how long had you known him?

21 A. I've known him for over twenty years.

22 Q. Did you know him well enough to recognize him on
23 sight?

24 A. Yes, sir.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 A. Yes.

2 Q. Did you know his phone number?

3 A. Yes.

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

5 A. Yes I called him.

6 Q. Why?

7 A. To buy three ounces of crack cocaine.

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

9 A. Yes, sir.

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

11 A. At the Rock Hill Law Enforcement Center.

12 Q. Is that in York County?

13 A. Yes, sir.

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

15 A. Yes, sir.

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

17 A. Yes, sir.

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

22 (WITNESS REVIEWS DOCUMENT.)

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Is it a CD?

2 A. Yes, sir.

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

4 A. Yes, sir, from my understanding.

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

6 A. Yes, sir.

7 Q. What is it a recording of?

8 A. The conversation between me and Elder Leach.

9 Q. That phone call you were talking about?

10 A. Yes, sir.

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

13 A. Yes, sir.

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

16 MR. BROWN: Without objection.

17 THE COURT: In without objection.

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

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

22 THE COURT: You may.

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

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

3 THE COURT: I sustain the objection.
4 BY SOLICITOR SHELTON:

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

6 A. Elder Leach.

7 Q. What does the whole three mean?

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

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

12 BY SOLICITOR SHELTON:

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

15 SOLICITOR SHELTON: Hang on.

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

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

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

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

23 THE COURT: All right. Overruled.

24 BY SOLICITOR SHELTON:

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 term whole three mean to you?

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

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

6 A. Thirty-three Hundred.

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

8 A. Yes, sir.

9 Q. Where was that?

10 A. Out on Wildcat Road.

11 Q. And is that in Rock Hill?

12 A. South Carolina. Yes, sir.

13 Q. In York County?

14 A. Yes, sir.

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

17 A. Yes, sir.

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

19 A. Yes, sir.

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

21 A. Yes, sir.

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

23 A. Yes, sir.

24 Q. How much money were you given?

25 A. Thirty-four Hundred dollars.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

2 A. Yes, sir.

3 Q. How did you get to Wildcat?

4 A. My vehicle.

5 Q. Did you drive?

6 A. Yes, sir.

7 Q. Was anyone else with you?

8 A. No, sir.

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

11 A. Yes, sir.

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

13 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. Have you watched the video recording?

18 A. Yes, sir.

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

20 (ATTORNEYS IN SIDEBAR DISCUSSION OFF THE RECORD.)

21 BY SOLICITOR SHELTON:

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

24 Please take a moment to inspect that exhibit.

25 (WITNESS COMPLIES.)

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 Q. Do you recognize that disk?

2 A. Yes, sir.

3 Q. Is it a DVD?

4 A. Yes, sir.

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

7 A. Yes, sir.

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

9 A. Yes, sir.

10 Q. And listened to the audio?

11 A. Yes, sir.

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

14 A. Yes, sir.

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

16 A. To my knowledge yes, sir.

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

19 MR. BROWN: Without objection.

20 THE COURT: In without objection.

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

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

25 THE COURT: You may.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

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

5 THE COURT: Yes, sir.

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

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

11 Thank you.

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

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

16 (WITNESS LEAVES WITNESS STAND.)

17 (DEFENDANT EXITS COURTROOM.)

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

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

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

21 Is the State ready?

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

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

25 SOLICITOR SHELDON: Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 (DEFENDANT REENTERS COURTROOM)

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

4 THE COURT: Yes, sir.

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

10 THE COURT: Okay.

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

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

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

15 THE COURT: Bring in the jury.

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

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

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

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION - CON'T

8 TEZO ERVIN BY SOLICITOR SHELTON:

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

10 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. Have you listened to that recording?

15 A. Yes, sir.

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

18 MR. BROWN: Without objection, Your Honor.

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

21 A. Yes, sir.

22 Q. Is it a CD?

23 A. Yes, sir.

24 Q. Is there a recording on it?

25 A. Yes, sir. To my knowledge.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

2 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. During this investigation?

7 A. Yes, sir.

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

9 A. Yes, sir.

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

12 THE COURT: Any objection?

13 MR. BROWN: No objection, Your Honor.

14 THE COURT: In without objection.

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

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

19 THE COURT: You may.

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

22 BY SOLICITOR SHELTON:

23 Q. Mr. Ervin.

24 A. Yes, sir.

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

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 phone calls?

2 A. Yes.

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

4 A. Couple a officers.

5 Q. Anyone else?

6 A. No, sir.

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

8 A. Yes, sir.

9 Q. What were those conversations about?

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

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

14 THE COURT: I agree. Sustained.

15 BY SOLICITOR SHELTON:

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

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

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

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

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

25 A. Yes, sir.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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

2 A. No, sir.

3 Q. Did you retrieve anything from the trunk of the car?

4 A. No, sir.

5 Q. Any other hidden compartments that you could access
6 from outside the car?

7 A. No, sir.

8 Q. At one point it sounded like you mentioned something
9 about somebody's sister?

10 A. Oh. Well, a guy I know sister stay along that road
11 and she seen me - probably seen me with my hood popped, she
12 might a stopped and I had trouble, car trouble or anything.

13 Q. And who were you talking to on the phone about seeing
14 that person's sister?

15 A. Officer Rainier.

16 Q. Did you meet with Elder Leach on Wild Cat Creek Road
17 in Rock Hill on June 19th, 2013?

18 A. Yes, sir.

19 Q. Where were you during the meeting?

20 A. In the car talking to him.

21 Q. Were you in the driver's seat?

22 A. Driver's seat. Yes, sir.

23 Q. Sitting in the driver's seat inside the car?

24 A. Yes, sir.

25 Q. Where was Leach?

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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- 1 A. Leaning inside the passenger door.
- 2 Q. Was anyone else there other than you two?
- 3 A. No, sir.
- 4 Q. Did Leach get there in a car?
- 5 A. Yes, sir.
- 6 Q. And was anyone else in that car with him?
- 7 A. Not to my knowledge.
- 8 Q. Did Leach hand you anything during the meeting?
- 9 A. Yes. He handed me three rocks of crack cocaine.
- 10 Q. Was it in any kind of packaging?
- 11 A. Yes. It was wrapped up in brown plastic.
- 12 Q. Like a grocery type bag?
- 13 A. Yeah, like a grocery bag.
- 14 Q. Did you look inside the grocery bag?
- 15 A. Yes, sir. I opened it.
- 16 Q. Did you smell inside the grocery bag?
- 17 A. Yes, sir.
- 18 Q. What did it appear was inside the bag?
- 19 A. Crack cocaine.
- 20 Q. Did it appear to be straight or what you had asked
- 21 for?
- 22 A. Yes, sir.
- 23 Q. And in your -- To your knowledge, did it appear to be
- 24 the whole three?
- 25 MR. BROWN: Objection. Your Honor, he just said was

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON

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1 what he asked for.

2 THE COURT: I sustain the objection.

3 BY SOLICITOR SHELTON:

4 Q. Did you hand Leach anything during the meeting?

5 A. Yes, sir. I handed him Thirty-three Hundred dollars.

6 Q. And was that the money officers had given you earlier?

7 A. Yes, sir.

8 Q. After that deal, did Leach say something about thirty
9 more grams?

10 A. Yes.

11 MR. BROWN: Objection, Your Honor. Again the tape
12 speaks for itself.

13 THE COURT: The tape speaks for itself. I sustain the
14 objection.

15 SOLICITOR SHELTON: Okay.

16 Q. What was your impression that he was taking about?

17 MR. BROWN: Same objection, Your Honor.

18 THE COURT: That's up to the jury to decide. What's
19 on the tape is on the tape. The jury can decide what they
20 hear and what it means.

21 BY SOLICITOR SHELTON:

22 Q. Mr. Ervin, what happened at the end of the video after
23 the deal was done?

24 A. Narcotics swooped in driving mostly different vehicles
25 and just basically arrested both of us.

TEZO ERVIN: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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- 1 Q. What happened to the drugs in the brown grocery bag?
- 2 A. I was told to place it on the ground. Just basically
- 3 open the door when they pull up and place it on the ground
- 4 and I placed it on the ground.
- 5 Q. And that's what you did, you placed it on the ground?
- 6 A. Yes, sir.
- 7 Q. Outside of your vehicle?
- 8 A. Outside the vehicle.
- 9 Q. And what happened to you after that?
- 10 A. I basically just put in handcuffs, put in the car and
- 11 took away.
- 12 Q. And were you taken away in a different vehicle?
- 13 A. Yes, sir.
- 14 Q. Did your vehicle remain there?
- 15 A. Yes, sir.
- 16 Q. Did you give a sworn statement about these events?
- 17 A. Yes, sir.
- 18 Q. Did you give that statement to a Drug Unit officer
- 19 after the buy?
- 20 A. Yes, sir.
- 21 Q. And was that at the Law Center?
- 22 A. Yes, sir.
- 23 Q. Do you see the person who you know as Elder Leach in
- 24 the courtroom today?
- 25 A. Yes, sir.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. And please point him out for the jury.

2 A. Guy sitting right there.

3 SOLICITOR SHELTON: Your Honor, please let the record
4 reflect he's pointed to the man sitting next to Mr. Brown
5 at the counsel table to his left.

6 (WITNESS INDICATED TO WITNESS TABLE.)

7 SOLICITOR SHELTON: No further questions.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 TEZO ERVIN BY MR. BROWN:

11 Q. Mr. Ervin, I want to make sure I understand some of
12 your direct testimony about your past. In this court on
13 September 6th, 2001, you plead guilty to possession with
14 intent to distribute marijuana. Correct?

15 A. Yes, sir.

16 Q. And you had enough marijuana to distribute at that
17 time. Correct?

18 A. Yes, sir.

19 Q. Were you placed on probation then?

20 A. Yes, sir.

21 SOLICITOR SHELTON: Objection.

22 THE COURT: I sustain the objection. The question of
23 whether or not he pled or was convicted of the offense and
24 not what sentence he may have received.

25 MR. BROWN: Your Honor, may we approach.

TEZO ERVIN: CROSS BY MR. BROWN

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1 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
2 THE JURY AT 12:00 P.M..)

3 BY MR. BROWN:

4 Q. Then subsequently in November 28th - excuse me.

5 February 25th, 2002, you came in here and pled to driving
6 under suspension, third offense and subsequent. Correct?

7 A. Yes, sir.

8 Q. On February 25th, 2002, you came in here, this very
9 courtroom, and plead to possession of crack cocaine with
10 intent to distribute within the proximity of a park.

11 Correct?

12 A. Yes, sir.

13 Q. And on the same date in this courtroom you plead
14 guilty in front of Judge Hayes, habitual traffic offender.
15 Correct?

16 A. Yes, sir.

17 Q. February 25th, 2002. And also in front of Judge Hayes
18 on February 25th, 2002, you plead guilty to possession of
19 crack cocaine with intent to distribute, third offense.

20 A. Yes, sir.

21 Q. How old were you when this happened?

22 A. Maybe twenty.

23 Q. How old?

24 A. . Maybe twenty years old.

25 Q. How old are you now?

TEZO ERVIN: CROSS BY MR. BROWN

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1 A. Thirty-four.

2 Q. Twelve years ago you would have been twenty-two.

3 Right?

4 (PAUSE.)

5 Q. And you were currently indicted in this county for
6 trafficking crack cocaine, third offense. Correct?

7 A. Yes, sir.

8 Q. That carries twenty-five years minimum mandatory
9 without parole up to thirty years without minimum mandatory
10 parole. Correct?

11 A. Yes, sir.

12 Q. So you are thirty-four. If you got twenty-five, you'd
13 be fifty-nine coming out. Right?

14 A. Yes, sir.

15 Q. All right. And you did these things. Right?

16 A. Yes, sir.

17 SOLICITOR SHELTON: Objection.

18 THE COURT: Well I --

19 MR. BROWN: Cross examination, Your Honor.

20 THE COURT: Well, I know but these are the ones that
21 he's charged with but not plead or found guilty of.

22 MR. BROWN: No, sir.

23 SOLICITOR SHELTON: Your Honor, may we approach.

24 THE COURT: Okay.

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF

TEZO ERVIN: CROSS BY MR. BROWN

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1 THE JURY AT 12:03 P.M..)

2 THE COURT: All right. Go ahead.

3 BY MR. BROWN:

4 Q. On May 11th, 2012, the defendant, Tezo Nevada Ervin,
5 did knowingly sell, manufacture, deliver, purchase or bring
6 it into this State, or did provide financial assistance, or
7 otherwise aid, abet, attempt or conspire to sell,
8 manufacture, deliver, purchase or bring into this State or
9 was knowingly in actual or constructive possession or
10 knowingly intended to become in actual or constructive
11 possession of ten grams or more of crack cocaine.

12 Is that you?

13 A. Yes. That's what the paper says.

14 Q. And you did that?

15 A. That's what the paper said.

16 Q. Now did you do it? Yes or no. Is this true?

17 A. Is that true?

18 Q. Is that true what I just read?

19 A. That's what the paper read.

20 Q. I'm asking you whether you did this or not, yes or no,
21 and then you can explain your answer.

22 THE COURT: He has a Fifth Amendment right to remain
23 silent.

24 Do you want to remain silent as to that?

25 A. I'm not on trial for that right there.

TEZO ERVIN: CROSS BY MR. BROWN

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1 THE COURT: That's right.

2 BY MR. BROWN:

3 Q. Are you asserting your Fifth Amendment privilege?

4 A. Yes, sir.

5 Q. Excuse me?

6 A. Yes, sir.

7 Q. Manufacture of crack cocaine. Manufacture means make.
8 cCorrect?

9 A. Yes, sir.

10 Q. On May 11th, 2012, you did manufacture crack cocaine.
11 Is that true or not?

12 A. That's what I'm being charged for.

13 Q. Are you taking the Fifth on this too?

14 A. Yes, sir.

15 Q. And the worst of all, you were within a half mile of a
16 school or park when you did this. Correct?

17 A. Yes, sir, I guess.

18 Q. Say again.

19 A. I said, I guess yes, sir.

20 Q. And you had a gun on you while you were doing this
21 because you were also charged with possession of a weapon
22 during the commission of a violent crime. Then on May
23 11th, 2012, while committing the crime of trafficking
24 cocaine, a crime of violence, you had in your possession a
25 pistol. Is that true?

TEZO ERVIN: CROSS BY MR. BROWN

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1 A. I'll take the Fifth.

2 Q. And you are also charged on the same date with
3 possession with intent to distribute crack cocaine also;
4 is that correct?

5 A. I take the Fifth.

6 Q. You take the Fifth when it suits you don't you?

7 SOLICITOR SHELTON: Objection.

8 THE COURT: Sustained. Again, he has the absolute
9 constitutional right to remain silent.

10 BY MR. BROWN:

11 Q. Let's total all this up, Mr. Ervin. You're looking at
12 twenty-five to thirty years without parole on the
13 trafficking charge. Correct?

14 A. That's what the cops says?

15 Q. Let's say you got the minimum you would be fifty-nine.
16 And on the manufacturing, you are looking at ten to thirty
17 years without parole. Correct?

18 A. Yeah I guess so.

19 Q. So you would be sixty-nine if you got the minimum
20 coming out. Right?

21 And on top of that, you're looking at ten years on two
22 counts for the half mile of a school or proximity of a park
23 are you not?

24 A. Yes, sir.

25 Q. Of course, you would get parole on that and by that

TEZO ERVIN: CROSS BY MR. BROWN

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1 point in time you would be seventy-nine. And then you've
2 got five years, no parole, for the weapon. Correct?

3 A. Yes, sir.

4 Q. So you would be eighty-four coming out if you go the
5 minimums. Correct?

6 A. Yes, sir.

7 Q. Did you ever tell a lie in your past?

8 A. Pretty much.

9 Q. And you did that to benefit yourself didn't you?

10 A. I guess if you want to say that.

11 Q. Excuse me? Speak up.

12 A. I said, I guess if you want to say that.

13 Q. Well you tell me. I'm asking you.

14 A. I think everybody in the world done told a lie ---

15 Q. Sure they do.

16 A. --- to benefit themself.

17 Q. Sure they do. What's the most minute thing you lied
18 about?

19 A. Age, I guess.

20 Q. Huh?

21 A. I say I guess you can say age.

22 Q. Age. How old you were to some woman or something?

23 A. Yeah.

24 Q. Okay. And why did you do that?

25 A. I pretty much guess it was something I did when I was

TEZO ERVIN: CROSS BY MR. BROWN

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1 young. Just something to do.

2 Q. Would you lie to save six months of your life?

3 A. . Pretty much, no.

4 Q. No?

5 A. No.

6 Q. You wouldn't do that?

7 A. Six months.

8 Q. Six months. How about one year?

9 A. No.

10 Q. Two years?

11 A. No.

12 Q. Three years?

13 A. No.

14 Q. How much?

15 A. Pretty much no.

16 Q. You wouldn't lie about it to save your life would you?

17 A. No.

18 Q. But you lied to a girl about your age?

19 A. Yeah. Just something simple.

20 Q. Let me ask you about this statement. I'm going to go

21 back through the chain of events that day. You placed a

22 phone call, I believe Mr. Shelton asked you about this,

23 when you stopped at the - was it the Moose Lodge or the

24 Elk's Lodge? I can't remember.

25 A. The Elk's Lodge.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. In the parking lot there?

2 A. Parking lot.

3 Q. And you are on the phone with a cop telling him where
4 you are. Correct?

5 A. Yes, sir.

6 Q. Okay. So they eventually lost you in following and
7 you had to tell them where you were. Is that basically
8 what happened?

9 A. No. We ain't never lose them.

10 Q. Well you had to tell them you were in the Moose
11 parking lot didn't you?

12 A. I basically just told em.

13 Q. Huh?

14 A. I basically just keep in contact with them at all
15 times.

16 Q. Okay. So you told them, hey I stopped at the Moose
17 lodge - Elk's Lodge parking lot. Correct?

18 A. Yes, sir.

19 Q. All right. And this statement you gave under oath to
20 - Well, let me give it to you. Who did you give this
21 statement to that Mr. Shelton asked you about, about what
22 happened that day?

23 A. I can't remember. You'll have to let me see the
24 paper.

25 Q. You gave it in front of a Notary. Right?

TEZO ERVIN: CROSS BY MR. BROWN

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1 It's notarized. You swore under oath this was true.
2 Right?

3 A. Yes, sir.

4 Q. You state in here that he started to count the money
5 and handed me back three hundred dollars. Correct?

6 A. Yes, sir.

7 Q. That's not on the tape though is it?

8 A. Well, it was laying in the seat of the car.

9 Q. You couldn't see that?

10 A. Evidently.

11 Q. So you said you're saying on that tape he gave you
12 back three hundred bucks?

13 A. Yes.

14 Q. All right. You've been in the crack business a long
15 time haven't you?

16 A. Yes, sir.

17 Q. I mean, you know the in's and out's and the pricing of
18 crack. Correct?

19 A. Yes, sir.

20 Q. Okay. And an normal ounce of crack cocaine goes for
21 what?

22 A. Maybe from eight hundred to --

23 Q. Eight Hundred to what?

24 A. Eight hundred dollars to maybe Thirteen Hundred
25 dollars.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. Okay. So between Eight and Thirteen Hundred bucks
2 per ounce. Correct?

3 A. Yes, sir.

4 Q. All right. And you know how to weigh the stuff out
5 and you know to not get it short changed. Correct?

6 A. Yes.

7 Q. You were there when Officer Harrelson installed the
8 camera. Correct?

9 A. Was I there?

10 Q. You were present when he put the camera in your car.
11 Correct?

12 A. Yeah.

13 Q. So you knew where the camera was. Right?

14 A. Actually, I didn't actually know where exactly the
15 camera was. I was on the scene but I was a car down so I
16 was sitting in the police car waiting on him to install the
17 camera.

18 Q. So he didn't instruct you at all like, the camera's
19 right here. Don't block it or anything?

20 A. Pretty much, no.

21 Q. Seriously.

22 A. No.

23 Q. And then you knew where the audio device was cause it
24 was on you. Right?

25 A. Yes.

TEZO ERVIN: CROSS BY MR. BROWN

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1 Q. Nobody else was present when this alleged transaction
2 took place. Right?

3 A. No, sir.

4 Q. Okay. Just you and he were the only people that could
5 see it. Correct?

6 A. And the camera.

7 Q. All right. And you know the difference between
8 thirty-eight grams of crack and three ounces don't you?

9 A. Do I know the difference ---

10 Q. Yeah.

11 A. --- between thirty-eight and three?

12 Q. Thirty-eight grams and three ounces.

13 A. Yeah.

14 Q. Is there a term in the crack dealing business such as
15 fronting crack?

16 A. Oh yes.

17 Q. In other words, somebody owes somebody some money,
18 after they front you crack they give you the dope up front.
19 Correct?

20 A. Yes.

21 Q. And you go sell the dope?

22 A. Yes, sir. And bring them the money.

23 Q. And then you bring the money back to them. Right?

24 A. Yeah.

25 Q. How often in your life have you been fronted crack?

TEZO ERVIN: CROSS BY MR. BROWN

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1 A hundred?

2 A. No.

3 Q. Fifty?

4 A. No.

5 Q. Well, you've been in the crack business from 2001 to
6 2012, that's eleven years --

7 SOLICITOR SHELTON: Objection.

8 MR. BROWN: I'll withdraw the question.

9 Q. In your time dealing crack, how many times were you
10 fronted crack?

11 A. Couple a times, two.

12 Q. Just a couple?

13 A. Yeah.

14 Q. Normally you have to pay up front for it?

15 A. Yeah.

16 Q. That's why you had the gun that day in the park?

17 SOLICITOR SHELDON: Objection.

18 THE COURT: Yeah, just --

19 MR. BROWN: Withdraw the question.

20 Q. What do you expect to happen to you?

21 A. What do I expect to happen to me?

22 Q. Uh-huh.

23 A. About what?

24 Q. Well you cooperating with the police. Correct?

25 A. Uh-huh.

TEZO ERVIN: REDIRECT BY SOLICITOR SHELTON

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1 Q. You expect something good to happen out of this.
2 Right?

3 A. Yes.

4 Q. You don't expect to come out of jail at eighty-four at
5 the bear minimum you are facing?

6 A. No, sir.

7 Q. But you wouldn't lie about that would you?

8 A. Do what?

9 Q. You wouldn't lie about that would you?

10 A. Lie about what?

11 Q. You wouldn't lie to save yourself some time in jail
12 would you?

13 A. . No.

14 Q. You wouldn't do that but you would lie to some girl?

15 A. It's simple.

16 Q. Eight-four years old. You wouldn't lie about that?
17 That's your testimony under oath?

18 A. No.

19 Q. Okay.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 TEZO ERVIN BY SOLICITOR SHELTON:

24 Q. Mr. Ervin, the math that you and Mr. Brown just went
25 through there on the pending charges, and he categorizes

TEZO ERVIN: RECROSS BY MR. BROWN

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1 that as you would be eighty-four years old when you get out
2 prison. Does that involve those sentences running
3 consecutive?

4 A. I guess. I don't know.

5 Q. So how old are you right now? Thirty-four?

6 A. Yes, sir.

7 Q. Okay. To get to eighty-four you would have to get a
8 fifty year sentence; is that correct?

9 A. Yes, sir.

10 Q. Have you been given any promises or even any plea
11 offers related to your pending charges?

12 A. No, sir.

13 Q. Are you familiar with the term concurrent sentencing?

14 A. Yes, sir.

15 Q. So if you got concurrent sentencing on those charges,
16 you would be looking at twenty-five to thirty. Correct?

17 A. Yes, sir.

18 Q. Have you been threatened in any way related to those
19 charges to get you to cooperate or testify?

20 A. No, sir.

21 SOLICITOR SHELTON: Nothing further, Your Honor.

22 MR. BROWN: Just one quick question.

23 RECROSS-EXAMINATION

24 TEZO ERVIN BY MR. BROWN:

25 Q. So if you got concurrent sentences, I want to make

TEZO ERVIN: CROSS BY MR. BROWN
OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 sure I understand this right. The gun law is five years.
2 The possession of a violent weapon that's consecutive. If
3 you got the minimum, twenty-five plus five, thirty without
4 parole, you would be sixty-four coming out. Correct?

5 SOLICITOR SHELTON: Your Honor, I objection. May we
6 approach?

7 THE COURT: No. Go ahead. You ask him about
8 sentencing.

9 Go ahead.

10 A. Could you repeat the question?

11 Q. If you got concurrent sentences, you are going to be
12 sixty-four coming out because you get twenty-five years on
13 the trafficking crack, third offense, and the gun that you
14 had in the park there when you got busted, which is
15 consecutive by law so you'll only be sixty-four. If you're
16 thirty-four, plus thirty equals sixty-four. Correct?

17 A. I guess.

18 Q. You guess? You don't know?

19 A. You doing the math.

20 Q. You hadn't thought about this at all?

21 A. Oh, yeah. I think about it every day.

22 Q. Okay. Well thirty-four plus thirty is sixty-four.
23 Right?

24 A. Okay, yes.

25 Q. Do you agree with that?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. I agree with that.

2 MR. BROWN: No further questions.

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

4 SOLICITOR SHELTON: Your Honor, at this time we ask
5 that Mr. Ervin be excused.

6 MR. BROWN: Without objection, Your Honor.

7 THE COURT: You may be excused.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR SHELTON: Your Honor, the State's next
11 witness is Officer Robin Gander.

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

14 (WHEREUPON, ROBIN GANDER,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

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

17 DIRECT EXAMINATION

18 OFFICER ROBIN GANDER BY SOLICITOR SHELTON

19 Q. Good afternoon. Please state your name and
20 occupation.

21 A. Robin Gander. Police officer.

22 Q. And what agency do you work with?

23 A. City of Rock Hill.

24 Q. Are you a member of the Drug Unit?

25 A. Yes, I am.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Q. How long have you been in law enforcement?

2 A. Five years.

3 Q. And how long have you worked with the Drug Unit?

4 A. Approximately three.

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

7 A. Yes, I was.

8 Q. Please explain your role in that case.

9 A. I was involved on the surveillance team as well as the
10 take down team and I drove - I was to drive the suspect
11 people back if needed.

12 Q. And did you recover any evidence?

13 A. I did.

14 MR. BROWN: I'm going to object. Right now, Your
15 Honor, I have a motion to suppress as to those findings.

16 THE COURT: All right. I am going to let the jury go
17 to the jury room while we take up a matter of law.

18 (JURY EXITS COURTROOM AT 12:16 P.M.)

19 THE COURT: We've got to remind the bailiff's to close
20 that door.

21 All right. Yes, sir.

22 MR. BROWN: Your Honor, for the record, it was twelve
23 point some odd grams allegedly found in allegedly this
24 defendant's car. I move to suppress that at the present
25 time.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Do you want me to go first or do you?

2 SOLICITOR SHELTON: Go ahead.

3 MR. BROWN: Okay.

4 DIRECT-EXAMINATION - IN CAMERA

5 OFFICER ROBIN GANDER BY MR. BROWN

6 Q. Officer Gander.

7 A. Yes, sir.

8 Q. You were at the take down scene. Correct?

9 A. Yes, sir, I was on the team.

10 Q. All right. Are you the inventory officer for the Rock
11 Hill PD?

12 A. For the Rock Hill PD?

13 Q. Yeah.

14 A. No, sir.

15 Q. You are not the inventory officer there?

16 A. Not for specifically Rock Hill PD.

17 Q. All right. Did you have a search warrant when you
18 went in the defendant's alleged vehicle?

19 A. Explain again.

20 Q. Did you have a search warrant when you went in the
21 vehicle that's alleged to be defendant's?

22 A. No.

23 Q. Okay. When you went in the vehicle, was the defendant
24 already handcuffed in another patrol car?

25 A. I cannot recall.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
IN CAMERA

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1 Q. Huh?

2 A. I cannot recall. I did not see the defendant.

3 Q. I can't hear you.

4 A. I did not see the defendant.

5 Q. Okay. You never saw him at all?

6 A. Not there. I was handling a different issue off to
7 the side.

8 Q. How long was the different issue taking?

9 A. Few minutes or so.

10 Q. What issue were you handling?

11 A. I was handling additional evidence that was on the
12 ground next to --

13 Q. Which evidence was that, ma'am?

14 A. That was a brown plastic bag.

15 Q. Okay. The alleged drugs of this transaction. Would
16 that be correct?

17 A. Yes.

18 Q. All right. So how long did it take you to do that?

19 A. Two minutes.

20 Q. Did you see the defendant, Elder Leach, after that?

21 A. Did I see him?

22 Q. Yeah.

23 A. No.

24 Q. Was he anywhere near his vehicle?

25 A. He was near it.

OFFICER ROBIN GANDER: CROSS BY SOLICITOR SHELTON
IN CAMERA

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1 Q. Was he handcuffed?

2 A. I did not see him get handcuffed.

3 Q. You can't say one way or the other?

4 A. I cannot.

5 MR. BROWN: Beg the Court's indulgence.

6 SOLICITOR SHELTON: Your Honor, we'll stipulate that
7 Mr. Leach was put in cuffs at the buy bust you can hear on
8 video. There was a take down and he was put in cuffs
9 almost immediately. Rather than have to proffer another
10 witness to that effect, we'll stipulate he was in
11 handcuffs.

12 THE COURT: Okay.

13 BY MR. BROWN:

14 Q. You did not have a search warrant when you went in the
15 car. Correct?

16 A. Correct.

17 MR. BROWN: Due to the stipulation, I have no further
18 questions.

19 THE COURT: Is there a motion?

20 SOLICITOR SHELTON: Your Honor, can I just clarify?

21 THE COURT: I'm sorry. Go ahead.

22 CROSS EXAMINATION - IN CAMERA

23 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

24 Q. Investigator, the drugs you recovered was the buy
25 drugs?

OFFICER ROBIN GANDER: CROSS BY SOLICITOR SHELTON
IN CAMERA

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1 A. Correct.

2 Q. And you took possession of Leach's vehicle and drove
3 it back to the Law Center?

4 A. I did.

5 Q. And were there drugs and contraband in the front seat
6 of that vehicle?

7 A. There was. In plain view.

8 Q. Can you explain.

9 A. As soon as you sit down you look in the driver's side
10 door to get in, you could clearly see a digital scale in
11 the center console of the vehicle as well as on the
12 passenger seat you can clearly see a bag of crack - I
13 cannot say how much it was - as well as package materials.

14 Q. And those items were in plain view?

15 A. Yes.

16 Q. Did anyone else get into the car before you?

17 A. No.

18 Q. Were you in charge of making sure the vehicle was
19 secure?

20 A. Yes.

21 Q. And you drove it straight back to the Law Center?

22 A. Yes.

23 Q. Did you meet with Investigator Faulkenberry back
24 there?

25 A. Yes.

1 Q. Did he take photographs of the evidence that was in
2 plain view?

3 A. Yes.

4 Q. Did he take those photos before he disturbed any of
5 the items?

6 A. Yes.

7 Q. And then he ultimately collected them as evidence.

8 . Correct?

9 A. Yes.

10 Q. And the buy drugs, you put into an evidence bag?

11 A. I did.

12 Q. And then gave it to Faulkenberry because he was the
13 evidence guy?

14 A. Yes.

15 Q. But you hadn't sealed them at that point?

16 A. Correct.

17 SOLICITOR SHELTON: Your Honor, that's the extent of
18 the recovery.

19 THE COURT: What's the motion?

20 MR. BROWN: We ask, Your Honor, we would suppress any
21 drugs that she found in this vehicle pursuant to *State v.*
22 *Brown* or *State v. Tindall* which I'm handing up to the
23 court.

24 THE COURT: All right.

25 MR. BROWN: The *State v. Tindall* case, Your Honor, it

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1 involved a search of the vehicle after the reason for a
2 traffic stop had occurred. The officer continues the
3 encounter after he had written a warning ticket. Cocaine
4 was subsequently found in - I believe in a McDonald bag in
5 the backseat of the vehicle.

6 The Supreme Court suppressed that stating the reason
7 for the stop had been over. In conjunction with *State v.*
8 *Danny Cortez Brown*, which is a similar nature, this is a
9 search incident to arrest case which is right on point.

10 And police may search a vehicle incident to a recent
11 occupant's arrest only if the arrestee is within striking
12 distance of the passenger compartment at the time of the
13 search or is reasonable to believe that the vehicle
14 contains evidence of the arrest, when these justifications
15 are absent, a search of an arrestee's vehicle will be
16 unreasonable unless police obtain a warrant to show that
17 exception to the warrant requirement applies.

18 In this case, Your Honor, it has been stipulated Mr.
19 Leach is in custody. He is nowhere near and can reach in
20 the vehicle. He is not within reaching distance. There is
21 no warrant here, Your Honor, and there is no reason to
22 believe that there will be evidence of the arrest in there
23 because allegedly the drug transaction has already taken
24 place.

25 THE COURT: Well I deny the motion to suppress. I

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 don't believe the *Tindall* case, the *Terry Tindall* case is
2 actually on point because we don't have a stop here. You
3 have a little different fact of the situation.

4 And in the other case, the *Brown* case, at Head note
5 [10] and [11], the court states "a warrantless searches and
6 seizures are unreasonable absent a recognized exception to
7 the ... warrant requirement."

8 These exceptions include the following: "search
9 incident to a lawful arrest." We don't have that here.
10 "Hot pursuit," we don't have that here. "Stop and frisk,"
11 we don't have that here. I don't believe this really is an
12 automobile exception, but Number five is the plain view
13 doctrine where you've consent and abandonment, but
14 according to the officer's testimony, the drugs were in
15 plain view and so I deny the motion.

16 MR. BROWN: Yes, sir.

17 THE COURT: Bring in the jury.

18 (JURY REENTERS COURTROOM AT 12:25 P.M.)

19 THE COURT: You may proceed.

20 SOLICITOR SHELTON: May it please the court, Your
21 Honor.

22 DIRECT EXAMINATION

23 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

24 Q. Investigator, did you recover any evidence in this
25 case?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. I did.

2 Q. . What did you recover?

3 A. It was a brown plastic --

4 MR. BROWN: Subject to my previous objection, Your
5 Honor, for the record.

6 THE COURT: Over ruled.

7 BY SOLICITOR SHELTON:

8 Q. What did you recover?

9 A. It was a brown plastic bag that contained crack.

10 Q. Where was it when you recovered it?

11 A. It was approximately two or three feet from the
12 driver's side door on the ground of Tezo's vehicle.

13 Q. So it was outside the driver's side door of Tezo's
14 vehicle?

15 A. Yes, I was.

16 Q. On the ground?

17 A. Yes.

18 Q. Did you open the plastic grocery bag to look inside?

19 A. I did.

20 Q. What did you do with that evidence?

21 A. I secured it. Maintained control of it. I placed it
22 into an evidence bag and maintained control until I then
23 gave it to Officer Faulkenberry.

24 Q. And was that back at the Law Center when you gave it
25 to Faulkenberry?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. Yes it was.

2 Q. Was it continuously under your custody and control
3 before you gave it to Faulkenberry?

4 A. Yes.

5 Q. And you put it in an evidence bag. Did you seal that
6 bag?

7 A. I did not.

8 Q. Was Faulkenberry the evidence guy?

9 A. Yes.

10 Q. So was he in charge of documenting the evidence and
11 sealing everything up for submission?

12 A. Yes, he was.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, PREMARKED FOR
14 IDENTIFICATION.)

15 MR. BROWN: Subject to my previous objection, Your
16 Honor.

17 THE COURT: Well he hadn't offered it yet but your
18 objection is on the record.

19 MR. BROWN: Just for the record, Your Honor.

20 THE COURT: Go ahead.

21 BY SOLICITOR SHELTON:

22 Q. Investigator, I'm handing you what's been marked as
23 State's Exhibit Number Four. Please take a moment to
24 inspect that.

25 A. Okay.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. Do you recognize that item?

2 A. I do.

3 Q. And what is it?

4 A. It is the item that I recovered, the brown plastic bag
5 with the crack that was contained inside.

6 Q. And is this what you recovered outside of Tezo's car?

7 A. Yes it was.

8 Q. Thank you. You can set that off to the side.

9 And just to be clear, is that the evidence bag you put
10 it in?

11 A. Yes, it is.

12 Q. And it was unsealed when you put it in there?

13 A. Yes.

14 Q. And then you handed everything to Faulkenberry in that
15 bag?

16 A. Yes.

17 Q. Was Leach's vehicle at Wild Cat Creek Road when you
18 got there?

19 A. It was.

20 Q. What kind of vehicle was it?

21 A. It was a silver Volkswagen.

22 Q. Was it a car? Truck?

23 A. Car.

24 Q. Did you look inside of that vehicle?

25 A. Yes, I did.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. Please describe what you saw inside of the vehicle.

2 A. In the center console --

3 MR. BROWN: For the record my objection.

4 THE COURT: All right. Overruled.

5 A. In the center console you could clearly see a digital
6 scale and on the passenger seat you can see packaging
7 material as well as crack.

8 MR. BROWN: Objection, Your Honor, the packaging
9 material, what she saw.

10 THE COURT: All right.

11 MR. BROWN: What she saw wasn't in fact. Her
12 interpretation is irrelevant.

13 THE COURT: Yeah. You can't identify it as crack
14 because you didn't analyze it so I sustain the objection.

15 BY SOLICITOR SHELTON:

16 Q. Investigator, when you are referencing things that you
17 saw, please refer to them as what they appear to be based
18 on your training and experience.

19 A. Yes. Through my training and experience, I believed
20 it to be crack cocaine.

21 Q. And you had eluded to some sort of packaging material.
22 Can you explain what that is?

23 A. Plastic bags.

24 Q. And in your training and experience are plastic
25 baggies commonly used to package drugs?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. They are.

2 Q. What happened to Leach's vehicle?

3 A. I drove it back to the Rock Hill Law Center.

4 Q. Were you by yourself?

5 A. I was.

6 Q. What happened to the items you described that were in
7 plain view inside of this vehicle?

8 A. They were photographed by Officer Faulkenberry, at
9 which time he then recovered them and placed them into
10 evidence.

11 Q. Did you touch any of the items before Faulkenberry
12 photographed them?

13 A. No, I did not.

14 Q. And where did he photograph them?

15 A. At the Rock Hill Law Center.

16 Q. So the photographs that he took, were they true and
17 accurate as to where those items were sitting in the car?

18 A. Yes.

19 Q. And did he collect the items as evidence?

20 A. Yes, he did.

21 Q. That's Faulkenberry. Correct?

22 A. Yes.

23 Q. Was that also at the Law Center?

24 A. Yes it was.

25 Q. And where at the Law Center were you all when this was

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 going on?

2 A. In the back parking lot.

3 MR. BROWN: Same objection as previous, Your Honor.

4 SOLICITOR SHELTON: That's to the next exhibit, sir.

5 (WHEREUPON, STATE'S EXHIBIT NUMBERS SIX, SEVEN, EIGHT
6 AND NINE PREMARKED FOR IDENTIFICATION.)

7 Q. I am going to hand you what's been marked as State's
8 Six, Seven, Eight and Nine for identification purposes.

9 Please take a second to look through those.

10 (WITNESS COMPLIES.)

11 Q. Do you recognize those items?

12 A. I do.

13 Q. What are they?

14 A. You can see what we believed to be was the crack
15 cocaine, the packaging material and the plastic bags.

16 MR. BROWN: Again, objection, Your Honor.

17 SOLICITOR SHELTON: Hang on. Let me rephrase the
18 question.

19 Q. Are they pictures?

20 A. Yes.

21 Q. Four separate pictures?

22 A. Yes.

23 Q. Where were these pictures taken?

24 A. At the Rock Hill Law Center.

25 Q. When were they taken?

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 A. They were taken after I transported the vehicle back
2 from Wild Cat.

3 Q. So after the buy?

4 A. Yes.

5 Q. Are they true and accurate as to what you saw in the
6 car at Wild Cat and then also back at the Law Center?

7 A. Yes they are.

8 Q. Did you take these pictures?

9 A. I did not.

10 Q. Did Faulkenberry take these pictures?

11 A. Yes, he did.

12 Q. But these pictures are true and accurate as to what
13 you saw at that time?

14 A. Yes.

15 SOLICITOR SHELTON: Your Honor, I move to admit these
16 four exhibits as evidence.

17 MR. BROWN: I'm going to object until they are
18 authenticated.

19 THE COURT: She said they show what she saw so I'll
20 overrule the objection.

21 (WHEREUPON, STATE'S EXHIBITS SIX, SEVEN, EIGHT AND
22 NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 SOLICITOR SHELTON: At this time, I would request
24 permission to publish these four exhibits.

25 THE COURT: You can.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. We'll start with State's Number Six.

2 Madam Clerk, would you dim the lights, please?

3 (STATE'S EXHIBIT SIX PUBLISHED TO THE JURY AT 12:33

4 P.M..)

5 Q. Investigator Gander, can you explain what we are
6 looking at in State's Number Six?

7 A. This is the front passenger seat of the vehicle which
8 I drove and you can see the plastic bags. I believe that's
9 a cell phone. You can see the corner of what we believe to
10 be crack cocaine wrapped in a plastic bag.

11 Q. And what about closer to the seat back on the left
12 hand side of this picture as we're look at it?

13 MR. BROWN: Your Honor, again I'm going to object a
14 third time. The picture speaks for itself. Her
15 interpretation does not matter.

16 THE COURT: I sustain the objection.

17 You can ask her about it, but be careful about how you
18 phrase your questions also.

19 SOLICITOR SHELTON: Yes, sir.

20 Q. Let's move on to State's Number Six, please - I mean,
21 State's Number Seven.

22 (STATE'S EXHIBIT SEVEN PUBLISHED TO THE JURY.)

23 Q. What is this?

24 A. Through my training and experience, I believe this to
25 be crack cocaine.

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON

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1 Q. And is it packaged in anything?

2 A. In a plastic bag.

3 Q. State's Number Eight, please.

4 (STATE'S EXHIBIT EIGHT PUBLISHED TO THE JURY.)

5 Q. And what about the items depicted in State's Number
6 Eight?

7 A. Again, through my training and experience, I believe
8 it to be crack cocaine wrapped in a plastic bag.

9 Q. And State's Number Nine.

10 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY.)

11 A. This was a black digital scale that was in the center
12 console of the vehicle.

13 (WHEREUPON, STATE'S EXHIBIT NUMBERS TEN, ELEVEN AND
14 TWELVE, PREMARKED FOR IDENTIFICATION.)

15 Q. Investigator, I'm going to hand you what's been marked
16 as State's Exhibit Number Ten, Eleven and Twelve. Please
17 take a moment to look at those exhibits.

18 (WITNESS COMPLIES.)

19 Q. What are those items?

20 A. This would be the black digital scale, packaging
21 materials, as well as what through our training and
22 experience we believe to be crack cocaine.

23 Q. So to be clear, packaging materials are those. Was
24 anything inside of what you are calling the packaging
25 materials or are they just loose ---

OFFICER ROBIN GANDER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 A. Loose.

2 Q. --- items?

3 A. Loose items.

4 Q. Loose plastic bags?

5 A. Yes.

6 Q. And the items you believe to be crack cocaine from
7 through your training and experience, were they collected
8 with the plastic bags still around them?

9 A. Yes they were.

10 Q. And are these the actual items that you saw sitting in
11 the front seat?

12 A. Yes they were.

13 Q. And these are the actual items collected by
14 Faulkenberry after he photographed State's Exhibits Six
15 through Nine?

16 A. Yes.

17 Q. And while you were traveling in Leach's car from Wild
18 Cat Circle to the Law Center, were these items continuously
19 under your custody and control?

20 A. Yes.

21 Q. Did anyone else have access to them other than you
22 during that trip?

23 A. No.

24 Q. Did anyone else have access to them at Wild Cat?

25 A. No.

OFFICER ROBIN GANDER: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON
RECROSS BY MR. BROWN

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1 Q. Other than you?

2 A. No.

3 Q. Did all these events you've described happen in York
4 County, South Carolina?

5 A. Yes they did.

6 SOLICITOR SHELTON: Nothing further, Your Honor.

7 CROSS-EXAMINATION

8 OFFICER ROBIN GANDER BY MR. BROWN:

9 Q. Officer Gander, have you reviewed the case summary for
10 this matter ---

11 A. I have.

12 Q. --- before you came to court? And are you familiar
13 with it?

14 A. Yes, sir.

15 Q. Okay. Do you have a copy with you, ma'am?

16 A. I do not.

17 Q. All right. Is that the Case Summary that starts on
18 the page earlier please, ma'am? The one from June 19th?

19 A. Yes, sir.

20 Q. All right. And on Page 3, fourth line from the
21 bottom, it says "Investigator Gander located brown paper
22 bag that contained plastic with approximately 90.2 grams of
23 crack in it." Is that correct?

24 A. I located --

25 Q. Is that what it says? Yes or no.

OFFICER ROBIN GANDER: RECROSS BY MR. BROWN

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1 A. That's what it says. Yes.

2 MR. BROWN: No further questions.

3 REDIRECT EXAMINATION

4 OFFICER ROBIN GANDER BY SOLICITOR SHELTON:

5 Q. Investigator, did you prepare that summary?

6 A. I did not.

7 Q. Did you weigh the crack you recovered?

8 A. I did not.

9 Q. Do you know if it was weighed?

10 A. Yes it was weighed.

11 Q. Do you know who weighed it?

12 A. Officer Faulkenberry.

13 Q. And is that part of the normal evidence inventory
14 process?

15 A. Yes.

16 Q. He was the evidence guy so that was part of his job?

17 A. Yes.

18 SOLICITOR SHELTON: Nothing further.

19 RECROSS EXAMINATION

20 OFFICER ROBIN GANDER BY MR. BROWN:

21 Q. So who came up with the 90.2 grams? You say it was
22 Investigator Faulkenberry; is that correct?

23 A. Yes, sir.

24 Q. Okay.

25 MR. BROWN: No further questions.

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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1 THE COURT: You can step down and be excused. We
2 appreciate your time. Thank you.

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: We'll break for lunch. It's about almost
5 a quarter to one so we'll break until two o'clock. Have a
6 pleasant lunch and we'll see you back at two o'clock.

7 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:40 P.M.)

8 THE COURT: We'll be on lunch break until two o'clock.

9 (COURT IN LUNCH RECESS AT 12:40 P.M.)

10 (COURT BACK IN SESSION AT 02:04 P.M..)

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

12 Is the State ready?

13 SOLICITOR SHELTON: Yes, sir.

14 THE COURT: Defense ready?

15 MR. BROWN: Yes, sir.

16 THE COURT: Bring in the jury.

17 Do we have a bond hearing scheduled?

18 MADAM COURT REPORTER: Yes, sir, you do with the
19 Attorney General's Office.

20 THE COURT: I've got something I was unaware of. It
21 will be a couple of more minutes. That's my fault.

22 Thank you.

23 SOLICITOR SHELTON: Your Honor, the Attorney General's
24 representative just told me they're not sure where the
25 Defense attorney is so they are not prepared to -

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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1 THE COURT: Bring them back in then.

