

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Case No. 2024-001052

Kalvin R. Brown,

Petitioner,

vs.

The State of South Carolina,

Respondent.

APPENDIX

Jillian Lesley
Bar No. 105801
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333
Counsel for Petitioner

Elizabeth Franklin-Best
Bar No. 72555
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333
Counsel for Petitioner

Other Counsel of Record:
Zachary Jones
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF YORK)	
State of South Carolina,)	
)	
Plaintiff,)	
v.)	Case No. 15-GS-46-02347
)	
Kalvin R. Brown,)	
)	
Defendant.)	

TRANSCRIPT OF BENCH TRIAL

The within bench trial in the above-captioned matter was held February 24, 2016, before The Honorable Perry H. Gravely in Courtroom 2 of the York County Courthouse in York, South Carolina; attended by counsel as follows:

APPEARANCES:

Marina Hamilton, Assistant Solicitor
Leslie Robinson, Assistant Solicitor
... Appearing for State of South Carolina

Willie Bradley, Esq.
Patrick Sharpe, Esq.
... Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

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(STATUTORY JURY QUALIFICATION)

(DEFENDANT PRESENT)

(IN CHAMBERS CONFERENCE -

OFF RECORD STIPULATION RE: BENCH TRIAL)

THE COURT: Be glad to hear from
you. State versus Calvin Brown.

SOLICITOR ROBINSON: Thank you,
Your Honor. The State wishes to call the
case on Calvin R. Brown, trafficking in
heroin, statute number 44-53-370(e). The
docket number is 2015-GS-46-02347. It's a
true bill indictment, true billed on August
20th, 2014.

The defendant -- this is a direct
indictment, Your Honor. The defendant was
arraigned on a formal arraignment on this
indictment on January 27th, 2016. And I guess
we could go forward with any defense motions
at this time if they ---

THE COURT: All right.

MR. BRADLEY: Thank you, Your
Honor. Attorney Willie Bradley for the
record. If it pleases the Court, we do have
a Motion to suppress, Your Honor. And based
on any talks in chambers some of this may be

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1 -- since it's a bench -- handled certainly by
2 Your Honor in a bench trial.

3 Our Motion to suppress, just for the
4 record, is for any evidence found as a result
5 of the traffic stop because the traffic stop
6 was unreasonably delayed. The purpose for
7 the stop was over at a certain time and we
8 wanted to argue that anything past that
9 point, you know, any reasonable suspicion or
10 anything that came past that point, should be
11 excluded, Your Honor. But, again, that ---

12 THE COURT: Well, I guess in light
13 of the way that it is I don't mind hearing
14 from you.

15 MR. BRADLEY: Okay. And we have
16 three different prongs and that's the first
17 prong of our Motion to suppress, Your Honor.
18 And Mr. Sharpe ---

19 THE COURT: I'll be glad to hear
20 from you.

21 MR. SHARPE: Thank you, Your Honor.
22 If it pleases the Court, let me get some case
23 law. May I approach, Your Honor?

24 THE COURT: Yes.

25 MR. SHARPE: (Tendering document to

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1 bench), Your Honor, the basis of this Motion
2 is the Supreme Court, U.S. Supreme Court case
3 of *U.S. v Rodriguez*, or Rodriguez versus the
4 United States, that came down April 21st of
5 last year. Just to point out, this stop
6 occurred in February of last year; so before
7 this Opinion came down. Your Honor ---

8 THE COURT: So the officer would
9 not have known about that.

10 MR. SHARPE: Correct, Your Honor.
11 Correct. And I think that might end up being
12 relevant. But, Your Honor, basically to
13 start out, Your Honor, this incident occurs
14 -- the Defendant and Ms. Trappier, the driver
15 of the vehicle, the Defendant rented the
16 vehicle so the vehicle was in his name --
17 rented. The driver is a young lady named
18 Monique -- I'm going to refer to her as "the
19 driver" for this Motion.

20 But, Your Honor, they were going up
21 77, heading towards Charlotte. Their actual
22 final destination was Morganton, North
23 Carolina. I'm not sure if you're familiar
24 with where Morganton, North Carolina is -- I
25 wasn't -- but it's about halfway between

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1 Asheville and Charlotte.

2 So basically, they're going up
3 there. It's our opinion this is pretty much
4 a pre-textual stop. You could see on the
5 video the cars drive by.

6 The officer, Officer Gibson makes
7 the stop for following too closely. As
8 you're watching the video you see all these
9 cars drive by. None of them appear that
10 they're too close. It's our opinion that
11 Officer Gibson sees the Florida tags that are
12 on the car that the Defendant rented in
13 Georgetown and follows him based on that.
14 Either way, he catches up with them and pulls
15 them over for following too closely.

16 When they get the blue lights, the
17 driver -- they're approaching an inter-
18 section. I believe it was Exit 73. But
19 there's a bridge that goes over the -- under
20 the highway. And so she goes past that to
21 pull over, so she's not stopped on the bridge
22 or the overpass.

23 Your Honor, at that point, the
24 officer approaches the car. He has a State
25 Constable with him that approaches the

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1 passenger. Well, I guess they both approach
2 the passenger's side and they ask, you know,
3 'Why are you following too close? Where are
4 you going?'

5 He eventually gets the driver out of
6 the car. This is at 10:30 in the morning,
7 a.m. So -- and it's in February, so it's
8 pretty cold. So they go and get into Officer
9 Gibson's patrol vehicle. At this point, they
10 determine essentially that she doesn't have a
11 driver's license. She's given him a false
12 name. They run it through the system and,
13 you know, nothing comes up. She's given a
14 false name. So, in our opinion, at this
15 point, that's when the traffic stop should
16 have ceased. Make the arrest for the under-
17 lying offense.

18 And, Your Honor, to go further -- and
19 there's some case law -- well, further, he
20 ends up going to -- approaches Mr. Brown in
21 the passenger side, asked him some questions.
22 And in the report it says they give different
23 stories about where they're going. Well, if
24 you watch the video, they give the same story
25 about where they're going. She's not

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1 familiar with where they're going but she
2 said somewhere around Asheville. Well, in
3 his -- you know, he's thinking 'oh, well,
4 Asheville's not this way.' So I'm thinking
5 that's some of the suspicion he uses. But,
6 you know, as I just pointed out, they're
7 heading up to Charlotte, and then going to
8 Morganton as opposed to going the I-26 route.
9 That's neither here nor there.

10 But, Your Honor, at that point he
11 asked the defendant out of the car and goes
12 on. But to point to *Rodriguez v. United*
13 *States*, a seizure becomes unlawful if it was
14 "prolonged beyond the time reasonably
15 required to complete the mission of issuing
16 the ticket for the violation"; which, in our
17 opinion, it could have been done.

18 Your Honor, in this case, the stop
19 occurred at 12:06 a.m., a little after
20 midnight, which is kind of adding to the
21 reasonable suspicion.

22 Now, the Supreme Court addresses
23 what a seizure is. It states a "seizure's
24 mission is to address the traffic violation
25 that warranted the stop and also attend to

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1 any related safety concerns." Well, in this
2 case those related safety concerns would be
3 the fact that she doesn't have a driver's
4 license. So, in our opinion, after he
5 determines that she doesn't have a driver's
6 license and he can't figure out who she is,
7 he made the arrest. Traffic stop's over.

8 Your Honor, the Supreme Court goes
9 on to say, because addressing the infraction
10 is the purpose of the stop, "it may last no
11 longer than is necessary to effectuate that
12 purpose. Authority for the seizure thus ends
13 when tasks tied to the traffic infraction are
14 or reasonably should have been completed."
15 Here, he takes her out of the car, goes and
16 sits her in his car. Talks to her. Can't
17 figure out who she is. You know, obviously,
18 if he can't figure out who she is, he can't
19 determine whether she's got a driver's
20 license. Make the arrest right then.

21 And to further that, Your Honor,
22 at that point, we believe that since the
23 Defendant hadn't done anything wrong, he'd be
24 free to go. Take the car and go on. They
25 don't need to impound the car. We have

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1 somebody that hasn't committed any crimes who
2 is responsible for the car, that can take car
3 on and continue his journey.

4 The Supreme Court further goes on
5 and says "an officer may conduct certain
6 unrelated checks during the underlying lawful
7 traffic stop but he may not do so in a way
8 that prolongs the stop." During this, the
9 oral arguments for this case, the government
10 acknowledged that a dog sniff, in such
11 routine measures as just mentioned, which
12 would be checking the driver's license for
13 any outstanding warrants, inspecting the
14 registration, proof of insurance, things
15 related to make sure the roadways are safe.

16 But the government acknowledges in
17 their oral argument that a dog sniff, unlike
18 the routine measures just mentioned, is not
19 an ordinary incident to a traffic stop.

20 Your Honor, further the Supreme
21 Court goes on to say that traffic stops are
22 especially fraught with danger to police
23 officers, (reading): "So an officer may need
24 to take certain negligibly burdensome
25 cautions in order to complete his mission

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1 safely. On-scene investigation into other
2 crimes, however, detours from that mission."
3 Basically saying that, you know, if you're
4 going to investigate someone besides the
5 traffic stop, you're putting your safety
6 basically in danger.

7 Your Honor -- at the end of the
8 Opinion, Your Honor, the Court goes on to say
9 that the critical question is not whether the
10 dog sniff occurred before or after the
11 officer issues a ticket but whether
12 conducting the sniff prolongs, i.e., adds
13 time to the stop.

14 Your Honor, just recently on the
15 January 27th advance sheets, our State Supreme
16 Court came down with Opinion that the case
17 was overturned based on *Rodriguez*. Actually,
18 it was before *Rodriguez* came out that it was
19 overturned. But it was overturned because
20 the traffic stop was prolonged. It was
21 overturned by the Court of Appeals.

22 Well, the Supreme Court reversed.
23 But the reason they reversed is, is because
24 if you look at every -- they said basically
25 if you look at the totality of the

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1 circumstances involved in the whole stop and
2 the case here, Morris -- actually Moore, Your
3 Honor -- there's enough reasonable suspicion
4 to prolong the stop to investigate for drugs.

5 THE COURT: Let me ask you this.

6 MR. SHARPE: Yes, sir?

7 THE COURT: At what did the
8 officer determine that this was a rental car
9 in fact?

10 MR. SHARPE: Oh, immediately.
11 Immediately.

12 THE COURT: Okay. And then at
13 what point did the Defendant come into the
14 picture under an investigation or what --
15 tell me ---

16 MR. SHARPE: After the officer had
17 determined that the driver didn't have a
18 driver's license and that she was lying to
19 them. She couldn't give them a Social
20 Security number. Gave him a name, he called
21 it in and they couldn't find it.

22 THE COURT: And the rental, I
23 guess that he presented them with a rental
24 agreement or insurance agreement as to who
25 could drive?

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1 MR. SHARPE: Right. Right.

2 THE COURT: It was in his name,
3 the Defendant's?

4 SOLICITOR HAMILTON: Correct, Your
5 Honor. Because whenever he asked for the
6 registration and insurance, that's when he
7 gave him those.

8 MR. SHARPE: Now, Your Honor, as I
9 was saying, the Court had allowed -- in this
10 case allowed reasonable suspicion because he
11 had reasonable suspicion when looking at the
12 totality of the circumstances. Now, some of
13 those circumstances were it's 1:10 in the
14 morning. A third party had rented the car
15 the afternoon before. So they had rented the
16 car, you know, 1:00 in the afternoon,
17 essentially twelve hours prior to the stop.
18 Well, this individual, when the officer
19 approached the car, he's talking on the
20 cellphone. That added to the suspicion. He
21 smelled like alcohol. He ended up passing
22 the field sobriety test, which is where the
23 stop prolonged. Because after he passed
24 field sobriety, then they prolonged the
25 search.

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1 Now, as I said, the car was rented
2 by a third-party the previous day. But the
3 individual in this case also stated that the
4 car was rented, ironically, in Morganton,
5 North Carolina, ironically. So he rents the
6 car and he tells the officer that he's on his
7 way to visit his grandmother who lives in
8 Marion, North Carolina. But he's on his way
9 from Lawrenceville, Georgia, which is in
10 Atlanta.

11 THE COURT: Uh-huh.

12 MR. SHARPE: You know, the Atlanta
13 Metropolitan area. So that added to it.
14 When he exited the vehicle, he left the door
15 open and had to go back and close the door.
16 That was something they pointed out. He
17 smoked a couple of cigarettes while they're
18 at the stop. That contributed to his
19 nervousness.

20 And while I'm bringing up nervous-
21 ness, Your Honor, I'd like to point out too
22 that Officer Gibson might try to get up on
23 the stand and say that they were acting
24 nervous. But, Your Honor, that's not the
25 case. He doesn't mention nervousness, not

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1 one time in his report. He doesn't mention
2 that they're being anxious, not one time in
3 his report. And, further, it's all on video
4 so you can see it for yourself that there's
5 no nervous behavior.

6 And another thing about this stop in
7 the Moore case, Your Honor, the defendant had
8 six hundred dollars in his pocket in a wad.
9 You know, when he Terry-frisked him he found
10 it. And he'd already told them that he was
11 unemployed. So they found it a little
12 suspicious that someone that's unemployed has
13 got a rental car and is driving around with
14 six hundred dollars (\$600) in their pocket.

15 Now, Your Honor, here the Defendant
16 and the driver both tell the officer that Mr.
17 Brown is working to open a restaurant. He
18 only has a hundred and thirty dollars in his
19 pocket. One of the things that Officer
20 Gibson said was suspicious is that they
21 didn't have any luggage. Well, their plan
22 was to go up to Morganton, North Carolina and
23 pick up the Defendant's daughter and bring
24 her back to Georgetown. So, you know,
25 there's no need for luggage. They're going

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1 -- she tells them -- the driver tells Officer
2 Gibson that either they're going to come back
3 tonight or tomorrow.

4 Oh, another thing, Your Honor, the
5 car was due to be returned the next day.
6 Also, Your Honor, to confirm the trip to
7 Morganton, the Defendant's driver's license
8 is a North Carolina license with a Morganton
9 address. You know, nothing suspicious about
10 that.

11 Now, further, Your Honor, in the
12 Court of Appeals Opinion on the *Moore* case,
13 they cite the Fourth Circuit. I just want to
14 touch on this one last time. They cite the
15 Fourth Circuit, it's on -- I don't think I
16 gave you a copy of this but the case is *U.S.*
17 *v Foster*. If you want me to give you a cite
18 to that, I can. It's ---

19 THE COURT: What page is it on?

20 MR. SHARPE: Your Honor, I gave you
21 the Supreme Court opinion.

22 THE COURT: Okay. You didn't give
23 me *State v Moore*.

24 MR. SHARPE: Yeah, but what I'm
25 trying to tell you is this one is the Court

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1 of Appeals Opinion, not from the Supreme
2 Court.

3 THE COURT: Oh, okay. Okay.

4 MR. SHARPE: So the case cite is
5 634 F3rd 243 and it's Fourth Circuit 2011.
6 Do you want me to give that to you again?

7 THE COURT: Try it again.

8 MR. SHARPE: 634 F3rd 243 and it's
9 Fourth Circuit, 2011.

10 THE COURT: Okay.

11 MR. SHARPE: Well, basically what
12 they say is -- the Court of Appeals in the
13 *Moore* case says that, (reading): "We share
14 the Fourth Circuit's concern regarding the
15 State's inclination toward abusing whatever
16 facts are present, no matter how innocent,
17 as indicia of suspicious activity."

18 The Supreme Court says, (reading):
19 "The State must do more than simply label a
20 behavior as suspicious to make it so. The
21 State must be able to either articulate why
22 a particular behavior is suspicious or
23 logically demonstrate, given the surrounding
24 circumstances that the behavior is likely to
25 be indicative of some more sinister activity

1 than may appear at first glance."

2 So, Your Honor, due to all of that,
3 Your Honor, we believe that there's not
4 enough reasonable suspicion to prolong the
5 stop to bring the drug dog out and do a free
6 air sniff; and for that reason, we'd ask that
7 you suppress the search.

8 THE COURT: Before I hear from the
9 State, I'd like to -- I want to make a couple
10 of comments. I think there's a distinction
11 when you pull off when somebody's speeding
12 and all that. 'Oh, you know, he's acting a
13 little nervous.'

14 But here you have -- first of all, a
15 rental car in the name of the passenger, a
16 driver who doesn't have a license and gives
17 false names. I think it's a lot different
18 type of circumstance than just 'oh, and then
19 just acting nervous' or something. You know,
20 that's -- you know, false names and kind of a
21 little bit different stories and I think that
22 -- you've got a lot of -- I'll hear from them
23 but you've got a lot of reasonable suspicions
24 going on here. Just the fact it's a rental
25 car. You know, here's somebody that's not

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1 driving when apparently he's a legal driver
2 and could have been driving. Instead you
3 have somebody that doesn't have a driver's
4 license.

5 MR. SHARPE: Right.

6 THE COURT: They're giving false
7 names and ---

8 MR. SHARPE: Right. And, Your
9 Honor, I think it's reasonable assume that
10 she's giving false names also because she
11 knows that if she is found without a license,
12 she's going to jail. So I think that's
13 reasonable.

14 Yet, you know, I also think it's
15 also reasonable that if they're coming back
16 that night, it's also reasonable that if
17 they're coming back that night, it's
18 reasonable for her to drive up and him to
19 drive back too.

20 THE COURT: My wife never lets me
21 do that.

22 SOLICITOR HAMILTON: Thank you,
23 Your Honor. It's the State's position that
24 all of this is not applicable in this case
25 because the stop had not concluded. He

1 stated that he took the driver back to the
2 vehicle, Officer Gibson's vehicle, to
3 question her in the back of it. During that
4 time frame, I think it was about ten minutes,
5 ten or fifteen minutes, he still had yet to
6 identify who she was. She continued to give
7 false statements, continued to give false
8 names. At that point, he left her in the
9 back of the vehicle, went to question the
10 passenger to try to identify who this driver
11 is. At this point, the investigation had yet
12 to complete.

13 He had no idea if she had
14 outstanding warrants if he couldn't verify
15 her Social Security Number, which she had no
16 idea what it was. She couldn't give a date
17 of birth. I think the ultimate date of birth
18 she gave was also false. So they had no
19 identification as to who this driver was to
20 even give her any kind of citation at that
21 point.

22 Then they go, I think, after about
23 fifteen minutes, maybe twenty minutes, he
24 walks up, starts questioning the passenger as
25 to the identity of the driver. He also given

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1 two different names. At that point it is
2 eleven minutes, and I'm giving you the
3 timestamps on the video. At eleven minutes
4 the officer gets the name from the passenger
5 of the Defendant. He goes back and forth,
6 different names for about two minutes.

7 And then at three minutes later, the
8 officer gets there and tells the Defendant he
9 is going to walk the dog around the vehicle.
10 He starts explaining the procedure for
11 walking the dog around. That is -- from the
12 time that he gets a statement from them as to
13 the name, that is two minutes later. And the
14 Defendant says to the officer that the dog
15 will alert.

16 And we believe the investigation
17 still at this point has not completed because
18 they don't know who the driver is at this
19 point still. But then at that point, he has
20 reasonable suspicion about whether there is
21 illegal activity going on, if there is
22 illegal substance in this vehicle as the
23 Defendant stated the dog would alert. So we
24 believe that the stop had yet to conclude.

25 So there can be no unlawful

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1 extension of the stop when the investigation
2 is not completed at the time another
3 reasonable suspicion had come up of more
4 illegal activity at that point. So the
5 State's position is that the stop is legal.

6 There's no extension of the stop and
7 unlawful detention at that point. Therefore,
8 anything that's found subsequently should be
9 admitted.

10 THE COURT: I'm going to deny your
11 Motion at this time but I don't mind, you
12 know, if we review the evidence -- because
13 both of y'all have a little different spin
14 exactly what happened. I'll be glad to allow
15 you to renew your Motion after we hear a
16 little more. We don't have a jury. We do
17 have a little more flexibility in that. But
18 I'll -- you know, I'm going to deny your
19 Motion at this time. But I'll review the,
20 you know, the evidence and at the appropriate
21 time I'll be glad to, you know, let you renew
22 your Motion if we need to do that.

23 MR. SHARPE: Thank you, Your Honor.

24 THE COURT: Was there another
25 Motion?

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1 MR. BRADLEY: Yes, Your Honor. If
2 it pleases the Court there is another -- and
3 I'd basically try to put it all in the same
4 Motion.

5 THE COURT: Okay.

6 MR. BRADLEY: There was an incident
7 report that we were given, and I have a copy
8 of it. I think this one is probably more
9 relevant pretrial. In the statement, the
10 officer, Officer Gibson gives a summary of
11 the stop. He gives a summary of the stop
12 exactly as the video shows it with one
13 exception. I can go ahead and bring this out
14 now, Your Honor, because literally you're
15 going to be the trier of the fact.

16 THE COURT: Okay.

17 MR. BRADLEY: On the bottom of his
18 summary, he basically states that my client
19 made an out-of-court statement, a confession
20 to him, saying that what they had found in
21 the car -- let me change that. Saying that
22 the cocaine that they found in the car was
23 his.

24 Your Honor, my problem with that, of
25 course, you know, is a confession -- at the

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1 time that he gave the confession, the officer
2 indicated that they were already at the
3 station, okay? So my thought there is, one,
4 why wasn't -- if it's a confession to the
5 ultimate, you know, issue in this case, why
6 wasn't it written?

7 Why wasn't my client allowed to
8 sign the confession?

9 Why wasn't it videotaped like every
10 other confession is done? There was
11 certainly that ability at the station.

12 If my client's going to give --
13 excuse my language -- such damning evidence
14 against him. He's basically saying 'It's
15 mine. I'm taking the charge.' Well, if he
16 does that orally, Your Honor, that has been
17 by many courts looked at in sort of a -- it's
18 looked at a lot harder because of the
19 ability, Your Honor, for misinterpretation of
20 words, et cetera.

21 Now, the reason I brought this out
22 is that they just mentioned that when the
23 drug dog apparently -- you know, the drug dog
24 came to the car and my client said that the
25 dog is going to hit on the car. So when

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1 you're looking at the video, Your Honor, and
2 this is why I made a big issue about getting
3 more time. Because when we look at the video
4 you see that's absolutely not what he said.
5 He said the drug dog would hit but it was
6 taken out of context. The whole context was,
7 *'Listen, I've seen these shows before, these*
8 *TV shows. The dog always hits on a car when*
9 *y'all march the drug dog around the car.'*
10 The full video shows that. So his one
11 statement in there saying my client said the
12 dog was going to hit is not really -- it
13 could be taken out of context. But on the
14 video, it can't. You can see that.

15 And on the bottom where he -- this
16 is the only mention of his confession. It's
17 nowhere else in any other discovery. It's
18 just written as a separate note with two
19 spaces underneath it saying "other
20 statements."

21 Mr. Brown said that it was his
22 cocaine in the car. Well, Your Honor,
23 actually the substance that was found wasn't
24 even cocaine. It was actually heroine. And
25 so, you know, our position is the State

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1 should be able to prove their case without
2 using a statement from my client, which, of
3 course, was not recorded; which, of course,
4 was not videotaped; which is nowhere else in
5 anything, Your Honor. And we feel that that
6 would be undue prejudice. So what we're
7 asking Your Honor to do is basically keep
8 that report out because the video is the
9 exact same replica of the report. And the
10 video is the best evidence. Plus the fact
11 that that note on there that basically says
12 he confessed, Your Honor, without any
13 corroboration or anything like that, it's
14 certainly unreliable.

15 THE COURT: But hasn't the trier
16 of facts been made aware of the statement
17 now?

18 MR. BRADLEY: Yes. The trier of
19 fact would have been made aware of it anyway.
20 So that's the reason why I said ---

21 THE COURT: And I think again,
22 since this is non-jury, I mean, I think --
23 I assume that y'all going to be putting the
24 video in or ---

25 SOLICITOR ROBINSON: Well ---

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1 THE COURT: Are you not? Well, at
2 some point, I mean, it's hard for me to make
3 a ruling on that without me getting to the
4 point. You know, I think I need to hear the
5 testimony. Then I don't know if y'all -- I
6 mean, if it's taken out of context, I would
7 think that you would put the video in or
8 something to show that, 'hey, this is taken
9 out of context.' That's something then for
10 me to weigh in my decision.

11 MR. BRADLEY: Yes, Your Honor.
12 Just again -- and I agree with that. It's
13 just that I wanted to bring your attention to
14 that prior to starting. Because, again, that
15 little part down there seems to be -- it's
16 crucial to the case because it basically says
17 'your client confessed.'

18 THE COURT: Uh-huh.

19 MR. BRADLEY: And there's nothing
20 else that we have except that. That little
21 statement that's written on that report.
22 It's nowhere on the video. Nowhere on
23 anything else. So, you know, again --
24 (pause).

25 As well, Your Honor, in this case

1 you can see -- and I know that they -- that
2 if someone's confessing, you write out a
3 statement. They did in this case in that
4 other circumstance. When a witness came,
5 they took the witness' statement. They wrote
6 it up. They had the witness sign the
7 statement. And, again, that is the same
8 thing that could have been done -- should
9 have been done in this situation if that
10 confession was reliable. So, of course, Your
11 Honor, we have problems with that coming in
12 or Your Honor even considering that in your
13 opinion of his guilt or innocence when you
14 weigh the facts, Your Honor.

15 But I do understand, Your Honor,
16 and, you know, if you feel the appropriate
17 time to rule on that during the trial, then
18 we'll take it up at that time.

19 THE COURT: What you're saying is
20 they made a statement that your client
21 confessed and you're saying that I should not
22 consider that because they didn't do a
23 written statement, basically; that they
24 should or always take written statements.
25 But doesn't that go more to the weight of

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1 whether I should consider that?

2 MR. BRADLEY: It goes to the
3 weight of the evidence but it also goes to
4 the prejudicial effect that that statement
5 would have on my client. And I think under
6 404 we're allowed to keep out evidence that
7 may be more prejudicial than probative.

8 And in this case, the confession is
9 uncorroborated, not signed or anything else,
10 we think would certainly be prejudicial to
11 our client because it goes to actually what
12 the whole case is about, whether or not my
13 client actually possessed that heroine in
14 this case.

15 THE COURT: Right. Well, I'm sure
16 it's definitely prejudicial but I think --
17 I'm not sure that it violates any of the
18 rules. You can educate me otherwise. But I
19 think it goes to the weight more than the
20 actual basis for suppression.

21 MR. BRADLEY: Okay.

22 THE COURT: But, again, anything
23 like this I'll be glad, like I said, since we
24 do have flexibility, let y'all renew it at
25 the appropriate time.

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1 MR. BRADLEY: Yes, sir. Thank
2 you.

3 THE COURT: Based on this, I'm not
4 sure there's a basis really to suppress it.

5 MR. BRADLEY: Certainly, Your
6 Honor. My argument there was, one, to
7 suppress the entire report that he had and,
8 two, in the alternative to suppress just that
9 confession, that statement part at the end.
10 So we'll just handle that in the trial, Your
11 Honor.

12 THE COURT: All right.

13 MR. BRADLEY: And that would take
14 care of the three issues that we were
15 actually raising to suppress.

16 THE COURT: All right. Now, are
17 there any additional pretrial Motions?

18 MR. BRADLEY: None, Your Honor.

19 THE COURT: We're ready to proceed
20 then, I guess.

21 SOLICITOR HAMILTON: The State
22 does have some issues that they would like to
23 take up, Your Honor.

24 THE COURT: Okay.

25 SOLICITOR HAMILTON: We do want to

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1 get a waiver of jury trial before we proceed.

2 I don't know if you want to do that now.

3 THE COURT: Okay. Yes. All

4 right. Mr. Brown. Can you swear him?

5 (WHEREUPON DEFENDANT DULY SWORN)

6 THE COURT: All right. Mr. Brown,

7 I'm going to ask you some questions and this

8 has nothing to do with your testimony as it

9 relates to -- or has anything to do -- it

10 doesn't relate to the facts in this case. We

11 are here and I've been instructed by your

12 attorneys that you and your attorneys wish to

13 go forward without, you know, without a jury.

14 Now I want to make sure you understand your

15 rights.

16 First of all, you realize that one

17 of your constitutional rights is that you

18 have a right to have your case heard by a

19 jury. That is twelve people would hear all

20 the evidence presented and they could

21 determine whether you're innocent or guilty.

22 Do you understand that right?

23 DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: And they have to --

25 still the State's burden is the same. They

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1 have to prove their case beyond a reasonable
2 doubt as to each element of that charge. And
3 then the jury would deliberate.

4 The jury would also be instructed
5 that you have a right to remain silent, that
6 you would -- if you did not testify, that
7 cannot be used against you. They cannot
8 consider that in any deliberations, you know.
9 But other than that, everything is the same.
10 You have a right to have twelve people make a
11 decision for your case.

12 DEFENDANT: Yes, sir. I know
13 that.

14 THE COURT: All right. Well,
15 first of all, are you under the influence of
16 alcohol, drugs or medication of any type
17 today, which would make you impaired?

18 DEFENDANT: I am not; no, sir.

19 THE COURT: All right. Do you
20 have any reason why -- any mental or health
21 issues that would keep you from understanding
22 what's going on?

23 DEFENDANT: No, I do not.

24 THE COURT: Have you had
25 sufficient time to talk with your attorneys

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1 about your right to have a jury trial?

2 DEFENDANT: Yes, I have, Your
3 Honor.

4 THE COURT: All right. Do you
5 need any additional time to discuss this with
6 them?

7 DEFENDANT: No, I -- (sidebar with
8 counsel).

9 THE COURT: I'm asking do you need
10 any more time to talk with your attorneys
11 about that right.

12 DEFENDANT: No, sir, Your Honor.

13 THE COURT: All right. And has
14 anybody -- do you wish to proceed without a
15 jury?

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: And you realize your
18 rights and you're making that decision on
19 your own?

20 DEFENDANT: Yes, I do, Your Honor.

21 THE COURT: And you realize that's
22 your decision?

23 DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: You realize that's
25 your decision?

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1 DEFENDANT: Yes, I do.

2 THE COURT: Has anybody promised
3 you anything to make this decision?

4 DEFENDANT: No.

5 THE COURT: Has anybody threatened
6 you to make this decision?

7 DEFENDANT: No one.

8 THE COURT: And do you make it
9 freely and voluntarily?

10 DEFENDANT: Yes, I do.

11 THE COURT: And based on every-
12 thing, you wish to go forward with your case
13 and you waive your right to a jury trial?

14 DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: All right. Anything
16 further from the State?

17 SOLICITOR HAMILTON: Your Honor,
18 if I may, I was just going to respond to
19 their Motion regarding the statement, to
20 clarify the State's position. It is normally
21 ---

22 THE COURT: Okay. But anything
23 else on his waiver ---

24 SOLICITOR ROBINSON: Oh, not
25 regarding the jury trial.

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1 THE COURT: Okay. All right.

2 Then we will accept your waiver. I find that
3 it's been knowingly, voluntarily and
4 intelligently made with advice of competent
5 counsel so that we'll proceed with this
6 matter as a bench trial. Yes, Solicitor?

7 SOLICITOR ROBINSON: Thank you,
8 sir. I would just clarify the State's
9 position regarding the statement that defense
10 counsel was making as to that Motion. Our
11 position is, it would normally be the course
12 that you would make the initial admissibility
13 determination simply determining the
14 statement is involuntary as to the
15 constitutionality. Then it would be -- as
16 you mentioned, it would be a weight issue for
17 the jury.

18 Since you are the fact-finder, we
19 would agree that during the testimony if you
20 determine that the taking of the statement
21 was involuntary in some way, that at that
22 point could choose to exclude the content of
23 the statement.

24 THE COURT: Right.

25 SOLICITOR ROBINSON: But otherwise

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1 as to whether or not it should have been
2 recorded or whatnot, that would go to whether
3 you found the statement credible in and of
4 itself.

5 THE COURT: Right. And I guess I
6 didn't address it under *Jackson v.* -- I mean,
7 the other issues with it. I didn't think
8 that they kind of hit that area and that's
9 why I didn't kind of respond that way.

10 SOLICITOR ROBINSON: Yeah. And I
11 just would -- normally, sometimes we ask to
12 do those even if the defense isn't raised
13 just to be sure all the ---

14 THE COURT: Right.

15 SOLICITOR ROBINSON: --- areas are
16 covered. We'd be comfortable going forward,
17 as well.

18 THE COURT: Right. And, again,
19 that's one of the things we do to make sure
20 that there is no issue when the jury comes
21 up. So, yes, we'll make sure we cover that
22 as we go along.

23 SOLICITOR HAMILTON: And, Your
24 Honor, we would request that anybody who is
25 not -- just sequester witnesses who're not

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1 the Defendant and -- you know, the State
2 would comply too.

3 THE COURT: All right. And,
4 again, I don't see anybody else in the
5 courtroom, other than your folks but we will
6 have a sequestration Order.

7 Do y'all have any response to that?

8 MR. BRADLEY: Yeah. We have no
9 problem with that, Your Honor. We have
10 probably just one witness who's supposed to
11 be here.

12 THE COURT: Okay.

13 MR. BRADLEY: Anyway, it's one of
14 those where we might not even know who a
15 witness is going to be.

16 THE COURT: That's fine. And make
17 sure they're instructed they're not to
18 discuss the case before the their testimony.

19 MR. BRADLEY: Certainly, Your
20 Honor.

21 SOLICITOR HAMILTON: Thank you.
22 And then the last thing that the State would
23 ask is just whether the defense complied with
24 *Brady*; you know, provided all necessary
25 discovery.

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1 THE COURT: All right. And your
2 response on that?

3 MR. BRADLEY: Yes, Your Honor. We
4 don't have any additional information, with
5 the exception that I will disclose and I
6 think I did tell the prosecution that one of
7 the witnesses -- that I did speak with one of
8 the witnesses. I didn't take any statements
9 or anything like that. So that's pretty much
10 it. There's nothing and I've been allowed to
11 conduct my investigation.

12 THE COURT: Yeah. Okay. Any
13 response to that?

14 SOLICITOR HAMILTON: No, Your
15 Honor.

16 THE COURT: Okay. All right.
17 Anything else?

18 SOLICITOR HAMILTON: Nothing from
19 the State, Your Honor.

20 THE COURT: All right.. Please
21 call your first witness. Oh, do y'all want
22 to make a brief statement or anything?

23 SOLICITOR HAMILTON: The State
24 waives opening.

25 THE COURT: All right.

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1 MR. BRADLEY: Your Honor, the Defendant
2 would waive too at this time.

3 THE COURT: Okay.

4 MR. BRADLEY: I think all the
5 evidence will come out in testimony.

6 THE COURT: All right. You may
7 call your first witness.

8 SOLICITOR HAMILTON: Thank you,
9 Your Honor. The State calls officer Randy
10 Gibson.

11 (WITNESS TAKE STAND)

12 RANDY GIBSON, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR HAMILTON:

17 Q. Good morning, Mr. Gibson?

18 A. Good morning.

19 Q. Would you please state your full
20 name for the court?

21 A. William R. Gibson, II.

22 Q. And what is your occupation?

23 A. I'm currently employed with York
24 County Sheriff's Office as a deputy sheriff.

25 Q. And what type of work do you do in

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1 your position?

2 A. I am currently a patrol deputy
3 assigned to the Fort Mill district.

4 Q. What did do prior to taking this
5 position?

6 A. For approximately nine years, I was
7 assigned to the York County multi-
8 jurisdictional highway interdiction team.

9 Q And can you state for the court what
10 that job entails?

11 A. Primarily, we patrol the main
12 thoroughfares throughout York County,
13 primarily focused our attention on I-77,
14 conducting criminal enforcement. Our primary
15 goal for our unit was safety for the citizens
16 of York County.

17 Q. Okay. And were you employed in that
18 capacity, working for the drug enforcement
19 unit the morning of February 18, 2015?

20 A. I was.

21 Q. Now, I would like to draw your
22 attention to that morning. What were you
23 doing around 10:50 in the morning?

24 A. I was stationary at the York
25 County/Chester County line, monitoring the

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1 northbound flow of traffic within York
2 County.

3 Q. Did you observe anything abnormal
4 around that time?

5 A. I did.

6 Q. And what did you observe?

7 A. I observed a white-in-color Nissan
8 Maxima come by, traveling behind -- initially
9 it came by northbound and I noticed it was
10 following too close to a tractor trailer.

11 Q. And what did you proceed to do when
12 you saw that?

13 A. At that time, I pulled out and
14 proceeded to catch up with the vehicle and
15 initiate a traffic stop.

16 Q. Okay. Where did you initiate that
17 traffic stop?

18 A. Mile marker 73, which Mt. Holly Road
19 in Rock Hill, York County.

20 Q. York County?

21 A. (Affirmative nod).

22 Q. And could you please explain to the
23 court what happened once you stopped that
24 vehicle?

25 A. I approached the passenger's side of

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1 the vehicle and made contact with the driver.
2 As I was speaking with the driver, the
3 Defendant, which is present in the courtroom
4 today, Mr. Brown, he immediately started
5 talking to me also. I think at some point in
6 time he said this was a rental car. The
7 driver never could produce a driver's license
8 or any type of identification.

9 Q. Did she give you a name?

10 A. Subsequently she did. "Anita
11 Trappier", I believe it was.

12 Q. Okay. So you spoke with the driver.

13 A. (Affirmative nod).

14 Q. You said she couldn't produce ---

15 A. She couldn't produce any type of
16 identification as to who she was.

17 Q. Okay. So what happened next? Once
18 you spoke with her, she didn't produce any
19 identification. What did you proceed to do?

20 A. I eventually asked her to step from
21 the vehicle and to the rear of it.

22 Q. And what did you proceed to do at
23 that point?

24 A. I questioned the name that she'd
25 given me, Anita Trappier, about did she have

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1 any type of ID on her at all. Nothing. I
2 asked Ms. -- we ended up getting in my
3 vehicle due to the cold weather. So we ended
4 up sitting -- she was on my front seat. And
5 while I was inside trying to verify who she
6 was on my computer and through dispatch, I
7 was having conversation with her about where
8 she was going, where they were going. How
9 long they plan on being there, things of that
10 nature.

11 Q. Did you ever identify who she was?

12 A. Her true identification didn't come
13 about until we got to the Rock Hill police
14 department.

15 Q. Okay. Did you eventually speak with
16 the passenger?

17 A. I did.

18 Q. Okay. And who was that passenger?

19 Did you identify him?

20 A. Mr. Calvin Brown.

21 Q. Okay. And did you speak to him ---

22 A. I did.

23 Q. --- about what was going on?

24 A. I did.

25 Q. Okay. What did he say when you

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1 spoke with him?

2 A. He said they were heading to
3 Morganton, North Carolina. I know he had a
4 conversation with the constable that was
5 riding with me that evening, as I was in my
6 vehicle speaking with the female. I did ask
7 -- based on my observation and getting the
8 conflicting stories, and no luggage and
9 saying that they were going to be somewhere
10 overnight. And then it was a one-way travel,
11 a rental car, air freshener, everything that
12 painted the picture of criminal activity. I
13 think he stated he had known her for a period
14 of years. And then she said that it was a
15 different amount of years that she had known
16 him. So I just drew the conclusion that
17 there was criminal activity present.

18 Q. Okay.

19 A. And I asked him could I search the
20 vehicle.

21 Q. And did he consent to the search?

22 A. He denied consent.

23 Q. Okay. What did you proceed to do
24 when he denied consent?

25 A. I explained to Mr. Brown that I had

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1 a drug K-9 inside my vehicle. And I
2 explained to him the procedure of, you know,
3 'we're going to walk the K-9 around the
4 vehicle.' At that time he made the comment
5 that, 'look, well, the dog's going to alert.'

6 Q. So at the time he stated the dog
7 would alert, what did you do?

8 A. I eventually walked back -- well, I
9 asked Mr. Brown to step from the vehicle,
10 which he did. He stepped back to the front
11 of my vehicle with the state constable that I
12 had with me. I deployed my K-9, Justice,
13 from the vehicle, escorted him around the
14 car, at which time he gave a positive alert
15 to the passenger rear door area of the car.

16 Q. Okay. Let me ask you a few
17 questions regarding your history as a K-9
18 handler, or narcotics detection. How long
19 have you worked as a K-9 handler?

20 A. I started back in 2007.

21 Q. Okay. And who is your K-9 partner
22 or was your K-9 partner?

23 A. Justice.

24 Q. Okay. How old is Justice?

25 A. He is approximately ten years of

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1 age. He's a rescue dog. When we adopted him
2 at the York County Sheriff's Office, we don't
3 know his true age. Based on veterinarian and
4 up, you know, doing annual checks, he looks
5 to be about ten, eleven years of age.

6 Q. Okay. And how long has he been in
7 service?

8 A. Since 2007, we started training him.

9 Q. Okay. So around seven, eight years?

10 A. Correct.

11 Q. And what law enforcement functions
12 does Justice, your K-9 partner, perform?

13 A. He's solely trained on the odor of
14 illegal narcotics.

15 Q. And what kind of narcotics has he
16 been trained to alert to?

17 A. Marijuana, crack, cocaine, heroin,
18 methamphetamine and ecstasy; if that's six.

19 Q. And was the K-9/Justice deployed for
20 the purpose of conducting a free air sniff on
21 the incident date of February 18th, 2015?

22 A. He was.

23 Q. Okay. And had he performed
24 narcotics detection prior to that date, your
25 dog?

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1 A. Many.

2 Q. Many?

3 A. (Affirmative nod).

4 Q. Okay. And during those prior police
5 sniffs as well as controlled sniffs conducted
6 during training exercises, has he
7 demonstrated reliable detection of narcotics?

8 A. Yes, ma'am.

9 Q. What training had Justice, your
10 canine partner, received prior to the
11 incident date of February 18th, 2015?

12 A. Well, he's certified through the
13 South Carolina K-9 association. We go
14 through a recert every year to recert our
15 dogs. Plus, I train eight hours a month, but
16 I break my training down to two four-hour
17 days a month.

18 Q. So you receive training in addition
19 to the dog receiving training at the same
20 time?

21 A. I have received training.

22 Q. Okay. And have you and your K-9 --
23 you said you have been certified by an
24 organization. What is that organization
25 again?

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1 A. It's the South Carolina Police K-9
2 Association. I have a certificate over
3 behind you there.

4 Q. And how often is that certification
5 required?

6 A. Annually.

7 Q. What breed is your K-9 partner,
8 Justice?

9 A. Labrador retriever.

10 Q. Okay. And is this breed known for a
11 huge sense of smell?

12 A. Yes, ma'am.

13 Q. And is the breed commonly used for
14 narcotics detection?

15 A. Labrador retrievers are commonly
16 known for drug detection.

17 SOLICITOR HAMILTON: Your Honor,
18 the State would have Officer Gibson declared
19 an expert in canine narcotics detection.

20 THE COURT: Are there any
21 questions or objections?

22 MR. BRADLEY: No objection on him
23 being an expert on K-9 use.

24 THE COURT: All right. I'll ---

25 MR. BRADLEY: If it please the

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1 Court, Your Honor. There is a -- and I hate
2 to interrupt, Your Honor. I saw two people
3 just come in. And I know the person on this
4 side. And I think that this may be one that
5 I had on my witness list, Anita Trappier's
6 uncle. But since you wanted the witnesses
7 suppressed, I wanted to bring that to your
8 attention.

9 THE COURT: All right. Let's take
10 a second. Do you want to talk to him?

11 MR. BRADLEY: Yeah. I just want to
12 make sure because I don't want him to sit in
13 here during the -- I'm sorry about that. I'm
14 sorry to interrupt.

15 THE COURT: Yeah. Run and do
16 that.

17 (COURT AT EASE)

18 MR. BRADLEY: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. BRADLEY: I'm sorry.

21 THE COURT: That's fine. So based
22 on the -- I do find that he is -- based on
23 the consent and the testimony, I do find that
24 he is qualified, so qualified as a K-9
25 narcotics detection canine handler.

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1 SOLICITOR HAMILTON: Thank you,
2 Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HAMILTON:

5 Q. You stated earlier that you talked
6 with the Defendant about a K-9 search that
7 day, February 18th, 2015. Did you have your
8 K-9, Justice, with you at that time of the
9 stop?

10 A. I did. He was on scene.

11 Q. Okay. Now, what did you do? You
12 stated you asked him to get out of the
13 vehicle. Did you direct your K-9 partner,
14 Justice, to conduct the sniff?

15 A. Yeah. I put him on cue. He's got
16 a toy that he's rewarded. And it's only
17 associated with training with illegal
18 narcotics. So when he sees this toy and I
19 put him on cue to start searching, he
20 immediately knows his job. So that's what I
21 did.

22 I start at the front of the vehicle and
23 I came down. I started -- I always present
24 the seams of the car doors because that's the
25 weakest part of a car that is going to emit

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1 any type of odor, generally. You know, I
2 mean, window sills or anything like that. So
3 I try to present areas of the car where air
4 is going to be released.

5 Q. Okay. And where did you present the
6 dog on that date?

7 A. Down the side of the car.

8 Q. Which side of the car?

9 A. Driver's side.

10 Q. Okay. And when you're presenting
11 with a dog, you're not telling the dog to
12 alert when you're presenting at that time;
13 are you?

14 A. No, ma'am.

15 Q. So when you're presenting, you're
16 asking him to sniff?

17 A. Right.

18 Q. And what are you looking for during
19 this sniff for him to do?

20 A. Justice's alert to me is -- he is,
21 what you would refer to as a passive alert K-
22 9. He's been trained to sit when he alerts.
23 And the reason we train them to do that, we
24 don't want him scratching on peoples'
25 vehicles and other peoples' property and

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1 causing damage because we're ultimately
2 responsible. So through the whole course of
3 his training, when he sits and gives me that
4 look, that's the indication that he is
5 smelling the odor that he has been trained to
6 recognize, to alert to.

7 Q. Okay. And on February 18, 2015,
8 what was the final response from Justice?

9 A. It was a positive alert. He sat.

10 Q. To what part of the vehicle?

11 A. Right at -- like I said, at the back
12 door area.

13 Q. Okay. Once you observed this alert,
14 this behavioral change in Justice, what did
15 you proceed to do?

16 A. I put the K-9 back in my vehicle. I
17 believe I informed the individuals that I was
18 going to conduct an interior search of the
19 vehicle.

20 Q. And what did you ultimately find in
21 your search of the vehicle?

22 A. What all I found?

23 Q. Well, what did you ultimately, yes,
24 find?

25 A. There was a couple of jackets on the

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1 back seat. I believe one belonged to the
2 female and one belonged to Mr. Brown. I
3 actually pulled the jacket from the vehicle,
4 asked Mr. Brown was this his jacket. And he
5 replied, 'yes, that's my jacket.' Inside one
6 of the jacket pockets was a -- looked like a
7 little toothpick container that contained a
8 powdery substance. And, also, a hard
9 substance, which I recognized to be crack
10 cocaine.

11 Q. In what jacket was that found in?

12 A. Mr. Brown's.

13 Q. Okay. Is that the male jacket?

14 A. The male jacket; correct.

15 Q. So you believed this substance that
16 you found to be an illegal substance?

17 A. No doubt.

18 Q. On scene did the Defendant identify
19 the nature of the substance found in his
20 jacket pocket?

21 A. I'm sorry. Can you repeat the
22 question?

23 Q. Yeah. While you were on scene, did
24 the Defendant identify the nature of that
25 substance that was ultimately found in his

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1 jacket pocket?

2 A. He did not.

3 Q. Okay. Who ultimately came to that
4 conclusion of what the substance was?

5 A. I did.

6 Q. And what was your conclusion?

7 A. Cocaine.

8 Q. Okay. And what was that based on?

9 A. Observation, what it appeared to be
10 at the time. To me, at that time, it looked
11 like cocaine. And like I said, it had crack.
12 There was a crack -- piece of a crack rock in
13 there. And I know you've got to have cocaine
14 to make crack.

15 Q. Let me hand you what's been marked
16 State's Exhibit 1 for identification
17 purposes. I want you to take a look at it.

18 A. Sure.

19 Q. Let me show the defense first.

20 MR. BRADLEY: (Upon review), no
21 objection.

22 THE COURT: All right. So that's
23 State's Exhibit 1.

24 SOLICITOR HAMILTON: State's
25 Exhibit 1 for identification purposes, Your

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1 Honor.

2 THE COURT: Well, I believe he
3 said no objection.

4 SOLICITOR HAMILTON: Okay. Yeah,
5 we haven't -- we're going to ultimately admit
6 this exhibit under the drug expert.

7 THE COURT: All right.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR HAMILTON:

10 Q. Could you please take a look at
11 that? Do you recognize State's Exhibit 1?

12 A. (Upon review), I do.

13 Q. Okay. And what is that?

14 A. Heroin.

15 Q. Okay. Is that the bag that you
16 recovered out of the Defendant's pocket on
17 February 18th, 2015?

18 A. It is.

19 Q. Now, I'm going to skip forward and
20 then I'm also going to go back later. But
21 back at the police department were you able
22 to determine how much heroin was actually in
23 that bag?

24 A. Yes, ma'am.

25 Q. Could you state for the Court how

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1 much?

2 A. Approximately sixteen point five
3 (16.5) grams.

4 Q. Okay. And once you determined the
5 weight of the seized heroin, what did you
6 ultimately do with it?

7 A. I sealed it inside one of our bags,
8 in our evidence bags to be placed in the
9 evidence drop, the York County evidence drop.

10 Q. And once you recovered that bag from
11 that the Defendant on scene, what did you do
12 with that bag? On scene?

13 A. On scene?

14 Q. Yes.

15 A. I just kept it in my possession.

16 Q. So it was continuously in your
17 custody and control prior to you taking it to
18 the station and putting it in a sealed bag?

19 A. Yeah. It was.

20 Q. And is this the envelope that you're
21 holding in your hand, the envelope you
22 secured the drugs in on the morning of
23 February 18th, 2014?

24 A. The envelope inside of that. I
25 didn't put it inside this envelope.

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1 Q. Yes.

2 A. I put it inside the envelope that's
3 in here.

4 Q. Yes?

5 A. And I also put it in this little
6 Ziploc bag and put my name on it.

7 Q. Okay. I'm going to ask you again,
8 what was the condition of the envelope when
9 it left your possession?

10 A. Sealed.

11 Q. It was sealed?

12 A. (Affirmative nod).

13 Q. What did you do with envelope once
14 you sealed it?

15 A. I placed it in the evidence locker
16 which is owned by the York County Sheriff's
17 Office, but located at the Rock Hill Police
18 Department.

19 Q. Okay. And is that a secured locker?

20 A. Yes.

21 Q. And is it locked? Anyone else can't
22 access it?

23 A. Correct.

24 Q. Now, back on scene -- I said I was
25 going to skip back. Back on the scene, did

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1 you read the Defendant his *Miranda* rights?

2 A. I did.

3 Q. Okay. Now those are the rights that
4 we hear, *you have the right to remain silent,*
5 *anything you say* -- are those the rights that
6 you read to him?

7 A. It is.

8 Q. And where on scene did you read him
9 his rights, what location?

10 A. It was directly in front of my car
11 at the back of theirs.

12 Q. Okay. Can you tell us a little bit
13 about the environment, officers present
14 during that?

15 A. It was myself, State Constable
16 Janeski (phonetic), the defendant, and the
17 female that I hadn't identified that was
18 there. And the traffic was -- down on the
19 south end it's usually moderate.

20 Q. And when you read these rights to
21 him, was anyone threatening him?

22 A. No, ma'am.

23 Q. Did he state that he understood
24 these rights?

25 A. Yes, ma'am.

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1 Q. And did you ultimately question him
2 in regards to the brown powdered substance
3 found in his jacket?

4 A. At the police department, yes,
5 ma'am, I did.

6 Q. And when you were questioning him at
7 the police department, was anyone threatening
8 the Defendant?

9 A. No, ma'am. Let me add also, yes, on
10 the scene I did -- when I removed this from
11 the jacket, I did ask Mr. Brown what this was
12 and he stated he didn't know what it was.

13 Q. Okay. So back at the station when
14 you did speak to him and you took a statement
15 from him, was the Defendant handcuffed?

