

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

TIMOTHY CROSBY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002279

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	Case No.
	)	2013-GS-47-00022
Plaintiff,	)	
v.	)	
	)	ORIGINAL
	)	
Timothy Terrell Crosby.	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 26, 2015 before The Honorable Alexander S. Macaulay in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Lawrence Gerald Wedekind, Esq.,
 Joshua Richard Underwood, Esq.,
 Appearing for The State Attorney General Office.

Michael Scott McElhannon, Esq.,
 Appearing for the Defendant

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I-N-D-E-X

JANUARY 26, 2015

(STATE OF SOUTH CAROLINA -v- TIMOTHY TERRELL CROSBY)

(VOIR DIRE AND JURY SELECTION ONLY)

(2013-GS-47-00022)

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EXHIBITS

IDENTIFICATION ENTERED

NO EXHIBITS OFFERED

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P R O C E E D I N G S

(10:42 A.M.)

THE COURT: All right, let's see, uh, can I see the attorneys on the first case, please?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: All right ladies and gentlemen, this is a term of General Sessions Court; it is sometimes called Criminal Court. Its purpose is to resolve questions of alleged criminal conduct arising between The State of South Carolina and the Defendant in a fashion that will ensure that justice under the law is accomplished.

Um, Mr. McElhannon?

MR. MCELHANNON: Yes, Your Honor?

THE COURT: Would you approach, please?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: Now, the trial of a case begins with the selection of a jury. Both The State and the Defendant are entitled to jurors who approach the case with an open mind. The trial jury must be as free as humanly possible from any bias, prejudice, or sympathy for either side and

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1 free from any previous either ideas on the facts of the
2 case or the law of the case.

3 Therefore, certain questions will be asked of you,
4 the jury -- petit jury panel. Now, these questions will
5 be asked or designed to ensure that each side has a fair
6 and impartial jury.

7 I might note further, if any person should talk with
8 you or attempt to talk with you about any case scheduled
9 with this term of Court, it would be your solemn duty to
10 immediately report that matter to The Court.

11 Now, we'll begin the selection of the trial jury.
12 Now, if any member of the jury panel cannot hear me, if
13 you would please raise your hand. Now, that's a rather
14 interesting question because if you couldn't hear me you
15 wouldn't know to raise your right hand; however, if you
16 see my lips moving and you don't understand what I'm
17 saying or what I say is not clear to you, if you would,
18 please, just indicate at that time and I'll try to be,
19 uh, a little bit more distinct in my -- my speech.

20 Now, ladies and gentlemen of the jury panel --
21 jury -- petit jury panel, uh, we are about to commence
22 the trial of the case entitled *The State of South*
23 *Carolina versus Timothy Crosby*, 2013-GS-47-22. (After
24 pause) The charge in the Bill of Indictment, in count
25 one, Conspiracy to Traffic Cocaine; and count -- the

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1 second count, Trafficking Cocaine Base.

2 Now, the Defendant is rep- -- oh, excuse me. The
3 State of South Carolina is represented by Mr. Wedekind of
4 The Attorney General's Office. If you would, please, um,
5 Mr. Wedekind, stand and introduce yourself. And if
6 anybody will be assisting you, uh, on the trial of this
7 case, if you would please introduce them too?

8 **MR. WEDEKIND:** Yes, sir. Uh, my name's Lawrence
9 Wedekind; I work at The State Grand Jury in Columbia with
10 The Attorney General's Office and I will be the lead
11 prosecutor. Uh, joining me will be Mr. Josh Underwood,
12 he's also an Assistant Attorney General with The State
13 Grand Jury who is currently in Greenville doing something
14 in Federal Court but he will join me and work with me.

15 Thank you, Your Honor.

16 **THE COURT:** Thank you, sir. Now, the Defendant,
17 Mr. Timothy Crosby, is, um, represented by
18 Mr. McElhannon. Mr. McElhannon, if you'd stand,
19 introduce yourself, and your client?

20 **MR. MCELHANNON:** Thank you, Your Honor. My name is
21 Scott McElhannon; I'm a lawyer, I practice law here in
22 Anderson and in the Upstate, and this is my client,
23 Timothy Crosby.

24 **THE COURT:** Very good; thank you, sir. Is there any
25 member of the jury panel related by blood or marriage to

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1 the Defendant, Mr. Timothy Crosby? If so, please stand.
2 I might add, or -- or a close personal friend or business
3 associate of Mr. Crosby. If so, please stand.

4 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

5 **THE COURT:** Was any member of the jury panel a
6 member of the State Grand Jury that found and returned
7 the indictment in this case? If so, please stand.

8 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

9 **THE COURT:** Now, I'm going to, uh, call out or list
10 a, uh, series of names of potential witnesses. Now,
11 these are witnesses who may be called but they do not
12 have to be called during the trial of this case.

13 Agent -- and if they are in the courtroom, if they
14 would please stand when their names are called. The
15 reason I do that is I -- today it seems that we might not
16 know people by their names but we might -- might
17 recognize them. So if any potential witnesses are in the
18 courtroom, when their names are called if they would
19 please stand.

20 Agent Casey Collier of the South Carolina Law
21 Enforcement Division. Thank you, sir.

22 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

23 **THE COURT:** Anthony Murray.

24 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

25 **THE COURT:** Lieutenant Baker of the Anderson County

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1 Sheriff's Office. Thank you, sir.

2 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

3 **THE COURT:** Officer D. L. Brin- -- Brinston of the
4 Anderson, uh, Police Department. Thank you, sir.

5 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

6 **THE COURT:** William Angelo Johnson.

7 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

8 **THE COURT:** Jeffery Parker.

9 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

10 **THE COURT:** Nikki Hughes, South Carolina Law
11 Enforcement Division Evidence -- Evidence Technician.

12 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

13 **THE COURT:** Patricia Crooks, South Carolina Law
14 Enforcement Division, Evidence Technician.

15 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

16 **THE COURT:** Jill Clark, South Carolina Law
17 Enforcement Division, uh, Chemist.

18 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

19 **THE COURT:** And the -- Mr. Timothy Terrell, uh,
20 Crosby is the, uh, Defendant.

21 **MR. MCELHANNON:** Yes, Your Honor.

22 **THE COURT:** And, uh, Phillip Walls. Phillip Walls
23 here?

24 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

25 **THE COURT:** All right, again now, is there any

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1 member of the jury panel related by blood or marriage,
2 close personal friend or business associate of Agent
3 Casey Collier, the South Carolina Law Enforcement
4 Division; Anthony Murray; Lieutenant Baker, of the
5 Anderson County Sheriff's Office; Officer D. L. Brinston,
6 of the Anderson, uh, Public -- or, Police Department;
7 William Angelo Johnson; Jeffery Parker; Nikki Hughes,
8 Patricia Crooks, Jill Clark, all of those South Carolina
9 Law Enforcement Division, uh, Evidence Technicians and
10 Chemists. The Defendant, of course, Timothy Terrell
11 Crosby; and Phillip Walls. If so, please stand at this
12 time.

13 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

14 **THE COURT:** Has any member of the jury panel
15 expressed or formed an opinion about this case? If so,
16 please stand.

17 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

18 **THE COURT:** Is there any member of the jury panel
19 aware of any interest, bias, or prejudice towards either
20 the Defendant or The State -- or The State of South
21 Carolina?

22 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

23 **THE COURT:** Does any member of the panel know of any
24 reason why he or she could not give both The State of
25 South Carolina and the Defendant a fair and impartial

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1 trial? If not, please stand.

2 (WHEREUPON, NO MEMBER OF THE JURY PANEL STOOD.)

3 **THE COURT:** All right, any further questions from
4 The State?

5 **MR. WEDEKIND:** No, Your Honor.

6 **THE COURT:** Any additional questions from the
7 Defense?

8 **MR. MCELHANNON:** No, Your Honor.

9 **THE COURT:** Very good. Now, ladies and gentlemen,
10 the way we draw a jury in General Sessions Court is that
11 the, uh, Court -- or, the Clerk of Court rather, has
12 prepared, uh, a list of jurors, uh, and it's done by the
13 computer so it's a random list of jurors. And, uh, as
14 your name is called, if you would please, come forward,
15 bring with you anything that you might have with you --
16 personal items -- and you'll come forward. And let's
17 see, could we have a Bailiff here at the, uh, gate?

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
19 CONFERENCE, OFF THE RECORD.)

20 (WHEREUPON, PROCEEDINGS CONTINUED.)

21 **THE COURT:** All right, uh, as your name is called,
22 if you would please, come forward. Now, it's going to --
23 yes, sir?

24 **MR. WEDEKIND:** Your Honor, I just want to make sure
25 that The Court was aware that we're in agreement that the

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1 strikes are five and five.

2 **THE COURT:** Five and five?

3 **MR. WEDEKIND:** Yes, sir.

4 **MR. MCELHANNON:** That's correct, Your Honor.

5 **THE COURT:** I was gonna announce that before we --
6 we did that, but okay. Again, uh, as Counsel note, uh,
7 this is a five and five strike.

8 And as I said, though, um, as your names are called,
9 if you would please, come forward and, uh, come through
10 the gate where the Bailiff is and stand at the front of
11 the courtroom looking towards the back.

12 And, um, as the attorneys have said, there are five
13 strikes apiece. In other words, uh, each side will have,
14 uh, at least five strikes.

15 And what we will do is when, uh, you're standing
16 here looking, uh, towards the back, The State, um, will
17 either say, uh, present the juror or excuse the juror.
18 And if a juror is presented, then the Defendant will go
19 forward and say either swear the juror or excuse the
20 juror. Now, if you -- you're a juror to be sworn, then,
21 uh, you will go over to the Bailiff at the, uh, jury box
22 and be seated.

23 Um, now, I think the computers are working, and so
24 we should have a list in just a moment. And I might tell
25 you a little bit about the history of this.

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1 But, of course, we didn't have computers until just
2 a few years ago, and the way we would draw a jury in, uh,
3 in General Sessions or Criminal Court is, we used to have
4 a little drum like you do at a Bingo game or something
5 like that, and The Clerk would have to prepare, uh -- uh,
6 a jury list and then cut it up into little individual
7 names and each name was put in a little white capsule and
8 put in the drum. And then you had to have a -- a child
9 who was too young to read or write or a person who was,
10 uh, legally blind to come forward and reach into the,
11 um -- uh, drum and pull out a capsule. Hand it to the
12 Clerk of Court and the Clerk of Court would open the
13 capsule and read the name. And that's how you would call
14 the juror forward. But fortunately, we have a computer
15 now and it seems to be working and I think we've got a
16 jury list.

17 Now remember, this is a random list of your names..
18 In other words, it will not correspond to your, uh, juror
19 number, uh, but is, uh -- uh, as I say, a random list.

20 Now, um, I think we should have two alternates, so
21 then -- then that would be two and one on the strikes on
22 the alternates.

23 Very good then, Mr. Clerk, give us a jury.

24 **CLERK OF COURT:** If it pleases The Court. Again,
25 if -- if I -- if you would, when I call your name, just

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1 come and stand in front of me and turn around and face
2 the lawyers. Our first potential juror is Anna G. Sauls.

3 **MR. WEDEKIND:** What -- what's the number, please?

4 **CLERK OF COURT:** Uh, I'm sorry, juror number one-
5 twenty-two.

6 (JUROR FORWARD.)

7 **CLERK OF COURT:** Right here, Ms. Sauls. What say
8 you for The State?

9 **MR. WEDEKIND:** Please present the juror.

10 **CLERK OF COURT:** What say you for the Defense?

11 **MR. MCELHANNON:** Please swear the juror.

12 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

13 **CLERK OF COURT:** Juror number thirty-seven, Victoria
14 E. Donaldson.

15 (JUROR FORWARD.)

16 **CLERK OF COURT:** Right this way, ma'am; thank you.
17 What say you for The State?

18 **MR. WEDEKIND:** Please present the juror.

19 **CLERK OF COURT:** What say you for the Defense?

20 **MR. MCELHANNON:** Please swear Ms. Donaldson.

21 **CLERK OF COURT:** That way, please, ma'am.

22 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

23 **CLERK OF COURT:** Juror number one-nineteen, Jonathan
24 A. Rogers.

25 (JUROR FORWARD.)

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1 **CLERK OF COURT:** What say you for The State?

2 **MR. WEDEKIND:** Please excuse the juror.

3 **CLERK OF COURT:** You may have a seat back out in the
4 audience, please.

5 (WHEREUPON, JURY RETURNED TO HIS SEAT.)

6 **THE COURT:** Juror number ninety-eight, Patrick J.
7 McDonough.

8 (JUROR FORWARD.)

9 **CLERK OF COURT:** What say you for The State?

10 **MR. WEDEKIND:** Please present the juror.

11 **CLERK OF COURT:** What say you for the Defense?

12 **MR. MCELHANNON:** Please excuse Mr. McDonough.

13 **CLERK OF COURT:** Have a seat back out in the
14 audience, please, sir.

15 (WHEREUPON, JUROR RETURNED TO HIS SEAT.)

16 **CLERK OF COURT:** Juror number one-eleven, Laura
17 (sic) A. Phillips -- Lori A. Phillips.

18 (JUROR FORWARD.)

19 **MS. PHILLIPS:** That's correct.

20 **CLERK OF COURT:** What say you for The State?

21 **MR. WEDEKIND:** Please present the juror.

22 **CLERK OF COURT:** What say you for the Defense?

23 **MR. MCELHANNON:** (After conference) Please swear the
24 juror.

25 **CLERK OF COURT:** That way, please, ma'am.

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1 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

2 **CLERK OF COURT:** Juror number eighty-seven, Raechel
3 (sic) N. Knight.

4 (JUROR FORWARD.)

5 **CLERK OF COURT:** What say you for The State?

6 **MR. WEDEKIND:** Please present the juror.

7 **CLERK OF COURT:** What say you for the Defense?

8 **MR. MCELHANNON:** Please swear the juror.

9 **CLERK OF COURT:** That way, please, ma'am.

10 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

11 **CLERK OF COURT:** Juror number sixty-seven, Emily R.
12 Hilton.

13 (JUROR FORWARD.)

14 **CLERK OF COURT:** Right there, please, ma'am; thank
15 you. What say you for The State?

16 **MR. WEDEKIND:** Please present the juror.

17 **CLERK OF COURT:** What say you for the Defense?

18 **MR. MCELHANNON:** Please swear Ms. Hilton.

19 **CLERK OF COURT:** That way, please, ma'am.

20 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

21 **CLERK OF COURT:** Juror number forty-four, Kathy L.
22 Fruster.

23 (JUROR FORWARD.)

24 **CLERK OF COURT:** Right there, please, ma'am. What
25 say you for The State?

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1 **MR. WEDEKIND:** Please excuse the juror.

2 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

3 **CLERK OF COURT:** Juror number seventy-one, Lou C.
4 Howard.

5 (JUROR FORWARD.)

6 **CLERK OF COURT:** What say you for The State?

7 **MR. WEDEKIND:** Please present the juror.

8 **CLERK OF COURT:** What say you for the Defense?

9 **MR. MCELHANNON:** (After conference) Please swear
10 Ms. Howard.

11 **CLERK OF COURT:** That way, please, ma'am.

12 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

13 **CLERK OF COURT:** Juror number ninety-seven, Deena L.
14 McClain.

15 (JUROR FORWARD.)

16 **CLERK OF COURT:** Right there, please, ma'am. What
17 say you for The State?

18 **MR. WEDEKIND:** Please excuse the juror.

19 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

20 **CLERK OF COURT:** Juror number fifty-five, Jason L.
21 Gosnell.

22 (JUROR FORWARD.)

23 **CLERK OF COURT:** Right here, sir. What say you for
24 The State?

25 **MR. WEDEKIND:** Please excuse the juror.

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1 **CLERK OF COURT:** Have a seat, please, sir.

2 (WHEREUPON, JUROR RETURNED TO HIS SEAT.)

3 **CLERK OF COURT:** I have that as four strikes for
4 you. Juror number one, Scelina W. Aleem.

5 (JUROR FORWARD.)

6 **CLERK OF COURT:** Right there; thank you, ma'am.
7 What say you for The State?

8 **MR. WEDEKIND:** And, please excuse the juror.

9 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

10 **CLERK OF COURT:** Your Honor, I have that's five
11 strikes for The State.

12 **THE COURT:** Yes, sir.

13 **CLERK OF COURT:** Juror number twenty-eight, Alyssa
14 D. Cheek.

15 (JUROR FORWARD.)

16 **CLERK OF COURT:** Right there, please, ma'am. What
17 say you for The Defense?

18 **MR. MCELHANNON:** (After conference) Please excuse
19 Ms. Cheek.

20 **CLERK OF COURT:** Be seated, please, ma'am.

21 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

22 **CLERK OF COURT:** Juror number one-thirteen, Jessica
23 A. Porter.

24 (JUROR FORWARD.)

25 **CLERK OF COURT:** Right here, please, ma'am. What

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1 say you for the Defense?

2 **MR. MCELHANNON:** Please swear the juror.

3 **CLERK OF COURT:** That way, please, ma'am.

4 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

5 **CLERK OF COURT:** Juror number ninety, James C.
6 Lasley the second.

7 (JUROR FORWARD.)

8 **CLERK OF COURT:** What say you for the Defense?

9 **MR. MCELHANNON:** Please excuse Mr. Lasley.

10 (WHEREUPON, JUROR RETURNED TO HIS SEAT.)

11 **CLERK OF COURT:** Juror number one-thirty-seven,
12 Bobbie M. Thompson.

13 (JUROR FORWARD.)

14 **THE COURT:** Mr. Clerk.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
16 CONFERENCE, OFF THE RECORD.)

17 (WHEREUPON, PROCEEDINGS CONTINUED.)

18 **CLERK OF COURT:** All right, does The State have any
19 reason to strike her---

20 **THE COURT:** For cause.

21 **MR. WEDEKIND:** No, sir.

22 **CLERK OF COURT:** ---for cause? For Defense?

23 **MR. MCELHANNON:** (After conference) Please present
24 Ms. Thompson.

25 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

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1 **CLERK OF COURT:** Juror number seventy-four, Kenneth
2 D. Hunter.

3 (JUROR FORWARD.)

4 **CLERK OF COURT:** Does The State have any reason to
5 cause a strike?

6 **MR. WEDEKIND:** I'll beg The Court's indulgence for a
7 moment. (After conference) No, Your Honor.

8 **THE COURT:** Very good.

9 **CLERK OF COURT:** What say you for the Defense?

10 **MR. MCELHANNON:** Please swear the juror.

11 **CLERK OF COURT:** That way, Mr. Hunter.

12 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

13 **CLERK OF COURT:** Juror number forty-five, Tammy L.
14 Gable.

15 (JUROR FORWARD.)

16 **CLERK OF COURT:** Does The State have any reason to
17 strike for cause?

18 **MR. WEDEKIND:** No, sir.

19 **CLERK OF COURT:** What say you for the Defense?

20 **MR. MCELHANNON:** (After conference) Please excuse
21 the juror.

22 **CLERK OF COURT:** Have a seat, please.

23 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

24 **CLERK OF COURT:** Mr. McElhannon, I have that's four
25 strikes.

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1 **MR. MCELHANNON:** Yes, sir.

2 **CLERK OF COURT:** Okay. Juror number twenty-four,
3 Sara L. Campbell.

4 (JUROR FORWARD.)

5 **CLERK OF COURT:** Right there, please, ma'am. What
6 say you, uh -- well, does The State have any reason to
7 strike---

8 **MR. WEDEKIND:** No cause from The State.

9 **CLERK OF COURT:** ---for cause? Thank you. What say
10 you for the Defense?

11 **MR. MCELHANNON:** Please excuse the juror.

12 (WHEREUPON, JUROR RETURNED TO HER SEAT.)

13 **CLERK OF COURT:** There's all of our strikes.

14 **THE COURT:** That's right; but for cause.

15 **CLERK OF COURT:** Okay. Juror number forty-seven,
16 Fyead Galloway.

17 (JUROR FORWARD.)

18 **CLERK OF COURT:** Right here, Mr. Galloway; thank
19 you, sir. Any reason to strike for cause?

20 **MR. WEDEKIND:** Your Honor, I beg The Court's
21 indulgence again. (After conference) No cause, Your
22 Honor.

23 **CLERK OF COURT:** Uh, Defense?

24 **MR. MCELHANNON:** No.

25 **CLERK OF COURT:** That way, Mr. Galloway.

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1 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

2 **CLERK OF COURT:** Juror number one-forty. Joey R.
3 Turner.

4 (JUROR FORWARD.)

5 **CLERK OF COURT:** Any reason to strike for cause from
6 The State?

7 **MR. WEDEKIND:** No cause.

8 **CLERK OF COURT:** From the Defense?

9 **MR. MCELHANNON:** No.

10 **CLERK OF COURT:** That way, please, sir.

11 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

12 **CLERK OF COURT:** Juror number sixteen, John K.
13 Boyte, Junior.

14 (JUROR FORWARD.)

15 **CLERK OF COURT:** Any reason to strike for cause from
16 The State?

17 **MR. WEDEKIND:** No cause.

18 **CLERK OF COURT:** Any reason from the Defense?

19 **MR. MCELHANNON:** No, sir.

20 **CLERK OF COURT:** That way, Mr. Boyte.

21 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

22 **CLERK OF COURT:** Your Honor, that's twelve jurors; I
23 will move on to the alternates.

24 **THE COURT:** Please; and again, it's one and two.

25 **CLERK OF COURT:** Juror number sixty, Jimmy Hall,

State of South Carolina v. Timothy Terrell Crosby

21

Case No. 2013-GS-47-00022

Hearing of January 26, 2015

Before The Honorable Alexander S. Macaulay

1 Junior.

2 (JUROR FORWARD.)

3 **CLERK OF COURT:** Right there, please, sir. What say
4 you for The State?

5 **MR. WEDEKIND:** Please present the juror.

6 **CLERK OF COURT:** What say---

7 **MR. MCELHANNON:** Please swear the juror.

8 **CLERK OF COURT:** That way, please, sir.

9 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

10 **CLERK OF COURT:** Juror number twelve, Jennifer J.
11 Boggs.

12 (JUROR FORWARD.)

13 **CLERK OF COURT:** What say you for The State?

14 **MR. WEDEKIND:** Please present the juror.

15 **CLERK OF COURT:** What say you for the Defense?

16 **MR. MCELHANNON:** Please present the juror.

17 **CLERK OF COURT:** That way, please.

18 (WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

19 **CLERK OF COURT:** Your Honor, that is twelve jurors
20 and two alternates.

21 **THE COURT:** Very well, is -- is there any reason
22 these -- the jury panel cannot be sworn for the trial of
23 this case, from the, uh, State?

24 **MR. WEDEKIND:** No, sir.

25 **THE COURT:** From the Defense?

State of South Carolina v. Timothy Terrell Crosby

22

Case No. 2013-GS-47-00022

Hearing of January 26, 2015

Before The Honorable Alexander S. Macaulay

1 **MR. MCELHANNON:** No, Your Honor.

2 **THE COURT:** Very good. Um, let's see, uh,
3 Mr. Turner, you're -- I'm gonna ask you if you would
4 please, serve as, um, foreman of the jury. So when we
5 come back -- and by the way, we're gonna try this case on
6 the third floor. Um -- uh, it would -- it will be a
7 different, uh, configuration of the jury -- uh, courtroom
8 as where is the jury box. But, you will sit on the first
9 row in the first seat. And the alternates will always
10 sit in those two seats at the end. And, in fact, it
11 turns around downstairs; you'll be at this end and the
12 foreman will be here. And there -- there are two rows of
13 seats, I believe, and, um, and all the others seats could
14 be anywhere; uh, you can sit anywhere you want to. But,
15 the only three reserved seats will be on the end of the,
16 uh, first and second row. Right the end of the second
17 row downstairs where we have only two rows for the
18 alternates, and then the, uh, Foremen will sit on the
19 first seat on the first row.

20 Uh, now I'm going to, uh, ask you to go with the
21 Bailiff and he will show you the jury room that we will
22 be using, um, on -- during the trial of this case.

23 Now, my instructions throughout the trial are gonna
24 be the same. And that is, you're not to undertake the
25 discussions of this case among yourselves or permit

State of South Carolina v. Timothy Terrell Crosby
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Before The Honorable Alexander S. Macaulay

23

1 anyone else to discuss it with you if we have a break,
2 over lunch or something, or overnight. Uh, you are not
3 to discuss this case at all -- even among yourselves --
4 until it's finally given to you for your, uh,
5 determination at the end of all the arguments, the charge
6 on the law, and the evidence and all the witnesses'
7 testimony because we never know what is going to be the
8 most important part of the case; either the first, uh,
9 opening statements, the first witness, the last witness,
10 the, uh, closing arguments and the charge on the law.
11 So, you have to keep an open mind throughout the trial of
12 the case.

13 So with that, I'll ask you to go with the Bailiff
14 and, uh, I'll be with you in just -- well, I tell you
15 what. Uh, Mr. Bailiff, if you would, uh -- uh, have
16 their -- the refreshments. We're gonna take this as a,
17 uh, the morning break. Very good. Thank you very much.

18 Everyone else remain seated while the jury retires
19 before...

20 (WHEREUPON, JURY OUT, 11:12 A.M.)

21 (WHEREUPON, VOIR DIRE AND JURY
22 SELECTION ENDED AT 11:13 A.M.)

23 *****END OF REQUESTED TRANSCRIPT*****
24
25

State of South Carolina v. Timothy Terrell Crosby
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Hearing of January 26, 2015
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24

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON
12 THE 26TH DAY OF JANUARY 2015.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15

16

17

18

19

20

21

22

23

24

25

JUN 7 2015

Vivian H. Cross

VIVIAN H. CROSS, COURT REPORTER

TENTH CIRCUIT AT LARGE

JUNE 7, 2015

State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Timothy Terrell Crosby,

Defendant.

2013-GS-47-22

January 26, 27 & 28, 2015

Transcript of Record

BEFORE:

The Honorable Alexander Macaulay, Judge

APPEARANCES:

Larry Wedekind, Esquire
Joshua Underwood, Esquire
Assistants Attorney General
Attorneys for the State

M. Scott McElhannon, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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1 **January 26, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 11:35 a.m.)

5 THE COURT: All right. As I mentioned, before
6 we start the trial in the case, I'm going to let the jury
7 go to lunch and suggest that they come back at one
8 o'clock. Of course, if they need more time, then of
9 course they'll have that. But I will not swear the jury
10 until we start the trial of the case. And I'll just give
11 them some preliminary instructions and then excuse them
12 until one o'clock.

13 Anything from the State?

14 MR. WEDEKIND: No, sir. We do have the
15 preliminary matters.

16 THE COURT: Right. We can take those up after
17 we let the jury go to lunch.

18 MR. WEDEKIND: Yes, sir.

19 THE COURT: Anything from the Defense?

20 MR. MCELHANNON: No, Your Honor.

21 THE COURT: All right. Very good. Ask the
22 jury to join us, please.

23 (WHEREUPON, the jury entered the open court at
24 approximately 11:35 a.m.)

25 THE COURT: All right. Let the record reflect

1 the jury and two alternates are all in the jury box.

2 Mr. Foreman, ladies and gentlemen of the jury, as
3 jurors, you must decide this case based solely on the
4 evidence presented here within the four walls of this
5 courtroom. And this means that during the trial you must
6 not conduct any independent research about this case, the
7 matters in the case, and the individuals involved in the
8 case. In other words, you should not consult
9 dictionaries or reference materials, search the internet,
10 websites, blogs, and use any other electronic tools to
11 obtain information about the case or to help you decide
12 the case. Please do not try to find out information from
13 any source outside the confines of this courtroom.

14 Until you retire to deliberate, you may not discuss
15 this case with anyone, even your fellow jurors. After
16 you retire to deliberate, you may begin discussing the
17 case with your jurors, but you cannot discuss the case
18 with anyone else until you return a verdict and the case
19 is at an end.

20 I hope that all of you in this case will find that
21 it's interesting and noteworthy. I know that many of you
22 use cell phones, Blackberries, the internet and other
23 tools of technology. You also must not talk to anyone
24 about this case or use these tools to communicate
25 electronically with anyone about the case. This includes

1 your family and friends. You may not communicate with
2 anyone about the case on your cell phone, through email,
3 Blackberry or iPhone, text messaging or on the Twitter,
4 through any blog or website, through any internet chat
5 room or by way of any other social networking websites
6 including the Facebook, My Space, Linkedin -- is that
7 correct? I don't know what how to pronounce it -- and
8 YouTube. In other words, you must make the decision
9 based on the testimony, evidence and arguments of counsel
10 and charge on the law in this courtroom and not -- what
11 is it? -- permit anybody to discuss it with you, as I
12 said upstairs.

13 And I might go ahead and mention -- I usually wait
14 until we recede for the day, but I'll do it at this time.
15 No one who is not going to be sitting in that jury box
16 with you or in that jury room with you can help you
17 decide this case in any way. They will not have heard
18 the first bit of testimony or other evidence in the case.
19 They will not hear the argument of counsel. They will
20 not hear the charge on the law. The only thing they can
21 do is interfere with the proper resolution of the case.
22 And I think you all understand that this is an important
23 case for everybody involved and needs to be resolved in
24 the proper fashion. The only thing that those people can
25 do or anyone else can do, other than your fellow jurors

1 -- and you aren't even to talk to them until the case is
2 finally given to you -- is to confuse the proper
3 resolution of the case. And so I instruct you not to
4 talk to anyone, even yourselves, among yourselves until
5 the case is given to you at the close of the testimony,
6 evidence, and the charge on the law for your decision.

7 Now, having said that, rather than start and
8 interrupt the trial of the case, I'm going to excuse you
9 to one o'clock. Now, is that enough time for you to get
10 lunch and then be back? I might note that if anybody
11 needs more time, just let me know. All right.
12 Obviously, we can't start without you. But if you do
13 need more time, let me know now and we can work something
14 out. Otherwise, I will see you at one o'clock. Come
15 back to the jury room you were in on the third floor just
16 a minute ago, and we'll start the trial at that time.
17 Very good.

18 All right. Everyone else remain seated while the
19 jury retires from the courtroom.

20 (WHEREUPON, the jury exited the open court at
21 approximately 11:40 a.m.)

22 THE COURT: All right. I understand there are
23 some pre-trial motions or matters that need to be
24 addressed?

25 MR. WEDEKIND: Yes, Your Honor. The first

1 matter was the chain of custody waiver. There are
2 several witnesses for the State beginning at the creation
3 of the chain of custody. And I've talked with Mr.
4 McElhannon, and he agrees that we'll just truncate the
5 chain of custody in this case, Your Honor, under State v.
6 Rockmeyer. We'll have Agent Collier beginning at where
7 she drops it into the BEST kit bag, seals it. And then
8 it will be taken up again by the chemist when she
9 testifies tomorrow. And that was just the first matter I
10 just wanted to put on the record that we had discussed
11 that.

12 The second was a potential motion in limine for
13 Officer D.L. Brinston regarding his service with the
14 Anderson Police Department. He's involved in some kind
15 of employment dispute with his own attorney in civil
16 court. And it was the request of that attorney that's
17 representing Mr. Brinston that he not be in contact with
18 Lieutenant Baker, which I'm sure they can accommodate
19 without the Court's help. But there are some issues
20 about his employment that we would like to have on the
21 record and perhaps flesh those out here so there's not
22 any information, privacy matters that are revealed that
23 don't need to be in regards to Officer Brinston.

24 The third issue is going to be regarding the RAP
25 sheet exchange. I think we've exchanged those in

1 discovery. There was the addition of the confidential
2 informant that just was handed over today to Mr.
3 McElhannon. And we're going to -- I think we're pretty
4 much in agreement that his record of prior convictions to
5 a ten-year window. There may be some gray area on one or
6 two of those, but I think we're pretty much in agreement
7 that everything that postdates that ten-year limit should
8 be able to impeach him.

9 And then there was a question of a Biggers hearing
10 and the potential for that, Your Honor. There is a
11 witness, Mr. -- it was a former defendant of Mr. Crosby,
12 Mr. William Angelo Johnson. He was the owner and
13 operator of the Toys R Us Motor Shop. Then there's an
14 assistant of his, Mr. Jeffrey Parker. They had
15 associations and knowledge of who Mr. Crosby was prior to
16 the arrest. And they are co-defendant's of Mr. Crosby in
17 this conspiracy. So they're going to identify him in
18 Court and say through their long-term association that
19 that is the guy who walked in on the day in question for
20 this trial.

21 There will also be Mr. Murray who is the
22 confidential informant who wore the wire and did the drug
23 exchange on behalf of SLED. He's also going to make an
24 identification of the Defendant.

25 And then the one that I think there's a bone of

1 contention on would be Lieutenant Baker from Anderson PD.
2 He has made prior arrests and had prior dealings with Mr.
3 Crosby, and he also will be able to identify that when he
4 came up on the vehicle stop, he saw the Defendant and
5 knew who he was.

6 That would be it, sir.

7 THE COURT: All right.

8 Mr. McElhannon?

9 MR. MCELHANNON: Your Honor, starting, I guess,
10 with the last first, of course, I would object to
11 anything from Officer Baker relating that he knew Mr.
12 Crosby from prior incidents or prior arrest or anything
13 of that nature. I think that's definitely more
14 prejudicial than probative, especially if you're going to
15 have other witnesses who are going to identify Mr.
16 Crosby. I just think that that tends to put in the
17 jury's mind that Mr. Crosby's been in trouble before and
18 possibly make them think then that he is more likely to
19 have done that than not. So I definitely think that that
20 part, if Officer Baker is going to testify to anything
21 like that as having prior dealings with Mr. Crosby, that
22 that be excluded and not be allowed, Your Honor.

23 THE COURT: What do you say, Mr. Wedekind?

24 MR. WEDEKIND: Your Honor, he did make -- I
25 think he was on probation and had done some work for

1 Lieutenant Baker. So it's really not relating to his --
2 well, there is a prior arrest, but we would just ---

3 THE COURT: Are you going to use the prior
4 arrest as part of the ---

5 MR. WEDEKIND: No, Your Honor. We can take
6 that up when we get to the RAP sheet issues about prior
7 convictions and issues regarding Mr. Crosby. But he was
8 going to say something -- I've already talked to
9 Lieutenant Baker that if he does get the opportunity to
10 testify, he would just say that he, through prior
11 associations, knew Mr. Crosby.

12 THE COURT: Well, you said that you worked for
13 him. In what sense?

14 MR. WEDEKIND: I can proffer Lieutenant Baker
15 under oath on that, Your Honor, but he tells me that he
16 had had some kind of association with Mr. Crosby.

17 THE COURT: I mean, was that outside of his
18 official capacity?

19 MR. WEDEKIND: No, sir. It was part of his
20 police work, I think.

21 THE COURT: All right. Well, of course, all of
22 these matters would be subject to renewal at the time a
23 witness is presented as to whether their testimony will
24 be limited. But I do feel if there's going to be other
25 testimony that obviously clearly identifies the Defendant

1 as Timothy Crosby, then of course -- what is it? --
2 anything else would be cumulative, and any value,
3 probative value, would be outweighed at this point.

4 MR. WEDEKIND: Yes, sir.

5 THE COURT: And as I say, with any motion in
6 limine, it has to be renewed either one way or the other.
7 It's just an anticipatory motion. But at this time I
8 probably would disallow it unless the case, at the point
9 that the testimony would be introduced, is in a situation
10 that it might be helpful to the jury.

11 MR. WEDEKIND: Your Honor, if I may propose
12 though in case it does come up -- could we take advantage
13 of this opportunity to flesh out the issue with
14 Lieutenant Baker right now outside the presence of the
15 jury?

16 THE COURT: Certainly. Very good.

17 MR. WEDEKIND: We'd call Lieutenant Baker.

18 (WHEREUPON, the witness was duly sworn.)

19 MR. WEDEKIND: Are you ready, Your Honor?

20 THE COURT: All right. You may proceed.

21 MR. WEDEKIND: Thank you, sir.

22 **DAVID ANTHONY BAKER,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 IN-CAMERA DIRECT EXAMINATION

25 BY MR. WEDEKIND:

1 Q. Lieutenant, who are you employed by?

2 A. Currently I'm employed by the Anderson County
3 Sheriff's Office.

4 Q. Okay. And back in 2013, who were you employed by?

5 A. I was employed by Anderson County Sheriff's Office.

6 Q. Were you working in conjunction on a multi-agency
7 narcotics team with Agent Collier?

8 A. That is correct.

9 Q. As were you part of an investigation known as Toys R
10 Us?

11 A. Yes, sir, State Grand Jury.

12 Q. Okay. And as part of that, there was multiple
13 defendants that were involved in this case; is that
14 correct?

15 A. That is correct.

16 Q. And then back on February 5th, 2013, do you recall
17 any activity that occurred specifically on that day with
18 regard to Mr. Crosby?

19 A. Specific to Mr. Crosby, yes, sir.

20 Q. Yes.

21 A. I recall conducting surveillance on this particular
22 deal, followed the vehicle back to Anderson, made contact
23 with the deputy ahead of time to conduct a traffic stop.
24 And at that time, I rode by the traffic stop and I
25 identified the individuals -- well, I recognized the

David Anthony Baker - In-camera Direct Examination by Mr. Wedekind

15

1 individual within the vehicle, I should say.

2 Q. Now, just since we're here off the record now

3 outside the presence of the jury ---

4 A. Yes, sir.

5 Q. --- when that controlled buy was going down, there

6 was a wire worn on the informant, Mr. Murray; is that

7 correct?

8 A. That's correct.

9 Q. Mr. Murray went to the Toys R Us and was told that

10 the individual by the name of Bernard was going to

11 conduct -- bring the drugs to the transaction?

12 A. That's correct.

13 Q. And there was an agreed-upon amount of a thousand

14 dollars would be paid for a cookie of crack cocaine of

15 roughly about an ounce of weight?

16 A. That's my understanding, yes, sir.

17 Q. Okay. And when Mr. Bernard didn't show up and he

18 said that he would be running late, there would be a

19 delay, did the informant step away for a period of time?

20 A. Yes, sir, he did. There was a time between --

21 within the deal where he went to the Toys R Us location

22 to meet with an individual that we knew of or a target we

23 know of as Bernard. That deal did not take place, so I

24 think he was advised that something would be set up for a

25 little later on. So he actually went back to the

1 location a second time after meeting with us.

2 Q. But in particular, you were expecting a fellow by
3 the name of Bernard to show up?

4 A. That's correct.

5 Q. And did Bernard ever arrive?

6 A. To my knowledge, no. I did not see Bernard.

7 Q. Yet an individual did show up in a Dodge pickup
8 truck?

9 A. That's correct.

10 Q. And what was that individual -- do you see him in
11 the courtroom today?

12 A. I do see that individual, but I did not physically
13 see him drive up to the location or the vehicle.

14 Q. Okay.

15 A. However, that's the same vehicle, when it left the
16 Toys R Us location, that I conducted surveillance on into
17 Anderson County and did at that time see him during the
18 traffic stop.

19 Q. Okay. So in order to find out who exactly had shown
20 up in that vehicle, there was a controlled stop of that
21 vehicle made, and that was done at your request?

22 A. That's correct.

23 Q. So once that stop was done and you drove by, the
24 police officer pulled over that vehicle that departed
25 Toys R Us; correct?

1 A. That's correct.

2 Q. And you said you looked in the vehicle. Who was
3 behind the wheel?

4 A. The Defendant, Mr. Crosby.

5 Q. And how do you know Mr. Crosby?

6 A. Several years ago when I was the Chief of Police for
7 the Town of Williamston, we actually had county inmate
8 workers that would come and do janitorial or custodial
9 work for us. At one point in time, Mr. Crosby was one of
10 those workers and was with us for several months. So I
11 had interaction with him on a daily basis.

12 Q. And what was the lighting conditions when you did
13 the drive-by as the vehicle was detained by Officer
14 Brinston?

15 A. It was just starting to get dark or -- light dark I
16 would probably say. However, it was illuminated enough
17 to where I could positively identify him.

18 Q. Okay. So you have no doubt in your mind that the
19 individual you saw operating that Dodge pickup truck was
20 the Defendant, Mr. Crosby?

21 A. That's correct.

22 MR. WEDEKIND: Thank you, Your Honor.

23 Please answer any questions that Mr. McElhannon my
24 have.

25 THE COURT: All right. Mr. McElhannon?

1 IN-CAMERA CROSS-EXAMINATION

2 BY MR. MCELHANNON:

3 Q. Lieutenant Baker, how long did you stay at that
4 site? Did you just ride by?

5 A. As far as the traffic stop?

6 Q. Yes, sir?

7 A. Yeah, the traffic stop I rode by several times. At
8 that point in time, we did not wish to allow the
9 Defendant to know we were conducting this case. Only the
10 traffic stop.

11 Q. And you say when you rode by, he was in the driver's
12 seat?

13 A. That's correct.

14 Q. Of the white truck?

15 A. That's correct.

16 Q. Did you ever see him out on the side of the road?

17 A. I did not, no, sir.

18 Q. Do you know if he was out on the side of the road at
19 any point during this traffic stop?

20 A. I don't recall seeing him out on the side of the
21 road.

22 Q. Did you stay there the entire time -- or while he
23 was there and apparently released, were you there when he
24 was let go?

25 A. I don't recall seeing him actually -- the officer

1 make final contact with him leaving, but I do recall
2 being in the area and riding by and both of them had gone
3 their separate ways. I made several ride-bys, in other
4 words.

5 Q. And you say that you know Mr. Crosby from some kind
6 of work release or ...

7 A. Yes, sir. And he was of no sentence to us. I think
8 it was a family court sentence, if I'm not mistaken. His
9 face was extremely familiar to me as soon as I saw him.

10 Q. But to your knowledge, it was nothing criminal in
11 nature while he was there?

12 A. No, sir.

13 Q. Just family court ---

14 A. That's correct, yes, sir.

15 Q. --- child support or something ---

16 A. He was a hard worker.

17 MR. MCELHANNON: Your Honor, I would just renew
18 my motion based on the same fact that I think if two or
19 three other individuals are going to identify him, it is
20 cumulative in nature.

21 THE COURT: As I say, I think that's what it's
22 going to come down to. Of course, if anything should
23 come out, even without the former employment being as the
24 police chief, in other words, suggesting that there was
25 some sort of a professional contact with the -- alleged

1 contact with the Defendant, that obviously may be
2 inadmissible as well. But you can answer you were
3 working in the city hall and that you knew the individual
4 you identified as the Defendant working in the same
5 place.

6 THE WITNESS: Yes, sir.

7 THE COURT: Other than that, very innocuous
8 sort of thing to establish under Biggers that you had
9 opportunity to make an identification.

10 MR. WEDEKIND: Yes, sir. If it comes up and
11 it's allowed, he's been well coached to limit any
12 involvement ---

13 THE COURT: Just remember, that's going to be
14 the limit of it.

15 MR. WEDEKIND: Yes, sir.

16 THE COURT: And, of course -- what is it? -- it
17 depends on at the time if it is going to be helpful to
18 the jury rather than cumulative to the testimony.

19 MR. WEDEKIND: Yes, sir.

20 THE COURT: All right. You may step down.

21 Unless you have some re-examination

22 MR. WEDEKIND: Nothing further. No, sir.

23 THE COURT: Very good.

24 All right. Next motion?

25 MR. MCELHANNON: Your Honor, at this time I

1 would make a motion for sequestration of the witnesses.

2 MR. WEDEKIND: And there'd be no objection from
3 the State.

4 THE COURT: All right. Without objection. All
5 right. How many -- are the witnesses all here?

6 MR. WEDEKIND: Your Honor, we'd designate Agent
7 -- no, they're not all here, but we'd designate Agent
8 Casey Collier as the lead investigator.

9 THE COURT: All right. So she'll be the
10 shepherd.

11 MR. WEDEKIND: Yes, sir.

12 THE COURT: All right.

13 MR. WEDEKIND: And that all others would be at
14 the appropriate time ---

15 THE COURT: Just so there won't be any
16 question, Agent -- with sequestration, witnesses can stay
17 in the courtroom during the opening statements. In other
18 words, if they need to identify somebody that will be
19 testifying or may be testifying or they're mentioned in
20 the opening statements, either by the Defense or the
21 State, they can remain in the courtroom. However, as
22 soon as the first witness is called, unless they happen
23 to be the witness that is called, all of the other
24 witnesses will retire to the designated area. And once
25 they testify, they cannot go back, and they can't come

1 into the courtroom. In other words, they have to find
2 some other place to go so they can't discuss their
3 testimony with anyone. And if they do come back in the
4 courtroom, they cannot be recalled. In other words, they
5 can't hear any other testimony. And so that's sort of
6 the rules of this particular procedure. Is there any
7 question about it?

8 AGENT COLLIER: No, sir.

9 THE COURT: Great. Thank you very much. Oh,
10 for the record, that is Agent Casey Collier, C-O-L-L-I-E-
11 R, South Carolina Law Enforcement Division. Very good.

12 MR. WEDEKIND: Your Honor, regarding the issue
13 of RAP sheets, one of the witnesses, Mr. Anthony Bernard
14 Murray, he has quite a RAP sheet which I've shared with
15 Mr. McElhannon. And he has a prior exhaustive RAP sheet.
16 But outside of ten years is where most of it occurs.
17 Within a ten-year period, he has, I believe, a 2006
18 conviction for attempted burglary and a felony possession
19 of a firearm and a breach of trust -- two counts of
20 conviction for breach of trust dating from 2006. Then
21 there's an arrest ---

22 THE COURT: That would be within a ten-year
23 period.

24 MR. WEDEKIND: Sir?

25 THE COURT: Are you talking about cases within

1 the ten years?

2 MR. WEDEKIND: Yes, sir.

3 THE COURT: Oh, okay.

4 MR. WEDEKIND: He has prior convictions pre-
5 dating the ten-year window. And then let's see. There's
6 a grand larceny arrest.

7 THE COURT: 2006, though, wouldn't that be
8 within ten years?

9 MR. WEDEKIND: Yes, sir. What I'm saying is,
10 I'm ignoring the prior convictions.

11 THE COURT: Oh. All right. That's what I was
12 asking. In other words, these are the ones that if you
13 are permitted to use, you would use?

14 MR. WEDEKIND: That I believe Mr. McElhannon is
15 entitled to impeach Mr. Murray with.

16 THE COURT: Right.

17 MR. WEDEKIND: And that would be those
18 convictions from 2006. Then there's a grand larceny
19 arrest but no disposition.

20 THE COURT: That wouldn't come in.

21 MR. WEDEKIND: Yes, sir. There's a driving
22 under suspension and a giving false information, again
23 with no ---

24 THE COURT: Driving under suspension is ninety
25 days, isn't it?

1 MR. WEDEKIND: Yes, sir.

2 MR. MCELHANNON: My concern would be the giving
3 false information because it goes to his credibility for
4 honesty.

5 THE COURT: Well, I think so.

6 MR. WEDEKIND: Yes, sir. And that's from 2007
7 is the arrest. But, again, I don't see the convictions
8 for that. Again, we could put Mr. Murray up on that.
9 But there are some driving under suspension, driving
10 under the influence, failure to obey a stop light -- blue
11 light. I'm sorry. Failure to obey a blue light.

12 THE COURT: Blue light would be.

13 MR. WEDEKIND: Yes, sir.

14 THE COURT: And the DUI would -- well, if it
15 was in General Sessions, it would be admissible.

16 MR. WEDEKIND: Yes, sir. So it looks like a
17 failure to obey blue light or traffic control device, a
18 DUI first and a driving under suspension, looks like what
19 he was convicted of. I am told by him that when the
20 police officers pulled him over on one of these charges,
21 he did lie to the officer and tell them he was his
22 brother because he knew his brother's information. And
23 his brother happens to be an FBI Agent, so he thought
24 that might be of value to him. But just for all candor
25 ...

1 THE COURT: Well, that does go to veracity.

2 MR. WEDEKIND: Absolutely, sir. I was just
3 making sure that we all knew exactly where we're going.
4 And then he's currently on probation is my understanding
5 as well. So -- for a charge.

6 THE COURT: Well, if it's probation, then
7 there's a conviction.

8 MR. WEDEKIND: Yes, sir.

9 THE COURT: And I guess it is within the last
10 ten years inasmuch as five years is the maximum
11 probation.

12 MR. WEDEKIND: Now, there was an armed robbery
13 charge. It looks like he pled down to a strong arm.
14 There's ---

15 THE COURT: Is that within the ten years?

16 MR. WEDEKIND: No, sir. So I'll leave those
17 out if you think that in excess of ten ...

18 THE COURT: You've got enough.

19 MR. WEDEKIND: Okay, sir.

20 THE COURT: All right. So anything over ten
21 years that did not result in a conviction or if it was
22 less than a year, it will not be used.

23 MR. WEDEKIND: Yes, sir.

24 THE COURT: Or anything else that comes within
25 those ten years?

1 (Off record discussion)

2 MR. WEDEKIND: And then, Your Honor, regarding
3 Mr. Crosby and enforcing the ten-year rule, he has no
4 convictions within a ten-year limit. I'm sorry. The
5 only thing is a possession of marijuana, but that's less
6 than an ounce. And that's from 2008. There's an assault
7 and battery, which I think is a thirty-day offense, from
8 2009. And then there's some pending charges with no
9 disposition. And I think that would be it, Your Honor.

10 THE COURT: So there are none?

11 MR. WEDEKIND: None. None for Mr. Crosby.

12 THE COURT: All right. In the event that
13 something is suggested to be used, of course, you'll
14 advise the Court, and the Court will make a decision
15 before it is introduced.

16 MR. WEDEKIND: Yes, sir. And then with regards
17 to Mr. Jeffrey Parker and Mr. William Johnson, Mr.
18 Johnson and Mr. Parker both have been previously before
19 Your Honor, and you took guilty pleas from them in this
20 case as co-defendants. I believe Mr. Johnson will show
21 up tomorrow in his Department of Corrections uniform.
22 And he had, I think, an eight-year sentence that he
23 received for this immediate offense. He has prior
24 convictions as well. That RAP sheet's been shared with
25 the same ten-year request would be applicable.

1 THE COURT: Well, about the dress, do you have
2 any complaint about the dress? This is a State's
3 witness, right?

4 MR. WEDEKIND: Yes, sir.

5 MR. MCELHANNON: I don't have any problem ---

6 THE COURT: Well, that's what I'm -- I'm just
7 going to want to be sure. If you're going to impeach
8 them based on a conviction, I think it would go to the
9 credibility of the impeachment.

10 MR. MCELHANNON: His SCDC uniform is fine with
11 me, Your Honor.

12 THE COURT: Very good. All right.

13 MR. WEDEKIND: And then Mr. Parker is on
14 probation. He may be a candidate to wear that uniform,
15 but he's not wearing one as we speak, Your Honor.

16 THE COURT: Okay. In other words, there is no
17 objection to the State's witnesses dressed in the
18 appropriate garb depending on their status in society?

19 MR. MCELHANNON: No, Your Honor.

20 THE COURT: Very good.

21 MR. WEDEKIND: And I think that would wrap up
22 any RAP sheet issues, Your Honor.

23 THE COURT: All right.

24 MR. WEDEKIND: And then we have the motion in
25 limine for Officer Brinston. And if you would like to

1 call him to the stand, he's present in the courtroom.

2 THE COURT: Very well, if you intend to use
3 him.

4 MR. WEDEKIND: The State would call Officer
5 D.L. Brinston.

6 THE COURT: And the motion in limine is Mr.
7 McElhannon?

8 MR. WEDEKIND: No, sir. I'm making a motion
9 regarding his ---

10 THE COURT: Oh, about his current employment
11 status or any question about it?

12 MR. WEDEKIND: Yes, sir.

13 THE COURT: All right. Yes, sir.

14 (WHEREUPON, the witness was duly sworn)

15 THE COURT: Officer, if you could, please, give
16 me your full name for the record and spell your name,
17 sir?

18 THE WITNESS: Deonta Lamon ---

19 THE COURT: Deonta, D-A-N-T-E.

20 THE WITNESS: D-E-O-N-T-A.

21 THE COURT: D-E-O-N ---

22 THE WITNESS: T-A.

23 THE COURT: --- T-A, Deonta.

24 THE WITNESS: Lamon, L-A-M-O-N.

25 THE COURT: Lamon. B-R-I-N-S-T-O-N?

1 THE WITNESS: Yes, sir.

2 THE COURT: Very good. Thank you, sir.

3 Okay.

4 MR. WEDEKIND: Yes, Your Honor.

5 DEONTA LAMON BRINSTON,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. WEDEKIND:

9 Q. Officer Brinston, who are you currently employed by?

10 A. I'm currently employed by Calhoun Falls Police
11 Department.

12 Q. Okay. And do you have any specific training or
13 speciality that you have with Calhoun Falls right now as
14 a police officer?

15 A. No, sir.

16 Q. Do you work with dogs? Are you rated for K-9?

17 A. I do. I am still currently a certified K-9 officer.
18 I'm just not handling them at this time.

19 Q. Okay. And then back in February 5th of 2013, were
20 you employed by Calhoun Falls or a different agency?

21 A. Different agency.

22 Q. Who was that?

23 A. Anderson County Sheriff's Office.

24 Q. Okay. So at that point -- you're no longer with
25 them -- did you maintain your commission when you left

1 from the Anderson Sheriff's Office to go to Calhoun
2 Falls?

3 A. I have a dispute in regards to the Law Enforcement
4 Division down in Columbia, but I did regain my
5 certification.

6 Q. Okay. So you never lost -- you currently are a
7 commissioned law enforcement officer in South Carolina?

8 A. Yes, sir.

9 Q. Okay. And regarding your employment with the
10 Anderson Sheriff's Office, that no longer -- those ties
11 have been cut; correct?

12 A. They have.

13 Q. But did you resign, or were you fired from that
14 position?

15 A. I was wrongfully terminated.

16 Q. Okay. So do you know what the alleged termination
17 was over?

18 A. I do.

19 Q. What did they say -- without saying that you did
20 anything because I know you're maintaining a civil case.
21 What was the citation for your separation?

22 A. Wrongful termination and not being paid.

23 Q. Okay. But did they say you were no longer to work
24 for the Sheriff's office?

25 A. Yeah, due to a controlled substance.

1 Q. Okay. And what was that controlled substance
2 alleged to have been?

3 A. Alleged to be anabolic steroid use.

4 Q. Okay. And would you tell the Court what that
5 steroid use or what they thought it was regarding? Was
6 it a roommate that you had been involved with?

7 A. That's true.

8 Q. Please tell the Judge. This isn't a trial of you,
9 but just lay it out for the Judge, if you would, so we
10 can have this issue explored.

11 A. I mean, I don't know which times you mean. Which
12 ...

13 Q. Okay. I'm talking about the steroids. What
14 happened with your roommate?

15 A. My roommate, he also -- he resigned from Anderson
16 County Sheriff's Office.

17 Q. Okay. So he was the one who initially popped
18 positive for steroid use?

19 A. I'm guessing. I don't know anything about his.

20 Q. But then the Sheriff's office became concerned with
21 him. And then after they were concerned with him,
22 because you were his roommate through association, they
23 also wanted to check you out; is that correct?

24 A. I guess so.

25 Q. And then you've said you've already passed your

1 test, but you were not -- you declined to go any further
2 than what had been done?

3 A. That's correct.

4 Q. And at that point they said that's not acceptable
5 and you resigned or you wanted to resign or they told you
6 you couldn't work for them? How did that work out?

7 A. It was a misunderstanding. I really can't go into
8 that part.

9 Q. Okay.

10 MR. WEDEKIND: And that, Your Honor ---

11 THE COURT: What is the limine here?

12 MR. WEDEKIND: Your Honor, just to flesh this
13 issue out about what can be told before the jury?

14 THE COURT: Well, then you're excluding all the
15 matter in the civil action?

16 MR. WEDEKIND: Yes, sir. Basically that, you
17 know, he's no longer employed by the Sheriff's office, he
18 was terminated by them, and he's currently a commissioned
19 officer in South Carolina. That's the gist of what the
20 State, I think, would want to limit.

21 THE COURT: All right. Mr. McElhannon, cross-
22 examine. Unless you agree that if he limits his
23 testimony that, yes, at one time on February the 5th,
24 2013, he was with Ocone -- excuse me -- Anderson County
25 Sheriff's Office, and today he is now with the Calhoun

1 Falls Police Department?

2 MR. MCELHANNON: Yes, sir. I would want to get
3 into that he was terminated from Anderson County
4 Sheriff's Office because he was terminated. He did not
5 resign. He was terminated because -- I know he doesn't
6 admit to any ---

7 THE COURT: Well, that's one of the things I'm
8 not sure being terminated is an admission. What is it,
9 it's suggested is an objection.

10 MR. WEDEKIND: Your Honor, he's not been
11 convicted. My understanding he's not been convicted of
12 any unauthorized possession of anabolic steroids. And
13 they had a suspicion. And they wanted him, my
14 understanding, is to take a urine test or some kind of
15 steroid testing. And he refused that. So that refusal
16 was the basis of their termination. I think it's
17 appropriate to say ---

18 THE WITNESS: Correction.

19 MR. WEDEKIND: Hold on.

20 THE WITNESS: That was a test done.

21 MR. WEDEKIND: Okay.

22 THE WITNESS: It was a urinary analysis test,
23 and I also offered to be blood tested.

24 MR. WEDEKIND: Okay. So you submitted to ---

25 THE COURT: And you passed those?

1 THE WITNESS: I wasn't given a blood test.

2 THE COURT: Oh, you weren't given a blood test.

3 THE WITNESS: I requested it.

4 THE COURT: You requested it?

5 THE WITNESS: I did.

6 THE COURT: Again, I think that's trying to --
7 forgive me for the pun -- trying another case.

8 MR. WEDEKIND: Yes, sir. So we'd just like --
9 I think it would be fair to just say he was employed by
10 the Sheriff's office, that relationship was terminated,
11 and now he's an employed officer, a commissioned officer,
12 of Calhoun Falls.

13 THE COURT: If that's what you want to limit it
14 to and actually put in the termination, then do you have
15 any objection?

16 MR. MCELHANNON: No. I definitely want
17 termination in there.

18 THE COURT: All right. Well, if that's the
19 testimony.

20 MR. WEDEKIND: I think that's what the facts
21 are, Your Honor. And I'm fine with that. It really
22 comes down to his making a traffic stop and the issuance
23 of a ticket. You know, if the jury wants to infer some
24 sinister thing, well ...

25 THE COURT: Very good.

1 MR. MCELHANNON: The only other thing, I
2 thought Deputy Brinston said that he temporarily lost his
3 law enforcement commission?

4 THE COURT: No. He said it was some dispute
5 about -- a dispute with South Carolina Law Enforcement
6 Division about his certificate, but he maintained it.

7 MR. MCELHANNON: I think he said he regained it
8 or had it reinstated.

9 THE COURT: I don't know. Which is it?

10 THE WITNESS: I currently kept it. There was a
11 dispute about it, which leads to an appeal and you get it
12 back.

13 MR. MCELHANNON: But did you ever have your
14 commission taken away from you for any period of time?

15 THE WITNESS: You'll have to call them. I'm
16 not sure.

17 THE COURT: Well, let me -- you were a
18 certified law enforcement officer under the judicial
19 academy or -- what was it? -- law enforcement academy?

20 THE WITNESS: Yes, sir.

21 THE COURT: And was it ever effectively --

22 THE WITNESS: I was unemployed for ---

23 THE COURT: Well, I'm just asking. But you
24 were -- when you were re-employed, did you ---

25 THE WITNESS: I was still ---

1 THE COURT: --- were you still qualified?

2 THE WITNESS: Yes, sir. I was still qualified
3 and did not have to repeat any training.

4 THE COURT: In other words, you've maintained
5 it?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Unless there was some
8 sort of final adjudication that he had lost his
9 certificate as a law enforcement officer.

10 MR. WEDEKIND: It sounds like he may have been
11 suspended pending an investigation, and the investigation
12 cleared him is my understanding.

13 THE COURT: Well, that's not an adjudication.

14 MR. WEDEKIND: Yes, sir.

15 THE COURT: All right. Anything else? I will
16 permit the testimony about being terminated but not
17 anything about losing his certification because obviously
18 he didn't.

19 MR. MCELHANNON: Yes, sir. That's fine.

20 THE COURT: All right. Very good. Is there
21 anything further from this witness?

22 MR. WEDEKIND: No, Your Honor.

23 THE COURT: I think you said something earlier
24 about Lieutenant Baker that might not be ---

25 MR. WEDEKIND: Just that his lawyer for the

1 civil case had requested the two of them not talk or be
2 present while the testimony's given.

3 THE COURT: Well, we've already violated that.

4 MR. WEDEKIND: Yes, sir. But ---

5 THE COURT: All right. So I'm going to say the
6 door's been opened on that. In other words, that's not
7 going to be a part of Agent Collier's shepherding.

8 MR. WEDEKIND: That's correct, sir.

9 THE COURT: To keep them from talking.

10 MR. WEDEKIND: Before the jury, yes, sir.

11 THE COURT: Except about testimony?

12 MR. WEDEKIND: Yes, sir. Now, as far as the
13 termination, Your Honor, if he just says he was, you
14 know, terminated by the Sheriff's office and found
15 employment with Calhoun Falls, that's ---

16 THE COURT: No problem.

17 MR. WEDEKIND: --- that's all we're going to
18 say. Okay.

19 THE COURT: And that would end it.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: I think the magic word is
22 terminated. And that was done, even though it hasn't
23 been decided -- what is it? -- done properly or without
24 ramifications.

