

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Thomas W. Cooper, Circuit Court Judge

Appellate Case No: **2023-001288**

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Aug 30 2024

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Steven Daniel Brown

Appellant.

RECORD ON APPEAL

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2 County of Lexington) Eleventh Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5 vs.) 2020-GS-32-01970
6 Steven Daniel Brown,)
7 Defendant.)

8

9 August 7th-10th, 2023

10 Lexington, South Carolina

11

12 B E F O R E:

13 The Honorable Thomas W. Cooper, Jr., Judge; and a Jury

14

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

16 Kelly Oppenheimer, Assistant Solicitor
17 Kyle E. Smith, Assistant Solicitor
On behalf of the State of South Carolina

18 Robert "Theo" Williams, Sr., Esquire
19 Jason T. Yonge, Esquire
On behalf of the Defendant

20

21

22 Stacy S. Johnson, RPR
23 Circuit Court Reporter

24

25

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1 (The following proceedings were held August 7,
2 2028, beginning at 12:26 PM.)

3 THE COURT: Good afternoon, ladies and gentlemen,
4 and thank you very much for your patience in this
5 process.

6 My name is Tommy Cooper. I'm a retired active
7 circuit judge from down in Manning. I still work one
8 week a month in retirement, and this is my week to work,
9 and I've been assigned at my request to come back to
10 Lexington where over the last thirty years as a circuit
11 judge I've had the opportunity to come and work with the
12 people of this county on many occasions and I'm always
13 glad to come because you-all have a fine court system
14 here, good lawyers, good court personnel, and, of course,
15 now you have a wonderful, beautiful court facility. I
16 tried many cases in the old courthouse right across
17 the street for years before this one, but it's always
18 a pleasure for me to come and work here with the fine
19 people of the county and it gives me a chance to meet
20 folks like you that I would not have otherwise had a
21 chance to meet except for my continued service in
22 retirement.

23 As you know, you-all have been summoned here to
24 serve this week potentially as jurors in the Court of
25 Common Pleas, and some of you have sat through that

1 process this morning, Judge McCaslin is trying the civil
2 cases this week, and also the Court of General Sessions,
3 criminal court, and that's what we're doing in this
4 courtroom.

5 And cases are disposed of in the criminal court by
6 guilty pleas and by trials. The reason you've been out
7 there in the hall waiting for about an hour or however
8 long you've been out there is because we handled a guilty
9 plea of someone who was prepared to plead guilty to his
10 crimes and was to going to ask for a trial at your hands.
11 It took a while to do that. It was a lengthy trial -- a
12 lengthy process, I should say, for many reasons, but we
13 had to work through it in order to accomplish that fact
14 and complete the guilty plea on that particular matter,
15 and now we're about to select a jury in the trial of the
16 case which you-all, some of you, will be involved as
17 jurors in the trial of.

18 I'll go through that process in just a moment with
19 you and I'm gonna ask you some questions, much as you
20 have heard asked earlier today, to determine your
21 qualifications to serve as jurors in this particular
22 case. Once a jury has been selected in this case,
23 then we will stand you as the trial jury in this case
24 aside until tomorrow morning and we'll start the trial
25 tomorrow morning at 9:30 and the rest of you will be

1 given instructions to call back, of course, and you're
2 already familiar with those instructions. You heard
3 some of those earlier today already.

4 All right. Thank you.

5 Madam Solicitor or Mr. Solicitor, you can call your
6 case.

7 MR. SMITH: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 MR. SMITH: The State calls Steven Daniel Brown to
10 trial. Indictment Number 2020-GS-32-01970, the State of
11 South Carolina versus Steven Daniel Brown, an indictment
12 for trafficking methamphetamine.

13 THE COURT: Thank you.

14 Ladies and gentlemen, as you have heard, the State
15 has called the case of the State versus Steven Daniel
16 Brown, charged with trafficking methamphetamine. And
17 the indictment accuses him here in Lexington County on
18 or about June the 29th of 2020 being in possession of
19 a quantity of methamphetamine in violation of the law
20 sufficient to give rise to a charge of trafficking
21 methamphetamine because the allegations are that he was
22 in possession of a quantity of 400 grams or more of
23 methamphetamine in violation of the law.

24 Now, ladies and gentlemen, the indictment, which I
25 just read to you, is not evidence, nor is it proof of

1 the charges that it contains. It is simply a charging
2 document, a document that tells you or me or anybody else
3 who reads it, what this case is all about.

4 To the charges contained in the indictment,
5 Mr. Brown has entered a plea of not guilty and has asked
6 for a jury trial at your hands.

7 Mr. Brown, would you please stand and face the jury
8 behind you.

9 (Defendant stands.)

10 THE COURT: Thank you. You can be seated.

11 Ladies and gentlemen, I need to know if any of
12 you-all are related by blood or connected by marriage
13 to Mr. Steven Daniel Brown or are you a friend of his
14 or a business associate of his, a casual acquaintance of
15 his or a person who has any direct or indirect contact
16 with Mr. Steven Daniel Brown. If so, would you please
17 stand.

18 Thank you.

19 Ladies and gentlemen, potential witnesses who will
20 be testifying in the trial of this case, and I'm gonna
21 read a list of witnesses to you, and I'm gonna ask you
22 the same thing about these potential witnesses that I
23 asked you about Mr. Brown. I'm gonna want to know if
24 you're kin to him by blood or by marriage or if you're
25 friends or have any association with him, direct or

1 otherwise.

2 Potential witnesses who may testify in the trial
3 of this case are: Gregory S. Shropshire of the South
4 Carolina Highway Patrol. Jacob T. Atwood of the South
5 Carolina Highway Patrol. John T. Gietz, G-I-E-T-Z, of
6 the Lexington County Sheriff's Department. William
7 Patterson of the Lexington County Sheriff's Department.
8 Gregory Love of the sheriff's department. Austin Sanner,
9 S-A-N-N-E-R, of the sheriff's department. Rosalie
10 Herberger of the Bureau of Alcohol, Tobacco and Firearms.
11 Derek Applegate of the sheriff's department. Kelly
12 Still. Mike Phipps of the sheriff's department.
13 Margaret Walker of the sheriff's department. Candy
14 Kyzer of the sheriff's department. Sandra Black of the
15 sheriff's department.

16 I need to know now if any of you-all are related by
17 blood or connected by marriage to any of those potential
18 witnesses or friends or casual acquaintances or people
19 who have any direct or indirect contact with any of those
20 potential witnesses. If so, please stand.

21 Thank you.

22 The lawyers who will be involved in the trial of the
23 case on behalf of the State, the case will be presented
24 by Kelly Oppenheimer and Kyle Smith, assistant solicitors
25 from the Eleventh Circuit Solicitor's Office, who sit

1 here at counsel table over here.

2 And Mr. Steven Daniel Brown is represented by
3 Mr. Robert "Theo" Williams and Jason Yonge of the firm
4 of Williams, Stitely and Brink here in Lexington.

5 I need to know if any of you-all are related by
6 blood or connected by marriage to any of these lawyers
7 or if you're friends of theirs or business associates of
8 theirs or casual acquaintances of theirs or if you've
9 ever been represented by any of them in the past or sued
10 by any of them in the past. If so, would you please
11 stand.

12 Thank you.

13 Ladies and gentlemen, I have read to you the
14 allegations in the indictment reminding you that they
15 are not evidence or proof of the charges, but they tell
16 us what the case is all about so that you can tell me
17 now if you know anything about this case.

18 If you have any knowledge about this case from any
19 source at all, would you please stand.

20 Now, ladies and gentlemen, the indictment contains
21 allegations of trafficking in methamphetamine. The
22 charges in this particular case arose out of a traffic
23 stop or a moving violation of a vehicle on the Interstate
24 and it resulted in a search of the vehicle and the charges
25 arose as a result of that search, and so I need to know

1 if any of you-all have any experience in your personal
2 or your private lives or anything in your background that
3 would make it difficult for you to serve as a juror in a
4 case involving those types of allegations? If so, would
5 you please stand.

6 Thank you.

7 Now I need to know if any of you or any members of
8 your immediate family have ever been involved in a crime
9 of a serious nature or a crime of violence or crime of
10 trafficking or distribution of drugs either as a defendant
11 or a witness or in the case of a crime of violence as a
12 victim.

13 So the question applies not only to you, it applies
14 to any members of your immediate family, and the crime
15 involves not only trafficking or distribution of drugs,
16 but any crime of personal violence that would have
17 required you or your family member to become involved in
18 the criminal process of your courts.

19 If that applies to anybody, would you please stand.

20 (Potential jurors stand.)

21 POTENTIAL JUROR: My husband was --

22 THE COURT: Okay. Right this minute I'm just gonna
23 get your name and number --

24 POTENTIAL JUROR: I'm sorry.

25 THE COURT: -- and then I'll ask you more questions

1 privately about it, okay?

2 I'll bring you down individually to talk about your
3 situation, all right?

4 First of all, we'll start -- if you will stand
5 please and let me get your name and your number and
6 identify you further.

7 Yes, ma'am. Your name and number, please, ma'am.

8 POTENTIAL JUROR: My name is Nicole Dillon and my
9 number is 57.

10 THE COURT: Your number's what?

11 POTENTIAL JUROR: 57.

12 THE COURT: 67?

13 POTENTIAL JUROR: 57. 5-7.

14 THE COURT: Thank you. I apologize. I'm real
15 hard of hearing despite of the fact that I have both
16 hearing aids in this morning that just doesn't work.

17 Nicole Dillon. Ms. Dillon. All right. Thank you,
18 ma'am. I'll get you down and talk with you about your
19 situation, okay?

20 POTENTIAL JUROR: Okay.

21 THE COURT: Yes, ma'am. Your name in the center,
22 please?

23 POTENTIAL JUROR: Tracie McGahee, Number 174.

24 THE COURT: Ms. McGahee? Did I say that right?

25 POTENTIAL JUROR: (Nods head.)

1 THE COURT: Okay. Thank you, ma'am.

2 Yes, ma'am. Your name, ma'am?

3 POTENTIAL JUROR: My name is Christine Orofino,
4 Juror Number 194.

5 THE COURT: Okay. Ms. Orofino, thank you, ma'am.
6 We'll get to you in just a moment.

7 Yes, ma'am. Your name and number, please?

8 POTENTIAL JUROR: My name is Larissa Driggers.
9 Juror 61.

10 THE COURT: Is it Ms. Driggers?

11 POTENTIAL JUROR: Yes.

12 THE COURT: Thank you, Ms. Driggers.

13 All right. Folks, if I could ask you-all please,
14 the four of you, to -- to form a line in that center
15 aisle and I'll bring you down individually.

16 Thank you.

17 MR. SMITH: There's one more.

18 THE COURT: There's another one back there. I'm
19 sorry.

20 POTENTIAL JUROR: Christian Stegmaier, 249.

21 THE COURT: Number 249?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: All right. Thank you.

24 Thank you, sir. If you will, likewise, be a part
25 of that line, thank you, and I'll bring you down to the

1 court reporter and talk you with individually.

2 Thank you.

3 (The following proceedings were held at the bench
4 out of the hearing of the jury panel.)

5 THE COURT: Yes, ma'am. If you will come forward,
6 please.

7 BAILIFF: 61.

8 THE COURT: Ms. Driggers, was it you or a family
9 member that was involved?

10 POTENTIAL JUROR: A family member.

11 THE COURT: And what was the relation to you,
12 please, ma'am?

13 POTENTIAL JUROR: My father and a cousin.

14 THE COURT: Was this a single event or two separate
15 events?

16 POTENTIAL JUROR: Two separate.

17 THE COURT: Okay. Let's start with your father first
18 of all. What was his involvement?

19 POTENTIAL JUROR: Honestly, I don't keep in contact
20 with him very often. He has many charges, some of which
21 I do believe are possession charges.

22 THE COURT: Okay. Were they charges that arose here
23 in Lexington County?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Are they recent charges?

1 POTENTIAL JUROR: Honestly, probably.

2 THE COURT: Okay. Were you involved in any way
3 in -- with your father during this time either in the
4 prosecution of these cases or otherwise?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Okay. And your cousin, tell me about
7 your cousin.

8 POTENTIAL JUROR: She was charged a few years ago
9 for trafficking methamphetamine in Lexington County.

10 THE COURT: All right. Your father's name, first
11 of all, would you share that with us?

12 POTENTIAL JUROR: John Allen Davis.

13 THE COURT: Baker?

14 POTENTIAL JUROR: Davis.

15 THE COURT: Davis. I'm sorry.

16 POTENTIAL JUROR: That's okay.

17 THE COURT: And your cousin?

18 POTENTIAL JUROR: Kendall Marie Hancock.

19 THE COURT: Okay. Would the fact that your
20 relatives have been involved in crimes perhaps somewhat
21 similar to this in the past make it difficult for you to
22 serve fairly and impartially as a juror on this trial?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Could you set aside your family's
25 experience in this regard and decide this case based on

1 what you would hear in court without regard to your own
2 experience?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: Would you do that, please, ma'am?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am. You can go back and
7 have seat.

8 BAILIFF: Your Honor, 174.

9 THE COURT: Thank you.

10 Ms. McGahee, will you'll stand right there and speak
11 so that she can hear, please, ma'am.

12 Was it you or a family member who was involved?

13 POTENTIAL JUROR: A family member.

14 THE COURT: And what was the relation to you?

15 POTENTIAL JUROR: Son.

16 THE COURT: And tell me what his involvement was.

17 POTENTIAL JUROR: He's a recovering drug addict and
18 was involved in domestic violence.

19 THE COURT: And how long has he been in recovery?

20 POTENTIAL JUROR: Seven years.

21 THE COURT: Oh, good. Where does he live?

22 POTENTIAL JUROR: Pardon me?

23 THE COURT: Where does he live?

24 POTENTIAL JUROR: In Long -- Myrtle Beach, South
25 Carolina.

1 THE COURT: Did he have any drug charges that arose
2 out of Lexington County?

3 POTENTIAL JUROR: No.

4 THE COURT: Okay. Was he ever prosecuted for his
5 drug issues?

6 POTENTIAL JUROR: No.

7 THE COURT: All right. Thank you, ma'am. We're
8 delighted that he's seven years in recovery.

9 Would that fact make it difficult for you to be fair
10 and impartial as a juror in this trial?

11 POTENTIAL JUROR: Yes, it would.

12 THE COURT: It would?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: All right. We appreciate that and I'm
15 gonna stand you aside as a juror in this case. Please
16 don't discuss your son's situation with anybody else
17 that's on the jury while we're trying to get this seated.
18 You can go back and have a seat. I'm sorry we had to
19 ask you to relive this.

20 POTENTIAL JUROR: Okay.

21 THE COURT: Juror Number 174 will be stood aside
22 as a juror in this case.

23 BAILIFF: Your Honor, 194.

24 THE COURT: Thank you.

25 Ms. Orofino, if you will speak so that she can hear

1 you, please, ma'am. Was it you or a family member that
2 was involved?

3 POTENTIAL JUROR: A family member.

4 THE COURT: And what was the relation to you?

5 POTENTIAL JUROR: My son.

6 THE COURT: And what was your son's involvement?

7 POTENTIAL JUROR: Two years ago he sold drugs at
8 school.

9 THE COURT: Okay.

10 POTENTIAL JUROR: And he went through -- I guess
11 it's called arbitration or family diversion.

12 THE COURT: Right.

13 POTENTIAL JUROR: And those charges are no longer.

14 THE COURT: Like pretrial intervention or something
15 like that?

16 POTENTIAL JUROR: Yes. He never went to court.

17 THE COURT: Did he go through drug counseling and
18 drug testing in that regard?

19 POTENTIAL JUROR: Yes.

20 THE COURT: How's he doing now?

21 POTENTIAL JUROR: Fine. He's gonna go to college
22 in the next few weeks.

23 THE COURT: Good for him. How old is he now?

24 POTENTIAL JUROR: Eighteen.

25 THE COURT: Good for you and good for him.

1 Would your experience through your son in that
2 regard make it difficult for you to be fair and impartial
3 as a juror in this case?

4 POTENTIAL JUROR: It would be fine.

5 THE COURT: Could you set aside your own experience
6 and decide this case based on what you would hear in
7 court?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Would you do that, please, ma'am?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Thank you, ma'am. If you'll go back and
12 have a seat. We're glad about your son.

13 POTENTIAL JUROR: Thank you.

14 BAILIFF: Your Honor, 249.

15 POTENTIAL JUROR: Christian Stegmaier.

16 THE COURT: Mr. Stegmaier, how are you doing?

17 POTENTIAL JUROR: I figured in fairness to
18 Mr. Williams I'd rather disclose than not disclose.

19 THE COURT: That's good. Is it you or a family
20 member?

21 POTENTIAL JUROR: It was a family member.

22 THE COURT: And what was the relation to you?

23 POTENTIAL JUROR: My wife's grandmother. In 2005
24 in Lancaster County, my wife's grandmother was killed in
25 a home invasion involving ultimately drugs. They broke

1 into the house for purposes of stealing to be able to
2 sell for drugs. It was an adult and a minor. They pled
3 ultimately. My part in all this is I was providing --
4 since I'm a lawyer, I was providing counsel to the family.
5 The solicitor elected to take an Alford plea, which I was
6 against.

7 THE COURT: Right.

8 POTENTIAL JUROR: But none of this has any impact
9 on my ability to be fair, but I figured I'd better
10 disclose than not disclose.

11 THE COURT: And you're right. And so -- I think
12 you've answered this, but let me ask it a different way.
13 Would your involvement through your family, your wife's
14 grandmother, make it difficult for you to be involved
15 as a juror in the trial of this case?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: You could set aside that experience and
18 decide this case based on what you would hear in court
19 without regard to that experience?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: And you'll do that, sir?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Thank you, Mr. Stegmaier.

24 POTENTIAL JUROR: Thank you.

25 BAILIFF: Your Honor, 57.

1 THE COURT: Hey, Ms. Dillon. If you'll speak so
2 that she can hear you. Was it you or a family member
3 that was involved?

4 POTENTIAL JUROR: My husband.

5 THE COURT: Your husband. And what was his
6 involvement?

7 POTENTIAL JUROR: He's law enforcement, so he's
8 been in multiple cases over twenty-five years now.

9 THE COURT: I reckon so. Twenty-five years.
10 What's your husband's name?

11 POTENTIAL JUROR: Michael Dillon.

12 THE COURT: And where does he serve as a law
13 enforcement officer?

14 POTENTIAL JUROR: Currently he's with SLED.

15 THE COURT: All right. Would that involvement as
16 you have just described it through your husband over
17 twenty-five years make it difficult for you to be fair
18 and impartial as a juror in this case?

19 POTENTIAL JUROR: I would like to be. I need to be
20 honest, so I need to say that.

21 THE COURT: And you're under oath, so I know you'll
22 be honest.

23 POTENTIAL JUROR: I don't think I can be. I'm
24 sorry. I want to be.

25 THE COURT: I know you do, but we don't want you

1 to have to answer to your husband for a not guilty vote
2 on the verdict at the end of the day. I appreciate your
3 candor in that regard, Ms. Dillon, and we appreciate your
4 husband's service, and I'm gonna excuse you as a juror
5 in this trial.

6 POTENTIAL JUROR: Thank you. And I wish -- I wish
7 I could be on it.

8 THE COURT: All right. Is there anyone else?
9 (Potential juror stands.)

10 THE COURT: Yes, ma'am. Your name and number,
11 please?

12 POTENTIAL JUROR: Janice Lynch, L-Y-N-C-H.

13 THE COURT: Come forward, please, ma'am.

14 POTENTIAL JUROR: Number 162.

15 THE COURT: What's her name again?

16 MS. OPPENHEIMER: Janice Lynch.

17 THE COURT: Ms. Lynch, is it?

18 POTENTIAL JUROR: Yes.

19 THE COURT: If you'll stand right there and speak
20 so she can hear you. Was it you or a family member that
21 was involved?

22 POTENTIAL JUROR: Not involved. My son is a
23 sergeant at Pine Ridge Police Department.

24 THE COURT: That's your son?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Pine Ridge?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Okay. How long he's been there?

4 POTENTIAL JUROR: Two years.

5 THE COURT: Oh, good. How old is he?

6 POTENTIAL JUROR: Thirty-three.

7 THE COURT: Before that was he a law enforcement
8 officer somewhere?

9 POTENTIAL JUROR: Yes, sir. Horry County.
10 Conway PD.

11 THE COURT: All right. Well, good. Would you --
12 your son's involvement as a law enforcement agent and
13 yours through him make it difficult for you to be fair
14 and impartial as a juror in this case?

15 POTENTIAL JUROR: No.

16 THE COURT: Could you set aside your son's
17 experience in that regard and decide this case based on
18 what you would hear in court without regard to that?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Would you do that, please?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Thank you, Ms. Lynch. You can go back
23 and have a seat.

24 Okay. Let me see if I can -- need to ask any more
25 of these questions from down here.

1 (The following proceedings were held in open court.)

2 THE COURT: Ladies and gentlemen, does any member
3 of the jury panel have a close business or personal
4 connection with the individuals who own B&L Auto?

5 Where is that located?

6 INVESTIGATOR GIETZ: West Columbia.

7 THE COURT: In West Columbia.

8 All right. Have any of you formed in your own mind
9 or expressed to anybody else any opinion as to the guilt
10 or the innocence of Mr. Brown? If so, please stand.

11 Are any of you conscious of; that is to say, aware
12 of any bias or prejudice for or against the State or for
13 or against the defendant, Mr. Brown? If so, please stand.

14 Do any of you then know of any reason of any kind
15 whatsoever that would keep you from serving fairly and
16 impartially as a juror in this trial? If you know of such
17 reason, would you please stand.

18 Thank you.

19 Other than previously noted, any additional
20 questions from the State? Mr. Smith? Ms. Oppenheimer?

21 MR. SMITH: Nothing from the State, Your Honor.

22 THE COURT: Other than previously noted,
23 Mr. Williams, Mr. Yonge, anything from the defense?

24 MR. WILLIAMS: Nothing from the defense, Your
25 Honor.

1 THE COURT: Thank you.

2 All right. Madam Clerk, you can give us a jury.
3 The strikes will be five and five. We'll select two
4 alternates. As to each alternate, the strikes will
5 be one for the State, two for the defense, okay?

6 Ladies and gentlemen, the process now we're going
7 through is the computer over here is generating a list
8 at random from which the jury will be drawn. Some of
9 your names will be on that list and some of them will
10 not be on that list and even if your names are on that
11 list, that doesn't mean you're gonna be on the jury yet.
12 We have to go through that process as well.

13 Years ago when I started practicing law, longer ago
14 than I'm going to let you know, and even thirty years ago
15 when I began as a trial judge, we had a real archaic but
16 flowery presentation of this selection. All of your names
17 were on little slips of paper and were placed in capsules
18 and they were placed in a big old rotunda and they would
19 shake it like that kind of like, then a blind person --
20 if that's not enough, a blind person or a child under the
21 age of seven according to statute would look into that
22 thing -- or not look into it, reach into it and pull out
23 the names and then the names would be called and people
24 would come forward. And places like Lexington could
25 afford a real nice brass thing like that. In my hometown

1 of Manning, in Clarendon County, it was a Price Albert
2 cigar box, but now -- we're now on par with Lexington
3 County. We've got a computer, too, that works just like
4 this.

5 And so in just a moment that list will be generated
6 and from that list names will be called and as the names
7 are called you will pay attention to the instructions
8 that will be given to you by the clerk and respond to
9 those instructions.

10 Thank you.

11 Madam Clerk.

12 THE CLERK: When I call your name, please come
13 forward and stand facing back out up here at the podium,
14 please.

15 Juror 165, Brian Maddox.

16 (Whereupon, Brian Maddox, a black male, was called
17 forward.)

18 THE CLERK: What say you for the State?

19 MR. SMITH: Please present this juror.

20 THE CLERK: For the defense?

21 MR. WILLIAMS: Please swear the juror.

22 THE CLERK: Please have a seat in the jury box.

23 BAILIFF: Bring all your stuff with you.

24 THE CLERK: Juror Number 24, James Brewer.

25 (Whereupon, James Brewer, a white male, was called

1 forward.)

2 THE CLERK: What say you for the State?

3 MR. SMITH: Please seat this juror.

4 THE CLERK: For the defense?

5 MR. WILLIAMS: I'm sorry, that number again?

6 THE CLERK: Number 24.

7 MR. WILLIAMS: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror number 160, Todd Lowman.

10 (Whereupon, Todd Lowman, a white male, was called
11 forward.)

12 THE CLERK: What say you for the State?

13 MR. SMITH: Please present this juror.

14 THE CLERK: For the defense?

15 MR. WILLIAMS: Please swear the jury.

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

17 Juror Number 162, Janice lynch.

18 (Whereupon, Janice Lynch, a white female, was called
19 forward.)

20 THE CLERK: What say you for the State?

21 MR. SMITH: Please present this juror.

22 THE CLERK: For the defense?

23 MR. WILLIAMS: Please excuse the juror from the
24 trial of this case.

25 THE CLERK: Please return back to your seat.

1 Juror Number 149, Joy Krause.

2 (Whereupon, Joy Krause, a white female, was called
3 forward.)

4 THE CLERK: What say you for the State?

5 MR. SMITH: Please present this juror.

6 THE CLERK: For the defense?

7 MR. WILLIAMS: Please excuse the juror from the
8 trial of this case.

9 THE CLERK: Please return back to your seat.

10 Juror Number 120, Aaron Howley.

11 (Whereupon, Aaron Howley, a white male, was called
12 forward.)

13 THE CLERK: What say you for the State?

14 MR. SMITH: Please present this juror.

15 THE CLERK: For the defense?

16 MR. WILLIAMS: Please excuse the juror from the
17 trial of this case.

18 THE CLERK: Please return back to your seat.

19 Juror Number 29, Gracyn Burgess.

20 (Whereupon, Gracyn Burgess, a white female, was
21 called forward.)

22 THE CLERK: What say you for the State?

23 MR. SMITH: Please present this juror.

24 THE CLERK: For the defense?

25 MR. WILLIAMS: Please swear the juror.

1 THE CLERK: Please have a seat in the jury box.

2 Juror Number 184, Shelby Minges.

3 (Whereupon, Shelby Minges, a white female, was
4 called forward.)

5 THE CLERK: What say you for the State?

6 MR. SMITH: Please present this juror.

7 THE CLERK: For the defense?

8 MR. WILLIAMS: Please swear the juror.

9 THE CLERK: Please have a seat in the jury box.
10 Juror Number 226, Reyes Bryan Santoyo.

11 (Whereupon, Reyes Bryan Santoyo, a Hispanic male,
12 was called forward.)

13 THE CLERK: What say you for the State?

14 MR. SMITH: Please present this juror.

15 THE CLERK: For the defense?

16 MR. WILLIAMS: Please swear the juror.

17 THE CLERK: Please have a seat in the jury box.
18 Juror Number 186, Gloria Moore.

19 (Whereupon, Gloria Moore, a white female, was
20 called forward.)

21 THE CLERK: What say you for the State?

22 MR. SMITH: Please present this juror.

23 THE CLERK: For the defense?

24 MR. WILLIAMS: Please swear the juror.

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

1 Juror Number 196, Dustin Owens.

2 (Whereupon, Dustin Owens, a white male, was called
3 forward.)

4 THE CLERK: What say you for the State?

5 MR. SMITH: Please excuse this juror from the trial
6 of this case.

7 THE CLERK: Please return back to your seat.

8 Juror Number 209, Kelly Proffitt.

9 (Whereupon, Kelly Proffitt, a white female, was
10 called forward.)

11 THE CLERK: What say you for the State?

12 MR. SMITH: Please present this juror.

13 THE CLERK: For the defense?

14 MR. WILLIAMS: Please swear the juror.

15 THE CLERK: Please have a seat in the jury box.

16 Juror Number 53, Stephen Davis.

17 (Whereupon, Stephen Davis, a white male, was called
18 forward.)

19 THE CLERK: What say you for the State?

20 MR. SMITH: Please present this juror.

21 THE CLERK: For the defense?

22 MR. WILLIAMS: Please swear the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Juror Number 211, Susan Queen.

25 (Whereupon, Susan Queen, a white female, was called

1 forward.)

2 THE CLERK: What say you for the State?

3 MR. SMITH: Please present this juror.

4 THE CLERK: For the defense?

5 MR. WILLIAMS: Please swear the juror.

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

7 Juror Number 139, Therese Joye.

8 (Whereupon, Therese Joye, a white female, was called
9 forward.)

10 THE CLERK: What say you for the State?

11 MR. SMITH: Please present this juror.

12 THE CLERK: For the defense?

13 MR. WILLIAMS: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: Please return back to your seat.

16 THE COURT: The State has exercised one strike and
17 the defense has exercised four strikes.

18 THE CLERK: Juror Number 65, Marcus East.

19 (Whereupon, Marcus East, a black male, was called
20 forward.)

21 THE CLERK: What say you for the State?

22 MR. SMITH: Please present this juror.

23 THE CLERK: For the defense?

24 MR. WILLIAMS: Please swear the juror.

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

1 Juror Number 111, Garrett Heinley.

2 (Whereupon, Garrett Heinley, a white male, was
3 called forward.)

4 THE CLERK: What say you for the State?

5 MR. SMITH: Please excuse this juror from the trial
6 of this case.

7 THE CLERK: Please return back to your seat.

8 Juror Number 254, Russell Stott.

9 (Whereupon, Russell Stott, a white male, was called
10 forward.)

11 THE CLERK: What say you for the State?

12 MR. SMITH: Please present this juror.

13 THE CLERK: For the defense?

14 MR. WILLIAMS: Please swear the juror.

15 THE CLERK: Please have a seat in the jury box.

16 THE COURT: Madam Clerk, we'll go now to alternates.
17 The strikes will be one for the State in each and two for
18 the defense as to each alternate.

19 THE CLERK: Juror Number 61, Larissa Driggers.

20 (Whereupon, Larissa Driggers, a white female, was
21 called forward.)

22 THE CLERK: What say you for the State?

23 MR. SMITH: Please excuse this juror.

24 THE CLERK: Please return back to your seat.

25 Juror Number 137, Rashard Jones.

1 (Whereupon, Rashard Jones, a black male, was called
2 forward.)

3 THE CLERK: What say you for the State?

4 MR. SMITH: Please present this juror.

5 THE CLERK: For the defense?

6 MR. WILLIAMS: Please swear the juror.

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

8 Juror Number 292, Scott Wise.

9 (Whereupon, Scott Wise, a white male, was called
10 forward.)

11 THE CLERK: What say you for the State?

12 MR. SMITH: Please present the juror.

13 THE CLERK: For the defense?

14 MR. WILLIAMS: Please excuse the juror from the
15 trial of this case.

16 THE CLERK: Please return back to your seat.

17 Juror Number 20, Edward Billingsley.

18 (Whereupon, Edward Billingsley, a white male, was
19 called forward.)

20 THE CLERK: What say you for the State?

21 MR. SMITH: Please present the juror.

22 THE CLERK: For the defense?

23 MR. WILLIAMS: Please swear the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Your Honor, that's the alternates.

1 THE COURT: Thank you.

2 Are there any matters of law regarding the jury
3 selection process from the State, Mr. Smith?

4 MR. SMITH: Nothing from the State, Your Honor.

5 THE COURT: Okay. From the defense?

6 MR. WILLIAMS: Nothing from the defense, Your Honor.

7 THE COURT: Thank you.

8 Folks, I want to thank you for your cooperation
9 throughout the day, and those of you who were not
10 selected as jurors in either of the two trials, I'm
11 gonna let you go now and ask that you please call the
12 new number that you were given today early this morning
13 after 6:00 today to get instructions about your
14 activities tomorrow, all right?

15 If both of the trials are underway, we won't need
16 you back tomorrow, but between now and then we want to
17 be sure that things are running smoothly so that we don't
18 need you. Call that number after 6:00 this afternoon,
19 please.

20 Thank you very much for your patience with us,
21 folks. You are free to go now. Call the number after
22 six.

23 (Whereupon, the jury panel was excused at 1:04 PM.)

24 THE COURT: Now, ladies and gentlemen, those of
25 you who were selected as jurors for the trial of this

1 case, as I've told you we've got some matters that we
2 need to deal with this afternoon outside of your
3 presence that do not require your decision or your input
4 in any way, so I'm gonna let you go now and ask that you
5 be back in the morning at 9:30 to begin the trial of this
6 case.

7 When you leave here, they will show you where to go
8 to, to the jury room, and you'll report to that jury room
9 tomorrow morning at 9:30.

10 Before we start the trial tomorrow, I will give you
11 some instructions about things that you can and cannot
12 do as jurors during your service as jurors, but to keep
13 you from mistakenly doing some of those things that you
14 really don't know you're not supposed to do between now
15 and then, let me give you some preliminary instructions.

16 You're not allowed to talk with anybody about this
17 case at any time during the trial of the case, even among
18 yourselves, until the trial of the case is over. Then,
19 of course, as jurors in your deliberations you can take
20 as much time as you want to to talk about it, but not
21 until that time.

22 And so if anybody should try to talk with you about
23 this case, just tell them that you're a juror in the case
24 and you can't discuss it with them. I'm pretty sure that
25 will end the discussion at that time.

1 And you can't try to find out anything on your own
2 about this case from any source at all outside of the
3 courtroom. You can't go home and get that computer that
4 knows everything in the world and type in the names of
5 these folks and try to find out -- there's got to be
6 something somewhere online about this case, I need to
7 know about that. I'm a juror.

8 Well, as practical matter, ladies and gentlemen,
9 everything that you need to know about this case in order
10 to render a verdict, in fact, everything that you are
11 allowed to know about this case in order to render a
12 verdict, you will learn from this courtroom right here,
13 from this witness stand right here, and from the charge
14 and the instructions on the law that I will give you
15 after the testimony has been completed.

16 Everything that we've been doing so far, all the
17 questions that I've been asking and the responses that
18 you and the other members of the jury panel have been
19 giving throughout the morning during the time that you
20 have spent with us have been designed to assure that
21 once we've got fourteen of you folks, people in that
22 jury box, we're gonna have folks just like you, people
23 who didn't know anything about this case, who don't know
24 anything about the people in this case, don't have any
25 connection with the facts of this case or the lawyers or

1 the witnesses or anything else about this case so that
2 you come to your service as jurors with a completely open
3 mind and a blank chart really from which what you know
4 about this case will be written on that blank chart and
5 in that mind that is open right now without having made
6 any preconceived ideas or any opinions about this case
7 whatsoever.

8 If you try to find out something on your own about
9 this case, then you'll upset everything that has been
10 done and you've been doing and that everybody else has
11 been doing to make sure we have folks just like you.

12 And, like I said, when the trial is over you can
13 talk about this case as much as you want to among
14 yourselves as long as you want to, and you will know
15 all you need to know at that point in time to render a
16 verdict, but please not until that time.

17 So have a save trip home, but even with you, I want
18 you to call that number after 6:00 today. You've still
19 got that card that has the number on it? Okay. I want
20 you to call that number when you get home today and
21 you'll hear instructions about the jurors generally and
22 you'll also hear a set of instructions about the -- this
23 is for the jurors in the case of the criminal case that's
24 being tried, and that's you, you're the jurors in the
25 criminal case, and you'll hear that and you'll follow

1 those instructions, which in all probability are gonna
2 tell you what I've already told you. Be in the jury room
3 at 9:30 tomorrow morning.

4 Does everybody understand all of that?

5 Okay. Thank you, folks. Have a safe trip home and
6 I'll see you tomorrow morning at 9:30.

7 (Whereupon, the jury was excused for the day at
8 1:09 AM.)

9 THE COURT: Folks, what about 2:15? That's an hour
10 and five minutes. Is that enough time for lunch and to
11 get ready for the motions?

12 MR. SMITH: Yes, Your Honor.

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: All right. We'll take a break right
15 now and we'll start back at 2:15, that's an hour and
16 five minutes, and we'll take care of the matter of the
17 pre-trial motions at that time.

18 Thank you.

19 (Whereupon, a luncheon recess was taken at 1:10 PM.)

20 (Court's Exhibit Numbers 1 through 4 were marked
21 for identification.)

22 BAILIFF: Court will come to order. The Honorable
23 Judge Thomas Cooper presiding.

24 THE COURT: Thank you, folks. Please be seated.

25 Good afternoon.

1 All right, folks. We are ready to proceed now
2 with pre-trial motions in the State versus Brown?

3 And, Ms. Oppenheimer, you indicated that you had a
4 brief Jackson v. Denno, and Mr. Yonge has the motion to
5 suppress.

6 Any particular order you-all want to take those
7 in?

8 MR. SMITH: Your Honor, we think we should probably
9 -- the motion to suppress needs to be heard first.

10 THE COURT: Okay. All right. Good.

11 All right. You-all have read the -- have read the
12 motion and it's a part of the record obviously and I'll
13 be glad -- now the motion having been made and articulated
14 the grounds within, it comes to the State to introduce
15 evidence contra to the motion.

16 Is that everybody's understanding of the process?

17 MR. YONGE: Yes, Your Honor.

18 THE COURT: Okay.

19 All right. Mr. Smith? Ms. Oppenheimer?

20 MR. SMITH: Your Honor, we'll be proffering some
21 testimony for our motion.

22 THE COURT: Okay. Yes.

23 MS. OPPENHEIMER: The State would call Investigator
24 John Gietz.

25 THE COURT: Come forward, please, Investigator, and

1 be sworn.

2 (Whereupon, John Gietz was duly sworn by the Clerk
3 of Court.)

4 THE CLERK: Would you please have a seat in the
5 witness box. State your full name and spell your last
6 for the record.

7 THE WITNESS: It's Senior Investigator John Gietz,
8 and that's G-I-E-T-Z.

9 JOHN GIETZ,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION (In-Camera)

12 BY MS. OPPENHEIMER:

13 Q. Investigator Gietz, you are an investigator with the
14 Lexington County Sheriff's Department; is that correct?

15 A. That is correct, ma'am.

16 Q. And you are assigned to the narcotics unit?

17 A. That is correct.

18 Q. How long have you been in that unit?

19 A. I've been on the NET Team for over six years.

20 Q. All right. And as a narcotics investigator, do you
21 often have specific targets or individuals you believe who
22 may be involved in the trafficking of illicit narcotics?

23 A. Yes, ma'am.

24 Q. Can you tell us whether or not Steven Daniel Brown was
25 ever a target of one of your investigations?

1 A. He was, ma'am.

2 Q. And that is the defendant we're all here for today; is
3 that correct?

4 A. Yes, ma'am.

5 Q. About how long did your investigation into the
6 defendant last?

7 A. There were several investigations, but the last one
8 that culminated in 2020 had gone previously from 2018.

9 Q. Okay. And can you tell us whether or not as a
10 narcotics officer you typically obtain tips from various
11 sources?

12 A. That is correct.

13 Q. Did you receive tips regarding the defendant at all?

14 A. Yes, ma'am. Several.

15 Q. Several. What was the nature of those tips?

16 A. That Steven Daniel Brown was trafficking narcotics.
17 Methamphetamine to be specific.

18 Q. Specifically methamphetamine?

19 A. Specifically methamphetamine.

20 Q. Can you tell us whether or not you received detailed
21 information about the defendant's source of supply in 2020?

22 A. Yes, ma'am. We received information that Steven
23 Daniel Brown was going to Georgia to pick up large
24 quantities of methamphetamine to bring back to South
25 Carolina.

1 Q. Okay. And did you know where specifically in Georgia
2 the defendant was going to pick up these large quantities
3 of methamphetamine?

4 A. Not the exact location; however, it was on the other
5 side of Augusta, Georgia.

6 Q. Okay. Can you tell us what you did with this
7 information when you received it?

8 A. I researched his information through several
9 databases, one of those to include South Carolina DMV,
10 where I was able to obtain tags that were associated with
11 his customer number and/or DL number. One of the tags
12 was a white F-350 bearing South Carolina tag [REDACTED].

13 Investigator --

14 Q. And let me stop you real quick. Why do you run an
15 individual's vehicle information through the DMV when
16 you're investigating them for trafficking narcotics?

17 A. The tip in this instance was that he was driving a
18 vehicle to Georgia and then back to South Carolina with
19 large -- large quantities of methamphetamine.

20 Q. And can you tell us once you ran the defendant's
21 vehicle information and got this tag for this large pickup
22 truck, what did you do with that?

23 A. The tag was placed in an LPR reader system run by the
24 DEA called DEASIL. Investigator Sanner put that tag in
25 there, there was instances where trips had been made to

1 Georgia, and then he put a tracking alert on that to notify
2 any time the vehicle went to Georgia and made me the
3 co-case agent for that.

4 Q. Okay. So you would receive these hits whenever the
5 defendant's tag was read on a -- and what is an LPR?

6 A. A license plate reader. Excuse me.

7 Q. Okay. And you would receive those tips as well as
8 Investigator Sanner?

9 A. Yes, ma'am.

10 Q. All right. Can you tell us the general area of where
11 this LPR is?

12 A. The other side of Augusta, Georgia.

13 Q. Is it on a specific highway?

14 A. I-20 -- there's one on I-20 east and westbound, but
15 the one that is located on the other side of Augusta,
16 Georgia is westbound.

17 Q. Okay. Can you tell us whether or not you received a
18 hit on the defendant's vehicle going past that LPR on the
19 morning of June 29, 2020?

20 A. Yes, ma'am, I did. At approximately 8:00 in the
21 morning.

22 Q. Okay. And as a result of -- well, what did you do
23 when you saw that hit?

24 A. I confirmed the hit to make sure. DEASIL provides
25 you a photograph of the actual vehicle with the tag and

1 when it was run or when the hit actually occurred. I was
2 able to confirm that it was an accurate hit. I viewed
3 the photograph, which was of the white F-350 bearing
4 South Carolina tag [REDACTED] and then I rallied a team
5 together. I contacted the South Carolina Highway Patrol
6 and made contact with several individuals there where I
7 was placed in contact with the South Carolina Highway
8 Patrol interdiction team. I spoke to now Sergeant Atwood
9 with the South Carolina Highway Patrol, provided him the
10 information, as well as photographs of what I obtained,
11 and that information was passed to Trooper Shropshire.

12 Q. Okay. What specific information did you give to
13 Sergeant Atwood?

14 A. That the vehicle was the subject of an investigation
15 and we had received tips that Steven Daniel Brown was
16 making trips to Georgia to pick up methamphetamine and
17 bring it back to South Carolina using that I-20 route and
18 that his tag had hit that morning and we suspected that he
19 would return shortly.

20 Q. Okay. So to clarify, you told the troopers the
21 identity of the individual you were investigating; is that
22 correct?

23 A. Yes, ma'am.

24 Q. The vehicle that he was driving; is that correct?

25 A. Yes, ma'am.

1 Q. The fact that you had information that the defendant
2 was going to and from Georgia; is that correct?

3 A. That is correct.

4 Q. The fact that he would be trafficking large quantities
5 of methamphetamine?

6 A. That is correct.

7 Q. And that his vehicle had hit on an LPR?

8 A. Yes, ma'am. That is all correct. And in addition
9 to that, I provided them with a photograph of the vehicle.

10 MS. OPPENHEIMER: I beg the Court's indulgence.

11 No further questions. Please answer any questions
12 that Mr. Yonge may have of you.

13 THE COURT: Mr. Yonge, you may cross-examine.

14 MR. YONGE: Thank you, Your Honor.

15 CROSS-EXAMINATION (In-Camera)

16 BY MR. YONGE:

17 Q. Investigator Gietz?

18 A. Yes, sir.

19 Q. Hey, I'm Jason Yonge. How are you today? How are you
20 doing?

21 A. Good.

22 Q. All right. So you're doing an investigation on Steven
23 Brown from 2018 to 2020?

24 A. That is correct.

25 Q. And you've got information that Steven's trafficking

1 methamphetamines?

2 A. That is correct.

3 Q. Okay. And how's he doing that again?

4 A. He was driving a vehicle from South Carolina to
5 Georgia and then returning with the same vehicle.

6 Q. Okay. And at some point you enter him into a license
7 plate reader?

8 A. Yes. A database that collects license plate reader
9 data.

10 Q. Okay. And what's the name of that again?

11 A. DEASIL. It's D-E-A-S-I-L.

12 Q. Walk me through how you go ahead and enter that
13 information in there.

14 A. So you provide the information that you need to.
15 There's -- you can check ahead of time, which is what we
16 did. We checked for prior hits in Georgia using the tag
17 and then you've got to provide a reasonable suspicion on
18 why you are putting that tag in there. Ours was a tip for
19 large sums of cash or drugs being trafficked from state to
20 state.

21 Q. Okay. And when you're -- when you're submitting that
22 reasonable suspicion that you mentioned there --

23 A. Uh-huh.

24 Q. -- is that a written thing that you submit to them?

25 A. It's not.

1 Q. No?

2 A. It's just a tab that you select on why you're running
3 the tag.

4 Q. Okay. So you're doing all of this through some
5 preformatted website?

6 A. The database, yes.

7 Q. Okay. And so at some point you've got to click a
8 button that says I have reasonable suspicion?

9 A. That is correct.

10 Q. And then you type that reasonable suspicion in?

11 A. No, you just click the dropdown on what it fits on
12 why you're running the tag.

13 Q. And what dropdown did you select on this?

14 A. Trafficking methamphetamine.

15 Q. And so your reasonable suspicion that you entered
16 into the database was that you suspected him of trafficking
17 methamphetamines?

18 A. Well, that we had received a tip that he was
19 trafficking methamphetamine.

20 Q. Okay. So the reasonable suspicion that you're
21 entering in on that website is I received a tip that he's
22 trafficking methamphetamines?

23 A. I clicked the dropdown that said trafficking
24 methamphetamine on it.

25 Q. So --

1 A. Trafficking narcotics I should say.

2 Q. And there won't be any record of this anywhere?

3 A. No, there's a record of it I'm sure.

4 Q. Okay. And where would you go to get that record?

5 A. Probably the DEA. I don't know if they still maintain
6 that stuff, but at one point in time there was a record of
7 that.

8 Q. Okay. Do you have a copy of that record now?

9 A. Not on me.

10 Q. Did you think it would be necessary to have a copy of
11 that record for this case?

12 A. There were e-mails provided that stated when the tag
13 was put in and when the hits were received.

14 Q. Okay. How many e-mails?

15 A. I'm not sure.

16 Q. No? And the only reasonable suspicion that you enter
17 in there is trafficking narcotics, correct?

18 A. That I put in there?

19 Q. Right.

20 A. You're asking if that's the only thing that I put in
21 there or is that the only thing that you can select?

22 Q. What was your role in entering this into the license
23 plate reader?

24 A. Well, I didn't personally enter it, Investigator
25 Sanner entered it, but it was for trafficking narcotics.

1 Q. Okay. How do you know that?

2 A. Because we received several tips saying that Steven
3 Daniel Brown was trafficking methamphetamine.

4 Q. No, and I apologize. That's my fault. I'm asking
5 how do you know what Detective Sanner entered into that
6 database?

7 A. Because that's what he told me.

8 Q. So based on what he told you, you know what he
9 selected in a dropdown menu?

10 A. That's what he told me he selected.

11 Q. You weren't sitting there watching him do it?

12 A. No, I was not.

13 Q. Okay. Is Detective Sanner in the courthouse today?

14 A. He's not.

15 Q. Okay. So just based on your information of what he
16 told you that he entered in a dropdown menu, that's what
17 we're establishing here is what was entered into that
18 database?

19 A. I don't know if that's the only thing, but he's the
20 one that entered it and selected that dropdown -- or he
21 advised that's what he selected.

22 Q. And there would have been a record at some point of it
23 that existed?

24 A. Yes.

25 Q. But it was never gathered by your office?

1 A. No.

2 Q. Okay. Did you only ever get hits on June 29th from
3 that database?

4 A. No.

5 Q. Okay. What other hits did you get?

6 A. I got another hit from a previous date that was
7 delayed and then there were the prior hits. Like I said,
8 you do the research and it will -- it will give you prior
9 hits prior to when we entered him into DEASIL.

10 Q. Okay.

11 A. So you run a query.

12 Q. Okay. How do you run the query?

13 A. The way that I said before where you put it in there.

14 Q. Okay. Did you run the query?

15 A. I did not run the query.

16 Q. Do we have a record of that query?

17 A. Probably not.

18 Q. Okay. Why not?

19 A. I couldn't answer that question. Investigator Sanner
20 was the one that put it in the database.

21 Q. So your only knowledge of this whole database is
22 getting a hit on June 29th?

23 A. No.

24 Q. Okay.

25 A. No, I use the system all the time.

1 Q. And when you run a query, you don't save the query?

2 A. No.

3 Q. Why?

4 A. There's -- there's no need to.

5 Q. Why?

6 A. I don't know. I don't understand what you're trying
7 to get to. There's -- there's no reason to save the query.

8 You have your -- your reason for it and then you run the
9 query and then it will show that they're saved or whatever,
10 that there -- there has been a hit.

11 Q. Okay. And it's saved where?

12 A. I'm sure in a DEA database somewhere.

13 Q. Okay. So you come in here today and you allege this
14 conspiracy running from 2018 to 2020, but we don't have any
15 of the documentation to show all these queries?

16 A. That's correct.

17 Q. Okay. Got it. Now you contacted the highway patrol
18 at some point on June 29, 2020, right?

19 A. I did.

20 Q. All right. And how did you do that?

21 A. By phone.

22 Q. You called them?

23 A. That's correct.

24 Q. At what phone number?

25 A. I'm gonna have to ask -- I'm going to have to access

1 my phone here real quick, but [REDACTED]-4825.

2 Q. Okay. And that was Atwood?

3 A. Sergeant Atwood, yes.

4 Q. Okay. What time did you call him?

5 A. I don't know the exact time.

6 Q. Approximately.

7 A. Very shortly after receiving the hit. Probably within
8 thirty minutes.

9 Q. When did you receive the hit?

10 A. Around 8:00.

11 Q. All right. So within thirty minutes of that? Around
12 8:30, 8:45?

13 A. Sure.

14 Q. All right. And why did you know to contact Sergeant
15 Atwood?

16 A. Because I contacted the South Carolina Highway Patrol.

17 Q. And you just wound up with Sergeant Atwood by chance?

18 A. I spoke to a supervisor with them and he suggested
19 -- I knew that South Carolina Highway Patrol had a very
20 good interdiction team, so I made contact with them and
21 I received Sergeant Atwood's phone number. I contacted
22 Sergeant Atwood and advised him of all of the details that
23 I said before.

24 Q. Okay. Would that be written down anywhere, anything
25 about that conversation with Sergeant Atwood?

1 A. No.

2 Q. At some point in preparing to testify here today, did
3 you speak with the solicitor's office?

4 A. Yes.

5 Q. Okay. And did you go over what your testimony was
6 gonna be?

7 A. What do you mean? They had my incident report.

8 Q. Okay. And so everything you're saying here today is
9 in your incident report?

10 A. Probably not everything.

11 Q. Okay. But just the major things?

12 A. Yeah.

13 Q. The most important things are in your incident report?

14 A. I think it's a pretty fair and accurate representation
15 of the events that unfolded that day.

16 Q. Okay. Now if I looked through your incident report,
17 am I gonna see anything about you contacting the highway
18 patrol interdiction team? Do you have a copy of it up
19 there?

20 A. I'm sure there's something in there about contacting
21 highway patrol.

22 Q. Perfect. Let's run through it then.

23 A. If you're referring to the phone call, there's no
24 documentation of the phone call in the report.

25 Q. Okay. How about any indication in your report at all

1 that you were the one who alerted highway patrol to go pull
2 over Steve Brown that day?

3 A. No, it's not gonna be in there.

4 Q. Why?

5 A. It's an investigative technique that we use in
6 narcotics. It's called the whisper stop. We use another
7 agency to stop, marked units and people on patrol, just
8 as an investigative tool. We -- we typically don't like
9 providing the details of the LPR system, but in this case
10 we were forced to.

11 Q. Okay. Would you agree with me that nothing in our
12 discovery up to this point that we received from the
13 solicitor's office says anything at all about you
14 contacting highway patrol before this traffic stop
15 occurred?

16 A. I'm sorry, can you repeat the question?

17 Q. I can. Would you agree with me that nothing we
18 received from the solicitor's office at this point has
19 said anything about you contacting highway patrol for this
20 traffic stop?

21 A. I don't believe so.

22 Q. You don't believe what?

23 A. That there's anything in this report about me
24 contacting prior to the stop about my phone call to
25 Sergeant Atwood.

1 Q. Okay. But you've told the solicitor's office this
2 before here today?

3 A. That's correct.

4 Q. Okay. When?

5 A. I don't know for sure.

6 Q. How many times?

7 A. I don't know. How many times have we had this teed
8 up to go to trial? I mean, it's been several times, so
9 during that -- those conversations we've had that
10 discussion numerous times.

11 Q. All right. And you've told the solicitor's office
12 each time that I called Sergeant Atwood and I set this
13 whole thing up?

14 A. Yes.

15 Q. Okay. Now would you agree with me that that
16 information has never been relayed to my office?

17 A. What? No.

18 Q. You wouldn't? Okay. When was it?

19 A. When was what?

20 Q. That information relayed to my office.

21 A. You would have to ask the solicitor's office. I've
22 never spoken to any of you guys personally other than
23 maybe Theo. I know that I've had personal discussions with
24 Theo about, you know, notifying highway patrol and he was
25 aware of the LPR system. I also knew that the solicitor's

1 office advised me that they had advised your office of the
2 information about highway patrol.

3 Q. But you would agree that information is not gonna
4 be written down anywhere because it's an investigative
5 technique?

6 A. That's correct.

7 Q. Okay. And that the only time you're gonna reveal that
8 is up here on the stand today?

9 A. About the investigative technique?

10 Q. Yeah.

11 A. Yeah.

12 Q. You would never tell us about that before getting up
13 there today?

14 A. Well, no. That's not -- I feel like you asked two
15 questions there and only one of them was relevant.

16 Q. Okay. Which one was relevant?

17 A. You asked if I would -- I'm sorry, can you repeat the
18 question?

19 Q. I just want to know at what point we were notified
20 that this is what you were gonna say here today?

21 A. I don't know the exact date.

22 Q. But you've told the solicitor's office on multiple
23 occasions whenever we teed this thing up for trial?

24 A. That's correct.

25 Q. Okay. And so if it's not been relayed to us, do you

1 think that would be fair?

2 A. I do think it's been relayed to you.

3 Q. Okay. When?

4 MS. OPPENHEIMER: Your Honor, asked and answered.

5 I mean, he doesn't know exactly when the
6 solicitor's office relayed that information multiple
7 times to Mr. Williams.

8 THE COURT: Then I think the defense -- if that is
9 what you're saying is a fact, then the appropriate answer
10 is I don't know.

11 MS. OPPENHEIMER: Correct, Your Honor.

12 THE COURT: That's an acceptable answer. I haven't
13 heard it yet.

14 MS. OPPENHEIMER: He said it multiple times.

15 THE WITNESS: I have been.

16 THE COURT: All right. Go ahead.

17 BY MR. YONGE:

18 Q. Okay. At one point you had a personal conversation
19 with Theo Williams you said?

20 A. Uh-huh.

21 Q. And in that conversation you relayed all of this to
22 him?

23 A. Well, I told him that we -- I notified highway patrol
24 of the stop. He knew that.

25 Q. Okay. When did you have that conversation with Theo

1 Williams?

2 A. I don't know the exact date. I've had several
3 interactions with Mr. Williams. We've had several other
4 cases.

5 Q. Where were you when you had that conversation?

6 A. I don't know the exact place and I don't know the
7 exact date or time.

8 Q. So at some unknown place and time you had a private
9 conversation with Theo Williams where you told him all this
10 information you're telling us now on the stand?

11 THE COURT: Ask the next question.

12 MR. YONGE: Okay.

13 BY MR. YONGE:

14 Q. Were you communicating on the radio with highway
15 patrol at all?

16 A. I was not.

17 Q. No? Okay. And so your entire communication was one
18 phone call to Atwood -- Sergeant Atwood?

19 A. No, it was multiple phone calls.

20 Q. Okay. When did you make the second phone call?

21 A. We were in constant communication. We would hang up,
22 things would get handled to prepare for the stop and then
23 I would make contact with him again. Pictures were sent.
24 I don't know the exact times.

25 Q. Was he -- was there constant communication during the

1 stop?

2 A. Just prior to, yes.

3 Q. Okay. Were you talking to him while he was driving to
4 the stop?

5 A. No.

6 Q. Okay. So how long before the stop were you talking
7 with him?

8 A. Before the stop?

9 Q. Uh-huh.

10 A. Minutes before the stop.

11 Q. Okay. And did you communicate directly with Trooper
12 Shropshire?

13 A. Not -- not directly.

14 Q. All right. Do you know whether Sergeant Atwood
15 communicated directly with Trooper Shropshire?

16 A. He told me he did.

17 Q. He told you he did?

18 A. Uh-huh.

19 Q. Okay. Are you aware of any record that would show
20 that?

21 A. No.

22 Q. Okay.

23 MR. YONGE: Bear with me for one moment.

24 THE COURT: Yes, sir.

25 THE WITNESS: You're fine.

1 (Court's Exhibit Number 5 was marked for
2 identification.)

3 BY MR. YONGE:

4 Q. Investigator Gietz, I'm handing you a document marked
5 Court's Exhibit 5. Would you please take a look at that
6 for me? Let me know if you know what that is.

7 A. It looks like an LPR note from DEASIL. The alert I
8 should say.

9 Q. All right. And did they send that hit to you by
10 e-mail?

11 A. I see Investigator Sanner on here and me, yes.

12 Q. Okay. Is that how you became aware of the license
13 plate reader hit on June 29th?

14 A. That is one of the ways, yes.

15 Q. What does it say there in Category? Category 2, do
16 not interdict; is that right?

17 A. Oh, yeah.

18 Q. What does that mean?

19 A. It means that we're working an active investigation
20 on him. So if there was a higher category that needed to
21 be done, it would be everybody interdict. It would go out
22 to anybody ran DEASIL. It would send the alert to anybody
23 that works interdiction and needs to know that. This was
24 a separate investigation, so it was a do not interdict.

25 Q. Okay. What does do not interdict mean?

1 A. It just means don't send it out to everybody. It
2 doesn't -- it says that these people are working this
3 investigation, myself and Investigator Sanner. Sergeant
4 Hodges is included on the bottom of it.

5 Q. Okay. So it does not mean don't go get him?

6 A. No, it means that I'm working the case and
7 Investigator Sanner's working the case and Sergeant Hodges
8 is working the case, so we will conduct the interdiction
9 stop.

10 Q. Okay. Did you tell anybody else in your department
11 that you were gonna go interdict at this traffic stop?

12 A. Yes, several people.

13 Q. Okay. Who did you tell?

14 A. Investigator Holt, Sergeant Hodges. The list can go
15 on and on. This was an active investigation throughout all
16 of NET.

17 Q. And when you go do that, do you have any paperwork
18 that you're supposed to fill out?

19 A. No.

20 Q. Okay. But you did fill out a report in this case?

21 A. I did do a post-incident, yes.

22 Q. And do you have that report with you up there?

23 A. I do.

24 Q. Would you mind taking a look at page 4 for me?

25 A. Okay.

1 Q. All right. And so just from the top on here, what
2 does that say?

3 A. On 6-29-2020?

4 Q. Correct.

5 A. I responded to the 41 mile marker of I-20 eastbound in
6 Lexington County, South Carolina.

7 Q. Sure. Can you keep going, please?

8 A. How far do you want me to read?

9 Q. Just keep going.

10 MS. OPPENHEIMER: Your Honor, certainly he could
11 introduce the report into evidence so that we don't
12 have to have Gietz read his pages of long report into
13 the record. It's just kind of a waste of time.

14 THE COURT: I don't -- I don't know how long it is,
15 how long it will take, but I'm gonna imagine Mr. Yonge
16 has got a point that he wants to emphasize and I'll let
17 him get to it as long as it doesn't create a lot of any
18 extraneous information getting there.

19 BY MR. YONGE:

20 Q. Well, I'll tell you what. I apologize. I'll read it
21 and then you can tell me -- answer some questions for me,
22 okay?

23 A. (Nods head.)

24 Q. All right. And let me know if it sounds accurate to
25 what happened that day.

1 A. Okay.

2 Q. So on 6-29-2020, I, being you, Investigator Gietz,
3 correct?

4 A. Correct.

5 Q. Responded to the 41 mile marker of I-20 eastbound in
6 Lexington County, South Carolina. "If", would be mean in
7 reference, correct?

8 A. Yep.

9 Q. All right. In reference to a traffic stop on a white
10 Ford F-350 bearing SC tag [REDACTED] by South Carolina Highway
11 Patrol.

12 A. That's correct.

13 Q. So far accurate?

14 A. Yeah, other than the spelling error -- or the
15 grammatical error.

16 Q. I have them, too. I'm not --

17 A. Yeah. Yeah.

18 Q. But accurate substantively?

19 A. Yes.

20 Q. Okay. From previous investigations I knew the owner
21 of that vehicle to be Steven Daniel Brown, a/k/a Steve-O,
22 a validated member of the Warlocks MC Capital Crew. Also,
23 through previous investigations, I had obtained information
24 that Steve Brown was trafficking methamphetamine from
25 Georgia to his residence in South Carolina using that

1 vehicle.

2 Does that say anything about you contacting highway
3 patrol beforehand?

4 A. It does not.

5 Q. Was that intentional?

6 A. Yes.

7 Q. That you would not include that?

8 A. Yes.

9 Q. Okay. On the stop, I met with Trooper Shropshire,
10 who advised that he stopped the vehicle Steven Brown was
11 driving for improper lane use and following too close.
12 Trooper Shropshire stated that the violation occurred in
13 Lexington County, South Carolina, correct?

14 A. Correct.

15 Q. I did then met with Trooper Atwood who advised his
16 K-9 indicated that there were narcotics in the vehicle.
17 Trooper Atwood also advised he read Steven his Miranda
18 advisement and Steven stated there was something in the
19 vehicle. Trooper Atwood and Trooper Shropshire also
20 advised that body cameras were activated during the stop,
21 correct?

22 A. Correct.

23 Q. What time did you arrive at the stop? Let's do this
24 if you don't mind.

25 A. Sure.

1 Q. Had the -- the traffic stop had already been initiated
2 and the dog sniff had already been performed at that time?

3 A. I believe that's accurate, yes.

4 Q. Okay. At no point did you speak directly with Trooper
5 Shropshire before you arrived on the scene that day, right?

6 A. No, I don't believe I had.

7 Q. You had not spoken to him?

8 A. I had not, yes.

9 MR. YONGE: One moment, please.

10 No further questions.

11 THE COURT: Thank you. Redirect?

12 MS. OPPENHEIMER: Very briefly, Your Honor.

13 REDIRECT EXAMINATION (In-Camera)

14 BY MS. OPPENHEIMER:

15 Q. Investigator Gietz, as a narcotics officer you receive
16 anonymous tips, correct?

17 A. That's correct.

18 Q. Now why don't you always put in your investigative
19 report, your initial report, who gave you that tip, when
20 they gave you that tip and what the information was?

21 A. For the -- the safety and the security of the person
22 providing the tip. It would be dangerous to provide that
23 information or put that in any kind of immediately
24 discoverable paperwork.

25 Q. Well, how would that be dangerous?

1 A. So there could be some form of retaliation, witness
2 tampering, all -- all kinds of things related to that,
3 especially drug traffickers and --

4 Q. It's common for people doing bad things to potentially
5 harm those who are ratting them out; is that correct?

6 A. That's correct. Yes.

7 Q. But, in fact, you did mention in your initial report
8 that you had obtained information that the defendant was
9 trafficking methamphetamine from Georgia to his residence
10 in South Carolina using his Ford F-350; is that correct?

11 A. That's correct.

12 Q. And you've been involved in a number of trial prep
13 meetings with myself and Mr. Smith and is it fair to say
14 that as trials like this proceed you are aware that more
15 details are given to the defense?

16 A. Yes.

17 Q. And, in fact, aren't you aware that the identity of
18 this particular tipster was given to the defense?

19 A. I am very aware of that, yes.

20 Q. And I believe Mr. Yonge pointed out this e-mail that
21 was an LPR hit e-mail that you got on June 29, 2020?

22 A. Uh-huh.

23 Q. Now he made a fuss about Cat 2, do not interdict.
24 That just means that any other agency shouldn't necessarily
25 pull him over because the Lexington County Sheriff's

1 Department Narcotics Enforcement Team is investigating this
2 individual?

3 A. That's correct.

4 Q. And you, in fact, had a plan to pull over the
5 defendant when you were able to; isn't that correct?

6 A. Yes, ma'am.

7 Q. And you executed that plan on June 29th of 2020?

8 A. Yes, ma'am.

9 Q. And that involved not only your agency, but the
10 highway patrol, correct?

11 A. Yes, ma'am.

12 Q. And information, is it fair to say that it's often
13 shared between law enforcement agencies?

14 A. Yes, ma'am. There were several agencies, not only
15 including them. The ATF was also involved in this case.

16 Q. And, again, it's an investigative tool not to
17 necessarily show your entire hand at the outset of a case,
18 isn't it?

