

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

ORIGINAL

RECEIVED

APR 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CLAYTON L. MASSEY,

APPELLANT

APPELLATE CASE NO. 2013-000657

RECORD ON APPEAL

LARA M CAUDY
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

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

Attorneys for Respondent

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (AUDIO RECORDING)
STATE'S EXHIBIT #2 (VIDEO RECORDING)
STATE'S EXHIBIT #3 (AUDIO RECORDING)
STATE'S EXHIBIT #6 (PHOTOGRAPH OF DEFENDANT)
STATE'S EXHIBIT #7 (PHOTOGRAPH OF DEFENDANT)
COURT'S EXHIBIT #1 (PHOTOGRAPHIC LINEUP)
COURT'S EXHIBIT #2 (LINEUP FORM)

State of South Carolina.,) In the General Sessions Court
) of York
)
) Case No. 2012-GS-46-00496
)
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -v-) Transcript of Record
)
 Clayton Leevell Massey.,)
)
Defendant.)

March 20, 21, 2013
 York, South Carolina

B E F O R E:

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

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

Ms. Teasa Weaver
 Mr. Ryan Newkirk
 Assistant Solicitor's
 Sixteenth Judicial Circuit Solicitor's Office
 1675-1A York Highway
 Moss Justice Center
 York, South Carolina 29745
 803-980-3020
Teasa.weaver@yorkcountygov.com
 For the Plaintiff

ORIGINAL

Ms. Ashley Anderson, Public Defender
 Ms. Amy Sikora, Public Defender
 Sixteenth Judicial Circuit
 Public Defender's Office
 1675-1E York Highway
 Moss Justice Center
 York, South Carolina 29745
 803-628-3031
Ashley.anderson@yorkcountygov.com
 For the Defendant

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

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
4	CT.1	Photo Lineup (St.1)	P.12	P.15
5	CT.2	Lineup form signed		
6		9/27/11		P.15
7	CT.3	Lineup Image Details	P.25	P.26
8	Ct.4	Jury Note		P.160
9	St.1	CD - Audio	P.71	P.72
10	St.2	CD - Video	P.75	P.76
11	St.3	CD - Audio	P.80	P.81
12	St.4	Lineup photos- (same as Ct.1)	P.82	P.84
13	St.5	Lineup form signed 9/27/13	P.83	P.84
14	St.6	Defendant's photo		P.121
15	St.7	Defendant's photo - left side		P.121
16	St.8	Chain of Evidence bag w. drugs		P.130
17	St.9	Chemist Cynthia Mitchum drug report		
18		Drug Report	P.128	P.130

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

1 And I don't think that Brady or Rule 5 requires that. He
2 can view that anytime with his attorney. I just have
3 concerns with as digital as our society has become about a
4 video that actually shows the informant in the video being
5 uploaded on Youtube and all the other places where younger
6 kids put these videos on line, we just have concerns about
7 that and a statement given out showing that the informant
8 worked with the police, basically showing, you know, work
9 with the informant.

10 THE COURT: Any problem with that, Ms. Anderson?

11 MS. ANDERSON: Your Honor, I've just spoken with Mr.
12 Massey and he did indeed come to my office and has reviewed
13 it in full. I spoke with him and explained before I even
14 confirmed with him and he says he does not have an
15 opposition to that. He has received just for the record
16 all of the other paper discovery in this case and he was
17 provided a copy of.

18 THE COURT: That leaves us with the lineup question.

19 SOLICITOR WEAVER: Your Honor, the State's first
20 witness is Mr. Ronald Birch.

21 MADAME CLERK: Raise your right hand, place your left
22 hand on the Bible.

23 (WHEREUPON: RONALD BIRCH, BEING
24 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION - IN CAMERA

RONALD BIRCH: BY SOLICITOR WEAVER - IN CAMERA

-10-

1 RONALD BIRCH BY SOLICITOR WEAVER:

2 Q. Mr. Birch, if you could please state your full name
3 for the record.

4 A. Ronald Dean Birch.

5 Q. And you spell that B-i-r-c-h?

6 A. Yes, ma'am.

7 Q. How old are you, Mr. Birch?

8 A. Fifty-four.

9 Q. And how far did you go in school?

10 A. I have a Master's, MBA.

11 Q. And are you currently employed?

12 A. Yes I am.

13 Q. And in August and September of 2011 did you meet with
14 Detective Welch to discuss with him as working as a
15 confidential informant with the Drug Enforcement Unit?

16 A. Yes I did.

17 Q. And were you able to set up a crack cocaine deal on
18 September 16th of 2011?

19 A. Yes I was.

20 Q. And prior to working with Detective Welch on that
21 deal, what description if any did you provide Detective
22 Welch about the person that you would be buying crack
23 cocaine from?

24 A. As far as any description I just - I didn't know a
25 name or a nickname. I just told him it was a black male

1 and general area that I would go. That's pretty much all
2 the description I gave.

3 Q. So you did not know his name at the time?

4 A. No.

5 Q. No nickname?

6 A. No.

7 Q. Did you know where he lived?

8 A. No.

9 Q. Approximately how many times prior to working with
10 Detective Welch had you met with this person?

11 A. Approximately ten times.

12 Q. And were those ten other times were you purchasing
13 crack cocaine those times?

14 A. Yes.

15 Q. And can you explain to the court approximately how
16 long you would be in this person's presence when you were
17 purchasing crack cocaine?

18 A. Five seconds.

19 Q. And during each meeting were you able to get a good
20 look at his face?

21 A. Yes.

22 Q. And on September 16th when you met with Detective
23 Welch to purchase crack cocaine from this male, did you
24 walk to that location or did you drive?

25 A. I drove.

RONALD BIRCH: BY SOLICITOR WEAVER - IN CAMERA

-12-

1 Q. Did you drive your car?

2 A. Yes I did.

3 Q. And did Officer Welch put any recording device in your
4 vehicle to record this deal?

5 A. Yes he did.

6 Q. And on September 16th, 2011, did you actually purchase
7 crack cocaine from the male that you had met with before?

8 A. Yes I did.

9 Q. Was it the same male that you described to Detective
10 Welch prior to the deal?

11 A. Yes.

12 Q. And after conducting this deal on September 16th,
13 2011, did you know his name at that point?

14 A. No. No I didn't know his name.

15 Q. Now after the deal on September 16th of 2011 with the
16 black male, some days after that deal did Detective Welch
17 show you a collection of photographs?

18 A. Yes he did.

19 Q. Okay. Where did he show you these photographs?

20 A. At Mr. Welch's office at the Drug Enforcement Unit.

21 Q. Is that located at the Rock Hill Police Department?

22 A. Yes it is.

23 (WHEREUPON: COURT'S EXHIBIT NUMBERS ONE AND PREMARKED
24 FOR IDENTIFICATION.)

25 Q. Mr. Burch, I'm showing you what's been marked for

1 identification as Court's Exhibit One.

2 Do you recognize those series of photographs?

3 A. Yes I do.

4 Q. Were those the series of photographs that Detective
5 Welch showed you after the deal on September 16th of 2011?

6 A. Yes.

7 Q. And what if anything do you remember Detective Welch
8 asking you before you look at those photographs?

9 A. Was the person that I made the purchase from in this
10 series of photographs and basically by recognizing the
11 individual that I purchased the crack cocaine from.

12 Q. And did you recognize an individual in those series
13 of photographs?

14 A. Yes I did and I circled and the person and wrote my
15 name or initial beside his name.

16 Q. You indicated the person you recognized as the black
17 male that sold you crack cocaine on September 16th by
18 circling his picture and putting your initials beside it?

19 A. Yes.

20 Q. Do you remember if anyone else was in the room when
21 Detective Welch showed you those photos?

22 A. There wasn't anybody else in the room at that time.
23 That was done in the little conference room there in their
24 office. I was the only one in the room.

25 Q. So the only people in the room were you and Detective

1 Welch?

2 A. Yes.

3 Q. And prior to showing you those photographs, did
4 Detective Welch make you any promises?

5 A. No.

6 Q. As far as who to pick out?

7 A. No.

8 Q. Did he make any threats as far as who to select?

9 A. No.

10 Q. Did he say anything that would influence the person
11 that you selected out of those photos?

12 A. No.

13 Q. Was this the first lineup that you had been shown?

14 A. Yes.

15 Q. Is this the only lineup that you have been shown?

16 A. Yes.

17 Q. And is the person that you selected the same person,
18 the same black male that sold you crack cocaine on
19 September 16th, 2011?

20 A. Yes.

21 Q. And, Mr. Birch, I'm also gonna show you what's been
22 marked as Court's Exhibit Two.

23 Do you recognize that item?

24 A. Bear with me a minute.

25 Yes I do.

RONALD BIRCH: BY SOLICITOR WEAVER - IN CAMERA
BY MS. ANDERSON - IN CAMERA

-15-

1 Q. And who gave you that form?

2 A. Detective Welch.

3 Q. And could you read that form for the Court?

4 A. "I have freely and voluntarily without threats or
5 promises viewed a photographic lineup as shown by the
6 officer listed below. The officer in no way suggested any
7 particular photograph. I am positive without a doubt that
8 the person I picked is the responsible party. I have
9 initialed the attached photograph."

10 Q. And did you sign that form?

11 A. I signed it.

12 Q. On what date did you sign that form?

13 A. September the 27th of 2011.

14 SOLICITOR WEAVER: And, Your Honor, we'd just like to
15 enter Court's Exhibit One and Two as Court's Exhibits only,
16 right now at this time.

17 (WHEREUPON: COURT'S EXHIBITS ONE AND TWO IDENTIFIED
18 AND MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR WEAVER: We have no further questions, Your
20 Honor.

21 THE COURT: Counsel.

22 CROSS EXAMINATION - IN CAMERA

23 RONALD BIRCH BY MS. ANDERSON:

24 Q. Mr. Birch, you said you had purchased from this
25 individual you purchased crack cocaine approximately ten

RONALD BIRCH: BY MS. ANDERSON - IN CAMERA

-16-

1 times prior to September 16th?

2 A. Yes, ma'am.

3 Q. Okay. And you were using crack cocaine during this
4 time period?

5 A. Yes, ma'am.

6 Q. Do you recall what time period - over what span of
7 time these ten purchases were made?

8 A. No, ma'am, not exactly.

9 Q. Months, weeks?

10 A. More than three months, less than six I would say.

11 Q. Okay. And I don't suppose you know the specific dates
12 you purchased?

13 A. No.

14 Q. How did you first meet this individual you said you
15 purchased from?

16 A. I do not rightly recall the specific appointments of
17 how we became acquainted.

18 Q. So you don't know how you started purchasing from this
19 individual?

20 A. No.

21 Q. On these prior - Prior to September these sort of ten
22 times you're referencing, I think you testified those as
23 approximately five seconds each transaction?

24 A. Yes as far as our --

25 Q. Interaction?

RONALD BIRCH: BY MS. ANDERSON - IN CAMERA

-17-

1 A. As long as it took ---

2 Q. Okay.

3 A. --- to hand him the money and receive the cocaine.

4 Q. Okay. So essentially five seconds is the counter,
5 you're handing the money to this person, this person is
6 handing what you believe is crack cocaine; you're looking
7 at that transaction and that's the entirety of it?

8 (PAUSE.)

9 THE COURT: You got to answer.

10 A. Yes, sir.

11 Q. Okay.

12 A. I'm sorry.

13 Q. And so you are some period of time you're also looking
14 down at what's going on, seeing that you're actually
15 getting crack cocaine in exchange for the money more or
16 less?

17 A. Yes.

18 Q. So you're not totally focused on this person even for
19 the five second space?

20 A. No.

21 Q. And do you recall if these transactions occurred
22 during the day; during night, or evening? Do you recall
23 the time of day?

24 A. Most always during the day.

25 Q. Okay. Mostly during the day?

RONALD BIRCH: BY MS. ANDERSON - IN CAMERA

-18-

1 A. During the day light hours.

2 Q. And you said you did not know this individual's name
3 or even a nickname?

4 A. No.

5 Q. How did you get in touch with this individual?

6 A. By phone.

7 Q. And what phone? Or what phone number? Do you recall?

8 A. It was [REDACTED].

9 Q. [REDACTED]?

10 A. Yes, ma'am. I remember numbers fairly well.

11 Q. Okay. And at no course in time did you learn any sort
12 of nickname of this person?

13 A. I never ask. That was kind of the trick of the trade,
14 you don't ask questions.

15 Q. Okay. So - All right. And now when you went into the
16 lineup you were questioned about - When you went in that
17 was on September 27th. Correct?

18 A. Yes, ma'am.

19 Q. Okay. So this was a few weeks after you were sent out
20 by the Drug Enforcement Unit on the 16th?

21 A. Yes.

22 Q. And were you wearing your glasses when you looked at
23 the lineup that day?

24 A. I only need my reading glasses to read text. Further
25 than arms length my eyes are better than twenty twenty.

1 Q. Okay. So do you remember if you used them when you
2 looked at the lineup or not?

3 A. I did not.

4 Q. Did not use them? Okay. How quickly did you pick out
5 the person in the photograph that you were shown?

6 A. I recall it was rather quick because the
7 distinguishable features I recognized.

8 Q. Okay. What were those distinguishable features?

9 A. His eyes, elongated longer face. I knew without a
10 question it was very obvious. I mean somebody I had seen a
11 number of times. It was very obvious.

12 Q. Was this the only person you purchased crack cocaine
13 during that time period?

14 A. During that time period I may have had one other
15 source.

16 Q. Was that individual a white male or?

17 A. Short black male.

18 Q. And you described it as rather quick. Do you know
19 minutes, seconds, or do you recall?

20 A. As far as how long I studied him?

21 Q. Yes.

22 A. I couldn't tell you that. Its been almost two years
23 ago.

24 Q. Okay.

25 MS. ANDERSON: I beg the Court's indulgence.

RONALD BIRCH: BY MS. ANDERSON - IN CAMERA

-20-

1 (PAUSE.)

2 Q. When you talked to - I think the description you gave
3 Detective Welch, did you give him any description beyond a
4 black male like any other further description?

5 A. No. No I did not.

6 Q. Did you give him any description of these distinctive
7 features you're saying you recognized?

8 A. No.

9 Q. And do you recall on the prior dealings with this
10 individual, this sort of continued reference, where did
11 those take place? Were you standing on the street, in a
12 car; what were the nature of those?

13 A. The nature of those we identified location to meet. I
14 would drive up in my vehicle usually let my window down and
15 the transaction occurred through the window.

16 Q. And do you wear glasses to drive?

17 A. No.

18 MS. ANDERSON: That's all I have for this witness,
19 Your Honor.

20 SOLICITOR WEAVER: No further questions, Your Honor.

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

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR WEAVER: Your Honor, the State calls
25 Detective Welch to the stand.

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

-21-

1 (WHEREUPON: JOSH WELCH,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 DIRECT EXAMINATION - IN CAMERA

4 DETECTIVE JOSH WELCH BY SOLICITOR WEAVER:

5 Q. Detective Welch, if you could say your full name for
6 the record?

7 A. Josh Welch.

8 Q. And, Detective Welch, where are you currently
9 employed?

10 A. Rock Hill Police Department.

11 Q. How long have you been with the Rock Hill Police
12 Department?

13 A. I been with the Rock Hill Police Department for
14 fifteen years.

15 Q. And you're currently a police officer?

16 A. I am.

17 Q. And have you been a police officer fifteen years?

18 A. I been a police officer for seventeen years. Two
19 years prior in North Carolina.

20 Q. And in 2011 were you assigned to the York County Drug
21 Enforcement Unit?

22 A. I was.

23 Q. And in August of September of 2011 did you meet with
24 Mr. Birch and discuss him working as a confidential
25 informant?

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

-22-

1 A. Yes I did.

2 Q. And was Mr. Birch able to give you information about a
3 person he could purchase crack cocaine from?

4 A. Yes.

5 Q. And what description of a person did he give you prior
6 to setting up that deal?

7 A. Mr. Birch told me that he knew a guy over on - in the
8 Boyd Hill area that he could purchase crack from. Just all
9 he knew was a phone number for him.

10 Q. How about race?

11 A. He said it was a black male.

12 Q. So he did know his name?

13 A. He did not know his name or any nicknames.

14 Q. And no address?

15 A. No.

16 Q. Do you remember whether or not Mr. Birch gave you any
17 other identifying information as far as his features?

18 A. Before the purchase no.

19 Q. And so you met with Mr. Birch on September 16th of
20 2011 to set up this crack cocaine deal?

21 A. That's right.

22 Q. And you said that Mr. Birch had a phone number to get
23 in touch with this black male.

24 Q. Yes he did.

25 Q. And was that phone call recorded?

1 A. Yes it was.

2 Q. And after the recording of that phone call, did you
3 prepare Mr. Birch to then go make a purchase of crack
4 cocaine from this black male?

5 A. I did.

6 Q. And how did you prepare Mr. Birch to go purchase crack
7 cocaine?

8 A. Mr. Birch was searched, his clothing, and his person
9 was searched. We then equipped him with a audio and video
10 surveillance and gave him forty dollars to purchase the
11 crack with.

12 Q. And what vehicle did Mr. Birch use for this crack
13 cocaine deal?

14 A. He used his own vehicle.

15 Q. And was anyone else in the vehicle when he left to go
16 do the crack cocaine deal?

17 A. No. He was by himself.

18 Q. And did you follow him when he went to meet with this
19 black male?

20 A. Yes I did.

21 Q. And were you listening over the audio wire as the
22 transaction occurred?

23 A. Yes we were.

24 Q. And did you meet up with Mr. Birch at - following the
25 transaction?

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

-24-

1 A. I did.

2 Q. And where did you meet up with Mr. Birch following the
3 transaction?

4 A. We followed him and met up with him at the Rock Hill
5 Police Department.

6 Q. And once back at the Rock Hill Police Department were
7 you able to or were you or Mr. Birch able to identify who
8 the black male in the video was?

9 A. That day? No we were not.

10 Q. At some point after the deal were you able to
11 determine who the black male in the video was?

12 A. Yes I was.

13 Q. And how were you able to determine his identity?

14 A. We - I took the video and showed it to our street
15 crimes unit and officers on patrol - I don't remember
16 exactly which officer it was - one of the officers from I
17 believe it was the street crimes unit gave me his name.

18 Q. And what name did that officer give you?

19 A. They gave me the name Clayton Massey.

20 Q. And after that officer had viewed the video, and
21 that's the video of the crack cocaine purchase by Mr. Birch
22 from the black male on September 16th, 2011?

23 A. That's correct

24 Q. And that officer from the street crimes unit
25 identified the black male in the video that sold Mr. Birch

1 crack cocaine as Clayton Massey?

2 A. Yes they did.

3 Q. And after getting that identification by that officer,
4 what did you do?

5 A. I compiled a photo lineup using our data base at the
6 police department; put together a lineup and then I
7 contacted Mr. Birch and had him come in.

8 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE PREMARKED
9 FOR IDENTIFICATION.)