25 THE WITNESS: Correct.

1 MR. WEDEKIND: Yes, sir.

2 THE COURT: All right. Anything else?

3 MR. WEDEKIND: No, sir. That would tend to
4 that.

5 THE COURT: All right. Since we do have
6 Lieutenant Baker present and Officer Brinston, any
7 question about y'all discussing your testimony or
8 anything else about any sort of pending civil action? In
9 other words, you're not to.

10 LIEUTENANT BAKER: No, sir, it hasn't. No,
11 sir.

12 THE COURT: All right. And you're still under
13 oath, so you understand that?

14 LIEUTENANT BAKER: Yes, sir.

15 THE COURT: All right. And Officer Brinston,
16 you understand too?

17 OFFICER BRINSTON: Yes, sir.

18 THE COURT: Very good. All right.

19 MR. WEDEKIND: And, Your Honor, I think --
20 other than that, I just want to put on the record that we
21 are facing in this trial, Mr. Crosby, the trafficking by
22 conspiracy for the overall count one of this indictment.
23 And that would carry, if he was convicted, a twenty-five
24 year sentence. It would be an eighty-five percent
25 amount. He also -- because of his prior record, we

1 initially thought he was looking at a trafficking ten to
2 twenty-eight grams of cocaine base which would have
3 mandated a five- to twenty-year sentence, and it would be
4 eighty-five percent. But because his conviction, as was
5 pointed out by Mr. McElhannon, is in excess of ten years
6 of age, it can't be used for sentencing purposes as an
7 enhancement. It could be considered for Your Honor's
8 sentencing within the parameters of the first offense
9 which would be three to ten years. And that would be a
10 paroleable sentence.

11 THE COURT: Is it a marijuana offense?

12 MR. WEDEKIND: No, sir. It's cocaine.

13 THE COURT: Cocaine? I mean, no. The prior
14 offense.

15 MR. WEDEKIND: The prior was a trafficking
16 cocaine.

17 THE COURT: The prior was also trafficking
18 cocaine?

19 MR. WEDEKIND: The prior was cocaine
20 trafficking.

21 THE COURT: Well, that's all I'm asking ---

22 MR. WEDEKIND: Yes, sir.

23 THE COURT: --- but I thought it might have
24 been marijuana.

25 MR. MCELHANNON: No, sir.

1 MR. WEDEKIND: No, sir. No, sir.

2 THE COURT: Marijuana is not eligible for
3 enhancement.

4 MR. MCELHANNON: That's five years, I think,
5 Your Honor, actually.

6 MR. WEDEKIND: They change the law so
7 frequently. But most recently, cocaine is now -- any
8 narcotics-related conviction in excess of ten years can
9 be used for enhancement purposes.

10 THE COURT: Okay.

11 All right. Understood?

12 MR. MCELHANNON: Yes, sir. What I think Mr.
13 Wedekind is saying is on the one indictment, that would
14 be a three- to ten-year range of sentence.

15 MR. WEDEKIND: And that's what he was offered
16 to plead to that sole charge, but he is rejecting that
17 offer. It's my understanding, we're going forward.

18 THE COURT: Very good. All right. It's,
19 gosh, twelve fifteen. It looks like I was a little
20 quick. I didn't realize -- I should have listened a
21 little more carefully to what we had pre-trial. Let's
22 try to make the one o'clock. We don't have any other
23 issues, so we can -- what is it? ---

24 MR. WEDEKIND: Yes, sir.

25 THE COURT: --- go to the jury as soon after

1 one o'clock as possible.

2 I will ask Mr. Crosby, if you would, stand, please.

3 Raise your right hand.

4 (WHEREUPON, the Defendant stood.)

5 THE COURT: You solemnly swear or affirm that
6 the testimony you're about to give is the truth, the
7 whole truth and nothing but the truth.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. You may lower your
10 hand.

11 I have not sworn -- you can lower your hand. I have
12 not -- not your body though. No. I just want to be sure
13 that you understand that I'm talking to you.

14 I haven't sworn the jury, so double jeopardy does
15 not attach at that time, so you'll be on your bond until
16 the trial does begin. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And also, the jury has been
19 selected, although not sworn. And so you have the right,
20 of course, to be here during your trial. But you also,
21 if you should exercise a right to waive that right to be
22 at trial and you do not appear at one o'clock or any
23 other time after the trial begins, then the trial will
24 continue in your absence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You will have waived your
2 constitutional right to be present during that trial. Do
3 you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And if a conviction is
6 found, you will be sentenced in your absence. Do you
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Any question about it?

10 THE DEFENDANT: No, sir.

11 THE COURT: And that trial will take place in
12 this courtroom where you are standing right at this
13 moment. In the third floor of the Anderson County
14 Courthouse on Main Street, Anderson, South Carolina, at
15 one o'clock p.m., January the 26th, 2015. Do you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any question?

19 THE DEFENDANT: No, sir.

20 THE COURT: Very good.

21 MR. MCELHANNON: Your Honor, the only thing I
22 would say in response, I called his bondsman on Saturday,
23 this Saturday. Mr. Crosby's wife had twins on Friday, a
24 boy and a girl. I called his bondsman Saturday morning,
25 and it's A-1 Bonding. I spoke with John Fowler and asked

1 him did they oppose staying his bond.

2 THE COURT: Well, unfortunately, unless they
3 have somebody in the courtroom at that time, and, of
4 course, the State -- what is it -- agrees to it -- in
5 other words, it's a three-party contract. The State, the
6 Defendant, and the bonding company, everybody has to
7 agree to be bound by any change in conditions.

8 MR. MCELHANNON: Yes, sir.

9 THE COURT: And I can't pronounce the name of
10 the case, but it's my case where I let one off. No.
11 Yeah, I did. I let one off. Because he wasn't in the
12 courtroom at the time the conditions were changed, and
13 the State lost what, sixty-six thousand, six hundred and
14 sixty-six dollars.

15 MR. MCELHANNON: Yes, sir.

16 THE COURT: All right. So, in other words, no.
17 You'll have to have all three.

18 Yes, sir?

19 MR. WEDEKIND: And, Your Honor, just an
20 interesting fact, Mr. Lay, who is a co-defendant in this
21 case was recaptured Friday. So that bond issue that we
22 had pending may be ---

23 THE COURT: Well, okay. That will be good.
24 But the other one wasn't. And that's where both the
25 State -- and it was a State Grand Jury case -- both the

1 State and the Defendant agreed to remove the electronic
2 monitoring. And he'd been such a good, cooperating
3 witness for two years during all those trials. What is
4 it? There was no complaint about him until he left the
5 courtroom. And he hasn't been seen since. What's his
6 name? Rominez (phonic)?

7 LAW CLERK: Hinojos.

8 THE COURT: Hinojos or something like that.

9 MR. WEDEKIND: Hinojos.

10 THE COURT: Hinojos? Mr. Parks was there too
11 when I committed my error.

12 MR. WEDEKIND: Well, we haven't sworn the jury,
13 Your Honor, so I think he should be continuing on the
14 bond.

15 THE COURT: We haven't sworn. Yeah, he's going
16 to continue it over lunch.

17 MR. WEDEKIND: Yes, sir.

18 THE COURT: But he will have to be back at one
19 o'clock.

20 MR. WEDEKIND: Yes, sir.

21 MR. MCELHANNON: Yes, sir.

22 THE COURT: As soon as the jury is sworn, I
23 mean, the trial begins.

24 MR. MCELHANNON: Yes, sir.

25 THE COURT: And in his absence, which I hope

1 doesn't happen.

2 MR. MCELHANNON: Yes, sir.

3 THE COURT: Very good. Thank you, sir.

4 (WHEREUPON, court stood at recess for a lunch
5 break.)

6 THE COURT: All right. Is there anything from
7 the State before we bring the jury in?

8 MR. WEDEKIND: Just to note the illustrious
9 arrival of Mr. Underwood who is now here, sir.

10 THE COURT: Oh, wonderful. Glad to have you
11 with us, sir.

12 MR. UNDERWOOD: Thank you, Your Honor.

13 THE COURT: All right. Anything from the
14 Defendant?

15 MR. MCELHANNON: No, Your Honor.

16 THE COURT: All right. Ask the jury to join
17 us, please.

18 (WHEREUPON, the jury entered the open court at
19 approximately 1:16 p.m.)

20 THE COURT: All right. Let the record reflect
21 that the jury and alternate are in the jury box.

22 Mr. Foreman, ladies and gentlemen of the jury, I'm
23 sure each of you now fully appreciates that this court,
24 the Court of General Sessions of Anderson County, exists
25 for the purpose of resolving questions of alleged

1 criminal conduct arising between the State of South
2 Carolina and the Defendant. It is a guaranteed right of
3 every citizen that a charge of criminal conduct be
4 presented in open court according to certain rules of
5 procedure. The State has not only an equal right but the
6 duty to present a charge of criminal conduct in open
7 court according to the same rules of procedure. Each of
8 the parties, therefore, both the State and the Defendant,
9 then have an equal right to the opportunity of this
10 proceeding, judicial proceeding, to have you, the jury,
11 selected and now to be sworn for the trial of this case.

12 Mr. Clerk, if you would, please, swear the jury.

13 (WHEREUPON, the jury was duly sworn.)

14 PRELIMINARY CHARGE

15 BY THE COURT:

16 Mr. Foreman, ladies and gentlemen of the jury, one
17 of the most important aspects of your duty as the jury
18 lies essentially in the oath that you have just now taken
19 to well and truly try and determine the facts of this
20 case. That oath, in a very essential way, says that you
21 are the sole judges of the facts in this case.

22 Obviously, any case tried in the court will involve
23 a question about what happened or how something came to
24 happen or whom, if anyone, did anything in a particular
25 occurrence or circumstance. From this point forward,

1 then, no one concerned with this trial has a right to
2 decide any question of fact in this trial or the truth of
3 it except you, the jury. The facts then are for your
4 resolution and your decision and yours alone. And after
5 you've heard -- excuse me. After you hear all of the
6 evidence in the case, then it will be your duty by your
7 mutual and joint discussions to determine the truth of
8 this case by deciding the weight and believability of
9 each part of the evidence and by applying the law of the
10 case thereto.

11 Now, as trial judge, I am the judge of the law in
12 the case. It is also my responsibility, among other
13 duties, to preside over this trial, to rule on the
14 admissibility of evidence offered during the progress of
15 the trial and to state to you, the jury, the law
16 applicable to the case.

17 The Constitution of South Carolina mandates that I,
18 as the trial judge, cannot directly or indirectly comment
19 about the facts in this case. The process of a verdict
20 then is simply that you, the jury, first determine what
21 is the truth of the facts and apply to that true state of
22 facts the principle of law applicable, and by that
23 process determine and report to this Court your final
24 verdict in the case, speaking the truth of the case as
25 you determine it.

1 I will more fully and more completely state to you
2 the principles of law applicable to the case before the
3 case is presented to you for your decision. However,
4 there are certain principles of law applicable to the
5 framework of every case in General Sessions Court. In a
6 very basic way, I will outline several of these basic
7 principles to you for your guidance.

8 The Defendant has entered a plea of not guilty to
9 the charges contained in the indictment. The indictment
10 in this case is not evidence. It is simply the written
11 instrument that contains the charge or charges against
12 the Defendant. It serves as the formal document on which
13 this case is processed in to court.

14 The plea of not guilty places upon the State the
15 burden of proof in this case. As to what is meant by the
16 term burden of proof, the Defendant is presumed innocent
17 in law of all charges contained in the indictment. The
18 burden of proof requires the State to prove guilt beyond
19 a reasonable doubt. And, therefore, consistent with that
20 burden, the Defendant, or the accused party, shall be
21 presumed innocent. And a presumption of innocence is
22 sufficient to compel a verdict of not guilty or a verdict
23 of acquittal unless you, the jury, conclude that the
24 State has satisfied its obligation to prove the Defendant
25 guilty beyond a reasonable doubt.

1 Now, the term reasonable doubt means the kind of
2 doubt that would cause a reasonable person to hesitate to
3 act.

4 The case will be opened by the Solicitor or in this
5 case, the Attorney General, after which the same
6 opportunity will be afforded to the Defendant to make an
7 opening statement. When all the evidence has been
8 received by the Court, counsel for the State and counsel
9 for the Defendant will state to the jury their respective
10 positions after which the Court will fully state the law
11 applicable in this case.

12 Obviously, all parts of a case are important. You
13 do not know which witness in a case will most impress
14 you, whether the first witness or the last witness. In
15 reaching your final conclusion, you will need the
16 guidance and the judgment of the other jurors. You will
17 need the guidance of the principles of law that will be
18 stated to you by the Court.

19 For all these reasons, just as I've said earlier, if
20 we have any recess periods when you retire to your jury
21 room or during your overnight or meal recess, I instruct
22 you that you must not undertake to discuss this case
23 among yourselves until it is finally given to you for
24 your deliberation. Nor are you to discuss this case with
25 anyone or permit anyone to discuss the case with you. If

1 anybody should try to do so, you are to immediately
2 report them. For you are now the sworn jury of the Court
3 of General Sessions of Anderson County, and no one is to
4 interfere with your duty as such.

5 The verdict in this case must be the unanimous
6 verdict of all twelve jurors.

7 Now, there are a few other additional comments I
8 need to make before we begin. First, as I mentioned
9 earlier, although I am the only person who can tell you
10 what the law is, you are the only ones that can determine
11 the facts. I do not have the right to indicate how I may
12 feel about the evidence presented. And throughout this
13 trial, my intention will be to act impartially towards
14 each party.

15 Second, from time to time, an attorney may object to
16 some bit of testimony or evidence which the other side is
17 seeking to present. As in sports, business, or any other
18 structured activity, there are certain rules that both
19 sides must obey in presenting evidence. These rules have
20 definite purpose. They ensure that the information you
21 receive is the most trustworthy and reliable evidence
22 available. An objection is a procedure we use for an
23 attorney to call a possible violation of those rules to
24 the Court's attention. And for this reason, you should
25 not hold an attorney's objection against his client, nor

1 should you conclude from my ruling on the objection that
2 I favor one side or the other.

3 Finally, I would ask that you pay closest attention
4 possible to the evidence presented to you. I will ask
5 that you do not take notes for if the note taker makes an
6 error, his notes can be more detrimental than helpful
7 during the deliberation. The time-tested system is for
8 each of you to listen carefully. And I'm sure you each
9 will do that.

10 The reason I suggest that jurors do not take notes,
11 it has been my experience that if you take notes, you
12 have a tendency to concentrate on the note that you're
13 taking. You want to be sure that you write down what you
14 think you hear. And by doing that, you are distracted
15 from the testimony and the evidence that's being
16 presented at the time. I would, therefore, suggest that
17 you pay, as I said earlier, very close attention to the
18 testimony and evidence being presented. And then if you
19 have a question about what that testimony was or what the
20 evidence was, you depend on the joint deliberations of
21 the other members of the jury, just as you will do in
22 your final verdict.

23 Moreover, if you make an error in the note from what
24 the testimony and evidence actually was, then it can be
25 not only detrimental, but it can actually affect the

1 quality of the information you seek to produce. And I
2 use as an example, if you're taking down what you think
3 you hear and you interject the word not or you forget to
4 write the word not where it wasn't presented, then it
5 changes the whole statement altogether. Therefore, I
6 suggest that you do not take notes and that you do rely,
7 as I say, on the collective recollection of the other
8 jurors if you have a question about what the testimony
9 and evidence was.

10 Now, having said all of that, I do take notes. It's
11 not one of these things, "Do as I say, not as I do." You
12 need to understand that you have different purposes in
13 this courtroom from mine. I am not concerned about the
14 truth of the evidence or the testimony. That is for your
15 and your alone responsibility. All I am concerned about
16 is if something happens that is required under our law, a
17 procedure so to speak. So I'm copying down what occurs,
18 not the significance of it. That is for you. You're the
19 ones who are to decide what the effect of that testimony
20 was. Was it credible? Was it believable? And can it be
21 depended upon? And you do that by observing the witness
22 at the time the testimony is made and the exhibits at the
23 time they are presented.

24 So with that, we will now begin the trial, and I
25 will recognize the Assistant Attorney General for his

1 opening statement.

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

4 THE COURT: Oh, and by the way, this is Mr.
5 Underwood. He joined us at lunchtime, and he's an
6 Assistant Attorney General and will be trying the case
7 along with Mr. Wedekind.

8 Very good.

9 MR. UNDERWOOD: Thank you, Your Honor.

10 OPENING STATEMENT

11 BY MR. UNDERWOOD:

12 Crack cocaine. That's why we're here. We're all in
13 this room because of crack cocaine. The trafficking of
14 crack cocaine here in Anderson County. We're here
15 because this Defendant, Timothy Crosby, is charged with
16 trafficking crack cocaine under two counts.

17 First, as a conspiracy, that he combined with others
18 to traffic more than a hundred grams of crack cocaine,
19 also called cocaine base. Second, an actual drug deal
20 where he sold more than twenty-two grams of crack cocaine
21 to a confidential informant. That is what Mr. Wedekind
22 and I are here to prove to you today and throughout this
23 trial, that that took place.

24 This is a very straightforward trial, but that does
25 not mean it is not an important trial. This trial is

1 very important. It's an important part of our system.
2 It's very important to the pursuit of justice. So we
3 bring this case to you to hear the facts and render a
4 verdict.

5 As to the drug deal I mentioned, you've often heard
6 the phrase, a picture is worth a thousand words. If
7 that's true, then sound is worth nine hundred and ninety-
8 nine words. And in this trial, you're going to hear a
9 drug deal. You're going to hear the actual audio
10 recording of the drug deal as it goes down.

11 On the date in question, February 2013, law
12 enforcement found a confidential informant, someone who's
13 not a police officer, but goes undercover to purchase
14 drugs from a drug dealer. They meet this confidential
15 informant at a secure location. They wire him up, so to
16 speak. They put an audio recording device on him. They
17 search him, search the vehicle, to make sure he doesn't
18 already have any drugs or anything else that he's not
19 supposed to have because they want to make sure that any
20 drugs that are found afterwards are part of the deal. So
21 they search to make sure there are no drugs to begin
22 with.

23 Again, the drug dealer has made arrangements that
24 William Angelo Johnson is purchasing crack cocaine from
25 whoever his supplier is. This person goes to Mr.

1 Johnson's shop, the Toys R Us. It's a car shop. And
2 that's where this deal is to go down. And you can hear
3 various conversations on the audio, but most importantly
4 are the few minutes where the actual drug deal goes down.
5 And you'll get to hear it. You'll get to hear the
6 discussion of, "Is this an ounce? Is this an ounce of
7 crack cocaine?" You'll hear them talking about counting
8 the money and how the money is made up.

9 You'll hear how the confidential informant,
10 immediately following the deal, notifies law enforcement
11 of what vehicle, not only the type of vehicle, a Dodge
12 truck, but also the license plate number of that vehicle
13 so that law enforcement can continually follow and watch
14 that vehicle to see who's driving it.

15 You'll hear how law enforcement then conducted a
16 traffic stop to positively identify the person who sold
17 the crack cocaine. You're going to hear from the officer
18 who conducted that traffic stop -- and there was others
19 -- that it was this Defendant, Mr. Crosby, who sold that
20 crack cocaine to the confidential informant.

21 Now, I mentioned that there are two charges here.
22 There's the one drug deal. There's also a conspiracy.
23 Why is there a conspiracy? Because we're going to prove
24 to you that this drug deal was not a one-time thing, that
25 this happened more than once. Not once, not twice, not

1 three times, but numerous times that Mr. Crosby delivered
2 quantities of crack cocaine to be resold to other
3 individuals. That Mr. Crosby worked together with others
4 to make sure that crack cocaine was further distributed
5 to other people.

6 Now, you might ask yourself, well, what is the
7 conspiracy idea? At the end of the trial, the Judge is
8 going to instruct you on the law, and he'll give you all
9 the fine details of a conspiracy. But in laymen terms,
10 think of it like this. It's a group of people coming
11 together in agreement to conduct some type of criminal
12 enterprise.

13 And think of it as any other kind of business.
14 Because that's what drug dealing is. It's a business.
15 You've got manufacturers. You've got wholesalers,
16 distributors, retailers, on down the line. The drug
17 trade is the same way. The only difference is we aren't
18 talking about Mary Kay products. We aren't talking about
19 tools. We aren't talking about televisions. We're
20 talking about crack. And that makes this an illegal
21 conspiracy, an illegal criminal enterprise.

22 Now, the Judge told you that we have a burden, as
23 the State, to prove this case beyond a reasonable doubt,
24 to prove that Mr. Crosby is guilty beyond a reasonable
25 doubt. And that's a huge burden. But we welcome that

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1 burden because that's important to our system of justice.
2 And the Judge told you that reasonable doubt is something
3 that would make a reasonable person hesitate to act.
4 That doesn't mean that you don't consider the evidence.

5 What we ask of you is to sit here and view all of
6 the evidence in this case, consider every bit of evidence
7 in this case. At the end of this trial when you have
8 heard all of the evidence, seen all of the evidence,
9 you're going to be asked to return a verdict. And I
10 submit to you when you consider all of that evidence,
11 that you will find the Defendant guilty of trafficking
12 crack cocaine both from a drug deal and an ongoing
13 conspiracy.

14 Thank you.

15 THE COURT: Mr. McElhannon?

16 MR. MCELHANNON: Thank you, Your Honor. May it
17 please the Court.

18 OPENING STATEMENT

19 BY MR. MCELHANNON:

20 Ladies and gentlemen of the jury, as the State said,
21 this is a very important day. It's the most important
22 day for Mr. Crosby sitting there at the table. The Judge
23 has already told you, and he'll instruct you again, y'all
24 are the trier of facts of this case. He'll instruct you
25 on the law. You'll apply the facts to the law that he

1 gives you.

2 The facts are going to come from that chair right
3 there, the witnesses. The State has the burden to prove
4 each and every element of the crime for which Mr. Crosby
5 is charged. Or crimes, two of them. They have the
6 burden of proof to prove every element beyond a
7 reasonable doubt. That's very important. If they do not
8 prove every single element of the crimes as the Judge
9 instructs you at the end of the case, you must acquit Mr.
10 Crosby. You can't just say, well, they made two parts of
11 it, proved two parts of it and didn't prove the third.
12 Every single element has to be proven beyond a reasonable
13 doubt.

14 And that beyond a reasonable doubt, although
15 everyone says the definition of it, in our system, that
16 is the highest standard of proof that we have in the
17 United States. So they have to prove every element by
18 that standard.

19 Now, he's indicted, as Mr. Underwood stated, on two
20 counts. The indictments are right here. But I'm going
21 to tell you that these indictments are nothing more than
22 a piece of paper with words written on them. This is not
23 proof. These are allegations. And until it's proven
24 beyond a reasonable doubt, this is not true. As stated,
25 Mr. Crosby is maintaining his innocence. He's pled not

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1 guilty. That's why we're here today. And that's his
2 right. I'm going to submit to you after the State's case
3 -- and listen to their witnesses very carefully. Listen
4 to them. If you believe them, then that's up to you. If
5 you believe part of what they say, that's up to you. But
6 their credibility and their veracity for truth is what
7 you really have to look at.

8 So after all the witnesses are put up, it'll be up
9 to you to decide the verdict in this case. And verdict
10 means to speak the truth. And it's up to you and only
11 you. So I'm going to leave it at that. I'm not going to
12 get into what the facts are and what we dispute. Because
13 like I said, that's not for me to say. And that's not
14 for the Attorney General's Office to say. That for the
15 witnesses to say.

16 So with that said, I appreciate your time. Thank
17 you for being here. And we know that you'll speak the
18 truth.

19 THE COURT: All right. The State may call its
20 first witness.

21 MR. WEDEKIND: Yes, Your Honor. The State
22 would call Agent Casey Collier.

23 **CASEY KIRKLAND COLLIER,**

24 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **DIRECT EXAMINATION**

1 BY MR. WEDEKIND:

2 Q. Agent Collier, please state your name again just for
3 the record for the jury?

4 A. Casey Kirkland Collier.

5 Q. Okay. And who are you currently employed by?

6 A. South Carolina Law Enforcement Division, also known
7 as SLED.

8 Q. Okay. And in that capacity with SLED, do you have
9 any particular job tasks currently?

10 A. I am currently assigned to the Midlands Region which
11 is criminal investigations.

12 Q. And a few years ago were you assigned to a different
13 agency or department within SLED?

14 A. Yes. I was assigned to our narcotics unit,
15 primarily in the State Grand Jury narcotics
16 investigation.

17 Q. And did you have occasion as part of that time frame
18 to be working in the 2013 time frame doing counter
19 narcotics operations?

20 A. Yes, sir.

21 Q. So tell the jury, if you would, what you know about
22 an investigation entitled -- and why they're entitled
23 certain names -- but about one called Toys R Us?

24 A. Toys R Us is a multi-county jurisdiction narcotics
25 case. This one included Pickens, Anderson and

1 Greenville. And there are drug deals that go on between
2 counties or a CI that comes from one county and goes to
3 another county to make controlled buys under our
4 observation.

5 Q. Now, why does SLED get involved in such multi-county
6 operations? With the issue of jurisdiction is what I'm
7 driving at.

8 A. Because SLED is state-wide, we have the ability to
9 go within each county. Therefore, we can bring the
10 counties together and make larger cases because they
11 can't cross county lines.

12 Q. So a sheriff's deputy from Anderson doesn't have the
13 authority to do an investigation in Greenville; is that
14 correct?

15 A. Correct.

16 Q. But SLED has the ability to go to every county in
17 the State?

18 A. Yes, sir.

19 Q. Okay. So part of that investigation, did that lead
20 you to the address of 6738 Highway 81 North in Piedmont?
21 And tell the jury what that address is.

22 A. Yes, sir. That is actually an Anderson County --
23 it's an auto shop, paint shop. It's not a Toys-R-Us.

24 Q. And is that just a play on words for the boys with
25 toys or men with cars?

1 A. I don't know. That's what they called this auto
2 shop.

3 Q. Okay. And would you tell the jury specifically what
4 actions you were taking with Toys R Us? Why were you
5 interested in that location?

6 A. We had information that they were selling and using
7 drugs out of the Toys R Us auto shop. So we were able to
8 get a confidential informant that was able to go in there
9 and make controlled purchases under our observation.

10 Q. Okay. And you work in this, and I work in this.
11 Many people in this courtroom do. But the jury doesn't
12 really know. Would you please explain exactly what a
13 confidential informant is?

14 A. A confidential informant is someone that -- they
15 come to us. They're signed up by SLED. They work
16 directly under our observation. They're in our control
17 during the controlled buy.

18 Q. Now, do you have different ways of receiving payment
19 -- or do they get paid? First of all, do they get paid
20 for their services?

21 A. Yes, they can get paid.

22 Q. And can they also be looking for favor from the
23 government in regards to anything that they have done?

24 A. Yes, sir.

25 Q. Do you use people who are always perfect angels as

1 informants?

2 A. No, sir.

3 Q. Okay. Tell the jury, if you would, sometimes how
4 informants are developed?

5 A. They can come from the locals. They may have
6 pending charges in a local jurisdiction, and they want to
7 work for us or the locals to make these buys to either
8 help work off charges or they'll get paid themselves.

9 But a lot of times you can't send -- re-use confidential
10 informants because they -- either they've been there or
11 they know somebody that can get them in.

12 Q. And by being involved in the drug trade themselves,
13 does that allow them to get greater access?

14 A. Yes.

15 Q. They're not total strangers often?

16 A. No.

17 Q. And specifically, would you tell the jury what
18 happened in particular at the Toys R Us on the 5th of
19 February 2013?

20 A. On February 5th, 2013, we had a confidential
21 informant. The confidential informant met with us. And
22 when I say he met with us, it's a group of us that is
23 involved, Anderson County Deputies, Pickens County
24 Deputies. They meet with us. The CI is the confidential
25 informant. We search them. We search their vehicle.

1 And on this day, we searched the confidential informant
2 that would be making the purchase as well as the person
3 that would drive him.

4 Q. Okay. Let me interrupt you right there now. Do
5 females search females and males search males, or does it
6 cross gender?

7 A. Female law enforcement search female CIs, and then
8 male officers search male CIs.

9 Q. Okay. And was there a male and a female informant
10 being used on the 5th of February at the Toys R Us?

11 A. Yes, sir.

12 Q. Okay. And who were they?

13 A. Anthony Murray was the male CI. And then his
14 sister, and I don't have her name with me. His sister
15 was the one driving him to make the purchase.

16 Q. Okay. And did you search that female?

17 A. Yes.

18 Q. Okay. What result came from that search?

19 A. There was no weapons or contraband, contraband
20 meaning the drugs. And she didn't have any money.

21 Q. And you say Mr. Murray was also present?

22 A. Yes, sir.

23 Q. All right. Was there an agreement? Were they
24 targeting a particular individual when they went to Toys
25 R Us that day?

1 A. Yes. There was supposed to be a controlled purchase
2 from a gentleman that we had know of as Bernard that day.

3 Q. And what was anticipated that your CI, Mr. Murray,
4 was going to go and procure when he got to Toys R Us?
5 What was -- he was looking for a guy named Bernard to
6 give him some stuff. What was it that he was expecting
7 to get?

8 A. An ounce of crack cocaine.

9 Q. And was there an agreed upon price for that ounce of
10 crack cocaine?

11 A. A thousand dollars.

12 Q. Okay. And did he just pull out of his own pocket a
13 thousand dollars and say, hey, I'll front this and, you
14 know, you guys can catch me later? Or did you do
15 anything in particular?

16 A. No, sir. At SLED we have our money. It's called CI
17 or confidential funds. And we have a form that you have
18 to fill out. On that form, on the back of it, we write
19 down each serial number that's on each bill that we would
20 give to them. If it's a twenty, a five, or a hundred
21 dollar bill we still write every serial number out. And
22 then the CI will sign that they received that money as
23 well as the agent that's giving it to them, and then a
24 witness also during the transaction.

25 MR. WEDEKIND: I beg the Court's indulgence for

1 a moment.

2 May I have this marked for identification?

3 (WHEREUPON, State's Exhibit Number 1 was marked for
4 identification only.)

5 Q. Agent Collier, I'm showing you what's marked for
6 identification as State's ID Number 1. Do you recognize
7 that?

8 A. Yes, sir.

9 Q. Tell the jury what that is.

10 A. It's the list of the hundred dollar bills that made
11 up the thousand dollars that we gave to the confidential
12 informant and every serial number and then what the funds
13 -- we write a little blurb of what the funds were used
14 for.

15 Q. So being hundred dollar bills equaling a thousand,
16 how many were there?

17 A. Ten.

18 Q. And you recorded all ten of those serial numbers?

19 A. Yes, sir.

20 Q. Now, is it often done that you recover those
21 immediately, or do you sometimes let the money go away?

22 A. Let the money go away a lot of times to further the
23 investigation.

24 Q. And did that occur in this case?

25 A. Yes, sir.

1 Q. Now, you said they expected a guy who was going to
2 make a delivery was a fellow by the name of Bernard?

3 A. Yes, sir.

4 Q. Were you -- did you also, before you sent your
5 informant in, Mr. Murray, did anybody put any kind of
6 listening device on him?

7 A. Yes. He had audio recording equipment on his
8 person.

9 Q. Okay. And by audio, what does that mean? Is it
10 just a tape recorder or ---

11 A. A recorder. Like a small recorder, and then there's
12 also another radio.

13 Q. And were you able to monitor that from a distance?

14 A. Yes, sir.

15 Q. Why is that done?

16 A. So that we know what's going -- we can have some
17 knowledge of what's going on inside and what to expect.
18 And for the safety of the CI.

19 Q. So he's wearing a transmission device but not a
20 receiver; is that correct? He couldn't hear you, but you
21 could hear him?

22 A. Correct. Yes, sir.

23 Q. Okay. Now, you dispatched him after searching him
24 and putting him with a wire. And he goes in with his
25 sister in a vehicle. Did you just leave him at a remote

1 location and expect to see him whenever he got back?

2 A. No. We follow him there to the target location, and
3 we set up to where we still have eyes on the location the
4 entire time. And when he comes out, he's picked up by
5 surveillance agents. And when I say picked up, I mean
6 we're following them back to where we meet to receive the
7 drugs.

8 Q. But there's always somebody keeping them within eye
9 contact; is that correct?

10 A. Yes, sir.

11 Q. Now, you're not driving around in SLED-marked
12 vehicles or local police cars when you do this; is that
13 correct?

14 A. No.

15 Q. Now, did it come about that your informant just
16 walked right up and met with Bernard and did the deal?

17 A. No.

18 Q. What happened on that day?

19 A. When he got there, Bernard was not going to show up.
20 It was going to be a while. So the informant left and
21 then came back, and Bernard still was not going to be
22 there.

23 Q. Okay. And did anyone know -- did somebody actually
24 arrive with the crack cocaine on that date?

25 A. Yes, sir.

1 Q. Okay. And did you know who it was at that time?

2 A. No, sir.

3 Q. Okay. Was it a new party to the Toys R Us, in
4 regards to the party?

5 A. Yes, sir.

6 Q. Okay. Could you describe what vehicle approached
7 after your informant walked in?

8 A. A white Dodge Ram pickup truck.

9 Q. And were you close enough that you could see the tag
10 number, or did you stay at a distance?

11 A. I did not see the tag number myself.

12 Q. Okay. That's all I'm asking. So you weren't able
13 to observe it directly?

14 A. No, sir.

15 Q. But you could see that it was a white pickup truck?

16 A. Yes, sir.

17 Q. Now, what happened after -- you said you were able
18 to monitor the transaction. Did you hear the deal go
19 down?

20 A. Yes, you could hear.

21 Q. Okay. And what -- well, I won't ask you what was
22 said. We'll do that later. But once the deal was
23 completed, did you get a signal from your informant? Any
24 information from the informant when he got to his
25 vehicle?

1 A. Yes.

2 Q. What information did you receive?

3 A. He called out the vehicle and the vehicle's tag
4 number.

5 Q. Okay. And did he tell you that it was Bernard?

6 A. No. He said it was not Bernard. He said it was a
7 black male.

8 Q. And did he say who that was?

9 A. Uh-uh (negative).

10 Q. Okay. So what did you improvise to occur in order
11 to find out who that person was?

12 A. I contacted Lieutenant Baker of the Anderson County
13 Sheriff's Office because he was out there with us and
14 asked if he had another unit to initiate a traffic stop
15 to identify that individual.

16 Q. Now, did Lieutenant Baker just appear out of
17 anywhere, or was he also part of your team?

18 A. He was part of the surveillance team.

19 Q. Okay. So he was your local assistance?

20 A. Uh-huh (affirmative).

21 Q. And you called upon him to do what?

22 A. To make a phone call to bring in another unit to
23 initiate the traffic stop to identify the driver or the
24 person in that vehicle.

25 Q. And when you say another unit, was this also an

1 undercover unit, or was it a uniform marking?

2 A. It was a fully marked. Fully marked.

3 Q. And what was the purpose of that?

4 A. For identification.

5 Q. So were you keeping the vehicle under observation,
6 this white Dodge pickup truck?

7 A. Yes, sir.

8 Q. Okay. Did you note any other parties in the vehicle
9 besides the driver?

10 A. I was not part of the vehicle that was driving with
11 the surveillance on that vehicle. I was headed back to
12 meet with the CI at that point.

13 Q. Well, when you saw the vehicle come up to Toys R
14 Us, did you see multiple people in the vehicle or what
15 number of people?

16 A. No, sir.

17 Q. It was just the driver?

18 A. Uh-huh (affirmative).

19 Q. Okay. When that vehicle departed -- you said you
20 still had eyes on it -- did you see another person in the
21 vehicle or just the driver when he left?

22 A. I honestly I can't remember. I don't even remember
23 if I really saw the truck leave because it's not marked
24 that I was. Lieutenant Baker was on the surveillance of
25 the vehicle.

1 Q. Okay. And then you said you kept the CI under total
2 observation. What happened after that?

3 A. We followed the CI, or CIs, back to the meeting
4 location that we'd met at prior to. And -- do you want
5 me to continue?

6 Q. Yeah, please.

7 A. And when he arrived there -- we arrived together --
8 he immediately handed over the crack cocaine that he
9 received from the individual that came to the shop. And
10 then he was searched and she was searched again to make
11 sure that they were still clean. And no money was
12 recovered. He had already used the money. And the
13 surveillance equipment was removed. And the vehicle was
14 again searched to make sure that there was nothing in the
15 vehicle.

16 Q. So to get this straight for clarity, you tasked
17 Lieutenant Baker to follow the white Dodge pickup truck.
18 You departed Toys R Us and you followed what vehicle?

19 A. The CI's.

20 Q. Okay. And they were going in the same locality,
21 weren't they?

22 A. No, sir.

23 Q. Okay. So once you found -- you joined up at this
24 remote location where it was free from observation of
25 anyone there, what, if anything, did Mr. Murray give to

1 you after the transaction?

2 A. The crack cocaine.

3 Q. Okay. And I've asked you to bring that evidence.

4 Did you do that today?

5 A. Yes, sir.

6 MR. WEDEKIND: Your Honor, if I can approach?

7 THE COURT: Yes, sir.

8 MR. WEDEKIND: Can we have that marked, please?

9 (WHEREUPON, State's Exhibit Number 2 was marked for
10 identification only.)

11 Q. Agent Collier, I'm showing you what's marked as
12 identification State's ID Number 2. Do you recognize
13 that?

14 A. Yes, sir.

15 Q. Okay. What is it?

16 A. That's the SLED Best kit that we put the drugs in to
17 send to the lab for analysis.

18 Q. Okay. And on that Best kit, is there a particular
19 way to make sure that that is one and only item? Is
20 there anything affixed to that bag?

21 A. It has a control number, but it's the same number
22 that goes through -- this bag is with the same chain of
23 custody.

24 Q. Now, when you first got that bag, is it in an outer
25 plastic bag like that?

1 A. (No verbal response)

2 Q. What is ---

3 A. When I ---

4 Q. Yes, go ahead.

5 A. When I received the drugs from the CI, it was placed
6 into this blue and white bag that says "SLED Drug
7 Analysis Security Envelope," which is known as a Best
8 kit. This outer envelope has been added since the drug
9 analysis has occurred at SLED.

10 Q. Okay. And you had some numbers affixed to it, you
11 said, that are unique identifiers to that particular item
12 of evidence. What numbers were on the bag?

13 A. It's Bravo 232330.

14 Q. Did you record that when you were taking notes for
15 the investigation?

16 A. Yes, sir.

17 Q. Okay. And you transferred that to a document that
18 is affiliated with that envelope?

19 A. Yes, the chain of custody.

20 Q. And that means -- what does a chain of custody mean?

21 A. It would document that the drugs were -- came from
22 the supplier to our confidential informant, from the
23 confidential informant to me, and then I would turn it
24 over to the SLED lab. And it just chains everybody. And
25 everybody has to sign and date that they were ---

1 Q. For accountably sake, so everyone who touches it
2 accounts for it?

3 A. Yes, sir.

4 Q. Okay. Now, you take the crack cocaine that you
5 received from Mr. Murray, and you did what with it?

6 A. Placed it in an envelope.

7 Q. And does that appear to be the same crack cocaine
8 that you had that day when you received it on February
9 5th, 2013, from Mr. Murray?

10 A. Yes, sir. It's still in the same bag.

11 Q. And you know that because the serial number is
12 affixed to the bag. Is it just dropped in the bag and
13 anybody can get access to it after you take it, or what
14 happens?

15 A. No. It stays with me until I get it to the SLED
16 lab, and then it is signed in to the SLED lab, and I have
17 to sign it over to somebody.

18 Q. Okay. How do you know that no one else has gotten
19 into that bag?

20 A. Because I've sealed it, and I signed when it's
21 sealed.

22 Q. So the bag has a blue strip on it; is that correct?

23 A. Yes. This green, the green strip is what seals the
24 top.

25 Q. So you activate that, and after you drop the crack

1 in it, you seal it?

2 A. Yes.

3 Q. And you sign it to make sure that nobody breaks the
4 seal?

5 A. I signed it saying that it was mine.

6 Q. And did you take any paperwork to document that
7 transaction? Did you fill out a control form?

8 A. Yes.

9 Q. And then that's taken from where -- where did that
10 envelope then go?

11 A. It goes to the SLED laboratory in Columbia.

12 Q. And you dropped it into a box; is that correct?

13 A. I would have to see the chain of custody, because
14 either I can sign it over or it can be dropped into a
15 slot that's locked only for this.

16 (WHEREUPON, State's Exhibit Number 3 was marked for
17 identification only.)

18 Q. All right. I'm showing you what's marked as ID
19 Number 3.

20 (WHEREUPON, State's Exhibit Number 4 was marked for
21 identification only.)

22 Q. Okay. I'm showing you what's marked ID, State's ID
23 Number 3. Do you recognize that?

24 A. Yes, sir.

25 Q. Okay. What is that?

1 A. The chain of custody for this, this bag.

2 Q. And that is a request, is it correct, to start the
3 chain of custody? You're going to do something with
4 that, right?

5 A. Well, I signed it over to the lab.

6 Q. Right. Okay. And at the top of that, there's a
7 serial number located; is that correct?

8 A. Yes.

9 Q. All right. Is there two sets of numbers or one?

10 A. There's supposed to be one set of numbers.

11 Q. Okay. Well, what happened?

12 A. A lot of times we'll fill this paper out, and
13 there's another document that goes with it. And that
14 document has a -- it's not cardboard, but it's harder
15 than regular paper. And that piece of paper slides into
16 this bag to notify the drug analyst that this bag belongs
17 to this set of documents. Well, when I went to -- I
18 sealed the bag with the original, the B230097. The drugs
19 was originally placed in there. I didn't put the hard
20 piece of paper in that bag, so I had to open it back up.
21 And then I got another blue and white bag with a
22 different serial number. Well, when I had the different
23 serial number, instead of having everybody sign again, we
24 just marked through the one that was messed up and put
25 the new one on it, but it's still the same.

1 Q. So that accounts for why that form has two numbers?

2 A. Yes, sir.

3 Q. All right. Now, read what you have on the Best kit
4 bag as a number and compare that, if you would, to what's
5 on State's ID Number 3?

6 A. The number on the plastic is B232330. The number on
7 the chain of custody form is B232330.

8 Q. Okay. And let me show you what's marked for
9 identification as State's ID Number 4. And that is a
10 request that you made for a SLED document, is it not?

11 A. Yes, sir.

12 Q. And what is that?

13 A. This is the chain of custody from the lab that
14 documents each time this bag was moved from hand to hand
15 through the lab. It went from me to the evidence intake,
16 which is the person who takes it into the lab and keys it
17 in for storage until it is analyzed. And then every time
18 it's moved all the way until it was analyzed by the drug
19 analyst, and then she takes it back.

20 Q. Okay. So that's an internal SLED document that
21 tracks that envelope wherever it goes inside the
22 building?

23 A. Yes, sir.

24 (WHEREUPON, State's Exhibit Number 5 was marked for
25 identification only.)

1 Q. Okay. And then State's ID number 5 is listed as a
2 SLED Laboratory Forensic Service Request. Do you
3 recognize that?

4 A. Yes, sir.

5 Q. Okay. And what is new -- is there a new number
6 assigned for tracking purposes on that particular file,
7 but it also overlaps with that to the Best kit bag?

8 A. Yes. Once any drug evidence or any evidence is
9 submitted to the SLED Laboratory, it receives a SLED lab
10 number. And that lab number is unique to that piece of
11 evidence that's being submitted on this one submission.

12 Q. So there's actually two ways to track the drugs in
13 that envelope, the Best kit number, and then there's also
14 a laboratory number; is that correct?

15 A. And when it gets the laboratory number, they
16 automatically print a sticker with the lab number and put
17 it on the bag. So now it has the lab number sticker as
18 well as the Best kit serial number.

19 Q. Okay. And look on State's ID Number 2 and compare
20 that lab number to the laboratory services request. Are
21 they identical?

22 A. Yes, sir.

23 Q. Okay.

24 MR. WEDEKIND: Your Honor, at this time the
25 State would move into evidence State's ID Number 3, 4,

1 and 5.

2 THE COURT: Any objection?

3 MR. MCELHANNON: No objection.

4 THE COURT: All right. Without objection
5 State's Exhibits 2, 3, 4, and 5?

6 MR. WEDEKIND: No, sir. I think just 3, 4, and
7 5.

8 THE COURT: 3, 4, and 5 are admitted into
9 evidence.

10 MR. WEDEKIND: Yes, sir.

11 (WHEREUPON, State's Exhibit Numbers 3, 4, and 5 were
12 admitted into evidence.)

13 Q. Now, after the collection of the drugs from Mr.
14 Murray, you did what we just talked about in great detail
15 with the Best kit. Immediately after the traffic stop
16 that you directed Lieutenant Baker to make, did you
17 arrest Mr. Crosby that you see here in the courtroom?

18 A. No, sir.

19 Q. Why didn't you arrest him immediately?

20 A. It was still an ongoing investigation.

21 Q. Okay. What significance is there to that, because
22 he had this marked money on him, didn't he?

23 A. Correct.

24 Q. Okay. Why didn't you take him down right then and
25 there when he had the marked money?

1 A. Because we were still furthering our investigation
2 using the same confidential informant.

3 Q. So you weren't just going to settle for one fish in
4 the net; you wanted a bigger crab?

5 A. Correct, uh-huh (affirmative).

6 Q. So you didn't obtain an arrest warrant for that day.
7 Did you later on?

8 A. Yes.

9 Q. And he was arrested and charged with what?

10 A. He had the trafficking cocaine and trafficking
11 conspiracy.

12 MR. WEDEKIND: I beg the Court's indulgence for
13 a moment.

14 Q. Now, before you sent the informants away from the
15 remote location, you said you rigged them a wire; right?

16 A. Yes, sir.

17 Q. Okay. And you observed that being affixed to Mr.
18 Murray, the wire?

19 A. Yes, sir. It was placed on him.

20 Q. And then you said you searched who?

21 A. I searched the female informant.

22 Q. Okay. That was his sister?

23 A. Yes.

24 Q. Okay. And the results of that were what?

25 A. Negative.

1 Q. Okay. So no drugs were on her at that time?

2 A. No drugs upon her.

3 Q. And was Mr. Murray searched?

4 A. Yes, sir.

5 Q. And who searched him?

6 A. Lieutenant Baker from the Anderson County Sheriff's
7 Office.

8 Q. Okay. And did you note any drugs being located on
9 his person at that time?

10 A. No, sir.

11 Q. What's the purpose of having them be searched to be
12 clean prior to the go-in?

13 A. So that when they leave -- when they come to us, we
14 don't know if they have anything. So if we search them,
15 we know that they're clean. And then when they go do the
16 deal and then come back, we search them again to just
17 show that there's no drugs between when we get them, when
18 they go do the deal, and then afterwards to make sure
19 that they're not holding out.

20 Q. So they could be taking two ounces and keep one for
21 themselves?

22 A. Correct.

23 Q. And you're going to make sure of that?

24 A. Yes, sir.

25 Q. And did you search the vehicle before going in?

1 A. Yes, sir.

2 Q. And was that clean?

3 A. Yes, sir.

4 Q. And you expect after a deal to see -- if they go in
5 clean and they come back dirty, what does that mean?

6 A. That they have purchased drugs under our
7 observation.

8 Q. And Mr. Murray gave you what's in that State's ID
9 Number 2 and you placed it in the Best kit. But what he
10 gave you from that transaction is in there?

11 A. Yes, sir.

12 Q. And one last point. Tell the jury, if you would,
13 what you do when you conduct a conspiracy investigation?

14 A. You're trying to find the whole group. And when
15 there's a conspiracy, you have -- when you have multiple
16 counties and it's one person that could be facilitating
17 drugs to several different people, or -- and then it
18 could be one person selling to this person, but then that
19 person could be distributing to another group of people.
20 So you don't want to get just the small people; you work
21 your way up the ladder.

22 Q. What does it take to constitute a conspiracy?

23 A. Two.

24 Q. Two or more; correct?

25 A. Yeah, two or more.

1 Q. Thank you. No further questions. Please answer any
2 that Mr. McElhannon would have.

3 CROSS-EXAMINATION

4 BY MR. MCELHANNON:

5 Q. Agent Collier, what time of day did this transaction
6 begin?

7 A. Mid-afternoon. Three is when we started.

8 Q. Okay. And the CI went -- Mr. Murray went to the
9 Toys R Us shop at three or three thirty?

10 A. He met with us around three. Are you talking about
11 the actual deal?

12 Q. Yes. Well, no. I'm talking about the entire day
13 when Mr. Murray was involved?

14 A. Okay. He was with us until approximately six thirty
15 or seven that evening.

16 Q. From three o'clock until six thirty or seven?

17 A. Yeah. It could have been right before. It could
18 have been before three, a little before three.

19 Q. Okay. What I'm getting at is he went to the shop
20 once and left; right?

21 A. Uh-huh (affirmative).

22 Q. And went back somewhere and then came back to the
23 shop, what, an hour or two later?

24 A. Can I look?

25 Q. Sure. Sure.

- 1 A. Yes. Yes, sir.
- 2 Q. And what -- if you remember, what type of vehicle
- 3 was he in, he and his sister?
- 4 A. The CI?
- 5 Q. Yes.
- 6 A. I do not remember.
- 7 Q. I mean, was it a sedan or an SUV or do you remember?
- 8 A. If I recall, it was a small car.
- 9 Q. Okay. And where were you parked to be in
- 10 surveillance of Mr. Murray, the CI, at the Toys R Us
- 11 shop?
- 12 A. I can't say where I was parked that day because we
- 13 did several controlled buys at that one location. So it
- 14 was within the vicinity that we could still see the shop.
- 15 Q. Okay. And you could see the parking lot?
- 16 A. Yes.
- 17 Q. Of the shop?
- 18 A. Yes, sir.
- 19 Q. How many -- approximately how many vehicles were in
- 20 the parking lot that day?
- 21 A. I know at least one other one was parked there.
- 22 Q. Was that a tan truck?
- 23 A. Yes, sir.
- 24 Q. And it had a South Carolina tag IER 984?
- 25 A. Yes, sir.

1 Q. Did you ever inquire as to whose vehicle that was?

2 A. At this time, I can't remember if I did.

3 Q. Did you actually see a white Dodge pickup truck pull
4 in?

5 A. Yes, I saw a white Dodge truck.

6 Q. And you saw someone get out?

7 A. Yes, an individual got out.

8 Q. But today sitting here, if Mr. Crosby was not
9 charged, would you be able to identify this man as the
10 man who got out of the truck?

11 A. No, sir. Me personally, no.

12 Q. Okay. Now, after you left or after the alleged drug
13 transaction took place, did the CI contact you again?

14 A. Once they were on the way back?

15 Q. Yes, by way of his audio equipment?

16 A. Over the recording, you can hear him calling out the
17 tag number on the truck, yes, sir. And that he was
18 leaving, I believe.

19 Q. Did he tell you anything else about the person that
20 he says he sold -- that he says he bought the drugs from?

21 A. He said it was not Bernard.

22 Q. Did he tell you, though, anything else about maybe
23 what he had on his person?

24 A. I would have to listen to the -- I don't have it
25 documented.

1 Q. Okay. You went back to the meeting location with
2 the CI?

3 A. Yes, sir.

4 Q. So you didn't do anything as far as following his
5 truck down the highway or anything like that?

6 A. No, sir. I wanted to go back with the confidential
7 informant to receive the drugs myself from him.

8 Q. Okay. And at that point, when you met back with the
9 confidential informant, did he indicate to you that he
10 did not know the identity of the person that he bought
11 from?

12 A. I would have to see the statement that was written
13 afterwards.

14 Q. I don't know if you can identify that. Actually,
15 you're not the right person to, but ...

16 A. That's fine. Can you repeat your question?

17 Q. I said, did he indicate to you when you met back at
18 the meeting location whether he knew the identification
19 of the person or not?

20 A. No.

21 Q. He just said it was not Bernard?

22 A. Correct.

23 Q. How did he know Bernard?

24 A. He had prior dealings with him.

25 Q. Prior drug dealings?

- 1 A. Yes, sir.
- 2 Q. Who recruited Anthony Murray as a CI?
- 3 A. I believe he came from Easley Police Department.
- 4 Q. Did he live around Easley?
- 5 A. Yes, sir.
- 6 Q. So they were familiar with Anthony Murray?
- 7 A. Yes, sir.
- 8 Q. And do you know if he was in any type of legal
- 9 trouble, or was he getting paid for being a CI?
- 10 A. He was being paid.
- 11 Q. From y'all?
- 12 A. Yes, sir.
- 13 Q. From SLED?
- 14 A. Yes, sir.
- 15 Q. Well, I guess, how did that -- did Easley Police
- 16 call SLED and say, "We have a guy who wants to work," or
- 17 how does that work?
- 18 A. If they have somebody that can make controlled buys,
- 19 they'll sometimes call if they can't -- a lot of
- 20 departments won't pay the money, or, you know, they can't
- 21 walk an ounce of crack because it's a thousand dollars.
- 22 So they can make some small buys, and then they'll call
- 23 SLED in to assist and further the investigation.
- 24 Q. Now, the -- so you don't know if Anthony Murray --
- 25 he was getting paid by SLED, but you don't know if he

1 also was trying to work off some charges from Easley ---

2 A. Normally -- I'm sorry.

3 Q. No, go ahead. From Easley or Anderson County or
4 wherever?

5 A. Not that I'm aware of. I know that we were paying
6 him when he was working for us.

7 Q. Okay. Can you tell me on a deal like this, with him
8 going after -- I guess he went after a bunch of people
9 for y'all, for SLED?

10 A. He did several buys.

11 Q. How much would you think, estimate, that he made out
12 of this deal?

13 A. Normally, it averages between eighty to a hundred
14 dollars a deal.

15 Q. Per buy or per transaction?

16 A. Yes, sir.

17 Q. You don't know how many he did, though, total?

18 A. Not right off-the-top-of-my-head, no, sir.

19 Q. Now, listening to the audio that was taken by the
20 wire on Anthony Murray, could you tell if there were a
21 number of people at the shop, or could you visually see
22 it?

23 A. I could not visually see it. But, yes, you can hear
24 several people on the audio.

25 Q. So more than two?

- 1 A. Yes.
- 2 Q. Could you estimate? Four? Five? Six?
- 3 A. I can say between three and four, from what I heard.
- 4 Q. Okay. So when Anthony Murray came back to the
- 5 meeting location and met with you, you took the drugs
- 6 from him?
- 7 A. Yes, sir.
- 8 Q. Okay. And tell me if I'm wrong. He thought he was
- 9 buying an ounce of crack?
- 10 A. That's what he had -- yes, that was the request.
- 11 Q. How much is an ounce in grams?
- 12 A. Twenty-eight.
- 13 Q. Okay. And how much did that that he actually bought
- 14 weight out to?
- 15 A. I believe it was twenty-two point five, but I can
- 16 confirm that with the lab analysis.
- 17 Q. So that's, if my math is right, seven and a half
- 18 grams is less than an ounce? No, six -- my mind's gone.
- 19 A. I believe that's seven and a half.
- 20 Q. Seven a half. Was I right on the math?
- 21 A. Yes.
- 22 Q. Yeah. Seven and a half?
- 23 A. Yes, I think so.
- 24 Q. So he -- and he paid a thousand dollars?
- 25 A. Yes, sir.

1 Q. Well, is that standard for an ounce?

2 A. It varies depending on what part of the state you're
3 in and -- I don't want to say how greedy somebody is, but
4 everybody has a different price. But it's around that
5 number.

6 Q. So unless someone is actually weighing the drugs
7 that they're buying when they buy them, they're not sure
8 that they're getting what they're paying for. Would that
9 be a fair statement?

10 A. Unless they bring their own scale in there and weigh
11 it themselves, no, sir.

12 Q. Okay. So basically Anthony Murray, what he thought
13 he was buying was speculation because it turned out to be
14 quite a bit -- about twenty-five percent less than what
15 he paid for?

16 A. Yes, sir.

17 Q. So unless somebody actually, like you said, weighed
18 it out, it's all going to be speculation on how much, how
19 many drugs you're getting; correct?

20 A. Yes, sir.

21 Q. And did that end your involvement on this February
22 the 5th, 2013, transaction once you got the drugs from
23 Anthony Murray? Did that end your ...

24 A. That was my role. I got the drugs. And then, of
25 course, later -- it might not have been that day, or it

1 was the next day -- they were submitted to SLED. I took
2 them to SLED, yes, sir.

3 Q. And you were in a vehicle, you said, unmarked?

4 A. Yes, sir. We all were except for the, of course,
5 the uniform patrol.

6 Q. Well, were you by yourself, or did you have another
7 SLED agent with you or ...

8 A. There was more than likely three of us.

9 Q. In the same vehicle?

10 A. Uh-huh (affirmative).

11 Q. You never went to the scene, though, where the
12 deputy actually pulled the truck over?

13 A. No, sir. I went back to the meeting location with
14 the confidential informant to get the drugs.

15 MR. MCELHANNON: That's all the questions I
16 have at this time, Your Honor.

17 THE COURT: Re-examine?

18 MR. WEDEKIND: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WEDEKIND:

21 Q. Okay. In response to the cross-examination, you
22 said that there were many deals to distinguish at the
23 Toys R Us. Could you tell the jury approximately how
24 many transactions that were narcotics and cocaine- and
25 crack cocaine-related that you undertook at Toys R Us and

1 observed?

2 A. I'd say at least ten.

3 Q. And do you have an approximate number as to the
4 amount of drugs that were purchased through Toys R Us?

5 A. It was approximately a hundred grams of crack as
6 well as approximately a hundred grams of cocaine.

7 Q. Okay. And regarding Mr. Murray, how many times did
8 he go in for you as the informant and purchase drugs,
9 roughly?

10 A. I'd say at least ten times.

11 Q. Okay. And as to the issue of weight of the drugs in
12 this particular transaction on the 5th of February, is it
13 common or uncommon for drug dealers to give a light count
14 or heavy count?

15 A. Short. They'll short you.

16 Q. And why will they short you?

17 A. Because they make more money, but yet they have more
18 to sell later because they've taken some off of yours.

19 Q. And that's what a baker could do to you or a butcher
20 could do; right?

21 A. Correct.

22 Q. The less they give you and the more money they get,
23 the more profit they have?

24 A. Yes, sir.

25 Q. Thank you.

1 MR. WEDEKIND: No further questions.

2 MR. MCELHANNON: Just one on recross, Your
3 Honor.

4 THE COURT: Limited to only what was brought
5 out on re-exam.

6 MR. MCELHANNON: As far as the money issue is
7 what I was getting at, Your Honor.

8 THE COURT: I'm going to permit limited, but
9 it's limited to just what was brought out on re-exam.

10 MR. MCELHANNON: Yes, sir. I'll withdraw that,
11 Your Honor. I don't think it's limited to that, so I'll
12 withdraw it.

13 THE COURT: Mr. Foreman, ladies and gentlemen
14 of the jury, as I say, I have the responsibility of
15 enforcing the rules of procedure. These rules of
16 procedure apply to both sides. And as you'll note, the
17 way that an examination of a witness is conducted, you
18 have the examination by the side that is calling the
19 witness. Then you have the cross-examination by the
20 other side. And then the side that is calling the
21 witness is limited to only those matters that are brought
22 up on cross-examination that were not brought up in the
23 original examination.

24 The reason for that is you have to have an end to
25 the examination. And then, although we do not have a

1 regular recross-examination, if new matter is brought on
2 examination that was not brought out on the direct
3 examination, then the other party, be it the plaintiff in
4 the defense case or Defendant if it's the plaintiff's
5 case or the State's case, then they are permitted.

6 Now, Mr. McElhannon, I want to be sure. Does that
7 rule apply in your case?

8 MR. MCELHANNON: It does, Your Honor.

9 THE COURT: Okay. Very good.

10 Thank you, ma'am.

11 And obviously you have no more questions?

12 MR. MCELHANNON: No, sir.

13 THE COURT: All right. You may step down.

14 Thank you.

15 Could counsel approach, please?

16 MR. WEDEKIND: (Addressing the witness) Just
17 keep that. Well, actually, it's a State's ---

18 THE COURT: And be sure that all of the
19 exhibits stay with the court reporter.

20 THE WITNESS: This is the page I need to ---

21 MR. WEDEKIND: That's the second page of that?

22 THE WITNESS: That's what I got when I brought
23 these.

24 MR. WEDEKIND: She's saying this is the second
25 page of an exhibit I put in, Your Honor.

1 THE WITNESS: This is when I picked the drugs
2 up from SLED to bring to court.

3 MR. WEDEKIND: Oh, that came with it?

4 THE WITNESS: This is the chain, the chain from
5 SLED to me.

6 MR. WEDEKIND: Okay. Keep it with it. Thank
7 you.

8 THE COURT: So that is part of exhibit 2?

9 MR. WEDEKIND: 1 and 2 are still for
10 identification, Your Honor.

11 THE COURT: Well, they're all for
12 identification except for 3, 4, and 5.

13 MR. WEDEKIND: Yes, sir. And these are here.
14 And then 3, 4, and 5 are there.

15 THE COURT: Okay. So the unmarked page is
16 actually ---

17 MR. WEDEKIND: Part of two.

18 THE COURT: Let's mark that so that we'll know
19 which one is which.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: All right. We're off the record
22 while the exhibit is being marked.