19 A. Yes, ma'am. That is accurate.

20 Q. And DEASIL is just an investigative tool that you use,
21 correct?

22 A. Yes, ma'am.

23 Q. And if you will take a look at that. Is it still up
24 there with you?

25 A. Yes, ma'am.

1 Q. If you will go to page 2, remarks, can you read that
2 statement for me?

3 A. Steven Brown is involved in methamphetamine
4 trafficking from Atlanta, Georgia to Lexington, South
5 Carolina.

6 Q. So that would have been the information that
7 Investigator Sanner put in when he entered the defendant's
8 license plate into DEASIL, correct?

9 A. It appears that that's additional. Other than the
10 dropdown, that is additional remarks that he put in
11 manually.

12 Q. All right. And can you look at the next line,
13 notification history, times reported. How many times was
14 this -- had this vehicle hit?

15 A. That would be six, ma'am.

16 Q. Okay. And if you'll also look at the top of the page
17 for me, right here, you did not put that headstamp on
18 there, did you?

19 A. I did not.

20 Q. And how about the footer, did you put that in there?
21 Right there.

22 A. No, ma'am.

23 Q. But can you read the footer for us, please?

24 A. Additional discovery.

25 Q. Okay. Additional discovery, and what case name is it?

1 A. State v. Brown.

2 Q. Okay. And on the top right-hand corner is there a
3 date?

4 A. March 2, 2022.

5 Q. Can you tell us prior to this traffic stop on June 29,
6 2020, were you able to independently verify certain aspects
7 of the tip from the tipster in this case?

8 A. Yes.

9 Q. What were you able to verify?

10 A. That he was, in fact, driving the vehicle that we
11 pulled off of his SC DMV. It was also that there were
12 prior trips made to Georgia from South Carolina or
13 vice-versa, back and forth. And then on the last page,
14 as you can see, there's -- it says images. There was an
15 image, front and back, of the vehicle. So you could see
16 the front of the vehicle, as well as the back of the
17 vehicle, so I could confirm that that was, in fact, the
18 vehicle.

19 Q. Okay. And do those images stay with the hit forever?

20 A. No, they don't.

21 Q. They expire?

22 A. No, that would be -- the database would have to carry
23 too much data. You've got to think there's thousands,
24 maybe hundreds of thousands of vehicles that travel that
25 route every single day. That would be exhaustive for the

1 day to keep track of.

2 Q. Okay. And can you tell us -- the remarks that he's
3 trafficking methamphetamine from Atlanta, Georgia, if
4 you're travelling to Atlanta, Georgia from Lexington,
5 South Carolina, what route do you typically take?

6 A. Typically I-20.

7 Q. I-20 westbound or eastbound?

8 A. You would take westbound and then return on the
9 eastbound.

10 Q. And is it fair to say that the vehicle hit going
11 westbound on I-20 on June 29, 2020?

12 A. Yes. It hit -- it hit westbound and eastbound.

13 Q. All right. And do you know about how long that trip
14 takes?

15 A. I don't know the exact details. I want to say about
16 three hours.

17 Q. Okay. Did you use that information in determining
18 when you should set this stop up?

19 A. Yes, ma'am.

20 Q. Okay. And can you tell us based on your recollection
21 and the CAD did the times pretty much line up?

22 A. Yeah. We did a -- we did a Google trip from Atlanta
23 to South Carolina or Lexington where we were at and it gave
24 us the approximate times. It all matched up.

25 MS. OPPENHEIMER: Thank you, Investigator Gietz.

1 No further questions.

2 THE COURT: Any follow-up on this, Mr. Yonge?

3 MR. YONGE: Nothing else, Your Honor.

4 THE COURT: Thank you. You can step down,
5 Investigator.

6 (Witness excused.)

7 MR. SMITH: Your Honor, the State calls Master
8 Trooper Gregory Shropshire.

9 THE COURT: Trooper, come forward and be sworn.

10 (Whereupon, Gregory Shropshire was duly sworn by
11 the Clerk of Court.)

12 THE CLERK: Thank you. Would you please have a seat
13 in the witness box. State your full name and spell your
14 last for the record.

15 THE WITNESS: Master Trooper Gregory Shropshire,
16 S-H-R-O-P-S-H-I-R-E.

17 GREGORY SHROPSHIRE,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION (In-Camera)

20 BY MR. SMITH:

21 Q. Trooper Shropshire, how long have you been with the
22 South Carolina Highway Patrol?

23 A. About nine years.

24 Q. And during those nine years, have you ever been tasked
25 with performing criminal interdictions?

1 A. Yes, sir.

2 Q. Approximately how many of those have you done in your
3 career?

4 A. Several hundred.

5 Q. Can you tell me a little bit about how a criminal
6 interdiction stop works?

7 A. As far as a criminal interdiction stop, it usually
8 consists of conducting high volume traffic stops and using
9 that to -- during that time spending most of your time
10 interviewing and -- and rapidly assessing the situation to
11 determine if the person is involved in any type of criminal
12 activity.

13 Q. And are those stops typically performed only with your
14 agency, are they performed with other agencies? How do
15 those work?

16 A. We normally perform work independently as a solo
17 agency, so we'll go out on our normal day-to-day operations
18 and conduct enforcement actions in our particular zone and
19 every once in a while if any other agency, whether a state,
20 Federal or local agency, needs our assistance, we'll assist
21 them.

22 Q. Okay. Now on July 29, 2020, were you called to assist
23 another agency?

24 A. I was.

25 Q. For what reason?

1 A. They advised me -- I was advised by Sergeant Atwood
2 who contacted me and told me that Lexington County wanted
3 us to stop a vehicle. It was a white Ford --

4 Q. If I could stop you there. So you -- so Trooper
5 Atwood was a part of your team, criminal interdiction?

6 A. He's my K-9 handler.

7 Q. For every interdiction that you did, was Trooper
8 Atwood with you?

9 A. Yes, for the most part.

10 Q. Okay. So any information that would have been
11 received, you would have received it from Trooper Atwood?

12 A. It depends on -- it depends on where we got it from
13 or anything like that. Sometimes our -- at the time there
14 was -- Captain English was over us at the time. He may
15 have contacted us if another agency needed us or another
16 agency may have contacted him or ourselves.

17 Q. Okay. So let's -- let's go back in. What information
18 did Trooper Atwood relay to you on July 29, 2020?

19 A. That Lexington County wanted us to stop a white Ford
20 F-350 that was going to Georgia and picking up a large
21 quantity of methamphetamine and returning back.

22 Q. You heard testimony just a minute ago about a license
23 plate reader. Were you-all advised of that?

24 A. Yes, sir. We knew about that.

25 Q. What did you know about that?

1 A. We knew that the license plate reader was in Georgia
2 in the Martinez area. We knew that they were using that to
3 track him and we were told that they was expecting him back
4 in a short amount of time.

5 Q. And did they tell you why they were tracking him?

6 A. Yes, he was transporting illegal narcotics.
7 Methamphetamine.

8 Q. So after you got this call, you got this briefing,
9 what did you do then?

10 A. I then got dressed. I was home that day. I got
11 dressed and started making my way into Lexington County
12 and I met up with Sergeant Atwood in Exit 39 in Lexington
13 County.

14 Q. Was there anyone with you besides Trooper Atwood?

15 A. At the time it was just me and Sergeant Atwood.

16 Q. Do you recall approximately when you were informed
17 that the defendant was headed your way?

18 A. It was maybe about thirty minutes after I got there,
19 so sometime afternoon-ish.

20 Q. And did you make visual contact with that vehicle?

21 A. I did. I observed the vehicle.

22 Q. Did it match the description you were given from the
23 sheriff's department?

24 A. Yes, sir.

25 Q. What did you do then?

1 A. Once I saw the vehicle and got a visual -- on visual
2 observation saw that that was the vehicle that was
3 involved. And also Sergeant Atwood actually relayed to
4 me and let me know that, yes, that was the vehicle. I
5 then entered onto the interstate and made contact with
6 that vehicle because I already had a traffic violation
7 prior to the stop.

8 Q. What was that traffic violation?

9 A. Following too closely, sir.

10 Q. While you were following this vehicle, did you observe
11 any other traffic violations?

12 A. Yes, sir. I observed -- the vehicle actually began
13 to have a change in driver behavior. The vehicle actually
14 began to fail to maintain his lane and started riding the
15 white line, the fog line.

16 MR. SMITH: I beg the Court's indulgence one moment.

17 THE COURT: Yes, sir.

18 BY MR. SMITH:

19 Q. All right. So after you observed these violations,
20 what did you do then?

21 A. Once I observed those violations, I advised Blythewood
22 communications that I was stopping a vehicle, blue lights
23 were activated, and I began to pull the vehicle onto the
24 shoulder.

25 Q. And the location where you pulled him over, that was

1 in Lexington County?

2 A. Yes, sir. At the 41 mile marker.

3 Q. All right. So what did you do then?

4 A. Once I advised Blythewood of the information and I
5 exited my patrol vehicle, I made sure all my cameras and
6 body camera information was already on and I then made
7 contact with the vehicle on the passenger side.

8 Q. Did you identify the driver of the vehicle?

9 A. Yes, sir, I did.

10 Q. Who was it?

11 A. Mr. Steven Brown.

12 Q. All right. So walk me through then. Tell me what
13 you do -- what you do during the course of a traffic stop.
14 What happened here?

15 A. During the course of a traffic stop, I usually make
16 contact with them. I introduce myself and I advise them
17 the reason why I'm stopping them and at that point I'm
18 observing them inside the vehicle at that point to make
19 a rapid decision if I'm gonna have them exit the vehicle
20 from there to conduct additional enforcement action.

21 Q. Did you pull the defendant out of the vehicle?

22 A. I did have him exit the vehicle.

23 Q. Was anybody else in the vehicle with him?

24 A. No, sir. He was the sole occupant.

25 Q. All right. So what did you do after you pulled him

1 out of the vehicle?

2 A. I had him -- once I had him exit the vehicle, I made
3 -- then advised Blythewood communications to start running
4 his driver's license information to verify there were no
5 active warrants or that his license was also clear and it
6 wasn't suspended.

7 Q. Okay. And do you have a conversation with the
8 defendant at this point?

9 A. Yes, sir. At that point I started having a general
10 conversation. I explained to him why I stopped him and
11 proper driving techniques and getting a little bit safer
12 way of driving. I also had a conversation about where he
13 was coming from and general information from there based
14 on what he says.

15 Q. And what did he tell you -- what did he tell you at
16 this point?

17 A. He told me that he was coming from Georgia. I then
18 asked him again where in Georgia he was coming from and he
19 stated he was coming from around the Augusta area. I then
20 ask him well, what city were you coming from around the
21 Augusta area and he said he wasn't able to tell me that, he
22 wasn't sure. He said he was down there visiting a friend
23 and finding work.

24 Q. Uh-huh. And while you're having this conversation,
25 are you comparing what he's telling you with information

1 you've already been given?

2 A. Well, at that point, yes, I had that in my backhand,
3 but I'm also rapidly assessing on my own, determining if
4 there's any type of deception that may be involved during
5 the course of that traffic stop.

6 Q. Would you tell us a little about that? What are you
7 looking for? What sort of behaviors are you trying to
8 assess?

9 A. Well, I'm looking at his physical appearance, how
10 he's reacting to me, how he's reacting to being out there
11 on the side of the roadway. By bringing him out there onto
12 the side of the roadway and speaking with him, it's gonna
13 make it an even playing field as well for me because some
14 people are scared and nervous about being in front of law
15 enforcement. That allows them to relax if there's nothing
16 that's going on from my training and my experience. This
17 allows me to see how they react, but it also allows me to
18 get them out of their comfort zone as far as being inside
19 the vehicle. While speaking with him and asking those
20 questions, I'm looking at how he answers the questions
21 and how he responds to the -- responds to how I ask the
22 questions and how his demeanor changes or any type of
23 difference of breathing or anything of that nature.

24 Q. So, again, let's go back a little bit. You were
25 briefed beforehand that he'd been in Georgia?

1 A. Uh-huh.

2 Q. He confirmed during your conversation that he had,
3 in fact, been in Georgia?

4 A. Yes, sir.

5 Q. Did you have -- you told -- you said that you were
6 informed about the license plate reader. Do you have any
7 -- do you have independent knowledge yourself of where that
8 license plate reader is located?

9 A. I know the westbound one is down towards the scale
10 house in Georgia. It is down near the Martinez area.

11 Q. And if we're going west on I-20, is Martinez past
12 Augusta?

13 A. It is.

14 Q. Okay. So at some point during the stop did you ask
15 defendant if he had any narcotics in his vehicle?

16 A. I did.

17 Q. Now why did you do that?

18 A. During that time it allows me to assess his reactions
19 to the different questions about narcotics. It also
20 -- I've already built up at that point my reasonable
21 articulable suspicion of why I got to that point to ask
22 him the questions.

23 MR. SMITH: I beg the Court's indulgence for a
24 moment, Your Honor.

25 THE COURT: Yes, sir.

1 MS. OPPENHEIMER: Sorry, Judge. To make it easier,
2 we're gonna use the defense's exhibits for pre-trial.
3 They're the exact same ones we have.

4 THE COURT: Okay.

5 BY MR. SMITH:

6 Q. Now before we play this, Trooper Shropshire, when you
7 asked defendant if he had any narcotics in his vehicle, are
8 you watching his demeanor?

9 A. I am.

10 Q. Why?

11 A. I wanted to gauge how he responds to the stimulus that
12 I'm giving him as far as the questions. So I may ask him
13 the question, I may wait a few seconds to gauge how he
14 responds to that. Because some people, they do rehearse
15 saying no, but then you're watching how they respond to you
16 after they said their no because they've already made up
17 their mind they're gonna say no and then you would gauge it
18 from there on how they respond after the fact. They may do
19 certain things. People look down, what have you. Every
20 person's different.

21 Q. And, again, by this point you've already been briefed
22 that he's been to Georgia that day and had tracked him for
23 suspected meth trafficking; is that correct?

24 A. That's correct, sir.

25 Q. Okay.

1 (Video clip played.)

2 MR. SMITH: For the record, we will be skipping
3 forward to approximately minute marker 8 on this vehicle
4 -- on this body cam. I apologize.

5 THE COURT: Okay.

6 MR. SMITH: Your Honor, let the record reflect that
7 we are resuming this video at 7 minutes and -- let the
8 record reflect that we are resuming this video at marker
9 7 minutes and 24 seconds.

10 (Video clip played.)

11 THE COURT: Okay. Thank you.

12 MR. SMITH: We're stopping the video at 8 minutes
13 and 52 seconds.

14 BY MR. SMITH:

15 Q. Trooper Shropshire, what did you observe there?

16 A. When I asked him the questions, he did give an audible
17 no to everything thing. Once I got to methamphetamine, you
18 could tell that he was anticipating having to answer that
19 question. It looked like he took a deep breath and said no
20 in a very low tone, raised up his head and looked down.

21 Q. And a little bit further back, I noticed you asked the
22 defendant what he had been doing and he said he'd been in
23 Augusta. Was he able to provide you any specific details
24 about where he was or what he was doing?

25 A. He said he was looking for work and supposed to be

1 meeting a friend there. As far as -- you know, he wasn't
2 able to tell me where in Augusta he was going or what
3 city they was in and when I asked him again -- you know,
4 I think we got to the point where I was asking him and he
5 said he does carpentry work or construction work and we
6 got on that conversation. I asked him, you know, was that
7 what he was doing with his friend and he said that yeah,
8 him and his friend were building a deck for a lady who was
9 in a wheelchair and when he was saying that he was -- you
10 could tell it was almost as if he was trying to think of
11 what next to say because it wasn't something that he was
12 prepared for. It wasn't in the compartmentalization of
13 his conversation with me.

14 Q. And, again, you're aware that the license plate reader
15 he hit on is in Martinez, Georgia?

16 A. Yes, sir.

17 Q. All right. So after you asked him these questions
18 about narcotics in his vehicle, what did you do then?

19 A. I explained to him the warning. I advised him, you
20 know, of safe driving distances and everything else. It
21 wasn't a traffic ticket and at that point, once I made
22 sure he got back his license, registration and insurance
23 paperwork and I began to hand him the warning and I asked
24 him for consent to search the vehicle.

25 Q. Why did you do that?

1 A. Because I had enough reasonable articulable suspicion
2 on my part, as well as my knowledge of him transporting
3 narcotics across state line, to ask for consent to search.

4 Q. Did he grant consent to search the vehicle?

5 A. After waffling a little while, we took it as a no,
6 he said no, so, therefore, I had advised to have Sergeant
7 Atwood deploy his K-9 Parker around the exterior of the
8 vehicle and the dog gave positive indications to search
9 from there.

10 Q. Were Sergeant Atwood and Parker already on-scene with
11 you?

12 A. They were.

13 Q. So let me ask you this, Trooper. If Sergeant Atwood
14 and Parker were already on the scene with you, why didn't
15 you go ahead and run them earlier?

16 A. That's now how we operate. We -- for one, it's my
17 stop, and then the thing is I need to be able to develop
18 my reasonable suspicion. You know, if he forced the dog
19 around the exterior of the vehicle, that would tend to shut
20 some people down and they're not able to give any further
21 information on why we got to that point or to be able to
22 show compartmentalization in the trained craft he's using
23 to be deceptive to being involved in drug trafficking.

24 Q. So is it fair for me to say then that you want to
25 make sure you're going through the proper steps and do the

1 whole investigation?

2 A. Correct. Don't put the cart before the horse
3 basically.

4 Q. Okay. And do you know -- do you know approximately
5 how long it took from beginning of the stop to the 9-K
6 deploying?

7 A. Ten or twelve minutes.

8 Q. Okay. And after the K-9 was deployed, what happened?

9 A. Then Sergeant Atwood, you know, let us know that the
10 dog did indicate to the vehicle that there was possibly
11 narcotics in the vehicle. So, therefore, I went and got
12 treated gloves so I could go ahead and start searching the
13 vehicle and as I went up to the vehicle, I was advised that
14 -- prior to that that there was, in fact, narcotics in the
15 vehicle.

16 Q. Now at this time once you started to search the
17 vehicle, were other law enforcement officers on-scene?

18 A. Yes.

19 Q. Who?

20 A. Investigator Gietz was that. There was a couple other
21 Lexington County deputies and two of our partners that work
22 adjacent to us on our team showed up.

23 Q. Did any of those officers assist you in searching the
24 vehicle?

25 A. Sergeant Gietz did and I believe some of the others

1 may have came up there after the fact, but initially it
2 was just Sergeant Gietz -- not Sergeant Gietz, sorry,
3 Investigator Gietz. I don't mean to promote you already,
4 but...

5 Q. And what did you find in the vehicle?

6 A. Methamphetamine.

7 MR. SMITH: I beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Okay.

10 BY MR. SMITH:

11 Q. Based on the tip you had received prior and all of
12 the information that you gathered during the stop, did you
13 believe you had probable cause to search the vehicle prior
14 to asking for consent?

15 A. I believed I had reasonable articulable suspicion,
16 yes, sir, to ask for consent to search.

17 MR. SMITH: No further questions at this time,
18 Your Honor.

19 Trooper, please answer any questions defense has.

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Yonge.

22 MR. YONGE: Thank you, Your Honor.

23 CROSS-EXAMINATION (In-Camera)

24 BY MR. YONGE:

25 Q. Good afternoon, Trooper Shropshire.

1 A. Good afternoon.

2 Q. Is it master trooper? Is that --

3 A. Just a pay bump. You can say Trooper Shropshire.

4 Q. All right. Since we've already got this pulled up,
5 this video, I think we've got it as Exhibit 1, let's go
6 ahead and run through this traffic stop real quick.

7 And I'm just gonna have you watch it and then I'm
8 gonna stop periodically and I'm gonna ask you some
9 questions, okay?

10 A. Sure. Go ahead, sir.

11 (Court's Exhibit Number 1 was played.)

12 Q. All right. And so we're paused here at minute 1 and
13 21 seconds.

14 A. Yes, sir.

15 Q. Is this the first time you've ever met Steven Brown?

16 A. That is correct.

17 Q. All right. And do you have his driver's license at
18 this point?

19 A. Yes, I have his license.

20 Q. And you've asked him to step out of the truck?

21 A. Uh-huh.

22 Q. What was the purpose of that?

23 A. Well, as I stated before, you know, in order for me
24 to be able to assess what the situation is I always have
25 the individual step out, but prior to that when he was

1 sitting in the vehicle he had -- he appeared to be very
2 stressed out, had rapid respiration and also a very stiff
3 posture, he appeared very nervous at that point, so, in
4 other words, to have him exit out of the vehicle allows me
5 to actually evaluate him and actually talk to him a little
6 bit more and continue my enforcement action.

7 Q. Sure. Is it just safer to have him out of the
8 vehicle?

9 A. Sure, because, I mean, they're inside their vehicle.
10 You know, you don't know if there's weapons or not inside
11 the vehicle. It allows me to have a normal conversation
12 with a person without having to compete with the engine
13 of their vehicle when we're standing between both of our
14 vehicles.

15 Q. Do you think he was nervous at this point?

16 A. He appeared -- he appeared to be stressed by that
17 time. Yes, sir.

18 Q. Are people generally pretty nervous when you pull them
19 over?

20 A. Well, everybody's nervous, but at that point he seemed
21 more nervous than an average person.

22 Q. In what way?

23 A. It seemed like was a more heightened nervous like he
24 had a little bit more stress than the average. So in order
25 for me to be able to ascertain that and figure out that,

1 I have him exit the vehicle to be able to conduct my
2 enforcement action, but also get a general read on him
3 during that time.

4 Q. So you're not sure. You think he's nervous, but
5 you're not sure?

6 A. No, I'm sure.

7 Q. Sorry?

8 A. No, I'm sure he's nervous. I'm trying to figure out
9 how -- if that nervousness is going to subside or if it's
10 going to continue to still be at an elevated rate.

11 Q. At this point in the stop do you feel like you have
12 probable cause to search his truck?

13 A. No, I was just stopping the vehicle and I would
14 develop my reasonable suspicion once I had him outside of
15 the vehicle if there's -- if it leads up to that point.

16 Q. So it would be improper to go ahead and just run
17 through that truck and look for stuff at this point?

18 A. No, I'm not gonna run through his vehicle. I conduct
19 my investigation and my reasonable suspicion from there.

20 Q. Okay. Let's go ahead and watch a little bit more.
21 It's not gonna go on forever. It's only like twelve or
22 thirteen minutes.

23 A. That's fine.

24 (Court's Exhibit Number 1 playing.)

25 Q. All right. We're stopping here at 2 minutes and

1 42 seconds.

2 A. Uh-huh.

3 Q. What are you saying into the radio right there?

4 A. I'm just running his driver's license. I'm actually
5 trying to get dispatch to pay attention to me because for
6 some reason -- they didn't answer me for some reason and
7 then I'm running his information to verify, again, if his
8 license is suspended or if he has any active warrants out
9 possibly.

10 Q. Two follow-up questions based on what you just said.
11 So, one, you said dispatch wasn't paying attention to you
12 for some reason?

13 A. I called into dispatch. I guess they didn't hear me
14 or what have you, I'm not really sure, but I called in and
15 called again, so.

16 Q. Is there any heightened expectation that they're
17 gonna pay attention to you if this is supposedly a drug
18 interdiction stop?

19 A. Well, they don't know. They just think I'm out just
20 stopping vehicles. They don't know -- they're responsible
21 for everybody in that area, so on that particular day that
22 dispatcher may have Lexington County -- Lexington Highway
23 Patrol, Richland Highway Patrol patched on the channel,
24 you've got multiple people talking at one time or what have
25 you and they may or may not have heard me at that point.

1 Q. Are these drug interdiction stops generally a little
2 more dangerous?

3 A. Any traffic stop is dangerous.

4 Q. Okay. I noticed you didn't pat him down there on the
5 video.

6 A. Okay.

7 Q. Did you pat him down at all?

8 A. No.

9 Q. Why not?

10 A. I'm building a rapport with him and I didn't feel the
11 need to pat him down at that point.

12 Q. Okay. But at this point according to your testimony
13 you have information that he's trafficking methamphetamine
14 from Atlanta back to South Carolina and that doesn't create
15 any heightened thought in your mind that this is gonna --
16 he might have a weapon?

17 A. Well, it's a possibility he could have a weapon. When
18 I asked him did he have one, he said he didn't have one on
19 him, but at the same time if I have him exit out of the
20 vehicle it takes away that possibility there could be one
21 inside that vehicle at that point. I'd already looked
22 down. It appeared he didn't have one on him. I could see
23 from where I was standing at that he possibly didn't have
24 one on him and if it got to that point in the situation, I
25 would have dealt with it from there.

1 Q. Who's that walking up to talk to you right there on
2 the video?

3 A. That's Sergeant Atwood. He's my K-9 handler.

4 Q. Okay. And he's the person who called you in to do
5 this stop, right?

6 A. Yeah, he told me about this.

7 Q. After you perform a drug interdiction stop, do you
8 fill out any paperwork?

9 A. As far as?

10 Q. Saying this was a drug interdiction stop?

11 A. No, sir. I'm not really understanding what you're
12 talking about. You're talking about for every stop I --
13 every vehicle I stop?

14 Q. Well, let's just use this case as an example. You get
15 a call from Sergeant Atwood, correct?

16 A. Sure.

17 Q. And he says we're gonna go intercept this truck that's
18 coming from Atlanta.

19 A. Oh, okay. You're saying that if I talk to him did
20 we fill out any paperwork saying this is gonna be an
21 interdiction stop, no, we don't do that.

22 Q. What about after the whole stop's over?

23 A. What, filling out that we did an interdiction stop,
24 that we got a phone call about an interdiction stop? No,
25 sir, we don't do that.

1 Q. So there won't be anything in the paper trail saying
2 this was an interdiction stop?

3 A. No, sir, because we don't fill out that type of
4 paperwork for that. You know, if we seize narcotics and
5 it's our case, then we'll do our normal paperwork, but if
6 we're assisting another agency we may do a synopsis of what
7 we saw and pass it onto them, but that is about what we saw
8 on the stop.

9 Q. Would you normally include that in your regular
10 traffic stop report?

11 A. We don't do reports for regular traffic stops.

12 Q. Did you prepare a report in this case?

13 A. I did a synopsis right here.

14 Q. Okay. And did you include in that synopsis anything
15 about this being a drug interdiction stop?

16 A. No, sir, because I am giving that from the perspective
17 of what I saw on the side of the road.

18 Q. Okay. Now at this point standing there with
19 Mr. Brown, do you have probable cause to search his truck?

20 A. I don't.

21 THE COURT: Could we -- the are we doing probable
22 cause or reasonable suspicion?

23 MR. YONGE: At this point probable cause to search
24 the truck is what I'm asking.

25 THE WITNESS: Probable cause, no. At this point

1 I'm trying to develop my reasonable suspicion as I go.

2 BY MR. YONGE:

3 Q. Okay. Now would you agree that in your report you
4 described -- or in your synopsis. I apologize. That's
5 what you called it?

6 A. Yes, sir.

7 Q. You described Steve Brown has extremely nervous?

8 A. Correct. To me, he was.

9 Q. At this point was he behaving extremely nervous?

10 A. Yes, he was nervous. Yes, sir. To me, he was.

11 Q. Okay. I'm just gonna go back a little and then you
12 tell me where you see the extreme nervousness.

13 A. Okay.

14 Q. Let's start over here. Just tell me to stop when you
15 see it.

16 (Court's Exhibit Number 1 playing.)

17 A. You can pause it.

18 Q. You said pause it right here?

19 A. Yes, sir.

20 Q. Okay.

21 A. Well, there was a couple of things, okay? One, he
22 has the paperwork in his hands. The reason why I give
23 him back the paperwork in his hands is I'm giving him back
24 something into his hands so he could -- it's kind of like
25 a blanket. So, therefore, if he has it in his hands, he's

1 usually shuffling it and it's gonna create some type of
2 soothing or comfort for him. Not only that, he keeps
3 looking back towards the back back there where my partner
4 is standing at and where there's possibly other vehicles
5 are parked back there and he -- you can tell that he is
6 nervous at that point. He's doing quick rapid breathing
7 through his nostrils, so you can tell it's very quick and
8 rapid, and that's what led me to that point.

9 Q. Okay. So quick rapid breathing through his nostrils
10 and fumbling with paperwork?

11 A. Correct.

12 Q. Okay. And would you -- so another thing you said in
13 that report was labored breathing?

14 A. Correct.

15 Q. Would that be --

16 A. That's part of the quick rapid breathing.

17 Q. Okay. And you said he was standing with a bladed
18 stance; is that correct?

19 A. Correct.

20 (Court's Exhibit Number 1 playing.)

21 A. That's a bladed stance. That's not facing towards
22 me in a normal stance. Most people when they have a
23 conversation with an individual, they'll stand towards
24 them and have a full conversation with them. And actually
25 if you keep going on, we'll be able to see that, and we'll

1 go with it from there.

2 Q. Okay. But we can see all of this at this point at
3 1:59 in the video?

4 A. Yes, sir. He's bladed off right here.

5 Q. Is he shuffling away from you at this point?

6 A. He will in a minute.

7 Q. Okay. And at this point is he holding his breath and
8 swallowing hard?

9 A. Well, we haven't got to any conversation, so we
10 haven't got to that point.

11 Q. Okay. And we'll just go from here. We're at 1:59.

12 (Court's Exhibit Number 1 playing.)

13 Q. I apologize ahead of time. I would fast-forward, but
14 it's been glitching, so.

15 A. No, that's fine.

16 (Court's Exhibit Number 1 playing.)

17 Q. All right. Stopping here at three minutes. You've
18 just spoken to Trooper or Sergeant Atwood?

19 A. That's correct.

20 Q. And he asked you if you were by yourself, correct?

21 A. Uh-huh.

22 Q. And then you said -- what did you tell him?

23 A. Yeah. I said I'm by myself.

24 Q. And did he ask you what all those cars were doing
25 there?

1 A. Yes, sir. Because whenever we do a traffic stop like
2 that when we're assisting another agency, we try to make
3 the traffic stop seem as normal as possible. So with that,
4 we're trying to calm him down and trying to throw off and
5 not think about the stuff that's back there and concentrate
6 on what we're doing at hand. Normally it's just me and
7 him. This time there were other agents and other vehicles
8 were standing back there at a little bit of distance as you
9 can see.

10 Q. So this was all an orchestrated act to put him at
11 ease?

12 A. Well, it was supposed to be a normal traffic stop.
13 It was supposed to be made to seem like it was a normal
14 traffic stop.

15 Q. Okay. We'll watch a little bit more.

16 (Court's Exhibit Number 1 playing.)

17 A. You can pause right there.

18 Q. I apologize. What did you say?

19 A. When I shifted just a little bit right here, you can
20 see him actually shift to the side right there. That's
21 part of the movement. I gave a little bit of a movement
22 right there. It may have been a little bit subtle, but
23 you can see where he shifted himself right there.

24 Q. Okay. And that would be between about 3:10 and 3:15
25 on the video?

1 A. That's correct.

2 Q. And that would be one of those signes of extreme
3 nervousness?

4 A. Well, it's part of the whole part where I said that he
5 -- whenever I made a move towards him, he shuffled a bit
6 towards -- away at that moment.

7 Q. Understood. And I love that. Keep stopping me as you
8 see it.

9 (Court's Exhibit Number 1 playing.)

10 Q. Okay. I'm stopping here at four minutes now. What
11 did you learn about Steve during that conversation?

12 A. Well, as I was asking him the questions about where
13 he was coming from and everything else, when I asked him
14 about coming -- where he was coming from, he said he was
15 coming from Georgia. When I asked about with where, he
16 said Augusta. At that point that's where he took a swallow
17 and began to say what he was gonna say. When I asked him
18 where about in Georgia -- or where about around the Augusta
19 area, excuse me, he said -- I'm not really sure if you can
20 tell, but he's trying to search for the answer and at that
21 point that's when he had took another swallow and he was
22 trying to spit out what he was trying to go with and he
23 stated in a lower audible tone than normal.

24 Q. Okay. And just to backtrack just briefly, I
25 remembered the second part of my two-part question that I

1 forgot to ask you.

2 A. Yes, sir.

3 Q. A little earlier you had said that you had to run his
4 driver's license?

5 A. Correct. That's to verify the information and to
6 make sure that he doesn't have any active warrants or any
7 -- that his license is clear and make sure he was not
8 suspended.

9 Q. You weren't made aware of any of that information
10 before you performed this interdiction stop?

11 A. As far as on the stop, I knew that he was transporting
12 illegal narcotics across state lines. I knew that he was
13 coming back from Georgia and that was the extent of it.
14 And who he was and what type of vehicle he was driving.

15 Q. And that was the entire extent of the information you
16 had?

17 A. That's correct.

18 Q. We're gonna go to 4 minutes and 44 seconds. It might
19 help to know ahead of time.

20 (Court's Exhibit Number 1 playing.)

21 Q. All right. Trooper Shropshire, can you tell me what
22 was off about his behavior there?

23 A. Well, I was explaining to him the reason why I stopped
24 him and trying to go over about safer driving distances.
25 What that does is it allows me to re -- one, I have to

1 reiterate why I stopped him, give him better driving
2 practices, but it also allows them to deescalate or come
3 down from their nervousness if they're extremely nervous.
4 Right now he's still at the same nervous level. He
5 understood and he was talking back and forth about it, so,
6 therefore, that's where we were at that point.

7 Q. Okay. At this point did you already decide you were
8 gonna run the K-9 around the truck?

9 A. I haven't decided anything yet. No, sir.

10 Q. It's all based on the information you're gonna get
11 from here on out and what he does?

12 A. It's the totality of the circumstances, yes, sir.

13 Q. From the beginning to the end of this?

14 A. From point to point, yes, sir.

15 Q. Okay. But right now at this point in the video at
16 4 minutes and 44 seconds, you have not decided to run the
17 K-9 around the truck, correct?

18 A. I'm still developing my reasonable articulable
19 suspicion, sir.

20 Q. Okay. Let's go to 5. We'll watch from there.

21 (Court's Exhibit Number 1 playing.)

22 Q. Stopping here at 5:29.

23 A. Yes, sir.

24 Q. What did you notice about his behavior during that
25 clip?

1 A. Well, when I'm asking him about the question -- I
2 believe it was the question about, you know, what he was
3 doing back down in the Augusta area. He was trying explain
4 to me when I asked him well, was that -- you know, what
5 that -- did you find work down there, he pretty much was
6 saying I was working with my -- you know, my friend for
7 his mom, putting in a wheelchair ramp, we were gonna do a
8 wheelchair ramp. You can tell when I was -- after I asked
9 him that, he was trying to figure out what he was going to
10 say next, okay? So he took a deep breath -- you could tell
11 he was taking a breath and trying to spit out what he was
12 gonna say from there, from that point.

13 Q. Okay. Why were you gonna check the VIN number on the
14 truck?

15 A. It was just to verify the information and
16 documentation that's on the paperwork matches the vehicle.

17 Q. At this point had you decided to run the K-9 around
18 the truck?

19 A. I'm still developing my reasonable articulable
20 suspicion.

21 (Court's Exhibit Number 1 playing.)

22 Q. Okay. I'm stopping at 6:22. What did you just learn
23 on the radio there?

24 A. His license was clear.

25 Q. His license was clear?

1 A. Yes, sir.

2 Q. Did you also learn that he didn't have any warrants?

3 A. Yes.

4 Q. Okay. And, I apologize, what's a Signal 24?

5 A. I'm not sure. It could be a validated gang member or
6 protection order or something like that. I'm not really
7 sure. You know, I don't normally use those codes that
8 often, so I'm not really sure.

9 Q. Are you sure it would be gang member?

10 A. It's either or. I'm not really sure. It's one of
11 those codes. You have it. A protection order or something
12 like that.

13 Q. Does sex offender sound right?

14 A. I don't use those codes that often.

15 Q. So you couldn't tell me what Signal 24 means?

16 A. They didn't say he had an active valid warrant, so I
17 wasn't concerning myself with it.

18 Q. Okay.

19 (Court's Exhibit Number 1 playing.)

20 Q. Stopping here at 7:21, what was going on with his
21 behavior now?

22 A. It was just a general conversation I had with him by
23 talking with him about his truck and he ended up going onto
24 his motorcycle. I gave him something that he was confident
25 in and something he liked answering, so it allows them to

1 bring themselves down and now he should be able to speak
2 the normal speaking with me and now he was able to give me
3 that basic information right offhand.

4 Q. Okay. So at this point he doesn't seem nervous?

5 A. I wouldn't say he didn't seem nervous. I'm just
6 saying it allows me to bring them down from their high
7 level to down to normal and give them something else to
8 think about other than what was going on at that point.

9 Q. Okay. Well, let's just run through that list of
10 things you put in your report again and you tell me if any
11 of them apply during this clip.

12 A. Certainly.

13 Q. Did he seem extremely nervous?

14 A. Still, yes.

15 Q. Okay. And was he exhibiting labored breathing?

16 A. At that point, no, sir, but prior to that, yes.

17 Q. Okay. Was he standing with a bladed stance?

18 A. At that point, no, because I'm standing in front of
19 him. I purposely put myself there.

20 Q. Was he shuffling away from you?

21 A. At that point, no, because I'm talking to him about
22 a particular conversation, but he did shuffle away from me
23 prior.

24 Q. Was he holding his breath and swallowing hard?

25 A. Not at that point because then we're speaking about

1 something that he's interested in such as his motorcycle
2 and his vehicle.

3 Q. Okay. What was the temperature out there that day?

4 A. Oh, it was warm. It was warm.

5 Q. 90's?

6 A. I'm not really sure. It was hot. It was June.

7 Q. As hot as it is today?

8 A. I'm not really sure. It was not.

9 Q. Okay. We'll resume the video.

10 (Court's Exhibit Number 1 playing.)

11 Q. All right. Just stopping here at 8:10 for a second,
12 at this point have you -- do you feel like you've
13 established reasonable suspicion to go ahead and run that
14 drug dog around the car?

15 A. I feel that I -- with the totality of the
16 circumstances because I'm completing my stop, I felt that
17 I had reasonable articulable suspicion along with the prior
18 knowledge that I had to complete the search, so, therefore,
19 I'm getting back information and then I'm going get into a
20 bit more questions.

21 Q. Okay. So at this point is when you have it?

22 A. Correct.

23 (Court's Exhibit Number 1 playing.)

24 Q. Just stopping here at 9:10 real quick.

25 A. Uh-huh.

1 Q. That was quite the list of things you went over with
2 him there.

3 A. Yes, sir.

4 Q. Do you do that list with a lot of traffic stops?

5 A. If I have reasonable articulable suspicion to
6 believe that there's more to the stop, that they're
7 involved in some type of criminal activity, in particular,
8 smuggling, whether it's drug smuggling, then, yes, I do
9 have reasonable suspicion.

10 Q. Have you ever caught anyone with hand-grenades?

11 A. Actually, yes.

12 Q. Really?

13 A. Yeah, years ago.

14 Q. Okay. Bombs?

15 A. No.

16 Q. And at this point you've written the warning?

17 A. Yes.

18 Q. And we're at 9:10 in the video. And you've handed it
19 to him?

20 A. Uh-huh.

21 Q. Okay.

22 (Court's Exhibit Number 1 playing.)

23 Q. Pausing here at 4:92. Why did you ask him if you
24 could search the vehicle?

25 A. Because I had enough reasonable articulable suspicion

1 that I had developed during the course of the traffic stop,
2 as well as prior knowledge.

3 Q. The prior knowledge being?

4 A. The prior knowledge prior to the stop that he was
5 involved in -- alleged to be involved in transporting
6 illegal narcotics across state lines.

7 Q. Okay.

8 (Court's Exhibit Number 1 playing.)

9 Q. Stopping here at 10 minutes and 12 seconds. So you
10 feel like you have reasonable suspicion to run the dog
11 around the car?

12 A. I have reasonable suspicion to ask for consent to
13 search, he denied, so, therefore, I did as Sergeant Atwood
14 to deploy K-9 Parker on the exterior of the vehicle.

15 Q. Did you have -- did you feel like you had probable
16 cause to search the truck?

17 A. I had reasonable suspicion to ask for consent to
18 search.

19 Q. Yes, but at this point where you're having the dog --
20 you're telling him the dog sniff's gonna happen, right?

21 A. Okay.

22 Q. Yes or no, sir?

23 A. Yes. I told him that we're gonna deploy -- that
24 Sergeant Atwood's gonna deploy K-9 Parker. Yes, sir.

25 Q. Okay. And did you feel like you had probable cause

1 to search the truck?

2 A. I had reasonable articulable suspicion to ask for
3 consent to search the truck. Yes, sir.

4 Q. Right, but you know that's not what I'm asking though,
5 right?

6 A. Well, if he denies consent, I cannot search because
7 he does have a right under the Fourth Amendment to refuse
8 said search. Now having said that, because he does have
9 a right, even though I have the reasonable articulable
10 suspicion as well as the prior knowledge, I can ask
11 Sergeant Atwood, who was a K-9 handler at that time, to
12 deploy his dog around the exterior of the vehicle and if
13 the dog indicates to the odor and presence of narcotics,
14 then I have probable cause to search the vehicle.

15 Q. Okay. So I think we're saying the same thing then.
16 You felt like -- correct me if I'm wrong. I just --

17 A. I don't know now.

18 Q. It's not a trick, but if you think it is, tell me, all
19 right? You have reasonable articulable suspicion based on
20 what you saw during the stop and your prior knowledge --

21 A. That's correct.

22 Q. -- to run the K-9 around the truck?

23 A. Yes, sir. Well, I have reasonable articulable
24 suspicion to ask for consent to search the vehicle. You're
25 asking me do I have reasonable articulable suspicion to

1 deploy the K-9. I asked for consent. Do you get what I'm
2 saying? Do you understand?

3 Q. I don't, but I think we're going to get there.

4 A. Okay.

5 Q. So you have reasonable articulable suspicion onto ask
6 for consent to search the vehicle?

7 A. That is correct. Yes, sir.

8 Q. You do not have probable cause to actually search the
9 vehicle at this point?

10 A. That is correct because all I have is a reasonable
11 articulable suspicion off of what I learned during the
12 stop, as well as prior knowledge.

13 Q. So you can't search the truck unless the K-9 indicates
14 on it?

15 A. If the K-9 indicates to the odor and presence after
16 his refusal, then, yes, I do have probable cause.

17 Q. But not before?

18 A. He refused, so, no, I do not have probable cause to
19 search that vehicle at that point.

20 Q. Thank you. And we've got about a minute left of what
21 I want to watch, okay?

22 A. Yes, sir.

23 (Court's Exhibit Number 1 playing.)

24 Q. All right. I'm stopping the video at 11:05.

25 A. Yes, sir.

1 Q. And in that clip there you inform Steve Brown that if
2 the dog didn't indicate, he would be free to go, right?

3 A. Yes. Our policy is if the dog does not indicate,
4 we're not searching the vehicle, so, therefore, our stop is
5 over.

6 Q. Okay. So he was not free to go at this point?

7 A. No, he was not. I had developed enough reasonable
8 articulable suspicion at that point, as well as prior
9 knowledge, to hold him there longer.

10 Q. To what?

11 A. To hold him there longer, sir.

12 Q. Okay. Why didn't you run the K-9 while you were
13 writing that warning?

14 A. Well, I'm not a K-9 handler. That's one part. I'm
15 not trying to be funny, but that's -- I'm not a handler.
16 Secondly, as I stated before, it gives -- that's not how
17 we operate. You know, during that time I'm developing my
18 reasonable suspicion during that time when I'm interviewing
19 whoever it is that I'm stopping at that point and when you
20 deploy a K-9 that can ruin the rapport that I have with the
21 individual at that point.

22 Q. Okay. Bear with me for one moment.

23 MR. YONGE: That's all the questions I have.

24 Thank you, Trooper Shropshire.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Redirect, Mr. Smith?

2 MR. SMITH: Briefly, Your Honor.

3 REDIRECT EXAMINATION (In-Camera)

4 BY MR. SMITH:

5 Q. Trooper Shropshire, you mentioned earlier it's like --
6 when you perform an interdiction stop, there's no special
7 or particular paperwork you fill out before or afterwards.

8 A. No, sir.

9 Q. Why is that?

10 A. As far as a traffic stop, any traffic stop can turn
11 into an interdiction stop depending on the circumstance.
12 As far as any particular paperwork, we just don't do that
13 because that's part of our normal day activities, it's just
14 a traffic stop, and until it leads to reasonable suspicion
15 or probable cause is developed during that timeframe and
16 if it gets to that point and items are found, then we deal
17 with it from there.

18 Q. Okay. And you stated that during the course of these
19 stops you want it to look as much like a normal traffic
20 stop as can be, correct?

21 A. If I'm doing it for another agency, we want it to seem
22 as if it's a normal traffic stop. Yes, sir.

23 Q. Okay.

24 A. That way it allows us to gauge it in a proper manner
25 without anything seeming different than what is normal from

1 what we go out there and do on a normal day to day basis.

2 Q. And a part of that is utilizing all these -- this
3 other questioning trying to develop articulable -- this
4 reasonable suspicion before you run the dog, correct?

5 A. That is correct, sir.

6 Q. And when you have -- even when you feel like you've
7 already developed reasonable suspicion during a traffic
8 stop, do you continue your investigation to either confirm
9 or dispel that?

10 A. Yes, sir.

11 Q. So even after you feel like you've established
12 reasonable suspicion in this stop, you still asked him for
13 consent to search, correct?

14 A. Yes, sir.

15 MR. SMITH: I beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 BY MR. SMITH:

18 Q. And at that point running the dog was, again, one more
19 way to either confirm or dispel that suspicion; is that
20 correct?

21 A. Yes, sir.

22 MR. SMITH: Nothing further, Your Honor.

23 THE COURT: Any follow-up on those narrow points,
24 Mr. Yonge?

25 MR. YONGE: No, sir, Your Honor.

1 THE COURT: Thank you.

2 Trooper, you may step down.

3 THE WITNESS: Thank you, sir.

4 (Witness excused.)

5 THE COURT: All right.

6 MR. SMITH: Your Honor, that's the first ground
7 raised in defense's motion to suppress. We are prepared
8 to present our argument.

9 THE COURT: All right. Let me find out if there's
10 any evidence that the defense wishes to offer at this
11 point in time before we go to argument.

12 MR. YONGE: No, Your Honor.

13 THE COURT: All right. Good.

14 All right. Mr. Smith.

15 MR. SMITH: Your Honor, the basic framework that
16 we're dealing with here is set out by our Supreme Court
17 in United States versus Rodriguez, which gives us the
18 proposition that it is unlawful for us to extend or
19 otherwise complete a traffic stop to conduct further
20 investigation or a dog sniff absent the establishment of
21 reasonable suspicion.

22 Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 MR. SMITH: I have copies of my caselaw prepared
25 for your review.

1 So then, Your Honor, the question is have we
2 established reasonable suspicion? Has Trooper Shropshire
3 established a reasonable suspicion to run the dog, and
4 the answer is yes. So in their motion defense does not
5 concede -- does not contest that the traffic stop on
6 Mr. Brown's vehicle was legitimate. Therefore, so if
7 the traffic stop is legitimate, then our next question
8 we've got to establish is did we have reasonable suspicion
9 or have we established consent. There's no question
10 consent was not granted.

11 I'm passing Your Honor up a copy of United States
12 versus Hill.

13 Your Honor, the Federal courts and our state courts
14 in a number of cases have given -- gone into great
15 lengths discussing what reasonable suspicion means.

16 I beg the Court's indulgence for one moment.

17 Starting with, the key thing to consider in making
18 this argument, is that facts known to a law enforcement
19 officer at the time the stop begins can give rise to
20 reasonable suspicion.

21 Further, I'm passing up a copy of Kansas versus
22 Glover.

23 So information that a law enforcement officer
24 possesses at the beginning of the traffic stop can give
25 rise to reasonable suspicion. At the start of this

1 traffic stop, Trooper Shropshire would now have been
2 briefed that the Lexington County NET Team has been
3 conducting an investigation into defendant, into
4 Mr. Brown. They followed up on numerous tips. They
5 know on multiple occasions he's been going to and from
6 Georgia and they've been provided information that he is
7 using his vehicle to go to and from Georgia trafficking
8 large amounts of methamphetamine.

9 They do their investigation. They put his
10 information into the license plate reader. On the day
11 of this incident Steve-O's license -- Steven Brown's
12 license plate number hits on that reader going I-20
13 westbound near Martinez, Georgia, which notably is on
14 the far side of Augusta, Georgia, going towards Atlanta.

15 The troopers are made aware of this. They're made
16 aware of that license plate hit, so when Trooper
17 Shropshire asks him during the course of this traffic
18 stop where have you been today, I've been in Augusta all
19 day, he already knows at this point that defendant's not
20 giving him the whole story.

21 Further, Your Honor, from Kansas versus Glover we
22 get into a discussion of what exactly reasonable suspicion
23 -- or what sort of burden, what sort of standard is it.
24 It's not probable cause. It's not even preponderance of
25 the evidence, Your Honor. It is a low bar to clear.

1 And, further, courts reviewing whether reasonable
2 suspicion exists in traffic stops have to give officers
3 leeway to make common sense judgments and inferences
4 based on human behavior.

5 Further, Your Honor, I'm passing up a copy of
6 United States versus Williams. Again, that reasonable
7 sus -- reasonable articulable suspicion, the common
8 sense, nontechnical judgment relies on the judgment of
9 experienced law enforcement officers and is considered
10 in light of the totality of the circumstances.

11 So, again, Your Honor, this is not just a blind
12 traffic stop. Defense's motion wants to narrow this
13 solely to Trooper Shropshire's traffic stop and pretend
14 that there's no further information, no bigger picture
15 here to look at. We know from testimony that's not true.
16 We know what information Investigator Gietz provided with
17 our troopers prior to.

18 Now from our own courts, Your Honor, State versus
19 Taylor, our Supreme Court, again, in 2011, has stated
20 that the courts have to look at the cumulative
21 information that is available to the officers during the
22 stops. You can't take it apart piece by piece to try and
23 refute the reasonable suspicion. You have to examine it
24 as a whole picture together.

25 And we heard testimony in questioning, Your Honor,

1 about why -- why if the K-9 unit was on-scene from the
2 get-go, why didn't they go ahead and run the dog.

3 In State v. Provet from 2013, our court -- our
4 Supreme Court has stated that -- I beg the Court's
5 indulgence -- that during a stop an officer's
6 investigative methods should be the least intrusive
7 means reasonably available to that officer.

8 That's what Trooper Shropshire testified to. When
9 he's doing an interdiction stop, he doesn't want to
10 immediately call out the dog and tip off the person being
11 investigated as to what's -- we want this to look like
12 as normal of a traffic stop as possible. He's going
13 through all the normal steps of an investigation. He's
14 asking the same questions he would ask at any traffic
15 stop to see if he can develop his reasonable suspicion
16 without calling the dog.

17 And, again, Your Honor, as our courts have restated
18 over and over and over again, that reasonable suspicion
19 is based, you know, on common sense judgments without any
20 inferences about human behavior. I think, Your Honor,
21 from my research the best caselaw I have on this that
22 says that most succinctly is State versus Morris.

23 Our Supreme Court in State versus Morris states
24 that reasonable suspicion does not entail bright line
25 legal rules, but rather it's, again, common sense,

1 nontechnical conceptions that deal with factual and
2 practical considerations of everyday life on which the
3 reasonably prudent person acts, not legal technicians.

4 I beg the Court's indulgence.

5 THE COURT: Okay.

6 MR. SMITH: Reasonable articulable suspicion. And,
7 again, under State versus -- a recent case, State vs.
8 Frasier, that reasonable suspicion is not rigid, it's
9 not formulated, but it does require more than mere hunch
10 or un-particularized suspicion. We have that here.

11 Your Honor, this was a lawful traffic stop that
12 Trooper Shropshire validly extended based on the
13 information he had going into the stop from the Lexington
14 County NET Team. Your Honor, I would argue that he had
15 reasonable suspicion to run the stop from the get-go.
16 He's already verified that this is a vehicle that
17 Lexington County has -- has advised us about. We've
18 confirmed it's him. We've been briefed that he's
19 trafficking methamphetamine from the State of Georgia.
20 And during the stop every question he asks, every action
21 he takes is only further strengthening that reasonable
22 suspicion. And that tip, plus the observations gathered
23 during the stop, clearly satisfy the reasonable suspicion
24 standard.

25 Your Honor, and I would end this argument by saying

1 this is not -- it is not some fishing expedition or --
2 you know, our troopers, Lexington County, they didn't
3 just luck into finding defendant with seven pounds of
4 meth. This is the result of a thorough investigation
5 that was coordinated with our sheriff's department, with
6 the highway patrol, and they took all the proper and
7 necessary steps to establish reasonable suspicion to call
8 the dog, which then indicated, and gave them probable
9 cause, and which led them to the methamphetamine.

10 And, further, the dog in this case was already
11 on-scene, so we do not have an unreasonable delay in
12 waiting for the dog to arrive.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 Mr. Yonge.

16 MR. YONGE: Thank you, Judge.

17 So I would start -- I guess Mr. Smith is conceding
18 that the stop was extended, so I think we can jump right
19 to reasonable suspicion at this point.

20 THE COURT: I'm sorry?

21 MR. YONGE: I apologize. I think -- I think
22 Mr. Smith is conceding that the stop was extended and
23 only focussing entirely on reasonable suspicion, so I
24 won't get too much into whether or not there's an
25 extension beyond the warning here other than to say the

1 last point he made about not being an unreasonable
2 extension. That's not really the standard. The
3 standard is just whether there was an extension, so
4 even a de minimus few second counts.

5 So I think there was an extension and so if we
6 move onto reasonable suspicion, I would ask the Court to
7 focus -- he's correct on the traffic stop itself and not
8 whether or not this is an interdiction, and the reason
9 for that is we were never given that information nowhere
10 in the discovery. What you will find in the discovery
11 is information that there was an investigation of Steve
12 Brown, we have some of that, that Lexington County was
13 looking at him. We have nothing in there linking
14 Investigator Gietz and Sergeant Atwood, who we did not
15 hear from during this pre-trial motion, and nothing in
16 the evidence that we've received links Gietz to
17 Shropshire. So we were never given this. That's the
18 reason it doesn't appear in my memo is I didn't know
19 that was what this case was gonna be when I showed up
20 here this morning.

21 So I would ask the Court to focus exclusively on
22 the stop itself and if you look at the stop, despite
23 what Trooper Shropshire says in there, I just don't see
24 the things he's talking about. I don't see the flaring
25 nostrils, I don't see the bladed stance. He doesn't

1 appear to be shuffling away from someone. He looks like
2 someone who's standing in the heat on the side of the
3 interstate during a traffic stop answering questions. I
4 just do not see what he's describing as this extremely
5 nervous behavior.

6 And in any event, our Court, I think in Frasier,
7 had quoted some previous Supreme Court cases saying
8 nervousness in itself is not sufficient. Everyone is
9 nervous during a traffic stop, so there's got to be
10 something more. If we're looking at just Trooper
11 Shropshire pulls him over, walks up to him, gets him
12 out of the truck, he shuts the tool box and they have a
13 conversation, without anything more there, I can't see
14 the suspicion -- the reasonable suspicion. I can only
15 see the hunch.

16 So that would be my argument for the seizure portion
17 of our motion to suppress, Your Honor.

18 THE COURT: All right. Thank you.

19 Let me take just a few minutes if I could step down
20 and review some of these cases. I have studied some of
21 them in advance, I'm familiar with some of them, and
22 I've got some more in the outline I have here, but I
23 need to look at a couple of these just to make sure that
24 they are well within the decision I need to make.

25 So if you'll give me about ten minutes. So let's

1 start back at 4:30.

2 MR. SMITH: Your Honor, if I could offer one point
3 of clarification very briefly. If you continue to watch
4 Trooper Shropshire's body cam and dash cam, you will
5 see Investigator Gietz clearly come on the scene and
6 be visible in that video. Your Honor, this has been a
7 multiple-involved agency case from the beginning.

8 THE COURT: All right.

9 Yes, sir. You were standing, Mr. Yonge. I'm sorry.

10 MR. YONGE: Yes, and I apologize. I thought about
11 this after I already said no to evidence, but we never
12 did let you see the dog video. I don't think you've
13 actually been able to view it. We can put it in. I
14 think it's a consent Court's exhibit. It's on this
15 flash drive here.

16 THE COURT: It is. And if it's relevant to my
17 ruling in this, I'll look at it.

18 MR. YONGE: It's part of the second argument.

19 Thank you.

20 THE COURT: All right. It is in the packet. I
21 tried opening it again during the lunch hour and I
22 couldn't do it. I'm sorry.

23 All right, folks. We'll take about ten minutes
24 and start back.

25 (Recess taken at 4:19 PM.)

1 (Back on the record at 4:38 PM.)

2 BAILIFF: Court's back in order. Take your seats.

3 THE COURT: Thank you, folks, for your patience.

4 The motion to suppress is respectfully denied.

5 At the outset, let me say that without the -- the
6 information regarding the tip, the license plate reader
7 information and all of that that had been accumulated
8 over the time of the investigation, this is a much,
9 much closer case than it is without that information.

10 And I'm sympathetic to the fact that Mr. Yonge did
11 not know about that and I -- and I don't get involved
12 into the why's and wherefore's of that as to whether
13 there was information given the extent of this whole
14 investigation and all the agencies that were involved
15 they should have put somebody on notice or not.

16 And, frankly, other than to simply introduce
17 evidence that none of that existed, I'm not sure what
18 the advance information would have done, although I'm
19 sure, Mr. Yonge, as well as your brief was written you
20 would have found some way to address it, that it was
21 there, and the officer had a right to rely on it and it
22 came into the record of this particular case, and so --
23 and it is supported, that information. That type of
24 information is supported by the caselaw.

25 The Kansas versus Glover case, 140 Supreme Court

1 1183, specifically says that facts known to a deputy at
2 the time he stopped the vehicle that gave rise to a
3 reasonable suspicion that he was driving in violation of
4 the law, et cetera, and so the information from the --
5 the multiagency investigation was an appropriate thing
6 to be considered by this Court, as it was by the officer
7 himself.

8 Our South Carolina Supreme Court, State versus
9 Taylor, T-A-Y-L-O-R, 401 South Carolina 104, a 2013
10 case, says that reasonable suspicion can arise from an
11 anonymous tip and so forth, and so that is well-settled
12 law, and what that does in my view and how it entered
13 into my consideration here is that it is -- it is a
14 heightened level than -- of examination, a heightened
15 level of attention brought to these various elements,
16 which are justifiably considered under that light.
17 The officer is -- is entitled to rely on those and our
18 whole line of cases talk about the totality of the
19 circumstances and an officer may after issuing a traffic
20 ticket determine whether to continue to detain a driver
21 if he has reasonable suspicion of a serious crime, and
22 it goes into reasonable suspicion is a common sense,
23 nontechnical conception that deals with the factual and
24 practical considerations of everyday life, et cetera,
25 citing State versus Wallace, 392 South Carolina 47,

1 and going onto say that it is entirely appropriate for
2 courts to credit the practical experience of officers
3 who observe on a daily basis what transpires on the
4 street and, furthermore, the Court must consider, must
5 consider, the totality of the circumstances, and so
6 there when I view the evidence in that light, then the
7 case is much clearer for the denial of the motion to
8 suppress. Without that, quite frankly, the testimony
9 about the nervousness is not nearly as marked, not nearly
10 as pronounced in that case. And the testimony about
11 bladed stance, I've got an idea what a bladed stance is,
12 but I'm not too sure about that and I'm not sure how
13 -- how it indicates the guilt of somebody. I suppose
14 bladed stance must be the current terminology that has
15 replaced felony stretch. Some of us are old enough to
16 remember the cases that dealt with felony stretch because
17 somebody got out of their car one time and stretched like
18 that and by, George, that was it, he's guilty, and so I
19 give that same amount to a bladed stance, but there are
20 other inclinations.

21 And, frankly -- and then the State verses Provet,
22 P-R-O-V-E-T, 405 South Carolina 101, sort of focuses
23 on the distinction between -- or inconsistencies in the
24 statements made by the defendant about where he was
25 going, where he was coming from, what he was doing in

1 those cases, which occurred in this case as well, which
2 are proper elements for the trooper's consideration.

3 I will say this for Trooper Shropshire. He has --
4 he is well-versed on the distinction between reasonable
5 suspicion and probable cause. He has been well-trained
6 in that regard and he applies that standard I think
7 appropriately in this particular case and stayed within
8 the lines in doing that.

9 The other cases which Mr. Smith cited in his
10 argument, I adopt those and the elements of the holdings
11 of those particular cases, which he has put in the record
12 as additional sustaining grounds for my decision to deny
13 the motion to suppress.

14 All right. I have considered whether or not in the
15 ruling of that, Mr. Yonge, in that ruling whether or not
16 the fact that the -- that the K-9 officer tapped on the
17 vehicle at certain portions around the truck itself as
18 he was conducting his investigation. I don't think that
19 that gets into the level of the cases that you've cited
20 in your brief about the dog actually getting into the
21 truck themselves and physically occupying the truck. I
22 don't think it rises to that level, which is a concern
23 in part two of your -- in part two of your brief, and I
24 accepted, quite frankly, for purposes of my ruling the
25 fact that the tape showed exactly what you said it would

1 show, but it would make no difference in my opinion.

2 Any questions about that from the State or the
3 defense?

4 MR. SMITH: Nothing from the State, Your Honor.

5 THE COURT: Mr. Yonge?

6 MR. YONGE: Nothing from the defense, Your Honor.

7 THE COURT: All right.

8 Okay, folks. That -- do we have any other motions
9 we need to take care of today?

10 MS. OPPENHEIMER: Your Honor, the Jackson v. Denno
11 might take five minutes if you'd like to go ahead and
12 get that out of the way.

13 THE COURT: Let's go ahead and get it done, okay?

14 MS. OPPENHEIMER: Would you like the State to call
15 its first witness?

16 THE COURT: Please.

17 MS. OPPENHEIMER: Investigator Gietz.

18 THE COURT: Investigator, if you'll resume the
19 stand. You're still under oath.

20 JOHN GIETZ,

21 having been previously sworn, testified as follows:

22 DIRECT EXAMINATION (In-Camera)

23 BY MS. OPPENHEIMER:

24 Q. Investigator Gietz, you arrived to this traffic stop
25 shortly after the K-9 indicated that there was something

1 in the vehicle, correct?

2 A. That's correct.

3 Q. And when you approached, was the defendant already in
4 custody?

5 A. He was detained.

6 Q. Was he in handcuffs?

7 A. Not to my knowledge.

8 Q. Okay.

9 THE COURT: He was in custody. I can tell you from
10 the information. Let's don't quibble about that. He was
11 in custody.

12 MS. OPPENHEIMER: Yes, Your Honor. We are willing
13 to concede that point.

14 BY MS. OPPENHEIMER:

15 Q. Do you know whether or not he had been Mirandized at
16 that point?

17 A. I don't think he had been Mirandized yet.

18 Q. Okay. And did you ask him any questions as you walked
19 up to the vehicle?

20 A. No, ma'am.

21 Q. Can you tell us whether or not he said anything to
22 you?

23 A. Yes, ma'am. I said hi to him and he said -- without
24 any questions being asked, he said it's on the floorboard.
25 Or he said it's on the floor, on the floorboard, something

1 along those lines.

2 Q. Were you trying to warrant a response by saying hi to
3 the defendant?

4 A. No, ma'am.

5 Q. And, in fact, where was this approximately seven
6 pounds of meth found?

7 A. On the passenger side floorboard of the vehicle.

8 MS. OPPENHEIMER: No further questions.

9 THE COURT: Thank you.

10 Cross-examination?

11 MR. YONGE: No questions, Your Honor.

12 THE COURT: Thank you.

13 (Witness excused.)

14 THE COURT: Any additional evidence from the
15 State or from the defense on the admissibility of the
16 statement?

17 MS. OPPENHEIMER: Nothing from the State, Your
18 Honor.

19 THE COURT: Thank you.

20 Mr. Yonge, anything further from the defense as
21 a matter of evidence in that regard?

22 MR. YONGE: Nothing for evidence, Your Honor. Just
23 the question of whether this would be included in your
24 Fourth Amendment suppression ruling.

25 THE COURT: Yeah, that's a good point.

1 MR. YONGE: But that's all, Your Honor.

2 THE COURT: Yeah, I would -- it would not
3 necessarily be encompassed in my Fourth Amendment ruling.
4 It stands alone, I think, under the Fifth Amendment.
5 It was not custodial questioning as I understand it,
6 therefore, he's not entitled to the Miranda warnings
7 according to my understanding.

8 Does that address your concern about that or I'll
9 be glad to hear argument on that point?

10 MR. YONGE: Am I jumping ahead in --

11 THE COURT: No. My ruling in the absence of
12 evidence to the contrary is that Jackson v. Denno
13 applies to in custodial interrogation. He was in
14 custody. There's no doubt about that, but it was not
15 an interrogation, so his statement was a spontaneous
16 statement made without -- no interrogation of any sort,
17 so it becomes admissible then on that basis along.

18 Does that make sense?

19 MR. YONGE: Yes, Your Honor. My only argument is
20 just that I have no -- I'm not contesting it under the
21 Fifth Amendment. I was just asking for a ruling saying
22 I would have asked for this to be suppressed under the
23 Fourth Amendment as it was an unconstitutional seizure.

