

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

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AUG 17 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARCUS ANTONIO MACK,

APPELLANT

APPELLATE CASE NO 2017-001842

RECORD ON APPEAL

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 State of South Carolina,) Indictment No.: 2016-GS-32-02729
4 Plaintiff,)
5 vs.) Transcript of Record
6 Marcus Antonio Mack,)
7 Defendant.)
_____)

8

9

August 7th and 8th, 2017

10

Lexington, South Carolina

11

12 BEFORE:

13

The Honorable Grace Knie, Judge

14

15 APPEARANCES:

16

Melanie Graham, Assistant State Solicitor
Gill Bell, Assistant State Attorney
Attorneys for the State

18

19

Jason Chehoski, Assistant Public Defender
Attorney for the Defendant

20

21 ALSO PRESENT:

22

Marcus Antonio Mack

23

24

25

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13 EXHIBITS

14 COURT'S

15 NO. DESCRIPTION ID EVDS.

16 1 Subpoena 7

17 2 Photo Lineup 53

18

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24

25

1 August 7, 2017

2 Thereupon, the following proceedings were had,

3 THE COURT: Ready, counsel?

4 MS. GRAHAM: Yes, Your Honor.

5 MR. CHEHOSKI: Yes, Your Honor.

6 THE COURT: Thank you, ma'am. Yes, ma'am.

7 MS. GRAHAM: Your Honor, this comes before the Court
8 pursuant to indictment number 2016-GS-32-02729. This is
9 the State versus Marcus Mack on distribution of cocaine.
10 Your Honor, this is the State's motion for the issuance
11 of a material witness bench warrant. At this time, Your
12 Honor, the State calls James Sullivan to the stand.

13 THE COURT: Yes, sir. Please come forward and be
14 sworn.

15 Thereupon,

16 JAMES SULLIVAN

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. State your name for
19 the record.

20 MS. GRAHAM: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 THE WITNESS: James Sullivan, S-u-l-l-i-v-a-n.

23 DIRECT EXAMINATION

24 BY MS. GRAHAM:

25 Q. Good afternoon, Investigator Sullivan. I just

1 handed you a document. Do you recognize that document?

2 A. Yes, ma'am.

3 Q. What is it?

4 A. It's a subpoena for a Franklin Hayes.

5 Q. Okay. That's in connection with the matter before
6 the Court right now?

7 A. Yes, ma'am.

8 Q. Okay. Were you involved in the service of that
9 subpoena?

10 A. Yes, ma'am. I was.

11 Q. Okay. If you could just review the document and
12 tell me when that subpoena was served?

13 A. It was served on Mr. Hayes on the 1st of this
14 month.

15 Q. And you were the individual who effectuated that
16 service; is that correct?

17 A. Yes, ma'am. I was.

18 Q. Mr. Sullivan, what efforts do you make to ensure
19 that the identity of the person named in the subpoena is
20 actually the person that you are serving the subpoena on?

21 A. Is this case since I never met Mr. Hayes I went
22 ahead and pulled his DMV photograph and I also went on the
23 Lexington County website and pulled any photographs they had
24 so when I saw Mr. Hayes for the first time, I could readily
25 identify him.

1 Q. The document that you referenced with regard to the
2 DMV document, is that the document that was attached to the
3 back of the subpoena that you relied on?

4 A. Yes, ma'am.

5 Q. And that I just handed up to you?

6 A. Yes, ma'am.

7 Q. And you did execute a proof of service in connection
8 with this case; is that correct?

9 A. Yes, ma'am. I did.

10 Q. Okay. And you executed that on the same day?

11 A. Yes, ma'am. I did.

12 MS. GRAHAM: Nothing further.

13 THE COURT: Anything?

14 CROSS EXAMINATION

15 BY MR. CHEHOSKI:

16 Q. Where was the subpoena served?

17 A. Yes, sir. It was served at 5133 Forest Drive which
18 is the parking lot of the Marlboro Inn over in Columbia, the
19 Columbia area.

20 Q. Mr. Hayes did confirm his identity to you?

21 A. He did, sir.

22 Q. In that subpoena it gives the date and time where
23 he's supposed to be?

24 A. Yes, sir. It does.

25 Q. What date and time is that?

1 A. It gives actually three dates. August 7th, 2017,
2 August 21st, 2017, September 11, 2017, all at 9:00 a.m. he's
3 to report here.

4 Q. And he did not report today?

5 A. Not that I'm aware of, sir.

6 Q. Have you tried to make any contact with him today?

7 A. I have not, sir.

8 MR. CHEHOSKI: Nothing further, Your Honor.

9 MS. GRAHAM: Thank you, Your Honor. If we could
10 just make that a court's exhibit, the subpoena, and the
11 underlying documents.

12 THE COURT: Do you have other witnesses that you are
13 going to call?

14 MS. GRAHAM: Yes, Your Honor. Just one more.

15 THE COURT: Okay. May I see that please?

16 MS. GRAHAM: (Proffering.)

17 THE COURT: Thank you. Counsel, have you seen this?

18 MR. CHEHOSKI: No, ma'am. I have not.

19 THE COURT: Any objection?

20 MR. CHEHOSKI: No, Your Honor.

21 THE COURT: This will be admitted into evidence.

22 (Whereupon, Court's Exhibit #1 marked for
23 identification.)

24 MS. GRAHAM: Nothing further from this witness from
25 the State, Your Honor. We do have one more witness we

1 wish to call very briefly.

2 THE COURT: Does anyone object to us letting this
3 witness go at this time?

4 MR. CHEHOSKI: No objection.

5 THE COURT: Okay. Sir, you're excused.

6 MS. GRAHAM: Your Honor, at this time the State
7 calls Jesse Quattlebaum.

8 Thereupon,

9 JESSE QUATTLEBAUM

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. State your name
12 spelling your last please.

13 THE WITNESS: Jesse Quattlebaum,
14 Q-u-a-t-t-l-e-b-a-u-m.

15 MS. GRAHAM: Permission to approach?

16 THE COURT: Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. GRAHAM:

19 Q. Investigator Quattlebaum, do you recognize that
20 document?

21 A. I do, ma'am. It's a subpoena in State versus Marcus
22 Antonio Mack.

23 Q. How do you recognize it specifically?

24 A. I viewed it before previously.

25 Q. Did you prepare that document?

1 A. I did.

2 Q. Okay. Mr. Quattlebaum, you did not serve this
3 subpoena in this case; is that correct?

4 A. I did not.

5 Q. But were you in contact with the person identified
6 as the witness in that subpoena that is Frank Hayes?

7 A. I have been in contact with Mr. Hayes.

8 Q. Okay. Pursuant to that contact has he reached out
9 to you at all to tell you that he was going to be here
10 today?

11 A. He has reached out to me. We had prior arrangements
12 for transportation for me to pick him up this morning and
13 bring him to court. When I arrived at our predetermined
14 location where I was going to pick him up, he was not there.
15 He advised me that he was unwilling to testify in this case
16 because he feared for his life.

17 MS. GRAHAM: Nothing further from this witness, Your
18 Honor.

19 THE COURT: Counsel.

20 CROSS EXAMINATION

21 BY MR. CHEHOSKI:

22 Q. Did he indicate who was forcing him to lie?

23 A. Excuse me.

24 Q. Did I hear correctly that Mr. Hayes indicated he was
25 being forced to lie?

1 A. No, sir.

2 Q. Sorry. Mr. Hayes said he was unwilling to testify.
3 Was there a reason for that?

4 A. He feared for his life.

5 Q. He feared for his life?

6 A. Yes, sir.

7 MR. CHEHOSKI: My apologies. I misheard you wrong.
8 No further questions, Your Honor.

9 MS. GRAHAM: Nothing further from the State, Your
10 Honor.

11 THE COURT: Investigator Quattlebaum, is it your
12 opinion that this witness is material to the case against
13 Mr. Mack?

14 THE WITNESS: It is my opinion, Your Honor.

15 THE COURT: All right. Anything based on that?

16 MR. CHEHOSKI: Nothing, Your Honor.

17 MS. GRAHAM: Nothing, Your Honor.

18 THE COURT: Okay. Thank you, sir. May this witness
19 be excused from this pretrial matter?

20 MS. GRAHAM: Yes, Your Honor.

21 MR. CHEHOSKI: Yes, Your Honor.

22 THE COURT: Okay. All right. Counsel, I will sign
23 the bench warrant for Mr. Hayes, Franklin Eugene Hayes to
24 be brought in as a material witness in this matter.

25 MS. GRAHAM: Thank you, Your Honor.

1 THE COURT: Okay. This is that bench warrant.

2 MS. GRAHAM: Thank you.

3 THE COURT: It's my understanding that we'll have
4 the members of the jury panel coming in at 2:00. Is
5 there another motion that you would like to put on the
6 record before they come in or would you rather wait until
7 after?

8 MS. GRAHAM: Your Honor, if it pleases the Court, if
9 we could just do all the pretrial matters at the start of
10 tomorrow's session, that would be how the State would
11 like to do it.

12 THE COURT: Counsel?

13 MR. CHEHOSKI: Your Honor, I guess in the interest
14 of judicial economy this, as you know, is Mr. Mack's,
15 this is the second time we have attempted to try this
16 case. It appears -- The defense is ready to proceed.
17 All the parties are here. I don't see any reason why we
18 can't continue with pretrial motions after we have sat
19 the jury.

20 MS. GRAHAM: Your Honor, just to clarify, with
21 regard to the Biggers hearing, Mr. Hayes is material to
22 that hearing in particular so we wouldn't be able to
23 proceed with that pretrial matter today because he is a
24 material witness and he is not present today. If the
25 State has other motions, we are requesting that the

1 defendant's family be prevented from being in the
2 courtroom during pretrial and the case in chief, Your
3 Honor. We are happy to proceed with that at this time.

4 THE COURT: Yes. That was actually the motion I was
5 referring to and I have considered our discussions in
6 chambers and I would respectfully deny your motion,
7 however, I will give an admonition concerning any
8 intimidation of potential witnesses.

9 MS. GRAHAM: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. CHEHOSKI: Thank you.

12 THE COURT: And will there be a motion to sequester?
13 I'm assuming there will be at some point, right?

14 MR. CHEHOSKI: Yes, Your Honor.

15 THE COURT: All right.

16 MS. GRAHAM: Your Honor, just one more matter very
17 briefly. With regard to Jesse Quattlebaum, he is an
18 investigator with our office and we would just ask that
19 he be permitted to remain in the courtroom as well as the
20 case agent and the investigator in this case Agent Scott
21 Purdy.

22 THE COURT: Okay. I think that's -- Yes, sir. Go
23 ahead.

24 MR. CHEHOSKI: Your Honor, as Investigator Purdy is
25 the lead Investigator in the case, I think under statute

1 he has a right to be here. As far as -- I don't know --
2 I don't think Agent Quattlebaum enjoys that same
3 privilege under the statute.

4 THE COURT: Counsel?

5 MS. GRAHAM: Your Honor, Investigator Quattlebaum
6 actually retrieves our witnesses in this case. He
7 ferries the witnesses from the court and from the space
8 that they're housed in within our office. We would just
9 ask that as a staff member that he be permitted to enter
10 and exit the courtroom for that purpose at the very
11 least.

12 THE COURT: And he's going to be a witness in the
13 case in chief as well?

14 MS. GRAHAM: Potentially, Your Honor. Yes.

15 THE COURT: Okay. Let me think about that for a
16 little bit. I'll let you know well before but I
17 understand you have got a number of witnesses. I
18 understand that. Let me think about it and I'll let you
19 know before we begin any of the motions or the trial,
20 okay? Don't let me forget though. Anything else?

21 MR. CHEHOSKI: Nothing from defense.

22 THE COURT: Okay. Counsel, I didn't give you an
23 opportunity to argue about the family members in the
24 courtroom and maybe I should have let you put that on the
25 record. You had stated your reasons in chambers and I'm

1 happy to allow you to put that on the record.

2 MR. CHEHOSKI: Thank you, Your Honor. The basis of
3 my objection to the State's motion to exclude family
4 members from the courtroom is that it's in violation of
5 the Sixth Amendment and the Fourteenth Amendment United
6 States Constitution an Article 1 Section 14 of South
7 Carolina Constitution. The defendant has the right to a
8 public trial and to exclude family members from the
9 proceedings would be in violation of that right.

10 THE COURT: Yes, ma'am.

11 MS. GRAHAM: Thank you, Your Honor. It's the
12 State's position that certainly the defendant is entitled
13 to a public trial and that would include the enjoyment of
14 having family members in the courtroom to witness and
15 support him in that trial, however, the State's position
16 is that it is not acceptable for those individuals to
17 interfere with the proceedings of this Court. The State
18 has been actively reviewing jail calls from the defendant
19 to his family members and it's very clear that they
20 actively intimidated witnesses at the last hearing in
21 this case by being in the courtroom, staring them down,
22 et cetera. Your Honor, we just think that that goes
23 beyond just merely supporting and being a member of the
24 public. That goes to interfering with this Court and the
25 integrity of the system.

1 MR. CHEHOSKI: Just in response to that, Your Honor,
2 I have had the opportunity to listen to most of the phone
3 calls that have been provided to me from the State. If
4 everything that was said on those phone calls were true,
5 I would have been fired about two months ago. However,
6 my memory is not what it used to be. I don't remember if
7 those family members who admitted to staring them down
8 were actually in the room when the witness testified. I
9 don't think that the phone calls being the sole basis for
10 the motion I don't think is sufficient. I think again
11 the constitution would trump the State's concern and I
12 think that the Court's, an admonition from the Court is
13 appropriate to cure any possible problems. Thank you.

14 THE COURT: Thank you. Thank you both. And as
15 indicated, I'm going to deny the State's motion at this
16 time, however, if I perceive there is a problem once we
17 commence, I will handle that at that time. And again, I
18 will give an admonition, all right? And I'll try to make
19 it as neutral as possible knowing as little - I haven't
20 heard the phone calls. I'm not trying to pre-judge that
21 but I will give an admonition. All right.

22 MS. GRAHAM: Thank you, Judge.

23 THE COURT: Are y'all ready to pull the jury?

24 MR. CHEHOSKI: Defense is ready, Your Honor.

25 MS. GRAHAM: State's ready, Your Honor.

1 THE COURT: Okay.

2 DEPUTY: Your Honor, just for space wise, I'm only
3 going to allow in the jury pool first, 35 to 40 people in
4 the room. Once it's pulled, I'll open it up to the
5 general public, if that's okay.

6 THE COURT: Yes, sir.

7 (Whereupon, the members of the jury panel entered
8 the courtroom.)

9 THE COURT: Good afternoon, members of the jury
10 panel. As Judge McMahon explained to you earlier this
11 morning, I am Judge Knie from Spartanburg. I so
12 sincerely appreciate you being here this afternoon. I
13 hope y'all had a nice lunch. I hope we didn't keep you
14 waiting too long. We had to take up a motion which
15 needed to be outside of your presence before we commenced
16 pulling our jury for the next case on the roster for this
17 week of General Sessions here in Lexington County. We
18 have our clerk Myra who is right here and our court
19 reporter is Steve, and I think y'all probably were
20 introduced to everybody else so, and let's see. Our
21 bailiffs were introduced downstairs but our deputies were
22 not. I need for y'all to stand and introduce yourself.

23 MR. JUSTICE: Garth Justice.

24 MR NEWELL: Andrew Newell.

25 THE COURT: Who I assure you are equally capable of

1 carrying out their duties as the fellows upstairs who
2 were bragging about their superior abilities. Thank you,
3 gentlemen. All right. So is the State ready to proceed?

4 MS. GRAHAM: Yes, Your Honor.

5 THE COURT: Defense?

6 MR. CHEHOSKI: Yes, Your Honor.

7 THE COURT: Okay. The way this will work is I'm
8 gonna let the State call, Madam Solicitor, I'll let you
9 call the case and then I'm gonna let each of you
10 introduce the folks at counsel table with you and then
11 I'll ask some questions and then I'll move further
12 through questioning, okay? All right. Yes, ma'am.

13 MS. GRAHAM: Thank you, Your Honor. The State calls
14 Marcus Antonio Mack. This matter comes before the Court
15 pursuant to indictment number 2016-GS-32-02729 on the
16 charge of distribution of cocaine.

17 THE COURT: Thank you, ma'am. Okay. Members of the
18 jury panel, I am looking at an indictment for
19 distribution of cocaine and this is a true billed
20 indictment number 2016-GS-32-2729 which states that
21 Marcus Antonio Mack did in Lexington County, South
22 Carolina on or about September the 4th of 2015 knowingly,
23 willfully, intentionally, and unlawfully distributed,
24 dispensed or deliver or otherwise aid, abet, attempt or
25 conspire to distribute, dispense or deliver a quantity of

1 cocaine or cocaine base, a controlled substance under the
2 provisions of South Carolina Code Section 44-53-110 and
3 in violation of South Carolina Code Section
4 44-53-370(B)(1) under the Code of Laws of South Carolina
5 as amended. And so we will now - I will now allow
6 Solicitor Graham to introduce the folks at her counsel
7 table and then I will allow the defense to do the same.
8 Yes, ma'am.

9 MS. GRAHAM: Good afternoon. My name is Melanie
10 Graham. I'm an Assistant Solicitor here in the Eleventh
11 Circuit for Lexington County. I together with my
12 co-counsel am trying the above captioned case or the
13 previously captioned case. This is Gill Bell. Our
14 investigator on this case is Agent Scott Purdy with the
15 Lexington County Sheriff's Office NET Team.

16 THE COURT: Yes, sir.

17 MR. CHEHOSKI: My name is Jason Chehoski. I'm an
18 assistant attorney with the Lexington County Public
19 Defender's Office. I represent Marcus Mack. Thank
20 you.

21 THE COURT: Okay. And so now you all have taken an
22 oath. You took an oath this morning and that you all are
23 continuing under that oath to answer questions truthfully
24 this afternoon with regard to this case so I'm going to
25 ask you, and again, this is not to pry into your personal

1 life but merely to ensure that each party will receive a
2 fair and impartial trial and in the event that one or
3 more of these questions applies to you, I want you to
4 stand. When you do that, if you will remember to give
5 your juror number and then your name, all right?

6 So is any member of the jury panel related by blood
7 or marriage or have a close personal or social
8 relationship with any member of the Solicitor's team that
9 has been introduced or any member of the defense at the
10 defense table or the defendant in this matter? And if
11 you are, if you would just please stand at this time.
12 For the record no one has stood.

13 Has any member of the jury panel ever been
14 represented by one of the attorneys involved in this case
15 or a member of the Solicitor's Office or a member of the
16 Public Defender's Office? If so, please stand. No
17 response.

18 And does any of the jury panel know the defendant in
19 this case or possibly family members of the defendant or
20 related to him by blood or marriage? No response.

21 Now, I have read the indictment and does anyone know
22 anything about the facts of this case? Again, the date
23 was September the 4th of 2015 in Lexington County, South
24 Carolina. No response.

25 Has anybody read anything, seen anything on the news

1 or had any information come to them at all about the
2 facts of this case or the defendant? If so, please
3 stand. No response.

4 Now, there are a number of potential witnesses and
5 what I'm going to do is I'll read, there are 11 possible
6 witnesses and so I will just read the list and then you
7 all stand up afterward please. Agent S. Purdy of the
8 Lexington County Sheriff's Department. Is that you?

9 SCOTT PURDY: Yes, ma'am.

10 THE COURT: Please stand since you're in here.

11 SCOTT PURDY: (Complies.)

12 THE COURT: Brian Travis with the Lexington County
13 Sheriff's Department. Michael Merckle of the Lexington
14 County Sheriff's Department, U.S. Drug Enforcement
15 Administration. Jody Putney of the West Columbia Police
16 Department. Frank Hayes. Candy Kyzer, Lexington County
17 Sheriff's Department. Margaret E. Walker of the
18 Lexington County Sheriff's Department. Johnny Lee
19 Dickerson. William Herring of Securus. Jesse
20 Quattlebaum, investigator with the Eleventh Circuit
21 Solicitor's Office. And as asked previously a potential
22 witness Marcus Antonio Mack.

23 Okay. With regard to these witnesses, does anyone
24 know the witnesses, have a close personal or social
25 relationship with them or related by blood or marriage to

1 them? If so, please stand. Okay. Sir, you can have a
2 seat. Thank you. I remember that you are juror number
3 1; is that correct?

4 KENNETH ADAMS: Yes, ma'am.

5 THE COURT: Okay. Sir, if you would please give the
6 details as to which potential witness you know.

7 KENNETH ADAMS: Investigator Michael Merckle,
8 Lexington County Sheriff's Department. I used to work
9 with his father at the City of Columbia.

10 THE COURT: Okay. Sir, would that affect your
11 ability to be fair and impartial in this case?

12 KENNETH ADAMS: No, ma'am.

13 THE COURT: How long ago was that?

14 KENNETH ADAMS: Six, maybe more years. Within the
15 last ten years.

16 THE COURT: You said that it would not affect your
17 ability to be fair and impartial?

18 KENNETH ADAMS: No, ma'am.

19 THE COURT: Okay. Any other questions of this
20 potential juror?

21 MR. CHEHOSKI: No, Your Honor.

22 MS. GRAHAM: No, Your Honor.

23 THE COURT: Okay. Thank you, sir. Anyone else?
24 Okay. Now I'm going to go through several questions
25 with you and at the conclusion of each one I will ask you

1 to please stand, okay? Are you so opposed to the war on
2 drugs such that you could not render a fair and impartial
3 decision in this matter? If so, please stand. No
4 response.

5 Have you, a family member or close friend ever had
6 an interaction with the Lexington County Sheriff's Office
7 such that you could not render a fair and impartial
8 decision in this matter? If so, please stand. No
9 response.

10 Have you, a family member or a close friend ever had
11 an interaction with the West Columbia Police Department?
12 Did I just ask West Columbia Police Department?

13 MS. GRAHAM: Lexington County, Your Honor.

14 THE COURT: Sheriff's Department. Okay.
15 Interaction with the West Columbia Police Department such
16 that you could not render a fair and impartial decision
17 in this matter? If so, please stand. No response.

18 Have you, a family member or a close friend ever had
19 an interaction with the United States Drug Enforcement
20 Administration, DEA, such that you could not render a
21 fair and impartial decision in this matter? If so,
22 please stand. No response.

23 Have you or any of your close friends or relatives
24 ever been employed in the field of law enforcement? Law
25 enforcement includes any police departments in South

1 Carolina or in other states, the State Law Enforcement
2 Division also known as SLED or any federal law
3 enforcement agencies and any military police agencies?
4 If so, please stand.

5 All right. Since I have seen everybody start with
6 juror number 1, I'll start over here. Okay. I'll start
7 with you, ma'am. Yes, ma'am.

8 DONNA WALL: 210. I was a nurse and I don't know if
9 that matters or not but I did three tours with the
10 Department of Corrections. Worked there three times five
11 years each.

12 THE COURT: How long ago was that, ma'am?

13 DONNA WALL: The last time was about nine years
14 ago.

15 THE COURT: What's your number again?

16 DONNA WALL: 210.

17 THE COURT: Okay. Were you actually employed by
18 DOC?

19 DONNA WALL: I was considered law enforcement. As
20 far as when you work for the Department of Corrections it
21 falls under law enforcement.

22 THE COURT: Ma'am, would that affect your ability to
23 be fair and impartial in this case?

24 DONNA WALL: No.

25 THE COURT: All right. Yes, sir, in the blue

1 shirt.

2 JERRY EUBANKS: 62. Jerry Eubanks. My,
3 brother-in-law is a securities with the Security and
4 Exchange Commission in Colorado. He's an enforcement
5 attorney.

6 THE COURT: Enforcement?

7 JERRY EUBANKS: Attorney with the SEC in Colorado.

8 THE COURT: Sir, is there anything else or just
9 that?

10 JERRY EUBANKS: That's it.

11 THE COURT: Would that affect your ability to be
12 fair and impartial?

13 JERRY EUBANKS: No.

14 THE COURT: Thank you, sir. Yes, sir.

15 KENNETH ADAMS: Juror number 1. Retired sergeant
16 with the Columbia Police Department. I have a cousin by
17 marriage who is a lieutenant there now and a second
18 cousin who is a police officer outside of Houston,
19 Texas.

20 THE COURT: Okay. You said that you are retired?

21 KENNETH ADAMS: Yes, ma'am.

22 THE COURT: How long ago did you retire?

23 KENNETH ADAMS: 2013.

24 THE COURT: Okay. Sir, do you believe that you
25 could be fair and impartial in this case?

1 KENNETH ADAMS: Yes, ma'am.

2 THE COURT: Okay. Thank you, sir. Yes, ma'am, with
3 the stripes.

4 AMY SUMMERS: 196. I have a brother-in-law that
5 worked with Cayce. I don't know if that makes a
6 difference or not. Plus my son is with Lexington County
7 as a correctional officer.

8 THE COURT: You have a son that works with
9 Lexington?

10 AMY SUMMERS: Yes.

11 THE COURT: What is his name?

12 AMY SUMMERS: Brent Summers.

13 THE COURT: Okay. Ma'am, would that affect your
14 ability to be fair and impartial?

15 AMY SUMMERS: No, ma'am.

16 THE COURT: Thank you. Yes, ma'am.

17 ELIZABETH BAGNALL: I have a first cousin that's --

18 THE COURT: What's your number?

19 ELIZABETH BAGNALL: Number 9. I have a cousin that
20 is an investigator for the Solicitor's Office and my
21 father is the chief investigator for the Ethics
22 Commission.

23 THE COURT: Okay. Ma'am, what's your cousin's name?

24 ELIZABETH BAGNALL: James Sullivan.

25 THE COURT: Ma'am, would that affect your ability to

1 be fair and impartial in this case?

2 ELIZABETH BAGNALL: No.

3 THE COURT: Thank you, ma'am. Have you or any of
4 your close friends or relatives ever been employed by any
5 prosecuting agencies in South Carolina or other states
6 including a District Attorney's Office, Solicitor's
7 Office or Attorney General's Office? If so, please
8 stand.

9 GREGORY WERNER: Juror 213. My wife works for SCDOJ
10 human resources.

11 THE COURT: She currently works there now?

12 GREGORY WERNER: Yes, ma'am.

13 THE COURT: Sir, would that affect your ability to
14 be fair and impartial in this case?

15 GREGORY WERNER: No, ma'am.

16 THE COURT: Thank you, sir.

17 EDWARD EARGLE: Juror number 57. I do IT work for
18 the Department of Justice. We provide computer services
19 for them.

20 THE COURT: Sir, is that under contract?

21 EDWARD EARGLE: Yes, ma'am. I'm a contractor and I
22 sit at the Department of Justice.

23 THE COURT: Sir, would that affect your ability to
24 be fair and impartial --

25 EDWARD EARGLE: No, ma'am.

1 THE COURT: -- in this case?

2 EDWARD EARGLE: No, ma'am.

3 THE COURT: Thank you, sir. Have you or any of your
4 close friends or relatives ever been employed in a jail,
5 prison or other detention center? If so, please stand.
6 Yes, ma'am.

7 AMY SUMMERS: 196. My son works for Lexington
8 County as a correctional officer.

9 THE COURT: Yes, ma'am.

10 VIVIAN ROBERTSON: 173. I work at the Department of
11 Juvenile Justice.

12 THE COURT: Okay. Ma'am, where is that that you
13 work?

14 VIVIAN ROBERTSON: Human resources. Broad River
15 Road but I am behind the fence.

16 MR. CHEHOSKI: What's that juror's number again?

17 VIVIAN ROBERTSON: 173.

18 THE COURT: Ma'am, how long have you worked there?

19 VIVIAN ROBERTSON: Ten years.

20 THE COURT: Ma'am, would that affect your ability to
21 be fair and impartial in this case?

22 VIVIAN ROBERTSON: No.

23 THE COURT: Thank you, ma'am. Anyone else? No
24 response.

25 Have you or any of your close friends or relatives

1 ever been a member, a financial supporter of or otherwise
2 connected with any group that has as is its primary
3 concern the promotion of law enforcement or victims'
4 rights? These groups include but are not limited to,
5 MADD, SADD, and any local police or troopers association?
6 If so, please stand. There is no response.

7 Have you or any member of your family or close
8 personal friends ever applied for a job in the law
9 enforcement field? These would include Sheriff
10 Departments, local police departments, Department of
11 Corrections, or county jails, magistrate offices, a city
12 or town attorney's office and Solicitor's Office or
13 District Attorney's Office? If so, please stand. There
14 is no response.

15 Does any member of the jury have a belief that
16 someone is probably guilty because they are arrested? If
17 so, please stand. No response.

18 Does any member of the jury have a belief that a law
19 enforcement officer's testimony is more believable
20 because they are a law enforcement officer? If so,
21 please stand. There is no response.

22 Does any member of the jury panel know of any reason
23 why he or she could not be fair and impartial to each of
24 the parties in this case? If so, please stand. There is
25 no response.

1 Okay. Are there any further questions that I need
2 to ask? Any further potential witnesses? From the
3 State?

4 MS. GRAHAM: Nothing from the State, Your Honor.

5 THE COURT: Defense?

6 MR. CHEHOSKI: Nothing from defense, Your Honor.

7 THE COURT: Okay. If I did not say it earlier, I
8 have read to you all from the indictment in this case and
9 the indictment is simply the charge by which the case is
10 brought into court. It is not evidence in the matter and
11 the defendant has pled not guilty to this indictment.
12 The State, therefore, has the burden of proving the case
13 in this matter. Okay. Madam Clerk. Oh, counsel, if you
14 will, the strikes are five and five?

15 MR. CHEHOSKI: Yes, Your Honor.

16 MS. GRAHAM: Yes, Your Honor.

17 THE COURT: Just wanted to make sure we are all on
18 the same page. And with regard to alternates then is two
19 all right with y'all?

20 MS. GRAHAM: Yes, Your Honor.

21 MR. CHEHOSKI: Yes, Your Honor.

22 THE COURT: Okay. Anything before we begin?

23 MS. GRAHAM: Nothing from the State.

24 MR. CHEHOSKI: Nothing from defense.

25 THE COURT: Okay.

1 THE CLERK: When I call your name, if you will bring
2 all your belongings up front, stand right here facing out
3 and I will ask the State and the defense if they choose
4 to seat you. If they do, if you will have a seat up here
5 in the jury box. If they do not, then you can just have
6 a seat back where you were. Juror number 177, David
7 Rumbough.

8 (Whereupon, David Rumbough, a white male, was called
9 forward.)

10 THE CLERK: What say for the State?

11 MS. GRAHAM: Please present the juror.

12 THE CLERK: What say for the defense?

13 MR. CHEHOSKI: Please swear Mr. Rumbough.

14 THE CLERK: Have a seat in the jury box, sir. Juror
15 57, Edward Eargle.

16 (Whereupon, Edward Eargle, a white male was called
17 forward.)

18 THE CLERK: What say for the State?

19 MS. GRAHAM: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. CHEHOSKI: Please swear Mr. Eargle.

22 THE CLERK: Have a seat in the jury box, sir. Juror
23 number 216 Karen Wiggins.

24 (Whereupon, Karen Wiggins, a white female, was
25 called forward.)

1 THE CLERK: What say for the State?

2 MS. GRAHAM: Please excuse the juror.

3 THE CLERK: If you will return to your seat, ma'am.
4 Juror number 82, Timothy Green.

5 (Whereupon, Timothy Green, a white male, was called
6 forward.)

7 THE CLERK: What say for the State?

8 MS. GRAHAM: Please present the juror.

9 THE CLERK: What say for the defense?

10 MR. CHEHOSKI: Please excuse Mr. Green from service
11 in the case.

12 THE CLERK: Have a seat, sir. Juror number 104,
13 Edward Jones.

14 (Whereupon, Edward Jones, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MS. GRAHAM: Please excuse the juror.

18 THE CLERK: Return to your seat, sir. Juror number
19 192, Deanna Stevens.

20 (Whereupon, Deanna Stevens, a white female, was
21 called forward.)

22 THE CLERK: What say for the State?

23 MS. GRAHAM: Please present the juror.

24 THE CLERK: What say for the defense?

25 MR. CHEHOSKI: Please swear Ms. Stevens.

1 THE CLERK: Have a seat in the jury box, ma'am.

2 Juror number 9, Elizabeth Bagnall.

3 (Whereupon, Elizabeth Bagnall, a white female, was
4 called forward.)

5 THE CLERK: What say for the State?

6 MS. GRAHAM: Please present the juror.

7 THE CLERK: What say for the defense?

8 MR. CHEHOSKI: Please excuse Ms. Bagnall from
9 service in this case.

10 THE CLERK: Return to your seat, ma'am. Juror
11 number 105, Michael Jones.

12 (Whereupon, Michael Jones, a white male, was called
13 forward.)

14 THE CLERK: What say for the State?

15 MS. GRAHAM: Please present the juror.

16 THE CLERK: What say for the defense?

17 MR. CHEHOSKI: Swear Mr. Jones.

18 THE CLERK: Have a seat in the jury box, sir. Juror
19 number 87, Sherill Harris.

20 (Whereupon, Sherill Harris, a black male, was called
21 forward.)

22 THE CLERK: What say for the State?

23 MS. GRAHAM: Please excuse the juror.

24 THE CLERK: Return to your seat, sir. Juror number
25 61, Robin Ellis.

1 (Whereupon, Robin Ellis, a white female, was called
2 forward.)

3 THE CLERK: What say for the State?

4 MS. GRAHAM: Please present the juror.

5 THE CLERK: What say for the defense?

6 MR. CHEHOSKI: Please swear Ms. Ellis.

7 THE CLERK: Have a seat in the jury box, ma'am.
8 Juror number 201, Elizabeth Thompson.

9 (Whereupon, Elizabeth Thompson, a white female, was
10 called forward.)

11 THE CLERK: What say for the State?

12 MS. GRAHAM: Please present the juror.

13 THE CLERK: What say for the defense?

14 MR. CHEHOSKI: Swear Ms. Thompson.

15 THE CLERK: Have a seat in the jury box, ma'am.
16 Juror number 184, Roberta Sinner.

17 (Whereupon, Roberta Sinner, a white female, was
18 called forward.)

19 THE CLERK: What say for the State?

20 MS. GRAHAM: Please present the juror.

21 THE CLERK: What say for the defense?

22 MR. CHEHOSKI: Please swear Ms. Sinner.

23 THE CLERK: Have a seat in the jury box, ma'am.
24 Juror number 41, Stephanie Crosby.

25 (Whereupon, Stephanie Crosby, a white female, was

1 called forward.)

2 THE CLERK: What say for the State?

3 MS. GRAHAM: Please present the juror.

4 THE CLERK: What say for the defense?

5 MR. CHEHOSKI: Please swear Ms. Crosby.

6 THE CLERK: Have a seat in the jury box, ma'am.

7 Juror number 116, Grant Lawson.

8 (Whereupon, Grant Lawson, a white male, was called
9 forward.)

10 THE CLERK: What say for the State?

11 MS. GRAHAM: Please present the juror.

12 THE CLERK: What say for the defense?

13 MR. CHEHOSKI: Please swear Mr. Lawson.

14 THE CLERK: Have a seat in the jury box, sir. Juror
15 number 210, Donna Wall.

16 (Whereupon, Donna Wall, a white female, was called
17 forward.)

18 THE CLERK: What say for the State?

19 MS. GRAHAM: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. CHEHOSKI: Please excuse Ms. Wall from service
22 in the case.

23 THE CLERK: Return to your seat, ma'am. Juror
24 number 212, Lakesha Washington.

25 (Whereupon, Lakesha Washington, a black female, was

1 called forward.)

2 THE CLERK: What say for the State?

3 MS. GRAHAM: Please present the juror.

4 THE CLERK: What say for the defense?

5 MR. CHEHOSKI: Please swear Ms. Washington.

6 THE CLERK: Have a seat, ma'am, in the jury box.

7 Juror 73, Cathy Gates.

8 (Whereupon, Cathy Gates, a white female, was called
9 forward.)

10 THE CLERK: What say for the State?

11 MS. GRAHAM: Please present the juror.

12 THE CLERK: What say for the defense?

13 MR. CHEHOSKI: Please swear Ms. Gates.

14 THE CLERK: Have a seat in the jury box, ma'am.

15 Juror number 132, Craig McBride.

16 (Whereupon, Craig McBride, a white male, was called
17 forward.)

18 THE CLERK: What say for the State?

19 MS. GRAHAM: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. CHEHOSKI: Please swear Mr. McBride.

22 THE CLERK: Have a seat in the jury box, sir. Juror
23 number 19, Ruth Blake.

24 (Whereupon, Ruth Blake, a white female, was called
25 forward.)

1 THE CLERK: What say for the State?

2 MS. GRAHAM: Please present the juror.

3 THE CLERK: What say for the defense?

4 MR. CHEHOSKI: Please excuse Ms. Blake from service
5 in the case.

6 THE CLERK: Return to your seat, ma'am. Juror
7 number 31, Russell Chambers.

8 (Whereupon, Russell Chambers, a white male, was
9 called forward.)

10 THE CLERK: What say for the State?

11 MS. GRAHAM: Please excuse the juror.

12 THE CLERK: Return to your seat, sir. Juror number
13 196, Amy Summers.

14 (Whereupon, Amy Summers, a white female, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MS. GRAHAM: Please present the juror.

18 THE CLERK: What say for the defense?

19 MR. CHEHOSKI: Please excuse Ms. Summers from
20 service in the case.

21 THE CLERK: Return to your seat, ma'am. Juror
22 number 39, Natasha Cook.

23 (Whereupon, Natasha Cook, a black female, was called
24 forward.)

25 THE CLERK: What say for the State?

1 MS. GRAHAM: Please present the juror.

2 THE CLERK: What say for the defense?

3 MR. CHEHOSKI: Please swear Ms. Cook.

4 THE CLERK: Have a seat in the jury box, ma'am.

5 Juror number 23, Shanta Brooks.

6 (Whereupon, Shanta Brooks, a black female, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MS. GRAHAM: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. CHEHOSKI: Please swear Ms. Brooks.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 THE COURT: Okay. Counsel, are there any motions or
14 exceptions pertaining to the selection of the jury from
15 the State?

16 MS. GRAHAM: Nothing, Your Honor.

17 THE COURT: Okay. What about from the defense?

18 MR. CHEHOSKI: None from the defense, Your Honor.

19 THE COURT: Okay. All right. Those of you not
20 selected on this jury panel you all are to, as I have
21 learned from the Clerk, you all are to call the system
22 this evening after 6:00 p.m. to receive further
23 instruction concerning your week. If you do not have
24 that number, please speak with one of the officers and
25 they can get you in touch with the bailiff. I'm seeing a

1 frown from my officer at the door but do all of you know
2 the number to call? Okay. I'm seeing a lot of nods.
3 Thank you so much. You all have a nice afternoon.

4 (Whereupon, the remaining jury venire was released
5 at 3:15 p.m.)

6 THE COURT: Members of the jury panel, you all have
7 now received your juror button and I believe that you
8 probably already received some instructions regarding
9 your cell phone when you come into the building and what
10 not. Now that you all are official members of the jury
11 panel you won't be allowed to use your cell phone when
12 you are here in the courtroom or in the jury room,
13 however, when we take breaks, you will be able to check
14 messages and contact family members and what not, okay?
15 I'm not certain if you all were in Judge McMahon's
16 courtroom when he was giving instructions to the other
17 jury panel but I think maybe you were but let me just
18 reiterate some things to you.

19 It is very important now that you all have been
20 chosen not to communicate regarding this case with anyone
21 including your spouse who may say, well, what happened at
22 jury duty? What did you do today? Or your co-workers or
23 other family members or your boss. I think a safe
24 comment would be to say I have been chosen to sit on a
25 case and that's it. And especially in this day and age

1 where you can probably look up anything by using your
2 phone I strongly and very sternly admonish you do not
3 Google, do not do your own research, do not look up these
4 lawyers, don't look up the defendant, don't do any -
5 don't go by where you might have thought this occurred or
6 something, okay? Don't do any independent research. It
7 is so fundamentally important to the fairness of both
8 sides that they get a fair and impartial jury.
9 Everything that you need to consider you're going to get
10 in this courtroom, you're going to get from this witness
11 stand or from evidence that is presented and it would be
12 extremely and probably detrimentally unfair for you all
13 to do any research on your own and now that we have gone
14 through this process today the last thing that I want is
15 to have to start over again with picking a jury because
16 somebody sees something and they tell another juror about
17 something and it just mushrooms from that, all right?

18 And so the other thing is that throughout the week
19 we will normally start at 9:30 in the morning. We will
20 end at 5:00 in the afternoon. You will have
21 approximately an hour to an hour and a half for lunch
22 midday and that will be between 12:00 and 2:00 depending
23 on where witnesses fall. We will have breaks about every
24 hour and a half to an hour and 45 minutes and if you get
25 extremely uncomfortable and you need a break, I need for

1 you to either let a bailiff know or just simply raise
2 your hand and I'll have somebody ask you privately if
3 there's a problem. This is not an endurance test and you
4 all will be taking in a lot of information and it will be
5 important for you to be comfortable. I think there's
6 water and coffee that will be provided. There's a
7 bathroom and so before we leave today, I will let the
8 bailiffs show you the jury room so that you all will feel
9 comfortable about the space you're going to be in and
10 then I will instruct you now I need for you all to be
11 back here in the morning at 9:30. This week of court is
12 for one week. I have been informed that this trial will
13 probably not take that long. It will not take the entire
14 week, okay? But other than that I can't give you much
15 instruction or information about the length of time. So
16 in the morning you all will be here on the third floor
17 outside of this courtroom and there will be a bailiff
18 there and it will be the same folks that are here today,
19 okay? So they will be looking for you and you be looking
20 for them, all right? Are there any questions for me?

21 All right. Remember, no research. No comments. It
22 will be tough. When I talk to my husband tonight, I'm
23 just going to say we just started a case and it seems
24 very exciting and that's all I'm going to say about it.
25 Yes, ma'am.

1 UNIDENTIFIED JUROR: Can I get a letter of
2 obligation to give to my employer?

3 THE COURT: Yes, ma'am. You can and I think our
4 clerk can help you with that.

5 THE CLERK: If you need an excuse, you will get one
6 at the end of the week. If you need one today, if you go
7 down to the records room and the clerk's office on the
8 first floor and just ask for the jury clerk and she'll
9 give you a note. No problem.

10 THE COURT: Okay. Anything else?

11 UNIDENTIFIED JUROR: And the cell phones you said we
12 can't use them here but can you have them or are you
13 saying just leave the cell phones out?

14 THE COURT: I will defer to the bailiffs. Each
15 judicial circuit is a little different on how they handle
16 cell phones and so I will let the bailiffs -- I believe
17 if you bring them into the building, they're going to put
18 them maybe in a box and keep them outside. You can turn
19 them off and they will have them ready for you to pick
20 back up as you leave for the day. I know it's a life
21 line and it's hard, it's hard for me, but it is
22 necessary. All right. Anything else? And that would
23 include, I think some people even have the watch now.
24 Okay. That would include that device. All right.
25 Anything else from the bailiffs? All right. Why don't

1 you follow our bailiffs on out and then you all be here
2 in the morning at 9:30. Have a nice evening.

3 (Whereupon, the prospective jury was released at
4 2:52 p.m. for the day.)

5 THE COURT: Okay. All right. Counsel, anything
6 else right now?

7 MS. GRAHAM: Nothing from the State, Your Honor.

8 MR. CHEHOSKI: Your Honor, just I want to get a
9 sense of where we are as far as scheduling things.

10 THE COURT: Okay. Let me just ask. Ms. Graham, do
11 you think that you could put up your other witnesses this
12 afternoon and then we would just have this one witness in
13 the morning?

14 MS. GRAHAM: Your Honor, if I could just very
15 briefly consult with my investigator on that.

16 THE COURT: Sure. Why don't we take, it's about
17 seven minutes until three by that clock and about nine
18 minutes till by my sources so why don't we just take a
19 break until 3:00. I will tell you that I know that the
20 Solicitor's Office has more work for me to do this week
21 and I did not take pleas this morning because I was
22 upstairs in the roll call and what not and so I would
23 like to get as much of the preliminary matters out of the
24 way as we can and we'll have a jury coming in at 9:30 in
25 the morning and I just hate for them to have to wait and

1 get a sour taste in their mouth about the court system
2 and about this case unless -- I just hate for them to get
3 here at 9:30 and then let them go until 10:30 or 11:00.

4 MS. GRAHAM: Absolutely, Your Honor.

5 THE COURT: Okay. Thank you.

6 MR. CHEHOSKI: Thank you, Your Honor.

7 THE COURT: All right. We'll be in recess for about
8 five our six minutes. All right.

9 (Short break.)

10 THE COURT: Okay. Do we have a decision?

11 MS. GRAHAM: Yes, Your Honor. The State can proceed
12 with all pretrial matters with the exception of the
13 testimony of CI Frank Hayes so we can proceed certainly
14 with the other witnesses for the Biggers hearing as well
15 as any other arguments and other pretrial matters.

16 THE COURT: Okay. Yes, sir.

17 MR. CHEHOSKI: Your Honor, before we get started, we
18 have alluded to it before but I am going to make a formal
19 motion to sequester all witnesses for the trial. I know
20 Agent Purdy as the lead investigator under statute has a
21 right to be present. Other than him I do request that
22 all other witnesses be sequestered.

23 THE COURT: Yes, ma'am.

24 MS. GRAHAM: Your Honor, we have Investigator
25 Quattlebaum just outside the courtroom so if the Court

1 will just give us some leeway in ferrying witnesses back
2 and forth.

3 THE COURT: Yes, ma'am. Certainly and that motion
4 is granted. Yes, sir.

5 MR. CHEHOSKI: Thank you.

6 THE COURT: Okay. All right. So we are ready to
7 proceed then, counsel?

8 MS. GRAHAM: Yes, Your Honor. We can certainly
9 proceed with the Biggers Hearing if that's acceptable to
10 opposing counsel.

11 MR. CHEHOSKI: Ready to proceed.

12 THE COURT: Okay. Thank you.

13 MS. GRAHAM: Thank you, Your Honor. The State calls
14 Agent Scott Purdy to the stand.

15 Thereupon,

16 SCOTT PURDY

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. Once you're seated,
19 state your full name spelling your last please.

20 THE WITNESS: Scott Purdy, P-u-r-d-y.

21 THE COURT: Yes, ma'am.

22 MS. GRAHAM: Thank you.

23 DIRECT EXAMINATION

24 BY MS. GRAHAM:

25 Q. Agent Purdy, what do you do for a living?

1 A. I'm an investigator with the Lexington County
2 Sheriff's Office narcotics unit.

3 Q. What's the narcotics unit?

4 A. It's a multi agency unit that's comprised of several
5 agents from the Sheriff's Office and then the local town
6 jurisdictions that don't have the manpower they can add agents
7 to it if they like as well or they just are members of it
8 without agents present and it's just a way to get more
9 manpower in their smaller agencies if they are in Lexington
10 County.

11 Q. What are your duties associated with being on the
12 NET Team?

13 A. As an investigator we get assigned narcotics
14 complaints. Several come through the tip line, anonymous
15 phone calls to our narcotics line and then besides that we
16 also go out and we make cases by making controlled purchases
17 of the narcotics from different people.

18 Q. Outside of working with the narcotics unit, have you
19 had any other experience in law enforcement?

20 A. Yes, ma'am. I did. I started my law enforcement
21 career back in 2006 for the Delray Beach Police Department in
22 Florida. I worked there for four years before moving here in
23 2009. I worked for Richland County for about three years and
24 then came over to Lexington County so I've got about 11 and a
25 half years total.

1 Q. And were you the lead officer in this case?

2 A. Yes, ma'am. I was.

3 Q. Where did the buy in this case take place?

4 A. The eventual final buy took place at the corner of
5 Brown.

6 Q. What date was this?

7 A. On September 4th.

8 Q. And if you could just give us a brief description of
9 how the buy took place.

10 A. Yes, ma'am. We were talked to by the narcotics
11 agent at the time for West Columbia which is Jody Putney and
12 he mentioned that they were having a problem area down in the
13 Sumter Street area. Now, Sumter Street area is kind of, it's
14 unique because the majority of that area falls under West
15 Columbia jurisdiction, however, there are some streets that
16 are in pockets of Lexington County so he had asked if we could
17 assist him by going into the areas that were Lexington County
18 trying to make controlled purchases. At that time we had a CI
19 in common I believe where we made contact with him and made
20 arrangements with him to make a buy off of a gentleman who is
21 supposed to be the target by the name of Beazy. He was picked
22 up. We searched him. We wired him up with audio/video
23 recording equipment and we drove him to the area that target
24 and dropped him off. He walked over to where Beazy was
25 supposed to be on Sumter Street and actually made contact with

1 Beazy however Beazy let him know that he didn't have any crack
2 cocaine at the time so he offered to show him an area where
3 there would be other people selling and they walked together
4 to that area to the corner where Brown Street is where he made
5 contact with a vehicle with two subjects in the back seat of
6 the car later identified as Mr. Johnny Lee Dickerson and Mr.
7 Marcus Antonio Mack. He then presented them documented funds
8 that we provided him. The two of them together were able to
9 come up with the amount of crack that he was requesting. They
10 split who put in the crack. They split who got the money and
11 then the CI came back to our location. He was searched again
12 and we collected the drugs. We collected the recording
13 equipment and then he gave a statement at that time.

14 Q. When you're referring to the confidential informant,
15 can you give us his legal name here today?

16 A. Yes, ma'am. In this case it was Frank Hayes, Frank
17 Eugene Hayes.

18 Q. When he came back to the vehicle, did he give you
19 legal names of the two individuals seated in the back of that
20 car?

21 A. No, ma'am. Often times CI's they only know people
22 by their street names. In this case he recognized the two of
23 them in the car as Sweet Pea and Anthony.

24 Q. Where was Sweet Pea?

25 A. Sweet Pea was directly behind that driver in the

1 back seat and Anthony would be on the other side behind the
2 passenger.

3 Q. What steps did you take to actually determine the
4 legal identities of the people, the individuals in the back
5 seat?

6 A. Well, Investigator Putney was with us when we made
7 the buy. He was in the van with us when we were listening to
8 the deal and he was familiar with a lot of the area because
9 the majority of it is in West Columbia jurisdiction and as a
10 narcotics agent he works that area so he told me if I could
11 isolate pictures from the video, he could probably identify
12 them so I went back to my office after I downloaded the
13 recording equipment and I was able to isolate still shots of
14 the suspects' faces from the video itself.) I then e-mailed
15 them to investigator Putney and asked for help with the
16 identification.

17 Q. About how long after the buy took place did you
18 e-mail those photographs to Putney?

19 A. I'm embarrassed. I left my case file sitting on the
20 table when I walked up here but I believe, if I'm correct, it
21 was about four days.

22 Q. (Proffering.) Agent Purdy, what did you do, if
23 anything, after you actually did have the legal names of the
24 individuals seated in the back seat?

25 A. Once we had determined who the possible suspects'

1 names were, I then used different law enforcement databases in
2 this case the South Carolina DMV as well as our inhouse
3 records management system to pull up photographs, booking
4 photos of the two suspects. I was able to then look at them
5 and compare them and see that I believe them to be the same,
6 the correct people and then I requested photo lineups to be
7 prepared and I showed the photo lineups to Frank Hayes.

8 Q. So you did not prepare the photo lineup in the
9 case?

10 A. No, ma'am. We typically do not prepare photo
11 lineups.

12 Q. Do you recall who you requested to develop the photo
13 lineup?

14 A. Yes. We have an intell unit which is comprised of
15 two individuals. I sent an e-mail to the two of them, a
16 Beverly Smith and a Brian Travis and Brian Travis is the one
17 who prepared it for me.

18 Q. And once the lineup was developed, did you have Mr.
19 Hayes view that lineup?

20 A. I did. Yes, ma'am.

21 Q. And do you recall the date and time that you had him
22 look at that lineup?

23 A. Yes. I have it right here.

24 Q. Does September 22nd, 2015 sound about right?

25 A. It could be. Yes, ma'am.

1 Q. Do you recall where the lineup took place?

2 A. Yes, ma'am. We picked up Mr. Hayes to do another
3 controlled purchase from a different individual and while we
4 were enroute to that I showed him the lineup and it was in one
5 of our county vehicles.

6 Q. Where was Mr. Hayes seated inside that vehicle?

7 A. Mr. Hayes was seated in the back area.

8 Q. Where were you seated?

9 A. I was in the passenger seat.

10 Q. And you may have already said this. I apologize.
11 Who else was present, if anybody?

12 A. At the time of the lineup?

13 Q. Yes.

14 A. Just myself and my partner Agent Merckle.

15 Q. Was Mr. Hayes told anything before being shown that
16 lineup?

17 A. No, ma'am. We have a kind of standard thing. We
18 just say I'm about to show you a photograph - or a photo
19 lineup. It has six individuals in it, common physical
20 features. Let me know if you recognize anyone from inside the
21 photographs. In this case I would have said, do you recognize
22 the person who you would have bought crack cocaine from on
23 September 4th that you know as Anthony?

24 Q. Do you recall the layout of the lineup?

25 A. Yes. I believe Anthony was in position one.

1 Q. Okay. If you could just describe the nature of the
2 photos used in the lineup?

3 A. The photos themselves are comprised again of people
4 with similar physical features that folks that make them are
5 really quite good at finding people that look alike so as not
6 to make any one particular person obvious..

7 Q. How is this lineup actually presented to the
8 informant? You said that he's seated in the back. You're in
9 the passenger seat. Merckle is driving. Did you hand it back
10 to him? How is it ultimately presented?

11 A. Yes, ma'am. I keep a clip board in my truck or I
12 keep a clipboard with me when I'm doing deals so in this case
13 we were in a van but I clip it to the clipboard, I turned
14 around and it would have been over my left shoulder where he
15 was sitting just about where she is right now and I just hand
16 him the clipboard and asked him if he recognized the person
17 who sold him the crack cocaine known to him as Anthony. And,
18 yes, ma'am. I have it in front of me now. It was on the 22nd
19 of September.

20 Q. Thank you. Did you influence or suggest to
21 Mr. Hayes which photo to select?

22 A. No, ma'am.

23 Q. Did you have Mr. Hayes participate in a physical
24 lineup before seeing the photos?

25 A. No, ma'am.

1 Q. Did you show any photos of the suspect to Mr. Hayes
2 prior to having him view the photo lineup?

3 A. No, ma'am.

4 Q. Upon showing Mr. Hayes the lineup, did he select a
5 photo?

6 A. He did. Yes, ma'am. He selected position number
7 one.

8 Q. How did he delineated his selection?

9 A. The photograph is circled and then the CI number is
10 written down inside the circle to show that he's the one that
11 signed it and then he puts his signature on the bottom as
12 well.

13 Q. Did he indicate whether this was the person that he
14 purchased the drugs from on the 4th, the person seated in the
15 rear passenger seat?

16 A. Yes, ma'am.

17 Q. Can you please point out that person in the
18 courtroom?

19 A. Yes, ma'am. Mr. Mack sitting at the defendant's
20 table.

21 Q. How long did it take Mr. Hayes to pick out the
22 photo?

23 A. Not long. He selected the photo rather quickly.

24 Q. What was his reaction, if any, upon picking out the
25 defendant?

1 A. He just pointed and said, "There he is."

2 Q. How confident was he in his selection?

3 A. Confident.

4 MS. GRAHAM: Your Honor, at this time I would like
5 to have this item marked as Court's 2, a copy of the
6 lineup, Court's exhibit 2.

