

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

TYRESS ANTONIO LITTLEJOHN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001895

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSION
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-GS-46-04110
04112

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
TYRESS LITTLEJOHN)

JULY 15, 2014
York, South Carolina

BEFORE THE HONORABLE FRANK R. ADDY

APPEARANCES:

LESLIE ROBINSON, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

GEOFF DUNN, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-SNO.DESCRIPTIONID.

EW

NO EXHIBITS

1 MS. ROBINSON - Tyress Littlejohn. May it
2 the Court.

3 THE COURT - Yes, ma'am.

4 MS. ROBINSON - Your Honor, this is actually just
5 an offer rejection. Mr. Littlejohn is charged with two
6 counts of trafficking crack cocaine 28 to 100 grams first
7 offense, Indictments 2013-GS-46-04110 and 04112. We have
8 made an offer in this case to plead to both of those two
9 charges for 15 years concurrent. I did invite Mr. Dunn who
10 represents Mr. Littlejohn at this point to make any counter
11 offers, but in our conversations my impression -- and he
12 can elaborate further if he wishes -- is that we were
13 simply too far apart and that Mr. Littlejohn wants to
14 officially request a trial in this matter. We will -- I
15 spoke with Mr. Dunn about scheduling. I know he has some
16 scheduling issues in August. I also need to speak with
17 officers and just verify obviously summer schedules to get
18 vacations and whatnot, but we'll be trying to schedule this
19 as soon as possible for trial.

20 THE COURT - All right. And he's charged with
21 counts of trafficking?

22 MS. ROBINSON - Yes, Your Honor.

23 THE COURT - Ten to 100. What's that carry?

24 MS. ROBINSON - They're seven to 25 for the weight
25 range and number of offenses.

1 MR. DUNN - Seven to 25 for the first, seven to 30
2 for the second.

3 THE COURT - All right, Mr. Dunn, obviously y'all
4 acknowledge the offer has been presented and you're
5 choosing to reject that and proceed to trial.

6 MR. DUNN - Yes, sir, and I just, you know,
7 this point we haven't seen any of the CI stuff and my
8 client doesn't want to accept an offer prior to that much
9 time if he can't see all the evidence that's against him,
10 and we have not seen CI video, pictures or any of the s
11 that goes along with CI cases.

12 THE COURT - Very good. It's acknowledged. Thank
13 you.

14 MS. ROBINSON - Thank you, Your Honor.

15 MR. DUNN - Thank you, Your Honor.

16 (END OF TRANSCRIPT)

17

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19

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21

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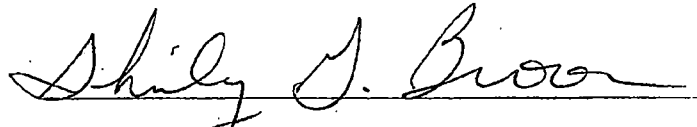
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 6 pages are true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Tyress Littlejohn, taken by me in the Court of General Session for the Sixteenth Judicial Circuit on the 15th day July, 2014, and provided by me this the 26th day of Nov. 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

State of South Carolina.,)
)
)
)
 County of York.)

In the General Sessions
 Court of York
 Case No.: 2013-GS-46-04112

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Tyress Antonio Littlejohn.,)
)
 Defendant.)

Transcript of Record

October 14-15, 2014
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III

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 To the Honorable John C. Hayes, III

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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

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

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1 (YORK COUNTY COURT OF SESSION IN SESSION, TUESDAY,
2 OCTOBER 14, 2014 AT 10:01 A.M..)

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

4 Good morning. Ms. Robinson.

5 SOLICITOR ROBINSON: May it please the court.

6 THE COURT: Yes, ma'am.

7 SOLICITOR ROBINSON: Your Honor, this is the matter of
8 State versus Tyress Littlejohn Indictment 2013-GS-46-0-4-1-
9 1-2. The charge is for trafficking in crack cocaine.

10 Your Honor, the defendant has indicated that he wishes
11 to plead not guilty and proceed to trial on this charge.
12 As an additional matter, just a house keeping matter, Your
13 Honor, on the front of the indictment the CDR Code is 389
14 which is a second offense trafficking but we are actually
15 going forward as a first offense. He does not have a
16 qualifying prior.

17 THE COURT: Well the CDR Code really doesn't come into
18 play until you get the sentencing sheets.

19 SOLICITOR ROBINSON: Yes, sir. I just wanted to - -

20 THE COURT: I appreciate you telling me that. Okay.

21 All right, we've met in chambers and talked briefly.
22 There is a co-defendant who I understand has been brought
23 from Anderson County based on, I guess, a subpoena from
24 counsel for Mr. Littlejohn - a gentleman named Williams -
25 who is represented by Mr. Pride here and by Druann White on

1 some charges in Anderson County. I guess he's in the
2 holding cell. It's through his attorney indicated he
3 doesn't intend to offer any testimony and exercise his
4 constitutional right to remain silent so I think the first
5 thing to do is find out where we stand with that so Mr.
6 Pride can be - not have to sit around. And also so the
7 individuals who are transporting Mr. Williams can take him
8 back if that's what happens.

9 SOLICITOR ROBINSON: Yes, Your Honor.

10 THE COURT: Any issues, any comments?

11 SOLICITOR ROBINSON: No, Your Honor, only until the
12 defendant is out here to put on the record as - -

13 THE COURT: Mr. Dunn.

14 MR. DUNN: I don't have any comments. It was my
15 subpoena though that brought him here.

16 THE COURT: Mr. Pride.

17 MR. PRIDE: None, Your Honor.

18 THE COURT: Okay. Bring in Mr. Williams.

19 THE BAILIFF: You want him to be sworn in on the
20 stand?

21 THE COURT: Let's swear him in and let him take the
22 stand is probably the best.

23 (DEFENDANT, JYWAUN DAVIS WILLIAMS, BLACK MALE, ENTERS
24 THE COURTROOM.)

25 MADAME CLERK: Please raise your right hand and place

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1 your left hand on the Bible.

2 (WHEREUPON, JYWAUN WILLIAMS,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE COURT: Just have a seat up here.

5 (WITNESS TAKES THE WITNESS STAND.)

6 THE COURT: Mr. Williams, I'm John Hayes the Circuit
7 Court judge here in this state and in this county. We've
8 convened a trial of a gentleman named Tyress Antonio
9 Littlejohn who is represented by Mr. Geoffrey Dunn. At
10 this time you are represented by Mr. Hemphill Pride and Mr.
11 Littlejohn's attorney has subpoenaed you to testify on his
12 behalf in this trial which he has a right to do.

13 Your attorney has indicated that you are - advised him
14 that it is your intention to not testify but exercise your
15 Constitutional right -

16 A. Yeah.

17 MR. PRIDE: Excuse me, Judge.

18 THE COURT: I'm sorry, I'll turn it over to Mr. Pride.

19 MR. PRIDE: Your attorney in Anderson, I have not
20 advised him of that right.

21 THE COURT: Okay. I'll turn it over --

22 Ms. White has advised you to exercise your
23 Constitutional right, Druann White who is your attorney and
24 as I understand it in the Anderson charges has advised you
25 to exercise your right to remain silent and not testify.

1 Is that correct?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: All right. What is your intention
4 regarding testifying in this case? Do you intend to
5 testify on Mr. Littlejohn's behalf or exercise your
6 Constitutional right to remain silent?

7 MR. WILLIAMS: Execute - Remain silent.

8 THE COURT: All right. Mr. Pride represents you in
9 regard to the charges here.

10 Do you have any matters you want to go over with him?

11 MR. PRIDE: No, Your Honor. I think that's sufficient.

12 THE COURT: All right. The State?

13 SOLICITOR ROBINSON: No, Your Honor.

14 THE COURT: Mr. Dunn.

15 MR. DUNN: No, sir. He says he isn't going to
16 testify.

17 THE COURT: All right. Well I'm sorry - not sorry -
18 We brought you over here for a legitimate purpose and we'll
19 send you back to Anderson.

20 MR. PRIDE: Judge, before you send him back I ---

21 THE COURT: Yeah, we've got --

22 MR. PRIDE: --- would move to be relieved as counsel
23 in this case that's pending here in York County.

24 THE COURT: And on the grounds of?

25 MR. PRIDE: On the grounds that his mother did not pay

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1 le as she promised.

2 THE COURT: All right. Do you understand that, Mr.
3 Williams? Mr. Pride --

4 MADAME COURT REPORTER: I'm sorry, Judge, I don't mean
5 to interrupt you. Could you get his full name on the
6 record. All I've heard so far is Mr. Williams.

7 THE COURT: What'S your full name?

8 MR. WILLIAMS: Jywaun Davis Williams.

9 MR. PRIDE: Here.

10 THE COURT: Okay. And Mr. Pride wants to get off
11 representing you further cause he hadn't been paid. Do you
12 understand that?

13 MR. WILLIAMS: Yeah. I have another attorney so.

14 THE COURT: Okay. All right, Mr. Pride.

15 MR. PRIDE: Thank you.

16 THE COURT: You've been substituted.

17 SOLICITOR ROBINSON: Your Honor, can I ask a brief
18 question on this matter? Druann White does represent him
19 in Anderson County but we have not received a letter of
20 representation here. I just want to clarify with the
21 defendant.

22 Are you expecting to retain her for your term in York
23 County as well or do you need to be considered for a public
24 defender here?

25 MR. WILLIAMS: No. I'm on retainer here for also.

1 SOLICITOR ROBINSON: Okay.

2 THE COURT: Ms. Robinson, you get in touch with Ms.
3 White.

4 SOLICITOR ROBINSON: I will, sir.

5 THE COURT: Thank you.

6 MR. PRIDE: Always nice to see you, Judge.

7 (WITNESS LEAVING WITNESS STAND.)

8 MADAME COURT REPORTER: Mr. Pride, do you need your
9 documentation?

10 MR. PRIDE: No. Can I enter that in evidence as an
11 Exhibit?

12 MADAME COURT REPORTER: Yes, sir.

13 Court's Exhibit?

14 THE COURT: I've already seen it. Court's Exhibit.

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

17 THE COURT: All right. We have the State's voir dire
18 and witness list.

19 Does the defense have any motions?

20 MR. DUNN: I have a number, Your Honor.

21 THE COURT: You got a copy?

22 MR. DUNN: Yes, sir, trying to find the original.

23 If I may approach? I have a witness list . . .

24 THE COURT: The defense - First are there any motions
25 on behalf of the State?

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1 SOLICITOR ROBINSON: Your Honor, I do have a couple of
2 matters to address pretrial. There is - I did not bring a
3 formal motion, Your Honor, but this case involves a video -
4 confidential informant video in which the defendant is
5 visible and he has a visible tattoo on one of his forearms.
6 I believe the case law allows the State to present evidence
7 that this person who is now on trial also has that same
8 tattoo that's visible in the video. I do have case law for
9 that that I can hand up to the Court but other than
10 addressing the defense's motion that would be the only
11 other issue from the State.

12 THE COURT: I'll take a look at those cases. I think
13 I'm familiar with the law. It is not considered self
14 incrimination or a violation of the right to remain silent
15 and have a defendant display - physically display
16 characteristics - but I'll take a look at the case.

17 MR. DUNN: I would object on the grounds it would be
18 self incrimination. Your Honor, just for the record.

19 THE COURT: Well I'll take a look at the case. It's
20 been a while since I visited that issue so I'd have to
21 refresh my memory. But my recollection was just what I
22 said. All right.

23 Now, the defense, Number One, complies with discovery.

24 SOLICITOR ROBINSON: Yes, Your Honor. The State has
25 complied with discovery. And just in response to notice,

1 the State served Mr. Dunn with a reciprocal discovery and
2 no we have not received anything from Mr. Dunn.

3 MR. DUNN: I do not have anything to give them so I
4 have not given you anything.

5 THE COURT: Okay. All right. Any statements by Mr.
6 Littlejohn that the State intends to use at trial.

7 THE COURT: Your Honor, the only time that the
8 defendant himself would be speaking would be during the
9 confidential informant video which are not statements to
10 law enforcement.

11 THE COURT: Okay. So no need for a Jackson versus
12 Denno so no interrogation. Prior convictions of the
13 defendant for Lyle, prior bad acts and for impeachment.

14 SOLICITOR ROBINSON: Your Honor, we do not have a Lyle
15 evidence for purposes of our case in chief in trial. I
16 would notify the court that he has another pending charge
17 that occurred two days prior to the event that we're trying
18 here today. I do not intend to admit that. I have advised
19 the officers that they are not to speak about the prior
20 incident. Other than the defendant some how opening the
21 door to that we don't intend to introduce that at trial.

22 In terms of impeachment convictions, we do have
23 records with intent to convict of armed robbery and
24 conspiracy 2000. He was sentenced to ten years on armed
25 robbery, five years on the conspiracy making those felonies

-13-

1 within the last ten years. And then federal charge,
2 financial institution crime in 2009 which would be both a
3 felony and a crime of dishonesty.

4 THE COURT: Okay. And the sentence from 2000 when did
5 he max out?

6 SOLICITOR ROBINSON: The 2010: He was released from
7 this in 2008 and his supervision not until 2010.

8 THE COURT: All right. Criminal records of the lay
9 witnesses.

10 SOLICITOR ROBINSON: Your Honor, the only witness
11 would be the informant in this case and I have provided the
12 criminal history to Mr. Dunn. I've reviewed that criminal
13 history and I shared with Mr. Dunn the ones - the
14 convictions that I believe qualify under the rules for
15 admissibility. So just to notify the Court that witness
16 has a PWID marijuana from 2001 which his sentence would
17 have extended us into the - within the ten year period.

18 He also has a possession with distribute - intent to
19 distribute crack third offense. A proximity charge related
20 to that. Habitual traffic offender and driving under
21 suspension third offense. He pled to all four of those
22 charges. In 2002 he received prison time which of course
23 extended to - within the ten years for those felony
24 convictions. He also has five pending charges that I
25 revealed to defense counsel. They are trafficking ten to

1 twenty-eight grams of crack second offense. Possession of
2 a weapon during a violent crime which is the trafficking
3 offense. Possession of the crack within proximity of a
4 park of school related to that trafficking. A distribution
5 of crack third offense and a proximity charge related to
6 that. Those are his pending charges.

7 THE COURT: All right.

8 MR. DUNN: Those are my understanding of his
9 convictions, Your Honor.

10 THE COURT: Next, Number Six, provide a copy of
11 criminal record of potential jurors.

12 SOLICITOR ROBINSON: Your Honor, I have not - We have
13 them here in court. If he wants to review them. I did not
14 provide them to him in advance. I just received this this
15 morning.

16 MR. DUNN: I had an opportunity to send for them and I
17 just didn't. Of course I can't find those myself.

18 THE COURT: I understand. Before the jury comes up
19 we'll take a break and I'll let you run through that.

20 Number Seven looks like it's an expansion of Number
21 One. I'm not sure I completely understand it.

22 MR. DUNN: Your Honor, this is an issue I had before
23 in a prior trial in front of Your Honor actually. At some
24 point subsequent to discovery being given at the prior
25 trial, additional statements, whenever they start talking

-15-

1 to lay witnesses sometimes they start telling things that
2 were not disclosed in writing. I just want to make sure
3 there aren't any statements given by any of the witnesses
4 that were exculpatory in nature. I don't want to be
5 surprised. That's all, Your Honor.

6 THE COURT: All right.

7 SOLICITOR ROBINSON: I have nothing else too, Your
8 Honor.

9 THE COURT: Okay. Motion for pretrial *Biggers*
10 hearing.

11 SOLICITOR ROBINSON: Your Honor, when the court is
12 ready we can call the witnesses for that. There is a photo
13 lineup in this case. We do not intend to introduce the
14 photo line up as evidence however we will be asking the
15 informant to make an in-court identification so Your Honor
16 will need to determine if the prior photo lineup caused
17 that to be -

18 THE COURT: All right, we'll do that. Offers made.
19 Any witnesses?

20 SOLICITOR ROBINSON: Your Honor, as I indicated the
21 informant does have a pending set of charges. However
22 there are not promises as to what the specific outcome of
23 his case will be.

24 THE COURT: And finally the CI's driving record.

25 MR. DUNN: I want a copy of his driving record, Your

1 Honor.

2 THE COURT: I know. That's what it says.

3 MR. DUNN: Yes, sir. I'm sorry.

4 THE COURT: I don't know why but any objection to
5 giving him --

6 SOLICITOR ROBINSON: Your Honor, I don't have it. We
7 were asking the paralegal to run the KQ information. As
8 soon as we get that we'll hand it --

9 MR. DUNN: That's fine, Your Honor. As long as I have
10 it before he takes the stand.

11 THE COURT: Okay. And let's go ahead and do the Neil
12 versus *Biggers* matter. Call your first witness.

13 SOLICITOR ROBINSON: Your Honor, in reference the
14 first witness would be the informant. The informant had
15 some threats against him over the course of -- of this case.
16 I'm not specifically alleging where those are coming from
17 but we would just ask that he be allowed to enter the
18 courtroom from the back.

19 THE COURT: Yeah, that'll be fine.

20 SOLICITOR ROBINSON: My apologies, Your Honor, he's
21 over in our office and we need to bring him here.

22 (PAUSE AT 10:19 A.M..)

23 THE COURT: If you will step up here and put your left
24 hand on the Bible and raise your right.

25 (WHEREUPON, TEZO ERVIN, BEING

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

-17-

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

2 MADAME CLERK: Thank you. You may have a seat.

3 DIRECT EXAMINATION - IN CAMERA

4 TEZO ERVIN BY SOLICITOR ROBINSON:

5 Q. Would you please state your name for the record?

6 A. Tezo Ervin.

7 Q. Mr. Ervin, did you assist local law enforcement in
8 working in an undercover capacity purchasing crack in
9 August of 2012?

10 A. Yes, ma'am.

11 Q. On August 16th, 2012 did you purchase crack on that
12 day?

13 A. Yes, ma'am.

14 Q. Who did you purchase that crack from?

15 A. Tyress Littlejohn.

16 Q. Is Tyress Littlejohn somebody you knew in advance of
17 August 16th of 2012?

18 A. Yes, ma'am.

19 Q. How long had you known Mr. Littlejohn?

20 A. Ten years or more.

21 Q. And before August 16th, 2012 is that the name you knew
22 him by? Did you know his full legal name?

23 A. Yes, ma'am.

24 Q. Any nicknames that you called him when you saw him?

25 A. Ress.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

-18-

1 Q. All right. And you said you had known him for ten or
2 more years. Is he someone that you saw in person regularly
3 enough that if you just happened to have a chance meeting
4 with him, say a grocery store, would you recognize him when
5 you saw him?

6 A. Yes.

7 Q. All right. Where were you when you met with him on
8 August 16th to purchase the crack?

9 A. Uh - in his yard.

10 Q. Okay. Was it during the daytime or nighttime?

11 A. Daytime.

12 Q. Was it well lite enough that you could see him
13 clearly?

14 A. This is broad daylight.

15 Q. And did you talk to him, directly interact with him in
16 person that day?

17 A. Yes.

18 Q. At some point after that, those events on August 16th,
19 2012, did law enforcement ask you to identify Tyress
20 Littlejohn for them?

21 A. Yes.

22 Q. And had you told law enforcement his name at that
23 time?

24 A. Yes.

25 Q. So law enforcement already knew the person you had

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

-19-

1 interaction with was Tyress Littlejohn?

2 A. Yes, ma'am.

3 Q. Okay. And when they ask you to help identify him,
4 how did they go about doing that? Did they bring in people
5 physically or was it photos?

6 A. Photos.

7 Q. When you were ask to look at the photos, did you look
8 at one photo at a time or was there a group of photos?

9 A. It's a group.

10 Q. And who showed you this group of photos? If you don't
11 remember specific names, was it law enforcement, was it?

12 A. Yeah it was law enforcement.

13 Q. And where did that take place?

14 A. It was the Federal Plaza.

15 Q. At law enforcement?

16 A. Law enforcement.

17 Q. At their offices?

18 A. Uh-huh.

19 Q. Okay. When - You said a law enforcement officer is
20 the one who showed you the photos. Correct?

21 A. Uh-huh.

22 Q. When the officer showed you the photos, did he tell
23 you to pick or give you any suggestions who you should pick
24 from the photos?

25 A. No, ma'am.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

-20-

1 Q. Did anybody else who might have been present make any
2 suggestions to you about who you should pick?

3 A. No, ma'am.

4 Q. Was the person who sold the crack to you on August
5 16th in that set of photos that you saw?

6 A. Yes, ma'am.

7 Q. Did you indicate that to the officers?

8 A. Yes, ma'am.

9 Q. Were you certain about the choice that you made?

10 A. Yes, ma'am.

11 Q. How long did it take you when you looked at the
12 pictures to figure out which one had sold you crack on
13 August 16th?

14 A. Five seconds.

15 Q. Mr. Ervin, I've handed you what's been marked State's
16 or Court's Exhibit One. Do you recognize that?

17 A. Yes.

18 Q. What is it?

19 A. The photo lineup.

20 Q. Is it the one that you just testified about seeing ---

21 A. Yes, ma'am.

22 Q. --- on August 16th? And how did you go about
23 indicating to the officers who you - who sold crack to you
24 on August 16th?

25 A. I initialed it and signature.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

-21-

1 Q. Does that lineup appear to have been altered in any
2 ways since you made your selection with the officers?

3 A. No, ma'am.

4 Q. And when did you make your selection? Did you
5 indicate on there when you made that?

6 A. Yeah, August the 22nd, 2012.

7 Q. 2012?

8 A. Uh-huh.

9 Q. Is the person who sold you crack on August 16th, 2012
10 in the courtroom here today?

11 A. Yes. There he is.

12 (WITNESS INDICATED TOWARD DEFENSE TABLE.)

13 Q. And what kind of shirt is he wearing?

14 A. Plaid shirt.

15 Q. A plaid shirt.

16 SOLICITOR ROBINSON: If the record could reflect he's
17 identifying the defendant, Your Honor.

18 (WITNESS INDICATED THE DEFENDANT.)

19 SOLICITOR ROBINSON: Your Honor, at this time I would
20 move to admit the Court Exhibit One for the Court's
21 consideration.

22 MR. DUNN: No objection.

23 THE COURT: In without objection.

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

TEZO ERVIN: CROSS BY MR. DUNN - IN CAMERA

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1 SOLICITOR ROBINSON: If you could, Mr. Ervin, answer
2 any questions from the Defense counsel.

3 MR. DUNN: May it please the Court, Your Honor.

4 CROSS-EXAMINATION - IN CAMERA

5 TEZO ERVIN BY MR. DUNN:

6 Q. So how did you know Mr. Littlejohn?

7 A. Previously a while ago. Middle school.

8 Q. You grew up with him?

9 A. Yeah pretty much.

10 Q. Ran in the neighborhood?

11 A. We weren't in the neighborhood.

12 Q. Okay. You ran in school?

13 A. Just around, yeah.

14 Q. And before August the 22nd of 2012 when you said you
15 initialed that piece of paper, had you done any other photo
16 lineups with police, law enforcement, or any other police
17 officer?

18 A. What, concerning him?

19 Q. Concerning Mr. Littlejohn.

20 A. No.

21 Q. So you just did one photo lineup?

22 Just one photo lineup of Mr. Littlejohn?

23 A. Yes as far as my recollection.

24 Q. And did law enforcement bring Mr. Littlejohn to your
25 attention or did you bring him to their attention?

TEZO ERVIN: CROSS BY MR. DUNN - IN CAMERA

-23-

1 A. Brought him --

2 Q. As a potential person that you could go buy drugs
3 from.

4 A. Brought him to their attention.

5 Q. All right. And which officer was it that you were
6 with when you did that photo lineup?

7 A. I can't recall.

8 Q. Do you remember how many there were?

9 A. Around?

10 Q. Approximately. Was there more than one?

11 A. Maybe ten.

12 Q. Do you remember which office you were at?

13 A. I was with law enforcement.

14 Q. All right. Were you in one of their offices or were
15 you somewhere else?

16 A. Inside with the FBI.

17 Q. All right. Do you remember what city you were in when
18 you met with them?

19 A. Rock Hill.

20 Q. All right. You said the FBI was involved?

21 A. Uh-huh.

22 Q. Was there more than one FBI agent?

23 THE COURT: You have to answer --

24 MR. DUNN: You're gonna have to --

25 I'm sorry, Your Honor.

TEZO ERVIN: CROSS BY MR. DUNN - IN CAMERA

-24-

1 THE COURT: You got to answer with a yes or a no.
2 You've got to give a verbal answer... You can't just
3 say huh-hum or shake your head.

4 A. Oh, yes, sir.

5 BY MR. DUNN:

6 Q. Was there more than one FBI agent?

7 A. Yes.

8 Q. Were there officers from the Drug Unit there?

9 A. Yes.

10 Q. Do you remember who?

11 A. Officer Rainier and Faulkenberry.

12 Q. All right. And Faulkenberry you said?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. All right. Anybody else?

17 A. It's a while ago, I can't remember all that.

18 MR. DUNN: For purposes I have no further questions.

19 THE COURT: All right. Redirect?

20 SOLICITOR ROBINSON: No redirect.

21 THE COURT: You can step down.

22 (WITNESS LEAVING WITNESS STAND.)

23 SOLICITOR ROBINSON: Your Honor, next the State would
24 call Officer Jamie Faulkenberry.

25 (WHEREUPON, JAMIE

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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

3 DIRECT EXAMINATION - IN CAMERA

4 OFFICER JAMIE FAULKENBERRY BY SOLICITOR ROBINSON:

5 Q. If you could please state your name for the record.

6 A. Jamie Faulkenberry.

7 Q. And where do you work?

8 A. The city of Rock Hill Police Department.

9 Q. In your work as law enforcement, have you ever worked
10 for a unit known as the Drug Enforcement Unit?

11 A. Yes, ma'am.

12 Q. And were you working with the Drug Enforcement Unit
13 in August of 2012?

14 A. Yes, ma'am.

15 Q. Were you involved in the investigation of Tyress
16 Littlejohn?

17 A. Yes, ma'am.

18 Q. At some point in that investigation did that
19 investigation involve a confidential informant?

20 A. Yes, ma'am.

21 Q. And who was that?

22 A. Mr. Ervin.

23 Q. And at some point in your investigation did you ask
24 that informant or were you involved in that asking that
25 informant to identify Tyress Littlejohn?

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 A. Yes, ma'am.

2 Q. And how do you guys go about asking them to do an
3 identification, what type of identification do you do?

4 A. If we - If they know who they are ahead of time we
5 ask for it in the statement. And then we also obtain a
6 photographic lineup of that individual that they - whom we
7 believe it is along with five other people who have similar
8 characteristics and see if they can identify them in the
9 lineup.

10 Q. Okay. So in this case did you have a name on a
11 suspect to start with?

12 A. Yes, ma'am.

13 Q. And what was that name?

14 A. Tyress Littlejohn.

15 Q. And were you involved with the creation of the photo
16 lineup in this case?

17 A. Yes, ma'am.

18 Q. Tell us how you went about creating a photo lineup
19 from what you knew.

20 A. At the time I was an employee at the sheriff's office
21 and we had a system through the sheriff's office called the
22 agent system which helps us build photographic lineups
23 based on physical characteristics, age. I obtained a photo
24 of that individual, Mr. Littlejohn, and applied
25 characteristics similar to those that ran for his photo,

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 height, weight, age, any facial hair, length of hair, and
2 it gave me a pool of individuals that had similar physical
3 characteristics. I picked five more photos that were
4 similar to his and placed them in a lineup.

5 Q. So you get a large pool of pictures and then you try
6 to pick five in addition to your known suspect ---

7 A. Yes, ma'am.

8 Q. --- for a match?

9 A. Yes, ma'am.

10 Q. So you have a total of six pictures?

11 A. Yes, ma'am.

12 Q. And do you use black and white or color photos?

13 A. If the photo if for instance if the only photo we have
14 of the individual we believe is in black and white then we
15 use all black and white. If we have a color photo we'd
16 rather use those.

17 Q. And in this case which was it?

18 A. Colored.

19 Q. And when you create this photo lineup do you know the
20 names of the other five people?

21 A. Yes, ma'am.

22 Q. You as an officer.

23 A. No, ma'am. No, ma'am, not initially. What happens
24 is it will print out two copies. A copy to show the
25 witness that doesn't have any names on it but just for the

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 number of each photo. The second copy is for law
2 enforcement that shows the names of individuals under their
3 photographs.

4 Q. Okay. Were you the officer who presented the photo
5 lineup that you created to the witness in this case?

6 A. I'm not sure.

7 Q. Okay. Would it help your recollection if you had a
8 chance to review the case summary?

9 A. Yes, ma'am. Usually there is a form attached to it
10 where we showed that they've indicated without any
11 recommendations from us. Then I have a signature of the
12 officer on it.

13 (PAUSE.)

14 A. Okay.

15 Q. Have you had a chance to read that?

16 A. Yes, ma'am.

17 Q. Do you know if you were the person who presented the
18 lineup to the witness?

19 A. No, ma'am, I was not.

20 Q. So your primary goal in this case would have been to
21 create the six photos?

22 A. Yes, ma'am.

23 Q. Okay. And do you see State's or Court's Exhibit One
24 sitting up there?

25 A. Yes, ma'am.

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 Q. Do you recognize that?

2 A. Yes, ma'am.

3 Q. And what is it?

4 A. That's the photographic lineup I built up from the
5 aging system.

6 Q. Do you recall if you were present when the other
7 officers showed the lineup to the witness?

8 A. I don't remember if I was or not.

9 Q. Okay. Do you have standard procedures about
10 presenting these type of things to witnesses in regards to
11 what's said to witnesses and what they're told about photo
12 lineups?

13 A. Yes, ma'am.

14 Q. What are those generally?

15 A. They're shown the photographic lineup and they are
16 told to identify any person they recognize and then
17 identify who they recognize and then they tell us where
18 they know that person from.

19 Q. Do you or any other individuals who you show the
20 lineups, you make suggestions or point anyone out or do
21 anything to help the witnesses make their selection?

22 A. No, ma'am.

23 Q. To your knowledge would those standard procedures have
24 been followed in this case?

25 A. Yes, ma'am.

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN - IN CAMERA

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1 Q. SOLICITOR ROBINSON: If you could please answer any
2 questions from the defense.

3 A. Yes, ma'am

4 CROSS EXAMINATION - IN CAMERA

5 OFFICER JAMIE FAULKENBERRY BY MR. DUNN:

6 Q. So that was not your signature on the second page of
7 the photo lineup. Correct?

8 A. No, sir.

9 Q. It was Officer Rainier's?

10 A. Yes, sir.

11 Q. But you were present during the questioning of Mr.
12 Ervin regarding the photo lineup?

13 A. I don't if I was or not. I believe so but I'm not a
14 hundred percent positive.

15 Q. Do you remember if anybody else would have been
16 involved besides you and Detective Rainier or Officer
17 Rainier?

18 A. I can tell you we never meet with the informant alone
19 but it would have been someone. I'm just not sure if I was
20 there.

21 Q. Do you know why the buy that we're here on or the sell
22 that we're here on happened on August the 16th of 2012.
23 Correct?

24 A. I believe so.

25 Q. And that the photo lineup is dated August the 22nd?

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN - IN CAMERA

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1 A. Yes, sir.

2 Q. Why is that you all waited eight days to do a photo
3 lineup?

4 A. I'm not particularly sure in this case. I can tell
5 you that there are times that we meet informants and
6 complainants away from our office. We get the information,
7 we go back to our office do some of the paperwork, obtain a
8 photographic lineup and then the next time we meet with
9 them then we present the lineup to them.

10 Q. But in this case you're not sure?

11 A. I'm not sure.

12 Q. When was the first time you knew what Tyress
13 Littlejohn looked like?

14 A. I'm not really sure. I'm not sure if I obtained a
15 photograph before this or not. I'm not sure.

16 Q. So you - Just so I'm clear, that you're clear, you
17 didn't have a picture of him prior to the transaction?

18 A. I don't know if I did or not.

19 Q. Do you remember how long that meeting lasted on
20 August 22nd where Mr. Ervin picked out Mr. Littlejohn in
21 the photo lineup?

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

23 Q. Were you involved in the arrest of Mr. Littlejohn?

24 A. I'd have to look at the summary.

25 Q. Did you ever have any physical interaction with Mr.

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN - IN CAMERA
OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

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1 Littlejohn?

2 A. Again, I'd have to look at the summary. I'm not sure.

3 Q. Did you look at the summary prior to - in preparation
4 of getting ready for trial?

5 A. Somewhat.

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

7 THE COURT: Redirect?

8 SOLICITOR ROBINSON: No further questions at this
9 time.

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

11 (WITNESS LEAVING WITNESS STAND.)

12 SOLICITOR ROBINSON: Your Honor, last the State would
13 call Officer John Rainier.

14 THE COURT: Please come up and be sworn.

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

17 DIRECT EXAMINATION - IN CAMERA

18 OFFICER JOHN RAINIER BY SOLICITOR ROBINSON:

19 Q. Please state your name for the record.

20 A. John Rainier.

21 Q. And where do you work?

22 A. City of Rock Hill Police Department.

23 Q. In your work with law enforcement have you ever been
24 assigned to the Drug Enforcement Unit?

25 A. Yes, ma'am.

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 Q. Were you assigned to the Drug Enforcement Unit in
2 August of 2012?

3 A. Yes I was.

4 Q. And were you involved in a drug investigation of
5 Tyress Littlejohn?

6 A. Yes, ma'am.

7 Q. Did that case involve a confidential informant?

8 A. Yes it did.

9 Q. Who was that?

10 A. Tezo Irvin. Ervin. Sorry.

11 Q. And you already testified you were involved in the
12 investigation of Tyress Littlejohn. How was it that he
13 became a target of an investigation?

14 A. He was identified by the confidential informant Mr.
15 Ervin.

16 Q. As a subject for the investigation?

17 A. Yes, ma'am.

18 Q. Okay. Now does that mean that the confidential
19 informant knew Mr. Littlejohn before you brought Mr.
20 Littlejohn up to him?

21 A. That's what he stated yes, ma'am.

22 Q. Now in the course of the investigation was the
23 informant ask to identify Tyress Littlejohn for law
24 enforcement?

25 A. Yes he was.

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 Q. And how do you go about asking your witness to make an
2 identification?

3 A. We'll do it through a photo lineup.

4 Q. And did you create the photo lineup in this case?

5 A. No I did not.

6 Q. Do you know who did?

7 A. Officer Faulkenberry.

8 Q. Were you involved in presenting the photo lineup that
9 was created to the witness?

10 A. Yes, ma'am.

11 Q. Can you tell me what procedures you followed in
12 presenting that photo lineup to a witness?

13 A. Once Officer Faulkenberry created the document he
14 brought the informant in, Mr. Ervin, and I sat it down in
15 front of him. Actually before I sat the actual photo
16 lineup in front of him I advised him that we were
17 presenting him with a photo lineup of the possible suspect
18 Mr. Littlejohn. I told him that the person may or may not
19 be in the photo lineup and I then presented it them - to
20 him.

21 Q. Where did that take place?

22 A. I think that was at the FBI office in Rock Hill.

23 Q. And are other people present while you are doing this?

24 A. Yes.

25 Q. What type of other people?

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 A. Agent Sosebee would a been there because that's the
2 only way we could have gotten into the office. And I think
3 Sergeant Lubben was there too. He was the Drug
4 Enforcement's direct supervisor kind of over seeing the
5 case.

6 Q. And you said that Officer Faulkenberry created the
7 photo lineup for you; is that correct?

8 A. Yes, ma'am.

9 Q. So would he have been present on that day at some
10 point?

11 A. I do not remember.

12 Q. Okay. It's possible he could have created it at
13 an advanced time?

14 A. Yes, ma'am.

15 Q. And you said Allen Sosebee was there?

16 A. Yes.

17 Q. Who is that?

18 A. He is Special Agent - He is a special agent for the
19 FBI at the Rock Hill Division.

20 Q. Okay. So when you said you met at the FBI office,
21 it's his office there that you would have been meeting?

22 A. Yes.

23 Q. Now you said you presented that to the informant. Do
24 you or anyone else who was present do anything that might
25 suggest or emphasize any of the pictures or give any

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON
IN CAMERA

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1 indication to the informant who they should pick?

2 A. No.

3 Q. Do you remember how long it took the informant to make
4 a selection in this case?

5 A. Not very - A few seconds.

6 Q. And did the informant indicate how certain he was
7 about the identification that he made?

8 A. He said absolutely.

9 Q. Are you aware if he ever identified anybody else as
10 a person who sold crack to him in this investigation?

11 A. I'm sorry, can you -

12 Q. Did he identify anyone other than Tyress Littlejohn as
13 the person who sold crack to him in the August 16th
14 investigation?

15 A. He did.

16 Q. Who else?

17 A. Jywaun Williams.

18 Q. And is that instead of Tyress Littlejohn or in
19 addition to Tyress Littlejohn?

20 A. In addition to.

21 Q. Okay. So the only two identifications are Tyress
22 Littlejohn and Jywaun Williams?

23 A. Yes, ma'am.

24 Q. Do you see Court's Exhibit One sitting there?

25 A. Yes, ma'am.

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON - IN CAMERA -37-
CROSS BY MR. DUNN - IN CAMERA

1 Q. And do you recognize that?

2 A. Yes I do.

3 Q. What is it?

4 A. This is a photo lineup that I presented to the
5 informant Mr. Ervin.

6 Q. And does it reflect the informant's identification?

7 A. Yes, ma'am.

8 Q. Of which suspect?

9 A. Mr. Littlejohn.

10 Q. And does that appear to have been altered in any way?

11 A. Other than the - -

12 Q. There is a sticker on it that says - -

13 A. Yeah, that's the only thing.

14 SOLICITOR ROBINSON: If you could please answer any
15 questions from the defense.

16 MR. DUNN: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION - IN CAMERA

19 OFFICER JOHN RAINIER BY MR. DUNN:

20 Q. During your investigation of Mr. Littlejohn did you
21 ever actually put your eyes on him?

22 A. No, sir, only when we arrested him.

23 Q. To the best of your knowledge during your
24 investigation did any other officers put their eyes on him?

25 A. No, sir.

1 Q. All right. So the only identification that you have
2 of what happened on August the 16th is because of the photo
3 lineup that Mr. - the identification from Mr. Tezo on the
4 22nd of August. Correct?

5 A. Well other than the video that we had from the
6 actual transaction. We did not physically arrest him that
7 day nor did we physically see him.

8 Q. And in fact you - Were you involved in the arrest?

9 A. That day when we arrested him? No I was not.

10 Q. All right. Do you know who was involved in the
11 arrest?

12 A. I know Lieutenant Ligon was one of 'em. I'm not
13 sure of the other individuals who was the supervisor of
14 that portion of the arrest.

15 Q. All right.

16 A. So I don't know other names, sir.

17 Q. He was not arrested until sometime in 2013. Correct?

18 A. Yes, sir.

19 Q. Who all - How many officers were involved in the
20 investigation on the 16th?

21 A. I think it was six.

22 Q. And who were they? Who were they?

23 A. Myself, Special Agent Sosebee with the FBI, Sergeant
24 Lubber, Investigator Faulkenberry, Investigator Walter
25 Beck, Investigator David Vaughn and I think Investigator

OFFICER JOHN RAINIER: CROSS BY MR. DUNN - IN CAMERA

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1 Chris Parks who was a part time DEU agent and a Winthrop
2 officer.

3 Q. And so eight folks?

4 A. Maybe yeah. Sorry.

5 Q. That's all right. I was just following your fingers.

6 A. My math's not great.

7 Q. Why was the FBI involved?

8 A. Due to the nature of the investigation they were
9 assisting us with the financial portion of purchasing drugs
10 because of the amount that we were attempting to purchase.

11 Q. The day that you were - Earlier you testified that
12 you met with Mr. Tezo on the 22nd at the Rock Hill FBI
13 office.

14 A. Yes, sir.

15 Q. Beside yourself and at least - at least one FBI
16 agent since you got in the building - who else was involved
17 in that photo lineup?

18 A. Possibly Sergeant Lubben. Jim Lubber. He's the
19 narcotics - the east office - he's the supervisor over the
20 east office.

21 Q. Prior to working with or prior to the - both the
22 August 14th incident which we're not here on but would
23 involve the same CI and the August 16th issue which we are
24 here on, did you have any other opportunities to work with
25 Tezo Ervin as a confidential informant?

OFFICER JOHN RAINIER: CROSS BY MR. DUNN - IN CAMERA

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1 A. I believe we did.

2 Q. Do you remember how many times?

3 A. Prior to those?

4 Q. Prior to the two incidents involving Mr. Littlejohn.

5 A. Maybe one.

6 Q. Did it involve Mr. Littlejohn or did it involve
7 another person?

8 SOLICITOR ROBINSON: Your Honor, I'm going to object
9 at this point. For the purposes of the Bigger's hearing
10 we've gone far beyond the informant identifying -

11 THE COURT: I agree but I'm gonna finish him up.

12 Go ahead, answer the question.

13 A. I'd have to look over the entire case file. To the
14 best of my recollection I believe we had dealt with him one
15 previous time before dealing with Mr. Littlejohn.

16 Q. And when you brought him in that day that - to pick
17 out the photo lineup, or to pick out Mr. Littlejohn in the
18 photo lineup, and you had only worked with him once or
19 twice before, how do you know that he would be reliable in
20 who he picked out on the photo lineup?

21 A. When we met with him prior before doing anything we
22 sat down extensively and interviewed him and myself and
23 Special Agent Sosebee and Sergeant Lubber and you know we
24 spoke with him in regards to that and he was, you know,
25 with what he said as far as how he knew Mr. Littlejohn

OFFICER JOHN RAINIER: CROSS BY MR. DUNN - IN CAMERA
REDIRECT BY SOLICITOR ROBINSON - IN CAMERA

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1 that's how we determined that he was telling us the truth
2 and then through the photo lineup and through the
3 transaction on the 16th, the confirmation of the video.

4 MR. DUNN: I have no further questions, Your Honor.

5 SOLICITOR ROBINSON: Just a few follow up questions,
6 Your Honor.

7 REDIRECT EXAMINATION - IN CAMERA

8 OFFICER JOHN RAINIER BY SOLICITOR ROBINSON:

9 Q. Officer Rainier, you testified that you did not lay
10 eyes on Mr. Littlejohn at the time of the distribution; is
11 that correct?

12 A. Yes, ma'am.

13 Q. Does your unit make use of audio/video recording
14 equipment for these type of investigations?

15 A. Yes, ma'am.

16 Q. Was it used on the August 16th distribution?

17 A. Yes. We had a body wire on the informant to where
18 we could hear what was going on the entire time.

19 Q. And did you use video recording equipment for that?

20 A. Yes.

21 Q. Did those produce videos?

22 A. Yes, ma'am.

23 Q. And those videos that you are able to watch after the
24 fact?

25 A. After the fact, yes.

OFFICER JOHN RAINIER: REDIRECT BY SOLICITOR ROBINSON - IN CAMERA -42-

1 Q. So even if you did not lay eyes on him so to speak
2 physically in the field you were able to watch those videos
3 afterwards?

4 A. Yes, ma'am.

5 Q. Does that -

6 A. Which we did.

7 Q. You did watch those?

8 A. Right after yes. Because of the nature of where our
9 office is and where the transaction occurred you know we're
10 probably twenty to twenty-five minutes away so we had to go
11 back to the office download the video and then watched it.

12 Q. But - And then the identification didn't take place
13 for several days after the actual distribution. Correct?

14 A. Correct.

15 Q. Does having access to the videos help you
16 determine the reliability of the witness in making
17 identifications?

18 A. Yes.

19 SOLICITOR ROBINSON: No further questions.

20 MR. DUNN: No recross, Your Honor.

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

22 OFFICER RAINIER: Yes, sir.

23 (WITNESS LEAVING WITNESS STAND.)

24 SOLICITOR ROBINSON: Your Honor, I would ask the court
25 to review the photo lineup. The State has no further

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1 witnesses in this.

2 THE COURT: Mr. Dunn, any witnesses on behalf of the
3 defendant?

4 MR. DUNN: No, sir.

5 THE COURT: All right. I find that the defendant has
6 failed to prove by a preponderance of the evidence that the
7 identification process utilized by law enforcement in this
8 case is impermissibly suggestive. I've got the photo
9 lineup in front of me now. The individuals are all sis
10 African Americans. The face shape is similar; the skin
11 tone is similar. Their hair cuts are similar, their
12 clothing is similar, not almost identical, so I find there
13 is no suggestivity at all in the photo lineup and therefore
14 I find that the defendant has failed to prove by a
15 preponderance that the identification process were
16 impermissibly suggestive.

17 I also find that there is no likelihood of irreparable
18 misidentification as to the use of this lineup so I'm going
19 to allow the witness Mr. Ervin to make an identification,
20 if he can, or he had, but if he can during the trial of Mr.
21 Littlejohn as the individual involved in the alleged event
22 at issue as the sale of crack cocaine.

23 Anything else before we get the jury up?

24 SOLICITOR ROBINSON: Your Honor, I didn't know if you
25 wanted to address any further at this time the tattoo issue

1 that I raised.

2 THE COURT: Well I looked at the cases and its just as
3 I recall and there is no - The case is pretty clear. *State*
4 *versus Day* 341 S.C. 410, it is a 2000 case. Unequivocally
5 says "evidence concerning a defendant's tattoo or nickname
6 is not prejudicial when used to prove something at issue in
7 a trial such as the identification of the defendant" and
8 that is the purpose for which the tattoo would be or the
9 defendant would be ask to display a tattoo. There is a
10 case that got reversed but in that case the - *Day* is the
11 case that got reversed. It got reversed based on the fact
12 that the State was using the tattoo and nickname not to
13 prove identification but to prove character and that is not
14 the issue here.

15 This is also a 1992 case. It doesn't mention tattoo
16 or nickname but it says constitutional safe guards are
17 invaded only when a defendant is required to give testimony
18 or evidence against himself. They do not extend the
19 refusal of physical traits that may be made by ordinary
20 observation and that's *State versus Moore*, 308 S.C. 349.

21 So I will allow the State to require the defendant to
22 display the tattoo.

23 SOLICITOR ROBINSON: Your Honor, as a factual matter
24 on that regard, I'm not sure how the court would like us to
25 address that issue, if at some point the defendant will be

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1 required to walk up to the jury and reveal his tattoo or if
2 you prefer us to take a picture and admit it as a
3 stipulated exhibit that it was a picture taken today, or
4 how would Your Honor like to handle that?

5 THE COURT: That's kind of your call but I guess I'll
6 leave that up to you.

7 SOLICITOR ROBINSON: Your Honor, I honestly think that
8 a picture if we could admit it as a stipulated - print it
9 out this morning - take a picture of it instead of having
10 to parade him in front of the jurors who won't be able to
11 see in the back row.

12 THE COURT: I've got no control over that. I can't
13 require - I think that's a different - kind of a different
14 issue. I don't know that I can require him to submit to a
15 photograph. That could be done by stipulation but
16 otherwise unless you work out something suitable to the
17 State and the Defense regarding the use of a photograph
18 instead of his physical - physically appearing in front of
19 the jury with his tattoo exposed and that's fine with me.

20 SOLICITOR ROBINSON: Yes, Your Honor.

21 MR. DUNN: I would object to the photograph.

22 THE COURT: Okay. That's done. All right, we know
23 where we are.

24 SOLICITOR ROBINSON: Your Honor, the only other matter
25 I just want to put on the record is as you've heard there

1 are videos that were captured in this case. I did ask
2 Defense counsel if he had any redaction request in advance
3 of court. I have not heard anything from him so the State
4 does intend to admit them in their entirety.