2 Who is the Defense attorney? We'll just have to wait
3 until break now. Hang around outside and we'll take care
4 of you later. Sorry.

5 (JURY REENTERS COURTROOM AT 2:06 P.M.)

6 THE COURT: I apologize. They told me I had something
7 then they told me I didn't have something so I got us.

8 SOLICITOR SHELTON: May it please the court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 SOLICITOR SHELTON: Your Honor, the next witness for
12 the State is Officer Todd - excuse me, Officer Jack
13 Dantzler.

14 (WHEREUPON, JACK DANTZLER,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 OFFICER JACK DANTZLER BY SOLICITOR SHELTON:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. Please identify yourself for the jury.

21 A. I'm Officer Jack Dantzler with the Rock Hill Police
22 Department.

23 Q. How long have you been working in law enforcement?

24 A. Five years.

25 Q. Did you work with the Drug Unit for a time?

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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- 1 A. Yes, sir.
- 2 Q. For how long?
- 3 A. Two and a half years.
- 4 Q. Were you working with the Drug Unit in June 2013?
- 5 A. Yes, sir.
- 6 Q. Were you involved in the investigation of Elder
- 7 Prescott Leach on June 19th, 2013?
- 8 A. Yes, sir.
- 9 Q. And what was your role in that investigation?
- 10 A. I was part of the surveillance team.
- 11 Q. Was there a car you took control of at Wild Cat Creek?
- 12 A. Yes, sir.
- 13 Q. Whose car was that?
- 14 A. Mr. Ervin's.
- 15 MR. BROWN: I'm sorry. Mr. Who?
- 16 A. Ervin's.
- 17 Q. And to be clear, is that a CI?
- 18 A. Yes, sir.
- 19 Q. And to your knowledge, was there any evidence in the
- 20 car when you got in it?
- 21 A. No, sir.
- 22 Q. No, there was not?
- 23 A. No, sir.
- 24 Q. Okay. Did you touch anything inside of his car other
- 25 than then gear shift and the steering wheel and the

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON

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1 ignition?

2 A. No, sir.

3 Q. Where did you take the car?

4 A. I took it the parking deck across from Rock Hill Law
5 Center.

6 Q. And were there any other officers there waiting for
7 you?

8 A. Yes, sir.

9 Q. Who was there?

10 A. Officer Harrelson was there.

11 Q. Was anyone else with you at the time when you were
12 driving it back?

13 A. No, sir.

14 Q. Did Harrelson take control of Tezo Ervin's car from
15 you?

16 A. Yes, sir.

17 Q. And to your knowledge, did Harrelson then search
18 Ervin's car?

19 A. To my knowledge, yes, sir.

20 Q. Did you have any other active role in this
21 investigation?

22 A. No, sir.

23 SOLICITOR SHELTON: No further questions, Your Honor.

24 MR. BROWN: Just one.

25

CROSS-EXAMINATION

OFFICER JACK DANTZLER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN
JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 OFFICER JACK DANTZLER BY MR. BROWN:

2 Q. When you looked in the car or got in the car, there
3 was nothing in plain view?

4 A. As far as - No, sir.

5 MR. BROWN: No further questions.

6 THE COURT: All right. You can step down and be
7 excused. We appreciate your time. Thank you.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR SHELTON: The next witness is Officer Jamie
11 Faulkenberry - former Officer Jamie Faulkenberry.

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

14 DIRECT EXAMINATION

15 JAMIE FAULKENBERRY BY SOLICITOR SHELTON:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Please identify yourself for the jury.

19 A. Jamie Faulkenberry.

20 Q. What is your current occupation?

21 A. Currently I am the training director for a private
22 security company in Charlotte.

23 Q. Prior to this job, did you have a career in law
24 enforcement?

25 A. Yes, sir.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 Q. For how long?

2 A. Nine years.

3 Q. And did you work with the Drug Unit for York County
4 during that time?

5 A. Yes, sir, I did.

6 Q. From when to when?

7 A. From February of 2011 until two months ago.

8 Q. So was the Drug Unit your last assignment prior to
9 going into private security?

10 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. What role did you have in that investigation?

15 A. I assisted Officer Rainier with the investigation and
16 with recovery of evidence primarily.

17 Q. Were you part of what's known as the surveillance
18 team?

19 A. Yes, sir.

20 Q. In that role, were you monitoring a live audio feed?

21 A. Yes, sir.

22 Q. And was that live wire on the CI Tezo Ervin's person
23 during the investigation?

24 A. Yes, sir.

25 Q. And were recordings produced from that live audio

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1 feed?

2 A. Yes, sir.

3 Q. Was there also a video recording produced from a
4 camera hidden inside of Ervin's car?

5 A. Yes, sir.

6 Q. Have you had a chance to review the recordings?

7 A. Yes, sir.

8 Q. Both the audio feed and the video?

9 A. Yes, sir.

10 Q. And are they true and accurate as to the events that
11 you heard on the live audio feed that day?

12 A. Yes, sir.

13 MR. BROWN: Your Honor, I'm going to object as to the
14 video feed unless he saw the whole thing.

15 SOLICITOR SHELTON: Okay. I'll rephrase.

16 Q. The audio feed, is it true and accurate as to what you
17 heard on the live wire?

18 A. Yes, sir.

19 Q. Were you one of the officers that moved in on Ervin
20 and Leach at Wild Cat Creek after the buy?

21 A. Yes, sir.

22 Q. Is that known as the take down team?

23 A. Yes, sir.

24 Q. Do you know Elder Leach on sight?

25 A. Yes, sir.

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1 Q. Do you see him in the courtroom?

2 A. Yes, sir.

3 Q. Would you please point him out?

4 A. Yes, sir. He's right over there.

5 SOLICITOR SHELTON: Your Honor, please let the record
6 reflect that he's pointed to the man sitting to the left of
7 Mr. Brown, his attorney.

8 (WITNESS INDICATED TOWARD DEFENDANT.)

9 Q. Did you recover the buy money used in this
10 investigation?

11 A. Yes, sir, I did.

12 Q. Where was it when you recovered it?

13 A. It was on the ground underneath the vehicle.

14 Q. Whose vehicle?

15 A. Mr. Leach's.

16 Q. Was that at Wild Cat Creek?

17 A. Yes, sir.

18 Q. And do you know how it got there?

19 A. Yes, sir.

20 Q. How did it get there?

21 A. As we were pulling up to initiate the take down, I
22 observed Mr. Leach drop the money underneath the back of
23 the vehicle.

24 Q. And did you inspect that money?

25 A. Yes, sir.

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1 Q. Did you count it?

2 A. Yes, sir.

3 Q. Did you look at all the serial numbers?

4 A. Yes, sir.

5 Q. And was it the buy money?

6 A. Yes, sir.

7 Q. How do you know that?

8 A. Prior to any time we do a deal that concerns money, we
9 make photocopies of all the money so that we have records
10 of the exact serial numbers that we used so we know that no
11 private money was used in buying drugs. We had to go back
12 once this was over and compare all the bills that we found
13 to all the bills that we used to buy the drugs with and
14 compared it to make sure (a) it was the money that was used
15 and (b) we got all of it back and made sure it was
16 accounted for.

17 Q. Do you recall if the full Thirty-three Hundred dollars
18 was on the ground?

19 A. I don't remember. I'm not sure.

20 Q. Was all of the money, the entire Thirty-three Hundred
21 dollars, accounted for at the end of this investigation?

22 A. Yes, sir. Yes, it was.

23 Q. And approximately how much money was on the ground?

24 A. Approximately Three Thousand dollars.

25 Q. And what did you do with the money after you compared

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 it to the photocopies?

2 A. The money was given back to the FBI. It was their
3 money that we used.

4 Q. And did you do the comparison back at the Law Center?

5 A. Yes, sir.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE, PREMARKED FOR
7 IDENTIFICATION.)

8 Q. Mr. Faulkenberry, I'm going to hand you what's been
9 marked for identification as State's Number Five.

10 Please take a minute to look at that exhibit.

11 (WITNESS COMPLIES.)

12 Q. What is that?

13 A. Copies of the money that as used for the buy.

14 Q. Is it copies of the entire Thirty-three Hundred
15 dollars?

16 A. I believe so. Yes, sir.

17 Q. It's all accounted for in those photos, photocopies?

18 A. Yes, sir.

19 Q. Who made those photocopies?

20 A. I did.

21 Q. Did you - I'm assuming you photocopied the actual
22 currency.

23 A. Yes, sir.

24 Q. Before it was given to Ervin?

25 A. Yes, sir.

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1 Q. And what you are holding in your hand, State's Number
2 Five, is it a true and accurate copy of the buy money given
3 to Ervin in this investigation?

4 A. Yes, sir, it is.

5 Q. Is it also a true and accurate copy of at least Three
6 Thousand of the money Leach threw down on the ground at
7 Wild Cat?

8 A. Yes.

9 Q. But again, the entire Thirty-three Hundred dollars was
10 accounted for at the end of this investigation?

11 A. Yes, sir, it was.

12 SOLICITOR SHELTON: Your Honor, I move to admit
13 State's Five as evidence.

14 MR. BROWN: No objection.

15 THE COURT: In without objection.

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

18 SOLICITOR SHELTON: You can set it down, sir.

19 Q. Mr. Faulkenberry, did you recover any other evidence
20 in this investigation?

21 A. Yes, sir, I did.

22 Q. From where?

23 A. There were some items inside Mr. Leach's vehicle that
24 I recovered.

25 Q. And where was it that you recovered the items?

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1 A. The front passenger seat.

2 Q. And what location in reference to the Rock Hill Law
3 Center?

4 A. I actually recovered them from the Law Center.

5 Q. In the parking lot?

6 A. Yes, sir.

7 Q. How did the vehicle - Was this the same vehicle that
8 was at Wild Cat?

9 A. Yes, sir.

10 Q. Did you see the vehicle at Wild Cat?

11 A. Yes, sir.

12 Q. What kind of vehicle was it?

13 A. It's a silver Volkswagen - not sure what brand it was.

14 Q. Some sort of car or sedan?

15 A. Yes, sir.

16 Q. Okay. And how did that vehicle get back to the Law
17 Center?

18 A. One of the other officers drove it back.

19 Q. Do you recall who?

20 A. I think it was Officer Gander.

21 Q. And what items of evidence did you recover from that
22 vehicle?

23 A. I remember recovering some crack --

24 MR. BROWN: Objection, Your Honor.

25 THE COURT: I sustain the objection.

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1 BY SOLICITOR SHELTON:

2 Q. Mr. Faulkenberry, when you are answering questions
3 related to any substances, you can refer to your training
4 and experience that relate to them as what you believed
5 them to be at the time.

6 A. Okay.

7 Q. So if you'll start over again, what items of evidence
8 did you recover from the car?

9 A. I recovered digital scales; what I believed to be was
10 packaging materials, clear plastic bags and what I believed
11 to be crack at the time.

12 Q. And those beliefs, are they based on your training and
13 experience in law enforcement?

14 A. Yes, sir.

15 Q. And where were these items in the car?

16 A. The front passenger seat.

17 Q. Were they hidden or were they in plain view?

18 A. They were just sitting in the seat.

19 Q. Did you take pictures of the items before collecting
20 them?

21 A. Yes, sir, we did.

22 Q. I'm going to show you what's already been admitted as
23 evidence, State's Numbers Six, Seven, Eight and Nine.

24 Please take a look at these four pictures.

25 (WITNESS COMPLIES.)

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 Q. Do you recognize those pictures?

2 A. Yes, sir, I do.

3 Q. Did you take those pictures?

4 A. Yes, sir.

5 Q. And what are those pictures of?

6 A. The front seat of Mr. Leach's vehicle.

7 Q. Specifically are they in reference to the items you
8 described that were on the front seat?

9 A. Yes, sir.

10 Q. All right. You can set those off to the side, sir.

11 Okay, I'm going to show you now what's been marked for
12 identification as State's Numbers Ten, Eleven and Twelve.

13 Take just a moment please to look at these items.

14 (WITNESS COMPLIES.)

15 Q. Before I ask you about those, there's one other
16 question I wanted to ask you about Six, Seven, Eight and
17 Nine. These pictures that you looked at just a moment ago,
18 did you move anything in this car before you took these
19 pictures?

20 A. No, sir.

21 Q. So this is the exact condition it was in when Gander
22 showed up with the vehicle?

23 A. Yes, sir.

24 Q. Okay. I would like to turn your attention back to
25 Ten, Eleven and Twelve that you are holding in your hand;

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1 what's been marked for identification as Ten, Eleven and
2 Twelve. Do you recognize those items?

3 A. Yes, sir, I do.

4 Q. And how do you recognize them?

5 A. I recovered them, placed them in these packages and
6 sealed them up.

7 Q. And were they recovered during this investigation?

8 A. Yes, sir, they were.

9 Q. And where were they recovered from?

10 A. Two of them were recovered from the front passenger
11 seat and the other from the center console.

12 Q. Which one of the three was recovered from the center
13 console?

14 A. The digital scale. Item Number Twelve. State's
15 Exhibit Twelve.

16 Q. So the other two items, which you believe to be
17 packaging materials and crack, were on the seat, passenger
18 side seat?

19 A. Yes, sir.

20 Q. And are these the same items you had taken pictures
21 of, States Six, Seven, Eight and Nine, prior to collecting?

22 A. Yes, sir.

23 Q. Describe what you did with each of these three items
24 when you collected them.

25 A. Once the photographs were taken, I seized each item,

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1 it was placed into an evidence bag. Each evidence bag -
2 Well, first the digital scale and what I believe to be
3 packaging materials were placed into evidence bags and
4 sealed up. What I believed to contain crack was each
5 weighed, the quantity was added and then they were placed
6 into a drug bag and were sealed.

7 Q. So it looks like you have two different kinds of
8 evidence bags there.

9 A. Yes, sir.

10 Q. What's the different in those two bags - two kinds of
11 bags?

12 A. The paper bags are simply for miscellaneous evidence
13 items. The plastic bags are for what we believe to be
14 drugs anytime we have those because of the way they have to
15 cut open the bags and test all the products and close them
16 back up.

17 Q. So the plastic bag that's State's Number Ten, is it
18 fair to say that's to preserve the evidence a little bit?

19 A. Yes.

20 Q. More scyncly, more definitely?

21 A. Yes, sir.

22 Q. And the items in those type bags, are they submitted
23 for testing at some point?

24 A. Yes, sir.

25 Q. By a chemist?

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1 A. Yes, sir.

2 Q. Did you weigh the substance believed to be crack found
3 in State's Number Ten prior to putting it in the evidence
4 bag?

5 A. Yes, sir, I did.

6 Q. Where did you weigh it?

7 A. At the narcotics office in Rock Hill.

8 Q. Did you weigh it inside or outside of the plastic
9 baggies it was in?

10 A. Usually we weigh it in the baggies, usually.

11 Q. And so we are clear, is the substance as well as the
12 packing materials it was in contained in State's Number
13 Ten?

14 A. Yes, sir.

15 Q. And what was the estimated weight of the substance,
16 the total estimated weight of the substance found on the
17 front seat of the car?

18 A. I don't remember the exact number we came up with.

19 Q. Would that have been recorded in the Case Summary?

20 A. Yes, sir, it would.

21 Q. Would looking at the Case Summary possibly help
22 refresh your recollection?

23 A. Yes, sir. Are you asking about the items that I
24 recovered solely?

25 Q. From the car. Yes, sir.

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1 A. Okay. It looks like it weighed approximately .28
2 grams.

3 MR. BROWN: Approximately what?

4 BY SOLICITOR SHELTON:

5 Q. Could you repeat your answer, please?

6 A. Twenty-eight grams.

7 Q. And do you know how many grams are in an ounce?

8 A. Twenty-eight grams.

9 Q. So in other words, it was approximately one ounce?

10 A. Yes, sir.

11 Q. Are the scales you weighed the substances combined on
12 at the drug - excuse me, at the Law Center, are those
13 calibrated for accuracy?

14 A. I'm not sure if they are or not. I don't believe so.
15 I'm not sure.

16 Q. Is --

17 MR. BROWN: Objection. If he doesn't know, he doesn't
18 know.

19 THE COURT: He said he didn't know.

20 MR. BROWN: Okay.

21 BY SOLICITOR SHELTON:

22 Q. Is it Drug Unit policy to consider those estimated
23 weights?

24 A. Yes, sir.

25 Q. And can weights of substances believed to be

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1 controlled substances such as crack be relevant for
2 chalking?

3 A. Yes, sir.

4 Q. Is that one of the reasons you weigh them on the front
5 end before submitting them into evidence?

6 A. Yes, sir.

7 Q. And so after you put the scales and what you believed
8 to be packing materials, sealed them up in the bags and
9 then put the other substance, weighed it and put it in the
10 evidence bag, what did you do with that substance then?

11 A. They were placed into a secure locker at the Rock Hill
12 Law Center. We have a pad lock on each. We don't have a
13 key to those. Only evidence tech's have a key to those
14 locks. Once we lock it, we have to wait for the evidence
15 tech's to come get it, take it to Moss and log it into
16 their evidence.

17 Q. And is that drop box at the Rock Hill Law Center?

18 A. Yes, sir.

19 Q. And just to be clear, did you submit all three items,
20 State's Ten, Eleven and Twelve, into that drop box?

21 A. Yes, sir.

22 Q. And did you seal the plastic evidence bag containing
23 what you believed to be crack prior to submitting it into
24 the evidence drop box?

25 A. Yes, sir.

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1 Q. And the other two items were sealed as well?

2 A. Yes, sir.

3 Q. In the envelopes?

4 A. Yes, sir.

5 Q. At this time I'm going to turn your attention to
6 what's been marked for identification as State's Exhibit
7 Number Four.

8 (WITNESS REVIEWING STATE'S EXHIBIT FOUR.)

9 Q. Do you recognize this item?

10 A. Yes, sir.

11 Q. How do you recognize it?

12 A. Officer Gander gave it to me back at the Law Center?

13 Q. And was this during this investigation on June 19th.
14 2013?

15 A. Yes, sir, it was.

16 Q. And to your knowledge, how did it come to be in her
17 possession?

18 A. According to this, she located it on the ground at the
19 scene.

20 Q. The scene being Wild Cat?

21 A. Yes, sir.

22 Q. What condition was it in when you received it from
23 Gander?

24 A. Everything was inside the brown shopping bag.

25 Q. Was it inside of the evidence bag you hold in your

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON

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1 Hand?

2 A. Yes. Yes. I'm sorry. I misunderstand the question.

3 Q. Had Gander sealed that bag yet?

4 A. No, sir.

5 Q. Did you ultimately seal that bag?

6 A. Yes, sir.

7 Q. And you were the evidence guy in this investigation.

8 Right?

9 A. Yes, sir.

10 Q. In your experience - Let me back up a second. Did you
11 inspect the contents of the plastic - the brown, plastic,
12 grocery type bag?

13 A. Yes, sir.

14 Q. And in your training and experience, what did you
15 believe the contents to be?

16 A. I believed that it contained packaging materials with
17 crack cocaine.

18 Q. And did you weigh the substance you believed to be
19 crack as in State's Number Four?

20 A. Yes, sir, we did.

21 Q. Where did you weigh it?

22 A. At the Rock Hill Law Center.

23 Q. And was that prior to sealing it up inside of the
24 evidence bag?

25 A. Yes, sir.

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1 Q. And did you have the drugs and packaging material
2 outside of the evidence bag when you weighed it?

3 A. Yes, sir.

4 Q. Were the sub --

5 MR. BROWN: Your Honor, I'm gonna object to leading.

6 THE COURT: Yeah, you're asking leading question.

7 SOLICITOR SHELTON: Yes, sir.

8 Q. . Were the substances you believed to be crack inside or
9 outside the packing materials when you weighed it?

10 A. Usually inside.

11 Q. And what was the estimated weight of the substances in
12 State's Number Four? And if you need to look back at the
13 Summary again, that's fine.

14 A. This one was approximately 90.2 grams.

15 Q. So in other measures, is that a little more than three
16 ounces?

17 A. Yes, sir.

18 Q. And looking at the contents of State's Number Four, is
19 there anything that appears to be packaging material
20 contained inside the evidence bag?

21 A. Yes, sir.

22 Q. Please describe.

23 A. What we believe is packaging material was the clear
24 plastic baggies.

25 Q. Was there also a brown, plastic baggy in there?

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1 A. Yes, sir.

2 Q. Is it larger than the other clear, plastic baggies?

3 A. Yes, sir.

4 Q. And does it appear to be some kind of grocery bag?

5 A. Yes, sir.

6 Q. And was that what everything was wrapped up inside of

7 ---

8 A. Yes, sir.

9 Q. --- when you received it?

10 A. Yes, sir.

11 Q. So State's Number Four along with the other three,
12 what did you do with State's Number Four at that time?

13 A. After we weighed it?

14 Q. Yes, sir. Start at the weighing.

15 A. After it was weighed it was returned to this bag. The
16 bag was sealed. I signed the seal and it was placed in
17 evidence along with the other evidence.

18 Q. So to be clear, State's Number Four, Ten, Eleven and
19 Twelve were all submitted into the drop location at Rock
20 Hill P.D.?

21 A. Yes, sir.

22 Q. Were they all submitted on the same day?

23 A. Yes, sir.

24 Q. What day was that?

25 A. June 19th.

JAMIE FAULKENBERRY: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 Q. Was that the day of the investigation?

2 A. Yes, sir.

3 Q. Approximately what time?

4 A. About 1:30 in the afternoon.

5 Q. Approximately how long after --

6 A. Excuse me. I'm sorry. I'm sorry. I apologize. It
7 was dropped into evidence at four. I received it from
8 Officer Gander at 1:30 and it was dropped into evidence at
9 four.

10 Q. So approximately -- At four o'clock, approximately how
11 long after the investigation at Wild Cat Creek was that?

12 A. About a little less than three hours.

13 Q. So at 1:30 when you received it from Gander, about
14 possibly how long after the investigation had concluded?

15 A. That was about twenty minutes, give or take.

16 Q. Were all four exhibits in evidence, State's Four, Ten,
17 Eleven and Twelve, were they all continuously in your
18 custody and control after you took possession of them?

19 A. Yes, sir.

20 Q. And were they all in sealed bags when you dropped them
21 in the locker?

22 A. Yes, sir.

23 Q. Did you submit a request for chemical testings of the
24 substances in State's Four and Ten?

25 A. Yes, sir, we did.

JAMIE FAULKENBERRY: CROSS BY MR. BROWN

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1 Q. Did all of this occur in York County, South Carolina?

2 A. Yes, sir.

3 SOLICITOR SHELDON: Nothing further.

4 CROSS-EXAMINATION

5 JAMIE FAULKENBERRY BY MR. BROWN:

6 Q. These scales you have down at the police department -
7 excuse me, that you used to have down at the police
8 department, I know you've moved on now, they are digital
9 scales. Right?

10 A. Yes, sir.

11 Q. And based on the amount you weigh those drugs in, you
12 come up with a charge against the defendant. Correct?

13 A. Yes, sir.

14 Q. And based on the weight as far as trafficking goes,
15 that can make a major difference. Correct?

16 A. Yes, sir.

17 Q. And ten to twenty-eight grams in one category, a
18 category of trafficking is it not?

19 A. Uh-huh.

20 Q. And twenty-eight to a hundred is one category of
21 trafficking. Right?

22 A. I believe so.

23 Q. And of course you being in law enforcement and with
24 the DEU, the Drug Enforcement Unit, as long as you were,
25 you know that the weight of other substances don't count.

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1 You just weigh the drugs. Right?

2 A. Yes, sir.

3 Q. All right. And you say sometimes you would leave the
4 packaging on and sometime you take it off. Correct?

5 A. Yes, sir.

6 Q. Wouldn't - Don't you most of the time take the
7 packaging out so you just get the weight of the drugs so
8 you know the correct charge?

9 A. Sometimes we do.

10 Q. Okay. Why would you not do that? Wouldn't you be
11 charging somebody with an over amount?

12 A. Usually if we don't take it out, it's because the
13 manipulation of it in case they want to do other
14 processing.

15 Q. I'm sorry, manipulation?

16 A. If we have to manipulate it too much to open it up, if
17 they request other processing for things, then us
18 manipulating it too much would mess it up so it's a little
19 easier to just weigh it in the packaging material itself.

20 Q. And the drugs were allegedly found - Do you have that
21 report with you, sir?

22 A. I've got the ---

23 Q. Case summary?

24 A. --- Case summary. Yes, sir.

25 Q. He was asking about earlier?

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1 A. Yes, sir.

2 Q. I'll refer you to the fourth line from the bottom on
3 page three. Investigator Gander located a brown paper bag
4 that contained plastic with approximately 90.2 grams of
5 crack in it. Correct?

6 Q. Is that what it says?

7 A. Yes, sir.

8 Q. That's not a paper bag is it?

9 A. No, sir.

10 Q. Okay. And that's what you weighed to be 90.2 grams.
11 Correct?

12 A. Yes, sir.

13 Q. Okay. Investigator Faulkenberry, you located
14 approximately twenty-eight grams of crack.. Is that you -
15 you found that. Right?

16 A. Yes, sir.

17 Q. And that is this right here. Correct?

18 A. Yes, sir.

19 Q. And that's what you weighed it with digital scales.
20 Right?

21 A. Yes, sir.

22 Q. Now if you took the - I believe you testified, sir,
23 that you took the pictures of this money; is that correct?

24 A. Yes, sir.

25 Q. Okay. And you did that when?

JAMIE FAULKENBERRY: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON

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1 A. Prior to the deal.

2 Q. . Okay. Tell me how that works. Where does the money
3 come from? How do you get it? What did you take a picture
4 of it with?

5 A. The money in this case was furnished by the FBI. What
6 they do, is they do an account at their office and they
7 bring it to us since we're the ones that are gonna be in
8 control of it. They have us count it as well to make sure
9 we come up with the same count. Since we are going to be
10 the ones to actually use the money and do the deal, we make
11 copies of it as well for our records for case purposes. We
12 go back and we Xerox every bill on a copier so that we have
13 copies of all the serial numbers for later comparisons.

14 Q. And that's what was shown as State's Exhibit Number
15 Five. Correct?

16 A. Yes, sir.

17 Q. And that's the Thirty-three Hundred dollars you took
18 care of. Correct?

19 A. Yes, sir.

20 Q. So you took this picture at the Law Center I assume?

21 A. Yes, sir.

22 Q. All right. And you recovered the money on the ground.
23 Correct?

24 A. Yes, sir.

25 Q. And that was the Thirty-three Hundred dollars.

JAMIE FAULKENBERRY: REDIRECT BY SOLICITOR SHELTON
RE CROSS BY MR. BROWN

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1 Correct?

2 A. Yes, sir.

3 MR. BROWN: No further questions.

4 SOLICITOR SHELTON: Brief redirect, Your Honor.

5 May it please the court.

6 REDIRECT EXAMINATION

7 JAMIE FAULKENBERRY BY SOLICITOR SHELTON:

8 Q. Mr. Faulkenberry, in your experience, is packaging
9 material very heavy?

10 A. No, sir.

11 MR. BROWN: I'm going to object to that, Your Honor.
12 It's not responsive to anything I asked. I didn't ask
13 anything about weights. I just asked him what he wrote in
14 his report.

15 THE COURT: All right. Meanwhile, I overrule the
16 objection. Let's stick to what was brought out.

17 SOLICITOR SHELTON: Yes, sir. Yes, sir.

18 Q. The other processing you mentioned on cross, is that
19 things such as fingerprint analysis, DNA testing, that
20 sort of thing?

21 A. Yes, sir.

22 Q. And to your knowledge was any of that done in this
23 case?

24 A. As far as I know, no, sir.

25 Q. And did you prepare the GS Summary you've been looking

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 at?

2 A. No, sir. I don't believe so.

3 Q. And looking at the item in evidence, State's Number
4 Four, would you refer to this brown bag as paper or
5 plastic?

6 A. Plastic.

7 SOLICITOR SHELTON: Nothing further.

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

9 MR. BROWN: Just one question.

10 THE COURT: I'm sorry. Go ahead.

11 RECROSS-EXAMINATION

12 JAMIE FAULKENBERRY BY MR. BROWN:

13 Q. I know you didn't do that report, but you gave the
14 weights to Officer Rainier did you not?

15 A. Yes, sir.

16 Q. It's from your weight?

17 A. Yes, sir.

18 MR. BROWN: No further questions, Your Honor.

19 THE COURT: All right, you can step down and be
20 excused quietly. Thank you.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Call your next witness.

23 SOLICITOR SHELTON: Thank you, Your Honor. The next
24 witness is Mr. Patrick Patterson.

25 (WHEREUPON, PATRICK

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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

3 DIRECT EXAMINATION

4 PATRICK PATTERSON BY SOLICITOR SHELTON:

5 Q. Good afternoon, sir.

6 A. Hello.

7 Q. Please identify yourself for the jury.

8 A. Patrick Patterson.

9 Q. And where do you work, sir?

10 A. York County Sheriff's Office.

11 Q. What job do you do there?

12 A. Evidence control technician.

13 Q. How long have you been doing that job?

14 A. Three and a half years.

15 Q. Were you working in that job in June of 2013 and on?

16 A. Yes, sir.

17 Q. What are your present duties?

18 A. As evidence control technician, we take possession of
19 evidence. We secure it in our evidence room. We log it
20 in. We maintain that security until the time it leaves our
21 custody.

22 Q. And taking possession of the evidence, does that
23 include you going to law enforcement drop sites throughout
24 York County to recover evidence?

25 A. It does.

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1 Q. Is that evidence that's been submitted by law
2 enforcement officers?

3 A. It has. It's been locked in a locker that only I and
4 my co-workers have keys to. We pick it up and transport it
5 to our evidence room here.

6 Q. Is there an evidence drop box at the Rock Hill Police
7 Department at the Law Center?

8 A. Yes, sir.

9 Q. Is that a secure location?

10 A. Yes, it is.

11 Q. Is it under lock and key?

12 A. Yes, sir.

13 Q. Is that one of those places that only you and the
14 other tech's have access to?

15 A. Yes, sir.

16 Q. If you'll take a look at some of these items of
17 evidence that are sitting next to you.

18 First let's look at what's been marked as State's
19 Number Four right here. I'm also going to have you look at
20 these other three in turn.

21 Here's Ten, Eleven and Twelve. Just so you can see
22 what we are talking about here. Take a second if you
23 please, sir, to inspect those items.

24 (WITNESS REVIEWS STATE'S EXHIBITS FOUR)

25 Q. If you'll look at the other three, as well.

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1 (WITNESS REVIEWS STATE'S EXHIBITS TEN, ELEVEN AND
2 TWELVE.)

3 Q. Have you seen these four items before?

4 A. Yes, sir.

5 Q. And how do you recognize them?

6 A. I signed these items out from the evidence drop in
7 Rock Hill on June 21st, 2013.

8 Q. And are these items that you recovered from that
9 location?

10 A. They are. I took possession of them then and
11 transported them back to our evidence room here.

12 Q. And that was while you were working in your job
13 duties?

14 A. Yes, sir.

15 Q. How did you transport them back here?

16 A. In a vehicle. Just drove 'em back to York.

17 Q. And did you bring them back here the same day that you
18 recovered them from the drop location?

19 A. Yes, sir.

20 Q. Were the items of evidence contained in those four
21 exhibits, were they in sealed evidence bags when you
22 recovered them?

23 A. Yes, they were.

24 Q. Did the seals appear to have been tampered with in any
25 way?

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 A. No, sir.

2 MR. BROWN: Your Honor, I hate to object to leading,
3 leading, leading.

4 THE COURT: Me too. Don't lead. Just ask him.

5 BY SOLICITOR SHELTON:

6 Q. What was the condition of the seals when you recovered
7 them?

8 A. The seals were intact and had signatures on them.

9 Q. What did you do with the items while you had them in
10 your possession?

11 A. I only transported them from that location here to our
12 evidence room.

13 Q. Were they continuously under your custody and care
14 while in your possession?

15 A. Yes, sir.

16 Q. Who all has access to the evidence room at the Moss
17 Justice Center?

18 A. Only myself and two co-workers.

19 Q. Is it a secure location?

20 A. Yes, sir.

21 Q. And were these four items of evidence brought back to
22 that secure location?

23 A. Yes, sir.

24 Q. Did anyone else take possession of State's Number Four
25 and Ten on January 21st, 2014?

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON

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1 A. No, sir. Only myself.

2 Q. On that day January - Did you pass them off to another
3 person at some point?

4 A. On January 21st?

5 Q. Yes, sir.

6 A. Yes, sir. I did. I signed these items over to our
7 chemist, Cynthia Mitchum.

8 Q. How about State's Number Eleven and Twelve?

9 A. These items were in our possession until May the 12th,
10 2014. I signed them to John Rainier.

11 Q. That being yesterday?

12 A. That was yesterday.

13 Q. And between the time that you brought 'em back and
14 yesterday, did they remain in the custody of the storage
15 room at Moss Justice Center, evidence storage?

16 A. Yes, sir. These two items did.

17 Q. Those two items you are holding in your hands, what
18 are the exhibit numbers there?

19 A. Eleven and Twelve.

20 Q. And were they sealed? Were there seals on those bags?

21 A. Yes, sir.

22 Q. Were they intact when you recovered them?

23 A. Yes, sir.

24 Q. Are they still in tact?

25 A. Yes, they are.

PATRICK PATTERSON: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 Q. Turn your attention back to State's Number Four and
2 Ten, Did you give those two evidence bags directly to Ms.
3 Mitchum the day in question?

4 A. Yes, sir, I did.

5 Q. And were the seals on both of those bags still intact
6 at that time?

7 A. Yes, sir.

8 Q. Were those two items returned back to the evidence
9 room at some point?

10 A. They were returned on March 19th, 2014.

11 Q. And who returned them?

12 A. Cynthia Mitchum signed them over to me.

13 Q. Did she give them directly to you?

14 A. Yes, sir.

15 Q. And what did you do with those two items once they
16 were back in possession of the evidence?

17 A. They were secured in our evidence room.

18 Q. And are those two items, State's Four and Ten, in the
19 same condition now as when you put them back into storage?

20 A. Yes, sir.

21 Q. After you received them from Ms. Mitchum?

22 A. Yes, sir.

23 Q. And all four of those items, Four, Ten, Eleven and
24 Twelve, were they checked out of the evidence locker
25 recently?

PATRICK PATTERSON: CROSS BY MR. BROWN

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1 A. They were checked out this morning. I signed them
2 over to John Rainier.

3 Q. Were they also checked out yesterday?

4 A. They were.

5 Q. Signed over to John Rainier, as well?

6 A. Yes, sir.

7 Q. And was that for court?

8 A. That was.

9 Q. And the seals on those evidence bags, were they still
10 intact when they left the evidence room both days?

11 A. Yes, sir.

12 SOLICITOR SHELTON: Nothing further.

13 CROSS-EXAMINATION

14 PATRICK PATTERSON BY MR. BROWN:

15 Q. When you say you are the evidence technician, all you
16 do is deal with evidence. Correct?

17 A. Yes, sir.

18 Q. And you hold it until somebody from lab comes over and
19 gets it. Correct?

20 A. Yes, sir.

21 Q. Or the processing we've heard in this courtroom. So
22 how close are you to the lab?

23 A. It's from one door to another.

24 Q. You're right next door?

25 A. Two steps.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 Q. Gotcha, gotcha. And as a matter of fact, the
2 sheriff's department or the county just got a brand new lab
3 with all kinds of new facilities. Correct? About two
4 years ago?

5 A. Repeat that please.

6 Q. Didn't the sheriff's department get a brand new lab
7 with a bunch of new equipment about two years ago?

8 A. For the drug lab?

9 Q. Well, the drug lab, DNA lab, et cetera.

10 A. Yes, sir.

11 Q. And all of that was in the last couple of years.
12 Correct?

13 A. Right.

14 Q. To your knowledge, has anybody checked this stuff out
15 other than to do drug testing?

16 A. No, sir.

17 Q. Okay.

18 MR. BROWN: I don't have any further questions.

19 SOLICITOR SHELTON: Your Honor, I would just move to
20 admit State's Number Eleven and Twelve as evidence.

21 MR. BROWN: Without objection.

22 THE COURT: In without objection.

23 (WHEREUPON, STATE'S EXHIBIT NUMBERS ELEVEN AND TWELVE
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 SOLICITOR SHELTON: I have no further questions at

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 this time.

2 THE COURT: You can step down and be excused. Thank
3 you.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR SHELTON: The next witness for the State is
6 Ms. Cynthia Mitchum.

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

9 DIRECT EXAMINATION

10 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

11 Q. Good afternoon, ma'am.

12 A. Good afternoon.

13 Q. Please identify yourself for the jury.

14 A. I'm Cynthia Mitchum, M-I-t-c-h-u-m.

15 Q. And how are you employed?

16 A. I'm employed with the York County Sheriff's Office in
17 the drug analysis laboratory.

18 Q. How long have you been in that job?

19 A. This month will be fourteen years at the sheriff's
20 office.

21 Q. And do you work at Moss Justice?

22 A. Yes.

23 Q. And you have a laboratory or an office?

24 A. Yes. I have a laboratory.

25 Q. And what do you do in your lab?

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 A. I receive in evidence and I'll do analysis on the
2 evidence for controlled and non-controlled substances.

3 Q. Do you have any prior experience in this field that
4 qualifies you for your job?

5 A. Yes.

6 Q. Please explain.

7 A. I have a Bachelor's of Science in Chemistry which I
8 received from Winthrop University in 1990. Prior to
9 working with the sheriff's office, I was with the South
10 Carolina Law Enforcement Division, commonly known as SLED,
11 in Columbia, South Carolina, for seven and a half years.
12 And I've also gone through instrumentation training and
13 various schools.

14 Q. And all this training and experience, does this
15 qualify you as an analyst in the field of chemical drug
16 analysis identification?

17 A. Yes.

18 Q. Have you ever been qualified in a court of law as an
19 expert in the field of chemical or drug analysis and
20 identification?

21 A. Yes, I have.

22 Q. Approximately how many times?

23 A. In excess of two hundred times.

24 Q. And during your career both in law enforcement at the
25 sheriff's department and before, approximately how many

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 samples have you tested?

2 A. Typically, I usually test around two thousand to
3 twenty-five hundred items a year, so you multiply that by
4 twenty-one years. It's a lot of samples.

5 SOLICITOR SHELTON: Your Honor, at this time I would
6 offer Ms. Mitchum as an expert in the field of chemical and
7 drug analysis and identification.

8 THE COURT: Voir dire?

9 MR. BROWN: No, sir.

10 THE COURT: You may proceed.

11 BY SOLICITOR SHELTON:

12 Q. Ms. Mitchum, sitting there next to you is State's
13 Number Four and Eleven - excuse me, what's been marked as
14 State's Number Four and Ten for identification. Have you
15 ever seen these items before?

16 A. Yes, I have.

17 Q. And how do you recognize them?

18 A. I recognize them through that I have my initials and
19 signature in the chain of custody and on the bags and I
20 also recognize the case number and the bar code number.

21 Q. Did you analyze the substances contained inside of
22 these two evidence bags?

23 A. Yes, I did.

24 Q. Please describe how these two items of evidence came
25 to be in your possession for analysis.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 A. They became in my possession from Pat Patterson on
2 January 21st of 2014.

3 Q. Both items?

4 A. Yes.

5 Q. What condition were they in when you received them?

6 A. They were sealed and I know this because on both bags
7 on the inside I got, Okay, the date I received them and my
8 initials, and that's on both of the bags.

9 Q. Did the seals on either of those bags appear to be
10 tampered with in any way?

11 A. No.

12 Q. And what did you do with them when you got them?

13 A. Once I received them, I then placed them in the
14 laboratory in a secure area until I had a chance to do my
15 analysis on them.

16 Q. During that time and during your analysis, were they
17 continuously under your custody and control while in your
18 possession?

19 A. Yes.

20 Q. Did you in fact analyze and test the contents of the
21 two bags?

22 A. Yes, I did.

23 Q. When did you conduct your analysis and testing?

24 A. On March the 10th of 2014.

25 Q. And between the time of receiving them and testing

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 them, where were the items?

2 A. They were in the evidence room at the sheriff's
3 office.

4 Q. Let me rephrase that. When you got possession of
5 them, between the time you took possession and the time you
6 actually analyzed and tested them, were they stored any
7 where?

8 A. Yes. They were stored in the drug analysis
9 laboratory.

10 Q. And is that a secured location?

11 A. Yes.

12 Q. Under lock and key?

13 A. Yes.

14 Q. And is it connected with your laboratory?

15 A. Yes.

16 Q. Does anyone else have access to that room?

17 A. Yes, they do but not to the drug box where I keep
18 these particular items. I have the only keys to that box.

19 Q. Please explain the process of analysis and testing
20 these items.

21 A. What I would do is take the substance and then what I
22 do is what's called a color test and then an instrumental
23 test on these.

24 The color test is basically I take a portion of the
25 sample and I'll put reagents on it and I will look for a

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 color change. That color change will then give me an idea
2 of what class of compounds I would be looking at.

3 And then I would take another portion of the substance
4 and dissolve it in a reagent and then run it through an
5 instrument and then from the instrument, it would give me
6 results that I compare to known results to make sure that
7 what I am calling it is correct.

8 Q. And the substances in these two bags, were they wet or
9 dry when you first opened the bags?

10 A. These were very wet when I opened them. There's three
11 bags in here. They are tied plastic bags and they were
12 very wet. Almost the consistency of a wet cake batter.

13 Q. And did you have to do anything with the substances
14 prior to testing?

15 A. Yes. What I did is when I opened them, I noticed they
16 had immediately started drying so I put them under a hood.
17 I have a hood in the laboratory which I can put things
18 under, chemicals and stuff, so I don't have to constantly
19 smell them. So I put them under there and then I let them
20 sit for a couple of hours and dry until I could be able to
21 get them out of the bag easier because they were just
22 really sticking to the plastic bag so then I could work
23 with the item better. I could actually scrape it out of
24 the bag.

25 Q. So is it your testimony they were difficult to remove

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 the items from the bag prior to drying them out?

2 A. That is correct.

3 Q. Did you weigh the substances in State's Four and Ten
4 prior to drying them out?

5 A. No, I did not. I did my weight after I dried them.

6 Q. And is that your common procedure, to weigh after
7 testing?

8 A. Yes.

9 Q. And if you will look inside the actual evidence bag,
10 are there some sort of markings, some sort of markings on
11 smaller baggies inside of that?

12 A. Are you talking about this green writing?

13 Q. Yes, ma'am.

14 A. Yeah, that's my writing for - I would distinguish bag
15 one, bag two, so that when I looked at my worksheet and was
16 comparing my results, I knew exactly which bag went with
17 which one.

18 Q. Okay. Very good. So the substances in these bags
19 were packaged in different baggies; is that correct?

20 A. Correct. There was one plastic bag and there was
21 three separate tied plastic bags that had each of the
22 substances in, so there was actually three bags of
23 substance.

24 Q. And that's in Number Four?

25 A. Yes, State's Exhibit Number Four.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you weigh the substances after you tested them?

2 A. Yes, I did.

3 Q. And that was after the drying process?

4 A. That is correct.

5 Q. And did you document those weights somewhere?

6 A. Yes, I did.

7 Q. And are the scales you use calibrated for accuracy?

8 A. Yes, they are.

9 Q. Please explain that.

10 A. They are calibrated once a month with standardized
11 weights and they are also calibrated by an outside agency
12 once every six months.

13 Q. Do you recall when the last time they were calibrated
14 before you weighed the substances in this case?

15 A. No. I couldn't give you the specific date on when
16 they were without looking at the book to my - when the
17 weights were. Usually I usually calibrate the instrument
18 right around the fifteenth of the month.

19 Q. For each month?

20 A. Yes.

21 Q. And what day of the month were these items weighed
22 after drying?

23 A. These would have been on 3-10-2014.

24 Q. And after you analyzed and tested the substances, what
25 did you do with the substances in Four and Ten?

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 A. What I did is then I repack - they were - they began
2 in this blue fillagree bag which is inside so I folded all
3 that up and put it in this outside bag which has been
4 sealed. This is a laboratory bag that I have and it has
5 the seal, it has the date I sealed it and my initials
6 within the heat seal and both of those are still in tact
7 today with the date of March the 10th, 2014 and the seal.

8 Q. And when did you return the newly sealed bags to the
9 evidence room?

10 A. On March the 19th of 2014.

11 Q. Who did you give them to?

12 A. Patrick Patterson.

13 Q. And the outer sealed evidence bags, the repackaged
14 bags if you will, are they in the same condition now as
15 when they left your possession?

16 A. Yes, they are. They are still sealed.

17 Q. Were you able to determine through your analysis and
18 testing what the substances in the two evidence bags,
19 State's Number Four and Ten, are?

20 A. Yes, I did.

21 Q. And what were your conclusions?

22 A. State's Exhibit Number Four, which is Item Number One
23 in this case, was found to be cocaine base, also known as
24 crack. A total weight of 38.03 grams or 586.80 grains,
25 control two substance.

1 And then State's Exhibit Number Ten, which is Item
2 Number Two in this case, was found to be cocaine base, also
3 known as crack, in the amount of total weight of 12.55
4 grams, or 193.64 grains, control two substance.

5 Q. . Do you have a breakdown of how much each of the three
6 baggies in Number's Four, State's Number Four, weighed
7 independent?

8 A. Yes, I do on my worksheet.

9 Q. Okay. Can you look back at that?

10 A. I sure can.

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

12 THE COURT: Yes, sir.

13 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
14 THE JURY AT 03:00 P.M..)

15 THE COURT: All right. Let me let the jury go to the
16 jury room for a minute while we take up a matter of law.

17 (JURY EXITS COURTROOM AT 3:00 P.M.)

18 THE COURT: All right, why don't you all step down and
19 we'll do this bond while you all are doing that.

20 You mind just sitting there?

21 MS. MITCHUM: Yeah, I'll be fine.

22 (DEFENDANT EXITS COURTROOM.)

23 (COURT AT EASE IN THE MATTER OF STATE V. ELDER LEACH.)

24 (COURT IN SESSION IN THE MATTER OF STATE V. KEITH
25 BURGESS WITH ATTORNEY GENERAL STEPHANIE MILES.)

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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1 THE COURT: All right, we'll take a real quick
2 refresher break for the staff about two or three minutes
3 and then we'll get the jury back in and move forward when
4 we find the attorneys.

5 (COURT IN RECESS AT 03:10 P.M..)

6 (COURT BACK IN SESSION AT 3:16 P.M.)