24 THE COURT: I see. I get you. I will include this
25 for that purpose. If I ruled incorrectly on the -- on

1 the issue of the -- of the search and things of that
2 nature, I will allow this if I can do it. I might can't
3 undo it and that's why we have a record, but you should
4 not be precluded on that basis for -- from arguing this
5 if you have to do it on the basis of the fact that I did
6 not rule correctly on the Fourth Amendment issues.

7 Does that make any sense at all?

8 MR. YONGE: That works for me, Your Honor.

9 THE COURT: Okay.

10 All right. Thank you.

11 I'm sorry I was not bright enough to see where you
12 were headed with that initially, Mr. Yonge. I should
13 have seen it at that point.

14 All right. So, folks, we will -- unless somebody's
15 got something else for us to do in this case, we will
16 recess and come back and be ready at 9:30 in the morning.

17 Is that --

18 MR. WILLIAMS: I'm rearing my ugly head at this
19 point.

20 THE COURT: Oh, no. Please. Not at all.

21 MR. WILLIAMS: Only for an abundance of caution,
22 and that is there were several motions that we had filed
23 which we wanted to make a record of that we were in
24 agreement in regards to this.

25 THE COURT: Oh, please do. Let's do it.

1 MR. WILLIAMS: There was a motion to sequester
2 witnesses and I think that was agreed to on behalf of
3 the State.

4 THE COURT: Good.

5 MR. WILLIAMS: In addition -- I'll wait. Go ahead.

6 MR. SMITH: No, go ahead.

7 MR. WILLIAMS: And there also was a motion to
8 exclude statements regarding gangs and any mention of
9 that in front of the jury, so I think that is the only
10 motion that we have.

11 THE COURT: All right. Thank you.

12 MS. OPPENHEIMER: Your Honor, the only way the gang
13 information would come up would be if the defense opened
14 that door and I don't -- Mr. Williams certainly doesn't
15 plan on doing that.

16 MR. WILLIAMS: I don't.

17 THE COURT: All right. Okay.

18 All right. So then there's no argument about those
19 and certainly, as he said, the gang won't come in unless
20 the door swings open.

21 The motion to sequester is granted. It will be in
22 effect at the conclusion of the opening statements.
23 After the opening statements are made, then the motion
24 to sequester will apply.

25 MR. WILLIAMS: Thank you, Your Honor.

1 THE COURT: All right. Anything further?

2 MR. SMITH: Your Honor, given the nature of the
3 charges on trial here and Your Honor's ruling denying
4 the motion to suppress, we would move that the defendant
5 be taken into custody pending the resolution of the
6 trial.

7 By statute this is a violent and serious offense
8 and it does carry a mandatory minimum of twenty-five
9 years.

10 MR. WILLIAMS: Your Honor, I don't know if you
11 noticed, but David Crawford was in here earlier who
12 runs A-Plus Bail Bonding, and he will provide whatever
13 you need for him to stay out. The jury has not been
14 sworn yet.

15 THE COURT: They're not. And if the bondsman is
16 willing to stay on his bond, then I will allow him to
17 stay out overnight.

18 MR. WILLIAMS: I'll have their office contact your
19 clerk, I guess, Your Honor.

20 THE COURT: Okay. Do that.

21 I'm sensitive to your concern, Mr. Smith. He's had
22 this hanging over his head now for a long time and I'm
23 trusting that he's not gonna lose the confidence in his
24 lawyers as he's expressed so far and he'll be here
25 tomorrow.

1 MR. SMITH: Yes, Your Honor.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: If not, the bondsman has probably got
4 enough on the hook to go get him.

5 MR. WILLIAMS: He probably does, Your Honor.

6 THE COURT: All right. Thank you. 9:30 tomorrow,
7 folks.

8 MR. SMITH: Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded for
10 August 7, 2023, at 4:53 PM.)

11 (The following proceedings were held August 8, 2023,
12 beginning at 9:50 AM.)

13 (State's Exhibit Number 1 through 10 were marked
14 for identification.)

15 BAILIFF: Court is now in session. The Honorable
16 Judge Thomas Cooper presiding.

17 THE COURT: Thank you, folks. Please be seated.
18 Good morning.

19 Madam Reporter, here is the Defendant's exhibits --
20 evidence that was attached to their motion yesterday. If
21 you'll make sure the record has that.

22 Folks, I understand that we have a motion that we
23 need to deal with before the jury is brought in this
24 morning.

25 Is that right, gentlemen?

1 MR. YONGE: Yes, Your Honor.

2 THE COURT: All right.

3 MR. YONGE: I apologize we didn't bring it up
4 yesterday. I honestly didn't think of it until this
5 morning.

6 THE COURT: I understand the nature of the things
7 and the timing of things. We'll deal with it now.

8 Mr. Yonge, let me hear from you.

9 MR. YONGE: So in light of the new information that
10 was disclosed yesterday during the pretrial suppression
11 hearing, we would request that this Court find that the
12 State has failed to disclose material evidence pursuant
13 to Brady v. Maryland, 373 U.S. 83, and Kyles v. Whitley,
14 514 U.S. 419, and Rule 5, South Carolina Rules of Criminal
15 Procedure.

16 THE COURT: And the specific information that is the
17 subject, I think I know what it is, but the record needs
18 to reflect it.

19 MR. YONGE: Yes, Your Honor.

20 So we were given information pretrial that Steve
21 Brown was under investigation by the Lexington County
22 Sheriff's Department for trafficking between -- right
23 here in Lexington. That's not in dispute. And we
24 also received information that he'd been -- triggered a
25 license plate reader on the date of the stop as well,

1 but what we did not get was anything linking that
2 information to the traffic stop itself. We did not have
3 anything about Investigator Gietz contacting Sergeant
4 Atwood or that this was an orchestrated drug interdiction
5 stop. All we had was two separate pieces of information
6 that were unlinked.

7 So we think the material evidence that was -- that
8 that is material evidence that was not disclosed to us
9 because it effects our ability to properly cross-examine
10 the witnesses that will testify during this trial, and so
11 we have a confrontation clause issue.

12 And, you know, I'm always happy if we can have
13 something showing that we did receive this information.
14 I'll apologize and pull my motion. I just have not been
15 able to find anything about it.

16 THE COURT: Okay.

17 MR. YONGE: Thank you, Your Honor.

18 THE COURT: All right. Mr. Smith, Ms. Oppenheimer,
19 let me hear from you.

20 MS. OPPENHEIMER: Yes, Your Honor.

21 I think this is kind of the classic reason why you
22 don't bring an attorney into a case that has been prepped
23 up multiple times and it's been pending for three years.

24 Mr. Williams has been in verbal communication with
25 myself, Mr. Smith, Agent Gietz, Judge McLeod. We've all

1 had meetings about this case specifically for years.
2 We have disclosed the identity of the tipster. We
3 have given -- in fact, they knew about that back in
4 2020, months after this stop happened. We gave them
5 information about Investigator Gietz's narcotics
6 investigation into the defendant. There are multiple
7 conversations, e-mails, phone calls, text messages,
8 et cetera, in-person meetings, about this information.

9 And, further, Your Honor, it's self-evident from
10 the body cam video and dash came video that this was
11 more than just an ordinary stop. Mr. Williams has
12 always known that this was a whisper stop. It is obvious
13 when Trooper Shropshire turns away from the defendant's
14 truck at a point in the video and you don't just see
15 Trooper Atwood, you see another line of law enforcement
16 vehicles. You see Lexington County K-9 officers. You
17 see Investigator Gietz walk up within seconds of that
18 dog indicating on the defendant's truck. This is no
19 surprise whatsoever that this was a big deal. That
20 this was more than just your ordinary traffic stop,
21 which is why we told Mr. Williams years ago that this
22 all resulted from a tip. We gave him the identity of
23 the tipster. We gave him Federal proffers that that
24 tipster gave not only about the defendant, but about
25 other targets as well.

1 We have gone above and beyond and, quite frankly,
2 if it's to be believed that they had no idea that this
3 wasn't a big deal, that other agencies weren't involved,
4 then Trooper Shropshire must be the most entertaining
5 trooper on the highways in South Carolina because no one
6 has five plus law enforcement vehicles at an ordinary
7 traffic stop.

8 It is self-evident from all of the discovery that
9 has been provided and we have told Mr. Williams that
10 they did have conversations that morning. That there
11 was a rally of these individuals to get them all together.
12 It was quick, but also we're not talking about just one
13 agency that everything can be documented via radio on a
14 CAD. We're talking about a different agency that doesn't
15 have access to Lexington County Sheriff's Department
16 radio channels. To document every single thing, phone
17 calls that every officer has with another officer, would
18 be practically impossible and it would be unreasonable.
19 They might as well leave their body cams on all day long
20 and never turn them off, and that's just completely
21 unreasonable, Your Honor.

22 So we have disclosed this information and would ask
23 that you deny their request for a mistrial.

24 THE COURT: The specific information that Mr. Yonge
25 raised, the point was evidence disclosed, the link

1 between all of this and this particular hit, I guess, or
2 this particular stop, I guess that's what the -- the
3 specific reference was to, and -- and your response to
4 that, Ms. Oppenheimer, was, as you said, the whole
5 panoply of evidence, the number of troopers and number
6 of agencies involved, lends itself to that type of
7 disclosure or was there some specific disclosure that
8 the license plate reader led to all of this and had it
9 all tied together?

10 You tell me.

11 MS. OPPENHEIMER: We did provide all of that
12 information to Mr. Williams, Your Honor. We provided
13 the hit itself, we provided letters, we provided every
14 information that Investigator Gietz had about this --
15 this stop. We told Mr. Williams that hey, Investigator
16 Gietz communicated with the troopers that morning before
17 this stop was planned and conducted. All of that has
18 been turned over, Your Honor.

19 THE COURT: All right.

20 MS. OPPENHEIMER: And there's nothing in the rules
21 or the law that says everything has to be written down.

22 THE COURT: Right.

23 MS. OPPENHEIMER: And, again, if Mr. Williams failed
24 to communicate that to Mr. Yonge, it's unfortunate.

25 There have been a lot of conversations about this case

1 for three years. Nothing has been hidden.

2 THE COURT: All right. Thank you.

3 Mr. Yonge.

4 MR. YONGE: Well, just to address the point that
5 this is so obvious because of the traffic stop itself,
6 I mean, we had Trooper Shropshire up there yesterday
7 explaining that. Of course they're trying to convince
8 everybody that this is a regular traffic stop. He's --
9 Trooper Atwood's walking up and saying hey, what's going
10 on here, I don't -- why do you have so many cars and he's
11 like I don't know what's going on. So this idea that
12 it's so obvious that everyone should know about it, but
13 at the same time it's all a trick and a deception to
14 convince the person that it was just a regular traffic
15 stop doesn't register to me. That doesn't convince me
16 that, you know, that should have shown me that there was
17 some link there.

18 I could always guess that there's a link. I could
19 maybe try to figure that out, but I have nothing even
20 close to what they said yesterday to help me prepare to
21 defend Mr. Brown in this case.

22 And there's no text messages, no e-mails about any
23 conversations up to this point? I find that hard to
24 believe that it was just told to him in passing or at
25 some meeting without otherwise being disclosed.

1 THE COURT: I think the -- the reference to the
2 implication or the conclusion that this was just a
3 routine task -- or routine stop was Trooper Shropshire's
4 relationship and discussions with the defendant in this
5 particular case, I think, which I got the impression
6 that he was trying to get him to believe it was a routine
7 stop so as to, in his words, perhaps release some of the
8 nervousness that he might be feeling otherwise with a
9 stop of this nature, but that after that point, from that
10 point on and for the purposes of pretrial discovery,
11 then my understanding was -- is what Ms. Oppenheimer was
12 saying it was, that it was obvious from that point on that
13 there were multiple agencies involved and communications
14 back and forth between those agencies tying Mr. Brown to
15 the drugs and to this particular shop.

16 I'm not sure specifically what -- what type of
17 information you are claiming was withheld from you that
18 you needed to know or should have been able to know under
19 Brady or Kyles versus Whitley or any of those cases.

20 Can you help me with that?

21 MR. YONGE: Anything making this a drug interdiction
22 stop. Up until this point reviewing all the discovery
23 that we have, which I've brought on a flash drive, it
24 looks like a traffic stop where perhaps Investigator
25 Gietz was pulling up to the scene afterwards or he's been

1 tracking him and he just happens upon this traffic stop
2 where he's been tracking Mr. Brown, but that wouldn't
3 affect Trooper Shropshire's reasonable suspicion or
4 probable cause to -- reasonable suspicion to extend the
5 stop or probable cause to search the truck and all of a
6 sudden it becomes a completely different case when we
7 show up for trial and it changes from, oh, a traffic
8 stop, you know, Investigator Gietz is here, he's gonna
9 take over the case, to Investigator Gietz is the puppet
10 master of the entire case in orchestrating this whole
11 thing.

12 We aren't prepared to cross-examine him on any of
13 the stuff. We find out yesterday that Detective Sanner
14 is the one entering all of this into a license plate
15 reader. What we have is an e-mail saying there was a
16 hit on the vehicle, but now I'm finding out that, oh,
17 here's how you enter this stuff into the license plate
18 reader and Detective Sanner is the one who did it and he
19 did a dropdown menu. I -- I couldn't even prepare for
20 that. I felt like I was taking a deposition without
21 discovery up there, so that -- that is where the problem
22 lies.

23 THE COURT: All right. Ms. Oppenheimer, what do you
24 say to that?

25 MS. OPPENHEIMER: Your Honor, there is a letter in

1 our file dated October 15, 2020, addressed to Mr. Williams
2 that says Theo, it has come to my attention that the --
3 in the above-referenced case law enforcement received
4 information about Mr. Brown's methamphetamine trafficking
5 activities from a tipster. Law enforcement used that
6 information in furtherance of its investigation into
7 Mr. Brown's activities, including his purchase of
8 methamphetamine in Georgia and trafficking it back to
9 the West Columbia, South Carolina area.

10 Your Honor, I don't know how more clear Mr. Yonge
11 wants us to be. It's -- it's self-evident by the video
12 and we have always said, and you can look at the hit
13 itself, the e-mail is right in front of the court
14 reporter, it says Austin Sanner, it says John Gietz and
15 it says Thomas Hodges. Those are the three people that
16 the hit was supposed to relay to it and the way that
17 the hit works or how you put it in, that's -- there's
18 no prejudice there. We have always said that the
19 information was put into DEASIL that a license plate
20 reader hit. We went above and beyond to disclose
21 everything to Mr. Williams. We have given him every
22 inkling of information that we had about this case.

23 And, again, if anyone watches that video and thinks
24 that it's an ordinary traffic stop like Your Honor said,
25 of course Trooper Shropshire's going to try and ease

1 Mr. Brown. Of course he is. He doesn't want him to
2 know that he's been investigated for years for trafficking
3 narcotics. You don't want to tip off a suspect to
4 either run or he could have become violent, Your Honor.
5 Obviously Trooper Shropshire was trying to avoid both of
6 those things, but it is obvious that there are multiple
7 law enforcement vehicles there. That there is no question
8 that this was not just an ordinary stop. There's no
9 prejudice to the defendant whatsoever. Everything has
10 been laid out on the table for years.

11 THE COURT: All right. Thank you.

12 All right. Mr. Yonge, I'll give you the last word
13 here. It's your motion.

14 MR. YONGE: Thank you, Your Honor.

15 Just addressing that piece of discovery that was
16 disclosed to us doesn't actually address the thing I'm
17 talking about here, which is the length between the
18 investigation and the traffic stop.

19 Thank you.

20 THE COURT: All right. Thank you.

21 You referred to a letter or an e-mail or something
22 that is up here that I have not seen.

23 Can you help me with that?

24 COURT REPORTER: (Hanging.)

25 THE COURT: Thank you.

1 Ms. Oppenheimer, you were saying that Court's
2 Exhibit Number 5 was disclosed to the defense? Is that
3 what you're saying?

4 MS. OPPENHEIMER: Absolutely, Your Honor. That
5 header is from our office and the date on the top is the
6 date that we disclosed it, which was over a year ago.

7 THE COURT: Okay.

8 MS. OPPENHEIMER: And, again, just because
9 Mr. Williams failed to communicate the information to
10 Mr. Yonge, that doesn't make it the State's burden to
11 make sure that co-counsel communicates amongst each
12 other.

13 THE COURT: Oh, no. I don't think that's the
14 contention. You don't have that responsibility. You
15 just have to disclose it to the other side.

16 MS. OPPENHEIMER: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 All right. I find that there is no Brady violation
19 in this particular case or Kyles v. Whitley violation;
20 that the totality of the information disclosed,
21 specifically Court's Exhibit Number 5, which indicates
22 what it indicates, the nature and the extent of this
23 investigation and how the investigation itself and
24 the agencies involved are targeting Mr. Brown for
25 methamphetamine trafficking from Atlanta to Lexington

1 in this regard is sufficient to put the defense on
2 notice of at least the scope -- the breadth of this
3 investigation and the involvement of other agencies in
4 it.

5 It is not necessary, as I understand that rule,
6 that every individual and every step that is being taken
7 to tie these things together has to be disclosed under
8 the caselaw or under the rules.

9 The motion -- the Brady motion in that regard is
10 respectfully denied.

11 All right.

12 MR. WILLIAMS: Your Honor, I have one additional
13 motion. I guess it's probably something to make a
14 record of as opposed to a disposition by the Court at
15 this time.

16 THE COURT: Okay.

17 MR. WILLIAMS: Your Honor, as we have viewed the
18 evidence which has come out, there's great placement,
19 if you will, on this license plate reader, Your Honor.

20 THE COURT: Right.

21 MR. WILLIAMS: Your Honor, I would call the Court's
22 attention to a case which was passed upon by the Supreme
23 Court recently, and it was the case which was the South
24 Carolina Public Interest Foundation and John Sloan on
25 behalf of -- individually and on behalf of others versus

1 South Carolina Law Enforcement Division and Mark Keel,
2 in his official capacity as Chief of the South Carolina
3 Law Enforcement Division.

4 The Supreme Court refused to make a decision on this
5 matter, and Your Honor may be aware of this particular
6 case, because they felt that the case had to work its
7 way through the circuit courts to make a decision if it
8 was proper.

9 THE COURT: Right.

10 MR. WILLIAMS: The argument is essentially that --
11 that SLED's retention of these license plate matters is
12 not authorized. It needs to be by law as opposed to
13 underneath some agency requirement.

14 THE COURT: Right.

15 MR. WILLIAMS: And I have a copy that I'd just like
16 to mark as an exhibit, Your Honor, but what has -- the
17 reason it's of some importance today --

18 THE COURT: Right.

19 MR. WILLIAMS: -- is that this case, in accordance
20 with the Supreme Court's decision, the attorneys on that
21 particular case, it was -- James Carpenter filed an
22 action in Richland County on or about April the 11th of
23 2023, which simply mirrors the accusations and the lack
24 of powers to do this license plate reader. And we all
25 know that it's been used throughout the State of South

1 Carolina, so I don't intend to pull some slick rug over
2 somebody's head --

3 THE COURT: Right.

4 MR. WILLIAMS: -- but we would -- because if the
5 Supreme Court should come back at some point in time and
6 determine that, indeed, that they not have the power,
7 and I'll note that there was an action which was filed
8 in the Legislature by -- I think it was Senator -- the
9 senator from Richland County who had some things that
10 were -- that touched upon this, but it's still floating
11 around out there, but there has been no -- there's no
12 state law that allows it --

13 THE COURT: All right.

14 MR. WILLIAMS: -- and the argument is always if you
15 don't have a state law that authorizes the use of it,
16 then it has to done by the powers underneath an agency
17 agreement.

18 So if we could just ask that those two particular
19 lawsuits be marked as a possible exhibit for consideration
20 at some point in time, Your Honor.

21 THE COURT: Certainly.

22 MS. OPPENHEIMER: If we could just note for the
23 record the caveat that this is an LPR run by the DEA,
24 which is a Federal agency, and the LPR is not in the
25 state of South Carolina.

1 THE COURT: All right. I'll note that. Whether it
2 applies will, of course, be for another day. Certainly
3 you can make the notation, yes, sir.

4 MR. WILLIAMS: Thank you, Your Honor.

5 (Court's Exhibit Number 6 and 7 were marked for
6 identification.)

7 THE COURT: Thank you.

8 All right, folks. Are there any other matters that
9 we need to deal with before we bring the jury in from the
10 State, Mr. Smith, Ms. Oppenheimer?

11 MR. SMITH: We would just ask for a brief five-minute
12 break, Your Honor, before we begin.

13 THE COURT: Okay. All right.

14 For the defense, Mr. Williams or Mr. Yonge?

15 MR. WILLIAMS: I think we're ready, Your Honor, but
16 we can take five minutes. Whatever they want to do.

17 THE COURT: Okay. Thank you.

18 Who'll open for the State?

19 MS. OPPENHEIMER: I will, Your Honor.

20 THE COURT: And for the defense?

21 MR. WILLIAMS: I will open, Your Honor.

22 THE COURT: Thank you.

23 Okay, folks. We'll take a -- there's no such thing
24 as a five-minute break. Why don't we start back at 10:30,
25 okay? Fifteen minutes.

1 MR. SMITH: Thank you, Your Honor.

2 THE COURT: Thank you-all.

3 (Recess taken at 10:14 AM.)

4 (Back on the record at 10:31 AM.)

5 BAILIFF: Court's back in session.

6 THE COURT: Thank you. Be seated.

7 All right, folks. The jury will be brought in and
8 I'll appoint a foreperson and the jury will be sworn.
9 I'll make some brief introductory remarks and then turn
10 it over to you-all for opening.

11 Are both the State and the defense ready to go?

12 MR. SMITH: The State is ready, Your Honor.

13 MR. WILLIAMS: The defense is ready, Your Honor.

14 THE COURT: All right. Thank you.

15 If you will bring in the jury.

16 (Whereupon, the jury enters the courtroom at
17 10:33 AM.)

18 THE COURT: All right, folks. You-all can be
19 seated. Thank you.

20 Ladies and gentlemen, at the outset let me apologize
21 for the length of time it's taken for us to get you out
22 this morning. We had some matters that we had to deal
23 with once again before we could bring you out, some
24 pretrial matters. We dealt with some of these yesterday,
25 but there were some left over until this morning, and I

1 didn't know about those yesterday, so that's the reason.

2 We are conscious of the value of your time and we
3 all try not to waste it and I think we will be able to
4 run a little more smoothly from this point in time once
5 we get things running and get some momentum built up.

6 The order of things today I'll explain to you in
7 just a few moments. Before I get to that, let me take
8 just a moment or two to tell you who some of these folks
9 are that you will be dealing with.

10 First of all, Mr. Davis, I've asked you to serve as
11 the foreperson of the jury. That means you will be the
12 jury's spokesman here in court. When the trial is over,
13 you'll be responsible for writing the verdict of the
14 jury, but I'll tell you more about that before you have
15 to do it. You don't have to worry about that now.
16 You've just got a reserved seat. You'll occupy that
17 chair throughout the trial of the case.

18 Mr. Jones, Mr. Billingsly, as the alternate jurors
19 -- where are the alternate jurors? There we go. You'll
20 -- well, as long as you understand that you're alternate
21 jurors and don't go into the jury room for deliberations
22 at the end, you can sit wherever you want to. Normally
23 you have reserved seats, but we'll leave you right there
24 unless the bailiff sits you somewhere else. The rest
25 of you, gentlemen and ladies, just get the best seat you

1 can when you come in from time to time.

2 You're gonna be sworn in now as jurors. I want you
3 to pay particular attention to the oath that you're about
4 to take. It is a time-honored oath, an artfully worded
5 oath. It explains to you very completely, but at the
6 same time very concisely what your responsibilities as
7 jurors are in this case. I'm gonna be reminding you
8 during the trial and after the trial as to what you're
9 sworn to do, so please listen to the clerk now as she
10 administers the oath.

11 Madam Clerk.

12 THE CLERK: Please stand and raise your right hand.

13 (Whereupon, the jury was sworn by the Clerk of
14 Court.)

15 THE CLERK: Please respond by saying I do.

16 (Jury responds.)

17 THE CLERK: Was there anyone not able to take the
18 oath?

19 Thank you. Please be seated.

20 THE COURT: Okay. Thank you.

21 Ms. Irby, you've just met her. She's the deputy
22 clerk who's in the courtroom. She is the clerk's
23 spokesperson. She's in charge of keeping things orderly
24 here and maintaining all of the records that result
25 from this -- from this trial except for the record of

1 the trial itself, and that's the responsibility of
2 Ms. Johnson, who is the court reporter, who sits right
3 here in front of us. She is the court reporter who keeps
4 up with the exhibits and with the trial testimony. She
5 has the responsibility of writing down everything that is
6 said. It is a word for word verbatim record that has
7 to be kept, and so she does that. And she's done it for
8 quite a while. I've had the chance to work with her over
9 the years quite often.

10 I have a law clerk up here, which is a luxury for
11 me, Mr. Will DuBose. He's a lawyer and he is actually
12 the law clerk for Judge McLeod. Judge McLeod is on
13 vacation this week, so he has loaned me his law clerk,
14 and I'm delighted to have that luxury. For fifteen years
15 when I was a full-time judge, I always had a law clerk,
16 and they were a great help in keeping up with the records
17 and doing research and things of that nature and doing
18 some mundane things as well that are not really important
19 for a law clerk's education, but are helpful to a judge,
20 and -- and the older I get the more I appreciate the
21 young ears and young lawyers like this who can -- who
22 can hear things a lot cleaner and they have a sharper
23 ear and a sharper mind than I do.

24 I've got that luxury this week with Mr. DuBose.
25 He will be leaving Judge McLeod's employ shortly. Law

1 clerks work generally from August to August and he's
2 going to go into private practice with a lawyer in
3 Columbia, and he's gonna do a good job there.

4 There are bailiffs in the courtroom. Mr. Scott,
5 who's over here, he's the chief bailiff. He calls us to
6 order and things of that nature. You've met Mr. Paris.
7 He's -- he's in charge of you-all and so you'll get a
8 chance to know him during the course of this trial.

9 The -- the security folks are about here, and I'm
10 sorry I didn't get their names today, but I will and
11 introduce you to them. They're important to us as well.

12 And all of these folks are an integral part of the
13 system who are sort of on the sidelines and you don't
14 get to pay any attention to them because you don't have
15 to, but the rest of us do because they are key components
16 of what we're all about.

17 Now the real key components are you-all, so let me
18 tell you what your responsibilities are gonna be during
19 the trial of this case.

20 In just a moment when I finish talking to you,
21 Ms. Oppenheimer, on behalf of the State is going to
22 stand before you and make a brief opening statement and
23 in that opening statement, she's going to outline for
24 you in something of a preview fashion what this case is
25 all about from the State's point of view and she may

1 even indicate to you some of what the State intends to
2 offer by way of proof in support of the charges which
3 it has brought in this indictment.

4 And after she has finished making the opening
5 statement on behalf of the State, then Mr. Williams, on
6 behalf of the defendant, has a right to make an opening
7 statement. He's under no obligation to do that, and I'll
8 tell you why in a moment, but he has the responsibility
9 -- or has the opportunity to do that if he so chooses.

10 And after the opening statements have been made,
11 then you will actually begin to see and hear the
12 presentation of evidence in this case. Evidence for the
13 most part will take the form of testimony of witnesses
14 who will take an oath and sit right in this chair and
15 answer the questions that the lawyers from both sides
16 will put to them, and it may also take the form of
17 documents, photographs, videotapes, all these sorts of
18 things that can come into evidence in the course of a
19 trial of this nature.

20 The State will put in its evidence and testimony
21 first and after it has finished offering evidence and
22 testimony, if the defendant wishes to offer evidence and
23 testimony, he has the chance to do it, but, once again,
24 he doesn't have to.

25 And after all of the evidence and testimony has

1 been introduced, then you will actually see the lawyers
2 again as they appear before you and make their closing
3 arguments. Closing statements they're sometimes called.
4 And in those closing statements, they're allowed to
5 summarize the evidence and to submit to you conclusions
6 that they claim you should draw from the evidence that
7 you have seen and heard. Obviously conclusions that
8 support their side of the case.

9 And after the final arguments have been made, then
10 I will instruct you as to what the law is and then you
11 will go into your jury room and finally begin to talk
12 about this case among yourselves, to deliberate and to
13 reach a verdict.

14 I remind you again not until then. Don't talk
15 about it among yourselves until then. You might take a
16 break and when you go back there and something you heard
17 interests you about it and you want to talk about it
18 then, right then while it's fresh in my mind, and you
19 tell me I can't talk about it? No, you can't do it then.
20 You can take all the time you want to when the trial is
21 over, but not until then, and the reason is this.

22 Once you start talking about this case among
23 yourselves, you're gonna start to make up your mind
24 about the case. You're gonna start to draw conclusions
25 based on those discussions and what you've heard. It

1 might be, I don't know whether it will or not, but it
2 might be that during the trial later on you hear
3 something that's different from what you've already
4 heard and started to talk about, but you're not likely
5 to receive that later testimony with an open mind
6 because you've already started to make up your mind,
7 and that's the reason we ask you don't do that, and
8 that makes sense to you and I'm sure you'll appreciate
9 that and you won't do that.

10 And, of course, as I've said, the -- the extent of
11 those deliberations, the length of them, from that point
12 on is entirely up to you. You took an oath to well and
13 truly try this case and render a true verdict according
14 to the evidence so help you God.

15 Evidence. Now I told you I'm the judge of the law.
16 I will tell you what the law is at the conclusion of
17 this case because that's my job, but when it comes to
18 evidence, you all are the judges. I'm the judge of the
19 law, you're the judge of the evidence. That tag says
20 juror, but if it's gonna be specific and correct, when
21 it comes to evidence it should say judge.

22 You have the right to believe or disbelieve what
23 you hear. You have the responsibility to assign weight
24 to it, responsibility to it. You have to decide what
25 you find to be credible about what you have seen and

1 heard in this case. You are well-able to do that. You
2 don't go to school to become a juror. We don't have any
3 specific schools in that. It's the school of life that
4 enables you to be a juror because the types of decisions
5 that you make every day in getting through life, raising
6 your family, if you have a family, and doing your job,
7 if you have a job, and just getting through life. You
8 make the same type of decisions that we ask you to make
9 in this courtroom, so that's all we ask of you; to bring
10 in your abilities, your common sense, your experiences
11 in life and all of those things that you all have and
12 you individually bring from your individual and separate
13 walks of life to bear on what you hear in this courtroom,
14 and you'll be able to decide what's credible and what's
15 believable. So just apply what you do outside of the
16 courtroom to what you do inside of the courtroom and
17 you'll be able to sufficiently discharge your oath to
18 be the judges of the evidence in this particular case.

19 A few moments ago I told you that the defendant
20 does not have to make an opening statement, does not
21 have to offer evidence in the case, and the reason for
22 that is, as you know, Mr. Brown has pled not guilty to
23 the charges in this case and under the law when somebody
24 pleads not guilty to the charges in a case he is presumed
25 in law to be not guilty. He's presumed, in fact, to be

1 innocent of the charges.

2 You've heard -- if you can go back to your seventh
3 grade civics classes, you've heard innocent until proven
4 guilty. That's all I'm talking about right now. Under
5 our law a person who pleads innocent or pleads not guilty
6 is presumed to be not guilty. That means he doesn't
7 have to take that stand and try to convince you he
8 didn't do the things he was accused of doing. He
9 doesn't have to bring in other witnesses to try to
10 make you believe he's innocent of these charges. He
11 is presumed to be innocent.

12 So the burden of proof then is not on the defendant
13 to prove his innocence. The burden is on the State not
14 just in this case, but in every case like this, to prove
15 that the defendant is guilty by evidence that satisfies
16 you of his guilt beyond a reasonable doubt.

17 Now when the trial is over, I will instruct you as
18 to what I mean and what the law means by proof beyond
19 a reasonable doubt, but for our purposes right now in
20 these brief remarks let me tell you that proof beyond
21 a reasonable doubt is proof that leaves you firmly
22 convinced of the defendant's guilt. And so after you
23 hear everything that's gonna be said about this case, if
24 you go back into your jury room and deliberate and your
25 collective decision is that the State has proven that he

1 firmly -- that he is guilty of these charges beyond a
2 reasonable doubt, the State has met its burden of proof
3 and the State would be entitled to a verdict of guilty
4 at your hands. But, on the other hand, after you've
5 heard it all if you find that there's still a real
6 possibility that he is not guilty, then the State has
7 not met its burden of proof and in that case the
8 defendant would be entitled to a verdict of not guilty
9 at your hands.

10 So you're gonna be listening for that. You're
11 gonna listen to the witnesses, the lawyers, listen to
12 me, and then when you've heard everything out here that
13 you need to listen to, you'll go back into the jury
14 room and you'll listen to each other as you discuss this
15 case and deliberate it among yourselves, and in your
16 deliberation you will discuss whether or not the State
17 has met its burden of proof and you will express your
18 opinion as to whether or not the State has met its burden
19 of proof by writing a verdict of guilty if you find that
20 you are firmly convinced that he is guilty or not guilty
21 if you find that there's a real possibility that he's not
22 guilty.

23 So listen now to the lawyers, ladies and gentlemen,
24 as they make their opening statements and thank you for
25 your attention to these remarks.

1 Ms. Oppenheimer.

2 MS. OPPENHEIMER: Thank you, Your Honor. May it
3 please the Court?

4 THE COURT: Yes, ma'am.

5 MS. OPPENHEIMER: Good morning. Why are we all here
6 today? We're here today because the defendant, Steven
7 Daniel Brown, is a drug trafficker. And he's not just
8 any ordinary drug trafficker, he's a meth trafficker.

9 On June 29, 2020, the defendant was pulled over by
10 highway patrol on I-20 eastbound here in Lexington County.
11 Now you would think this is any ordinary traffic stop, but
12 it's not. You're going to hear that Investigator Gietz
13 with the Lexington County Sheriff's Department Narcotics
14 Enforcement Team actually opened an investigation into
15 the defendant back in 2018. He received multiple tips
16 about the defendant's behaviors that were consistent with
17 trafficking methamphetamine. You're going to hear that
18 at some point in 2020 he actually received a tip that the
19 defendant was going down to Atlanta, Georgia to pick up
20 large quantities of methamphetamine and bringing it home
21 right here in Lexington County. To your homes.

22 You're going to hear that with this information
23 Investigator Gietz researched all of the vehicles that
24 were registered to the defendant. He had a big pickup
25 truck. What does he do? He puts that license plate

1 number in a database that the Federal government and
2 all law enforcement agencies use that would hit if the
3 defendant were to pass called a license plate reader.

4 Well, on the morning of June 29, 2020, Investigator
5 Gietz is getting ready for work like any other day. He's
6 getting ready to go to a team meeting that they have
7 every week, but he sees this hit and it says that the
8 defendant's truck was seen on I-20 westbound going
9 towards Atlanta, past Augusta, Georgia, and so what does
10 Investigator Gietz do? He calls the rest of his team
11 members from the county and he calls highway patrol. He
12 does this so that they can conduct a stop, a traffic
13 stop, should the defendant commit any traffic violations.

14 They're all set up on I-20. They have their
15 different points. There's a lookout down in Aiken
16 County who notifies everyone hey, I see his truck. The
17 troopers who, let's all be honest, what is a trooper's
18 job, notices traffic violations. I'm sure we've all been
19 pulled over before. They know the defendant's truck.
20 They know about Investigator Gietz's investigation.

21 So they're somewhere on I-20 and when they get the
22 notice that the defendant's truck is coming their way,
23 they get on the highway and they observe two traffic
24 violations, so they pull him over.

25 Again, you would think this is any ordinary stop.

1 It's not. It's pretty evident, but you're gonna see
2 those traffic violations. You're going to see the steps
3 that Trooper Shropshire goes through with the defendant.
4 You're going to see how the defendant is acting. Ask
5 yourselves does his story make sense? It changes. He
6 can't give any specific details about where he is. So
7 ask yourself is he acting nervous? If this is just an
8 ordinary day and he's not doing anything wrong, why is
9 he acting the way that he's acting?

10 You're going to hear the trooper ask him about
11 different substances that could have been in his truck.
12 And, again, the trooper knew about this investigation.
13 The trooper goes through a litany of questions. Hey,
14 do you have any heroin? Do you have any weed? Do you
15 have any pills? No. No. No. Well, how about any
16 methamphetamine? You're going to see and you're gonna
17 hear the defendant's response. You might be able to
18 hear the defendant's response so well because he kind
19 of mutters no. It's not a resounding no like the rest
20 of them as he answers to the other narcotics.

21 You're going to see that the troopers make a
22 decision to run a dog around the car. You're gonna get
23 to see that beautiful little baby dog, who is an officer,
24 and you're going to see within two minutes that he hits
25 and indicates that there's something in that vehicle and

1 seconds later Investigator Gietz walks up and you're gonna
2 see the defendant's demeanor change. He's defeated. He
3 knows he's caught red-handed. He tells Investigator Gietz
4 it's on the floorboard. As quick as day he tells him
5 exactly what he will find. And it takes him two seconds
6 to find it. About seven pounds of methamphetamine in
7 three clear plastic totes right there in the defendant's
8 truck. He's the only one in there. He knows it's in
9 there. He tells Investigator Gietz exactly where it is.
10 He knows he's caught red-handed.

11 Now, ladies and gentlemen, there's a couple of
12 different types of trafficking methamphetamine,
13 trafficking narcotics. One is bringing the narcotics
14 into the state. Well, we know the defendant was in
15 Georgia and we know he came back to South Carolina.
16 That's trafficking. We also know that he's in possession
17 of it. It's his truck. He has knowledge of it. He has
18 control over it. That's also trafficking.

19 The judge talked to you a little bit about
20 reasonable doubt. Again, it's firmly convinced. You
21 don't have to be a hundred percent sure. You just need
22 to be firmly convinced of the defendant's guilt. You
23 keep that in mind throughout this trial. Ask yourselves
24 how is he behaving? Does he know about these drugs in
25 his truck? Is what the defense is telling you, is that

1 reasonable? Ask yourself that throughout this trial.
2 You get to use your common sense. You did not leave it
3 out in that gallery as soon as you took your oath. You
4 brought it with you.

5 And, ladies and gentlemen, as long as you listen to
6 the testimony, you look at the evidence and you follow
7 the law, your job will be easy, and I assure you that
8 at the end of this trial when Mr. Smith gets up and
9 asks that you find the defendant guilty of trafficking
10 methamphetamine, you will be able to do so. He is a
11 drug trafficker and all of the evidence points that way.

12 Thank you.

13 THE COURT: Thank you, Ms. Oppenheimer.

14 Mr. Williams.

15 MR. WILLIAMS: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
18 the jury, I really thank you for being here because a lot
19 of people try to get out of stuff like this, but I think
20 if you listened to Judge McCaslin she told you that this
21 will probably be the one of the most enjoyable learning
22 experiences that you've ever had and that you really will
23 appreciate doing it.

24 The one thing you don't know and probably you don't
25 know it because you're not professional jurors and you

1 don't get to sit on but maybe one jury in your lifetime,
2 is that you have the pleasure of having one of the most
3 experienced judges on the bench. You probably picked up
4 on it by his instruction, and I'm not just saying that.
5 He's -- he's been around for a while and his instructional
6 ability is wonderful. So you get to learn from one of
7 the best judges in terms of the instruction on what the
8 law is, and he has a very important job to do and he does
9 it well, but let's don't forget you twelve or fourteen
10 people have a job to do, too.

11 You know, you probably watched the process go a
12 little bit and you said well, I don't really understand
13 why these lawyers are picking certain people or striking
14 certain people. Well, it's all an attempt to find
15 unbiased people, people who don't have prejudices in
16 their minds or people who they think would be fair
17 and impartial because that's what both sides should be
18 looking for is fair and impartial people because the
19 jury is supposed to determine the facts in the case, so
20 that's where everybody's looking at.

21 If you'll look around -- and the first thing I
22 noticed is that when I was looking at you twelve or
23 fourteen people is that you-all look different. It's
24 just like there's no -- I mean, you-all look different.
25 Each and every one of you look different from the other

1 person. Some are old, some young, some male, some are
2 females, some are ethnic. You all look different, but
3 you're all the same to a certain extent, and that's what
4 I think is important is that you-all possess something
5 which is the same, and that is that good common sense.
6 You-all have experiences of some kind.

7 And when -- years ago when we set up the system to
8 evaluate and to judge people, we decided that we would
9 use a jury system in the United States, and that's part
10 of the Bill of Rights, you know, you have the right to
11 trial by jury, but I was curious because I'm always
12 curious about something, and that is that why do we have
13 twelve jurors? Because in some places you have six
14 jurors, sometimes you just have a judge, so I began to
15 research that issue because it was kind of interesting.
16 I just wanted to know why you've got twelve.

17 It turns out that there was a decision back in 725
18 by a Welsh king by the name of Morgan who said that he
19 thought that you should have twelve jurors because you
20 should have -- just like the apostles, the twelve apostles
21 of Christ, and I said well, that's as good an answer as
22 any, but he said he was looking for wise men. That's why
23 he had that.

24 Well, the importance of you twelve people in this
25 case is great and I expect and hope that you-all will be

1 wise men and women in this case because it requires it.
2 It requires it because you have a task, which is even
3 though you may not think it's that important, it is
4 extremely important. Because you hold the decision in
5 this case. I'd like to say it's my silver tongue in
6 arguing to you or the solicitor or the judge, but it's
7 not. It's you twelve people who make the decisions in
8 this case.

9 Now having said that, the other thing I wanted to
10 talk about, you see unfortunately for a defense lawyer
11 I always hate it when you have a very good judge on the
12 bench because he will say all of those things that you
13 want to say in your opening argument and you would sound
14 silly if you just repeated all those things, and I'm
15 sure it's some sort of conspiracy to keep defense lawyers
16 from saying too much in front of a jury, but he has said
17 much of what I would normally tell you, and that is what
18 a juror's rights and what their obligations are, but I
19 did think about one other thing that I would ask that
20 you consider because you see these kinds of stuff in
21 today's headlines all the time, and that's artificial
22 intelligence.

23 You're probably saying he's lost his mind. Why he's
24 talking about artificial intelligence? You see, we're
25 taking the human out of everything. Well, the one thing

1 they can't take out of you twelve people is the humanity
2 that you possess and your ability to reason, your ability
3 to look at evidence. Because the burden of proof is,
4 indeed, on the State to prove beyond a reasonable doubt
5 the guilt of the person charged. So if they can't do
6 that, then they're not guilty, and that's what the system
7 is built all upon. So you must find that the evidence
8 that you're looking at is persuasive, that it convinces
9 you, that leaves you firmly convinced of the person who
10 is charged.

11 I liken it to the change in the atmosphere where
12 you went from Huntley and Brinkley to television stations
13 that tell you exactly what you're supposed to believe.
14 Well, this time you make the decisions. You look at
15 the facts. You become your own television station and
16 determine what you believe to be the truth based on what
17 you see. Is it capable of being -- of standing on its
18 own? That's all we really ask is that you apply the law
19 as the judge gives that information to you.

20 I'll sit down, but I neglected to tell you who is
21 seated at my table. And Steve Brown, he's the gentleman
22 who's charged, and he is hoping, expecting as we all
23 should, that he receives a fair and impartial trial.

24 And the other young man over there, he's probably
25 gonna get tired of me saying this over the years, he's

1 actually my son-in-law. He's married to my daughter,
2 who is a partner in my firm. And my wife, who is also
3 a partner in the firm, so we're a bunch of lawyers, but
4 I would ask you do your job as being good jurors, fair
5 jurors. You make the State prove beyond a reasonable
6 doubt that my client violated the law, that he had
7 criminal intent, that he knew what he was doing and that
8 he's guilty of these charges. If you do that, then we
9 can have no qualms and you should not have any qualms
10 because I think you'll have an interesting and instructive
11 day when the judge gives you the charge.

12 Thank you.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Williams.

15 Ms. Oppenheimer, you can call your first witness.

16 MS. OPPENHEIMER: The State calls Investigator
17 John Gietz.

18 THE COURT: Investigator Gietz, come forward please
19 and be sworn.

20 (Whereupon, John Gietz was duly sworn by the Clerk
21 of Court.)

22 THE CLERK: Would you please have a seat in the
23 witness box. State your full name and spell your last
24 for the record.

25 THE WITNESS: Senior Investigator John Gietz,

1 G-I-E-T-Z.

2 JOHN GIETZ,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. OPPENHEIMER:

6 Q. Good morning, Investigator Gietz. How are you doing?

7 A. I'm well.

8 Q. Can you tell us where you're presently employed?

9 A. The Lexington County Sheriff's Department.

10 Q. And in what capacity?

11 A. I'm a senior investigator on our narcotics enforcement
12 team.

13 Q. Can you tell us a little bit about the narcotics
14 enforcement team?

15 A. So it's comprised of several different units within
16 narcotics investigations and we have a crime reduction unit
17 as well and a fugitive apprehension team. I'm assigned
18 to Team 1 and we investigate narcotics offenses, tips,
19 complaints of narcotics distribution. Generally anything
20 related to the illicit sale, trafficking and distribution
21 of narcotics.

22 Q. And I believe you mentioned a little bit about this,
23 but can you tell us some of the investigative tools you use
24 as a narcotics officer?

25 A. Sure. We use normal citizens of Lexington County

1 who give us tips and -- and if you -- if anybody's had
2 any issues with somebody possibly dealing narcotics in
3 their neighborhood or anything like that, we receive those
4 tips and we work those complaints. We also meet with
5 confidential informants. We'll purchase narcotics using
6 confidential informants or in an undercover capacity. We
7 also will use various databases, investigative tools. We
8 meet with Federal entities quite often to work if there's
9 any conjunction between a case that we're working or if
10 it's a case that they're working.

11 Q. You mentioned tips.

12 A. Yes, ma'am.

13 Q. Can you tell us whether or not it's common for you to
14 receive tips about the trafficking and distribution and
15 sale of narcotics?

16 A. Yes. Absolutely. Almost daily we receive tips from
17 different people about the sale and use. We actually
18 actively go out and try to cultivate this information as
19 well. It's part of our job.

20 Q. Okay. And when you receive a tip, what exactly do you
21 do with that information?

22 A. There's various different investigative tools that we
23 would use. Again, databases and stuff like that. Say if
24 somebody was trafficking narcotics, we would take that
25 information and research it through DMV or another database

1 that we have is CLEAR and we can research through there.
2 We also utilize license plate reader systems that is run
3 by DEASIL -- or, excuse me, run by the DEA that's called
4 DEASIL. We have internal databases and -- and then we go
5 talk to other tipsters and informants.

6 Q. Is it fair to say that you don't just solely rely on
7 a tip?

8 A. Oh, absolutely. We -- we never. That would -- that's
9 just the start of an investigation.

10 Q. Okay. Turning your attention to Steven Daniel Brown,
11 can you tell us whether or not you opened an investigation
12 into narcotics on this individual?

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

14 Q. And do you see Steven Daniel Brown in this courtroom
15 today?

16 A. Yes, ma'am, I do.

17 Q. Can you please identify him for the jury?

18 A. He's sitting right over there in the middle seat.

19 Q. At the defense table?

20 A. Yes, ma'am.

21 Q. And can you tell us the nature of that investigation?

22 A. It was -- it was a narcotics investigation.

23 Q. Can you tell us approximately when that investigation
24 began?

25 A. Approximately 2018.

1 Q. Now without telling us anything specific, can you tell
2 us whether or not you received any tips in reference to the
3 defendant?

4 A. Yes, ma'am, I did. We received multiple tips from
5 several sources that he was trafficking narcotics.

6 THE COURT: Wait. Wait. Wait. Wait. Wait.

7 MS. OPPENHEIMER: He's discussing the general nature
8 of the tips, Your Honor.

9 THE COURT: My understanding was he's testified
10 that he received tips that he was trafficking narcotics,
11 right?

12 MS. OPPENHEIMER: Correct.

13 MR. WILLIAMS: Your Honor, I have a motion to make
14 not in the presence of the jury.

15 THE COURT: Yeah, we -- ladies and gentlemen, go
16 to your jury room for just a moment, please. I need to
17 take up some matters out of your presence. Please do
18 not discuss this case among yourselves at this time.

19 Thank you.

20 (Whereupon, the jury retires to the jury room at
21 11:05 AM.)

22 THE COURT: All right, Mr. Williams.

23 MR. WILLIAMS: Your Honor, I would move for a
24 mistrial. Your Honor stopped the examination of the
25 prosecutor by saying wait, wait, wait, which obviously

1 it was the correct thing to do, because what has just
2 happened is that we now have heard that the defendant
3 -- that they were investigating whether or not the
4 defendant is involved in more than the one case that
5 we're dealing with right now. So there is a -- they're
6 bringing up the fact that he is guilty of other offenses
7 for which he's not being tried for. So that, Your Honor,
8 is improper and we would move for a mistrial on that
9 basis.

10 THE COURT: All right. We're dealing with a
11 quintessential 404(b) question about other bad acts or
12 evidence and, of course, 404(b) says on the face of it
13 that evidence of other crimes, wrongs or acts is not
14 admissible to prove the character of a person in order
15 to show action in conformity therewith. It may, however,
16 be admissible to show motive, identity, the existence
17 of a common scheme or plan, the absence of mistake,
18 accident or intent, which, of course, I take it as it
19 is the exception of the rule that the State is offering
20 this information for.

21 The question is that -- that caselaw seems to
22 indicate that at some point in time I, as the trial
23 judge, am required to conduct some sort of an analysis
24 as to whether or not the prejudicial impact outweighs
25 the probative value of this and, of course, the deeper

1 we get into the specifics as we were headed right here,
2 we've got a whole bunch of other complaints about him
3 doing this same thing, is what seems to me to be an area
4 that I need to inquire some further about.

5 Of course, it seems to be fair game obviously under
6 the rules, so, yeah, we were conducting an investigation
7 about -- about Mr. Brown. That's right. There's nothing
8 wrong with that.

9 MS. OPPENHEIMER: Right. Your Honor, I was just
10 offering it for Investigator Gietz to explain what his
11 investigation into the defendant was about, not anything
12 specific about any other tips.

13 THE COURT: Really -- really all you need from
14 Investigator Gietz is the fact that you were investigating
15 him and that you had tips that led you to believe he was
16 gonna be on the road trafficking drugs. You don't need
17 all this other about the numbers of tips that you've
18 gotten --

19 MS. OPPENHEIMER: I can --

20 THE COURT: -- where they came from and how many
21 times you've run this down. That -- we really need to
22 be taking about this event and -- and the investigation
23 that deals with it completely. How many times have you
24 heard a trial judge when an officer has a -- or, excuse
25 me, an officer on the stand says we've been knowing about

1 Mr. So and So for a long time, he's been selling drugs
2 for a long time, and it's a mistrial right there out and
3 running, you know.

4 MS. OPPENHEIMER: Right. I apologize, Your Honor.
5 I was just talking about the general nature. I can
6 certainly narrow it down.

7 THE COURT: That's what you were talking about.

8 Mr. Gietz may have -- you know, he was the one who
9 was going beyond what you were talking about. That's
10 the problem. It's the answer that creates the problem
11 and -- and I was trying to put the brakes on it before
12 we got too far along.

13 MS. OPPENHEIMER: And I think Your Honor did that.
14 You stopped it very quickly.

15 THE COURT: Well, you're exactly right, but except
16 for that the horse was out and running and there's no
17 stopping once we get too far down this road and that's
18 the reason I was trying to put the brakes on it.

19 I note the motion for a mistrial, Mr. Williams.

20 I'm trying to figure out what sort of curative
21 instruction at this juncture to give before this --
22 before this matter just runs completely away and -- and
23 I'll instruct the jury that they're to disregard the
24 last comments of the investigator regarding any matters
25 not related to the stop that is the subject of this

1 particular lawsuit -- or this trial, and I don't know
2 whether that helps a bit or not. It's the best that I
3 can do under the circumstances. Trying to get the
4 toothpaste back in the tube is an impossibility, but at
5 the same time I think we're early enough in the trial
6 of this case to -- to try to get it back on track without
7 running completely afoul of 404(b) and creating any more
8 of an appellate issue than has already been created to
9 this particular point.

10 Mr. Williams, the motion for mistrial is
11 respectfully denied. I will instruct the jury in some
12 benign way and hopefully they will have forgotten what
13 was said by the time they get back in here and the
14 subsequent instructions of the Court at the conclusion
15 maybe hopefully will clear that up.

16 That's the best I can do. The motion's denied.

17 MR. WILLIAMS: Thank you, Your Honor.

18 MS. OPPENHEIMER: Thank you, Your Honor.

19 THE COURT: Bring us the jury.

20 (Whereupon, the jury return to the courtroom in at
21 11:14 AM.)

22 THE COURT: Thank you, folks.

23 Ladies and gentlemen, I told you a little earlier
24 I'm the judge of the law, and that's my job, is trying
25 to keep the -- the law properly applied and sometimes I

1 have to take steps as the trial -- as the traffic court,
2 I suppose, when it comes to that in deciding things that
3 are admissible and are not admissible.

4 You are to disregard any testimony offered by the
5 investigator that goes beyond the scope of this case
6 when it comes to the investigation of the defendant in
7 this particular case. There's a -- he's on trial for
8 one offense and it's included in the indictment. You're
9 to disregard any testimony regarding the scope of this
10 investigation beyond that particular event.

11 And now we will try to get this thing back on
12 track.

13 Ms. Oppenheimer.

14 MS. OPPENHEIMER: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. You testified earlier that you opened a narcotics
18 investigation into the defendant. Turning your attention
19 to 2020, can you tell us without being specific about
20 anything anyone told you, the general nature of information
21 that you received in 2020?

22 A. Yes. That Investigator Sanner received a tip.

23 MR. WILLIAMS: Objection to hearsay, Your Honor.

24 THE COURT: Yes, that would be.

25 BY MS. OPPENHEIMER:

1 Q. Without telling us what anyone said, the general
2 nature.

3 A. That Steven Daniel Brown was trafficking
4 methamphetamine from Georgia to South Carolina.

5 Q. All right. And with that information, what
6 investigative tools did you use?

7 A. South Carolina DMV. I looked up Mr. Brown's vehicles,
8 his customer vehicles. I was able to identify one vehicle
9 in particular, South Carolina tag [REDACTED] which was a white
10 F-350 that belonged to Mr. Brown. I also was linked to a
11 hit confirmation through an LPR system known as DEASIL.

12 Q. Let me stop you right there, Investigator Gietz. You
13 said that you ran the defendant's DMV information and you
14 got information on a pickup truck; is that correct?

15 A. Yes, ma'am.

16 Q. What kind of truck was it?

17 A. It was a white F-350.

18 Q. What was the license plate on it?

19 A. [REDACTED]

20 MS. OPPENHEIMER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes.

23 BY MS. OPPENHEIMER:

24 Q. I'm handing you what's been marked as State's
25 Exhibit Number 1. Can you tell me if you recognize that?

1 A. Yes, ma'am. That's the defendant's vehicle.

2 Q. And is it an accurate representation of the
3 defendant's vehicle?

4 A. Yes, ma'am, it is.

5 MS. OPPENHEIMER: Your Honor, at this time I'd move
6 State's Exhibit Number 1 into evidence.

7 MR. WILLIAMS: Your Honor, the objection goes to
8 time and place where this photograph was taken. He
9 hasn't restricted it to a particular fact.

10 THE COURT: Do you have any idea when that image
11 was lifted?

12 THE WITNESS: Yes, sir. That was from the traffic
13 stop on June 29th of 2020.

14 MR. WILLIAMS: No objection to that, Your Honor.

15 THE COURT: Okay. Thank you. State's 1 -- did you
16 say State's 1?

17 MS. OPPENHEIMER: Yes, Your Honor.

18 THE COURT: State's 1 without objection.

19 (State's Exhibit Number 1, a photograph, was
20 admitted into evidence.)

21 MS. OPPENHEIMER: Permission to publish, Your Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. OPPENHEIMER:

24 Q. All right. Investigate Gietz, State's Exhibit
25 Number 1, can you tell us what we're looking at here?

1 A. Yes, ma'am. That's a vehicle belonging to Steven
2 Daniel Brown. That's the vehicle with the tag [REDACTED]

3 Q. And can you tell us whether or not you personally
4 observed the defendant driving this vehicle?

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

6 Q. All right. Now with the information on this vehicle,
7 what, if anything, did you do?

8 A. So with that vehicle I monitored the -- the DEASIL
9 hits. While -- I'm sorry?

10 Q. What -- what is DEASIL?

11 A. Oh, it's an LPR system run by the DEA. It's
12 D-E-A-S-I-L, so DEASIL.

13 THE COURT: Will you tell the folks what the LPR is.

14 THE WITNESS: Yeah. It's a license plate reader and
15 what it does is it will track and monitor license plate
16 tags. So as you pass the reader, it will take a picture
17 of your vehicle on the front side as you approach and on
18 the rear side as well, and it will create a digital record
19 of that.

20 BY MS. OPPENHEIMER:

21 Q. And can you tell us whether or not the defendant's tag
22 for this truck was placed into DEASIL?

23 A. Yes, ma'am, it was.

24 MR. WILLIAMS: Objection to that, Your Honor, unless
25 he's the one that did it.

1 MS. OPPENHEIMER: He has personal knowledge that it
2 was done, Your Honor.

3 THE COURT: I'll allow it if can testify about that.
4 He has to have some foundation for knowing how it's done.

5 BY MS. OPPENHEIMER:

6 Q. Did you instruct an individual to put his tag into
7 DEASIL?

8 A. Yes, I was notified that the -- the tag was placed
9 into DEASIL and that I was listed as a co-agent for it.

10 Q. Okay. So you would have gotten any information
11 pertaining to the defendant's vehicle on --

12 MR. WILLIAMS: Same objection to that, Your Honor.

13 THE COURT: All right.

14 MS. OPPENHEIMER: What was the objection?

15 THE COURT: That it's not firsthand knowledge I
16 guess is what it is.

17 Right?

18 MR. WILLIAMS: It is.

19 MS. OPPENHEIMER: He testified he received the
20 hits, Your Honor. He was listed as a co-agent. That's
21 been thoroughly discussed.

22 THE COURT: The testimony was that he got
23 information that the tag was placed in the system and
24 that he was notified of it being in the system and would
25 receive information from that. I think that that's

1 sufficient to tie him to the system. I'll allow it.

2 MS. OPPENHEIMER: Thank you, Your Honor.

3 BY MS. OPPENHEIMER:

4 Q. Investigator Gietz, do you have personal knowledge as
5 to whether or not there are any license plate readers on
6 I-20?

7 A. Yes, ma'am, there are.

8 Q. Can you tell us the general area of where those are
9 located?

10 A. So there's one in Georgia on the far side of Augusta
11 and there is -- and that is going to be westbound, and then
12 on the eastbound side there's one in South Carolina.

13 Q. Okay. Can you tell us whether or not you received any
14 hits on June 29, 2020, as it relates to the defendant's
15 vehicle?

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

17 Q. Approximately what time?

18 A. Approximately eight in the morning.

19 MS. OPPENHEIMER: I beg the Court's indulgence.

20 Your Honor, may I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. OPPENHEIMER:

23 Q. Investigator Gietz, I'm handing you what's been marked
24 as State's Exhibit Number 2. Can you tell me whether or
25 not you recognize that?

1 A. Yes, ma'am.

2 Q. What is it?

3 A. It's a map of the area around the SC/Georgia border
4 and an icon of a truck where the license plate reader would
5 have been.

6 Q. Can you tell us where that image of the truck is on
7 the vehicle is that substantially where the LPR is located
8 based on your personal knowledge?

9 A. Yes. Yes, ma'am. Based on my personal knowledge,
10 that is the approximate area where the license plate reader
11 is located.

12 MS. OPPENHEIMER: Your Honor, at this time I move
13 State's Exhibit Number 2 into evidence.

14 THE COURT: Any objection?

15 MR. WILLIAMS: No objection, Your Honor.

16 THE COURT: Without objection, State's 2 in evidence.

17 (State's Exhibit Number 2, a photograph/map, was
18 admitted into evidence.)

19 MS. OPPENHEIMER: Permission to publish?

20 THE COURT: Yes, ma'am.

21 BY MS. OPPENHEIMER:

22 Q. All right. Investigator Gietz, looking at this map,
23 can you tell us where we are in the world basically?

24 A. Do you mean the icon of the truck, ma'am?

25 Q. Well, I see the Georgia/South Carolina border. Where

1 are we? Just where does this map show?

2 A. Oh, the border of South Carolina and Georgia along
3 the route of I-20, which is located there, and if you pass
4 through it's past Georgia and where the vehicle would have
5 hit on the LPR system is located by the icon of the white
6 truck.

7 Q. Okay. So the white truck is in what direction? Or
8 what was the direction of travel?

9 A. That would have been westbound, ma'am.

10 Q. Headed towards what city?

11 A. Towards, Atlanta.

12 Q. And can you tell us whether or not this is past
13 Augusta?

14 A. Yes, ma'am, that's past Augusta.

15 Q. All right. And this is the location of where you
16 would have received the hit when the defendant's vehicle
17 passed on the morning of June 29th?

18 A. Yes, ma'am.

19 Q. When you received that hit, what did you do?

20 A. I contacted the team that I work with, which, again,
21 involves several different units within the narcotics
22 enforcement unit. I notified everyone that was on the team
23 that I'd received the tip. We, as a group, had actively
24 been working this at this point that he was trafficking
25 methamphetamine from Georgia to South Carolina and then I

1 reached out to the South Carolina Highway Patrol to get in
2 contact with their interdiction team to conduct what we
3 call a whisper stop, which is to pretend like it's a normal
4 traffic stop when in reality we know exactly what we're
5 stopping and why we're stopping the vehicle.

6 Q. Did you provide the troopers with a little bit of the
7 information from your investigation?

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

9 Q. Can you tell us whether or not you directed certain
10 officers to be at certain points on the travel back from
11 Georgia?

12 A. Yes, ma'am. So the team that I work with, we rallied
13 up and we all took a spot along I-20 coming eastbound into
14 South Carolina; one of those units being placed outside
15 of our jurisdiction, but as a -- kind of a lookout for
16 the vehicle with anticipation that he would continue into
17 Lexington County, and then we had several units placed
18 along that route to include highway patrol, which was
19 placed at the 39 mile marker of I-20 eastbound, and then
20 I maintained my spot at the 44 mile marker of I-20 for fear
21 that my truck might be noticed.

22 Q. Approximately what time of day was this that you were
23 instructing other officers to be along I-20 eastbound?

24 A. Midday. Approximately midday.

25 Q. And can you tell us how could you possibly have known

1 that the defendant might be showing up if he was hit -- if
2 his vehicle hit going westbound?

3 A. So we -- we calculated the time that it would take to
4 get to approximately Atlanta from Lexington County or from
5 where the hit was in Georgia and then the amount of time it
6 would take to return from approximately the Atlanta area
7 back to Lexington County and then we also received an
8 additional hit on the eastbound side, which is in South
9 Carolina.

10 Q. Okay.

11 MS. OPPENHEIMER: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. OPPENHEIMER:

15 Q. Investigator Gietz, I'm handing you what's been
16 marked as State's Exhibit Number 3. Can you tell me if
17 you recognize that?

18 A. Yes, ma'am.

19 Q. What is it?

20 A. It's a map of the South Carolina/Georgia border and
21 I-20, both the east and westbound, with the locations of
22 where -- excuse me, not the South Carolina/Georgia border,
23 but the Lexington County/Aiken border, and then where
24 different people were located to include Investigator Holt
25 at the Exit 33, troopers Shropshire and Atwood, which were

1 at the 39 mile marker, and then where the traffic stop
2 was conducted at the 41 mile marker and then where I was
3 located at the 44 -- Exit 44 on I-20.

4 Q. Is this an accurate representation of where you
5 instructed law enforcement agents to be on the morning of
6 June 29, 2020?

7 A. Yes, ma'am.

8 Q. Or I believe you testified that it was about noon-ish?

9 A. Yes, ma'am.

10 MS. OPPENHEIMER: Your Honor, at this time I'd move
11 State's Exhibit 3 into evidence.

12 MR. WILLIAMS: No objection.

13 THE COURT: Without objection State's 3 in evidence.

14 (State's Exhibit Number 3, a photograph/map, was
15 admitted into evidence.)

16 MS. OPPENHEIMER: Permission to publish, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. OPPENHEIMER:

19 Q. All right. So, Investigator Gietz, again, what part
20 of the world are we looking at?

21 A. South Carolina, ma'am, and that is the Aiken County
22 border and Lexington County border.

23 Q. Okay. So to the left of this red line, what county
24 is this?

25 A. Aiken.

1 Q. And to the right?

2 A. Lexington County.

3 Q. Okay. Who was at Exit 33?

4 A. Investigator Adam Holt.

5 Q. And what unit is he assigned to?

6 A. The crime reduction unit, which falls underneath the
7 narcotics enforcement unit.

8 Q. All right. And who was at Exit 39 in Lexington
9 County?

10 A. That would be Master Trooper Shropshire and then
11 Sergeant Atwood with the South Carolina Highway Patrol.

12 Q. All right. I'm gonna move this down a little bit.
13 Where are you located?

14 A. The 44 Truck Top at Exit 44 of I-20.

15 Q. Okay. And why are you -- or I guess as part of your
16 investigation is it fair to say that you were kind of the
17 point man?

18 A. Yes, ma'am. I acted as a -- what's like a command
19 center speaking with units within the Lexington County
20 Sheriff's Department, as well as South Carolina Highway
21 Patrol. Our radios don't work great together, so to avoid
22 unnecessary radio traffic on any of our channels I spoke
23 to Trooper Atwood on the phone while speaking to Lexington
24 County units over the radio.