5 MR. DUNN: I do not have any redaction request.
6 Obviously I object to the video at some point but nothing
7 that's going to be redacted.

8 THE COURT: Okay. Anything else?

9 SOLICITOR ROBINSON: Your Honor, he did ask to review
10 the jury book so I don't know if you want - -

11 THE COURT: Well we're getting ready to take a break
12 and I said we'd do that. Anything before we take a break?
13 Get the jury up. Let Mr. Dunn look at the juror
14 information.

15 SOLICITOR ROBINSON: Yes, sir.

16 THE COURT: Anything before we do that?

17 MR. DUNN: Not from me, Your Honor.

18 THE COURT: All right. Well we'll take about a ten -
19 It's a little bit before eleven, let's reconvene at 11:10
20 and we'll have the jury up by then.

21 THE BAILIFF: In or out, Judge?

22 THE COURT: In. And I've gone over and marked the
23 voir dire that I'm going to use. I'm excluding - I'm not
24 saying I'm doing it exactly like you have it here cause a
25 lot of this I already cover in my stocked questions. I'm

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1 not going to use State's No. 3, I'm not gonna use the
2 Defendant's - When I say not use, I'm not gonna cover these
3 issues, Seven, Nine, Ten, Eleven, Twelve, Thirteen,
4 Fourteen, Fifteen and Sixteen. Otherwise I think I cover
5 everything else that you requested.

6 MR. DUNN: I just ask that it be made part of a Court
7 Exhibit.

8 THE COURT: Hand it up to the court reporter.

9 MR. DUNN: I will yes, sir.

10 THE COURT: I can hand you this one if --

11 MR. DUNN: Well I wrote on mine so if we could --

12 THE COURT: I've written on mine too.

13 MR. DUNN: I've got one more.

14 THE COURT: I putting mine in. I've got marks on it
15 but ...

16 MR. DUNN: I don't think it's dated, Your Honor.

17 SOLICITOR ROBINSON: Your Honor, can I ask you to
18 repeat that list on Mr. Dunn's to make sure I got them all.

19 THE COURT: These are out. Seven, nine, ten through
20 sixteen.

21 SOLICITOR ROBINSON: Thank you, Your Honor.

22 THE COURT: Take a break until about ten after.

23 (COURT IN RECESS AT 10:56 A.M..)

24 (JURY ENTERS COURTROOM AT 11:13 A.M..)

25 (COURT BACK IN SESSION AT 11:16 A.M..)

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

2 Members of the jury panel I am John Hayes and along
3 with Judge Alford I'm holding court here this week. We're
4 starting our first trial in this courtroom for the week and
5 that is the case of State versus Tyress Littlejohn.

6 Mr. Littlejohn, would you please stand?

7 This is Mr. Littlejohn and he's represented by Mr.
8 Geoffrey Dunn.

9 You both may be seated.

10 The State is represented by Ms. Robinson and Ms.
11 Weaver from the Solicitor's office.

12 (SOLICITOR'S ROBINSON AND WEAVER STOOD.)

13 THE COURT: Mr. Littlejohn is charged with the offense
14 that's known as trafficking in crack cocaine. We use the
15 word trafficking but that does not mean anything like
16 traffic on the road so it's a little misleading but it's
17 called trafficking in crack cocaine. But the allegations
18 are that on August 16th of 2012 Mr. Littlejohn was involved
19 in selling or possessing or bringing into the state or
20 being involved in some degree with twenty-eight grams or
21 more of crack cocaine in violations of the laws of our
22 state.

23 If you end up sitting on the jury panel I will explain
24 trafficking to you more before the jury considers the
25 verdict. But in essence he's charged with being involved

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1 with crack cocaine in an amount in excess of twenty-eight
2 grams and that in this state is referred to as trafficking.

3 First, are any of you related by blood or marriage,
4 or, are any of you a close personal friend or acquaintance
5 of any of the individuals to whom I've just introduced to
6 you; if so, please stand? Introduced to you.

7 (NO ONE STANDS.)

8 THE COURT: Did you hand me a list?

9 MR. DUNN: I gave you a yellow piece of paper.

10 THE COURT: Oh. Okay.

11 I've already ask if you are related by blood or
12 marriage, or are you a close personal friend or
13 acquaintance of any of the individuals to which you've been
14 introduced. Next, I'll ask you do any of you know anything
15 about this case? Again, I told you it happened in York
16 County on August 16th, 2012.

17 What area of the county did this occur in?

18 SOLICITOR ROBINSON: York, town.

19 THE COURT: It occurred in York, South Carolina on
20 that day. Does anybody know anything about this case,
21 heard about it from any source whatsoever or have any of
22 you formed or expressed any opinion about any matter or
23 issue that would be involved in a case - this particular
24 case or a case like this; if so, please stand?

25 No one stands.

1 Are any of you members of the Grand Jury which passed
2 on this indictment at an earlier time; if so, please stand?

3 No one stands.

4 Are any of you or a member of your immediate family
5 involved in law enforcement at any level? Anything from a
6 policeman to a US Marshall, or MP; if so, please stand?

7 Your name and number?

8 A. Shelly Gause, 95.

9 THE COURT: And who are you related to?

10 MS. GAUSE: My brother in law and my sister in law
11 are both MP's. My brother in law is an MP and my sister in
12 law was an MP.

13 THE COURT: Okay. Would that affect your ability to
14 be fair and impartial in the trial of Mr. Littlejohn?

15 MS. GAUSE: I don't know anything about - I know what
16 they do but . . .

17 THE COURT: Well I know but would that affect - The
18 fact that you have somebody in law enforcement and he's
19 charged by law enforcement with a crime --

20 MS. GAUSE: I don't think it would make a difference.

21 THE COURT: Okay. Thank you. You can be seated.

22 Any of you or a member of your immediate family
23 involved with the prosecution of criminal cases? Anything
24 from a judge like me to a judge advocate general to
25 magistrate city judge, anything like that; if so, please

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1 stand?

2 No one stands.

3 Are any of you members of, contributors to
4 organizations such as Students Against Drunk Drivers;
5 Mother's Against Drunk Driver's; Citizen's Against
6 Violence; Trooper's Association; Sheriff's Association or
7 Fraternal Order of Police; if so, please stand?

8 No one stands.

9 Have any of you or a member of your immediate family
10 been prosecuted by the - Mr. Brackett's office, the
11 Sixteenth Solicitor's Office for any offense; if so, please
12 stand?

13 No one stands.

14 Have any of you worked with --

15 Yes, ma'am.

16 A. I think it's when my son was young, in his teens.

17 THE COURT: Your name and number?

18 A. Seventy-two, Arlene Dollar.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in the trial of this case?

21 MS. DOLLAR: No.

22 THE COURT: Thank you. I appreciate it.

23 Have any of you worked with the solicitor's office as
24 a Victim's assistant or been a witness on behalf of the
25 State for the solicitor's office; had any involvement with

1 the solicitor's office at all; if so, please stand?

2 Yes, ma'am, your name and number.

3 A. Pamela Yukon, 250. My grandson was murdered and we
4 just finished up the case.

5 THE COURT: All right. Would that affect your ability
6 to be fair and impartial in this trial?

7 MS. YUKON: Yes.

8 THE COURT: Okay. I'll excuse you. You just have a
9 seat. Thank you, but I'm sorry to hear about that. Thank
10 you for standing up.

11 Do any of you have any belief, religious or
12 philosophical or otherwise that would prevent you from
13 being a fair and impartial juror in the trial of this case;
14 if so, please stand?

15 All right. Yes, ma'am, your name and number?

16 A. Cheryl Sivak, Juror 201.

17 THE COURT: You have - You don't think you can be
18 fair and impartial in the trial of this case based on some
19 religious or other concerns?

20 MS. SIVAK: ... don't believe ...

21 THE COURT: You need to speak up. You need to speak
22 up. I can't hear you.

23 MS. SIVAK: I said I don't believe so.

24 THE COURT: All right. You can be excused. You just
25 have a seat. Thank you.

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1 Have any of you been represented by - I kind of
2 covered this with the Solicitor's office, but by the
3 Solicitor's office in any fashion -

4 You've already stood. You don't need to stand again.

5 Or have any of you been represented by Mr. Dunn or
6 Mr. Jordan with whom he practices law; if so, please stand?

7 No one stands.

8 Have any of you served as or been called - served
9 isn't probably the right word - been called as a witness in
10 any type of criminal case either side, the State or the
11 Defense; if so, please stand?

12 All right, your name and number.

13 A. Steven Jansen, Number 115.

14 THE COURT: And for which side were you testifying?

15 MR. JANSEN: I testified for the prosecution.

16 THE COURT: All right, and would that affect your
17 ability to be fair and impartial in this case?

18 MR. JANSEN: No.

19 THE COURT: Okay. Thank you. And I believe I already
20 ask this but to make sure, have any of you heard about this
21 case from any source whatsoever?

22 No one stands.

23 The next question is - I need to ask is somewhat
24 sensitive so I'm not going to ask you to go into great
25 detail. This is a case involving - allegations involving

1 the drug crack cocaine a illegal substance here in this
2 state. Have any of you or a member of your family been
3 affected by illegal drugs? That is has a member of your
4 family been addicted to them or been prosecuted for being
5 involved in the drug trade? Or have any of you experienced
6 something in your life that you think was precipitated by
7 illegal drugs; if so, please stand?

8 All right, we'll start in the front and we'll work our
9 way back. This time I'm going to ask the six of you just
10 to give me your name and number and you don't have to tell
11 me the background. Just your name and number and then I
12 will ask all of you collectively about your ability to be
13 fair and impartial.

14 A. Lynda Anderson, Number 9.

15 A. Arlene Dollar, 72,

16 A. Vivian Hammond, Number 98.

17 A. Elizabeth Garback, Number 86.

18 A. Lou Morgan, 161.

19 A. Brittany Walden, 6.

20 THE COURT: All right, the six of you who are
21 standing, if that experience in your life would prevent you
22 from being fair and impartial in this trial please raise
23 your right hand?

24 All right, the three that raised their hand, the other
25 three will sit down, and the three that raised their right

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1 hand if you will tell us your name and number again and you
2 will be excused.

3 A. Lynda Anderson, Number 9. I've had --

4 THE COURT: No, no. I don't need to know what
5 happened. I'm not prying.

6 MS. ANDERSON: Okay.

7 THE COURT: You told me all you needed to tell me.
8 You can't be fair and impartial and that's fair and that's
9 what we want to know.

10 Did you get her name and number?

11 MADAME COURT REPORTER: Yes sir.

12 THE COURT: Okay. Next.

13 A. Elizabeth Garback, Number 86.

14 THE COURT: Okay. You may be seated.

15 A. Brittany Walden, 6.

16 THE COURT: All right, you may be seated also. Thank
17 you.

18 The following are possible witnesses in this case. I
19 do not know that all will testify but even if they don't
20 testify their names may come up so if you know - of course
21 if you're related by blood or marriage - or if you know any
22 of these individuals please stand.

23 Marvin Brown, Mike Ligon, John Rainier, Jamie
24 Faulkenberry, Alan Sosebee, James Lubber, Christopher
25 Parks, Walter Beck, David Vaughan, Patrick Patterson,

1 Cynthia Mitcham and Tezo Ervin.

2 Do any of you know or are related, but anybody know
3 any of these individuals or related to any of these
4 individuals please stand?

5 No one stands.

6 Anything further from the State?

7 SOLICITOR ROBINSON: No, Your Honor.

8 THE COURT: The Defense?

9 MR. DUNN: No, sir.

10 THE COURT: All right. Finally do any of you know of
11 any reason whatsoever why you could not or should not serve
12 as a fair and impartial juror in the trial of this
13 particular case; if so, please stand?

14 No one stands.

15 Now the way we draw juries - and I'm kind of throwing
16 a curve to the lawyers - we're just gonna do it a little
17 different than we've been doing it in the past. Names will
18 be drawn at random. Each side has five - up to - -

19 MR. DUNN: I think ten isn't it?

20 SOLICITOR ROBINSON: It's just five, Your Honor, to my
21 knowledge.

22 THE COURT: I believe it's five and five.

23 Each side has a right to excuse ---

24 Could you check that?

25 --- up to five individuals. We will double check but

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1 I think five and five is correct - up to five individuals
2 so your name will be drawn at random. I'm going to ask you
3 to stand where you are. I'm not going to ask you to come
4 up here. I'm going to ask you to stand where you are and
5 the solicitor will say either excuse the juror or present
6 the juror. If she says excuse the juror simply sit back
7 down. If she says present the juror turn and face the
8 table where Mr. Littlejohn and his attorney are seated.
9 Mr. Dunn will say either excuse the juror which again means
10 you may simply have a seat. Or he will say swear the
11 juror. If you hear him say swear the juror please come out
12 to the hallway there or the alley - anyway come forward and
13 the bailiff's will tell you where to have a seat in the
14 jury box if you hear those words swear the juror.

15 Madame Clerk, it's five.

16 MADAME CLERK: Number 49, Aaron Clark.

17 (BLACK MALE STANDS.)

18 MADAME CLERK: What say you for the State?

19 SOLICITOR ROBINSON: Please excuse this juror.

20 MADAME CLERK: Your are excused from this case.

21 Number 141, Robert McCarthy.

22 (WHITE MALE STANDS.)

23 MADAME CLERK: What say you for the State?

24 THE COURT: Wait, wait, wait, wait, wait.

25 Okay. We'll draw two alternates. We'll draw two

1 alternates and strikes will be one and two.

2 All right.

3 SOLICITOR ROBINSON: Please present this juror.

4 MADAME CLERK: Defense?

5 MR. DUNN: Please excuse the juror.

6 MADAME CLERK: You are excused from this case.

7 Number 83, Lewis Frucht.

8 (WHITE MALE STANDS.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR ROBINSON: Please present this juror.

11 MADAME CLERK: Defense?

12 MR. DUNN: Please seat the juror.

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

14 Number 244, Gregory Winter.

15 (WHITE MALE STANDS.)

16 MADAME CLERK: What say you for the State?

17 SOLICITOR ROBINSON: Please present this juror.

18 MADAME CLERK: Defense?

19 MR. DUNN: Please seat the juror.

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

21 Number 179, Stephen Rainey.

22 (WHITE MALE STANDS.)

23 MADAME CLERK: What say you for the State?

24 SOLICITOR ROBINSON: Please present this juror.

25 MADAME CLERK: Defense?

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1 MR. DUNN: Please seat this juror.

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

3 Number 168, Gregory Parsons.

4 (WHITE MALE STANDS.)

5 MADAME CLERK: What say you for the State?

6 SOLICITOR ROBINSON: Please present this juror.

7 MADAME CLERK: Defense?

8 MR. DUNN: Please excuse the juror.

9 MADAME CLERK: You are excused from this case.

10 Number 77, Mary Edwards.

11 (BLACK FEMALE STANDS.)

12 MADAME CLERK: What say you for the State?

13 SOLICITOR ROBINSON: Please present this juror.

14 MADAME CLERK: Defense?

15 MR. DUNN: Please seat the juror.

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

17 Number 26, Stacy Black.

18 (WHITE FEMALE STANDS.)

19 MADAME CLERK: What say you for the State?

20 MR. DUNN: What was the number again?

21 MADAME CLERK: 26.

22 SOLICITOR ROBINSON: Please present this juror.

23 MADAME CLERK: Defense?

24 MR. DUNN: Please seat the juror.

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

1 Number 159, Harriette Moore.

2 (BLACK FEMALE STANDS.)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR ROBINSON: Please present this juror.

5 MADAME CLERK: Defense?

6 MR. DUNN: Please seat the juror.

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

8 Number 24, James Bergman.

9 (WHITE MALE STANDS.)

10 MADAME CLERK: What say you for the State?

11 SOLICITOR ROBINSON: Please present this juror.

12 MADAME CLERK: Defense?

13 MR. DUNN: Please excuse the juror.

14 MADAM CLERK: You are excused from this case.

15 Number 241, Stacy Williams.

16 (BLACK FEMALE STANDS.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR ROBINSON: Please present this juror.

19 MADAM CLERK: Defense?

20 MR. DUNN: Please seat the juror.

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

22 Number 243, John Wilson.

23 (WHITE MALE STANDS.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR ROBINSON: Please present this juror.

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1 MADAM CLERK: Defense?
2 MR. DUNN: Please excuse the juror.
3 MADAM CLERK: You are excused from this case.
4 Number 169, Ina Pascal.
5 (BLACK FEMALE STANDS.)
6 MADAM CLERK: What say you for the State?
7 SOLICITOR ROBINSON: Please present this juror.
8 MADAM CLERK: Defense?
9 MR. DUNN: Please seat the juror.
10 MADAM CLERK: Please have a seat in the jury box.
11 Number 198, Joann Sievers.
12 (WHITE FEMALE STOOD.)
13 MADAM CLERK: What say you for the State?
14 SOLICITOR ROBINSON: Please present this juror.
15 MADAM CLERK: Defense?
16 MR. DUNN: Please seat the juror.
17 MADAM CLERK: Please have a seat in the jury box.
18 Number 95, Shelly Gause.
19 (WHITE FEMALE STOOD.)
20 MADAM CLERK: What say you for the State?
21 SOLICITOR ROBINSON: Please present the juror.
22 MADAM CLERK: Defense?
23 MR. DUNN: Please seat the juror.
24 MADAM CLERK: Please have a seat in the jury box.
25 Number 140, Sharon McCarter.

1 (WHITE FEMALE STOOD.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR ROBINSON: Please present this juror.

4 MADAM CLERK: Defense?

5 MR. DUNN: Please seat the juror.

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

7 Number 73, Ricky Doran.

8 (WHITE MALE STOOD.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR ROBINSON: Please present this juror.

11 MADAM CLERK: Defense?

12 MR. DUNN: Please excuse the juror.

13 MADAM CLERK: You are excused from this case.

14 Number 98, Vivian Hammond.

15 (WHITE FEMALE STANDS.)

16 MADAM CLERK: What say you for the State?

17 SOLICITOR ROBINSON: Please present this juror.

18 MADAM CLERK: Defense?

19 MR. DUNN: I don't have any more strikes I don't think
20 it matters.

21 THE COURT: Strike for cause.

22 MR. DUNN: May we approach, Your Honor?

23 THE COURT: Yes.

24 (BENCH CONFERENCE OFF THE RECORD AT 11:38 A.M..)

25 THE COURT: Come forward and have a seat.

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1 Alternate strikes will be one for the State and two
2 for - The Defense will draw two.

3 MADAM CLERK: Number 112, Karen Jacobs.

4 (WHITE FEMALE STANDS.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR ROBINSON: Please present this juror.

7 THE COURT: The Defense?

8 MR. DUNN: Please seat the juror.

9 MADAM CLERK: Please have a seat in the jury box.
10 Number 32, Waddell Brown.

11 (BLACK MALE STANDS.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR ROBINSON: Please excuse this juror.

14 MADAM CLERK: You are excused from this case.

15 Number 56, Michael Comer.

16 (WHITE MALE STANDS.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR ROBINSON: Please Excuse this juror.

19 Excuse, Your Honor. I only have one strike so please
20 seat the juror.

21 THE COURT: I'm sorry.

22 SOLICITOR ROBINSON: I've already used my strike, Your
23 Honor.

24 THE COURT: Well we're doing two alternates and each
25 alternate you get one strike.

1 MADAM CLERK: She already used it.

2 THE COURT: She already did? Okay.

3 MADAM CLERK: Defense?

4 MADAM CLERK: Defense?

5 MR. DUNN: Please seat the juror.

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

7 THE COURT: Anything from the State involving the
8 striking of the panel?

9 SOLICITOR ROBINSON: Nothing, Your Honor.

10 THE COURT: Anything from the Defense involving the
11 striking of the panel?

12 MR. DUNN: No, sir.

13 THE COURT: All right. Those of you who are not
14 chosen, I'm going to allow you to leave. I'm going to let
15 you go. Call back today at one and whatever instruction
16 you receive at that time please make sure you follow those.
17 It's very important that you do. I'm going to ask you to
18 leave quietly so that I can start talking to this jury
19 panel. Thank you.

20 (JURY DISMISSED AT 11:41 A.M..)

21 THE COURT: Members of the jury panel, I'm going to
22 ask you now to all stand and the Clerk will administer the
23 oath.

24 MADAM CLERK: Please raise your right hand.

25 (WHEREUPON, PETIT JURY SWORN

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1 AT 11:41 A.M..)

2 THE COURT: Be seated.

3 Members of the jury panel, I'm going to chat with you
4 for just a minute and then I'm going to turn the case over
5 to the attorneys to make their opening statements. We are
6 following some very ugly weather that's headed this way and
7 we always get a little apprehensive; I'm not gonna try to
8 take any apprehension away but we're gonna stop mid-
9 afternoon today so that everybody can be home if this event
10 occurs. I want you to be able to hear and you learn about
11 what's going on. We may not have - Hopefully we won't have
12 anything that we can call an event but right now it looks
13 like we might so I don't want you to worry. We'll be
14 leaving probably three of 3:30. In fact what we may do is
15 just kind of work through lunch and stop for the day rather
16 than stop for an hour, hour and fifteen minutes and come
17 back for an hour or forty-five minutes.

18 You - And I will appoint a foreperson later during the
19 trial. At this time I want to talk to you a little bit
20 about the case. To this charge of trafficking in crack
21 cocaine Mr. Littlejohn has entered a plea of not guilty.
22 This plea of not guilty places on the State the burden of
23 proving his guilt beyond a reasonable doubt.

24 He is presumed innocent of the charge and need not
25 prove his innocence. I repeat, the State has to prove his

1 guilt beyond a reasonable doubt.

2 I have three primary jobs in the trial such as this.
3 I rule - I'm the logistics person. I make sure we take
4 breaks, make sure we get out of here at a decent time, make
5 sure one person is speaking at a time. The mechanical part
6 of the trial. I also rule on questions of evidence. If
7 one side believes certain evidence should be allowed into
8 the record for your consideration, and the other based on
9 some rule or case law, believes that evidence is
10 inadmissible I have to rule on that.

11 My third job is that I am the sole judge of the law in
12 this case. You must take, accept, and apply the law as I
13 charge it even if you think I charge the law in error or
14 even if you think the law should be different. Your oath
15 requires you take, accept, and apply the law as I charge
16 it.

17 I am giving you a few legal principles at this point;
18 during the trial I will give you some legal principles,
19 perhaps, at the end of the trial I will give you a concise
20 and comprehensive charge on the law that you are to apply
21 to the facts as you determine them to be.

22 In just a minute I will allow the attorneys to come
23 before you and make opening statements. They don't have to
24 but they have a right to come before you and outline or
25 give you a blueprint of the trial. They are not arguing

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1 their case at this point. They will at the end of the
2 trial have an opportunity to tell you why or argue to you
3 why your verdict should be a certain verdict. That's not
4 what they're doing at this time. They are simply telling
5 you what to expect and they're expecting to come out
6 through the trial.

7 Do not take from anything I say or do during the trial
8 of this case as being an indication of an opinion of mine
9 on the facts. Our law does not allow a trial judge to
10 formulate or express to a jury any opinion on the facts.
11 It is solely your job as the trial jury in this case to
12 examine the evidence, to give to the evidence the effect,
13 the value, the weight and the truth you believe it should
14 have. In doing this you may believe one witness as opposed
15 to several witnesses; one witness as - several witnesses as
16 opposed to one.

17 You may believe all or part or none of a witnesses'
18 testimony. Use your common sense, your sense of logic, use
19 your experiences in life as you analyze the evidence. As
20 judges of the facts you necessarily must judge the
21 credibility, that is, the believability of the witnesses
22 who testify. In accessing believability use those things
23 I've just talked to you about. Use the things that you
24 find in your day to day life as being indicators of
25 truthfulness. And you can use certain evaluators. A

1 witnesses demeanor, how they act on the stand, are they
2 hesitant or straight forward. Is their testimony
3 consistent or inconsistent. Consider the opportunity a
4 witness had to know those things to which the witness
5 testified. Consider any bias or prejudice a witness may
6 have, that is, whether a witness would have any reason to
7 help or hurt one side or the other.

8 All these things you consider, determine the facts -
9 the true facts and you will be in a position to return a
10 verdict that speaks the truth.

11 Do not discuss the case among yourselves. It's very
12 important. Do not start discussing this case or try to
13 make up your mind until we reach the point where I instruct
14 you to jointly deliberate and return a unanimous verdict.
15 Prior to that time your oath forbids you from discussing
16 the case and it is not fair to the parties and you are not
17 equipped with all you need to make a fair and reasonable
18 decision so do not discuss the case until I instruct you to
19 do so at the end of the trial.

20 Do not let anyone discuss this case with you outside
21 the courtroom. If anyone tries to discuss this case with
22 you, report that back to me, hopefully giving me that
23 person's identity. But make sure you tell them that you
24 cannot discuss the case as you are serving as a juror.

25 Do not use any means to do any independent research

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1 about this case. Particularly do not go to any electronic
2 - use any electronic device to do any research about the
3 case or about the law or about courts, about solicitor's,
4 about Mr. Littlejohn and his counsel. Just stay away from
5 electronic media during this trial as it would be improper
6 for you to use this to obtain any information that would
7 have any bearing on this trial.

8 I include in that do not use any social media while
9 you're serving or at least if you use it don't print or
10 send out that you are sitting on a jury. There is nothing
11 wrong with that other than if you send that out on a Face
12 book, instagram, someone may reply with some information or
13 comments that wouldn't be healthy for the trial of this
14 case so just stay away from that the next couple of days
15 while you're on the jury if you don't mind.

16 If there is any news coverage, and I don't know that
17 there would be - but don't let yourselves be exposed to
18 any. Don't read about it, watch anything or listen to
19 anything that could remotely deal with this trial. Again,
20 anything that catches your eye or ear which would deal with
21 this trial don't let yourselves be exposed to it. You must
22 base your verdict solely on the law that is developed in
23 the trial.

24 If you can't see or you can't hear let me know. Cup
25 your ear, give a voice raising gesture, nudging gesture and

OPENING STATEMENT: BY SOLICITOR ROBINSON

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1 I'll try to correct that. We take breaks about every hour
2 and a half. I find that's a good comfortable level for
3 most people but if at any time any of you need a break for
4 any reason whatsoever simply raise your right hand and with
5 no questions ask we'll take a break.

6 And I extend that to counsel and to Mr. Littlejohn.

7 We want to move the case along but we are not in such
8 a hurry that we won't take a break if we need to take a
9 break. At this time I'm going to call on the State to make
10 any opening statement.

11 SOLICITOR ROBINSON: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, ma'am.

14 SOLICITOR ROBINSON: Ladies and gentlemen, on August
15 16th of 2012 the defendant in this case Tyress Littlejohn
16 gave about forty-five grams of crack cocaine to an
17 informant who was working for the York County Multi-
18 Jurisdictional Drug Enforcement Unit in York in York
19 County. Those are the basic facts of what bring us here
20 today. The charge is trafficking crack cocaine on Tyress
21 Littlejohn.

22 Now the judge alluded to this a little bit earlier
23 about what is trafficking. I'm not going to get into much
24 detail about that now either as Judge Hayes will give you
25 fuller instructions on that later but I do want to give you

OPENING STATEMENT: BY SOLICITOR ROBINSON

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1 a little bit of an idea of what we're talking about and
2 what the law in South Carolina says about trafficking.

3 So trafficking offenses tend to deal or focus more
4 with the weights involved on the drugs. So in this case
5 the defendant is specifically charged with trafficking more
6 than twenty-eight grams of crack cocaine. And as I said
7 the evidence in this case will show that the amount
8 involved in this case is forty-five grams. So that's the
9 crux of trafficking but what does it mean to traffic
10 something?

11 Well since these trafficking offenses focus a little
12 bit more on the weight they have a broad range of
13 activities that count as trafficking. They can include
14 things like selling drugs, giving drugs to somebody else
15 even if it's not for profit; being in possession of,
16 helping somebody else do any of those things but it can
17 even be as simple as having that amount of drugs; such
18 possession of that amount of drugs.

19 So as you also heard from the judge my name is Leslie
20 Robinson, I represent the state of South Carolina in this
21 matter. And it is my burden to prove this case beyond a
22 reasonable doubt. What is beyond a reasonable doubt? Well
23 it's not beyond any and all doubt. It is not to one
24 hundred percent certainty but it is proof that would leave
25 you firmly convinced of the defendant's guilt.

OPENING STATEMENT: BY SOLICITOR ROBINSON

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1 How do I go about doing that? Well I present evidence
2 to you. And the type of evidence that you will hear in
3 this case you will hear from witnesses who will testify.
4 You're going to hear from the officers who are involved in
5 this investigation; what type of procedures they followed
6 and how they conduct these types of investigations with
7 informants.

8 You will hear from the informant who went out and met
9 with the defendant and received the drugs from that
10 defendant. As I said we've got - I've got to prove to you
11 that it is over twenty-eight grams of crack cocaine so you
12 also hear from a chemist who test the substance that comes
13 back to verify that it is chemically crack cocaine. And
14 also is responsible for determining the official weight of
15 the amount of the substance that is brought back.

16 You will hear from the chemist. But there is other
17 types of evidence that can be like exhibits and in this
18 case officers made use of video recording equipment so you
19 will get to see videos of the informant going to meet with
20 the defendant. And in that video you will see the
21 defendant holding forty-five grams of crack cocaine.

22 I ask that all of you pay careful attention to all of
23 the evidence that is presented to you; that you weight it
24 carefully, consider everything that you hear, and at the
25 conclusion of the case I will be standing back in front of

OPENING STATEMENT: BY SOLICITOR ROBINSON
BY MR. DUNN

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1 you and asking you to render a just verdict in this case.
2 I will ask you to render a verdict that speaks the truth.
3 I will be asking you to render a verdict of guilty. Thank
4 you.

5 THE COURT: Mr. Dunn.

6 MR. DUNN: May it please the Court, Your Honor.

7 Good morning.

8 My name is Geoff Dunn and I represent Tyress
9 Littlejohn. You have heard briefly from the judge and you
10 heard briefly from the state about someone - everybody's
11 roles in the courtroom. The judge's job is to weigh the
12 evidence - Excuse me, not to weigh the evidence but to look
13 at it and see how it comes out. But he's basically the
14 referee.

15 You've got the solicitor. We call the prosecutors
16 here in South Carolina Solicitors. And it's the
17 solicitor's job to prove beyond a reasonable doubt that Mr.
18 Littlejohn is guilty of whatever it is that they are
19 accusing him of doing. In this case it's trafficking crack
20 cocaine.

21 The defendant's job he doesn't have to prove anything.
22 Every defendant comes to a courtroom cloaked in a
23 presumption of innocence and that cloak has to be taken off
24 by the evidence that the State presents. And if the State
25 fails to prove their case beyond a reasonable doubt, then

OPENING STATEMENT: BY MR. DUNN

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1 it's a very easy decision at the end of the day when the
2 judge ask you to go make a decision. It's a not guilty
3 decision because the defendant doesn't have to prove
4 anything.

5 So what I ask for you to do while you hear the
6 evidence cause of part of your job is to do is to weigh the
7 evidence. Your job it to hear the testimony that comes in
8 through people is to hear the testimony that comes in
9 through pictures and videos and whatever other tangible
10 items the state chooses to present their evidence it's your
11 job to weigh it.

12 So what I ask you to do is look at the quality of the
13 evidence as you are hearing it. Whether it's a video,
14 through a video. Is it quality? Is it something that - Is
15 it showing - That they are showing words that may be -----
16 --. And listen to the witnesses. Everybody who comes to
17 Court comes with certain biases and prejudices. We all
18 carry our own baggage in life. And when witnesses come
19 through the state and they carry the same sort of baggage,
20 you know, is there something in it for them. Well why are
21 they here. As parents those of us who are parents and we
22 have kids and they start talking to us and telling us
23 stories about what happened outside - at the school
24 outside, you know, a disagreement between them, you know,
25 the boys and their friends. You know we always have to

OPENING STATEMENT: BY MR. DUNN

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1 shift and to sort of sift and to sort of go through with
2 the story well what am I hearing? Is there more to the
3 story than what I'm hearing? Is there maybe you're not
4 hearing the whole story, maybe there is things like that.
5 It's the same principle for juries. You have to listen not
6 only for what you - for what's being told to you but for
7 what's not being told to you.

8 So as the attorney for Mr. Littlejohn what we ask is
9 just bring your common sense to the jury when you're
10 listening to the evidence and when you're hearing the
11 testimony. Does it really have substance does it make any
12 sense? I submit to you that at the end of the day when
13 you hear the case that you're going to say I got some
14 serious doubts. And we will talk about those doubts later
15 on in the case when the judge gives us an opportunity in
16 closings. But in the meantime we'd just ask that you
17 listen, use your common sense, and use those tools that God
18 gave us as individuals and as people and the same tools
19 that you use with your wives and your husbands and your
20 kids, your friends, your family. Thank you for being here.

21 THE COURT: All right. We'll take a short break.
22 Take about a fifteen minute break and then when we come
23 back the State will be in a position to call it's first
24 witness. So follow the bailiff to the jury room and we'll
25 take a break.

1 (JURY EXITS THE COURTROOM AT 11:56 A.M..)

2 THE COURT: Take about a fifteen minute break and that
3 will be a quarter after twelve and we'll go an hour and a
4 half or so, two if we can last, and then stop.

5 MR. DUNN: Yes, sir. One question I have. The last
6 break he was taken - Mr. Littlejohn was taken. Is he going
7 to be taken into custody?

8 THE COURT: Yeah, this type charge I am going to
9 require him to remain in custody during the trial.

10 MR. DUNN: Just for the Court's information, he does
11 wear an ankle monitor and he has been on house arrest for
12 two years. I think if he was gonna be a flight risk he
13 probably would have left before then.

14 THE COURT: Well I - My practice is in cases of this
15 magnitude when we start the defendant remains with us.

16 MR. DUNN: Yes, sir.

17 SOLICITOR ROBINSON: Thank you, Your Honor.

18 (COURT IN RECESS AT 11:57 A.M..)

19 (COURT BACK IN SESSION AT 12:22 P.M..)

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

21 Is the State ready?

22 SOLICITOR ROBINSON: Yes, Your Honor.

23 THE COURT: Is the Defense ready?

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

25 THE COURT: Bring in the jury.

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 (JURY REENTERS COURTROOM AT 11:24 P.M..)

2 THE COURT: Members of the jury panel, I did not
3 mention, you do not need to take notes, just listen very
4 attentatively and the next time you come in and out, Mr.
5 Frucht, I'm gonna ask you to be the foreperson and so -

6 And that's you?

7 MR. FRUCHT: Yes, sir.

8 THE COURT: F-r-u-c-h-t? Okay. I mispronounced it.

9 Okay. I'm going to ask you to be the Foreman, and
10 later we'll change seating but right now you just sit right
11 there.

12 All right, call your first witness.

13 SOLICITOR ROBINSON: Yes, Your Honor.

14 The State calls Officer John Rainier.

15 (WHEREUPON, JOHN RAINIER,

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

17 DIRECT EXAMINATION

18 OFFICER JOHN RAINIER BY SOLICITOR ROBINSON

19 Q. Good afternoon.

20 A. Hello.

21 Q. Would you please state your name for the record?

22 A. John Rainier.

23 Q. And what is it that you do?

24 A. I'm - Right now I'm a sergeant with the Rock Hill
25 Police Department.

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 Q. How long have you been working with the Rock Hill
2 Police Department?

3 A. Thirteen years.

4 Q. Have you - Do you have any other law enforcement
5 experience prior to those thirteen years?

6 A. Yes. Prior to that I was a police officer in the
7 state of Ohio for five years.

8 Q. Are you familiar with a unit that is called the Drug
9 Enforcement Unit in York County?

10 A. Yes, ma'am.

11 Q. Have you ever worked for that unit?

12 A. Yes I have.

13 Q. When did you work for that unit?

14 A. March of 2008 until my current promotion to Sergeant
15 in July of last year.

16 Q. Okay. And what is it that unit does or specialize
17 in?

18 A. Narcotics and vice crime investigations.

19 Q. And what kind of training do you receive as a law
20 enforcement officer and any additional training you receive
21 to work on the Drug Enforcement Unit?

22 A. I went to the Academy. Also I've been to various
23 narcotics investigation classes to include the narcotics
24 commander's class put on by the US Attorney's Office back
25 in 2011 I think it was.

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 Q. And you said you worked for the DEU from 2008 until
2 last year 2013; is that correct?

3 A. Yes, ma'am.

4 Q. In your work with the Drug Enforcement Unit are you
5 familiar with using confidential informants?

6 A. I am.

7 Q. If you could tell the jury a little bit about what
8 that means to work with a confidential informant; who are
9 those type of people and what do they do?

10 A. A confidential informants are people who are could
11 possibly be just concerned citizens in the community.
12 We've worked with those. We've also worked with people who
13 were paid informants. They come in we conduct
14 investigations we pay them for doing various types of work
15 for us. And then also - Excuse me, we've also had
16 individuals who are working off criminal charges come in
17 and work for us as well.

18 Q. Okay. And what does that mean that they're working
19 off charges?

20 A. People with criminal charges kind of hanging over
21 their head or their pending will come in. They will speak
22 to us if they meet the criteria then we'll work with them
23 to, you know, in relations to drug or vice crime issues
24 that we have in the community.

25 Q. Now in regard to what you refer to as the charges

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 hanging over them, do you make specific agreements
2 with them about what would happen with their charges
3 working with a confidential informant?

4 A. The only thing that we - The only thing we could tell
5 them is we don't promise them anything but we do have a
6 list of criteria that they have to meet. We have some
7 rules that they have to follow so that's really the only
8 thing that - other than we don't promise anybody anything.

9 Q. So you don't promise them anything specific.

10 Typically they're people hoping to get a benefit
11 though from what they doing ---

12 A. Correct.

13 Q. --- on their pending charges?

14 A. Yes, ma'am.

15 Q. And tell us a little bit about the criteria. What is
16 it that you are working for - looking for to work with
17 someone that's a confidential informant?

18 A. The kind of rules we have?

19 Q. Uh-huh.

20 A. We have a list I think it's - I mean it's over a page
21 now. During any type of investigation - Excuse me - that
22 they assist us with they are not allowed to facilitate any
23 other crimes other than if we're having then go buy drugs
24 for us that's the only thing their allowed to do. They're
25 not allowed to use any type of drugs. Not to carry any

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 firearms or any other weapons. They understand that during
2 an investigation they will be searched, their vehicle will
3 be searched, anybody that assist them. In an investigation
4 they will be searched as well. That they will have - that
5 there is a possibility that they will have audio recordings
6 of the - of their voices of the transactions of the
7 investigations that we do as well as video recordings.

8 Q. Okay. You talked about some of these procedures. Are
9 you familiar with the term controlled buy?

10 A. Yes.

11 Q. What does it mean to you the term controlled buy?

12 A. If we have a confidential informant that we're
13 utilizing during a controlled buy we'll have them come in
14 and then we will have them the money. We are in charge of
15 the money, we give it to them, they in turn once we search
16 them to show that they don't have any other - any other
17 money on their person we give them the money and then they
18 go out and they buy what we want then to and in this case
19 narcotics. And after they purchase the narcotics they will
20 bring it back to us.

21 Q. Okay. And is that also - You mentioned recording
22 equipment. Is that when those items come into play?

23 A. Yes, ma'am.

24 Q. And you talked about searches as well. What kind of
25 searches do you do in the confines of a controlled buy?

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 A. We'll search their person, the clothing that they're
2 wearing, the vehicles that they'll - and the vehicles that
3 they'll drive. Or if it involves a female we'll search
4 their purse or anything that they're gonna take with them.

5 Q. Okay. And we've already addressed video recordings.

6 What do you as officers do while you're sending these
7 people out to do a controlled buy?

8 A. We run loose surveillance on them to ensure that
9 they are doing what we have ask them to do. We don't drive
10 right behind them. We don't drive up to where the incident
11 - where the incident location is but we will create a loose
12 tail on them with multiple officers and multiple vehicles.

13 Q. Why do you keep it, in your words, as loose?

14 A. It has been - It's known through our experiences
15 that people who sell narcotics will have counter
16 surveillance. We conduct surveillance to ensure not only
17 the safety of the informant, the safety of the officers and
18 the safety of the public, the public that's around during
19 that incident, but it's also to look for counter
20 surveillance and also to ensure that everything goes
21 smoothly.

22 Q. So would it be fair to say you're talking about is
23 keeping an eye on what's happening and keeping the
24 investigation kind of secretive?

25 A. Secretive and I guess for lack of a better word

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 intact.

2 Q. Now when you worked with the Drug Enforcement Unit,
3 specifically in August of 2012, did you become involved in
4 the investigation of a Tyress Littlejohn?

5 A. Yes, ma'am.

6 Q. How is it that Tyress Littlejohn became the target
7 of an investigation?

8 A. We utilized a confidential informant that identified
9 him in a - during a interview.

10 Q. Okay. And who was that informant?

11 A. Tezo Ervin.

12 Q. What type of informant was Tezo Ervin? Earlier you
13 talked about concerned citizens, people who are paid who
14 have pending charges?

15 A. He was working off criminal charges.

16 Q. And in working off those charges did you make any
17 specific promises to him on what the outcome would be?

18 A. No, ma'am.

19 Q. Would anyone else in the Drug Enforcement Unit would
20 have made any promises?

21 A. I'm sorry, can you repeat that?

22 A. Would anyone else in the Drug Enforcement Unit have
23 made him promises about his pending charges that you are
24 aware of?

25 A. No, ma'am.

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 Q. Now you indicated that Tyress Littlejohn became a
2 target when he was mentioned by the informant to you; is
3 that correct?

4 A. Yes, ma'am.

5 Q. So in that sense the informant brought up this name
6 to you. You did not go to the informant and ask for a
7 controlled buy or investigation of Tyress Littlejohn?

8 A. We did not - We did not bring the name up, he
9 brought it to us to our attention.

10 Q. And was your investigation actively taking place on
11 August 16th of 2012?

12 A. Yes, ma'am.

13 Q. Just generally what was taking place on that day?

14 A. I had received a phone call from the informant
15 stating that he could in fact purchase a quantity of
16 narcotics from Mr. Littlejohn. We met. Prior to we met at
17 the FBI office which is located in the city of Rock Hill.
18 It's the field office at residence offices.

19 Q. When you say prior to, you mean prior to setting up
20 the deal or prior to the actual deal?

21 A. Prior to the actual deal.

22 Q. Okay.

23 A. When I - When we discussed and we decided to go ahead
24 and utilize Mr. Ervin as a confidential informant we gave
25 him kind of the opportunity to go out and start setting

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 deals up; making contact with Mr. Littlejohn and then he
2 later in turn called me. We met up to discuss what we were
3 about to do and then we proceeded to buy the drugs.

4 Q. So he would have made the front end arraignment and
5 then contacted you?

6 A. Yes, ma'am.

7 Q. Okay. And then you said you met at the FBI office
8 in Rock Hill; is that correct?

9 A. Yes originally.

10 Q. What would take place at the FBI office when you
11 are first meeting?

12 A. We would talk about what we were gonna do and where
13 we gonna go, who we were buying drugs from, how much we
14 were buying drugs from, how much the money was - Excuse me
15 - making sure that the money part of it was squared away;
16 we had the right amount. Making our necessary copies for
17 all our paperwork and just making sure everything was just
18 kind of ready to go because where we had to go in relation
19 to where we were we had to go to an off sight location to
20 activate some of our video equipment which I can explain.

21 Q. Okay. Yeah, before we get there, you talked about
22 summarizing what you guys expect to happen at the FBI
23 office. On August 16th, 2012, what were the terms of the
24 deal and your understanding of the arrangements that you
25 were seeking to follow through on?

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 A. I believe we had attempted to purchase three ounces
2 of crack. Somehow during the day the defendant had
3 indicated that he could only sell two ounces of crack which
4 is a significant amount of money between two and three
5 ounces cost wise. That's pretty much our plan and then we
6 were still kind of waiting where we were actually going to
7 do the actual drug transaction.

8 Q. Okay. So when you get at the FBI office you guys
9 finalize it and it's going to be - your understanding of
10 the deal it will be two ounces of crack?

11 A. Yes, ma'am.

12 Q. And did you guys finalize the amount of money that
13 would be involved?

14 A. Yes. Twenty-four hundred dollars.

15 Q. Okay. And would the money have been dealt with at
16 the FBI office before you went to the other location?

17 A. Yes the FBI - Agent Sosebee with the FBI - they played
18 a dual roll. Not only did we - During the investigation we
19 are trying to determine if we were gonna charge the
20 individual federally or through the state as well as he was
21 kind of the money source because of the amount of narcotics
22 we were purchasing.

23 Q. Okay. And how much money did you say you -

24 A. Two Thousand, Four Hundred Dollars.

25 Q. Okay. And tell us a little bit about how money is

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 handled at the FBI office in terms of actually giving it
2 into the custody of the informant.

3 A. Agent Sosebee actually had it up on his conference
4 table. He had it broken down into - it was hundred dollar
5 increments or five hundred dollar increments laid out. He
6 also has paperwork that has to be signed as well. It has
7 to not only be signed by the informant, it has to be signed
8 by Agent Sosebee and then it has to be signed by a witness
9 to ensure that it was correct. I went back behind Agent
10 Sosebee and I recounted the money as well. Once all our
11 paperwork was squared away Agent Sosebee felt comfortable
12 with making sure all his paperwork was squared away. We
13 went ahead and gave it to the informant.

14 Q. And would you have been present when that money was
15 given to the informant?

16 A. Yes.

17 Q. Now you mentioned going to a second location from
18 the FBI office. Would you remember what that was?

19 A. Yes. I think it was Cotton Belt Elementary School.

20 Q. Okay. And what city is that in?

21 A. The city of York.

22 Q. What was the purpose of going to the school?

23 A. From where we were going to meet the defendant at
24 from where we were coming from is about twenty to twenty-
25 five minute drive because of the time of day. The

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 surveillance equipment that we have is kind of time
2 sensitive meaning we only have depending upon which piece
3 of equipment we used whether it's a video source or an
4 audio source. I think the shortest portion the equipment
5 gives us the least amount of time when it's activated is
6 about forty-five minutes. So we wanted to ensure that we
7 had enough time cause everything runs off a battery or an
8 actual like a wire that's charged so we didn't have a whole
9 lot of time to deal with and that twenty to twenty-five
10 minute drive between the city of Rock Hill to Cotton Belt
11 Elementary like I said that's twenty-five minutes so that's
12 kind of critical for us.

13 Q. In terms of your equipment?

14 A. In terms of the equipment cause once it dies it
15 dies.

16 Q. So you go to the school to get a little bit closer
17 to the actual location where you believe the deal will
18 take place.

19 A. Yes, ma'am.

20 Q. What was your understanding of where the deal was to
21 take place?

22 A. I'm not familiar with that area. The Drug Unit has
23 three offices: The North office, the West office and the
24 East office. The West office kind of covers that York City
25 and everything kind of west of the county. I was

OFFICER JOHN RAINIER: BY SOLICITOR ROBINSON

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1 unfamiliar with it. My boss Sergeant Lubben was familiar
2 with the area. We called agents over from the West office.
3 The indicated that it was probably less than two to three
4 minutes away.

5 Q. Okay. So you went to Cotton Belt and you're in
6 York and it's in that general vicinity is where you were
7 expecting the deal?

8 A. Yes, ma'am.

9 Q. All right. So once you arrive at the school what
10 takes place at the school?

11 A. There we would have finished searching; we would
12 have searched the vehicles. We searched the person, the
13 money would have been given, we would have activated all
14 the equipment. I would have gone over last second details,
15 last minute details of what would happen. I would brief -
16 I briefed our officers that were there that day of the
17 tactical considerations if something were to go bad and
18 kind of the plan of attack; how we wanted the informant to
19 drive in and drive out so we could minimize our time not
20 being able to physically - visibly see him.