16 A. No, ma'am.

17 Q. What other officers were present at
18 that time?

19 A. I don't recall.

20 Q. Was it a bunch of officers in a
21 room, around him?

22 A. There were several narcotic agents
23 inside the office area.

24 Q. Okay. Tell us about that
25 environment, when you took his statement.

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1 Could you please explain to the Court the
2 environment in which you took his statement?

3 A. Well, the office is one big office
4 with some adjoining offices. One of them is
5 the supervisor's office. The other one's
6 another like interview room. And then we
7 have another office with a desk that we also
8 utilize as a interview room at times when we
9 bring in more than one or two people.

10 Q. So you were working around people?

11 A. Yeah. Yes, ma'am.

12 Q. So they're not focused on you while
13 you're taking the statement?

14 A. Right.

15 Q. Okay. And when you took the
16 statement, did he appear to be hurt or
17 injured?

18 A. No, ma'am.

19 Q. And he was able to understand what
20 was going on. He was coherent?

21 A. Yes, ma'am.

22 MR. BRADLEY: Objection, Your Honor.
23 That requires him to know the state of my
24 mind of my client, which he can't testify to.

25 THE COURT: All right.

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1 SOLICITOR HAMILTON: The State's
2 just asking if he was under the influence.
3 Did he appear to be under the influence based
4 on his years in law enforcement.

5 MR. BRADLEY: Objection.

6 THE COURT: I'd ask you to
7 rephrase your question.

8 SOLICITOR HAMILTON: Okay. I'll
9 move on, Your Honor.

10 THE COURT: Okay.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR HAMILTON:

13 Q. What did you ultimately ask him?

14 A. I ultimately ask him was the cocaine
15 his. And he replied, yes. And I asked him
16 how much ---

17 MR. BRADLEY: Objection again, Your
18 Honor. That objection is based on our
19 pretrial motion.

20 THE COURT: Okay.

21 MR. BRADLEY: And I understand that.

22 THE COURT: I think it really goes
23 to weight. I'll be glad to ---

24 MR. BRADLEY: Certainly. Thank
25 you.

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1 DIRECT EXAMINATION CONTINUED
2 BY SOLICITOR HAMILTON:
3 Q. You can go ahead. You replied, yes.
4 And then what else did he say?
5 A. Then he stated he paid a thousand
6 dollars (\$1,000) for the substance, which I
7 kept referring to as cocaine.
8 Q. But he never refers to it as
9 cocaine?
10 A. He never referred to it as cocaine.
11 Q. And is a thousand dollars consistent
12 with the amount someone would pay for this
13 amount of heroin based on your experience in
14 law enforcement?
15 A. Yeah.
16 Q. Do you see the person in the
17 courtroom today that you seized that bag of
18 heroin from and arrested the morning of
19 February 18, 2015?
20 A. I do.
21 Q. Okay. Could you please point him
22 out?
23 A. He's sitting right over there
24 between the deputy and the defense attorney,
25 in the white shirt with the greenish tie.

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1 SOLICITOR HAMILTON: Your Honor,
2 the State would ask the record reflect that
3 he did identify the Defendant, Mr. Calvin
4 Brown.

5 THE COURT: All right, it so
6 noted.

7 SOLICITOR HAMILTON: I beg the
8 Court's indulgence, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR HAMILTON:

11 Q. And when you were questioning the
12 Defendant, did he appear to understand what
13 was going on when you were questioning him
14 and taking his statement?

15 A. Clearly.

16 Q. Clearly?

17 A. Yes, ma'am.

18 Q. And when you read him *Miranda* rights
19 on scene, was that before or after you found
20 the drugs?

21 A. After.

22 Q. Please answer any questions the
23 Defense may have.

24 A. Yes, ma'am.

25 THE COURT: You may proceed.

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1 MR. BRADLEY: Thank you, Your Honor.
2 Your Honor would you prefer that I stand here
3 or ---

4 THE COURT: Whatever you want to
5 do, that's fine.

6 CROSS-EXAMINATION

7 BY MR. BRADLEY:

8 Q. Officer Gibson, just to -- just
9 first to go over a couple of things that you
10 just stated. You said that my client made a
11 statement. Can you tell the Court exactly
12 what that statement was that my client made?

13 A. About the heroin?

14 Q. Yes. About any type of ownership
15 that he was expressing over the heroin or
16 this cocaine or whatever it was.

17 A. He stated that the cocaine was his
18 and that he had paid a thousand dollars for
19 it.

20 Q. Okay. He said that the cocaine was
21 his; is that correct?

22 A. Correct.

23 Q. And the substance in that bag was
24 not cocaine; am I correct?

25 A. Correct. It tested positive for

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1 heroin.

2 Q. When he told you that, did you --
3 why did you not have him sign a statement to
4 that effect?

5 A. I just didn't.

6 Q. Okay. He's basically telling you
7 that the huge amount of substance that was
8 found is his. Is it not the policy that you
9 all at least get a statement from a witness
10 who's actually confessing?

11 A. Not to my knowledge, there's no
12 policy on it.

13 Q. In your practice do you normally --
14 if a witness comes in or has someone that's
15 made a statement, do you normally either get
16 it recorded, written? Do you have the
17 officer involved? What is the procedure that
18 you do?

19 A. We don't record it. We have had
20 statements taken and we have statements taken
21 orally.

22 Q. I'm sorry. I missed that last part.
23 I'm sorry.

24 A. We have taken statements orally.
25 And we have taken statements -- written

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1 statements.

2 Q. Okay. Well, what do you do in order
3 to make sure that it's not questioned when we
4 come to court? Are there any safeguards that
5 you all take, such as having another witness
6 present to verify that that person actually
7 said it?

8 A. Not in all instances, no.

9 Q. Okay. So sometimes you all just get
10 -- how long have you been a police officer?

11 A. Approximately twenty-one years.

12 Q. Twenty-one years. And in those
13 twenty-one years you all have never had a --
14 or you don't see a need to have another
15 officer there or have a client actually sign
16 a statement, just to verify that that is
17 actually the client's statement? You all
18 just don't have any safeguards or procedures
19 that are there for that; is that correct?

20 A. Not in every instance, no.

21 Q. Not in every instance. What do you
22 normally do?

23 A. I'm sorry?

24 Q. What's your normal -- what's your
25 normal MO? What's your normal modus

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1 operandi? Do you normally get a statement
2 written? Do you normally take them into the
3 interrogation room and have them videotaped?

4 A. We do not videotape them.

5 Q. Okay. You don't videotape any type
6 of confessions that they might give. Do
7 y'all have equipment there to videotape?

8 A. No.

9 Q. Okay. In your interrogation room,
10 is there video cameras?

11 A. No, sir.

12 Q. Okay. Is there audio in the
13 interrogation rooms?

14 A. No, sir.

15 Q. There's no audio either?

16 A. No, sir.

17 Q. Are there other officers available
18 at the time?

19 A. Like I said earlier, there were
20 several throughout the office.

21 Q. So there's nothing that would have
22 stopped you from getting an officer to come
23 in and say, 'Would you witness this? He's
24 actually accepting responsibility for the
25 substance.'

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1 A. No, sir.

2 Q. And why wouldn't you?

3 A. Maybe it was my mistake. Maybe I
4 should have.

5 Q. You also stated a minute ago that
6 the K-9 -- that my client said the K-9 would
7 alert on the vehicle. Were you the one that
8 was a part of that conversation?

9 A. Yes, sir. I was.

10 Q. So he actually told you that the K-9
11 would alert on the vehicle?

12 A. He did.

13 Q. Was there any other conversation
14 regarding that issue? Did he say anything
15 else?

16 A. Not that I recall.

17 Q. Okay. So you don't remember any
18 type conversations about K-9s possibly always
19 hitting, false alerts or anything like that,
20 that you may have had with Mr. Brown? No
21 conversations like that?

22 A. He may have. I don't recall.

23 Q. He may have. But he may have said
24 some other things as well regarding the K-9;
25 is that what you're saying?

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1 A. He may have.

2 Q. At what point during this procedure,
3 this stop, did you believe you had reasonable
4 suspicion that another crime was being
5 committed? And I say another crime, because
6 you actually stopped her for following too
7 closely, which is a traffic violation.
8 You're still considering that to be, you
9 know, criminal. So at what point after the
10 stop did you consider there was reasonable
11 suspicion for a drug dog to come on the
12 scene, or to come out of the car because he
13 was already on the scene?

14 A. The inconsistencies in the two
15 parties travel itinerary.

16 Q. Okay. And tell me about that? What
17 were the inconsistencies that actually
18 alerted you that there may have been drugs in
19 the car?

20 A. I believe she said they were heading
21 to Asheville. How long they had known each
22 other.

23 Q. Well, let's take them one by one.
24 They were heading to Asheville. Why did you
25 find that suspicious?

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1 A. Because he had said they were
2 driving to Morganton.

3 Q. But had he already told you that at
4 the time?

5 A. I believe so

6 Q. So he first said -- he told you they
7 were going to Morganton. And then did you go
8 back to the patrol car and ask her 'where
9 y'all going?'

10 A. I believe I had spoken with her
11 first and then went back and got -- talk to
12 Mr. Brown. And then he stated they were
13 traveling to Morganton.

14 Q. Okay. And what did she say they
15 were traveling to Asheville, is that what you
16 testified to?

17 A. I believe Asheville came out at some
18 point in time, yes, sir.

19 Q. And how far apart is Asheville and
20 Morganton? Do you have any idea?

21 A. I have no clue.

22 Q. So at the time you thought that was
23 suspicious, were you under the impression
24 that Asheville was just a significant
25 distance away from Morganton, which is where

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1 they stated they were going? Which is where
2 he stated he was going?

3 A. (No verbal response).

4 Q. In other words, and I'll just give
5 you an example. If I say I'm going to Rock
6 Hill instead of going to York County -- do
7 you understand where I'm going with this?

8 A. No, sir.

9 Q. Okay. Well, let me rephrase and try
10 to make it clear.

11 A. Okay.

12 Q. Did you know at that time the
13 distance between Asheville and Morganton?

14 A. I believe I stated I do not.

15 Q. Okay. Did you have any idea whether
16 they were even in the same vicinity?

17 A. Well, I know they're not in the same
18 vicinity.

19 Q. Okay. And how do you know that?

20 A. One, Morganton, North Carolina.

21 Asheville, North Carolina.

22 Q. Could they be twenty miles apart?

23 A. They could have been.

24 Q. They could have been?

25 A. (Affirmative nod).

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1 Q. Okay. So I've got to take my point
2 up. You said that that was the thing that
3 made you suspicious, that they gave two
4 different places that they were going to.
5 But you weren't even certain whether or not
6 those two places were anywhere near each
7 other or not; is that correct?

8 A. Correct.

9 Q. So the suspicion there was based on
10 your knowledge of the fact that those weren't
11 the same two places; is that correct?

12 A. Correct.

13 Q. Okay. And the second thing you said
14 that actually made you suspicious was what
15 again?

16 A. No luggages.

17 Q. Okay. No luggage. And what was
18 their reason for not having luggage?

19 A. One said that -- I believe she
20 stated they may stay overnight, they may come
21 back. He's -- I believe he stated they were
22 coming back.

23 Q. Okay. Did he also say that may have
24 stayed overnight because of the dark or
25 because they didn't want to drive on the

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1 road? Did he make any statement like that
2 to you or you just don't recall?

3 A. I'm sorry?

4 Q. Did he make any statement to you
5 that 'yeah we may stay overnight, simply
6 because we may not have driven back on the
7 road' or 'we would be back early that next
8 morning'?

9 A. No. I don't recall.

10 Q. Okay. But you're not saying he did
11 not. You just don't recall; that's correct?

12 A. Correct.

13 Q. Okay. And so if they were taking a
14 trip there that day, to be coming back that
15 day would no luggage, would that have been
16 suspicious?

17 A. Repeat the question, please?

18 Q. I'm sorry. If you found out that
19 they said that they were only going to North
20 Carolina for that day and they were coming
21 back that day and there was no luggage in the
22 vehicle, would that have been suspicious to
23 you as well?

24 A. No.

25 Q. Okay. If they said they were

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1 staying overnight and coming back the next
2 day, would that have been suspicious?

3 A. With no luggage, (affirmative nod).

4 Q. And why would that be? Why would
5 you find that if someone's going that day and
6 coming back that day or maybe the next
7 morning, why would be considered suspicious
8 that they didn't have any luggage?

9 A. Because out of the thousands and
10 thousands of traffic stops that I've made
11 over the twenty-one years most people that
12 travel and are going to stay somewhere
13 overnight at least take a tooth brush with
14 them.

15 Q. So you're thinking that it's clearly
16 abnormal to not at least have toothbrushes;
17 is that correct?

18 A. They had no article of clothing,
19 other than the jackets ---

20 Q. And so they did have jackets there;
21 right?

22 A. Correct.

23 Q. Okay.

24 MR. BRADLEY: Beg the court's
25 indulgence for one second.

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1 CROSS-EXAMINATION CONTINUED

2 BY MR. BRADLEY:

3 Q. You just testified about the luggage
4 and about whether or not they may have had --
5 you know, you would have found -- at least
6 they should have taken a toothbrush with
7 them, at this particular time when you're
8 making this determination though, you hadn't
9 searched the vehicle yet; is that correct?

10 A. No, sir.

11 Q. Okay. So how would you know whether
12 or not they had a toothbrush in the back or
13 in a coat pocket or anything like that?

14 A. I wouldn't have.

15 Q. So at that particular time you did
16 not know whether or not they had any
17 necessary supplies to stay overnight; is that
18 correct?

19 A. Correct.

20 Q. And you did not know what was in the
21 trunk at that time either; is that correct?

22 A. Correct.

23 Q. Okay. But you still thought it was
24 suspicious that there were places in the
25 vehicle that you, at that point did not look

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1 to see whether or not there was anything
2 there? Whether there was a toothbrush there
3 or any overnight bag there. At that
4 particular point you hadn't searched the
5 vehicle so you really did not know whether
6 they had at that time or not. Is that
7 correct?

8 A. Do you mean prior to the K-9
9 alerting to the vehicle?

10 Q. I am referring to the time that
11 you're suspicious. Your K-9, you hadn't --
12 I'm assuming you had suspicion before you
13 brought the K-9 out; is that correct?

14 A. Correct.

15 Q. And -- you were suspicious?

16 A. (Affirmative nod).

17 Q. And you said the reason you were
18 suspicious was because the itineraries were
19 different and a second thing we're talking
20 about now is that they didn't have luggage or
21 at least have a toothbrush or necessities
22 that would show an overnight trip?

23 A. Correct.

24 Q. And my question to you is you hadn't
25 searched the vehicle yet, front or truck, so

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1 you did not know whether or not they had
2 those things at that point; is that correct?

3 A. Correct.

4 Q. So is it fair to say at that point
5 that maybe your suspicions were not
6 justified?

7 A. No, they were justified.

8 Q. And they were justified because of
9 the travel itineraries that was different,
10 which you were not certain the vicinity and,
11 secondly, whether or not they had anything,
12 any luggage or any type of things they need
13 for an overnight stay. And you're saying you
14 didn't even check the vehicle yet for that.
15 So both of those suspicions there, you still
16 feel that they were actually justified?

17 A. Correct. And that along with the
18 air freshener inside the rental car.

19 Q. Well, let's talk about the air
20 freshener?

21 A. Yes, sir.

22 Q. What type of air freshener was in
23 the car?

24 A. I believe it was a, uh, -- forest
25 tree referred to as.

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1 Q. Where was it?

2 A. I believe it was hanging from the
3 mirror.

4 Q. Is that not where most people put
5 those type air fresheners?

6 A. In personally-owned vehicles or
7 rental cars?

8 Q. In either/or?

9 A. Correct.

10 Q. Okay. And don't, when people get a
11 rental car, don't they usually use that
12 vehicle, unless there's any restrictions by
13 the rental car company, they typically use
14 that vehicle as they see fit until they take
15 it back to the rental car company; is that
16 correct?

17 A. Yes.

18 Q. It's their vehicle at the time.
19 It's like a hotel room; is that correct? If
20 you get a hotel room, that's your room. If
21 you choose to spray air freshener in that
22 room, you have the right to do that; is that
23 correct?

24 A. You have that right; correct.

25 Q. Okay. So he did have a right to

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1 have a air freshener in the car; is that
2 correct?

3 A. Correct.

4 Q. Okay. And that air freshener, what
5 is it about that that made you suspicious?

6 A. Well, commonly in my training and
7 experience with rental cars, they like --
8 people like to personalize their car, a
9 rental car, to make it look like it's
10 personally owned.

11 Q. Okay.

12 A. Also, not to mention, to mask the
13 odor of illegal narcotics that may be in the
14 car.

15 Q. Certainly. So there's two reasons,
16 there's two things that could have
17 necessitated him having the air freshener is
18 what you're testifying to. One, he may have
19 wanted it for his own personal to him of the
20 rental vehicle. But two, in your experience
21 is it's been used to mask the scent of drugs.
22 Mask the scent -- when you say mask the scent
23 of drugs, what type of drugs are you talking
24 about?

25 A. Heroin, cocaine, marijuana.

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1 Q. Is there a distinct smell of heroin
2 that you're aware of?

3 A. Heroin smells like heroin.

4 Q. Okay. What does it smell like? I
5 mean, "heroin smells like heroin." I mean,
6 does it have a -- what's the difference in
7 the smell of heroin and the smell that's in
8 this courtroom now?

9 A. Heroin smells like heroin. I don't
10 smell heroin in this courtroom today, other
11 than what's in front of me, but it's in a
12 sealed bag.

13 Q. Okay. On the scene you thought that
14 it was cocaine. Does cocaine have a distinct
15 smell?

16 A. Cocaine smells like cocaine.

17 Q. Okay. So why weren't you able to
18 determine, based on the smells, whether or
19 not it was heroin or cocaine?

20 A. I don't believe I ever put the
21 substance up to my nose.

22 Q. Okay. Would it not have been
23 important to know what the substance was that
24 you actually arrested him for?

25 A. Yes, sir.

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1 Q. Okay. And you thought it was
2 cocaine; is that correct?

3 A. Correct.

4 Q. Why didn't you conduct a field
5 sobriety -- I'm sorry -- a field test of the
6 substance to determine what it was?

7 A. I don't believe at that time I had a
8 field test kit in my vehicle for heroin.

9 Q. Okay. What were you doing out there
10 that morning with the state constable?

11 A. Repeat the question, please.

12 Q. What was you all's job that day?
13 What were you doing? Were you on patrol?
14 Were you looking for a burglary suspect?
15 What were you all doing there that day,
16 parked stationary, the day that you all
17 pulled my client over?

18 A. I was conducting criminal enforce-
19 ment on I-77, which is what my duties -- what
20 I was assigned to do.

21 Q. Okay. And what duties were you
22 assigned to do at that time?

23 A. Conduct criminal enforcement.

24 Q. Okay. Does criminal enforcement
25 include traffic stops as well?

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1 A. High-volume traffic stops.

2 Q. Okay. What do you mean by high-
3 volume traffic stops?

4 A. A lot of traffic stops. At that
5 time I did not answer calls, domestics. My
6 job was to conduct traffic stops on the
7 interstate, provide safety for the citizens
8 of York County.

9 Q. Okay. Well, you're a member of the
10 drug suppression team; right? Or the drug
11 enforcement unit; is that correct?

12 A. I'm sorry?

13 Q. Are you a member of the drug
14 enforcement unit with York?

15 A. Yes, sir, I was.

16 Q. Okay. So as a member of the drug
17 enforcement unit it's your job not to be
18 looking out for signs of illegal drugs? Is
19 that not what you were doing there that day?

20 A. That, among other things.

21 Q. Okay. So you were -- I mean, you
22 know, you had a K-9 unit in the back of the
23 car. My question is, is it -- was your job
24 that day to be seeking out drug enforcement
25 or to be doing traffic, where you're just

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1 particularly concerned with traffic?

2 A. My primarily job was protect the
3 citizens of York County and try to prevent
4 accidents occurring within York County on the
5 interstate.

6 Q. Okay. And what alerted you to this
7 car that you pulled over?

8 A. They were following too close.

9 Q. They were following too close. Can
10 you explain to the Court what following too
11 close in your opinion is?

12 A. Well, the rule of thumb for every
13 ten miles an hour one car length. So if
14 you're traveling approximately two car
15 lengths at sixty or seventy miles an hour,
16 that's too close.

17 Q. Okay. Did you know how fast that
18 vehicle was going?

19 A. I didn't have an accurate radar
20 speed. No, I did not.

21 Q. Okay. So you did not know whether
22 my client was actually going sixty-five or
23 not; is that correct?

24 A. That vehicle was doing at least
25 sixty.

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1 Q. And how would you know that if you
2 were stationary?

3 A. Just based on observation of the
4 vehicle traveling.

5 Q. It was doing at least sixty. And
6 the speed limit on that road was what?

7 A. In that particular area, it's
8 seventy.

9 Q. It's seventy and the car was doing
10 sixty. Okay. How close was this vehicle to
11 the truck which you claim it was following
12 too closely?

13 A. It appeared to be no more than two
14 car lengths behind the tractor trailer.

15 Q. So the car was actually about two
16 car lengths behind the tractor trailer?

17 A. Yes, sir.

18 Q. And, again, your rule of thumb as
19 far as following too close is that cars need
20 to be at least two lengths back behind the
21 next vehicle; is that correct?

22 A. No, sir. I said for every ten miles
23 one car length. That's the general rule.

24 Q. Okay. So the car -- the general
25 rule is one -- now, I'm sorry. I'm just not

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1 up on this following too closely, in the area
2 of following too closely?

3 A. Okay.

4 Q. What I'm trying to determine is what
5 alerted you that that car was actually
6 following too closely to that semi/truck.
7 And you may have already answered it but I'm
8 just trying to make sure that I can
9 understand what made you make that stop?

10 A. Well, at ten miles an hour one car
11 length, at sixty miles an hour, it should
12 have been at least six car lengths. When it
13 came by, it was not. It didn't appear to be
14 six car lengths.

15 Q. It didn't appear -- and you've also
16 admitted already that you were not running
17 radar at the time. Your radar didn't
18 indicate how fast that car was going; is that
19 correct?

20 A. Correct.

21 Q. And so all of these things, the
22 distance between the truck and the vehicle,
23 the speed of the vehicle, all these things
24 that is needed to determine whether someone's
25 following too closely, what you're telling me

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1 is all of that was made just based on what
2 you saw at the time; is that correct?

3 A. Correct.

4 MR. BRADLEY: I'm going to beg the
5 Court's indulgence for just one second, Your
6 Honor. I may just ask you if you will allow
7 us to take a five-minute break. I just need
8 to confer with co-counsel on a major issue.
9 If you would -- if it's okay?

10 THE COURT: We've been going for
11 about an hour or an hour and a half. So
12 we'll take a brief break.

13 MR. BRADLEY: Yes, sir.

14 SOLICITOR HAMILTON: Is he done?

15 THE COURT: No.

16 MR. BRADLEY: I'm not. I'm not
17 done.

18 THE COURT: The defendant will be
19 in custody at this time. All right. We'll
20 take a five-minute break.

21 (DEFENDANT INTO CUSTODY)

22 SOLICITOR HAMILTON: Thank you,
23 Your Honor.

24 (BRIEF RECESS)

25 MR. BRADLEY: Thank you for the

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1 Court's indulgence.

2 (OFF RECORD DISCUSSION)

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Officer Gibson, I just wanted to ask
6 you. Do you recall whether or not your car
7 had audio capability?

8 THE COURT: Go ahead.

9 MR. BRADLEY: I was just going to
10 ask him -- it's not a big deal.

11 THE COURT: Okay.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. BRADLEY:

14 Q. Did you have video, audio and video
15 equipment in your cruiser at the time?

16 A. I did.

17 Q. Okay. Did you record the incident
18 regarding the stop where Mr. Brown was
19 arrested?

20 A. I did.

21 Q. Okay. I would show you this and
22 show you what it's labeled.

23 MR. BRADLEY: May I approach?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION CONTINUED

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1

BY MR. BRADLEY:

2

Q. You're probably not going to be able
3 to identify that but ---

4

A. Yeah, that's not our disk.

5

Q. Exactly. But did you give a disk to
6 the prosecutor's office?

7

A. Yes, sir. There was one made
8 available.

9

Q. And you gave them a disk of the
10 stop; is that correct?

10

11

A. I did.

12

Q. And you would be able to look at the
13 video and tell us whether or not this disk is
14 an actual depiction of the stop; is that
15 correct?

15

16

A. Correct.

17

Q. Okay.

18

MR. BRADLEY: At this time I'm going
19 to ask Your Honor to allow us to play the
20 video.

21

THE COURT: How long is it?

22

SOLICITOR HAMILTON: Are we
23 watching the whole video?

23

24

MR. BRADLEY: No.

25

THE COURT: I understand. I'm

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1 going to move, just so -- I just want to make
2 sure that I see.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Mr. Gibson, we're going to show you
6 a part of the video that -- and I'm going to
7 ask you some questions about it to
8 authenticate whether or not it's actually the
9 video that you actually took in your car?

10 A. Yes, sir.

11 Q. (Video playing) -- Officer Gibson,
12 at that particular time when you pulled out,
13 you say that that vehicle that you pulled
14 over was traveling too close to the truck at
15 that particular time ---

16 A. It appeared to be; yes, sir.

17 Q. --- when it passed you?

18 A. It appeared, yeah.

19 Q. It did appear that it was traveling
20 too close, okay. And is there anywhere --
21 can we run that part slower -- (video
22 playing). Can you identify for me which
23 vehicle -- and we'll stop it right there --
24 (video playing/paused/resumed).

25 A. Can I make a statement?

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1 Q. Let's stop it. Okay.

2 A. The vehicle actually was in lane
3 one. As soon as he came by, he shifted over.

4 Q. Okay. Let me make sure I'm
5 understanding this. The vehicle, which you
6 say he -- but it was actually she that was
7 driving the vehicle; right?

8 A. Right.

9 Q. So they were in the right lane?

10 A. I believe they were in the number
11 one lane when they came ---

12 Q. Is the number one lane the right
13 lane? I'm not sure?

14 A. The number one lane is the left
15 lane, the fast lane.

16 Q. So they were in the fast lane?

17 A. Correct.

18 Q. Okay. And you just said that they
19 switched lanes?

20 A. As soon as they went by, I believe
21 she shifted over behind the truck.

22 Q. Okay. And is that when you
23 determined they were following too close?

24 A. Correct.

25 Q. Okay. So when they actually changed

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1 lanes to go back over into the right lane ---

2 A. Correct.

3 Q. --- is when you're saying. Is that
4 depicted on this video? Would you be able to
5 point it out on this video?

6 A. What do you mean?

7 Q. Would you be able to show on -- does
8 your video depict that? Would it show that?

9 A. It would depict it following too
10 closely. I think I actually zoom in on the
11 car behind the tractor-trailer.

12 Q. Okay. So if we keep going, we'll be
13 able to see that?

14 A. Correct.

15 Q. Okay -- (video playing/paused).
16 So at this time they're not traveling too
17 closely?

18 A. I believe they are.

19 Q. (Video playing) -- is this the point
20 at which they're following too close to the
21 truck?

22 A. Yes, sir.

23 Q. Okay. And you can tell, you said
24 based on the speed and the distance between
25 cars whether or not they're traveling too

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1 close; is that correct?

2 A. Yes, sir. Correct.

3 Q. Okay. So in other words what I'm
4 asking you is, you see that times/date on the
5 video?

6 A. Yes, sir.

7 Q. That means that you actually zoomed
8 in; is that correct?

9 A. I believe so; yes, sir.

10 Q. Okay. So you were not even this
11 close to that vehicle at the time; is that
12 correct?

13 A. (No verbal response).

14 Q. Your video actually is zooming in
15 and to look closer; is that correct?

16 A. Correct.

17 Q. Okay. So you were able to tell that
18 they were following too closely from a
19 distance that was actually farther than this
20 video is depicting; is that right?

21 A. Correct.

22 Q. And you said that they actually --
23 you said a minute ago that they were
24 following too closely when they switched back
25 over to the right lane?

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1 A. I believe so.

2 Q. Is that right?

3 A. Correct.

4 Q. Okay. Because now you're telling me
5 they're following too closely in the left
6 lane?

7 A. Correct.

8 Q. Okay. And your testimony is when
9 they switched back over to the right lane?

10 A. I believe so.

11 Q. Is that right?

12 A. Correct.

13 Q. And so now you're telling me they're
14 following too closely in the left lane?

15 A. Correct.

16 Q. Okay. And your testimony is when
17 they switch back over to the right lane,
18 they're actually following too closely too?

19 A. Correct.

20 Q. So you're saying they were following
21 too closely in two instances; is that right?

22 A. Correct.

23 Q. Okay.

24 Q. Continuing -- (video playing). This
25 is how far you actually are right now; is

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1 that right?

2 A. That's the -- yeah.

3 Q. That's the appropriate distance.

4 A. (Affirmative nod).

5 Q. From that distance how were you able
6 to tell how many car lengths that that
7 vehicle is by the truck?

8 A. I could tell that vehicle was too
9 close to the tractor trailer.

10 Q. And tell me how do you decipher that
11 from so far away?

12 A. Just on my observation.

13 Q. And your training is basically in
14 drug enforcement; is that right?

15 A. Solely in drug enforcement?

16 Q. Not solely. But the main purpose --
17 your main duty -- one of your main duties
18 besides the broad aspect of public safety is
19 drug enforcement?

20 A. Correct.

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. And traveling too close to vehicles
24 does that any in any way indicate that a
25 vehicle may contain contraband?

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1 A. No, sir.

2 Q. Okay.

3 MR. BRADLEY: Can we go a little
4 further -- (video playing until officer is
5 calling out license plate number), stop it
6 right there. At this particular point in the
7 video, it's just -- is that car still
8 following too closely?

9 A. Yes, sir, in my opinion.

10 Q. Okay. Does it not appear to be
11 almost a truck length in between those two?

12 A. Are you saying that that car's a
13 truck -- what kind of truck?

14 Q. I'm saying does it not look like
15 that first truck is ahead of that truck in
16 the right lane?

17 A. Maybe, maybe not. I can't really
18 tell.

19 Q. Maybe, maybe not. But it's clear
20 that that car is behind that truck. Is that
21 -- I'm talking about the truck in the right
22 lane.

23 A. Well, that would put that truck
24 ahead of that truck. I'm not clear.

25 Q. In fact, what I'm saying is there's

1 a truck that the car's following; is that
2 correct?

3 A. (No response).

4 Q. You see the truck that the white
5 car's following ---

6 A. I see the suspect car behind the
7 tractor trailer.

8 Q. Yes, sir.

9 A. And what I believe the vehicle was
10 committing a traffic violation.

11 Q. Okay. At that time, but what I'm
12 asking you is based on this view right here,
13 does it not look like there is about a --
14 almost a semi-truck distance between that car
15 in the back and that truck in front of it?

16 A. No, sir.

17 Q. It does not look like that to you,
18 okay. (Video playing), stop it. Officer
19 Gibson at this time, is this when you
20 initiated the lights to make a traffic stop?

21 A. Yes, sir.

22 Q. Okay. And at this particular time,
23 tell me what your reason for making the stop
24 is at this particular time?

25 A. I believe we stated earlier they

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1 were following too closely to the tractor
2 trailer.

3 Q. That's correct. Okay. Now, at
4 this particular time it is that it was still
5 following too closely in your opinion?

6 A. Right now?

7 Q. Yes, sir?

8 A. Probably not.

9 Q. Probably not?

10 A. Because they decreased their speed
11 with the lights and sirens.

12 Q. Okay. Because you just turned the
13 lights on just now, just before the video
14 stopped. And that's why I was asking at that
15 particular point when you cut the lights on,
16 were they committing a traffic violation? Or
17 in your opinion a traffic violation had
18 already been committed?

19 A. It had already occurred. It appears
20 that they were starting to increase their
21 distance, I guess with the mere fact that I
22 was behind them.

23 Q. That they saw you behind them?

24 A. Correct.

25 Q. Okay. And there was another officer

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1 in the car with you? Was there another
2 officer in the car with you?

3 A. Yes, sir.

4 Q. Okay. And who was that officer?

5 A. State Constable Dan Janeski.

6 Q. Okay. And he's not an employee of
7 York County is he?

8 A. No, sir.

9 Q. And State constables, basically they
10 -- can you explain to me what their jobs are?

11 A. They play various roles throughout
12 the State. They work functions. They go to
13 Myrtle Beach and work Bike Week. They can go
14 and assist other agencies when in need of
15 help.

16 Q. Typically, what do they do when
17 they're working with you?

18 A. Solely, they're backup officers.

19 Q. Just backup officers. Does he have
20 any authority to make arrest or anything like
21 that?

22 A. Yeah. He's empowered to make
23 arrests through the South Carolina Law
24 Enforcement Division.

25 Q. Okay. We can carry on -- (video

1 playing). Can we stop it there, (video
2 paused). Officer Gibson, what did you just
3 -- how did you introduce yourself to them?

4 A. Officer Gibson with the highway
5 interdiction team.

6 Q. Highway interdiction team. And what
7 does that highway interdiction team stand
8 for?

9 A. Basically conducting criminal
10 enforcement or trying to interdict things
11 that are being carried from one place to the
12 other.

13 Q. Okay.

14 A. Whether it be illegal guns,
15 fugitives ---

16 Q. Sure.

17 A. --- dead bodies.

18 Q. And you all were making this stop at
19 this particular point the only suspicion you
20 had was the fact that she was actually
21 driving too close to the truck; is that
22 correct?

23 A. And the length of time it took her
24 to stop.

25 Q. And the length of time it took her

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1 to stop?

2 A. Yeah.

3 Q. Okay. Did you cite her for
4 following too closely?

5 A. I did not.

6 Q. Okay. Did you cite her for failure
7 to stop for a blue light or police command?

8 A. I did not.

9 Q. Okay. We can go on with the next --
10 (video playing). Now -- right now, Officer
11 Gibson, is the driver still in the car?

12 A. I haven't seen her get out.

13 Q. Okay. And he actually -- the
14 Defendant, from what I just heard, he was
15 engaged in a conversation with you.

16 A. (Affirmative nod).

17 Q. I heard him say something about
18 North Carolina. Did he tell you exactly
19 where he was going at that time?

20 A. I didn't really understand. I did
21 hear North Carolina.

22 Q. Okay. You asked him where he was
23 going and he made a response to say -- I
24 thought we heard him say Morganton, North
25 Carolina. Did you hear that as well?

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1 A. You'd have to back it up. I did
2 hear North Carolina.

3 Q. Could you back it up just a little
4 bit? Just a teeny bit -- (video replayed).
5 Now, wasn't the driver actually sitting in
6 the vehicle listening to him as he just said
7 Morganton, North Carolina?

8 A. Yes, sir.

9 Q. Okay -- (video playing) -- stop it.
10 At this particular point -- I'm sorry. Can
11 you explain what she was just explaining to
12 you?

13 A. I really couldn't understand her.

14 Q. You didn't.

15 A. Can you repeat that?

16 Q. Do you recall anything that she may
17 have said to you at that time?

18 A. About the license?

19 Q. Yes, about the license or anything
20 else that you were asking.

21 A. I believe she said she had one but
22 she couldn't produce it.

23 Q. Okay. So at this particular time
24 what you're trying to figure out is who she
25 is and whether or not she's a licensed

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1 driver; is that correct?

2 A. Yeah. And if she was supposed to be
3 driving the rental vehicle.

4 Q. Okay -- (video playing) -- pause it.
5 At this particular point is there any
6 indication of suspicious behavior that you
7 saw?

8 A. From?

9 Q. And -- I'll withdraw that question.
10 Was there any type of inconsistencies between
11 what she was saying and what he told you,
12 where he told you they were going?

13 A. Other than Asheville, no.

14 Q. And other than the Asheville thing,
15 there wasn't any other inconsistencies; is
16 that right? They both said North Carolina,
17 basically Morganton/Asheville, North
18 Carolina. And at this point is there any
19 suspicion on your behalf that there may be
20 illegal contraband in the vehicle?

21 A. At this point, no, sir.

22 Q. And as we go on, is there going to
23 be a point where you think that there is some
24 contraband in the vehicle?

25 A. Yes, sir.

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1 Q. Okay. And could you tell me at
2 which point that is when you believe that
3 there was some contraband in the vehicle?

4 A. Well inconsistency in their travel
5 itinerary. Like I said no luggage, rental
6 car. The person driving ---

7 Q. And I'm going to interrupt but we
8 just -- we took -- they just told you the
9 itinerary, both of them did; is that correct?

10 A. Right.

11 Q. The fact, the driver even told you
12 his itinerary -- I'm sorry, the passenger,
13 Mr. Brown, told you where they were going; is
14 that correct?

15 A. Yes, sir.

16 Q. And you just said that up to this
17 point there wasn't any inconsistencies; is
18 that correct?

19 A. Other than the Asheville, the --
20 where they were going.

21 Q. Okay. Other than that, yes?

22 A. Correct.

23 Q. And so further up, you said there
24 was going to be a point where things become
25 inconsistent and you get reasonable suspicion

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1 to bring K-9 out; is that right?

2 A. Yes, sir.

3 Q. And can you tell me at what point
4 that is? I'll forward the video there so we
5 can look at it.

6 A. Probably after the point where I go
7 up there and speak with him about how long he
8 had known her, which was inconsistent with
9 how long she said she had known him.

10 Q. Okay.

11 A. The fact that she was -- I believed
12 at that point in time she was lying about who
13 she was. Most people lie -- when they're
14 lying, they're hiding something. So I'm ---

15 Q. So it was those things ---

16 A. I'm building my suspicion -- they're
17 building my suspicion with what they're
18 telling me.

19 Q. Okay. And the things that they were
20 saying is the thing that actually gave you a
21 reasonable suspicion to bring the K-9 out;
22 right?

23 A. Yes. All the "humms", the "uh's",
24 the overly friendliness that she was
25 displaying. Those are things that ---

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1 Q. Overly friendliness; is that what
2 you said?

3 A. Yeah. She was a little more
4 friendly than a normal traffic stop folks
5 would be.

6 Q. And could that have been because she
7 didn't have a license?

8 A. I don't know why it could have been.

9 Q. Well, what would lead you to believe
10 that there may be drugs in the car, some type
11 of drugs because we have a drug dog come out?

12 A. Well, at this point in time, I
13 didn't know there were drugs in the car.

14 Q. Okay. And you did not -- you didn't
15 know there were drugs in the car until you
16 actually searched the car.

17 A. Right.

18 Q. But my question becomes at what
19 point in time did you develop a reasonable
20 suspicion to say we need to check this car
21 for there may be some contraband in the car?

22 A. I think ---

23 SOLICITOR HAMILTON: Your Honor,
24 objection. This has been asked and answered.

25 THE COURT: Let's move on.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. BRADLEY:

3 Q. (Video playing) -- Officer Gibson,
4 at this particular point -- Officer Gibson,
5 you and Mr. Brown had a conversation about
6 the drug dog; is that correct? About the K-
7 9?

8 A. It was pretty lengthy. Yeah, we
9 did.

10 Q. It was pretty lengthy?

11 A. Seemed to be on this part.

12 Q. Okay. And I am -- you actually, I
13 think, in your report basically said that Mr.
14 Brown stated the K-9 would alert to the
15 vehicle; is that correct?

16 A. Yes, sir.

17 Q. Do you recall that?

18 A. Yes.

19 Q. All right. Well, wasn't there
20 initial conversations and wasn't there some
21 sort of context that was in?

22 A. 'The dog always alerts.' I think I
23 heard him say that.

24 Q. Okay.

25 A. 'The dog's going to alert. The dog

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1 *always alerts.'*

2 Q. Okay. When you're saying here that
3 he said that the dog would alert on the
4 vehicle, is that pretty much the context in
5 which it was given?

6 SOLICITOR HAMILTON: Objection,
7 Your Honor. I think he's already answered
8 this question.

9 MR. BRADLEY: No, I ---

10 THE COURT: I'm going to let him
11 go. I mean ---

12 CROSS-EXAMINATION CONTINUED

13 BY MR. BRADLEY:

14 Q. And I'm trying to make this as clear
15 as I can. He didn't just say the dog is
16 going to alert as if there is contraband in
17 the car; did he?

18 A. I don't know; did he?

19 Q. From what you just saw?

20 A. (No verbal response).

21 Q. That conversation? Did that
22 conversation seem like, '*hey, the dog is*
23 *going to hit because I have contraband in the*
24 *car'*?

25 A. There was heroin found inside his

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1 jacket.

2 Q. That's after the fact.

3 A. And he made the comment ---

4 Q. At this particular point. At this
5 particular point we haven't found anything.
6 What you're doing is asking him questions
7 about the stop and whether there's some
8 contraband in his vehicle. Right? And the
9 K-9 hit. And then he replied to you. And in
10 his reply I'm asking you, in what context was
11 he talking about the K-9 dog? Was he ---

12 SOLICITOR HAMILTON: Objection,
13 Your Honor. He doesn't know what context.
14 This is a subjective ---

15 THE COURT: I'm going to let him
16 ask the question. Overruled.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. BRADLEY:

19 Q. What I'm saying is that conversation
20 right there, you asked -- you said that he
21 said the K-9 would alert. And I'm saying did
22 you take that as saying there is contraband
23 in this vehicle because my client said the K-
24 9 would alert?

25 A. No, I didn't take it like that.

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1 Q. Okay. Exactly. And how did you
2 understand what he was saying? What was your
3 understanding of what he was saying in that
4 conversation?

5 A. That there may possibly be drugs in
6 the car.

7 Q. Okay. And how did you get that?
8 Where did you come up with that from?

9 A. Based on him saying the dog is going
10 to alert.

11 Q. Okay.

12 A. Because I ---

13 Q. Did you not hear him also talk about
14 the dog may alert because he's seen several
15 times where that has happened before. Did
16 you hear anything like that on the video?

17 A. I don't recall hearing it.

18 Q. Okay. Did you recall hearing him
19 say something about he knows the procedures.
20 And every time you walk the dog around it
21 usually always gives a positive alert. Do
22 you recall hearing that just now on the
23 video?

24 A. I heard broken -- I heard a lot of
25 stuttering. You know, um's and uh's. But I

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1 don't recall exactly what all was said.

2 Q. Okay. Did you find any other
3 contraband during that search?

4 A. Other than this heroin?

5 Q. Uh-huh, (affirmative nod).

6 A. I believe there was a small amount
7 of crack found.

8 Q. Okay. Did you find any kind of
9 paraphernalia when you found that?

10 A. I believe there were some crack
11 pipes found.

12 Q. Did you take those into evidence?

13 A. No, sir. I don't believe I did.

14 Q. Okay. Can you explain why not?

15 A. They were crack pipes that had been
16 burnt and used.

17 Q. And you found crack at the scene; is
18 that correct?

19 A. I did find crack at the scene.

20 Q. Okay. And did you not think that
21 those pipes would be somehow relevant to
22 maybe whose DNA would be on them or who those
23 pipes actually belonged to?

24 A. I did not.

25 Q. You did not. Okay. And what did

1 you do with the pipes when you found them?

2 A. I believe them on -- in front of my
3 camera maybe.

4 Q. Okay. You put them in front of the
5 camera. And ultimately what did you do with
6 them?

7 A. I believe I put them back in the
8 car.

9 Q. So these pipes had burnt -- was
10 there residue in them? In your opinion, was
11 there drug residue inside?

12 A. I didn't do a test on them out there
13 on the scene, no. They appeared to be burnt.

14 Q. They appeared to be burnt.
15 Indicating someone had used them for probably
16 using drugs; is that correct?

17 A. Yes, sir. That would be accurate to
18 say.

19 Q. Did you get a -- and I don't know if
20 you would notice or if anybody else would
21 notice, but have you all ever been successful
22 at getting fingerprints off of things like
23 crack pipes or pipes like that, like you saw?

24 A. I don't have any idea.

25 Q. In other words, would you have been

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1 able to identify whether or not Mr. Brown or
2 the young lady driving the vehicle had used
3 that pipe?

4 A. I don't know, other than maybe doing
5 a DNA.

6 Q. And you didn't do a DNA because you
7 put them back in the car; is that correct?

8 A. Correct.

9 Q. Are you familiar with whether or not
10 any of the evidence was fingerprinted that
11 you got?

12 A. I'm unaware.

13 Q. You're unaware of it? Okay. If I
14 was to mention to you that there was a
15 fingerprint analysis done, would that be out
16 of the ordinary?

17 SOLICITOR HAMILTON: Objection,
18 Your Honor. He has no idea if there were
19 fingerprints performed on.

20 THE COURT: Well, I mean, he can
21 ask it, you know.

22 MR. BRADLEY: He doesn't know.

23 CROSS-EXAMINATION CONTINUED

24 BY MR. BRADLEY:

25 Q. Would it be out the ordinary?

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1 A. That you all only do conduct
2 fingerprints on stuff, the evidence that's
3 found, particularly if there's drugs found in
4 a car?

5 A. Yeah. There's fingerprints taken.

6 Q. And you're just not aware in this
7 case whether there was or not?

8 A. I am not.

9 Q. Okay. Were there also cellphones
10 found at the scene?

11 A. I believe there were several found.

12 Q. I'm sorry?

13 A. Several. Two or more.

14 Q. Okay. And did you conduct an
15 investigation into who those cellphones
16 belonged to? Who was the owner of the
17 cellphones?

18 A. I believe Mr. Brown was the owner of
19 maybe two of them.

20 Q. Okay. And the other two you just
21 don't know?

22 A. I don't recall.

23 Q. You don't recall?

24 A. I do not.

25 MR. BRADLEY: May I approach, Your

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1 Honor?

2 THE COURT: Yes.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Mr. Gibson, I'm going to give you a
6 photograph that was provided to me in
7 discovery. Do you recall the contents of
8 what's in that photograph?

9 A. Yes, sir.

10 Q. Okay. Is that an accurate depiction
11 of what you found in the vehicle from the
12 search?

13 A. Yes, sir.

14 Q. With the exception of, I guess, the
15 heroin.

16 A. Correct.

17 Q. Can you tell the Court what's
18 actually in that picture?

19 A. It appears to be four cellphones,
20 maybe one, two, three pipes used to smoke
21 maybe crack. Push -- maybe two push rods and
22 a Newport cigarette box and a phone charger
23 attached to one of the phones.

24 Q. Okay. And I just would like to ask
25 you in that video I want to show you -- I

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1 want to actually show you in here.

2 A. Yeah.

3 Q. I'm pointing to the wired object
4 that's right beside the crack pipe. What is
5 that, in your opinion?

6 A. It appears that may be a push rod.

7 Q. Okay. And what's a push rod?

8 A. I believe that's where they, someone
9 that would use crack would push the crack up
10 into the pipe before they actually light it
11 to smoke it. That's my little bit of
12 understanding.

13 Q. Okay. Is that clearly evidence of
14 drug use?

15 A. Clearly, yes, sir.

16 Q. Thank you.

17 MR. BRADLEY: Your Honor, I'd like
18 to move this -- putting it as an exhibit if
19 there's no objection by the prosecution?

20 (SO MARKED DEFENDANT'S EXHIBIT 1)

21 THE COURT: Any objection?

22 SOLICITOR HAMILTON: No objection,
23 Your Honor.

24 THE COURT: All right.

25 Defendant's Exhibit 1 in without objection.

1 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

2 THE COURT: Can you hand that to
3 me?

4 MR. BRADLEY: Oh, I'm sorry, Your
5 Honor. I apologize -- (tendering to court).

6 THE COURT:

7 MR. BRADLEY: Yes, sir.

8 CROSS-EXAMINATION CONTINUED

9 BY MR. BRADLEY:

10 Q. If this was the scene, Officer,
11 where that was the only thing that was found,
12 would you have arrested the occupants of the
13 vehicle?

14 A. More than likely not.

15 Q. You would not have. Okay. And why
16 not?

17 A. There was nothing to test in those
18 pipes.

19 Q. Okay.

20 A. The pipes were burnt.

21 Q. Okay. Is that not clearly consider-
22 ed to be drug paraphernalia?

23 A. Oh, clearly paraphernalia.

24 Q. Is it fair to say that you all are
25 more interested in drug traffickers than

1 users?

2 A. Yes, sir.

3 Q. Okay. So, at that particularly time
4 the evidence that showed use, you decided to
5 put back in the car; is that correct?

6 A. Yes, sir.

7 Q. Okay. And the evidence that could
8 have possibly showed that someone may have
9 been dealing drugs as opposed to using it is
10 the evidence that you're actually proceeding
11 on today; is that correct?

12 A. That's correct.

13 Q. Okay.

14 MR. BRADLEY: I beg the Court's
15 indulgence.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. BRADLEY:

18 Q. Just a couple more questions. The
19 codefendant, although I won't call her a
20 codefendant because she's actually not. The
21 lady who was driving the car, did she in any
22 way give you any indication that she may have
23 been on drugs or using drugs?

24 A. On the scene?

25 Q. On the scene or during any time you

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1 encountered her on this day?

2 A. No, sir.

3 Q. Okay. So you were suspicious at all
4 that she was under the influence of anything?

5 A. No, sir..

6 Q. Do you know whether or not -- I
7 think you basically wrote in your narrative
8 that my client basically said it's his and he
9 paid a thousand dollars for it. Do you know
10 of any other statements in this case? Did
11 anyone else make a statement in this case?

12 A. No, sir. Not that I can recall.

13 Q. Were you later on informed that
14 someone may have come in and given a
15 statement, the codefendant, maybe?

16 A. I was just recently made aware, yes,
17 sir.

18 Q. Okay. So you are aware there was
19 another statement?

20 A. Yes, sir.

21 Q. Okay. Can you explain that, what
22 your awareness to that is?

23 SOLICITOR HAMILTON: Objection,
24 Your Honor. He has no knowledge about the
25 statement.

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1 MR. BRADLEY: Well, he just said he
2 knew that there was another statement, Your
3 Honor.

4 THE COURT: Another statement.
5 What's your question?

6 MR. BRADLEY: My question is going
7 to be that -- whether or not there was a
8 statement by the codefendant? Was he aware
9 of it and what the substance of that said?
10 And if he doesn't know ---

11 THE COURT: Well, I'm not sure he
12 can testify to the substance.

13 MR. BRADLEY: Certainly. If he
14 doesn't know ---

15 THE COURT: I mean, I don't think
16 he can anyway ---

17 MR. BRADLEY: Certainly.

18 THE COURT: Yeah.

19 MR. BRADLEY: And I would withdraw
20 that question.

21 CROSS-EXAMINATION CONTINUED

22 BY MR. BRADLEY:

23 Q. But I will ask this. You said you
24 were made aware that there was another
25 statement in this case?

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1 A. Yeah. I made aware there was a
2 statement, yes, sir.

3 Q. Okay. Who made you aware of that?

4 A. The prosecutor and the other
5 officer.

6 Q. Okay. What did they tell you?

7 A. Because I asked the other officer --
8 I didn't know she ---

9 SOLICITOR HAMILTON: Objection,
10 Your Honor. That is hearsay.

11 THE COURT: Again, I don't want to
12 get into hearsay.

13 MR. BRADLEY: No further questions
14 for this witness. Thank you, Your Honor.

15 THE COURT: All right. Any
16 redirect?

17 SOLICITOR HAMILTON: Yes, Your
18 Honor. Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. HAMILTON:

21 Q. I know this has been very long so
22 I'm going to try to go back as far as I can
23 based on your memory. But one of those
24 questions that the Defense did ask you is,
25 that the Defendant stated the cocaine was

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1 his. And he said cocaine. But on your
2 direct you stated he never said cocaine out
3 of his mouth. Do you recall what he said?
4 What you asked him and what he said when
5 questioning him in his statement?

6 A. At the Rock Hill Police Department?

7 Q. Yes.

8 A. He said the cocaine was his and that
9 he had purchased the cocaine for a thousand
10 dollars.

11 Q. Did he ever identify it as cocaine?

12 A. Yes.

13 Q. Or were you the one who identified
14 it as cocaine?

15 A. Well, I identified it as cocaine.

16 Q. So he never said "that's my
17 cocaine"?

18 MR. BRADLEY: Your Honor, he just
19 answered yes when she asked him did he
20 identify his cocaine. So she's asking it a
21 different way now.