25 Q. Now without telling us anything specific that anyone

1 else said, can you tell us whether or not the defendant's
2 vehicle was able to be seen travelling on I-20 eastbound?

3 A. Yes, ma'am, it was. It was identified at the Exit 33
4 where Investigator Holt was. He notified us over the
5 radio --

6 MR. WILLIAMS: Objection to hearsay, Your Honor.

7 THE COURT: Right. I think beyond that. He said
8 he was noted at the 33. I'll allow it.

9 BY MS. OPPENHEIMER:

10 Q. And with that information that the defendant's vehicle
11 was seen at mile marker 33, did you relay that information
12 to anyone else?

13 A. I did. I relayed it to Sergeant Atwood with the South
14 Carolina Highway Patrol.

15 Q. Okay. And are you aware of what happened next?

16 A. Yes, ma'am. So Trooper Shropshire observed the
17 vehicle pass him. He entered the --

18 MR. WILLIAMS: Your Honor, objection to that.
19 That's certainly speculation.

20 THE COURT: I will --

21 MS. OPPENHEIMER: I'll rephrase.

22 THE COURT: I'll sustain the objection as to that.
23 I think that he can testify as to what happened next,
24 you know, without getting into what the officer may have
25 observed or said.

1 BY MS. OPPENHEIMER:

2 Q. Can you tell us whether or not you're aware if
3 anything happened to the defendant's vehicle?

4 A. Yes, there was a traffic stop conducted on the vehicle
5 at the 41 mile marker of I-20 eastbound.

6 Q. Is that in Lexington County?

7 A. Yes, ma'am, that is in Lexington County.

8 Q. Is that indicated on State's Exhibit Number 3?

9 A. Yes, ma'am, it is.

10 Q. Where the little stop sign is?

11 A. Yes, ma'am.

12 Q. So you were not involved in pulling the defendant's
13 vehicle over; is that correct?

14 A. Not directly, ma'am.

15 Q. Can you tell us whether or not you responded to that
16 traffic stop?

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

18 Q. And can you tell us what vehicle was pulled over?

19 A. A white F-350 bearing license plate [REDACTED] driven by
20 Steven Daniel Brown.

21 Q. Can you tell us whether or not that vehicle was the
22 same one you observed in the hit the morning of June 29,
23 2020?

24 A. Yes, ma'am. It's the same vehicle.

25 Q. And can you tell us whether or not the individual

1 driving the vehicle was the same individual that's the
2 subject of your investigation?

3 A. Yes, ma'am.

4 Q. All right. Can you tell us when you responded to the
5 traffic stop, had -- were you aware that a K-9 had already
6 been run around the vehicle?

7 A. Yes, I was advised that as I arrived.

8 Q. Okay. And where was the defendant when you walked up
9 to this traffic stop?

10 A. He was outside of the vehicle near Trooper
11 Shropshire's police cruiser.

12 Q. Okay. And can you tell us whether or not you asked
13 him any questions at that time?

14 A. No, ma'am, I did not ask him any questions.

15 Q. Can you tell us whether or not anything was said to
16 you by the defendant?

17 A. Yes, ma'am. I -- I said hello cordially and without
18 any questions he advised me it's on the floorboard in the
19 back.

20 Q. All right. And can you tell us whether or not you
21 looked into the back floorboard of the defendant's vehicle?

22 A. I did.

23 Q. And did you find anything?

24 A. Yes, ma'am.

25 Q. What did you find?

1 A. Seven pounds of methamphetamine in a yellow liquor
2 box.

3 MS. OPPENHEIMER: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, ma'am.

6 BY MS. OPPENHEIMER:

7 Q. I'm handing you State's Exhibit Number 4 and 5. Can
8 you tell me whether or not you recognize these?

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

10 Q. And what are they photographs of?

11 A. They're photographs of the methamphetamine that was
12 located in Mr. Brown's vehicle exactly where he said it
13 would be.

14 Q. And is that how you -- in State's Exhibit Number 4,
15 can you tell us is that how you observed the
16 methamphetamine on June 29, 2020?

17 A. Yes, ma'am, that's exactly how it was observed.

18 Q. And can you tell us whether or not you pulled the
19 suspected narcotics out of the defendant's vehicle to take
20 a photograph of it?

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

22 Q. And can you tell us --

23 MR. WILLIAMS: Your Honor, we would -- we would
24 place at this time on the record the objection to this,
25 in that there have already been motions dealing with the

1 search, and we'd ask that it be noted at this particular
2 time.

3 THE COURT: All right. The last part -- I couldn't
4 hear the last part, your voice dropped, and I'm sorry,
5 Mr. Williams.

6 MR. WILLIAMS: I'm sorry. That motions have been
7 made in regards to the search and we would ask that they
8 be noted at this particular point in time.

9 THE COURT: Yes. I'll note that the testimony
10 regarding the search itself, consent of the search and
11 results of the search were subject to objections made
12 in pretrial matters and are preserved for the record
13 in that regard.

14 MR. WILLIAMS: And an additional objection to the
15 comment about meth because he's not a chemist and it
16 wasn't tested at this time.

17 MS. OPPENHEIMER: I apologize. We'll use suspected
18 methamphetamine.

19 THE COURT: All right.

20 BY MS. OPPENHEIMER:

21 Q. Can you tell us whether or not these are accurate
22 depictions of the manner in which you found the suspected
23 methamphetamine on June 29, 2020?

24 A. Yes, ma'am.

25 MS. OPPENHEIMER: Your Honor, at this time I'd move

1 State's Exhibit Number 4 and 5 into evidence.

2 THE COURT: Subject to objection, 4 and 5 are
3 admitted.

4 (State's Exhibit Number 4 and 5, photographs, were
5 admitted into evidence.)

6 MS. OPPENHEIMER: Permission to publish, Your Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. OPPENHEIMER:

9 Q. I'm showing you State's Exhibit 4. Can you tell us
10 what we're looking at here?

11 A. It's a yellow liquor box in the back of Mr. Brown's
12 vehicle. It looks like cellophaned crystal-like substance
13 that I know through my training and experience to be
14 methamphetamine.

15 Q. Okay. Can you tell us where the defendant instructed
16 you to look?

17 A. In the back floorboard.

18 Q. And this is in the back floorboard?

19 A. Yes. He said, quote unquote, it's on the back
20 floorboard.

21 Q. I'm showing you State's Exhibit Number 5. Can you
22 tell us you what that is a picture of?

23 A. That's a photo that I took of the crystal-like
24 substance that I know through my training and experience
25 to be methamphetamine outside of the box placed on the

1 rear of Mr. Brown's vehicle.

2 Q. Outside of the liquor box?

3 A. Outside of the liquor box, yes, ma'am.

4 Q. Was it originally in these three clear plastic totes?

5 A. Yes, ma'am.

6 Q. And I believe you testified there was cellophane
7 around that?

8 A. Yes, ma'am.

9 Q. And can you tell us whether or not you obtained a
10 field weight of this suspected methamphetamine?

11 A. Yes, ma'am.

12 Q. And what was that field weight?

13 A. Approximately seven pounds.

14 Q. Can you tell us whether or not seven pounds of meth
15 is for personal use based on your training and experience
16 as a narcotics investigator?

17 A. Based on my training and experience as a narcotics
18 investigator, there is absolutely no way that that could
19 be personal use.

20 Q. Do you know approximately how many grams seven pounds
21 of meth would have been?

22 A. Yes, ma'am. Approximately 3,200 grams of
23 methamphetamine.

24 Q. Now can you tell us what you did with this suspected
25 methamphetamine?

1 A. I seized them to submit to the Lexington County
2 evidence center and to conduct testing on it.

3 Q. All right. And when you seized it, this is a large
4 quantity of meth, did you use a BEST kit?

5 A. Oh, no. There's -- it's far too large of a quantity
6 to fit inside of a BEST kit, so I had to package it in a
7 box.

8 Q. And is that standard procedure for large quantities
9 of suspected narcotics?

10 A. Yes, ma'am, it's standard practice.

11 Q. Did you seal that box?

12 A. Yes, ma'am. I sealed the box and initialled anywhere
13 I could find a gap.

14 MS. OPPENHEIMER: Your Honor, may I approach the
15 witness?

16 THE COURT: Yes, ma'am.

17 BY MS. OPPENHEIMER:

18 Q. I'm showing you State's Exhibit Number 7 for ID only
19 at this time. Can you tell us whether or not you recognize
20 this item?

21 A. Yes, ma'am. That's the box I submitted with my
22 signature and the date that it was submitted.

23 Q. Okay. How do you know that it has your signature and
24 the date?

25 A. Because it's my signature and it's the date that I

1 wrote it.

2 Q. And you recognize that?

3 A. Yes, ma'am. I wrote it.

4 Q. Can you tell us whether or not it's in multiple places
5 on this box?

6 A. Yes, ma'am.

7 Q. There's also another date up here.

8 A. Yes, ma'am.

9 Q. Can you tell us why another date is on there?

10 A. Because that's the date that it was opened and prepped
11 for trial.

12 Q. And did it look like it was in substantially the same
13 condition as it was on June 29, 2020?

14 A. Yes, ma'am.

15 Q. Can you tell us based on your training and experience
16 as a narcotics officer about how much seven pounds of meth
17 costs?

18 A. Greater than \$30,000.00.

19 Q. And can you tell us whether or not you seized anything
20 else from the defendant's truck on June 29, 2020?

21 A. Yes, ma'am, a cell phone.

22 MS. OPPENHEIMER: Your Honor, may I approach?

23 THE COURT: Yes, ma'am.

24 BY MS. OPPENHEIMER:

25 Q. I'm showing you -- well, hold on. I'm handing

1 Investigator Gietz State's Exhibit Number 6. If you could
2 open that package and tell us whether or not you recognize
3 the item inside.

4 A. Yes, ma'am. Yes, I recognize it.

5 Q. How do you recognize it?

6 A. It has my signature -- or my initials, the date that
7 it was sealed, and I remember it from seizing it on the
8 date of the incident.

9 Q. And what is it?

10 A. It's a cell phone belonging to Steven Daniel Brown.

11 Q. And he was the only occupant of the vehicle at that
12 time?

13 A. That's correct. He was the only occupant of the
14 vehicle.

15 Q. And is it in substantially the same condition as it
16 was on June 29, 2020?

17 A. Yes, ma'am.

18 MS. OPPENHEIMER: Your Honor, at this time I move
19 State's Exhibit Number 6 into evidence.

20 MR. WILLIAMS: If I could see it, Your Honor.

21 MS. OPPENHEIMER: Sorry.

22 THE COURT: Okay.

23 MR. WILLIAMS: Your Honor, the objection would be
24 that the -- that if there is a chain of custody dealing
25 with a cell phone, we don't feel like it has been

1 completed at this particular point in time, particularly
2 noting that there is a notation that it has been opened
3 before, I think. Yes, that it has been opened. We don't
4 know where it's been, Judge. We don't know who's kept.
5 We don't know who's had access to it.

6 THE COURT: Well, for the purposes of having it
7 admitted as being the one that he picked up that day, I
8 will allow it. As to what relevance it might have in
9 other matters, that would have to be for somebody else
10 to determine.

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (State's Exhibit Number 6, a cell phone, was
14 admitted into evidence.)

15 BY MS. OPPENHEIMER:

16 Q. Investigator Gietz, can you tell us what was done with
17 this cell phone on June 29, 2020?

18 A. Yes, ma'am. I submitted it into evidence and then I
19 obtained a search warrant for the phone to do a cell phone
20 extraction.

21 Q. And why are cell phone extractions done?

22 A. That's to provide additional evidence and other
23 information pertaining to the case that can be pulled off
24 the phone.

25 Q. And can you tell us whether or not that was done in

1 this case?

2 A. Yes, ma'am, it was done.

3 Q. And were you provided the results of that extraction?

4 A. Yes, ma'am. I was provided a disk of the extracted
5 data.

6 Q. And did you have an opportunity to review that
7 extracted data?

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

9 Q. Investigator Gietz, can you tell us whether or not you
10 had a phone number associated with the defendant's phone on
11 June 29th of 2020?

12 A. Yes, ma'am.

13 Q. What was that phone number?

14 A. I don't recall the number, ma'am. I'll have to look
15 through my notes.

16 Q. I believe it's on your report.

17 MR. WILLIAMS: Objection to leading.

18 THE COURT: Well, it is. If she says it, it's
19 leading. She can point to him where it might be in the
20 record.

21 BY MS. OPPENHEIMER:

22 Q. Investigator Gietz, when you do your initial report,
23 do you typically provide all of the identifying information
24 of a suspect?

25 A. Yes, ma'am.

1 Q. And if you'd look at page 7 --

2 A. Oh, found it.

3 Q. Did you find it?

4 A. Yes, ma'am.

5 Q. All right. Can you tell us what phone number you had
6 associated with the defendant on June 29, 2020?

7 A. [REDACTED] 3666.

8 MS. OPPENHEIMER: I beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 MS. OPPENHEIMER: I have no further questions at
11 this time. If you'll answer any questions that
12 Mr. Williams may have of you.

13 THE COURT: Mr. Williams, cross-examine.

14 MR. WILLIAMS: May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. WILLIAMS:

18 Q. So I'll kind of pick up with the -- I think you
19 said that you had some sort of hit process that was sent
20 directly to you notifying you that the vehicle that was
21 driven -- that allegedly was driven by my client had
22 crossed into Georgia, is that correct, on or about what
23 date?

24 A. Well, the hit was well into Georgia that we received
25 and it was on June 29th of 2020.

1 Q. And what was the time you received it?

2 A. Approximately 8:00 in the morning.

3 Q. And when you received the hit -- were you at home when
4 you received the hit?

5 A. Yes, I was.

6 Q. And when you say you received a hit, did it -- did it
7 designate something on your cell phone or a computer or how
8 was that done?

9 A. Yes, I received a text message and an e-mail from
10 DEASIL notifying me that the vehicle hit in Georgia.

11 Q. Okay. And the nomenclature on that was, I think
12 you've already pointed it out, it was on the other side of
13 Augusta; is that correct? When it was first pointed out;
14 is that correct?

15 A. That's correct.

16 Q. So if I show this right here, did you prepare this
17 document, which is marked as State's Exhibit Number 2?

18 A. No, sir.

19 Q. All right. Do you were you present when it was
20 prepared?

21 A. No, sir.

22 Q. And is it your testimony that the vehicle which is
23 shown on this map is supposedly my client's vehicle at
24 8:00 on the morning of June 29th of 2020?

25 A. I'm sorry, can you repeat the question?

1 Q. Is it your suggestion that my client's vehicle on
2 June the 29th of 2020 at 8:00 in the morning would be at
3 the location that's reflected on this map?

4 A. Yes, approximately.

5 Q. All right. And when you say approximately, you're
6 saying that because some sort of monitor is placed up there
7 that records the time in which the plate passes by it? Is
8 that what you're saying?

9 A. That is correct.

10 Q. All right. And have you been to that location to see
11 if there is a monitor there?

12 A. Yes, sir, I have.

13 Q. All right. And on that particular date, it went to --
14 that notification went to who -- whom?

15 A. To Investigator Sanner and myself and a sergeant over
16 our unit, Sergeant Hodges.

17 Q. All right. Now you don't maintain that particular
18 item, do you? Whatever this picture is that reflects when
19 people cross over something like that, you don't maintain
20 that piece of instrument, do you?

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

22 Q. So you don't have any indication as to the inner
23 workings of that whether or not the times are correct on
24 that or not correct on that. It is something that's
25 printed out and given to you as being the Gospel, and we

1 had mentioned the Gospel earlier. Is that essentially what
2 it is?

3 A. I would say to an extent; however, it's been accurate
4 every other time that I've used it.

5 Q. So -- and I guess we all know the point I'm trying to
6 make is that there's a time reflection on something that
7 is sent to you. Since you don't maintain this particular
8 item, you don't know if the timing is set up on this
9 particular item accurately or not?

10 A. Well, I trust the DEA and their ability to maintain
11 an LPR.

12 Q. And has your -- I don't know, the power gone off at
13 your house before and come back on at a different hour
14 because of an electrical storm or power surge or what have
15 you?

16 A. Yes, that's happened before.

17 Q. Okay. So since you don't maintain it, you can't say
18 that it's properly maintained; that it's accurate as we
19 change from Eastern Standard Time or what have you in
20 reference to that?

21 A. I cannot.

22 Q. Thank you. So you say you got this information at
23 8:00 in the morning, it was sent out at the same time
24 to two or three other locations at the same time, right?

25 A. It was sent to the two or three other people.

1 Q. All right. Well, you can't just send it to people.
2 You have to send it to an instrument, so unless they were
3 sitting next to you in your room it would be sent to their
4 computers or wherever they were, right?

5 A. I would assume so, yes.

6 Q. All right. So each and every one of those would have
7 the same date and time that it was received by you?

8 A. That it was received by me or when the -- because
9 they're all gonna receive the hit with the timestamp as it
10 passes the LPR. It has no bearing whatsoever on what the
11 other person's phone says. It's just what the LPR would
12 say.

13 Q. Do you know when they received it?

14 A. Do I know when Investigator Sanner and Sergeant
15 Hodges --

16 Q. They would have to testify to that, wouldn't they?

17 A. I would assume so.

18 Q. Okay. So when you received it, did you communicate
19 with them? Is it true that you said you would call them up
20 on your cell phone and communicate that with them saying
21 you had received that information or did you just assume
22 they knew?

23 A. Yes, I contacted them. They were part of my team.

24 Q. Okay. And when you contacted them, do you know what
25 time you called?

1 A. I don't know the exact time. It would be within
2 thirty minutes of receiving the hit.

3 Q. Who did you call first?

4 A. I don't know.

5 Q. What did you tell them that you were going to do?

6 A. That I was going to get a team together and I was
7 gonna contact the highway patrol and make contact with
8 their interdiction team because in my opinion they're the
9 best interdiction team that we have in South Carolina.

10 Q. So what did you instruct these other two individuals
11 to do at that point in time?

12 A. I didn't instruct them to do anything. Sergeant
13 Hodges is my boss and I wouldn't tell him what to do and
14 then Investigator Sanner, I mean, we spoke.

15 Q. So you didn't instruct him to do anything?

16 A. Not to my knowledge.

17 Q. Okay. So basically you communicated and said you had
18 a hit and you were gonna do something about it, correct?

19 A. No, I received the tip and we already had a team
20 placed together to go handle that information that we had
21 received.

22 Q. All right. Then you contacted highway patrol?

23 A. That is correct.

24 Q. Who did you talk to at highway patrol?

25 A. A supervisor at highway patrol who put me in contact

1 with Sergeant Atwood, who at the time was part of an
2 interdiction team that they had, along with Master Trooper
3 Shropshire.

4 Q. So you called Atwood first, right?

5 A. Yes, sir.

6 Q. What time did you call him?

7 A. I don't know the exact time, but it would have been
8 within half an hour.

9 Q. And what about Shropshire? What time did you call
10 him?

11 A. I didn't call Trooper Shropshire.

12 Q. That's hard to say, isn't it?

13 A. What?

14 Q. I'm sorry. You did not call him?

15 A. No, I did not call him. I did not contact Trooper
16 Shropshire directly. Sergeant Atwood advised that all
17 information was being relayed to him.

18 Q. So you didn't communicate with Shrop -- Shropshire?

19 A. Not directly.

20 Q. When did you first communicate with him directly?

21 A. At the traffic stop.

22 Q. That's the first time you talked to him that morning
23 or that afternoon or that day? Let's bring it down to that
24 day. That's the first time you talked to him that day?

25 A. The information that I received I passed to Trooper

1 Shropshire who he advised was being -- excuse me.

2 Q. I'm not asking you --

3 A. I passed to Sergeant Atwood that he advised that it
4 would be passed to Shropshire, so not directly did I talk
5 to Trooper Shropshire.

6 Q. Okay. So the only person to know what was transmitted
7 to him would be Sergeant Atwater, right?

8 A. No, sir.

9 Q. I'm sorry?

10 A. Trooper Atwood.

11 Q. Trooper Atwood?

12 A. Who's now Sergeant Atwood, yes, sir.

13 Q. Okay. I'll call him what he was. And he was the dog
14 handler back then, right?

15 A. Yes, sir.

16 Q. Okay. Did you tell Trooper Atwater where -- Atwood or
17 Atwater?

18 A. It's Atwood, sir.

19 Q. Did you tell him where you wanted him to go?

20 A. Yes, sir.

21 Q. And where did you tell him to go?

22 A. The 39 mile marker of I-20 eastbound.

23 Q. But since you didn't have a conversation with
24 Shropshire, he just happened to show up on that or somebody
25 told him to be at the 39, right?

1 A. Sergeant Atwood advised that he told Trooper
2 Shropshire to be with him at the 39 mile marker.

3 Q. Now looking at this State's Exhibit Number 3, you have
4 designated those two particular troopers to be at Exit 39
5 and you've given the designation of 44 as being where you
6 are; is that correct?

7 A. That is correct, sir.

8 Q. All right. And that's where the truck stop is at 44?

9 A. Yes, sir.

10 Q. And at 39, were both troopers on the side of the
11 highway or were they off the Interstate?

12 A. I couldn't testify to their exact specific location,
13 but I knew that they were both at the 39 mile marker.

14 Q. In that location, correct?

15 A. Yes, sir.

16 Q. So you really didn't have any conversation until you
17 arrived on the scene where my client was stopped after that
18 particular conversation, right, that you had with Atwood?

19 A. No, sir, that's not true. I had -- I had conversation
20 with Sergeant Atwood.

21 Q. I said after you talked to Atwood, right? Did you
22 talk to anybody else other than Atwood before you got to
23 the stop?

24 A. Yes, sir. Numerous members on my team.

25 Q. And who was that?

1 A. Investigator Holt, there was several K-9 handlers,
2 K-9 Handler Love, and then also my sergeant at the time,
3 Sergeant Zwolak, and I'm not sure who else was in there.
4 I can look it up for you if you'd like.

5 Q. Sure.

6 A. Investigator Patterson as well. K-9 Handler Love.

7 Q. Anybody else?

8 A. Sergeant Burt.

9 Q. Is that Mike Burt?

10 A. Yes, sir. Investigator Holt.

11 Q. I've already got him. Is that it?

12 A. I'm sure there were other people out there, but I
13 think that adequately covers the people that were out
14 there.

15 Q. All right. And did you assign their locations just
16 as you say that these are assigned here? Did you assign
17 those individuals on where to be?

18 A. Yes. However, some of them due to the fact that they
19 were not gonna be directly involved in the actual traffic
20 stop due to the nature that we were using, a technique we
21 call a whisper stop, their location was not nearly as
22 important.

23 Q. Do you know where they were?

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

25 Q. So you talked to them, but you didn't know where they

1 were and you told them that you were going to do something,
2 but they didn't have anything to do on the particular stop?

3 A. Oh, I knew they were gonna be on I-20 eastbound within
4 Lexington County.

5 Q. You commented that there was somebody who was a
6 lookout on this particular occasion; is that correct?

7 A. Yes, sir.

8 Q. Who was that?

9 A. Investigator Adam Holt.

10 Q. Would he have been near the license plate reader as
11 you come into South Carolina or would he have just been in
12 Lexington County?

13 A. He was not in Lexington County. He was in Aiken
14 County at the 33 mile marker.

15 Q. Aiken County?

16 A. That's correct.

17 Q. And is that where the license plate reader is?

18 A. No, sir.

19 Q. Is there a license plate reader which reads persons
20 who are coming into South Carolina?

21 A. Yes.

22 Q. But was anybody there at that location?

23 A. No, sir.

24 Q. So there was no individual who was present at either
25 one of where these locations where the license plate

1 readers was?

2 A. No, sir.

3 Q. So all of this information is based on whatever
4 documentation you received electronically from these two
5 particular readers?

6 A. That's correct.

7 Q. Are there pictures taken of the vehicle?

8 A. Yes, sir.

9 Q. And did you have the day by -- did you have the minute
10 by minute progress of this truck or could the truck have
11 gone any number of locations during that time span that you
12 have of, what, 8:00 in the morning until what time he was
13 stopped?

14 A. No, sir. I mean, we don't have constant surveillance
15 on the vehicle.

16 Q. Okay. So you don't know who else had been in the
17 vehicle or anything like that, do you?

18 A. I knew Steven Daniel Brown was in the vehicle.

19 Q. When he was stopped?

20 A. That's correct.

21 Q. You don't know who else had been in the vehicle that
22 day from 8:00 until when was he stopped?

23 A. That was a question?

24 Q. Yes.

25 A. I thought it was rhetorical.

1 Q. Well, I wanted you to say it.

2 A. Approximately 1:00 give or take.

3 Q. So for five hours you don't know who was in the --
4 who was in the vehicle and who did what with the vehicle,
5 correct?

6 A. That's correct. I did not have constant surveillance
7 of the vehicle.

8 MR. WILLIAMS: I beg the Court's indulgence for
9 one minute, Your Honor.

10 THE COURT: Yes, sir.

11 BY MR. WILLIAMS:

12 Q. So we were just talking about the hit that you said
13 you got when it was coming eastbound into South Carolina.
14 That was in -- where was that camera located again? In
15 Augusta -- or, I'm sorry, in Aiken County?

16 A. I'm sorry, can you repeat the question?

17 Q. The hit on the eastbound lane, where was that camera
18 located?

19 A. Within South Carolina.

20 Q. Where in South Carolina?

21 A. I don't have the exact GPS coordinates. It's just
22 entering into South Carolina.

23 Q. Is it in South Carolina?

24 A. That's correct.

25 Q. Okay. And you got the hit on that?

1 A. Yes, sir.

2 Q. And when did you get the hit on that?

3 A. Shortly before the traffic stop.

4 Q. You don't know the time you got that hit?

5 A. I don't.

6 Q. But now if you've got the same information from the
7 hit going into Georgia with the documentation of 8:00
8 in the morning, then you would have had some kind of
9 documentation that you're talking about when you got into
10 South Carolina, right?

11 A. I believe so. Yes, sir.

12 Q. But you don't know what time it was?

13 A. I don't know the exact time.

14 MR. WILLIAMS: That's all the questions I have,
15 Your Honor.

16 THE COURT: Thank you.

17 Redirect, Ms. Oppenheimer.

18 MS. OPPENHEIMER: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. OPPENHEIMER:

21 Q. You said that when you receive a hit pictures are
22 taken of the vehicle; is that correct?

23 A. Yes, ma'am. Of the front and rear of the vehicle.

24 Q. Did you personally view the photographs taken with
25 this hit the morning of June 29, 2020?

1 A. Yes, I did, and I was able to confirm that it was the
2 vehicle, in fact, we were looking for.

3 Q. It was this vehicle in State's Exhibit Number 1 that
4 the defendant was driving on June 29, 2020, and is
5 registered to him; is that correct?

6 A. Yes, ma'am. In the hit, you can actually see that the
7 -- the tool box is slightly open as well.

8 Q. All right. And these pictures, do they last forever?

9 A. No, ma'am, they don't.

10 Q. But you personally saw it?

11 A. I did personally observe the photographs sent to me
12 by DEASIL.

13 Q. Now the defense asked you you don't know exactly where
14 the defendant was going. Did you have a GPS tracker on his
15 truck?

16 A. No, ma'am, I didn't.

17 Q. Okay. Can you tell us whether or not based on your
18 review of the data collected from his cell phone you had
19 an idea of where he went?

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

21 MR. WILLIAMS: Objection. Speculation, Your Honor.

22 THE COURT: And it is speculation and the answer
23 comes as speculation, so the jury can give that whatever
24 weight it chooses to give it.

25 Go ahead.

1 BY MS. OPPENHEIMER:

2 Q. Can you tell us whether or not the defendant seemed
3 surprised by this seven pounds of meth in the truck?

4 MR. WILLIAMS: Objection. That's --

5 THE COURT: I sustain that objection.

6 Thank you.

7 BY MS. OPPENHEIMER:

8 Q. Where did the defendant tell you the suspected
9 methamphetamine would be?

10 A. To -- to quote the defendant, it's on the back
11 floorboard.

12 Q. And what was on the back floorboard as depicted in
13 State's Exhibit Number 4?

14 A. A yellow liquor box with three plastic containers
15 cellophaned wrapped of a crystal-like substance that I know
16 through my training and experience to be methamphetamine
17 that had a field weight of approximately seven pounds.

18 Q. Did you have to tell him where this was?

19 A. No, ma'am. He told me.

20 Q. Did you force him to tell you where this was?

21 A. I didn't even ask him a question. He told me without
22 a question where exactly it was located.

23 MS. OPPENHEIMER: No further questions.

24 THE COURT: Thank you.

25 Any follow-up on those narrow questions?

1 MR. WILLIAMS: No follow-up, Your Honor.

2 THE COURT: Thank you.

3 You can step down, Investigator.

4 THE WITNESS: Thank you, sir.

5 (Witness excused.)

6 MS. OPPENHEIMER: Subject to recall, Your Honor.

7 THE COURT: Surely. He won't be released from any
8 subpoena you might have.

9 MS. OPPENHEIMER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. WILLIAMS: We do have a matter for the record,
12 Your Honor.

13 THE COURT: Okay. Do we need to send the jury out
14 for that?

15 MR. WILLIAMS: We probably should. We probably
16 should. Yes, sir. I'm sorry. No probably. We should.
17 I was being evasive. I should have said should, no
18 probably. Meaning that we should.

19 THE COURT: Okay. Ladies and gentlemen, I think
20 that we need to deal with a matter of law outside of
21 your presence.

22 I did understand that right; is that right,
23 Mr. Williams?

24 MR. WILLIAMS: That is correct, Your Honor.

25 THE COURT: All right. Let me send you to your

1 jury room for just a moment, folks, and we'll get you to
2 continue the morning's work. If it takes a long time
3 out here, I will send in word to start our lunch hour
4 early. Normally we try to break for lunch around 1:00
5 and take an hour and fifteen minutes or thereabouts, so
6 we'll try to squeeze in another witness if possible
7 between now and the lunch hour.

8 Please don't talk about this case among yourselves
9 while you're in the jury room.

10 Thank you.

11 (Whereupon, the jury retires to the jury room at
12 12:06 PM.)

13 THE COURT: Mr. Williams.

14 MR. WILLIAMS: Your Honor, in that Mr. Yonge is
15 the one who brought the objection to Rule 5 and Brady,
16 there are three items that he would like to bring up at
17 this time which were not provided in discovery, but I
18 think he can do it better than I.

19 THE COURT: Yes, Mr. Yonge. Go ahead.

20 MR. YONGE: Just to put it all on record, Your
21 Honor, we would just renew our Brady and Rule 5 motions
22 based on the new testimony we got from Investigator
23 Gietz. We now know that there's an eastbound hit on
24 I-20 that we were not aware of up until this point. We
25 don't have the same e-mail we had during the pre-trial

1 motion regarding that eastbound hit and he also said
2 there were -- he gets a text message about it, which
3 we have never seen, and then he explained that he had
4 communicated via radio traffic or he had used a radio
5 to communicate with Lexington County while he was calling
6 Sergeant Atwood, so we don't have the -- those radio
7 communication stuff either. So just to renew our motions
8 based on that evidence, Your Honor.

9 THE COURT: All right. The eastbound hit, the text
10 messages and the radio traffic, is that the three? Did
11 I get those right?

12 MR. YONGE: Yes, sir, Your Honor.

13 THE COURT: All right. I'll note that those have
14 been added as additional sustaining -- grounds seeking
15 the sustaining of the Brady motion so the record is
16 complete in that regard.

17 All right. Who's the next witness gonna be,
18 Ms. Oppenheimer?

19 MS. OPPENHEIMER: It's Trooper Shropshire, Your
20 Honor. He might be fairly lengthy. I don't know.
21 We're gonna show several videos with him and I imagine
22 the cross will be quite lengthy.

23 THE COURT: Okay.

24 All right. I'm gonna send the -- I'm gonna send
25 the jury out for an early lunch and get them back at

1 1:30 because I don't want them to be looking at their
2 watches during the testimony of Trooper Shropshire.

3 Does that create a problem with anybody?

4 MR. WILLIAMS: No, Your Honor.

5 MR. SMITH: No, Your Honor.

6 THE COURT: Okay. Go ahead and bring us the jury,
7 please.

8 (Whereupon, the jury returns to the courtroom
9 at 12:10 PM.)

10 THE COURT: Thanks, folks. You can all be seated
11 when you come in, if you'd like.

12 Folks, it didn't take very long for us to deal
13 with that brief matter of law, but during that break I
14 did inquire about the next witness to see if we had
15 the chance of working that in before lunch. The next
16 witness is gonna be a lengthy witness. Master Trooper
17 Shropshire will be the next witness. He is the witness
18 who initiated the stop. There are some videotapes which
19 will be shown to you, the result of which that testimony
20 and cross-examination will go well into the lunch hour,
21 and so we'll break a little early in order to accommodate
22 the fact that we don't want to interrupt that testimony
23 for the lunch hour.

24 So we'll just take our lunch hour early. And I
25 trust that that won't offend anybody. Not nearly as

1 much as you'd be offended if you had to sit there and
2 miss your lunch while the testimony is ongoing.

3 I want you back in the jury room at 1:30. That's
4 an hour and twenty minutes. That's a little bit longer
5 than we normally take, but that will accommodate the
6 time. I could say 1:25, but we're not gonna be here
7 until 1:30 anyway, so.

8 I remind you as always not to talk about the case
9 among yourselves or with anybody else. Enjoy your lunch
10 and I'll see you back at 1:30.

11 Thank you.

12 (Whereupon, the jury was excused for lunch at
13 1:12 PM.)

14 THE COURT: Anything else before we break for lunch,
15 Ms. Oppenheimer, from the State?

16 MS. OPPENHEIMER: Nothing from the State, Your
17 Honor.

18 THE COURT: Mr. Williams, from the defense?

19 MR. WILLIAMS: Nothing from the defendant, Your
20 Honor.

21 THE COURT: Thank you, folks. 1:30. I'll see you
22 then. Enjoy your lunch.

23 (Whereupon, a luncheon recess was taken at
24 12:13 PM.)

25 (Back on the record at 1:37 PM.)

1 BAILIFF: Court is back in session.

2 THE COURT: Thank you, folks. You-all can be
3 seated. Good afternoon.

4 All right, folks. Are we ready for the jury?

5 MR. SMITH: The State's ready, Your Honor.

6 MR. WILLIAMS: The defense is ready, Your Honor.

7 THE COURT: Okay. Let's bring in the jury.

8 (Whereupon, the jury returns to the courtroom at
9 1:39 PM.)

10 THE COURT: Good afternoon, folks, and thank you
11 for your prompt return from lunch.

12 We're ready now to continue the trial of the case
13 as the State continues to offer evidence and testimony.

14 Ms. Oppenheimer. Mr. Smith.

15 MR. SMITH: Your Honor, the State calls Master
16 Trooper Gregory Shropshire with the South Carolina
17 Highway Patrol.

18 THE COURT: Come forward, Trooper Shropshire, and
19 be sworn.

20 (Whereupon, Gregory Shropshire was duly sworn by
21 the Clerk of Court.)

22 THE CLERK: Would you please have a seat in the
23 jury box. State your full name and spell your last for
24 the record, please.

25 THE WITNESS: Master Trooper Gregory Shropshire.

1 That's S-H-R-O-P-S-H-I-R-E.

2 GREGORY SHROPSHIRE,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. Good afternoon, Master Trooper Shropshire. Real
7 quick, do you mind if I just call you trooper while you're
8 testifying?

9 A. Yeah, that's fine.

10 Q. Trooper Shropshire, how long have you been employed
11 with the highway patrol?

12 A. Nine years.

13 Q. What sort of -- what is your role with the highway
14 patrol currently?

15 A. My current role is conducting enforcement, as well as
16 criminal enforcement, for the State of South Carolina, the
17 South Carolina Highway Patrol.

18 Q. Do you have any law enforcement experience outside of
19 the highway patrol?

20 A. Yes, I do.

21 Q. Where would that be?

22 A. I have five and a half years' experience prior with
23 the City of Columbia Police Department.

24 Q. Okay. And any other work experience aside from that?

25 A. I've worked numerous jobs. I worked -- I was at

1 CarMax, FedEx, stuff like that prior to that.

2 Q. Okay. So you were employed with the highway patrol on
3 June 29, 2020?

4 A. That's correct.

5 Q. What specific unit or team were you assigned to on
6 that day?

7 A. On that particular day, I was assigned to the South
8 Carolina Highway Patrol's criminal interdiction unit.

9 Q. What is criminal interdiction?

10 A. Criminal interdiction is conducting a high volume
11 amount of traffic stops with the purpose of rapidly
12 assessing each traffic stop to determine if there's any
13 type of criminal activity that's occurring during that
14 time in order to interdict any type of drug trafficking,
15 human trafficking, weapons trafficking, sex trafficking,
16 anything like that going on in the state of South Carolina.

17 Q. And how long have you performed criminal interdictions
18 with the highway patrol?

19 A. A total of five years.

20 Q. Could you estimate for me approximately how many of
21 those criminal interdictions you've performed?

22 A. Hundreds of traffic stops.

23 Q. So during a criminal interdiction, are those only
24 performed in-agency? How are those normally performed and
25 carried out?

1 A. Our predominate role is we work independently. At
2 that time we worked as a two-man team assigned to each
3 group, but every once in a while if another agency requests
4 us, we will assist them whether it's state, local or
5 federal agencies.

6 Q. Okay. Now let me back you up there for just a second.
7 You said you had someone with you. Who was your partner?

8 A. My partner at that time was Sergeant Atwood.

9 Q. Was he your partner for every criminal interdiction
10 you performed for the highway patrol?

11 A. Yes, sir. For the most part.

12 Q. So when you perform criminal interdiction with another
13 law enforcement agency, can you tell us a little bit about
14 how that works?

15 A. Usually whenever we do any type of what they call a
16 whisper stop for another agency, that agency may contact us
17 and they may give us various information; who the person
18 is, where they're coming from, what it is they're allegedly
19 supposed to have, any type of pertinent information that we
20 may need for that stop at that time.

21 Q. So what was the purpose of -- you mentioned that you
22 always had a partner during your indiction stops. What was
23 the purpose of you having a partner?

24 A. Well, my partner, Sergeant Atwood, is our K-9 handler,
25 so he is to provide backup for me. I'm also as well

1 supposed to provide backup for him, but also by him being
2 a K-9 handler if we were to receive a refusal, we would
3 deploy our department-issued K-9 on the vehicle for a
4 free-air sniff around that vehicle for the -- to see if
5 the dog was to give a positive indication for the odor or
6 presence of narcotics.

7 Q. And, again, when you're performing criminal
8 interdiction, you stated that you're trying to rapidly
9 assess the situation to see what's going on. What sort of
10 -- what are you analyzing? What sort of behaviors are you
11 looking for during a criminal interdiction?

12 A. Well, there's multitude of things. No specific
13 individual is ever the same. Every person reacts
14 differently to a new type of stimuli that may be put in
15 front of them. So if you introduce me, another person may
16 do something different than this person. This person may,
17 you know, have a -- what they call a felony stretch. So
18 it's numerous amounts of nervousness or anything like that.
19 Another person may cross their arms in front of their chest
20 and may close you off. It all depends on what's going on.
21 I may ask them questions about where they are, where
22 they're coming from, where they're headed to, what they're
23 doing, no different than I'd ask any normal person out
24 there on a traffic stop, but I'm rapidly assessing during
25 that timeframe to determine if there's something more to

1 that stop than what the actual violation was for the
2 initial stop.

3 Q. Were you asked to perform a criminal interdiction on
4 June 29, 2020?

5 A. That's correct.

6 Q. Who asked you to do that?

7 A. I was contacted by Sergeant Atwood. He called me and
8 said that Lexington County --

9 MR. WILLIAMS: Objection to hearsay, Your Honor.

10 THE COURT: I think he said -- I'll sustain as to
11 what Sergeant Atwood may have told him. The question
12 was who contacted him. He said Sergeant Atwood. That's
13 okay. Beyond that the conversation would be hearsay.

14 BY MR. SMITH:

15 Q. Without going specifically into what you were told or
16 who told you anything, what information were you provided
17 on this day?

18 A. We were provided the name of the individual they
19 wanted us --

20 MR. WILLIAMS: Objection to hearsay, Your Honor.

21 THE COURT: The fact that he was directed in a
22 certain way, provided a name of an individual, it's part
23 of the res gestae that gets them to wherever they need to
24 be. Now as to whether we get too far into matters which
25 are truly hearsay for the truth of the matter asserted,

1 I'll deal with those.

2 Mr. Smith, I'm gonna let you lead Master Trooper
3 Shropshire around those issues to avoid hearsay.

4 Go ahead.

5 MR. SMITH: So --

6 THE COURT: Were you given the name of an individual
7 that you were looking for on that day?

8 THE WITNESS: That's correct.

9 THE COURT: Okay. Good. Now.

10 BY MR. SMITH:

11 Q. And, again, who contacted you on June 29, 2020, about
12 performing this interdiction?

13 A. You're talking about the person who called me?

14 Q. Yes, sir.

15 A. That was Sergeant Atwood.

16 Q. And prior to going on-scene to perform this stop, to
17 perform this interdiction, what information did you have?

18 A. That the individual was heading to Georgia to pick
19 up a large quantity of methamphetamine and that they had
20 already had him westbound on I-20 and that he had already
21 tripped the LPR system.

22 MR. WILLIAMS: Your Honor, I'm gonna object again
23 to that being hearsay.

24 THE COURT: All right. Once again, I think it lays
25 -- it lays a foundation as to why he was, where he was

1 and what he was doing. I think those are the appropriate
2 matters that he's allowed to testify to under these
3 circumstances as long as he is doing it in a relatively
4 innocuous way as far as real specifics are concerned.

5 I'll note your objection, but overrule it. Thank
6 you.

7 Go ahead.

8 THE WITNESS: That he was travelling westbound,
9 LPR's had been tripped and that he was -- they were
10 expecting him back shortly.

11 BY MR. SMITH:

12 Q. Trooper Shropshire, I'm gonna show you what's already
13 been admitted into evidence as State's Number 2.

14 MR. SMITH: I beg the Court's indulgence for a
15 moment, Your Honor.

16 THE COURT: Okay.

17 BY MR. SMITH:

18 Q. So you mentioned that you were informed about the
19 defendant hitting on a license plate reader on I-20. We've
20 introduced this into evidence with this marker showing the
21 approximate location of where that license plate reader is.

22 A. Uh-huh.

23 Q. Prior to this stop, did you -- were you independently
24 aware of where this license plate reader was located on
25 I-20?

1 A. I knew it was westbound on I-20 outside of the Augusta
2 area in the Martinez area.

3 Q. Thank you.

4 All right. So you've been called, you've been given
5 your briefing -- or information beforehand. What did you
6 do then?

7 A. At that point we -- both myself and Sergeant Atwood
8 were off, so, therefore, I proceeded to get myself ready
9 and came into work and began to make my way towards
10 Lexington County to Exit 39 inside Lexington where me and
11 Sergeant Atwood staged up.

12 Q. Okay. And, again, a little bit redundant, but the
13 location where you and Sergeant Atwood were located, is
14 that location in Lexington County?

15 A. That is correct.

16 Q. I'm showing what's already been admitted as Exhibit 3.
17 So, again, Trooper, where it says here troopers GS and JA
18 at Exit 39, that would have been you and Trooper Atwood --
19 Sergeant Atwood?

20 A. Yes, sir.

21 Q. Okay. And as we've noted, that location is within
22 Lexington County lines.

23 Approximately when were you informed that the
24 defendant was headed your way on I-20?

25 A. About thirty minutes after I arrived out there to the

1 Exit 39.

2 Q. Do you recall what time that would have been?

3 A. Sometime after noon.

4 Q. And once you were informed that the defendant was
5 headed your way, what did you do then?

6 A. At that point we sat upon the ramp at an advantageous
7 point so we could actually see the highway and wait for
8 him.

9 Q. Do you recall at what point that day you saw
10 defendant's vehicle?

11 A. A little after 1:00.

12 Q. Now, Trooper Shropshire, is your vehicle equipped with
13 any sort of recording devices?

14 A. It is.

15 Q. Was that device working that day?

16 A. It was.

17 Q. Was it turned on?

18 A. It was.

19 Q. Did it generate a recording?

20 A. It did.

21 Q. All right.

22 MR. SMITH: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. SMITH:

25 Q. I'm showing you what's been premarked as State's

1 Exhibit Number 8. Do you recognize this item?

2 A. I do.

3 Q. What is it?

4 A. That is the dash cam. A copy of the dash cam.

5 Q. And how do you recognize that item?

6 A. It has my signature, as well as the date.

7 Q. Okay. And does it appear to have been significantly
8 altered or tampered with since the last time you saw it?

9 A. No.

10 MR. SMITH: Your Honor, at this time I'd move
11 State's Exhibit Number 8 into evidence.

12 MR. WILLIAMS: No objection, Your Honor.

13 THE COURT: Thank you.

14 With no objection State's 8 is in evidence.

15 (State's Exhibit Number 8, a dash cam video, was
16 admitted into evidence.)

17 MR. SMITH: Permission to publish for the jury?

18 THE COURT: Yes, sir.

19 BY MR. SMITH:

20 Q. Okay. What I want to do now, Trooper Shropshire, is
21 we're gonna play a little bit of your dash cam. Not the
22 whole thing all at once. We're gonna go through some
23 segments and I want you to tell me what we're seeing on
24 this video, okay?

25 A. Yes, sir.

1 Q. Before we continue, were you given a description of
2 defendant's vehicle?

3 A. I was.

4 Q. What was that description?

5 A. It was a white Ford F-350.

6 MR. SMITH: Please continue, Kelly.

7 (State's Exhibit Number 8 playing.)

8 MR. SMITH: I'll note for the record, Your Honor,
9 we stopped the video at 1 minute and 29 seconds.

10 BY MR. SMITH:

11 Q. All right. Trooper Shropshire, walk us through. What
12 did we just see here?

13 A. All right. At this point I'm making a -- effecting a
14 traffic stop for one on the white Ford F-350.

15 Q. What -- what traffic violations did you obvious?

16 A. Initially I had whenever they passed the ramp where
17 we were at, he was following too closely to a silver sedan.
18 Upon entering onto the interstate and catching up to the
19 vehicle, I observed an actual change in driving behavior
20 where the vehicle began -- appeared to create a little bit
21 of distance between him and that vehicle and began to hug
22 white fog line, which was failure to maintain lane.

23 Q. And does this vehicle that we see on your dash cam,
24 does it match the description of the vehicle you were
25 given?

1 A. It is.

2 Q. What sort of vehicle is this we see on your dash cam?

3 A. That is a white Ford F-350.

4 Q. Okay. So at this point the truck's been pulled over.
5 What did you do then?

6 A. After calling in the traffic stop, I proceeded to exit
7 my vehicle and make sure all my equipment was working, make
8 sure my body cam was working and on at the time, and then I
9 made a passenger side approach and made contact with the
10 driver.

11 Q. And after you made contact with the driver, what did
12 you do?

13 A. I introduced myself, gave him the reason for the stop
14 and asked him for his information.

15 Q. Were you able to identify the driver?

16 A. I was.

17 Q. And who was the driver?

18 A. Mr. Steven Daniel Brown.

19 Q. And is the person you identified during this traffic
20 stop here in the courtroom today?

21 A. He is.

22 Q. Could you please point him out for the jury?

23 A. He's over there.

24 Q. Thank you.

25 All right. So -- so we've begun the traffic stop.

1 Tell me what is your typical procedure when you perform a
2 traffic stop.

3 A. Well, you have to call it into our communications.
4 For us, Blythewood TCC, Blythewood Telecommunication
5 Center, and let them know the basic information of the
6 vehicle, vehicle description, my location, what the tag
7 information is for the vehicle, and that's the simple gist
8 of it. Make sure that all my equipment is on and the
9 vehicle is stopping.

10 Q. So you've already told us about the information you
11 received prior to this traffic stop. How would -- how is
12 this traffic stop different from a normal run of the mill
13 traffic stop you would have performed?

14 A. Well, we had prior knowledge there was a possibility
15 of something there, whereas illegal narcotics trafficking
16 going on, being transported across state lines, so there
17 was that in there as well, but at this point I need to
18 develop my reasonable articulable suspicion from there.

19 Q. Okay. Note for the record we are moving ahead to
20 4 minutes and 30 seconds in the video.

21 Before we play the video, Trooper, why do you have him
22 pulled out of the vehicle?

23 A. One -- when I have him exit the vehicle, one, it
24 allows me to put that individual, whoever it is, on an
25 even playing field. A lot of people are nervous when they

1 have contact with law enforcement and for me in order for
2 me to be able to rapidly assess what the situation is,
3 having him exit the vehicle it allows them to have a one
4 on one conversation with me, a person speaking to another
5 person, but also another aspect is the possibility of the
6 unknown that's inside vehicle, which is the possibility of
7 weapons in there.

8 Q. So you've already told you us about your prior
9 knowledge. Everything we're seeing so far, this looks
10 like a normal run of the mill traffic stop. Why is that?

11 A. Well, it's supposed to look that way. Whenever we
12 have a situation like this, you're supposed to make it look
13 as normal as possible for the individual so you can get a
14 proper gauging of the reaction for them whenever I ask them
15 certain questions that may be a stimulus to them during
16 that conversation.

17 Q. Okay.

18 (State's Exhibit Number 8 playing.)

19 MR. SMITH: It appears at the moment our technology
20 is not --

21 (State's Exhibit Number 8 playing.)

22 MR. SMITH: I beg the Court's indulgence for a
23 moment, Your Honor.

24 THE COURT: Okay.

25 BY MR. SMITH:

1 Q. Trooper, you got him out of the vehicle. You're going
2 about this like it's a normal traffic stop?

3 A. Correct.

4 Q. What sort of conversation are you and the defendant
5 having at this point?

6 A. Whenever I have a conversation with an individual,
7 it's no different a conversation than I would have with any
8 normal -- innocent normal public that's out there, so it's
9 usually just general conversation. Hey, how you doing?
10 Where are coming from? Where you're headed to? Once you
11 ask him a little bit more questions would be to ask to --
12 appeal to the cover and concealment and also the level of
13 clandestine activity that he is using in order to be -- in
14 order to be -- for me to detect an involvement in an aspect
15 of drug trafficking or smuggling.

16 Q. Where did defendant tell you he'd been that day?

17 A. He said initially when I asked him that he had been to
18 Georgia.

19 Q. Did he tell you where in Georgia?

20 A. Well, when I asked him where at in Georgia, he said
21 around the Augusta area.

22 Q. What did he tell you he had been doing?

23 A. He said initially that he had went to see a friend and
24 that he was attempting to find work.

25 Q. And how did that information compare with the prior

1 knowledge that you already had?

2 A. Well, with the prior knowledge that I had, I knew
3 that the vehicle had tripped the Martinez LPR, which is
4 different from where he said that he had been and what he
5 said he was doing, but also during the conversation when
6 asking him those questions it seemed as if he was trying to
7 search for the answer and come up with what's next outside
8 of the basic where I am or where I'm coming from. When you
9 ask somebody where they're coming from, they're usually
10 able to give you basic information as far as where they'd
11 gone, where they're going to, what they did when they were
12 down there, and he seemed more or less as if he trying to
13 search for the answer and trying to figure out what next to
14 say.

15 Q. What about his demeanor during this interaction stood
16 out to you?

17 A. To me, it seemed like he was very -- he was extremely
18 nervous. Again, everybody exhibits nervousness in a
19 different way. He -- I handed him the paperwork to him and
20 he was holding it close to his chest in a manner --

21 (State's Exhibit Number 8 playing.)

22 A. I guess it caught up. But he was holding it in a
23 matter that's consistent with if you give somebody
24 something in their hand, whenever I hand somebody something
25 in their hand, it allows me to see and gauge what their

1 reaction is with it. Where somebody that maybe has
2 something that's going on, they use that as almost like a
3 comforting moment or a blanket to keep themselves calm
4 during that time, so you would see that from time to time
5 he may rub the paperwork, he may shuffle through it in that
6 timeframe. Some people may close themselves off. In this
7 case, he was standing at a bladed stance a bit where he was
8 -- where I had him stand there, he was standing at an angle
9 where he wasn't necessarily facing me and opening himself
10 up to me to have a conversation. So whenever -- say if me
11 and you were having a conversation on the side of the road,
12 most people will turn themselves to you. Even if they're
13 standing in that position, you'll have more openness
14 towards that person.

15 (State's Exhibit Number 8 playing.)

16 Q. So, again, Trooper Shropshire, what did you -- again,
17 what did you notice during this interaction?

18 A. During that timeframe, I was -- again, some of the
19 same similar stuff I was stating as far as how he was
20 standing and everything else. Even when I asked him -- I
21 asked him clarifying questions. Even after I explained to
22 him the reason for the stop and we'd got an understanding
23 of why you have to have safe driving distances and stuff
24 like that, when I asked him where -- again, to clarify
25 where he was coming from, he said somewhere around the

1 Augusta area, he wasn't sure.

2 We then got on the conversation about what he does
3 for a living. I asked him and he said that he does
4 construction or carpentry work. We had a general
5 conversation because I have a family member who does,
6 you know, drywall work. He says he builds decks and stuff
7 like that, and then I asked him well, is that what you're
8 doing with your friend down there and he proceeded to say
9 yes, they were looking at doing a ramp for his -- I guess
10 it was his mother or an older lady for a wheelchair ramp
11 down there, which is a little bit different from what --
12 initially what he was saying where he was saying that he
13 needed to look for a job and he further said that he needed
14 to go back down there in order to do the work for that, so
15 there was inconsistencies as far as from my standpoint that
16 seemed odd and different from what he initially said.

17 Q. Okay.

18 MR. SMITH: Your Honor, I'm moving forward to
19 8:15 on the video.

20 (State's Exhibit Number 8 playing.)

21 BY MR. SMITH:

22 Q. Now I know that's a little bit difficult to hear at
23 some times, but tell us what we just saw there, Trooper
24 Shropshire.

25 A. Well, when we were initially standing there, initially

1 I had had a conversation with him about his truck. The
2 reason being is that when you have a conversation about a
3 truck or something like that, it allows them to talk about
4 something that they're comfortable speaking on. As you can
5 see, whenever I had the conversation with him about that he
6 was able to easily talk about the truck. He seemed very
7 confident, a little bit more loose about it to me. He was
8 able to talk about that, as well as the fact that he rides
9 motorcycles and that he recently had just gotten a new --
10 he had recently gotten another motorcycle, I believe, and
11 he was still riding when I asked him did he miss riding
12 because I believe he had wrecked his bike. I then asked
13 him to clarify again where at -- if he knew where at in
14 Augusta he had been and he wasn't able to give me a direct
15 answer on that one. He pretty much said I don't know. I
16 then proceeded to go through the whole spiel about
17 narcotics or anything in possession.

18 Q. Let me -- let me stop there you there for just a
19 second. Why did you ask him if he had all sorts of
20 different narcotics in his car?

21 A. Well, that allows me to gauge the reaction off of
22 that. Some people have prepared themselves to be able
23 to answer, but -- to give a direct answer about it. If
24 they're prepared for it, they'll automatically want to say
25 no, but it allows me to ask a question, wait a few and then

1 ask the next one to gauge their reaction off of it. In
2 this case, when I went through the -- each narcotic you
3 could see there was a bit of a buildup for him where you
4 could tell that his breathing had changed a little bit
5 more, he began to appear to hold his breath a bit and take
6 a deep breath and say -- when we got to the methamphetamine
7 and he said no, you couldn't even hear it, that it wasn't
8 audible, he looked downward and instead shook his head,
9 but he was able to say no on the other stuff and you could
10 clearly hear.

11 Q. Trooper, were you also equipped with a body-worn
12 camera on this day?

13 A. That's correct.

14 Q. Was it in proper working order on this day?

15 A. It was.

16 Q. Was it equipped?

17 A. It was.

18 Q. Did you have it turned on?

19 A. Yes.

20 Q. And did it produce a recording?

21 A. It did.

22 MR. SMITH: Permission to approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. SMITH:

25 Q. All right. Trooper Shropshire, I'm showing you what's

1 been marked as State's Number 9. Do you recognize that?

2 A. Yes.

3 Q. What is it?

4 A. This is the body-worn camera.

5 Q. And how do you recognize it?

6 A. My signature.

7 MR. SMITH: Your Honor, at this time the State would
8 introduce State's Exhibit Number 9 into evidence.

9 THE COURT: Any objection?

10 MR. WILLIAMS: Without objection, Your Honor.

11 THE COURT: Thank you.

12 That will be State's 9.

13 (State's Exhibit Number 9, a body-worn camera
14 video, was admitted into evidence.)

15 MR. SMITH: Permission to publish to the jury?

16 THE COURT: Yes, sir.

17 MR. SMITH: I believe, Your Honor, the jury will
18 have an opportunity also to take the disk back with
19 them into the jury room and they should be able to view
20 the material on a better speaker.

21 THE COURT: Certainly.

22 (State's Exhibit Number 9 playing.)

23 BY MR. SMITH:

24 Q. And, Trooper Shropshire, just to be clear, that's the
25 same interaction with defendant we saw on your dash cam,

1 but from your body cam, correct?

2 A. That's correct.

3 Q. So after this point, you've asked about all the
4 narcotics in the vehicle, what did you do next?

5 A. At that point I handed back -- made sure he had back
6 all his personal property as far as his driver's license,
7 registration and insurance and began to explain the written
8 warning that he was being issued for both citations,
9 explained to him there was no court costs and about safer
10 driving distance and driving behavior out there on the
11 roadway, and at that point I then asked for consent to
12 search his vehicle while handing him the warning.

13 Q. Why did you ask for consent to search his vehicle?

14 A. Because I had developed my reasonable articulable
15 suspicion that -- to believe that there was some type of
16 crime that he was involved in, believing that he was
17 involved in drug smuggling, as well as the prior knowledge
18 about him being involved -- alleged to be involved in the
19 legal trafficking and transport of narcotics across state
20 lines.

21 Q. Were you granted consent to search the vehicle?

22 A. After we -- a little bit of me walking back and forth
23 for a little bit, at that point it was determined that he
24 said no, he said no to me, and at that point I then advised
25 him that Sergeant Atwood was on-scene and he was going to

1 deploy his department-issued K-9, K-9 Parker, around the
2 exterior of the vehicle, and the dog gave positive
3 indication to the odor or presence of narcotics and we were
4 gonna search it.

5 Q. How long was Sergeant Atwood and Parker on-scene with
6 you?

7 A. Not too long after I stopped the vehicle.

8 Q. So if they were already there, why didn't you go ahead
9 and run the dog during the traffic stop?

10 A. That's not how we work. In order for us to -- we want
11 to be able to gain our reasonable articulable suspicion if
12 we believe that there's some type of smuggling going on
13 and the last thing we want to do is deploy a K-9 around
14 the exterior of the vehicle in order to ruin any type of
15 rapport or level of rapport that me and that person have
16 gotten at that point in time during the stop and the last
17 thing you want to do is introduce the dog and the person
18 shuts down and not wanting to talk to you or speak to you
19 anymore to prove what you've seen during that point -- up
20 to that point.

21 Q. And approximately how long was it from the beginning
22 of this traffic stop till you deployed the K-9?

23 A. About ten or twelve minutes.

24 Q. And then what happened?

25 A. Sergeant Atwood advised me that K-9 --

1 MR. WILLIAMS: Objection to hearsay, Your Honor.

2 BY MR. SMITH:

3 Q. Were you advised --

4 THE COURT: Well, go ahead.

5 MR. SMITH: I'll rephrase, Your Honor.

6 BY MR. SMITH:

7 Q. Were you advised if the K-9 alerted to the presence
8 of narcotics?

9 A. I was advised that the dog was, in fact, indicating.

10 Q. So once you were advised of that report, what did you
11 do then?

12 A. I believe I retrieved some gloves to put on my hands
13 and then I proceeded to head towards the vehicle to conduct
14 a search of the vehicle.

15 Q. Were there any other law enforcement officers on-scene
16 by this time?

17 A. At that point Lexington County Sheriff's Department
18 was there on-scene, Investigator Gietz was there, as well
19 as couple of other troopers that was a part of our team was
20 also there.

21 Q. Were there any other officers that assisted you in
22 searching this vehicle?

23 A. Investigator Gietz assisted me initially and I believe
24 some other officers then helped out later on.

25 Q. And what did you find inside the vehicle?

1 A. Inside the vehicle methamphetamine was found.

2 Q. Where did you find it?

3 A. It was in the rear passenger compartment.

4 MR. SMITH: I beg the Court's indulgence.

5 THE COURT: Okay.

6 MR. SMITH: Trooper Shropshire, I have no further
7 questions for you at this time. Please answer defense's
8 questions.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Williams.

11 MR. WILLIAMS: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q. So let me take you back to -- what was the date that
16 all this stuff happened on?

17 A. I believe it was June 29th.

18 Q. Say again.

19 A. June 29th.

20 Q. Of what year?

21 A. 2020.

22 Q. And I believe you said that you worked in a unit with
23 Sergeant Atwood; is that right?

24 A. That's correct, sir.

25 Q. So when you got up that morning, you had a phone call

1 from Sergeant Atwood; is that correct?

2 A. He called me. Yes, sir.

3 Q. All right. Now is Sergeant Atwood gonna testify in
4 this trial?

5 A. He should. Yes, sir.

6 Q. And he would be the one that was involved in -- is he
7 the dog handler? He's the dog handler, right?

8 A. He was the K-9 handler at that time.

9 Q. Okay. And he also has a video showing exactly how the
10 dog reacts around the truck, correct?

11 A. He has his body cam on. Yes, sir.

12 Q. He has a body cam which shows exactly what the dog
13 does when the dog is around the truck and he'll be able to
14 testify in regards to what he told you; is that correct?

15 A. He'll be able to testify.

16 MR. SMITH: Objection, Your Honor. These questions
17 would be properly put to Sergeant Atwood, not Trooper
18 Shropshire.

19 THE COURT: I think that's what he's asking.

20 MR. WILLIAMS: That's exactly what I'm asking.

21 BY MR. WILLIAMS:

22 Q. So he will be here to answer those questions?

23 A. That's correct, sir.

24 Q. Okay. So you were at home when you took off that
25 morning, correct?

1 A. Yes, sir.

2 Q. And I think you got that call -- what time did you
3 say you got a call about this possible drug interaction or
4 whatever you want to call it?

5 A. Sometime midmorning.

6 Q. Midmorning?

7 A. Yes, sir.

8 Q. All right. So midmorning to you is what time?

9 A. Midmorning could be anything between 9 AM and 11 AM.

10 Q. All right. So say 10:00, 10:15? That's right in the
11 middle. 10:15?

12 A. If that's where you want to put it.

13 Q. I'm just trying to figure out when it is. I don't
14 know what your midmorning is. You said between 9 and,
15 what, 11?

16 A. Between 9 and 11. Yes, sir.

17 Q. All right. So you got a call in the middle of all
18 that, which is 10 maybe?

19 A. Uh-huh.

20 Q. And you were still at home, correct?

21 A. (Nods head.)

22 Q. And what time were you supposed to go on duty?

23 A. I was off that day.

24 Q. Okay. You were off.

25 All right. So when you're off, do you normally have

1 your patrol car with you at home?

2 A. Yes, sir. We're issued vehicles.

3 Q. It was issued to you, so you don't have to go anywhere
4 to pick it up?

5 A. Correct.

6 Q. So when you received the phone call, you discussed
7 what time you were gonna be working that day; is that
8 right?

9 A. No.

10 Q. But you were off?

11 A. That's correct.

12 Q. I guess I'm trying to -- on this particular day, was
13 -- it was kind of a busy day with cars out there on the
14 road, wasn't it?

15 A. It's a weekday.

16 Q. It's a weekday. What day of the week was it?

17 A. I'm not really sure.

18 Q. Okay. Are you normally off on a weekday?

19 A. From time to time I am.

20 Q. But on this particular day it was a weekday and you
21 were off?

22 A. Uh-huh.

23 Q. And had you made any plans to stay home that day?

24 A. I was off.

25 Q. So you had had no plans and you'd had no discussions

1 that would require you to plan being at work on this
2 particular day; is that right?

3 A. I was scheduled off for that day. Yes, sir.

4 Q. So you had no plans to do anything on that particular
5 day; is that correct?

6 A. Sir, it's been three years. I'm not sure what I had
7 planned that day. All I know is I was off that day.

8 Q. Okay. So I assume what you did was you had to put
9 your uniform on because you were going to do this drug
10 intervention. Is that what you call it?

11 A. I had to get dressed after I spoke with Sergeant
12 Atwood to actually conduct a whisper stop for Lexington
13 County Sheriff's Department.

14 Q. You call it a whistle stop?

15 A. Whisper.

16 Q. Why do you call it a whistle stop?

17 A. Whisper stop.

18 Q. Whisper stop. I'm sorry. My years are little old and
19 you're a little soft-spoken. So it's a whisper stop?

20 A. Yes, sir.

21 Q. So say a little bit after 10 maybe you -- you get the
22 call. You take a shower and put your clothes on; is that
23 right?

24 A. Uh-huh.

25 Q. About what time do you leave your house?

1 A. I'm not really sure. It usually takes me a little
2 over an hour to get there.

3 Q. To get to where?

4 A. To wherever we're working that day in particular.
5 They had us -- with that we had to go to Lexington County,
6 so I live two counties away.