7 MR. CHEHOSKI: No objection.

8 THE COURT: Okay. Have you seen that?

9 MR. CHEHOSKI: Yes.

10 THE COURT: Okay.

11 (Whereupon, Court's Exhibit #2 marked for
12 identification.)

13 MS. GRAHAM: At this time, Your Honor, I'm
14 presenting Agent Purdy with an unredacted lineup which
15 will be just a Court's exhibit, of course.

16 BY MS. GRAHAM: 0

17 Q. Do you recognize this item, Agent Purdy?

18 A. Yes, ma'am. I do. This is the lineup that I gave
19 to Mr. Hayes.

20 Q. Does it appear to have been altered or tampered with
21 in any fashion?

22 A. No, ma'am.

23 Q. As a result of that identification, did you obtain
24 an arrest warrant for the defendant?

25 A. Yes, ma'am. I did.

1 MS. GRAHAM: Nothing further of Agent Purdy.

2 THE COURT: Okay. You're going to have that marked
3 as well. Counsel, have you seen the unmarked?

4 MS. GRAHAM: This is just Court's 2.

5 THE COURT: Is that the same exhibit?

6 MS. GRAHAM: Yes.

7 THE COURT: Okay. May I see that please?

8 MR. CHEHOSKI: (Proffering.)

9 CROSS EXAMINATION

10 BY MR. CHEHOSKI:

11 Q. You said Mr. Hayes was a CI that had worked
12 previously with Mr. Putney?

13 A. Yes, sir. I don't recall -- I believe he actually
14 presented him to us as somebody that he was working with
15 previously.

16 Q. Had you worked with him previously as well?

17 A. I don't believe on this deal. I honestly -- I'm not
18 sure.

19 Q. In general though?

20 A. I've worked with him several times. Yes.

21 Q. And prior to September 4th, 2015?

22 A. I would have to check.

23 Q. All right. And you said that the target was Beazy
24 in that case?

25 A. Yes.

1 Q. Have you been able to make a positive identification
2 of who Beazy is?

3 A. I haven't. I never needed it.

4 Q. Never needed it. All right. The lineup took place
5 on September 22nd, 2015; is that right?

6 A. Yes, sir.

7 Q. And the purchase took place on September 4th?

8 A. 4th. Yes, sir.

9 Q. In between those times had you had a chance to work
10 with Mr. Hayes?

11 A. I believe I did.

12 Q. And any of those times did you show him the
13 lineup?

14 A. No.

15 Q. You had the opportunity to do so?

16 A. I don't know when I actually got the lineup.

17 Q. All right. So you're saying this is the first time
18 that you had the opportunity to show him the lineup?

19 A. Yes.

20 Q. When you showed him the lineup, you directed him to
21 the September 4th purchase?

22 A. Yes.

23 Q. And you directed him to the person known as
24 Anthony?

25 A. For this particular lineup. Yes, sir.

1 Q. Right. And you were - and it was just - you were in
2 the car with Mr. Hayes; is that right?

3 A. Yes.

4 Q. And Mr. Merckle?

5 A. Yes.

6 Q. Both you and Agent Merckle were also in the car at
7 the time of the purchase?

8 A. That's correct.

9 Q. There wasn't a person who wasn't involved in this
10 transaction who could have presented the lineup?

11 A. No. Everyone that was in the car that day was
12 there.

13 Q. Was there. And you couldn't have had somebody - you
14 could have had somebody at the station though do that, right?

15 A. Well, we try to keep the exposure who our CI's are
16 limited to people that work cases with them.

17 Q. I understand. Also you testified that you gave him
18 documented funds, right?

19 A. Yes, sir.

20 Q. How much was the documented funds?

21 A. One hundred dollars.

22 Q. You also said there was an amount of cocaine that
23 was required to be purchased --

24 A. That's correct.

25 Q. -- that you wanted or desired rather. And how much

1 was that?

2 A. Typically five rocks for a hundred dollars.

3 Q. How much does five blocks weigh?

4 A. It's usually about a gram but it's pretty typical to
5 get shorted.

6 Q. All right. Was the car in motion when you presented
7 the lineup?

8 A. Yes.

9 Q. How far away were you from your target location when
10 you presented the lineup?

11 A. I don't have any idea.

12 MR. CHEHOSKI: Nothing further, Your Honor.

13 MS. GRAHAM: Just very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. GRAHAM:

16 Q. When Mr. Chehoski mentioned that he directed you to
17 the incident involving Anthony, just to clarify, that was not
18 suggesting anybody on the lineup at all? You're just
19 connecting the date with the street name?

20 A. Correct. When I present the lineup, I say, do you
21 recognize the person who sold you crack cocaine on September
22 4th that you told me his name was Anthony?

23 MS. GRAHAM: Nothing further, Your Honor.

24 MR. CHEHOSKI: Just one question.

25 RECROSS EXAMINATION

1 BY MR. CHEHOSKI:

2 Q. You couldn't have used -- You didn't use the
3 location of the purchase?

4 A. No.

5 MR. CHEHOSKI: All right. That's all.

6 MS. GRAHAM: Nothing further.

7 THE COURT: Anything else from this witness?

8 MS. GRAHAM: No, Your Honor.

9 THE COURT: Okay. Thank you, sir. Step down.

10 MS. GRAHAM: Your Honor, the State next calls Jody
11 Putney.

12 Thereupon,

13 JODY PUTNEY

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. Once you're seated,
16 state your full name spelling your last please.

17 THE WITNESS: Jody Putney, P-u-t-n-e-y.

18 DIRECT EXAMINATION

19 BY MS. GRAHAM:

20 Q. Good afternoon, Investigator Putney. What do you do
21 for a living?

22 A. I'm a detective with the West Columbia Police
23 Department.

24 Q. What did you do prior to that?

25 A. I was a narcotics investigator from 2011 to 2016.

1 Q. What does being a narcotics investigator entail?

2 A. Working the streets mainly, plain clothes, UC buys,
3 buys with informants and just street level interdiction.

4 Q. Prior to working with West Columbia, what did you
5 do?

6 A. I was in the Marine Corps for ten years.

7 Q. What did you do with the Marine Corps?

8 A. Just logistics stuff.

9 Q. Okay. In your capacity as a narcotics investigator
10 did you ever have an opportunity to work with the Lexington
11 County NET Team?

12 A. Yes, ma'am.

13 Q. Do you recall working with them on this case?

14 A. I do.

15 Q. Okay. How did that cooperative work come to play?

16 A. We had an informant that could buy in the Sumter
17 Street area.

18 Q. What was the name of that informant?

19 A. Frank Hayes.

20 Q. Go ahead.

21 A. Sumter Street that's in Lexington County's
22 jurisdiction but it's surrounded by West Columbia so Agent
23 Purdy for this informant can do buys on Sumter Street so we
24 got him in touch with them.

25 Q. Do you recall when this buy took place?

1 A. September 4th.

2 Q. Do you recall how the buy took place?

3 A. Met up with Agent Purdy and Agent Merckle and
4 Mr. Hayes.. I think, I'm not sure where but briefed Hayes on
5 the buy, Agent Purdy and Agent Merckle did, they searched him
6 before, wired him up with whatever surveillance equipment they
7 had and then put him on the street to go to Sumter Street to
8 do a buy of crack cocaine.

9 Q. Okay. Did he make that buy on Sumter Street?

10 A. No, ma'am.

11 Q. Do you recall what happened at that point?

12 A. He met up with someone, I'm not sure who, and that
13 person walked him up to Ross and North Brown Street to
14 somebody he said he could get some drugs from them.

15 Q. Do you recall whether he made a purchase?

16 A. He did.

17 Q. Okay. After the purchase when he was picked up, was
18 he able to give a legal name for the individuals that he
19 purchased from?

20 A. No, ma'am. He just had street names..

21 Q. Okay. How did you end up determining the legal
22 names, if at all?

23 A. Agent Purdy sent still photos and e-mailed them to
24 me and I was able to identify them just from prior dealings
25 with the two.

1 Q. Investigator Putney, do you recognize these items?

2 A. Yes, ma'am.

3 Q. Okay. What are they?

4 A. These are the stills that Agent Purdy sent me
5 through e-mail.

6 Q. Based on viewing those stills what did you determine
7 with regard to identity, if anything?

8 A. I was able to identify the two people in the back
9 seat.

10 Q. With regard to the person seated in the passenger
11 driver's side, who was that?

12 A. Marcus Mack. Oh, no. That's Sweet Pea in the
13 driver's side or Johnny Lee Dickerson.

14 Q. With regard to the person seated in the rear
15 passenger seat?

16 A. That's Marcus Mack. But the pictures I received
17 were a lot clearer than in my e-mail.

18 Q. And for purposes of this hearing, how did you know
19 them?

20 A. Well, I'm a community officer before I was a
21 narcotics officer so I try to get out and know people within
22 the community and those were two individuals that I have come
23 across several times that lived in the community.

24 Q. So you have had prior interactions with them?

25 A. Yes, ma'am.

1 MS. GRAHAM: Nothing further for this witness, Your
2 Honor.

3 THE COURT: Counsel.

4 CROSS EXAMINATION

5 BY MR. CHEHOSKI:

6 Q. All right. Now, you were in the van when the
7 purchase took place; is that right?

8 A. Yes, sir.

9 Q. And the original target of the investigation was
10 somebody named Beazy; is that right?

11 A. Yes, sir. I believe so.

12 Q. Beazy was never come to be identified?

13 A. No, sir.

14 Q. Not to your knowledge?

15 A. No, sir.

16 Q. And you were not in the van when the identification
17 took place with Mr. Hayes, right?

18 A. As far as?

19 Q. You weren't there when Mr. Hayes was shown the
20 lineup?

21 A. No, sir. No. I was not.

22 Q. Apologize for that poorly worded question. And you
23 say that the photos that you received on your computer were a
24 lot clearer than what you are seeing right now?

25 A. Yes, sir.

1 Q. But you don't have those clearer pictures with you,
2 do you?

3 A. Not at this time.

4 Q. That's the best you got right now?

5 A. Yes, sir.

6 MR. CHEHOSKI: Nothing further, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. GRAHAM:

9 Q. Just to clarify, Investigator Putney, after you
10 reviewed the photos, you were able to determine the identity.
11 Did you give that information to Agent Purdy?

12 A. Yes, ma'am.

13 MS. GRAHAM: Nothing further from this witness, Your
14 Honor.

15 THE COURT: Did an exhibit come in with Investigator
16 Putney?

17 MS. GRAHAM: Two Court's exhibits.

18 THE COURT: Counsel, did you object to these coming
19 in?

20 MR. CHEHOSKI: No, Your Honor. I did not.

21 THE COURT: You have seen those?

22 MR. CHEHOSKI: Yes. Yes, I have.

23 THE COURT: Okay.

24 MS. GRAHAM: Nothing further of this witness.

25 THE COURT: All right. Sir, you may be excused, I

1 guess, until they need you again.

2 MS. GRAHAM: The State next calls Brian Travis.
3 Thereupon,

4 BRIAN TRAVIS

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full name spelling your last please.

8 THE WITNESS: Brian Travis, T-r-a-v-i-s.

9 DIRECT EXAMINATION

10 BY MS. GRAHAM:

11 Q. Investigator Travis, what do you do for a living?

12 A. Investigator with Lexington County Sheriff's
13 Department.

14 Q. How long have you worked there?

15 A. For a little over ten years.

16 Q. What are the various duties that you had working
17 with the Sheriff's Office?

18 A. Patrol deputy, field training officer, property
19 crimes detective, major crimes detective and now detective in
20 the intelligence unit.

21 Q. What are your duties in connection with this unit?

22 A. Assist investigators and administer support. I help
23 command staff with work load, detectives with lineups,
24 processing information, phone records, that sort of thing.

25 Q. Okay. How many lineups have you created during your

1 career?

2 A. Somewhere around 300.

3 Q. Can you explain the process used to develop a
4 lineup?

5 A. In the records development system we have a database
6 of photos so we tell the system which person we want to make
7 the lineup for, input physical characteristics that match that
8 person, then the system provides possible matches and
9 photographs, then me or my partner will go through them and
10 find five matching photographs to the one of the suspect.

11 Q. Do you recall being asked to develop a lineup in
12 this case?

13 A. , I was.

14 Q. Okay. Do you recall the nature of the photos used
15 in the lineup?

16 A. Black males in their 20's, a thinner build. That's
17 all off the top of my head that I can remember.

18 Q. Can you describe the lay out of a lineup?

19 A. Six photographs, three on top, three on the bottom,
20 numbered, line on the bottom for the investigator's name, case
21 number, a place for the person who views the lineup to sign it
22 and circle the number.

23 Q. Do you recall what position the suspect Marcus Mack
24 was placed in in the lineup?

25 A. Not off the top of my head.

1 Q. Do you recognize that document?

2 A. Yes. That's the lineup I created.

3 Q. After reviewing it, do you now recall what position
4 the suspect was in in that lineup?

5 A. Number 1.

6 Q. How does he come to be number 1 in the lineup?

7 A. Once you have selected the five photographs you want
8 to use, the system randomly places them throughout the six
9 positions.

10 Q. So it's not controlled by you whatsoever?

11 A. No.

12 Q. And how do you know that it's actually you who
13 developed this lineup because you do so many of them?

14 A. Everything we do in our records management system
15 has an audit stamp and what that is is a time and date along
16 with the user ID which is your last name and first initial.
17 It's uneditable and it's a permanent record.

18 Q. And after having reviewed that lineup, does anything
19 in it appear to have been altered or changed in any way since
20 you developed it?

21 A. Just the writing, the identification.

22 MS. GRAHAM: Nothing further for this witness.

23 THE COURT: Counsel.

24 MR. CHEHOSKI: Thank you.

25 CROSS EXAMINATION

1 BY MR. CHEHOSKI:

2 Q. Do you know what the nature of the photo that was
3 used, I guess -- Let me rephrase. Do you know the source of
4 the picture of Mr. Mack, where that came from?

5 A. For the photo lineup?

6 Q. Yes.

7 A. It's in our internal database of photographs.

8 Q. Do you know how it came into that database? Is it a
9 driver's license photo?

10 A. No.

11 Q. Do you know what kind of photo it was to get into
12 that database?

13 A. Yes. I do.

14 Q. What kind of photo was it?

15 A. It's a booking photo.

16 Q. Are the other five pictures also booking photos?

17 A. Yes. They are.

18 Q. Some of the characteristics that you used you said
19 that there was a black male in 20's, thinner build, right?

20 A. Yes. That's what I remember offhand.

21 Q. You also use eye color?

22 A. It's an option.

23 Q. It's an option. Did you use it in this case?

24 A. I don't generally select eye color.

25 Q. Also do you use hair style?

1 A. Hair style is an option.

2 Q. Did you use it in this case?

3 A. I use it when I go through the photos. I don't know
4 if I put it in for a filter in the first place.

5 Q. How about earlobe?

6 A. It's something I look at as an investigator. It's
7 not a pre-determined character.

8 Q. How about nose shape?

9 A. Again, it's something that I look at when I'm
10 putting them together.

11 Q. So that wouldn't be a, one of the parameters you
12 would set in getting your bank of photos to pick from?

13 A. No. With the bank of photos the only selectable
14 options are age, race, sex, hair color, eye color, body type,
15 facial hair, hair style, hair length. It's very general. But
16 when we do them, those are a lot of times filled out by
17 different people and what one person sees as a short haircut
18 someone else might see as a medium so the parameters I enter
19 before I do this are typically a plus or minus five year age
20 range, race and sex and then I just use my training and
21 experience to select out photos from that.

22 Q. Do you remember how many photos you were given out
23 of your search?

24 A. Not offhand. I can tell you average we get anywhere
25 from 200 to 4000. It's very wide depending on your

1 parameters.

2 Q. It does seem rather wide. But the more parameters
3 you use would narrow the output, right?

4 A. Correct.

5 Q. So that would also help reduce how long it would
6 take to compose the photo lineup?

7 A. Generally like I say, we don't want to narrow it
8 because then you're gonna miss out on pictures that may be a
9 good match.

10 Q. Do you remember how long it took you to compose this
11 photo lineup, compile it all?

12 A. Less than an afternoon.

13 Q. And you don't remember how many photos were in the
14 bank?

15 A. I can tell you from doing -- I couldn't tell you
16 exactly how many for this particular lineup but I know for
17 that age range with all that I have done generally it's about
18 2000 pictures.

19 Q. Do you go through them all and pick the six best?

20 A. Yes. I do.

21 Q. So you might not just pick the six that - you go
22 through -- Let me ask you this. I'm sorry. You said you go
23 through them all. And how many -- Do you go through them more
24 than once?

25 A. If I need to. But I always make sure I go through

1 all of them to make sure that I don't just stop. When I get
2 some, I go through and make sure it's the best I can make.

3 Q. Do you remember how many you picked out in your
4 initial run through?

5 A. No.

6 MR. CHEHOSKI: I have nothing further, Your Honor.

7 THE COURT: Yes, ma'am.

8 REDIRECT EXAMINATION

9 BY MS. GRAHAM:

10 Q. Investigator Travis, how the characteristics get to
11 be in the system is dependent upon a human inputting those
12 characteristics into the system; is that correct?

13 A. Correct.

14 Q. So when somebody is booked in, these are booking
15 photos, they put in all of the characteristics as they see
16 them with their eye?

17 A. Correct.

18 Q. And as you stated one person's short hair cut could
19 be somebody else's long hair cut?

20 A. Correct.

21 Q. And how many photos do you think are in the database
22 in total, how many booking photos?

23 A. I think at last count somewhere around 50,000.

24 Q. So 50,000 photos. You put in some parameters in
25 this case. I think you testified black male, within a five

1 year age range and then you go through the photos that are
2 returned to find the best match?

3 A. Correct.

4 Q. And when you're going to find that best match and in
5 this case specifically based upon the suspect's photo what
6 individual characteristics were you trying to match?

7 A. It's the same for any lineup. I try to look at the
8 overall shape of the head, the nose, the mouth, the eyes,
9 their shape, their relationship to each other, where the ears
10 sit on the head, whether they flare out or not, the hair
11 style. Even so much as whether or not they've got on a
12 T-shirt or not. If there's glasses. No glasses. All of
13 those have to be taken into account.

14 Q. When somebody requests a lineup in Lexington County,
15 are booking photos ever not used?

16 A. If none are available or if the photo has some type
17 of trait that makes it unmatchable like it came in wearing a C
18 collar or a halo.

19 Q. And when you are developing the photo lineup, do you
20 ever use color photos?

21 A. No.

22 MS. GRAHAM: Nothing further.

23 THE COURT: Anything?

24 RECROSS EXAMINATION

25 BY MR. CHEHOSKI:

1 Q. Are color photos an option?

2 A. Uhm, the photographs are taken in color but we do
3 not create photo lineups in color.

4 Q. Is that a yes?

5 A. Hmm?

6 Q. Is that a yes?

7 A. It's not an option. We cannot distribute a color
8 photo lineup.

9 MR. CHEHOSKI: Thank you.

10 THE COURT: Anything else?

11 MS. GRAHAM: Nothing further for this witness.

12 THE COURT: Okay. Thank you, sir. Yes, ma'am.

13 MS. GRAHAM: Again, Your Honor, with the exception
14 of Mr. Frank Hayes that would conclude the witnesses that
15 we would have for the Biggers portion of pretrial. We
16 would just ask that we reserve argument on this until we
17 can come to understand exactly where we are at in getting
18 that witness in court. We are happy to proceed with any
19 other motions that defense may raise.

20 THE COURT: Okay. Thank you. Yes, sir.

21 MR. CHEHOSKI: Your Honor, I don't believe I have
22 any other motions. The only one I had again was this one
23 and the one that has already been ruled upon.

24 THE COURT: The sequestration. All right. Thank
25 you. Anything else?

1 MS. GRAHAM: Nothing further, Your Honor. I think
2 that concludes our pretrial for today with the exception
3 of the State's evidentiary matter.

4 THE COURT: Why don't we try then, since the jury is
5 going to be here at 9:30, can you all be here by 9:15?
6 Is that too much of an inconvenience to get the defendant
7 here?

8 DEPUTY: That's not a problem.

9 MR. CHEHOSKI: I was going to say it's not a problem
10 for me. I'm sure it's not a problem for the Solicitor's
11 Office. They are on this floor. I'm across the
12 street.

13 THE COURT: Madam Clerk, does that suit you, 9:15.

14 THE CLERK: Yes.

15 THE COURT: All right. Why don't we reconvene this
16 at 9:15 unless there is something else you need for me to
17 take up.

18 MS. GRAHAM: Nothing from the State, Your Honor.

19 MR. CHEHOSKI: Nothing from defense.

20 THE COURT: Okay. I don't need to address whether
21 or not the defendant is incarcerated. Is he
22 incarcerated?

23 MR. CHEHOSKI: Yes, Your Honor. He is.

24 THE COURT: Okay.

25 (Court adjourned for the day at 3:30 p.m.)

1 August 8, 2017

2 THE COURT: Good morning. Please be seated.
3 Counsel, what I'll do is proceed with motions first. All
4 right. Yes, ma'am.

5 MS. GRAHAM: Thank you, Your Honor. At this time
6 the State requests a continuance in this matter. The
7 material witness that we mentioned yesterday and that you
8 issued the material witness bench warrant has not been
9 brought in yet, Your Honor, and based upon that we would
10 ask for a continuance. The State has noticed this matter
11 for three terms in the subpoena that is a Court's
12 exhibit, Court's exhibit 1. Your Honor, we requested an
13 additional judge this term because we sensed that there
14 may be a witness issue and that it may be complicated.
15 For that reason this is the first term that we could have
16 put this case up from the last time that it was tried in
17 June. We have done that, Your Honor. We're prepared to
18 go forward as soon as we are able to get that material
19 witness picked up.

20 THE COURT: Okay. Can I see, you said it was
21 State's exhibit number 1. That was the subpoena?

22 MS. GRAHAM: Court's exhibit number 1. Yes, Your
23 Honor.. (Proffering.)

24 THE COURT: And that was the subpoena that was
25 signed on July 19th. He was noticed for August 7th,

1 August 21st and September 11th of 2017 at 9:00 a.m. and
2 this was served on August the 1st on Mr. Hayes. Okay.
3 Yes, sir.

4 MR. CHEHOSKI: Thank you, Your Honor. The defense
5 objects to the continuance. We have a - this case has
6 already been called to trial once. We have tried it. It
7 was mistried due to a hung jury. It has been called to
8 trial again yesterday. We have picked the jury. The
9 jury I'm guessing if they followed the Court's
10 instructions is waiting to be brought in. The defense is
11 ready to proceed.

12 The State has been in contact with the witness if I
13 remember testimony correctly as recently as yesterday and
14 I don't see any reason for further delay. Even after, we
15 are now five years after the ruling of State v. Langford
16 the State still has considerable powers which cases get
17 called to trial. They have called this case to trial.
18 Now they're telling the Court that they cannot proceed.
19 If the Court -- The defense is ready to proceed and go
20 forward.

21 If the Court is inclined to grant the continuance,
22 I'm moving to dismiss the case with prejudice as this
23 case has already been called to trial now twice. Your
24 Honor, Mr. Mack has been in custody over, about a year,
25 361 days by my count on the bench warrant and on this

1 warrant. I was in the process of looking up what his
2 bond is, Your Honor. Now the Court is keeping - asking
3 -- Well, the State is asking to keep Mr. Mack in jail for
4 even further through no fault of his own. He's been
5 ready to go to trial. We have gone to trial once. Now
6 the State has lost their witness. I don't think that the
7 State should be given a free pass in calling the case at
8 trial using up a full day of the Court's time and now
9 wiping the slate clean again.

10 Therefore, Your Honor, the defense is ready to
11 proceed to trial. We have a jury ready. We can go
12 forward. If the State does not want to go forward, we
13 move to dismiss with prejudice. If the Court is not
14 inclined to grant that motion, we move to vacate the
15 bench warrant and reinstate the bond to allow Mr. Mack to
16 make bond. Thank you, Your Honor.

17 MS. GRAHAM: Your Honor, if I may be heard very
18 briefly just in reply?

19 THE COURT: Yes, ma'am.

20 MS. GRAHAM: Your Honor, the defendant cannot be
21 heard to complain of a delay where we have inferences
22 that he is the actual architect of that delay in and of
23 itself. We have argued before this Court that he has
24 intimidated witnesses that have appeared in this
25 courtroom before. We have information from law

1 enforcement that the defendant's family is actively
2 threatening the CI in this case which essentially is
3 preventing him from coming into this courtroom and
4 effectuating the very delay that he complains of today.

5 By way of procedural background, Your Honor, the
6 defendant was picked up for failure to stop for blue
7 lights on a 2015 warrant. He was served with a warrant
8 in this case in February 2016. Or excuse me. It was
9 taken out in February of 2016. It was then served on the
10 defendant approximately six months later. He failed to
11 appear on that failure to stop for blue light. The facts
12 supporting that warrant are that he was fleeing from law
13 enforcement for approximately 20 minutes in a high speed
14 chase. So this is somebody who certainly is absolutely a
15 flight risk.

16 Your Honor, the bond in this matter was set at
17 \$15,000.00. Again, he does not do well with bond because
18 he does not come to court and he is absolutely a flight
19 risk. The State would also argue that he's a danger to
20 the community because he's putting this downward pressure
21 on the State's witnesses.

22 Your Honor, we did indeed call this case to trial
23 back in June after working for months to try to work out
24 some resolution. We could not do that. When we realized
25 that, we called it to trial. We put the case up.

1 Mr. Chehoski had protection in July. We immediately
2 tried it the first term thereafter requesting a special
3 additional session. We are prepared for the next two
4 terms to put this case up. When you have a material
5 witness warrant as I understand, Your Honor, the fugitive
6 task force needs additional means of getting to the
7 person identified in that warrant. They are going to
8 need to be able to ping cell phones. They have got those
9 orders signed at the end of the day by Judge McMahon.
10 They are actively working on getting this material
11 witness here. We are doing everything we can to move
12 this case forward in spite of the defendant's active
13 interference with that.

14 Your Honor, we believe an appropriate resolution
15 would just be to since we already have that last term
16 identified in the subpoena and have given the defendant
17 notice of that last term, that we keep - that the
18 defendant remain in custody until that last term. In the
19 event the State has not gotten the matter tried at that
20 time, that we can certainly instate a bond if the Court
21 deems that appropriate. But we would request at this
22 time it be a very high cash bond to ensure his presence
23 in this courtroom going forward. And right now we would
24 just ask that you do not vacate the bench warrant.

25 THE COURT: Yes, sir.

1 MR. CHEHOSKI: Your Honor, in response to the
2 State's allegation that it's my client, or that there's
3 an inference that my client's family is the one that's
4 exerting the pressure on Mr. Hayes to keep him from
5 testifying, in the previous trial Mr. Hayes testified
6 that he had been a confidential informant for several
7 years, could not count how many times he had done
8 purchases but was able to say that he had conducted at
9 least 50, approximately 50 purchases for Investigator
10 Purdy alone. Now, while Mr. Hayes is a professional
11 informant the risk of that is that at a certain point he
12 understands that he may get exposed. That had to happen
13 when he was - when this case was called to trial and he
14 was called as a witness back in June of this year. Your
15 Honor, the fact that now he's feeling pressure, we don't
16 have any proof that it's coming from my client's family.
17 It's just an inference or from any of the possibly
18 hundreds of other people that he has conducted purchases
19 for. That is also a reasonable inference here.

20 As Solicitor Mack has stated -- Graham rather. I'm
21 sorry. -- that Mr. Mack has a \$15,000.00 bond on this
22 charge, from what I can tell his bond was -- Give me one
23 moment please. -- \$10,000.00 on the failure to stop.

24 Your Honor, I am asking, again, I am asking the
25 Court to proceed with the trial. All the State's here.

1 They have their witnesses. The defense is here. The
2 defendant is here. The jury is here. We are ready to
3 move forward. The State is now asking for a continuance
4 because they are missing a key witness and they're asking
5 for a delay without any consequence for paneling a jury
6 and using a day of the Court's time and keeping Mr. Mack
7 in jail until they can find this witness which, you know,
8 could be anywhere from later today to never and without
9 some kind of consequence for what we have done over the
10 last day and so far this morning I feel that that would
11 offend the nature of justice in my opinion. Mr. Mack,
12 again, he's here. We are ready to go to trial. In the
13 alternative we move to dismiss with prejudice since we
14 already have been down this road before and then at least
15 allow Mr. Mack, if we are going to go forward with the
16 trial at a later date, at least allow Mr. Mack the
17 opportunity to make bond.

18 THE COURT: Okay. And I sense your frustration,
19 sir, and I understand that. You're a tremendous advocate
20 for your client. Your client is very lucky to have you
21 representing him in this matter. I sense frustration
22 from the State because these are matters over which they
23 don't have control. They have done everything they could
24 do to get this gentleman here for the second time. You
25 know, they did issue a subpoena and he failed to show.

1 They immediately then reacted to that. They didn't sit
2 on it and so understanding both sides of it and
3 understanding that I just really took this over yesterday
4 and there's another trial date coming up in less than two
5 weeks, tell me about your client's ties to the community.
6 Let's talk about the bond issue, okay? Just so I have a
7 full picture. How old is the defendant?

8 MR. CHEHOSKI: Your Honor, he's 31 years old. He
9 has a GED level of education. He is single. He does
10 have two children. They are in the custody of their
11 mother.

12 THE COURT: Where do they live?

13 MR. CHEHOSKI: Your Honor, as Mr. Mack has been in
14 custody for as long as I have known him, I was
15 subsequently appointed, my address has and I don't know
16 if its changed, please correct me if I'm wrong --

17 THE COURT: Do they live in South Carolina?

18 MR. CHEHOSKI: West Columbia, Lexington County.

19 THE COURT: Okay. All right.

20 MR. CHEHOSKI: So as far as I know he's a life long
21 resident of Lexington County or the midlands area. Maybe
22 the southern part of Richland County. Before his arrest
23 he was actually in school. He was studying business
24 management. He was doing online classes via University
25 of Phoenix. He had been employed with Nick's House of

1 Pizza which is also in West Columbia. He had been there
2 for about seven, eight months doing food prep, dish
3 washing, essentially kitchen or backup housework, Your
4 Honor.

5 The State will go into his record. There is nothing
6 violent on his record. He does have a couple of drugs
7 charges. This is his third offense. He also has a prior
8 failure to stop for blue light conviction because he's
9 charged with failure to stop for blue light second
10 offense. Outside of that I don't remember any other
11 General Sessions convictions. There may be some
12 magistrate level offenses.

13 Your Honor, I'm asking, again, he has bond already
14 at 10,000 on the failure to stop for blue light. That
15 had been paid and probably will have to be repaid again
16 unless the bonding company is willing to stay on and
17 15,000 for this charge which he has not been able to make
18 because he's been held on the bench warrant since his
19 arrest which happened on August 16th of last year.
20 Again, by my count I want to say it's 360 days or 61 days
21 that he's been in custody. Again, we have already tried
22 this case once.

23 THE COURT: Yes, sir.

24 MR. CHEHOSKI: I filed a motion to vacate the bench
25 warrant on June the 23rd which was essentially at the end

1 of the week following that first trial and this is our
2 first opportunity to have that motion heard.

3 THE COURT: Okay. And has the defendant ever lived
4 anywhere other than this West Columbia, Lexington,
5 Columbia, South Carolina area?

6 MR. CHEHOSKI: No, Your Honor.

7 THE COURT: Does he -- Are his parents alive?

8 MS. CHEHOSKI: I have spoken to his mother.

9 THE COURT: Where does she live?

10 MR. CHEHOSKI: I think they live also in the area.

11 THE COURT: Okay.

12 MS. GRAHAM: Your Honor, may the State be heard just
13 very briefly on his record?

14 THE COURT: Are you finished, counsel?

15 MR. CHEHOSKI: Yes, Your Honor.

16 THE COURT: Okay. Yes, ma'am.

17 MS. GRAHAM: Your Honor, I hear the defense's
18 argument about Mr. Mack being a young man and certainly
19 having family in the area and that's been the case since
20 he started committing crimes back in 2003. That was a
21 trespass after warning. He's got a 2005 simple
22 possession of marijuana. 2008 driving under suspension
23 and failure to comply with court order. 2007 possession
24 with intent to distribute marijuana, throwing bodily
25 fluids and possession of crack cocaine. 2008 he had a

1 parole revocation. 2009 another simple possession of
2 marijuana, distribution of crack cocaine and that one was
3 actually in proximity to a school, Your Honor. There was
4 an additional proximity charge. Excuse me. 2013 DUS.
5 2013 possession of crack cocaine. 2013 failure to stop
6 for blue light. The charge that he's in on now is a
7 second so failure to stop for blue light and then there
8 was a violation of parole. Again, Your Honor, this is
9 not somebody who does very well --

10 THE COURT: Violation of parole or probation?

11 MS. GRAHAM: Probation. Excuse me. With regard to
12 him being a danger to the community he's somebody who is
13 actively interfering with the process and also
14 complaining about the delay created by that. He is
15 somebody with a very long criminal record who does not
16 comply with terms of his bond. We think a reasonable
17 solution is to allow this to proceed through the terms
18 that have been identified in the subpoenas and then at
19 that time we can visit the bond issue. We just ask that
20 you deny the motion to vacate the bench warrant and we
21 can move forward once we - with any consideration with
22 regard to that bond after we have gotten through these
23 next two terms. I think that we can get this tried and
24 resolved.

25 THE COURT: Yes, sir.

1 MR. CHEHOSKI: Your Honor, the State is saying that
2 a reasonable solution is to give them everything they
3 want. Right now, again, what they want is to dismiss the
4 jury that is waiting for us, waiting for us for almost
5 half an hour now.

6 THE COURT: Yes, sir. And I will remind you, sir,
7 that the jury has not yet been sworn.

8 MR. CHEHOSKI: That is true. I understand that,
9 Your Honor. If the jury had been sworn, the State's
10 argument wouldn't carry any water at all because jeopardy
11 would have attached and Mr. Mack should be free to go.
12 However, again, I remind the Court that this is the
13 second jury that Mr. Mack had that we have had to try
14 this case and there have been no - since that first trial
15 there have not been any considerations of bond. I
16 disagree with the State's position on bond. Bond is
17 already set. It's a cumulative \$25,000.00 bond, ten for
18 the failure to stop for blue light, 15 for distribution
19 charge. Your Honor, I'm asking the Court that he be
20 allowed the opportunity to make it as a minimum
21 consequence for the State not being ready or not being
22 able to move forward at this time. My preference is that
23 the Court dismiss this charge with prejudice.

24 THE COURT: Yes, sir. I've heard you four times
25 now. Yes, sir. I understand that's what you want.

1 MR. CHEHOSKI: And so I want to make sure that the
2 record is abundantly clear.

3 THE COURT: It is.

4 MR. CHEHOSKI: And the Court is aware of what my
5 preference is. I have nothing further.

6 THE COURT: Okay. All right. Thank you all. At
7 this point I am going to grant the continuance. We have
8 a jury that we need to deal with and then I will issue a
9 written order regarding the other issues before me and
10 hopefully I will get that to you before the end of the
11 day, okay? And if you all can just make sure that my law
12 clerk has your e-mail address.

13 MR. CHEHOSKI: I sure will.

14 THE COURT: Okay. Anything else?

15 MS. GRAHAM: Nothing from the State, Your Honor.

16 MR. CHEHOSKI: Thank you.

17 THE COURT: Thank you.

18 MS. GRAHAM: Thank you, Judge.

19 THE COURT: Thank you for your professionalism.

20 Good luck to you, sir.

21 MR. CHEHOSKI: Thank you, Judge.

22 (Whereupon, the prospective jury entered the
23 courtroom at 10:00 a.m.)

24 THE COURT: Okay. Good morning. I hope you all had
25 a nice evening and sadly I have been informed that your

1 services are not needed this week and so you all will
2 actually be released. But I do want to thank you for
3 your efforts to be here on time and your professionalism
4 and your appearance and I'm disappointed that we aren't
5 going to go forward with the trial that had been
6 scheduled and I'm not certain that you shared those same
7 feelings but I do want to thank you very, very much for
8 appearing and it's my understanding, correct, Madam
9 Clerk, that they don't need to call in?

10 THE CLERK: No, ma'am. They don't need to call in.

11 THE COURT: So you all are free to go. You will
12 need to turn in your juror button and I believe that your
13 compensation will come in ten days.

14 THE CLERK: Normally on Friday they start working on
15 the slips and the checks and stuff like that so I would
16 expect maybe sometime in the middle of next week or the
17 end of next week. If you need another work excuse, go
18 down to the record room again and get a work excuse. I
19 don't have them. I told the jury clerk that you all
20 might come back down and get another one. Just ask for
21 the jury clerk.

22 THE COURT: And I'm sorry that you all didn't come
23 in until about five minutes ago. We had some matters we
24 needed to take up this morning outside of your presence
25 that really determined the rest of the week. And so

1 again, thank you so very much and it's further my
2 understanding that you all if you are summoned again for
3 jury service, you will not have to serve for three years
4 unless you want to. Okay. All right. Thank you again.
5 Have a nice week.

6 (Whereupon, the jury was released from further
7 service at 10:05 a.m.)

8 WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

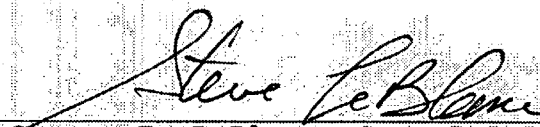
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 7th and 8th day of August,
11 2017.

12 I FURTHER CERTIFY that the forgoing 88 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 21st day of November, 2017.

18
19
20 
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	2016-GS-32-02729
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Marcus Antonio Mack	)	)
<u>DEFENDANT</u>	)	August 21, 2017
		Lexington, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE; and a jury.

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

MELANIE GRAHAM, ASSISTANT SOLICITOR
 LESTER M. BELL, JR., ASSISTANT SOLICITOR
 Attorneys for the State'

JASON CHEHOSKI, ASSISTANT PUBLIC DEFENDER
 Attorney for the Defendant

KESHIA REED
 Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

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EXHIBITS

<u>NO.</u>	DESCRIPTION	<u>ID.</u>	<u>EVD.</u>
Court's 1	Defendant's Requested Voir Dire \		25

1 THE COURT: We are going to kind of shift gears,
2 okay, and I'm going to start to ask you questions about
3 the cases that are on the docket, okay. Now, I need to
4 make sure everybody hears me loud and clear. You are
5 still under oath, okay. And you're still required to
6 answer my questions truthfully, okay. And what we're
7 going to do is shift to the first case that is on the
8 docket, okay. Do you have an indictment?

9 MS. GRAHAM: Yes, Your Honor, the State has the
10 indictment.

11 THE COURT: You can call it in just a second and
12 bring me one -- the indictment once you call it. All
13 right. So we're going to move to the first case on the
14 docket. So these questions are going to shift from are
15 you qualified to do you know anything about this case,
16 okay. Does that make sense? All right. So I'm going to
17 ask you these questions. Now, I'm going to give you an
18 example, I like this example because I think it's the best
19 example. So I'm going to ask you a lot of questions about
20 do you know this person or do you know that person, okay.
21 And we all interpret the word do you know somebody
22 differently, okay. What I think knowing somebody is
23 different from what you may think knowing means. So I'm
24 going to give you an example. So I did a case just like
25 this and a guy on the front row in the jury panel was a

1 lawyer. Now, in Columbia, there are thousands of lawyers.
2 I'd never seen the guy in my whole life, okay. I didn't
3 know he was a lawyer from anybody else, but he stood up
4 and said I'm a lawyer and I work at this law firm. I took
5 my notes.

6 In just a second, I'm going to ask you do you
7 know any of the lawyers in this case, okay. And it's not
8 wrong if you know any of the lawyers in the case, but you
9 just need to tell us, well, this guy -- and this is a real
10 case. This guy never stood up. And once we were through,
11 all the lawyers in the case said, hey, Judge, can we
12 approach and I said yes. And they said the lawyer in the
13 front row we all went to law school with him, okay. Now,
14 all of us can testify to you that there's just a couple of
15 hundred people in your law school class. Now, he hadn't
16 never eaten dinner with any of those people and he never
17 been to their house and he probably didn't have their cell
18 phone number, but they knew who he was. He should have
19 stood up and said, hey, Judge, I know these people, I went
20 to law school with them. There's nothing wrong with that,
21 okay. So when you err -- when you make a decision about
22 answering these questions that I'm about to ask you, I
23 want you to err on the side of providing us too much
24 information as oppose to too little information. Does
25 that make sense?

1 So I'm going to ask you a question are you
2 connected to law enforcement in any way. If you have a
3 cousin who's a law enforcement officer in Alabama, I want
4 you to just stand up and tell us, okay. There's nothing
5 wrong with that, but we're just gathering all that
6 information so that we can all make good decisions about
7 who to put on the jury and who not to, okay. Fair enough,
8 everybody understand me? Okay. And if you don't
9 understand me or you need me to repeat something, just
10 say, Judge, please repeat the case. All right. Is the
11 State ready to proceed on The State of South Carolina
12 against Marcus Antonio Mack?

13 MS. GRAHAM: We are, Your Honor.

14 THE COURT: And, Mr. Chehoski, you ready to
15 proceed?

16 MR. CHEHOSKI: Yes, Your Honor.

17 THE COURT: All right. Ms. Graham, you may call
18 your case.

19 MS. GRAHAM: May it please the Court, Your
20 Honor. The State at this time calls Marcus Antonio Mack
21 to trial. This matter comes before the Court pursuant to
22 indictment number 2016-GS-32-02729 on distribution of
23 cocaine. The State is now handing up the indictment, Your
24 Honor.

25 THE COURT: Okay. Thank you very much. Ladies

1 and gentlemen, this is the case of The State of South
2 Carolina against Marcus Antonio Mack. This is indictment
3 2016-GS-32-2729. This is an indictment for distribution
4 of cocaine. This indictment that I hold in my hand has
5 been true bill by the grand jury. Now, this indictment is
6 not evidence of anything. It is not proof of anything.
7 This is simply the document that gives this court the
8 authority to hear this case. To this indictment, the
9 defendant has pled not guilty and that plea puts the
10 burden of proof on the State to prove his guilt to a jury
11 unanimously beyond a reasonable doubt. This indictment
12 alleges that Marcus Antonio Mack did in Lexington County
13 South Carolina on or about September the 4th of 2015
14 knowingly, willfully, intentionally and unlawfully
15 distribute, dispense or deliver or otherwise aid, abet,
16 attempt or conspire to distribute, dispense or deliver a
17 quantify of cocaine or cocaine base, a control substance
18 under the provisions of the South Carolina code of laws as
19 amended.

20 Again, this indictment is not proof of anything.
21 It is not evidence of anything. It is simply the document
22 that allows this court to hear this case. To that charge,
23 the defendant has pled not guilty and the burden of proof
24 is on the State. All right. So I'm going to let the
25 lawyers introduce themselves and so you get to know who

1 they are.

2 And we'll start with the State, Ms. Graham, if
3 you will introduce yourself and Mr. Bell.

4 MS. GRAHAM: Good morning, ladies and gentlemen,
5 I'm Melanie Graham. I'm assistant solicitor with the
6 Eleventh Circuit Solicitor's office. I together with my
7 co-counsel, Gill Bell, primarily try cases hear in
8 Lexington County.

9 THE COURT: All right. So the question is is
10 anybody related by blood or marriage, close personal
11 friends with or have any connection to business, personal,
12 social or otherwise to Ms. Graham or to Mr. Bell or anyone
13 that works in the Eleventh Circuit Solicitor's office?
14 Now, the Eleventh Circuit Solicitor is Rick Hubbard and
15 the Eleventh Circuit encompasses Lexington, Edgefield,
16 Saluda, McCormick counties. Anybody related to anybody,
17 friends with anybody, have any connection to Ms. Graham or
18 Mr. Bell or anyone in the Eleventh Circuit Solicitor's
19 office, if so please stand?

20 (WHEREUPON, there are none.)

21 THE COURT: All right. Mr. Chehoski, if you
22 will please introduce yourself and your client?

23 MR. CHEHOSKI: My name is Jason Chehoski. I am
24 assistant attorney with the Lexington County Public
25 Defender's office. I represent Marcus Mack.

1 THE COURT: All right. And the same question is
2 anybody related by blood or marriage, close personal
3 friends with, have any connection to business, personal,
4 social or otherwise to Mr. Chehoski or Mr. Mack or anyone
5 in the Lexington County Public Defender's office? Yes,
6 ma'am, tell me your name?

7 PROSPECTIVE JUROR: Annie Brooks.

8 THE COURT: Ms. Brooks is juror number 23. And
9 who do you know, Ms. Brooks?

10 PROSPECTIVE JUROR: Marcus Mack we went to high
11 school together.

12 THE COURT: Okay, very well. And would this
13 affect your ability to be fair and impartial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Are you willing to base your
16 decision off the evidence and the law?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: And will you do so?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Thank you very much, Ms. Mack (sic).
21 All right. And your name, ma'am?

22 PROSPECTIVE JUROR: Joy Rambo number 160.

23 THE COURT: Ms. Rambo is juror 160. And who do
24 you know, Ms. Rambo?

25 PROSPECTIVE JUROR: I know Mr. Chehoski.

1 THE COURT: Okay. And how do you know him?

2 PROSPECTIVE JUROR: We use to attend church
3 together.

4 THE COURT: Great. And would that affect your
5 ability to be fair and impartial?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Are you willing to base your
8 decision off the evidence and the law?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And will you do so?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. And, yes, ma'am, tell me your
13 name?

14 PROSPECTIVE JUROR: Joann Gibbons.

15 THE COURT: Ms. Gibbons is juror number 65. Who
16 do you know, Ms. Gibbons?

17 PROSPECTIVE JUROR: I think I'm kin to Mr. Mack.

18 THE COURT: Okay. And what relation would be
19 that?

20 PROSPECTIVE JUROR: Cousin.

21 THE COURT: Cousin.

22 PROSPECTIVE JUROR: I think the third
23 generation.

24 THE COURT: All right. And would this affect
25 your ability to be fair and impartial?

1 PROSPECTIVE JUROR: No, it wouldn't.

2 THE COURT: Are you willing to base your
3 decision off the evidence and the law?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: And will you do so?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Anybody else?

8 (WHEREUPON, there are none.)

9 THE COURT: All right. The next thing I'm going
10 to do is read a list of potential witnesses to you. Now,
11 wait 'til the end before you stand up. I want to make
12 sure that -- we want to know if you know anybody on the
13 witness list. And again the question is are you related
14 by blood or marriage, close personal friends with, have
15 any connection to business, personal or social or
16 otherwise, any of the potential witnesses. Even if you
17 hear a name -- let's say the name is John Smith and you
18 know a John Smith and you want to see if that's the John
19 Smith that you know, we can usually provide some more
20 identifying information if necessary, okay. So if you
21 hear a name and you think I may know that person or I may
22 be connected to that person, just stand up where you are:
23 Agent S. Purdy P-U-R-D-Y of the Lexington County Sheriff's
24 Department. Thank you, Mr. Purdy. Brian Travis of the
25 Lexington County Sheriff's Department, Michael Merckle of

1 the Lexington County Sheriff's Department, Jody Putney of
2 the West Columbia Police Department, Frank Hayes, Candy
3 Kyzer K-Y-Z-E-R of the Lexington County Sheriff's
4 Department, Margaret Walker of the Lexington County
5 Sheriff's Department, Johnny Lee Dickerson, William
6 Herring who works for Securus, is that right?

7 MS. GRAHAM: Yes, Your Honor.

8 THE COURT: Okay. And Jesse Quattlebaum who's
9 an investigator with the Eleventh Circuit Solicitor's
10 office. Anybody related by blood or marriage, close
11 personal friends with, have any connection to business,
12 personal, social or otherwise any of those witnesses, if
13 so please stand? Okay. And you were our add on, Ms.
14 Dorn, is that right number 47?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And who do you know, ma'am?

17 PROSPECTIVE JUROR: I just know I went to school
18 with a John Dickerson. I don't know if it's the same one.

19 THE COURT: Okay. And would that affect your
20 ability to be fair and impartial?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Are you willing to base your
23 decision off the evidence and the law?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And will you do so?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you, ma'am.

3 All right. Ladies and gentlemen, this is
4 allegedly a case that is in violation of the drug laws of
5 South Carolina that occurred on or about September the 4th
6 of 2015, on or near the 600 block of North Brown Street in
7 West Columbia, South Carolina. Again, these are
8 allegations and allegations only, but does anybody know
9 anything about this case, have you heard anything about
10 this case, have you formed or expressed any opinions about
11 this case or have any knowledge about this case in anyway,
12 shape or form, if so please stand?

13 (WHEREUPON, there are none.)

14 THE COURT: All right. Is there anybody who has
15 formed or expressed an opinion about any matter or issue
16 in this case at all, if so please stand?

17 (WHEREUPON, there are none.)

18 THE COURT: Is there any member of the jury
19 panel who is aware of any bias or prejudice that you may
20 have towards either the State or the defendant in this
21 case, if so please stand?

22 (WHEREUPON, there are none.)

23 THE COURT: Is there any member of the jury
24 panel who is a member of or contributor to any group which
25 has as its primary concern the promotion of law

1 enforcement or victims' rights?

2 (WHEREUPON, there are none.)

3 THE COURT: These groups would include, but are
4 not limited to MADD, SADD or CAVE or defendants' rights
5 such as the Innocence Project?

6 (WHEREUPON, there are none.)

7 THE COURT: Is there any member of the jury
8 panel know of any reason whatsoever why he or she should
9 not serve as a juror in this case?

10 (WHEREUPON, there are none.)

11 THE COURT: All right. I have some additional
12 questions to ask you give me just one second. All right.
13 Have you or any member of your family or close personal
14 friend ever had any interaction with the Lexington County
15 Sheriff's office such as you could not render a fair and
16 impartial decision in this matter?

17 (WHEREUPON, there are none.)

18 THE COURT: Have you or any member of your
19 family or close personal friend had any interaction with
20 the West Columbia Police Department such that you could
21 not render a fair and impartial decision in this matter?

22 (WHEREUPON, there are none.)

23 THE COURT: And the same question as to the
24 United States Drug Enforcement Agency anybody had any
25 interaction with them or close personal friend or family

1 member that had interaction with them such that you cannot
2 render a fair and impartial decision in this matter, if so
3 please stand?

4 (WHEREUPON, there are none.)

5 THE COURT: All right. Have you or any member
6 of your close -- any member of your family or close
7 personal friends ever been employed with law enforcement?
8 All right, stand up right where you are, okay. We are
9 going to take these one at a time just tell me who you are
10 and what your number is and then just tell me -- I'm going
11 to make up one. I would say my brother he works for
12 Lexington Sheriff Department. My sister she works for
13 SLED, okay. That's the information we're going to gather,
14 okay. All right. Tell me your name?

15 PROSPECTIVE JUROR: Kimberly Melton juror number
16 23 (sic).

17 THE COURT: Hold on I've got to get my different
18 list. 123 and what's the relation?

19 PROSPECTIVE JUROR: I have multiple
20 relationships. My grandfather retired from Springdale
21 County as a drug detective. My older brother was
22 previously employed by the state as a correctional
23 officer. My grandmother who is retired from a
24 correctional facility and my deceased grandmother on my
25 dad's side also worked for a correction facility in

1 Beaufort County.

2 THE COURT: And would this affect your ability
3 to be fair and impartial?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Okay. Thank you very much.
6 Tell me your name?

7 PROSPECTIVE JUROR: Patricia Moorer 130 I have a
8 uncle who's retired Columbia Police Department.

9 THE COURT: And would this affect your ability
10 to be fair and impartial?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: All right. Thank you. We're going
13 to come straight across the black shirt gentleman.

14 (WHEREUPON, juror number 67 is James Gillion.)

15 PROSPECTIVE JUROR: Juror 67 I work for a year
16 at the department of corrections when I was 21 years old.

17 THE COURT: Would this affect your ability to be
18 fair and impartial?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: All right.

21 (WHEREUPON, juror number 72 is Carla Griffin.)

22 PROSPECTIVE JUROR: Number 72.

23 THE COURT: All right, Ms Griffin.

24 PROSPECTIVE JUROR: My husband is a Richland
25 County Deputy Sheriff.

1 THE COURT: Would this affect your ability to be
2 fair and impartial?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right.

5 (WHEREUPON, juror number 132 is Denise D.
6 Minemier.)

7 PROSPECTIVE JUROR: 132 Ms. Minemier.

8 THE COURT: 132 Ms. Minemier.

9 PROSPECTIVE JUROR: My father's a retired state
10 constable. A cousin is a retired Columbia police officer
11 and now works for Richland County as a school resource
12 officer.

13 THE COURT: Okay. Would this affect your
14 ability to be fair and impartial?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. In the blouse, yes, ma'am,
17 your name?

18 PROSPECTIVE JUROR: Gina Connelly number 34 my
19 husband is commissioned with the State.

20 THE COURT: He's what?

21 PROSPECTIVE JUROR: He's commissioned --
22 lieutenant with the Highway Patrol.

23 THE COURT: Okay. He's a lieutenant in the
24 Highway Patrol?

25 PROSPECTIVE JUROR: Well, he's with DPS now.

1 THE COURT: Got it. And would this affect your
2 ability to be fair and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Okay, in the blue shirt your name?

5 PROSPECTIVE JUROR: Perry Estes number 56. My
6 fiancé is a federal marshal.

7 THE COURT: Would this affect your ability to be
8 fair and impartial?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: Treasa Thompson 199. My
12 brother was in Columbia Police Department and he retired
13 from the Houston Police Department. My son is security
14 forces in the Air Force.

15 THE COURT: Would this affect your ability to be
16 fair and impartial?

17 PROSPECTIVE JUROR: No.

18 THE COURT: All right, in the blue shirt.

19 PROSPECTIVE JUROR: Colleen Carroll number 28.
20 My father was Marine MP and worked in the department of
21 corrections for South Carolina.

22 THE COURT: And that was juror number 28; is
23 that right, Ms. Carroll?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay, and the black, name?

1 PROSPECTIVE JUROR: Lori Dupree juror 52. My
2 husband works for the federal bureau of prisons.

3 THE COURT: And would this affect your ability
4 to be fair and impartial?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay, right next to her.

7 PROSPECTIVE JUROR: 144 Kevin Nation.

8 THE COURT: Mr. Nation, go ahead.

9 PROSPECTIVE JUROR: I'm a retired police
10 officer. And during my tenure as a police officer, I was
11 a drug addiction officer as well.

12 THE COURT: All right. Would this affect your
13 ability to be fair and impartial?

14 PROSPECTIVE JUROR: No.

15 THE COURT: All right, in the white shirt?

16 PROSPECTIVE JUROR: Juror number 60 Amy
17 Flanary-Smith. My brother is a Florida sheriff's deputy.
18 My uncle is retired state bureau of investigation agent
19 with North Carolina.

20 THE COURT: Would this affect your ability to be
21 fair and impartial?

22 PROSPECTIVE JUROR: No, Your Honor.

23 THE COURT: All right, in the orange?

24 (WHEREUPON, juror number 7 is Alexandria G.
25 Baker.)