23 MR. WEDEKIND: Yes, sir. She's going to mark
24 it as 2-A, Your Honor, just for ---

25 THE COURT: Sure.

1 (WHEREUPON, State's Exhibit Number 2-A was marked
2 for identification only.)

3 THE COURT: We're off the record here too. I'm
4 going to have a side bar with counsel.

5 (WHEREUPON, a bench conference was held off the
6 record.)

7 THE COURT: All right. We're back on the
8 record.

9 Mr. Foreman, ladies and gentlemen of the jury, I
10 understand the next witness might take some time. So I'm
11 going to suggest we take a recess just to refresh
12 yourselves, and then we'll come back and continue the
13 trial of the case.

14 Again, my instructions, as I said from the very
15 first, will always remain the same. Do not discuss the
16 case among yourselves in any way. Talk about the
17 weather, football games or anything else, but not this
18 case.

19 All right. And I'll excuse you. And when you're
20 ready to come back, just knock on the door. Very good.

21 Everyone else remain seated while the jury retires
22 to the jury room.

23 (WHEREUPON, the jury exited the open court at
24 approximately 2:24 p.m.)

25 THE COURT: All right. Is there anything from

1 the State before we take a recess?

2 MR. WEDEKIND: No, sir.

3 THE COURT: Anything from Defense?

4 MR. MCELHANNON: No, Your Honor.

5 THE COURT: Very good. Thank you. All right.

6 We'll stand at ease until the jury returns.

7 THE BAILIFF: We've got some that want to
8 smoke, Your Honor.

9 THE COURT: Somebody go with them.

10 (WHEREUPON, court stood at recess for a short
11 break.)

12 THE COURT: Is Mr. Underwood going to be with
13 us?

14 MR. WEDEKIND: Not, Your Honor -- no, not ---

15 THE COURT: Okay.

16 MR. WEDEKIND: He'll come in later.

17 THE COURT: All right. Anything from the State
18 before we bring the jury back?

19 MR. WEDEKIND: No, sir.

20 THE COURT: From the Defense?

21 MR. MCELHANNON: No, Your Honor.

22 THE COURT: Very good. Ask the jury to join
23 us, please.

24 MR. WEDEKIND: Oh, Your Honor?

25 THE COURT: Yes, sir.

1 MR. WEDEKIND: Can we approach?

2 THE COURT: Come on. Approach.

3 (WHEREUPON, a bench conference was held off the
4 record during which the jury entered the open court
5 at approximately 2:49 p.m.)

6 THE COURT: All right. Is the State ready?

7 MR. WEDEKIND: The State's ready, Your Honor.

8 THE COURT: Is the Defense ready?

9 MR. MCELHANNON: The Defense is ready, Your
10 Honor.

11 THE COURT: All right. You may call your next
12 witness for your case.

13 MR. WEDEKIND: Yes, sir. The State would call
14 Mr. Anthony Murray.

15 (WHEREUPON, the witness was duly sworn.)

16 THE COURT: All right. You may proceed.

17 MR. WEDEKIND: Thank you, sir.

18 **ANTHONY BERNARD MURRAY,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. WEDEKIND:

22 Q. Mr. Murray, tell the jury, if you would, a little
23 bit about yourself. What do you currently do for
24 employment?

25 A. Well, I'm not working right now. I've had three

1 strokes. I'm unemployed. I was a carpenter before that.

2 Q. Okay. And without -- you don't have to go into the
3 precise details. But where have you lived most of your
4 life?

5 A. In Anderson County.

6 Q. And how long have you been living in this area?

7 A. Forty-five years.

8 Q. And let's be direct about something. You've worked
9 as an informant; correct?

10 A. Yes.

11 Q. And have you been in trouble with law enforcement
12 before in your past?

13 A. Yes.

14 Q. Okay. And have you been put in a situation where
15 you've had to do probation with a sentence hanging over
16 your head?

17 A. Repeat the question.

18 Q. Have you ever been put on probation before?

19 A. Yes, sir.

20 Q. Okay. And so you've had a couple of run-ins with
21 the law; you've got a few convictions on your record?

22 A. Yes, sir.

23 Q. Now, did you have occasion to go work for SLED as an
24 undercover informant?

25 A. Yes.

1 Q. A confidential informant, I think, is what they
2 precisely use that language?

3 A. Yes.

4 Q. And what do you do when you're a confidential
5 informant or a CI for SLED?

6 A. I call up and tell them I got somebody that's
7 selling dope. Can I meet with them.

8 Q. So you keep your ears open and your eyes open for
9 any drug deals, and if you find somebody that's going to
10 sell it to you ---

11 A. Right.

12 Q. --- you're going to give them a ring up and tell
13 them that you might set up a deal and they're going to
14 deliver drugs?

15 A. Yes, sir.

16 Q. Okay. Now, were you paid for your services to do
17 that?

18 A. Yes, sir. Yes, sir, I be paid.

19 Q. Were you working off any charges when you did that
20 ---

21 A. No.

22 Q. --- or were you just receiving cash?

23 A. Cash always.

24 Q. How much were you getting per deal?

25 A. A hundred per deal with SLED.

1 Q. Okay. The other agencies cheap or paid the same?

2 A. Some will pay more; some pay less.

3 Q. Okay. So you were working for Agent Collier on

4 February 5th of 2013; correct?

5 A. Yes.

6 Q. Okay. Tell the jury what you know about a place

7 called Toys R Us?

8 A. It's a garage where they fix cars and sell them.

9 Q. Do you know who the owner of Toys R Us was?

10 A. Yes. Angelo Johnson.

11 Q. Okay. Did you have any occasions to make any drug

12 purchases through Mr. Angelo Johnson?

13 A. Yes, several times.

14 Q. And on the day of 5 February 2013, was he the owner

15 and supervising the locality of Toys R Us that day?

16 A. Yes.

17 Q. Okay. Now, did you have an occasion to go and call

18 up SLED and say you think you have a deal going down with

19 anybody in particular at Toys R Us on May [sic] 5th?

20 A. On what day?

21 Q. 5 February 2013, did you expect to do a drug deal

22 that day at Toys R Us?

23 A. Yes.

24 Q. Okay. And what were you expecting to happen?

25 A. I was expecting for Bernard to show up.

1 Q. Okay. And what was he supposed to show up with?

2 A. One ounce.

3 Q. Of what?

4 A. Cocaine. Crack.

5 Q. Okay. And how much? Did you agree about a price
6 beforehand?

7 A. A thousand dollars.

8 Q. A thousand dollars. Okay. And were you just
9 pulling that out of your bankroll and laying it down for
10 the crack, or did somebody give it to you?

11 A. SLED gave it to me.

12 Q. Okay. Now, when they give it to you, did they
13 account for every bill, or did they just give you the
14 money and say, "Here it is"?

15 A. They counted it for me, and then I got to count it
16 and sign for it.

17 Q. And you did that?

18 A. Yes.

19 Q. Okay. Now, did they do anything to search you
20 personally?

21 A. Yes, they searched me.

22 Q. Okay. What about your vehicle?

23 A. They searched the vehicle.

24 Q. And were you going in solo, or were you with anybody
25 that day?

1 A. I had a driver because I don't drive.

2 Q. Okay. And that driver was who?

3 A. My sister.

4 Q. Okay. So you go in, you and your sister. And what
5 happens when you first get to Toys R Us on that day?

6 A. The first time we get there, they say he's in
7 Anderson and he'll be there in forty-five minutes. I
8 think I waited a little while, and then I left. I talked
9 to SLED.

10 Q. When you say he, who are you waiting on?

11 A. Bernard.

12 Q. Okay. So you're expecting to still see Bernard that
13 day?

14 A. Bernard, yeah.

15 Q. Okay. So he doesn't show. You wait a bit. Then
16 what happens?

17 A. I leave and go back to the meeting point, give the
18 money back. They search the car. And then we wait. I
19 make a phone call back to Toys R Us to Angelo. He says,
20 come on back. So I get back. I probably sat about
21 thirty minutes still waiting on Bernard, and somebody
22 else pulled up.

23 Q. All right. And so like when you say Angelo, is that
24 William Angelo Johnson?

25 A. Yes, sir.

- 1 Q. That's the owner of Toys R Us?
- 2 A. Yes, sir.
- 3 Q. Okay. So you called him to see was Bernard there,
- 4 and he said what?
- 5 A. "You can come on. I got it coming."
- 6 Q. Okay. So you show up again. What happens?
- 7 A. Well, we sit out there about thirty minutes talking,
- 8 then a guy pulled up.
- 9 Q. Now, was your sister inside or ---
- 10 A. No. My sister sat in the car. Whoever drives has
- 11 to stay in the car.
- 12 Q. Okay. So she stayed in the car?
- 13 A. Yeah.
- 14 Q. You go in solo?
- 15 A. Right.
- 16 Q. But you're wearing a wire?
- 17 A. Yes, I had a wire on.
- 18 Q. And was that a two-way communicator? Could you hear
- 19 Agent Collier, or it was just a one-way talker?
- 20 A. I couldn't hear them. They hear me talking.
- 21 Q. Okay. And you said you were in there to buy a
- 22 thousand dollars worth of crack; right?
- 23 A. Yes, sir.
- 24 Q. How much did you expect that to be weight-wise?
- 25 A. One ounce.

1 Q. One ounce. Okay. That was your agreed-upon price?

2 A. Yes, sir.

3 Q. Did you weigh it when you go it?

4 A. No, sir.

5 Q. Did you ask the guy who brought it to you how much
6 it was?

7 A. I asked him was it an ounce. He said, yes.

8 Q. What did he say?

9 A. He said, yes, it was a ounce. So I gave him the
10 money. I said, "Count your money. It's a thousand
11 dollars."

12 Q. Okay. And did he count it?

13 A. Yeah, he counted it. I said, "It's all hundreds."

14 Q. Okay. Now, the person that sold you that crack on
15 the 5th of February 2013, did you know that individual
16 that day?

17 A. No.

18 Q. Have you had prior acquaintance with that
19 individual?

20 A. No.

21 Q. Do you see him in the courtroom today?

22 A. Yes.

23 Q. Okay. Would you point him out and describe him?

24 A. Sitting over there in that pretty suit.

25 Q. What color's his shirt?

1 A. I think blue.

2 MR. WEDEKIND: Your Honor, the record should
3 reflect he has identified the Defendant, Mr. Timothy
4 Crosby.

5 THE COURT: The transcript will so show.

6 MR. WEDEKIND: Thank you, Your Honor.

7 Q. Okay. So you go, you do the transaction. Then what
8 do you do? After you've obtained the crack with a
9 thousand dollars, what happens?

10 A. I leave back out to go get in the car and drive back
11 to our meeting point.

12 Q. All right. Do you have some highly developed sense
13 of feel or touch?

14 A. No.

15 Q. Do you have any special skills that you think you
16 have on identifying weight?

17 A. No. I just I know I got the dope in my hand.

18 Q. Okay. But he gave you that amount?

19 A. Yes.

20 Q. And you took his word that it was an ounce; right?

21 A. Yes.

22 Q. Did you weigh it?

23 A. No.

24 Q. Did you bring a set of scales with you?

25 A. No.

1 Q. Did it look about right?

2 A. Yeah, it looked right.

3 Q. So you leave, and then what do you do?

4 A. Get back in the car. We drive back. They're
5 following us. We go back to the meeting point.

6 Q. Did you do a call-out on the wire?

7 A. Oh, yeah. When I got in the car I did call out. I
8 say, "It's not Bernard. It's a guy I ain't ever seen."
9 And I called out the tag number and the color of the
10 truck.

11 Q. Okay. And what was it that you said, if you
12 remember?

13 A. It was a white Dodge. I don't know the tag number.
14 I called out the tag number.

15 Q. You called out -- whatever's on the tape is what you
16 said?

17 A. Yes.

18 Q. Okay. And then after you called out the tag, you
19 get in the vehicle with your sister. And where do you
20 go?

21 A. Go back to Pickens County, Easley.

22 Q. Okay. So you go back to Easley. And who do you
23 join up with?

24 A. SLED, Casey.

25 Q. Okay. And after you get in contact with Agent

1 Collier, what do you do at that point?

2 A. She has a bag. I drop it in the bag.

3 Q. And so when you say you drop it in the bag, what did
4 you drop in the bag?

5 A. The coke. The crack.

6 Q. The crack, okay. And did you take anything from the
7 bag that you got?

8 A. No.

9 Q. Did she search you again? Or did Agent Baker search
10 you, Lieutenant Baker search you?

11 A. Lieutenant Baker searched me going in and coming
12 back.

13 MR. WEDEKIND: I beg the Court's indulgence for
14 a moment, sir.

15 THE COURT: Certainly.

16 (WHEREUPON, State's Exhibit Number 6 was marked for
17 identification only.)

18 Q. Mr. Murray, I'm showing you what's marked for
19 identification as State's ID Number 6, which is an
20 envelope contain a CD or a DVD-R to be precise. Do you
21 recognize this disk?

22 A. Yes, sir. Yeah, I signed it. That's my initials.

23 Q. Okay. And that contains an audio recording; is that
24 correct?

25 A. Yes.

1 Q. And does that audio recording include you on the
2 tape?

3 A. Yes.

4 Q. Is it the wire that was used to record -- is it a
5 recording of the wire that you were wearing on 5 February
6 2013?

7 A. Yes.

8 Q. Does it fully, completely and accurately contain all
9 the information that you remember?

10 A. Yes.

11 Q. Okay. Are there any -- and have you listened to
12 every bit of it from start to finish?

13 A. Yes, I listened to the whole tape.

14 Q. Okay. Were there any additions or deletions made to
15 the tape?

16 A. No, not that I could tell.

17 Q. Is it complete and accurate?

18 A. Yes, sir.

19 Q. And who's on that tape to the best of your
20 recollection?

21 A. You want me to name everybody?

22 Q. If you can. Those parties that you know?

23 A. Angelo, Jeff, Bernard, Larry, and that guy Timothy.

24 Q. Okay. And was your sister also?

25 A. And my sister.

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1 Q. Okay. Now, you say you particularly listened to
2 this because of what reason?

3 A. I had signed it. He had me sign it after I listened
4 to it.

5 Q. So you listened to it and you dated it. What's the
6 date that you listened to it?

7 A. 1/20/15.

8 Q. Okay. So just last week?

9 MR. WEDEKIND: Your Honor, at this point, the
10 State would seek to introduce into evidence State's ID.
11 Number 6.

12 THE COURT: Any objection?

13 MR. MCELHANNON: No objection, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, State's Exhibit Number 6 was admitted
16 into evidence.)

17 THE COURT: As I understand it, though, you're
18 going to pick out portions of it, or are you going to do
19 the whole thing?

20 MR. WEDEKIND: Yes, Your Honor. We may play it
21 during the closing. But for the purposes of right now,
22 I'm going to just examine a witness about a truncated
23 portion from the tape. I believe it's in excess of an
24 hour in total recording, but there's a three- or four-
25 minute window that I'm going to have him listen to.

1 THE COURT: Very well.

2 MR. WEDEKIND: Thank you, Your Honor. If we
3 may publish it?

4 THE COURT: Certainly.

5 MR. WEDEKIND: And I may take a couple of
6 minutes here to set it up.

7 THE COURT: Very good. We'll go off the record
8 while they're preparing the DVD.

9 (WHEREUPON, court stood at ease while Mr. Wedekind
10 prepared to play the audio recording.)

11 THE COURT: All right. Back on the record.

12 (WHEREUPON, a portion of State's Exhibit Number 6
13 was published.)

14 THE COURT: (Audio playing) Mr. Foreman,
15 ladies and gentlemen, can you hear?

16 MR. WEDEKIND: (Audio playing) I'm getting it,
17 Your Honor.

18 THE COURT: I tell you what. Let's take a
19 short break until we get everything set up because we
20 might need other amplifiers. All right.

21 MR. WEDEKIND: Yes, sir.

22 THE COURT: All right. So Mr. Foreman, ladies
23 and gentlemen of the jury, I'm going to ask you to retire
24 to your jury room just for a few minutes. Again, do not
25 undertake a discussion of the case among yourselves in

1 any way.

2 (WHEREUPON, the jury exited the open court at
3 approximately 3:06 p.m.)

4 THE COURT: All right. We'll stand at ease
5 until we're advised.

6 (WHEREUPON, court stood at ease.)

7 THE COURT: Thank you very much.

8 MR. WEDEKIND: I think we've got it, Your
9 Honor.

10 THE COURT: Anything from the State before we
11 bring the jury back?

12 MR. WEDEKIND: No, sir.

13 THE COURT: From the Defense?

14 MR. MCELHANNON: No, Your Honor.

15 THE COURT: Very good. Ask the jury to join
16 us, please.

17 Mr. Wedekind?

18 MR. WEDEKIND: Yes, sir.

19 THE COURT: Could you identify for the record
20 where you are on the DVD?

21 MR. WEDEKIND: Yes, sir.

22 THE COURT: Thank you.

23 MR. WEDEKIND: I'll do that.

24 THE COURT: Very good.

25 (WHEREUPON, the jury entered the open court at

1 approximately 3:13 p.m.)

2 THE COURT: All right. Let the record reflect
3 that the jury and alternates are in the jury box. You
4 may proceed.

5 MR. WEDEKIND: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 CONTINUED BY MR. WEDEKIND:

8 Q. Okay. Mr. Murray, we've taken this tape that you
9 identified, and we're going to publish it, which means
10 we're going to play it for the jury. You might not have
11 the exact time on it. But you did say you listened to
12 it. It's one hour and four minutes in total duration.

13 A. Okay.

14 Q. And what I'm going to do is play a portion of it for
15 you, and then afterwards I'll ask you some questions
16 about what was played for the jury. But it's a portion
17 from the middle of the tape, just to not confuse you.
18 Okay?

19 MR. WEDEKIND: Your Honor, if I may?

20 THE COURT: Do you have the actual part of the
21 -- where it is on the thing?

22 MR. WEDEKIND: It's set for that, yes, sir.

23 THE COURT: All right. And what's the number?

24 MR. WEDEKIND: It is set at forty-seven minutes
25 and sixteen seconds into the tape.

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1 THE COURT: Very good.

2 MR. WEDEKIND: And it says at the bottom that
3 it has a total duration of one hour four minutes and
4 thirty-seven seconds.

5 THE COURT: All right. Very good. Thank you.

6 (WHEREUPON, a portion of State's Exhibit Number 6
7 was published.)

8 Q. Okay. Mr. Murray, that portion that we just
9 listened to, tell the jury in your own words what that
10 was.

11 A. Oh, that was the deal going down. He finally got
12 there, and we went in the side room and I asked him was
13 it an ounce. I told him, "Here's your money. It's all
14 hundreds."

15 Q. Okay. And at the very end, is that your voice?

16 A. At the very end, that's me going back, getting in
17 the car, having to call out the tag number and identify
18 that it is not Bernard.

19 Q. Now, I'm going to go back to the beginning. There's
20 a portion here. And the first time you listen to it, it
21 might not be as clear. But you said you were adamant
22 that you asked him if it was an ounce; is that correct?

23 A. Yes.

24 (WHEREUPON, a portion of State's Exhibit Number 6
25 was published.)

1 Q. Is that that portion where you're saying, "Is that
2 an ounce?"

3 A. Yes.

4 Q. And that comes up at forty-eight forty-five; is that
5 correct?

6 A. Yes, sir.

7 (WHEREUPON, a portion of State's Exhibit Number 6
8 was published.)

9 Q. Now, the totality of what we heard is you come in
10 alone; correct?

11 A. Yes, sir.

12 Q. Then what happens?

13 A. I was sitting there waiting on him to get there.

14 Q. And when you say, "he gets there," who's that?

15 A. I'm thinking it was Bernard, but it's Timothy.

16 Q. Okay. And then he shows up, and you ask him or does
17 he -- what do you do?

18 A. We go to the side. We went into the side. We
19 walked over there. And I asked him was it an ounce. He
20 said, "Yeah." I said, "It's a thousand dollars in
21 hundreds. Count them."

22 Q. And did you get the impression from your common
23 experience about -- did he know anyone else present in
24 that room when he walked in? Did he greet them?

25 A. I think he spoke to half of them. I mean, Jeff and

1 Angelo was calling him this whole time because they knew

2 I wasn't going to wait much longer.

3 Q. Okay. And then, as you said, you took the thousand

4 dollars out, and you counted it out, and you gave it to

5 him. What happened? He gave you ---

6 A. He gave me the dope. I got the dope, and then I

7 gave him a thousand dollars.

8 Q. And then you walk out. Where we hear that crunching

9 noise, what is that?

10 A. That's the gravel outside of the shop. They didn't

11 have asphalt; they had gravel. That's the crunching that

12 you hear.

13 Q. Was that microphone in your shoe or something?

14 A. Yeah. On my leg, thigh.

15 Q. Okay. And I just noticed when you were walking, we

16 could hear everything but the shoe creak. Okay.

17 MR. WEDEKIND: I beg the Court's indulgence one

18 moment, sir.

19 THE COURT: Very well.

20 Q. And you said you did how many transactions for SLED

21 at Toys R Us approximately?

22 A. How many?

23 Q. How many times did you go there and do drug

24 transactions at Toys R Us?

25 A. About eight.

1 Q. Eight times?

2 A. Eight or ten.

3 Q. And do you know how much total drugs you bought
4 while you were there? Were they all for an ounce or more
5 or less?

6 A. It was always -- I think eight of them was ounces.

7 A couple was maybe a hundred. It started out like a
8 hundred or two hundred. I think it was all eight ounces
9 because everybody had to bring an ounce.

10 Q. Thank you. Please answer any questions that Mr.
11 McElhannon may have for you.

12 CROSS-EXAMINATION

13 BY MR. MCELHANNON:

14 Q. Mr. Murray, how old are you?

15 A. I'm forty-six.

16 Q. Forty-six? And briefly, Mr. Wedekind said that you
17 had some trouble with the law; is that correct?

18 A. Yes, sir.

19 Q. Were you, in fact, convicted of attempted burglary
20 in 2006 and felon in possession of a firearm in 2006?

21 A. 2006?

22 Q. Yes, sir.

23 A. No.

24 Q. Were you convicted in 2006 of two counts of breach
25 of trust?

1 A. Yes.

2 Q. Were you convicted in 2007 of giving false

3 information to law enforcement?

4 A. Yes. I got pulled over.

5 Q. You gave them false identification?

6 A. I gave them my brother's name. I went home, and

7 then the next day, his supervisor called. He was an FBI

8 agent.

9 Q. And are you now on probation for a 2012 conviction

10 for failure to stop for a blue light?

11 A. Yes, sir.

12 Q. So you've got a pretty lengthy history just in the

13 past six years, don't you?

14 A. Yes.

15 Q. And breach of trust, that involves a crime of

16 dishonesty, doesn't it?

17 A. Yes.

18 Q. Giving false information is lying to a law

19 enforcement officer, isn't it?

20 A. Yes, it is.

21 Q. So you've got a history of being dishonest and

22 lying?

23 A. Yes.

24 Q. Now, you called out that tag number on the white

25 truck. Do you know who owned that truck?

1 A. No.

2 Q. As we sit here today, do you know who owns that
3 truck?

4 A. No.

5 Q. Now, do you remember giving a written statement
6 after this transaction went down?

7 A. Yes.

8 Q. And you signed it?

9 A. Yes.

10 Q. I'll just show you this. And if you can tell me,
11 can you identify this?

12 A. Yes.

13 Q. Is that your signature?

14 A. Yes.

15 Q. Two pages?

16 A. Yeah, two pages.

17 Q. Signature on both pages?

18 A. Yes, sir.

19 MR. WEDEKIND: And Your Honor, if Defense would
20 like to introduce the entire document, we would have no
21 objection.

22 MR. MCELHANNON: I'll marked it for
23 identification. I've actually marked this one up.

24 THE COURT: Do you have a clean copy somewhere?

25 MR. MCELHANNON: I do, Your Honor. We're good

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1 to go.

2 THE COURT: Oh, okay. Is that -- all right.

3 MR. MCELHANNON: Yes, sir. I provided a
4 duplicate.

5 THE COURT: All right. Very good.

6 (WHEREUPON, Defendant's Exhibit Number 1 was marked
7 for identification only.)

8 THE COURT: So, without objection by either the
9 State or the Defendant, the statement will be ---

10 MR. WEDEKIND: Is the Defense moving that into
11 ---

12 THE COURT: I don't know if he's moving it in.
13 He had it for identification.

14 MR. WEDEKIND: Identification. I'm sorry, sir.

15 THE COURT: But he can refer to it and, of
16 course, you can refer to any other part of it.

17 MR. MCELHANNON: Yes, sir.

18 Q. Mr. Murray, I want you to turn that to page two.

19 And if you can go to about seven lines down. And the

20 sentence ends, "... while we waited on Bernard." And

21 then if you can pick up from there. Do you see what I'm
22 talking about?

23 A. No.

24 THE COURT: You can approach the witness.

25 MR. MCELHANNON: Thank you, Your Honor.

1 THE COURT: Show him where you want him to
2 start.

3 A. Oh, right here where you talking about? "...
4 waiting on Bernard."

5 Q. Right here. If you could read that paragraph down
6 to -- well, about five lines down. If you just start
7 reading, I'll stop you.

8 A. "While I was waiting on Bernard, a black male Dodge
9 pulled up -- and a black male pulled up in a white Dodge
10 Ram pickup truck. Jeff said to him, 'Give it to me.'
11 And I told him, 'No,' could I do my own deals? And then
12 we walked inside the office and the black male who was
13 not Bernard. The guy pulled about a bag, a quantity of
14 large rock, crack, large cookie of crack. And there was
15 another bag of crack in his pocket."

16 Q. Okay. Stop right there. So you're saying that he
17 sold you what we call a cookie of crack, and he had
18 another bag of crack in his pocket?

19 A. Yes, sir.

20 Q. Where was it? What pocket?

21 A. His front pocket.

22 Q. You're sure that was drugs in that bag too?

23 A. It was the same size as the other one.

24 Q. And at the time, you weren't able to identify who
25 sold you those drugs, were you?

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1 A. Nope.

2 Q. You ever seen the man before?

3 A. Nope.

4 Q. How did you identify him later?

5 A. They never asked me to identify him.

6 Q. They never asked you to identify him?

7 A. No. They said they were going to do a lineup, but
8 they didn't.

9 Q. They were going to do a lineup, but they didn't?

10 A. (No verbal response)

11 Q. Were you shown a driver's license picture at some
12 point?

13 A. No, not that I can remember. I don't think so.

14 Q. Let me show you ---

15 MR. WEDEKIND: And, Your Honor, I think I'm
16 going to object to this at this point. If we could have
17 -- approach the bench.

18 THE COURT: Well, I tell you what. I think it
19 might take more than that.

20 Mr. Foreman, ladies and gentlemen of the jury, I'm
21 going to ask you to retire to your jury room so I can
22 take up a matter of law. Again, do not undertake
23 discussion of the case in any way.

24 (WHEREUPON, the jury exited the open court at
25 approximately 3:32 p.m.)

1 THE COURT: All right. Mr. Wedekind?

2 MR. WEDEKIND: My objection is that I believe
3 he was going to refer to a ten-year driver record of Mr.
4 Crosby that has an annotation in handwriting at the top.
5 And it says specifically, "CI identified 2/6/13 as guy he
6 bought an ounce of crack from on 2/5/13." I don't
7 believe that's the handwriting of this witness, Mr.
8 Murray. So he can't really testify as to a statement
9 that he didn't make, so I would object under the grounds
10 of hearsay.

11 THE COURT: Well?

12 MR. MCELHANNON: Well, Your Honor, I would
13 agree with that part of it. But he just testified that
14 he never identified ---

15 THE COURT: That's what his statement was,
16 "couldn't identify the man, never seen before. They were
17 going to do a lineup but didn't." 613, I think (b)
18 extrinsic evidence of prior inconsistent statement of a
19 witness. And there are certain things you have to do in
20 order to establish that. I'm going to overrule the
21 objection if he lays the proper groundwork.

22 MR. WEDEKIND: Yes, sir.

23 THE COURT: Yes, sir?

24 IN-CAMERA EXAMINATION

25 BY MR. MCELHANNON:

1 Q. Mr. Murray, you stated that you never identified Mr.

2 Crosby?

3 A. Yes.

4 Q. You were never shown a lineup?

5 A. No.

6 Q. How did you find out it was Mr. Crosby?

7 A. How did I find out? When I walked in the courtroom

8 this morning and I hadn't seen nobody, and I seen him

9 sitting there. And I told my daughter, "That's him."

10 Q. So you did not identify Mr. Crosby on the day after

11 this alleged drug sale took place?

12 A. No.

13 Q. You weren't shown any pictures of him?

14 A. No.

15 MR. MCELHANNON: Your Honor, that would be my
16 questioning of him. And this is not his handwriting, but
17 ...

18 MR. WEDEKIND: Your Honor, I think if I may
19 suggest, he probably -- Agent Collier is saying she did
20 show it to him and she did make that note. He doesn't
21 remember it. He's given an answer to the best of his
22 recollection.

23 THE COURT: Unfortunately, "I can't remember"
24 is a denial. And this is, of course, under Rule 613,
25 extrinsic evidence of prior inconsistent statement of a

1 witness. "Extrinsic evidence of prior inconsistent
2 statement by a witness is not admissible unless the
3 witness is advised of the subject of the statement, the
4 time and place it was allegedly made and the person to
5 whom it was made and he was given the opportunity to
6 explain or deny the statement." And I think "I can't
7 recall" -- well, I don't have my book. I'm using another
8 judge's evidence book. But I do know that a denial
9 permits the admission of it. And "can't recall" or "not
10 certain" or whatever does permit it. In this case, we
11 have representatives of the Court that such a statement
12 was written by someone who was apparently at the time the
13 statement was entered or alleged. Is that right? On the
14 side of the paper?

15 MR. MCELHANNON: It was entered on a driver's
16 license photo.

17 THE COURT: All right. I'm going to overrule
18 the objection.

19 MR. WEDEKIND: Okay.

20 THE COURT: It's permitted under Rule 613(b).

21 All right. Anything else before we bring the jury
22 back?

23 MR. WEDEKIND: No, sir.

24 MR. MCELHANNON: No, sir.

25 THE COURT: All right. Very well. Ask the

1 jury to join us, please.

2 (WHEREUPON, the jury entered the open court at
3 approximately 3:40 p.m.)

4 THE COURT: All right. Let the record reflect
5 the jury and alternate are in the jury box.

6 All right. You may proceed.

7 MR. MCELHANNON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 CONTINUED BY MR. MCELHANNON:

10 Q. Mr. Murray, I'm going to show you what is a ten-year
11 driver's record for Timothy Crosby. Do you see what's
12 written in the right-hand corner of that?

13 A. Yes, sir.

14 Q. Can you read it?

15 A. "CI identified on 2/6, bought crack on 2/05/13."

16 Q. It was your previous testimony that you did not
17 identify Mr. Crosby on February the 6th, 2013?

18 A. That's what I think. I know that's what I said,
19 but, yeah.

20 Q. And you were not shown a photo lineup?

21 A. Yes. Not that I remember.

22 Q. But what is your testimony regarding when is the
23 first time that you identified Mr. Crosby?

24 A. Today.

25 Q. Today? So two years after, almost two years after

- 1 this alleged drug deal went down?
- 2 A. Uh-huh (affirmative).
- 3 Q. Now, on the audio that we heard, it sounded like
- 4 there were a lot of people in that shop. Were there?
- 5 A. I think there were four.
- 6 Q. Okay. You said Angelo, which would be Angelo
- 7 Johnson; right?
- 8 A. Yeah.
- 9 Q. Jeff would be Jeff Parker?
- 10 A. I guess that's his last name.
- 11 Q. Mon. Who is Mon? Do you know his name?
- 12 A. Ferguson.
- 13 Q. Ferguson? Larry?
- 14 A. Walker.
- 15 Q. And that's all that you remember being in there?
- 16 A. Yeah, that's all I remember.
- 17 Q. Did you hear on there, as I heard, a man yell in a
- 18 loud voice?
- 19 A. That was Mon.
- 20 Q. Mon?
- 21 A. Yes. He's got a big mouth.
- 22 Q. And how do you know Mon Ferguson?
- 23 A. We're cousins.
- 24 Q. Did you see him actually yell, or you just think
- 25 that was him?

- 1 A. I can tell his voice.
- 2 Q. Who was he talking to, yelling at?
- 3 A. Angelo.
- 4 Q. I believe you said that -- who did you say made the
- 5 telephone calls trying to arrange this?
- 6 A. Angelo and Jeff.
- 7 Q. Angelo and Jeff?
- 8 A. Uh-huh (affirmative).
- 9 Q. Did Jeff ---
- 10 A. Angelo ordered Jeff to make the telephone call.
- 11 Q. Jeff would talk on the phone?
- 12 A. Yes, sir.
- 13 Q. Is that who you spoke with? Jeff?
- 14 A. Jeff.
- 15 Q. You did?
- 16 A. No. I dealt with Angelo. He was relating stuff to
- 17 Jeff. Jeff would call.
- 18 Q. And Jeff would actually arrange the deals?
- 19 A. No. Angelo would set it up. Jeff would just call
- 20 to see -- when I was getting impatient, he would call to
- 21 see what he at, you know.
- 22 Q. Now, do you remember giving a statement? Not the
- 23 written statement right after the transaction, but a
- 24 summary of all the deals that you've done at this Toys R
- 25 Us shop as dated, interview dated March the 13th of 2013?

1 A. I probably did.

2 Q. About five weeks after the February 5th transaction?

3 Would that be about right?

4 A. Yeah. I think that's when they shut it down. I
5 didn't get no more when they stopped working, yes.

6 Q. Do you know why no mention of Mr. Crosby would be in
7 this summary of all the deals that you've done at the
8 Toys R Us shop?

9 A. No. I just go by there, and they write down who
10 goes in there.

11 Q. Well, it's three pages.

12 MR. WEDEKIND: Your Honor, I'm going to object
13 again to hearsay. He's not the creator of that document.
14 I don't think he can attest to what's in it or not in it.
15 He didn't create it.

16 MR. MCELHANNON: Okay. Let me ask.

17 Q. Do you remember that interview, March 13th?

18 A. I think it was in Easley at the Police Department.

19 Q. Do you know Jason Lovell, Lovell?

20 A. Yeah, that's one of the Easley detectives.

21 Q. Brandon Minor?

22 A. That's one of the Easley detectives.

23 Q. And Joe Parrish?

24 A. That's Greenville.

25 Q. Of course, you know Agent Collier?

1 A. Yes.

2 Q. So you remember an interview with all of them
3 present?

4 A. Yes, and Lieutenant Baker.

5 Q. And Lieutenant Baker? Do you remember or not if you
6 discussed anything about Mr. Crosby in that interview?

7 A. More than likely, we did. But exactly what I said,
8 I don't know.

9 Q. So if you discussed it and it's not in here, it was
10 just left out?

11 A. I don't -- I don't write. They write down the
12 stuff.

13 MR. MCELHANNON: That's all the questions I
14 have, Your Honor.

15 THE COURT: Very well.

16 MR. MCELHANNON: Thank you, Your Honor.

17 THE COURT: Redirect?

18 MR. WEDEKIND: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. WEDEKIND:

21 Q. Mr. Murray, I'm showing you the ten-year driver's
22 record that Mr. McElhannon was showing you.

23 A. Yeah.

24 Q. What's highlighted there in yellow?

25 A. CI.

1 Q. Can you read it?

2 A. "CI identifies 2/6/13 the guy who bought crack from
3 us on 2/5/13."

4 Q. Is that your handwriting?

5 A. No.

6 Q. Did you write that?

7 A. No.

8 Q. So you were just being asked to go by your memory,
9 and your memory is what about identifying Mr. Crosby?
10 When did you first do that?

11 A. I mean, other than today?

12 Q. You know for sure today. But back then, you're not
13 sure? Therefore, you're absolutely sure you never did?

14 A. I don't remember.

15 Q. Okay. Regarding that form, read out, if you would,
16 the driver's license number portion of that right there.
17 If you would read right there.

18 A. Right here?

19 Q. Yeah?

20 A. [REDACTED].

21 Q. Thank you. Now, as far as this audio recording, you
22 were asked by Mr. McElhannon about your prior criminal
23 record and your truthfulness?

24 A. Yes.

25 Q. And you said at one point you had your back up

1 against it, and you identified yourself as your brother;

2 is that correct?

3 A. Yes.

4 Q. What benefit did you think you were going to get

5 from doing that?

6 A. I got to go home that day.

7 Q. And why did you use your brother's name?

8 A. Because I was driving.

9 Q. And what did you think that that was going to do for

10 you?

11 A. Nothing. I knew I was going to get caught.

12 Q. Is there something special you thought about your

13 brother was going to help out by identifying yourself as

14 your brother?

15 A. I don't even talk to my brother.

16 Q. Well, what does he do for a living?

17 A. He's a FBI agent.

18 Q. Okay. So then do you have -- now, as far as this

19 truthfulness and veracity of what's on this recording

20 that we played here for the jury ---

21 A. Yes, sir.

22 Q. --- do you have some ability to alter or delete what

23 goes on a recording device?

24 A. No, sir.

25 Q. And you couldn't change, add or take away from that

1 recording; is that correct?

2 A. No, sir.

3 Q. What it says is what happened?

4 A. That's what happened.

5 MR. WEDEKIND: Thank you, Your Honor. No
6 further questions.

7 THE COURT: Very well. Anything else?

8 MR. MCELHANNON: No, Your Honor.

9 THE COURT: Very good. You may step down.

10 Thank you.

11 MR. WEDEKIND: Your Honor, I have no need, I
12 think, for Mr. Murray being -- he can be excused if the
13 Defense doesn't have an objection.

14 MR. MCELHANNON: No objection.

15 THE COURT: All right. Very good. He will be
16 excused without objection.

17 All right. I tell you what. Approach and let me
18 find out some sort of timing on this thing.

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 THE COURT: All right. You may call your next
22 witness.

23 MR. UNDERWOOD: Thank you, Your Honor. The
24 State calls Lieutenant David Baker.

25 DAVID ANTHONY BAKER,

David Anthony Baker - Direct Examination by Mr. Underwood

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1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. UNDERWOOD:

4 Q. Good afternoon, Lieutenant Baker.

5 A. Good afternoon.

6 Q. If you would, please introduce yourself to the jury
7 and tell them a little bit about your professional
8 background.

9 A. Yes, sir. As I mentioned, my name is Lieutenant
10 David Anthony Baker. I have approximately twenty years
11 of law enforcement experience. I started out at
12 Greenville County, worked there for a couple of years.
13 Ended up in the Town of Williamston, worked there for
14 approximately twelve or thirteen years. And I've been
15 here at the Sheriff's office for about six. Currently, I
16 am responsible for managing and supervising the vice and
17 narcotics division.

18 Q. And what are your duties in that supervisory
19 position?

20 A. I am responsible for many things. Investigate
21 narcotics and vice-related crimes as well as gang
22 activity here in Anderson County as well as assist the
23 adjoining agencies with their investigations that either
24 may come into Anderson County or Anderson County cases
25 that may spill over into their jurisdiction.

1 Q. And working in the vice and narcotics unit, do you
2 have experience doing controlled purchases?

3 A. Yes, sir.

4 Q. Could you explain to the jury what a controlled
5 purchase is and how you conduct it?

6 A. Sure. A controlled purchase typically is exactly
7 how it says. It's controlled. You control it from the
8 beginning all the way to the end. At any point in time,
9 if a buy becomes compromised through it's control, it's
10 not a good buy. But we typically start that controlled
11 purchase with an informant. And we will meet with that
12 informant. We'll actually search them physically to be
13 sure they aren't bringing anything contraband related to
14 introduce into this particular case to, you know,
15 potential bad evidence and so forth. We'll search the
16 informant. We'll search their vehicle that they're
17 transporting in to also rule out the possibility of some
18 false evidence for introduction.

19 We use marked money. That money is copied and it is
20 supplied by the State or Federal if there's a federal
21 investigation from a federal agency.

22 Typically, there's recording devices. It could be
23 anything from just plain audio, or it could also include
24 video. It just depends on the application. We've done
25 everything from really good contact buys where we were

1 able to utilize cameras all the way up to -- we've had
2 informants that go year round and don't wear shirts. So
3 it just doesn't work in that type of application. And
4 every one of them varies. They're all different.

5 But, again, in a controlled buy, after the buy takes
6 place or during the course of a buy, surveillance also
7 takes place. And that's physical surveillance. That's
8 where we're traveling by. We take that informant to a
9 location or follow him to a location, make sure that he's
10 there, that he doesn't leave and go anywhere else or
11 anything of that nature.

12 When that informant is through at that location,
13 we'll come pick them up and take them back to a meeting
14 spot where they will be searched again. Any evidence is
15 turned over so that there's a good chain of custody. We
16 ensure that they don't have any additional narcotics
17 either on their person or in their vehicle. And then
18 there's a debrief that takes place to determine exactly
19 what took place during the course of that buy.

20 Q. And did you have an occasion to conduct any
21 controlled purchases at the Toys R Us auto shop in
22 Anderson County?

23 A. Yes, sir. I participated in several at that
24 particular location.

25 Q. And to the best of your memory, how many different

1 controlled purchases did you participate in?

2 A. I'm going to estimate five, probably five.

3 Something like that.

4 Q. Did one of those controlled purchases take place on
5 February 5th, 2013?

6 A. It did.

7 Q. If you would, please tell the jury what your role
8 was in that operation.

9 A. There was, I believe, a total of six or seven of us
10 at that particular meeting. It was myself representing
11 Anderson County Sheriff's Office. I know that particular
12 evening we had another buy going on, so I couldn't lend
13 another person into that particular buy, so I went
14 myself. We had myself from Anderson County, Investigator
15 Jason Owens from Greenville County, Lieutenant Lovell
16 from Easley Police Department, SLED Investigators Casey
17 Collier, Connie Sonnerfelt and -- let me think who else
18 was there. I believe one more. An investigator also
19 with SLED, I believe, if I'm not mistaken. I don't
20 recall if she was present during this particular buy, but
21 they had -- SLED also during the course of this
22 investigation had an intern that came up during several
23 buys. I just don't recall if she was present during this
24 particular buy.

25 Q. And on this particular buy, what was the goal?

1 A. The goal was to send the informant to Toys R Us,
2 which is located in Anderson County on Highway 8, and
3 make a purchase, a controlled purchase, of a quantity of
4 narcotics. In this particular case, crack cocaine.

5 Q. And how was the controlled purchase arranged?

6 A. It was arranged through SLED through an informant
7 that had been utilized for prior buys to go to this
8 target location.

9 Q. And who was that informant?

10 A. That informant was Anthony Murray.

11 Q. And was he your informant?

12 A. He was not.

13 Q. He was from another law enforcement agency?

14 A. That's correct. I believe, if I'm not mistaken he
15 was initiated by Easley PD.

16 Q. When did that operation begin?

17 A. I'm going to say probably months before. At least
18 probably a month before this particular buy.

19 Q. And on this particular buy ---

20 A. Yeah.

21 Q. --- how did the particular buy start?

22 A. Oh, you're talking about as far as this particular
23 day. I apologize. Well, we met about three fifteen at a
24 meeting spot where we've met for prior buys in this
25 particular case. We met, I think it was like around

1 three fifteen or so on the 5th. Started off with just, I
2 think chatted with him for a minute. I think I conducted
3 the search of -- actually I'm certain. I conducted the
4 search of the informant's person. I believe one of the
5 female agents searched the female. There was a female
6 that was also present that particular day. Searched her
7 person. And then a couple of other agents searched the
8 vehicle to ensure that all were clean for this particular
9 buy.

10 Q. And what were the results of your search of the
11 confidential informant?

12 A. I found nothing on his person. He was clean.

13 Q. And what about ---

14 A. He was considered clean.

15 Q. Okay. Meaning he didn't have any drugs on him?

16 A. He did not.

17 Q. Did he have any money on him?

18 A. He did not.

19 Q. And the search of the vehicle to your knowledge,
20 what was the result of that?

21 A. To my knowledge it would not have continued if
22 anything was found.

23 Q. And what about the female informant?

24 A. She was found to be clear as well.

25 Q. So after the informants and the vehicle was

1 searched, what did you do next?

2 A. I think Lieutenant Lovell, I believe, was the one
3 who actually initiated the -- or placed the surveillance
4 equipment on the informant, which was done shortly after
5 all the searches took place of both their persons and the
6 vehicle. Once that was done, we do what we call prepping
7 the tape. And that's typically where we tape, "Today is
8 such and such date. It's approximately this time. And
9 what our goal is." Typically, that's what we do to prep
10 a wire. And I think that took place. And from there, we
11 left shortly thereafter to ---

12 Q. And what kind of a device was used?

13 A. I believe in that particular -- or this particular
14 day it was just audio. I don't think any video was in
15 place.

16 Q. Did that audio have a transmitter as well?

17 A. Yes, that is correct. I was not monitoring the
18 audio on this particular day.

19 Q. So once you had conducted a search of the CIs, the
20 CI had been wired up with an audio device, where did you
21 go at that point?

22 A. Myself and other agents in separate vehicles would
23 follow the informant down to the location. Some of us
24 would go beyond it. Some of us would behind us. Some of
25 us would be before it. So we could get -- conduct good

1 video -- or visual -- not video, but a visual
2 surveillance of the location so we could see who was
3 coming and going.

4 Q. And were you in a position where you could see who
5 was coming into and out of the shop?

6 A. I was. I did both stationary and mobile. Actually,
7 I ended up pulling into a business that looked like they
8 were closed. Somebody pulled up, and I had to pull out.
9 So I did both stationary and mobile surveillance.

10 Q. And stationary versus ...

11 A. Stationary is where I normally just sit in a parking
12 lot and watch until I'm satisfied and leave, or mobile
13 would be where I'm having to move and driving back and
14 forth.

15 Q. And in this particular instance, you did a
16 combination of both?

17 A. I had a combination of both in this case.

18 Q. Were you able to see any vehicles approach the shop
19 during the time of this controlled purchase?

20 A. Yes, sir.

21 Q. What did you see?

22 A. Well, I saw actually several vehicles. But in this
23 particular buy, when we first initially sent the
24 informant, there was a time span between when we
25 initially sent him. He had to leave and then return back

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1 for this deal to take place because something fell

2 through with the original deal, I believe.

3 Q. And when the confidential informant had to leave,

4 where did he go?

5 A. He came back and met with us. He was surveilled

6 [sic] back to that location.

7 Q. Was he kept under supervision of law enforcement the

8 entire time?

9 A. He was.

10 Q. Was there an opportunity for him to interact with

11 any other people without law enforcement's knowledge?

12 A. No, sir, he was not.

13 Q. So what happened after he had left the buy location

14 to another location? What happened after that?

15 A. When he left where we met again to come back?

16 Q. Yes.

17 A. Okay. When he came back, I believe one of the SLED

18 Agents -- again, I could not hear that audio recording or

19 the transmission of the wire. But I believe one of the

20 SLED agents had advised that the individual -- that

21 vehicle had been identified as being the target's

22 vehicle. My understanding was on this particular

23 vehicle, we were looking for a gentleman that we knew as

24 Bernard. We had found out at that time that Bernard was

25 not coming, and he actually sent somebody in his place,

1 which is not uncommon in a dope deal. The vehicle
2 identified and given the tag number was of a Dodge truck,
3 a white color or light colored Dodge truck.

4 Q. Now, at this point, since you had left the location
5 and come back, were you again in a position where you
6 could see the entrance to the shop?

7 A. Yes, sir. That's correct.

8 Q. Were you able to see this white truck pull up?

9 A. I did. I actually pulled down past the store and
10 physically saw the white truck pull in.

11 Q. Did you see anyone get out of the truck?

12 A. I did not.

13 Q. And why is that?

14 A. They had apparently already exited the vehicle and
15 entered the shop before I could put eyes on him. I did
16 not see the truck pull up either from where I had pulled
17 in, so that's actually why I moved.

18 Q. So you had seen the truck in the parking lot?

19 A. That's correct.

20 Q. Okay. But you didn't see who got out of it?

21 A. I did not.

22 Q. This is before the deal had gone down?

23 A. I'm assuming so, yes, sir.

24 Q. What did you see after that, after you arrived back
25 at that location?

1 A. When I came back to the location?

2 Q. Yes, sir.

3 A. The truck was still there. The truck was there for
4 several minutes, and I rode up and down the road several
5 times.

6 Q. Okay. Were you able to observe when the truck left?

7 A. Yes, sir. I was actually headed the opposite
8 direction from which the truck was traveling when it
9 left. I was headed back up north on Highway 8. That
10 vehicle pulled out of the shop and headed south on
11 Highway 8. I turned around about a block up and caught
12 back up to the vehicle. So really essentially at no time
13 was it really out of my sight.

14 Q. So from the time that vehicle left, did it remain in
15 your sight?

16 A. It did, as well as I think there was another agent
17 that participated in surveilling that vehicle here to
18 Anderson.

19 Q. And during that time, did you see anyone get into or
20 out of that vehicle?

21 A. No, sir, I did not.

22 Q. After the truck left the buy location, what did you
23 do?

24 A. I surveilled that truck to -- into Anderson.

25 Q. And did you receive any new information about that

1 truck?

2 A. Just the tag number, what the physical tag number
3 was, which I could verify that tag number I was behind,
4 that it was the same.

5 Q. And what did you do with that information?

6 A. At that time, I made a phone call ahead. I knew
7 that our shift was actually getting ready to change. And
8 I spoke with Deputy Brinston who was a K-9 officer
9 getting ready to come on shift, asked him if he could
10 participate in a traffic stop for us to help us identify
11 the subject.

12 Q. And what exactly did you ask him to do?

13 A. I essentially asked him to look for a lawful reason
14 to stop the vehicle. I told him to find a lawful reason
15 to stop the vehicle, that it was very important to us for
16 this investigation to identify the driver of the vehicle,
17 specifically since, at that time, I did not see the
18 driver, so I could not identify as to who the driver was.

19 Q. Did you ask Deputy Brinston to search the vehicle?

20 A. I don't recall asking him to search the vehicle, no.

21 Q. From the time that you asked for the traffic stop to
22 take place, how long was it before that vehicle was
23 pulled over?

24 A. From the time the buy took place to the time?

25 Q. From the time it left, how long did it take for it

1 to pull over?

2 A. I'm going to say probably travel time twenty minutes
3 approximately. We left Highway 8, turned right at Rogers
4 Auto Parts to Highway 81, took 81 to the interstate, went
5 southbound on the interstate and got off on Liberty
6 Highway, took Liberty Highway to Highway 28. We'd
7 traveled approximately three to four miles before it was
8 physically pulled over.

9 Q. Did you have an opportunity to actually see the stop
10 happen?

11 A. Yes, sir, I did.

12 Q. And where were you in relation to ---

13 A. I was behind the vehicle.

14 Q. And what did you see when the stop took place?

15 A. I saw Deputy Brinston pulled behind the vehicle. At
16 that time, once that stop took place, I actually passed
17 by both of them, went down the road just a ways, turned
18 around and came back.

19 Q. Did you have an opportunity to see the driver of
20 that car?

21 A. I did.

22 Q. And did you recognize the driver of that truck?

23 A. I did. When I physically -- it was approximately
24 six thirty, so it was just getting a little bit dark.

25 But it was pretty well illuminated from the traffic stop.

1 When passing by the stop, I actually slowed down and
2 looked. The vehicles that we use are what we call cold
3 cars. They're not marked. They don't look like police
4 vehicles. And they have somewhat of a little bit of
5 tinted windows, so the ability for us to look at stuff
6 like that is certainly to our advantage. Not to convey
7 in this situation, we're passing by this car, trying to
8 drive a little bit slower and try to look and see if I
9 could identify who the driver was.

10 Q. And do you have a prior working relationship
11 unrelated to this investigation with the Defendant in
12 this case, Timothy Crosby?

13 A. I do.

14 Q. And how long have you known him?

15 A. I would say -- I've been at the Sheriff's office
16 approximately six years. It would have been the year
17 prior to me coming to Anderson, between six and seven
18 years.

19 Q. And you've had numerous opportunities to see and
20 interact with him?

21 A. I did back then, yes, sir.

22 Q. So would you know him if you see him?

23 A. Yes, sir. It was a working relationship.

24 Q. And at this traffic stop, were you able to see the
25 driver of the truck?

1 A. I was, sir.

2 Q. And who was the driver of that truck?

3 A. It was the Defendant, Timothy Crosby.

4 Q. And is that individual in the courtroom?

5 A. Yes, sir, he is. He's there sitting at the

6 Defendant's table.

7 Q. Can you describe what he's wearing, please, sir?

8 A. Yes, sir. He's wearing a gray-in-color suit.

9 Q. From the time that vehicle left the Toys R Us until
10 the traffic stop took place, was there ever an
11 opportunity for the driver of that vehicle to get out of
12 the truck?

13 A. No, sir. Nobody exited the vehicle, nor did anybody
14 enter the vehicle as either a passenger or have an
15 opportunity to swap with the driver. It did not take
16 place.

17 Q. At the time of the traffic stop, when you knew that
18 a controlled purchase had just taken place, why did you
19 or Deputy Brinston not immediately arrest Mr. Crosby?

20 A. To protect the identity of the informant at that
21 time. This was still an ongoing investigation. And part
22 of the thing about a controlled buy is when you maintain
23 that control from start to finish, it allows you to
24 continue that investigation into other parties and other
25 subjects. If we would have actually effected the arrest

1 on Mr. Crosby that particular night, it would have
2 jeopardized this ongoing investigation as well as
3 potentially identifying the identity of our informant and
4 the ability for us to further use him to further this
5 case.

6 Q. And, in fact, did you use this same informant on
7 other controlled purchases?

8 A. Yes, we did.

9 Q. Involving this case?

10 A. I believe so, yes, sir.

11 Q. Okay. Now, Lieutenant, I might have asked you once
12 already before. Do you remember how many buys took
13 place, controlled buys, at the Toys R Us?

14 A. Physically at the Toys R Us, I'm going to say I'm
15 thinking it was around five or so that I participated in.
16 There were other buys regarding this case both that took
17 place at Toys R Us and other locations that I did not
18 participate in. So I know total regarding this case, I
19 would say it was more than five. I would say four to
20 five is what I participated in.

21 Q. And how much crack cocaine was being purchased
22 during those buys?

23 A. I think it varied. For this particular case, it was
24 an ounce.

25 Q. And do you know in total how much crack cocaine had

1 been purchased during controlled purchases that you
2 participated in?

3 A. I do not. I don't recall. And forgive me. I've
4 done a bunch of buys since then, so I don't recall.

5 Q. I understand. Thank you, Lieutenant. Please answer
6 any questions opposing counsel may have.

7 A. Absolutely, yes, sir.

8 THE COURT: Cross-examine?

9 CROSS-EXAMINATION

10 BY MR. MCELHANNON:

11 Q. Lieutenant Baker, did you or anyone ever run the tag
12 on that white truck?

13 A. It seems like somebody might have ran it because I'm
14 thinking that it was identified as the vehicle coming
15 back towards Anderson.

16 Q. I mean, do you know today who owns that white truck
17 or who owned it?

18 A. I don't. No, sir. I apologize. I don't.

19 Q. And I believe the information I have is that the
20 stop of the truck on Liberty Highway was at roughly
21 eighteen twenty-nine military time. What's that? Six
22 twenty-nine? Six thirty in the evening?

23 A. Six thirty. But it wasn't on Liberty Highway. It
24 was on 28 Bypass.

25 Q. 28 Bypass. I'm sorry. And February the 5th, which

1 is roughly around this time of the year, at six thirty in
2 the evening, isn't it pretty dark?

3 A. It is.

4 Q. And when you rode by, was the truck window down or
5 up?

6 A. It was down.

7 Q. And was Officer Brinston talking at that time to ---

8 A. No, sir. He was actually approaching the vehicle.
9 He had not made contact when I went by the first time.

10 Q. And you're riding by from which direction? Like
11 coming around them?

12 A. I was traveling in the same direction that both of
13 them were. I actually drifted back, far enough back to
14 where Deputy Brinston could pull in behind the subject
15 and make the traffic stop.

16 Q. Okay. And do you know why the window was down at
17 that point?

18 A. I'm assuming so he could make contact with Deputy
19 Brinston.

20 Q. Okay. And how lighted was it on Highway 28 right
21 there?

22 A. It's between, halfway between Whitehall and McGee
23 Road, right there just as you pass a plant, which is on
24 your right. I would say probably average for a road in
25 Anderson County.

1 Q. But it was getting dark?

2 A. Yeah, it was. It was certainly dark. It was -- I
3 mean, it was illuminated enough for me to recognize the
4 Defendant.

5 Q. And you said you had a working relationship?

6 A. Yes, sir, he ---

7 Q. He was a good worker? A hard worker?

8 A. I'm sorry?

9 Q. What kind of worker was he?

10 A. He was a hard worker.

11 Q. A hard worker?

12 A. Yes, sir.

13 Q. Okay. So you didn't see anyone get out of the truck
14 at the Toys R Us shop?

15 A. I did not.

16 Q. And you didn't see him get back in the truck either?

17 A. I did not. Not from the position I was in. I think
18 we may have others that can testify as to that..

19 Q. And you have no knowledge of how many people were
20 inside the shop or anything like that?

21 A. I don't. I think after this particular date that I
22 had learned that there were actually multiple individuals
23 inside the shop.

24 MR. MCELHANNON: I think that's all the
25 questions I have, Your Honor.

1 THE COURT: Re-examine?

2 REDIRECT EXAMINATION

3 BY MR. UNDERWOOD:

4 Q. Lieutenant, was there enough light for you to be
5 able to see who was in the truck?

6 A. Yes, there was.

7 Q. Was the patrol car behind the truck?

8 A. The patrol vehicle was behind the truck.

9 Q. And were the headlights on?

10 A. Yes, sir.

11 Q. So did that provide light for you to be able to see
12 the truck?

13 A. Absolutely. As well as oncoming lights from the
14 opposite direction. And I traveled by and slowed up
15 enough to where I could.

16 Q. How many times did you actually pass the truck?

17 A. Several times, actually. I would go up the road and
18 turn around and come back by. And I did that for a
19 couple of reasons. Just for, A, curiosity sake, and B,
20 there was actually a secondary officer that showed up for
21 a backup. And I did it for officer safety standpoint as
22 well until that officer backup showed up.

23 Q. And again, from the time that the white Dodge truck
24 left the Toys R Us until the traffic stop, did anyone get
25 in or out of that truck?

1 MR. MCELHANNON: Asked and answered, Your
2 Honor.

3 THE COURT: I'll permit the question.

4 Q. From the time that the white Dodge truck left the
5 Toys R Us until the traffic top, did anyone get in or
6 out?

7 A. No, sir, no one got out of the vehicle nor did
8 anyone enter the vehicle.

9 Q. Thank you.

10 MR. UNDERWOOD: No further questions.

11 THE COURT: I'll permit any re-exam.

12 MR. MCELHANNON: Just one, Your Honor.

13 THE WITNESS: Yes, sir.

14 RE CROSS-EXAMINATION

15 BY MR. MCELHANNON:

16 Q. Speaking of the lights that were on in Officer
17 Brinston's car, were his blue lights activated?

18 A. Yes, sir, that's correct. The blue lights were
19 activated. I don't recall if his front lights -- we have
20 the ability to, when we engage a traffic stop to turn
21 them on, which will be the front end of that. Once the
22 vehicle is stopped, you still have the ability to turn
23 off the front ones as to not, you know, to have the glare
24 upon you. I don't recall whether his blue lights were on
25 in the front in this particular instance.

1 Q. And in those cars when the blue lights are
2 activated, are there video cameras?

3 A. In certain vehicles there are.

4 Q. You don't know if there was one in this one?

5 A. I don't. I think typically our -- the vehicles that
6 they utilized with the video -- are equipped with video
7 surveillance are traffic units. I don't recall what his
8 particular car was.

9 Q. And he was a K-9?

10 A. He was a K-9 handler; that's correct.

11 MR. MCELHANNON: Okay. That's all the
12 questions I have, Your Honor.

13 THE COURT: Very well.

14 MR. UNDERWOOD: Nothing further from the State,
15 Your Honor.

16 THE COURT: Very good. Thank you very much.
17 You may step down.

18 Approach?

19 MR. WEDEKIND: Your Honor, I was going to say
20 we have some other witnesses but we would request, I
21 think because of the time, a break for the day.

22 THE COURT: All right. Any objection?

23 MR. MCELHANNON: No objection, Your Honor.

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, I have a certain policy, I guess

1 you might say, that with my experience that it seems that
2 we have two days. One begins early in the morning and
3 goes to about five o'clock, and then another day starts
4 at five with meetings and things that you have to do at
5 home or other places that seems to go on forever. So I
6 usually try to break about five. And the two things that
7 control it is if you -- if I have a witness that would
8 take us beyond five, a new witness, I don't do it
9 because, as I say, if I start a witness' testimony and it
10 goes beyond five, I take all of the testimony, exam,
11 cross-examine, re-examine sometimes and recross exam to
12 have the testimony complete in one day rather than going
13 home and coming back and starting over again. And
14 sometimes maybe -- well, it's just not a good idea to do
15 that.