7 Q. So you actually live -- what county do you actually
8 live in?

9 A. Kershaw.

10 Q. And that's normally where you do your work, out there
11 in Kershaw County, don't you?

12 A. No, I'm on a statewide team, so I go multiple places.

13 Q. Okay. But you're not normally assigned a particular
14 area?

15 A. Only wherever the supervisor has us for that
16 particular day.

17 Q. So you received your notations on a day by day basis?

18 A. It's on a schedule. Yes, sir.

19 Q. So where were you the week before?

20 A. I'm not really sure.

21 Q. But it's on a schedule somewhere whenever you have to
22 go out?

23 A. It's three years ago, sir.

24 Q. I'm really not trying to trip you. I just kind of
25 want to know how you got from Kershaw County where you

1 live all the way over here to work with somebody on your
2 day off. That's all.

3 A. I drive.

4 Q. Okay. I didn't think you ran. That's a long way.

5 A. That would be very amazing.

6 Q. Yeah. So you -- you got a call and you got dressed,
7 it took you about an hour, and that would be about 11:00.
8 And did you know where you were supposed to meet anybody
9 that day?

10 A. We decided to meet up at that Exit 39.

11 Q. All right. So you had a conversation with -- he
12 wasn't a sergeant then, but --

13 A. He was a lance corporal at the time.

14 Q. All right. So you had a conversation and the two of
15 you-all decided to go to that location?

16 A. That's correct.

17 Q. Now you don't recall if you were working in Lexington
18 County that week before or the week after?

19 A. I might have been. I don't know. I work multiple
20 counties, sir.

21 Q. How did you decide where in Lexington County you were
22 going?

23 A. Well, sir, on that particular day I was off.

24 Lexington County Sheriff's Department contacted Sergeant
25 Atwood, therefore, he contacted me about assisting in

1 that stop. So, therefore, on that day we were working in
2 Lexington County.

3 Q. Okay. So had you worked I-20 before in Lexington
4 County?

5 A. I have.

6 Q. All right. So you knew about 44 Truck Stop, you knew
7 about Exit 39, you knew about Exit 41. You knew about all
8 those areas, right?

9 A. I'm familiar with all those highways.

10 Q. Highways?

11 A. Correct.

12 Q. Okay. So you had talked -- you were not on the
13 highway when you first noticed something going down the
14 road. You were at an exit, you were at an overpass, when
15 you observed something; is that correct?

16 A. U.S. 78 is a highway.

17 Q. Okay.

18 A. That's pretty much a highway to be exact and the
19 Interstate ramp is actually part of the highway system.

20 Q. Okay. So you were there at the overpass on the
21 highway?

22 A. The ramp.

23 Q. On the ramp?

24 A. Yes, sir.

25 Q. That's the bridge, right?

1 A. The ramp.

2 Q. Okay. So you were on the ramp. Is that the ramp
3 which goes onto the Interstate at I-20?

4 A. That's correct.

5 Q. Okay. So were you in the roadway or were on the --
6 I guess what you're distinguishing is that you were not on
7 the bridge or anything. You were on a ramp that goes onto
8 the Interstate, right?

9 A. Yes.

10 Q. Okay. Which is a flat area as opposed to an elevated
11 area, correct?

12 A. That area is elevated.

13 Q. It's a flatter area than coming off the top of a
14 bridge, right?

15 A. I'm not aware of what you're speaking of.

16 THE COURT REPORTER: Judge, can I have a minute?

17 THE COURT: Yes.

18 (Pause in proceedings.)

19 THE COURT: Mr. Williams.

20 MR. WILLIAMS: Thank you, Your Honor.

21 BY MR. WILLIAMS:

22 Q. All right. We were talking about that you were on the
23 ramp and this was at Exit --

24 A. 39.

25 Q. -- 39 and if we were facing towards Lexington County,

1 you would have been on the right-hand side of the ramp; is
2 that correct?

3 A. Eastbound side. Yes, sir.

4 Q. Because that's how you get on the Interstate there
5 at the -- on the right-hand side?

6 A. Okay. Yes.

7 Q. And so since it's a ramp, it's not as high as the
8 bridge?

9 A. Yes.

10 Q. So you were watching the traffic go by; is that
11 correct?

12 A. That's correct.

13 Q. And you were on alert watching for this white truck
14 and is that when you decided to pull off of the ramp into
15 the Interstate of I-20? Since you say the ramp is a part
16 of the highway, is that when you decided to get on the
17 Interstate?

18 A. Once I entered onto the entrance ramp, if that's what
19 you're asking --

20 Q. That is.

21 A. -- once I confirmed visually and we confirmed that
22 was, in fact, the vehicle, yes, I did enter on especially
23 after I had determined and also saw that he was also
24 following too close to another car.

25 Q. So I guess what we're really getting around to, you

1 have the -- you have video on your car --

2 A. Uh-huh.

3 Q. -- which is that -- does that run constantly when
4 you're driving your vehicle down the road or do you have
5 to hit blue lights or something to make your video work?

6 A. Once you turn your blue lights on, it backs up
7 thirty seconds prior.

8 Q. So when you -- when you pulled onto the ramp -- when
9 you left the ramp area into I-20, was your camera
10 functioning at that point in time?

11 A. The camera's on.

12 Q. The camera's on?

13 A. Uh-huh.

14 Q. Okay.

15 A. Are you asking is it recording, like actual recording
16 to a disk? No. It's recording, but it's not recording to
17 a disk.

18 Q. That's all I care is if it's on and whether -- what
19 you record on this disk is kind of up to you, but I guess
20 what I'm asking is does this disk include everything that
21 happened once you pulled onto the Interstate and your
22 camera was running?

23 A. It has everything thirty seconds prior to me stopping
24 him.

25 Q. Thank you.

1 MR. WILLIAMS: Yeah, if you'll come run that for
2 me, Jason.

3 (State's Exhibit Number 8 playing.)

4 BY MR. WILLIAMS:

5 Q. Now stop it right here. So you said that this came
6 on thirty seconds ahead of --

7 A. That's correct.

8 Q. -- when your blue lights come on?

9 A. It has a thirty second prerecord prior to me turning
10 my blue lights on, so I --

11 Q. Are your blue lights -- I'm sorry. Are your blue
12 lights on right here?

13 A. No.

14 Q. All right. So as we watch this --

15 A. Uh-huh.

16 Q. -- tell me when your blue lights come on.

17 (State's Exhibit Number 8 playing.)

18 A. Right there where you hear my mic turn on.

19 Q. All right. So what happens when you turn the blue
20 lights on is it actually -- you can actually hear sound and
21 video when your blue lights come on?

22 A. That's correct.

23 Q. And if it were nighttime, we'd get to see all the blue
24 lights flashing around. So thirty seconds before this
25 sound begins, you're actually recording; is that right?

1 A. Thirty seconds prior.

2 Q. Before? Prior? I don't know. So it's on and does
3 this show this car that you said that my client was
4 following too closely on?

5 A. You can see it right there, but you can also see --
6 prior to me turning my blue lights on, you can see the
7 changes in his driving behavior where that vehicle actually
8 begins to actually create a separation between him and that
9 vehicle and he actually rides the white fog line.

10 MR. WILLIAMS: Jason, can you back that up for me,
11 please?

12 MR. YONGE: It's doing that buffering thing again.

13 (State's Exhibit Number 8 playing.)

14 BY MR. WILLIAMS:

15 Q. So you were able to see him following too closely to
16 some car on that video just now?

17 A. I saw it on the ramp. Yes, sir.

18 Q. On the ramp?

19 A. Yes, when I was sitting on the ramp there waiting.

20 Q. Oh, so it's -- I thought you said you had it on the
21 video, too. So you're saying that you -- you don't see
22 it on your video once you get on the Interstate, but you
23 observed it on the ramp; is that right?

24 A. As you can see right there, you can see the change in
25 driving behavior that he has and the other vehicle actually

1 creates a distance between him and that other vehicle and
2 his vehicle begins to hug the white fog line creating a
3 secondary violation.

4 Q. So -- so the car that you said he was following too
5 closely, you can see that car on this video and you saw
6 him following too closely on this video?

7 A. That's what I saw. Yes, sir.

8 Q. All right. And obviously everybody else can see what
9 you see if this video's accurate, right?

10 A. Yes.

11 Q. Okay. And the fog line that you're talking that he's
12 -- he's touching, for the -- for the jurors' edification
13 that fog line you're talking about is this little white
14 line on the right-hand side that's known as a fog line,
15 but is that the touching of the white line that you say he
16 touched the fog line?

17 A. He's not maintaining the centermost portion of his
18 lane. Yes, sir.

19 Q. Okay. Is there a ticket violation that you can get
20 for touching a fog line?

21 A. You can be cited for failure to maintain your lane,
22 which --

23 Q. If you touch the fog line?

24 A. For failure to maintain your lane.

25 Q. I don't know why you won't answer my question.

1 A. I am answering your question.

2 Q. So if you touch the fog line, is that a -- is that a
3 ticket that you can receive?

4 A. You can write it. Yes, sir. You can write a uniform
5 traffic ticket for it.

6 Q. As a matter of fact, you wrote him two warning
7 tickets, didn't you?

8 A. No, I only wrote one.

9 Q. You only wrote him one warning ticket?

10 A. Correct.

11 Q. And you handed that to him, didn't you?

12 A. Correct.

13 Q. And then you took it back?

14 A. (Nods head.)

15 Q. He never got full control of the ticket. You -- you
16 handed the ticket and then you pulled it back in all this,
17 didn't you?

18 A. Okay.

19 Q. True?

20 A. Yes, I still maintained control of it.

21 Q. You still have the warning ticket with you, don't you?

22 A. Correct.

23 Q. So you never gave him a warning ticket?

24 A. He was advised that he was issued a uniform warning
25 and he was given a warning.

1 Q. Well, you never released the ticket to give him the
2 warning ticket, did you?

3 A. Well, at that point if you're -- if you're asking
4 about when I handed you -- handed him the warning, he was
5 asked for consent to search. At that point he denied
6 consent, so, therefore, the stop's not over. So,
7 therefore, he was held there for longer for the K-9
8 deployment.

9 Q. And you never gave him the warning ticket?

10 A. He was given a warning.

11 Q. Well, when we refer to a warning ticket, we're talking
12 about a piece of paper, aren't we?

13 A. Uh-huh.

14 Q. So he was -- he never had sole possession of a piece
15 of paper which says warning ticket on it, did he?

16 A. I handed it to him, he touched it, and when you're --
17 when he denied consent to search -- denied for a consent to
18 search, I held onto the warning ticket because, therefore,
19 the traffic stop is not finished at that point.

20 Q. Okay. Why were you holding onto it? Why didn't you
21 just give it to him?

22 A. Because, therefore, it's a detention at that point
23 for further investigation of facts and for K-9 deployment.

24 Q. Are you saying that -- that once you release the
25 warning ticket he is in detention or before he releases the

1 warning ticket?

2 A. Well, the traffic stop in itself is technically by
3 state law custodial arrest. So, therefore, it's my
4 determination on if I want to write a ticket or a warning.
5 So, therefore, until I advise him that -- he is given
6 everything and he is on his way, the stop is not done.

7 Q. So if he had been quicker pulling that ticket out of
8 your hand, then it would be different; is that right?

9 A. Repeat that again. I'm not --

10 Q. If he were quicker pulling that ticket out of your
11 hands that both of you were holding onto -- it's like
12 pulling a pulley bone. If he were able to pull that pulley
13 bone out before you did, then --

14 A. What's a pulley bone? I'm not --

15 Q. You don't know what a pulley bone is?

16 A. No.

17 Q. There you go. No need of explaining it.

18 But there is significance to you the fact that you
19 were able to hold onto it and he did not achieve sole
20 possession of this warning ticket?

21 A. Okay.

22 Q. That's true?

23 A. I'm not understanding what you're saying. Repeat
24 that.

25 Q. Well, let me ask you this. This warning ticket which

1 you issued to him, that came out of a ticket book, didn't
2 it?

3 A. The warning? Yes, sir. A warning book.

4 Q. All right. And there are copies issued in this
5 warning book, this ticket book, which allows you to -- to
6 go back in time to look and see what warning tickets you
7 have issued?

8 A. Uh-huh.

9 Q. And do you know what the number of that warning ticket
10 was?

11 A. Not offhand.

12 Q. And the purpose of a warning ticket is to acknowledge
13 that somebody -- that you have stopped somebody on the road
14 and you have given them a warning and they -- correct?

15 A. Go ahead.

16 Q. And they take that warning ticket with them to make
17 sure that they understand what they did wrong so that they
18 don't do it again. That's the purpose of a warning ticket,
19 right?

20 A. (Nods head.)

21 Q. True?

22 A. True. Yes, sir.

23 Q. Okay. Now is --

24 MR. WILLIAMS: I beg the Court's indulgence. I beg
25 the Court's indulgence.

1 THE COURT: Yes, sir.

2 BY MR. WILLIAMS:

3 Q. If you will, because we just kind of -- we just kind
4 of hit sections of it, we're just gonna play the rest of
5 the video and then -- to show the entire period of what's
6 going on, him on the side of the road, your -- how you
7 react to him.

8 A. Okay.

9 Q. And then I'm gonna ask you some questions.

10 (State's Exhibit Number 8 playing.)

11 Q. So the fog line touching that you were referring to
12 was not right there when the blue lights came on and he was
13 pulling off and he was hitting those rough things on the
14 side of the highway. That's not the reference to touching
15 the fog line that you're concerned about?

16 A. Well, I was effecting a traffic stop at that point,
17 so I was not -- when I observed him actually committing
18 the violation, it started back in the traffic prior to me
19 turning my blue lights on.

20 (State's Exhibit Number 8 playing.)

21 Q. Let me ask you a question. Atwood is standing by the
22 car when he's looking in that direction and then you go off
23 to the front of the truck; is that correct?

24 A. Yes, sir.

25 Q. Okay.

1 (State's Exhibit Number 8 playing.)

2 MR. WILLIAMS: That's all the questions I have,
3 Your Honor.

4 THE COURT: Thank you.

5 Redirect.

6 MR. SMITH: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. SMITH:

9 Q. Trooper Shropshire, where were you when the recording
10 from the vehicle started on this day?

11 A. Where was I when the recording began?

12 Q. Uh-huh. Yes, sir.

13 A. I was at Exit 39.

14 Q. Right, but specifically like when this recording --
15 let me rephrase the question.

16 A. What mile marker?

17 Q. No, sir. When this recording began, had you already
18 entered onto the highway off of the ramp?

19 A. (Nods head.)

20 Q. And you stated -- at that point had you already
21 observed the defendant following too closely behind a
22 vehicle?

23 A. I did.

24 Q. And at that point when you observed defendant he had
25 already passed Exit 39 on the highway?

1 A. That is correct.

2 Q. And during the video that we just watched again, did
3 the defendant acknowledge to you that he had been following
4 the vehicle in front of him too closely?

5 A. Yes, sir.

6 Q. And you mentioned that the citation is for a failure
7 to maintain lane?

8 A. Correct.

9 Q. Elaborate on that for me.

10 A. Under state law it states that you must drive in a
11 manner that's reasonable and prudent under that. As a
12 driving instructor, because I'm a certified DMV instructor,
13 we always instruct our students to drive in the centermost
14 portion of your lane to avoid unnecessary collisions
15 whether it's when a vehicle is travelling from the opposite
16 direction or from the shoulder of the roadway. As a
17 collision reconstructionist, we see a lot of collisions
18 that occur from vehicles either sideswiping a vehicle
19 that's sitting on the side of a highway or another vehicle
20 that may be in that lane next to it causing unnecessary
21 collisions.

22 Q. So is it fair of me to say then that you don't
23 necessarily have to be all the way over a line to catch
24 that ticket?

25 A. No, sir.

1 Q. Would you have pulled Mr. Brown over on this day if
2 you hadn't observed any traffic violations?

3 A. No, sir.

4 MR. SMITH: I beg the Court's indulgence.

5 Nothing further.

6 MR. WILLIAMS: Just one question on redirect {sic}.

7 THE COURT: Yes, sir.

8 RECROSS EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Clearly the tape that we just saw does not include
11 those driving issues that you just referenced, does it?

12 A. It does show the driving issue of failure to maintain
13 lane. You can also see the driving distance decrease
14 between -- excuse me, increase between him and the other
15 vehicle into the change of driving behavior that he had.

16 Q. And when you were asked on cross-examination, you
17 had already passed Exit 39 when you observed the driving
18 violation?

19 A. I had not passed Exit 39.

20 Q. You were on Exit 39?

21 A. On Exit 39.

22 Q. Because on the highway you've got an entrance ramp
23 on Highway 39 and you have another ramp going up on the
24 highway, so you were seated on the -- parked on this area.
25 So what you had -- would have seen would have been somebody

1 that would have been gotten -- depending on how you
2 reference it, he was already past 39 before you even pulled
3 back on?

4 A. Well, 39 is a mile long exit as far as the mile
5 marker; hence, the name mile. So Exit 39 in itself is one
6 mile long in its distance. So, therefore, he passed within
7 the exit -- passed by the itself, but I was sitting at the
8 top of the entrance -- sitting on the entrance ramp itself
9 where I had a clear vantage point of the roadway.

10 MR. WILLIAMS: I don't have any other questions.

11 THE COURT: Thank you.

12 Any follow-up?

13 MR. SMITH: No, Your Honor.

14 THE COURT: All right. Thank you.

15 Trooper you can step down. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 THE COURT: Okay. You can call your next witness.

19 MR. SMITH: The State calls Sergeant Tyler Atwood.

20 Jacob Atwood. I apologize, Your Honor.

21 THE COURT: Okay.

22 Sergeant Atwood, come forward, please, sir, and be
23 sworn.

24 THE WITNESS: Yes, sir.

25 (Whereupon, Jacob Atwood was duly sworn by the

1 Clerk of Court.)

2 THE CLERK: Would you please have a seat in the
3 witness box. State your full name and spell your last
4 on the record.

5 THE DEFENDANT: The first name is Jacob, J-A-C-O-B.
6 Last name Atwood, A-T-W-O-O-D.

7 JACOB ATWOOD,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q. Good afternoon, Sergeant Atwood. How long have you
12 been with the South Carolina Highway Patrol?

13 A. This January will be ten years.

14 Q. Do you have any law enforcement experience outside of
15 the highway patrol?

16 A. I do not.

17 Q. So you were employed with the highway patrol on
18 June 29, 2020?

19 A. I was.

20 Q. What was your role there at the time?

21 A. I was a K-9 handler for our interdiction team during
22 the 2020 year.

23 Q. Were you always -- approximately how long were you a
24 K-9 handler?

25 A. I got certified in August of 2018 at Alabama K-9

1 Institution in Northport, Alabama, and I was still a K-9
2 handler in 2020.

3 Q. And what was the name of your K-9 partner at the time?

4 A. Parker.

5 Q. How long?

6 A. From the beginning. I was issued him in August of
7 2018.

8 Q. So did you and Parker undergo your training and
9 certification together?

10 A. We did, yes, sir.

11 Q. If you can recall approximately how many hours'
12 training did you undergo together?

13 A. The course I took was anywhere from four to six weeks
14 and approximately 240 hours. It just depends on how fast
15 you bonded with the dog and got certified. You had to
16 complete a course before you were actually issued your
17 certification.

18 Q. And was this -- was this your initial training and
19 certification?

20 A. Yes, sir.

21 Q. Did you undergo any training after your initial
22 training certification?

23 A. Yes, sir. We did monthly training through our agency
24 and then we also had to recertify at the institution at
25 Alabama K-9 every year.

1 Q. And did this training continue throughout your entire
2 time with Parker?

3 A. Yes, sir, it did.

4 Q. So we heard Trooper Shropshire testify just a little
5 while ago that for criminal interdiction with the highway
6 patrol a K-9 unit is always present. Were you present
7 with -- the entire time that you were a K-9 handler, would
8 you have been present with Trooper Shropshire during an
9 interdiction?

10 A. As long as no unforeseen circumstances, but, yes, that
11 was the idea of the team; that me and him would work
12 together as a partner setup.

13 Q. And were you involved in a criminal interdiction on
14 defendant's vehicle on June the 29th, 2020?

15 A. I was.

16 Q. So, again, why were you on-scene with Shropshire?

17 A. I was assisting Trooper Shropshire with a traffic
18 stop, whether it be just as a backup officer for safety
19 concerns or if he did need a K-9, I was also there for that
20 role as well.

21 Q. Now were you provided any information prior to this
22 traffic stop?

23 A. I was.

24 Q. What was that information?

25 A. I spoke with Officer Gietz by phone about a subject

1 coming back from the Atlanta area with an unknown quantity
2 of narcotics. It was actually our day off, so then I
3 called Shropshire on the phone and explained to him the
4 situation, it was his day off as well, and then we met up
5 on I-20.

6 Q. Was the vehicle described to you?

7 A. It was.

8 Q. Do you recall what the vehicle description was?

9 A. It was a white pickup truck and they had the tag
10 number as well. It was in a license plate reader.

11 Q. And this information that you were given prior to the
12 stop, did you relay that information to Trooper Shropshire?

13 A. I did. All the information I had I relayed to Trooper
14 Shropshire.

15 Q. Your partner Parker, what breed of dog is he?

16 A. He was a mix breed. He was a Belgian Malinois and
17 Shepard mix. So he looked like a Shepard, but he had the
18 attitude of a Belgian Malinois, so he was a little more
19 excited, happy.

20 Q. Do you know what specific narcotics he's imprinted on?

21 A. I do. He was imprinted on five narcotics. It would
22 be marijuana, meth, MDMA, cocaine, crack cocaine and
23 heroin.

24 Q. And what does it mean when you -- what does it mean
25 to say that those are the substances he's imprinted on?

1 A. So when we went to Alabama K-9, those are the
2 things that he was certified in. So when he got his
3 certification, those were the narcotics that we trained
4 with for him to be certified in.

5 Q. So just not this specific stop, but any time you
6 deploy Parker during a stop what are you looking for during
7 that inter -- during that sniff, during that interaction?

8 A. With the dog?

9 Q. Yes, with the dog. I'm sorry.

10 A. That's okay. So I would be looking for a change
11 of behavior, which we would call an alert. That would
12 be a natural change of behavior. And then I would also
13 be looking for an indication. That would be the final
14 behavior. For Parker, that would be a sit, a lay down or
15 a pinpoint stare. So that would be like his final rest.
16 Once he did that, that would end the sniff.

17 Q. So you mentioned two different things. Is a change of
18 behavior something that is taught to the dog?

19 A. No, that is a natural behavior. For Parker, it would
20 be a rapid respiration, a change of body posture, something
21 that comes natural to him. Something that when he smells
22 something he's going to naturally change his behavior.
23 It's nothing that is taught. It's whatever he decides --
24 whatever he decided during training that he was going to
25 do.

1 Q. So what about then -- I believe you called it a final
2 response. Is that a behavior that's taught to the dog?

3 A. The indication is a taught final response. So dogs
4 naturally do an aggressive indication, which is scratching.
5 People don't like their car's scratched or their property
6 scratched, so we -- they were trained to not scratch things
7 and to either sit, lay down or pinpoint stare.

8 Q. And what is Parker's -- let me make sure I'm using the
9 correct word here -- indication?

10 A. Yes, sir.

11 Q. And what is his taught indication?

12 A. Any of the three. He sits, lays down or a pinpoint
13 stare. Just depending on the surface we are searching.
14 If it's something very low, he may lay down. He's trying
15 to get as close to the source as he can where the odor is
16 permeating out.

17 Q. So we heard testimony earlier from Trooper Shropshire.
18 Were you on-scene the entire time during this stop?

19 A. Not the entire time. I think I came about three,
20 four, five minutes in. It was somewhere -- not immediate,
21 but I did respond quickly.

22 Q. But you would have been there for a substantial
23 portion of this stop?

24 A. Yes. Yes. Most of it I was on-scene for. I did not
25 assist in pulling him over though.

1 Q. So why didn't -- were you -- during the stop were you
2 requested to perform a free-air sniff of the vehicle?

3 A. At the -- at the conclusion of the stop, yes.

4 Q. Who requested that?

5 A. Trooper Shropshire.

6 Q. Okay. But you were on-scene before the conclusion
7 of the stop. Why didn't you go ahead and run the dog?

8 A. A few different reasons. One's a safety concern.
9 We're on the side of I-20, traffic's moving at seventy
10 miles per hour. If the dog would happen to get off leash
11 or maybe jump out of the truck, we don't want to use any
12 tools unnecessarily, so there's other ways to go about
13 asking for consent to search, admittance of narcotics in
14 the vehicle. There's a plethora of other ways to search
15 a vehicle than just the K-9. I call it a tool. It's a
16 tool on my belt. I don't use every tool the same way every
17 time, so the way we use the K-9 is we ask for consent first
18 and if they deny consent, then we would use the K-9.

19 Q. Where did you start the free-air sniff of defendant's
20 vehicle?

21 A. I started on the back bumper of the pickup truck.

22 Q. Do you always start free-air sniffs in the same
23 location on every vehicle?

24 A. Approximately the same location. As long as the road
25 conditions allow it, yes.

1 Q. And do you recall approximately how many times you led
2 Parker around the truck?

3 A. About one and a half times.

4 Q. And, again, if you would, while the sniff is going on,
5 what sort of behaviors are you looking for from Parker?

6 A. Any kind of change in behavior than his day to day
7 normal interactions with him and any kind of indication,
8 which would be a sit, a lay down or a pinpoint stare.

9 Q. Sergeant Atwood, on this day were you equipped with
10 a body-worn camera?

11 A. I was.

12 Q. Was it in proper working order?

13 A. It was.

14 Q. Was it turned on?

15 A. Yes, sir.

16 Q. Was it recording?

17 A. It was.

18 Q. And it was equipped to you?

19 A. Yes, sir. It was on my belt.

20 Q. Did it generate a recording?

21 A. It did.

22 THE COURT: Sergeant Atwood, where is Parker today?

23 THE WITNESS: So I have been promoted twice since
24 that time, Your Honor. He has been issued to another
25 K-9 handler. I still get to see him frequently, but we

1 -- he still is in use.

2 THE COURT: Okay. That's good. That's good.

3 Is he gonna -- is Parker gonna come here today to
4 testify?

5 THE WITNESS: He could come in the courtroom, Your
6 Honor, but you might should put him in the hall for now.

7 (Off the record discussion.)

8 THE COURT: Go ahead. I'm sorry for that
9 interruption.

10 MR. SMITH: Your Honor, may I approach the witness?

11 THE COURT: Yes, sir.

12 BY MR. SMITH:

13 Q. Sergeant Atwood, I'm showing you what's already been
14 marked as State's Number 10 for identification. Do you
15 recognize this?

16 A. I do.

17 Q. What is it?

18 A. It appears to be my body cam footage.

19 Q. And how do you recognize that?

20 A. I put the date on it and my initials.

21 Q. Does that disk appear to have been altered or tampered
22 with since you last seen it?

23 A. It does not.

24 MR. SMITH: Your Honor, at this time we'd move
25 State's Number 10 into evidence.

1 THE COURT: What says the defense?

2 MR. YONGE: Without objection.

3 THE COURT: Thank you. State's 10 without
4 objection.

5 (State's Exhibit Number 10, body-worn camera
6 video, was admitted into evidence.)

7 MR. SMITH: Permission to publish to the jury?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q. We're gonna go through this. I'm gonna stop it at a
11 couple of points to ask you some questions, all right?

12 A. Yes, sir.

13 Q. Or we may just let it play through.

14 THE COURT: All right.

15 (State's Exhibit Number 10 playing.)

16 Q. All right. Sergeant Atwood, I notice at the beginning
17 of this video, of course, we redacted out some portions
18 where you were going to retrieve the dog and take him back
19 to the vehicle. Why did you ask defendant if there was any
20 sort of substance in the vehicle? What's the purpose of
21 that?

22 A. Again, just a safety concern. I'm sure you guys have
23 heard about Fentanyl. Fentanyl is very, very strong. It
24 takes a very small amount. If it's in the air, anybody
25 that smells it, it can put you down very quickly. So

1 Fentanyl is one thing. Any kind of bombs. Some of that
2 stuff is very toxic to dogs. Dogs have a very sensitive
3 nose. Much more sensitive than ours.

4 Q. So when we move forward, I noticed during this video
5 that you are, you know, tapping high and low on the truck
6 and kind of snapping in some places. What are you doing
7 there?

8 A. I'm just casting the dog, just keeping them moving.

9 Q. Briefly, if I could slow you down for a second, can
10 you explain what you mean by casting?

11 A. A dog is supposed to smell where I am casting to
12 after every cast and casting means pointing to where I
13 want him to smell. The only time he can break that cast
14 is when he's within an odor of narcotics.

15 Q. And why are you -- these specific spots that you're
16 casting him to, why are you casting to those spots?

17 A. Different things. Door jams. That would be one way
18 maybe something can be released from vehicles, where door
19 handles are, residual odors from narcotics. Anywhere low,
20 depending on how a vehicle is set up. Just different areas
21 that I would believe that an odor could escape from.

22 Q. Okay. Had you been on any other calls that day?

23 A. I had not. Like I said earlier, it was my and Trooper
24 Shropshire's day off.

25 Q. Had your hands come into contact with any substances

1 that may have left a lingering odor?

2 A. No, sir. Not any kind of illegal odor.

3 Q. All right. So during your body cam, did you notice
4 what -- what alerts, if any, did you notice from Parker?

5 A. I noticed a rapid respiration and what I mean by that
6 is when you watch the video you can kind of see his mouth
7 is open at some points. At the end of the video just
8 before he sits, he closes his mouth and he kind of -- he's
9 breathing very shallow with his nose. He's constantly
10 (demonstrating), so that, to me, is rapid respiration.
11 He's not opening his mouth and taking deep breaths. He's
12 trying to locate the source of an odor, which is an alert.
13 He also had a change of body posture. You can kind of see
14 with his head he starts to trace up the side of the truck
15 up to the front bumper where he stops.

16 Q. And did you notice -- during this video did Parker
17 give an indication?

18 A. He did. He showed an indication by sitting right at
19 the front bumper area.

20 Q. And what does that mean when he indicates?

21 A. That is his final rest, so that would be saying this
22 is as close as he thinks he can get to the narcotics that
23 he believes are in this area.

24 Q. Sergeant, we've heard testimony today that a
25 crystal-like substance believed to be methamphetamine was

1 located in the back floorboard of the defendant's vehicle.
2 I notice during this video that Parker gave an indication
3 and sat at the front right bumper. Can you explain why
4 would he have indicated somewhere away from where the
5 narcotics are located?

6 A. I can explain that by permeation. Smells expel. They
7 continually go out and depending on if the A/C was running
8 or if the motor was running or if the fans were running,
9 anything like that beforehand, sucking air of the truck,
10 blowing it back out or constantly pulling the air. It's
11 no different than you walking into your house and you can
12 smell that your spouse is cooking beef stew on the oven.
13 Even though you're not in the kitchen, you can still smell
14 it.

15 Q. And what did you do after Parker gave that indication?

16 A. I came over to him. So Parker does not get a reward
17 unless narcotics are actually found, so that's why you saw
18 me praise him up. He is actually looking for his toy, but
19 he does not get his toy unless narcotics are actually
20 found, so I praised him up and put him back up in the
21 truck.

22 (State's Exhibit Number 10 playing.)

23 MR. SMITH: I beg the Court's indulgence for a
24 moment.

25 THE COURT: Yes, sir.

1 BY MR. SMITH:

2 Q. Sergeant Atwood, at that point when we see that you've
3 arrested defendant and read him his Miranda rights, had the
4 suspected methamphetamine been located?

5 A. I believe it's being pulled out of the truck.

6 Q. And do you know where it was located?

7 A. In the back floorboard.

8 MR. SMITH: No further questions at this time,
9 Sergeant Atwood. Please answer any questions from the
10 defense.

11 THE WITNESS: Yes, sir.

12 THE COURT: Mr. Yonge, you may cross-examine.

13 MR. YONGE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. YONGE:

16 Q. Good afternoon, Sergeant Atwood.

17 A. Good afternoon.

18 Q. How are you today?

19 A. Good. How are you?

20 Q. I'm all right.

21 A couple of things, but before I forget right there
22 at the end you said that at the point where you Mirandized
23 him and you're handcuffing him and arresting him, the
24 suspected methamphetamine has been found already; is that
25 right?

1 A. I believe so, yes.

2 Q. Okay. So, I guess, let's just take a look at the
3 video. Bear with me. I want to attempt to move it
4 further.

5 (State's Exhibit Number 10 playing.)

6 Q. All right. So we're here at 3:20. Pausing here at
7 3:47 on the video. What are you putting on your hands
8 there?

9 A. Gloves.

10 Q. Okay. In order to do what?

11 A. To search the vehicle.

12 Q. Okay. So had the search of the vehicle been performed
13 yet?

14 A. At this moment, no. As I'm walking away, I hear
15 Mr. Brown say it's in the floorboard.

16 Q. Okay. So has the suspected methamphetamine been
17 discovered at this point?

18 A. At this moment the door's about to open. As you see
19 Trooper Shropshire's about to open it, so at this exact
20 moment, no.

21 Q. Okay. And -- so if we play it again.

22 (State's Exhibit Number 10 playing.)

23 Q. All right. So now you're placing him under arrest?

24 A. Yes, sir.

25 Q. All right. Has methamphetamine been -- suspected

1 methamphetamine been discovered at this point?

2 A. I believe so.

3 Q. Okay.

4 A. It was in plain view in the back -- in the back
5 floorboard, sir.

6 Q. The suspected methamphetamine was in plain view on
7 the floorboard?

8 A. Of the backseat, yes.

9 Q. Okay.

10 A. So all Trooper Shropshire had to do was open the door.

11 Q. And it was just sitting there?

12 A. It was, yes.

13 Q. There was nothing to disguise it?

14 A. No, sir. Not that I recall.

15 Q. Okay. You said that K-9 Parker is trained to either
16 sit, lay down or do a pinpoint stare as his final response;
17 is that correct?

18 A. His indication, yes, sir.

19 Q. As an indication?

20 A. Yes, sir.

21 Q. Okay. What's the final response?

22 A. That would be the indication.

23 Q. So final response equals indication?

24 A. Yes.

25 Q. So as his indication he's taught to sit, lay down or

1 pinpoint stare?

2 A. Yes.

3 Q. When does he choose to lay down?

4 A. It just depends on the scenario. If it was something
5 very low, maybe we're searching like a pallet from like a
6 tractor-trailer maybe, he would lay down. I don't tell
7 him which one to do. He does whichever one he wants to do.

8 Q. Okay. Let's watch this again and take a look at -- I
9 don't know how this video thing jumps, so I'm gonna try to
10 find the spots.

11 (State's Exhibit Number 10 playing.)

12 Q. All right. So stopping right here at 52 seconds on
13 State's Exhibit -- or Exhibit 10, this tapping that you're
14 doing on the truck, is that casting?

15 A. Yes, sir.

16 Q. Okay. And the purpose of casting is to do what?

17 A. Have the dog's nose follow.

18 Q. So you choose where the dog sniffs, correct?

19 A. Yes.

20 Q. And is that performed in accordance with your training
21 from Alabama?

22 A. Yes, sir.

23 Q. All right. So they train you that you cast on the
24 vehicle and the K-9 should be trained as well to go where
25 you cast?

1 A. That's correct.

2 Q. And one thing you mentioned was that people don't like
3 their property scratched, correct?

4 A. That's correct.

5 Q. And you specifically train the dogs not to scratch the
6 vehicles?

7 A. As an indication, no, sir.

8 Q. Right. So -- because that would cause damage to the
9 vehicles?

10 A. I don't think it causes damage, no, but some people
11 don't like it. The appearance of it.

12 Q. Okay. So you train them not to scratch as part of
13 their indicator?

14 A. Yes, that they should not -- it's called an aggressive
15 indication.

16 Q. Okay. But that same training doesn't apply to the
17 casting and smelling; is that right?

18 A. When I'm talking about aggressive indication, I mean
19 like a dog digging a hole on the side of a car, not jumping
20 up to smell a high space.

21 Q. Okay. And so let's watch you go around the car and
22 follow up.

23 (State's Exhibit Number 10 playing.)

24 Q. All right. Stopping here at 1:35. At this point
25 you've gone around the truck one time, correct?

1 A. Yes, sir.

2 Q. And has K-9 Parker indicated at all?

3 A. He has not.

4 Q. No. Now you mentioned you were looking for -- before
5 you get to that indicator or that final response, you're
6 looking for some change in behavior?

7 A. An alert, yes, sir.

8 Q. An alert. All right. So you're looking for an alert
9 which can be what again?

10 A. There's many different alerts. For K-9 Parker it was
11 normally a change of body posture and a change of rapid
12 respiration.

13 Q. All right. What was his standard body posture?

14 A. His standard body posture?

15 Q. Sure. Like when he's not performing a sniff?

16 A. He's a happy-go-lucky dog.

17 Q. Okay. And what's his body posture like when he's
18 performing a sniff?

19 A. When he's performing a sniff?

20 Q. Uh-huh.

21 A. He's following my cast. His mouth is closed when he's
22 smelling objects.

23 Q. And what would his body posture be like if you see a
24 change in behavior?

25 A. Like I testified to, he changes. He closes his mouth.

1 He's not breathing out of his mouth anymore, he's breathing
2 through his nose. He starts to kind of trace a scent, so
3 he's kind of doing his head movement back and forth, and
4 he's working the source. He's working the narcotic odor.

5 Q. And so salivating is part of this?

6 A. Salivating?

7 Q. I don't know the right term to use. Excessive
8 moisture coming from his mouth.

9 A. For a change of body posture or in general?

10 Q. For a change in body posture.

11 A. No, sir. It was 110 degrees that day. Probably it
12 was just hot.

13 Q. Would that also cause him to increase his respiration?

14 A. Because he's hot? Yes, sir.

15 Q. Okay. So how do you distinguish between the change
16 in behavior that you would see exhibited when he smells
17 narcotics versus the change in behavior because of the
18 temperature and activity you're performing?

19 A. Because he closed his mouth.

20 Q. Because he closed his mouth?

21 A. And because I had worked with him for two years and
22 I -- I can tell a change of his posture and I can tell a
23 change of his breathing. He lived with me for two years
24 straight, so I can tell the difference.

25 Q. What did you-all do together when you were off-duty?

1 A. It depends. Some days we'd just sit in the backyard
2 and throw a tennis ball, maybe go on a run, exercise, do
3 some hides, things like that.

4 Q. What is a hide?

5 A. Like a narcotics hide. Hide some narcotics somewhere.

6 Q. And you were off that day?

7 A. I was.

8 Q. Was K-9 Parker with you that day?

9 A. He was.

10 Q. At your house?

11 A. Yes.

12 Q. Okay. Do you live with anyone else?

13 A. My wife.

14 Q. Okay. And what were you-all doing that day before you
15 went out to do this interdiction?

16 A. Hanging out. He had an outdoor kennel, so that's
17 where he -- he lived. He lived in the outdoor kennel, so
18 it's not like he was in my house running around. He stayed
19 in his outdoor kennel unless I was outside with him.

20 Q. That's fair.

21 All right. Let's go ahead and finish your search
22 around the truck.

23 (State's Exhibit Number 10 playing.)

24 Q. All right. Now right before we get to the conclusion
25 of it, what is the purpose of casting so high up onto the

1 truck?

2 A. It just gives the dog two different areas to smell.
3 You cast them low and you cast them high.

4 Q. Okay. And it help them -- it creates a better
5 opportunity for him to catch a scent; is that right?

6 A. It just keeps the dog moving. But, yes, I am
7 presenting areas that I think maybe odor could be released
8 from.

9 Q. Okay. So getting him to -- casting it up high, having
10 him jump up there, would that -- is it more likely that
11 he'll be able to catch smells that way than he would just
12 walking around the exterior of the truck without actually
13 casting onto the truck?

14 A. I don't know. I've never done it the other way. I
15 was trained to cast.

16 Q. And you always cast when you do these?

17 A. I do, yes.

18 Q. Okay. And let's go ahead and finish this off.

19 (State's Exhibit Number 10 playing.)

20 Q. What were you doing right there?

21 A. So in training scenarios or if we knew there were
22 narcotics in there for sure, we would have somebody else
23 throw a toy in because that is ultimately what Parker is
24 looking for. He is not distinguishing narcotics. He's
25 ultimately playing a game of hide and go seek, so what I'm

1 doing there is you would present the area that he indicated
2 on and then another individual would be back behind Parker
3 and then he would throw the toy in so that it would appear
4 that the source that he sat or indicated on popped the toy
5 out magically. That's what he's saying. He's playing a
6 game of hide and go seek. So right here I am presenting
7 what he indicated on, but, again, he does not get a toy
8 unless we actually find narcotics in the vehicle. That
9 way he's not falsely sitting or indicating in any other
10 scenario.

11 Q. So he's hoping for a trap door and a toy?

12 A. Yes, he's hoping for a magic trick.

13 Q. Okay. Let's see what else is on the video.

14 (State's Exhibit Number 10 playing.)

15 Q. What's going on here?

16 A. I'm just praising him up. Telling him he's a good
17 boy.

18 Q. Do you consider that to be a reward?

19 A. I mean, he gets good boy's all the day, so, yes. I
20 mean, I guess. I mean, now in his eyes he's looking for
21 a toy, so in his eyes, no, that's not a reward. In my
22 eyes, yes, I mean, I'm praising him up.

23 Q. Sure. But if he had not done the final response or
24 the indicator, would he still receive the good boy and the
25 pats?

1 A. Oh, absolutely. He worked. I mean, it's like you
2 going out there in a fur coat and exhibiting a lot of force
3 on something and then telling you ah, do a better job next
4 time. So he gets a good boy whether he indicates or not.

5 Q. Okay.

6 (State's Exhibit Number 10 playing.)

7 Q. Now I apologize. This was very abrupt on the video.
8 There was a portion of the video missing here, right?

9 A. Yes. I had to walk him back to the truck.

10 Q. That's not to say anything's hidden. I'm asking
11 during that time period what was going on?

12 A. I was putting him back in the truck, putting the
13 leash away, maybe getting him some water. I haven't
14 watched that portion of the video recently. Sometimes,
15 you know, I would go ahead and give him some water because
16 it is hot outside, but pretty much just putting the dog
17 away.

18 Q. So nothing really of value for this case?

19 A. Not that I -- not that I think.

20 Q. Okay.

21 (State's Exhibit Number 10 playing.)

22 Q. All right. And K-9 Parker indicated on the front
23 right bumper?

24 A. Yes.

25 Q. All right. You had mentioned some reasons why that

1 would be when the suspected methamphetamine is in the back
2 seat. What were those reasons?

3 A. Can you ask me again? I'm sorry.

4 Q. Yeah. It was probably not well-spoken.

5 So why would he indicate on the front bumper if what
6 you were looking for is in the back floorboard.

7 A. It would be something called permeation. It would be
8 the odor travelling.

9 Q. Could it be from Interstate traffic along the highway
10 there?

11 A. Like the wind?

12 Q. Yeah. Sure. Or the wind created by a truck going
13 by?

14 A. Are you talking about like the odor that Parker
15 smelled?

16 Q. Yes.

17 A. It would be highly unlikely at seventy miles per hour.

18 Q. No, no, no. I'm not asking you whether the scent came
19 from a truck.

20 A. Oh, okay. That's why I was asking can you repeat it.
21 I'm sorry.

22 Q. No. I apologize. So I'm asking you whether if
23 there's a smell back here, a truck comes by, could that
24 waft the smell forward on the vehicle?

25 A. Technically, yes.

1 Q. But you wouldn't expect that?

2 A. I don't know. I couldn't smell it.

3 Q. Okay. But you gave some reasons, which would include
4 the inner workings of the vehicle, the air-conditioner was
5 on?

6 A. Yeah. Again, I'm just -- just like you said, it
7 could happen. I don't know why it happened, but
8 permeation, smells expand. They come out of unknown
9 places.

10 Q. Okay.

11 THE COURT: Mr. Yonge, the jury has been in here
12 now two hours. I'm gonna send them out for an afternoon
13 recess. I realize you might have more to do and we have
14 redirect even after that.

15 So, ladies and gentlemen, we're gonna go ahead and
16 take the afternoon recess at this time. We'll take a
17 full break. We'll get you back at 4:00. That's twenty
18 minutes.

19 Please do not discuss this case among yourselves
20 while you're in the jury and we'll resume at 4:00, okay?

21 Thank you.

22 (Whereupon, the jury retires to the jury room at
23 3:40 PM.)

24 THE COURT: Sergeant Atwood, you can step down
25 during the break, but you cannot discuss your testimony

1 with anybody while you're off the stand, okay?

2 THE WITNESS: Yes, sir. Thank you. I just want to
3 stretch my legs if that's okay.

4 THE COURT: Refresh yourself if you need to. You
5 just can't talk about your testimony.

6 All right, folks. We'll take twenty minutes.

7 MR. SMITH: Your Honor, if we could, I just wanted
8 to briefly discuss the scheduling for the remainder of
9 the day. I know we're coming back at four. We should
10 finish up with Atwood -- Sergeant Atwood. Our next
11 witness is going to be Sergeant Derrick Applegate from
12 the sheriff's department and we do intend to offer him
13 as an expert in K-9 sniffs and the like. If -- if it
14 suits Your Honor, we believe that once we finish with
15 Sergeant Atwood today, that would probably be a good time
16 to adjourn for the day and we can start with Sergeant
17 Applegate first thing in the morning.

18 THE COURT: Okay. Who does that leave us with after
19 Sergeant Applegate?

20 MR. SMITH: Then we'll have Mike Phipps with the
21 sheriff's department. Margaret Walker, our chemist,
22 and Sergeant Gietz -- Investigator Gietz is subject to
23 recall.

24 THE COURT: Okay.

25 All right. I'm trying to just calculate what

1 time we might conclude the State's case so that I can
2 factor that in and the court reporter has a doctor's
3 appointment in the morning. She's been struggling here
4 for some time with congestion and things of that nature
5 and we want to get her well, and she's got a doctor's
6 appointment very early tomorrow. I'm planning to start
7 back tomorrow at probably 10:30 in the morning.

8 Is that okay? Does that give you enough time,
9 Madam Reporter?

10 THE COURT REPORTER: Oh, yes. That's fine.

11 THE COURT: Okay.

12 MR. SMITH: Your Honor, I fully expect the State
13 will rest its case tomorrow.

14 THE COURT: Okay.

15 All right. So that will be the plan.

16 In view of that, then there's no harm to be done
17 and recessing for the day after Sergeant Atwood finishes
18 his testimony.

19 Does that create a problem for you, Mr. Yonge or
20 Mr. Williams?

21 MR. YONGE: No, Your Honor.

22 THE COURT: Okay.

23 All right. That will be the plan then.

24 4:00, folks.

25 MR. SMITH: Thank you, Your Honor.

1 (Recess taken at 3:42 PM.)

2 (Back on the record at 4:01 PM.)

3 BAILIFF: Court will come to order. Keep your
4 seats.

5 THE COURT: Thank you, folks. Please be seated.

6 Mr. Yonge, you look ready to resume; is that right?

7 MR. YONGE: Let do it, Your Honor.

8 THE COURT: Is the State ready?

9 MR. SMITH: The State's ready, Your Honor.

10 THE COURT: Good.

11 You can bring the jury.

12 (Whereupon, the jury returns to the courtroom at
13 4:03 PM.)

14 THE COURT: We're now ready to resume
15 cross-examination of Sergeant Atwood.

16 Mr. Yonge.

17 MR. YONGE: Thank you, Your Honor. I actually
18 checked my notes during the break and I don't have any
19 other questions.

20 THE COURT: All right. Well, good. It was time
21 well-spent then.

22 MR. YONGE: Thank you, Sergeant.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect, Mr. Smith.

25 MR. SMITH: I'll be very brief, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SMITH:

3 Q. Sergeant Atwood, during Parker's free-air sniff, did
4 you observe the types of change in behavior that you know
5 Parker to exhibit --

6 A. Yes, sir.

7 Q. -- when he's tracking an odor?

8 A. Yes, sir. I saw alert behavior and a final
9 indication.

10 Q. And did you -- and did Parker give the final
11 indication that he was trained -- a final indication he
12 was trained to perform?

13 A. Yes, sir. He sat.

14 Q. And after that indication were suspected narcotics
15 located in defendant's vehicle?

16 A. Yes, sir.

17 MR. SMITH: Thank you, Sergeant Atwood.

18 THE COURT: Mr. Yonge, any follow-up on that narrow
19 issue?

20 MR. YONGE: No, Your Honor.

21 THE COURT: Thank you.

22 Sergeant Atwood, you can step down.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 THE COURT: Ladies and gentlemen, during the break

1 we've also discussed for planning purposes the schedule.
2 The next witness is going to be a quite lengthy witness
3 or the potential for being a quite lengthy witness. He's
4 gonna be sought to be qualified as an expert in a certain
5 field and it could go past -- well past 5:00.

6 So normally we would keep on working until later
7 in the day except we don't need to do that in this case.
8 The State has assured me that they will be able to
9 complete their trial testimony tomorrow and so we can
10 do -- two matters of delay. First of all, we can put
11 that witness off until tomorrow and then, secondly, some
12 of the folks -- one of the folks who's involved in the
13 trial of this case has a commitment in the morning that
14 cannot be avoided, so we're not gonna start until 10:30
15 tomorrow morning.

16 So I'm letting you off early today and we start
17 late tomorrow, so that's government work. That's the
18 way they work. And so -- well, in this case that's true,
19 but there are good reasons for it and it's not gonna
20 prolong the trial of this case in any event in order to
21 accommodate those two issues and so I'm gonna let you go
22 now ahead of the 5:00 traffic and have a safe trip home.

23 One thing I -- it occurred to me as you-all have
24 been coming back and forth for the most part, I told you
25 that you can sit wherever you want to and no reserved

1 seats except for the foreperson and -- but most of you
2 go back to an assigned seat almost as if your name was
3 on it and that leads me to believe that you must be a
4 Presbyterian. I'm a Presbyterian and back in the days
5 when the Presbyterian church used to be full of people
6 and you had to really get there early for a seat,
7 everybody had their own seat and if anybody sat in it,
8 you know it, they'd get frowned at. And now if you come
9 to the Presbyterian church you can sit wherever you want
10 to, but...

11 So, anyway, whichever church you belong to, and you
12 can sit wherever you want to in here, and I appreciate
13 the good humor that you have put up with our schedule
14 throughout. We'll start back tomorrow morning at 10:30.
15 Have a save trip home. Thank you.

16 Don't discuss the case among yourselves or with
17 anybody.

18 (Whereupon, the jury was excused for the day at
19 4:07 PM.)

20 THE COURT: Anything further from the State before
21 we break for the day?

22 MR. SMITH: Nothing from the State at this time,
23 Your Honor.

24 THE COURT: Thank you.

25 From the defense?

1 MR. WILLIAMS: Nothing from the defense, Your Honor.

2 THE COURT: All right, folks. We'll start back at
3 10:30 in the morning.

4 Thank you.

5 MR. SMITH: See you in the morning, Judge.

6 THE COURT: Thank you.

7 Mr. Brown, one more thing. I'm gonna let you
8 continue to stay out. You've been out so far and
9 you've honored that and your bondsman has assured us of
10 his willingness to stay on the bond and, of course, you
11 know that we're gonna start the trial of the case back
12 tomorrow at 10:30 and if you're here, we're gonna start
13 it and if you're not here, we're gonna start it. You
14 need to be here with your lawyers. You understand that?

15 THE DEFENDANT: I'll be here.

16 THE COURT: All right. See you-all at 10:30
17 tomorrow morning.

18 Thank you.

19 (Whereupon, the proceedings were concluded for
20 August 8, 2023, 4:10 PM.)

21 (The following proceedings were held August 9,
22 2023, beginning at 10:34 AM.)

23 BAILIFF: Court is now in session. The Honorable
24 Judge Thomas Cooper presiding.

25 THE COURT: Thank you, ladies and gentlemen. Please

1 be seated.

2 Good morning.

3 Madam Reporter, if you'll mark this, please, as
4 Court's Exhibit next.

5 THE COURT REPORTER: Okay. That will be Number 8.

6 (Court's Exhibit Number 8 was marked for
7 identification.)

8 THE COURT: Ladies and gentlemen, in chambers I met
9 with counsel and have disclosed to them what was made
10 known to me by the bailiffs. In closing -- in cleaning
11 up the jury room yesterday after we had dismissed for
12 the day and the notepads, which the jurors have, one of
13 them -- it was facedown on the table, when they turned
14 it over found that there was some doodling on it and
15 some writing on it. Some of it rather innocuous, some
16 of perhaps not so innocuous that I need to deal with
17 individually.

18 I'm going to call in the jurors individually to
19 inquire about any connection that they have with the
20 note itself. Is it -- if they have seen it, if they
21 know anything about it or discussed it in the jury
22 room. If all -- if all of those turn out to be negative
23 responses, then I will send that juror one by one after
24 they have been individually voir dire'd into a separate
25 -- I think they've got a room downstairs or somewhere we

1 can keep them separate from each other.

2 Once I've determined who wrote the note, then I will
3 ask that person if he or she has shown that to anybody
4 else or discussed it with anybody else. If those answers
5 are likewise negative, I will excuse that juror and --
6 and place the -- the alternate in place. If it has been
7 discussed with someone else, then I'll have to follow up
8 on that inquiry and see where this leaves us, okay?

9 Everybody understand that?

10 MR. SMITH: Yes, Your Honor.

11 THE COURT: I'll be glad to hear from you-all, from
12 counsel, at the conclusion of this inquiry depending upon
13 what it reveals because right now we don't know.

14 Mr. Bailiff, we will bring in the jurors individually
15 in the order in which they were called, beginning with
16 Juror Number 165.

17 BAILIFF: Yes, sir.

18 THE COURT: I will show them from a distance just
19 the half of the note that appears to be innocuous so
20 they'll at least know what I'm talking about, if they do
21 know anything about it. If they don't, it won't mean
22 anything to them and they will not see the opinion of the
23 -- of the author.

24 (Whereupon, Juror Number 165 enters the courtroom.)

25 THE COURT: Mr. Maddox, if you'll have a seat right

1 there please in that chair. Let me tell you, we're not
2 picking on you individually. I'm gonna talk with all
3 the members of the jury to discuss a matter that was
4 revealed to us after we broke yesterday.

5 The bailiffs discovered on the notepads that were
6 left in there that somebody had been writing some
7 scribbling, which is fine really. That's what the
8 notepads are in there for; however, one note caused a
9 little concern. I'm just gonna show you a portion of
10 it to see if you have seen it or know anything about it.

11 Does this look familiar to you?

12 JUROR NUMBER 165: Yes, sir. I saw that.

13 THE COURT: Okay. And where did you see it?

14 JUROR NUMBER 165: In the jurors' room.

15 THE COURT: All right. And do you know who wrote
16 it?

17 JUROR NUMBER 165: I don't. I don't know who wrote
18 it.

19 THE COURT: How was -- was it just laid out on the
20 -- on the table there face up or --

21 JUROR NUMBER 165: Yeah, it was on the table face
22 up.

23 THE COURT: All right. And was it late yesterday
24 or during the day yesterday that you saw this or when
25 did you see it?

1 JUROR NUMBER 165: During the day at some point.

2 THE COURT: Okay. So that the note had been out
3 there and had been apparent to anybody who wanted to
4 look at it, they could see it; is that right?

5 JUROR NUMBER 165: Yes, sir.

6 THE COURT: Okay. Did you hear anyone discussing
7 the contents of this note?

8 JUROR NUMBER 165: Not at all.

9 THE COURT: Okay. And I think you've already
10 answered this. I want to be sure. Do you have any idea
11 who the author of the note was, who wrote it?

12 JUROR NUMBER 165: No, sir.

13 THE COURT: All right. Were you impacted in any way
14 by what you saw on the note, the doodles, the comments
15 and whatever else you saw? Were you impacted or in any
16 way persuaded by it or in any way affected in your -- in
17 your thought process by what you saw in the note?

18 JUROR NUMBER 165: No, sir.

19 THE COURT: All right. You can continue to be fair
20 and impartial in this case without regard to what you saw
21 on the note?

22 JUROR NUMBER 165: Yes, sir.

23 THE COURT: And you can continue to abide by your
24 oath to decide this case based on the evidence that you
25 will hear without regard to the scribblings on this note?

1 JUROR NUMBER 165: Yes, sir.

2 THE COURT: And you'll do that, won't you?

3 JUROR NUMBER 165: Yes, sir.

4 THE COURT: Thank you, sir, Mr. Maddox. We're
5 gonna send you -- while we're talking with the other
6 jurors, I'm gonna send you into a separate jury room
7 just so that when you go back in there and they'd say
8 what did they want to know, and that will put you in an
9 uncomfortable position. So we'll send you downstairs.
10 for the moment you'll have your own private jury room,
11 but other others will be joining you separately as they
12 come.

13 JUROR NUMBER 165: Yes, sir.

14 THE COURT: I'd appreciate it when they do join you
15 if you will not discuss anything that you have seen or
16 anything that you know about this note as well, okay?

17 JUROR NUMBER 165: Absolutely.

18 THE COURT: Thank you, Mr. Maddox.

19 JUROR NUMBER: 165: Yes, sir.

20 THE COURT: I appreciate it.

21 (Whereupon, Juror Number 165 was excused from the
22 courtroom.)

23 THE COURT: What says the State or the defense in
24 regard to that inquiry?

25 First of all, what says the State, Ms. Oppenheimer,

1 Mr. Smith?

2 MR. SMITH: Your Honor, we believe that Mr. Maddox
3 clearly answered that while the note was visible there's
4 been no discussion. He's indicated it hasn't affected
5 his thought process and he remains able to be fair and
6 impartial and decide this case properly based on the
7 facts and the law.

8 THE COURT: I got you.

9 Mr. Williams, what says the defense?

10 MR. WILLIAMS: Obviously, Your Honor, I think the
11 fact that he admitted that it was in an open area where
12 all jurors could see it, that that in itself constitutes
13 a problem in the continuation of the trial. I note for
14 the Court's benefit that he was not sworn at the time that
15 he gave his responses. Not meaning any disrespect to the
16 Court.

17 THE COURT: Well, here's my --

18 MR. WILLIAMS: I'll retract that. He was sworn to
19 at the beginning of the trial, Your Honor, so --

20 THE COURT: Yes, sir. Not only that --

21 MS. OPPENHEIMER: Hold on.

22 THE COURT: Wait just a second, sir.

23 I'm sorry, Mr. Brewer. We'll get to you in a
24 minute.

25 My understanding, and I was not present for voir

1 dire, but as a matter of course that every juror is
2 sworn in the voir dire process as put under oath.

3 Am I incorrect in that regard? If so, I'll swear
4 them when they come in here.

5 THE CLERK: It's a general oath that they take.

6 THE COURT: I mean, does every juror stand in the
7 jury room downstairs and they say ladies and gentlemen,
8 do you solemnly swear or affirm that you'll give truthful
9 answers to the questions put to you so help you God?

10 MR. SMITH: Yes.

11 THE COURT: And I just need to know yes or no. If
12 it's not, I'll take care of it now.

13 THE CLERK: I'm gonna show it to you. That way you
14 can read it and --

15 THE COURT: Okay. Thank you.

16 THE CLERK: The top half is during voir dire --

17 MR. WILLIAMS: I caught myself, Judge, halfway into
18 that statement, so I may be incorrect.

19 THE CLERK: -- and then the bottom half of it is
20 what they're --

21 THE COURT: I'm sorry. I can only listen to one.

22 MR. WILLIAMS: You're right.

23 THE COURT: All right. Thank you.

24 Yes, ma'am. Again?

25 THE CLERK: The top half is the oath that they're

1 given during voir dire and then the bottom half is what
2 they're given whenever they come in as they're picked as
3 the actual jury panel.

4 THE COURT: Yes, I understand that.

5 It's the top oath in particular that I was talking
6 about, that they're put under oath to answer all the
7 questions, et cetera, put by the Court or speak the truth
8 and so forth, and so I find that that -- if that oath is
9 satisfactory to carry throughout, the jury does not have
10 to be re-sworn or put under oath thereon.

11 And so I'm sorry, Mr. Williams, I didn't understand
12 what you were telling me while she was telling me that,
13 so I'll be glad to hear from you.

14 MR. WILLIAMS: And I was -- sometimes -- I suffer
15 sometimes with talking when other people are talking. I
16 don't mean to. It's my brain is so slow --

17 THE COURT: That's all right.

18 MR. WILLIAMS: -- and I realized after I'd said
19 that well, of course, they are sworn at the beginning,
20 and I was trying to stop that statement, but it was
21 already out.

22 THE COURT: Okay. I will remind them of the oath
23 when they come in here just to be sure.

24 MR. WILLIAMS: But the short answer on this, Judge,
25 is I think the mere fact that he saw it --

1 THE COURT: That's right.

2 MR. WILLIAMS: -- that that itself puts enough
3 question in the minds of the fairness of the jurors and
4 -- and there's no other way. I don't doubt that there's
5 any other way to handle this process than bringing them
6 out one at a time, but that in itself creates maybe an
7 issue for them.

8 THE COURT: All right.

9 Okay. We'll continue to deal with that as they come
10 in.

11 If you'll ask Number 24, Mr. Brewer, to come in
12 please.

13 (Whereupon, Juror Number 24 enters the courtroom.)

14 THE COURT: Is this Mr. Brewer?

15 JUROR NUMBER 24: Yes, sir.

16 THE COURT: Mr. Brewer, if you'll have a seat right
17 there, please, sir. I apologize for sending you back
18 out. We had some stuff that we were still discussing
19 about the prior individual.

20 Mr. Brewer, I remind you that you're still under
21 oath throughout this process as is everybody else that
22 I'm gonna be inquiring with.

23 Yesterday after court was dismissed, the bailiffs
24 were cleaning up the jury room, as is their practice
25 every day, and they were going through the notes that

1 were on the table in there that -- on your-all's notepads
2 that they have in there and they noticed some scribbling
3 on some of those, which is fine. As I say, the notepads
4 are given to you-all to scribble on, but they noticed
5 some writing on one of the -- one of the notes that gave
6 them some concern and they have shown it to me and I have
7 shown it to the lawyers and I'm trying to inquire further
8 who else has seen it and if it has any bearing on what
9 we're trying to decide.

10 I show you a part of the note on there, half of the
11 note, to see if you are familiar with this, if you have
12 seen it before and saw it in the jury room or at any other
13 time.

14 JUROR NUMBER 24: That doesn't stand out to me, sir.

15 THE COURT: Sir?

16 JUROR NUMBER 24: That does not stand out to me. I
17 don't recognize that.

18 THE COURT: You don't recall having seen this?

19 JUROR NUMBER 24: No, sir.

20 THE COURT: Okay. And nobody in your presence has
21 discussed anything about this note? It was there where
22 other jurors could have seen it had they been in proximity
23 to it, you know, so I want to be sure that perhaps if
24 somebody else saw it and was talking about it in your
25 presence, are you aware of that?

1 JUROR NUMBER 24: No, sir.

2 THE COURT: Okay. So whatever the note says, you
3 don't know what it says, and is it safe to say that it
4 would have no bearing in any event on your ability to
5 continue to serve fairly and impartially?

6 JUROR NUMBER 24: No, sir.

7 THE COURT: Okay.

8 All right. Thank you, Mr. Brewer. I'm gonna send
9 you down to a separate jury room while we talk with the
10 other jurors because I have to ask every one of them the
11 same questions I'm asking you, and -- and ask that you not
12 disclose the contents of this with anybody else because,
13 frankly, you don't know anything about it other than what
14 I've told you, all right?

15 Thank you.

16 (Whereupon, Juror Number 24 was excused from the
17 courtroom.)

18 THE COURT: Any concerns about Mr. Brewer from the
19 State?

20 MR. SMITH: No, Your Honor.

21 THE COURT: Okay. Defense?

22 MR. WILLIAMS: Your Honor, obviously we can't
23 quibble with what his remarks were. If it was open and
24 maybe he doesn't recall it now or whether he did see it
25 or didn't see it, he's obviously saying on this particular

1 occasion he doesn't recall seeing it, which is a problem
2 with memory, Your Honor.

3 THE COURT: I understand. All right, sir.

4 MR. SMITH: Your Honor, if I may briefly, I would
5 ask that -- Mr. Brewer did just indicate that he's not
6 familiar with the note. It indicates to me that even
7 if the note were face up, it appears not everyone in the
8 jury room has seen it and perhaps some of the jurors saw
9 it that were in proximity to whoever wrote this note, but
10 still we have no indication of any discussion about this.
11 He's indicated he can be fair and impartial and it's had
12 no impact on his thought process regarding this case.

13 THE COURT: I think that would be what he's told me.

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: I heard that. Thank you.

16 All right. Juror Number 160.

17 (Whereupon, Juror Number 160 enters the courtroom.)

18 THE COURT: Mr. Lowman, how are you?

19 JUROR NUMBER 160: Good. How are you, sir?

20 THE COURT: Mr. Lowman, I'll remind that you're
21 still under oath as you were placed under oath before
22 this process began.