1 PROSPECTIVE JUROR: Juror number seven.

2 THE COURT: Ms. Baker.

3 PROSPECTIVE JUROR: My mom is currently employed
4 at Lexington County probation and parole.

5 THE COURT: Would this affect your ability to be
6 fair and impartial?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Okay, right behind her.

9 PROSPECTIVE JUROR: Jesse Thompson 198 first
10 cousin was a police officer in Myrtle Beach, another first
11 cousin sheriff's department in Georgetown county.

12 THE COURT: Would this affect your ability to be
13 fair and impartial?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: All right, in the white blouse your
16 name, ma'am?

17 PROSPECTIVE JUROR: Cheryl Williams juror number
18 215. I was employed about five years ago in Lexington
19 County bond court as a clerk of court.

20 THE COURT: And would this affect your ability
21 to be fair and impartial?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right, in the peach blouse?

24 PROSPECTIVE JUROR: Cendy James juror number 89
25 former brother-in-law was in law enforcement in Texas.

1 THE COURT: And would this affect your ability
2 to be fair and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: All right, coming right across your
5 name, ma'am?

6 PROSPECTIVE JUROR: Kim Smith juror number 179.
7 My nephew is a chief of police in California.

8 THE COURT: Would this affect your ability to be
9 fair and impartial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, Flowers.

12 (WHEREUPON, juror number 61 is Jennifer
13 Flowers.)

14 PROSPECTIVE JUROR: Number 61. I have a cousin
15 James Flowers that was a former Lexington police officer
16 and I do have another cousin who is Rachel Flowers who is
17 also employed in Richland County.

18 THE COURT: Would this affect your ability to be
19 fair and impartial?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: In the white, yes, ma'am.

22 PROSPECTIVE JUROR: Gisele Maynard 110.

23 THE COURT: 110 who do you know, Ms. Maynard?

24 PROSPECTIVE JUROR: My nephew is in law
25 enforcement in Arizona.

1 THE COURT: Would this affect your ability to be
2 fair and impartial?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right, come across Ms. Dorn.

5 (WHEREUPON, juror number 47 is Ansley Dorn.)

6 PROSPECTIVE JUROR: Forty-seven my grandfather
7 is a retired state trooper.

8 THE COURT: And would this affect your ability
9 to be fair and impartial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, come in across in the
12 blouse, yes, ma'am, right there.

13 PROSPECTIVE JUROR: Margaret McDonald number
14 113. My husband is employed with South Carolina
15 Department of Corrections in the engineering department
16 and my ex-husband is a cop for Richland County Sheriff
17 Department.

18 THE COURT: Okay. And would this affect your
19 ability to be fair and impartial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: All right, yes, ma'am.

22 PROSPECTIVE JUROR: Number 104 Deborah Lindler
23 and my father was a fallen officer.

24 THE COURT: Your father was who?

25 PROSPECTIVE JUROR: A fallen officer.

1 THE COURT: Thank you, ma'am. Would this affect
2 your ability to be fair and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: All right, right behind her tell me
5 your name?

6 PROSPECTIVE JUROR: Jesse Szuman 194, close
7 personal friend in law enforcement.

8 THE COURT: And would this affect your ability
9 to be fair and impartial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, in the yellow shirt?

12 (WHEREUPON, juror number is 63 Gregory Fowler.)

13 PROSPECTIVE JUROR: Fowler 63.

14 THE COURT: Yes, sir.

15 PROSPECTIVE JUROR: My brother is a detective in
16 Pennsylvania.

17 THE COURT: Would this affect your ability to be
18 fair and impartial?

19 PROSPECTIVE JUROR: No, Your Honor.

20 THE COURT: All right, and in the blue shirt.

21 PROSPECTIVE JUROR: Desmond Scott 172. I was
22 sergeant at SCDC for five years.

23 THE COURT: Would this affect your ability to be
24 fair and impartial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: All right.

2 PROSPECTIVE JUROR: Juror number 64 Tina
3 Gartmon. My second cousin retired from Lexington County
4 sheriff department.

5 THE COURT: Would this affect your ability to be
6 fair and impartial?

7 PROSPECTIVE JUROR: No.

8 THE COURT: All right. Have you or any close
9 friends or relatives ever been employed by any prosecuting
10 agencies in South Carolina or other states, so this would
11 be attorney general's office, district attorney's office,
12 solicitor's office or U.S. Attorney's office? What's your
13 name, ma'am?

14 PROSPECTIVE JUROR: Beth Selbee.

15 THE CLERK: Juror number 173.

16 PROSPECTIVE JUROR: Niece a federal prosecutor.

17 THE COURT: Okay. And would this affect your
18 ability to be fair and impartial?

19 PROSPECTIVE JUROR: It will not.

20 THE COURT: Okay. Any further voir dire from
21 the State?

22 MS. GRAHAM: Nothing from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. CHEHOSKI: Nothing more from defense, Your
25 Honor, other than I submitted -- I request that my

1 proposed voir dire be made a court exhibit.

2 THE COURT: Okay, very well.

3 MR. CHEHOSKI: Thank you.

4 (WHEREUPON, Court's Exhibit No. 1 was admitted
5 into evidence.)

6 THE COURT: Okay. So what we're going to do at
7 this point and time is Ms. Carol, who's over here to your
8 very far right, is going to randomly select how many of
9 them?

10 THE CLERK: Who many alternates are you going to
11 select?

12 THE COURT: Two.

13 THE CLERK: Two, so we'll do a random draw of
14 36.

15 THE COURT: Okay. So we're going to randomly --
16 and I promise you this is hundred percent random. We are
17 going to randomly select 36 of you out of this group,
18 okay. And out of the 36, we're going to select 14 of you,
19 okay. So when your name is called -- do you all have them
20 come up to the middle?

21 THE CLERK: Yes, sir.

22 THE COURT: So when your name is called grab all
23 of your belongings and you'll walk right up here to where
24 this big monstrosity in the middle of the courtroom is and
25 face out, face towards the audience. And they will ask

1 the State whether or not they want to seat you or excuse
2 you. And then they will ask the defense whether or not
3 they want to seat you or excuse you. If both sides say
4 seat or swear, then you come right over here to Mr. Jones
5 and he'll show you where to sit, okay. If either side
6 says excused, then just return back to your seat, okay,
7 because we're going to pick another jury right after this
8 one, okay. I will tell you you are very fortunate. You
9 have a great clerk of court's office. Circuit court
10 judges travel all over the entire state. I was in Pickens
11 a few weeks ago. I have to be in Saluda again in a few
12 weeks. I been to Dorchester County this year. I was in
13 Horry County last week. We travel all over the entire
14 state. You have a great clerk of court's office. It is
15 very professionally run and they have their act together.
16 And it's always a pleasure to come here because your clerk
17 does a great job.

18 Yes, sir.

19 PROSPECTIVE JUROR: Possible I can have a
20 bathroom break?

21 THE COURT: Yeah, we're going to take a bathroom
22 break just as soon as I finish, okay. We going to pick
23 this jury and we're going to take a break. And then we're
24 going to regear up for the next one, okay. We haven't hit
25 an hour we been going yet, so give me just a few minutes.

1 So if your name is called, I want you to come
2 forward and grab all your belongings and then we will
3 start the selection process, all right.

4 THE CLERK: Proceed?

5 THE COURT: Yes, ma'am.

6 THE CLERK: Number 28 Collen Carroll.

7 (WHEREUPON, a white female, comes forward.)

8 THE CLERK: What say you for the State?

9 MS. GRAHAM: Please present the juror.

10 THE CLERK: What say you for the defense?

11 MR. CHEHOSKI: Please swear Ms. Carroll.

12 THE CLERK: Please have a seat in the jury box,
13 ma'am.

14 Number 63 Gregory Fowler.

15 (WHEREUPON, a white male, comes forward.)

16 THE CLERK: What say you for the State?

17 MS. GRAHAM: Please present the juror.

18 THE CLERK: What say you for the defense?

19 MR. CHEHOSKI: Please swear Mr. Fowler.

20 THE CLERK: Have a seat in the jury box, sir.

21 Fifty-two Lori Dupree.

22 (WHEREUPON, a white female, comes forward.)

23 THE CLERK: What say the State?

24 MS. GRAHAM: Please present the juror.

25 THE CLERK: What say for the defense?

1 MR. CHEHOSKI: Please swear Ms. Dupree.
2 THE CLERK: Have a seat in the jury box, ma'am.
3 Number 4 Gail Anderson.
4 (WHEREUPON, a white female, comes forward.)
5 THE CLERK: What say for the State?
6 MS. GRAHAM: Please present the juror.
7 THE CLERK: What say for the defense?
8 MR. CHEHOSKI: Please swear Ms. Anderson.
9 THE CLERK: Have a seat in the jury box, ma'am.
10 Ninety-three Tony Jumper.
11 (WHEREUPON, a white male, comes forward.)
12 THE CLERK: What say the State?
13 MS. GRAHAM: Please present the juror.
14 THE CLERK: What say for the defense?
15 MR. CHEHOSKI: Please swear Mr. Jumper.
16 THE CLERK: Have a seat in the jury box, sir.
17 Fifty-nine David Fisher.
18 (WHEREUPON, a white male, comes forward.)
19 THE CLERK: What say for the State?
20 MS. GRAHAM: Please excuse the juror.
21 THE CLERK: Return to your seat please, sir.
22 Number 221 Nanette Wooton.
23 (WHEREUPON, a white female, comes forward.)
24 THE CLERK: What say the State?
25 MS. GRAHAM: Please excuse the juror.

1 THE CLERK: Return to your seat please, ma'am.
2 Forty-seven Ansley Dorn.
3 (WHEREUPON, a white female, comes forward.)
4 THE CLERK: What say the State?
5 MS. GRAHAM: Please present the juror.
6 THE CLERK: What say for the defense?
7 MR. CHEHOSKI: Please swear Ms. Dorn.
8 THE COURT: Have a seat in the jury box, ma'am.
9 Thirty-two Gabriel Coker.
10 (WHEREUPON, a white male, comes forward.)
11 MS. GRAHAM: Please present the juror.
12 THE CLERK: Okay. What say for the defense?
13 MR. CHEHOSKI: Please swear Mr. Coker.
14 THE CLERK: Have a seat in the jury box.
15 Number 101 Edward Larocque.
16 (WHEREUPON, a white male, comes forward.)
17 THE CLERK: What say for the State?
18 MS. GRAHAM: Please present the juror.
19 THE CLERK: What say for the defense?
20 MR. CHEHOSKI: Please swear Mr. Larocque.
21 THE CLERK: Have a seat in the jury box, sir.
22 Number 68 Jessica Goodley.
23 (WHEREUPON, a black female, comes forward.)
24 THE CLERK: What say for the State?
25 MS. GRAHAM: Please excuse the juror.

1 THE CLERK: Return to your seat please, ma'am.

2 Sixty-one Jennifer Flowers.

3 (WHEREUPON, a white female, comes forward.)

4 THE CLERK: What say the State?

5 MS. GRAHAM: Please present the juror.

6 THE CLERK: What say for the defense?

7 MR. CHEHOSKI: Please excuse Ms. Flowers from
8 service in the case.

9 THE CLERK: Return to your seat please, ma'am.

10 Eighty-nine Cendy James.

11 (WHEREUPON, a white female, comes forward.)

12 THE CLERK: What say the State?

13 MS. GRAHAM: Please present the juror.

14 THE CLERK: What say for the defense?

15 MR. CHEHOSKI: Please excuse Ms. James from
16 service in the case.

17 THE CLERK: Return to your seat please, ma'am.

18 165 Taylor Rodgers.

19 (WHEREUPON, a white female, comes forward.)

20 THE CLERK: What say the State?

21 MS. GRAHAM: Please present the juror.

22 THE CLERK: What say for the defense?

23 MR. CHEHOSKI: Please swear Ms. Rodgers.

24 THE CLERK: Have a seat in the jury box, ma'am.

25 144 Kevin Nation.

1 (WHEREUPON, a white male, comes forward.)
2 THE CLERK: What say for the State?
3 MS. GRAHAM: Please present the juror.
4 THE CLERK: What say for the defense?
5 MR. CHEHOSKI: Please excuse Mr. Nation from
6 service in the case.
7 THE CLERK: Return to your seat please, sir.
8 215 Cheryl Williams.
9 (WHEREUPON, a black female, comes forward.)
10 THE CLERK: What say for the State?
11 MS. GRAHAM: Please present the juror.
12 THE CLERK: What say for the defense?
13 MR. CHEHOSKI: Please swear Ms. Williams.
14 THE CLERK: Have a seat in the jury box, ma'am.
15 218 Needham Williamson.
16 (WHEREUPON, a white male, comes forward.)
17 THE CLERK: What say for the State?
18 MS. GRAHAM: Please present the juror.
19 THE CLERK: What say for the defense?
20 MR. CHEHOSKI: Please swear Ms. Williamson.
21 THE CLERK: Have a seat in the jury box, sir.
22 130 Patricia Moorer.
23 (WHEREUPON, a white female, comes forward.)
24 THE CLERK: What say for the State?
25 MS. GRAHAM: Please present the juror.

1 THE CLERK: What say for the defense?

2 MR. CHEHOSKI: Please excuse Ms. Moorer.

3 THE CLERK: Return to your seat please, ma'am.
4 137 Mary Montgomery.

5 (WHEREUPON, a white female, comes forward.)

6 THE CLERK: What say for the State?

7 MS. GRAHAM: Please present the juror.

8 THE CLERK: What say for the defense?

9 MR. CHEHOSKI: Please swear Ms. Montgomery.

10 THE CLERK: Have a seat in the jury box, ma'am.
11 Proceed with alternates, Your Honor.

12 THE COURT: Yes, ma'am, we're going to pick two
13 alternates strikes will be one and two on each.

14 THE CLERK: 194 Jesse Szuman.

15 (WHEREUPON, a white male, comes forward.)

16 THE CLERK: What say for the State?

17 MS. GRAHAM: Please present the juror.

18 THE CLERK: What say for the defense?

19 MR. CHEHOSKI: Please excuse Mr. Szuman from
20 this case.

21 THE CLERK: Return to your seat please, sir.
22 187 Michael Steinbacher.

23 (WHEREUPON, a white male, comes forward.)

24 PROSPECTIVE JUROR: May I approach please, Your
25 Honor. I don't know if it has a bearing or not, but in

1 regards to the drug case, my sister's been an addict for a
2 while, so I don't know if I'll have issues.

3 THE COURT: Have a seat in the back of the room.
4 You're not allowed to leave until I excuse you. I'm
5 striking him for cause on my...

6 MR. CHEHOSKI: Yes, Your Honor.

7 THE CLERK: Number 39 Camille D'Ascoli.

8 (WHEREUPON, a white female, comes forward.)

9 THE CLERK: What say for the State?

10 MS. GRAHAM: Please excuse the juror.

11 THE CLERK: Return to your seat please, ma'am.

12 Number 23 Katherine Sakovich excuse me -- 169

13 Katherine Sakovich.

14 (WHEREUPON, a white female, comes forward.)

15 THE CLERK: What say for the State?

16 MS. GRAHAM: Please present the juror.

17 THE CLERK: What say for the defense?

18 MR. CHEHOSKI: Please seat Ms. Sakovich.

19 THE CLERK: Have a seat in the jury box, ma'am.

20 That's alternate one, Your Honor.

21 THE COURT: Strikes start over.

22 186 Tyrone Starks.

23 (WHEREUPON, a black male, comes forward.)

24 THE CLERK: What say the State?

25 MS. GRAHAM: Please present the juror.

1 THE CLERK: What say for the defense?

2 MR. CHEHOSKI: Please seat Mr. Starks.

3 THE CLERK: Have a seat in the jury box, sir.
4 That's alternate number two, Your Honor.

5 THE COURT: All right. Any exception to the
6 jury selection process from the State?

7 MS. GRAHAM: Nothing from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. CHEHOSKI: None from the defense, Your
10 Honor.

11 THE COURT: I struck Mr. Steinbacher for cause.
12 Does the State object to that or they need to be heard on
13 that issue?

14 MS. GRAHAM: No, the State does not need to be
15 heard on the issue?

16 THE COURT: Mr. Chehoski, I assume you were
17 going to ask for that anyway, but I did it. You okay with
18 that issue?

19 MR. CHEHOSKI: I have no objection, Your Honor.

20 THE COURT: Okay. All right. Here's what we're
21 going to do, all right, so you 14 you're going to be my
22 jury for my first trial, okay. So I'm going to release
23 you. When I release you here in the next two or three
24 minutes, Mr. Jones is going to show you where the jury
25 room is, show them how to come back in on Wednesday

1 morning, okay. So you leave today, do not need to come
2 back in. You do not need to call back in. You do not
3 need to be here tomorrow. You need to be back Wednesday
4 morning at 9:30, okay, Wednesday morning at 9:30, okay.
5 My two alternates raise your hands. I'm going to put you
6 -- when you come back in on Wednesday, you be on the top
7 row seated next to the lady on the end, okay. You two
8 have assigned seats, all right. And then where is
9 Mr. Coker. Mr. Coker, you're going to be the foreman of
10 this jury. You're going to sit right here where the
11 gentleman on the front row is seating. Don't do that
12 right now. You don't get paid any extra and your vote
13 doesn't count anymore. Somebody has to be in charge of
14 communicating with me, okay. All right.

15 So I'm going to give you some basic rules real
16 quick, real fast. You don't know anything about this case
17 right now, okay. You know the name of the person involved
18 really that's about it, okay. I want you the same way
19 when you come back. Do not do any research. Do not go
20 look up anything. Do not talk to anybody about the case.
21 Do not talk to each other about the case, okay, in anyway,
22 shape or form. You're allowed to tell people -- you're
23 allowed to tell people you're on a jury. It is in
24 Lexington County. And if they ask anything else, just say
25 that judge from Columbia want let me talk about the case,

1 okay. So you're allowed to tell them you're on a jury,
2 but do not talk about the case. Here's why, because if
3 you tell them a little bit about the case, what if they
4 say I know all about that case and they start talking to
5 you about it, okay, that would be improper. You're going
6 to base your decision on what happens in this courtroom,
7 the witness stand, the testimony that comes from the
8 witness stand and any exhibits which are introduced in the
9 law that I give you. So I want you the same in your
10 knowledge about this case right now as when you come back
11 Wednesday, okay, make sense. So you are not allowed to
12 talk about this case in anyway, shape or form with anyone
13 at all including each other, okay. And I'll explain that
14 more to you Wednesday, but that's the most important thing
15 between now and then.

16 Don't go look up anything. Don't go Google
17 something. Don't go try to figure out something. I want
18 you to go enjoy the eclipse, go to work tomorrow if you go
19 work tomorrow and come back here Wednesday morning, that
20 you know much about this case as you do right now, okay.

21 The lawyers will do a good job of presenting the
22 things that need to be presented to you. And you will
23 learn about the case as the case goes along, okay,
24 everybody with me. So if you do not show back up on
25 Wednesday morning at 9:30, then I will send somebody in a

1 light yellow and dark colored car with lights on the top
2 of it to find you, okay. If you do not show up, I will
3 send law enforcement to find you at your job or at your
4 home and have you taken into custody. So I'm releasing
5 you today, but you are to be back Wednesday morning at
6 9:30 ready to go, okay.

7 I do not expect the case to be a very lengthy
8 case, but it is a very important case, okay. And you need
9 to plan on being here through all the day on Wednesday and
10 probably into Thursday too, okay. That's the best guess I
11 can give you on top. I don't think it will go beyond
12 Thursday. I can't promise you that. We will start at
13 9:30 on Wednesday. We will finish Wednesday around five
14 or 5:30. We will start again Thursday morning at 9:30 and
15 then finish as the case finishes, okay, but that will be
16 the general time frame for Wednesday. I don't work crazy
17 late hours unless you're deliberating, okay.

18 Wednesday's also the first day school and I know
19 that, so I know everybody will be itching to get home to
20 their kids to talk about school and what happened and
21 things like that. So I'm going to be cognizant of all
22 that with your time on Wednesday, okay. Does that make
23 sense. But do not discuss the case anyway, shape or form
24 with anyone, okay. You don't really need to let the whole
25 world know you're on a jury, okay. Mr. Jones going to

1 show you how to go back out and come back in.

2 The other thing is do not have any contact with
3 any of the lawyers or any of the parties in the case,
4 okay. So when you come back in you may see somebody
5 involved in the case, they're going to ignore you.
6 They're not even going to say, hey, or good morning or
7 hello. They're not being rude. They're merely following
8 my instructions. I promise you that innocent good morning
9 or hello seen by the other side is always misconstrued,
10 okay. So as you come in and go out, you know, you're
11 going to have -- the reason you had that tag on is so no
12 one bothers you, okay, and no one talks to you. And so
13 you don't have any conversation with anyone involved in
14 the case, okay. Everybody good? Anything for this jury
15 before I dismiss them, Ms. Graham?

16 MS. GRAHAM: Nothing Your Honor.

17 THE COURT: Mr. Chehoski?

18 MR. CHEHOSKI: No, sir.

19 THE COURT: Okay. All right. Have a good day.
20 Mr. Jones will show you how to come in and go out and then
21 you are free to go.

22 (WHEREUPON, the jury is excused.)

23 END OF REQUESTED HEARING

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Keshia Reed
Keshia Reed, Court Reporter

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 State of South Carolina,) Indictment No.: 2016-GS-32-02729
4 Plaintiff,)
5 vs.) Transcript of Record
6 Marcus Antonio Mack,)
7 Defendant.)
_____)

8

9

August 23 and 24, 2017

10

Lexington, South Carolina

11

12

BEFORE:

13

The Honorable Robert E. Hood, Judge; and a Jury

14

15

APPEARANCES:

16

Melanie Graham, Assistant State Solicitor
Gill Bell, Assistant State Solicitor
Attorneys for the State

18

19

Jason Chehoski, Assistant Public Defender
Attorney for the Defendant

20

ALSO PRESENT:

21

Marcus Antonio Mack

22

23

24

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1 August 23, 2017

2 (Whereupon, Court's Exhibits #1 and 1A through #3
3 marked for Identification.)

4 (Whereupon, State's Exhibits #1 through #11 marked
5 for Identification.)

6 BAILIFF: All rise. The Honorable Judge Robert E.
7 Hood presiding.

8 THE COURT: Thank you. Take your seats. Mr.
9 Chehoski, is your client on bond?

10 MR. CHEHOSKI: No, sir.

11 THE COURT: He's in custody?

12 MR. CHEHOSKI: Yes, sir.

13 THE COURT: All right. Great. All right. We're on
14 the record in 2016-GS-32-2729, the State of South
15 Carolina against Marcus Antonio Mack. Mr. Mack is
16 present and represented by his attorney Jason Chehoski.
17 The state is present and represented by Ms. Graham and
18 Mr. Bell. Is everybody ready to proceed, Ms. Graham?

19 MS. GRAHAM: Yes. The State is ready, Your Honor.

20 THE COURT: Mr. Chehoski?

21 MR. CHEHOSKI: Defense is ready, Your Honor.

22 THE COURT: Okay. Are there any pretrial matters
23 that we need to take up before we get started?

24 MR. CHEHOSKI: Yes, sir. A couple preliminary
25 matters. I guess a little bit of case history. On the

1 week, I believe, of June 19th of this year the State did
2 call this case to trial and the case was - the case
3 did not go to verdict. It was a hung jury and mistried.
4 The State tried again to call this case the week of
5 August 2nd, two weeks ago. At that time they did not
6 have one of their witnesses present and so in the middle
7 of pretrial the State moved for a continuance. Over my
8 objections it was granted. At that time I moved to
9 dismiss with prejudice due to the fact that the State
10 called the case for trial and was not prepared. Judge,
11 that was in front of Judge Knie. Judge Knie denied that
12 motion.

13 I will at this time again I will renew that motion,
14 Your Honor, for the purposes, again, this is now, I
15 believe, the sixth day of court that we have used up with
16 this case and just out of judicial expediency I'm moving
17 to dismiss this case with prejudice again for the State
18 calling the case and not being ready.

19 THE COURT: Okay. Ms. Graham, you want to be heard
20 on that?

21 MS. GRAHAM: Yes, Your Honor. Indeed this case was
22 tried the first time on June 19th. Mr. Chehoski is
23 correct in stating that the case was mistried at that
24 time. The State then immediately moved to put the case
25 up in the first term thereafter. Mr. Chehoski had

1 protection during the month of July. We put the case up
2 during the term of August 7th which was the first term
3 that we could put it up. During that term our
4 confidential informant did not, after being subpoenaed,
5 come to the case as it was scheduled for August 7th. We
6 had communication with him and he did make it clear that
7 he was not going to come. We moved for a bench warrant
8 due to his failure to appear after being lawfully
9 subpoenaed. We had a hearing on that matter, Your Honor,
10 where we put up witnesses with regard to the subpoena. A
11 bench warrant was issued. He was picked up the following
12 day on the 9th, I believe. That is correct. And he has
13 been in custody since that time.

14 It was very important that the State immediately put
15 this case up because we do have a witness in custody and
16 we believe that the defense's motion to dismiss this case
17 should be denied under the circumstances, Your Honor.

18 THE COURT: All right. I certainly don't have the
19 power to overrule Judge Knie's decision but based upon
20 the facts presented to me this morning the motion to
21 dismiss is denied. The State is prepared to go forward
22 today and the witness, the necessary witness that was not
23 present last time will now be available due to him being
24 in custody and the defense's motion to dismiss is denied.
25 Any other preliminary matters?

1 MR. CHEHOSKI: Yes, sir. Again, the defense will
2 make a motion to sequester all State's witnesses say for
3 Agent Purdy who is the lead investigator on the case.

4 THE COURT: Okay. And that is reciprocal?

5 MS. GRAHAM: No objection, Your Honor.

6 THE COURT: I have no clue who these witnesses are
7 or what they look like.

8 MR. CHEHOSKI: Agent Purdy is sitting at counsel
9 table.

10 THE COURT: You are Agent Purdy. Good morning.
11 Thank you very much for being here. Y'all just keep an
12 eye out, turn around. If somebody walks in, I'm not
13 going to know if they are a witness or not so if you see
14 somebody, just say, hey, Judge, can we approach? We want
15 to ask them to step out. I'm not sure, depending on what
16 county I'm in it depends on how many witnesses I know.
17 This one I don't know. I don't think I know any of these
18 people. So if you see somebody, just holler and we'll
19 get them excused. Okay?

20 MR. CHEHOSKI: Yes, sir. Finally, Your Honor, there
21 is, I think the key issue in this case is identification
22 and there is a photo lineup identification. We're moving
23 to suppress any in court identification pursuant to Neil
24 versus Biggers.

25 THE COURT: Are you ready to go forward with that

1 hearing?

2 MS. GRAHAM: Yes, Your Honor. We call our first
3 witness with regard to the Biggers Hearing which is Agent
4 Scott Purdy.

5 THE COURT: All right. Please come forward to be
6 sworn.

7 Thereupon,

8 SCOTT DAVID PURDY
9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. Once you're seated,
11 state your full name spelling your last please.

12 THE WITNESS: Scott David Purdy, P-u-r-d-y.

13 DIRECT EXAMINATION

14 BY MS. GRAHAM:

15 Q. Good morning, Agent Purdy. What do you do for a
16 living?

17 A. Good morning. I work for the Lexington County
18 Sheriff's Office. I'm attached to their narcotics unit.

19 Q. What is the narcotics unit?

20 A. It's a unit made up of multi agency unit of agents
21 from Lexington County and then smaller municipalities that all
22 work together doing narcotics cases throughout Lexington
23 County.

24 Q. What are your duties specifically associated with
25 that unit?

1 A. Personally, we investigate anything that is brought
2 into the CrimeStoppers tip line, also given anonymously to our
3 phone line or from citizens on the street to road deputies and
4 then we also do, we make our own cases by going out and making
5 controlled purchases from known drug dealers.

6 Q. Prior to working in narcotics here in Lexington
7 County, did you have any other experience in law
8 enforcement?

9 A. Yes, ma'am. I worked for four years for an agency
10 in Florida and also for another just over two with Richland
11 County. Total of about 11 and a half years.

12 Q. Turning your attention to this case, were you the
13 lead investigator in this case?

14 A. Yes, ma'am.

15 Q. When did the buy in this case take place?

16 A. It was on September 4th.

17 Q. Can you just describe briefly how the buy took
18 place?

19 A. Yes, ma'am. The area where the buy took place is
20 located in Lexington County and we have a small street inside
21 of that neighborhood. The rest is all under West Columbia
22 jurisdiction. We were working with West Columbia and they
23 asked that we could try and make some controlled purchases on
24 that one street. We picked up a confidential informant that
25 was provided by Detective Putney, somebody that he knew. We

1 picked him up. He was searched. We wired him with
2 audio/video recording equipment, gave him some instructions
3 and sent him out to make a controlled purchases. He went out,
4 made contact with one subject who did not have any drugs at
5 the time to sell him so they walked together to another
6 location where they made contact with the defendant and the
7 co-defendant. They purchased an amount, or he purchased an
8 amount of crack cocaine at that time, came back to our
9 location where he turned it over, he was searched again, we
10 collected the equipment, he gave a statement, and then the
11 drugs were logged into evidence.

12 Q. You referenced Joe Putney with the West Columbia
13 Police Department. Was he there during the buy?

14 A. Yes, ma'am. He was. He was with us in the van when
15 we met with the CI. He was also there at the time monitoring
16 it, monitoring the buy through the technical equipment and at
17 the end when we picked him back up he was there as well.

18 Q. Who else was in the van, if anyone?

19 A. Just my partner Agent Merckle.

20 Q. When the informant came back to the van, did he give
21 any information that he knew who he had bought from?

22 A. He gave the street name of both subjects. He knew
23 one subject to be Sweet Pea and he knew the other subject as
24 Anthony.

25 Q. But he did not know their legal identities?

1 A. No, he didn't.

2 Q. How, if at all, did you determine who was actually
3 pictured in the video that you captured that day?

4 A. So I took the video back to our office and we
5 downloaded it to a computer where you could then watch it.
6 Once we watched it, we were able to isolate still frames and
7 print and copy pictures and I sent an e-mail to Detective
8 Putney with some still photos in it of the two subjects and
9 asked if he was familiar with them from his working on the
10 street. He did e-mail me back and let me know the identity of
11 the two people. That Sweet Pea was Johnnie Lee Dickerson and
12 that Anthony was Marcus Antonio Mack. I used that information
13 to request a photo lineup to be made by our intel unit. Once
14 I got the photo lineups made by the intel unit, we met back
15 with Frank at a later date, or excuse me, the CI and had him
16 look at the photo lineup and he identified Marcus Mack as
17 being Anthony.

18 Q. About how long after the buy did you have Frank view
19 the photo lineup?

20 A. I believe it was on September 22nd.

21 Q. Where did the photo lineup take place? Where did
22 the ID take place?

23 A. It was in one of our vehicles. We had picked him up
24 to go do another deal and while we were en route to that
25 location I showed him the lineup.

1 Q. You keep saying we. Who else was there when you did
2 the photo lineup?

3 A. At the photo lineup it was just myself and Agent
4 Merckle.

5 Q. Can you just describe for me, you said it took place
6 in a vehicle. Where were you seated?

7 A. I would be in the passenger seat.

8 Q. Where was Agent Merckle seated?

9 A. He was driving.

10 Q. Where was Frank Hayes, the CI seated?

11 A. In the back.

12 Q. Can you explain to me how you actually handed him
13 the photo lineup?

14 A. Yes, ma'am. What I do is I have a clipboard that I
15 keep with me. I put the lineup on the clipboard, I turned
16 around and I handed it to him. I said, you know, in regards
17 to September 4th, could you please look and tell me if you see
18 the person known to you as Anthony, the same person that sold
19 you crack cocaine. He looked down, almost immediately said,
20 yeah. That's him right there. He then circled the photograph
21 and I have them put their CI number which is kind of a way of
22 signing it and then they sign the bottom with their
23 indication.

24 Q. Did you influence or suggest to Mr. Hayes which
25 photos to select?

1 A. No, ma'am.

2 Q. Did you have Mr. Hayes participate in a physical
3 lineup before seeing the photos?

4 A. No, ma'am.

5 Q. Did you show any photos of the subject to Mr. Hayes
6 prior to having him view the photo lineup.

7 A. No, ma'am.

8 Q. Just going back to the actual layout of the photo
9 lineup, how many photos were displayed in that lineup, do you
10 recall?

11 A. Our photo lineups have six.

12 Q. Do you recall what the layout of that lineup was?

13 A. The defendant was located in photograph number 1.

14 Q. When I say layout, not specifically referring to
15 where the defendant was in the layout but how was it set up?

16 A. Okay. It's six photographs of people with similar
17 features, three across the top, three across the bottom and
18 it's typically from around the neck or shoulders up.

19 Q. Now, I understand that you actually don't develop
20 these lineups. Intel does that. But can you just describe to
21 me the characteristics of the lineup?

22 A. In this case it was a black male, early to mid 20's,
23 I believe, short hair, similar tone of skin.

24 Q. Was the lineup black and white or color, do you
25 remember?

1 A. All of our lineups are black and white.

2 Q. Okay. Mr. Hayes didn't participate in a physical
3 lineup before he did the photo lineup, did he?

4 A. No.

5 Q. And when he indicated, when he did the ID, did he
6 say that this was the person that he purchased the drugs
7 from?

8 A. Yes.

9 Q. Can you point out that person in the courtroom?

10 A. Yes. Mr. Mack at the defense table, red tie.

11 Q. Do you recall about how long? You said almost
12 immediately?

13 A. Yes. It was just shortly.

14 Q. He was confident in his selection?

15 A. He was.

16 MS. GRAHAM: Request to approach the witness, Your
17 Honor.

18 THE COURT: Yes, ma'am.

19 BY MS. GRAHAM:

20 Q. I just handed up to you what's been marked as
21 Court's exhibit 1. Do you recognize this item?

22 A. Yes, ma'am. I do.

23 Q. What is it?

24 A. It's the photo lineup that I presented to Frank
25 Hayes.

1 Q. Does the lineup appear to have been altered with or
2 tampered with in any fashion since the last time you saw it?

3 A. No, ma'am.

4 Q. As a result of the identification in this case did
5 you take out an arrest warrant?

6 A. I did.

7 MS. GRAHAM: Your Honor, I have nothing further for
8 this witness. Please answer questions for the defense.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right. Cross examination.

11 MR. CHEHOSKI: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. Agent Purdy, when you received the lineup, did you
15 know where Mr. Mack was located in that lineup?

16 A. Yes.

17 Q. And you were the one who handed the lineup to the
18 confidential informant?

19 A. Yes.

20 Q. And Agent Putney wasn't there?

21 A. Not at that time.

22 Q. In fact, there wasn't any -- It was just you and
23 Agent Merckle, right?

24 A. Correct.

25 Q. There wasn't anybody not involved in the

1 investigation there?

2 A. Correct.

3 Q. And you said that when you handed it to him, you
4 referenced September 4th, right?

5 A. Yes.

6 Q. Did you reference the location of the buy?

7 A. I don't know.

8 Q. You don't know. Had you done other buys with the CI
9 that day?

10 A. No. That date, September 4th? No.

11 Q. September 4th?

12 A. No.

13 Q. Now, when you handed it to him, you said that you
14 knew that Mr. Mack was at position number 1?

15 A. I did.

16 Q. Do you remember how you handed him the photo
17 lineup?

18 A. Attached to a clipboard.

19 Q. Attached to a clipboard. Do you remember where your
20 thumb was when you handed it to him?

21 A. I would have handed him the clipboard like this
22 (indicating.)

23 Q. With your thumb on the --

24 A. My thumb would have been in the upper right hand
25 corner.

1 Q. Upper right hand corner. And that could have been
2 where the picture was?

3 A. Well, the picture is in the upper left hand
4 corner.

5 Q. I just wanted to make sure there wasn't any
6 unintentional suggestion.

7 A. Right.

8 Q. Like inadvertently putting your thumb on Mr. Mack's
9 picture?

10 A. No. That would be silly.

11 MR. CHEHOSKI: Nothing further, Your Honor.

12 THE COURT: All right. Redirect?

13 MS. GRAHAM: Nothing, Your Honor.

14 THE COURT: Thank you. You may step down.

15 MR. BELL: Your Honor, may I interject a brief
16 matter?

17 THE COURT: Sure.

18 MR. BELL: Your Honor, our inhouse investigator
19 assigned to this case is also subject to the motion to
20 sequester. He usually is responsible for ferrying our
21 witnesses. Is Your Honor okay if we use discreetly a
22 cell phone to try to coordinate those witnesses?

23 THE COURT: Yes.

24 MR. BELL: Thank you, Judge. Your Honor, at this
25 time the State calls Agent Mike Merckle to the stand.

1 Thereupon,

2 MICHAEL SAMUEL MERCKLE

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. Once you're seated,
5 state your full name spelling your last please.

6 THE WITNESS: Michael Samuel Merckle, M-e-r-c-k-l-e.

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Good morning.

10 A. Good morning.

11 Q. Agent, who are you employed by?

12 A. Lexington County Sheriff's Department.

13 Q. In what capacity do you work with the Sheriff's
14 Department?

15 A. I am a narcotics agent.

16 Q. How long have you been working for the Sheriff's
17 department?

18 A. Approximately 14 years.

19 Q. Any prior law enforcement experience?

20 A. Yes. Four years previous to Lexington County I
21 worked at the Forest Acres Police Department.

22 Q. Did you have reason to work with West Columbia on
23 September 4th, 2015?

24 A. Yes, sir.

25 Q. What was the purpose of you -- Excuse me. It would

1 have been September 22nd, 2015. Did you work with West
2 Columbia Police Department at that time?

3 A. I did.

4 Q. What was that work in relation to?

5 A. It was follow up on a narcotics purchase, controlled
6 purchase that I assisted with Agent Purdy.

7 Q. Were you present for the original purchase itself?

8 A. Yes, sir. On September 4th.

9 Q. Who else was present during the original purchase?

10 A. The original purchase was myself, Agent Scott Purdy
11 and Agent Putney or Officer Putney from the West Columbia
12 Police Department and, of course, the confidential
13 informant.

14 Q. What was the name of the confidential informant?

15 A. Mr. Frank Hayes.

16 Q. Can you give us a brief description of how that buy
17 went down that day?

18 A. Basically we picked the informant up at a secure
19 offsite location, drove the informant to the area, instructed
20 the informant, got the informant wired, searched the
21 informant, they got the informant wired with audio/video
22 recording equipment, provided the informant with the money to
23 make the purchase, gave the informant specific instructions
24 and then sent the informant off on foot to go meet with the
25 narcotic distributor.

1 Q. Were you aware if the confidential informant had any
2 problems with his eyesight?

3 A. No, sir.

4 Q. Do you recall if he was wearing glasses at the
5 time?

6 A. No, sir. He wasn't.

7 Q. Are you aware if he was wearing contacts?

8 A. Not that I'm aware of.

9 Q. Any complaints from the informant as to vision
10 issues at all?

11 A. No, sir.

12 Q. Ultimately was he let loose out of the vehicle to go
13 conduct the buy?

14 A. Yes, sir.

15 Q. And upon return did he make any indication as to the
16 legal name of the individual that he purchased from?

17 A. The only information that he gave us was he knew the
18 person as Anthony.

19 Q. Did he indicate whether he had any prior
20 interactions with the person he called Anthony?

21 A. Yes. In the past he said that he dealt with
22 Anthony.

23 Q. Did you conduct any further buys with Mr. Hayes on
24 September 4th, 2015?

25 A. No, sir.

1 Q. Moving along. You testified earlier you were
2 present for the follow up photo lineup with Mr. Hayes; is that
3 accurate?

4 A. Yes, sir. I was.

5 Q. To be clear, you testified that was September
6 22nd?

7 A. Yes, sir.

8 Q. Where did this photo lineup take place?

9 A. It took place basically roadside in an undetermined
10 location or secure location inside of one of our vehicles, one
11 of our narcotic vehicles.

12 Q. Do you recall if it was day or night during the
13 photo lineup presentation?

14 A. I recall it was daytime.

15 Q. Would there have been any issue clearly seeing the
16 photo lineup within the interior of that van?

17 A. No, sir.

18 Q. Were the windows blocked out such that they would
19 have blocked sunlight from the vehicle?

20 A. No, sir.

21 Q. Did Mr. Hayes appear to be intoxicated during your
22 interaction with him?

23 A. No, sir.

24 Q. And intoxication would include either drug or
25 alcohol or anything in between?

1 A. Correct. Yes, sir.

2 Q. Did Mr. Hayes appear clear headed that day?

3 A. Yes, sir.

4 Q. Did he make any complaints about his vision to
5 you?

6 A. No, sir. He did not.

7 Q. Did he make any complaints about being in the
8 vehicle with law enforcement?

9 A. Absolutely not.

10 Q. Did he seem under duress at all?

11 A. No, sir.

12 Q. Did you have an opportunity to view the photo lineup
13 yourself?

14 A. I did.

15 Q. I'm showing you what's been marked as Court's
16 exhibit number 1. Are you familiar with what I'm handing
17 you?

18 A. Yes, sir.

19 Q. What is that?

20 A. This is a standard photo lineup from the case with
21 the defendant.

22 Q. To be clear, was this the photo lineup presented to
23 Mr. Hayes on September 22nd?

24 A. Yes, sir.

25 Q. Have you had an opportunity prior to this photo

1 lineup to construct or present photo lineups?

2 A. Yes, sir. I have.

3 Q. Does the photo lineup represented by Court's number
4 1 appear to be a fair and accurate representation of how photo
5 lineups are supposed to be constructed?

6 A. Yes, sir.

7 Q. Does there appear to be any one item that stands out
8 beyond the other?

9 A. No, sir.

10 Q. Is there an entry selected on that photo lineup?

11 A. There is. Yes, sir.

12 Q. What entry was selected?

13 A. Entry number 1.

14 Q. Who selected that entry?

15 A. The informant, Mr. Hayes.

16 Q. Is the lineup signed or dated by Mr. Hayes?

17 A. Yes, sir. It is.

18 Q. What's the purpose of that?

19 A. To show who actually did the lineup as the person
20 when the lineup was done, i.e., the date and the person that
21 actually selected the individual from the lineup.

22 Q. What is the date that's written on the lineup?

23 A. September 22nd, 2015.

24 Q. Now, walk us through how exactly that photo lineup
25 was presented to Mr. Hayes.

1 A. So basically our procedure is once we have our photo
2 lineup, we meet with the informant. We explain to them that
3 we are going to show them a photo lineup of six similar
4 looking people, that they are to look at the lineup and if
5 they recognize anybody in the lineup that would be the person
6 that sold them a quantity of whatever that narcotic is for
7 that date, to circle that picture and then write their
8 informant number on it and sign it.

9 Q. Did you or Agent Purdy hand the photo lineup to
10 Mr. Hayes?

11 A. Agent Purdy did.

12 Q. And where was Agent Purdy seated at the time that
13 photo lineup was handed to Mr. Hayes?

14 A. Front passenger seat.

15 Q. Where was Mr. Hayes?

16 A. He was in the back seat.

17 Q. And when the photo lineup was handed to Mr. Hayes,
18 was any indication made as to who was to be selected from the
19 photo lineup?

20 A. Absolutely not.

21 Q. Do you recall Agent Purdy's thumb or finger
22 indicating any particular picture?

23 A. No, sir. It was not.

24 Q. You have already indicated that Mr. Hayes did make a
25 selection. Did he appear to be confident in that selection?

1 A. Yes, sir.

2 Q. Was his decision belabored? Did it take him a
3 period of time?

4 A. No, sir. Not an extended period of time. Just long
5 enough to look at each picture and to make a selection.

6 Q. Did he seem to have any hesitation about the
7 individual he selected?

8 A. No, sir.

9 Q. At any point in time did you have any sort of
10 firearms, batons, pepper spray, et cetera unholstered or in
11 the area of Mr. Hayes?

12 A. No, sir. Just my firearm on my side where I keep it
13 in the holster.

14 Q. And it was secured?

15 A. Yes, sir. Absolutely.

16 Q. At any point in time did Mr. Hayes ask to use the
17 restroom or any other biological needs that you all restricted
18 him from?

19 A. No, sir.

20 Q. Did he appear to be comfortable during the time that
21 he made his selection?

22 A. Yes, sir.

23 Q. What was Mr. Hayes' demeanor like when he selected
24 item 1 from that photo lineup?

25 A. From what I remember he was calm and collected and

1 appeared to be confident.

2 MR. BELL: Please answer any questions the defense
3 may have.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION

6 BY MR. CHEHOSKI:

7 Q. Now, prior to giving this confidential informant
8 Mr. Hayes the lineup, did you drug test him?

9 A. No, sir.

10 Q. So it's just your opinion that he was not under the
11 influence but you could not tell if he would test positive?

12 A. Right. I'm not a physician. No, sir. We didn't do
13 any kind of drug test. Just his demeanor and his appearance.

14 Q. You do have drug tests available?

15 A. No, sir.

16 Q. While he was given -- You were in the driver's seat;
17 is that right?

18 A. Yes, sir.

19 Q. Were you driving the car when he was --

20 A. No. We were parked.

21 Q. You were parked? You were not moving?

22 A. No, sir.

23 Q. You said there was no complaints. Did you ask him
24 if there was any problems with his eyesight?

25 A. No, sir.

1 Q. Did you ask if he wore contact lenses?

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

3 Q. Did you ask if he had any other issues with his
4 eyesight?

5 A. No, sir.

6 Q. You were present for the original purchase, right?

7 A. Yes, sir. I was.

8 Q. And you went over what the original purchase details
9 were. Do you remember how long the original purchase took?

10 A. I couldn't give you an exact amount of time but it
11 wasn't an extended amount of time. It wasn't like hours.
12 Probable an hour or less.

13 Q. Less than an hour?

14 A. I would venture to say. I don't know the exact
15 time. I would have to watch the video.

16 Q. As far as, do you remember how much actual contact
17 he had during the purchase with the co-defendant?

18 A. Oh, probably just a matter of a couple of minutes.

19 Q. Couple of minutes?

20 A. I would think. Yes, sir. A couple minutes at the
21 most.

22 Q. Had you had the opportunity to see the lineup before
23 it was given to Mr. Hayes?

24 A. Before it was given to him?

25 Q. Yes.

1 A. I mean, like right as it was being given to him I
2 saw it.

3 Q. You did not see it before then?

4 A. No, sir.

5 Q. Did you know where Mr. Mack was located in the
6 lineup?

7 A. No. I did not.

8 MR. CHEHOSKI: Nothing further, Your Honor.

9 THE COURT: Redirect.

10 MR. BELL: Very briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MR. BELL:

13 Q. Agent, you testified you've got roughly 20 years
14 experience in law enforcement?

15 A. Roughly. Yes, sir.

16 Q. How much of that dedicated to narcotics?

17 A. Approximately eight years.

18 Q. In that eight years have you had reason to come in
19 contact with intoxicated individuals?

20 A. Absolutely. Yes, sir.

21 Q. Are you familiar with some of the signs and symptoms
22 of intoxication through that interaction?

23 A. Yes, sir. I am.

24 Q. Did Mr. Hayes display any of that on the date that
25 he conducted the photo lineup?

JODY PUTNEY - DIRECT BY MR. BELL

31

1 A. No, sir. He did not.

2 Q. On the date that the buy was conducted September
3 4th, 2015, do you recall what the weather was?

4 A. I recall it was clear. Fairly decent day. Nice
5 day.

6 Q. Would there have been any issues with visibility at
7 the time the purchase took place?

8 A. No, sir.

9 MR. BELL: No further questions.

10 THE COURT: Recross?

11 MR. CHEHOSKI: No.

12 THE COURT: All right. Thank you. You may step
13 down. Next witness.

14 MR. BELL: Thank you, Judge. At this time the State
15 would call Detective Jody Putney to the stand.

16 Thereupon,

17 JODY PUTNEY

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. Once you're seated,
20 state your full name spelling your last please.

21 THE WITNESS: Jody Putney, P-u-t-n-e-y.

22 DIRECT EXAMINATION

23 BY MR. BELL:

24 Q. Sir, do you go by detective?

25 A. Yes, sir.

- 1 Q. Is that your preferred title?
- 2 A. Either or. It doesn't matter to me really.
- 3 Q. Who are you employed by?
- 4 A. West Columbia Police Department.
- 5 Q. How long have you been there?
- 6 A. A little over ten years.
- 7 Q. Any prior law enforcement experience?
- 8 A. No, sir.
- 9 Q. Any prior military experience?
- 10 A. Yes, sir.
- 11 Q. How long were you in the military?
- 12 A. I spent ten years in the Marine Corps.
- 13 Q. And in what capacities have you worked for West
- 14 Columbia Police Department?
- 15 A. I have worked on the regular road patrol, the
- 16 community action team and narcotics and now investigations.
- 17 Q. And how long are you working in narcotics?
- 18 A. Roughly five years.
- 19 Q. And during your time with narcotics, did you ever
- 20 have the ability or the faculties to become familiar with the
- 21 people in your community?
- 22 A. Yes, sir.
- 23 Q. On September 4th, 2015, did you have reason to be
- 24 working with the Lexington County Sheriff's Department?
- 25 A. Yes, sir.

1 Q. Why were you working with the Sheriff's Department
2 on that date?

3 A. We were doing, trying to do a buy on Sumter Street
4 which is a little pocket within West Columbia. We had drug
5 complaints with it. We can't buy drugs from there because
6 it's Lexington County's jurisdiction.

7 Q. On the date of September 4th, 2015 when you were
8 working with the Sheriff's Department, who from the Sheriff's
9 Department was present?

10 A. Mike Merckle and Agent Purdy.

11 Q. And were you working with a confidential informant
12 at that time? /

13 A. Yes, sir.

14 Q. What was that confidential informant's name?

15 A. Frank Hayes.

16 Q. Briefly walk us through how the transaction took
17 place that day.

18 A. I met up with Agent Purdy and Agent Merckle. We
19 picked up Frank. Agents Purdy and Merckle briefed him on what
20 we were going to do. He was searched. He was wired with
21 audio and video recording and he was sent to the Sumter Street
22 location to attempt to buy crack cocaine. We were able to
23 hear everything audio live as he was walking to the location
24 and stuff like that.

25 Q. Did you have live video feed?

1 A. No, sir.

2 Q. But you did have live audio feed?

3 A. Correct.

4 Q. And was the video itself recorded so you could
5 review it at a later time?

6 A. Yes, sir.

7 Q. Do you recall what the weather was on the day this
8 buy took place?

9 A. It was a sunshiny day.

10 Q. Any problem with visibility outside of your
11 vehicle?

12 A. No, sir.

13 Q. Any reason to think Mr. Hayes wouldn't have been
14 able to see the suspect he was purchasing from?

15 A. No, sir.

16 Q. Have you reviewed the video yourself?

17 A. No, sir.

18 Q. Have you reviewed stills from the video?

19 A. Yes, sir.

20 Q. Did the stills appear to have any visibility
21 issues?

22 A. No, sir.

23 Q. When Mr. Hayes returned back to the vehicle after
24 making the purchase, did he indicate who he had purchased
25 from?

1 A. He stated that it was a guy by the name of Anthony
2 and Sweet Pea.

3 Q. Did he have full legal names?

4 A. No, sir.

5 Q. Did he indicate if he had any prior interactions
6 with these individuals?

7 A. He had prior interactions with Sweet Pea he stated
8 but not Anthony.

9 Q. How did you go about determining the legal names of
10 these two people that you only had street names on?

11 A. I have known Sweet Pea for many years within the
12 community. Just run-ins here and there. I get out on the
13 street and talk with people all the time and the same with
14 Anthony who he called Anthony.

15 Q. Did you take any part in visually identifying the
16 two people that are in the confidential informant's report and
17 video?

18 A. Yes, sir. Agent Purdy sent me stills of the video
19 of the two people in the back seat of a vehicle that he
20 purchased crack cocaine from.

21 Q. I'm showing you what's been marked as Court's 2 and
22 3. Do you recognize the two photos?

23 A. Yes, sir.

24 Q. And what are those two photos from?

25 A. These are the still photos that Agent Purdy sent me

1 from the transaction of the crack cocaine Mr. Hayes had.

2 Q. Do those two photos in your hand fairly and
3 accurately represent the photos that were relayed to you via
4 e-mail by Agent Purdy?

5 A. They are not as clear as the e-mails that I
6 received.

7 Q. Why is that?

8 A. Maybe the printer had not been as clear as my
9 computer screen.

10 Q. Has there been any material alteration or editing to
11 those photos?

12 A. No, sir.

13 Q. In Court's number 2 what are we seeing?

14 A. I see three gentlemen, two in the back seat, one in
15 the front.

16 Q. Were you able to identify any of the gentlemen in
17 that vehicle?

18 A. I was able to identify the two gentlemen in the back
19 seat.

20 Q. And in the foreground meaning in the, it would be
21 the left rear passenger seat who did you identify that as?

22 A. I identified the driver's backseat passenger to be
23 Johnnie Dickerson and the passenger, backseat passenger as
24 Marcus Mack.

25 Q. Mr. Dickerson, what was his street name?

1 A. Sweet Pea.

2 Q. And Mr. Mack, how was he referenced by the
3 confidential informant, by what name?

4 A. He referenced him as Anthony.

5 Q. In those two pictures does there appear to be
6 daylight?

7 A. Yes, sir.

8 Q. When viewing those pictures on your computer after
9 being e-mailed, did you have any trouble identifying those two
10 individuals you just spoke to in the court?

11 A. No, sir.

12 Q. Did you have to sit there and think about it for a
13 while?

14 A. No, sir. It was pretty quick.

15 Q. Did you guess as to who you thought it was?

16 A. No, sir.

17 Q. Were you confident that those were the two
18 individuals?

19 A. Yes, sir.

20 Q. Do you see the gentlemen you identified as Mr. Mack
21 in court today?

22 A. I do.

23 Q. Where is he seated?

24 A. He's sitting in the defendant's chair, white shirt,
25 red tie.

1 Q. Are any of his physical characteristics different
2 than they were in the photo and at the time of the buy?

3 A. It looks like his hair is longer.

4 Q. Were you present for the subsequent photo lineup
5 being presented to Mr. Frank Hayes?

6 A. No, sir.

7 Q. Did you have any further interaction with this
8 case?

9 A. No, sir.

10 MR. BELL: Thank you, detective.

11 THE COURT: Cross.

12 CROSS EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. Agent Putney, have you had experience with Marcus
15 Mack in the past?

16 A. Yes, sir.

17 Q. Do you know what his street name is?

18 A. I do not. I'm not sure if he has a street name.

19 Q. Have you ever known him to go by Anthony?

20 A. No, sir.

21 Q. All right. And you stated that Hayes has not had
22 any previous interaction with Anthony prior to this day?

23 A. Not that I'm aware of. No.

24 Q. All right. And on the -- You were present for the
25 buy and monitoring of the audio feed, correct?

1 A. Yes, sir.

2 Q. Did you recognize Marcus' voice?

3 A. There was several voices. I couldn't pinpoint any
4 particular ones.

5 Q. You -- So that's a no?

6 A. That's a no.

7 MR. CHEHOSKI: Thank you. Nothing further.

8 THE COURT: Redirect?

9 MR. BELL: Nothing further, Your Honor.

10 THE COURT: All right. Thank you very much.

11 Next.

12 MS. GRAHAM: Your Honor, at this time the State
13 calls Brian Travis.

14 Thereupon,

15 BRIAN TRAVIS

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please have a seat. Once you're seated,
18 state your full name spelling your last please.