21 Q. Now you mentioned searching and searching vehicles.
22 Whose vehicle or what vehicle are being searched
23 before you go buy?

24 A. The informants.

25 Q. And did the informant use a vehicle to get to and

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1 from the deal in this case?

2 A. Yes, ma'am.

3 Q. And do you search - Does somebody search his person
4 as well?

5 A. Yes.

6 Q. And the equipment. You've already talked a little
7 bit about that for the jury but explain to them, are you
8 using video cameras, hand held video cameras or are a
9 smaller - What kind of equipment are you working with?

10 A. A very small. Some - The camera hull is probably
11 as big as a pin hole. We - Some are placed on the
12 informants person, some are placed within the vehicle.
13 Sometimes we will use the old, you know, video cam corder.
14 In this case we couldn't because of where the location was
15 and where we were set up we were unable to do that. So a
16 lot of this equipment is very - Looks like everyday type of
17 equipment but the camera - the camera lenses are very very
18 very small so if only it is basically a sight on where the
19 camera goes so if - Let's for instance say that this is my
20 camera. Where I stand and where I will look is where - is
21 what it records. It doesn't give us any type of panorama.
22 It doesn't turn either way or anything like that.

23 Q. So is it fair to say these are in a sense hidden
24 cameras?

25 A. Yes.

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1 Q. And you said you can't - it's not a panoramic camera.

2 Do you as officers have any control to move the lenses
3 at all remotely?

4 A. No. Not - Excuse me - Not on the - not on the
5 video recording devices that we used that day.

6 Q. Okay we've talked about videos. What about audio
7 feeds? Do you use - make use of those in these
8 investigations?

9 A. Yes.

10 Q. What is the purpose of an audio feed for these
11 investigations?

12 A. One is to back up the video recording. And two its
13 also as a wire - Excuse me - for us to hear what is going
14 on real time.

15 Q. Okay. So once an informant is no longer in your
16 physical presence you can still hear what's going on with
17 that person; is that correct?

18 A. Yes, ma'am.

19 Q. All right, so at the school you would have dealt
20 with these issues - the wiring - and then you also discuss
21 talking about getting in and out from the deal; is that
22 correct?

23 A. Yes.

24 Q. What are your goals between you and the informant and
25 other officers involved in the investigation in terms of

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1 these travel arrangements?

2 A. One its for safety. And two its for us to be able
3 to - Once we know we will send a vehicle in. We'll send a
4 vehicle in with the informant as best we can until we know
5 there is a chance where we won't get located or burnt what
6 we call it. But it's also to know where the location of
7 that informant is going to be after the deal so we can pick
8 them back up with that loose surveillance.

9 And it's for - I'm sorry - And it's for safety reasons
10 too. If something were to happen and we've had - we have
11 had issues in the past it's to know that exactly where we
12 need to be in case we have to take law enforcement action.

13 Q. Okay. And you previously mentioned Agent Sosebee as
14 being involved in this case?

15 A. Yes, ma'am.

16 Q. Are there other officers that get involved at this
17 stage of the investigation?

18 A. Yes, ma'am.

19 Q. Who would have been involved once you were out at
20 the school in the case? Do you know?

21 A. Investigator Faulkenberry was the main - my direct
22 supervisor. Our direct supervisor. Sergeant Jim Lubben he
23 kind of over saw the operations. Investigator Chris Parks,
24 Investigators Walter Beck and David Vaughan, they were
25 assigned I think to the West office at that point and Agent

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1 Sosebee. I believe that was it.

2 Q. So you mentioned Vaughan and Beck, they are assigned
3 to the West office. So those are your guys that knew more
4 about the geographic area than you -

5 A. Yeah. They're also county deputies so they know the
6 area a lot better than I would.

7 Q. Okay. So I believe you also just mentioned you were
8 with Officer Faulkenberry that day.

9 A. Yes, ma'am.

10 Q. And what do you mean by that?

11 A. Whenever we ride we will ride at least two to a
12 vehicle so Investigator Faulkenberry was in my assignment
13 cars vehicle.

14 Q. So you met at the school and you talked about the
15 search procedures, wiring procedures, and the money had
16 already been handled. What's the next step?

17 A. Turn everything on and let 'em go.

18 Q. Okay. And at that point you would have left the
19 school with Officer Faulkenberry; is that correct?

20 A. Yes, ma'am.

21 Q. And the other officers involved they would have been
22 two in other vehicles, at least two?

23 A. Yeah they were in all different types of vehicles.

24 Q. Okay. All right, now, at that time the informant
25 would have left the school as well --

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1 A. . Ma'am?

2 Q. The informant would have left for the school as well
3 to go to the deal location?

4 A. Yeah. One of the - I think it was Beck and David
5 Vaughn actually followed him for a period of time.

6 Q. Okay. And you went to your location at that time with
7 Officer Faulkenberry?

8 A. Yes, ma'am.

9 Q. And would you have had access to be able to cue
10 that audio if we need to talk about it?

11 A. Yes.

12 Q. Did you listen to what took place while the informant
13 was out of your visual range?

14 A. Yes, ma'am.

15 Q. Based on what you could hear do you know if the
16 informant went and met with somebody?

17 A. Yes, ma'am.

18 Q. About how long was he gone from the school to the time
19 you would have next seen him?

20 A. I'm sorry.

21 Q. About how long would he have been gone from - Audio
22 feed but you can't actually see the informant.

23 A. Fifteen minutes maybe. Maybe a little bit more.

24 Q. Okay. And when is the next time you would have seen
25 the informant after the deal?

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1 A. I know that investigators - I think it was
2 Investigators Beck and Vaughan followed him in, caught up
3 with him at some point where Investigator Faulkenberry and
4 I were. We had to kind of work our way back around so I
5 did not see him. I did not physically see the informant's
6 face until he got out of his car back at that school.

7 Q. Okay. So after a deal happens you guys then
8 reconvene?

9 A. Yes, ma'am.

10 Q. And that's a prearranged meeting place back at the
11 school in this case?

12 A. Yeah.

13 Q. Okay. Did you hear anything unusual or out of the
14 ordinary that concerned you over the audio feed during that
15 time?

16 A. No, ma'am.

17 Q. What happens when you arrive back at the school?

18 A. When we get back to the school I took care of custody
19 of the drugs that were purchased. We took all the
20 equipment, the video and audio equipment, out of the
21 vehicle and off the informant's personage and turned it all
22 off, stopped recording and shut it down. An individual -
23 The confidential informant was researched again and the
24 vehicle was searched again to ensure the integrity of the
25 investigation.

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1 Q. What do you mean by that?

2 A. Making sure that - Making sure that he wasn't - the
3 informant wasn't - didn't break off a piece of drugs and
4 keep it for themselves or anything like that or, you know.
5 Like I said we weren't physically present during the deal
6 so, you know, it was kind of hard, some of the audio was
7 kind of gargled a little bit so we wanted to ensure that
8 all the money that we sent him with is what he used to
9 purchase the narcotics with and that he didn't get a price
10 break or something. And that we wanted to make sure that
11 everything - the integrity of the case was good.

12 Q. So you're looking for money or other kinds of
13 contraband at that point in that deal?

14 A. Right.

15 Q. Now you testified that you would have recovered the
16 drugs from the informant; is that correct?

17 A. Yes, ma'am.

18 Q. What do you do with that once you receive it?

19 A. I keep it on my person. Once we're done we'll go back
20 to our - our office and then we'll go ahead and process it
21 by weighing it and filling out all the necessary paperwork
22 and placing it in an evidence bag and a supervisor will
23 always go over our work. Once I was done filling out all
24 the tags and the paperwork and all that stuff, I handed it
25 to my boss and he'd review it. Once it was - he was

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1 pleased with how it was we would secure it in an evidence
2 locker.

3 Q. Okay. Now when you received the drugs, how were you
4 receiving it? Were you directly handling the substance or
5 was it packaged in some way?

6 A. It was packaged in like a regular sandwich bag and the
7 informant handed it to me.

8 Q. Okay. So your fingertips were not on the drugs so
9 to speak?

10 A. Physically on the actual crack no. Like I said it
11 was in like just a regular sandwich - sandwich bag.

12 Q. And you testified that you would go back to your
13 offices and weigh it. When you weigh it do you take it out
14 of the sandwich bag or do you just weigh it all as one?

15 A. No. We have other bags in our office, pretty much
16 almost any bag we can possibly think of. Ziplock bags,
17 sandwich bags and stuff. What we will do - and again it's
18 an approximate weight - so if like in this case it was a
19 non - it was one of the non-ziplock bags, just regular
20 sandwich bag. We took one of those out, cleared the scale
21 off, laid it on there, find out how much that weighed; took
22 it off and placed the sandwich bag that contained the crack
23 put it on there and we basically just subtracted what the
24 weight of the empty bag would be.

25 Q. So let me make sure I understand. You have the bag

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1 that has the drugs in it. And then you guys have in your
2 office empty bags?

3 A. Yes, ma'am.

4 Q. To kind of use to off set; is that what you're saying?

5 A. It's to compare. You know the sandwich bag like that
6 is probably gonna weigh about 1.3 grams. And again its
7 approximate. So if the crack weighed 50 grams we would
8 subtract 1.3 grams from it because we don't want to take
9 the crack - we don't want to ruin the integrity of the
10 drugs - take it out of the bag and put it on the scale.

11 Q. And for purposes of your investigation what is the
12 purpose of getting this approximate weight?

13 A. So we can know if the charges - Find out how much the
14 drugs weigh so we can make the appropriate charges.

15 Q. Okay. So during this handling do you ever untie the
16 bag that you received, unseal it?

17 A. Not in this case no.

18 Q. Do you document by taking any pictures?

19 A. Yes, ma'am.

20 Q. Officer Rainier, I handed you what's been marked as
21 State's Exhibit One. What is that?

22 A. This is the - This is the sandwich bag that contained
23 the crack that he purchased.

24 Q. Okay. And does that contain just the sandwich bag
25 or the substance as well?

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1 A. The sandwich bag and the substance.

2 Q. Okay. And how do you know that that is what you
3 recovered in this case?

4 A. It's my handwriting on the bag and it's also my
5 handwriting sealing the evidence into the bag. Into the
6 evidence bag. Sorry.

7 Q. Okay. And you talked a little bit about you do
8 the weight. You have a supervisor review it and you put it
9 in a evidence locker. What is that process of putting it
10 in an evidence locker?

11 A. We have a secured - We have a secured evidence locker
12 within the East office of the DEU.

13 Q. And what is that? What's a secured evidence locker?

14 A. It's like a big locked box. Different containers for
15 different types of items that we seize. And once we put it
16 in there and close the lid and lock it down we have no
17 access to it.

18 Q. So you personally can't get it out once you put it in
19 there?

20 A. No, ma'am.

21 Q. What do you do before you put in there? You've talked
22 about a bag that you signed and things like that. What
23 other procedures before you drop it in there for preserving
24 it?

25 A. I'm sorry.

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1 Q. You talked about you signed a bag.

2 A. Right.

3 Q. You signed the baggie. The sandwich baggie or just
4 the bag?

5 A. No. This is - This blue bag right here, that's our
6 evidence bag. All that handwriting up top, you know, is
7 all mine and I handled all the evidence so I took care of
8 it. Once I - Once we've weighed it we done what we needed
9 to do with the evidence we put in this blue bag and you
10 pull this seal that's red and it's like this super sticky
11 stuff and you seal it down and then you initial and date
12 when you sealed it so this was all handled by me.

13 Q. So you would have done that, the sealing of the bag
14 before you put in the evidence locker?

15 A. Yes.

16 Q. Was that substance in your custody and control from
17 the time you received it from the informant until the time
18 you placed it in the evidence locker?

19 A. Other than when I sat there while my boss looked it
20 over yes.

21 Q. And you would have been present while your boss
22 looked it over?

23 A. Yes, ma'am.

24 Q. Did anyone tamper with or do anything to that during
25 that time period?

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1 A. It doesn't look like it.

2 Q. Now, Officer Rainier, I handed you what had been
3 marked as State's Exhibits Two and Three.

4 Do you recognize those?

5 A. Yes, ma'am.

6 Q. What are they?

7 A. These are the pictures that we took of the bag that
8 contained the crack cocaine which is this right here.

9 Q. You said we took. Did somebody else take them or did
10 you take them?

11 A. Um, it looks like Faulkenberry's handwriting I'd
12 imagine.

13 Q. And that was an officer involved in the case?

14 A. Yes.

15 Q. When would those pictures have been taken?

16 A. That day.

17 Q. And is that before or after their sealed in the
18 evidence bag?

19 A. Before.

20 Q. Do those pictures fairly and accurately depict the
21 drugs that you recovered from the informant on that day?

22 A. Yes, ma'am.

23 SOLICITOR ROBINSON: Your Honor, at this time we would
24 move to admit State's Exhibits Two and Three.

25 MR. DUNN: I do have objections, Your Honor.

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1 I'm not sure if a foundation has been laid for them
2 especially if he's not the officer that took the pictures.

3 THE COURT: Let me let the jury go to the jury room
4 for just a minute.

5 (JURY EXITS COURTROOM AT 12:57 P.M..)

6 THE COURT: Yes, sir.

7 MR. DUNN: Your Honor, just - If their gonna - If the
8 State is gonna introduce pictures and it's not the officer
9 that actually took 'em and didn't really know if he took
10 them or not, he thinks its another officer, I think it
11 would be more appropriate if the evidence come in through
12 the person who actually took the pictures.

13 SOLICITOR ROBINSON: Your Honor, he has testified
14 that's a very accurate picture of the drugs he recovered.
15 He knows where that picture was taken and he's saying that
16 it does look like what was in that bag they recovered it, I
17 believe a foundation has been laid require the photographer
18 who took the photographs.

19 THE COURT: I agree. I over rule the objection and
20 allow them in over objection.

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

23 All right, let's take - When the jury goes out I know
24 they rush to the restroom so we'll take about a four or
25 five minute refresher break ourselves before we bring them

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1 back in.

2 (COURT IN RECESS AT 12:59 P.M..)

3 (COURT BACK IN SESSION AT 01:05 P.M..)

4 THE COURT: Thank you. Take your seats.

5 If the jury is ready come on in.

6 (JURY REENTERS COURTROOM AT 01:06 P.M..)

7 THE COURT: You may continue.

8 SOLICITOR ROBINSON: Thank you, Your Honor.

9 Your Honor, just for the record, the State had moved
10 in State's Exhibits Two and Three and we request permission
11 to publish those.

12 THE COURT: They've been allowed into evidence so over
13 objection you may publish.

14 DIRECT EXAMINATION - CON'T

15 OFFICER JOHN RAINIER BY SOLICITOR ROBINSON:

16 Q. All right, Officer Rainier, is that one of the two
17 photos you were looking at?

18 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY.

19 A. Yes, ma'am.

20 Q. And what is that a picture of?

21 A. The plastic that contained the crack.

22 Q. And the plastic bag, that is the bag that you
23 received from the informant and not what you added to it?

24 A. Correct.

25 Q. Is that the second picture?

OFFICER JOHN RAINIER: DIRECT BY SOLICITOR ROBINSON
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1 (STATE'S EXHIBIT NUMBER THREE, PUBLISHED TO THE JURY.)

2 A. Yes, ma'am.

3 Q. Is this the same bag of drugs in these two pictures?

4 A. Yes.

5 Q. What's different between the two?

6 A. I just flipped the bag around.

7 Q. Okay. So other than the orientation of it, it's
8 the same?

9 A. Correct.

10 SOLICITOR ROBINSON: If you could please answer any
11 questions from the Defense.

12 MR. DUNN: May it please the Court, Your Honor.

13 CROSS-EXAMINATION

14 OFFICER JOHN RAINIER BY MR. DUNN:

15 Q. Was it your testimony that you tested the drugs that
16 day?

17 A. No.

18 Q. You did not test it?

19 A. No, sir, we did not.

20 Q. Did any of the officers present do any kind of test
21 on them?

22 A. No, sir.

23 Q. And you were never present at the incident cite
24 where Mr. Littlejohn was. Correct?

25 A. No, sir, I was not.

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 Q. You never physically saw what happened at the incident
2 site. Correct?

3 A. Just the afterwards.

4 Q. Any of the other officers physically saw what
5 happened there. Correct?

6 A. No, sir.

7 Q. And I think it was your testimony that you didn't
8 actually follow the CI to the incident site did you?

9 A. No, sir.

10 Q. So you don't know what he did between the time he
11 left your presence at the elementary school and the time
12 you saw him again at the elementary school?

13 A. Just from what we heard from Investigators Beck and
14 Vaughan.

15 Q. But you could hear what was going on. Correct?

16 Because of the recording you had on the wire on the
17 confidential informant?

18 A. Well no. We can hear the body wire.

19 Q. But that's what I'm saying, you could hear what's
20 going on?

21 A. Oh, yes, sir.

22 Q. The reality is and at some point we'll probably hear
23 it but the reality is there is no talk of drugs and no body
24 wire is there?

25 A. Not that I could - Not that I could hear.

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1 Q. Okay. When you got back to - Let me ask this.

2 At what point or where were you when you weighted
3 the substance?

4 A. Where was I?

5 Q. Yes.

6 A. The East office in the police department.

7 Q. So you didn't do it at the elementary school?

8 A. No.

9 Q. When you got back to the East office and weighed it,
10 did you take any pictures of it on a scale?

11 A. No.

12 Q. Did you take any video or did anybody else take any
13 video of it being weighed?

14 A. No.

15 Q. Did anybody take any video of it being recovered
16 from the confidential informant?

17 A. I did not take any video no.

18 Q. Are you aware of anybody else taking any video then?

19 A. No, sir.

20 Q. Did you have any video in your car or in any of the
21 other cars so you could see where the confidential
22 informant was going and that had him on a video?

23 A. No. I think the one we had in the vehicle kind of
24 just shot straight up in the air.

25 Q. All right. So you saw the sky if you saw anything?

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1 A. Well, it's the cab of the vehicle. It doesn't show
2 like - it doesn't show the roadway.

3 Q. You talking about your vehicle or his vehicle?

4 A. His. We don't have any video on ours.

5 Q. You're now on the street patrol with the Rock Hill
6 City?

7 A. I'm a supervisor over the field training unit and I'm
8 also one of the supervisors over the actual department of
9 training unit right now.

10 Q. Do you have your own vehicle that you use - your own
11 Rock Hill City vehicle that you use?

12 A. Yes, sir.

13 Q. Does it have video in it?

14 A. No, sir.

15 Q. Any video of any - You said Special Agent Sosebee
16 gave the money to Mr. Ervin?

17 A. Actually I did.

18 Q. All right. Any video showing you giving the money
19 to him?

20 A. No, sir.

21 Q. Any video showing you or any other officers searching
22 the CI?

23 A. No, sir.

24 Q. When you recovered the substance in the photographs
25 that we saw, did you ever check it for fingerprints?"

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 A. No, sir.

2 Q. Fingerprints can be recovered from plastic bags
3 though. Correct?

4 A. They can be from time to time.

5 Q. Back in August of 2012 what was the street value of
6 a gram of crack?

7 A. A gram?

8 Q. Uh-huh.

9 A. Depending upon the area - well, between eighty and a
10 hundred dollars maybe.

11 Q. Did he get a hundred?

12 A. Well do you mean actually like a rock of crack?

13 Q. I'm just - -

14 A. Between ten and twenty dollars would be an actual
15 rock of crack cocaine.

16 Q. And how many rocks to get to a gram though?

17 A. About a tenth of gram. So possibly a hundred dollars
18 usually.

19 Q. When you - You supposedly gave Twenty-four Hundred
20 Dollars to Mr. Ervin. Right?

21 A. Yes, sir.

22 Q. And his job is to go buy two ounces of crack.

23 Correct?

24 A. Yes, sir.

25 Q. And typically - Typically when you weigh crack it's

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 weighed in grams. Correct?

2 A. Yes, sir.

3 Q. Cause its such a small amount that we're dealing
4 with it's easier to see?

5 A. Correct.

6 Q. And for purposes - Let me ask this. Do you know
7 what the conversion rate is from grams to ounces? How many
8 grams there are in an ounce.

9 A. Twenty-eight point three.

10 Q. All right. So you gave Mr. Ervin enough money to
11 buy approximately fifty-six, fifty-six and a half grams of
12 crack. Correct?

13 A. Yes, sir.

14 Q. But when you weighed it it weighted how much?

15 A. I don't know the actual weight. I would have to
16 review over the field report.

17 Q. Did you weigh it that day?

18 A. Yes, sir.

19 Q. If I told you that the weight on the report was
20 forty-five grams does that sound about right?

21 A. On the actual report or the chemist report?

22 Q. Let me ask you this. Did you generate a report
23 where you actually put weight down?

24 A. Yes, sir.

25 Q. Is that on your report?

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 A. Yes, sir.

2 Q. Do you have your report with you?

3 A. I do not.

4 MR. DUNN: If I may approach the witness, Your Honor.

5 THE COURT: You may.

6 BY MR. DUNN:

7 Q. Is your report contained in one of those pieces
8 of paper that I handed you?

9 A. Looks like fifty-six grams on the summary, the actual
10 York County Summary.

11 Q. It says fifty-six grams. Is that a report you
12 generated?

13 A. Who wrote it? Yes, reporting officer, me.

14 Q. And is it your testimony - Well, strike that.

15 You never on August the 16th, 2012 you never saw
16 Mr. Littlejohn. Correct?

17 A. I'm sorry, can you say that again.

18 Q. On August the 16th, 2012 you never saw Mr. Littlejohn?

19 A. Correct. Just in the video afterwards.

20 Q. You were not involved with his arrest?

21 A. No, sir.

22 Q. So you never actually - During your investigation
23 you never actually saw Mr. Littlejohn; is that correct?

24 A. During the arrest?

25 Q. During your investigation.

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 A. Oh. No, sir, just in the video.

2 Q. I believe you testified but I didn't hear it cause
3 of the air conditioning here, who actually put the video
4 cameras on Mr. Ervin?

5 A. Me.

6 Q. All right. And you put more than one?

7 A. Yes, sir.

8 Q. And when you got back to the office you reviewed those
9 cameras. Correct?

10 A. Sergeant Lubber did yes, sir.

11 Q. Did you not review them?

12 A. I reviewed them after he downloaded them and reviewed
13 them first.

14 Q. And on those videos it actually has a date on the
15 video when you watch it. Correct?

16 A. Yes, sir.

17 Q. And on this case the video actually says - It doesn't
18 say August 16th, 2012 does it?

19 A. It probably didn't. The surveillance equipment that
20 we receive is a very - when it comes to programing and
21 stuff like that when in this case is we use video and we
22 actually go beyond the length of the battery life it'll die
23 and then when we recharge it again when we replugin it back
24 in it may produce a different date. And in the equipment
25 that we have the dates are very very difficult to try and

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 reprogram every single time.

2 Q. So you don't even both to put the time or the date
3 on it?

4 A. We have but like I said before sometimes when that
5 equipment dies when you plug it back in it may produce a
6 different time stamp and date stamp.

7 Q. Mr. Littlejohn - The incident we're here about
8 happened supposedly happened on August the 16th 2012.
9 Right?

10 A. Yes, sir.

11 Q. But he was not arrested until June 19, 2013; isn't
12 that correct?

13 A. Yes, sir.

14 Q. At the time he was arrested his cell phone was taken
15 from him. Did at any point during subsequent to his
16 arrest did you search his cell phone?

17 A. They may have. It was a larger scale investigation
18 so I wasn't a part of that group. We had assigned
19 different officers for different task but I did not.

20 Q. But typically when you arrest somebody you thinks
21 involved in drugs you want to take their phone and see if
22 there is any kind of activity, buying and selling activity
23 on that phone. Right?

24 A. Yes, sir.

25 Q. Is it fair to say that most confidential informants

OFFICER JOHN RAINIER: CROSS BY MR. DUNN

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1 that you work with at the time you were on the DEU were
2 trying to help themselves?

3 A. I don't know what the percentage was. I'd say it's
4 sometimes fifty fifty. It was fifty fifty people wanting
5 to come in and actually do work to get paid as well as
6 people working charges off and in this case he was working
7 charges off.

8 Q. In the last - At the end of the day when Mr. Ervin
9 came back to you guys, he came back to the elementary
10 school. Correct?

11 A. Yes, sir.

12 Q. And he brought back to you at the elementary school
13 which you allege are drugs?

14 A. Yes, sir.

15 Q. Weren't you concerned that there were kids at the
16 school or teachers at the school?

17 A. It was later on in the afternoon.

18 Q. About 5:30?

19 A. Yes, sir.

20 MR. DUNN: No further questions, Your Honor.

21 THE COURT: Redirect?

22 SOLICITOR ROBINSON: Just briefly, Your Honor.

23 If I may approach, Your Honor.

24 REDIRECT EXAMINATION

25 OFFICER JOHN RAINIER BY SOLICITOR ROBINSON:

1 Q. Officer Rainier, in working on these cases you
2 generate quite a bit of paperwork over the course of the
3 investigation?

4 A. Yeah.

5 Q. I've handed you what I believe to be one of the case
6 summaries that would have been prepared for purposes of
7 this case. Does that appear to be a case Summary from
8 August 16th?

9 A. Yes, ma'am.

10 Q. Does that reflect what your approximate weight was for
11 the drugs when you got back to the law enforcement unit?

12 A. It looks like it. In the narrative it says 49.1 grams
13 but if you look at the front page, the page one of the
14 actual document, it actually says 56.

15 Q. Okay. So you're agreeing it was - the agreement is 56
16 grams but what you're testifying to now is when you weighed
17 at law enforcement office you came up with 49 point?

18 A. 49.1 grams.

19 Q. Okay.

20 A. Which is not uncommon.

21 Q. And you testified briefly just about the dates on
22 videos.

23 A. Yes.

24 Q. And you testified earlier that these are kind of
25 hidden cameras so to speak. When you're out at the school

OFFICER JOHN RAINIER: REDIRECT BY SOLICITOR ROBINSON

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1 applying the cameras, do you have a video screen in front
2 of you showing you what date is being reflected on the
3 video at that time?

4 A. No, ma'am.

5 Q. So when do you realize what date stamp is on those
6 videos?

7 A. Once it's done we go back and download the video and
8 we play it and watch it.

9 Q. So if the video - if the cameras are not set before
10 you get out of the office, then you're not going to have
11 the ability to change dates; is that correct?

12 A. Correct. We - Yeah, we do not have the option of
13 being able to change any type of date in the field. It all
14 has to be done through a program and those programs are
15 extremely complex.

16 SOLICITOR ROBINSON: No further questions.

17 THE COURT: Recross?

18 MR. DUNN: No recross, Your Honor.

19 THE COURT: All right. You can step down. We
20 appreciate your time.

21 OFFICER RAINIER: Yes, sir.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR ROBINSON: Your Honor, the State calls
25 Tezo Ervin. And we're gonna ask Officer Rainier to escort

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 him to the courtroom.

2 (WITNESS TEZO ERVIN ENTERS COURTROOM FROM SIDE DOOR.)

3 THE COURT: Step up here and put your left hand on the
4 Bible and raise your right.

5 (WHEREUPON, TEZO ERVIN, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 THE COURT: Have a seat up here.

8 SOLICITOR ROBINSON: Your Honor, can Officer Rainier
9 be excused?

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 TEZO ERVIN BY SOLICITOR ROBINSON:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Could you please state your name for the jury?

16 A. Tezo Ervin.

17 Q. Mr. Ervin, where are you from?

18 A. Rock Hill, South Carolina.

19 Q. Lived here your whole life?

20 A. Yes, ma'am.

21 Q. In August of 2012 did you assist law enforcement with
22 a narcotics investigation regarding Tyress Littlejohn?

23 A. Yes, ma'am.

24 Q. Why were you assisting law enforcement at that time?

25 A. I had prior - I had a prior pending charges.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 Q. You have pending charges right now?

2 A. Yes, ma'am.

3 Q. Okay. Are those pending charges trafficking crack in
4 the amount of ten to twenty-eight grams a second offense?

5 A. Yes, ma'am.

6 Q. Possession of a weapon during a violent crime which
7 is trafficking crack?

8 A. Yes, ma'am.

9 Q. Trafficking crack within proximity to a park or a
10 school which means it was within a half mile of a park or
11 school?

12 A. Yes, ma'am.

13 Q. And then another charge of distribution of crack
14 cocaine third offense?

15 A. Yes, ma'am.

16 Q. And distribution of crack cocaine within proximity of
17 a park or school?

18 A. Yes, ma'am.

19 Q. So you have those five pending charges right now?

20 A. Yes, ma'am.

21 Q. So you said you were assisting law enforcement
22 because of those charges. Have you been made any specific
23 promises as to the outcome on those charges?

24 A. No, ma'am.

25 Q. But you are hoping to get some kind of benefit when

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 everything is said and done?

2 A. Yes, ma'am.

3 Q. Now do you also have a criminal history?

4 A. Yes, ma'am.

5 Q. Have you previously been convicted of possession with
6 the intent to distribute marijuana in 2001?

7 A. Yes, ma'am.

8 Q. In 2002 were you convicted of possession with the
9 intent to distribute crack cocaine third offense?

10 A. Yes, ma'am.

11 Q. Possession with intent to distribute that crack
12 within proximity of a park of school?

13 A. Yes, ma'am.

14 Q. Habitual traffic offender offense?

15 A. Yes, ma'am.

16 Q. And driving under suspension third offense?

17 A. Yes, ma'am.

18 Q. Those were all convictions from 2002?

19 A. Yes, ma'am.

20 Q. All right, now, you testified that you were involved
21 in the investigation of Tyress Littlejohn. Correct?

22 A. Yes, ma'am.

23 Q. Is that somebody that you knew before August 2012?

24 A. Yes.

25 Q. How long had you known him?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Ten years or more.

2 Q. Was he a person that you saw in person on a regular
3 basis during that time, the ten years or more?

4 A. Yes.

5 Q. So do you feel like that you know him well enough
6 that if you just happen to be in the same place at the same
7 time, run into each other at a grocery store, would you
8 recognize him when you saw him?

9 A. Yes.

10 Q. Do you see Tyress Littlejohn in the courtroom here
11 today?

12 A. Yes, ma'am, he's sittin right there with the glasses
13 on, plaid shirt.

14 Q. Glasses and a plaid --

15 THE COURT: You need to kind of raise your voice.
16 You've got a very soft voice.

17 A. Yeah, he's sittin with the glasses on in the plaid
18 shirt.

19 SOLICITOR ROBINSON: Thank you. Please let the record
20 reflect he has identified the defendant in this case.

21 Q. Now what was your role in assisting law enforcement
22 with their investigation into Tyress Littlejohn?

23 A. Places made buys, made drug buys from for crack
24 cocaine.

25 Q. So you were supposed to make a purchase of drugs

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 from Tyress Littlejohn?

2 A. Yes, ma'am.

3 Q. Did law enforcement ask you to purchase from Tyress
4 Littlejohn or did you go to law enforcement and say I can
5 purchase from Tyress Littlejohn?

6 A. I went to law enforcement.

7 Q. So you brought up Mr. Littlejohn's name?

8 A. Yes, ma'am.

9 Q. All right. Now, on August 16th, 2012 is that one of
10 the dates involved in this investigation?

11 A. Repeat the question.

12 Q. August 16th, 2012, is that the date you were involved
13 in this investigation?

14 A. Yes, ma'am.

15 Q. And what was supposed to happen that day?

16 A. Pretty much supposed to meet at his house or something
17 and just pretty much buy some crack cocaine from him.

18 Q. Okay. How did you go about making that arrangement
19 to - for this purchase on that date?

20 A. I called him.

21 Q. Called him on his phone?

22 A. Yeah I called him on his cell phone. We agreed to do
23 it and then I contacted law enforcement.

24 Q. Okay. Did you have his phone number already?

25 A. Yes, ma'am.

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1 Q. And at that time did you know him by his full name
2 Tyress Littlejohn or did you call him something else?

3 A. I called him Ress pretty much by his nickname.

4 Q. You called him Ress?

5 A. Uh-huh.

6 Q. Did you know his full name?

7 A. Yes, ma'am.

8 Q. And you say you called him to set up the deal. Were
9 you familiar enough with him that you knew that you were
10 talking to Ress on the phone?

11 A. Yes, ma'am.

12 Q. Okay. And when you called to make the deal, tell the
13 jury about what that conversation would be like. Do you
14 call and say I want to buy crack cocaine from you?

15 A. No. We pretty much you know chit chat a little bit
16 and just talk about stuff and then we'll just pretty much
17 kind of use slang on the phone.

18 Q. Okay.

19 A. So we pretty much just like I want to buy two. I
20 never really say crack cocaine or anything like that
21 because it's pretty much people don't talk like that on
22 phones when you dealing with you know something illegal so
23 we pretty much you know we use code and slangs.

24 Q. So tell me about your prior history experience. You
25 have some experience with drugs. Correct?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Yes, ma'am.

2 Q. So it would be unusual to you if someone called and
3 said I want crack cocaine.

4 A. Yeah.

5 Q. You wouldn't expect that terminology to be used?

6 A. No, ma'am.

7 Q. Now you said I want two. What does that mean?

8 A. It means personally I just you know from dealing
9 with me that's just like how we talk or he knows streets
10 terminology too so pretty much gonna know two ounces.

11 Q. So two, specifically two ounces?

12 A. Yes, ma'am.

13 Q. Okay. And would you have worked out with him where
14 you needed to go to get this amount?

15 A. Yes, ma'am.

16 Q. Where was that gonna be?

17 A. In York, South Carolina, California Street.

18 Q. Is this his address?

19 A. A residential.

20 Q. A resident?

21 A. Uh-huh.

22 Q. Okay. And what about cost? Was he giving it to you
23 or were you paying for it?

24 A. Paying for it.

25 Q. Did you - Would you have worked out the price in

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 advance?

2 A. Yes, ma'am.

3 Q. What was the agreement on August 16th?

4 A. Twenty-four Hundred Dollars.

5 Q. And you said that was for two?

6 A. Uh-huh.

7 Q. Two ounces. So this would have all been on a phone
8 call. Correct? And then you testified that you contacted
9 law enforcement.

10 A. Yes, ma'am.

11 Q. So you had already talked to him on the phone once
12 you contacted law enforcement?

13 A. Yes, ma'am.

14 Q. Did they know that you would be doing that? Making
15 the phone calls.

16 A. Yes, ma'am.

17 Q. Once you contact law enforcement what happens next?

18 A. Pretty much I meet up with 'em. They search my
19 person, they search my car, and pretty much we discuss how
20 it would go down.

21 Q. Okay. Where would you meet with them?

22 A. Law Enforcement Center.

23 Q. Okay. What city is that located in?

24 A. Rock Hill, South Carolina.

25 Q. So you - Your first contact or in person contact

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 with law enforcement that day would be at a law enforcement
2 office in Rock Hill; is that correct?

3 A. Yes, ma'am.

4 Q. And you said that the things that took place with them
5 are searches?

6 A. Yes, ma'am.

7 Q. And what else would you do at the law enforcement
8 office?

9 A. Pretty much just talk to 'em about you know the things
10 you know what might transpire.

11 Q. So you filled them in about the call that you've
12 already made at that point?

13 A. Yes, ma'am.

14 Q. And you testified it would be a plan for what's gonna
15 happen?

16 A. Yes, ma'am.

17 Q. Okay. How do you pay for the drugs? Did you bring
18 your own money?

19 A. No. They give me the money.

20 Q. Okay. And where do you go from the law office?

21 A. Directly to - Directly to my destination where the
22 meeting place where I was supposed to meet the person.

23 Q. At any point did they set you up with recording
24 equipment?

25 A. Yes, ma'am.

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1 Q. Where did that take place?

2 A. Elementary school in York.

3 Q. Okay. So when you left the law center you stopped
4 at the elementary school first?

5 A. Yes, ma'am.

6 Q. Okay. And that's where they would have set you up
7 with the recording equipment?

8 A. Yes, ma'am.

9 Q. Where did the searches take place at the law office
10 or at the school?

11 A. They pretty much took place both.

12 Q. So they searched you both times?

13 A. Yes, ma'am.

14 Q. And what are they searching, your physical person?

15 A. My physical person and my vehicle.

16 Q. So when you meet at the school you get the recording
17 equipment set up and they do some searches. Anything else
18 at the school that you remember?

19 A. We pretty much we just sit around like went on the
20 phone call for a person, I mean for them to call me back
21 and let me know it's okay for me to come.

22 Q. Okay. So you're just waiting for go time at that
23 point?

24 A. Yes, ma'am.

25 Q. Okay. And where did you go when you left the school?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Directly to California Street.

2 Q. Okay. And was Tyress Littlejohn at that location when
3 you arrived?

4 A. Yes, ma'am.

5 Q. Were you meeting with him outside or inside?

6 A. Outside.

7 Q. And what time of day was it? Was it light or dark?

8 A. It was daylight.

9 Q. Between the time that you left the school and went
10 to the California Street residence, did you make any stops
11 anywhere else?

12 A. No, ma'am.

13 Q. And just generally what took place while you were at
14 that residence on California Street?

15 A. Pretty much I pulled up and he was sittin in his car
16 and I just pretty much had a conversation and then the guy
17 that he deal with or whatever he pulled up and pretty much
18 I exchanged the money with him; he went to the jeep. I sat
19 by his car waited on him. He came back and we talked some
20 more. He handed me the stuff, the crack cocaine, and we
21 talked some more and I just left.

22 Q. Okay. So I want to back you up a little bit. You
23 talked about another person. So at some point another
24 vehicle arrived at that residence. Is that what you're
25 testifying to?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Yes, ma'am.

2 Q. Did you ever interact with the person directly that
3 was in the vehicle?

4 A. No, ma'am.

5 Q. Okay. So that person stayed with their vehicle?

6 A. Yes, ma'am.

7 Q. Did Tyress Littlejohn interact with that person?

8 A. Yes, ma'am.

9 Q. At some point after that took place your testimony
10 is that you would have received crack from Tyress
11 Littlejohn?

12 A. Yes, ma'am.

13 Q. And you testified you also gave the money to Tyress
14 Littlejohn?

15 A. Yes, ma'am.

16 Q. Were you satisfied with what you received from Tyress
17 Littlejohn in reference to the drugs? Did it appear to be
18 what you ask for in the weight?

19 A. Yes, ma'am.

20 Q. And once that had taken place where did you go next?

21 A. Back to the schoolhouse.

22 Q. Did you make any stops on the way from - between
23 California Street and the school?

24 A. No, ma'am.

25 Q. What did you do when you get back to the school?

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1 A. I basically handed over the drugs to - to narcotics
2 and they searched me again and searched my vehicle.

3 Q. Okay. Did you tell them about what happened while
4 you were at the house?

5 A. Pretty much, yeah, we talked. They kind of had
6 recorded all this. They pretty much could listen in to
7 what was going on and everything.

8 Q. Okay. So you were aware that they could hear you
9 while you were doing this?

10 A. Yes, ma'am.

11 Q. And you talked about recordings. Were you aware
12 that they were using cameras on that day?

13 A. Yes, ma'am.

14 Q. Are you aware of whether or not those cameras produced
15 actual recordings of the time you were at the
16 California Street address?

17 A. Yes, ma'am.

18 Q. Have you had an opportunity to view the videos that
19 were produced?

20 A. Yes, ma'am.

21 Q. Mr. Ervin, I've handed to you what's been marked as
22 State's Exhibit Four. Do you know what that is?

23 A. Yes. It's a video that was on the watch camera, the
24 watch that I had on.

25 Q. Okay. How do you know that that's what's on that

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 disc?

2 A. I basically signed my initial.

3 Q. So you watched that disc before today?

4 A. Yes, ma'am.

5 Q. And then you initialed it so you'd know what it was?

6 A. Yes, ma'am.

7 Q. Okay. And did - Does the recording that's on that
8 disc fairly and accurately depict what took place from the
9 time you left the school to the time you got back to the
10 school on August 16th?

11 A. Yes, ma'am.

12 SOLICITOR ROBINSON: Your Honor, at this time the
13 State would move to admit State's Exhibit Four.

14 MR. DUNN: No objection, Your Honor.

15 THE COURT: In over objection. I mean, in without
16 objection.

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

19 SOLICITOR ROBINSON: And, Your Honor, at the time I
20 would request permission to publish the video.

21 THE COURT: You may.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR PUBLISHED TO
23 THE JURY AT 01:40 P.M..)

24 BY SOLICITOR ROBINSON:

25 Q. Mr. Ervin, who is that in the white vehicle?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Tyress Littlejohn.

2 Q. And where are you at right now?

3 A. At his house on California Street in York, South
4 Carolina.

5 Q. All right. Thank you.

6 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
7 PUBLISHED TO THE JURY.)

8 Q. Mr. Ervin, did you hear a reference to money in
9 the last few seconds?

10 A. Yes, ma'am.

11 Q. Whose voice was that?

12 A. I said I'm giving him the money.

13 Q. You said that?

14 A. Yes, ma'am.

15 Q. Did you actually give him the money at that point?

16 A. Yes, ma'am.

17 Q. Had he given you anything in exchange for money at
18 that point?

19 A. No, ma'am, not at that point.

20 Q. So why were you giving it to him at this point?

21 A. From my understanding he was goin to meet the guy
22 that pulled up in the SUV.

23 Q. So he needed the money to talk to the person in
24 the SUV, is that what you're saying?

25 A. Yes, ma'am.

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1 Q. And are you sitting in a car at this point? Right
2 here where I paused, are you sitting in a car?

3 A. Yeah I'm sittin on his seat. I'm sittin - -

4 Q. So this is Tyress Littlejohn's vehicle.

5 A. Yeah. I'm sittin on the edge of the seat.

6 Q. And where had he gone while you're sitting right here?

7 A. He walked to the SUV.

8 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
9 PUBLISHED TO THE JURY.)

10 Q. Mr. Ervin, who were you talking to just then?

11 A. Officer Rainier.

12 Q. And how were you talking to him?

13 A. Cell phone.

14 Q. So you called him while you were sitting there
15 waiting?

16 A. Yes, ma'am.

17 Q. Mr. Ervin, who are you talking to now?

18 A. My little cousin. My little cousin.

19 Q. Did that have anything to do with why you were at
20 California Street that day?

21 A. No, ma'am.

22 Q. Just happened to call you?

23 A. Yes, ma'am.

24 Q. Where was Tyress Littlejohn while you were talking
25 on the phone right now?

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1 A. Still in the SUV.

2 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
3 PUBLISHED TO THE JURY.)

4 Q. Mr. Ervin, who did you just say yeah to?

5 A. Tyress.

6 Q. Why were you talking to Tyress at that point?

7 A. He ask me a question about was his eyes which means
8 his scales he weighed the product on was it in the car.

9 Q. So he ask you a question about was his scale was in
10 the car?

11 A. Yes, ma'am.

12 Q. What do you use a scale for?

13 A. To weigh the drugs.

14 Q. So you're standing next to his car and answering
15 his questions?

16 A. Yes, ma'am.

17 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
18 PUBLISHED TO THE JURY.)

19 Q. Now, Mr. Ervin, who was it that just walked up to
20 the area where you were at the car?

21 A. It was Tyress Littlejohn.

22 Q. What was he doing at the car at that point?

23 A. Bend down in the seat in the floorboard.

24 Q. What was in the floorboard?

25 A. Plastic bag and a scale.

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1 Q. Okay. So he came to the car and got those?

2 A. Yes, ma'am.

3 Q. And is that the same person that's now we see in this
4 where it's fogged right here, is that Tyress Littlejohn
5 standing at the SUV?

6 A. Yes, ma'am.

7 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
8 PUBLISHED TO THE JURY.)

9 Q. Mr. Ervin, what just took place just now?

10 A. We just basically did the drug transaction.

11 Q. And what do you mean by that?

12 A. Basically he used the scale to weigh the product that
13 I purchased from him that he handed it over to me.

14 Q. Did he let you see the scale when he was weighing it?

15 A. Yes, ma'am.

16 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
17 PUBLISHED TO THE JURY.)

18 Q. Mr. Ervin, what's been happening in these last few
19 minutes while the camera's might have been off?

20 A. He was down there playing with crack cocaine and
21 breaking it down.

22 Q. Was that the same bag of crack cocaine you're talking
23 about now is that the same as what he gave you or
24 different?

25 A. It's different.

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1 Q. So you already have yours at that point?

2 A. Yes, ma'am.

3 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
4 PUBLISHED TO THE JURY.)

5 Q. Mr. Ervin, did you hear that conversation just now?

6 A. Yes, ma'am.

7 Q. What was your understanding of what Tyress Littlejohn
8 was telling you just now?

9 A. Basically we talking about crack cocaine. Just slang
10 talk where they talking about a baby and semilac and stuff
11 like that is pretty much like . . .

12 Just give me a moment on how to say it so you can
13 understand it. When you talk about crack cocaine you got
14 a kilo is thirty-six ounces. And a half a kilo is
15 eighteen. A quarter a kilo is nine and a baby is four and
16 a half. It's a smaller part of a kilo of crack cocaine.

17 Q. So a quarter kilo is nine ounces. You're saying a
18 baby is four and a quarter?

19 A. Four and a half.

20 Q. Oh, four and a half. Sorry. And that would be an
21 eighth of a kilo?

22 A. Yes, ma'am, it would be a eighth of it.

23 Q. And why do they call it a baby?

24 A. Just cause it's the smallest part of a - of the kilo.

25 Q. And when you talk about moving some like semilac

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1 what does that mean to you?

2 A. Just moving it fast just like a baby drinks milk fast,
3 like semilac fast.

4 Q. Okay. And did you hear him make reference to making
5 plays?

6 A. Yes.

7 Q. What does that mean?

8 A. Just a sale. Basically pretty much a distribution.

9 (STATE'S EXHIBIT NUMBER FOUR, CONTINUED TO BE
10 PUBLISHED TO THE JURY/STOPS AT 02:09 P.M..)

11 THE COURT: Ms. Robinson, we're gonna stop for the
12 day.

13 It's a little unusual schedule, I apologize for
14 keeping you so long but I think it best that we've done it
15 this way so we'll start back at 9:30 in the morning. The
16 bailiffs will tell you how to get in and out while you're
17 serving as a juror. Keep in mind you're not to discuss the
18 case or make up your mind or let anyone discuss the case
19 with you; use electronic media, or let yourselves be
20 exposed to any news coverage if there is any. So have a
21 pleasant evening and we'll see you back at 9:30.

22 (JURY EXITS COURTROOM AT 02:10 P.M..)

23 THE COURT: Mr. Ervin, since you're on the stand you
24 can't talk to the Solicitor or anybody about your
25 testimony. You are under oath and in the middle of your

1 examination so we'll see you back at 9:30 in the morning
2 and we'll put you back on the stand and you'll finish up
3 your testimony at that time. Do you understand?

4 MR. ERVIN: Yes, sir.

5 THE COURT: All right. Anything before we quit for
6 the day?

7 SOLICITOR ROBINSON: Not from the State, Your Honor.

8 MR. DUNN: Nothing from the Defense, Your Honor.

9 THE COURT: We'll see everybody at 9:30 in the
10 morning. Thank you.

11 (COURT IN RECESS AT 02:11 P.M..)

12 (COURT BACK IN SESSION WEDNESDAY, OCTOBER 15, 2014 AT
13 09:38 A.M..)

14 THE COURT: Thank you. Please take your seats.

15 We'll come back into session on Mr. Littlejohn's case.

16 Is the State ready?

17 SOLICITOR ROBINSON: Is the Defense ready?

18 MR. DUNN: Yes, sir.

19 THE COURT: All right. Bring in the jury.

20 (JURY REENTERS COURTROOM AT 09:39 A.M..)