16 So this is a little early for the day, but y'all
17 have been very patient with the Court. I'm going to
18 suggest that we -- in fact, I'm going to actually excuse
19 you for the balance of the day.

20 And I will do this though. Now, I have about an
21 hour to get here in the morning. I'm in Oconee. And I
22 would ask, Mr. Foreman, if you would just consult with
23 the jury as to what time you would like to start in the
24 morning. Now, this is not a unanimous verdict. It's a
25 consensus. But you can do it with the jury in the box.

1 I would suggest either nine thirty, ten o'clock.

2 Something of that nature. Y'all know what you need to do

3 to get here and what you -- before you get here.

4 MR. FOREMAN: Nine thirty is fine.

5 THE COURT: Nine thirty. Very good. So we

6 will see you in the morning at nine thirty. Come back to

7 the jury room.

8 Now, I tell the juries that this is perhaps the most

9 difficult part of the whole trial because you'll go home,

10 and the first thing somebody's going to ask you is, "What

11 are you doing?" You're going to say, "Well, I've been

12 drawn on a jury." They'll say, "What's it about?" And

13 you're going to say, "Well, I can't talk to you about it.

14 Can't tell you about it." They'll say, "Well, why not?"

15 And you'll say, "Because the judge said so." And they

16 will probably say something to the effect, "Well, that's

17 ridiculous."

18 Well, the thing is, I think you know that this is an

19 important case to everybody involved, and it needs to be

20 resolved in a proper fashion. And as I said earlier

21 today, nobody that has not sat in that jury box with you

22 or in the jury room when you come to make your decision

23 can help you because they haven't heard the first bit of

24 testimony, evidence or anything else. The only thing

25 they can do is interfere with the proper resolution. So

1 if they insist on talking to you about it, tell them I'll
2 be here at nine thirty in the morning and I'll be glad to
3 explain it to them.

4 With that, I'll excuse you. Have a very good
5 evening. I'll see you in the morning.

6 Everyone else remain seated while the jury retires.

7 (WHEREUPON, the jury exited the open court at
8 approximately 4:20 p.m.)

9 THE COURT: All right. Gentlemen and ladies,
10 if there's -- if you have any requests for charges,
11 please get them to me as soon possible. You don't have
12 to exchange them or anything, and you don't have to use
13 them if you decide not to. But if you would give them to
14 Mr. Bowman, I'd certainly appreciate it.

15 MR. WEDEKIND: Your Honor, just for
16 housekeeping, tomorrow we have one witness -- we have
17 about four more witnesses. Two are lay witnesses, and
18 two will be -- one will be Officer Brinston. And then
19 Ms. Jill Clark who was the chemist for SLED. She is not
20 arriving by air -- she lives in Alabama right now, and
21 she's flying in for this testimony. She will be at the
22 Greenville-Spartanburg Airport in Greer at eleven oh
23 four. I'm estimating about an hour driving time, getting
24 herself together, so probably ---

25 THE COURT: Where does she come in your order

1 of witnesses?

2 MR. WEDEKIND: She's going to be -- we can make
3 her the last witness.

4 THE COURT: Okay. Well, that's what I'm
5 thinking. That gives you a little flexibility.

6 MR. WEDEKIND: But she is going to be here --
7 her arrival is at eleven. Her departure is at four ten.
8 So I guess she's got to be there about three. I just
9 want to make -- it sounds like she can't get here until
10 about twelve thirty.

11 THE COURT: Okay.

12 MR. WEDEKIND: But if we just get her up and
13 out, that's what I'm trying ...

14 THE COURT: How extensive do you think her
15 testimony will be?

16 MR. WEDEKIND: She's the chemist. She'll give
17 the weight. She'll ---

18 THE COURT: All right. I mean, in other words,
19 she's not a fact witness as to the events?

20 MR. WEDEKIND: No, sir. Just as to her
21 testing, her analysis and closing the chain of custody.

22 THE COURT: And let me ask you this. Is she
23 going to be qualified, or is there going to be any voir
24 dire of the witness?

25 MR. MCELHANNON: I would stipulate to her

1 qualifications.

2 THE COURT: Well, that's what I'm looking for.
3 In other words, if we don't waste any time or do
4 something that's not necessary or effective or of benefit
5 to the jury.

6 MR. WEDEKIND: Yes, sir. So what I'm thinking
7 might happen if we get these witnesses, hopefully there
8 won't be a big gap between her and them, but -- and then
9 we can also fill it in with Mr. Kendrick's client, Mr.
10 Dogan. He's going to plead guilty, and he's supposed to
11 come tomorrow sometime as well.

12 THE COURT: In other words, take a break early
13 in the day or something?

14 MR. WEDEKIND: Somewhere, sir, if we can fill
15 in the gap.

16 THE COURT: Well, y'all keep me abreast of
17 that.

18 MR. WEDEKIND: Yes, sir.

19 THE COURT: But I think we can work it all out.

20 MR. WEDEKIND: We'll be flexible, yes, sir.

21 THE COURT: We might be a little bit early, but
22 I do want to -- have you discussed testifying with your
23 client?

24 MR. MCELHANNON: I have, Your Honor.

25 THE COURT: Do you think you'll finish your

1 case then tomorrow?

2 MR. WEDEKIND: Yes, sir.

3 THE COURT: All right. Well, then in that
4 case, let me ...

5 All right. Mr. Crosby, if you would, please, again
6 stand.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you recall, I put you under
9 oath earlier today. And you understand you're still
10 under oath ---

11 THE DEFENDANT: Yes, sir.

12 THE COURT: --- for these proceedings. And
13 it's not necessary to put you under oath. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And Timothy Terrell
17 Crosby, at this time I am going to explain to you certain
18 of your rights. If you do not understand anything I say,
19 please let me know. If you want me to explain anything
20 in more detail, please let me know. Do you understand
21 this?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: We have now reached the stage of
24 the trial where you may present your defense, or we will
25 soon be reaching that stage of the trial. You have the

1 right to claim the protections given to you by the Fifth
2 Amendment to the Constitution of the United States. And
3 this amendment says, in part, "No person shall be
4 compelled in any criminal case to be a witness against
5 himself." This means that you cannot be required to
6 testify in this case and you have the right to testify on
7 your own behalf. However, no one can make you testify,
8 and this is a personal right that no one can waive this
9 right except you.

10 If you decide to testify, you will be subject to the
11 same rules that govern other witnesses, and you may be
12 examined and cross-examined on any relevant issue in this
13 case. In addition, if you have any convictions involving
14 dishonesty or false statement or for crimes punishable by
15 imprisonment for more than one year and this Court
16 determines that the probative value of admitting this
17 evidence outweighs its prejudicial effect to you, the
18 prosecuting attorney will be able to introduce your
19 record to attack your credibility.

20 If you decide to testify, the decision on your part
21 must be freely, voluntarily, and intelligently made with
22 knowledge of the protections given to you by the Fifth
23 Amendment and the consequences of your decision to
24 testify. And this also extends to even offering any
25 evidence.

1 If you decide not to testify or offer any evidence,
2 I will instruct the jurors that they cannot give the fact
3 that you did not testify any consideration whatsoever and
4 that there is absolutely no prejudice to you because you
5 did not testify.

6 It is left up entirely to you whether or not you
7 testify. You may talk with your attorney, your family
8 and friends or anyone else, but the final decision will
9 be left up to you. Now, do you understand what I've
10 explained to you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Do you have any
13 questions about what I've explained to you?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you discussed with your lawyer
16 whether you should testify or not testify?

17 THE DEFENDANT: Not at the moment. I haven't
18 discussed that with him.

19 THE COURT: All right. But at this time I'm
20 going to let you consider it. And as I say, I'll again
21 ask you at the close of the State's case whether or not
22 you wish to exercise your rights, the right to either
23 testify or not testify.

24 THE DEFENDANT: Okay.

25 THE COURT: Very good. Any questions?

1 THE DEFENDANT: No, sir.

2 THE COURT: Very good. You may be seated.

3 Thank you.

4 All right. Is the bondsman here?

5 MR. MCELHANNON: No, sir. They're located in
6 Aiken. They couldn't come up, but we would make the
7 motion that he -- as an officer of the Court, Your Honor,
8 I spoke with him on Saturday morning, and he said they
9 were fine with leaving him on the bond. I've got his
10 name, his telephone number. And I understand your
11 position.

12 THE COURT: Well, unfortunately -- and it was
13 in one of these cases. And it was a case where both the
14 Attorney General's Office and the Defendant, what is it?,
15 agreed to it. Actually it was a bond. It was a two-
16 hundred-thousand-dollar bond split three ways with three
17 sureties. One surety happened to be in the courtroom
18 when the motion was made to release the Defendant from
19 the GPS. And I went ahead and granted the motion. The
20 other two weren't. And when he had been located and ...

21 Mr. Parks, how many years has that been?

22 THE CLERK: Your Honor, I believe it's probably
23 six years ago.

24 THE COURT: Six years. Because it's been up to
25 the United -- not to the United States but the South

1 Carolina Supreme Court. And they said that the two that
2 weren't there were not bound. Of course, that's the
3 problem that we have with bonds, that even a change in
4 the conditions of the bond. Of course, the bond is to
5 present the Defendant at trial. And once the jury is
6 empaneled and sworn, then double jeopardy attaches. So
7 I'm not going to put the Attorney General on any sort of
8 spike because I know what his predecessor did in good
9 faith. So I'm going to have to deny your request.

10 MR. MCELHANNON: Yes, sir. Thank you, Your
11 Honor.

12 THE COURT: Very good. Anything else from the
13 State?

14 MR. WEDEKIND: No, sir.

15 THE COURT: From the Defendant?

16 MR. MCELHANNON: No, Your Honor.

17 THE COURT: Thank you. All right.

18 (WHEREUPON, court stood at recess for the day at
19 approximately 4:30 p.m.)

20 **January 27, 2015**

21 (WHEREUPON, court convened with all parties present
22 and the following proceedings were had commencing at
23 approximately 9:42 a.m.)

24 MR. MCELHANNON: Your Honor?

25 THE COURT: Yes, sir.

1 MR. MCELHANNON: Mr. Wedekind and I both have
2 read the reasonable doubt charge you provided. We're
3 both fine with that.

4 THE COURT: Now, you understand it'll be the
5 mandatory charge first. The only time I use the Victor
6 versus Nebraska is if they ask for a further explanation.

7 MR. WEDEKIND: Application, yes, sir.

8 THE COURT: But while we are here, one of our
9 jurors is sick. Called in and said she was up all night.
10 So now we have to select between the two alternates. And
11 which one of learned counsel know the proper procedure?
12 Because at one time we just did the first alternate and
13 then the second. But if I'm not mistaken, there's been a
14 recent case that said you do it as to -- you have to
15 randomly select between the two. In other words, you put
16 the two -- well, I guess the two names in a cup and draw
17 the name.

18 MR. WEDEKIND: Okay. So should we ---

19 THE COURT: I mean, whichever way. I think, of
20 course -- what is it? ---

21 MR. WEDEKIND: --- throw one against the wall
22 and see what comes out?

23 THE COURT: Yeah. Although I'm doing this all
24 from recollection because I haven't quite found the case
25 yet, I think that the procedure now is to put the two

1 names in. If you'll notice, in this case for example,
2 when I told the alternates to sit in two seats, I didn't
3 designate which seat.

4 MR. WEDEKIND: Yes, sir.

5 THE COURT: At one time -- what was it? -- the
6 first alternate sits and the second alternate. All
7 right. Is there any thought about it from the State?

8 MR. WEDEKIND: No objection by that method,
9 Your Honor.

10 MR. MCELHANNON: No objection.

11 THE COURT: And then let the Clerk draw the
12 name.

13 MR. WEDEKIND: Yes, sir.

14 THE COURT: All right. Mr. Clerk, if you
15 would, prepare the selection. Put them in the cup.

16 THE CLERK: Your Honor, are you ready?

17 THE COURT: Yes, sir.

18 (WHEREUPON, the Clerk prepared the names, placing
19 them into a cup and then drew one out.)

20 THE CLERK: The alternate's name that was
21 selected is Jennifer Boggs.

22 THE COURT: Number?

23 THE CLERK: Number 12.

24 THE COURT: Mr. McElhannon, number 12 was
25 selected.

1 MR. MCELHANNON: Ms. Boggs? Thank you.

2 THE COURT: Boggs, I think. Is that right?

3 THE CLERK: That's correct. Jennifer Boggs,
4 number 12.

5 THE COURT: All right. Is the State ready to
6 go forward?

7 MR. WEDEKIND: Your Honor, just one of our
8 witnesses was brought from the Department of Corrections,
9 a Mr. Johnson.

10 THE COURT: Uh-huh (affirmative).

11 MR. WEDEKIND: And my understanding he has not
12 arrived yet, but we got assurances that he would be
13 transported today. But other than that, we've got all
14 our witnesses lined up to come to court.

15 THE COURT: All right. Now, you have one
16 coming in from ---

17 MR. WEDEKIND: Alabama, yes, sir.

18 THE COURT: Alabama. And when is she coming?

19 MR. WEDEKIND: She touches ground by flight
20 schedule at eleven ---

21 THE COURT: All right. So it'll be early
22 afternoon?

23 MR. WEDEKIND: Yes, sir.

24 THE COURT: And then she needs to get out by
25 4:00?

1 THE COURT: She flies away at four. I think we
2 need to deliver her by three, which means probably two
3 thirty would be when we need to be done with her here.

4 THE COURT: All right. Now, of course, if she
5 does come at a time you need to take her out of order in
6 order to meet her schedule, I'm sure that we don't have a
7 problem with that?

8 MR. MCELHANNON: No.

9 THE COURT: Very good. All right. Anything
10 from the Defendant before we bring the jury back?

11 MR. MCELHANNON: No, Your Honor.

12 THE COURT: All right. Very good.

13 Mr. Clerk, I'm going to call on you to give me the
14 name of the alternate that will be seated.

15 Very good. Ask the jury to join us.

16 (WHEREUPON, the jury entered the open court at
17 approximately 9:48 a.m.)

18 THE COURT: All right. Let the record reflect
19 that the twelve members -- or eleven members of the jury
20 and the two alternates are present.

21 And I think you might have realized that one of the
22 jurors has had a health problem over the evening. She
23 called in and said she would not be able to complete
24 service. And so then we followed a procedure to select
25 of the two alternates who the alternate was to join the

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1 other eleven to make the twelfth juror.

2 Mr. Clerk, would you announce who that alternate
3 was?

4 THE CLERK: Yes, Your Honor. The alternate who
5 was selected to replace the alternate [sic] who is not
6 here today is Jennifer J. Boggs, juror number 12.

7 THE COURT: All right. Ms. Boggs, if you
8 would, please join the jury. And it was not an alternate
9 that was incapacitated. It was a regular member of the
10 jury.

11 All right. Is there anything from the State before
12 we proceed?

13 MR. WEDEKIND: No, sir.

14 THE COURT: From the Defense?

15 MR. MCELHANNON: No, Your Honor.

16 THE COURT: Very good. All right. Now that we
17 have twelve jurors and an alternate, we'll proceed.

18 You may call your next witness.

19 MR. WEDEKIND: Yes, sir. The State would call
20 Officer D.L. Brinston to the stand.

21 **DEONATA LAMON BRINSTON,**

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. WEDEKIND:

25 Q. Officer Brinston, please tell the jury, if you

1 would, currently who you're employed by?

2 A. I'm currently employed by Calhoun Falls Police
3 Department.

4 Q. And are you a certified commissioned law enforcement
5 officer in the state of South Carolina?

6 A. I am.

7 Q. And tell the jury, do you have any specific skills
8 or training as a police officer?

9 A. Again, specific skills are criminal interdiction and
10 police working K-9.

11 Q. Okay. And what is a K-9? Not everybody is used to
12 the abbreviations.

13 A. My K-9 is a seven-year-old German Shepard from
14 Belgium. He's certified through American Police K-9
15 Association. And I obtained certification through
16 Anderson County when I was employed by them.

17 Q. But basically it's a dog handler, a police dog
18 handler?

19 A. It is.

20 Q. Okay. And in addition to that, you still do regular
21 duties?

22 A. I do.

23 Q. Okay. Now, were you employed by Calhoun Falls back
24 in February the 5th of 2013?

25 A. No, sir, I was not.

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1 Q. Okay. Who were you working for then?

2 A. Anderson County Sheriff's Office.

3 Q. And were you a commissioned sheriff's deputy back in
4 February of 2013?

5 A. I was.

6 Q. Okay. Are you -- how did you come to be at Calhoun
7 Falls and not the Sheriff's office?

8 A. Through litigation reasons. I was unlawfully
9 terminated. I am going through a process with them now
10 at this time. But I was picked up by Calhoun Falls
11 Police Department.

12 Q. So you ended your employment at the Sheriff's office
13 and you're now at Calhoun Falls. Is that fair to say?

14 A. Yes, sir.

15 Q. Now, let's focus back on February 5th of 2013. Were
16 you working on a regular shift at that time?

17 A. I was. I was on Charlie shift.

18 Q. And did you have anything in particular happen that
19 afternoon?

20 A. I received a phone call from my supervisor asking
21 was I available, was I already on my beat, my patrol. I
22 told him I was. I was getting ready to come in for roll
23 call. And he advised me just hang tight for a second,
24 that I'd be receiving a phone call from narcotics.

25 Q. Okay. And did you, in fact, receive that phone call

1 from narcotics?

2 A. I did.

3 Q. And what was the gist of that?

4 A. They asked me for assistance with a traffic stop in
5 the area of Highway 28.

6 Q. Did they describe the particular vehicle that they
7 wanted you to make a traffic stop on?

8 A. They did. It was a white-in-color Dodge truck. And
9 they had given me a tag. I don't recall the tag at this
10 time, but I know it was on my warning that I issued.

11 Q. So at the time, they asked you to look for a Dodge
12 pickup truck, white-in-color with a particular tag
13 number?

14 A. Yes, sir.

15 Q. And you found that truck?

16 A. I did.

17 Q. Okay. And did the tag number match up as you were
18 instructed?

19 A. What was given to me, it did.

20 Q. Okay. All right. Now, was your vehicle equipped
21 with a dashboard camera at that time?

22 A. I can't recall.

23 Q. Did you make a copy that you know of?

24 A. We're not required just to make copies on just
25 regular warnings. But if it was something where I took

1 someone to jail or I thought there was an issue, we would
2 get our tape or whatnot if we had a camera and give it to
3 our supervisor.

4 Q. Do all vehicles come standard equipped with a dash
5 camera?

6 A. Not all.

7 Q. Okay. So it's possible you could have had a dash
8 camera?

9 A. It is. And possibly not.

10 Q. Okay.

11 (WHEREUPON, State's Exhibit Number 7 was marked for
12 identification only.)

13 Q. Officer Brinston, I'm going to show you what's
14 marked for identification as State's ID Number 7. Would
15 you look that over, please?

16 A. (Witness complied)

17 Q. Would you describe for the jury what exactly I gave
18 you?

19 A. It's my public contact or either my warning that I
20 issued at the time of the traffic stop.

21 Q. So that's a warning ticket?

22 A. Yes, sir.

23 Q. Okay. And looking at it, it says -- it's circled at
24 the top. It says, "City of Anderson." Is that correct?

25 A. That's correct.

1 Q. Okay. And there's a name at the top block where it
2 says first name, middle name, last name. Would you read
3 that out for the jury to as to what it says?

4 A. The name of -- the first name block that I wrote on
5 this contact warning was "Timothy." And the block that
6 says middle name, I put a 'T' for the initial. Last
7 name, I wrote "Crosby."

8 Q. Okay. And do you recognize that ticket as being one
9 that was issued, or the type that was issued by the
10 Sheriff's office to use for traffic warnings?

11 A. Oh, yeah.

12 Q. And does the handwriting appear to be whose?

13 A. It's mine.

14 Q. Okay. And was this a ticket that you in fact filled
15 out on the date of February 5th, 2013?

16 A. It is.

17 Q. Now, what does it say below state license? What is
18 filled out in that part?

19 A. State license would be represented by SC for South
20 Carolina.

21 Q. Okay. And of particular significance, would you
22 read out the driver's license number?

23 A. Yes, sir. What I recorded on that date was 0072804
24 -- I can't make out the second to last number -- and 3.
25 I believe it might be 83.

1 Q. Okay. Now, what does that symbolize? How did you
2 just come up with that?

3 A. During a lawful traffic stop, you have to ask for
4 required credentials to operate a motor vehicle in the
5 State of South Carolina, the license and registration,
6 proof of insurance. And we get his ID or a driver's
7 license. You call that number back out to dispatch and
8 record it as an individual you made contact with at that
9 date and time.

10 Q. Okay. Now, drop down a couple lines or a couple
11 blocks where it says vehicle license number. What did
12 you annotate at the end of that block?

13 A. I recorded "[REDACTED]" of the State of South Carolina.

14 Q. Right.

15 A. And it was a Dodge for the vehicle make. And then
16 had the year, but I can't read that.

17 Q. So it's a Dodge [REDACTED]?

18 A. Yes, sir.

19 Q. Okay. And then your name and initials are below it
20 with your badge number?

21 A. It is.

22 Q. Okay. What was the reason that you noted on this
23 ticket as to why you stopped that vehicle?

24 A. The driver at the time was following too close to
25 another vehicle, and he had defective equipment on his

1 vehicle.

2 Q. So you were told to look for a white Dodge pickup
3 truck, and you found what?

4 A. A white Dodge pickup truck.

5 Q. You were told to look for [REDACTED], and what did you
6 find?

7 A. A white Dodge pickup truck displaying [REDACTED].

8 Q. Okay. And your reason for stopping it was what?

9 A. Following too close and defective equipment.

10 Q. And what was your procedure after you stopped the
11 vehicle and initiated your blue lights? What did you do?

12 A. Approached the driver, asked for the required
13 credentials, made contact with him. And it was my
14 discretion to write a ticket or have a warning. I wrote
15 him a public warning or contact.

16 Q. Okay. Asking him for his credentials, was that a
17 driver's license?

18 A. Yes, sir.

19 Q. Did that driver's license have a photograph on it?

20 A. It did.

21 Q. If the photograph didn't match the individual who
22 gave you a ticket, what would you do? Or gave you the
23 license, what would you do?

24 A. I would continue further investigations finding out
25 who he was and who the vehicle went through and get

1 really in-depth on my traffic stop.

2 Q. But if the picture matched up to the individual that
3 you were talking to, what would happen?

4 A. I'd record his information, told him he had a
5 warning or either write him a ticket and let him go.

6 Q. So if one thing looks fishy, you go into detail. If
7 it looks normal, you continue on?

8 A. Yes, sir.

9 Q. Now, you're not sure whether you had a dash camera.
10 Have you provided any kind of tape from your vehicle in
11 response to inquiries that were made?

12 A. No, sir.

13 Q. Do you remember searching the vehicle or the person
14 of Mr. Crosby?

15 A. I can't recall. But I do remember I did ask him to
16 step out just for my safety and his. And he complied and
17 was very nice on the traffic stop. I had no problem at
18 all.

19 Q. Did you have any reason to search him for -- since
20 you'd pulled him over on the traffic stop, did you search
21 his person?

22 A. For officer safety reasons I did a pat-down, a Terry
23 frisk, just to make sure that there was no weapon
24 involved for my safety and for his.

25 Q. Did you employ your dog to walk around the vehicle

1 and look for drugs, or did you just keep him up?

2 A. I can't recall that.

3 Q. What's that?

4 A. I don't believe I did.

5 Q. Okay. I'm going to ask you have you -- do you
6 remember what the appearance of the driver looked like?

7 A. I do.

8 Q. Okay. Do you see him in this courtroom today?

9 A. I do.

10 Q. And would you please describe him and point him out?

11 A. Mr. Crosby right there with the tan suit on, black
12 male.

13 Q. Okay. What color shirt is he wearing?

14 A. It looks lavender.

15 MR. WEDEKIND: Your Honor, if I could ask the
16 record to reflect that he identified the Defendant.

17 THE COURT: The record will so reflect.

18 MR. WEDEKIND: I beg the Court's indulgence.

19 Q. Do you have any way of annotating exactly what time
20 you made the stop?

21 A. Yes, sir. The recorded time block is eighteen
22 fifty-one. That's military time. It was six fifty-one
23 p.m.

24 Q. And would that have been the time you filled out the
25 ticket or the time that you initiated the stop?

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1 A. That would have been the time I gained his
2 credentials, went back to my vehicle and started applying
3 what I recorded from his credentials.

4 Q. Okay. And then there's a date block. What is
5 filled out in that block?

6 A. 2/5/2013.

7 Q. Okay. And then below the driver's license block,
8 there's a description for race/ethnicity, and then
9 gender. What did you make note in those blocks?

10 A. Those blocks I put 'B' for Black, 'M' for gender
11 male, and [REDACTED]/1976 for date of birth.

12 Q. And you obtained that from where?

13 A. From his driver's license.

14 Q. Does this appear to be the document, the ticket, the
15 warning ticket, that you issued that night, a copy of it?

16 A. It is.

17 Q. Has there been any changes, alterations, or
18 deletions?

19 A. No, sir.

20 MR. WEDEKIND: Your Honor, at this time the
21 State would move into evidence State's ID Number 7.

22 MR. MCELHANNON: Without objection.

23 THE COURT: Without objection, State's Exhibit
24 Number 7 is in evidence.

25 (WHEREUPON, State's Exhibit Number 7 was admitted

1 into evidence.)

2 Q. Please answer any questions the Defense may have.

3 Thank you.

4 CROSS-EXAMINATION

5 BY MR. MCELHANNON:

6 Q. Deputy Brinston, what supervisor called you and told
7 you to make this stop?

8 A. I can't recall if it was my sergeant or my
9 lieutenant that night.

10 Q. Do you remember their names, one of -- both of them?

11 A. I remember all my supervisors. I just can't recall
12 which one.

13 Q. What two were they?

14 A. I had three total. I had three at the time, two
15 sergeants and one lieutenant.

16 Q. I think you just said it would have been one of two
17 that would have called you. What would their names be?

18 A. Well, to clarify, some nights three work, some
19 nights two work.

20 Q. And what were you told to do?

21 A. I was asked to assist narcotics.

22 Q. Okay. So you knew it was a supposed drug deal?

23 A. I didn't know anything at all until I received a
24 phone call to help with a traffic stop.

25 Q. Well, that's what I'm saying. But at that time, you

1 knew. They told you what it was about?

2 A. They informed me they needed me to make a traffic
3 stop on a vehicle.

4 Q. Okay. And your dog was with you?

5 A. I can't recall.

6 Q. Your dog wasn't with you most of the time you were a
7 K-9 officer?

8 A. Sometimes my dog was sick. Sometimes he get hurt in
9 the line of duty.

10 Q. But just this day, you don't remember if you had him
11 or not?

12 A. I can't recall.

13 Q. Now, you say you got his credentials and started
14 writing your ticket at six fifty-one p.m.?

15 A. I believe so. That was on my warning ticket. Yes,
16 sir.

17 Q. So not six twenty-nine?

18 A. I reported six fifty-one on my charging document.

19 Q. Okay. So on February the 5th, 2013, at nine minutes
20 until seven in the evening, was it dark?

21 A. It was beginning to get dark, sir. The shift
22 changed for us.

23 Q. It was just beginning to get dark at almost seven
24 o'clock?

25 A. I don't know if it was daylight saving time or not.

1 It was changing.

2 Q. Okay. And you approached the vehicle after you
3 stopped him; right?

4 A. I did.

5 Q. Did he roll his window down?

6 A. He did.

7 Q. And he provided you with what?

8 A. South Carolina DL, his insurance and registration.

9 Q. His insurance and registration?

10 A. The vehicle's registration.

11 Q. Who was it registered to?

12 A. I can't recall.

13 Q. Was it Mr. Crosby?

14 A. I can't recall.

15 Q. Now, you admit you got Mr. Crosby out of the
16 vehicle; correct?

17 A. I did.

18 Q. And you patted him down?

19 A. Uh-huh (affirmative).

20 Q. Is that a yes?

21 A. Yes, sir.

22 Q. You remember making him take his shoes off and
23 patting the bottom of his feet?

24 A. I don't recall that.

25 Q. Do you remember placing him in handcuffs?

1 A. I don't recall that at all.

2 Q. And you don't remember your dog walking around his
3 vehicle?

4 A. No, sir.

5 Q. Do you remember a second police car pulling up?

6 A. I do.

7 Q. Well, why would they be pulling up on a regular
8 warning ticket citation?

9 A. Nothing is regular about the job we do.

10 Q. Okay.

11 A. Every traffic stop is different. And for officer
12 safety reason, if other officers hear a traffic stop,
13 they come and back you up.

14 Q. And for officer safety reasons, if you get a
15 gentleman out of a vehicle after being called by
16 narcotics, wouldn't it be common sense that you put him
17 in handcuffs?

18 A. I didn't say, no, I didn't. I said I cannot recall
19 if I did it or not.

20 Q. So it's a possibly you put him in handcuffs?

21 A. It's possible.

22 Q. And a possibility that you patted him down?

23 A. I pat everyone down just for my safety.

24 Q. You didn't find anything in his pockets?

25 A. No, sir.

1 Q. Did you find ten one-hundred-dollar bills on him?

2 A. I don't recall.

3 Q. You don't recall?

4 A. I don't recall finding anything of that nature in
5 his pocket, no, sir.

6 Q. Do you recall if you searched his vehicle?

7 A. I vaguely remember the complete traffic stop back in
8 2013 with the number of traffic stops that I've had over
9 my career.

10 Q. So there's a possibility though that you searched
11 the truck?

12 A. It could be.

13 Q. Of course, nothing was found in the truck either?
14 Nothing unlawful or suspicious?

15 A. I didn't document anything of that nature.

16 Q. And you state that it would have been -- it may be
17 possible that your vehicle had a working dash cam?

18 A. It could have had one, and it could not. I went
19 through several vehicles at the time.

20 Q. And you're stating though that on this instance if
21 you did have a working dash cam, you would not
22 necessarily have turned it on?

23 A. It depends on if it's working or not. Some of our
24 dash cams would come on once you initiate the blue
25 lights, and some have malfunctions. You don't know when

1 you're getting a car from someone else.

2 Q. Well, again, for safety purposes in your line of
3 business, if you were called by narcotics to assist in
4 that type of investigation or a stop, wouldn't it be safe
5 if your in-camera -- I mean, if your dash cam was working
6 that you have it turned on?

7 A. If it was working, yeah. If I had one in the
8 vehicle at the time, then yes.

9 Q. Did you do a supplemental report to provide to your
10 supervisor on this stop?

11 A. I did not. It was just a traffic stop, and I issued
12 him a warning.

13 Q. It was a traffic stop where nothing illegal was
14 found and no ---

15 A. I didn't document anything of that nature.

16 Q. Okay. And you issued him a warning for following
17 too close and defective equipment?

18 A. Yes, sir.

19 Q. What was the defective equipment?

20 A. I can't recall.

21 Q. Do you know how long this entire stop lasted?

22 A. I do not.

23 Q. Would you have it on a log that you're stopping at a
24 certain time, wrote the citation, and then you left the
25 scene?

1 A. I wouldn't, but they probably do have it recorded
2 somewhere.

3 Q. Do you remember who the other officer was that
4 pulled up?

5 A. I believe it was Corporal Jessica Collins at the
6 time.

7 Q. Do you remember how long she stayed?

8 A. I'm not sure.

9 Q. I mean, you -- when a second officer pulls up to
10 assist or just to see what's going on, if you tell that
11 officer everything's fine, they would normally just
12 leave?

13 A. It would be depending on the situation. Sometimes
14 some stay -- they still stay and hang out just in case.

15 Q. Okay. And this one you don't recall whether she
16 did?

17 A. I do not.

18 Q. And she's not a K-9 officer, is she?

19 A. She's not.

20 MR. MCELHANNON: That's all the questions I
21 have, Your Honor.

22 THE COURT: Re-examine?

23 MR. WEDEKIND: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. WEDEKIND:

1 Q. When you said you were contacted by narcotics, were
2 you told to make an arrest of the Defendant, or were you
3 told to just get an identification?

4 A. I was told to see if I could identify the driver.

5 Q. And the goal was not to hook him up, it was to just
6 identify him?

7 A. That's all.

8 Q. Did you have probable cause based on a traffic stop
9 to search a vehicle or to go into a person's personal
10 possessions just for a traffic stop?

11 A. If I ask for a consent to search the vehicle and
12 they consent, then, yes, sir, you do. You gain consent
13 and you can search the person or the vehicle if they give
14 it to me.

15 Q. So if you ask and they give it to you, you can
16 search?

17 A. Yes, sir.

18 Q. But if they say no or you don't ask, do you have
19 probable cause to search?

20 A. No, sir.

21 Q. So you just can't -- just because you're a police
22 officer you can't just ---

23 A. You can't violate anyone's rights.

24 Q. And now, you talked about officer safety in response
25 to some questions here. What do you do when you do an

1 officer safety check? And what's a Terry frisk?

2 A. I'll pat him down for weapons, anything bulging on
3 his person that I can't articulate what it really is. Or
4 hard foreign looking objects, I can ask him if he's got a
5 weapon just for my safety, "Do you mind if I check it?
6 Can you point it out just so I can make sure?"

7 Q. But if you feel a wallet, do you go inside the
8 wallet and check it out?

9 A. No, sir.

10 Q. If you feel something that doesn't feel like a
11 weapon, do you tell them to pull it out or just bypass
12 it?

13 A. I do not.

14 Q. And if you ask for registration and insurance, and
15 it's not the name of the person who's the actual driver,
16 has that ever occurred?

17 A. It has.

18 Q. And if the car's not listed as a stolen vehicle in
19 response to your check of the vehicle, do you
20 automatically go into great detail if the registration
21 and insurance is in a different name?

22 A. I don't.

23 Q. Okay. If the insurance was out of date, would that
24 then heighten your suspicion, or would you undertake any
25 other action?

1 A. It would. I would ask first if he had a newer
2 insurance card or one that was up to date, just because
3 you have to have insurance to operate a motor vehicle.

4 Q. Okay. And now, the block of the ticket that we put
5 in as State's 7, does that have anything to document
6 insurance or registration?

7 A. No, sir, it does not.

8 Q. And, in fact, somebody else could own a vehicle,
9 loan it to a friend, and that person could go off
10 speeding and get a ticket, but it doesn't go to the owner
11 of the vehicle. It goes to who?

12 A. The one who's operating the vehicle at the time.

13 Q. And that's why those tickets aren't slated to the
14 vehicle; they're following who?

15 A. The person that's operating it.

16 Q. Thank you.

17 MR. WEDEKIND: No further questions.

18 THE COURT: Very well.

19 Any recross?

20 MR. MCELHANNON: No, Your Honor.

21 THE COURT: All right. You may step down.

22 Thank you, sir.

23 MR. WEDEKIND: Your Honor?

24 THE COURT: Yes, sir.

25 MR. WEDEKIND: May Officer Brinston be

1 dismissed?

2 THE COURT: Any objection?

3 MR. MCELHANNON: No objection, Your Honor.

4 THE COURT: Very good. Thank you, sir.

5 You may call your next witness.

6 MR. UNDERWOOD: Thank you, Your Honor. The
7 State calls Jeffrey Parker.

8 (WHEREUPON, the witness was duly sworn.)

9 THE COURT: If you would, sir, give us your
10 full name for the record.

11 THE WITNESS: Jeffrey Jerry Parker.

12 THE COURT: Jeffrey Joe?

13 THE WITNESS: Jerry.

14 THE COURT: Jerry.

15 THE WITNESS: Jeffrey Jerry.

16 THE COURT: Thank you, sir.

17 **JEFFREY JERRY PARKER,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. UNDERWOOD:

21 Q. Good morning, Mr. Parker. Where are you from?

22 A. Brooklyn.

23 Q. As in South Carolina?

24 A. I moved here after the twin towers fell.

25 Q. And what do you do for a living?

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- 1 A. Paint cars.
- 2 Q. How long you been painting cars?
- 3 A. Eleven or twelve years.
- 4 Q. Have you ever had a chance to be acquainted with a
- 5 person named William Angelo Johnson?
- 6 A. Yes, I know him.
- 7 Q. How did you meet him?
- 8 A. Well, I met Angelo when I first moved down here,
- 9 maybe a year after, through a guy named Anthony Johnson.
- 10 And he introduced me to Angelo. And we've been friends
- 11 ever since.
- 12 Q. And how did your relationship with him develop?
- 13 A. Me and Angelo?
- 14 Q. Yes.
- 15 A. He needed somebody to paint cars for him.
- 16 Q. And where was that?
- 17 A. In Piedmont.
- 18 Q. You remember the name of the shop?
- 19 A. Toys R Us Motor Sports.
- 20 Q. And how did you go to work there?
- 21 A. A buddy of mine, Kendrick, me and him wasn't getting
- 22 along too good. I was working for him. And Angelo said
- 23 he was taking over the Bell (phonic) Shop and he needed
- 24 somebody to paint and I needed somewhere to live.
- 25 Q. And where did you end up living?

1 A. 6738 Highway 81 North at the shop.

2 Q. So you actually lived at the shop?

3 A. Yeah. Still do. Me and my dogs.

4 Q. What did you do at the shop? What was your job?

5 A. Painting, sanding, you know, getting car parts,

6 buying parts. Stuff like that.

7 Q. Did you have anything to do with what went on in the
8 office at the shop?

9 A. The office wasn't my domain till after they went
10 home. The shop was my domain. That's where I stayed
11 at, in the shop.

12 Q. You say you lived at the shop. Where do you
13 actually live?

14 A. It's a bedroom, shower in the office part of the
15 shop. After you pass the office, there's a bedroom and
16 shower there. But my domain was inside the shop where I
17 work at during business hours.

18 Q. So during business hours, you're actually in the
19 shop part, not in the office?

20 A. Not in the office.

21 Q. At some point in time, did you become aware of
22 Angelo Johnson being involved with illegal drugs?

23 A. Yeah.

24 Q. When did that start?

25 A. Well, let me see. Who died -- what happened first,

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1 wife left or daddy died? Sharon left first, then his
2 daddy died. So that was his excuse.

3 Q. And how did you become aware that he was involved in
4 illegal drugs?

5 A. Every once in a while, you know, he would come back
6 to the shop. He'd have something. I'll take a little
7 toot. "You want to take a little toot?" I'd say, "Sure,
8 why not." And I go back to work.

9 Q. And explain that. What do you mean when you say,
10 "take a toot"?

11 A. Oh, one on one, you know, then I go back to work.

12 Q. So Angelo Johnson provided you with cocaine to
13 snort?

14 A. Every once in a while. You know, it's not like it's
15 a habit. He just say, "You want some?" "Sure, why not."
16 And then you go back to work.

17 Q. Do you know where he was getting that cocaine?

18 A. Not at first, no.

19 Q. Did you eventually learn where he was getting the
20 cocaine?

21 A. Yeah.

22 Q. Where was he getting the cocaine?

23 A. He would call Bernard in Greenville or another
24 gentleman in Anderson that I know him as Terrell.

25 Q. The person you know as Terrell. How do you know

1 him?

2 A. Well, I first met him through Angelo because he
3 bought a -- what was it? -- a '99 or 2000 Suburban. And
4 he had me put it back together once I got to the shop.
5 That's how I first met him. But I didn't know what he
6 was doing, you know, until eventually I found out, you
7 know. And when I first met him, I just told him he would
8 do what he was going to do, like everybody would buy and
9 sell cars.

10 Q. And how many times did you have occasion to meet
11 this person you knew as Terrell?

12 A. Just like everybody else who come in the shop. They
13 just pop up. You know, he got on Angelo's case one time
14 because he wanted his truck. So after the Suburban was
15 done, I didn't see him for a while. You know, then he
16 brought me up a '78 short-bed truck. He asked me to do
17 the body work, and I did that. You know, then a couple
18 months after that, he brought me a '90 -- no -- a 2000
19 Excursion. That's something he brought with a quarter
20 panel caved in. I fixed that for him.

21 Q. That was Terrell brought the vehicles to you?

22 A. Yes. Yeah.

23 Q. And did you actually interact with him to find out
24 what he wanted done and what you had to do?

25 A. Anytime a quarter panel was messed up, may not have

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1 made it perfect. Just made it look good enough to sell.

2 No problem.

3 Q. The person you know as Terrell, is he in the
4 courtroom at this time?

5 A. Yes. The guy right here.

6 Q. Could you describe what he's wearing, please?

7 A. A gray suit. As matter of fact, it's pewter. I'm
8 sorry. Yeah, a pewter suit.

9 MR. UNDERWOOD: Your Honor, I would ask that
10 the record reflect that he has identified the Defendant.

11 THE COURT: The record will so reflect.

12 Q. Now, Mr. Parker, how would the trade of illegal
13 drugs go on at the Toys R Us shop?

14 A. The only thing I would know, Angelo would get a
15 phone call from somebody. They come out to the shop.
16 And Angelo called either Anderson or Bernard. Because,
17 like I said, my phone, they could get it out of the
18 Yellow Pages. Anything you need to find, any part you
19 need to find, anybody need a phone number, it's here. So
20 he just tell me make a phone call. I dial the number.

21 "He want to know you got anything, yea or nay." And once
22 they say yea or nay, I give him the phone. I go back in
23 the shop and do my work. He gives me my phone back.

24 Q. All right. Let me come back a little bit. You said
25 somebody would call Angelo?

1 A. Yeah.

2 Q. What was the purpose of someone calling Angelo?

3 A. I guess, like I said, I guess they want something.

4 They call for all types of reasons. You know what I
5 mean? But if it's for -- somebody say, "Jeff, call such
6 and such." Then I figure, well, if he called Bernard and
7 Bernard didn't call me, I know it ain't for a car to fix.

8 Q. Okay. And you said you would call Anderson. Is
9 Anderson a person or a place?

10 A. A place.

11 Q. All right. Who's the person that you would call?

12 A. That gentleman, Terrell.

13 Q. You're referring to the Defendant?

14 A. Yeah, Terrell.

15 Q. Mr. Crosby?

16 A. Yeah. See, I don't know him as that. I know him as
17 Terrell.

18 Q. When Mr. Johnson asked you to make a phone call,
19 describe exactly how you would make those calls?

20 A. I dial the number. I dial the number. And I say,
21 "He want to know y'all got anything. Y'all got any
22 drugs?" If they say, "Yeah," I give him the phone. If
23 they say no, they ain't got nothing.

24 Q. When you say work, what do you mean by work?

25 A. Drugs. Like Cocaine, I guess, you know.

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1 Q. So you would call either Bernard -- did you know
2 Bernard's full name?

3 A. I just found out. I called him Bernard. I just
4 found -- see, I don't know things. I just found out his
5 name was Horace. I never knew his name was Horace, you
6 know. Like I said, I'm the shop man. I'm like a
7 glorified secretary who paints cars.

8 Q. So Mr. Johnson asked you call either Bernard or call
9 Terrell?

10 A. Yes, right.

11 Q. And you would call and you would say, "Hey, do you
12 have any?"

13 A. Right, yea or nay. If they say yea, "Right here.
14 Here's the phone for you."

15 Q. And when you say, "here," who are you talking to?

16 A. Angelo. Give him the phone.

17 Q. So you would get the person on the phone, find out
18 ---

19 A. And they did -- do what they needed to do and I get
20 my phone back.

21 Q. All right. But you'd call them on the phone, find
22 out if they had product. If they said yes, you'd give
23 the phone to Mr. Johnson?

24 A. Uh-huh (affirmative).

25 Q. And if they said no, you'd call someone else.

1 A. And I'd say, "Look, they ain't got nothing. What
2 you want me to do?"

3 Q. Now, what kind of drugs were coming to the shop at
4 Toys R Us?

5 A. I didn't see any. Like I said, I stayed in the
6 shop. Whatever they did, I found out after the fact. If
7 he called somebody, he went home. Then whatever they
8 gave him, he came back and said, "You want a little
9 toot?" "Sure, I'll take a toot." I ain't no crack
10 smoker, so I didn't see. You know what I mean? The only
11 time I knew if a transaction went on was when he came
12 back and asked if I want to take a little toot while I
13 was working.

14 Q. And, again, with the toot, that would be powdered
15 cocaine?

16 A. Yes.

17 Q. How many times or how often would you call Bernard
18 or call Terrell?

19 A. If he get a phone call, whoever calls him. But it
20 wasn't like he was selling like crazy. Somebody would
21 call him, and he'd ask me to make phone call. So days or
22 something like that, I couldn't tell you.

23 Q. Do you have any idea how many times you would call
24 either Terrell or call Bernard?

25 A. No, not off the top of my head. You know, it was a

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- 1 month span or something like that, two, three weeks.
- 2 Sometimes you don't do nothing for two or three week, and
- 3 you call somebody, you know.
- 4 Q. Now, when did you first begin making these phone
- 5 calls?
- 6 A. Like I said, it was my job. I was right there.
- 7 When he was broke and he had to make money. So let me
- 8 see. He went to the beach. Sharon found out he was
- 9 cheating. So it was right after Memorial Day, I guess.
- 10 Q. So would that be in 2012?
- 11 A. Yeah, right after Memorial Day.
- 12 Q. And when did you stop making these phone calls for
- 13 Mr. Johnson?
- 14 A. When that lady right there ---
- 15 Q. Agent Collier?
- 16 A. Uh-huh (affirmative).
- 17 Q. And when she told me that I'm being charged with
- 18 conspiracy, I said, "Excuse me. I paint cars for a
- 19 living." And she said, "Well, he said you made phone
- 20 calls." I said, "No, no, no. I dial the number." And
- 21 she said, "That's what it is. That's what it is."
- 22 Q. Now, were you charged in this case?
- 23 A. Yeah.
- 24 Q. And what's the status of your case?
- 25 A. I'm on probation.

1 Q. So you pled guilty?

2 A. Yeah. Like they said, the phone calls and using my
3 phone, there's no way out of it. I don't complain. I've
4 got to look out for my daughters.

5 Q. Now, when you were making these phone calls, did you
6 know the purpose of the phone calls?

7 A. Like I said, when he came back and told me to slip
8 one here, I knew the purpose of the phone. And I had
9 told him, "You don't need to do this. You sell cars for
10 a living. I've seen you make ten to twenty thousand
11 dollars in three months selling cars. You don't have to
12 do this." But you can't tell a grown man what to do.

13 Q. When Mr. Johnson would ask you to make a call ---

14 A. Uh-huh (affirmative).

15 Q. --- was it always in response to someone else
16 contacting him first?

17 A. Yes.

18 Q. So would that be some customer of his?

19 A. Somebody he knew. Somebody he grew up with.

20 Q. But was he getting the drugs for someone else?

21 A. Yeah. He was getting the drugs for do (phonic).

22 Q. I'm sorry?

23 A. He was getting the stuff for whoever called him.

24 Q. And that would be cocaine?

25 A. Yeah. He was getting it for whoever called him.

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1 Q. So someone called Mr. Johnson?

2 A. Right.

3 Q. Asked him for cocaine?

4 A. Yeah.

5 Q. He would then ---

6 MR. MCELHANNON: Your Honor.

7 THE COURT: Just a minute. Let's slow down.

8 MR. MCELHANNON: I'm going to object to

9 leading.

10 THE COURT: All right. Very well. Rephrase
11 your question.

12 Mr. Foreman, ladies and gentlemen of the jury, an
13 objection has been made to the leading questions.
14 Leading questions are the questions that suggest the
15 answer. And then the effect of it is that all you're
16 doing is having the witness agree with what you say. In
17 other words, it's the attorney who is testifying and the
18 witness is just agreeing with him.

19 Now, leading questions are not permitted when it's
20 your own witness. In other words, if you call somebody
21 to the witness stand, you want to hear -- or we need to
22 hear from the witness. However, on cross-examination,
23 when it's the other side that is addressing the witness,
24 then you can lead.

25 So in this case, this witness is the State's

1 witness. So, therefore, the State can't lead. However,
2 if the Defendant should put up a witness, then the
3 Defendant would also be required not to lead. And that
4 is -- the reason for that, as I say, we want to hear from
5 the witnesses, not from the attorneys. But these rules,
6 as I say, apply to both the State and the Defendant.
7 Very well.

8 Mr. Underwood, if you would please, restate your
9 question.

10 Q. Mr. Murray, I don't want to put words in your mouth.
11 But you said a lot of different things. And I'd like, if
12 you could, please summarize that process from start to
13 finish, what each step was, starting with the phone call
14 to Mr. Johnson. Go through that process.

15 MR. MCELHANNON: Your Honor, I hate to object
16 again, but I think this has been answered, asked and
17 answered already.

18 THE COURT: Well, also, we want to hear what
19 the witness has to say about a particular thing, not just
20 observations. So you do need to ask what questions
21 you're interested in. In other words, set the area.
22 Now, I'm going to permit those types of questions if you
23 choose to. All right? Don't lead, but -- what is it? --
24 we don't need the witness just to try to draw out
25 everything he could possibly think of even if it's not

1 relevant. So ask questions that are relevant, and then
2 listen to the answer.

3 MR. UNDERWOOD: Yes, sir.

4 THE COURT: Very good. Thank you, sir.

5 And, again, that also applies to both sides.

6 If you would, please.

7 Q. Mr. Parker, why would people call Mr. Johnson in
8 relation to drug transactions?

9 A. I don't know. But he ain't sell drugs in God knows
10 how long. When I met Angelo, Angelo wasn't selling no
11 drugs. Angelo was selling cars. So I don't know why all
12 of a sudden he just wanted to start doing this.

13 Q. But he was selling drugs?

14 A. Like I said, after his wife left and his daddy died,
15 that was his excuse to go back to doing this.

16 Q. So would people call him asking for drugs?

17 A. I guess so because he come ask me to call people to
18 find something for him.

19 Q. And ---

20 A. And I would tell him, "You don't need to do this."

21 Q. Would you then call someone looking for the drugs?

22 A. I would call and say, "Look, he want to know if you
23 got something. Yea or nay?"

24 Q. And then what did you do?

25 A. If it was yea, I give him the phone. If it was nay,

1 I was like, "Who else you want me to call?" And then
2 he'd say, "Call Bernard." And I'd call Bernard. If
3 Bernard got it, I was like give him the phone. Then he
4 would tell me, "I'm going home. I'll see you in a little
5 while. I'll see you tomorrow." And I'd go back to work.

6 Q. Okay. And on occasion after you would be involved
7 in one of those phone calls, did you ever see Mr. Johnson
8 in possession of cocaine?

9 A. No. Like I said, he would -- well, he brought me a
10 toot, yeah. You know, in an -- a dollar bill something
11 like that. I ain't never seen no large portions or none
12 of that crap. But he say he ---

13 Q. But he -- I'm sorry. Finish.

14 A. He just like open up a dollar bill, say, "You want a
15 toot?" "Sure." And I go back to work. Then he'd sit
16 there and drink all day.

17 Q. But he did have some supply of cocaine?

18 A. Yeah, maybe like a gram or two grams, you know, just
19 something in a dollar bill.

20 Q. And that's what he gave to you?

21 A. No. That's what I sniffed out of his. He kept it
22 to his self. He ain't giving nothing up.

23 Q. So it was more than that he kept to himself?

24 A. No. Whatever was in that dollar bill he kept for
25 his self as his personal use. So he would tell me, well,

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1 "Look, you want a toot?" "Sure." I take a toot, go back
2 to work. And he'd sit in the office and drink all day.
3 That's what he do.

4 Q. So he would keep some cocaine for personal use and
5 sell the rest?

6 A. I guess. Like I said ---

7 MR. MCELHANNON: Objection, Your Honor. That
8 calls for speculation.

9 THE COURT: All right. Again, ask him if he
10 knows what he did, if anything. If he doesn't, then ---

11 A. I seen no money. Like I said, I made a phone call.
12 If they had it, he would go home. However, later on that
13 afternoon or the next morning he comes to the shop, he
14 would say, "You want a toot?" That's how I know he had
15 some.

16 Q. Did Angelo Johnson, William Angelo Johnson, ever
17 meet with people privately in his office?

18 A. I don't know. I'm in the shop.

19 Q. Do you know an individual named Ant Murray?

20 A. Yeah. I know Ant Murray.

21 Q. How did you know him?

22 A. Lord knows where he comes. Angelo treated Ant
23 Murray like gold. Okay? When I say like gold, we went
24 to the beach together. He ain't had to spend a dime.
25 Anytime Ant Murray wanted to ride a motorcycle, Angelo

1 gave a motorcycle ride. Anytime Angelo needed carpentry
2 work done, he paid -- anything that Ant Murray -- Angelo
3 did for Ant Murray.

4 Q. Do you know if Ant Murray ever bought cocaine from
5 Angelo Johnson?

6 A. From what my ---

7 MR. MCELHANNON: Objection, Your Honor, unless
8 this is personal knowledge.

9 THE COURT: Well, that's just it.

10 MR. WEDEKIND: I can ---

11 THE COURT: Just a moment. I overrule your
12 objection. Restate your question.

13 Q. Do you know if Angelo Johnson ever sold cocaine to
14 Anthony Murray?

15 A. Well, that's what the whole -- Verizon, this whole
16 thing's about. For some reason or another, Ant Murray
17 decided he just wanted to start smoking crack all of a
18 sudden. So anytime -- he would call Angelo, then Angelo
19 ask me. And I'm like "Man, you need -- don't mess with
20 this dude. But, like I said, you can't tell a grown man
21 what to do.

22 Q. So are you saying that Anthony Murray would call
23 Angelo for drugs?

24 A. From my knowledge, yes.

25 Q. All right. And what did Mr. Johnson ask you to do?

1 A. Make a phone call.

2 Q. Who did he ask you to call?

3 A. Either Bernard or Mr. Terrell.

4 Q. And on occasion ---

5 A. But this what they was. Ant Murray said that he ran
6 into some Mexicans who was looking for some stuff.

7 That's why he called Angelo. Why he called Angelo, I
8 don't know. But him being in his situation, drinking and
9 not thinking right, he's thinking money instead of logic.
10 That's why he's in the situation he's in.

11 Q. And so after you made a phone call to -- when you
12 made a phone call to either Bernard or to the Defendant,
13 Terrell, what was the purpose of that phone call?

14 A. I guess to get something for Ant Murray.

15 MR. MCELHANNON: Objection, Your Honor.
16 Speculation.

17 THE COURT: All right. Again, if he doesn't
18 know the reason for it, then, of course, that would be
19 speculation, and I sustain the objection.

20 Q. Did you make a phone call at the direction of Mr.
21 Johnson?

22 A. Sure did.

23 Q. Did you make the phone call because Mr. Johnson told
24 you to?

25 A. If he asked me to, yeah.

1 Q. And do you know generally in the course of those
2 dealings why those phone calls were made?

3 MR. MCELHANNON: Objection, Your Honor. Asked
4 and answered.

5 THE COURT: Well, he can answer the question if
6 he knows. If he doesn't know then, of course -- what is
7 it -- it would be speculation. We want to know what he
8 knows of his own knowledge.

9 Q. After you made the phone calls to either Bernard or
10 more specifically to Terrell, what happened after you
11 made the phone call?

12 A. He was gone.

13 Q. Who was gone?

14 A. Angelo was gone. He'd leave.

15 Q. Do you know where he went?

16 A. Home. He was gone.

17 Q. And do you know why he left?

18 A. I guess to wait for whoever's coming to bring
19 whatever they coming to bring. But he was gone. Like I
20 said, if it didn't, it didn't happen. If it did happen,
21 the only way I knew was he had some in a dollar bill the
22 next day for me to take a little toot off of if I wanted
23 to.

24 Q. Aside from making phone calls for Mr. Johnson, were
25 you involved in the drug deals?

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1 A. Oh, no. I don't know nothing. I don't know
2 nothing.

3 Q. Did you want to be involved ---

4 A. Oh, heck, no. I paint cars. That ain't my
5 lifestyle.

6 MR. UNDERWOOD: Court's indulgence, Your Honor.

7 Q. Thank you, Mr. Parker. Please answer any questions
8 opposing counsel may have.

9 CROSS-EXAMINATION

10 BY MR. MCELHANNON:

11 Q. Mr. Parker, you're ---

12 A. How are you doing today?

13 Q. You're a car painter?

14 A. Yes, sir.

15 Q. It's your testimony today that you never actually
16 witnessed any drug deals at the shop?

17 A. No, I didn't.

18 Q. Okay. And what you did was dial a number on your
19 phone?

20 A. Uh-huh (affirmative).

21 Q. And then hand it to Angelo Johnson?

22 A. Uh-huh (affirmative).

23 Q. And you weren't around for the conversation that he
24 would have?

25 A. Nope.

1 Q. With the person on the other end?

2 A. No, sir.

3 Q. And then when he was through, he would come give you
4 your phone back?

5 A. Yes, sir.

6 Q. Because your domain's the shop?

7 A. My domain is the shop. Him and his entourage, they
8 met in the office.

9 Q. And you never saw any drug transaction in his
10 office?

11 A. No, sir.

12 Q. And as far as those toots that you're taking --
13 correct me if I'm wrong -- but that was like after he
14 would get a call, maybe the next day he would ---

15 A. Yes, right.

16 Q. --- be at the shop and have a rolled up dollar bill
17 ---

18 A. Yeah. Yeah.

19 Q. --- and say, "Do you want a toot?"

20 A. Yeah.

21 Q. Okay. So ---

22 A. So technically, I don't even know who he got it
23 from.

24 Q. That's what I was getting at.

25 A. Okay.

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1 Q. From your personal knowledge, you don't know if that
2 cocaine came from somebody he talked to on the phone ---

3 A. Right.

4 Q. --- or not, do you?

5 A. You're right.

6 Q. And as far as why he was asking you to call certain
7 people, you don't know the real reason for that. That's
8 just speculation because you would just dial the number
9 and hand it to him; correct?

10 A. Yes, sir.

11 Q. And it's your testimony that you never saw any large
12 quantities of drugs at the shop?

13 A. None of that, no.

14 Q. Never no large quantities of money?

15 A. No.

16 Q. No drugs or money changing hands?

17 A. No.

18 Q. And your testimony was, I think, that you really
19 have no idea of how many telephone calls you made in
20 certain months?

21 A. No, because some calls were about cars. Not every
22 call, you know, was about drug dealers.

23 Q. Right. And every call that was made to Bernard or
24 Mr. Crosby could have been for business reasons, cars ---

25 A. Yes.

- 1 Q. --- because you'd done paint work for Mr. Crosby;
2 correct?
- 3 A. Yeah. Yes, sir. That's why his number's in my
4 phone.
- 5 Q. Right. And I think he had done more cars at that
6 shop than just one, hadn't he?
- 7 A. Yeah. Yes, sir.
- 8 Q. Several?
- 9 A. Yeah.
- 10 Q. Okay.
- 11 A. I know I did two and helped him fix the Suburban.
12 That's when I first met him.
- 13 Q. Okay. And even as far as Bernard ---
14 A. (Taking deep breath)
- 15 Q. You all right, Mr. Parker?
- 16 A. Yeah. Yeah. Just had a quick pain. I'm okay.
- 17 THE COURT: Do we have any water, please?
- 18 Q. Are you okay?
- 19 A. (Nodded head up and down in the affirmative.)
- 20 Q. And as far as even Bernard -- what's his last name?
21 Do you know his last name?
- 22 A. Freeman.
- 23 Q. Freeman. Bernard Freeman, if he were selling drugs
24 to Angelo, you don't know the amounts or anything of that
25 nature?

1 A. No, sir.

2 Q. Okay.

3 MR. MCELHANNON: That's all the questions I
4 have, Your Honor.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. UNDERWOOD:

8 Q. Mr. Parker, were some of the calls made to Bernard
9 Freeman about setting up drug deals?

10 MR. MCELHANNON: Objection, Your Honor. That's
11 already been -- I didn't bring that up on cross.

12 THE COURT: No. That's new matter, not brought
13 out on cross. And it was already -- excuse me. Go on to
14 something else.

15 MR. UNDERWOOD: Nothing further, Your Honor.

16 THE COURT: Very good.

17 All right. You may step down. Be careful though.

18 MR. UNDERWOOD: Your Honor, we'd ask Mr. Parker
19 be excused.

20 MR. MCELHANNON: Without objection.

21 THE COURT: All right. Without objection, the
22 witness will be excused. Thank you, sir.

23 Will counsel approach?

24 (WHEREUPON, a bench conference was held off the
25 record.)

1 THE COURT: Very good. Mr. Foreman, ladies and
2 gentlemen of the jury, we need to take a break at this
3 time before we continue with the trial. So I'm going to
4 ask you to retire to your jury room.

5 Be sure they have some refreshments, if you would,
6 please. Thank you, sir.

7 Again, do not undertake the discussion of the case
8 among yourselves in any way.

9 (WHEREUPON, the jury exited the open court at
10 approximately 10:43 a.m.)