19 THE WITNESS: Brian Travis, T-r-a-v-i-s.

20 DIRECT EXAMINATION

21 BY MS.. GRAHAM:

22 Q. Good morning, Investigator Travis. What do you do
23 for a living?

24 A. I'm a detective with the Lexington County Sheriff's
25 Office.

1 Q. How long have you been working there?

2 A. Over ten years.

3 Q. What experiences have you had with the agency?

4 A. I have been a patrol deputy, field training officer,
5 property crimes investigator, major crimes investigator and
6 now I'm an investigator assigned to the criminal intelligence
7 unit.

8 Q. As an investigator with the intelligence unit what
9 are your duties?

10 A. I do crime analysis, photo lineups, work load
11 assessments, strategic planning. Different types of tactical
12 analyses.

13 Q. Do you develop photo lineups in connection with your
14 duties in the intelligence unit?

15 A. Yes. I do.

16 Q. How many have you developed during your career?

17 A. About 300.

18 Q. Can you explain the process used to develop a photo
19 lineup?

20 A. Once we get notified that a deputy or a detective
21 needs a lineup, we'll go into our internal database, we'll
22 pull up photographs with our records management software, then
23 myself or my partner in the office will then select five
24 matching photographs to create a six photo lineup, three on
25 top, three on the bottom and then looking at different facial

1 features trying to get the best match to the photos as we
2 can.

3 Q. When you say you put characteristics into the
4 database, what types of characteristics do you put in?

5 A. It's -- For what we do, we have the ability to enter
6 in any kind of physical characteristics but to not limit the
7 number of photographs all I'll put in is race, sex, and age
8 plus or minus five years.

9 Q. So if you are on the other end of the database and
10 you're putting in information, do people uniformly put in the
11 information or is there some give for human interpretation?

12 A. There is definitely room for human interpretation.

13 Q. Can you just explain on that a little bit?

14 A. Some things are very straightforward. Their age is
15 calculated by their date of birth so they enter their date of
16 birth and they get an age. Other things, their eye color,
17 their hair color. Those are typically the same no matter who
18 enters them but there's also characteristics like hair length,
19 body type, facial hair, tattoos, and all those are somewhat
20 subjective to the person who is entering them. Some people
21 see a haircut is short and other people see it as medium. Or
22 someone will say someone is average, another person will say
23 they're heavy set.

24 Q. So when you're putting your characteristics into the
25 database for the development of a lineup, do you put in fewer

1 characteristics or more?

2 A. Fewer.

3 Q. Okay. Did you develop the photo lineup in this
4 case?

5 A. I did.

6 Q. Do you recall when you were asked to develop the
7 lineup?

8 A. I believe it was September 14th in 2015.

9 Q. What was the nature of the photos used in this
10 lineup?

11 A. They came from our internal jail database.

12 Q. Can you explain the characteristics of the
13 individuals featured in the lineup?

14 A. Black males in their 20's.

15 Q. What kind of build did they have?

16 A. They all had more of a slender build.

17 Q. And with regard to hair length what was the
18 selection?

19 A. It was a shorter hair length.

20 Q. Okay. Can you describe the layout of the photo
21 lineup?

22 A. There's three pictures on the top, three pictures on
23 the bottom. Each picture has a number underneath it. On the
24 bottom there's a line where it's got the case number, case
25 officer and an area for whoever is looking at the photo lineup

1 to circle the number of the picture and sign it.

2 Q. Do you recall what photo was the suspect's photo?

3 A. Number 1.

4 Q. How did his photo come to be number 1?

5 A. Once you have gone through the photos and you tell
6 it to make a photo lineup, it randomly places all the
7 photographs.

8 Q. How do you know that it was you that developed this
9 photo lineup as opposed to somebody else in the intelligence
10 unit?

11 A. In our records management system whenever any data
12 is entered, it gets an audit tag which has the user's name, or
13 the user name of the person who entered it which is your last
14 name and first initial.

15 Q. I'm showing you what has been marked as Court's
16 exhibit 1. Do you recognize this item?

17 A. It's the lineup I created.

18 Q. And does it appear to have been altered or changed
19 in any way since you developed the lineup?

20 A. Just the handwriting on it.

21 Q. Okay. By handwriting you're referring to the
22 witness' selection; is that correct?

23 A. Correct.

24 MS. GRAHAM: Nothing further for this witness, Your
25 Honor.

1 THE COURT: Cross.

2 CROSS EXAMINATION

3 BY MR. CHEHOSKI:

4 Q. Investigator Travis, were you just given the name of
5 Marcus Mack?

6 A. Uhm, if memory serves, it was name, date of birth.

7 Q. Name, date of birth. Were you given a still
8 photograph to work off of?

9 A. No.

10 Q. You weren't given either this picture or this
11 picture (indicating)?

12 A. No.

13 Q. And when compiling the lineup, you're going off of
14 the picture that you have for Mr. Mack?

15 A. Correct.

16 Q. And you are not aware of any changes that may have
17 taken place regarding hair style?

18 A. Correct.

19 Q. Or weight gain?

20 A. Uhm, typical things would be with the investigator
21 that's requesting it. If there is some substantial change
22 from what's in the system, they usually let us know so that
23 way in case we have to request a different photo.

24 Q. You weren't given any of that information?

25 A. Nope.

1 Q. You said that you compiled this on the 14th of
2 September?

3 A. I believe that was the date.

4 Q. That's 2015?

5 A. Correct.

6 Q. All right. And you completed it the same day?

7 A. Correct.

8 MR. CHEHOSKI: That's all I have.

9 THE COURT: Redirect?

10 MS. GRAHAM: Nothing, Your Honor.

11 THE COURT: Thank you. Next.

12 MR. BELL: Your Honor, at this time the State calls
13 Frank Hayes to the stand.

14 THE COURT: All right. Is he in custody?

15 MR. BELL: Yes, Your Honor.

16 Thereupon,

17 FRANKLIN HAYES

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. Once you're seated,
20 state your full name spelling your last please.

21 THE WITNESS: Franklin Eugene Hayes, H-a-y-e-s.

22 DIRECT EXAMINATION

23 BY MR. BELL:

24 Q. Mr. Hayes, is it okay if I occasionally call you
25 Frank?

1 A. Yes, sir.

2 Q. Mr. Hayes, for the record, can you read that clock
3 in the back of the courtroom?

4 A. Yes, sir.

5 Q. What time is it?

6 A. 10:26.

7 Q. Where are you from, Frank?

8 A. Right here in Lexington.

9 Q. Where did you go to school?

10 A. Airport High School.

11 Q. Were you doing any work prior to being
12 incarcerated?

13 A. I don't understand the question.

14 Q. Did you do any kind of work?

15 A. Yes, sir.

16 Q. What were you doing?

17 A. Installing wood fences, custom arbors, decks,
18 construction type work.

19 Q. Did you ever do any additional kind of work with
20 law enforcement?

21 A. I have.

22 Q. Is that something new or have you been doing that
23 for a while?

24 A. I have been doing it off and on for a while
25 sometimes.

1 Q. What agencies have you worked for?

2 A. I worked with Lexington, West Columbia, Cayce which
3 is considered Lexington as well, City of Columbia.

4 Q. Have you ever worked in the upstate?

5 A. I have.

6 Q. Who did you work for up there?

7 A. Rock Hill and SLED.

8 Q. Mr. Hayes, do you wear glasses?

9 A. Reading glasses I do.

10 Q. What about contacts?

11 A. No, sir.

12 Q. Do you need your glasses on at all times to see?

13 A. No, sir.

14 Q. You said you worked for various law enforcement
15 agencies. What kind of work were you doing for them?

16 A. Just from time to time I would, you know, as a CI,
17 just go out and get contacts and things of that nature and buy
18 drugs, illegal drugs for narcotic agents.

19 Q. And would you wear any sort of equipment during
20 those purchases?

21 A. I did.

22 Q. What kind of equipment would you wear?

23 A. Video and audio.

24 Q. Were you working off charges when you worked for law
25 enforcement?

1 A. No, sir.

2 Q. Do you know what that means?

3 A. Yes, sir. It means I had a charge and I was to work
4 for law enforcement to get the charge throwed out.

5 Q. Why were you working for law enforcement?, What were
6 you getting out of it?

7 A. Just a little bit of extra money.

8 Q. How much were they paying you?

9 A. It varied. Mostly it averaged around \$60.00 a buy
10 but again it varies.

11 Q. Do you recall having to work with West Columbia
12 Police Department and the Lexington County Sheriff's
13 Department back on September 4th, 2015?

14 A. I do.

15 Q. Who was your handler at that time?

16 A. Uhm, it was Officer Putney in West Columbia but I
17 was also working with Agent Merckle and Agent Purdy as well
18 from Lexington County.

19 Q. Were those individuals present on September 4th,
20 2015?

21 A. Yes, sir.

22 Q. Did you meet with them that day to make a buy?

23 A. I did.

24 Q. Where did you meet with them?

25 A. We meet usually in a private location.

1 Q. Do you meet on foot or are you in a vehicle?

2 A. They usually pick me up, we go to again a private
3 location and where I'm searched and wired and audioed up and
4 gave instructions what to do.

5 Q. What were your instructions on that day?

6 A. My instructions that day was I was going down Sumter
7 Street which is Lexington County but in West Columbia, if that
8 makes sense. I was instructed to go down there and buy some
9 illegal drugs.

10 Q. When you left the vehicle that day, do you recall
11 whether the sun was out or was it nighttime? Was it
12 raining?

13 A. Uhm, no. It was a normal morning. It was around
14 shortly after 10:00 a.m.

15 Q. Did you have clear visibility?

16 A. Yes, sir.

17 Q. Any trouble seeing on that particular date?

18 A. No, sir.

19 Q. When you got out of the vehicle, where did you
20 head?

21 A. Uhm, again, after I was searched, audioed and
22 videoed up and gave instructions, I then got out of the van.
23 I headed through a little cut. Again, I was instructed to cut
24 through that little cut because it's the shortest way,
25 shortest route to where I was going. When I got there, there

1 was a fence there and me with my old age couldn't get over the
2 fence so I went around and got back on the street, went up to
3 Holland, made a left on Holland, then went down to Sumter and
4 made a left on Sumter.

5 Q. Did you run into anybody while you were out making
6 that trek?

7 A. Yes, sir.

8 Q. Who did you initially run into?

9 A. Again, like I said, I was instructed to go down to
10 the bottom of Sumter Street. That's where I went. There's a
11 house down there on the left hand side down at the bottom down
12 there, a white house with a chain link fence around it known
13 as a drug house, gang bang house, whatever. I went there to
14 try to get some dope.

15 Q. Were you successful?

16 A. I wasn't. I did meet a guy there that I knew named
17 Beazy. I asked him, I said what was up and everything. He
18 said everybody, he knew where everybody was at. He said
19 pretty much like he made me feel like that spot on Sumter
20 Street was hot so they switched their trap location so he said
21 he knew where they was.

22 Q. When you say something's hot, what do you mean?

23 A. Well, you know, that means the police alert on that
24 specific area.

25 Q. So you just testified that they relocated. Where

1 did you end up going after meeting with that individual?

2 A. Again, another known drug spot that was on the
3 corner of Brown and Ross.

4 Q. When you got there, did you meet up with anybody?

5 A. I did.

6 Q. Who did you meet up with?

7 A. I met up with a guy I knowed to be Sweet Pea.

8 Q. Where was he?

9 A. He and Marcus Anthony Mack was sitting in the rear
10 seat of a small four door vehicle.

11 Q. Was the vehicle in park?

12 A. Yes, sir.

13 Q. Were the windows up or down?

14 A. The windows was up but he rolled the back rear
15 window down.

16 Q. And who was sitting at that window?

17 A. The window, I approached the back rear driver's side
18 of the vehicle. Uhm, I was talking to who I know to be Sweet
19 Pea and the guy on the other side which was on the back
20 passenger seat was who I know to be Mack.

21 Q. Now, could you see the guy that was on the other
22 side of the vehicle that you said you knew as Mack, were you
23 able to see him clearly?

24 A. Yes, sir.

25 Q. During that interaction, did you ever get closer to

1 Mr. Mack or Anthony?

2 A. No, sir. He remained in the car the whole time.

3 Q. What about you, did you change your position at any
4 time?

5 A. I did.

6 Q. Tell us about that.

7 A. Sweet Pea got out of the vehicle, again, out of the
8 driver's side rear and asked me to get inside. He was saying
9 he wanted me to get in the middle and he was gonna get back in
10 the car and I was gonna be sandwiched between the two who I
11 know to be Mack which is right there and Sweet Pea.

12 Q. Did you do what they said?

13 A. I was about to get in the car, half way in the car
14 pretty much and then I remembered Agent Purdy pretty much told
15 me if I could avoid getting in the vehicles like that right
16 there because of safety issues if something may happen, try to
17 avoid that situation if I could and I remembered that and I
18 stepped back out of the vehicle.

19 Q. At least briefly were you seated side by side with
20 Mr. Mack or Anthony?

21 A. Briefly I was.

22 Q. Did you have an unobstructed view of his face?

23 A. I don't understand the question.

24 Q. Could you clearly see his face?

25 A. Oh, yes, sir.

- 1 Q. Was there anything between you and him?
- 2 A. No, sir.
- 3 Q. Were you essentially shoulder to shoulder?
- 4 A. I wouldn't say shoulder to shoulder. I would
- 5 probably say six inches apart shoulder to shoulder. Yeah.
- 6 Q. After you got back out of the vehicle, what
- 7 happened?
- 8 A. After I got out of the vehicle, Sweet Pea got back
- 9 into the vehicle, shut the door and I leaned up into the
- 10 window, the rear window of the driver's side and then Sweet
- 11 Pea didn't have enough dope. He didn't have enough.
- 12 Q. So did you end up buying from someone else?
- 13 A. Correct.
- 14 Q. Who was that?
- 15 A. Mack.
- 16 Q. Did he hand it directly to you?
- 17 A. No. He didn't.
- 18 Q. Who did he hand it to first?
- 19 A. He handed it to Sweet Pea.
- 20 Q. Who did you hand the money to?
- 21 A. I handed it to Sweet Pea.
- 22 Q. Did you see if he handed it to anybody else?
- 23 A. Yes.
- 24 Q. Who?
- 25 A. Mack.

1 Q. After making that purchase, did you go back to the
2 law enforcement unmarked vehicle?

3 A. I did. I returned to the agents.

4 Q. What did they do at that time?

5 A. Got in the van. They cut my audio/video off, then I
6 was again searched. Excuse me. When I first got up with the
7 agents, I gave them the dope the first thing I did, then they
8 took the audio and video off of me, detached it from me, then
9 we went to that same private location where they again
10 searched me.

11 Q. Do you recall if you told law enforcement who you
12 bought the drugs from?

13 A. Excuse me.

14 Q. Do you recall if you indicated who you bought the
15 drugs from? Did you give any names to law enforcement?

16 A. I did.

17 Q. What names did you give at that time?

18 A. The only name I knew was Mack.

19 Q. Did you have his full legal name at that time?

20 A. No, sir.

21 Q. Had you ever had any prior run-ins with him?

22 A. Yes, sir.

23 Q. That was prior to this date that you made this
24 purchase?

25 A. Yes, sir.

1 Q. Did law enforcement ever follow up with you and show
2 you a photo lineup?

3 A. Later on they did.

4 Q. Do you recall how long afterwards?

5 A. Not - No, sir.

6 Q. Was it a short period of time? A long period of
7 time?

8 A. Short period.

9 Q. And where were you when that photo lineup was
10 conducted?

11 A. Uhm, Purdy and Officer Merckle picked me up. We
12 went to, again went to a private location. Purdy who is the
13 passenger, Merckle is the driver, I'm in the back seat behind
14 Purdy on the passenger's side.

15 Q. What time of day was it?

16 A. I don't recall. It was daytime.

17 Q. How was the light inside of the vehicle you were
18 in?

19 A. Clear.

20 Q. Any trouble seeing?

21 A. No, sir.

22 Q. Did they hand you a photo lineup?

23 A. Uhm, Officer Purdy sitting in front of me on the
24 passenger side said, asked me do I - here, here's a photo
25 lineup. Is any of these guys here that you buy dope from on

1 that day. He handed it to me and Officer Purdy and Officer
2 Merckle remained facing forward. There wasn't no pressure or
3 anything like that so I took my time, looked at the photo
4 lineup and picked it and put a circle around it and put my
5 initials.

6 Q. Were you drunk or high at the time that you made
7 your selection?

8 A. No, sir.

9 Q. Did you need your reading glasses to see the
10 pictures clearly?

11 A. Yes, sir.

12 Q. Did you use them?

13 A. I did.

14 Q. Did you have any hesitation in selecting someone
15 from the photo lineup?

16 A. No, sir. That reason being again, before I bought
17 dope from Marcus that day, Mack that day, I seen him multiple
18 times around hotels, specifically the Executive Inn so I
19 already knew who he was and what he looked like. You know
20 what I mean? But I didn't know his name.

21 Q. To be clear, the person you picked out of the
22 lineup, was that the same person that sold you crack on
23 September 4th two weeks prior?

24 A. Yes, sir.

25 Q. And that was the individual that was in the back

1 seat of the vehicle along with the guy you called Sweet Pea?

2 A. Correct.

3 Q. I'm showing you what's been entered as Court's
4 exhibit 1. Do you recognize that?

5 A. I do.

6 Q. What is that?

7 A. That's the photo lineup that Officer Purdy gave me
8 in the vehicle that day.

9 Q. To be clear for the record, did you just put on your
10 reading glasses?

11 A. I did.

12 Q. You had reading glasses that were comparable to
13 those at the time you made your selection on the photo
14 lineup?

15 A. Correct.

16 Q. When they handed you that photo lineup, was anybody
17 already circled or marked upon?

18 A. No, sir.

19 Q. Did you select an item?

20 A. I did.

21 Q. Which item?

22 A. I circled 1.

23 Q. Did you initial or sign your name anywhere?

24 A. Yes, sir.

25 Q. Where did you do that?

1 A. I was instructed to circle who I thought to be Mack
2 and put a number on it which is a CI number pretty much.

3 Q. Again, did you have any hesitation in picking that
4 individual out?

5 A. None at all.

6 Q. Court's exhibit 1, does this fairly and accurately
7 reflect the photo lineup that was given to you?

8 A. Yes, sir.

9 Q. Did you feel as if you were under duress and that
10 you were scared or fearful at any point in time during the
11 photo lineup?

12 A. No, sir.

13 Q. Did you need to use the restroom or anything else,
14 drink water during that time?

15 A. No, sir.

16 Q. Did law enforcement deny you anything that you
17 requested for your comfort?

18 A. No, sir.

19 Q. The gentleman that you identified in both the photo
20 lineup and from the buy on September 4th, is he present in the
21 courtroom today?

22 A. Yes, sir.

23 Q. And can you indicate where he's sitting? I
24 understand you can't lift your hands up very well.

25 A. Right. It's the guy right there. The only thing

1 different is he's got dreads now. He's got long dreads. But
2 it's the guy with the white shirt and red tie.

3 MR. BELL: Please answer any questions Mr. Chehoski
4 has for you.

5 CROSS EXAMINATION

6 BY MR. CHEHOSKI:

7 Q. Mr. Hayes, why are you in custody right now?

8 A. I was subpoenaed to appear in court on August the
9 7th. I missed court on August 7th and the reason being I had
10 multiple threats for my life out there that some individuals
11 that know who I know to be Mack. I also, I'm incarcerated
12 now, I also received threats in jail specifically this morning
13 from Mack.

14 Q. How many purchases have you done?

15 A. I don't recall.

16 Q. More than 50?

17 A. Altogether, yeah.

18 Q. More than a hundred altogether?

19 A. Nope.

20 Q. Somewhere between 50 and a hundred?

21 A. Maybe.

22 Q. In the past you were convicted in 2006 of criminal
23 domestic violence of a high and aggravated nature; is that
24 right?

25 A. Repeat the question.

1 Q. In 2006 you were convicted of criminal domestic
2 violence of a high and aggravated nature?

3 A. I was.

4 Q. In 2012 you were convicted of assault and battery
5 first degree?

6 A. I was.

7 Q. And right now in your county you have a pending
8 charge for purchase of marijuana?

9 A. I do.

10 Q. You also have a pending charge for obstruction of
11 justice?

12 A. I do.

13 Q. And right now you are aware that there is an
14 outstanding bench warrant for your arrest on those charges?

15 A. No. No. It's been lifted.

16 Q. Is that recent?

17 A. No.

18 Q. Is that recent?

19 A. Well, I'm out on bond in Rock Hill. Ms. Weaver the
20 Solicitor up there lifted the bench warrant and gave me a PR
21 bond. That's why I'm out right now, out of their custody
22 anyway.

23 Q. Out of their custody?

24 A. Correct.

25 Q. After you made the purchase, you gave a statement to

1 the police; is that right?

2 A. Yeah.

3 Q. Do you remember naming Mack in that statement?

4 A. I don't recall.

5 Q. If you looked at your statement, would that help you
6 recall?

7 A. Yes, sir.

8 MR. CHEHOSKI: May I approach the witness?

9 THE COURT: Yes, sir.

10 BY MR. CHEHOSKI:

11 Q. I'll just give you a moment to read it.

12 A. All right.

13 Q. Does that refresh your memory?

14 A. Yeah.

15 Q. Do you see the name Mack in that statement?

16 A. Nope.

17 Q. Thank you. Neither Sweet Pea nor Mack were the
18 target of you going out to purchase that day; is that right?

19 A. Right.

20 Q. You were going to see somebody named Beazy; is that
21 right?

22 A. That's right.

23 Q. And you actually did see Beazy?

24 A. I did.

25 Q. You do not know Beazy's true identity; is that

1 right?

2 A. No, sir.

3 Q. You do not know his legal name?

4 A. No, sir.

5 Q. And you said before that you were given specific
6 instructions from Agent Purdy on what to do; is that right?

7 A. Correct.

8 Q. And it was agreed before that you were going to see
9 Beazy, right?

10 A. I was gonna go down to the bottom of Sumter
11 Street.

12 Q. And to see someone named Beazy?

13 A. To see somebody named Beazy. But if Beazy wasn't
14 straight, then go to the next one.

15 Q. Go to the next one?

16 A. Correct.

17 Q. And it was also okay with - you're okay with going
18 with Beazy to that other place?

19 A. Yeah.

20 Q. Even though you didn't know Beazy?

21 A. I do know Beazy.

22 Q. You did know Beazy. You have known him to be
23 reliable with this information?

24 A. I guess so.

25 Q. You guess so?

1 A. I didn't know him that long. I didn't know Beazy
2 that long at that moment.

3 Q. Is that a yes or a no? Did you consider Beazy
4 reliable?

5 A. In what?

6 Q. With regard to knowing where drugs were?

7 A. Yeah.

8 Q. Even though you didn't know him that well?

9 A. Yeah.

10 Q. All right. Now, let me talk about when you got to
11 the car where Sweet Pea was. Sweet Pea had some drugs on him,
12 didn't he?

13 A. Small amount. Yeah.

14 Q. You said it wasn't enough?

15 A. It wasn't enough.

16 Q. How much money were you given?

17 A. I was gave a hundred dollars.

18 Q. How much dope does a hundred dollars buy?

19 A. Uhm, depends. A gram.

20 Q. A gram?

21 A. Yeah. I'm saying a 20 is a .2 so a hundred would be
22 a gram.

23 Q. You had been - you had done this, done these
24 purchases how many times up to this point?

25 A. I don't recall.

1 Q. More than ten?

2 A. Maybe somewhere around in there.

3 Q. Had you purchased a hundred dollars worth of dope up
4 to that point?

5 A. Have I bought dope, a hundred dollars worth of dope
6 from someone else?

7 Q. Prior to September 4th, 2015?

8 A. Yes, sir.

9 Q. Do you know how much a hundred dollars worth of dope
10 is?

11 A. Around about. Yeah.

12 Q. Around about. Roughly?

13 A. But it's never always - it's never right. It will
14 always be short.

15 Q. It will always be short?

16 A. Always be short.

17 Q. Got you. How much money were you paid for this
18 transaction?

19 A. \$60.00.

20 Q. You said that was the usual?

21 A. Yep.

22 Q. All right. And when -- Have you done purchases for
23 either Agent Purdy, Agent Merckle, Agent Putney after
24 September 4th?

25 A. I have.

1 Q. Do you remember how many purchases you have done
2 after September 4th?

3 A. It was -- I don't recall. I don't recall. But far
4 and in between here and there.

5 Q. Did you do other purchases for Agent Purdy on
6 September 4th?

7 A. No.

8 Q. All right. Do you remember how many purchases you
9 have done for Agent Purdy between September 4th and September
10 22nd?

11 A. No.

12 Q. So then on September 22nd you made the
13 identification; is that right?

14 A. I don't recall the date specifically.

15 Q. It was about two and a half weeks later?

16 A. Probably so. Sounds about right.

17 Q. You hadn't had a chance to view the video before
18 making that identification?

19 A. I never reviewed the video up until trial or
20 preparing for trial.

21 Q. Now, when Agent Purdy showed you the lineup, do you
22 remember how he handed it to you?

23 A. He had like some kind of hard back.

24 Q. Clipboard?

25 A. Clipboard type thing. He put on it upside down,

1 slid it in between the two seats on the console. I took it,
2 flipped it over. That's when Purdy said do I see the
3 individual that I bought dope from on September --

4 Q. Was his hand on it when you picked up the
5 clipboard?

6 A. Excuse me.

7 Q. Was Agent Purdy's hand on the clipboard when you
8 picked it up?

9 A. Yeah.

10 Q. Do you remember where it was? Was he pointing --

11 A. No.

12 Q. -- to picture 1 at any time?

13 A. The picture was upside down.

14 MR. CHEHOSKI: Nothing further, Your Honor.

15 THE COURT: Redirect.

16 MR. BELL: Thank you, Judge.

17 REDIRECT EXAMINATION

18 BY MR. BELL:

19 Q. Frank --

20 A. Yes, sir.

21 Q. -- defense asked about you not showing up for a
22 prior scheduled trial. Do you recall that?

23 A. Yes.

24 Q. Do you recall that question?

25 A. Yeah.

1 Q. Back on I believe it was June 19th of this year, did
2 you voluntarily show up to a trial on that date?

3 A. I did.

4 Q. Was that for the same case?

5 A. It was.

6 Q. Did you testify throughout the duration of that
7 trial?

8 A. I did.

9 Q. Was it only after your identity was exposed that you
10 didn't show up to the next trial?

11 A. Yes, sir. After, like I said, that day I was pretty
12 much exposed. My name. My face. Who I was. So yeah, I was
13 exposed and it put me in a situation where again I received
14 threats and it put me in fear of my safety and that was the
15 only reason that I didn't show up for that next court date.

16 Q. Regardless of all those threats and everything else
17 that you just talked about has your identification in that
18 photo lineup ever changed?

19 A. No.

20 Q. To be clear, I don't want to mislead the Court,
21 Frank. Recently did you reach out to our office and change
22 your opinion as to this case?

23 A. I did. I called up and talked to Melanie Graham
24 briefly. The reason I did that, I was scared straight up
25 honest with you.

1 Q. And was that during the same period of time where
2 you did not show up for trial?

3 A. It was. It was a couple of days prior to it.

4 Q. Outside of that one instance have you ever changed
5 your opinion on the photo lineup?

6 A. No, sir.

7 Q. And are you confident in your selection today?

8 A. Absolutely.

9 MR. BELL: Thank you.

10 MR. CHEHOSKI: Your Honor, briefly.

11 RECROSS EXAMINATION

12 BY MR. CHEHOSKI:

13 Q. Did you also reach out to my office?

14 A. I did.

15 Q. Did you also say that you were not sure of the
16 identity at that time?

17 A. I did.

18 MR. CHEHOSKI: All right. Nothing further.

19 BY THE WITNESS:

20 A. Same thing I told Ms. Graham.

21 MR. CHEHOSKI: Nothing further.

22 THE COURT: All right. Take him back. Any other
23 witnesses?

24 MS. GRAHAM: No other witness, Your Honor, for the
25 purpose of the Biggers Hearing.

1 THE COURT: Okay. All right. Any argument, Mr.
2 Chehoski?

3 MR. CHEHOSKI: Thank you, Your Honor. At this time
4 the defense moves to suppress the in court identification
5 of Frank Hayes specifically with regard to by looking at
6 the factors I think that there is an error of
7 suggestiveness in it as Mr. Hayes is being shown the
8 identification while in a confined space in one of the
9 department's vehicles while flanked by two of their
10 agents. Both agents are familiar with the investigation.
11 Both agents, well, agent Purdy had knowledge of who
12 Marcus Mack was and where he was in the lineup and also
13 Mr. Hayes has a financial incentive to please the officer
14 as he's being physically paid by the State to give this
15 testimony.

16 Your Honor, also, in addition to the factors, the
17 transaction took no more than a couple of minutes.
18 Mr. Hayes' attention would have been split between at
19 least two people. There was also a third person driving
20 who is in the driver's seat of the car who has not been
21 named or identified or even shown a lineup. So as his
22 identification was split therefore his level of attention
23 is compromised. I think the certainty is certainly in
24 question as he has testified to calling both the
25 Solicitor's Office and my office to change his testimony.

1 Your Honor, I believe all the, with all the other factors
2 not only is it suggestive, I don't think it can be cured
3 and I move to suppress the in court identification.
4 Thank you.

5 THE COURT: Ms. Graham.

6 MS. GRAHAM: Thank you, Your Honor. As Your Honor
7 knows, we're just dealing with whether or not the Biggers
8 identification is admissible. We're not getting into the
9 weight. It's a totality of the circumstances analysis,
10 Your Honor. We heard evidence from both officers who
11 were in the van that day, that there absolutely was
12 nothing coercive or suggestive. Indeed, Mr. Hayes did
13 make his identification relatively quickly but because he
14 was very confident in the identification indeed he
15 testified that he had known the person before, he took
16 his time by putting his eyeglasses on. There was no
17 hesitation there. He testified that he was not under the
18 influence of anything and did not feel as though he were
19 under duress.

20 I don't think that based a preponderance of the
21 evidence standard under a totality analysis that the
22 defense has met their burden for suppressing the Biggers
23 identification. With regard to whether or not Mr. Hayes
24 is a credible witness in that he testified that he
25 changed his testimony or attempted to recant after his

1 identity was revealed, Your Honor, that really is a
2 weight question, not an admissibility question. We would
3 just ask that the Biggers identification be admitted.

4 THE COURT: Based upon the testimony of Investigator
5 Purdy and Investigator Merckle, Mr. Putney and Detective
6 Travis and Mr. Hayes I find that the photo lineup is
7 admissible and was done properly. It was done under the
8 proper circumstances. There is no evidence that
9 Mr. Hayes was under any undo influence or alcohol and/or
10 drugs. He was given the photo lineup and it was
11 generated properly and correctly. It was given to him.
12 There was no influence placed upon him or nor any
13 suggestion to him as to who he should select. He
14 selected who he believed to be Mr. Mack from his
15 interaction with Mr. Mack during the buy and the fact
16 that he has called both the prosecution and defense
17 office after the first trial and changed his story goes
18 to the credibility of the witness and not to the purposes
19 of the photo lineup or the admissibility under Neil
20 versus Biggers and I find that the photo lineup and being
21 for identification to be proper. Anything else before we
22 start, Ms. Graham?

23 MS. GRAHAM: Your Honor, just very briefly. Just
24 based on defense's examination with regard to the CI's
25 prior record with regard to his domestic violence charge,

1 that is not admissible under -- Beg the Court's
2 indulgence while I review his record. Actually, Your
3 Honor, Mr. Hayes does not have any record within a ten
4 year window that is probative of truthfulness as I see
5 it. With regard to his pending charges we would say that
6 that certainly can't be used to show bias because we have
7 no control over what Rock Hill does with those charges.

8 THE COURT: I would take them one at a time. Does
9 he have a criminal domestic violence of a high and
10 aggravated nature from 2006?

11 MS. GRAHAM: Yes, Your Honor. He does.

12 THE COURT: What kind of sentence did he receive on
13 that?

14 MR. CHEHOSKI: According to my record, Your Honor,
15 it was a four year sentence on May 24th of 2006.

16 MS. GRAHAM: That is accurate, Your Honor.

17 THE COURT: How does that not fall under 609?

18 MS. GRAHAM: Well, first, Your Honor, that does fall
19 outside the ten year window.

20 THE COURT: The ten year window is defined as when
21 the sentence ends.

22 MS. GRAHAM: And with regard to whether or not he
23 could be impeached based on truthfulness -- Your Honor, I
24 concede that for a non defendant witness that that issue
25 does not matter here.

1 THE COURT: Okay. And then you said something about
2 an assault and battery first degree from 2012?

3 MS. GRAHAM: Yes. He does indeed have an A and B
4 first conviction from 2012, Your Honor, and then
5 thereafter he does have a - excuse me. Before that he
6 actually does have a fraudulent application for a
7 driver's license conviction.

8 THE COURT: When was that from?

9 MS. GRAHAM: That is from 2008. So that is within.

10 THE COURT: All right. Is there anything else
11 you want to cross examine them on, Mr. Chehoski?

12 MR. CHEHOSKI: Your Honor, I don't think that's
13 going to affect the ruling on the hearing that was just
14 concluded.

15 THE COURT: No. We're talking about when he
16 testifies at trial.

17 MR. CHEHOSKI: When he testifies in trial? Let me
18 just note that he had a 2008 conviction for fraudulent
19 application; is that right?

20 THE COURT: Right.

21 MR. CHEHOSKI: Your Honor, I believe I can also go
22 into without going into detail go into the pending
23 charges out of York County. I can ask him about the
24 purchase of marijuana and ask about the obstruction of
25 justice. I just can't go into anymore detail as far as

1 regarding that. Again, I think that's also for the
2 purpose of credibility.

3 THE COURT: You want to be heard on that, Ms.
4 Graham?

5 MS. GRAHAM: Your Honor, just as long as we limit
6 that ruling to he can certainly ask one question but he
7 can't go on.

8 THE COURT: I'm not going to allow - as to the
9 pending charges in York County, I'm going to allow you to
10 ask him if they exist which he, of course, based upon his
11 testimony today he would be crazy not to admit that they
12 exist but I'm not going to let you go down that rabbit
13 trial of all that, calling the Solicitor's Office in
14 Lexington. The Eleventh Circuit has no control over what
15 the Sixteenth Circuit does in cases but I'll let you ask
16 him if he has these charges and if they're pending and if
17 he has gotten them since September of 2015. I think
18 that's admissible for those purposes to show that he has
19 pending charges but I'm not going to let you keep going
20 and going and belaboring that point.

21 MR. CHEHOSKI: Your Honor, that's perfectly
22 acceptable.

23 THE COURT: Okay.

24 MS. GRAHAM: Thank you, Your Honor.

25 THE COURT: Under, for the criminal domestic

1 violence of a high and aggravated nature just so the
2 ruling is clear, under 609 time limit is defined as, the
3 ten year time limit is defined as the later of the date
4 of the conviction or the release of the defendant from
5 confinement imposed for that conviction whichever date is
6 later. So if he received a four year sentence in 2006, I
7 can't imagine that he wasn't in custody in 2007
8 which would fall within the ten years and with this
9 witness and the credibility of this witness being crucial
10 I find that the probative value of that outweighs the
11 prejudicial effect. Mr. Hayes' credibility is crucial to
12 this case and so that's why I will allow the defense to
13 cross examine him on that conviction from 2006. Okay.

14 MS. GRAHAM: Thank you, Your Honor.

15 THE COURT: Anything else?

16 MR. CHEHOSKI: Nothing from the defense, Your Honor.

17 THE COURT: From the State?

18 MS. GRAHAM: Nothing from the State, Your Honor.

19 THE COURT: Let's take a very short break, like
20 everybody run to the restroom if you need to go to the
21 restroom and come right back. Okay? We'll do openings.
22 We'll swear them in and go right into openings as soon we
23 start right back, all right? The next time you have
24 pretrial, tell me so I can tell the jury not to come back
25 until 10:30 or 11:00. I'm not mad. Just in the future

1 just say, hey, we have about an hour worth of pretrial.
2 I wouldn't have told them to be here at 9:30. I'll take
3 responsibility for that when they come back in. Next
4 time just let me know that.

5 MS. GRAHAM: Thank you, Your Honor.

6 THE COURT: No big deal.

7 (Short break.)

8 THE COURT: Is the State ready to proceed?

9 MS. GRAHAM: Yes, Your Honor.

10 THE COURT: Defense ready?

11 MR. CHEHOSKI: Yes, sir.

12 THE COURT: Okay. Y'all can move about the
13 courtroom as you need to. Okay? If y'all want to
14 approach a witness, approach a witness. If they're
15 showing something and you want to move around,
16 Mr. Chehoski, likewise, y'all move around as you need to.
17 If somebody does something crazy, I'll stop you,
18 otherwise you don't need to ask permission every time you
19 approach. I know y'all know what you are doing. I'll
20 let you do your jobs and let you try your case. Okay?

21 MR. BELL: Thank you.

22 THE COURT: All right. Let's bring them in.

23 (Whereupon, the jury entered the courtroom at 11:10
24 a.m.)

25 THE COURT: Okay. Good morning, ladies and

1 gentlemen. Welcome back. Thank you very much for being
2 on time this morning. I promise you that we have been
3 working for the past hour and a half. It wasn't a
4 situation where we were waiting on anybody or anything
5 like that. I accept full responsibility for that so
6 thank you for being on time. I apologize for making you
7 wait just a little bit.

8 The first thing I want to do this morning is make
9 sure you understand who everybody is in the courtroom.
10 So my name is Robert Hood. I'm from Richland County. I
11 introduced myself to you yesterday. Seated to my left,
12 this is Bailey Davis. She is my law clerk. She has
13 graduated from law school. She took the bar exam about a
14 month ago. She is awaiting on the results from her bar
15 exam and then she will work for me from this August until
16 next August. You'll see her on her computer. She may
17 run out and come back in if we're doing things in other
18 cases at the same time while this case is going on so she
19 works for me. Down to my left is Ms. Frick. Ms. Frick
20 is with the Clerk's Office. She will be helping with
21 witnesses, swearing them in, handling the exhibits,
22 things of that nature. Okay? Then you have got
23 Mr. Jones. You all met Mr. Jones. And then Mr. Tolen is
24 in the back and Ms. Mitchell is right here behind me. So
25 they will kind of be in charge of you and as I told you

1 before, the staff here at Lexington is great and amazing
2 and you should be very glad. You have a very competent
3 and professional and courteous courthouse for visiting
4 judges to come in and work in.

5 Now, seated below me is Mr. LeBlanc. He is the
6 court reporter. And I like to say he's the most
7 important person in the room. Okay? So he is the only
8 person in the room who is always working. So he takes
9 down every single word we say so when he gets tired or if
10 he needs a break, he knows he just needs to let me know I
11 need a break because he is creating the official record
12 of what happens here in the court and we want that to be
13 as accurate as possible. Okay? So Mr. LeBlanc is great.
14 He does a wonderful job. So what will happen in almost
15 every trial that I have ever done is witnesses and
16 attorneys will start to talk over each other or sometimes
17 attorneys talk over each other so if you see me go time
18 out or stop or everybody stop talking, that is because he
19 can only take down one voice at a time so we want
20 everybody to be heard. We want the record to be clear
21 and I like to say time out so I'll say time out.
22 Everybody stop. Something like that. I'm not trying to
23 be rude and cut people off. I'm trying to make sure that
24 only one person is speaking at a time so that the record
25 is accurate. Okay? So that's who everybody is.

1 So the first thing we're gonna do this morning is
2 you're gonna be sworn in. Now, you were sworn in on
3 Monday to tell truth to the questions that I asked.
4 Today's oath is different. Today's oath has been used in
5 this country from the very beginning of jury trials and
6 it truly encompasses what you are required to do as a
7 juror and that is to be fair and impartial, to set aside
8 any bias or prejudice you may have and base your decision
9 off the evidence that comes in and the law that I give
10 you and this is your duty. This is your oath to
11 yourself. This is your oath to the parties. And this is
12 your oath to me that you are going to follow the law that
13 I give you, follow the rules that I give you and try this
14 case fairly and impartially. So if you will please stand
15 and Ms. Frick will swear you in.

16 (Whereupon, the jury was sworn by the Clerk of Court
17 at 11:10 a.m.)

18 THE CLERK: Be seated please.

19 THE COURT: All right. Before we begin the actual
20 trial of this case I thought it might be helpful to
21 explain to you how a trial will proceed.

22 First, the State will be allowed to make an opening
23 statement. Now, the opening statements that you will
24 hear are not evidence. They are simply outlines to help
25 you understand what that party expects the evidence will

1 show. The defendant may, if he chooses, present an
2 opening statement but he does not have to for reasons
3 that I will explain to you shortly. Following the
4 opening statements you will hear the testimony and the
5 evidence in this case.

6 Now, the word evidence has a meaning and I'm going
7 to explain that to you in just a second. When you hear
8 evidence, you need to understand what is evidence and
9 what is not evidence so pay attention as I go through
10 this. The evidence will consist of the testimony from
11 the witnesses as well as any physical exhibits which will
12 be introduced into evidence. Following the completion of
13 the testimony the attorneys will again have an
14 opportunity to make what is called a closing statement or
15 closing argument to you. This is an opportunity for the
16 attorneys to summarize the case from their respective
17 points of view. Again, the opening statements and the
18 closing arguments of the attorneys are not evidence.

19 Following the closing statements I will tell you
20 what the law is as it applies to the issues that have
21 arisen during this case. When I have completed my
22 instructions, you will then be permitted to begin your
23 deliberations in order to reach a verdict. It will be
24 your duty, ladies and gentlemen, to decide from the
25 evidence what the facts are. You and you alone are the

1 judges of the facts. You will hear the evidence, decide
2 what the facts are and then apply those facts to the law
3 that I give you. That is your duty in this case. That
4 is how you will reach your verdict. In doing so you must
5 follow the law that I give you whether you agree with it
6 or not.

7 The evidence will consist of the testimony of the
8 witness and any documents or anything else received into
9 evidence as an exhibit and/or including any facts upon
10 which the lawyers agree or anything that I tell you to
11 accept.

12 Now, you should not take anything that I say or do
13 during the trial as indicating what I think of the
14 evidence or what I think your verdict should be.

15 Basically in summary it's this: You are in control
16 of the facts. I am in control of the law. I am not
17 allowed to have an opinion about the facts. I'm not
18 allowed to tell you what the facts are and you are not
19 allowed to tell me what the law is. So you are in
20 control of the facts and I am in control of the law.

21 Now, this is a criminal case brought by the State of
22 South Carolina. The State has charged the defendant with
23 the distribution of cocaine. That charge is contained in
24 the indictment. The indictment alleges the allegations
25 that I read to you on Monday. Now, this indictment is

1 not evidence of anything. It is simply the description
2 of the charge made by the State against the defendant.
3 The defendant has pled not guilty to the charge and he is
4 presumed to be innocent unless and until proven guilty
5 beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the defendant's guilt. A
8 defendant has the right not to testify and never has to
9 prove innocence or present any evidence at all. The
10 burden of proof is always upon the State of South
11 Carolina.

12 Now, some things that you will hear during this
13 trial are not evidence and you must not consider them as
14 evidence. Number 1, the statements and the arguments of
15 the attorneys are not evidence. Number 2, the questions
16 and the objections of the attorneys are not evidence.
17 Number 3, anything that I tell you to disregard. So it
18 happens in almost every single case somebody says
19 something and I say you are to disregard that statement.
20 You are to literally wipe it from your mind and not use
21 it in your deliberations.

22 There are two types of evidence. One is direct
23 evidence and the other is circumstantial evidence.
24 Direct evidence is what somebody saw, heard, did,
25 touched, smelled, something of that nature.

1 Circumstantial evidence is indirect evidence. It is
2 proof of one or more facts from which you can find
3 another fact. You are to consider both direct and
4 circumstantial evidence. The law permits you to give
5 equal weight to both but it is for you to decide how much
6 weight to give any evidence.

7 Now, in this court and throughout this trial there
8 are rules that apply to the procedure of how things go.
9 I'm just not making this up as we go. There are criminal
10 rules of procedure and there are rules of evidence. This
11 book right here is my evidence book. Okay? So when a
12 lawyer asks a question or offers an exhibit into evidence
13 and the lawyer on the other side thinks that it is not
14 permitted by the rules of evidence, the lawyer may object
15 so they will stand up and say objection. Hearsay.
16 Objection. Relevance. These are just examples. If I
17 overrule the objection, then the question may be answered
18 or the exhibit may be received. If I sustain the
19 objection, the question cannot be answered or the exhibit
20 cannot be received. Whenever I sustain an objection to a
21 question or deny a motion to admit an exhibit into
22 evidence, you must ignore the question or the existence
23 of the exhibit and you must not guess at what the answer
24 would have been or what the exhibit would have shown.

25 Sometimes it may be necessary for me to ask that you

1 leave the courtroom while I discuss legal issues with the
2 attorneys that come up during this trial. This happens
3 in every single case. When this occurs, you should not
4 speculate about our discussions or the reason that you
5 were asked to leave the room. This is a procedure used
6 that the law requires when certain legal issues come up.
7 There may be also occasions when I ask the attorneys to
8 approach the bench so that I can discuss something with
9 them in private, a legal issue. I will do this as often
10 as possible so that you will not be required to leave the
11 courtroom more than is absolutely necessary. Again, if I
12 ask the attorneys to step to the bench or if I ask you to
13 leave the courtroom, please don't think that anybody is
14 trying to hide anything from you or keep anything from
15 you. This is simply a procedure used by all lawyers and
16 by all courts to determine and to decide legal questions.

17 Now, to decide the facts of this case you have to
18 decide which witnesses to believe and which witnesses not
19 to believe. We call this the credibility of the
20 witnesses. You may believe everything a witness says.
21 You may believe part of what a witness says. Or you may
22 believe none of what a witness says. In deciding what to
23 believe you may consider but you're not limited to the
24 following factors. Number 1, what was the witness'
25 ability to see, hear or know the things testified to.

1 Number 2, what was the quality of the witness' memory.
2 Number 3, what was the witness' manner or demeanor while
3 testifying. Number 4, does the witness have an interest
4 in the outcome of the case or do they have any motive or
5 bias or prejudice. Number 5, was the witness
6 contradicted by anything the witness said or wrote before
7 the trial or by other evidence. Number 6, how reasonable
8 was the witness' testimony when considered in light of
9 the other evidence that you believe.

10 The bottom line is this: You judge people's
11 credibility every single day of your life. This morning
12 before you came to court, unless you live alone, you
13 judged somebody's credibility. What's the easiest
14 example is when the kids come downstairs and I say, did
15 you brush your teeth? Right? Okay. I judge that
16 child's credibility right there when they say yes, or by
17 what their teeth look like or what their breath smells
18 like or the fact that I know that child doesn't like to
19 brush their teeth, right? We judge people's credibility
20 all day long. When you came in the courtroom this
21 morning, you didn't leave your common sense at the metal
22 detector. You were chosen for this jury for a reason so
23 do not leave your common sense at home when you come into
24 the jury room! Okay?

25 Now, until I advise you that you are allowed to

1 begin your deliberations that is at the very end of the
2 case you must not discuss this case with anyone including
3 each other in any way, shape or form. You can talk about
4 the eclipse. You can talk Gamecock football. You can
5 talk about Clemson football. You can talk about anything
6 else you want to but you cannot talk about this case.
7 Got it? In any way, shape or form even down to I don't
8 like that judge's tie. I don't like his tie. You can't
9 even say that. Okay? You are not allowed to talk about
10 the case in any way, shape or form. This includes
11 friends, family members or anyone involved in the case.
12 This includes discussions that are face-to-face, by
13 telephone, e-mail, text message, blog, instant message or
14 some kind of messaging app that I don't even know what it
15 is. Whatever it is you can't use it to talk about the
16 case at all. You may not use any type of electronic
17 device to get or send information about the case. You
18 may use these devices during your breaks or overnight but
19 you are not allowed to use them to get or send
20 information about this case. This includes information
21 about a party, a witness, an attorney, a court officer or
22 any news accounts about the case.

23 You also cannot go out and do any research on
24 something. You can't go and say, well, I would really
25 like to know this so I'm going to go out and research

1 this. Okay? Let me give you the easiest example of that
2 is let's say this was a car wreck case, like two people
3 got in a car wreck here in Lexington. Let's say they got
4 in a car wreck everybody know where Publix is. There's a
5 lot of car wrecks right there, right? So let's say
6 that's where the car wreck was. I'm making this up. I
7 would tell you unless you have to go home that way, don't
8 go by that intersection. Okay? The reason is this: You
9 don't know that what that intersection looks like today
10 is what that intersection looked like on the day of the
11 accident. Okay? So that's why you can't go out and do
12 your own kind of research on the case. Okay?

13 You're going to base your decision on the evidence
14 that comes in and the law that I give you and your common
15 sense and nothing more. I know of no news media about
16 this case. There are no news reporters in here but if
17 for some reason you're watching the news and this case
18 comes on, you need to turn it off. Okay? Once the
19 case is submitted to you, you can discuss it with each
20 other. The attorneys and the parties in this case have
21 been told not to talk to you so if they see you in the
22 hall and they don't even say hello, they're not being
23 rude. They are merely following my instructions.

24 It is important that you keep an open mind and you
25 are not to decide any issue in this case until all of the

1 evidence has been presented, the parties have made their
2 closing arguments and I have told you what the law is in
3 this case. It is your responsibility to determine the
4 guilt or the innocence of the defendant and your verdict
5 must be based solely on the evidence that is presented to
6 you in this trial and on the law that I give you at the
7 close of the case.

8 All right., Mr. Foreman, it will be your duty to
9 preside in the jury room. Someone needs to communicate
10 with the court, that will be your responsibility and I'll
11 give you further instructions later. I do not allow note
12 taking so no one is allowed to take any notes. While
13 this a very important case, I do not expect it to be a
14 very lengthy case and therefore I will not allow any note
15 taking. What happens is you start taking notes and when
16 you start taking notes, you stop listening because the
17 testimony continues on. Okay?

18 All right. Is the State ready to proceed?

19 MS. GRAHAM: Were are, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. CHEHOSKI: Yes, sir.

22 THE COURT: All right. Ms. Graham, the floor is
23 yours.

24 MS. GRAHAM: Good morning, ladies and gentlemen. As
25 you heard, the defendant in this case has been charged

1 with distribution of cocaine. That's because on
2 September 4th, 2015 he sold a quantity of cocaine to a
3 confidential informant along with his co-defendant
4 Johnnie Lee Dickerson. That buy was monitored by agents
5 with the Lexington County Narcotics Task Force.

6 Distribution brings to mind sort of business terms
7 and indeed Mr. Mack is a businessman. He has a product,
8 in this case cocaine. He has capital. In this case cash
9 money. And he has a market, a corner in the West
10 Columbia area of Lexington County. But there is no
11 golden arches for cocaine. This business is done in the
12 shadows because not only is it illegal, it is extremely
13 dangerous and law enforcement has to go into the shadows
14 in order to police this kind of activity.

15 The reason that I'm telling you this is because I
16 want you to think about that when you're hearing from our
17 confidential informant today. You do not send Sunday
18 school teachers in to buy dope. Law enforcement uses
19 CI's as conduits to get to these transactions and that
20 conduit has to make sense to that market.

21 In order for you to ultimately find that the
22 defendant is guilty of the offense as charged the State
23 has to prove two main elements to you. First, that the
24 substance was, in fact, crack cocaine. You're going to
25 hear from Lexington County's chemist in this case Meg

1 Walker and she's going to explain to you that she tested
2 that substance and it was, in fact, cocaine.

3 Second, the State has to prove to you that the
4 defendant in this case distributed that substance. This
5 transaction was actually caught on video surveillance so
6 by transferring we simply mean he gave it to another
7 party. And we have to prove all of this to you beyond a
8 reasonable doubt and you heard what that means from our
9 Judge and I will say always look to the bench for any
10 instructions with regard to the law but I do want to make
11 it clear that beyond a reasonable doubt doesn't mean
12 beyond all doubt because nothing in life is a hundred
13 percent certain. It is indeed the kind of proof that
14 leaves you firmly convinced of the defendant's guilt.

15 So if this case is as I say it is very
16 straightforward, caught on video surveillance, then what
17 does this case ultimately come down to? It comes down to
18 an argument that any one of you with small children will
19 be very, very familiar with. It comes down to the it
20 wasn't me factor. I myself have a small child and
21 experienced him coloring on the wall in a 700 square foot
22 apartment while I was in law school. There weren't but
23 two of us there and he was the only one with a set of
24 Crayolas but it wasn't me. The difference is that Mr.
25 Mack, Mr. Mack is a grown man and it's time that he be

1 held accountable for the crime that he committed that day
2 and I believe at the conclusion of the State's case you
3 will be firmly convinced that he did indeed commit this
4 crime. Thank you.

5 THE COURT: Thank you, Ms. Graham. Mr. Chehoski,
6 would you like to make an opening statement?

7 MR. CHEHOSKI: Yes, Your Honor. Thank you.

8 THE COURT: All right. The floor is yours.

9 MR. CHEHOSKI: Good morning. There is an old saying
10 and it goes like this: If you lie with the dogs, you're
11 gonna get fleas. The reasoning behind it, I believe, is
12 that if you spend your time with disreputable people,
13 their bad influence is going to rub off on you.

14 Now, for a long time in the war on drugs the State
15 being law enforcement, prosecutors has relied on law
16 enforcement to make cases. They rely on informants and
17 informants are not usually people with reputations for
18 honor, character, integrity or credibility and in this
19 case that's who the State is relying on to convict Marcus
20 Mack. They are opportunists who are only in it for
21 themselves to either make a little money or try to get
22 themselves out of a bad situation. That is who the State
23 is in bed with on this case. Now, Marcus, stand up
24 please.

25 MR. MACK: (Complies.)

1 MR. CHEHOSKI: Please sit down. He's an innocent
2 man. He will remain that way from this point all the way
3 through the trial and only be guilty if and only if the
4 State proves otherwise beyond a reasonable doubt. As a
5 juror you must set aside your first impressions, your gut
6 intuitions, your personal feelings, any other bias that
7 you might have. Marcus comes in here with a clean slate.
8 He is entitled to all the privileges that one is due as a
9 citizen of the United States and as a resident of South
10 Carolina and under the oath that you just took you are
11 required to see him that way as the law does pure as the
12 driven snow and if for a moment you haven't done that,
13 I'm gonna give you this moment right now to reset,
14 forgive yourself for that lapse and get focused to see
15 Marcus in that way.

16 Now, in their opening the State had a choice to
17 make. They could have told you everything good, bad,
18 otherwise, or they could have just told you what they
19 wanted you to hear. Did you hear them acknowledge any
20 possible weaknesses in their case? Or did they tell you
21 only what they wanted you to hear? That's part of your
22 job here is to hold the State to their burden. They say
23 they welcome their burden. That's what the law says,
24 they have to. I'm asking you to pay close attention to
25 any excuses they might make, to any offers of

1 explanations as to why things that should be there aren't
2 there or why they did things a certain way they did it.