7 THE COURT: Take your seats.

8 All right. Yes.

9 SOLICITOR SHELTON: Your Honor, before the break there
10 was some discussion about the worksheet that Ms. Mitchum
11 was referencing. Mr. Brown and I conversed and he has been
12 provided a copy of what is called the Initial Drug Report.
13 It's labeled Drug Analysis Worksheet at the top.

14 He was provided a copy of that in discovery as well as
15 the official Court Exhibit Drug Report that Ms. Mitchum has
16 the original of here, but I think we probably need to - I
17 probably need to proffer a quick little bit of information
18 from Ms. Mitchum to make sure we are on the same page with
19 what she means by worksheet.

20 I have a document that was provided in discovery that
21 says Drug Analysis Worksheet and I'm not sure if she is
22 talking about the same thing. I probably will move to
23 admit this as evidence as well as the official drug report.

24 THE COURT: Go ahead and ask her about it.

25 SOLICITOR SHELTON: Yes, sir.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON - IN CAMERA

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DIRECT EXAMINATION - IN CAMERA

CYNTHIA MITCHUM BY SOLICITOR SHELTON:

Q. Ms. Mitchum, I'm holding in my hand a document captioned in the title Drug Analysis Worksheet, York County Sheriff's Office. Can you take a look at this?

A. Yes.

Q. And is that a true and accurate copy of your initial drug report or your Drug Report Worksheet that you do when you test items for evidence?

A. It is but it's not for this case.

SOLICITOR SHELTON: Wait. What?

MR. BROWN: He got the wrong case.

SOLICITOR SHELTON: I've got a copy here.

Q. Okay. Case number 2013-2-0-2-2-5.

A. Yes.

Q. Is this a copy of that same report?

A. Yes, it is.

Q. And you have the original worksheet in your file?

A. Yes, I do.

Q. Okay. So this copy I hold in my hand is what would have been sent from you to the Solicitor's office to document your findings?

A. That's correct.

SOLICITOR SHELTON: And Judge, for the record, this copy is what I sent to Mr. Brown as discovery. That's why

1 I was referring to a copy.

2 THE COURT: Do you have any questions, Mr. Brown?

3 MR. BROWN: I don't have any questions. I just have
4 an objection at to this issue.

5 THE COURT: All right. What's the -

6 MR. BROWN: As to this issue.

7 THE COURT: What's the objection?

8 MR. BROWN: Your Honor, pursuant to Rule 6, Broken
9 Chemical Analysis Chain of Custody, you can enter a report
10 that's certified and verified by SLED procedures, which I
11 submit is this report. I have no objection to this coming
12 in. Her work product, I do. It contains extraneous facts
13 does not relate to Rule 6.

14 It also carries a description of what she deemed the
15 crack to be, very wet, dried under hood, damp, dried under
16 hood, cocaine base, cocaine base. I submit to you under
17 Rule 6 she is entitled just to submit her report as to what
18 she found, not extraneous material as to the description or
19 whatever.

20 THE COURT: Well Rule 6 applies to, I think, and I'm
21 just skimming it, and I always thought that it applied to
22 the introduction of a report without the chemist actually
23 testifying. I think that is what it's for because the last
24 sentence says if an objection is properly made the trial
25 judge shall require the chemist or analysis or analyst to

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 be present at the trial for purposes of a person
2 testifying. So the report of chemical analysis under
3 number 6(a) allows for the introduction without the actual
4 testimony, but, I do have concerns about, and maybe you
5 ought to ask her, what is the official report as opposed to
6 a worksheet.

7 SOLICITOR SHELTON: Okay. The official report is what
8 will be marked as State's Thirteen. What I was referring
9 to in this proffer is the worksheet which will show initial
10 findings but they do have some more detail in them as to
11 description of the number of bags and the weights
12 associated with those as well as her initial impressions of
13 the substances when she first --

14 THE COURT: Do you object to that?

15 MR. BROWN: Yes, I do.

16 THE COURT: I sustain it. The question is what it was
17 and how much it weighed.

18 SOLICITOR SHELTON: Okay. Very good.

19 THE COURT: You ready for the jury?

20 SOLICITOR SHELTON: Yes, sir.

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

22 Wait a minute. We forgot Mr. Leach. .

23 SOLICITOR SHELTON: Your Honor, can I ask one other
24 question. I had a question presented that what were the
25 weights of each of the three individual baggies in Number

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 Four. Can she refer to her worksheet and testify --

2 THE COURT: If she needs to refresh her memory. You
3 know how to do that.

4 SOLICITOR SHELTON: Yes, sir.

5 (DEFENDANT REENTERS COURTROOM AT 03:21 P.M..)

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

7 (JURY REENTERS COURTROOM AT 3:22 P.M.)

8 THE COURT: All right. You may proceed.

9 SOLICITOR SHELTON: Thank you, Your Honor. May it
10 please the court.

11 DIRECT EXAMINATION

12 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

13 Q. Ms. Mitchum, prior to the break I had asked you a
14 question about State's Number Four, specifically if you had
15 weighed each of the three baggies contained therein
16 separately.

17 A. Yes.

18 Q. Did you do that?

19 A. Yes, I did.

20 Q. Did you document your findings as to those weights?

21 A. Yes.

22 Q. And do you recall the exact weights off the top of
23 your head?

24 A. Not off the top of my head. I would have to refer to
25 my notes.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR SHELTON

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1 Q. Would referring to your notes help refresh your
2 memory?

3 A. Yes.

4 Q. Please do so.

5 A. Okay.

6 Q. And what were the weights of the three individual
7 bags?

8 A. Bag one was 13.0 grams; bag two was 13.59 grams; and
9 bag three was 11.14 grams.

10 Q. And the total weight of those three combined?

11 A. 38.03 grams.

12 Q. Thank you, ma'am. Did you perform your analysis and
13 testing of the substances in State's Four and Ten in
14 accordance with your training?

15 A. Yes, I did.

16 Q. And did you prepare a report of your findings?

17 A. Yes, I did.

18 Q. And you have the original report with you in the
19 courtroom?

20 A. Yes.

21 Q. May I hold that, please. Thank you.

22 MR. BROWN: Without objection, Your Honor.

23 THE COURT: In without objection.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN, PREMARKED
25 FOR IDENTIFIED.)

CYNTHIA MITCHUM: CROSS BY MR. BROWN

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1 Q. I'm going to hand back to you what's now been marked
2 as State's Thirteen. Is that your original report?

3 A. Yes, it is.

4 SOLICITOR SHELTON: Your Honor, I move this into
5 evidence.

6 MR. BROWN: Without objection.

7 THE COURT: In without objection.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN,
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 SOLICITOR SHELTON: Your Honor, I also move State's
11 Number Four and Ten into evidence.

12 THE COURT: What is that? That's the -

13 MR. BROWN: Without objection.

14 THE COURT: In without objection.

15 (WHEREUPON, STATE'S EXHIBIT NUMBERS FOUR AND TEN,
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 SOLICITOR SHELTON: Nothing further from this witness,
18 Your Honor.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 CYNTHIA MITCHUM BY MR. BROWN:

22 Q. Ms. Mitchum, you have been down in the lab for how
23 long again?

24 A. Twenty-one years.

25 Q. In York County?

CYNTHIA MITCHUM: CROSS BY MR. BROWN

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1 A. Fourteen years in York County.

2 Q. Fourteen in York County. And you don't decide what
3 kind of tests to perform on these drugs. Somebody asks you
4 to perform a certain test. Correct?

5 A. No. I decide what test to perform on it. They just
6 tell me that this is the suspected substance I have and
7 then I'll bring it in the laboratory and then I will
8 perform a series of tests on them to determine if that's
9 what it really is or not.

10 Q. Let me rephrase my question. They ask you to test it
11 for drugs, for substance. Right? They don't ask you to
12 test for fingerprints, DNA or anything. Correct?

13 A. That's correct. Just drugs.

14 Q. Other people in the lab do that. Right?

15 A. Correct. Not in my laboratory but different labs.

16 Q. . But whoever brings the alleged contraband into the lab
17 or right next door to Mr. Patterson's shop so to speak,
18 they decide what kind of test they want run. Correct?

19 A. That's correct.

20 Q. All right. And you were instructed in this test just
21 to run an analysis for contraband or illicit drugs?

22 A. Correct.

23 Q. Okay. Now when you run this test, or when you ran
24 this particular test, what method did you use?

25 A. Now, what do you mean by what method?

CYNTHIA MITCHUM: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON

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1 Q. Well, chemical or --

2 A. Okay. I did a color test. So I started out with a
3 color test and then I also ran --

4 Q. Slow down a little bit. Explain to the jury what a
5 color test is.

6 A. Okay. A color test is where I take a portion of the
7 substance and then I'll add reagents and look for a color
8 change then that color change will give me an idea of what
9 class of compounds I might be looking at.

10 Q. And would that color change or color test be the same
11 thing you use on powder cocaine?

12 A. Yes.

13 Q. Okay. What other test did you use?

14 A. Then I also used an instrumental test.

15 Q. Explain to the jury.

16 A. An instrumental test, I take another portion of the
17 sample, dissolve it in the reagent and then put that on the
18 instrument. It will run the sample and then it will give
19 me some results. From those results, I compare those to
20 known results to make sure I've got what I think it is.

21 Q. Okay. And that's the same test also used on powder
22 cocaine. Correct?

23 A. That is correct.

24 Q. Were there any other tests you ran on this particular
25 alleged contraband?

CYNTHIA MITCHUM: REDIRECT BY SOLICITOR SHELTON
SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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- 1 A. No.
- 2 Q. Do you know how crack is made from your experience?
- 3 A. Yes. I have a very slight idea of how crack is made.
- 4 Q. And basically you wind up cooking it don't you?
- 5 A. That's correct.
- 6 Q. You stick it in the oven.
- 7 A. You can stick it in the oven, you can use a microwave.
- 8 Q. Anything to heat it up?
- 9 A. That's correct.
- 10 Q. And that's the final product. Correct?
- 11 A. That is correct.
- 12 MR. BROWN: I don't have any further questions.
- 13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 CYNTHIA MITCHUM BY SOLICITOR SHELTON:

- 16 Q. Ms. Mitchum, in your understanding of how crack is
- 17 made is water or some other liquid solvent used in the
- 18 manufacture of crack cocaine?
- 19 A. Yes, it is.
- 20 Q. And in your opinion, could that account for why this
- 21 was wet?
- 22 A. Yes, it could.
- 23 Q. In your opinion, did that account for why it's wet?
- 24 MR. BROWN: Objection, Your Honor. How could she
- 25 possibly know that -

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 SOLICITOR SHELTON: I withdraw.

2 THE COURT: I sustain the objection.

3 SOLICITOR SHELTON: I'll withdraw.

4 SOLICITOR SHELTON: Nothing further.

5 THE COURT: All right. You can step down and be
6 excused. We appreciate your time. Thank you.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR SHELTON: Your Honor, the State's next
10 witness is Sergeant John Rainier.

11 (WHEREUPON, JOHN RAINIER,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 SERGEANT JOHN RAINIER BY SOLICITOR SHELTON:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. Please identify yourself to the jury.

18 A. My name is John Rainier.

19 Q. And what do you do for a living?

20 A. I'm a police officer with the Rock Hill Police
21 Department.

22 Q. And what rank are you at the Rock Hill P.D.?

23 A. I was promoted to Sergeant in July of 2013.

24 Q. How long have you worked in law enforcement.

25 A. I think I'm on year nineteen right now.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. And did you work with the Drug Unit for a time?

2 A. Yes, I did.

3 Q. How long?

4 A. A little over five years.

5 Q. And when did you - When was your assignment changed
6 from the Drug Unit?

7 A. July 1st, 2013.

8 Q. During your time with the Drug Unit, did you
9 particular in any investigations involving crack cocaine?

10 A. Yes, sir, I did.

11 Q. Did you investigate any controlled buys?

12 A. Yes, sir, I did.

13 Q. Approximately how many investigations?

14 A. Several hundred probably.

15 Q. Did you have occasion to interview any folks who deal
16 crack?

17 A. Yes, sir.

18 Q. Any addicts?

19 A. Yes, sir.

20 Q. Can you give an approximate number of how many
21 interviews you participated in?

22 A. Probably over a hundred.

23 Q. And in those interviews, were you able to get any kind
24 of idea as to how crack cocaine is made?

25 A. Yes, sir.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. And what is your understanding of how crack cocaine is
2 made?

3 A. Basically the cocaine is mixed with usually water and
4 it's heated up on - in a stove or in a microwave. And
5 usually what they will do is take some other kind of other
6 agent and usually typically baking soda and mix it in with
7 that and then once they are done boiling it, take it off,
8 let it harden to where it turns into a rock form.

9 Q. Sergeant, were you involved in the investigation of
10 Elder Prescott Leach on June 19th, 2013?

11 A. Yes, sir, I was.

12 Q. Are you what's known as the case agent for this
13 investigation?

14 A. Yes, I am.

15 Q. Please explain the role that you had in this
16 investigation.

17 A. We developed a confidential informant and I was pretty
18 much the one that interviewed that informant and basically
19 took kind of care and custody of them and just kind of led
20 the investigation. And then if I ever needed anything, I
21 had two supervisors in that office with me to assist me
22 with whatever I needed.

23 Q. And the confidential informant you are referring to,
24 is that Tezo Ervin?

25 A. Yes, it is.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. And on June 19th, 2013, did Tezo Ervin indicate to you
2 he could buy crack cocaine?

3 A. Yes, he could.

4 Q. Did he indicate who he could buy it from?

5 A. Yes, he did.

6 Q. Who did he say he could buy it from?

7 A. Elder Leach.

8 Q. And was he searched? Was his person searched prior to
9 going to buy the crack?

10 A. Yes, sir.

11 Q. And where was the search conducted?

12 A. At that time at the Rock Hill Police Department in our
13 Narcotics Bureau office.

14 Q. Who conducted the search?

15 A. I think it was me. Before we left for the buy, it was
16 me.

17 Q. Are you certain that you are the one that conducted
18 the search?

19 A. Yes, sir.

20 Q. Describe the manner in which you conducted the search
21 of Tezo Ervin's person.

22 A. I will - If there weren't any type of outer clothing,
23 jackets or anything like that, I would take it off. I will
24 manipulate the pockets, go through them, and hoodies and
25 stuff like that. Hats, if they're wearing hats, I'll take

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 it off, go around the inter band and then I will kind of
2 section off the person as I search them into quarters and
3 then I will go through their pockets and stuff.

4 If they are a male and they are wearing pants, I will
5 have them unbuckle their pants and shake their pants out
6 real quick to make sure they don't have anything up in
7 their groin area. If they are wearing tennis shoes or
8 boots or anything like that, I'll make them take them off.
9 I'll take the soles - not the soles, but the inner liner of
10 the shoe, take it out and make sure nothing's in there. It
11 is a thorough search but it is minus a body cavity search.

12 Q. I missed that last part. You said you do not do a
13 body cavity search?

14 A. No, I do not.

15 Q. Do you recall what Tezo Ervin was wearing that day?

16 A. I don't.

17 Q. This was June 19th, 2013?

18 A. Yes, sir.

19 Q. Do you recall, was he wearing any outer clothing,
20 shirt, jacket, anything like that?

21 A. I don't think he was.

22 Q. If he had been, it would have been searched?

23 A. Yes.

24 Q. And you testified shoes, socks, pockets, that sort of
25 thing, was all searched thoroughly?

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 A. Right. If - And I forgot to go a little bit further.
2 The socks, I make them take their socks off, produce the -
3 show the bottom of their feet and spread their toes to make
4 sure there is nothing packed up underneath in between the
5 toes or anything like that.

6 Q. And why do you do that?

7 A. Just to ensure that there's a, I guess for lack of
8 term, sterile environment to make sure that he does not -
9 the informant doesn't have any type of contraband to create
10 any issues with our case that we are trying to investigate.

11 Q. Is that one of the outside variables you are trying to
12 account for for control?

13 A. Yes.

14 Q. So you know what he's going in with?

15 A. Yes, sir.

16 Q. And so in those searches, specifically what are you
17 looking for?

18 A. Weapons, any type of illegal narcotics, currency.
19 When we are doing controlled buys, any type of currency
20 that that person is carrying, we will secure because we
21 don't want it to get mixed up with any of the money that we
22 are going to provide them.

23 Q. And when you say secure, what do you mean? Secure
24 their money, what do you mean?

25 A. We'll lock it in a locker or we will hold onto it.

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 Q. Did you find anything on Tezo Ervin that day?

2 A. No, we did not.

3 Q. Did you give him any money to buy crack?

4 A. Yes, we did.

5 Q. Did you personally give it to him?

6 A. Yes. I think I did.

7 Q. How much money was it?

8 A. Three thousand, Three Hundred dollars.

9 Q. Will you take a look at State's Exhibit Number Five.

10 Does this appear to be an accurate representation of
11 the money you gave him?

12 (WITNESS REVIEWING STATE'S EXHIBIT FIVE.)

13 A. Yes, it does.

14 Q. And do you give CI's, in particular did you give Tezo
15 Ervin any instructions prior to him leaving for the buy on
16 June 19th?

17 A. Yes, I did.

18 Q. Please explain.

19 A. Because of where we were going, what we call rolling
20 surveillance where we are following the informant, I will
21 tell them to kind of give me updates as to where they are
22 because we're not following directly behind them or
23 anything like that.

24 You know we're a few hundred yards away. We'll be
25 caught up by traffic lights, stop signs, you know, other

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 traffic and stuff like that, so normally I will tell them
2 to call me and let me know where they are because since -
3 because of the nature of this case, we were trying to -
4 There were so many vehicles, I mean, other surveillance
5 vehicles and other officers, I wanted to make sure that
6 they were close by but not directly on top of the
7 informant.

8 Q. And prior to him leaving the Law Center for the buy,
9 is that when the phone call - sometime before that was when
10 the phone call was made?

11 A. To Elder Leach?

12 Q. Yes, sir. That's what I mean.

13 A. Yes, sir.

14 Q. When specifically Tezo called Leach?

15 A. Yes, sir.

16 Q. And that was recorded?

17 A. Yes, sir.

18 Q. And that's State's Number One?

19 (SOLICITOR INDICATED TO STATE'S EXHIBIT ONE.)

20 A. Yeah. Yes, sir. Sorry.

21 Q. And were you part of the surveillance team?

22 A. Yes, I was.

23 Q. During that time were you listening to live audio wire
24 that was on Ervin's person?

25 A. Yes, I was.

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1 Q. Have you listened to the other two recordings in this
2 case, State's Number Two and State's Number Three?

3 A. Yes.

4 Q. And that's the audio/video and then just the audio
5 feed?

6 A. Yes, sir.

7 Q. You've watched and listened to those?

8 A. Yes, sir.

9 Q. And as to the audio, is it consistent to what you
10 heard on the live wire from that day?

11 A. Yes, it was.

12 Q. Did anything out of the ordinary occur during this
13 investigation?

14 A. Other than Mr. Ervin's car kind of overheating, you
15 know, he had to pull over for a minute, everything went
16 kind of according to plan.

17 Q. Did you speak with Tezo Ervin on the phone while he
18 was driving to the buy location?

19 A. Yes, sir.

20 Q. And to be clear, the buy location was where?

21 A. On Wildcat.

22 Q. And is that in Rock Hill?

23 A. Yes.

24 Q. In York County?

25 A. Yes, sir.

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1 Q. And what were the nature of those phones calls from
2 Tezo to you?

3 A. I was trying to make sure he was giving me the updates
4 of where he was and stuff like that and he had - one phone
5 call he had called me and told me about a person that knew
6 him had passed by and he thought that that individual was
7 turning around to come check on him, but I guess they
8 didn't. And I was just making sure that he was giving me
9 his updates. I'm a little OCD so I wanted to make sure the
10 case went as smooth as possible, so I called him and he
11 called me..

12 Q. And as for State's Number Two, the video, did you
13 watch that video?

14 A. Yes, I have.

15 Q. Is there a time stamp on that video?

16 A. Yes.

17 Q. Is that - Is it the date and time that's shown on the
18 video?

19 A. No, it's not.

20 Q. Please explain that.

21 A. Our video equipment is kind of sensitive and somewhat
22 fragile unfortunately and if a battery dies during
23 anything, even if it's just in stationary mode that, you
24 know, we're talking about a device that is very, very small
25 and the battery is very small, so it doesn't have a very

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1 long life to it.

2 If the battery dies, it kind of resets and it kind of
3 - and you have to reset it through a program on the
4 computer. The previous night we had used it and I thought
5 it was properly charged and we charged it over night and we
6 had left it on and it had died so we had to go back and
7 recharge it and when it did, it produced a different time
8 stamp.

9 Q. So to be clear, was this investigation the afternoon
10 of June 19th, 2013?

11 A. Yes.

12 Q. And the time stamp on the video is not correct?

13 A. Yes.

14 Q. Did you - Were you part of the take down team at
15 Wildcat?

16 A. Yes, sir, I was.

17 Q. Can you describe what happened?

18 A. Once we had kind of gotten the word that, you know,
19 everything had - the transaction had occurred, we started
20 to move in. Wildcat Creek is kind of a - it's a country
21 road and it's got some turns in it and stuff and the
22 driveway wasn't - it's not like a regular City of Rock Hill
23 type driveway. It's a little bit longer.

24 When I pulled in, I wasn't the first vehicle. I think
25 I was the second or third vehicle, and when we pulled in we

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 had seen Mr. Leach walking from the passenger side of Mr.
2 Ervin's vehicle and he had started to walk towards his -
3 kind of towards his vehicle and then that's when we exited
4 our vehicles. We were pretty close. I mean, we were kind
5 of caravanning kind of close and that's when we got out and
6 effected the arrest on Mr. Leach.

7 Q. In this area of Wildcat, how far from Elk's Lodge is
8 that?

9 A. Quarter of a mile.

10 Q. And just to be clear, where is Elk's Lodge?

11 A. It's off Ogden Road just south of Squire.

12 Q. So it takes a matter of a minute or two to get from
13 Elk's Lodge to where you are describing?

14 A. Yeah, I'd say. Depending upon how fast you were
15 driving.

16 Q. And you had indicated you were the third vehicle that
17 arrived. Are you referencing Drug Unit vehicles?

18 A. Yes, sir.

19 Q. Were there any other vehicles already there that were
20 not Drug Unit vehicles?

21 A. Yes.

22 A. How many?

23 Q. Two.

24 A. And I believe you said that it was Ervin's vehicle and
25 Leach's vehicle?

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1 Q. Yes, sir.

2 MR. BROWN: I'm going to object to the reference to
3 Mr. Leach's vehicle. Nobody's established that.

4 THE COURT: Well he's leading questions too.

5 Rephrase your question. I sustain the objection.

6 BY SOLICITOR SHELTON:

7 Q. How were the vehicles positioned?

8 A. As the drive comes in, it goes towards a residence and
9 the drive - I don't know if it's - it's not like it's a
10 looping driveway. It wasn't a manicured lawn or anything
11 like that. Mr. Ervin's vehicle was parallel with the
12 residence and the other vehicle in question was kind of -
13 looked like it was pointed face in like if you were to
14 drive straight, it would drive straight into the house and
15 it almost in an L - kind of in an L shape I guess.

16 Q. I have a white board here. Do you think it might help
17 to assist the jury for you to kind of draw a rough diagram
18 of what you are describing?

19 A. Yes, sir.

20 Q. If you would, please, step down here while I set this
21 up. You may have to help me with this thing.

22 (WITNESS LEAVES WITNESS STAND.)

23 Q. Let's position it right up here so we can move it
24 further.

25 MADAM COURT REPORTER: Move in close to the mic. Move

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON

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1 over close to the over head mic, Mr. Solicitor, so I can
2 hear him. He's gonna have his back to me, please.

3 SOLICITOR SHELTON: Okay. Yea, ma'am.

4 MADAM COURT REPORTER: Thank you, sir.

5 (WITNESS SKETCHING ON BOARD.)

6 Q. Please explain to the jury what this sketch
7 represents.

8 A. This is the - kind of the overall area when Mr. Ervin
9 was talking about the Elk's Lodge where he was kind of - He
10 had to cool his car down he was right here and this is
11 Ogden Road. This is Squire and this is Wildcat. It's not
12 to scale so I apologize. When we pulled in, this right
13 here, the CI vehicle, and this is the unknown vehicle in
14 question. The point is basically the front of the car so
15 that's kind of how they were facing. This is just - This
16 was the residence that - this is the yard that the incident
17 took place

18 Q. So to be clear here, when you arrived and you said you
19 saw Leach walking to the passenger side of this CI vehicle?

20 A. When I saw him, he was about right here at the back
21 quarter panel of the other car and was walking. And we're
22 talking a distance of maybe twenty-five, thirty feet.

23 Q. And was he walking in the direction of the other car?

24 A. To this unknown silver, Volkswagen Passat.

25 Q. And other than the CI and Mr. Leach, were there any

SERGEANT JOHN RAINIER: DIRECT BY SOLICITOR SHELTON
CROSS BY MR. BROWN

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1 other individuals in that general area?

2 A. No, sir. Wildcat, it's a dead end road and it's kind
3 of, you know, there's not very many houses on there. I
4 think may be five or six.

5 Q. All right. Thank you.

6 (WITNESS RETURNED TO WITNESS STAND.)

7 Q. So was Elder Leach arrested that day at Wildcat Creek
8 Road?

9 A. Yes, he was.

10 Q. What happened to Tezo Ervin?

11 A. We handcuffed him and transported him back to the Law
12 Center as well, the Rock Hill Law Center.

13 Q. And did you meet back up with Tezo at the Law Center?

14 A. Yes, I did.

15 Q. After the buy at Wildcat, did you search Tezo again at
16 the Law Center?

17 A. Yes, sir, I did.

18 Q. Did you search him in the same manner as you described
19 earlier?

20 A. Yes.

21 Q. Did you find anything on him?

22 A. No, sir.

23 Q. Did you find any drugs?

24 A. No, sir.

25 Q. Did you find any money?

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN

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1 A. No, sir.

2 Q. Did this entire investigation occurred in York County,
3 South Carolina?

4 A. Yes, sir, it did.

5 SOLICITOR SHELTON: Nothing further.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 SERGEANT JOHN RAINIER BY MR. BROWN:

9 Q. Whose residence was all this happening in front of?

10 A. I don't know, sir.

11 Q. Was anybody at home or do you know?

12 A. No one came outside.

13 Q. Well there was a car in the driveway though wasn't it?

14 A. Yes. Well --

15 Q. Well, two cars there plus two cars in the driveway?

16 A. No. What I remember is two cars, Tezo and then the
17 silver Passat.

18 Q. And there wasn't a car in the driveway?

19 A. Not that I remember.

20 Q. And how far off the road was this particular
21 residence?

22 A. It's kind of a country residence. I mean I'd say --

23 Q. Best guesstimate.

24 A. A hundred and fifty feet.

25 Q. Hundred and fifty feet. And how many -- Wildcat Road,

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN

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1 how many houses, did you say five or ten?

2 A. I'd say less than ten. It's a very - It's a dead end
3 road and it's - I think it's kind of family, you know.

4 Q. Was any cars parked on the road that day or do you
5 remember?

6 A. Not that I remember.

7 Q. Is it unusual for cars to park on that road or do you
8 know?

9 A. Sir?

10 Q. Is it unusual for cars to park on that road. Like
11 people park in front of their houses.

12 A. I think all the times I've been down there, all the
13 cars have been, you know, in a house. They were parked in
14 the yard.

15 Q. You wrote the Summary up for this case did you not,
16 sir?

17 A. Yeah, I did.

18 Q. Do you have a copy of that, sir?

19 A. No, I don't. I'm sorry.

20 Q. Starting on the fourth line to the bottom of page
21 three. "Investigator Gander located a brown paper bag that
22 contained plastic with approximately 90.2 grams of crack in
23 it." Correct?

24 A. I'm sorry. I'm not --

25 Q. Let me show you, sir.

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN

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1 A. I'm sorry.

2 Q. Right here. Starting right there. Fourth line from
3 the bottom.

4 A. Yeah. I'm sorry. There you go. Yeah.

5 Q. So State's Investigator Gander located a brown paper
6 bag that contained plastic with approximately 90.2 grams of
7 crack in it. Correct?

8 A. Yes.

9 Q. And you got that weight from, I'm assuming from
10 previous testimony, Officer Faulkenberry?

11 A. Yes, sir.

12 Q. And those are digital scales you use down at the DEU
13 Unit. Correct?

14 A. Yes, sir.

15 Q. And the purpose of these scales - when I say digital,
16 explain to the jury what that means as opposed to the old
17 postal scales or whatever.

18 A. It gives us a digital readout. It's like going home
19 and weighing yourself on your home scale and it's got a
20 digital readout to it.

21 Q. Okay. And they are pretty accurate. Right?

22 A. Yeah. Yes, sir.

23 Q. As a matter of fact, you use these to weigh drugs to
24 charge people?

25 A. Yes, sir.

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN

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1 Q. Based on the weight, they get different charges that
2 carries different penalties.

3 A. That's correct.

4 Q. And you would agree with me the higher the weight, the
5 more higher the penalty?

6 A. Correct.

7 Q. "In the front passenger seat of Leach's Volkswagen
8 Investigator Faulkenberry located approximately 28 grams of
9 crack and packaging material." Correct?

10 A. Yes, sir.

11 Q. Okay. And that again was you got that weight from
12 Investigator Faulkenberry. Correct?

13 A. Yes, sir.

14 Q. And I believe you testified that Mr. Ervin stopped
15 because his car was over heating?

16 A. I'm sorry.

17 Q. You testified that he told you that he stopped because
18 his car was over heating?

19 A. Yeah that and to give us a little bit of time because
20 he had said that Mr. Leach had not --

21 Q. I didn't ask you what he said. Did he tell you that
22 he was stopped because his car was over heating? Yes or
23 no.

24 A. Yes, sir.

25 Q. Okay. And as you testified to, of course, you are not

SERGEANT JOHN RAINIER: CROSS BY MR. BROWN
REDIRECT BY SOLICITOR SHELTON

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1 right behind him, you're updating. Where are you, what's
2 going on now? Right?

3 A. Yes.

4 Q. And that was the phone calls I heard back and forth.
5 Correct?

6 A. That's correct.

7 Q. All right. As a matter of fact, Mr. Ervin didn't come
8 straight back to the police department from this drug deal
9 did he?

10 A. Uh --

11 Q. He didn't come straight to the police department did
12 he?

13 A. Well, we transferred him back.

14 Q. Well, you didn't go by Jack in the Box first? Didn't
15 one of your officers take him by Jack in the Box and buy
16 him lunch?

17 A. I don't know.

18 Q. Did Officer Holland take him by Jack in the Box?

19 A. He might have. I don't recall.

20 MR. BROWN: I beg the court's indulgence one second.

21 (PAUSE.)

22 Q. You didn't see this transaction, per se, did you
23 yourself?

24 A. The transaction --

25 Q. Between Mr. Leach - Alleged transaction between Mr.

SERGEANT JOHN RAINIER: REDIRECT BY SOLICITOR SHELTON

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1 Leach and Mr. Ervin?

2 A. No, sir. No, sir.

3 MR. BROWN: I have no further questions.

4 REDIRECT EXAMINATION

5 SERGEANT JOHN RAINIER BY SOLICITOR SHELTON:

6 Q. Sergeant, is there a reason under Drug Unit procedures
7 for lack of a better word why you might have taken a detour
8 or Holland might have taken a detour in bringing Ervin back
9 to the Law Center after the buy?

10 A. He was probably hungry if he stopped at Jack in the
11 Box. Originally the deal was suppose to go earlier in the
12 day and it didn't and I didn't want to loose chain and
13 custody of my informant, so I can't speculate on what Vince
14 did, but if he took him to Jack in the Box, I can imagine
15 he was hungry.

16 Q. Let's take a look at State's Number Four real quick.

17 (WITNESS REVIEWS STATE'S EXHIBIT FOUR.)

18 A. Yes.

19 Q. Is there a bag in there? A brown bag?

20 A. Yes.

21 Q. Is it paper or plastic?

22 A. It looks plastic.

23 Q. So when you wrote the Summary, could you have written
24 down the wrong type bag in the Summary?

25 A. Yes.

1 SOLICITOR SHELTON: Nothing further.

2 MR. BROWN: No further questions, Your Honor.

3 THE COURT: You can step down and be excused. We
4 appreciate - Well, you are the case agent. You can stay
5 here.

6 SERGEANT RAINIER: Yes, sir. Yes, sir, all right.

7 (WITNESS LEAVING WITNESS STAND.)

8 SOLICITOR SHELTON: Your Honor, the State rests it's
9 case.

10 THE COURT: All right. Members of the jury panel, the
11 State has rested it's case and telling us that its
12 presented it's evidence. We're gonna stop for the day.
13 And we've got some legal matters we always have to take up
14 at this point so rather than keep you back in the jury room
15 for a while and also so we don't run into later in the
16 evening, we are going to go ahead and stop and start back
17 at ten in the morning so have a pleasant evening.

18 And you are not in the position yet to make up your
19 mind or discuss the case and don't let yourself be exposed
20 to anything outside the courtroom regarding or even
21 remotely coming close to regarding this case. So have a
22 pleasant evening and we'll see you back at 10:00 a.m. in
23 the morning.

24 (JURY EXITS COURTROOM AT 3:55 P.M.)

25 THE COURT: Anything from the State?

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1 SOLICITOR SHELTON: Nothing from the State, sir.

2 THE COURT: Defense?

3 MR. BROWN: Your Honor, at this time at the close of
4 State's evidence I would make a motion for directed verdict
5 on these two charges. Reasonable trier of fact could not
6 conclude that there's evidence here to prove guilty beyond
7 a reasonable doubt on either charge, my first motion,
8 general motion.

9 Second motion is the testimony from the chemist in
10 this case is that the same test that tested positive for
11 crack cocaine is also the exact same test used for powder
12 cocaine. She never differentiated between the two.

13 I asked specifically on cross examination that's the
14 same test used to test powder cocaine. I would move for a
15 direct verdict as to the crack cocaine charges. The charge
16 should be dismissed because nobody has clearly established
17 this is crack cocaine versus powder cocaine.

18 THE COURT: All right. The first motion, I deny. I
19 think there is sufficient evidence from which a jury could
20 reach the conclusion the State has proven beyond a
21 reasonable doubt that Mr. Leach is guilty of one or both of
22 these offenses, so I deny that motion.

23 I thought she testified that this was crack and gave
24 certain weights, grams 38.01, 38 point something and 12
25 point something on the other and I'd have to see a report

1 to see what it says.

2 Could you hand it to me; Mr. Sheldon.

3 She -

4 MADAME COURT REPORTER: The exhibit, States Thirteen,
5 correct, Judge?

6 THE COURT: I have no idea. That's why I asked Mr.
7 Shelton to give it to me.

8 SOLICITOR SHELTON: Okay. Yes, sir.

9 THE COURT: All right. Items of Evidence. Item One,
10 result one is cocaine base a gram of crack. The result two
11 are cocaine base crack. You did ask her that and I
12 certainly think that's fair game to argue to the jury that
13 the State has not proven that it was crack. It may very
14 well just be powder cocaine but I think the evidence from
15 her was that it was crack.

16 I deny that motion also.

17 MR. BROWN: Thank you, Your Honor.

18 THE COURT: And, Mr. Leach, can you hear me?

19 MR. LEACH: Yes, sir.

20 THE COURT: We've reach the point in the trial where
21 you have a right to present a defense if you wish. You can
22 call witnesses on your behalf but you do not have to. The
23 State has to prove your guilt beyond a reasonable doubt.
24 You do not have to prove anything. You are presumed
25 innocent of the charges. I will tell the jury that

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1 probably more than once during the - my Charge.

2 You have a right to testify. If you exercise that
3 right and testify, you can be cross-examined.

4 Does he have any impeachable offenses?

5 SOLICITOR SHELTON: Yes, sir.

6 THE COURT: If you testify, you will have to answer
7 truthfully. You would be under oath. The State can ask
8 you about the events of this particular day. They can also
9 use for what's called impeachment, that is, an effort to
10 show that you may not be as truthful as someone who doesn't
11 have a criminal record, to call the jury's attention to
12 certain criminal offenses you have on your record.

13 I'm going to ask Mr. Shelton, the Solicitor, at this
14 time to tell me what they are.

15 SOLICITOR SHELTON: Yes, sir, Your Honor. Some of
16 these are very old indictments so it's kind of hard to
17 engage. In 1992, he was convicted of distribution of crack
18 in the proximity of a park. He was sentenced to fifteen
19 years in prison. I believe that takes it within the ten
20 year frame. I believe if we call it what it is and not
21 reference the sentence based on previous rulings.

22 THE COURT: What was the charge again?

23 SOLICITOR SHELTON: Distribution of crack within
24 proximity of a park and then there is also distribution of
25 crack. He received a twenty year sentence for that in

1 1992. A twenty year sentence on the distribution and it
2 says fifteen years for the proximity charge from 1992.

3 THE COURT: But you know he didn't serve fifteen
4 years. It depends on when his sentences expired and that
5 would be when he maxed out.

6 SOLICITOR SHELTON: Okay.

7 THE COURT: If he maxed out before 2004, May of 2004,
8 then I would say they could not be used.

9 SOLICITOR SHELTON: Okay.

10 THE COURT: And also if it's a prior drug charge, I
11 ask that you not reference it as a drug charge but just as
12 a charge for which you could receive punishment that
13 exceeded one year imprisonment.

14 SOLICITOR SHELTON: Okay. I'd have to do some
15 research, Judge, to see if he had maxed that out or not.
16 That's a potential charge.

17 And then in 1999, he was convicted of possession of
18 crack cocaine, third offense. He received a ten year
19 sentence, subject to the same limitations you discussed.

20 THE COURT: Why don't you look at those. We'll talk
21 about that in the morning.

22 SOLICITOR SHELTON: Okay. Very good.

23 THE COURT: Anyway, they can ask you even if you
24 testify about your prior offenses, if they have occurred
25 within the last ten years and carry more than one year in

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1 jail. Or they have what we call an element of dishonesty
2 about it such as stealing or shoplifting or something like
3 that.

4 Now, you have the absolute Constitutional right to
5 remain silent also, Mr. Leach. If you exercise that right,
6 I will tell the jury that you have exercised your right to
7 remain silent and they cannot use that against you in any
8 way whatsoever. They cannot discuss that in the jury room
9 and they cannot factor it into their own deliberations.
10 It is your decision to exercise your Constitutional right
11 to remain silent.

12 Do you understand all that?

13 MR. LEACH: Yes, sir.

14 THE COURT: Do you have any questions about it?

15 MR. LEACH: No.

16 THE COURT: Now the option to testify or not is
17 your's, it's not your attorney's or - and Mr. Cronin's.
18 It's not the State's, of course. It's not mine. Now you
19 can obtain on break over night, I know it's difficult from
20 where you stand to communicate with others, but you have a
21 right to discuss the case and determine whether or not you
22 wish to testify or not but ultimately it's Mr. Leach's
23 decision.

24 Do you understand that?

25 MR. LEACH: Yes, sir.

1 THE COURT: All right. Well, I'll ask you in the
2 morning. Just so the lawyers can do some planning, its
3 your intention, and if you change your mind one way or the
4 other, but right now so I'll know and be getting ready for
5 tomorrow and the State will know, do you intend to testify
6 or exercise your right to remain silent?

7 MR. LEACH: I'd like to talk it over with my attorney.

8 THE COURT: Okay. You certainly have that right and
9 I'm going to give you that right.

10 But I will go ahead and ask the attorneys if they have
11 any request to charge, please hand them up to me. And on
12 the charge of 28 grams or more, whether there is a lesser
13 included because you charged him with a certain amount.

14 SOLICITOR SHELTON: Your Honor, I do believe that he
15 would be entitled to the lesser included of ten grams to
16 twenty-eight grams, but there is a recent case, I think its
17 Gore is what it's called. As long as there is substantial
18 evidence to support the trafficking charge, the defense is
19 not entitled to any possession charges on either of those.

20 THE COURT: I think possession is out. And I knew
21 there was a case. I could not recall whether or not it
22 also dealt with the issue of whether or not if the only
23 evidence, and as to one that was the 38 grams, whether or
24 not since that was the only evidence the jury had to find
25 them guilty or not guilty of that. But we've got a verdict

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1 form that includes the lesser and we'll show you that in
2 the morning.

3 SOLICITOR SHELTON: Your Honor, do you want to
4 potentially get together a little bit earlier tomorrow and
5 go over the charge?

6 THE COURT: Yeah. About 9:30, please.

7 SOLICITOR SHELTON: Okay.

8 MR. BROWN: And, Your Honor, for the record, I would
9 request to charge, I would ask that he be charged with
10 simple possession of crack cocaine and simple possession of
11 powder cocaine. Let me withdraw that. I withdraw that
12 because that's not a lesser include offense to simple
13 possession of crack.

14 I would ask that it be charged down to simple
15 possession of crack, for the record.

16 THE COURT: Okay. Simple possession of crack.

17 MR. BROWN: I would ask that it be charged
18 trafficking, lesser include trafficking, PWID, and
19 possession of crack.

20 THE COURT: All right. Well I'm going to ask the
21 Solicitor to give me that case. But I think there is some
22 law on that.

23 SOLICITOR SHELTON: Yes, sir. It's a 2012 case. I'll
24 pull it and bring it to you tomorrow.

25 THE COURT: All right. And we'll get together at

1 9:30.

2 Yes, sir, Mr. Brown

3 MR. BROWN: We will do it at 9:30 tomorrow any
4 additional requests that I have?

5 THE COURT: If you have, yes.

6 MR. BROWN: Yes, sir. I think I'm just going to have
7 one. Excuse me. 9:30, Your Honor?

8 THE COURT: 9:30 in the morning. Have a pleasant
9 evening.

10 (COURT IN RECESS AT 04:10 P.M..)

11 (COURT BACK IN SESSION WEDNESDAY, MAY 14, 2014 AT
12 10:00 A.M..)

13 (STATE VERSUS DAVONTA BLAKE PLEA WITH ATTORNEY TWANA
14 BURRIS.)

15 (COURT IN RECESS AT 10:25 A.M.)

16 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
17 ELDER PRESCOTT LEACH AT 10:30 A.M..)

18 THE COURT: Thank you. Take your seats.

19 You ready to proceed?

20 MR. BROWN: Yes, sir.

21 THE COURT: All right. The first issue is we have a
22 juror who called in sick. We discussed that with Counsel
23 in chambers and my proposal, based on my belief, the juror
24 is being up front with us and she has indicated she has a
25 doctor's appointment tomorrow, could not get one today and

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1 will send us a doctor's statement at such time - at that
2 time, but I'm ready to go forward with pulling an
3 alternate.

4 What's the State's position?

5 SOLICITOR SHELTON: Your Honor, I'll leave it in your
6 discretion.

7 THE COURT: Defense?

8 MR. BROWN: Yes, Your Honor. Just draw what we talked
9 about back in chambers.

10 THE COURT: All right. We've got two names and I'll
11 ask, Mr. Kruger, would you please come draw a lot for us?

12 MR. KRUGER: Yes, sir.

13 THE COURT: Thank you. All right. Mr. Kruger has
14 drawn a tightly wrapped piece of paper that says Number 95,
15 Christopher Hilton will be seated with the panel now.

16 All right. We've gone over - The next thing will be
17 the - We're at the point where the Defense has a right to
18 present a defense. Does the Defense intend to call any
19 witnesses?

20 MR. BROWN: Defense rests, Your Honor.

21 THE COURT: All right. Mr. Leach, you exercise your
22 right to remain silent; is that correct?

23 MR. LEACH: Yes, sir.

24 THE COURT: All right. Then, you will have - Go
25 ahead.

1 SOLICITOR SHELTON: Also I would renew my previous
2 motions for a Directive Verdict at this time at the close
3 of the evidence ---

4 THE COURT: All right. That motion -

5 SOLICITOR SHELTON: --- for the record.

6 THE COURT: That motion is denied. I, again, think
7 there is sufficient evidence from which the jury could
8 find, they may not, but could find Mr. Leach guilty beyond
9 a reasonable doubt on one or both of these charges.

10 Now, we have gone over our request to charge in
11 chambers and I think we've got that fleshed out very well.
12 The only issue may be and I've got it resolved, but I want
13 to let anybody put on the record anything they want, the
14 question of whether or not there are any lesser included
15 offenses. I have read the cases handed up by the State,
16 *State versus Gore*, *State versus Brown*, and I think *State*
17 *versus* - and I left them on my desk, and I think *State*
18 *versus Gandy*. Anyway the Defendant ---

19 SOLICITOR SHELTON: Your Honor, I'm sorry to
20 interrupt. The other one was *Sellers*.

21 THE COURT: *Sellers*. The case makes it clear that
22 where the - there is uncontradicted evidence that the
23 amounts of the alleged controlled substance cocaine or, in
24 this case, crack cocaine, exceed the trafficking level,
25 it's uncontroverted that the - there is no lesser included,

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1 it's trafficking or not. As to the 28 grams or more, we do
2 have the - I don't know if you call it a lesser included
3 offense, but the jury will be given the option of 28 grams
4 or more or 10 grams or more which have the effect of being
5 somewhat of a lesser included, although I don't know that
6 technically that would be what it's called, but we will go
7 ahead and be submitting that.

8 Anything else on the charge? You got all the verdict
9 forms from the State?

10 SOLICITOR SHELTON: The verdict form, I would just
11 request to take a look at it, consistent with what we
12 talked about and make sure there are two separate forms ---

13 THE COURT: All right.

14 SOLICITOR SHELTON: --- to make sure the indictment
15 numbers are correct.

16 THE COURT: All right. You want to do that?

17 Mr. Brown, you can come up too.

18 MR. BROWN: Yes, sir.

19 (BENCH CONFERENCE OFF THE RECORD AT 10:36 A.M..)

20 THE COURT: The State waive - well, not waive, the
21 State has to open and Defense has a right to close.

22 Anything else before we get the jury in?

23 MR. BROWN: Yes, sir. Your Honor, just for the record,
24 I would also request of the Court, I understand the Court's
25 ruling, I just want to put it on the record, less - I would

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 request that the Court charge lesser-included offense to
2 include possession with intent to distribute crack cocaine
3 on both charges and simple possession of crack cocaine on
4 both charges. I understand the Court's ruling and I just
5 want to put that on the record.

6 THE COURT: Well, I - We discussed that and I think
7 the case is very clear and on the one of 10 grams or more,
8 it would actually not even be possession with intent to
9 distribute. If there was a lesser, it would actually be a
10 distribution because charging that is that the CI was
11 actually handed to - or put into the possession of the CI.

12 SOLICITOR SHELTON: Your Honor, just so the record.
13 That's actually the 28 or more trafficking or distribution
14 level.