11 THE COURT: All right. Anything from the State
12 before we take a break?

13 MR. WEDEKIND: Yes, sir. We'll let you know as
14 soon as we get an update.

15 THE COURT: Can y'all check on the status of a
16 transport?

17 THE DEPUTY: No, sir, we don't have any way to
18 check on motor vehicles.

19 THE COURT: Well, I mean, don't tell me he's
20 floating out there in space.

21 MR. WEDEKIND: With our luck, he may be in
22 Ocone.

23 THE DEPUTY: He's not here.

24 THE COURT: Well, what facility was he in?

25 MR. WEDEKIND: He is in Tiger River or

1 somewhere near Spartanburg, I was told. And it shouldn't
2 have been that long ---

3 THE COURT: Well, what I would suggest is
4 somebody call Tiger River and say, "Are they missing one,
5 or is he in route?"

6 MR. WEDEKIND: Well, they did say they would
7 have him here by nine. He wasn't here.

8 THE COURT: Well, I mean, I'm not asking what
9 we -- because obviously they didn't have him here.

10 MR. WEDEKIND: Yes, sir.

11 THE COURT: So let's do. Let's find out and
12 then we'll be able to ---

13 MR. WEDEKIND: Yes, sir.

14 THE COURT: All right. Anything from the
15 Defendant before we take a break?

16 MR. MCELHANNON: No, Your Honor.

17 THE COURT: All right. Very good.

18 (WHEREUPON, court stood at recess for a short
19 break.)

20 THE COURT: All right. I understand we're
21 having some problems with scheduling witnesses. And next
22 we've got -- at least not holding you to it, but I
23 understand there are two more witnesses the State wishes
24 to present.

25 MR. WEDEKIND: That is correct, sir.

1 THE COURT: And at least one of them might be
2 some time. Rather than send the jury to lunch and then
3 have them come back for one witness -- and then I
4 understand the second witness would be in the morning --
5 I am proposing to go ahead and let the jury go for the
6 day and come back in the morning and complete the State's
7 case at that time.

8 MR. WEDEKIND: Yes, sir.

9 THE COURT: All right. Any objection from the
10 State?

11 MR. WEDEKIND: No, sir.

12 THE COURT: Anything from the Defendant?

13 MR. MCELHANNON: No, Your Honor.

14 THE COURT: All right. I also understand the
15 Defendant has some things that the family wants to give
16 to him. We will see that he gets those after we dismiss
17 the jury.

18 MR. MCELHANNON: Thank you, Your Honor.

19 THE COURT: All right. Ask the jury to join
20 us, please.

21 THE BAILIFF: They might still be on their
22 smoke break.

23 THE COURT: Oh, you've got one on a smoke
24 break? Yeah, bring them back.

25 THE BAILIFF: I don't know they're --

1 THE COURT: All right. We'll stand at ease
2 until the jury comes -- is ready. They're all on a smoke
3 break right now.

4 MR. MCELHANNON: Yes, sir.

5 (WHEREUPON, court stood at ease.)

6 THE COURT: All right. We're back on the
7 record in State versus Crosby.

8 MR. MCELHANNON: Your Honor, I had my -- on my
9 witness list, of course, I had the Defendant listed, and
10 I had a Phillip Walls listed. Based on my discussions
11 with the State, I had Mr. Walls coming back here this
12 afternoon at about two thirty. Now that these issues
13 have arisen, he'll, of course, come tomorrow. He had
14 already advised me that he has a doctor's appointment
15 tomorrow for a very serious matter. And I would just
16 like the Court's consideration of my witness, basically
17 the same as you're giving the State's, about being here
18 as soon as I can after his doctor's appointment.

19 THE COURT: Certainly.

20 MR. MCELHANNON: Thank you.

21 THE COURT: I think so. Tomorrow's Wednesday,
22 so we've got some time if we do need to reschedule
23 things.

24 All right. Are they back?

25 Yes, sir?

1 MR. WEDEKIND: Also, I would just -- could we
2 request since we have Mr. Johnson here that you order he
3 remain overnight at the detention center?

4 THE COURT: Certainly.

5 Mr. Johnson, we're going to continue the case until
6 tomorrow. We've got two other witnesses now in addition
7 to yours. So rather than keep the jury here all
8 afternoon until we can get to those other witnesses, I'm
9 going to continue it until tomorrow. So you'll stay in
10 custody here.

11 And whatever the detention center needs, be sure
12 that I get it and I'll sign it. All right.

13 All right. Ask the jury to join us, please.

14 (WHEREUPON, the jury entered the open court at
15 approximately 12:27 p.m.)

16 THE COURT: All right. Let the record reflect
17 the jury and alternate are in the jury box.

18 Mr. Foreman, ladies and gentlemen of the jury, we've
19 had -- and I appreciate your patience with the Court.
20 We've had some conflict with getting witnesses here. And
21 because of that, rather than waiting until later this
22 afternoon for one witness, I'm going to continue the case
23 until tomorrow. And then we'll be able to complete all
24 of the -- we have witnesses coming from Alabama and
25 other. Apparently, there's been some difficulties in

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1 getting them here. But they will be here tomorrow.
2 We're going to get all of that arranged between now and
3 tomorrow morning, and then we'll -- I would anticipate
4 that we'll complete the trial tomorrow. But rather than
5 you waiting until we do get things in order, I'm going to
6 ask that you be excused for the balance of the day and
7 then come back at ...

8 Nine-thirty?

9 MR. FOREMAN: Yes, sir.

10 THE COURT: All right. Nine-thirty in the
11 morning. Again, my instructions have been throughout the
12 trial and continue today, do not discuss the case with
13 anyone at all, even among yourselves or particularly with
14 anyone else. I was here at nine-thirty this morning. I
15 didn't see anybody that wanted me to explain to them the
16 reason. But I think you can understand.

17 Very good. Thank you very much and I'll see you
18 tomorrow morning at nine-thirty.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:29 p.m.)

21 THE COURT: All right. Is there anything we
22 need to put on the record to take up before we recede for
23 the day?

24 MR. WEDEKIND: No, sir. I will try and contact
25 the SLED agent who's going to volunteer to pick up the

1 witness for the chemist's testimony, and I'll let the
2 Court know and Mr. McElhannon know.

3 THE COURT: All right. But also check with the
4 Anderson County Detention Center to be sure that the
5 arrangements are made. I'm going to be in the courthouse
6 for at least an hour or so.

7 MR. WEDEKIND: All right, sir.

8 THE COURT: So if you need anything signed or
9 whatever.

10 MR. WEDEKIND: Thank you, sir.

11 THE COURT: Very good. All right. And did you
12 get the items that -- I think it was something that the
13 family wanted to give to the Defendant?

14 MR. MCELHANNON: I think we've got it here,
15 Your Honor.

16 THE COURT: Oh, you did?

17 MR. MCELHANNON: Yes, sir.

18 THE COURT: All right.

19 MR. MCELHANNON: We'll arrange that.

20 THE COURT: All right. Very good. All right.
21 Anything else from the Defendant?

22 MR. MCELHANNON: No, Your Honor.

23 THE COURT: All right. We'll see you in the
24 morning at nine-thirty. And let's do see if we can get
25 started. I think we were already here. I think that

1 there was a problem with one of the jurors. All right.

2 I'll see you in the morning.

3 (WHEREUPON, court stood at recess for the day at
4 approximately 12:29 p.m.)

5 **JANUARY 28, 2015**

6 (WHEREUPON, court convened with all parties present
7 and the following proceedings were had commencing at
8 approximately 9:51 a.m.)

9 THE COURT: All right. Is there anything from
10 the State before we proceed?

11 MR. WEDEKIND: No, sir.

12 THE COURT: From the Defense?

13 MR. MCELHANNON: No, Your Honor.

14 THE COURT: Very well. Ask the jury to join
15 us, please, sir.

16 (WHEREUPON, the jury entered the open court at
17 approximately 9:51 a.m.)

18 THE COURT: All right. Let the record reflect
19 that the jury and alternate are in the jury box.

20 Mr. Foreman, ladies and gentlemen of the jury, we'll
21 continue with the State's case.

22 I recognize the Assistant Attorney General.

23 MR. WEDEKIND: Thank you, Your Honor. The
24 State would call Ms. Jill Clark to the stand.

25 (WHEREUPON, the witness was duly sworn.)

1 THE COURT: You may proceed.

2 MR. WEDEKIND: Thank you, Your Honor.

3 JILL CLARK,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. WEDEKIND:

7 Q. Ms. Clark, tell the jury, if you would, who you
8 currently are employed by.

9 A. I'm currently employed by Keller Williams Real
10 Estate Company in Alabama.

11 Q. Okay. And did you arrive today or last night from
12 Alabama?

13 A. Yes, I did.

14 Q. Now, prior to residing in Alabama, did you live in
15 South Carolina?

16 A. Yes. Up until -- I moved February of last year.

17 Q. Okay. And just prior to moving there, were you
18 employed by a governmental agency in South Carolina?

19 A. Yes. I was employed by South Carolina Law
20 Enforcement Division, which is known as SLED, up until
21 that time from December of '99 until January 31st of
22 2014.

23 Q. So on February 13, 2013, you were employed by SLED
24 in what capacity?

25 A. I was employed as a drug chemist assigned to the

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1 drug analysis department at SLED.

2 Q. And in that capacity, did you just walk in off the
3 street, fill out an application and they hire you to do
4 that, or do you have to go through some schooling and
5 training in order to be qualified for that?

6 A. Yes. I have a bachelor's degree in chemistry. And
7 I've also completed training with the Drug Enforcement
8 Agency. And I also completed SLED's chemistry training
9 program for all their forensic chemists. And I've also
10 been to the South Carolina Criminal Justice Academy.

11 Q. And are there certifications that have to follow
12 along with that training?

13 A. Yes. You get certified by SLED, and then you also
14 have yearly competency tests that you have to complete
15 and pass.

16 Q. And did you ever have any difficulty in passing any
17 of those?

18 A. No, I never did.

19 Q. And in regards to working at SLED, you were
20 employed, as I said, on February 13th, 2013?

21 A. Yes.

22 Q. Let me show you what's marked for identification ...
23 (WHEREUPON, State's Exhibit Number 8 was marked for
24 identification only.)

25 Q. It's marked for identification State's ID Number 8.

1 Does that document look familiar to you?

2 A. Yes. It's a drug report I issued from SLED.

3 Q. Now, as to -- going back real quick to your
4 employment at SLED, have you ever been required or
5 requested to testify previously in a court of record in
6 South Carolina?

7 A. Yes. I've been certified as an expert witness
8 approximately forty-eight times.

9 Q. And have you testified on each of those occasions
10 under oath?

11 A. Yes.

12 Q. And what specialty, again, were you qualified as an
13 expert?

14 A. In drug analysis.

15 MR. WEDEKIND: Your Honor, at this time, the
16 State would request to have Ms. Clark testify or be able
17 to testify as an expert in the subject matter of chemical
18 forensic analysis.

19 THE COURT: All right.

20 Any voir dire?

21 MR. MCELHANNON: No. Without objection, Your
22 Honor.

23 THE COURT: All right. Expert in drug analysis
24 or forensic chemistry?

25 MR. WEDEKIND: Thank you, Your Honor.

1 THE COURT: I mean, which is it? Or is it
2 both? All encompassing?

3 MR. WEDEKIND: A forensic chemist, Your Honor.

4 THE COURT: Is that correct, Ms. Clark?

5 THE WITNESS: Yes, that's fine. Either one is
6 correct.

7 Q. Okay. And ---

8 THE COURT: Just a second, please?

9 MR. WEDEKIND: Thank you, sir.

10 THE COURT: Mr. Foreman, ladies and gentlemen
11 of the jury, you've probably noticed that you hear --
12 what is it? -- terms called -- objections made as to
13 speculation and things of that nature during testimony
14 from various witnesses. The reason for that is that
15 witnesses are normally limited to only those things they
16 know of their own knowledge. In other words, the
17 exercise of their own senses, what they see, touch, feel
18 or smell, things of that nature. But a witness who is
19 qualified by their background, training and experience,
20 or whatever, in a particular area are permitted to give
21 their opinion, in other words, as to what they perceive
22 based on their training, experience and background. And
23 they are called expert witnesses. And expert witnesses
24 can give you their opinion.

25 Now, all witnesses, expert witnesses, lay witnesses

1 or fact witnesses, their testimony is for your
2 determination and your decision as to the credibility of
3 it as any witness.

4 So with that, I'll let the Attorney General proceed.

5 MR. WEDEKIND: Thank you, sir.

6 THE COURT: Yes, sir.

7 Q. Okay. So you were -- were you requested to do a
8 drug analysis on a particularly associated lab number on
9 February 13, 2013?

10 A. Yes.

11 Q. And I mean, you do lots of analysis; is that
12 correct? This is not just one case you were working on?

13 A. Correct.

14 Q. And how do you distinguish between multiple
15 submissions for analysis? How do you keep control of
16 that?

17 A. Well, we do one test at a time. And then each case
18 comes in a Best kit and has a unique six digit number
19 that we match up and we put on our paperwork. And then
20 it's also on our report. And then it also has a unique
21 lab number that it's given when it comes to SLED.

22 Q. So on a table in front of you, you don't have five
23 different mixtures, chemical submissions; you just have
24 one and only one in front of you from that case or that
25 one particular lab request?

1 A. Correct. We're only allowed to work one case at a
2 time. And it has to be sealed in between cases before we
3 start a new one.

4 Q. And does that help with an issue of cross-
5 contamination? What is that?

6 A. Yes. It's just so that you can't mix up any drugs.
7 And also, do one case at a time, and it's sealed, put
8 away, put out fresh paper to work on and then you get
9 another one. So you don't have to worry about it.

10 Q. And that way you know when you say the weight of one
11 of item is the weight for that item and not the weight of
12 two combined or three combined? You know, a mixture that
13 results?

14 A. Right. Correct. It's just one case you're doing.

15 Q. Now, let me show you State's Exhibit Number 2 for
16 ID. Do you recognize this?

17 A. Yes, this is a Best kit that I tested.

18 Q. Okay. And how do you know if that's the one that
19 we're talking about?

20 A. I know it's the one we're talking about because the
21 Best kit number on it matches my report. And it's also
22 got the date that I worked it with my initials and the
23 day I sealed it with my initials. And then the evidence
24 also has the case number and my initials.

25 Q. Okay. And looking at the State's ID Number 2, can

1 you read out the Best kit number that's affixed to that?

2 A. It's Best kit 232330.

3 Q. Okay. Now, looking at the report that you
4 generated, what is the report relating to and in regards
5 to the Best kit number?

6 A. It's also Best kit 232330.

7 Q. So the two numbers on State's ID Number 2 and the
8 number on State's ID Number 8, do they match?

9 A. Yes. They're an exact match.

10 Q. Okay. Is there an additional tracking number that
11 you all affix to the evidence number 2?

12 A. Yes. The unique number that is given at SLED, the
13 lab number is on the label. It comes from SLED and it's
14 also on my report.

15 Q. And would you compare those two, please, and then
16 tell us the results?

17 A. Right. They're the same. It's lab number 1301740.

18 Q. Okay. So the first digit's a 13. That relates to
19 what?

20 A. That's the year that the evidence was submitted.

21 Q. And SLED apparently tracked this -- this is the one
22 thousand seven hundred and fortieth item that was tracked
23 that year?

24 A. Right. It's just numerical as they come in.

25 Q. Okay. Now, when you received that Best kit that you

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1 have as State's ID Number 2, please tell the jury about
2 the condition it was in when you received it?

3 A. Well, before we test it, we check to make sure that
4 the Best bag is properly sealed. And then that's where I
5 put, "OK. February 11th 2013, JLC," which are my
6 initials. And that just tells me that I did check it to
7 make sure it was sealed, that there weren't any cuts in
8 the bag and that it hadn't been tampered with.

9 Q. Okay. And what would happen if there had been any
10 disturbance to the packing, if there had been a cut or it
11 looked like the seals had been broken? What would you
12 do?

13 A. Well, I wouldn't be able to test. We would have to
14 send it back to the person who submitted it. And we also
15 document that it wasn't properly sealed.

16 Q. But in this case, what was the condition when in
17 which you ...

18 A. It was properly sealed.

19 Q. And then after you ascertain that and made those
20 notations on that, what did you do?

21 A. Then I cut open the bottom, removed the drugs out of
22 the bag, and I tested them.

23 Q. Okay. And if you would, referring to State's ID
24 Number 2 -- or 8, is that the report that you generated
25 as a result of your examination?

1 A. Yes, it is.

2 MR. WEDEKIND: And at this time, Your Honor,
3 the State would move into evidence State's ID 2.

4 THE COURT: Any objection?

5 MR. MCELHANNON: No objection.

6 THE COURT: All right. Without objection,
7 State's Exhibit Number 2 is admitted.

8 (WHEREUPON, State's Exhibit Number 2 was admitted
9 into evidence.)

10 Q. All right. Regarding State's ID Number 8, do you
11 have a -- would you read the top line of what that -- or
12 the top two lines of what that report is?

13 A. Well, they submitted a rock substance. That's an
14 eye description. And then the results of my testing show
15 that it was cocaine base, which is called crack, was
16 found. It's a Schedule II drug. And it weighed twenty-
17 two point five grams, which converts to three hundred
18 forty-seven point two grains.

19 Q. Okay. What's the difference between a gram and
20 grain? A grain and a gram. I'm sorry.

21 A. It's just the conversion in the way the law's
22 written. We also have to record out grains and convert.
23 And you most commonly measure in grains. It was just ---

24 Q. A different unit of measurement; is that correct?

25 A. Yes.

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1 Q. But it's kind of archaic, and really nobody but
2 scientists use it today?

3 A. Right. We just use it because it's written into the
4 law that we have to record it that way.

5 Q. All right. Now, this report that you generated, did
6 you actually type it out? Did you actually sign it to
7 attest to its authenticity?

8 A. Yes. I have to put in a code so that my electronic
9 signature comes out on the report, which is on this
10 report.

11 Q. And your signature is affixed to it?

12 A. Yes, it is.

13 Q. Okay. Do you also recognize this document as being
14 the product of your own hand?

15 A. Yes, I do.

16 MR. WEDEKIND: Your Honor, at this time the
17 State would move into evidence State's ID Number 2 -- or
18 Number 8. Sorry.

19 THE COURT: Number 8. All right. Any
20 objection?

21 MR. MCELHANNON: No objection, Your Honor.

22 THE COURT: All right. Without objection,
23 State's Exhibit Number 8 is admitted into evidence.

24 (WHEREUPON, State's Exhibit Number 8 was admitted
25 into evidence.)

1 Q. Now, just one last question. Regarding the result,
2 the determination of cocaine base, was there anything
3 else that you discovered to be in there?

4 A. No. That was the only controlled substance
5 detected.

6 Q. Is there any doubt in your professional opinion as
7 to what that substance being in the bag is exactly what
8 you determined it to be?

9 A. No, there's no doubt.

10 Q. Okay. Thank you. Please answer any questions that
11 the Defense may have.

12 CROSS-EXAMINATION

13 BY MR. MCELHANNON:

14 Q. Ms. Clark, you solely do the analysis on whatever
15 substance is submitted to you; correct?

16 A. Yes, that's correct.

17 Q. Or you did. You don't any longer; you did back
18 then. So you don't know where these, the substance,
19 actually came from. You just know it's submitted to SLED
20 for analysis; correct?

21 A. That's correct.

22 Q. Would you look on State's Number 2, your actual drug
23 report? I don't know if you have that up there. The
24 actual drug report. If you would look at the top where
25 you have drug analysis. You have the date, the SLED lab

1 number, those type things. What is on the bottom line
2 there?

3 A. The bottom line -- 'S' stands for the subject. And
4 it's -- for this subject, we weren't given a name. So
5 those are logged in as what we call FNU LNU, which stands
6 for first name unknown, last name unknown.

7 Q. Okay. So the subject of these drugs, the name was
8 unknown to SLED at this time; correct?

9 A. Well, it was unknown when they submitted it to the
10 lab. They did not submit the name with it.

11 Q. On February the -- do you know when it was
12 submitted?

13 A. It was submitted on February 6, 2013?

14 Q. February 6, okay. So they didn't know the name of
15 who allegedly was in possession of these drugs on
16 February the 6th?

17 A. I don't know if they didn't know the name or they
18 just didn't put it down. Sometimes they don't put it
19 down purposefully.

20 Q. But a lot of times under subject, it'll have John
21 Smith or whoever the case is against; correct?

22 A. That's correct.

23 Q. And you don't have anything to do with
24 identification of where the drugs came from or anything;
25 you're just solely analysis?

1 A. Right. No, nothing to do with identification.

2 MR. MCELHANNON: That's all I have.

3 THE COURT: Reexamine?

4 MR. WEDEKIND: Very quickly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WEDEKIND:

7 Q. If it has a name or it doesn't have an unknown name,
8 does that change in any way in any respect what you do
9 with the analysis?

10 A. No. The analysis is the same.

11 Q. And in this case, whether it was unknown or known,
12 the results would have still been what?

13 A. It would still be cocaine base, crack found.

14 Q. Thank you.

15 MR. WEDEKIND: Nothing further.

16 THE COURT: You may step down.

17 MR. WEDEKIND: And may the witness be excused,
18 Your Honor?

19 MR. MCELHANNON: Without objection.

20 THE COURT: Without objection, the witness may
21 be excused.

22 Thank you very much, ma'am.

23 MR. WEDEKIND: Your Honor, our next witness is
24 downstairs.

25 THE COURT: All right. Do you need a few

1 minutes?

2 MR. WEDEKIND: Yes, sir. To get him up here.

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, if you would, please, retire to
5 the jury room while we bring the witness up. Again, do
6 not undertake the discussion of the case among yourselves
7 in any way.

8 (WHEREUPON, the jury exited the open court at
9 approximately 10:07 a.m.)

10 MR. WEDEKIND: I'm sorry. I know the deputies
11 they're going down to retrieve him so it'll just -- that
12 might be him right there.

13 THE DEPUTY: Are you ready for me to bring him
14 in?

15 MR. WEDEKIND: Yes.

16 (WHEREUPON, the witness entered the courtroom.)

17 THE COURT: Leave a cup of water on the stand
18 for the witness.

19 MR. WEDEKIND: We're ready, Your Honor.

20 THE DEPUTY: What about the chains? You want
21 to leave them on or take them off?

22 THE COURT: Whatever ---

23 THE DEPUTY: We'll leave them on.

24 THE COURT: Leave them on.

25 THE DEPUTY: Thank you, sir.

1 THE COURT: Yes, sir?

2 MR. MCELHANNON: I was just going to say I was
3 going to take a restroom break while they were out.

4 THE COURT: All right. Go ahead. They're out.
5 That's fine. They probably are too.

6 (WHEREUPON, court stood at ease.)

7 THE COURT: Would counsel approach, please?

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 THE COURT: All right. After consulting with
11 the attorneys, I'm going to ask for the witness to be
12 seated on the stand.

13 And, of course, you'll swear him when he's up there.

14 THE CLERK: In front of the jury?

15 THE COURT: In front of the jury.

16 THE CLERK: Yes, sir.

17 THE COURT: All right. And you are William
18 Angelo Johnson?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. I'm going to have you
21 sworn once the jury's back in, but you may remain seated.

22 THE WITNESS: Okay, Your Honor.

23 THE COURT: Very good.

24 All right. Anything from the State before I bring
25 the jury back?

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1 MR. WEDEKIND: No, sir.

2 THE COURT: From the Defense?

3 MR. MCELHANNON: No, Your Honor.

4 THE COURT: Very good.

5 Ask the jury to join us, please.

6 (WHEREUPON, the jury entered the open court at
7 approximately 10:14 a.m.)

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, we will now hear from the witness,
10 William Angelo Johnson.

11 Mr. Clerk, if you would, please, swear the witness.

12 (WHEREUPON, the witness was duly sworn)

13 THE COURT: Thank you, sir.

14 All right. You may proceed.

15 MR. UNDERWOOD: Thank you, Your Honor. May it
16 please the Court.

17 **WILLIAM ANGELO JOHNSON,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. UNDERWOOD:

21 Q. Good morning, Mr. Johnson.

22 A. Good morning.

23 Q. Judging by your attire, is it safe to say you're
24 currently incarcerated in the Department of Corrections?

25 A. Yes, sir.

1 Q. Is that because you have already pled guilty in this
2 case?

3 A. Yes, sir.

4 Q. Mr. Johnson, if you would, tell the jury where
5 you're from?

6 A. Easley, South Carolina.

7 Q. And have you lived in the upstate of South Carolina
8 your whole life?

9 A. Yes, sir.

10 Q. How old are you, sir?

11 A. Forty-five.

12 Q. How far did you go in school?

13 A. Eleventh grade.

14 Q. At some point in your life, did you get involved
15 with illegal drugs?

16 A. Yes, sir.

17 Q. How did that happen?

18 A. I don't know. I really can't remember. I guess
19 curious.

20 Q. How old were you then?

21 A. Around seventeen.

22 Q. What kind of drugs did you use?

23 A. Cocaine.

24 Q. Did you ever stop using cocaine?

25 A. Yes, sir.

1 Q. When?

2 A. I did for a little while. It wasn't that long. I
3 can't really remember all the dates and stuff. I don't
4 know exactly how long. It wasn't that long. A while.

5 Q. At some point later on in your life, did you get
6 involved with drugs again?

7 A. Yes, sir.

8 Q. When did that happen?

9 A. After my father passed, somewhere around that time.

10 Q. Was that 2012?

11 A. '11 or '12, something like that. I can't -- I don't
12 know the date.

13 Q. And how did you get involved with drugs again?

14 A. I knew people that had it.

15 Q. What kind of drugs?

16 A. Cocaine.

17 Q. Were you using cocaine?

18 A. Yeah. Cocaine and alcohol.

19 Q. At some point, did you begin buying larger than just
20 user amounts of cocaine?

21 A. Yes, sir.

22 Q. All right. And when was that?

23 A. I'm not sure.

24 Q. How long had you been using cocaine again when you
25 started selling?

1 A. I guess a few months maybe. I think a few months
2 after I started using. I think that's right.

3 Q. And where would you get your cocaine?

4 A. From different people.

5 Q. Who were those people?

6 A. Bernard and Tee, and a couple of other of people. I
7 can't think their name right off.

8 Q. All right. Let's start with Bernard. Who is that?

9 A. A guy I was selling cars to.

10 Q. Okay. Do you know Bernard's full name?

11 A. Bernard, I don't know his last name.

12 Q. How did you get involved with buying drugs from
13 Bernard?

14 A. I'm not sure. Like a friend of mine might have told
15 me he might get some or he may have seen him use some or
16 something. I can't remember the details, man.

17 Q. When you would get drugs from Bernard, how would you
18 arrange for a drug transaction?

19 A. I would get a friend of mine to call.

20 Q. And who was that?

21 A. Jeff.

22 Q. Jeff who?

23 A. Parker.

24 Q. All right. Explain to the jury, how would those
25 phone calls take place?

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- 1 A. He would call and tell them I needed it, and they
- 2 would bring it.
- 3 Q. So Jeff would call who?
- 4 A. Bernard or whoever I needed to call.
- 5 Q. And then what would happen after that phone call?
- 6 A. They would usually bring it if they had some. If
- 7 they didn't, I'd try somebody else.
- 8 Q. Okay. When you would buy cocaine from Bernard, how
- 9 much cocaine did you buy?
- 10 A. Various amounts. Maybe a quarter, a half or so.
- 11 Q. A quarter or half of what?
- 12 A. Of cocaine. A quarter or half an ounce.
- 13 Q. Okay. Did you ever buy whole ounces?
- 14 A. Yes, sir.
- 15 Q. Do you remember how many times you bought from
- 16 Bernard?
- 17 A. No, sir.
- 18 Q. Was it more than once?
- 19 A. Yes, sir.
- 20 Q. More than twice?
- 21 A. Yes, sir, most likely.
- 22 Q. Five times?
- 23 A. I'm not sure.
- 24 Q. But multiple times?
- 25 A. Yes, sir.

- 1 Q. And you'd buy it ounces at a time?
- 2 A. I have bought ounces, yes, sir.
- 3 Q. Now, when you would get the cocaine from Bernard,
- 4 what would you do with that cocaine?
- 5 A. Get me some out and resell it.
- 6 Q. Now, you say get some out. What do you mean?
- 7 A. Take me a portion out and resell it.
- 8 Q. How much would you take for yourself?
- 9 A. Maybe a eight-ball or so.
- 10 Q. And what's an eight-ball?
- 11 A. Three and a half grams.
- 12 Q. So you would take out of an ounce, which is roughly
- 13 twenty-eight grams, you would take out three and a half
- 14 grams?
- 15 A. Yes, sir.
- 16 Q. And you would keep that for yourself?
- 17 A. Yes, sir.
- 18 Q. What did you do with the rest?
- 19 A. Sell it.
- 20 Q. Who would you sell it to?
- 21 A. Ant Murray most of the time.
- 22 Q. Did you ever sell to other people?
- 23 A. A few.
- 24 Q. How much would you pay when you buy an ounce?
- 25 A. Roughly a thousand to eleven fifty, twelve hundred,

1 something like that.

2 Q. And how much could you sell the remainder for?

3 A. The same amount.

4 Q. So did you make any monetary profit?

5 A. Not really.

6 Q. But you would take a share of the drugs to use for
7 yourself?

8 A. Yes, sir.

9 Q. You mentioned another person, Tee. Who is that?

10 A. The Defendant.

11 Q. You're referring to Timothy Crosby?

12 A. Yes, sir.

13 Q. Is he in the courtroom?

14 A. Yes, sir.

15 Q. Could you please point him out, sir?

16 A. Sitting right there.

17 Q. And could you please describe what he's wearing?

18 A. Kind of a gray suit, black suit.

19 MR. UNDERWOOD: Your Honor, I'd ask that the
20 record reflect he's identified the Defendant.

21 THE COURT: The record will so reflect.

22 Q. Mr. Johnson, how did you get to the Defendant?

23 A. He was buying cars from me.

24 Q. And when was that?

25 A. I can't remember the dates.

- 1 Q. And you say he was buying cars from you. What was
2 your primary business at this time?
- 3 A. Fixing and painting cars.
- 4 Q. And did you have an actual shop somewhere?
- 5 A. Yes, sir.
- 6 Q. What was the name of that shop?
- 7 A. Toys R Us Motor Sports.
- 8 Q. And where was that?
- 9 A. 6738 Highway 81 North, Piedmont.
- 10 Q. Is that in Anderson County?
- 11 A. Yes, sir.
- 12 Q. And Mr. Johnson, would your drug transactions
13 frequently occur at the shop?
- 14 A. Sometimes.
- 15 Q. Where else would they take place?
- 16 A. At my house.
- 17 Q. And where was that?
- 18 A. [REDACTED] Rod (phonic) Road.
- 19 Q. And what town is that in?
- 20 A. Easley.
- 21 Q. Is that in Pickens County?
- 22 A. Anderson.
- 23 Q. That's in Anderson County? How many times would you
24 have cocaine deals at the shop versus at the house?
- 25 A. I don't -- I don't know that. I can't remember.

1 Q. Do you know how many times you had cocaine deals at
2 the shop?

3 A. A few.

4 Q. Do you remember how many times you had them at the
5 house?

6 A. Maybe a couple. A few or so.

7 Q. You don't remember exactly how many?

8 A. No, sir. I was drinking heavy at that time.

9 Q. The individual, Tee, the Defendant, did you ever get
10 involved with him concerning cocaine?

11 A. Yes, sir.

12 Q. How did that happen?

13 A. I think he seen me using.

14 Q. And how did the transaction relationship occur with
15 him?

16 A. I'm not sure how that -- what started that going on.

17 Q. When did you start buying cocaine from him?

18 A. Shortly after he seen me using, I think. I'm not
19 sure. I don't know time and dates or nothing. Like I
20 say, I was a heavy user. I was a alcoholic at the time.

21 Q. Was this at the same time that you were buying from
22 Bernard?

23 A. Yes, sir.

24 Q. How would you set up a drug transaction with this
25 Defendant, Mr. Crosby?

- 1 A. The same way.
- 2 Q. And could you explain what you mean by the same way?
- 3 A. Jeff would call, and he would bring it.
- 4 Q. So Jeff would call the Defendant?
- 5 A. Yes, sir.
- 6 Q. And then the Defendant would bring drugs to you?
- 7 A. Yes.
- 8 Q. What would he bring?
- 9 A. That, I can't remember. I don't know.
- 10 Q. Was it cocaine?
- 11 A. Yes, sir. Yes, sir. Yeah. I thought you were
- 12 talking about how much.
- 13 Q. Okay. Well, how much would you be able to buy at a
- 14 time from him?
- 15 A. Maybe up to a ounce or so. I don't remember who I
- 16 was getting how much or what from.
- 17 Q. So you don't remember exactly how much you were
- 18 buying?
- 19 A. I was buying up to an ounce, but I don't know -- I
- 20 can't remember exactly from who.
- 21 Q. So there were multiple people involved?
- 22 A. A few, yes, sir.
- 23 Q. And were the main people you were buying from
- 24 Bernard and Timothy?
- 25 A. Yes, sir.

- 1 Q. And Jeff Parker would make the phone call?
- 2 A. Yes, sir.
- 3 Q. Did you ever purchase crack cocaine?
- 4 A. Yes, sir.
- 5 Q. Where would you get crack cocaine?
- 6 A. The same place.
- 7 Q. Who is that?
- 8 A. (No verbal response)
- 9 Q. You said the same person. Who you talking about?
- 10 A. The same way.
- 11 Q. Okay. And what do you mean by that?
- 12 A. Either of the two.
- 13 Q. Either Bernard or the Defendant?
- 14 A. Yes, sir.
- 15 Q. So did you buy crack cocaine from this Defendant?
- 16 A. Yes, sir.
- 17 Q. How much crack cocaine would you purchase from him?
- 18 A. I don't know. Maybe a quarter or a half ounce or
- 19 so.
- 20 Q. Did you ever buy up to an ounce of crack cocaine
- 21 from him?
- 22 A. I don't remember buying an ounce.
- 23 Q. Do you know an individual named Anthony Murray?
- 24 A. Yes, sir.
- 25 Q. How do you know him?

1 A. Went to school together.

2 Q. Did you ever have any drug transactions with Mr.
3 Murray?

4 A. Yes, sir.

5 Q. What was the nature of those?

6 A. He would come get drugs from me.

7 Q. And how would that happen? How would he set that
8 up?

9 A. He'd stop by the shop or either wherever he would
10 see me at and say he need this and that. Which if I
11 didn't have it, I could make arrangements to get it for
12 him.

13 Q. And how did you make those arrangements to get it
14 for him?

15 A. The same way I been -- I did the others. I would
16 get Jeff to call.

17 Q. And on occasions, did this Defendant bring crack
18 cocaine to Mr. Murray?

19 A. You mean directly to him?

20 Q. Bring it to your shop for Mr. Murray?

21 A. Well, those are the times I done told you about.
22 That would be for him.

23 Q. Did the Defendant bring it himself to the shop?

24 A. Yes, sir.

25 Q. And were you present when that would happen?

- 1 A. Yes, sir.
- 2 Q. Do you remember any specific dates that took place?
- 3 A. No, sir.
- 4 Q. Do you remember how many times it took place?
- 5 A. No, sir.
- 6 Q. Was it more than once?
- 7 A. Yes, sir.
- 8 Q. And was that with both crack and powder cocaine or
- 9 just one or the other?
- 10 A. One or the other, if I'm hearing you right, Hoss.
- 11 Q. Concerning powder cocaine ---
- 12 A. Yes, sir.
- 13 Q. --- is that what would take place?
- 14 A. Yes, sir.
- 15 Q. Concerning crack cocaine, is that ---
- 16 A. Same thing, yes, sir.
- 17 Q. So maybe not both at the same time, but both crack
- 18 ---
- 19 A. Right.
- 20 Q. --- and powder?
- 21 A. Right.
- 22 Q. Now, Mr. Johnson, you've stated that you made
- 23 multiple purchases of cocaine from both Mr. Bernard and
- 24 the Defendant as well as others. And did you say that
- 25 you would buy up to an ounce at a time?

1 A. No. Up to an ounce, yes.

2 Q. Okay. And that took place more than once?

3 A. Yes, sir.

4 Q. Did you purchase more than a total of a hundred
5 grams?

6 A. It's possible. Most likely, but I'm not sure. I
7 couldn't tell you a specific number.

8 Q. Mr. Johnson, do you remember being interviewed by
9 Special Agent Casey Collier about this case?

10 A. Yes, sir.

11 Q. Specifically, do you remember being interviewed by
12 her on March 7th, 2013?

13 A. I don't remember no dates.

14 Q. But you remember being interviewed by her?

15 A. Yes, sir.

16 Q. And, in fact, you were actually interviewed by her
17 twice?

18 A. (No verbal response)

19 Q. Two separate occasions?

20 A. Yes, sir.

21 Q. On the first occasion, do you remember telling her
22 that you would purchase cocaine from one of your
23 suppliers named Tee and that you had purchased ounces of
24 cocaine five to seven times?

25 A. I can't remember all the details. If I told her, I

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1 guess that's what it -- but I don't remember all the
2 details. See, I was an alcoholic. I don't know what all
3 I said.

4 Q. Would it be fair to say that -- well, did you
5 remember things better then or better now?

6 A. Probably then because it was just -- that's been
7 three years ago. Three or four years ago, something like
8 that.

9 Q. And do you remember telling Agent Collier that you
10 also purchased from Bernard and you would purchase a
11 quarter ounce of cocaine every two weeks for six months
12 from Bernard?

13 A. I remember telling her something like that, but I
14 don't know -- I can't remember the numbers.

15 Q. Do you remember also telling her that on three or
16 four occasions you received an ounce of cocaine from
17 Bernard?

18 A. I remember talking to her. I don't remember the
19 numbers.

20 Q. But you did have drug dealings with Bernard and with
21 Tee?

22 A. Yes, sir.

23 Q. The amounts involved in your conversation with Agent
24 Collier, does that sound reasonable to you?

25 A. Yes, sir.

1 Q. Is that the amount that you would purchase?

2 A. Now, what are you asking? I didn't ---

3 Q. The amounts that I just stated, is that how much you
4 would buy from those two individuals?

5 MR. MCELHANNON: Objection, Your Honor. I
6 think he's already answered.

7 THE COURT: Well, let's -- I'm not sure because
8 I haven't heard the amount again. Just go ahead and
9 state the amount. You're quoting from a prior statement?

10 MR. UNDERWOOD: Yes, Your Honor.

11 THE COURT: All right. Go ahead and quote what
12 the substance of the statement is.

13 Q. In regards to Bernard, did you purchase a quarter
14 ounce of cocaine every two weeks for six months?

15 A. I don't remember the exact amount, but it might --
16 it's possible.

17 Q. And on three or four occasions, did you ---

18 THE COURT: Well, again -- you're reading from
19 the statement?

20 MR. UNDERWOOD: I'm summarizing his statement.

21 THE COURT: No, sir. Let's read from the
22 statement.

23 MR. MCELHANNON: That would be my objection,
24 Your Honor.

25 THE COURT: Well, he says he can't remember.

1 MR. MCELHANNON: This is coming from an
2 interview, not a statement.

3 THE COURT: It's an oral statement that's
4 recorded apparently?

5 MR. UNDERWOOD: It's a memorandum of interview.

6 AGENT COLLIER: It's a memorandum of interview.

7 THE COURT: All right. Go do the substance
8 then. Very good. Overruled.

9 Q. Did you purchase three to four ounces of each at one
10 time from Bernard? Cocaine?

11 A. Excuse me?

12 Q. On three or four occasions, did you purchase an
13 ounce of cocaine from Bernard?

14 A. I can't remember the times. How many times it was,
15 I cannot remember. I know I purchased an ounce or so
16 from him, but I can't remember no exact number.

17 Q. So you did purchase multiple ounces at a time?

18 A. Yes, sir.

19 Q. From Bernard?

20 A. Yes, sir.

21 Q. Involving the Defendant, Tee, did you purchase
22 ounces at a time of cocaine from him?

23 A. I know I purchased an ounce or so, but I can't --
24 like I told you, I can't remember how many times it was.

25 Q. In total, did you -- between those individuals, did

1 you purchase at least a hundred grams if you add it all
2 together?

3 MR. MCELHANNON: Your Honor, that's been asked
4 and answered already.

5 THE COURT: I've going to overrule the
6 objection. Ask it one time more and then we'll move on.

7 A. I can't give you a number. I have no -- I don't
8 know the numbers.

9 Q. Is it fair to say that you bought at least two
10 ounces from Bernard of cocaine?

11 A. Most likely, yes, sir.

12 Q. Is it fair to say you bought at least two ounces of
13 cocaine from the Defendant?

14 A. I'm not sure. Like I say again, I was doing so
15 much, drinking so much and carrying on. It's possible,
16 but I'm not positive.

17 Q. Thank you. Please answer any questions that
18 opposing counsel may have for you.

19 CROSS-EXAMINATION

20 BY MR. MCELHANNON:

21 Q. Mr. Johnson, I appreciate the fact that you've
22 already come out and answered what I was going to ask
23 you. You were an alcoholic back then; correct?

24 A. Yes, sir.

25 Q. When would you start drinking during the day?

- 1 A. Five thirty, six o'clock in the morning.
- 2 Q. In the morning, and drink all through the day?
- 3 A. Yes, sir.
- 4 Q. Drinking in your shop there?
- 5 A. Yes, sir.
- 6 Q. And on top of that, you were also doing drugs?
- 7 A. Yes, sir.
- 8 Q. So is it fair to say that your mind at that time,
- 9 for at least a six-month period of time there, was
- 10 extremely cloudy?
- 11 A. Yes, sir.
- 12 Q. So when the State is asking you questions about
- 13 dates, you've already said you don't remember dates;
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. About amounts of drugs that you purchased, you don't
- 17 really remember dates of when you purchased a quarter of
- 18 an ounce or a half an ounce or an ounce, do you?
- 19 A. No, sir.
- 20 Q. So all that's speculation as far as what you bought?
- 21 A. Well, I know I did buy some, but I don't know
- 22 exactly what the ---
- 23 Q. The weights.
- 24 A. --- situation of the stuff was.
- 25 Q. Right. And do you remember -- well, I think you

1 said if you bought an ounce you would take an eight ball
2 for your personal use?

3 A. Yes, sir.

4 Q. And how much is an eight ball?

5 A. Three and a half grams.

6 Q. So that's ---

7 A. I think.

8 Q. Here again, my math's not good. I'm just trying to
9 figure out how much percentage that is of an ounce. An
10 ounce is twenty-eight grams; correct?

11 A. Yes, sir.

12 Q. So three to four grams is an eight-ball?

13 A. Yes, sir..

14 Q. Do you remember testifying before the State Grand
15 Jury?

16 A. Yes, sir.

17 Q. Do you remember ---

18 A. Somewhat.

19 Q. Pardon?

20 A. Somewhat.

21 Q. Somewhat?

22 A. Yes, sir.

23 Q. Okay. This would have been back in, I think, May of
24 2013. May the 15th, 2013. Does that sound about right?

25 A. (No verbal response)

1 Q. You don't remember dates?

2 A. (No verbal response)

3 Q. Okay. Do you remember telling the State Grand Jury
4 that what you were buying you were actually using about
5 half?

6 A. I might have said that, but it wasn't quite that
7 much. But it was -- I was using a good bit of it.

8 Q. A good bit. So probably it was more than an eight-
9 ball off an ounce; correct?

10 A. Maybe.

11 Q. And you bought from various people?

12 A. Yes, sir.

13 Q. And you sold to various -- mostly to, I think you
14 said, Anthony Murray?

15 A. Yes, sir.

16 Q. He was your biggest customer?

17 A. Yes, sir.

18 Q. Sitting here today, you do not have any recollection
19 of how much you purchased from any one person, do you?

20 A. Not exactly.

21 Q. Or how many times any one person would have sold you
22 over a six-month ---

23 A. Not a specific number.

24 Q. So any number that was thrown out there would be
25 pure speculation, and any dates ---

1 A. Maybe close, but I don't -- you know, I know I did
2 purchase an ounce or a couple of ounces at one time. I
3 do remember a few of them or something like that.

4 Q. From different people?

5 A. Yeah, from different people, yes, sir.

6 Q. And all of this happened within about a five- or
7 six-month period is what you're ---

8 A. I'm thinking so. I think so.

9 Q. Okay. When were you arrested? In March of 2013?

10 A. I have -- I don't remember. That may sound crazy,
11 but I don't remember.

12 Q. Okay. But you started back using probably in
13 October of 2012?

14 A. I think so. No, it was -- was it '12? I don't know
15 dates.

16 Q. You don't remember if it was 2011 or 2012?

17 A. Yeah, I don't.

18 Q. I think you've already testified to that. Okay.

19 Well, if you say 2012 in your Grand Jury testimony, would
20 that be about right?

21 A. I reckon. I don't -- I guess that should be. I
22 know I would have a better recollection of it then than I
23 do now.

24 MR. MCELHANNON: That's all the questions I
25 have.

1 THE COURT: Re-examine?

2 MR. UNDERWOOD: No further questions from the
3 State, Your Honor.

4 THE COURT: Very well. All right. Do you
5 have another witness?

6 MR. WEDEKIND: No, Your Honor. At this point
7 the State would rest, and we ask that he be eligible to
8 be excused.

9 THE COURT: All right. Very well.
10 All right. Just keep your seat, please.

11 THE WITNESS: Oh.

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen of the jury, the State has now rested with
14 their testimony and evidence. And so I'm going to ask
15 you -- I need to take up some matters with the attorneys.
16 So I'm going to ask you if you would, please, retire to
17 the jury room while I take up these matters, and then I
18 will bring you back.

19 Again, do not undertake the discussion of the case
20 among yourselves in any way.

21 (WHEREUPON, the jury exited the open court at
22 approximately 10:38 a.m.)

23 THE COURT: All right. You may step down, sir.

24 Any objection to the witness being released from his
25 subpoena?

1 MR. MCELHANNON: No objection, Your Honor.

2 THE COURT: Very good.

3 All right. Is there anything else from the State?

4 MR. WEDEKIND: No, sir.

5 THE COURT: All right. Y'all want to take a
6 few minutes before we proceed with the Defense?

7 MR. MCELHANNON: Yes, sir.

8 THE COURT: Very good.

9 MR. MCELHANNON: And I'll make my motions when
10 we ---

11 THE COURT: Right. When we come back, yeah.

12 MR. MCELHANNON: Right, sir.

13 MR. WEDEKIND: Ten minutes or so?

14 THE COURT: Sir?

15 MR. WEDEKIND: Ten minutes?

16 THE COURT: Yes, exactly.

17 (WHEREUPON, court stood at recess for a short
18 break.)

19 THE COURT: All right. Anything further from
20 the State?

21 MR. WEDEKIND: No, sir.

22 THE COURT: All right. Mr. McElhannon?

23 MR. MCELHANNON: May it please the Court, Your
24 Honor. At this time I would move for a directed verdict
25 on both indictments, trafficking ten to twenty-eight

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1 grams and also conspiracy to traffic one hundred to two
2 hundred grams. Your Honor, my motion would be based on
3 the lack of identification on the first indictment of Mr.
4 Crosby. I think there was some contradictory testimony
5 in the State's case about darkness and light on the road
6 and whether Mr. Crosby was searched. Things of that
7 nature.

8 As far as the conspiracy to traffic, I don't think
9 there's been any proof or any evidence that one hundred
10 to two hundred grams has been established, Your Honor.
11 And that would be my motions on both indictments.

12 THE COURT: All right.

13 Mr. Wedekind?

14 MR. WEDEKIND: Your Honor, regarding the
15 trafficking in crack cocaine ten to twenty-eight grams --
16 I think that's count thirteen of the indictment -- the
17 evidence, I would submit, is sufficient. We have --
18 virtually every witness with the exception, I think, of
19 Agent Collier and the chemist has identified the
20 Defendant, Mr. Timothy Crosby, as the deliverer of the
21 drugs on the date in question.

22 By virtue of Mr. Anthony Murray's testimony of him
23 returning to his vehicle wearing a live wire saying the
24 driver of the vehicle is in a white Dodge pickup truck,
25 [REDACTED] [REDACTED], and then having constant eyeball surveillance of

1 the law enforcement officers to this point of the
2 stopping of that vehicle for a traffic stop wherein it
3 was established that the sole occupant of that vehicle, a
4 white Dodge pickup truck, tag number [REDACTED], was Mr.
5 Timothy Crosby.

6 In fact, it even went so far as -- I think a
7 document that was used by the Defense, which was a
8 driver's license record, a ten-year driving record, that
9 had an annotation from Agent Collier listed a driver's
10 license number as [REDACTED]. And that was matched up with
11 what was on the ticket that was used by Officer Brinston
12 when he testified that he obtained a driver's license
13 from that vehicle, and it was Timothy L. -- T. Crosby
14 with the driver's license that matched up with the
15 driving record. So we would submit that certainly that's
16 a question for the jury beyond a mere preponderance.
17 It's sufficient to go forward to the jury.

18 The chemist came back and testified that the weight
19 was in excess of ten grams. Certainly twenty-two point
20 five grams is over ten, and it's less than twenty-eight
21 grams. So that fits within the parameters for that one.
22 Regarding the trafficking by conspiracy one hundred to
23 two hundred grams, as I recall, Agent Collier said that
24 they attributed over a hundred grams of powder cocaine
25 going through Toys R Us as part of their investigation.

1 I will submit that it was close, but it's a question of
2 the jury's interpretation that Mr. Johnson was talking on
3 the stand about doing at least two deals with Mr. Crosby,
4 at least two deals with Mr. Bernard. And those were for
5 ounces in multiple months. So an ounce being twenty-
6 eight grams, right there, two and two plus two and two,
7 that's twenty-eight, twenty-eight, twenty-eight, and
8 twenty-eight. That's just about, what, twelve grams over
9 a hundred. A hundred and twelve grams total, I think. A
10 hundred and sixteen maybe. But in any event, I think
11 that exceeds -- they can do the arithmetic between ounces
12 and reach that it's in excess of a hundred grams.

13 But in the alternative -- well, I'll leave it at
14 that, Your Honor. I would say there's multiple
15 individuals involved, Crosby, Bernard and Mr. Johnson.
16 So I think that the evidence is sufficient to go forward
17 to the jury.

18 THE COURT: All right. Anything else, Mr.
19 McElhannon?

20 MR. MCELHANNON: There, again, just, Your
21 Honor, that on the conspiracy to traffic one hundred to
22 two hundred grams, even Mr. Johnson, who was the main
23 player in this, testified that he doesn't remember
24 weights and dates, and he's not sure of how much he
25 bought. And I don't think it's ever been established

1 that at least one hundred grams was sold.

2 THE COURT: Well, of course, under Rule 19, I'm
3 not concerned about the weight of the evidence but
4 whether there's any evidence that would support the
5 charges. And I'll do it in reverse. I think obviously
6 as far as the question of identity, that's clearly a
7 question for the jury to determine if there was
8 sufficient evidence and it was credible.

9 But as to the hundred grams, I think it was Mr.
10 Murray's testimony that he had at least eight -- now, he
11 changed it. It went from eight to four to seven and five
12 and all of that. But we have to remember the fact that
13 -- what is it? -- evidence that's contradicted even by
14 the witness is evidence to be considered by the jury. It
15 becomes a matter of credibility. I think the case is
16 Hoxic versus Michelin. Anyway, in this testimony, he did
17 testify about eight drug transactions at Toys R Us,
18 started out one hundred grams, went down to one ounce.
19 So you have the testimony of the witness that it was at
20 least one one-hundred-gram transaction and went down to
21 an ounce. So on that, as far as the motion for directed
22 verdict, I do ...

23 MR. WEDEKIND: Your Honor, I think we're just
24 kind of trying to recollect our memory on it. And not to
25 be belligerent and challenge your recollection, but I

1 don't recall the hundred. I do remember him saying
2 ounces. And I know you're ruling in our favor, but I
3 want to be honest with the Court, as well.

4 THE COURT: I hope you are. But the record
5 will speak for itself.

6 MR. WEDEKIND: Yes, sir.

7 THE COURT: I didn't come up -- I had eight
8 drug transactions at Toys R Us, started out at one
9 hundred grams, but one hundred grams went down to one
10 gram -- or one ounce. Excuse me.

11 MR. WEDEKIND: One ounce, yes, sir. Okay.
12 That's -- Agent Collier doesn't recall that. I don't and
13 I ---

14 THE COURT: Well, again, coming back, it seems
15 that -- what is it? -- one hundred grams and another
16 transaction of one ounce is over a hundred grams.

17 MR. WEDEKIND: Yes, sir.

18 THE COURT: But I know less about this case
19 than anybody else in this courtroom.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: But that's from my notes. Then I
22 -- in other words -- and, also, as you say, there was
23 other testimony by Mr. Johnson, I think, that -- that he
24 acknowledged that it could be up to a hundred grams.

25 MR. WEDEKIND: Yes, sir.

1 THE COURT: Number of ounces. Can't remember a
2 specific number. Could be up to a hundred ounces -- or
3 hundred grams. Excuse me.

4 MR. WEDEKIND: Yes, sir.

5 THE COURT: I'm not very good at math. All
6 right. So the motions for directed verdict are denied,
7 and the case on both indictments will be submitted to the
8 jury.

9 All right. Has the Defendant decided if he's going
10 to testify or not?

11 MR. MCELHANNON: Yes, Your Honor. And I think
12 he is. And I have one other witness as well.

13 THE COURT: Very good. Very good. All right.

14 All right. Let's see. With that said, are you
15 ready to go forward by the State?

16 MR. WEDEKIND: Yes, sir.

17 MR. MCELHANNON: If I could have five minutes,
18 Your Honor.

19 THE COURT: Certainly. Certainly. All right.
20 So we'll wait until the Defendant is ready.

21 MR. MCELHANNON: Yes, sir.

22 (WHEREUPON, court stood at ease.)

23 THE COURT: All right. Anything from the
24 State before we proceed?

25 MR. WEDEKIND: No, sir.

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1 THE COURT: From the Defense?

2 MR. MCELHANNON: No, Your Honor.

3 THE COURT: All right. It's my understanding
4 the Defendant will testify?

5 MR. MCELHANNON: He is planning to, yes, sir.

6 THE COURT: All right.

7 Mr. Crosby, if you'll please stand.

8 (WHEREUPON, the Defendant stood.)

9 THE COURT: Now, you're still under oath. You
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And have you had an
13 opportunity to consider whether or not you wish to
14 testify in this case?

15 THE DEFENDANT: (No verbal response)

16 THE COURT: Have you considered whether or not
17 you wish to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you do understand the
20 ramifications? In other words, that you have a right not
21 to testify as well as the right to testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And have you discussed this with
24 your attorney?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And he advised you whether you
2 should or should not testify?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Do you have any more
5 questions about whether or not you should testify ---

6 THE DEFENDANT: No, sir.

7 THE COURT: --- as far as what the instructions
8 of the Court were?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you wish to talk to your lawyer
11 any more about that at this time?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. And I'll ask you, do
14 you wish to testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I find that the
17 Defendant knowingly, intelligently, freely and
18 voluntarily at this time exercises his right to testify
19 when called. All right. Very good. Thank you, sir.

20 All right. Anything from the State?

21 MR. WEDEKIND: No, sir.

22 THE COURT: From the Defense?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: All right. Ask the jury to join
25 us, please.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 11:07 a.m.)

3 THE COURT: All right. Let the record reflect
4 the jury and alternate are in the jury box.

5 Mr. Foreman, ladies and gentlemen of the jury, we
6 will now go forward with the Defense case. I recognize
7 Mr. McElhannon for his first witness.

8 MR. MCELHANNON: Thank you, Your Honor. The
9 Defense would call Phillip Wall.

10 PHILLIP WALL,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. MCELHANNON:

14 Q. Mr. Wall, where do you live?

15 A. [REDACTED] Fire Tower Road, Williamston.

16 Q. In Williamston? And that's Anderson County?

17 A. Yes, sir.

18 Q. How long have you lived in Anderson County?

19 A. For a while. I'd say about thirty years or more.

20 Q. Thirty? Okay. A long time? Most of your life?

21 A. A long time.

22 Q. Do you know a auto paint and repair shop named Toys

23 R Us Motor Sports?

24 A. Yes, sir.

25 Q. Have you been there before?

1 A. Yes, sir. Numerous times.

2 Q. And basically what time frame had you been going
3 there?

4 A. It would usually be in the evenings after I get off
5 of work.

6 Q. Would this have been in 2012, 2013?

7 A. Yes, I'd say maybe.

8 Q. And when you would go to this shop, were there a
9 bunch of people hanging around normally?

10 A. Not a bunch of people. Some people did, and then it
11 would be, you know, me and the guy that owned the shop
12 and one of the workers.

13 Q. Okay.

14 MR. WEDEKIND: Your Honor, I'm sorry to
15 interrupt. But may we approach the bench?

16 THE COURT: Certainly.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 Q. Mr. Wall, you know the owner of the Toys R Us shop,
20 who owned it?

21 A. Yes.

22 Q. And what was his name?

23 A. Angelo.

24 Q. Okay.

25 A. I don't know his last name. I just know him by

1 Angelo.

2 Q. Okay. I know you don't know all the dates of when
3 you would have been at the shop. But could you have been
4 at the shop in February of 2013?

5 A. Yeah, I could have been. Yeah.

6 Q. Okay. I'm going to let you listen to an audio, part
7 of an audio, and see if you can identify anything on
8 that. Okay? I'm going to try to start it right where we
9 need it, and it will only last about -- well, maybe a
10 minute.

11 (WHEREUPON, a portion of State's Exhibit 6 was
12 published.)

13 Q. Okay. Did you recognize anybody's voice on that
14 audio?

15 A. Yeah. That was me.

16 Q. And which one was you?

17 A. The one saying, "God almighty. I ain't seen you in
18 I can't remember when."

19 Q. Okay. And who were you talking about?

20 A. I was talking about Terrell.

21 Q. You saw him come to the shop that day?

22 A. Yes, sir.

23 Q. And that day, just for the record, is February 5th,
24 2013?

25 A. If you say so, yeah.

- 1 Q. Okay. And where were you when you saw Mr. Crosby
2 come up?
- 3 A. In the office.
- 4 Q. Okay. And there were other people in there?
- 5 A. Yeah. A few in there, yes.
- 6 Q. Can you estimate how many?
- 7 A. No, not right off. I don't know right off. But
8 there was a few in there.
- 9 Q. And did you interact with Mr. Crosby, talk to him?
- 10 A. Yeah. I shook his hand right then, slapped backs
11 and all that stuff. And I think, like I said, I ain't
12 seen him in a long time.
- 13 Q. Okay. Did you ever see Mr. Crosby leave that office
14 with anyone, any other person, while you were in there?
- 15 A. No, I didn't.
- 16 Q. Did you see Mr. Crosby exchange anything and receive
17 money?
- 18 A. No, I didn't. We was standing there talking.
- 19 Q. Okay. And were you still there when Mr. Crosby
20 left?
- 21 A. Yes, sir.
- 22 Q. And during the whole -- how long do you think you
23 were talking to him?
- 24 A. I guess probably about fifteen, twenty minutes, I
25 guess. I don't know. I guess, you know, a quarter hour.

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1 Q. Okay. And when he left -- between the time that he
2 arrived when you said what you said on the tape, that you
3 hadn't seen him in forever -- let me ask you this. Let
4 me strike that. How did you know him, from when he was
5 younger or ---

6 A. Yeah, when he was younger. I used to date his aunt.

7 Q. You used to date his aunt? Okay. And you hadn't
8 seen him in years?

9 A. It had been a good little while. I had moved from
10 Anderson to Williamston and Powdersville and Pendleton.
11 You know, I had moved all around to try to stay close to
12 my job.

13 Q. So you were surprised to see him?

14 A. Yes, sir. I didn't hardly recognize him.

15 Q. Okay. And speaking of your job, are you employed
16 now?

17 A. Yes, sir.

18 Q. Where do you work?

19 A. Down at Frigidaire.

20 Q. And I didn't ask you. How old are you?

21 A. Fifty-five.

22 Q. So from the time that you saw him arrive at the Toys
23 R Us shop, you were there with him the entire time?

24 A. Yes, sir.

25 Q. And you never saw him transact any business with

1 anyone?

2 A. No, sir.

3 Q. Give anyone anything or receive anything?

4 A. No.

5 Q. And then what did he do after y'all quit talking?

6 A. Left. He said, everybody, you know, got to go, and
7 he left.

8 Q. He left? Okay. And that was the end of it?

9 A. Yes, sir.

10 Q. Okay.

11 MR. MCELHANNON: That's all the questions I
12 have, Your Honor, of this witness.

13 Q. Please answer anything the State would have.

14 MR. UNDERWOOD: Court's indulgence, Your Honor.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MR. UNDERWOOD:

18 Q. So is it your testimony that on the day that this
19 recording was taking place that you were speaking with
20 the Defendant, Mr. Crosby, for twenty minutes?

21 A. Well, we were speaking to everybody in the shop. I
22 wasn't speaking to him for the whole time. You know, I
23 was speaking to everybody, you know. I greeted him when
24 he came in. I hadn't seen him in a long time, you know.
25 Everybody was speaking.

1 Q. So you just greeted him when he came in? You

2 weren't talking to him the whole time; is that ---

3 A. Not directly. Everybody was talking. Everybody

4 that was in there. Everybody was talking.