10 Q. Detective Welch, I'm showing you what's been marked
11 as Court's Exhibit Number One. Do you recognize at item?

12 A. I do.

13 Q. What is it?

14 A. This is the photo lineup that I compiled using our
15 system?

16 Q. And that's the series of photographs?

17 A. Yes.

18 Q. Now I'm asking you to take look at Court's Exhibit
19 Three.

20 A. Okay.

21 Q. Can you explain to the Court what that is?

22 A. Whenever you print out your photo lineup it also
23 prints out the names behind it to show who all is in your
24 lineup.

25 Q. And did you place a photograph of Mr. Clayton Massey

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

-26-

1 in that lineup?

2 A. I did.

3 Q. And what photograph?

4 A. It's Image Number Three counting one, two, three.

5 Q. So he's second down from left to right?

6 A. He's second down from the left.

7 Q. And so Court's Exhibit Three is the list of name and
8 identifying information of all persons contained in that
9 lineup?

10 A. That's correct

11 SOLICITOR WEAVER: Your Honor, at this time I'd like
12 to enter Court's Exhibit Three just as a Court's Exhibit.

13 THE COURT: Court's Exhibit without objection.

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

16 BY SOLICITOR WEAVER:

17 Q. And so you showed that photo lineup to Mr. Birch?

18 A. I did.

19 Q. Do you remember what date you showed him that photo
20 lineup?

21 A. According to my Summary September the - Excuse me, I'm
22 sorry. Its not in my Summary. It would have been on the
23 other page where he signed and initialed it.

24 Q. You talking about Court's Exhibit Two?

25 A. Court's Exhibit Two on the 27th of September 2011.

1 Q. And how do you know that that was done on September
2 27th, 2011?

3 A. Because when they pick it out or whenever they circle
4 it and sign this form we put a date and time on there.

5 Q. And what form are you referring to?

6 A. The form - The photographic lineup form that we have
7 them sign saying that they weren't threatened or in any way
8 and they freely and voluntarily pick the person out of the
9 photo lineup.

10 Q. And that's Court's Exhibit Two?

11 A. That's right.

12 Q. And you showed that to Mr. Birch before or after the
13 lineup?

14 A. The Number Two? This comes after the lineup.

15 Q. And did you sign that form as well?

16 A. I did.

17 Q. And again that was signed on September 27th of 2011?

18 A. Yes.

19 Q. And Mr. Birch signed that form on the same day that he
20 selected a photo out of the photo lineup?

21 A. That's correct

22 Q. And approximately what time was that done?

23 A. 5:40 p.m..

24 Q. And where - Where in the Rock Hill Police Department
25 did you have Mr. Birch view that photo lineup?

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

-28-

1 A. In the narcotics office back there.

2 Q. And can you describe specifically in the office you
3 had him view that lineup?

4 A. In the narcotics area office when you come in there is
5 a conference room on the right. It would have been back on
6 the right hand side in that conference room.

7 Q. So it was inside the conference room where he viewed
8 the lineup?

9 A. Yes.

10 Q. Do you remember anyone else being inside that room
11 with you and Mr. Birch when he viewed that lineup?

12 A. I don't remember anybody being inside the room no.

13 Q. And what if anything did you tell Mr. Birch prior to
14 him viewing that photo lineup?

15 A. Every time I show a photo lineup, in every case, I
16 always take the photographs in there and I tell the person
17 the person may or may not be in this photo lineup that you
18 bought crack from or, you know, that or whatever I'm doing
19 I always say the person may or may not be in the lineup, if
20 you could look at the lineup and tell me if they're in
21 there. Then I'll lay it in front of them and let them look
22 at it. And that's what I did on that day.

23 Q. And did Mr. Birch select a photo out of that lineup?

24 A. He did.

25 Q. And how do you know that?

1 A. Because he picked it right here and also whenever they
2 pick it I ask them are you sure that's the person? When
3 they tell me yes I say go ahead and circle and have them
4 initial it.

5 Q. And did you ask that question to Mr. Birch "are you
6 certain?"

7 A. I did.

8 Q. And what did Mr. Birch tell you?

9 A. And he said yes.

10 Q. And you had Mr. Birch circle the photograph?

11 A. Circle the photo and sign it.

12 Q. And, Detective Welch, did you suggest or influence Mr.
13 Birch in any way to select the photograph?

14 A. No I did not.

15 Q. Did you make any threats or promises to Mr. Birch to
16 select that photograph?

17 A. No I did not.

18 Q. And was this the first and only lineup you showed to
19 Mr. Birch?

20 A. Yes.

21 Q. And this lineup is in reference to the black male that
22 sold Mr. Birch crack cocaine on September 16th of 2011?

23 A. It is.

24 Q. And could you tell the Court what person Mr. Birch
25 selected out of that photo lineup?

1 A. The person Mr. Birch selected was Clayton Leevel
2 Massey, seated right over here.

3 Q. And the picture that you used for Mr. Massey, do you
4 have a date when that photo was taken?

5 A. The date that this photo was taken? Let me see if
6 it's on here.

7 No I don't. I don't see it on here.

8 Q. Let's explain to the Court, you said that you prepared
9 that lineup from a program from the Rock Hill Police
10 Department?

11 A. Yes.

12 Q. Can you explain to the Court how that program works?

13 A. The program works when you log into our system.

14 Anybody who's ever been booked into our jail at the Rock
15 Hill Police Department they are put into this system.

16 Whenever you select the name it puts the photograph of the
17 person up there and it puts all their identifying features
18 and then you select create a lineup using these same
19 features, height, weight, hair color, eye color, things
20 like that. And it brings up a line or it brings up pages
21 and pages of people that you pick and put into the lineup.
22 Then when you print it - When you print it out the order
23 that you print, put them on there, when you print it out it
24 puts it in it's own order so it doesn't go by your order or
25 anything like that. It does it's own order as far as how

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER - IN CAMERA

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1 they go in the lineup.

2 Q. So this program you - You yourself enter descriptive
3 information?

4 A. Right.

5 Q. About persons you want that look like this individual?

6 A. Yes.

7 Q. And that the program gives you a pool of photographs
8 to choose from?

9 A. That's correct

10 Q. And then once you choose the photographs you're gonna
11 use then it puts it in it's own lineup?

12 A. Yes.

13 Q. And do you remember what descriptions you used to pull
14 up others - other photos?

15 A. When - I'll say that whenever you pick the person it
16 automatically puts their identifiers in there and you hit
17 search based on their identifiers; their height and weight;
18 they're hair color and eye color. It automatically goes in
19 there.

20 Q. You didn't enter any additional - - -

21 A. I didn't enter any additional information in there no,
22 ma'am.

23 SOLICITOR WEAVER: I have no further questions, Your
24 Honor.

25 CROSS EXAMINATION - IN CAMERA

DETECTIVE JOSH WELCH: BY MS. ANDERSON - IN CAMERA

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1 DETECTIVE JOSH WELCH BY MS. ANDERSON:

2 Q. Detective, since we're kind of on the subject of the
3 lineup, I want to make sure I'm clear. When you say you
4 put the info in, in other words is it correct that what you
5 did was once you got the name Clayton Massey you put
6 Clayton Massey in the system?

7 A. Yes.

8 Q. Okay. And so the info that was pulled up was based on
9 whatever information the Rock Hill system had for Clayton
10 Massey?

11 A. That's correct.

12 Q. And when we were talking about the descriptive info I
13 think one time you said height, weight, hair color, eye
14 color. Is that the descriptive info the program is going
15 off of?

16 A. That's the descriptive info yes. The age range also
17 goes age ranges.

18 Q. Okay.

19 A. It has several different descriptors in there.

20 Q. Okay. But not like you wouldn't go in there and say
21 large forehead or square jaw or something like that. It's
22 pulling up of a name, height, weight, age, things like
23 that?

24 A. Yes.

25 Q. Okay. And you testified I think you did not know when

1 the photo was dated to or when the photo was taken.

2 A. That's what I testified to. I don't know when the
3 photo was taken.

4 Q. And I'm looking and I think it's what's Court's
5 Exhibit Three which is the list because it says - I'm
6 looking at image four and image five are both listed as a
7 1981 birth date but one says age twenty-one and one is age
8 twenty-six, so some of the photos has - are some of them
9 old or could you explain? Just out of curiosity I was
10 trying to figure out - --

11 A. Yes. The system does not automatically update their
12 age each year.

13 Q. Okay.

14 A. It won't go back in there and automatically update
15 their age. So whatever age they were at the time of arrest
16 so I guess - I mean I can go in there and look but that
17 would have been - He was what? Twenty-seven at the time of
18 the arrest it would have been a year old.

19 Q. Okay.

20 A. Is that right? Yes.

21 Q. So what it's pulling is I guess the photo's it's
22 pulling from whenever the age of the person the time the
23 photos was taken?

24 A. Yes. Yes. .

25 Q. And did Mr. Birch watch the video taken in this case

DETECTIVE JOSH WELCH: BY MS. ANDERSON - IN CAMERA

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1 at any point in time?

2 A. Did he watch this video?

3 Q. Did he watch the video?

4 A. No we never show them the video.

5 Q. Okay.

6 A. At - Yes I never showed him the video. He hadn't seen
7 it.

8 Q. Okay. And do you recall what the length of time was
9 total that you dealt with Mr. Birch? He was working as a
10 informant to some degree. Correct?

11 A. Yes.

12 Q. Okay. Do you know how long, how long a period of time
13 you dealt with him total?

14 A. How long a period of time I dealt with Mr. Birch? I
15 know I used him on probably five or six cases.

16 Q. Okay.

17 A. I mean that would just be my guess.

18 Q. Okay. I mean do you recall is it several months, a
19 year or how long he was working as an informant on cases?

20 A. I don't recall exactly how long no I don't.

21 Q. And at any point in time in dealing with Mr. Birch on
22 any of the cases he worked on were there ever any threats
23 made to him about working with the Drug Enforcement Unit?

24 A. Threats made from us?

25 Q. Yes.

1 A. No.

2 Q. The only information Mr. Birch gave you was a black
3 male and a telephone number. Correct?

4 A. That's right.

5 Q. Was that telephone number ever looked into in terms of
6 identifying who that number belonged to?

7 A. No.

8 Q. So Clayton Massey's name was not derived from any
9 search of that phone number. Right?

10 A. No.

11 Q. Okay. And the only source on the name Clayton Massey
12 was from the street crimes unit.

13 A. Yes.

14 Q. Do you recall which officer?

15 A. I really don't recall which officer. I know that was
16 my common practice if we had somebody we didn't know, call
17 the street crimes guys in and let them look at the video
18 and they normally could tell me who the person was.

19 Q. Okay.

20 MS. ANDERSON: I beg the Court's indulgence.

21 (PAUSE.)

22 MS. ANDERSON: Nothing further, Your Honor.

23 THE COURT: Redirect?

24 SOLICITOR WEAVER: No redirect, Your Honor.

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

1 DETECTIVE WELCH: Thank you, Your Honor.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: I need the exhibits.

4 MADAME COURT REPORTER: Give them to the judge.

5 DETECTIVE WELCH: Give 'em to the judge.

6 MADAME COURT REPORTER: Thank you.

7 (EXHIBITS RECEIVED UP BY THE COURT.)

8 SOLICITOR WEAVER: Your Honor, the State has no more
9 witnesses.

10 THE COURT: Any witnesses on behalf of the defense?

11 MS. ANDERSON: No, Your Honor.

12 THE COURT: What's the position of the defense?

13 MS. ANDERSON: Your Honor, the defense would just
14 point out in regards to looking at the factors the court
15 looks at in terms of a Biggers hearing or in regard to a
16 lineup, would point out the informant's testimony that
17 these encounters lasted approximately five seconds. It was
18 testimony regarding that he was not always focused
19 specifically on the face of the person he was dealing with,
20 could not recall as to day or night and so we don't have
21 the information as to the lighting of when seeing this
22 person. Did not provide, did not ever provide a name, a
23 nickname, a address, any description beyond a unknown black
24 male extensively. No extensive or specific description was
25 ever provided to the police in terms of a prior description

1 being given. The length of the time as well that this took
2 place approximately eleven days after September 16th which
3 is when the informant went out to make this buy. The
4 informant did, or Mr. Birch did, put on glasses while he
5 was on the stand to look at part of the court's Exhibits in
6 the lineup. Testified he needs glasses I think at reading
7 short range but we didn't have - we don't have the
8 specifics of the again set up of exactly how they were
9 positioned or his ability to see during these encounters.
10 He did testify he did not wear his glasses at the time I
11 believe in the lineup so, Your Honor, we would ask you to
12 take all of that into consideration in looking at the
13 factors to determine the reliability of the identification
14 and would submit that the identification by Mr. Birch of
15 Mr. Massey is not reliable under the circumstances.

16 THE COURT: Well I find by clear and convincing
17 evidence that the lineup is not unduly suggestive; that the
18 trial identification procedure utilized by the law
19 enforcement does not create a very substantial likelihood
20 or any substantial or any likelihood of irreparable
21 misidentification. I find Mr. Birch identification of Mr.
22 Massey is reliable and may be introduced in front of a jury
23 here in addition to the photo lineup identification being
24 reliable I find that Mr. Birch had during day light hours
25 though short opportunities to view the defendant face to

1 face and that his identification was to use his word to a
2 degree of quote without question quote so I'll allow the
3 identification in. And the photo lineup.

4 Anything else before we get the jury up?

5 SOLICITOR WEAVER: Nothing from the State, Your Honor.

6 MS. ANDERSON: Your Honor, if I can have just a short
7 break.

8 THE COURT: We're gonna take a short break.

9 MS. ANDERSON: Thank you, Your Honor.

10 THE COURT: And Mr. Massey will remain in custody
11 during the trial.

12 (COURT IN RECESS AT 03:19 P.M..)

13 (JURY ENTERS COURTROOM AT 03:37 P.M..)

14 (COURT BACK IN SESSION AT 03:42 P.M..)

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

16 Members of the jury panel, we're going to start our
17 second trial of the week here in this courtroom and it is
18 the case of the State versus Clayton Leevell L-e-e-v-e-l-l
19 Massey.

20 Mr. Massey, would you please stand and let the jury
21 see you. This is Mr. Massey. He is represented by Ms.
22 Anderson and Ms. Sikora.

23 (DEFENSE ATTORNEYS AND DEFENDANT STOOD.)

24 THE COURT: You may be seated.

25 The State is represented by Ms. Weaver and Mr.

1 that somebody is liable to email you back with some comment
2 that we would rather not have made. Or rather not have you
3 heard. So confine for your attention to this case to the
4 courtroom and to the participants.

5 We take breaks about every hour and a half. If you
6 need a break at any time, raise your right hand and no
7 questions asked, we'll take a break and I extend that to
8 counsel and to Mr. Massey. We want to move the case along
9 but we'll take a break if we need one.

10 If you can't see or you can't hear, cup your ear or
11 give me a voice gesture or a nudging gesture. It's not
12 fair to ask you to help resolve this matter and then not
13 give you a full opportunity to see and hear that which is
14 necessary for you to see and hear.

15 Counsel.

16 SOLICITOR WEAVER: May it please the Court.

17 Lady and Gentlemen, today we are here for the charge
18 of distribution of crack cocaine and it simply is the
19 charge that deals with persons who sell crack cocaine to
20 others. And for those of you who aren't aware, we have a
21 unit in York County and it's called the York County Multi
22 Jurisdiction Drug Enforcement Unit. And that unit is
23 comprised of several officers from the different agencies
24 in York County and what they do is they come together and
25 they work together and their investigations focus on drug

1 crimes, those crimes that involve drug activity such as
2 those persons who sell drugs like crack cocaine. And in
3 this case, one of the officers of the York County Drug
4 Enforcement Unit, and you will hear from Detective Welsh,
5 he worked with what is known as a confidential informant.
6 Some of you may have heard that term. It's a person that
7 works for law enforcement basically to work with them, they
8 could may be hook up with some device, or recording device,
9 on their person or in their vehicle; they record the other
10 man trying to purchase drugs from another individual. But
11 that's what happened in this case and you are going to hear
12 from Ron Birch. He is going to tell you that he was
13 arrested for possession of crack cocaine and Detective
14 Welch met with him, Detective Welch from the drug unit. He
15 had spoken with Mr. Birch about working with Detective
16 Welch in trying to make a purchase of crack cocaine from
17 another individual.

18 Mr. Birch gave Detective Welch the information about a
19 person that he could purchase crack cocaine from. And what
20 Birch told Investigator Welch was that I know a black male
21 that I can purchase crack cocaine from. And so what
22 Detective Welch did was on September 16th of 2011, he met
23 with Mr. Birch, he put a recording device on his person
24 that recorded audio. He put a device in his vehicle that
25 recorded audio and video and sent Mr. Birch out. They

1 searched Mr. Birch prior to the deal happening and they
2 also searched his vehicle just to make sure there's no
3 illegal drugs or anything already on Mr. Birch's person or
4 in his vehicle.

5 So they searched him and they search his vehicle,
6 provided him with a recording device and his vehicle with a
7 recording device and first they had Mr. Birch make a
8 recorded phone call to the black male that he said he could
9 purchase drugs from and they recorded that phone call. And
10 what Mr. Birch does is he asked for a forth. And Mr. Birch
11 will tell you when he takes the stand that what he meant by
12 a forty was forty dollars worth of crack cocaine and you
13 will hear that recorded phone call.

14 And after that phone call, Mr. Birch then left to go
15 near the neighborhood like they had discussed on the phone
16 call, and when he got there, the meeting had changed. When
17 he spoke with the male, he asked him to meet him at the
18 Valero gas station in Rock Hill, South Carolina and so
19 that's where the deal occurs.

20 And so Mr. Birch informed law enforcement, then drives
21 to Valero gas station and that's where he meets with a
22 black male. And it's recorded on video and you can see the
23 person that meets with him. And you can see that person is
24 the defendant Clayton Massey.

25 And while Mr. Massey is there for all of six short

1 seconds he hands the informant crack cocaine and in
2 exchange the informant Mr. Birch gives Mr. Massey the forth
3 dollars as agreed upon. Now after the deal the informant,
4 Mr. Birch, is taken back to the Rock Hill Police
5 Department. He was searched again; his car was searched
6 and he had two rocks of crack cocaine on him. And you will
7 hear from Detective Welch about what he took from the
8 informant. And also Mr. Birch no longer had the money, he
9 had given the money to Mr. Massey for selling him the crack
10 cocaine. And that's basically what this case is. It is
11 simply the sale of crack cocaine.

12 Bear in mind that under the South Carolina law, it is
13 illegal to distribute crack cocaine. You don't actually
14 have to sell it. Just giving it to someone is illegal in
15 South Carolina. But in this case what happened was the
16 sell of crack cocaine, forty dollars worth, two rocks of
17 crack cocaine, and you will see that he did it with Mr.
18 Clayton Massey. And after all the evidence comes before
19 you, the witnesses, the informant, Detective Welch, and
20 once you see the video, you will be convinced that it was
21 Mr. Massey as well, and find him guilty of distribution of
22 crack cocaine. Thank you.