23 JUROR NUMBER 160: Yes, sir.

24 THE COURT: And yesterday as the bailiffs were
25 cleaning out the jury room, they were rearranging the

1 notepads, which you-all have to take notes, and they
2 noticed some scribbling on some of those, and there's
3 no problem with that, that's why they're there, but one
4 of the scribblings caused them some of concern and they
5 have revealed the contents of to me and I have shared it
6 with the lawyers, and I need to know if any of you-all
7 on the jury have seen the note or if you wrote the note
8 and I just want to find out what impact, if any, the note
9 or its contents might have on the decisionmaking process
10 in this regard.

11 I show you just a portion of the note, not anything
12 -- there's nothing terribly harmful about this other than
13 apparently the writer doodles like we all do. Some of us
14 write neat, some of us not. You can see what it is.

15 JUROR NUMBER 160: Yes, sir.

16 THE COURT: Have you seen this note before?

17 JUROR NUMBER 160: No, sir, I have not.

18 THE COURT: Okay. It was present in the jury room
19 where others in the proximity of it could have seen it
20 had they looked at it. Of course, you're scattered in
21 there. And so I need to know did you hear anybody else
22 who may have seen it, although you did not, who may have
23 seen it, discussing anything on it, commenting anything
24 on it, making any comments about the contents of it in
25 any way whatsoever?

1 JUROR NUMBER 160: No, sir. It's very quiet in
2 there.

3 THE COURT: Okay. Is it?

4 JUROR NUMBER 160: Yeah.

5 THE COURT: Well, good.

6 All right. So I take it then that since you don't
7 know anything about the note, you have not heard anybody
8 else talking about the note, you don't know the contents
9 of it, am I putting words in your mouth if I say that
10 it would not have any impact on your ability to continue
11 to be fair and impartial in this case?

12 JUROR NUMBER 160: No, sir, you're not.

13 THE COURT: Would you give it any weight whatsoever
14 when you finally decide what to do in this case?

15 JUROR NUMBER 160: No, sir.

16 THE COURT: All right.

17 Thank you, Mr. Lowman. I appreciate your candor.

18 We're gonna send you down to another jury number
19 while I continue to talk with everybody else on this.
20 Please don't discuss our colloquy or what this is all
21 about with anybody else, okay?

22 JUROR NUMBER 160: Yes, sir.

23 THE COURT: Thank you, sir.

24 JUROR NUMBER 160: Thank you.

25 (Whereupon, Juror Number 160 was excused from the

1 courtroom.)

2 THE COURT: All right. His comments speak for
3 themselves. I don't need to belabor that or have them
4 repeated unless they cause some concern or heartburn
5 for some of you-all that you would like to raise any
6 additional issues about it. Otherwise, I'll proceed to
7 Ms. Burgess, Juror Number 29.

8 (Whereupon, Juror Number 29 enters the courtroom.)

9 THE COURT: Ms. Burgess, thank you for having a seat
10 right there.

11 Ms. Burgess, I remind you, as I'm reminding all
12 of the jurors as I talk to you individually, that you're
13 still under oath as you were administered on Monday
14 before you began your service.

15 Yesterday as the jurors were leaving, after they
16 left, the bailiffs in cleaning out the jury room were
17 going through the notepads that you-all have there to
18 scribble on or write on whatever you want to, and they
19 noticed some scribbling on several of them I would
20 imagine, and that's fine, there's nothing wrong with
21 that, but on one of the notes they saw some writing
22 that caused them some concern, and so they have shared
23 it with me and I've shared it with the lawyers. I'm
24 just trying to find out what impact, if any, that note
25 might reveal or have on -- on this process.

1 I show you just a part of the note right here to
2 see if you have seen this or -- or know anything about
3 this note in the jury room.

4 JUROR NUMBER 29: I saw a couple of the other
5 jurors scribbling, but I don't know whose it was.

6 THE COURT: Do you know which jurors were
7 scribbling?

8 JUROR NUMBER 29: I honestly don't know their
9 names. I could describe what they looked like, but I
10 don't know their names.

11 THE COURT: All right. How would you describe them?

12 JUROR NUMBER 29: One is a younger Hispanic male
13 and the other is a younger black male.

14 THE COURT: Okay. Did you see either of these or
15 anybody else discussing any of the scribblings that were
16 on the note?

17 JUROR NUMBER 29: No.

18 THE COURT: Okay. The notes themselves -- or the
19 note itself was visible to anybody else who was in the
20 immediate vicinity, they could have seen it, you know,
21 and so you told me that you have not seen the note. Am
22 I correct in that?

23 JUROR NUMBER 29: I didn't see the exact drawings
24 on it. I just saw the two I described scribbling.

25 THE COURT: And what do you recall seeing on the

1 note itself? Any words, any figures, anything like that?

2 JUROR NUMBER 29: No, sir. I didn't really pay
3 it too much attention. I just noticed that they were
4 scribbling.

5 THE COURT: Okay. Did you hear any discussion
6 among these two or anybody else, quite frankly, about
7 the note, the contents of the note or what it may have
8 contained?

9 JUROR NUMBER 29: No, sir.

10 THE COURT: Okay. Would that limited exposure
11 that you have had, as you have described it to me,
12 make it difficult for you to continue to be fair and
13 impartial as a juror in the trial of this case?

14 JUROR NUMBER 29: No, sir.

15 THE COURT: Would you take any of these things that
16 you saw in the jury room in connection with the note or
17 anything that I've discussed with you, would that have
18 any bearing on your decisionmaking in this process?

19 JUROR NUMBER 29: No, sir.

20 THE COURT: Okay. You can continue to be fair and
21 impartial?

22 JUROR NUMBER 29: Yes, sir.

23 THE COURT: Thank you, ma'am.

24 Ms. Burgess, I'm gonna send you down to the --
25 to another jury room while we're continuing in this

1 discussion and I'll ask that you not discuss with the
2 other jurors who are in that room now anything that you
3 and I have talked about, okay?

4 JUROR NUMBER 29: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 JUROR NUMBER 29: Yes, sir.

7 (Whereupon, Juror Number 29 was excused from the
8 courtroom.)

9 THE COURT: The young Hispanic male would be Juror
10 Number 226. We will inquire of him shortly. There are
11 two black males. We've already talked with one of them.
12 The other Juror Number 65, Mr. East, is 41 years of age.
13 Mr. Maddox, who has already been questioned, is 34.
14 We've already got the benefit of his information so that
15 I can inquire further. Obviously Ms. Burgess has no
16 information about this process that would be harmful in
17 my view, so we move onto next to Ms. Shelby Minges,
18 Juror Number 184.

19 (Whereupon, Juror Number 184 enters the courtroom.)

20 THE COURT: Ms. Minges, good morning.

21 JUROR NUMBER 184: Good morning.

22 THE COURT: I remind you that you're still under
23 oath as you were administered the oath Monday before we
24 started.

25 JUROR NUMBER 184: (Nods head.)

1 THE COURT: Yesterday the bailiffs in cleaning out
2 the jury room after you-all had left were going through
3 the notepads and the scribbling notes -- or scribbling
4 pads that you-all have in there and they saw some
5 information on one of them that caused them some concern
6 to share with us and I shared with the lawyers, and so
7 I'm trying to find out if that note is -- has any bearing
8 on the decisionmaking process that you-all will be engaged
9 in at the conclusion of the trial.

10 I show you a portion of the note right here just so
11 you can identify it and tell me if you have seen it or
12 know about it or if you wrote it or whatever.

13 JUROR NUMBER 184: No, sir, I have not seen that.

14 THE COURT: Have not seen it?

15 JUROR NUMBER 184: No.

16 THE COURT: All right. The note was there in view
17 of those folks who were write close to it. They could
18 have seen it, so that might -- or it could mean that
19 somebody else had seen it and perhaps was discussing it,
20 even though you did not see the note itself. Did you
21 hear anybody else discussing anything like this or the
22 note or the contents of it or was it just a nonissue as
23 far as you're concerned? How would you describe it?

24 JUROR NUMBER 184: To me, it seems like a nonissue.
25 There has been zero discussion of the case. There's been

1 mostly silence in the room.

2 THE COURT: Okay.

3 All right. So as far as this particular note,
4 you've got no information about it. Is that fair? I
5 don't want to put words in your mouth.

6 JUROR NUMBER 184: That's fair to say, Your Honor.
7 Yes.

8 THE COURT: Okay. And so my talking with you about
9 some innocuous note, you don't even know what it says,
10 I take it -- is that gonna have any bearing on your
11 continued ability to be fair and impartial in this trial?

12 JUROR NUMBER 184: No, sir.

13 THE COURT: All right. Ms. Minges, we're gonna send
14 you down to a separate jury room so that we can keep all
15 of you-all whom I've talked with separate from everybody
16 else involved until I've gone through this process with
17 all the jurors, so I ask that you not discuss this with
18 any of them, okay?

19 JUROR NUMBER 184: Okay. Sounds good.

20 THE COURT: Thank you, ma'am.

21 JUROR NUMBER 184: Go out this way?

22 THE COURT: Yes, ma'am.

23 (Whereupon, Juror Number 184 was excused from the
24 courtroom.)

25 THE COURT: Mr. Santoyo, Juror Number 226.

1 (Whereupon, Juror Number 226 enters the courtroom.)

2 THE COURT: Ms. Santoyo, have a seat right there,
3 please, sir.

4 I remind you that you're still under oath in the
5 oath that you were administered on Monday. The bailiffs
6 in cleaning out the jury room yesterday after everybody
7 had left for the day and in going through the notepads,
8 which you-all have been scribbling on them, you've been
9 scribbling on, everybody's been scribbling on, and that's
10 fine. That's what they're there for.

11 They found one of the notepads had some writing on
12 it that they thought that I needed to see and to share
13 with the lawyers, and so I have done that. The only
14 purpose I'm trying to decide is if the note itself is
15 going to have any impact on the outcome of this case,
16 anybody's gonna take it into account or if it indicates
17 any opinions about this case that we need to know about
18 at this juncture.

19 So I show you a portion of the note to see if,
20 first of all, did you write this note? You're familiar
21 with it?

22 JUROR NUMBER 226: Oh, yes, sir.

23 THE COURT: Did you write it?

24 JUROR NUMBER 226: Yes, sir.

25 THE COURT: Okay. And so did you discuss the

1 contents of this note with anybody else?

2 JUROR NUMBER 226: Oh, no. It was just for fun
3 drawing. I was just writing it.

4 THE COURT: Right. Now, of course, it has on it,
5 the back of it, an expression of guilty, which I take it
6 is part of what you wrote down?

7 JUROR NUMBER 226: Yes, sir.

8 THE COURT: Okay. And you -- as I said -- or as
9 you said, you did not discuss this with anybody else?

10 JUROR NUMBER 226: No, sir.

11 THE COURT: And it's your opinion, which you're
12 entitled to your opinion without a doubt. There's
13 nothing that I can comment about that. I'm glad that
14 jurors have to make up their minds about these things
15 and not me. The only inquiry which I need to be engaged
16 in in that regard is whether you have shared that opinion
17 with anybody else on the jury?

18 JUROR NUMBER 226: No, sir.

19 THE COURT: All right. And you have not discussed
20 the contents of this with anybody else in the jury room?

21 JUROR NUMBER 226: No, sir.

22 THE COURT: Okay.

23 All right. Mr. Santoyo, I appreciate your candor
24 in this regard, and I thank you for that. As I
25 indicated at the beginning of the trial yesterday, as a

1 matter of fact, I said that we ask the jurors to keep
2 an open mind throughout the entire process and I'm --
3 I don't fault you for writing this down and you have
4 committed no wrong in doing that. It's the sort of thing,
5 however, that we need to know and we need to take it into
6 account in what we do, and so since it does indicate an
7 opinion before the conclusion of the trial, I'm going to
8 excuse you from any further involvement in the trial of
9 this case. Do you understand that?

10 JUROR NUMBER 226: Yes, sir.

11 THE COURT: I tell you once again that that is not
12 to indicate any wrongdoing on your part since you didn't
13 discuss it with anybody else. It is your opinion and
14 you have a right to that. You've not discussed it with
15 anybody else as I've asked you not to do. So based on
16 that, I'm confident that this is not going to impact the
17 outcome of the trial of this case, but because it does
18 involve your thought process before the trial is over,
19 I'm going to excuse you from any further involvement,
20 okay?

21 JUROR NUMBER 226: Yes, sir.

22 THE COURT: I'm gonna ask you to not share your
23 opinion in this regard with anybody else who's on the
24 jury.

25 Do you have any personal effects in the jury room?

1 JUROR NUMBER 226: No, sir. Just my phone outside.

2 THE COURT: Okay. They can give that to you.

3 JUROR NUMBER 226: Yes, sir.

4 THE COURT: Mr. Santoyo, I'm sorry. I wish we
5 could have had your continued service in this regard.
6 Maybe you'll get to serve again at some other time, but
7 I'm gonna have to excuse you for reasons I hope you
8 understand.

9 JUROR NUMBER 226: Yes, sir.

10 THE COURT: I'm sorry. Thank you.

11 Okay. You're free to go.

12 (Whereupon, Juror Number 226 was excused from the
13 courtroom.)

14 THE COURT: Okay. That limits my inquiry. From
15 now I'll be able to identify the author of the note for
16 everybody else that I talk about -- that I talk to I
17 should say and maybe give a little more specificity to
18 at least the origin of the note so that those folks can
19 take that into account.

20 Now any further comments or remarks concerning
21 Mr. Santoyo from the State?

22 MR. SMITH: No, Your Honor. We think his excusal
23 was proper --

24 THE COURT: All right.

25 MR. SMITH: -- out of an abundance of caution and

1 we do believe that he was forthcoming and candid in his
2 answers.

3 THE COURT: Okay.

4 All right. Mr. Williams?

5 MR. WILLIAMS: Obviously, Your Honor, as I
6 understand it, you're still gonna inquire of all the
7 other jurors as to what communication they had with
8 him being the juror that admitted to that note. And I
9 note that one of the jurors has already mentioned that
10 there were at least two notes -- that she saw two people
11 writing notes, so obviously I'm still concerned about
12 what's on the other note and I'm further concerned about
13 how we don't have that other note because that indicates
14 that somebody either didn't want somebody else to see
15 the other note or it just, I don't know, disappeared.
16 I don't know how to draw a conclusion from that.

17 THE COURT: All right. Well, when we have concluded
18 our voir dire of the individual jurors, I will put the
19 bailiffs under oath and ask them if they have any other
20 notes that they have not shared with us, okay?

21 All right. We move now to Juror Number 186,
22 Ms. Moore.

23 (Whereupon, Juror Number 186 enters the courtroom.)

24 THE COURT: Ms. Moore, good morning.

25 JUROR NUMBER 186: Hello.

1 THE COURT: All right. I noted your background.
2 You worked for the education department. Were you a
3 teacher?

4 JUROR NUMBER 186: I was.

5 THE COURT: What did you teach?

6 JUROR NUMBER 186: Elementary.

7 THE COURT: Elementary. Well, bless you. I was
8 a teacher. I taught high school English for five years
9 and I -- and I loved teaching.

10 JUROR NUMBER 186: I did it thirty-three.

11 THE COURT: Goodness. Well, five years, I don't
12 even register on your radar.

13 Ms. Moore, yesterday as the bailiffs were cleaning
14 up the jury room they -- of course, there's notepads that
15 you-all have in there that you've been scribbling on,
16 and on one of the notepads there were some notes that
17 were written that they were concerned about and they've
18 shared it with me and I've shared it with the lawyers,
19 and we've term determined that the scribbling, such as
20 it was, was done by Mr. Santoyo. He said he wrote it.
21 It's nothing to be ashamed of in that regard. No wrong
22 has been done, but there were some comments upon that
23 that could have -- it could possibly impact the
24 impartiality of everybody who's involved.

25 So the first thing I need to ask you, have you

1 seen this? Mr. Santoyo was writing it. I don't know
2 whether you were sitting close to him in the jury room.

3 JUROR NUMBER 186: I was not and I did not see it.

4 THE COURT: Okay.

5 JUROR NUMBER 186: No.

6 THE COURT: Okay. Some of the other jurors did see
7 the note. I'm not sure that they knew what it said, but
8 they did see the note, which means that there could have
9 been some discussions away from where you were involving
10 the content of the note itself. Could you tell me if
11 you heard anybody else discussing any -- this note or
12 any other note or any other aspects of the trial of the
13 case, including any opinions that anyone might have about
14 the outcome of the case?

15 JUROR NUMBER 186: No, I heard nothing, nothing
16 inappropriate, and I heard nothing about a note.

17 THE COURT: Okay. Thank you, ma'am. And I
18 appreciate that and I'm happy it has not gone beyond
19 where it started and so you've given me the information
20 that I need.

21 I'm gonna send you downstairs to another jury room
22 where all the other people that we've been taking out of
23 your jury room and they haven't been coming back in and
24 so now you folks who were still in that jury room who
25 were going well, I wonder what happened to those other

1 folks, they take them out of here and we never see them
2 again, well, you'll find out right now it's downstairs.
3 We're just keeping you-all apart while we're going through
4 this process. And please don't discuss any of this stuff.
5 It's a nonissue and so there's no need to try to make
6 something out of it or wonder about it. You've told me
7 all I needed to know.

8 JUROR NUMBER 186: Okay.

9 THE COURT: Thank you, ma'am.

10 (Whereupon, Juror Number 186 was excused from the
11 courtroom.)

12 THE COURT: All right. Once again, Ms. Moore's
13 comments speak for themselves.

14 THE COURT: Juror Number 209, Mr. Proffitt -- or
15 Ms. Proffitt.

16 (Whereupon, Juror Number 209 enters the courtroom.)

17 THE COURT: Good morning, Ms. Proffitt.

18 JUROR NUMBER 209: Good morning.

19 THE COURT: Ms. Proffitt, I remind you that you're
20 still under oath as you were administered the oath on
21 Monday before we began this process.

22 Let me get right to what we're here about.
23 Yesterday as the bailiffs were cleaning out the jury
24 room after you-all left for the day, they were going
25 through the notepads, the scribbling pads that you-all

1 have in there to write on, and one of the notepads had
2 some scribbling on it that caused them a measure of
3 concern, and so they shared it with me and I've shared
4 it with the lawyers, and we're just trying to find out
5 if there's anything about this that causes any concern
6 to the process.

7 The note, the scribbling, was written by Mr. Santoyo,
8 who's a young Hispanic male who is on the jury, and he
9 said yeah, he wrote it, and there's nothing wrong with
10 that, there's no wrongdoing in that, but it just expressed
11 some opinions that we need to make sure have not otherwise
12 tainted the jury.

13 So I show you the note or at least a portion of the
14 note right now that he has written to see if you know
15 anything about it, if you've ever seen it or heard
16 anything about this note?

17 JUROR NUMBER 209: (Shakes head.) No.

18 THE COURT: It doesn't mean anything to you?

19 JUROR NUMBER 209: No, sir.

20 THE COURT: All right. Some other folks on the
21 jury who may have been sitting close to Mr. Santoyo have
22 seen this and so I need to know if you heard anybody else
23 talking about this note or making any comments about the
24 trial itself or any opinions about the trial that may
25 have been expressed in this note itself.

1 JUROR NUMBER 209: No, sir.

2 THE COURT: So is it fair for me to say that as far
3 as you're concerned the note is a nonissue?

4 JUROR NUMBER 209: Yes, sir.

5 THE COURT: Would it have any impact on your ability
6 to be fair and impartial as a juror in this trial?

7 JUROR NUMBER 209: No, sir.

8 THE COURT: Okay. Thank you, ma'am.

9 So you didn't see it and you don't know anything
10 about it, haven't heard about it?

11 JUROR NUMBER 209: No, sir.

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

13 Ms. Proffitt, I'm gonna send you down to another
14 jury room. I just told Ms. Moore a moment ago that some
15 of you may be concerned about the fact that we're calling
16 people out of your jury room and you don't see them
17 anymore and you might be wondering what happened to them.
18 Well, we send you to another jury room so that we can
19 keep you-all separate while we're trying to discuss this
20 with everybody.

21 Please don't talk about this issue. You don't
22 know anything about. There's no good that can come out
23 of a conversation when nobody knows anything about the
24 conversation, okay?

25 JUROR NUMBER 209: Right.

1 THE COURT: Thank you, Ms. Proffitt.

2 JUROR NUMBER 209: Yes, sir.

3 THE COURT: Thank you. You're free to go.

4 (Whereupon, Juror Number 209 was excused from the
5 courtroom.)

6 THE COURT: Juror Number 53. Mr. Davis.

7 (Whereupon, Juror Number 53 enters the courtroom.)

8 THE COURT: Mr. Davis, have a seat here, please,
9 sir.

10 Good morning.

11 JUROR NUMBER 53: Good morning, Your Honor.

12 THE COURT: Mr. Davis, I remind you and the other
13 jurors that the oath that you took on Monday before we
14 started still applies to any questions and answers we
15 share in this process.

16 And let me get right to the heart of the matter.
17 Yesterday the bailiffs, in cleaning out the jury room
18 after you-all left for the day, in going through the
19 scribbling notepads that you have to scribble on,
20 which is fine, that's what they're there for, saw some
21 scribbling on one of the notepads that caused some
22 concern, and so we've been inquiring with everybody
23 else now and have got to your name on the list to
24 determine if you know anything about the note or if it
25 has any impact on your continued ability to be fair and

1 impartial.

2 The note was written by Mr. Santoyo. He -- he said
3 that he wrote it --

4 JUROR NUMBER 53: Yes, sir.

5 THE COURT: -- and he acknowledged it, and there's
6 no wrongdoing in connection to that. He hasn't committed
7 any wrong or any violation in writing his notes with his
8 thoughts on it.

9 My concern, first of all, I wanted to know if you
10 had seen the note or if you had heard Mr. Santoyo talking
11 about the note or its comments.

12 First of all, have you seen the note or do you have
13 any knowledge about the note? And here's -- here's a
14 part of it.

15 JUROR NUMBER 53: Yes, Your Honor. I was sitting
16 next to the gentleman and I saw him doodling and then I
17 did notice that he had written some words on there as
18 well.

19 Your second part of the question I think, Your
20 Honor, was that does it have any impact on me as --

21 THE COURT: Yeah, let me inquire, first of all, a
22 little bit deeper into the first part and then we'll get
23 to the second part.

24 JUROR NUMBER 53: Yes, sir.

25 THE COURT: You saw -- and whether you paid any

1 attention to it or not, I'm not sure, but it did express
2 his opinion as to the outcome of this case. Did you see
3 what his opinion was in that regard?

4 JUROR NUMBER 53: I did.

5 THE COURT: Okay. And did he discuss that with you
6 or with anybody else?

7 JUROR NUMBER 53: No, sir.

8 THE COURT: Okay. Did his opinion in any way impact
9 your ability to be fair and impartial as a juror in the
10 trial of this case?

11 JUROR NUMBER 53: Not at all.

12 THE COURT: Okay. Could you continue to be
13 open-minded about this without regard to an opinion that
14 you saw that he had expressed, open-minded about this,
15 and continue to decide this case based on the evidence
16 that you would hear in this courtroom without regard to
17 a scribbled opinion of a fellow juror?

18 JUROR NUMBER 53: Without a doubt. Yes, Your Honor.

19 THE COURT: And you'll continue to do that?

20 JUROR NUMBER 53: I will.

21 THE COURT: All right. Thank you.

22 Have you discussed the note or his opinion with
23 anybody else or did you hear Mr. Santoyo discuss the
24 note or his opinion with anyone else?

25 JUROR NUMBER 53: I did not.

1 THE COURT: All right. Was anybody else that you
2 might know of close enough to you and to Mr. Santoyo to
3 see the same note that you saw?

4 JUROR NUMBER 53: I cannot -- it doesn't appear
5 that that was the case. I don't think anybody else paid
6 attention to it. I just happened to be standing very
7 close to where I could see the scribbling.

8 THE COURT: One of the other jurors said that he
9 had seen it, but that it was not -- I'm not sure that he
10 read it or that it had any impact on him, and that's the
11 only concern that we have, of course.

12 JUROR NUMBER 53: Sure.

13 THE COURT: As I say, there's no wrongdoing in this
14 as long as he didn't openly share it and start talking
15 about the case among the jurors, which would be wrong,
16 but since he has not done that and since this appears to
17 be his own opinion that he has expressed to himself and
18 not to anybody else, there's nothing that -- any wrong
19 that he has committed in that regard. We have, of course,
20 excused him from any further involvement in the trial of
21 this case. That will be obvious when you come back into
22 the jury room if he's not here, but you've answered my
23 question.

24 The second part, that what he has expressed would
25 have no bearing on your ability to continue to be fair

1 and impartial about this and you're not going to be
2 swayed by what you read on it; is that fair to say?

3 JUROR NUMBER 53: Yes, sir.

4 THE COURT: All right. We're gonna send you
5 downstairs to another jury room where all of the other
6 folks who've been coming in here have been sent. They
7 haven't been coming back into that jury room and I can
8 tell you we have not sent them off somewhere into some
9 nether land. They're just downstairs in another jury
10 room.

11 Please don't discuss these comments with anybody
12 else and since you know more about this note than most
13 of the other folks do, don't share that with anybody,
14 okay?

15 JUROR NUMBER 53: Yes, sir. I understand.

16 THE COURT: Thank you, Mr. Davis.

17 JUROR NUMBER 53: Thank you.

18 (Whereupon, Juror Number 53 was excused from the
19 courtroom.)

20 THE COURT: All right. What says the State now in
21 regard to Mr. Davis?

22 MR. SMITH: We have no concerns of Mr. Davis, Your
23 Honor. He has indicated that he saw the note and
24 that he did see what was written on it; however, he's
25 indicated there's been no discussion between himself

1 and Mr. Santoyo, there's been no discussion amongst the
2 jury as a whole. He indicates that -- under oath he's
3 able to remain fair and impartial. We have no concerns.

4 THE COURT: All right.

5 And what says the defense?

6 MR. WILLIAMS: Your Honor, I have a somewhat
7 different attitude. I think -- I think seeing the note,
8 knowing what the words are on the sheet, constitutes
9 a discussion. I don't know that one has to have a
10 discussion verbally. I think one can have a discussion
11 written. Whether it -- so in true terms of discussion
12 prior to -- prior to it being rendered to the jury there
13 was some discussion which was carried out within the
14 jury room prior to the close of all the testimony by his
15 reading or seeing the opinion of another juror and it
16 may -- and it may affect how he views things in the past
17 and/or in the future.

18 THE COURT: All right. The case is Church of
19 Holy Cross versus Terminix Exterminating Company. The
20 Supreme Court in that case held that the question is
21 whether the misconduct of a juror taints the process
22 itself or renders it unfair and deprives both sides of
23 a fair and impartial juror.

24 Holy Cross is a case that we discussed in chambers.
25 It was a post-verdict case. The misconduct was revealed

1 after -- after the trial was over when there was no
2 opportunity to correct by removing anybody or by curative
3 instructions or anything else of that sort, but the
4 holding was in that case does the admitted misconduct of
5 a juror who had taken part in the deliberations, and the
6 misconduct of the juror and the bias of the juror was on
7 the prevailing side in that particular case, which meant
8 that in that particular case the -- the church, the losing
9 party, didn't have twelve impartial jurors, it had eleven
10 impartial jurors.

11 In this particular case, knowing of the conduct,
12 and at this point in time I don't necessarily call it
13 misconduct because it is his opinion, which he has not
14 shared with anybody else and he's entitled to his opinion
15 in spite of the fact that they're asked not to reach
16 their opinion until they've heard everything, we're not
17 delusional about how closely those instructions are
18 followed, but in any event his -- his opinion that he
19 held if we -- if we consider that to be misconduct has
20 up until this point not revealed that it has any impact
21 on the decisionmaking process.

22 Mr. Santoyo's a 23-year-old young man. I'm not
23 sure what he does for a living. The jury information
24 doesn't reflect that. Mr. Davis, who I selected as the
25 foreperson of the jury because of demeanor, his attitude

1 and his approach to the jury service, is 58 years old.
2 He's retired from service of some nature. The likelihood
3 that this 58-year-old person retired from a lifetime of,
4 I take it, meaningful service is going to be swayed by
5 the scribbled opinion of a 23-year-old that is not going
6 to be involved in the discussions of this case from this
7 point on, I find they're so remote as not to require that
8 he be excused.

9 I note the exception in that regard. I'll overrule
10 that and allow Mr. Davis to continue to serve as a juror
11 in this case.

12 All right. Let's move on now to Ms. Susan Queen,
13 Juror Number 211.

14 (Whereupon, Juror Number 211 enters the courtroom.)

15 THE COURT: Ms. Queen.

16 JUROR NUMBER 211: Yes.

17 THE COURT: Have a seat on the witness stand.

18 JUROR NUMBER 211: On the witness stand?

19 THE COURT: There you go. Thank you. That's just
20 so you're close and I won't have to shout at you and you
21 won't have to shout at me.

22 Ms. Queen, let me cut right to the matter at hand.
23 The bailiffs yesterday in cleaning up the jury room and
24 going through the notepads, the scribbling pads, that
25 you-all have back there to write whatever you want to

1 write on it, saw some scribbling on one of the notes
2 that caused them some measure of concern or at least
3 that they thought that we needed to inquire about a
4 little bit further, and so that's what I've been doing
5 with the other jurors, and now, including you.

6 The notepad that caused the concern was
7 Mr. Santoyo's, a young Hispanic male, who's on the
8 jury, and he's the one who wrote it and he said he wrote
9 it. And he didn't do anything wrong in that regard.
10 There's no misconduct in that regard. He has a right to
11 express his opinion and to scribble on the notes like
12 everybody else does as long as he doesn't share any
13 opinions with anybody else because we've asked you not
14 to do that, of course, during the course of the trial.

15 So the first thing I need to know is knowing that
16 Mr. Santoyo is the one who wrote the note, I show it to
17 you to see if you remember seeing it.

18 JUROR NUMBER 211: He was doodling. I just --
19 now we were at opposite tables -- opposite sides of the
20 table. I just noticed him doodling.

21 THE COURT: I see. So he was across from you?

22 JUROR NUMBER 211: Right.

23 THE COURT: Okay. So do you have any idea what it
24 says?

25 JUROR NUMBER 211: No.

1 THE COURT: Okay. Did you hear him discussing the
2 contents of the note with anybody else?

3 JUROR NUMBER 211: No.

4 THE COURT: And -- and you yourself didn't discuss
5 it, I take it, because you didn't know anything what
6 about it says?

7 JUROR NUMBER 211: No, sir.

8 THE COURT: All right. What we're trying to figure
9 out -- as I said, as long as he doesn't share his opinion
10 about this with anybody else, then there's no wrongdoing
11 and the process has not been impeded by whatever he was
12 doing on the notepad itself.

13 So just to reaffirm, and I remind you you're still
14 under oath, I tell everybody that, I don't mean to be
15 condescending when I remind everybody of that, but you
16 don't recall him discussing this with anybody else or
17 anybody else who may have seen this note while sitting
18 by him over there --

19 JUROR NUMBER 211: No, sir.

20 THE COURT: -- or discussing it with him?

21 JUROR NUMBER 211: No, sir.

22 THE COURT: All right. Thank you, ma'am.

23 Would all of this discussion that we've had or
24 whatever you saw in the jury room have any impact on
25 your ability to continue to be fair and impartial?

1 JUROR NUMBER 211: No, not at all.

2 THE COURT: Thank you, ma'am.

3 I'm gonna send you downstairs to the other jury
4 room where we've been sending everybody else since we've
5 been bringing them out and you'll join the rest of that
6 crowd so that you'll know that they're fine, we haven't
7 done anything with them and they're gathering there, and
8 we'll get you back shortly to continue the trial of this
9 case.

10 Please don't discuss these discussions with anyone,
11 okay?

12 JUROR NUMBER 211: Thank you, sir.

13 THE COURT: Thank you, ma'am.

14 (Whereupon, Juror Number 211 was excused from the
15 courtroom.)

16 THE COURT: All right. She says she saw it across
17 the table, so I'll be glad to hear any comments regarding
18 Ms. Queen's limited involvement in this from the State
19 or the defendant.

20 The State first.

21 MR. SMITH: She has no idea what was written on the
22 paper, Your Honor. We have no concerns.

23 THE COURT: Okay.

24 All right. Mr. Williams?

25 MR. WILLIAMS: Your Honor, obviously what I'm

1 doing is keeping a list of all the jurors who admit that
2 they have seen the note, but independent of that one
3 particular person I'm not sure as a single person that
4 I can say much about whether or not she did or didn't
5 because she said that she didn't see the note, so I
6 can't say much about her one way or the other.

7 THE COURT: All right. Thank you.

8 Juror Number 65, Mr. Marcus East.

9 (Whereupon, Juror Number 65 enters the courtroom.)

10 THE COURT: Mr. East?

11 JUROR NUMBER 65: Yes.

12 THE COURT: Good morning.

13 JUROR NUMBER 65: Good morning.

14 THE COURT: Mr. East, I remind you that you're
15 still under oath, the same oath that you took before we
16 started the trial or before you started your service.
17 I try to tell everybody that before I inquire further.

18 Let me just tell you what we're here about. The
19 bailiffs yesterday in cleaning out the jury room after
20 everybody left, going through the notepads that you-all
21 have in there to take notes, noticed some scribbling on
22 one of the notes that caused them some concern and so
23 they shared it with us, I've shared it with the lawyers,
24 and that's what we've been asking all the other folks
25 about.

1 The scribbling was on the pad that Mr. Santoyo was
2 taking. It was on his notepad. I show you a part of it
3 right now. As you can see, it's rather innocuous, just
4 his scribbles, and that's what the notepad was for.

5 I tell you that he has not committed any misconduct
6 by doing what he was doing in this regard, but depending
7 upon how much of this he shared with anybody else, it
8 could create some issues, and that's what we're trying
9 to find out now.

10 So the first thing I need to know is have you seen
11 this note before knowing that Mr. Santoyo was the one
12 who wrote it and acknowledged that he wrote it? And I
13 don't know whether you were sitting close to him in the
14 jury room or not. Do you know anything about it?

15 JUROR NUMBER 65: No, sir.

16 THE COURT: Haven't seen it?

17 JUROR NUMBER 65: No, sir.

18 THE COURT: Okay. Some others who were in the jury
19 room saw the note. They didn't know anything else about
20 it other than they saw at that, so that could lead to
21 the conclusion that maybe somebody else who saw it may
22 have been discussing it among themselves.

23 So did you hear anybody else talking about this note
24 with anybody?

25 JUROR NUMBER 65: No, because I don't even know who

1 that person is.

2 THE COURT: Mr. Santoyo? I'll tell you that he's
3 a young Hispanic male who was -- I can't remember where
4 he was sitting. Anyway, but if you don't -- it doesn't
5 matter really if you didn't see him or anybody else
6 writing the note or know anything about the note, and
7 that's what you're telling me, right?

8 JUROR NUMBER 65: Right, sir.

9 THE COURT: Okay. So can I gather from that -- or
10 you can tell me. With what little bit you know about
11 the note and our discussions here today in this limited
12 context, would that have any impact on your ability to
13 continue to be fair and impartial as a juror in this
14 trial?

15 JUROR NUMBER 65: No, sir, it don't.

16 THE COURT: Could you set aside all that stuff and
17 decide this case based on what you would hear in this
18 courtroom from that witness stand right there, in other
19 words, and not pay any attention to any discussion about
20 a note that somebody might have found?

21 JUROR NUMBER 65: Yes, sir.

22 THE COURT: And you will do that?

23 JUROR NUMBER 65: Yes, sir.

24 THE COURT: Thank you so much, Mr. East. They're
25 gonna take you down to another jury room where everybody

1 else has been gathering. Don't talk about this with any
2 of the others. It's a nonissue and so there's no point
3 in trying to conjecture on that.

4 JUROR NUMBER 65: Yes, sir.

5 THE COURT: Thank you, Mr. East.

6 JUROR NUMBER 65: Thank you.

7 (Whereupon, Juror Number 65 was excused from the
8 courtroom.)

9 THE COURT: Juror Number 254, Mr. Stott. S-T-O-T-T.

10 (Whereupon, Juror Number 254 enters the courtroom.)

11 THE COURT: Mr. Stott, good morning.

12 JUROR NUMBER 254: Good morning.

13 THE COURT: Let me remind you as I've been reminding
14 all the others that you're still under oath. The oath
15 that you took when you started service on Monday still
16 applies.

17 What we're here about is that yesterday the bailiffs
18 in cleaning out the jury room and going through the
19 notepads that were left in there, the scribbling notepads,
20 discovered some scribbling on one of those notepads that
21 caused them some concern that they thought that we needed
22 to know about just to inquire further to see if it has
23 any impact on the impartiality and the fairness of the
24 trial.

25 I'll tell you that the scribbling on the notepad,

1 it was done by Mr. Reyes Bryan Santoyo. It was his
2 notepad and he acknowledged that he wrote it, and
3 there's nothing wrong, there's no misconduct in that,
4 except there's some opinions expressed on that that
5 if he shared them with anybody else, then that would
6 be a problem up until now. That's what we're inquiring
7 about.

8 I'll show you a portion of the notepad itself right
9 here so that you can, first of all, say -- tell me if
10 you know anything about this, if you have seen this note.

11 JUROR NUMBER 254: No.

12 THE COURT: Okay. Some others in the jury room have
13 seen this, although whether they -- what they know about
14 it, what they read about it is limited, but that could
15 have led to some discussions among other people, not you,
16 but you could have been perhaps hearing somebody else
17 talk about it even though you have no independent
18 knowledge of it.

19 So even though you haven't seen it and don't know
20 what it says, did you hear anybody else talking about
21 this note, the notepad, or any opinions that might be
22 expressed?

23 JUROR NUMBER 254: No.

24 THE COURT: Okay. So from that I gather, that
25 whatever's on the note, whatever opinion is expressed

1 on it, is not gonna have any bearing on your ability to
2 be fair and impartial; is that fair to say?

3 JUROR NUMBER 254: That is fair to say.

4 THE COURT: All right. So you'll -- can you set
5 aside all of these discussions and this questioning about
6 all of this and decide this case based on what you would
7 hear in court without regard to this note issue?

8 JUROR NUMBER 254: Yes, I could.

9 THE COURT: And would you do that, please, sir?

10 JUROR NUMBER 254: Yes, sir.

11 THE COURT: Thank you, Mr. Stott.

12 I'm gonna send you now to the other jury room and
13 get you all back in here shortly to start the morning,
14 okay?

15 JUROR NUMBER 254: Thank you.

16 THE COURT: Thank you.

17 (Whereupon, Juror Number 254 was excused from the
18 courtroom.)

19 THE COURT: Juror Number 137, Mr. Jones.

20 (Whereupon, Juror Number 137 enters the courtroom.)

21 THE COURT: Mr. Jones, if you'll have a seat right
22 there, please, sir.

23 Mr. Jones, I remind you and everybody else that
24 you're still under oath from the oath that you took
25 before you started as a juror.

1 Let me cut right to the chase. The bailiffs
2 yesterday in cleaning out the jury room found some
3 scribblings on some of the notepads that you-all have
4 been given to scribble on, that's what they're there
5 for, and there's some comments on one of these notes
6 that caused them some concern, they shared it with us,
7 I've shared it with the lawyers, and that's what we've
8 been talking with everybody else about for purposes of
9 trying to find out if the scribblings have any impact
10 on anybody's impartiality and fairness as jurors in the
11 trial of this case.

12 The scribbling was done by Mr. Santoyo, the young
13 Hispanic male, who had his notepad and he scribbled, and
14 he said this is what he did, he did it himself. There's
15 no misconduct in connection with that. He expressed
16 some any opinions on this, but as long as he didn't
17 share those opinions with anybody, he's entitled to those
18 opinions. He shouldn't share them with anybody else and
19 we understand that he says he didn't share them with
20 anybody else, so I'm trying to find out if anybody else
21 saw this and know what is on it and if they would be
22 impacted by the contents of this note.

23 So I show you, first of all, a portion of the note
24 itself so that you can look at it, and I'll tell you
25 Mr. Santoyo is the one who wrote. He said he wrote it.

1 I need to know if you have seen this yourself and if
2 you have any idea of what it contains and what's on it.

3 JUROR NUMBER 137: No. No, sir. I didn't see it.

4 THE COURT: Okay. You haven't seen it.

5 Some other folks in the jury room saw it because
6 they were sitting close enough to him to see it, so
7 it's possible that somebody else could have seen it and
8 talked about it. I need to know if you had heard anybody
9 else talking about the contents of this note here in my
10 hands?

11 JUROR NUMBER 137: No.

12 THE COURT: Got any idea what it's all about?

13 JUROR NUMBER 137: No, sir.

14 THE COURT: That's good. So I take it that
15 whatever's on this note is not gonna affect your ability
16 to be fair and impartial as a juror in this trial?

17 JUROR NUMBER 137: No, sir.

18 THE COURT: You can continue to decide this case
19 based on what you would hear in the court without regard
20 to whatever this note might contain?

21 JUROR NUMBER 137: Yes, sir.

22 THE COURT: And you'll do that, please, Mr. Jones?

23 JUROR NUMBER 137: Yes, sir.

24 THE COURT: Thank you, sir.

25 I'm gonna send you down to the other jury room

1 where everybody else has been gathering and we'll get
2 you back in here shortly to start the trial of this case,
3 okay?

4 JUROR NUMBER 137: Thank you.

5 THE COURT: Don't share these discussions with
6 anybody else, please, sir. Thank you.

7 (Whereupon, Juror Number 137 was excused from the
8 courtroom.)

9 THE COURT: Juror Number 20, Mr. Billingsly.

10 (Whereupon, Juror Number 20 enters the courtroom.)

11 THE COURT: Mr. Billingsly, have a seat right there,
12 please, sir. I remind you that you're still under oath.

13 JUROR NUMBER 20: Yes, sir.

14 THE COURT: I guess you were wondering. You're the
15 last one left in there, right?

16 JUROR NUMBER 20: The sole survivor.

17 THE COURT: Well, let me tell you that the rest
18 of them are alive and well, so you'll join them shortly.

19 Here's what we've been doing, Mr. Billingsly.
20 The bailiffs yesterday in cleaning out the jury room
21 after you-all had left and going through the scribbling
22 notepads that you have in there discovered some
23 scribblings on one of those notepads that caused them
24 some concern. They shared it with us, I shared it with
25 the lawyers, and we're trying to discover whether or not

1 that has any impact on the decisionmaking process of
2 the jurors in the trial of this case, and so I've been
3 inquiring of each of you to see whether you have any
4 knowledge about the note and whether it has any impact,
5 if you have knowledge about it, that would impact your
6 decisionmaking process.

7 I tell you that the note itself that's in question
8 was Mr. Santoyo's note. The young Hispanic male, 23.
9 He was the one who did it and he said yeah, it was his
10 note, he did it, and there's nothing wrong with that.
11 There's no misconduct. He's not in trouble as a result
12 of that. It expresses his opinions, however, and if
13 he shared his opinions with somebody, that could be an
14 issue, but he didn't share those with anybody according
15 to what he's told us and we just need to make sure that
16 if anybody else saw the note or saw what was written on
17 it that we need to know if that would have any bearing
18 on their ability to serve fairly and impartially.

19 So, first of all, I'll show you the note itself.
20 Or at least a part of the note.

21 JUROR NUMBER 20: I saw the other side yesterday.

22 THE COURT: You saw it? You saw it when he writing
23 it?

24 JUROR NUMBER 20: When he was scribbling, yes.

25 THE COURT: Yeah, that's right. Did you see what

1 his opinion was?

2 JUROR NUMBER 20: I saw what he wrote and it has
3 no bearing or any opinion on me -- or from me at all.

4 THE COURT: Okay.

5 All right. And we skipped to the second part of
6 the question, and that is knowing that this note
7 expresses his opinion based on what little bit he knew
8 about the case I guess at the time he wrote it, would
9 his opinion have any bearing on your opinion about the
10 outcome of this case?

11 JUROR NUMBER 20: No.

12 THE COURT: Would you be able to set aside,
13 disregard, what you know about his opinion being
14 scribbled on this notepad --

15 JUROR NUMBER 20: Yes.

16 THE COURT: -- and decide this case based on what
17 you would hear in the courtroom and in making up your
18 own mind about it without regard to anything that he may
19 have said about it?

20 JUROR NUMBER 20: Yes.

21 THE COURT: Would you be able to set aside then his
22 note and decide this case based on your understanding of
23 the evidence and the law?

24 JUROR NUMBER 20: Yes, sir.

25 THE COURT: And would you do that, please, sir?

1 JUROR NUMBER 20: Yes, sir.

2 THE COURT: Thank you, sir.

3 And I may have asked this question already, but
4 did you hear anybody else discussing this note among
5 themselves?

6 JUROR NUMBER 20: No.

7 THE COURT: Okay.

8 All right. We're gonna send you down and let you
9 gather with the balance of the jury at this time so you
10 will know they've not been mistreated. They have been
11 well taken care of. I'll ask you not to discuss this
12 with anybody, of course, while you're -- until the trial
13 is over, okay?

14 Thank you, sir.

15 JUROR NUMBER 20: Thank you.

16 (Whereupon, Juror Number 20 was excused from the
17 courtroom.)

18 THE COURT: He saw it. Before I could even ask him
19 the question, he had told me that it would not have any
20 bearing on his ability to be fair and impartial and make
21 a decision in this regard. He is -- he is one of two
22 alternates. Either Mr. Jones, Juror Number 137, or
23 Mr. Billingsly, Number 20, is now going to become a
24 principal alternate -- a principal juror I should say.

25 Mr. Billingsly, according to this he's a court

1 reporter, self-employed -- or his wife is. Anyway, he's
2 59 years old. I share that with you. You already know
3 because, of course, you-all have got this information.

4 Now while we're talking about Mr. Billingsly since
5 he is an alternate, I'll just go ahead and -- and discuss
6 the process. There is a different method of replacing a
7 principal juror in the Common Pleas Court and the Court
8 of General Sessions. Replacing a juror in the Common
9 Pleas Court is governed by rule and it says that the
10 first alternate selected will be the first alternate who
11 takes the place. In the Court of General Sessions, the
12 selection of a replacement juror to a principal juror who
13 has been dismissed is done by statute and it's done by
14 casting of lots or drawing of names, and so what we would
15 do in this particular case is put these two numbers in a
16 hat and draw -- and draw them out. Unless you-all agree.
17 Unless you-all agree, given the circumstances, that in
18 this particular case you choose to follow the Common
19 Pleas method, and that is select Mr. Jones, Number 137,
20 as the alternate to replace the principal juror.

21 What says the State?

22 MR. SMITH: We would agree to seat Mr. Jones as
23 the replacement principal.

24 THE COURT: What says the defense?

25 MR. WILLIAMS: Your Honor, I'm old school. I go

1 by whatever the rules are. The luck of the draw, I
2 guess, Your Honor.

3 THE COURT: Okay.

4 MR. WILLIAMS: I would like the opportunity to
5 embrace a further argument since we've now completed
6 with the jurors.

7 THE COURT: Well, I haven't talked with the bailiffs
8 yet.

9 MR. WILLIAMS: Okay. You're right. I'm sorry.

10 THE COURT: That's okay. I remembered that. I
11 wasn't gonna skip that point. I just wanted to deal
12 with the alternate stuff while we still had it fresh in
13 our mind.

14 MR. WILLIAMS: Everything in life is a matter of
15 luck, I guess, Your Honor.

16 THE COURT: All right.

17 Mr. Scott, let me start with you. If you'll come
18 around and sit in this witness chair and let me --
19 Madam Clerk, if you want to swear Mr. Scott. And while
20 you've got him under oath, you can ask him anything you
21 want to ask him.

22 (Whereupon, Gerry Scott was duly sworn by the Clerk
23 of Court.)

24 THE CLERK: Would you please have a seat in the
25 witness box. State your full name and spell your last

1 for the record.

2 THE WITNESS: Gerry, G-E-R-R-Y. Scott, S-C-O-T-T.

3 GERRY SCOTT,

4 having been duly sworn, testified as follows:

5 EXAMINATION (In-Camera)

6 BY THE COURT:

7 Q. Okay. Mr. Scott, you're one of the bailiffs in the
8 courtroom in the trial of this case and was it you or
9 Mr. Paris who discovered the note?

10 A. It was Mr. Paris.

11 Q. Okay. Do you know where it was?

12 A. It -- I do.

13 Q. Did you see it?

14 A. I did.

15 Q. Okay. Were you helping him in cleaning up the other
16 notepads that were in there?

17 A. I was.

18 Q. All right. Were there any other scribblings on any
19 of the other notes of any significance that you-all saw
20 as you were going through that?

21 A. They were all clean with the exception of that one
22 pad.

23 Q. It was the only one?

24 A. (Nods head.)

25 THE COURT: Okay. Thank you, sir.

1 Any questions from the State?

2 MR. SMITH: No, Your Honor.

3 THE COURT: From the defense?

4 MR. WILLIAMS: One question.

5 EXAMINATION (In-Camera)

6 BY MR. WILLIAMS:

7 Q. And obviously those were the pads that were left
8 in the jury room that you were able to examine. You
9 weren't able to examine pads that were not in the jury
10 room, were you?

11 A. No.

12 MR. WILLIAMS: That's all.

13 THE COURT: Thank you, Mr. Scott. You can step
14 down.

15 (Witness excused.)

16 THE COURT: Mr. Paris, if you'll take the stand,
17 please, sir, and be sworn.

18 MR. PARIS: Yes, sir.

19 (Whereupon, Otis Lee Paris was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: Thank you. Would you please have a
22 seat in the witness box. State your full name and spell
23 your last for the record.

24 THE WITNESS: Okay. Otis Lee Paris, Junior.

25 P-A-R-I-S.

1 OTIS LEE PARIS,
2 having been duly sworn, testified as follows:

3 EXAMINATION (In-Camera)

4 BY THE COURT:

5 Q. Mr. Paris, you are the other bailiff. You've been
6 sort of in charge of the jury during the trial of this
7 case; is that right?

8 A. That's right, Your Honor.

9 Q. And you were the one who actually collected the note?

10 A. I did.

11 Q. Could you describe how that was done and where it was
12 done?

13 A. As we were getting ready for the next day, I was
14 collecting the -- the tablets and I saw that -- I saw the
15 tablet on the left-hand side of the table, so I didn't
16 immediately see it, then as I walked around that's when I
17 noticed the note.

18 Q. Okay. Were there any other tablets left on the table
19 that did not have scribbles on them?

20 A. No, sir.

21 Q. Okay. So this was the sole tablet on the table that
22 had scribbling on it?

23 A. That is correct.

24 Q. And is this -- we're talking about Court's 8?

25 A. That is correct.

1 Q. Okay. All right. Okay. No other scribblings?

2 A. No other scribblings.

3 THE COURT: All right. Thank you, Mr. Paris.

4 THE WITNESS: Yes, sir.

5 THE COURT: Any questions from the State?

6 EXAMINATION (In-Camera)

7 BY MS. OPPENHEIMER:

8 Q. Mr. Paris, you couldn't see it from afar, from across
9 the room, correct?

10 A. I could not tell, no.

11 Q. All right. And you don't have any information that
12 any of these jurors have discussed any opinion, whether it
13 be an opinion or not?

14 A. None whatsoever.

15 Q. And so as far as you know, everything else has been
16 proper? While the judge has said this is not misconduct,
17 but you have no information that there was anything
18 improper going on?

19 A. None whatsoever.

20 MS. OPPENHEIMER: Thank you.

21 THE COURT: All right. Mr. Williams?

22 MR. WILLIAMS: No questions, Your Honor.

23 THE COURT: Thank you, Mr. Paris. You may step
24 down.

25 (Witness excused.)

1 THE COURT: Mr. Scott, Mr. Paris, gentlemen, you
2 can thank us for not contacting your significant others
3 while we had you under oath to find out if they had any
4 questions they wanted us to put to you, so we have spared
5 you all that.

6 All right. Now the inquiries are complete from
7 everybody who was supposed to know anything about it, so,
8 Mr. Williams, now I'll be glad for to you add whatever
9 you want to add to the mix.

10 MR. WILLIAMS: Thank you, Your Honor.

11 And by way of summary, I'll just give the juror
12 numbers. 165 saw it. 29 saw a couple of other jurors
13 scribbling notes. And I use the word more than one, a
14 couple. 226 was the person who was excused -- the juror
15 who was excused who wrote the note.

16 THE COURT: Right.

17 MR. WILLIAMS: 209 does not remember the note.
18 I cite significance in that in that every other juror
19 was either like yes or no. It's kind of like the guy
20 stopped on the side of the road, yes or no, but he said
21 he does not remember. 211 saw the notes. 53, of some
22 significance, saw the opinion. Number 20 saw what he
23 wrote.

24 So, I guess, by going through the numbers, you have
25 one who acknowledged that he had an opinion before the

1 jury deliberated. You saw at least two jurors who
2 actually saw the opinion, acknowledged they saw the
3 opinion, and -- and I still go back to the note itself
4 is -- constitutes discussion. I don't know that there
5 is -- I don't know that we can say that merely writing
6 down the note is not transmitting ideas. I mean, that's
7 what stop signs are all about. That's what instructions
8 are all about. It's a discussion.

9 THE COURT: Right.

10 MR. WILLIAMS: I think that this infringes upon the
11 possibility of my client receiving a total -- a totally
12 fair and impartial jury. And I realize that we can only
13 give him the best we can give him, but when we have the
14 opportunity to do it again and do it right, I see no --
15 I would ask that he be given that chance.

16 THE COURT: I understand.

17 MR. WILLIAMS: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Williams.

19 I renew my earlier rulings and discussions at some
20 point in time during this voir dire and find that even
21 if this rises to the level of misconduct, and I will
22 accept for the purposes of argument that it does, that
23 it -- that it is discussion for those purposes, that
24 under these circumstances the fact that we've inquired
25 of all of the other jurors and whatever the discussion

1 was they were not impacted by it. He will not be present
2 from this point on in the trial to share these opinions
3 with anyone else and so I think that we've done --
4 certainly we've done all that we can do under these
5 circumstances, but I think it's more than just -- it's
6 not like it's just close enough for government work. It
7 is thorough enough in my view to satisfy the process
8 itself and to assure that the process goes forward
9 untainted given the affirmations of each these jurors.

10 The question always, of course, is not whether even
11 a prospective juror has reached an opinion himself in the
12 trial of the case, the question is whether or not that
13 juror could set aside an opinion previously held by that
14 juror and decide the case based on the evidence itself
15 and not on that preconceived opinion.

16 So we go a step beyond that and we don't have
17 preconceived opinions or ideas among any of the jurors
18 at this point, so I think that the process, although not
19 perfect, granted, Mr. Williams, I think it's as close
20 to perfect as we can have any process to assure a fair
21 and impartial juror in the trial of the case. I
22 respectfully note your -- your exceptions in that regard.

23 So now the next matter is to put Juror Number 137
24 and Juror Number -- a piece of paper with Number 137
25 and Number 20 in a -- in a hat somewhere or a cup, a

1 Styrofoam cup, hopefully one that does not have any
2 coffee in it, and we'll let the clerk draw the number to
3 determine whether or not 137 or 20 will be the principal
4 juror.

5 As I told the jury yesterday when we were selecting
6 them, this is my wheelhouse here. Give them a scrap of
7 paper and write their number down and throw it in a box
8 somewhere and snatching it out and let that computer just
9 lie idle in that other room unimpeded.

10 All right. Shake them up real good.

11 All right. Thank you.

12 In the absence of a blind person or a 6-year-old
13 child, Ms. Mariah, you will have to do.

14 THE CLERK: Thanks.

15 Do I just tell you which number it is?

16 THE COURT: You can tell me what number.

17 THE CLERK: 20.

18 THE COURT: Number 20, Mr. Billingsly, will be the
19 principal juror and you can give that Number 20 to the
20 court reporter and mark it as another court's exhibit
21 right behind the note itself.

22 Somebody one of these days if they have to look at
23 this is gonna say what does all this trash on this record
24 reflect.

25 (Discussion off the record.)

1 THE COURT: All right. It's been put on the record,
2 Mr. Williams, and you've built a record of it, that
3 this matter will be thoroughly examined by an appellate
4 court if the need should arise, okay?

5 All right, folks. We'll need a break. We were
6 prepared to go at 10:30 and knock this thing right
7 out, but we'll take about ten more minutes to give us a
8 chance and let's try to start at -- is that enough time?
9 Twenty after the hour? Does anybody need twenty minutes?
10 12:30?

11 MR. WILLIAMS: Ten minutes is good.

12 THE COURT: Is ten minutes enough?

13 MR. SMITH: I think that should be enough, Your
14 Honor.

15 THE COURT: Okay. Ten minutes, folks.

16 (Court's Exhibit Number 9 was marked for
17 identification.)

18 (Recess taken at 12:14 PM.)

19 (Back on the record at 12:32 PM.)

20 BAILIFF: Court is back in session. Please have a
21 seat.

22 THE COURT: Thank you.

23 Thank you, folks. You can be seated.

24 Folks, I note that the lunch hour is almost upon
25 us, but given the fact that we've been delayed I didn't

1 want to delay the start of this any longer than I could.
2 We'll get in a half hour or forty-five minutes or
3 something like that and at least get a start on this
4 and -- and then go from there.

5 Is the State ready for us to proceed?

6 MR. SMITH: We're ready, Your Honor.

7 THE COURT: Good.

8 It the defense ready?

9 MR. WILLIAMS: The defense is ready, Your Honor.

10 THE COURT: Thank you.

11 Bring us the jury, please.

12 (Whereupon, the jury enters the courtroom at
13 12:35 PM.)

14 THE COURT: Thank you. Folks, I'm aware of the
15 fact that we are starting two hours later than we had
16 planned on starting this morning and the lunch hour is
17 almost on us, but I felt, as I told the lawyers, we need
18 at least to get started on the morning's work rather
19 than delay the beginning any longer. Obviously I don't
20 need to explain the reasons for the delay as you were
21 all a part of the process that we've been working through,
22 and I hope that even though we've all been frustrated by
23 the starting time being postponed that the importance of
24 assuring the fairness of any trial is more important than
25 the schedule and the timing of it, and that's what we've

1 been working on, as you know, all morning.

2 A couple of housekeeping matters. To begin with,
3 Mr. Billingsly, you are now a principal juror. You are
4 number -- you will take the place of the juror who's
5 been excused.

6 Mr. Jones, you will continue as an alternate juror
7 unless we need to move you into the principal's seat at
8 some point in time in the future.

9 And one other matter. I had told you a day or so
10 ago that I had not introduced the security folks to you,
11 and they're an important part.

12 Mr. Young and Mr. Clevenger in the back, they are
13 important parts of the process as well. We count on
14 them and they're wonderful at maintaining order whenever
15 that's necessary and normally their presence alone is
16 enough to maintain order, and we appreciate what they do.

17 We'll continue now with the presentation of evidence
18 and testimony in this case as the State calls its next
19 witness.

20 Mr. Smith.

21 MR. SMITH: Thank you, Your Honor.

22 The State calls Sergeant Derek Applegate with the
23 Lexington County Sheriff's Department.

24 THE COURT: Sergeant Applegate, come forward please
25 and be sworn.

1 (Whereupon, Derek Applegate was duly sworn by the
2 Clerk of Court.)

3 THE CLERK: Would you please have a seat in the
4 witness box. State your full name and spell your last
5 for the record.

6 THE WITNESS: My name's Derek Applegate.
7 A-P-P-L-E-G-A-T-E.

8 DEREK APPLGATE,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q. Good afternoon, Sergeant Applegate. How long have
13 you been employed with our sheriff's department?

14 A. A few days shy of thirty-one years.

15 Q. And what specific unit or division are you with in
16 the sheriff's department?

17 A. I'm currently the supervisor for the K-9 unit.

18 Q. And how long have you been there in that capacity?

19 A. Well, at the sheriff's department I was appointed the
20 K-9 coordinator in 2002, which was an ancillary duty, but
21 I was responsible for all the patrol and detection dogs.
22 In 2006, the sheriff's department started a full-time unit.

23 Q. Could you estimate for me -- so one of your primary
24 duties is to work with law enforcement dogs. What sort of
25 purposes does the sheriff utilize dogs for?

1 A. So at Lexington County Sheriff's Office, we have dogs
2 for certain tasks. We have dual purpose dogs, which are
3 dogs that do two different tasks. We have single purpose
4 dogs, which are trained to perform one task. Currently we
5 have a single purpose bloodhound that's trained in only
6 human tracking. We have a single purpose -- or a dual
7 purpose German shorthaired pointer. He is trained in
8 tracking and narcotics odor detection. We have a dual
9 purpose EOD dog, which is an explosive detection dog. We
10 have five dogs that are trained in patrol, narcotics and
11 tracking.

12 Q. So let's focus in on the dogs used for narcotics
13 detection. Can you estimate for me how many training
14 exercises you've done with dogs for narcotics detection?

15 A. Tens of thousands.

16 Q. And have you ever performed free-air sniffs with those
17 dogs?

18 A. I have performed free-air sniffs with my -- with dogs
19 that I've worked, yes, sir.

20 Q. And can you estimate how many of those you've done in
21 your career?

22 A. Thousands.

23 Q. Where were you certified as a K-9 handler?

24 A. So I started working my first dog on the street in
25 1995. I started working in training with police dogs in

1 1993. I've been certified through the National Narcotic
2 Dog Detector Association. I've been certified through a
3 company prior, which was CCTA, Cross Creek K-9 Training
4 Academy. I've been certified through NLEKO, which is the
5 National Law Enforcement K-9 Organization. I've been
6 certified through South Carolina Police K-9 Association,
7 and that's all the different groups I've been certified
8 with.

9 Q. And briefly to follow on that, how -- how often are
10 you certified? And what I mean by that is, is it a
11 one-time certification, is it continuing? How often is
12 that done?

13 A. So the industry standard is that you're certified
14 prior to working the road or the street with your dog and
15 then you recertify annually with your dog.

16 Q. As part of your job, Sergeant, are you involved in
17 training these dogs for Lexington County?

18 A. Yes, sir, I am. Since 2002 to date I've been
19 responsible for fifty-one different dog teams.

20 Q. Are you also involved in training their handlers?

21 A. Yes. Well, any time you're training with a dog, the
22 K-9 team -- the K-9 team is the dog and the handler.

23 Q. So it's fair of me to say then that they're never
24 separate in their training?

25 A. No, sir.

1 Q. Do you receive these dogs already trained? Do you
2 train them from puppyhood? Where do you start there?

3 A. So typically at the sheriff's department we do buy
4 our dogs already trained. So we pay the vendor to train
5 the dogs and then we send our handlers to school and the
6 handlers go to school for -- depending on what type of dog
7 and the handler's previous experience, it could be two to
8 twelve weeks. We have trained some dogs that weren't
9 puppies, but they were young. In the field we call them
10 green dogs and so we have trained dogs from being green,
11 but predominately we train dogs that we purchase already
12 trained.

13 Q. Can you tell us then what does the training for the
14 dog and handler look like? What sort of -- what process
15 are they put through?

16 A. At the handler's school or when they are back here at
17 the sheriff's office working?

18 Q. Let's do both. Let's start with handler's school and
19 then let's circle back to once they return.

20 A. Okay. Typically when an officer goes to the
21 handler's school they get partnered with their dog and
22 they do exercises. The trainer there teaches the handlers
23 what to look for in the change of behaviors of the dog,
24 what the dog does when it gets an odor, how to properly
25 reward the dog and then how to work the dog in different

1 environments, whether it be a house or a motor vehicle or
2 working packages or luggage.

3 So when the handlers come back, in my opinion
4 two weeks to twelve weeks is not long enough to build
5 that team's reliability. And I also look at it like
6 somebody coming from the academy to the sheriff's
7 department. You have to spend more time with them. So
8 there we try to make more real world environments for
9 the dog out of training, so we'll throw in masking odors,
10 we'll throw in different odors for the dog other than
11 narcotics, and then we also do a lot of searches where
12 there are no narcotics.

13 Q. So tell us then in general why does law enforcement
14 use dogs.

15 A. The primary reason we use dogs is as a locating tool.
16 Yes, they can do other things for us, but just about
17 everything we do with the dogs is to find something,
18 whether it's narcotics odor, explosives odor, to find a
19 human. They're using their noses.

20 Q. So let's expand that. What characteristics of a dog
21 make them well suited as a location tool?

22 A. So most of the dogs that we use in law enforcement
23 are your black Labs, your Belgian Malinois, your German
24 Shepherds, German Shorthaired Pointers. Their receptor
25 cells, the cells that are in there nose collecting odor,

1 they have 220 million of those. A bloodhound has 300
2 million. Humans have 600 million {sic} olfactory cells
3 in their nose, so you can see that they right there
4 collect a lot more scent. The other thing about the dog
5 is 18 percent of their brain is geared towards odor
6 recognition.

7 MR. YONGE: Your Honor, I apologize. Objection.
8 I just -- I just think we may be a little ahead of
9 ourselves. I'm not sure if he's gonna be qualified
10 as an expert at some point because I feel like we've
11 shifted into some opinion testimony.

12 THE COURT: Well, you're right. He hasn't been
13 qualified yet to render an opinion. I think that's
14 the purpose of where we're getting, but I think -- I
15 tell you the statistics that he just gave or -- the
16 number of olfactory cells and all that sort of stuff is
17 probably not necessarily an opinion as much as it is a
18 scientific fact in the industry I would imagine, but
19 I'm not sure.

20 Perhaps if you could couch it that way. Are we
21 talking about this witness's opinion, Mr. Smith? Are we
22 talking about what --

23 MR. SMITH: We're talking about his knowledge in
24 working with these dogs in general. And we -- Mr. Yonge
25 is correct. We are trying to lay the foundation to move

1 towards expert qualifications, so I want to be able to
2 flesh out his knowledge of these topics.

3 THE COURT: His knowledge and his training
4 certainly.

5 MR. SMITH: Yes, sir.

6 THE COURT: All right. I'll allow you do that, to
7 lay the foundation for later true opinion testimony. I
8 take it there's a difference between the knowledge that
9 you're seeking now and the opinion which he's going to
10 render; is that right?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: All right.

13 BY MR. SMITH:

14 Q. Sergeant Applegate, also, real quick, can I ask -- I
15 just want to ask you one point for clarification. You
16 stated that human beings have up to -- up to how many smell
17 receptors in our nose? I'm not sure what the exact term
18 you used was.

19 A. Six million.

20 Q. Okay. So I just wanted to make sure and clarify
21 because you had said 600 million a couple of minutes ago.
22 I think it was simply a misstatement.

23 A. I thought I said six million, but humans have six
24 million.

25 Q. Okay. Thank you.

1 MR. SMITH: I beg the Court's indulgence for a
2 moment.

3 THE COURT: Okay.

4 BY MR. SMITH:

5 Q. Sergeant Applegate, have you ever been qualified as
6 an expert in K-9 and odor detection dogs?

7 A. I've been qualified as an expert for police service
8 dogs, yes.

9 THE COURT: As an expert in what, Sergeant?

10 THE WITNESS: Police service dogs.

11 THE COURT: Okay.

12 MR. SMITH: Your Honor, at this time we would offer
13 Sergeant Applegate as an expert in police service dogs.

14 THE COURT: All right.

15 Mr. Yonge, voir dire.

16 MR. YONGE: No voir dire, Your Honor. No objection.

17 THE COURT: An expert in police service dogs. Is
18 that it?

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: All right.

21 Okay. So qualified. Thank you.

22 BY MR. SMITH:

23 Q. So now we're gonna get into more specifics. You
24 spoke briefly about all the ways these dogs are trained
25 along with their handlers. Can you tell us specifically

1 how these dogs are trained for narcotics detection?

2 A. So the foundation is pretty much the same, although
3 some trainers do differently. A lot of times they
4 introduce odor and then the dog is rewarded with a toy.
5 Some trainers use food as a reward. Most trainers use a
6 toy as a reward. Some trainers use the cocktail method
7 where all the odors of the narcotics or whatever they're
8 wanting the dog to search for that odor, they put it all
9 together and then they pull out the individual odors. And
10 then it's just repetition and the dogs start to remember.
11 Dogs can remember odor. They have history in their brain
12 for it and you just keep working from there.

13 Q. When these dogs are being trained for odor detection,
14 you already stated that the handlers and the K-9's go
15 through continuous training during the whole process,
16 training, recertification. When this training is being
17 performed, is it performed in the same fashion every time?

18 A. No. No, at the sheriff's department we train out in
19 the community. So we set up different training scenarios
20 based upon the needs of each individual dog and then it
21 also depends on what kind of environments we have to work
22 in. A lot of times when I conduct training we don't put
23 any training aids out, so the dog has to search and there's
24 no odor found.

25 Q. So what are some environmental factors that can affect

1 a dog during this odor detection process?

2 A. So there's a lot of factors that affect odor. Odor
3 is just a mysterious thing. Wind affects odor. Humidity.
4 Temperature. All those things affect how odor moves.

5 Q. So we heard testimony yesterday that Sergeant Atwood
6 deployed his K-9 Parker around defendant's vehicle. At
7 the conclusion of that sniff, Parker indicated at the front
8 right bumper of the vehicle. The suspected narcotics were
9 later located in the back passenger side floorboard of the
10 vehicle. In your experience, is that unusual for a dog to
11 indicate in a location away from where the narcotics are
12 physically located?

13 A. No, because odor has to fill up whatever container
14 it's in before it starts to seep out and you're not exactly
15 sure where that odor is gonna start to seep out at. And
16 wind also plays a portion into it because it's gonna blow
17 that odor in the direction the wind's going.

18 Q. And, Sergeant Applegate, in your preparation for this
19 trial, did you also have an opportunity to review yourself
20 the footage of Parker's deployment?

21 A. Yes, sir.

22 Q. So before we -- I'm gonna let you review that video
23 briefly, but I have a couple more questions I want to ask.
24 When you deploy a K-9 for narcotics detection, what are you
25 looking for?

1 A. You're looking for a distinct change of behavior in
2 you're dog.

3 Q. And what is that? What is a change of behavior?

4 A. It can be -- every dog's different. A lot of times
5 their mouth might close. Sometimes you can actually hear
6 the popping of their nose. A sharp head turn, tail
7 wagging, tail going straight. Every dog's different, but
8 when they get into the odor that they recognize you will
9 see a distinct change in behavior.

10 Q. And where do those changes in behavior come from?

11 A. From the dog. It's not taught.

12 Q. And what is a -- what is a final response?

13 A. A final response is the dog letting the handler know
14 that he is where that odor is strongest.

15 Q. And where does a dog's final response -- or I believe
16 it's also called an indication, where does that come from?

17 A. That is a trained behavior trained by the trainer and
18 there's different final responses. Some dogs sit, some
19 dogs lay down, some dogs go into a stare and just stare at
20 where it's at. Some dogs scratch.

21 Q. All right. Sergeant, I'm gonna play for you a little
22 bit of what's already been brought into evidence as State's
23 Number 10.

24 (State's Exhibit Number 10 playing.)

25 Q. All right, Sergeant. I want to stop there for just

1 a second. We see in this video that Sergeant Atwood is
2 tapping in various places on the vehicle. In your -- in
3 your experience, what's the purpose of doing that?

4 A. So he is trying to get his dog in productive areas to
5 sniff where odor could be coming out of productive areas.

6 Q. What do you mean by a productive area?

7 A. An area where you believe odor could come out from.
8 If you notice, he tapped up on the toolbox, on the bed --
9 or in the back of the truck, so there's a place where odor
10 could come out or a substance could be. I noticed he
11 tapped on the door handles. Door handles are a very good
12 area for odor to escape because you have the mechanics of
13 the door handle having to go all the way through so there's
14 nothing blocking, so that's a good place for odor to come
15 out.

16 Q. So to say that, again, the dog is being -- you bring
17 -- I guess you bring the dog's attention to areas. Why
18 can't you just release the dog around the vehicle and say
19 go sniff?

20 A. Some -- some can do that. I don't recommend it on the
21 side of the Interstate.

22 MR. SMITH: Continue please, Kelly.

23 (State's Exhibit Number 10 playing.)

24 BY MR. SMITH:

25 Q. All right. So, Sergeant, you talked to us just a few

1 minutes ago about changes of behavior and final response
2 or, you know, alerts, indications. Based on your review of
3 this body cam, what did you see here?

4 A. So I saw the dog working. I saw him follow the
5 handler guide the dog to where he wanted him to check. On
6 the second pass when he was having the dog tap up high,
7 the dog went up high, but then he went down low. You can
8 see the dog's mouth close and then work on its own. You
9 lose perspective and then you see the dog work inside that
10 bumper well and then the dog sits.

11 Q. And we heard testimony, Sergeant Atwood testified
12 Parker is a Malinois and shepherd mix. Is that one of the
13 breeds that you stated as preferred for odor detection?

14 A. Yes, sir.

15 Q. Sergeant Applegate, during your preparation for this
16 trial, did you have an opportunity to review Parker and
17 Sergeant Atwood's training and certification records?

18 A. Yes, sir.

19 Q. In your expert opinion and based on that review, would
20 you consider them a reliable K-9 team?

21 A. Yes, sir.

22 Q. And in your expert opinion, would you consider them to
23 be adequately and properly certified?

24 A. Yes, sir.

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

1 moment.

2 THE COURT: Okay.

3 MR. SMITH: I don't have any further questions
4 for you right now, Sergeant. Please answer defense's
5 questions.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Yonge.

8 MR. YONGE: Very briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. YONGE:

11 Q. Good afternoon, Sergeant Applegate.

12 A. How you doing?

13 Q. It's nice to meet you.

14 A. Nice to meet you.

15 Q. Did you -- so do you see Trooper Atwood sitting there?

16 A. Yes, sir.

17 Q. Did you train Sergeant Atwood?

18 A. No, sir.

19 Q. Okay. And did you have anything to do with the
20 training of K-9 Parker?

21 A. No, sir.

22 Q. I think at one point you said the final response. Is
23 that where the dog indicates on a specific area?

24 A. The final response is where the dog is notifying the
25 handler that is where the odor is strongest for his senses.

1 Q. Okay. And I believe you mentioned, and correct me if
2 I'm wrong, that it's the handler who trains the dog to do
3 that, correct?

4 A. No, sir. It's the trainer or -- or the vendor, not
5 the handler.

6 Q. I got you. So some human being trains the dog to
7 perform that action?

8 A. Yes, sir.

9 Q. All right. Is it typical for the dog to have more
10 than one final response?

11 A. I'm not understanding.

12 Q. So you listed off a few types of indicators or final
13 responses, I think, which would be sit, lay down, pinpoint
14 stare and scratching?

15 A. Yes, sir.

16 Q. All right. Would it be typical for a trained K-9
17 officer to both sit and do a pinpoint stare as a final
18 indicator?

19 A. The dog could do that, yes, sir, if it -- if that's
20 what it was trained to do.

21 Q. And could they do -- for example, could they be
22 trained to do all of them and then the trainer just
23 recognizes that in this instance sitting means it's the
24 final response?

25 A. No, sir. You normally don't have the passive alert,

1 which is the sit, the lay down or the stare and the
2 aggressive, which would be the scratch. You normally don't
3 mix any of those up.

4 Q. So -- and just so I'm clear, the dog could be trained
5 to sit, lay down and stare, but they wouldn't typically
6 also be trained to scratch?

7 A. Well, no, you would stick with typically one final
8 response.

9 Q. Okay. That's what I was trying to find out.

10 A. Okay. Sorry.

11 Q. And some dogs are trained to scratch at the -- as the
12 indicator?

13 A. Yes, sir.

14 MR. YONGE: I believe that's all the questions I
15 have for you. I appreciate it.

16 THE COURT: Redirect, Mr. Smith?

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Based on your review, Sergeant Applegate, do you have
20 any question as to whether Parker sitting is his final
21 indication?

22 A. Based on what I've seen, no, through the course of my
23 time as a dog handler. I'm the current president of the
24 South Carolina Police K-9 Association and I certify a lot
25 of dogs that I'm not engaged in their training.

1 MR. SMITH: That's all I have for you, Sergeant
2 Applegate.

3 MR. YONGE: Nothing else, Your Honor.

4 THE COURT: Thank you.

5 All right, Sergeant. You can step down. Thank you,
6 sir.

7 (Witness excused.)

8 THE COURT: Ladies and gentlemen, the brevity of
9 that witness has kind of got us back on schedule where
10 we wanted to be at the lunch hour at 1:00.

11 I'm gonna ask you to be back in the jury room
12 please at 2:15. That's an hour and fifteen minutes.

13 Does that give you enough time for lunch?

14 Okay. I'll see you back at 2:15. Remember not to
15 discuss this case among yourselves or with anyone else
16 and don't let anybody talk with you about it.

17 I'll see you back at 2:15. Thank you.

18 (Whereupon, the jury was excused for lunch at
19 1:03 PM.)

20 THE COURT: Mr. Smith, Ms. Oppenheimer, we still
21 have Mike Phipps and Margaret Walker I think you told me
22 yesterday. Do you anticipate any additional witnesses
23 this afternoon or what's your plan?

24 MS. OPPENHEIMER: Your Honor, we would more than
25 likely recall Investigator Gietz just to explain some

1 of the things that are going to come out during Mike
2 Phipps's testimony.

3 THE COURT: All right. And he'll be recalled to
4 address what issues? Can you tell me?

5 MS. OPPENHEIMER: Your Honor, we plan to introduce
6 a string of text messages between the defendant and who
7 we believe based on the review of those messages is
8 his source of supply down in Atlanta. There's certain
9 terminology that is best, I guess, described and explained
10 by a narcotics officer --

11 THE COURT: Okay.

12 MS. OPPENHEIMER: -- which Investigator Gietz is
13 prepared to do.

14 THE COURT: All right. Thank you, ma'am.

15 MS. OPPENHEIMER: Thank you.

16 THE COURT: All right. Anything further from the
17 State before we break?

18 MR. SMITH: No, Your Honor.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: Okay. 2:15, folks.

22 (Whereupon, a luncheon recess was taken at 1:04 PM.)

23 (Back on the record at 2:16 PM.)

24 BAILIFF: Court is now back in session. The
25 Honorable Judge Tommy Cooper presiding.

1 THE COURT: Good afternoon. Thank you.

2 MR. SMITH: Good afternoon, Your Honor.

3 THE COURT: Folks, the jury is all in place.

4 Is the State ready to proceed?

5 MS. OPPENHEIMER: We are, Your Honor. We're just
6 grabbing our witness.

7 THE COURT: Ma'am?

8 MS. OPPENHEIMER: We're just grabbing our witness
9 from across the hall.

10 THE COURT: Okay.

11 Is the defense ready to proceed?

12 MR. WILLIAMS: The defendant is ready, Your Honor.

13 THE COURT: Thank you.

14 Please bring us the jury, Mr. Scott.

15 (Whereupon, the jury returns to the courtroom at
16 2:18 PM.)

17 THE COURT: Thank you, ladies and gentlemen. Once
18 again, thank for your prompt return from lunch.

19 We're ready now to resume the trial of the case as
20 the State continues to offer evidence and testimony.

21 Ms. Oppenheimer.

22 MS. OPPENHEIMER: The State calls Meg Walker.

23 THE COURT: Ms. Walker, please come forward, ma'am,
24 and be sworn.

25 (Whereupon, Margaret Walker was duly sworn by the

1 Clerk of Court.)

2 THE CLERK: Would you please have a seat in the
3 witness box. State your full name and spell your last
4 for the record.

5 THE WITNESS: Margaret Walker, W-A-L-K-E-R.

6 MARGARET WALKER,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. OPPENHEIMER:

10 Q. Good afternoon, Ms. Walker. Can you tell us where
11 you're presently employed?

12 A. I'm employed with the Lexington County Sheriff's
13 Department.

14 Q. And in what capacity?

15 A. I am the chemist with the drug lab.

16 Q. Okay. And as the chemist, what are -- what are you
17 assigned to do?

18 A. My job is to analyze narcotics that are brought in
19 off the road by our deputies, narcotics agents and other
20 Federal agencies.

21 Q. Okay. And how long have you been doing that?

22 A. Seven years.

23 Q. Can you tell us a little bit about your education
24 and training that led you to become a chemist with the
25 sheriff's department?

1 A. I have a degree in forensic chemistry and a minor in
2 criminal justice from York College in Pennsylvania and
3 then I also did about three months' training with the
4 South Carolina Law Enforcement Division, commonly known
5 as SLED.

6 Q. Okay. About how many drug analyses have you performed
7 throughout your career?

8 A. I've done about 2500 BEST kits.

9 Q. Okay. And were those for all kinds of suspected
10 narcotics or just one?

11 A. This is for everything that I've tested for the
12 sheriff's department.

13 Q. So would that include marijuana?

14 A. Yes.

15 Q. Heroin?

16 A. Yes.

17 Q. Methamphetamine?

18 A. Yes.

19 Q. All right. And have you ever testified in court
20 before?

21 A. Yes, I have.

22 Q. How many times?

23 A. Ten.

24 Q. Okay. And have you been offered those ten times as
25 an expert in any field?

1 A. Yes, I have.

2 Q. And what field have you been offered as?

3 A. Drug identification, drug analysis.

4 Q. All right. And is that in state court?

5 A. Yes, ma'am.

6 MS. OPPENHEIMER: Your Honor, at this time I'd
7 offer Ms. Walker as an expert in chemical analysis of
8 suspected narcotics.

9 THE COURT: Voir dire, Mr. Williams?

10 MR. WILLIAMS: Yes, sir.

11 VOIR DIRE EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Ms. Walker, you indicated that you had testified ten
14 times as an expert. In those ten times that you were
15 qualified as an expert and testified, which drugs were
16 involved in your testimony?

17 A. I have done, off the top of my head, recently
18 methamphetamine, heroin, cocaine, marijuana -- cannabis,
19 I'm sorry, and fentanyl.

20 Q. All right. And when you were qualified as an
21 expert, were you qualified as an expert in any particular
22 speciality dealing with the type of drug that you were
23 testing?

24 A. No, just general drug analysis or drug identification.

25 MR. WILLIAMS: All right. That's all I have, Your

1 Honor. We have no objection.

2 THE COURT: Thank you.

3 Eleven times now, Ms. Walker.

4 THE WITNESS: Thank you, sir.

5 CONTINUED DIRECT EXAMINATION

6 BY MS. OPPENHEIMER:

7 Q. All right, Ms. Walker. Turning your attention to the
8 case that we're here for today, were you asked to analyze
9 suspected narcotics in the case of State versus Steven
10 Daniel Brown?

11 THE WITNESS: Sir, may I refer to my notes, please?

12 THE COURT: Yes, ma'am.

13 MR. WILLIAMS: Your Honor, I have a matter of law
14 to take up with the Court that I think it may be fruitful
15 if we could approach the bench?

16 THE COURT: Okay.

17 MR. WILLIAMS: I don't know that we need to run
18 anywhere.

19 (Proceedings held at the bench; not reported.)

20 THE COURT: Madam Reporter, if you'd note the
21 sidebar conference. We'll memorialize that out of the
22 presence of the jury if we don't have the opportunity
23 to put it on the record in the presence of the jury.

24 Ms. Oppenheimer.

25 BY MS. OPPENHEIMER:

1 Q. Ms. Walker, you were asked to test suspected narcotics
2 evidence in this case; is that correct?

3 A. Yes, ma'am.

4 Q. And where did you receive that evidence from?

5 A. I collected it from the Lexington County Sheriff's
6 Department evidence room.

7 Q. Can you tell us who has access to the evidence room?

8 A. Only the evidence custodians has access to any
9 evidence room.

10 Q. Okay. So can any person off the street access the
11 evidence room?

12 A. No, ma'am.

13 Q. What about any deputy with the sheriff's department?
14 Can they?

15 A. No, they can't. They can be let in by evidence
16 custodians.

17 Q. Okay. And is this a secure area that these suspected
18 narcotics and evidence are placed into?

19 A. Absolutely.

20 Q. Okay. And who specifically did you retrieve them
21 from?

22 A. Candy Kyzer. She's one of our evidence custodians.

23 Q. Okay. And can you tell us whether or not she has
24 access to the evidence control room?

25 A. Yes, she does.

1 Q. And why is that?

2 A. Because she's an evidence custodian.

3 Q. All right. And when you retrieved this evidence, can
4 you tell us how it was packaged?

5 A. It was packaged in a box and then on top of that box
6 there was a BEST kit attached to it.

7 Q. Okay. You've mentioned it a couple of times. What is
8 a BEST kit. Can you explain to us what that is?

9 A. A BEST kit stands for Best Evidence Sample Testing.
10 Basically it's a tamperproof bag that narcotics are placed
11 into and then that is turned into evidence for me to
12 complete and for me to do analysis on. In this situation,
13 it was -- the box was the BEST kit itself.

14 Q. Can you tell us why a box was necessary in this case?

15 A. There was a fair amount of narcotics in this case.

16 Q. Can you explain to us a little bit what's the
17 approximate size of a BEST kit?

18 A. A BEST kit is probably about the size of a sheet of
19 paper.

20 THE COURT: A what?

21 THE WITNESS: A sheet of paper.

22 THE COURT: Okay.

23 BY MS. OPPENHEIMER:

24 Q. So about the size of this paper that I'm holding right
25 here?

1 A. Roughly a little bit bigger than that, but, yes.

2 Q. In your experience, can three plastic totes fit into
3 a bag of this size?

4 A. No, ma'am.

5 Q. Now you said a BEST kit is a tamperproof bag. Can you
6 tell us when you retrieve a box of evidence do you still
7 look to see whether or not that package has been tampered
8 with?

9 A. I still go over all of the seals that the officer had
10 taped shut. I check to make sure that his initials and
11 dates were properly on the box as well, making sure that
12 there was no way it was opened in the process of being
13 handled.

14 Q. And did you do that in this case?

15 A. Yes, I did.

16 Q. And whose initials did you see on that box?

17 A. Officer Gietz.

18 Q. Okay. And he is employed with the Lexington County
19 Sheriff's Department?

20 A. Yes, ma'am.

21 Q. And did the seal appear to be intact?

22 A. Yes.

23 Q. It had?

24 A. Yes.

25 Q. Did it appear to be tampered with at all?

1 A. No.

2 Q. Okay. Did it have the proper date on it?

3 A. Yes.

4 Q. Do you recall that date?

5 A. Not off the top of my head.

6 MS. OPPENHEIMER: Your Honor, may I show the witness
7 the box --

8 THE COURT: Yes, ma'am.

9 MS. OPPENHEIMER: -- and see if this refreshes your
10 recollection.

11 BY MS. OPPENHEIMER:

12 Q. Can you tell us whether or not you observed the date
13 that Investigator Gietz would have sealed --

14 MR. WILLIAMS: Objection to that, Your Honor.
15 Calling for hearsay, speculation and a number of things.

16 If she's -- and I could go further if I can.

17 THE COURT: Okay. Let's ask her what the date is
18 and whose name appears.

19 Well, just tell me what's on the box? We'll do
20 that.

21 THE WITNESS: The date is noted 6-29 of 2020 and
22 the initials that I recognize are Deputy Gietz's.

23 THE COURT: I'm sorry, the initials are?

24 THE WITNESS: Deputy Gietz's.

25 THE COURT: All right. Let me look and see what

1 you're talking about.

2 THE WITNESS: Yes, sir. It's -- there's the date,
3 initials, date, initials, date, initials, date, initials.
4 There's some up here and then there's also one down here.

5 THE COURT: All right. Thank you.

6 Do you want to -- Mr. Williams, do you want to look
7 at that, what I just saw?

8 MR. WILLIAMS: Yes, sir. I guess.

9 THE COURT: Okay.

10 MR. WILLIAMS: I looked at it, Your Honor.

11 THE COURT: All right, sir.

12 You can go ahead. I don't have any rulings to make
13 as far as that's concerned.

14 BY MS. OPPENHEIMER:

15 Q. Ms. Walker, approximately how many times did you
16 yourself observe Investigator Gietz's initials and the date
17 of 6-29-2020 on that box?

18 A. Six times.

19 Q. Okay. And after you retrieved that box, where did you
20 take it?

21 A. I took it to the drug lab and placed it into my vault
22 that I have in the lab.

23 Q. And who has access to your vault?

24 A. Only I have access to that vault currently.

25 Q. Okay. And can you tell us whether or not in your

1 procedure do you open up this box?

2 A. Yes, I do.

3 Q. Okay. And without -- we're gonna skip a step a little
4 bit here. When you're done testing the evidence, what do
5 you do with it?

6 A. Once everything has been sampled and I've done
7 everything that I needed to do to prepare it for testing,
8 I then place everything that I have repackaged back into
9 the box and then tape it shut and then I put my initials
10 and date of when I sealed the box back up.

11 Q. Did you do that in this case?

12 A. Yes, I did.

13 Q. Do you see your initials and the date on this box
14 anywhere?

15 A. Right here, and I have the case number and the BEST
16 kit number and the item that it is.

17 Q. And what date did you seal it?

18 A. I sealed it on 8-25 of 2020.

19 Q. And that would have been when your testing was
20 completed?

21 A. Yes.

22 Q. And all that time did this box either remain in the
23 evidence room or in your vault in your lab at the sheriff's
24 department?

25 A. Yes, ma'am.

1 Q. All right.

2 MS. OPPENHEIMER: Your Honor, at this time I'd move
3 State's Exhibit Number 7 into evidence.

4 THE COURT: Yes, sir.

5 MR. WILLIAMS: I have a litany of objections, Your
6 Honor.

7 THE COURT: Let's go ahead and put -- let's list
8 them. Get started on them.

9 MR. WILLIAMS: All right. Number one, even though
10 there's been testimony about a date, which is on the box,
11 she wasn't the one that observed anyone write the date on
12 the box and it's -- common sense says that you could --
13 I could go over there today and write the date on the
14 box. It wouldn't be the date that it was actually put
15 in the evidence log. So, Your Honor, the suggestion is
16 that we would require a witness who could testify as to
17 when and where he placed the box in evidence and to
18 follow the chain all the way through until we see that
19 the evidence has not been tampered with.

20 MS. OPPENHEIMER: Your Honor -- I apologize, Theo.

21 MR. WILLIAMS: We're cutting out like a million
22 steps, Your Honor, and that would include -- and
23 obviously there may or may not be any relevance because
24 I don't know what's in that box either, but the short
25 answer, Your Honor, is we haven't traced it from the

1 -- from the date and time which this box allegedly was
2 found on the road until it was placed into evidence
3 -- into the locker of the evidence room, how it was
4 maintained in the -- because there are a number of
5 people who I assume from what I've observed have touched
6 that box and have at least looked at it, opened it up,
7 did things to it, but she can't just jump from A to Z,
8 Your Honor.

9 MS. OPPENHEIMER: Your Honor --

10 THE COURT: Well, the testimony of Investigator
11 Gietz when this was offered for identification was that
12 he had seized it, gave a field weight to it and so forth
13 and took it to the evidence room, put it in a sealed box
14 with his signature and his date on it and that there
15 was another date on it when it was opened for trial
16 preparation at some other point in time. Up until now
17 the testimony is that it was in the evidence room with
18 his name and his date and that is the date which she's
19 testified that she saw it on whatever it was she just
20 read. Then the testimony was that it was in the evidence
21 room. The evidence custodian, Ms. Kyzer, I guess?

22 Is that right?

23 MS. OPPENHEIMER: Yes, Your Honor.

24 THE COURT: Delivered it to Ms. Walker and then she
25 opened it.

1 Now I don't know -- if what you're asking for is
2 the proof of a negative, that nobody else did anything
3 other than those folks who --

4 MR. WILLIAMS: Well, Your Honor, I don't have to
5 prove anything, Your Honor.

6 THE COURT: I know.

7 MR. WILLIAMS: What I'm suggesting is that the
8 burden of proof is on the State to prove that this --
9 these items were not, I guess, messed with in any
10 particular way. She's -- she's acknowledged at least
11 one other individual that she said handed it to her.

12 THE COURT: Right.

13 MR. WILLIAMS: But she was -- she's incapable of
14 testifying what that individual did with it because they
15 obviously received it at some point in time from the
16 evidence room and then I believe the testimony is she
17 can testify to what this woman does to her -- or hand it
18 to her, but she can't testify in regards to what this
19 other woman has done with the box. And I don't believe
20 Gietz ever testified to the -- to the number of the BEST
21 kit that has been affixed to that box.

22 THE COURT: I don't think he did either, but...

23 And so, Ms. Oppenheimer, do you want to address
24 those things?

25 MS. OPPENHEIMER: Your Honor, I'm not required to

1 prove every single link in the chain. Investigator
2 Gietz testified yesterday that he collected those drugs,
3 packaged them into this box on June 29, 2020, sealed it,
4 maybe went a little bit overboard with his initials and
5 the date, and put it into evidence. This witness has
6 testified that the only people who have access to the
7 evidence room are the evidence custodians and not any
8 random Joe Schmoe or deputy unaccompanied by an evidence
9 custodian can go into the evidence room. She testified
10 that she was handed this box by an evidence custodian.
11 She testified that she brought it directly to her lab
12 where she put it in her vault and she is the only person
13 who has access to her vault in her lab where it remained
14 until August 25th of 2020 when she put it back into
15 evidence with it being sealed. She also said before she
16 even opened the box she checked to see whether or not it
17 had been tampered with or if the seal had been broken in
18 any way and it certainly had not.

19 So, Your Honor, we've certainly established that
20 the chain is sufficient, that there are no breaks in the
21 chain, that the box was not tampered with at all, and we
22 have met our burden.

23 THE COURT: Right.

24 All right. It's your motion, Mr. Williams. I'll --

25 MR. WILLIAMS: Your Honor, I don't know that I need

1 to argue anymore. I've yet to hear anything about the
2 number, which is normally assigned to items that are
3 placed in --

4 THE COURT: Right.

5 MR. WILLIAMS: -- because as Your Honor knows
6 because you've been doing this for as long as I have --
7 well, I don't know if we need to compare, but the --
8 there's always that special number which is assigned to
9 the test, and that's what I'm concerned about is because
10 whether it's in a box or in a balloon, the test number
11 is what is important because that keeps it separate and
12 apart from anything else that might be tested.

13 MS. OPPENHEIMER: I can ask her one question to
14 solve that.

15 MR. WILLIAMS: And there was no testimony from Gietz
16 about that.

17 THE COURT: Okay. Ms. Oppenheimer.

18 MS. OPPENHEIMER: I can ask one question and quickly
19 solve that if that's an issue, Judge.

20 THE COURT: You can do what?

21 MS. OPPENHEIMER: I can ask one simple question to
22 solve that if that's an issue.

23 THE COURT: Okay. If you have one simple question,
24 that will be fine. Have at it.

25 BY MS. OPPENHEIMER:

1 Q. Ms. Walker, what's the BEST kit number associated with
2 this case?

3 A. The BEST kit number associated with this case is
4 C017604.

5 Q. Okay. And is that number reflected on both this box
6 and in your report?

7 A. Yes, it is.

8 MS. OPPENHEIMER: Your Honor, I believe that cures
9 any issues that the defense may have.

10 THE COURT: Has the seal with that number been
11 tampered with?

12 THE WITNESS: I'm sorry?

13 THE COURT: Has that -- there's a label with that
14 number, right?

15 THE WITNESS: The label is right here, it's listed
16 here, and then it is also listed up here, and the BEST
17 kit is what's inside.

18 THE COURT: Okay. Does it appear that the BEST kit
19 has been tampered with? Is that number disturbed in any
20 way or the date disturbed in any way?

21 THE WITNESS: No, sir.

22 THE COURT: Thank you.

23 I find that the State has met its burden of proof
24 sufficient to establish that the evidence has been in
25 a secured situation since Deputy Gietz stored it on

1 June 29, 2020, and it has been secured since that time.
2 There's no evidence of tampering. I'm gonna overrule
3 the objections to the chain of custody.

4 Thank you.

5 BY MS. OPPENHEIMER:

6 Q. All right, Ms. Walker. Can we put this in a way that
7 it's not blocking your view?

8 So you retrieved this box from evidence. Can you tell
9 us what is the first thing that you do after -- well, I
10 guess you've checked the seal?

11 A. Yes.

12 Q. And then what do you do?

13 A. And then -- I then itemize everything in it. I pull
14 everything out of the box itself and then I do what's
15 called a worksheet, so I break it down. So whatever bag,
16 whatever packaging is included, I then go through it, mark
17 it on my worksheet and then I can do a weight of each
18 individual item that is a narcotic and then I repackage
19 it, put it back into the box and then I seal it back up
20 after I've done a sampling of everything.

21 Q. All right. So what was your description of the
22 evidence in this case?

23 A. Item 1.0, BEST kit C017604 taped to box containing, no
24 analysis performed.

25 Q. Okay. So --

1 MR. WILLIAMS: Your Honor, I have one other matter
2 I'd like --

3 THE COURT: Okay. I couldn't hear everything you
4 said at the conclusion, Ms. Walker. You gave numbers
5 1.0 and what else was a part of your testimony there?

6 THE WITNESS: BEST kit C017604 taped to box.
7 Results, no analysis performed.

8 THE COURT: No analysis performed on what?

9 THE WITNESS: The physical box.

10 THE COURT: Okay. The box itself?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right.

13 All right, Mr. Williams. I'm sorry. I interrupted
14 your argument.

15 MR. WILLIAMS: No, I didn't mean to interrupt what
16 was going on, but I need to make a motion at this
17 particular point in time.

18 Your Honor, we have a motion to take up with the
19 Court outside the presence of the jury.

20 THE COURT: All right. Ladies and gentlemen, I'm
21 gonna send you to your jury room for a moment. I've
22 got to take up a matter of law outside of your presence.
23 Please do not discuss this among yourselves while you're
24 in the jury room.

25 (Whereupon, the jury retires to the jury room at

1 2:40 PM.)

2 THE COURT: All right. Mr. Williams.

3 MR. WILLIAMS: Judge, obviously we had a motion
4 dealing with the search of the vehicle, which Your Honor
5 has already ruled on. I don't know what's inside that
6 box other than there is a box and there may, indeed, be
7 evidence which was secured from the truck inside that,
8 as well as obviously there's gonna be some sort of
9 testimony in regards to what the analysis of those items
10 are.

11 THE COURT: Right.

12 MR. WILLIAMS: So, Your Honor, at this time I want
13 to make sure that the record revealed that we renewed
14 our motions in regards to the search --

15 THE COURT: Right.

16 MR. WILLIAMS: -- so that it would continue to --
17 and I don't know if I did -- I did it this early time
18 because I don't know what's in that box and if she's
19 seeking to introduce something that's in that box, I
20 didn't want to -- the reason I sent the jury out was
21 as I talked about the search, which Your Honor's already
22 ruled on.

23 THE COURT: All right.

24 MS. OPPENHEIMER: Judge, the whole box is already
25 in evidence.

1 THE COURT: I'm sorry?

2 MS. OPPENHEIMER: The whole box is already in
3 evidence. It's just the drugs.

4 THE COURT: Right. The -- the video shows that
5 there were three plastic smaller boxes that were stacked
6 up. Is that what is in this box?

7 MS. OPPENHEIMER: Yes, Your Honor.

8 THE COURT: Anything else?

9 MS. OPPENHEIMER: No. They don't package evidence
10 that way. They keep --

11 THE COURT: Ma'am?

12 MS. OPPENHEIMER: They keep everything separate.
13 They wouldn't put everything in one box with suspected
14 narcotics. They don't do that.

15 THE COURT: I'm just trying to figure out is there
16 anything in this box that was not seized at the scene on
17 the videotape?

18 MS. OPPENHEIMER: There are bags added that she
19 added herself that she will testify to --

20 THE COURT: Surely.

21 MS. OPPENHEIMER: -- but that's it.

22 THE COURT: All right.

23 Mr. Williams, does that address your concern or is
24 there something else that we need to --

25 MR. WILLIAMS: No, sir. I just wanted to make

1 sure that I was protected in terms of the introduction
2 of any evidence dealing with the search by continuing
3 the objection before these items get placed into evidence
4 in the trial itself.

5 THE COURT: All right. I note your continuing
6 objection in that regard and allow that as a continuing
7 objection.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: And so with that done, then we can move
10 forward.

11 See if the jury is ready to -- see if the jury is
12 ready to come back in, Mr. Scott. They might be in the
13 restroom. Don't bring them back in until everybody is
14 ready to come in, okay?

15 BAILIFF: Yes, sir.

16 THE COURT: Thank you.

17 (Whereupon, the jury return to the jury room at
18 2:44 PM.)

19 THE COURT: Thank you, folks, for your patience.
20 We'll continue now with the direct examination of
21 Ms. Walker.

22 Ms. Oppenheimer.

23 BY MS. OPPENHEIMER:

24 Q. All right, Ms. Walker. Can you tell us whether or
25 not you inventoried the items inside of the box that you

1 obtained from evidence?

2 A. Yes, I did.

3 Q. And how do you inventory those?

4 A. I pulled everything out and noted them on my
5 worksheet.

6 Q. And what did you note?

7 A. Item 1.0 was the BEST kit C017604 taped to box
8 containing. No analysis performed. Item 1.1, three
9 plastic containers containing crystal substance. And
10 then Item 1.2 was Ziploc bag containing plastic container
11 containing plastic corner bag containing crystal substance.

12 Q. All right. Now let's start with Item 1.1. What do
13 you do with that item first?

14 A. I pull it out of the box. I then will note the
15 packaging that it has. Once I've noted the packaging, I
16 will then pull the substance out of the packaging. I will
17 weigh each individual packaging -- or each individual
18 substance on a scale and then I will place it into either
19 its original container or a bag that I'm adding into the
20 case.

21 Q. Okay. So if there are three plastic containers in
22 Item 1.1, would you do that process for each plastic
23 container?

24 A. Yes, I would.

25 Q. And can you tell us why you take the suspected

1 narcotic out of its original packaging?

2 A. Because I'm looking to get the raw weight. I'm not
3 trying to include the plastic container, I'm not trying
4 to include a plastic bag because that's not included in
5 the weight when dealing with narcotics. It's just the raw
6 substance itself.

7 Q. Okay. And you would have -- did you do that with all
8 three of these plastic containers in this case?

9 A. Yes, I did.

10 Q. And can you tell us whether or not you received --
11 well, I guess, do you tare your scale out in between
12 weighing certain substances?

13 A. What I do is I put the new packaging that I'm
14 introducing onto the scale and then I tare it out equally
15 to zero and then I place the substance inside the bag so
16 that way it's getting only the weight of the substance,
17 not the weight of the new bag and the weight of the
18 substance.

19 Q. So tare is just a fancy way of saying zero it out?

20 A. Yes, essentially that's what it is.

21 Q. Do you combine the weight of those three -- or the
22 substances from those three plastic containers to get an
23 aggregate weight?

24 A. Yes, I do. So I weigh out each individual item. So
25 in this case it was three plastic containers containing

1 crystal substance as three weights and then when it comes
2 down to the report time I then add them together to make a
3 total combined weight.

4 Q. And what was the total combined weight for Item 1.1?

5 A. 2,917 grams. 45,016.19 grains.

6 Q. Okay. Why do you put grains in addition to grams?

7 A. It's part of the law that we are required to add
8 grains, which is another form of weight -- or another
9 measurement of weight I should say. I'm sorry.

10 THE COURT: And what was the second figure that you
11 gave on the grains?

12 THE WITNESS: It is 45,016.19.

13 THE COURT: Okay. 4516.19?

14 THE WITNESS: 45,016.19.

15 THE COURT: Thank you.

16 THE WITNESS: Yes, sir.

17 BY MS. OPPENHEIMER:

18 Q. And so that's a little over 2900 grams, I believe. Is
19 that what you said?

20 A. Yes.

21 Q. All right. After you weigh Item 1.1, what do you do?

22 A. Once that item has been handled, I then take a small
23 sample of it to be placed into a test tube to continue onto
24 instrumental analysis and then I take another example for
25 presumptive testing.

1 Q. Okay. So which do you do first, your presumptive
2 testing or your machine testing, I guess, for lack of a
3 better term?

4 A. I do presumptive testing. It's -- basically what it
5 is, it's a color test. So it kind of gives me an idea of
6 what I'm looking at. It's like -- it's kind of like I
7 pull -- I basically put a sample in, I do a few drops of
8 a liquid and then it's gonna give me a color. So that
9 color is usually indicative with a certain substance. In
10 this situation, it was orange, which is indicative with
11 methamphetamine.

12 Q. Did you do that presumptive test with a small sample
13 from each of the substances found in each plastic
14 container?

15 A. Yes. I only need a small crystal to give me a -- for
16 me to do a spot test on, yes.

17 Q. And why do you only need a small crystal?

18 A. The spot test is super sensitive. It doesn't need
19 much.

20 Q. Okay. And I believe you testified that the color that
21 you got in this case was orange?

22 A. Yes, ma'am.

23 Q. And what is that indicative of?

24 A. Methamphetamine.

25 Q. Okay. After you do your spot test, what do you do

1 next?

2 A. Then the next is I place a small sample into a test
3 tube that's labeled with the BEST kit number, which is
4 our lab number, and then the item number, and in this case
5 it was -- it's either gonna be Item 1.1 parentheses 1,
6 parentheses 2, parentheses 3.

7 Q. So you take another small sample from the substance
8 found in each of these three plastic containers; is that
9 correct?

10 A. Yes, ma'am.

11 Q. All right. And after you've placed the small sample
12 into a test tube, what do you do with that test tube?

13 A. Based off of the spot test, then that's when I start
14 to do the extraction process. So the next step is to
15 help with -- kind of turn it into a liquid because the
16 instrument itself relies on the liquid.

17 Q. Okay. How do you do the extraction process?

18 A. It is with a base methylene chloride extraction and
19 then once that is placed into the test tube I extract
20 the liquid out, I then put it into a small GC-MS vial and
21 then I will start the confirmatory testing with the gas
22 chromatography-mass spectrometer.

23 Q. Okay. So is that GC-MS? I can never say that word.

24 A. Yes. Gas chromatography-mass spectrometer is commonly
25 known as the GC-MS.

1 Q. And did you have any concerns about your GC-MS the day
2 that you tested these substances?

3 A. No, ma'am.

4 Q. And was it working properly?

5 A. Yes, ma'am.

6 Q. And were you able to get a result from this testing?

7 A. Yes, I was.

8 Q. And what was the testing for -- what was the result
9 for Item 1.1?

10 A. Methamphetamine.

11 Q. Okay. And is that a scheduled narcotic?

12 A. Yes, it is.

13 Q. What schedule is it in?

14 A. It is a Class 2.

15 Q. All right. Now after you get your result from the
16 GC-MS, you do this process for, again, a small sample from
17 the substance found in each plastic container; is that
18 correct?

19 A. Yes, ma'am.

20 Q. So you did three tests from Item 1.1?

21 A. Yes.

22 Q. And were all of them the same result?

23 A. Yes, they were.

24 Q. And that result was?

25 A. Methamphetamine.

1 Q. All right. After you have finished testing Item 1.1,
2 what do you do with it?

3 A. Once I've done all of the itemization for Item 1.1
4 and I've gotten the sampling for the spot test and for the
5 confirmatory test, I then go into Item 1.2, which is a
6 Ziploc bag containing plastic container containing plastic
7 corner bag containing crystal substance.

8 Q. All right. So before we get into Item 1.2, I'm gonna
9 ask that you open the box in front of you, please.

10 Do you need gloves?

11 A. I brought some with me.

12 Q. And what are you putting down on the witness stand
13 right now?

14 A. I'm putting what's prep paper down for our lab. It's
15 to make sure that the bench stays clean, so that way the
16 next person that is coming up doesn't get contaminated with
17 it if the substance does happen to leak out.

18 THE WITNESS: Sir, do you mind if I remove my suit
19 jacket?

20 THE COURT: No, that's fine.

21 BY MS. OPPENHEIMER:

22 Q. And where are you opening it?

23 A. I'm opening it on the top portion of the box.

24 Q. Would a knife be easier?

25 A. Uh-huh.

1 Q. Let me see if I can get you a knife. I apologize.

2 (Pause in proceedings.)

3 BY MS. OPPENHEIMER:

4 Q. If you'll show us Item 1.1. Now you are holding up
5 three different bags. Did you add those bags after your
6 testing process was complete?

7 A. Yes, I did. It's noted on the bag where it says bag
8 added.

9 Q. All right. And the containers that are in the bags
10 themselves, can you tell us were those the original
11 packaging, I guess, that this methamphetamine was found in?

12 A. Yes, it was.

13 Q. And what are the plastic containers wrapped in? It
14 appears they're wrapped in something.

15 A. I believe plastic wrap.

16 Q. I believe you testified that there was an Item 1.2.

17 A. Yes.

18 Q. Can you describe Item 1.2 for us? I apologize. I've
19 made your space a lot smaller up there.

20 A. It is Ziploc bag containing plastic container
21 containing plastic corner bag containing crystal substance.

22 Q. All right. Now did you go through your same testing
23 process that you did with Item 1.1?

24 A. Yes, I did.

25 Q. And so that first step would have been what?

1 A. I then -- I pull it out of its original packaging. I
2 itemize it, I do an inventory of it, and then I -- once I'm
3 done with the packaging I then will weigh it individually.
4 The same process. I put it on the scale, I tare it out,
5 then I weigh the substance on it and then I get a weight
6 for it, I place it into new its packaging or it's original
7 packaging. I then will take a sample for a presumptive
8 test, which is a color test, or I put it in the -- and I
9 also get a sample for my confirmatory testing, which is the
10 GC-MS.

11 Q. All right. So what was the weight of Item 1.2?

12 A. For Item 1.2, it was 5.22 grams.

13 Q. All right. And you testified that you did your spot
14 testing. What color did the spot test come back as?

15 A. It came back as orange as well.

16 Q. And what is orange indicative of?

17 A. Methamphetamine.

18 Q. All right. And you got a confirmatory result as well
19 through your GC-MS; is that correct?

20 A. Yes, I did.

21 Q. And what was that result?

22 A. Methamphetamine.

23 Q. I'd ask that you show the jury Item 1.2 if you could.

24 A. (Witness complies.)

25 Q. Now, Ms. Walker, do you put your findings into --

1 or do you document your findings in addition to your
2 worksheet?

3 A. I do. I do create a formal report.

4 Q. And did you do that in this case?

5 A. Yes, I did.

6 Q. All right. And is there any kind of, I guess, checks
7 and balances that go into that report writing for lack of
8 a better term?

9 A. Once the report has been completed, I do a -- what's
10 called a formal report. Once the formal report has been
11 completed, I combine it with the data that I've received
12 from the GC-MS, my worksheet and the chain of custody that
13 was given with this item, and then I combine it together to
14 create a giant packet and give it to what's called a peer
15 review group. And three other agencies, we meet up, we
16 exchange paperwork, and they will review it to make sure
17 there's no misinformation, I spelled a name wrong, I didn't
18 identify something correctly, that sort of thing.

19 Q. And was that done in this case?

20 A. Yes, it was.

21 Q. And did your report make it past the peer review
22 process?

23 A. Yes, it did.

24 Q. Were there any issues with any of your testing?

25 A. No, ma'am.

1 Q. All right. Now after you've tested all of these
2 items, you testified that you put them back in the box; is
3 that correct?

4 A. Yes, ma'am.

5 Q. And do you seal it back up?

6 A. Yes, ma'am.

7 Q. And then where do you take it?

8 A. Once I have an opportunity and it's been sealed up,
9 I put it into my safe until I'm ready to take it over to
10 evidence. I then will take it over to evidence where they
11 will take it and I will, quote unquote, return it and
12 they'll sign off on a chain of custody saying it has left
13 my lab by me and it's turned into evidence and then they
14 will put it into the drug room.

15 Q. And does it stay in the drug room until, let's say,
16 this case were to go to trial?

17 A. Yes. And the drug room is in evidence.

18 MS. OPPENHEIMER: Ms. Walker, I have no further
19 questions. If you want to go ahead and put all of the
20 drugs back into the box and then answer any questions
21 that Mr. Williams or Mr. Yonge may have of you.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: All right. Mr. Williams, cross-examine.

24 MR. WILLIAMS: May it please the Court?

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Ms. Walker, we talked a lot about chain of custody and
4 how you make sure that you're analyzing the proper items
5 that you're gonna testify to and it goes to the time in
6 which these items are seized --

7 A. Uh-huh.

8 Q. -- up through whatever protection is afforded those
9 items, correct?

10 A. Uh-huh.

11 THE COURT: Say yes or no.

12 THE WITNESS: I'm sorry, sir.

13 BY MR. WILLIAMS:

14 Q. Providing that these items that are seized at a
15 particular location from a particular person and that those
16 items are placed in some sort of protective environment,
17 correct, making sure that those items stay together and
18 that those items go to that particular person and that
19 particular charge that the person is charged with, right?

20 A. It's placed into the security of evidence, correct.

21 Q. Right. Because you want to make sure that when you
22 get that evidence and you test that evidence that that
23 evidence that you're testing applies to whatever charge
24 that person is charged with, right? You don't want to
25 have somebody else's evidence used against him, right?

1 A. No, sir.

2 Q. Okay. So does your log, your evidence log, does it
3 indicate, if you will, because I know you have access to
4 it, does it indicate when Officer Gietz placed the items
5 into the evidence room?

6 A. I have a -- the only thing I have is the paper chain
7 of custody. I do not have access to the digital log
8 because that is controlled by evidence.

9 Q. So you don't have any knowledge in regards to when
10 Gietz placed the item into the evidence room itself because
11 it's digital, right?

12 A. It's -- the officer is submitting it, but it can be
13 printed out.

14 Q. All right. So years ago you used to have paper and
15 now you type it in and then you would have evidence, what
16 you typed in, or you could produce it if need be, right?

17 A. Yes.

18 Q. All right. Do you have access to that information
19 when Officer Gietz placed those items into evidence?

20 A. It has to be approved by the evidence custodians and
21 then I would have access to it, but I don't have access
22 when he first does it.

23 Q. Do you have anything that indicates when these items
24 were placed into evidence and what was actually placed into
25 evidence?

1 A. What I have is a piece of paper that Officer Gietz had
2 turned in with the BEST kit and it says the date that it
3 was seized and what items that he put into the basket.

4 Q. Do you have that with you right now?

5 A. Yes, I do.

6 Q. Can I see it?

7 A. Yes, sir.

8 Q. Would you agree that that paper that you possess does
9 not contain -- give a -- if you don't mind, just give a
10 description, I guess, of how he references this -- these
11 items that he's placing into evidence. What does he call
12 them, a bag? Or what does he say?

13 A. Plastic containers of a crystal-like substance,
14 parentheses, methamphetamine.

15 Q. So the only thing that he is designating in this log
16 that he's entering into is that there are plastic
17 containers that he is placing into evidence in the evidence
18 room to be properly secured through the many hands of the
19 Lexington County Sheriff's Department until you get a
20 chance to test it, right? There's nothing else there.

21 A. No, sir.

22 Q. So -- and it has a number on it, doesn't it?

23 A. It has the BEST kit control number.

24 Q. And what is that number again?

25 A. C017604.

1 Q. All right. So that control number is obviously for
2 those plastic containers that contains that substance,
3 right?

4 A. It is what is placed -- what he deems for the BEST
5 kit.

6 Q. All right.

7 A. So whatever he has deemed in that BEST kit in this box
8 has that control number.

9 Q. On this box that you have here, you have -- the BEST
10 kit number is on -- is stuck on the outside of the box,
11 isn't it?

12 A. I don't understand your question. I'm sorry.

13 Q. Okay. You've got a number. I'm just trying to keep
14 up with where the drugs are. You've got a number that you
15 just referred to, which is the control number. That is
16 not on a regular bag because it's too much to put it in a
17 regular bag, it's on the box itself, right?

18 A. The BEST kit itself is actually in the box.

19 Q. Can I see the BEST kit?

20 A. Yes, sir.

21 MS. OPPENHEIMER: Ms. Walker, do you want another
22 pair of gloves?

23 THE WITNESS: I'm good. Thank you.

24 Be careful. There's narcotics on it.

25 MR. WILLIAMS: Okay. Could I have a glove?

1 THE WITNESS: They have them, sir.

2 MR. WILLIAMS: Okay.

3 BY MR. WILLIAMS:

4 Q. Now can I see it?

5 A. Yes, sir.

6 Q. So is there anything on this BEST kit bag that you
7 have that refers to three plastic containers and then some
8 reference to a sealed bag which has some substance in it --
9 another substance in it?

10 A. The correlation is the BEST kit control number, which
11 is noted on the BEST kit bag and noted on the Form B chain
12 of custody, which then correlates over into the plastic
13 containers containing crystal substance.

14 Q. The point of all this is when you got around to
15 testing items, when did you -- when did you test these
16 items?

17 A. I tested it on August 25th of 2020.

18 Q. And when you tested these items, you had something
19 which tested out as -- you designated a C1 number with a
20 weight and you tested -- oh, didn't you give -- you tested
21 two different groups of things, didn't you?

22 A. Yes, sir.

23 Q. You have the three containers?

24 A. Uh-huh. Yes, sir.

25 Q. And what was -- what was the -- you threw me off with,

1 sir. What was the -- what did you designate those as, C1?

2 A. Are you -- I'm confused. Are you --

3 Q. You broke it down. You said there's a plastic bag in
4 there that you tested also which was not part and parcel of
5 those three items that you tested, wasn't there?

6 A. I'm still a little confused what you're asking.

7 Q. Okay. You've got three plastic containers that have
8 some substance in it?

9 A. Yes, sir.

10 Q. And you tested those by testing a sample from each one
11 of those three plastic containers?

12 A. Yes, sir.

13 Q. To prove that whatever the item was in those three
14 plastic containers was consistent with your determination
15 of what the drug allegedly was. Then you tested something
16 else. You tested a plastic bag, which you measured out at
17 -- what did you say, 5 --

18 A. 5.22.

19 Q. 1.2 is 5 point what?

20 A. 1.2 is 5.22 grams.

21 Q. 5.22 grams. So where did you find this at?

22 A. Right here.

23 Q. So this item was not in --

24 MR. WILLIAMS: Your Honor, I have a matter of law
25 to take up with the Court outside the presence of the

1 jury.

2 THE COURT: Before you get to that, I need to have
3 a clarification, Ms. Walker.

4 THE WITNESS: Yes, sir.

5 THE COURT: My understanding was that the 1.1 item
6 is the three plastic containers, right?

7 THE WITNESS: Yes, sir.

8 THE COURT: And then you took each of those three
9 plastic containers and gave them a sub number, 1.1, 1 in
10 parentheses, 2 in parentheses and 3 in parentheses?

11 THE WITNESS: Yes, sir.

12 THE COURT: So is it my understanding then that
13 that accounts for the -- the drugs that are in the three
14 plastic containers?

15 THE WITNESS: For Item 1.1, yes.

16 THE COURT: That's right. Item 1.1 is the three
17 plastic containers?

18 THE WITNESS: Yes, sir.

19 THE COURT: And the drugs that are in them?

20 THE WITNESS: Yes.

21 THE COURT: And 1.1(1) and 1.1(2) and 1.1(3) is
22 the individualized contents of each of those three
23 containers?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. So what then is 1.2 with

1 the 5.22 grams?

2 THE WITNESS: That is a Ziploc bag containing
3 plastic container containing plastic corner bag
4 containing crystal substance.

5 THE COURT: Okay. Not the three bags that are in
6 the 1.1? Something different?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Okay.

9 All right. Thank you, ma'am.

10 Ladies and gentlemen, step to your jury room
11 for a moment and let me see what we've got to take up
12 outside your presence.

13 (Whereupon, the jury retires to the jury room at
14 3:13 PM.)

15 THE COURT: Mr. Williams.

16 MR. WILLIAMS: I have the answer to the question,
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. WILLIAMS: I would move for a mistrial. The
20 answer to the question is that when I was referring
21 to this box which had these cocaine items in it or
22 methamphetamine items in it, it not only possessed
23 those items, but it also possesses that 5 -- what was
24 the amount?

25 THE WITNESS: 5.22 grams.

1 MR. WILLIAMS: 5.22 grams. Well, I know, as well
2 as you do, Your Honor, is you note where you find drugs
3 and you put them down where you find the drugs and
4 that's the basis of formulating whether or not you're
5 gonna charge him for possession of drugs over here,
6 you're gonna charge him for possession of drugs over
7 here, and they're two separate events, and on the --
8 on this bag, which is referenced as Item 4, it says
9 Room Number 2.

10 Now I don't know -- oh. Now I don't know this to
11 be a hundred percent, but I'm pretty sure that what this
12 Room Number 2 refers to is after my client was stopped
13 on the Interstate and was charged with trafficking
14 cocaine, they secured a search warrant and with that
15 search warrant they went to a house, which is his
16 residence, where they encountered two other females who
17 were in his house and they searched his house and they
18 ended up finding drugs there, and they subsequently
19 charged people who were there with the drugs.

20 I'm pretty sure that that Room Number 2 that it
21 says there is a reference to the drugs that were found
22 in a separate location in West Columbia where two other
23 people were at where they were also charged with drugs
24 and should not be part and parcel of this particular
25 charge that we're charging.

1 That's why I was raising such a stink, Your Honor,
2 about the chain of custody because I was concerned that
3 there might be some extra drugs that shouldn't be a part
4 of this crime, but I couldn't get into the box.

5 THE COURT: Right.

6 MS. OPPENHEIMER: Your Honor --

7 THE COURT: Hold on just a second. He's not
8 through.

9 MS. OPPENHEIMER: I'm sorry.

10 MR. WILLIAMS: All right. So, Your Honor, he's
11 -- what we have actually done is there's a separate
12 crime which would be a -- I guess a possession of
13 methamphetamine, if they were gonna accuse him of
14 possessing those, that he should have been charged
15 with that he's not charged with, and they're attempting
16 to use those drugs to convict him of this trafficking
17 charge. There are at least two other co-defendants who
18 were in the house who could have possessed these drugs
19 that are in his box, which is why it is just -- and
20 you'll note, Your Honor, and we can ask her, but I'd be
21 willing to bet that on the -- on the chain of custody
22 forms that the officer fills out that there is a reference
23 as to where the drugs came from, there's a notation that
24 it was found on the Interstate, and then there's also a
25 reference to a search warrant for all of it.

1 THE COURT: All right.

2 MR. WILLIAMS: For all of it. Meaning, the drugs
3 that were found in the truck and anything that was
4 found in the house, so it's kind of like a two-fer.
5 And clearly the seizing of the drugs on the highway was
6 not pursuant to a search warrant. He seized them on the
7 -- on the highway at the time that he made the stop.

8 THE COURT: Right.

9 MR. WILLIAMS: The search warrant references a
10 search warrant which he received from a magistrate that
11 allowed him to go into -- he and several other narcotics
12 officers to go into the house and seize other items, and
13 that's why it says search warrant on it. And I think we
14 could probably produce that information, Your Honor.

15 So, Your Honor, we would move for a mistrial because
16 of all of that.

17 THE COURT: Because of -- well, let me hear what
18 Ms. Oppenheimer has to say first off.

19 Ms. Oppenheimer.

20 MS. OPPENHEIMER: Your Honor, this Form B Rule 6
21 that Mr. Williams is referring to does, indeed, have
22 methamphetamine attributed to the defendant from both
23 his home and the drugs seized on I-20 Eastbound. They
24 were packaged together. This one co-defendant that was
25 in the house that Mr. Brown -- is Mr. Brown's house had

1 drugs attributed to her that were in a separate BEST
2 kit.

3 Certainly the remedy is not a mistrial, it is the
4 suppression of Item 1.2, which we are happy to do.
5 Unfortunately, they are packaged in the same box. They
6 were packaged with the same BEST kit. It's very
7 difficult to separate those out and keep a chain of
8 custody intact, but they are from June 29th of 2020,
9 and I'm happy to offer Form B as an exhibit, Your Honor,
10 that is signed by John Gietz.

11 THE COURT: Wait a minute. Right at this moment
12 Item 7 -- it was for identification initially. I'm not
13 sure whether it's been ruled into evidence yet or not.
14 I don't -- I don't recall whether that motion has been
15 made or whether we completed it. I don't think it is
16 because I don't think we completed the -- the discussion
17 of the analysis of it just yet, but I was going to
18 suggest, Mr. Williams, if, indeed, this separate cup,
19 and I'll accept what you say and your analysis of that
20 from being from Room 2, wherever that is, and that
21 they're improperly trying to lump all this together to
22 get the weight to whatever they're trying to get to to
23 satisfy the statute in this particular case, that the --
24 the appropriate remedy to deal with that issue, with the
25 improper introduction of that 1.2, 5.22 grams, is simply

1 to not allow that into evidence for the reasons that
2 you've already put on the record, but it doesn't seem to
3 disturb the validity of the other evidence in the three
4 plastic containers; 1.1(1), 1.1(2) and 1.1(3).

5 Can you tell me why that is not an appropriate way
6 to deal with we'll say the improper introduction of the
7 5.22 grams?

8 MR. WILLIAMS: Sure. Because the jury sat over
9 there and heard all that testimony about those items
10 and -- and the jury heard about there being this -- the
11 solicitor even elicited testimony about this 1.2 and
12 included it in her testimony -- in her presentation.

13 THE COURT: Right.

14 MR. WILLIAMS: So it's like closing the door after
15 the -- after the cow has already leaped out of the barn.
16 And, Judge, you have to give me a fair share on this.
17 I tried to stop it. I tried to stop it.

18 THE COURT: You did.

19 MR. WILLIAMS: I really tried hard not to let that
20 happen.

21 THE COURT: Right, and I appreciate that, and I'm
22 trying to figure out why it did happen when we've been
23 focussing on the three plastic bags since the road stop
24 and then all of a sudden they come up with this flower
25 pot full of drugs that I didn't know anything about,

1 it wasn't part of Officer Gietz's testimony or Office
2 Atwood's testimony or Officer Shropshire's testimony
3 because it wasn't out there where they were.

4 MS. OPPENHEIMER: Your Honor, they're all packaged
5 together under the same BEST kit throughout this --

6 THE COURT: I understand that part. I understand
7 they threw them all in the same box.

8 MS. OPPENHEIMER: Right. And so Item 1.2 --

9 THE COURT: Wait a minute. Wait a minute. Let's
10 just -- they're all in the same box.

11 Now the other stuff was on the side of the road,
12 the seizure properly dealt with, all of the evidence
13 regarding a proper seizure of that, like you should have,
14 and I've sustained all -- the introduction of all of
15 that, but now we get this. But until Mr. Williams tells
16 me, I haven't got any idea what it came from. It just
17 shows up in the box. Well, it's in the same. Of course,
18 it's in the same box, but why didn't we know something
19 about -- why didn't I know something about that? He
20 might have had an objection as to whether or not that
21 was proper, whether there was a proper search warrant
22 for that or whatever it happened to have been that he
23 could have raised before now.

24 Why just now?

25 MS. OPPENHEIMER: Your Honor, it's been over a year

1 since we opened that box in preparation for trial. Our
2 initial trial strategy was to not only bring in the three
3 kilos -- about three kilos of meth in the defendant's
4 truck, but also all of the weapons, all of the drugs,
5 all of the money, the drug ledger, the scales, et cetera,
6 found in his home. We decided at Mr. Williams' request
7 to only focus on the traffic stop --

8 THE COURT: Right.

9 MS. OPPENHEIMER: -- which did seem to make it
10 simpler than to go into a traffic stop plus the search
11 of a home.

12 THE COURT: Okay. All right.

13 MS. OPPENHEIMER: It was an honest mistake. They
14 are packaged together because they are associated with
15 the same defendant. Certainly suppression of Item 1.2
16 would be the remedy and a curative instruction that the
17 jury is not to give weight to any of that testimony or
18 even regard it whatsoever. It certainly does not affect
19 the 2900 grams of meth found in his truck. We get to
20 400 grams or more regardless.

21 THE COURT: I just stated that. I understand that.

22 MS. OPPENHEIMER: I'm just making my argument just
23 like Mr. Williams, Judge.

24 THE COURT: That's right.

25 Okay. I'm beginning to wonder just how clean my

1 curative instructions are going to wash this record of
2 the taints beginning with -- well, the initial statement
3 early on about a whole lot of other drug activity in
4 addition to this June 29th stuff that we're dealing with,
5 and now to ask this jury to further disregard this 5.22
6 grams of drugs, just forget about that.

7 Let me take a few minutes, ladies and gentlemen.

8 Ms. Walker, you can stand down. You cannot talk
9 about your testimony while you're on the stand.

10 THE WITNESS: Yes, sir. Thank you.

11 (Recess taken at 3:24 PM.)

12 (Back on the record at 3:57 PM.)

13 BAILIFF: Court is back in session. Please take
14 your seats.

15 THE COURT: The motion has been made for a mistrial.
16 I'll tell you what we all know in this courtroom about
17 the law in that regard. Our Court has held that the
18 granting of a mistrial is an extreme measure that should
19 be taken only when an incident is so grievous that the
20 prejudicial impact can be removed no other way. That's
21 State versus Tisdale, 338 South Carolina 607.

22 A mistrial should not be granted unless absolutely
23 necessary. Defendant must show error and resulting
24 prejudice. State versus Council, C-O-U-N-C-I-L,
25 335 South Carolina 1. And, of course, it's the judge's

1 discretion which controls.

2 What we're talking about in this case is improperly
3 admitted evidence or improperly proffered evidence sought
4 to be admitted. It is not in evidence yet. State's 7
5 has been offered for identification and has not been
6 introduced into evidence -- has not been admitted into
7 evidence I should say.

8 I am struggling with two separate events. First
9 of all, there's the testimony early on by Inspector
10 Gietz about the fact that the defendant was under
11 investigation and had been under for some other -- for
12 some time. There was a reference for more than in this
13 event, which we have dealt with earlier.

14 Our caselaw creates a bar that it is extremely
15 difficult to meet in order to get a mistrial and I and
16 other trial judges are compelled by the law as it has
17 been handed to us to try to avoid a mistrial if we
18 possibly can and still -- and still ensure a fair trial.

19 The prior reference of other drug activity has been
20 addressed in other cases, State versus Council again, in
21 which there was some reference to the defendant's prior
22 criminal record, but the State didn't make any attempt
23 to introduce any other evidence of any other crimes in
24 that regard. A single reference to warrants or other
25 charges against the defendant has been held insufficient

1 to grant a mistrial. That's State versus Harris,
2 340 South Carolina 59.

3 The more troublesome case that we're confronted
4 with right now is that evidence, that improperly offered
5 evidence in this regard, and I need not repeat again
6 which both sides have alluded to during the argument.
7 Here is evidence that by agreement was not going to be
8 offered in this particular case. Here is evidence that
9 insofar as the arrest is concerned and the circumstances
10 surrounding the arrest, and all of the motions that we
11 took care of in regard to that, was not even mentioned.
12 The photographs on the roadside, the nature of the stop,
13 the nature of the dog search, all of those things, the
14 photographs, the videos that were taken, talked about
15 three plastic containers full of methamphetamine. That's
16 all that Investigator Gietz talked about. That's all
17 that the troopers talked about. That's all that there
18 was.