15 THE COURT: Oh, the 28 or more. I got it backwards.

16 SOLICITOR SHELTON: Yes, sir.

17 THE COURT: Okay. I'm sorry. All right. Anything
18 else before we get the jury in?

19 SOLICITOR SHELTON: Nothing from the State, sir.

20 MR. BROWN: No, ma'am - No, sir.

21 THE COURT: Bring in the jury.

22 (JURY REENTERS COURTROOM AT 10:39 A.M..)

23 THE COURT: Mr. Hilton, you are an alternate no more.
24 We've lost one juror because she was ill, we're sorry to
25 hear that, so as a result we have seated you and now

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 instead of being an alternate, you are one of the twelve
2 jurors. Ms. Gardner, of course, remains the other -- the
3 only other alternate at this time.

4 The State, as you know, has rested. The Defense has
5 rested and not - as it has a right of not presenting any
6 further evidence by either side, so at this time, the State
7 will open with their closing argument, and then the Defense
8 will have the last closing argument, and then I will charge
9 you the law that you are to apply to the facts of this case
10 as you determine as you determine the facts that do exist.

11 Counsel.

12 SOLICITOR SHELTON: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 SOLICITOR SHELTON: Good morning.

16 Ladies and Gentlemen, Elder Prescott Leach is charged
17 with two separate counts of trafficking in crack cocaine.
18 You're going to hear Judge Hayes explain to you what the
19 charge is and it's this - what the law defines that charge
20 as, and it's this lengthy legalese listing of a set of
21 circumstances, and there is a set amount of weight that we
22 have to prove, but these are two separate charges and they
23 can be broken down pretty simply.

24 First, there is trafficking by distribution, so you
25 have a person who knowingly sells and delivers, or

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 conspires to sell and deliver, 28 grams or more of crack
2 cocaine which is a cocaine base. That's as simple as the
3 first charge actually is.

4 And the second charge is trafficking in crack cocaine,
5 trafficking by possession. A person who is knowingly in
6 actual or constructive possession of 10 grams or more of
7 crack cocaine which is a cocaine base. Again, that charge
8 breaks down pretty simply. There are some legal terms in
9 there that you're going to hear Judge Hayes instruct you on
10 some of the facets, especially with the possession charge.
11 The words knowingly, we - The State always has to prove
12 that Mr. Leach knew what he was doing. That he knew this
13 was crack. And actual or constructive possession, there's
14 two different ways the State can demonstrate he was in
15 possession of both.

16 I'll explain that in a little bit more detail and then
17 at the end, at the close of both arguments, Judge Hayes
18 will instruct you on what the law is on those concepts.

19 And then finally we - So that goes to the possession
20 element and we have to prove the weight element and we have
21 to prove it's crack.

22 So the trafficking by distribution, I argue it breaks
23 down to two key questions: One, was this a drug deal and
24 two, was it Elder Leach? So the first question, was this a
25 drug deal? Yes, this was a drug deal. How do we know?

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 Tezo Ervin told Drug Unit officers he could buy crack. He
2 agreed to work as a confidential informant. Ervin knows
3 who sells it.

4 In this case, he knows that Elder Leach sells it 'cause he
5 says right off the bat, I can buy it from Elder Leach, and
6 he sets up a meeting. He knew Leach's phone number. He
7 called him from his cell phone and that call was recorded,
8 State's Number One, we're going to listen to it in a
9 second, and a meeting was set up at Wildcat and that's
10 where the meeting took place.

11 So Ervin called Elder Leach and set up the drug deal
12 and he testified that's the person that he called on the
13 phone, and you can hear both men's voices on the phone. So
14 that's important. I ask you to pay careful attention to
15 the voices you hear on the call, if you haven't already
16 during the trial, you're going to hear the same voices on
17 the other recordings.

18 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY AT 10:44
19 A.M..)

20 SOLICITOR SHELTON: Ladies and gentlemen, ya'll are
21 the finders of the fact. What you believe is what matters.
22 What you decide the facts are is what matters. My argument
23 to you is that phone call demonstrates that these two men
24 knew each other and they knew each other well enough to
25 where there wasn't a hey, who is this, it was hey, what's

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 happening, man?

2 Tezo Ervin testified he's known Elder Leach for
3 twenty-plus years and he's from Rock Hill. He's familiar
4 enough that he can make a phone call to Elder and Elder
5 knows who's calling. And I'm also going to breakdown my
6 understanding of what that conversation is. Again, you're
7 the trier's of the fact. What you hear, what you decide
8 the facts are is what is important in the trial, but this
9 is my argument as to what that conversation said.

10 The phone call shows it's a drug deal. Leach answered
11 and said, "What's happening?" Not who is this, "What's
12 happening?" Ervin said, "What's going on?" Leach asked,
13 "You ready for this?" "Ready for what?" "The crack."
14 Ervin said, "Yeah, yeah, I'm going to buy the crack from
15 you." Leach said stop -- something about stop by and pick
16 it up and bring it a little closer. Ervin asks, "Where you
17 want to meet," so they're setting up a meeting location.

18 Why are they setting up a meeting location? Cause
19 there's going to be a crack deal. Leach said, "Come to
20 Wildcat and I'll be there in about twenty-five minutes."
21 Ervin said, "All right." And he didn't say where is
22 Wildcat we talking about? He said come to Wildcat, okay,
23 go to Wildcat. Leach asked, "You want the whole three?"
24 Three ounces of crack cocaine as Tezo Ervin testified.

25 Ervin said, "Yeah," and Leach confirmed, "All right.

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 I'll be there in about twenty-five minutes." The deal is
2 struck right there. If that was all the evidence the State
3 had, we've proved that there is a conspiracy to distribute
4 three ounces of crack cocaine, 28 plus grams of crack right
5 there. Ervin confirms it, we got a deal.

6 I beg the Court's indulgence real quick.

7 (PAUSE AT 10:48 A.M..)

8 SOLICITOR SHELTON: All right. Now Mr. Brown may
9 argue to you when it's his time - I don't know what he's
10 going to argue to you, but he may argue some points to you
11 that I'm trying to anticipate. I go first; he goes second.
12 We have to go in some kind of order, so I'm anticipating
13 what he might argue to you about the phone call.

14 He might argue to you that you don't hear the words
15 crack cocaine to that guy that we say is Mr. Leach, that
16 the State says is Mr. Leach on the phone call; therefore,
17 there is just no way we can prove that was a phone call
18 setting up a crack cocaine deal.

19 Think about the words that were used and recall Tezo
20 Ervin's testimony. Look at the circumstances as a whole.
21 This phone call was about buying crack cocaine, in
22 particular about Elder Leach selling crack cocaine to Tezo
23 Ervin.

24 And the slang words they use prove it's a drug deal.
25 Leach asked, "You ready for this?" Ervin says, "Yes." "You

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 want the whole three?" Ervin says, "Yeah." "Come to
2 Wildcat, I'll be there in about twenty-five minutes." "All
3 right." They set up the drug deal during that
4 conversation. They didn't have to spell out what they were
5 talking about, they both knew.

6 This was a controlled buy as you heard the Drug Unit
7 officers tell you. The officers control variables. They
8 control what the CI took to the deal and controlled buys,
9 in general, are they control what CI's take to the deal,
10 the Confidential Informants bring with them. They put
11 audio/video recording equipment in vehicles. Live wire on
12 the person. They do that to monitor what's going on so
13 they know what happened and is happening. And it's also
14 evidence-gathering purposes.

15 And they also search their informants, as well as the
16 cars they take to the buy before they go to the b buy.
17 They're controlling the situation. This is their
18 investigation. They want to know what the informants,
19 their cooperating witnesses, their agents, whatever you
20 want to call them, they want to know what they're taking to
21 the deal.

22 And they give them money to buy the drugs. The
23 controlled buy on this day, June 19th, 2013, Tezo Ervin was
24 the Confidential Informant. He was thoroughly searched
25 before the deal: no drugs, no money, no weapons. Sergeant

CLOSING STATEMENT: BY SOLICITOR SHELTON

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1 Rainier told you yesterday he did a thorough search. He
2 described the way he searched him to going all the way down
3 into the liners of his shoes and taking his socks off.

4 Ervin didn't take anything to the deal that they
5 didn't give him, and the only thing they gave him was the
6 money.

7 His car was thoroughly searched twice before the deal.
8 Remember Harrelson talking about that Monday afternoon.
9 The car was in his custody and control, that being
10 Harrelson, prior to the deal; no drugs, no money and no
11 weapons in the car. Ervin was given Thirty-three Hundred
12 dollars by the Drug Unit to buy the drugs. That's all he
13 took with him.

14 And then the same day after the buy, Ervin was
15 thoroughly searched after the deal. He was driven from
16 Wildcat by Officer Holland of the Drug Unit. Searched
17 again by Rainier at the law center and no drugs, no money,
18 no weapons. Ervin's car was thoroughly searched after the
19 deal. Nothing was in plain view in the car per Dantzler.
20 He drove it from Wildcat back to the parking deck across
21 from Rock Hill P.D.. Harrelson was waiting for the car,
22 took possession of it, thoroughly searched the car; again,
23 no drugs, no money, no weapons. He didn't take anything
24 with him other than money, and he didn't come back with
25 anything. He didn't even come back with the money or the

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1 drugs, and we'll get to that in a second.

2 And then on top of those, the nature of the
3 investigation and the phone calls, we have the recordings,
4 the audio/video recording and the live wire recording, and
5 we're going to go through some parts of those that are very
6 relevant. The buy video, in general, and you see on the
7 video Tezo's drive into Wildcat and he - he's confirming
8 the meeting location along the way.

9 Now, Tezo stops at Elks Lodge for a minute and he gets
10 out of his car and he opened his hood, and he told you guys
11 all about that. He says he was stalling for time. Rainier
12 says that he had been having car trouble around the time.
13 Whichever one it was, Tezo has testified he didn't recover
14 anything from the outside of his car. Harrelson had
15 checked the trunk of his car in any hidden compartments
16 that there were and there was no - there is no evidence
17 that suggests that he recovered anything from his car
18 during this stop.

19 In fact, the evidence is almost incontroverted to the
20 contrary when you see the buy video. But just keep that in
21 mind. That's the only other thing that could have maybe
22 been the place where Ervin got the drugs, but there is
23 simply no evidence to suggest he recovered the drugs from
24 under the hood of his car.

25 Leach, in fact, meets up - Leach meets up with Ervin

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1 at Wildcat. You remember he - Leach says on the video,
2 "You're already here?" Ervin was already at the meeting
3 location when Leach showed up. You see a hand-to-hand
4 exchange of crack cocaine in the grocery bag and money
5 between these two men. You hear Leach and Ervin talk about
6 the crack. Both men appear pleased with the deal and agree
7 things are straight, in their words, everything's good.
8 They're satisfied. The deal has been - has been
9 successful.

10 All right. Here's the video or a clip of the video,
11 States Number Two.

12 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
13 10:54 A.M..)

14 SOLICITOR SHELTON: Now, that video doesn't have the
15 greatest sound, but you can still hear what's going on. A
16 live wire sounds pretty good. You remember that's on Tezo
17 Ervin's person. Let's listen to that same moment in time
18 through the live wire. .

19 (AUDIO PUBLISHED TO THE JURY AT 10:55 A.M..)

20 SOLICITOR SHELTON: Now remember the live wire is what
21 the cops were listening to when this was going down. They
22 know Tezo Ervin, so they can hear that that's his voice and
23 you -- you'd already heard Elder Leach's voice on the
24 recording. You actually heard both these men's voices.
25 Think about are those the same voices. Think about the

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1 things you hear in the background too. Does that sound
2 like a plastic bag crinkling when he saying, "Oh, that
3 smells good."

4 The evidence that you have before you all supports
5 itself. It all corroborates itself. The Defense, it's
6 their job to attack the State's evidence and they may try
7 to suggest to you that there's all these holes in our case.
8 There's all these inconsistencies. A lot of that I argue
9 to you is just smoke and mirrors. Don't lose sight of what
10 the facts really are.

11 And, again, I don't know what Mr. Brown is going to
12 say in his argument, but I'm anticipating he may argue
13 something like this. We don't see any crack on that video.
14 We don't see who the guy who they say is my client, Mr.
15 Leach, handing the crack to that other guy who they say is
16 their informant Mr. Ervin. We don't see that with our own
17 eyes, so the State just can't prove that it's a drug deal.

18 Well, folks, that ignores, completely ignores, if that
19 is his argument, what the video does show. The video does
20 show a big plastic brown grocery bag of crack, State's
21 Number Four. And you're going to have a chance to look at
22 this back in the jury room. You're going to get a chance
23 to take a good look at this brown plastic grocery bag.

24 And look right here. That's it right there on the
25 video. It ignores the fact that you got Mr. Leach passing

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1 the drugs across the passenger side to the driver side
2 where Mr. Ervin is sitting, and Mr. Ervin, with a wad of
3 money in his hand to exchange and he gives it to Mr. Leach,
4 and Mr. Leach counts it and Mr. Leach is happy, 'cause he
5 got all of his money.

6 Leach had actual possession of that bag of drugs. It
7 was in his hand. He knowingly and intentionally possessed
8 it. He possessed it to sell it to Ervin, and he exerted
9 control over it by selling it to Ervin.

10 So let's break down the conversation during the deal
11 and again, this is what I'm arguing to you is on those
12 videos and that audio recording. You are the trier's of
13 fact. You have to listen to it and gauge for yourself what
14 you heard. This is my argument as to what takes place.

15 Ervin asked Leach, "How's everything look?" We got a
16 deal struck. "Everything good?" Leach replies, "We
17 straight." We're good. Everything's as we agreed on.
18 It's all like we said it would be. Ervin said, "it look
19 good. Oh, she smells good."

20 Now, he used some different words that I'm not going
21 to repeat, 'cause what's the point, but this is the time
22 that he's checking the bag; looking inside that grocery
23 bag. Now, remember he testified that he looked inside the
24 bag and in his experience, he has experience with crack.
25 In his experience, that was crack and he believed that he

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1 got what he was paying for. And, in fact, he's excited
2 about it. This smells great. And Leach, after counting
3 his money that he got from Ervin, is happy, too.

4 Everything's straight.

5 Let's talk about the brown grocery bag that's in --
6 that's in State's Number Four here. The brown grocery bag
7 with 28 grams of crack in it that Leach handed to Ervin
8 during the deal is the same brown grocery bag with 28 grams
9 of crack in it that Ervin sat down outside of - outside of
10 his car at the bust when the cops moved in. And it's the
11 same brown grocery bag with 28 grams that Investigator
12 Ervin[sic] recovered from right outside of Ervin's vehicle
13 a couple of feet outside of the vehicle when she arrived on
14 the scene to help recover the evidence.

15 And this is all in a very short period of time. You
16 can hear from the recordings the bust is going on. You can
17 even - you can hear what I believe is a female voice
18 shouting, a little bit octave above, "Get down on the
19 ground." And Officer Danzler is a female, remember? And
20 so here we go again. This is - it's the same bag that is
21 in evidence. It's the same bag that had the crack in it.
22 This wasn't an innocent meeting. It was a crack cocaine
23 deal. And all of the evidence the State has presented to
24 this effect is consistent with itself. There is nothing
25 that contradicts itself.

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1 . You're going to hear talk about the burden of proof
2 and that's a very, very important concept. It's one of the
3 bedrock principles of our legal system. And you're going
4 to hear legal phrases like proof beyond a reasonable doubt
5 is the kind of proof that leaves you firmly convinced. The
6 flip side proof that doesn't rise to the level of beyond a
7 reasonable doubt is the type of doubt that would cause a
8 reasonable person to hesitate to act. What both of those
9 concepts are not is proof beyond any and all doubt.

10 > There is no - There are very, very few things in this
11 life that are absolutely certain and the criminal justice
12 system does not require the State to prove the elements to
13 you beyond any and all doubt beyond - to every degree of
14 certainty. We must prove it to you beyond a reasonable
15 doubt. We must leave you firmly convinced and that is what
16 the evidence shows.

17 Let's talk about the buy money real quick. Drug Unit
18 officers gave Ervin the Thirty-three Hundred dollars buy
19 money - buy money at the Law Center before he went to the
20 deal. Ervin handed Leach the stack of money in exchange
21 for the grocery bag of crack. You saw it on the video.
22 Leach counted the money and said it's straight. You see
23 that on the video and hear it on the audio feed as well.

24 Leach threw down the money at the bust. Faulkenberry
25 saw him do it. Faulkenberry recovered the money on the

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1 ground behind Leach's car, the car he was walking towards
2 at the - at the bust; the only other car that was out there
3 other than Ervin's. And those are the only two men that
4 were out there. Faulkenberry compared the serial numbers
5 from all the bills that he collected that were recovered
6 from this investigation. Photo - they had - photocopies
7 had been taken before it was given to Ervin. Remember,
8 State's Number Five? He compared all the bills and all of
9 the money was accounted for.

10 So even if Elder - Even if Elder did give Tezo Three
11 Hundred dollars back as Tezo testified his recollection was
12 of events that occurred almost a year ago, and what he put
13 in his statement to the police, Mr. Brown fleshed that out
14 on cross-examination. Even if that's true, and Tezo didn't
15 deny that being in his statement, he said that's what
16 happened. So even if that's what happened and Faulkenberry
17 only picked up Three Thousand dollars of the buy money that
18 Leach threw down on the ground at the bust, all the money
19 as accounted for at the end. So if there is that extra
20 Three Hundred dollars that Ervin remembers setting down
21 because Leach gave back to him, that - if that's not - if
22 that wasn't recovered from what was on the ground, it's
23 still accounted for on the back end.

24 What I'm getting at is, Tezo Ervin didn't keep any of
25 the money. All the money was accounted for and it was

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1 returned to the Feds. And the money in the video is the
2 same money in State's Number Five, the photocopies.
3 Faulkenberry counted - looked - compared every single
4 serial number and he counted it even on the stand. You saw
5 him go through and count it all out to make sure that those
6 photocopies were - the photocopies were accounting for
7 everything that he'd already counted during the
8 investigation.

9 All right. There is some discrepancy about weight in
10 this case and, again, I anticipate Mr. Brown may argue to
11 you that the weights are off, therefore, the State's case
12 fails, 'cause you heard - you heard him talk about a
13 three-ounce deal, 90 grams being weighed at the Drug Unit
14 and Ms. Mitchum weighed it at 38 grams in her laboratory.

15 There is a reasonable logical, consistent explanation
16 for those weights. First off, the - what the law requires
17 in the trafficking by distribution charge, it requires the
18 State to prove a quantity of crack cocaine was involved in
19 that charge and the quantity was in excess of 28 grams. It
20 doesn't say 90 grams. It doesn't say 38 grams. It says 28
21 or more. So even with the lowest weight we have evidence
22 of, the 38 grams, the State has met that element of the
23 distribution and trafficking charge.

24 And there is a logical reason why the crack that was
25 sold from Leach to Ervin weighed less when Ms. Mitchum

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1 weighed it. She had to dry it out first. Remember her
2 testimony about that? And the evidence present - presented
3 about these drugs, none of it contradicts itself. It all
4 makes logical sense. Water is used to make crack. Ms.
5 Mitchum is familiar with the basic concepts and Sergeant
6 Rainier has interviewed people who make, sell, or use crack
7 and he's testified in his experience water's used to make
8 crack. Crack in State's Number Four and Number Ten,
9 according to Ms. Mitchum, was too wet to test without
10 drying. She described it as I remember, what you remember
11 is what's important, she described it as it was more like
12 cake batter when she opened the evidence bag initially to
13 get it out for testing. So she had to dry it out in order
14 to be able to test it, to confirm it is what it is, 'cause
15 that's one of the things we have to prove that it is, in
16 fact, crack.

17 Tezo Ervin believes it's crack. Elder Leach believes
18 it's crack. All the copes believe it's crack. Unless we
19 have somebody who comes in on that witness stand as an
20 expert witness, a chemist, Ms. Mitchum, to say yes, I
21 tested it, I tested it in a matter that I always test
22 drugs, the way I'm trained to do, and I can confirm it is
23 crack cocaine and crack cocaine base, we can't prove that
24 element. She said that it is crack cocaine and all the
25 other evidence supports that conclusion.

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1 And she weighed it after she tested it, so she weighed
2 it after it was dried out. Of course, it's going to weigh
3 less. It was wet. Water has weight. The Drug Unit
4 weighed it. They're estimate weights, but it corroborates
5 90 grams, three ounces. That's pretty consistent. Their
6 scales are still accurate. They're used to determine
7 appropriate charges. Mr. Brown fleshed out that that's
8 important. And Faulkenberry testified he weighed the wet
9 crack before it was dried out by Mitchum prior to testing.
10 He weighed it before he sealed those evidence bags on June
11 19th, 2013, and his weights at the Drug Unit for State's
12 Number Four, the distribution crack, the 90.2 grams and
13 State's Number Ten was 28 grams.

14 All right. There's another angle you can analyze the
15 trafficking by distribution charge on. The conspiracy
16 angle. Remember when I talked to you a minute about the
17 phone call, the deal is struck in the phone call. A
18 conspiracy is an agreement or an understanding or a deal.
19 The agreement, the conspiracy between Leach and Ervin was
20 for three ounces of crack, the whole three and there is a
21 conspiracy element in the trafficking charge. The amount
22 of the money paid Thirty-three Hundred dollars shows both
23 Leach and Ervin were dealing with - were dealing for three
24 ounces of crack, both were satisfied with the deal. It was
25 straight. Neither one of them felt like they had been

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1 ripped off. And namely Ervin didn't feel like he'd been
2 ripped off. He was excited.

3 Ms. Mitchum testified it is crack cocaine. She was
4 qualified as an expert in the field of chemical and drug
5 analysis by identification. She's been certified trained.
6 She has years of experience, has testified thousands of
7 samples. She's testified in court, I believe she said,
8 roughly two hundred times. She tested the substances in
9 both numbers four - State's Number Four and Number Ten, and
10 her testimony was she confirmed both as being crack
11 cocaine. Crack cocaine is a cocaine base. She used the
12 appropriate testing methods. She followed her procedures,
13 and she prepared a report of her findings, State Number
14 Thirteen.

15 Now, Mr. Brown may try to confuse you with some talk,
16 if you remember on cross-examination, he was trying to say,
17 well, did you use the same test that you use for powder
18 cocaine. So he may try to argue to you that somehow that
19 invalidates Ms. Mitchum's procedures, somehow that it
20 invalidates her testimony.

21 Her testimony was she tested the substance the way she
22 would test it. It was suspected to be crack cocaine. She
23 used the proper procedures and methods that she was trained
24 to do, and it tested positive as crack cocaine which is a
25 cocaine base. Simply because she could have used the same

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1 test for crack as she would for suspected powder cocaine
2 does not discredit that. Her testimony, her conclusions
3 were definitive. She definitively found this was crack
4 cocaine in both State's Number Four and State's Number Ten
5 and she prepared a report of her findings.

6 This is in evidence for you to review. State's Number
7 Thirteen, Item Number 1, rock substance. Result One,
8 cocaine base, crack. Found total weight, 38.03 grams or
9 586.80 grains and it's a Schedule 2 - C-2 of the controlled
10 substance Schedule 2, and so that's the distribution weight
11 that was the 90 grams dried out weighed 38 grams.

12 Item Number 2, the trafficking by possession that
13 we're going to talk about in a second. Rock substance,
14 result, two cocaine base, crack. Found total weight 12.55
15 grams or 193.64 grains and, again, it's a controlled
16 substance in Schedule 2. She signed it, she dated it --
17 she dated when she reached these conclusions and has
18 prepared this report, and it's been admitted as evidence
19 for your consideration, and I argue to this. I argue to
20 you this is definitive proof that what we're talking about
21 is crack cocaine.

22 You heard mentioned throughout the testimony of the
23 officers had to say it was the substance they believed to
24 be crack cocaine. You know, it appeared to be all that
25 stuff. And that's important, because they're not trained

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1 chemist like Ms. Mitchum is, and Ms. Mitchum is a trained
2 chemist, she says it's crack cocaine. There is simply no
3 evidence to contradict that.

4 Okay. Question Number Two. Was this Elder Leach?
5 Take a look at the video and take a look at that man
6 sitting right there who was identified by a number of
7 people in this courtroom, Tezo Ervin, Mr. Faulkenberry.
8 And there is no question, the same features, the same
9 appearances. There's no question it's the same man that I
10 argue to you but that's for you to consider. You're going
11 to hear Judge Hayes charge you on the law of
12 identification, so I ask you to pay attention to that.
13 But that's one thing you have to decide in your
14 deliberation. But, again, I don't think that's really in
15 dispute.

16 Ervin testified he's known Elder for twenty-plus
17 years. He knows him on sight. He pointed him out in the
18 courtroom. Faulkenberry knows him and pointed him out in
19 the courtroom, and you saw him with your own eyes
20 throughout this trial and you can look at him right now.

21 Okay. Trafficking by distribution. Let's put this
22 charge to the side and we can argue on this one. Yes, it's
23 a crack deal involving 28 grams. Yes, it's Leach who sold
24 the crack. Yes, Leach is guilty of trafficking crack 28
25 plus grams.

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1 Let's talk about the trafficking by possession charge.
2 It's almost like this was a separate investigation in a
3 way. Leach told Ervin, "I got thirty, expletive, grams of
4 this stuff left. I got it in the hole waiting on you."
5 What's he talking about? He's talking about crack. In
6 what other context can you take that in? They're - they
7 are involved - they had just completed a crack cocaine
8 deal. It's obvious he's talking about crack, the extra
9 crack he's trying to sell to Ervin. He's trying to make an
10 additional deal. He's got crack he wants to get rid of.
11 He doesn't like it. A lot of people don't like it; some
12 people do, most people don't.

13 He might make Three or Four dollars out of it. Three
14 Hundred dollars, if Ervin, his recollection was correct,
15 the Three Hundred dollars that Leach had set back down for
16 him. Leach may get it right back if he can make this deal.
17 And Drug Unit officers found 10 plus grams of crack
18 cocaine, packaging materials in the front seat of Leach's
19 car in plain view. And plain view obviously means, you
20 look in and you can see it without having to move things
21 around if you look in and you see it just by looking in.

22 Oh, I forgot one thing I needed to talk to you about.
23 Before we get much further here, I'm going to back - I told
24 you I was done with the distribution and trafficking
25 charge, and I apologize, I need to talk with you about Mr.

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1 Ervin for a minute.

2 Yes, Tezo Ervin has a criminal record. He was in
3 possession with intent to distribute marijuana in 2001. He
4 was in possession with intent to distribute crack in 2002.
5 He was in his early twenties. That was twelve years ago.

6 He is currently indicted on drug charges. He's
7 indicted for trafficking crack, third offense. It carries
8 twenty-five to thirty years, mandatory minimum, no parole.
9 He's indicted for manufacturing crack, third offense. It
10 carries ten to thirty years, no parole. He's indicted on
11 two counts of either manufacturing or what's possession
12 with intent to distribute, but it goes with the trafficking
13 charge of crack within proximity of a school or park and
14 both of those charge carry - both of those charges carry up
15 to ten years.

16 And he's indicted of possessing a weapon while he had
17 trafficking weight of crack and that carries five years.
18 Tezo Ervin could be looking at a lot of prison time if he's
19 convicted on those pending charges. Now, there was some
20 back and forth over, you know, consecutive sentencing and
21 concurrent sentencing. The fact of the matter is however
22 you want to slice it, five, ten, twenty-five years until
23 he's eighty-four years old is prison time. It's a lot of
24 time he's looking at. No question.

25 But just because he may have had reason to lie does

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1 not mean he did lie. Tezo Ervin tried to help himself out
2 by working as a Confidential Informant with the Drug Unit.
3 He testified that he went in and talked to them about
4 working almost immediately after he was arrested I believe
5 his testimony was. Who can blame him? He's looking at a
6 lot of prison time and he's been in trouble before. Who
7 can blame him for trying to help himself out. He was not
8 promised anything. He was not threatened in any way.

9 He hopes to get credit on his charges, but he's been
10 guaranteed nothing. He told you yesterday morning, he
11 thinks about these charges every day. He hopes to get a
12 benefit on it. Who wouldn't? But he's not been promised
13 anything or threatened anything.

14 And recall, these charges are pending on Tezo Ervin.
15 He is innocent until proven guilty. Tezo Ervin has an
16 absolute constitution right to not incriminate himself
17 regarding those charges, the Fifth Amendment. Tezo Ervin
18 invoked the Fifth Amendment when Mr. Brown tried to get him
19 to admit to the charges. That's his right. He has an
20 absolute right in this country under the Constitution to
21 not incriminate himself. Please do not hold that against
22 him for exercising his right. Tezo Ervin will get his day
23 in court. That day is not today. You don't even know
24 anything about that case. You just know that he has
25 pending charges.

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1 And, folks, the Drug Unit cannot send a school teacher
2 to buy crack cocaine. It'd be wonderful if we could bring
3 in an informant that had no record but that's simply not
4 the reality of the situation. You heard Officer Harrelson
5 explain that Monday afternoon. It takes a person who's
6 used to this kind of stuff, who knows the language, knows
7 the people involved. That's the kind of person that is
8 able to buy drugs as an undercover agent.

9 Harrelson explained, "Drug Unit officers sometimes go
10 undercover to make buys, but this is a small community."
11 York County, Rock Hill, these are relatively small
12 communities. People know each other. These officers are
13 out working every day. They could easily be made or be
14 identified and have no success. They'd just be wasting
15 their time. They have to utilize people like Tezo Ervin.

16 What's very important, if you haven't already
17 comprehended this, Tezo Ervin's testimony does not stand on
18 its own. The State's evidence supports it and State's
19 evidence corroborates it. You don't have to believe
20 Ervin's testimony by itself. Everything was recorded. The
21 case is consistent. Everything supports itself including
22 Tezo Ervin's testimony and the other way around from the
23 inside and the out.

24 The Drug Unit does not base its investigations on the
25 word of a Confidential Informant alone. That's one of the

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1 reasons they wire the informant. That's one of the reasons
2 they record everything that happens and listen in on a live
3 audio feed, and that's one of the reasons they search the
4 CI's before and after the buys.

5 The police want to make sure their CI's are on the up
6 and up. They want to make sure they have a chance to make
7 - they don't have a chance, the CI's, don't have a chance
8 to make something up, fabricate it, whatever.

9 They want to make sure they're perfect - in control of
10 their investigation. And in this case, there is simply no
11 evidence that Tezo Ervin did anything other than what the
12 Drug Unit officers asked him to do. This was a controlled
13 buy. He didn't take anything to it. He didn't try to
14 sneak anything to the buy. He stayed in touch with the
15 officers as he was supposed to, as he was instructed to do,
16 checking in with Rainier.

17 Rainier said he's a little OCD on that kind of stuff,
18 but they're checking in. The police have eliminated all of
19 the other variables that could cast doubt on the
20 distribution - trafficking by distribution. It's a clean
21 buy.

22 And, in fact, Ervin was told not to stop and meet with
23 anybody or do anything. He called Rainier just 'cause he
24 saw somebody that might have recognized him. He was
25 talking about some guy's sister that he saw, and he's

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1 checking in with Rainier just to make sure he knows what's
2 going on.

3 Okay. Let's get back. Stay with me and let's flip
4 you back to the trafficking by possession charge. All
5 right. The weight of that crack was in dispute. Remember,
6 again, Ms. Mitchum's - or the Defense may argue it's in
7 dispute. There's some evidence - What I'm saying is, the
8 crack was very wet. Ms. Mitchum had to dry it out and
9 weighed it after testing after drying it out. Drug Unit
10 weights are estimates, but their estimates were the weight
11 of the wet crack before it was dried out.

12 Leach said he had it set aside for Ervin. He wanted
13 Ervin to buy it. It was packed for sale. There were
14 scales and packaging material in the front seat of Leach's
15 car. He said it was 30,31 grams, I think something he was
16 talking about. The Drug Unit estimated the weight at 28
17 grams. That's pretty close. That's consistent and - Oh,
18 I've already got there. Here's the - Let's look at the
19 video and listen to the audio one more time about the drugs
20 that were set aside.

21 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY AT 11:23
22 A.M..)

23 SOLICITOR SHELTON: All right. And then let's listen
24 to that same moment in time on the audio feed just so it's
25 a little clearer audio. Again, this is what the cops were

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1 listening to.

2 (STATE'S EXHIBIT THREE PUBLISHED TO THE JURY AT 11:24
3 A.M..)

4 SOLICITOR SHELTON: So what's he talking about? He's
5 talking about the evidence that's in plain view in the
6 front seat of his car, the silver Volkswagen. The car, the
7 sedan, the only other vehicle at Wildcat. It was not a
8 Drug Unit vehicle, there were other Drug Unit vehicles that
9 pulled in. Ervin said he was - Ervin was already there.
10 Leach pulled up in that car. They're the only two men that
11 are there before the Drug Unit officers get there. No one
12 came in with Leach. No one else is present. No other cars
13 parking on the road or in that driveway.

14 Gander secured Leach's vehicle after she saw the drugs
15 in plain view on the seat. She didn't disturb anything.
16 She drove it right back to the law center. Faulkenberry
17 took the photographs, State's Six, Seven, Eight and Nine.
18 Collected the evidence, weighed it, sealed it for Court and
19 that's State's Ten.

20 Mitchum tested those drugs positive as being crack
21 cocaine, which is cocaine base. Her weight after drying
22 and testing was 12.55 which is in excess of 10 grams. And
23 here are those pictures, State's Number Six, crack, crack.
24 There is State's Seven, closer up to the crack. And you
25 look at this, but I argue this looks like the cover to the

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1 scale that they found and you'll be able to look at the
2 wording on there. What I see is "turn off the scale.
3 Press and hold the" something "keys at the same time" and
4 that's the instruction, the cover for the scale is what it
5 appears to be to me.

6 The pictures speak for themselves. There's the other
7 crack sitting on the front seat closer to the back of the
8 seat. There's the console and the drugs are down here and
9 there is that scale with some sort of residue on it.

10 MR. BROWN: Objection, Your Honor.

11 THE COURT: I sustain the objection. Just let the
12 jury determine what the pictured shows.

13 SOLICITOR SHELTON: Yes, sir.

14 Yes, it's 10 plus grams of crack. Yes, it was in
15 Leach's car, and yes, Leach is guilty of trafficking in
16 excess of 10 grams.

17 Ladies and gentlemen, Mr. Brown will now have a chance
18 to talk to you. I ask you to pay careful consideration to
19 him. Remember, it's his job to try to attack the State's
20 case. It's your job to decide the facts and you have to
21 decide them unanimously beyond a reasonable doubt. All
22 twelve of you jurors have to agree beyond a reasonable
23 doubt to all the elements that are listed and all the
24 things you're going to hear Judge Hayes reference that are
25 matters of law related to the elements. At the end of the

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1 day when you've done your duty, you fulfilled your oath, I
2 am confident you will render a verdict that speaks the
3 truth and that's guilty of both charges as charged.

4 MR. BROWN: May it please the Court.

5 Ladies and gentlemen of the jury, before I give you my
6 view of the evidence, I again want to thank you for being
7 on jury duty. As I said in my opening statement, jury duty
8 may be a very inconvenience or inconvenience for you. Some
9 of you may or may not want to be here, but like I said in
10 my opening statement one of the best civic duties you can
11 do.

12 Before I go into my view of the evidence, I'm going to
13 refer back to something I said in my opening statement. If
14 you recall, I compared civil law versus criminal law. We
15 have two forms of law in this country. They are really
16 quite simple.

17 Civil law occurs when someone sues someone for
18 economic gain. In that case, we have a general rule of
19 evidence called preponderance of the evidence where both
20 sides are required to present evidence.

21 What happens there is you believe one side, fifty-one
22 percent versus forty-nine percent, you vote that way.

23 Criminal law is very completely different. And please
24 pay close attention when Judge Hayes charges you with the
25 law in this case because it becomes your job at that point

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1 in time to apply the law to the facts as you decide them to
2 be. Not what I think they are, not what Mr. Shelton thinks
3 they are, but what you thirteen decide them to be.

4 It's almost like a mathematical formula. Decide what
5 the facts are and apply it to the law.

6 Unlike civil law, criminal law is completely
7 different. Anyone charged with a crime including the
8 context of this case, the State, through Officer Rainier
9 and Matthew Shelton has made an accusation of two counts of
10 trafficking against Mr. Leach. When that occurs, we have
11 some cardinal bedrock principles of law that are applicable
12 whether it be in this courtroom or any other courtroom
13 throughout the United States and all the way up to the
14 Supreme Court.

15 The first one is that anyone charged with a crime is
16 presumed innocent. Right now, Mr. Leach is innocent. That
17 presumption of innocence is as strong and real as any fact
18 that you believe beyond any doubt that you've heard in this
19 courtroom. And he stays innocent only until such time as
20 the State has brought before you believable, credible
21 evidence to convince you to a certain standard. Listen
22 closely to what that standard of burden of proof is because
23 they carry this burden of proof.

24 Unlike a civil case, a defendant in a criminal case
25 has to prove nothing. They carry the sole burden of proof

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1 and that proof is not by the preponderance of the evidence,
2 it's not proof to a reasonable doubt, it is proof beyond a
3 reasonable doubt. Please listen closely when Judge Hayes
4 defines what a reasonable doubt is.

5 A reasonable doubt is the kind of doubt that would
6 cause a reasonable person to hesitate to act. It is
7 evidence that leaves you firmly convinced of someone's
8 guilt.

9 What is a reasonable doubt? A doubt that would cause
10 you to hesitate to act. To put it in the context of this
11 case or any other case, if you are hesitating or thinking
12 twice about voting for a conviction, that is a reasonable
13 doubt because you are hesitating. And if you've got
14 hesitation in your mind, that is reasonable doubt, and Mr.
15 Leach is entitled to a verdict of not guilty.

16 Likewise, if you have no doubt, no hesitation, your
17 obligation and duty is to return a verdict of guilty.

18 The specific charge in this case is two counts of
19 trafficking. I'm going to deal with them factually as we
20 went through the testimony chronologically. And he is
21 correct in his definition of trafficking.

22 And the first one is he's alleging conspiracy and the
23 actual distribution of crack cocaine. And the second one,
24 he's alleging constructive possession of crack cocaine.

25 The first one as you all know by now, is the alleged

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1 deal between Mr. Tezo Ervin and Mr. Leach. And the second
2 one is the drugs found in the Volkswagen automobile at the
3 scene.

4 The Judge is also going to charge you about certain
5 kinds of evidence and under the law, there's two forms of
6 evidence.

7 One is direct, you see it. And the other one is
8 circumstantial evidence. And circumstantial evidence
9 applies in this case because the simple fact is they are
10 trying to get you to believe a certain set of facts
11 occurred with no other possibilities. And circumstantial
12 evidence, every event must lead to a logical conclusion.
13 If there is another answer, another conclusion, then you
14 must return a verdict of not guilty.

15 If the circumstances merely portray the defendant's
16 behavior suspicious the proof has failed. The State has
17 the same burden of proof to be guilty beyond a reasonable
18 doubt whether it be circumstantial or direct evidence.

19 He is also going to charge you constructive
20 possession. And why is that important in this case? It's
21 the card, the second charge, the alleged ten to twenty-
22 eight grams found in the Volkswagen. Nobody had that in
23 their possession.

24 Your Honor is going to charge you what constructive
25 possession is. And he's also going to tell you that the

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1 mere presence at the scene of a crime is not enough. They
2 must show that Mr. Ervin had dominion and control over that
3 crack in the Volkswagen.

4 Let's go through the testimony in this case and if I
5 misquote any of the testimony you thirteen remember it as
6 you heard it because there's thirteen of you all and one of
7 me and my memory is not perfect compared to your's.

8 The first witness was Officer Leland Harrelson of the
9 Drug Unit. He testified that he installed the camera, also
10 the listening device on Mr. Ervin. He also testified that
11 he searched the car and I asked him in great detail about
12 that search. He said he searched the trunk. He said he
13 searched the back of the car and the front of the car.
14 What's the one place he didn't search? He didn't search
15 under the hood. We'll come back to that. But you heard
16 the testimony. Didn't search under the hood.

17 And then the next witness we have is Mr. Tezo Ervin.
18 His career is dealing and selling crack cocaine. You know,
19 thirty-one years in this business, it always kind of amuses
20 me. The State wants to bring him in here dressed up and
21 serve you Boone's Farm and tell you its Dom Perignon.

22 I don't know if any of you all remember the episode of
23 Andy Griffith show, there was a character in that show
24 named Ernest T. Bass. And he would come down out of the
25 mountains every so often and throw rocks through windows.

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1 In one episode Andy and Barney decided they were going
2 to fix Ernest T. up and take him to Ms. Wiley's social.
3 And they dressed him up and got him prettied up and took
4 him there and for the first half of the social, he was
5 fine. How do you do, Mrs. Wiley. Thank you very much,
6 Mrs. Wylie.

7 Well eventually, his true colors came out. He threw a
8 rock through the window, grabbed the woman and hauled her
9 outside and threw her in the bushes. My point is, the
10 State's doing the same thing to you with Tezo Ervin. They
11 are trying to tell you that Boone's Farm is Dom Perignon.

12 I'm not going to sit here and insult your intelligence
13 because his record speaks for itself. The man is a career
14 criminal. Would you believe this man, beyond a reasonable
15 doubt, of anything he told you? Would you believe him
16 beyond any doubt that would cause you to hesitate to act?
17 Think about it. Of course you wouldn't.

18 He has prior convictions. Possession with intent to
19 distribute crack, third offense, 2001. Habitual traffic
20 offender, possession with intent to distribute crack in the
21 proximity of a school or a park, meaning where kids are.
22 DUS, driving under suspension. Possession with intent to
23 distribute marijuana. And what's he got pending?
24 Trafficking crack, not first offense, not second offence.
25 Third offense. Manufacturing crack. Possession with

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1 intent to distribute crack in the proximity of a school.

2 Manufacturing crack in the proximity of a school.

3 Possession of a pistol.

4 At a bare minimum, at a bare minimum if he got
5 concurrent sentences as Mr. Sheldon pointed out, he would
6 be coming out at sixty-four. If he's convicted of
7 everything, he will be coming out in a box or if he lives
8 to be that old because the total number of years he is
9 looking at is seventy-five. Unless he is going to live to
10 be a 109, he is coming out in a box.

11 If you don't think he wouldn't say or do anything
12 under this sun to get out of that trap he would, he would,
13 and the State's case turns on him.

14 Now they can talk about all the surveillance and all
15 the stuff they did. Oh, and one last thing about that.
16 You know, it's kind of funny he wants to come in here and
17 yes this is what happened, this what happened, but his own
18 involvement with crack, I'm going to take the Fifth, which
19 is his right. Which is his right. But if you are going to
20 become a good guy and a reformed citizen, come in here and
21 tell the whole truth. Don't hide behind, which it is his
22 Constitutional right to hide behind the Fifth Amendment.
23 They didn't know exactly what you all did - what he did.
24 Tell you all what he did and he won't do that. He's
25 hiding.

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1 SOLICITOR SHELTON: I'm going to object, Your Honor.

2 THE COURT: What's the objection?

3 SOLICITOR SHELTON: He has the Fifth Amendment right
4 to remain silent.

5 MR. BROWN: I agree.

6 THE COURT: Everybody agrees on that. I'm not quite
7 sure what your objection is, but I overrule it.

8 MR. BROWN: The man is involved in a lifelong crack
9 business. He's been in the crack business at least we know
10 from the first conviction when he was twenty-two and now at
11 thirty-four, he's got trafficking crack, third offense.
12 He's a career crack dealer.

13 Remember the video. If you watch this real closely,
14 you can see his reflection getting out of the car here.

15 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY AT
16 11:40 A.M..)

17 MR. BROWN: Right there. He stays there for over six
18 minutes out of the view of any surveillance of any police
19 officers under no supervision and what does he open? The
20 trunk. Circumstantial evidence to the exclusion of all
21 other theories.

22 You don't think for five seconds he wouldn't plant
23 dope under the hood of that car? Think about it. Of
24 course he would because he does not want to spend the rest
25 of his natural life in jail.

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1 He tells you that he was just buying time. Why was he
2 buying time? I'm confused on that too. Buying time for
3 what? The deal is already set. He's suppose to go to
4 Wildcat Road. I can tell you what he's doing. He pulled
5 off out of the view of those officers to pick up crack and
6 he brought the crack. This is what this deal was about.

7 Desperate men will do desperate things and I submit to
8 you, he had to come up with some bust because if he didn't,
9 he's going to jail for a long time.

10 Now I'm not going to sit up here and tell you that Mr.
11 Leach is some saint. I'm not going tell you obviously from
12 the conversations he has been involved in crack in the
13 past. I'm not sitting here telling you that at all. I'm
14 not telling he's some saint, but what I am telling you,
15 this deal is flawed as the day is long.

16 You can convict him of other crimes, but this one they
17 have not proved it beyond a reasonable doubt.

18 The currency. Mr. Ervin under oath said he had Three
19 Hundred dollars in currency. I think we now know that's
20 not true. Three Hundred Dollars was not found in the seat.
21 Three Hundred Dollars was not taken off of him and all
22 thirty-three Hundred dollars was found on the side of the
23 vehicle, allegedly.

24 Lastly, Mr. Shelton wants to explain the weights to
25 you and I don't blame him. That's kind of hard to explain.

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1 Ninety point two grams or three ounces. This was three
2 ounces. This is what's confusing. A veteran crack dealer,
3 Mr. Ervin, is going to know the difference between three
4 ounces and 38 grams.

5 And they can talk all day about crack being wet. When
6 you come on jury duty, you don't throw away your good
7 common sense. You smoke crack. You can't smoke something
8 that's wet. You cook it. When you cook it, it comes out
9 hard as a rock, there's no more water in it. Think about
10 it. How did it get wet? We've had no explanation on that.
11 And crack's not sold wet. Go back to Mr. Ervin in that
12 stop, that six and half minute period when he's not under
13 supervision. He's not in sight and he goes to the one
14 place in that car, the one place they didn't search. And
15 you see how small that is. You see how small that is. How
16 easy would that be to hide under the hood? It would be
17 simplistic. It would be simplistic.

18 To convict on the first count I submit to you that you
19 have to believe Mr. Ervin's testimony beyond a reasonable
20 doubt. This is a circumstance evidence case. I'm not
21 saying they didn't have some dealings in the past, but I'm
22 submitting to you what they brought before you today is
23 not. It's not.

24 There is a better way to prove this case though.
25 Reasonable doubt, and the Judge will instruct you can arise

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1 from the evidence you hear. You know, I questioned now
2 whether that's true or not or the lack of evidence. That's
3 important in this case because the lack of evidence occurs
4 when they fail to answer your questions. When they fail to
5 bring forward the necessary evidence you need to be firmly
6 convinced, to believe, not to hesitate, to think twice
7 about it. Firmly convinced.