23 THE COURT: Ms. Anderson.

24 MS. ANDERSON: May it please the Court.

25 Members of the jury, one of the things I used to do

1 when I was little with my dad in particular was we used to
2 put together puzzles. My dad actually cut out this sort of
3 puzzle board for me to lay it on the floor in the living
4 room in the house in the evening so we would worked on
5 puzzles. We would spread all of the pieces out and put
6 all the pieces in together. And it was only when all the
7 pieces were put in in the right place and every puzzle
8 piece filled in, that you saw what the picture was. And
9 usually we might do like a photograph of somewhere in the
10 world some interesting location, some pretty scene. That
11 was usually what the puzzles we did were.

12 And I'm talking about puzzles because I want you to
13 think about that illustration as you go through this trial
14 and as you listen to testimony in this trial today.
15 Because the burden of proof as you heard the judge
16 reference is on the State. And you will hear more about
17 the charges at the end of the trial and more about the
18 judge's instructions on the the law that you're to follow.
19 But I'll go ahead and talk to you a little bit about it is
20 that the burden of proof is on the State. And it's always
21 on the State in our criminal justice system.

22 The State has to prove their case beyond a reasonable
23 doubt. They have to prove each and every element of the
24 charge that appears in distribution of crack cocaine. Each
25 and every element of that charge has to be proven to you

1 beyond a reasonable doubt. And if they come even a
2 millimeter short of proving that, then your duty as jurors
3 is to return a verdict of not guilty. To find that the
4 State has failed to meet its burden of proof.

5 And the State has the ability to bring in the
6 witnesses they wish to do so, to call the witnesses to ask
7 the questions because it's their responsibility to present
8 to you and to bring to you the testimony and the evidence
9 that they believe will prove their case. And it's your
10 duty as jurors to hold them to that.

11 And what I will tell you is and submit to you is that
12 when there are pieces missing, when there are things that
13 the State isn't able to bring in or chooses not to bring
14 in, or there is information missing, then that's just like
15 a puzzle with missing pieces, and there isn't a full
16 picture if they are missing pieces of the puzzle. And in a
17 criminal trial then there isn't a proof beyond a reasonable
18 doubt if there are pieces that are missing.

19 And what I want you and I ask you to do is to listen
20 carefully to what you hear, but listen to the information
21 that you don't have. Listen to the information that isn't
22 presented to you and ask yourself is that a missing piece
23 from the puzzle.

24 One thing that stood out to me about the opening that
25 the solicitor just gave to you, and there is one other

1 thing I'll leave you with is she, at one point she said
2 what Mr. Birch will tell you is that what he meant was.
3 And I will tell you that the State's case in this case
4 hinges largely on this Mr. Birch who is an informant. As
5 you heard from the State, he had a pending drug charge and
6 you'll hear more about what he was doing essentially to
7 work for drug officers to try probably to get rid of that
8 charge.

9 And so think about when the judge talks to you about
10 assessing the credibility of the witness, of what this
11 informant's motive is. And then think about that motive
12 and what he has to gain and what he has to lose and think
13 about when you hear things like what he meant by that was
14 this. Because, ladies and gentlemen, I'll submit to you
15 that when you listen to the tapes that the state talked
16 about, the phone call they talked about, never in the
17 course of any of that is the words crack cocaine or cocaine
18 base used. I submit to you you won't hear that in any
19 recording, the audio recording or video recording. But
20 what the State will come in and say is well what Mr. Birch
21 meant was, what the informant meant was. I submit to you
22 that its because the State's case ultimately rests on what
23 this informant says happened, this informant who has a
24 motive for what he says happened back on September 16th.

25 Ladies and gentlemen, I ask that you look critically

1 at this case. Use as the judge says your common sense.
2 Think about it logically and think about it like a puzzle.
3 That the State has to bring in all their pieces and they
4 have to make all the pieces fit and have all the pieces
5 present. Because at the end of this case I submit to you
6 there will be pieces missing and you won't have a full
7 picture and that, ladies and gentlemen, I say amounts to
8 reasonable doubt. And that is why at the end of this trial
9 I'll ask you to find - return a verdict of not guilty
10 because the State has failed to prove their case beyond a
11 reasonable doubt. Thank you.

12 THE COURT: All right. Members of the jury panel,
13 we're going to stop for the day. Now the jury room that
14 you will be using is a different one from the one you were
15 in a few minutes ago. We had another jury in that room.
16 So the bailiff will show you where the jury room is and
17 instruct you how to get in and out while you are serving on
18 the jury panel. Have a pleasant evening and we'll see you
19 at 9:30 in the morning.

20 (JURY EXITS COURTROOM AT 04:52 P.M..)

21 THE COURT: Anything from the State before we adjourn
22 for the day?

23 SOLICITOR WEAVER: Nothing from the State, Your Honor.

24 MS. ANDERSON: Nothing from the Defense, Your Honor.

25 THE COURT: All right. Have a pleasant evening and

RONALD BIRCH: BY SOLICITOR WEAVER

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

2 MADAME CLERK: Thank you. You may have a seat right
3 up there.

4 DIRECT EXAMINATION

5 RONALD BIRCH BY SOLICITOR WEAVER:

6 Q. Mr. Birch, if you could please state your full name
7 for the record.

8 A. Ronald Dean Birch.

9 Q. And how old are you?

10 A. Fifty-four.

11 Q. And where are you employed?

12 A. I - contract employee with Duke Energy.

13 Q. And what is your job title?

14 A. Project Control Specialist.

15 Q. And sometime in the year of 2011, did you meet with
16 Detective Welch of the Rock Hill Police Department?

17 A. Yes, I did.

18 Q. And you came into contact with Detective Welch after
19 you were arrested for possession of crack cocaine?

20 A. Yes.

21 Q. And you were arrested for possession of crack cocaine
22 in August of 2011?

23 A. Yes.

24 Q. And you are a user of crack cocaine?

25 A. I was, yes.

RONALD BIRCH. BY SOLICITOR WEAVER

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1 Q. And did you speak with Detective Welch about assisting
2 him in an investigation regarding the sale of drugs?

3 A. Yes.

4 Q. And after speaking with Detective Welch, did you agree
5 to assist him in making a purchase of crack cocaine from
6 another person?

7 A. Yes, I did.

8 Q. And can you explain to the jury what you are hoping to
9 get in exchange by working with Detective Welch in this
10 investigation?

11 A. No promises specifically been made to me; said that
12 we would work to help me out as much as possible but I had
13 no specific promises.

14 Q. And is your possession of crack cocaine charge still
15 pending?

16 A. Yes.

17 Q. And do you face up to three years in jail on that
18 charge?

19 A. Yes.

20 Q. And you also pled guilty in Magistrate's court to a
21 2003 hit and run of an attended vehicle?

22 A. Yes.

23 Q. The same charge in 2009 for hit and run?

24 A. Yes.

25 Q. And did Detective Welch ever make any promises to you

1 regarding what would happen in exchange for you assisting
2 him?

3 A. No.

4 Q. And have any promises been made to you by me the
5 prosecutor in exchange for your testimony today?

6 A. No.

7 Q. And on September 16th of 2011, did you meet with
8 Detective Welch to see if you could buy crack cocaine from
9 someone?

10 A. Yes.

11 Q. And where did you meet Detective Welch?

12 A. At the Drug Enforcement Unit office in Rock Hill at
13 the City Police Department.

14 Q. And on September 16th of 2011, did you already have
15 someone in mind that you could purchase crack cocaine from?

16 A. Yes, I did.

17 Q. And what description did you give Detective Welch on
18 September 16th of 2011 about this person?

19 A. Before I made the purchase the only description I gave
20 was a black male.

21 Q. So you did not know this black male's name back on
22 September 16th of 2011?

23 A. No I did not.

24 Q. You did not know an address?

25 A. No.

RONALD BIRCH: BY SOLICITOR WEAVER

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1 Q. Approximately how many times in the past that you met
2 in person with this white male?

3 A. A minimum of ten.

4 Q. And how were you able to get in touch with this
5 person?

6 A. Phone. Cell phone.

7 Q. And when you met with Detective Welch on September
8 16th of 2011, did you make a phone call to that person?

9 A. Yes, I did.

10 Q. And was this phone call recorded?

11 A. Yes, it was.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
13 IDENTIFICATION.)

14 Q. Mr. Birch, I'm handing you what's been marked as
15 State's Exhibit Number One.

16 Do you recognize that CD?

17 A. Yes, I do.

18 Q. Can you explain to the jury what that is?

19 A. This is an audio recording of the phone call I made to
20 set up the purchase for the crack cocaine.

21 Q. And that on September 16th of 2011?

22 A. Yes.

23 Q. Made at the Rock Hill Police Department?

24 A. Yes.

25 Q. And how do you know that that's --

RONALD BIRCH: BY SOLICITOR WEAVER

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1 A. It has my initials.

2 SOLICITOR WEAVER: Your Honor, at this time I'd like
3 to enter State's Exhibit One and publish for the jury.

4 MS. ANDERSON: No objection.

5 THE COURT: In without objection.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE IDENTIFIED AND
7 MARKED RECEIVED INTO THE RECORD AND PUBLISHED TO THE JURY
8 AT 10:10 A.M..)

9 Q. Now, Mr. Birch, you first asked on that recorded phone
10 call, "you got anything good today?"

11 A. Yes.

12 Q. Can you explain to the jury what you meant by that?

13 A. That's the way I would ask if they had any crack
14 cocaine that was of good quality basically that I could
15 purchase.

16 Q. And then also on the phone call you asked for a forty.

17 Could you explain to the jury what you meant by that?

18 A. A forty to me means approximately two small rock
19 pieces of cocaine, crack cocaine.

20 Q. So the forty dollars meant two rocks of crack cocaine?

21 A. Yes.

22 Q. And after the male asked you to meet in the
23 neighborhood, you responded to near Charles. What did you
24 mean by that?

25 A. Charles is just an acquaintance that we both were

RONALD BIRCH: BY SOLICITOR WEAVER

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1 familiar with, where he lived, and we used as a reference
2 point or the area.

3 Q. Where was the area where Charles lived?

4 A. Over off of Cherry Road and Calhoun Street and I
5 think Bynum Street may be the name. I'm not sure the
6 street name.

7 Q. And so from the recorded phone call you understood the
8 deal to be you were buying forth dollars' worth of crack
9 cocaine and you were suppose to drive near Charles' place
10 and call the male at that time?

11 A. That's right.

12 Q. And can you explain to the jury why not just ask for
13 forty dollars of crack cocaine, say those specific words,
14 on the phone call.

15 A. It's just something you don't do. You don't refer to
16 the drug that you're talking about purchasing just in case
17 someone could be listening in. You just avoid it.

18 Q. And after the phone call, were you searched by law
19 enforcement?

20 A. Yes, I was.

21 Q. Do you remember who searched you?

22 A. Detective Josh Welch.

23 Q. Do you remember where he searched you?

24 A. At his office.

25 Q. And that would be the Drug Enforcement office at the

1 Rock Hill Police Department?

2 A. Yes.

3 Q. Where inside, do you remember?

4 A. In the little conference room they have there inside
5 is the - where the detective's offices are.

6 Q. Do you remember how Detective Welch searched you?

7 A. Yes. I emptied all my pockets. They went through my
8 pockets, by feeling with their hands they patted me down,
9 socks, legs. They went through my billfold. Did a
10 thorough search to make sure that I didn't have anything on
11 me.

12 Q. And were you wired with a recording device?

13 A. Yes. After that I was.

14 Q. And who fitted you with a recording device?

15 A. Detective Welch.

16 Q. And he did it that at the Rock Hill Police Department?

17 A. Yes.

18 Q. And were you given any money?

19 A. Yes. Forty dollars.

20 Q. And who gave you that money?

21 A. Detective Welch.

22 Q. And that was not your money?

23 A. No.

24 Q. Were you going to walk or drive to the location to
25 meet with this man?

RONALD BIRCH: BY SOLICITOR WEAVER

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1 A. Drive.

2 Q. And whose car did you take?

3 A. Mine.

4 Q. And was your car searched prior to you leaving the
5 Rock Hill Police Department?

6 A. Yes, it was.

7 Q. And was your car fitted with any recording devices?

8 A. Yes, it was.

9 Q. And this all happened at the Rock Hill Police
10 Department?

11 A. Yes, it did.

12 Q. And did all the audio recording start before you left
13 the Rock Hill Police Department?

14 A. Yes, it did.

15 Q. Was anyone else in the car with you when you left the
16 Rock Hill Police Department?

17 A. No.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO PREMARKED FOR
19 IDENTIFICATION.)

20 Q. Mr. Birch, I'm handing you what's been marked as
21 State's Exhibit Number Two.

22 Can you tell me what that CD is?

23 A. It's the video of - that was taken while I was driving
24 to and when I made the purchase of crack cocaine.

25 Q. So that's the video recording of all the events that

1 occurred once you were fitted with the recorded device,
2 your car was fitted with the recording device?

3 A. Yes.

4 Q. And how do you know that that's the video?

5 A. It has my initials.

6 Q. And this was the video as reported on September 16th
7 of 2011?

8 A. Yes.

9 Q. And it fairly and accurately reflects what occurred on
10 that day?

11 A. Yes.

12 SOLICITOR WEAVER: Your Honor, at this time I'd like
13 to enter State's Exhibit Two and publish for the jury.

14 MS. ANDERSON: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO IDENTIFIED AND
17 MARKED, RECEIVED INTO EVIDENCE; PUBLISHED TO THE JURY AT
18 10:16 A.M..)

19 Q. Now, Mr. Birch, can you explain to the jury who you
20 were speaking with over the phone?

21 A. Yes. I was speaking with the person I was gonna
22 purchase crack cocaine from.

23 Q. And can you explain what happened during that
24 conversation?

25 A. Yes. I was in the neighborhood we had first agreed

RONALD BIRCH: BY SOLICITOR WEAVER

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1 to meet and when I called to let him know I was in the
2 area, he told me to go to the Vanero store and meet him
3 there.

4 Q. But you called it the Vanero store?

5 A. Yeah, I did. Venero. Never sure how to pronounce that
6 one.

7 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO JURY
8 AT 10:23 A.M..)

9 Q. Now, Mr. Birch, who did you make that phone call to?

10 A. Detective Welch.

11 Q. And what were you telling him in that phone
12 conversation?

13 A. I was concerned that he may get in the - come to the
14 passenger side where we had the video aimed at the driver's
15 side so that I was - thought the purchase may be done
16 through the window and I was concerned that he may want to
17 get in the car or come to the other door and the video
18 wouldn't capture that and I was asking Detective Welch what
19 should I do.

20 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO THE
21 JURY AT 10:24 A.M..)

22 Q. Mr. Birch, do you remember who you attempted to
23 make a phone call to?

24 A. Yes. I was trying to call the seller.

25 Q. Who were you trying to call?

1 A. Trying to call the seller.

2 Q. And you're at the Valero store at this point?

3 A. Yes.

4 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO THE
5 JURY AT 10:27 A.M..)

6 Q. Mr. Birch, who were you speaking with in this phone
7 conversation?

8 A. The seller I was buying the crack from.

9 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO THE
10 JURY AT 10:29 A.M..)

11 Q. Now, Mr. Birch, right before you met with that black
12 male, why did you reach into your pocket?

13 A. To get - I had forty dollars in my shirt pocket.

14 Q. And that was the forty dollars that law enforcement
15 had given you?

16 A. Yes.

17 Q. And that forty dollars was used to purchase crack
18 cocaine?

19 A. Yes.

20 Q. And when the black male got into the vehicle, you saw
21 him put his hand to his mouth. What happened after he put
22 his hand to his mouth?

23 A. He removed the crack cocaine from his mouth and handed
24 it to me and I handed him the money.

25 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO THE

RONALD BIRCH: BY SOLICITOR WEAVER

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1 JURY AT 10:33 P.M..)

2 Q. Now, Mr. Birch, who did you make that phone call to?

3 A. Detective Welch.

4 (STATE'S EXHIBIT TWO CONTINUED TO BE PUBLISHED TO THE
5 JURY AT 10:35 A.M..)

6 Q. And, Mr. Birch, you returned to the Rock Hill Police
7 Department?

8 A. Yes, ma'am.

9 Q. And at the Rock Hill Police Department who did you
10 meet back with?

11 A. Detective Welch and some other detectives.

12 Q. And you had just received two rocks of what appeared
13 to be crack cocaine from the black male?

14 A. Yes.

15 Q. And who did you hand those rock of what appeared to be
16 crack cocaine to?

17 A. Detective Welch.

18 Q. And after handing that to Detective Welch, were you
19 searched?

20 A. Yes.

21 Q. And who searched you?

22 A. Detective Welch.

23 Q. And was it in the same manner as you were searched
24 before the buy?

25 A. Yes.

1 Q. So they searched your pockets?

2 A. Yes.

3 Q. They did a thorough search?

4 A. Yes.

5 Q. And where was the search conducted?

6 A. In the same conference room as before.

7 Q. And was your car searched again after the deal?

8 A. Yes, it was.

9 Q. And you were also fitted with a device that recorded
10 the audio of the same transaction?

11 A. That's right, yes.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE PREMARKED
13 FOR IDENTIFICATION.)

14 Q. Mr. Birch, I'm showing you what has been marked as
15 State's Exhibit Number Three

16 Do you recognize that CD?

17 A. Yes, I do.

18 Q. And was that the CD that contains only the audio
19 portion of this same transaction?

20 A. Yes, it is.

21 Q. It recorded the events as they occurred on
22 September 16th of 2011?

23 A. Yes.

24 Q. And how do you recognize that CD?

25 A. By my initials.

RONALD BIRCH: BY SOLICITOR WEAVER

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1 SOLICITOR WEAVER: At this time, Your Honor, the State
2 would like to move into evidence State's Exhibit Three.

3 MS. ANDERSON: No objection.

4 THE COURT: In without objection.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE.)

7 Q. Now, Mr. Birch, after you, after the deal and you've
8 arrived back at the Rock Hill Police Department, you handed
9 what appeared to be crack cocaine to Detective Welch. You
10 were searched, your car was searched. Do you remember if
11 Detective Welch showed you the video after the deal was
12 over with?

13 A. No, he did not. I don't believe he did. I really
14 don't recall.

15 Q. And after September 16th of 2011, the day of this drug
16 deal, do you remember meeting with Detective Welch some
17 days after that?

18 A. Yes.

19 Q. And where did you meet him at?

20 A. Same location, his office at Rock Hill Police
21 Department.

22 Q. And do you remember giving a statement to Detective
23 Welch regarding the events of September 16th of 2011?

24 A. Yes.

25 Q. And on this date did Detective Welch also ask you to

1 see a series of photographs?

2 A. Yes, he did.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER FOUR PREMARKED FOR
4 IDENTIFICATION.)

5 Q. Mr. Birch, I'm showing you what has been marked as
6 State's Exhibit Number Four.

7 Do you recognize that item?

8 A. Yes, I do.

9 Q. Is that the series of photographs that Detective Welch
10 showed you after this drug deal?

11 A. Yes.

12 Q. Do you remember what, if anything, Detective Welch
13 said to you before showing you those photographs?

14 A. He asked me if the individual I purchased what I
15 believed to be crack was in this series of photos.

16 Q. And where inside the Drug Enforcement Unit offices at
17 the Rock Hill Police Department did he show you those
18 series of photographs?