5 Q. You were talking to other people too?

6 A. Yeah. I was talking to other people, talking to

7 him, talking to other people and everything, yeah.

8 Q. You weren't latched to him the whole time, were you?

9 A. (No verbal response)

10 Q. I mean, you weren't solely talking with Mr. Crosby

11 the whole time?

12 A. No, no. We was all in the office right there

13 together. Everybody was right there together.

14 Q. And so at times your attention was on other people?

15 A. The office was only so big. You know, everybody was

16 right there together, you know. First talk to that

17 person, then go talk to -- everybody was conversating

18 (phonic). A group. You know, like when a group of

19 people get together, you know, holler at this person,

20 holler at that person, laugh at a joke. You respond to

21 that. And ---

22 Q. At one point you're talking to one person, and

23 you're focused on another person when you get together?

24 A. A get together, yeah.

25 Q. Thank you.

1 MR. UNDERWOOD: No further questions, Your
2 Honor.

3 THE COURT: Re-examine?

4 MR. MCELHANNON: That's all I have.

5 THE COURT: All right. You may step down.

6 MR. MCELHANNON: May he be excused, Judge?

7 THE COURT: Any objection?

8 MR. UNDERWOOD: No, sir.

9 THE COURT: All right. Without objection, you
10 may be excused. Thank you, sir.

11 All right. You may call your next witness.

12 MR. MCELHANNON: I call Mr. Timothy Terrell
13 Crosby, Your Honor.

14 **TIMOTHY TERRELL CROSBY,**

15 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MR. MCELHANNON:**

18 Q. Mr. Crosby, how old are you?

19 A. Thirty-eight.

20 Q. How far did you go in school?

21 A. I finished high school.

22 Q. And what types of jobs have you had since you
23 graduated high school?

24 A. Funeral home, barber shop, fixing up old cars and
25 fixing -- remodeling houses.

1 Q. And what funeral home did you work at?

2 A. Marcus D. Brown Funeral Home, but Johnson Funeral
3 Home first when I was like eighteen.

4 Q. Okay. How long did you stay at the funeral home?

5 A. Which one?

6 Q. Pardon?

7 A. Which one?

8 Q. Well, just your funeral home in general?

9 A. I've been in funeral homes all my life since I was
10 about eighteen or nineteen back and forth.

11 Q. Do you still kind of work for them some?

12 A. I did until this happened.

13 Q. Okay. And you said what else you've done?

14 A. Cut hair.

15 Q. Barber shop?

16 A. I went to school for a little while to learn how to
17 cut hair.

18 Q. Okay. And then fixing up old cars?

19 A. Yeah. I still do that. And houses.

20 Q. And houses?

21 A. Yeah.

22 Q. Renovating houses?

23 A. Right.

24 Q. Okay. And do you have any children?

25 A. Yes.

- 1 Q. How many?
- 2 A. Three boys and three girls.
- 3 Q. And did your wife just have some?
- 4 A. Had a set of twins Friday of last week.
- 5 Q. Last Friday? A boy and girl?
- 6 A. A boy and a girl.
- 7 Q. Now, you've been sitting through this entire trial;
- 8 correct?
- 9 A. Right.
- 10 Q. And you've heard all the allegations?
- 11 A. Right.
- 12 Q. Tell the history from the beginning. When did you
- 13 first start going to Toys R Us Motor Sports?
- 14 A. Well, it wasn't Toys R Us first. It was like just
- 15 going to his house and looking at cars in front of his
- 16 yard. And it was like ---
- 17 Q. You're talking about Mr. Johnson?
- 18 A. Yeah, Mr. Johnson.
- 19 Q. Okay.
- 20 A. And that was like in '08, something like that.
- 21 Q. So six years at least?
- 22 A. Something like that, yeah.
- 23 Q. And then when did you begin going to the actual
- 24 shop?
- 25 A. I can't even remember. But I know when they opened

1 the shop, they started painting. That's when I started
2 taking cars to get them painted.

3 Q. Okay.

4 A. Wrecked cars and stuff like that.

5 Q. How often -- how many -- well, let me -- can you
6 give me a number on how many vehicles you've had worked
7 on there?

8 A. At the shop or from the house?

9 Q. Well, both.

10 A. Probably about twelve or fifteen.

11 Q. Twelve or fifteen over the years?

12 A. Yes, sir.

13 Q. Okay. And when you say you fix them up or have them
14 fixed them up, then what do you do with them?

15 A. Sell them.

16 Q. Resell them?

17 A. Uh-huh (affirmative).

18 Q. Okay. What was the most recent vehicle that you had
19 at the shop?

20 A. I think it was a -- probably a pickup truck.

21 Q. Okay. And did you end up selling that?

22 A. Oh, yeah.

23 Q. After they fixed it up for you?

24 A. (Nodded head up and down in the affirmative.)

25 Q. Now, going to the February 5th of 2013 date, do you

1 remember going to the Toys R Us shop that day?

2 A. Yes.

3 Q. And what were you driving?

4 A. A white pickup truck.

5 Q. Okay. And can you tell the jury why you were going
6 to the shop that day?

7 A. Probably checking up on a car or a truck or checking
8 on parts or something, some kind of vehicle.

9 Q. And do you remember going into the shop?

10 A. Yes.

11 Q. And into the office?

12 A. Well, both sides, really.

13 Q. Okay.

14 A. The paint shop and the office. So ...

15 Q. Okay. And you've heard the audio that was just
16 played?

17 A. Right.

18 Q. And I know this is kind of probably hard to
19 remember. But do you remember that scene?

20 A. I don't remember it, but it's -- I remember him
21 speaking to me.

22 Q. Okay. And him, you're talking about Phillip Wall?

23 A. Yeah, uh-huh (affirmative).

24 Q. And when was the last time you'd seen Mr. Wall until
25 this time?

- 1 A. He was at a convenience store.
- 2 Q. No. I mean the last time ---
- 3 A. Oh, I ain't seen him in a while.
- 4 Q. Okay. Were you smaller when he was dating your
- 5 aunt?
- 6 A. Well, I haven't seen him since I've been a teenager.
- 7 Q. A teenager though?
- 8 A. Yeah.
- 9 Q. How old are you now?
- 10 A. Thirty-eight.
- 11 Q. Thirty-eight. So it had been a while?
- 12 A. Yeah.
- 13 Q. Okay. And you went into the shop, and there were
- 14 how many people in the shop?
- 15 A. Right off hand, it was people on the outside and the
- 16 inside. It was probably like seven, six. I don't know.
- 17 Q. Six or seven people? Okay. Did you recognize
- 18 anybody else that was in the office there?
- 19 A. Angelo.
- 20 Q. Okay. Mr. Johnson?
- 21 A. Right.
- 22 Q. And did you see a gentleman who has testified in
- 23 this trial named Anthony Murray?
- 24 A. No, sir.
- 25 Q. Do you know Anthony Murray?

1 A. No, sir.

2 Q. Have you seen him until we started this trial?

3 A. Have I seen him?

4 Q. Did you know him before we started this trial?

5 A. No, no.

6 Q. Did you, on February the 5th, 2013, sell any drugs
7 to Anthony Murray?

8 A. No, sir.

9 Q. Take any money from him?

10 A. No.

11 Q. Now, you were on -- you are leaving -- you left Toys
12 R Us and were heading which way?

13 A. Toward Anderson.

14 Q. And you were in a white pickup truck; correct?

15 A. (Nodded head up and down in the affirmative)

16 Q. Can you tell what happened on Highway 28?

17 A. I got pulled over.

18 Q. And was it by Officer Brinston ---

19 A. Right.

20 Q. --- who has testified here?

21 A. Yes.

22 Q. And can you tell the jury what happened in that
23 traffic stop?

24 A. He pulled me over. Of course, he walked beside the
25 truck. I rolled down the window. And he said something

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1 about following a vehicle too close. I said, "Okay." He
2 was like, "Do you mind if I search the vehicle?" And I
3 asked him, "Why?" And, you know, he said something. But
4 I didn't want to give him no problem, so I just stepped
5 outside the vehicle like he asked me. And he patted me
6 down.

7 Q. And let's talk about that. How did he pat you down?

8 A. Pat me down, you know, like he -- in detainment or
9 something. You know, like pat you all the way down.

10 Took my shoes off, checked the shoes. And he told me
11 that I wasn't under arrest but I was being detained for
12 his safety. So he put me in the back of the police car.
13 And he said, "Well, do you have any drugs or anything in
14 the car?" I said, "No, but it's not my truck." And he
15 said, "Well, I'm going to take my dog around the truck
16 and see, you know, if it hit anything." And he took the
17 dog out. And he came back to the back of the police car,
18 and he said, "The dog hit." He said, "I'm going to
19 search your vehicle." I was like, "That's fine. It's
20 not my truck." And he searched the truck. And another
21 female cop pulled up. She stood there while he was
22 searching the truck with the dog. And he didn't find
23 anything. Gave me a warning. I asked him, "What is this
24 all about?" He said, "Have a nice day."

25 Q. Okay. So he searched you, your person?

- 1 A. Right.
- 2 Q. Patted your pockets down?
- 3 A. Right.
- 4 Q. Didn't find anything in your pockets?
- 5 A. No.
- 6 Q. And he did take the dog around your truck?
- 7 A. Right.
- 8 Q. He did search inside the truck?
- 9 A. Right.
- 10 Q. Didn't find anything?
- 11 A. No.
- 12 Q. Didn't find a thousand dollar documented funds on
- 13 you or in the truck?
- 14 A. Didn't find anything. Just let me go.
- 15 Q. Wrote you a warning ticket for following too close
- 16 and faulty equipment?
- 17 A. Well, faulty -- I didn't even know that until then.
- 18 He just said I was following someone too close.
- 19 Q. So he didn't even tell you what was wrong with you
- 20 about it being faulty equipment?
- 21 A. Uh-uh (negative).
- 22 Q. And you heard Mr. Johnson's testimony today;
- 23 correct?
- 24 A. Yes.
- 25 Q. That you have sold drugs to him at the Toys R Us

1 shop?

2 A. Yes.

3 Q. Is that true?

4 A. No, sir.

5 Q. What's your business with Mr. Johnson been over the
6 years?

7 A. Cars and painting. Sometimes rims. And that's it.

8 Car rims.

9 Q. But no drugs?

10 A. No.

11 Q. Okay.

12 MR. MCELHANNON: That's all the questions I
13 have, Your Honor.

14 Q. Please answer anything the State has for you.

15 THE COURT: Cross-examine?

16 MR. WEDEKIND: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. WEDEKIND:

19 Q. Mr. Crosby, you've had the opportunity to hear the
20 disk tape that's State's Number 6; correct?

21 A. What you just played, yes.

22 Q. Right. It's in there. Now, it's in total, I
23 believe it's minute -- I mean, one hour and four minutes
24 and thirty-seven seconds. Have you listened to it from
25 start to finish?

1 A. Yes, I have.

2 Q. Okay. And then there's a portion of it at about the
3 forty-eight minute mark when -- would you agree that
4 that's the time that you arrived at the Toys R Us that
5 day?

6 A. No, I'm not agreeing.

7 Q. You don't agree?

8 A. Right. No, I don't.

9 Q. So were you at Toys R Us?

10 A. Yes. I said that.

11 Q. Okay. But you don't agree that you arrived at
12 forty-eight minutes and twenty seconds into it?

13 A. I didn't count or see how long I was there.

14 Q. Okay. So you're just not -- you did arrive there;
15 you're just not sure if it was at ---

16 A. I was there.

17 Q. --- at the forty-eight twenty.

18 A. I was there.

19 Q. In advance? Is that what you're saying? You were
20 there already?

21 A. What I'm saying is I'm not really understanding what
22 you're saying about forty-eight seconds or forty-eight
23 minutes. I just know I was there. I don't remember the
24 time.

25 Q. Okay. Let me see if I can clarify that for you.

1 MR. WEDEKIND: I beg the Court's indulgence?

2 THE COURT: Certainly.

3 MR. WEDEKIND: Can't see like I used to, Judge.

4 (WHEREUPON, a portion of State's Exhibit Number 6
5 was published.)

6 Q. Now, is it your testimony that you're there before
7 what we're hearing right now?

8 A. I'm not sure.

9 (WHEREUPON, a portion of State's Exhibit Number 6
10 was published.)

11 Q. Okay. Did you just hear a door open and somebody
12 say, "What's up, man?"

13 A. I heard a lot.

14 Q. But did you hear that door go creaking open?

15 A. I don't know if it was a door or not, but I heard a
16 lot.

17 Q. Okay. Would that have been your time of arrival?

18 A. I'm not sure.

19 MR. WEDEKIND: Your Honor, could I ask him to
20 step down briefly, please?

21 THE COURT: Certainly.

22 (WHEREUPON, the witness stepped down from the
23 witness stand.)

24 Q. Would you spell out for the jury the time mark
25 that's right there on that ---

1 A. Forty-eight twenty-three.

2 Q. Forty-eight minutes and twenty-three seconds?

3 A. It look like forty-eight seconds and -- I don't -- I
4 mean -- I'm not sure.

5 Q. It just says forty-eight colon twenty-three;
6 correct?

7 A. I just see forty-eight twenty-three.

8 Q. Okay. Thank you. Please return to your seat.

9 (WHEREUPON, the witness resumed the witness stand
10 after which a portion of State's Exhibit Number 6
11 was published.)

12 Q. Okay. What was that word that was just said on that
13 tape to your ear?

14 A. "Oh, my God," or something.

15 Q. You didn't hear the word "ounce"? "Is that an
16 ounce?"

17 A. No, I did not hear that.

18 Q. Okay.

19 MR. WEDEKIND: Your Honor, if he could step
20 down again please?

21 THE COURT: Certainly.

22 A. I can hear very good.

23 (WHEREUPON, the witness stepped down from the
24 witness stand after which a portion of State's
25 Exhibit Number 6 was published.)

1 Q. That wasn't the word, "Is that an ounce?"

2 A. I didn't understand none of it.

3 Q. Okay. Please return to your seat. And that's at
4 the marker forty-eight forty-five? I'm sorry. Come on
5 back a second, please. What does the marker say right
6 there?

7 A. Forty-eight forty-five.

8 Q. Okay. Thank you.

9 (WHEREUPON, the witness resumed the witness stand.)

10 Q. Now, is it your testimony that Mr. Phillip Wall was
11 in error when he said he greeted you in a very boisterous
12 fashion on the tape?

13 A. We spoke. I heard him saying Terrell.

14 Q. So when he walked in the door and says, "Dynamite,"
15 or something to that effect, that's not his happiness at
16 seeing you for this long distance reestablishment of your
17 relationship together or viewing each other after a long
18 absence?

19 A. He said that, right. You're right.

20 Q. Okay. So you would agree with this tape that as you
21 walked in the door he gives you the, "Hey, I ain't seen
22 you in a long time"?

23 A. I'm not agreeing with the tape. I'm just going to
24 agree saying that he spoke to me on that scene.

25 Q. But that wasn't his voice is what you're saying?

1 That's not him greeting you?

2 A. It sound like it, yes.

3 Q. Okay. And isn't it customary for people to greet
4 each other when they first see each other and not after
5 they've been around each other for thirty minutes?

6 A. Sometimes.

7 Q. Okay. Let's go to the question of the vehicle stop.
8 You said -- you don't dispute that you were in a vehicle,
9 a white Dodge pickup truck; correct?

10 A. I said that.

11 Q. Okay. That was not your vehicle. That's your
12 testimony; right?

13 A. I said that also.

14 Q. It's owned by somebody else?

15 A. It's a possibility. So long ago.

16 Q. But you were in the driver's seat driving that
17 vehicle away from the Toys R Us?

18 A. I said that.

19 Q. Okay. And you were stopped by Officer Brinston?

20 A. I said that also.

21 Q. And the tag number was [REDACTED]?

22 A. I don't know the tag number.

23 Q. Okay. And you don't dispute that your driver's
24 license ---

25 A. [REDACTED].

- 1 Q. Looking over State's Number 7, have a look at that.
- 2 A. [REDACTED] -- not [REDACTED] but [REDACTED].
- 3 Q. And what's the name listed at the top?
- 4 A. That would be my name.
- 5 Q. And please read it out?
- 6 A. Timothy T. Crosby.
- 7 Q. Okay. So you don't dispute that he asked you for
- 8 your driver's license and you provided it to him?
- 9 A. Yeah. It just got the wrong number on it, but
- 10 that's my name. It's supposed to be 93 instead of 83.
- 11 Q. You're saying what, now?
- 12 A. It's supposed to be -- the last two numbers on that,
- 13 that's supposed to be 93 instead of 83.
- 14 Q. Okay. Could that be a nine or an eight? I don't --
- 15 I mean ---
- 16 A. To me it look like an eight.
- 17 Q. Okay. But it could also be interpreted to be a
- 18 nine?
- 19 A. No. It look like an eight.
- 20 Q. Okay. And then your driver's license record
- 21 reflects what right there?
- 22 A. Yeah, this is the right number.
- 23 Q. Okay. Now, when the police officer first approached
- 24 you, he used what method to get you to pull over in your
- 25 vehicle, in that pickup truck?

1 A. Normally, when they -- an officer, you know, blue
2 lights you, if they get out their car, I'm not going to
3 give them no problem or anything. I'm going to roll down
4 the window. And, you know, if he asked me to step
5 outside the car, that's what I'm going to do. I'm not
6 trying to give him no problem. And that's what happened.

7 Q. So he put the blue lights on to stop you? You were
8 just riding down minding your own business?

9 A. I wouldn't have stopped unless he was going to put
10 the blue lights on me.

11 Q. Right. So during that period was just -- you locked
12 up the brakes and stopped right in the middle of the
13 road, or did you pull over ---

14 A. No. It's like I constantly slow down and yield to
15 the right, you know, like they tell you in driver's ed
16 book. You know, get to the right. Oncoming traffic, you
17 get out of the way. And you stop, like immediately pull
18 over.

19 Q. And the windows -- you said you rolled down the
20 window, right?

21 A. Yeah. They had tint on them, so I rolled them down
22 so he wouldn't think that I was actually like doing
23 something in the vehicle, fidgeting or something like
24 that. So I rolled down the window.

25 Q. Speaking about fidgeting, were you rolling down the

- 1 window, or was it electric?
- 2 A. It was automatic. Just one button.
- 3 Q. Okay. And you could control the window from there?
- 4 A. Yeah, just one button.
- 5 Q. All right. Okay. So it's your testimony you didn't
- 6 have any drugs on you in that vehicle at that time; is
- 7 that correct?
- 8 A. That's what the officer said.
- 9 Q. And it was starting to get dark, right?
- 10 A. Yes, it was dark.
- 11 Q. Okay. And you don't dispute that everybody
- 12 identified you correctly when they said they saw you
- 13 getting in the vehicle and you were the driver?
- 14 A. Say that again?
- 15 Q. You were the driver of the vehicle and the sole
- 16 occupant; right?
- 17 A. Yeah. I got pulled over in the vehicle.
- 18 Q. Okay. Did you -- when you were getting pulled over
- 19 and saw those blue lights, you know, "The cops are on my
- 20 tail. I better toss the drugs out the window"?
- 21 A. You must didn't hear what I said. I said, I
- 22 constantly yielded to the right, slowed down. If I threw
- 23 something out, yeah, he's already behind me, so he should
- 24 have seen it.
- 25 Q. But it was dark, right?

1 A. Yield to the right. When he got out of his car, I
2 was rolling down my window, and he spoke to me and asked
3 me to get out of the vehicle.

4 Q. So the answer is, no, you didn't toss any drugs out
5 the window; right?

6 A. Correct.

7 MR. WEDEKIND: I beg the Court's indulgence for
8 a moment, sir.

9 Q. Your testimony is that you were in the Toys R Us on
10 February 5th, 2013; correct?

11 A. If that's the date on the CD when I spoke with
12 Phillip Wall, yes.

13 Q. And how long were you in there?

14 A. I'm not sure.

15 Q. You're not sure?

16 A. Uh-huh (affirmative), for the third time.

17 Q. An hour?

18 A. For third time, I'm not sure. For the fourth time,
19 I'm not sure.

20 Q. But you were in there?

21 A. I've told you that.

22 Q. You're just not sure how long?

23 A. For the fifth time, no, I'm not sure.

24 Q. You're going to stand by what this -- you're not
25 going to dispute this tape saying you were in and out,

1 right?

2 A. I'm not saying I was in and out. I'm just saying I
3 was in there at a point in time.

4 Q. You're saying you've reviewed this tape with your
5 lawyer from start to finish?

6 A. Oh, yeah.

7 Q. And you don't recognize -- are you saying there's an
8 omission from the tape, or is there some magical property
9 that a tape can ---

10 THE COURT: Just a moment. No editorial
11 comments.

12 MR. WEDEKIND: Okay. Yes, sir. Yes, sir.

13 Q. Are you saying that you have a dispute with the
14 accuracy of the tape's time line?

15 A. You talking about right now?

16 Q. Yes, what's on ---

17 A. It is longer than that what y'all had actually, yes.

18 Q. It's what?

19 A. It's longer than that, right. Yeah.

20 Q. So you were in there longer than ---

21 A. No. What I said the CD is longer than what we're
22 hearing today.

23 Q. Yes. It goes for an hour ---

24 A. I'm not saying I was in there a hour or nothing like
25 that. I said I don't remember how long I was actually in

1 there.

2 Q. Okay. Thank you.

3 MR. WEDEKIND: Your Honor, no further
4 questions.

5 THE COURT: Re-examine?

6 MR. MCELHANNON: Nothing further, Your Honor.

7 THE COURT: You may step down. Thank you, sir.

8 All right. You may call your next witness.

9 MR. MCELHANNON: That's the Defense's case,
10 Your Honor.

11 THE COURT: Any reply?

12 MR. WEDEKIND: No, Your Honor.

13 THE COURT: Very good.

14 Mr. Foreman, ladies and gentlemen of the jury ...

15 In other words, the Defense has rested?

16 MR. MCELHANNON: Yes, sir.

17 THE COURT: All right. Now, both the Defense
18 and the State have rested and the case is complete as far
19 as the testimony and evidence, but we still have the
20 argument by counsel and then the charge on the law by the
21 Court. I'm going to excuse you for a few minutes again
22 to take up some matters of law. But please do not
23 undertake the discussion of the case because it is not
24 complete. As I say, we still have the argument and the
25 charge on the law. But when you come back, we'll see if

1 we can proceed at that time.

2 And with that, I'll ask you to return to your jury
3 room just for a few minutes.

4 (WHEREUPON, the jury exited the open court at
5 approximately 11:40 a.m.)

6 THE COURT: All right. Anything else from the
7 State?

8 MR. WEDEKIND: No, sir.

9 THE COURT: From the Defense?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: Have you renewed your motions?

12 MR. MCELHANNON: Yes, sir.

13 THE COURT: And they are denied.

14 All right. I've prepared two verdict forms. I'm
15 going to give you a few minutes to look over those and
16 see if they're sufficient.

17 MR. WEDEKIND: Your Honor, a question. If we
18 go back -- when they get the evidence to review, do you
19 allow them to take the tape back or if they want to ---

20 THE COURT: No. I want hear what they want to
21 hear.

22 MR. WEDEKIND: Yes, sir.

23 THE COURT: Very good.

24 (WHEREUPON, court stood at recess for a short
25 break.)

1 THE COURT: All right. Anything from the State
2 before we proceed?

3 MR. WEDEKIND: No, sir.

4 THE COURT: All right. From the Defense?

5 MR. MCELHANNON: Yes, Your Honor. At this time
6 I would also like to make a motion for a lesser-included
7 conspiracy to traffic twenty-eight to a hundred grams. I
8 believe the jury, if they believe that Mr. Crosby is
9 guilty, could find him -- there was evidence that maybe
10 not a hundred grams was sold in total. So the evidence
11 would be that possibly it could be that it was twenty-
12 eight to a hundred grams if they believe that he actually
13 sold.

14 MR. WEDEKIND: I would concur with that, Your
15 Honor. We would have no objection.

16 THE COURT: Very good.

17 MR. MCELHANNON: Thank you.

18 THE COURT: All right. So we'll need to do the
19 verdict form as well as the charge on a lesser-included.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: On the ---

22 MR. WEDEKIND: Trafficking by conspiracy.

23 THE COURT: By conspiracy.

24 MR. MCELHANNON: Twenty-eight to a hundred.

25 THE COURT: All right.

1 MR. MCELHANNON: And these, Your Honor -- just
2 for the record, these verdict forms are fine with the
3 Defense.

4 THE COURT: As far as they go?

5 MR. MCELHANNON: Yes, sir.

6 THE COURT: All right. Just a second. We're
7 off the record.

8 (WHEREUPON, court stood at ease.)

9 THE COURT: We are back on the record.

10 I just want you to look at the verdict forms that
11 provide for the lesser-included of trafficking on the
12 first indictment or first count of the indictment going
13 to the jury of conspiracy between ten and twenty-eight
14 grams.

15 MR. WEDEKIND: Yes, Your Honor. The lesser-
16 included should read, guilty of the lesser-included
17 offense of trafficking cocaine conspiracy, twenty to a
18 hundred grams or more but less than ---

19 THE COURT: Okay. Is that right, Mr.
20 McElhannon?

21 MR. MCELHANNON: Yes, sir.

22 THE COURT: Well, all right. All right. It's
23 twenty-eight grams but less than a hundred grams?

24 MR. WEDEKIND: Yes, sir.

25 MR. MCELHANNON: Yes, sir.

1 (WHEREUPON, court stood at ease.)

2 THE COURT: All right. If we could, I'm going
3 to ask the attorneys ...

4 MR. MCELHANNON: That's fine.

5 MR. WEDEKIND: That's fine, Your Honor.

6 THE COURT: All right. Is the verdict form
7 acceptable to the State?

8 MR. WEDEKIND: Yes, sir.

9 THE COURT: To the Defendant?

10 MR. MCELHANNON: Yes, Your Honor.

11 THE COURT: Very good. Are we ready to go to
12 the jury?

13 MR. WEDEKIND: Yes, Your Honor.

14 THE COURT: All right. I propose -- it's
15 twelve thirty. And I propose that we go ahead and go to
16 the jury and order lunch for them if they need to. Or
17 wait until we finish and they're out about ten minutes.
18 That'll probably be about one thirty.

19 MR. WEDEKIND: Okay, sir.

20 THE COURT: All right. Very good. Ask the
21 jury to join us.

22 (WHEREUPON, the jury entered the open court at
23 approximately 12:23 p.m.)

24 THE COURT: All right. Let the record reflect
25 the jury and alternate are in the jury box.

1 Madam Foreman, ladies and gentlemen of the jury, I
2 do apologize for the inconvenience, but it did take some
3 time to get the matters of law resolved. But we are now
4 ready to enter the final stage of the trial of the case
5 which will be the argument by counsel and then the charge
6 on the law that's applicable to this case by the Court.

7 Now, unlike opening statements, these will be true
8 arguments. Each counsel will try to -- I'll forewarn you
9 -- would want you to agree with their consideration of
10 the facts. And do remember that argument is not
11 evidence. It's an argument. And you have the evidence
12 that's been admitted into these proceedings as well as
13 the charge on the law to make your decision. With that,
14 I recognize the Attorney General for his closing
15 statement. Or argument. Excuse me.

16 MR. WEDEKIND: Your Honor, if I'm correct,
17 we're going to open on the law and then reserve final
18 argument?

19 THE COURT: Mr. McElhannon?

20 MR. WEDEKIND: Whichever way he prefers to do
21 it, Your Honor. I don't ---

22 THE COURT: Very well. If that's your -- are
23 you going to split your argument?

24 MR. WEDEKIND: Yes, sir. I'll do the final
25 argument.

1 THE COURT: Very good. All right. Mr.
2 Underwood?

3 MR. UNDERWOOD: Thank you, Your Honor. May it
4 please the Court.

5 CLOSING ARGUMENT

6 BY MR. UNDERWOOD:

7 All right. Ladies and gentlemen, at this point in
8 time, I want to briefly go over a little bit about the
9 law that applies to this case. I'm not going to go into
10 a great detail because the Judge is going to instruct you
11 full on the law. And if I say anything that's
12 inconsistent with what the Judge says, you follow what
13 the Judge says.

14 Now, there's two different charges involved in this
15 case. One is a substantive count of trafficking cocaine
16 base, ten to twenty-eight grams. Trafficking is simply
17 about dealing with an illegal drug, in this case crack
18 cocaine. We're talking about a situation of a person who
19 either possess, distributes, conspires with someone else,
20 brings into the State of South Carolina some amount of
21 illegal substance.

22 Trafficking is called trafficking because of the
23 amount of the substance. It's not called trafficking
24 because of the actions; it's about the amount. So
25 trafficking is when you get above ten grams of crack

1 cocaine. So trafficking of crack cocaine is when someone
2 possesses, sells, distributes, or conspires with someone
3 else to bring in to do those things more than ten grams
4 of crack cocaine or cocaine base.

5 The other charge is for a conspiracy, conspiracy to
6 traffic cocaine. Again, trafficking is based on the
7 weight. One of the elements of trafficking is by a
8 conspiracy. Well, what is a conspiracy? A conspiracy is
9 when two or more people combine together to commit a
10 criminal act or some other act by criminal means. It's
11 not necessary that every person involved in a conspiracy,
12 if there's more than two -- it's not necessary that
13 everybody knows what all the other people in the
14 conspiracy are doing.

15 An example I would use is an automobile
16 manufacturer. Let's say you've got BMW who makes cars.
17 There's lots of people at the BMW plant that do a lot of
18 different things. There's somebody that puts in a
19 windshield. There's somebody that puts on the wheels.
20 Somebody puts in the seats, somebody that paints the
21 body. Lots of different things in tons of different
22 places of that plant. The guy who puts in the windshield
23 does not have to ever meet the guy who puts on the
24 brakes, but at the end of the day, they're both doing
25 their part to make a final car. The only difference is

1 it's not illegal to make a car.

2 What we're dealing with in this case is conspiracy
3 to traffic cocaine, meaning individuals who get together
4 to sell, distribute or bring in an amount of cocaine. In
5 this case, again, it's based on the weight. Whether it
6 be one hundred grams or more or some other weight.
7 Again, trafficking is all dependent on the amount of the
8 substance. And with a conspiracy, that does not mean
9 that you've got to actually have that amount of the drug
10 in one place at one time. It can take place over a span
11 of time, and that weight can be added together. If there
12 are multiple occasions of some amount of the substance,
13 you could put all of those together over a period of time
14 to get that total weight.

15 Now, the State has the burden of proving this case
16 beyond a reasonable doubt. The Judge is going to tell
17 you again that a reasonable doubt is something that would
18 cause a reasonable person to hesitate to act. Hesitate
19 to act, that does not mean don't take your time. It does
20 not mean that you can't use all the time you need to look
21 at the evidence, to listen to any recordings, to view
22 everything, consider everything. What it means is that
23 after you have done that, if you have a hesitation to
24 act. It does not mean you can't take your time.

25 Now, ladies and gentlemen, at this point, I'm going

1 to turn things over to Mr. McElhannon who's going to
2 argue his side of the case. And then Mr. Wedekind will
3 bring you his final argument on the facts. But remember
4 the Judge will give you the instruction on the law.
5 That's why I've been very brief at this time. Thank you.

6 THE COURT: Mr. McElhannon?

7 MR. MCELHANNON: Thank you, Your Honor. May it
8 please the Court.

9 CLOSING ARGUMENT

10 BY MR. MCELHANNON:

11 Ladies and gentlemen, I told y'all from the
12 beginning this was going to be a case solely about
13 witnesses on the witness stand, their veracity and their
14 honesty. And that's what this case is about. And I
15 apologize I'm going to have to use my notepad here
16 because I have so many things I want to bring out about
17 the various witnesses. And I'll forget something if I
18 don't have my notes with me.

19 Let's start with the paid snitch, Anthony Murray.
20 According to his testimony -- and you'll remember this --
21 he said that did not even identify Timothy Terrell Crosby
22 until Monday of this week. Now, the State would have you
23 believe that he had identified him right after the -- or
24 the day after the alleged drug transaction. But you
25 heard him say, "No, I haven't seen him. I don't know him

1 today or ..." Monday was the first day that he says he
2 identified him. I'm going to submit to you that if I had,
3 another black male sitting there beside me at the Defense
4 table and Mr. Crosby was sitting in the back of the
5 courtroom, I'm going to submit that Anthony Murray would
6 have said that the black male sitting with me was the guy
7 that sold him drugs because he said he had not identified
8 him in almost two years. And this is the first time he's
9 identified him. That's the first part.

10 The second part is in his own statement Mr. Murray
11 testified that when the gentleman sold him the crack
12 cocaine right here, twenty-two point five grams, that he
13 saw another bag of crack cocaine in that gentleman's
14 pocket. That was in his own signed statement. That was
15 actually done, written the day of the alleged drug sale,
16 February the 5th, 2013. If you'll remember when Deputy
17 Brinston searched him, patted him down -- he admitted
18 patting him down -- he said there was nothing in his
19 pockets.

20 Now, Mr. Crosby, according to David Baker,
21 Lieutenant David Baker's own testimony was, he never left
22 sight of him. He was in constant surveillance from the
23 Toys R Us shop to when he was pulled on Highway 28.
24 Constant surveillance. So how could he get rid of drugs
25 in his pocket if he actually had them? That goes to the

1 veracity of Mr. Murray's testimony.

2 And you also remember I brought out on cross that
3 Mr. Murray has been convicted of crimes of dishonesty.
4 He was convicted of two counts of breach of trust, which
5 is basically taking something that doesn't belong to you
6 and not giving it back or someone entrust it to you and
7 then you do something with it. He also had -- and I
8 think this is very important. He admits that he lied to
9 the police. He was convicted of false information to
10 police. So you've got to really think when he's up here
11 on the stand, is he telling the truth about this?
12 Because the facts don't say he is. There were no drugs
13 found in the truck at the traffic stop and no drugs found
14 on Mr. Crosby.

15 Now, I go to the second witness, Lieutenant David
16 Baker. He testified that he was under -- he had
17 surveilled a white truck from Toys R Us all the way down
18 the highway, made several turns, when they finally got it
19 stopped on Highway 28. He says that when he rode by and
20 when he made out his surveillance report, that the truck
21 had been stopped at six twenty-nine p.m. And he actually
22 admitted it was dark. He also then said, though, that he
23 recognized Timothy Crosby as the driver of the truck.
24 However, I don't know how he did that if it's dark. If
25 the window's rolled down, you know, Mr. Crosby's a black

1 man at night. How can you identify somebody. The door's
2 not open. The light's not on inside the truck. So just
3 riding by, he's going to identify him.

4 The third witness was deputy D.L. Brinston. I found
5 it interesting that the majority of the questions,
6 factual questions, that I asked him, if you remember what
7 his response was, "I can't recall. I can't recall."
8 Anything that I asked him he basically said, "I can't
9 recall." I asked him if his vehicle was equipped with a
10 dash cam. He said, "It was possible, but I can't
11 recall." I asked him if he had his dog walk around the
12 truck, his K-9. "I can't recall." Asked him if he
13 searched the inside of the truck. "I can't recall." I
14 asked him if he placed Mr. Crosby in handcuffs. "I can't
15 recall."

16 I even asked him the name of his supervisors. He
17 couldn't recall their names. Now, that seems odd to me
18 that, you know, from less than two years you couldn't
19 remember who your immediate supervisors were at the
20 Anderson County Sheriff's Office. I asked him as far as
21 the traffic stop goes, he cited him for faulty equipment
22 and following too closely. And I asked him what the
23 faulty equipment was on the truck. Again, "I can't
24 recall."

25 Now, from the ticket itself -- and it's in evidence.

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1 It's a warning citation. He lists the time that he wrote
2 this ticket as six fifty-one p.m. Now, again, remember
3 Lieutenant David Baker testified that it was dark at six
4 twenty-nine p.m. And I think Deputy Brinston said when I
5 asked him, "Wasn't it dark when you wrote the ticket?" he
6 said "It wasn't dark." But if it was dark at six twenty-
7 nine p.m. to six fifty-one p.m.; which is twenty-two
8 minutes, it was definitely dark. So there again, is he
9 believable?

10 And as far as him not recalling what all he did
11 searching Mr. Crosby, the truck, having the dog out,
12 placed Mr. Crosby in the patrol car, I'll submit to you
13 that it doesn't take twenty-two minutes to write a
14 warning citation. And that's how long from David Baker,
15 Lieutenant David Baker's testimony the stop began to when
16 this ticket was written at six fifty-one is twenty-two
17 minutes.

18 What went on during that twenty-two minutes? I'll
19 tell you what went on. Exactly what Mr. Crosby testified
20 to today. He was patted down. He was searched. His
21 shoes were taken off. The interior of his truck was
22 searched after the drug dog walked around it. Another --
23 a female officer came up. He was placed in a patrol car.
24 Nothing was found on him. There was not any more drugs.
25 As Mr. Murray stated, it was in the pocket of whoever

1 sold it to him. And there wasn't a thousand dollars
2 documented by them.

3 Now -- and this is extremely important -- Deputy
4 Brinston told you that he was terminated from employment
5 with the Anderson County Sheriff's Office. Don't know
6 the details of that, but he was terminated. It wasn't a
7 resignation; he was terminated.

8 Now, as for Jeffrey Parker, basically his entire
9 testimony was, "I think," speculation. He says he never
10 saw anything happen. He dialed numbers and handed the
11 phone to Mr. Johnson, but he never saw any drug
12 transactions take place, never saw any money change
13 hands. He said it was pure speculation on his part about
14 what the phone calls were about. And he said, "The shop
15 was my domain. You know, the office was Angelo Johnson."
16 So as far as any speculation about what these phone calls
17 were for is pure speculation.

18 And finally, Mr. Johnson himself. You heard him
19 this morning say that he was an alcoholic and a drug
20 addict when all of this was taking place. And he even
21 testified that he began drinking at, I think he said,
22 five thirty in the morning and would drink all day in the
23 office. Plus he admitted that at that time he was doing
24 drugs on top of all the drinking he was doing. He even
25 said that his memory was clouded. He couldn't remember

1 things. He doesn't remember who he bought certain things
2 from. He doesn't remember how much. He knows how much
3 he would have paid for something, but he said, I think at
4 some point at three ounces to four ounces to some other
5 amounts -- I mean, not ounces, grams -- up to an ounce.
6 But he doesn't remember how many times, and he doesn't
7 exactly remember who he bought from.

8 Now, Bernard, of course, is the major guy, the main
9 guy. I think he said he would normally buy from Bernard.
10 But there again, he doesn't remember how many times over
11 a six-month period he bought from anybody. And he wasn't
12 able to say today. So there again, as far as weight, if
13 any drugs were bought or sold by Mr. Johnson, any weight
14 is pure speculation.

15 I told you from the start that the State has to
16 prove every element of the crime for which Mr. Crosby is
17 standing trial. Each element has to be proven beyond a
18 reasonable doubt. The Judge is going to tell you what
19 that reasonable doubt means. And I'm going to submit to
20 you today that, having heard the State's case, this case
21 is full of reasonable doubt.

22 And I've told you verdict means to speak the truth.
23 And that's what y'all are here to do. And I don't think
24 that the State has proven either one of these indictments
25 beyond a reasonable doubt. And I would ask you to bring

1 back a not guilty verdicts on both indictments.

2 Thank you.

3 THE COURT: Mr. Wedekind?

4 MR. WEDEKIND: Thank you, Your Honor.

5 CLOSING ARGUMENT

6 BY MR. WEDEKIND:

7 Forty-eight forty-five. Forty-eight forty-five.

8 Just remember those numbers because that's really where
9 this case turns upon. Forty-eight minutes and forty-five
10 seconds on that audio recording of the drug transaction
11 that took place for the sale of trafficking amount of
12 crack cocaine took place on 5 February 2013 at Toys R Us
13 in Anderson County. Forty-eight forty-five.

14 Ladies and gentlemen, I'll submit to you this tape
15 is one hour four minutes and thirty-seven seconds long.
16 You'll have that at your disposal. You can listen to the
17 full entire tape from start to finish, but we've only
18 presented you a snippet of that just in order to save
19 some time. It's not an effort to conceal anything. If
20 you want to look at that or hear it, we'll play it for
21 you. But really the case as far as the trafficking
22 involving that man sitting over there who's been
23 identified by virtually every witness with the exception
24 of Agent Collier and I believe the SLED chemist. Every
25 State witness said, "There he is. Timothy Crosby.

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1 That's the man I saw that day, 5 February, at Toys R Us."
2 Anthony Murray says he's the guy who said, "Here's the
3 drugs." He asked him, "Is that an ounce?" And he said,
4 "Yeah." And he goes, "Here's your money." And he gave
5 him ten one-hundred-dollar bills to equal a thousand
6 dollars, which was the agreed-upon price for the sale of
7 the ounce of crack cocaine.

8 Now, we all know from hearing over and over that
9 twenty-eight grams equals an ounce. The SLED chemist
10 testified that when it came back, the weight was twenty-
11 two point five grams. State's Exhibit Number 8 will
12 reflect that. And you'll have this to take back and
13 digest as well. Twenty-two point five grams, according
14 to my days in arithmetic -- and it's been a while. But
15 twenty-two point five is more than ten and less than
16 twenty-eight. And that's what you heard the law requires
17 to meet the trafficking threshold. You even heard a
18 little bit of corroboration from that because -- why does
19 the law do that? A user, a person who's just using it
20 for their own purposes is probably going to use less than
21 ten grams. You'd be doing a lot of cocaine if you were
22 tooting ten grams or more per day. So that's why that
23 threshold is set there. If you have more than that, if
24 you have more than the eight-ball that you heard that Mr.
25 Johnson was talking about, that's a user. He's using

1 about three or four grams a day. Using. That's
2 personal-use drugs. And the law recognizes that. But if
3 you bring in more than that, if you bring in a hundred
4 grams, that's more than anybody's going to use in a
5 couple of days for their personal stash. They're trying
6 to profit off of it.

7 And in this case, a whole group of people coming
8 together, two or more working in concert, working for the
9 same goal. They don't even have to be in the same room
10 or same location. If they're working together, that's a
11 conspiracy. And if the weights are in excess of those
12 threshold amounts set by law for the powder cocaine --
13 and this case is charged on the primary charge
14 trafficking cocaine conspiracy, it's one hundred or two
15 hundred grams.

16 You're going to also hear about the trafficking in
17 the crack cocaine, which pertains to what you have here.
18 The conspiracy cocaine is cumulative and it comes through
19 the words of the witnesses talking about how much drugs
20 was done. You heard Mr. Johnson said he'd get an ounce.
21 That's twenty eight grams, two times at least, maybe
22 more, from Bernard. Two times at least, maybe more, from
23 Terrell, who as we know is Mr. Crosby. Twenty-eight
24 grams is an ounce. Twenty-eight times two is fifty-six.
25 Fifty-six and fifty-six is a hundred and twelve. A

1 hundred and twelve, again, according to my arithmetic, is
2 more than a hundred grams. So on both charges, the
3 conspiracy to traffic in powder and the crack cocaine,
4 there's more testimony, there's more evidence than
5 required by law.

6 Now, witness credibility. Motives to lie. Mr.
7 Johnson's already doing his time. He kind of went all
8 over the place. Couldn't remember. Had some amnesia
9 here and there. But some things he was clear about. He
10 recognized Terrell, Mr. Crosby, as somebody who he had
11 dealt drugs with.

12 You're also going to hear that Mr. Murray, the
13 primary witness, the informant, who stood up in front of
14 you and said, "Yeah, I've been in trouble with the law.
15 I've got a record." Well, ladies and gentlemen, those
16 are the people that you use as informants, people that
17 are known to the drug dealers, because they're going to
18 trust them and let them into their circle. They're going
19 to grant them that access to come into their embrace and
20 do business with them. They know it's an illegal
21 business. If you just walk up off the street and don't
22 know that guy, they might sell you a little snippet, but
23 they're not going to do enough to get in trouble for a
24 trafficking amount. They might do a couple of test buys.
25 Law enforcement recognizes this from experience, and they

1 develop those informants. They find somebody who's
2 dealing. They catch them or they pay them, and they use
3 that person to gain access to find bigger fish.

4 Now, the Defense is making a big deal about the stop
5 that took place. Well, you heard from the Defense
6 witnesses. There's really no doubt. The Defense says he
7 was at Toys R Us on the day in question. Mr. Phillip
8 Wall said he was at Toys R Us and Mr. Crosby came in. So
9 you can just set that aside.

10 The motive to lie. Who really has that motive to
11 lie? Timothy Crosby. You heard Mr. Phillip Wall say
12 that he was there fifteen to twenty minutes. Listen to
13 that tape. This tape doesn't lie. It's about four or
14 five minutes, ladies and gentlemen, that he's totally --
15 from the time you hear him walk up -- I believe he's
16 identified as -- somebody says, "Here comes somebody."
17 You'll hear the cru cru (phonetic) and a rustling around.
18 There's talking going on before that. You'll hear a door
19 open. Eeek (phonetic). Then you'll hear somebody come
20 in. And Mr. Wall said it was him greeting him like, "God
21 almighty," or something -- or some expression of
22 recognition. "I haven't seen you in forever." And then
23 you'll hear a very muffled, "What's up?" Then you'll
24 hear, "That an ounce?" "Yeah." Then they start talking
25 about hundred, hundred, hundred. That's a drug deal,

1 ladies and gentlemen, right there.

2 Ladies and gentlemen, that's it. Showing him what
3 he's got. "Is that an ounce?" Because that's what he's
4 there to buy. "Yeah. Here's your money." Right after
5 that, a couple minutes, a couple seconds later, you hear
6 the foot crunching, cru cru cru (phonic). He's in his
7 shoe with the microphone or nearby. Gets out to the car,
8 and the first thing he does is call out white Dodge,
9 white Dodge pickup truck, [REDACTED]. He's talking on that
10 one-way radio transmitter to Casey Collier tipping her
11 off to what she's going to be looking for because that
12 ain't Bernard.

13 The guy that they were expecting to deliver the
14 drugs was Bernard. Bernard, for one reason unknown to
15 us, didn't make it that day. So they went to a secondary
16 source, Terrell, the buddy. Mr. Crosby, who also was
17 known and relied upon to deal drugs when needed. So he
18 comes up, presents the drugs. "Is that an ounce?" There
19 it is. Don't take my word for it. Don't take anybody's
20 from the stand. Just listen to the recording.

21 (WHEREUPON, a portion of State's Exhibit Number 6
22 was published.)

23 MR. WEDEKIND: Bear with me on this. But at
24 the forty-eight twenty -- remember those numbers --
25 you'll hear the door open. Forty-eight forty-five, "Is

1 that an ounce?"

2 (WHEREUPON, a portion of State's Exhibit Number 6
3 continued to be published.)

4 MR. WEDEKIND: It's kind of quiet.

5 (WHEREUPON, a portion of State's Exhibit Number 6
6 continued to be published.)

7 MR. WEDEKIND: Door.

8 (WHEREUPON, a portion of State's Exhibit Number 6
9 continued to be published.)

10 MR. WEDEKIND: There's the recognition.

11 (WHEREUPON, a portion of State's Exhibit Number 6
12 continued to be published.)

13 MR. WEDEKIND: "What's up?"

14 (WHEREUPON, a portion of State's Exhibit Number 6
15 continued to be published.)

16 MR. WEDEKIND: "Is that an ounce?"

17 (WHEREUPON, a portion of State's Exhibit Number 6
18 continued to be published.)

19 MR. WEDEKIND: "Count the money."

20 (WHEREUPON, a portion of State's Exhibit Number 6
21 continued to be published.)

22 MR. WEDEKIND: "There's the hundreds."

23 (WHEREUPON, a portion of State's Exhibit Number 6
24 continued to be published.)

25 MR. WEDEKIND: There's the gravel. The deal's

1 done.

2 (WHEREUPON, a portion of State's Exhibit Number 6
3 continued to be published.)

4 MR. WEDEKIND: And, "That ain't Bernard."

5 So ladies and gentlemen, that's Timothy Crosby.
6 That ain't Bernard. He's the man who brought the drugs
7 in. You don't even have to believe all of the State's
8 witnesses. Even there's assistance from Mr. Wall. He
9 said he was there fifteen, twenty minutes. That's not
10 fifteen to twenty minutes. And you hear that recognition
11 when he sees his old acquaintance. He says, "God
12 almighty." He goes, "What's up?" From that point to
13 there, the end of this is fifty minutes. Forty-eight
14 twenty when he walks in the door and you hear it creak
15 open and that recognition from an old friend of hers
16 [sic], Mr. Wall, is a little over two minutes is all
17 we're talking about. Everybody was quiet beforehand.
18 The Defense wants you to believe that maybe somebody else
19 brought the drugs and that's how it got in the pocket of
20 Mr. Murray, and then it got transferred over to Agent
21 Collier's evidence kit to be presented before you today.
22 But if that's the case and if Murray's already in there,
23 why doesn't he just do the deal and get out? Why is he
24 going to hang around? He's going to hang around because
25 he's waiting on a guy who's got the dope, Timothy Crosby,

1 to arrive. So when Timothy walks in, bang, bang, boom.
2 It's time to do business. Let's get it over and done.
3 As soon as that's done, Mr. Murray's got no other
4 business there. He clears out and he calls it [REDACTED].
5 Eyes on the vehicle. Requested a stop. Is there
6 anything nefarious or anything crazy about Officer
7 Brinston's testimony? He didn't remember. It would have
8 been great if he had a traffic monitor video on there,
9 but we don't have that. If we had it, we'd show it. But
10 we just don't have it. But ladies and gentlemen, we do
11 have the audio recording. That speaks the truth.
12 There's no motive to lie. There's no ability to cover
13 that up. It's there.
14 Therein lies the case as far as the trafficking for
15 the crack cocaine. And I would submit there's no
16 reasonable doubt. There isn't -- there's just no doubt
17 about that. He himself admits he was in the truck pulled
18 over.
19 What happened to the additional dope? Put the
20 window down, throw it out. Might have gotten rid of it.
21 But you also heard Lieutenant Baker say they didn't want
22 to end it there. They wanted to continue the
23 investigation to keep the net out there to catch more
24 people in the net. They didn't want to end it. So maybe
25 -- I'll submit to you Officer Brinston was just doing a

1 show walk-around, trying to find out if -- his primary
2 mission is to make the stop and identify who's in the
3 vehicle. Mission accomplished with this traffic ticket,
4 State's Number 7, Timothy Terrell Crosby. And Mr. Crosby
5 sat on the stand and said, yeah, that was -- he wanted to
6 get hyper technical about the last four digits, [REDACTED]. It
7 could be a 9. It could be an 8. Big deal. Timothy
8 Terrell Crosby is on there. The photograph matched up.
9 The driver's license matched up. Heck, even Mr. Crosby
10 says, "Yeah, that was me."

11 Now, as far as the conspiracy and the trafficking in
12 the powder cocaine, that's a little more sketchy. I'll
13 give you that. But you heard from Mr. Johnson about here
14 it is six months after his father died. He'd been using.
15 Every two weeks he was buying an ounce, half ounce,
16 whatever it is his amounts. And he'd take his little
17 personal cut off of it. But, again, working with the
18 minimum numbers because we'll give every benefit of the
19 doubt to Mr. Crosby. It's more than a hundred if you
20 tally it up. He did two one-ounce deals, twenty-eight
21 grams and twenty-eight grams, fifty six. And he did two
22 with Mr. Crosby, Terrell, as he called him. Twenty-eight
23 grams, twenty-eight grams, fifty-six. A hundred and
24 twelve total. Was he involved? Was it a conspiracy?
25 Was he derived a benefit? Yeah, he took his little user

1 amount off. He also sold it for cash to other people.

2 So, ladies and gentlemen, that's pretty much it.

3 It's really not hard to do. All you got to do is listen

4 to that tape and hear the testimony of those people. And

5 you don't even have to believe in their veracity. I

6 mean, Mr. Murray said he lied to get out of trouble.

7 Guess what? So will the Defendant who's standing before

8 you right now. He'll lie to get out of trouble. But Mr.

9 Murray's lies were so ridiculous even he knew at the time

10 that he was going to get caught by saying he was his

11 brother, an FBI agent. Yeah, he knew he was going to get

12 caught. But like he said, "Well, at least I'll have an

13 extra day out of jail." That's all he was hoping for.

14 But then he had to work his way out of the hole and knew

15 exactly what Agent Collier wanted him to do. And he did

16 it. He walked in wearing a wire, delivered the goods,

17 gave you enough evidence to say the words guilty as far

18 as both charges against Mr. Crosby.

19 Thank you.

20 CHARGE

21 BY THE COURT:

22 Mr. Foreman, ladies and gentlemen of the jury, as

23 jurors in this case, you have certain functions and

24 responsibilities to perform which are entirely separate

25 and distinct from those of mine as the trial judge. I am

1 prohibited by the Constitution of our state from charging
2 you on the facts of this case. I am also prohibited from
3 discussing the facts of the case with you or in any way
4 intimating what my feelings, if any, are about the facts
5 of the case. It is your responsibility, and yours alone,
6 to pass upon all the issues of fact presented in the
7 case.

8 I would, therefore, charge you that if, during the
9 course of the trial or during my charge, you have been
10 given or left with the impression or feeling that I do
11 have a personal feeling about the facts in the case, I
12 would specifically instruct you to disregard that feeling
13 or impression.

14 Moreover, you are the sole judges of what the
15 testimony was and not the argument of counsel. It is
16 also your duty and yours alone to weigh the testimony and
17 evidence in the case and to pass upon the credibility or
18 believability of the witnesses. In this connection, you
19 have the right to believe all that a witness tells you or
20 to disbelieve all that a witness tells you. You have the
21 right to believe a part of what a witness tells you and
22 to disbelieve a part of what a witness tells you. You
23 have the right to take into consideration any bias,
24 prejudice or interest you feel a witness might have in
25 the case. I say this merely to emphasize that the weight

1 you see fit to give testimony to the credibility of the
2 witness, as well as all issues of fact, are your sole
3 determination.

4 As judges of the facts, you're the sole judges of
5 the credibility -- that is, the believability -- of the
6 witnesses who have testified in this case. In passing
7 upon their credibility, you may take into consideration
8 many things such as the appearance and manner of the
9 witness on the stand, sometimes referred to as the
10 demeanor of the witness. Was a witness forthright or
11 hesitant? Was a witness' testimony consistent, or did it
12 contain discrepancies? What was the ability of the
13 witness to know the facts about what he or she testified?
14 Did the witness have a cause or reason to be biased and
15 prejudiced in favor of the testimony he or she gave? Was
16 the testimony of a witness corroborated or made stronger
17 by other testimony in evidence, or was it made weaker or
18 impeached by such other testimony into evidence?

19 As jurors, you have the right to believe a small
20 portion of a witness' testimony and discard the larger or
21 vice versa. You may believe all of a witness' testimony
22 or none. You may believe the testimony of a single
23 witness against that of many witnesses or the other way
24 around. Most certainly, you do not determine the matter
25 of credibility or believability by counting up the number

1 of witnesses who may have testified on behalf of the
2 parties.

3 The rules of evidence ordinarily do not permit
4 witnesses to testify to opinions or conclusions. An
5 exception of this rule exists for witnesses we call
6 expert witnesses. A witness who, by education and
7 experience, has become an expert in some art, science,
8 profession or calling may state an opinion as to relevant
9 and material matter in which the witness claims to be an
10 expert and may also state the reasons for that opinion.

11 You should consider an expert opinion received in
12 evidence in this case, and like any other evidence, give
13 it the weight you think it deserves. If you decide that
14 the opinion of an expert is not based on sufficient
15 education and experience or if you conclude that the
16 reasons given in support of the opinion are not sound or
17 that the opinion is outweighed by other evidence, you may
18 disregard the opinion entirely.

19 An expert witness' testimony is to be given no
20 greater weight than that of other witnesses simply
21 because the witness is an expert. Further, you are not
22 required to accept an expert's opinion even though it is
23 not contradicted. Throughout this entire process, you
24 have but one single objective, and that is to seek the
25 truth regardless of from what or from whom or what

1 witness the testimony may have come.

2 Now, by the same Constitution and law which makes
3 you the finders of the facts and evidence, as I've
4 discussed with you, I am, and as the judge, made the sole
5 and only instructor on the law. You must accept as
6 correct the law which I charge and apply to it the
7 evidence as you find it and reach your verdict. If I
8 should make an error in the law as I instruct it to you,
9 there's another time and place that error can be
10 considered and if necessary, corrected. But for the
11 purposes of this case today, you must accept the law as I
12 charge it to you to be the correct law. And finally, I
13 charge you in this regard, that you, nor for that matter
14 am I, concerned with what the law ought to be, but rather
15 what I charge you the law to be.

16 Now, the Defendant has pled not guilty to this
17 indictment. That means both counts of the indictment.
18 And that plea puts the burden of proof on the State to
19 prove the Defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove himself innocent. I charge you that it
22 is an important rule of the law that the defendant in a
23 criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed innocent of the
25 crime for which the indictment was issued unless guilt

1 has been proven by evidence satisfying you of that guilt
2 beyond a reasonable doubt. The presumption of innocence
3 does not end when you begin your deliberations, but it
4 accompanies the Defendant throughout the trial until you
5 reach a verdict of guilt based upon evidence satisfying
6 you of that guilt beyond a reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed upon the shoulders of the Defendant
9 which remains with the Defendant until it has been
10 stripped from the Defendant by evidence satisfying you of
11 the Defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not mere legal
13 theory. It is not just a legal phrase. It is a
14 substantial right to which every Defendant is entitled
15 unless you, the jury, are satisfied from the evidence of
16 the Defendant's guilt beyond a reasonable doubt.

17 Now, what is a reasonable doubt? A reasonable doubt
18 is the kind of doubt that would cause a reasonable person
19 to hesitate to act.

20 Now, there are two types of evidence which are
21 generally presented in a trial, direct evidence and
22 circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual knowledge
24 of a fact, such as an eye witness. It is evidence that
25 immediately establishes the main fact to be proved and

1 does not require deduction. Circumstantial evidence is
2 proof of a chain of facts and circumstances indicating
3 the existence of a fact. It is evidence which
4 immediately establishes collateral facts from which the
5 main fact may be inferred. Circumstantial evidence is
6 based on inference and not on personal knowledge or
7 observation.

8 Crimes may be proven by circumstantial evidence.
9 The law makes no distinction between the weight or value
10 to be given either direct or circumstantial evidence.
11 However, to the extent the State relies on circumstantial
12 evidence all of the circumstances must be consistent with
13 each other, and when taken together point conclusively to
14 the guilt of the accused beyond a reasonable doubt. If
15 these circumstances merely portray the Defendant's
16 behavior as suspicious, the proof has failed.

17 The State has the burden of proving the Defendant
18 guilty beyond a reasonable doubt. The burden rests with
19 the State regardless of whether the State relies on
20 direct evidence, circumstantial evidence, or some
21 combination of the two. You should weigh all of the
22 evidence in a case. And after weighing all the evidence,
23 if you are not convinced of the guilt of the Defendant
24 beyond a reasonable doubt, you must find the Defendant
25 not guilty.

1 In order to establish criminal liability, intent is
2 required. For example, the mental state required to be
3 proven by the State for a particular crime might be
4 purpose, intent or knowledge. Criminal intent must be
5 proven by the State beyond a reasonable doubt.

6 Criminal intent is always a matter to be determined
7 by the jury from the circumstances surrounding the
8 situation. There is no way to prove intent to a
9 mathematical certainty. There's no way medical science
10 can dissect a person's brain and determine what the
11 person had in mind. So the law says that criminal intent
12 may be inferred from the circumstances shown to have
13 existed. This is how you make the determination of
14 whether or not the element of criminal intent was
15 present. It's not necessary to establish intent by
16 direct and positive evidence. But intent may be
17 established by inference in the same way as any other
18 fact, by taking into consideration the acts of the
19 parties and all the facts and circumstances of the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. It's up to you to determine what the
22 Defendant intended to do based on the circumstances shown
23 to have existed. Criminal intent is a state of mind that
24 operates jointly with act or omission in the commission
25 of a crime. Criminal intent is a mental state.

1 Criminal intent is normally based upon the
2 occurrence of two factors, an evil-meaning mind and an
3 evil-doing hand. A person who causes a particular result
4 is said to act purposefully. The person is said to act
5 knowingly if he is aware that the result is particularly
6 certain to follow his conduct.

7 Suspicion, however strong, is not enough to sustain
8 a conviction. The evidence presented by the State must
9 be substantial evidence that tends to prove the guilt of
10 the Defendant beyond a reasonable doubt.

11 Now, the indictment charges the Defendant in two
12 counts with trafficking cocaine conspiracy and another
13 count of trafficking cocaine base. I remind you that the
14 fact the Defendant was arrested, charged and indicted in
15 this case is not evidence in the case and cannot be
16 considered by you as evidence of guilt in this case, nor
17 does it create any presumption or inference of guilt.
18 This document is simply the formal written instrument
19 which contains the charges made against the Defendant.
20 It is a formal document in which a case is brought into
21 this court.