22 SOLICITOR HAMILTON: I don't think
23 he's understanding what I'm saying.

24 THE COURT: Rephrase your
25 question.

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1 SOLICITOR HAMILTON: That's what
2 I'm trying to do, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR HAMILTON:

5 Q. When you asked him what these drugs
6 were, did he respond as to what the identity
7 of the drugs were?

8 A. I asked him was the cocaine his?
9 And he said "yes." And I said "just be
10 straight up, how much did you pay for it?"

11 Q. What was his response?

12 A. He said a thousand dollars.

13 Q. So he did not say the "cocaine is
14 mine"?

15 A. Correct.

16 Q. Okay. Thank you. I just wanted to
17 clarify that. And we were watching the video
18 -- or actually, let me go back to the
19 statement. He was asking about other
20 officers being on scene and why couldn't you
21 bring another officer in on this questioning.
22 In your opinion, bringing multiple officers
23 in front of this defendant and watching over
24 him, could that come across as intimidating?

25 A. Yes, ma'am, it could.

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1 Q. So you try to keep it intimate?

2 A. Correct.

3 Q. Okay. Now, going to the scene.

4 They made a lot of -- a big deal about the
5 statement that the Defendant said about the
6 dog alerting. Remember that?

7 A. Yes, ma'am.

8 Q. What did the Defendant say when you
9 asked him, when you explained about the dog?
10 What did he say?

11 A. *'Well, the dog's going to alert.'*

12 Q. The dog's going to alert?

13 A. *'The dog always alerts. The dog's
14 going to alert.'* *'The dog always is going to
15 alert'* is what I heard him say.

16 Q. And does Justice always alert when
17 you're ---

18 A. No. He don't always alert.

19 Q. He doesn't always alert. Dogs don't
20 always alert?

21 A. Correct.

22 Q. Okay. And when he made that state-
23 ment about the alert, what in your mind was
24 going on at that point?

25 A. Can you ---

1 Q. When he said the dog will alert,
2 what, in your mind, was going on at that
3 point? What did you think you would find in
4 that vehicle?

5 A. Well, based on the totality of the
6 whole traffic stop, I always suspected that
7 there was criminal activity present. So when
8 he said that, that kind of lead me to believe
9 there's possibly illegal drugs in the car.
10 Of course, I'm thinking like a reasonable
11 person, why would he say the dog's going to
12 alert?

13 SOLICITOR HAMILTON: I beg the
14 Court's indulgence. No further questions.

15 THE COURT: All right. I've been
16 advised that we're under a tornado watch at
17 this moment, so let's take a break.

18 (WITNESS STEPS DOWN)

19 SOLICITOR HAMILTON: Your Honor, I
20 assume Trooper Gibson can be excused. May he
21 be excused, Your Honor?

22 THE COURT: Yes. Do y'all have
23 any objection to him being excused?

24 MR. BRADLEY: Oh, no objection, Your
25 Honor.

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1 (COURT IN RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: You may call your next
4 witness.

5 SOLICITOR HAMILTON: Thank you, Your
6 Honor. The State would call Patrick
7 Patterson.

8 (WITNESS TAKES STAND)

9 THE COURT: All right. You may
10 proceed.

11 SOLICITOR HAMILTON: Thank you, Your
12 Honor.

13 PATRICK PATTERSON, having been duly sworn
14 to tell the truth, and nothing but the truth,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HAMILTON:

18 Q. Would you please state your full
19 name for the record?

20 A. Patrick Patterson.

21 Q. And Mr. Patterson, what is your
22 occupation?

23 A. Evidence control technician with the
24 York County Sheriff's Office.

25 Q. And what are your duties as an

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1 evidence control technician?

2 A. We take possession of evidence that
3 the officers drop off either at our secure
4 location here at Moss Justice or one of our
5 other two secure locations at Rock Hill PD or
6 Fort Mill PD. We transport items here. We
7 secure it here, enter it, log it in, and
8 store it in a secure location until such time
9 as needed to leave our possession for testing
10 or court.

11 Q. Let me show you what's been marked
12 for identification purposes as State's
13 Exhibit 1. And would you please take a look
14 at this exhibit and tell me if you've seen
15 this before?

16 A. I have. I see that I took
17 possession of this item on February the 24th,
18 2015 from our location in Rock Hill PD, our
19 evidence drop.

20 Q. And how did this exhibit come into
21 your possession? Who submitted it?

22 A. It was submitted by Deputy Gibson.

23 Q. And when you first received this
24 bag, did it appear to have been tampered with
25 in any way?

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1 A. Yes, ma'am. We check every bag we
2 get for ---

3 Q. Was it tampered with?

4 A. Not at all. Not at all.

5 Q. Was it completely sealed when it
6 came into your possession?

7 A. The seal was intact and initialed by
8 Deputy Gibson.

9 Q. And was this signed when it came
10 into your possession?

11 A. Yes, ma'am.

12 Q. Do you sign this?

13 A. Yes. I was -- before I took
14 possession of it, I signed it.

15 Q. And while this evidence was with
16 you, did anybody else have any access to
17 this?

18 A. No. Not until it was in our
19 evidence room here.

20 Q. Okay. And what did you do with the
21 evidence once you took it into your
22 possession?

23 A. I transported it here to our
24 location, our evidence room.

25 Q. Is that a secure location?

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1 A. Yes, ma'am.

2 Q. When you logged this evidence out to
3 the next person, was that evidence bag still
4 sealed?

5 A. Yes, ma'am.

6 Q. And untampered with?

7 A. Yes, ma'am.

8 Q. And did you sign that bag after it
9 left your possession?

10 A. After it left my possession, it
11 returned to my possession. Yes, I did.

12 Q. And if you'd please answer any
13 questions the Defense may have.

14 MR. SHARPE: We have no questions.

15 THE COURT: Thank you. You may
16 step down.

17 (WITNESS STEPS DOWN)

18 SOLICITOR HAMILTON: Your Honor,
19 the State would request Mr. Patterson be
20 excused.

21 THE COURT: Any objection?

22 MR. SHARPE: No objection.

23 THE COURT: All right. Thank you,
24 Mr. Patterson.

25 SOLICITOR HAMILTON: The State would

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1 call the last witness Cynthia Mitchum.

2 (WITNESS TAKES STAND)

3 SOLICITOR HAMILTON: May it please the
4 Court?

5 THE COURT: Yes, you may proceed.

6 CYNTHIA MITCHUM, Having been duly sworn
7 to tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR HAMILTON:

11 Q. Will you please state your full name
12 for the record?

13 A. Ms. Cynthia Mitchum.

14 Q. Ms. Mitchum what is your occupation?

15 A. I work as the drug chemist in the
16 drug department in the York County Sheriff's
17 Office.

18 Q. And where do you work?

19 A. In the basement of the sheriff's
20 office.

21 Q. And what do you call that, where you
22 work?

23 A. The drug analysis laboratory.

24 Q. What are your duties in the drug
25 lab?

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1 A. I receive evidence and then I'll
2 analyze the evidence for controlled and non-
3 controlled substances.

4 Q. And how long have you worked there?

5 A. I've been at the sheriff's office
6 almost sixteen years.

7 Q. And what education or training to
8 qualify you to be able to identify illegal
9 drugs, prescription drugs, and controlled
10 substances have you had?

11 A. I have a bachelor of science degree
12 in chemistry that I received from Winthrop
13 University. Prior to working at the
14 sheriff's office, I worked with the South
15 Carolina Law Enforcement Division, commonly
16 known as SLED, in Columbia for seven and a
17 half years. And then I've been through
18 training for instrumentation and analysis.

19 Q. And have you ever been qualified in
20 court as an expert in drug identification and
21 analysis?

22 A. Yes, I have.

23 Q. How many times?

24 A. In excess of two hundred times.

25 SOLICITOR HAMILTON: Your Honor,

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1 the State would move to offer Ms. Mitchum as
2 an expert in analysis and identification of
3 controlled substances.

4 THE COURT: All right. Any
5 objection?

6 MR. SHARPE: Your Honor, I just
7 want to ask a couple voir dire ---

8 THE COURT: Yes.

9 VOIR DIRE CROSS-EXAMINATION

10 BY MR. SHARPE:

11 Q. Ms. Mitcham, I'm Pat Sharpe. It's
12 nice to meet you this morning.

13 A. Nice to meet you.

14 Q. Well . Just briefly, I've got your
15 CV and I see that you have several trainings
16 listed. I just wanted to check on each of
17 these, when these trainings occurred or how
18 recent they were?

19 A. Okay.

20 Q. The first one it says -- do you have
21 a copy of this?

22 A. No, I do not.

23 Q. Let me see if I can get you ---

24 MR. SHARPE: May I approach, Your
25 Honor?

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1 THE COURT: Yes, sir.

2 VOIR DIRE CROSS-EXAMINATION

3 BY MR. SHARPE:

4 Q. Do you recognize that?

5 A. Yes, I do.

6 Q. Okay. Down at the bottom with the
7 training, I'm just going to go through and
8 just get you to tell me when the last time
9 you had training.

10 A. Okay.

11 Q. So the first one, the training in
12 forensic chemistry at SLED?

13 A. That was years -- let's see, I
14 started in 1993 to 2000 was when I was at
15 SLED.

16 Q. Okay. So these were trainings that
17 occurred while you were employed there?

18 A. Agilent Technologies, I have had
19 some training since I've actually worked here
20 at the sheriff's office. I think that was a
21 couple of years ago.

22 Q. Okay. And what about -- so then
23 these other two, the training through the
24 Department of Justice and DEA?

25 A. DEA was while I was at SLED.

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1 Q. While at SLED?

2 A. Yes. Uh-huh.

3 Q. And then -- well, okay. Well, the
4 last one's just saying that you are
5 certified?

6 A. Right, that's a yearly certifica-
7 tion.

8 Q. But you said that's a yearly thing
9 so they come out every year?

10 A. Correct.

11 Q. Who does that certification?

12 A. DHEC does the state and Department
13 of -- the DEA does the federal.

14 Q. Okay.

15 MR. SHARPE: Okay. No further
16 questions. No objection, Your Honor. Thank
17 you, Your Honor.

18 THE COURT: Tell me exactly what
19 your phrase was? Analysis and identification
20 of ---

21 SOLICITOR HAMILTON: ---
22 controlled substances and prescription drugs.

23 THE COURT: All right. And then
24 she's so qualified. And based on the
25 consent, I will qualify her as an expert in

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1 that field.

2 MR. SHARPE: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HAMILTON:

5 Q. Ms. Mitchum, I'm going to show you
6 what's been marked for identification
7 purposes as exhibit -- State's Exhibit Number
8 1. Did you come in contact with this exhibit
9 before?

10 A. Yes, I did.

11 Q. When did you have contact with this?

12 A. On March 2nd of 2015, I received it
13 from Patrick Patterson.

14 Q. And when you first received this bag
15 from Mr. Patterson did it appear to have been
16 tampered with in any way?

17 A. No, it did not. I know this because
18 I have my initials on this inner bag, the
19 date and my initials and "OK." So it was not
20 tampered with. So I checked to make sure all
21 the seals were intact.

22 Q. You would have noted it if it was?

23 A. Correct.

24 Q. And was it completely sealed?

25 A. Yes, it was.

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1 Q. And was it signed?

2 A. Yes.

3 Q. And while the evidence was with you
4 at the drug lab, did any other person have
5 access to it?

6 A. No.

7 Q. What was contained in that bag when
8 you received it?

9 A. That was a Ziploc that has a plastic
10 bag in it with a powdered substance.

11 Q. The evidence bag still had another
12 bag inside of it that contained a suspected
13 illegal substance?

14 A. Correct.

15 Q. And did you analyze the substance in
16 the bag?

17 A. Yes, I did.

18 Q. And what did you find it to be?

19 A. This is item number one, which is
20 State's Exhibit Number 1 in this case, was a
21 powdered substance and it was found to be
22 heroin, which is a controlled I substance,
23 weighing 16.37 grams.

24 Q. Okay. And what test did you run to
25 determine this?

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1 A. I ran a chemical test and an
2 instrumental test.

3 Q. And how well-regarded and respected
4 is this type -- these types of tests in the
5 scientific community in terms of publications
6 and peer reviews?

7 A. They're the ones that's typically
8 used in all the drug labs.

9 Q. How many times have you performed
10 this type of test?

11 A. We get about two thousand items of
12 evidence in a year, so over twenty-three
13 years in excess of five thousand, maybe ten
14 thousand times.

15 Q. And how reliable have you found this
16 test to be in your own experience?

17 A. Very reliable.

18 Q. And are quality control measures
19 associated with this type of test to help
20 ensure that there's no contamination from
21 substances or evidence tested?

22 A. Yes, there is.

23 Q. And it's not inconsistent with what
24 you know about scientific principals and
25 procedures?

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1 A. Yes.

2 Q. Now, you stated you determined the
3 amount of heroin in the bag to be -- what was
4 the weight?

5 A. 16.37 grams.

6 Q. And let's say that it was cocaine
7 instead of heroine. Would that test that you
8 just explained to me show positive for
9 cocaine?

10 A. Yes, it would.

11 Q. And did you detect any cocaine in
12 this?

13 A. I did not find any cocaine.

14 Q. Did you make a written report of
15 your findings?

16 A. I did.

17 Q. And do you have a copy of that with
18 you today?

19 A. I do.

20 SOLICITOR HAMILTON: (Tenders
21 document to be marked as exhibit).

22 (SO MARKED AS STATE'S EXHIBIT 2)

23 COURT REPORTER: State's Exhibit 2
24 for identification.

25 SOLICITOR HAMILTON: Your Honor,

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1 the State's going to mark this as State's
2 Exhibit 2 for identification purposes and, of
3 course, show the Defense.

4 MR. SHARPE: May I see it please?

5 THE COURT: Is there no objection?

6 MR. SHARPE: No objection, Your
7 Honor.

8 THE COURT: All right. It's in
9 without objection.

10 (SO ENTERED AS STATE'S EXHIBIT 2)

11 THE COURT: There's one that we --
12 there's one that we had, the report, State's
13 Exhibit 1?

14 SOLICITOR HAMILTON: It's not in
15 yet, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. HAMILTON:

18 Q. Let me just hand you what is marked
19 first for identification purposes as Exhibit
20 Number 2. Now, after you ran this test, what
21 did you do with the evidence?

22 A. Once I ran the evidence, I put it
23 back in an outside Ziploc bag or a heat-
24 sealed bag and sealed that shut and kept it
25 in my custody until I could return it back to

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1 evidence.

2 Q. And was the bag completely sealed up
3 when you returned it?

4 A. Yes, it was.

5 Q. And on your drug report, what was
6 the date on your drug report when you ran
7 this test and came to the conclusion?

8 A. Let's see, the final drug report,
9 the date of the report was April 17th of 2015.

10 SOLICITOR HAMILTON: Your Honor,
11 the State would move to admit, Exhibit 1,
12 which is the bag which contains the drugs in
13 question in this case.

14 And move to admit Exhibit Number 2,
15 which is the report.

16 THE COURT: I think both of them
17 are in without objection.

18 MR. BRADLEY: No objection.

19 SOLICITOR HAMILTON: We would so
20 move this into evidence.

21 THE COURT: Yes. It is so moved.

22 (SO ENTERED AS STATE'S EXHIBIT 1)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR HAMILTON:

25 Q. If there was one more illegal

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1 substance in the powder, would you have
2 noted that on your report?

3 A. Yes. On the report it would have
4 had like -- say if it was heroin and cocaine
5 or heroin and anything, it would have been
6 heroin, control I; cocaine, control II; or
7 any other substance that would be controlled.
8 They would both be listed in the Results line
9 of the report.

10 Q. Please answer any questions that
11 Defense may have.

12 A. Okay.

13 MR. SHARPE: Thank you. May it
14 please the Court?

15 CROSS-EXAMINATION

16 BY MR. SHARPE:

17 Q. Now, on this report it doesn't state
18 what amount of material you used to test?

19 A. That is correct.

20 Q. What amount did you use to test?

21 A. We don't record the amount. We do
22 our weight after we have done the testing.
23 So this is actually weight after we've taken
24 our portion to do our spot tests and
25 instrumental tests.

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1 Q. Well, I mean, a ballpark figure, I
2 mean, what's the weight you usually use to
3 test?

4 A. Depending on how many spot tests I
5 do and everything, maybe .02 gram.

6 Q. Okay.

7 A. So it's a very small amount that we
8 would use.

9 Q. Right. So -- and this bag had 16
10 grams, .02 would be around like a .001
11 percent of the bag; right?

12 A. Right.

13 Q. Like a thousand percent?

14 A. Uh-huh, (affirmative nod).

15 Q. Now, I've recently spoke to
16 laboratory expert at Richland County
17 Sheriff's Department. And they were under
18 the opinion that if there was sixteen grams
19 of the substance and let's say twelve grams
20 of if were heroin, the other four were
21 cocaine, they're of the opinion that it would
22 be reasonable to not test any of the cocaine,
23 that you could only test the heroin. Do you
24 agree with that?

25 A. No, I wouldn't. It would be a

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1 mixture because it's a powder substance. So
2 it's just a mixture in there. So we would
3 report out that we saw heroin and cocaine if
4 they both existed. But I did not see any
5 cocaine in this particular instance.

6 Q. Right. Right. Well, what I'm
7 asking is, is though is that it would be
8 reasonable that when you're testing only a
9 hundredth percent of the substance, that it
10 would be reasonable for you to only extrude
11 some heroin as opposed to cocaine that could
12 possibly be mixed in there as well?

13 A. No, I don't think so because it's a
14 very good mixture, so -- (pause).

15 Q. Okay. What happens to the material
16 that was tested?

17 A. It is consumed in analysis because
18 it is a spot test and ---

19 Q. So it's destroyed in the testing?

20 A. Yeah. It's no longer there.

21 Q. Which is why y'all use such a small
22 amount?

23 A. Correct.

24 MR. SHARPE: I beg the Court's
25 indulgence. Nothing further, Your Honor.

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1 THE COURT: All right.

2 SOLICITOR HAMILTON: The State
3 would ask for her to be excused.

4 THE COURT: All right. Any
5 objection to this witness being excused?

6 MR. SHARPE: No objection.

7 THE COURT: All right. You may
8 step down. Thank you.

9 (WITNESS STEPS DOWN)

10 SOLICITOR HAMILTON: Your Honor,
11 the State would rest at this time.

12 THE COURT: Okay.

13 MR. SHARPE: Your Honor, at this
14 time the Defense would renew all the
15 objections, pretrial motions.

16 THE COURT: Okay. And I think the
17 main one that I carefully looked at was the
18 reason for the stop. And he -- when he
19 pulled out -- I don't think there's any
20 question though before he turned on his blue
21 light, I think he could definitely determine
22 that that was following too close. And
23 before that, I guess that's not necessarily
24 -- wouldn't matter. But at the time before
25 he turned on his blue light, that car did

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1 look like it was almost underneath the van --
2 I mean, under the big tractor-trailer truck.

3 So, you know, I believe there is
4 just beyond the threshold there. So, I'm
5 going to deny your Motions.

6 I've looked at all the Motions but
7 that's the only one that I thought I needed
8 to carefully watch. But the other three are
9 denied. The other two are denied as well.

10 MR. SHARPE: All right. Thank you,
11 Your Honor.

12 MR. BRADLEY: Your Honor, at this
13 time, since the State's rested, we would be
14 making a Motion for a directed verdict at
15 this time. Do you want to hear that now?

16 THE COURT: Yes, sir. I'll be
17 glad to hear from you.

18 MR. BRADLEY: Okay. Your Honor,
19 you've heard the evidence, Your Honor. Our
20 directed verdict Motion is based on several
21 things. And the first of which being the
22 State has to prove knowledge -- they have to
23 prove possession first. If my guy is the
24 person who actually rented the vehicle and if
25 my guy's the actual one that's responsible

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1 for the vehicle, of course, anything in the
2 vehicle he would be in constructive
3 possession of, with the exception of what
4 would be on the young lady's person.

5 Your Honor, in this case though, the
6 problem that I don't think the State has
7 overcome is putting up a witness that's
8 showing any knowledge of intent, knowledge
9 that my guy knew that that substance was in
10 the car.

11 And even the biggest thing, when you
12 talk about knowledge is, Your Honor, you have
13 to have knowledge of what the substance is
14 that you're possessing. And everything from
15 the witnesses, all the witnesses here, with
16 the exception of the last two, certainly
17 Officer Gibson, you know, he himself didn't
18 even know what the substance was that my
19 client had at the time or they claim my
20 client had at that time. It was called
21 cocaine.

22 There were no field sobriety tests
23 -- I'm sorry. I keep saying sobriety. But
24 there were no field tests done to determine
25 what it actually was. Your Honor, the only

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1 thing that they have against my client really
2 is the fact that my client, that the officer
3 said that my client said that it was his
4 cocaine. The officer used the word cocaine
5 and he asked my client and my client
6 answered.

7 Your Honor, you can see how that can
8 be pretty ambiguous in this case because
9 number one, the officer himself could have
10 tested it. He could have figured out what
11 the substance was. He did not do that.

12 Number two, with my client saying
13 the cocaine is his he didn't confess to any
14 heroin at all. He didn't say the heroin was
15 his. He never even made a statement that --
16 and if it was a true confession he would say,
17 'well, it's not my cocaine because that's not
18 what it is, it's heroin.'

19 And, you know, there's nothing like
20 that that's been put up by the State. The
21 only thing State's put up is the officer gave
22 a reason why he made the stop and why he had
23 a reasonable suspicion to search the car,
24 which really leads to the young lady who did
25 not have a license and the inconsistencies

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1 that he sort of created.

2 Well, Your Honor, on the cross-
3 examination you just heard, I asked him
4 about, just about each of those things that
5 he said that led him to a reasonable
6 suspicion. And he basically answered that
7 well, you know, there are certain times and
8 this is not the case, you know. I said,
9 'well, what's suspicious about the fact that
10 their itinerary was different?'

11 What's suspicious about the fact
12 that she says Asheville versus Morganton,
13 when they're really in the same vicinity; you
14 know?

15 What is suspicious about the fact
16 that they don't have any kind of clothes in
17 the car? Well, it was a one-day trip, you
18 know. So, you know, that's just explained to
19 him once again. I mean, my client said the
20 lady that was driving the car said it.
21 'We're just going and we're just coming back'
22 and that's it. (Lights go out in the
23 courtroom) -- whoa! Was I that powerful?

24 THE COURT: State's computers
25 didn't go down.

1 (OFF RECORD DISCUSSION REGARDING POWER OUTAGE)

2 THE COURT: We don't have to have
3 lights -- unless, Deb (court reporter), are
4 you okay?

5 COURT REPORTER: Yes, sir, converted to
6 battery backup.

7 THE COURT: Then let's keep going.

8 MR. BRADLEY: And, Your Honor, I'm
9 reading here from a -- this is a case, a case
10 from the Fourth Circuit which is *State v.*
11 *Burgess*, Your Honor, were there were similar
12 facts. And, you know, in the court's
13 dissent, you know, "we share the Fourth
14 Circuit's concern regarding the State's
15 inclination toward using whatever facts
16 present no matter how innocent or indicative
17 of suspicious activity."

18 The State must do more than simply
19 label a behavior as suspicious to make it so.
20 The State must be able to either articulate
21 why a particular behavior is suspicious or
22 logically demonstrate, given the surrounding
23 circumstances, that the behavior is likely to
24 be indicative of some more sinister activity
25 than may appear at a glance.

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1 And, Your Honor, you know, I see the
2 judge's Opinion. In this case that's pretty
3 much what our directed verdict Motion is. In
4 this case all of the things that Officer
5 Gibson said were suspicious when I actually
6 asked him in the context of this stop was it
7 suspicious and had the suspicion arose at
8 that time, he said, no.

9 You know, as well, 'When you first pulled
10 her over, did she get out of the car and did
11 she look like she was in some way, you know,
12 intoxicated, under the influence? Did you
13 have reason to believe there was contraband
14 in the car after speaking with her?'

15 'At those particular times, no.'

16 You know, just the fact that they were
17 making a trip that was in the same vicinity
18 does not in and of itself mean that that is
19 an inconsistency which would lead to a search
20 of a vehicle for drugs.

21 This was a traffic stop. I don't think
22 that he's articulated anything -- he didn't
23 see anything in the car to indicate -- he
24 didn't say he saw a cigar or anything in the
25 car, in the front or the back of the vehicle,

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1 to believe that there was contraband. He did
2 not say he smelled marijuana in the car,
3 which is usually the typical -- in my fifteen
4 years, that's the one that is mostly given
5 for a search of the vehicle because you can't
6 contest what the officer said he smelled.
7 If he says he smelled it, he smells it.

8 But in this particular case, you know, he
9 says, you know that heroin smells like heroin
10 and cocaine smells cocaine. But he didn't
11 articulate any reason to believe that there
12 was any illegal contraband in there that
13 would relate to any kind of drugs.

14 The only thing he articulated was that
15 there were some inconsistencies in stories;
16 which you're going to find that in every
17 case, as Your Honor knows as well.

18 There needed to be a red flag. A red
19 flag is just not somebody driving without a
20 driver's license. I don't think that that
21 indicates whether or not you're carrying
22 drugs in the car and gives you a reasonable
23 suspicion to search the car for drugs, Your
24 Honor. And I don't think that they've proven
25 that this officer had any reasonable

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1 suspicion that there was contraband in the
2 car.

3 He have may have had a reason to believe
4 that they were not traveling where they were
5 traveling. I don't know. But I did not hear
6 anything out of his mouth that would indicate
7 that there was any kind of knowledge,
8 presence, plain view, any conversations that
9 he heard that would indicate anything of drug
10 use.

11 I see a traffic stop and I would not call
12 it pretextual because I don't know Officer
13 Gibson and I thought he was -- he said what
14 he said and I thought he was being as honest
15 as he could be. But I also know that his job
16 is to be a -- he was a drug enforcer. And
17 the stop was made not for the fact they were
18 following too closely, even though he had
19 that cause to make that stop. It went down
20 because they were conducting a drug stop. It
21 turned from a traffic stop into a drug stop.
22 It's crystal clear because there was nothing
23 else to give any other indication when he
24 said, 'I'm going to bring the drug dog out.'
25 No one said, 'yeah, there's contraband in the

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1 car.'

2 You heard what my client said. He said,
3 'yeah, the dogs, they hit on the car. You
4 know, I've seen this before.' That's not any
5 indication that there are drugs in the car at
6 all.

7 I don't see where this officer had any
8 reasonable suspicion to believe there was any
9 drugs in the car. I think he certainly has
10 suspicion that this driver may not have been
11 who she was. At that time, he could have
12 ascertained who she was by actually taking
13 her to jail.

14 But, Your Honor, we would ask, based on
15 that ground, that Your Honor would dismiss
16 the charges against my client at this time.
17 Thank you, Your Honor.

18 THE COURT: Solicitor?

19 SOLICITOR HAMILTON: Okay. Your
20 Honor, I'm just going to go through the
21 elements as to why I believe -- and I believe
22 the rest was kind of the suppression motion.
23 But I'm going to try to go through this as I
24 can.

25 Viewing that in the light most favorable

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1 to the State, you know, the elements have
2 been met and our opinion that the knowledge
3 element -- I have two cases that I want to
4 hand up, Your Honor.

5 THE COURT: Thank you.

6 SOLICITOR HAMILTON: In these
7 cases, that's not an element. In one of the
8 cases, *U.S. v Ollie* states that "as long as
9 you find that the Government has proven
10 beyond a reasonable doubt that the defendant
11 knew that he or she were in possession with
12 intent to distribute some substance that
13 contained an illegal..." -- that was illegal
14 under the US drug laws -- "you do not have to
15 find that a particular defendant knew the
16 precise nature of the chemical or..." -- sorry,
17 Your Honor -- "the precise nature or chemical
18 name of the specific control substance. The
19 law does not require that a defendant knew
20 the chemical name of the substance, so long
21 as the defendant knew the substance was
22 illegal under the US drug laws."

23 Of course, we do have to prove what the
24 substance ultimately is. But in this case
25 we did prove that he had knowledge of a

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1 substance when we had -- the officer
2 testified that he said he knew the dog would
3 alert. "The dog will alert." He obviously
4 knew there was something illegal in that
5 vehicle that the dog would alert to.

6 Additionally, as presented it was
7 consistent that a thousand dollars would be
8 what someone would pay for heroin. So he
9 obviously paid the right amount for the
10 drugs, the particular substance that he
11 actually had in his possession.

12 Initially he stated that it was his.
13 The drug was his. That's knowledge of the
14 presence of those drugs.

15 Additionally, looking at the *Barbosa* case
16 that I handed up, they will --- (interruption
17 by noise from holding cell).

18 (OFF RECORD DISCUSSION)

19 THE COURT: All right. You may
20 proceed. He (Mr. Bradley) got interrupted,
21 so it's only fair that you should be as well.
22 You may proceed.

23 SOLICITOR HAMILTON: In *Barbosa*
24 the court looked at the knowledge of the
25 particular substance to be a sentencing

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1 factor, as is weight a sentencing factor.

2 In our law we do have different sections
3 as to controlled substances. Under each
4 section it states the controlled substance
5 and it states the amount and it states the
6 sentencing with each.

7 I believe based on these cases, based
8 on *Barbosa*, that is a sentencing factor.
9 The drug, the particular drug and the weight
10 of the particular drug as a sentencing
11 factor. The knowledge would go to the
12 illegal substance. And we have proven, we
13 believe, that he had knowledge that he was in
14 possession of an illegal substance based on
15 his behavior stating the dog would alert.

16 Dogs alert to illegal substances and
17 that's what was in that vehicle and
18 ultimately found in this case. So he does
19 not have to know the particular name,
20 chemical name. That does not need to be
21 proven. If that is what they are arguing,
22 the fact it's needed, then every Defendant
23 pulled over would say, 'oh, I thought I was
24 in possession of marijuana' and avoid these
25 extreme sentences that are for heroin. Or

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1 he can say its cocaine and avoid heroin
2 sentences. It's not the legislative intent,
3 we believe. We believe based on those cases
4 that I handed up and that is what was
5 intended with the way that this statute was
6 written.

7 As I said before, the State fully
8 intends to prove that this controlled
9 substance was in fact heroin. We believe
10 that's an element. And that was proven with
11 Ms. Mitchum who was on the stand, who did
12 state an amount of the substance; which was,
13 I believe, sixteen -- around 16 grams of
14 heroin. So we have put evidence in the
15 record that this was, in fact, heroin, the
16 amount of the heroin.

17 We've shown that he was in
18 possession. He stated that the jacket was
19 his. He identified the jacket as his. The
20 drugs that he found in the jacket and him
21 saying that those were his drugs and the
22 amount he paid for them.

23 So, Your Honor, we believe viewing
24 all of this evidence in the light most
25 favorable to the State, that the directed

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1 verdict should not be granted.

2 THE COURT: All right. Anything
3 in response?

4 MR. BRADLEY: Your Honor, I just
5 would like to say this and not to -- I don't
6 want to beat a dead horse. But one thing I
7 have learned in drug cases, too, is that in
8 certain cases, particularly when somebody's
9 facing twenty -- facing a huge amount of
10 time. We don't have to prove liability. The
11 State has to prove their burden(s) beyond a
12 reasonable. "Beyond a reasonable doubt" is
13 pretty high, which is one of the reasons why
14 we were actually talking about that
15 statement, whether or not that statement that
16 was written in there was going to be placed
17 -- was going to be given a lot of weight.

18 In this case, Your Honor, again,
19 it's not a specific liability crime. There
20 are elements. The knowledge, the knowledge
21 element goes to the intent. He did not know
22 what it was. I think we clearly understood
23 that. But then the officer didn't know
24 either. And I just ask Your Honor, if Your
25 Honor would focus on that and focus on what

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1 was available to him to find these things out
2 and how these things could have been cured.

3 And we haven't heard from the
4 witness stand yet. So I would just ask if
5 Your Honor would direct a verdict in favor of
6 the Defendant.

7 THE COURT: Well, I believe --
8 this is the directed verdict stage.

9 MR. BRADLEY: Yes, Your Honor.

10 THE COURT: So I think in light of
11 the standard that I have to apply that the
12 evidence must be viewed in the light most
13 favorable to the State as the moving party, I
14 think they've got -- I think that it would
15 be appropriate for your Motion to be denied.

16 Anything else at this point?

17 Do y'all plan to present a defense?
18 Do you have some witnesses?

19 MR. BRADLEY: Yes, sir. We do plan
20 to present a defense, Your Honor. So I would
21 ask now, are we going to break?

22 THE COURT: Yeah. Because I think
23 we need to break for lunch.

24 MR. BRADLEY: Ours is one witness
25 and possibly the Defendant, which would take

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1 us beyond ---

2 THE COURT: Right. So I think we
3 need to -- let's break until 1:45.

4 MR. BRADLEY: That'd be great.

5 THE COURT: All right.

6 (OFF RECORD DISCUSSION)

7 THE COURT: All right. So let's
8 resume back at 1:45. And your client is in
9 custody.

10 MR. BRADLEY: Yeah. I understand.

11 SOLICITOR HAMILTON: Thank you,
12 Your Honor.

13 MR. BRADLEY: Thank you, Your Honor.

14 (LUNCH RECESS)

15 (DEFENDANT PRESENT)

16 THE COURT: Do y'all need a
17 minute?

18 MR. BRADLEY: I think we're ready,
19 Your Honor.

20 THE COURT: All right. All right.
21 I believe the Defendant -- is the State
22 ready?

23 SOLICITOR HAMILTON: Yes, Your
24 Honor.

25 THE COURT: Okay. And Defendant,

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1 are y'all ready?

2 MR. BRADLEY: We're prepared, Your
3 Honor.

4 THE COURT: All right.

5 MR. BRADLEY: The defense calls
6 Monique Trappier. I think she's outside,
7 Your Honor.

8 THE COURT: All right.

9 SOLICITOR ROBINSON: Your Honor,
10 can we approach?

11 THE COURT: Yes.

12 (OFF RECORD BENCH CONFERENCE)

13 (WITNESS TAKES STAND)

14 (WITNESS DULY SWORN)

15 THE COURT: Would you please state
16 your name?

17 WITNESS: My name is Monique
18 Trappier.

19 THE COURT: All right. I'm going
20 to ask you some preliminary questions based
21 on discussion with counsel. You've been
22 called to testify in this case in the State
23 versus Calvin Brown, okay?

24 WITNESS: Yes, sir.

25 THE COURT: Now, I want to -- at

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1 this point do you realize you're just a --
2 you're a witness in this case and I've not
3 seen your statement. I understand that based
4 on a prior statement that there may be some
5 things in there that you may be testifying or
6 that people expect you to testify that would
7 incriminate yourself. I want to make sure
8 that you understand your rights before you go
9 forward, okay?

10 WITNESS: Okay. ^

11 THE COURT: Like I say, you're a
12 witness in this case and I want to advise you
13 that you have a right to invoke the
14 protections given to you by the Fifth
15 Amendment. That means that no person shall
16 be compelled to be a witness against him or
17 herself. Now, what this means is that you
18 cannot be required to be a witness against
19 yourself. And you have a right to remain
20 silent if certain matters may incriminate
21 yourself. You have the right to refuse to
22 answer any questions asked of you which you
23 think gives reasonable cause to believe that
24 the answer might intend to incriminate you.
25 In other words, you know, may indicate that

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1 you have committed some crime. If you wish
2 to exercise this right when asked a question,
3 then you have to indicate that you refuse to
4 answer the question because it may
5 incriminate.

6 I also advise that you are not the
7 final decision maker on whether you have to
8 answer a question or not. That's for the
9 Court to determine if it's obviously on your
10 part it's justified. So you understand you
11 have a right to remain silent in any matters
12 that may incriminate you?

13 WITNESS: Yes, sir. I do.

14 THE COURT: Okay. Do you have any
15 questions whatsoever about that and do you
16 need any further explanation of that right?

17 WITNESS: No.

18 THE COURT: Okay. And you realize
19 that admission of any crime -- again, I don't
20 know the nature of your testimony, could
21 subject you to being charged with a crime?

22 WITNESS: Yes, sir.

23 THE COURT: That you have not
24 already been charged with. Do you understand
25 that?

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1

2

WITNESS: Yes, Your Honor.

3

4

THE COURT: And based on that, you
still wish to proceed as a witness?

5

WITNESS: Yes, sir.

6

7

THE COURT: All right. Anything
further from the State as far as that issue?

8

9

SOLICITOR HAMILTON: No, Your
Honor. Thank you.

10

11

THE COURT: Anything further from
the Defense?

12

MR. BRADLEY: No, sir.

13

14

THE COURT: All right. All right.
You may proceed.

15

16

MR. BRADLEY: Thank you, Your Honor.
If it pleases the Court?

17

THE COURT: Certainly.

18

19

MONIQUE TRAPPIER, having been duly sworn
to tell the truth, and noting but the truth,
testified as follows:

20

21

DIRECT EXAMINATION

22

BY MR. BRADLEY:

23

24

Q. Would you state your full name for
the record, please, ma'am?

25

A. My full name is Monique Teresa

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1 Trappier.

2 Q. Ms. Trappier, do you know the
3 Defendant, who is sitting at the table beside
4 -- the young man in the gray?

5 A. Yes, sir, I do.

6 Q. How do you know him?

7 A. We've been friends for a while.

8 Q. I'm sorry?

9 A. We've been friends for a long time.

10 Q. You've been friends for a long time.
11 Did there come a time when you two were
12 pulled over by an officer while y'all were in
13 the car together?

14 A. Yes, sir.

15 Q. Okay. And do you remember that date
16 pretty well?

17 A. Yes, sir, I do.

18 Q. Okay. I want to ask you a couple of
19 questions about that. The first question was
20 do you recall why you were pulled over?

21 A. Yes, sir. I was -- we were pulled
22 over for following too closely.

23 Q. For following too closely to what?

24 A. To, I guess a vehicle.

25 Q. Another vehicle or truck?

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1 A. A truck. There were trucks on the
2 road. There was only trucks.

3 Q. When you were pulled over was it
4 explained to you why you were pulled over?

5 A. Yeah, the officer said that that's
6 the reason why he pulled me because I was
7 following too closely.

8 Q. You were following too closely?

9 A. Yes, sir. That's right.

10 Q. Okay. And did that -- when he
11 pulled you over, did that result in you being
12 arrested or were you allowed to go home?

13 A. No, I was not allowed to go home. I
14 wasn't arrested for following too closely but
15 I was arrested.

16 Q. Okay. You were arrested. Can you
17 explain to the Court why you were arrested?

18 A. The officer placed me under arrest
19 because he said that I had given him false
20 information.

21 Q. And what type false information did
22 the officer say you gave him?

23 A. Well, at that time -- he didn't say
24 then, but after we got to the, down to the
25 station, I guess, you know, he asked my name.

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1 I gave him a name that wasn't my true name.

2 Q. Okay. So you gave -- you did, on
3 the scene, give him a name that was not true
4 name?

5 A. Right. It's an alias. It was an
6 alias.

7 Q. Okay. And why did you do that?

8 A. Well, basically, I was -- that's
9 what I usually do. And I kind of knew I was
10 -- I was driving under suspension.

11 Q. So basically you said that's what
12 you normally do. When you say that, explain
13 what that means?

14 A. You know, I really don't get pulled
15 over and drive under suspension. But at that
16 time that I was being pulled over, I had
17 already decided that I was going to give him
18 the alias instead of the real name.

19 Q. And, again, I guess you'd done this
20 before?

21 A. Not really. Once or twice.

22 Q. So you have done it before?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

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1 Q. Okay. And you gave a false name
2 because you knew your license was ---

3 A. Suspended.}

4 Q. --- it was suspended?

5 A. Yes, sir.

6 Q. Do you actually have a license?

7 A. Yeah.

8 Q. Okay. But it was suspended at that
9 time?

10 A. Yes, sir.

11 Q. Okay. Are you aware that an illegal
12 substance was found in the car that day?

13 A. Yes, I am.

14 Q. Okay. Are you aware of what that
15 substance was?

16 A. Yes. It was the cocaine/heroin
17 mixture.

18 Q. It was cocaine heroin. Was it
19 cocaine and heroin or ---

20 A. Yes, it was. It was cocaine and
21 heroin.

22 Q. Okay. And, also are you aware that
23 there was other evidence found at the scene
24 that day?

25 A. Uh-huh. Yes.

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1 Q. Okay. What other evidence are you
2 aware of that was found that day?

3 A. They found a piece of crack cocaine.
4 And, also, my pipes were found too. So there
5 were paraphernalia. A few of my pipes as
6 well as my telephones. That's all that was
7 found that day.

8 Q. Okay. If I may, I'm going to refer
9 to what ---

10 MR. BRADLEY: Your Honor, may I
11 approach?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. BRADLEY:

15 Q. -- to what's been marked as State's
16 Exhibit -- I'm sorry. It's Defendant's 1.
17 Take a look at this picture.

18 MR. BRADLEY: Your Honor, I think
19 this is the one you've already seen.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. BRADLEY:

22 Q. Okay. Take a look at that picture
23 and tell me do you recall the contents, those
24 contents being in the vehicle you was
25 driving?

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1 A. Well, yeah. That's my cigarette
2 pack. And those are the pipes and those are
3 my three phones. And, of course, there's Mr.
4 ---

5 Q. Okay. Hold that up and show the
6 Court which phones were yours.

7 A. What, I show the judge?

8 Q. Show the Judge which phones were
9 yours?

10 A. Okay. Well, this is mine. This is
11 mine. And also this is mine.

12 Q. So are you pointing to the first
13 three from the left.

14 A. Yeah. This is my phone. This one's
15 also mine and so is this one.

16 Q. Okay. Were all those three phones
17 operative at the time? Did they work?

18 A. Yes.

19 Q. They did work? Why did you have
20 three cellphones?

21 A. Well, I use one for apps and one for
22 games and one for the internet.

23 Q. You pay three phone bills?

24 A. Yes.

25 Q. Are those pretty big or are they ---

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1 A. They're ten dollars (\$10). Prepaid
2 pretty much. Ten dollars (\$10), buy a card.
3 Put the minutes on it, and use it up.

4 Q. Are you employed?

5 A. Not currently I'm not.

6 Q. At that time? How could you afford
7 to pay for three telephones?

8 A. Well, I pretty much get money the
9 best way I know how. I mean, I do what I
10 have to do to support my habit and to support
11 myself.

12 Q. Well, let's talk about the habit.
13 What habit do you have?

14 A. Well, I've been using drugs for --
15 if it's okay to say that. I've been using
16 drugs for a long time.

17 Q. Well, this is a Court of law. And
18 Your Honor will tell you if you're getting
19 out of range.

20 A. Okay.

21 Q. Where we're here to do is get the
22 truth.

23 A. Okay.

24 Q. You know, you say a long time. Is
25 that three years? Is that thirty years?

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1 A. I have a son that's twenty-two years
2 old so it's been close to twenty years.

3 Q. So you've been using drugs for
4 twenty years. What type drugs have you been
5 using for twenty years?

6 A. The first thing I started out using
7 cocaine. And then that kind of like
8 escalated to other things such as heroin and
9 a little weed here and there. But my choice
10 drug is heroin/cocaine.

11 Q. Do you recall around what time you
12 may have gotten hooked on heroin?

13 A. It's been a long time. I was around
14 maybe -- it's been some years. Like, I want
15 to say maybe twenty-five, twenty-six.

16 Q. Do you remember around when you
17 first got hooked on heroin?

18 A. Yeah.

19 Q. Was there some event that happened
20 in your life that made you wound up doing it
21 or ---

22 Q. Well, yeah. Cocaine was originally
23 my drug of choice. And -- I'm just very
24 emotional about it. I was going through AA
25 -- (emotional) -- sorry. I was going through

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1 a phase in my life where I had lost a lot.
2 When -- well, when I was using cocaine, it
3 wasn't just enough for me.

4 Q. I'm sorry.

5 A. It wasn't enough for me. It wasn't
6 enough for me. I'm sorry. It just wasn't
7 enough for me. I was married. At one time
8 my children -- my husband got arrested and he
9 was all that I really knew. He was all that
10 I depended on. And when he left, I didn't
11 know what to do, I then would resort to
12 drugs. I'm sorry.

13 MR. BRADLEY: May I approach, Your
14 Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. BRADLEY:

18 Q. You okay?

19 A. I'm sorry. So, I apologize. But I
20 went through a lot in my life, which
21 escalated, you know, from the cocaine to the
22 heroin because the cocaine at that time
23 wasn't enough. You know, it just wasn't
24 enough for me; that was basically it.

25 Q. Have you ever been to a drug rehab

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1 or any type of drug dependency program to
2 help ---

3 A. Yes, I have. I have been to the
4 Chrysalis Center in Florence. I get a little
5 medical there for -- to try to get clean off
6 of drugs.

7 Q. Okay. And were you clean at the
8 time you were released from there?

9 A. Yeah, I was.

10 Q. And how long did you stay clean?

11 A. Three years after that. And then
12 went back out on the streets and I kind of,
13 like, let a lot of the things that happened
14 in my life, I kind of like used that as an
15 excuse to use drugs; which was wrong at the
16 time, but I did it anyway.

17 Q. So even after you, when you got out
18 of the rehabilitation center, you started
19 pretty much doing what you were doing prior
20 to going into rehab?

21 A. Yeah. Well, yeah, I was ---

22 Q. So rehab did not work for you?

23 A. It worked but only for a small time,
24 amount of time. I mean, it didn't last.

25 Q. Okay. And have you now cured your

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1 drug addiction?

2 A. Yes-and-no. I've have still been
3 indulging in drug use. You know, an
4 addiction is a very powerful thing and so I
5 have not completely stopped using drugs, you
6 know.

7 Q. Okay. And I'll ask you this
8 question. Are you under the influence of any
9 drugs or anything right now that would
10 prohibit you from giving truthful testimony
11 to this court today?

12 A. No. Right now, no.

13 Q. Okay. Were you yesterday?

14 A. No, not yesterday either.

15 Q. Okay, were you the day before
16 yesterday?

17 A. No, sir.

18 Q. Okay. So at least three days you've
19 gone and have not had any drugs; is that
20 correct?

21 A. Yes. That's correct.

22 Q. Okay. On the day that you all were
23 pulled over, I think Officer Gibson pulled a
24 substance out the back seat of the car.

25 A. Uh-huh.

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1 Q. Do you recall that?

2 A. Yes, I do.

3 Q. Okay. And I think he called it
4 cocaine at that time.

5 A. Yes, he did.

6 Q. Do you recall that?

7 A. Yeah. He did, cocaine.

8 Q. Do you know who that heroin, which
9 was referred to as cocaine back at that time,
10 whose drugs was that?

11 A. It was mine.

12 Q. It was yours?

13 A. Yes, it was.

14 Q. Okay. And why would the Court
15 believe that that was yours?

16 A. Well, I mean, it's mine. I use
17 drugs, you know, that's -- it was mine. I
18 put it there. I mean, to be honest, it
19 belonged to me. So, I mean, it was like why
20 would they believe -- but I was there. I put
21 it there. I know who it belonged to.

22 Q. Well, you said you put it there but,
23 you know, that's kind of convenient at the
24 last moment. So my question is -- I want to
25 go back.

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1 A. Uh-huh.

2 Q. When did you get a chance to put
3 that -- he rented the car. Not you.

4 A. Well, I put it in the night before.
5 You know, it was the night before. It was
6 just the day we left. It was actually the
7 night before. I really did put it in the
8 wrong jacket pocket, but ---

9 Q. The wrong jacket pocket?

10 A. Yeah.

11 Q. Now, explain that to the Judge.

12 A. Well, both our jackets were in the
13 car and I put it in there. But -- I think I
14 was really high at the time. I was under the
15 influence. Usually, I just don't stick my
16 stuff in someone else's stuff. I really just
17 keep all my stuff together.

18 Q. Uh-huh.

19 A. But this particular night, I had put
20 it -- just went and stuck it in the car and
21 went back about my business.

22 Q. So in what city did this occur?

23 A. In Georgetown County.

24 Q. So you were in Georgetown County.

25 Did you buy the drugs in Georgetown County?

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1 A. Yeah.

2 Q. You bought the drugs in Georgetown
3 County?

4 A. Yes, sir.

5 Q. Okay. And when you bought the drugs
6 you somehow got it in his coat pocket. Can
7 you explain to the Judge how did that happen?

8 A. Well, like I said, the night before
9 I had put it in there. But I was kind of
10 high. I was under the influence. But
11 usually, like I said, I don't stick it stick
12 it in my stuff in other peoples' things. But
13 I believe at that time I was high. But I
14 have stuck in the coat. Both of the coats
15 are in the back seat. And that's basically
16 what I done. You know, it was not
17 intentionally just to put it in the coat it
18 didn't belong to. It was just really an
19 honest misstate.

20 Q. If a male coat was in the back seat,
21 where was the male at that time?

22 A. Well, he wasn't inside the car. He
23 was -- I believe he might have been at a card
24 game. He wasn't inside the car. We had not
25 been in the car that night.

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1 Q. So are we talking about the same car
2 that you all were stopped in?

3 A. Yeah.

4 Q. How did you get control of that
5 vehicle?

6 A. Well, it was his -- he rented the
7 vehicle.

8 Q. Uh-huh.

9 A. You know, I knew we were going on a
10 trip. And like I said, I believe he was at a
11 card game or whatever that night before. And
12 so when he did call me for us to leave, and I
13 got back to the house, I offered to drive.
14 You know, because I believe he had been up
15 most of the night, probably playing cards or
16 whatever, had a card party or whatever and so
17 I offered to drive because I knew he was
18 tired.

19 Q. So this is the next morning you
20 offered to drive the car?

21 A. Right.

22 Q. What I'm trying to go back to is
23 when you bought the drugs?

24 A. Yes.

25 Q. Was the Defendant with you when you

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1 purchased the drugs?

2 A. Oh, no. No. Oh, no. No.

3 Q. Okay. The Defendant was not with
4 you?

5 A. No, sir.

6 Q. You purchased the drugs yourself?

7 A. Yes, sir.

8 Q. Was anyone else with you?

9 A. No.

10 Q. Okay. After you purchased the
11 drugs, what did you do?

12 A. Well, I went back to my house. I
13 used some. And I put it in a bag and got,
14 stuck it in the car. Got what I needed out
15 ---

16 Q. You stuck it in the car?

17 A. Yeah. I got what I needed out and
18 put the rest in the car.

19 Q. And you put it in the car, why? Why
20 didn't you keep it in the house?

21 A. No, I always. I knew we were
22 leaving and traveling the next morning. And
23 I was taking my stuff with me. I'm sorry,
24 but it's the truth, you know. I had every
25 intention of traveling with my stuff.

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1 Q. So what you're explaining to the
2 Court is you were planning on taking that
3 with you the next day on the trip?

4 A. That's right.

5 Q. That's correct. Okay. When the
6 officer pulled it out he asked whose it was?

7 A. Yes.

8 Q. And did you alert the officer that
9 it was yours?

10 A. No, I didn't.

11 Q. You did not?

12 A. No, I didn't.

13 Q. In fact, you didn't say anything to
14 the officer about it being yours; is that
15 correct?

16 A. That's correct.

17 Q. Okay. Did he subsequently take you
18 to the station and question you about it?

19 A. Yes, he did.

20 Q. Okay. What did he ask you?

21 A. He just asked me what it was, what
22 was it. 'What is this?'

23 Q. Okay.

24 A. You know, he didn't really ask me as
25 to ownership or who it belonged to. He just

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1 basically held it up and said 'what is it?'

2 Q. Okay. And what was your response to
3 that?

4 A. I told him it was cocaine.

5 Q. You told him it was cocaine. Did
6 there come a time, and you were -- actually,
7 were you released from jail anytime soon?

8 A. Yeah. I was put in jail that day
9 and the following morning.

10 Q. Okay. And what were you charged
11 with?

12 A. They charged me with giving false
13 information to police. And they also charged
14 me with driving under suspension.