19 And then in the course of Ms. Walker's testimony,
20 who was not present obviously for the other and didn't
21 know the background, all she knew is what she had been
22 asked to analyze, and she did and here it is, and she
23 went into great detail that I don't need to belabor any
24 further and having -- and having completed her report.
25 And very specifically. Even I understood it. The 1.1

1 and the 1.1(1), (2) and (3), I understood that. And then
2 there comes in this 1.2. I was trying to figure out what
3 that was. I hadn't heard about that. Mr. Williams knew
4 about it or he thought he knew about it. He thought he
5 knew what they were talking about and he tried to keep
6 it out. He insisted that he wanted the chain to be
7 completed. He wanted to know what was in the box. He
8 knew exactly what -- what it could have been. He fought
9 to keep it out. I would have thought at that time if I
10 were on the other side and realized now wait a minute,
11 we weren't supposed to be trying this case on anything
12 but the -- but the three plastic containers, but the
13 prosecution forges ahead right through the stop sign,
14 right through the speed bumps and everything else, right
15 onto this 1.2 Ziploc bag containing crystal, weighed
16 separate, tested, 5.22 grams. I was trying to figure out
17 how that factored into the weight that had been given of
18 the three plastic bags and I -- I didn't know because I
19 didn't know what it was until we get to the flower pot
20 or whatever it was that says this is -- this is something
21 else and that, of course, immediately gave rise to the
22 mistrial.

23 Now -- now I'm confronted with what is obviously
24 overreaching and not accidental. Not to say that it
25 was intentional from the standpoint of luring somebody

1 into a trap in this regard, but to say for some reason,
2 and I don't understand why, the agreement not to bring
3 this very item into evidence was forgotten, and what do
4 I do with it?

5 Candidly, folks, I wanted to declare a mistrial.
6 I still want to declare a mistrial, but a trial judge
7 doesn't get to do whatever he wants to do just because
8 he wants to do it. I'm bound by the law and our courts
9 have told me in cases even more severe than this that
10 a mistrial should not be granted.

11 State v. Howard at 269 South Carolina 481.
12 Mr. Howard was on trial for the crime of murder and his
13 co-defendant said during the course of the trial that
14 Howard had committed another murder and the statement
15 was made twice and the Supreme Court said that did not
16 warrant a mistrial when the judge admonished the jury
17 to disregard anything about that and so any error in
18 failing to grant a mistrial in that case was harmless
19 error. Of course, as the trial judge I don't like
20 to commit any error, even a harmless error, but
21 that requires the State to review the -- I mean, the
22 Supreme Court to review the entire record to find out.

23 A mistrial should not be ordered in every case
24 where incompetent evidence is received and later stricken
25 out. An instruction to disregard objectionable evidence

1 usually cures any error in its admission. The defendant
2 has to show both error and resulting prejudice. State
3 versus Johnson, 334 South Carolina 78.

4 State versus Moses, 390 South Carolina 502, when
5 in the course of a trial incompetent statements of
6 witnesses are brought in either from accident or when
7 they might reasonably though erroneously be thought
8 by counsel to be competent, the only remedy that the
9 Court can afford is to grant a motion to strike and
10 instruct the jury to disregard the testimony. The injury
11 resulting from a jury having heard incompetent testimony
12 is regrettable, but the trial cannot be stopped because
13 of such accidents and mistakes likely to occur.

14 That's the law that I'm confronted with in the face
15 of my gut reaction to grant a mistrial in this case. I
16 don't get to rule on the basis of what my -- pardon my
17 French -- gut reaction happens to be. I'm bound by the
18 law.

19 And, Ms. Oppenheimer and Mr. Smith, you-all are the
20 beneficiaries of the law in this regard, and you should
21 be. The State should be. Whoever the law benefits under
22 the law I suppose it should be because that's the way
23 the law is intended to be, and so the motion to grant
24 a mistrial is respectfully, yet regrettably, denied.

25 Now the introduction of 1.2, the 5.22 grams, is

1 suppressed. It is not admitted. None of the drugs
2 are yet in evidence. The box has been marked for
3 identification. Ms. Walker has been describing the
4 evidence and has been telling about its weight and has
5 been cross-examined, of course, and is in the course
6 of cross-examination by Mr. Williams, which he will
7 continue in just a moment, and depending on whatever
8 else might come up during the course of the
9 cross-examination, there might be other things that
10 Mr. Williams knows about that I don't yet know about
11 that he'll make sure I do know about it if I need to
12 know about it before his examination is over depending
13 on what happens. If nothing happens, then the contents
14 of the three plastic -- the net contents of the three
15 plastic containers will be in evidence, but I'm not
16 gonna rule on that until I've heard all of the testimony
17 regarding the introduction of that cross-examination and
18 the redirect as it will occur.

19 Does everybody understand all that?

20 MS. OPPENHEIMER: Can we have a point of
21 clarification? I was looking of the transcript of
22 Ms. Johnson during the break. There was an objection
23 by Mr. Williams when I first offered State's Exhibit
24 Number 7, he had a litany of objections, and then we
25 cured any potential issue that he had about having

1 Ms. Walker identify the BEST kit number. You overruled
2 that objection and then I believe Mr. Williams then
3 immediately asked for the jury to step out to renew his
4 motion to suppress, which is probably where the -- I
5 thought that the drugs had been entered because you
6 overruled his objections to State's Exhibit Number 7.

7 THE COURT: At that point in time the focus, as I
8 understand it, was on the box itself, right?

9 MS. OPPENHEIMER: Well, and the contents because we
10 hadn't opened it yet.

11 THE COURT: Hadn't opened it.

12 MS. OPPENHEIMER: But I can certainly mark the three
13 separate bags as State's 11, 12 and 13.

14 THE COURT: Here's -- here's my recollection of
15 the question. I do remember in regard to the -- to the
16 objection that I -- that I did rule that the box itself
17 with all the marks and so forth on it because that's
18 what the objection was to at that point in time, State's
19 Number 7, Item 1, the BEST kit Number C017604, the box,
20 no analysis. Now it was after that that the box was
21 opened and Ms. Walker got into 1.1, 1.2 and so forth.

22 Am I incorrect in my recollection of the order of
23 things?

24 MS. OPPENHEIMER: Right, Your Honor. And it might
25 just be a confusion in the difference in judges. Like

1 typically we just offer the entire BEST kit into evidence
2 at once and I think because there was some jumbling not
3 only about the objection to the chain and overruling
4 by Your Honor to that objection and then immediately
5 Mr. Williams asked for the jury to be excused, so it
6 could just be because --

7 THE COURT: And I think that's fair, Ms. Oppenheimer.
8 My understanding was that what I was ruling on was
9 the objection we had at sidebar about the chain.

10 MS. OPPENHEIMER: Correct.

11 THE COURT: I thought that had been satisfied.

12 MS. OPPENHEIMER: Correct.

13 THE COURT: It's unlikely that I would have ruled
14 everything in that box in evidence in the absence of the
15 box being opened and in view of the fact that Ms. Walker
16 had testified the box, no analysis.

17 So I would have -- if I had ruled the drugs into
18 evidence without knowing what they were or the weight of
19 them, I would have -- I shouldn't have done it.

20 MS. OPPENHEIMER: And that's just different than
21 how I've always done it, so I apologize, Your Honor.

22 THE COURT: Okay.

23 All right. Well, nonetheless I'm glad that I did
24 not rule separately into evidence those items because
25 if I had ruled into evidence 1.2, the zip bag in that

1 particular case, that would have been reversible error.

2 MS. OPPENHEIMER: Yes, Your Honor. I understand.

3 I just wanted clarification.

4 THE COURT: All right.

5 MR. WILLIAMS: Your Honor, if I could speak to that?

6 THE COURT: Yes, sir.

7 MR. WILLIAMS: I have a differing opinion from the
8 solicitor and both Your Honor --

9 THE COURT: All right.

10 MR. WILLIAMS: -- and the reason -- and the reason
11 I have a differing opinion is because she published those
12 items to the jury to see --

13 THE COURT: Right.

14 MR. WILLIAMS: -- and the jury is not allowed to
15 view the evidence until it's placed into evidence.

16 THE COURT: Right.

17 MR. WILLIAMS: So the only possible -- well, not
18 the only possible, but the way I would view it would be
19 that when you -- I understood you to say you were putting
20 the box and those items in it because she was talking
21 about them, pulling them out, showing them to everybody,
22 then that certainly would be improper if she was showing
23 it, but I thought maybe -- maybe it was in evidence.

24 THE COURT: Right. I was trying to deal with the
25 chain of custody stuff that we talked about over here

1 because you'd indicated you were gonna have to object to
2 everything, and I can understand why.

3 MR. WILLIAMS: And you see that's the reason. That
4 is the very reason why this is so crucial is because this
5 is not a piece of evidence that -- you know, it's already
6 been shown to the jury.

7 THE COURT: Right. And -- and until your further
8 inquiry and argument in that regard, I had no idea what
9 it was, you know, so I was -- I assumed that it had
10 something to do with the three bags -- three boxes and
11 I don't know why. Well, I know why. Because apparently
12 I was the only one in the courtroom who didn't know that
13 there was another drug stashed somewhere that was taken
14 into account. That would have been good for me to know.

15 I've already put my ruling on the record and I have
16 put my -- the legal basis for my ruling on the record
17 and I hope I have sufficiently for whatever purpose it
18 might serve to some appellate court looking at this the
19 extreme distaste for which I feel I am required to do
20 what the law mandates.

21 (State's Exhibit Number 11, 12 and 13 were marked
22 for identification.)

23 THE COURT: Bring us the jury.

24 (Whereupon, the jury returns to the jury room at
25 4:17 PM.)

1 THE COURT: Thank you, folks.

2 When we broke some time ago to deal with some
3 matters of law, which obviously took some time to deal
4 with, Ms. Walker was being cross-examined by Mr. Williams.

5 We pick up at that point now with continued
6 cross-examination of Ms. Walker who you recall analyzed
7 the drugs in this particular case.

8 Let me tell you that there was a reference to
9 the three plastic containers. There was reference to
10 another zip bag that contained a quantity of drugs that
11 was shown to you. Let me tell you that that -- that
12 last container is not in evidence. It was improperly
13 shown to you. It is not a part of this trial. It has
14 nothing do with the charges that the defendant is facing
15 in this regard. I tell you as strongly as I can that --
16 forget about that. That has no rule -- no role I should
17 say and nothing for you to consider insofar as it's
18 concerned. It's not a part of the record in this case.
19 You will deal with and give whatever consideration you
20 feel you need to give to the other containers that have
21 been offered in this matter, but nothing to that.

22 Thank you.

23 All right. Mr. Williams, you can continue your
24 cross-examination.

25 MR. WILLIAMS: No questions.

1 THE COURT: Thank you.

2 Any redirect?

3 MS. OPPENHEIMER: Yes, Your Honor. If I may
4 approach the witness?

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY MS. OPPENHEIMER:

8 Q. All right, Ms. Walker. We've talked about three
9 plastic containers that you analyzed, right?

10 A. Yes, ma'am.

11 Q. I'm showing you State's Exhibit Number 11. Can you
12 tell me if you recognize that item?

13 A. I do.

14 Q. And is that the item that you -- one of the items that
15 you tested in this case in reference to this defendant?

16 A. Yes, ma'am.

17 Q. And how do you know that?

18 A. My initials are on the bag.

19 Q. And is that your handwriting on the bag?

20 A. Yes, ma'am.

21 Q. And did -- where did that bag come from?

22 A. This bag specifically I added into the case.

23 Q. And the plastic container that's inside that bag,
24 where did that plastic container come from?

25 A. That plastic container containing the meth that's in

1 this bag was found in this box.

2 Q. And that's previously marked as State's Exhibit 7 --

3 A. Yes, ma'am --

4 Q. -- that you said had not been tampered with at all?

5 A. Yes, ma'am.

6 Q. From the plastic container in Item 1.1(1), can you
7 tell us whether or not that plastic container in and of
8 itself appeared to be tampered with?

9 A. No, ma'am.

10 MS. OPPENHEIMER: Your Honor, at this time I'd move
11 State's Exhibit Number 11 in evidence.

12 MR. WILLIAMS: Subject to my prior objections.

13 THE COURT: Subject to previous objections.

14 Now tell me where that came from again.

15 THE WITNESS: This specific item came from the box.

16 THE COURT: Is that the third plastic container; is
17 that right?

18 THE WITNESS: This is the first one that I tested.
19 This is Item 1.1 parentheses 1.

20 THE COURT: That's one of the three?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. In evidence over objection.
23 Thank you.

24 (State's Exhibit Number 11, a container of
25 methamphetamine, was admitted into evidence.)

1 BY MS. OPPENHEIMER:

2 Q. I'm showing you what's been marked as State's Exhibit
3 Number 12. Can you tell me if you recognize that item?

4 A. I do.

5 Q. And what it is?

6 A. It's Item 1.1 parentheses 2.

7 Q. And is that one of the items you tested in this case
8 in reference to this defendant?

9 A. Yes, I did.

10 Q. And can you tell us did you add that plastic bag after
11 you were done testing?

12 A. Yes, I did.

13 Q. Is it in the same condition as it was when you sealed
14 it?

15 A. Yes, it is.

16 Q. And can you tell us that plastic container in the bag,
17 is that what the methamphetamine was found in?

18 A. Yes, ma'am.

19 Q. And can you tell us where you obtained that plastic
20 container from?

21 A. I obtained it from the box that was submitted as
22 C017604.

23 Q. And that would have been the BEST kit in this case?

24 A. Yes, ma'am.

25 Q. And the box that's been previously ID'd as State's

1 Exhibit Number 7?

2 A. Yes, ma'am.

3 Q. And when you removed that plastic container from
4 State's Exhibit Number 7, did it appear to have been
5 tampered with at all?

6 A. No, ma'am.

7 MS. OPPENHEIMER: Your Honor, at this time I move
8 State's Exhibit Number 12 into evidence.

9 THE COURT: Subject to previous objection 12's in
10 evidence.

11 (State's Exhibit Number 12, a container of
12 methamphetamine, was admitted into evidence.)

13 BY MS. OPPENHEIMER:

14 Q. I'm showing you what's been marked as State's
15 Exhibit 13. Do you recognize this item?

16 A. I do.

17 Q. And how do you recognize that?

18 A. It has my initials and the BEST kit and case number
19 on it.

20 Q. All right. Is that one of the items that you tested
21 in this case in reference to this defendant?

22 A. Yes, ma'am.

23 Q. Can you tell us whether or not you added that bag
24 after you were done testing?

25 A. Yes, I did. It's noted as bag added on the bag.

1 Q. And the methamphetamine that's inside that bag, where
2 was that originally found?

3 A. It was found in the plastic container that is in that
4 Ziploc bag.

5 Q. And where was that plastic container found when you
6 went to go test it?

7 A. It was found in the same box as the other two prior
8 and it's boxed with the BEST kit C017604 taped to it.

9 Q. Did that plastic container appear to be tampered with
10 at all?

11 A. No, ma'am.

12 MS. OPPENHEIMER: Your Honor, at this time I move
13 State's Exhibit Number 13 into evidence.

14 THE COURT: Subject to previous objection, 13's in
15 evidence.

16 (State's Exhibit Number 13, a container of
17 methamphetamine, was admitted into evidence.)

18 MS. OPPENHEIMER: I beg the Court's indulgence.

19 BY MS. OPPENHEIMER:

20 Q. And, Ms. Walker, you tested all three of those bags?

21 A. Yes, ma'am.

22 Q. And the results of your test was what?

23 A. Methamphetamine.

24 Q. And the aggregate weight of those three bags was what?

25 A. The 2917 grams, 45,016.19 grains.

1 MS. OPPENHEIMER: I have no further questions.

2 Thank you, Ms. Walker.

3 THE COURT: Any followup on those points,

4 Mr. Williams?

5 MR. WILLIAMS: None, Your Honor.

6 THE COURT: Thank you.

7 Ms. Walker, you can step down.

8 THE WITNESS: Yes, sir.

9 THE COURT: Let me get -- the initial weight,

10 Ms. Walker -- before you step down, Ms. Walker, give

11 that to me to make sure. I've got the 44,016.9. What

12 was the other weight?

13 THE WITNESS: It was 2,917 grams, 45,016.19 grains.

14 THE COURT: I had the 2,917 before as your weight.

15 Thank you very much. You can step down.

16 THE WITNESS: Yes, sir. Thank you.

17 (Witness excused.)

18 THE COURT: All right. How long will the next

19 witness take, Madam Solicitor?

20 MS. OPPENHEIMER: That all depends, Your Honor, on

21 cross-examination. I don't think my direct will be that

22 long.

23 THE COURT: Who is your next witness gonna be?

24 MS. OPPENHEIMER: Investigator Mike Phipps. He

25 is -- we intend to offer him as an expert in digital

1 forensics.

2 THE COURT: Okay. Given the fact that we've had to
3 start late, interrupt the case twice already, I think we
4 need to keep on going, so we'll do that.

5 MR. WILLIAMS: Your Honor, there is one matter that
6 -- since I now know who the next witness is, we might
7 need to entertain outside the presence of the jury.

8 THE COURT: All right. Folks, can you-all find
9 your way to the jury room?

10 FOREPERSON: Yes, Your Honor.

11 THE COURT: Please don't discuss the case among
12 yourselves.

13 (Whereupon, the jury retires to the jury room at
14 4:27 PM.)

15 (State's Exhibit Number 14, 15, 16 and 17 were
16 marked for identification.)

17 THE COURT: All right. Tell me again,
18 Ms. Oppenheimer, what Mr. Phipps is gonna be testifying
19 to because I want to have a basis for understanding what
20 Mr. Williams' objection is gonna be.

21 MS. OPPENHEIMER: Your Honor, he did the cell
22 phone extraction in this case from the cell phone that
23 is already in evidence that was identified as the
24 defendant's phone in his truck.

25 THE COURT: Right.

1 MS. OPPENHEIMER: We intend to offer him as an
2 expert in digital forensics and cell phone extraction.
3 Specifically there's one conversation that we intend to
4 introduce that we have also pared down that would show
5 the plan of the defendant and his source of supply to
6 pick up these drugs from Atlanta, Georgia.

7 THE COURT: Okay.

8 All right. Thank you.

9 Now, Mr. Williams, I'll be glad to hear from you.

10 MR. WILLIAMS: Your Honor, clearly what they're
11 going to do is as in most cases when the cell phone is
12 seized that at some point in time they secure a search
13 warrant which allows them to go into the cell phone and
14 analyze it.

15 THE COURT: Right.

16 MR. WILLIAMS: Your Honor, there was actually a
17 search warrant and what happens in terms of -- I don't
18 know much about the custody of the cell phone, but it
19 was on June 30th, it was placed into evidence, and there
20 was a search warrant which was issued by Gietz -- by the
21 judge pursuant to Gietz's request for a search of the
22 cell phone.

23 THE COURT: Right.

24 MR. WILLIAMS: Your Honor, that search warrant was
25 dated June the 30th of 2020 and as is the case with most

1 search warrants, the judge has instructed that the item
2 to be searched is stored at Lexington County Sheriff's
3 Department, and I can present you a copy of this, Your
4 Honor, located at 521 Gibson Road. The item is described
5 as one white LG cell phone with case and it describes
6 the description of the property, which is Steve Brown's
7 cell phone, which was seized on June 29, 2020, then it
8 goes on in the body of the search warrant, to follow the
9 statute, it says that this search warrant shall not be
10 valid for more than ten days from the issuance -- from
11 the date of issuance, which is standard lingo, if you
12 will, Your Honor, in a search warrant.

13 THE COURT: Right.

14 MR. WILLIAMS: I have a copy of the extraction
15 summary, which was completed by Mr. Phipps, which
16 clearly indicates that the date and time that he did
17 this would have been -- I think I'm reading this right.
18 Start date, October the 16th of 2020 at 2:51:26 PM, and
19 I can present this to the Court if you need to see it,
20 Your Honor.

21 THE COURT: No, I'll take your word.

22 MR. WILLIAMS: It's standard kind of because it
23 tells when he began to do his work to do the search.

24 THE COURT: Right.

25 MR. WILLIAMS: Your Honor, a search warrant pursuant

1 to 17.3.140 is an allowance which allows someone to go
2 -- they're authorized basically to break people's privacy
3 and to go into the phone and determine what is in the
4 phone.

5 THE COURT: Right.

6 MR. WILLIAMS: It wasn't done within ten days is
7 the short answer, Your Honor. Cell phones are now
8 covered and are required to have search warrants to go
9 into the phones. I'm sure Your Honor knows whatever
10 that California case was --

11 THE COURT: Right.

12 MR. WILLIAMS: -- but it's kind of a simple -- kind
13 of a simple argument. I don't know why -- if anybody
14 has ever made the argument before. It just wasn't done
15 within ten days, Your Honor. They're not authorized to
16 go into that cell phone unless the search warrant is
17 within ten days of the date that they performed the
18 extraction --

19 THE COURT: All right.

20 MR. WILLIAMS: -- in its simplest terms.

21 THE COURT: Okay. What says the State?

22 MS. OPPENHEIMER: Your Honor, I believe Investigator
23 Gietz did seize this cell phone into evidence on the 29th
24 and he hand-delivered it to Investigator Phipps on
25 June 30th, which would have been within the 10-day

1 requirement of this search warrant. Investigator Phipps,
2 obviously a very busy man, has hundreds of cell phones
3 that he needs to obtain extractions from and he was given
4 this phone in June of 2020 at which point that would have
5 been the date that the search warrant was, in fact,
6 executed when it was handed to Investigator Phipps. He
7 did not put it on the software to download everything
8 or extract everything until October of 2020. I don't
9 believe that that would run afoul at all of Judge
10 Reinhart's order. The search warrant was, indeed,
11 executed really the next day, Your Honor.

12 THE COURT: Can somebody show me a copy of the
13 search warrant?

14 MR. WILLIAMS: Yes, Your Honor.

15 MS. OPPENHEIMER: Yes, Your Honor.

16 MR. WILLIAMS: Here's a copy of the search warrant
17 and this is just showing where Phipps received it and
18 this is the extraction date.

19 THE COURT: Okay.

20 MS. OPPENHEIMER: Your Honor, Investigator Phipps
21 did just inform me that on the date that Investigator
22 Gietz handed him the phone, on June 30th, he began his
23 process and attempted to use our software at the sheriff's
24 department, and correct me if I'm wrong, Investigator
25 Phipps, but the software at the sheriff's department was

1 unable to extract anything, which is why we had to go to
2 a different software that allowed access in October of
3 2020. So the initial attempt to get into the phone was
4 made the day after it was seized, which is well within
5 those ten days.

6 MR. WILLIAMS: And, Your Honor, I believe the law
7 in regards to search warrant says that if you're not
8 able to execute the search warrant, it's to be returned
9 to the magistrate within those ten days. So the search
10 was not commenced that was used for the extraction until
11 after this date in October.

12 MS. OPPENHEIMER: Well, actually it was commenced
13 because they did attempt to extract it on June 30th.

14 MR. WILLIAMS: But no evidence is tantamount to no
15 search.

16 MS. OPPENHEIMER: Your Honor, sometime these
17 extractions can take months, if not years, depending on
18 the device and depending on how much data is in there.

19 THE COURT: I'm familiar with that. I'm just
20 trying to decide whether the statute means what it says.
21 The search warrant itself says -- the body of the warrant
22 says a written inventory of all properties seized shall
23 be made to the judge within ten days from the date
24 of the warrant, et cetera. The description of the
25 property from the affidavit itself is the cell phone.

1 Obviously that by implication means whatever information
2 is contained in it, but the matter of reading would just
3 say the cell phone is the property and the cell phone
4 was received within that 10-day period.

5 State versus Weaver is a case that has come down
6 and held that the failure to complete that and get the
7 return done within ten days is a ministerial act and in
8 the absence of prejudice is not grounds for vacating the
9 search warrant or declaring it invalid. That's State
10 versus Weaver, W-E-A-V-E-R, and the cite is 374 South
11 Carolina 313.

12 All right. Mr. Phipps, come forward and be sworn.

13 I'm sorry.

14 MR. WILLIAMS: Can I add to that? Your Honor,
15 I'm familiar with that case and when it references a
16 ministerial duty what they're referencing is the actual
17 turning over of the form which comes with the search
18 warrant to the magistrate.

19 THE COURT: Right.

20 MR. WILLIAMS: So they're not talking about the
21 search, they're talking about the paperwork. So if a
22 police officer fails to turn over the paperwork on
23 the return to the search warrant, therein lies the
24 ministerial duty, but the search is not being conducted
25 within that time period.

1 THE COURT: All right. Let me look at it. I
2 haven't read the whole case.

3 MR. WILLIAMS: I believe that's what it says, Your
4 Honor.

5 THE COURT: I just need to know as much about it
6 as you do if I'm gonna rule if I can.

7 MS. OPPENHEIMER: Your Honor, we can certainly
8 offer testimony from Investigator Phipps if that would
9 help.

10 THE COURT: Okay. The reading of the case among
11 other things says the failure to list all of the items
12 seized on the return or the failure to make a return
13 is a ministerial error that does not require suppression
14 of the evidence, et cetera, unless there's some prejudice.
15 The fact that the case refers not only to the document
16 itself, that is the return, but also to a listing of
17 whatever was seized during that period of time goes
18 beyond just the mere paperwork to the item that was
19 seized, and in this particular case, of course, that
20 would be the phone and whatever's on it, so.

21 MR. WILLIAMS: I don't disagree with that, Your
22 Honor, but that's still not the search.

23 THE COURT: Well, in the case -- in the Weaver
24 case, the items seized would be the result of the search,
25 right?

1 MR. WILLIAMS: The item seized in this particular
2 case for which the search warrant is given would be the
3 authority to go inside the cell phone.

4 THE COURT: Right. That's right.

5 MR. WILLIAMS: So it is the power -- if you follow
6 that line of thinking from the California court, it's
7 the power to go inside that cell phone and retrieve that
8 information, and that good for ten days. If they don't
9 go inside the cell phone for those ten days, then they
10 don't have the authority to do it. This deals with
11 authority. It's not talking about the little yellow
12 form that's on the back of the search warrant that says
13 return and you list all the items.

14 THE COURT: Right.

15 Yes.

16 MS. OPPENHEIMER: Your Honor, I believe that, you
17 know, Investigator Phipps will testify that he began
18 his process on June 30th of 2020 and that this entire
19 time before the extraction was complete he was executing
20 that search warrant. I don't think that the spirit of
21 the search warrant or the law would require that every
22 single cell phone extraction be done within ten days.
23 That would just be absurd.

24 THE COURT: Right.

25 I agree with that. I think that that would create

1 an impossibility obviously given the nature of the
2 extractions.

3 I'm respectfully overruling the motion to suppress
4 the warrant and the results of the search of the --
5 results of the search warrant for those reasons. It
6 began within the 10-day period, it was on-going during
7 that period of time, it was not unduly delayed I take it
8 Mr. Phipps will testify, so the motion is respectfully
9 denied, all right?

10 MR. WILLIAMS: Your Honor, preempting whether or
11 not that there would be another objection when she
12 attempts to put the statements in, we would object to
13 the introduction of any statements from somebody other
14 than the defendant.

15 THE COURT: Right. Now I believe that's the kind
16 of thing I can handle.

17 MR. WILLIAMS: Okay.

18 THE COURT: All right. Thank you, sir.

19 Okay. Ms. Oppenheimer.

20 MS. OPPENHEIMER: Your Honor, based on a reading
21 of this chain of messages, the State does not believe
22 that they fall under the rule of hearsay because they're
23 statements by a co-conspirator. It is very obvious that
24 the defendant and a person by the name of "T" are
25 attempting to exchange money for methamphetamine. It is

1 -- and, Your Honor, I can hand up what we intend to offer
2 so that you can look at it.

3 It is clear that this is a co-conspirator to this
4 trafficking of methamphetamine, to bring this
5 methamphetamine into this state.

6 THE COURT: All right.

7 MS. OPPENHEIMER: Your Honor, there's nothing in
8 the law that says that the co-conspirator needs to be
9 charged. In fact, based on the evidence, it appears
10 that he is in Atlanta, Georgia, so Investigator Gietz
11 would have no jurisdiction to charge him, but I'm sure
12 if he ever came into the state of South Carolina and
13 Lexington County, he would be subject to a charge of
14 trafficking methamphetamine.

15 I have not been able to find anything in the law
16 that would require a co-conspirator to be charged, but
17 these are statements by a co-conspirator and, therefore,
18 not hearsay.

19 THE COURT: I think the question is whether or not
20 there is law that says the statements of a co-conspirator
21 are not subject to the hearsay exception -- are not
22 subject to hearsay rules. We should be able to find
23 something about that.

24 MR. WILLIAMS: We're concerned about confrontation
25 of witnesses and the constitutional deal here and if

1 he's not -- if he's not a co-conspirator, if he cannot
2 become co-conspirator unless he comes into the state of
3 South Carolina, then I think that only buttresses the
4 argument.

5 MS. OPPENHEIMER: Your Honor, certainly the
6 questions made by this individual named "T" are not
7 offered for the truth of the matter asserted and most of
8 those statements by "T" are, indeed, questions that the
9 defendant responds to. Any statements by the defendant
10 are certainly not hearsay. And, again, we would argue
11 Rule 801(d), I believe, that -- that they're statements
12 by a co-conspirator and, therefore, not hearsay.

13 THE COURT: Just for my information, Mr. Brown is
14 -- the blue stuff is his and the green stuff is the
15 other guy?

16 MS. OPPENHEIMER: The green is the defendant and
17 the blue is "T".

18 THE COURT: Okay. I see. All right.

19 All right. I'll deal with this when -- we've got
20 a little ways to get to until I look at the -- the scope
21 of the messages and whether or not I'll even deal with
22 those. We need to deal with the process you got it to
23 begin with.

24 Mr. Phipps, come forward and be sworn, please.

25 (Whereupon, Michael Phipps was duly sworn by the

1 Clerk of Court.)

2 THE CLERK: Would you please have a seat in the
3 jury box. State your full name and spell your last for
4 the record.

5 THE WITNESS: Michael Phipps, P-H-I-P-P-S.

6 MICHAEL PHIPPS,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION (In-Camera)

9 BY MS. OPPENHEIMER:

10 Q. Good afternoon, Investigator Phipps.

11 A. Good afternoon.

12 Q. You are employed with the Lexington County Sheriff's
13 Department; is that right?

14 A. That's correct.

15 Q. Are you also a TFO --

16 MS. OPPENHEIMER: I imagine this is outside the
17 presence of the jury, correct?

18 THE COURT: What's that?

19 MS. OPPENHEIMER: We don't have the jury. That's
20 what you wanted?

21 THE COURT: We don't have the jury. My
22 understanding is -- well, you tell me. Are we trying
23 to lay some foundation to support him at this juncture
24 or do you want the jury to hear what -- frankly, I've
25 lost sight of what the jury's role is in this and what

1 mine is.

2 But you're right. We do need the jury here if this
3 is something that's gonna get past a matter of law to a
4 matter of fact.

5 MS. OPPENHEIMER: Well, I believe you ruled that
6 the search warrant objection by Mr. Williams would have
7 been overruled and so the extraction would have been
8 proper.

9 THE COURT: Exactly. Because you said he was going
10 to testify, I believe, that he got this within a certain
11 period of time and that he was on-going with it, and I
12 assume that that's what he's gonna tell me so that I can
13 go ahead and let him talk about what he found.

14 If that's what he's gonna say, let's get that in the
15 record and then let me get the jury in.

16 MS. OPPENHEIMER: All right.

17 BY MS. OPPENHEIMER:

18 Q. Investigator Phipps, one of your tasks at the
19 sheriff's department is to do cell phone extractions; is
20 that right?

21 A. Yes, I'm considered a digital forensic analyst.

22 Q. All right. And were you asked to do one in this case
23 against Steven Daniel Brown?

24 A. Yes, ma'am.

25 Q. And what's already been introduced into evidence as

1 State Exhibit Number 6, was this the cell phone that you
2 were asked to extract data from?

3 A. Yes, ma'am.

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

5 A. Detective Gietz.

6 Q. On what date?

7 A. June 30th of 2020.

8 Q. And can you tell us did you begin your extraction
9 process on June 30, 2020?

10 A. I did. As the device came into the lab, I immediately
11 started to triage it, began to find out where we stood
12 with being able to access the device. At that time it was
13 determined that the phone was PIN locked, so that was gonna
14 require a brute force attack to get around that locked
15 device.

16 Q. What do you mean by a brute force attack?

17 A. So in this case, the user of the phone had set up a
18 user lock to prevent anyone from going in the phone. We
19 have software tools that we can mount the phone on and
20 these tools just run a brute force attack on that PIN
21 number trying every variation of all possible number
22 variations for whatever length PIN it is and it takes
23 however as long as it takes. I mean, sometimes we get
24 lucky and someone chose something really simple like all
25 1's and we may get into the phone the same day. If it's

1 something complex, it could take months, even years.

2 Q. All right. And was this a simple phone to get into?

3 A. We were able to access the phone on October 16th of
4 2020.

5 Q. And this entire time between June 30th of 2020 and
6 October 16th of 2020 is your software working attempting
7 to find that PIN number?

8 A. That's correct.

9 Q. All right.

10 THE COURT: All right. Thank you.

11 The groundwork has sufficiently been laid to deal
12 with the search warrant issue on the basis of that
13 testimony.

14 Let's get the jury in.

15 MS. OPPENHEIMER: Thank you, Your Honor.

16 Would you like him to come down and come back?

17 THE COURT: You can stay right where you are,
18 Mr. Phipps. I'll let the jury know that you've been
19 sworn outside of their presence.

20 MS. OPPENHEIMER: Your Honor, you have my printout
21 copy of the messages.

22 THE COURT: You want this?

23 MS. OPPENHEIMER: Is that okay? I do have an exhibit
24 sticker on it.

25 THE COURT: You take that.

1 MS. OPPENHEIMER: Okay.

2 (State's Exhibit Number 7, an empty BEST kit box,
3 was admitted into evidence.)

4 (Whereupon, the jury return to the courtroom at
5 4:53 PM.)

6 THE COURT: Ladies and gentlemen, Mike Phipps of
7 Lexington County Sheriff's Department, has taken the
8 stand and was sworn in your absence -- I think in your
9 absence. Nonetheless he's now subject to direct
10 examination.

11 Ms. Oppenheimer.

12 MS. OPPENHEIMER: Thank you, Your Honor.

13 MICHAEL PHIPPS,
14 having been previously sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. All right, Investigator Phipps. You are employed with
18 Lexington County Sheriff's Department; is that correct?

19 A. Yes, ma'am.

20 Q. What unit are you assigned to?

21 A. I'm with the crime scene unit and I hold a special job
22 title within our CSI unit, which is forensic technology
23 examiner.

24 Q. All right. And as a forensic technology examiner,
25 what are you tasked with doing?

1 A. Trying to extract evidence in criminal investigations
2 from digital devices. It can be anything from vehicles,
3 cars, computers, cell phones, anything electronic that may
4 have evidence that's pertinent to a criminal investigation.

5 Q. Do you have any special training as it relates to this
6 forensic data analyst analysis?

7 A. Yes, ma'am. I started training in this field back
8 in 2007. In 2010, I became a member of the South Carolina
9 Electronic Crimes Task Force, which is now called the
10 South Carolina Cyber Fraud Task Force. It's a task force
11 administered by the United States Secret Service. In
12 2015, I became a full-time task force officer with them
13 and actually sit in their lab and work out of their lab
14 even though I'm employed by the Lexington County Sheriff's
15 Department.

16 Q. Okay. And you said that extracting data from cell
17 phones is part of your job description; is that correct?

18 A. It is.

19 Q. Approximately how many cell phones have you extracted
20 data from throughout your career?

21 A. I have no way to even estimate, but over a thousand.

22 Q. All right. And have you testified in court today --
23 or sorry. Have you testified in court before?

24 A. I have. Yes, ma'am.

25 Q. In both state and Federal court?

1 A. I have. Federal court was not for phone-related
2 stuff. It was crimes unrelated to this.

3 Q. All right. And have you been offered as an expert and
4 qualified as an expert in digital forensics and cell phone
5 extractions before?

6 A. Yes, ma'am. I've been qualified in various areas of
7 digital forensics many times.

8 Q. And is there any training that you do annually or
9 quarterly to keep up on the new technology?

10 A. We do. There's various training seminars and training
11 courses we go to. Additionally, I'm also certified by a
12 vendor of one of our tools, Cellebrite, so I'm certified
13 as a Cellebrite certified operator, Cellebrite certified
14 physical analyst, and Cellebrite certified smart phone
15 analyst.

16 Q. And how long have you been are certified by
17 Cellebrite?

18 A. We get certified every three years and I'm on my
19 second rotation now, so coming up on six years.

20 MS. OPPENHEIMER: Your Honor, at this time I'd offer
21 Investigator Phipps as an expert in digital forensics and
22 cell phone extractions.

23 MR. WILLIAMS: Without objection, Your Honor.

24 THE COURT: Thank you.

25 Without objection Mr. Phipps is so qualified.

1 BY MS. OPPENHEIMER:

2 Q. Investigator Phipps, were you asked to extract data
3 from a cell phone in this case?

4 A. Yes, ma'am.

5 Q. And I'm handing you what's already in evidence as
6 State's Exhibit Number 6. Can you tell us if you recognize
7 that item?

8 A. I do. The packaging has my initials and date on it
9 and this is the proper case number and evidence number.

10 Q. And who did you -- or did you attempt to extract data
11 from that cell phone?

12 A. Yes, ma'am.

13 Q. And who did you receive that cell phone from?

14 A. Detective Gietz with our narcotics unit.

15 Q. On what date did you receive that cell phone to begin
16 your extraction process?

17 A. Detective Gietz brought me the phone June 30th of 2020
18 and I started looking at the phone that -- that same day.

19 Q. Okay. Can you tell us what your process is in
20 attempting to extract data from a cell phone?

21 A. Obviously the first thing we do is we take photographs
22 of the evidence within the packaging and then out of the
23 packaging. We take the protective cases off, try to
24 identify the make and model we're dealing with. We remove
25 the SIM card from the phone to isolate it from the network

1 because at some point we're gonna have to power that up
2 and we don't really want the phone downloading any more
3 additional information, and in this instance when it was
4 powered up it was found to have a PIN lock, so the user had
5 activated a lock so only he could access the phone.

6 Q. All right. And do you have software in which you can
7 attempt to, I guess, bypass that PIN code? Would that be
8 the appropriate term?

9 A. Yes, sometimes the -- sometimes the forensic tools can
10 actually just bypass the PIN. In which case, that's sort
11 of -- it's like a boot loader for the phone. It loads a
12 client on the phone, bypasses the main operating systems
13 and it allows you to access the raw memory without having
14 to boot the phone. Alternatively, sometimes we have to
15 do a brute force attack on that PIN; meaning the phone is
16 powered up, it's hooked to the equipment, that equipment
17 just tries virtually every possible combination of PIN
18 number and will eventually find the right PIN number.

19 Q. And which method did you have to use in this case?

20 A. I believe in this case it was a brute force attack
21 that we started on that phone.

22 Q. And what software do you use for that brute force
23 attack?

24 A. This was Cellebrite. My notes indicate that we used
25 a combination, but ultimately Cellebrite Premium was the

1 forensic tool that was used.

2 Q. And were you able to eventually get an extraction from
3 this phone?

4 A. Yes, we obtained various levels of extraction; a file
5 system and a physical extraction.

6 Q. Okay. Can you explain the difference between a file
7 system and a physical extraction for us?

8 A. I can try. A file system would be akin to you looking
9 at your computer and going into file explorer and having
10 the file structure open up as a series of folders. It
11 would be like collecting all of those folders and pulling
12 them out. The physical is not using the operating system,
13 but getting the raw binary data, literally the ones and
14 zeros, out of the memory and then using a secondary tool to
15 reconstruct that into a user readable format.

16 Q. All right. And did -- I guess you obtain both a file
17 and a physical extraction in this case?

18 A. We did, yes.

19 Q. And did you store that anywhere?

20 A. Yes, we -- it was stored within our forensic lab there
21 where we store all extractions and digital evidence.

22 Q. All right.

23 MS. OPPENHEIMER: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, ma'am.

1 BY MS. OPPENHEIMER:

2 Q. I'm showing you what's been marked as State's Exhibit
3 Number 17 for ID only. Do you recognize that item?

4 A. I do. This is a disk that I previously verified that
5 were the contents of the extraction of this phone.

6 Q. And how did you verify that it was the extraction of
7 the phone?

8 A. By looking at the files that are on there and
9 identifying those are the ones that I recovered from the
10 phone.

11 Q. And did you initial that disk?

12 A. I did. My initials are up here in the left-hand
13 corner.

14 Q. And did you put a date on it?

15 A. I did. August 3, 2023.

16 Q. And is that disk the entirety of the phone extraction
17 in this case?

18 A. It's -- yes. It's everything that we got and parsed
19 out. Again, we recover raw data, ones and zeros, which
20 aren't on here because that's not something someone can
21 look at, but as far as the results of that data being
22 processed in the tool, this is everything that came off the
23 phone.

24 Q. All right, Investigator Phipps.

25 MS. OPPENHEIMER: Again, Judge, just for ID. It's

1 the entirety of the extraction.

2 BY MS. OPPENHEIMER:

3 Q. Are you able to create smaller reports from -- well,
4 let me back up. Are you able to attribute the data at all
5 in this cell phone to any individual?

6 A. It's a matter of looking at what is on the phone.
7 Obviously people have accounts that they set up on their
8 phones, so one of the artifacts that this tool will
9 carve out is it will try to go through and identify all
10 accounts that are on the phone, whether you have a Facebook
11 account, a Gmail account, Linked-In account, whatever chat
12 application account, and it will list all of those under
13 one heading for that phone. So sometimes you'll see where,
14 you know, if you handed your phone over to a friend and
15 they log into their Facebook, you may get the odd account
16 listed there, but you can usually determine who is the
17 primary user of the account just by the virtue of the
18 volume of accounts under one person.

19 Q. Were you able to determine a primary user of this cell
20 phone?

21 A. Yes.

22 Q. And who has that individual?

23 A. I would have to have the printout because I don't have
24 his name memorized.

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

1 seem to have misplaced the item that I wanted to show
2 Investigator Phipps.

3 THE COURT: All right.

4 BY MS. OPPENHEIMER:

5 Q. Investigator Phipps, would looking at a smaller
6 extraction report help refresh your memory of who the owner
7 of this phone might be?

8 A. It can. There was a specific accounts document.

9 Q. I seem to have found it.

10 MS. OPPENHEIMER: I am so sorry, Your Honor.

11 THE COURT: That's all right. If you've got it now,
12 we'll show it to him and it should resolve the issue.

13 BY MS. OPPENHEIMER:

14 Q. Does this look like the document that would tell you
15 the owner?

16 A. Yes.

17 Q. And the various accounts?

18 A. It does. So under user accounts, there were several,
19 and, of course, with any type of android phone, an android
20 phone has a Gmail account associated with it. In this
21 instance, there were two Gmail accounts identified. One
22 was a BSteveo2323@Gmail.com and let me find the second
23 one. That Gmail account is utilizing -- linked to numerous
24 other accounts as far as the other and the other is
25 BSteveo666@Gmail.com.

1 Q. All right. Can you tell us whether or not there was
2 a phone number associated with this phone that you were
3 able to obtain?

4 A. Yes.

5 Q. What was that phone number?

6 A. The phone number was area code [REDACTED] 3666.

7 Q. All right. Can you tell us whether or not you
8 observed the name associated with a WhatsApp account from
9 your extraction?

10 A. You wouldn't happen to have the exhibit I prepared,
11 would you?

12 Q. I do.

13 MS. OPPENHEIMER: May I approach, Your Honor?

14 BY MS. OPPENHEIMER:

15 Q. I'm showing you State's Exhibit Number 14. Is this
16 an exhibit that you prepared for court today?

17 A. It is.

18 Q. And did you create that report from the full
19 extraction from this cell phone?

20 A. I did.

21 Q. And does it appear to have been altered in any way?

22 A. It does not.

23 Q. Can you tell us who the owner of that chat appears to
24 be?

25 A. Well, the under -- it's a WhatsApp account and the

1 owner is listed as just Steve and, of course, it has a
2 numerical value for the user account, and that's
3 [REDACTED]-3666.

4 Q. And is that the same phone number associated with the
5 phone that was given to you by Investigator Gietz?

6 A. It is. Yes, ma'am.

7 Q. And were you asked specifically to look at
8 conversations as it relates to the trafficking of narcotics
9 in creating this report?

10 A. Yes, I was.

11 Q. And that is what this report reflects?

12 A. Yeah, this report is specific to communications
13 between the defendant and one individual specifically for
14 a very specific period of time.

15 Q. All right. And what was that period of time?

16 A. Starting on June 20th of 2020 through June 29th of
17 2020.

18 MS. OPPENHEIMER: Your Honor, at this time I would
19 move State's Exhibit Number 14 into evidence.

20 MR. WILLIAMS: Subject to all prior objections made
21 in reference to the search, as well as this item that
22 she's introducing into evidence itself.

23 THE COURT: All right. Thank you.

24 Subject to defense's objections in evidence, 14's
25 in evidence.

1 (State's Exhibit Number 14, text messages, was
2 admitted into evidence.)

3 BY MS. OPPENHEIMER:

4 Q. Can you tell us who the two participants of this
5 conversation are?

6 A. The owner of the phone, listed as Steve with that
7 phone number, and then an individual that's just listed
8 as the letter "T" with a numerical value for his WhatsApp
9 account as well.

10 Q. Now can you explain to us when these messages are
11 pulled from the full extraction, is there a date and a time
12 associated with those messages?

13 A. Yes. I mean, the tool basically reconstructs that
14 data just like you kind of see it on the phone with bubbles
15 so you can see, you know, the sender and the receiver for
16 the text communication.

17 Q. All right. And the time, is that in Eastern Standard
18 Time, is that in Mountain Standard Time? What time zone
19 are we looking at?

20 A. Well, we correct for it, so usually on a cell phone
21 most things are tracked in UTC or Universal Time
22 Coordinated. It's the old Zulu time. It's just what a
23 lot of computer systems use. In this instance, we know
24 that the individuals were in the Eastern time zone, so we
25 can apply that time offset so what's printed in the report

1 is an accurate time for Eastern Daylight Time when this
2 occurred.

3 Q. Okay. And can you explain to us, I guess, how do we
4 differentiate between incoming and outgoing messages in
5 that exhibit?

6 A. So in this particular document, the bubbles that point
7 over to the left are the individual "T", so that's his
8 communication to the owner of the phone, and they're in
9 blue, and then the owner of the phone's are pointing to the
10 right and they're green.

11 Q. And the owner of the phone was who again?

12 A. Steve.

13 Q. And were you able to extract some images that were
14 also sent in this time period between these two
15 individuals?

16 A. Yes. Like in the chats you'll see the chat and
17 then you'll see a little icon that represents the image
18 of an attachment if there's an image attached to the
19 communication, but it's a very low resolution little icon.
20 So the user would click on it and, of course, it would
21 open up into a larger resolution image. Well, those are
22 also stored on the phone as well. So I went through and
23 identified the corresponding larger file to the little
24 icon images that appear within this chat correspondence
25 in the report.

1 MS. OPPENHEIMER: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes, ma'am.

4 BY MS. OPPENHEIMER:

5 Q. I'm showing you what's been marked as State's Exhibit
6 Number 15 and 16. If you could look at those and tell me
7 if you recognize those.

8 A. I do.

9 Q. And what are they?

10 A. They are --

11 MR. WILLIAMS: Your Honor, I'm gonna object to the
12 identification of these two items unless he is able to
13 testify as to who would have taken these images -- the
14 picture of these images.

15 THE COURT: All right. What are we talking about?
16 These are the icons here?

17 MS. OPPENHEIMER: These are the images that were
18 included in the messages between "T" and the owner,
19 Steve. He testified that he generated a report of the
20 images alone and --

21 THE COURT: And do these images also correspond to
22 the same phones that the conversations correspond to?

23 MS. OPPENHEIMER: They do, Your Honor. They're
24 extracted from these messages that have been introduced
25 in State's Exhibit Number 14.

1 THE COURT: All right. As long as they -- they
2 are identified and connected with either the blue or
3 the green. I'll note your objection, but respectfully
4 overrule it. It seems to me that there's a sufficient
5 connection under the way these things are done to
6 identify them with, one, either "T" or with the owner
7 of the phone.

8 Is that fair to say, Investigator Phipps?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. I'll allow it.

11 MS. OPPENHEIMER: Are they in evidence, Your Honor,
12 or would you like me to add more foundation?

13 THE COURT: No, they're in evidence now.

14 MS. OPPENHEIMER: Thank you, Your Honor.

15 THE COURT: If you'll tell me what they are right.
16 All I know right this minute is that they're 15 and 16
17 and they're icons, but that's all I know.

18 BY MS. OPPENHEIMER:

19 Q. Can you tell us what Exhibit Number 15 is?

20 A. Fifteen is a targeted report showing slightly larger
21 images for the images that are found within the chats that
22 are depicted in this report, and it's just a little better
23 view, a little clearer view, than what you would see here
24 because this is a little bit larger. They're -- within
25 this report, they're hyperlinked. You can click on and see

1 even a larger view.

2 MR. WILLIAMS: Obviously the -- objection.

3 THE COURT: Hold on a second.

4 MR. WILLIAMS: Obviously they're not the same as
5 what's in the report. It is a -- the images have been
6 hyperextended or -- it's a word he used, but essentially
7 they're making the pictures bigger than what is viewed in
8 these -- in these images as you would, I guess, download
9 it.

10 THE COURT: Okay. I think he testified earlier that
11 the original icons are low resolution and that he had to
12 enhance them somehow or another to make them easier to
13 distinguish.

14 Is that fair to say?

15 THE WITNESS: No, sir. There's no enhancement.
16 It's like on your phone if someone sends you a photo
17 and it's just a really small image and when you click
18 on it it has already downloaded the full version, but
19 you're only seeing a small icon because it's trying to
20 show you the text and everything else that goes with it.
21 So when you click on it, it just displays to you, even
22 though it's already on your device, the higher resolution
23 version of that. So it's just like when you're on your
24 personal computer and you're looking at a photo file and
25 you can see small versions of the images and then you

1 can go on and click and say I want to see the medium size
2 ones or I want to see the large size ones. They're all
3 on your computer. Nothing changes. We're not enhancing
4 or making them bigger. They're already there. We're
5 just pulling the larger one out so you can see it.

6 THE COURT: If I use the word "magnify", would that
7 be wrong too?

8 THE WITNESS: A little bit because the low
9 resolution are degraded, they're pixillated, so you
10 really couldn't magnify the small image to make it
11 bigger. It's just a lower resolution image. And you
12 can have multiple image sizes for the exact same image
13 on your phone and these aren't -- the larger one that's
14 here is not something that we blew up or enhanced, it
15 was there. It just represents the full size view of
16 what the small icon represented.

17 THE COURT: I don't even know why I'm engaging in
18 this conversation about how a cell phone works, but I'm
19 gonna ask you for my purposes in trying to determine the
20 evidentiary value of that --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- is there any significant change
23 between what you show on that -- whatever you've shown
24 and what the little icon is on wherever you get it from?
25 In other words, it doesn't change the character of it,

1 does it?

2 THE WITNESS: No, sir. It's the same image. It's
3 just the full resolution of it.

4 THE COURT: All right. Just as an evidentiary
5 matter, I wanted to be sure that we're talking about the
6 same thing, and I think we are.

7 Okay. Thank you.

8 (State's Exhibit Number 15, a WhatsApp chain,
9 and State's Exhibit Number 16, a WhatsApp image, were
10 admitted into evidence.)

11 BY MS. OPPENHEIMER:

12 Q. And if you could just briefly describe what State's
13 Exhibit Number 16 is, Investigator Phipps.

14 A. So 16 is a full size, eight and a half by eleven,
15 print of what would be Item 3 on State's 15, which is an
16 image that was included in the WhatsApp chain. I'll have
17 to find it to see.

18 So in State's 14, which is the WhatsApp communication
19 between Steve and "T", on June 23rd at 6:26 PM "T" sends a
20 message to Steve and includes the attachment of the image,
21 which is State's 16, blown up to full size.

22 MS. OPPENHEIMER: Your Honor, permission to publish
23 State's 16?

24 THE COURT: Yes. Subject to objection previously
25 made and to the possibility of the hearsay objection

1 being made, I note that these things would come within
2 the exceptions under Rule 801(b), it appears to me -- or
3 801(d), under our rules.

4 Go ahead.

5 BY MS. OPPENHEIMER:

6 Q. Investigator Phipps, State's Exhibit Number 16 that
7 we're looking at here, it is a low res photo, I believe, as
8 you testified to, but who sent that message?

9 A. "T" sent that to Steve.

10 Q. And on what date was that message sent?

11 THE COURT: 6-23 is what you said earlier.

12 BY MS. OPPENHEIMER:

13 Q. I believe you said June 23rd of 2020.

14 A. That's correct. June 23, 2020, at 6:26 PM.

15 MS. OPPENHEIMER: Thank you, Investigator Phipps.

16 I have no further questions. If you'll answer any
17 questions that Mr. Williams may have.

18 THE COURT: Mr. Williams, cross-examine?

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q. How you doing, Mike?

22 A. I'm doing fine, sir. Yourself?

23 Q. I'm doing fine.

24 I guess what I'm trying to ask is on State's Exhibit
25 Number 16, and we were discussing about enhancement and

1 stuff like that, the size on the picture that you pulled
2 off the cell phone -- well, it's about that big, right?

3 A. Yeah. I found probably -- I don't remember exactly,
4 but there was probably a good four or five variations as
5 far as file sizes of this same image.

6 Q. But, in essence, there's no way that that picture that
7 size would even fit on a cell phone because a cell phone is
8 only -- even if you have the big size like me that's about
9 that big, so that big sheet of paper, it is enhanced, it's
10 made bigger, it's --

11 A. It's printed larger than what would have been
12 viewable, yes, sir, on the screen of the cell phone.

13 Q. You could take a piece of salt and make it look like a
14 stalactite or stalagmite if you wanted to, right?

15 A. I would imagine. Yes, sir.

16 Q. Now essentially what you did was run Cellebrite on
17 this phone that you had, right?

18 A. Yes, sir.

19 Q. And it took you, what, four months before you did
20 that?

21 A. We started the process the day it was handed over to
22 identify -- well, to photograph it and determine make and
23 model and try to determine if it was accessible. It was
24 determined immediately that it was PIN locked, which meant
25 we would have to go through an additional process to gain

1 access to the data on the phone.

2 Q. Right. So just like any other cell phone, there are
3 different ways to lock your phone. It could be face
4 orientated, it could be fingerprint oriented or it could
5 be some numerical thing as mine is?

6 A. Or a pattern. Yes, sir.

7 Q. Or pattern. And because you didn't have -- was his a
8 pattern or what; do you know?

9 A. It was a PIN code. A numerical value. Yes, sir.

10 Q. And you didn't know the numbers to unlock it?

11 A. I did not.

12 Q. So eventually you-all ran the numbers and you opened
13 it up and then from that information did you go and check
14 out his phone number maybe with the telephone company to
15 see what his phone number was?

16 A. I mean, we recovered the number that the phone
17 identifies is linked to it, but I did not do any
18 investigation outside of the actual phone as far as cell
19 phone provider records or anything like that.

20 Q. All right. So what we do know through your
21 investigation is that there is a phone number, which
22 associated with the cell phone, right?

23 A. Yes, sir.

24 Q. And you were talking about accounts. There were like
25 how many accounts? Eight accounts?

1 A. Oh, there were hundreds of accounts as far as
2 different -- I mean, any time you sign up for anything you
3 develop an account basically with that -- that vendor.

4 Q. And, of course, the number itself doesn't mean that
5 any particular person is using the cell phone to that
6 number. It could be -- I could use that phone if I wanted
7 to, couldn't I, if I had the number to open it up?

8 A. Yeah, if you -- if you had the PIN code to unlock it,
9 you could use it. Yes, sir.

10 Q. It certainly doesn't mean that whoever Steve is used
11 that phone, it could be anybody that is sending messages
12 through that phone?

13 A. That is correct. Anyone that had physical access to
14 the phone could have sent a message.

15 Q. And in today's age, I guess, people can hack phones
16 and use their numbers, can't they?

17 A. There are processes that allow you to -- yes.
18 Basically it's called SIM swapping. So you're able to
19 steal basically someone's phone number, preclude them from
20 utilizing it and use it yourself.

21 Q. So you could -- you could steal whoever Steve is, his
22 phone number, and utilize that phone number for whatever
23 purposes --

24 MS. OPPENHEIMER: Objection. Calls for speculation.
25 There's been no evidence of --

1 THE COURT: He's an expert. Go ahead.

2 BY MR. WILLIAMS:

3 Q. And use that cell phone and -- and you could be Steve
4 right now?

5 A. Yes, but then the contents of the communication
6 wouldn't appear on that phone, it would be on someone
7 else's phone.

8 Q. Well, you mean the receipt of those, but the account
9 which is set up in the name of Steve, which is on there,
10 it would still report on that because that's where you took
11 it from, you took it from the account which is registered
12 with, what, the telephone company?

13 A. No. So the -- the phone number is on the device. I
14 don't go to a phone provider and ask them what the phone
15 number is and if I were to steal your phone number and
16 start using your phone number to set up accounts, you
17 wouldn't -- your phone would actually go dead. You
18 wouldn't see that stuff populate on your phone, it would
19 only be on my phone now.

20 Q. So when you hijack a number, are you saying that no
21 one would have access -- you wouldn't be able to know that
22 your phone had been hijacked essentially?

23 A. You would know your phone was hijacked because you
24 would -- suddenly your phone wouldn't work at all.

25 Q. So you wouldn't have any evidence that it was being

1 used is what you're saying?

2 A. You would know it was being used because you couldn't
3 use your phone for anything. It would be like a dead --
4 it wouldn't connect to the network, you know, you couldn't
5 make a phone call.

6 Q. I got you. And if I took your phone and used your
7 phone, it would be all over your phone if I took your phone
8 and used your phone, wouldn't it?

9 A. Yes, sir.

10 Q. Tell me the accounts that were on the phone.

11 A. I would have to -- I mean, there were a lot of
12 accounts and they're listed in the document.

13 Q. Where -- where are they listed?

14 A. Under accounts. I don't mean to be smart, but...

15 Q. Thanks.

16 A. I don't think it's in a document that's been entered
17 yet as far as -- but there's -- as far as the full listing,
18 they're in the extraction that I provided. I don't think
19 that's been made --

20 Q. Are there hundreds? You say hundreds of accounts?

21 A. There was probably around a hundred accounts from
22 various things.

23 Q. Were they opened at different times?

24 A. I wasn't looking at the timing. I was looking at, you
25 know, attribution as far as what Gmail account was used and

1 they were all variations of the Steve, Steve-O showing that
2 he was the primary user of that device. I don't recall how
3 many accounts were just totally not his name --

4 Q. But there were some that were not his name?

5 A. Yes, sir, there were.

6 Q. So that means that somebody else had access to that
7 phone and were running accounts through his phone.

8 A. It means at some point in time someone used his phone
9 to access their account on his phone, yes, sir.

10 Q. And use that phone?

11 A. Yes, sir.

12 MR. WILLIAMS: That's all I have, Your Honor.

13 THE COURT: Thank you.

14 Redirect, Ms. Oppenheimer?

15 REDIRECT EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. Investigator Phipps, you testified that the primary
18 user was Steve or Steve-O, some variation of that form?

19 A. That's correct.

20 Q. Is it fair to say that the majority of the accounts
21 from this extraction were attributed to a Steve or a
22 Steve-O?

23 A. They were.

24 Q. And can you tell us was this phone dead?

25 A. It was not. It was a functioning phone.

1 Q. So because it wasn't dead would lend us to believe
2 that it had not been hacked based on your testimony,
3 correct?

4 A. Right. That there was -- in other words, we wouldn't
5 see the communication on the phone if his accounts had been
6 taken over by someone else.

7 Q. And State's Exhibit Number 16, you didn't alter this
8 photo in any way, did you?

9 A. I did not.

10 MS. OPPENHEIMER: No further questions, Your Honor.

11 RECROSS EXAMINATION

12 BY MR. WILLIAMS:

13 Q. So you were asked the question about dead. Well, when
14 you referenced it wasn't dead, what you meant was it still
15 had powering going to it and you could use it?

16 A. Yes. It was a functioning phone and that phone had
17 communication up to the point where it was seized by law
18 enforcement; meaning, there wasn't a period of time where
19 it was dead and the user would not have been able to use
20 his device.

21 Q. And it still had other accounts which were reflected
22 on the phone where other persons had used the phone that
23 wasn't Steve-O's account?

24 A. At some point in time, yes, sir.

25 MR. WILLIAMS: That's all I have.

1 THE COURT: You've got the last word,
2 Ms. Oppenheimer.

3 MS. OPPENHEIMER: I have no further questions.
4 Thank you, Investigator Phipps.

5 THE COURT: Mr. Phipps, thank you. You've been a
6 -- you've actually made it so that I could understand
7 some of this. I wish I would have brought my phone. I
8 can't -- I lost my Outlook on it. You could probably
9 help me with that.

10 But thank you for your patience.

11 THE WITNESS: Yes, sir.

12 THE COURT: You can step down.

13 (Witness excused.)

14 THE COURT: And, folks, thank you for your patience
15 as well. I suppose things went too smoothly yesterday.
16 We should have known this morning when we got here and
17 got delayed for two hours for things beyond everybody's
18 control that we were not gonna be able to go through
19 without some speed bumps along, and we've done that, but
20 you've been patient with us throughout that and you've
21 hung in there, and I think -- how many more witnesses do
22 you have?

23 MR. SMITH: Just one, Your Honor.

24 THE COURT: Good.

25 The State has one more witness and it will complete

1 its testimony in the morning and then we will turn to
2 the defendant. He'll have an opportunity to put in
3 evidence if he chooses and so it looks like there's a
4 light at the end of this tunnel and I thank you for
5 staying with us so far.

6 It's a little later than -- I let you off early
7 in the day yesterday, so I throw you into the 5:00
8 traffic today. Be careful on your way home.

9 9:30 tomorrow morning, folks. Be back in the jury
10 room then. Please don't talk about this case with anybody
11 or let anybody talk to you about it.

12 I'll see you at 9:30 in the morning.

13 (Whereupon, the jury was excused for the day at
14 5:31 PM.)

15 THE COURT: Is there anything further from the
16 State before we break for the day, Ms. Oppenheimer,
17 Mr. Smith?

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Williams?

21 MR. WILLIAMS: Nothing from the defendant, Your
22 Honor.

23 THE COURT: All right, folks. We'll start back at
24 9:30 in the morning. Have a good evening. Be careful
25 on the way home.

1 (Whereupon, the proceedings were concluded for
2 August 9, 2020, at 5:32 PM.)

3 (The following proceedings were held August 10,
4 2023, beginning at 9:34 AM.)

5 BAILIFF: Court's now in session. The Honorable
6 Judge Thomas Cooper presiding.

7 THE COURT: Thank you, ladies and gentlemen. Please
8 be seated. Good morning.

9 Folks, the jury is all in place. Is the State ready
10 for the jury?

11 MR. SMITH: We are, Your Honor.

12 THE COURT: Mr. Williams?

13 MR. WILLIAMS: Your Honor, I have one matter to
14 take up with the Court prior to the jury and that is
15 that all that meth is sitting out there on the table
16 and I was always of the opinion if you're not using a
17 particular exhibit or publishing to the jury or using
18 it for purposes of the trial, then it normally doesn't
19 have to sit somewhere to, I guess, influence the jury,
20 if you would, Your Honor.

21 THE COURT: Right.

22 MR. WILLIAMS: When we left, it was in a box. It
23 remained in the box most of the time, but now it's
24 sitting out all by itself.

25 THE COURT: And I don't know whether that's gonna

1 be used for the next witness or not, but my experience
2 has been from time to time that the evidence stays out
3 there close at hand so that the lawyers can pull it up
4 in short order without having to go through the scenario
5 of the box or whatever it happens to be in.

6 So I note that. I don't think -- I don't think that
7 that's prejudicial and I assume that it's out there for
8 some purpose other than for display. In any event, of
9 course, as we know the jury is gonna have all that in
10 the jury room with them at the appropriate time, so I
11 don't find that where it is right this minute creates
12 any additional prejudice beyond that, but evidence,
13 if it is incriminating, always creates some, but not
14 unfairly I don't think.

15 MR. WILLIAMS: As long as the record reflects my
16 objection to it remaining out there for the duration.

17 THE COURT: It does. Thank you, sir.

18 All right. Bring us the jury, Mr. Scott.

19 (Whereupon, the jury enters the courtroom at
20 9:38 AM.)

21 THE COURT: Thank you, ladies and gentlemen, for
22 your prompt return once again this morning as we continue
23 the trial of the case as the State is offering additional
24 evidence and testimony.

25 Counsel, you can call your next witness.