22 The indictment in this case alleges two different
23 offenses against the Defendant. The charges are in
24 indictment number 2013-GS-47-22, count one, trafficking
25 cocaine conspiracy. The other count, trafficking cocaine

1 base. Each count charges a separate and distinct
2 offense. You decide each count separately on the -- and
3 you must decide each count separately on the evidence and
4 the law applicable to it, uninfluenced by your decision
5 as to the other charges.

6 The Defendant may be convicted or acquitted on any
7 or all of the offenses charged. You will be asked to
8 write a separate verdict of guilty or not guilty for each
9 count of the indictment.

10 The Defendant is charged in the first count with
11 trafficking cocaine conspiracy, one hundred grams or more
12 but less than two hundred grams. The State must prove
13 beyond a reasonable doubt the Defendant combined with one
14 or more person for the purpose of committing the unlawful
15 act. There must be a mutual understanding, agreement, or
16 common intention and plan. Mere passive knowledge or
17 consent to the criminal conduct of another is not enough
18 to make a person a conspirator. There must be guilty
19 knowledge and participation.

20 Similarly, the mere fact the Defendant may have
21 associated with another person or met with another person
22 and can discuss common names or interests does not
23 necessarily establish the proof of the existence of a
24 conspiracy or that the Defendant was involved in the
25 conspiracy. On the other hand, it is not necessary that

1 the agreement be a formal one, that is it be in writing,
2 that the persons hold a meeting and expressly state the
3 terms of their common plan all that -- or that the
4 agreement be stated in words between them. The agreement
5 of a criminal conspiracy may come into being through an
6 implied mutual understanding. The willful, intentional,
7 and knowing adoption of two or more persons to a common
8 plan is sufficient. No overt act needs to be shown to
9 establish a conspiracy. A conspiracy may be shown by
10 circumstantial evidence in the conduct of the parties.

11 In order to convict the Defendant of conspiracy, the
12 State must prove beyond a reasonable doubt not only that
13 the Defendant knew of the unlawful conduct, but the
14 Defendant agreed to combine with the other persons for
15 the purposes of accomplishing the unlawful conduct.

16 The State must prove beyond a reasonable doubt that
17 the amount of cocaine or any mixture containing cocaine
18 that the Defendant conspired to traffic was one hundred
19 grams but less than two hundred grams. The Defendant is
20 charged with trafficking in cocaine. The State must
21 prove beyond a reasonable doubt that the Defendant
22 knowingly sold, manufactured and cultivated, delivered,
23 purchased, brought into this state, provided financial
24 assistance or otherwise aided and abetted or attempted or
25 conspired to sell manufacture, cultivate, purchase or

1 bring into this state, was knowingly and in actual or
2 constructive possession, knowingly attempted to become in
3 actual or constructive possession. The State must also
4 prove beyond a reasonable doubt that the cocaine -- the
5 amount of cocaine or any mixture containing cocaine was
6 one hundred grams or more, but less than two hundred
7 grams.

8 Now, to prove possession, the State must prove
9 beyond a reasonable doubt that the Defendant had both the
10 power and intent to control the disposition of the
11 cocaine. Possession may be either actual or
12 constructive. Actual possession that the cocaine was in
13 the actual physical condition or custody of the
14 Defendant. Constructive possession means that the
15 Defendant had dominion and control or the right to
16 exercise dominion and control over either the cocaine
17 itself or the property on which the cocaine was found.

18 Mere presence at the scene where the drugs were
19 found is not enough to prove possession. The Defendant's
20 knowledge and possession may be inferred when a substance
21 is found in the property under the Defendant's control.
22 However, this inference is simply an evidentiary fact to
23 be taken into consideration by you along with other
24 evidence in the case and be given the weight you decide
25 it should have. Two or more persons may have possession

1 of a drug.

2 To deliver means to actually, constructively or
3 attempt to transfer the drug. Distribute means to
4 deliver other than by administering or dispensing a drug
5 under medical procedures.

6 Manufacture. Manufacture means to produce, prepare,
7 convert, process, plant, cultivate, grow or harvest a
8 drug naturally or chemically. Manufacturing includes any
9 packaging or repackaging of the drug or labeling or re-
10 labeling the drug's container.

11 Now, if you, as jurors, have a reasonable doubt as
12 to whether the State has proven -- has met its burden of
13 proof and shown all of the elements of the crime of
14 trafficking cocaine conspiracy one hundred grams or more
15 but less than two hundred grams, you would then consider
16 the lesser-included offense of trafficking cocaine
17 conspiracy, twenty-eight grams or more but less than a
18 hundred grams. The State must prove all the elements of
19 conspiracy beyond a reasonable doubt and also prove
20 beyond a reasonable doubt that the amount of cocaine or
21 any mixture containing cocaine that the Defendant
22 conspired to traffic was twenty-eight grams or more but
23 less than a hundred grams. If you have reasonable doubt
24 as to whether the State has met its burden of proof and
25 shown all the elements of the crime of trafficking

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1 cocaine conspiracy, twenty-eight grams or more but less
2 than a hundred grams, then you would find the Defendant
3 not guilty.

4 Now, the Defendant is charged in the other count of
5 the indictment with trafficking in cocaine base. The
6 State must prove beyond a reasonable doubt that the
7 Defendant knowing sold, manufactured, cultivated,
8 purchased, brought into this state, provided financial
9 assistance or otherwise aided or abetted, attempted to
10 conspire to sell, manufacture, cultivate, deliver,
11 purchase or bring into this state, was knowingly in
12 actual or constructive possession, or knowingly attempted
13 to become in actual constructive possession of cocaine
14 base.

15 Now, the State must also prove beyond a reasonable
16 doubt that the amount of cocaine base was ten grams or
17 more but less than twenty-eight grams. And if you have a
18 reasonable doubt of the Defendant's guilt after
19 considering all the evidence on either count of the
20 indictment, then you must find the Defendant not guilty
21 on that count of the indictment. On the other hand, if
22 you have no reasonable doubt of the Defendant's guilt
23 after considering all the evidence on either or both
24 counts of the indictment, then you must find the
25 Defendant guilty on that or those counts of the

1 indictment.

2 Now, Mr. Foreman, ladies and gentlemen of the jury,
3 you have been selected as fair and impartial jurors sworn
4 to impartially try and determine the facts of this case.
5 When you comply with your oath to do so, then no one will
6 have a right to criticize your verdict and you will have
7 fully discharged your duty as jurors. You should not be
8 influenced by opinions or expression of opinions, if any,
9 which you may have heard on the outside. But you are to
10 decide the case according to the testimony that you have
11 heard from the lips of the sworn witnesses along with the
12 other evidence that may have been introduced.

13 You must not consider as evidence any statement of
14 counsel made during the trial. However, if the counsel
15 for the parties have stipulated to any fact or any fact
16 has been admitted by counsel, then you will regard that
17 fact as being conclusively proved to the party or parties
18 making the stipulation or admission.

19 As to those questions to which an objection was
20 sustained, you must not speculate as to what the answer
21 might have been or as to the reason for the objection.
22 You must never speculate to be true any insinuation
23 suggested by a question asked of a witness. A question
24 is not evidence and may be considered only as it supplies
25 meaning to the answer.

1 As I said earlier, you are the judges of the facts
2 in this case, and you are to determine only if the
3 Defendant is guilty or not guilty based upon the
4 testimony and evidence presented in the trial and after
5 applying the law as I have given it to you. If, from the
6 evidence, you have a reasonable doubt as to whether or
7 not the Defendant is guilty, it is your duty to acquit
8 him and write the two verdicts "not guilty."

9 Under the oath you took, you swore to try the case
10 based solely and only on the testimony and evidence and
11 the law presented and heard in this courtroom. It is
12 your duty to lay aside all bias or prejudice or sympathy
13 you may have in reaching your verdict. You have no
14 friends to reward or enemies to punish in this case. I
15 might note the word verdict comes from the Latin term
16 veredicto, which means to speak the truth. Abide by your
17 oath and return a verdict which speaks the truth.

18 Now, Mr. Foreman, I have prepared the verdict form
19 for you to use for the jury in this case. If you'll note
20 -- and, of course, the verdict must be unanimous. That
21 will be all twelve members of the jury must agree on
22 whatever verdict you have on each count of the
23 indictment. And as you will notice, it says, "Verdict,
24 indictment number 2013-GS-47-22, first count, trafficking
25 cocaine," parenthesis, "conspiracy," close parenthesis.

1 As I say, the jury -- it must be a unanimous verdict. So
2 it provides, "We, the jury, unanimously find on
3 indictment 2013-GS-47-22 that the Defendant, Timothy
4 Terrell Crosby, is guilty of trafficking cocaine
5 conspiracy, one hundred grams or more but less than two
6 hundred grams, or guilty of the lesser-included offense
7 of trafficking cocaine conspiracy twenty-eight grams or
8 more, but less than one hundred grams, or not guilty."
9 It can only be one verdict, but you do have the lesser-
10 included count charge in this count.

11 And then on the second page we have the other count,
12 the other count to indictment 2013-GS-47-22, trafficking
13 in cocaine base. Again, "We, the jury, unanimously find
14 on indictment number 2013-GS-47-22 that the Defendant,
15 Timothy Terrell Crosby, is either guilty of trafficking
16 in cocaine base ten grams or more but less than twenty-
17 eight grams or not guilty." As I say, again, that
18 verdict also must be unanimous as to the second count or
19 the other count.

20 Once the jury has reached its unanimous verdict as
21 to each count of the indictment and it's indicated on the
22 verdict form in the place provided, then you will sign
23 your name as foreman on the line provided, knock on the
24 door, and then we will return and receive your verdict
25 and we'll have the verdict published.

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1 Now, in this regard, I'm going to have to ask you --
2 I will have to ask you to retire to the jury room one
3 more time without deliberating. Now, we've ordered lunch
4 for you so that should be here in a few minutes. But do
5 not begin your deliberations until I send in the verdict
6 form together with the evidence that's been admitted in
7 this case. Once you get the verdict form and then the
8 evidence, then you may begin your deliberations. And as
9 I say, once you've reached the verdict in your
10 deliberations, knock on the door and we'll return and
11 receive your verdict.

12 All right. Everyone but the alternate -- if you
13 would Mr. Alternate, stay with us -- retire to the jury
14 room. And once you get the verdict form and the
15 evidence, begin your deliberations.

16 THE JUROR: May we be escorted outside to
17 smoke?

18 THE COURT: Ma'am?

19 THE JUROR: May we be escorted out to smoke?

20 THE COURT: Oh, yes, ma'am. Yes, ma'am. But
21 that will be the last time. Once ---

22 THE JUROR: Yes, sir. Well, that's what I was
23 thinking.

24 THE COURT: Very good. Thank you, ma'am.

25 (WHEREUPON, the jury exited the open court at

1 approximately 1:30 p.m.)

2 THE COURT: All right. Any exceptions or
3 requests from the State?

4 MR. WEDEKIND: No exceptions from the State,
5 sir.

6 THE COURT: From the Defendant?

7 MR. MCELHANNON: None from the Defendant.

8 THE COURT: Very good. All right. Now, look
9 at the exhibits and be sure that everything goes back
10 that's supposed to but nothing that isn't supposed to.
11 Of course, the audio will stay in the courtroom so I can
12 hear what the jury hears.

13 MR. WEDEKIND: Yes, sir.

14 THE COURT: But we can play it at any time we
15 need to.

16 MR. WEDEKIND: Should we keep the envelope
17 outside too, sir?

18 THE COURT: Yes. Now, as I understand it,
19 Exhibit Number 1 was never moved for admission.

20 MR. WEDEKIND: That's correct, sir, 1 and we
21 had 2-A ---

22 THE COURT: And 2-A.

23 MR. WEDEKIND: 2-A, I don't think it matters
24 whether it's in or not.

25 THE COURT: Mr. McElhannon?

1 MR. MCELHANNON: Yes, sir,

2 THE COURT: 2-A was a part of the ---

3 MR. MCELHANNON: I agree with that, Your Honor.

4 THE COURT: All right. So 2-A will go back as
5 a part of 2.

6 (WHEREUPON, State's Exhibit Number 2-A was admitted
7 into evidence after which the alternate juror was
8 excused.)

9 THE COURT: Well, gentlemen and lady, it's in
10 the juror's hands, so we'll wait and see what the outcome
11 is. But I do want to thank you for your patience with
12 the Court but also the way you tried the case. I think
13 you did an excellent job.

14 MR. MCELHANNON: Thank you, Your Honor.

15 THE COURT: And I apologize for not having
16 caught all of the -- well, nuances. Now, of course, when
17 you agreed to the lesser-included, then that did create a
18 little scampering.

19 MR. WEDEKIND: I appreciate the Court's
20 patience on our chemist witness too. That had us ...

21 THE COURT: That's all right.

22 MR. WEDEKIND: Thank you, sir.

23 THE COURT: Glad she made it.

24 So we'll await the jury's verdict.

25 MR. MCELHANNON: Yes, sir.

1 MR. WEDEKIND: Yes, sir.

2 (WHEREUPON, the verdict form and exhibits were
3 delivered to the jury at approximately 1:45 p.m.
4 after which court stood at recess awaiting the
5 verdicts of the jury.)

6 THE COURT: All right. Gentlemen, will you
7 approach? I've received two questions from the foreman,
8 I think.

9 MR. WEDEKIND: Certainly the first one on the
10 re-hearing, that's no problem. And the second one ...

11 THE COURT: Well, I've got a conspiracy charge.
12 I'll read it slower this time.

13 MR. MCELHANNON: What about the second part of
14 that, how it applies to this charge? I'm not sure ---

15 THE COURT: I'll just tell them what it means.

16 MR. WEDEKIND: Just read it again. I think
17 that's it, sir.

18 THE COURT: All right. Let's see. I've got --
19 well, I've got one charge on conspiracy, I think. The
20 other one is just delivery or sale.

21 MR. MCELHANNON: The other one was just the
22 sale.

23 THE COURT: I've got the trafficking cocaine
24 conspiracy.

25 MR. MCELHANNON: Right. Yes, sir.

1 THE COURT: Well, maybe that's what they need,
2 as it applies to this one. Which is ---

3 MR. MCELHANNON: One charge is a conspiracy and
4 one charge ---

5 THE COURT: One's just the sale.

6 MR. MCELHANNON: Of course, then still the
7 lesser-included is a conspiracy charge.

8 THE COURT: Well, I'll give them that.

9 MR. MCELHANNON: Yeah. Okay. That's fine.
10 You want those Court's exhibits, Your Honor, I guess.

11 THE COURT: Well, of course.

12 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were
13 marked for identification only after which court
14 stood at ease.)

15 THE COURT: Renee, we need to go back on the
16 record. On the one question, of course, is "May we hear
17 the audio recording again, particularly the section
18 played during the trial?" Obviously, that's going to be
19 played for them.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: But if they should ask for
22 something more -- if I understand it, the audio was
23 admitted as an exhibit in total.

24 MR. MCELHANNON: Yes, sir.

25 THE COURT: And then we concentrated on the

1 little four-minute plus.

2 MR. WEDEKIND: Correct, sir.

3 THE COURT: All right. But they could listen
4 to something else on it, but I don't think they want to.
5 But just for the record, to know that ---

6 MR. WEDEKIND: It would be eligible if they
7 wished it, but we're focused on, I think -- my
8 understanding of the note was they just wanted the
9 truncated part.

10 THE COURT: Sounds good. All right.

11 (WHEREUPON, court stood at ease.)

12 THE COURT: All right. We're back on the
13 record in State versus Crosby. As I mentioned to the
14 attorneys, we have two questions from the jury. Court's
15 Exhibit Number 1, "May we hear the audio recording again,
16 particularly the section played during the trial?" And I
17 clarified with the attorneys that the entire audio is in,
18 but they seem to want to hear just a particular section.
19 However, if they should ask for a playing of the other
20 parts of the audio, it's the Court's understanding that
21 that is into evidence.

22 Is that correct, Mr. Wedekind?

23 MR. WEDEKIND: That's correct, sir.

24 THE COURT: Is that correct, Mr. McElhannon?

25 MR. MCELHANNON: That's correct.

1 THE COURT: And then, "May we have a
2 clarification of conspiracy and how it applies to this
3 charge?" I'm going to give them the conspiracy charge
4 that I gave for the hundred and two grams -- trafficking
5 cocaine conspiracy a hundred to two hundred grams. And
6 I'm also going to read to them the lesser-included, which
7 would be forty-eight grams or more but less than one
8 hundred grams. Any exception to that?

9 MR. WEDEKIND: No, sir.

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: Ask the jury to join us, please.

12 MR. WEDEKIND: And, Your Honor, if you want --
13 just as a housekeeping matter -- to adjust the volume, if
14 they feel that it's not ---

15 THE COURT: All right. Well, you've got it
16 down there where you can do it, right?

17 MR. WEDEKIND: It's keyed up, but I can adjust
18 the volume if they want more.

19 THE COURT: We'll listen.

20 (WHEREUPON, the jury entered the open court at
21 approximately 2:36 p.m.)

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen, I have two questions from the jury. "May we
24 have a clarification of, quote, conspiracy, closed quote,
25 and how it applies to this charge?" And then another.

1 question, "May we hear the audio recording again,
2 particularly the section played during the trial?" I'll
3 read both questions. I'll answer both questions, but I
4 would suggest that we do the conspiracy charge first, and
5 then we'll hear the audio that you're interested in.
6 Very well.

7 RECHARGE

8 BY THE COURT:

9 Now, the indictment in this case alleges two
10 different offenses against the Defendant. The charges
11 are indictment number 2013-GS-47-22, count one,
12 trafficking cocaine conspiracy. The other count is
13 trafficking cocaine base. Each count charges a separate
14 and distinct offense. You must decide each count
15 separately on the evidence and the law applicable to it,
16 uninfluenced by your decision as to any other count.

17 The Defendant may be convicted or acquitted on any
18 or all of the offenses charged. You will be asked to
19 write a separate verdict for guilty or not guilty for
20 each count of the indictment.

21 The first count is conspiracy or trafficking
22 cocaine, parenthesis, conspiracy, close parenthesis, one
23 hundred to two hundred grams. The Defendant is charged
24 with trafficking cocaine conspiracy one hundred grams or
25 more but less than two hundred grams. The State must

1 prove beyond a reasonable doubt that the Defendant
2 combined with one or more persons for the purposes of
3 committing the unlawful act. PThere must be a mutual
4 understanding, agreement, or common intention and plan.
5 Mere passive knowledge or consent to the criminal conduct
6 of another is not enough to make a person a conspirator.
7 There must be guilty knowledge and participation.
8 Similarly, the mere fact the Defendant may have
9 associated with another person or met with another person
10 and discussed common names and interests does not
11 necessarily establish proof of the existence of a
12 conspiracy or that the Defendant was involved in a
13 conspiracy.

14 On the other hand, it is not necessary that the
15 agreement be a formal one, that it be in writing, that
16 the persons hold a meeting and expressly state the terms
17 of the common plan or that the agreement be stated in
18 words between them. The agreement of a criminal
19 conspiracy may come into being through an implied mutual
20 understanding. The willful, intentional and knowing
21 adoption by two or more persons of a common plan is
22 sufficient.

23 No overt acts need to be shown to establish a
24 conspiracy. A conspiracy may be shown by circumstantial
25 evidence and the conduct of the parties. In order to

1 convict the Defendant of conspiracy, the State must prove
2 beyond a reasonable doubt not only that the Defendant
3 knew of the unlawful conduct, but the Defendant agreed to
4 combine with the other persons for the purpose of
5 accomplishing the unlawful conduct.

6 The State must prove beyond a reasonable doubt that
7 the amount of the cocaine or any mixture containing
8 cocaine that the Defendant conspired to traffic was one
9 hundred grams or more, but less than two hundred grams.

10 Now, if you as jurors have a reasonable doubt as to
11 whether the State has met its burden of proof and shown
12 all the elements of the crime of trafficking cocaine
13 conspiracy a hundred grams or more but less than two
14 hundred grams, you would then consider the lesser-
15 included offense of trafficking cocaine conspiracy
16 twenty-eight grams or more, but less than a hundred
17 grams.

18 The State must prove all the elements of the
19 conspiracy beyond a reasonable doubt and also prove
20 beyond a reasonable doubt that the amount of the cocaine
21 or any mixture containing cocaine that the Defendant
22 conspired to traffic was twenty-eight grams or more but
23 less than a hundred grams. If you have a reasonable
24 doubt as to whether the State has met its burden of proof
25 and shown all the elements of the crime of trafficking

1 cocaine conspiracy twenty-eight grams or more but less
2 than a hundred grams, then you would find the Defendant
3 not guilty.

4 Now, do you need any further explanation on the
5 charge dealing with conspiracy?

6 MR. FOREMAN: No, sir.

7 THE COURT: And it includes -- what is it? --
8 conspiracy of the charge in the indictment of one hundred
9 grams or more but less than two hundred grams as well as
10 the lesser included-offense of trafficking cocaine
11 conspiracy twenty-eight grams or more but less than one
12 hundred grams.

13 All right. Anything further on that charge?

14 (No response)

15 THE COURT: Very well.

16 And now, do I understand you want to listen to the
17 audio as -- I think it is, what, four minutes forty-seven
18 seconds?

19 MR. WEDEKIND: Just about that, sir. I can
20 stop it at any time.

21 THE COURT: Well, is that where you want to
22 start is where we started that particular section?

23 MR. FOREMAN: Yes, sir.

24 THE COURT: All right. Very good. If you need
25 any more, just let me know.

1 MR. FOREMAN: Your Honor.

2 THE COURT: Yes, sir.

3 MR. FOREMAN: Can we have him move it over here
4 so we can hear it a little better?

5 THE COURT: Will that be all right?

6 MR. WEDEKIND: Yes, sir.

7 THE COURT: And if you would like to move
8 around, you may.

9 (WHEREUPON, a portion of State's Exhibit Number 6
10 was published.)

11 THE COURT: All right. Is that enough, Mr.
12 Foreman?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Anyone else?

15 (No response)

16 THE COURT: All right. Very well. Thank you
17 very much.

18 All right. If you would return to the jury room and
19 continue your deliberations. When you reach a verdict,
20 knock on the door. In both counts.

21 (WHEREUPON, the jury exited the open court at
22 approximately 2:45 p.m.)

23 THE COURT: Any exceptions or requests from the
24 State?

25 MR. WEDEKIND: No, sir.

1 THE COURT: From the Defense?

2 MR. MCELHANNON: No, Your Honor.

3 THE COURT: Very good. All right. We'll stand
4 at ease awaiting to hear the verdict.

5 (WHEREUPON, court stood at recess awaiting the
6 verdicts of the jury.)

7 THE COURT: All right. It's my understanding
8 the jury has reached a verdict. Is there anything from
9 the State before we bring the jury back?

10 MR. WEDEKIND: No, sir.

11 THE COURT: From the Defense?

12 MR. MCELHANNON: No, Your Honor.

13 THE COURT: Very good. Ask the jury to join
14 us.

15 (WHEREUPON, the jury entered the open court at
16 approximately 2:59 p.m.)

17 THE COURT: All right. Let the record reflect
18 the jury is in the jury box.

19 Mr. Foreman, I understand the jury has reached a
20 verdict?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: All right. If you would, please,
23 pass it up to the bailiff for me.

24 (WHEREUPON, the verdict form was handed up to the
25 Court.)

1 THE COURT: Mr. Clerk, if you would please,
2 publish the verdict.

3 Would the Defendant stand?

4 (WHEREUPON, the Defendant and counsel stood.)

5 THE CLERK: Your Honor, this is indictment
6 2013-GS-47-22. The first count of trafficking cocaine
7 conspiracy, "We, the jury, unanimously find this
8 indictment 2013-GS-47-22, the Defendant guilty of a
9 lesser-included offense of trafficking cocaine conspiracy
10 twenty-eight grams or more but less than one hundred
11 grams."

12 Additionally, Your Honor, on the second count, "We,
13 the jury, unanimously find on indictment 2013-GS-47-22,
14 that the Defendant, Timothy Terrell Crosby, is guilty of
15 trafficking in cocaine base ten grams or more but less
16 than twenty-eight grams. Signed Joey R. Turner, Foreman.
17 Mr. Foreman, is this your verdict and the verdict of
18 your entire jury?

19 MR. FOREMAN: Yes, it is.

20 THE COURT: All right. Thank you. All right,
21 if I might ask this. Is the verdict not only of the
22 foreman but the verdict of each of the jurors and it
23 remains your verdict? If so, indicate by raising your
24 right hand.

25 (WHEREUPON, all jurors' right hand was raised.)

1 THE COURT: Very good. Let the record reflect
2 that the jury affirms its verdict.

3 All right. You may be seated.

4 (WHEREUPON, the Defendant and counsel were seated.)

5 THE COURT: All right. Anything from the State
6 before sentencing?

7 MR. WEDEKIND: No, sir.

8 THE COURT: From the Defense?

9 MR. MCELHANNON: No, Your Honor.

10 THE COURT: All right. Are you prepared to go
11 forward?

12 MR. WEDEKIND: Just if I may have one moment,
13 Your Honor.

14 THE COURT: All right. Anything from the jury
15 before ---

16 MR. WEDEKIND: Nothing from the jury, Your
17 Honor.

18 THE COURT: All right. Anything from the
19 Defendant?

20 MR. MCELHANNON: No, Your Honor.

21 THE COURT: All right. Mr. Foreman, ladies and
22 gentlemen of the jury, the Court is never interested in a
23 verdict, only how that verdict is reached. And I noticed
24 that, as I told the alternate that -- what is it? -- it
25 looks like I'm doing everything up here except paying

1 attention, but I've developed, I guess, a certain knack
2 for what -- to sort of keep up with what's going on the
3 courtroom. And I noticed throughout the trial of this
4 case, each of you paid very careful and close attention.
5 And your questions that you requested during the
6 deliberations indicated that. And I am confident that
7 you have given both the State and the Defendant a fair
8 trial and that you reached a verdict that was in
9 conformity with your findings of the fact and the charge
10 on the law. So you have met your responsibilities as
11 jurors well.

12 Now, I wish there was something I could do for you.
13 But this, of course, will complete your service in
14 circuit court here in Anderson for this week. But if
15 you'll remember, on Monday I asked the jury panel, all of
16 the jurors, potential jurors, whether or not they'd
17 served in the last three years. Well, at least you won't
18 have to serve or won't be called for service for another
19 three years.

20 But I do hope that your service has been of some
21 benefit to you. Because if we did not have citizens
22 serving on juries, our system of justice would not be
23 what it is, one that is respected throughout the world.
24 And although it might not be perfect, it's so much better
25 than anything else that's available in these years and

1 this time.

2 All right. With that, I will excuse you for the
3 balance of the week. This, as I said, completes your
4 service, And I thank you very much. All right. Very
5 good. You may be excused.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:04 p.m.)

8 THE COURT: All right. Now, is there anything
9 from the State based on sentencing?

10 MR. WEDEKIND: Your Honor, of course, you've
11 seen the whole trial. And we did go over the RAP sheet
12 of the Defendant. The only thing I would note is he does
13 have a July 17, 1997, prior conviction for trafficking in
14 crack cocaine. I think it is a matter that is proper for
15 consideration in sentencing. It doesn't apply for
16 enhancement purposes to a higher sentencing range.

17 THE COURT: That's what I was thinking, yes,
18 sir.

19 MR. WEDEKIND: Yes, sir. It doesn't apply for
20 that, but I do think it is applicable for your
21 consideration that he has had the benefit of prior
22 conviction, incarceration, and he is back ---

23 THE COURT: How much -- what was the sentence
24 on that one?

25 MR. WEDEKIND: It was conviction for three

1 years. And it was executed on February 4th, 1998. He
2 has minor charges, but I don't think there's any major
3 felonies beyond that, Your Honor. So unless Agent
4 Collier would like to add anything. I think you've seen
5 the case and know what the evidence is about.

6 THE COURT: Agent?

7 AGENT COLLIER: No, sir. I'm good.

8 THE COURT: Very good. Thank you, ma'am.

9 All right. Mr. McElhannon?

10 MR. MCELHANNON: May it please the Court, Your
11 Honor. As you've heard, the prior drug conviction was
12 some -- however many years that is. It was in '98, about
13 sixteen years ago. Your Honor, what I would ask -- and I
14 believe the lesser-included of conspiracy twenty-eight to
15 a hundred is a range of seven to twenty-five.

16 THE COURT: Well, it's a mandatory seven, is it
17 not?

18 MR. MCELHANNON: Yes, sir. Seven to twenty-
19 five, I believe. What I would ask is that Mr. Crosby be
20 treated or fed out of the same spoon as the co-defendants
21 in this case. Mr. Johnson, the -- and I think the State
22 would agree with me that that was the main guy that they
23 were going after in this. He received an eight-year
24 sentence.

25 I was up at the pleas in Oconee before your Honor

1 when Mr. Bernard Freeman, who was actually the one that
2 testimony came out was the main supplier for Mr. Johnson,
3 I believe he actually received a probationary sentence,
4 Your Honor. And he had prior drug offenses too because
5 Your Honor questioned him. Well, "You had ..." you know,
6 "You had done this before. You knew it was wrong." And
7 he said, "Yes, sir." And he still received a
8 probationary sentence as well as his son, Talbert
9 Simpson. It was a combination sale and he actually
10 received probation as well.

11 So I guess what I'm getting at, Your Honor, is the
12 main person in this entire drug conspiracy case received
13 an eight-year sentence. So I would ask Your Honor to
14 give Mr. Crosby the minimum seven-year mandatory sentence
15 on this charge, Your Honor. And as well as the
16 trafficking cocaine base is a first offense, it's a
17 three- to ten-year sentence. And I would ask that it be
18 the minimum on that and that that run concurrent, Your
19 Honor.

20 MR. WEDEKIND: Your Honor, if I may, the only
21 thing I would note that I heard in that argument was that
22 the chief person sending Mr. Johnson, he did cooperate.
23 I'm sure Your Honor took that into consideration when you
24 sentenced him to the eight-year sentence. But, you know,
25 Mr. Crosby, I would note has nothing to cooperate.

1 MR. MCELHANNON: And, of course, my response to
2 that ---

3 THE COURT: Yes, sir.

4 MR. MCELHANNON: --- would be that someone --
5 and I know Your Honor feels the same way, should not be
6 punished more for exercising their constitutional right
7 to a jury trial.

8 THE COURT: Well, also, the Constitution
9 provides for equal protection.

10 MR. MCELHANNON: Yes, sir.

11 THE COURT: But not equal punishment.

12 MR. MCELHANNON: Yes, sir.

13 THE COURT: Each case has to stand on its own
14 merits..

15 All right. Does anyone else want to speak on behalf
16 of Mr. Crosby?

17 MR. MCELHANNON: Your Honor, his mother has
18 been here throughout the trial, but apparently she didn't
19 realize the verdict was in.

20 THE COURT: Let's see. Do we have a sentencing
21 sheet?

22 MR. WEDEKIND: Yes, sir. I'm just finishing it
23 up, Your Honor.

24 THE COURT: All right. Let's get the Defendant
25 and the attorney.

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1 These are going to be separate, count one and count
2 two.

3 All right. If you would, would the Defendant come
4 around?

5 (WHEREUPON, counsel and Defendant approached the
6 bar.)

7 THE COURT: All right. Are you Timothy Terrell
8 or actually Timothy Crosby, also known as Timothy Terrell
9 Crosby?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Mr. McElhannon,
12 anything else?

13 MR. MCELHANNON: Your Honor, as you heard him
14 testify, he's thirty-eight years old. He has, I believe
15 he said, five children, two of which are ---

16 THE COURT: Six children.

17 MR. MCELHANNON: Six children, two of which are
18 less than a week old, twins. Your Honor, there again, I
19 just ask for your mercy on Mr. Crosby and sentence him to
20 the minimum on each one of these indictments and run that
21 concurrent so that when he gets out his boy and girl, who
22 are brand new, will not be that old and still be able to
23 be a father to them, Your Honor.

24 THE COURT: Well, Mr. Crosby, obviously you
25 didn't come in here for a lecture or a sermon. But these

1 offenses are perhaps the most dangerous ones we have in
2 our society today. You know, I sometimes -- but I won't
3 do it here. But sometimes I will ask the ones who are
4 pleading guilty or found guilty to sale or conspiracy to
5 sell crack cocaine or cocaine base, and particularly if
6 they're fathers, when do they want their children to
7 start using crack cocaine or cocaine base. And, in fact,
8 how old is your oldest child?

9 THE DEFENDANT: Seventeen. She starts college
10 this year coming up.

11 THE COURT: Well, then she's definitely one
12 that would be vulnerable as all children are. No matter
13 if they're male or female or anything else, because it's
14 a blight that -- what is it? -- affects our whole
15 society. But let me just ask you, if you saw someone
16 give your daughter or any of your children -- I don't
17 know how old they all are. But they'll all eventually
18 will be out there in society. If you saw someone giving
19 your child -- not selling your child any crack cocaine,
20 but just giving it to them saying, "Oh, this will give
21 you an experience. This will make you feel good. You
22 never felt better in your life," and you found somebody
23 doing that, giving your child crack cocaine, what would
24 you do to them?

25 THE DEFENDANT: I wouldn't do anything to them.

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1 I would ask to speak to my child and try to give them the
2 pros and cons what can happen and what can't happen by
3 taking the type of drugs or whatever they try to give to
4 them.

5 THE COURT: So you wouldn't do anything? Well,
6 that tells me something that -- what is it? -- obviously
7 your first experience with the law, you were, what,
8 twenty years old?

9 THE DEFENDANT: Nineteen.

10 THE COURT: Nineteen? That didn't make much of
11 an experience on you. But just it does -- it just
12 concerns me that our society has this plague, and it's
13 not something that somebody just visits on us. We do it
14 to ourselves. It's the same communities, same families,
15 same -- and it goes all across the socioeconomic
16 population.

17 All right. Anything you'd like to say, Mr. Crosby?

18 THE DEFENDANT: Not at the moment, sir.

19 THE COURT: Mr. McElhannon, were you appointed
20 or retained?

21 MR. MCELHANNON: Appointed, Your Honor.

22 THE COURT: All right. Anything else?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: Indictment number 2013-GS-47-22,
25 count one, it's the sentence of the Court that Timothy

1 Crosby, also known as Timothy Terrell Crosby, be
2 committed to the State Department of Corrections for a
3 term of seven years, plus pay the costs and assessments
4 as applicable. The Defendant will be given credit for
5 any time served by the Department of Corrections.
6 Special conditions is he is to undergo drug and alcohol
7 testing and treatment and substance abuse counseling to
8 include ATU as directed. Pay five hundred dollars to the
9 Clerk of Court during probation. Well, no probation. No
10 probation.

11 Indictment number 2013-GS-47-22, count two. The
12 sentence of the Court that the Defendant Timothy Crosby,
13 also known as Timothy Terrell Crosby, be committed to the
14 State Department of Corrections for a term of three
15 years, plus pay the costs and assessments as applicable.
16 The sentence to run consecutive to indictment number
17 2013-GS-47-22, count one. The Defendant will be given
18 credit for the time served. Also to undergo drug and
19 alcohol testing, treatment and substance abuse counseling
20 as directed.

21 The reason that I give these sentences consecutive,
22 that the conspiracy apparently was ongoing. So it was a
23 separate offense. The one sale apparently in 2013 was a
24 single event. I treated it separately.

25 Good luck to you, sir.

1 THE DEFENDANT: Thank you, sir.

2 MR. MCELHANNON: Thank you, Your Honor.

3 MR. WEDEKIND: Your Honor, if I may for the
4 record for clarity?

5 THE COURT: Yes, sir.

6 MR. WEDEKIND: We did write count two on that,
7 but a technicality under the indictment is count
8 thirteen. So just for the appellate record and clarity
9 of that, although in court we've been referring to it as
10 count one and count two. That's what I wrote at the head
11 of the sentence sheet. But on the indictment ---

12 THE COURT: Well, obviously, I understand that.
13 Of course, you wouldn't want thirteen counts in an
14 indictment on a sentencing sheet.

15 MR. WEDEKIND: Yes, sir. I'm just speaking to
16 the appellate record.

17 THE COURT: All right. So, let's see. Count
18 two is actually count one -- no. Count two is -- yeah.
19 All right. But the ---

20 MR. WEDEKIND: The indictment -- count
21 thirteen, sir.

22 THE COURT: Oh, excuse me. Count 2 is
23 successive to count 1?

24 MR. WEDEKIND: Yes, sir.

25 THE COURT: And that is noted. All right.

1 MR. WEDEKIND: Thank you, Your Honor.
2 (WHEREUPON, the trial ended at approximately 3:15
3 p.m.)

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the day 26th, 27th, and 28th days of January 2015.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 April 3, 2015

15

16 S/ *Renee H. Tollison*

17

18

Circuit Court Reporter

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. 2013GS 47 22

V.

William Angelo Johnson
Clifton Garrett
Samantha Hamby
Demetrice Dogan
Horace Bernard Freeman
Talvus Simpson
Timothy Crosby
Jeffrey Parker

INDICTMENT FOR
UNLAWFUL DRUGS**FILED**

NOV 13 2013

JAMES R. PARKS
CLERK, STATE GRAND JURY

Trafficking Cocaine
S.C. Code § 44-53-370(e)(2)(c)
(1 Count)

Trafficking Cocaine
S.C. Code § 44-53-370(e)(2)(a)
(5 Count)

Distribution of Cocaine Base
S.C. Code § 44-53-375(b)
(7 Counts)

Trafficking Cocaine Base
S.C. Code § 44-53-375(c)(1)
(2 Count)

Trafficking Cocaine Base
S.C. Code § 44-53-375(c)(2)
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina on November 13, 2013, the State Grand Jurors present upon their oath:

COUNT ONE.
TRAFFICKING COCAINE (CONSPIRACY)
S.C. Code Ann. § 44-53-370(e)(2)(c)

That *WILLIAM ANGELO JOHNSON, CLIFTON GARRETT, DEMETRICE DOGAN, HORACE BERNARD FREEMAN, TALVUS SIMPSON, TIMOTHY CROSBY, JEFFREY PARKER* and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville, Pickens, and Anderson counties of South Carolina, from October 24, 2012 until the present, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, 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 one hundred (100) grams or more but less than two hundred (200) of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance

in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TWO
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(a)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about November 8, 2012, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT THREE
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(a)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about November 20, 2012, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid,

abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FOUR
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(a)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about November 27, 2012 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIVE
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(a)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about December 6, 2012 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SIX
TRAFFICKING COCAINE
S.C. Code Ann. § 44-53-370(e)(2)(a)

Freeman

That *HORACE BERNARD SIMPSON, TALVUS SIMPSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about March 7, 2013 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession

or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SEVEN
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)**

That *WILLIAM ANGELO JOHNSON, SAMANTHA HAMBY, and* other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about October 16, 2012 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT EIGHT
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)**

That *CLIFTON GARRETT, and* other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about

January 22, 2013 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT NINE
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)

That *CLIFTON GARRETT*, and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about February 1, 2013 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TEN
TRAFFICKING COCAINE BASE
S.C. Code Ann. § 44-53-375(C)(1)

That *DEMETRICE DOGAN* and other persons whose names are both known and unknown to the State Grand Jury, did in Pickens county of South Carolina, on or about January 15, 2013 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT ELEVEN
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)

That *DEMETRICE DOGAN* and other persons whose names are both known and unknown to the State Grand Jury, did in Pickens county of South Carolina, on or about February 1, 2013 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled

substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TWELVE
TRAFFICKING COCAINE BASE
S.C. Code Ann. § 44-53-375(C)(2)**

That *DEMETRICE DOGAN* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about March 5, 2013 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, 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 but less than one hundred (100) grams of cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT THIRTEEN
TRAFFICKING COCAINE BASE
S.C. Code Ann. § 44-53-375(C)(1)**

That *TIMOTHY CROSBY* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about February 5, 2013 knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise did aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in, actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FOURTEEN
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)**

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about October 24, 2012 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South

Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIFTEEN
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about November 1, 2012 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SIXTEEN
DISTRIBUTION OF COCAINE BASE
S.C. Code Ann. § 44-53-375(B)

That *WILLIAM ANGELO JOHNSON* and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson county of South Carolina, on or about February 28, 2013 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or

purchase, or possesses with intent to distribute, dispense, or deliver cocaine base, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

A True Bill

Richard D. Huggins
FOREMAN

Alan Wilson
ALAN WILSON (CNG)
ATTORNEY GENERAL

FILED

Court 1

STATE OF SOUTH CAROLINA

JAN 28 2015

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

ANDERSON

JAMES R. PARKS

STATE

CLERK, STATE INDICTMENT

CASE#: 2013-GS-47-22

VS.

TIMOTHY CROSBY
 AKA: TIMOTHY TULLOCH CROSBY
 Race: W Sex: M Age: 37
 DOB: 1/17/77 SS#: [REDACTED]
 Address: 781 BELL ST
 City, State, Zip: ANDERSON, SC 29625
 DL# [REDACTED] SID# [REDACTED]

AW#:

Date of Offense: 5 Feb 2015S.C. Code S: 44-53-370(2)(2)CDR Code #: 0280**SENTENCE SHEET***CDL Yes: ☐ No ☒ CMV Yes: ☐ No ☒ Hazmat Yes: ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☒ PLEADSTO: Timothy R. Crosby 28-1008 1st OffenseIn violation of S. 44-53-370(2)(2) of the S.C. Code of Laws, bearing CDR Code # 2359
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
 (CSC w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

James R. Parks 13984 Timothy Crosby Scott McElwain 11961
 Assistant Attorney General SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years.

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ATA

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL	\$	\$ 288.40

Clerk of Court/Deputy Clerk James R. Parks
 Court Reporter: Rene Tallison

Presiding Judge [Signature]Judge Code: 03Sentence Date 1/28/15

FILED

STATE OF SOUTH CAROLINA

JAN 28 2015

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

ANDERSON

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY/CASE#: 2013-GS-47-22

VS.

TIMOTHY CROSBY

AKA: TIMOTHY TERRY CROSBY
 Race: B Sex: M Age: 31
 DOB: 1976 SS#: [REDACTED]
 Address: TRIPLE ST
 City, State, Zip: ANDERSON, SC 29625
 DL#: [REDACTED] SID#: [REDACTED]

AW#: [REDACTED]Date of Offense: 5 FEB 2013S.C. Code §: 44-53-375(1)(a)CDR Code #: 0450

SENTENCE SHEET

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☒ PLEADSTO: TRAFFICKING IN COCAINE BASE 10.28 gramsIn violation of § 44-53-375(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0450

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST-SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted; ☐ Lesser Included Offense;☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation;☐ Negotiated Sentence;☐ Recommendation by the State.

ATTEST:

Assistant Attorney General SC Bar # 13984

Defendant

Attorney for Defendant

SC Bar # 11961WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☒ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or paymentof \$ [REDACTED], plus costs and assessments as applicable; the balance is suspended with probation for [REDACTED] months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2013-GS-47-22 (Count 1)☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP [REDACTED]Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED][REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. [REDACTED]Recipient: [REDACTED]

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ [REDACTED] Beginning\$ [REDACTED] Paid to Public Defender FundOther: [REDACTED]

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$150

\$50-21-114 (BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCJA Surcharge)

\$5

3% to County (if paid in installments)

\$[REDACTED]

TOTAL

\$[REDACTED]

Clerk of Court/Deputy Clerk

Court Reporter: Rene Tolison

Presiding Judge

Judge Code: 1623Sentence Date: 1/28/15

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY CROSBY,

APPELLANT

APPELLATE CASE NO. 2015-000325

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Crosby's directed verdict motion on the conspiracy to traffic cocaine one hundred but less than two hundred grams when the state did not establish that one hundred or more grams had been sold because the state's key witness, William Johnson, could not remember the amount?

STATEMENT OF THE CASE

On November 13, 2013, the State Grand Jury indicted Appellant Timothy Crosby and six others (William Johnson, Clifton Garrett, Demetrice Dogan, Bernard Freeman, Talvus Simpson, and Jeffrey Parker) on the charge of conspiracy to traffic cocaine one hundred grams or more but less than two hundred grams. (Count One). Crosby was also indicted for trafficking cocaine base ten to twenty-eight grams. (Count Thirteen). On January 26 – 28, 2015, Crosby proceeded to trial before the Honorable Alexander Macaulay and a jury. Crosby was represented by M. Scott McElhannon, and the state was represented by assistant attorney generals Larry Wedekind and Joshua Underwood. R. 1. The jury found Crosby guilty of the lesser included charge of conspiracy to traffic cocaine twenty-eight grams or more but less than one hundred grams, and trafficking in cocaine base ten grams or more but less than twenty-eight grams. R. 377, ll. 5 – 19. Judge Macaulay sentenced Crosby to seven years on the conspiracy to traffic cocaine and three years on the trafficking cocaine base which was to run consecutively to the conspiracy to traffic. R. 387, ll. 1 – 25. Crosby's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant Crosby's directed verdict motion on the conspiracy to traffic cocaine one hundred but less than two hundred grams when the state did not establish that one hundred or more grams had been sold because the state's key witness, William Johnson, could not remember the amount.

Agent Casey Collier of the State Law Enforcement Division (SLED) told the trial court that she was with the SLED narcotics unit which was conducting a State Grand Jury narcotics investigation. They were focused on the "Toys R Us" investigation that covered several counties. Toys R Us was an auto repair and paint shop in Piedmont. They had information that drugs were being used and sold out of the Toys R Us auto shop. R. 82, ll. 24 - R. 85, ll. 7.

On February 5, 2013, SLED used a confidential informant (CI), whom they wired with an audio recording device, to go to Toys R Us and purchase an ounce of crack cocaine for one thousand dollars. The CI was Anthony Murray, and SLED provided the one thousand dollars to him. Their target person they hoped to catch was a man named Bernard. R. 85, ll. 8 - R. 88, ll. 25.

The CI Murray was fitted with the audio device and took the money to Toys R Us, but Bernard did not show. Another man whom they did not know sold the drugs to the CI. The man left in a Dodge Ram pickup truck. The CI saw the tag number which he conveyed to Agent Collier. Agent Collier asked Lieutenant Baker, also a team member, to have a deputy stop the Dodge so they could identify the person driving. They identified the driver as Crosby. They arrested Crosby later as they were still trying to arrest the entire group involved. R. 90, ll. 1 - R. 96, ll. 2; R. 103, ll. 1 - R. 106, ll. 25. SLED conducted

approximately ten controlled buys at Toys R Us with CI Murray. R. 115, ll. 21 – R. 116, ll. 14.

Anthony Murray admitted that he was paid one hundred dollars by SLED per drug buy. He was a CI because he had been in trouble with the law. R. 122, ll. 22 – R. 124, ll. 25. On February 5, 2013, he wore a wire and went into Toys R Us and bought one thousand dollars worth of crack cocaine which was an ounce. He did not know the person who sold the drugs to him. However, he did identify Appellant Crosby in court as the person who sold him the drugs. R. 127, ll. 1 – R. 130, ll. 11.

Jeffrey Parker worked at Toys R Us painting cars. The owner was William Angelo Johnson. Ne became aware that Johnson was involved with illegal drugs after Johnson's father died. Johnson would get Jeffrey to call the drug dealer which was usually Bernard or Terrell and tell them when to bring the drugs. Johnson would give Jeff a small amount of cocaine for his use each time. Jeff knew Terrell because he brought cars for Jeff to paint. Jeff identified Crosby in court as Terrell. R. 215, ll. 17 – R. 222, ll. 25. Jeffrey was charged in this and pled guilty. He was on probation at the time of Appellant Crosby's trial. R. 224, ll. 12 – R. 225, ll. 4.

William Johnson testified that he was currently incarcerated because he had pled guilty to the charges in this case. He owned the Toys R Us auto shop. He admitted that he became involved with illegal drugs for the second time in 2012 after his father died. He used alcohol and cocaine. He bought his drugs from Bernard and Tee primarily but others also. He bought various amounts and did buy whole ounces sometimes but was not sure how many times. R. 262, ll. 17 – R. 266, ll. 25.

He would take some cocaine for his use and then sell the rest. He identified Crosby in court as being Tee. He knew him because Crosby had bought cars from him. R. 267, l. 1 – R. 268, ll. 25.

Johnson could not remember how much drugs he bought. He was an alcoholic and heavy drug user at the time. He did not know how many times drug transactions occurred and could not remember the amounts. R. 269, ll. 1 – R. 274, ll. 21. He would start drinking alcohol at 5:30 or 6:00 in the morning and drink during the day. He also used drugs heavily during the same time. R. 279, ll. 14 – R. 280, ll. 24.

Johnson thought it was likely that he bought at least two ounces of cocaine from Bernard, but was not sure if he bought that much from Crosby. He could not remember the numbers. R. 278, ll. 9 – R. 280, ll. 16. When asked if he purchased more than a total of a hundred grams of drugs, he responded that it was possible and most likely but he was not sure. He could not tell a specific number. R. 278, ll. 22 – R. 279, ll. 7.

Jill Clark was the drug chemist with SLED during this investigation. R. 247, ll. 1 – 25. Her test results of the crack submitted was that it was 22.5 grams of crack cocaine. R. 255, ll. 1 – 18.

At the close of the state's case, defense counsel moved for a directed verdict on both charges. The basis for the directed verdict on the conspiracy to traffic was that the state did not prove that one hundred grams or more had been the subject of the trafficking. Counsel argued that William Johnson, the main player in the trafficking, did not remember weights and dates, and was not sure how much he bought. The state argued in terms of ounces sold. An ounce was twenty-eight grams, and Johnson talked about two deals with Crosby and two

with Bernard which would be a total of one hundred twelve grams. R. 285, ll. 19 – R. 289, ll. 22.

Then the state admitted that they were trying to “recollect our memory on it.” Assistant attorney general Wedekind told the court that he wanted to be honest because he did not remember the one hundred grams. He did remember the ounces. The judge denied the directed verdict motion. R. 289, ll. 23 – R. 291, ll. 8.

Appellant Crosby testified that he did take wrecked cars to Johnson’s shop, Toys R Us, to be worked on, and then Crosby would sell them. R. 301, ll. 14 – R. 304, ll. 24. On February 5, 2013, he went to the shop, Toys R Us, driving a white pickup truck. He was probably checking on a part or a vehicle. R. 304, ll. 25- 23. He did not remember seeing the CI Murray because he did not know him before the trial. He did not sell drugs to Murray and did not take any money from him. R. 304, ll. 25 – R. 307, ll. 10. When the deputies stopped Crosby after he left the Toys R Us, they did not find anything on Crosby nor in the car. R. 307, ll. 11 – R. 310, ll. 13.

After the defense rested, defense counsel renewed his motions which were denied. R. 321, ll. 1 – R. 322, ll. 13.

Defense counsel then made a motion for a jury charge on the lesser included offense of conspiracy to traffic twenty-eight to a hundred grams. He argued there was evidence that not one hundred grams were sold. The state concurred with the request and had no objection to the lesser included. The judge agreed to charge the jury on the lesser included offense. R. 322, ll. 14 – R. 323, ll. 25. During the jury charges, the judge did give the charge on the lesser included of conspiracy to traffic twenty-eight grams or more but less than one hundred grams. R. 359, ll. 11 – R. 360, ll. 3.

The jury found Crosby guilty of the lesser included trafficking cocaine conspiracy twenty-eight grams or more but less than one hundred grams. The jury also found him guilty of the second offense of trafficking cocaine base ten grams or more but less than twenty-eight grams. R. 377, ll. 1 – 19.

A directed verdict motion should not be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006)

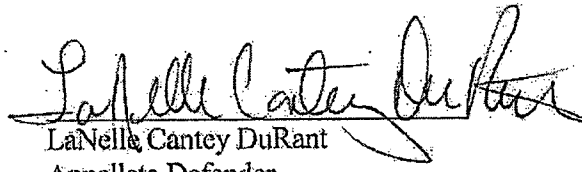
When reviewing the denial of a motion for a directed verdict, if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Supreme Court must find the case was properly submitted to the jury. State v. Harris, 413 S.C. 454, 776 S.E.2d 365 (2015).

The trial judge should have granted the directed verdict motion on the conspiracy to traffic one hundred grams or more but less than two hundred grams because there was not sufficient evidence of the required amount. William Johnson, who was the primary witness in the conspiracy to traffic, could not confirm that the amount sold was at least one hundred grams of cocaine. He vacillated in his testimony on the amount. He never said definitely that the amount was one hundred grams.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for the entry of a directed verdict.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

TIMOTHY CROSBY,

APPELLANT

APPELLATE CASE NO. 2015-000325

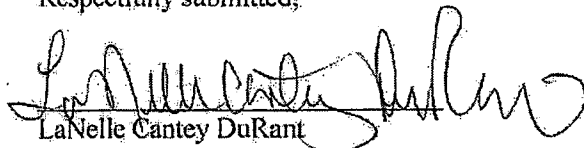
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Crosby states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Alexander S. Macaulay, which was held on January 28, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Timothy Crosby.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY CROSBY,

APPELLANT

APPELLATE CASE NO. 2015-000325

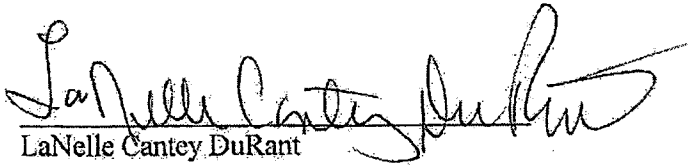
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Sentencing Sheets
- (3) Transcript Jury Selection January 26, 2015
- (4) Trial Transcript January 26-28, 2015

I certify that this designation contains no matter which is irrelevant to this appeal.

December 16th, 2015


LaNelle Cantey DuRant
Appellate Defender

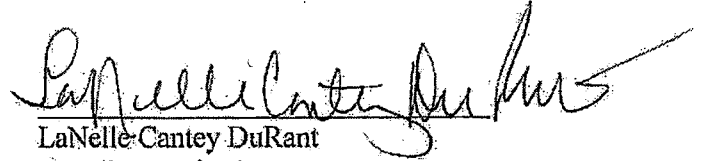
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 16, 2015



LaNelle Cantey DuRant
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

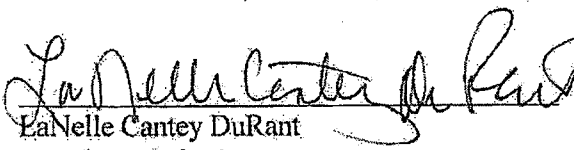
TIMOTHY CROSBY,

APPELLANT

APPELLATE CASE NO. 2015-000325

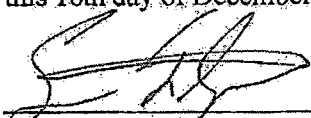
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Joshua R. Underwood, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter and Record on Appeal have been served on Timothy Crosby, #247353 at Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210, this 16th day of December, 2015.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of December, 2015.


Notary Public for South Carolina

(L.S.)

My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Crosby, Appellant.

Appellate Case No. 2015-000325

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2017-UP-080
Submitted January 1, 2017 – Filed February 15, 2017

APPEAL DISMISSED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Assistant Attorney General Joshua Richard
Underwood, all of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

County of Anderson

IN THE COURT OF COMMON PLEAS

2017-CP-04-01545

Timothy Crosby

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

POST-CONVICTION RELIEF

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ANDERSON SC

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COMMON PLEAS AND
GENERAL SESSION
State of South Carolina

A TRUE COPY

JUL 26 2017

Anderson
ANDERSON CLERK OF COURTINSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIVESAY B Corr Inst
C
2. Name and location of Court which imposed sentence Anderson County
Court House
3. Name(s) of co-defendant(s) (if any) William Angelo Johnson, Clifton Garrett
Demetrice Degan, Horace Bernard Freeman, Talvas Simpson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) ~~2013-GS-47-22~~ Trafficking Cocaine Conspiracy
2013-GS-47-00022

- (b) TRAFFICKING COCAINE BASE, 2013-65-47-00022
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JANUARY 26-28, 2015, 7 yrs, Consecutive 3 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina 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. February 15, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody ~~unlawfully~~

- (a) The Trial Court Lack Subject Matter Jurisdiction to Charge
- (b) A k s s e include offense
- (c) Ineffective Assistance of Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment
- (b) See Attachment
- (c) See Attachment

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court?

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO
- N/A
- N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) PCR ISSUES
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. M. Scott McElhannon, P.O. Box 827
Anderson S.C. 29622
- ii. LaNelle Cantey Durant, P.O. Box 11589,
S.C. 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial, Sentencing
- ii. Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

VACATE

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Timothy Crosby, 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.

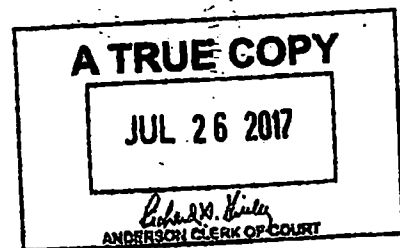
Timothy Crosby

SWORN to and subscribed before me this 17th
day of June, 2017

Katherine Scott (L.S.)
Notary Public

My Commission Expires:

9/25/2022



2017-CP-04-01545

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Timothy Crosby, 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.

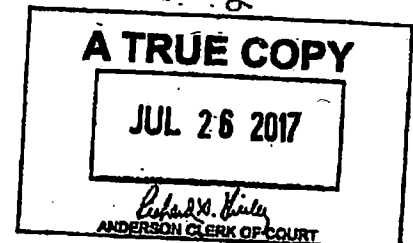
Timothy Crosby
Applicant

SWORN or affirmed to and subscribed before me this

7th day of June, 2017
Katherine Scott
Notary Public

My Commission Expires: 9/25/2022

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL 26 AM 9:26
COMMON PLEAS AND
GENERAL SESSIONS



A:

On Jan. 26-28 in 2013 went to trial for trafficking cocaine (conspiracy) S.C. Code 44-53-370 (a)(2)(c) (100) grams or more but less than two hundred (200) with five other names in the indictment William Angelo Johnson, Clifton Garrett, Demetrice Degan, Horace Bernard, Talvus Simpson, I Timothy Crosby also was charged with trafficking Cocaine base S.C. code 44-53-375 (c) (1), ten grams or more but less than twenty-eight (28) grams.

At the end of trial the judge gave the jury a verdict form of the indicted charge (conspiracy) 100 grams or more but less than 200 grams of cocaine also told the jury if they had reasonable doubt you can convict I Timothy Crosby of lesser include offense of 28 grams or more but less than 100 grams as a lesser include offense which I wasn't indicted for. A variance between a single drug trafficking conspiracy charged in an indictment and several conspiracies proved at trial is a material variance and cannot support the convictions of defendants not involved in the charged conspiracy but only those who are so involved. State v Gunn, 313 S.C. 124, 437 S.E. 2d 75 (1993), by charging the lesser amount as a lesser included offense the court committed reversible error (lack of subject matter jurisdiction) because it allowed the jury to convict I Timothy Crosby of a different, uncharged conspiracy the lesser charge would be an appropriate consideration in defining the scope or object of the conspiracy and it would apply to each alleged conspirator, that was not the case here

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

TIMOTHY CROSBY,
S.C.D.C. No. 247353

Applicant,

V.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-1545

**RETURN, PARTIAL MOTION
TO DISMISS AND MOTION FOR
A MORE DEFINITE STATEMENT**

In response to the post-conviction relief application filed July 26, 2017, Respondent would show this Court:

I.

Timothy Crosby ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of South Carolina Grand Jury Clerk of Court. On November 13, 2013, the State Grand Jury of South Carolina indicted Applicant for Trafficking in Cocaine (Conspiracy) (100 to 200 grams) and Trafficking in Cocaine Base (10-28 grams) (2013-GS-47-0022, Counts 1 & 13) as part of a multi-count, multi-defendant indictment stemming from an investigation into a cocaine trafficking ring.

On January 26, 2015, Applicant proceeded to a jury trial in the Anderson County Court of General Sessions before the Honorable Alexander S. Macaulay, circuit court judge. Michael Scott McElhannon, Esquire, represented Applicant. Assistant Attorney Generals Joshua R. Underwood and Lawrence Wedekind, of the South Carolina Attorney General's Office, prosecuted the case. At the conclusion of the trial, the jury convicted Applicant of the lesser-included offense of Trafficking in Cocaine (28-100 grams) and as indicted of Trafficking in Cocaine Base (10-28 grams). Judge Macaulay sentenced Applicant to seven years imprisonment

for Trafficking in Cocaine (28-100 grams) and a consecutive three years imprisonment for Trafficking in Cocaine Base (10-28 grams).

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender LaNelle Cantey Durant of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following the submission of a brief pursuant to Anders¹ and a *pro se* brief, the South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion and granted counsel's motion to be relieved. State v. Timothy Crosby, 2017-UP-080 (Ct. App. filed February 15, 2017). Applicant filed a *pro se* petition for rehearing and the Court of Appeals denied the petition by written order dated April 24, 2017. Applicant then filed a *pro se* petition for a writ of certiorari to the South Carolina Supreme Court and the Supreme Court denied the petition for a writ of certiorari by written order dated June 1, 2017. The Remittitur was returned to the circuit court on June 12, 2017.

II.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on allegations the trial court lacked subject matter jurisdiction for charging the jury on the lesser-included offense of which he was ultimately convicted and ineffective assistance of counsel. Applicant failed to set forth with any specificity any of the underlying facts giving rise to the allegation of ineffective assistance of counsel.