19 A. In the conference room.

20 Q. Was anyone else present in the conference room?

21 A. Just Detective Welch.

22 Q. And were you able to select a photograph ---

23 A. Yes.

24 Q. --- of the person that sold you crack cocaine on
25 September 16th of 2011?

RONALD BIRCH: BY SOLICITOR WEAVER

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1 A. Yes, I was.

2 Q. And how do you know that you were able to select a
3 photo out of those series of photographs?

4 A. I circled it and initialed it.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE PREMARKED FOR
6 IDENTIFICATION.)

7 Q. I'm showing you what's been marked as State's Exhibit
8 Number Five.

9 Do you recognize that form?

10 A. Yes, I do.

11 Q. And when were you showed that form?

12 A. Before I did the lineup or either just after. I'm not
13 sure which came first but I believe it was before.

14 Q. But it was on the same day that you viewed those
15 series of photographs?

16 A. Yes.

17 Q. And who showed you that form?

18 A. Detective Welch.

19 Q. And is your signature on that form?

20 A. Yes.

21 SOLICITOR WEAVER: Your Honor, at this time the State
22 would like to enter State's Exhibits Four and Five.

23 MS. ANDERSON: Your Honor, I renew my previous
24 arguments and motions pretrial.

25 THE COURT: Based on earlier rulings they are in over

1 objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER FOUR AND FIVE,
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 Q. And, Mr. Birch, could you please read State's Exhibit
5 Five for the jury.

6 A. "I have freely and voluntarily, without threats or
7 promises, viewed a photographic lineup as shown by the
8 officer listed below. The officer in no way suggested any
9 particular photograph. I am positive without a doubt that
10 the person I picked is the responsible party."

11 I have initialed the attached photograph and it has my
12 signature and Office Welch's.

13 Q. How sure were you about that choice that you made?

14 A. One hundred percent sure.

15 Q. And do you see that person in the court room today
16 that sold you crack cocaine on September 16th of 2011?

17 A. Yes.

18 Q. And can you point him out for the jury?

19 A. Yes. Sitting over there.

20 Q. What shirt is he wearing?

21 A. Brownish color checked shirt.

22 SOLICITOR WEAVER: Your Honor, I would like the record
23 to reflect that Mr. Birch selected Clayton Massey as the
24 person who sold him crack cocaine on September 16th of
25 2011.

RONALD BIRCH: BY MS. ANDERSON

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1 (WITNESS INDICATED TO DEFENDANT, CLAYTON MASSEY.)

2 SOLICITOR WEAVER: I have no further questions, Your
3 Honor.

4 THE COURT: Why don't we take about a ten-minute
5 refresher break before we do cross examination.

6 (JURY EXITS COURTROOM AT 10:47 A.M..)

7 (COURT BACK IN SESSION AT 11:00 A.M..)

8 THE COURT: Thank you. Take your seats.

9 Bring in Mr. Massey.

10 (DEFENDANT, CLAYTON MASSEY RETURNS TO THE COURTROOM.)

11 (JURY RETURNS TO COURTROOM AT 11:02 A.M..)

12 THE COURT: You may proceed.

13 MS. ANDERSON: Thank you, Your Honor.

14 CROSS EXAMINATION

15 RONALD BIRCH BY MS. ANDERSON:

16 Q. Mr. Birch, you testified that when you went and drove
17 out on September 16th, you did not know who the person was
18 that you called on that day?

19 A. I do not know his name.

20 Q. Okay. So in other words, you didn't know a first
21 name?

22 A. No.

23 Q. And you did not know a last name either. Correct?

24 A. No.

25 Q. Okay. And you didn't even know a nickname as well.

1 Didn't have a nickname?

2 A. No.

3 Q. And you didn't have an address either. Correct?

4 A. An area but not an address.

5 Q. Okay. And the one thing that you did have that you
6 did tell Detective Welch, that was a phone number; is that
7 correct?

8 A. Yes.

9 Q. And is it correct that was the phone number
10 [REDACTED]? Does that sound right?

11 A. I believe that's correct but it's in my statement that
12 I did September 11th.

13 Q. Okay. But if that's the phone number ---

14 A. September 16th.

15 Q. --- in your statement, that would have been the phone
16 number you gave Detective Welch back then?

17 A. Yes.

18 Q. And when you went to the Valero on September 16th,
19 this individual that drove up and got into the car, he
20 drove up in a vehicle. Correct?

21 A. Yes.

22 Q. And you heard the phone call that the State asked you
23 about and that was submitted into evidence. That was -
24 Let's see, that's State's Exhibit One I believe if that's
25 correct. State's Exhibit One. And from hearing that video

RONALD BIRCH: BY MS. ANDERSON

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1 and I think the State asked you about, it's correct that
2 there's no reference or mention of the words crack or crack
3 cocaine or cocaine based on that phone call. Correct?

4 A. That's right.

5 Q. And I think your testimony was when the State asked
6 you about a forty that you testified that was what you
7 understood that to be. Correct?

8 A. Yes.

9 Q. And of course you can't speak as to what the other
10 person at the time was thinking logically. Right?

11 A. I can't read minds no.

12 Q. And when you were at the Rock Hill Police Department
13 you testified about them putting a video in your vehicle.
14 Correct?

15 A. Yes.

16 Q. And there was only one video camera placed in your
17 vehicle. Right?

18 A. Yes. There was one that recorded that video that we
19 watched.

20 Q. Maybe I'm being - One camera in other words? I think I
21 said video. But one camera placed. I think it was in the
22 passenger side door; is that correct?

23 A. That's correct. I don't know what all they placed in
24 my car.

25 Q. Okay.

1 A. I know that one camera was there in the door.

2 Q. Okay. I'll ask one of the officers. I'd don't want
3 to ask you something that you don't have the knowledge of.

4 And this entire encounter that we saw in terms of the
5 person getting in the car, that was approximately a matter
6 of seconds, right, maybe about five seconds or so; is that
7 correct?

8 A. Yes.

9 Q. And the police - Let me rephrase that. When you left
10 the Valero, you drove to the police station that day.
11 Correct?

12 A. That's correct.

13 Q. In other words, the police did not come in on scene at
14 the Valero and arrest the both of you?

15 A. No.

16 Q. Okay. And so you were at the Rock Hill Police
17 Department again on September 16th. Correct?

18 A. Yes.

19 Q. And I think that's when you testified that they
20 searched you at that point?

21 A. Yes.

22 Q. Okay.

23 A. They searched me for the second time.

24 Q. For the second time. And these rocks that you said
25 you gave Detective Welch, where had those been in the car?

RONALD BIRCH: BY MS. ANDERSON

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1 A. I don't recall if I kept them in my hand or set them
2 in the little compartment on the door handle. I don't
3 recall.

4 Q. Okay. And the State asked you about a statement you
5 gave to Detective Welch and that statement was not given on
6 September 16th. Correct?

7 A. That's correct.

8 Q. Do you recall it was about September 27th or about ten
9 or eleven days later; is that correct?

10 A. Yes.

11 Q. And that was the day, the same time that you came in
12 and looked at the pictures that the State asked you about;
13 is that correct?

14 A. That's correct.

15 Q. Now, Mr. Birch, the State asked you a little bit about
16 your prior record.

17 A. Yes.

18 Q. And you said that you have a hit and run conviction
19 from 2003. Correct?

20 A. Yes.

21 Q. And that's from Greenville County. Right?

22 A. Yes.

23 Q. Okay. And what hit and run essentially is a charge of
24 that there was some sort of - you were involved in some
25 sort of traffic accident and instead of staying on the

1 scene, you left the scene. Correct?

2 A. Yes.

3 Q. Okay. That's what the hit and run is basically.

4 Correct?

5 A. Yes, in this particular case I did leave my
6 information and the police called me later and said if I
7 would come in they would not arrest me. So that's how they
8 knew to contact me so quickly.

9 Q. But you were convicted of that in 2003. Right?

10 A. Yeah. I paid a fine.

11 Q. And then again in 2009 you were convicted of a hit and
12 run again. Correct?

13 A. Yes.

14 Q. And that was in York County this time?

15 A. Yes.

16 Q. And the reason that you were working with the Drug
17 Enforcement Unit on September 16th is that you had a
18 pending drug charge. Right?

19 A. Yes.

20 Q. So you had been arrested for possession of crack
21 cocaine?

22 A. Yes.

23 Q. Okay. And back at the time that you were arrested for
24 that, you had been purchasing crack cocaine. Correct?

25 A. Yes.

RONALD BIRCH: BY MS. ANDERSON

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- 1 Q. And you had been using crack cocaine?
- 2 A. Yes.
- 3 Q. And you're an educated man.
- 4 A. Yes.
- 5 Q. You have a graduate degree, I believe. Correct?
- 6 A. Yes.
- 7 Q. You have a good job?
- 8 A. Yes.
- 9 Q. I imagine you make a good salary at your job?
- 10 A. Fairly.
- 11 Q. And you stand to lose a lot in other words if you were
- 12 to lose your job. Correct?
- 13 A. Yes.
- 14 Q. And a drug charge or a drug conviction would certainly
- 15 probably get you fired or could get you fired, let's put it
- 16 that way.
- 17 A. This was a misdemeanor and I would not jeopardize
- 18 perjury on top of that to make the situation worse.
- 19 Q. But a drug conviction could certainly hurt you?
- 20 A. It could certainly. Yes.
- 21 Q. Okay. And so what happened you got arrested as you
- 22 talked with the drug enforcement with Detective Welch and
- 23 you agreed essentially to work for them to get some
- 24 benefit. Right?
- 25 A. I agreed to work with them - yes.

RONALD BIRCH: BY MS. ANDERSON
BY SOLICITOR WEAVER

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1 Q. And now you testified that they didn't make you any
2 specific promises. Right?

3 A. That's right.

4 Q. Okay. But what you're certainly hoping is to come out
5 of this without a conviction. Right?

6 A. That would be my hope, yes.

7 Q. Okay.

8 MS. ANDERSON: I beg the court's indulgence.

9 (PAUSE.)

10 MS. ANDERSON: Nothing further, Your Honor.

11 SOLICITOR WEAVER: Just a few questions, Your Honor.

12 REDIRECT EXAMINATION

13 RONALD BIRCH BY SOLICITOR WEAVER:

14 Q. Mr. Birch, you stated to defense counsel that Mr.
15 Massey drove up in a vehicle to the drug deal?

16 A. Yes.

17 Q. Do you remember what type of vehicle that was?

18 A. It was a Crown Victoria, I believe, blue.

19 SOLICITOR WEAVER: No further questions, Your Honor.

20 THE COURT: Ms. Anderson.

21 MS. ANDERSON: Nothing further, Your Honor.

22 THE COURT: You can step down and be excused. We
23 appreciate your time.

24 (WITNESS LEAVING WITNESS STAND.)

25 THE COURT: Call your next witness.

OFFICER HUGH HARRELSON: BY SOLICITOR WEAVER

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1 SOLICITOR WEAVER: Your Honor, the State calls Officer
2 Hugh Harrelson.

3 (WHEREUPON: HUGH HARRELSON,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 DIRECT EXAMINATION

6 OFFICER HUGH HARRELSON BY SOLICITOR WEAVER:

7 Q. Officer Harrelson, if you could please state your full
8 name for the record.

9 A. Hugh Leland Harrelson Junior.

10 Q. And Officer Harrelson, do you work with the Drug
11 Enforcement Unit?

12 A. I do.

13 Q. And you are a police officer?

14 A. Correct.

15 Q. How long have you been a police officer?

16 A. Approximately five years.

17 Q. And what agency are you currently employed with?

18 A. I work for the city of Rock Hill.

19 Q. And how long have you worked for the city of Rock
20 Hill?

21 A. Five years.

22 Q. And in 2011, you were assigned to the Drug Enforcement
23 Unit?

24 A. Correct.

25 Q. And how long have you been a part of the Drug

1 Enforcement Unit?

2 A. Approximately two and a half years.

3 Q. And on September 16th of 2011 do you remember
4 assisting Detective Welch with a drug investigation?

5 A. Yes, I did.

6 Q. And as a part of that investigation, was it your job
7 to search the informant's vehicle?

8 A. Yes, it was.

9 Q. And can you explain to the jury what process you used
10 to search the informant's vehicle?

11 A. Yes. Any time we use a confidential informant we have
12 an officer go out, it may be one or two of us, it just
13 depends on how many we have, and we search the vehicle
14 before and after and we go out and search the vehicle. We
15 search the inside of the compartment. We look in the glove
16 box. We look in the center console. Up underneath the
17 seat. We kind of search all over the vehicle to make sure
18 they don't have any drugs in the vehicle, to make sure they
19 don't have any weapons.

20 And we also will search the trunk as well. And then
21 after the deal when they come back to the office, we
22 research the vehicle again to make sure they didn't leave
23 any evidence in there; to make sure they didn't get
24 something they weren't suppose to, or if they are just
25 trying to hide something from us and we go back and look in

OFFICER HUGH HARRELSON: BY SOLICITOR WEAVER

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1 the same exact spots.

2 We pull up the floor mats and look under there. We
3 make sure we look up underneath the seat and the crevasses.
4 We really, you know search the vehicle thoroughly. It's a
5 practice that we do before and after any type of deal where
6 we work with a confidential informant.

7 Q. Did any other officer assist you in searching the
8 CI vehicle?

9 A. Yes. There was another officer with me, Officer
10 Gander assisted me in searching the vehicle.

11 Q. And is she also assigned to the Drug Enforcement Unit?

12 A. Yes, she is.

13 Q. And she's a police officer?

14 A. Yes, she is.

15 Q. And you stated that you searched the informant's
16 vehicle both before and after the drug transaction?

17 A. That is correct. Myself and Officer Gander did
18 together.

19 Q. And the procedure that you explained to the jury, that
20 was the procedure you used to search both before and after
21 the drug transaction?

22 A. Yes.

23 SOLICITOR WEAVER: I have no further questions for
24 this witness, Your Honor.

25 CROSS EXAMINATION

OFFICER HUGH HARRELSON: BY MS. ANDERSON
DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER

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1 OFFICER HUGH HARRELSON BY MS. ANDERSON

2 Q. Officer Harrelson, neither of these searches was
3 videotaped on September 16th. Correct?

4 A. That is correct. We did not videotape it.

5 MS. ANDERSON: Nothing further, Your Honor.

6 THE COURT: You may step down and be excused. We
7 appreciate your time.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR WEAVER: Your Honor, the State calls
11 Detective Welch to the stand.

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

14 DIRECT EXAMINATION

15 DETECTIVE JOSH WELCH BY SOLICITOR WEAVER:

16 Q. Detective Welch, if you could please state your full
17 name for the record?

18 A. Josh Welch.

19 Q. And you are a police officer?

20 A. I am.

21 Q. And how long have you been a police officer?

22 A. For seventeen years.

23 Q. And where are you currently employed?

24 A. With the Rock Hill City Police Department.

25 Q. And what are your current duties?

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER

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1 A. My current duties is as a detective. I'm assigned to
2 the detective division at the Rock Hill Police Department.

3 Q. And previous to being a detective with the Rock Hill
4 Police Department, were you assigned to the Drug
5 Enforcement Unit?

6 A. Yes, I was.

7 Q. And can you explain to the jury what the York County
8 Drug Enforcement Unit is?

9 A. The York County Drug Enforcement Unit is made up of
10 officers from every agency in the County. We have Clover,
11 York, Tega Cay, Fort Mill, Winthrop, Rock Hill and the
12 sheriff's office all have someone assigned to the York
13 County Drug Enforcement Unit. And basically what it is,
14 it's a way to jointly work investigations whereas before
15 you would have Rock Hill trying to work an investigation
16 which would take them into the county or over to York city
17 and they would have to cross those lines and get other
18 people involved and stuff like that whereas the York County
19 Multi Jurisdictional, you have jurisdiction throughout the
20 county.

21 So say I set up a drug deal in Rock Hill and the guy
22 says meet me over in York, hey we can do that. We can go
23 to York and do the deal because we have that multi
24 jurisdiction. It helps York County as a whole to fight the
25 war on drugs.

1 Q. And how long were you assigned to this unit?

2 A. I was assigned to the York County Drug Enforcement
3 Unit for seven years.

4 Q. And how many of those years you were on the Drug
5 Enforcement Unit did you work with confidential informants?

6 A. All seven.

7 Q. And can you explain to the jury what the purpose is of
8 using a confidential informant?

9 A. The purpose of using a confidential informant me - I
10 couldn't go to a neighborhood and get somebody to sell me
11 crack cocaine. They would pick up on it, they would know
12 me. I don't know the street lingo. They haven't seen me
13 before. So the purpose of using a confidential informant
14 is you have a person at this level and you try to reach the
15 next level and the way to do that is you have to use those
16 people who are already established in that area who already
17 know these people who are dealing drugs to take down the
18 dealers and try to work your way up the chain. And that's
19 the main goal.

20 Q. And during your seven years in the Drug Enforcement
21 Unit, approximately how many of those years have the unit
22 used recording devices such as video recording?

23 A. As far as video recording, probably the last three,
24 four years.

25 Q. And sometime in August or September of 2011, you met

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER

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1 with Mr. Birch?

2 A. Yes.

3 Q. And can you explain why you came into contact with Mr.
4 Birch?

5 A. I came into contact with Mr. Birch because he had been
6 charged with possession of crack cocaine and that's how I
7 came in contact with him.

8 Q. And did you discuss with him about working as a
9 confidential informant?

10 A. Yes, I did.

11 Q. And after meeting with Mr. Birch, was he able to give
12 you information about a person that he could buy crack
13 cocaine from?

14 A. Yes he was.

15 Q. And what description if any did he give you of that
16 person?

17 A. He told me that he had a guy over in the Boyd Hill
18 area, a black male, and that he had his phone number that
19 he could buy crack from.

20 Q. He did not know his name?

21 A. He didn't know a name.

22 Q. And on September 16th of 2011, did you meet with Mr.
23 Birch to set up this crack cocaine deal?

24 A. Yes, I did.

25 Q. Where did you meet with Mr. Birch to prepare for this

1 deal?

2 A. It's at the Rock Hill Police Department but it's the
3 York County Drug Enforcement Unit has an office inside the
4 Rock Hill Police Department.

5 Q. And how was Mr. Birch able to get in touch with this
6 person to set up this crack cocaine deal?

7 A. Cell phone. Had a cell phone number.

8 Q. And did Mr. Birch make a phone call to that person on
9 September 16th?

10 A. Yes, he did.

11 Q. And that phone call was recorded?

12 A. Yes, it was.

13 Q. And that's the phone call that you heard earlier?

14 A. That's correct.

15 Q. And were you the officer that recorded that phone
16 call?

17 A. Yes, I was.

18 Q. And during the time of the phone call on September
19 16th, were you able to listen to both what Mr. Birch and
20 the male were saying during the phone call?

21 A. Yes. When we record phone call we are able to listen
22 in also as the phone call is being made.

23 Q. And can you explain to the jury some of the ways that
24 you prepared Mr. Birch prior to going out to do this drug
25 deal?