15 Q. Driving under suspension?

16 A. Uh-huh.

17 Q. But you didn't get charged for the
18 driving too closely; is that correct?

19 A. No, that kind of puzzled me. But,
20 no, I didn't get a charge, a ticket or a
21 charge with following too closely to no
22 truck.

23 Q. And you were not charged with the
24 package that was found in the vehicle?

25 A. No.

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1 Q. And I'm talking about the fact that
2 it was called cocaine and ultimately it is
3 heroin?

4 A. No.

5 Q. Okay. Have you ever gotten a call
6 from anyone in York County about that heroin,
7 about those drugs that were in the car at
8 that time after you bonded out of jail?

9 A. No, I didn't.

10 Q. So you had no call from anyone?

11 A. No.

12 Q. Did you get a call from an attorney
13 right after you got out, inquiring about this
14 case, inquiring about whether or not this was
15 your drugs?

16 A. No, I didn't.

17 Q. You did not.

18 A. No.

19 Q. Okay. Do you recall coming back to
20 York County to talk with law enforcement?

21 A. Yes, I did. Yes, I do recall that.

22 Q. Do you recall when that was?

23 A. That was in February -- I mean, I'm
24 sorry. It was at the end of the year.

25 Q. It was some time toward the end of

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1 the year?

2 A. Yeah.

3 Q. Okay. But was it around -- was it
4 later in September?

5 A. Yes.

6 Q. Okay. Was it maybe somewhere around
7 between October and December?

8 A. October and November, yeah.
9 November.

10 Q. But you just don't recall the
11 particular date.

12 A. November. It was in November.

13 Q. It was in November?

14 A. Yes.

15 Q. Okay. And why did you come up --
16 did they call you to come up to York?

17 A. No. No one called me to come here.

18 Q. No one called?

19 A. No.

20 Q. Okay. Why did you decide to come up
21 here?

22 A. Well, a couple of things. One of my
23 first reasons because I had -- for most of
24 the year, since the stop and since Mr. Brown
25 had actually taken ownership of that, I felt

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1 guilty a little bit because they, in fact,
2 were my drugs. And I really didn't want him
3 to go own -- to really go -- to get in
4 trouble by something that wasn't his. I felt
5 kind of scared at first that some serious
6 stuff was happening here, was going to happen
7 to him. And that's really not right. And
8 it's not fair to him. Because in the first
9 place, he lied to protect me in the first
10 place. So I felt pretty bad.

11 Q. Well, you know, if -- you've said
12 the reason is because he lied to protect you.
13 Why didn't you try to clear it up that day?

14 A. Well, I had been going through -- I
15 really didn't know the seriousness of it, of
16 the actual charge. But for most of the time
17 through the year, I had been getting high off
18 and on and not really looking at what would
19 happen or what the outcome would be. I
20 really wasn't paying attention to -- you
21 know, it's like I woke up one morning and I
22 was like, you know what, this is not -- I
23 can't do this.

24 Q. Now, let me just ask you directly.
25 Did somebody call you up or talk with you and

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1 tell you to come into court and take this
2 charge?

3 A. No. Nobody knew what I was trying
4 to do. No one had an idea. This was
5 something that I had decided on, pondering
6 and thought out, and nobody had to call me to
7 come and do this. It was only right.

8 Q. Did Mr. Brown call you and talk with
9 you about these charges?

10 A. No. He actually didn't have a clue
11 that I was here. You know, that I'd come.
12 He found out, of course, but he really didn't
13 know. When I came and made that confession
14 and signed that statement, he had no clue.

15 Q. Okay. You said made a confession
16 and signed a statement. Are you indicating
17 that when you came up here you actually wrote
18 out a confession?

19 A. No. I didn't write out a confession
20 out. But, you know, I spoke with an officer
21 who -- I signed it.

22 Q. Okay. Do you recall the name of the
23 officer?

24 A. Her name, I don't remember. Her
25 name was Jan, Ganning (phonetic) or something

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1 like that.

2 Q. I am going to show you a document
3 (SO MARKED AS DEFENDANT'S EXHIBIT 2)

4 COURT REPORTER: Defendant's
5 Exhibit Number 2 for identification. Two
6 pages.

7 MR. BRADLEY: Your Honor, do you
8 need a copy of this while we're going over
9 testimony?

10 THE COURT: No, sir.

11 MR. BRADLEY: I'll present that.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. BRADLEY:

14 Q. I'm going to show you a copy of that
15 document. I want you to take your time and
16 look over that document. And then I'm going
17 to ask you a couple of questions.

18 SOLICITOR HAMILTON: Your Honor, I
19 object to her reading from the statement.
20 She can testify based on her memory and he
21 can impeach her with that statement. She has
22 -- otherwise, we would object.

23 THE COURT: All right.

24 MR. BRADLEY: I believe it was
25 November 6th. It was to refresh the witness's

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1 recollection. She certainly can read her own
2 statement.

3 THE COURT: If she can't remember
4 what she said then she can use it to reflect.
5 I mean, if she is being asked what she
6 remembers what she said, she ---

7 MR. BRADLEY: Well, I mean, she
8 didn't even remember the name of the officer,
9 which is actually on the statement.

10 THE COURT: Well, ask her and see
11 if she knows?

12 MR. BRADLEY: I'm sorry.

13 THE COURT: Ask her and see.

14 MR. BRADLEY: I did. I asked her
15 just now did she remember the name of the
16 officer ---

17 THE COURT: No, I'm talking about
18 does she remembers what she said.

19 MR. BRADLEY: Sure. Sure.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. BRADLEY:

22 Q. Do you recall the substance of your
23 meeting with whoever you met with that day?

24 A. Yes.

25 Q. You do recall that substance?

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1 A. Yes.

2 Q. Okay. I'll take that document back.
3 Can you explain to the Court what you told
4 law enforcement that day?

5 A. I told -- I spoke with -- actually,
6 when I came in, I spoke with the district
7 attorney, I guess.

8 Q. Do you recall which district
9 attorney you spoke with?

10 A. This young lady right here.

11 Q. Well, there are two young ladies
12 here, which one you spoke with?

13 A. The one in the -- the blonde.

14 Q. Okay. You had a conversation with
15 the Solicitor?

16 A. Yes, I did.

17 Q. Okay. And what was that
18 conversation about?

19 A. Well, when I came here I had went
20 and told her -- I spoke with someone else who
21 was at the desk. And I explained to them
22 that I was here and I needed to speak to
23 someone regarding a case.

24 Q. Okay.

25 A. And that young lady, in fact, told

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1 us that we had to come back in a few minutes
2 or whatever. And, so, I came back and this
3 young lady here is the one that I spoke to
4 first.

5 Q. Okay. And what was said during that
6 conversation?

7 A. I had told her the reason that I was
8 here, to make a confession, and the reasons
9 why I came. And I just needed to know what I
10 needed to do and who I need to speak with in
11 regards to the case. And she asked me in
12 regards to who. And I had explained to her
13 that it was Mr. Brown's case and that I was
14 also involved in the case.

15 Q. Okay. Did she take a confession
16 from you?

17 A. No, she didn't.

18 Q. Okay. Well, how did you get to the
19 confession?

20 A. Well, she got on the telephone and
21 called someone and she had -- or over and
22 over again she'd said that this was over her
23 head and this was nothing she could do. But
24 that if she got on the telephone and spoke
25 with someone and whom that person was, I

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1 guess, well, turned out to be the district --
2 the drug enforcement people. And those were
3 the people, I guess, that she directed me to
4 talk to. Because her words were that this
5 was over her head. This was nothing she
6 could do about this.

7 Q. Okay. Prior to this meeting with
8 the Solicitor and the police officer, had you
9 ever met me before?

10 A. No, I have never.

11 Q. Had you ever talked with me before?

12 A. No, sir.

13 Q. Had any discussions with me before?

14 A. Yeah. Well, we spoke -- before
15 then?

16 Q. Before you actually went in ---

17 A. Oh, no. no.

18 Q. --- November?

19 A. No. No. No. I didn't even know --
20 didn't know who the lawyer was.

21 Q. Okay. Can you tell the Court what
22 you told the officer that you were confessing
23 to?

24 A. I spoke with the officer after some
25 time. We went, I guess, in a room or

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1 whatever. I guess it was an interrogation
2 room or whatever the kind of room it was.
3 And I spoke with her and I told her, 'Well,
4 ma'am, I'm here to make a confession. I
5 would like to make a confession. I don't
6 know whether it's going to be a formal
7 confession or whatever. I don't know
8 anything about it. I'm giving a confession.'
9 And at some time she went and got a computer
10 or whatever and came back with a computer and
11 asked me, after going to do some paperwork or
12 whatever, was I ready to make a confession.
13 And what was I here to confess about. And I
14 told her that I'm here to take ownership of
15 some drugs that one of my friends was charged
16 with that doesn't belong to him.

17 Q. Okay.

18 A. And at that time she went to typing
19 on her, like a little laptop, like what she
20 (court reporter) is doing.

21 Q. Okay.

22 A. And she asked me -- that she's going
23 to ask me what took place during the stop.

24 Q. Okay.

25 A. Which led up to I guess why I was

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1 coming to make the confession. And I had to
2 explain to her that I really had wanted to
3 make a confession because, you know, it was
4 really on my conscience about -- I just
5 couldn't go on much longer.

6 Q. So what was the substance of your
7 confession?

8 A. I told them that I had indeed put
9 the drugs in the pocket, that it was mine.
10 I'd also told them what type of drugs it was.
11 How much I spent for it. What happened on
12 the day of the arrest. And those were pretty
13 much the questions that she asked me.

14 Q. Okay. Did Mr. Brown know that those
15 drugs were in that jacket pocket?

16 A. No, he did not know.

17 Q. And how do you know he didn't know?

18 A. Because I'm the one put it there.

19 Q. Well, did you may have been the one
20 that put it there, but if he grabbed that
21 jacket any time after that ---

22 A. No. He didn't touch the jacket.

23 Q. --- if he put his hands in his
24 pocket then he would have known?

25 A. He would have known. And I probably

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1 would have been cussed out or something like
2 that. But he didn't use the jacket at all.
3 It actually -- we really didn't have a need
4 for the jacket then. We were inside the
5 vehicle, you know. So, no, he didn't have
6 any idea that the drugs were there until they
7 were actually pulled out of the pocket.

8 Q. The officer pulled out -- and I
9 showed you a picture just now that I think
10 it's some crack -- some pipes that are in
11 there?

12 A. Yes, sir.

13 Q. Okay. Whose pipes are those?

14 A. They would be mine.

15 Q. Okay. And if those pipes were
16 actually tested for residue, what type
17 residue would come out of those pipes?

18 A. Oh, wow. You'd get cocaine, you'd
19 get some crack. You'd get a little heroin.
20 You'd get -- I use those pipes for two or
21 three different things, you know. One for my
22 cocaine, one for my crack. I mean, you know,
23 I use them for whatever I need to use it for.

24 Q. Do you sell dope?

25 A. No, I'm not a drug seller. I've

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1 been an addict a long time. I've never sold
2 drugs. I just pretty much like to maintain
3 what I have just without having to go on the
4 street over and over and over again and
5 subject myself to things that ---

6 Q. Okay. You mean go on the street
7 over and over again, do you buy from one ---

8 A. Yeah. I just buy from one person.

9 Q. Where did you get a thousand dollars
10 to buy this?

11 A. Well, a woman who's an addict, such
12 as I am, I've been in the streets a long
13 time, sir. And I have done a lot of things
14 not to be proud of that I've done to get my
15 drugs. I have done unearthy things
16 sometimes, but I support my habit. You know,
17 I don't try to rob and steal from anybody,
18 but, you know, I've prostituted at times.
19 I've done things -- I mean, this is not --
20 I'm not trying to be proud -- I'm not trying
21 to make it sound like that's the right thing
22 to do or that's the good thing to do but I've
23 done some bad things to get my drugs.

24 Q. Why aren't you actively seeking some
25 help for your drug addiction?

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1 A. You know, I have this really bad --
2 another bad habit about myself. I feel like
3 I can pretty much overcome things, overcome
4 my habit. It's a false way of thinking, it's
5 not a good way of thinking. Sometimes I'm
6 just superwoman, that I can just overcome
7 this. You know, I don't need the help. But
8 in actuality, I do.

9 Q. Has anyone offered you any help in
10 the last year to try to get you into a rehab
11 program?

12 A. Well, yes. Yes.

13 Q. Okay. Who did?

14 A. Well, my mom has. My sister, she's
15 always on me about going and getting some
16 help. And -- I'm sorry.

17 Q. Were you finished with your answer?

18 A. No, sir. And this -- Ms. -- I don't
19 even know what her name is.

20 Q. Who are you speaking of?

21 A. This young lady.

22 Q. The Solicitor?

23 A. Yeah. The Solicitor. Even she
24 offered to help me.

25 Q. When did she offer to help you?

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1 A. The day I came in.

2 Q. I'm sorry?

3 A. The day I came in.

4 Q. So the day you went in to make a
5 confession, they offered you help?

6 A. Yeah.

7 Q. And did you accept that help?

8 A. At first, (affirmative nod).

9 Q. You did?

10 A. At first I did. But then I -- but
11 there was some other issues at home, and
12 which I couldn't do it.

13 Q. You couldn't do it or you didn't
14 want to do it?

15 A. I just didn't want to do it, at
16 first.

17 Q. You didn't want to do it?

18 A. (No verbal response)

19 Q. Do you recall, did they have you
20 sign your confession? The document that you
21 -- did they give you a document to sign when
22 you were there?

23 A. Yes, sir. They did.

24 Q. Okay. And you signed that document
25 acknowledging that it was your signature?

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1 A. Yes, sir.

2 Q. Okay.

3 MR. BRADLEY: Your Honor, at this
4 time I'd like to move to introduce the
5 statement into evidence that Ms. Trappier
6 actually signed.

7 SOLICITOR HAMILTON: The State
8 would object, Your Honor. I believe the
9 testimony is on the record that is the
10 substance of that statement. The statement
11 is not necessary.

12 MR. BRADLEY: All right. Well,
13 the statement's -- we haven't gotten her to
14 read the entire testimony. Your Honor, it's
15 a statement that was taken at that time so
16 it's clearly relevant to what she told the
17 officers at that time.

18 THE COURT: I'm going to accept
19 it. I'm going to let it in. Just like I
20 said ---

21 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

22 MR. BRADLEY: Thank you, Your Honor.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. BRADLEY:

25 Q. Ms. Trappier, I guess people are

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1 going to find it hard that you just had a
2 come-to-Jesus and just decided to come in
3 here to just spill your guts and tell them
4 the truth. Do you know what the penalties
5 are for what you had?

6 A. No. I know what he's been faced
7 with and that that -- I mean, I really don't
8 care what the penalties are.

9 Q. Well, I'm asking do you know what
10 you would be faced with?

11 A. Yeah. I guess I would be faced with
12 time or whatever I have to do to. It was
13 still mine but I feel like I was wrong. It
14 belonged to me so whatever happens, and that
15 -- you know, sometimes they say that you
16 suffer consequences by the choices that you
17 make in life. And sometimes my choices got
18 to make for -- so whatever consequences that
19 are behind me, I'm willing to take it.

20 Q. Do you recall the date you gave that
21 statement? You say it was around November.
22 Is that correct?

23 A. Yes, sir. Uh-huh.

24 Q. Okay. It is now February, am I
25 correct? Have you been charged yet?

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1 A. No, sir. I have issues with that
2 because no one called me. No one tried to
3 get in touch with me. I didn't know what was
4 going on until -- about it. So I didn't know
5 what to think, but I haven't been charged.

6 Q. You haven't been charged?

7 A. No, sir.

8 Q. Has any officers visited you about
9 this charge?

10 A. No, sir.

11 Q. Okay. Any other agencies visit you
12 about this charge?

13 A. No, sir.

14 Q. Do you have kids?

15 A. Yes, sir, I do.

16 Q. Do you know that if you are
17 convicted of this charge that you may lose
18 custody of your kids?

19 A. Yes, I do.

20 Q. You do? And in spite of that you're
21 still willing to come in and actually testify
22 that that is your drugs and you're telling
23 the truth?

24 A. Yes, sir.

25 MR. BRADLEY: No further questions

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1 for this witness at this time, Your
2 Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. BRADLEY:

5 Q. Please answer any questions the
6 prosecutor may have of you?

7 A. Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. HAMILTON:

10 Q. Hey, Ms. Trappier, how are you?

11 A. Yes, ma'am.

12 Q. Do you need a second to get your
13 composure?

14 A. Please.

15 Q. (Pause) -- are you ready?

16 A. Yes, ma'am.

17 Q. Okay. I just want to understand how
18 do you know the Defendant? How long have you
19 known him, time period?

20 A. It's been a few years.

21 Q. How many, four years?

22 A. Yeah, about -- for years, yes.

23 Q. So not eight years?

24 A. We know each other for a long time.

25 But we've been friends for about four years.

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1 Q. Four years, okay. And do you live
2 with him?

3 A. No, I don't.

4 Q. Did you live with him then?

5 A. I lived with him at one time. He's
6 the type of person that will take anybody in
7 and I -- at a couple of points of time in my
8 life that I needed a place to stay. I had a
9 place to rest my head. I had been maybe up
10 or high for a week or two or whatever and
11 really needed to someplace to sleep or
12 something like that, but couldn't go home or
13 whatever.

14 Q. Okay. You were on hard times but
15 you paid a thousand dollars for these drugs,
16 yet you needed a place to stay?

17 A. Well, that was two years ago. You
18 know, that was during the time -- that wasn't
19 recently. I really don't really have a
20 problem with a place to stay because I have a
21 mama that loves me. I have sisters that love
22 me, I have family members and friends that
23 really love me.

24 Q. Okay. All right. Now, on February
25 18th of 2015 ---

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1 A. Uh-huh.

2 Q. --- you stated that you were with
3 him. Did y'all live together at that time?
4 Y'all were staying together?

5 A. No.

6 Q. You said that y'all were staying
7 together that night?

8 A. Well, he'd been to a party. I live
9 in the country. He lives in the city. But
10 we have spent time together. He's my friend.

11 Q. Now, you stated you were -- I
12 remember you stating you were so high that
13 you put the drugs in the wrong pocket. But
14 where were your crack pipes?

15 A. My crack pipes were with my
16 cigarette pack.

17 Q. Where was that located?

18 A. It was in the back seat.

19 Q. Okay. Was it in your pocket?

20 A. It probably was in my pocket or on
21 the side of the door, whichever one they
22 found it. They found a ---

23 Q. Was it in your jacket pocket?

24 A. No, I don't think ---

25 Q. The crack pipes weren't in your

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1 jacket pocket?

2 A. The crack pipes were in the
3 cigarette box. And the cigarette box was in
4 the back, in the back seat as well.

5 Q. Okay. Where the jackets were?

6 A. Yes.

7 Q. Okay. And it was laying in the back
8 seat, not in the jacket?

9 A. At that point in time, maybe it
10 could have been in my coat pocket but it
11 could have fallen out because, you know, I'll
12 reach back there and grab them, grab my
13 jacket to get out and go to whatever, in the
14 store or whatever, to get gas or whatever.
15 But they indeed were in the back seat as much
16 as I can ---

17 Q. I'm just trying to figure out how
18 you were so high at the time that you
19 couldn't figure out where to put the drugs
20 and whose jacket was whose, but you managed
21 to put the crack pipes in your jacket?

22 A. Well, ma'am, I had already stated
23 earlier that the night before, you know, I
24 had been getting high for a couple of days.
25 And the night before, I went inside the car.

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1 and I stuck the jacket -- it was dark. It
2 was like 11:00, 12:00 at night. I just
3 opened the car door and stuck it in a pocket.
4 I really didn't intend to stick it in his
5 jacket pocket, but I had put it inside the
6 pocket.

7 Q. Let me try to keep on track. So you
8 put the drugs in the jacket pocket.

9 A. Uh-huh, (affirmative nod).

10 Q. You stated it was in a bag, that you
11 put it in?

12 A. Uh-huh.

13 Q. So that it was in like a plastic
14 bag. When you put it in the pocket, it was
15 just in a plain plastic bag, right?

16 A. Uh-huh.

17 Q. Was it wrapped?

18 A. It was wrapped.

19 Q. Were you aware that the drugs were
20 actually not found in a bag? They were found
21 in a toothpick container?

22 A. Well, I think that the toothpick
23 container contained the crack and stuff like
24 that. So the toothpick container might have
25 contained that or whatever, but they still

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1 were wrapped in plastic. The cocaine was in
2 plastic.

3 Q. Within the toothpick container?

4 A. Okay. But it was still in plastic.

5 Q. All right. And going back to the
6 scene, I think I addressed -- oh, I do want
7 to talk about something that you had said on
8 direct examination about the phones. Now, on
9 scene you told officers two of those phones
10 were yours, not three?

11 A. Well, ---

12 Q. There were three?

13 A. But pretty much -- if I told the
14 officer there were two of them, actually you
15 can see there were more than two phones. And
16 so the ones that I claim are three, the three
17 phones. The one phone was already in the car
18 because I already only used this one and this
19 one. That one, I think the battery had been
20 dead that night before. So, you know,
21 actually when he held the phones up, he
22 didn't hold up all three of those phones.
23 You know, he only held up one phone.

24 Q. You said you normally give a fake
25 name, so it's pretty normal for you to lie?

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1 A. Well, yeah. I have lied.

2 Q. Okay. And so you lied on the scene
3 that night also about your name?

4 A. Excuse me?

5 Q. You lied on scene about your name?

6 A. About my name. Well, actually, I
7 told -- yeah. I have a lot of aliases: Lisa
8 Trappier, Anita Trappier, Teresa Trappier.
9 You know, they're -- I never change my last
10 name.

11 Q. Yeah?

12 A. I mean, not that that's the right
13 thing. But I always use my aliases. You
14 know, I've done that -- especially if I know
15 I'm driving and at that point in time. I
16 just don't go around and give people my
17 false, you know, a false name. But for at
18 that time, I knew that I was driving. I knew
19 that I was driving and I didn't have my
20 licenses. It was under suspension. So, you
21 know, the ---

22 Q. Let me ask you something.

23 A. Yes.

24 Q. So on scene you also gave him a
25 birth date of [REDACTED]?

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1 A. Uh-huh.

2 Q. But your real birth date is [REDACTED],
3 [REDACTED] correct?

4 A. Yes, it is. Yes.

5 Q. Okay. So you lied about your name.
6 You lied about your birth date?

7 A. Right.

8 Q. So at the beginning of the traffic
9 stop you've already lied to the officers
10 twice, right at the beginning of it.

11 A. Well, he didn't really know that I
12 had lied because first of all, he didn't --
13 the officer to me that morning, they didn't
14 really find out what my real name was until
15 after we got to the police station. So it
16 wasn't like he knew I was lying.

17 He -- it was, to me, his job to find out
18 who I was. I mean, even if I told him I'm
19 'Nita Trappier, which is what I told him,
20 that name, that is a name that he could look
21 up on any NCIC and find out that that's a
22 true name.

23 Q. I do want to ask you. You have
24 some, a few crimes of dishonesty in the past.

25 A. Uh-huh.

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1 Q. Giving false information?

2 A. Yeah.

3 Q. 7/15.

4 A. Yeah.

5 Q. Shoplifting. Do you remember that,
6 2015?

7 A. Yeah. I remember.

8 Q. Financial transaction card 2008?

9 A. Yeah.

10 Q. And giving false information to
11 police, 2015?

12 A. Yeah.

13 Q. So ---

14 A. Did you see the credit card charges
15 in there, too?

16 Q. I'm just -- so are you telling the
17 truth today?

18 A. Well, I told the truth already.

19 Q. Okay.

20 A. When I told the officer what my real
21 name was, that was the truth.

22 Q. Okay. Are you and Calvin still
23 friends?

24 A. He's kind of upset with me but,
25 yeah. I'd like to say he's my friend still.

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1 Q. Have you spoken to him lately?

2 A. Yeah, I speak to him all the time.

3 Q. Okay. So you are friends?

4 A. We are friends.

5 Q. Okay. Pretty close friends?

6 A. I don't know what he would say but I
7 would say that he's a dear person to me, you
8 know, for whatever reasons that I'm going to
9 say that. I feel that, yes, he truly is
10 truly a dear friend.

11 Q. Okay. And such a good friend that
12 you would try to take a charge to protect
13 him?

14 A. He did for me.

15 Q. Oh, he did for you.

16 A. Took a charge for me.

17 Q. So all of these things you're saying
18 that you possessed these drugs?

19 A. Yeah. They're mine.

20 Q. You knowingly possessed heroin;
21 right?

22 A. And cocaine.

23 Q. And cocaine?

24 A. Uh-huh.

25 Q. Okay.

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1 A. And crack too.

2 Q. There was only heroin in this case.
3 So -- no cocaine. But you knowingly
4 possessed them on February 18th, 2015 ---

5 A. Uh-huh.

6 Q. --- knowingly possessed heroin in
7 excess of fourteen grams?

8 A. Uh-huh.

9 Q. You did say yes on the record;
10 correct?

11 A. "Yes." I'm saying yes on the
12 record.

13 Q. Okay. Now, how did you get to court
14 today?

15 A. How did I get to court?

16 Q. Yeah. Did you ---

17 A. Well, yesterday we broke down. I
18 caught a ride.

19 Q. We who? Who is we?

20 A. Me and I don't know where he is. I
21 can't even see him. But Doug. Doug is in
22 the courtroom somewhere, I think. I thought
23 he was.

24 Q. So you were with him?

25 A. Excuse me?

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1 Q. You and just the other guy in the
2 courtroom?

3 A. No. Kelly, as well.

4 Q. Okay. You rode to court today ---

5 A. Yesterday.

6 Q. Who did you ride with today?

7 A. Today I rode with Calvin, I rode
8 with Doug, Uncle Perry.

9 Q. So you have enough contact and are
10 good enough friends with him that you're
11 hanging out with him the day of trial?

12 A. Well, let me say this if I can just
13 -- If I can say this. Okay. I don't have a
14 vehicle, okay? I don't have a vehicle.
15 Truly, the only way that I would have been
16 able to get here because I don't have access
17 to a vehicle and it's his court date and I
18 want to be here for his court because I am
19 truly a co-defendant too. That's the only
20 natural thing that I thought would to do.
21 I just wasn't to me, didn't seem like a
22 problem. Just ask for a ride here.

23 Q. I do want to ask you about the
24 statement that we had discussed. Now, are
25 you aware -- surely you're aware that the

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1 statement you gave was November 6; right?

2 A. Yeah. It was on the 6th of November.

3 Q. Are you aware that on November 2nd
4 was when the Defendant, the defense attorney
5 was notified that the offer was being revoked
6 and we were moving forward with trial.

7 That's really close to that date. I'm just

8 ---

9 A. Listen, I don't understand what your
10 question is.

11 Q. I'm asking did he call you? Did Mr.
12 Brown call you and tell you to go in and give
13 this statement ---

14 A. No.

15 Q. --- now that his offer off the table
16 and moving forward to trial?

17 A. I believe we spoke that morning,
18 right? And I believe that morning I did tell
19 you that he has no clue that I'm here. I
20 think I said that to you about four or five
21 times.

22 Q. It just happened to correspond with
23 that date?

24 A. I don't have any clue about the date
25 you're talking about. I'm talking about the

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1 date that I came up.

2 Q. This is nine months later ---

3 A. Uh-huh.

4 Q. --- you decide you now want to take
5 the charge and it just happens to correspond
6 to the same week that Mr. Brown's offer is
7 revoked?

8 A. Well, sweetheart, like again, I'm
9 going to say I don't have any idea what --
10 what revocation -- what your business is with
11 him. I'm saying when I came in I explained
12 to you that more than one, twice, I think
13 three or four times -- with a witness -- that
14 he had no idea that I was here. And that
15 kind of upset me that day too. I think you
16 even said ---

17 Q. You can't go into anything that I
18 had said.

19 A. Okay. Well, I don't know why not
20 because there are a lot of things that you
21 said that I have issues with. But when I
22 came in I did say to you more than once ---

23 Q. Yeah, I ---

24 A. Do you remember that, me saying
25 that?

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1 Q. I'm bringing out the fact that this
2 just corresponds so closely to this. That's
3 all I wanted to bring out. I have a few more
4 questions.

5 A. Oh, okay. Okay. Yes, ma'am.

6 Q. So you said you paid a thousand
7 dollars (\$1,000) to buy these drugs. That is
8 a lot money ---

9 A. Yeah, it is.

10 Q. --- for someone who doesn't work?

11 A. Well, like I said earlier, I'm not
12 proud of the things that I've done to
13 maintain -- to support my habit. I have done
14 what would be necessary for me to get my
15 drugs. I don't really look to anybody to
16 support my habit. I try to support my habit.
17 Like I said, I know that it's not right -- it
18 may not be the right thing to say. It may
19 not even ---

20 Q. Well, I just -- okay. I just was
21 trying to figure out the thousand dollars.
22 So you have stated you are guilty of this
23 charge. Are you willing to plead today
24 guilty to these charges right now?

25 A. Yes, ma'am. If I have to, yes, I

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1 am.

2 Q. If we bring an indictment in here
3 you'd be willing to plead guilty to this
4 charge right now and face twenty-five years?

5 A. Yes.

6 Q. Okay.

7 SOLICITOR HAMILTON: I beg the
8 Court's indulgence, Your Honor. One more
9 question.

10 CROSS-EXAMINATION CONTINUED

11 BY SOLICITOR HAMILTON:

12 Q. Sixteen grams of heroin was found on
13 scene. That's a lot for a user; isn't it?

14 A. Not really. Because there are
15 people that I know that have a thousand
16 dollar a week habit, a thousand dollars or
17 better. There are people that are using
18 heroin especially in different mixtures,
19 different type release every day, especially
20 where I'm from. A thousand dollars is
21 nothing where I'm from to buy -- that I have
22 seen people actually go and spend money. And
23 I have myself. I mean, so to me that's not
24 really a lot because, you know, I've seen
25 other people that spend way more than that in

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1 a week's time.

2 Q. That are unemployed?

3 A. That are unemployed because they ---

4 Q. That's it. That's it.

5 A. Oh, okay.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. BRADLEY:

9 Q. Ma'am, one two questions. You may
10 have already testified to this. If it's been
11 asked and answered, I'll withdraw. In that
12 bag you keep saying there was a -- I think
13 you said it in your ---

14 A. Statement?

15 Q. --- document that we admitted ---

16 A. Uh-huh.

17 Q. --- that it was heroin and cocaine.

18 A. It was cocaine and heroin.

19 Q. Well, the lab report came back as
20 sixteen grams of heroin?

21 A. Well, I don't know if it did that.
22 But I usually mix my -- I usually, like I
23 said in my statement I usually mix my stuff
24 together.

25 Q. How much cocaine did you put in

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1 that? Were you the one that mixed it?

2 A. Yeah. I always mix my stuff, yeah.

3 Q. Okay. How much cocaine did you put
4 in it?

5 A. It probably was maybe like four
6 grams or maybe -- probably four, a little
7 less than four.

8 Q. So a quarter of that bag would have
9 been ---

10 A. Yeah. It wasn't a whole lot now,
11 but it was enough. It was mixed.

12 Q. And why do you?

13 A. Well, because when I do that it just
14 -- I don't shoot my drugs, okay? I smoke my
15 drugs.

16 Q. Okay.

17 A. You understand?

18 Q. (No verbal response).

19 A. And I mix it together. I put a
20 mixture of it together, whether it be the
21 crack, the heroin and the cocaine, and on top
22 of one pipe. But I don't intravenously -- I
23 don't use needles. I smoke. You know, I
24 smoke and get high.

25 Q. Okay.

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1 A. So that's where my pipes come in at.
2 And that's why I mix it because it's very
3 strong.

4 Q. You were read your *Miranda* rights
5 when you were arrested that day; correct?

6 A. Yes, sir.

7 Q. Okay. Did they ever place you under
8 oath and have you give any statement that
9 day?

10 A. No, they didn't.

11 Q. Okay. So you did not tell the
12 officer that it was yours?

13 A. No.

14 Q. You gave him a false name; is that
15 correct?

16 A. Yes, sir.

17 Q. And you may have told some things
18 that may have not been true that day; is that
19 correct?

20 A. Yes, sir.

21 Q. Were you ever placed under oath that
22 day when you said those things?

23 A. No, sir.

24 Q. Okay. When you actually went in the
25 station to give your confession, were you

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1 placed under oath that day?

2 A. No, sir.

3 Q. Were you read your *Miranda* rights
4 that day?

5 A. Yes, sir.

6 Q. Were you told or anywhere written on
7 a form that you -- you could commit perjury
8 if what you're saying in there is not
9 correct?

10 A. Yes, sir.

11 Q. Were you told that or was it written
12 on a form?

13 A. No, no. It was written on a form.

14 Q. Okay. So they didn't warn you that
15 you were committing perjury if you weren't
16 telling them the truth?

17 A. Yes, sir.

18 Q. Okay. And so you told the truth; is
19 that correct?

20 A. Yes, I did.

21 MR. BRADLEY: No further questions,
22 Your Honor.

23 THE COURT: All right. Thank you.
24 You may step down.

25 (WITNESS STEPS DOWN)

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1 MR. BRADLEY: Your Honor, at this
2 time, we would have one more witness, which I
3 would be our client. But we -- if we might
4 discuss with him whether or not he's going to
5 take the stand. Could we just have five
6 minutes just to discuss it with him now.

7 THE COURT: All right. Y'all
8 discuss it with him and then we'll take a --
9 I guess based on y'all's prediction that it
10 was lunchtime, is it about lunchtime yet?

11 MR. BRADLEY: Yeah.

12 THE COURT: Isn't that what y'all
13 said, we'd be through by lunch.

14 MR. BRADLEY: Yes, sir.

15 THE COURT: Late lunch. All
16 right. Y'all take a few minutes to discuss
17 with him about that. And then I'll come back
18 on the record and discuss it with him as
19 well.

20 MR. BRADLEY: Thank you, Your Honor.

21 THE COURT: Okay. Five minutes.

22 (BRIEF RECESS)

23 THE COURT: All Right. Are we
24 ready to proceed?

25 MR. BRADLEY: We're ready to

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1 proceed, Your Honor.

2 THE COURT: All right. And my
3 indication is your client wishing to testify.
4 Is that the indication? And I'll go through
5 the questions.

6 All right. Mr. Brown, you are
7 already under oath. You were placed under
8 oath earlier, okay? I'm going through some
9 questions of you to make sure you understand.

10 All right. First of all, it's your
11 constitutional right that you have a right to
12 remain silent. Nobody can force you to
13 testify, okay? And I, as the trier of fact,
14 if you don't testify, I'm not in any way to
15 consider that against you. But that is not
16 to be considered because the State still
17 would have the burden to prove you guilty
18 beyond a reasonable doubt on each element of
19 these charges, okay?

20 So do you understand that right?

21 DEFENDANT: Yes, sir, I do, Your
22 Honor.

23 THE COURT: Have you had
24 sufficient time to talk with your attorney
25 about whether you wish to testify or not to

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1 testify?

2 DEFENDANT: Yes, I have.

3 THE COURT: Do you need any more
4 time to talk with him about that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do we need to take a
7 break or ---

8 DEFENDANT: Five minutes, yes,
9 sir. Thanks a lot.

10 THE COURT: Well, before we -- I
11 guess everybody's aware of what any charges
12 are if there are any impeachable charges?

13 SOLICITOR HAMILTON: There are,
14 Your Honor.

15 THE COURT: Okay. And you're
16 aware of that. Y'all want me to go through
17 that. Let's kind of go through some stuff
18 and then y'all -- before y'all talk, that way
19 we have the evidence, okay. The impeachable
20 charges are what?

21 SOLICITOR HAMILTON: He has giving
22 false information to police from 2007, Your
23 Honor.

24 THE COURT: All right. And that's
25 the only one?

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1 SOLICITOR HAMILTON: Yes, Your
2 Honor.

3 THE COURT: Okay. All right. And
4 do you realize that that fact can be used
5 against you if you were to testify?

6 DEFENDANT: Yes, sir.

7 THE COURT: It's an impeachable
8 charge. All right. So you want to have
9 another few minutes? All right. We'll take
10 four minutes.

11 MR. BRADLEY: That's fine, Your
12 Honor. Thank you.

13 THE COURT: When you are ready,
14 let me know.

15 MR. BRADLEY: I appreciate that,
16 Your Honor.

17 (BRIEF RECESS)

18 THE COURT: All right. So you've
19 had sufficient time to discuss your rights?
20 Again, we're back on the record. You're
21 under oath and you realize that we're here to
22 talk about your right to testify and whether
23 to do that.

24 So you've had sufficient time to
25 talk with your attorneys about whether you

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1 should testify or not; is that correct?

2 DEFENDANT: Yes, I have, Your
3 Honor.

4 THE COURT: And you don't need any
5 more time to do that?

6 DEFENDANT: No, I don't, Your
7 Honor.

8 THE COURT: And you realize that
9 this right to testify or not to testify is
10 totally up to you. It is not your attorney's
11 decision but it's your decision after you've
12 had advice from your attorney?

13 DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: All right. Are you
15 under the influence of any alcohol, drugs or
16 medication this afternoon?

17 DEFENDANT: No, I'm not.

18 THE COURT: Anything to keep you
19 from understanding what's going on?

20 DEFENDANT: No, sir, Your Honor.

21 THE COURT: All right. And has
22 anybody promised you anything to make this
23 decision?

24 DEFENDANT: No, sir, Your Honor.

25 THE COURT: Anybody threatened you

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1 to make this decision?

2 DEFENDANT: No, sir, Your Honor.

3 THE COURT: You're making this
4 decision on your own free will?

5 DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: All right. Anything
7 that I've discussed with you, do you have
8 questions or need further explanation?

9 DEFENDANT: No, sir, Your Honor.

10 THE COURT: All right. And do you
11 wish to testify?

12 DEFENDANT: No, sir, Your Honor.
13 I elect to stand.

14 THE COURT: Okay. All right.
15 That's fine. And like I said, that cannot be
16 used against you. All right.

17 MR. BRADLEY: Your Honor, at this
18 particular time the Defense would rests its
19 case.

20 THE COURT: All right.

21 MR. SHARPE: And, Your Honor, at
22 this time we'd also renew any of our
23 objections and motions that were ---

24 THE COURT: All right. And I
25 think at this pint I'm going to deny those

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1 motions based on what was previously stated.

2 Okay.

3 SOLICITOR HAMILTON: Your Honor,
4 the State has two rebuttal witness.

5 THE COURT: Did I hear you say two
6 short rebuttal witnesses?

7 SOLICITOR HAMILTON: Two rebuttal
8 witnesses.

9 THE COURT: Two short rebuttal?

10 SOLICITOR HAMILTON: Very short,
11 actually.

12 THE COURT: Just making sure that
13 adjective was in there.

14 SOLICITOR HAMILTON: Yes, yes.

15 THE COURT: All right.

16 MR. BRADLEY: Okay. Do we have
17 notice of those people?

18 SOLICITOR HAMILTON: We did not
19 need to notify you of who they were. Oh,
20 it's Gibson. Trooper Gibson -- or Officer
21 Gibson who testified earlier. And it is
22 Officer Gander who is the one who took the
23 statement that they have admitted into
24 evidence.

25 THE COURT: All right. Any

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1 comments or ---

2 MR. BRADLEY: No, sir.

3 THE COURT: All right. Okay. You
4 may proceed.

5 SOLICITOR HAMILTON: Thank you,
6 Your Honor.

7 The State calls Randy Gibson.

8 (WITNESS TAKES STAND)

9 THE COURT: Mr. Gibson, I would
10 just remind you, you were already placed
11 under oath earlier today.

12 WITNESS: Yes, Your Honor.

13 SOLICITOR HAMILTON: May it please
14 the Court, Your Honor.

15 THE COURT: Yes.

16 RANDY GIBSON, having been previously
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR HAMILTON:

20 Q. Officer Gibson, would you please
21 state your full name for the record again?

22 A. William R. Gibson, II.

23 Q. Just a little while ago we heard
24 from a witness, a defense in this case, a
25 Monique Trappier. Do you remember her?

1 A. Yes, ma'am. She was the driver.

2 Q. She was the driver on February 18th,
3 2015?

4 A. Correct.

5 Q. In court she stated that you took a
6 statement from her. Do you remember ever
7 taking a statement from her?

8 A. I don't recall taking a statement.

9 Q. Did you ever hold up a bag of
10 cocaine and ask her what it was?

11 A. No, ma'am.

12 MR. BRADLEY: Your Honor, I object
13 on that based on facts assumed and were not
14 in evidence. I don't remember her testifying
15 that he took a statement from her.

16 SOLICITOR HAMILTON: Your Honor,
17 she did testify that back at the station he
18 took a statement from her, holding up the bag
19 of cocaine asking her, 'is this cocaine?'
20 She stated, 'yes, I paid a thousand dollars
21 for it.'

22 THE COURT: I think ---

23 MR. BRADLEY: So we're talking about
24 an oral statement. We're not talking about
25 the written statement.

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1 THE COURT: That's what I took it
2 as ---

3 SOLICITOR HAMILTON: Thank you,
4 Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. BRADLEY:

7 Q. And if she saying that statement,
8 did occur and you did ask her if it was her
9 cocaine, would you have taken out charges if
10 she said yes, against her?

11 A. Most definitely.

12 MR. BRADLEY: Objection.
13 Speculation, Your Honor. That's not facts
14 that are in evidence and that's not relevant,
15 Your Honor.

16 THE COURT: All right. I'll take
17 it for what it's worth, but I think it's
18 appropriate.

19 MR. BRADLEY: Certainly.

20 SOLICITOR HAMILTON: That is it,
21 Your Honor.

22 THE COURT: All right. Thank you.
23 Any cross-examination?

24 MR. BRADLEY: Nothing, Your Honor.

25 THE COURT: All right. Thank you.

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1 You may step down.

2 SOLICITOR HAMILTON: We would ask
3 that he be excused. Hopefully for good.

4 (WITNESS STEPS DOWN)

5 SOLICITOR HAMILTON: Our next
6 witness is Officer Robin Gander.

7 (WITNESS TAKES STAND)

8 (WITNESS DULY SWORN)

9 SOLICITOR HAMILTON: May it please
10 the Court, Your Honor.

11 THE COURT: Yes, You may proceed

12 ROBIN GANDER, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR HAMILTON:

17 Q. Officer Gander, could you please
18 state your full name for the record?

19 A. Robin Gander.

20 Q. And what is your occupation?

21 A. A police officer with the City of
22 Rock Hill. I'm assigned to the York County
23 multijurisdictional drug unit.

24 Q. Now, I wanted to draw your attention
25 to November 6, 2015. Do you remember taking

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1 a statement from a Monique Trappier that day?

2 A. I do.

3 Q. Now, when you did take that

4 statement, do you remember what she said?

5 What she came down there -- the purpose of
6 her coming down to you to give a statement
7 was?

8 A. She wanted to talk about a traffic
9 stop she was involved in regarding some drugs
10 that were found, with regard to that traffic
11 stop.

12 Q. And can you explain to me what her
13 demeanor was?

14 A. She seemed very coached in a way,
15 like she wanted to be there to talk about
16 just that one statement and that was it.

17 Q. And the statement that she gave,
18 what made you believe that it was coached?

19 A. It was extremely well thought out.
20 She didn't change at all. Most people,
21 they'll go through and like think back. But
22 she was very precise with her answers.

23 Q. And did the answers resemble the
24 report from Officer Gibson?

25 A. Almost to a T.

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1 Q. Please answer any questions the
2 Defense may have.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q. Officer Gander?

7 A. Yes.

8 Q. You just testified that, you know,
9 that Ms. Trappier -- and I don't know if I'm
10 getting her name right -- but Ms. Trappier
11 the person who was driving, you said she
12 appeared to be coached; is that correct?

13 A. Yes, sir.

14 Q. Okay. And the basis of her being
15 coached was that she had -- she gave detail
16 that was similar to the report that Officer
17 Gibson had taken?

18 A. Almost as if she had read the report
19 and was told to come in.

20 Q. Okay. Looking at -- and you've read
21 this report; is that right? You're familiar
22 with what this report is; is that right?

23 A. I'm familiar with it, but I haven't
24 read it to a full ---

25 Q. Well, if you haven't read it to a

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1 full, how would you know that it's actually
2 almost verbatim with the report?

3 A. After seeing her statement that she
4 gave and then afterwards, before she gave her
5 statement, that's when I -- because seeing
6 the report and in speaking with Officer
7 Gibson in regards to the incident.

8 Q. Okay. And Officer Gibson's report
9 never mentions heroin, does it?

10 A. No.

11 Q. Did she mention heroin when she
12 talked to you?

13 A. She did.

14 Q. Okay. That's something that was not
15 consistent in the report; is that correct?

16 A. Correct.

17 Q. Okay. Did she also tell you that it
18 was her cocaine/heroin, as opposed to Mr.
19 Brown's?

20 A. That's what the report states, her
21 statement states, (affirmative nod).

22 Q. Okay. That's what her statement
23 says, so that's what she would have said that
24 day; because you took down the statement; am
25 I correct?

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1 A. Correct. Uh-huh.

2 Q. Okay. Is that anywhere, as far as
3 you know, in Officer Gibson's report?

4 A. No. Not that I'm aware of.

5 Q. Okay. Can you tell me what else to
6 you seemed to be verbatim with Officer
7 Gibson's report that was in her confession?

8 A. What's stated in her statement is
9 what she told me. That's what I typed down.

10 Q. Okay. And so you're saying that the
11 statement that she gave is very close or
12 almost verbatim as the report that Officer
13 Gibson actually wrote out; is that correct?

14 A. It's close to it, yeah.

15 Q. Okay. No further questions. Thank
16 you.

17 THE COURT: All right. Any
18 redirect?

19 SOLICITOR HAMILTON: None, Your
20 Honor.

21 THE COURT: All right. Thank you,
22 you may step down.

23 (WITNESS STEPS DOWN)

24 THE COURT: All right. Anything
25 further from the State?

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1 SOLICITOR HAMILTON: Nothing
2 further.

3 THE COURT: All right.
4 Do y'all want to have -- make closing
5 remarks? Or I guess -- any Motions, I'll be
6 glad to hear from you.

7 MR. BRADLEY: Thank you, Your
8 Honor. If it please the Court, the Defendant
9 would move at this point for an acquittal
10 based on some of the evidence that we've
11 actually put up just now. I think that what
12 Your Honor has to see is that there's no way
13 beyond a reasonable doubt that a fact finder
14 would be able to determine from there that my
15 client was actually the one in possession of
16 those drugs, Your Honor. We would just ask
17 for a motion to acquittal. We would also
18 renew again our Motion for suppression, as
19 well as our motion for directed verdict.

20 THE COURT: Okay. And I'm
21 assuming you're saying by based on the
22 statement of your last witness. But I guess
23 as the fact finder I have to determine and
24 weigh the credibility of the witness.

25 MR. BRADLEY: Yeah. Weigh the

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1 credibility, Your Honor.

2 THE COURT: So I'm going to deny
3 your Motions and, as indicated, the previous
4 Motions on the previous basis as well.

5 Do y'all want to make any closing
6 remarks? I'll be glad to hear from you.

7 SOLICITOR HAMILTON: We would like
8 to just briefly, Your Honor.

9 THE COURT: Okay. All right.

10 (OFF RECORD DISCUSSION)

11 MR. BRADLEY: Thank you, Your Honor.
12 I'd like to thank the court for some time
13 today. We did take up a little bit of time,
14 a lot of time as a matter of fact.

15 I was used to standing over here
16 just now because the witnesses were there,
17 but I'll stand over here.

18 Your Honor, this is a case where I
19 think it's pretty straightforward. This was
20 not a traffic stop. This was clearly a drug
21 stop. We have actually given evidence that
22 we thought that it was constitutional
23 violations and we talked about that, such as
24 extending the stop, in the Motion to
25 suppress. But I think, Your Honor, it is

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1 probably contingent on Your Honor to listen
2 to the witnesses and judge the credibility of
3 the witnesses.

4 Your Honor, we've had witnesses
5 here. We had Officer Gibson. And certainly
6 I don't have any reason to believe that
7 Officer Gibson would not come in here and
8 would not tell the story exactly as it
9 happened.

10 Certainly, there were, as you saw
11 inconsistencies between what he said and what
12 was on that video. As far as where they were
13 making their trip to was very consistent. As
14 far as them only planning to stay a short
15 period of time. She didn't testify that they
16 were going to stay a week. She said that day
17 or possibly the next day as well as I think
18 the State Constable, who was speaking with my
19 client also said the same thing. My client
20 told him the same thing standing on the side
21 of the car, Your Honor. It was going to be
22 an overnight trip. And it may have been
23 Officer Gibson who told that. But said it
24 was going to be overnight. I mean that day
25 but 'we may wind up staying overnight'

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1 because they didn't want to come back because
2 of how late it was or driving on the road,
3 Your Honor.

4 Your Honor, we also have in this
5 case where the traffic stop for following too
6 closely, which Your Honor said is justified,
7 that's fine and I turned into -- instead of a
8 traffic stop it turned into finding out who
9 this young lady was. And the police went
10 through procedures that they were supposed to
11 go through and even indicated that they were
12 going to -- they were still trying figure out
13 who this young lady was. Well, at the time,
14 my client was sitting in the passenger's seat
15 of the car. He remained in the passenger's
16 seat of the car, Your Honor. He didn't have
17 that jacket on his body. As a matter of
18 fact, he didn't put that jacket on his body
19 until after they had already found the drugs
20 that they say they took out of that pocket.
21 Your Honor, if he had put the coat on earlier
22 and put his hand in there and, you know,
23 tried to hide it or anything like that, you
24 know, I could probably understand the State
25 would be much more interested in prosecuting

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1 my client as opposed to the person who
2 actually took the stand and said it was their
3 drugs, Your Honor. She clearly stated in her
4 testimony that it was her drugs. There is --
5 it is uncontradicted.

6 I mean, the only other contradiction
7 that we have is my client who says 'the
8 cocaine's mine', from what they're saying.
9 Of course, Your Honor, I've already laid out
10 to you that the reason why that is
11 unreliable, it is an out-of-court statement.
12 It certainly is. It is a statement against
13 his interest, which would be an exception to
14 that.

15 But more importantly, Your Honor,
16 it's a statement that's actually
17 uncorroborated because it's not cocaine
18 there. Your Honor, they've put up no proof
19 that my client's ever used any drugs. And
20 there is no proof that my client actually has
21 been convicted of even selling any drugs.

22 The young lady who took the stand,
23 Your Honor, I think she was very open about
24 her drug use. You know, if you look at her
25 demeanor, she clearly looks like someone who

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1 has either had a drug problem before or
2 continues to have one.

3 When you look at the videotape that
4 we saw, Your Honor, she actually got out of
5 the vehicle and came back to the police car.
6 And you can see how rattled she was. And,
7 you know, she even got to being nervous at a
8 certain time.

9 Mr. Brown never was that way. He
10 told the truth. Matter of fact, the only way
11 the officers figured out who she really was
12 is my client actually gave the real name. My
13 client told them what her name was.

14 And so, again, Your Honor, I see
15 everything here that points to a young man
16 who may have been in the car with a known
17 person with him that may have used drugs.
18 But as Your Honor knows, mere presence where
19 drugs are found or mere association with a
20 person who used drugs does not constitute
21 possession or knowledge or intent to have
22 those drugs, to sell those drugs and to
23 dispose of them. My client would have to
24 have the authority to be able to dispose of
25 those drugs, Your Honor; to be able to go

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1 control those drugs, Your Honor. And he
2 could not have had that if he had not known
3 those drugs were there.

4 The only evidence of knowledge that
5 we have, Your Honor,, is the testimony from
6 this young lady who basically said 'I put it
7 in there. He did not know it was in there.
8 I did it.'

9 That is very extreme. In my fifteen
10 years I've never had a witness come into
11 court and actually confess, opening herself
12 up for a sentence that Your Honor knows what
13 the sentence would be if she's actually
14 charged and if she's actually convicted. I
15 find very few people would do that.