21 THE COURT: We're ready to proceed. We still have
22 Mr. Ervin on the stand.

23 SOLICITOR ROBINSON: Thank you, Your Honor.

24 DIRECT EXAMINATION - CONTINUED

25 TEZO ERVIN BY SOLICITOR ROBINSON:

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 Q. Mr. Ervin, where we left off yesterday we just
2 finished watching that first watch video. Correct?

3 A. Yes, ma'am.

4 Q. And in that video where were you located at at that
5 time at the end?

6 A. I was standing on the side of his car getting ready
7 to leave. In the process - Well no. You said the end of
8 the video?

9 Q. At the very end. After you left the California
10 Street.

11 A. Oh. I had went back over to local law enforcement.

12 Q. You met with law enforcement?

13 A. Yes, ma'am.

14 Q. Mr. Ervin, I have handed you what had been marked
15 as State's Exhibits Five, Six, and Seven. Do you recognize
16 those?

17 A. Yes, ma'am.

18 Q. What are they?

19 A. Photos from the video.

20 Q. So the same video that we watched in court yesterday
21 those are just still images taken from that video?

22 A. Yes, ma'am.

23 Q. Do they appear to have been altered in any way?

24 A. No, ma'am.

25 Q. And do those pictures fairly and accurately depict

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 scenes that happened while you were out on California
2 Street on August 16th, 2012?

3 A. Yes, ma'am.

4 SOLICITOR ROBINSON: Your Honor, at this time the
5 State would move to admit Exhibits - State's Exhibits Five,
6 Six, and Seven.

7 MR. DUNN: We will object to them, Your Honor.

8 THE COURT: All right. Let me let the jury go to the
9 jury room.

10 (JURY EXITS COURTROOM AT 09:42 A.M..)

11 THE COURT: All right. What are the items again?

12 SOLICITOR ROBINSON: Your Honor, they are three still
13 images from the video we watched in court yesterday.

14 THE COURT: And your objection?

15 MR. DUNN: Your Honor, the objection would be that
16 the video will speak for itself. The pictures are a
17 redundancy. And secondly if - But that's the objection,
18 Your Honor.

19 THE COURT: Well I'll over rule the objection.

20 You don't contest the validity of their accuracy?

21 MR. DUNN: Well that would be my second objection
22 actually. The problem I have is he's looking at pictures
23 that he didn't create. He doesn't know how they were
24 created and she ask him if he knew whether or not they were
25 accurate but he doesn't know about -

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 THE COURT: Well let me see them.

2 MR. DUNN: --- how they came about.

3 THE COURT: My arms aren't that long.

4 (EXHIBITS RECEIVED UP BY THE COURT.)

5 SOLICITOR ROBINSON: And, Your Honor, for the record,
6 the way I obtained these is I would just pause the video at
7 the relative point and take a screen shot so to speak and I
8 tried to capture the time stamp on each of those images as
9 well so it would be evident where in the video those are
10 from.

11 It's the State's position that though the video is
12 in evidence that those are particularly relevant scenes in
13 the video that would be helpful to the jury. I would like
14 for them to be exhibits so that the jury could consider
15 those without necessarily having to review the entirety of
16 the video at a later time.

17 THE COURT: Well the problem is I think they would
18 probably be admissible but I'm not sure that they're
19 admissible through this witness; for this witness to
20 basically give his opinion on.

21 SOLICITOR ROBINSON: Your Honor, the State's position
22 is, he has watched the video actually and he has seen - -

23 THE COURT: The jury has watched it too. That's his
24 argument, if the jury - if he's watched it and the jury
25 watched it to so how is he in a better position to -

TEZO, ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 SOLICITOR ROBINSON: Well he has verified he was also
2 there and saw. He's verified it's a fair and accurate
3 picture of the events that took place that he was a witness
4 to. And so he is truly the best witness to say that this
5 is something that fairly and accurately depicts what he saw
6 with his own eyes on August 16th, 2012.

7 THE COURT: With his own eyes? Not somebody else's
8 eyes?

9 SOLICITOR ROBINSON: Your Honor, he was on scene at
10 that -

11 THE COURT: You said with his own eyes. I said not
12 with someone else's eyes.

13 SOLICITOR ROBINSON: Yes, Your Honor.

14 THE COURT: With his own eyes?

15 SOLICITOR ROBINSON: Yes.

16 THE COURT: Well if he testifies that these -

17 The problem as I see is, he's testifying that these
18 do represent things he observed that day.

19 SOLICITOR ROBINSON: Your Honor, I did ask the
20 question do these fairly and accurately depict the events
21 that took place that you saw on August 16th.

22 THE COURT: I'm gonna ask you to be a little more
23 specific and see what he says.

24 SOLICITOR ROBINSON: More specific?

25 THE COURT: Well I can't give you too much guidance.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA

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1 SOLICITOR ROBINSON: Yes, Your Honor.

2 THE COURT: Well, the Defense.

3 DIRECT EXAMINATION - IN CAMERA

4 TEZO ERVIN BY SOLICITOR ROBINSON:

5 Q. Mr. Ervin, do those pictures fairly and accurately
6 depict what happened while you were on scene on California
7 Street on August 16th, 2012?

8 A. Yes. From what I'm looking at is.

9 THE COURT: That's still very general. I'm asking
10 about these particular pictures.

11 BY SOLICITOR ROBINSON:

12 Q. Would you look at State's Exhibit Five please?

13 And what is that image of?

14 A. Tyress Littlejohn standing at the jeep on the driver
15 side talking.

16 Q. And did you personally observe him talking to the
17 driver or standing on the driver side of that SUV on
18 August 16th, 2012?

19 A. Yes.

20 Q. Can you please look at State's Exhibit Six please.

21 What does that depict?

22 A. Tyress Littlejohn holdin a bag of crack in a plastic
23 bag.

24 Q. And did you see that take place yourself on August
25 16th, 2012?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON - IN CAMERA
CROSS BY MR. DUNN - IN CAMERA

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1 A. Yes.

2 Q. And what is State's Exhibit Seven?

3 A. Tyress Littlejohn sittin in his car looking up at
4 me.

5 Q. At you. And so you saw him on August 16th, 2012
6 looking at you in that manner?

7 A. Yes.

8 Q. And all of these are fair and accurate depictions
9 of what took place on that day?

10 A. Yes.

11 THE COURT: Any examination by the Defense?

12 MR. DUNN: If it may please the court, Your Honor.

13 CROSS EXAMINATION - IN CAMERA

14 TEZO ERVIN BY MR. DUNN:

15 Q. So, Mr. Ervin, this - the camera that took these
16 pictures was actually on your watch. Correct?

17 A. Yes.

18 Q. Was the watch on your left arm or was it your right
19 arm?

20 A. Right.

21 Q. All right. And when you were talking with Mr.
22 Littlejohn, were you pointing your arm in the same
23 direction that you were pointing your face or where you
24 just holding your arm naturally?

25 A. Leanin on the car like this.

TEZO ERVIN: CROSS BY MR. DUNN - IN CAMERA

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1 (WITNESS DEMONSTRATED.)

2 Q. All right. So you weren't trying to direct the
3 camera in any way with your arm. You were just standing
4 there talking.

5 A. Trying to be loose and natural.

6 Q. Okay. Trying to be loose and natural.

7 A. Yes.

8 Q. You're not trying to obvious that you had a camera on
9 your wrist. Right?

10 When you got back from - actually - excuse me. Do you
11 remember meeting with the - with the police officers on
12 November 7, 2012?

13 A. Yes.

14 Q. And during that meeting with them you remember
15 giving them a written statement in which you signed an
16 affidavit?

17 A. Yes.

18 Q. And in that affidavit do you remember saying - Well
19 let me ask you this. Did you tell the narc's on that day
20 that during the buy that you had observed Mr. Littlejohn
21 not standing next to the car but actually sitting in the
22 car? Sitting in the SUV.

23 A. Did I see him --

24 Q. Did you --

25 A. Repeat the question.

TEZO ERVIN: CROSS BY MR. DUNN - IN CAMERA

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1 Q. Do you remember telling narcs that back on August
2 the 16th that you had seen - That you didn't tell the
3 narcotics that he was standing next to his car. You told
4 the narcotics that Mr. Tyress actually got into the
5 passenger seat when the SUV was sittin there?

6 A. That second clip is actually from the second time he
7 went to the jeep he stood outside of on the driver side.
8 The first clip what I showed was he was actually inside the
9 car.

10 Q. So he went back twice?

11 A. Twice.

12 Q. All right.

13 MR. DUNN: I have no further questions, Your Honor.

14 THE COURT: I'm gonna over rule the objection. I'm
15 going to allow 'em in. Some of those last questions really
16 more cross examination as opposed to admissibility. I find
17 that he has identified those as images that he - they are
18 images from a camera but he's testified that they
19 accurately depict what he saw. And of course that's
20 subject to cross examination so I'll allow them in over
21 objection.

22 Bring the jury back in.

23 (WHEREUPON, STATE'S EXHIBIT NUMBERS FIVE, SIX, AND
24 SEVEN, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 (JURY REENTERS COURTROOM AT 09:51 A.M..)

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 THE COURT: Again the photographs are in over
2 objection.

3 SOLICITOR ROBINSON: Thank you, Your Honor.

4 THE COURT: Not the photographs but pictures ---

5 SOLICITOR ROBINSON: Yes, Your Honor.

6 THE COURT: --- they are in over objection.

7 SOLICITOR ROBINSON: Your Honor, the State request
8 permission to publish.

9 THE COURT: You may.

10 (STATE'S EXHIBIT NUMBER FIVE PUBLISHED TO THE JURY.)

11 DIRECT EXAMINATION - CONTINUED

12 TEZO ERVIN BY SOLICITOR ROBINSON:

13 Q. Mr. Ervin, can you see that image up there?

14 A. Yes.

15 Q. Can you tell us who that person is in that image?

16 A. Tyress Littlejohn.

17 Q. And at different times when you talk about an SUV
18 or a jeep, is that the vehicle that you were referring to?

19 A. Yes.

20 Q. And you saw this take place while you were on
21 California Street on August 16th, 2012?

22 A. Yes.

23 Q. This is State's Exhibit Six.

24 (STATE'S EXHIBIT NUMBER SIX PUBLISHED TO THE JURY.)

25 Q. Who is depicted in this image?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Tyress Littlejohn.

2 Q. And what is he doing at this time?

3 A. He actually playing with crack cocaine in a little
4 plastic baggie.

5 Q. And do you know what happened with that crack
6 cocaine that's in that plastic bag?

7 A. Yeah that's the crack cocaine he gave me.

8 Q. So that particular baggie is what you left California
9 Street with?

10 A. Yes.

11 Q. This is State's Exhibit Seven.

12 (STATE'S EXHIBIT NUMBER SEVEN PUBLISHED TO THE JURY.)

13 Q. Who is that?

14 A. It's Tyress Littlejohn.

15 Q. And what was happening at this time?

16 A. Pretty much we's having a conversation, just talkin.

17 Q. Mr. Ervin, I've handed you what's been marked
18 State's Exhibit Eight. Do you know what that is?

19 A. Yes. It's a video tape.

20 Q. And how do you know that that disc contains a video?

21 A. It actually had a second camera which was a key fob.

22 Q. Uh-huh.

23 A. Automatic alarm key fob which you can just point -
24 angle it and direct it any kind of way and it actually
25 video kind of records.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 Q. Okay. So you had that with you on August 16th, 2012?

2 A. Yes, ma'am.

3 Q. And so this is a second camera that you went to
4 California Street with?

5 A. Yes, ma'am.

6 Q. And how do you know the video from that camera is on
7 the disc that you're holding in your hand?

8 A. I watched it and initialed it.

9 Q. Did - When you watched it did the recording from that
10 camera fairly and accurately depict what took place on
11 August 16th, 2012 while you were at California Street?

12 A. Yes.

13 SOLICITOR ROBINSON: Your Honor, at this time the State
14 would move to admit State's Exhibit Eight.

15 MR. DUNN: No objection.

16 THE COURT: In without objection.

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

19 BY SOLICITOR ROBINSON:

20 Q. Now we previously watched what you testified was the
21 video from a watch camera; is that correct?

22 A. Yes, ma'am.

23 Q. And this you're saying is a video from a key fob
24 camera. Correct?

25 A. Yes, ma'am.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 Q. Were those video cameras activated at the same time
2 or roughly the same time?

3 A. Yes roughly the same time.

4 Q. And where did that take place?

5 A. At the school yard in York, South Carolina.

6 Q. Okay. And then they were active when you left the
7 school; is that correct?

8 A. Yes, ma'am.

9 Q. When did they get turned off?

10 A. When I arrived back with the officers.

11 Q. Were both cameras turned off at roughly the same
12 time?

13 A. Yes, ma'am.

14 Q. So would it be fair to say that the video on this
15 recording covers substantially the same period of time as
16 State's Exhibit Four, the video we watched yesterday?

17 A. Yes, ma'am.

18 Q. And the differences would be the positioning maybe
19 of those two cameras, a watch versus a key fob?

20 A. Yes, ma'am.

21 Q. Mr. Ervin, I've handed you what's been marked as
22 State's Exhibits Nine and Ten.

23 Do you recognize those?

24 A. Yes.

25 Q. What are those?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. It's my hand on a big wad of money.

2 Q. Let me stop you. State's Exhibit Nine. Go ahead and
3 describe it. What are you saying State's Exhibit Nine is?

4 A. Its my hand holding a big wad of money.

5 Q. Okay. And did this image of your hand holding a
6 big wad of money, when did that take place?

7 A. At the time Tyress - When the SUV first pulled up I
8 actually went back to my car to try to get a closer look at
9 the person in the SUV. And I actually couldn't so that's
10 why I just went back to my car and act like I got the money
11 out of my car and I just basically informed the narcotics
12 I'm handing him the money now and let them see that, you
13 know, the money is right there.

14 Q. So that image which is State's Exhibit Nine shows
15 your hand with the money; is that correct?

16 A. Yes, ma'am.

17 Q. And is there a vehicle involved in that image?

18 A. Yes it's my vehicle.

19 Q. Your vehicle? Okay.

20 A. Yes, ma'am.

21 Q. And so does that image fairly and accurately depict
22 something that took place and you were witnessed to on
23 August 16th, 2012?

24 A. Yes, ma'am.

25 Q. And State's Exhibit Ten, do you recognize that?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. Yes, ma'am.

2 Q. What does that image reflect?

3 A. A small black digital scale and a clear plastic
4 baggie laying in the floor of a car.

5 Q. What car?

6 A. Mr. Tyress Littlejohn's white Crown Victoria.

7 Q. And when where those items in that vehicle?

8 A. When I walked up and pretty much for a little minute.

9 Q. So you saw - You personally saw them on August 16th,
10 2012?

11 A. Yes, ma'am.

12 SOLICITOR ROBINSON: Your Honor, at this time the
13 State would move to admit State's Exhibits Nine and Ten.

14 MR. DUNN: With objection, Your Honor.

15 THE COURT: In without objection.

16 MR. DUNN: No. With objection.

17 THE COURT: In with objection. I'm sorry.

18 MR. DUNN: Same objection as last time.

19 THE COURT: Same ruling.

20 (WHEREUPON, STATE'S EXHIBIT NUMBERS NINE AND TEN,
21 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 SOLICITOR ROBINSON: And, Your Honor, at this time the
23 State would ask to publish those exhibits.

24 THE COURT: Yes you may.

25 (STATE'S EXHIBIT NUMBERS NINE PUBLISHED TO THE JURY

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 AT 09:59 A.M..)

2 Q. Now that the jury has had an opportunity to see this,
3 Mr. Ervin, this is State's Exhibit Nine, and could you
4 explain again what's happening in this image?

5 A. Pretty much when the jeep pulled up my car was like
6 maybe not even half a car from where the jeep was at so I
7 decided on myself to - I had the money in my pocket - I
8 decided upon myself to walk back to the jeep to get a
9 closer look at who was in the jeep.

10 Q. And so this we see red at the bottom of this image,
11 and that's the vehicle that you're saying this is your
12 vehicle?

13 A. Yes, ma'am.

14 Q. Okay. And the money that is visible on this image,
15 what did you do with that money?

16 A. I pretty much handed it off to Tyress.

17 Q. And the hand that's visible in this image, whose
18 hand is that?

19 A. Its my hand.

20 Q. This is State's Exhibit Ten.

21 (STATE'S EXHIBIT NUMBER TEN PUBLISHED TO THE JURY.)

22 Q. And again if you could please explain to the jury what
23 this image is.

24 A. A clear plastic baggie and a black scale.

25 Q. And what vehicle is that?

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON

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1 A. That's Tyress Littlejohn's vehicle.

2 Q. Okay. So if we talk about this image, the bottom part
3 is kind of a white stripe and that's part of the vehicle;
4 is that correct?

5 A. Yes, ma'am.

6 Q. And then you testified that there is a scale and a
7 baggie. Are those items you're talking about at the top of
8 the screen, towards the top of the image?

9 A. Yes, ma'am.

10 Q. I'm gonna go back now to State's Exhibit Six.

11 You testified that the baggie you see in the lower
12 corner of this image is the drugs that Tyress Littlejohn
13 made to you; is that correct?

14 A. Yes, ma'am.

15 Q. Did you ever take the drugs out of the baggie that
16 they are in in this image?

17 A. No, ma'am.

18 Q. And what did you do with that baggie and the drugs
19 when you got back to the school that day?

20 A. I handed it straight over to narcotics.

21 Q. Is the person who gave you that baggie with the
22 drugs in it in the courtroom here today?

23 A. Yes, ma'am.

24 Q. Could you please point him out to the jury?

25 A. Tyress Littlejohn.

TEZO ERVIN: DIRECT BY SOLICITOR ROBINSON
CROSS BY MR. DUNN

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1 Q. And could you just briefly describe what he's
2 wearing for the record?

3 A. Yellow blue plaid shirt.

4 SOLICITOR ROBINSON: Please let the record reflect
5 he's identified the Defendant Tyress Littlejohn.

6 (WITNESS INDICATED TO AND IDENTIFIED DEFENDANT TYRESS
7 LITTLEJOHN.)

8 SOLICITOR ROBINSON: If you could please answer any
9 questions from the Defense.

10 MR. DUNN: May it please the court.

11 CROSS-EXAMINATION

12 TEZO ERVIN BY MR. DUNN:

13 Q. Mr. Ervin, you've been to prison before haven't you?

14 A. Yes, sir.

15 Q. And it's fair to say that you don't want to go back
16 do you?

17 A. No, sir.

18 Q. Fair to say that you would do a lot of things to
19 try to keep yourself out of prison wouldn't you?

20 A. I'm not gonna say a lot but I would do some things.

21 Q. You're pretty familiar with drugs aren't you?

22 A. Yes, sir.

23 Q. And you - In just looking at your record you've got
24 a possession with crack with intent to distribute near a
25 school. Right?

TEZO ERVIN: CROSS BY MR. DUNN

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1 A. Yes, sir.

2 Q. You've got a possession with crack with intent to
3 distribute a third offense. Correct?

4 A. Yes, sir.

5 Q. You have a possession with intent to distribute
6 marijuana first offense. Right?

7 A. Yes, sir.

8 Q. The only two people or the only three people present
9 that day were you. Right?

10 A. Yes, sir.

11 Q. Mr. Littlejohn. Right?

12 A. Yes, sir.

13 Q. And the driver of that other vehicle. Correct?

14 Is that right?

15 A. Yes, sir.

16 Q. There were no - None of the cops where there. Right?

17 A. No, sir.

18 Q. And you didn't have anybody with you. Right?

19 A. They was in the area somewhere.

20 Q. So when you tell us what we're seeing on these

21 videos because the video quality is not very good we have

22 to take your word that whatever you're telling us is what's

23 really happening. Right?

24 A. The video speaks for itself.

25 Q. Now you never actually gave any money into the hands

TEZO ERVIN: CROSS BY MR. DUNN

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1 of Mr. Littlejohn did you?

2 A. No I didn't.

3 Q. You put it on the car seat did you not?

4 A. Yeah. I mean I flashed it to the car seat.

5 MR. DUNN: If I may approach the witness stand, Your
6 Honor.

7 Q. State's Exhibit Number Nine. That's your hand.
8 Right?

9 A. Yes, sir.

10 Q. And it's your hand with money in it?

11 A. Yes, sir.

12 Q. And that's your car?

13 A. Yes, sir.

14 Q. Right? And you're putting the money back into your
15 own car. Right?

16 A. I wouldn't say I was puttin it back in there. My
17 hand is still on it.

18 Q. All right. No where in the video do we ever see you
19 put that money into Mr. Littlejohn's hand did we?

20 A. No. I guess not. I don't know. You seen the
21 video.

22 Q. No where in that video do we ever see you put any
23 drugs into the hands of Mr. Littlejohn did we? Or excuse
24 me, that Mr. Littlejohn ever put - put the drugs into your
25 hands did we?

TEZO ERVIN: CROSS BY MR. DUNN

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1 A. No.

2 Q. Now when you went to work for the narcotics, they
3 didn't promise you anything did they?

4 A. No.

5 Q. But you knew that they would help you out in the long
6 run. Right?

7 A. I mean I got to follow through with what I got goin.

8 Q. But you're not doing it out of charity. Right?

9 A. No?

10 Q. And you're not doing it because you know at the end
11 of the day you think that you're not getting anything out
12 of it. Right?

13 A. Yes.

14 Q. At some point yesterday you said that Mr. Littlejohn
15 walked back with drugs and with a scale. Right?

16 A. Yes.

17 Q. But that doesn't show up on the video either does it?
18 Right?

19 A. I guess not. It showed him with the scale in his
20 hand.

21 Q. The video showed the scale in his hand?

22 A. Yes.

23 Q. Let me show you what's been marked as State's
24 Exhibit Number Five. That's Mr. Littlejohn standing next
25 to an SUV. Right?

TEZO ERVIN: CROSS BY MR. DUNN

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1 A. Yes.

2 Q. The scales in his hand?

3 A. We not talking about that scene.

4 Q. But you're saying that somewhere else on that video
5 his hand had the scale in it?

6 A. Yes.

7 Q. The jury can see for themselves when they go back
8 and watch the video?

9 A. Yes.

10 Q. Was it your testimony a little while ago that when
11 he was weighing something on the scales while he was
12 sitting in his own car. Right?

13 A. Yes.

14 Q. What did the scales say?

15 A. Which - You talking about --

16 Q. How much weight was on it.

17 A. 56.

18 Q. Which is two ounces. Right?

19 A. Yes.

20 Q. And if the cops testified that he only got 49 that
21 would be different fair to say?

22 A. Fair to say.

23 Q. Fair to say that if you got 49 and not 56 that would
24 not make you happy if you were buying drugs from somebody
25 else?

TEZO ERVIN: CROSS BY MR. DUNN

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1 A. No.

2 Q. You would not be happy. Right?

3 A. No.

4 Q. It was your testimony yesterday that you called
5 Littlejohn or Tyress during - sometimes earlier that day?

6 A. Yes.

7 Q. The narcs weren't with you?

8 A. No.

9 Q. They never - They didn't ask to hear the
10 conversations?

11 A. Well they wanted to but.

12 Q. But they didn't? They didn't record the conversation?

13 A. They didn't get a chance.

14 Q. You didn't call them back while they were - while you
15 were with the narcs to make sure that - that you were still
16 on so that they could have a audio recording of the fact
17 that you were going over to somebody's house allegedly to
18 buy drugs?

19 A. Yes but I don't think they got a recording of it. It
20 was a quick glup "I'm ready".

21 Q. Did the cops ever take your phone to verify that you
22 had made a phone call?

23 A. Yes.

24 Q. Was it a phone call or was it a text?

25 A. I think a phone call.

TEZO ERVIN: CROSS BY MR. DUNN

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1 Q. Did they take your phone then to make sure that
2 you actually made a call out to Tyress's number?

3 A. Yes.

4 Q. Did they take a picture of your screen to show that
5 it was made?

6 A. I have no knowledge of that.

7 Q. Now on that video we saw yesterday, you all were
8 talking about baby momma's. Right?

9 A. Yes.

10 Q. Talking about pain pills?

11 A. Yes.

12 Q. Talking about the fact that your women were
13 complaining because you weren't given them enough
14 money to pay their bills. Right?

15 A. Yes.

16 Q. It's your testimony that that is slang for drug
17 buying or drugs?

18 A. No that ain't. You missin a whole other conversation
19 too.

20 Q. The cops - I think it was your testimony you said
21 the cops searched you?

22 A. Yes.

23 Q. Part of you --

24 A. Both times.

25 Q. All right. Did they ever strip search you?

TEZO. ERVIN: CROSS BY MR. DUNN

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1 A. A couple.

2 Q. During that process?

3 A. No.

4 Q. The reason why you're working with the narcotics and
5 agents and the FBI at this point is because you have
6 pending drug charges against you. Right?

7 A. Yes.

8 Q. And it looks like you're facing - You've been charged
9 another distribution of crack near a school. Right?

10 A. Yes.

11 Q. And it looks like you're looking at a significant
12 jail time with it aren't you?

13 A. Yes.

14 Q. Up to ten years in prison?

15 A. Yes.

16 Q. You're charged with possession of a weapon during a
17 violent crime. Right?

18 A. Yes.

19 Q. And you're looking at another five years in prison
20 on top of that. Right?

21 A. Yes.

22 Q. It looks like you're charged another drug charge
23 that carries at least five years in prison if not thirty
24 years in prison. Right?

25 A. Yes.

TEZO ERVIN: CROSS BY MR. DUNN

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1 Q. Another charge that carries at least ten years in
2 prison. It looks like a distribution near a school.

3 Right?

4 A. Yes.

5 Q. Finally you got a third offense. Again you're facing
6 at least ten if not up to thirty years in prison on that.

7 Right?

8 A. Yes.

9 Q. And those are all the reasons - Let me ask you this.
10 Are you married?

11 A. Yes.

12 Q. Do you have kids?

13 A. Yes.

14 Q. You want to stay a part of their life don't you?

15 A. Yes.

16 Q. Between all that time you're facing in jail and the
17 fact that you have a family you have lots of reasons to do
18 whatever you have to do to make sure that you gave the
19 narcotics something on somebody else. Right?

20 A. It's not a reason to lie.

21 MR. DUNN: Please, indulgence of the court just one
22 minute.

23 (PAUSE AT 10:12 A.M..)

24 MR. DUNN: I don't have any further questions, Your
25 Honor.

TEZO ERVIN: REDIRECT BY SOLICITOR ROBINSON

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1 THE COURT: Redirect?

2 SOLICITOR ROBINSON: Just a few questions.

3 REDIRECT EXAMINATION

4 TEZO ERVIN BY SOLICITOR ROBINSON:

5 Q. Mr. Ervin, you talked again just now about the image
6 of the money in your vehicle. Correct?

7 A. Yes, ma'am.

8 Q. What did you do with the money after that point when
9 that image is taken from?

10 A. I - Basically we walked past each other while he was
11 going to the SUV I handed the money off and I went and sat
12 by his car.

13 Q. Now earlier when you were testifying about hoping
14 to get the benefit you made a comment that you have to
15 follow through; is that correct?

16 A. Yes.

17 Q. And what does that mean to you to follow through?

18 A. I have to pretty much - I mean do you know pretty
19 much everything right. Lie - one lie - I mean anything I
20 do wrong like as far as you say trying to take drugs
21 and money and stuff like that and I do anything like that I
22 mean it's all for nothin.

23 Q. If the officers were to find out that you had lied
24 or planted drugs or kept the drugs for yourself or kept
25 money for yourself, how would that impact your ability to

TEZO ERVIN: REDIRECT BY SOLICITOR ROBINSON

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1 get a benefit?

2 A. It don't affect me any.

3 Q. What doesn't affect you?

4 A. The fact that if I do any of that it's - I mean its
5 automatic back to jail regardless.

6 Q. And you were aware when you are anticipating these
7 investigations that you are under surveillance?

8 A. Oh yes.

9 Q. And you've already testified you had two cameras?

10 A. Yes, ma'am.

11 Q. You got one recording the event?

12 A. Yes, ma'am.

13 Q. And to your knowledge there was an audio feed that
14 the officers were listening to as well?

15 A. Yes, ma'am.

16 SOLICITOR ROBINSON: No further questions, Your Honor.

17 MR. DUNN: No recross.

18 THE COURT: You can step down to be excused. We
19 appreciate your time. Thank you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 SOLICITOR ROBINSON: Your Honor, may he be excused?

23 THE COURT: He may.

24 SOLICITOR ROBINSON: Your Honor, may we approach
25 briefly?

1 THE COURT: Yes.

2 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
3 OF THE JURY AT 10:15 A.M..)

4 SOLICITOR ROBINSON: Your Honor, at this time the
5 State would ask that the Defendant step forward and lift
6 his shirt sleeve to show his right forearm to the jury.

7 THE COURT: Mr. Littlejohn, would you come before the
8 jury and roll up your sleeve and let the jury see your
9 right forearm.

10 MR. Littlejohn: Yes, sir.

11 THE COURT: And I will allow this over the objection
12 of your attorney.

13 MR. LITTLEJOHN: Yes, sir.

14 THE COURT: Based on earlier ruling.

15 (DEFENDANT TYRESS LITTLEJOHN COMPLIES WITH THE COURT'S
16 REQUEST.)

17 THE COURT: You may be seated. Thank you.

18 SOLICITOR ROBINSON: Thank you, Your Honor.

19 THE COURT: Call your next witness.

20 SOLICITOR ROBINSON: Your Honor, the State will call
21 Officer Beck. Officer Faulkenberry went to retrieve him
22 from the hallway.

23 THE COURT: Okay. While we're waiting on him, I want
24 to thank you for your patience yesterday. Unfortunately
25 the storm did bypass us and didn't come at all but I wanted

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 to be proactive in case we had some issues. We did have
2 a storm here one time when I had a jury in here. It was
3 very jacquard and very uncomfortable; kind of had no play
4 book to go by quite frankly but we made it through. I
5 didn't want that to happen again.

6 All right, call your witness.

7 SOLICITOR ROBINSON: Your Honor, at this time the
8 State would call Officer Jamie Faulkenberry.

9 THE COURT: Please come up and be sworn.

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

12 DIRECT EXAMINATION

13 OFFICER JAMIE FAULKENBERRY BY SOLICITOR ROBINSON:

14 Q. Good morning. Could you please state your name for
15 the jury?

16 A. Jamie Faulkenberry.

17 Q. And who do you work for?

18 A. The city of Rock Hill Police Department.

19 Q. And how long have you worked for the Rock Hill
20 Police Department?

21 A. I just went to the police department in June.

22 Q. In June. Do you have any prior experience in law
23 enforcement?

24 A. Yes, ma'am.

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

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 A. A total of nine years.

2 Q. And prior to when you were with the Rock Hill Police
3 Department in June had you ever worked for a Unit known as
4 the Drug Enforcement Unit?

5 A. Yes, ma'am.

6 Q. And when was that?

7 A. From 2011 until April of this year. Or May of this
8 year.

9 Q. So you would have been working for that Unit then back
10 in August of 2012?

11 A. Yes, ma'am.

12 Q. And during that time did you participate in the
13 investigation of Tyress Littlejohn?

14 A. Yes, ma'am.

15 Q. And were you involved in the investigation on August
16 16th, 2012?

17 A. Yes, ma'am.

18 Q. What was your role in the investigation on that
19 day?

20 A. I was the officer that was responsible for searching
21 the informant and his vehicle.

22 Q. Okay. And so where did you first meet up with the
23 informant on that day?

24 A. At the Cotton Belt Elementary School.

25 Q. And about what time of day was that?

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 A. It was in the afternoon.

2 Q. Daylight hours still?

3 A. Yes, ma'am.

4 Q. And you said you were responsible for the searches.

5 What is the purpose of performing searches in this
6 type of investigation?

7 A. We do searches before we do any kind of a control
8 buy to ensure that the people we send out don't have
9 anything illegal on them before we send them out. It
10 preserves the credibility of the case. We don't want to
11 send somebody out that already has drugs on them to go buy
12 drugs or somebody that has guns on them to go buy guns. So
13 we search them, we search their vehicle, and we make sure
14 they don't have anything illegal on them or in their person
15 at all before we send them out.

16 And then we bring them back once we obtain whatever it
17 is we sent them out for we search them again to make sure
18 they didn't - when it comes to money we want to make sure
19 they don't have any of the money to make sure we didn't get
20 skimmed out of any money that we sent them with. We want
21 to make sure they didn't take any portion of what they
22 bought for us, again, to preserve the integrity of the case
23 we're trying to make.

24 Q. You mentioned searching for money when they come back.

25 Is that something you're also looking for in advance

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 of ---

2 A. Yes, ma'am.

3 Q. --- of sending them out?

4 A. Yes, ma'am.

5 Q. Okay. So in this case that was your responsibility.

6 Would you have searched Mr. Ervin in this case?

7 A. Yes, ma'am.

8 Q. And your testimony is you first met with him at the
9 school?

10 A. Yes, ma'am.

11 Q. Can you describe what process you go through when you
12 are searching Mr. Ervin's person?

13 A. Yes, ma'am. It's essentially the same kind of search
14 we do for someone when they are brought into jail
15 essentially. We search pockets, we search clothing items,
16 we search waist lines, we do a very thorough pat down of
17 their person of anything that may be loose to make sure
18 that nothing else falls out. We search their - I make them
19 take their shoes off, take the inside of their shoes and
20 soles themselves; take their socks off to make sure there
21 is nothing hidden in their socks. Then I search their
22 vehicle. I start with the driver side to make sure there
23 is nothing in the compartments, under the seats, in the
24 head liner of the visors, any crevice where something like
25 that would fit. And then I work my way counter clockwise

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 through the vehicle until I get back to the front of the
2 vehicle to the passenger side and just continue to search
3 all the crevices and things like that throughout the car.

4 Q. Do you perform strip searches?

5 A. Not when we're in a public place like that. You don't
6 want to run the risk especially the school in the afternoon
7 of doing a strip search in a public parking lot in the
8 middle of the afternoon.

9 Q. Is it generally routine cause if you could would you
10 perform a strip search?

11 A. We could yes, ma'am.

12 Q. But this case did not involve that?

13 A. No, ma'am.

14 Q. Okay. When you searched Mr. Ervin and his vehicle
15 in advance of the deal on this date did you find anything?

16 A. No, ma'am.

17 Q. What do the other officers do while you take care of
18 searches at the school?

19 A. We had a couple of different officers working so
20 their assigning people to vehicles. They're assigning
21 vehicles locations for surveillance purposes. They're
22 getting the cameras ready, making sure the money's
23 accurate, making sure everybody's got everything their
24 supposed to have for everything to go well.

25 Q. Okay. So once everyone has fulfilled their role at

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 the school and that general plan is in place, what is the
2 next step?

3 A. The informant's given directions. First of all they
4 find out where they're going. Once they figure out where
5 they're going we tell them specifically, you know, go
6 straight there, you're gonna be followed there, you're
7 gonna be followed back. And then we get - In this
8 particular case my location required us to go pretty far
9 out of the way so myself and Officer Rainier left a little
10 bit before everybody else so we could have a head start and
11 make sure we're there in time.

12 Q. Officer Faulkenberry, I've handed you what's been
13 marked as State's Exhibit Eleven.

14 A. Yes, ma'am.

15 Q. I'll give you a second to orient yourself.

16 Do you recognize that?

17 A. Yes, ma'am.

18 Q. What is it?

19 A. It's an aerial map view of Alexander Love Highway - or
20 excuse me - Highway 321, West Liberty Street, California
21 Street area of York.

22 Q. Okay. Does that map reflect the locations we been
23 talking about as being relevant to this investigation?

24 A. Yes, ma'am.

25 Q. And is that map fairly and accurately depict the

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 roadways and things of that nature that you would have
2 taking on that day?

3 A. Yes, ma'am.

4 SOLICITOR ROBINSON: Your Honor, at this time the
5 State would move to admit State's Exhibit Eleven.

6 MR. DUNN: No objection.

7 THE COURT: In without objection.

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

10 SOLICITOR ROBINSON: Your Honor, the State would ask
11 to publish at this time.

12 THE COURT: You may.

13 (STATE'S EXHIBIT NUMBER ELEVEN PUBLISHED TO THE JURY
14 AT 10:24 A.M..)

15 Q. Officer Faulkenberry, I'm gonna ask that if you could
16 step down from the witness stand and step up to the screen.

17 (WITNESS LEFT WITNESS STAND.)

18 Q. Do you see on this map where you would have first met
19 with the informant on that day?

20 A. Yes, ma'am.

21 Q. Can you point that out for the jury?

22 A. If I was a little taller it would be right here.

23 Q. So would it be fair to say there is a group of
24 buildings with green roofing; is that correct?

25 A. Yes, ma'am.

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 Q. So that would be the school that you testified
2 about?

3 A. Yes, ma'am.

4 Q. And you testified that you had to leave a little bit
5 earlier because you were going in the back way; is that
6 correct?

7 A. Yes.

8 Q. Can you try and explain to the best of your ability
9 what you're talking about, the route some?

10 A. Yes, ma'am. If I can start off the location of the
11 deal was supposed to be in this general vicinity. Because
12 of this way especially a one way in or two way in two out
13 basically it's a straight line. In order to get to this
14 side - again if I was a little taller - it would be right -
15 right where it says California Road. That's where we were
16 gonna be stationed. In order to get there we would have
17 had to pass the incident location and run the risk of being
18 seen so what we did was we took Highway 5, West Liberty
19 Street, up to Sutton Springs Road, a little bit off of
20 here. We took Sutton Springs to Kelly Road; Kelly Road to
21 California Street and then California Street down to our
22 location so we wouldn't have to pass the target location.

23 Q. Okay. So the way this is oriented on the screen, you
24 basically came down from off of the map from the top?

25 A. Yes, ma'am.

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 Q. Okay. And where did you end up?

2 A. Right there beside a little road. If you want to
3 drive over you just pull in the driveway there.

4 Q. Okay. And this entire map, what county does this
5 reflect?

6 A. York County.

7 Q. And you can go ahead and take a seat.

8 (WITNESS RETURNS TO WITNESS STAND.)

9 Q. Now based on where you were located, were you able
10 to see the location where the informant went to that day?

11 A. No, ma'am.

12 Q. If the informant had left that location and driven
13 towards you on California Street would you have seen him?

14 A. Yes, ma'am.

15 Q. Did you see the informant ever drive in that
16 direction on that day?

17 A. No, ma'am.

18 Q. When was the next time you would have seen the
19 informant?

20 A. When we all returned back to the school.

21 Q. Okay. While you were parked on California Road were
22 you able to hear what was taking place with the informant?

23 A. Yes, ma'am.

24 Q. Did you hear anything during that time that seemed
25 unusual to you outside of what you would expect for a deal?

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 A. No, ma'am.

2 Q. So the next time you saw the informant you meet back
3 at the school?

4 A. Yes, ma'am.

5 Q. And what took place back at the school?

6 A. Back at the school I believe Officer Rainier recovered
7 the evidence from the informant and I went back to do
8 another search of his vehicle and then once they got the
9 evidence back from him then I conducted a search of him as
10 well.

11 Q. And when you talked about conducting searches, do you
12 follow the same procedures, search the same areas as you
13 previously testified to?

14 A. Yes, ma'am.

15 Q. So shoes, car liners and all that that you discussed?

16 A. Yes, ma'am.

17 Q. I'm going to step back a moment. When you returned to
18 the school, did you take the same route that you used to
19 get where you had parked?

20 A. Yes, ma'am.

21 Q. What else did you do at the school on that day as
22 part of the investigation other than searches?

23 A. Once all the searches were complete and the evidence
24 was bagged and labeled properly, I spoke to the informant
25 and got an account of what happened in order to perform a

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON

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1 statement.

2 Q. Okay. When you get an account of what happened, do
3 you document it in any way?

4 A. Yes, ma'am, I had to - I took notes on what happened
5 ---

6 Q. Okay.

7 A. --- by his account.

8 Q. You were not physically in the office at this point?

9 A. No, ma'am.

10 Q. Did you arrest Tyress Littlejohn that day?

11 A. No, ma'am.

12 Q. Why didn't you or the other officers go back to the
13 house right then and arrest Tyress Littlejohn?

14 A. We tried to refrain from doing any arrest directly
15 after the buy in order to protect the informant. The thing
16 is if we go do a buy and come right back and then go back
17 and arrest him, he's gonna know who bought from him when it
18 happened so it's to protect the informant.

19 Q. Officer Faulkenberry, I've handed you what's been
20 marked as State's Exhibit Twelve. Do you know what that is?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. It's a photograph from the Agent system of Mr.
24 Littlejohn.

25 Q. And that's the defendant in this case?

OFFICER JAMIE FAULKENBERRY: DIRECT BY SOLICITOR ROBINSON
CROSS BY MR. DUNN

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1 A. Yes, ma'am.

2 Q. And you recognize that person in that picture to be
3 Tyress Littlejohn?

4 A. Yes, ma'am.

5 SOLICITOR ROBINSON: Your Honor, at this time the
6 State would move to admit State's Exhibit Twelve.

7 MR. DUNN: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE, BEING
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 SOLICITOR ROBINSON: If you could please answer any
12 questions from the defense.

13 CROSS-EXAMINATION

14 OFFICER JAMIE FAULKENBERRY BY MR. DUNN:

15 Q. So you did not follow the - Mr. Ervin the confidential
16 informant from the school to California Street. Right?

17 A. No, sir.

18 Q. This is not your - You were in the DEU Unit for a
19 number of years. Correct?

20 A. Yes, sir.

21 Q. This is not your first time of - This is either your
22 first or your last time of doing a controlled buy.
23 Correct?

24 A. No, sir.

25 Q. Is it not normal or pretty standard to try to

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN

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1 record the phone calls setting up the deals?

2 A. If possible.

3 Q. Isn't it pretty standard to try and get, if you can,
4 get a picture of some kind of picture proof, you know some
5 other electronic proof of the phone call or text being sent
6 from the confidential informant to the potential target?

7 A. If possible.

8 Q. That was not done in this case. Correct?

9 A. I'm not sure.

10 Q. You didn't do it?

11 A. I did not do it no, sir.

12 Q. And with your other involvement in this case you have
13 not seen those pictures. Correct?

14 A. No, sir.

15 Q. All right. Were you present at the FBI office in -
16 before you all went - before the meeting at the elementary
17 school?

18 A. I'm not sure if I was or not.

19 Q. Okay.

20 A. I don't believe so.

21 Q. But you did not strip search Mr. Ervin?

22 A. No, sir.

23 Q. And the purpose of strip searching is to make sure
24 somebody hasn't hidden anything in bodily orifices.
25 Correct?

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN

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1 A. That's correct.

2 Q. And you were not the one that actually recovered
3 the substance at the end of all this. Right?

4 A. No, sir.

5 Q. That was Officer Rainier?

6 A. Yes, sir.

7 Q. And you never actually had any dealings with it.
8 Right?

9 A. No, sir.

10 Q. Were you involved in Mr. Littlejohn's arrest?

11 A. I don't remember if I was or not.

12 Q. You were aware that he was arrested on June the 19th
13 of 2013?

14 A. Sounds right.

15 Q. And you said earlier that the reason why you don't
16 do it right away is you try and give a little protection to
17 the CI. Right?

18 A. Yes, sir.

19 Q. In this case you all waited almost ten months, eleven
20 months to make an arrest?

21 A. Probably yes, sir.

22 Q. You have no video of money exchanging hands. Correct?

23 A. I'm not sure if I ever did.

24 Q. You've seen what's been placed so far - You've been
25 sitting in the courtroom the whole time.

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN

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1 A. Right.

2 Q. Besides what we've seen in the courtroom is there
3 any other videos that would show money changing hands?

4 A. There are no other video other than that no, sir.

5 Q. All right. So there is no other videos of whatever
6 this substance is going between hands. Correct?

7 A. I don't believe so.

8 Q. You're not aware of any videos of the CI being
9 searched. Right?

10 A. No, sir.

11 Q. Either before or after. Right?

12 A. No, sir.

13 Q. You're not aware of any audios or videos of any
14 phone calls being made to Mr. Littlejohn. Right?

15 A. No, sir.

16 Q. You're not aware of any pictures showing or videos
17 showing the substance being weighed on the scale. Right?

18 A. No, sir.

19 Q. In fact the only pictures we have are the two that
20 Officer Rainier testified to yesterday. Correct?

21 A. Yes, sir.

22 Q. And I believe those are Exhibits Two and Three.

23 It's fair to say that when you're dealing with
24 confidential informants especially the variety that have
25 picked up charges somewhere else and they're trying to help

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN

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1 themselves. Right?

2 A. Is their hope yes, sir.

3 Q. And the reality is if they work for you and at the
4 end of it if you didn't help them out or the system didn't
5 help them out you really wouldn't have a whole lot of other
6 CI's lining up to help you and that sort of thing.

7 A. Probably not.

8 Q. No one wants to be screwed in a deal. Right?

9 A. I'm sorry.

10 Q. I said nobody really wants to be screwed in a deal.

11 A. Right.

12 Q. Did you ever - During the course of your involvement
13 in this case did you ever see Mr. Littlejohn cell phone?

14 A. I don't believe I did no, sir.

15 Q. When you arrest somebody part of the you know the
16 standards of operating you guys like to get the person you
17 arrested cell phone and see what kind of information is on
18 it. Right?

19 A. Uh-huh.

20 Q. You're looking for whether there's pictures of drugs
21 or drug activity. Right?

22 A. Yes, sir.

23 Q. Text of drug activity. Right?

24 A. Yes, sir.

25 Q. Telephone calls to people you think are involved in

OFFICER JAMIE FAULKENBERRY: CROSS BY MR. DUNN

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1 drug activity. Right?

2 A. Yes, sir.

3 Q. And there's probably other stuff. Those are the main
4 things that you're looking for. Right?

5 A. Yes, sir.

6 Q. Ever been brought to your attention during this
7 process that there's pictures of Mr. Littlejohn's phone
8 after he was arrested?

9 A. Not that I'm aware of.

10 Q. Or the contents of what would have - you know screen
11 shots of what would have been on the phone?

12 A. Not that I'm aware of.

13 Q. Okay. Then you all met the CI before everything
14 and after everything at the Cotton Belt Elementary School.
15 Right?

16 A. Yes, sir.

17 Q. You weren't worried that there would be kids or
18 teachers or other parents at the school?

19 A. Because of the time frame no. What we do is anytime
20 we're gonna meet in a public place like a school we have
21 somebody from that office in this particular case the West
22 side office usually do a ride by, make sure it's pretty well
23 vacant because we don't want any issues out there.

24 And because we don't want anybody out there seeing
25 us pulling in with our informant again for their

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 protection.

2 MR. DUNN: I have no further questions, Your Honor.

3 SOLICITOR ROBINSON: Nothing further from the State
4 on this witness.

5 THE COURT: All right. You may step down and be
6 excused. We appreciate your time, Officer Faulkenberry.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR ROBINSON: Your Honor, the State calls
10 Officer Walter Beck.

11 (WHEREUPON, WALTER BECK, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 OFFICER WALTER BECK BY SOLICITOR ROBINSON:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. Could you please state your name for the record?

18 A. Walter Beck.

19 Q. And where are you employed?

20 A. York County Sheriff's office.

21 Q. How long have you been working for the sheriff's
22 office?

23 A. Since 2003.

24 Q. So over ten years at this point?

25 A. Yes, ma'am.

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 Q. During your time working there have you ever worked
2 for a unit known as the Drug Enforcement Unit?

3 A. Yes I did.

4 Q. And what time period were you assigned to that unit?

5 A. January of 2008 until October of 2014 nearly seven
6 years.

7 Q. Okay. And we've heard testimony that there are
8 different offices within the county for the Drug
9 Enforcement Unit; is that correct?