3 And this is where you come in. Your job both
4 individually and collectively is to hold the State to
5 their burden. Armed with the law that Judge Hood will
6 give you put their case to the test. No one person in
7 this box, their voice does not carry any more weight than
8 the others. It's 12 equal voices. No one's voice is no
9 more important. If you have questions, make your voice
10 heard. Judge Hood said you should not leave your common
11 sense at the metal detector. Bring it in with you. Make
12 your voice be heard. Ask questions. Do not accept what
13 they are saying just at face value. Put it to the test
14 and be prepared to exercise that solemn power when you
15 get the case at the end because at that time I'm going to
16 ask you to trust what you see and not what you hear and
17 you are going to find Marcus Mack not guilty. Thank
18 you.

19 THE COURT: Thank you very much. Is the State ready
20 to call its first witness?

21 MS. GRAHAM: Yes, Your Honor. The State calls Agent
22 Scott Purdy to the stand.

23 THE COURT: Please come forward and be sworn.
24
25

1 Thereupon,

2 SCOTT DAVID PURDY

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. Once you're seated,
5 state your full name spelling your last please.

6 THE WITNESS: Scott David Purdy, P-u-r-d-y.

7 DIRECT EXAMINATION

8 BY MS. GRAHAM:

9 Q. Good morning, Agent Purdy. What do you do for a
10 living?

11 A. I'm a detective with the Lexington County Sheriff's
12 Office. I'm assigned to our narcotics enforcement team.

13 Q. What is the narcotics enforcement team?

14 A. It's a multi agency team put together of detectives
15 from the Sheriff's Office and then also any other small
16 municipalities that may coincide inside the county that don't
17 have the manpower to do their own narcotics cases, smaller
18 agencies such as Pelion, Batesburg/Leesville, West Columbia,
19 things of that nature.

20 Q. And what are your duties associated with being an
21 agent on that team?

22 A. We're responsible for doing background
23 investigations or follow up investigations on any tips that
24 may come in through the CrimeStoppers anonymous line. We also
25 have our own narcotics line through the Sheriff's Department

1 where we get tips from citizens. Anything that may be needed
2 to get investigated further, if a deputy comes out on a call
3 and sees something that's strange. And then in the spare time
4 we also make controlled purchases from subjects than are
5 dealing drugs.

6 Q. Agent Purdy, would you say that most of your work is
7 conducted in the street or most of your work is conducted
8 behind a desk?

9 A. In the street. Yes, ma'am.

10 Q. Just touching on your appearance today, Agent Purdy,
11 you are wearing a suit. Is that perhaps why you have longer
12 hair and perhaps facial hair?

13 A. Yes, ma'am. Some of us, we're the ones that get
14 paid to not look like this. Typically I'm in some dirty jeans
15 and a T-shirt and outside. I don't think anybody would look
16 at me and think police officer but that's kind of the point.
17 We do that really for our own protection and also for the
18 protection of the people we work with. You know, if somebody
19 wanted to make a complaint about their neighbor cooking meth,
20 they may not want a marked squad car in their front yard and
21 telling them about it so we do keep our appearance
22 different.

23 Q. Prior to working narcotics here in Lexington, did
24 you have any other law enforcement experience?

25 A. Yes, ma'am. I was a patrol officer in Florida for

1 about four years. We moved here to raise a family. I worked
2 for Richland County for about two and a half years. And then
3 I came to Lexington County. I worked the road here for about
4 a year, and I have been back in the narcotics unit for about
5 three years. In total about 11 and a half years with
6 police.

7 Q. Can you describe any trainings that you have
8 completed in connection with your experience in law
9 enforcement?

10 A. Well, yes, ma'am. I was in the police academy in
11 Florida for about six months. It's a lengthy all day long hot
12 summer sun type of atmosphere. We had some narcotics training
13 down there as part of our road experience. When I came to
14 South Carolina, I had to repeat, they call it a cross over
15 academy. It's about three weeks of just kind of going over
16 the difference in law in South Carolina being different from
17 other states and then since I have been here in Lexington
18 County we have block training twice a year where we're refresh
19 in different areas, biannual shooting, certified as a meth
20 technician by the FBI where we have to go off and handle meth
21 labs and how to dismantle them or recognize them, how to
22 handle them. That's a week long type of thing. And then just
23 various different classes that we can take on the side.

24 Q. You have explained that your work primarily takes
25 you out into the streets. How do you go about developing the

1 intel for your cases?

2 A. It really depends on what the case is and what the
3 complaint is. For example, if it's a complaint that someone
4 is cooking meth or dealing drugs out of their house, we may
5 conduct surveillance. We may be familiar with that person
6 already from dealing with them at a different address. People
7 in this line of work tend to move around quite a bit once
8 their landlord figures out what's going on. So we may be
9 familiar with them already. We may watch the house for a
10 while. Sometimes we sneak in the middle of the night and
11 steal garbage out of the garbage cans to see what they're
12 doing, things like that nature and we rely heavily upon
13 citizen calling up and letting us know what people are doing
14 and then also again tapping the other agencies to see what
15 they've got going on in their jurisdictions that may still
16 fall in Lexington County.

17 Q. Do you ever rely on intelligence from confidential
18 informants?

19 A. We do. As mentioned earlier, people make bad
20 decisions. It doesn't make them bad people but sometimes
21 people that are either recovering or want to get out of the
22 drug game or just are down on their luck or whatnot and may be
23 familiar with a certain type of person that may be dealing
24 drugs or may know people dealing drugs, they will contact us
25 and let us know about things that are going on. If a lot of

1 times there's nothing we can do anything about right at that
2 time, but if it's something we can act on, we try to.

3 Q. Why is confidentiality so important when you're
4 working with a CI?

5 A. Well, number 1, for their protection. You wouldn't
6 want to tell me something in confidence and then me go next
7 door and say, hey, your neighbor says you're cooking meth. Is
8 that true? Because again, we may not be able to prove it
9 right then but now you have got one neighbor mad at the other
10 and then that neighbor may not come out and tell me something
11 else that's going on. In the case of a confidential informant
12 buying drugs, I don't think anybody wants to be on the bad
13 side of a drug dealer. They are typically violent people.

14 Q. What, if anything, does a CI get for the risk that
15 they are assuming?

16 A. It really depends on the motivation of that CI. I
17 have worked with CI's that just want to make the world a
18 better place and don't want drugs on their streets or maybe
19 have a family member that's been addicted or God forbid fallen
20 victim to an overdose or things of that nature where they want
21 to do their part. When it comes to information sometimes it's
22 just a phone call. But the folks that are out walking the
23 streets with us and going in and making controlled buys with
24 video cameras on them and things of that nature typically
25 they are either motivated by money or they're motivated by

1 they have been arrested and they have got pending charges and
2 we let them know that depending on their cooperation their
3 Solicitor is told about what they do to help and then it
4 really falls on the Solicitor to determine whether or not they
5 can help out.

6 Q. Because you are dealing with folks who may or may
7 not have criminal histories, what measures, if any, do you
8 take to ensure the reliability of a CI?

9 A. It all starts with an interview. Somebody will
10 contact the Sheriff's Office and let us know they are
11 interested in being a CI or we will approach somebody that
12 we've arrested recently to ask if they're interested in
13 becoming a CI. If they do show an interest in that, I sit
14 down with them and we discuss what my expectations are, what
15 their expectations are, what they hope to get out of it.
16 There's definitely guidelines and rules as far as what they
17 can or cannot do, what they can or cannot possess, what their
18 behavior, expectation is when they're working as well as when
19 they're not.

20 Their criminal history is pulled. There are certain
21 things that if you are involved in, if you have been convicted
22 of that would disqualify you from being a CI specifically in
23 Lexington County. These things include anything that involves
24 children. Any kind of offenses against children. Anything
25 that would label you as untruthful being maybe if you were

1 convicted of a perjury charge or something along those lines.
2 Then it's kind of like a job application. You give me all
3 your information. I go back to my boss with what I have, we
4 do our research. If everything falls into line, then they get
5 approval whether they can work for us.

6 Q. With regard to a buy itself what measures do you
7 take with regard to the buy to ensure reliability?

8 A. Kind of taping the vein of the last question as
9 well, when I got a new CI, what I start with is I'll just ask
10 for information. I'll ask them who do you know in the area
11 that's selling drugs or who do you know in this area that's
12 doing whatever. I typically try to ask them questions about
13 an area that I already know. What that does is it gives me
14 the opportunity to see if they're gonna come to me with the
15 people that I know are dealing drugs or if they're just gonna
16 throw information at me that they think I want to hear. So
17 that kind of helps to build the credibility as to whether or
18 not the people are being reliable.

19 When it comes to making a buy itself, if this -
20 we're pretty strict about how we handle a buy. So, for
21 example, in this particular situation and any of them really
22 the CI's are searched. They come to us. They let us know,
23 hey, I've got this target. I can buy this for this amount of
24 money or whatnot. Prior to that, we take information if they
25 have it, phone numbers, descriptions or whatnot, and we do our

1 own research to try to figure out exactly who they're talking
2 about so we know what we're getting ourselves into, where
3 they're going, what they're buying, what they're going to
4 spend.

5 Then the CI will be picked up, taken somewhere where
6 they're not in the view of everyone else and we search them.
7 We search what they're wearing. If they came in a vehicle, we
8 search the vehicle. We specifically are looking for any money
9 they may have, any drugs, contraband they may have, if they
10 have any weapons or anything like that. Once they are
11 determined that they're not holding anything they shouldn't
12 have, we then wire them with an audio recording device, a
13 video recording device. They vary depending on what the
14 situation is or where they're going to go. Then they're given
15 instructions. They're given money that's documented by us so
16 that we can keep track of it. Then we send them off to go
17 down and make contact with whomever they are buying from that
18 day.

19 Q. Agent Purdy, what's a buy bust?

20 A. A buy bust is kind of more what you see in movies
21 when if it was in a house somebody comes, knocks on the door,
22 makes a buy and then right then before there is a chance to do
23 anything else everyone comes hut, hut, hut, kick the door in,
24 arrest everybody in the house. It has its place more in the
25 federal agency or larger type amounts that you are talking

1 about. Movies, again, if you are buying kilos of cocaine and
2 it's stacked up on the table, it's not really reality. We
3 typically don't do a buy bust just for the protection of the
4 CI. Again, if I told you, hey, I want you to go inside and
5 buy this cocaine and I promise I won't tell anybody who you
6 are and then the minute you leave I kick the door in and I say
7 you just sold cocaine, you know, again, common sense would
8 dictate that that CI wouldn't do much work for me.

9 Q. Did you use a CI in this case?

10 A. I did. Yes, ma'am.

11 Q. Who was the CI in this case?

12 A. Frank Hayes.

13 Q. When did the buy take place?

14 A. The buy was on September 4th, 2015.

15 Q. What happened during the buy?

16 A. Again, just some background. The area that we were
17 going down to target is in Lexington County but it's also in
18 the City of West Columbia. Referring back to what I mentioned
19 earlier, West Columbia uses the NET Team because they don't
20 have the manpower to put a 10 or 12 man team out into the
21 street. Detective Jody Putney was the narcotics detective at
22 that time. He contacted us and asked us if we would be
23 willing to go down to that area specifically to try and buy
24 cocaine from an area that was one street inside their
25 jurisdiction that was still our jurisdiction. So we met with

1 Agent Putney. He had the CI Mr. Hayes that he was familiar
2 with and he was searched, he was wired with the equipment, we
3 drove him down to that area and dropped him off and asked him
4 to go buy an amount of cocaine from Sumter Street from a
5 subject that we were told his name was Beazy, street name was
6 Beazy and we dropped him off and he went off to attempt that
7 buy.

8 Q. How much did you give him?

9 A. He was given a hundred dollars.

10 Q. What are the documented or pre-recorded funds?

11 A. Personally I document, I write down the serial
12 number of each bill and what the denomination is on my
13 paperwork and then I also typically take a photograph of the
14 money itself.

15 Q. Agent Purdy, I'm showing you what's been marked as
16 State's exhibit 1. Do you recognize this item?

17 A. I do.

18 Q. Okay. What is it?

19 A. It's a photograph of the hundred dollars, five 20's
20 and the serial numbers.

21 MR. CHEHOSKI: Judge, objection. It's not in
22 evidence right now.

23 THE COURT: You're not allowed to show it to
24 anybody. Just answer the questions. Go ahead.

25 BY MS. GRAHAM:

1 Q. Is it a fair and accurate depiction of the funds
2 that Frank was given that day?

3 A. I would assume so. I would have to check the serial
4 numbers. I'll take your word but I'm sure it is.

5 MS. GRAHAM: Your Honor, at this time the State
6 requests to admit State's 1 into evidence.

7 MR. CHEHOSKI: That's without objection, Your Honor.

8 THE COURT: All right. State's exhibit number 1
9 admitted without objection.

10 BY MS. GRAHAM:

11 Q. You previously testified that you wire your CI's)
12 with audio and video. You did that in this case?

13 A. Yes, ma'am.

14 Q. Can you explain to me technologically how that
15 works? And just to be a little bit clearer, where the camera
16 is mounted and what you can actually monitor during the buy.

17 A. Yes, ma'am. Okay. The unit that we use, we have
18 several different ones depending on the situation and
19 depending on what we are trying to capture, it's typically a
20 body mounted camera somewhere on the torso. It records live
21 video and live audio in color typically and what it also does
22 it transmits the audio back to our listening station so we can
23 monitor the safety and progress of the CI from a distance
24 without being right on top of him.

25 Q. And the audio then is live realtime?

1 A. Yes.

2 Q. What do you do with the video once the CI comes
3 back? What's the procedure?

4 A. Once they come back, we obviously stop it from
5 recording. I collect the equipment. It's very expensive. We
6 take it back to my office or the narcotics' office and it gets
7 downloaded from the unit itself onto a computer where
8 everything is stored and it gets sorted, case number, date,
9 location into our evidence database.

10 Q. So you testified that you picked Frank up and what
11 happened from there once he's ready to go? He's been
12 searched.

13 A. So he's wired up. I give him the cash. We drop him
14 off some place where he's not going to be seen getting out of
15 our car. He goes and walked, in this instance again his
16 target was back down at the bottom of Sumter Street. He
17 walked for a short time and came upon a chain link fence that
18 was taller than he wanted to climb so he turned around, came
19 back a ways and cut across some yards, went down a couple more
20 blocks and found his way to Sumter Street. He made contact
21 there at the house that we had suggested with a subject again
22 known as Beazy. He was the original target in this case due
23 to West Columbia wanted this particular drug house was already
24 a target. He spoke to Beazy. Found out that there was no
25 crack at the time at that house, however, Beazy suggested

1 another area not far where he could get crack.

2 They walked together to that location where they
3 made contact with a vehicle with three subjects inside the
4 vehicle, one in the driver's seat, two in the rear of the car.
5 He spoke with the two passengers in the back seat. Asked if
6 he could buy an amount of a hundred dollars of crack cocaine.
7 The first subject told him that he didn't have enough crack to
8 give him a hundred dollars of crack cocaine. The second
9 subject said that he did have enough between the two of them.
10 There was an exchange between the two subjects in the back
11 seat where they were able to pull together their resources and
12 have a hundred dollars worth of crack cocaine. They in turn
13 gave the CI the crack cocaine. The CI in turn gave them a
14 hundred dollars in documented funds which they then divvied up
15 based on who put in how much crack.

16 The CI then walked back to where we were. We picked
17 him up. We stopped his recording equipment. We collected the
18 crack cocaine and put it in my stuff. We took him off
19 somewhere else where we took the equipment off of him. We
20 searched him to make sure that he didn't have anything on him
21 that he shouldn't have and then he gave a statement which was
22 written and then he signed it. I then placed the cocaine into
23 evidence which we put in what's called a BEST kit. What that
24 is is a sealable bag, tamper proof sealable bag that gets
25 turned into our evidence department of Lexington County and

1 gets tested by our chemist.

2 Q. Take us back to the buy. You're monitoring this on
3 audio. Was there a disruption in the audio? Could you keep
4 track of what was going on?

5 A. We were parked in an area so that we could always
6 hear where he was. He was walking for a pretty good amount of
7 time between the first stop and the second stop we were still
8 able to hear the conversation and know that he was safe.

9 Q. Based upon your monitoring or the work you did
10 afterwards were you able to determine where the buy took
11 place?

12 A. I don't recall if he said on the video where the buy
13 was. He was able to tell us when he came back exactly where
14 he was when he bought it.

15 Q. Where was that?

16 A. He was on the corner of North Brown Street and Ross
17 Street which is still in West Columbia in Lexington County.

18 Q. I'm showing you what's been marked for ID purposes
19 only as State's 2. Do you recognize this item?

20 A. Yes, ma'am. It's a photograph of the plastic bag
21 containing the rocks of crack cocaine that were purchased by
22 Frank Hayes that day.

23 Q. Has that photograph been altered or changed since
24 you last saw it?

25 A. No, ma'am.

1 MS. GRAHAM: At this time, Your Honor, the State
2 would ask to admit State's 2 into evidence.

3 MR. CHEHOSKI: No objection.

4 THE COURT: State's number 2 admitted without
5 objection.

6 BY MS. GRAHAM:

7 Q. Agent Purdy, I'm showing you what's been marked as
8 State's 9 for identification purposes only. Do you recognize
9 this item?

10 A. Yes.

11 Q. Okay. What is it?

12 A. Well, inside the bag is the BEST kit that I entered
13 the crack cocaine evidence into.

14 Q. You briefly sort of got into what a BEST kit is and
15 why you use BEST kits. Can you just expand on that a little
16 bit?

17 A. Yes, ma'am. Again, it's a plastic bag and it's got
18 a peel and stick on the top so that once evidence is entered
19 into it and the sticker is peeled off and it's folded over, if
20 you ever tried to open it, it distorts. There's a design all
21 the way around it and it distorts to show if somebody tried to
22 tamper with it similar to a bank deposit bag.

23 Q. How do you know that that BEST kit is associated
24 with your case and the item in the BEST kit is associated with
25 your case?

1 A. Okay. On the top here is a control number and then
2 each one has its own specific control number.. In this case
3 it's 0022349 which I documented in my report as being the bag
4 that I put the crack cocaine into. Also, you write down your
5 case number on the bag itself and the date you entered it
6 which coincides with the case number for this case and the
7 same date and you also handwrite and sign your name as the
8 person sealing the envelope or the BEST kit which in this case
9 has my name and signature.

10 Q. With the exception of the chemist's signature
11 evidencing her opening the bag, does the bag appear to have
12 been altered or tampered with in any way?

13 A. No, ma'am. Again, other than just the chemist
14 opening it to do her tests it still appears to be the same
15 bag.

16 Q. Agent Purdy, you talked about how you handled the
17 video recording equipment when you're monitoring these buys.
18 Explain to me what you did with the equipment specifically in
19 this case after you took it from Frank and you went back to
20 the office?

21 A. Well, the unit itself has a download port like any
22 cell phone or any kind of recording device. We plug it into
23 our computer, it brings up anything that's been recorded on it
24 since the last time it was downloaded and you can select it
25 and then in the case of our evidence collecting we start a

1 file with that case number on it. We copy it from the unit to
2 that file, it downloads and then it stays there until the time
3 when the Solicitor's Office requests a copy of it, we burn it
4 to a disk, we burn it to a CD and drop it off.

5 Q. And are there other downloads associated with other
6 cases on that hard drive?

7 A. Yes.

8 Q. But there is a specific number associated with this
9 case for the download?

10 A. Yes. In each case there is a folder for each agent,
11 folder for each case number and then if you have more than one
12 buy for a target, then there is a folder for each buy and they
13 are separated by date and case number.

14 Q. Did you transfer the video of the buy in this case?

15 A. I don't recall if it was me personally or my partner
16 Agent Merckle. At the time we did all of our cases together.
17 I would have been in the room while it was happening. I just
18 don't know if I'm the one who pushed start.

19 Q. Did you watch the video that you retrieved in this
20 case?

21 A. Yes, ma'am. I did.

22 Q. Agent Purdy, I'm showing you what's been marked as
23 State's 3 for ID only. Do you recognize this item?

24 A. I do.

25 Q. What is it?

1 A. This is a CD that has a copy of the buy video burned
2 to it.

3 Q. How do you know that it's the CD that you viewed?
4 Did you view the CD?

5 A. I did. Yes, ma'am.

6 Q. How do you know that?

7 A. I initialed it and dated it on the day that I viewed
8 it and it's also my handwriting for the case number and the
9 subject's name on the disk itself.

10 Q. Does the footage on that disk accurately depict the
11 footage that was taken from the informant that day?

12 A. Yes. It does.

13 Q. Was it altered, tampered, edited in any way?

14 A. No, ma'am.

15 Q. When Frank got back to the van, did he give you the
16 legal name of the people that he encountered that day?

17 A. No, ma'am. As I remember it he told me that he had
18 bought the crack cocaine from a subject that he knew as Sweet
19 Pea and a subject that he knew as Anthony.

20 Q. And how, if at all, were you able to determine the
21 legal identity of the people pictured on the video?

22 A. Well, again, in this case because it was West
23 Columbia that asked us to do the actual buy it was their
24 jurisdiction, I spoke with Agent Putney that day and asked him
25 if he was familiar with those two street names. He said,

1 well, just send me the pictures.

2 MR. CHEHOSKI: Objection. Hearsay.

3 THE COURT: Sustained.

4 BY THE WITNESS:

5 A. I watched the video and I was able to secure still
6 photos of the video which depicted the faces of who he bought
7 the crack from. I then printed those pictures and attached
8 them to an e-mail and I sent the e-mail to Agent Putney in
9 West Columbia Police Department asking him if he was familiar
10 with the two subjects as it was West Columbia that he would be
11 familiar with. Agent Putney e-mailed me back and stated that
12 he knew the two subjects to be, Sweet Pea's actual name is
13 Johnny Lee Dickerson and he knew Anthony to be Marcus Antonio
14 Mack from previous dealings with those two subjects.

15 Q. What did you do after you had Marcus Antonio Mack's
16 legal name?

17 A. I asked my intel unit to provide me with a photo
18 lineup that would include Mr. Mack's photograph so that I
19 could show that to Frank and have him identify the person that
20 he had bought the crack from to see if it was, in fact, Marcus
21 Mack who Agent Putney had believed it to be.

22 Q. What is a photo lineup?

23 A. So a photo lineup in our case it's a black and white
24 six pack of six photographs, common features, physical
25 features, three on top, three on the bottom of people that

1 look alike.

2 Q. And did you have the informant view the lineup in
3 this case?

4 A. Yes, ma'am. I did.

5 Q. Do you recall the date and time that you had him
6 look at this lineup?

7 A. I don't know exactly what time. Actually, I could
8 look at my supplement here. September 22nd, a couple weeks
9 later. We don't necessarily always see our CI's as often as
10 our co-workers so I hadn't had a chance to get back with him
11 until then.

12 Q. Where did the viewing of the photo lineup take
13 place?

14 A. We picked him up and went off to a private spot and
15 we were sitting inside our vehicle.

16 Q. By him you're referring to?

17 A. Frank Hayes the CI.

18 Q. You stated that there were six photos in the lineup;
19 is that correct?

20 A. Yes, ma'am.

21 Q. And the layout of the photos was three on top, three
22 on the bottom?

23 A. Yes, ma'am.

24 Q. Can you describe the nature of the photos that were
25 used in that lineup?

1 A. What they typically will use, if they have them in
2 the system, is any internal photographs that we have in our
3 remote database. Typically that are compiled from booking
4 photos if they have got them on file. If they're not on file
5 for having been booked there, sometimes they use a DMV
6 photograph. But that's more difficult because the backgrounds
7 are often different. If they're not able to do that, they
8 will sometimes contact SLED and see if they can find a
9 photograph of the person. In this case though it was six
10 photographs from our remote database system which would have
11 been previous booking photos.

12 Q. How is the lineup presented to the informant?

13 A. I have a clipboard that I keep in my car that I use
14 for when I'm making buys. I attach it to a clipboard. I
15 handed it to Frank. I asked him specifically remember back to
16 September 4th, 2015. Is there anyone in this photo lineup
17 that you know as Anthony as the person that sold you crack
18 that day.

19 Q. Was anybody else present during the lineup?

20 A. Just my partner Agent Merckle.

21 Q. Where was he seated?

22 A. He was in the driver's seat. I was in the passenger
23 seat. Frank was sitting in the back seat.

24 Q. Did Mr. Hayes indicate whether this person was the
25 individual that he purchased from?

1 A. He did. He looked at the photo lineup and indicated
2 that the person in photograph number 1 was Marcus Mack. Well,
3 he indicated it was Anthony but it was Marcus Mack.

4 Q. How long did it take him to pick out the photo?

5 A. Not long. He looked at the photographs, each one,
6 and then said that's him right there.

7 Q. How confident was he in his selection?

8 A. Confident. He knew.

9 Q. Did he execute that photo lineup?

10 A. Execute?

11 Q. Did he sign it?

12 A. Yes. I'm sorry. We have them sign the photograph
13 itself. We ask them to put their confidential informant
14 number inside the circle so we have of who did it and then we
15 also have them sign the bottom.

16 Q. And do you recall, you said that this took place in
17 a vehicle?

18 A. Yes.

19 Q. Approximately two weeks later. Do you recall
20 whether or not the vehicle was moving at the time you did that
21 identification?

22 A. I don't believe it was.

23 Q. Okay. And do you recall about what time of day it
24 was?

25 A. We don't write the time down on the lineup itself.

1 However, I did not notate the time in my supplemental either
2 but it would have been during the daytime.

3 Q. Was Mr. Hayes able to clearly see the photo lineup
4 while he was sitting inside the vehicle, Agent Purdy? Was
5 there any obstruction to light is what I'm asking?

6 A. No, ma'am. It was just a regular vehicle, windows,
7 sunlight.

8 Q. I'm showing you what's been marked for
9 identification purposes only as State's exhibit 4. Do you
10 recognize this item?

11 A. Yes, ma'am. I do. It's the photo lineup that I
12 presented to Frank Hayes on September 22nd.

13 Q. Does it appear to have been altered with or tampered
14 with in any fashion?

15 A. It does not appear to have been. No.

16 Q. And as a result of the identification indicated in
17 that lineup, did you obtain an arrest warrant for the
18 defendant in this case?

19 A. Yes, ma'am. I did.

20 Q. Agent Purdy, I'm going to show you again what's been
21 marked as State's 9 which you identified as the BEST kit and
22 the item that was retrieved from the informant.

23 A. Yes.

24 Q. And you explained to us how you attached a control
25 number and that's how you associate it with your case.

1 A. Yes.

2 Q. You also explained that you immediately retrieved
3 those drugs and immediately placed them into the BEST kit; is
4 that correct?

5 A. We retrieved the drugs immediately. We actually put
6 the BEST kit in my office.

7 Q. When did that take place?

8 A. An hour or so later.

9 Q. After the drugs are in the BEST kit, what did you
10 do?

11 A. The BEST kit gets dropped off into evidence and
12 depending on the time of day or what day it is, if it's still
13 during business hours we can sometimes just hand it right to
14 the evidence clerk. If it's not during business hours, there
15 is a box that you can drop, a pad locked drop box that you can
16 drop smaller items into. If it's a larger item, there's
17 lockers that you lock them in and once they're locked they
18 can't be opened again except by evidence.

19 Q. When did you deposit this item into evidence?

20 A. It would have been on the 4th of September which I
21 believe is a Friday. However, it was, if I remember
22 correctly, it was after business hours so it would have been
23 dropped into the drop box.

24 Q. Was this item in your sole care, custody and control
25 the entire time from when you retrieved it to depositing it

1 into evidence?

2 A. Yes, ma'am.

3 MS. GRAHAM: I have nothing further. Please answer
4 any questions for the defense.

5 THE COURT: Yes, sir.

6 MR. CHEHOSKI: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. CHEHOSKI:

9 Q. You testified that the original target of this
10 investigation was somebody named Beazy; is that right?

11 A. Yes, sir.

12 Q. And you testified that Beazy was located on Sumter
13 Street?

14 A. Yes.

15 Q. In West Columbia. And when you gave Mr. Hayes the
16 money, it was to buy drugs from Beazy?

17 A. Yes.

18 Q. You also gave him specific instructions of what to
19 do?

20 A. Yes. I asked him to take the money and attempt to
21 buy cocaine from Beazy.

22 Q. Attempt to buy cocaine from Beazy. Now, it was your
23 understanding that Mr. Hayes knew Beazy?

24 A. I don't know if Mr. Hayes knew Beazy. I knew that
25 Agent Putney knew Beazy.

1 Q. Putney knew Beazy?

2 A. Yes, sir.

3 Q. Was it part of your instructions that Mr. Hayes
4 accompany the target of your investigation to an unknown
5 area?

6 A. Not specifically. No.

7 Q. And to your knowledge has Beazy ever been identified
8 with a legal name?

9 A. I don't know. I did not identify him.

10 Q. Not identify. You don't know who Beazy is at this
11 time?

12 A. I don't know. I didn't end up buying anything from
13 him that day so I didn't need to know who he was.

14 Q. Kind of transition a little bit to the money issue.
15 Prior to -- You had to obtain the money somehow, right?

16 A. Yes.

17 Q. There's a dedicated account with the Sheriff's
18 Office for that purpose?

19 A. Yes, sir.

20 Q. So you go to the ATM to withdraw the money?

21 A. Yes, sir.

22 Q. After you withdraw the money, you take the picture
23 of it, right?

24 A. Yes, sir.

25 Q. And you document the serial numbers, right?

1 A. Yes, sir.

2 Q. And you do that to identify which bills are
3 associated with which purchase?

4 A. Correct.

5 Q. Therefore, when Solicitor Graham asked you about a
6 buy bust, the money can come into play there, right?

7 A. It's possible. Yes, sir.

8 Q. You could have conducted a traffic stop on the
9 vehicle after the purchase, correct?

10 A. Yes, sir.

11 Q. You could have done a probable cause search of that
12 vehicle, correct?

13 A. If it had been stopped in a traffic stop, yes, sir.

14 Q. And you could have located the money related to this
15 purchase in that vehicle?

16 A. Correct.

17 Q. You did not conduct a buy bust in this case?

18 A. No, sir.

19 Q. You did not recover the money in this case?

20 A. No, sir.

21 Q. That money is still out there?

22 A. I would imagine so. Yes, sir.

23 Q. All right. After you completed the transaction and
24 you completed the, submitted the drugs into evidence, you
25 applied for a search warrant, correct?

1 A. No. I applied for an arrest warrant.

2 Q. Arrest warrant I meant to say. Thank you. You
3 applied for an arrest warrant?

4 A. Yes, sir.

5 Q. Did you apply for that arrest warrant on September
6 22nd?

7 A. No, sir.

8 Q. Did you apply for that arrest warrant the following
9 week?

10 A. No, sir. I applied for the arrest warrant on
11 February 1st.

12 Q. So six months later?

13 A. Yes, sir.

14 Q. Excellent. Now, like I said, I want to talk about
15 Mr. Hayes here. Had you worked with Mr. Hayes in the past
16 before this date?

17 A. Not before that date. No, sir.

18 Q. Did you work with him after this date?

19 A. Yes, sir.

20 Q. Do you recall how many times you have worked with
21 him?

22 A. I couldn't give an exact number. No, sir.

23 Q. More than ten?

24 A. Probably right around ten.

25 Q. Right around ten. All right. And when you met up

1 with him on this date, you searched him, correct?

2 A. Yes, sir.

3 Q. You searched him for money?

4 A. Yes, sir.

5 Q. Searched him for drugs?

6 A. Yes, sir.

7 Q. Searched him for weapons?

8 A. Yes, sir.

9 Q. And for anything else that might compromise the
10 investigation?

11 A. Yes, sir.

12 Q. All right. Do you know what Mr. Hayes' street name
13 is?

14 A. I believe he calls himself Trip maybe.

15 Q. And after, when you, after you searched him, that's
16 when you outfit him with the camera; is that correct?

17 A. Yes, sir.

18 Q. That camera allows you to monitor his movements
19 audio only?

20 A. Audio only.

21 Q. Audio only. And you don't maintain visual contact
22 with him?

23 A. Typically, no.

24 Q. You try to stay a safe distance away?

25 A. For his protection. Yes.

1 Q. And possibly for your protection?

2 A. Well, sure.

3 Q. And but he knows that all of his movements are being
4 recorded?

5 A. Yes, sir.

6 Q. And he knows that all of his words are being
7 heard?

8 A. Yes, sir.

9 Q. And all of his movements are going to be seen?

10 A. Yes, sir.

11 Q. All right. But you didn't actually personally
12 witness the transaction in this case?

13 A. No. Not in real time. No.

14 Q. Not in real time. You listened to it?

15 A. Yes, sir.

16 Q. And you weren't able to identify the voices?

17 A. No, sir.

18 Q. And finally when the CI returned, he turns over the
19 drugs, right?

20 A. Yes, sir.

21 Q. And you searched him again?

22 A. Yes.

23 Q. Do you perform a full cavity search?

24 A. No, sir.

25 Q. That's inside and out, right?

- 1 A. Yes. A full body cavity search, no.
- 2 Q. To make sure he's not hiding anything?
- 3 A. That's sexual assault. Yes.
- 4 Q. Now, you gave him a hundred dollars, right?
- 5 A. Yes, sir.
- 6 Q. A hundred dollars on the street buys approximately a
- 7 gram of crack; is that right?
- 8 A. Typically five rocks. Yes.
- 9 Q. Typically five rocks. Did you recover five rocks?
- 10 A. I did.
- 11 Q. You did. Were they worth about a gram or did they
- 12 weigh about a gram?
- 13 A. I don't know if I took a field weight or not.
- 14 Q. You don't remember?
- 15 A. I don't.
- 16 Q. But it would be about a gram?
- 17 A. Typically. Again, you're purchasing a number of
- 18 rocks. You can only trust a drug dealer so far as far as how
- 19 much the weight is. It's usually by the number of rocks.
- 20 Q. But it would be around the weight of a gram?
- 21 A. Typically, yes.
- 22 Q. Finally, the transaction happened around 11:00 in
- 23 the morning; is that right?
- 24 A. I don't know the exact time.
- 25 Q. To the best of your knowledge does that sound about

- 1 right?
- 2 A. It was early. I was mid morning.
- 3 Q. Mid morning? Mid day?
- 4 A. I'm sure the video would say so.
- 5 Q. Right. And you were in possession of the items
- 6 after you seized it?
- 7 A. Yes, sir.
- 8 Q. And then you dropped it off around about the end of
- 9 the day, right?
- 10 A. Correct.
- 11 Q. Roughly 4:00 in the afternoon?
- 12 A. I don't know the exact time.
- 13 Q. You had to fill out a form though of dropping it
- 14 off, right?
- 15 A. We have to fill out the form for the BEST kit.
- 16 Yes.
- 17 Q. Identifying the case?
- 18 A. Yes, sir.
- 19 Q. Identifying the substance?
- 20 A. Yes, sir.
- 21 Q. What you think it is?
- 22 A. What we think it is. Yes, sir.
- 23 Q. And you're submitting it for testing at that time?
- 24 A. Correct.
- 25 Q. And that form that you are submitting has a place

1 for you to get it notarized, right?

2 A. I believe so.

3 Q. Did you get it notarized in this case?

4 A. No. That's not procedure.

5 Q. That's not procedure?

6 A. No.

7 MR. CHEHOSKI: Nothing further, Your Honor.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MS. GRAHAM:

11 Q. Agent Purdy, in all seriousness if you disclosed to
12 confidential informants that they were going to be subject to
13 a cavity search every time they did a buy for you, how likely
14 in your training and experience do you think they would sign
15 up?

16 A. I mean, I know I wouldn't sign up. I don't imagine
17 many people would and as the defense alluded to everything
18 they do is on video. You know, there's typically not a reason
19 to do that.

20 Q. You testified that you gave Mr. Hayes a hundred
21 dollars to purchase a quantity of cocaine and you are not sure
22 whether or not you did a field weight?

23 A. Correct.

24 Q. In your training and experience in the buys that you
25 have monitored do purchasers ever get under sold?

1 A. Yeah. It's pretty typical. Number 1, it's often
2 that dealers will what they call pinch or give a little bit
3 less than what you are paying for. Typically different
4 demographics of people will get shorted more than others. We
5 don't typically take a weight of drugs that we buy unless it's
6 going to put them in a threshold of a different charge be it
7 trafficking or whatnot. One rock is the same as five rocks up
8 until you get ten grams so it doesn't typically matter to us
9 at that time.

10 Q. Because dealers are notorious for under selling do
11 some buyers actually carry a small digital scale with them at
12 times?

13 A. Some do. Yes. Depending on how much they're
14 planning on buying.

15 Q. Agent Purdy, why was there approximately a five
16 month delay in taking the warrant out in this case?

17 A. Well, oftentimes what will happen if we're starting
18 a new case in which this case was the first buy from this
19 subject, we don't always rush to get a warrant because we
20 continue to make other buys from that same subject. In this
21 case we did have additional buys against the co-defendant so
22 we didn't want to necessarily take the chance of burning the
23 CI's identity just for the one buy. Also, in all honesty in
24 my day to day I'll be dealing with several CI's and several
25 drug dealers and making several different cases and you get -

1 the warrant part is the administrative part. You get to it
2 when there's time.

3 MS. GRAHAM: Thank you, Agent Purdy. Nothing
4 further.

5 MR. CHEHOSKI: Very briefly.

6 RECROSS EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. You're saying that there wasn't time from September
9 22nd to September 30th?

10 A. I'm not saying -- I may have misspoke when I said
11 there wasn't time. What I meant was it wasn't important at
12 that time. Between those times we were still making buys from
13 the co-defendant so it wasn't logical to have him arrested for
14 it at that time.

15 Q. It wasn't important?

16 A. Correct.

17 Q. It wasn't important in October?

18 A. It was more important to maintain the
19 confidentiality of the CI.

20 Q. It wasn't important in November?

21 A. Same answer.

22 Q. December?

23 A. All day.

24 Q. January? It finally became important in February?

25 A. I got the warrant for your defendant in February.

1 MR. CHEHOSKI: Nothing further, Your Honor.

2 THE COURT: All right. Thank you very much. You
3 may step down. Who's next?

4 MR. BELL: The State calls Michael Merckle. The
5 State anticipates the direct will last 15 minutes.

6 THE COURT: All right. Let's go ahead and break for
7 lunch. I don't like to cut witnesses up in the middle
8 like that so we'll go ahead and stop for lunch. It's
9 about 12:25 and we'll start back at 1:45. We'll start
10 back at 1:45. Okay? Now, everybody listen very
11 carefully to me. You're going to hear me say this and
12 I'm gonna say it so much you're gonna wish I stop saying
13 it. You're not allowed to discuss this case with anyone
14 in any way, shape or form. Okay? You know that. You're
15 not to have any contact with the parties. You know that,
16 too. We're now about to take our first break. I'm
17 reminding you of the warning that you are not to discuss
18 this case with anyone. You are to base your decision
19 solely on the evidence presented in this courtroom and
20 you need to fully commit to each other and to the parties
21 in this case and to me that you are not going to discuss
22 this case or use any type of electronic device to get or
23 send information about the case even with close family or
24 friends or anyone else including each other. Okay? So
25 we'll see you back at 1:45. Do not discuss the case.

1 Keep an open mind. Thank you very much.

2 (Whereupon, the jury was released for lunch recess
3 at 12:25 p.m.)

4 THE COURT: Anything from the State before we break?

5 MS. GRAHAM: Nothing from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. CHEHOSKI: No, Your Honor.

8 THE COURT: Before we take up Mr. Hayes' testimony,
9 we need to take up this threat issue and how we're going
10 to deal with that, if at all. Just think about that.
11 Put that in the hopper over lunch break. Thank you very
12 much.

13 MS. GRAHAM: Thank you, Judge.

14 (Lunch break.)

15 BAILIFF: All rise. Court is now in session.

16 THE COURT: Is the State ready?

17 MS. GRAHAM: Yes, Your Honor.

18 THE COURT: Is the defendant ready?

19 MR. CHEHOSKI: Yes, Your Honor.

20 THE COURT: Bring them back in.

21 MS. GRAHAM: Your Honor, did you want to take up the
22 issue of the threat testimony?

23 THE COURT: Is he next?

24 MS. GRAHAM: He is not next. No, Your Honor. We
25 would likely get to him before the end of the day.

1 THE COURT: Let's take it up at a break.

2 (Whereupon, the jury entered the courtroom at 1:50
3 p.m.)

4 THE COURT: Ready?

5 MS. GRAHAM: Yes, Your Honor.

6 THE COURT: Call your next witness.

7 MR. BELL: Thank you, Judge. The State calls Agent
8 Michael Merckle to the stand.

9 Thereupon,

10 MICHAEL MERCKLE

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. Once you're seated,
13 state your full name spelling your last please.

14 THE WITNESS: Michael Samuel Merckle,
15 M-e-r-c-k-l-e.

16 DIRECT EXAMINATION

17 BY MR. BELL:

18 Q. Agent, who do you work for?

19 A. Lexington County Sheriff's Department.

20 Q. In what capacity do you work for the Sheriff's
21 Department?

22 A. I'm assigned to narcotics. I have recently been
23 moved to the DEA as a task force officer.

24 Q. How long have you been with the Sheriff's
25 Department?

1 A. I'm working on my fourteenth year.

2 Q. Any prior law enforcement experience?

3 A. Yes, sir. Four years previous to Lexington County I
4 was at Forest Acres Police Department. I have been in law
5 enforcement roughly 18 years.

6 Q. So much like the Judge, I can't count very well.
7 How much total law enforcement experience?

8 A. About 18 years.

9 Q. Now, you mentioned you worked for the narcotics
10 enforcement team; is that true?

11 A. Yes, sir.

12 Q. And with the narcotics enforcement team what sort of
13 duties do you have?

14 A. We try to infiltrate narcotic organizations, buy
15 narcotics ourselves in an undercover capacity which explains
16 the way we look, why we don't wear uniforms. We also work
17 organized crime and any other unordinary crime that may come
18 up. But our main focus is on narcotics and the narcotic
19 distribution and infiltrating that and stopping it in our
20 county.

21 Q. Have you worked what's called a controlled buy in
22 your career?

23 A. Yes, sir. I have.

24 Q. Can you estimate how many times you have done
25 controlled buys?

1 A. Wow. More than 200. It's been a lot.

2 Q. And can you just briefly describe what a controlled
3 buy is?

4 A. Sure. A controlled buy is, it's where law
5 enforcement either utilized a confidential informant that we
6 have developed or ourselves going in undercover capacity and
7 purchase narcotics from narcotics dealers who we identify
8 within the county either through our own investigations or
9 through tips that we receive on our hotlines or any other
10 investigative tool that we have.

11 Q. So with that said, if you have done controlled buys,
12 have you also had the opportunity to work with confidential
13 informants?

14 A. Yes, sir.

15 Q. Can you estimate how many confidential informants or
16 CI's you have worked with?

17 A. Hundreds.

18 Q. Now, we have heard some testimony about CI's. Can
19 you tell us how you go about maintaining the confidentiality
20 of an informant?

21 A. We don't put their information on general paperwork
22 that goes into a report. They're assigned a number and that
23 number is how they're tracked within our reporting system if
24 you will so that when we do or are conducting any type of
25 investigation or use them in that capacity where it's reported

1 on a general report that the general public would see, they
2 would be listed as a number instead of their name and personal
3 information. We also keep all of their files off site from
4 the Sheriff's Department within a locked filing cabinet that
5 is only accessed by our supervisor.

6 Q. How many supervisors do you have?

7 A. We have four direct supervisors, two sergeants, a
8 lieutenant and a captain.

9 Q. Are those the only people who have access to your CI
10 files?

11 A. Only the sergeants and the lieutenant have access to
12 the files so there are three of our four supervisors.

13 Q. Why is it important to maintain confidentiality of
14 informants?

15 A. Well, first and foremost for the protection of that
16 informant. The information they give us is information that
17 certainly criminal organizations especially larger criminal
18 organizations don't want that information out to us therefore
19 it puts their life in danger. Secondly, it's so that we can
20 continue to use them in a capacity to where we can continue to
21 make cases to make our neighborhoods safe. Without their
22 assistance we would never be able to get into some of these
23 organizations.

24 Q. Are CI's typically one and done? Do you do one
25 transaction and then reveal their identity?

1 A. No, sir.

2 Q. Do you typically use them more than once?

3 A. Yes, sir. We try to use them as much as we can.

4 Q. When is usually the first time that the identity of
5 the confidential informant revealed?

6 A. During a trial such as this.

7 Q. Are you familiar with a confidential informant by
8 the name of Frank Hayes?

9 A. Yes, sir. I am.

10 Q. Have you worked cases with Mr. Hayes?

11 A. Yes, sir. I have.

12 Q. Are you aware that Mr. Hayes has a record?

13 A. Yes. Yes, sir. I do.

14 Q. Is a record something that automatically
15 disqualifies someone from being a confidential informant?

16 A. Absolutely not.

17 Q. Why not?

18 A. Well, normally it actually helps a person because
19 for their - it gives them credibility, if you will within the
20 criminal world. It's not necessary but we do allow people who
21 have a criminal record work in that capacity but there are
22 some parameters that we follow. I mean, you can't be a sex
23 offender or, you know, those types of things.

24 Q. What kind of people do you typically try to target
25 to be confidential informants?

1 A. Normally just, you know, somebody who has the inside
2 information or the inside track. Somebody who has either --
3 We know through our investigative skills had found out they're
4 into the narcotics distribution game whether they're a user or
5 whether they're a supplier or whether they're even somebody
6 who deals in large quantities, somebody who is inside and has
7 inside information that we need. So those are the, usually
8 the typical people that we try to target to use.

9 Q. One final question on that. Do you typically
10 approach your ordinary civilian to be a confidential
11 informant?

12 A. No, sir.

13 Q. Now, you mentioned that you have worked with
14 Mr. Frank Hayes in the past. Did you have reason to work with
15 Mr. Hayes on September 4, 2015?

16 A. Yes, sir. I did.

17 Q. What agency were you working with on that particular
18 date?

19 A. I was working with the Lexington County Sheriff's
20 Department narcotics, multi jurisdictional narcotics
21 enforcement team.

22 Q. Was the narcotics enforcement team assisting any
23 other agency or department?

24 A. West Columbia Police Department was there with us as
25 well helping each other out in that general area.

1 Q. Why were you with West Columbia Police Department on
2 that particular occasion?

3 A. The area that we were in, the way the county is set
4 up, and I'm sure a lot of people know, it's not just little
5 nice neat squares. The lines drift in and out around
6 neighborhoods and around businesses and such and the area that
7 we were in is within Lexington County but it's also within the
8 jurisdiction of the West Columbia Police Department and we
9 like to work well with our partners especially in law
10 enforcement when we're conducting these types of
11 investigations. We don't want to put each other in any kind
12 of danger and make sure they're not working the same case
13 we're working on and make sure they're not in the area as well
14 as typically our partners in law enforcement, i.e., with West
15 Columbia in this situation would have more detailed
16 information about the people who operate in those areas.

17 Q. On September 4th, 2015 what individuals were present
18 when meeting with Mr. Hayes initially?

19 A. It was myself, Agent Scott Purdy, Detective or
20 Officer Putney with the West Columbia Police Department and,
21 of course, the informant Mr. Hayes.

22 Q. Can you just very briefly walk us through how you
23 initially approach a confidential informant prior to a
24 controlled buy?

25 A. Like in the, for the signing up process?

1 Q. I apologize. How exactly do you go about preparing
2 a confidential informant before releasing them out the door to
3 go to a buy?

4 A. Sure. Okay. So generally we'll speak with the
5 informant prior to anybody even leaving or us getting money
6 out or anything like that to make sure they have the time and
7 availability. Once we determine that, we'll meet them at what
8 we call a secure location. This location isn't necessarily
9 even determined until, sometimes we're already on the way. It
10 could be behind an abandoned business. Just out of the
11 general public's view so that we can talk to them and we can
12 make sure everything is going well, get all the information we
13 need. We'll search the informant. Empty his or her pockets
14 out. Search their body from top to bottom and make sure
15 they're not carrying number 1 weapons. And number 2, make
16 sure they're not carrying any narcotics with them that they
17 could possibly plant or cause problems with our case and make
18 sure they're not carrying any money so that they can purchase
19 any other narcotics which would again or cause us problems
20 with evidence issues. Once we search the informant and make
21 sure they're good to go, if they have a vehicle, we'll also
22 search their vehicle to make sure their vehicle is clear of
23 any of the same items, document what we find, if we do find
24 those things, and then we would prepare them for an audio or
25 video or both so which would be on their person. We put that

1 on them, start the video, do what we call a preamble, typical
2 date, place, time, what we're going to do, who we're going to
3 meet, and what we're going to buy, and then we would turn them
4 loose.

5 Q. On this particular occasion with Mr. Hayes were you
6 present when the search of his person was conducted?

7 A. Yes.

8 Q. Was any contraband, firearms, et cetera, located on
9 him?

10 A. No, sir.

11 Q. Was he issued any funds for this transaction?

12 A. Yes, sir.

13 Q. Who provided those funds to Mr. Hayes?

14 A. Agent Purdy.

15 Q. Do you recall the quantity?

16 A. I believe it was a hundred dollars.

17 Q. And typically when you send an informant out with a
18 hundred dollars, just ballpark roughly how much are you
19 expecting him to purchase with that money?

20 A. Generally if it's crack, we would expect them to
21 come back with generally around a gram of crack cocaine.

22 Q. And are you or the other agents involved typically
23 required to get the specific weight that is purchased?

24 A. No, sir.

25 Q. Who typically is responsible for coming up with the

1 weight?

2 A. Our chemist.

3 Q. Is that something they would be better suited to
4 testify to?

5 A. Absolutely.

6 Q. After Mr. Hayes was released out of the vehicle, do
7 you recall where he was supposed to go?

8 A. I believe he was supposed to go to the Sumter Street
9 area and meet with an individual we only had a street name
10 for.

11 Q. Do you recall the street name?

12 A. I want to say it was Beazy.

13 Q. Do you recall whether or not he made contact with
14 that individual?

15 A. He did.

16 Q. Is that who he purchased the illegal drugs from?

17 A. No, sir.

18 Q. What happened after he met with that individual?

19 A. Okay. So once he met with Beazy, Beazy told him
20 basically in other words he didn't have anything to sell to
21 him but he knew somebody who did that was close by so they
22 decided to walk to that location which was around the
23 corner.

24 Q. Later on did you and the other law enforcement
25 personnel make contact with Mr. Hayes again?

1 A. I don't think I understand.

2 Q. After he completed his buy, did you have reason to
3 make contact with him again?

4 A. Yes, sir. Absolutely.

5 Q. Is that typical?

6 A. Yes, sir.

7 Q. What's the purpose of that interaction?

8 A. The purpose for that interaction is number 1, to
9 collect our evidence. Number 2, collect our equipment.
10 Number 3, search the informant again for money, contraband,
11 weapons, all that type of stuff. Then we got a statement
12 about what happened. You know, he or she will give us a
13 verbal statement or written statement. Typically what we do
14 is have them give us a verbal statement as to what happened.
15 We write down the verbal statement for them, they reread it
16 and make sure that's exactly what happened and then they sign
17 it.

18 Q. What did the search of his person yield on return?

19 A. Nothing.

20 Q. And did he still have the funds on him that was
21 provided by law enforcement?

22 A. No, sir.

23 Q. Did he turn over any illegal narcotics that he came
24 into possession of through the transaction?

25 A. Yes, sir. He did.

1 Q. Did you collect or did anyone with you collect the
2 video from the electronic equipment that he was wired with?

3 A. Yes, sir.

4 Q. And is it the combination of the video and the
5 written statement that gives you the full picture of what
6 happened when he left the vehicle?

7 A. Yes, sir. Absolutely.

8 Q. Do you have any ability to listen to audio when the
9 confidential informant is in the field?

10 A. Yes. We do.

11 Q. Did you monitor the audio on Mr. Hayes' buy on
12 September 4th?

13 A. Yes, sir. We did. That's how we knew that when he
14 met with the one individual and was moving to another location
15 where we could go and keep eyes on him. Our ultimate goal
16 during any of these operations is to keep our informant safe
17 first and foremost.

18 Q. Did you ever view the video?

19 A. Yes, sir. I did.

20 Q. Did the contents of the video match the statement
21 that he provided upon returning to the law enforcement
22 vehicle?

23 A. Yes, sir. It did.

24 Q. After that day in question, did you have any further
25 contact with Mr. Hayes?

1 A. Yes, sir. I met with him on some several other
2 deals with Agent Purdy.

3 Q. Did you have any reason to meet with him
4 particularly related to the buy he conducted on September
5 4th?

6 A. Yes, sir. I did.

7 Q. What was the purpose of that meeting?

8 A. It was to go over a photo lineup that Agent Purdy
9 had prepared.

10 Q. Do you recall the date that meeting took place?

11 A. Yes, sir. It was September 22nd, 2015.

12 Q. Is there any reason that you are aware of why there
13 is that two week separation between the incident and the
14 presentation of a lineup?

15 A. In this particular case I don't know the specific
16 reason but generally there is some time in between us
17 identifying the person if they don't know who that person's
18 government name is, if you will. It takes us some time to
19 figure out who they are. Once we do, we ask for a photo
20 lineup to be created and then we have to, of course, get in
21 touch with our informant again. You can imagine that can be
22 difficult at times along with juggling other schedules and
23 other responsibilities that we have. But I couldn't say
24 specifically in this case why it took that long.

25 Q. Do the agents personally create or construct the

1 photo lineups?

2 A. No, sir.

3 Q. Now, you mentioned that sometimes that delay is
4 caused by not knowing the full government name of an
5 individual; is that accurate?

6 A. Yes, sir.

7 Q. When Mr. Hayes returned to the vehicle on September
8 4th, did he give you a full legal name of who he purchased the
9 illegal drugs from?

10 A. No, sir.

11 Q. Did he give you any indication or any street name of
12 who he purchased from?

13 A. He did. He told us that he bought from a guy that
14 he knew as Anthony.

15 Q. Did he indicate whether or not he had had any prior
16 interactions with the individual he said was Anthony?

17 A. Yes, sir. He said he dealt with him before.

18 MR. CHEHOSKI: Objection. Hearsay.

19 THE COURT: Sustained.

20 MR. CHEHOSKI: Move to strike.

21 THE COURT: Do not consider the last statement,
22 ladies and gentlemen.

23 BY MR. BELL:

24 Q. On September 22nd, 2015, you testified that you had
25 reason to meet with Mr. Hayes again to present a photo lineup.

1 Who was present during the presentation of that photo
2 lineup?

3 A. Myself and Agent Purdy.

4 Q. And was Mr. Hayes also present?

5 A. I'm sorry. Yes. Of course, the informant was there
6 Mr. Hayes.

7 Q. Where were you when the lineup was presented?

8 A. I don't know the specific address as to where we
9 were. Again, we typically just meet in out of the way places
10 out of public view for the most part so the general public
11 don't see the informants.

12 Q. Were you at a restaurant?

13 A. I don't believe we were.

14 Q. Were you on foot?

15 A. Oh, no. No, sir.

16 Q. Where were you?

17 A. I was in a vehicle in our van, one of our law
18 enforcement vans.

19 Q. Where was everybody located in that vehicle?

20 A. I was the driver in the front seat and Purdy was the
21 front seat passenger and Mr. Hayes was in the back seat.

22 Q. And were you present and able to view the photo
23 lineup being handed to Mr. Hayes?

24 A. Yes, sir. I was.

25 Q. On that particular occasion did Mr. Hayes indicate

1 any issues with being able to see clearly?