16 But we also, Your Honor, the purpose
17 of the justice system, as Your Honor knows
18 and I don't have to tell you is, is to get at
19 the truth. And there have been times when
20 we've had people who have come in and we've
21 made confessions. And people just, for
22 whatever the reason is, they decide 'I can't
23 live with this anymore.' They teach us this
24 in law school. Appeal to the conscience of a
25 person. And once you appeal to that person's

1 conscience, they tell the truth.

2 I can't tell you whether there was
3 any conversation between my client and the
4 young lady who took the stand. I can't tell
5 you whether there was that conversation. I
6 never asked.

7 But I certainly can tell you this,
8 Your Honor, some people do have this change
9 of conscience where someone -- they see that
10 something bad is going to happen. And they
11 know that they were the one who actually set
12 that in motion and actually caused that to
13 happen. It was their substance. And so she
14 had a change of heart. She decided to come
15 in, take the witness stand, open herself up
16 to cross-examination, Your Honor. And she
17 explained to you exactly what happened on
18 that day.

19 Your Honor, I think that when you
20 look at that and you take that evidence and
21 you also have to take a standard we have in
22 this case. And I don't have to tell you.
23 You've probably -- you know it a lot better
24 than I have. You've been doing this a lot
25 longer than I've been practicing law. You've

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1 been practicing. The beyond a reasonable
2 doubt standard doesn't go higher or lower
3 because it's a bench trial or because it's a
4 jury trial. The standard is still pretty
5 high. And beyond a reasonable doubt pretty
6 much means that there is no other reasonable
7 reason that this could have happened. He had
8 to -- there was no doubt in my mind that
9 those drugs did not belong to Mr. Brown.
10 That is exactly what Your Honor has to
11 decide. Circumstantial evidence can be used.
12 But I can tell you, you have direct evidence
13 when you have a confession that is actually
14 into evidence and that person taking that
15 stand and actually confessing, Your Honor,
16 that those drugs belonged to her and that she
17 actually put those drugs in that vehicle.

18 The prosecution doesn't know whether
19 it happened. The prosecution has their
20 theories based on what they may think is
21 evidence. I've learned in my years that
22 sometimes the truth is stranger than fiction.
23 And some of the stories my clients tell me
24 when they come in that office, you know, and
25 they're telling me it's true, I find hard to

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1 believe. But later on, come to find out,
2 hey, you know, it happened that way. And in
3 this particular case, Your Honor, I think
4 based on the evidence -- again, Officer
5 Gibson he told what he did. He told what he
6 did on the scene. He had nothing to do with
7 the fact that the young lady came in later on
8 and actually gave a statement. So, you know,
9 with his testimony, what he said, I
10 understand. I do.

11 We've reached different conclusions
12 as to whether or not my client was actually
13 following too closely or whether or not the
14 search was extended beyond a reasonable
15 point. But other than that, Officer Gibson,
16 clearly being an officer going about his
17 duties the exact way he's supposed to go
18 about it with one exception. In our minds
19 this was a pre-textual stop. It was
20 certainly not a traffic stop. It was done
21 because when he zeros in the on car you can
22 see a Florida license tag on there, which
23 usually tells you to zero in on someone who
24 is not from here. And certainly, that gives
25 us some reason to believe as well.

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1 And then the conversation shifting
2 from her license to, 'Where are you going.
3 Is there contraband in the car? Why wouldn't
4 you have, you know, luggage in the car?' And
5 I think Officer Gibson said I would at least
6 have a tooth brush if I was going overnight.
7 But at that particular time, he didn't even
8 know what was in the car. He has the beauty
9 of it now. But at that particular time, he
10 had no idea. So, you know, if his reasonable
11 suspicions led him to do that, Your Honor,
12 his reasonable suspicions led him to search
13 that car with the drug dog, fine. The drug
14 dog did hit.

15 But the question is this case is not
16 whether or not it was contraband found. It
17 was whether or not my client possessed that
18 contraband and whether my client had the
19 knowledge and the intent sufficient to prove
20 beyond a reasonable doubt that he possessed
21 and he had control and dominion over it, Your
22 Honor, and that he intended to do that.

23 We feel that the evidence here is
24 pretty clear, Your Honor, that the drugs
25 belonged to someone else and that my client

1 did not have knowledge of the drugs.

2 I also understand in the law, Your
3 Honor, as I used to write it sometimes when I
4 was in the House of Representatives that, you
5 know, there's certain inferences that we
6 make. You know, we certainly -- sometimes we
7 call a drug crime a violent crime, even
8 though there may not be any violence
9 associated with it. Well, the State wants to
10 infer certain things such as knowledge on him
11 because it's his coat. The mere fact that
12 it's his coat means that he knew it was in
13 there. Well, Your Honor, I would suggest to
14 you I can sit my coat on this chair and leave
15 and I know in here there will be no problems.
16 But in other venues, such as a club, such as
17 somewhere else, I can sit it in there and I
18 come back and my wallet's gone because
19 somebody's already been in that coat pocket.
20 I very rarely see where someone may put
21 someone put something in that coat pocket.
22 But, I have had and have seen situations
23 where defendants in a hasty time where they
24 would just stick something under the seat,
25 stick it underneath something in the back.

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1 She testified that she actually put
2 it in that coat pocket the night prior to
3 that. They got in the car early that
4 morning. They drove, which is totally
5 consistent, and they were pulled over at
6 about ten something in the morning. Again,
7 totally consistent.

8 This was the night she got the
9 drugs. The next morning they got in the car
10 and they were driving to Morganton. That's
11 pretty much uncontradicted. There's no one
12 here that's taken the stand and can take the
13 stand and say that Ms. Trappier did not get
14 those drugs and put those drugs there.

15 And then there's no one else that
16 can come in here on any direct evidence and
17 say that those drugs were my client's. They
18 didn't find my client's fingerprints on the
19 cover. And from my understanding, they
20 didn't run an analysis to try to do that.
21 They did not take the crack pipes and try to
22 fingerprint the crack pipes or even figure
23 out what type of drugs were in those crack
24 pipes. To me, that's certainly
25 paraphernalia. And when you find crack on

1 the scene, which they did, and you find crack
2 pipes in the car, I don't see where he put
3 the pipes away from the crack because clearly
4 that's paraphernalia and that's evidence of a
5 crime. But in this case, that's what
6 happened.

7 And we heard Officer Gibson say
8 'we're interested in drug traffickers, not
9 the users but the drug traffickers.' Well,
10 in this case, clearly, it could have been a
11 user.

12 Sixteen ounces (sic), you saw what
13 it is, I think, Your Honor. It's in
14 evidence. So you'll see how much that is. A
15 thousand dollars is what she paid for it from
16 what she said. Some users at certain times
17 have more money than others. They're able to
18 do that. They may do some things that would
19 enable them to be in a position to get a
20 thousand dollars worth of drugs. I've seen it
21 all in my practice. I have a little bit of
22 some of that in my family too. So I
23 understand some of the drug use and the drug
24 users in the way that they go about doing
25 things. I didn't see any inconsistent with

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1 her that would lead me to believe that she in
2 any way would come into this court and tell
3 Your Honor a story that would subject her to
4 twenty-five years if her conscience did not
5 tell her that this is the truth.

6 So, Your Honor, again, in closing,
7 we've seen her statement. We've heard her
8 take the stand. She actually did take the
9 stand. She told the story the way it was
10 supposed to be told. The officer did. The
11 chain of custody is not so much at issue with
12 us at all. What they found not really an
13 issue at all. They found a substance they
14 thought could have been crack or could have
15 been heroin. But one of my problems with
16 that too, and I'll just bring this out to
17 Your Honor is, I've seen in my position as a
18 defense attorney crack and heroin. And I
19 cannot say they look exactly the same. In
20 certain situations, I've seen heroin look
21 different from crack cocaine ---

22 SOLICITOR HAMILTON: Object, Your
23 Honor, this is his testimony and ---

24 MR. BRADLEY: Well, it's closing so
25 it's not even in evidence. I'm just arguing

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Closing Argument by Defense Counsel

1 my case. And this is actually -- look, this
2 is actually what the issue was in the case is
3 whether or not when he pulled it out as a
4 drug enforcement officer of twenty-one years,
5 he didn't know whether it was cocaine or
6 whether it was heroin. That's fine.

7 There's certainly things available
8 even to find that out, which is the field
9 sobriety test -- I'm sorry -- field test
10 outside there or then when he get to the
11 station have it tested, because at this
12 stage if it proved not to be contraband, then
13 you've arrested this young man for nothing.
14 Not Ms. Trappier because she's got a driving
15 under suspension, false information to the
16 police department, no license. And the only
17 thing they've got this young man is actually
18 that substance, Your Honor.

19 So, in closing, I would just ask
20 Your Honor to weigh the evidence. You judge
21 the credibility of the witnesses, as we trust
22 you will, Your Honor. That's why we chose a
23 bench trial. We feel Your Honor will be able
24 to look at the evidence and determine from
25 the evidence what's there and whether or not

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Closing Argument by Defense Counsel

1 the State has proven their case beyond a
2 reasonable doubt.

3 The only witness up there that can
4 prove it beyond a reasonable doubt -- the
5 only person who knows it is my client and Ms.
6 Trappier.

7 Officer Gibson doesn't know because
8 he wasn't with them prior to that. And so he
9 doesn't know whether or not she put this in
10 there. He doesn't know. The only thing he
11 knows is it was in his coat. And that's what
12 he's testified to. Certainly, there was
13 certainly more testimony that Officer Gibson
14 saying it's in that coat that is relevant in
15 this case, Your Honor.

16 We've put up the witnesses, Your
17 Honor. And we trust that Your Honor will
18 weigh the evidence. And I feel when we weigh
19 the evidence, I don't think it's even close.
20 I think that clearly from the testimony
21 that's given from the facts from what you,
22 Your Honor saw, there is nothing that would
23 say that this is my client's cocaine/heroin
24 that was in that bag, with the exception of
25 it being found in his coat. And it's found

1 in his coat, Your Honor, again, it was
2 explained why it was like that, Your Honor.
3 If he said what the officer said he said that
4 it's my cocaine and I paid a thousand dollars
5 for it. He said it. But the truth of the
6 matter is it was not cocaine.

7 So, again, we would move to suppress
8 that statement. Our suppression is renewed.
9 But the bottom line is even with that, you
10 can see how and Ms. Trappier testified, he
11 was trying to take up for her because if he
12 had said that, he probably figured it had to
13 be hers, because he knew she had a history of
14 drug use.

15 Your Honor, we will close on that.
16 I would just ask that Your Honor would just
17 weigh the evidence and do what's fair in the
18 eyes of the Court.

19 Your Honor, I would hate for the
20 young man to basically lose his life off of
21 one that's this close when we have somebody
22 who's come in here and basically testified
23 that it's theirs. And that's not our call.
24 We leave it in the hands of the Court. And
25 we respectfully accept the decision the Court

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Closing Argument by Solicitor

1 lays down. Thank you, Your Honor. Thank
2 you, Your Honor.

3 THE COURT: Thank you, Mr.
4 Bradley. Solicitor?

5 SOLICITOR HAMILTON: Thank you,
6 Your Honor. Of course, the State would ask
7 that you find the Defendant guilty in this
8 case.

9 We have -- what is at issue here is
10 we have already proven, based on the
11 testimony by Cynthia Mitchum, this is, in
12 fact, heroin. No other drug was found. It
13 was in fact heroin only. No cocaine.
14 Additionally, she did testify that the amount
15 of the drugs was 16.37 grams of heroin. That
16 proves the weight is over 14 grams, which is
17 another element of the crime. So both of
18 that heroin and over 14 grams are included in
19 Cynthia Mitchum's testimony. This is 2.37
20 grams over the minimum level of 14 grams.

21 So what's really our concern in this
22 case is going to be the knowledge and the
23 confession, which he has spoken on in his
24 closing argument. As he stated, he can't be
25 convicted for mere presence. And in this

1 case, that's not what we have. We have way
2 more than mere presence. We're not inferring
3 knowledge because he stated we're inferring.
4 There is a confession. He stated the drugs
5 were his.

6 Additionally, he stated he knew the
7 dog would alert before he knew drugs were
8 supposed in the car.

9 If we go with Monique Trappier's
10 statement, he had no idea the drugs were in
11 the jacket. But yet before they even search
12 that jacket, he's saying the dog will alert
13 to illegal substances in that vehicle.

14 Your Honor, the drugs are found in
15 his jacket. Prior to the drugs being found,
16 he admits that is his jacket. Additionally,
17 he gives, as I stated earlier the statement
18 saying those were his drugs. He paid a
19 thousand dollars (\$1,000) for it. Also, it
20 has been stated on the stand that a thousand
21 dollars is consistent with the price paid for
22 heroin. Heroin and cocaine are separate
23 things and they also are priced differently.
24 The thousand dollars is consistent with what
25 was found.

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Closing Argument by Solicitor

1 Knowledge it is an illegal
2 substance. He stated he paid a thousand
3 dollars for it. He's not going to pay a
4 thousand dollars for something that is not an
5 illegal substance. He's not going to pay a
6 thousand dollars for baking soda. So we
7 believe there is knowledge that this is an
8 illegal substance and he stated he paid a
9 thousand dollars for it and said it was his
10 drugs.

11 Additionally, her claim on the
12 stand, which the State would say her
13 credibility is completely at issue based on
14 all the inconsistencies. I think here
15 testimony -- I could go on and on about it,
16 but I want to be as brief as possible because
17 you have heard it minutes ago. Her claim to
18 the drugs does not absolve him of
19 responsibility. If we look at this, it could
20 possibly be a conspiracy of them transporting
21 these drugs down to wherever they were going.
22 I'm not quite sure exactly where they stated
23 they were going. That's another
24 inconsistency. But they can both possess
25 these drugs. And we believe in this case

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Closing Argument by Solicitor

1 they both did possess these drugs. He
2 admitted to possessing the drugs as we had
3 stated before.

4 Monique Trappier, she does not have
5 the means to pay a thousand dollars for
6 drugs. She is unemployed. She stated that
7 on the stand. But yet she has a thousand
8 dollar a week habit. Where does that money
9 come from?

10 The Defendant has a rented car,
11 those aren't cheap. He's driving this rented
12 car. That would be consistent with him
13 having the means to pay a thousand dollars
14 for the drugs and which he claims he did pay
15 a thousand dollars for it.

16 Also, the confession that was given
17 by Ms. Trappier that was brought up on the
18 stand by the Defense, that confession is just
19 interesting how it corresponds with the date
20 that I emailed the Defense attorney that the
21 defendant's offer is revoked and we're moving
22 forward with trial. That was on November 2nd.
23 She happens to show up at our office November
24 6th and give this statement, a statement that
25 is wholly consistent with the incident

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Closing Argument by Solicitor

1 report, other than the fact that she is
2 saying that those drugs are hers. This is
3 nine months later, Your Honor. If, in fact,
4 she felt so bad she could have done it before
5 then. But it comes down to when the offer is
6 revoked. Days later she comes in.

7 Additionally, she said he's done
8 many things for her. He's given her many
9 things. She said on the stand. She makes
10 the statement this statement today is payment
11 back to him for all the things that he has
12 done for her. If, in fact, the Defendant
13 know -- I'm sorry, Your Honor. We believe
14 that based on all of these facts and
15 circumstances that there was knowledge of the
16 -- he knew that he had these drugs, this
17 illegal substance and that he was actually in
18 possession of these drugs, Your Honor. And
19 we'd ask you find him guilty on these
20 charges.

21 THE COURT: All right. May I see
22 the exhibits, please?

23 COURT REPORTER: Yes, sir.

24 THE COURT: All right. I'm going
25 to take a few minutes. I'm going to -- we're

1 going to have a few minutes break. I'm
2 going to review the evidence. And I'll be
3 back in in just a minute and let you know
4 what my decision is.

5 (SHORT BREAK)

6 THE COURT: First, I want to
7 commend both sides for the professional
8 presenting of their case.

9 You know, I've listened very care-
10 fully to everything, reviewed the exhibits.
11 I believe that based on what I've reviewed,
12 that the State did meet its burden of proof.
13 Therefore on the indictment of trafficking in
14 heroin, 2015-GS-46-2347, I find the
15 Defendant, Calvin Brown, guilty as charged
16 and indicted.

17 MR. SHARPE: Your Honor, at this
18 time, I believe we would renew our objections
19 and Motions from pretrial, during the trial,
20 after the trial.

21 THE COURT: Right.

22 MR. SHARPE: I guess, you know, I'm
23 not used to this situation without a jury,
24 but I don't think it's really relevant to
25 move for a directed verdict at this point.

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Ruling of The Court - Verdict

1 THE COURT: Well, and I think -- I
2 mean ---

3 MR. SHARPE: --- notwithstanding
4 the verdict/decision.

5 THE COURT: Right. And I think
6 you're protected. Your motions and your
7 objections have been raised, renewed and I
8 respectfully deny those as well.

9 MR. SHARPE: Thank you, sir.

10 THE COURT: All right. Are we
11 ready to proceed with sentencing?

12 SOLICITOR HAMILTON: We are, Your
13 Honor.

14 THE COURT: I mean, tell me if I'm
15 wrong. Is there anything for me to decide at
16 this point?

17 MR. SHARPE: I don't really think
18 there is, Your Honor.

19 THE COURT: In looking at this
20 statute it's pretty -- and it's a mandatory
21 minimum on fine and jail time. But I'll be
22 glad to hear any -- unless you can tell me
23 otherwise.

24 MR. SHARPE: Your Honor, I think
25 it's pretty much done at this point.

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Sentence

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1 THE COURT: All right. Anything from
2 the State?

3 SOLICITOR HAMILTON: Nothing, Your
4 Honor, unless you want to hear his record,
5 but I don't ---

6 THE COURT: No, that's all right.
7 Mr. Brown, the sentence of the court on
8 indictment 2015-GS-46-2347, trafficking of
9 heroin more than fourteen (14) grams but less
10 than twenty-eight (28) grams, the sentence of
11 the Court is twenty-five (25) years and a
12 fine of two hundred thousand dollars
13 (\$200,000).

14 (BENCH TRIAL CONCLUDED)

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED

THE STATE,

JUL 21 2017
RESPONDENT,
SC Court of Appeals

v.

KALVIN ROPEL BROWN,

APPELLANT

APPELLATE CASE NO 2016-000529

FINAL BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in denying Appellant's motion to suppress evidence found as the result of an unreasonably and immeasurably delayed traffic stop where law enforcement could have issued a ticket for following too closely and concluded the stop but instead continued to investigate without reasonable suspicion in violation of the Fourth Amendment of the United States Constitution?

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant at the August 20, 2015 term of court for trafficking in heroin, fourteen grams or more but less than twenty-eight grams. R. 263 – 264. His case was called to trial on February 24, 2016 before the Honorable Perry H. Gravely. Assistant Solicitors Marina Hamilton and Leslie Robinson appeared on behalf of the State, and Willie Bradley and Patrick Sharpe represented Appellant. R. 1.

At the conclusion of the bench trial, Judge Gravely found Appellant guilty as indicted. R. 260, ll. 9 – 16. He sentenced Appellant to twenty-five years' imprisonment and ordered a fine of two hundred thousand dollars. R. 262, ll. 7 – 13.

This appeal follows.

ARGUMENT

The trial judge erred in denying Appellant's motion to suppress evidence found as the result of an unreasonably and immeasurably delayed traffic stop where law enforcement could have issued a ticket for following too closely and concluded the stop but instead continued to investigate without probable cause in violation of the 4th Amendment of the United States Constitution.

Relevant facts

On February 18, 2015, Officer William Gibson, a deputy sheriff with the York County Sheriff's Office pulled over a car in which Appellant was a passenger for allegedly following too closely, although he never issued a ticket for that charge. R. 39, ll. 17 – 24; R. 42, l. 17 – R. 43, l. 21. Gibson approached the passenger side of the car and spoke with both occupants. R. 43, l. 22 – R. 44, l. 13. Because the driver could not produce any identification, Gibson asked her to get out of the car. R. 44, ll. 17 – 21. Due to the cold weather, Gibson invited the driver, later identified as Monique Trappier, to get into his patrol car. R. 166, ll. 10 – 24.

While Gibson and Trappier were in his car, Gibson began questioning her about the duration and destination of the trip. R. 45, ll. 4 – 10. Following that line of questioning, Gibson spoke with Appellant. R. 45, ll. 15 – 24. According to Gibson, Appellant stated that he and Trappier were headed to Morganton, North Carolina. R. 46, ll. 2 – 3. Gibson began asking additional questions “based on [his] observations” about luggage. R. 46, ll. 6 – 10. The contents of the trunk of the car were not seen or discussed, but Gibson concluded that Appellant and Trappier did not have any luggage. Gibson testified that the presence of “a rental car [and] air freshener,” coupled with the fact that Appellant and Trappier may have been traveling one-way

“painted the picture of criminal activity.” R. 46, ll: 10 – 12. Additionally, Gibson “drew the conclusion that there was criminal activity present” because of the alleged discrepancy between the number of years that Appellant and Trappier had said they knew each other. R. 46, 12 – 17.

Gibson asked Appellant for consent to search the car, and Appellant denied consent. R. 46, ll. 18 – 22. Gibson asked Appellant to step out of the car, and Gibson searched the vehicle with his drug K-9. R. 47, ll. 6 – 15. The dog “gave a positive alert” R. 47, ll. 6 – 15; R. 52, l. 5 – R. 54, l. 12. Gibson searched the interior of the car and found a few jackets, one of which contained a powdery substance later determined to be sixteen and a half grams of heroin. R. 54, l. 13 – R. 56, l. 14; R. 57, l. 19 – R. 58, l. 3. Gibson was not able to determine Trappier’s identity until he transported her to the Rock Hill Police Department. R. 45, ll. 11 – 14.

Appellant moved to suppress any evidence found as a result of the traffic stop due to the unreasonable delay and extension beyond the original purpose of the stop. R. 6, ll. 3 – 11; R. 7, l. 1 – R. 21, l. 19. Judge Gravely denied Appellant’s pre-trial motion and offered to allow Appellant to renew the motion. R. 24, ll. 10 – 22. After the State rested, Appellant renewed all objections and pretrial motions, to include the motion to suppress evidence obtained as a result of the traffic stop. R. 145, ll. 13 – 15. Those motions were denied. R. 146, l. 16 – R. 146, l. 9. Following the denial, Appellant moved for a directed verdict. R. 146, ll. 12 – 15.

On cross-examination, Gibson admitted that although he had no knowledge regarding the distance between the cities of Asheville and Morganton in North Carolina, he utilized that alleged inconsistency to develop reasonable suspicion that another crime was being committed. R. 71, l. 2 – R. 72, l. 21. Furthermore, the initial statement that the pair was going to Morganton, North Carolina, was made by Appellant in the presence of Trappier. R. 103, ll. 3 – 8. He

admitted that they could have been twenty miles apart. R. 73, ll. 15 – 25. His testimony was summarized by defense counsel:

Q: Okay. So I've got to take my point up. You said that that was the thing that made you suspicious, that they gave two different places that they were going to. But you weren't even certain whether or not those two places were anywhere near each other or not; is that correct?

A: Correct.

R. 74, ll. 1 – 8.

Gibson stated that the second indicator of suspicious activity was the lack of luggage. R. 74, ll. 13 – 16. However, this pretextual reason was likewise called into question during cross examination:

Q: You just testified about the luggage and about whether or not they may have had - - you know, you would have found - - at least they should have taken a toothbrush with them, at this particular time when you're making this determination, though, you hadn't searched the vehicle yet; is that correct?

A: No, sir.

Q: Okay. So how would you know whether or not they had a toothbrush in the back of a coat pocket or anything like that?

A: I wouldn't have.

Q: So at that particular time you did not know whether or not they had any necessary supplies to stay overnight; is that correct?

A: Correct.

Q: And you did not know what was in the trunk at that time, either; is that correct?

A: Correct.

R. 77, ll. 3 – 22.

Gibson defended his suspicions and characterized them as justified:

Q: And you said the reason you were suspicious was because the itineraries were different and a second thing we're talking about now is that they didn't have luggage or at least a toothbrush or necessities that would show an overnight trip?

A: Correct.

Q: And my question to you is you hadn't searched the vehicle yet, front or [trunk], so you did not know whether or not they had those things at that point; is that correct?

A: Correct.

Q: So is it fair to say at that point that maybe your suspicions were not justified?

A: No, they were justified.

Q: And they were justified because of the travel itineraries that was different, which you were not certain the vicinity and, secondly, whether or not they had anything, any luggage or any type of things they need for an overnight stay. And you're saying you didn't even check the vehicle for that. So both of those suspicions there, you still feel that they were actually justified?

A: Correct.

R. 78, l. 17 – R. 79, l. 17.

Gibson confessed that part of his duties that day were to be looking out for signs of illegal drugs. R. 84, ll. 16 – 20; R. 96, ll. 13 – 22. He also admitted that the charge of following too closely to vehicles does not indicate that a vehicle may contain contraband. R. 96, l. 23 – R. 97, l. 1. That said, Gibson never cited Trappier, the driver, for following too closely. R. 102, ll. 3 – 5.

Discussion

“Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment].” Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct.

1769, 135 L.Ed.2d 89 (1996). Thus, an automobile stop is “subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” *Id.* at 810, 116 S.Ct. 1769. Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se. *Id.* See also *State v. Williams*, 351 S.C. 591, 597–98, 571 S.E.2d 703, 707 (Ct. App. 2002).

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV; see *State v. Woodruff*, 344 S.C. 537, 544 S.E.2d 290 (Ct.App.2001). Thus, the Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). An officer is permitted to make an investigative detention or stop only if supported “by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.” *Reid v. Georgia*, 448 U.S. 438, 440, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980). “And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Thus, a court must look to the totality of the circumstances in determining whether the officer had a particularized and objective basis for suspecting criminal activity. *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002). “While such a detention does not require probable cause, it does require something more than an ‘inchoate and unparticularized suspicion or hunch.’ ” *United States v. Sprinkle*, 106 F.3d 613, 617 (4th Cir.1997) (quoting *Terry*, 392 U.S. at 27, 88 S.Ct. 1868).

It is nevertheless clear that a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. United States v. Jacobsen, 466 U.S. 109, 124, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984). A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission. Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 837, 160 L. Ed. 2d 842 (2005). The traffic stop involved in Appellant's case became unlawful when Gibson sought to develop a reasonable suspicion of criminal activity through prolonged questioning. (Dashcam video). In fact, he stated at trial that he "always suspected that there was criminal activity present" even though the reasons he provided did not hold up under cross-examination. He did not have an articulable suspicion; rather, he clung to a hunch and continued to investigate.

"A routine traffic stop is a relatively brief encounter and 'is more analogous to a so-called Terry stop ... than to a formal arrest.'" Knowles v. Iowa, 525 U.S. 113, 117, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998) (quoting Berkemer v. McCarty, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)). Illinois v. Caballes, 543 U.S. 405, 420, 125 S. Ct. 834, 844, 160 L. Ed. 2d 842 (2005).

An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop and the scope of the detention must be carefully tailored to its underlying justification. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). The officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999). Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Id.,

see also United States v. Jones, 234 F.3d 234, 241 (5th Cir.2000) (“The basis for the stop was essentially completed when the dispatcher notified the officers about the defendants’ clean records, three minutes before the officers sought consent to search the vehicle. Accordingly, the officers should have ended the detention and allowed the defendants to leave. And the failure to release the defendants violated the Fourth Amendment.”); United States v. Mesa, 62 F.3d 159, 162 (6th Cir.1995) (“Once the purposes of the initial traffic stop were completed, there is no doubt that the officer could not further detain the vehicle or its occupants unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention.”); United States v. Beck, 140 F.3d 1129, 1136 (8th Cir.1998) (“Because the purposes of [the officer’s] initial traffic stop of Beck had been completed ... [the officer] could not subsequently detain Beck unless events that transpired during the traffic stop gave rise to reasonable suspicion to justify [the officer’s] renewed detention of Beck.”); People v. Redinger, 906 P.2d 81, 85–86 (Colo.1995) (“When, as here, the purpose for which the investigatory stop was instituted has been accomplished and no other reasonable suspicion exists to support further investigation, there is no justification for continued detention and interrogation of citizens.”); Davis v. State, 947 S.W.2d 240, 243 (Tex.Crim.App.1997) (“[O]nce the reason for the stop has been satisfied, the stop may not be used as a ‘fishing expedition for unrelated criminal activity.’”) (citations omitted). State v. Pichardo, 367 S.C. 84, 98–99, 623 S.E.2d 840, 848 (Ct. App. 2005).

A traffic stop supported by reasonable suspicion of a traffic violation remains valid until the purpose of the traffic stop has been completed. Arizona v. Johnson, 555 U.S. 323, 333, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). The officer may not extend the duration of a traffic stop in order to question the motorist on unrelated matters unless he possesses reasonable suspicion that

warrants an additional seizure of the motorist. See United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998). The officer cannot avoid this rule by employing dilatory tactics. See United States v. Jones, 234 F.3d 234 (5th Cir.2000) (driver's Fourth Amendment rights violated when, after dispatcher reported no problems and officer had completed warning citation except for obtaining the driver's signature, officer deliberately delayed completing the stop for several more minutes until canine search unit arrived). State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013).

Like the officer in State v. Jones, Officer Gibson went on a “fishing expedition” and prolonged his detention for the purpose of performing a search. 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005). In Jones, the defendant asserted that “the questioning of the passengers and the extended conversation the officer had with him about where they had been and what they were doing was merely a ‘ruse’ so he could eventually search the car.” Id. at 55, 610 S.E.2d at 848. Jones maintained “anything this officer did with [him] pursuant to this stop after a reasonable period of time had expired for him to issue him the summons ... [was] unreasonable” and was therefore an illegal detention. Id. Similarly, Officer Gibson stated that the incongruent destinations gave him pause yet he was unaware of the close vicinity between Morganton and Asheville. Additionally, although he testified that the lack of luggage and additional clothing led him to believe that criminal activity was present, **by his own admission** he had not yet searched the trunk of the car. Therefore, his two main reasons for becoming suspicious of Appellant and Trappier were manufactured and unverified. The traffic stop ceased being lawful when Gibson went on a “fishing expedition” and continued questioning Appellant and Trappier when he could have cited and/or arrested Trappier and allowed Appellant, who had a valid driver's license, to drive away.

Upon a lawful traffic stop, an officer “may order the driver to exit the vehicle ... [,] request a driver's license and vehicle registration, run a computer check, and issue a citation.” State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct.App.2005) (citations omitted). However, a lawful traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); see also Pichardo, at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). The extension of a lawful traffic stop is permitted if (1) the encounter becomes consensual or (2) the officer has a reasonable, articulable suspicion of other illegal activity. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. The proper inquiry is not whether an officer “unreasonably” extended the duration of the traffic stop with his off-topic questions but whether he “measurably” extended it. Arizona v. Johnson, 555 U.S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). This is a temporal inquiry, not a reasonableness inquiry. State v. Provet, 405 S.C. 101, 111, 747 S.E.2d 453, 458 (2013).

“Any further *detention* for questioning is beyond the scope of the [] stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime.” United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998) (emphasis added); see Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) (“[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”); Ferris v. State, 355 Md. 356, 735 A.2d 491, 499 (1999) (“Once the purpose of [the] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002).

Officer Gibson, who claimed that he always knew that criminal activity was present, was unable to provide sufficient and articulable reasons to justify his use of the drug K-9. R. 126, ll. 1 – 12. Rather, as a member of the Drug Enforcement Unit, he repeatedly peppered Appellant and Trappier with irrelevant questions in an attempt to confirm his hunch. After being denied consent to search the vehicle by Appellant, he decided to deploy the K-9. The drugs located should have been suppressed, because Gibson’s actions violated Appellant’s Fourth Amendment rights—namely, Gibson went on a “fishing expedition” rather than ticketing Trappier for the underlying offense.

Gibson admitted under cross-examination that he had no knowledge of the distance between the two destinations listed by Appellant and Trappier. As defense counsel articulated, a non-South Carolinian may not know that York County and Rock Hill are in the same vicinity, just as Morganton and Asheville are. However, Gibson was determined to develop reasonable suspicion, his lack of awareness of North Carolina cities notwithstanding.

Similarly, his conclusion that the occupants of the car did not have any luggage in plain view and were therefore lying about their plans was not supported by facts, as Gibson admitted that he did not check the trunk or underneath the clothing in the back seat. As a result, this conclusion did not add to his reasonable suspicion determination but rather left him in the realm of an unarticulable hunch.

The State should not use “whatever facts are present, no matter how innocent, as indicia of suspicious activity.” U.S. v. Foster, 634 F.3d 243, 248 (4th Cir. 2011). Rather, it must “be able to either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance.” Id. See Ornelas v. U.S., 517 U.S. 690, 695,

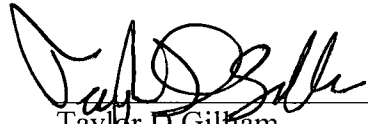
116 S.Ct. 1657 (1996) (defining reasonable suspicion as a “commonsense, nontechnical conception[] that deal[s] with ‘the factual and practical considerations of everyday life’ ” (quoting Illinois v. Gates, 462 U.S. 213, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)); United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)) (“[I]nvestigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.”).

There was nothing exceptional about Appellant’s actions in the car, and Officer Gibson’s interactions with Appellant and Trappier failed to add any certainty to his instinctive concerns. Gibson did not see any suspicious items pass between the hands of Trappier and Appellant. Neither occupant fled. Appellant’s innocent actions of stating a different North Carolina city as a destination and not storing luggage in the plain view of the officer cannot be relied upon to validate the search and subsequent seizure of Officer Gibson. The State “cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband.” United States v. Martinez-Fuerte, 428 U.S. 543, 565, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976).

In fact, Gibson’s statement that he “always suspected that there was criminal activity present” belied his stated reason for searching the vehicle with his K-9. The drugs seized as a result of the unconstitutional continuation of the traffic stop should have been suppressed.

CONCLUSION

For the reasons listed above, Appellant requests this Court reverse his conviction based upon the trial court's error in admitting the evidence seized as a result of the immeasurably and unconstitutionally extended traffic stop.


Taylor D Gilham
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief 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."

July 21, 2017



Taylor D Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-000529

THE STATE,RESPONDENT,

v.

KALVIN ROPEL BROWN,APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3922

KEVIN BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Hwy
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial judge properly denied Appellant's motion to suppress evidence of the drugs seized by officers because they developed reasonable suspicion Appellant and the driver of his car were in possession of illegal substances while investigating the driver's identity during the course of a lawful traffic stop.

STATEMENT OF THE CASE

On August 20, 2015, the York County Grand Jury indicted Appellant for trafficking in heroin, fourteen grams or more but less than twenty-eight grams. On February 24, 2016, Appellant proceeded to a bench trial before the Honorable Perry H. Gravely. Willie Bradley, Esquire, and Patrick Sharpe, Esquire, represented Appellant; Assistant Solicitors Marina Hamilton, Esquire, and Leslie Robinson, Esquire, represented the State. The trial judge found Appellant guilty as indicted and sentenced him to twenty-five years' incarceration and ordered a fine of \$200,000.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On the morning of February 18, 2015, Officer William R. Gibson, II, a deputy sheriff with the York County Sheriff's Office, pulled over a "white-in-color Nissan Maxima" for following too closely to a tractor-trailer. After approaching the passenger-side of the vehicle, he requested the driver, Monique Trappier,¹ to provide her license and the registration for the car. Appellant, the passenger, interjected and explained they were in a rental car and that they were traveling to Morganton, North Carolina. Trappier claimed she was not in possession of her driver's license or any type of identification. Officer Gibson asked Trappier to exit the vehicle so he could collect her information.² (R.p.41, line 17–R.p.44, line 8; R.p.44, lines 17–21; Dashcam Video).

Trappier told Officer Gibson her name was "Nyambi Annetta Trappier,"³ born December 14, 1981,⁴ but could not recall her social security number. Using this information, Officer Gibson attempted to find Appellant's license information using his vehicle's computer. He was unable to find Trappier's license and called dispatch to request for assistance in locating her information. (R.p.44, line 9–R.p.45, line 14; Dashcam Video).

While waiting, Officer Gibson asked Trappier for additional information. She told Officer Gibson she and Appellant had known each other for approximately four years, and were travelling to "somewhere" near Asheville, North Carolina. They were in a rental car because

¹ Trappier's true identity was not ascertained until after her arrest, when she was taken to the Rock Hill Police Department. (R.p.45, lines 11–14).

² At the time of the traffic stop, Officer Gibson was accompanied by State Constable Dan Janeski. Officer Janeski's sole role during the stop was standing with Trappier and/or Appellant while Officer Gibson separated them and when he searched the vehicle. (R.p.99, line 25–R.p.100, line 24; Dashcam Video).

³ Officer Gibson testified Trappier identified herself as "Anita Trappier," but the Dashcam Video recording captured the name, and spellings, she provided. (R.p.44, lines 9–14; Dashcam Video).

⁴ At trial, it was revealed Trappier also provided a false birthdate: her actual date of birth is May 8, 1974. (R.p.208, line 24–R.p.209, line 7).

Appellant had totaled his own vehicle a few months prior when he collided with a deer. She and Appellant lived in Georgetown, South Carolina, and were heading to North Carolina to visit Appellant's daughter and her family. She was uncertain for how long they would stay, but were probably coming back later that day. Trappier claimed neither she nor Appellant brought a change of clothes or other supplies for an overnight stay. (R.p.71, lines 14–22; Dashcam Video)

After a few minutes, dispatch radioed back to Officer Gibson and informed him it was also unable to find Trappier's license information. Officer Gibson informed Trappier he could not let them leave until he verified her information. Hoping to acquire additional information about Trappier, he asked her to wait by his vehicle while he questioned Appellant. Appellant told Officer Gibson Trappier's name was "Lisa Trappier" and that he had known her for "seven or eight years." Again, he claimed he and Trappier were heading to Morganton, North Carolina, but claimed they were visiting "friends of family" and planned on staying the night in Morganton and returning to Georgetown the following day. When asked whether he had been in a recent accident, he claimed a minor collision with a deer put a "dent" on his car. While conversing with Appellant, Officer Gibson noticed no luggage was visible in the car and that an air freshener was present. Based on Appellant and Trappier's inconsistent statements as well as his observations of the vehicle, Officer Gibson developed a reasonable suspicion drugs were present in the car. (R.p.45, line 15–R.p.46, line 17; R.p.71, lines 2–18; R.p.74, 13–R.p.76, line 23; R.p.79, line 4–R.p.81, line 25; Dashcam Video).

Officer Gibson asked Appellant for permission to search the car. He declined and defended his decision by claiming: (1) he was not the driver of the vehicle; (2) it was a rental; and (3) they were stopped for a simple traffic violation. Officer Gibson informed Appellant that he and Trappier's stories were not "adding up," noting they provided differing information on

their destination, the extent of their stay in North Carolina, and even Trappier's name. Officer Gibson, suspicious of Trappier and Appellant, asked whether he could have his drug-detection K-9 sniff around the perimeter of the vehicle. Appellant protested claiming the dog was going to alert, and that "the dog always alerts," which would create probable cause for a vehicle search. Over Appellant's objections, Officer Gibson allowed his dog to sniff around the vehicle. The dog "alerted" outside the driver's side of the car. (R.p.46, line 19–R.p.47, line 15; Dashcam Video).

Officer Gibson searched the car and found an air freshener, and multiple phones. He discovered a jacket, which Appellant identified as his, inside of which was heroin.⁵ After this discovery, Officer Gibson arrested Appellant and Trappier. Officer Gibson subsequent search of the car uncovered two crack pipes, a small amount of crack, and additional cell phones (for a total of four). At the police station, Officer Gibson determined approximately 16.5 grams of heroin had been in Appellant's coat. Appellant confessed to ownership of the drugs and claimed he purchased them for one-thousand dollars.⁶ (R.p.54, line 13–R.p.65, line 21; R.p.112, lines 2–19; R.p.115, line 9–R.p.116, line 23; R.p.124, lines 5–15; Dashcam Video).

At trial, Officer Gibson testified he developed reasonable suspicion of drug activity after hearing Trappier's and Appellant's inconsistent statements regarding the location, scope, and purpose of their trip to North Carolina as well as Trappier's name. His suspicion only deepened when Appellant claimed the drug K-9 would alert outside of the vehicle. (R.p.101, line 18–R.p.112, line 1; R.p.125, line 8–R.p.126, line 12).

⁵ At the scene, without the benefit of testing, Officer Gibson misidentified the drugs as some crack/cocaine mixture. (R.p.82, line 13–R.p.83, line 8; R.p.137, line 15–R.p.138, line 2).

⁶ Appellant did not specifically identify the drugs as heroin. Rather, Officer Gibson asked him whether the crack/cocaine was his, and, without mentioning the name of the drugs, admitted purchased them. (R.p.55, line 18–R.p.56, line 7; R.p.122, line 21–R.p.124, line 15).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress evidence of the drugs seized by officers because they developed reasonable suspicion Appellant and the driver of his car were in possession of illegal substances while investigating the driver's identity during the course of a lawful traffic stop.

Appellant argues the trial judge erred in denying his motion to suppress the drug evidence discovered during the traffic stop because the evidence was discovered during an “unreasonably and immeasurably delayed traffic stop,” claiming Officer Gibson should have merely issued a ticket for following too closely and concluded the stop because he did not have reasonable suspicion justifying his continued investigation of the vehicle and its occupants. The State disagrees with Appellant's allegation of error. Officer Gibson developed reasonable suspicion of criminal activity during while attempting to discern Trappier's identity, a necessary step in the investigation of the original traffic violation. As a result, Officer Gibson had reasonable suspicion to utilize his drug K-9, with the K-9's alert providing probable cause for his search of the vehicle.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However,

the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (“[A]ppellate courts must affirm if there is any evidence to support the trial court’s ruling.”); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (“When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.” (citation omitted)). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

Reasonableness of Deteneion

Pursuant to the Fourth Amendment, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see United States v. Sokolow, 490 U.S. 1, 7 (1989) (“[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” (citation omitted)); State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) (“To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.”). “Reasonable suspicion” requires a particularized and objective basis leading one to suspect another of criminal activity. See State v. Moore, 415 S.C. 245, 252, 781 S.E.2d 897, 900 (2016).

The reasonable suspicion standard is less demanding than probable cause, and requires a showing considerably less than preponderance of the evidence. Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred or reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.”); see also Whren v. United States, 517 U.S. 806, 810 (1996) (“An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

A lawful traffic stop begins at the point an officer stops a vehicle to investigate a traffic violation and “ordinarily continues, and remains reasonable, for the duration of the stop.” Arizona v. Johnson, 555 U.S. 323, 333 (2009). Once a lawful traffic stop is initiated, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and “may request a driver’s license and vehicle registration, run a computer check, and issue a

citation.” State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see Maryland v. Wilson, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). “Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.” Johnson, 555 U.S. at 333.

During the course of the stop, an officer can inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not **measurably** extend the duration of the stop. Id.; see Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015) (“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop.”); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory traffic stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see Rodriguez, 135 S. Ct. at 1614 (“Authority for the seizure . . . ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.”); see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) (“The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.”).

Even if a traffic stop is initially lawful, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of

that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a **reasonable articulable suspicion** of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. Branch, 537 F.3d at 337 (“Courts must look at the ‘cumulative information available’ to the officer . . . and not find a stop unjustified based merely on a ‘piecemeal refutation of each individual’ fact and inference[.]” (citations omitted)). Instead, all of the circumstances of the stop, including the officer’s own experience and specialized training, must be considered as a whole to determine whether the officer’s actions were reasonable in light of all of the information available to him at the time. See United States v. Arvizu, 534 U.S. 266, 273 (2002) (“[W]e have said repeatedly that [reviewing courts] must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing. The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” (citations omitted)); United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (“[J]ust as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.”). “In applying the

concept of reasonable suspicion to the various facts of a case, “[i]t is the entire mosaic that counts, not single tiles.” State v. Wallace, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). Thus, the presence of several factors seemingly consistent with innocent travel can establish reasonable suspicion when viewed together in totality. Sokolow, 490 U.S. at 9.

In the instant case, Officer Gibson developed reasonable suspicion of illegal activity during his investigation of Trappier’s identity. Officer Gibson’s trial testimony and the Dashcam Video show Trappier repeatedly provided him with false information. Without knowledge of Trappier’s true identity, Officer Gibson was unable to complete the purpose of the traffic stop: issuing a citation for Trappier’s traffic violation. See Rodriguez, 135 S. Ct. at 1614 (stating an officer’s authority for a seizure related to a stop ends only when the tasks tied to issuing the traffic citation are, or reasonably should have been, completed). Officer Gibson made multiple attempts at finding Trappier’s driver’s license information using his cruiser information, and when that failed solicited help from dispatch. When dispatch was also unable to locate her information, he did the most reasonable and practical thing he could do at that point: speak to Appellant and attempt to solicit information which would help him discover Trappier’s true identity. It was during this conversation in which Appellant provided information contradicting Trappier’s, disagreeing with: (1) statements about the length of their friendship; (2) their destination; (3) the purpose and length of their trip; (4) the reason for the rental car; and (5) Trappier’s first name. Given the vast disparity between Trappier’s and Appellant’s statements, Officer Gibson reasonably suspected criminal behavior on the part of Trappier and/or Appellant. See Arvizu, 534 U.S. at 273 (stating the “totality of the circumstances” surrounding a traffic stop must be considered when evaluating whether an officer reasonably suspected legal wrongdoing).

His questioning of Appellant and Trappier was part of his effort to discover the latter's true identity, without which he could not issue the traffic citation and complete intended purpose of the stop. See Pichardo, 367 S.C. at 98, 623 S.E.2d at 847.

Officer Gibson's reasonable suspicion was only furthered by Appellant's statements about the drug dog. Officer Gibson, still unable to complete the original purpose of the traffic stop and suspecting illegal activity, asked Appellant for permission to allow his drug detection K-9 to sniff around the outside of the vehicle. Even without the reasonable suspicion he possessed, Officer Gibson had the authority to request such permission. See Rodriguez, 135 S. Ct. at 1614 (stating officers may question a vehicle's occupants on matters unrelated to the purpose of the traffic stop, provided such questioning does not measurably extend the duration of the stop). Appellant's answer was not a polite refusal; rather, Appellant claimed Officer Gibson's K-9 would alert outside of the vehicle. Such a statement, separate and apart from Officer Gibson's earlier observations, would lead any officer to reasonably suspect the presence of illegal drugs in a vehicle and justify a drug K-9 sniff search around said vehicle.

The State further notes Officer Gibson did not need reasonable suspicion or Appellant's permission to use his drug detection K-9 outside of Appellant's car. In Illinois v. Caballes, 543 U.S. 405 (2005), the United State Supreme Court found an officer's use of a trained drug-detection dog, one that "does not expose non-contraband items that otherwise would remain hidden from public view," during a traffic stop does not, by itself, "implicate legitimate privacy interests." Id. at 409. Thus, allowing the dog to sniff around the exterior of a defendant's car while he was lawfully seized for a traffic violation was not a "constitutionally cognizable infringement" on his privacy expectations. Id.

This Court directly acknowledged precedential value of Caballes to South Carolina law in State v. Jones, 364 S.C. 51, 610 S.E.2d 846 (Ct. App. 2005). In Jones, the defendant argued the trial court erred in failing to suppress drug evidence because the officer's request that defendant exit the vehicle during traffic stop was a "fishing expedition" which prolonged his detention and violated his Fourth Amendment rights. Id. at 56, 610 S.E.2d at 848. Noting the request and subsequent questioning occurred before the officer returned the defendant's license and registration and issued the traffic ticket, the Court found the evidence supported the trial court's conclusion that the officer's actions occurred as result of his casual conversation with the vehicle's occupants which occurred while defendant looked for the car's registration, an event within the scope of the original traffic stop. Id. at 58, 610 S.E.2d at 849–50. The Court supported its decision with Caballes and its approval of the use of drug dogs during routine traffic stops when such use does not "unjustifiably enlarge the scope" of said stops. Id. at 58–59, 610 S.E.2d at 850.

Accordingly, Officer Gibson had reasonable suspicion of criminal activity when he ordered his K-9 to sniff the perimeter of the vehicle. Further, even if Officer Gibson did not have reasonable suspicion at the time he requested permission for the K-9 sniff, Appellant's statement that the dog would alert provided additional reasonable suspicion meriting use of the K-9. After the K-9 alerted Officer Gibson, he had probable cause to search the vehicle. The trial judge did not err in denying Appellant's motion to suppress the evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

KEVIN BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

ATTORNEYS FOR RESPONDENT

July 28, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-000529

THE STATE,RESPONDENT,

v.

KALVIN BROWN,APPELLANT.

CERTIFICATE OF COUNSEL

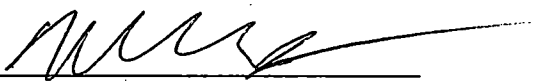
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

RECEIVED
JUL 28 2017
SC Court of Appeals

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

KEVIN BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: 

William F. Schumacher, IV

Bar # 100231

Office of the Attorney General

Post Office Box 11549

Columbia, SC 29211

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ATTORNEYS FOR RESPONDENT

July 28, 2017

STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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Perry H. Gravely, Circuit Court Judge

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THE STATE,RESPONDENT,

v.

KALVIN BROWN,APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Taylor D. Gilliam, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED
JUL 28 2017
SC Court of Appeals

I further certify that all parties required by Rule to be served have been served.
This 28th day of July, 2017.



Angela Bennett
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

5



ALAN WILSON
ATTORNEY GENERAL

July 28, 2017

Taylor D. Gilliam, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Calvin Brown
Appellate Case No. 2016-000529

Dear Mr. Gilliam:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

William F. Schumacher, IV
Assistant Attorney General
S.C. Bar No. 100231

Enclosures

cc: Honorable Jenny A. Kitchings (original and 9 copies enclosed)
Victim Advocacy Division

RECEIVED

JUL 28 2017

SC Court of Appeals

**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.

Kalvin Ropel Brown, Appellant.

Appellate Case No. 2016-000529

Appeal From York County
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2019-UP-014
Submitted November 1, 2018 – Filed January 9, 2019

AFFIRMED

Appellate Defender Taylor Davis Gilliam, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William Frederick Schumacher, IV,
both of Columbia; and Solicitor Kevin Scott Brackett, of
York, all for Respondent.

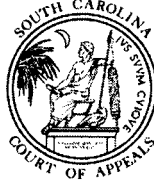
PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Govan*, 372 S.C. 552, 557, 643 S.E.2d 92, 94 (Ct. App. 2007)
("[A] motion *in limine* to exclude evidence made at the beginning of trial does not

preserve the issue for appellate review because a motion *in limine* is not a final determination."); *State v. Atieh*, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review."); *State v. Dicapua*, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (holding counsel's statement to the trial court that he had "no objection" to the introduction of evidence, even though he previously made a motion to exclude the evidence, waived any issue with admission of that evidence).

AFFIRMED.¹

LOCKEMY, C.J., and THOMAS and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 01, 2019

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Calvin Brown
Lower Court Case No. 2015GS4602347
Appellate Case No. 2016-000529

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Taylor Davis Gilliam, Esquire
William Frederick Schumacher, IV, Esquire
Kevin Scott Brackett, Esquire
The Honorable Perry H. Gravely

FORM 5

2019 April - 1504

STATE OF SOUTH CAROLINA

FILED-RECEIVED

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2019 APR 30 AM 11:13

Kalvin Brown, SCDC No. 00173109
Full name and prison number (if any) of Applicant.

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence York General Session Court, York, SC
3. Name(s) of co-defendant(s) (if any) Monique Trappier
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-46-02347
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 24, 2016

Revised 3/2003

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 9, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2019-UP-014
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Revised 3/2003

(a) Trial counsel was ineffective in failing to preserve for appellate review the unconstitutional search of the automobile I was riding in.

(b) Trial counsel was ineffective in recommending that I waive a jury trial when the co-defendant was willing to testify that the drugs found in the automobile belonged to her.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) In a pre-trial motion, trial counsel moved to suppress the drugs found in the automobile in which I was a passenger. The trial judge pre-trial ruled "I'm going to deny your Motion at this time. But I'll review the, you know, the evidence and at the appropriate time I'll be glad to, you know, let you renew your Motion if you need to do that." Tr. at 24. ll 18-22. When the illegally seized drugs were later introduced into evidence during the non-jury trial, trial counsel failed to object to their admissibility.