8 Let's talk about the phone calls. If I'm going to
9 come into a courtroom and prove to you that two cell phone
10 calls existed, what's the first thing I am going to bring?
11 We all get it. We got one. The cell phone records. Here
12 is a call from Tezo to Leach. Here's a call from Leach to
13 Tezo. There is a reason, and I don't know what it is, I
14 have no earthly idea what it is or the rational behind
15 that, but if I was going to prove that to you, I'd bring
16 you those phone records. At 12:08 this phone call took
17 place from Ervin's phone to Leach's phone. At 12:10, this
18 phone call took place from Leach to Ervin's phone.

19 You have not seen, they have not produced, one phone
20 record. The simplest way to prove communication. Shoot,
21 in the pictures, you see his cell phone. Allegedly what
22 people are gonna think to be his cell phone. They don't
23 produce that. They haven't produced any copies of the
24 calls or a phone record to corroborate. They just want you
25 to believe Tezo Ervin.

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1 Do you believe Tezo Ervin beyond any doubt that would
2 cause you to hesitate to act? Are you firmly convinced of
3 anything he would tell you? Of course the obvious answer
4 is no.

5 You heard Mr. Patterson testify, the lab technician.
6 As he told you the last two years that they do, they have a
7 state of art lab down there. They can do DNA and
8 fingerprints. Again, lack of evidence. If you have this
9 super facility down there and there is an agreement where
10 you want to bring a career criminal, a career crack dealer,
11 in to testify under oath, I believe I would bolster that
12 testimony by bringing some fingerprints in on that crack or
13 some DNA. You have not heard one scientific piece of
14 evidence that links Elder Leach to that crack cocaine.

15 The only thing you've got is him on the camera picking
16 up a garbage bag that's plastic. And I'm a little confused
17 about that because their report I gave made reference to a
18 brown paper bag. Do people make mistakes? Yes. I agree.
19 Is that mistake crucial? Yes, when someone is on trial for
20 trafficking crack cocaine.

21 You are the sole judges of the fact. You and you
22 alone will decide whether that's important or not.

23 Lastly, you had this big surveillance team all over
24 the place. They were at Wildcat Road. They knew where
25 they were going. What else did you hear? You didn't hear

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1 one police officer come in and testify, yes I saw Elder
2 Leach get out of the car and walk over with a bag in his
3 hand and hand it to Tezo Ervin. Not one person testified
4 to that in this case and you would think if they had that,
5 you would have heard it.

6 Again, reasonable doubt. Evidence, lack of evidence,
7 because it didn't happen that way.

8 And they talk about the date and they are trying to
9 explain it's June 20th but it allegedly happened on June
10 19th. You know you would think if the battery went out, it
11 would be a date backwards; not jump a day forward. That
12 makes no sense either. Their explanation makes no sense
13 whatsoever.

14 The recording is from June 20th to June 19th. Now I
15 don't know why. I don't have the answer to that but I
16 don't have to explain that they do. And to say the battery
17 ran out, that it jumped forward a day makes no sense. Use
18 your good God given common sense to reach a decision on
19 that.

20 Lastly, their one claim on the separate charge that
21 the dope in the car is Mr. Ervin's. Well to establish
22 that, they need to establish that's Mr. Ervin's car. They
23 have not. You have not heard one piece of testimony
24 confirming that was his car. You have not heard one piece
25 of testimony saying that he drove there. You have not seen

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1 or heard on piece of testimony saying that he got out of
2 the car, unless you want to count believing Mr. Ervin which
3 I'm sure it speaks for itself.

4 And he is right, Mr. Shelton is right, they have to
5 convince you beyond a reasonable doubt that the drugs have
6 been tested for crack cocaine. She ran two tests. The
7 same test you run for powder cocaine. We don't know if
8 that's crack or powder beyond a reasonable doubt. Just
9 because she says it's crack doesn't make it crack. Crack's
10 not wet. You can't smoke wet crack. Crack's dry. You
11 have to believe beyond all reasonable doubt, firmly
12 convinced beyond a reasonable doubt that that was crack
13 cocaine. There was no follow up question to explain the
14 difference.

15 She just made the assumption it was crack cocaine.
16 It's something that gets us all in trouble. Instead of
17 during further tests to say, this is why it's crack versus
18 powder. If you have a doubt as to whether that was crack
19 or powder, then you must return a verdict of not guilty.

20 That issue can be tried another day but as to this
21 charge, he is entitled to a verdict of not guilty.

22 I thank you for your time. You've been very patient
23 in listening to me. And I want to submit to you one thing.
24 On both charges, bring all the evidence out and consider
25 the lack of evidence. Do not believe beyond a reasonable

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1 doubt that would cause anyone to hesitate to act that Elder
2 Leach is guilty of trafficking, I submit to you he is
3 entitled to a verdict of not guilty because to convict him,
4 you have to be firmly convinced, you have to believe beyond
5 a reasonable doubt, i.e., any doubt that would cause you to
6 hesitate to act, that Tezo Ervin was telling the truth.
7 And I submit to you his record and his actions speak for
8 themselves and he's entitled to a verdict of not guilty.

9 Thank you.

10 THE COURT: Members of the jury panel, we'll take
11 about a five minute refresher break before I will charge
12 you on the law but you are not yet in the position to
13 discuss the case or try to make up your own mind but I
14 think we probably need about a five minute just refresher
15 break so we'll send for you in just a few minutes.

16 (JURY EXITS COURTROOM AT 11:50 A.M..)

17 THE COURT: We'll take a short break.

18 (COURT IN RECESS AT 11:50 A.M.)

19 (COURT BACK IN SESSION AT 12:05)

20 THE COURT: Can we get Mr. Leach in.

21 (DEFENDANT ELDER LEACH REENTERS COURTROOM.)

22 THE COURT: All right. Bring in the jury.

23 (JURY REENTERS COURTROOM AT 12:07 P.M.)

24 THE COURT: Members of the jury panel, I appreciate
25 the attention you have given to me and to the attorneys and

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1 to the witnesses to this point in the trial.

2 I'll now ask you to turn your attention to me for a
3 few minutes while I charge you on the law which you are to
4 apply the facts as you determine the facts to exist in this
5 trial.

6 Mr. Leach is charged with two counts of trafficking in
7 crack cocaine. The charges are for trafficking in two
8 different amounts: One alleges that he trafficked in an
9 amount in excess of ten grams and the second is that he
10 trafficked in crack cocaine in an amount in excess of 28
11 grams. I'll talk to you more about that in a little bit.

12 Now the fact that he has two indictments is of no
13 importance. That is, the State has just determined that
14 they thought over the facts of this case, or the facts of
15 what they determined as they see 'em that he is guilty of
16 two offenses. But the fact that he is charged with two
17 offenses does not give this case any more weight on the
18 State's behalf as opposed to if he only had one offense.

19 And as to these offenses, you would examine each
20 independently. That is, your verdict does not to be the
21 same as to each charge. That is, each charge must rise or
22 fall on it's own merits, on it's own facts, and the law as
23 I charge it to you.

24 You will have with you in the jury room the
25 indictments. These indictments are not evidence; they are

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1 simply the paperwork by way of which this case is processed
2 throughout our court system and they contain the charges
3 against Mr. Leach. They also are where the verdicts will
4 ultimately - unanimous verdict of the jury will announced
5 record of the jury will ultimately be enrolled.

6 As to these charges, Mr. Leach has entered pleas of
7 not guilty. His pleas of not guilty place on the State the
8 burden of proving his guilt beyond a reasonable doubt. The
9 State must prove his guilt beyond a reasonable doubt before
10 you could find him guilty of either of the charges.

11 This presumption of innocence in Mr. Leach's favor
12 attached at the time of his arrest, remains with him as his
13 case is processed throughout our court system, remains with
14 him at this moment.

15 The presumption of innocence in his favor exists even
16 as you deliberate. The presumption of innocence in Mr.
17 Leach's favor is removed if and when, and only if and when,
18 you as the trial jury unanimously determine the State has
19 proven his guilt beyond a reasonable doubt.

20 This is not just a mere - The presumption innocence is
21 not just a mere legal theory or a merely theory or a mere
22 legal phrase. It is a substantial right.

23 Now, the State does not have to prove Mr. Leach's
24 guilt all or beyond every doubt, but beyond a reasonable
25 doubt.

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1 Our courts have defined a reasonable doubt as the kind
2 of doubt that would cause a reasonable person to hesitate
3 to act. Reasonable doubt can arise from evidence in the
4 case or from a lack of evidence in the case.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of someone's guilt.

7 There are very few things as I've said in our world
8 that we can know with absolute certainty and our law does
9 not require that in criminal cases.

10 If based on your consideration of the evidence you are
11 firmly convinced that Mr. Leach is guilty of one or both of
12 the charges, you would find him guilty.

13 If on the other hand you think there is a real
14 possibility that he is not guilty of one or both of the
15 charges, you would give him the benefit of that doubt and
16 find him not guilty.

17 He is entitled to the benefit of any reasonable doubt
18 you have in regard to the charges against him.

19 I told you at the first of the trial that I have
20 certain jobs and the one I am exercising now is charging
21 you the law that you are to apply to the facts as you
22 determine them to be.

23 You are not to infer from anything I have said or done
24 during the trial or now say or do as indicating an opinion
25 of mine on the facts. Our law does not allow a trial judge

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1 to formulate or express to a jury any opinion on the facts.
2 It is solely your job as the trial jury in this case to
3 examine the evidence and give to the evidence the effect,
4 the value, the weight, and truth you believe it should
5 have.

6 In doing this you may believe one witness as opposed
7 to several; several witnesses' as opposed to one. You may
8 believe all, or part, or none of a witnesses' testimony.

9 Use your common sense, your sense of logic, your sense
10 of reason and your experiences in life as you analyze the
11 evidence.

12 As judges of the facts, you necessarily must judge the
13 credibility that is the believability of the witnesses who
14 have testified.

15 In assessing credibility, use the things I just talked
16 about. Use the thing that you find in your day-to-day life
17 as being indicative of truthfulness. And you can use
18 certain evaluators. How a witness acts on the stand. Are
19 they hesitate or straightforward in responding to
20 questions.

21 Look at consistencies or inconsistencies in a witness'
22 testimony. Look at any bias or prejudice a witness may
23 have, that is, whether a witness would wish to help or hurt
24 one side or the other. All these things you consider and
25 you will be in a position to determine the true facts and

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1 return a verdict that speaks the truth.

2 Ms. Mitchum testified in this case as what we call an
3 expert witness. Generally, individuals are only able to
4 testify as to something they've seen or experienced with
5 one of their five senses. Something they've seen or heard;
6 it could be taste, touch or smell, but usually it's
7 something someone has seen or heard.

8 However, where a certain witnesses has or where a
9 witness had certain education, skill, knowledge and
10 training in a certain area, that witness is allowed to take
11 facts and from those facts reach an opinion.

12 The opinion of expert witnesses is allowed in the
13 record and is allowed to be presented to the jury for your
14 consideration to assist you. You are not bound by an
15 expert witness's testimony. You look at an expert
16 witness's testimony through the same lense that you look at
17 other witness. And in addition, you look at an expert's
18 testimony and in weighing it you can look and you
19 determine, even though the court has found Ms. Mitchum to
20 be an expert in regard to chemical analysis, you determine
21 whether she had the criteria to be such an expert.

22 You also may consider and look at in determining what
23 use, if any, to give her expert opinions the reasons she
24 came to the opinion she reached.

25 The opinion of experts are allowed in evidence to

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1 assist you. Again, you can disregard them, use them in
2 whole or in part. They are again for your assistance.
3 They are not binding on you.

4 In this case Mr. Leach has exercised his
5 Constitutional right to remain silent. This is a
6 fundamental Constitutional right of our's and his exercise
7 of that cannot be used against him in any way whatsoever.
8 You cannot in the jury room discuss the fact that Mr. Leach
9 exercised his right to remain silent. You cannot even
10 factor it into your own deliberation. You cannot use in
11 any way whatsoever to mitigate against Mr. Leach the fact
12 that he exercised his constitutional right to remain
13 silent. He is, as I told you earlier, presumed innocent.
14 The State must prove his guilt beyond a reasonable doubt.
15 He need not prove his innocence.

16 Now, there are two types of evidence which are
17 generally presented in cases such as this, circumstantial
18 and direct evidence.

19 Direct evidence is evidence which directly proves the
20 existence of a fact and does not need any deduction.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances which indicate the existence of a fact.

23 Crimes may be proven by circumstance evidence. Our
24 law makes no distinction between the weight or value to be
25 given to the direct or circumstantial evidence. However,

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1 to the extent the State relies on circumstantial evidence,
2 all of the circumstances must be consistent with each other
3 and when taken together point conclusively to the guilt of
4 the accused beyond a reasonable doubt. If these
5 circumstances merely portray the defendant's behavior as
6 suspicious, the proof has failed.

7 The State has the burden of proving Mr. Leach guilty
8 beyond a reasonable doubt. This burden rests with the
9 State regardless of whether the State relies on direct
10 evidence, circumstantial evidence, or some combination of
11 the two. What you should do is weigh all of the evidence
12 and determine the verdict that you should render.

13 Now, in this case there have been, as you recall, in
14 the audio I mentioned earlier that there were gaps, in TV
15 language parts were blipped; here they were just muted.
16 You are not to give that any consideration whatsoever.
17 They were taken out of that audio because they had no value
18 to this case, no relevance to this case and may have caused
19 confusion in this case. So don't be concerned about the
20 fact that there are certain portions of the audio which
21 were removed.

22 In this case the identification of Mr. Leach as the
23 individual involved in this alleged event is an issue. The
24 State has the burden of proving Mr. Leach's identify beyond
25 a reasonable doubt. You must be satisfied beyond a

CHARGE TO THE JURY:

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1 reasonable doubt of the accuracy of the identification of
2 Mr. Leach as the person involved before you may convict
3 him.

4 Identification testimony is an expression of belief or
5 impression by a witness. You must determine the accuracy
6 of the identification of a witness of the defendant.

7 You must consider the believability of any
8 identification witness in the same way as you look at the
9 testimony of other witnesses as I have already talked to
10 you about.

11 You may consider whether the witness had an
12 adequate opportunity to observe the offender at the time of
13 the offense, and this will be affected by things such as
14 how long or short a time was available. How far or close
15 the witness was to the alleged perpetrator.

16 You can consider the lighting conditions. Whether the
17 witness had a chance to know or see the person in the past..
18 I instruct you that the burden of proof extends to the
19 State to prove every element of the charge of the crime
20 beyond a reasonable doubt and this includes proving beyond
21 a reasonable doubt Mr. Leach to have been the person who
22 committed this alleged offense.

23 If after examining the testimony you have a reasonable
24 doubt as to the accuracy of the witness' identification,
25 you would find Mr. Leach not guilty.

CHARGE TO THE JURY:

-302-

1 Mr. Leach is charged with trafficking in crack
2 cocaine. Here the State must prove beyond a reasonable
3 doubt as to both of these indictments that the defendant
4 either knowingly sold, manufactured, cultivated, delivered,
5 purchased, brought into this State, provided financial
6 assistance or otherwise aided, abetted, attempted, or
7 conspired to sell, manufacture, cultivate, deliver,
8 purchase, or bring into this State, or that the defendant
9 was knowingly in actual or constructive possession, or
10 knowingly attempted to become in actual constructive
11 possession of crack cocaine.

12 The State must prove that the substance involved was
13 in fact crack cocaine and the State has to prove what
14 amount is involved as to the two separate indictments and I
15 will talk to you more about that in just a moment.

16 Knowledge, of course, knowingly actually means with
17 knowledge. That is, not accidental or unknowingly.

18 Actual possession means that the crack cocaine or
19 alleged crack cocaine was in the actual physical custody of
20 an individual, here Mr. Leach.

21 Constructive possession means that a defendant had
22 dominion and control, or, the right to exercise dominion
23 and control over either the drug itself or the property
24 where the drug was found, the cocaine, crack cocaine.

25 Mere presence at a scene where drugs are found is not

CHARGE TO THE JURY:

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1 enough alone to prove possession. Actual knowledge of the
2 presence of crack cocaine is strong evidence of a
3 defendant's intent to control it's disposition of use.

4 A defendant's knowledge of possession may be inferred
5 when a substance is found on property under that person's
6 control. However, this inference is simply an evidentiary
7 fact to be taken into consideration while you along with
8 other evidence in this case and give it such weight, if
9 any, you decide it should have.

10 Now, I told you the State must prove that the
11 substance involved was in fact crack cocaine. Of course,
12 all these things just be proven beyond a reasonable doubt.

13 There are two indictments here. One charges that Mr.
14 Leach was in possession of 28 grams or more, or not in
15 possession, that he trafficked it in as I defined it for
16 you. And the language I used about sale, manufacture, et
17 cetera, even though I told you the indictments are not
18 evidence, the indictments do have that language in them.

19 The State has charged Mr. Leach in one indictment with
20 being in actual constructive possession, or distributing or
21 delivering 28 grams or more of crack cocaine. And in the
22 other indictment, alleges that he either did one of the
23 things prohibited as to ten grams or more.

24 Now as to that second charge, the State must prove
25 that as to that charge that the amount of crack cocaine

CHARGE TO THE JURY:

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1 involved was ten grams or more. And as to that indictment,
2 that would be the simple - what you would have to return,
3 whether or not he trafficked in crack cocaine and whether
4 the State has proved beyond a reasonable doubt that the
5 amount was ten grams or more.

6 Now as to the other indictment where he is charged
7 with being in possession of or being involved in the
8 trafficking of 28 grams or more, the State must prove
9 beyond a reasonable doubt for you to convict him of being
10 involved with trafficking in 28 grams or more, that the
11 weight of the substance involved in that event was 28 grams
12 or more.

13 However, in that charge, if you find that the State
14 has failed to prove that he trafficked in 28 grams or more,
15 did traffic in ten grams or more, you could find him guilty
16 of trafficking in the lesser amount.

17 They charged him with 28 grams or more but under our
18 law you can examine the evidence and if you determine that
19 the weight was not - After you determine it was crack
20 cocaine and determine unanimously that Mr. Leach was in
21 fact involved, as to the charge with 28 grams or more, you
22 can determine and consider whether or not the amount was
23 not 28 grams but less than 28 grams but more than 10 grams.

24 I have verdict forms. As a verdict form as to the
25 trafficking in crack cocaine as to the charge of 28 grams

CHARGE TO THE JURY:

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1 or more, and on that there are two options. The first
2 option has a sub-option. The fact that these are in this
3 particular order is of no importance. I have to put them
4 in some order, so I put them in this order. That is, the
5 options.

6 The first option is, we find the defendant guilty of
7 trafficking crack cocaine. And as to this indictment
8 involving 28 grams or more, then you would have to
9 determine whether or not the State has proven not only that
10 he trafficked in crack cocaine, but the weight in which he
11 trafficked, 28 grams or more or ten grams or more.

12 If you find that the State has proven him guilty of
13 trafficking, you would put an X mark or a check in front of
14 that line and then you would put an X mark or check by the
15 amount you determine was involved.

16 If you find the State has failed to prove Mr. Leach
17 guilty under that indictment, you would put an X or check
18 on the second line that says, we find the defendant not
19 guilty of trafficking crack cocaine. There is a place for
20 you to sign, Madame Forelady, you of course will preside
21 over the jury deliberations. And there is a place for you
22 to date and today's the 14th.

23 As to the indictment for trafficking in crack cocaine
24 in ten grams or more, you would see there is no verdict
25 form with that because you can simply write the verdict on

CHARGE TO THE JURY:

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1 the back of the indictment.

2 You will see there the word verdict several lines
3 below it. On the bottom line you sign, and there is a
4 place for you to date, and on one of the other three lines
5 above your signature, you would write the verdict, the
6 unanimous verdict, of the jury.

7 If as to that charge of ten grams or more the State
8 has failed to prove Mr. Leach guilty of trafficking in ten
9 grams or more of crack cocaine, you would write the two
10 words not guilty.

11 If the State has proven Mr. Leach to your unanimous
12 satisfaction guilty of trafficking in ten grams or more,
13 you would write the word guilty.

14 Now your verdict must be unanimous; all twelve jurors
15 must agree. Once all twelve jurors have agreed, the
16 Forelady will enroll the verdict on your behalf.

17 Your verdict cannot be based on sympathy, passion,
18 prejudice, or matters outside the record. We do not send
19 in in South Carolina a written charge to you on the law,
20 but if you wish for me to go over any part or all of my
21 charge on the law, please let me know and I'll bring you
22 back in here in open court and recharge you on any part or
23 all of the law.

24 If you have questions, write them down. Knock on the
25 door, give them to the bailiff and the bailiff will bring

CHARGE TO THE JURY:

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1 them to me and I will consult with the attorneys. And I
2 will try to - I will respond. I may be able to write an
3 answer to the note on the note itself. If I do that and
4 return the note, please keep it and turn it in with the
5 evidence at the end of the trial because it has to be part
6 of the record in this case.

7 If I cannot answer it by writing an answer on the note
8 itself, I will bring you out here in open court and answer
9 whatever the question is.

10 We can have testimony replayed if you wish. There are
11 - The audio and video are into evidence. We will make -
12 provide you with a laptop that has nothing else on it so
13 that you can use it to review the audio and video.

14 If you wish to have testimony replayed, let us know
15 and we can bring you back in here in open court and do
16 that.

17 Now, Ms. Gardner, as an alternate, you will remain in
18 the courtroom as the jury exits this time and when you do
19 exit this time, do not start deliberating.

20 I have to go over with the attorneys my charge. If I
21 have made an error, I will send for you and bring you back
22 in and correct it.

23 If I have not made any error, I will send in the
24 exhibits, the indictments, and the verdict form and the
25 bailiff will tell you to go ahead and start deliberating.

CHARGE TO THE JURY:

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1 When you have reached a verdict, knock on the door,
2 tell the bailiff. The bailiff will inform me that you have
3 reached a verdict. I'm starting another trial fairly soon,
4 but I will break in that trial as quickly as I can to
5 accept your verdict when you reach one. And I will do the
6 same when I receive any notes from you.

7 We have ordered pizza to be here around one so you
8 don't have to worry about lunch and a meal. You can take a
9 break and eat lunch or you can work while you are eating
10 lunch. Although since the verdict has to be unanimous I'm
11 going to need all twelve of you to be working or all twelve
12 of you not working, so with that said, I'm going to let you
13 go out and wait. Go back to the jury room. Do not start
14 deliberating at this time, everybody but Ms. Gardner.

15 (JURY EXITS COURTROOM AT 12:28 P.M.)

16 THE COURT: Anything from the State regarding the
17 charge?

18 SOLICITOR SHELTON: No, sir.

19 THE COURT: Anything from the defense?

20 MR. BROWN: No, sir.

21 THE COURT: All right. Check the exhibits and make
22 sure you have the computer that they can use.

23 Check with the exhibits and the verdict forms and we
24 will send them in and tell the jury to start deliberating.

25 Ms. Gardner, I'm going to - We've already got a panel

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1 for the next trial, so you don't need to stick around for
2 that, but you can call tonight after seven and you will
3 receive whatever instructions they are. You can stay
4 around if you wish. We will give you some pizza too if
5 you'd like. We'll make arrangements for you to have that
6 in private if you would like to wait and see what the
7 verdict is or you can leave. That's your choice, but you
8 are free from this panel. You are excused, so thank you so
9 much for your help.

10 (ALTERNATE JUROR DISMISSED AT 12:29 P.M.)

11 THE COURT: Mr. Brown, you want to check the exhibits?
12 Mr. Brown, do you want to check the exhibits and make
13 sure?

14 All right, we'll be at ease.

15 (COURT IN RECESS AT 12:30 P.M.)

16 (WHEREUPON, COURT'S EXHIBITS THREE AND FOUR,
17 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.

18 (COURT BACK IN SESSION AT 02:40 P.M., IN THE BOND
19 HEARING MATTER FOR TAPLIN WALDEN WITH MICHAEL BROWN.)

20 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
21 ELDER LEACH.)

22 (JURY NOTE RECEIVED UP BY THE COURT AT 02:48 P.M..)

23 (WHEREUPON, COURT'S EXHIBIT NUMBER FIVE, IDENTIFIED
24 AND MARKED, RECEIVED INTO THE RECORD.)

25 (DEFENDANT ELDER LEACH REENTERS COURTROOM AT 02:51

VERDICT:

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1 P.M..)

2 THE COURT: All right, I understand we have a verdict
3 in Mr. Leach's case.

4 I don't know what the verdict is, but I am going to in
5 advance tell anyone who is present who does not believe
6 they can control their emotions, regardless of what the
7 verdict is, that they should leave now because if we have
8 any outbursts regarding the jury verdict, the person
9 responsible for that would be escorted by one of these
10 gentlemen in a grey shirt to a holding cell for a thirty
11 day period of incarceration for being in contempt of court
12 and disrupting court. So if you don't think you can handle
13 whatever the verdict might be, I suggest you leave now
14 through the back door instead of leaving later through the
15 holding cell.

16 All right. Bring in the jury.

17 (JURY REENTERS COURTROOM AT 02:54 P.M..)

18 THE COURT: Madam Forelady, I understand the jury has
19 reached a verdict.

20 MADAM FORELADY: Yes, Your Honor, we have.

21 THE COURT: If you will hand it up to the bailiff,
22 the bailiff will hand it up to me.

23 (VERDICT RECEIVED UP BY THE COURT.)

24 THE COURT: Thank you.

25 MADAM CLERK: Indictment 2013-GS-46-6-7-9 the State

VERDICT:

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1 *versus Elder Prescott Leach*, indictment for trafficking
2 crack cocaine, we find the defendant guilty of trafficking
3 in crack cocaine, 28 grams or more, signed by the
4 foreperson, dated today's date.

5 Indictment 2014-GS-46-678, State versus Elder Prescott
6 Leach, indictment for trafficking in crack cocaine,
7 verdict, guilty, signed by the foreperson, dated today's
8 date.

9 Ladies and gentlemen of the jury, if that be that your
10 verdict so say you all by raising your right hand.

11 Let the record show all jurors affirmed this verdict.

12 (ALL JURORS RESPONDED AFFIRMATIVELY.)

13 THE COURT: Anything from the State before the jury is
14 dismissed?

15 SOLICITOR SHELTON: No, sir, Your Honor.

16 THE COURT: Defense?

17 MR. BROWN: No, sir.

18 THE COURT: All right. I'm going to let you go and we
19 will - to call back tonight after seven and follow those
20 instructions.

21 Madam Forelady, if you'll meet with the Clerk for a
22 minute, she will show you where you need to fill in on the
23 other indictment that you had the verdict form on, so we
24 appreciate your assistance. We'll make that back row
25 available - Mr. Kruger - if any of you want to stay for the

SENTENCING:

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1 sentencing. I don't require juries to stay for the
2 sentencing but if you would like to, you can go out this
3 way and the bailiff will make sure you have a place to sit
4 in the back, safe and comfortable, and you can be here when
5 I sentence Mr. Leach but you don't have to. You can go and
6 call back tonight after seven.

7 Madam Forelady, if you will meet just two seconds with
8 the Clerk.

9 Thank you. Now, yes, ma'am.

10 (JURY DISMISSED AT 02:56 P.M..)

11 THE COURT: All right, the jury has been dismissed.

12 Anything from the State before we get into the
13 sentencing?

14 SOLICITOR SHELTON: No, sir.

15 THE COURT: I mean we'll get into the record and LWOP
16 and all that in just a minute but just regarding the trial.

17 MR. BROWN: Your Honor, I would move for a new trial
18 based on all my previous motions made throughout the course
19 of the trial and my motion for directed verdict at the
20 close of the State's case and at the close of the evidence.

21 THE COURT: All right. The motion is denied. As I
22 have stated several times, there is sufficient evidence,
23 direct and substantial circumstantial evidence from which a
24 jury could and did conclude that Mr. Leach committed these
25 offenses.

SENTENCING:

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1 All right, if you'd bring Mr. Leach around.

2 (DEFENDANT ELDER LEACH AND DEFENSE ATTORNEY MICHAEL
3 BROWN APPROACH THE BAR.)

4 THE COURT: All right, Mr. Shelton, I'll let you go
5 forward now and tell me, I understand that - and make sure
6 we put on the record what I understand to be the case -
7 that this is a third or more serious offense or a
8 combination of three serious and most serious offenses, and
9 that Mr. Leach has been earlier served with a Notice of
10 Life Without Parole, so go over all of that and his record
11 and the - I don't know if you actually call them enhancing
12 but the - I guess they would be a form of enhancing - but
13 the prior verdicts, prior convictions that lead to this
14 being a third or subsequent serious or most serious
15 offense.

16 SOLICITOR SHELTON: Yes, sir, Your Honor. You are
17 correct, Your Honor. Mr. Leach was served with Notice of
18 the State's intention to seek life without parole under the
19 three strikes recidivism statute. Let's see, that's, for
20 the record, 17-25-45. He has prior convictions that are
21 serious or violent offenses prior to this.

22 Mr. Leach was notified of this intention, of the
23 state's intention to seek life without the possibility of
24 parole if he was convicted on February 27th, 2014. I had
25 filed my Notice with the Clerk of Court and I served Mr.

SENTENCING:

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1 Leach in person that day in the courtroom. I believe it
2 was in front of Your Honor, with Ms. Nelson as the court
3 reporter, and Sean Cronin was standing in for Mr. Brown as
4 he was on medical leave at the time.

5 I do have a copy of the State's Notice, a certified
6 copy, I would like to make a part of the Court's Exhibit as
7 a court record. It does also outline what the State - what
8 Mr. Leach's prior serious and violent offenses are.

9 I also have certified copies of his prior drug
10 convictions. Some of those being serious crime offenses.

11 In 1991, Mr. Leach was convicted of possession of
12 crack, second offense. 1992 he was convicted of
13 distribution of crack and distribution within the proximity
14 of a school - excuse me, within the proximity of a park.
15 That's 1992-GS-46-4-0-9-9 is the proximity charge. That is
16 a serious strike so that's his first strike.

17 In 1999, Mr. Leach was convicted of possession of
18 crack, third offense. In 2005, Mr. Leach was convicted of
19 trafficking crack cocaine between the weights of 10 and 28
20 grams, second offense. That was indictment 2005-GS-46-
21 0-6-9-4. That conviction constitutes a violent and a
22 serious strike.

23 He was also convicted of a companion proximity charge
24 from the same incident, 2005-GS-46-0-6-9-5 and that is a
25 serious strike.

SENTENCING:

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1 Those constitute his two priors and then of course
2 both of the charges the jury just found him guilty, both
3 trafficking's, are serious and violent offenses, making him
4 life without parole.

5 THE COURT: All right, Mr. Brown.

6 SOLICITOR SHELTON: And Your Honor, just for the
7 record I will make all these Court's Exhibits, these
8 certified copies.

9 THE COURT: Okay. All right, Mr. Brown.

10 MR. BROWN: Your Honor, I don't dispute that. He has
11 provided that to me.

12 THE COURT: All right, anything you want to say on
13 behalf of Mr. Leach?

14 MR. LEACH: Yes, sir, Your Honor, I'd like to say
15 something. On the offense in 1992 that he's discussing,
16 that was my first ever drug offense and I was tried for a
17 third offense charge and was not tried for no first offense
18 charge. I was tried for a third offense charge. It wasn't
19 for a first offense charge.

20 Now they are changing it. They are trying to say it
21 is a first offense. Now it's a first offense. Then it was
22 a third offense. And I figured by it being they changed it
23 to first offense, it's not a most serious offense. Them
24 charges over twenty years old.

25 THE COURT: Well the length of the charges there is

SENTENCING:

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1 no sort of statute of limitations on when serious offenses
2 run their course. The record reflects as presented to me
3 and undisputed, uncontradicted, unchallenged, that you have
4 three serious offenses which would substitute a life
5 without parole.

6 MR. LEACH: No, Your Honor. That one in 2005 if
7 that's included. The '92 offense and then 2005 offense.

8 THE COURT: And this would be number three.

9 MR. LEACH: This would be number three but I'm just
10 saying that offense, I was tried as a third offense. In
11 all actuality, it should have been a first offense. It's
12 like I'm back on trial again for that offense again right
13 now today.

14 THE COURT: Well I have a little trouble following
15 you as to how that would affect anything that I'm doing
16 today because regardless of what you are trying to tell me
17 it boils down to you having three serious offenses today
18 which is what I have to include on the sentencing.

19 Anything else, Mr. Brown?

20 MR. BROWN: No, sir.

21 THE COURT: All right. Mr. Leach, on both of these,
22 these are to run concurrent. They are life without parole
23 under Section 17-25-45 as provided under the laws of this
24 State.

25 Thank you.

1 MR. LEACH: Love ya'll.

2 (DEFENDANT EXITS COURTROOM.)

3 THE COURT: All right.

4 (WHEREUPON, COURT'S EXHIBIT NUMBERS SIX, SEVEN, EIGHT,
5 AND NINE IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

6 (COURT ADJOURNED IN THE MATTER OF STATE VERSUS ELDER
7 PRESCOTT LEACH AT 03:19 P.M..)

8 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 11th and 12th days of August, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 7, 2014

COF 319

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 09 2015

SC Court of Appeals

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELDER PRESCOTT LEACH

APPELLANT

APPELLATE CASE NO. 2014-001158

ANDERS BRIEF OF APPELLANT

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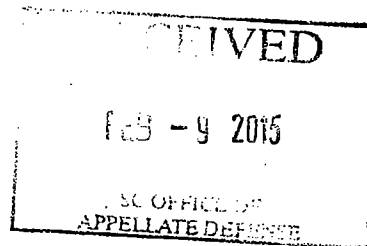


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STATEMENT OF ISSUE ON APPEAL

Did the trial court commit a reversible error in upholding the warrantless seizure and search of Appellant's vehicle under the "plain view" doctrine because the searching officer did not discover the packaging materials or the scale until she either: (1) sat in the vehicle, which was an unlawful vantage point, or, (2) opened the driver's side door, which constituted an improper warrantless search?

STATEMENT OF THE CASE

On March 20, 2014, the York County Grand Jury indicted Appellant Elder Leach for two counts of trafficking in crack cocaine. R. 326 – R. 325. On February 27, 2014, the State filed notice of intent to seek a sentence of life imprisonment without the possibility of parole.

On May 12, 2014, Appellant proceeded to trial before the Honorable John C. Hayes, III, and a jury. R. 1. Michael L. Brown and Sean Cronin represented Appellant. Assistant Solicitors Mathew Shelton and Leslie Robinson represented the State.

The jury found Appellant guilty as charged. R. 311, ll. 1-14. The trial court sentenced Appellant to two concurrent terms of life imprisonment without the possibility of parole. R. 316, ll. 21-25.

This appeal follows.

ARGUMENT

The trial court committed a reversible error in upholding the warrantless seizure and search of Appellant's vehicle under the "plain view" doctrine because the searching officer did not discover the packaging materials or the scale until she either: (1) sat in the vehicle, which was an unlawful vantage point, or, (2) opened the driver's side door, which constituted a an improper warrantless search.

Relevant Facts

On June 19, 2013, at the direction of law enforcement, Tezo Ervin contacted Appellant to allegedly purchase three ounces of crack cocaine. R. 106, ll. 16 – R. 110, ll. 8. Ervin, a drug dealer and user with an extensive criminal record, offered to work with law enforcement for cooperation credit on a trafficking charge for which he was facing up to thirty years in prison. R. 122, ll. 10 – R. 128, ll. 10.

Ervin was given three thousand three hundred dollars in marked bills to purchase the drugs. R. 223, ll. 5-17. While driving to meet Appellant, law enforcement lost visual contact with Ervin. R. 117, ll. 16 – R. 118, ll. 15. During this time Ervin stopped on the side of road and opened the hood of his vehicle, a part of the car that had not been searched by law enforcement during his briefing. R. 91, ll. 8 – R. 93, ll. 20; R. 117, ll. 18-20. Ervin met Appellant in a residential lot where Appellant walked over to Ervin's car and an exchange took place. R. 110, ll. 7-14. Immediately thereafter, law enforcement moved in and arrested Appellant before he reached his vehicle. R. 142, ll. 6-11.

Once Appellant was arrested, Ervin turned over, what laboratory results revealed to be thirty-eight grams of crack cocaine as well as three hundred dollars of the marked buy-money which Ervin testified Appellant returned to him. R. 131, ll. 1-24. Law enforcement recovered the remaining three thousand dollars at the location of Appellant's arrest. R. 167, ll. 23-24.

Search of Appellant's Vehicle

After Appellant was arrested and handcuffed; law enforcement conducted a warrantless search of his vehicle. R. 140, ll. 20-22. Appellant's vehicle was on private property. R. 227, ll. 18-23. During the search, Officer Robin Gander opened the driver's side door and sat down. She then noticed a small black scale in the center console and what appeared to be packaging materials. R. 143, ll. 9-20. Gander inspected the packaging materials and discovered what she believed to be a quantity of crack cocaine. *Id.*

Unusually, Appellant's vehicle was not impounded. Instead, Gander drove the vehicle to the police station where it was processed. R. 143, ll. 2-25. Subsequent tests confirmed that the packaging materials contained 12.55 grams of crack cocaine. R. 206, ll. 1-8.

Trial and Suppression Hearing

During trial, Appellant moved to suppress the evidence of the crack cocaine found in the vehicle on the grounds that the warrantless search was not conducted incident to arrest and that no other exception to the warrant requirement applied. R. 144, ll. 20 – R. 145, ll. 24. The State countered that the drugs were in plain view with Gander claiming:

As soon as you sit down you look in the driver's side door to get in, you could clearly see a digital scale in the center console of the vehicle as well as on the passenger seat you can clearly see a bag of crack – I cannot say how much it was - as well as package materials."

R. 140, ll. 5 – R. 144, ll. 18 (*emphasis added*). The court denied Appellant's motion; concluding that the plain view exception to the warrant requirement justified the search. R. 146, ll. 4-15. The court also believed "consent and abandonment" of the vehicle by Appellant further supported the propriety of the warrantless search. *Id.*

When the jury reentered, Gander remained on the stand and claimed, over a renewed objection by defense counsel, that she saw the digital scale and packaging material inside the

vehicle. R. 150, ll. 5-7. Gander then confirmed that the photographs of the evidence found in the car, taken by another officer at the station reflected how they appeared when Gander entered Appellant's car.¹ R. 151, 16-24. No other officer testified that they observed the scale and packaging materials on the passenger seat at the time of Appellant's arrest. Gander conceded that she drove the vehicle alone to the police station and that no photographs were taken at the scene of Appellant's arrest. R. 151, ll. 3-24.

The State then called Jamie Faulkenberry, the officer who took the photographs of the scales and packaging once the vehicle arrived at the police station. R. 163, ll. 10-16. Faulkenberry recalled that she examined Appellant's vehicle once Gander delivered it to the police station. R. 171, ll. 2-21. Faulkenberry alleged that the evidence found in the car was sitting on the passenger seat when the vehicle reached the station. *Id.* Faulkenberry then authenticated the photographs of the items found and they were entered into evidence. R. 171, ll. 15 – R. 172, ll. 23. Faulkenberry testified that she had not seen the packaging materials and scale following Appellant's arrest or during the investigation at the controlled buy location. R. 182, ll. 1-19.

Appellant did not testify. R. 247, ll. 13-25. After the jury returned a guilty verdict on both charges, the trial court sentenced Appellant to two concurrent sentences of life imprisonment without the possibility of parole. R. 316, ll. 21-25.

¹ These photographs were entered into the record as State's Exhibits Nos. 6 – 9. It appears that Exhibits 6, 7, and 8 had the items recovered during the search manipulated before being photographed as the scale appears on the seat instead of in the center console and the alleged crack cocaine has been moved so as to appear in a single photograph. These photographs are on file with the Court.

Discussion

The trial court committed a reversible error in upholding the warrantless seizure and search of Appellant's vehicle under the "plain view" doctrine because the searching officer did not discover the packaging materials and scale until she either: (1) sat in the vehicle, which was an unlawful vantage point as law enforcement had no legitimate reason to seize the vehicle under the circumstances; or, (2) opened the driver's side door, which constituted a warrantless search allowing her to observe portions of the car's interior not otherwise readily visible from outside the vehicle.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Consequently, the United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights against police misconduct. *United States v. Calandra*, 414 U.S. 338 (1974).

The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The exclusionary rule provides that evidence seized in violation of the Fourth Amendment must be excluded from trial. *Id.*; *See State v. Sachs*, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975); *see also State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010).

Additionally, the exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.

See Wong Sun v. United States, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999) (finding if law enforcement exploit an unlawful search to seize evidence that would not have otherwise come to light, that evidence is the "fruit of the poisonous tree" and is not admissible).

Furthermore, the United States Supreme Court has held that "searches [and seizures] conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted); *See Coolidge v. New Hampshire*, 403 U.S. 443, 91 (1971); *see also State v. Weaver*, 361 S.C. 73, 80-81, 602 S.E.2d 786, 790 (Ct. App. 2004).

These exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek exemption...that the exigencies of the situation make the course imperative." *Coolidge*, 403 U.S. at 91. More specifically, the burden is on the State to justify a warrantless search or seizure. *Id.* Recognized exceptions have include: (1) search incident to a lawful arrest; (2) "hot pursuit;" (3) "stop and frisk;" (4) "automobile exception;" (5) the "plain view" doctrine; and (6) consent.² *Id.*

Yet, despite these exceptions, the United States Supreme Court has emphasized its concern with warrantless searches and seizures:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. ***Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate***

² When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Missouri*, 361 S.C. 107, 603 S.E.2d 594 (2004). Additionally, an appellate court will reverse only when there is clear error. *Id.*

instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Johnson v. United States, 333 U.S. 10, 14-15 (1948) (*emphasis added*).

The Supreme Court of the United States has also addressed the warrant requirement's effect on the seizing officer: "In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer against a suit for damages. *In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.*" *Carroll v. United States*, 267 U.S. 132, 156 (1925) (*emphasis added*).

As an exception to the warrant requirement, the plain view doctrine permits law enforcement to remove objects which can be identified and seen without a search. *State v. Thomas*, 248 S.C. 573, 151 S.E.2d 855 (1966) (overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (a seizure of what is in plain view, without a search, is not prohibited by the search and seizure provisions of the South Carolina or United States Constitutions).

To fall under the protections of the plain view doctrine the State must satisfy two requirements: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities. *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011) (*citing Horton v. California*, 496 U.S. 128, 110 (1990)). The State carries the burden of proving that evidence seized was, in fact, in plain view, or risk its admissibility. *State v. Brown*, 289 S.C. 581, 347 S.E.2d 882 (1986) (suppression is required when the state puts forth no competent evidence that items seized were in plain view).

In the present case, the trial court erred in concluding that the plain view doctrine permitted the search and seizure of Appellant's car as law enforcement did not observe the packaging, the scales, or the crack cocaine until Gander entered the vehicle. Gander testified that she noticed the items on the passenger seat and in the center console: "*As soon as you sit down you look in the driver's side door to get in*". R. 143, ll. 9-15 (*emphasis added*).

Alternatively, even if her testimony is understood to mean that **she observed the packaging material and scales once she opened the door**; the plain view doctrine is still inapplicable as opening a car door is a search within the meaning of the Fourth Amendment. *McHam v. State*, 404 S.C. 465, 478, 746 S.E.2d 41, 49 (2013) (plain view doctrine requires the officer to be able to observe what is in open or plain view when he is located where he has a lawful right to be, *where an officer has opened the car door to view portions of the interior of the car that he could not otherwise see a search has taken place*) (*emphasis added*). There was no testimony that the items were visible from outside the vehicle.

The driver's seat was not a lawful vantage point as the police did not have any legitimate reason to enter the vehicle or seize it. It is uncontested that the vehicle was located on private property and was not an obstruction to traffic that would justify removal. R. 227, ll. 18-23. There were no exigent circumstances, such as the risk of Appellant escaping in the vehicle, justifying prompt action by law enforcement. *State v. Peters*, 271 S.C. 498, 248 S.E.2d 475 (1978).

Nor was the search incident to arrest or a safety sweep as Appellant was outside of the car when arrested and was already handcuffed in custody when the search was conducted. *State v. Brown*, 401 S.C. 82, 90-91, 736 S.E.2d 263, 267 (2012) (*citing Arizona v. Gant*, 556 U.S. 332

(2009)(search of vehicle incident to arrest is only permissible if arrestee within in reaching distance of passenger compartment).

There was no evidence law enforcement sought Appellant's consent, the consent of the car's titled owner, or that the car had been voluntarily abandoned. *State v. Lemacks*, 275 S.C. 181, 184, 268 S.E.2d 286 (1980) (running car in roadway was abandoned and constituted a traffic hazard justifying search). Likewise, there was no testimony on any standardized procedure or policies law enforcement employed when searching or seizing vehicles after a drug bust that would justify a seizure and inventory search. *State v. Boyd*, 288 S.C. 206, 208, 341 S.E.2d 144, 145-46 (Ct. App. 1986) (citing *South Dakota v. Opperman*, 428 U.S. 364 (1976)). Finally, as defense counsel correctly stated: "there is no reason to believe that there will be evidence of the arrest in [the vehicle] because the alleged drug transaction has already taken place [outside of the vehicle]." R. 145, ll. 18-24.

Accordingly, the trial court erred in holding that the warrantless seizure of Appellant's vehicle on private property was proper under the Fourth Amendment because the officers failed to secure a search warrant or establish that probable existed under the plain view doctrine, to seize the vehicle.³ R. 145, ll. 25 – R. 146, ll. 16; *See Coolidge v. New Hampshire*, 403 U.S. at 91.

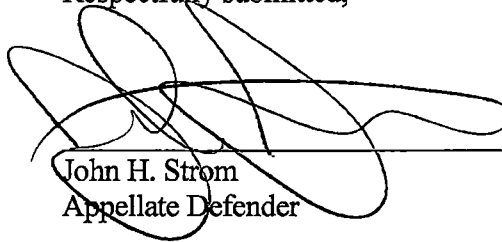
³ While unpreserved, the two indictments for trafficking stem from a single act; Appellant's alleged possession of up to 50.58 grams of crack cocaine. *Matthews v. State*, 300 S.C. 238, 387 S.E.2d 258 (1990) (vacating conviction and sentence for possession of marijuana with intent to distribute where defendant was convicted of possession with intent to distribute and trafficking based on the same act); *State v. Brown*, 319 S.C. 400, 407, 461 S.E.2d 828, 833 (1995).

Appellant should have only been indicted for a single count of trafficking because the indictments represent a single offense as the elements charged in each are identical and trafficking is a crime defined by possession of a certain amount of narcotic. Appellant has been prescribed greater punishment than the legislature intended. *Blockburger v. United States*, 284 U.S. 299, 304, (1932); *State v. Gosnell*, 341 S.C. 627, 535 S.E.2d 453 (2000) (defendant indicted for trafficking by conspiracy "handled" a maximum of 252 grams and could not be found guilty on indictment alleging trafficking by conspiracy in excess of 400 grams).