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1 A. You always search the informant before the deal and
2 that's to make sure they don't have any kind of weapons,
3 drugs, anything hidden on them. Any kind of contraband on
4 them. Once you search them, you know, you search their
5 pockets. You search all their clothing. Make sure there
6 is nothing on them anywhere. Take off their socks, their
7 shoes. You check everything.

8 Once you do that, then you place a body wire on them
9 to monitor the transaction and so you can monitor - we can
10 monitor it and if, you know, something that we don't like
11 is happening, we can call and try to intercede. Anyway, to
12 maintain the integrity of the case. We place the body wire
13 on. We also place a digital recorder on them to pick up
14 the audio and record it.

15 And give them money. We make copies of the money that
16 we give them. We make copies and give them the money to
17 purchase the drugs with.

18 Q. So Mr. Birch was searched prior to going out on this
19 drug transaction?

20 A. Yes, he was.

21 Q. He was searched by you?

22 A. Yes, he was.

23 Q. And that was at the Rock Hill Police Department?

24 A. That's right.

25 Q. And you conducted a thorough search of Mr. Birch prior

1 to the drug transaction?

2 A. Yes, I did.

3 Q. And did you locate any illegal drugs on his person?

4 A. No, I did not.

5 Q. Did you locate any thing like weapons that would have
6 interfered with this investigation?

7 A. No, I did not.

8 Q. And Mr. Birch's car was searched prior to the drug
9 transaction?

10 A. Yes, it was.

11 Q. And you talked about using recording devices.

12 A. Yes.

13 Q. Can you explain the particular recording devices that
14 you used or attempted to use in this case?

15 A. Okay. We had the body wire which we put on them.
16 That's so we can monitor. And then we had the digital
17 recorder that we put in their pocket. That's the voice
18 recording that you heard and then we placed - had two
19 cameras in the car. Had one at the passenger door and one
20 at the driver's side on the CD case, a small camera there
21 pointing out the driver window and I believe that's all we
22 used in this case.

23 Q. So you had two video cameras in this case?

24 A. Yes, we did.

25 Q. One on the side door?

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1 A. Yes.

2 Q. And that's the video that we watched in court today?

3 A. That's it.

4 Q. And the other video was placed in the CD visor?

5 A. That's right.

6 Q. Was that towards the driver's side?

7 A. Uh-huh.

8 Q. And is that what we saw you in the video?

9 A. Trying - messing with up there by the CD case.

10 Q. And what happened to that video recording?

11 A. It didn't work that day.

12 Q. So there was no recording whatsoever from that camera?

13 A. No. That was a new camera system that we had just
14 gotten and we were working with it trying to see if we
15 could get it to work and it did not work that day.

16 Q. And you said that there was an audio recorder placed
17 on Mr. Birch's person?

18 A. That's right.

19 Q. And that recorded only audio?

20 A. Yes.

21 Q. And were you able to listen to that audio throughout
22 the transaction?

23 A. Yes.

24 Q. And did you follow Mr. Birch after he left the Rock
25 Hill Police Department?

1 A. Yes, we did. We always follow our confidential
2 informant wherever they go just for safety and to maintain
3 the integrity of the case.

4 Q. So you couldn't see the transaction on video but you
5 were listening over audio?

6 A. Exactly. Yes.

7 Q. And you also maintained contact with Mr. Birch
8 throughout the drug transaction?

9 A. Yes.

10 Q. In fact he called you a few times.

11 A. He did.

12 Q. And you said that he stated that prior to the drug
13 transaction you gave Mr. Birch money to purchase the crack
14 cocaine?

15 A. Yes, I did.

16 Q. How much money did you give him?

17 A. I gave him forty dollars.

18 Q. And that is - Is that police funds?

19 A. Yes. That's government funds, police funds.

20 Q. And at some point after Mr. Birch left the Rock Hill
21 Police Department he made a phone call to you and where did
22 you go after he made that phone call?

23 A. After he made the phone call, he was originally going
24 to the Boyd Hill area, and he made a phone call and telling
25 me that he wanted to meet at the Valero station.

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1 Q. And where is the Valero station located?

2 A. The Valero station is located there at the end of
3 Cherry Road, South Cherry Road and Heckle Boulevard. You
4 have two gas stations on each corner. You've got the
5 Valero and then the one we call the chicken store. I'm not
6 sure the name of it. The convenient store there. The Spot
7 Food Store. I'm sorry. Spot Food and Valero, and we were
8 meeting at the Valero station.

9 Q. And what city is that located in?

10 A. It's located within the Rock Hill city limits.

11 Q. And what county is that located in?

12 A. County of York.

13 Q. And so it's located in Rock Hill, County of York,
14 South Carolina?

15 A. That's correct.

16 Q. And did you reach the Valero station before the drug
17 transaction occurred?

18 A. I did.

19 Q. And were you able to confirm what Mr. Birch testified
20 to as what vehicle drove up to do the transaction?

21 A. Yes, I was.

22 Q. And what vehicle drove up?

23 A. It was a blue Ford, Crown Vic.

24 Q. And did you see anyone step out of that vehicle?

25 A. Yes.

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1 Q. And can you describe to the jury who you saw step out
2 of that vehicle?

3 A. I saw a black male step out of the vehicle and get
4 into the car wearing a ball cap. The one we saw on the
5 video.

6 Q. And after the drug transaction, what happened?

7 A. After the drug transaction, we followed the
8 confidential informant back to the Rock Hill Police
9 Department. And when I say follow, we're not nose to tail
10 on them because of course that would give us away. We're
11 following at a distance where we can still observe them and
12 see them but we follow them back to the police officer and
13 back to the back parking lot and met with the informant
14 there.

15 Q. And when you met with Mr. Birch back at the Rock Hill
16 Police Department, did he hand you anything?

17 A. He did.

18 Q. What did he hand you?

19 A. He handed me two small plastic baggies that had what
20 appeared to be crack cocaine in them.

21 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT PREMARKED
22 FOR IDENTIFICATION.)

23 Q. Detective Welch, I'm showing you what's been marked as
24 State's Exhibit Number Eight.

25 Do you recognize that item?

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1 A. Yes, I do.

2 Q. How are you able to recognize that item?

3 A. This is an evidence bag. The inside bag is an
4 evidence bag that we always use and inside that evidence
5 bag is a smaller plastic bag which is also our bag and it's
6 got the two small corner baggies of crack cocaine, what
7 appeared to be crack cocaine at the time. Two smaller
8 baggies in there and we marked it with DEU on that small
9 bag letting them know that that's our bag and it goes
10 inside this bigger bag. And then we fill out the front,
11 case number, and sign it and where it was dropped at and
12 the date and time that it was dropped. And before we do
13 that, excuse me, we seal up that bag and we initial and
14 date that it was - or initial and date the date that it was
15 actually sealed up.

16 Q. So on September 16th of 2011, Mr. Birch handed you
17 what appeared to be two rocks of crack cocaine?

18 A. That's correct.

19 Q. And so what you do is place them in an evidence bag?

20 A. Yes, I did.

21 Q. And that's the evidence bag that you're holding,
22 State's Exhibit Eight?

23 A. Yes, it is.

24 Q. And how can you tell that that is the evidence bag?

25 A. Because it has my name and the date and time that I

1 dropped it.

2 Q. So it has my handwriting on it?

3 A. It has my handwriting on it yes.

4 Q. And you received ed that on September 16th of 2011?

5 A. Yes.

6 Q. And you placed the two rocks of crack cocaine inside
7 the evidence bag?

8 A. Uh-huh.

9 Q. And you sealed it.

10 A. Yes.

11 THE COURT: You have to say yes or no.

12 A. I'm sorry, sir.

13 Yes.

14 Q. And after you sealed it, did you fill out that - you
15 fill out the information and then sealed it?

16 A. Yes.

17 Q. And after you sealed the two rocks of crack cocaine in
18 that evidence bag, what did you do with it?

19 A. We have a secure locker inside the DEU office at the
20 Rock Hill Police Department that only the York County
21 evidence people have access to. We drop it into that drop
22 locker.

23 Q. Okay. And this secure evidence locker at the Rock
24 Hill Police Department, once you drop evidence into that
25 locker who has access to it?

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1 A. Only the York County Sheriff's office evidence
2 personnel has access to that locker.

3 Q. So all evidence that comes into the York County Drug
4 Enforcement Unit goes to the York County Sheriff's
5 Department?

6 A. That's correct.

7 Q. So after you dropped that sealed evidence bag into
8 that locker you did not access that locker at that time?

9 A. No, you cannot.

10 Q. And after receiving that crack cocaine from Mr. Birch,
11 did you search him after the drug transaction?

12 A. Yes, I did.

13 Q. Did you find any illegal drugs on his person?

14 A. I did not.

15 Q. Anything else that would make you concerned about the
16 investigation?

17 A. No.

18 Q. Was his car searched following the drug transaction?

19 A. Yes, it was.

20 Q. And at some point after securing the crack cocaine and
21 searching Mr. Birch, were you able to watch the video?

22 A. Yes, I was.

23 Q. And when you watched the video were you able to
24 determine who the black male was in the video?

25 A. At that time I was not able to determine who it was.

1 Q. And after some investigation were you able to
2 determine the identity of the black male?

3 A. Yes. A few days later after through further
4 investigation I was able to determine who it was.

5 Q. And after determining that identity, did you set up a
6 series of photographs to show Mr. Birch?

7 A. Yes, I did.

8 Q. And where did you have Mr. Birch review these series
9 of photographs?

10 A. At the Rock Hill Police Department in the Drug
11 Enforcement Unit office.

12 Q. And State's Exhibit Four, is that the series of
13 photographs you showed Mr. Birch?

14 A. That is it.

15 Q. And can you explain to the jury what date you showed
16 those series of photographs to Mr. Birch?

17 A. On September the 27th at 5:40 p.m., is when I showed
18 it to him.

19 Q. So that was eleven days after the incident date of
20 September 16th of 2011?

21 A. Yes. It was eleven days after.

22 Q. And who else was present when you showed those
23 photographs to Mr. Birch?

24 A. To my knowledge, it was just myself and Mr. Birch.

25 Q. And where did you show him the lineup?

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1 A. In the Drug Enforcement Unit office at the Rock Hill
2 Police Department.

3 Q. And what if anything did you say to Mr. Birch prior to
4 showing him those series of photographs?

5 A. Anytime I show a photo line up to anyone, I always
6 tell them the person that sold you the crack cocaine, or
7 the person who sold you the whatever, may or may not be in
8 this photo lineup. I want you to look at it and see if
9 they are. Then I place it in front of them and I step back
10 and let them look at it. And when they point to it, I ask
11 them, are you sure that's him and they tell me yes and I
12 ask them to go ahead and circle and initial the person that
13 they picked out.

14 Once they do that, then I hand them this form that
15 says "I have freely and involuntarily without threats or
16 promises viewed the photographic lineup as shown by the
17 officer listed below. The officer in no way suggested any
18 particular photograph. I am positive without a doubt the
19 person I picked is the responsible party."

20 I have initialed the attached photograph. And then
21 I have them to sign that, sign and print their name and
22 then I sign and print my name and then the case number,
23 date and time.

24 Q. And Detective, did you show the video to Mr. Birch
25 prior to showing him this lineup?

1 A. No. I never show videos to confidential informants.

2 Q. And did Mr. Birch select a photo out of that lineup?

3 A. Yes, he did.

4 Q. And how do you know that?

5 A. Because it's got where he circled it and initialed.

6 Q. And did you say or do anything to influence Mr. Birch
7 or suggest to him to select a person out of that photo
8 lineup?

9 A. Of course not.

10 Q. And whose photograph did Mr. Birch select?

11 A. He selected Clayton Massey.

12 Q. And following this identification, did you seek an
13 arrest warrant for Clayton Massey?

14 A. Yes, I did.

15 Q. Do you remember what day that Mr. Massey was arrested?

16 A. Mr. Massey was arrested on October the 21st, 2011.

17 Q. So this was a little after a month after the incident?

18 A. Yes.

19 Q. And can you explain why Mr. Massey was not arrested
20 for one month?

21 A. Yes. Any time you are conducting a drug investigation
22 and using a confidential informant you want to try to do as
23 many cases as you can with them before you start arresting
24 people because once you arrest somebody then they find out
25 who the confidential informant is, then any other cases you

DETECTIVE JOSH WELCH: BY SOLICITOR WEAVER
BY MS. ANDERSON

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1 might have are shot.

2 Q. And, Detective Welch, going back to State's Exhibit
3 Eight, the evidence bag.

4 A. Yes.

5 Q. What date does it say that you placed that evidence
6 bag into the drug locker?

7 A. On September the 16th, 2011, at six o'clock in the
8 evening.

9 Q. And do you remember approximately what time you
10 received that from Mr. Birch?

11 A. Yes. I received it at 3:36 p.m.

12 SOLICITOR WEAVER: No further questions, Your Honor.

13 CROSS EXAMINATION

14 DETECTIVE JOSH WELCH BY MS. ANDERSON:

15 Q. Detective Welch, - Excuse me, I hope I can get through
16 this without coughing too much - the main information you
17 had about this individual from the informant was a phone
18 number. Right?

19 A. That's correct.

20 Q. And that was phone number of [REDACTED] or [REDACTED]-
21 [REDACTED]?

22 A. That's correct.

23 Q. And no cell phone with that phone number was recovered
24 from Mr. Massey. Correct?

25 A. No.

1 Q. And there is nothing in this case or in the course of
2 your investigation of any phone records linking him to that
3 phone number. Right?

4 A. No.

5 Q. But records could have been subpoenaed in regard to
6 that phone number. Correct?

7 A. Well, they could but - well not subpoenaed. You can't
8 subpoena phone records. We have to send what's called a
9 search warrant for phone records and it takes months to get
10 back and the phone companies a lot of times don't even
11 acknowledge our search warrants because a lot of phone
12 companies in California or wherever out of this state,
13 sometimes don't even acknowledge our search warrants so,
14 yes we could have. It would have took a lot longer to get
15 cell phone records and stuff back for that number.

16 Q. So it was a choice not to pursue getting a search
17 warrant or attempting to execute a search warrant for the
18 phone records?

19 A. Yes because I already had the guy identified on the
20 video.

21 Q. Okay.

22 A. Before I would have got phone records back.

23 Q. But there are cases where phone records are obtained.
24 Correct?

25 A. Yes. There are those cases.

DETECTIVE JOSH WELCH: BY MS. ANDERSON

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1 Q. And these can show the records of phone calls that are
2 made through some period of time, in other words what
3 number is called, what number receives the call, the date,
4 the time, sometimes even location and things like that?

5 A. That is correct.

6 Q. And you testified about government funds being used in
7 connection with this case.

8 A. Yes.

9 Q. I think you testified they are photocopied?

10 A. They are photocopied.

11 Q. And that's because - and I don't know the technical
12 term, but serial number, there is some sort of identifying
13 number on each ---

14 A. Yes.

15 Q. --- item of currency.

16 A. Right.

17 Q. And so they're photographed so that if you were to
18 recover that from someone then you could link it up that
19 these were the funds that were given to an informant to
20 make the buy?

21 A. Yes.

22 Q. And in this case, none of those, neither of those -
23 it was two twenty dollar bills; is that correct?

24 A. I don't have the copies of it but I'm almost certain
25 it was two twenty dollar bills.

DETECTIVE JOSH WELCH: BY MS. ANDERSON

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1 Q. Okay. But there was none of this marked government
2 funds were ever recovered from Mr. Massey?

3 A. No, they were not.

4 Q. And you testified that there were two cameras hooked
5 up in Mr. Birch's vehicle on September 16th. Correct?

6 A. Yes, there were.

7 Q. And there was one that was sort of on the passenger
8 side door area.

9 A. Uh-huh.

10 Q. And then the other we saw you said was the CD area ---

11 A. Right.

12 Q. --- over the driver's side. Correct?

13 A. Yes.

14 Q. And you said that driver's - that driver's area camera
15 did not work that day.

16 A. It didn't record that day. That's right.

17 Q. And in other words the Drug Enforcement Unit does have
18 multiple cameras available. Correct?

19 A. Yes.

20 Q. Okay. So you could have the decision of to use as
21 many cameras as you thought necessary for an investigation?

22 A. Yes.

23 Q. In other words you're trying to catch different angles
24 because not every buy or drug transaction is going to be
25 the same pattern every single time?

DETECTIVE JOSH WELCH: BY MS. ANDERSON

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1 A. No. Definitely not.

2 Q. And you mentioned several times the integrity of your
3 investigation, you want to make a good thorough
4 investigation so you are wanting to try to capture as much
5 as possible. Correct?

6 A. That's right.

7 Q. And there was not a camera set up over the passenger
8 side console. Correct? On the passenger side I guess
9 mirror --

10 A. Headboard, I mean the --

11 Q. Dash, whatever you would call that.

12 A. No. There was not one set up there.

13 Q. And officers were on scene at the Valero monitoring
14 this situation. Correct?

15 A. On scene, yes. We had officers in the area.

16 Q. In the area.

17 A. Not actually at the Valero.

18 Q. Okay. So you're not going to be right there. In
19 other words you said you don't want anything to be
20 suspicious but you're within eyesight to monitor what is
21 going on?

22 A. That's right.

23 Q. And that's so if there's some sort of problem, you are
24 able to reach the informant or get on scene?

25 A. Yes.

1 Q. So you're in eye shot?

2 A. That's right.

3 Q. And do you recall how many officers were on scene or
4 in the area?

5 A. I think four.

6 Q. Four? Do you know the makeup of the vehicles? Was it
7 one vehicle? Two vehicles?

8 A. It was two vehicles.

9 Q. Two vehicles. Okay. And none of those vehicles, you
10 didn't have any video equipment set up in any of those
11 vehicles catching the scene from afar. Correct?

12 A. No we did not.

13 Q. But you did testify you were able to see what
14 transpired or see a vehicle pull up and the CI's vehicle?

15 A. Yes. And had we known -- had I known at first that
16 it was gonna go at the Valero, that the deal was going to
17 go at the Valero, I most definitely probably would have had
18 somebody across the street shooting video but I had no idea
19 it was going to go at the Valero at the time we were going.

20 Q. In other words, so when the car --

21 A. It changed mid stream.

22 Q. Mid stream. In other words when you left your DEU
23 office at Rock Hill PD, there were no cameras in the
24 vehicle available, none were taken with you?

25 A. No. We didn't take any cameras with us.

DETECTIVE JOSH WELCH: BY MS. ANDERSON

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1 Q. And you testified you were able to see a Crown
2 Victoria drive up and a black male get out of the car.
3 Correct?

4 A. Yes.

5 Q. And you did not make a note of the license plate
6 number of the vehicle?

7 A. No. I mean, I don't have it written down anywhere and
8 I don't remember - no. We didn't make a note of it.

9 Q. And the searches you testified to of Mr. Birch were
10 not videotaped. Correct?

11 A. The searches we made? No, we don't video because I
12 mean a lot of times your looking down their pants and
13 everything else. You wouldn't video all that.

14 Q. And there were photographs of what these rocks you
15 say that you believed to be crack cocaine that you
16 recovered from Mr. Birch, none of those items was
17 photographed on September 16th?