(b) At the non-jury trial, Monique Trappier was called as a witness and testified the drugs belonged to her. This created a jury issue as to whom the drugs belonged. Knowing this fact, trial counsel should have recommended that I have a jury trial.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____

- ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Willie Bradley, 6160 St. Andrews Rd., Suite 5, Columbia, SC 29212; Patrick Sharpe, P. O. Box 12627, Columbia, SC 28211
 - ii. Taylor D. Gilliam, South Carolina Commissoin on Indigent Defense, P. O. Box 11589, Columbia, SC 29211
 - iii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646
 - (b) the proceedings at which each such attorney represented you:
 - i. trial and sentencing
 - ii. appeal
 - iii. preparation of this Post Conviction Relief Application
19. State clearly the relief you seek in filing this application:
New trial
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 Greenville)

VERIFICATION

I, Calvin R. Brown, 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.

Calvin R. Brown

SWORN to and subscribed before me this 16
day of April, 2019.

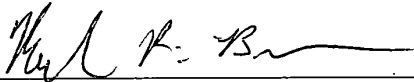
Tamara Conwell (L.S.)
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

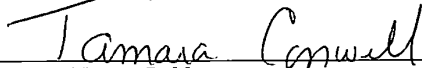
^{K, B}
I, K. B. Brown hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.



Applicant

SWORN or affirmed to and subscribed before me this
16 day of April, 2019.



Notary Public

My Commission Expires: September 25, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
Kalvin Brown, SCDC #173109)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
))
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-46-01504

RETURN
DAVID HAMILTON
C.D. CLERK
YORK COUNTY, SC
2019 AUG 29 AM 11:36
FILED-RECEIVED

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on April 30, 2019, would respectfully show this Court:

I. Procedural History

Kalvin Brown (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In August 2015, the York County Grand Jury indicted Applicant for trafficking opium/heroin, 14 grams or more (2015-GS-46-02347). Willie Bradley and Patrick Sharpe, Esquires, represented Applicant. Assistant Solicitors Marina Hamilton and Leslie Robinson prosecuted the case. On February 24, 2016, Applicant proceeded to a bench trial before The Honorable Perry H. Gravely. Judge Gravely found Applicant guilty and sentenced him to twenty-five years' imprisonment and a fine of two hundred thousand dollars. Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Brown, No. 2019-UP-014 (Jan. 9, 2019). The Remittitur was issued February 1, 2019.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina

Department of Corrections, the trial transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Factual Background

On the morning of February 18, 2015, Officer William R. Gibson, II, a deputy sheriff with the York County Sheriff's Office, pulled over a "white-in-color Nissan Maxima" for following too closely to a tractor-trailer. After approaching the passenger-side of the vehicle, he requested the driver, Monique Trappier,¹ to provide her license and the registration for the car. Applicant, the passenger, interjected and explained they were in a rental car and that they were traveling to Morgantown, North Carolina. Trappier claimed she was not in possession of her driver's license or any type of identification. Officer Gibson asked Trappier to exit the vehicle so he could collect her information.² (R.p.41, line 17–R.p.44, line 8; R.p.44, lines 17–21; Dashcam Video).

Trappier told Officer Gibson her name was "Nyambi Annetta Trappier,"³ born December 14, 1981,⁴ but could not recall her social security number. Using this information, Officer Gibson attempted to find Applicant's license information using his vehicle's computer. He was unable to find Trappier's license and called dispatch to request for assistance in locating her information. (R.p.44, line 9–R.p.45, line 14; Dashcam Video).

¹ Trappier's true identity was not ascertained until after her arrest, when she was taken to the Rock Hill Police Department. (R.p.45, lines 11–14).

² At the time of the traffic stop, Officer Gibson was accompanied by State Constable Dan Janeski. Officer Janeski's sole role during the stop was standing with Trappier and/or Applicant while Officer Gibson separated them and when he searched the vehicle. (R.p.99, line 25–R.p.100, line 24; Dashcam Video).

³ Officer Gibson testified Trappier identified herself as "Anita Trappier," but the Dashcam Video recording captured the name, and spellings, she provided. (R.p.44, lines 9–14; Dashcam Video).

⁴ At trial, it was revealed Trappier also provided a false birthdate: her actual date of birth is May 8, 1974. (R.p.208, line 24–R.p.209, line 7).

While waiting, Officer Gibson asked Trappier for additional information. Trappier told Officer Gibson she and Applicant had known each other for approximately four years, and were travelling to “somewhere” near Asheville, North Carolina. They were in a rental car because Applicant had totaled his own vehicle a few months prior when he collided with a deer. She and Applicant lived in Georgetown, South Carolina, and were heading to North Carolina to visit Applicant’s daughter and her family. She was uncertain for how long they would stay, but were probably coming back later that day. Trappier claimed neither she nor Applicant brought a change of clothes or other supplies for an overnight stay. (R.p.71, lines 14–22; Dashcam Video)

After a few minutes, dispatch radioed back to Officer Gibson and informed him it was also unable to find Trappier’s license information. Officer Gibson informed Trappier he could not let them leave until he verified her information. Hoping to acquire additional information about Trappier, he asked her to wait by his vehicle while he questioned Applicant. Applicant told Officer Gibson Trappier’s name was “Lisa Trappier” and that he had known her for “seven or eight years.” Again, he claimed he and Trappier were heading to Morganton, North Carolina, but claimed they were visiting “friends of family” and planned on staying the night in Morganton and returning to Georgetown the following day. When asked whether he had been in a recent accident, he claimed a minor collision with a deer put a “dent” on his car. While conversing with Applicant, Officer Gibson noticed no luggage was visible in the car and that an air freshener was present. Based on Applicant and Trappier’s inconsistent statements as well as his observations of the vehicle, Officer Gibson developed a reasonable suspicion drugs were present in the car. (R.p.45, line 15–R.p.46, line 17; R.p.71, lines 2–18; R.p.74, 13–R.p.76, line 23; R.p.79, line 4–R.p.81, line 25; Dashcam Video).

Officer Gibson asked Applicant for permission to search the car. He declined and defended his decision by claiming: (1) he was not the driver of the vehicle; (2) it was a rental; and (3) they were stopped for a simple traffic violation. Officer Gibson informed Applicant that he and Trappier's stories were not "adding up," noting they provided differing information on their destination, the extent of their stay in North Carolina, and even Trappier's name. Officer Gibson, suspicious of Trappier and Applicant, asked whether he could have his drug-detection K-9 sniff around the perimeter of the vehicle. Applicant protested claiming the dog was going to alert, and that "the dog always alerts," which would create probable cause for a vehicle search. Over Applicant's objections, Officer Gibson allowed his dog to sniff around the vehicle. The dog "alerted" outside the driver's side of the car. (R.p.46, line 19–R.p.47, line 15; Dashcam Video).

Officer Gibson searched the car and found an air freshener, and multiple phones. He discovered a jacket, which Applicant identified as his, inside of which was heroin.⁵ After this discovery, Officer Gibson arrested Applicant and Trappier. Officer Gibson subsequent search of the car uncovered two crack pipes, a small amount of crack, and additional cell phones (for a total of four). At the police station, Officer Gibson determined approximately 16.5 grams of heroin had been in Applicant's coat. Applicant confessed to ownership of the drugs and claimed he purchased them for one-thousand dollars.⁶ (R.p.54, line 13–R.p.65, line 21; R.p.112, lines 2–19; R.p.115, line 9–R.p.116, line 23; R.p.124, lines 5–15; Dashcam Video).

At trial, Officer Gibson testified he developed reasonable suspicion of drug activity after hearing Trappier's and Applicant's inconsistent statements regarding the location, scope, and

⁵ At the scene, without the benefit of testing, Officer Gibson misidentified the drugs as some crack/cocaine mixture. (R.p.82, line 13–R.p.83, line 8; R.p.137, line 15–R.p.138, line 2).

⁶ Applicant did not specifically identify the drugs as heroin. Rather, Officer Gibson asked him whether the crack/cocaine was his, and, without mentioning the name of the drugs, admitted purchased them. (R.p.55, line 18–R.p.56, line 7; R.p.122, line 21–R.p.124, line 15).

purpose of their trip to North Carolina as well as Trappier's name. His suspicion only deepened when Applicant claimed the drug K-9 would alert outside of the vehicle. (R.p.101, line 18–R.p.112, line 1; R.p.125, line 8–R.p.126, line 12).

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- (1) “Trial counsel was ineffective in failing to preserve for appellate review the unconstitutional search of the automobile I was riding in.”
- (2) “Trial counsel was ineffective in recommending that I waive a jury trial when the co-defendant was willing to testify that the drugs found in the automobile belonged to her.”

Applicant lists a “new trial” as requested relief.

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its “reasonableness under

prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced 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 can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the 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), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *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), SCRCPP.

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.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Request for an Evidentiary Hearing

WHEREFORE, having made its return, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 10, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
)
 KALVIN BROWN, #173109,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2019-CP-46-01504


AFFIDAVIT OF SERVICE BY MAIL

FILED-RECEIVED
 2019 AUG 29 PM 11:06
 DEBORAH HANLON
 C. C. P. CLERK
 YORK COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

DATED this the 20th day of August, 2019.


 Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-46-1504

KALVIN ROPEL BROWN,)
)
Plaintiff,)
)
-vs-)
)
STATE OF SOUTH CAROLINA)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

December 7, 2022
York, South Carolina

B E F O R E:

Honorable Walton J. McLeod, IV, Judge.

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

Mr. C. Rauch Wise
Attorney at Law
Attorney for the Plaintiff
Greenwood, South Carolina

Mr. Zachary Jones
Attorney at Law
Attorney for the State
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

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WILLIE F. BRADLEY, JR.

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E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
P-1	Motion to Suppress	8
P-2	Video	15

(REPORTER'S NOTE: All exhibits admitted into evidence during this proceeding were duly filed with the York County Clerk of Court's Office.)

1 THE COURT: All right. All right. Mr. Attorney
2 General, what's our next case?

3 MR. JONES: May it please the Court. The next case
4 is the matter of *Kalvin Brown versus the State of South*
5 *Carolina*, case number 2019-CP-46-1504. My name is
6 Zachary Jones for the State; Mr. Brown is here, along
7 with his attorney, Mr. Rauch Wise.

8 Mr. Brown was indicted in the -- by the August,
9 2015, Grand Jury of York County for trafficking
10 opium/heroin, 14 grams or more, that indictment number
11 being 2015-CS-46-2347. He was represented by Willie
12 Bradley and Patrick Sharpe and Assistant Solicitors
13 Marina Hamilton and Wesley Robinson prosecuted the case.

14 On February 24th of 2016, he proceeded to a Bench
15 trial before the Honorable Perry Gravely. Judge Gravely
16 found applicant guilty and sentenced him to 25 years
17 imprisonment and a fine of \$200,000.

18 He filed a timely notice of appeal and the South
19 Carolina Court of Appeals confirmed his conviction by an
20 unpublished opinion. The remittitur was issued on
21 February 1st, 2019.

22 Mr. Brown filed the present application for post-
23 conviction relief on April 30th, 2019, and now I'll turn
24 it over to Mr. Wise to begin his case.

25 THE COURT: And the sentence was ten years?

1 MR. WISE: Your Honor, --

2 MR. JONES: I'm sorry. The sentence was 25 years.

3 THE COURT: Twenty-five. Oh, okay. Go ahead.

4 MR. WISE: Your Honor, we've had -- this case been
5 around for a while and we've been back and forth on a
6 lot of the issues.

7 One of the issues that Mr. Brown
8 wanted was the question of the weight. We have actually
9 had those drugs re-weighed and we're withdrawing that
10 issue.

11 THE COURT: All right.

12 MR. WISE: Aside from that, we remain with all the
13 other issues.

14 THE COURT: All right. And the application -- the
15 amended application dated -- I don't see the date on it,
16 but --

17 MR. WISE: Should be on the very last page.

18 THE COURT: This looks like a copy, but it's not
19 signed. But, the bottom line is you're ready to proceed
20 on your amended application today?

21 MR. WISE: We are; uh-huh.

22 THE COURT: You ready to call your first witness?

23 MR. JONES: We are, Your Honor.

24 THE COURT: All right. Proceed.

25 MR. WISE: All right. I'd like to call Mr. Patrick

1 Sharpe first.

2 THE COURT: Yes.

3 (PATRICK C. SHARPE, being first duly sworn, was
4 examined and testified as follows):

5 DIRECT EXAMINATION

6 PATRICK C. SHARPE BY MR. WISE:

7 Q. All right. Mr. Sharpe, how did you come to
8 represent Mr. Calvin Brown?

9 A. At some point very late in the game, Mr. Bradley
10 gave me a call, I guess, whenever things were looking
11 like they're -- I guess they were in the trial docket,
12 but he gave me a call to see if I would be available to
13 assist him.

14 Q. All right. So Mr. Bradley got you involved in it?

15 A. That's correct.

16 Q. And that was when you first met Mr. Brown?

17 A. Correct.

18 Q. Okay. Do you recall when -- about when you got
19 involved in it?

20 A. From, like, a procedural stage, I want to say that
21 we were, like, right on the cusp of trial. It was very
22 late in the game, so to speak.

23 Q. Okay. And this case was tried -- this case was
24 tried in, looks like, February of 2016?

25 A. Sounds about right.

1 Q. So shortly before that?

2 A. Actually, now that you've given me that date, I
3 went into private practice, I believe I opened that
4 February, the 1st, February 1st, so it would have
5 probably been right about that -- you know, within that
6 thirty-day period.

7 Q. Yeah. You truly came in at the last minute?

8 A. I -- yeah.

9 Q. Okay.

10 A. I didn't -- now that you bring that up, I didn't
11 realize how last minute it was until --

12 Q. All right. So what was the basic issues that you
13 -- that you and Mr. Bradley saw in this case?

14 A. One of the issues was was the possession aspect,
15 because apparently the -- I want to say the driver of
16 the vehicle was going to come and say or she had been --
17 she -- I think she told the sheriff's department and the
18 solicitor's office that the drugs were hers.

19 Q. So when you got involved, you were aware of her
20 testimony?

21 A. Yeah.

22 Q. Okay.

23 A. I believe so. Yes.

24 Q. What were the other issues?

25 A. Other issues were, I remember that I argued a

1 motion to suppress the drugs based on, I want to say,
2 it's *U.S. versus Rodriguez* extending the traffic stop.

3 Q. Uh-huh. And the other was?

4 A. Uh, --

5 Q. Let me hand you this and see if this refreshes your
6 memory of issues y'all wanted to raise.

7 A. Thank you.

8 (WHEREUPON, the witness reviewed a document
9 provided by Mr. Wise.)

10 A. Yeah.

11 Q. Okay. Let me -- can you identify this?

12 A. Yes. It's a motion to suppress---

13 Q. Okay.

14 A. ---on the case.

15 MR. JONES: May I take a look at that, Your Honor?

16 MR. WISE: Yes.

17 (Whereupon, the referenced document was handed to
18 Mr. Jones for review.)

19 MR. WISE: Move to introduce this as Applicant's
20 Exhibit 1.

21 MR. JONES: No objection.

22 THE COURT: So admitted. You're moving into
23 evidence. Did I hear you correctly?

24 MR. WISE: Excuse me?

25 THE COURT: Did you move it into evidence?

1 MR. WISE: Yes.

2 THE COURT: Okay.

3 MR. WISE: Okay.

4 Q. All right. And you can use that to refresh your
5 memory rather than---

6 A. Thank you.

7 Q. ---rely on mine. All right. So what were the
8 issues identified in this case based on the pretrial
9 motion?

10 A. This motion, it looks like we were trying to
11 suppress any evidence found as a result of the stop, as
12 the traffic stop was unreasonably delayed and the
13 purpose for the stop was complete before any reasonable
14 suspicion of contraband was determined. Another issue
15 was any reference to the incident report of Jay Gibson,
16 which the contents of the report is a summary of what is
17 already captured on the dash cam video of the officer's
18 patrol car---

19 Q. Uh-huh.

20 A. ---and any reference to any alleged out-of-court
21 statements made by the defendant in this case as such
22 statement submitted by the officer is unreliable,
23 tainted and is highly suspicious under the facts of this
24 case.

25 Q. Okay. So, basically, you were pretty down to

1 whether or not you're going to let his statement come in
2 and whether or not the legality -- whether or not the
3 search was legal? Is that correct?

4 A. That's correct.

5 Q. All right. What do you know about the decision to
6 waive a jury trial in this case?

7 A. That was a decision that had been made prior to my
8 getting involved.

9 Q. Okay.

10 A. So I couldn't really --

11 Q. All right. Did you and Mr. Bradley ever discuss
12 that in any detail?

13 A. Not really. To my recollection, I believe that
14 had already kind of been decided.

15 Q. Okay. So this case was tried non-jury and have you
16 got a copy of the record in front of you? You don't.

17 A. No.

18 (Whereupon, the referenced item was handed to the
19 witness.)

20 Q. I'm going to hand you the record in this case.

21 A. All right.

22 Q. If you turn to page 56, -- let me back up. You
23 don't need to turn there yet. Let me -- were you
24 involved at all in the appeal in this case?

25 A. No, sir.

1 Q. Okay. The -- was there a pretrial motion in this
2 case?

3 A. Yes. I remember I argued the pretrial motion to
4 suppress the drugs based on the, like I said, I believe
5 it was *U.S. versus Rodriguez* delayed extending the
6 purpose of the traffic stop.

7 Q. All right. Was there any testimony taken in the
8 pretrial motion?

9 A. And when you say testimony, you mean like from a
10 witness.

11 Q. From witnesses.

12 A. I don't recall.

13 Q. All right. I believe, if you turn to about page
14 32, it should tell you. Actually, if you go back and
15 look at -- go back and start about page 6.

16 A. Six?

17 Q. Yeah. I believe Mr. Bradley actually started --
18 started the argument and then you took over and if you
19 look -- thumb through that and page -- to page 32, it's
20 pretty much, I think, the pretrial argument. And does
21 that reflect any testimony from any law enforcement
22 officers or anyone?

23 (Whereupon, the witness reviewed the referenced
24 document.)

25 A. I do not see any testimony.

1 Q. Okay. So it was just basically oral argument among
2 lawyers?

3 A. Correct.

4 Q. All right. And I think the judge finally ruled, on
5 page 32 at line 3, kind of a vague ruling where he said,
6 Based on this, I'm not sure there's really -- there's a
7 basis really to suppress it. Correct?

8 A. Correct.

9 Q. All right. Didn't prevent y'all from raising that
10 later?

11 A. Did -- no. Did not prevent us from --

12 Q. Okay. And really not a very definitive ruling at
13 that point?

14 A. Correct.

15 Q. All right. And in fairness to the judge, he didn't
16 have all the facts from the officers involved either,
17 did he?

18 A. Right.

19 Q. Okay. Now let's turn to page 56 of the transcript
20 and looking down at line 19, and you may need a running
21 start to that. On page 15 where the State introduced
22 State's Exhibit 1 and can you gather from that what
23 State's Exhibit 1 was?

24 A. It looks like, if I had to guess, it -- from what I
25 can see here, is the drugs.

1 Q. Right. Okay. All right. And did the defense
2 raise any objection to the drugs at that point?

3 A. It doesn't appear that there was.

4 Q. Now, how was the *Jackson versus Denno* hearing going
5 to be handled as far as the alleged confession of Mr.
6 Brown?

7 A. I do not recall.

8 Q. Excuse me?

9 A. I do not recall.

10 Q. You don't recall?

11 A. I don't recall.

12 Q. Okay. But that was a part of your motion?

13 A. Right.

14 Q. To suppress the statement pursuant to *Jackson*
15 *versus Denno*?

16 A. Correct.

17 Q. Okay. Did you and Mr. Bradley ever have any
18 conversation about how that would be handled?

19 A. I don't recall.

20 Q. Okay; all right. Now, on page 145 there was again
21 -- you renewed all motions at that point, on line 13.
22 You remember that?

23 A. Yes; yes. Sorry.

24 Q. All right.

25 A. I didn't know you were waiting for a

1 response. Yes, sir.

2 Q. And the Court -- and all motions including the
3 motion to suppress and all that? Correct?

4 A. Correct.

5 Q. All right. And the Court, on line 11 -- excuse me
6 -- 21 and 22 said basically, I think he could definitely
7 determine that that was following too close. Correct?

8 A. Correct.

9 Q. And one of the issues in this case was did the
10 officer observe the driver of the car Mr. Brown was in
11 following too close.

12 A. Correct.

13 Q. And do you recall the video?

14 A. Vaguely, and I do remember that, in my opinion, you
15 know, it didn't seem like she was following too close.

16 Q. Okay. Particularly, when he first pulled out. Is
17 that correct?

18 A. Correct.

19 MR. WISE: We're not going to ask this witness to
20 look at it, Your Honor, but before I forget about it, I
21 would like to introduce the video as an exhibit, which I
22 think the Court would have to review to rule in this
23 case.

24 MR. JONES: Your Honor, this -- if it is the video,
25 then I don't have a problem with that.

1 MR. WISE: It is.

2 MR. JONES: Okay.

3 MR. WISE: It is the one -- I will certify this is
4 the one that was actually sent to me by the South
5 Carolina Court of Appeals.

6 THE COURT: It's going to be Applicant's Exhibit 2?

7 MR. WISE: Correct.

8 THE COURT: All right. Admitted without objection.

9 Q. All right. So the only finding the judge made as
10 far as the motion to suppress was that there was
11 probable cause to stop the car because he was following
12 too close. Is that correct?

13 A. That's my understanding.

14 Q. Did he make any ruling about whether the stop was
15 extended or anything like that?

16 A. Nothing specifically on the record.

17 Q. Okay. And do you recall whether you or Mr. Bradley
18 at that point asked the judge to be more definitive in
19 his ruling?

20 A. I do not recall.

21 Q. Okay. At a *Jackson versus Denno* hearing, you're
22 aware that Mr. Brown would have had a right to testify?

23 A. Yes, sir.

24 Q. Is that correct?

25 A. Correct.

1 Q. Had y'all discussed with Mr. Brown his testimony at
2 a *Jackson versus Denno* hearing?

3 A. I don't specifically remember that.

4 Q. You don't have a recall of y'all sitting down and
5 going over a lot?

6 A. No.

7 Q. Okay; all right. And Mr. Brown denied making the
8 statements attributed to him?

9 A. Correct.

10 Q. And, now, at some -- was there some reason to give
11 credibility to his denial of making those statements?

12 A. I don't recall recall.

13 Q. Do you remember what the officer said the drugs
14 were?

15 A. I believe that the officer said that they were one
16 thing and they were actually maybe the other.

17 Q. All right.

18 A. I think maybe he said they were -- it was heroin,
19 but it was cocaine or --

20 Q. Said that it was cocaine and it turned out to be
21 heroin?

22 A. It was heroin. That's right; that's right.

23 Q. Okay; all right. So the officer on the video made
24 mention of cocaine. Correct?

25 A. Right.

1 Q. And then in his report that you mention in your
2 motion, he made mention of cocaine?

3 A. Right.

4 Q. All right. And that wasn't correct?

5 A. Right; yeah. That's right.

6 Q. At the end of all the testimony on page 237, there
7 was then again a motion to -- look at lines 17 through
8 19.

9 A. Yes, sir.

10 Q. Did you read that?

11 A. I did.

12 Q. All right. And then Mr. Bradley said, We would
13 also renew again our motion for suppression, as well as
14 motion for directed verdict. Correct?

15 A. Correct.

16 Q. And then on page 238 the judge simply -- looking at
17 lines 2 through 4, he simply denied the motion.

18 A. Correct.

19 Q. Correct?

20 A. Correct.

21 Q. Didn't go into any detail?

22 A. Did not.

23 Q. And neither of y'all requested that he go into more
24 detail as to the specifics of the suppression motion?

25 A. I don't believe so.

1 Q. Okay. Now, there was no objection -- are you
2 familiar with what happened on appeal?

3 A. I -- generally, I believe that the -- since there
4 was no objection during the introduction at trial, a -
5 wouldn't be the---

6 Q. Correct.

7 A. ---appeal.

8 Q. Do you recall failing to make that objection?

9 A. I don't recall that, but you know, transcript's
10 right here, so --

11 Q. Right. All right. And if there was no objection
12 made when exhibit 1 was introduced, would you agree that
13 that would be a failure to make that objection?

14 A. I would.

15 Q. All right. And let me find one other place.

16 MR. WISE: Give me just one second, Your Honor.

17 Q. And do you recall that -- whether or not there was
18 an objection to the drugs when they were again
19 introduced during the testimony of the SLED -- of the
20 lab person that did the analysis?

21 A. I don't recall.

22 Q. All right. Turn to 141 and look at lines 10
23 through 18 and read those to yourself, please.

24 A. Okay.

25 Q. Okay. You read them?

1 A. I read them. Yes.

2 Q. Okay. And that's where not only the drugs are
3 introduced again as exhibit 1, but exhibit 2, the SLED
4 report, was introduced. Correct?

5 A. Yes, sir. Yes, sir.

6 Q. And was there any objection to either one of those?

7 A. Not that I can see here.

8 Q. Okay. Give me one moment.

9 MR. WISE: No further questions.

10 THE COURT: All right. Cross-examination.

11 CROSS-EXAMINATION

12 PATRICK C. SHARPE BY MR. JONES:

13 Q. Thank you, Mr. Sharpe. Do you recall the
14 explanation given by the State as to why the traffic
15 stop was delayed?

16 A. I do not.

17 Q. All right. The --

18 A. I mean, I want to say it was because I don't think
19 they really had -- to my recollection, they didn't have
20 really a good reason, but I think that they were trying
21 to get the dog, drug dog, out there.

22 Q. Do you recall the officer or do you recall the
23 matter about the driver of the car giving a false name?

24 A. I do.

25 Q. All right. And this might just be more of an

1 argument for the Court at the end of summations since --
2 just based on the transcript, but the -- have you read
3 the Court of Appeals' opinion?

4 A. I did; yes.

5 Q. All right. And it was an unpublished opinion
6 pursuant to Rule 220(b) as to the straight-side (ph)
7 opinion?

8 A. That's my understanding.

9 Q. All right. I believe that -- I think you testified
10 to Mr. Wise, in response to his question, that on two
11 separate occasions you made the motion to renew all
12 prior objections?

13 A. Correct.

14 Q. And the motions were denied both times?

15 A. Correct.

16 Q. And in addition, you had the motion at the
17 beginning of trial to suppress all the evidence?

18 A. Correct.

19 Q. And that motion was denied?

20 A. That's right.

21 Q. I think that's the only questions I have for you,
22 Mr. Sharpe. Thank you so much.

23 THE COURT: Redirect?

24 MR. WISE: No redirect.

25 THE COURT: All right. The witness may step down.

1 THE WITNESS: Thank you.

2 MR. WISE: Call Mr. Bradley.

3 (WILLIE F. BRADLEY, JUNIOR,
4 being first duly sworn, was examined and testified as
5 follows):

6 DIRECT EXAMINATION

7 WILLIE F. BRADLEY, JUNIOR:

8 Q. Mr. Bradley, tell us, if you would, how you came to
9 represent Mr. Calvin Brown.

10 A. Mr. Brown was introduced to me through a mutual
11 friend of ours --

12 Q. Speak up just a little.

13 A. Sorry.

14 Q. All right.

15 A. Mr. Brown was introduced to me through a mutual
16 friend of ours whom lived in Kingstree, South Carolina,
17 which is where I'm from.

18 Q. Uh-huh.

19 A. They -- he and the mutual friend called me up and
20 they wanted to speak with me in my office on a Saturday,
21 at which time I did tell them I'd make myself available.
22 That mutual friend was one of my best friends and he'd
23 gone away and wound up doing some time and he told me he
24 wanted me to see if I could help someone, a friend of
25 his, and I told him I'd do the best I can. Yes.

1 Q. So when did you first meet Mr. Brown?

2 A. Mr. Wise, I can't exactly recall that, but it would
3 have been, I'll say, at least four months to five months
4 out from when the trial was, if not longer.

5 Q. All right. He was -- do you recall when he was
6 arrested?

7 A. I do not. Not the exact date.

8 Q. But it was -- how long -- do you recall how long
9 this case had been pending when it finally went to
10 trial?

11 A. I don't recall at this time. I knew that we were
12 going to be placed on a trial docket, but was hoping
13 that we would still have enough time to be prepared to
14 move forward on it.

15 Q. Okay. And do you recall what he was originally
16 arrested for, as opposed to what he was indicted for?

17 A. I -- what I recall, I think he was arrested for
18 trafficking cocaine over -- I don't know what the
19 threshold level was, but it was a trafficking cocaine
20 and it was -- I know it carried a mandatory 25-year
21 sentence, so I would say it may have been over maybe a
22 14 to 28 grams---

23 Q. All right.

24 A. ---or somewhere around in there.

25 Q. And he was ultimately indicted, I believe, for

1 trafficking heroin?

2 A. Yes, sir.

3 Q. All right. Do you ever recall whether he went back
4 in and was re-arrested on the charges in the indictment?

5 A. I don't recall, but I do not remember myself being
6 the person that had gone with him---

7 Q. Okay.

8 A. ---if he had done that. I know I did not -- would
9 not have been representing him at that time, but, no, I
10 don't -- I do not recall him being re-arrested.

11 Q. Uh-huh. Did you actually have a formal contract
12 with Mr. Brown?

13 A. I am sure I did. I was in the -- I always did
14 that. I'd been practicing for probably about seventeen
15 years by that time, maybe 16, so normally I would have
16 done that.

17 Q. And the reason was just a concern about the date
18 more than anything else?

19 A. Okay. Yeah.

20 Q. 'Cause that would have a date on it.

21 A. I -- I'll be honest with you, you and I spoke
22 several times---

23 Q. Uh-huh.

24 A. ---and because of certain things that I've had come
25 up, I was not able to locate a lot of the -- well,

1 really, I was only looking for the video. I did have a
2 copy of the file, but those were the things that you
3 asked for on the video.

4 Q. Right.

5 A. I did go back and look through some of those files,
6 Mr. Wise, but I don't recall the exact date. I'm sorry.

7 Q. Okay. You went back and looked through Mr. Brown's
8 file?

9 A. I did; I did.

10 Q. You did find it, then?

11 A. I can't recall. It's been about two years now
12 since you first called me and since then, I've gone
13 through several seizures and hospital procedures, so --

14 Q. Well, I was going to say you've had to close your
15 office down---

16 A. I have.

17 Q. ---since this case?

18 A. Yes, sir.

19 Q. Okay. And to what extent you're working, you're
20 working from home?

21 A. I am working from home and I'm probably only
22 working about a little under half of what I was working
23 then---

24 Q. Okay.

25 A. ---because of the issues I have.

1 Q. All right. So you recall meeting with Mr. Brown?

2 A. Certainly.

3 Q. Right? In your initial discussions with him, what
4 was the theory of issues that are involved in this case?

5 A. The issues were similar to what Mr. Sharpe just
6 mentioned.

7 Q. Uh-huh.

8 A. I was trying to --

9 Q. And excuse me. I don't want to interrupt you, but--
10 --

11 A. Oh. Okay.

12 Q. ---the motion is there if you want to use that to
13 refresh your memory, sir.

14 A. Well, I mean, the issues were exactly as he stated.
15 I don't think we got into the actual conversation about
16 a *Jackson* hearing until Patrick actually came abroad,
17 but I can remember the first several times we talked
18 about just what had happened. I mean, we did not -- I
19 didn't develop any theory of the case because I hadn't
20 looked at any of the discovery on the case.

21 Q. Uh-huh.

22 A. I was only going by what my client had told me. He
23 wasn't my client at the time, but until we actually
24 engaged, and so I was basically just an advisory person
25 and I think he was determining whether or not he really

1 wanted me to move forward on that case, as well as what
2 would be the charges on that --

3 Q. All right.

4 A. -- I mean, what I would be able to charge on that
5 case, and it took me a while to determine whether I was
6 actually going to represent him and what the charge
7 would be.

8 Q. So leave aside for a moment the *Jackson versus*
9 *Denno* issue---

10 A. Certainly.

11 Q. ---because that would not have been---

12 A. Yeah. That's --

13 Q. ---obvious until you got some discovery. So before
14 you got any discovery in this case, what was the real
15 issue in the case?

16 A. Whether or not --

17 Q. Or issues.

18 A. Whether or not Mr. Brown actually had knowledge of
19 the drugs that were found in the car and what those
20 drugs were.

21 Q. Uh-huh.

22 A. Whether they were cocaine, whether they was heroin,
23 were they some other illegal substance or whether they
24 were illegal at all.

25 Q. Right. In your discussions with Mr. Brown, did you

1 discuss with him anything about the traffic stop?

2 A. He mentioned to me about the traffic stop, but yes,
3 that came later on down the line---

4 Q. Okay.

5 A. ---where we did get into the traffic stop and that
6 would have been just before I got a copy of the disk

7 Q. Okay. So Mr. Brown, obviously, ultimately retained
8 you to represent him?

9 A. We both came to a mutual agreement that I would
10 represent him. Yes.

11 Q. Okay; all right. And about how many times you
12 think you met with him prior to the trial in February?

13 A. Oh. I would say no less than seven to eight times
14 and maybe up to ten times, because we had met several
15 times before then when I was not -- I hadn't agreed to
16 represent him at that time yet.

17 Q. And you had a chance to go over with him with the
18 incident report from Officer, I believe, Gibson?

19 A. Did I -- you said did I go over --

20 Q. Did you go over that report with him?

21 A. I'm sure I did during the course of our meetings.
22 I can't tell how early it was in the process, though.

23 Q. And do you recall in that incident report there
24 being an alleged statement given by Mr. Brown?

25 A. Yes. I think it was in the incident report where

1 the officer alleged that Mr. Brown had said, after he
2 had gotten to the station, that the drugs may have been
3 his, that he had taken ownership of the drugs or
4 something to that effect.

5 Q. Right. And, of course, suppression of that
6 statement would be important?

7 A. Certainly. And I think at that point we noted that
8 that was one of the things that if I were retained that
9 we would have to look at. That would have been one of
10 the bases for moving forward.

11 Q. And that was in your motion also to suppress---

12 A. Certainly.

13 Q. ---that was filed?

14 A. Certainly.

15 Q. All right. That's Applicant's Exhibit 1.

16 A. Yes, sir.

17 Q. Now, when did the discussion come with Mr. Brown
18 about waiving a jury trial?

19 A. Oh.

20 Q. Let me back up. Let me back up one second.

21 A. Okay.

22 Q. I'm going to try to keep in more order.

23 A. Sure.

24 Q. When did you become aware of a statement by the
25 driver of the car in which she was claiming

1 responsibility for the drugs?

2 A. Oh. I will say it was probably maybe about the
3 second or third time Mr. Brown and I met where we got
4 into further detail every time we would meet and he
5 mentioned to me that -- about the young lady that was
6 actually driving the car and that those were her drugs.
7 And the next time or the time after that, she actually
8 showed up with Mr. Brown at my office and at that point--
9 -- and I stopped her from talking to me and that's
10 actually when I called Mr. Sharpe in for the very first
11 time, because I told both of them that I was not going
12 to listen to that, that I needed to have a separate
13 counsel advise her of her rights and I had a friend that
14 I knew, because Pat and I had worked together on some
15 other cases and that when she came down the next time
16 that I would have that attorney there and that's when
17 Mr. Sharpe first came to meet with her. That's why he
18 was brought in initially.

19 Q. Okay. Do you recall, did the State ever give you a
20 copy of her statement prior to the actual trial?

21 A. I don't recall. That certainly could have been the
22 case; it may have not. I haven't been able to -- I
23 can't be certain of that.

24 Q. Let me check real quick. Turn, if you would, to
25 page 190 of the transcript.

1 A. Yes, sir.

2 Q. And look at -- excuse me -- 189 first and read
3 where your direct examination of her begins on line 22
4 and I would just say read until your memory is refreshed
5 enough to answer questions about her statement.

6 (Whereupon, the witness reviewed the referenced
7 document.)

8 A. I recall the statement that she had. I don't
9 recall -- I think I do recall receiving a copy of that.

10 Q. Okay. And if you'd turn over to page 199 and you
11 actually, at line 21,---

12 A. Uh-huh.

13 Q. ---I believe you actually introduced the statement
14 as an exhibit?

15 A. Yes.

16 Q. Okay. And then over on page 200 at line 20 through
17 23, does that mention when she mentioned that she gave
18 the statement?

19 A. It does. It says around November.

20 Q. All right. And that was in November before the
21 trial in February?

22 A. Yes. That would have been about two months before,
23 three months before trial. Two or three months.

24 Q. And do you recall -- it may be difficult for you to
25 recall when you got that statement from the solicitor's

1 office?

2 A. Well, the problem is I don't recall whether I got
3 the statement from the solicitor's office or whether I
4 got the statement from -- yeah; I did get it from the
5 solicitor's office. I cannot recall when,---

6 Q. All right.

7 A. ---but I do remember getting it from the
8 solicitor's office.

9 Q. All right. Obviously it would have been after --

10 A. And --

11 Q. -- after November before trial?

12 A. It would have been sometime around that time, but I
13 remember, because the solicitor actually called me and
14 she told me that the person -- the young lady who was in
15 the car had come back up there and had given a
16 statement.

17 Q. Okay.

18 A. Yes. And that is right around the time that,
19 again, I would have called Mr. Sharpe, and so it would
20 have been right around that time.

21 Q. Okay; all right. So when did you have a
22 conversation or how'd your conversation with Mr. Brown
23 about giving up a jury trial come about?

24 A. It wasn't -- I didn't say give up a jury trial. I
25 just told -- I told Mr. Brown that there were two ways

1 to proceed in a case like this, that he could actually
2 -- he had the option of deciding whether or not he
3 wanted a jury trial or whether or not he wanted a Bench
4 trial. We talked about the dynamics of both and that is
5 something that I give just about every client that is
6 going to trial, the option of whether or not they want
7 to choose a jury or whether or not they want to proceed
8 before a judge. I do that sometimes based on the
9 credibility of the people, the witnesses that I speak
10 with, as well as the credibility of the persons,
11 everyone who's going to testify. In this particular
12 case, I can't recall exactly, you know, what the
13 conversation was, but I do remember us talking more than
14 one time about whether or not he should have a Bench
15 trial or a jury trial and I know that at the end, prior
16 to us coming to trial a couple of weeks, Mr. Brown was
17 certain that he was going to go before the judge.

18 Q. Now, when you had discussions with Mr. Brown about
19 waiving the jury trial, were you aware of the young lady
20 who was going to come in and testify that the drugs were
21 hers?

22 A. The first time, I don't think I was, but certainly
23 after that, yes, sir.

24 Q. Okay. How did that fact impact your advice on
25 whether or not to seek a jury trial?

1 A. I can recall that, you know, it was that the judge
2 can either accept it or the judge cannot accept her
3 testimony. It's a matter of whether or not twelve
4 people are going to agree with you or maybe just one
5 person may hold out or whether, in the case with the
6 judge, whether or not the judge is going believe her
7 testimony, because the judge is the finder of fact at
8 that point and he's going to be judging the credibility
9 of the witnesses and so it was more in the understanding
10 of whether or not you would want that judge to be the
11 one or whether or not you would want those twelve
12 people to be one. We also spoke about geographical
13 area, as well as the demographics of what a jury may
14 look like, and all those things were discussed in
15 detail.

16 Q. You had a chance to meet this Monique, I believe it
17 was, Tapier (ph)?

18 A. I --

19 Q. You had --

20 A. I think that's her name.

21 Q. You had a chance to meet with her--

22 A. I did.

23 Q. ---before the trial. Right?

24 A. Yes, I did.

25 Q. And from your meeting her, did she have some

1 credibility?

2 A. She did have some credibility.

3 Q. All right. She had some value?

4 A. She had some baggage and at certain times, I guess
5 it just depends on what her mood was at the time when
6 she -- when she was there at that time, because I saw
7 several sides of her. I saw signs when she was angry; I
8 saw times when she was not angry and I did have some
9 worries or concerns about how she would appear before a
10 jury, but I had those concerns about how she would
11 appear before the judge as well.

12 Q. All right; all right. And when she testified, I
13 mean, she, quite frankly, admitted she was a serious
14 addict?

15 A. Certainly.

16 Q. And had been for quite some time?

17 A. Certainly.

18 Q. All right. And I think her testimony, basically,
19 was the drugs were for personal use.

20 A. Exactly.

21 Q. Okay. So did you talk to Mr. Brown about the fact
22 that if we have twelve jurors and just one juror
23 believes her, that you have to do it over, but if you do
24 it in front of a judge and the judge doesn't believe
25 her, then it's over, so to speak?

1 A. We discussed in full the entire dynamics of the
2 jury versus the judge and so, yes, I'm sure that would
3 be -- that would certainly be one of the dynamics that
4 would happen in a judge trial versus a jury trial. Do I
5 specifically remember the words I used? I do not, but
6 certainly we discussed it on more than one occasion.

7 Q. Now, let's go back to the trial of this case. At
8 the beginning of it, you made a verbal motion to
9 suppress or you made a written motion first and then put
10 it on the record on page 32 of the transcript at lines 8
11 through 11, if you would turn to page 32.

12 A. Certainly.

13 (Whereupon, the witness complied with the request
14 of counsel.)

15 Q. And then, actually, on 32 you're talking about
16 suppressing the confession and the statements and the
17 report.

18 A. Am I on page 8?

19 Q. Thirty-two.

20 A. Page 32?

21 Q. Yeah, line 8.

22 A. Okay.

23 Q. Or, actually, if you wanted to get a running
24 start, go back to line 5.

25 A. Okay.

1 (Whereupon, the witness reviewed the referenced
2 document.)

3 A. Okay.

4 Q. You're referring there primarily to his statement
5 that you wanted to suppress.

6 A. Just the confession, yes.

7 Q. Right. And that would be pursuant to, I assume,
8 a *Jackson versus Denno* hearing?

9 A. Yes. That would be.

10 Q. What did you mean there when you said, "So we'll
11 just handle that during the trial, Your Honor"?

12 A. I don't know exactly what I was saying, but I knew
13 that once the officer would actually take the stand that
14 as opposed to the judge having a evidentiary hearing, a
15 *Jackson* hearing that since he was gonig to be the finder
16 of fact, that that would certainly still -- that would
17 sort of substitute for that hearing. The judge would
18 still hear it, so it wasn't like a jury would hear it
19 and the judge would actually have the right to rule on
20 it at that time or around that time that it was
21 introduced.

22 Q. All right. So let's go to page 63 of the
23 transcript and look at lines 13.

24 A. Okay.

25 Q. And that's when you interpose an objection based on

1 a pretrial motion.

2 A. Yes.

3 Q. All right. At that point did you ask the judge to
4 have a full-blown *Jackson versus Denno* hearing when Mr.
5 Brown could testify about that alleged statement?

6 A. I did not.

7 Q. Okay. Had you discussed with Mr. Brown the need
8 for his -- him to testify at a *Jackson versus Denno*
9 hearing?

10 A. I did not.

11 Q. All right.

12 A. I -- let's say, I don't recall having---

13 Q. Okay.

14 A. ---that conversation, because it would stick out in
15 my mind; I would remember.

16 Q. Then you understand that in your conversations with
17 Mr. Brown he denied making any statement?

18 A. I'm sorry?

19 Q. He denied making the statement that was in the
20 incident report?

21 A. Yes, he did.

22 Q. Okay; all right.

23 A. He denied it. I'm sorry.

24 Q. All right. And is there some logic inherent to his
25 position that he didn't make that statement, aside from

1 his credibility?

2 A. I guess I don't understand what you mean.

3 Q. All right. Let me rephrase it. Did the officer,
4 in his testimony about when he was having a discussion
5 with Mr. Brown as to what the drugs were, mention they
6 were cocaine?

7 A. Yes. Judging from the transcripts and Mr. Brown;
8 yes.

9 Q. And it turned out they were hers?

10 A. Certainly.

11 Q. All right. So if Mr. Brown admitted possessing
12 cocaine, would there be some inherent logic there that,
13 in reality, he didn't know what the drugs were, 'cause
14 they turned out to be heroin.

15 A. And you said would there be some inherent logic in
16 there?

17 Q. Right.

18 A. What do you mean by that?

19 Q. Well, I mean, if a person is confessing to
20 possessing the drugs were in the car,---

21 A. Uh-huh.

22 Q. ---would you assume the person would know what the
23 drugs are?

24 A. Oh, yes. I certainly would. And I don't remember
25 whether or not it was -- we had that discussion. We had

1 several discussions about what the drugs were and, you
2 know, he certainly said he did not make that statement.

3 Q. All right; all right. And had you conducted a
4 full-blown *Jackson versus Denno* hearing, Mr. Brown would
5 have been allowed to testify. Correct?

6 A. Yes.

7 Q. And he would have been allowed to testify that he
8 didn't make the statement and the circumstances
9 surrounding when he -- when they claim the statement was
10 made?

11 A. Yes.

12 Q. Right. And he -- his credibility would have then
13 been for the judge to pass upon as to whether or not the
14 statement should be admitted?

15 A. Correct.

16 Q. All right. But you never introduced -- you never
17 put Mr. Brown on the stand to refute that statement in
18 any way?

19 A. You know, I think we generally came to understand
20 that not whether Mr. Brown's credibility, but, you know,
21 we had to take a lot into consideration in judging his
22 credibility, as to whether or not his prior record would
23 come in, which as --

24 Q. Uh-huh.

25 A. -- as I looked at it and I had several detailed

1 conversations. There were several burglaries; there
2 were a lot of things that were considered crimes of
3 dishonesty that would have come in and so those were
4 reasons that, number 1; number 2, he decided not to
5 testify or take the stand, and that may have played into
6 my decision not to put him on the stand at that time
7 that we had to do it.

8 Q. But the decision for him to testify was made much,
9 much later in the trial, was it not?

10 A. Well, no, not -- between me and Mr. Brown, no. I
11 mean, we had already discussed that Mr. Brown, he --
12 he'd already informed me he was not going to take
13 the stand, but certainly the judge gave the instructions
14 and he had a chance to reconsider that at that time.
15 Now, I guess what you're saying is at this time he
16 wasn't given a chance to reconsider whether or not to be
17 put on the stand for the evidentiary hearing.

18 Q. All right. But the judge -- so in an effort to
19 refute the allegation of Officer Gibson, there was going
20 to be no testimony refuting exactly what he said if you
21 did not put Mr. Brown up. Would that be correct?

22 A. I don't think there was going to be testimony. I
23 think what we were going to look at was the fact that
24 they had, at several times, certain other aspects of it
25 was recorded, such as the stop on the outside, that they

1 knew how to use the recording devices, that they had a
2 habit of recording those things, and that the fact that
3 they did not recuse a statement that they were using as
4 a self-serve statement, certainly would allow Your Honor
5 to see that. They broke protocol and based on that,
6 that that would have been sufficient reason for them to
7 not allow that to come in. They had a procedure and a
8 policy of doing that and in that particular instance, it
9 was not recorded and that in that instance, that is
10 certainly -- would raise a red flag that Mr. Brown may
11 have not said those things, and I think that we relied
12 on that much more so than we were Mr. Brown's testimony.
13 We let their policies and procedures kind of speak for
14 itself.

15 Q. All right. Now, the only real record Mr. Brown had
16 was some false statement to a law enforcement agency
17 some years earlier?

18 A. Well, from what Mr. Brown and I had discussed, he
19 had several -- he had burglaries and I think Mr. Brown
20 -- I remember him telling me that he had to plead to a
21 burglary charge and he was actually -- he'd actually
22 taken several of the burglaries because they had made
23 him an agreement that they would only had charged him
24 with the same amount of time, but there were several
25 burglaries, and I may be right or wrong, but they had

1 charged him with nine. He didn't admit he didn't do
2 those nine burglaries, but that he was charged with
3 that, and I may be saying burglary for robbery. It's
4 been a while, but I do remember us having that
5 conversation, because I know that the first time he
6 served time, he was in jail with my buddy and my buddy
7 did serve about 14 years.

8 Q. And these were old charges that would have been
9 beyond the ten years?

10 A. It would have been right around that time. I know
11 my buddy got out in '06 and so this would have been
12 around 2015, I'm assuming.

13 Q. All right.

14 A. So it would have been around nine years from -- and
15 I did not have the exact dates, but that would have been
16 something that I would have looked at as well.

17 Q. Hold on one second.

18 A. Certainly.

19 Q. I thought I had that marked and I don't. All
20 right. Turn to page 224 of the transcript.

21 A. Certainly.

22 THE COURT: May I have that page again, please?

23 MR. WISE: 224.

24 A. All right. 224.

25 Q. At line 15. Let me back up. Line 10, where it

1 starts with, "The Court," and the Court says, "Before we
2 -- I guess everybody is aware of what any charges are if
3 there are any impeachable charges," and the solicitor
4 says, "There are, Your Honor." Correct?

5 A. That's correct.

6 Q. And what is the one impeachable charge the
7 solicitor gave?

8 A. He has given false information to the police from
9 2007, Your Honor.

10 Q. Okay. And that was the only one mentioned?

11 A. That's the only one she mentioned at that time.
12 Yes.

13 Q. Okay. As a practical matter, since this case was
14 tried non-jury, the judge knew of his prior conviction
15 in 2007. Correct?

16 A. Correct.

17 Q. All right. So should your concern about the judge
18 knowing of the prior conviction have been a factor in
19 your decision of whether or not he testifies at a
20 *Jackson versus Denno* hearing?

21 A. It was, because I had a copy of his rap sheet given
22 to me in discovery.

23 Q. All right. I understand that, but the judge was
24 going to know about it anyway.

25 A. I would have thought so.

1 Q. All right. So how was Mr. Brown prejudiced by the
2 -- by his testifying and being asked on cross-
3 examination if he had been convicted of false statement
4 to a law enforcement officer?

5 A. Well, I guess what you're saying is this occurred
6 during the time that we were actually in trial. Our
7 conversations as to whether or not -- in my judgment as
8 to whether or not he was going to be a credible witness
9 and those things were going to come out were based on
10 the discovery information that I had received and the
11 conversations I had and I had known from talking with
12 him, as well as his best friend, probably a little more
13 than what Mrs. Hamilton had said here. I can't tell you
14 what, you know, she had, but I know what I had and I
15 know what had been told to me.

16 Q. All right. So it was your decision that -- well,
17 back up.

18 A. Can I clarify?

19 Q. Yeah, please do.

20 A. I want to say --

21 Q. And let me think of my question.

22 A. I don't think it was my decision. I'll be honest
23 with you, in the middle of a trial, you know, you're
24 thinking about a lot of things and if I had to go back
25 and I had a lot of time to reconsider and to actually

1 catch that, that she had not said that, I was -- I'm not
2 even sure that I was focused on that at that time, and
3 now in discussing it with you, I see your point that
4 you're making. I'm not the sharpest arrow that ever
5 fell off the branch, but certainly when you're in the
6 middle of a trial, especially with Mr. Brown, because he
7 had become a friend and I wanted nothing more than to do
8 the best that I can for him and, you know, it was -- it
9 could have been something that I could have missed. So
10 I don't want you-all leaving here thinking I made a
11 conscious decision not to do that, but when I did make
12 -- have the conversation with him, those were things
13 that popped into my mind as to whether or not these
14 things would come in and he and I had discussions about
15 them in detail.

16 Q. Right. So did you have discussions with Mr. Brown
17 about how you were going to attempt to keep out the
18 alleged statement he made to Officer Gibson?

19 A. Oh, yeah. We had conversations about how we were
20 going to do it and we -- basically, one of the ways were
21 going to be a pretrial motion, which is why I brought
22 Pat in. Once I realized that there was not a conflict,
23 that the two witnesses were on the same side, then I
24 brought Pat in and Pat -- to work with me and once he
25 decided he was going to work with me, that was the

1 assignment that Patrick had. And that was -- he solely
2 focused on that and I focused on the other niceties that
3 we were bringing up in trial.