2 A. No, sir.

3 Q. Did he complain about his eyesight or that he needed
4 glasses?

5 A. No, sir.

6 Q. Were the windows obstructed in such a way that it
7 would limit the light entering the vehicle?

8 A. No, sir.

9 Q. Were there any other obstructions that would cause
10 someone to have trouble looking at pictures on a piece of
11 paper?

12 A. No, sir. None at all.

13 Q. Ultimately who handed the lineup back to Mr.
14 Hayes?

15 A. Agent Purdy did.

16 Q. I'm handing you what's been marked for ID as State's
17 4. Do you recognize that?

18 A. Yes, sir.

19 Q. What does that appear to be?

20 A. This appears to be a six person lineup.

21 Q. And is that the same lineup that was used on
22 September 22nd, 2015?

23 A. Yes, sir.

24 Q. Is that the lineup that was presented to Mr.
25 Hayes?

- 1 A. Yes, sir.
- 2 Q. And ultimately was a selection made?
- 3 A. Yes, sir. A selection was made.
- 4 Q. And were you able to identify who the picture was
- 5 and the name that belonged to that person?
- 6 A. Yes, sir.
- 7 Q. Who was that?
- 8 A. That would be the defendant Marcus. I'm drawing a
- 9 blank.
- 10 Q. Do you have your report on you?
- 11 A. Yes, sir.
- 12 Q. Feel free to take a look and refresh your memory.
- 13 A. Marcus Antonio Mack. I apologize.
- 14 Q. As to the presentation of that lineup to Mr. Hayes,
- 15 did you witness Agent Purdy try to make any sort of
- 16 suggestions to Mr. Hayes as to who he should select?
- 17 A. No, sir.
- 18 Q. When he handed the document to Mr. Hayes, did he put
- 19 his finger over any particular picture as if to suggest that's
- 20 who should be selected?
- 21 A. No, sir.
- 22 Q. How exactly was the presentation given to Mr.
- 23 Hayes?
- 24 A. The presentation is handed to just like we always
- 25 do, Agent Purdy handed the photo lineup to Mr. Hayes. It was

1 on a clipboard. He was asked to look at all the photos and
2 select the photo of the person that was the individual who
3 sold crack cocaine to him on that date which would have been
4 on September 4th.

5 Q. Did Mr. Hayes take a long time to select someone
6 from that lineup?

7 A. No, sir.

8 Q. Was it a quick selection?

9 A. Yes, sir.

10 Q. Did he appear to have any hesitance in making a
11 selection?

12 A. No, sir.

13 Q. Did he appear confident in his selection?

14 A. He did.

15 Q. And at any point in time during the selection of the
16 photograph did he appear to be under duress?

17 A. No, sir.

18 Q. Was he asking for anything that you all were
19 depriving him of?

20 A. No, sir.

21 Q. Was he asking to use the restroom and you said no.
22 Not until you finish?

23 A. No, sir.

24 Q. Did your have your weapons or any other sort of
25 implements drawn or displayed so as to intimidate him?

1 A. No. Absolutely not.

2 Q. Did he appear intoxicated via being drunk or high?

3 A. No, sir. He did not appear that way to me.

4 Q. Did he seem to be of a clear head and mind?

5 A. Yes, sir.

6 MR. BELL: Please answer any questions defense may
7 have for you.

8 MR. CHEHOSKI: Your Honor, may we approach on a
9 matter of law?

10 THE COURT: You may. All right. Y'all stand up and
11 stretch. Do not talk about the case. Stand up and
12 stretch right where you are.

13 (Side bar off the record.)

14 THE COURT: All right. Have a seat.

15 CROSS EXAMINATION

16 BY MR. CHEHOSKI:

17 Q. Agent Merckle, did you draft any report in reference
18 to this investigation?

19 A. No, sir. I don't believe I did.

20 Q. You just referenced some, not referenced, to
21 identify Mr. Mack. What were you referring to?

22 A. I was actually referring to the warrant that was
23 drawn up right here in front of me.

24 Q. Was that a warrant that you drafted up?

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

1 Q. Do you have the ability to field test narcotics?

2 A. Yes. Absolutely.

3 Q. Did you field test those narcotics in this case?

4 A. No, sir.

5 Q. Also, you referenced in developing a confidential
6 informant that you do your background on them?

7 A. Yes, sir.

8 Q. You do a criminal history?

9 A. Yes, sir. We do.

10 Q. You said that having a criminal history is not
11 necessarily disqualifying?

12 A. Correct. Yes, sir.

13 Q. But there are some ways to be disqualified?

14 A. Sure. Absolutely.

15 Q. That would be if you were, had convictions of
16 dishonesty?

17 A. The one that, from what my supervisor told us
18 dishonesty. One is if you were ever convicted of perjury in
19 court is one. If you have lied about your name. Or traffic
20 stops. Something about yourself and been convicted of that is
21 not disqualifying.

22 Q. Not disqualified after being convicted?

23 A. Of that particular charge, no, sir.

24 Q. What about crimes of violence?

25 A. It's up to my supervisor but it's not necessarily a

1 single disqualification. It also revolves around what type.
2 If it was murder, I'm sure my supervisor would say no but
3 something like simple assault.

4 Q. Or aggravated assault?

5 A. Sure. That would be, but it's all completely up to
6 our supervisor once we send the package forward.

7 Q. You also mentioned that you search the confidential
8 informant both before they are given the audio and money,
9 audio equipment and the money --

10 A. Absolutely. Yes, sir.

11 Q. -- and also after?

12 A. Yes, sir.

13 Q. Top to bottom?

14 A. Yes, sir.

15 Q. Do you do a cavity search?

16 A. Absolutely not. I'm not a doctor.

17 Q. You're not a doctor but you have been in law
18 enforcement for 18 plus years roughly?

19 A. Yes, sir.

20 Q. You have been in narcotics about 14 of those
21 years?

22 A. Well, roughly eight.

23 Q. Roughly eight. Have you known people to hide
24 narcotics on their body?

25 A. Oh, absolutely.

1 Q. Have you known people to hide narcotics that could
2 only be found through a cavity search?

3 A. Yes, sir. Absolutely.

4 Q. Also, just to kind of wrap up here. When
5 investigator -- Did you see how Investigator Merckle turned
6 over the lineup to Mr. Hayes?

7 A. I didn't turn it over. Agent Purdy did.

8 Q. Forgive me. I'm getting names confused. It happens
9 sometimes. You were present when Agent Purdy showed the
10 lineup to Mr. Hayes?

11 A. Yes, sir.

12 Q. Did you see how Agent Purdy showed that lineup to
13 him?

14 A. Yes, sir.

15 Q. Was the clipboard facing up?

16 A. He was facing the clipboard. Yes, sir.

17 Q. With the picture showing?

18 A. Yes, sir.

19 Q. When he handed it over to Mr. Hayes, were the
20 pictures showing?

21 A. Yes, sir.

22 MR. CHEHOSKI: Thank you. Nothing further.

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25 BY MR. BELL:

1 Q. Agent, a lot is being made of cavity searches. You
2 had testified earlier that you reviewed the video from this
3 particular buy; is that accurate?

4 A. Yes, sir.

5 Q. At that time was there any point in having him
6 dropping his trousers or pulling anything out of his
7 clothing?

8 A. Absolutely not. No, sir.

9 Q. Otherwise you would search their body?

10 A. We search to the best we can minus a body cavity.

11 Q. There was nothing hidden in his clothing?

12 A. Nothing that I found.

13 Q. Does the camera that Mr. Hayes is outfitted with
14 give you 360 degree visibility?

15 A. No, sir. It doesn't.

16 MR. BELL: That's it.

17 MR. CHEHOSKI: Nothing further.

18 THE COURT: Okay. That's it. Step down. Call your
19 next witness.

20 MR. CHEHOSKI: Your Honor, I have no objection if
21 Mr. Merckle wants to be excused.

22 THE COURT: Okay.

23 MR. BELL: Thank you, Judge. At this time the State
24 calls Detective Jody Putney to the stand.

25 Thereupon,

1 JODY PUTNEY

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please have a seat. Once you're seated,
4 state your full name spelling your last please.

5 THE WITNESS: Jody Putney, P-u-t-n-e-y.

6 DIRECT EXAMINATION

7 BY MR. BELL:

8 Q. Detective, who are you employed by?

9 A. West Columbia Police Department.

10 Q. How long have you been there?

11 A. Just over ten years.

12 Q. Prior to law enforcement, what were you doing?

13 A. Ten years in the Marine Corps.

14 Q. In what capacities have you worked for the West
15 Columbia Police Department?

16 A. I was a road patrol uniformed officer, community
17 action team and narcotics and now detective.

18 Q. How long were you specifically working narcotics?

19 A. Roughly five years.

20 Q. And what all does that job entail?

21 A. Making contact with the community, people in the
22 community. Our biggest resource is people within the
23 community giving us complaints and letting us know who they
24 see selling drugs, stuff like that.

25 Q. Do you use that information to act upon in trying to

1 locate narcotics in the community?

2 A. Yes, sir.

3 Q. And through that job have you become familiar with
4 individuals in your community? (

5 A. Yes, sir.

6 Q. Now, on September 4th, 2015, did you have reason to
7 work with the Lexington County Sheriff's Department on a
8 narcotics case?

9 A. Yes, sir.

10 Q. Why were you working with the Sheriff's Department
11 on that date?

12 A. We had some complaints on the Sumter Street area
13 which is a street that's county's jurisdiction but West
14 Columbia surrounds it for some reason. It's not ours. So we
15 got the NET Team involved to help us with our complaint.

16 Q. To be clear, is that area located within Lexington
17 County?

18 A. Yes, sir.

19 Q. And on September 4th, 2015, who all was present
20 leading up to this controlled buy?

21 A. Myself, Agent Purdy, Agent Merckle with the
22 Lexington County Sheriff's Department and Frank Hayes.

23 Q. Who is Frank Hayes?

24 A. He's a confidential informant.

25 Q. Where were you located prior to releasing Mr. Hayes

1 to conduct the controlled buy?

2 A. Within a half mile from the location of where the
3 buy was supposed to happen.

4 Q. Were you all together?

5 A. Yes, sir.

6 Q. Were you inside of a vehicle?

7 A. Inside of a van I believe is what it was.

8 Q. And are you familiar with the ordinary course of
9 preparing a confidential informant to go into the field?

10 A. Yes, sir.

11 Q. What sort of things do you do to prepare the
12 confidential informant?

13 A. The agents who are dealing with the informant will
14 brief them on what they want done as far as where to go, who
15 to ask for, what kind of drugs they're looking for depending
16 on the complaint. They would search the informant before the
17 buy. They would wire the informant up with audio/video
18 recording device and then send him to a location of the
19 complaint area.

20 Q. Did you witness the agents carry out that normal
21 protocol you just listed for us?

22 A. Yes, sir.

23 Q. Did you see Mr. Hayes searched prior to the
24 controlled buy?

25 A. Yes, sir.

1 Q. Did you see any contraband located on his person?

2 A. No, sir.

3 Q. Was he ultimately issued funds to go conduct the
4 controlled buy?

5 A. Yes, sir.

6 Q. When Mr. Hayes was released from the vehicle, where
7 was he heading?

8 A. Sumter Street.

9 Q. And did he go there immediately?

10 A. Yes, sir.

11 Q. Who did he initially make contact with?

12 A. An individual he called Beazy. I'm not sure who the
13 individual was.

14 Q. Is that the person that he had purchased the illegal
15 drugs from?

16 A. No, sir.

17 Q. Where did he end up going after meeting with
18 Beazy?

19 A. He went to the corner of Ross Street and North
20 Brown, 1500 block of Ross Street in the City of West
21 Columbia.

22 Q. Ultimately does he return to the law enforcement
23 vehicle?

24 A. Yes, sir.

25 Q. And at that time is he questioned about what

1 happened during the period of time he left the vehicle and
2 returned to your vehicle?

3 A. Yes, sir.

4 Q. Are you aware of whether he gave a statement to that
5 effect?

6 A. I'm pretty sure he did. I'm not quite positive
7 whether it was a written or oral statement.

8 Q. Are you aware of whether or not he turned over the
9 illegal drugs that he received pursuant to that transaction?

10 A. Yes, sir.

11 Q. Do you know if anything else was located on his
12 person that wasn't on his person when he initially left the
13 vehicle?

14 A. No, sir.

15 Q. Did you witness the electronic equipment being
16 gathered off of Mr. Hayes?

17 A. I'm sure I did. I just can't recall who gathered it
18 from him.

19 Q. Did you have anything to do with the video once it
20 was pulled from Mr. Hayes?

21 A. No, sir.

22 Q. Initially did you view the video yourself?

23 A. No, sir.

24 Q. At that point whose responsibility would it be to
25 follow-up on those items?

1 A. Lexington County Sheriff's Department.

2 Q. After the buy was completed and Mr. Hayes was
3 debriefed, when was the next time you had any involvement with
4 this case?

5 A. I received the e-mail from Agent Purdy that was
6 still pictures of the actual buy itself.

7 Q. And why did they send those to you?

8 A. Because that's my jurisdiction. I generally have a
9 lot of information of people that live in the city and it was
10 just still pictures of the people who sold the crack cocaine
11 to Frank Hayes.

12 Q. Do you know if they had already identified the legal
13 name of the two individuals in the pictures you were sent?

14 A. No, sir.

15 Q. Do you recall when Mr. Hayes returned to the vehicle
16 on September 4th if he indicated who he had bought from?

17 A. He said an individual he was told was Anthony and
18 the other one was Sweet Pea.

19 Q. Referring to the e-mail you testified about, did you
20 have an opportunity to review the attachments in that
21 e-mail?

22 A. Yes, sir.

23 Q. And again, what were the attachments?

24 A. It was still photos of three individuals in the
25 vehicle.

1 Q. How many images?

2 A. Three. Three individuals.

3 Q. How many images were in the e-mail?

4 A. Two.

5 Q. Were you able to view those pictures and identify
6 any of the individuals?

7 A. Yes, sir.

8 Q. How many of the individuals did you identify?

9 A. Two back seat passengers.

10 Q. What about the driver?

11 A. I had no idea who that was.

12 Q. I'm showing you what's been marked as State's 5 and
13 6. Do you recognize those?

14 A. Yes, sir.

15 Q. What are those?

16 A. These are the stills that Agent Purdy sent me
17 through e-mail.

18 Q. Do they fairly and accurately reflect the photos as
19 they were contained within the e-mail you were sent?

20 A. No, sir.

21 Q. When you say they weren't, what do you mean by
22 that?

23 A. The e-mail I received, the picture was clearer on my
24 screen than the pictures that are printed here.

25 Q. Aside from the lower resolution from not being on

1 your computer monitor, does there appear to be any substantial
2 difference between the photos in your hand and what was sent
3 to you?

4 A. No, sir.

5 Q. Aside from the resolution itself do they fairly and
6 accurately represent what you were sent?

7 A. Yes, sir.

8 MR. BELL: Your Honor, at this time the State seeks
9 to enter State's 5 and 6.

10 MR. CHEHOSKI: No objection.

11 THE COURT: Without objection.

12 BY MR. BELL:

13 Q. The individual in the foreground of State's 5 who is
14 closest to the window there, who did you identify that
15 individual as?

16 A. Johnny Dickerson.

17 Q. And on the far side of the vehicle which would be
18 the rear passenger seat behind the front passenger seat, who
19 is located in that seat?

20 A. Marcus Mack.

21 Q. When you initially received those photos, did you
22 have any trouble at all figuring out who those individuals
23 were?

24 A. No, sir.

25 Q. When you look at State's 6, do those angles make you

1 confident in your decision as to who you identified?

2 A. Yes. I'm confident who they are.

3 Q. Did you have to guess who they were?

4 A. No, sir.

5 MR. BELL: Permission to publish to the jury, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. BELL: The State is publishing by hand State's 5
9 and 6.

10 BY MR. BELL:

11 Q. Upon making your identification of those two
12 individuals, did you relay that information back to the
13 Sheriff's Department?

14 A. I did.

15 Q. Who did you relay that information to?

16 A. Agent Purdy.

17 Q. And beyond the identification did you have any
18 further interactions in this case?

19 A. No, sir.

20 Q. Did you handle any of the evidence that was
21 collected from the scene on September 4th?

22 A. No, sir.

23 Q. Did you have anything to do with the video that was
24 backed up and stored at the Sheriff's Department?

25 A. No, sir.

1 Q. Aside from the two images that you have been shown
2 already in State's 5 and 6, did you handle any other pieces of
3 evidence in this case?

4 A. No, sir.

5 Q. To be perfectly clear, in State's 5 and 6 you
6 identified, you were able to identify the legal
7 identifications of the two rear occupants. Were you also
8 aware of what their respective street names were?

9 A. I knew Johnnie Dickerson's.

10 Q. And again, where was he located in the vehicle?

11 A. He was in the driver's back seat passenger.

12 Q. And that's in the foreground of State's 5 and 6 that
13 you were shown?

14 A. Yes, sir.

15 Q. And what his street name?

16 A. Sweet Pea.

17 Q. And you did or did not know the street name of the
18 other occupant?

19 A. I'm not aware of the street name. No.

20 Q. When looking at Mr. Mack in that image in the rear
21 passenger seat, does there appear to be any physical
22 differences in that picture and today?

23 A. Yes, sir.

24 Q. What is that difference?

25 A. His hair.

1 Q. What is different about his hair?

2 A. It's longer.

3 MR. BELL: Thank you, sir.

4 THE COURT: Cross examination.

5 MR. CHEHOSKI: Thank you, Judge.

6 CROSS EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. You had worked with Frank Hayes in the past?

9 A. Yes, sir.

10 Q. All right. And were you the one who developed him
11 as a confidential informant?

12 A. I brought him to the Lexington County Sheriff's
13 Department.

14 Q. Before you brought him there, had he done any work
15 with Lexington County to your knowledge?

16 A. Not to my knowledge. No, sir.

17 Q. You were aware of Mr. Hayes' criminal history?

18 A. Yes, sir.

19 Q. Do you know what the resolution of your monitor
20 is?

21 A. I have no idea.

22 Q. And you are not aware of any street name that Mr.
23 Mack may have?

24 A. No, sir.

25 Q. And you were present when the purchase took place on

- 1 September 4th in the van?
- 2 A. Yes, sir. Correct.
- 3 Q. You were there with Agent Purdy and Agent Merckle?
- 4 A. Yes, sir.
- 5 Q. And you had a live audio feed going on?
- 6 A. Yes, sir.
- 7 Q. And so you could hear Frank Hayes' voice?
- 8 A. Correct.
- 9 Q. You could hear Sweet Pea's voice?
- 10 A. Correct.
- 11 Q. You could hear Anthony's voice?
- 12 A. I heard several voices.
- 13 Q. You did not recognize Marcus Mack's voice?
- 14 A. I did not recognize any voices other than Frank
- 15 Hayes because his was closer to the mic than the others.
- 16 Q. At this point in time you still don't know who Beazy
- 17 is?
- 18 A. That's correct.
- 19 MR. CHEHOSKI: Nothing further, Your Honor.
- 20 THE COURT: Redirect?
- 21 MR. BELL: No further questions, Your Honor.
- 22 THE COURT: Have a nice day.
- 23 MR. CHEHOSKI: No objection to him being excused,
- 24 Your Honor.
- 25 THE COURT: Great. Call your next witness.

1 MS. GRAHAM: Your Honor, at this time the State
2 calls Brian Travis to the stand.

3 Thereupon,

4 BRIAN TRAVIS
5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full name spelling your last please.

8 THE WITNESS: Brian Travis, T-r-a-v-i-s.

9 DIRECT EXAMINATION

10 BY MS. GRAHAM:

11 Q. Detective Travis, what do you do for a living?

12 A. I'm a Detective with the Lexington County Sheriff's
13 Department.

14 Q. How long have you worked with that department?

15 A. Just over ten years.

16 Q. What roles have you held within that department?

17 A. I started as a patrol deputy. From there I was
18 promoted to field training officer, then to property crimes
19 detective, major crimes detective, and now I'm a detective
20 with the criminal intelligence unit.

21 Q. What are your duties within the criminal
22 intelligence unit?

23 A. We do both investigative and administrative support
24 so I do things like photo lineups, cell phone analysis, work
25 load assessments, strategic and tactical planning.

1 Q. How many photo lineups do you believe you have
2 created in your career?

3 A. Around 300.

4 Q. Can you explain the process used to develop a photo
5 lineup?

6 A. When an officer or detective asks us for a lineup,
7 we'll go and check our database that we keep internally for a
8 photograph. If we have one, we'll take that and look at
9 physical characteristics to match five other photographs to it
10 to create the photo lineup and then I do a three on the top,
11 three on the bottom photo lineup and provide it to the
12 investigator.

13 Q. With regard to the internal database when you're
14 searching characteristics within that database, how do those
15 characteristics get into the database?

16 A. When the photographs are uploaded to the database,
17 those physical characteristics are entered in by the person
18 that's uploading the photo.

19 Q. Is there variations in opinion on how to define
20 certain characteristics?

21 A. Some things are absolute like a date of birth
22 produces the age but other things are more subjective like
23 hair length, tattoo locations and sometimes hair color can be
24 subjective.

25 Q. So when you're putting your own characteristics into

1 the database, are you using a broad spectrum of
2 characteristics putting a lot in there or a limited number?

3 A. When I do a search for matching photographs, I use a
4 limited number of characteristics. That way I get more photos
5 to sort through to get a better match.

6 Q. So you are essentially getting a bunch of photos
7 based on the general characteristics and then using the naked
8 human eye to make sure that they match up?

9 A. Yes.

10 Q. Do you recall being asked to develop a photo lineup
11 in this case?

12 A. Yes. I was.

13 Q. Do you recall who asked you to develop that
14 lineup?

15 A. Agent Purdy.

16 Q. Do you recall the name that you were given to use
17 for the photo lineup?

18 A. Marcus Mack.

19 Q. Do you recall where he appeared in the lineup?

20 A. He ended up at number 1.

21 Q. How did he end up at number 1?

22 A. After we have gone through and selected the
23 photographs and tell it to make a lineup, it randomly places
24 the photographs.

25 Q. With regard to photos that were actually used in the

1 lineup, can you describe the characteristics that were
2 ultimately used in this lineup?

3 A. Black male in his 20's, more of a slender build,
4 shorter hair cut.

5 Q. How do you know that it was you who developed the
6 photo lineup as opposed to somebody else within the
7 intelligence unit?

8 A. Every time something is done in our records
9 management system a audit stamp is put on it that says the
10 date and time and the user name who created it and our user
11 names are our last name and first initial.

12 Q. I'm showing you what's been marked as State's
13 exhibit 4. Do you recognize this item?

14 A. Mm-hmm.

15 Q. What is it?

16 A. It is a cropped photo lineup.

17 Q. Okay. Other than the identification that's marked
18 on there, has it been altered or changed in any way?

19 A. The photographs have been cropped to just their
20 face.

21 MS. GRAHAM: Nothing further from this witness, Your
22 Honor.

23 THE COURT: Mr. Chehoski.

24 MR. CHEHOSKI: Very briefly, Your Honor.

25 CROSS EXAMINATION

1 BY MR. CHEHOSKI:

2 Q. You received the request for to do the lineup on
3 September 14th; is that correct?

4 A. Uhm, yes, sir.

5 Q. And you completed it on that same day?

6 A. Correct.

7 Q. Sent it back to Agent Purdy the same day?

8 A. Yes, sir.

9 Q. When you completed the lineup, do you have any - do
10 you have to do any peer review for it?

11 A. Uhm, most of the time we'll look at each others
12 lineups but it's not a requirement.

13 Q. When you saw each others, do you have a partner in
14 your lab?

15 A. Correct.

16 Q. In this case, was there any peer review?

17 A. The only review would have been by Agent Purdy to
18 see if he had issue with it.

19 Q. No one else in your lab?

20 A. Not that I recall.

21 MR. CHEHOSKI: Thank you.

22 THE COURT: Redirect?

23 MS. GRAHAM: Nothing, Your Honor.

24 THE COURT: Have a nice day.

25 MR. CHEHOSKI: No objection to him being excused.

1 THE COURT: All right. Who's next?

2 MR. BELL: Your Honor, at this time we need to take
3 up a matter of law with the Court.

4 THE COURT: Okay. All right. Ladies and gentlemen,
5 we'll take a break. Do not discuss the case. Keep an
6 open mind. We'll be back with you in just a few moments.
7 Thank you very much.

8 (Whereupon, the jury entered the jury room at 2:35
9 p.m.)

10 MS. GRAHAM: Your Honor, before we broke for lunch
11 we did get into and discuss and talked about the threat
12 element that was elicited through Mr. Hayes' testimony in
13 pretrial. We just want to be clear that we do not plan
14 to elicit any testimony regarding the threat in direct
15 examination. In the event that defense gets into that,
16 we would, of course, go into it at that point, Your
17 Honor.

18 THE COURT: Okay.

19 MR. CHEHOSKI: Your Honor, again as far as the
20 threats, I guess we'll go a little bit into the history
21 here. Mr. Hayes testified he didn't show up for court a
22 couple weeks ago because of alleged threats that may have
23 been made either on behalf of my client or on behalf of
24 the 50 to a hundred other people that he's done purchases
25 for. During a pretrial ruling or a pretrial hearing at

1 the last trial the State actually moved to exclude my
2 client's family from the courtroom even though they
3 weren't present because of this perceived threat. As you
4 can see there's nobody in the courtroom for either the
5 State or for my client right now. I don't see that this
6 being a problem other than the fact Mr. Hayes might be a
7 little bit of a loose cannon on cross or that he might
8 blurt it out. He's now a CI who has been exposed.
9 Naturally I think that's just more of the natural course
10 of events for his life choices.

11 THE COURT: All right. I mean, is he right back in
12 here?

13 MR. CHEHOSKI: He's on the third floor.

14 THE COURT: Can we get him brought up for me,
15 please, deputy. What we're going to do is I'm going to
16 tell him that, I'm going to try to explain to him what
17 direct and cross examination is and redirect and recross.
18 That on the direct examination he's not to say anything
19 about the threats. Likewise don't ask him the question.
20 I mean, I think the answer to the question of why didn't
21 you show up is going to be I got threatened. But if the
22 defense chooses to ask him that question on cross, then
23 they're stuck with the answer. I'm gonna allow the State
24 to go back into it on redirect, but I'm going to bring
25 him in here and caution him outside of the presence of

1 the jury that I don't want him going off in direct
2 examination about him being threatened. If he says it in
3 cross examination, it better be directly related to a
4 question asked.

5 MR. CHEHOSKI: Yes, sir.

6 MR. BELL: Your Honor, may I take up a tangential
7 issue as well?

8 THE COURT: Sure.

9 MR. BELL: Your Honor, the State doesn't intend to
10 get into any testimony related to the prior trial
11 testimony and so forth. In the event that that door is
12 opened for any reason, does Your Honor want us to refer
13 to the prior mistrial as just a hearing?

14 THE COURT: You can just say you previously have
15 testified. I assume you don't have a transcript?

16 MR. CHEHOSKI: We never saw a transcript, Judge.

17 THE COURT: So how would it come up?

18 MR. BELL: In the event that on cross examination he
19 was asked about anything he may have testified
20 differently to in the past.

21 THE COURT: Okay. I think that the way to do that
22 is to say -- When was the trial?

23 MR. BELL: June 19th.

24 THE COURT: Do you remember testifying in June of
25 this year when you were under oath without saying it was

1 a whole other trial and I'll explain that to him, too, so
2 he's not going off the reservation on us and creating
3 issues that don't need to be created. Is he next?

4 MR. BELL: Yes, sir.

5 THE COURT: Okay.

6 MR. BELL: Your Honor, as a matter of scheduling, I
7 assume Mr. Hayes is the lengthiest witness in the case.
8 The State's direct 30 minutes likely. With that said,
9 Your Honor, our next two witnesses are the chain of
10 custody and the chemist. Those are fairly short just for
11 Your Honor's information.

12 (Whereupon, Franklin Hayes entered the courtroom.)

13 THE COURT: Stay right there. How are you doing?

14 MR. HAYES: All right.

15 THE COURT: Good. Okay. I don't know you and you
16 don't know me, right?

17 MR. HAYES: No. I have never seen you before.

18 THE COURT: Now, when testified in here earlier
19 today, do you understand what I mean when I say direct
20 examination?

21 MR. HAYES: No, sir.

22 THE COURT: So you understand they're the
23 prosecutors, right?

24 MR. HAYES: Yes, sir.

25 THE COURT: Mr. Bell and Ms. Graham.

1 MR. HAYES: Right.

2 THE COURT: You're with me on that?

3 MR. HAYES: Right.

4 THE COURT: You understand Mr. Mack has an attorney.

5 His name is Mr. Chehoski, right?

6 MR. HAYES: Yes, sir.

7 THE COURT: You with me?

8 MR. HAYES: Yes, sir.

9 THE COURT: You understand who those people are,

10 right?

11 MR. HAYES: Yes, sir.

12 THE COURT: Okay. So I think Ms. Graham did your

13 testimony this morning. Remember that?

14 MR. HAYES: Right.

15 THE COURT: So she asked you questions first.

16 That's direct examination. Okay?

17 MR. HAYES: All right. Well, actually Mr. Bell.

18 THE COURT: Mr. Bell. I'm sorry. Mr. Bell asked

19 you questions first, right?

20 MR. HAYES: Yes, sir.

21 THE COURT: And then that's what we call direct

22 examination. Then Mr. Mack's attorney was allowed to

23 cross examine you.

24 MR. HAYES: Right.

25 THE COURT: Does that make sense?

1 MR. HAYES: Yes, sir.

2 THE COURT: And then Mr. Bell was allowed to do what
3 we call a redirect. Okay? And then if Mr. Mack's
4 attorney wanted to ask you more questions, he would be
5 allowed to recross you. Okay?

6 MR. HAYES: Yes, sir.

7 THE COURT: Now, you mentioned this morning in your
8 testimony that you received threats as early as this
9 morning. Okay?

10 MR. HAYES: Yes, sir.

11 THE COURT: Okay. I'm not saying that's true or not
12 true. What I'm saying is in your direct testimony with
13 the prosecution you don't need to say, don't go off the
14 reservation and start talking about threats. Okay?
15 They're not going to ask you a question that would elicit
16 that response. In the original, the first time Mr. Bell
17 does your direct examination you don't need to say
18 anything about threats. Okay?

19 MR. HAYES: Understood.

20 THE COURT: Now, if Mr. Chehoski asks you a question
21 like why didn't you show up or whatever or something like
22 that may be whereas you testified this morning I didn't
23 show up because I was scared because I had been
24 threatened, then you are allowed to give that answer.
25 Okay? Then from that point forward you would be allowed

1 to talk about it at my discretion as to how much I'm
2 going to let you get into or not get into. But when
3 Mr. Bell gets up here and asks you questions, you just
4 stick to the questions. Don't go off on a tangent or
5 just start rambling about somebody threatening you unless
6 the defense asks you a question about it specifically.
7 You with me? Yes or no?

8 MR. HAYES: Yes, sir.

9 THE COURT: Now, the other thing is you previously
10 testified in this trial back in June, right?

11 MR. HAYES: Correct.

12 THE COURT: That was a hung jury. Does that make
13 sense?

14 MR. HAYES: Yes, sir.

15 THE COURT: The jury couldn't make a decision. I
16 wasn't here. I don't know what happened. Okay? So if
17 somebody starts talking to you about prior testimony,
18 okay, they're not going to say do you remember the trial
19 where you testified and it was a hung jury. They're just
20 going to say do you remember testifying back in June.
21 That's what they're talking about. Okay?

22 MR. HAYES: All right.

23 THE COURT: Or they may say do you remember
24 testifying this morning, then that's what they're talking
25 about. But you don't need to mention anything about a

1 prior trial occurring.

2 MR. HAYES: Short and sweet.

3 THE COURT: No. I'm not saying to keep it short and
4 sweet. I'm just saying I don't know you. I have never
5 seen you in my whole life. I don't know anything about
6 you. I don't want you to go off on a tangent if that's
7 not the question that was asked. I want you to answer
8 the questions and I want you to answer them truthfully.
9 If at any time during your testimony somebody says the
10 word objection, I want you to immediately stop talking
11 and let me resolve the issue and then I'll give you a
12 specific direction on where you can go. Fair enough?
13 But I'm not trying to limit your testimony. I'm trying
14 to just caution you. I don't need you going off on a
15 tangent about things. You didn't do that this morning in
16 any way, shape or form. You didn't do that this morning.
17 I'm not fussing at you. I'm just trying to help you
18 through it. Okay?

19 MR. HAYES: Yes, sir.

20 THE COURT: Why don't you come on and sit up here so
21 you don't have to walk in front of everybody. They're
22 going to know you're in custody anyway so... Is the
23 State ready?

24 MS. GRAHAM: We are, Your Honor.

25 THE COURT: Mr. Chehoski?

1 MR. CHEHOSKI: Yes, sir, Your Honor.

2 THE COURT: All right. Let's bring them back in.

3 (Whereupon, the jury entered the courtroom at 2:47
4 p.m.)

5 THE COURT: You may call your next witness.

6 MR. BELL: Thank you, Your Honor. The State calls
7 Frank Hayes to the stand.

8 Thereupon,

9 FRANKLIN EUGENE HAYES

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. Once you're seated,
12 state your full name spelling your last please.

13 THE WITNESS: Franklin Eugene Hayes, H-a-y-e-s.

14 DIRECT EXAMINATION

15 BY MS. GRAHAM:

16 Q. Mr. Hayes, do you mind if I occasionally refer to
17 you as Frank?

18 A. That's fine.

19 Q. For the record, can you tell us what time it is on
20 the clock in the rear of the courtroom?

21 A. 2:48 p.m.

22 Q. Mr. Hayes, where are you from originally?

23 A. Lexington. Right here in Lexington County.

24 Q. How long have you been in Lexington?

25 A. Probably 20 years.

1 Q. Where did you go to school?

2 A. Airport High School.

3 Q. Did you graduate?

4 A. I did.

5 Q. Did you go to any college or community school or
6 anything afterwards?

7 A. No, sir.

8 Q. So what kind of work have you been doing then?

9 A. Mostly like remodeling. My last employment was
10 construction work like custom arbors, custom decks, privacy
11 fence, wood and vinyl, that type.

12 Q. Now, Mr. Hayes, I'm not here to embarrass you but we
13 have to be up front with the Court. Do you have a prior
14 criminal record?

15 A. I do.

16 Q. And do you recall being convicted of fraudulent
17 application for a license in your past?

18 A. I do.

19 Q. Do you recall being convicted of an assault and
20 battery case?

21 A. I do.

22 Q. And a criminal domestic violence case?

23 A. I do.

24 Q. And do you currently have a pending marijuana and
25 obstruction charge against you?

- 1 A. That's correct.
- 2 Q. Where do those stem from?
- 3 A. Rock Hill.
- 4 Q. Aside from doing contractor work that you have
- 5 mentioned, is there anything else you do to make additional
- 6 monies?
- 7 A. I do.
- 8 Q. What else do you do on the side?
- 9 A. Confidential informant.
- 10 Q. How long have you been doing that?
- 11 A. Off and on two years.
- 12 Q. Do you work for one agency or multiple agencies?
- 13 A. Multiple.
- 14 Q. What agencies have you worked for?
- 15 A. I have worked with SLED, City of Columbia, ATF, Rock
- 16 Hill, York County, Cayce, West Columbia and Lexington.
- 17 Q. What do you get out of working as a confidential
- 18 informant for law enforcement?
- 19 A. I get paid.
- 20 Q. At any point in time are you working off charges
- 21 that were pending against you?
- 22 A. No, sir.
- 23 Q. Are you currently working off any charges pending
- 24 against you?
- 25 A. No, sir.

1 Q. On September 4th, 2015, were you working as a
2 confidential informant?

3 A. Yes, sir.

4 Q. Do you recall what agency you were working for on
5 that day?

6 A. West Columbia and Lexington.

7 Q. When you say Lexington, are you referring to the
8 Sheriff's Department?

9 A. Correct.

10 Q. On that date in question who did you meet up with
11 from law enforcement?

12 A. I met up with Officer Putney from West Columbia,
13 Officer Purdy who is right there from Lexington and his
14 partner Officer Merckle.

15 Q. Did you meet up with them in a vehicle?

16 A. I did.

17 Q. Was it a police vehicle with lights and sirens on
18 it?

19 A. No. It was pretty much like an undercover operation
20 van, construction type white van.

21 Q. What time of day roughly did you meet with law
22 enforcement?

23 A. I met up with them shortly after 10:00. I think the
24 deal took place around 10:45.

25 Q. To be clear, are you referring to morning or

1 evening?

2 A. Morning.

3 Q. Do you recall what the weather was that day?

4 A. Clear.

5 Q. Any problem with visibility outside?

6 A. No, sir.

7 Q. No fog?

8 A. No, sir.

9 Q. When you met with law enforcement, walk us through
10 what you went through in the van that day?

11 A. All right. Well, I met up with Officer Purdy,
12 Putney and Merckle at a private location. At that point I was
13 searched from head to toe, wired with audio and video and
14 instructed to go buy dope, specifically crack cocaine.

15 Q. And did you have anybody in particular you were
16 supposed to be buying from?

17 A. Originally I was going down Sumter Street, at the
18 bottom of Sumter Street to buy from a guy I know as Beazy.

19 Q. And prior to September 4th, were you a confidential
20 informant before that date as well?

21 A. Correct.

22 Q. Had you conducted controlled buys for law
23 enforcement prior to that date?

24 A. Yes, sir.

25 Q. If you were given a target by law enforcement and

1 for whatever reason can't make contact or make a purchase from
2 that target, do you just quit for the day?

3 A. No. For example, my target was Beazy but if he
4 didn't have it, someone right there in that perimeter did have
5 it.

6 Q. After making contact with Beazy that day, where did
7 you head?

8 A. I made contact with Beazy again on Sumter Street at
9 a white house right there with a chain link fence right there
10 where all of them usually hang out at. It's known as a trap
11 spot. When I met up with Beazy there to buy a hundred dollars
12 worth of crack cocaine, he told me that --

13 Q. Mr. Hayes, I'm sorry to interrupt. Rules of court
14 you can't say what somebody else said. Okay?

15 A. Yes, sir.

16 Q. So after meeting with Mr. Beazy, where did you
17 head?

18 A. After meeting up with Beazy, he took me around the
19 corner to the corner of Brown and Ross Street where I met up
20 with a guy named Sweet Pea and a guy I know as Mack.

21 Q. Where were they located when you met with those two
22 individuals?

23 A. As I was approaching that corner of Brown and Ross,
24 it was a car, four door small vehicle parked on the side of
25 the road and I seen a driver in it and then, of course, I saw

1 Sweet Pea and the person I know as Mack sitting in the rear of
2 the vehicle.

3 Q. Now, you say the rear of the vehicle. Can you be
4 more specific as to where Sweet Pea was seating?

5 A. When I approached the driver side, the driver's side
6 back seat was where Sweet Pea was sitting at. The back seat
7 passenger side is where the guy I know as Mack was sitting
8 at.

9 Q. Is it fair to say that the person you refer to as
10 Mack was on the rear right side of the vehicle?

11 A. Correct.

12 Q. When you first made contact with those two
13 individuals, tell us how that went down.

14 A. I met up, like said, I encountered Sweet Pea first.
15 Sweet Pea got out of the vehicle and I told him I wanted a
16 hundred dollars worth of crack. A hundred dollars of hard.
17 People call it hard. Slang for crack. He said he didn't have
18 that much or something along those lines. He asked me to get
19 in the vehicle. I started to get inside the vehicle.

20 Q. Where did you start to get inside the vehicle at?

21 A. On the driver's side rear. When Sweet Pea stepped
22 out the vehicle, he left the door open and then he told me to
23 get in. Well, I started to get in and then, of course, I
24 remembered specifically Purdy told me if I can avoid getting
25 in a vehicle at any point, do so because of safety issues. So

1 when I got in the vehicle, I sort of paused for a second and
2 then got right back out.

3 Q. Now, I know you said you got in and got back out.
4 But at any point did you actually firmly sit down in the back
5 of the vehicle?

6 A. Yes, sir. I sat down right beside the guy I know as
7 Mack.

8 Q. The guy that you are referring to as Mack, had you
9 seen him prior to September 4th?

10 A. Multiple times.

11 Q. How close to him were you in the vehicle?

12 A. Six inches.

13 Q. How was the visibility inside the vehicle?

14 A. Clear.

15 Q. Did you have an unobstructed view of Mack's face?

16 In other words, was there anything in between you two?

17 A. Nothing.

18 Q. Any trouble seeing his face whatsoever?

19 A. No.

20 Q. Do you wear contacts?

21 A. I don't.

22 Q. Do you wear glasses?

23 A. Reading glasses.

24 Q. Do you need those glasses in general to see?

25 A. No.

1 Q. Do you wear them all the time?

2 A. No, sir.

3 Q. After getting in the vehicle and then remembering
4 you weren't supposed to and getting back out, what happened?

5 A. Then Sweet Pea got in the rear of the car, shut the
6 door so at this point Sweet Pea is sitting right there on the
7 driver's side rear and on the other side, the rear passenger
8 side was Marcus. Sweet Pea didn't have enough crack. He
9 didn't have a hundred dollars worth of crack so he looked over
10 to Marcus and he had it so...

11 Q. When you say it, what are you referring to?

12 A. Crack.

13 Q. Did you see Mr. Mack actually with the crack in his
14 hand at any point?

15 A. Yes, sir.

16 Q. Do you know where the crack came from?

17 A. Out of his pocket.

18 Q. Did you actually see him pull it out of his
19 pocket?

20 A. I did.

21 Q. Does the video show that?

22 A. I'm not sure.

23 Q. After he pulled the crack out of his pocket, what
24 did he do with it?

25 A. He handed it to Sweet Pea, then Sweet Pea started to

1 open a plastic, small plastic bag with multiple pieces of
2 crack in it.

3 Q. Ultimately where did that crack go?

4 A. He pulled out a hundred dollars worth of crack, gave
5 me a hundred dollars worth of crack and I gave him a hundred
6 dollars cash.

7 Q. You say him. Who is him? Who did you give the cash
8 to?

9 A. Sweet Pea.

10 Q. Did Sweet Pea take that cash and put it in his own
11 pocket?

12 A. No. He gave it to Mack, the guy I know as Mack.

13 Q. So you testified that Mr. Mack pulled the crack out
14 of his pocket; is that right?

15 A. Correct.

16 Q. Who did the crack then go to?

17 A. The crack went to Sweet Pea.

18 Q. Then who did the crack go to?

19 A. To me.

20 Q. How did the cash move?

21 A. Same way but in reverse. I handed Sweet Pea the
22 cash, Sweet Pea handed Marcus the cash.

23 Q. Did both the crack and the cash at some point go
24 through Mr. Mack?

25 A. Absolutely.

1 Q. After this transaction was complete, what did you do
2 next?

3 A. I returned to the agents.

4 Q. How long did it take you to get back to them?

5 A. Approximately four or five minutes.

6 Q. Was anybody with you during that period of time?

7 A. Beazy.

8 Q. Is that the same gentlemen that you originally met
9 with?

10 A. Correct.

11 Q. Why does he follow you?

12 A. Because he was heading that way anyway back to
13 Sumter Street.

14 Q. Why didn't you just run from him?

15 A. I knew that he was, within the next couple blocks I
16 knew that he was going to make that right on Sumter Street for
17 one. Number 2, it's undercover. That's part of it.

18 Q. Did you go back to the van with Beazy?

19 A. No.

20 Q. Did you wait until he left to go to the van?

21 A. Beazy made a right hand on Sumter Street off
22 Holland, I kept onto the next Street which is, I think,
23 Greenwood. When I made that right on Greenwood, I was walking
24 towards the traffic and I seen the white undercover van pull
25 up. When it came up driving up, I jumped in the back with

1 Officer Putney.

2 Q. Were the same law enforcement personnel in the
3 vehicle at that time?

4 A. That's correct. That's Officer Putney, Officer
5 Purdy and Officer Merckle.

6 Q. Did you tell law enforcement who you believed you
7 had bought from?

8 A. I did.

9 Q. What name did you give them, if any?

10 A. Mack.

11 Q. Did you have a full legal name?

12 A. I ain't had no idea.

13 Q. Did you give a statement to law enforcement?

14 A. I did.

15 Q. Did they search you again?

16 A. Yeah. When I got in the van, the first thing I did
17 was I gave the agents the dope, the crack, then we went back
18 to that private location. They took the audio and video off
19 me and then again searched me from head to toe again just like
20 they do every time.

21 Q. I'm showing you what's been entered as State's 2.
22 Does that appear to be similar to the crack cocaine or cocaine
23 that you were provided on September 4th?

24 A. Yes, sir.

25 Q. Is that how it would appear when you turned it over

1 to law enforcement in the van?

2 A. Yes, sir.

3 MR. BELL: Permission to publish State's 2 to the
4 jury.

5 THE COURT: Yes, sir.

6 MR. BELL: The State has published by hand.

7 BY MR. BELL:

8 Q. Now, you talked about law enforcement recovering the
9 surveillance equipment from you. At any point in time on that
10 particular day did you watch the video with law enforcement?

11 A. I had never, I never watched the video until I knew
12 I had to come to trial.

13 Q. And prior to trial, did you have an opportunity to
14 view the video?

15 A. Yes, sir. I did one time.

16 Q. I'm showing you what's been marked as State's 3.
17 What does that appear to be?

18 A. That's the DVD I watched, the video.

19 Q. What is the contents of that DVD?

20 A. That's the controlled buy.

21 Q. How do you know that's the same controlled buy that
22 you already viewed?

23 A. Because my initials are on it.

24 Q. And the video that you watched on that DVD, does it
25 fairly and accurately reflect the events as they occurred on

1 that day September 4th?

2 A. Absolutely it did.

3 MR. BELL: Your Honor, at this time the State moves
4 to enter State's 3 into evidence.

5 MR. CHEHOSKI: Without objection.

6 THE COURT: State's exhibit number 3 admitted
7 without objection.

8 BY MR. BELL:

9 Q. Now, briefly before we watch the video together, I
10 want you to tell us more about the surveillance equipment.
11 Where did they have you wired?

12 A. In a Polo type shirt. The second button from the
13 top is the audio, the camera itself. And then I have a live
14 wire as far as hearing.

15 Q. And is the audio and the video that you just
16 referred to that would have been recorded from those two
17 devices, was that present on that DVD that you just saw?

18 A. Yeah.

19 MR. BELL: Your Honor, permission to publish State's
20 3?

21 THE COURT: Yes, sir.

22 MR. BELL: Your Honor, the State is not intending to
23 play it from start to finish unless the defense has an
24 objection.

25 THE COURT: If anybody can't see or you can't hear,

1 wave at me. Okay? You want to turn down the lights a
2 little bit, Mr. Jones, and see what happens.

3 (Whereupon, State's exhibit number 3 played for the
4 jury.)

5 BY MR. BELL:

6 Q. Whose point of view is this video from?

7 A. Excuse me.

8 Q. Whose point of view is this video from?

9 A. Mine.

10 Q. Frank, over the course of the next few minutes
11 what's happening inside the van?

12 A. Were going to a drop off spot.

13 Q. I'm going to move about a few minutes ahead, about
14 eight minutes ahead of where we just were. Where are you
15 walking to at this time?

16 A. At this point I am - I just made a left off Holland
17 to Sumter Street and I'm heading down Sumter.

18 Q. Who is the individual that you are speaking to right
19 now?

20 A. This is the original target the guy I know as Beazy.

21 Q. A moment ago we saw a second individual. Did you
22 have any contact with that person?

23 A. No, sir.

24 Q. It's muffled on these speakers. What are you all
25 talking about while you're walking?

1 A. We're just reminiscing a little bit, talking about
2 guns, little stuff like that.

3 Q. At this point how close are you to your final
4 stop?

5 A. Well, we just made a right on Brown right there at
6 the church.

7 Q. Now, during that long boring walk, did you have any
8 contraband located in your clothing?

9 A. No, sir.

10 Q. Did you have any contraband located in your body?

11 A. No, sir.

12 Q. Did Mr. Beazy, did he put anything on you or in your
13 pockets?

14 A. No, sir.

15 Q. Are you still on the same way you were when you left
16 the law enforcement van?

17 A. Correct.

18 Q. Does it remain that way until you approach the
19 vehicle of Mr. Mack and Mr. Dickerson?

20 A. Yes, sir.

21 Q. All right. Where are we right now?

22 A. We're at the corner of Brown and Ross.

23 Q. And what vehicle have you just walked up to?

24 A. I walked up to an unknown vehicle but Sweet Pea had
25 his window down calling me because he recognized me. That's

1 when I walked up to the car.

2 Q. Who is closest to you at the window?

3 A. At this point closest me is Sweet Pea and then
4 behind the passenger side seat in the back that's the
5 gentlemen I know as Mack.

6 Q. At this point what's happening?

7 A. Sweet Pea said you know Marcus, don't you? I said,
8 yeah, man. Yeah. I seen him a few times. Blase, blase. You
9 know, Sweet Pea didn't have it. You know what I mean? Marcus
10 did. It appears to be in his hand right now.

11 Q. Now, did you necessarily know him as Marcus prior to
12 your interaction with Sweet Pea?

13 A. No. I knew him as Mack.

14 Q. And at this point why is Sweet Pea stepping out of
15 the vehicle?

16 A. Don't really know why he stepped out of the vehicle.

17 Q. Now, a moment ago we saw him playing around with
18 something sort of between his legs. Now he has his hands
19 cupped. What is he doing there?

20 A. Well, he was paying attention to the video. He had
21 a baggie that he pulled the dope out of it and now he's got it
22 in his hand right now about to hand it to Sweet Pea.

23 Q. All right. I just missed it but where did the money
24 go?

25 A. After he gave me the dope, uhm, I gave him the

1 hundred dollars in funds and then he handed the money to
2 Marcus.

3 Q. Who is with you right now?

4 A. The same individual that I run into on Sumter that
5 walked with me along the way I know as Beazy.

6 (Whereupon, State's exhibit #3, the video, was
7 stopped.)

8 Q. Okay. For the next nine minutes which is in
9 evidence to watch what happens during that nine minutes?

10 A. Pretty much we go a block, we make a right on
11 Holland at that store right there, I try to kick him off and
12 say, hey, man, I gotta go, blase, blase, just to, you know,
13 where he wouldn't follow me but he did and as we approached
14 Sumter Street he made that right headed to his house and I
15 kept going returning to the agents.

16 Q. Did you have any further contact with Sweet Pea or
17 Mack --

18 A. No.

19 Q. -- on that particular occasion?

20 A. No.

21 Q. I'm handing you what's been marked for ID as State's
22 7 and 8. What do those appear to be?

23 A. The first one is Marcus, the individual sitting
24 right there.

25 Q. Speak up for me just a little bit.

1 A. Sorry about that. The first picture is a picture of
2 Marcus the guy sitting right their handing the crack cocaine
3 to Sweet Pea.

4 Q. Where is that image captured from?

5 A. From my audio/video on my shirt.

6 Q. Is that the same source that we just watched up on
7 that big screen?

8 A. It is.

9 Q. Does the image in front of you fairly and accurately
10 represent what's presented in the video?

11 A. Yes, sir.

12 Q. Now, you just referred to State's 7. How about
13 State's 8?

14 A. This is when I was pretty much leaving and Sweet Pea
15 was pretty much handing the money over to Marcus.

16 Q. And again, does this fairly and accurately represent
17 what actually occurred in the video that we just watched?

18 A. It does.

19 MR. BELL: Your Honor, at this time the State would
20 seek to enter State's 7 and 8.

21 MR. CHEHOSKI: Without objection.

22 THE COURT: State's 7 and 8 entered without
23 objection.

24 MR. BELL: Permission to publish to the jury by
25 hand?

1 THE COURT: Yes, sir.

2 MR. BELL: The State has published State's 7 and 8
3 to the jury by hand.

4 BY MR. BELL:

5 Q. Mr. Hayes, after returning to the van that day and
6 handing off the contraband to law enforcement, did you have
7 any further contact related to this case?

8 A. No.

9 Q. Were you ever met and asked to do a photo lineup
10 related to this case?

11 A. I was.

12 Q. And who did you meet with to conduct that photo
13 lineup?

14 A. Approximately a couple weeks later I met up with
15 Agent Merckle and Agent Purdy who is sitting right there.

16 Q. Where did you meet up with them?

17 A. At a private location.

18 Q. Were you in that same vehicle?

19 A. No. I wasn't.

20 Q. Where were you at this time?

21 A. We was in a SUV type vehicle. Officer Merckle was
22 the driver. Officer Purdy right here was the passenger. I
23 was sitting behind Officer Purdy.

24 Q. What time of day did this meeting take place?

25 A. I really don't recall. I know it was daytime.

1 Q. Was your visibility clear?

2 A. Crystal clear.

3 Q. Did you have any trouble seeing inside of that
4 vehicle you were in?

5 A. No, sir.

6 Q. You mentioned that you do wear reading glasses when
7 necessary. Did you have those glasses with you?

8 A. I did.

9 Q. While you were in vehicle did law enforcement show
10 you a photo lineup?

11 A. Yes, sir.

12 Q. Who handed it to you?

13 A. Officer Purdy.

14 Q. And where did he hand it to you from?

15 A. He was sitting in the front passenger seat and I was
16 seating directly behind him.

17 Q. And upon handing the lineup to you, did he try to
18 make any sort of indications or suggestions as to who you
19 should pick?

20 A. No. He handed me a sort of like a clipboard with
21 the photo lineup turned upside down. He handed it to me and
22 asked me to turn it over and did I see anybody on that photo
23 lineup that I bought dope from.

24 Q. And did you ultimately select someone from the photo
25 lineup?

- 1 A. Yes, sir.
- 2 Q. Did it take you long to select someone?
- 3 A. No, sir.
- 4 Q. Were you confident in your selection?
- 5 A. Absolutely.
- 6 Q. Did you have access to your reading glasses?
- 7 A. Yes, sir.
- 8 Q. Did you use them?
- 9 A. I did.
- 10 Q. I'm showing you State's 4 for ID. Do you recognize
- 11 that?
- 12 A. Yes. This is the six pack photo lineup that Officer
- 13 Purdy gave to me face down. I flipped it over and chose
- 14 number 1.
- 15 Q. On what date did they hand you that photo lineup?
- 16 A. I don't really recall. I know it was probably
- 17 approximately a couple weeks.
- 18 Q. At the bottom of the photo lineup is there any date
- 19 indicated?
- 20 A. Yes, sir.
- 21 Q. What is that date?
- 22 A. September 22nd, 2015.
- 23 Q. Do you see any signatures?
- 24 A. I do.
- 25 Q. Whose signature is that?