CONCLUSION

For the foregoing reasons, Appellant's convictions should be reversed and this case remanded to the York County Court of General Sessions for a new trial.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELDER PRESCOTT LEACH

APPELLANT

APPELLATE CASE NO. 2014-001158

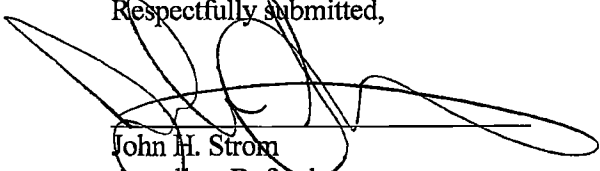
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Elder Prescott Leach states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge John C. Hayes, III, which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Elder Prescott Leach.

Respectfully Submitted,


 John H. Strom
 Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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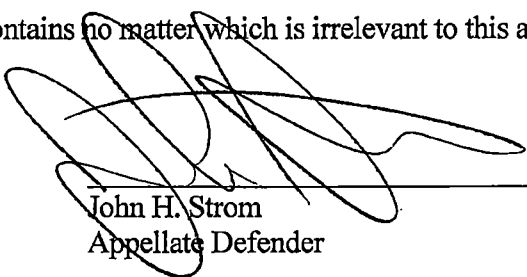
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (May 12-14, 2014);
- (3) State's Exhibit 6 (Photo – baggies);
- (4) State's Exhibit 7 (Photo – Digital scales & white substance);
- (5) State's Exhibit 8 (Photo – plastic baggies w.white substance); and
- (6) State's Exhibit 9 (Photo – digital scales on console).

I certify that this designation contains no matter which is irrelevant to this appeal.

February 9th, 2015



John H. Strom
Appellate Defender

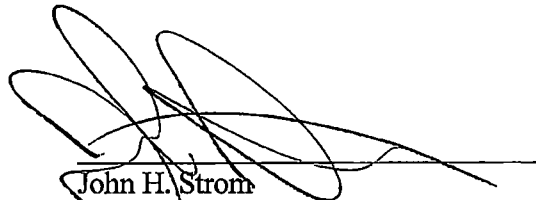
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 9, 2015



John H. Strom
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

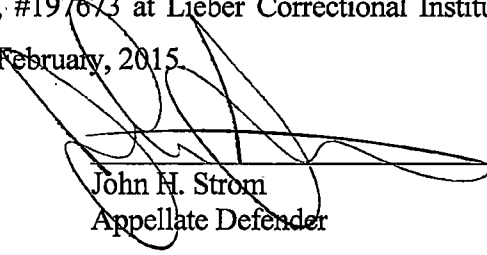
ELDER PRESCOTT LEACH

APPELLANT

APPELLATE CASE NO. 2014-001158

CERTIFICATE OF SERVICE

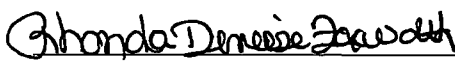
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Elder Prescott Leach, #197673 at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 9th day of February, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Elder Prescott Leach, Appellant.

Appellate Case No. 2014-001158

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-499
Submitted August 1, 2015 – Filed October 21, 2015

APPEAL DISMISSED

Appellate Defender John Harrison Strom, of Columbia;
and Elder Prescott Leach, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia; and Solicitor Kevin Scott Brackett, of
York, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2016CP4602740

STATE OF SOUTH CAROLINA

County of

York

CERTIFIED

TRUE COPY

IN THE COURT OF COMMON PLEAS

2016 SEP 16 PM 3:14

Elden P. Yeach #197653

Full name and prison number (if any) of Applicant

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2016 SEP 16 PM 12:09

DAVID HAMILTON
C.C.C.P. & CS
YORK COUNTY, SC

FILED-RECEIVED

INSTRUCTIONS 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 Broad River Corr. Mu 257
4460 Broad River Rd., Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Moss Justice Center
1675 York Highway S, York, South Carolina 29745
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014-65-46-00678, 44-53-375 (c)(1) C.D.R. Code 450

(b) 2014-GS-46-00679, 44-53-375 (c) (2) C.D.R. Code 392 341

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 14, 2014 Life Without Parole (concurrent)

(b) May 14, 2014 Life without Parole (concurrent)

(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. Court of Appeals South Carolina

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted Aug. 1st 2015 - Filed Oct. 21, 2015

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2015-4p-499

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appellant Counsel
- (c) Prosecutor Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached sheets
- (b) See Attached sheets
- (c) See Attached sheets
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

N/A

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

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) This is initial P.C.R.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? NO
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (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. Michael Langford Brown - P.O. Box 1025
Rock Hill, South Carolina 29730
- ii. John H. Strom, 1330 Lady St. suite 401
Columbia, South Carolina 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Michael H. Brown, Trial and Sentencing
- ii. John H. Strom, Court of Appeals
- iii. _____

19. State clearly the relief you seek in filing this application:

Conviction and Sentences Vacated, and to be released from prison.
Conviction and Sentences Reversed and Remanded for New Trial.
Conviction and Sentences Remanded for Resentencing ...

20. Are you now under sentence from any other court that you have not challenged?

No

* Petitioner believes he has additional claims for P.C.R., but does not have collateral counsel, access to discovery process, or funds for expert services to investigate these claims as such. I petitioner would respectfully reserve the right to amend application for further issues... Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Elder P. Leach, 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.

Elder Leach

SWORN to and subscribed before me this 14th
 day of September, 2016.

Lisa Brown-Alston (L.S.)
 Notary Public

LISA BROWN-ALSTON
 Notary Public, State of South Carolina
 My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Elder P. Leach #197673, 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.

Elder P. Leach EPL
Applicant

SWORN or affirmed to and subscribed before me this
14 day of September, 2016.

Lisa Brown-Alston
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

(A)

347①

ineffective Assistance of Trial Council:

- 1) Failure to properly challenge prior convictions..
- 2) Trial council gave erroneous advice on which petitioner based his decision, not to testify
- 3) Failure to show buy bust procedure was defective
- 4) No true billed indictment in Rule 5 brady motion
- 5) Did not prove chain of custody was defective once drugs were placed on the ground..
- 6) Failure to have Video Evidence Authenticated
- 7) Failure to suppress Video Evidence
- 8) Allowed Video/Audio evidence to be muted and deleted during and before trial without objection..
- 9) Allowed Key witness to Authenticate a Video, that was different from initial statement..
- 10) Allowed Unauthenticated video into evidence without objection at trial..
- 11) Failure to present different Video from same day: "there are two videos different from each other.."
- 12) Failure to suppress Video evidence which had different date and time of actual event..
- 13) Improper statement to the jury in closing argument
- 14) Failure to present a defense..
- 15) Trial council never was presented a true billed indictment in Rule 5 brady.. Only 1st offense indictments were presented...
- 16) Trial council allowed a ~~constructive~~ amendment/ to indictment at the end of trial..

Ineffective Assistance of Council

- 17) Failure to challenge prior unconvicted conviction used to secure life without parole conviction..
- 18) No motion to suppress evidence or statements..
- 19) Attorney gave wrong legal advice on which defendant made his decision not to testify..
- 20) Counsel failed to strike Pro-Prosecution Juror..
- 21) Sufficiency of Charging Document
- 22) Essential element required to indictment..
- 23) Attorney kept hearing Aid day 2 of trial..
- 24) Failure to challenge Jury Selection or Voir Dire

⑧

Ineffective Assistance of Appellant Council..

- 1) Failed to present issues of Merit
- 2) Failed to present Directed Verdict issue
- 3) Failed to present wrong charge to the jury.
- 4) Failed to present issue as plain-view was deflected
- 5) Failed to present issues of subject matter jurisdiction.
- 6) Lesser included offense Jury instruction, not presented to jury..
- 7) Jury instruction on confidential informant not presented to jury..
- 8) Trial courts duty to Assess Conflict of interests
- 9) Failed to present Merit issue on Warrantless Search and Seizure..

10)

©

Prosecutor Misconduct

- 1) Due Process Violation
- 2) No true billed indictment in Rule 5 brady
- 3) True billed outside scope of General Sessions Court.. Indictment never presented to Grand Jury..
- 4) Sufficiency of the charging document.
- 5) Essential element Required to indictment.
- 6) Amendment to indictment after trial is over.
- 7) Prosecutor did not present sufficient evidence to support claim that prior conviction was a crime of violence in support of career offender enhancement..
- 8) Allowed primary witness false testimony..
- 9) Conflict of Interest
- 10) Failed to present sufficient evidence of an essential element of Trafficking in crack cocaine,

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Elder P. Leach, #197673,	)	2016-CP-46-2740
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 16, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted by the March 2014 term of the Grand Jury for York County for one of Trafficking in Crack Cocaine, 28-100 grams, 3rd offense (2014-GS-46-00679), and Trafficking in Crack Cocaine, 10-28 grams, 3rd offense (2014-GS-46-00678). Applicant was represented by Michael Brown Jr., Esquire. Applicant proceeded to a jury trial and on May 14, 2014, he was found guilty as indicted. Applicant was sentenced by the Honorable John C. Hayes, III, to life imprisonment without parole for both charges, to be served concurrently.

Applicant filed a timely notice of appeal. Applicant's was represented by John Harrison Strom, Esquire, who filed an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion submitted August 1, 2015, and filed October 21, 2015. State v. Leach, 2015-UP-499 (S.C. Ct. App. 2015). The Remittitur was returned on November 6, 2015.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records from the Department of Corrections, and the trial transcript. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons (see Application for specific allegations):

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland 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. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of his appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRPC.

[Signature block on following page]

VII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

December 22, 2016

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2016-CP-46-2740

ELDER P. LEACH, #197673,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

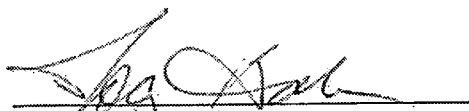
STATE OF SOUTH CAROLINA,

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 by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29731-7015

DATED this 22nd day of December, 2016.


Jocelyn Baker, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 ELDER PRESCOTT LEACH,

4 Applicant,

5 Case No.

6 -against-

2016-CP-46-2740

7 State,

8 Respondant.

9 -----x

10 August 1, 2017

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE R. LAWTON MCINTOSH

15

16 A P P E A R A N C E S:

17 JUSTIN HUNTER, Esquire

18 Attorney for the State

19

20 LEAH MOODY, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Elder Prescott Leach				
Ms. Moody	4			
Michael Brown				
Mr. Hunter	52			
Ms. Moody		62		
Matthew Shelton				
Mr. Hunter	73			
Ms. Moody		77		
John Strom				
Mr. Hunter	82			
Ms. Moody		86		

3.

EXHIBITS

1 MR. HUNTER: May it please the Court, Your Honor.
2 The next case is Elder Leach versus the State South
3 Carolina, 2016-CP-46-2740. Your Honor, he was
4 indicted March 2014 in York County for two counts of
5 trafficking crack, 28 to a hundred grams.

6 Your Honor, he was represented by Mr. Michael
7 Brown. On May 14, 2014 he proceeded to a jury trial
8 before Judge Hayes. He was sentenced to life without
9 parole. He did file a Notice of Appeal and Appellant
10 defender John Strom (phonetics) filed an Anders brief.
11 South Carolina Court of Appeals dismissed the appeal
12 pursuant to Anders on October 21, 2015. A Remittitur
13 was sent November 6, 2015. He filed this current
14 action September 16, 2016. He is present today
15 represented by Miss Leah Moody.

16 MS. MOODY: Thank you, Your Honor. May it please
17 the Court. We are ready to proceed and I would like
18 to call Mr. Leach to the stand.

19 ELDER PRESCOTT LEACH, called as a witness, having
20 been duly sworn by the clerk, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MOODY:

24 Q Mr. Leach, could you please state your full name for
25 the record?

1 A Elder Prescott Leach.

2 Q And where are you currently incarcerated?

3 A Broad River Correctional Institution.

4 Q And what are you incarcerated for?

5 A Trafficking crack cocaine, ten to 28 grams, trafficking
6 crack cocaine, 28 to one hundred grams.

7 Q And who was your attorney that represented you on those
8 charges?

9 A Michael Brown.

10 Q And you proceeded to a trial, correct?

11 A Yes, ma'am.

12 Q And so you filed your PCR application on this case;
13 those two charges?

14 A Yes, ma'am.

15 Q And you initially alleged that your attorney was
16 ineffective assistance of counsel?

17 A Yes.

18 Q Can you tell me what the first ground of ineffective
19 assistance of counsel that you alleged?

20 A First ground would be prior conviction.

21 Q Okay, and can you explain that to the Court what you
22 mean by prior conviction?

23 A I mean my counsel failed to challenge my priors.

24 Q Your prior offenses?

25 A My prior offenses, yes.

1 Q Okay, and what specifically did you want him to
2 challenge on your prior offenses?

3 A My prior conviction. I was noticed to seek life
4 without parole on a conviction that was a non-violent,
5 non-serious offense at the time that it was committed.

6 Q Okay.

7 A It was not a part of 17-25-45 when they said it was
8 alleged.

9 Q Okay. And do you recall the date of that conviction?

10 A The date of the conviction -- I was notified the date
11 was a 1992 conviction but the conviction itself was 1993
12 conviction.

13 Q Okay, and who provided you that notice?

14 A The solicitor, Matthew Shelton.

15 Q And what if anything did your lawyer say about that
16 notice?

17 A He never -- as a matter of fact my lawyer, Michael
18 Brown wasn't there at the time when I receive that notice. I
19 was in front of Judge Burch, a visiting judge, and I was
20 representing by Mr. Sean Cronin.

21 Q Okay, and who is Sean Cronin to Mr. Brown?

22 A I guess that's his assistance.

23 Q Okay. So did you point out that you were not convicted
24 in 1992?

25 A Yes.

1 Q And what if anything occurred?

2 A He said don't worry about it.

3 Q Mr. Cronin said that?

4 A Yes.

5 Q Okay. Did you discuss it with Mr. Brown?

6 A No, I didn't. I never got a chance to discuss it.

7 Q Okay. At the trial did you have an opportunity to
8 discuss it?

9 A At the trial -- I brought it up at trial and I was told
10 by the judge that it was violent because of the amount of time
11 that I received on it.

12 Q Okay. And so again you are alleging that you didn't
13 receive proper notice?

14 A I did not -- I received notice. I received proper
15 notice of the seek life without parole punishment, yes, but to
16 challenge my Indictment -- to challenge my prior conviction was
17 never challenged.

18 Q Okay, and so you are saying Mr. Brown should have
19 challenged?

20 A Should have challenged my prior conviction, yes, ma'am.

21 Q Okay. And that was at the trial?

22 A Yes, ma'am.

23 Q Is there anything else as to that notice?

24 A As to --

25 Q The challenge on the notice?

1 A No.

2 Q Okay. All right, you have another ground, the second
3 one being the trial counsel failed to -- excuse me -- gave
4 erroneous advice on which you made your decision not to testify.
5 Can you explain that?

6 A Yes, ma'am. Erroneous decision was the fact that I was
7 told that they was going to use my priors against me if I would
8 testify, and I also was told that it was better for me not to
9 testify because, you know, it was like it would lesser my chance
10 of my appeal.

11 Q Okay. What do you mean by that?

12 A I didn't understand it, but he said don't testify.
13 Listen, I don't know the law. I'm not a lawyer. That's why I
14 hired Mr. Brown. I paid Mr. Brown my money and I was taking his
15 advice.

16 Q Okay.

17 A He advised me not to testify and I really do feel and
18 believe that his advice to not testify because of my prior --
19 because of my prior, and I was like the only priors that they
20 had against me I was pleading guilty. So if they want to use
21 that against me that's good. But I recognize that they couldn't
22 go back no further. They couldn't really bring up no priors
23 because all of them exceeded the ten-year period.

24 Q Okay. And so, your saying that he told you before they
25 could use all the priors?

1 A Yes.

2 Q Okay. Is there anything else as to ground?

3 A As to that, no, ma'am, there's not.

4 Q Okay. The next ground that you filed in your
5 application was failure to stop buy bust procedure was
6 defective?

7 A Yes.

8 Q What do you mean that the buy bust procedure was
9 defective?

10 A In trial -- in trial they proved the buy bust
11 procedure. And the buy bust procedure was defective because
12 they lost sight of the informant.

13 Q Because they lost sight of the informant.

14 A They lost sight of the informant. They lost the
15 informant.

16 Q Okay.

17 A And the informant lied. Pulling in the parking lot and
18 going into the vehicle and do all kinds of other things and the
19 police never know where he was and what he was doing. Never was
20 objection done to that.

21 Q Did you discuss that with your lawyer?

22 A Yes.

23 Q Okay and what did he say, if anything, about that?

24 A It was like he brought it up. He brought it up, but he
25 never put a motion - he never asked for, you know -- I mean he

1 brought it up. He did bring it up. And he disputed the fact --
2 he disputed that fact but it's like -- it just was the way.

3 Q Is just what?

4 A It just was the way.

5 Q But you feel like he should have stayed on that issue?

6 A Yes, ma'am, I felt like he should have stayed on that
7 issue.

8 Q Is there anything else as to that issue?

9 A The buy bust procedure, yes, but I think we kind of
10 take it up during the video evidence also.

11 Q Okay.

12 A I think we'll get to that.

13 Q Okay. So then you allege that there was no true
14 Indictment in the Rule 5 Brady motion. Are you saying that when
15 you went to trial there was no Indictment or are you saying that
16 you didn't receive it when you received your Discovery?

17 A In my motion Discoveries, Mr. Brown applied for my
18 motion of Discovery on July of 2013. He didn't receive my
19 motion of Discovery until April the 9th of 2014. He received
20 April 9, 2014 and then he never did receive the Protective
21 Order.

22 Within that -- excuse me. Let me rephrase that. He did
23 receive the Protective Order but not at that time. Not on April
24 9th. Yeah, not April the 9th. In the motion Discoveries that
25 he received April 9th, I had Indictments in there. They were

1 true billed -- they was not True Bill Indictments. I kept
2 inquiring about True Bill Indictments and we never -- I never
3 got a chance to see True Bill Indictments.

4 Q Okay.

5 A So when we proceeded to trial, before trial I asked
6 about the True Bill Indictments. He stepped over to the
7 solicitor, got the Indictments. I checked the Indictments that
8 I had in my Rule 5. I checked the CDR code. I checked the
9 statutes. I checked everything. The statements in the
10 Indictments, everything; the billing Indictments and everything
11 and they matched. They were stamped and it was true billed. It
12 was stamped true bill. I said let's go to trial and the
13 Indictments that I went to trial on they were first offense
14 Indictments.

15 Q And what do you mean by first offense Indictments?

16 A By CDR code 450, CDR code, trafficking. One of
17 trafficking 44-53-375, CDR code 450. That's a first offense
18 Indictment.

19 Q Okay. And what is the CDR code that they should have
20 been?

21 A CDR code should have been for third offense, 452.

22 Q 452?

23 A Four fifty-two.

24 Q And so, as it relates to those Indictments what did you
25 expect for your attorney to do with those Indictments?

1 A Excuse me. Let me back up one time. The other
2 Indictments 44-53-375 they had a CDR code of 392. There was two
3 Indictments.

4 Q Right.

5 A Two charges. All right. What he should have done with
6 those Indictments, I feel that the Indictments should have been
7 amended before trial. If you going to change anything to the
8 Indictment I feel it should have been amended before trial.
9 Before the jury is sworn. After the jury is sworn, you can't
10 amend the Indictment.

11 Q Okay.

12 A We proceeded on to trial.

13 Q Okay, so your lawyer -- are you saying your lawyer
14 didn't review the Indictments to make sure the CDR codes were
15 not correct? To make sure -- excuse me. Let me rephrase that.

16 Are you saying that your lawyer should have reviewed the
17 Indictments to make sure the CDR codes were correct?

18 A I'm going to elaborate back.

19 Q Answer that question first though?

20 A Excuse me.

21 Q Are you saying that your lawyer should have reviewed
22 the Indictments and made sure CDR codes were correct?

23 A Yes, ma'am. At that time I feel that he should have.
24 I feel that he should have at that time, but if I may elaborate
25 back.

1 Q Yes.

2 A I'm sure that he knew that those CDR codes, first
3 offense.

4 Q Okay.

5 A That the Indictment was a first offense Indictment.

6 Q Okay. And why do you say that?

7 A Because of my plea agreement that they offered. They
8 offered me a plea agreement on January before I was indicted and
9 he stated that the -- he stated that the Indictment itself
10 didn't carry but ten years.

11 Q Okay. So looking at the Indictment that you all
12 received in the Discovery, the Indictment based on the code
13 section and the CDR code the amount of time that you were facing
14 was ten years?

15 A Ten years.

16 Q And that's what you all discussed?

17 A Yes.

18 Q So what happened to get the Indictment or to get to the
19 offense level that you got the third offense?

20 A The third offense -- during trial -- after the trial
21 was over, I am going to say its in the back of the trial while
22 they was getting sentencing papers together my solicitor, Mr.
23 Shelton, he made the statement that they had to go back and
24 check to make sure the Indictment numbers were correct.

25 Q So now, why are you saying that the -- that when he

1 went back to check the Indictment numbers to be correct, how did
2 that harm you?

3 A That classified me -- that harmed me because that
4 changed the nature of the Indictment that I was noticed. That
5 changed my notice of Indictment.

6 Q Okay. And did you discuss that with your lawyer?

7 A I didn't know. I did not. At the time I did not
8 know,, I didn't know at the time. I didn't know.

9 Q What if anything did he do with regard to that
10 Indictment being changed?

11 A After the Indictment was changed they came back out of
12 chambers. He came back out and they said -- they said a few
13 things concerning the Indictment. Then he put a motion -- he
14 put a motion for a lesser included offense of the Indictment;
15 possession with intent to distribute.

16 Q And so what do you feel he should have done?

17 A I feel he should have quashed the Indictment itself --

18 Q Okay.

19 A -- because the Indictment did not give me notice, fair
20 notice.

21 Q Okay. And this is when they came -- after you gone
22 through the trial --

23 A Yes.

24 Q -- you felt he should have quashed the Indictment?

25 A He should have quashed the Indictment at that time. I

1 feel that the Court didn't have jurisdiction to try me on that
2 Indictment.

3 Q Okay. All right.

4 Is there anything else as to that true bill Indictment?

5 A As far as the true bill Indictment, no, there is
6 nothing on the true bill Indictment because I never received a
7 true bill Indictment. I never received copies of those
8 Indictments until maybe 11 months down the line.

9 Q From the conviction?

10 A From the the conviction.

11 Q Okay. All right.

12 On your application you have also alleged that your lawyer
13 did not object to the State not proving the chain of custody.
14 You said the chain of custody was defective once the drugs were
15 placed on the ground?

16 A Yes. Also, they got a reliable informant. They said
17 he's reliable.

18 Q I'm sorry.

19 A They said that he was reliable.

20 Q Arriving?

21 A Allowable. Reliable.

22 Q Oh, reliable?

23 Q Reliable. He place the drugs on the ground. I was
24 presented with, to my consideration, it wasn't an effective
25 change of custody. But it's what they say was a chain of

1 custody. And it was presented that the drugs, the chain of
2 custody started from the ground. I'm under the fair belief that
3 if this case was presented before a Grand Jury that they
4 described the Grand Jury that the drugs from the ground might
5 have came from my hand. That I placed them on the ground.

6 Q Okay, and where did the drugs on the ground come from?

7 A From Teezo (phonetics). They classified him as
8 confidential informant. I don't.

9 Q They classify Teezo as a confidential informant?

10 A As a confidential informant, yes.

11 Q Okay. And you're saying that he's the one that put the
12 drugs on the ground?

13 A Drugs on the ground, yes.

14 Q And an in trial they said that you?

15 A In trial they made a statement that they informed Mr. I
16 Irving to place the drugs on the ground. But in their chain of
17 custody -- so be it, whatever it was -- chain of custody -- I
18 don't know. They said that the chain of custody, the drugs
19 chain start from the ground.

20 Q Okay. All right. So they didn't tell who the drugs
21 came from?

22 A Not in chain. Not in chain.

23 Q So in essence they said the found the drugs on the
24 ground?

25 A Basically.

1 Q Okay. And your lawyer, you feel that your lawyer --
2 and what should your lawyer have done as it relates to that?

3 A I feel that he should have objected. He should have
4 objected to the drugs placed on the ground because his client
5 did not place the the drugs on the ground.

6 Q His client being you?

7 A Being me.

8 Q Okay. And did you discuss this with Mr. Brown?

9 A No, ma'am, at that time I did not know. No.

10 Q All right. Your next ground that you state is that
11 your lawyer failed to have video evidence authenticated?

12 A Yes, ma'am.

13 Q Can you explain to the Court what you mean by that?

14 A Authenticated. There was so much wrong with that
15 video. The video itself, there are two copies of the video.
16 The only person that can identify the video was Mr. Teezo
17 Irving, the CI. What they classified as their C.I. He
18 testified to a video that didn't even match the statement the
19 day of the incident.

20 Q What do you mean it didn't state the date of the
21 incident?

22 A It didn't match. What he stated that happened in his
23 statement the day of the incident. It was completely, totally
24 -- it was almost like to me that video changed his statement.

25 Q The video changed his statement?

1 A Yes, it was like it changed his statement. He -- he
2 has a video.

3 Q When you say "he", who are you referring to?

4 A Mr. -- Mr. -- the Court itself. The video evidence
5 that was used against me yes it shows me at the scene.

6 Q Okay.

7 A But it never showed me making a transaction.

8 Q Okay. Did you discuss this with Mr. Brown?

9 A Yes.

10 Q And what was his response?

11 A Mr. Brown's response on that video was the fact that I
12 -- that he's showing me the wrong video.

13 Q Okay, but were you on that video?

14 A Yes, my face was on there. Yes. But me being present,
15 I'm not disputing me being present.

16 Q Okay.

17 A I'm on the video but to hand-off on the video it's not
18 me.

19 Q Whose hand on the video?

20 A I don't know.

21 Q But it's not you?

22 A It's not me. His statement confirms that.

23 Q Teezo, the C.I., confirms that?

24 A His statement confirms that I didn't hand him no
25 package.

1 Q All right.

2 A And the video itself if it would have been properly
3 authenticated I feel -- that's how I feel about that video, I
4 feel Mr. Brown didn't get -- did not get a -- there was a
5 protective custody order on that video and he did not receive
6 that video until April the 15th. I am going to say that was 17,
7 maybe 18 working days before trial. So he had really just
8 rushed off. I always have been told Mr. Brown was a good
9 attorney. I've always been told he was good attorney but I was
10 wondering a good attorney good enough to have that video
11 authenticated 18 days before trial.

12 Also this video it should have been suppressed.

13 Q Okay, I'm coming to that one. All right. That's your
14 next ground that you stated you feel like your attorney should
15 have had the video suppressed?

16 A Yes.

17 Q And did you all discuss that?

18 A Yes. We didn't discuss the suppression, but we
19 discussed the reason the video was showing what was fabricated.

20 Q So was that an agreement to go forward allowing it in?
21 What are you saying?

22 A I don't know why it was allowed in. It should've never
23 been allowed in.

24 Q Okay, but I am asking did you all discuss -- did you
25 tell your attorney that you felt like the video shouldn't be

1 allowed into evidence?

2 A Miss Moody, at the time I paid Mr. Brown a substantial
3 amount of money and I feel right then that that video he should
4 have done a better job with that video. The video itself, that
5 video is so messed up and it was so bad to the fact it didn't
6 even had not today's date on but tomorrow's date. Not the date.
7 It had tomorrow's date. It was day ahead.

8 Q Not the day of the incident it had the the next day?

9 A The next day. It was a day ahead. It should have been
10 suppressed.

11 Q All right. As to the video you stated in your next
12 ground that your attorney allowed the video slash audio evidence
13 to be muted and deleted during and before trial without
14 objection?

15 A No objection.

16 Q And what did you want him to object to?

17 A Charge to the jury. During the trial they kept saying
18 something about the video being muted. Certain clips of the
19 video muted.

20 Q And when you say "they" who are you speaking of?

21 A I am saying the judge, the solicitor and my attorney;
22 Mr. Brown also.

23 Q Okay.

24 A They were stating that the video was being muted. And
25 all throughout the trial but he was saying wait, he's going to

1 explain that to the jury later on. So when the judge explained
2 the -- when he explained the charge to the jury, he charged the
3 jury that parts of the video, the evidence, it was muted.
4 Bleeped. Bleeped. Muted. He used the bleeped and muted. Don't
5 give it no consideration those sections were taken out because
6 it'll only cause confusion in the case. And that's the way he
7 put it in the transcript, page 300, line 13 through 21. He
8 stated that it was muted and deleted because it would only cause
9 confusion in the case and I feel that it should have
10 contemporaneous objection to that statement in there because
11 it's evidence and evidence you can not delete. You can not
12 tamper with evidence and that was evidence.

13 Q So whatever the statements were going -- that were on
14 the video you felt the jury should have had the opportunity to
15 listen to those statements in conjunction --

16 A They should have heard it, yes, ma'am.

17 Q Okay. In conjunction with what they were seeing?

18 A In conjunction with what's going on.

19 Q What, if anything, did you discuss with Mr. Brown about
20 that?

21 A At that time I didn't know. I didn't know. I was just
22 --I was just like a little pawn sitting there listening to my
23 attorney and I'm thinking everything is right. I'm thinking
24 everything is right.

25 Q I mean but during the time that you were sitting there

1 with your attorney was your attorney explaining to you what was
2 happening?

3 A No.

4 Q So you all had no discussion about it? He didn't
5 object to it?

6 A He didn't object to it.

7 Q Okay. Your next ground that you state is that your
8 attorney allowed a key witness to authenticate a video that was
9 different from the initial statement. And I assume you are
10 talking about Mr. Teezo?

11 A Yes, ma'am.

12 Q Okay. And earlier you stated that Mr. Teezo's
13 statement, written statement, was different from what he
14 testified to?

15 A It was different from what the video stated. His
16 statement on the stand was testifying toward the video. He
17 never even testified to his statement.

18 Q What do you mean by that?

19 A I mean his statement never even come up in trial. His
20 statement came up one time in trial.

21 Q So are you saying your lawyer should have used that
22 statement to impeach him?

23 A He should have used the statement. First that video.
24 He should have used the statement.

25 Q All right. So did you say anything to your attorney

1 about that?

2 A I wasn't even aware of the statement.

3 Q What do you mean?

4 A I had never even seen the statement.

5 Q Did you receive a copy of your Discovery?

6 A Yes, but it didn't have a statement in it.

7 Q And so in preparing for trial you are saying you didn't
8 have an opportunity to discuss the testimony that might be
9 presented by Teezo?

10 A During my trial my attorney stated that he normally do
11 some -- place some kind of motion in but he didn't know what the
12 informant was going to say.

13 Q Right. I am asking you before the trial you knew Teezo
14 was going to testify, correct?

15 A Yes.

16 Q So when you talked about Teezo testifying you are
17 saying your attorney didn't have that statement?

18 A I'm saying -- I'm saying that I never seen a copy of
19 it. I never seen a copy. He might have had it but I never seen
20 a copy. I never seen the statement.

21 Q Okay. And so during trial your attorney -- you and
22 your attorney discussed he didn't know what was going to come
23 from the --

24 A We didn't discuss it. He stated on the record during a
25 profer (sic) I guess it was and he said normally do it pretrial

1 but he said that he don't know what the C.I. will say. So I
2 took that as like I had never seen a statement so there might
3 not ever been a statement presented. But I notice I have a copy
4 of the statement now.

5 Q Okay, but now your saying that your attorney didn't
6 know, but your allegation states he allowed -- how did your
7 attorney allow the C.I. to -- or the witness, to authenticate
8 the video?

9 A All right, there was no officer, no police, nobody.
10 When me and him was talking there was no police, nobody around.
11 It's just him there with a camera in his vehicle. All right.
12 And there wasn't nobody that confirmed that that video was
13 stating that the actual events happened but him.

14 Q So, the witness testified as to the events that
15 happened on that day then went along with that video?

16 A With that video, yes.

17 Q And so you feel that was how your attorney allowed that
18 video to be authenticated?

19 A That is what they said it was authenticated.

20 Q Okay.

21 Q The next ground you have that deals with the video you
22 indicate that your lawyer allowed the un-authenticated video
23 into evidence without objection at the trial. Is this the same
24 video where the C.I. --

25 A Yes.

1 Q -- testified about the evidence?

2 A Yes, ma'am.

3 Q And so you feel that at that point in time he should
4 have objected to the video?

5 A To the video coming in, yes, ma'am, because it hadn't
6 been authenticated.

7 Q Okay. And again, did you discuss this with your
8 attorney?

9 A No, ma'am, I didn't.

10 Q All right. Your next ground you indicate that your
11 attorney failed to present a different video from the same day
12 and you indicated that there are two different videos from the
13 video that was allowed into evidence?

14 A Yes, ma'am.

15 Q Okay. Can you describe what that video would have had
16 on it to the Court?

17 A I'm going to say it was -- I don't have an actual date
18 -- but I had a meeting with Mr. Brown at Mr. Brown's office to
19 show a video. That was after he got the protective order so I
20 would say it's after April, after April 14th, 15th. He
21 displayed the video. Showed the video. And the video don't
22 even have a transaction. No transaction in the video. So I am
23 sitting right there and I look at the date of the video and the
24 date of the video is showing the 20th and this incident happened
25 on the 19th. So I'm saying I don't see no transaction. I don't

1 even see my hands. I'm going to trial. And I knew I was going
2 to trial then because I know what they are trying to say
3 happened didn't happen. All right.

4 Q So let me be clear on on this. This second video had
5 the date on it of the 20th?

6 A The 20th.

7 Q Okay, and that's the day that this actual happened?

8 A No, ma'am.

9 Q So it's a different video?

10 A Yes.

11 Q And it should have been showed in this particular
12 trial?

13 A Yes.

14 Q Okay. And as opposed to the first video that had the
15 -- I thought you testified that video had the date after on it?

16 A It had the 20th on it also.

17 Q And so your attorney didn't show, as far as your
18 defense was concerned, the second video that didn't have a
19 transaction?

20 A Didn't show it.

21 Q Okay. Do you know why he didn't show?

22 A I took it as by him not presenting a defense he wasn't
23 going to show that video. That's the only reason why I say if
24 he didn't present a defense he didn't show that video.

25 Q Say that again.

1 A I was thinking because my interpretation of that was
2 because he didn't present a defense. By him not presenting a
3 defense that mean he probably -- that's the reason why he wasn't
4 going to present that video, but I want that video presented.

5 Q So did you all discuss your defense before you went in
6 to trial?

7 Q Yes. He said he wasn't presenting a defense.

8 Q Okay, so when he wasn't presenting that video did you
9 not question him?

10 A I didn't. I was -- I really just like I say once
11 again, I really just put my trust in Mr. Brown. Like I said, I
12 already know him to be a good attorney.

13 Q Okay. So what do you feel he should have done with
14 that video?

15 A I feel that video should have been suppressed. I feel
16 that video should have been suppressed. I feel it should have
17 -- it should have been dismissed out. Some kind of way because
18 of the date on it, period.

19 Q The guess what I'm asking you, the second video.

20 A The second video?

21 Q Yes.

22 A The second video that you are talking about, you're
23 talking about the one that wasn't admitted into evidence, right?

24 Q Correct.

25 A Okay. It should have been admitted in. The jury

1 should have been allowed to see that video. So he should have
2 let them know there are two different videos.

3 Q Okay. But both of those videos do not show any
4 transaction?

5 A One of those videos show a --

6 Q A third party?

7 A No, it's just two parties. One of those videos show
8 two hands --

9 Q Okay.

10 A -- exchange a bag and some money. Blow up so big over
11 the whole camera screen and then all of sudden you see me back
12 outside the car.

13 Q And I guess what I am asking you are you saying that's
14 your hand in that transaction?

15 A I'm saying that is not my hand in the transaction.

16 Q Okay, so it's a third party?

17 A It had to be.

18 Q Okay. Well, that's what I am asking?

19 A Yes ma'am, had to be.

20 Q All right. Your next ground you indicate again about
21 the video that your attorney failed to suppress the video which
22 had different dates and times of actual events. I believe you
23 testified to that already, correct?

24 A Yes, ma'am.

25 Q Okay. The next ground that you have is your attorney

1 failed to object to an improper statement to the jury in the
2 closing argument?

3 A That was the -- that was during the charge to jury.
4 That was -- I feel it was during the charge to the jury when
5 they stated the muted and bleeped and muted the evidence on the
6 video.

7 Q So your attorney didn't object to that and we discussed
8 that one, correct?

9 A Yes, ma'am. Can I state one more thing about the video
10 please.

11 Q Yes.

12 A I want to state that the video never -- a chain of
13 custody of the video never was presented. It never was
14 presented or really discussed about it in the Court and I feel
15 he should have asked for a chain of custody of that video.

16 Q Okay. As to you eluded to this just a second ago, you
17 indicated that your attorney failed to present a defense. Now
18 as you recall I asked you did you all discuss your defense?

19 A No, ma'am, not that much. Not that I remember. I
20 can't really remember.

21 Q Well, what did you all discuss about how you were going
22 to go forward on on this charge?

23 A He said he wasn't presenting a defense. So we just
24 discussed about what they had and what they didn't have.

25 Q But in essence that was the defense?

1 A Yeah, I guess.

2 Q Okay.

3 A I don't -- I don't know.

4 Q Well, what if anything did your attorney tell you about
5 mounting any other kind of defense? Did he tell you anything?

6 A We didn't discuss no kind of defense.

7 Q All right. You indicated that your trial counsel never
8 was presented a True Bill Indictment and I am going through this
9 as it is listed on your application.

10 A Yes, ma'am.

11 Q Do we need to state anything further about your True
12 Bill Indictment?

13 A No, ma'am.

14 Q All right.

15 MS. MOODY: Just for the record purposes, Your
16 Honor, he has already testified about the trial
17 counsel allowed an amendment to the Indictment at the
18 end of the trial and we don't need to discuss that
19 part.

20 Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 MS. MOODY: All right. Just for the record I would
23 like to place on there, on the application it should
24 say that there's a number 17 and it says the use of
25 his previous convictions used for his life without

1 parole conviction. He has already testified to that.
2 And as far as a no motion to suppress the evidence or
3 statements, he has already testified as to that. He
4 also testified on number 19, the attorney gave the
5 wrong legal advice on which he relied to not to
6 testify. That was at the beginning. All right.

7 Q All right, Mr. Leach, you indicated that your counsel
8 failed to strike a pro-prosecution jury member?

9 A Yes. There was a member of the jury, number 77. I
10 think it was number 77,, I think it was Mr. Garrison. The jury
11 voir dire question was any of your family members work for the
12 sheriff department or some kind of question in that manner and
13 he stated that he had two son-in-laws that were sheriff
14 deputies. The judge allowed him. Told him he can be seated.
15 And he was part of my trial. But he also asked would that
16 effect him in making a decision in the case and he said he
17 didn't know. I felt he shouldn't have been a part of my jury.

18 Q What if any assistance did you provide to your attorney
19 in picking the jury?

20 A Very little.

21 Q Did you help him decide who was going to be on your
22 jury?

23 A I took his advice. I took my attorney's advice on
24 everything.

25 Q But you did help him?

1 A Yeah, if you consider, you know, taking his advice, we
2 should take this one. Yes, that's help. But that's what I did.
3 I took his advice. If he said take this we're going with that.
4 If he say we are going to strike one, we strike that one.

5 Q Well, what are you saying that your attorney should
6 have done as it relates to juror number 77?

7 A Seventy-seven should not have been on this jury.

8 Q So he should have struck that juror?

9 A He should have struck that juror and also he should
10 have -- yes, he should have struck that juror. And the judge
11 also stated that the juror can be seated. That jury number 77
12 he can be seated on my jury because this is not -- this is not a
13 county case. He stated it was a city case. So I'm under the
14 impression now and I have been under the impression since I
15 heard that that if this had been a county case that jury number
16 77 might not have been able to be seated on my case. But the
17 judge stated it was a county case and not a city case. I mean,
18 it was a city case and not a county case.

19 Q Okay.

20 A So by me knowing that it's a county case, I'm assuming
21 that the jury number 77 couldn't be on my trial for a county
22 case.

23 Q All right. Earlier you talked about your Indictment.
24 Sufficiency of the charging -- excuse me -- not the Indictment.
25 Sufficiency of the charging document?

1 A Yeah.

2 Q Are you talking about the Indictment --

3 A The Indictment.

4 Q -- being sent back? What are you talking about there?

5 A That's the Indictment. That's the Indictment. We
6 discussed that.

7 Q All right. As to Indictment you also talked about the
8 essential elements required for the Indictment. Are you saying
9 in the body of the Indictment where it alleges the offense that
10 was committed that it was not sufficient?

11 A When we saying element I believe the official element
12 in the Indictment was -- I want to think the element was -- I
13 felt that the State did not present evidence, the production of
14 crack cocaine. That was one of the elements that they had to
15 prove in the Indictment.

16 Q Okay, and what did they present?

17 A They presented -- they presented an element of -- I
18 guess I want to say by the test of the chemical analysis. She
19 tested for powder cocaine.

20 Q Okay.

21 A Yes. She tested for powder cocaine. She ran two tests
22 for powder cocaine, but that wouldn't fall under ineffective
23 assistance of counsel.

24 Q So are you striking that issue?

25 A That issue, I can't strike that issue because it's --

1 it's -- that issue -- that issue is preserved for -- that issue
2 -- I want the issue for ineffective counsel, appellant defense
3 counsel.

4 Q All right. You are saying that goes as to your
5 appellant counsel?

6 A Yes. I felt -- I felt it was preserved. I felt that
7 issue itself was preserved enough by Mr. Brown --

8 Q Okay.

9 A -- and also by the Solicitor Shelton for -- to be
10 presented in Court of Appeals.

11 Q Okay. So you're saying that doesn't go to ineffective
12 assistance of counsel of Mr. Brown but as to your appellant
13 counsel?

14 A Yes. I felt it was preserved enough for appellant
15 review.

16 Q All right. The next ground you have is your attorney
17 left the hearing -- you said left hearing aid day two of the
18 trial?

19 A Yes, day two of the trial he was without a hearing aid.
20 I don't know whether it had any kind of, you know, distraction
21 or anything but it's on the record.

22 Q And how is that ineffective assistance of counsel?

23 A He might not have heard some things that he should have
24 heard. I don't know, I just --

25 Q Okay. As it relates to your trial counsel, you also

1 state and finally state that your attorney failed to challenge
2 the jury selection for the voir dire. Does that go to juror
3 number 77?

4 A Seventy- seven, yes, ma'am.

5 Q There is no other issues as it relates to any other
6 jurors?

7 A No, ma'am.

8 Q Or the voir dire questions?

9 A No, ma'am.

10 Q All right. You have a few grounds that you allege
11 towards your appellant counsel?

12 A Yes, ma'am.

13 Q And who is was appellant counsel?

14 A Mr. John Harrison Strom.

15 Q And when did you become Mr. Strom's client?

16 A Oh, man.

17 Q Was that after the trial?

18 A After the trial. Yes, it was after the trial.

19 Q All right. So he became your trial -- your appellant
20 counsel. Did you have an opportunity to discuss your case with
21 him?

22 A Yes, we had one phone call.

23 Q Okay. And what if anything did you tell him about your
24 trial?

25 A Oh, man. I told him so much about it. I mean it was

1 like -- it was like -- it was almost like a hidden treasure but
2 he had already done his brief of what he was going to present.
3 And he was presenting in like an Anders form.

4 Q Okay.

5 A Because he said a lot of issues that weren't preserved.
6 And you know, a lot of issues weren't preserved and it's like he
7 just did -- I guess he might have done his job.

8 Q What other issues were not preserved?

9 A There's direct verdict issue. He said it wasn't
10 preserved but like I said he didn't present it.

11 Q He did not appeal that ground?

12 A He didn't appeal it, no, ma'am.

13 Q And what was the next ground that was not appealed?

14 A The chain of custody issue.

15 Q I'm sorry.

16 A The chain of custody.

17 Q Is there any others? Are are there any others?

18 A I want to say an issue in the chain -- within the chain
19 of custody dealing with the weight of the drugs.

20 Q And that's it?

21 A Yes, that's all I can think of right now.

22 Q All right. So, when you filed this PCR you alleged
23 that your appellant counsel failed to present issues merit?

24 A Of merit, yes.

25 Q And what were those issues that he failed to present?

1 A He stated that he presented a brief but he said it
2 didn't have merit. So I never really understand why would you
3 present a brief and it don't have merit. One of them was a
4 warrant, search issue, which I felt was pretty much preserved
5 for appellant review.

6 Q Can you tell me all of the issues that he said were not
7 of merit?

8 A Direct verdict.

9 Q And he said they were not of merit because --

10 A Yes, the charge to the jury.

11 Q Let me finish my question.

12 A Yes, ma'am.

13 Q He's saying they're not of merit. That they were not
14 valid appellant grounds?

15 A Yes.

16 Q Okay. All right. So you're disagreeing that they were
17 valid appellant grounds?

18 A Yes, I'm saying that they were.

19 Q Okay. And so when you discussed with him are these the
20 grounds, the previous grounds that you stated; the directed
21 verdict; the chain of custody and the weight in the drugs?

22 A Yes, ma'am.

23 Q As to the drugs he said to you that those were
24 meritless.

25 A They were meritless.

1 Q Okay. So in your application you allege that he failed
2 to present the directed verdict. He presented the wrong charge
3 to the jury, your appellant counsel?

4 A My appellant counsel, yes. Yes. The judge -- the
5 charge from the judge charged it, yes, ma'am.

6 Q Okay. So that's one of the grounds you asked him to
7 appeal?

8 A Yeah.

9 Q Okay. You also state that he failed to present a plain
10 view -- an issue on plain view?

11 A That's dealing with the warrantless -- the warrantless
12 search.

13 Q Okay, but you asked him to appeal that issue?

14 A Yes.

15 Q You indicate that he failed to present issues on
16 subject matter jurisdiction and he failed to appeal that as
17 well?

18 A Yes, subject matter jurisdiction. Yes.

19 Q And that is based on your Indictment?

20 A It's based on Indictment, yes.

21 Q And then you stated that there was a lesser included
22 offense, jury instruction that was not presented on your behalf
23 to the jury?

24 A Right.

25 Q And he failed to appeal that?

1 A Right. Yeah.

2 Q You indicated that the jury instruction on confidential
3 informant your appellant counsel did not preserve, or didn't
4 appeal that issue?

5 A I would like to strike that issue.

6 Q That's number seven on your application?

7 A Yes.

8 Q Of the ineffective assistance of your appellant
9 counsel?

10 A Right.

11 Q Your last two issues that you state your appellant
12 counsel did not do were that he did not appeal the trial courts
13 duty to access the conflict of interest in the case?