4 Q. Did you have a discussion with Mr. Brown about his
5 testifying in a *Jackson versus Denno* hearing?

6 A. I -- not specifically in a *Jackson versus Denno*
7 hearing, but about him testifying at all.

8 Q. All right. So you didn't discuss with him --

9 A. The specifics of the *Denno* hearing.

10 Q. -- the specifics or the need for him to get on the
11 stand and tell the judge, "I didn't make that
12 statement"?

13 A. No, I did not.

14 Q. All right.

15 A. Not that I can recall. No.

16 Q. All right. Now, you spent quite some time with Mr.
17 Brown.

18 A. And if I may go back and clarify, I did not call it
19 a Brown hearing at that time --

20 Q. A *Denno* hearing.

21 A. -- a *Denno* hearing. I called it an evidentiary
22 hearing and we did have those discussions, but it was
23 not in the context of, you know, hey, you know, you're
24 going to have -- I did tell him he was going to have to
25 take the stand in those hearings, but he did not say,

1 "No; I did not want to take the stand" at that time, but
2 we did have a general understanding that we did not want
3 certain things to come in which may have prejudiced the
4 judge or the jury, because we hadn't finalized at that
5 time, sir, whether or not it was going to be before the
6 judge or a jury. We made that final determination once
7 -- it was made at the last when he said, "I am going to
8 take the trial," before -- he made up his mind that he
9 was going to take the trial before the judge, because we
10 had several conversations about that and it was sort of
11 an ongoing thing. It wasn't just a one-time
12 conversation.

13 Q. And I think in fairness, and I'll have to find the
14 page 'cause I haven't got it in front of me right now,
15 --

16 A. Okay.

17 Q. -- did not the judge make mention in pretrial
18 motions about a *Jackson versus Denno* hearing?

19 A. Oh. He did. Yes.

20 Q. I think he called it a *Jackson* hearing.

21 A. Hearing. He did.

22 Q. All right. So when you made pretrial motion, no
23 live testimony was taken?

24 A. I don't recall.

25 Q. Well, go --

1 A. I haven't looked back in a while, sir.

2 Q. All right. Go back --

3 A. I'm sorry.

4 Q. Go back and look at, I believe, starting on page 6.

5 A. I'm going to agree with you. I don't recall any
6 live testimony,---

7 Q. Okay.

8 A. ---but I'll go back and take a look, just to be
9 accurate.

10 Q. And can you explain to us, then, the reasoning
11 behind doing a pretrial motion without taking live
12 testimony from the officer involved?

13 A. No. I just didn't -- I think based on what the
14 judge had said about his ruling that he was going to
15 deny the pretrial motions at that time, that he would
16 have, again, maybe come back to that during the time we
17 made our motions for a directed verdict and renewed the
18 prior motions that we had made and so, you know, the
19 judge would have had a chance to hear the officer
20 testify and at that particular point I think that he
21 would have made a determination as to whether or not he
22 would grant or deny our pretrial motion to suppress.

23 Q. All right. Turn to page 56 of the transcript.

24 A. Certainly.

25 (Whereupon, the witness complied with the request

1 of counsel.)

2 Q. All right. And look at line -- well, look at line
3 -- starting line 15.

4 A. Okay.

5 Q. And read that down to about line -- where you say,
6 "No objection."

7 (Whereupon, the witness reviewed the referenced
8 document during which the electrical power was
9 interrupted and discussion conducted off the record.)

10 Q. Okay. So you've got, on page 56, --

11 A. And I didn't go back any further, but is that the
12 substance that he was -- that they were showing?

13 Q. And that was exhibit 1, which I believe has been
14 identified as the drugs involved in the case.

15 A. Okay. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. So when the drugs were introduced through the
19 officer,---

20 Q. Uh-huh.

21 A. ---you raised no objection.

22 A. I did not, apparently, according to the transcript.

23 Q. Okay.

24 A. No. I did not.

25 Q. And that was -- what did the Court of Appeals have

1 to say about the motion to suppress in their --

2 A. I think the Court said that it was not properly
3 preserved.

4 Q. Okay; all right.

5 A. I did read that, but it's been -- it's been a
6 while.

7 Q. All right. Now, on page 63, after you objected to
8 the statement by the officer, the judge said, "I think
9 it really goes to weight. I'll be glad to -- do you
10 have any" -- well, go back and read pages -- lines 17
11 through 23 again.

12 (Whereupon, the witness complied with the request
13 of counsel.)

14 THE COURT: Mr. Wise, what page you on?

15 MR. WISE: Oh. Excuse me; 63.

16 A. Okay.

17 Q. Do you know what the Court meant there when they
18 say, "I think it really goes to weight. I'll be glad
19 to," and then doesn't follow anything else?

20 (Whereupon, the witness reviewed the referenced
21 document.)

22 A. I don't,---

23 Q. Okay.

24 A. ---not at this particular time out of context. I'd
25 probably have to read a little bit more, probably a lot

1 more, to get a full understanding.

2 Q. And then on page 64, beginning at line 3 through
3 10, he gives another statement that Mr. Brown allegedly
4 made, does he not?

5 A. He does.

6 Q. All right. Was any objection taken to that
7 statement?

8 A. I thought I saw where I objected, but that was on
9 the last statement.

10 Q. Uh-huh.

11 A. No, not at that time.

12 Q. Okay. And that was, again, a statement that you
13 wanted to exclude pursuant to the *Jackson v. Denno*
14 hearing?

15 A. It was.

16 Q. Okay. Then turn to page 145---

17 A. Okay.

18 Q. ---at line 21. Well, let me back up a second. Mr.
19 Sharpe, at line 13,---

20 A. Uh-huh.

21 Q. ---at the end of the State's case, -- I don't think
22 this is quite at the end, but he says, "Your Honor, at
23 this time defense would renew all objections, pretrial
24 motions." Correct?

25 A. Okay. That's correct.

1 Q. And the judge, in denying it, he says, "I think he
2 should definitely determine that that was following too
3 close," meaning the driver of Mr. Brown's car was
4 following too close. Correct?

5 A. That's correct.

6 Q. Read through there through line 9 on page 146.

7 (Whereupon, the witness reviewed the referenced
8 document.)

9 A. Through which -- which line on that page do you
10 want me to go to?

11 Q. Through line --

12 A. I'm on line 12.

13 Q. -- line 9.

14 A. Okay.

15 Q. All right. That's when the judge is ruling again
16 on your pretrial motions. Correct?

17 A. Yes, sir.

18 Q. Did he ever rule in there anything about the search
19 being illegal or improper?

20 A. I mean, if we filed a motion that the search was
21 improper, then certainly yes, he did, but if we did not,
22 he only ruled on all motions. He said, "I've looked at
23 all motions," but he denied the other three as well, the
24 other two were denied as well, so I assume that would
25 have been any motion we had made.

1 Q. But he never specifically said the search was
2 constitutionally okay?

3 A. Not that we discussed today and not what he just
4 said in that part that you had me read. No, sir.

5 Q. And in the pretrial motions he didn't say it
6 either, did he? Just said, I deny them.

7 A. Not that I recall.

8 Q. Okay.

9 A. He just said he denied them at that time.

10 Q. Did you call to the attention of the judge at any
11 time or should you have called attention to the judge
12 of, Judge, we're raising an issue concerning the
13 prolonged stop, not just the probable cause to stop?

14 A. Well, my understanding was, because he denied all
15 motions that we had made, that that motion was being
16 denied as well, and, I mean, I could have -- I probably
17 could have at that point made some specificity about
18 each individual motion and go through each individual
19 motion we had filed, and maybe in that instance it may
20 have been properly preserved or to make sure that he had
21 properly considered each of the motions, but I don't see
22 here where I had done that, but I did understand him to
23 be making more of a conclusory statement that every
24 motion that you all have made or raised, either written
25 or orally, would have been denied.

1 Q. The motion you filed really contains no real facts,
2 does it?

3 A. I --

4 Q. You can look at it.

5 (Whereupon, the witness reviewed the referenced
6 document.)

7 A. No. I don't see a whole lot of facts. I mean, it
8 just talks about what the -- what the issue was at the
9 time.

10 Q. Do you recall at any time in this transcript that
11 you argued to the judge, "Here are the facts that make
12 the stop prolonged and unconstitutional"?

13 A. I don't recall. I have not been drawn to my
14 attention today and I don't recall because it was -- it
15 was years since I've read through a copy of the
16 transcript.

17 Q. And on page 146 at line 14 and 15 you, again, made
18 a motion for directed verdict?

19 A. At line 14, we made a motion -- "We'll be making a
20 motion for a directed verdict at this time"?

21 Q. Uh-huh.

22 A. "Do you want to hear that now?" "Yes, sir." Okay.

23 Q. And then you argued the facts of the case several
24 -- you know, over several pages.

25 A. Yes. It looks like I did, and as I read through

1 it, it kind of -- it refreshes my memory somewhat.

2 Q. But, again, there you did not talk about or cite
3 cases to the proposition that this was an
4 unconstitutional search because the traffic stop was
5 prolonged?

6 A. I -- no, sir. I did not see where I had done that.

7 Q. I mean, I think you argued, it was pretext, that
8 following too close really wasn't a good---

9 A. It was pretext.

10 Q. ---choice for places, but okay. And then on page
11 160, --

12 THE COURT: One six zero?

13 MR. WISE: One six zero. Excuse me.

14 Q. Let me go back. On page 154 through 158 the State
15 argues in response to your motion.

16 A. Okay.

17 Q. All right. And you can glance through it,
18 particularly, beginning on page 155.

19 (Whereupon, the witness reviewed the referenced
20 document.)

21 A. Yes, sir.

22 Q. All right. The State basically just argues the
23 factual basis for the conviction. They don't argue --
24 they really don't argue anything against the motion to
25 suppress?

1 A. I didn't. I mean, she just relied on -- she just
2 argued the *Barbosa* case and you're correct.

3 Q. And that was a case that basically says if it's
4 illegal drugs, you bear the risk of what it is.
5 Correct?

6 A. That's correct.

7 Q. Okay; all right. And on page 160 the judge again
8 denied your motion for directed verdict without any
9 specific factual rulings on your motion to suppress?

10 A. That's correct.

11 Q. All right. And then we finally turn to page 237
12 and that was the final motion, the end of all testimony,
13 and that presents at lines 17 through 19.

14 A. Yes, sir.

15 Q. And all you say is, "We also renew again our motion
16 for suppression, as well as the motion for directed
17 verdict"?

18 A. That's correct.

19 Q. Again, you didn't articulate any factual basis for
20 the motion to suppress?

21 A. I thought we had done some of that during the
22 trial, based on my questions of the witnesses, but not
23 specifically at that time. You're correct.

24 Q. All right. And then the judge simply says, "I'm
25 going to deny your motions and, as indicated, previous

1 motions on the previous basis as well”?

2 A. That’s correct.

3 Q. Correct? So from what we’ve been through and from
4 what you remember, the judge in this case has never
5 really said -- made a definitive ruling on your motion
6 to suppress on the grounds that it was prolonged?

7 A. Not specifically. I do not think so. Oh, wait.
8 On the ground that the stop was prolonged?

9 Q. Yes.

10 A. That -- again, that was the issue that Mr. Sharpe
11 had taken, but I did, you know, recall the motion, but I
12 think he did say that it looked like -- oh, no, not the
13 stop. I’m sorry. You’re correct. The stop -- the stop
14 was -- I thought we were talking about him driving too
15 close to the other vehicle in pretext.

16 Q. And when the -- when the drugs were introduced the
17 second time, I believe, on 140, yes, page 140, where
18 they introduced, beginning at line 10 --

19 A. Yes.

20 Q. -- through 18, at that point they introduced not
21 only the drugs through the chemist, but also the lab
22 report?

23 A. That’s correct.

24 Q. And you raised no objection to that.

25 A. I don’t see one that I raised at that point. No.

1 Q. Actually, I think you said, "No objection," at line
2 18.

3 A. I -- are we on page 140?

4 Q. 141 now. Excuse me.

5 A. Oh, okay.

6 Q. I apologize.

7 A. Yes. I did say, "No objection," at that time.

8 Q. And that was the basis for the Court of Appeals
9 denying any relief on appeal?

10 A. I can't say specifically, but generally yes, that
11 was my understanding, that it was not preserved
12 specifically for appeal.

13 Q. Give me one minute.

14 MR. WISE: That's all the questions we have, Your
15 Honor.

16 THE COURT: All right. Cross-examination.

17 CROSS-EXAMINATION

18 WILLIE F. BRADLEY, JUNIOR BY MR. JONES:

19 Q. Thank you, Mr. Bradley. I believe most of the
20 stuff I was going to go through with you Mr. Wise
21 already did, but just very briefly, the -- you explained
22 to Mr. Brown the differences between a jury trial and a
23 Bench trial?

24 A. Yes, I did.

25 Q. And the strategic considerations that could go into

1 that regarding --

2 A. Certainly.

3 Q. Okay. And whose decision ultimately was it to go
4 with a Bench trial?

5 A. The decisions for all the -- for that was Mr.
6 Brown's.

7 Q. The -- do you recall on -- and it's, again, on page
8 63, the judge's explanation of -- the judge saying that
9 in his view, the issues, if any, with the confession or
10 the statement by Mr. Brown would go to the weight of
11 that testimony?

12 A. He did say it'd go to the weight, which to me
13 indicated that it would be the factual -- the finder of
14 fact that would have to be the one to judge that.

15 Q. And then from pages 66 to 70, did you, in fact,
16 cross-examine the officer about that statement?

17 A. Officer Gibson. Specifically about which
18 statement? I'm sorry.

19 Q. About the statement that was the subject of this --
20 of your motion to exclude?

21 A. Certainly.

22 Q. Yeah. And that the -- I believe you testified that
23 your strategy for keeping that out was based on law
24 enforcement's failure to follow the ordinary procedures
25 in doing so?

1 A. That's correct.

2 Q. For instance, that law enforcement -- that he did
3 not videotape the statement?

4 A. Certainly.

5 Q. I believe there was no witness statement?

6 A. Certainly. And my position was if the statement
7 was that important and it was a confession, that it
8 would have been videotaped when their -- their procedure
9 throughout the entire ordeal or incident was to have
10 everything recorded.

11 Q. And once the judge denied that motion and stated
12 that he was going to consider it as to the weight
13 instead of the admissibility, you continued to argue it
14 regarding the weight. Correct?

15 A. I continued to argue it. I didn't go into
16 specifics at that particular point, but I did argue it,
17 and, again, my understanding was the judge, as the
18 finder of fact, would hear the testimony through my
19 cross-examination of the witnesses that the State put
20 on, as well as any witness that we were planning on
21 putting on as well, and through that that we would be
22 able to make our point that, you know, that the
23 statement should have not come in or even if the
24 statement did, that it would be uncontradicted factual
25 evidence as to Ms. Tapier's (ph) testimony and that if

1 she said it was hers and there was no one that would
2 contradict that, then only the judge would have to be
3 the one to decide whether she was telling the truth or
4 not.

5 Q. All right. Then would you quickly turn to page 6
6 of the transcript at lines 3 through 6?

7 THE COURT: Say again what page?

8 MR. JONES: Page 6.

9 THE COURT: Oh. Page 6. All right.

10 A. Okay.

11 Q. And do you recall saying there that the motion to
12 suppress was based on the unreasonable delay of the
13 traffic stop?

14 A. Because -- yes, I do.

15 Q. All right. Let's see.

16 MR. JONES: Beg the Court's indulgence for one
17 moment.

18 MR. JONES: All right. I think that's all the
19 questions I had for you, Mr. Bradley. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 WILLIE F. BRADLEY, JUNIOR BY MR. WISE:

24 Q. But you acknowledge that in this trial, you never
25 argued the facts to the judge as to why the traffic stop

1 was unreasonably delayed?

2 A. Again, I don't know if I said that I did not argue
3 facts. I know we did not go into specifics at the time
4 that you pointed me to. I do recall me, in cross-
5 examining the officer, I think it was Officer Gibson,
6 certainly saying certain things that like he did not
7 check the trunk of the car.

8 Q. Right.

9 A. He said that because there were varying testimonies
10 and things like that, that meant that there was
11 inconsistencies and I challenged those things as well,
12 and the extension of the stop was what Mr. Sharpe was
13 working on; that was his issue.

14 Q. Okay. And the record reflects what the actual
15 argument to the judge was as opposed to cross-
16 examination?

17 A. It certainly does. Yes.

18 MR. WISE: That's all.

19 THE COURT: Any recross?

20 MR. JONES: No. I think that's everything, Mr.
21 Bradley. Thanks.

22 THE WITNESS: Thank you.

23 THE COURT: Witness may step down.

24 THE WITNESS: Thank you, Your Honor.

25 MR. WISE: Give me one second. All right. Call

1 Kalvin Brown.

2 (KALVIN ROPEL BROWN, being first duly sworn, was
3 examined and testified as follows):

4 DIRECT EXAMINATION

5 KALVIN ROPEL BROWN BY MR. WISE:

6 Q. Please give us your full name.

7 A. Kalvin Ropel Brown.

8 Q. You got to speak up a little bit or speak close to
9 the mic.

10 MR. WISE: Does that mic have a --

11 THE WITNESS: Is it on?

12 COURT REPORTER: It is not working.

13 MR. WISE: Oh. It's not working?

14 COURT REPORTER: No. I don't think it is.

15 Q. All right. You have to speak up a little bit.

16 A. Kalvin Ropel Brown.

17 Q. Perfect. Where you from, Mr. Brown?

18 A. Georgetown, South Carolina.

19 Q. All right. And how long have you lived in
20 Georgetown?

21 A. I would say about forty years.

22 Q. All right. And tell us, if you would, how you came
23 to retain Mr. Bradley to represent you on these charges
24 out of York County.

25 A. Well, as he said, a mutual friend of mine's at the

1 time, you know, through a mutual friend. It was before
2 I was arrested, so I knew him prior to that, so you
3 know, you get a friend --

4 Q. So you first met Mr. Bradley when?

5 A. It was before I was arrested in 2015. I would say
6 2011, somewhere around in there, something like that.

7 Q. Several years before?

8 A. Yeah, most likely.

9 Q. All right. So you knew him before you were
10 arrested?

11 A. Yes, through a mutual friend of mine's. Yeah; uh-
12 huh.

13 Q. Okay; all right. So how did you come to retain him
14 after you were arrested?

15 A. Well, when I was arrested, sometime the -- when you
16 know a lawyer, you go to him first.

17 Q. Right.

18 A. You know, if you someone -- he was an attorney, so,
19 you know, it was --

20 Q. Do you remember the day of this incident?

21 A. That I was arrested or --

22 Q. Right.

23 A. Yes. It was February of 2015.

24 Q. All right. February, roughly one year before the
25 trial?

1 A. Correct.

2 Q. Okay. So when did you first see Mr. Bradley after
3 you were arrested?

4 A. I 'd say it would be about a month later,
5 approximately a month later.

6 Q. So--

7 A. Uh-huh.

8 Q. ---March or so?

9 A. Uh-huh.

10 Q. All right. Did you retain him right away or was
11 there any delay in that process?

12 A. As he said, I had time; you know, once you're
13 arrested, you have time to get the opportunity to retain
14 representation, so I had time, but I had spoke to him
15 prior to that. Yes. Not initially, I guess, contact-
16 wise, but I guess my intentions, I probably asked him,
17 "Can you do it," and so on, yeah, but formally --

18 Q. Okay. Eventually he was retained?

19 A. Yes; uh-huh.

20 Q. All right. Did you have a chance to meet with him
21 and go over the discovery in this -- or tell him what
22 happened and go over discovery?

23 A. Absolutely. Yes.

24 Q. And did y'all go over the discovery?

25 A. Yeah. Once he received it, the full, I guess,

1 packet from the solicitor's office, yes, we did.

2 Q. All right.

3 A. Uh-huh.

4 Q. And were there things in the discovery that
5 concerned you?

6 A. Well, -- well, some things were inaccurate, in my
7 opinion,---

8 Q. Okay.

9 A. ---but nothing really concerned me. It --

10 Q. What was inaccurate? I think -- I think inaccurate
11 is what I meant by the concern.

12 A. Well, again, in my opinion, the ownership of the
13 drugs and what they were saying and how things -- it was
14 inaccurate.

15 Q. There were statements attributed to you in the
16 discovery?

17 A. Yes.

18 Q. Were any of those statements made?

19 A. No, not by me. No.

20 Q. And when you were interrogated by Officer Gibson,
21 were there other officers present?

22 A. Yes, they were.

23 Q. All right. During the entire time or just part of
24 the time?

25 A. Through the entire time. There was a officer who

1 was in the room with me the entire time.

2 Q. Uh-huh.

3 A. Officer Gibson was going in and out of the room,
4 but if you'd like me to call the officer's name, I
5 remember his name also, well, yeah, who was in the room
6 with me.

7 Q. Did this other officer testify in this trial?

8 A. No, he did not.

9 Q. Okay; all right. So you -- did you point out to
10 Mr. Bradley the inaccurate information in that incident
11 report?

12 A. Yes, I did.

13 Q. And what was the discussion about how that would be
14 handled?

15 A. Well, he took it under advisement and he said,
16 "Well, we'll" -- I guess, "we'll look into it," or,
17 "We'll attack it with the motion," and so on. Mind you,
18 a lot of things that I -- I know more now than I knew
19 then.

20 Q. I was getting ready to go into that.

21 A. So but the --

22 Q. When you --

23 A. Uh-huh.

24 Q. -- when you first met---

25 A. Yes.

1 Q. ---with Mr. Bradley, were you familiar
2 with a *Jackson versus Denno* hearing?

3 A. No, I was not.

4 Q. Are you familiar with it now?

5 A. Yes, I am.

6 Q. All right. And is it sometimes hard to separate
7 what you know now versus what you knew then?

8 A. Yeah.

9 Q. Okay.

10 A. It's a whole different picture now.

11 Q. All right. Do you recall whether or not Mr.
12 Bradley discussed with you a *Jackson versus Denno*
13 hearing?

14 A. No, he did not.

15 Q. All right. Did he discuss with you a hearing on
16 the suppression of your statement?

17 A. He did -- we were going to attack that, because
18 when I told him it was false, it was incorrect, but what
19 he did, if I can recall from the transcript, he
20 mentioned Rule 403 or was it 404?

21 Q. 404.

22 A. 404. He -- yeah. That was -- but not Jackson, the
23 hearing, but that was his, I guess, way of attacking it.
24 He mentioned about --

25 Q. All right. I believe the judge mentioned the

1 *Jackson* hearing---

2 A. Right; right.

3 Q. ---early in the transcript.

4 A. Uh-huh.

5 Q. Okay. Were you expecting to testify at any hearing
6 to suppress the statement?

7 A. Well, I would have. In a *Jackson/Denno* hearing. I
8 absolutely would have testified. Yes.

9 Q. All right; all right. Under your understanding of
10 a *Jackson versus Denno* hearing today?

11 A. Yes.

12 Q. All right. At the time when Mr. Bradley was
13 talking about a motion to suppress your statement, were
14 you anticipating testifying at that point?

15 A. I would have, yes, 'cause I think my testimony
16 would have been needed to explain exactly, I'm sure.
17 Yeah. I would have. Yes.

18 Q. Did you understand your testimony would be needed
19 to determine whether or not the statement was made?

20 A. At the time? Maybe -- yes. I would have liked to
21 think I knew, 'cause I guess my testimony would have
22 helped, but legally-wise, I didn't know, you know, but
23 thinking just helping myself with telling the truth, I
24 would have testified. Yes.

25 Q. Let me phrase it this way: were you willing to

1 testify if needed?

2 A. Yes. Yes, I would have.

3 Q. Okay; all right. So if there had been a -- well,
4 let me back up. That was a bad question. Did you ever
5 have any discussions with Mr. Bradley about your not
6 testifying at any motion to suppress your statement?

7 A. No. I don't recall not having a conversation of
8 not testifying. No, I don't.

9 Q. Okay; all right. Now, what were the other issues
10 that were discussed about -- on the defense of your
11 case?

12 A. Well, the -- could we go back for a second? You
13 mentioned about the trial by a judge, Bench trial?

14 Q. Well, we'll get to that in a second.

15 A. Okay.

16 Q. What other issues were discussed before trial---

17 A. Uh-huh.

18 Q. ---as to how your case would be defended?

19 A. Well, with the -- with Ms. Trapiez, Monique
20 Trapiez's (ph) testimony, that was a big thing.
21 Actually, that was the -- that was the strongest
22 evidence we had, I guess, for the defense, someone who's
23 taking ownership, who actually made a statement, and so
24 that was -- that was our case.

25 Q. Right. So what about the -- a motion to suppress?

1 Did you discuss that with Mr. Bradley?

2 A. Yeah. Maybe not in those terms. Remember I said
3 legally, the legal terms, the legalese of it, I wasn't
4 aware of, but speaking about it, yes. I remember
5 speaking about that. Yes.

6 Q. All right. Did he mention that he thought he could
7 get the drugs thrown out or words to that effect?

8 A. My understanding, yes, but we had an under- -- my
9 understanding of at the time, if I can say this just
10 speaking, most clients, people who hire attorneys at the
11 time, looking back in hindsight now, I wish I would have
12 done more of my due diligence in learning more, but
13 sometimes you trust your attorneys and you along what
14 they say. I wasn't aware, but I remember vaguely those
15 conversations and I'm -- yeah; that -- but I didn't
16 understand it fully; obviously I didn't at the time.

17 Q. So you traveled up to Columbia from Georgetown to
18 talk to him?

19 A. Yes, all the time. Uh-huh.

20 Q. And you made several trips?

21 A. Yes; uh-huh.

22 Q. Okay. So tell us again how the conversation about
23 waiving a jury trial came up.

24 A. Well, thinking, he mentioned that we had the
25 conversation prior, around November or prior to

1 November. That's not true. That conversation was held
2 in January, the last month prior to me going to trial.

3 Q. All right.

4 A. That conversation --

5 Q. Well, let me back up one second.

6 A. Uh-huh.

7 Q. So, apparently, you had gotten notice that you were
8 going to trial?

9 A. Yes; uh-huh.

10 Q. All right. And you kind of knew it -- did you know
11 a trial date?

12 A. Was within -- within the month,---

13 Q. Okay.

14 A. ---I think, the last month before I was expected to
15 go.

16 Q. All right. So after you got notice of a trial
17 date,---

18 A. Uh-huh.

19 Q. ---the issue of waiving a jury trial came up?

20 A. Well, just, again, I think our last -- second to
21 last strategy session when I came to his office,---

22 Q. Uh-huh.

23 A. ---he mentioned it. At the time I had no idea --
24 remember --

25 Q. All right. Who brought it up first?

1 A. He did.

2 Q. All right. Did you even know you could waive a
3 jury trial?

4 A. No, I can't -- I say no.

5 Q. Okay.

6 A. Well, no, I didn't. Actually, no, I didn't.

7 Q. All right. So how did it come up?

8 A. Well, like I said, our last -- second to last
9 strategy session, it was how we're going to proceed with
10 -- I can't recall verbatim exactly what was said, but it
11 came about how we're going to proceed, whether Bench
12 trial or trial, you know, a jury trial.

13 Q. Uh-huh.

14 A. Again, honestly, taking a lead from my attorneys,
15 it really didn't matter to me. I wanted to just win.

16 Q. Right.

17 A. You know, whatever you think is going to win, you
18 know, and so that's how it went. I kind of understood.
19 He gave me slightly, okay, Bench trial, judge, judge is
20 the fact-finder and so on and so on and a jury trial,
21 but really to get into details of really a full
22 understanding, I didn't have a understanding. I just
23 trusted him, thinking that if you think this is the best
24 way we can go where we can win, let's go with it. I'm
25 willing to go with it.

1 Q. Was there any discussion about the fact that if one
2 juror believes Ms. Trapiez, that then you don't get
3 convicted?

4 A. We never discussed that. He -- we never discussed
5 that.

6 Q. All right. So you didn't understand the concept of
7 twelve jurors having to unanimously agree to convict
8 you?

9 A. Well, yeah. I understood that, you know, I -- but
10 as far as the det- -- knowing what I know now, Bench
11 trials are different and all those, I guess, rules
12 still apply as a jury trial, but it's slightly
13 different, the rules and how it governs with pretrial
14 things and we didn't get into that even, but just common
15 sense, I knew that one juror, you can have a mistrial
16 or, you know, so on and so on.

17 Q. And how did you know that?

18 A. Well, I'm old enough to remember watching Perry
19 Mason and up to modern day television, Law and Order.

20 Q. Okay.

21 A. So from television, I'm familiar with the, you
22 know, the general terms of court. Yes.

23 Q. So you knew that from your legal education on
24 television?

25 A. Pretty much, yeah.

1 Q. Okay; all right.

2 A. From television; yeah.

3 Q. But did you have any discussions with Mr. Bradley
4 about that concept in more detail?

5 A. No, not the detail. No, we did not. We did not.

6 Q. So whose suggestion was it that a jury trial be
7 waived?

8 A. Mr. Bradley's.

9 Q. All right. And did he go into great detail about
10 the pros and cons?

11 A. Well, I do remember him explaining, basically,
12 jury, twelve jurors, as opposed to a judge making a
13 ruling. That's about it.

14 Q. Okay.

15 A. You know, no more -- no more than that.

16 Q. All right. And so when you were before the judge
17 and waived the right to a jury trial, the basis for that
18 was what?

19 A. When the judge -- you mean when I was before the
20 judge and he asked me did I go --

21 Q. Right.

22 A. You said the basis, the basis was I was following
23 the lead of my attorney, the conversation we had prior
24 to trial. That's what I thought at the time that's what
25 i was -- although, I said it was my -- you know, when

1 the -- when the trial judge questioned me, I said it was
2 my decision, but really it was the decision of my
3 attorney, his recommendation and his information
4 explained to me and assuring me that -- I remember this
5 also, that that may be better, because what he said
6 about the dynamics of, he said, about the jury pool and
7 other factors. In his opinion, a Bench trial may have
8 been better than going -- you know, like, I guess there
9 is a legal -- well, in some cases you -- I think, in
10 some cases -- I think he explained to me some cases a
11 Bench trial would be better than the jury trial in
12 certain instances, I'm sure.

13 Q. Did he explain how it would be better?

14 A. Well, not that I recall, but if he did at the time,
15 honestly, I probably would not have been able to
16 understand it.

17 Q. Okay; all right. So let's go back to your
18 testifying in a *Jackson versus Denno* hearing.

19 A. Yes.

20 Q. Later it came out that the solicitor said there was
21 one conviction against you in 2007, false statement to a
22 law enforcement officer?

23 A. Uh-huh; uh-huh. Uh-huh.

24 Q. Was that a correct statement?

25 A. Yes. That was a correct statement.

1 Q. All right.

2 A. Yes.

3 Q. Did you have any burglary charges?

4 A. No. I've never had a burglary charge.

5 Q. You never had a burglary charge?

6 A. No.

7 Q. Did you have some old charges from --

8 A. Yes, it was a charge in 1992.

9 Q. '92?

10 A. Yeah, 1992.

11 Q. For what?

12 A. It was for robbery.

13 Q. For robbery.

14 A. They charged me with robbery. And I was told also,
15 I think, it was -- that was one of the things they could
16 not have used it to impeach me or something, you know,
17 again at the time I didn't really understand, but I knew
18 it was so far back and then also, you know, it didn't --
19 I forgot it didn't apply or something to, I guess, the
20 charge I was facing or something like that, so it wasn't
21 --

22 Q. All right. Now,---

23 A. It wasn't an issue.

24 Q. ---did you discuss with Mr. Bradley your prior
25 record before trial started?

1 A. I can't recall, but I'm sure if it came up, it
2 wouldn't be a issue and I think he had my records out.
3 I'm sure he had, you know, once -- I think in discovery,
4 the discovery packet, I think my whatever --

5 Q. Right.

6 A. Yeah. So -- but it was nothing to discuss, it was
7 about in the moment now, because I don't think my prior
8 record played -- would have played a issue in our trial
9 strategy at the time.

10 Q. All right; all right. So you go to trial.

11 A. Yes.

12 Q. All right. And you've heard the testimony of Mr.
13 Sharpe and Mr. Bradley?

14 A. Uh-huh.

15 Q. And, basically, the objections that weren't made is
16 an accurate statement---

17 A. Yes. Yes, that's accurate.

18 Q. ---as to what happened?

19 A. Yes. That's a accurate statement.

20 Q. And you're familiar with your appeal?

21 A. Yes, I am.

22 Q. And the Court ruled what?

23 A. The Court of Appeals affirmed it, because the issue
24 -- basically, the issue wasn't preserved.

25 Q. Right. And you've read your transcript more than

1 once?

2 A. Yes, I have.

3 Q. All right. Was there ever any argument to the
4 judge about why this was a prolonged traffic stop?

5 A. Only -- well, at the beginning of Attorney Sharpe,
6 in the -- his argument of -- for the motion,---

7 Q. Uh-huh.

8 A. ---but after that, there was really nothing. It
9 was just the -- the re-issuing of the motion, really,
10 but nothing in detail.

11 Q. And did you see a copy of the motion they filed
12 before it was filed?

13 A. Well, actually, --

14 Q. And that's exhibit 1. I think it still should be
15 up there.

16 A. Right. But not - I'm familiar; I'm familiar. But,
17 actually, yeah.

18 THE WITNESS: I'm familiar with that, Your Honor.

19 Q. Okay. Let me hand it to you. I know you're
20 familiar with it, but my question's when did you first
21 become familiar with it?

22 A. Actually, when I received a copy of the discovery
23 packet.

24 Q. All right. So what's the date on that motion?
25 Look at the second page.

1 A. Okay. Twenty -- February, 2016.

2 Q. Okay. February what?

3 A. February the 20th.

4 Q. All right. That was right before this trial
5 started?

6 A. Right before the trial started; yeah. Uh-huh.

7 Q. Was any details of that motion discussed with you
8 in any of those conferences?

9 A. I would say no, not from specific this motion, but
10 the general idea to attack the statements and the
11 traffic stop and so on, but not in detail --

12 Q. The issues raised in that motion,---

13 A. Uh-huh.

14 Q. ---how do they relate to the conversations you had
15 with Mr. Bradley and Mr. Sharpe?

16 A. Hmm. Again, vaguely, it relates -- he -- I guess
17 he understood at the time I wasn't aware -- I knew about
18 a lot of, you know, the legal part of it, so I kind of
19 -- whatever direction you're going to go. So he was
20 kind of, you know, well, we're going to go this way and
21 what he gives -- what he was giving to me was we're
22 going to attack it, but not into details. And so I
23 saying, "Okay. We're going to attack it. How we going
24 to attack it?" "Well, we're going to file a motion,"
25 and so I accepted it as that.

1 Q. Okay.

2 A. That's as far as I knew at the time. Uh-huh.

3 Q. I mean, did you understand any of the law of search
4 and seizure or anything like that?

5 A. No, not -- at the time, I did not.

6 Q. Okay.

7 A. I did not.

8 Q. All right. What was your opinion about your
9 testifying in front of the judge on a motion to suppress
10 the statement?

11 A. On a motion to suppress -- I would have testified.

12 Q. You would have testified?

13 A. Yes, absolutely.

14 Q. Were you wanting to testify?

15 A. Yes. I -- yes, I -- yes. I wanted to clarify,
16 again, my version of exactly what happened, who were
17 present and so on, because at the time, remember, the
18 other officer who was there, a lot of these facts never
19 came up.

20 Q. And in your conversations with Mr. Bradley and Mr.
21 Sharpe right before trial and during the trial, was
22 there ever a serious discussion about your testifying at
23 a motion to suppress the statement?

24 A. When you say serious discussion, --

25 Q. Well, was there a discussion at all, I guess.

1 A. Well, again, the extent of it with me was, "I'm
2 going to attack the motion or the statement," what have
3 you, but explain it to me, you know, as again I keep
4 saying at the time I was a defendant who just wanted to,
5 okay, win. This is what happened. I've given my facts,
6 my version what happened. The strategy and the legal
7 aspect of it was his and if he would have told me, I
8 wouldn't -- I probably wouldn't have understood it, so
9 he probably explained it to me, but what I got from it,
10 he -- I trusted he says, "We're going to attack it this
11 way." Okay, fine. But he never got into detail, not
12 with me.

13 Q. All right. Now, Ms. Trapiez gave a statement in
14 November---

15 A. Uh-huh.

16 Q. ---helpful to you.

17 A. Uh-huh.

18 Q. Correct?

19 A. Yes.

20 Q. All right. And you've known her for a number of
21 years, although you haven't known her her entire life
22 nor has she known you.

23 A. No, not her entire life, yeah, but prior to that,
24 yes.

25 Q. You had known each other a good many years.

1 A. Yes.

2 Q. Okay.

3 A. A few years. Uh-huh.

4 Q. Now, did you ever make a statement to Officer
5 Gibson that, in response to his question of who is the
6 cocaine's -- whose cocaine is this and he claims you
7 answered, "Yes." Is that true?

8 A. No. That's not true.

9 Q. Did you ever -- did you ever give a statement to
10 Officer Gibson as to how much was paid for that cocaine?

11 A. That's not true. No, I did not.

12 Q. The cocaine that was found in that car on the stop,
13 did it belong to you?

14 A. No, it did not. Well, I'm sorry. Actually, they
15 said it wasn't cocaine that --

16 Q. Excuse me.

17 A. So you keep saying cocaine. That's the whole
18 thing. It wasn't even cocaine, but everyone thought it
19 -- well, he said it was cocaine. He said I said it was
20 cocaine,---

21 Q. We're caught in --

22 A. ---but it was not cocaine. I don't --

23 Q. Yes. We're caught in the same trap.

24 A. Right; yeah.

25 Q. The substance that was later tested positive for

1 heroin,---

2 A. Right. Exactly.

3 Q. ---did that belong to you?

4 A. No, it did not.

5 Q. All right. Thank you. Answer any questions the
6 State may have.

7 A. Okay.

8 THE COURT: Cross-examination?

9 MR. JONES: Thank you. I beg the Court's
10 indulgence for one second.

11 THE COURT: Madam Court Reporter, you doing all
12 right over there?

13 COURT REPORTER: I am. Thank you.

14 MR. JONES: Your Honor, I don't believe I have any
15 questions for Mr. Brown.

16 THE COURT: All right.

17 MR. WISE: With that, the applicant rests, Your
18 Honor.

19 THE COURT: You may step down, sir.

20 MR. JONES: Your Honor, the State rests as well or
21 --

22 THE COURT: Your witness has already been called?

23 MR. JONES: Yes.

24 THE COURT: I see the State filed a return way back
25 in 2019. Was there an amended return ever done?

1 MR. JONES: Your Honor, I don't believe an amended
2 return was prepared.

3 THE COURT: I only said that because I think
4 there's --

5 MR. JONES: And I don't know what he'd amend it to
6 say, to be frank with you.

7 THE COURT: Well, the return talks about two
8 grounds you're seeking relief, but I think there were
9 four in memo, so --

10 MR. WISE: Right; right. If he wants to verbally
11 amend it to say three, 'cause we've abandoned one,
12 that'd fine, too.

13 MR. JONES: I would like just to have the
14 opportunity to argue.

15 THE COURT: Okay.

16 MR. JONES: ---the State's position.

17 THE COURT: Mr. Wise, I'd be happy to hear any
18 summation you have, sir.

19 MR. WISE: Your Honor, we have several issues here
20 that I think are of really major importance. One is or
21 the primary one, I think, is and the one I want to
22 discuss first at least, is quite clearly the trial
23 strategy in this case was to develop a record in which
24 they could prove a prolonged stop and the judge would
25 grant it and the drugs would be suppressed.

1 The problem with the trial strategy is it was an
2 idea before the trial that never took fruition during
3 the trial. They filed a motion to suppress evidence,
4 but when the evidence sought to be suppressed was
5 introduced, there was no objection made. That, by
6 itself, is error. There's no question about that. So
7 the real question is whether or not they were
8 prejudiced.

9 The South Carolina Supreme Court has recently come
10 out with a case, I believe, called *Middleton* and I have
11 something I want to pass up to the Court in response to
12 that, and in *Middleton*, the Court said the PCR judge
13 erred in granting a new trial when the defense lawyer
14 failed to introduce or failed to object to the drugs
15 being introduced in relation to a traffic stop, also a
16 search. PCR was granted and the Supreme Court reversed
17 and the Supreme Court reversed for a very specific
18 reason. They said in that case the trial judge made
19 very specific findings as to the legality of the search
20 and unless those specific factual findings were not
21 based on any evidence, we're going to accept the trial
22 judge's findings.

23 I want to pass up to the judge, to Your Honor, a
24 packet of the transcript of record as it relates to
25 *Middleton*.

1 THE COURT: And so this is what was argued in
2 *Middleton* and what was relied upon in the Supreme
3 Court's decision.

4 MR. WISE: That's correct.

5 THE COURT: All right.

6 MR. WISE: That's the transcript from the
7 *Middleton* PCR and what I've handed you is that portion
8 of the *Middleton* trial where the judge ruled on a
9 finding of fact as to the elements presented to him.

10 THE COURT: Let me ask you a question.

11 MR. WISE: Sure.

12 THE COURT: Was *Middleton* a jury trial or a Bench
13 trial?

14 MR. WISE: *Middleton*, originally, was a jury trial,
15 but the ruling by the judge in *Middleton* and the ruling
16 by the judge in a Bench trial is going to be the same
17 'cause it's on a motion to suppress evidence, so it
18 wouldn't make any difference whether it was a jury trial
19 or non-jury in that sense.

20 THE COURT: Okay. And it was on a motion to
21 suppress -- well, I understand what you're talking
22 about.

23 MR. WISE: Yes. All right. It used to be the rule
24 before *Middleton* that if a lawyer failed to object to
25 evidence being introduced that he should have objected

1 to, then he's -- the defendant's entitled to a new
2 trial. And in *Middleton* the Court said, basically, not
3 always true.

4 When a trial judge hears the testimony, makes very
5 specific findings as to why it's to be suppressed, then
6 the defendant's gotten all he's entitled to and unless
7 he can establish that ruling was wrong as a matter of
8 law, the trial judge ruling stands, even though the
9 lawyer didn't object, because there's nothing to
10 indicate the judge would have changed his mind after
11 those specific rulings.

12 This case is very, very different from that. We
13 have an intent by filing the motion to suppress it on a
14 grounds; we never have a good argument as to what it
15 would be, so we don't know what the judge really would
16 have ruled, to be frank with you, because it was never
17 articulated to the judge.

18 Secondly, secondly, the judge pretrial makes a
19 ruling on argument by counsel, which can't be a real
20 ruling on the facts 'cause no witness has testified.

21 THE COURT: Right.

22 MR. WISE: Then once the evidence is introduced
23 without objection, I would say the trial judge's hands
24 are tied because there's really nothing for him to rule
25 on then because it wasn't objected to, and the next time

1 the idea of suppressing the evidence is brought up is at
2 the end of the trial, the end of all the testimony. And
3 even then there's no specific ruling by the trial judge
4 under the particular facts of this case.

5 So on that basis, I think the law prior to
6 *Middleton* was that Mr. Brown's entitled to a trial
7 because his counsel failed to move to suppress the
8 evidence and I think that's the correct statement of
9 what should happen in this case.

10 Secondly, Your Honor, one of the grounds -- one of
11 the intents in this case also by trial counsel was to
12 conduct a suppression hearing on his statement and the
13 trial started with that intent, 'cause I can't find the
14 page and I'll have to get it for you, but it's in the
15 first part of it. Even the judge talks about a *Jackson*
16 hearing---

17 THE COURT: Right.

18 MR. WISE: ---when they talk about suppressing the
19 statement. And here, trial counsel never, then, went
20 forward with -- he let the statements in without having
21 a *Jackson versus Denno* hearing of any type.

22 Mr. Brown's testimony is quite clear that he would
23 have been willing to testify at a *Jackson versus Denno*
24 hearing on this case and explain the circumstances of
25 that improper statement.

1 THE COURT: Where does the trial judge make
2 reference to the *Jackson* hearing? We've all been
3 talking about that.

4 MR. WISE: I found it one time and I didn't mark it
5 and that's my apology, so --

6 THE COURT: Well, maybe we --

7 MR. WISE: It's at -- it's in the early part of it.

8 THE COURT: Well, here -- let's see. Page 32, we
9 talk about suppress the entire report and we want to try
10 to suppress---

11 MR. WISE: All right.

12 THE COURT: ---the confession, just that
13 confession.

14 MR. WISE: Right.

15 THE COURT: And then the Court said, "We'll just
16 handle that at trial."

17 MR. WISE: And then they go right into his waiving
18 the jury trial.

19 THE COURT: Well, --

20 MR. WISE: Here we go. It's under -- I'm sorry.
21 It's under Jack -- he says *Jackson*, on page 38? Yeah,
22 38. Yeah. He says, "I guess I didn't address it under
23 the *Jackson versus* -- I mean, the other issues with
24 it," et cetera.

25 So it was kind of mentioned and at least even trial

1 counsel admitted that they intended to have a *Jackson*
2 *versus Denno* hearing, but didn't --

3 THE COURT: Well, I'm -- I have not read the
4 transcript in its entirety yet,---

5 MR. WISE: Okay.

6 THE COURT: ---but I don't want to get out in front
7 of you too much there, Mr. Wise, but I mean, I wonder if
8 having the Bench trial---

9 MR. WISE: Well, --

10 THE COURT: ---put some confusion into this,
11 because the point of the *Jackson v. Denno*, and you tell
12 me where he disagrees, to figure out the voluntariness
13 of his statement.

14 MR. WISE: Correct.

15 THE COURT: But -- and that's to find out if the
16 jury can ultimately--

17 MR. WISE: Correct.

18 THE COURT: ---decide it's voluntary and it seems
19 like the trial judge just said, well, I'll just hear it
20 and determine that.

21 MR. WISE: Except in a -- well, go ahead.

22 THE COURT: But once they were in -- well, there
23 was no jury to swear, but once the trial had begun, then
24 he didn't have, I'll call it, the pretrial ability to
25 testify about waiving his Fifth Amendment rights. Is

1 that --

2 MR. WISE: Right. He -- a defendant can testify in
3 a *Jackson versus Denno* hearing without waiving his
4 Fifth Amendment rights.

5 THE COURT: Right.

6 MR. WISE: No question about it.

7 THE COURT: Yeah; yeah.

8 MR. WISE: The only thing he couldn't do is testify
9 in a *Jackson versus Denno* hearing and lie, and if he
10 testifies later and says something different, he can be
11 impeached with it, but generally, you're correct, and
12 that's true whether the case is non-jury or jury.

13 If he testifies as a witness, it's a little
14 different rules, but if the defense counsel in this
15 case, and apparently from the testimony they intended to
16 do it, just didn't do it, had conducted a *Jackson versus*
17 *Denno* hearing, Mr. Brown could have testified just as he
18 did today; the judge could have passed judgment on the
19 credibility and said the statement's in or out. All
20 right.

21 I want to refer the Court to the case of *State*
22 *versus Creech*, in which a *Jackson versus Denno* hearing
23 was requested, and that case, for the Court's
24 edification, is 314 South Carolina 76 and 441 Southeast
25 Second 635, and in *Creech* the defendant request -- had

1 requested a *Jackson versus Denno* hearing and the judge
2 just basically summarily denied it, and that case was
3 remanded back for a *Jackson versus Denno* hearing,
4 because they said it's that important.

5 Well, in this case, counsel was ineffective, in our
6 opinion, in failing to conduct a *Jackson versus Denno*
7 hearing and the only remedy today is to remand it for a
8 new trial, I think, just as if the old -- just as if the
9 law about suppressing -- you don't object to evidence
10 being introduced that you should have objected to to
11 preserve an issue for appeal, you're entitled to a new
12 trial, the same logic should apply to this one.

13 THE COURT: I'm looking through some of my notes
14 here and I see *Creech* cited alongside *Salisbury*. I'm
15 just telling what the notes say. This isn't
16 authoritative at all. The trial courts found that
17 holding a *Jackson v. Denno* was harmless error. Don't
18 know any of the facts of this trial, and two, but -- it
19 says, "But see *State versus Silver*, decline to hold that
20 a trial court must hold an en camera hearing to
21 determine whether a defendant -- well, that's different.
22 Sorry.

23 MR. WISE: Right. It just sets up, basically, what
24 a *Jackson versus Denno* hearing is.

25 THE COURT: Yeah.

1 MR. WISE: Now, and apparently this trial started
2 with the idea of having one and for some reason, it just
3 -- they didn't do it and I think that's ineffective.

4 THE COURT: Well, okay. I understand your
5 argument.

6 MR. WISE: Then thirdly is the issue about, you
7 know, waiving the jury trial. There's a waiver on the
8 record; there's no question about it.

9 I would simply point out to the judge that I,
10 frankly, did not hear a good explanation as to why the
11 decision was made by Mr. Bradley to recommend a jury
12 trial be waived in this case.

13 You have the testimony of a woman in the car who's
14 willing to come to court and say, "Those drugs are
15 mine," and to be candid with the Court, if you read her
16 testimony, I thought it was pretty impressive and
17 sounded very genuine, even a cold transcripts, and,
18 frankly, it's hard for me to read that testimony, and I
19 have not met the woman, and conclude that I couldn't
20 convince at least one juror that she's telling the
21 truth. And under those circumstances, I don't know how
22 a lawyer can objectively say the best recommendation I
23 can give to my client is to allow one person to
24 determine whether or not they believe it rather than
25 twelve. And I just think that's --

1 THE COURT: Was this a case where -- this is just a
2 mandatory 25-year---

3 MR. WISE: Right.

4 THE COURT: ---penalty. Right? So I will say I --
5 one of my Bench trials I've done was a similar case
6 trafficking heroin, where they just said, "Well, we'll
7 just do a Bench trial 'cause it is what it" -- there's
8 no -- the outcome, if there's a conviction, is -- just
9 saying. I'm not saying that's what happened here, but
10 at least it's not unprecedented.

11 MR. WISE: Right. And I'll be candid with the
12 Court, I've done a Bench trial in a case in which the
13 only defense I had was can the evidence be suppressed.

14 All right? Because they were in his car; they saw him
15 leave a drug house after staying about five minutes. No
16 one else was in the car. You know, if you don't
17 suppress the drugs, the jury's going to convict him.

18 This case is strikingly different from that. You
19 know, if we had two people in that car and it was found
20 not in my client's pocket, that's a good argument it
21 belonged to the passenger if you wanted to argue that,
22 but this case is just so different from the case I had
23 where I waived the jury trial, because the only issue
24 was the search. But in this case, jury -- you can read
25 the transcript and see. You may not share the same

1 opinion. You may think she's the worst witness that
2 ever appeared in a courtroom, but that wasn't the
3 impression I got. And for a lawyer to objectively say
4 with a witness claiming the drugs, your best shot is a
5 non-jury trial, I think is ineffective assistance of
6 counsel as a matter of law, to be frank with you.

7 I have told Mr. Brown that if he had walked in my
8 office and said, "I want to waive a jury trial in this
9 case," after about a five- or six-page disclaimer that
10 he would be required to sign, that's the only way he'd
11 have a non-jury trial if I'm representing him.

12 THE COURT: Well, on one hand, the options were
13 convince twelve strangers who show up to the courthouse,
14 get one of the twelve or convince the trial judge that
15 the drugs weren't the -- then the defendant's.

16 MR. WISE: Uh-huh; uh-huh.

17 THE COURT: So I -- but I -- your argument's noted.

18 MR. WISE: I understand---

19 THE COURT: Yes.

20 MR. WISE: ---your position, too. But, you know,
21 there's an old adage among a lot of defense lawyers that
22 simply say a non-jury trial is just a long, slow guilty
23 plea and, unfortunately, my experience has been, with
24 one exception, there's some truth to that. But I think
25 that's still, you know, without explaining in some

1 detail to Mr. Brown the fact that a hung jury is, you
2 know, can help you or that, you know, it --

3 THE COURT: It can; certainly. I mean, --

4 MR. WISE: And there should be at least some
5 further explanation about the importance of a jury trial
6 than what was --

7 THE COURT: What pages are the, I'll say, colloquy
8 on?

9 MR. WISE: The colloquy's on page -- I believe it
10 starts on page 53---

11 THE COURT: All right.

12 MR. WISE: ---and runs through 36. No, 34 to 36.
13 Let me put my glasses on and look at the page numbers.
14 Bottom of page 33 through the bottom of page 36.