10 A. That's correct.

11 Q. What office were you assigned to in 2012?

12 A. In 2012 I was assigned to our Fort Mill office.

13 Q. Are you - What office is that?

14 A. It covers Fort Mill and Tega Cay but we kind of go
15 all over the county where needed.

16 Q. Are you - Have you ever been assigned to what they
17 call the West office?

18 A. Yes I have. The office that covers York, Clover,
19 Lake Wylie.

20 Q. Okay. And do you consider yourself familiar with
21 the geographic area the West office covers?

22 A. Yes very.

23 Q. Were you involved in an investigation of Tyress
24 Littlejohn on August 16th, 2012?

25 A. I was.

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 Q. What was your primary role in that investigation?

2 A. I was part of the surveillance team.

3 Q. Officer Beck, this is State's Exhibit Eleven that has
4 been previously admitted. Are you familiar with what that
5 is?

6 A. I am.

7 Q. What is that?

8 A. That is a aerial map of 321 Bypass, West Liberty
9 Street area, California Street area of York.

10 Q. Okay. York City?

11 A. Some of that's in York City; some of it's outside
12 the city limits. It's all in York County.

13 Q. Okay. So more of the western side of the county?

14 A. Yes, ma'am.

15 Q. Okay. And you would say you are familiar with this
16 geographic area?

17 A. I am.

18 Q. Okay. And as part of the surveillance team where
19 were you when you first got involved in this case?

20 A. When I first got involved in this case I came over
21 and met up with the other officers at the Cotton Belt
22 Elementary School there on West Liberty Street, Highway 5.

23 Q. And if you would go ahead and step down. Get closer
24 to the screen and I'll ask you to point out some of the
25 locations.

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 A. Okay.

2 (WITNESS LEAVING WITNESS STAND.)

3 MADAME COURT REPORTER: Officer Beck, Officer Beck,
4 you're gonna have your back to me, keep your voice up
5 please.

6 A. Sure.

7 MADAME COURT REPORTER: Thank you.

8 BY SOLICITOR ROBINSON:

9 Q. Where is this school you were just speaking of?

10 A. Cotton Belt Elementary is up here on the far right,
11 the side of the screen in the middle. If you can see those
12 green roofs right to the right of the Number 5.

13 Q. All right. And what was your understanding of where
14 the deal would take place on this day?

15 A. My understanding was it would happen on California
16 Street in one of the first group of houses here on the left
17 coming off of 321 Bypass. There is a group of several
18 houses there all in a line and my understanding was the
19 deal would take place there.

20 Q. Okay. And as part of the surveillance team do you
21 make a plan to where people are going to be for that?

22 A. We do.

23 Q. And what was the general plan for this case?

24 A. The plan was Officer Faulkenberry and Officer
25 Rainier were gonna leave the school cut the back way out of

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 this map. They were gonna make a right coming out of the
2 school, come around and get on the top end of the deal
3 north of the deal on California Street.

4 Myself and Investigator Vaughan were gonna follow
5 the informant down Highway 5 down West Liberty Street make
6 a right on US 321 Bypass. The CI was gonna turn right on
7 California Street; we were gonna go by California Street
8 staying on 321 Bypass. There is a cemetery here. Myself
9 and Investigator Vaughn were gonna park there and listen to
10 the audio of the deal. Behind us was Sergeant Lubben and
11 Special Agent Sosebee of the FBI. They were gonna be in
12 the apartments here in the easeway area off US 321 Bypass.

13 Q. Okay. So there are three vehicles involved?

14 A. There were three two-officer vehicles yes that's
15 correct.

16 Q. So when you left the school where was the informant
17 at that time?

18 A. The informant was in front of me.

19 Q. In his own vehicle?

20 A. That's correct.

21 Q. And did you and the informant take the same basic
22 route towards California Street?

23 A. We did.

24 Q. And you testified that you went past California
25 Street; is that correct?

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 A. That's correct.

2 Q. Did you see where the informant went at that point?

3 A. I did. The informant was in front of me then made a
4 right on California Street.

5 Q. Okay. And that was consistent with what you were
6 expecting?

7 A. That is consistent with what we were expecting.

8 Q. Between the school and California Street did the
9 informant make any other stops?

10 A. No.

11 Q. Why didn't you follow the informant down California
12 Street?

13 A. Well if I would a driven my vehicle down there we
14 would of stuck out like a sore thumb.

15 Q. So you're trying to keep a low profile?

16 A. We are. We're trying to not be seen, not do anything
17 that would spook the target in this deal, Mr. Littlejohn.
18 Not do anything that would cause any suspicion that
19 narcotics agents or police were in the area.

20 Q. Okay. You also testified that there was another
21 vehicle with Agent Sosebee and Sergeant Lubber. Correct?

22 A. That's correct.

23 Q. Did you see them actually go to their surveillance
24 location?

25 A. I saw them pull into the apartment complex off US 321

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 Bypass. I wasn't able to see where they went inside the
2 complex though but I know they turned in there.

3 Q. Okay. And so once you went on at that point you no
4 longer could see them but you knew that that's where they
5 stationed?

6 A. That's correct.

7 Q. Do you have contact with the other officers while you
8 out conducting this surveillance?

9 A. We do. We have radio contact.

10 Q. Okay. And you testified that you would not have been
11 able to see the informant - Correct - once he turned?

12 A. That's correct.

13 Q. Do you have any other way of having an idea of what
14 the informant is doing?

15 A. Absolutely.

16 Q. And what is that?

17 A. Through body wires.

18 Q. And tell the jury a little bit about how the body wire
19 works for you guys.

20 A. Absolutely. The informant is fitted with an
21 electronic listening device or body wire. That allows us
22 to hear over a VHF radio frequency - the audio of what's
23 happening. It's very clear, you can hear the conversation,
24 you can ever hear somebody getting in and out of a car.
25 You can hear the dinging of the car like when you leave the

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 key in the ignition, we can hear all that..

2 Q. Because you can hear all of that does that sometimes
3 make it hard to make out conversations and stuff cause you
4 got a lot of background noise?

5 A. If you got a lot of background they can be very hard
6 to hear.

7 Q. Okay. And is this audio feed is it a two way or is
8 the informant able to hear you or are you able to talk to
9 the informant through this?

10 A. We are not. We can't communicate back with the
11 informant. It's a one way from them to us.

12 Q. Okay. And this is a different audio feed than what
13 you are using to communicate with the other officers?

14 A. That's correct. We're talking totally through radio
15 frequency off totally different radios.

16 Q. So there is no way that the informant is picking up
17 the conversations between you and the other officers?

18 A. That is correct. There is no way they can hear what
19 we're talking about.

20 Q. Okay. Now you testified you went over to area of a
21 cemetery at the Bypass; is that correct?

22 A. Yes. The cemetery is right here.

23 (WITNESS INDICATED ON STATE'S EXHIBIT ELEVEN.)

24 Q. Okay.

25 A. In that area.

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 Q. And is that where you waited while the informant was
2 on California Street?

3 A. I did.

4 Q. How did you know when it would be time to leave that
5 area and go back to the school or what have you?

6 A. We were listening to the deal; we were listening to
7 the audio of it. In my time you can hear what's going on.
8 Sometimes its hard to hear depending on background
9 especially if you've got radio's going and stuff like that.
10 But we were able to tell, you know, that he was getting
11 back in his vehicle and you could - once he's in that
12 vehicle it kind of kills a lot of that background and the
13 things you hear are like the car radio, the dinger, the
14 door shutting. Sometimes you can ever hear the engine
15 going rrrrrrrrrrr as its accelerating forward.

16 Q. So that's the cue to you that it's time to go?

17 A. That's the cue.

18 Q. So what would have done when you heard those things
19 taking place?

20 A. Just kind of started moving out of our position
21 getting here to 321 Bypass, getting a line of sight down to
22 California Street, being able to pick up that CI whenever I
23 saw their vehicle here.

24 Q. So once you pulled up to the Bypass you could see
25 far enough towards California Street to see when the

OFFICER WALTER BECK: DIRECT BY SOLICITOR ROBINSON

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1 informant got to the Bypass as well?

2 A. I may have had to pull out just a little and get in
3 the road but we can time it pretty good.

4 Q. Okay. So did you in fact see the informant leave
5 California Street?

6 A. I did. I kind of had a little bit of a jump and was
7 here and saw the informant make a left turn off of
8 California onto US 321 Bypass.

9 Q. And where did you guys go from there?

10 A. We took US - We took the same route we took before.
11 We went down US 321 Bypass made a left at the Knights
12 Inn on West Liberty Street, Highway 5, right back to Cotton
13 Belt Elementary School.

14 Q. Did the informant make any stops from the time that
15 you saw him again coming off California Street to getting
16 back to the school?

17 A. They did not.

18 Q. And did the other officers join you back there at
19 the school?

20 A. They did. We all - The whole surveillance team, the
21 same people that were there when we started, all of them
22 met back there again in the same place behind the school.

23 Q. All right. Can you take the seat again.

24 A. Thank you.

25 Q. Thank you.

OFFICER WALTER BECK: CROSS BY MR. DUNN

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1 (WITNESS RETURNED TO THE WITNESS STAND.)

2 SOLICITOR ROBINSON: And if you could please answer
3 any questions from the defense.

4 MR. DUNN: May it please the court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 OFFICER WALTER BECK BY MR. DUNN:

8 Q. So you met - You followed the CI from an elementary
9 school to California Street. Right?

10 A. That's correct.

11 Q. And you followed the CI back to the elementary
12 school. Correct?

13 A. That's correct.

14 Q. Did you meet with the CI at the FBI office?

15 A. I did not.

16 Q. You just - You met him right over at the Cotton
17 Hill or Cotton Belt?

18 A. Yes, sir.

19 Q. Did you see the CI get searched?

20 A. I did not.

21 Q. And yourself did not do any searching of him.

22 Correct?

23 A. I did not do any searching.

24 Q. Besides just the little bit that we've heard about
25 that you did today, did you have any other involvement

OFFICER WALTER BECK: CROSS BY MR. DUNN

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1 in this case?

2 A. Not at all.

3 Q. You were just - You were just part of the team to
4 make sure some - You were just part of the team in case
5 something bad happened you were there to help. Right?

6 A. Absolutely.

7 Q. All right. So you're not - You were not a part of
8 the arrest of Mr. Littlejohn?

9 A. I don't believe so.

10 Q. You've done other confidential informant buys.

11 Correct?

12 A. That's correct.

13 Q. And normally these confidential informants are working
14 for you because they've picked up some charges themselves.

15 Correct?

16 A. A lot of them are.

17 Q. And there's some other - primarily a lot of them they
18 just pick up drugs dealers usually. Right?

19 A. Right.

20 Q. And they work for you because they know that at the
21 end of the day they're going to get something out of it.

22 Right?

23 A. They hope so.

24 Q. You don't ever promise them anything. Right?

25 A. We can't promise them.

OFFICER WALTER BECK: CROSS BY MR. DUNN
PATRICK PATTERSON: DIRECT BY SOLICITOR ROBINSON

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1 Q. . But you take care of them at the end. Right?

2 A. We make sure that the prosecutor knows what they did
3 if they had charges pending.

4 Q. Okay. Because the reality is that if they weren't
5 taken care of at the end of the day you really wouldn't
6 have a whole lot of CI's lining up to help you would you?

7 A. Not of that type.

8 MR. DUNN: I don't have any further questions, Your
9 Honor.

10 SOLICITOR ROBINSON: Nothing further from this
11 witness.

12 THE COURT: You can step down and be excused. We
13 appreciate your time.

14 (WITNESS LEAVING WITNESS STAND.)

15 THE COURT: Call your next witness.

16 SOLICITOR ROBINSON: Your Honor, the State calls
17 Patrick Patterson.

18 (WHEREUPON, PATRICK
19 PATTERSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
20 FOLLOWS:)

21 DIRECT EXAMINATION

22 PATRICK PATTERSON BY SOLICITOR ROBINSON:

23 Q. Good morning. If you could please state your name
24 for the jury.

25 A. Patrick Patterson.

PATRICK PATTERSON: DIRECT BY SOLICITOR ROBINSON

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1 Q. And where are you employed Mr. Patterson?

2 A. York County Sheriff's office.

3 Q. What do you do there?

4 A. Evidence control technician.

5 Q. How long have you been working for the sheriff's
6 office?

7 A. Four years.

8 Q. And as Evidence Control Technician, what are your
9 duties and responsibilities?

10 A. The evidence we take in we secure that evidence, log
11 it in give it a location or keep it secure until such time
12 as it's needed to be taken out of evidence.

13 Q. Okay. And what are some of the reasons that evidence
14 might be taken out of the evidence department?

15 A. It can be taken out to be tested. It could be taken
16 out and brought to court. It can be returned or the
17 property could be returned to an owner.

18 Q. Mr. Patterson, I've handed you what's been marked
19 as State's Exhibit One. Do you recognize that?

20 A. I do recognize this.

21 Q. And how is it that you recognize it?

22 A. I recognize it by my signature. It is an item that
23 I picked up from the Rock Hill P.D. evidence drop box on
24 August 17th, 2012.

25 Q. Tell us a little bit about this Rock Hill evidence

PATRICK PATTERSON: DIRECT BY SOLICITOR ROBINSON

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1 box that you just testified about.

2 A. This is a secure locker inside of Rock Hill P.D.

3 Q. Okay.

4 A. And it's a place that evidence is dropped and secured
5 and myself and two co-workers have the keys to the locks on
6 that locker.

7 Q. Okay.

8 A. And it's where we go and pick evidence up to transport
9 here to our evidence department.

10 Q. Okay. So a total of three people can access this
11 locker?

12 A. Yes, ma'am.

13 Q. You said people drop evidence into it. Correct?

14 A. Yes.

15 Q. The people who drop evidence in, can they get that
16 evidence back out?

17 A. No. Just only our evidence personnel have keys to
18 the locks to the locker.

19 Q. So you testified you picked that up from Rock Hill
20 on August 17th?

21 A. Yes, ma'am.

22 Q. Of 2012?

23 A. Uh-huh.

24 Q. And when you picked up the evidence what condition
25 would that have been in?

PATRICK PATTERSON: DIRECT BY SOLICITOR ROBINSON

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1 A. It was in a drug bag, a sealed drug bag.

2 Q. When you pick up evidence do you check to see if
3 things are sealed?

4 A. Yes.

5 Q. If it had not been sealed at that time would you have
6 made note of that or done anything differently?

7 A. I would have. I would have returned it to the locker
8 and notified the person who had dropped it into evidence.

9 Q. Okay. So based on what you can see with that piece
10 of evidence had that been sealed when you received it?

11 A. It was sealed.

12 Q. And what do you do with it once you pick it up from
13 Rock Hill Police Department?

14 A. I transported it to our evidence department here.

15 Q. And while you're transporting it does anyone else
16 have access to it to tamper with it or to do anything to
17 it?

18 A. No, ma'am. It never leaves my possession.

19 Q. And when you arrived back at the sheriff's office
20 what do you do with the bag?

21 A. We bring it inside and secure it in our evidence
22 department.

23 Q. What does that mean to secure it in your evidence
24 department?

25 A. It's inside a locked room.

PATRICK PATTERSON: DIRECT BY SOLICITOR ROBINSON
CROSS BY MR. DUNN

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1 Q. Okay. And who has access to this room?

2 A. Just myself and my two co-workers.

3 Q. So the same three people that can access the Rock Hill
4 box?

5 A. Yes, ma'am.

6 Q. Did you have any further contact with this particular
7 piece of evidence after you secured it on August 17th?

8 A. I did. I signed this piece of evidence out to our
9 chemist Cynthia Mitcham on July the 17th, 2013.

10 Q. And when you signed it out to her was there any
11 evidence that it had been tampered with in any way?

12 A. No, ma'am.

13 Q. So it was still sealed at that time?

14 A. Yes, ma'am.

15 Q. And when you say you gave it to the chemist Cynthia
16 Mitcham, do you in person hand it to her?

17 A. Yes, ma'am.

18 SOLICITOR ROBINSON: Please answer any questions from
19 the defense.

20 MR. DUNN: May it please the court, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 PATRICK PATTERSON BY MR. DUNN:

24 Q. You don't know where the evidence has been prior to
25 it coming to the drop box. Correct?

PATRICK PATTERSON: CROSS BY MR. DUNN

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1 A. No, sir.

2 Q. And if somebody signs it out you don't really know
3 where it's going. You don't know for sure where it's
4 going. Right?

5 A. When you say where it's going.

6 Q. When somebody took it but once they leave your
7 presence you don't know where it's actually going. Right?

8 A. When it leaves my presence.

9 Q. Right.

10 A. To the chemist or?

11 Q. To anybody. I'm just talking about in general in
12 particulars.

13 A. When I give it to the chemist all I know is it's in
14 her possession.

15 Q. Right. And you can testify that who had handled it
16 before you just because a signature is on the back. Right?

17 A. Yes, sir.

18 Q. If it was actually handled by somebody who didn't
19 sign for it you wouldn't know one way or the other.

20 A. No, sir.

21 Q. And you didn't participate in getting this particular
22 piece of evidence from the original source. Right?

23 A. No, sir.

24 Q. Is there a video feed of the evidence locker showing
25 the box so you can see what's coming and going in and out

PATRICK PATTERSON: CROSS BY MR. DUNN
CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

1 of the box?

2 A. Not to my knowledge.

3 MR. DUNN: No further questions.

4 SOLICITOR ROBINSON: Nothing from the State.

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

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR ROBINSON: Your Honor, the State calls
10 Cynthia Mitchum.

11 THE COURT: Please come up and be sworn.

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

14 DIRECT EXAMINATION

15 CYNTHIA MITCHUM BY SOLICITOR ROBINSON:

16 Q. If you could please state your name for the jury.

17 A. It's Cynthia Mitchum.

18 Q. And what do you do?

19 A. I'm employed with the York County Sheriff's office in
20 the Drug Analysis Laboratory.

21 Q. What would your job title be?

22 A. Drug chemist.

23 Q. And how long have you worked here as a chemist?

24 A. At the sheriff's office I've been here now for
25 fourteen and a half years.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 Q. Do you have prior training working as a chemist?

2 A. Yes.

3 Q. And where was that?

4 A. I worked with the South Carolina Law Enforcement
5 Division commonly known as SLED in Columbia, South Carolina
6 in their drug analysis laboratory. I was there for seven
7 and a half years so I been doing this for a total of
8 twenty-one years.

9 Q. And you said you had been doing this. What are your
10 duties; what do you do?

11 A. What I do is I receive evidence and I will analyze
12 that evidence for controlled and non-controlled substances
13 and then report out my results to the officers.

14 Q. And did you have to receive any special education or
15 training to be able to do this kind of testing?

16 A. Yes.

17 Q. Tell us a little bit about your educational
18 background.

19 A. I have a Bachelor of Science Degree in Chemistry
20 from which I received from Winthrop University in 1990.
21 And also gone through training through the South Carolina
22 Law Enforcement Division, SLED, in their office for the
23 analysis of drugs.

24 Q. And in this education and training do you learn about
25 are there - Let me rephrase. Are there standardized

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 procedures and testing techniques that are used for the
2 analysis of controlled and non-controlled substances?

3 A. Yes.

4 Q. And do you follow the standardized procedures in the
5 work that you do here?

6 A. Yes I do.

7 Q. Have you ever been qualified in court as an expert
8 in drug identification and analysis?

9 A. Yes.

10 Q. About how many times?

11 A. In excess of two hundred times.

12 SOLICITOR ROBINSON: Your Honor, at this time the
13 State would offer Ms. Mitcham as an expert in drug
14 identification and analysis.

15 THE COURT: Any voir dire?

16 MR. DUNN: No, sir.

17 THE COURT: I find she is qualified.

18 BY SOLICITOR ROBINSON:

19 Q. Ms. Mitcham, I have handed you what's been marked
20 as State's Exhibit One. Have you had contact with that
21 evidence before?

22 A. Yes I have.

23 Q. How can you tell?

24 A. I can tell by my initials on the bag where I've signed
25 it and my name in the chain of custody where I received it

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 from Patrick Patterson on 7/17 of 2013..

2 Q. And Patrick Patterson, where would you have received
3 it from him?

4 A. I received it in person and he works in the evidence
5 control room over at the sheriff's office.

6 Q. And where is your office relative to that?

7 A. Basically it's across the back hall from it.

8 Q. Okay.

9 A. Its in the basement of the sheriff's office.

10 Q. So when you pick it up in person from him what do you
11 do with it?

12 A. Then what I will do is I will check the bag and
13 everything then I store it into - I have a locked locker in
14 - within the drug analysis laboratory that I will store in
15 there until the chance that I have to be able to analyze
16 it.

17 Q. And I believe just now you said you check it. What
18 does that mean?

19 A. I will check the bag to make sure it's all sealed
20 and everything.

21 Q. Did the bag appear to have been tampered with in any
22 way when you received it?

23 A. No it didn't. And I know that because I've got okay,
24 the date and my initials, right here on the bag.

25 Q. Now what was contained in the bag when you received

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 it?

2 A. It was a rock substance. It's a plastic bag
3 containing a rock substance.

4 Q. So you had with the rock substance and other packaging
5 material in there?

6 A. Yes.

7 Q. Once you bring it back to the drug lab you testified
8 that you put it in a locker?

9 A. Correct.

10 Q. When's the next time you would have contact with it?

11 A. When I pull it out to do my analysis and it remains
12 in my custody throughout that time.

13 Q. And had the bag been tampered with in any way when
14 you pulled it from your locker?

15 A. No.

16 Q. And what did you do with it once you get it out? You
17 said you performed a testing.

18 A. Yes. What I will do is I remove the substance from
19 this inner bag and I'll do my analysis on the substance and
20 then I'll seal this back up in this outer bag which is
21 still intact today.

22 Q. And when you do your analysis would you use the same
23 standardized procedures and testing that you testified
24 about in your background?

25 A. Yes.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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- 1 Q. And you applied those test to this substance.
2 Correct?
3 A. Yes.
4 Q. And were you able to identify the substance?
5 A. Yes I did.
6 Q. What did you identify the substance as being?
7 A. From State's Exhibit Number One which is Item Number
8 One in this case was found to be cocaine base also known as
9 crack a controlled two substance in the amount of 45.1
10 grams.
11 Q. Okay. So your testing involves both determining what
12 it is and how much it is?
13 A. Correct.
14 Q. And you said that it was cocaine base?
15 A. Correct.
16 Q. And you testified that that is the same as crack
17 cocaine?
18 A. Yes. Yes it is.
19 Q. You testified to the weight. Correct?
20 A. Correct.
21 Q. When do you determine the weight of the substance?
22 A. I will take my samples that I need for the weight and
23 - I mean for the testing - and from my analysis and then
24 I'll do the weight after that.
25 Q. So the weighing comes after you've taken a small part

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 c& it to do the identification test?

2 A. That is correct.

3 Q. When you do the weight do you include the packaging
4 that it came in?

5 A. No it's just the substance itself.

6 Q. So you would be somebody who would have the
7 interaction with the substance in the lab versus handling
8 it through a baggie?

9 A. That's correct.

10 Q. Do you have any indication of when you performed
11 your test?

12 A. I started it on October the 24th of 2013.

13 Q. Now there's testimony in this case that the events
14 that led to this case occurred in August of 2012.

15 Would a delay of that kind of nature on the testing impact
16 your chemical identification of the substance?

17 A. No.

18 Q. And would the delay have any impact on your weighing
19 of the substance?

20 A. Only if the substance happen to be maybe really
21 wet at the beginning it might dry out some but this doesn't
22 appear that it had any kind of difference in that.

23 Q. Okay. So when you get it a year later the only
24 difference would maybe be as to weight if it had dried
25 some?

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 A. Correct.

2 Q And how would drying effect the weight?

3 A. It would make it less.

4 Q. And why would crack dry? Does it come moist or?

5 A. It depends on what process they might be at making it
6 if they just made it and just pulled it out of their making
7 container and trying to sell it right then and it's wet or
8 if they've actually let it cool down some and let it dry
9 out.

10 Q. So the process of making - Your understanding of the
11 process of making crack cocaine involves some kind of
12 fluids or liquids that could then later dry?

13 A. Correct.

14 Q. Did you prepare a report of your findings?

15 A. Yes I did.

16 Q. Did you bring that with you today?

17 A. Yes.

18 Q. Now, Ms. Mitchum, that report that you brought with
19 you which has been marked as State's Exhibit Thirteen, does
20 it accurately reflect your findings after your analysis
21 from this case?

22 A. Yes it does.

23 SOLICITOR ROBINSON: Your Honor, at this time the
24 State would move to admit State's Exhibits One and State's
25 Exhibit Thirteen.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR ROBINSON

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1 THE COURT: Any objection?

2 MR. DUNN: No, sir.

3 THE COURT: In without objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE AND THIRTEEN,
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR ROBINSON: If you could answer any questions
7 from the defense.

8 MR. DUNN: Your Honor, may we have a break?

9 THE COURT: Yeah, we can take a short break. Take
10 about ten or fifteen minutes, a refresher break. Thank
11 you.

12 (JURY EXITS COURTROOM AT 11:08 AM..)

13 THE COURT: We will take a break until about twenty-
14 five after eleven. If either party has any request to
15 charge if you will hand them to my law clerk I would
16 appreciate it. We'll be at ease.

17 (COURT IN RECESS AT 11:09 A.M..)

18 (COURT BACK IN SESSION AT 11:24 A.M..)

19 THE COURT: Thank you. Take your seats and get Mr.
20 Littlejohn back in.

21 (DEFENDANT, TYRESS LITTLEJOHN, REENTERS COURTROOM.)

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

23 (JURY REENTERS COURTROOM AT 11:26 A.M..)

24 THE COURT: All right. Go ahead and call - I'm sorry.
25 Cross.

CYNTHIA MITCHUM: CROSS BY MR. DUNN

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1 MR. DUNN: I'm sorry. May it please the Court.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 CYNTHIA MITCHUM BY MR DUNN:

5 Q. So, Ms. Mitch, you don't know where the drugs or the
6 substance that you're testing, you don't know where it
7 comes from. Correct?

8 A. Correct other than the paperwork I have. To personal
9 knowledge no.

10 Q. And apart from the signatures of folks who have
11 signed that bag at some point during the process, you don't
12 know who has handled it either. Correct?

13 A. Correct.

14 Q. And you did not participate in the securing of it.
15 Right?

16 A. No I did not.

17 Q. In fact you didn't see for the first time until July
18 of 2013 I believe; is that right?

19 A. Yes. July 17th that's correct.

20 Q. And it was dropped into the box prior to that on
21 August 17th of 2012. Right?

22 A. Correct.

23 Q. So it sat in a box or sat in evidence for about ten
24 months, eleven months ---

25 A. Yes.

CYNTHIA MITCHUM: CROSS BY MR. DUNN

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1 Q. --- somewhere in that neighborhood? And then when
2 you test it you're by yourself?

3 A. Yes.

4 Q. I mean you don't have assistance or a lab tech or
5 anybody helping you. Right?

6 A. Not at that time I didn't but I do now.

7 Q. And when you - During the process of testing it do
8 you take pictures of what you have?

9 A. No I do not.

10 Q. Do you take videos of what you have?

11 A. No.

12 Q. Any kind of video in the - a video feed in your office
13 showing just for security purposes and make sure nothing's
14 being handled wrong?

15 A. No.

16 Q. How much of the substance was actually used up during
17 the testing?

18 A. I don't actually take a weight of that substance but
19 it's just a small portion.

20 Q. And the weight that you have now is 49 grams, 49.1
21 grams. Right?

22 A. 45.1

23 Q. I'm sorry. 45.1?

24 A. Correct.

25 Q. You know if pictures - You didn't take any pictures

CYNTHIA MITCHUM: CROSS BY MR. DUNN

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1 of it sitting on the scale. Correct?

2 A. No I did not.

3 MR. DUNN: I don't have any further questions, Your
4 Honor.

5 THE COURT: Any recross? I mean redirect?

6 SOLICITOR ROBINSON: Nothing from the State, Your
7 Honor.

8 THE COURT: All right, Ms. Mitcham, you can step down
9 and be excused. We appreciate your time.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 SOLICITOR ROBINSON: Your Honor, the State rest at
13 this time.

14 THE COURT: All right. Members of the jury panel, the
15 State is resting, they are telling us they have presented
16 their case so we have to even though we just come back we
17 have to take another break. Trials are sort of like a ball
18 game. They have a first inning and you have a second
19 inning so we moved past inning number one and we have to
20 take a break between this and whatever we do next. So just
21 don't start discussing the case yet because you are not
22 possessed with the arguments of the attorneys or the charge
23 on the law so I'm gonna let you go to the jury room at this
24 time. Don't start deliberating and we'll send for you
25 momentarily.

1 (JURY EXITS COURTROOM AT 11:30 A.M..)

2 THE COURT: The jury is dismissed, anything from the
3 State?

4 SOLICITOR ROBINSON: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. DUNN: Yes, sir, Your Honor.

7 I make a motion for a directed verdict. Your Honor,
8 I would contend that the State has failed to meet it's -
9 even the minimal burden of presenting enough evidence to
10 show that Mr. Littlejohn is guilty of trafficking in crack
11 between the one-hundred range that he's charged with.

12 I would argue that based on the evidence that has been
13 entered into evidence - that has been introduced so far is
14 insufficient to show that or to help the State bear that
15 burden and that there is just simply is not enough evidence
16 to support it to go to a jury at this time.

17 THE COURT: Well I deny the motion. I believe it has
18 ample evidence from which a jury could - I'm not saying
19 they will - conclude that this transaction took place with
20 Mr. Littlejohn involving the transaction; that the
21 substance was crack cocaine and that it exceeded twenty-
22 eight grams in weight.

23 Mr. Littlejohn, can you hear me?

24 MR. LITTLEJOHN: Yes, sir.

25 THE COURT: We've reached the point in the trial where

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1 you have a right to present a defense if you wish. You
2 don't have to present a defense because you are presumed
3 innocent of this charge and the state has to prove your
4 guilt beyond a reasonable doubt. But you have a right to
5 present a defense; call witnesses if you wish.

6 You have the right to testify or you can remain
7 silent. If you testify the state can ask you about those
8 offenses we discussed yesterday in your past. If you take
9 the stand and they ask you about them then I will tell the
10 jury that they can consider your past criminal record only
11 regarding whether or not to believe you or not; not for any
12 value regarding this charge. That is they cannot factor in
13 your past in determining what to do with this case as far
14 as whether to find you guilty or not guilty. They can only
15 use your past record regarding whether to believe you or
16 not. That is your credibility.

17 And what was the record again?

18 SOLICITOR ROBINSON: Your Honor, he has an armed
19 robbery conviction from 2000 which his sentence extended
20 into the ten year range. And then he has a financial
21 institution crime which is both a felony and a crime of
22 dishonesty.

23 THE COURT: And so they can ask you about those.
24 Again I will tell the jury that those are allowed into
25 evidence only for the jury to access whether to believe you

1 or not to determine whether or not or indicate you
2 committed this offense. You have a right to remain silent.
3 You exercise your constitutional right to remain silent I
4 will tell the jury you have done that; that you have
5 exercised your constitutional right to remain silent. I
6 will tell them that you do not need to prove your innocence
7 but the state must prove your guilt beyond a reasonable
8 doubt; that you are presumed innocent and that you need not
9 call any witnesses or testify. I will tell them that you
10 have a right not to testify, that they cannot use that
11 against you in anyway whatsoever. They cannot even discuss
12 it and not factor it into their own consideration.

13 Do you understand all of that?

14 MR. LITTLEJOHN: Yes, sir.

15 THE COURT: Do you have any questions about that?

16 MR. LITTLEJOHN: Yes, sir.

17 THE COURT: Have you explained all of that to him?

18 MR. DUNN: I have, Your Honor.

19 THE COURT: Do you believe he understands it?

20 MR. DUNN: I believe he does.

21 THE COURT: Do you intend to take the stand?

22 MR. LITTLEJOHN: No, sir.

23 THE COURT: All right. Does the Defense have any
24 witnesses?

25 MR. DUNN: No, sir.

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1 THE COURT: All right, then the state will have to
2 open and the defense would close. We hadn't had a charge
3 conference. Anybody handed up any charges?

4 SOLICITOR ROBINSON: We had nothing specific other
5 than of course the usual instructions, Your Honor.

6 THE COURT: On trafficking, okay.

7 MR. DUNN: I don't have anything specific. Just the
8 normal you know he doesn't testify, doesn't have to put up
9 a defense and all the things the court normally presents.

10 THE COURT: The only question I have when you get into
11 these weights it seems to me that the only issue is whether
12 or not he was in actual constructive possession or
13 distributed twenty-eight grams or more. There is no
14 evidence that's been indicated that they could find a
15 lesser amount but I want to make sure.

16 The verdict would indicate they found twenty-eight
17 grams or more. I don't need - I don't believe it needs to
18 be broken out as to an amount specifically but I ask both
19 the State and the Defense if they want to have the jury to
20 make a specific finding as to the amount as opposed to just
21 making a finding that he trafficked in excess of twenty-
22 eight grams.

23 SOLICITOR ROBINSON: I believe that's the appropriate
24 course if the State has met it's burden of proof twenty-
25 eight grams or more.

1 MR. DUNN: I don't think - I think you're fine.

2 THE COURT: Yeah, I agree but I just wanted to run
3 that by you. Okay. All right. You all need a short break
4 before we --

5 MR. DUNN: Give me five to speak to my client.

6 THE COURT: All right. Let's take about five minutes.
7 I want to just sit here for right now and look at
8 something.

9 (COURT AT EASE AT 11:35 A.M..)

10 (COURT BACK IN SESSION AT 11:42 A.M..)

11 THE COURT: All right. Is the State ready?

12 SOLICITOR ROBINSON: Yes, Your Honor.

13 MR. DUNN: Yes, sir.

14 THE COURT: All right. The Defense has the right to
15 - you both have the right to close, the defense has the
16 right to final argument.

17 Bring in the jury.

18 (JURY REENTERS COURTROOM AT 11:45 A.M..)

19 THE COURT: Members of the jury panel, the State has
20 rested, now the Defense has rested, and so we will move
21 into the arguments and I will charge you the law as you are
22 to apply it. We've ordered lunch, it will be here around
23 one so we'll be in a position for you to deliberate as soon
24 as we get though with arguments and charge.

25 Counsel.

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 SOLICITOR ROBINSON: Thank you all for your time and
2 attention and your patience as we've gone through the
3 trial. We're at the part now where I get to argue about
4 everything that has now been presented.

5 As I told you from the start and as you've known from
6 the start this is a case where Tyress Littlejohn is charged
7 with trafficking crack cocaine. And as you heard a little
8 bit in the beginning that the statute is kind of broad on
9 what it means to traffic something.

10 I have put up here for you the language of the statute
11 and you can see it's quite lengthy. It says it's unlawful
12 for a person to knowingly sell, manufacture, deliver,
13 purchase, or bring into this state, or to provide financial
14 assistance, or otherwise aided, abetted, attempt, or
15 conspire to sell, manufacture, delivery, purchase, or bring
16 into this state, or to knowingly be in actual or
17 constructive possession; or to knowingly attempt to become
18 in actual or constructive possession of twenty-eight grams
19 or more of methamphetamine or cocaine base as defined and
20 otherwise limited in these other statutes which then are
21 also lengthy.

22 So again I want to break this down for you and try to
23 make it more manageable for us to talk about. So here is
24 my rough summary of what we have going on in this case. It
25 is unlawful for a person - in this case the allegation

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 Tyress Littlejohn to do stuff. We have a lot of options.
2 That's my very technical description of what's going on
3 here. I'll come back to that, but it's unlawful do to
4 stuff, to do things with twenty-eight grams or more. And
5 in our case we're dealing with cocaine base.

6 And now to look basically the four things we're
7 looking for in this case. And I'm gonna walk through them
8 one at a time, not necessarily in that order, based on what
9 the evidence you've heard in this case so far.

10 So start with - I'm actually gonna start at the bottom
11 of cocaine base. And what we're talking about is whether
12 the substance involved in this case was cocaine base. This
13 is the substance. We're starting with the substance
14 involved. This is the substance we allege is involved.
15 These exhibits are in evidence, pictures of it that you
16 heard law enforcement took this picture back at the law
17 enforcement center after they recovered it on October 16th,
18 2012. State's Exhibit One is also in evidence. It is the
19 actual substance that was recovered. You will have this
20 for your deliberations. You will be able to see how much
21 it is, what is exactly in here, we've still got the baggie
22 in here but it's showed in that picture as well as the
23 substance itself.

24 The question is, how do we know that this substance
25 is the one that was involved with Tyress Littlejohn? Well

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 we know that because before they send the informant to go
2 to California Street to meet with Tyress Littlejohn they
3 search him and his vehicle to make sure he doesn't already
4 have something to claim or whatever have you. And they're
5 searching for controlled substances: money, weapons, all of
6 those things. This is not some tiny little grain of drugs
7 that he just concealed somewhere. They searched him and he
8 did not have drugs on him. They would have noticed this
9 amount of drugs hidden on his person or in his car. They
10 are trained to look for it.

11 Once he left the law enforcement officers - Well he
12 didn't leave the officers. At first they followed him all
13 the way to California Street where they saw him turn on
14 that street. They saw he didn't stop anywhere. In the
15 video there is no stopping anywhere. There is no
16 communication with other people before he gets to
17 California Street. While he's on California Street the
18 only person he has direct person to person contact with is
19 the defendant nobody else. There is this other Jeep, SUV,
20 whatever term you want to use to call this other vehicle,
21 but the informant never goes all the way up to that
22 vehicle; never gets close enough to have a hand to hand
23 exchange or in person interaction with that driver. The
24 only person is Tyress Littlejohn.

25 The informant then leaves California Street and you

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 heard the surveillance plan. The officers then picked him
2 up as he's turning off California Street. They pick him up
3 - not pick him up in their car - but pick him up visually
4 and followed right behind him all the way back to the
5 school. Again, no stops, no interacting with other people.

6 There Officer Rainier secures the evidence and you've
7 heard the testimony of his policy and procedures; how he
8 handles it; take it back to the law enforcement center and
9 document approximate weight, took those pictures, sealed it
10 up into a bag, put it in that evidence locker. Once it's
11 in that evidence locker none of the officers involved in
12 this investigation can get it out. That's where Patrick
13 Patterson comes into play. It's his job to go collect that
14 evidence. There's only two - him and two other employees
15 that are all evidence technicians that have access to this
16 evidence. They bring it back to the evidence department,
17 keep it secure until it goes to the chemist.

18 That's how we know that it is this substance that
19 we're talking about when we talk about trafficking cocaine
20 base or crack cocaine in this case.

21 But we have a little bit more because we do have the
22 videos. This is from that watch video. This is one of the
23 State's Exhibits.

24 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY.)

25 SOLICITOR ROBINSON: This is Tyress Littlejohn. And

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 that's what he has in his hand when the informant goes out
2 to meet with him. And when you take a look at that it's
3 the same thing. We've got the same packaging, we've got it
4 knotted in the same way. And that's consistent with the
5 testimony you heard from everybody. The informant didn't
6 undo it and handle the drugs directly. He left it in the
7 bag, he gave it to the officers, the officer left it in the
8 bag and he packaged it up and that's how it's turned into
9 evidence. So this is the substance that was involved. And
10 it will be available for your viewing at State's Exhibit
11 One.

12 So what is the substance cocaine base? Well you've
13 heard two phrases being talked around here. Cocaine base
14 and crack cocaine. And that's because when we were on that
15 first slide with the whole statute at the end it says
16 cocaine base as defined in these other statutes. So 44-53-
17 110 is another South Carolina statute and in there it
18 defines different things, one of them being cocaine base.
19 And when it defines cocaine base it says cocaine base is
20 commonly referred to as rock or crack cocaine. That it is
21 also consistent with what you heard from the chemist. She
22 did the chemical testing on this substance; she determined
23 it to be cocaine base or in other words crack cocaine.

24 And I believe there the time between when this
25 evidence was recovered in 2012 and her testing. You also

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 heard her testify that that doesn't change the chemical
2 identification of the compound. So we talked about the
3 substance involved in this case being cocaine base or crack
4 cocaine.

5 How much was it? The trafficking statute involved
6 requires that there be twenty-eight grams or more. For
7 this element you've heard a couple o different ways but
8 when it comes down to it a person who makes the official
9 weight is the chemist. She is the person who is in a
10 scientific training capacity and she's got the official
11 equipment. She is also the one person who takes it out of
12 the bag so we separate out the weight of the packaging and
13 just talk about what exactly was present and that's forty-
14 five point one grams. No other evidence suggest that it
15 was less than twenty-eight grams which is all that - The
16 statute requires twenty-eight grams or more 45.1 grams.
17 And again, you have it to look at it yourself. It is a
18 fairly large amount of drugs present in this bag. Again
19 it's not a little tiny pinch off or a little rock.
20 Everything suggest, it tells you that it's over twenty-
21 eight grams.

22 So we've now hit the last few two. A person. Who is
23 the person in this case? Tyress Littlejohn. The State
24 always has to prove identity. In this case we have the
25 video of this taking place, who the informant met with when

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 he got to California Street. You can take a look over to
2 the defense table and decide for yourself is that the same
3 person. Well you also heard that the informant this is a
4 person he had known for ten plus years. He knows him by
5 his full name, he's got a nickname for him, he knows his
6 phone number. He knows that's who he's dealing with. When
7 he got there if it was someone else he would know. But we
8 got the video showing who it is too. There is a known
9 photo of Tyress Littlejohn. Again you can judge for
10 yourself is that the same person?

11 And we also have --

12 If you can just dim the lights momentarily.

13 (COURTROOM LIGHTS DIMMED.)

14 SOLICITOR ROBINSON: Again, this is from the video and
15 this is one of the State's exhibits. Identifying marks:
16 He has a distinct - fairly distinctive tattoo that he
17 walked over here and showed all of you. The person in that
18 video, the person that gave drugs to Tezo Ervin on August
19 16th is Tyress Littlejohn the same person who's sitting in
20 front of you here today with that same tattoo.

21 Okay. We pick three of the four which brings me to
22 doing stuff. What stuff? All right, can't help it, we got
23 to go back to what the law says. But of all the options
24 and there are only some of them that are really relevant to
25 this particular case so I tried to kind of pick a couple of

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 things out for your consideration so I grouped it into
2 three.

3 It's unlawful for a person to knowingly sell or
4 deliver, to aid, abet, or conspire to sell.

5 And the last option knowingly to be in actual
6 possession of the drugs.

7 Now that I've broken it down into three I'm gonna take
8 the first two kind of together because the main thing on
9 these first two is sell or deliver. The top one, knowingly
10 sell or deliver. The second one just adds if he did it
11 with somebody else. And I include both of these here
12 because we have the person in the SUV.

13 Whether Tyress Littlejohn sold and delivered on his
14 own or had help from the person in the SUV, both of those
15 fit the statute. Now sell or deliver, the reason I picked
16 both of those verbs is, you've heard the testimony
17 officer's supplied the money to the informant. The
18 informant testified he went there. You saw at one point he
19 says I'm gonna give him the money and he grabs for the
20 money and he says he handed it off to the defendant. That
21 would be a sale.

22 And the money helps to identify what the intentions
23 of the parties are. Everyone knows this is a drug deal
24 You know there's nothing mysterious about it. But the
25 section doesn't require us to show money. It doesn't

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 require a profit to be made. It doesn't require any of
2 that cause delivery counts too and delivery is as simple as
3 handing it over. So regardless of whether money is
4 exchanged, regardless of how much of his light bill Tyress
5 Littlejohn can pay with his profit from this deal, as long
6 as he gave the drugs you've met the statute.

7 How do we know there was a sell or delivery in this
8 case? That brings us to the informant which we need to
9 talk about. He is a person who has a drug history. He is
10 a person who has pending charges. Well when you think
11 about what type of person would be able to arrange and
12 follow through with a purchase of drugs, what type of
13 people are those?

14 Its not gonna be your school teacher, it's not gonna
15 be a person with no criminal history or no involvement or
16 being someone who is not in touch with that environment.
17 It needs to be someone like Tezo Ervin who knows that's
18 going on. He knows that if he picks up the phone and says
19 Excuse me, sir, I'd like to place an order for two ounces
20 of crack cocaine, the person on the other end of the phone
21 is gonna go yeah forget it I don't know what you're talking
22 about.

23 But that's not how these things go down. So when we
24 use people who have this background and this baggage it
25 allows us to enter into this world that other people could

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 not. But when we're doing that we have to be cognizant of
2 whether or not that creates a motive for them to lie. And
3 that's where we get into the law enforcement involvement
4 and in fact that this was a controlled buy because we know
5 that they're hoping to get something out of this so we have
6 to take precautions to make sure they are honest; to make
7 sure they are not trying to pull one over on people.

8 And they do that by searching the informant and his
9 vehicle before and after the deal. They do that by
10 recording the things that they're recording and by
11 following him. The informant knows that these things are
12 happening. The informant knows that if he plays games with
13 the law enforcement officers and tries to do this work
14 dishonestly he loses the credit that he's hoping to get.

15 He can't risk it. He knows he's got recording
16 equipment on him. He knows that they can hear him. He
17 knows that they are in the area but he doesn't necessarily
18 know at what moments they can see him and when they can't.
19 He can't take the risk of planting things, of stopping
20 somewhere else to get the drugs elsewhere. He has to
21 follow through as he said and do the right thing or his
22 change of getting credit or working his charges is done, he
23 blows it. Even though he's a person that you might not
24 ordinarily trust it is the circumstances that surround the
25 transaction that allow you to put trust in what he's

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 saying.

2 And then what comes from that is a bunch of other
3 evidence. And all the other evidence corroborates his
4 testimony of what happened and that's where we have the
5 videos and the chain of custody and all this stuff goes to
6 show you that what he is telling you can be trusted.

7 Now, we talked about sell and delivery and whether or
8 not money is to be exchanged. And again I say it doesn't
9 need to be but that did happen in this case.

10 If you could dim the light switch.

11 (COURT ROOM LIGHTS DIMMED AGAIN.)

12 SOLICITOR ROBINSON: If you watched in court the video
13 from the watch, and what takes place on that video.

14 (VIDEO FROM WATCH CAMERA PUBLISHED TO JURY AT 12:03
15 A.M..)

16 SOLICITOR ROBINSON: Now you saw a flash of money and
17 you heard the informant say I'm giving him the money now.
18 But admittedly you don't see much more on that video. The
19 other video is the key fob video. And it's the same time
20 but just it's a question of where the watch is versus where
21 the key fob is. The key fob video is in evidence and it's
22 available for your viewing but I tried to cut out here what
23 would be the same time period for you to see how it came
24 across on the other end.

25 (VIDEO FROM KEY FOB PUBLISHED TO THE JURY.)

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 SOLICITOR ROBINSON: Okay. Now I'm not gonna hood
2 wink you and say you saw two hands. He says give me the
3 money now. You see the stack of money. You see that they
4 walk closely together again. There is a brief pause and
5 they walk off. That is consistent with the informant's
6 testimony that he got the money, he walked past Tyress
7 Littlejohn, Tyress Littlejohn received the money and
8 returned to that SUV that was on the scene.

9 That right there tells us that there was a sell going
10 on here.

11 Now the other thing about this money and whether or
12 not it changed hands, you saw in those images or in the
13 video the stack of money and this Exhibit is entered into
14 evidence which --

15 THE COURT: Are you through with the --

16 SOLICITOR ROBINSON: Yes, if you could please. Thank
17 you.

18 The stack of money that's involved here it was twenty-
19 four hundred dollars. This is not a twenty dollar bill
20 that the informant maybe wedged in his clothes somewhere or
21 put somewhere and hid it and kept it and never gave it to
22 Tyress Littlejohn. If he came back with this stack of
23 money the law enforcement would have found it when they
24 searched him again. Again, consistent with his testimony
25 that he gave that money to Tyress Littlejohn.