14 A Yes.

15 Q And who does that conflict of interest regard?

16 A The conflict of interest with regards to the prosecutor
17 himself, Mr. Shelton, and the confidential informant, Mr.
18 Irving.

19 Q And how is that a conflict of interest?

20 A Mr. Shelton he was Mr. Irving's prosecutor also.

21 Q In this same case?

22 A Not in this. In his cases. See Mr. Irving, he's a
23 confidential informant but he had pending charges and who was in
24 control of those charges was Mr. Shelton. He was his prosecutor
25 also.

1 Q So what are you saying in terms of --

2 A I'm saying Matthew Shelton was my prosecutor. Mr.
3 Irving was on the stand testifying against me for his
4 prosecutor, Matthew Shelton.

5 Q And what's wrong with that?

6 A I feel there's a lot wrong with it because the man has
7 got a gun to my head and noose. I'm going to say whatever you
8 want me to say.

9 Q So you're saying because he had charges that Mr. Irving
10 testified for some leniency? What are you saying?

11 A Yes, testified for leniency. He testified. He said
12 whatever Mr. Shelton wanted him to say because Mr. Shelton got
13 his charges too.

14 Q Okay. And so you wanted your appellant counsel to
15 appeal that?

16 A Right.

17 Q Did you discuss that with your attorney?

18 A Yes.

19 Q Not the appellant counsel but your trial counsel?

20 A Yes.

21 Q Yes. Yes, I discussed that with Mr. Brown also. I
22 never really got a respond on that. I never got an
23 understanding on that. I don't understand. I still don't
24 understand that. Right now I'm telling you this and I'm telling
25 this Court now this and I don't understand that right now today.

1 How can I testify for a man that is prosecuting me and not
2 expect nothing out of it.

3 Q Okay. All right. Your last issue as it relates to
4 your appellant counsel you state that he, the appellant counsel,
5 failed to present merit issues, or the merit issue on a
6 warrantless search and seizure?

7 A Warrantless search and seizure of a vehicle that was on
8 the scene.

9 Q That was what?

10 A Of a vehicle that was there that they found more drugs
11 in. That was suppose to be my second charge. I mean, you know,
12 that's suppose to be the second charge. So they found some
13 drugs in a vehicle. They were trying to say that the drugs were
14 mine. That the vehicle belonged to me. That was a second
15 charge, the warrantless search of vehicle.

16 Q But was that in your trial?

17 A Yes, all that was the same trial.

18 Q And you talked about that with Mr. Brown?

19 A Yes, Mr. Brown knew about that.

20 Q Okay, and what if anything did he do in terms of that?

21 A Mr. Brown?

22 Q Yes.

23 A Mr. Brown did the best he could on the car issue. He
24 did a great job on that car issue.

25 Q Okay.

1 A I amend (sic) Mr. Brown for that car issue. You did a
2 great job on the car issue Mr. Brown. I amend him on that. But
3 the car issue itself it was preserved for appellant review.

4 Q And your appellant counsel did not present that?

5 A Did not present it.

6 Q Did you discuss that with him as to why it should have
7 been presented?

8 A Yes. Yes. It should have been presented, yes. I
9 discussed it with him but he had relieved himself as counsel and
10 and that takes another phase and you know ---

11 Q Okay. All right. In your application you also allege
12 there was prosecutorial misconduct?

13 A Yes.

14 Q And you indicated that your prosecutor Mr. Shelton --

15 A Yes.

16 Q -- violated you due process. What is your due process
17 violation?

18 A Due process violation, he failed -- he failed to
19 challenge -- he failed to look and see my priors.

20 Q And earlier you testified about your priors, correct?

21 A Yes.

22 Q Okay. And are you referring to the 1993 prior that was
23 listed as a 1992 prior?

24 A Yes.

25 Q And again, can you explain to the Court why you have a

1 problem with the 1990 (sic)-- with the it being identified as
2 1992?

3 A As it being 1992 because I don't have a conviction from
4 a 1992. I don't have a 1992 conviction.

5 Q And so because you don't have 1 1992 conviction and he
6 uses one, that's a violation of your due process?

7 A That's a violation. I assume that's due process
8 violation simply because, before he can -- when he present this
9 notice to seek he had to satisfied all requirements.

10 Q Okay. And what did you understand those requirements
11 to be?

12 A He had to make sure he was using go the right cases.

13 Q And by him not using the right case and your attorney
14 not objecting to that, did you tell your attorney that was the
15 wrong charge?

16 A Like I say, my attorney wasn't there at the time. Mr.
17 Brown wasn't there at the time when I received that. That was
18 on February 27th. I was represented at that point in time by
19 Mr. Sean Cronin and I mentioned it -- I mentioned it but it was
20 just like another court proceeding. Don't say nothing. You be
21 all right.

22 MS. MOODY: I beg the Court's indulgence.

23 Q Your second issue that you allege in your case was that
24 -- as to the prosecutor -- we talked about this. There was no
25 True Bill Indictment in your Rule 5. How was your prosecutor

1 committing -- how is that misconduct on your prosecutor?

2 A Because I should have been notified of the charge
3 against me.

4 Q You mean the actual offense level?

5 A The actual offense level. The Indictment is a
6 notice -- it's a notice -- it's a notice document. You got to
7 look at it with a practical eye.

8 Mr. Shelton has made the mistake in the past indicting people
9 for the wrong Indictments, dealing with CDR codes. I don't know
10 if it's by rule or by -- you know, but he has done it before.

11 Q But we're talking this case specifically?

12 A This case specifically, okay. This case specifically,
13 did it with my Indictment, yes. I feel I should have had a True
14 Bill Indictment. It took I guess it was about nine months
15 before I was indicted. I felt I should have had a True Bill
16 Indictment.

17 Q Okay.

18 A I should have had a True Bill copy of my Indictment
19 within five or six months. But however long it took, in my Rule
20 5 I should have had a True Bill Indictment. But what I had was
21 what I had used.

22 Q Okay. So, you in your application you list that as
23 sufficiency of the charging Indictment as number four. You also
24 state as to your essential elements required in the Indictment
25 it's the same thing that you previously stated but you are

1 alleging it against your solicitor?

2 A Yes.

3 Q Okay. You also list the amendment to the Indictment
4 after the trial was over, you also allege that against your
5 solicitor, correct?

6 A Right.

7 Q The prosecutor did not present sufficient evidence to
8 support the claim that the prior conviction of crime of violence
9 in support of a career defender enhancement. You realize career
10 criminal enhancement relates to Federal Court, correct?

11 A No, I don't. Honestly I didn't know.

12 Q Okay, but do you mean in terms of offense level?

13 A Career -- when I say career -- I don't know. Like I
14 said, they seek life without parole on three strike law. That's
15 what I was most pertaining on, on the three strike law. I'm
16 saying he used the offense that wasn't a serious offense. I'm
17 suppose to had three strike law which mean three serious
18 offenses. All right. And I'm going to say it was an illegal
19 and unjust procedure when the State itself use a prior proximity
20 to school, distribution conviction this reduce the conviction,
21 to enhance my sentence under the statute 17-25-45.

22 Q And you testified as to that already, right?

23 A Yes.

24 Q Okay. So you are talking about the same thing?

25 A Yes.

1 Q But it relates to the prosecutor?

2 A Yes, it also relates to the prosecutor also.

3 Q Okay.

4 A Because he's the one that made the notice.

5 Q Okay. Next you indicat your prosecutor's misconduct is
6 that he allowed the primary witness to testify falsely and are
7 you talking about the C.I. in the case?

8 A Yes.

9 Q And that's the information --

10 A Yes.

11 Q -- that you alleged -- that you eluded to earlier?

12 A Yes.

13 Q The conflict of interest that is the relationship
14 between the C.I. and the prosecutor, Mr. Shelton, correct?

15 A Yes. Yes.

16 Q And then as to your last and final issue that you
17 allege you indicate that the prosecutor failed to present
18 sufficient evidence of an essential element on trafficking in
19 crack cocaine and earlier you testified that that was -- she
20 gave -- the chemist gave testimony or did the analysis on
21 cocaine?

22 A Yes, that's what I gave earlier. But I really would
23 like to elaborate a little bit more on that if you don't mind.
24 That was -- the chemist -- I forgot her name.

25 Q The chemist in your case.

1 A Yes, she kind of in a sense she testified for the
2 State. She stated that she alleged when she received the
3 alleged crack cocaine she stated that it was consistency of wet
4 cake batter. She stated it was consistency of wet cake batter.
5 To me that is not crack cocaine. It was elaborate to what she
6 did to the drugs. She heated the drugs.

7 Q She heated the drugs?

8 A Yes. Put them under hood so she calls it, and that's a
9 form of heat and that's how you produce crack cocaine. That is
10 how crack cocaine is made. It's made with heat.

11 Q And so you are saying what about the crack cocaine?

12 A She come from cake batter in her evidence to rock
13 substance and she was allow to present it as crack cocaine. I
14 feel that the evidence that she presented to the court, the
15 testing that she ran on it, she ran two tests. Both tests were
16 for powder cocaine, but after she got through dealing with it
17 and manipulating it and doing what she did with it she created
18 crack cocaine and she was allowed to do it.

19 Q Okay. And you're saying that your prosecutor
20 participated --

21 A Yes.

22 Q -- in that by allowing her to testify?

23 A That's right. She took -- she took -- she ran tests
24 for something that didn't really -- you know, she just made --
25 after she got through with her testing she made a assumption on

1 what it was.

2 Q Okay. Are you finished?

3 A Yes, ma'am.

4 Q Now all of this you list as what your attorney did not
5 do. How did any of this prejudice you as it relates to your
6 case?

7 A Oh man. The prior conviction issue that put me in
8 statute of life without parole under the statute 17-25-45. My
9 possession with intent to distribute proximity of a school was
10 committed in 1993. Conviction was from 1993. In 1993 that
11 conviction itself was not a part of 17-25-45 and it never was
12 enumerated to be part of 17-25-45.

13 Q And when you say enumerated are you saying in the
14 statute?

15 A In the statute.

16 Q Okay. And so that prejudiced you by giving you a life
17 without parole sentence?

18 A By using that -- by using that sentence gave me life
19 without parole. By using that as a serious offense that gave me
20 life without parole. You couldn't use that. It couldn't be
21 used for sentencing enhancement until January 1st of 1996. It
22 had to be committed on or after January 1, 1996.

23 Q Did you discuss this with Mr. Brown?

24 A I didn't know. I did not, no.

25 Q But your actual sentence is the prejudice in this case?

1 A Yes, ma'am.

2 Q Is is there any other prejudice?

3 A The Indictment.

4 Q No, we are not going to go back through all the things
5 that didn't occur. I am saying, all of these things that you
6 just testified to, how did it harm you in your case?

7 A In my case, my issues, it sent me to jail. To prison.

8 Q All right.

9 A Incarcerated. Incarcerated. I mean, it really
10 stripped me down.

11 Q Okay. And what relief are you asking from the Court
12 here today?

13 A I am asking for relief. I am really asking for
14 honesty. I am really asking for honesty. I am asking for
15 relief.

16 Q Are you asking the Court for a new trial?

17 A New trial, vacate the sentence, sentence reduction.

18 Q Well, you do realize that the judge can not reduce your
19 sentence?

20 A Yes, he can't reduce the sentence. I know that.
21 You've explained that to me. You explained that to me.

22 Q Okay. So what you are asking from the Court is for a
23 new trial?

24 A Yes, ma'am.

25 Q Okay. Is there anything else that you need to ask the

1 Court for?

2 A I can't think of right now, no, ma'am. A new trial.
3 Maybe vacate. I mean he can't do that. I'm good.

4 MS. MOODY: No further questions for this witness.

5 THE COURT: Let's take about ten minutes.

6 (WHEREUPON, there was a brief recess in the
7 proceedings.)

8 MS. MOODY: I was trying to find my document. I
9 just wanted to show him this document. He spoke about
10 his notice of life without parole and have it marked
11 just so you will see what he is talking about if that
12 is all right.

13 (Defendant's Exhibit 1, Document, marked for
14 identification as of this date.)

15 THE COURT: You need to come around and take the
16 stand. Mr. Leach, you are still under oath.

17 THE DEFENDANT: Yes, sir.

18 MS. MOODY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. MOODY CONT'D:

21 Q Mr. Leach, I am going to hand you what has been marked
22 as Defendant's Exhibit Number 1.. Earlier you testified about
23 your notice of life without parole that was given and you also
24 talked about the charge that was within the notice?

25 A Yes, ma'am.

1 Q Do you recognize exhibit one?

2 A Yes, ma'am.

3 Q Okay. And is that the document that you received in
4 terms of the notice without -- notice of life without parole?

5 A Yes, ma'am.

6 Q Okay.

7 MS. MOODY: No further questions.

8 THE COURT: Any objection to that being admitted.

9 MR. HUNTER: No, Your Honor.

10 THE COURT: It will be admitted. What number is
11 that?

12 (Defendant's Exhibit 1, Document, received in
13 evidence as of this date.)

14 MS. MOODY: Number 1, Your Honor.

15 THE COURT: Thank you ma'am. Cross examination.

16 MR. HUNTER: Your Honor, I don't have any
17 questions for this witness.

18 THE COURT: Thank you, you may step down Mr.
19 Leach.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Miss Moody, any other witnesses on
22 behalf of the applicant?

23 THE COURT: No, sir, Your Honor.

24 Call your first witness.

25 MR. HUNTER: The State would call Mr. Michael

1 Brown.

2 MICHAEL BROWN, called as a witness, having been
3 duly sworn by the clerk, was examined and testified as
4 follows:

5 MR. HUNTER: May it please the Court.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. HUNTER:

9 Q Please state your name for the record?

10 A Michael Lanford Brown, Jr.

11 Q And where are you employed?

12 A I'm self-employed as an attorney in York County, South
13 Carolina. I have been for thirty-four years.

14 Q Can you please explain how you became retained in this
15 case?

16 A Mr. Leach retained me on or about July of 2013 to
17 represent him on these two trafficking charges.

18 Q Okay, and can you explain prior to the trial how many
19 times did you meet?

20 A He was out on bond so we met a great deal in
21 preparation for the trial. I don't know. Endlessly.
22 Especially toward the end.

23 Q And did you receive Discovery from the State?

24 A I did.

25 Q And can you explain the C.I. video. Did you have a

1 chance to view that video prior to the trial?

2 A We did. I don't really dispute his timing on it. I
3 think that's correct. To the best of my memory it was kind of
4 late getting it. They have this idea up here that we are not
5 entitled to that without a protective order and which in this
6 case it didn't matter because we were able to watch it but it
7 could have been earlier but it didn't effect anything that went
8 on in my opinion.

9 Q And so did you watch the video with Mr. Leach?

10 A I think we did. I'm 99 percent sure we did. I assume
11 we did. If I remember correctly there was -- he's correct,
12 there's two of them. One of them the audio wasn't worth a damn
13 and the other one the audio was perfect so we had to kind of
14 merge the two so it was intelligible for the jury and the rest
15 of the courtroom.

16 Q So just to back up, there were two videos?

17 A There were two videos. May be there was a video and
18 audio and the video was not that good and then the audio itself
19 was good so we had to merge the two. I think not two actual
20 videos. There were two recordations. One had video, one did
21 not. The one without video was easier to hear. The one with
22 the video was hard. Was messed up.

23 Q Okay.

24 A He is correct on that.

25 Q Okay. And as far as this video is concerned can you

1 explain I guess like how there were some redactions made?

2 A There was language in there that under the rules of
3 evidence highly prejudicial to him.

4 Q Prejudicial to?

5 A To Mr. Leach.

6 Q Can you explain that?

7 A Comments about other drug transactions, drugs etc.,
8 that had nothing to do with this case.

9 Q And did you all have some sort of hearing?

10 A We kept most of that out redactions, I don't think we
11 even had an argument about it. I think we agreed on what the
12 redactions were.

13 Q Okay, and you went over that with Mr. Shelton?

14 A Yes.

15 Q So as far as that video is concerned did you have any
16 reason at trial to suppress the video?

17 A I'm sure I moved to suppress it, but I really didn't
18 have grounds. It is about as clear as day as you could get.
19 There is the drugs and here comes the money.

20 Q So, you heard him testify that the the video doesn't
21 show him. It only shows two hands. Kind of explain what is on
22 that video?

23 A The video -- there was a gap in the video which we
24 attacked as hard as I could where the C.I. decides he is going
25 to pull over and go under his hood for some reason. This is

1 outside the view of the law enforcement officials involved in
2 this and I thought that helped his case a lot as to how the
3 drugs got there. The actual video when it comes to the
4 transaction time you can see the bag going and the cash coming.
5 The video was set up in a cup holder of the C.I. in his car.

6 Q So did it show faces?

7 A To the the best of my memory it did.

8 Q So, as far as the -- your opinion on the weight of the
9 evidence was that video weak?

10 A Overwhelming.

11 Q Overwhelming.

12 A It's a movie.

13 Q And did you explain that to Mr. Leach prior to trial?

14 A Yeah. Mr. Leach was very adamant, as is his
15 prerogative. He wanted to go to trial. I don't know that we
16 even spent 15, 30 minutes discussing plea options. I think they
17 might have offered 12 to 15. I can't remember off the top of my
18 head. Mr. Leach was not interested in that at all. He was very
19 adamant to the best of my recollection he wanted to go to trial.

20 Q Okay. And just to back up a little bit. His prior
21 convictions can you explain?

22 A They were both serious, most serious offenses.

23 Q So you had no question that they could have been used
24 or properly used I suppose for life without parole notice?

25 A I don't remember -- I don't remember whether I was

1 there or not then. My never ending help problems I was
2 hospitalized before his trial too. He may be right. Mr. Cronin
3 was here for that. But when we got to the trial I reviewed it.
4 It's clear those two were serious, most serious and you're
5 looking at LWOP. Now I can't answer what he said about the
6 statute back in '92 or '93. For all I know he can be correct on
7 that.

8 Q At trial you didn't object to those being used?

9 A I think I did. I think I tried to challenge it but
10 they had the certified copies when we came to sentencing at the
11 end. I read the transcript last night. I remember he had
12 certified copies hear for sentencing purposes.

13 Q Okay.

14 A When I say he, Mr. Shelton.

15 Q Did you two discuss his right to testify?

16 A Oh, yeah.

17 Q Can you explain how those conversations went?

18 A It was my strong recommendation he not testify from a
19 strategic and practical view point.

20 Q And why was that?

21 A I just don't think with his prior record and that video
22 and the cross examination he would have be under for that, it's
23 kind of hard to deny that issue with the video. I thought the
24 best strategy in this trial was one, I kept ownership of the car
25 out of evidence for a Brady slash Rule 5 violation. And argued

1 that when the C.I. stopped and fiddled around for five to ten
2 minutes that, you know, this guy is unreliable. He has got 25
3 years minimum hanging over his head. That he in a effort to
4 escape his own guillotine planted the drugs.

5 Q So that was a big part of your trial strategy, attack
6 the C.I.?

7 A That was most. That was 90 percent of my trial
8 strategy.

9 Q Now, let's talk a little bit about the the Indictments.
10 Did you any deficiencies in his Indictment on these two charges?

11 A Yeah, I don't recall there being any. Whether it was
12 true billed or not I just don't remember. I assuming they were
13 or we would have been there. I really don't have any direct
14 recollection of four years ago, three years ago.

15 Q Okay. And did you ever tell him that he was facing
16 only ten years on these charges?

17 A I may have told that when we first met based on the
18 Indictment. I don't know if he had been LWOP then or not. I
19 can't remember the exact sequence. I may have told him that
20 when he first came in based on what -- I have no reason to
21 question that based on what he brought me.

22 Q Okay.

23 A I feel sure they notified him of the LWOP.

24 Q Okay.

25 A Life without parole.

1 Q Now, lets go over the the drugs. Did you have any
2 reason to challenge the chain of custody of the drugs he was
3 referring to, the ones that were found on the ground?

4 A I don't know if we challenged. We questioned that back
5 and forth with the officers. I don't remember. Nothing jumps
6 out at me from review of my notes yesterday.

7 Q Okay. And as far as the authentication of the video
8 coming in, did you have any reason to question it coming in
9 through the C.I.?

10 A I guess I could have objected. For what? I mean, he
11 can authenticate this is what happened.

12 Q You said he could?

13 A Yeah, I think he could.

14 Q So you would have no reason to object?

15 A I don't see what the grounds would have been. He is
16 just corroborating this is what happened. His video of what
17 happened.

18 Q Okay. And just to go over another allegation, did you
19 two discuss defenses prior to trial?

20 A Oh, yeah.

21 Q And how did those conversations go?

22 A I mean basically we wound up attacking the C.I. was the
23 whole thing.

24 Q And so essentially I believe you said you also got the
25 ownership of the car suppressed?

1 A I'm sorry.

2 Q The ownership of the car, you got that information
3 suppressed?

4 A Yeah. For whatever reason they had it in the
5 forfeiture file. I think I got it one or two days before trial.
6 That kept the ownership of the car out of question which was the
7 second charge, not the one on video if my memory serves right or
8 pertained more to the second charge.

9 Q Okay. And you made it clear that you were not going to
10 submit any evidence at trial, correct?

11 A No, I was going to take the strategic last argument.

12 Q Now, have you had a chance to look over the issue or
13 the transcript pertaining to that juror in question?

14 A Yeah. As a matter of fact when he was testifying I
15 went through my notes and I don't have a answer for that. I got
16 a red flag that he said his two son-in-laws were in law
17 enforcement. I wasn't out of strikes. I think I'd only used
18 two or three strikes at that point in time. I can't tell you
19 why I didn't strike him unless it was some gut reaction when I
20 saw him up there or thought I knew him from some place or
21 something. I don't have an answer for that. But I've just
22 looked through my notes, a red flag, voir dire, number 77; two
23 son-in-laws in law enforcement. It was sitting there in front
24 of me and I don't remember.

25 Q Okay. The issue about the --

1 A I do remember -- on that subject, I think I argued for
2 ten strikes. I only got five. And I don't know if that came
3 into play or not by the time juror number 77 came up.

4 Q You argued because it was LWOP case?

5 A Yeah, I thought I was entitled to ten but I wasn't.

6 Q And so the judge didn't grant that?

7 A Say it again.

8 Q The judge did not grant that?

9 A No, he did not.

10 Q Okay. Let's talk a little bit about chemist. Can you
11 explain how the issue of the -- I guess, the wet cocaine or the
12 wet crack?

13 A That was only about the weight. They were weighing the
14 water. What the weight at the scene, the discrepancy what they
15 actually got down at the lab. We objected to basically she used
16 the same test for cocaine as she did for crack, so therefore the
17 different penalties, would have been lesser for him but that was
18 not granted. I don't know if that was appealed or not, but we
19 certainly raised it.

20 Q You raised it?

21 A At the trial level, yes.

22 Q Right, yes, sir. And you --

23 A She used the same protocol test, from my understanding
24 how they operate over there -- when I say over there, the lab,
25 they built that three million lab five years. She used the same

1 protocol test in my research that you use for powder cocaine and
2 I objected to that. When it came to what is it; crack or
3 powder, because the penalties are obviously much different.

4 Q Right, was that also a basis for DV motion?

5 A Was that what?

6 Q Your directed verdict motion?

7 A I can't remember. I'm a sure I did.

8 Q Now, just looking I suppose back to -- just back to the
9 video again. There was a second video. He testified there was
10 a second video that you should have entered in. Can you
11 explain?

12 A I don't remember that. I'm not saying this is gospel.
13 Again, I haven't watched it in three and a half years. My
14 recollection is there was audio with no picture that was clear
15 as day. There was a video with audio that was not
16 comprehensible. So we tried -- I think Matt and I got together
17 after we did redactions and tried to merge the two on a timely
18 basis and I think that's what we wound up presenting to the
19 jury.

20 That's the best of my recollection that's how that went.

21 Q Okay. So at the end of the day did you have any
22 problem with the form of that audio and video as it was
23 presented?

24 A No, I did not.

25 Q Okay.

1 A I mean, I got the redactions I wanted that I thought I
2 was entitled to.

3 Q Okay. And those redactions were --

4 A About prior drugs, et cetera. Highly inculpatory.

5 MR. HUNGER: Beg the the Court's indulgence for
6 one second. That's all I have thank you.

7 THE COURT: Cross examination.

8 MS. MOODY: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. MOODY:

11 Q Mr. Brown, when you were retained how -- when you met
12 with Mr. Leach on several occasions, did you all discuss any
13 other defense other than attacking the video, the car, and all
14 of that?

15 A That was the suppression of certain things that I was
16 going to do. One being the car that was suppressed and some
17 others stuff. That was pretty much it.

18 Q So in the trial when you had gone forward that was
19 understood that you were going to attack those things but not
20 present any evidence in the defense's case?

21 A Well, I mean you can't really make that decision firm
22 and fast until you get to that point in the trial. But that was
23 my inclination was not to present any evidence because one, of
24 his record and two, he's the only witness I had that was there.
25 And three, strategically I get last argument to the jury.

1 Q And I believe you testified -- I just want to make
2 sure. Mr. Leach understood that at the trial?

3 A That's my recollection, yes.

4 Q Now did he ever express any --

5 A Not that I remember. I'm not saying he didn't but I
6 don't recall. Reviewing my notes I don't recall any strong
7 opposition to that, him not taking the stand.

8 Again, I would strongly urge him not to anyway based on his
9 prior record and the video of him the prosecutor getting to go,
10 is that you, is that you, is that you? I think that would have
11 buried him. Whatever little doubt I created with the jury at
12 that point in time with the C.I. pulling off the road for five
13 to ten minutes.

14 Q Okay. And then as far as like proceeding to trial you
15 previously testified about the offer coming from the State. The
16 offer was 12 years?

17 A You have to ask Mr. Shelton that. It's either 12 or 15
18 to the best of my memory. I did not see that in there. I
19 didn't go through with fine tooth comb, but it's 12 or 15. Mr.
20 Shelton would know. But he was not interested.

21 Q So from the beginning he wasn't interested in the
22 offer?

23 A To best of my recollection, no. I think he wanted like
24 five years or something which wasn't going to happen. It was so
25 far apart. I went back with it. Of course I got bounced out

1 like a basketball. They were just worlds apart.

2 Q And in terms of after that offer you just were in the
3 trial mode preparation?

4 A Right. Mr. Leach wanted a trial. I give him this, he
5 was pretty adamant about it.

6 Q Okay. I'm not sure whether you touched on this but the
7 time you got the Discovery, the motion response, up until the
8 trial, did you ever have a True Bill Indictment?

9 A I don't recall. In all honesty I just don't remember.
10 Beg the Court's indulgence for just one second.

11 I have a copy of the True Bill Indictment here but I don't
12 know if this is after trial or -- I think this is the LWOP
13 material. So evidently I received that at the time they moved
14 for LWOP and the Indictment was for February 17, 2005 it was
15 true billed then.

16 Q Okay, as to that indictment --

17 A That's -- let me clarify something. That's the hearing
18 Mr. Cronin was at. So he would received these documents. I
19 can't specifically remember this. I just know it was in my
20 file.

21 Q So those were the True Bill Indictments for this trial?

22 A Correct.

23 Q Okay.

24 A No, no, no. I'm sorry, I'm wrong. Let me look through
25 this.

1 Q Okay.

2 A No, that was February '05, not 15.

3 Q Okay.

4 Your Honor, may I approach the witness?

5 THE COURT: Yes, ma'am.

6 Q Mr. Brown, I will make it easy. (Showing a document)

7 A That's it.

8 Q So that is the True Bill Indictment?

9 A Correct.

10 Q And on True Bill indictment for 2014-GS-46-00678 which
11 is the trafficking crack cocaine?

12 A Correct.

13 Q Can you read what the CDR code is?

14 A 452.

15 Q And that's for what he went to trial on, correct?

16 A I guess. Hold on a second.

17 Q All right.

18 A Hold on a second. That's one count he went to trial on
19 on.

20 Q Okay. And then there's another Indictment 2014-GS-46-
21 00679?

22 A And the CDR code on that 349.

23 Q And that's the other?

24 A That is the other one, correct. He had ninety grams on
25 one and approximately 28 on the other.

1 Q All right. And I'll pull this out. One second. All
2 right. I am going to ask you to identify these documents.

3 A This -- all right, the first one says trafficking crack
4 cocaine CDR code 392, trafficking for actual constructive
5 possession, 28 grams or more.

6 Q And what date was on that?

7 A The date on this is -- good question. June 19, 2013.

8 Q Okay. So, that's one of the charges?

9 A Right.

10 Q And then you have another?

11 A It says for ten grams or more, on June 19th 2013.

12 Q Okay. And then this document? (Handed)

13 A On June 19, 2013, 28 grams or more.

14 Q So do those look like the copies of the pre-file
15 Indictments that would go to the Grand Jury?

16 A Could very well be.

17 Q Okay. But they don't have an Indictment number on
18 these?

19 A No, they don't.

20 Q And so CDR codes on these documents are they the same
21 as the CDR codes on the True Bill Indictments?

22 A No, there are not.

23 A We got 349 and 452 on this one.

24 Q So it's possible you could have told him based on these
25 documents that you received what the potential penalties were?

1 A Very much so.

2 Q And so when you all went to trial --

3 A I know what I probably did like I do with everybody. I
4 have a little red book which you just flip up with the statute
5 number and the CDR code so that may be what I told him.

6 Q Okay.

7 A I think this is before the LWOP though.

8 Q Okay. Before you got the notice for the LWOP?

9 A Right.

10 Q When you explained to him what you normally do when you
11 say you go through you tell them the sentence -- the sentencing
12 range that they would be looking at, he would consider what he
13 was facing at that point in time and whether he should take an
14 offer?

15 A I would imagine that conversation took place before I
16 got Discovery when he brought his warrants in and I probably
17 based that on warrants to a great degree because I wouldn't have
18 the Discovery by then. I don't know when -- he may be right. I
19 just can't remember. We may have had a subsequent conversation
20 where I had the documents you just showed me and I may have told
21 him that. It's not in my notes. I don't remember. But you are
22 correct. I could very well have told him that, yes, ma'am.

23 Q Okay. But I just want to be clear on that, in terms of
24 it could have been his understanding based on that conversation
25 that it was a lesser sentence, but when you got to trial you had

1 received -- you had already received the notice of the LWOP?

2 A Correct. Correct.

3 Q And with that did you all discuss the notice of the
4 LWOP what the potential -- what the sentencing range was?

5 A Correct. Yes.

6 Q And that was life without parole?

7 A That's why I was a little shocked at -- not shocked.
8 He's wanting to go forward knowing the potential penalty.

9 Q Okay, so after you discussed that he wanted to go
10 forward?

11 A Yes.

12 Q And then when you got to trial did you have a copy of
13 the Indictment -- I'm saying it wrong. When you went over that
14 did you have a copy of the Indictment, the True Bill
15 Indictments?

16 A I am sure I did but I don't recollect specifically
17 saying, yes, this is the True Bill Indictment.

18 Q Okay. And so when you got to trial did you -- I mean I
19 think you already testified as to this -- you didn't have a
20 problem with the body of the Indictment?

21 A Obviously I didn't because I didn't object to anything.

22 Q At the end of the trial when Mathew Shelton talked
23 about amending the Indictment. What was your position on that?

24 A I can't remember. Is it in the transcript?

25 Q Yes.

1 A Do you have the page?

2 Q Page 238 should be talking about --

3 A 238?

4 Q Yes.

5 A My 238 has the judge excusing a juror and 239 is me
6 making a motion for a directed verdict.

7 Q Hold on. We got these pages mixed up.

8 MS. MOODY: I beg the Court's indulgence.

9 Q On 308.

10 A Well, that's after sentencing. I don't see it there
11 either.

12 Q Well, check the Indictments -- not the Indictments but
13 the exhibits and the Indictment.

14 A Are you talking when they send the jury out.

15 Q Yes.

16 A "Check the exhibits and the verdict form and we'll send
17 them in and tell the jury to start deliberating." I don't know
18 that he sent the Indictments back from reading this.

19 Q It's in the transcript that he checked the Indictments.
20 You all discussed the --

21 A Leah, I'm missing a page number.

22 Q I'm trying to find it. Well, I had it marked and I
23 think I pulled the page out from under, but do you recall having
24 a conversation on the record with the solicitor needing to make
25 sure the Indictments were correct -- the Indictment numbers and

1 information?

2 A I don't recall that. Whatever it is, it is. Res ipsa
3 loquitur. If it's in there it speaks for itself.

4 Q All right. So you didn't state any objections to the
5 Indictment?

6 A Not that I remember, no.

7 Q The Indictments. All right. So after you reviewed all
8 the Indictments you didn't have any objections to any content on
9 the Indictments as to whether they were the correct CDR codes or
10 sections?

11 A No, I don't remember doing that.

12 Q Okay. And would you normally look at the Indictments
13 to see whether the CDR codes and the statute sections are
14 correct on those Indictments?

15 A Normally I would look for the statute. I can't say
16 that I specifically -- again, my little red book which got the
17 CDR codes in it normally match up. If you got the wrong CDR
18 code I didn't catch it.

19 Q And would that have effected the sentencing?

20 A No.

21 Q Okay.

22 A I mean it is what it is. The statute speaks for
23 itself. The CDR code doesn't control sentencing.

24 Q Right. So I guess what I am getting at is in terms of
25 the sentencing did you find anything wrong with how the Court

1 ended up sentencing Mr. Leach?

2 A No. I mean, he had the things that were pulled out of
3 the certified copies of the prior convictions. He notified him
4 for LWOP. It was all statutorily procedurally done correctly in
5 my opinion as far as notification and so forth.

6 Q And the convictions were they correct?

7 A They were correct. In my opinion they were. They're
8 certified. I mean I wasn't there but --

9 Q So did they line-up with his rap sheet as prior
10 convictions on his rap sheet?

11 A To the best of my memory yes.

12 Q All right. Did you explain all of this information to
13 Mr. Leach?

14 A Yes. Mr. Leach knew he was looking at life without
15 parole.

16 Q So there was no misunderstanding?

17 A No question about it.

18 Q Prior to the trial?

19 A Umpteen times.

20 Q Okay. After the Protective Order that you eluded to,
21 the State having insisted on a Protective Order before you could
22 review the video?

23 A I don't know if we'd signed that or not. Normally I
24 don't sign those obtuse things. I don't think they're
25 constitutionally valid. But I can't remember whether I signed

1 it in this case or not. Mr. Shelton and I have always had a
2 good working relationship. If I tell him I'm going to show it
3 to him and nobody else it's never been a problem with he and I.
4 But I find those things void on the face of them anyway.

5 I mean, the man is on trial for his life. He ought to be
6 able to watch the video.

7 Q So did you find anything wrong with the delay, in
8 getting that video, did that effect anything in this case?

9 A No, ma'am. No, ma'am. We knew -- we knew that was
10 coming.

11 Q Okay. But why do you say it didn't effect anything in
12 the case?

13 A It helped actually in a strange way because then we
14 have this -- the best defense for him came out of that video
15 when that C.I. without notifying anybody just pulls over and
16 goes under his hood. That gave me something to hang on to in
17 his defense.

18 Q Okay.

19 MS. MOODY: No further questions for this witness.

20 THE COURT: Redirect?

21 MR. HUNTER: Nothing else from the State on this
22 witness.

23 THE COURT: Can he be excused?

24 MR. HUNTER: No objection to that.

25 MS. MOODY: No objection.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Anything further?

3 MR. HUNTER: I have two more I would like to call.
4 One being the assistant solicitor. Two is the
5 Appellant defender in Columbia by phone. I don't know
6 if Your Honor prefers any order in which I do those.

7 THE COURT: Do you have your solicitor, assistant
8 solicitor over here close.

9 MR. HUNTER: Right here.

10 THE COURT: Let's do that now.

11 MR. HUNTER: The State would call Mr. Matthew
12 Shelton.

13 MATTHEW SHELTON, called as a witness, having
14 been duly sworn by The Clerk, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HUNTER:

18 Q Please state your name for the record.

19 A Matthew Woodrow Shelton.

20 Q And where do you currently work?

21 A I work with the 16th Circuit Solicitor's Office in York
22 and I've been here for over ten years.

23 Q Can you please explain how you became involved in this
24 case?

25 A The long answer is or the short answer if you will,

1 there are several attorneys in our office. We go on a rotation,
2 a two-week rotation and cases are divvy out based on arrest
3 date. It just so happened Mr. Leach's arrest happened within
4 the two-week period in which I was on rotation and so I was
5 assigned to his case.

6 Q Okay. And can you just explain the -- let's go over
7 the Indictments.

8 A Sure.

9 Q Can you explain how those were presented under what
10 charges you decided to present?

11 A To the best of my recollection Mr. Leach had one set of
12 charges and then was re-arrested I believe on the two
13 trafficking charges that Mr. Brown represented him on at trial.
14 They were charged as third offense trafficking. Carries a
15 mandatory minimum 25 years regardless of the weight. I
16 presented those Indictments to the the grand jury as charged.
17 The CDR codes that have been noted in Court 0452 and 0359 or 49
18 whichever it is. I always double check to verify those are
19 accurate. Actually prior to coming in to testify I pulled up my
20 copy of the True Bill Indictments. They were stamped True Bill
21 and the CDR codes were accurate.

22 Q Okay. And as far as his prior history is concerned,
23 can you explain the research you did in looking at his prior
24 convictions?

25 A Sure. Any time we get a case in in addition to

1 reviewing the facts of the case to see if there is factual legal
2 merit to the charge presented to us by law enforcement, we do a
3 review of the person's criminal history. Mr. Leach had been
4 involved in the drug trade for decades. I learned that he had
5 several prior drug offenses, two of which were serious in
6 nature. And I believe it was in July of 1991 one he sold crack
7 cocaine to someone within proximity of a school. He was
8 arrested in '92 and plead guilty in '93. Received a 20-year
9 sentence on the distribution and 15-year sentence on the
10 proximity. The proximity was serious in nature under CDR 0108.
11 And then I believe it was in '04 or '05; 2004, 2005 he was
12 convicted of trafficking cocaine and that's in combination with
13 a multitude of other arrests and convictions for drugs and other
14 things between those points in time and even after that.

15 Q And those charges were the basis of your LWOP notice?

16 A Yeah, well, I attempted to work it out through plea
17 negotiations before noticing him for life. I originally offered
18 a negotiated 18-year sentence. I would have had to reduce the
19 charge down in order to get into that. So I would have to
20 reduce from a third offense to second offense and then a
21 dismissal of the remainder of the charges.

22 I recall at some point Mike Brown who was representing Mr.
23 Leach, of course, telling me that Mr. Leach would take five.
24 That was just not doable given the quality of the case as well
25 as Mr. Leach's prior criminal history. I believe at that point

1 I indicated to Mike that I would go as low as 15. My general
2 practice is not to negotiate against myself. That may have been
3 me eluding to him that if he could get his guy, his client,
4 closer to 15 that I could come down a little bit. And Mike and
5 I have been working together for years so if I tell him, hey, I
6 got a little bit of room here he knows what that means. But he
7 knows I'm not going to just start cutting into my plea offer.
8 Five years was not tenable. We were very far apart from the get
9 go.

10 Q So can you go over when you drew up the LwOP notice and
11 how you served that?

12 A Yeah, at some point this informant, Mr. Irving, was
13 involved in other cases so I was kind of keeping an eye on those
14 other cases. We didn't want to reveal him too soon and
15 compromise the other cases. But it became apparent that Mr.
16 Leach was going to go to trial. So we don't disclose the
17 identity of informant during plea negotiations. We make it very
18 clear that that's the case.

19 I would have offered to show the video to Mr. Brown in my
20 office without giving him a copy. Again, part of plea
21 negotiations. At some point when it was clear that plea
22 negotiations broke down -- we're not going to go any further --
23 I obtain certified copies of the prior enhanceable convictions.
24 Made sure that Mr. Brown had a copy of those. Drafted up a life
25 notice and put him in front of one of the judges. I can't

1 specifically remember which judge but we followed the procedures
2 under the statute and he was presented with his notice on the
3 record.

4 I do recall Sean Cronin standing in for that hearing because
5 Mike was having some health problems.

6 Q Okay. And to your knowledge were those certified
7 copies accurate?

8 A Yeah, they came from our Clerk of Court. I have no
9 reason to believe otherwise.

10 MR. HUNTER: That's all I have. I appreciate you
11 being here.

12 THE WITNESS: Sure.

13 CROSS EXAMINATION

14 BY MS. MOODY:

15 Q All right. Good afternoon Mr. Shelton.

16 A Good afternoon.

17 Q You indicated that Mr. Leach had another set of
18 charges. Those set of charges -- how many charges were there,
19 were there three?

20 A They were two other trafficking by distribution and
21 proximity. I want to say there was another case that came in as
22 possession with intent to distribute but the inference level was
23 lower so I believe it got reverted to possession. I may have my
24 facts mixed up a little bit.

25 Mr. Leach has been through our office several times. I get

1 a little bit blurry some times as to exactly what. But I know
2 there were other charges, other incidents that he was charged
3 with originally that I did not indict. I think I might have in
4 indicted one set but I didn't indict all of them.

5 Q So was Mr. Brown the attorney for those other charges
6 or was it a different attorney?

7 A I believe so. I believe Mike was on at least the two
8 that I could have tried. The third one really wasn't a triable
9 case. The video quality was not very good. But this one was
10 the best one. The video was fantastic and Mr. Leach's face was
11 right in the middle of the screen. You can see the drugs
12 passing from hand-to-hand. You can see him counting the money.
13 When the police came in he threw the money under the car and the
14 informant put the dope down pretending like he was caught off
15 guard. There really was no question in my mind this was the
16 case to try.

17 Q All right. So like during the trial, the Indictments
18 that he was indicted for is it that there were multiple sets of
19 copies of potential Indictments that you provided to the
20 defense?

21 A I don't recall.

22 Q So is it typical for you to give un-filed Indictments
23 to the defense?

24 A Possibly. Depending on when it was going to Grand Jury
25 I may have sent them a copy of a draft just to let them know,

1 hey, this is what I intend to send to the Grand Jury just so
2 there's no question of what's being alleged. And then of course
3 the True Bill Indictment, being what is really the charging
4 document, my general practice is to give a copy of that to
5 defense before trial. I don't have notes on that, whether I did
6 or not in this case. But I mean, I have no doubt that Mike knew
7 exactly what was at stake in this case.

8 Q Okay. And as far as Mr. Leach was concerned you were
9 present at the hearing where you gave notice?

10 A Yes, ma'am.

11 Q When you did the notice of LWOP did you talk -- prior
12 to giving notice of LWOP, did you talk to Mr. Leach about any of
13 his charges outside of Michael Brown?

14 A I don't recall ever having a conversation with Mr.
15 Leach without -- I don't even recall having a conversation with
16 him period let alone outside the presence of his lawyer.

17 Q Okay. In the presence of Sean Cronin did you give any
18 potential drafts of the Indictments?

19 A I don't recall.

20 Q In terms of the CDR codes that are listed on the True
21 Bill Indictment, did you change them at all based on his prior
22 record before going to Grand Jury?

23 A No, I double checked my file. The CDR codes that were
24 on the warrants originally for this case were the ones presented
25 on the True Bill Indictments. It's possible that I got mixed

1 up. Sometimes when the warrants come in they won't put the
2 correct CDR code. Sometimes the Clerk of Court puts a CDR code
3 based on what's written in the body of the warrant. Obviously
4 when I am reviewing before I send things to Grand Jury I'm
5 double checking to make sure CDR codes are accurate and they
6 were in this case before I sent them to the Grand Jury.

7 Q Okay, so it's possible on the warrant they're wrong.
8 You will correct them when they go to Grand Jury and in the
9 trial when you present the Indictments to the judge, or it's
10 presented to judge did you change or do you recall changing
11 anything in terms of the CDR codes?

12 A Like I said, I don't recall changing anything. The CDR
13 codes match what I have in my system for this particular case.
14 But you know, in reality like I would have to drop them down to
15 a second offense in order to effect a plea deal. That's
16 possibly what we were dealing with. That could be an
17 explanation why there's a different CDR code. I could have just
18 made a mistake and realized it before I sent it to Grand Jury.
19 But it went to Grand Jury with the appropriate CDR codes.

20 Q And then when you make changes to an Indictment do you
21 initial? How do you indicate that there is a change to the
22 Indictment?

23 A Well, if it's been True Billed I can't make any changes
24 to the the Indictment.

25 Q Okay. Who has to make those changes?

1 A The judge would.

2 Q And so if you were to make a change to the Indictment
3 and the judge allowed that to occur, would you have marked on
4 the Indictment or who would have marked on the Indictment?

5 A I've only seen a judge ever make changes on the face of
6 an Indictment. That's kind of no-brainer. We don't touch
7 Indictment once they have been True Billed except to bring them
8 to the courtroom.

9 MS. MOODY: Okay. No further questions for this
10 witness. Thank you.

11 MR. HUNTER: Nothing else for this witness.

12 THE COURT: Thank you, sir, you may be excused.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: For the record, Miss Moody before I
15 came here last week there was some e-mail
16 correspondence between Mr. Hunter, yourself and myself
17 about this witness appearing over the telephone. You
18 did not object, is that correct.

19 MS. MOODY: That is correct Your Honor.

20 THE COURT: All right. Thank you.

21 (WHEREUPON, the next witness was examined via the
22 telephone.)

23 A Okay let me know if I can, hear me clearly. We will he
24 let you know.

25 MR. HUNTER: All right. Your Honor. The State is

1 is calling appellant defender John Strom.

2 THE COURT: Swear in Mr. Strom please ma'am.

3 JOHN STROM, called as a witness, having been duly
4 sworn by the clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. HUNTER:

8 Q John, can you please state your name for the record?

9 A John Strom.

10 Q And where are you employed?

11 A South Carolina Office of Appellant Defense.

12 Q And is that where you were employed when you became
13 involved in Mr. Leach's case?

14 A Yes.

15 Q And just for the record can you tell us where you are
16 located right now?

17 A Sure. I'M in Columbia, South Carolina, at our offices
18 which are 1330 Lady Street, Suite 401.

19 Q Okay. Now can you just briefly explain how you became
20 involved in Mr. Leach's case?

21 A Sure. Looking at my file I was appointed to represent
22 Mr. Leach some time around September 9, 2014. He would have --
23 after filing a timely Notice of Appeal Mr. Leach would have sent
24 in an application alleging indigency and that would have to be
25 approved by our office. It looks like he was approved and we

1 received his transcript like I said on September 9th of 2014.