15 THE COURT: Okay. And the defendant answered the
16 questions. Okay; all right.

17 MR. WISE: And for what it's worth, too, Your
18 Honor, the judge didn't explain to him either, that, you
19 know, one juror hanging up --

20 THE COURT: Well, that'd be getting kind of close
21 to legal advice, though.

22 MR. WISE: That's a factual advice.

23 THE COURT: Well, okay. Well, all right.

24 MR. WISE: That's telling the legal consequences
25 of a jury.

1 THE COURT: Statistics, if you prefer.

2 MR. WISE: So, but I mean, with those, too, that
3 that just should be, you know, ineffective assistance of
4 counsel as a matter of law.

5 THE COURT: Okay.

6 MR. WISE: All right.

7 THE COURT: All right. Mr. Attorney General.

8 MR. JONES: Thank you, Your Honor. First,
9 regarding the suppression motion, the only -- first of
10 all, I want to challenge Mr. Wise's characterization of
11 Mr. Sharpe's argument. To listen to him, it sounds --

12 THE COURT: Which argument?

13 MR. JONES: The argument for the suppression of the
14 evidence from the traffic stop as being unreasonably
15 delayed.

16 From listening to Mr. Wise, you would think that he
17 just raised the issue but didn't develop the facts or
18 argument as a basis, which, Your Honor, this --

19 THE COURT: Let me ask you this: what page in the
20 transcript are you referring to?

21 MR. JONES: I'm referring to pages 10 through 21.

22 THE COURT: Okay.

23 MR. JONES: Approximately eleven pages of Mr.
24 Sharpe's testimony or not testimony, but argument
25 regarding the extent of the traffic stop.

1 THE COURT: Now, was it at the end of -- was it
2 around page 21 where the trial court --

3 MR. JONES: No, Your Honor.

4 THE COURT: No. I take that back.

5 MR. JONES: It was around page 21, the trial
6 court -- the solicitor then begins the State's position
7 and that continues for a few pages.

8 THE COURT: At some point the trial court says,
9 "Well, I --

10 MR. JONES: Yes, sir.

11 THE COURT: -- I don't think I'm going to suppress
12 it."

13 MR. JONES: On page 24, line 10, the Court says,
14 "I'm going to deny your motion at this time, but I don't
15 mind if you review the -- et cetera. I'll be glad to
16 allow you to renew your motion."

17 Mr. Sharpe, for what it's worth, did express that
18 he renewed the motion and on -- at two different
19 occasions and on both of those occasions the Court, once
20 again, stated that it denied the pretrial motions.

21 Now, ultimately, the Court of Appeals ruled that
22 that was not sufficient to preserve the issue for
23 appeal; however, I would contend that, and maybe I don't
24 quite understand Mr. Wise's position regarding
25 *Middleton*, but the ultimate test of ineffective

1 assistance of counsel is found in *Strickland*, of course,
2 versus *United States* and it requires both deficiency and
3 prejudice.

4 THE COURT: I think his point on *Middleton* was just
5 to show that -- he was distinguishing our current case
6 today from---

7 MR. JONES: All right.

8 THE COURT: ---*Middleton*.

9 MR. JONES: Yes, Your Honor. But, nevertheless,
10 there's still a requirement to show prejudice and that
11 means a requirement to show that the result would have
12 been different but for the alleged deficiency of trial
13 counsel. I have not seen anything that would suggest
14 that.

15 Your Honor, once again, the reason the traffic stop
16 was delayed was because the driver, and this is all in
17 the transcript and all and it's also in our return and
18 the appellate documents, that the driver, Monique
19 Trapier (ph), did not have a license for the car and --
20 did not have a driver's license, rather, and gave false
21 names to the law enforcement and law enforcement was
22 unable to verify her identity for a significant period
23 of time.

24 THE COURT: You mean, on the side of the road?

25 MR. JONES: On the side of the road, Your Honor.

1 Yes, sir. So it's not like law enforce- -- like they
2 could have just let her go and continue driving without
3 a license and without having any idea of what her
4 identity was. So the State's position at Mr. Brown's
5 trial and through appeal and now here is that there was
6 a -- this was not an unreasonably delayed traffic stop.
7 It was delayed as long as it needed to be under the
8 extremely bizarre circumstances of the driver not having
9 a -- not having identification and, of course, that was
10 only the beginning of it. Subsequently they spoke to
11 Mr. Brown. He gave a different name than the one she
12 gave, which was still not Monique's name. They had
13 different destinations that they mentioned going to, and
14 for what it's worth, Mr. Sharpe went into all those and
15 attempted to characterize them as not giving reasonable
16 suspicion to prolong the traffic stop, but I think, Your
17 Honor, that they certainly constitute reasonable
18 suspicion to prolong the traffic stop.

19 Reasonable suspicion is a much lower bar than
20 probable cause and, ultimately, Your Honor, that's been
21 the State's position from day one in this and it
22 continues to be the State's position that there was no
23 grounds under the law for the delay of the traffic --
24 for the suppression of the drugs on the grounds of
25 unreasonable delay of the traffic stop.

1 THE COURT: Okay.

2 MR. JONES: So, again, on that we would submit,
3 simply, that there was no showing of prejudice and that
4 the drugs simply -- he's not -- was not entitled to the
5 suppression of the drugs, so it doesn't matter how many
6 times his lawyer would have or should have objected to
7 them.

8 THE COURT: Okay.

9 MR. JONES: As to the next issue, I believe the
10 so-called *Jackson v. Denno* issue, I say so-called,
11 because as Your Honor pointed out, *Jackson v. Denno*
12 concerns the voluntariness of a confession, which is, of
13 course, relevant on --

14 THE COURT: For the existence, I would say.

15 MR. JONES: Okay. The issue in this was whether
16 the statement, one, was made or, two, whether Mr.
17 Gibbon's (sic) testimony about what the statement
18 actually was was credible. Your Honor, that's -- the
19 State submits that that was, in fact, an issue, as the
20 Court said, in the Bench trial context, the weight of
21 the evidence and Mr. Bradley, once the judge made that
22 ruling, he continued -- he argued based on -- he cross-
23 examined Mr. -- Officer Gibbons (sic) extensively about
24 the circumstances in which that was made. As he stated,
25 that was his trial strategy was to attack the -- that

1 was both his initial strategy for trying to keep the
2 statement out was to attack the circumstances of it --
3 of its being made and his subsequent strategy for
4 attacking its weight was to, again, point out the
5 disparities between what actually happened and the
6 ostensible policies of law enforcement regarding taking
7 confessions and that sort of thing. The fact that he
8 was ultimately, I mean, unsuccessful in keeping it out,
9 I think, should not reflect -- does not constitute
10 ineffective assistance.

11 The third issue regarding the Bench trial, Mr.
12 Bradley testified very clearly that he explained the
13 difference between the strategic considerations
14 regarding a Bench trial versus a jury trial, but that
15 ultimately the decision was Mr. Brown's, that he, as a
16 matter of course, floats the options to all of his --
17 all the defendants he represents, but does not force
18 them or recommend them to take it. He denied
19 recommending it and -- but, ultimately, I'm not sure
20 what the point about Monique Trapier is. She did get
21 up; she did testify. The judge heard that. So unless
22 -- I'm not sure what the prejudice is supposed to have
23 been that -- there's been no proof, and I can't think of
24 what proof possibly could be of what a jury would have
25 done with her testimony versus what the judge ultimately

1 did with the testimony. It very well could have been
2 that she was less sympathetic to a jury than to a judge
3 who's seen drug cases plenty of times before, but
4 ultimately, I'm just pointing out that it's speculative
5 what the difference would have been had they gone to a
6 jury trial instead of a Bench trial.

7 The record's clear that Mr. Brown understood his
8 right to a jury trial and that he waived it on the
9 record, so once again, the State's position on that --
10 on those grounds is that there's been no proof of
11 prejudice and I would say no deficiency either because
12 of the -- because it was ultimately not Mr. Bradley's
13 decision, it was Mr. Brown's decision.

14 THE COURT: Okay.

15 MR. JONES: Thank you, Your Honor.

16 THE COURT: Mr. Wise.

17 MR. WISE: Just briefly, and I promise briefly.

18 THE COURT: Yes, sir.

19 MR. WISE: On the prejudice issue, there's no
20 question when you fail to object to evidence you want
21 suppressed due to a bad search, that's ineffective
22 assistance of counsel, so the first prong of *Strickland*
23 has been met.

24 As to the prejudice, this gets back to the
25 *Middleton* case. Had the trial judge in this case heard

1 great arguments from both sides and the -- by the way,
2 when you look at the video, it's about twenty minutes
3 from the time of the stop, in initial stop, to the time
4 the drug dog comes out. All right? If you had heard --
5 if the judge had heard articulate arguments from both
6 sides that twenty minutes is not unreasonable delay
7 because of the problems and the judge had said, "I've
8 reviewed the video; I've heard argument of counsel; I've
9 heard the testimony. I find that a twenty-minute delay
10 is not sufficient," then they can have an argument that
11 the judge has ruled just as they did in *Middleton*.

12 We have no clue here as to what the judge's belief
13 was as to the reasonableness of the delay. The judge
14 could have just as easily said, Look, this officer knew
15 from the get-go she had a false name. He had the choice
16 of either carry her in or give her a ticket for no
17 driver's license, but he didn't have a right to sit
18 there and carry on conversation for another ten or
19 fifteen minutes. All right?

20 We don't know because that issue was -- the judge
21 never ruled on it and that's important for *Middleton*.
22 The judge ruled on those important issues in *Middleton*;
23 the judge did not here, and when you don't get the judge
24 to rule on the issue, it's prejudice.

25 As to the *Jackson versus Denno* hearing issue, we,

1 unfortunately, don't know what this trial judge would
2 have done had Mr. Brown testified as he did today and
3 said, "I didn't make the statement. There was another
4 officer there," and all this stuff. We don't know
5 because counsel was ineffective in giving the judge the
6 opportunity to pass upon the credibility of Mr. Brown
7 and, therefore, that's not only defective -- ineffective
8 assistance of counsel for not calling Mr. Brown, but
9 also was prejudicial to him.

10 And as to the jury issue, the judge can read the
11 transcript of Ms. Trapier and, I think, make a legal
12 determination of whether or not the advice to waive the
13 jury trial was reasonable.

14 THE COURT: All right. Anything else?

15 MR. JONES: Nothing from the State, Your Honor.

16 THE COURT: All right. If I have any questions or
17 need any -- if I have any other questions, I'll reach
18 out to y'all, but I'll need to get a copy of the
19 exhibits, 'cause I think the CD needs to stay with the
20 court --

21 MR. WISE: I have no objection to your taking the
22 exhibits with you, to be frank with you, unless the
23 State has --

24 THE COURT: I think she's in charge of that, so I
25 don't --

1 COURT REPORTER: The clerk's office takes
2 possession of them, ultimately.

3 THE COURT: We can order the CD. I'm confident
4 that --

5 MR. JONES: I mean, that's fine.

6 THE COURT: I suspect there's another copy of it
7 somewhere.

8 MR. WISE: Judge, if there's another copy of that
9 CD, I'd like to see it.

10 THE COURT: Okay.

11 MR. WISE: 'Cause we really went around for months
12 before we finally found it with the Court of Appeals.

13 THE COURT: If there's not an objection, perhaps I
14 can just put a -- well, maybe I can save a copy of it on
15 my computer.

16 MR. WISE: Yeah. That'd be fine; yeah. That's a
17 good idea.

18 THE COURT: I just want to make sure -- before the
19 end of the week, we'll get it.

20 MR. WISE: Yeah. But we initially got a denial
21 from the Court of Appeals they had it.

22 THE COURT: Right.

23 MR. WISE: And neither party had it and, finally, I
24 open my mail one day and there it is.

25 THE COURT: All right. Well, I'll take the matter

1 under advisement and I'll be in touch.

2 MR. WISE: Okay.

3 THE COURT: Thank y'all.

4 MR. JONES: Thank you, Your Honor.

5 (WHEREUPON, the proceeding was concluded at 4:26

6 P.M.)

7 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
 COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 7th day of December, 2022.

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

In witness whereof, I have hereunto subscribed my name, this 21st day of May, 2023.

Shannon E. McGilberry

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
 Calvin R. Brown, #173109)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2019-CP-46-1504
)

) **ORDER OF DISMISSAL**
)

FILED-RECEIVED
 2021 JAN -5 PM 2: 15
 ANGE M. BRYANT
 C.C.C.P. & GS
 YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Calvin R. Brown (“Applicant”) on April 30, 2019, and amended on June 11, 2021. The Court convened an evidentiary hearing into the matter on December 7, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

After reviewing the Applicant’s records from the South Carolina Department of Corrections, the transcript of Applicant’s trial, the records of the York County Clerk of Court regarding the subject conviction, Applicant’s appellate records, and the legal arguments and evidence submitted from the attorneys, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

Procedural History

Applicant was indicted by the York Grand Jury in August of 2015 for trafficking opium/heroin, 14 grams or more (2015-GS-46-02347). Applicant was represented by Willie F. Bradley and Patrick C. Sharpe (collectively, “Counsel”). Assistant Solicitors Marina Hamilton and Leslie Robinson prosecuted the case. On February 24, 2016, Applicant proceeded to a bench

trial before the Honorable Perry H. Gravely, circuit court judge. Judge Gravely found Applicant guilty and sentenced him to twenty-five years' imprisonment and a fine of two hundred thousand dollars. Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion. *State v. Brown*, No. 2019-UP-014 (Jan. 9, 2019). The remittitur was issued February 1, 2019.

Factual History

On the morning of February 18, 2015, Officer William R. Gibson, II, a deputy sheriff with the York County Sheriff's Office, pulled over a "white-in-color Nissan Maxima" for following too closely to a tractor-trailer. After approaching the passenger-side of the vehicle, he requested the driver, Monique Trappier,¹ to provide her license and the registration for the car. Applicant, the passenger, interjected and explained they were in a rental car and that they were traveling to Morgantown, North Carolina. Trappier claimed she was not in possession of her driver's license or any type of identification. Officer Gibson asked Trappier to exit the vehicle so he could collect her information.²

Trappier told Officer Gibson her name was "Nyambi Annetta Trappier,"³ born December 14, 1981,⁴ but could not recall her social security number. Using this information, Officer Gibson attempted to find Applicant's license information using his vehicle's computer. He was unable to find Trappier's license and called dispatch to request assistance in locating her information.

¹ Trappier's true identity was not ascertained until after her arrest, when she was taken to the Rock Hill Police Department. (R.p.45, lines 11-14).

² At the time of the traffic stop, Officer Gibson was accompanied by State Constable Dan Janeski. Officer Janeski's sole role during the stop was standing with Trappier and/or Applicant while Officer Gibson separated them and when he searched the vehicle. (R.p.99, line 25-R.p.100, line 24; Dashcam Video).

³ Officer Gibson testified Trappier identified herself as "Anita Trappier," but the Dashcam Video recording captured the name, and spellings, she provided. (R.p.44, lines 9-14; Dashcam Video).

⁴ At trial, it was revealed Trappier also provided a false birthdate: her actual date of birth is May 8, 1974. (R.p.208, line 24-R.p.209, line 7).

While waiting, Officer Gibson asked Trappier for additional information. Trappier told Officer Gibson she and Applicant had known each other for approximately four years, and were travelling to “somewhere” near Asheville, North Carolina. They were in a rental car because Applicant had totaled his own vehicle a few months prior when he collided with a deer. She and Applicant lived in Georgetown, South Carolina, and were heading to North Carolina to visit Applicant’s daughter and her family. She was uncertain for how long they would stay, but stated they were probably coming back later that day. Trappier claimed neither she nor Applicant brought a change of clothes or other supplies for an overnight stay.

After a few minutes, dispatch radioed back to Officer Gibson and informed him it was also unable to find Trappier’s license information. Officer Gibson informed Trappier he could not let them leave until he verified her information. Hoping to acquire additional information about Trappier, he asked her to wait by his vehicle while he questioned Applicant. Applicant told Officer Gibson Trappier’s name was “Lisa Trappier” and that he had known her for “seven or eight years.” Again, he claimed he and Trappier were heading to Morganton, North Carolina, but claimed they were visiting “friends of family” and planned on staying the night in Morganton and returning to Georgetown the following day. When asked whether he had been in a recent accident, he claimed a minor collision with a deer put a “dent” on his car. While conversing with Applicant, Officer Gibson noticed no luggage was visible in the car and that an air freshener was present. Based on Applicant and Trappier’s inconsistent statements as well as his observations of the vehicle, Officer Gibson developed a reasonable suspicion drugs were present in the car.

Officer Gibson asked Applicant for permission to search the car. He declined and defended his decision by claiming: (1) he was not the driver of the vehicle; (2) it was a rental; and (3) they were stopped for a simple traffic violation. Officer Gibson informed Applicant that he and

Trappier's stories were not "adding up," noting they provided differing information on their destination, the extent of their stay in North Carolina, and even Trappier's name. Officer Gibson, suspicious of Trappier and Applicant, asked whether he could have his drug-detection K-9 sniff around the perimeter of the vehicle. Applicant protested claiming the dog was going to alert, and that "the dog always alerts," which would create probable cause for a vehicle search. Over Applicant's objections, Officer Gibson allowed his dog to sniff around the vehicle. The dog "alerted" outside the driver's side of the car.

Officer Gibson searched the car and found an air freshener, and multiple phones. He discovered a jacket, which Applicant identified as his, inside of which was heroin.⁵ After this discovery, Officer Gibson arrested Applicant and Trappier. Officer Gibson's subsequent search of the car uncovered two crack pipes, a small amount of crack, and additional cell phones (for a total of four). At the police station, Officer Gibson determined approximately 16.5 grams of heroin had been in Applicant's coat. Applicant confessed to ownership of the drugs and claimed he purchased them for one-thousand dollars.⁶

At trial, Officer Gibson testified he developed reasonable suspicion of drug activity after hearing Trappier's and Applicant's inconsistent statements regarding the location, scope, and purpose of their trip to North Carolina as well as Trappier's name. His suspicion only deepened when Applicant claimed the drug K-9 would alert outside of the vehicle.

⁵ At the scene, without the benefit of testing, Officer Gibson misidentified the drugs as some crack/cocaine mixture. (R.p.82, line 13–R.p.83, line 8; R.p.137, line 15–R.p.138, line 2).

⁶ Applicant did not specifically identify the drugs as heroin. Rather, Officer Gibson asked him whether the crack/cocaine was his, and, without mentioning the name of the drugs, Applicant admitted he had purchased them. (R.p.55, line 18–R.p.56, line 7; R.p.122, line 21–R.p.124, line 15).

Current Post-Conviction Relief Application

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Trial Counsel was ineffective in failing to preserve for appellate review the unconstitutional search of the automobile I was riding in."
2. "Trial Counsel was ineffective in recommending that I waive a jury trial when the co-defendant was willing to testify that the drugs found in the automobile belonged to her."

Subsequently, on June 11, 2021, Applicant amended his application to raise the following additional grounds for relief:

3. "Trial counsel was ineffective in failing to properly conduct a Jackson v. Deno [*sic*] hearing as to my alleged statement."
4. "Trial counsel failed to properly investigate the case and have the drugs weighed to determine the proper weight."

At the outset of the evidentiary hearing, counsel for Applicant withdrew the allegation related to the weight of the drugs.

Findings of Fact and Conclusions of Law

This court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel, Generally

Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a

preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

a) Failure to Renew Objection to Admission of Drug Evidence.

At Applicant's trial, Counsel made a pre-trial motion to suppress the evidence of drugs seized from the automobile in which Applicant was a passenger. The trial court denied the motion but stated Counsel could renew the motion "at the appropriate time." During the evidentiary phase of the trial, the evidence was admitted without objection. At the end of the trial, Counsel renewed the suppression motion, and the trial court denied the motion "on the previous basis." Applicant alleges Counsel was ineffective for failing to renew the objection to the admission of the drugs at the time they were introduced into evidence. The Court finds this allegation is meritless.

"Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986).⁷

In this case, the trial court held a pre-trial hearing on Applicant's motion to suppress. Counsel argued that Applicant had been illegally detained beyond the legitimate duration of the traffic stop, rendering the dog sniff and subsequent search of the car illegal under *Rodriguez v. U.S.*, 575 U.S. 348 (2015) (holding police may not detain a motorist once the purpose of the traffic

⁷ Whether the "exclusionary rule" even applies in the context of a *Strickland* prejudice analysis appears to be an open question. The exclusionary rule is not a personal constitutional right, but a court-created prudential doctrine designed to deter Fourth Amendment violations. *Davis v. U.S.*, 564 U.S. 229, 236–37 (2011); *see also State v. Moore*, 429 S.C. 465, 478, 839 S.E.2d 882, 889 (2020) (holding the exclusionary rule is a harsh sanction that is "clearly unwarranted" whenever it fails to yield appreciable deterrence). Because application of the exclusionary rule "deflects the truthfinding process and often frees the guilty," the United States Supreme Court has declined to entertain habeas corpus claims urging the application of the rule. *Stone v. Powell*, 428 U.S. 465 (1976) (holding the deterrent effect of the exclusionary rule, while sufficient to justify its application at trial and on direct appeal, is too small relative to its costs to justify applying on collateral review). Although the *Kimmelman* court rejected the position that *Stone* barred federal habeas corpus review of ineffectiveness claims involving failure to challenge illegally suppressed evidence, it did not reach the prejudice issue. *See Kimmelman*, 477 U.S. at 396–98 (Powell, J., concurring) (Because the exclusionary rule was adopted "for deterrence reasons that have no relation to the fairness of the defendant's trial . . . the question of whether *Strickland* prejudice encompasses the admission of reliable but illegally obtained evidence remains an open one.").

stop has been completed, absent reasonable suspicion to prolong the stop). Counsel acknowledged, however, that the driver, Monique Trappier, did not have a driver's license and gave officers a false name. The trial court found these facts to be supportive of reasonable suspicion, noting, "you've got a lot of reasonable suspicions here." The solicitor argued that, under *Rondriguez*, the initial purpose of the traffic stop had not been completed at the time Officer Gibson conducted the dog sniff, since Trappier's continued refusal to give her real name prevented officers from finishing the initial stop. Ultimately, the trial court denied the motion.

Applicant contends Counsel was ineffective for failing to renew his objection at the time the drug evidence was introduced; however, he has not presented any new arguments or evidence in support of his Fourth Amendment claim. The Court finds Applicant has not shown Counsel was ineffective as to this allegation because Applicant's Fourth Amendment claim has no merit. *Kimmelman*, 477 U.S. at 375. Under *Rodriguez*, an officer who initiates a traffic stop may continue to detain a motorist until the purpose of the stop is completed. In this case, the purpose of the stop was *not* completed because Trappier refused to give her real name. Therefore, the use of the drug detection dog did not prolong the stop beyond its original justification. Under *Illinois v. Caballes*, 543 U.S. 405 (2005), the use of a drug detection dog is permissible during a traffic stop as long as the stop is not unreasonably prolonged as a result.

Even if the original justification for the traffic stop *had* elapsed by the time the drug dog was brought out, by that point Officer Gibson certainly had reasonable suspicion to extend his investigation based on Trappier's highly suspicious refusal to provide her real name, combined with other indicia suggestive of criminal activity, such as the discrepancies between Trappier's responses and Applicant's responses to Gibson's questions. For these reasons, the Court finds Applicant has not established that there was any merit to his Fourth Amendment claim.

Accordingly, Applicant cannot meet his burden of proving prejudice from Counsel's failure to renew the Fourth Amendment objection at the time the evidence was introduced.

b) Counsel's Alleged Recommendation to Waive Jury Trial.

At the outset of Applicant's trial, the trial court conducted a thorough colloquy with Applicant regarding his decision to waive the right to a jury trial. Ultimately, the trial court found Applicant's waiver was knowing, voluntary, and intelligent. Applicant does not challenge the voluntariness of the waiver; rather, he alleges Counsel was ineffective for recommending that he waive a jury trial and go forward with a bench trial only. Applicant argues he was prejudiced by waving a jury trial because some jurors might have voted to acquit Applicant after his co-defendant Trappier testified that the drugs belonged to her. The Court finds this allegation is without merit.

At the evidentiary hearing, Counsel Bradley testified that he did not "recommend" a bench trial, but informed the Applicant that it was an option and explained the differences between a jury trial and a bench trial. Counsel Bradley testified that it was Applicant's decision to pursue a bench trial. The Court finds Counsel's testimony on this point credible. Therefore, Applicant has failed to show that Counsel's performance was deficient.

In addition, Applicant's contention that a jury would be more likely than a judge to believe the testimony of Applicant's co-defendant Trappier is purely speculative. The Court will not presume prejudice based on the mere possibility that a different factfinder, faced with the same evidence, might have reached a different conclusion. As Applicant has not proved either deficiency or prejudice as to this allegation, the Court finds that he has not met his burden of proving Counsel was ineffective.

c) Counsel's Failure to Conduct *Jackson v. Denno* Hearing.

A criminal defendant is entitled to an evidentiary hearing outside the presence of the jury to determine the voluntariness of statements made by the defendant prior to the admission of such statements into evidence. *Jackson v. Denno*, 378 U.S. 368 (1964). The admissibility of a confession must be based on a determination of its voluntariness. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969).

Prior to Applicant's trial, Counsel sought to exclude a portion of Officer Gibson's incident report in which Gibson states Applicant admitted the drugs found in the car belonged to him. Counsel argued Applicant's statement should be suppressed because it was not videotaped, written down, or signed by the Applicant, although law enforcement had the ability to record statements in those ways. In addition, Counsel argued the statement was not reliable because it reflected that Applicant claimed ownership of the "cocaine" in the car, when the substance was actually heroin. The trial court stated, "I'm not sure that it violates any of the rules. You can educate me otherwise. But I think it goes to the weight more than the actual basis for suppression." The solicitor argued that the admissibility of the confession should be based on whether the statement was involuntary, while Counsel asserted that the fact that the statement was unrecorded "would go to whether you found the statement credible." The trial court agreed, clarifying that "I didn't address it under *Jackson v. [Denno]* . . . I didn't think that they kind of hit that area and that's why I didn't kind of respond that way."

Applicant now argues Counsel was ineffective for not conducting a proper *Jackson v. Denno* hearing to determine the admissibility of the statement. However, Applicant has not produced any evidence that the statement was *involuntary*, which is the lynchpin of admissibility under *Jackson v. Denno*. Instead, Applicant merely argues Officer Gibson's summary of

Applicant's statement was not credible. This argument, which was thoroughly explored by Counsel during Applicant's trial, even after the denial of the motion to suppress the statement, goes only to the weight to be accorded the statement by a factfinder. The argument does not go to the admissibility of the statement or the necessity of a *Jackson v. Denno* hearing. Therefore, the Court finds Applicant has not met his burden of proving Counsel was ineffective for failing to request a *Jackson v. Denno* hearing.

Conclusion


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21 day of December, 2023.


WALTON J. MCLEOD, IV
Presiding Judge
Sixteenth Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Calvin R. Brown, № 173109,)
)
 Applicant,)
)
 -vs-)
)
 State of South Carolina,)
)
 Respondent.)

FILED-RECEIVED
 IN THE COURT OF COMMON PLEAS
 2024 JAN 19 AM 11:50
 vs
 ANGIE M. BRYANT
 C.C.C.P. & GS
 YORK COUNTY, SC
 Case № 2019-CP-46-1504
 Rule 59 Motion to Alter or Amend Judgment

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Calvin R. Brown moves this Court to Alter or Amend the order issued in this matter on December 21, 2023 and filed with the Office of the Clerk of Court for York County on January 5, 2024 in the following particulars:

1. The Court erred in its order by not clearly finding that trial counsel was deficient in failing to preserve for appeal the validity of the stop and search of the automobile he was driving. This Court noted, "During the evidentiary phase of the trial, the evidence was admitted without objection," Order at 8. The failure to make the proper objection to preserve the issue is, as a matter of law, ineffective assistance of counsel.

2. The Court erred in holding that a pre-trial hearing was held in this matter. The argument of counsel for Mr. Brown and the argument of the assistant solicitor does not constitute a proper pre-trial hearing as to the suppression of the evidence seized as no testimony was taken. The trial judge stated, "I'm going to deny your Motion at this time but I don't mind, you know, if we review the evidence - - because both of y'all have a little different spin [as to] exactly what happened." Tr. at 24, ll 10-14. This statement by the trial judge did not contain any finding of

fact due to the fact that no testimony was taken. The trial judge then concluded, “But I’ll review the, you know, the evidence and at the appropriate time I’ll be glad to, you know, let you renew your motion if we need to do that.” Tr. at 24, ll 19-22. Thus, the trial court told defense counsel he needed to renew the motion at the appropriate time and he would make a ruling based upon the evidence. As defense counsel failed to make the proper objection, the trial court never made a ruling considering the credibility of the witnesses as to the admissibility of the drugs seized.

3. The Court erred in accepting the statement by the trial court that “[Y]ou’ve got a lot of reasonable suspicions going on here.” The statement is not a factual finding as the statement was not made based upon any testimony taken at the pre-trial motion. Whether the trial judge had the same belief after fully hearing from the state’s case and the defense witness is not known as the motion to suppress the evidence was not renewed when the drug evidence was introduced.

4. This Court erred in making factual conclusion based upon the testimony of the arresting officer. As the arresting officer did not testify at the Post Conviction hearing, this Court cannot make credibility findings. As the South Carolina Supreme Court said in *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018) “In determining whether a PCR applicant has established prejudice, the PCR court does not act as a finder of fact and substitute its judgment for that of the trial court. Rather, in instances like the case before us, the PCR court must view the trial court’s ruling through the same lens that would be applied on appeal, which here requires giving appropriate deference to the trial court’s findings.” This case tells the Post Conviction Relief Court that they cannot judge the credibility of the testifying officers in the original trial. The trial judge can judge the credibility of the testifying officer. Unlike *Milledge*, the trial judge in this case never made any factual finding as to the credibility of the testifying arresting officer. At

the Post Conviction Relief hearing in this matter, defense counsel introduced the relevant portion of the trial transcript in *Milledge* to show that testimony was taken from the arresting officer. A ruling in that case was made based upon the testimony heard by the trial judge. In the present case, there was only oral argument by counsel for both sides which did not involve the credibility of the arresting officer. Thus, *Milledge* prevents this Court from making an independent credibility determination of as to the testimony of the arresting officer. If this Court believes the testimony of the arresting officer is sufficient to sustain the validity of the search, this conclusion can only be reached by passing upon the credibility of the arresting officer.

In his concurring opinion, Judge Few stated, “[T]he PCR court—and this Court on certiorari—must focus on the trial court’s pre-trial ruling, unless the evidence in the trial itself includes a substantial reason to believe the trial court would have changed its mind when ruling on a contemporaneous objection. If there is such a reason, the PCR court’s analysis should focus on the probability the trial court would have changed its ruling; the PCR court should not conduct its own suppression analysis. In this case, nothing changed regarding the existence of reasonable suspicion from the time of the trial court’s pre-trial ruling to the point during trial when the State offered the evidence.” *Id.* at 384, 811 S.E.2d at 806. Here, as there were no true pre-trial ruling and no objection as to the drugs when they were introduced, this Court has no legal basis to determine what the trial court would have done had a timely objection been made when the evidence was introduced. Thus, this Court to alter or amend the order entered in this matter to give Mr. Brown a new trial.

4. This Court erred in failing to hold that trial counsel was ineffective in failing to properly conduct a *Jackson v. Denno*, 378 U.S. 368 (1964) hearing. Mr. Brown contends that a

Jackson v. Denn hearing includes more than a simple reliability issue as to the confession. The hearing logically should include a hearing on whether the statement was actually made. The United States Supreme Court said in the case, "It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession and even though there is ample evidence aside from the confession to support the conviction." *Jackson* at 376 (internal citations omitted). The question as to whether the statement was actually made is as important as whether the statement was made under undue influence. No person should be convicted based upon either a coerced confession or an alleged confession that was not made. Both deny a defendant of due process of law. Trial counsel intended to conduct the required hearing as he introduced a motion to have such a hearing. However, the hearing was never conducted. To actually conduct such a hearing, trial counsel would have been required to have Mr. Brown testify as to the facts surrounding the alleged confession.

Trial counsel gave no reason for not conducting the required hearing. He had not even discussed with Mr. Brown the need for him to testify at the hearing. PCR hearing 37, ll 3-10; 39, ll 3-23; 46, l 8 to 47, l 12. Trial counsel was never able to explain why he did not put Mr. Brown on the stand to refute the testimony of the arresting officer. PCR hearing, 42, l 25 to 43, l 25.

- At the Post Conviction Relief hearing, Mr. Brown denied making the alleged statement. PCR hearing at 66, l 10 to 67, l 19. Trial counsel's trial strategy was correct. He intended to have a hearing to contest the validity of the alleged confession. He completely failed in his execution of the trial strategy.

This Court is not in a position to judge the credibility of Mr. Brown as opposed to the

arresting officer because this Court never heard the arresting officer. As noted above, this Court cannot consider the credibility of the trial testimony in making the determination as to whether Mr. Brown should prevail on this issue. As no hearing was held, Mr. Brown is entitled to relief. He was prejudiced because his trial counsel deprived him of his opportunity to have a fair hearing as to the validity of the alleged confession.

5. In making the credibility determination as to trial counsel as to the waiver of a jury trial, this Court failed to consider the inconsistent and contradictory testimony between the two trial attorneys. First Patrick Sharpe testified that he did not get involved in the case until around February 1, right before the trial which began on February 24, 2016. Mr. Bradley testified that Mr. Sharpe got involved in the fall of 2015 when he first learned that the female passenger would be testifying for Mr. Brown. PCR hearing, 30 at ll 13-21. Mr. Bradley testified he brought Mr. Sharpe into the case when he learned of the passenger's testimony. PCR hearing at 29, ll 2-18. This issue is further complicated as Mr. Bradley testified that he brought Mr. Sharpe into the case when he declined to talk to the passenger without another lawyer present. As he stated, "[S]he actually showed up with Mr. Brow at my office and at that point - - - and I stopped her from talking to me and that's actually when I called Mr. Sharpe in for the very first time, because I told both of them that I was not going to listen to that, that I needed to have separate counsel advise her of her rights" PCR hearing at 29, ll 7-13. This testimony suggests that Mr. Sharpe was brought in to represent the female passenger. If this were true, Mr. Sharpe could not have represented Mr. Brown.

Mr. Bradley testified that the decision to waive a jury trial was made a couple of weeks before the trial. PCR hearing. PCR hearing at 32, ll 13-17. Mr. Sharpe testified that the decision

to waive a jury trial was made before he came come on board on around the first of February.
PCR hearing at 10, II 5-8. These factual inconsistencies and legal ethical problems are contrary
to the Court's finding as to credibility.

Based upon the above discussion, this Court should grant the Motion under Rule 59 to
alter or amend the decision in this case and issue and order granting Calvin Ropel Brown a new
trial in this matter.

January 15, 2024



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauch_wise@gmail.com
S. C. Bar № 6188

Attorney for Calvin Ropel Brown

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Calvin R. Brown, No. 173109,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

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 ANGIE M. BRYANT
 C.C.P. & GS
 YORK COUNTY, SC

Case No. 2019 - CP - 46 - 1504

CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for Attorney for the Applicant in the above entitled case. That on January 16, 2024, I did send via US Mail , a copy of the Rule 59 Motion to Alter or Amend Judgment to Zachary William Jones, SC Attorney General Office at P.O. Box 11549, Columbia, SC 29211 and Hon. Walton J. McLeod, IV at 205 E. Main Street, Lexington, SC 29072.

January 16, 2024

/s/Sandy Traynham
 Sandy Traynham
 Secretary

C. RAUCH WISE
 Attorney-at-Law
 305 Main Street
 Greenwood, SC 29646
 (864) 229-5010
 S.C. Bar No. 6188

Attorney for Applicant

FILED-RECEIVED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF YORK) FOR THE SIXTEENTH JUDICIAL CIRCUIT
 2024 MAY 13 PM 12: 08)
 ANGIE M. BRYANT)
 C.C.P. & GS)
 YORCK COUNTY, SC)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

Case No.: 2019-CP-46-1504

**RETURN TO APPLICANT'S RULE 59
 MOTION TO ALTER OR AMEND
 JUDGMENT**

This matter concerns an application for post-conviction relief (“PCR”) filed by Calvin R. Brown (“Applicant”) on April 30, 2019, and amended on June 11, 2021. The Court convened an evidentiary hearing into the matter on December 7, 2022, at the Moss Justice Center in York, South Carolina. Following that hearing, the Court issued an order denying and dismissing Applicant’s PCR action on December 21, 2023.

Applicant now asks the Court to alter or amend its prior order and grant Applicant’s application for PCR. The State contends Applicant’s motion should be denied because this Court did not err in its initial order denying and dismissing PCR. The State offers the following responses to the arguments raised in Applicant’s Rule 59 motion:

1. Failure to object to admission of evidence

Applicant claims Counsel’s failure to contemporaneously object to the admission of drug evidence seized at the traffic stop was, “as a matter of law, ineffective assistance of counsel.” However, Applicant has not addressed this Court’s specific finding that Applicant had not shown prejudice from Counsel’s omission because the Fourth Amendment claim, on which the motion to exclude the evidence was based, was meritless. For the reasons given in this Court’s order, there was no Fourth Amendment violation in the traffic stop in this case. As a matter of law, Applicant cannot be prejudiced by Counsel’s failure to renew a meritless objection. Since a showing of

prejudice is necessary to establish a claim of ineffective assistance of counsel, this Court correctly held that Applicant's ineffective assistance claim on this ground must fail.

2. and 3. Trial court's alleged failure to make a factual finding at the pre-trial hearing

Applicant claims this Court erred in stating that a pre-trial hearing was held. This claim is meritless; the trial court heard extensive legal arguments from Counsel on the suppression issue before ruling on the issue. (R.pp.5–24). The trial court expressly denied Applicant's motion to suppress at the conclusion of that hearing: "I'm going to deny your motion at this time." (R.p.24, lines 10–11). There was no need to assess the credibility of the officers at that point because the material issue was a legal one—whether Trappier's evasive answers, use of a false name, and refusal to provide a driver's license justified the extension of the traffic stop.¹ Those facts were not in dispute. Therefore, this Court did not err in considering the result of the pre-trial suppression hearing in evaluating the likelihood of success had Counsel renewed his suppression motion at the proper time.²

4. *Milledge v. State* issue

Applicant relies on *Milledge v. State* for the proposition that "the PCR court does not act as a finder of fact and substitute its judgment for that of the trial court." 422 S.C. 366, 380, 811

¹ It should be remembered that, despite testifying at the PCR hearing, Applicant never denied the existence of these circumstances. This Court noted that Applicant "has not presented any new arguments or evidence in support of his Fourth Amendment claim." (Order p.9). Even now, in his Rule 59 motion, Applicant has failed to assert *any* facts contrary to the circumstances articulated at the pre-trial motion to suppress hearing, which both the trial court and this Court have found justified the duration of the traffic stop.

² Applicant also implies the trial court might have changed its ruling had Counsel renewed his objection after the officers had testified and the court had the opportunity to weigh their credibility. This speculation is baseless, especially because Counsel *did* renew his objection at the end of trial. (R.p.237, lines 17–19). The trial court noted that, "[A]s the fact finder I have to determine and weigh the credibility of the witness . . . I'm going to deny your Motions and, as indicated, the previous Motions on the previous basis as well." (R.p.237, line 23–p.238, line 4).

S.E.2d 796, 804 (2018). This is a correct statement of law, and it reflects the principal that the PCR court should show the same deference to factual findings of the trial court as appellate courts do. Applicant seems to be making the following warped argument:

- A. Under *Milledge*, the PCR court cannot make a credibility finding contrary to that made by the trial court;
- B. The trial court in this case never *expressly* found the officers credible; therefore
- C. This Court is precluded from finding the officers credible.

This argument is not sound,³ but more importantly, it is not relevant. This Court never purported to make a finding that the officers were credible. Rather, the Court simply found that Applicant had not met his burden of proving a Fourth Amendment violation occurred. It is axiomatic that the applicant bears the burden of proof in a PCR action. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. As explained in the Court's order, Applicant did not produce any new evidence at the PCR hearing to substantiate his Fourth Amendment claim. Therefore, the Court correctly found that Applicant had failed to meet his burden of proof.

5. *Jackson v. Denno* issue⁴

Applicant claims Officer Gibson lied when he testified that Applicant gave a statement admitting to ownership of the drugs. Applicant argues he was prejudiced by Counsel's failure to insist on a *Jackson v. Denno* hearing to determine whether he actually made the inculpatory statement related by Officer Gibson. However, this Court correctly found that the purpose of a

³ The absence of an affirmative finding of credibility does not imply an affirmative finding of non-credibility. In addition, the fact that the trial court denied Counsel's renewed motion to suppress the evidence at the end of trial strongly suggests that, to the extent the court had to rely on witness credibility at all (the material facts not being in dispute), the court deemed the officers' testimony credible.

⁴ Applicant has labeled this issue as "4," even though the prior issue is also labeled "4."

Jackson v. Denno hearing is to evaluate the voluntariness of a confession, not to evaluate a claim that a purported confession was never actually made. *Jackson v. Denno*, 378 U.S. 368 (1964); *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). Tellingly, Applicant has provided no authority for his argument that *Jackson v. Denno* should be extended to such claims.

Applicant argues that *Jackson v. Denno* should still apply in this situation because “no person should be convicted based upon . . . an alleged confession that was not made.” This argument proves too much—obviously, no person should be convicted on the basis of *any* falsified evidence. That does not mean a pre-trial *Jackson v. Denno* hearing is warranted every time a defendant claims that an item of evidence against him is fabricated. Instead, the trial itself provides the appropriate guarantee against convictions based on falsified evidence; determining the truth or falsity of evidence is the role of the factfinder.

In Applicant’s case, the trial court correctly declined to hold a *Jackson v. Denno* hearing to address Applicant’s claim that he never made the statement, on the ground that it went to the weight of the evidence rather than its admissibility. Applicant proceeded to challenge the truth of Officer Gibson’s testimony on that point through cross-examination during the State’s case-in-chief. This is the correct procedure for addressing claims that a witness is lying.

Finally, Applicant again argues this Court “cannot consider the credibility of the trial testimony.” Again, this Court never purported to make a credibility determination. All this Court found was that the credibility or non-credibility of Officer Gibson was an issue of “the weight to be accorded the statement by a factfinder,” and therefore not within the purview of the voluntariness analysis prescribed by *Jackson v. Denno*. This Court’s finding was clearly correct.

6. Jury Trial Waiver

Finally, Applicant contends Counsel was not credible when he testified that he explained the difference between a bench trial and a jury trial but did not recommend a bench trial and that it was Applicant's choice to waive a jury trial and have a bench trial. Applicant claims Counsel Bradley testified Counsel Sharpe became involved in the case in the fall of 2015, while Counsel Sharpe testified he got involved in the case shortly before Applicant's trial in February of 2016. Applicant cites the PCR transcript at page 30, lines 13–21, regarding Counsel Bradley's testimony on this point; however, that portion of the transcript has nothing to do with this issue. Applicant's characterization of the testimony is misleading.

Counsel Bradley testified that he called in Counsel Sharpe "right around [the] time" that the solicitor told him Trappier had given a statement. (PCR Tr. p.31, lines 12–20). He could not remember the date that happened, but he testified it must have been "after November [but] before trial," since Trappier gave her statement in November. (PCR Tr. p.31, lines 2–20). While Counsel Bradley admitted his recollection was cloudy on this point, the range he gave is consistent with Counsel Sharpe's testimony that he became involved in February before trial. (PCR Tr. p.7, lines 2–6). Even if this testimony were viewed as inconsistent, such a minor inconsistency in the matter of dates has no bearing on the issue of Applicant's waiver of a bench trial.

On that issue, Applicant took the stand at the PCR hearing and admitted Counsel informed him about the possibility of a bench trial. He testified that Counsel explained that the judge would be the factfinder, and he knew that he would not get the benefit of a twelve-person jury that would have to unanimously agree to convict him. (PCR Tr. p.73, line 18–p.74, line 16). He testified that "I think [Counsel] explained to me some cases a Bench trial would be better than the jury trial in certain instances, I'm sure," although he claimed he "probably" did not understand Counsel's explanation. (PCR Tr. p.76, lines 7–16).

This Court's credibility determination should take into account the fact that Applicant expressly told the trial court, three times in a row, under oath, that it was his own decision to waive a jury trial. (R.p.35, line 17–p.36, line 1). Applicant own testimony undermines his credibility: “[W]hen the trial judge questioned me, I said it was my decision, but really it was the decision of my attorney . . .” (PCR Tr. p.76, lines 1–3). Applicant either lied to the trial court, or he lied to this Court. Compared to the insignificant quibbles Applicant now raises with Counsel's testimony, the State maintains Counsel was clearly more credible.

Furthermore, this Court found that Applicant had failed to prove prejudice, because there was no indication that the result of his trial would have been different if he had been tried by a jury as opposed to a judge. Applicant has not presented any argument against the Court's conclusion on the prejudice prong of this issue. On that prong alone, then, Applicant's ineffectiveness claim must fail.

For all these reasons, the Court should deny Applicant's Rule 59 motion to alter or amend the judgement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

ZACHARY W. JONES
Assistant Attorney General

By: s/Zachary W. Jones
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 8, 2024

FILED-RECEIVED

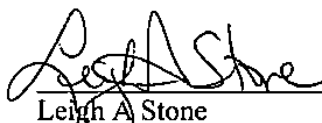
2024 MAY 13 PM 12: 08

STATE OF SOUTH CAROLINA,)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
)	2019-CP-46-01504
KALVIN R. BROWN, #173109)	
Applicant,)	
vs)	CERTIFICATE 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 to Applicant's Rule 59 Motion to Alter of Amend Judgment in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

DATED this 8th day of May, 2024.


 Leigh A Stone
 Administrative Coordinator for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Kalvin R. Brown, #173109)
Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

NO.: 2019-CP-46-1504

ORDER DENYING APPLICANT'S RULE 59 MOTION

FILED-RECEIVED
2024 MAY 28 PM 12:01
ANGIE H. BRYANT
C.C.P. & SS
YORK COUNTY, SC

This matter is before the Court by way of a post-conviction relief (PCR) action commenced by Calvin R. Brown, #173109 ("Applicant"). An application for PCR was filed on April 30, 2019, and amended on June 11, 2021. The Court convened an evidentiary hearing into the matter on December 7, 2022, at the Moss Justice Center in York, South Carolina. Following the hearing, the Court issued an order denying and dismissing Applicant's PCR action on December 21, 2023 ("prior order"). Applicant filed a Motion to Alter or Amend Judgment on January 2, 2024 and Respondent filed a response on May 7, 2024. For the reasons set forth herein, Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is DENIED.

Applicant argues that reconsideration of the Order of Dismissal is necessary and appropriate for the following reasons:

- a) The Court did not err in its prior order by not finding that the trial counsel was inefficient in failing to preserve for appeal the validity of the stop and search of the automobile he was driving.

Applicant asserts the Court erred in its prior order by not finding trial counsel ineffective for permitting the introduction of evidence seized during the stop and search of Applicant's car

without renewing his objection. A showing of prejudice is necessary to establish a claim for ineffective assistance of counsel. Here, the Court found that the objection would have been meritless; thus, Applicant has not shown prejudice from Counsel's omission of the objection. The Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts as it relates to trial counsel permitting the introduction of evidence seized during the stop and search of Applicant's car without objection.

b) The Court did not err in holding that a pre-trial hearing occurred.

The Court found in the prior order that the parties convened for a pre-trial hearing on Applicant's motion to suppress. Applicant argues that the Court erred in the prior order finding because no testimony was taken. The Court finds Applicant's argument is without merit as there is no error of law or facts asserted as to the Court's finding. Therefore, this Court did not err in considering the result of the pre-trial suppression hearing in evaluating the likelihood of success had Counsel renewed his suppression motion at the proper time

c) The Court did not err in accepting the statement by the trial court that "you've got a lot of reasonable suspicions going on here."

Applicant argues the Court erred in accepting the statement by the trial court that "[Y]ou've got a lot of reasonable suspicions going on here." Applicant argues the statement is not a factual finding as the statements was not made based upon any testimony take at the pre-trial motion. The Court's prior order simply states evidence from the record that that the trial court notes "you've got a lot of reasonable suspicions going on here." Therefore, this Court did not err in noting statements made by the trial court in the Court's overall analysis.

- d) The Court did not err in making a factual conclusion based upon the testimony of the arresting officer.

Applicant argues that the Court erred in making factual conclusions in the prior order based upon the testimony of the arresting officer because the arresting officer did not testify at the Post Conviction hearing. Applicant relies on *Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018), which states that “in determining whether a PCR applicant has established prejudice, the PCR court does not act as a finder of fact and substitute its judgment for that of the trial court. Rather, in instances like the case before us, the PCR court must view the trial court’s ruling through the same lens that would be applied on appeal, which here requires giving appropriate deference to the trial court’s finding.”

The Court agrees with the *Milledge* holding, yet finds the argument not relevant as the Court did not reach a factual conclusion based upon the testimony of the arresting officer. In considering the testimony of the arresting officer, the Court was making a finding as to whether the Applicant had met his burden of proving a Fourth Amendment violation. Therefore, this Court did not err by making a factual conclusion as to testimony of the arresting officer.

- e) The Court did not err in not finding trial counsel ineffective as to a proper *Jackson v. Deno* hearing.

Applicant contends that trial counsel never conducted a *Jackson v. Deno* hearing when such was required. The prior order found that Applicant did not meet his burden of establishing ineffective assistance because, among other arguments, Applicant had not produced any evidence that the statement was involuntary, a necessary requirement for a *Jackson v. Denno*. Applicant argues the Court reached this finding by improperly considering the credibility of trial testimony. Again, this Court was citing to evidence in the record to identify the issue before the Court, without

making a determination as to the credibility. Therefore, this Court did not err in not finding trial counsel ineffective as to a proper *Jackson v. Deno* hearing.

f) The Court did not err in not finding trial counsel ineffective as to the waiver of a jury trial.

Applicant argues the Court erred in failing to consider the testimony between the two trial attorneys in regards to the decision to waive a jury trial was contradictory and not credible. While there is discrepancy in the time line of when Applicant was advised of the option to waive a jury trial, there is also discrepancy in Applicant's testimony as to the events around the decision to waive a jury trial. The Court weighed all of these factors and determined that Applicant had failed to establish deficiency or prejudice as to the waiver of jury trial. Therefore, this Court did not err in not finding trial counsel ineffective as to the waiver of jury trial.


CONCLUSION

For the aforementioned reasons, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts as it relates to the Court's prior order denying and dismissing Applicant's PCR action.

IT IS THEREFORE ORDERED that Applicant's Motion to Alter or Amend and for Reconsideration pursuant to Rule 59(e), SCRPC, is **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

IT IS SO ORDERED.


WALTON J. MCLEOD IV
Presiding Judge
Sixteenth Judicial Circuit

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015-GS-46-02347

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders

Foreperson of Grand Jury

Date: 8/20/15

VERDICT

2/24/16 - Bench Trial

Guilty

Wm. H. Oraveck

Foreperson of Grand Jury

Date: 2/24/16

DOCKET NO. 2015-GS-46-02347

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 20, TERM 2015

THE STATE

VS.

KALVIN ROPEL BROWN

INDICTMENT FOR

TRAFFICKING IN HEROIN

SC Code: § 44-53-370(e)

CDR Code: 0287

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on August 20, 2015, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN HEROIN

The defendant, Calvin Ropel Brown, did on or about February 18, 2015, in York County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise 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 fourteen (14) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely Heroin, as described in Section 44-53-190 or 44-53-210, or fourteen (14) grams or more of any mixture containing any of these. All in violation of 44-53-370(e), *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


MARINA B. HAMILTON
ASSISTANT SOLICITOR