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 The second option is whether he Tyress Littlejohn
2 aided, abetted, or conspired with another person. This
3 image is in evidence; this is just to show you as you saw
4 in the video there's somebody in this car. Does he give
5 the drugs to this person? Does Tyress get the drugs from
6 this person? Does he give the money to this person?

7 It's kind of neither nor there cause that's covered in
8 this statute too. If he's helping that person sell drugs
9 or deliver drugs, he has violated the statute.

10 Now this is the part of the video, this is the watch
11 video that we did watch before.

12 Dim the lights again.

13 (COURTROOM LIGHTS DIMMED.)

14 SOLICITOR ROBINSON: This is going to cover the part
15 of time where Tyress Littlejohn walks back from the SUV and
16 have a brief interaction at Tyress Littlejohn's car.

17 (WATCH VIDEO PUBLISHED TO THE JURY AT 12.09 P.M..)

18 SOLICITOR ROBINSON: In that scene Tyress Littlejohn
19 returns from the SUV, takes a seat in his car. You see him
20 holding the drugs in that scene, see him mess around in a
21 floor board area of the car where he's got his scale and he
22 says see, right? He's letting the informant take a look at
23 the drugs he's gonna be receiving and he hands them off to
24 the informant.

25 The informant testified that it went down like that

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 and this video is consistent. The video helps you to find
2 his testimony reliable. But we even get from Tyress
3 Littlejohn himself statements that confirm he too is aware
4 this is a drug deal, this is not a mystery. This
5 conversation takes place just a few minutes later.

6 (WATCH VIDEO PUBLISHED TO THE JURY.)

7 SOLICITOR ROBINSON: You can bring up the lights.

8 (COURTROOM LIGHTS TURNED UP.)

9 SOLICITOR ROBINSON: Now, again, you heard from the
10 informant and it makes sense that they don't sit around
11 talking about crack cocaine and ounces and measurements and
12 things of that nature. They have their own lingo, they
13 have their own thing going. But what is it the defendant
14 acknowledging here? He's making plays. What are play?
15 He's making drug deals.

16 What else is he talking about? Being able to move a
17 baby? I don't think he's offering to start an adoption
18 agency that can get his baby adopted out in a day. As you
19 heard from the informant a baby is a specific amount of
20 drugs. Four and a half ounces of drugs. The defendant
21 himself is acknowledging this is the play, I can move this
22 stuff, I told the guy in the car I can move this stuff. I
23 can move four and a half ounces in a day. Today he moved
24 about two ounces to the informant. So what's that other
25 guy that he's working with that he's helping to sell and

CLOSING ARGUMENT: BY SOLICITOR ROBINSON

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1 deliver drugs and get his act together and get more it's
2 gone, it's gonna be gone.

3 That's how we know that a sell and delivery takes
4 place. You don't have to just say I'm going to believe
5 this guy that's got pending charges, he's got past charges,
6 you look at everything and you say what makes sense here,
7 what happened?

8 The last option that I mention to you on the doing
9 stuff is to be in actual possession so when we strip away
10 everything else, strip away whether the informant paid him,
11 whether a deal took place, we get to the question of did he
12 knowingly possess twenty-eight grams or more of crack
13 cocaine.

14 Here it is. Tyress Littlejohn holding a baggie of
15 crack cocaine that turned out to be forty-five point one
16 grams of crack cocaine. He is in actual possession. He is
17 knowing possession right now? He's looking right at it.
18 What is he doing? He's messin around with scales and such.
19 He knows what he's got. He knows it's drugs.

20 Ladies and gentlemen, I make my closing argument first
21 and don't get a chance to stand up before you again and say
22 anything else. As you listen to defense closing arguments
23 I ask you to just keep in mind what are the important
24 things in this case. Did a person possess, sell, or
25 delivery twenty-eight grams or more of crack cocaine?

CLOSING ARGUMENT: BY SOLICITOR ROBINSON
BY MR. DUNN

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1 You look at all the circumstances, to use your common
2 sense and to analyze things as to what makes sense happened
3 out there. But at the end of the day in State versus
4 Tyress Littlejohn you're asking yourself do we have twenty-
5 eight grams or more of crack cocaine. Right there.

6 Was it Tyress Littlejohn? Right there. Did he do any
7 of those things with it? It's right there, it's right in
8 front of you. And it is for all of these reasons that I
9 ask you to return a verdict of guilty in this case.

10 Thank you.

11 MR. DUNN: May it please the court.

12 Good afternoon. Yesterday I told you that all
13 defendants bring three things with them when they come into
14 court. One is the presumption of innocence. It hangs over
15 their shoulders like a cloak. The second is that they
16 bring with them that they don't have to prove anything.
17 The State bears the burden of proof. The State has to show
18 through their evidence, that their testimony, the tangible
19 stuff, the verbal stuff, the electronic stuff, you know
20 that burden if a person did what they said they did.

21 The third thing that the defendant brings with them is
22 that not only does the State have that burden, but they
23 have to prove that burden is beyond a reasonable doubt. So
24 I believe it begs the question what is reasonable doubt?

25 A reasonable doubt is a doubt that makes a reasonable

CLOSING ARGUMENT: BY MR. DUNN

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1 person which is you citizens of our country, citizens of
2 York County, it's doubt that makes you all talk, it makes
3 you hesitate, I t makes you say Hum, I don't know if really
4 everything I'm hearing adds up.

5 So let's go through some of the things that we have
6 heard in the last two days that cause us to pause and say
7 Hum, I wonder if everything is as it says it is.

8 What we know is that the State has a lot of resources
9 whether it's York County or the State agency. Or in this
10 case we heard testimony that the FBI was involved. That is
11 a lot of resources that are available to the State. So
12 what do we get at the end of the day? What do we get for
13 our money? What do we get with our resources?

14 Somehow we've made it into the second decade of the
15 twenty-first century and we're still getting videos of
16 forty minutes long, each of those videos were about twenty
17 minutes - forty minutes of clouds, forty minutes of grass,
18 forty minutes of up the top of a car; forty minutes of
19 beside a house; forty minutes of trees. We got forty
20 minutes of very little technology in this case. We've made
21 it to the second decade of the twenty-first century and all
22 the resources of the hands of the State, all the resources
23 at the hand of the federal government, and we don't have an
24 audio recording of any kind of deal set up.

25 We have no audio recording, no video recording of a

CLOSING ARGUMENT: BY MR. DUNN

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1 search going on. We have no audio recording, no video
2 recording of any conferences with the confidential
3 informants. We have no audio, we have no video of the
4 drugs, if that's what they are, being weighed. We have no
5 audio, we have no video of any money exchanging hands.
6 We have no audio, we have no video of any drugs
7 exchanging hands. We have no audio, we have no video of an
8 evidence locker which doesn't move. If you look around
9 this courtroom there's cameras in here. And yet the
10 evidence locker which doesn't go anywhere and which has got
11 evidence from many cases coming and going all day long
12 there is no recording of it to make sure that people aren't
13 doing what they say their doing.

14 At the end of the day what we have is testimony from
15 three people saying that yeah we put our signature on here.
16 But we don't really know what happened with it before we
17 only know what happened with it after. We don't know if
18 they're telling the truth when they say they really signed
19 it when they said they signed it.

20 We made it into the second decade of the twenty-first
21 century and we got no audio, we got no video of these drugs
22 being tested. When you boil all of this down what you have
23 at the end of the day is you have to rely upon the word of
24 one man doing what he said he did. One man's
25 interpretation of the grass and the sky and the house and

CLOSING ARGUMENT: BY MR. DUNN

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1 the one side of the car of things going down the way he
2 says they went down.

3 One of the things that I ask of you yesterday is ask
4 yourselves what do we see? Who do we hear from? And we've
5 seen and you've heard from them, four, five, six witnesses.
6 The other thing I ask you to do is what haven't you seen?
7 Who haven't we heard from?

8 As we said the State bears the burden. They have to
9 bring the witnesses and they have to show the testimony.
10 They have to show the evidence that says Mr. Littlejohn did
11 what they're claiming they did. We heard testimony today
12 from an officer who's been doing narcotics for a while.
13 And it's not unusual and it's fairly standard to look at
14 telephones of the person making the buy for them. They're
15 not there; there's no video recording, there is no audio
16 recording. How do we really know he did make a call?
17 There is no pictures. There's nothing, there's no
18 transaction. There's nothing showing that that ever really
19 happened.

20 The same officer testified that when folks are
21 arrested at some point, in this case it was a year, ten
22 months, eleven months, almost a year later that Mr.
23 Littlejohn was finally picked up. You look at the
24 telephones of the person you pick up too. The reason why
25 you do that especially if its somebody you thinks a drug

CLOSING ARGUMENT: BY MR. DUNN

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1 dealer you want to see if there's other drug transactions.
2 Why haven't we seen the telephone? Why haven't we seen
3 what was on it? I submit to you we haven't seen it because
4 there is nothing there.

5 Now at the end of all this you boil it all down you
6 have the word of Mr. Ervin. That's what we have.
7 Everything else is just its window dressing. It's not what
8 - There is just not enough there but you really have to
9 believe, you have to believe what Mr. Ervin said, it
10 happened the way he said it happened. And quite frankly I
11 don't think that his word is sufficient. Quite frankly I
12 don't think that he's believable. They did a search but
13 they didn't do a - they didn't strip search him. They
14 didn't really make sure there was nothing on him. They
15 didn't.

16 They said they followed him but they didn't actually
17 see what happened because they didn't go down California
18 Street. Of all the conversations that I heard in that deal
19 had to do with a lot of vulgarity and a lot of cursing
20 talking about having to pay the bills for their women.
21 Complaining that they are having to pay the bills for their
22 women so they're having to come up with two hundred dollars
23 to pay the bills and to pay some other bills. It really
24 just sounded like they were complaining because their women
25 were nagging them is what it sounded like.

CLOSING ARGUMENT: BY MR. DUNN

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1 We have a witness who has got a very lengthy relative
2 term but very lengthy drug record. Been to prison before
3 and didn't want to go back. And he's facing significant
4 amounts of time if he doesn't work with them, if he doesn't
5 work for the State, and if he doesn't work for the FBI or
6 whoever it is he's working for. And those similar charges
7 carry mandatory minimum sentences, he's gonna go to prison
8 and he doesn't want to go back.

9 I would submit to you that when somebody is in that
10 position that they are gonna do what they have to do
11 whether it's honest or dishonest to make sure they don't go
12 back to prison. He's got a wife and family and he doesn't
13 want to leave them. Can't say I blame him. What would you
14 be willing to do to not loose your wife and your family?
15 What would you do not to go back to prison?

16 He was given enough money according to the police to
17 go buy two ounces of crack. Twenty-eight point two grams,
18 twenty-eight point three grams, one ounce, multiple that by
19 two you get fifty-six, fifty-six and a half grams, comes
20 back with - that's the first thing we heard.

21 The other thing we heard was the street value of a
22 gram of crack was somewhere between eighty and a hundred
23 dollars. Now if a man is going and buying this product he
24 comes back short eleven grams, tested it at forty-five
25 grams, should have been fifty six, that's almost a thousand

CLOSING ARGUMENT: BY MR. DUNN

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1 dollars worth of product that he wasn't getting. He said
2 that - Today he testified that he was trying to act real,
3 trying to act natural that's why he was standing however he
4 was standing; that's why the watch is flying up to watch
5 the clouds and why the key fob is showing the house or
6 which ever way it was is because he was trying to act
7 natural and he didn't want to be caught by the person he
8 was trying to buy drugs from supposedly.

9 And if you're trying to act natural and you're short a
10 product that's gonna cost you over a thousand dollars dare
11 to say that you would have said something. If he really
12 truly looked at the scale and he really truly saw that it
13 was weighed he would say something like dude you're not
14 giving me what you said you were supposed to give me. But
15 he doesn't do that. I submit to you that he doesn't do
16 that because there was nothing on the scale being weighed.

17 So what do we know? We know we have a confidential
18 informant that's gonna do whatever he needs to do to get
19 out of it. Do whatever he needs to do to go home at the
20 end of the day and see his wife and his kids. Do whatever
21 he needs to do to stay away from jail because he doesn't
22 want to go back.

23 We know that we're in the twenty-first century, the
24 second decade of the twenty-first century, and have very
25 little modern technology that's showing anything. Very

CLOSING: BY MR. DUNN
CHARGE TO THE JURY

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1 little modern technology that's being utilized by the
2 police officers to not only prove their case potentially
3 but to protect themselves so that they can come into court
4 and say what happened really happened and here's all the
5 evidence to show that we did what we were supposed to do.
6 And technology to protect their people, their confidential
7 informants. But we have very little of that.

8 Mr. Littlejohn comes to court presumed innocent. Mr.
9 Littlejohn comes to court wearing that presumption like a
10 cloak. Mr. Littlejohn comes to court requiring the system
11 required to that cloak be taken off by the evidence that
12 the State presents. If the State can't present enough
13 evidence for that cloak to fall off, then the only thing
14 that you as the jury can do is come back with a not guilty
15 verdict. I submit to you not enough evidence has been
16 presented that takes that cloak off of Mr. Littlejohn's
17 shoulders and that that cloak still at this point rest upon
18 him. And even after you begin deliberating will still rest
19 upon him and the only verdict that you can come to is not
20 guilty. Thank you.

21 THE COURT: Members of the jury panel, I appreciate
22 the attention you've given everybody at this point. I'm
23 not going to ask you to give me your attention for a few
24 more minutes as I charge you the law that you are to apply
25 to the facts as you determine them to be in this case.

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1 The indictment here charges Mr. Littlejohn with
2 trafficking in crack cocaine. It's alleged that on or
3 about August 8, 2012 he did knowingly sell, manufacture,
4 deliver, purchase, or bring into this state, or provided
5 financial assistance or otherwise aid, abet, attempt, or
6 conspire to sell, manufacture, deliver, purchase, or bring
7 into this state, or was knowingly in actual or constructive
8 possession, or knowingly attempting to become in actual or
9 constructive possession of twenty-eight grams or more of
10 crack cocaine, a cocaine base. It's alleged this occurred
11 here in York County, South Carolina.

12 To this charge Mr. Littlejohn has entered a plea of
13 not guilty. His plea of not guilty places on the State the
14 burden of proving his guilty beyond a reasonable doubt.
15 This indictment that you will have in the jury room with
16 you is not evidence; it contains the charge, the allegation
17 the State has made against Mr. Littlejohn but it's not
18 evidence and cannot be considered by you as evidence in
19 this case.

20 It is also the formal document by way of which his
21 case has been processed through our court system and where
22 - And I will tell you more about this later, Mr. Foreman,
23 the jury's unanimous verdict to be enrolled.

24 As I said Mr. Littlejohn has entered his plea of not
25 guilty. Mr. Littlejohn as would be anyone charged with any

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1 offense in our system is presumed innocent of this charge.
2 This presumption of innocence in favor of one accused of an
3 offense is a substantial right. It is not a mere legal
4 theory or a mere legal phrase; it is a substantial right.
5 This presumption of innocence attaches to an individual at
6 the time of their arrest; remains with them as their case
7 is processed through our court system and remains with them
8 as the trial goes forward. In fact the presumption of
9 innocence in Mr. Littlejohn's favor exist in his favor at
10 this moment and continues to exist as you deliberate.

11 The presumption of innocence in Mr. Littlejohn's favor
12 is removed if and when, and only if and when, you as the
13 trial jury in this case decide that the case has proven his
14 guilt beyond a reasonable doubt.

15 Now, the State is not required to prove his guilt
16 beyond all or beyond every doubt but beyond a reasonable
17 doubt. Our courts have defined a reasonable doubt as the
18 kind of doubt that would cause a reasonable person to
19 hesitate to act. Proof beyond a reasonable doubt is proof
20 that leaves you firmly convinced of someone's guilt. There
21 are very few things that I said that we can know with
22 certainty, absolute certainty, and that is not required.

23 If based on your consideration of the evidence you are
24 firmly convinced that Mr. Littlejohn is guilty as charged
25 of trafficking in crack cocaine you would find him guilty.

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1 If on the other hand you think there is a real possibility
2 that he is not guilty you would give him the benefit of
3 that doubt and find him not guilty. He is entitled to the
4 benefit of any reasonable doubt you have as to any issue in
5 this case.

6 I remind you that I am the sole judge of the law and
7 you must take accept and apply the law as I charge it. I
8 remind you that this is true even if you think the law
9 should be different or you think I charge it in error.
10 Your oath requires you to take, accept and apply the law as
11 I charge it.

12 You are not to infer from anything I have said or done
13 or anything I now say or do as indicating an opinion of
14 mine on the facts. Our law does not allow a trial judge to
15 formulate or express to a jury any opinion on the facts.
16 That is solely your job. It is solely your job to examine
17 the evidence, give to the evidence the effect, the value,
18 the weight, and the truth you believe the evidence you
19 should have. In doing this you may believe one witness as
20 opposed to several, several witnesses as opposed to one.
21 You may believe all, part, or none of a witnesses
22 testimony.

23 Use your common sense your sense of logic, your sense
24 of reason; use your experiences in life as you analyze the
25 evidence. As judges of the facts you necessarily must

CHARGE TO THE JURY:

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1 judge the credibility, that is, the believability of the
2 witnesses who testify. In accessing believability use
3 those things I just talked about. Use the things that you
4 find in your day to day life as being indicators of
5 truthfulness in an individual.

6 And you can use certain evaluators. The demeanor of a
7 witness on the witness stand, or was the witness hesitant
8 or straightforward. Was their testimony consistent or
9 inconsistent? You can consider any prior criminal record.
10 the witness may have regarding their credibility. You can
11 consider any bias or prejudice, that is, whether a witness
12 would wish to help or hurt one side or the other.

13 All these things you consider, determine the true
14 facts and you'll be in a position to return a verdict that
15 speaks the truth.

16 Now in this case the identification of Mr. Littlejohn
17 as the individual involved in this alleged transaction is
18 an issue. The State has the burden of proving identity
19 beyond a reasonable doubt. You must be satisfied beyond a
20 reasonable doubt of the accuracy of the identification by
21 the witness of Mr. Littlejohn as the person involved before
22 you could convict him.

23 Identification testimony is an expression of belief,
24 or impression by a witness. You must determine the
25 accuracy of the identification by a witness of Mr.

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1 Littlejohn. You must consider the believability of each
2 identification witness in the same way as you assess other
3 witnesses. You may consider whether the witness had an
4 adequate opportunity to observe the alleged offender at the
5 time of the transaction. This will be effected by things
6 like how long or short a time was available; how far or
7 close the parties were to each other, the lighting
8 conditions, and whether the witness had a chance to see or
9 know the person involved alleged in the past.

10 Once again I instruct you the burden of proof on the
11 State extends to every element of the crime charged and
12 this specifically includes the burden of proving beyond a
13 reasonable doubt the identify of Mr. Littlejohn as a person
14 who was involved in this event. If after examining the
15 testimony you have reasonable doubt as to the accuracy of
16 the identification you must find Mr. Littlejohn not guilty.

17 In this case we've had testimony of Ms. Mitchum who
18 was qualified as an expert. Generally an individual can
19 only testify as to something they've observed with one of
20 their five senses. However where an individual has certain
21 knowledge, experience, training and education in a certain
22 field, that person can take facts and from those facts
23 render an opinion. The opinions of experts are allowed
24 into evidence to assist you, they are not binding upon you.
25 Even though I found that Ms. Mitcham was qualified to

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1 testify about drug analysis, it is up to you to determine
2 what if any value to give her testimony. You look at her
3 testimony as a witness just as you look at the testimony of
4 other witnesses. And you also may use in determining what
5 value if any to give her opinion her educational
6 background, her ability to give the opinion she gave. And
7 you can also look at the reasons she gave the opinion that
8 she reached.

9 In this case Mr. Littlejohn has exercised his
10 constitutional right to remain silent. As I told you
11 earlier he is presumed innocent and need not prove his
12 innocence but the State must prove his guilt beyond a
13 reasonable doubt. The fact that he exercised his
14 constitutional right to remain silent cannot be used
15 against him in any way whatsoever. You cannot discuss in
16 the jury room that fact. You cannot factor into your own
17 deliberation the exercise of Mr. Littlejohn's to remain
18 silent.

19 I remind you he is presumed innocent he need not prove
20 his innocence; the State has the burden of proving his
21 guilt beyond a reasonable doubt.

22 In cases such as this there are generally two types of
23 evidence that are presented. Direct and circumstantial
24 evidence. Direct evidence is the testimony of someone who
25 claims to have actual knowledge of a fact such as an

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1 eyewitness. Circumstantial evidence is proof of a chain of
2 facts that indicate the existence of a fact. Our law makes
3 absolutely not distinction between the weight or value to
4 be given either direct or circumstantial evidence; nor, is
5 a greater degree - I'm sorry - Let me start over.

6 As I was saying, there are two types of evidence which
7 are generally presented during a trial. Direct evidence
8 and circumstantial evidence. Direct evidence is evidence
9 which directly proves the existence of a fact and does not
10 require deduction. However circumstantial evidence of
11 proof of a chain of facts and circumstances indicating the
12 existence of a fact. Crimes may be proven by
13 circumstantial evidence. Our law makes no distinction
14 between the weight or value to be given to either direct or
15 circumstantial evidence.

16 However to the extent the State relies on
17 circumstantial evidence all the circumstances must be
18 consistent with each other and when taken together point
19 conclusively to the guilt of the defendant.

20 If these circumstances merely portray him as - If
21 these circumstances merely portray someone's behavior as
22 merely suspicious then the proof has been - proof has
23 failed. I remind you the burden rest on the State to prove
24 Mr. Littlejohn's guilt beyond a reasonable doubt and to
25 this extent the State can rely on direct and circumstantial

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1 evidence or a combination of the two.

2 As to the charge I've read the indictment and remind
3 you that the indictment is not evidence. Mr. Littlejohn is
4 charged with trafficking in crack cocaine, cocaine base.
5 Here the State must prove beyond a reasonable doubt that
6 Mr. Littlejohn knowingly sold, manufactured, cultivated,
7 delivered, purchased, brought into this state, provided
8 financial assistance or otherwise aided, abetted or attempt
9 to conspire to sell, manufacture, cultivate, deliver,
10 purchase, or bring into this state, or, was knowingly in
11 actual or constructive possession, or knowingly attempted
12 to become in actual constructive possession of crack
13 cocaine.

14 The State must also prove beyond a reasonable doubt in
15 addition to proving beyond a reasonable doubt one of those
16 elements and the State does not have to prove all of those
17 things, the State only has to prove that he was involved in
18 one of those listed events. But in addition to proving
19 that the State must prove beyond a reasonable doubt that
20 the substance in question was in fact crack cocaine and
21 that it weighed twenty-eight grams or more but less than
22 one hundred grams.

23 To prove possession, the State must prove beyond a
24 reasonable doubt that the individual had both the power and
25 intent to control the disposition or use of the subject at

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1 issue. Here it was crack cocaine. Possession may be
2 either actual or constructive.

3 Actual possession means that the drug was in the
4 actual physical custody of the defendant.

5 Constructive possession means that he had dominion and
6 control, or the right to exercise dominion and control,
7 either over the crack cocaine itself or the property on
8 which it was found. Mere presence however at the scene
9 where the drugs were found is alone not enough to prove
10 possession. A defendant's knowledge and possession may be
11 inferred when a substance is found on property under the
12 defendant's control. However, this inference is simply an
13 evidentiary fact to be taken into consideration by you
14 along with the other evidence in this case and it's to be
15 given such weight as you decide it should have if any.

16 In a moment I will go over with you, Mr. Foreman, the
17 verdict; how that is enrolled. Of course the verdict must
18 be unanimous. The verdict cannot be based on sympathy,
19 passion, prejudice, public opinion, or matters outside the
20 record. When you first go into the jury room do not start
21 deliberating. I have to go over my charge with the
22 attorneys. If I have made an error I will have to bring
23 you back in and correct it. If not, we will send in the
24 indictment and the exhibits and the bailiff will tell you
25 to start deliberating.

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1 If you have questions while you are deliberating
2 please write them down and give them to the bailiff. The
3 bailiff will bring them to me; after consulting with the
4 attorneys I will respond. It may be that I can send answer
5 to your note on the note itself and return it to the jury
6 room. If I do that, Mr. Foreman, keep that note and turn
7 it in with the exhibits because it has to be a part of the
8 record.

9 If you need to have testimony replayed let us know and
10 we can bring you back here in court to do that. We do not
11 in this state send in a written instruction on the law but
12 if you wish for me to go over any part of all of my charge
13 on the law let me know; I will bring you back and here in
14 open court recharge you any part or all of my charge if you
15 need me to do so.

16 When you've reached a verdict knock on the door, tell
17 the bailiff, I may be doing some other work and I will send
18 for you as promptly as I can. We do have lunch ordered.
19 You can take a break and eat lunch or you can work while
20 you eat lunch. The two alternates when the jury goes in
21 just a moment will remain in here because your service will
22 no longer be needed.

23 On the back of the indictment, Mr. Foreman, you will
24 see in the bottom left hand corner the word verdict and
25 there are four lines below that. A place for the date

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1 which is the 15th and there is a place for you to sign. On
2 one of the three lines above where you sign you will write
3 the jury's unanimous verdict. If the State has failed to
4 prove Mr. Littlejohn's guilt as to the charge beyond a
5 reasonable doubt you would write two words not guilty. If
6 on the other hand the jury unanimously finds the State has
7 proven his guilt of trafficking in crack cocaine beyond a
8 reasonable doubt in excess of twenty-eight grams you would
9 on one of those lines write one word guilty.

10 So everybody but the alternates go to the jury room at
11 this time, and don't start deliberating until you hear from
12 me in a moment.

13 (JURY EXITS COURTROOM TO DELIBERATE AT 12:41 P.M..)

14 THE COURT: I will be with you all in just a second.

15 Anything from the State involving the charge?

16 SOLICITOR ROBINSON: Nothing, Your Honor.

17 THE COURT: Defense?

18 MR. DUNN: No, sir.

19 THE COURT: All right. Go check the exhibits and the
20 indictment and we will send them back and tell the jury to
21 start deliberating.

22 What about the alternates?

23 All right, you are through for the week. We
24 appreciate your help. You can leave or if you want to stay
25 around and see what happens you can do that but you will be

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1 mailed a check. We appreciate your help and you are
2 finished for the week. Thank you so much for your help.

3 (JURY ALTERNATES DISMISSED AT 12:41 P.M..)

4 THE COURT: All right, we'll be at ease . . .

5 (COURT IN RECESS AT 12:41 P.M..)

6 (COURT BACK IN SESSION AT 01:42 P.M..)

7 THE COURT: You may be seated.

8 (WHEREUPON, COURT'S EXHIBITS THREE AND FOUR,
9 IDENTIFIED AND MARKED RECEIVED INTO THE RECORD.)

10 I understand we have a verdict. Got Mr. Littlejohn.

11 Is the State ready?

12 SOLICITOR ROBINSON: Yes, Your Honor..

13 THE COURT: The Defense ready?

14 MR. DUNN: Yes, sir.

15 THE COURT: All right. Bring in the jury.

16 (JURY REENTERS COURTROOM AT 01:43 P.M..)

17 THE COURT: I understand the jury has reached a
18 verdict?

19 MR. FOREMAN: Yes.

20 THE COURT: If you will hand it to the bailiff he will
21 hand it up to me.

22 (VERDICT RECEIVED UP BY THE COURT.)

23 MADAM CLERK: Indictment Number 2013-GS-46-4112 the
24 State of South Carolina versus Tyress Littlejohn we the
25 jury find the defendant guilty signed by the Foreperson

VERDICT

-252-

1 dated 10/15/2014.

2 If this be your verdict please say so by raising your
3 right hand?

4 Let the record reflect all jurors affirmed.

5 (ALL JURORS AFFIRMED VERDICT.)

6 THE COURT: Anything from the State before the jury is
7 dismissed?

8 SOLICITOR ROBINSON: No, Your Honor.

9 THE COURT: The Defense?

10 MR. DUNN: Please poll the jury.

11 THE COURT: All right. Madame Clerk.

12 The Clerk's gonna ask you specific questions about
13 confirming your verdict.

14 MADAM CLERK: If all the jurors will stand.

15 You may be seated after I ask you.

16 Number 83, Lewis Frucht.

17 JUROR EIGHTY-THREE: Guilty.

18 MADAM CLERK: Is this your verdict?

19 JUROR EIGHTY-THREE: Guilty. Yes.

20 MADAM CLERK: You may have a seat.

21 Number 244, Gregory Winter is this your verdict?

22 MR. WINTER: Yes, ma'am.

23 MADAM CLERK: Is this still your verdict?

24 MR. WINTER: Yes, ma'am.

25 MADAM CLERK: Number 179, Stephen Rainey.

VERDICT

-253-

1 MR. RAINEY: Yes, ma'am.
2 MADAM CLERK: Is this your verdict?
3 MR. RAINIER: Yes, ma'am.
4 MADAM CLERK: Is this still your verdict?
5 MR. RAINEY: Yes, ma'am.
6 MADAM CLERK: Have a seat.
7 Number 77, Mary Edwards.
8 MS. EDWARDS: Yes.
9 MADAM CLERK: Is this your verdict?
10 MS. EDWARDS: Yes.
11 MADAM CLERK: Is this still your verdict?
12 MS. EDWARDS: Yes.
13 MADAM CLERK: Have a seat.
14 Twenty-six, Stacy Black.
15 MS. BLACK: Yes.
16 MADAM CLERK: Is this your verdict?
17 MS. BLACK: Yes, ma'am.
18 MADAM CLERK: Is this still your verdict?
19 MS. BLACK: Yes, ma'am.
20 MADAM CLERK: Have a seat.
21 Number 159, Harriette Moore.
22 MS. MOORE: Yes.
23 MADAM CLERK: Is this your verdict?
24 MS. MOORE: Yes.
25 MADAM CLERK: Is this still your verdict?

VERDICT

-254-

1 MS. MOORE: Yes.

2 MADAM CLERK: Number 241, Stacy Williams.

3 MS. WILLIAMS: Yes.

4 MADAM CLERK: Is this your verdict?

5 MS. WILLIAMS: Yes.

6 MADAM CLERK: Is this still your verdict?

7 MS. WILLIAMS: Yes.

8 MADAM CLERK: Number 169, Ina Pascal.

9 MS. PASCAL: Yes.

10 MADAM CLERK: This is your verdict?

11 MS. PASCAL: Is this still your verdict?

12 MS. PASCAL: Yes.

13 MADAM CLERK: Number 198, Joanna Sievers.

14 MS. SIEVERS: Joann Sievers.

15 MADAM CLERK: Is this your verdict?

16 MS. SIEVERS: Yes.

17 MADAM CLERK: Is this still your verdict?

18 MS. SIEVERS: Yes.

19 MADAM CLERK: Have a seat.

20 Number 95, Shelly Gause. Is this your verdict?

21 MS. GAUSE: Yes, ma'am.

22 MADAM CLERK: Is this still your verdict?

23 MS. GAUSE: Yes.

24 MADAM CLERK: Number 140, Sharon McCarter.

25 MS. MCCARTER: Yes.

VERDICT

-255-

1 MADAM CLERK: This is your verdict?

2 MS. MCCARTER: Yes.

3 MADAM CLERK: Is it still your verdict?

4 MS. MCCARTER: Yes.

5 MADAM CLERK: Number 98, Vivian Hammond.

6 Is this your verdict?

7 MS. HAMMOND: Yes, ma'am.

8 MADAM CLERK: It is still your verdict?

9 MS. HAMMOND: Yes, ma'am.

10 THE COURT: Anything else from the State?

11 SOLICITOR ROBINSON: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. DUNN: No, sir.

14 THE COURT: Members of the jury panel, this finishes
15 your week. We appreciate all of your help. Feel free to
16 leave and you will be mailed a check so thank you so much
17 for your help.

18 MR. FOREMAN: Are we done for the week?

19 THE COURT: You're done for the week, yes that's
20 right. That's what I meant to say, I don't know if I said
21 it or not but you're through for the week.

22 (JURY DISMISSED AT 01:46 P.M..)

23 THE COURT: Bring Mr. Littlejohn around for
24 sentencing.

25 What offense is this?

SENTENCING:

-256-

1 SOLICITOR ROBINSON: Trafficking twenty-eight to one
2 hundred, first offense.

3 THE COURT: First.

4 From the State I know about his armed robbery and the
5 financial institution. Does he have any other record?

6 SOLICITOR ROBINSON: Yes, Your Honor. From 1999 there
7 was an unlawful carry and a common law or strong armed
8 robbery that was separate and apart from the armed robbery
9 and a conspiracy in 2000. The Federal card financial
10 institution crime that you mentioned was 2009.

11 THE COURT: All right. Anything else from the State
12 regarding sentencing?

13 SOLICITOR ROBINSON: No, Your Honor. But we are
14 asking that this sentencing be at the top in light of the
15 facts and his criminal history.

16 THE COURT: Mr. Dunn, I'll be glad to hear from you
17 and anybody on Mr. Littlejohn's behalf and then Mr.
18 Littlejohn.

19 MR. DUNN: Yes, sir. I will make mine brief and his
20 wife is here and she wishes to address the court.

21 And his mother is here and I believe she also wishes
22 to address the court at the appropriate time.

23 My advice to my client which is normally not to say
24 anything during sentencing and convictions but if he
25 chooses to speak that will be up to him.

SENTENCING:

-257-

1 Your Honor, my client is thirty - thirty years old.
2 He is now since this incident happened back in 2012 or 2012
3 he has gotten married; his wife Bernice is here. Since
4 this incident happened in 2012 he has had a child with his
5 wife and he's got other kids as well.

6 Since this incident happened in 2012 he has enrolled
7 in college and is attending college. Since it happened in
8 2012 he's been working two jobs to help his family. He's
9 been on house arrest so he had to pay that but he also had
10 to take care of his bills.

11 Your Honor, he's managed to stay out of trouble on
12 those two years and its safe to say that's all good and all
13 because he's on a ankle monitor but the reality is he's not
14 been in any trouble all the time even when you're on
15 monitors and the stress of being under house arrest he has
16 stayed out of trouble.

17 Your Honor, he has maintained his innocence and
18 actually he exercised his right to a trial and we would ask
19 that he not be punished for that. We would ask that in
20 light of the fact that, you know, these other mitigating
21 circumstances that you consider a sentence of less than the
22 maximum.

23 The General Assembly has given the Court's some leeway
24 in these may be that they require a mandatory minimum but
25 they put a range in there we would ask that the Court

SENTENCING:

-258-

1 consider something within that range. He is still a
2 relatively young man and he finally got his life turned
3 around. I think until this arrest he has tried to do that
4 and being married and being in college having jobs he was
5 showing that he was trying to live a conformed life. I
6 know unfortunately his past caught up to him. For those
7 reasons I would ask the court to consider a lesser part of
8 that range, the bottom part of the range even if it's a ten
9 to fifteen year range still less perhaps.

10 His wife --

11 THE COURT: Okay. If you'll come forward.

12 Your name?

13 A. Bernice, his wife. Like Mr. Dunn said we been
14 married a little over a year. Within that year found work.
15 He's looking constantly for better work to take care of his
16 family to feed his three small children. He's enrolled in
17 school full time in Sheridan University working on his
18 bachelor's in management degree. He and I actually in the
19 process of trying to open up a business as soon as he
20 completes his degree. And I just ask that the court would
21 just show him as much leniency as possible.

22 THE COURT: Thank you.

23 MR. DUNN: His mother does not wish to address the
24 Court, Your Honor.

25 THE COURT: Mr. Littlejohn, anything you want to say?

SENTENCING:

-259-

1 MR. LITTLEJOHN: Yes, sir. Throughout these last
2 seventeen, almost eighteen months on house arrest I have
3 been doing a wonderful job as maintaining my health and
4 all. I recently been diagnosed with diabetes and Grave's
5 disease. At this time I just want to just ask the Court to
6 be lenient on me so I can take care of my kids in the
7 process while they are still young.

8 THE COURT: All right, the sentence is fifteen years.
9 Thank you.

10 MR. DUNN: Thank you, Your Honor.

11 (DEFENDANT ESCORTED FROM THE COURTROOM.)

12 THE COURT: Solicitor, anything we can do?

13 SOLICITOR WEAVER: We have one plea . . .

14 (COURT IN RECESS IN THE MATTER OF STATE VERSUS TYRESS
15 LITTLEJOHN AT 01:52 P.M..)

16 (COURT BACK IN SESSION AT 02:30 P.M..)

17 (STATE VERSUS TRAYON DEONTRE HEATH PLEA WITH MATTHEW
18 NIEMIEC.)

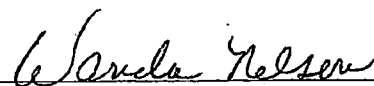
19 (COURT IN RECESS IN THE 03:00 P.M..)
20
21
22
23
24
25

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 14th and 15th days of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021
DATE: December 10/ 2014

-261-

County: YorkDate: October 14, 2014**VOIR DIRE/BATSON SHEET**Case No.: 2013- GS-46-04112Judge: Honorable John C. Hayes, IIIPl./State: State of South CarolinaPl.State Atty's.: Solicitor Leslie RobinsonSolicitor Teasa WeaverDefendant: Tyress Antonio LittlejohnDefense Atty's: Geoffrey DunnCourt Reporter: Wanda Nelson, CVR-M

Juror No.	Name	Race	Sex	STRIKES			
				*Court	Plaintiff	Defense	Accept
49	Aaron G. Clark	B	M		X		
141	Robert F. McCarthy II	W	M			X	
6	Brittany N. Walden	W	F	X			
83 **	Lewis P. Frucht	W	M				X
244	Gregory A. Winter	W	F				X
179	Stephen D. Rainey	W	M				X
168	Gregory S. Parsons	W	M			X	
77	Mary Edwards	B	F				X
26	Stacy L. Black	W	F				X
159	Harriette G. Moore	B	F				X
24	James L. Bergman	W	M			X	
241	Stacy M. Williams	B	F				X
243	John K. Wilson	W	M			X	
169	Ina c. Pascal	B	F				X
198	Joann Sievers	W	F				X
95	Shelly L. Gause	F	W				X
250	Pamela A. Yukob	F	W	X			
9	Lynda C. Anderson	F	W	X			
140	Sharon C. McCarter	F	W				X
73	Ricky L. Doran	M	W			X	
98	Vivian L. Hammond	F	W				X
112 *	Karen L. Jacobs	F	W				X
86	Elizabeth A. Garbeck	F	W	X			
32	Wardell Brown	M	B		X		
56 *	Michael A. Comer	M	W				X

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

York Circuit Court RANDOM STRIKE SHEET

Monday - 262 -

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

Sorted by: Random Nbr

Trial

NEL ID : 10-14 CRT1

DESCRIPTION : 10-14 CRT1

COURTROOM CRI

10:30 AM

NAME	JUROR NBR	RACE	SEX	ST	PL	DEF	CRI	REMARKS
1 Clark, Aaron G	49	B	M	(X)-1	()	()		
2 McCarthy, Robert F II	141	W	M	()	(X)-1	()		
3 Walden, Brittany N	6	W	F	()	()	(X)-5		
4 Frucht, Lewis P ^{Jo re person}	83	W	M	()	()	()		Seated -1
5 Winter, Gregory A	244	W	M	()	()	()		Seated -2
6 Rainey, Stephen D	179	W	M	()	()	()		Seated -3
7 Parsons, Gregory S	168	W	M	()	(X)-2	()		
8 Edwards, Mary J	77	B	F	()	()	()		Seated -4
9 Black, Stacy L	26	W	F	()	()	()		Seated -5
10 Moore, Harriette G	159	B	F	()	()	()		Seated -6
11 Bergman, James L	24	W	M	()	(X)-3	()		
12 Williams, Stacy M	241	B	F	()	()	()		Seated -7
13 Wilson, John K	243	W	M	()	(X)-4	()		
14 Pascal, Ina C	169	B	F	()	()	()		Seated -8
15 Sievers, Joann	198	W	F	()	()	()		Seated -9
16 Gause, Shelly L	95	W	F	()	()	()		Seated -10
17 Yukob, Pamela A	250	W	F	()	()	(X)-1		
18 Anderson, Lynda C	9	W	F	()	()	(X)-3		
19 McCarter, Sharon C	140	W	F	()	()	()		Seated -11
20 Doran, Ricky L	73	W	M	()	(X)-5	()		
21 Hammond, Vivian L	98	W	F	()	()	()		Seated -12
22 Jacobs, Karen L	112	W	F	()	()	()		Seated -13
23 Garback, Elisabeth A	86	W	F	()	()	(X)-4		
24 Brown, Wardell Jr.	32	B	M	(X)-1	()	()		

York Circuit Court RANDOM STRIKE SHEET

-263-

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

JURY ID : 10-14 CRT1

JURY ROOM CRI

DESCRIPTION : 10-14 CRT1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PT/EE	DEF	CRT	REMARKS
25 Comer, Michael A	56	W	M	()	()	()	<u>Seated - 14</u>
26 Saunders, John I	192	W	M	()	()	()	
27 Ferrell, Alex F Jr.	81	W	M	()	()	()	
28 Smith, Benjamin R	203	W	M	()	()	()	
29 Denton, Betty J	68	W	F	()	()	()	
30 Sivak, Cheryl	201	W	F	()	()	()-2	
31 Morgan, Lou A	161	W	F	()	()	()	
32 Dollar, Arlene C	72	W	F	()	()	()	
33 Jansen, Steven T	115	W	M	()	()	()	
34 Latronica, Richard A	123	W	M	()	()	()	
35 Krivis, Edward L	120	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

Tyress Antonio Littlejohn)
SCDC #263016)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUCIAL
CIRCUIT

2017CP46-582

APPLICATION FOR
POST-CONVICTION REVIEWFILED-RECEIVED
2017 FEB 23 PM 2:39
DAVID HENNINGTON
C.C. CLERK & SS
YORK COUNTY, SC**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence York County Court of General Sessions, York, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (a) 2013-GS-46-04112
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 15, 2014; 15 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted December 1, 2015; Filed April 6, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2016-UP-161
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) No grounds for direct appeal.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Geoff Dunn, PO Box 11785, Rock Hill, SC 29731
 ii. David Alexander, PO Box, 11589, Columbia, SC 29211
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing;
 ii. Appeal
 iii. _____

19. State clearly the relief you seek in filing this application: Vacate of Conviction and

Sentence

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Tyress Antonio Littlejohn, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tyress Littlejohn

SWORN to and subscribed before me this 23rd
day of January, 2017.

Michael Conne
Notary Public (L.S.)

My Commission Expires: July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tyress Antonio Littlejohn, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tyress Littlejohn
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of January, 2017
Michael Canine
Notary Public

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

Tyress Antonio Littlejohn,)

vs.)

The State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

ATTACHMENT TO APPLICATION
 FOR POST-CONVICTION RELIEF

FILED-RECEIVED
 2017 FEB 23 PM 2:39
 DAVID HAMILTON
 C.C. & GS
 YORK COUNTY, SC

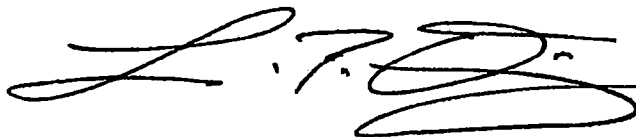
Applicant Tyress Antonio Littlejohn specifically alleges the following ineffective assistance of counsel in this matter:

1. Trial counsel did not act in Littlejohn's best interest during his defense of this case.
2. Trial counsel did not properly prepare for trial in this matter.
3. Trial counsel did not independently verify drug analyzation evidence in this case.
4. Trial counsel did not properly investigate this case.
5. Trial counsel did not properly move to suppress drug evidence in this case.
6. Trial counsel did not require the State to produce a full chain of custody in the trial of this case.
7. Trial counsel did not provide Discovery materials to or review Discovery material with Defendant prior to trial of this case.
8. Trial counsel did not require State to produce all Discovery materials prior to the trial of this case.
9. Trial counsel did not adequately consult with Littlejohn prior to trial of this case.
10. Trial counsel did not allow Littlejohn to participate in developing a defense for the trial of this case.

11. Trial counsel did not subpoena relevant evidence to aide in the defense of Littlejohn in the trial of this case.
12. Trial counsel did not interview all witnesses prior to trial of this case.
13. Trial counsel did not properly impeach State's witnesses in during the trial of this case.
14. Trial counsel did not adequately challenge evidence entered by the State during the trial of this case.
15. Trial counsel prevented Littlejohn from testifying during the trial of this case.
16. Trial counsel did not call witnesses known to Littlejohn during the trial of this case.
17. Trial counsel did not properly advice Littlejohn on the potential sentence he could receive in this matter.
18. Trial counsel waived Littlejohn's plea offer without Littlejohn consenting or being present during such waiver.

Applicant reserves the right to amend his allegations prior to any hearing in this matter.

Respectfully submitted,



Lir Patrick Derieg (76135)
DERIEG LAW FIRM, LLC
1924 Barnwell Street
Columbia, SC 29201
(803) 206-3140
Lir@DeriegLaw.com

January 23rd 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Tyress Antonio Littlejohn, #263016,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-46-0582

RETURN

FILED-RECEIVED
2017 JUN 15 AM 11:52
DAVID R. SMITH
Clerk of Court
YORK COUNTY, SC

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 23, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In November 2013, the York County Grand Jury indicted Applicant for trafficking in crack cocaine, 28-100 grams, first offense (2010-GS-23-4112). Geoffrey M. Dunn, Esquire represented Applicant. Assistant Solicitor Leslie D. Robinson, Esquire prosecuted the case. On October 14-15, 2014, Applicant proceeded to trial before the Honorable John C. Hayes, III. The jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to imprisonment for fifteen years for trafficking cocaine, 28-100 grams, first offense.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on April 6, 2016. State v. Littlejohn, Op. No. 2016-UP-161 (S.C. Ct. App. filed April 6, 2016). The remittitur was returned to the circuit court on May 6, 2016.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Trial counsel did not act in Littlejohn's best interest during his defense of this case,"
 - b. "Trial counsel did not properly prepare for trial in this matter,"
 - c. "Trial counsel did not independently verify drug analyzation evidence in this case,"
 - d. "Trial counsel did not properly investigate this case,"
 - e. "Trial counsel did not move to suppress drug evidence in this case,"
 - f. "Trial counsel did not require the State to produce a full chain of custody in the trial of this case,"
 - g. "Trial counsel did not provide Discovery materials to or review Discovery material with Defendant prior to trial of this case,"
 - h. "Trial counsel did not require State to produce all Discovery materials prior to the trial of this case,"
 - i. "Trial counsel did not adequately consult with Littlejohn prior to trial of this case,"
 - j. Trial counsel did not allow Littlejohn to participate in developing a defense for the trial of this case,"
 - k. "Trial counsel did not subpoena relevant evidence to aide in the defense of Littlejohn in the trial of this case,"
 - l. "Trial Counsel did not interview all witnesses prior to trail of this case,"
 - m. "Trial counsel did not properly impeach State's witnesses during the trial of this case,"
 - n. "Trial counsel did not adequately challenge evidence entered by the State during the trial of this case,"
 - o. "Trial counsel did not call witnesses known to Littlejohn during the trial of this case,"
 - p. "Trial counsel did not properly advise Littlejohn on the potential sentence he could receive in this matter,"

- q. "Trial counsel waived Littlejohn's plea offer without Littlejohn's consenting or being present during such waiver."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant

such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 8, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

TYRESS LITTLEJOHN, #263016)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2017-CP-46-0582

AFFIDAVIT OF SERVICE BY MAIL

FILED-RECEIVED
2017 JUN 15 AM 11:52
DAVID HARRISON
CLERK OF COURT
YORK COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Lir Patrick Derieg
1924 Barnwell St
Columbia, SC 29201

DATED this the 8th day of June, 2017.