18 A. Photographed that day, no.

19 MS. ANDERSON: Beg the court's indulgence.

20 (PAUSE.)

21 MS. ANDERSON: Nothing further, Your Honor.

22 SOLICITOR WEAVER: Nothing further from the State.

23 THE COURT: You can step down and be excused. We
24 appreciate your time. As the case agent you are welcome to
25 stay.

1 INVESTIGATOR WELCH: Thank you, Your Honor.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR WEAVER: Your Honor, may we approach one
5 moment?

6 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
7 THE JURY AT 11:44 A.M..)

8 THE COURT: Members if the jury panel, I'm told by the
9 attorneys that they have agreed on certain facts. That is,
10 they have entered into a stipulation that certain facts are
11 true. I told you earlier and I'll tell you later that you
12 are the sole judges of the facts and must decide what facts
13 are true. However, where the parties have made and reached
14 an agreement and stipulated that the fact is true, for
15 purposes of your deliberation you consider it's true. You
16 don't have to wrestle with whether or not it's true. It is
17 for purposes of this trial a true fact because the parties
18 have agreed that it is and stipulated to it.

19 And I'm going to ask Ms. Weaver to now tell us what
20 that stipulation is and have it confirmed by Ms. Anderson.

21 SOLICITOR WEAVER: Your Honor, as to State's Exhibit
22 Number Six and Number Seven, they are photos taken of Mr.
23 Clayton Massey on the date October 21st 2011, and that
24 would be the stipulation.

25 THE COURT: Is that correct?

CYNTHIA MITCHUM: BY SOLICITOR WEAVER

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1 MS. ANDERSON: That is correct, Your Honor.

2 THE COURT: All right. They're being placed into
3 evidence without objection.

4 SOLICITOR WEAVER: Thank you, Your Honor.

5 (WHEREUPON: STATE'S EXHIBITS SIX AND SEVEN IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE BY STIPULATION OF
7 COUNSEL.)

8 THE COURT: Call your next witness.

9 SOLICITOR WEAVER: Your Honor, the State's next
10 witness is Cynthia Mitchum.

11 THE COURT: All right.

12 SOLICITOR WEAVER: Your Honor, I don't think she's up
13 yet.

14 THE COURT: She just works next door.

15 (PAUSE.)

16 MADAME CLERK: Please raise your right hand, place
17 your left hand on the Bible.

18 (WHEREUPON: CYNTHIA MITCHUM,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION

21 CYNTHIA MITCHUM BY SOLICITOR WEAVER:

22 Q. Ms. Mitchum, if you could please state your full name
23 for the record.

24 A. Cynthia Mitchum.

25 Q. And where are you employed?

1 A. I'm employed at the York County Sheriff's office in
2 the drug analysis laboratory.

3 Q. And what are your duties?

4 A. I analyze evidence that comes in from the officers and
5 test it for controlled or non-controlled substances.

6 Q. And what type of education have you had?

7 A. I have a BS in chemistry I received from Winthrop
8 University in 1990. And also before working here at the
9 Sheriff's office, I worked with the South Carolina Law
10 Enforcement Division, commonly known as SLED, in Columbia,
11 South Carolina also in their drug analysis laboratory.

12 Q. And what sort of training have you had?

13 A. I've had instrumental training for the instruments
14 that I use and also training through the South Carolina Law
15 Enforcement Division.

16 Q. And have you ever been qualified as an expert in the
17 field of chemical drug analysis?

18 A. Yes.

19 Q. Approximately how many times?

20 A. In excess of two hundred times.

21 Q. And as part of your duties, you do analyze controlled
22 substances like crack cocaine?

23 A. Yes.

24 Q. And how long did you say you've been working as a
25 chemist for the York County Sheriff's Department?

CYNTHIA MITCHUM: BY SOLICITOR WEAVER

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1 A. I've been here at the Sheriff's office for thirteen
2 years and I worked with SLED for seven and a half so I've
3 been doing this approximately twenty years.

4 SOLICITOR WEAVER: Your Honor, at this time I would
5 like offer Ms. Mitchum as an expert in chemical analysis
6 and identification of controlled substances.

7 MS. ANDERSON: No objection, Your Honor.

8 THE COURT: I find she is qualified.

9 BY SOLICITOR WEAVER:

10 Q. And when you first started working with the sheriff's
11 office as a chemist were you part of the evidence
12 department?

13 A. Yes.

14 Q. And explain the duties you had in addition to being a
15 chemist for the evidence department.

16 A. At that time I would also receive in and get my
17 evidence from the drop lockers, log that in and then take
18 it back to the laboratory.

19 Q. Now you mentioned the drop lockers. Where are those
20 located?

21 A. We've have drop lockers over at the sheriff's office.
22 There is one in Fort Mill and they have drop lockers at the
23 DEU in Rock Hill at Rock Hill PD.

24 Q. And so you as part of the evidence department you
25 would pick up the evidence at those drop lockers?

1 A. All except Fort Mill. I don't do Fort Mill.

2 Q. But you picked that up at Rock Hill Police Department?

3 A. Correct.

4 Q. And so you are familiar with the drop locker at Rock
5 Hill Police Department?

6 A. Yes.

7 Q. And once someone drops drug evidence into that locker,
8 who can access it at that point?

9 A. Only the personnel in the evidence department at the
10 sheriff's office.

11 Q. And how long were you a part of the evidence
12 department?

13 A. I was part of the evidence department probably about
14 five years, I think. Maybe four.

15 Q. And do you still work closely with the evidence
16 department today?

17 A. I do.

18 Q. And to your knowledge are the procedures still the
19 same as when you worked in the evidence department?

20 A. Yes, they are.

21 Q. Ms. Mitchum, do you recognize State's Exhibit Eight?

22 A. Yes, I do.

23 Q. When did you first receive that item?

24 A. I received this 11/14 of 2011.

25 Q. And who did you receive that item from?

CYNTHIA MITCHUM: BY SOLICITOR WEAVER

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1 A. Jimmy Styles.

2 Q. And who is Jimmy Styles?

3 A. He is one of the evidence custodians in the evidence
4 department at the sheriff's office.

5 Q. And you recognize his signature?

6 A. Yes, I do.

7 Q. And as part of Mr. Styles duties, he accepts evidence
8 into the York County Sheriff's Department?

9 A. Yes.

10 Q. Can you explain what happens when evidence is
11 taken into the York County Sheriff's Department?

12 A. Once it's brought into the Sheriff's office in the
13 evidence room they'll log it into the computer where it
14 will then be stored until it needs to be analyzed or
15 destroyed.

16 Q. And can you tell that was done with this evidence?

17 A. Yes.

18 Q. And how can you tell?

19 A. When this one was stored and then once it became - the
20 solicitor's office requested this case, then that's how I
21 got it.

22 Q. And prior to Jimmy Styles receiving that item, does it
23 indicate on the log who possessed it prior to Jimmy Styles?

24 A. Yes. Patrick Patterson did and he got that from the
25 Rock Hill PD evidence drop.

1 Q. And on what date did Mr. Patterson receive that on?

2 A. Let's see. It went to the evidence drop on 9/19 of
3 2011. That's the date that Patrick picked it up.

4 Q. So Mr. Patterson picked it up from the Rock Hill drug
5 locked on September 19th of 2011?

6 A. Correct.

7 Q. And how do you know that Mr. Patterson picked up that
8 bag?

9 A. I recognize his signature on the bag.

10 Q. And where is Mr. Patterson employed?

11 A. At the York County Sheriff's office in the evidence
12 room.

13 Q. And as the chemist with the York County Sheriff's
14 office, do you routinely come into contact with both Mr.
15 Patterson and Mr. Styles?

16 A. Yes.

17 Q. And were your duties as being previously part of the
18 evidence department, what procedure did you use to pick up
19 or after you picked up evidence from the Rock Hill drug
20 locker?

21 A. I would bring it back here to the Sheriff's office to
22 the evidence room at the sheriff's office and log it in and
23 it would be stored until it got called by the solicitor's
24 office or destroyed.

25 Q. And are those procedures the same today?

CYNTHIA MITCHUM: BY SOLICITOR WEAVER

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1 A. Yes.

2 Q. And can you explain to the jury what State's Exhibit
3 Eight was like when you first received it?

4 A. When I first received this, I received this bag inside
5 that has the blue filler glue on it. That's the first bag
6 I received and I've got the date I received it, okay and my
7 initials on it and it was sealed. That's what the okay
8 means, that that bag was sealed when I received it.

9 Q. So you didn't see any evidence of tampering with that
10 bag?

11 A. That's correct.

12 Q. And if you had seen evidence of tampering, what would
13 you have done?

14 A. I would have called the officer in for him to look at
15 the bag, check to make sure that was the proper evidence in
16 there, and that he would reseal it into another bag and put
17 his signature on it.

18 Q. But this item had not been tampered with?

19 A. Correct.

20 Q. And after you received it, what did you do?

21 A. I therefore then take it back to the lab and I have a
22 lockbox in the laboratory I store my evidence in where it
23 stays until I have my chance to do my analysis on it.

24 Q. And did you do that analysis on State's Exhibit Eight?

25 A. Yes.

1 Q. And after analyzing the substance, what did you do?

2 A. Once I finished analyzing this substance, I put it in
3 this plastic bag here which I have in the lab and then I
4 heat sealed it and put the date I heat sealed it and my
5 initials in there and heat seal it and that heat seal is
6 still intact today.

7 Q. And what date did you heat seal that bag?

8 A. I heat sealed this on 11/20 of 2011.

9 Q. And once you received that evidence bag, was it
10 continuously under your control?

11 A. Yes.

12 Q. And is this bag in the same condition as when you
13 sealed it on November 28 of 2011?

14 A. Yes, it is.

15 Q. Any evidence of tampering?

16 A. No.

17 Q. And after testing did you make a determination of what
18 the substance is contained in that evidence bag?

19 A. Yes, I did.

20 Q. And did you prepare a report of your analysis?

21 A. Yes.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER NINE PREMARKED FOR
23 IDENTIFICATION.)

24 Q. Ms. Mitchum, I'm handing you what's been marked as
25 State's Exhibit Number Nine.

CYNTHIA MITCHUM: BY SOLICITOR WEAVER

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1 Do you recognize that item?

2 A. Yes, I do.

3 Q. And what is it?

4 A. This is the drug report that I prepared in reference
5 to this case.

6 Q. And what did you determine the substance to be?

7 A. State's Exhibit Number Eight was determined to be
8 cocaine base, also known as crack, in the amount of 0.31
9 grams or 4.78 grains and that's a controlled two substance.

10 Q. And did you weigh the substance before or after
11 testing?

12 A. After testing.

13 SOLICITOR WEAVER: Your Honor, at this time I would
14 like to offer State's Exhibit Number Eight and Nine into
15 evidence.

16 MS. ANDERSON: Your Honor, can we approach?

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
18 THE JURY AT 11:58 A.M..)

19 MS. ANDERSON: Your Honor, I do object to the
20 admission of these items.

21 THE COURT: Overruled.

22 Did you offer?

23 SOLICITOR WEAVER: Yes I did.

24 THE COURT: In without objection.

25 (WHEREUPON: STATE'S EXHIBIT NUMBERS EIGHT AND NINE

1 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR WEAVER: No more questions, Your Honor.

3 THE COURT: All right. Cross examination.

4 MS. ANDERSON: No questions, Your Honor.

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

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR WEAVER: That would be the conclusion of the
10 State's case, Your Honor.

11 THE COURT: Members of the jury panel, the State is
12 telling us they have presented their evidence, the
13 witnesses and the exhibits. It is almost twelve so we'll
14 break until 1:30 and start back as promptly after 1:30 as
15 we can. Have a pleasant lunch. Keep in mind that you are
16 not yet in a position to make up your mind or discuss the
17 case. And recall what I told you about not - what not to
18 do while you are outside the courtroom. Have a pleasant
19 lunch and we'll see you at 1:30.

20 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 11:58 A.M..)

21 THE COURT: Anything from the State?

22 SOLICITOR WEAVER: Nothing from the State.

23 THE COURT: Do you want to put on the record your
24 objection?

25 MS. ANDERSON: Yes, Your Honor. For purposes of the

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1 THE COURT: The State has rested. The defense also
2 rests and so now you'll hear the arguments of the attorneys
3 and my charge on the law.

4 Ms. Weaver.

5 SOLICITOR WEAVER: Madame Clerk, if you can please dim
6 the lights.

7 (COURTROOM LIGHTS DIMMED.)

8 SOLICITOR WEAVER: Now as I discussed before Mr.
9 Massey is charged with distribution of crack cocaine and
10 here's the law on distribution of crack cocaine and this is
11 what the Judge will charge you and as you can tell, there's
12 lots of different things that you can do to violate this
13 statute. You'll see there is manufacture, distribute,
14 dispense, deliver, purchase, aid, abet or conspire, or
15 possess with the intent to distribute.

16 Well in this case we are only dealing with a person
17 who distributes or delivers a cocaine base which is crack
18 cocaine. And remember I said, see the statute doesn't say
19 that you have to actually receive money or sell crack
20 cocaine, if you distribute it or deliver it you are in
21 violate of this statute.

22 There are just two big questions in this case today.

23 The first is was this a drug deal and the second is is
24 it Clayton Massey? So first, was this a drug deal?

25 Yes, it was. I mean, that was the purpose of

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1 Detective Welch and Mr. Birch meeting. Mr. Birch was
2 arrested for possession of crack cocaine. He is a user,
3 he knows who sells it. And at this meeting, Mr. Birch gave
4 Detective Welch a description and a phone number of where
5 he could reach this person. And so on September 16th of
6 2011, that's what happened. Detective Welch and Mr. Birch
7 got together to set up this crack cocaine deal.

8 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

9 SOLICITOR WEAVER: Now the phone call shows it's a
10 drug deal. You heard, "got anything good today?" "Yeah, I
11 got something good for you." "Well can you do me a forty?"
12 "Yeah, I can do that." "I'm over near the Wal-Mart area."
13 "Okay, call me when you get near the neighborhood."

14 Now, the defense is going to say because you did not
15 hear Mr. Birch go, "hey, I'd like to purchase forty
16 dollars' worth of crack cocaine. Can you help me out?"
17 That means that we can't show that this was a drug deal but
18 actually it's the secret code words that show it's a drug
19 deal. "Got anything good?" "Yeah, I got something good."
20 "Can you do me a forty and near the neighborhood."
21 Remember Mr. Birch testified you don't say crack cocaine.
22 Those are not the words you say during a drug deal because
23 someone might be listening so you use the code words. That
24 shows it was a drug deal.

25 But there is more evidence showing that this was a

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1 drug deal. Remember Mr. Birch was search before the deal.
2 His car was searched before the deal and before the deal
3 Mr. Birch had forty dollars on his person but no drugs.
4 You heard Detective Welch say we didn't find anything
5 illegal on him. And then Mr. Birch and his car was
6 searched after the deal and after the deal he has two rocks
7 of crack cocaine and no money. Two rocks of crack cocaine,
8 just as ordered and as requested, "can you do me a forty?"

9 And then there is the video. Not only do we have the
10 phone call with the secret code words setting up the crack
11 cocaine on top of the fact that Mr. Birch ends up exactly
12 with what he ordered, we have the video. And this video
13 includes the drug deal and a series of phone calls made
14 between either Mr. Birch and the defendant, Mr. Massey, or
15 to Detective Welch. It starts at the Rock Hill Police
16 Department, Birch's car. Birch and his car has been search
17 and nothing illegal found. And we've already heard the
18 phone call setting up the deal. The deal has been set,
19 forty dollars worth of crack cocaine.

20 And so the first thing we see is Mr. Birch calling
21 Massey when he gets near the neighborhood.

22 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

23 SOLICITOR WEAVER: And then right after Mr. Birch
24 calls Massey, Massey changes it to the Valero store
25 although Mr. Birch in his mistakenly calls it the Venero

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1 store. Then what does Birch do? He immediately calls
2 Detective Welch to let him know about the change.

3 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

4 SOLICITOR WEAVER: So now Mr. Birch has arrived at the
5 Valero store and he has updated Detective Welch that's
6 where they're going. He then at the Valero store you saw
7 on the video that Mr. Birch once he reaches there he
8 attempts to call Massey. Doesn't get in touch with him so
9 he waits for his return call. This is the phone call where
10 Massey calls Birch back.

11 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

12 SOLICITOR WEAVER: So Mr. Birch has called Mr. Massey,
13 updated him, I'm here at the Valero store. I'm in a silver
14 Toyota. Now Mr. Birch calls Detective Welch and gives him
15 an update.

16 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

17 SOLICITOR WEAVER: And so now Massey gets there and
18 here is a drug deal.

19 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

20 SOLICITOR WEAVER: And now after the drug deal, Birch
21 calls Detective Welch to give him an update.

22 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

23 SOLICITOR WEAVER: So let's focus on the actual six
24 seconds of the drug deal. Now the defense is going to say
25 since you did not see the guy, who by the way is not Mr.

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1 Massey, actually hand crack cocaine to Mr. Birch on the
2 video because you can't see crack cocaine on the video or
3 anything being exchanged between that person that's not Mr.
4 Massey, but we have proof that a drug deal occurred that he
5 completely ignores what the video does show.

6 First, as Mr. Birch testified, he was given forty
7 dollars from Detective Welch of police funds in order to
8 buy this crack cocaine. And you can see Birch as he
9 testified reach for the money in his pocket.

10 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

11 SOLICITOR WEAVER: And then you heard Birch testify
12 that Massey had the crack cocaine in his mouth. He spit it
13 into his hand and handed it to him and you can tell this on
14 the video.

15 You can see the crack cocaine was still photo from the
16 video right there at Massey's mouth. Just like Birch
17 testified. He spit it out into his hand and handed it to
18 him. You can tell an exchange is made. Look at the
19 demeanor. Look at the movements. Although you might be
20 able to see their actual hands on the video, you can tell
21 an exchange is made.

22 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

23 SOLICITOR WEAVER: There is no conversation. They
24 didn't need a conversation. The deal had already been set.

25 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

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1 SOLICITOR WEAVER: I mean this meeting was six
2 seconds. Why six seconds? It's a drug deal. Again, they
3 set it up through the phone call, forty dollars worth of
4 crack cocaine. It only took six seconds for him to spit it
5 out in his hand and hand it to Mr. Birch. It was a drug
6 deal.

7 (STATE'S EXHIBIT TWO PUBLISHED TO THE JURY.)

8 SOLICITOR WEAVER: Yes, it was a drug deal. The deal
9 was set in the phone call. Only six seconds because it
10 didn't need to be any more time. That's all they needed in
11 order to give him the crack cocaine. You can tell there
12 was an exchange. You can see that on the video. You can
13 see the movements that's all consistent with that. You see
14 Massey looking around. I don't know if you notice when he
15 he spits in his hand he's looking around making sure nobody
16 is watching them because what are they doing? A drug deal.
17 This wasn't an innocent meeting between friends. This was
18 a crack cocaine deal. So that comes to question number
19 two. Was that person Clayton Massey? Yes, it is him.