1 A. It's mine.

2 Q. Are there any other markings on that photo lineup?

3 A. Yes, sir.

4 Q. What is that marking indicating?

5 A. I circled number 1, a guy that I knew as Marcus or
6 Mack and put my CI number on it.

7 Q. And in making the selection of number 1 what were
8 you telling law enforcement?

9 A. Excuse me. Repeat the question.

10 Q. Why were you selecting him out of that lineup?

11 A. Because that's who it was I bought dope from.

12 Q. On what date, do you recall?

13 A. September 4th, 2015.

14 Q. Is that the gentleman that was on the far side rear
15 passenger of that vehicle --

16 A. It was.

17 Q. -- that we saw on the video?

18 A. It was.

19 Q. Does this photo lineup fairly and accurately reflect
20 the photo lineup that you were handed by Agent Purdy on
21 September 22nd, 2015?

22 A. Yes, sir.

23 MR. BELL: Your Honor, at this time the State seeks
24 to enter State's 4.

25 MR. CHEHOSKI: Subject to prior objection, Your

1 Honor.

2 THE COURT: All right. The prior objection in noted
3 for the record. The court understands and State's
4 exhibit number 4 is admitted over defense objections.

5 MR. BELL: Permission to publish, Your Honor.

6 THE COURT: Yes.

7 BY MR. BELL:

8 Q. Frank, I'm showing you State's 4 which you just had
9 in your hand. Is that the same document that you just
10 testified to?

11 A. Yes, sir.

12 Q. Is your selection the one that is circled in the top
13 left?

14 A. Yes, sir.

15 Q. What is that number or marking inside the circle?

16 A. That's my CI number.

17 Q. In making your selection from that photo lineup, did
18 law enforcement put any pressure or coerce you in any way to
19 make a particular selection?

20 A. No, sir.

21 Q. Did they keep from you basic human needs like water
22 or using the restroom?

23 A. I don't believe I quite understand the question.

24 Q. Were you comfortable at the time that you made your
25 selection?

1 A. Yes, sir.

2 Q. Did law enforcement tell you that you wouldn't be
3 allowed to leave until you picked out one?

4 A. No, sir.

5 Q. Again, how long did it take you to make your
6 selection?

7 A. Quick.

8 Q. Are you still confident in your selection today?

9 A. Absolutely.

10 Q. And the person that you both met in person on
11 September 4th at that vehicle and bought crack from and the
12 person that you selected from this photo lineup, are they
13 present in court today?

14 A. Yes, sir.

15 Q. Can you indicate where they are seated?

16 A. The gentleman sitting right here with the long
17 dreads, white shirt, red tie sitting right there.

18 Q. Is there anything different about him today as you
19 see him compared to how it was when you bought the crack back
20 in 2015?

21 A. Yes, sir. In the photo lineup he doesn't have the
22 dreads, you know, and it's been two years. Now he has dreads.
23 Other than that no difference.

24 MR. BELL: Please answer any questions for the
25 defense.

1 THE WITNESS: Yes, sir.

2 MR. CHEHOSKI: Please the Court.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. CHEHOSKI:

6 Q. After you did this transaction, Mr. Hayes, you gave
7 a statement to the police; is that correct?

8 A. I did.

9 Q. You signed that statement?

10 A. I didn't write the statement but, yeah, I signed
11 it.

12 Q. You signed it, right?

13 A. I signed it. Correct.

14 Q. And in signing so you certified that the facts
15 contained were true and correct; is that correct?

16 A. Correct.

17 Q. You wanted to tell them the whole truth?

18 A. Yeah.

19 Q. Nothing but the truth?

20 A. Nothing but the truth.

21 Q. All right. Have you seen that statement?

22 A. I don't recall. Been a while.

23 Q. If you looked at it, would it help you?

24 A. Possibly.

25 Q. (Proffering.)

- 1 A. All right.
- 2 Q. All right. You had a chance to read your
3 statement?
- 4 A. I did.
- 5 Q. Refreshed your memory?
- 6 A. Yes.
- 7 Q. Do you see the name Mack on there?
- 8 A. I don't.
- 9 Q. Do you see the name Marcus on there?
- 10 A. I don't.
- 11 Q. So the person you know as Mack doesn't show up on
12 here, right?
- 13 A. Right.
- 14 Q. Beazy was the original target of this investigation;
15 is that right?
- 16 A. Correct.
- 17 Q. You had dealt with Beazy before?
- 18 A. I have.
- 19 Q. You were going over there to buy a hundred dollars
20 worth of crack?
- 21 A. Yes, sir.
- 22 Q. And unfortunately Beazy didn't have any product; is
23 that right?
- 24 A. That's correct, sir.
- 25 Q. So you followed Beazy to another location?

1 A. Yes, sir.

2 Q. You followed the target of your investigation to
3 another location, right?

4 A. Yes, sir.

5 Q. You had a general idea of where you were going,
6 right?

7 A. I did.

8 Q. But you didn't know who you were meeting?

9 A. No.

10 Q. You testified that when you get mic'd up by the
11 police that they give you instructions; is that right?

12 A. Basic instructions. Yes, sir.

13 Q. Basic instructions. Those instructions are for your
14 safety?

15 A. For the most part. Correct.

16 Q. For the most part. You don't get into a car and get
17 sandwiched by people?

18 A. Right.

19 Q. And you don't follow the target of your
20 investigation to an unknown location, right?

21 A. I didn't understand the question. Repeat.

22 Q. Was part of your instructions not to follow the
23 target of your investigation to an unknown location?

24 A. No. That wasn't part of it.

25 Q. You felt free to do that?

1 A. Excuse me.

2 Q. You felt free to do that?

3 A. Yeah.

4 Q. Not knowing that you might be ambushed?

5 A. Yeah. You know, when I signed up for it, I knew the
6 risk.

7 Q. All right. Now, being a confidential informant
8 involves a certain degree of deception, right?

9 A. Yes, sir.

10 Q. You're not telling the person you're buying drugs
11 from that you are working for the State, right?

12 A. Correct.

13 Q. That would be dangerous, right? And you also have a
14 history of deception when you were convicted for fraudulent
15 application of a driver's license in 2008, right?

16 A. Wrong.

17 Q. Wrong?

18 A. Wrong.

19 Q. You were not convicted of fraudulent application for
20 a driver's license in 2008?

21 A. I was convicted of failure to surrender my driver's
22 license.

23 Q. Did you not testify earlier that you were convicted
24 of fraudulent application --

25 A. That's the charge, but in actuality I didn't turn my

1 driver's license in after they were suspended.

2 Q. Is your testimony today that you were not convicted
3 of fraudulent application?

4 A. Yes, sir.

5 Q. Thank you.

6 A. You're welcome.

7 Q. And you were also convicted in 2006 of criminal
8 domestic violence of a high and aggravated nature?

9 A. I was.

10 Q. And in 2012 you were convicted of assault and
11 battery first degree?

12 A. Yes, sir. I was.

13 Q. And right now you are facing charges of obstruction
14 of justice?

15 A. Yes, sir.

16 Q. And purchase of marijuana?

17 A. Yes, sir.

18 Q. And, in fact, there's an outstanding bench warrant
19 for your arrest?

20 A. Yes, sir.

21 Q. Now, in your statement that you read earlier you
22 said that you dealt only with Anthony; is that right?

23 A. I bought dope from Anthony. Yeah.

24 Q. You gave the money to Anthony?

25 A. No.

1 Q. That's not what your statement says? Would you like
2 another chance to read it?

3 A. No. I read it.

4 Q. Did you not state that you gave the funds to
5 Anthony?

6 A. No.

7 Q. (Proffering.) Read the highlighted line there.

8 A. It says I gave Anthony the documented funds in
9 exchange for an amount of crack cocaine.

10 Q. Thank you. Did you go to another location to make
11 another purchase after that day?

12 A. No.

13 Q. Is there a reason why you told, you wrote in your
14 statement that you went to another location? Was that not the
15 whole truth? Was that not the truth?

16 A. Excuse me.

17 Q. You wrote in your statement that you went to another
18 location that day.

19 A. That was the location.

20 Q. And afterwards did you go to another location?

21 A. No.

22 Q. Yet you said in your statement you went to another
23 location after you returned. Was that not the truth?

24 MR. BELL: Objection, Your Honor. Asked and
25 answered.

1 THE COURT: Overruled. Answer the question.

2 BY THE WITNESS:

3 A. The other location is from Sumter Street to the
4 corner of Ross and Brown is what I meant by another location
5 which I did.

6 BY MR. CHEHOSKI:

7 Q. Read from this line to the period please.

8 A. Where at?

9 Q. From this line.

10 A. "And then walked back to where the agents were and
11 we went to another location." Another location meaning
12 another private location. After every buy, we go to a private
13 location, take the video/audio off, return the dope to the
14 agents. That's what I meant by that.

15 Q. That's what you meant by that by going to another
16 location?

17 A. Absolutely, sir.

18 Q. Not another location to buy for the State?

19 A. No, sir.

20 Q. That's what it sounds like to me.

21 A. No. I wouldn't put that in my statement, sir.

22 Q. But you signed a statement that says that.

23 A. And I explained.

24 Q. After - you did more purchases for the police after
25 this day, right, after September 4th?

1 A. I don't recall.

2 Q. You don't recall?

3 A. I don't recall.

4 Q. You don't recall if you did purchases between
5 September 4th and September 22nd?

6 A. Two years ago. I don't recall.

7 MR. CHEHOSKI: Nothing further, Your Honor.

8 THE COURT: Mr. Bell?

9 MR. BELL: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BELL:

12 Q. Defense extensively questioned you about going to
13 another location. Do you recall that?

14 A. Yes, sir.

15 Q. Did you ultimately testify that in your statement
16 you wrote that you went to another location with agents?

17 A. Correct.

18 Q. And you were then questioned as to the validity of
19 that statement. Do you recall that?

20 A. Yes, sir.

21 Q. What is the document that I'm handing you?

22 A. My statement.

23 Q. Is it the same document that you were just shown by
24 defense counsel?

25 A. Yes, sir.

1 Q. Now, I want you to read from where I'm indicating
2 right here at about line five to the end of the statement.

3 A. All right. It says, "I gave Anthony the documented
4 funds in exchange for an amount of crack cocaine and then
5 walked back to where the agents were and we went to another
6 location. The agents searched me again and turned the crack
7 over as evidence. The agents procured their equipment and I
8 provided a statement."

9 Q. Anywhere in that statement did you testify you went
10 to another location to make another buy?

11 A. No, sir.

12 Q. You were questioned about who you gave the money to.
13 Do you recall that?

14 A. I do.

15 Q. In the video who pulls the drugs out of their
16 pocket?

17 A. Marcus.

18 Q. Who hands those drugs to Sweet Pea?

19 A. Marcus.

20 Q. And then where do those drugs from Sweet Pea go?

21 A. To me.

22 Q. Who did you hand the money to in exchange for those
23 drugs?

24 A. Sweet Pea.

25 Q. And who did he hand the money to?

1 A. Marcus.

2 Q. Was Mr. Mack close to you in the vehicle or far
3 away?

4 A. When I was outside the vehicle looking in he was
5 three foot away.

6 Q. Even though you gave the money to Sweet Pea because
7 he was standing beside you, did you have any doubt it was
8 going to end up going to Mr. Mack?

9 A. None.

10 Q. Why did you know it would ultimately go to Mr.
11 Mack?

12 A. Because it was Mack's crack cocaine coming out of
13 his pocket. He wants his money I'm sure.

14 Q. The statement that you just read from, is it a short
15 statement or a long statement?

16 A. It's long.

17 Q. What do you think is more detailed, the video or
18 your written statement?

19 A. The video.

20 Q. If there is any question about a discrepancy in your
21 statement versus what happened, does the video or your
22 statement better reflect that?

23 A. The video. The video shows it all.

24 MR. BELL: Thank you, Mr. Hayes.

25 THE COURT: Recross?

1 MR. CHEHOSKI: Very briefly.

2 RECROSS EXAMINATION

3 BY MR. CHEHOSKI:

4 Q. And again, the name Marcus does not appear anywhere
5 in your statement, correct?

6 A. Correct.

7 Q. The name Mack does not appear anywhere in your
8 statement, correct?

9 A. Correct.

10 MR. CHEHOSKI: Thank you.

11 THE COURT: All right. Have a good day. Thank you
12 very much. All right. Ladies and gentlemen, let's take
13 a break. It's about ten till four. Let's start back at
14 4:00. Do not discuss the case. Keep an open mind.
15 We'll start back at 4:00. Thank you very much.

16 (Whereupon, the jury entered the jury room at 3:50
17 p.m.)

18 THE COURT: Who's left?

19 MS. GRAHAM: Your Honor, we have Candy Kyzer who is
20 an evidence custodian and then we have our chemist and we
21 have Johnny Lee Dickerson and one potential impeachment
22 witness depending upon the way that testimony goes.

23 THE COURT: Okay. All right. 4:00. Ten minute
24 break.

25 (Short break.)

1 THE COURT: All right. Keep your seats. All right.

2 The State ready?

3 MS. GRAHAM: Yes, Your Honor, we are.

4 THE COURT: Defense ready?

5 MR. CHEHOSKI: Yes, sir.

6 THE COURT: All right. Bring them in please.

7 (Whereupon, the jury entered the courtroom at 4:00
8 p.m.)

9 THE COURT: All right. Welcome back. Thank you
10 very much. You may call your next witness.

11 MS. GRAHAM: Thank you, Your Honor. At this time
12 the State calls Candy Kyzer.

13 Thereupon,

14 CANDY KYZER

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. Once you're seated,
17 state your full name spelling your last please.

18 THE WITNESS: Candy Kyzer, K-y-z-e-r.

19 DIRECT EXAMINATION

20 BY MS. GRAHAM:

21 Q. Good afternoon, Candy.

22 A. Good afternoon.

23 Q. Where do you work?

24 A. I work at the Lexington County Sheriff's
25 Department.

1 Q. How long have you worked there?

2 A. I've been there for 22 years.

3 Q. What do you do?

4 A. I'm an evidence custodian.

5 Q. What are the duties associated with being an
6 evidence custodian?

7 A. We get in evidence that the deputies get off of
8 cases or investigators get off of cases and we make sure it's
9 properly packaged and make sure they enter it into the
10 computer system right and then print up bar code labels and
11 store it in a location.

12 Q. I'm showing you what's been marked as State's 9 for
13 identification purposes only. Do you recognize this item,
14 Candy?

15 A. I do.

16 Q. And how do you recognize the item?

17 A. It has a BEST kit number. All of our BEST kits come
18 with the numbers to it and whenever the investigator or deputy
19 that turns in the case, if it's like a BEST kit, they will
20 associate that into the computer system and it has the BEST
21 kit number on here that matches.

22 Q. If you could just recite that BEST kit number into
23 the record?

24 A. BEST kit number C022349.

25 Q. Based on your records who did you receive this item

1 from?

2 A. I received it from Scott Purdy.

3 Q. When did you receive that item?

4 A. It was received on September the 7th, 2015.

5 Q. That was received into evidence on that day?

6 A. Yes. It was.

7 Q. And then other than having been opened for the
8 purposes of testing the substance, does it appear to have been
9 altered or tampered with in any way?

10 A. No. It doesn't.

11 Q. And as evidence custodian, did evidence maintain the
12 integrity of this item?

13 A. Yes.

14 Q. While this item was under your care and control was
15 it changed or substantially altered in any way?

16 A. No. It was not.

17 Q. You previously testified that the item was
18 deposited into evidence on the 4th of September; is that
19 correct?

20 A. It was actually - it was actually turned into
21 evidence on September 4th but we did not check it into our
22 evidence room until September the 7th.

23 Q. Can you just explain what the difference is?

24 A. We have lockers. We're not on staff 24 hours. We
25 only work Monday through Friday 8:00 to 5:00 so when we're not

1 in the office, we actually have lockers that the deputies,
2 investigators can come and put items into and once they put
3 their items into that, the lockers lock and the only ones that
4 have access to those lockers are the three evidence custodians
5 so once they put that into the locker, we come in and either
6 the following morning or if it happened to be over the weekend
7 we come in that Monday morning, check the lockers and then we
8 sign it in from there.

9 Q. According to your records it was deposited on the
10 4th and then you all received it on the 7th?

11 A. Yes.

12 MS. GRAHAM: No further questions, Your Honor.

13 THE COURT: Cross?

14 MR. CHEHOSKI: Briefly, Your Honor.

15 CROSS EXAMINATION

16 BY MR. CHEHOSKI:

17 Q. Does it indicate in your records anywhere what time
18 of day it was checked in?

19 A. What time it was checked in?

20 Q. What time it was deposited?

21 A. It was put into the lockers on September the 4th at
22 4:04 in the afternoon.

23 Q. 4:04?

24 A. Mm-hmm.

25 Q. You guys are open from 8:00 to 5:00?

1 A. From 8:00 to 5:00 depending on when and what we're
2 doing. Fridays are usually really bad for us, uhm, and we're
3 trying to get everything caught up from them turning
4 everything in and then crime scene investigators turn stuff
5 in, too. Friday afternoons are usually pretty hectic for
6 us.

7 Q. The answer to my question is you close at 5:00?

8 A. Yes.

9 Q. And you received, you logged it in on September
10 15th. Do you have in your records when it went out for
11 testing? September 7th, 2015. I'm sorry. When did it go out
12 for testing?

13 A. It went out for testing on May the 11th, 2017.

14 MR. CHEHOSKI: Thank you.

15 THE COURT: Any redirect?

16 MS. GRAHAM: No redirect for this witness, Your
17 Honor.

18 THE COURT: Have a great day. Call your next
19 witness.

20 MR. BELL: The State calls Margaret Walker to the
21 stand.

22 Thereupon,

23 MARGARET WALKER

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. Once you're seated,

1 state your full name spelling your last please.

2 THE WITNESS: Margaret Walker, W-a-l-k-e-r.

3 DIRECT EXAMINATION

4 BY MR. BELL:

5 Q. Ms. Walker, who do you work for?

6 A. I work for the Lexington County Sheriff's
7 Department.

8 Q. How long have you been working there?

9 A. I have been there for a little over a year.

10 Q. What role are you fulfilling there at the Sheriff's
11 Department?

12 A. I'm a forensic chemist.

13 Q. What exactly does that mean?

14 A. I handle the day to day operations dealing with drug
15 analysis.

16 Q. Walk us through what sort of education and training
17 you had to go through for that title?

18 A. I have a bachelor's of science degree in forensic
19 chemistry with a minor in criminal justice from York College,
20 of Pennsylvania. I also completed a three month training with
21 the South Carolina Law Enforcement Division commonly known as
22 SLED with their drug analysis unit.

23 Q. Now, the methodology that you've been trained and
24 educated on, are they considered nationally reliable?

25 A. Yes.

1 Q. Are they accepted by the scientific community at
2 large?

3 A. Yes. It is.

4 Q. Through your experience as a forensic chemist with
5 the Sheriff's Department have you worked any cases with
6 cocaine or cocaine base?

7 A. Yes. I have.

8 Q. Can you estimate how many of those cases you have
9 tested?

10 A. Over 65 times.

11 Q. Have you been qualified as an expert in court
12 before?

13 A. Yes. I have.

14 Q. How many times?

15 A. Two.

16 Q. In what fields were you qualified in?

17 A. The field of drug analysis.

18 Q. Do you recall what substance you were testifying to
19 in those cases?

20 A. It was for cocaine and another case was for cocaine
21 base.

22 MR. BELL: Your Honor, at this time the State would
23 seek to admit Ms. Walker as an expert in the field of
24 forensic chemistry.

25 THE COURT: Voir dire?

1 MR. CHEHOSKI: No additional voir dire, Your Honor.
2 No objection.

3 THE COURT: Ladies and gentlemen, normally a witness
4 is not allowed to give opinion testimony. Normally when
5 somebody testifies, they have to testify as to what they
6 saw, heard, sensed by smell or something of that nature.
7 There is an exception under the rules when someone is,
8 qualified because of education or experience. That
9 person is permitted to give their opinion in certain
10 areas if I qualify them in that way. This witness will
11 be qualified as an expert in the area of forensic
12 chemistry. She will be allowed to give opinion testimony
13 in that area. That does not mean that you have to accept
14 her opinion but it is evidence for you to use in any way
15 that you see fit and give it the weight and credibility
16 that you believe is appropriate as you are required to do
17 with each and every witness that appears before you.

18 MR. BELL: Thank you, Judge.

19 BY MR. BELL:

20 Q. Ms. Walker, did you have reason to test evidence
21 related to the case of State versus Marcus Antonio Mack?

22 A. Yes. I did.

23 Q. I'm handing you what's been marked as State's 9 for
24 ID only. What is that item?

25 A. It is one of our BEST bags with a case number and it

1 also has my initials on it.

2 Q. And do you know whether or not that BEST bag or BEST
3 kit is attached to the case that you are here to testify
4 about?

5 A. May I refer to my notes?

6 Q. Please.

7 A. Yes. It is.

8 Q. How do you know that?

9 A. The case number I have written on the side --

10 Q. I'm sorry to interrupt. It hasn't been entered into
11 evidence so if you wouldn't hold it up right now.

12 A. The case number matches my case number that I have
13 written on here. Also the BEST kit number matches the lab
14 number that I have on here as well.

15 Q. What is the BEST kit number that's on the BEST kit
16 itself?

17 A. It's a unique number that is given to this BEST bag
18 and it cannot be duplicated.

19 Q. Can you read that control number into the record?

20 A. C022349.

21 Q. On what day did you receive that BEST kit?

22 A. I received it on May the 11th, 2017.

23 Q. And how do you know that that's the BEST kit that
24 you personally tested the contents of?

25 A. There are my initials on the seal of the kit pack

1 and also my initials on the BEST bag itself.

2 Q. Upon receiving the BEST kit, did you see any signs
3 that it had tampered with prior to entering your custody?

4 A. No. It was not.

5 Q. Was the seal still intact on the BEST kit?

6 A. Yes. It was. It was noted on my report.

7 Q. What was noted on your report?

8 A. That the seal was good.

9 Q. Would you have continued with your testing if you
10 thought the item had been tampered with?

11 A. No. I would not have. I would have contacted my
12 supervisor and closed the case.

13 Q. Did you ultimately test the contents of the BEST
14 kit?

15 A. Yes. I did.

16 MR. BELL: Your Honor, at this time the State would
17 seek to enter State's 9 into evidence.

18 MR. CHEHOSKI: No objection.

19 THE COURT: State's exhibit number 9 admitted
20 without objection.

21 BY MR. BELL:

22 Q. I'm handing you back State's 9. When you received
23 the item from the evidence locker, did the contents appear
24 similar to what you see in that bag today?

25 A. Yes.

1 Q. And have you seen substances come into your office
2 or your lab in that shape before?

3 A. Yes. I have.

4 Q. Is it possible the substances when sitting in
5 evidence change their form?

6 A. It's possible due to where it's been stored. Yes.

7 Q. Could you tell us more about that?

8 A. Uhm, our evidence locker is not temperature
9 controlled for drug analysis so an item can slip into -
10 essentially it's just sitting in a hot shed so essentially the
11 water or whatever the liquid that was holding it together had
12 evaporated so it could lose weight. It could liquify and turn
13 into a liquid all depending on how long it's been sitting in
14 evidence for.

15 Q. Once you open that BEST kit and you see what you are
16 dealing with, how do you go about testing that item?

17 A. I start with a two part test which is first the
18 presumptive test then continue on to do a confirmatory test.

19 Q. Tell us more about that. It sounds like a bunch of
20 nonsense. What does it mean?

21 A. A presumptive test for me is I have to do what is
22 called a spot test. It shows what exactly I have to go with,
23 what extraction solvents I need to do to go into the
24 confirmatory test. For this I had to do a base methylene
25 chloride extraction so for the spot test I had to have gotten

1 a blue/blue reaction with the cobalt thiocyanate stannous
2 chloride. With that I then use the extraction that go into
3 the confirmatory part of the test which I use the gas
4 chromatography and mass spectrometer which is commonly known
5 as the GCMS. It is then injected into a column, goes through
6 the column, then it goes into a ionization, then it's
7 separated by four giant magnets and then hits a detector.

8 Q. And the methods that you just spoke of, are those
9 the same ones you were trained by SLED and are considered
10 nationally reliable methods?

11 A. Yes, sir.

12 Q. The instruments that you use, are they regularly
13 calibrated?

14 A. Yearly, yes.

15 Q. Is annually considered enough by national
16 standards?

17 A. I do a calibration once a week but we have somebody
18 who comes in annually to make sure that preventative
19 maintenance has been done.

20 Q. Did you conduct a test that you just talked about on
21 the particular item located in that specific BEST kit?

22 A. Yes. I did.

23 Q. And as a result of your testing did you generate a
24 report detailing your findings?

25 A. Yes. I did.

1 Q. And is that report something that you keep in the
2 ordinary course of your business with the Sheriff's
3 Department?

4 A. Yes, sir.

5 Q. And is it something that you would rely upon for
6 your testimony here in court?

7 A. Yes, sir.

8 Q. Do you have a copy with you?

9 A. Yes. I do.

10 Q. May I see it?

11 A. Mm-hmm (proffering.)

12 MR. BELL: Your Honor, at this time the State would
13 seek to enter State's 10 into evidence.

14 MR. CHEHOSKI: No objection, Your Honor.

15 THE COURT: State's 10 without objection.

16 BY MR. BELL:

17 Q. Now, referring to State's 10, again, will you just
18 identify what this packet of information is?

19 A. It's my formal report.

20 Q. If you would refer to page 2 of your report. What
21 is that page specifically?

22 A. It is the formal report stating the officer's name,
23 the date that I have written the report, the lab number I have
24 for this report, the case number and the suspect and it also
25 indicates my notes of what the item, how many items were in

1 the case, what items were in the case. Also what the final
2 result was for the report.

3 Q. And is the BEST kit control number that you have
4 mentioned in red off of the BEST kit itself, is that also
5 located on the report?

6 A. It is my lab number that I have created.

7 Q. Tell us more about what that means.

8 A. Essentially I use whatever the BEST kit control
9 number is so the 022349 is essentially my lab number that I
10 use.

11 Q. Are you able to confirm that the report in front of
12 you is the results from that specific BEST kit?

13 A. Yes. It is. The lab number and the case number
14 match the BEST kit.

15 Q. Tell us what your findings were.

16 A. First for item 1.1 zip lock bag containing rock
17 substance results were cocaine, C2 found in sample tested, one
18 tested net weight 0.28 grams, 4.32 grams.

19 Q. Now, I want to slow it down a little bit. You
20 stated that your results indicated cocaine; is that correct?

21 A. Yes, sir.

22 Q. And beside that on your report there is parentheses
23 that says C dash Roman numeral II. What does that indicate?

24 A. CII stands for controlled substance II so
25 essentially it's a controlled status.

1 Q. And you read out a net weight of 0.28 grams. Within
2 what spectrum of certainty does that fall? How certain are
3 you as to that weight?

4 A. The balances are calibrated every six months.

5 Q. Do you have any doubt as the accuracy of your
6 instrumentation?

7 A. No. I do not.

8 Q. Now, there's been testimony that the drug report was
9 not tested until -- When was this item tested? I apologize.

10 A. The item was tested on May 11th.

11 Q. Of what year?

12 A. Of 2017.

13 Q. Now, this case was originally in September of 2015.
14 Do you have any idea why it took so long to test that item?

15 A. I just started in August of 2016. I had to go
16 through three months of training so I started in September for
17 that training and continued on until November. Uhm, the
18 previous chemist probably had not gotten to it at that time so
19 when I got it is when officers had asked me to test it.

20 Q. How many pending cases do you have to test?

21 A. I have between three to 400 cases to test.

22 Q. Does the latency in testing an item such as the item
23 you tested in this case affect ultimately what that substance
24 is?

25 A. No.

1 Q. So even though there may have been one or more years
2 in between the seizure of the item and the scientific testing,
3 are you still confident in the results of your report?

4 A. Yes, sir.

5 MR. BELL: Please answer any question the defense
6 may have.

7 THE COURT: Cross examination.

8 MR. CHEHOSKI: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. CHEHOSKI:

11 Q. The GCMS test, you are given an analysis afterwards,
12 right?

13 A. Spectral data. Yes.

14 Q. Yes. And that is you compare that to a known sample
15 that you have?

16 A. Yes.

17 Q. And the comparisons are favorable?

18 A. Yes.

19 Q. Now, you said you received this on May 11th, 2017;
20 is that correct?

21 A. Yes, sir.

22 Q. When did you test it, the same day?

23 A. Yes.

24 Q. Is receiving it the same day as you open it?

25 A. Yes.

1 Q. Do you know how long it had been in your lab from
2 that point? How long since you received it until when you
3 opened it?

4 A. Probably a few hours.

5 Q. Are there items in your lab that have been there
6 longer than a few hours?

7 A. Yes.

8 Q. And do items in your lab typically go longer than a
9 few hours before tested?

10 A. Yes, sir.

11 MR. CHEHOSKI: Thank you, Your Honor. Nothing
12 further.

13 THE COURT: Redirect?

14 MR. BELL: No further questions, Judge.

15 THE COURT: All right. Have a nice day. Call your
16 next witness.

17 MS. GRAHAM: Your Honor, at this time the State
18 calls Johnnie Lee Dickerson.

19 Thereupon,

20 JOHNNIE LEE DICKERSON

21 after having been first duly sworn, testified as follows,

22 THE CLERK: Please have a seat. Once you're seated,
23 state your full name spelling your last please.

24 THE WITNESS: Johnnie Lee Dickerson,
25 D-i-c-k-e-r-s-o-n.

1 DIRECT EXAMINATION

2 BY MS. GRAHAM:

3 Q. Mr. Dickerson, you were transported to this
4 courtroom today by the South Carolina Department of
5 Correction; is that correct?

6 A. Yes.

7 Q. What crime are you currently serving a sentence
8 for?

9 A. Distribution of crack cocaine.

10 Q. In connection with this incident?

11 A. Yes.

12 Q. That's September 4th, 2015, the sale in this case?

13 A. Yes.

14 Q. How long is your sentence?

15 A. Ten years.

16 Q. Mr. Dickerson, at a previous hearing in this case
17 back in June you testified that you met with members from our
18 office, specifically me and an investigator from our office;
19 is that correct?

20 A. Yes.

21 Q. Do you recall being asked at that time if our office
22 showed you an image? Mr. Dickerson, I'm showing you what's
23 been marked as State's exhibit 11 just for identification
24 purposes only.

25 MS. GRAHAM: Let the record reflect that I have

1 shown the defense a copy.

2 BY MS. GRAHAM:

3 Q. Mr. Dickerson, at the time that I showed you this
4 image you gave a positive ID; is that correct?

5 A. No.

6 Q. You on May 15th when we met with you at Turbeville
7 you did not identify the person in that photo as Marcus
8 Antonio Mack?

9 A. No. You -- Let me refresh your memory of what
10 happened that day. You came to me. You asked me did I know
11 Marcus Mack. I told you yes and I told how I knew him was
12 through my baby mamma which is his cousin. Then you showed me
13 this picture and asked me was that him on this picture and I
14 said I couldn't tell you if that's him on this picture or not
15 because I can't really see this picture. That's what I told
16 you.

17 Q. Mr. Dickerson, you are kin to Marcus Anthony Mack;
18 is that correct?

19 A. No.

20 Q. You have family ties to him through the mother of
21 your children?

22 A. Yes.

23 Q. You have spent time with him in the past?

24 A. Yes.

25 Q. And your testimony here today is that you never

1 identified him in that picture?

2 A. No. What I told you was that I knew him. Yes. I
3 do know him. And when you showed me the picture, I told you I
4 can't tell you if that's him or not in that picture because I
5 can't really see that picture.

6 Q. Mr. Dickerson, what's your street name?

7 A. Sweet Pea.

8 Q. You have already testified, Mr. Dickerson, that the
9 sentence that you are serving is in connection with this
10 incident. Who was in the car with you that day?

11 A. I really can't tell you who was in the car with me
12 that day because I really don't recall that day. I told you
13 that also the last time I talked to you.

14 Q. I'm showing you what's been admitted as State's
15 exhibit 5. Where are you seated in that picture? I
16 understand that you don't know the person that's sitting next
17 to you in the vehicle but where are you seated?

18 A. I'm right here in the front by the window.

19 Q. And by the window do you mean the rear driver's
20 side?

21 A. Yes.

22 Q. And your appearance has changed since that time?

23 A. Yes.

24 Q. How has it changed?

25 A. I cut my hair off.

1 Q. Mr. Dickerson, do you recognize the man in the white
2 shirt sitting at defense table?

3 A. Yes.

4 Q. Who is it?

5 A. Marcus.

6 Q. But you don't recall him sitting next to you on the
7 day of the incident?

8 A. (No. It was two years ago.

9 Q. But you're serving ten years for that one day?

10 A. Yeah.

11 Q. And you don't remember --

12 A. I'm not - I'm not serving ten years just for that
13 one day.

14 Q. But you don't remember who was sitting next to you
15 in that vehicle?

16 A. No. I couldn't tell you. I don't remember. I
17 can't remember what happened last month to be honest
18 with you.

19 MS. GRAHAM: Got you, Mr. Dickerson. Nothing
20 further.

21 THE COURT: Cross?

22 CROSS EXAMINATION

23 BY MR. CHEHOSKI:

24 Q. Just a couple questions, Mr. Dickerson. Ms. Graham
25 referenced a previous hearing that you testified to,

1 remember?

2 A. Yes.

3 Q. Was that testimony under oath?

4 A. Yes.

5 Q. She also referenced a meeting that you had at
6 Turbeville on May 15th, 2017 when she met with you. Was that
7 meeting under oath?

8 A. No.

9 MR. CHEHOSKI: Nothing further.

10 THE COURT: Redirect?

11 MS. GRAHAM: Nothing further from the State, Your
12 Honor.

13 THE COURT: All right. Have a nice day. Thank you
14 very much. May this witness be released from the
15 subpoena, Mr. Chehoski?

16 MR. CHEHOSKI: No objection.

17 THE COURT: Any objection?

18 MS. GRAHAM: No objection.

19 THE COURT: Okay. He's good. Thank you. All
20 right. Who's next.

21 MS. GRAHAM: Your Honor, at this time the State
22 calls Jesse Quattlebaum.

23 THE COURT: Okay.

24 Thereupon,

25 JESSE QUATTLEBAUM

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,
3 state your full name spelling your last please.

4 THE WITNESS: Jesse Quattlebaum,
5 Q-u-a-t-t-l-e-b-a-u-m.

6 DIRECT EXAMINATION

7 BY MS. GRAHAM:

8 Q. Good afternoon, Jesse. What do you do for a
9 living?

10 A. I'm employed by the Eleventh Circuit Solicitor's
11 Office as an investigator.

12 Q. What are your duties associated with that
13 employment?

14 A. My duties include generating and serving subpoenas,
15 accompanying prosecutors as they interview potential
16 witnesses. Various other.

17 Q. What did you do prior to working for the Eleventh
18 Circuit?

19 A. I was employed as a law enforcement Officer
20 beginning my career in 2006 with the County of Saluda and
21 later with the Town of Saluda.

22 Q. How many total years do you have in law
23 enforcement?

24 A. Roughly 11.

25 Q. Jesse, you testified that you accompany prosecutors

1 to different meetings. Why do you do that? Why is it
2 important to have an investigator go to interviews?

3 A. To give a perspective from law enforcement what I
4 perceive as important. Also to provide protection for the
5 prosecutor while they're attending those interviews.

6 Q. Do you recall attending an interview at Turbeville
7 Correctional Center on May 15th, 2017 in this case?

8 A. I do.

9 Q. Do you recall meeting with Johnnie Lee Dickerson and
10 myself?

11 A. I do.

12 Q. Do you remember Mr. Dickerson being shown a photo of
13 the defendant in this case Marcus Mack?

14 A. I do.

15 Q. Do you remember whether or not he was able to
16 positively identify --

17 MR. CHEHOSKI: Objection, Your Honor.

18 MS. GRAHAM: Excuse me.

19 THE COURT: Let her finish the question. Finish the
20 question, Ms. Graham.

21 BY MS. GRAHAM:

22 Q. Do you recall whether or not Mr. Dickerson was able
23 to positively identify the defendant during that meeting?

24 THE COURT: All right. Is there an objection?

25 MR. CHEHOSKI: Yes, Your Honor. Hearsay.

1 THE COURT: Ms. Graham.

2 MS. GRAHAM: Withdrawn, Your Honor.

3 BY MS. GRAHAM:

4 Q. Mr. Quattlebaum, do you recognize that photograph?

5 A. I do.

6 Q. And what is it?

7 A. It's a photograph that was shown to Mr. Dickerson at
8 Turbeville Correctional Institute.

9 Q. And has it been altered or changed in any manner
10 since it was shown to Mr. Dickerson?

11 A. It has not.

12 Q. And as a result of his reviewing that photo, was he
13 able - were you given the legal identity of the person seated
14 in the back passenger seat?

15 MR. CHEHOSKI: Again, Your Honor, objection to
16 hearsay.

17 THE COURT: What's your response, Ms. Graham?

18 MS. GRAHAM: Your Honor, withdrawn.

19 THE COURT: Okay.

20 BY MS. GRAHAM:

21 Q. As a result of looking at that photograph was he
22 able to -- Withdrawn. Move to strike. Jesse, did he make an
23 identification that day?

24 A. He did.

25 MR. CHEHOSKI: Objection, Your Honor. Hearsay.

1 THE COURT: Objection overruled. Go forward.

2 BY MS. GRAHAM:

3 Q. Did he hesitate in the identification at all?

4 A. He did not. It was immediately and without
5 hesitation.

6 Q. Was he reluctant at all to share other details of
7 the case?

8 A. He was.

9 Q. But he was able to do the ID?

10 A. He did positively identify.

11 MS. GRAHAM: Nothing further for this witness.

12 THE COURT: Cross examination.

13 CROSS EXAMINATION

14 BY MR. CHEHOSKI:

15 Q. Was - were there any statements given?

16 A. As to what?

17 Q. On May 15th of 2017 did you get a statement from Mr.
18 Dickerson?

19 A. Written statement?

20 Q. Written, recorded, any statement at all?

21 A. No, sir. We introduced ourselves as being from the
22 Eleventh Circuit Solicitor's Office, produced this photograph,
23 he identified Mr. Mack and then was reluctant to give any more
24 details of the incident.

25 Q. Are you a notary?

1 A. I am not.

2 Q. Do you know if there is a notary in the Eleventh
3 Circuit Solicitor's Office?

4 A. I assume there is.

5 Q. Did a notary accompany you with this?

6 A. Unless Ms. Graham is. I'm not aware if she is.
7 They did not.

8 Q. All right. Was any other conversation done under
9 oath?

10 A. No, sir.

11 MR. CHEHOSKI: Nothing further, Your Honor.

12 THE COURT: Redirect?

13 MS. GRAHAM: Nothing further, Your Honor.

14 THE COURT: All right. Thank you very much. Have a
15 nice day. You may call your next witness.

16 MS. GRAHAM: Your Honor, at this time the State
17 rests.

18 THE COURT: All right. Ladies and gentlemen, the
19 State has rested its case. There are some legal matters
20 which require me to take up outside of your presence so
21 what we're gonna do is we're gonna stop for the day.
22 Okay? I don't like to keep things going on to late in
23 the evening. If your kids are in Lexington/Richland five
24 today is your first day of school and I'm sure you're
25 anxious to get home to them so I understand all of that

1 so we're gonna stop for the day. Okay?

2 Now listen. I'm about to release you for the
3 evening. Okay? You have made a promise to each other,
4 you have made a promise to the parties, and you have made
5 a promise to me that you are not going to discuss this
6 case with anyone in any way, shape or form. You're not
7 gonna do any research on this case. You're not gonna go
8 out and look up something. You're not gonna go out and
9 try to figure out something. You're gonna go home, enjoy
10 your family or whatever you need to do tonight and be
11 back here tomorrow morning. Okay? We're gonna start
12 tomorrow morning at 9:30, all right? And we're gonna
13 move right along and whatever happens next in the case,
14 you need to come prepared just as you did today. Please
15 be on time. Thank you very much for your service and
16 your willingness to serve today. You all have stayed
17 awake all day. You have stayed with me all day and you
18 paid attention and you have been on time and you have
19 been prompt and on behalf of all the lawyers and the
20 parties in this case I want to say thank you for that
21 very much. We will see you tomorrow morning at 9:30.
22 Keep an open mind. Do not discuss the case. Thank you
23 very much.

24 (Whereupon, the jury was released for the evening at
25 4:45 p.m.)

1 THE COURT: All right. Let's go ahead and do
2 directed verdict motions.

3 MR. CHEHOSKI: Thank you, Your Honor. At this time
4 the defense moves for a directed verdict knowing the
5 standard in a light most favorable to the State any
6 reasonable juror could not find - there is not sufficient
7 - the existence of - there is not sufficient existence of
8 the evidence to find Mr. Mack guilty encompassing all
9 prior motions, objections, under the Fifth and Fourteenth
10 Amendments to the United States Constitution and in
11 Article 1, Sections 3 and 14 of the South Carolina
12 constitution. Your Honor, we ask that - we ask for the
13 Court to direct a verdict of not guilty in favor of Mr.
14 Mack.

15 THE COURT: Ms. Graham.

16 MS. GRAHAM: Your Honor, it's the State's position
17 that there is indeed sufficient evidence to move forward
18 with the case. We have established that the item
19 retrieved from the CI in this case which was given to him
20 by the defendant was, in fact, crack cocaine. We put up
21 sufficient evidence regarding cocaine and we put up
22 sufficient evidence regarding the transfer of that item.
23 Again the standard here is most favorable to the State.
24 We have heard identification testimony from Agent Putney,
25 excuse me, Investigator Putney as well the CI in this

1 case. Your Honor, we would respectfully ask that you
2 deny the defense's directed verdict motion.

3 THE COURT: All right. Under Rule 19 in the South
4 Carolina Rules of Criminal Procedure which is the rule
5 I'm required to follow under a motion for directed
6 verdict considering the evidence in the light most
7 favorable to the non moving party which is the State and
8 also considering the existence of the evidence and not
9 the weight of the evidence the State has presented
10 sufficient testimony for this case to go forward to the
11 jury on the charge of distribution of cocaine. They have
12 presented the law enforcement testimony which established
13 the controlled purchase was made. They presented the
14 testimony of Mr. Hayes that it was made from Mr.
15 Dickerson and Mr. Mack and they presented testimony to
16 establish a chain of custody of the controlled narcotics
17 and that, in fact, the substance that was taken that day
18 is cocaine or cocaine base and considering the existence
19 of the evidence and not the weight of it there is
20 sufficient evidence for the case to go forward to the
21 jury.

22 Okay. All right. Go ahead. Mr. Mack, stand up.
23 Thereupon,

24 MARCUS ANTONIO MACK

25 after having been first duly sworn, testified as follows,

1 EXAMINATION

2 BY THE COURT:

3 Q. All right how old are you?

4 A. 31.

5 Q. 31. How far did you go in school?

6 A. I got my GED.

7 Q. Okay. Good. Are you married?

8 A. No, sir.

9 Q. Got any children?

10 A. Yes, sir.

11 Q. How many children do you have?

12 A. Two.

13 Q. Two. Okay. All right. Now, what kind of work did
14 you do before you were incarcerated?

15 A. Carpentry.

16 Q. Okay. Have you understood me okay throughout this
17 trial?

18 A. Yes, sir.

19 Q. Have you understood your conversations with your
20 lawyer?

21 A. Yes, sir.

22 Q. Okay. Now, at this time I'm going to explain to you
23 some of your rights. If you do not understand anything that I
24 say, just let me know. If you want me to explain anything in
25 more detail, just let me know. Do you understand?

1 A. Yes, sir.

2 Q. Okay. We have now reached the stage of the trial
3 where you may present your defense. You have the right to
4 claim the protections given to you by the Fifth Amendment to
5 the Constitution of the United States. This amendment states
6 in part that no person shall be compelled in any criminal case
7 to be a witness against themselves. This means that you
8 cannot be required to testify in this case. You have the
9 right to testify on your own behalf, however, no one can make
10 you testify. This is a personal right and no one can waive or
11 give up this right but you. If you decide to testify, you
12 will be subject to the same rules that govern other witnesses
13 and you may be examined and cross examined on any relevant
14 issue in this case.

15 In addition, if I have any convictions that involve
16 dishonesty or false statements or for crimes punishable by
17 more than one year in prison and this Court determines that
18 the probative value of admitting this evidence outweighs its
19 prejudicial effect to you, the Solicitor will be able to
20 introduce your record to attack your credibility. If you
21 decide to testify, this decision on your part must be made
22 freely. It must be made voluntarily. And it must be made
23 intelligently with the knowledge and the protections given to
24 you by the Fifth Amendment and the consequences of your
25 decision to testify.

1 If you decide not to testify, I will tell the jurors
2 and instruct them that they cannot give the fact that you did
3 not testify any consideration whatsoever and that there is to
4 be absolutely no prejudice to you because you did not testify.
5 It is left entirely up to you whether or not you testify. You
6 may talk with your attorney or your family or anyone else but
7 the final decision is entirely yours.

8 Do you understand what I have explained to you so
9 far?

10 A. Yes, sir.

11 Q. Do you have any questions about what I have
12 explained to you?

13 A. No, sir.

14 Q. Prior to today have you and your attorney discussed
15 this issue?

16 A. Yes, sir.

17 Q. Okay. Did you understand those conversations?

18 A. Yes, sir.

19 Q. Do you wish to talk to him anymore at this time?

20 A. No, sir.

21 Q. Okay. And do you want to testify in this case?

22 A. No, sir.

23 THE COURT: Okay. Fair enough. Does he have a
24 criminal history that could be used?

25 MR. CHEHOSKI: Yes, sir.

1 BY THE COURT:

2 Q. Okay. All right. And you have discussed that with
3 Mr. Chehoski and you have decided not to testify; is that
4 correct?

5 A. Yes, sir.

6 Q. Okay. I will instruct the jury when we come to the
7 point of what's called the charge on the law, I give them an
8 entire instruction that tells them they cannot hold that fact
9 against you and they cannot use that against you. In fact,
10 they're not even allowed to talk about it in the jury room.
11 Okay?

12 A. Yes, sir.

13 Q. Do you understand all of that?

14 A. Yes, sir.

15 THE COURT: Okay. Very well. Thank you very much.
16 Mr. Chehoski, do you intend on presenting any witnesses
17 or evidence?

18 MR. CHEHOSKI: No, sir.

19 THE COURT: Okay. So we'll start tomorrow morning
20 with closing arguments. So hold on. I've got to find
21 that case. What's that case called? Beatty? Closing
22 argument case.

23 MR. CHEHOSKI: I'm not entirely sure, Your Honor.

24 THE COURT: Okay. We have got to find it. All
25 right. So what is y'all's interpretation of how closing

1 arguments go since the defense did not put up a case?
2 The State is required to open in full and then the
3 defense goes last. Is that is the State's understanding?

4 MS. GRAHAM: Yes. That's our understanding, Your
5 Honor.

6 THE COURT: Is that your understanding, Mr.
7 Chehoski?

8 MR. CHEHOSKI: Yes, sir, as long as we brought no
9 witnesses and presented no evidence.

10 THE COURT: Right. Which you have not. So the
11 State will be required to open in full and then the
12 defense will be permitted to give their closing argument
13 finally and then that will be the end of it. Everybody
14 got that? You good?

15 MS. GRAHAM: Yes, Your Honor.

16 THE COURT: Okay. All right. Good. That case is
17 State versus Beatty. Very interesting reading. You're
18 going to have to read it four or five times but if you
19 decide to put up evidence, that's when it becomes a
20 little bit more complicated.

21 MR. CHEHOSKI: I believe if I introduce any exhibits
22 even through a State's witness, I would lose last
23 closing.

24 THE COURT: Right. Okay. Now, jury charges. I
25 know you all do not live with me every week like my

1 friends in Richland County do so I'm going to go through
2 the normal charge with you kind of here on the record so
3 you know what I'm going to say. If you want me to e-mail
4 you a copy of this this afternoon before you leave, just
5 give Bailey your e-mail address so you can have the exact
6 words that I'm going to say. I'm more than happy to give
7 you this ahead of time. I don't want anything that I say
8 to be a surprise to anybody. We also have created a
9 verdict form which we can also e-mail to you so you can
10 see that and see what I usually use.

11 So I start with he's indicted which is not evidence
12 in the case. It's just simply the document which
13 contains the charge. I tell them that they have
14 different duties than I do. I'm the Judge of the law.
15 They're the Judge of the facts. The next thing that I go
16 into is the presumption of innocence. I do the whole
17 presumption of innocence is like a robe of righteousness
18 placed about the shoulders of the defendant. All that
19 standard language. The reasonable doubt charge that I
20 use is Victor versus Nebraska. I go through what is not
21 evidence which is almost identical to what I read before.
22 I go to direct and circumstantial evidence and I use the
23 new circumstantial evidence charge. That's the one that
24 contains the language that to the extent the State relies
25 on circumstantial evidence all of the circumstances must

1 be consistent with each other and when taken together
2 point conclusively to the guilt of the accused beyond a
3 reasonable doubt.

4 I then go through credibility of the witnesses. I
5 then give the standard expert witness charge since we had
6 one expert witness. I then go into failure of the
7 defendant to testify.

8 MR. CHEHOSKI: Your Honor, I guess, I know this is
9 semantics but I don't know if you're actually going to
10 use the words failure to testify. We would prefer
11 exercise constitutional right not to testify.

12 THE COURT: Let me see exactly what I said. It's
13 captioned -- What it says is I instruct you and emphasize
14 that the fact that the defendant did not testify is not a
15 factor to be consider by you.

16 MR. CHEHOSKI: Thank you.

17 THE COURT: Then it has the constitutional right to
18 remain silent and the assertion of this right must not be
19 considered by you in your deliberations so...

20 MR. CHEHOSKI: May I -- You're probably just going
21 through it as a summary.

22 THE COURT: Yeah. I'll be happy to send it to you
23 guys and we can talk about it again in the morning if we
24 need to. I then go into intent. I do the standard
25 criminal intent charge and then I go into the crime. So

1 the charge says the defendant is charged with the
2 distribution of cocaine. The State must prove beyond a
3 reasonable doubt that the defendant distributed cocaine.
4 Distribute means to deliver or to actually constructively
5 or attempt to transfer a drug other than by administering
6 or dispensing. Deliver means to actually constructively
7 or attempt to transfer a drug. A transfer can involve an
8 exchange for money, a barter or a gift. There does not
9 have to be anything given in exchange for the drugs for a
10 transfer to constitute distribution.

11 The State has some aiding and abetting language in
12 the indictment. Y'all want that in the charge or not?

13 MS. GRAHAM: Yes, Your Honor.

14 THE COURT: Okay. There should be a jury charge on
15 aiding and abetting. What's the defense's position on
16 the distribution charge?

17 MR. CHEHOSKI: Your Honor, we would ask, I don't
18 have any objection to the distribution charge. We would
19 ask for a lesser included under the general contempt and
20 conspiracy statutes under 44-53-420 subsection (A).

21 THE COURT: You want me to charge what?

22 MR. CHEHOSKI: Under the general contempt and
23 conspiracy statute under 44-53-420 subsection (A).

24 THE COURT: We'll come back to that. Hold on a
25 second. So after I describe distribution, I go into this

1 thing at the end that tells them how to deliberate, you
2 know. Be nice to each other. Be respectful of each
3 other. Listen to each other. Consider the evidence and
4 talk through it and they have to, of course, be
5 unanimous. And then I explain to them how the verdict
6 form works. All right. Let me go pull up that statute.

7 MR. BELL: Your Honor, the State would object to
8 that. We're prepared to argue when appropriate.

9 THE COURT: Just give me one second. Did it get
10 charged last time?

11 MR. CHEHOSKI: It did not, Your Honor.

12 THE COURT: Did you ask for it?

13 MR. CHEHOSKI: I did.

14 THE COURT: Who was the Judge?

15 MR. CHEHOSKI: Griffith.

16 THE COURT: All right. Tell me what the argument is
17 from the State on section 420.

18 MR. BELL: Your Honor, the indictment which the
19 defendant is facing here at trial is under statute
20 44-53-370 subsection (A)(1). Your Honor, that
21 specifically includes conspiracy within the principal
22 statute. The specific statute dealing with conspiracy
23 would apply to those statutes not already including the
24 conspiracy element.

25 THE COURT: Okay. Mr. Chehoski.

1 MR. CHEHOSKI: Yes, Your Honor. I understand. I
2 think the legislative intent to include 44-53-420 would
3 be in this case to make it a lesser included to the
4 substantive charge, otherwise there doesn't seem to be
5 any purpose for it.

6 THE COURT: Under that theory any trafficking case
7 you would get this charge, right?

8 MR. CHEHOSKI: Yes, sir.

9 THE COURT: Okay. All right. I'm not gonna charge
10 that. I agree with the State's analysis of that. The
11 specific statute 44-53-370 specifically encompasses a
12 conspiracy analysis and therefore, and an attempt
13 analysis so therefore I'm not going to confuse the issue
14 by charging that.

15 MR. CHEHOSKI: Understood, Your Honor. I felt I
16 needed to make the argument.

17 THE COURT: I understand. Thank you. So my
18 question is on this aiding and abetting thing, there's an
19 aiding and abetting charge that says a person who is
20 present at the scene and intentionally or through a
21 common plan aided, abetted or assisted in the commission
22 of that crime through some overt act is guilty as an
23 accomplice. To be liable as an accomplice the defendant
24 must have knowledge, the principal's conduct. Mere
25 presence at the scene is not sufficient to establish

1 guilt. Intentionally means willfully intending the
2 result that actually occurs, not accidentally or
3 involuntarily. Is that what you want me to charge?
4 That's one option. Option two is to just charge the
5 words from the statute as they are to say that
6 distribute, dispense, deliver. I don't think purchase
7 wasn't in the indictment. Aid, abet, attempt to conspire
8 to do that.

9 MS. GRAHAM: I think the words from the statute
10 would be appropriate, Your Honor.

11 THE COURT: Okay. Any objection to that,
12 Mr. Chehoski, other than the lesser included?

13 MR. CHEHOSKI: No, Your Honor.

14 THE COURT: Okay. Lesser included. So we have put
15 the language out of the statute in. Again, I'm happy to
16 e-mail this to you all tonight so you can go through it
17 and we can talk about it again tomorrow morning, if we
18 need to. Anything else in regards to the jury charge?

19 MS. GRAHAM: Nothing from the State, Your Honor.

20 THE COURT: So the verdict form says we the jury
21 unanimously find the defendant as to the charge of
22 distribution of cocaine and there's a place to check
23 guilty or there's a place to check not guilty and then
24 there's a place for the foreperson to sign so sweet and
25 simple and we'll e-mail you that, too, again.

1 MR. CHEHOSKI: I don't know how you have it in
2 order, Your Honor. Just under the presumption of
3 innocence not guilty should go first.

4 THE COURT: Okay. I switch it every time so it
5 doesn't matter to me. I tell them that there's no rhyme
6 or reason of which one goes first and which one goes
7 second. I have to put one first and I have to put one
8 second. All right, so anything else from the State
9 before we break?

10 MS. GRAHAM: Nothing, Your Honor.

11 THE COURT: Anything else from the defense before we
12 break?

13 MR. CHEHOSKI: No, Your Honor.

14 THE COURT: All right. Thank you very much. 9:30
15 tomorrow morning. 9:30 tomorrow morning. Oh, back on
16 the record. Are we going to provide the jury with some
17 kind of blank computer or something to play the video if
18 they want to hear it or watch it?