Attached herewith and incorporated herein are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the appellate records (including the record on appeal), and his application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ Anders v. California, 386 U.S. 738 (1967).

III.

Applicant alleges the trial court lacked subject matter jurisdiction for charging the jury on the lesser-included offense of which he was ultimately convicted. Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless.

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (overruled on other grounds by State v. Gentry, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005)) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). "If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense." State v. Gilmore, 396 S.C. 72, 76-77, 719 S.E.2d 688, 690 (Ct. App. 2011) (citing Dempsey v. State, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005)).

In this case, Applicant was indicted by the State Grand Jury for Trafficking in Cocaine (Conspiracy) (100 to 200 grams) in violation of S.C. Code Ann. § 44-53-370(e)(2)(c). That indictment was true-billed, signed by the foreman of the grand jury, contained contains all the necessary elements of the offense, and further cited the applicable statute. At trial, the evidence presented to the jury could infer the defendant was guilty of the lesser-included offense of Trafficking in Cocaine (28-100 grams) based the testimony of State's witness William Johnson, which included conflicting testimony about the exact amount of drugs involved. Trafficking in Cocaine (28-100 grams) is a lesser-included offense of Trafficking in Cocaine (100 to 200 grams). See State v. Gosnell, 341 S.C. 627, 635, 535 S.E.2d 453, 458 (Ct. App. 2000) ("[W]e conclude that 'Conspiracy to traffic in cocaine in the amount of 400 grams or more' can include

conspiracy to traffic in lesser amounts.”); see also S.C. Code Ann. § 44-53-370(e)(2)(b).

Therefore, the trial court properly instructed the jury on the lesser-included offense. Applicant cannot establish the trial court lacked subject matter jurisdiction to convict him of Trafficking in Cocaine (28-100 grams) because the jury was properly charged with it as a lesser-included offense. Therefore, Respondent moves for summary judgement on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

III.

Applicant alleges ineffective assistance of counsel but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant’s allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her 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 the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (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. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial

counsel's performance was deficient Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. Applicant's allegation of ineffective assistance of counsel is so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return to this allegation. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

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), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent 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), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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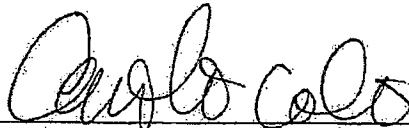
10/26, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2017-CP-04-01545
	)	
TIMOTHY CROSBY, #247353,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Partial Motion to Dismiss and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Linda Vallar Whisenhunt, Esquire
 Linda Vallar Whisenhunt, LLC
 213 South Main Street
 Anderson, South Carolina 29624

DATED this the 26th day of October, 2017.


 Caroline Collins, Administrative Coordinator
 For Respondent

State of South Carolina
County of Anderson

Court of Common Pleas

Timothy Crosby	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2017-CP-04-01545
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

August 30, 2018
Anderson, South Carolina

B E F O R E:

The Honorable R. Scott Sprouse, Judge.

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

Linda Whisenhunt, Esquire
Attorney for the Applicant

Megan Jameson, Esquire
Attorney for the State of South Carolina

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

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- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Indictment	X	

- - -

P R O C E E D I N G S

* * * * *

MS. JAMESON: May it please the Court?

THE COURT: Yes, ma'am.

MS. JAMESON: Your Honor, Megan Jameson on behalf of the State. The next matter is *Timothy Crosby v. The State of South Carolina*, Docket No. 2017-CP-04-1545.

On November 13, 2013, the statewide grand jury indicted Applicant for trafficking in cocaine conspiracy, 100 to 200 grams, and trafficking in cocaine base, 10 to 28 grams, as part of a multi-count, multi-defendant indictment stemming from an investigation into a cocaine and crack trafficking ring in the Upstate.

On January 26, 2015, Mr. Crosby proceeded to a jury trial in Anderson County Court of General Sessions before Judge McCauley. Scott McElhannon represented Mr. Crosby. Assistant Attorney Generals Joshua Underwood and Lawrence Wedekind represented the State.

At the conclusion of the trial, the jury convicted Mr. Crosby of the lesser included offense of conspiracy to trafficking cocaine, 28 to 100 grams, and as indicted for trafficking in cocaine

1 base, 10 to 28 grams. Judge McCauley sentenced him
2 to seven years imprisonment for the conspiracy to
3 traffic 28 to 100 grams and a consecutive three
4 years of trafficking cocaine base.

5 He filed a timely notice of appeal, and an
6 appeal was perfected on his behalf by Public
7 Defender LaNelle DuRant. Following the submission
8 of an Anders Brief and a pro se brief, the Court of
9 Appeals affirmed his convictions in an unpublished
10 opinion and granted Ms. DuRant's motion to be
11 relieved.

12 Applicant then filed a pro se petition for
13 rehearing, which was denied by the Court of Appeals.
14 And then he filed a pro se petition for a Writ of
15 Certiorari to the South Carolina Supreme Court,
16 which was denied by written order on June 1, 2017.

17 The remitter was returned to the Circuit Court
18 on June 12, 2017.

19 On July 26, 2017, he filed this present
20 application for post-conviction relief alleging he
21 was being held in custody unlawfully. Based on
22 allegations, the trial court lacked subject matter
23 jurisdiction to charge the jury on the lesser
24 included offense of which he was ultimately
25 convicted and a general statement of ineffective

1 assistance of counsel. However, he failed to set
2 forth any specificity, any of the underlying facts
3 giving rise to the allegation that counsel was
4 ineffective.

5 The State made its return on October 26, 2017,
6 asking that the allegation of -- the trial court
7 lacked subject matter jurisdiction be summarily
8 dismissed based on a lack of merit to the matter of
9 law. And the State also moved for Mr. Crosby to
10 amend his application to include specific
11 allegations of ineffective assistance of counsel.

12 He has not amended his application. He's
13 represented in this action by Ms. Whisenhunt. And
14 at this time, the State would renew its motion to
15 dismiss the allegation pertaining to subject matter
16 jurisdiction as a matter of law.

17 The Court clearly had subject matter
18 jurisdiction over criminal indictments, and the
19 lesser included trafficking was properly charged to
20 the jury based on the evidence presented. And the
21 State would move to dismiss that allegation as a
22 matter of law.

23 THE COURT: Ms. Whisenhunt.

24 MS. WHISENHUNT: Yes. Your Honor, we object to
25 that motion being granted. We ask that the Court

1 hear all of the evidence prior to ruling on that.
2 We believe that the testimony will show Mr. Crosby
3 was not given notice -- a proper notice. He
4 believes his due process rights were violated, and
5 he would like the opportunity to explain that to the
6 Court, and we would ask that that motion be denied.

7 THE COURT: I'm going to reserve judgment on
8 that motion until I hear the testimony.

9 MS. JAMESON: Thank you, Your Honor. And since
10 no amendment was filed, we just have that general
11 vague allegation, we ask that Ms. Whisenhunt put her
12 allegations on the record. And if the State needs
13 additional opportunity to respond, we ask that the
14 record be left open.

15 THE COURT: All right. Ms. Whisenhunt, are you
16 able to clearly define the issues?

17 MS. WHISENHUNT: Your Honor, I can define the
18 issues to the best of my ability based on my
19 conversations with my client to this point. The
20 principle issue, which I believe is very detailed in
21 his post-conviction relief action with the
22 attachment that he has provided, relates to the fact
23 that the lesser included charge was, in fact,
24 charged. He believes that was improperly done in
25 error and believes that was because of his

1 ineffective counsel that that was allowed to go
2 forward and that also is what led to the conviction
3 where he believes he would've gotten a not guilty.
4 That's the principle issue. I believe that is
5 clearly spelled out in his post-conviction relief
6 application.

7 He has -- there are some ancillary issues that
8 do fall under the umbrella of ineffective assistance
9 of counsel. Those -- I would like to give him the
10 opportunity to tell the Court what those are. I am
11 prepared to ask him questions about those.

12 If at that time the Court believes that -- or
13 the State believes they need additional time to be
14 able to question him or provide evidence, I have
15 no -- no objection to there being a continuance or
16 whatever needs to be done. But I believe at this
17 time, we are prepared to go forward in light of the
18 fact that there's one really principle issue and
19 that relates to the lesser included charge. And the
20 other ancillary issues, he can provide testimony to
21 at the appropriate time.

22 THE COURT: So just to make sure I understand
23 the issue, he was charged with trafficking 100 to
24 200 grams; is that correct?

25 MS. WHISENHUNT: Yes. And, Your Honor, I

1 intend to make as part of the record a copy of the
2 indictment so you can actually see the different
3 counts, if you'd like me to do that at this time.

4 MS. JAMESON: It's already part of the record
5 before the Court.

6 MS. WHISENHUNT: Okay.

7 THE COURT: And -- and so the ineffective
8 assistance of counsel that he's alleging is that his
9 counsel at time -- at the time of the trial
10 requested a lesser included charge?

11 MS. WHISENHUNT: On Count 1, the conspiracy,
12 yes. He had Count 1 and Count 13, and he requested
13 a lesser included on the conspiracy ---

14 THE COURT: Okay.

15 MS. WHISENHUNT: --- because -- and he also
16 made a motion for directed verdict, but there was --
17 there was not sufficient evidence in our view of the
18 100 to 200 grams. There was certainly -- there
19 wasn't sufficient evidence in the lesser either, but
20 my client believes if he hadn't given the State an
21 out essentially, that there would've -- he would've
22 gotten a not guilty on that Count 1.

23 THE COURT: Okay.

24 MS. JAMESON: Your Honor, if I could briefly be
25 heard in regards to the ancillary issue? I believe

1 Ms. Whisenhunt said they fall under the umbrella of
2 ineffective assistance of counsel. The application
3 had case law that clearly states you have to provide
4 specific facts to go forward on these allegations,
5 and so the State would object to any ancillary
6 issues based on a lack of notice.

7 THE COURT: Well, let's just do this, let's
8 proceed with the issue that's been stated. And if
9 there's some new issue that comes up, we -- we can
10 take a recess if necessary.

11 I -- I -- Ms. Whisenhunt, I want to give the
12 State ample opportunity to respond to your client,
13 but on the other hand, this is your client's day in
14 court, and I want him to have a full opportunity to
15 present his case.

16 MS. WHISENHUNT: Yes, sir. I appreciate you
17 balancing that, Your Honor, and being respectful ---

18 MS. JAMESON: Thank you.

19 MS. WHISENHUNT: --- for both of us. Thank
20 you.

21 THE COURT: All right. And I -- and the Court
22 would also note that Mr. Crosby was not represented
23 by counsel when he prepared his petition, so I'm --
24 I'm going to give him great leeway in expressing
25 what he believe his issues are. So let's -- let's

1 go ahead and proceed.

2 MS. WHISENHUNT: Thank you, Your Honor. And
3 while the indictment may be part of the record, I
4 want the opportunity to show it to my client. So if
5 you'd like me to mark it ---

6 THE COURT: Go ahead and mark it.

7 MS. WHISENHUNT: --- that's my next point.

8 THE COURT: Go ahead and mark that exhibit.

9 (Exhibit was marked by the court reporter.)

10 MS. WHISENHUNT: And while she's preparing that
11 exhibit, I'd like to call Mr. Crosby.

12 THE COURT: Mr. Crosby, come around to the
13 witness chair.

14 THE APPLICANT: (Complying.)

15 THE CLERK: If you'd raise your right hand.

16 THE APPLICANT: (Complying.)

17 THE CLERK: Do you solemnly swear or affirm the
18 testimony you're about to give to be the truth, the
19 whole truth, and nothing but the truth?

20 THE APPLICANT: Yes, ma'am.

21 THE CLERK: If you would, please come around
22 and take a seat at the witness stand.

23 THE APPLICANT: (Complying.)

24 TIMOTHY CROSBY,
25 having been produced and first duly sworn as a

1 witness on behalf of the Applicant, then testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MS. WHISENHUNT:

5 Q. Please state your name.

6 A. Timothy Crosby.

7 Q. Mr. Crosby, do you understand that we're here
8 on a post-conviction relief application that you
9 filed?

10 A. Yes, ma'am.

11 Q. And do you understand the purpose of a
12 post-conviction relief?

13 A. Yes, I do.

14 Q. Have we had ample time to talk about that?

15 A. Yes.

16 Q. And do you understand that if you are
17 successful in this hearing, you're not automatically
18 going to be released?

19 A. Yes.

20 Q. And have I explained the risks to you of a
21 post-conviction relief hearing?

22 A. Yes, ma'am.

23 Q. That if the guilty verdicts are set aside, you
24 would have the opportunity to start this process
25 over, correct?

1 A. Yes, ma'am.

2 Q. And you understand that the charges could be
3 dismissed when you started over?

4 A. Yes, ma'am.

5 Q. But you may also be able to negotiate a -- a
6 plea?

7 A. Yes.

8 Q. But at the same time, the State may choose to
9 retry you?

10 A. Correct.

11 Q. And do you understand that you could get more
12 time than the time the trial judge sentenced you to?

13 A. Right.

14 Q. Understanding those risks, do you want to go
15 forward today?

16 A. Yes, ma'am.

17 Q. All right. I'm going to show you what's been
18 marked as Petitioner's Exhibit No. 1. You and I
19 have looked this over. This is the State's original
20 indictment. I'm going to let you have that up there
21 because we're going to refer to it.

22 Were you aware of what your charges were in
23 this case?

24 A. That's in the indictment?

25 Q. That was in the indictment, yes. Were you

1 aware of the charges?

2 A. Yes.

3 Q. You were -- you were provided a copy of that
4 indictment, correct?

5 A. Correct.

6 Q. And you were aware that you had charge one --
7 Count 1 which was a conspiracy, a trafficking
8 conspiracy charge, correct?

9 A. Correct.

10 Q. And you were aware that you also were mentioned
11 in that indictment in Count 13?

12 A. Right.

13 Q. To your knowledge, were those the only two
14 indictments -- only two charges in that indictment
15 that related to you?

16 A. Yes.

17 Q. All right. After you were -- were charged
18 with -- with -- and provided with a copy of that
19 indictment, did you have an opportunity to retain
20 counsel?

21 A. (No response.)

22 Q. Did you get a lawyer?

23 A. The one that was appointed to me, yes.

24 Q. Okay. So you got a court-appointed lawyer.
25 Was that court-appointed lawyer Scott McElhannon?

1 A. Yes.

2 Q. Okay. And he's the only lawyer that
3 represented you over the course of this matter?

4 A. Right.

5 Q. Okay. At some point, I realize you were
6 incarcerated, but did you have the opportunity to
7 meet with Mr. McElhannon and discuss this case?

8 A. (No response.)

9 Q. Did he come to the jail and meet with you?

10 A. No. I bonded out.

11 Q. You bonded out. Okay. Did he provide you with
12 the discovery in the case?

13 A. No.

14 Q. Okay. At some point, did he send you the
15 discovery in the case?

16 A. Well, after I -- after I got sentenced, I asked
17 for my motion and that's how I got it.

18 Q. Okay. And you understand, you use the word
19 "motion." I'm using the word "discovery." He made
20 a motion. He got discovery and that was given to
21 you; is that correct?

22 A. Correct.

23 Q. Okay. So we're talking about the same thing?

24 A. The same thing.

25 Q. Okay. You had the opportunity to review that?

1 A. Yeah.

2 Q. And did you meet with him to discuss your
3 charges?

4 A. (No response.)

5 Q. Did you meet with him to discuss ---

6 A. Before I got incarcerated?

7 Q. At any time, whether you were incarcerated or
8 after you bonded out, did you have the
9 opportunity ---

10 A. After I bonded out, yes.

11 Q. Okay. And did you discuss the elements of the
12 charges against you, the elements of those crimes?

13 A. Not really the elements, but how much time they
14 actually carried.

15 Q. Okay. So he -- he reviewed with you how much
16 time both of those charges would carry?

17 A. Right.

18 Q. At one point, did you get a plea offer in this
19 case?

20 A. Maybe about three and a half weeks before trial
21 maybe, something like that.

22 Q. Okay. But did you make the decision in
23 consultation with Mr. McElhannon to go forward with
24 this trial?

25 A. Yes.

1 Q. Let's talk -- talk specifically about the
2 trial. Now, it's my understanding that there were
3 things that happened in the trial that you -- you
4 weren't satisfied with; is that correct?

5 A. Correct.

6 Q. Okay. In part, there was an audio recording
7 that was entered into evidence at trial. Do you
8 remember that?

9 A. Yes.

10 Q. Okay. Had you listened to that audio recording
11 prior to trial?

12 A. Yes, I did.

13 Q. And at -- and was the -- I don't remember
14 exactly how long the audio recording was, but at
15 trial was there only a small portion of the -- the
16 transcript of that audio recording played for the
17 jury?

18 A. It was played about 40 seconds, but actually
19 the CD was like an hour.

20 Q. Okay.

21 A. Something like that.

22 Q. And is it your belief that the entire audio
23 should've been played for the jury?

24 A. Correct.

25 Q. Okay. And do you believe that Mr. McElhannon

1 should've insisted that the entire thing be played
2 for the jury?

3 A. Yes.

4 Q. All right. Also, in related -- in relation to
5 that audio recording, you also believe that -- that
6 the voices on that audio recording were difficult to
7 identify; is that correct?

8 A. Correct.

9 Q. Okay. What do you believe your attorney
10 should've done in relation to that -- to identify
11 those audio ---

12 A. Well, he could've asked ---

13 Q. --- recording?

14 A. --- for expert testimony or hire somebody to
15 see, you know, to detect whose voices are whose on
16 the CD.

17 Q. Okay. And you believe by failing to hire an
18 expert in voice identification that he didn't
19 provide you effective assistance of counsel?

20 A. That's part of it, yes.

21 Q. Okay. Another issue that you have raised in
22 our discussions is related to the confidential
23 informant. The confidential informant only IDs you
24 in court; is that correct?

25 A. Correct.

1 Q. And you have issue with the fact that he didn't
2 ID you prior to that?

3 A. Correct.

4 Q. And you believe that your attorney should've
5 done something to object to his testimony coming in
6 because of that?

7 A. Right.

8 Q. Okay. All right. Now, I want to turn to this
9 less -- this idea of the lesser included offense,
10 really which is what I represent to the Court which
11 I believe is at the crux of -- of your PCR petition.
12 During the course of the trial, there was a lot of
13 testimony about weight; is that correct?

14 A. Correct.

15 Q. From various witnesses, there was testimony
16 about weight of drugs?

17 A. Right.

18 Q. And I'll ask Mr. McElhannon more about that.
19 And based on the -- what Mr. McElhannon presented
20 was lack of evidence, he provide -- he made a motion
21 for directed verdict. Now, were you aware he was
22 going to make the motion for directed verdict?

23 A. No, ma'am.

24 Q. Did he consult with you at all about the motion
25 for directed verdict?

1 A. No, ma'am.

2 Q. Were you in the courtroom when the directed
3 verdict motion was made?

4 A. When he asked for it at that time, yes, when he
5 asked for it.

6 Q. Okay. Do you believe he should've taken
7 additional steps related to the directed verdict
8 motion once it was denied?

9 A. I think he should object to the judge when he
10 said he would do it for the lesser under Rule 19.

11 Q. Okay. So let's turn to that. Did you discuss
12 with Mr. McElhannon the fact that he was going to
13 request that the judge charge that lesser included
14 offense?

15 A. No, ma'am.

16 Q. Okay. So at no point either at the time of the
17 directed verdict motion or prior to charging of the
18 jury, did you have a conversation with
19 Mr. McElhannon about the benefits or risks of doing
20 the lesser included?

21 A. No.

22 Q. If Mr. McElhannon had asked for your input
23 about charging -- asking that the lesser included
24 charge be charged to the jury, what would your
25 response have been?

1 A. No.

2 Q. Would you -- was that "no"?

3 A. No.

4 Q. No. So you would've objected to him doing
5 that?

6 A. Yes.

7 Q. And is that because you believe something --
8 the outcome would've been different if the lesser
9 included hadn't been charged?

10 A. Right.

11 Q. If the lesser included hadn't been charged, the
12 Court would only have charged the Count 1 as it is,
13 the 100 to 200 grams. And what do you think
14 would've happened on that count?

15 A. The verdict might've been not guilty because I
16 wasn't involved in the conspiracy, 100 to 200 grams.

17 Q. Okay. So, essentially, you believe by charging
18 the lesser included, you gave the jury an out to
19 find you guilty of something else?

20 A. Yeah, they probably felt I was guilty of
21 something.

22 Q. Something that was never in your original
23 indictment?

24 A. Never in my indictment.

25 Q. Something that was never shown to you?

1 A. (Nonverbal response.)

2 Q. Something that was never discussed with you?

3 You have to speak up.

4 A. Correct.

5 MS. WHISENHUNT: Correct. Okay. I have no
6 further questions at this time. You can answer any
7 questions the State has.

8 THE COURT: All right. Ms. Jameson.

9 MS. JAMESON: May it please the Court?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. JAMESON:

13 Q. Mr. Crosby, when was Mr. McElhannon appointed
14 to represent you?

15 A. 2015 -- no. It was 2014.

16 Q. And you testified before that you bonded out
17 before trial, correct?

18 A. Right.

19 Q. And you said you did meet with him. How many
20 times did you meet with him before trial?

21 A. Maybe twice.

22 Q. Two times?

23 A. Yes.

24 Q. How long were those meetings?

25 A. Less than an hour.

1 Q. What did you discuss at those meetings?

2 A. Well, the first time, me and him bumped heads
3 because he said I actually got arrested for one of
4 them. And I told him if I got arrested for one of
5 them, there should be a mugshot or something saying
6 that I got caught with drugs. So that was our first
7 discussion.

8 The second discussion was about, "Okay. You
9 didn't get caught with anything, but these people
10 are saying these things about you."

11 Q. When you say you didn't get caught with
12 anything, you mean you weren't arrested with any
13 drugs on you?

14 A. Right. That's where we bumped heads because
15 when I met him the first time, he said I got caught
16 with drugs on me personally.

17 Q. You weren't arrested right after the CI buy
18 here, correct? It was a few months later at least?

19 A. I think so, yeah.

20 Q. Because you were pulled over by law enforcement
21 after this drug buy on February 5, 2013, correct?

22 A. Correct.

23 Q. And officers testified they just gave you a
24 warning for a traffic violation, correct?

25 A. Correct.

1 Q. And you testified during your trial, right?

2 A. Correct.

3 Q. And when you testified, you told the Court and
4 the jury that officers had searched your car and
5 searched your person and didn't find anything on
6 you, right?

7 A. Correct.

8 Q. And let you go?

9 A. (Nonverbal response.)

10 Q. Okay. And so those two times, all you
11 discussed was that you weren't arrested with
12 anything on you. That's the only thing you and
13 Mr. McElhannon discussed before your trial?

14 A. No. That's the first time we discussed that.

15 The second time we discussed about the
16 allegations that's in the indictment, that people
17 was talking about me.

18 And I think we met one more time that -- and it
19 was about the trial, are we going to trial.

20 Q. So you met three times?

21 A. Yes. Right before we went to trial.

22 Q. And what did you discuss in that meeting right
23 before trial?

24 A. Well, we discussed are we going to trial and
25 the plea is not on the table anymore, and that's all

1 I can remember at this time.

2 Q. Okay. You testified on direct that you were
3 never provided with a copy of discovery, right? You
4 didn't get a copy of your motion?

5 A. Until I was incarcerated after the trial.

6 Q. But you did review the audio of the undercover
7 drug buy with your attorney, right?

8 A. For 45 seconds, maybe 30 seconds.

9 Q. But you told the Court and the jury when you
10 testified at trial that you had reviewed the
11 full video -- the full audiotape?

12 A. Never -- never viewed the whole CD at all.

13 Q. And your testimony today is that only 45
14 seconds were played for the jury?

15 A. That's correct.

16 Q. But the record reflects that over four minutes
17 was played for the jury twice?

18 A. Well, they played it numerous times. You add
19 it up, it might come up to that, but it was only
20 played 45 seconds.

21 Q. Okay. So your testimony today is only 45
22 seconds was played?

23 A. About 45 seconds.

24 Q. And the entire CD was introduced as a State's
25 exhibit, right?

1 A. Right.

2 Q. And there was some discussion with the Court
3 that the jury could listen to the entire CD if they
4 wanted, correct?

5 A. I don't know that, but I don't know if they
6 listened to the whole thing or not, but I doubt it.

7 Q. But one of your allegation is that
8 Mr. McElhannon should've played the entire tape for
9 the jury?

10 A. Yes.

11 Q. Did you review any other discovery materials
12 other than the audiotape with Mr. McElhannon before
13 trial?

14 A. Don't recall. That's the only thing we
15 discussed is the CD.

16 Q. He didn't show you any incident reports or CI
17 statements or anything like that before trial?

18 A. No.

19 Q. Did -- did he discuss with you that because
20 this was a statewide grand jury case, there was a
21 protective order in place regarding the discovery?

22 A. No.

23 Q. He never told you that you couldn't take a copy
24 of any of the materials outside of his office based
25 on an order in place?

1 A. No.

2 Q. What portion of the 45 seconds of the audio did
3 you listen to?

4 A. Only portion that they played was actually
5 somebody asking for drugs and asked what was the
6 weight of it, and you heard footsteps going to the
7 car and that was it.

8 Q. That's the portion you said was played for the
9 jury. What did Mr. McElhannon play for you?

10 A. The same thing.

11 Q. Only 45 seconds of the over an hour long audio
12 recording?

13 A. That's the only part they practically played.
14 If it -- if it's not that particular part, maybe --
15 it might've been 20 seconds before that, but that's
16 the only thing he played.

17 Q. That's all he played for you. Okay. Do you
18 recall giving Mr. McElhannon any witnesses you
19 wanted him to investigate?

20 A. Yes.

21 Q. What witnesses did you tell him about?

22 A. Phillip Wall.

23 Q. And Phillip Wall was called as a defense
24 witness, wasn't he?

25 A. Right.

1 Q. At your request?

2 A. Right.

3 Q. And he identified you as present in the Toys R
4 Us auto shop during this drug transaction, correct?

5 A. Right.

6 Q. He ---

7 A. He was there also.

8 Q. Pardon?

9 A. He was there also.

10 Q. So you put up a witness who told the jury you
11 were present while this transaction was taking
12 place, correct?

13 A. I asked for that witness because I heard his
14 voice on the CD and I knew him.

15 Q. And you heard your voice on the CD, right?

16 A. No. I heard somebody speaking, which was
17 Phillip Wall.

18 Q. And Phillip Wall said you were there?

19 A. Yes.

20 Q. So why did you need a voice expert if you
21 called your own witness who said you were there, and
22 you told the jury you were there?

23 A. Because the person doing the transaction wasn't
24 actually me.

25 Q. So you don't deny you were present when this

1 transaction allegedly took place?

2 A. No, I don't.

3 Q. You testified you got a plea offer three and a
4 half weeks before trial. What was that for? What
5 term of years?

6 A. Five years.

7 Q. Had you received any plea offers before that?

8 A. No.

9 Q. Did you receive any other trial -- plea offers?

10 A. No.

11 Q. Do you recall a three- to ten-year offer that
12 was made during pretrial?

13 A. No.

14 Q. This isn't your first drug conviction, right?

15 A. No.

16 Q. Had you pled guilty before or gone to trial?

17 A. (No response.)

18 Q. In your prior drug conviction, did you plead
19 guilty or did you exercise your right to a jury
20 trial?

21 MS. WHISENHUNT: Your Honor, I object. This
22 is ---

23 THE APPLICANT: I just don't understand.

24 MS. WHISENHUNT: --- whether this is relevant
25 to the PCR conviction.

1 MS. JAMESON: It's ---

2 THE COURT: Overruled.

3 BY MS. JAMESON:

4 Q. Did you plead guilty or go to trial? I didn't
5 hear you.

6 A. I pled guilty.

7 Q. You testified that you and Mr. McElhannon
8 reviewed the time each charge is carried. Did he
9 explain to you that the trafficking conspiracy
10 charge for 100 to 200 grams carried a mandatory
11 minimum of 25 years?

12 A. Yes.

13 Q. So you understood if you were convicted of that
14 weight of the conspiracy, you are looking at least
15 25 years in prison?

16 A. Correct.

17 Q. And with the lesser included offense, that
18 significantly reduced your exposure to a seven-year
19 mandatory minimum, correct?

20 A. Yeah, I understand what you're saying about the
21 lesser.

22 Q. Did you discuss that with Mr. McElhannon?

23 A. No.

24 Q. You never discussed lesser included offenses?

25 A. No.

1 Q. At any time, during those three meetings?

2 A. No time.

3 Q. And no time during trial?

4 A. No.

5 Q. Were you surprised when he asked the Court to
6 charge the lesser included offense?

7 A. Yeah, kind of, but I didn't know what it was.

8 MS. JAMESON: Your Honor's indulgence.

9 BY MS. JAMESON:

10 Q. And so your testimony is you wanted a -- a
11 voice recognition expert to identify who was -- who
12 was the actual person discussing the drug deal and
13 the money in the audio recording, right?

14 A. Some parts of it, yes.

15 Q. Have you had a voice recording expert listen to
16 the audio in preparation for this hearing today?

17 A. Excuse me?

18 Q. Have you retained an expert to listen to the
19 videotape for this hearing today?

20 A. No.

21 Q. Your main allegation is pertaining to the
22 conspiracy to traffic conviction, correct?

23 A. Correct..

24 Q. Are you challenging the trafficking in cocaine,
25 10 to 28 grams?

1 A. Trafficking conspiracy, yeah.

2 Q. So you don't have any problems with your
3 trafficking -- trafficking in crack conviction?
4 You're not challenging that in this application?

5 A. Well, at this time we had discussed it. It is
6 more better just to concentrate on that conspiracy.

7 Q. Okay. So you're concentrating just on the
8 conspiracy today?

9 A. Yes.

10 MS. JAMESON: Moment's indulgence.

11 No further questions, Your Honor.

12 THE COURT: Ms. Whisenhunt, any redirect?

13 REDIRECT EXAMINATION

14 BY MS. WHISENHUNT:

15 Q. Just a few questions to redirect to clarify
16 about the Toys R Us and the Phillip Wall.

17 Where this incident took place, as the State
18 mentions Toys R Us, can you explain to the Court
19 just so it's -- it's clear? What is Toys R Us?
20 It's not the toy store?

21 A. Toys R Us is -- Toys R Us is a place where you
22 can get cars like wrecked and you can actually
23 purchase them or you can be fixing on a car and you
24 can actually like get it painted to sell.

25 And, also, you can buy a cars that's already

1 fixed up. That's what -- that's what Toys R Us is.

2 Q. And is it true over the years you have done
3 business with them as it related to cars?

4 A. Right.

5 Q. So it's not unusual for you to be at Toys R Us?

6 A. No.

7 Q. So you don't deny that you were there ---

8 A. No.

9 Q. --- working a car deal?

10 A. No.

11 Q. And Mr. Wall is who the State asked you about.
12 He's somebody that you saw at Toys R Us on that day?

13 A. Well, I knew his voice because he used to date
14 my aunt. I knew his voice then. I kind of like put
15 two and two together and kind of when I seen him, I
16 asked. But, yes, he was -- he was there.

17 Q. Okay. So on this tape, there were several
18 voices because there were a lot of people there?

19 A. Yeah, there were some. Yes.

20 Q. Okay. So as the State questioned you, you
21 don't deny that you were there and that you saw
22 Mr. Wall and that's why you called him as a witness?

23 A. Right.

24 Q. But your issue is with the portion of the tape
25 that was played repeatedly to the jury?

1 A. Yes.

2 Q. And how that -- those voices were identified?

3 A. Right.

4 MS. WHISENHUNT: Okay. I have no further
5 questions.

6 THE COURT: Thank you, Mr. Crosby. You can
7 step down.

8 THE APPLICANT: (Complying.)

9 MS. WHISENHUNT: Your Honor, we would wish to
10 call Mr. McElhannon.

11 THE WITNESS: (Approaching.)

12 THE CLERK: Do you solemnly affirm or swear
13 that the testimony you're about to give is going to
14 be the truth, the whole truth, and nothing but the
15 truth?

16 THE WITNESS: I do.

17 THE CLERK: If you would, please come around
18 and take a seat at the witness stand.

19 THE WITNESS: (Complying.)

20 M. SCOTT MCELHANNON,
21 having been produced and first duly sworn as a
22 witness on behalf of the Applicant, testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MS. WHISENHUNT:

1 Q. Please state your name.

2 A. Scott McElhannon.

3 Q. And, Mr. McElhannon, did you have occasion to
4 represent Timothy Crosby?

5 A. I did.

6 Q. And can you tell me the nature of that
7 representation as it relates to this PCR?

8 A. I was -- I was appointed by the statewide grand
9 jury to represent him in a drug conspiracy case, and
10 I believe I was appointed probably in January of
11 2014. It could've actually been maybe the latter
12 part of 2013, but I actually received the case in
13 January of 2014.

14 Q. And you've heard Mr. Crosby's testimony about
15 the times you've met, some of the things you've
16 discussed. Do you recall meeting with him multiple
17 times?

18 A. I do. And, actually, I have -- that's why I
19 brought my file up here because I think he first
20 stated we only met two times and then he said three.
21 But I just reviewed my -- my file on the dates we
22 met, and we met at least six times.

23 Q. Okay. And during the course of those six
24 times, did you have the opportunity to review with
25 him the accounts in the indictment, which is marked

1 as Petitioner's Exhibit 1? Did you review those --
2 did you review those counts with him?

3 A. I did.

4 Q. And in particular, what two counts related to
5 Mr. Crosby?

6 A. I believe Count 1 and 13, I believe. Yes.
7 Count 1 and Count 13.

8 Q. And as for Count 1, it specifically indicated a
9 conspiracy count; is that correct?

10 A. That's correct.

11 Q. And what was the weight that it alleged
12 Mr. Crosby had been involved in a conspiracy with?

13 A. 100 to 200 grams.

14 Q. Was he ultimately convicted of that?

15 A. No.

16 Q. Was he convicted of, in fact, a lesser
17 included?

18 A. He was.

19 Q. During the course of the trial, there are
20 numerous times in the transcript that witnesses
21 testified as to the weight of the drugs.

22 Based on your professional opinion, did you
23 believe there was sufficient evidence to establish
24 that Mr. Crosby had involved in conspiracy of over
25 100 grams?

1 A. I thought there would be a real possibility
2 that the jury might find him guilty of that, yes.

3 Q. Did you go and make a directed verdict motion?

4 A. I did. I always do in criminal trials.

5 Q. And was that motion granted or denied?

6 A. It was denied. Actually, I think I made
7 numerous motions. And I renewed all of them at the
8 end of trial, and they were all denied.

9 Q. How did you come about making the decision to
10 ask for a lesser included charge?

11 A. Well, because I knew what the sentence range
12 was on 100 to 200 grams was a mandatory 25 years,
13 after listening to all the testimony and more than
14 one person saying that an ounce was sold five to six
15 to seven times, you know, the weight was adding up.
16 You never know what a jury is going to do; however,
17 I didn't want to subject Mr. Crosby to the jury
18 saying, "Well, we need to find him guilty. We're
19 going to find him guilty of 25 -- of the 25-year
20 statute." So I actually made the motion for a
21 lesser included of 28 to 100, which carried 7 to 25.

22 Q. Did you discuss that with Mr. Crosby?

23 A. Specifically, I do not remember, but typically
24 I discuss everything with the client before I -- I
25 do it. And I think at that point in the trial,

1 Judge McCauley was probably talking with the jury,
2 because the case was pretty much over, and telling
3 them what the sequence of events was going to be.

4 Then I probably would have talked to him at
5 that point at the table, so typically I do. I don't
6 normally make -- except for objection motions, I
7 don't normally make motions in a trial without
8 telling my client what I'm going to do.

9 Q. If he had asked you not to request the lesser
10 included be charged, would you have ---

11 A. I would. I probably would've done what he
12 asked me to do; however, I would've advised him
13 against it. I still think that was the right trial
14 strategy.

15 And I will say that we had discussed lesser
16 included offenses. I think he said we had not
17 because his initial plea offer was in April of 2014,
18 which he declined. And they were allowing -- or
19 going to allow him to actually plead to a
20 trafficking 10 -- excuse me -- trafficking 28 to
21 100, which is what he initially got or eventually
22 got.

23 They were going to allow him to plead to that;
24 however, the sentence recommended -- the sentence
25 range was going to be 10 to 15 years, and that was

1 if he would cooperate with them in any other trials.
2 He -- he declined that. He basically blew that off
3 and said, "I'm not doing 10 to 15 years."

4 Q. So it's your testimony that during the course
5 of the discussion, that offer, you would've had to
6 talk to him about the issue of lesser included?

7 A. Absolutely.

8 Q. But as it relates to trial, you don't
9 specifically remember ---

10 A. No.

11 Q. --- discussing ---

12 A. I do not.

13 Q. --- your request for the charge?

14 Over the course of representing him, did you
15 review the audio recording with him?

16 A. We did. Yes, I did.

17 Q. Did you give him the opportunity to listen to
18 the whole recording?

19 A. He was in my office for hours, you know,
20 several times for over an hour, so I -- I would
21 imagine we listened to most of it until he didn't
22 want to hear any more.

23 Matter of fact, I will say that on -- I had
24 made a note in -- in my file because I thought it
25 was fairly important that one Saturday when we -- I

1 was getting him ready for trial, I had called
2 Mr. Crosby on the phone and told him that he needed
3 to listen to something.

4 And he called me back and left a message at
5 like eleven o'clock that night, Saturday night, on
6 my office voice mail saying he had just received my
7 message.

8 I called -- I went back in on Sunday to work
9 Sunday morning some more on the trial and called
10 him, and he said he didn't need to come to my office
11 to listen to anything else.

12 Q. Was there a second CD that you would've wanted
13 him to listen to?

14 A. Probably. There were -- yeah, there were at
15 least two CDs in the trial.

16 Q. And that particular Sunday, was that the date
17 that his wife had just delivered twins?

18 A. I'd have to look. It could've been. I know
19 she was due.

20 Q. Going back to the CD audio recording that was
21 admitted at trial. There is a small portion of the
22 trial, but there's been test -- a small portion of
23 the audio that there's been testimony of. Did you
24 discuss with him at any time having some kind of
25 expert come in and listen to those voices ---

1 A. No.

2 Q. --- and why are they not?

3 A. No. Because he didn't deny that that was his
4 voice on there.

5 And Phillip Wall, I got him in the office and
6 let him listen to it. And he said that was him and
7 Timothy Crosby on there.

8 Q. But they both certainly deny that they weren't
9 the ones discussing the drugs, right?

10 A. Well, Mr. Crosby denied it the whole time.
11 Sure, he's never admitted to any involvement with
12 drugs.

13 Q. So that portion of the tape, if you knew the
14 State was going to allege it was his voice, why
15 didn't you have an ---

16 A. It was never discussed.

17 Q. --- audio expert?

18 A. It was never discussed. The CI, Anthony
19 Murray, as soon as he made the buy, he left and he
20 radioed the SLED agent and said, "The man that I
21 just bought the drugs from is getting into a white
22 Dodge pickup truck," and that's how they followed
23 Mr. Crosby.

24 You had a positive ID from the CI, so, you
25 know, he put himself there. Phillip Wall put

1 himself there or put Mr. Crosby there. And then the
2 CI confirmed that that's the man who I just bought
3 the drugs from and getting into that white pickup.
4 And then they stopped him down Clemson -- down 85.

5 Q. Mr. Crosby testified and believes that you
6 could've done more to keep the CI's testimony out
7 because he didn't ID Mr. Crosby until the day of
8 trial. Was there anything else that you could've
9 done?

10 A. No.

11 Q. In retrospect, do you think the -- the -- the
12 lesser included charge gave the jury an out?

13 A. No. I think it gave them an option, but I
14 think that they -- to be honest, that they were
15 going to convict him of 100 to 200 grams conspiracy,
16 based on the testimony of the other State's
17 witnesses.

18 MS. WHISENHUNT: No further questions.

19 THE COURT: Ms. Jameson.

20 MS. JAMESON: Thank you, Your Honor. May it
21 please the Court?

22 CROSS-EXAMINATION

23 BY MS. JAMESON:

24 Q. Mr. McElhannon, was this your first experience
25 with a statewide grand jury case?

1 A. No, ma'am.

2 Q. You'd previously been appointed to represent
3 clients?

4 A. Yes, ma'am.

5 Q. Was this case subject to a protective order
6 regarding discovery as is the standard practice in
7 statewide grand jury cases?

8 A. It was.

9 Q. Did you discuss that with Mr. Crosby?

10 A. I didn't make a note of it, but I'm sure I told
11 him why I couldn't give him the case file.

12 Q. Did you review discovery with him in your
13 office?

14 A. Yes.

15 Q. In full?

16 A. Yes.

17 Q. And I believe you testified you listened to the
18 audio for over an hour, and you think you probably
19 listened to most of the audio?

20 A. He was in my office, like I said, at least six
21 times. And most of those times, he was there for
22 over an hour, yes.

23 Q. And your testimony was there might've been two
24 different disks. These charges pertain to one CI
25 buy for the trafficking in crack, correct?

1 A. Correct.

2 Q. And then the conspiracy was based on a Bernard
3 and a Timothy Johnson and a Jeffrey Parker all
4 buying and selling drugs in the Toys R Us auto shop,
5 correct?

6 A. I think it was Angelo Johnson, yes.

7 Q. I think it's William Angelo ---

8 A. Yes.

9 Q. --- but he goes by Angelo? But this was the
10 only recorded transaction with a confidential
11 informant, correct?

12 A. Correct.

13 Q. So there might've been two different audios,
14 but it was of the same transaction, correct?

15 A. Correct.

16 Q. You listened to the audio?

17 A. Oh, yes. Sure.

18 Q. Did it sound like Mr. Crosby on the tape?

19 A. It did to me.

20 Q. Why -- why did it sound like him?

21 A. Well, as you can hear him on the stand today,
22 he has a very distinct voice.

23 Q. And he asked you to call Phillip Wall who
24 placed him at the Toys R Us auto shop on February 5,
25 2013, during the transaction, correct?

1 A. That's correct.

2 Q. And he admitted he was there?

3 A. Yes.

4 Q. Did he ever give you any other witnesses other
5 than Phillip Wall to investigate?

6 A. No.

7 Q. And he never gave you an alibi because he
8 admitted he was there?

9 A. Yes. Matter of fact, his driver's license,
10 when they stopped him in the white pickup truck, I
11 had his driver's license record and all that
12 confirmed. We think that that was, in fact, him
13 and, you know, eventually he told me, "Yeah, I was
14 driving a white pickup truck."

15 He didn't tell me that at first. When I
16 started the case, he told me about a couple --
17 several month -- months maybe, two months before the
18 trial that, "Oh, yeah, now I remember. They did
19 stop me in a -- when I was driving somebody's white
20 pickup truck."

21 Q. Can you describe for the Court the stop of
22 Mr. Crosby?

23 A. They pulled him over, I believe, for faulty
24 equipment. And it was a deputy, and he basically
25 asked Mr. Crosby, you know, did he mind stepping out

1 of the vehicle and searching the vehicle.

2 Mr. Crosby said, "Well, it's not my truck, but,
3 yeah, I don't mind you searching it."

4 There was -- there's some discrepancy because
5 Mr. Crosby says that it was a full search of his
6 person. Made him take his shoes off, pockets out
7 and everything else.

8 The deputy, I think it was Brinston (phonetic)
9 was his name. Deputy Brinston testified that, "No,
10 I didn't do any of that. I didn't make him take his
11 shoes off. I didn't don't this. I didn't do that."

12 Quite frankly, the deputy, to me, his
13 credibility was not very good, but they did do the
14 stop. They didn't find anything on Mr. Crosby, or
15 he says they didn't find anything on him. That
16 could've been just a stop to identify Mr. Crosby as
17 what the State alleged that they didn't want to
18 actually arrest him at that time. They just wanted
19 to find out his actual identity.

20 And when he presented his driver's license and
21 it was Timothy Crosby, then they knew who they were
22 dealing with. And they wrote him, I think, a
23 warning or citation and let him go.

24 Q. And several officers testified during this
25 case, correct?

1 A. Yes.

2 Q. The SLED officer who was the chief
3 investigator, as well as local law enforcement?

4 A. Yes.

5 Q. And numerous witnesses testified the stop was
6 just to identify Mr. Crosby, not to arrest him, not
7 to search for drugs?

8 A. That's correct.

9 Q. And this is documented funds used to purchase
10 the drugs, correct?

11 A. Yes. \$1,000.

12 Q. And they didn't search for the documented
13 funds, correct?

14 A. They apparently did not. They didn't find --
15 they didn't find the \$1,000, no.

16 Q. And testimony was presented from the officers
17 that this was just an identification. They wanted
18 to -- they didn't want to arrest Mr. Crosby. They
19 wanted to continue the conspiracy to keep building
20 their case?

21 A. That's correct and I believe why he wasn't
22 arrested until months later. They wanted to find
23 out who that was driving the white pickup truck.

24 Q. Because the CI, Mr. Murray, thought he was
25 originally going to meet another co-conspirator, a

1 Bernard, correct?

2 A. That's correct.

3 Q. And I believe you testified he eventually
4 admitted he was pulled over. Did he initially deny
5 that to you?

6 A. He acted like he couldn't remember ever being
7 pulled over by law enforcement. I kept -- you know,
8 and then finally when we got the actual citation and
9 all and he was looking at it, and he said, "Well,
10 yeah, that's me. That's my driver's licence. And
11 now I remember I was driving a white pickup truck
12 and they pulled me over off 86 -- off Highway 85, I
13 believe at the 28 exit."

14 Q. How would you describe your relationship with
15 Mr. Crosby? Was he forthcoming with you?

16 A. Not initially. That was part of the problem.
17 When I first got in touch with him by phone, and as
18 he stated we butted heads. I don't know his exact
19 words, but he acted like he didn't know what I was
20 talking about, and I had been appointed to represent
21 him and he had been charged with, you know, drug
22 charges and that type thing. And he acted like I --
23 basically, I don't know what you're taking about.

24 Q. Did he eventually become more cooperative as
25 trial approached?

1 A. He did. I mean, we -- we tended -- we ended
2 up, like I said, meeting at my office six -- at
3 least six times and, you know, I thought things were
4 fine after we initially had a rough start.

5 Q. And you testified the weekend before trial, you
6 called and asked him to come to your office to
7 listen to an audio recording?

8 A. I don't know if that was the weekend before
9 trial. It was getting close to trial, but I don't
10 know if it was actually the weekend before trial.

11 Q. And to the best of your recollection, he called
12 and said he didn't to listen to anything else?

13 A. He said, "Yeah, I don't need to come up there
14 and listen to anything else." Something to that
15 effect.

16 If you'd -- I -- I mean, I can -- I wrote the
17 date down and notes on it. If you want me to get
18 more in detail on that.

19 Q. The specific date isn't necessary. A moment's
20 indulgence, Your Honor.

21 Actually, if you wouldn't mind looking and
22 seeing what that date was, if it was a Saturday or a
23 Sunday.

24 A. Well, it was a Saturday and a Sunday because I
25 was in on Saturday, and then he didn't return my

1 call until Saturday night -- late Saturday night.
2 Yeah, it would've been Saturday the -- January 24th
3 of 2015.

4 Q. And you informed the Court during trial that
5 Mr. Crosby's wife had -- just had twins the Friday
6 before, correct?

7 A. Yes.

8 Q. Did he inform you when he called that he didn't
9 want -- he couldn't come by because of this life
10 event?

11 A. I wrote on here that his fiancée had twins on
12 Friday, 1/23/15, so he -- he must've -- we must've
13 discussed that, yes.

14 Q. Do you ---

15 A. I was just going to say, on Sunday morning,
16 which would've been January 25, 2015, I called him
17 at 9:30 in the morning and told him I needed him to
18 come in.

19 He said he did not want to come to my office to
20 listen to the audio, and we talked on the phone for
21 about 15 minutes.

22 Q. Did he ever ask you to retain a voice
23 identification expert?

24 A. No. That was never discussed.

25 Q. Do you recall how many offers were made to

1 Mr. Crosby?

2 A. I believe at least three initial for the
3 reduced -- or the plea to the lesser included and
4 cooperation with the State for 10 to 15 years. And
5 that -- for a recommended sentence range of 10 to
6 15, that was April of 2014.

7 And then we actually went to Oconee before
8 Judge McCauley for a status conference, I believe.
9 And at that point -- that's not -- the second offer
10 was November the 17th of 2014. That was an offer
11 for negotiated five years.

12 Q. So that obviously would've been to a lesser
13 included offense, as well?

14 A. True. And that, on November the 19th, is when
15 we went back to Oconee for -- some people actually
16 entered pleas on that day in this -- in this case.

17 And Mr. Crosby rejected the five-year offer.
18 Then a five-year negotiated offer on November the
19 19th of 2014.

20 And then there was an offer I believe the day
21 of trial or shortly before trial of three to ten, a
22 range of three to ten.

23 Q. And all of those were to lesser included
24 offenses?

25 A. It would've been because the 100, 200 grams

1 was -- is a mandatory 25 years.

2 Q. I believe you testified you moved for a
3 directed verdict, but you thought there was
4 sufficient evidence that the jury could convict him
5 of the 100 to 200 as indicted?

6 A. I did. And I think it's ineffective assistance
7 of counsel if you don't make a directed verdict
8 motion in every criminal trial.

9 Q. And there was evidence from two co-conspirators
10 at trial, Jeffrey Parker and a William Angelo
11 Johnson?

12 A. That's correct.

13 Q. And Mr. Johnson testified as to various amounts
14 he bought from Mr. Crosby, as well as another
15 co-conspirator?

16 A. Yes.

17 Q. And his testimony was admittedly vague,
18 correct?

19 A. Correct.

20 Q. You testified that he'd been drunk and high for
21 essentially the whole six-month period and wasn't
22 really sure on amounts or dates sold?

23 A. That's correct.

24 Q. But you believed his testimony would've
25 established that minimum 100 to 200 grams?

1 A. His combined with Mr. Parkers', yes.

2 Q. And that was for the conspiracy charge?

3 A. Yes.

4 Q. Which involved Bernard, as well?

5 A. That's correct. And -- well, conspiracy
6 doesn't mean that Mr. Crosby would've had to sell
7 all of that. It's just the whole combination of
8 people conspire to move that much weight.

9 Q. Did you explain that to Mr. Crosby?

10 A. I'm sure I did. He -- I mean, we talked about
11 conspiracy. Yes.

12 Q. And you testified you don't have any specific
13 notes or recollection that you discussed requesting
14 a lesser included with him, but it's part of your
15 general practice?

16 A. It would be and it would've been. If I decided
17 that right at the end of the trial that I think we
18 needed to do that, I wouldn't have made a note of
19 it. I would've just probably leaned over and
20 discussed it with him, like I say, while the judge
21 was speaking with the jury.

22 Q. And your strategy in requesting the lesser
23 included offenses was to reduce the mandatory
24 minimum?

25 A. Absolutely. I didn't want to expose him to a

1 25-year sentence. I -- you know, I was trying to
2 get the best deal for him, you know, and that was
3 what -- why I made the motion.

4 Q. Do you recall him ever telling you he didn't
5 want the lesser included charged?

6 A. No.

7 Q. When you made that request, did he tell you he
8 wanted you to withdraw that request?

9 A. No. As a matter of fact, I believe Judge
10 McCauley actually, if I remember right, he might've
11 taken a break to make sure that that could actually
12 be done.

13 And nothing -- Mr. Crosby never told me during
14 that break, "I don't want to do that" or anything
15 like that. And then Judge McCauley came back and
16 said, you know, we worked that out and I can charge
17 it.

18 Q. When you requested the lesser included offense,
19 the -- the State willingly agreed and said they
20 wanted a lesser included offense, correct?

21 A. They concurred. They didn't oppose.

22 Q. If you hadn't moved for the lesser included
23 offense to be charged to the jury, the State
24 could've done so, correct?

25 A. Could have. Yes.

1 Q. Based on the wavering testimony from
2 Mr. Johnson, do you think the State would've moved
3 for the lesser included if you hadn't?

4 A. I believe they probably would have. I didn't
5 specifically speak with them after the trial about
6 that, but the indication was that they would have.

7 Q. Did you see any issues that might arise
8 regarding subject matter jurisdiction or a lack of
9 notice for requesting lesser included offense?

10 A. No.

11 Q. And there was testimony to support the lesser
12 include offense based on Mr. Johnson's varying
13 weights, correct?

14 A. Correct.

15 Q. His faulty memory?

16 A. Correct.

17 MS. JAMESON: Moment's indulgence, Your Honor.

18 No further questions.

19 THE COURT: Any redirect?

20 MS. WHISENHUNT: Yes. Redirect, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. WHISENHUNT:

23 Q. Related to the audio recording and some
24 questions you were asked about that, at the time it
25 was entered, did you tell my client, Mr. Crosby,

1 during the trial that take this -- when you take the
2 stand, the jury will be able to hear your voice and
3 they can discern whether that is you in that 45
4 seconds?

5 A. I don't know if I actually told him that or
6 not, but he was adamant that he wanted to testify.

7 Q. Okay. He was also adamant in rejecting all the
8 plea offers that you testified to on -- on cross; is
9 that correct?

10 A. Yes.

11 Q. And you said that at the beginning your -- your
12 relationship may've been a little bit rocky, you
13 just testified, because he didn't know what this was
14 about ---

15 A. That's correct.

16 Q. --- is that correct?

17 A. Yes. That's what he told me initially on the
18 phone the first time.

19 Q. And that was consistent with somebody who is
20 maintaining their innocence; isn't that correct?

21 A. Well ---

22 Q. He said, "I don't know what this is about. I
23 don't want to plead to any lesser included."

24 A. Well, he didn't say that. On the first phone
25 call, we didn't even discuss that, but he acted like

1 he had not -- he had gone without on drug charges,
2 but he acted like he didn't know anything about --
3 that he'd never been arrested on drug charges, so
4 that's why we kind of butted heads because he
5 basically was acting like, I don't know what you're
6 talking about, you know, after he had just bonded
7 out on conspiracy charges.

8 Q. Okay. Drawing your attention now to the
9 questions that you asked about Mr. Johnson and his
10 admittedly vague or wavering testimony. In fact,
11 it was -- it was extremely vague; is that not
12 correct?

13 A. He said that he was drunk and high most of the
14 time, and that he didn't remember weights and all.
15 However, his grand jury testimony, I think, it
16 is actually his testimony at trial was that he had
17 bought five to seven times from Mr. Crosby, and I
18 think it was a half ounce to an ounce at a time.

19 MS. WHISENHUNT: For instance, on page 249.
20 Your Honor, the transcript's a little confusing.
21 The -- there's two numbers on the copy I got, but
22 I'm going with the number that's actually the number
23 on the transcript that the court reporter would've
24 prepared.

25 BY MS. WHISENHUNT:

1 Q. On page 249, line 20, he -- when being
2 questioned. This was on direct exam. "Did you ever
3 buy up to an ounce of crack cocaine from him?" And
4 he says, "I don't remember buying an ounce?"

5 Do you remember testimony such as that, or
6 would you like to see it?

7 A. No. I'm sure if it's in there, it's accurate.

8 Q. Okay. And also on page 252, line 6. He says,
9 "I can't remember how much." So there were ---
10 there -- when we say he was vague, it was extremely
11 vague; is that correct?

12 A. That's correct.

13 Q. And likewise on your cross. You were able to
14 bring out and reiterate that vagueness effectively.
15 I believe on page 257, line 16. "You don't really
16 remember dates when you purchased a quarter of an
17 ounce or a half an ounce of an ounce, do you?" And
18 he said, "No, sir."

19 There were other witnesses that also testified
20 about amounts, but would you agree that those were
21 equally vague?

22 A. They weren't as vague as Mr. Johnson. He was
23 the one that said I -- he actually admitted, "I was
24 high and drunk most of the time." The rest of them
25 didn't say they were high. They were -- you know,

1 they did say enough weight to get it up over
2 100 grams.

3 MS. WHISENHUNT: Okay. I have no further
4 questions.

5 THE COURT: Anything further from
6 Mr. McElhannon?

7 MS. JAMESON: No, Your Honor.

8 THE COURT: Any objection to Mr. McElhannon
9 being excused?

10 MS. WHISENHUNT: No objection, Your Honor.

11 MS. JAMESON: No, sir.

12 THE COURT: Thank you, Mr. McElhannon. You are
13 excused.

14 THE WITNESS: Thank you very much.

15 (Witness excused.)

16 MS. WHISENHUNT: I have no further witnesses,
17 Your Honor, and my client has requested that I make
18 a motion for summary judgment.

19 THE COURT: This is a factual dispute, and I
20 will deny that -- that motion.

21 MS. WHISENHUNT: Thank you, Your Honor.

22 THE COURT: Anything further from the State?

23 MS. JAMESON: Just argument, Your Honor.

24 THE COURT: All right. I'll be happy to hear
25 from the State. And then, Ms. Whisenhunt, you're

1 the moving party, so I'll give you the last word.

2 MS. WHISENHUNT: May it please the Court?

3 THE COURT: Well, no. Let the State go first.
4 You have the burden of proof in this -- in this
5 case, so I'll give you the last -- last argument.

6 MS. WHISENHUNT: Okay, Your Honor. Thank you.

7 MS. JAMESON: Your Honor, the State's first
8 addressing the subject matter jurisdiction regarding
9 the lesser included offense. The State would ask
10 that that matter be dismissed as a matter of law.
11 Case law is very clear that trafficking is
12 established once you're over the ten-gram threshold.
13 And beyond that, it has to deal with sentence and
14 punishment.

15 And so the lesser amount wasn't proper lesser
16 included offense, so the Court had subject matter
17 jurisdiction. It was properly indicted. And the
18 testimony from Mr. Crosby was -- was enough to
19 properly charge the jury with that lesser included
20 offense. So we'd ask you to deny the allegation of
21 subject matter jurisdiction.

22 Regarding the ineffective assistance of counsel
23 for making that motion, I believe we have testimony
24 from Mr. McElhannon that he had a strategic reason
25 for doing that. He wanted to reduce his client's

1 exposure from mandatory minimum 25 years down to 7
2 years. And while he doesn't have specific
3 recollection, he believes that Judge McCauley took a
4 break. He was able to discuss it with his client,
5 and that his standard practice is he wouldn't make
6 any motion other than a standard objection without
7 discussing it with his client.

8 So the testimony before this Court is, there
9 was a reason -- reasonable trial strategy in moving
10 for the lesser included offense; and, therefore, he
11 was not deficient for -- for doing so. He
12 significantly reduced his client's exposure from the
13 mandatory minimum 25 years down to a minimum of 7
14 years, which was the sentence he did receive for the
15 conspiracy charge.

16 And additionally, Your Honor, the State readily
17 conceded that they wanted the lesser included
18 offense, as well, after Mr. McElhannon requested it.
19 So he can't show any prejudice because it was likely
20 to be charged to the jury anyway. Whether or not
21 Mr. McElhannon had made that request, the State
22 likely would've made the request based on
23 Mr. Johnson's testimony which varied anywhere from a
24 fourth of an ounce purchase, all the way up to an
25 ounce purchase from these two co-conspirators,

1 Bernard as well as Mr. Crosby.

2 So the evidence supported the lesser included
3 offense. It was properly charged as the lesser
4 included offense, so we'd ask you to deny as to the
5 subject matter jurisdiction and the ineffective
6 assistance of counsel for requesting that. I think
7 that if Mr. McElhannon had requested the lesser
8 included offense, we'd be here with an allegation
9 that he was ineffective in failing to request the
10 lesser included.

11 I direct Your Honor's attention to *Sellers v.*
12 *State*. The site for that is 362 S.C. 182. That is
13 a case from our Supreme Court where counsel was
14 found ineffective for failing to request a lesser
15 included offense when the evidence warranted it. So
16 the State would submit he -- he wasn't deficient for
17 requesting it. If he hadn't requested it, we might
18 be here with an application for failing to request
19 the lesser included if he had gotten the 25 years on
20 the greater offense.

21 As to the other allegations, which the State
22 still objects to based on the lack of notice, but I
23 believe the other allegations were failing to have a
24 voice identification expert. We have testimony from
25 Mr. Crosby today and at trial, as well the witness,

1 Phillip Wall, that he was there. He was present and
2 didn't deny being there, so I don't know what
3 benefit a voice identification expert would've been.

4 As to the testimony that it would've been
5 helpful because there were five or six different
6 voices being heard on the tape, Mr. McElhannon
7 testified that he listened to the tape. His client
8 had a distinct voice, and it was clearly Mr. Crosby
9 engaged in a drug deal based on the audio.

10 So the State would submit that he hasn't met
11 his burden of proof regarding deficiency. He
12 certainly hasn't met the burden of proof regarding
13 prejudice because he hasn't had a voice
14 identification expert listen to the tape and provide
15 testimony here for the Court today. So that would
16 be speculative at best, but that it could be gleaned
17 from that, so we'd ask you to dismiss as to that
18 allegation.

19 As to the allegation regarding the confidential
20 informant not identifying in court, the record
21 establishes that Mr. McElhannon objected when the CI
22 identified Mr. Crosby in court for the first time.
23 And Judge McCauley overruled his objection and
24 allowed the confidential information to make that in
25 court identification.