20 Now the defense will say you can't believe anything
21 Mr. Birch says. He wasn't telling the truth. He is
22 testifying just to help himself out on this charge and he
23 will tell us anything he thinks is going to help him out.
24 Birch told you the truth even though he did not know
25 Massey's name, he knew Massey. He testified that he met

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1 him about ten times in person and he immediately picked him
2 out of a photo lineup. A photo lineup by the way that
3 Detective Welch told you, he didn't show him that video
4 before he looked at that photo lineup but miraculously he
5 picks out the same person that's in the video. Birch
6 didn't lie to you. He told you the truth. And the video
7 confirms that Birch told you the truth. Look at the
8 snapshot from the drug deal video on September 16th of 2011
9 and look at the photo of Clayton Massey on October 21st of
10 2011. That's the same person. Same features. Same
11 mustache. Same nose. Same mouth. And the same chin strap
12 beard. That's Clayton Massey. So yes, it is a drug deal.

13 Birch and Detective Welch testified Birch was arrested
14 for possession of crack cocaine. He knows who to buy from
15 and that was the whole purpose of him meeting with
16 Detective Welch was working. That phone call shows you the
17 secret code language and the deal was set for forty
18 dollars' worth of crack and that's what Birch got, two
19 twenty dollar rocks. The video shows you it's a drug deal.
20 You see him reach - Birch reach for the money. You see the
21 crack in Massey's mouth. You see him spit it into his
22 hand. You see an exchange. You see Massey looking around.
23 It was only six seconds. It didn't need to be longer
24 because the deal was set. There's no conversation. There
25 was no need for one because again, the deal had already

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BY MS. ANDERSON

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1 been set. Before the deal Birch had forty dollars and no
2 drugs and after the deal he had two rocks of crack cocaine,
3 forty dollars' worth. Yes, it's Clayton Massey. Birch
4 told you it's Massey. He'd met him ten times before. He
5 picked him out of a photo lineup without having to see the
6 video. The photos of Massey matched the video. It's the
7 same features. Again, same mustache, same chin strap
8 beard. It's the same person. It's Massey. So yes, it is
9 Massey. Yes, it's a drug deal. And yes, Massey is guilty.

10 Thank you.

11 MS. ANDERSON: May it please the Court.

12 Members of the jury, your role as a jury is often a
13 tough one because one of the things our system requires of
14 you is to sometimes make difficult decisions. And
15 sometimes those difficult decisions involve analyzing
16 things very carefully when considering very carefully as to
17 whether or not the State has met their burden of proof.
18 Because one of your responsibilities is to hold the State
19 to their burden of proof.

20 And that burden of proof that you heard a little bit
21 in the preliminary charges and preliminary discussion in
22 this case is beyond a reasonable doubt. And the Judge will
23 charge you shortly about the law and what that means, but
24 essentially beyond a unreasonable doubt has been doubt, a
25 reasonable doubt has been defined before or described

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1 before as the kind of doubt that would cause a reasonable
2 person to hesitate to act. And sometimes I refer to that
3 as the kind of doubt that would cause a person to hesitate
4 to take a step forward. And Clayton Massey is presumed
5 innocent. He sits here in this courtroom presumed
6 absolutely innocent of this charge and the burden is on the
7 State to prove each and every element of the crime. Each
8 and every element of the offense of distribution of crack,
9 the elements of which the Judge will talk to you about,
10 beyond a reasonable doubt.

11 In criminal court it isn't a matter of getting close.
12 It isn't a matter of more likely than not. It isn't a
13 matter of getting within inches of the line. It's about
14 absolutely crossing line beyond a reasonable doubt and
15 coming close doesn't count and it's role as jurors and your
16 duty as jurors to hold the State to that burden. And if
17 they don't meet that burden, they don't cross that line
18 completely, it's your duty to return a verdict not guilty
19 because they haven't met the burden.

20 I talked in opening a little bit about the idea of a
21 puzzle. And the idea of maybe thinking of missing pieces
22 as expressing reasonable doubt and so I want to talk to you
23 about some things that are missing pieces in this case that
24 the State hasn't presented to you.

25 One thing I want to talk to you about is the phone

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1 number. When Mr. Birch testified to you, he testified that
2 mainly, the main thing he knew about this person that he
3 said he could purchase crack cocaine from was a phone
4 number. We went over the phone number on the record and
5 that was the number he had and that was the number he said
6 he called in the recorded phone call you heard that he made
7 with Detective Welch at the Drug Enforcement Unit office on
8 September 16th 2011.

9 But when you heard Detective Welch testify, you heard
10 he didn't even look into that number. Mr. Birch has no
11 idea who this person is. Doesn't know an address. Doesn't
12 know a first name. Doesn't know a last name. Doesn't know
13 a nickname. He knows a phone number but the detective on
14 the case, the officer working on the case, didn't even
15 bother to try to find the number and he said oh it might be
16 a lot of trouble but that's not the measure.

17 To do a thorough investigation may require going to
18 some trouble. But he could have obtained phone records
19 and those phone records might have led him to who the
20 person the phone was registered to. Those phone records
21 might have shown calls back and forth. But rather than
22 even trying, they didn't bother. So much is made of just
23 calling on this number, of the phone number being
24 associated with this person, but the detective on the case
25 and the solicitor prosecuting the case, didn't chose to

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1 look into it at all to see who does this number belong to.

2 There was testimony that no cell phone was ever
3 recovered from Clayton Massey with that number. There's no
4 evidence I submit to you that's been brought in that links
5 Clayton Massey with any sort of records any sort of with
6 that phone.

7 Let's talk about marked money. There was a discussion
8 of how there were certain government funds given to Mr.
9 Birch on that day. Now Mr. Birch, the informant, had this
10 money and the money had been photocopied and there's an
11 identifying number on that money so if the drug enforcement
12 unit were to recover that currency from someone when they
13 are arrested, or when they are searched, they can link that
14 money up. But that marked money was never recovered from
15 Clayton Massey. Again, there's a missing piece as to this
16 money that the State says money changed hands but that
17 money is never found.

18 Now the State is making a big deal about the video and
19 they showed you some shots where they slowed things down or
20 enlarged things or did a different angle. Ladies and
21 gentlemen, what I submit to you is if you watched that, you
22 don't see an exchange take place. You don't see crack
23 cocaine. You don't clearly see the money that the
24 informant says he takes out of his pocket. What I do think
25 is that you have the informant testify. He's told you what

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1 things meant to him or how he interpreted things. And what
2 the State has then done is looked at the video and enlarged
3 things or cropped things or done different angles to try to
4 support what Mr. Birch testified happened because it
5 clearly doesn't have any actual visual evidence of that
6 being crack cocaine. There were no photographs taken of
7 what was recovered. There's no video of the search of the
8 car before or after. We don't have any conclusive visual
9 evidence of that. What we do have is the informant who is
10 testifying to benefit himself and then we have the State
11 sort of trying to show the video in a way that supports
12 what he says happened.

13 Let's talk about that. You heard that he had two
14 prior convictions. Two prior convictions for leaving the
15 scene of an accident. You heard he has a pending charge.
16 He's here in court today because he is trying to help
17 himself out. And yeah he testified he hasn't been promised
18 anything and he was hoping for this or - but let's be
19 frank, ladies and gentlemen, he has a job. He has a
20 professional career. He doesn't want a drug conviction on
21 his record. He is here testifying because he hopes by
22 testifying for the State of the State trying to get a
23 conviction on someone else, maybe he will get his charge
24 dismissed. So certainly he has a motive and a bias for
25 what he says and why he is here today. And one of the

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1 things the Judge will talk to you about is the credibility
2 of witnesses and how you as the jury judge the credibility.
3 And one of the things you can consider is someone's motive
4 for testifying. Did they have a reason for being here?
5 Did they have something to gain by their testimony? And to
6 think about whether that could influence how they testify.
7 And certainly I'd submit to you Mr. Birch has a motive for
8 making things - wanting to make this sound like a drug deal
9 took place, like a distribution took place, because he is
10 looking to help himself out.

11 We talked a little bit about the videos. How the drug
12 enforcement unit had multiple cameras they could have used.
13 They said the one camera on the driver's side
14 malfunctioned. They had the one camera on the door but
15 they could have put more cameras in there. They didn't put
16 one in the passenger's seat. We had four officers also
17 testify they were somewhere on scene watching. They
18 watched enough and Detective Welch was watching enough that
19 he could see a light blue Crown Victoria pull up and a
20 black male get out of it but he didn't write the licence
21 plate down. Again, isn't that really another missing
22 piece. The drug enforcement unit didn't bother to take
23 cameras with them to film from their cars. Again, they are
24 dealing with someone whose name they don't know. The only
25 information is a phone number they haven't looked into but

CLOSING BY MS. ANDERSON

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1 they don't bother to get that evidence either even though
2 on several occasions during his testimony, particularly
3 during his direct testimony, Detective Welch talked about
4 the integrity of the investigation and wanting to preserve
5 the integrity of the investigation.

6 Ladies and gentlemen, I submit to you that the burden
7 of proof requires a full investigation of there not to be
8 missing pieces and again, it's the State's burden of proof
9 to bring in all the puzzle pieces, to present the full
10 picture because if there are gaps, if there are things that
11 should have been done and worked, if there is evidence that
12 isn't brought into you but should have, that is reasonable
13 doubt.

14 Ladies and gentlemen, I ask you to look critically at
15 this case. That's what our system entrusts you with,
16 looking critically at things and carefully at things.
17 While you come into this case without any connection to any
18 of the parties involved, you don't have a stake in this
19 case. You look at it with fresh eyes. With unbiased eyes.
20 With objective eyes. You don't have a stake in this case
21 and that enables you to look at it with fresh eyes and
22 critically and seriously and analytically. It's difficult
23 decisions at times. It's a tough task. But this is a
24 situation where Clayton Massey's liberty is in your hands
25 and it's your duty as jurors to look at this case seriously

CLOSING BY MS. ANDERSON
CHARGE TO THE JURY

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1 and critically and to hold the State to the burden of proof
2 and to make the decision that when there are missing
3 pieces, when the State hasn't presented to you with a full
4 picture, that they failed to meet their burden of proof.
5 They failed to cross the line completely and that your duty
6 as jurors when they have not proved their case beyond a
7 reasonable doubt is to return a verdict of not guilty and
8 that's what I ask of you, ladies and gentlemen.

9 Thank you.

10 THE COURT: Members of the jury panel, I appreciate
11 the attention you've given to the attorneys and to me. Now
12 it's my duty to charge you the law that you are to apply to
13 the facts in this case.

14 Mr. Massey is charged with distribution of crack
15 cocaine and the indictment alleges that this happened here
16 in York County on September 16th, 2011, when he did deliver
17 or distribute to another individual a quantity of crack
18 cocaine, sometimes referred to as cocaine base, in
19 violation of the laws of this State. That's what he is
20 charged with in the indictment.

21 Now you will have in the jury room with you that
22 indictment, this indictment. I advise you that the
23 indictment is not evidence. It contains the allegations,
24 the charge against Mr. Massey, but it is not evidence. It
25 is paperwork by way of which this case is processed through

CHARGE TO THE JURY

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1 our court system and, Madame Forelady, it will be where you
2 ultimately enroll the unanimous jury verdict.

3 The fact that Mr. Massey was arrested, the fact that
4 he was charged, the fact that he was indicted, the fact
5 that he is on trial is not any indication of what your
6 verdict should be. This is just the way our system works.
7 When someone is thought to have committed a crime, they are
8 charged, indicted and brought to trial and the State must
9 prove that person's guilt beyond a reasonable doubt.

10 You're not to give any weight to the fact that he is
11 on trial. Again, that is just the way our system works.

12 As to Mr. Massey and this charge, he is presumed
13 innocent. He has pled not guilty and therefore he is
14 presumed innocent of the charge and the State must prove
15 his guilt beyond a reasonable doubt. Now this presumption
16 of innocence is a substantial right. It is not a mere
17 legal theory but is a substantial right. The presumption
18 of innocence attaches to an individual at the time of their
19 arrest. Remains with them as their case is processed
20 through court. In this case the presumption of innocence
21 remains with Mr. Massey at this moment. It even remains
22 with him as you deliberate.

23 The presumption of innocence in Mr. Massey's favor is
24 removed if and when, and only if and when, you find that
25 the State has presented evidence which satisfies you of his

CHARGE TO THE JURY

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1 guilt beyond a reasonable doubt.

2 Now, the State is not required to prove his "guilt"
3 beyond all or beyond every doubt but beyond a reasonable
4 doubt. Our courts have described or defined a reasonable
5 doubt as the kind of doubt that would cause a reasonable
6 person to hesitate to act. Proof beyond a reasonable doubt
7 is proof that leaves you firmly convinced of someone's
8 guilt. There are very few things in our world that we can
9 know with absolute certainty and that is not required in a
10 case such as this.

11 If based on your consideration of the evidence you are
12 firmly convinced that Mr. Massey committed this offense,
13 you would find him guilty.

14 On the other hand, if you think there is a real
15 possibility that he is not guilty you would give him the
16 benefit of that reasonable doubt and you find him not
17 guilty. He is entitled to the benefit of any reasonable
18 doubt you have as to any issue in this case.

19 I remind you that I am the sole judge of the law in
20 this case and you must take, accept and apply the law as I
21 charge it. I remind you that this is true even if you
22 think I charge you the law in error or even if you think
23 the law should be different. Your oath requires you to
24 take accept and apply the law as I charge it.

25 You are not to infer from anything I say or do or have

CHARGE TO THE JURY

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1 said or done during this trial as indicating an opinion of
2 mine on the facts. Our law does not allow a trial judge to
3 formulate or express to a jury any opinion on the facts.
4 It is solely your job to examine the evidence and give to
5 the evidence the effect, the value and weight and the truth
6 you believe it should have. In doing this, you may believe
7 one witness as opposed to several; several witnesses as
8 opposed to one. You may believe all or part or none of a
9 witness' testimony.

10 Use your common sense; your sense of logic. Use your
11 experiences in life as you analyze the evidence. As judges
12 of the facts, you necessarily must judge the credibility,
13 that is the believability of the witnesses who have
14 testified. In accessing believability, you use those
15 things I just talked about. You use the things that you
16 find in your day to day life as being indicative of
17 truthfulness. And you can use certain factors, whether an
18 individual has a prior criminal record. Their demeanor on
19 the stand. Are they hesitant or straightforward. The
20 opportunity a witness had to actually know those things to
21 which the witness testified. Look at any bias or prejudice
22 a witness may have, that is whether a witness has any
23 reason to help or hurt one side or the other. And you can
24 consider the opportunity a witness had to know those things
25 about which they testified.

CHARGE TO THE JURY

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1 Now in this case we had Ms. Mitchum testify as to what
2 we call an expert witness. An expert in chemical analysis.
3 Generally an individual can only testify as to something
4 they observed with one of their senses, usually it's
5 something they've seen or heard. However, where an
6 individual has certain education, skill, training and
7 background in an area, that person can render an opinion
8 based on facts. The opinions of experts are allowed into
9 evidence to assist you. They are not binding on you. You
10 can give the expert's testimony whatever weight, if any,
11 you deem it should have. You look at an expert who
12 testifies just as you look at any other witness. You use
13 the same criteria I've already gone over.

14 Also as to an expert, you look at their
15 qualifications. Even though I found that she was qualified
16 to give an opinion, you determine whether you are satisfied
17 that she had the credentials and qualifications to render
18 the opinion she reached. And also you can examine the
19 reason she gave for reaching the opinion that she did in
20 fact reach.

21 I instruct you and emphasize to you the fact that Mr.
22 Massey exercised his constitutional right to remain silent
23 cannot be used against you in any fashion whatsoever. It
24 cannot be discussed by you. It cannot be factored into
25 your own deliberation. It can have no mitigating effect on

CHARGE TO THE JURY

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1 Mr. Massey to any degree whatsoever. I remind you that he
2 is presumed innocent and he need not prove his innocence.
3 The State must prove his guilt beyond a reasonable doubt.

4 In this case, identification of Mr. Massey as the
5 individual who the State claims committed this offense is
6 an issue. The State has the burden of proving the identity
7 of the individual charged beyond a reasonable doubt. You
8 must be satisfied beyond a reasonable doubt of the accuracy
9 of the identification of Mr. Massey before you could
10 convict him. Identification testimony is an expression of
11 a belief or an impression by a witness. You must determine
12 the accuracy of the identification of Mr. Massey or of the
13 defendant. You must consider the believability of any
14 witness who made an identification just as you look at the
15 testimony of any witness.

16 You may also consider whether a witness had an
17 adequate opportunity to observe the individual at the time
18 of the offense. This would be affected by things as to how
19 long or short a time was available. How close or far away
20 the individuals were. The lighting conditions and whether
21 a witness had the chance to know the person from a prior
22 encounter or to have known the individual being identified
23 prior to the time of the alleged offense.

24 The burden is on the State to prove every element of
25 the offense beyond a reasonable doubt and this includes

CHARGE TO THE JURY

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1 proving beyond a reasonable doubt that Mr. Massey was in
2 fact the person who committed this offense.

3 If after examining the testimony, you have a
4 reasonable doubt as to the witness, Mr. Birch's, testimony
5 as to the identity of Mr. Massey, you would give Mr. Massey
6 the benefit of that reasonable doubt.

7 Our legislature has passed a law that makes it illegal
8 to distribute or deliver crack cocaine, sometimes called
9 cocaine base. That is what Mr. Massey is charged with.
10 The State here must prove beyond a reasonable doubt that
11 Mr. Massey distributed or delivered crack cocaine. The
12 term distributed means to deliver or to transfer a drug or
13 other item. Again, deliver means simply to transfer the
14 drug. A transfer can involve an exchange for money but
15 there does not have to be anything exchanged for drugs for
16 there to be - anything exchanged for any drugs for there to
17 be a transfer which would constitute a distribution. The
18 State must also prove that the substance at issue was in
19 fact crack cocaine or cocaine base.

20 Now your verdict must be unanimous. It cannot be
21 based on sympathy, passion, prejudice, public feeling or
22 matters outside the record. If you wish me to go over any
23 of my charge, please let me know. We in South Carolina do
24 not send into the jury room a written charge but if you
25 wish for me to go over any part or all the charge, let me

CHARGE TO THE JURY

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1 know. You can testimony replayed if you wish and if you
2 wish to see the video, we can bring you back in and play
3 such part as you wish without anybody saying anything. It
4 would simply be a viewing if you want. If you have any
5 questions, Madame Forelady, or the jury does, write them on
6 a piece of paper. Knock on the door and give them to the
7 bailiff. The bailiff will bring the note to me. I will
8 confer with the attorneys and then respond. It may be that
9 I can write an answer on the note itself and send the note
10 back in. If I do that, keep the note and return it with
11 the exhibits. It has to be part of the record.

12 If I cannot answer the note by writing on it, I will
13 bring you back in and answer here in open court. Of
14 course, I can go back over any part or all of my charge if
15 you wish.

16 When you've reached a verdict, knock on the door and
17 tell the bailiff. The bailiff will come and get us. I may
18 be doing some other work but I will stop that as soon as I
19 can and send for you.