19 MS. GRAHAM: The courtroom computer is actually
20 scrubbed and doesn't have Internet access. It only would
21 be utilized for playing the video.

22 THE COURT: Can we put that in the jury room if they
23 need it?

24 MS. GRAHAM: Yes, Your Honor.

25 THE COURT: Okay. So just have that computer and

1 then tomorrow what I'll tell them is that we're going to
2 send, when we send the video back, we'll send the
3 computer back with them. If they can't figure out how to
4 work it, then they can knock and let us know and we'll
5 let the law clerk teach them how to use it. Just make
6 sure we have something so they don't have to come back
7 and forth to watch the video out here. Is that okay?

8 MS. GRAHAM: Yes, Your Honor.

9 MR. CHEHOSKI: Yes, Your Honor.

10 THE COURT: Okay. Thank you very much. See you all
11 tomorrow morning.

12 (Whereupon, court was adjourned for the day at 5:15
13 p.m.)

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1 August 24, 2017

2 BAILIFF: All rise. The Honorable Robert E. Hood
3 presiding.

4 THE COURT: Thank you very much. Please be seated.
5 Have you looked over the jury charge?

6 MR. CHEHOSKI: Judge, I just want to get a
7 clarification. As you go through the jury charge with
8 the jury, are you reading the headers of the paragraphs
9 or are you just going through the text? Again, it was
10 about the failure to testify language. The language
11 itself is fine but I guess the caption was a little -- I
12 just want to make sure that that's cleared up.

13 THE COURT: Give me a creative name to rename it.

14 MR. BELL: Your Honor, I believe prior judges have
15 used right not to testify.

16 THE COURT: How about defendant's right not to
17 testify?

18 MR. CHEHOSKI: I prefer defendant's exercising of
19 right to remain silent. Again, if you are not even going
20 to be reading the captions, it's not a problem.

21 THE COURT: The problem is if I have to give them a
22 copy of it.

23 MR. CHEHOSKI: Okay. Or exercising Fifth Amendment
24 privilege.

25 THE COURT: We'll just call it Fifth Amendment

1 privilege.

2 MR. CHEHOSKI: That's acceptable.

3 THE COURT: Okay. We are on the record in the State
4 of South Carolina versus Marcus Mack. Everybody got the
5 jury charge last night; is that right?

6 MS. GRAHAM: Yes, sir, Your Honor.

7 THE COURT: Any objection from the State?

8 MS. GRAHAM: Nothing from the State.

9 THE COURT: Any from the defendant other than the
10 lesser included?

11 MR. CHEHOSKI: Nothing other than what's already
12 been put on the record, Your Honor.

13 THE COURT: Okay. I did change the title of that
14 paragraph about him not testifying to it just says Fifth
15 Amendment privilege. That only becomes an issue if it
16 goes back and if for some reason they have a legal
17 question or something and I need to explain it to them.
18 Sometimes I will just send the charge back. Okay. So
19 when the jury comes in, the first thing that needs to
20 happen is the defense needs to rest and renew your
21 motions and then we'll go right into closing arguments.
22 Okay? All right. Let's bring them in.

23 (Whereupon, the jury entered the courtroom at 9:40
24 a.m.)

25 THE COURT: Okay. Welcome back. Thank you very

1 much for being here. I know there was parking lot
2 confusion. Family court is going on downstairs. It has
3 nothing to do with us but that's just the way it goes
4 sometimes in Lexington. We are here ready to go. We
5 understand getting in to park is difficult. That's no
6 problem at all. Yesterday when we finished the State
7 rested its case. The defense now has an opportunity to
8 put on their case if they want to. They do not have to
9 because they have nothing to prove. The burden of proof
10 is upon the State to prove Mr. Mack's guilt to you beyond
11 a reasonable doubt. Mr. Chehoski, do you wish to call
12 any witnesses?

13 MR. CHEHOSKI: Your Honor, at this time the defense
14 rests.

15 THE COURT: Okay. Ladies and gentlemen, the defense
16 has rested its case. Your motions are renewed for the
17 record. I understand what they are and my ruling upon
18 them is the same.

19 MR. CHEHOSKI: Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen, so we are at the
21 point in the trial now known as closing arguments. So
22 just with everything that happens in court there is a
23 procedure of how we do this. In this case the State will
24 be allowed to give their closing argument first and the
25 defense will be allowed to give their closing argument

1 second. Once both closing arguments are finished, I will
2 then tell you what the law is as it pertains to the
3 issues that have arisen in the case and then I'll give
4 you your verdict form and give you your instructions for
5 deliberation. Okay? Now, you all have done a very good
6 job all through yesterday paying me attention when I
7 speak to you and paying attention to the attorneys and to
8 the witnesses. This is the attorneys' final opportunity
9 to come before you and make their case from their
10 respective points of view. I ask that you to give them
11 your undivided attention. Ms. Graham.

12 MS. GRAHAM: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Yes, ma'am.

15 MS. GRAHAM: Your Honor, I just have some
16 demonstratives. These have been shown to defense
17 counsel.

18 THE COURT: Thank you.

19 MS. GRAHAM: Good morning, ladies and gentlemen. As
20 you heard during the defense's opening, there's an
21 argument that this case to the State is about the war on
22 drugs. In fact, the State can not declare a war. That
23 really is up to the community members that Investigator
24 Putney referenced in his testimony who call in and give
25 tips about the activities going on in their respective

1 communities. Indeed, these community members work and
2 live and may, in fact, even attend the church that Frank
3 Hayes passed on his way to buy dope from Marcus Mack on
4 September 4th, 2015.

5 This case isn't about a war. It's about an
6 individual case. It's about an individual defendant and
7 the facts that we presented to you yesterday and I want
8 to go over how all of the evidence that we presented to
9 you yesterday and how all the facts that were presented
10 to you yesterday indeed establish the important elements
11 of the law in this case.

12 First, I want to talk to you a little bit about the
13 identity factor. We heard from Investigator Putney that
14 he was sent photographs from Agent Purdy asking him to
15 identify the people that were in the car that day because
16 as he testified he has over ten years of experience in
17 working in that jurisdiction so he's familiar with the
18 community. I want to point out that Investigator Putney
19 had no idea what was coming across that e-mail because as
20 he indicated Frank didn't know who he had really bought
21 from legally. He didn't know their legal identities.
22 And, in fact, who they were going after was a guy named
23 Beazy so when those e-mails came to him, he testified and
24 you heard him go into that in detail that he knew exactly
25 who was in the back seat of that car. He knew Sweet Pea

1 and he knew Marcus Mack.

2 From there we heard from Frank Hayes. Now, Frank
3 Hayes also gives the identity of the defendant in this
4 case and much was made from the defense's position of the
5 fact that in approximately a 30 line statement he gave
6 the wrong street name of the defendant but in a half hour
7 video when you replay that video you hear him refer to
8 the man as Mack on more than one occasion. You heard
9 that evidence. You also saw on the video that these
10 three individuals, Johnnie Lee Dickerson, Marcus Antonio
11 Mack and Frank Hayes were familiar with each other. You
12 saw them on that video cutting up. They were not
13 strangers to each other.

14 As defense pointed out in their opening argument,
15 when you lay with dogs, you get fleas. I want you to
16 remember that when you look at the interactions of those
17 three individuals on that video.

18 Finally, with regard to identity you also heard
19 Investigator Putney and Frank Hayes reference the fact
20 that the defendant's appearance has changed over the
21 preceding two years. They both noted that his hair has
22 grown out and that's not uncommon. When Johnnie Lee
23 Dickerson was up on the stand yesterday, you heard that
24 his appearance had changed. He talked about how he had
25 long hair and has short hair now. And, indeed, when you

1 look at Mr. Dickerson's at first glance and you compare
2 his image on the video you have to look at it a minute
3 and that's what I want you to do when you go back to that
4 deliberation room. Think about that. Look carefully at
5 these images because over a two year period people's
6 appearances do change.

7 Now, I also want to talk to you a little bit about
8 what you heard coming off that witness stand yesterday
9 from Mr. Dickerson. It's pretty obvious that he did not
10 want to be here. I want to point out that Investigator
11 Quattlebaum positively stated that there was an ID in
12 that case from Mr. Dickerson in May. He was not under
13 oath at that time. But when he was under oath, you're
14 right, he did not give a name of who was or wasn't in
15 that car that day. I want you to think about that.

16 Next, the State has the burden of proving that the
17 substance that was exchanged that day was, in fact,
18 cocaine. And you kind of heard throughout the case
19 references to crack cocaine, to dope. The truth is that
20 when you're a buyer of illegal narcotics, you don't carry
21 a chem lab in your pocket and the State doesn't indict
22 things based on what people say it is. We indict things
23 based on what a chemist tells us it is. And you heard
24 from Meg Walker that when she, an expert qualified in
25 this courtroom, tested that substance that it came back

1 as cocaine. You also heard testimony from Meg that the
2 substance was tested approximately two years after it was
3 submitted into evidence after it was collected by Agent
4 Purdy, given to evidence to Ms. Kyzer and deposited into
5 evidence. It stayed there for two years in a non climate
6 controlled evidence locker. She testified that because
7 of this the substance can change slightly in weight and
8 indeed when you go back and you're looking at the
9 substance and you're comparing the pictures you will see
10 it has changed and I want you to think about that.
11 Nobody is hiding the ball. Nobody is trying to change
12 information. It is what it is.

13 Now, I want you to think about the final element in
14 this case which is the distribution piece. I have some
15 demonstratives here. I want you to look at the Judge for
16 direction with regard to the law but just briefly I
17 pulled out some relevant portions of the statute.
18 Distribute means to deliver a controlled substance.
19 Deliver means actual constructive or attempted transfer
20 of a controlled drug or paraphernalia, et cetera. So
21 when we look at what deliver means what we see on the
22 video is Marcus Mack taking the dope out of his pocket,
23 the cocaine, he's parceling it out, he's packaging it, he
24 hands it off to Johnnie Lee Dickerson who hands it off to
25 Frank Hayes. Pretty clearly a transfer.

1 Now, what would confuse me a little bit is the fact,
2 and much was made of this, in fact, that the substance is
3 transferred to Dickerson who transfers it to Mr. Hayes
4 and you did hear in cross examination much was made of
5 the fact is Frank Hayes gives the money to Dickerson who
6 then gives the money to Mr. Mack. Transfer actually
7 doesn't require that anybody even receive any money. In
8 fact, we don't have to prove that element to you and the
9 law states that where you are aiding, abetting,
10 attempting or conspiring you've distributed the
11 substance. So here we have again pulling the cocaine out
12 of the pocket, handing it to Mr. Dickerson who hands it
13 off to Mr. Mack.

14 I want to touch briefly on one final piece of
15 defense's argument and that was simply that you needed to
16 focus on not what we said we were going to show you but
17 what you actually saw, that by inference there was some
18 sort of hiding the ball in this case. I want to point
19 out to you that you heard from every single law
20 enforcement agent in this case. You heard from Agent
21 Merckle. You heard from Agent Purdy. You heard from
22 Investigator Putney. You heard from the lab technician
23 or the evidence custodian who housed the drugs. You
24 heard from a chemist. You heard from a co-defendant.
25 You heard from a CI. That's a lot of testimony. There

1 is no hiding the ball.

2 I think there was also some attempt made at
3 distracting you. There was a lot of discussion of cavity
4 searches. The truth is is that we see on the video
5 cocaine being given to Mr. Hayes. Mr. Hayes turns that
6 cocaine over to Agent Purdy, Agent Purdy deposits that
7 cocaine into evidence and it's tested by a lab
8 technician.

9 I also just want to just briefly touch on one other
10 thing with regard to the hiding element. Mr. Hayes got
11 on the witness stand and he was provided with his
12 statement by defense and he was asked to give information
13 about the second incident location with implication being
14 that he had somehow conducted another buy that day and
15 you saw that defense had him read a portion of that
16 statement and then you saw Mr. Bell get up and redirect
17 that examination having him read not a portion of the
18 statement but the entire statement which gives you a
19 pretty clear picture of what happened is Frank got the
20 drugs and went to an incident location and took his
21 recording device off and was searched and handed over the
22 contraband to the agents. That's because we don't deal
23 in partial truths. We present the facts as they are to
24 you. There is no hiding the ball here.

25 I would just ask that in closing that you don't get

1 distracted by allegations that this is about a war on
2 drugs or some other social or political war. This is
3 about an isolated incident. This is about one man and
4 this is about what I asked you to do at the beginning of
5 this trial which is to hold him accountable for his
6 conduct that day and find Marcus Mack guilty of
7 distributing cocaine. Hold him accountable. Thank
8 you.

9 THE COURT: Thank you very much, Ms. Graham. All
10 right. Ladies and gentlemen. Mr. Chehoski.

11 MR. CHEHOSKI: Thank you, Your Honor. One moment to
12 get everything situated.

13 Good morning. The State in their opening equated
14 this case to a lone child being caught doing wrong. I
15 believe the expression they used was that it was an only
16 child in a room alone with crayon markings on the wall
17 holding the crayon. Ladies and gentlemen, I think the
18 better comparison is is a parent accusing his or her
19 child of marking up a wall that they had just noticed
20 even though the crayon markings had been there about six
21 months earlier and the family has only been in the house
22 for three. If I were to boil this case down to two
23 things, I would boil it down to lies and excuses. Frank
24 Hayes lies and the State makes excuses. You add those
25 two together and they equal not guilty.

1 I said at the beginning of this case that if you lie
2 with the dogs, you get fleas. That stays true. Frank
3 Hayes is the dog. He lied consistently throughout his
4 testimony whether it was about his prior criminal
5 history, whether it was about his knowledge of the person
6 that he thinks to be Marcus Mack or whether it was about
7 the details of the transaction. Frank Hayes lies.

8 I want to touch on just a couple of points to
9 demonstrate this. First, let's consider the testimony
10 about the person in the rear passenger seat, passenger
11 side seat that he thinks that he knows, he thinks to be
12 Mack. That was the very first time he ever used that
13 name. You heard him that he gave a statement immediately
14 following this transaction at the time his memory was
15 freshest. We went over that statement for the expressed
16 purpose to show you that the name Mack never appeared.
17 The name Marcus never appeared in that statement. He
18 doesn't know who that person is plain and simple. If you
19 just want proof, watch that video again. I implore you.
20 Notice how he greets Beazy. Notice how he greets Sweet
21 Pea. The other person, no handshake. No fist bump.
22 There's just no recognition.

23 Now, Hayes did say that the person that he knew as
24 Anthony and I suppose you can say that's a street name
25 and that almost works until the moment you realize that

1 Jody Putney said Marcus Mack has no street name. Frank
2 Hayes lies and when he's not lying, he just doesn't
3 remember anything. It gets quite convenient for the
4 State to have someone testify to details to something
5 that happened almost two years ago but can't quite come
6 up with any of the relevant supporting details and that's
7 important because that tests your memory. Otherwise he's
8 just reciting a script that's been given to him. He
9 couldn't remember how many times he worked for Agent
10 Purdy. He can't remember how many transactions he's
11 completed. He can't remember anything about the
12 intervening days and I think a reasonable inference based
13 on his testimony is that if you were to ask him what he
14 was doing 18 days ago, he wouldn't remember that either.

15 Now, there is no reason to believe that his memory
16 18 days later when he makes the identification is any
17 more reliable. And this is what the State has paid for,
18 paid for to the tune of roughly \$3000.00 in taxpayer
19 money by conservative estimates. So when I say that the
20 State has to own Frank Hayes' word, I mean that literally
21 because they bought it.

22 MS. GRAHAM: Objection, Your Honor. Improper
23 argument.

24 THE COURT: Y'all approach.

25 (Side bar off the record.)

1 THE COURT: All right. The jury will disregard any
2 testimony about the State purchasing a witness' testimony
3 and you will remember the evidence as you remember it
4 from the trial.

5 MR. CHEHOSKI: That brings us to the State and their
6 excuses. Now, in my opening I asked you to pay attention
7 to any explanations the State might give or excuses they
8 might give for things that you think should be there but
9 aren't or things that they should have done but didn't.
10 Where did their excuses begin? Let's begin with the
11 money. Agent Purdy told you how he photographed the
12 money, documented the serial numbers. That would be a
13 good strategy if your intent was to actually recover the
14 money. They could have done a buy bust. You heard what
15 that is. They could have called in a deputy from either
16 Lexington County or West Columbia seeing how
17 representatives from both agencies were in that van.
18 They have devices to contact either by telephone or by
19 radio to make a stop and they could have done a search
20 and could have recovered the money. Just think how
21 convincing that would have been if they had recovered
22 that money, matched with the serial numbers and brought
23 the actual cash with the photograph to show that. They
24 could have done that but they didn't because it wasn't
25 important. Important. We might come back to that word.

1 Now, Agent Putney testified that the photograph that
2 he had on his monitor was much clearer than what you are
3 seeing. He's essentially saying that these photos are
4 unclear. They're inconclusive. You can't tell who is in
5 them, who is in the passenger seat. You can see
6 Dickerson quite clearly. You can't see who that other
7 person is. He's in shadows. He could have brought in
8 his monitor. He could have shown you how much clearer it
9 was. My guess is that computer right there and that
10 video that you will see will be just as clear as what
11 Agent Putney has so I ask you to watch the video, pause
12 it at the key moments, dissect it. If it's not clear, if
13 you can't tell who it is, follow your instructions and
14 find Marcus Mack not guilty.

15 Then there is the fact that Agent Purdy waited more
16 than four full months between when the investigation
17 ended and when he sought the search warrant. He could
18 have gotten that warrant from any time after September
19 22nd when the investigation ended. He could have done it
20 in October, could have done it in November, could have
21 done it in December, could have done it in January but he
22 testified that it wasn't that important. There is that
23 word again. Important.

24 And there are other things that they could have done
25 but again they offer up excuses. They made excuses as to

1 why it took almost two years to test the substance. They
2 never even made an effort to identify this mysterious
3 Beazy or the driver of that vehicle.

4 And then there are matter they just gloss over
5 completely. How about the fact their two lay witnesses
6 are in custody, their custody or that they didn't even
7 bother looking for fingerprint evidence or DNA evidence.
8 It's lie after lie and excuse after excuse. Seems to me
9 from my perspective that the State is trying to get you
10 to judge their case by a lesser standard than what the
11 law requires. Remember your oath. Hold them to their
12 burden. And this is where you come in.

13 I'm almost done. Judge Hood is about to give you
14 the law of this case. You will finally be able to
15 discuss it amongst yourselves. I ask you to consider the
16 State's case in light of their lies and excuses.
17 Remember, each one of you has a voice. Use that voice.
18 If you have questions regarding the veracity of their
19 witnesses or the truth or the accuracy of their
20 testimony, ask those questions. Each one of you voice is
21 the most important in that room. No one person's voice
22 is more important than any others. Use your voice. The
23 answer is clear. The pictures are not. Trust what you
24 see not what you have heard. Find Marcus Mack not guilty
25 This is a just verdict. Thank you.

1 THE COURT: All right. Thank you very much. All
2 right. Ladies and gentlemen, we have reached the point
3 of the trial where it's my obligation to explain the law
4 to you so if you would give me your undivided attention.

5 The indictment has charged the defendant with the
6 distributing of cocaine. I remind you that the fact that
7 the defendant was arrested, charged, and indicted in this
8 case is not evidence and it cannot be considered by you
9 as evidence of guilt nor does it create any presumption
10 or inference of guilt. The indictment is simply the
11 formal written instrument which contains the charge made
12 against the defendant. It is the formal document by
13 which the case is brought into this court.

14 During this trial you and I have certain duties to
15 perform. As the trial judge it is my responsibility to
16 preside over the trial of the case and I also have the
17 duty to rule on the admissibility of the evidence offered
18 during the trial. You are to consider only the competent
19 evidence before you. If there was any testimony ordered
20 stricken from the record in this case, you must disregard
21 it. You are to consider only the testimony which has
22 been presented from the witness stand and any exhibits
23 which have been made a part of the record in this case.

24 I have the additional duty to charge you the law
25 applicable to this case. As the presiding judge I am the

1 sole judge of the law and it is your duty to accept it
2 and to apply it as I now give it to you. If you have an
3 idea as to what you think the law is or what you think
4 the law ought to be and it does not agree with what I now
5 tell you the law is, you must abandon your own idea
6 because you are sworn to accept the law and apply it
7 exactly as I give it to you.

8 'In every case tried in this court before a jury the
9 jury becomes the sole and exclusive judge of the facts.
10 A trial judge cannot state, comment on or make any
11 statement to a trial jury about the facts in a case.
12 Since you are the sole judge of the facts in this case
13 you are not to infer from anything that I have said
14 during the progress of this trial in ruling upon the
15 admissibility of evidence or otherwise or anything that I
16 say now during the course of this instruction to you that
17 I have any opinion about the facts in this case. The law
18 does not allow me to have an opinion about the facts.
19 This is a matter for you to determine. It is your duty
20 to determine the effect, the value and the weight of the
21 evidence presented during this trial.

22 Now, the defendant has pled not guilty to this
23 indictment. That plea puts the burden on the State to
24 prove the defendant guilty. A person charged with
25 committing a criminal offense in South Carolina is never

1 required to prove himself innocent. I charge you that it
2 is an important rule of law that the defendant in a
3 criminal trial no matter what the seriousness of the
4 charge may be will always be presumed to be innocent of
5 the crime for which the indictment was issued unless
6 guilt has been proven by evidence that satisfies you of
7 that guilt beyond a reasonable doubt. This presumption
8 of innocence does not end when you begin your
9 deliberations but it accompanies the defendant throughout
10 the trial until you reach a verdict of guilt based upon
11 evidence that satisfies you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the defendant
15 which remains with the defendant until it has been
16 stripped from the defendant by evidence that satisfies
17 you of the defendant's guilt beyond a reasonable doubt.
18 The presumption of innocence is not a mere legal theory.
19 It's not just some legal phrase. It is a substantial
20 right to which every defendant is entitled unless you the
21 jury are satisfied from the evidence of the defendant's
22 guilt beyond a reasonable doubt.

23 So what is reasonable doubt? The State has the
24 burden of proving the defendant guilty beyond a
25 reasonable doubt. Some of you may have served as a juror

1 in a civil case where you were told that it is only
2 necessary to prove that a fact is more likely true than
3 not true such as by the greater weight or the
4 preponderance of the evidence. In criminal cases the
5 State's proof must be more powerful than that. It must
6 be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the defendant's guilt. There are
9 very few things in this world that we know with absolute
10 certainly. In criminal cases the law does not require
11 proof that overcomes every possible doubt. If based upon
12 your consideration of the evidence you are firmly
13 convinced that the defendant is guilty of the crime
14 charged, you must find the defendant guilty. If on the
15 other hand you think that there is a real possibility
16 that the defendant is not guilty, you must give him the
17 benefit of the doubt and find him not guilty.

18 Some things that you have heard during this trial
19 are not evidence and you must not consider them as
20 evidence in deciding the facts of this case. Number 1,
21 the statements and the arguments of the attorneys are not
22 evidence. Number 2, the questions and the objections of
23 the attorneys are not evidence. Number 3, anything that
24 I have told you to disregard.

25 Now, there are two types of evidence which are

1 generally presented during a trial, direct and
2 circumstantial. Direct evidence directly proves the
3 existence of a fact and does not require deduction.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances that indicate the existence of a fact.
6 Crimes may be proven by circumstantial evidence. The law
7 makes no distinction between the weight or the value to
8 be given to either direct or circumstantial, however, to
9 the extent that the State relies on circumstantial
10 evidence all of the circumstances must be consistent with
11 each other and when taken together point conclusively to
12 the guilt of the accused beyond a reasonable doubt. If
13 these circumstances merely portray the defendant's
14 behavior as suspicious, the proof has failed.

15 The State has the burden of proving the defendant
16 guilty beyond on reasonable doubt. This burden rests
17 with the State regardless of whether or not they rely on
18 direct evidence, circumstantial evidence or some
19 combination of the two.

20 As I told you in the beginning, you must determine
21 the credibility of the witnesses who have testified in
22 this case. Credibility just means believability. It
23 becomes your duty as jurors to analyze and to evaluate
24 the evidence. In determining the believability of the
25 witnesses who have testified in this case you may believe

1 one witness over several. You may believe several over
2 one. You may believe a part of the testimony of a
3 witness and reject the remaining part of the testimony of
4 the same witness. You may believe the testimony of a
5 witness in its entirety or reject it in its entirety.
6 You may consider whether the witness has exhibited to you
7 any interest, bias, prejudice or other motive in this
8 case. You may also consider the appearance and the
9 manner or demeanor of a witness while on the witness
10 stand.

11 Now, the rules of evidence ordinarily do not permit
12 witnesses to give opinions or conclusions. An exception
13 to this is called expert witnesses. A witness who by
14 education and experience has become an expert in some
15 art, science, profession or calling may state an opinion
16 as to relevant and material matters in which the witness
17 claims to be an expert and may also state the reasons for
18 that opinion. You should consider any expert opinion
19 received into evidence in this case and like any other
20 evidence give it the weight that you believe it deserves.
21 If you decide that the opinion of an expert witness is
22 not based upon sufficient education and experience or if
23 you conclude that the reasons given in support of the
24 opinion are not sound or that the opinion is outweighed
25 by other evidence you may disregard the opinion entirely.

1 An expert witness' testimony is to be given no greater
2 weight than that of other witnesses simply because they
3 are an expert. Further, you are not required to accept
4 an expert's opinion even though it is not contradicted.

5 I instruct you and I emphasize to you that the fact
6 that the defendant did not testify is not a factor to be
7 considered by you in any way in your deliberation and in
8 your consideration on the question of the guilt or the
9 innocence of the defendant. It must not be considered by
10 you in any manner whatsoever. A defendant has a
11 constitutional right to remain silent and the assertion
12 of this right must not be considered by you in your
13 deliberations. I repeat, under your oath you are to draw
14 no conclusion whatsoever from the fact that the defendant
15 in this case did not testify. The fact that this
16 defendant did not testify should not even be discussed in
17 the jury room. The burden of proof as I have told you
18 from the very beginning is on the State. The defendant
19 is not required to prove his innocence. The burden of
20 proof remains on the State to prove guilt beyond a
21 reasonable doubt.

22 Now, in order to establish criminal liability
23 criminal intent is required. For example, these are
24 examples. The mental state required to be proven by the
25 State for a particular crime might be purpose or intent

1 or knowledge or recklessness or criminal negligence.
2 Criminal intent must be proven by the State beyond a
3 reasonable doubt. Criminal intent is always a matter
4 that must be determined by the jury from the
5 circumstances that surround the situation. There is no
6 way to prove intent to a mathematical certainty. There
7 is no way medical science can dissect a person's brain
8 and determine what that person had in mind so the law
9 says that criminal intent may be inferred from the
10 circumstances that existed.

11 This is how you make a determination of whether or
12 not the element that requires intent was present. It is
13 not necessary to establish intent by direct and positive
14 evidence. But intent may be established by inference in
15 the same way as any other fact, by taking into
16 consideration the acts of the parties and all of the
17 facts and circumstances of the case. Criminal intent is
18 a mental state. It is a conscious wrongdoing. It is up
19 to you to determine what the defendant intended to do
20 based upon the circumstances shown to have existed.
21 Criminal intent can arise from an action or a failure to
22 act. It may arise from negligence, recklessness or an
23 indifference to duty or to consequences that is
24 considered by the law to be the equivalent of criminal
25 intent.

1 Now, the defendant is charged with the distribution
2 of cocaine. The State must prove beyond a reasonable
3 doubt that the defendant distributed or dispensed or
4 delivered or aided or abetted or attempted or conspired
5 to distribute, dispense or deliver cocaine. Distribute
6 means to deliver or to actually constructively or attempt
7 to transfer a drug other than by administering or
8 dispensing. Delivery means to actually constructively or
9 attempt to transfer a drug. A transfer can involve an
10 exchange for money, a barter or a gift. There does not
11 have to have anything given in exchange for the drugs for
12 a transfer to constitute distribution.

13 I'm almost done. Let me say something to you now
14 about your deliberations. Deliberation is defined as
15 careful consideration weighing up with a view to a
16 decision. The genius of this system is that it allows 12
17 good men and women from 12 totally different backgrounds
18 and life experiences and perspectives to come together,
19 consider the evidence, talk about it and ultimately reach
20 a verdict. We call them deliberations for a reason. You
21 are to consider the evidence in this case carefully and
22 deliberately and discuss it in a calm, thorough and
23 courteous manner. You are not a partisan or an advocate
24 for either side. You do not favor one side or the other.
25 You are a judge. You're the judge of the facts. Your

1 sole interest is to find the truth from the evidence you
2 have heard in this courtroom. Listen to the views of all
3 of your fellow jurors, consider other people's points and
4 points of view and talk through and discuss the evidence.
5 And remember, if you are doing something deliberately,
6 you are not in a big hurry and you should not be in a big
7 hurry here. This case is very important to both sides.
8 This is their only day in court to resolve this matter.

9 When you retire to the jury room, you should discuss
10 the case with each other to reach an agreement, if you
11 can. Your verdict must be unanimous. Each of you must
12 decide the case for yourself but you should do so only
13 after you have impartially considered all the evidence,
14 discussed it fully with each other, and listened to the
15 views of your fellow jurors. Do not be afraid to change
16 your opinion if the discussion persuades you that you
17 should, but do not come to a decision simply because
18 everyone else thinks it's right. It is important that
19 you attempt to reach a unanimous verdict but only if each
20 of you can do so after having made your own decision. Do
21 not change an honest belief about the weight and the
22 effect of the evidence simply to reach a verdict. In
23 other words, don't change your opinion simply solely for
24 the sake of reaching a unanimous verdict.

25 Now, there are two possible verdicts in this case

1 which you may find, guilty or not guilty. There is no
2 significance whatsoever in the order that I state these
3 possible verdicts. One must be stated first. Your
4 verdict must be unanimous. And I'm gonna go over your
5 verdict form with you and give you a little bit of
6 instructions. Okay. So your verdict must be unanimous.
7 That means all 12 of you must agree. Rule number 2 is
8 all 12 of you have to be in the room to deliberate so if
9 someone needs to go to the restroom, someone needs to
10 make a phone call, someone steps out of the room for
11 whatever reason deliberations have to stop. All 12 have
12 to be in the room. In about 60 seconds I'm going to send
13 you back to your room. You're still not allowed to
14 deliberate. I need to ask the attorneys one more
15 question. Okay? And then I will need to pull my
16 alternates out. The sign that you can begin deliberating
17 is when the evidence comes in the room. Okay? So when
18 the bailiff hands you these exhibits, that is your sign,
19 Mr. Foreman, that you all may begin deliberating. You
20 all must be in that room. The alternates will come out.
21 They are not allowed to be in the room during
22 deliberations.

23 Okay. Now, the other thing is this: Do not ever
24 tell me the count. So when I first started doing this,
25 juries for some odd reason always wanted to tell me the

1 count. The count is your count. You do not ever need to
2 report to me the count is this. That's for you and you
3 alone. That's not for me. Okay?

4 The last thing I need to tell you, I'm going to go
5 over this verdict form. It's very simple. It's got the
6 case caption at the top, we the jury by unanimous consent
7 find the defendant as to the charge of distribution of
8 cocaine, check either not guilty or guilty and sign it.
9 Okay? Very simple.

10 Now, there is a video in this case. You all have
11 seen the video on the big screen. Okay? So we are going
12 to send back what we call a clean or a scrubbed computer
13 with you. Okay? This computer right here. That's going
14 to allow you to play the video. If you want to see the
15 video on the big screen, you can. You just need to send
16 out a note that says we want to watch the video on the
17 big screen and I'll bring you back in here and we can
18 play the video for you. If I need to bring you back in
19 here and clear the courtroom so you can watch the big
20 screen and deliberate at the same time, I can do that
21 too. Okay? You will have the computer. It will play on
22 the computer. If someone wants to see it on the big
23 screen or that becomes an issue, we can do that, too.
24 Okay? So whichever one works best for you all.

25 So I'm gonna send you back to your jury room. Do

1 not discuss the case. The sign that you can begin
2 discussing the case is when the evidence comes in the
3 room. Okay? Thank you very much.

4 (Whereupon, the jury entered the jury room at 10:25
5 a.m.)

6 THE COURT: All right. Any exceptions to the charge
7 other than those previously stated?

8 MR. BELL: Your Honor, no exception to your charges.
9 The State is going to request a curative instruction at
10 the appropriate time.

11 THE COURT: As to what Mr. Chehoski said?

12 MR. BELL: Your Honor, yes, sir, Your Honor. I
13 would like to extrapolate when appropriate.

14 THE COURT: Go ahead.

15 MR. BELL: Your Honor, I guess the real concern here
16 is that statement was absolutely intended whether or not
17 it drew an objection to imply to the jury that we paid
18 some three thousand dollars worth of taxpayer money for
19 what Mr. Hayes said on the stand. Not only is it
20 extremely prejudicial to the State regardless of the
21 objection, it's false and devoid of any evidence in the
22 record. I appreciated Your Honor's instruction at the
23 time. I do think the jury should be further instructed
24 though that unless there was any evidence in the record
25 through the testimony that that statement absolutely

1 should not be considered.

2 THE COURT: All right. Steve, I need you to go back
3 into Frank Hayes' testimony during the trial, not the
4 pretrial hearing. So what I need is Frank Hayes'
5 testimony during the trial, not during pretrial and I'm
6 looking for the number 50 or the number 100 or the number
7 60.

8 (Whereupon, the requested portion of the record was
9 read back to the Court.)

10 THE COURT: Back on the record. What would the
11 State want the curative instruction to say?

12 MR. BELL: Your Honor, some phrasing related to
13 during defense counsel's closing there was mention that
14 the State paid an estimated \$3000.00 and that they bought
15 a witness' testimony and that unless the jury finds that
16 there is any proof of that in the record it's to be
17 completely disregarded.

18 THE COURT: All right. Mr. Chehoski.

19 MR. CHEHOSKI: Your Honor, I think the Court's
20 instruction that arguments are not evidence is
21 sufficient. The jury has already been instructed to
22 disregard my misstatement and at that point with the
23 instruction to disregard and the instruction that
24 arguments are not evidence I think the jury, I think
25 everything is covered.

1 THE COURT: Okay. I'm going to tell them that --
2 I'm gonna bring them out and give a curative instruction.
3 Bring the jury back out.

4 (Whereupon, the jury entered the courtroom at 11:00
5 a.m.)

6 THE COURT: All right. Ladies and gentlemen, I
7 brought you back. I kept you waiting. I accept
8 responsibility for that. I brought you back out to
9 remind you of a couple of things. Number 1, the opening
10 statements and the closing arguments of the attorneys are
11 not evidence. Okay? I have defined what evidence is for
12 you in the opening statements and the closing arguments
13 of the attorneys regardless of the side are not evidence.

14 Number 2, you are to remember the facts of the case
15 as you, and the evidence in this case as you remember
16 them. Okay? That's why we have a court reporter.
17 That's why there is an official record of what takes
18 place. If any of the attorneys said anything different
19 than how you remember the facts or the evidence, then you
20 are to use your own memory because the opening statements
21 and the closing arguments of the attorneys are not
22 evidence.

23 Now, I am not allowed to comment on, as I told you
24 before, or state to you or intimate to you what the facts
25 in the case are but it is your responsibility to remember

1 the evidence as you remember it. We have a court
2 reporter so if you need to hear evidence again, you can.
3 And that is available to you. But if your memory is
4 different than what the attorneys' memory is of the
5 evidence that is presented, you are to use your own
6 memory or to ask for the testimony to be replayed again.
7 Okay? If you ask for a witness' testimony to be replayed
8 again, I have to play that person's testimony for you in
9 it's entirety. I can't just play you one portion or just
10 sort of take it in steps. So if you said I want witness
11 X, we want to hear that again, that can be made available
12 to you but we'll hear that person's testimony from the
13 beginning of that person's testimony to the end. Okay?

14 As I told you, during the defense's closing argument
15 you are to disregard the statement about the State paying
16 \$3000.00 for a witness. Okay? All right. Thank you
17 very much. And the exhibits are about to come back.
18 Then the alternates are gonna come out and you may begin
19 your deliberations. Thank you.

20 (Whereupon, the jury entered the jury room at 11:05
21 a.m.)

22 THE COURT: Okay. Anything else before we break
23 from the State?

24 MS. GRAHAM: Nothing from the State, Your Honor.

25 THE COURT: Anything from the defense?

1 MR. CHEHOSKI: No, Your Honor.

2 THE COURT: Okay. All right. Make sure the right
3 exhibits are the ones that go back. Make sure the
4 computer goes back. Make sure the law clerk and the
5 Clerk of Court has your cell phone numbers in case - when
6 we hear from the jury. Okay? Good job everybody. Thank
7 you very much.

8 (Whereupon, the verdict form and exhibits were sent
9 into the jury room and the jury commended deliberations
10 at 11:07 a.m.)

11 (Short break.)

12 THE COURT: All right. Keep your seats. We've got
13 a note requesting to hear the testimony of the
14 confidential informant, Purdy and Putney. Is that
15 Putney?

16 MS. GRAHAM: Yes, Your Honor.

17 THE COURT: We are going to replay those three.
18 We'll mark that note as Court's exhibit number 2. All
19 right. Let's bring the jury out.

20 (Whereupon, the jury entered the courtroom at 11:35
21 a.m.)

22 THE COURT: All right. Ladies and gentlemen, I've
23 got your note requesting the testimony of the CI, Purdy
24 and Putney although Putney looks like Mutney. Does that
25 sound right?

1 JURY FOREPERSON: Yes.

2 THE COURT: So it takes longer to find that on the
3 audio recording than you might have imagined. We did
4 order you lunch. It's on the way but we are going to
5 listen to those three witnesses at this time. Now, we'll
6 listen to the testimony of the witnesses in its entirety.
7 We can't just play a portion of it because there's a
8 direct and cross and maybe a redirect and maybe a recross
9 depending on the witness so you will have to listen to
10 all of that witness' testimony. Okay? We'll do that at
11 this time, and then we'll have to fast forward to the
12 next one so you may hear the machine a little bit.

13 (Whereupon, the requested portions of the testimony
14 was played back for the jury.)

15 (Whereupon, the jury entered the jury room to
16 continue their deliberations at 1:30 p.m.)

17 (Whereupon, Court's Exhibits #4 through #6 marked
18 for identification.)

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THE COURT: It's my understanding the jury has reached a verdict. Is there anything from the State before we bring them in?

5

MS. GRAHAM: Nothing from the State, Your Honor.

6

THE COURT: Anything from the defense?

7

8

MR. CHEHOSKI: Nothing from the defense, Your Honor.

9

THE COURT: Okay. Let's bring them in.

10

11

(Whereupon, the jury entered the courtroom at 2:55 p.m.)

12

13

THE COURT: Mr. Foreman, it's my understanding there is a verdict; is that correct?

14

JURY FOREPERSON: Yes, sir, Your Honor.

15

THE COURT: If you would, hand it to Mr. Jones.

16

JURY FOREPERSON: (Complies.)

17

18

THE COURT: All right. The verdict is in its proper form. Madam Clerk, you may publish.

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THE CLERK: Indictment 2016-GS-32-02729, The State versus Marcus Antonio Mack. We the jury by unanimous consent find the defendant Marcus Antonio Mack as to the charge of distribution of cocaine on indictment 2016-GS-32-02729 guilty and it is so signed by the foreperson August 24th, 2017. Mr. Foreman, ladies and gentlemen of the jury, if this is your verdict please

1 indicate each of you by raising your right hand.

2 All hands raised, Your Honor.

3 THE COURT: All right. Thank you everyone. Ladies
4 and gentlemen, that concludes your service this week.
5 You are completely and totally done for the week. You do
6 not need to call back in or come back in. You have a
7 jury exemption for Circuit Court the rest of this year
8 and for the years of 2018 and 2019 so if you get called
9 again, just let them know that you served this week and
10 they can excuse you from jury duty. On behalf of all the
11 parties in the case I want to say thank you very much for
12 your service this week. You have all paid attention.
13 You have all followed along. You have all been prompt
14 and courteous to all the parties and to me and I want to
15 personally say thank you. It's always a pleasure to come
16 over here and hold court. It's always good when you get
17 out of your home circuit a little bit so I always enjoy
18 coming over here and seeing everybody and trying cases so
19 thank you very much.

20 Now, the rule on not talking to anyone about the
21 case is now lifted from you so you are free to discuss
22 the case with whoever you want to. Sometimes attorneys
23 like to call jurors and say, what did we do right? What
24 did we do wrong? If you want to speak with an attorney
25 about the case, you may. If you don't want to, just

1 simply say I don't want to and then they will leave you
2 alone and not bother you anymore. But I want to
3 personally say thank you very much and you are excused.
4 Polling. Do you want polling, Mr. Chehoski?

5 MR. CHEHOSKI: Yes, Your Honor.

6 THE COURT: Sorry. My bad. My mind was going too
7 fast. We'll ask you two questions. The first one is is
8 this your verdict? The second one is is this still your
9 verdict? And we'll go one at a time. Okay? Just answer
10 out loud.

11 THE CLERK: Okay. As I call your juror number
12 please hold your hand up so I can recognize you please.
13 I will ask the question as the judge instructed and then
14 give me your response at the conclusion.

15 Number 28, as to the verdict was this your verdict
16 and is it still your verdict?

17 COLLEEN CARROLL: Yes.

18 THE CLERK: 63, as to the verdict, was this your
19 verdict and is it still your verdict?

20 GREGORY FOWLER: Yes, ma'am.

21 THE CLERK: 52, as to the verdict, was this your
22 verdict and is it still your verdict?

23 LORI DUPREE: Yes, ma'am.

24 THE CLERK: Number 4, as to the verdict, was this
25 your verdict and is it still your verdict?

1 GAIL ANDERSON: Yes, ma'am.

2 THE CLERK: 93, as to the verdict, was this your
3 verdict and is it still your verdict?

4 TONY JUMPER: Yes.

5 THE CLERK: 47, as to the verdict, was this your
6 verdict and is it still your verdict?

7 ANSLEY DORN: Yes.

8 THE CLERK: 32, as to the verdict, was this your
9 verdict and is it still your verdict?

10 GABRIEL COKER: Yes, ma'am.

11 THE CLERK: 101, as to the verdict, was this your
12 verdict and is it still your verdict?

13 EDWARD LAROCQUE: Yes, ma'am.

14 THE CLERK: 165, as to the verdict, was this your
15 verdict and is it still your verdict?

16 TAYLOR RODGERS: Yes.

17 THE CLERK: 215, as to the verdict, was this your
18 verdict and is it still your verdict?

19 CHERYL WILLIAMS: Yes.

20 THE CLERK: 218, as to the verdict, was this your
21 verdict and is it still your verdict?

22 NEEDHAM WILLIAMSON: It is.

23 THE CLERK: 137, as to the verdict, was this your
24 verdict and is it still your verdict?

25 MARY MONTGOMERY: Yes, ma'am.

1 THE CLERK: All jurors polled, Your Honor.

2 THE COURT: Okay. Thank you very much. You may
3 retire to your jury room. I'll be back in just a couple
4 minutes to see you after I have post trial motions.

5 (Whereupon, the jury entered the jury room.)

6 THE COURT: All right. Post trial motions. Where
7 is your client?

8 MR. CHEHOSKI: They're changing him out.

9 THE COURT: Okay. Shawn and them are coming back to
10 finish the Cookout. I think we told them 3:30.

11 MR. BELL: They're in the next room over so they can
12 be here shortly, Your Honor. Let me step out.

13 THE COURT: Mr. Chehoski.

14 MR. CHEHOSKI: At this time the defense moves for a
15 new trial incorporating all previous motions and
16 objections and not only regarding their error
17 individually but cumulative error and again we move for a
18 new trial.

19 THE COURT: All right. Based upon my previous
20 rulings, my rulings upon them would be the same. I found
21 that there was sufficient evidence for the case to go
22 forward to the jury. This jury took some considerable
23 time considering the length of the case to make the
24 decision on the case. They reheard testimony which they
25 requested and clearly took time to go through the

1 evidence and make a decision as to the verdict in the
2 case so I find it to be appropriate and under the
3 circumstances your motion for a new trial and post trial
4 motions are hereby denied. Is the State ready for
5 sentencing?

6 MS. GRAHAM: Yes, Your Honor. May I approach?

7 THE COURT: Yes, ma'am. Tell me his criminal
8 history.

9 MS. GRAHAM: Your Honor, I did get, provide copies
10 of his prior distribution convictions or drug
11 convictions, if you would like to see those. This is a
12 true third. I don't know if you want to.

13 THE COURT: Okay.

14 MS. GRAHAM: With regard to prior criminal history
15 he's got a 2005 simple possession of marijuana. 2006
16 simple possession of marijuana. 2006 failure to comply
17 with police command. 2007 throwing bodily fluids. 2007
18 possession of cocaine. 2009 simple possession of
19 marijuana, distribution of cocaine, distribution within
20 proximity of a school, parole revocation. There's also a
21 parole revocation in 2008. 2013 possession of crack
22 cocaine, failure to stop for blue lights. 2015 DUS, and
23 then another violation of probation from 2013, Your
24 Honor.

25 THE COURT: All right. So tell me his drug

1 convictions one more time.

2 MS. GRAHAM: He's got a 2013 possession of crack
3 cocaine. 2009 distribution of crack cocaine. 2009
4 distribution within proximity of a school, and a 2007
5 possession of cocaine.

6 THE COURT: All right. So this is a third offense?

7 MS. GRAHAM: Yes, Your Honor.

8 THE COURT: Okay. All right. So the sentencing
9 range is what?

10 MS. GRAHAM: 10 to 30, Your Honor.

11 THE COURT: All right. And that would be a serious
12 offense?

13 MS. GRAHAM: Yes, Your Honor.

14 THE COURT: And no parole?

15 MR. CHEHOSKI: I don't think so on that count, Your
16 Honor, due to new case law and my conversations with the
17 general counsel at DOC. I think it's the Arc case. I
18 could be getting it all wrong. But outside of
19 trafficking they are no longer treating distribution even
20 though it's over 20 years that would trigger unparolable.
21 They are no longer treating it as such.

22 THE COURT: Okay.

23 MR. BELL: Your Honor, if I may interject just for
24 clarity of the record so the record is protected. I
25 believe under State versus Bolen which reinterpreted

1 those laws, it only is not 85 percent if the prior
2 enhancements are possession only, however, in this case
3 one of his prior enhanceable offenses is a distribution
4 so he doesn't qualify under Bolen and they will calculate
5 his 85 percent as far as the law is concerned.

6 THE COURT: Okay.

7 MR. CHEHOSKI: I have been told it can go both ways,
8 Your Honor, and it was the Bolen case that Mr. Bell
9 referred to that I was thinking of.

10 THE COURT: Okay. What's the State's position on
11 sentencing?

12 MS. GRAHAM: Your Honor, Mr. Mack has a very long
13 criminal history and this case has been pending for quite
14 some time in our circuit. He has really refused to take
15 responsibility for his actions in this case. We have
16 been steadily monitoring jail calls. As Mr. Chehoski
17 referenced before there is quite a bit that came in on
18 those calls intimidating witnesses. He's been somebody
19 who has absolutely refused to take responsibility and
20 he's now 31 years old, Your Honor. With regard to an
21 appropriate sentence this is a mandatory minimum so he is
22 looking at 10 years. I don't believe that he has
23 actually done any serious time in SCDC up to this
24 point.

25 THE COURT: How much credit does he have

1 at this point?

2 MR. CHEHOSKI: 378 days, Your Honor.

3 THE COURT: All right.

4 MS. GRAHAM: Your Honor, he is in on a bench warrant
5 for a pending charge failure to stop for blue lights.

6 THE COURT: All right. Mr. Chehoski.

7 MR. CHEHOSKI: Thank you, Your Honor. As to his
8 record he has on the violation of probation and the
9 failure to, previous failure to stop, he did have to
10 serve a three year sentence. I'm not sure what the
11 State's definition of serious time is. My definition is
12 any time is serious time. He is 31 years old. He has a
13 GED level of education. He is single. He does have two
14 children. They are in the custody of their mother. He
15 does know that this, that there is a mandatory minimum of
16 10 years. He is also aware that this is a serious
17 offense under the three strikes rule.

18 THE COURT: So this is going to be his second
19 strike?

20 MR. CHEHOSKI: I think it's his first.

21 THE COURT: If he's got a proximity charge, he's
22 already got a strike.

23 MR. CHEHOSKI: That's true.

24 THE COURT: So this is your second strike.

25 MR. CHEHOSKI: Yes, Your Honor.

1 MS. GRAHAM: Yes, Your Honor.

2 MR. CHEHOSKI: Your Honor, before his arrest he also
3 was going back to school and studying business management
4 at the University of Phoenix. Before his arrest he had
5 been employed with Nick's House of Pizza in West
6 Columbia. Had been there about seven to eight months
7 holding stable employment primarily doing food prep and
8 dish washing.

9 Your Honor, commenting on the case it's not disputed
10 that Mr. Mack was not the original target. Agent Purdy
11 testified that one of the reasons they don't go seek
12 arrest warrants is sometimes they want to build more
13 cases, make more purchases. As you can see there were no
14 other purchases from Mr. Mack in the intervening time
15 between September 4th, 2015 and April - and February 1st,
16 2016 when the arrest warrant was issued or even until his
17 subsequent arrest in August of 2016.

18 Those things considered, Your Honor, I have listened
19 to the phone calls. I didn't hear any - didn't hear Mr.
20 Mack making any intimidations or threats regarding the
21 witness. Again, there was comments about the family
22 trying to carry out those threats. No family was present
23 during the trial as with regard to Mr. Hayes.

24 Your Honor, I'm asking for the minimum of 10 years.
25 This is a true third. He was not the target. There

1 wasn't - if there was any further ongoing investigation
2 or ongoing difficulties or troubles, that would have come
3 out during the trial. There was no such thing.

4 Again, it looks like Mr. Mack was caught up in a bit
5 of a sweep and by misfortune of Mr. Hayes not being - or
6 rather the mysterious Beazy not appearing he never would
7 be here. That said, Your Honor, again Mr. Dickerson is
8 serving a 10 year sentence. The not taking
9 responsibility for his actions as the State calls it, I
10 call it a different name and that's exercising his
11 constitutional right to a trial. We have been over the
12 evidence. We thought there was real question as to the
13 identity of that person in the car. He's exercised his
14 right to a trial. The jury has spoken. We stand before
15 you now asking for what leniency you can provide given
16 the statute and the limits of that understanding that
17 he's already been in for more than a year. Your Honor,
18 with that we ask for 10 years.

19 THE COURT: All right. Mr. Mack, you don't have to
20 say anything but you have the right to if you would like
21 to. Would you like to say anything?

22 MR. MACK: No, sir.

23 THE COURT: Okay. All right. Thank you very much.
24 Was the distribution in the proximity one case or two
25 cases?

1 MS. GRAHAM: The distribution, the 2009?

2 THE COURT: Yes.

3 MS. GRAHAM: Those seem to come out of the same
4 incident, Your Honor.

5 THE COURT: Okay. How bad was Dickerson's record?

6 MS. GRAHAM: Your Honor, I can certainly pull that
7 up. Mr. Dickerson did plea to multiple charges and was
8 sentenced to 10 years. I believe that was approximately
9 a year ago.

10 MR. CHEHOSKI: Your Honor, just for, I guess,
11 clarity, included in the discovery there was a September
12 9th purchase with the same CI Mr. Hayes involving
13 Mr. Dickerson. While not relevant to this case and Mr.
14 Mack was not present in that case, but that would
15 indicate that certainly the culpability of Mr. Dickerson
16 along with the clarity of him on the video certainly
17 speaks to that.

18 MS. GRAHAM: Your Honor, I do have Mr. Dickerson's
19 record here. I can hand that up to Your Honor.

20 THE COURT: Okay. Let me see it.

21 MS. GRAHAM: (Proffering.)

22 THE COURT: Agent Purdy, do you want to be heard
23 from?

24 AGENT PURDY: I'll let you make the decision, sir.

25 THE COURT: Okay. All right. Anything else, Mr.

1 Chehoski?

2 MR. CHEHOSKI: No, sir.

3 THE COURT: The sentence of the Court is that you
4 are to be committed to the State Department of
5 Corrections for a period of 15 years, given credit for
6 378 days. Good luck. Thank you very much.

7 MS. GRAHAM: Thank you, Your Honor.

8 MR. CHEHOSKI: Thank you, Your Honor.

9 MR. BELL: Thank you, Your Honor.

10 THE COURT: We'll start back at 3:30.

11 WHEREUPON, THE TRIAL WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 23rd and 24th day of October,
11 2017.

12 I FURTHER CERTIFY that the forgoing 304 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 14th day of February, 2018.

18
19
20 
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

WITNESSES

Lexington County Sheriffs Department

Elizabeth Garrett

Law Enforcement Case #: 15017030

RCC

ARREST WARRANT NUMBER

2016A3210700037

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10-17-16 L. Scott Water

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8/24/17

DOCKET NO. 2016GS3202729

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2016

THE STATE

vs.

Marcus Antonio Mack

0185-44
CDR #: 3039

Indictment for

DISTRIBUTION OF CRACK COCAINE

§ 44-53-037(B)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF LEXINGTON)

DISTRIBUTION OF ~~CRACK~~ COCAINE

§ 44-53-0375(B) (1)

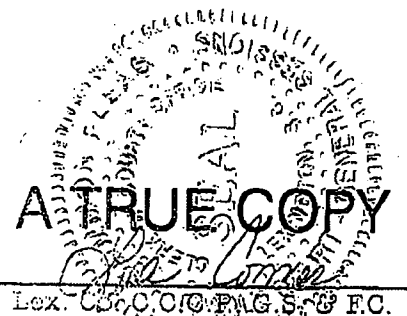
At a Court of General Sessions, convened on OCTOBER 2016, the Grand Jurors of Lexington County present upon their oath:

That Marcus Antonio Mack did in Lexington County, South Carolina on or about September 4, 2015 knowingly, willfully, intentionally, and unlawfully distribute, dispense, or deliver, or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of ~~crack~~ cocaine, or cocaine base, a controlled substance under the provisions of § 44-53-110 et. seq., and in violation of § 44-53-375(B)(1) Code of Laws of South Carolina, as amended.

RECEIVED

SEP 06 2017

SC Court of Appeals



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Marcus Antonio Mack

AKA:

Race: Sex: M Age: 31

DOB: 1986 SS#

Address: Vernon Street

City, State, Zip: Columbia, SC 29203

DL#: SID#: SC01493300

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 3rd or sub. offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and-subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 378 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202729

A/W#: 2016A3210700037

Date of Offense: 9/4/2015

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0185

SENTENCE SHEET

SC Court of Appeals

SEP 06 2017

☐ Appointed PD or appointed other counsel,
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

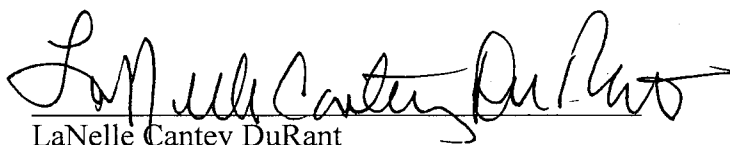
Re Hood
2164
8-24-17

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of August, 2018.

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AUG 17 2018

SC Court of Appeals