Jennifer Jennison
Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF YORK

TYRESS ANTONIO LITTLEJOHN
SCDC # 263016

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON
PLEAS FOR THE SIXTEENTH
JUDICIAL CIRCUIT

C/A No: 2017-CP-46-00582

**SUPPLEMENT TO
APPLICANT'S PCR
APPLICATION**

Pursuant to SC Code §17-27-20(A)(4) and §17-27-45(C), Applicant Littlejohn, by and through his undersigned Counsel, hereby supplements his previously filed Application for Post-Conviction Relief. The information contained in this supplement is evidence of material facts not previously presented and heard that requires vacation of Mr. Littlejohn's conviction and sentence. This information could not have been included previously, as Applicant and undersigned Counsel learned of this evidence for the first time on the same day as the filing of this Supplement.

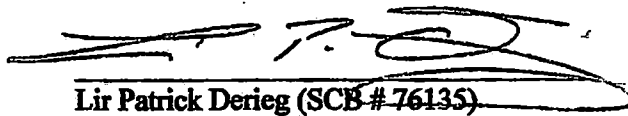
Undersigned Counsel was contacted by a man by the name of Jywaun Davis Williams. Mr. Williams was Mr. Littlejohn's co-defendant for the charges that led to the conviction that is the subject of this PCR. Mr. Williams was subpoenaed by Mr. Littlejohn to testify during Mr. Littlejohn's trial, as the State had elected to proceed against Mr. Littlejohn individually. However, upon taking the witness stand and being questioned by the Honorable John C. Hayes, III, *in camera*, Mr. Williams invoked his right to remain silent under the 5th Amendment to the United States Constitution because he was advised to do so by his Counsel due to his pending charges related to the same set of facts. Mr. Williams provided no testimony in front of the jury.

Subsequently, after the trial and conviction of Mr. Littlejohn, Mr. Williams' charges for which he was a co-defendant of Mr. Littlejohn were dismissed. Upon contacting undersigned

Counsel, Mr. Williams stated that his charges were dismissed by the State specifically due to the evidence told by the Confidential Informant, Mr. Tezo Ervin, that were made known to the State. Mr. Ervin is the same CI who testified against Mr. Littlejohn and upon whose testimony the jury had to rely in order to return a verdict of guilty, as no sale of drugs was ever captured by audio or video, and the alleged transaction occurred outside the presence of any law enforcement agent.

Therefore, it follows that there is, at a minimum, a reasonable probability that a jury would have returned a verdict of not guilty had Mr. Williams' testimony been before it, especially where the lies that would have been testified to by Mr. Williams were significant enough for the State to outright dismiss Mr. Williams' charges. Now that there are no longer the aforementioned, pending charges against Mr. Williams, he has offered to submit his testimony to this Court.

Respectfully submitted,



Lir Patrick Derieg (SCB # 76135)
DERIEG LAW FIRM, LLC
Post Office Box 5479
Columbia, South Carolina 29250
(803) 206-3140
Lir@DeriegLaw.com

January 17, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

TYRESS ANTONIO LITTLEJOHN
SCDC # 263016

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

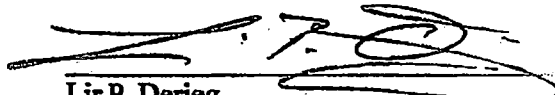
IN THE COURT OF COMMON
PLEAS FOR THE SIXTEENTH
JUDICIAL CIRCUIT

C/A No: 2017-CP-46-00582

CERTIFICATE OF SERVICE

This is to certify that I, Lir P. Derieg, have this day caused to be served upon the representative of the State of South Carolina assigned to this case, AAG Justin J. Hunter, **Applicant's Supplement to PCR Application** in the foregoing matter by placing a copy of the same in the United States Mail in an envelope, with proper postage affixed thereto, addressed as follows:

AAG Justin J. Hunter
PO Box 11549
Columbia, SC 29211


Lir P. Derieg

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
Telephone: (803)206-3140
Facsimile: (803)422-8630

Columbia, South Carolina

This 17th day of January, 2018

1 STATE OF SOUTH CAROLINA

2 -----x

3 TYRESS LITTLEJOHN,

4 Petitioner,

5 Case No.

6 -against- 2017-CP-46-0582

7 STATE,

8 Respondent.

9 -----x

10 April 18, 2018

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER E. HENDERSON

15

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

17 LIR P. DERIEG,

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER,

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Tyress Littlejohn			
4	Mr. Deriug	4		
5	JYWAUN WILLIAMS			
6	Mr. Deriug	19		25
7	Mr. Hunter		23	
8	GEOFFRY DUNN			
9	Mr. Hunter	26		
10	Mr. Deriug		38	
11	LESLIE ROBINSON			
12	Mr. Hunter	45		
13	Mr. Deriug		53	
14				
15	Lynn West			
16	Mr. Bean	14		27
17	Mr. Campbell			19
18	Mr. Thigpin			24
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EXHIBITS

NO.

DESCRIPTION

I.D.

EVD.

NO EXHIBITS RECEIVED

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2

3

4

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8

THE COURT: All right, Mr. Hunter.

9

10

11

MR. HUNTER: May it please the Court. The next case is Tyress Littlejohn verses the State of South Carolina, 2017-CP-46-582.

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14

He was indicted November 2013 in York County for trafficking in crack cocaine. He was represented by Mr. Geoffry Dunn.

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On October 14, 2014 he proceeded to a jury trial before Judge John Hayes. He was found guilty as indicted and sentenced to 15 years.

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23

He didn't file a direct appeal. An Anders Brief was filed by appellant defense. The Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was returned May 6, 2016. He filed this current action and is present represented by Lir Derieg.

24

THE COURT: Okay, Mr. Derieg.

25

MR. DERIEG: Yes, Your Honor. Thank you.

1 At this time we would call Tyress Littlejohn to
2 the stand.

3 THE COURT: Mr. Littlejohn come around please.

4 TYRESS LITTLEJOHN, called as a witness, having
5 been duly sworn by The Clerk, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DERIEG:

9 Q Are you ready?

10 A Yes, sir.

11 Q All right. Good afternoon Mr. Littlejohn. I would
12 like to begin today by you introducing yourself to the judge.
13 Tell him about how old are you, where your from. Tell him about
14 your family?

15 A I am Tyress Littlejohn. I am 36 years old. I have
16 three kids. I am from York, South Carolina. I was currently
17 married but I'm now divorced due to all this stuff going on. I
18 have prior education. Some college background. That's
19 basically it. I have three loving kids that I am trying to get
20 home.

21 Q At the time you were arrested how old were you?

22 A I was 31.

23 Q When was that?

24 A 2014 when I got arrested.

25 Q You were 31 then?

1 A I was 33 at the time of my arrest.

2 Q Thirty-three, excuse me. Were you working?

3 A Yes, I was working two jobs. I was working at
4 McDonalds and Showmars at the time plus I was enrolled at
5 Strayer University.

6 Q So that's the some college that you told the judge
7 about?

8 A Yes, sir.

9 Q When you got arrested in November of 2014 you were in
10 college?

11 A Yes, sir.

12 Q Now, before we get into the specific reason we're here,
13 to give the judge a little bit of background, how many cases
14 like this trafficking case were you facing at the time when you
15 went to trial?

16 A I was facing two from here in York South Carolina.

17 Q And were both involving the same confidential
18 informant?

19 A Yes, that's what they said.

20 Q And do you remember what the drug weights were between
21 the two cases?

22 A Yes, sir. On August 14th of 2012 it was 56 grams.
23 August 16th, 2012 it was suppose to be another 56 grams as they
24 say but that wasn't the case.

25 Q Well, what was the case?

1 A The case was like the dude, the informant was to come
2 to my mother's house to meet somebody there to get drugs or
3 whatever.

4 Q Okay.

5 A He was trying to make it seem like I was the one giving
6 the drugs to him or supplying the drugs and I wasn't. He was
7 just meeting someone at my mom's house at the time and the way
8 the things transpired at the time the cameras in the air the
9 whole time. So I don't know what took place or how the drugs or
10 whatever got missing from whatever he said he came and got
11 because I did not the put the drugs in his hands physically, you
12 know. I was just there at my mother's house and he was meeting
13 the person there.

14 Q So specifically, you were saying that the August 14th
15 incident you were alleged to have 56 grams, right?

16 A Yes, sir.

17 Q Is that what you just testified to?

18 A Yes, sir.

19 Q And then two days later on August 16th you were alleged
20 to have another 56 grams, right?

21 A Yes, sir.

22 Q Which one of those two incidents did you go to trial
23 on?

24 A I went for the August 14th which were basically the
25 same incident. They just -- I think they made a mistake and

1 just because the way the things transpired between the two
2 incidents it was the drug that the C.I. presented to what he got
3 from -- allegedly got from my house and delivered them back to
4 the recovering officer it lost weight. He said it was 56 grams
5 that he got but when he took it to the recovering officer the
6 recovering officer only had 49.1. So in between the manner of
7 him delivering whatever he received it lost weight.

8 Q And we're talking about August the 16th, correct?

9 A Correct.

10 Q And then we got 56 and then we got 49 and then the
11 chemical analysis, what was its weight?

12 A It was 45.1.

13 Q So 11 -- approximately 11-gram difference with the
14 August the 16th weight.

15 Was there any issue with the August 14th weight?

16 A The August 14th weight that case was dismissed because
17 it was like -- it was only -- it was just one incident that took
18 place.

19 Q To your knowledge, did the weight on the August 14th
20 charge ever change?

21 A August 14th charge?

22 Q Did it always stay 56 or did it vary like the 16th?

23 A I never had no paperwork on that one. It just said
24 45.1.

25 Q And then that gets me to my next question which was,

1 prior to going to trial how much of your Discovery had you seen?

2 A Bits and pieces.

3 Q Do you remember specifically what you had seen?

4 A I only seen -- I seen the discrepancy in the weight
5 amounts. That was basically it.

6 Q Did you see any other pictures from the video?

7 A Yeah, I seen some pictures. They wouldn't let me get
8 my pictures here but they had a few pictures with some money,
9 but they never recovered from me or the informant because no one
10 was arrested that day.

11 Q Now, you say that you have an entire Discovery file
12 now?

13 A No, sir.

14 Q Did I provide you with additional Discovery documents
15 then what you had seen prior to going to trial?

16 A No, sir.

17 Q Okay. So everything in the Discovery that you got from
18 me you had already seen when you went to trial?

19 A Yes, sir.

20 Q Tell the judge about your meetings with Mr. Dunn
21 leading up to the trial. How many times did you guys meet?

22 A Well, I had filed for indigent defense on I think like
23 May of 2014. And they had gave me Mindy Lapinski at first and
24 said there was a conflict of interest. Then they turn around
25 and gave me Dunn.

T. Littlejohn - Direct by Mr. Derieg

10

1 I talked with Dunn a couple of times. We never -- we never
2 discussed no defense strategies or nothing. He was always
3 telling me that he wasn't getting paid for this. And we never
4 filed no motions or nothing for the judge in order to, you know,
5 prepare. Get all the funds necessary to prepare for trial
6 because I was indigent defense. I don't know why we never did
7 that.

8 Q What do you mean, get the money?

9 A Well, file for the motion for -- all the motions that
10 needed to be filed for the funds so we can prepare properly for
11 trial.

12 Q All right. Are you talking about things like a private
13 investigator?

14 A Yes, things of that nature. Private investigators,
15 independent analysis. So we can, you know, verify things on our
16 own.

17 Q Did you guys ever talk about anything like that?

18 A No, we did not.

19 Q Okay. How many times would you say that you met with
20 Mr. Dunn prior on to trial?

21 A Maybe five times, four or five times.

22 Q And in specifically preparing for the trial how many
23 times would you say you all met?

24 A Once. Twice.

25 Q Okay. And how -- how much before the trial were those

1 meetings?

2 A There was really nothing. I came in from off of house
3 arrest. I was on house arrest at the time. So when I came in
4 we just came -- I came in straight through that door right
5 there. Sat down right there and we proceeded to trial.

6 Q And you said that you were coming off of house arrest.
7 Were you on GPS monitoring too?

8 A Yes, sir.

9 Q So you were out of jail. You weren't stuck in jail
10 with any restrictions?

11 A No.

12 Q Besides staying at your house?

13 A No, actually I was under -- what do they call it? I
14 was really restricted. All I could do is go to work, church,
15 school. That was it. And doctors appointments.

16 Q Were you allowed to meet with your lawyer?

17 A And meet with my lawyer. That's it.

18 Q And how long did you say those meetings were prior to
19 trial? How long before trial were those meetings --

20 A I got him in May. I went to trial in October. So five
21 months in there. We was like -- I probably seen him four to
22 five times, 30 to 45 minutes probably.

23 Q Did you ever discuss trial strategy with Mr. Dunn?

24 A No, he told me we didn't have to put up no defense. It
25 was up to the State to prove -- to prove everything.

1 Q Did you ever provide Mr. Dunn with witnesses that you
2 wanted call on your behalf or tell him the names of people?

3 A Yes, I told him you know about the informant or
4 whatever, and that was it. And the people that were -- the
5 officers and stuff, you know, but other than that nothing else.

6 Q So, were there any witnesses that you thought could
7 have been called on your behalf that weren't?

8 A No, sir, not at that time.

9 Q Okay. You were present for the whole trial, right?

10 A Yes, sir.

11 Q Were you present when you rejected the plea offer made
12 by the State?

13 A I was never present during no plea. I'd never seen no
14 merits or nothing of a plea offer or nothing.

15 Q Did you ever discuss a plea offer with Mr. Dunn?

16 A No. One time he was saying something that they were
17 trying to offer me a plea and I had asked him what it was and he
18 was like he didn't know at the time.

19 Q Okay. Did you ever give Mr. Dunn authorization to tell
20 the Court that you were rejecting a plea offer?

21 A I did not.

22 Q And, again, were you present when that happened?

23 A No, sir.

24 Q Prior to the trial starting were there -- was there any
25 pretrial hearings that were done?

1 A No. I had presented a motion, a different type of -- I
2 had a lot of motions that I had presented to Mr. Dunn and he
3 never filed any motions.

4 Q What were some -- well, what were the motions that you
5 gave to Mr. Dunn that you wanted filed or made on your behalf?

6 A I have -- I know it was a motion to suppress the drug
7 evidence.

8 Q You asked Mr. Dunn to make a motion to the Court to
9 suppress the drug evidence?

10 A Yes.

11 Q Was that ever done?

12 A No.

13 Q Were you ever given any reason why that wasn't done?

14 A No. There was also a motion for the funds that we
15 needed so we could prepare properly for trial. I never had any
16 motion filed amongst the courts for that.

17 Q Prior to trial, did you ever talk to Mr. Dunn about
18 whether or not you wanted to testify on your own behalf?

19 Q I did, but he said I didn't have no reason to testify
20 because they had to prove everything by preponderance beyond a
21 reasonable doubt?

22 Q Did he tell you -- well, excuse me. Did you tell him
23 that you wanted to testify?

24 A I did.

25 Q Did he convince you not to?

1 A He did.

2 Q And why did you make the choice not to?

3 A Because I thought my lawyer had my best interest.

4 Q Do you know specifically why he didn't want you to
5 testify?

6 A No. He was just like it was just up to the State to
7 prove everything beyond a reasonable doubt.

8 Q Did you all have any discussions about who got to have
9 last closing?

10 A Yes, sir. We did.

11 Q And what did you learn about that?

12 A During the last closing it was like -- it was nothing
13 really said. He was just basically stating that the State had
14 to prove everything they had against me.

15 Q Well, did he tell you that if you testified that the
16 State would get the last closing?

17 A He probably did say that, yes.

18 Q Okay. Now, during the trial do you recall what, if
19 any, witnesses were called on behalf of the State to try and put
20 the drug evidence into evidence? Do you know who all was called
21 to testify about the drugs themselves?

22 A Yes, I do. Officer Raynor, John Raynor. And I think
23 is Cynthia Mitchum.

24 Q And since the trial you've seen a chain of custody on
25 the drugs, right?

1 A I did, bits and pieces.

2 Q Had you ever seen the chain of custody prior to the
3 trial?

4 A No, I just seen bits and pieces. I never had a full
5 chain of custody.

6 Q Okay. And based on the bits and pieces of the chain of
7 custody that you had seen, were all of the -- all of the people
8 that were in the chain of custody for those drugs called to the
9 stand to testify during your trial?

10 A No, sir.

11 Q Okay. Do you recall during your trial any affidavits
12 being submitted regarding chain of custody from people that
13 weren't called to testify?

14 A No, sir.

15 Q So you were being tried on a case for drugs that had
16 three different weights and the entire chain of custody wasn't
17 brought in to court to insure the reliability of the drugs?

18 A Yes, sir. Nothing was described about the three
19 different amounts of the weights. It was like they just hit me.
20 They charged me with a threshold amount because they couldn't
21 come up with the actual weight. They didn't know the actual
22 weight because it was so many discrepancies with the weight
23 being delivered from and to the recovering officer.

24 Q Now, you said earlier that you didn't feel like you had
25 all the Discovery materials that the State possessed for this

1 case, right?

2 A Right. Exactly.

3 Q Tell the judge what you think exists that you don't
4 have.

5 A Well, we have the -- I have the different items of the
6 different weights. I can show you this right here, a couple of
7 exhibits.

8 Q You don't have to pull them out.

9 A The different weights.

10 Q Are there pieces of the chain of custody missing?

11 A Most definitely that. There is nothing -- no evidence
12 showing that, you know, I ever committed a trafficking. Period.

13 Q Do you know if any cell phone records were subpoenaed
14 in your case?

15 A Never.

16 Q You think that those cell phone records could have is
17 been significant to your case?

18 A Yes, I do. The cell phone records would have proved
19 the deal existed between the C.I. and I. When he say he called
20 to set up the deal with me and I said I had such and such amount
21 of drugs they should have recorded that phone conversation to
22 show and proved that it actually took place.

23 Q Could the phone records have shown that the call
24 actually took place? Not necessarily what was said but that the
25 phone call even took place?

1 A Yes, it could have shown that, you know, the phone call
2 took place and the date and time it actually took place.

3 Q And was any of that subpoenaed?

4 A No, sir.

5 Q On your behalf?

6 A No, sir.

7 Q Did any of that ever get brought up at trial?

8 A No, sir.

9 Q Do you feel like Mr. Dunn adequately challenged the
10 credibility of Teeso Irving?

11 A No, sir.

12 Q Will you explain to the Judge first who Teeso Irving is
13 and why you don't feel his credibility was challenged properly
14 in court?

15 A Mr. Teeso Irving was a habitual drug offender, Your
16 Honor.

17 Q Was he the confidential informant in this case?

18 A I don't know if he's a registered confidential
19 informant or not, you know, because the way the case took place.

20 Q Did he testify against you as a confidential informant
21 during your trial?

22 A He did. He did.

23 Q Okay. Now, tell the judge why did you think his -- or
24 why did you think his credibility wasn't impeached properly
25 during that trial?

1 A Because he was a habitual drug offender facing a life
2 sentence, Your Honor. He basically was my old roommate prior to
3 me getting out of the jail from a crime I had committed from '99
4 to '08. He was my roommate in like 2006 originally in the
5 correctional institute I'm in now.

6 He got out and caught some drugs charges. He felt like he
7 was in desperate need to get anybody he could get and he got me
8 and I'm pretty he would have gotten anybody else. I just came
9 to court to face him and to see and prove that he did commit
10 fraud amongst the courts because he was tampering with the
11 evidence.

12 Q When the drugs were submitted into evidence during your
13 trial did Mr. Dunn ever make any objection?

14 A No, sir.

15 Q Prior to going to trial did you know what the sentence
16 range was that you were facing?

17 A No. All this was new to me. He was saying that, you
18 know, I never -- he never tried to get it -- you know, I guess
19 brought down to a lesser included offense or whatever. This was
20 my first drug offense and like I say, he never really talked
21 about how much time I could get. He was just quoting the
22 maximum penalties of it. I guess seven to 35, or seven to 30.
23 Seven to 25 or something like that.

24 Q So you weren't real sure what you were facing when you
25 went to trial?

1 A No.

2 Q Is there anything that happened with your case that --
3 or didn't happen with your case, that you think is important
4 that Judge Henderson know about?

5 A There is. Like the transactions, Your Honor, never
6 took place.

7 Q We are not here to argue whether or not your guilty or
8 innocent.

9 A Right.

10 Q What we are here today is to talk about whether or not
11 what occurred before and during your trial was proper.

12 A Right.

13 Q Related to that, is there anything else you think the
14 judge needs to know or I asked you everything that you think he
15 needs to know about your trial?

16 A Well, yes, dealing with Jywaun, there saying my
17 co-defendant, he was never around me.

18 Q Is there anything else?

19 A No, sir.

20 MR. DERIEG: Thank you, Your Honor. That's all I
21 have for Mr. Littlejohn.

22 THE COURT: Mr. Hunter.

23 MR. HUNTER: No questions from the State on this
24 witness, Your Honor.

25 THE COURT: You may step down sir.

J. Williams - Direct by Mr. Derieg

20

1 MR. DERIEG: Your Honor, we would call Jywaun
2 Williams to the stand.

3 THE COURT: Mr. Williams come forward.

4 JYWAUN WILLIAMS, called as a witness, having been
5 duly sworn by the clerk, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. DERIEG:

9 Q Good afternoon Mr. Williams.

10 A Hey, how you doing.

11 Q Please briefly introduce yourself to the judge?

12 A Hey, how you doing. My name is Jywaun Williams. I'm 32
13 years old. I am from York, South Carolina, as well, and I have
14 one son and I'm right now my work is I'm a musician. I'm
15 certified. Just got paid. My first check yesterday for \$1,100
16 for music. First ever. I came here judge on behalf of Tyress.

17 Q Well, congratulations on your music career. You heard
18 us talking about the August 14th and August 16th incidents,
19 right?

20 A Yes, sir.

21 Q Were you a co-defendant of those two incidents?

22 A Yes, sir.

23 Q What were you -- what did they say that you did?

24 A They said that I gave Tyress drugs. That's what they
25 say. They charged me with trafficking. The same charge they

1 had him charged with they had me charged with the same thing.

2 They said he got the drugs from me. But that didn't happen.

3 Q And that is what Teeso Irving said, right?

4 A Yeah. I don't even know him. I never met him. I
5 hadn't seen Tyress in about a year. Probably longer. Then all
6 of sudden I was charged with these two drug charges and I didn't
7 even know what it came from. So my lawyer --

8 MR. HUNTER: Your Honor, if I can just interject.
9 It just seems customary to do. If you can give him
10 his Fifth Amendment rights so he knows, I guess, any
11 involvement involved in this case, I just want him to
12 be aware of his Fifth Amendment rights in this
13 situation.

14 THE COURT: All right. Mr. Williams, do you
15 understand with regards to your testimony, you don't
16 have to testify about this, but if you testify you
17 could offer testimony that might incriminate you in
18 some way. Do you understand that?

19 THE WITNESS: Yes, sir.

20 THE COURT: I want you to be aware of that. You
21 do have the right to remain silent.

22 THE WITNESS: Yes, sir. I haven't done nothing
23 wrong.

24 THE COURT: But I want you to understand that.

25 THE WITNESS: I understand.

1 DIRECT EXAMINATION CONT'D:

2 Q Prior to Mr. Littlejohn's trial you got subpoenaed to
3 be a witness for court, right?

4 A Yes, sir.

5 Q Who did you get subpoenaed by?

6 A I think his lawyer.

7 Q Had you ever met his lawyer?

8 A That day when I came here.

9 Q Did you ever speak to him before trial?

10 A No, sir.

11 Q At trial you took the Fifth then, right?

12 A Yes, sir.

13 Q Why was that?

14 A Because at that time I was in trouble in Anderson,
15 South Carolina, and my lawyer that I had then just told me to
16 plead the Fifth because she was my lawyer for this case in
17 Anderson.

18 I had a case with me and Tyress so she just told me, you
19 know, I am going to get your charge dropped. Just plead the
20 Fifth. So I pled the Fifth.

21 Q And what happened with your charges?

22 A They were dismissed.

23 Q Do you know why?

24 A Because it wasn't me on the tape or anything like that.

25 Q Were you ever given any reason why you got charged in

1 the first place?

2 A I didn't even understand how I even got charged. All I
3 know is that I was just got charged with it. They never told me
4 why.

5 Q And ultimately your charges were dropped because that
6 wasn't you, is that what you said?

7 A Yes, sir.

8 Q And just to clarify, prior to the day of trial you had
9 never met Mr. Dunn?

10 A No, sir, I had never met him.

11 Q Were you surprised when you got subpoenaed?

12 A I mean, I had been hearing that I was going to get
13 subpoenaed because my mother was talking to Tyress at the time.
14 So she was telling me that they were going to subpoena me.

15 Q But nobody ever interviewed you prior to trial?

16 A Nobody.

17 Q Okay. Is there anything else you can shed light on
18 that might help the judge make his decision?

19 A Basically that it wasn't me or Tyress at the time.
20 What I don't know about, you know, what all happened with
21 Tyress's situation, but it wasn't me on the tape so my charges
22 got dropped.

23 Q Do you know if law enforcement ultimately discovered
24 that Mr. Irving was lying about you being on that tape?

25 A Yeah, he lied. He lied about me being on the tape.

1 Definitely lied. I didn't even know the guy. I never met him.

2 MR. DERIEG: That's all have I Your Honor.

3 THE COURT: Mr. Hunter.

4 MR. HUNTER: Just a few things.

5 CROSS EXAMINATION

6 BY MR. HUNTER:

7 Q How do know your charges -- the reason why your charges
8 were dropped? Who told you that?

9 A My lawyer, Druanne White.

10 Q So, she's the one who told you why they were dropped?

11 A Yes, sir.

12 Q And I guess she said that is because they couldn't tell
13 that you were in the car?

14 A No, it was camera footage. She had got the whole
15 camera footage and I wasn't there.

16 Q Okay. So it was because you weren't on the camera?

17 A I wasn't there.

18 Q Right. Right. Okay. So, we talked about Mr. Irving.
19 How did you hear -- when did you hear something about what Mr.
20 Irving said?

21 A I never heard anything said. I just --

22 Q Well, you said something about the C.I. lying. When
23 did you hear any of this?

24 A Oh, cause they charged me. So they charged me off of
25 what he said. They charged me off of what he said and they

1 charged Tyress off of what he said.

2 Q So the State told you that they with charging you
3 because the C.I. said your name?

4 A Basically. I mean they didn't tell me that. Basically
5 I just had a charge and basically the charge was trafficking
6 cocaine. And they never proved that I trafficked anything or
7 sold anything.

8 Q So you were charged I guess the same incident as Mr.
9 Littlejohn and they dismissed the charge because they couldn't
10 prove that you were there?

11 A Yes, sir.

12 Q Okay.

13 MR. HUNTER: That's all have. I thank you.

14 THE COURT: Anything else?

15 REDIRECT EXAMINATION

16 BY MR. DERIEG:

17 Q Do you know, prior to your charges being dismissed, do
18 you know whether or not law enforcement was able to prove that
19 Mr. Irving had been lying?

20 A No, I never did come to his trial. I mean, I came but
21 I wasn't able to stay or anything like that. So I don't know
22 what they was able to prove or anything.

23 Q Well, you're talking about what you had learned through
24 your lawyer?

25 A Oh, yes, she had just basically told me --

G. Dunn - Direct by Mr. Hunter

26

1 MR. HUNTER: Objection. Hearsay, Your Honor.

2 THE COURT: Don't tell me what she said. You
3 can't tell what somebody said.

4 THE WITNESS: All right.

5 MR. DERIEG: That's all have, Your Honor. Thank
6 you.

7 MR. HUNTER: Nothing else.

8 THE COURT: You may step down, sir.

9 MR. DERIEG: Your Honor, we rest.

10 THE COURT: All right, Mr. Hunter.

11 MR. HUNTER: The State would call Mr. Jeff Dunn.

12 Geoffry DUNN, called as a witness, having been
13 duly sworn by the clerk, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. HUNTER:

17 Q Mr. Dunn, please state your name for the record.

18 A Geoffry Dunn.

19 Q And what is your current area of practice?

20 A I mostly do criminal and disability law.

21 Q Okay. Can you please explain how you became involved
22 in this case?

23 A I was appointed pursuant to a contract I have with the
24 office of indigent defense to represent Mr. Littlejohn. I don't
25 know the exact date. I got the Order somewhere if you need to

1 know the exact date.

2 Q Well, do you know roughly how long you represented him
3 prior to trial?

4 A I think I was appointed I think in May of 2016 and we
5 tried the case October I believe of 2016.

6 Q Okay. During that time how many times would you say
7 you met with him?

8 A It was a number of times. It was at least five if not
9 more. I met with not only Mr. Littlejohn but his wife would
10 meet with us on occasion, Bernice Littlejohn. And then on at
11 least one occasion there were three people involved; Mr.
12 Littlejohn, Bernice Littlejohn and whoever the president of the
13 York County Chapter of the NAACP was at the time. I don't
14 remember his name, but he was in the meeting as well.

15 Q Okay. And during those meetings I guess just go over
16 what you all talked about?

17 A My initial meeting with any client is just to basically
18 get contact information. Basic information about where they
19 live and what they're working and personnel information of that
20 nature.

21 During that initial consultation with my clients I generally
22 try to get an idea of what their position on the case is. Some
23 clients tell me they're guilty and they are just looking for
24 deals. Some clients tell me they had absolutely no involvement.
25 They don't understand why they've been arrested. Then they want

1 to tell me their side.

2 From there it's just, you know, every case is different, but
3 with Mr. Littlejohn it just progressed to talking about the
4 evidence. Went over deals with him. I always go over the deals
5 with my clients if offers are made. And if we get to the point
6 where it doesn't look like there is going to be an plea then we
7 sit down and talk about trial.

8 Q Okay. Did you receive the State's Discovery?

9 A Yes and no. When I first got appointed, you know, in
10 York County on drug cases they don't give you their entire file.
11 Often times there's C.I. buys and C.I. information and those
12 sort of things that they, you know, claim that they don't have
13 to give. Claim it under under the idea of confidentiality.

14 Once offers are rejected then usually they start turning
15 that stuff over and at some point in Mr. Littlejohn's case I got
16 a copy of information from Teeso Irving. I got a copy of I
17 believe there's two videos in his case. One for the trial we
18 went to and he had two different cases and I believe I saw
19 videos on both of them.

20 Q So aside from the C.I. information, what else did you
21 receive from the State?

22 A Incident report, and all the things that go along with
23 it, custody, evidence logs and those sort of things.

24 At some point I don't remember if I got it right away or if
25 I got it later on there would have been a drug report. Most

1 drug cases I think there's not a whole lot -- not a whole lot to
2 them. Just incident report, arrest information and drug
3 reports, unless and until I get the the actual buy videos and
4 audios and that sort of thing.

5 Q And I guess overall in your discussions with him, did
6 he assist you I guess in your defense?

7 A We met on number of occasions. He never -- he was
8 never interested in pleading. I think I would categorize our
9 conversations as not easygoing. He was agitated. He was upset.
10 Some of the reason why he was upset is he might have been
11 arrested in 2014 but the case itself actually originated in
12 2012. So there was a long timeframe in between when he got
13 arrested and when this case was brought. He was upset that the
14 person that he was in 2012 wasn't the same person he was in
15 2016. That he made steps to better himself. Got a job. Had
16 gotten marry. Had children. I don't remember if he told me how
17 many children he had but he had children.

18 He was wishy washy about -- there had been some discussion
19 about whether or not he wanted to -- if he would be willing to
20 work I think it was the FBI in this case. It's a little more
21 serious then just the local drug cops. But he was wishy washy.
22 He made some unreasonable demands. He verbalized unreasonable
23 demands to me that I would have to relay to the State in order
24 for him to work with them. And so that part of it never really
25 went anywhere because he didn't want to hear what I had to tell

1 him.

2 We talked about his offer. The offer in this case had
3 started off at 15. It never moved. And part of the reason why
4 it never moved is he was never willing to take any additional --
5 he didn't want to plead to anything. He wasn't going to take
6 any time. And any kind of plea was conditioned upon him getting
7 some unreasonable conditions. So it never really went anywhere.

8 We sat down during his trial prep as we are getting ready
9 for it and discussing his defense strategy. One of the things
10 the State had they had a video. I would not say it was the best
11 video I had ever seen on a drug buy. It was very shaky. It
12 wasn't real focused. But at some point during that video you
13 could hit stop or pause and you could see that he was holding
14 something in the floorboard of a car that was rather large.
15 Large enough that you can see it in his hand that it was white
16 in nature and when I asked him what that was because I think
17 that was very an important part of the defense strategy, he told
18 me that he didn't have to tell me. It was my job as his lawyer
19 to tell him what it was. And it just made it very difficult to
20 come up with a -- any kind of strategy beyond making the State
21 prove their case strategy which is ultimately what we had to go
22 along with.

23 There was never any alibi defense. There never was any kind
24 of I wasn't there defense.

25 Q Did he ever give you any potential alibi witnesses or

1 just any witnesses for you to go off of?

2 A The only witness I was given to go off of was Mr.
3 Williams which is why I subpoenaed him. When he showed up to
4 trial he evoked his Fifth Amendment right and that was that. I
5 I had talked to Ms. Druanne White at some point previous as well
6 during my trial prep just because I knew she was representing
7 him on some of the other charges and both her and Mr. Pride
8 never gave me permission to talk to him so I never talked to him
9 since he was represented.

10 Q Now, back up just a little bit. The plea offer, were
11 you working with one solicitor this whole time or the office as
12 a whole?

13 A The only solicitor I remember -- I think originally I
14 talked to solicitor Teasa Weaver but I don't remember ever
15 actually dealing with her. The only one I ever remember dealing
16 with was Miss Robinson.

17 Q And did she presented you the offers and then you would
18 go to him or did you all meet together?

19 A I know we sat down and talked about it. I know his
20 wife was there at some point during some of those discussions.
21 I am sure we talked on the phone as well.

22 He was one of my more hands-on clients as far as having a
23 lot of interaction with him. Some clients I have never talked
24 to me but he was not like that.

25 Q Okay. Can you explain the -- I guess the plea offer

1 that you rejected on the record. He's not present. Do you
2 recall that hearing?

3 A I remember the plea offer, or rejection hearing.

4 Q Did you make him aware that's what you were going to
5 do?

6 A Yes, and he was present. I've never had a plea offer
7 rejection -- a plea rejection hearing where my client has not
8 been present.

9 Q Okay, I apologize. I was mistaken about that.
10 So did he ahead of time did he say I want to reject this
11 offer?

12 A Yes.

13 Q Okay. So at no point did he tell you he wanted to
14 plead?

15 A No.

16 Q Okay. And again, how many years did you say it was
17 for?

18 A The offer was for 15.

19 Q And just to back up a second more. Can you explain
20 what their investigation?

21 A I'm sorry.

22 Q Can you explain your investigation in this case? What
23 all you did?

24 A It's a drug case. I would go over the information with
25 my client, with Mr. Littlejohn. Once I had access to the video

1 I watched the video. I took notes on the video. I tried to
2 remember if I ever actually had this video in hand. I don't
3 think I did.

4 Miss Robinson is one of those that makes you sign an order
5 of confidentiality on it because there's a C.I. and so I don't
6 know if Mr. Littlejohn and I actually went over it prior to
7 trial beyond me talking to him about what I saw on it. And we
8 would have discussed that. We discussed -- we would have
9 discussed the weight on the case because there's a drug report
10 in the case.

11 Q I want you to go over that. We heard testimony there
12 were three weights. As far as you're able to tell, what was the
13 weight of the drugs ultimately entered at trial?

14 A I believe it was 45 or 46 grams.

15 Q Okay. And can you just explain, if you are aware, of
16 discrepancy that came out about the drug weight?

17 A The police report indicated it was higher. I believe,
18 it was 54. Why there was discrepancies I don't remember. I
19 think Miss Mitchum actually testified to that. I don't
20 remember. I've seen it happen in other cases where there is a
21 discrepancy. This isn't one of those where the discrepancy was
22 enough to put us at a threshold so it wasn't like it was almost
23 28 grams. It was substantially over whatever the number was for
24 that particular category. So I wasn't, you know, concerned
25 about it.

1 Q Okay. And given the fact that there may have been some
2 discrepancy of the weight, did you see any reason to challenge
3 that evidence as it is coming in to trial or make a pretrial
4 motion to suppress?

5 A No, not a specific one. Again, it wasn't close enough
6 to a level for it to be -- I mean, it's always important because
7 it is the crux of the trial, but it wasn't enough -- it wasn't
8 enough there for me to get anybody to test it see if it was that
9 much different.

10 Q Did it occur to you that you should get an independent
11 expert here?

12 A I don't remember if we talked about it or not.

13 Q Is that something you've done before in drug cases?

14 A I've never gotten one. I mean the state's chemist is
15 going to testify. He couldn't give me good reason -- he could
16 never -- we talked about what the substance was on a number of
17 occasions. He insisted to me that it wasn't crack but he could
18 never tell me what it was when I asked him what it was. And so
19 I didn't think that Miss Mitchum was going to lie about that
20 part of it.

21 Q As far as the drugs are concerned, did you receive any
22 sort of chain of custody in Discovery?

23 A I don't remember. I usually do. I don't remember in
24 this case.

25 Q At trial, as far you recall the testimony from the

1 State's witnesses, did you see any reason to challenge the
2 chain, either possession or chain of custody there?

3 A I don't remember.

4 Q Okay.

5 A I mean, if I thought there was a reason to challenge
6 the chain I would have. I don't normally just consent to the
7 drugs coming in.

8 Q In a drug case is that something that you would usually
9 analyze beforehand?

10 A Yes.

11 Q Are you aware of any materials -- we talked about it a
12 minute ago -- any materials that may have been missing from your
13 Discovery that came out at trial?

14 A No.

15 Q I just want to be clear. Did you discuss with him,
16 with Mr. Littlejohn, about I guess his right to testify?

17 A I always have that discussion with clients at trial.

18 Q All right. What did you tell him?

19 A I tell -- I told him the same thing I tell all my
20 clients. During the trial they only have -- that at the end of
21 the day the client only has two real rights in a trial. One is
22 whether or not he pleads or goes to trial, and two, whether or
23 not he testifies or doesn't testify. At no point can I
24 interfere with either one of those rights.

25 Most of the time my clients will ask me if it's in this best

1 interest or not and we'll have that discussion, but I've never
2 -- I have never opposed a client to testify if they want to.

3 Q Do you recall what you told him about whether or not it
4 would be in his best interest?

5 A I don't recall that conversation. I know we had it. I
6 don't remember the details of it.

7 Q And as far as the entirety of the defense's case is
8 concerned, did you inform him about whether or not you all
9 planned on putting up a case?

10 A I think the nature of that conversation was basically
11 if you can't tell me what that substance is that's in your hand
12 in that picture then the only thing I can do is challenge and do
13 the -- try to create reasonable doubt in my cross examination of
14 the case.

15 Q Okay. And in your cross examination of the C.I. do you
16 recall and specifically, if you recall, if you looked over the
17 transcript if and how were you able to challenge his
18 credibility?

19 A If I remember correctly -- obviously the transcript
20 would be a better recollection of what I did but if I remember
21 correctly we talked about -- or I asked him about what his
22 potential exposure was and why he was working for the State.

23 We might have gone into his driving history because I think
24 he had a suspended driving license if I remember correctly.

25 Q And prior to the trial, did you ever sit down and

1 discuss with him the potential sentences that he was facing?

2 A Always.

3 Q And so would you have talked to him about lesser
4 included or just what he was indicted for?

5 A I would have talked to him about what his exposure was
6 on the charge.

7 Q Do you recall doing that in this case?

8 A Specifically, no. I mean, I know we did it. I just
9 don't remember when. I mean, I have just never gone to trial
10 where I haven't told a client what they're exposed to. I don't
11 think it's fair to the client.

12 Q And again, just to relate that back, did you tell him
13 what he was exposed to prior to -- or as you are relaying the
14 plea offer?

15 A Yes, and we would have had that discussion again before
16 the rejection hearing because in York County once you reject
17 your hearing offer often times you don't get another better
18 offer. The next offer sucks. Even worse.

19 MR. HUNTER: I beg the Court's indulgence.

20 Q Now, Mr. Dunn --

21 MR. HUNTER: And Your Honor, this is mainly to put
22 on the record.

23 Q Mr. Dunn, Judge Henderson's law clerk, can you just
24 explain I guess how you know him?

25 A Joshua Brown use to when he was in law school clerked

1 for my office, mostly during the summertimes. During the
2 academic school year he lived in Columbia and didn't work for us
3 but he would come back during the summer two or three times and
4 then after he graduated he did a little bit of work for me last
5 summer or whatever summer he graduated from law school.

6 Q And to your knowledge would he have had any involvement
7 with this case whatsoever?

8 A No. No, I don't have any recollection of him being
9 involved.

10 MR. HUNTER: Okay. I just wanted to put that on
11 the record. That's all I have for you Mr. Dunn.

12 Thank you.

13 THE COURT: Mr. Derieg.

14 MR. Derieg: Thank you, Your Honor. May it please
15 the Court.

16 CROSS EXAMINATION

17 BY MR. DERIEG:

18 Q Good afternoon Mr. Dunn.

19 A Good afternoon.

20 Q When you say the trial was in 2016, you mean 2014,
21 right?

22 A Yes, sure, 2014.

23 Q And you said my client -- your client was present
24 during the plea rejection offer or plea rejection hearing?

25 A He would have been, yes.

1 Q Did he sign anything rejecting the plea offer?

2 A No.

3 Q Is that something that's typically done here in York?

4 A No.

5 Q How many, if you can estimate, how many drug trials
6 would you say that you have done?

7 A To a jury trial?

8 Q Yes, or to a bench trial?

9 A I don't know. I don't know the answer. It's less than
10 ten.

11 Q More than five?

12 A I don't know. I don't think. If it is it's not more
13 than five I don't think.

14 Q And you said you usually consent to the drugs coming in
15 in these trials, right?

16 A I don't know. If I think there is a reason to object I
17 will. If I don't have any grounds for an objection I don't
18 typically make an objection just to make one.

19 Q Do you typically file a pretrial motion to try to have
20 the drugs suppressed?

21 A In this case I don't think I did.

22 Q And when you make no pretrial -- excuse me. In this
23 case did you make any objection during the trial to the
24 introduction of the drug evidence?

25 A I don't remember. It would be in transcript if I did.

1 Q Is this one of those type cases where you would just
2 consent to the drugs coming in?

3 A Again, I don't remember what I did.

4 Q And in a situation where no pretrial motion was made
5 and no objection was made during the trial you're aware that
6 he's foreclosed from appealing that issue, right?

7 A If I didn't object he would be, yes.

8 Q You said you discussed with Mr. Littlejohn his right to
9 testify and things associated with that?

10 A Yes.

11 Q Did you explain to him about the giving up last
12 argument if he were to decide to testify?

13 A I don't remember if I did that. I mean sometimes I
14 have that conversation, sometimes I don't.

15 Q What was the meeting that you started off with, it
16 sounded like there was a lot of people at that meeting with Mr.
17 Littlejohn when you were telling the State about your different
18 meetings. Was that the first meeting you had with Mr.
19 Littlejohn?

20 A No, it wasn't. The first meeting was just either me
21 and him. His wife was present a lot. The only meeting where I
22 remember where it wasn't just either the two of us or the three
23 of us he had brought somebody from NAACP and I don't remember
24 the guy's name.

25 The gist of that conversation was basically he was upset

1 because he felt like he was being railroaded and we went over
2 the civil rights part of it.

3 Q Regarding the chain of custody in this trial, did you
4 make any objection to the the chain?

5 A I don't remember.

6 Q Did you consent to the chain?

7 A I don't remember. I don't think so but I don't
8 remember.

9 Q Did you require the State to produce every person that
10 had contact with those drugs to come in to testify?

11 A I thought I did but I don't remember. Again, it would
12 be in the transcript. I don't remember every witness in this
13 case. How the trial unfolded.

14 Q And do you recall whether any affidavits were entered
15 by people in the chain saying what their involvement with the
16 drugs were?

17 A I don't remember that. I don't remember.

18 Q Do you recall ever making any objection to the drugs
19 under Rule 6 of the South Carolina Rules of Criminal Procedure?

20 A I don't remember if I did in this case. I generally as
21 a rule do. I don't remember if I did in this case.

22 Q You said you had never gotten any independent drug
23 testing done, right?

24 A Correct.

25 Q You know you're aware it's potentially available if a

1 judge will give you money for it, right?

2 A It is.

3 Q Why don't you typically -- or why haven't you ever
4 gotten it done?

5 A In this incident if my client couldn't give me a really
6 good reason as to why he thinks there's drugs involved I don't
7 typically go that route.

8 Q And when you said earlier that this wasn't the case
9 where it was, no, I wasn't there defense, right?

10 A He never told me he wasn't there. If that's what
11 you're are asking.

12 Q Yes, that was my next --

13 A There was a video with him in it. He never said that
14 wasn't him.

15 Q He never told you that wasn't him?

16 A No.

17 Q And how well do you see anybody in that video?

18 A In that video it was clear to me it was Mr. Littlejohn.
19 There's two video and the one that I remember it was clear it
20 was him. He had tattoos in the video. There is tattoos in
21 person.

22 Q They never showed his face in either video did they?

23 A They did. At one point he bent over enough that you
24 see him in a white t-shirt if I remember correctly.

25 My notes -- if that's what you want to hear I will tell you

1 what is in my notes. But my recollection and my notes both
2 indicate that my client was in those videos.

3 Q Okay. And you said that you don't remember why the
4 weight differed from 56 to 49 to 45?

5 A No. I mean I assumed it had to do with the length of
6 time that the drugs sat in evidence that it dried out.

7 Q Did you -- when the drug analysis was on the stand you
8 asked her questions about the difference in the weights, right?

9 A Again, if it is in the transcript I did.

10 Q Prior to the trial was if any efforts did you make to
11 ascertain why there were three different weights?

12 A I don't remember what I did about that. In reviewing
13 for this I didn't see anything in my notes that would jog that,
14 so --

15 Q Were all Discovery materials that you received from the
16 State provided to my client or to our client prior to his trial?

17 A Everything accept, if I remember correctly, I did not
18 turn over the C.I. stuff. My memory tells me on this one I had
19 to sign an order from the State saying that I would not disclose
20 the C.I. stuff, or I would not give him a copy of the C.I. stuff
21 which is typical for York County.

22 Q But he can see it prior to trial? He just can't have a
23 copy of it?

24 A Normally, yes.

25 Q Do you recall whether or not he got to see the video

1 prior to trial, or either video?

2 A I don't remember. If I have it I show it to him but if
3 I don't have it I can't. But I never not show it to him if I
4 have it.

5 Q What potential witnesses in the case either for the
6 State or the defense did you interview prior to trial?

7 A Besides Mr. Williams who I wasn't allowed to talk to
8 and the only other witnesses would have been the cops.

9 Q Did you try and sit down and talk to them?

10 A I talk to them. I may talk to them before when we are
11 in the courtroom but -- or courthouse, but they're not going to
12 change anything.

13 Q You didn't think it would be important to find out
14 exactly what it was they with going to say prior to the trial?

15 A My experience is the cops testified to whatever is in
16 their notes.

17 Q I'm sorry, I didn't hear that.

18 A I said my experience cops testify to whatever is in
19 their notes.

20 MR. DERIEG: Beg the Court's indulgence, Your
21 Honor.

22 Q Was Mr. Littlejohn on house arrest and GPS monitoring
23 prior to his trial?

24 A I don't know about the GPS but he was under house
25 arrest. He was with conditions, but he was -- the feds I think

1 had him. Yes. I don't know why.

2 Q Approximately do you remember for how long?

3 A I don't know.

4 Q And do you recall whether or not any of that time that
5 he spent on house arrest and/or GPS was ever requested to be
6 credited to him in terms of time served during the sentencing
7 phrase of this trial?

8 A I don't think I did, but that would be a transcript
9 issue -- question. Whatever is in the transcript is what I
10 said.

11 MR. DERIEG: Your Honor, that's all I have. Thank
12 you Mr. Dunn.

13 MR. HUNTER: Nothing else from this witness, Your
14 Honor.

15 THE COURT: Thank you, Mr. Dunn.

16 MR. HUNTER: Your Honor, the State would call
17 Leslie Robinson.

18 MR. DUNN: Do you need my presence any longer?

19 THE COURT: Any reason --

20 MR. HUNTER: No objection to him being excused.

21 MR. DERIEG: No objection.

22 THE COURT: You you may be excused. Thank you
23 sir.

24 LESLIE ROBINSON, called as a witness, having
25 been duly sworn by The Clerk, was examined and

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HUNTER:

4 Q Good afternoon. Please state your name for the record.

5 A Leslie Robinson.

6 Q And where are you currently employed?

7 A Solicitor's office here in York County.

8 Q Is that where you were employed in 2014?

9 A Yes.

10 Q And can you explain, were you the only solicitor
11 involved in this case?

12 A Actually, no. I received this case after it had
13 initially handled by Teasa Weaver. But I believe the case was
14 given to me around the same time that Mr. Dunn was appointed Mr.
15 Littlejohn.

16 I don't know if he had retained people or what had happened
17 but there had been some other defense attorneys involved as
18 well, and Mr. Dunn and I became involved about the same time in
19 May 2014 I believe.

20 Q Okay. And can you just give us an overview of what the
21 State presented at trial as far as the evidence goes?

22 A At trial -- so he did -- Mr. Littlejohn was charged in
23 two separate incidents that happened on I believe August 14th
24 and August 16th of 2012.

25 I elected to go to trial on the August 16th date. In that

1 video, the confidential informant video, there were times in
2 that video where it was very, very clear that it was the
3 defendant, Mr. Littlejohn. You could both see his face at
4 times, you could see his tattoo on his arm which I had happen to
5 just notice on a day that he was here for docket sitting in the
6 hallway. I was able to see that tattoo just walking by him one
7 day. So it was very prominent and it was in the video. The
8 drugs were visible in that video in Mr. Littlejohn's hand, and
9 cash was visible in that video so that's the one I elected to
10 take to trial.

11 The trial was essentially the confidential informant
12 testified about what happened that day. The officers who were
13 involved in handling the confidential informant, searching him
14 before and after processing the evidence. All of that type of
15 information, all those officers testified. I believe I had one
16 individual who was evidence employee who testified as part of
17 the chain of custody, and then the chemist testified as to the
18 weight and the nature of the the drugs recovered. And that was
19 essentially the case.

20 Q Okay. And aside from the material dealing with the
21 confidential informant, what material did you share in
22 Discovery?

23 A You know, honestly, I'm not sure if I shared it or Miss
24 Weaver did. But we would have provided the incident report. We
25 would have provided his criminal history, along with incident

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1 reports, the evidence log sheets, inventory sheets and warrants
2 and all that kind of stuff. We also provided in this case still
3 screen shots from those videos to show the drugs in Mr.
4 Littlejohn's hand and his face. So those still shots were
5 provided during the plea negotiation phase in advance of full
6 Discovery at the later date.

7 Q Okay. Can you explain, I guess your office's policy
8 and also as it pertains to this case, with the C.I.

9 A Generally, when we are in a negotiating phrase we try
10 to share as much as we can without revealing the confidential
11 informant's actual identity. And like I said, so in this case
12 whenever I can I would provide still footage from -- I'll pause
13 the video and screen shot it and provide that to the defense
14 attorney whenever I can to demonstrate the quality of those
15 videos to the defense attorney.

16 When I can't I will tell them I don't have a good enough
17 shot in my video to provide you with which is an indication of
18 what they are dealing with. So that was done in this case.

19 We do that during the plea negotiations. If they are
20 insistent that they would like to know the confidential
21 informant that is certainly their right, but at that point once
22 we reveal the identity of the confidential informant there are
23 no more plea offers in the case.

24 Q Okay. And just to go over, back to some of the
25 evidence, were you aware of any discrepancies in the drug

1 weight?

2 A I believe -- when I came in to the case I believe it
3 was evident from the incident report and I would have to go
4 back. I know they have been talking about three different
5 weights. I believe that was all reflected in the incident
6 report and that's where those different weights came from. And
7 then when the drug report came back which was significantly
8 delayed from the date of seizure the weight was then lower than
9 what had been reported by law enforcement at the time.

10 Q And did the discrepancy in the drug weights effect what
11 you were charging?

12 A It did not effect the charge because it was always
13 within that range of over 28 grams for trafficking and it wasn't
14 high enough to go to any other levels. So it did not effect the
15 charge and though it's certainly frustrating from a prosecution
16 standpoint it didn't raise any concerns for me about the
17 validity of the charge or the nature of the substance involved
18 or anything like that. I simply believe it was a matter of the
19 drugs drying out over time. Potentially an issue of the officer
20 using scales.

21 MR. DERIEG: Your Honor, at this point I am going
22 to object as to speculation.

23 THE COURT: All right. I will sustain the
24 objection.

25 THE WITNESS: I was just explaining why I wasn't

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1 concerned as a prosecutor about the weight. But
2 that's fine.

3 Q I will move on. Can you explain as it pertains to this
4 case, whether or not you provided the defense with a chain of
5 custody?

6 A So we don't use affidavits to prove our chain of
7 custody or anything like that. So initially what he would have
8 received would have been the evidence log report and then as we
9 are moving toward trial the defense is free to set up an
10 appointment with evidence and see the actual bag where they
11 would have handwritten their names as it moves in the chain of
12 custody. I don't recall if we did that, but I know that I have
13 never gone to trial on a -- this did not involve a missing chain
14 witness in this case. I called every person to testify in court
15 who was in the handwritten chain on the evidence bag.

16 Q Okay. The last thing I want to talk about is Jywaun
17 Williams. Can you explain how he was involved in this case?

18 A So, he was a charged co-defendant from the initial part
19 of the case. When I came in to the case Miss Weaver informed me
20 that the case against Mr. Williams was not as strong and so the
21 best thing to do would be to focus on resolving Mr. Littlejohn's
22 charges and then go from there.

23 Mr. Williams was in fact not incarcerated in our
24 jurisdiction. I believe he was in Anderson at that time. So he
25 was always there. His involvement -- his alleged involvement is

1 on the confidential videos from both dates. An SUV pulls up to
2 the scene. Mr. Littlejohn is seen in both videos going to the
3 SUV and interacting with the driver of that vehicle and then
4 returns to the C.I. and that's when the drug transaction takes
5 place between Mr. Littlejohn and the C.I.

6 In those videos the person in the SUV never gets out of the
7 vehicle and the C.I. is never close enough with the videos to
8 see who is in the video.

9 So that is why we felt our case was not as strong. The first
10 time -- I was focused as I said on Mr. Littlejohn because we did
11 not even have access to Mr. Williams at this time. The first
12 time I ever began to even question what was going on with the
13 person in the vehicle is when I found out that Mr. Williams is
14 being transported for purposes of our trial by Mr. Dunn to
15 testify.

16 So, that would have been -- that was October 8th that I
17 found that out. But up to that point I never had any reason to
18 suspect it wasn't Mr. Williams in the vehicle. But admittedly,
19 I could I not see who was in that vehicle in the evidence that I
20 had.

21 Q So, in your discussions with Mr. Williams or I guess
22 through his attorney, what did you tell him about why you were
23 dropping the charge?

24 A That would have come after the fact when I was trying
25 to find out about him being transported to Anderson County and

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1 were his attorneys aware of that. I was told emphatically he
2 would be evoking his Fifth Amendment rights and he would not
3 testify at trial. And then Miss Druanne White made the comment
4 that he was not there. As I later continued those discussions
5 she indicated to me that he was not in the state of South
6 Carolina at the time. I don't have any proof of that other than
7 her word.

8 She indicated the reason he was not in South Carolina is he
9 was fleeing his charges in Anderson County that he was
10 ultimately picked up on. And she suggested to me that there was
11 another person who could have been the driver of that vehicle
12 and I was able to track down the name that she gave and whether
13 or not they with associated with a vehicle of a similar type.
14 And they were associated with a vehicle of a similar type. So
15 at that point I could not see his face on the video. I had been
16 given the name of someone who may have been the driver. It was
17 incumbent on me at that point to dismiss Mr. William's charges
18 because I did not think I could prove them beyond a reasonable
19 doubt.

20 A Okay, and this is just based on testimony we heard
21 earlier. Did you ever tell, I guess, either Mr. Williams or
22 Miss White, did you ever tell them it had to do with lies told
23 by the C.I.

24 A No. In fact that was never really my concern. I did
25 ask the confidential informant why he reported to law

1 enforcement that it was Mr. Williams in that car, in that SUV
2 and his response to me is that was what Mr. Littlejohn had
3 conveyed to him. So, I never had any indication that the
4 confidential informant was lying in any way. Just that the
5 information he conveyed may have been wrong in the first place
6 but not in the sense that he fabricated it or intentionally lied
7 about it.

8 It was evident from the videos themselves that he did not
9 get close to the vehicle either. So that was part of why I
10 asked him what made you say who was in that vehicle.

11 Q Okay.

12 MR. HUNTER: That's all have. Thank you for your
13 time.

14 THE COURT: MR. DERIEG:

15 MR. DERIEG: Thank you, Your Honor. May it please
16 the Court.

17 CROSS EXAMINATION

18 BY MR. DERIEG:

19 Q Who with the York County Sheriff's Office has the
20 initial M, last name Brown?

21 A Marvin Brown, the Commander of the drug unit.

22 Q Was he called to testify in this case?

23 A I don't recall. You would have to look at the
24 transcript.

25 Q Well, do you remember who your witnesses were?

1 A This was almost four years ago now. I don't remember
2 every single one, no.

3 Q Well, what was the list of witnesses you rattled off
4 for the State there at the beginning of your testimony?

5 A The confident informant, the officers involved in the
6 handling the confidential informant at the time of the deals,
7 the chain witness and the chemist.

8 Q Who was your chain witness?

9 A Patrick Paterson, I believe who was the chain in this
10 case.

11 Q And was Marvin Brown -- wasn't Marvin Brown on the
12 chain in this case?

13 A Not to my knowledge. Marvin Brown rarely handles the
14 drug evidence. I don't -- again, I did not have any gaps in my
15 change in this case. I always prepare in advance of legal
16 argument if I have to encountered that and that was not the case
17 here. So if he did not testify in the chain in the transcript
18 then that was because I was not aware that he had any
19 involvement in the chain of evidence.

20 Q Okay. Was any challenge to the chain of custody made
21 during the trial?

22 A I don't recall. You would have to check if there was
23 an objection. But like I said I had had every person who was on
24 that bag of evidence and had signed on it testify, so --

25 Q Okay.

1 MR. DERIEG: May I approach, Your Honor?

2 THE COURT: Sure.

3 Q Let me show you a couple of photographs and tell me if
4 you recognize those?

5 A Yes.

6 Q Are those the pictures that you testified about
7 earlier, the still shots that were captured and sent to Mr.
8 Dunn?

9 A I believe so, yes.

10 Q So those were pictures that clearly reflect Mr.
11 Littlejohn?

12 A This one more so than this one. This is the one I went
13 to trial on. This one is in color. There is the tattoo that I
14 was referring to and these are the drugs, and when it is in
15 color it is very clearly Mr. Littlejohn.

16 MR. DERIEG: Your Honor, may I publish those
17 pictures to you?

18 THE COURT: Yes, sir.

19 THE WITNESS: The second picture is the other
20 incident which is why I said I went with the August
21 16th date because they weren't as clear images from
22 the other video.

23 Q So that's not the picture, the white substance that was
24 used in your August 16th trial?

25 A There is, but you handed me two and the second one he's

1 in different clothes in those two pictures. So the second one
2 is from a different date.

3 Q Okay. Was there any pretrial motion made to suppress
4 the drug evidence?

5 A Not that I recall, but have I to rely on the transcript
6 for that.

7 Q How well do you recall this trial?

8 A I mean, fairly well, but it was like I said almost four
9 years ago. Some of these more detailed questions.

10 Q Do you remember doing any pretrial prior to --

11 A I don't remember the specifics of pretrial in this
12 case, no.

13 Q Would you be surprised if I told you that there was no
14 pretrial in this case?

15 A Not necessarily. I don't recall having any concerns
16 leading into this case. There were no Bigger's issues. There
17 was no Jackson v. Denno issues. This wasn't the execution of a
18 search warrant. So I don't know. I would not be surprised.
19 There was nothing significant that I'm accustomed to dealing
20 with.

21 Q How many drugs cases have you tried?

22 A I have -- I know I've tried three as my own cases and
23 have I been second chair on numerous others.

24 Q And how often in those cases does the defense make --
25 in a drug case, make a pretrial motion to suppress the drug

1 evidence?

2 A There may have been one in the one of the other ones.
3 One of the cases -- I am trying to think. I've done pretrial in
4 several cases and then they plead out. So I have done them.
5 But any time I have done them it has about the validity about a
6 traffic stop maybe. And so they're seeking suppression based on
7 a unlawful stop or maybe the validity of a search warrant.
8 Those are the only types of suppression hearings that I recall
9 having.

10 Q In your experience, isn't it true that just about -- in
11 your typical drug trial, that it's going to start off with a
12 motion to suppress the drug evidence, right?

13 A I would not necessarily agree with that. I feel that
14 the defense attorneys are pretty good at going where the
15 evidence takes them and it's not always a relevant thing. I
16 expect them to maybe make an objection, but there's a difference
17 between suppression and challenging credibility and trying to
18 create reasonable suspicion -- or reasonable doubt, excuse me.

19 Q So you don't think it would be a useful tool for a
20 defense attorney to have cross examined several of the states
21 witnesses prior to this trial even starting?

22 A I can see where a defense attorney might want to do
23 that but if it's not appropriate in this case then I probably
24 would have objected. There was no suppression issues that I can
25 think of.

1 Q Three different weights isn't an issue?

2 A That has to do with, you know, the defense attorney
3 cross examined the chemist about that. He crossed examined the
4 officers about that and where their weights come from. And
5 that's where that would have been appropriate.

6 No, it was not a suppression issue.

7 Q And he didn't ask any of those questions prior to
8 trial, right?

9 A I don't know what you mean. Me or --

10 Q Mr. Dunn. Any of those questions that you just talked
11 about that he asked during the trial he didn't ask them any of
12 those witnesses prior to trial?

13 A Well, now you are asking me to speculate when you
14 didn't want me to earlier.

15 I don't know what Mr. Dunn did to prep his trial.

16 Q All right. Did he ask any of those questions in court
17 prior to trial? Were there any pretrial hearings that he would
18 have asked those questions?

19 A If they are not in the transcript then no.

20 Q Thank you.

21 MR. DERIEG: Beg the Court's indulgence.

22 THE COURT: Sure.

23 Q What were the discussions with Mr. Dunn like?

24 A I spoke with him by e-mail several times. I spoke with
25 him over the phone a couple of times. I know one time he came

1 to my office and we sat in my office and discussed it.

2 The offer was 15 years when I came into the case and we
3 never had a number other than 15 years. I believe it was as Mr.
4 Dunn said, he did come back with various demands or various
5 questions. None of those resulted in anything concrete.

6 I believe there was an implication from Mr. Dunn at one
7 point that to even get close to an agreement it needed to be
8 less than double digits. I don't know that it was said in that
9 way, but I know that from the State's perspective we were not
10 ever going to be under double digits as a plea offer. So I
11 think that is what Mr. Dunn was referring to is that there was
12 such a divide. There was never anything really concrete. So 15
13 years was the official offer.

14 Q And to your knowledge, what record exists of Mr.
15 Littlejohn's presence at the hearing where the plea was
16 rejected?

17 A I don't know other than I know that we did the
18 rejection hearing in front of Judge Addy, but other than what
19 that would reflect --

20 Q In those hearings when the defendant is present is the
21 defendant asked to accept or reject the plea?

22 A It depends on the judge who's presiding.

23 Q Do you remember what happened in this case?

24 A I don't specifically, other than to know that we did go
25 in to court and put a rejection on the record. I don't remember

1 the specifics of the case.

2 I do know Mr. Dunn made a statement to the effect that they
3 weren't willing to accept an offer. They did not have copies of
4 the video that was the comment that was said but that doesn't
5 reflect on Mr. Littlejohn's presence obviously.

6 Q And when a defendant rejects a plea offer is there any
7 sort of written paper work that gets done?

8 A No.

9 Q Just to have a paper trial of that rejection?

10 A No, not from our office. I mean, the clerk's office
11 keeps a court log of what transpired in court, but there's no
12 paperwork that is filed. No.

13 MR. DERIEG: Your Honor, that is all I have.
14 Thank you.

15 THE COURT: Anything else Mr. Hunter?

16 MR. HUNTER: Nothing else from the witness and I
17 ask that she be excused.

18 MR. DERIEG: No objection.

19 MR. HUNTER: The State has no further witnesses.

20 THE COURT: All right, gentlemen, I am going to
21 take this matter under advisement. I will let you
22 hear from me within the next couple of days. If
23 anybody wishes to I will give you an opportunity to
24 but it is not necessary.

25 MR. DERIEG: I can't pass up an opportunity to

1 talk Your Honor.

2 THE COURT: All right.

3 MR. DERIEG: But I will be very brief.

4 THE COURT: All right.

5 MR. DERIEG: Do you have the memo that I drafted
6 Your Honor?

7 THE COURT: Yes, sir.

8 MR. DERIEG: And I think most of it pretty well
9 speaks for itself. I'll skip to page eight would be
10 my primary focus of what I wanted to talk about in
11 summation because I think it's the most likely the
12 beginning of the end of inquiries as to whether or not
13 Mr. Littlejohn should have his guilty verdict vacated
14 and a new trial ordered. And that's dealing with the
15 drugs. I submit all the other reasons that are in
16 this memo and we talked about today we strongly
17 believe and has been outlined in the memo, that those
18 things would have caused a significant difference in
19 the outcome and for those reasons a new trial should
20 be granted. But what I want to focus on are the
21 drugs.

22 I started out as a prosecutor. I was actually a
23 law clerk for four years prior to becoming a
24 solicitor. Well, I guess the first time I was
25 technically a runner. But I spent from 2004 to 2011

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1 in the prosecutor's office and I have been out on my
2 own ever since. Between defense and solicitor, I've
3 tried to -- when I knew I was going to ask Mr. Dunn
4 how many drug trials he had counted -- or he had done,
5 I was trying to count up myself and I got to 23 and I
6 am sure I'm forgetting some I did as a second chair
7 that their were drugs, kind of ancillary aspect of the
8 case. But every true drug case that I ever seen,
9 tried, or ever been involved with starts off with a
10 motion to suppress the drug evidence. Regardless of
11 how strong or weak the motion may be I've yet to ever
12 see it get made and in fact some the mentors, the
13 solicitors I would talk to as a law clerk, would be
14 like these arguments aren't that great. Why are we
15 having to go through this. And I remember this very
16 vividly an I remember this at the beginning of every
17 drug trial I ever had as a defense attorney, is that
18 if you don't make a motion pretrial and put those law
19 enforcement officers and evidence custodians and
20 chemist on the stand pretrial then you are committing
21 malpractice. And whether or not it should be
22 classified as malpractice I do think it is wrong for
23 any defense attorney not to make that motion. It
24 compounds the error when you don't make an objection
25 to the evidence when it gets introduced at trial and

1 essentially just consent to a chain of custody and
2 consent to a proper foundation being laid and just
3 allowing the drug to come in. And as Your Honor knows
4 it forecloses Mr. Littlejohn from ever having an
5 opportunity at the appellant level to argue as to
6 whether or not those drugs should have come in. Had
7 that motion been argued it's tough to say what Judge
8 Hayes would have done.

9 I think -- I don't think that the discrepancy in
10 the weight was gone into enough during trial.
11 Certainly it wasn't gone into at all pretrial and from
12 Mr. Dunn's own admission it wasn't investigated at
13 all. And I can't imagine having a drug case where
14 it's an inference weight case. There are three
15 different weights when you go from the warrant, to the
16 incident report, to the indictment to the chemical
17 analysis. You're dealing with three different weights
18 and I can't imagine not challenging the validity and
19 requiring the State to provide the entire change of
20 custody.

21 As you heard there weren't any affidavits and I
22 don't believe that every witness in that chain was
23 called. And you know, Your Honor, there was a lot of
24 I don't know and I don't remember this and that. And
25 I find it interesting in this case because this is the

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1 first PCR I've ever done where my memo to the judge
2 quoted almost none of the trial transcript because
3 it's not so much things that were done incorrectly
4 during the trial that deprived my client of having a
5 fair trial. It was the things that weren't done. It
6 was the things that weren't done in the five-months
7 leading up to trial. It's the things that weren't
8 done pretrial.

9 It's not necessarily the errors and omissions that
10 were made during the trial, though I would contend
11 that the failure to object to the drug evidence kind
12 of goes hand-in-hand with the failure to make a motion
13 to suppress the drug evidence. But with none of that
14 having happened, let alone having done in an incorrect
15 manner, my client never got to explore those
16 possibilities of having the drugs suppressed and
17 thrown out of court for three different weights and an
18 incomplete chain of custody. And there can't be
19 anything more trial changing or verdict changing then
20 whether or not the drugs come in in a drug case. And
21 it stands to follow if the drugs don't come in the
22 case gets dismissed. And I think that it's so
23 blatantly wrong with this case is that there were no
24 efforts made on behalf of my client in the
25 investigation of the case by any of his attorneys or

1 in the pretrial or during the trial to properly
2 require the State to prove that the drugs were what
3 they said that they were and that there was no
4 discrepancy in the chain and to explain why it is that
5 there were all those different weights.

6 I appreciate Your Honor the opportunity to talk to
7 Your Honor and thank you.

8 THE COURT: Thank you, sir. Mr. Hunter.

9 MR. HUNTER: Your Honor, just a couple of points.
10 Of course Your Honor has the full transcript up there
11 and of course for Your Honor to I guess grant PCR in
12 this situation you have to find that the motion to
13 suppress or the objection to exclude the drugs would
14 have been successful. And I think we had testimony
15 from defense counsel and from the solicitor both,
16 although of course the solicitor is kind of just a
17 purview of the case. But, I mean, I would argue you
18 can't just move to suppress drugs just because. I
19 mean, obviously like Mr. Dunn said, he would need a
20 reason. There's no, as far as pretrial motion is
21 concerned, there was no Denno issue, no Bigger's
22 issue, no Franks', no search issue. And I would argue
23 that just any motion, whatever those grounds may have
24 been, wouldn't be successful. Any objection wouldn't
25 have been successful here.

L. Robinson - Cross by Mr. Derieg

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1 There was testimony at trial about the different
2 drug weights but, you know, going from 56 grams down
3 to 45 it's still well over 28 which is required for
4 trafficking, so it doesn't move it into any sort of an
5 iffy area here.

6 As far as the chain of custody is concerned, Your
7 Honor, has the transcript, and in my reading of the
8 transcript I read that the chain of possession was
9 complete. There was testimony from the C.I. giving
10 the drugs to Officer Raynor, who then put it into the
11 evidence locker. Patrick Patterson got it out of the
12 evidence locker, gave it to Cynthia Mitchm. Cynthia
13 Mitchum testified she received it from Patrick
14 Patterson. That's all in the transcript for Your
15 Honor.

16 And just to I guess any argument overall, we could
17 sit here and speculate what, you know, he should have
18 done any differently. But the State would definitely
19 rest on the testimony of Mr. Dunn and everything he
20 had to talk about with this, I guess, the pretrial
21 investigation, the plea offers, what he was dealing
22 with at trial and any assistance or non-assistance
23 that Mr. Littlejohn gave him.

24 The State rests there and asks you to deny the
25 petition.

1 THE COURT: Thank you, sir.

2 MR. DERIEG: Thank you, Your Honor.

3 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 18th day of April, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 28, 2019

s/Aileen Butler

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Tyress Antonio Littlejohn, #263016,

2017-CP-46-0582

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

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OCT 23 2018

SC Court of Appeals

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FILED-RECEIVED

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 23, 2017. Respondent submitted its Return on June 8, 2017. An evidentiary hearing was convened on April 18, 2018, at the York County Courthouse. Applicant was present at the hearing and was represented by Lir P. Derieg, Esquire. Respondent was represented by Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office.

The Court had before it the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In November 2013, the York County Grand Jury indicted Applicant for trafficking crack cocaine, 28-100 grams, first offense (2010-GS-23-4112). Geoffrey M. Dunn, Esquire represented Applicant. Assistant Solicitor Leslie D. Robinson, Esquire prosecuted the case. On October 14-15, 2014, Applicant proceeded to trial before the Honorable John C. Hayes, III. The



jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to imprisonment for fifteen years for trafficking cocaine, 28-100 grams, first offense.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on April 6, 2016. State v. Littlejohn, Op. No. 2016-UP-161 (S.C. Ct. App. filed April 6, 2016). The remittitur was issued on May 6, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel

- a. "Trial counsel did not act in Littlejohn's best interest during his defense of this case,"
- b. "Trial counsel did not properly prepare for trial in this matter,"
- c. "Trial counsel did not independently verify drug analyzation evidence in this case,"
- d. "Trial counsel did not properly investigate this case,"
- e. "Trial counsel did not move to suppress drug evidence in this case,"
- f. "Trial counsel did not require the State to produce a full chain of custody in the trial of this case,"
- g. "Trial counsel did not provide Discovery materials to or review Discovery material with Defendant prior to trial of this case,"
- h. "Trial counsel did not require State to produce all Discovery materials prior to the trial of this case,"
- i. "Trial counsel did not adequately consult with Littlejohn prior to trial of this case,"
- j. "Trial counsel did not allow Littlejohn to participate in developing a defense for the trial of this case,"
- k. "Trial counsel did not subpoena relevant evidence to aide in the defense of Littlejohn in the trial of this case,"
- l. "Trial Counsel did not interview all witnesses prior to trial of this case,"
- m. "Trial counsel did not properly impeach State's witnesses during the trial of this case,"
- n. "Trial counsel did not adequately challenge evidence entered by the State during the trial of this case,"
- o. "Trial counsel did not call witnesses known to Littlejohn during the trial of this case,"

- p. "Trial counsel did not properly advise Littlejohn on the potential sentence he could receive in this matter,"
- q. "Trial counsel waived Littlejohn's plea offer without Littlejohn's consenting or being present during such waiver."

Applicant filed supplement to his application on January 17, 2018, claiming an additional allegation of newly discovered evidence based on newly obtained information regarding Applicant's prior co-defendant.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different." *Id.* at 117-18; 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Jywan Williams. Respondent presented testimony of Geoffrey Dunn (hereinafter "Trial Counsel") and Assistant Solicitor Leslie Robinson ("Solicitor").

Applicant

At the evidentiary hearing, Applicant testified he was 33 years old when he was arrested in 2014. He stated that at the time he was working two jobs, had some college education, and he was in college when he was arrested. He testified he was facing two charges, both with the same confidential informant. The first charge was from August 14, 2012, and the second from August 16, 2012. He stated that on those dates, he was not supplying the drugs, but he was just meeting someone at his mom's house. Applicant testified he was just there at the house while the confidential informant met someone there, and he did not put the drugs in the confidential informant's hands.

Applicant testified the drugs from the two dates were weighed by law enforcement, and the drugs from August 14 were originally listed as 56 grams and were weighed at 56 grams, as well. However, he stated the drugs from August 16 were originally listed as 56 grams but changed, and they were only weighed as 49.1 grams. Applicant testified Trial Counsel did not hire a private investigator and they never discussed an investigator. He stated he wanted Trial Counsel to verify the evidence on his own. Applicant stated he met with Trial Counsel four or

five times before the trial, and they met once or twice for thirty to forty-five minutes specifically to prepare for the trial.

Applicant testified Trial Counsel told him they did not have to put up a defense because the burden was on the State. He stated that at that time there were no witnesses he wanted Trial Counsel to present on his behalf. Applicant testified there was no discussion of a plea offer, and there was a plea offer from the State but Trial Counsel did not know what it was. He stated he did not tell Trial Counsel that he wanted to reject a plea offer. Applicant testified Trial Counsel never filed any pre-trial motions, but he wanted him to. He stated he told Trial Counsel that he wanted to testify at trial, but Trial Counsel convinced him not to, and they discussed having the last closing argument if they did not put up a defense.

Applicant testified he never saw a full chain of custody, and not all of the chain of custody witnesses were called at trial. He stated he believes he was missing discovery, such as the evidence of weights of the drugs and pieces of the chain of custody. He stated there was no evidence that he ever committed a trafficking. He stated Trial Counsel should have subpoenaed all the cell phone records to prove the "deal" never existed.

Jywan Williams

Jywan Williams testified that he was charged as a co-defendant in these two drug charges. He stated he was subpoenaed by Trial Counsel to appear at the trial, but he chose to plead the Fifth Amendment because his attorney advised him to remain silent at the time. He stated he never met Trial Counsel before the trial and no one interviewed him. Williams testified the confidential informant lied to the State and told them Williams was on the video tape, but he was not actually on the tape.

Trial Counsel

Trial Counsel testified he practices primarily criminal and disability law, and he was appointed to this case from May to October of 2016. He stated he met with Applicant at least five times, he met with Applicant's wife, and he met with the President of the York chapter of the NAACP to discuss this case. He stated they discussed with Applicant the evidence, plea deals, the trial, and the discovery. Trial Counsel explained that he cannot get the entire discovery file because the State is not required to give them information about the confidential informant. He stated he did get the incident report, the evidence logs, and the drug report.

Trial Counsel testified Applicant told him the person he was in 2012 was different than who he was now, and Applicant had bettered himself, gotten a job, and gone to college. He stated Applicant did not want to hear what Trial Counsel had to tell him. Trial Counsel testified he discussed a plea offer with Applicant for fifteen years, but Applicant did not want to do any of the conditions or negotiate with the State. Trial Counsel stated the State presented a video, which was shaky and unfocused, but in the video Applicant was clearly visible, holding a bag on the floorboard of the car which was filled with a white substance. He stated Applicant would not tell him what the substance in the bag was, which made it difficult to develop a defense.

Trial Counsel testified he subpoenaed Jywan Williams to appear at trial, but Williams invoked his Fifth Amendment right to remain silent and did not testify on his behalf. He stated he could not interview Williams because he was represented by an attorney and the attorney would not allow him to speak with Williams. Trial Counsel testified he discussed the plea offer with Applicant and made Applicant aware he was going to reject the plea. He stated Applicant was present at the time and never told Trial Counsel he wanted to plead guilty.

Trial Counsel testified his investigation consisted of going over the evidence with Applicant and making notes on the video tape. He stated he probably did not show the video to Applicant because of the order of confidentiality with the confidential informant ordered by the Solicitor's Office. Trial Counsel testified there was some discrepancy in the weight of the drugs from the police report to the drug report, but the both amounts were way over the 28 gram threshold required for this criminal charge, so he believed it did not make a difference in his case. He stated there was no reason to challenge the amount of drugs at trial because it would not make a difference. Trial Counsel testified he did not recall discussing getting an independent expert with Applicant. Trial Counsel explained that Applicant insisted to him that the material in the bag was not crack, but Applicant could never tell him what it was, so Trial Counsel did not suspect that it was not crack.

Trial Counsel testified that if he thought there was a reason to challenge the chain of custody he would have done so. He stated he was not aware of any materials that were missing from discovery that came out at trial. He testified he advised Applicant of his right to testify at trial, but he did not specifically recall the conversation. Trial Counsel testified he impeached the confidential informant at trial with the charges he was facing. He stated he advised Applicant of his exposure and the potential sentences he could get at trial during their discussions about the plea offer and also at the rejection hearing. He stated Applicant did not sign any paperwork to reject the plea offer, but it was not typical to do so.

Trial Counsel testified that he will object to drugs if there is a reason to do so, but he will not if there is no valid basis to object. He stated that in this case there was no reason to move to suppress the drugs. He stated Applicant never told him he was not at the scene of the crime, and he never denied that it was him in the video tape. Trial Counsel stated it was clear to him that



Applicant was on the video because his face was clearly visible and his tattoos on the video match his tattoos.

Solicitor

Assistant Solicitor Leslie Robinson testified she chose to go to trial on the August 16, 2012 drug transaction because there was a video that very clearly showed drugs in Applicant's hand with a clear shot of his face and a visible, prominent tattoo that you could easily see on his arm in person. She testified the discovery she provided to Trial Counsel would have included the incident report, Applicant's criminal history, screenshots from the video which showed his face, and sheets from custody. The Solicitor testified that Applicant has a right to know the identity of the confidential informant if he chooses to, but their office policy is that if they tell him, they will not offer any more plea deals. She testified that the discrepancies in the drug weights did not affect the criminal charge because all the possible weights were within the same range for the offense.

The Solicitor testified she does not use affidavits to prove chain of custody, and the defense is able to come and see the actual evidence if they chose to. She stated this case did not involve a missing witness, and she called every witness in the chain of custody at trial. The Solicitor testified she dropped the charges against the co-defendant, Jywan Williams, because the evidence against him was not as strong, but the video they had clearly showed Applicant, whereas you could not clearly see Williams in the video. She stated she had no reason not to believe it was Williams in the vehicle on the tape, but she could not clearly see him on the tape, so she dropped his charges. She testified she never had any indication that the confidential informant was lying about Williams.

The Solicitor testified she did not recall having any concerns about pre-trial issues in this case because there was no warrant, there were no statements given, there was no photo lineup, and there was no traffic stop. She stated those are usually the types of issues that create pre-trial motions, but here there were none. She testified that if Trial Counsel had moved to suppress the drugs based solely on the allegation that they were listed in different weights she would have objected because it was not appropriate for him to do so just to size up the witnesses in the case. She testified that when she came into the case, there was a fifteen year plea offer, and she participated in plea negotiations with Trial Counsel. She testified there was a plea offer rejection hearing in front of Judge Addy, but she did not recall the specifics.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each specific allegation is addressed below.

- a. *"Trial counsel did not act in Littlejohn's best interest during his defense of this case"*

This Court finds this allegation meritless. The record before the Court and the testimony presented at the evidentiary hearing clearly shows Trial Counsel's representation of Applicant was well within reasonable professional norms, and he did all he could to represent Applicant's

best interests. Trial Counsel fully discussed the case and the evidence with Applicant, fully prepared for trial, zealously argued on his behalf, and also participated in and discussed plea negotiations on his behalf, which Applicant rejected. Applicant has failed to prove any deficiency in any of Trial Counsel's actions or inactions, and that anything counsel could have done differently would have affected the outcome of the trial. Accordingly, this allegation is denied and dismissed with prejudice.

b. "Trial counsel did not properly prepare for trial in this matter"

This Court finds this allegation meritless. Applicant himself testified at the evidentiary hearing that he met with his attorney multiple times, and at least two of those meetings were specifically to discuss their trial preparation. Trial Counsel's testimony shows he thoroughly reviewed all evidence and discovery material with Applicant and alone to prepare for trial. He testified that he discussed potential trial defenses to use with Applicant, but Applicant made it difficult for him to develop a defense by refusing to tell him what the white substance in the bag he was recorded holding was. Applicant has failed to present credible evidence of any way Trial Counsel should have better prepared for trial and thus has failed to meet either prong of the Strickland test. Therefore, this allegation is denied and dismissed with prejudice.

c. "Trial counsel did not independently verify drug analyzation evidence in this case"

This Court finds Applicant has failed to prove deficiency in failing to have an independent verification of the drug analyzation evidence. Applicant was charged with and convicted of trafficking crack cocaine, 28 – 100 grams. While the testimony showed there may have been a dispute between whether the drugs weighed either 56 grams or 49.1 grams, neither of these weights are anywhere near the bottom threshold of this charge. Because the alleged discrepancy in drug weights was so small and very distant from the threshold for a lesser charge,

it was reasonable for Trial Counsel to choose not to challenge this evidence. For the same reason, Applicant can show no prejudice. Even if Trial Counsel had independently verified the drug evidence weight, it very likely would not have been weighed at less than 28 grams, so his charge and conviction would be the same regardless. Accordingly, this allegation is denied and dismissed.

d. "Trial counsel did not properly investigate this case"

This Court finds Applicant has failed to meet his burden of proving anything Trial Counsel failed to investigate which would have changed the outcome of the trial. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Trial Counsel testified his investigation consisted of reviewing all discovery and evidence against Applicant as well as discussion the facts of the case with Applicant to develop a defense. In a case such as this, Trial Counsel's strategy to attack the State's evidence rather than gathering more of his own is reasonable given the facts and circumstances of the case. Trial Counsel further testified he did not recall a conversation with Applicant about hiring an independent

expert. This Court finds Trial Counsel's choices in investigating the case were reasonable under the circumstances, and Applicant has failed to present any evidence of deficiency or any resulting prejudice. This allegation is denied and dismissed with prejudice.

e. "Trial counsel did not move to suppress drug evidence in this case"

This Court finds Trial Counsel was not deficient for failing to move to suppress the drug evidence in this case, as there was no valid legal basis to suppress the evidence based on the facts and circumstances of the case. This charge resulted from a drug buy with a confidential informant, and there was no search warrant or traffic stop, etc., by which to challenge the admission of the drug evidence. Trial Counsel credibly testified he saw no legal reason to move to suppress the drugs in this case, and if there had been a reason he would have made the motion. Applicant has failed to meet his burden of proving any basis for a motion to suppress the drugs, or that any such motion would have been successful and changed the outcome of the trial. This allegation is denied and dismissed with prejudice.

f. "Trial counsel did not require the State to produce a full chain of custody in the trial of this case"

This Court finds Applicant has failed to prove any missing sections of the chain of custody in this case or that Trial Counsel's failure to object in this manner would have affected the outcome of the trial. The Solicitor credibly testified she did not recall anything missing from the chain of custody, and she presented all chain of custody witnesses at trial in this case. Trial Counsel credibly testified that if he thought there was a reason to challenge the chain of custody, he would have, and he did not in this case. Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

- g. *"Trial counsel did not provide Discovery materials to or review Discovery material with Defendant prior to trial of this case"*

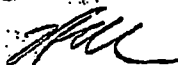
This Court finds Trial Counsel did fully review and discuss all available discovery material with Applicant prior to trial. Trial Counsel credibly testified there was some evidence he was not permitted to show Applicant through order of the Solicitor's Office per their office policy, such as the video tape, which revealed the identity of the confidential informant. While Applicant could have elected to view the videotape and learn the identity of the confidential informant if he so chose, he would have lost his ability to negotiate a potential plea offer. He was, however, shown still photographs which were pulled from the video, which showed the evidence against him in a clear shot of his face and arms holding the drugs in question. Trial Counsel reviewed all available discovery with Applicant before the trial. Therefore, this allegation is denied and dismissed with prejudice.

- h. *"Trial counsel did not require State to produce all Discovery materials prior to the trial of this case"*

This Court finds, based on the credible testimony of the Solicitor and Trial Counsel, that the State did produce all discovery materials to Trial Counsel prior to the trial of this case. Applicant has failed to meet his burden of proving otherwise, and this allegation is denied and dismissed with prejudice.

- i. *"Trial counsel did not adequately consult with Littlejohn prior to trial of this case"*

This Court finds, as discussed above, Applicant himself testified Trial Counsel met with him at least five times to discuss his case, and at least two of those meetings were specifically to prepare for the trial. Trial Counsel's testimony also showed they met at least five times and thoroughly discussed the case, the facts, potential defenses, the evidence against him, and plea negotiations. "Even if the meetings were brief, this fact alone is not indicative of inadequate trial



preparation." Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Easter v. Estelle, 609 F.2d 756, 759 (5th Cir.1980) (recognizing that brevity of time spent in consultation with defendant, without more, did not establish that trial counsel was ineffective)). Applicant has failed to prove that Trial Counsel was deficient in his consultations with him and that any further consultation would have changed the outcome of the trial. This allegation is denied and dismissed with prejudice.

j. *Trial counsel did not allow Littlejohn to participate in developing a defense for the trial of this case"*

This Court finds this allegation meritless. Trial Counsel credibly testified he fully discussed potential defenses with Applicant, but it was difficult for him to develop a defense because Applicant never denied being in the video or at the scene but would not tell him what was in the bag. Applicant has failed to show that Trial Counsel somehow prevented Applicant from participating in his trial preparation. This allegation is denied and dismissed with prejudice.

k. *"Trial counsel did not subpoena relevant evidence to aide in the defense of Littlejohn in the trial of this case"*

This Court finds Applicant failed to present any favorable evidence which should have been used in his trial to change the outcome of the trial. The South Carolina Supreme Court has repeatedly held a PCR applicant must produce the favorable evidence he alleges should have been used in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from failure to present this evidence at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The applicant's mere speculation what the evidence would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Accordingly, Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

l. "Trial Counsel did not interview all witnesses prior to trial of this case"

This Court finds Applicant has failed to meet his burden of proving that Trial Counsel failed to interview favorable witnesses which were available for him to interview and that those witness's testimony would have changed the outcome of the trial. At the evidentiary hearing, Applicant presented testimony from his former co-defendant, Jywan Williams, and argued Trial Counsel should have interviewed this witness and used his testimony at trial. However, Trial Counsel credibly testified that he could not interview Williams before the trial because Williams was represented by counsel, and the attorney would not let him speak to Williams. He further testified that he subpoenaed Williams for trial, but Williams invoked his Fifth Amendment right against self-incrimination and refused to testify for Applicant. Under these facts and circumstances, it was reasonable for Trial Counsel not to interview this witness. Further, because Williams chose not to testify at Applicant's trial, Applicant can show no resulting prejudice from the failure to interview him. This allegation is denied and dismissed with prejudice.

m. "Trial counsel did not properly impeach State's witnesses during the trial of this case"

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient for failing to properly impeach any witnesses at trial. The record shows Trial Counsel thoroughly cross-examined and impeached all necessary witnesses, including the confidential informant, who he impeached with the charges he was facing if he did not cooperate with the State. This Court finds Trial Counsel's actions reasonable under the circumstances. Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

n. "Trial counsel did not adequately challenge evidence entered by the State during the trial of this case"

This Court finds Trial Counsel's challenge to the State's evidence in this case was adequate and reasonable under the facts and circumstances of this case. Applicant has failed to provide any credible evidence of deficiency on this ground and has not presented a different way of challenging the evidence which would have changed the outcome of the trial. Therefore, this allegation is denied and dismissed with prejudice.

o. "Trial counsel did not call witnesses known to Littlejohn during the trial of this case"

This Court finds Applicant has failed to present testimony of any witness which Trial Counsel did not call at trial. Although he presented testimony of co-defendant Williams, the record shows Trial Counsel did subpoena this witness and call him to testify at trial, but Williams refused to testify and invoked his Fifth Amendment right against self-incrimination at the trial. Trial Counsel was not deficient in any regard with this witness. Applicant has failed to prove deficiency or prejudice, and this allegation is denied and dismissed with prejudice.

p. "Trial counsel did not properly advise Littlejohn on the potential sentence he could receive in this matter"

This Court finds this allegation meritless. Trial Counsel credibly testified at the evidentiary hearing that he advised Applicant of his exposure and the potential sentence he could receive if convicted at trial. He stated he knew he did so, although he could not specifically remember when the conversation took place. He stated he advise Applicant of this during their discussion of the plea offer and at the plea offer rejection hearing, as well. This Court finds Applicant was fully advised of the potential sentence he could receive at trial. Furthermore, even if this allegation were true, Applicant can show no resulting prejudice because any further advice

on this matter would not have changed the outcome of the trial. Therefore, this allegation is denied and dismissed with prejudice.

g. "Trial counsel waived Littlejohn's plea offer without Littlejohn's consenting or being present during such waiver"

This Court finds this allegation meritless. Trial Counsel credibly testified that he fully discussed the State's plea offer with Applicant, and Applicant did not want to consent to the terms of the offer and rejected it. He further testified, and the Solicitor testified as well, that Applicant rejected this offer himself before the trial court at a plea rejection hearing on the record. Applicant has failed to meet his burden of proving this allegation, and it is denied and dismissed with prejudice.

Testimony of Jywan Williams

Finally, this Court finds all of Applicant's allegations regarding co-defendant Jywan Williams to be meritless. First, this Court notes Williams' testimony was not credible and was directly contradicted by the credible testimony of the Solicitor. The Solicitor testified she only dropped the charges against Williams because the evidence against him was, in her opinion, not strong enough to pursue the charge. On the contrary, she testified the evidence against Applicant was stronger, as it included a videotape with a very clear picture of Applicant, with recognizable features, holding the drugs in the vehicle. The Solicitor testified she had no indication that the information she received from the confidential informant was a lie.

Furthermore, Williams' testimony cannot be the ground for a successful claim of ineffective assistance of counsel, as Trial Counsel did subpoena this witness to testify at trial, but Williams refused to testify and invoked his right to remain silent. Trial Counsel could have done nothing further to secure this testimony without violating Williams' rights. Therefore, his actions were reasonable and he cannot be deficient in this regard.

Last, Williams' testimony does not qualify as "newly discovered evidence" which would entitle Applicant to a new trial. "A party requesting a new trial based on after-discovered evidence must show that the evidence (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching." Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Williams' testimony fails to meet all five factors of the test for newly discovered evidence.

The testimony could have been discovered before the trial through the exercise of due diligence. It likely would not have changed the outcome of the trial, as the testimony was speculative and not credible, and in light of the strong evidence against Applicant, including a videotape with a clear shot of Applicant holding the drugs during the transaction, this testimony likely would not have affected the jury's verdict. The testimony is not directly material to the issue of guilt or innocence, and the testimony is merely impeaching of the confidential informant. Therefore, the testimony does not satisfy the test for newly discovered evidence which would entitle Applicant to a new trial.

Therefore, Applicant has failed to meet his burden of proving any way that Williams' testimony would entitle him to post-conviction relief, and these allegations are denied and dismissed with prejudice.

[conclusion and signature page to follow]

VII. CONCLUSION

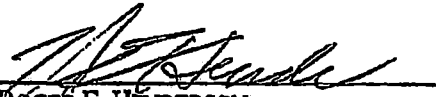
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

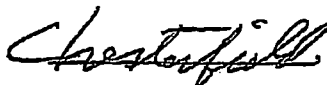
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of August, 2018.


 ROGER E. HENDERSON
 Presiding Judge
 Sixteenth Judicial Circuit

 South Carolina

WITNESSES

DEU Harrelson

tr

ARREST WARRANT NUMBER

2013A4610200743

ACTION OF GRAND JURY

TRUE BILL

Kathryn Lee Neal
Foreperson of Grand Jury

Date: 11-14-2013

VERDICT
guilty

Levin Smith
Foreperson of Court

Date: 10/15/14

15/14

DOCKET NO. 2013-GS-46-04112

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 14, Term 2013

THE STATE

vs.

TYRESS LITTLEJOHN

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Co 3 375 C
C)

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 November 14, 2013, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

On or about August 16, 2012, the Defendant, Tyress Littlejohn, did know, sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of crack cocaine, a cocaine base. Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

FILED
CLERK OF COURT
YORK COUNTY, SC
11/26/13

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Heasa Weaver
ASSISTANT SOLICITOR