20 Mr. Finker, you'll remain with us as the alternate and
21 do not participate any further. When you first go into the
22 jury room, do not start deliberating or get too comfortable
23 because I may have to send for you if I have made an error
24 but I will know that within a few moments after you leave.
25 As soon as you leave I will check with the attorneys and

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1 see if I need to bring you back to correct anything I may
2 have misstated.

3 If I have not made any error, I will send in the
4 exhibits and the indictment and the bailiff will tell you
5 to start deliberating.

6 Madame Forelady, you will preside over the jury's
7 deliberation and sign the unanimous verdict. On the back
8 of the indictment you will see on the bottom left hand
9 corner the word verdict and four lines. The bottom line is
10 for your signature, Madame Forelady, and there's a place to
11 put the date below there. Today is the 21st. On one of
12 the three lines above your name you will write the jury's
13 unanimous verdict. If that verdict is that the State has
14 failed to prove Mr. Massey's guilt beyond a reasonable
15 doubt, you would write the two words, not guilty.

16 If on the other hand the State has proven to your
17 unanimous satisfaction Mr. Massey guilty of this offense,
18 you would write the one word, guilty.

19 When you've reached a verdict, knock on the door and
20 let the bailiff know and we'll send for you as promptly as
21 possible. Now everyone but Mr. Finker may go to the jury
22 room but don't start the deliberation quite yet.

23 Mr. Finker, I'll be with you in just one minute.

24 (JURY EXITS COURTROOM AT 02:14 P.M..)

25 All right. Anything from the State?

1 SOLICITOR WEAVER: Nothing from the State, Your Honor.

2 THE COURT: Defense?

3 MS. ANDERSON: Nothing from the defense, Your Honor.

4 THE COURT: All right. Here's the indictment, check
5 it and check the exhibits and we'll have the bailiff take
6 them in and start deliberations.

7 Mr. Finker, you're free to leave for the week. You
8 can stay if you wish. You will be mailed a check, just
9 give your badge to Mr. Dunlap as you go out. We appreciate
10 your help. Do you have anything in the jury room you have
11 to go get or send for?

12 MR. FENKER: No.

13 THE COURT: Thank you so much and you're welcome to
14 stay but you're free to leave. Thank you.

15 All right, we'll be at ease for a minute.

16 Solicitor, let me know what if anything we have to do.

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

18 (COURT BACK IN SESSION AT 02:39 P.M..)

19 THE COURT: Take your seats. We have a verdict in Mr.
20 Massey's case. State ready?

21 SOLICITOR WEAVER: The State's ready, Your Honor.

22 THE COURT: Defense ready?

23 MS. ANDERSON: Yes, Your Honor.

24 THE COURT: We do have a note that says we've reached
25 a verdict and we'll make it part of the record.

VERDICT

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

3 THE COURT: Bring in the jury.

4 (JURY REENTERS COURTROOM AT 02:40 P.M..)

5 THE COURT: Madame Forelady, I understand the jury has
6 reached a verdict.

7 MADAME FORELADY: Yes we did, Your Honor.

8 THE COURT: If you'll hand it to the bailiff, he'll
9 hand it up to me.

10 (VERDICT RECEIVED UP BY THE COURT.)

11 MADAME CLERK: State of South Carolina versus Clayton
12 Levelle Massey under Indictment 2012-GS-46-0-0-4-9-6,
13 indictment for distribution of crack cocaine, we the jury
14 find the defendant guilty. Signed by the foreperson and
15 dated today's date.

16 If this be your verdict, so say you all by raising
17 your right hand. Let the record show all jurors confirm
18 this verdict.

19 (ALL JURORS AFFIRMED BY INDICATING.)

20 THE COURT: Anything from the State before the jury is
21 dismissed?

22 SOLICITOR WEAVER: Nothing from the State, Your Honor.

23 THE COURT: Anything from the defense?

24 MS. ANDERSON: Nothing from the defense, Your Honor.

25 THE COURT: Members of the jury panel, we appreciate

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1 your help. I'm going to let you go for the week. We're
2 not going to start another trial. It's now Thursday
3 afternoon. We do have pleas and probation matters and
4 motions and bond hearings and things, stuff to keep us
5 busy.

6 Thank you so much for your help and feel free to leave
7 and you will be mailed a check. On the way out if you
8 would give your badges to one of the bailiffs.

9 Thank you.

10 (JURY DISMISSED AT 02:41 P.M..)

11 THE COURT: Anything else before we get into
12 sentencing from the State?

13 SOLICITOR WEAVER: Nothing from the State, Your Honor.

14 THE COURT: Defense?

15 MS. ANDERSON: Your Honor, just for the record I would
16 renew all prior motions and objections.

17 THE COURT: All right. Those motions are denied. I
18 believe the jury verdict is supported by the evidence.
19 Bring Mr. Massey around for sentencing and I'll ask the
20 State to - you've already told me a little bit about his
21 background. If you'll tell me anything else you want to
22 tell me about his background.

23 SOLICITOR WEAVER: Your Honor, just to reiterate, his
24 two prior convictions were for possession of cocaine in
25 2004 and possession of crack cocaine in 2006. Just a note,

SENTENCING

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1 Your Honor, I looked up those cases and Mr. Massey in both
2 those cases possessed .9 grams of crack cocaine. I believe
3 that this is just the first time Mr. Massey has been caught
4 distributing and in this case it was two rocks, .3 grams.
5 And those cases, although they're only possession, he still
6 had .9 grams on him in each of those cases.

7 THE COURT: And the presumptive weight?

8 SOLICITOR WEAVER: Is one gram.

9 THE COURT: All right. Ms. Anderson.

10 MS. ANDERSON: May it please the court, Your Honor.
11 Mr. Massey - I will hand up at this point, I do have a
12 letter from his employer. He has been employed while he
13 was out on bond at McAllister's Deli in Rock Hill. I'm
14 handing up a letter from his manager basically attesting to
15 him as a reliable, dependable employer[sic]. Your Honor,
16 as you heard from the State, his prior convictions are
17 solely possession. From both of those on looking at his
18 rap sheet he essentially received probation in 2004 and
19 then 90 days and probation in 2006, so this is a situation
20 where Mr. Massey has never served any prison time.

21 Your Honor, obviously understanding the situation and
22 the third offense, he understands that is going to happen
23 here but we would ask Your Honor to take into consideration
24 those prior offenses, those were both probation essentially
25 offenses and would ask that to be taken into consideration

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1 with his sentence.

2 Your Honor, he does have family and friends who are
3 here who wish to speak on his behalf. I'll ask the first
4 to come forward who wish to speak on his behalf.

5 THE COURT: All right. Be glad to have them come
6 forward.

7 Yes, ma'am, your name.

8 Counsel, if you all -

9 Yes, ma'am.

10 A. My name is

11 THE COURT: You need to speak up so I can hear you.

12 A. My name is Nadia McClure. I'm Clayton's fiancée. I
13 just want to say, Your Honor, we just got engaged on the
14 first of February. We just had a child who is six months
15 old and I'm just speaking on my son's behalf because he
16 needs a father in his life and I understand that, you know,
17 what happened or whatever but it's just an innocent life
18 involved with the situation and I'm just speaking on my
19 son's behalf because he needs his father.

20 THE COURT: Thank you.

21 Yes, ma'am. Your name.

22 A. Corrine Massey. Corrine Massey, Your Honor, and
23 that's my son, Clayton Massey. It's kind of hard for me to
24 take all this in. But I just wanted to let him know that I
25 love him. And I know things can work out better. And

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1 just like Nadia said, I'm speaking on behalf of my
2 grandchildren. I've got two grandchildren and they are six
3 months old and going on a year old and I desire that he get
4 to see his son, you know, spend that time with them because
5 they innocent and they don't know no better because their
6 babies, you know. I thank God because I see them every day
7 and I see the smile on their face. You know, they don't
8 understand because they're too young but I thank God for
9 the children. You know what I'm saying. And I thank God
10 for my son because he from that incident he basically has
11 himself been humbled, you know, and keeping his self in
12 check. Keeping his life straight and know he got a
13 responsibility which is the baby to take care of him and do
14 that which is right before him.

15 And I just want to say that I love you, son.

16 THE COURT: Thank you.

17 MS. ANDERSON: And, Your Honor, I do believe Mr.
18 Massey will wish to address the court. We would just ask
19 Your Honor to consider suspending those sentences - priors
20 for possession. It is eligible to be expunged below the
21 minimum ten years. We would ask Your Honor to consider
22 that.

23 We also ask that in dealing with SCDC's
24 interpretation, we've been instructed to write, to request
25 or write on there that it would be parole eligible based on

SENTENCING

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1 the priors being possession. Not only is there a notation
2 on the sentencing sheet, we would ask Your Honor to do that
3 as well. And I'd ask you to hear from Mr. Massey.

4 THE COURT: Write parole eligible based on what?

5 MS. ANDERSON: Prior convictions being possession.

6 THE COURT: Anything you want to say? Anything you
7 want to say, Mr. Massey?

8 MR. MASSEY: Yes, sir. In my past I was a big drug
9 user. I hadn't really too much cared about but like my
10 mother said, I'm in a situation where I remember my child
11 being born is like a whole new lease for me. I'm a
12 changed man. I read my Bible more every day. I work hard.
13 Come home to my son and try to be a family man and do
14 what's right, what I know is right now, you know, and I
15 guess my apologies to the court, to the State.

16 MS. ANDERSON: And Your Honor, I do neglect in looking
17 I believe he has I think it should be fifty-seven days of
18 credit prior to bonding out. I calculate that.

19 THE COURT: All right. Sentence of the Court is
20 fifteen years. He will be parole eligible based on prior
21 convictions for having two possessions. Thank you.

22 MS. ANDERSON: Thank you, Your Honor.

23 (END OF TRANSCRIPT OF RECORD)

24

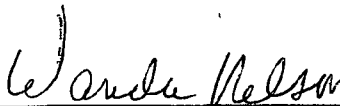
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th and 21st days of March, 2013.

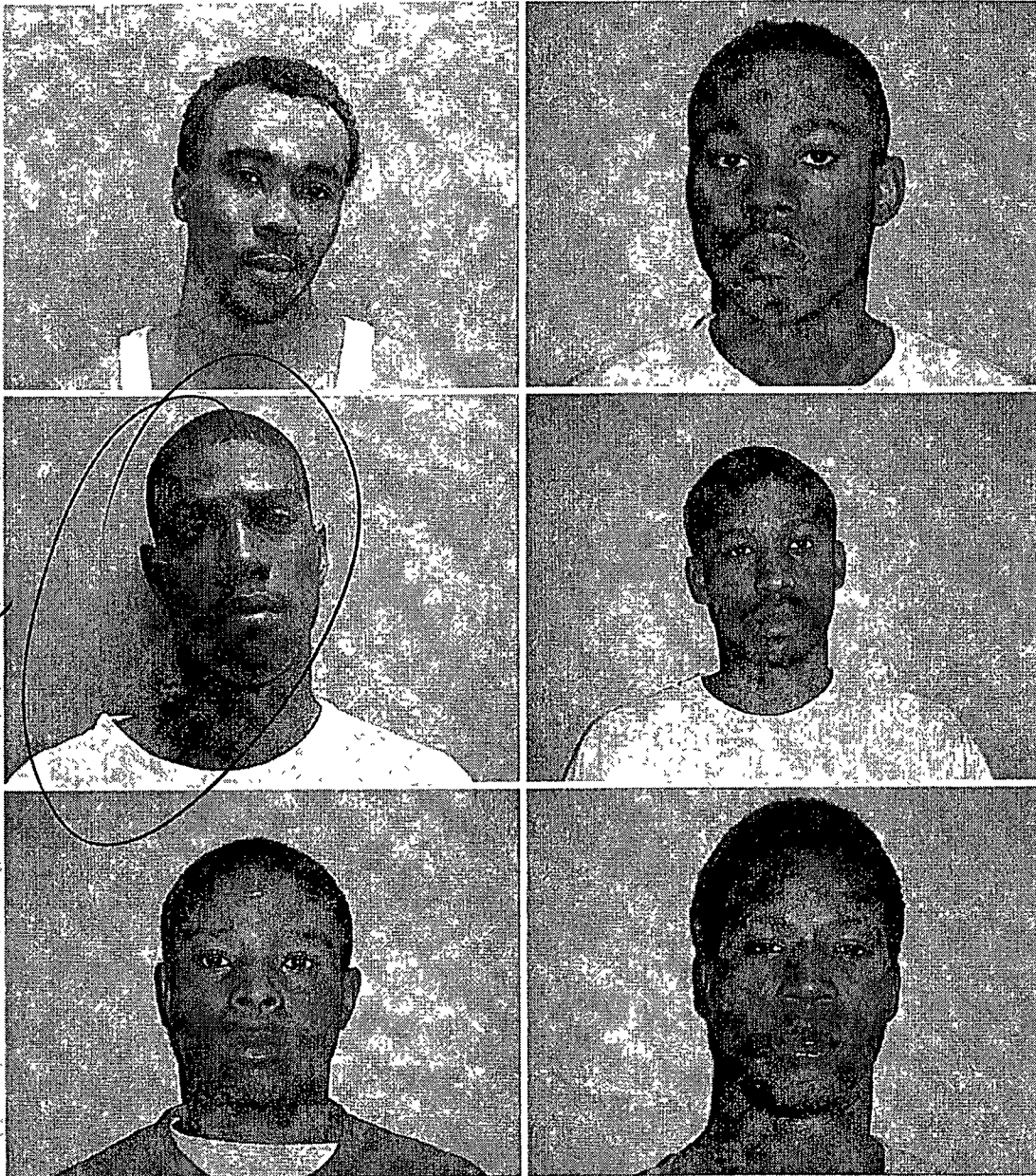
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



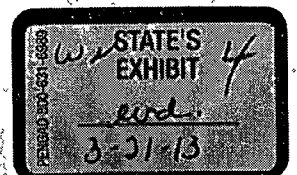
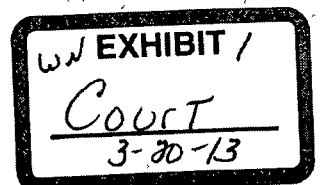
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 2021

DATE: 7-29-2013



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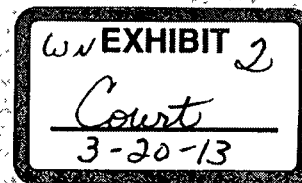
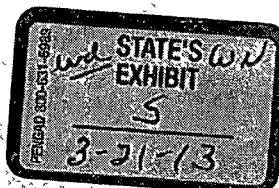


YORK COUNTY MULTIJURISDICTIONAL
DRUG ENFORCEMENT UNIT

PHOTOGRAPHIC LINE-UP

I have freely and voluntarily, without threats or promises, viewed a photographic line-up as shown by the officer listed below. The officer in no way suggested any particular photograph. I am positive, without a doubt, that the person I picked is the responsible party. I have initialed the attached photograph.

Witness Ron Birch Ron Birch
Signature Print Name
Officer Joshua Welch Joshua Welch
Signature Print Name

Case # 201100030175, 20110003189Date 9/27/11Time 5:40 PM

CONFIDENTIAL

Lineup Image Details

Image: 1 File Name: B709715180

Last Name: PAUL First Name: KENDRICK Middle Name: V Suffix:

SSN: [REDACTED]

Address: [REDACTED] Apartment: City: ROCK HILL Zip: 29730-

Last Known Phone: - - Last Known Employer:

Height: 602 Weight: 175 Hair Color: BLK Eye Color: BRN

Build: Date Born: [REDACTED] Age: 24

Image: 2 File Name: C711751043

Last Name: JOHNSON First Name: ROOSEVELT Middle Name: Suffix:

SSN: [REDACTED]

Address: [REDACTED] City: ROCK HILL Zip: 29730-

Last Known Phone: [REDACTED] Last Known Employer: NEW HOPE CAROLINA

Height: 509 Weight: 150 Hair Color: BLK Eye Color: BRN

Build: Date Born: [REDACTED] Age: 26

Image: 3 File Name: F886049927

Last Name: MASSEY First Name: CLAYTON Middle Name: LEEVELL Suffix:

SSN: [REDACTED]

Address: [REDACTED] Apartment: City: ROCK HILL Zip: 29730-

Last Known Phone: 803- - Last Known Employer: BLACK & DECKER

Height: 602 Weight: 175 Hair Color: BLK Eye Color: BRN

Build: 1 Date Born: [REDACTED] Age: 26

Image: 4 File Name: E715795108

Last Name: CHISHOLM First Name: KEVIN Middle Name: J Suffix:

SSN: - -

Address: [REDACTED] Apartment: City: ROCK HILL Zip: 29730-

Last Known Phone: - - Last Known Employer:

Height: 511 Weight: 170 Hair Color: BLK Eye Color: BRN

Build: Date Born: [REDACTED] Age: 21

Image: 5 File Name: C712393161

Last Name: ROBINSON First Name: ZHIVAGO Middle Name: ANWAH Suffix:

SSN: [REDACTED]

Address: [REDACTED] Apartment: [REDACTED] City: ROCK HILL Zip: 29730-

Last Known Phone: [REDACTED] Last Known Employer: JAZZY CUTS/BARBER/CLEAN UP

Height: 604 Weight: 235 Hair Color: BLK Eye Color: BRN

Build: Date Born: [REDACTED] Age: 26

Image: 6 File Name: C712513319

Last Name: DAVIS First Name: ANTONIO Middle Name: T Suffix:

SSN: [REDACTED]

Address: [REDACTED] Apartment: City: ROCK HILL Zip: 29730-

Last Known Phone: [REDACTED] Last Known Employer:

Height: 511 Weight: 226 Hair Color: BLK Eye Color: BRN

Build: Date Born: [REDACTED] Age: 28

CONFIDENTIAL

WITNESSES
EU/ Welch

3

ARREST WARRANT NUMBER
-603171

ACTION OF GRAND JURY
TRUE BILL

Paul Van
Representative of Grand Jury
Date: 1/19/12

VERDICT
Guilty

Phillip Sundell
Representative of Petit Jury
Date: 3-21-2013

DOCKET NO. 2012-GS-46-00496

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

January 19, Term 2012

THE STATE

vs.

CLAYTON LEEVELL MASSEY

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375(B)(3)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

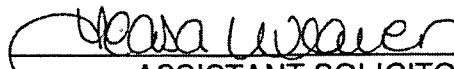
INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

On or about September 16, 2011, the Defendant, Clayton Leevell Massey, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

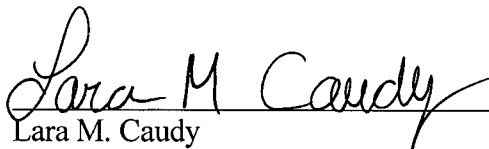
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 17, 2014

A handwritten signature in black ink, reading "Lara M. Caudy", written over a horizontal line.

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

APR 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

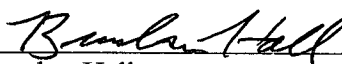
CLAYTON L. MASSEY,

APPELLANT

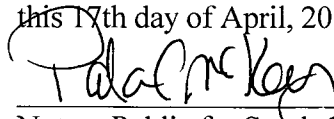
APPELLATE CASE NO. 2013-000657

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of April, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of April, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.