2 Q And did you review his transcript?

3 A I did.

4 Q And did you talk to Mr. Leach at all?

5 A Yes. I believe we had multiple phone conversations
6 with Mr. Leach regarding his case. I also believe that I sent
7 Mr. Leach a number of letters

8 Q Can you just explain your thought process in filing the
9 petition that you filed?

10 A Sure. Certainly I never enjoy filing an Anders's Brief.
11 It's essentially a process where after reviewing the transcript
12 several times as well as the exhibits that are requested from
13 the Clerk of Court it just determines that there is no
14 meritorious appellant issues. And so the Anders procedure is
15 sort of set up to reconcile this contradiction that says that an
16 individual has a right to the assistance of counsel on appeal,
17 yet as an officer of the Court can not file a frivolous
18 submission. And so that's the Anders procedure essentially
19 reconciles that by requiring me to submit an arguable issue and
20 to then to seek to be relieved as counsel. And so typically, it
21 comes after a substantial amount of review as well as talking
22 with -- you know, talking over potential issues with other
23 attorneys in my office. So it's certainly not a decision that I
24 ever come to sort of lightly.

25 Q And can you explain I guess how you came about in

1 analyzing the issues in his case?

2 A Sure. There was at least from my review of the record
3 in Mr. Leach's case, is a sort of a traditional control buy with
4 an immediate bust after the alleged sale. So none of the
5 typical issues surrounding the identity of the confidential
6 informant, confrontation clause, were present because they had
7 the informant there to testify. So again sort of the common
8 issue that we see in drug cases -- frequently see in drug cases
9 -- just weren't present in Mr. Leach's case.

10 In addition, I am sort of limited to the issues that are
11 objected to by trial counsel. So even if there was an issue --
12 you know, a major issue and I don't recall there being one, I
13 would be limited only to circumstances where there is an
14 objection, an argument made and the trial Court had to make a
15 ruling.

16 Q Okay, and do you recall any issues in this case that
17 were unpreserved for you to brief?

18 A Again, none specifically come to mind. The -- well,
19 actually the one that does come to mind is more an academic
20 question question because it wouldn't provide Mr. Leach any
21 relief, but it's whether or not he committed two acts of
22 trafficking or just a single continuous act of trafficking.
23 Ultimately trafficking is an offense that is a wide variety of
24 actions and involve a certain amount of weight. And in Mr.
25 Leach's case if I recall correctly, they had charged him with

1 two counts of trafficking because of the drugs found either
2 immediately outside the informant -- where the informant was
3 sitting or the drugs that were recovered from the informant as
4 well as drugs that were found in his car when he was searched
5 incident to his arrest.

6 I think based on my experience in that it would have been
7 one count of trafficking. However Mr. Leach was sentenced to
8 two life sentences. I don't think raising that issue would have
9 gotten him any sort of relief from his overall sentence. And
10 again, you know, I don't think it would have any effect on the
11 fact that he had two life sentences and reduce it to one.

12 Q Okay, and do you recall any appealable issue that
13 involved the Indictments?

14 A No.

15 Q And what about appealable issues that involved the jury
16 charges?

17 A I don't recall any appealable issues regarding the jury
18 charges.

19 Q Okay. And just to be clear, you read the entire record
20 of this case, correct?

21 A Yes, I did.

22 Q And is it your testimony that if if there had been
23 appealable issues you would have briefed them?

24 A Certainly. As I say every time I testify at a PCR
25 hearing, I never have any intention, there was never any

1 strategic reason for not raising a winning issue on appeal. So
2 no, if I missed a winning issue I certainly didn't have any
3 reason for not raising it.

4 Q Okay.

5 MR. HUNTER: That's all I have for this witness,
6 Your Honor. Mr. Strom, I appreciate your patience and
7 you being willing to testify.

8 THE WITNESS: Absolutely.

9 THE COURT: Cross examination.

10 CROSS EXAMINATION

11 BY MS. MOODY:

12 Q Good afternoon Mr. Strom. As far as the jury verdict
13 was there an issue there?

14 A Good afternoon Miss Moody. Are you referring to the
15 directed verdict --

16 Q Yes, sir.

17 A -- stage. No.

18 MS. MOODY: Okay. No further questions.

19 THE COURT: All right. Thank you. May this
20 witness be excused?

21 MR. HUNTER: Yes, Your Honor.

22 MS. MOODY: Yes.

23 THE COURT: All right. Thank you Mr. Strom. We
24 appreciate you. You're excused.

25 MR. STROM: Yes, Your Honor. Thank you very much.

1 MR. HUNTER: No further witness, Your Honor.

2 THE COURT: Any reply?

3 MS. MOODY: No, sir, Your Honor.

4 THE COURT: All right, thank you. I will look
5 over the information and I'll issue my Order.

6 MS. MOODY: Thank you, Your Honor.

7 (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 19th day of October, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 19, 2017

Aileen Butler

A

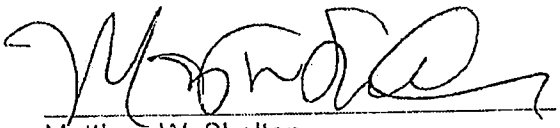
STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
STATE OF SOUTH CAROLINA)
v.)
ELDER PRESCOTT LEACH,)
Defendant.)

2014 FEB 27 PM 1:47
Warrants # 2013A610200726, 0736, 0840, 0841
NOTICE OF INTENTION TO SEEK
LIFE IMPRISONMENT WITHOUT
POSSIBILITY OF PAROLE SENTENCE

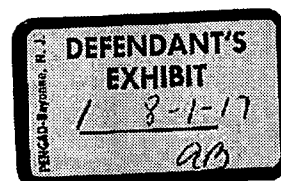
In the above captioned case the Defendant, Elder Prescott Leach, is charged with four (4) separate counts of Trafficking in Crack Cocaine from three (3) separate incidents, all of which are crimes defined as a "Serious Offense" in South Carolina Code Ann. § 17-25-45(C)(2)(b)(1976 & Supp. 2003).

The State of South Carolina hereby advises that the Defendant was convicted of Distribution of Crack Cocaine within Proximity of a Park in 1992, Trafficking in Crack Cocaine and PWID Crack Cocaine within Proximity of a Public School in 2005, each of which is classified as a "Serious Offense" under South Carolina Code Ann. § 17-25-44 (1976 & Supp. 2003). Trafficking in Crack Cocaine is also classified as a "Violent Offense" under South Carolina Code Ann. § 17-25-44 (1976 & Supp. 2003).

The State of South Carolina through the Solicitor's Office, Sixteenth Judicial Circuit, hereby gives notice that at the trial of the case(s) at bar, which will be scheduled on a date at least ten (10) days after notice to the Defendant, upon a conviction for this, another "Serious Offense," and/or "Violent Offense", the State intends to seek a term of imprisonment for life without the possibility of parole pursuant to South Carolina Code Ann. § 17-25-45(B) (1976 & Supp. 2003).


Matthew W. Shelton
Assistant Solicitor
Sixteenth Judicial Circuit

February 27, 2014
York, South Carolina



NEGOTIATED PLEA

COUNTY OF YORK

COUNT NO: _____

CASE NO: 92 GS-46- 4098WARRANT NO: B-146190CHARGE: Dist. Track

THE STATE

VS

Elder LeachThe sentence of the Court is that Elder Leach, the defendant named in thisindictment be confined to the State Board of Corrections/ York County Detention for a term of 20 years.

(and) (or) pay a fine of \$ _____ : provided that upon the service of _____ (and)

(or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable *, the balance is

suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (Yes) (No)

PHYSICAL INJURY \$ _____

HEARING HELD OR WAIVED ON: _____

(and) (or)

PROPERTY DAMAGE \$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: Credit for time served.MonumentDATE: 4-29-93

YORK, SOUTH CAROLINA

*COST AND ASSESSMENTS:

FINE \$ _____

ACADEMY \$ no

C.C.A. \$ _____

L.C.F. \$ yes

C.A.T. \$ _____

OTHER \$ _____

GRAND TOTAL \$ _____

COPY RECEIVED BY: Elder Leach

Defendant

Don H. Currell, Jr.
Presiding JudgeMr. H. Currell, Jr.
Clerk of CourtDate of Birth 11-17-63Social Security 142-64-4358

Drivers License _____

ATTORNEY FOR DEF: _____

ADDRESS: 1153 Teahouse DrRock Hill SC29730

MF

BW

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Elder P. Leach,)
S.C.D.C. No. 197673,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-2740

ORDER OF DISMISSAL

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 16, 2016. Respondent made its Return on or about December 22, 2016. An evidentiary hearing into the matter was convened on August 1, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, 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, Michael Brown, Esquire, also testified. Assistant Appellate Defender John Strom and Assistant Solicitor Matthew Shelton 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 Clerk of Court for York County. Applicant was indicted by the March 2014 term of the Grand Jury for York County for one of Trafficking in Crack Cocaine,

28-100 grams, 3rd offense (2014-GS-46-00679), and Trafficking in Crack Cocaine, 10-28 grams, 3rd offense (2014-GS-46-00678). Applicant was represented by Michael Brown Jr., Esquire (hereinafter "Trial Counsel"). Applicant proceeded to a jury trial and on May 14, 2014, he was found guilty as indicted. Applicant was sentenced by the Honorable John C. Hayes, III, to life imprisonment without parole for both charges, to be served concurrently.

Applicant filed a timely notice of appeal. Applicant's was represented by John Harrison Strom, Esquire, (hereinafter "Appellate Counsel") who filed an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion submitted August 1, 2015, and filed October 21, 2015. State v. Leach, 2015-UP-499 (S.C. Ct. App. 2015). The Remittitur was returned on November 6, 2015.

PCR Application

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Failure to properly challenge prior convictions
 - b. Trial counsel gave erroneous advice on which Applicant based his decision not to testify
 - c. Failure to show buy bust procedure was defective
 - d. No true billed indictment in Rule 5 Brady Motion
 - e. Did not prove chain of custody was defective once drugs were placed on the ground
 - f. Failure to have video evidence authenticated
 - g. Failure to suppress video evidence
 - h. Allowed video/audio evidence to be muted and deleted during and before trial without objection
 - i. Allowed key witness to authenticate a video, that was different from initial statement
 - j. Allowed unauthenticated video into evidence without objection at trial
 - k. Failure to present different video from same day "there are two videos different from each other"
 - l. Failure to suppress video evidence which had different date and time of actual event

¹ 386 U.S. 738 (1967).

- m. Improper statement to the jury in closing argument
- n. Failure to present a defense
- o. Trial counsel never was presented a true billed indictment in Rule 5 Brady, only 1st offense indictments were presented
- p. Trial Counsel allowed an amendment to indictment at the end of trial
- q. Failure to challenge prior uncounseled conviction used to secure life without parole conviction
- r. No motion to suppress evidence or statements
- s. Trial counsel gave wrong legal advice on which Applicant based his decision not to testify
- t. Counsel failed to strike pro-prosecution juror
- u. Sufficiency of charging indictment
- v. Essential element required to indictment
- w. Attorney left hearing aid day 2 of trial
- x. Failure to challenge jury selection or voir dire
- 2. Ineffective Assistance of Appellate Counsel
 - a. Failed to present issues of merit
 - b. Failed to present directed verdict issue
 - c. Failed to present wrong charge to the jury
 - d. Failed to present issue on plain view was defective
 - e. Failed to present issues of subject matter jurisdiction
 - f. Lesser included offense jury instruction not presented to jury
 - g. Jury instruction on Confidential Informant not presented to jury
 - h. Trial Court's duty to assess conflict of interests
 - i. Failed to present merit issue on warrantless search and seizure
- 3. Prosecutorial Misconduct
 - a. Due process violation
 - b. No true billed indictment in Rule 5 Brady
 - c. True Billed outside scope of General Sessions Court...indictment never presented to Grand Jury
 - d. Sufficiency of the charging document
 - e. Essential element required to indictment
 - f. Amendment to indictment after trial is over
 - g. Prosecutor did not present sufficient evidence to support claim that prior conviction was a crime of violence in support of career offender enhancement
 - h. Allowed primary witness false testimony
 - i. Conflict of interest
 - j. Failure to present sufficient evidence of an essential element of trafficking in crack cocaine

II. 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.

III. 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 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 Trial Counsel

Failure to properly challenge prior convictions

Applicant alleged that Trial Counsel failed to properly challenge his prior convictions. He testified that he had a prior conviction in 1992 that was not a serious offense. He testified that Trial Counsel's associate, Sean Cronin, represented him when he received the State's notice to seek life without parole (LWOP) and did not challenge the priors.

Trial Counsel testified that Applicant had two prior serious offenses and the State presented him with certified copies of the convictions. The record reflects that the State's notice to seek LWOP was made a court's exhibit at sentencing. The State sought LWOP based on Applicant's two prior serious offenses: his 1992 conviction for distribution of crack and distribution of crack within proximity of a park and his 2005 conviction for trafficking crack cocaine (10-28 grams), second offense. Trial Transcript p. 314 ll. 9-25. Trial Counsel told the trial judge that he did not dispute Applicant's prior record and the State had provided him with copies of the convictions. Trial Transcript p. 315, ll. 10-11.

This Court finds that Applicant's allegation is without merit. This Court finds that Trial Counsel and Assistant Solicitor Shelton provided credible testimony that Applicant had two prior serious convictions that would form the basis of the State's LWOP notice. The record reflects that the State alleged Applicant had two prior serious convictions for distribution of crack cocaine within proximity of a park (1992-GS-46-4099) and trafficking crack cocaine (10-28

grams), second offense (20015-GS-46-0694). Applicant has failed to show that either prior conviction was not "serious" or that his prior convictions were improperly used under § 17-25-45. This Court finds that distribution of crack cocaine within proximity of a park and trafficking crack cocaine are both enumerated as serious convictions under § 17-25-45. Applicant's prior convictions were properly used as predicate offenses for LWOP and Trial Counsel was not deficient for failing to challenge these prior convictions. Applicant has failed to show that he was prejudiced by Trial Counsel's actions and this allegation must be dismissed.

Trial counsel gave erroneous advice on which Applicant based his
decision not to testify

Applicant testified that Trial Counsel told him that the State could use his prior convictions against him when he testified. Trial Counsel testified that their trial strategy was for Applicant not to testify given his prior record.

This Court finds that Applicant has failed to show that Counsel gave deficient advice that caused Applicant to decide not to testify. To the extent that Trial Counsel informed Applicant that the State could impeach him with his prior record if he chose to testify, this Court finds that such advice was not deficient. In his colloquy with Applicant, the trial judge also informed Applicant that the State may impeach him based on his prior record and Assistant Solicitor Shelton informed Applicant and the trial judge of Applicant's possible impeachable offenses. Trial Transcript p. 241-243. Applicant told the trial judge that he understood that these offenses may be used to impeach him and that he had no questions about it. Trial Transcript p. 243. This Court finds that Applicant has failed to show that Trial Counsel provided deficient advice regarding Applicant's prior convictions. Rule 609 of the Rules of Evidence allows prior convictions to be used for impeachment purposes in certain circumstances and the trial judge correctly advised Applicant of this fact. Furthermore, this Court finds that Applicant has failed to

show that he was prejudiced by Trial Counsel's actions as he has failed to show that the outcome of his trial would have been different had Counsel given different advice regarding Applicant's prior convictions or his right to testify. Accordingly, this allegation must be dismissed.

Failure to show buy bust procedure was defective

Applicant testified that the buy bust procedure was defective when the police officers lost sight of the Confidential Informant ("CI") during the buy. He testified that Trial Counsel should have challenged this deficiency in the procedure, but also testified that Trial Counsel brought this up during trial. Trial Counsel testified that he attacked the gap in the video at trial, pointing out that the CI was out of the officers' surveillance for period of time. Trial Counsel testified that attacking this point was his best defense.

This Court finds that Applicant has failed to show that Trial Counsel's actions were deficient. This Court finds that Trial Counsel testified that he attacked the buy bust procedure at trial, including arguing to the jury in his closing argument that the CI was out of view of any police surveillance for six minutes. See Trial Transcript p. 286. This Court finds that Applicant has failed to show how Trial Counsel's arguments were deficient or what Counsel should have otherwise argued. This Court finds that attacking the buy bust procedure and the CI's absence was part of Trial Counsel's defense strategy and ultimately a question for the jury. This Court finds that Applicant has failed to meet his burden of proving that Trial Counsel was deficient and he has failed to show that the outcome of the trial would have been different had Trial Counsel made different arguments. Accordingly, this allegation must be dismissed.

Indictment issues

Applicant alleged that Trial Counsel was ineffective for failing to object that there were no true-billed indictments for his charges. He testified that he did not receive discovery for over

a year after he was arrested. He testified that Trial Counsel was ineffective because he allowed the State to amend his indictment at the end of the trial to reflect a third offense when he was originally presented an indictment for first offense charge. Applicant testified that Trial Counsel knew that the CDR codes on the indictments were for a first offense. He testified that Trial Counsel told him that the indictment carried ten years and the Court did not have jurisdiction to try him for the third offense charge.

Trial Counsel testified that the initial indictment with the CDR code referencing a first offense was probably presented to them prior to the State's notice to seek LWOP. He testified that the discrepancies in CDR codes are due to initially being presented with pre-filed indictments prior to the presentment to the grand jury. Trial Counsel testified that he probably told Applicant the potential penalty based on the warrants before the State's LWOP notice. Trial Counsel testified that he gives advice based on the criminal statutes, and further testified that any issues Applicant has with the indictments did not affect his sentencing.

Assistant Solicitor Matthew Shelton testified that the CDR codes on the true-billed indictments were accurate. He testified that he did not recall giving Trial Counsel unfilled indictments but may have gave him initial drafts prior to presenting the case to the grand jury. He testified that the grand jury was presented with accurate indictments.

This Court finds that Applicant has failed to meet his burden of proving Trial Counsel was ineffective for his actions concerning Applicant's indictments. First, this Court finds that Applicant's indictments are both stamped "true billed" with the signature of the grand jury foreperson and the date "3/20/2014." Applicant's allegation that Trial Counsel failed to object that there were no true-billed indictments for his charges must be dismissed.

To the extent that Applicant alleges that Trial Counsel was ineffective for failing to argue

that only first-offense indictments were presented, this Court finds that this allegation must be dismissed. Trial Counsel and Assistant Solicitor Shelton testified that Applicant was initially presented with pre-filed indictments that may have listed the CDR code for trafficking first offense. This Court finds that Applicant and Trial Counsel both received the true-billed indictments to trafficking third offense such that Applicant was put on notice of the charges against him. This Court finds that Applicant has failed to show that Trial Counsel's actions were deficient. This Court further finds that Applicant has failed to show that he was prejudiced by Trial Counsel's actions. This Court agrees with Trial Counsel's testimony that Applicant's sentence would not have changed if the charge was a first offense or second offense because he was noticed for a sentence of LWOP. As Applicant has failed to meet his burden, this allegation must be dismissed.

Furthermore, Applicant has failed to meet his burden of proving that Trial Counsel was ineffective for allowing an amendment to the indictment at the end of trial. This Court finds Applicant has provided no evidence that his indictments were altered or amended at the end of his trial. Thus, he has failed to show that Counsel was deficient or that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Did not prove chain of custody was defective once drugs were
placed on the ground

Applicant testified that the chain of custody for the drugs was defective because the CI placed the drugs on the ground when the police showed up. He testified that the police officers stated they found the drugs on the ground and Trial Counsel should have objected. Trial Counsel testified that he did question the State's witnesses on this fact.

This Court finds that Applicant has failed to prove that Trial Counsel was ineffective for failing to prove a defective chain of custody as the drugs were placed on the ground by the CI.

This Court finds that testimony was elicited from Trial Counsel and the State that when police busted the drug transaction, the CI placed a bag containing drugs on the ground and this bag was immediately recovered by Officer Robin Gardner. See Trial Transcript pp. 139-146. Officer Gardner testified that he secured the bag and maintained control of it in a sealed evidence bag until he gave it to another officer at the law center. See Trial Transcript pp. 147-148. Applicant has failed to show that there were any defects in the chain of custody and that Trial Counsel's actions were deficient. Additionally, Applicant has failed to show that the outcome of his trial would have been different had Trial Counsel acted differently regarding to the chain of custody. Accordingly, this allegation must be dismissed.

Video Authentication

Applicant made several allegations concerning the CI buy video. He alleged that Trial Counsel was ineffective for failing to have the videotape authenticated and for allowing an unauthenticated video into evidence at trial. He testified that the CI testified at trial to a videotape that did not match what actually happened. He testified that the video played at trial did not show a drug transaction. This Court finds that Applicant has failed to prove that Trial Counsel was ineffective for failing to have the videotape from the CI buy authenticated and for allowing an unauthenticated video into evidence without objection. The record reflects that the CI authenticated the video and audio of the CI buy before the State entered it into evidence. Trial Transcript p. 111, l. 9 – 112, l. 20. The CI testified at trial that he was equipped with audio and video recording equipment for the buy, he reviewed the video and audio recording, and he believed it was a true and accurate representation of the events surrounding the buy. Trial Counsel did not object when the recording was moved into evidence.

This Court finds that Applicant has failed to show that Trial Counsel should have

objected as he has failed to show that the video was not properly authenticated. This Court finds that the CI's authentication was proper under Rule 901 of the South Carolina Rules of Evidence, and Trial Counsel was not deficient for failing to object. This Court finds that Applicant has failed to show that the outcome of the trial would have been different had Trial Counsel objected to the CI's authentication. Accordingly, this allegation must be dismissed.

Applicant also alleged that Trial Counsel was ineffective for allowing the CI to authenticate the video without using the CI's inconsistent statement to impeach him. He also testified that he did not see a statement from the CI to impeach. This Court finds that Applicant has failed to prove that Trial Counsel was ineffective for allowing a witness to authenticate a video that was different from an initial statement. Trial Counsel testified that he was not aware of a statement from the CI that would have been different than the video.

This Court finds that Applicant has failed to produce such a statement to show that Trial Counsel should have objected. Furthermore this Court finds, as shown above, that Applicant has failed to show that the CI's authentication of the video was improper. Applicant has also failed to prove that the outcome of the trial would have been different as he has failed to produce the CI's statement and because such a statement would have been merely impeaching. Accordingly, this allegation must be dismissed.

Failure to present a second video

Applicant alleged that Trial Counsel was ineffective for failing to present another video from the same day. He testified that he saw another video with Commander Brown that showed two hands and a bag but neither hand was his hand and no transaction took place. Applicant testified that the video had a different date on it. Trial Counsel testified that there was not a second video produced. He testified that the State had one tape of solely audio and another tape

of audio and video together.

This Court finds that Applicant has failed to show that Trial Counsel was deficient for failing to present a different video from the CI buy. This Court finds Trial Counsel provided credible testimony that only one video of the CI buy existed. This Court finds that Applicant has failed to show that he was prejudiced by Trial Counsel's actions as he has failed to show that a second video exists and has failed to produce such video at the PCR hearing. This Court finds that Applicant has failed to prove that Counsel was ineffective and this allegation must be dismissed.

Failure to suppress video evidence

Applicant testified that the CI buy video should have been suppressed. He further testified that the video should have been suppressed because the video had a different date and time than the actual event. This Court finds that Applicant has failed to show that Trial Counsel's actions were deficient for failing to suppress the CI buy video. The record reflects that Sergeant John Ranier testified as to why the time and date stamp on the video was different than the actual date. He testified that the battery to the video equipment died overnight and when they recharged it, it produced a different time stamp. See Trial Transcript pp. 226-227. This Court finds that Applicant has failed to show that there was anything objectionable about the videotape that would justify Trial Counsel making a motion to suppress. This Court finds that Applicant has failed to show that the different time and date stamp on the videotape, and issue which was clarified by Sergeant Rainer at trial, would cause it to be objectionable or inadmissible at trial. This Court also finds that Applicant has failed to prove that he was prejudiced as he has failed to show that such a motion would have been successful. Accordingly, this allegation must be dismissed.

Allowed video/audio evidence to be muted and deleted during and
before trial without objection

Applicant testified that Trial Counsel was ineffective for allowing the audio and video to be redacted at certain points when it was played during the trial. This Court finds the record reflects that the State and Trial Counsel agreed to redact certain parts of the CI buy video. The trial court noted that it would give the jury an instruction that the redactions were done for purposes that were not important to their deliberations. The trial judge gave a curative instruction during the CI's testimony and mentioned the redactions during his jury charge. See Trial Transcript pp. 114-115, 300. Assistant Solicitor Shelton told the trial court "I think there are some noticeable gaps that are just silence. We didn't cut it out of any of the recordings except for the very end. We cut some of the irrelevant stuff off from the very end, but there are some pockets of time there will be deal silence for about a minute." Trial Transcript p. 60, ll. 17-21. Trial Counsel confirmed that he had agreed to redactions. This Court finds that Applicant has failed to show that Trial Counsel's actions were deficient in this regard. This Court finds that Trial Counsel had agreed to redactions and the State provided a reasonable explanation at trial for the redactions. This Court further finds that Applicant has failed to show that he was prejudiced as he has failed to show how his trial was affected by these redactions and because this Court will not speculate as to the content of the redactions. Accordingly, this allegation must be dismissed.

Improper statement to the jury in jury charge²

Applicant testified that Trial Counsel was ineffective for failing to object to the improper statement during the jury charge that referenced the muted redactions in the audio and video.

² This Court notes that Applicant's allegation listed in his application reads "Improper statement to the jury in closing argument," however it was clear from his testimony at trial that he was referring to the jury charge and not either party's closing argument.

This Court finds the record reflects the trial judge charged the jury as follow:

Now, in this case there have been, as you recall, in the audio I mentioned earlier that there were gaps, in TV language parts were blipped; here they were just muted. You are not to give that any consideration whatsoever. They were taken out of that audio because they had no value to this case, no relevance to this case and may have caused confusion in this case. So don't be concerned about the fact that there are certain portions of the audio which were removed.

Trial Transcript 300, ll. 13-21.

This Court finds that Applicant has failed to show that Trial Counsel was deficient for failing to object to the jury charge. "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct.App. 1996). This Court finds that the jury charge is not objectionable and the portion in question simply mirrors a curative instruction that the trial judge had previously given to the jury informing them why certain gaps in the audio and video exist. Applicant has failed to show that he was prejudiced by Trial Counsel's failure to object to the jury instruction because he has failed to show that such a curative instruction was improper or that an objection would have been successful. As he has failed to prove that counsel was ineffective in this regard, the allegation must be dismissed.

Failure to present a defense

Applicant testified that Trial Counsel was ineffective for failing to present a defense. He testified that Trial Counsel discussed the State's case with him and told him that they were not presenting evidence. Trial Counsel testified that the main defense strategy that he discussed with Applicant was to move to suppress the drugs and to attack the CI. Trial Counsel testified that his best defense was to argue about the CI's short absence in surveillance that occurred when he pulled over before the CI buy.

This Court finds that Applicant has failed to show that Trial Counsel's actions were

deficient regarding his defense strategy. This Court finds that Trial Counsel articulated a valid trial strategy that involved moving to suppress the drugs and attacking the CI. This Court finds the record reflects that Trial Counsel made a motion to suppress the drug evidence but was unsuccessful and he consistently attacked the CI's credibility and actions during the buy. Applicant has neither shown how Trial Counsel's defense strategy was deficient nor what other strategy Trial Counsel should have employed. Without showing how the outcome of his trial would have been different, Applicant has failed to show that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Failure to challenge prior uncounseled conviction used to secure
life without parole conviction

Applicant alleged that Trial Counsel was ineffective for failing to challenge his prior convictions that were used as prior offenses to seek life without parole sentence. Trial Counsel testified that Applicant had prior serious convictions and he was provided certified copies from the State of these convictions. Trial Counsel testified that the certified copies of Applicant's prior convictions were confirmed on his rap sheet. He testified that he met with Applicant often to explain the State's notice of LWOP and his prior convictions. Assistant Solicitor Matthew Shelton testified that he provided certified copies of Applicant's prior convictions to Applicant and Trial Counsel prior to trial.

This Court finds that Applicant's allegation is without merit. As stated above, the record reflects that the State alleged Applicant had two prior serious convictions for distribution of crack cocaine within proximity of a park (1992-GS-46-4099) and trafficking crack cocaine (10-28 grams), second offense (20015-GS-46-0694). Applicant has failed to show that either prior conviction was not "serious" or that his prior convictions were improperly used under § 17-25-45. This Court finds that distribution of crack cocaine within proximity of a park and trafficking

crack cocaine are both enumerated as serious convictions under § 17-25-45. This Court finds that Applicant's concern that a prior conviction was uncounseled does not invalidate its use as a predicate "serious" felony for LWOP notice. This Court finds that Applicant's prior convictions were properly used as predicate offenses for LWOP and as such, Trial Counsel was not deficient for failing to challenge his priors. Applicant has failed to prove that he was prejudiced by Trial Counsel's actions as he has failed to show that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

No motion to suppress evidence or statements

Applicant alleged that Trial Counsel was ineffective for failing to make a motion to suppress the statements. Trial Counsel testified that moving to suppress the evidence was part of his defense strategy. Applicant has failed to show that Trial Counsel was ineffective in this regard as he did move to suppress the drug evidence and statements. This Court finds the record reflects that Trial Counsel made a motion to suppress the drug evidence and challenged Officer Robin Gardner *in camera*. After Trial Counsel made his argument, the trial judge denied his motion to suppress. The record also reflects that Trial Counsel made a successful motion to suppress documents showing the ownership of Applicant's vehicle. The record reflects that Trial Counsel made a successful motion to suppress a statement from Commander Marvin Brown concerning the ownership of Applicant's vehicle. The record also reflects that Trial Counsel made a successful motion to keep out hearsay statements from the CI about where Applicant told him to be for the drug deal. Trial Transcript p. 62-63. As Trial Counsel did make these motions, Applicant cannot show that he was deficient for failing to do so or that he was prejudiced by Trial Counsel's actions.

Counsel failed to strike pro-prosecution juror

Applicant alleged that Trial Counsel was ineffective for failing to strike a pro-prosecution juror. He testified that Juror #77 told the court that he had two sons-in-law who are York County police officers. Trial Counsel testified that he had no reason to challenge this juror. This Court finds the record reflects the following exchange took place during jury selection:

THE COURT: The next question is, are any of you, or a member of your family, involved at any level in law enforcement or in the prosecution of criminal cases? Law enforcement at any level, either Federal Marshals, military police or prosecution at any level, from the solicitor to the U.S. attorney, anything like that, if so, please stand?

...

THE COURT: Yes, sir. Your name and number?

JUROR #77: Number 77, Scott Garrison. I have two son-in-laws that are York County officers.

THE COURT: All right. This is a City case; not a County case. Would that effect your ability to be fair and impartial in this case?

JUROR #77: I don't think so.

THE COURT: Okay. You'll remain with us then.

Trial Transcript p. 11, l. 7 – 12, l. 6.

This Court finds that Applicant has failed to show that Trial Counsel's acted deficiently by failing to strike Juror #77. This Court finds that it was not unreasonable for Trial Counsel to refrain from moving to strike Juror #77. When questioned by the court, he informed the court that he could be fair and impartial. Likewise, Juror #77's sons-in-law were not employed with the prosecuting or law enforcement agencies in Applicant's case. Thus, Applicant has failed to show that the outcome of the trial would have been different as he has failed to show that Juror #77's inclusion on the jury was improper and that a motion to strike this juror would have been successful. Accordingly, this allegation must be dismissed.

Sufficiency of charging indictment

Applicant alleged that Trial Counsel was ineffective for failing to challenge the indictment because the chemist testified at trial that she tested the drugs for powder cocaine. Applicant alleged that Trial Counsel should have objected because he was indicted for trafficking crack cocaine. Trial Counsel testified that the chemist informed the trial court that she does the same chemical test for powder cocaine and crack cocaine. This Court finds the record reflects that the chemist testified at trial that she uses the same chemical test to identify crack cocaine and powder cocaine. Trial Transcript p. 215, ll. 4-23. The record reflects that Trial Counsel argued at trial that the court should grant a directed verdict as to Applicant's crack cocaine charge because the State did not clearly establish that it was crack cocaine as opposed to powder cocaine. Trial Transcript p. 239, ll. 9-17. The trial judge denied the directed verdict, asserting that it was a question for the jury. This Court finds Trial Counsel argued the possible discrepancy between powder and crack cocaine from the chemist's test in his closing argument.

This Court finds that Applicant has failed to show that Trial Counsel was deficient for failing to object to the indictment. Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so

plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007).) This Court finds Applicant has failed to show that the indictments were defective in any way or that they were improperly issued. As he has failed to show a defect, he has also failed to show that Trial Counsel should have made an objection and that such an objection would have been successful. This Court finds that Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Attorney left hearing aid day 2 of trial

Applicant alleged that Trial Counsel was ineffective for leaving his hearing aid on the second day of trial. He testified that he is not sure how this may have affected the outcome of the trial. The record reflects that on the first day of trial, just after jury selection but before the Biggers³ and Denno⁴ hearings, Trial Counsel asked the court if he could step outside to retrieve his hearing aid. Trial Transcript p. 34, ll. 7-10. Trial Counsel gave no indication that he had difficulty with any part of the pre-trial matters and there is nothing to suggest that his performance was deficient as a result of not having his hearing aid for jury selection. Applicant has failed to provide any evidence to support this allegation and this Court finds that he has failed to show Counsel provided deficient performance or that he was prejudiced. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Appellate Counsel

Applicant alleged that Appellate Counsel was ineffective for failing to raise meritorious issues on appeal. He testified that he talked to Appellate Counsel over the phone and told him everything about the trial. He testified that Appellate Counsel failed to present issues including

³ 409 U.S. 188 (1972).

⁴ 378 U.S. 368 (1964).

the warrantless search and seizure, failure to grant a directed verdict, an incorrect jury charge, defective plain view doctrine analysis, lack of subject matter jurisdiction due to the defective indictments, failure to present lesser included offenses to the jury, and conflict of interest between Assistant Solicitor Shelton and the CI.

Appellate Counsel argued that he had multiple phone calls with Applicant. He testified that he reviewed the entire transcript. He testified that he decided to write an Anders brief because there were not meritorious issues for appeal. He testified that Applicant's case was a traditional CI buy with an immediate bust by police. He testified that there were no Confrontation Clause issues because the CI testified at trial. Appellate Counsel testified that there were no issues that were unpreserved but there was an academic question about whether Applicant engaged in one act or two acts of trafficking. He testified that Applicant was sentenced to LWOP on both trafficking charges so Applicant's sentence would not have changed. Appellate Counsel further testified that he had no reason not to raise a meritorious issue if one existed. The record reflects that Appellate Counsel submitted an Anders brief arguing that the trial court erred in upholding the warrantless seizure and search of Applicant's vehicle under the plain view doctrine.

Applicable Law

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial.

See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

“Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is ‘difficult to demonstrate that counsel was incompetent.’” United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “‘Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.’” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th

Cir. 1985).

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Deficiency

This Court finds that Applicant has failed to prove that Appellate Counsel was deficient for failing to raise certain issues on appeal. Appellate Counsel provided persuasive testimony that he reviewed the entire record in analyzing potential issues. He testified that he did not believe any issues had merit and that was why he filed an Anders brief. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). This Court finds Appellate Counsel made the reasonable strategic decision to brief the issue he considered strongest and in filing a brief pursuant to Anders. This Court finds Applicant has failed to meet his burden in proving deficiency. Applicant has failed to prove that the proposed issues are stronger than the one raised by Appellate Counsel. This Court finds that, pursuant to the Anders procedure, even if Appellate Counsel somehow missed an issue that had merit, the Court of Appeals would not have granted his request to be relieved and would have instructed him to brief that issue. Appellate Counsel briefed the issues of the warrantless search and seizure and the plain view doctrine. Applicant also submitted a *pro se* brief to the Court of Appeals, which the Court of Appeals considered in dismissing the appeal. Accordingly, this Court finds that Applicant has failed to meet his burden of proving that Appellate Counsel was deficient.

Prejudice

This Court finds Applicant has failed to meet his burden in proving he was prejudiced by the brief submitted by Appellate Counsel because he would not have been successful on appeal had he argued the trial court erred in failing to grant a directed verdict, giving an incorrect jury charge, lacking subject matter jurisdiction, failing to present lesser included offenses to the jury, and failing to assess the conflict of interest between Assistant Solicitor Shelton and the CI. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167 (no prejudice where there is no merit to arguments that were not briefed). The Court also finds that Applicant failed to meet his burden in proving the omitted issues were stronger than the issue of the warrantless search and seizure and the plain view doctrine.

Further, Applicant suffered no prejudice because the South Carolina Court of Appeals conducted an Anders review and ultimately dismissed the appeal. In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), this Court outlined the Anders procedure as follows:

[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the Anders procedure. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citations omitted). This Court finds the Court of Appeals reviewed the issue concerning the warrantless search and seizure and the plain view doctrine before dismissing Applicant's direct

appeal and found that it had no merit. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). If the Court of Appeals believed the trial court's ruling was questionable, it would have directed Appellate Counsel to file a merits brief.

Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise the issue that the trial court erred in denying a directed verdict, as there is not a reasonable probability that this issue would not have been successful on appeal. In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. State v. Phillips, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence in the light most favorable to the State. See State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006). In Applicant's case, Trial Counsel moved for a directed verdict generally and specified that he was moving for a directed verdict on the crack charges because the chemist said she tested the crack cocaine using the same test she uses for powder cocaine. Trial Transcript 239, ll. 3-17. The trial judge denied the directed verdict motion, finding there was sufficient evidence to send the case to the jury and finding that the question of whether the drugs were crack cocaine or powder cocaine was a question for the jury. See Trial Transcript pp. 239-240. Viewing the evidence in the light most favorable to the State, this Court finds that the trial judge did not abuse his discretion in denying

Applicant's motion for a directed verdict. Chemist Cynthia Michum testified at trial that the results of her drug analysis showed the drugs were crack cocaine. Trial Counsel elicited testimony from Michum that the test she used is the same test she uses for powder cocaine. As there is evidence in the record that the results were crack cocaine, and a possible discrepancy that Trial Counsel could argue to the jury, it is not likely that an appellate court would find the trial court abused its discretion in admitting the statement. This Court finds Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise this issue on appeal.

Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise the issue that the trial court erred by presenting the wrong charge to the jury. Applicant has failed to specify what incorrect charge was presented to the jury or that a specific jury charge was improper. He has failed to show that this issue would have been stronger than the issue briefed or that the issue would have any success on appeal. This Court finds that such an issue would not be successful on appeal as there is no evidence that an incorrect charge was sent to the jury or that the jury charges contained any errors. This Court finds Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise this issue on appeal.

Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise the issue that the trial court did not have subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. Thus, an applicant challenging subject matter jurisdiction must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's convictions involved criminal

charges in General Sessions Court and thus, the circuit court had subject matter jurisdiction. A claim that the trial court lacked subject matter jurisdiction would not have been successful on appeal. This Court finds Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise this issue on appeal.

Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise the issue that the trial court erred by failing to give a lesser included jury instruction to the jury. Applicant has failed to specify what lesser included instruction should have been presented to the jury. He has failed to show that this issue would have been stronger than the issue briefed on appeal and would have been successful. Applicant has failed to show that he was entitled to a charge on a lesser included offense and this Court finds that this issue would not have been successful on appeal. This Court finds Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise this issue on appeal.

Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise the issue that the trial court erred in assessing a conflict of interest. Applicant argued that he believed a conflict existed because Assistant Solicitor Shelton was the prosecutor for the CI's charges as well. This Court finds that Applicant has failed to show that an actual conflict of interest existed that improperly affected the outcome of his trial. The solicitor's involvement in the CI's case, which had not been resolved at the start of Applicant's trial, is not a conflict of interest that would require a new trial or a new prosecuting solicitor for Applicant's case. As no conflict existed, this Court finds that there is not a reasonable probability that the issue would have been successful if raised on appeal. Applicant has failed to show that this issue would have been stronger than the issue briefed on appeal and would have been successful. This Court finds Applicant has failed to show that he was prejudiced by Appellate Counsel's failure to raise this

issue on appeal.

Prosecutorial Misconduct

Applicant alleged prosecutorial misconduct. Several of his grounds concern the indictment. He alleged that there was no true-billed indictment in his Rule 5/Brady material. He alleged that the indictment was never presented to the grand jury. He alleged that the indictment was amended after the conclusion of the trial.

Applicant alleged that the State did not present sufficient evidence to support claim that prior conviction was a crime of violence in support of career offender enhancement. Applicant testified that the State failed to properly look into his prior record and testified that he does not have a conviction from 1992.

Applicant also alleged that the State did not present sufficient evidence of an essential element of trafficking crack cocaine because the cocaine tested by the chemist was wet. He further alleged that the State presented false testimony and that the prosecuting solicitor had a conflict of interest because Assistant Solicitor Shelton was the prosecutor for the CI's charges as well.

First, this Court finds that prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v.

Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that Applicant has failed to prove prosecutorial misconduct as it relates to the indictment. This Court finds that Applicant's indictments are both stamped "true billed" with the signature of the grand jury foreperson and the date "3/20/2014." This was provided to Applicant and Trial Counsel prior to the trial. Applicant has failed to show that the State committed prosecutorial misconduct for "no true billed indictment in Rule 5/Brady, true billed outside scope of General Sessions Court...indictment never presented to Grand Jury, sufficiency of the charging document, and essential element required to indictment." He has failed to show any deficiencies in his indictments, that they were improperly returned, or that the State committed misconduct in obtaining the indictments. Accordingly, these allegations must be dismissed.

This Court finds Applicant has failed to prove that the State committed misconduct by amending his indictment after the trial is over. There is no evidence in the record to show that the State amended his indictment. Accordingly, this allegation must be dismissed.

This Court finds Applicant has failed to prove that the State committed misconduct by not presenting sufficient evidence to support claim that prior conviction was a crime of violence in support of career offender enhancement. Applicant testified that the State failed to properly look into his prior record and testified that he does not have a conviction from 1992; however Assistant Solicitor Shelton and Trial Counsel credibly testified that they had certified copies of Applicant's prior "serious" convictions and Applicant was aware of these convictions. Accordingly, this allegation must be dismissed.

This Court finds Applicant has failed to prove that the State committed misconduct by allowing false witness testimony. Applicant has provided no evidence to show that the State was instrumental in producing perjured or false testimony. Applicant has not provided evidence to

show what the false testimony consisted of or how the State committed misconduct in that regard. Accordingly, this allegation must be dismissed

This Court finds Applicant has failed to prove that the State committed misconduct because the prosecuting solicitor had a conflict of interest as he was the prosecutor for the CI's charges as well. This Court finds that Applicant has failed to show that an actual conflict exists or that his case was improperly affected. The solicitor's involvement in the CI's case, which had not been resolved at the start of Applicant's trial, is not a conflict of interest that would require a new trial or a new prosecuting solicitor for Applicant's case. Accordingly, this allegation must be dismissed.

This Court finds Applicant has failed to prove that the State committed misconduct by not presenting sufficient evidence of an essential element of trafficking crack cocaine because the cocaine tested by the chemist was wet. This Court finds that the chemist's tests were challenged by Trial Counsel and ultimately remained a question for the jury to consider. Applicant has failed to show that the State committed any sort of misconduct in its direct examination of the chemist. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was 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.

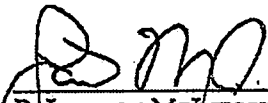
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days

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), SCRCP, 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 Sept, 2017.


R. LAWTON MCINTOSH
Presiding Judge
Sixteenth Judicial Circuit

Anders, South Carolina

477

WITNESSES

NEIL, RHPD

S/DL Dore

ARREST WARRANT NO. D- 146191

ACTION OF GRAND JURY

DATE TRUE BILLED 11/30/92*Ann W. Weldon*
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 92-GS46- 4099

The State of South Carolina,

County of YORK

COURT OF GENERAL SESSIONS

NOVEMBER 30 TERM 1992

THE STATE

vs.

ELDER PRESCOTT LEACH

Indictment for
Unlawful Drugs

S.C. 44-53-445

CDR CODE 108

Elmer Leach

(We) Elmer Prescott Leach
 hereby appear in my (our) own proper person (s) and plead guilty to the
 within indictment or to Distribution of Cocaine
Cocaine within Proximity of a Park
 Witness: *Elmer Leach*
Elmer Leach
 C. C. P. S. and G. S.

After being fully advised as to
 my legal rights, I hereby waive
 indictment to the Grand Jury.
 Sign *Elmer Leach*

FORM 6 (12/87)

STATE OF SOUTH CAROLINA **REC 15** INDICTMENT FOR UNLAWFUL DRUGS
 COUNTY OF YORK

At a Court of General Sessions, convened on NOVEMBER 30, 1992,

the Grand Jurors of YORK County present upon their oath:

COUNT ONE — POSSESSION

That _____ did in _____ County on or about _____, knowingly and intentionally possess a quantity of _____, a controlled substance under provisions of §§ 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That _____ did in _____ County on or about _____, possess with intent to distribute a quantity of _____, a controlled substance under provisions of §§ 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That ELDER PRESCOTT LEACH did in YORK County on or about JULY 26, 1991, distribute to one INDIVIDUAL a quantity of CRACK COCAINE WITHIN PROXIMITY PARK, a controlled substance under provisions §§ 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BH

SOLICITOR

6
4
WITNESSES

DEU Harrelson

sg

ARREST WARRANT NUMBER

2013A4610200840

ACTION OF GRAND JURY

TRUE BILL

Ronnie B. Sadler

Foreperson of Grand Jury

Date: 3/20/2014

VERDICT

Guilty

Karen Hiltor-Zhao

Foreperson of Petit Jury

Date: May 14, 2014

DOCKET NO. 2014-GS-46- 00678

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 20, Term 2014

THE STATE

vs.

ELDER PRESCOTT LEACH

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375(C)(1)

CDR Code: 0452

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

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INDICTMENT

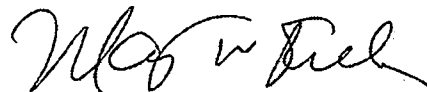
DAVID N. S. L.
CLERK OF COURT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

On or about June 19, 2013, the Defendant, Elder Prescott Leach, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of crack cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

DEU Harrelson

sgb

ARREST WARRANT NUMBER

2013A4610200841

ACTION OF GRAND JURY

TRUE BILL

Ronnie B. Sackey

Foreperson of Grand Jury

Date: 3/20/2014

VERDICT

Guilty
Trafficking 28 g or more

Karen Huttons have

Foreperson of Petit Jury

Date: May 14, 14

DOCKET NO. 2014-GS-46-00679

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 20, Term 2014

THE STATE

vs.

ELDER PRESCOTT LEACH

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375(C)(2)

CDR Code: 0349

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA) INDICTMENT
COUNTY OF YORK

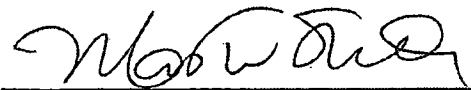
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2016 SEP 26 AM 10:32

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath.

TRAFFICKING IN CRACK COCAINE

On or about June 19, 2013, the Defendant, Elder Prescott Leach, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of crack cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR