

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable George M. McFaddin, Circuit Court Judge

RONALD MICHAUX, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000960

APPENDIX

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions

3 Indictment No.: 2014-GS-32-2606
4

5
6 State of South Carolina,)
Plaintiff.)
7)
8 vs.) Transcript of Record
9)
10 Ronald Douglas Michaux,)
Defendant.)

11
12
13 May 17-19, 2016
14 Lexington, South Carolina
15

16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge and a jury.

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

19 Lester McGill Bell, Jr., Assistant Solicitor
20 Bradley Pogue, Assistant Solicitor
Attorney for the State

21 David M. Mauldin, Esquire
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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PRETRIAL MOTIONS

THE COURT: This is the matter of State versus Ronald Michaux, Jr., is that correct, Solicitor?

MR. BELL: Yes, Your Honor.

THE COURT: And the only motions I saw in there was a motion on Rule 6 and a Discovery Motion. Are there other motions?

MR. MAULDIN: Yes, Your Honor, I believe the State intends to have a statement made at the roadside, which this is a vehicle stop case, Your Honor. And I have, as well a motion on the Fourth Amendment as to possible illegal search of the vehicle. There is a video in question. I think that's something we can agree the body mic of the trooper is not on and the car audio is on and there's some chatter on the radio from my listening, it is -- some of it's indecipherable.

We've had issues before where the audio in the courtroom is better than the audio on our computers and they've had an issue since there could be chatter about somebody's prior bad record. I think the State is willing to consent that portion not be played for the jury.

And finally, Your Honor, I believe the State intends to call a Sam Gunter who's with the Lexington County Sheriff's Department to testify as some sort of drug expert in the case. I don't believe that that testimony is

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 relevant and would help the jury to come to a conclusion --
2 I don't think it's relevant expert testimony and it should
3 be excluded.

4 THE COURT: First we have Jackson versus Denno?

5 MR. BELL: That's correct, Your Honor. And if it
6 suits, perhaps the testimony would also be under the Fourth
7 Amendment testimony as well.

8 THE COURT: All right. You may call your first
9 witness.

10 MR. BELL: Thank you, Your Honor. The State would
11 call Trooper Michael Harrison to the stand.

12 THE COURT: Trooper if you would come and be sworn
13 for us.

14 MICHAEL HARRISON,

15 after having been duly sworn, testified as follows:

16 THE CLERK: Have a seat please, sir. Once you're
17 seated, state your full name, spelling your last, please.

18 THE WITNESS: My name is Michael David Harrison,
19 H-A-R-R-I-S-O-N.

20 **DIRECT EXAMINATION IN-CAMERA**

21 BY MR. BELL:

22 Q Trooper, where are you currently employed?

23 A South Carolina Highway Patrol.

24 Q How long have you been with the highway patrol?

25 A This is my sixteenth year.

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 Q And what is your current rank?

2 A Lance Corporal.

3 Q And just briefly could you go over the training you
4 have had throughout your career.

5 A When I started in 2000, I was assigned to Ocone
6 County as a road trooper. I worked there until 2004 before
7 coming to the H-Team which is Troop 8 nowadays out of
8 Columbia and I've been doing that essentially full time
9 interdiction work. I've had a little over 300 hours of
10 training.

11 Q Do you also have training relating to narcotics?

12 A I do.

13 Q And what was that training?

14 A Basically the identification of narcotics. Also I
15 specialized in hidden compartments for transport of illegal
16 substance.

17 Q On March 20, 2014, were you involved in a traffic
18 stop of Ronald Michaux?

19 A Yes.

20 Q And can you tell us about why you initiated that
21 had traffic stop?

22 A Yes. On March 20th, 2014, I was in Lexington
23 County with some other troopers working a detail on I-20.
24 As I was monitoring traffic around the 42 mile marker I
25 observed a white mid-sized sedan, later I discovered it was

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 a Volkswagon Passat -- I noticed the vehicle slow down
2 abruptly. I also observed a tractor trailer truck that had
3 to swerve to the adjacent lane to avoid the vehicle. I
4 thought the was extremely odd on the interstate where there
5 were no hazards, it was a clear day, sun was out.

6 I entered the roadway in an effort to follow the
7 white vehicle. As I pulled onto the interstate, I noticed
8 that the vehicle was not maintaining his lane of travel and
9 what I mean by that is, he wasn't driving in the center
10 most portion. He was to the left, he was to the right, he
11 was back and forth. He never went outside of his lane;
12 however, he's weaving within his lane.

13 I wasn't sure if the driver was looking back at me.
14 I wasn't sure if the driver was sleepy or possibly under
15 the influence. It was at that time with the erratic
16 behavior coming from the white vehicle, the driver of the
17 white vehicle, I decided to make the traffic stop.

18 Q And did you initiate your emergency lights?

19 A I did.

20 Q And did a stop result from that?

21 A Yes.

22 Q And upon pulling that vehicle over, did you
23 approach the vehicle?

24 A I did.

25 Q And did you notice anything while you approached

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 the vehicle?

2 A As I was walking up to the passenger side of the
3 vehicle, I first observed the license plate. It was out of
4 New York and it was brand new. The vehicle was also newer,
5 nothing fancy about it, mid-size, four-door car. It also
6 had some stickers on the rear window displayed that I knew
7 from my experience working the highways and also renting
8 vehicles for myself personally that it was most likely a
9 rented car.

10 Q And could you tell how many occupants were in the
11 vehicle at that time?

12 A I could see one, which was the driver.

13 Q And which side of the vehicle did you approach?

14 A I always make a passenger-side approach. That's
15 what we're taught nowadays. It's much safer than being on
16 the driver side with our backs to traffic.

17 Q Okay. And tell us about your initial observations
18 when you first made contact with the passenger-side window?

19 A Once the -- once the operator of the vehicle rolled
20 the window down I leaned over and my normal routine, I
21 asked for driver's license and registration. I noticed
22 that the driver was already nervous to the point where when
23 he got his driver's license that his hand was trembling.

24 I also noticed visually two cans of air fresheners
25 within the vehicle, some shavings from inside a cigar on

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 the console. I could smell the air freshener and I could
2 also smell an overwhelming odor of marijuana.

3 Q Now, why are cans of air freshener relevant when
4 you're looking in that vehicle.

5 A To me it stands out. It's not something that you
6 typically see in a rental vehicle because the cars are new;
7 the cars are cleaned once the last renter turns them in;
8 and the majority of the rental cars are no smoking.

9 Q Could you see anything in plain view that an air
10 freshener would be necessary for?

11 A I did not.

12 Q And in your 16 years with highway patrol have you
13 encountered marijuana before?

14 A Yes.

15 Q Once or many times?

16 A Times?

17 Q Are you familiar through your experience of the
18 smell of marijuana?

19 A Yes.

20 Q And were you positive that that's what you were
21 smelling from the vehicle?

22 A I was able to smell the air freshener as well as
23 the odor of marijuana.

24 Q At that point did you proceed.

25 A At this point once I obtained the identification

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 card from the driver and the rental agreement, I asked the
2 driver to exit the vehicle and walked back to the front of
3 my patrol vehicle.

4 Q Did he have a driver's license on him?

5 A He did not.

6 Q And is that a violation under South Carolina law.

7 A Yes.

8 Q As you removed him from the vehicle -- why did you
9 decide to do that?

10 A Based on the fact that I'd seen the air fresheners,
11 and also the rental, and then the smell of the marijuana, I
12 decided at this time it would be safer for myself and safer
13 for the public to get the driver as far away from that
14 vehicle as possible.

15 Q Why is that?

16 A In my past experience whenever there were
17 narcotics, or criminal activity in general, it's best to
18 separate the driver from the vehicle so that the driver was
19 not at the vehicle where they are most likely to flee.

20 Q In your experience and seeing what you saw is it
21 typical with narcotics that they may have weapons?

22 A Yes.

23 Q Where did you remove the driver to?

24 A Once he exited the driver side, I motioned him over
25 to the right front portion of my patrol car and as we were

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 walking back to my patrol car, he said that there was no
2 marijuana in the car.

3 Q And the driver was who?

4 A Mr. Michaux.

5 Q Okay. Why did you move him off to the right of
6 your vehicle?

7 A In my experience the area between my patrol car and
8 the rear of the other driver's bumper, that's -- we refer
9 to that as the kill zone, so if someone who's not paying
10 attention coming down the highway and runs into the back of
11 my patrol car we obviously don't need to be in that area.

12 Q And did you have any conversation with Mr. Michaux
13 after removing him from the vehicle?

14 A I did.

15 Q And what observations did you make during your
16 conversation with him?

17 A During that conversation -- and I had already
18 called for assistance from Lance Corporal Rogers -- it was
19 casual conversation, the same questions I would ask any
20 out-of-state driver that I stopped, basically letting the
21 public know that we're not robots, we're humans; questions
22 like, Where you coming from? You know where you traveling
23 to? How long you been there? How long you guys going to
24 stay at the beach? Things like that.

25 During mine and Mr. Michaux's conversation, I

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 simply asked where you coming from. He answered a female
2 cousin's house. I asked him where his cousin lived and he
3 turned back from the direction he was coming from and
4 basically pointed back down the interstate and said
5 incoming from that way?

6 Q Did he ever give you a name of the cousin?

7 A No.

8 Q Did he ever give an address or an area of where his
9 cousin lived?

10 A No. It was very general statements.

11 Q What other conversations did you have with him?

12 A Did he know how long he was staying with his
13 cousin. He -- when I asked him how long he'd been here or
14 had been at the place he was coming from -- I asked him how
15 long he'd stayed, which he stated two days. And --

16 Q Did you ask him about his driver's license?

17 A I did.

18 Q And what did he tell you about that?

19 A He admitted they were suspended out of North
20 Carolina.

21 Q Now, as the questioning went on, was he always
22 forthright with his answers?

23 A No.

24 Q Can you explain that a little bit?

25 A Basically when I would ask a question as soon as I

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 was finished with the question he would ask what, in my
2 experience, working with the motoring public over the years
3 the folks that are involved in criminal activity will use
4 that as a stall technique which gives them time to figure
5 out how they want to answer the question.

6 Q Did you ultimately determine who the vehicle was
7 actually rented to?

8 A Yes.

9 Q And was it the individual you had pulled over on
10 the side of the road?

11 A No, it was a female's name. I don't recall the
12 name.

13 Q Did he -- did Mr. Michaux indicate who that
14 individual was in relation to him?

15 A He stated that it was his girlfriend and she had
16 rented the vehicle for him.

17 Q Now, during this questioning while you're in front
18 or beside your car or cruiser at this point was he under
19 arrest?

20 A No.

21 Q Did you have any intention of putting him under
22 arrest?

23 A No.

24 Q At any point in time were you threatening him or
25 sort of overbearing him as far as standing over him?

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A No.

2 Q Intimidating him?

3 A No, sir.

4 Q Did you have your hand on your weapon, or your
5 taser?

6 A No.

7 Q How were you speaking to him?

8 A Essentially like I am now.

9 Q At any point in time, did he request to speak to an
10 attorney or stop talking to you?

11 A No.

12 Q Now, was he free to leave?

13 A No.

14 Q And why is that?

15 A Based on the fact that I'd already discovered he
16 didn't have a valid driver's license, the indicators of
17 criminal activity I observed within the vehicle, and also
18 the smell of marijuana.

19 Q In your general experience, on the road, after
20 interviewing people, do you ever just issue citations?

21 A I'm sorry, could you repeat that?

22 Q Have you ever issued citations as a result of a
23 traffic stop?

24 A Yes.

25 Q And they are released?

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A Yes.

2 Q At this point in the interview, did you have any
3 reason to arrest him?

4 A No.

5 Q After speaking to him, and him giving testimony
6 that you deemed to not be forthright, how did you then
7 proceed?

8 A Basically, during that time and while I was waiting
9 for Lance Corporal Rogers to arrive as backup, once I
10 finished speaking with Mr. Michaux, I continued the
11 enforcement action with a warning before returning back to
12 where he was standing with Lance Corporal Rogers.

13 Q At this point when you made contact with
14 Mr. Michaux again has he calmed down?

15 A No.

16 Q How would you describe his demeanor?

17 A It -- his demeanor at that time, he was clearly
18 extremely nervous. His breathing rate, his pulse that I
19 could observe in the pit of his neck, none of that ever
20 subsided throughout the stop.

21 Q And are those things that you've been trained
22 through your 16 years of law enforcement to observe?

23 A Yes.

24 Q And are those thing that are nationally relied upon
25 by law enforcement?

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A Yes.

2 Q And after seeing these indicators from him, what
3 else did you end up doing on scene? How did you proceed at
4 that point?

5 A After I explained the warning to Mr. Michaux, I
6 then explained to him that I would be searching the
7 vehicle. I explained the reasoning, that I'd observed
8 about the vehicle because I smelled marijuana.

9 Q That was the only reason to search this vehicle,
10 correct?

11 A Yes.

12 Q Was that -- did anything else go into your
13 consideration of the situation?

14 A The indicators that I initially observed along with
15 the smell indicators, the third party rental, the --
16 Mr. Michaux being general about his trip which is unusual,
17 the air fresheners -- the air fresheners in a rental and
18 then, of course, the smell of marijuana and his extreme
19 nervousness.

20 Q And did you ultimately search the vehicle?

21 A I did.

22 Q And do you recall as you were walking to the
23 vehicle to search it Mr. Michaux saying anything to you?

24 A He did. As I turned my back to begin my search,
25 leaving him Lance Corporal Rogers, he stated again there's

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 no marijuana in the vehicle.

2 Q Upon ultimately searching the vehicle did you
3 locate anything?

4 A I did.

5 Q And where did you locate it?

6 A Typically I always start my searches in the front
7 passenger compartment. I typically start my search on the
8 right front passenger department. I didn't this day
9 because that door was locked, so I went around to the
10 driver's side where I started my search. As I checked the
11 console where I had seen the tobacco shavings, I located
12 more tobacco shavings in a cup. I also located some cigar
13 packages, they typically come two to a pack, looking for
14 marijuana.

15 Q Why did that stand out to you?

16 A That stands out through my training and experience.
17 There's a lot of folks that prefer to hollow out those,
18 take the cob out, replace it with other substances. I
19 didn't -- I'm sorry.

20 Q What else did you locate?

21 A The -- in the rear passenger floor I observed --
22 and this again was from the front seat -- I could see a
23 black plastic bag with a knot tied in it.

24 Q And did you investigate that bag?

25 A I did.

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 Q And what did you believe it was?

2 A I picked the bag up. It felt to me like there was
3 a powdery substance in the bag and again that's based on
4 dealing with this type of narcotic. It felt to me the way
5 it was falling into my hand that it could possibly be
6 powder cocaine or powder heroin. I didn't know because I
7 didn't untie the bag at this time.

8 Q This is the marijuana odor substance?

9 A No.

10 Q Is that bag a container in which marijuana may have
11 been located?

12 A Possibly, but -- yes.

13 Q Did you find anything else in the vehicle?

14 A I did. Once I picked that package up, I exited the
15 Volkswagon, returned to Mr. Michaux and Lance Corporal
16 Rogers and placed Mr. Michaux in custody before returning
17 to the Volkswagon to remove the package, the black plastic
18 bag.

19 Q Was there any other belongings inside of the
20 vehicle?

21 A Not that I recall.

22 Q Was there anything that would indicate he was on an
23 extended road trip for a couple of days?

24 A No.

25 Q In your experience dealing with civilians during

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 traffic stops is it common or uncommon for individuals to
2 be nervous when they are dealing with you?

3 A Typically the motoring public that I deal with,
4 once I've spoken to them about the reason for the stop,
5 typically the nervousness subsides. It never did with Mr.
6 Michaux.

7 Q Okay. Can you estimate how long this traffic stop
8 took place?

9 A I'd say less than 15 minutes.

10 MR. BELL: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 BY MR. BELL:

13 Q Is driving without a license legal or illegal?

14 A Illegal.

15 Q Are you allowed to arrest someone for driving
16 without a license?

17 A Yes.

18 Q Do you have to arrest someone without a driver's
19 license or is it within your discretion?

20 A It is, we have discretion.

21 Q And did you ultimately confirm whether or not
22 Mr. Michaux had a driver's license when you pulled him
23 over?

24 A I did.

25 Q And what is the answer to that question?

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 A His license was revoked out of North Carolina.

2 Q Please answer any questions the defense may have
3 for you.

4 THE COURT: Thank you, Solicitor.

5 Mr. Mauldin?

6 MR. MAULDIN: Thank you, Your Honor.

7 **CROSS-EXAMINATION IN-CAMERA**

8 BY MR. MAULDIN:

9 Q Corporal Harrison, what time of day was this?

10 A This was late morning, early afternoon I believe.

11 Q And you were at the 42 mile marker?

12 A Yes.

13 Q Close to it?

14 Now Mr. Michaux's car was coming eastbound from
15 Augusta toward Columbia, correct?

16 A That is correct.

17 Q And where were you positioned in regard to the
18 highway?

19 A I was parallel with the highway.

20 Q Okay. If you are facing eastbound, the direction
21 of Mr. Michaux's vehicle was the right side of the highway
22 or the median?

23 A The right shoulder.

24 Q The right shoulder?

25 A Facing eastbound or --

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 Q You were facing eastbound?

2 A Right.

3 Q Towards Columbia?

4 So your view of the traffic situation as far as
5 Mr. Michaux comes west to east? If you're facing your
6 rear-view mirror --

7 A No, sir, I have a K-9 in my vehicle which is placed
8 in the back, so I used the mirror on my left and outside
9 mirror.

10 Q So you were looking at your passenger mirror toward
11 traffic behind you?

12 A Right.

13 Q And you are not operating radar that day; is that
14 correct?

15 A I've always got my radar on.

16 Q Did you have your radar on to track Mr. Michaux's
17 speed that day?

18 A I did.

19 Q And what speed was he going?

20 A I don't recall what speed he was going. There was
21 a tractor trailer behind him.

22 Q There was a tractor trailer in that area also?

23 A Yes.

24 Q Do you recall the speed of the tractor trailer?

25 A I don't know. I don't recall.

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

- 1 Q So you're looking through your rearview mirror at
2 traffic coming eastbound behind you. Mr. Michaux's in the
3 right lane going west or the left lane going east?
- 4 A The number two lane as we call it, going east.
- 5 Q And so from the view in your rearview you could see
6 the front of his car?
- 7 A Yes.
- 8 Q And a truck behind him?
- 9 A Yes.
- 10 Q You couldn't gauge how far the truck was behind him
11 in the rear-view mirror, could you?
- 12 A You mean was he following --
- 13 Q What distance was the truck behind him?
- 14 A I have no idea.
- 15 Q Now, there's a speed limit on the highways,
16 correct.
- 17 A Yes.
- 18 Q And it's 70 miles an hour?
- 19 A That sounds right.
- 20 Q You don't know?
- 21 A Don't work I-20 very much.
- 22 Q And there's a minimum speed isn't there?
- 23 A Yes.
- 24 Q Is that 45 miles an hour?
- 25 A That is 45.

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 Q And you don't remember what speed Mr. Michaux was
2 going?

3 A No, sir.

4 Q Or the speed the truck was going?

5 A No, sir. Would you like for me to explain that?

6 THE COURT: You may explain your answer, yes.

7 THE WITNESS: Thank you, Your Honor.

8 The reason I don't know how fast either vehicle is
9 because there was no speed violation at that time.

10 BY MR. MAULDIN:

11 Q Okay. And none of the -- I mean obviously, none of
12 the driving that you described as slowing down is on the
13 video that you have; is that correct?

14 A That's correct.

15 Q All right. Now, when you pulled Mr. Michaux over,
16 you asked him to step out of the vehicle. You took him to
17 the right side of your vehicle? The right front?

18 A Yes, sir.

19 Q So you had him go from that location from his
20 vehicle to the right side of the road from his driver's
21 side?

22 A Right front of my patrol car.

23 Q And your reason for doing that is that you were
24 worried the he might flee or escape or fail to stop for the
25 blue light?

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 A Yes.

2 Q So you didn't want to chase after him?

3 A That's correct.

4 Q You didn't want him going anywhere?

5 A That's correct.

6 Q And at no time during your conversation with him at
7 the side of your patrol car, the conversation that you
8 mentioned here in court today did you read Mr. Michaux his
9 Miranda Rights?

10 A No.

11 Q Now, you said you smelled an overwhelming odor of
12 marijuana?

13 A Overwhelming.

14 Q Did you find any marijuana in the car?

15 A No, I did not.

16 Q And you had a Trooper Rogers with you; is that
17 correct?

18 A Yes.

19 Q Did he have -- you had a K-9 is that correct?

20 A That's correct.

21 Q Did you run your K-9 around the car?

22 A No.

23 Q What was the warning? You said you issued a
24 warning?

25 A It's a public contact form warning which is not a

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 citation.

2 Q Okay. And what was it for? Was it for a minor
3 thing?

4 A Yes.

5 Q What was it?

6 A If I recall correctly it was for improper lane
7 usage.

8 Q Do you have a copy of this warrant?

9 A I don't know. It's been two years ago. I would
10 say probably not.

11 Q Now -- and you said you called in Mr. Michaux's
12 identity -- and they said his license was revoked in North
13 Carolina; is that correct?

14 A That was after the search of the vehicle.

15 Q Was during enforcement action. Before the search?

16 A Before.

17 Q Now, in your conferring with him, you're kind of
18 paraphrasing what he says; is that correct?

19 A Yes.

20 Q It's not -- did he say that -- is it possible he
21 said my home girl instead of my girlfriend?

22 A It's possible.

23 Q So you don't remember exactly what word he used for
24 the female that had rented the vehicle?

25 A No.

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 Q Now, you testified you didn't recall whether or not
2 there was something in the trunk of the vehicle?

3 A I don't recall. I don't remember anything there.

4 Q You don't remember what was in the trunk?

5 A I don't recall.

6 Q Were there things in the trunk or were there not
7 things in the trunk?

8 A I don't recall.

9 MR. MAULDIN: Your Honor, may I approach this
10 witness?

11 THE COURT: Yes.

12 BY MR. MAULDIN:

13 Q Corporal Harrison, I'm going to show you a copy of
14 your initial incident report. And in that report, if you
15 want to use it to refresh your memory, no money was found
16 in the vehicle or on the subject.

17 A I'm sorry, no money?

18 Q On your incident report cover sheet?

19 A That's correct.

20 Q Okay.

21 MR. MAULDIN: I have no further questions, Your
22 Honor.

23 THE COURT: Redirect, Solicitor.

24 MR. BELL: Briefly, Your Honor.

25 ///

Michael D. Harrison - Redirect-Examination In-Camera by Mr. Bell

1 REDIRECT EXAMINATION IN CAMERA

2 BY MR. BELL:3 Q In your experience with marijuana, if marijuana is
4 removed from a location does the odor go with it or does it
5 remain?

6 A It remains.

7 Q Because you ultimately found no marijuana in that
8 car does not mean there necessarily was or was not
9 marijuana ever in that car?

10 A No, it does not.

11 Q Is a tractor trailer bigger than the car the
12 defendant was driving?

13 A Much bigger.

14 Q Could you see the tractor trailer behind the
15 defendant's vehicle?

16 A Yes.

17 Q And you testified earlier that you're looking
18 through your side view mirrors; is that accurate?

19 A That's right.

20 Q And could you see this -- did you have any doubt
21 that that tractor trailer swerved because of the
22 defendant's vehicle?

23 A None. Could I explain that?

24 Q Certainly.

25 A In my experience working the highways all these

Michael D. Harrison - Recross-Examination by Mr. Mauldin

1 years tractor trailers, I've never been in one that did not
2 have a CB radio talking to other drivers of tractor
3 trailers and when they see a state trooper or a DOT vehicle
4 they immediately start giving that location out. So when
5 tractor trailers pass by my location nine times out of ten
6 they are on the dot as far as the speed limit.

7 Q Are any of the statements that we've discussed
8 during your testimony did any of those come after the
9 defendant's arrest?

10 A .

11 Q Did you have any reason to Mirandize the defendant
12 prior to his arrest?

13 A No, I did not.

14 Q Prior to finding the cocaine in the vehicle, was
15 the defendant under arrest?

16 A No.

17 MR. BELL: No further questions Your Honor.

18 THE COURT: Recross-examination, Mr. Mauldin?

19 **RECROSS EXAMINATION IN-CAMERA**

20 BY MR. MAULDIN:

21 Q Your testimony is that -- that you believe the
22 tractor trailers are beginning to go -- you believe the
23 tractor trailers are beginning the go the speed limit by
24 the time they get to you. And you're just guessing that;
25 is that correct?

Michael D. Harrison - Recross-Examination by Mr. Mauldin

1 A No, sir, I'm not.

2 Q You know?

3 A My experience is long-term drivers go the speed
4 limit. They're on the spot.

5 Q In your experience they're on the dot.

6 A And we have records with DPS with every vehicle we
7 spot and the amount of tractors trailers I've stopped in 16
8 years.

9 Q So you don't recall how fast this tractor trailer
10 was moving, but you know he was not speeding.

11 A Correct.

12 Q Okay. Did you record that speed anywhere or you
13 just don't remember it?

14 A Record the tractor trailer's speed?

15 Q You don't record it down in the orders or notices?

16 A No, sir that would be thousands of writing speeding
17 down. We don't do that.

18 Q No further questions.

19 THE COURT: Thank you. Thank you very much,
20 Trooper. You may step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Solicitor, you may call
23 your next witness.

24 MR. BELL: We have no further witnesses on this
25 issue.

1 THE COURT: Mr. Mauldin any testimony you intend to
2 present.

3 MR. MAULDIN: No, Your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Mauldin?

6 MR. MAULDIN: I guess we'll handle the Fourth
7 Amendment issues first, Your Honor.

8 Your Honor, in order to stop a vehicle, the officer
9 must have a reasonable suspicion of criminal activity or
10 probable cause that there is a traffic violation, the
11 trooper's testimony is that he was facing eastbound looking
12 in the side-view mirror at eastbound traffic. He could
13 only see the front of the vehicles coming towards him. He
14 believes that the defendant slowed down and that the truck
15 had to slow down and swerve.

16 He did not indicate that anybody was speeding above
17 the maximum speed limit on the highway nor below the
18 minimum limit on the highway. He couldn't testify how far
19 the tractor trailer was behind the car to be traveling too
20 close or as to what the speed of the tractor trailer was
21 other than to say, I don't believe he was speeding.

22 I don't see that there was probable cause that
23 Mr. Michaux committed any kind of traffic violation. He,
24 mentioned following him a bit and he did not maintain the
25 center position of his lane. That in itself is not a

1 traffic violation and I think that does not lead to a
2 probable cause that a traffic violation -- no reasonable
3 suspicion that criminal activity was afoot.

4 THE COURT: All right. Thank you.
5 Solicitor?

6 MR. BELL: Thank you, Your Honor.

7 Your Honor, I think the speed issue is somewhat of
8 a red herring. Speed was indicated in that the trooper
9 testified that he saw the white vehicle hit the breaks such
10 that the tractor trailer had to swerve, however, at that
11 point he didn't immediately hit his lights. He then pulled
12 out and started following the vehicle and with his own eyes
13 witnessed erratic driving. He even mentioned at some point
14 that that is the kind of indicator that makes them curious
15 as to whether or not someone may be driving under the
16 influence or at least a reasonable suspicion of criminal
17 activity.

18 As it comes to cause for a traffic violation, I
19 certainly do believe that based on the reckless driving of
20 hitting the brakes as well as swerving throughout the
21 center of your lane -- excuse me, I keep hearing a beeping,
22 I'm sorry. Those two things together certainly would be a
23 reason to qualify him for this stop.

24 So in summary, Your Honor, I believe there was
25 reasonable suspicion that the driver may have been under

1 the influence even if ultimately swerving and the erratic
2 behavior of the driver gave the trooper a probable cause of
3 a traffic violation.

4 THE COURT: Thank you, Solicitor.

5 Anything in response Mr. Mauldin?

6 MR. MAULDIN: Just that it would be impossible for
7 the trooper to see brake lights were on. It could have
8 just been as natural as letting off the accelerator --
9 showing as far as taking your foot off the accelerator is
10 not very good from the passenger side -- he might not have
11 had a clear view from the driver's side-view mirror looking
12 at traffic oncoming where you can only see the front of the
13 vehicles.

14 THE COURT: Thank you.

15 MR. MAULDIN: And of course Fourth Amendment and
16 the South Carolina Constitution.

17 THE COURT: Thank you.

18 All right. Based on the testimony of Trooper
19 Harrison, I would find that he is a veteran of the South
20 Carolina Highway Patrol of approximately 16 years; he has
21 quite an amount of training, including training in
22 narcotics, specifically the identification of narcotics.
23 Further, I would find that on this particular day he was in
24 Lexington County at mile marker 42. He would be able, I
25 believe, you said -- I believe I wrote it down Mr. Mauldin,

1 that he might have not had a clear view but that's just
2 like saying it's collateral damage it's still a view. And
3 at this time of day late morning early afternoon, he could
4 clearly -- he could view traffic traveling eastbound on
5 I-20 from what would have been 42 mile marker -- his
6 testimony he also remarked was eastbound on I-20 so he
7 could view that.

8 He identified the type of vehicle, a white
9 Volkswagon Passat. I find you don't have to see brake
10 lights to determine a vehicle has braked. If a vehicle
11 brakes abruptly and you're looking in your rearview mirror
12 on a vehicle or you're going towards that vehicle, you can
13 see the abrupt braking by the movement of the vehicle
14 itself.

15 Then the Passat being a smaller vehicle a small,
16 four-door sedan as the officer described, the other vehicle
17 being a tractor trailer, which is obviously a much -- much
18 larger vehicle, he described that a tractor trailer had to
19 brake hard and swerve. Now, that gets the officer's
20 attention. Given the fact that they were -- he observed no
21 hazards between he and the vehicle that he was observing
22 and the tractor trailer, so it becomes a progression as to
23 the steps he then took to follow the vehicle -- no
24 different than Defendant McFadden in Terry versus Ohio, he
25 was just doing a followup, moving investigation to observe

1 the vehicle continuing to go eastbound.

2 He said the vehicle weaved within his lane, that
3 there was failure to maintain proper control of the
4 vehicle, that's improper use of lane going side to side;
5 didn't know the -- I don't know if he was as concerned that
6 the trooper was behind him; that the driver of the vehicle
7 may have been focusing on the officer or if he was sleepy
8 or perhaps he was under the influence. As a result of the
9 combination of what he observed, he made a valid traffic
10 stop with reasonable suspicion.

11 He then testified as he approached the vehicle he
12 noticed a New York tag, appeared to be a brand new vehicle,
13 had a bar code within the rear window, and most likely
14 would indicate to him that it was a rental vehicle. He
15 approached the driver's side, observed the defendant, asked
16 for driver's license, which he never received, and
17 registration, receiving the rental agreement.

18 He said the operator of the vehicle appeared
19 nervous, that his hand was trembling. He noticed tobacco
20 shavings on the console, air fresheners, and an odor of
21 marijuana. Later on he testifies many times people will
22 take cigars and pack them with marijuana.

23 He further testified he is familiar with the smell
24 of marijuana and that the smell of marijuana, whether
25 marijuana is present or not may linger in the air. He then

1 asked the operator of the vehicle to exit and went to the
2 right front passenger side of the patrol vehicle, still
3 smelled marijuana, and that was an indication that he
4 warranted a situation so that it would not escalate to any
5 type of chase or violence.

6 He then had a conversation, which is appropriate
7 with the defendant, casual conversation where you coming
8 from, where you been, how long; responses were very
9 general, I would say evasive, or describe them as evasive.
10 Female cousin's house and points down the road; never got a
11 name, never got an address, just general statements; always
12 answer a question with a question. He was not forthright.

13 He noticed that the vehicle was rented not to the
14 operator but to a female; also indicated that the defendant
15 indicated that the girlfriend had rented it for him. It's
16 no moment, girlfriend or home girl or what have you was
17 used. He was not under arrest; normal tone, not
18 threatened, not intimidating, but that he was not free to
19 leave.

20 Further, he only gave him an identification card
21 when asked for his license which was revoked in the State
22 of North Carolina. He gave him warning for improper use of
23 lane and further indicated that many members of the
24 motoring public are nervous when stopped by an officer
25 generally but will calm down once the officer speaks to

1 them in a normal tone and understands why they were
2 stopped. Said that the defendant appeared extremely
3 nervous that he could detect an increase in his breath rate
4 and even observed a pulse in his neck.

5 He then, in my opinion, had not only reasonable
6 suspicion, but probable cause to search the vehicle based
7 on the long line of the cases under the Karl doctrine.
8 Other indicators again was third-party rental, air
9 fresheners, extreme nervousness. As he's walking to the
10 vehicle, it appears a spontaneous statement was made,
11 There's no marijuana in the vehicle. He checked the front
12 passenger and located the shavings of tobacco that he'd
13 seen on the console.

14 He checked the rear passenger floor located a black
15 plastic bag which appeared to contain a powdery substance,
16 I can't call the exact name of the case but it's a Texas
17 case on a balloon that was in plain view. The defendant
18 was then placed in custody. The officer doesn't recall
19 observing any clothing or any indication that the defendant
20 had been on a quote, road trip, unquote, the type of which
21 you may need a change of clothing. The nervousness never
22 subsided in a stop that was less than 15 minutes which
23 would be consistent with United States versus Sharpe.

24 I've also taken into account as the defendant's
25 counsel has pointed out and as the officer stated, there

1 was no speed -- he doesn't recall the speed, that's not why
2 he followed him. That's not what brought the vehicle to
3 his attention. There were no Miranda warnings, no
4 custodial interrogation, of course, can be on the roadside
5 of the motoring public.

6 One would tend to think that a gun -- or no guns
7 were found, no money was found. The witness testified that
8 just because you have no money and you have no gun doesn't
9 mean that that is inconsistent of maybe probable cause. So
10 I think he clearly had probable cause to stop the white
11 vehicle for the traffic violation and there was some
12 reasonable suspicion that criminal activity was afoot to
13 search this vehicle.

14 THE COURT: What is the next motion?

15 MR. MAULDIN: Kind of, obvious, my first motion was
16 probable cause to stop the vehicle only in order to
17 suppress, the drugs. Your Honor, we didn't argue with the
18 extension of the stop or I could have gone into that as
19 well. Place that in the order that a warning ticket was
20 issued and after the warning ticket -- and I believe that
21 once the warning ticket was issued Mr. Michaux should have
22 been free to go. And I base that under Fourth Amendment
23 under Article 1.

24 THE COURT: And I would say that just for the
25 record. I didn't mean to leave that out. And, of course,

1 I would say for the record, I don't know what the term,
2 free to go, exactly the precise definition, he certainly
3 wasn't free to drive the vehicle away, nor as I understand
4 it can you be a pedestrian on an interstate highway.
5 However, the officer never placed him under arrest until
6 post search. Post search.

7 Anything further Mr. Mauldin.

8 MR. MAULDIN: Yes, Your Honor. My understanding,
9 you believe there was probable cause due to improper use of
10 lane.

11 THE COURT: And further I believe I indicated what
12 brought it to the officer's attention was the improper
13 braking. If you brake your motor vehicle in such a manner
14 to which other members of the motoring public have to take
15 evasive action for no apparent reason, no highway hazards,
16 clear day, not raining, that's improper baking in and of
17 itself. He followed and observed him.

18 MR. MAULDIN: Yes, sir.

19 I guess we'll move onto the Jackson v. Denno, Your
20 Honor. You mentioned in you're colloquy regarding the
21 stopping and then the following search, the trooper
22 testified that when he -- before the conversation occurred
23 he asked the defendant to step out of the car and had him
24 follow him to the right side of his vehicle which was
25 behind Mr. Michaux's car and the reason for that being he

1 didn't want Mr. Michaux to leave or get in the car and
2 drive away and cause a failure to stop situation. I think
3 that his reasons for that is tantamount to the defendant
4 not being able to leave. And I think that is custody for
5 Miranda purposes and he testified that no Miranda warnings
6 were issued; and I would move that all statements made
7 would be suppressed.

8 THE COURT: Well, then they are hearsay? There's
9 no marijuana in the car. That's a response by the
10 defendant that there was no marijuana in the car so there's
11 no custodial interrogation and is not a confession. The
12 officer was also -- Harrison was walking away towards his
13 car when that statement was made. The others are no
14 Miranda issues as far as interviewing a member of the
15 motoring public stopped by an officer on the side of the
16 highway. It's not hearsay under 801, statement by a party
17 opponent, used by the other party.

18 Be that as it may. Anything you want to add
19 Mr. Mauldin for the record?

20 MR. MAULDIN: Well, it's under the Fifth Amendment
21 of the U.S. constitution. Article 1 Section 2 of the State
22 Constitution. That was the statements -- I think that's it
23 as far as those three issues it is stop of the vehicle and
24 the statement issued.

25 THE COURT: Solicitor, anything you want to add for

1 the record as to those three issues.

2 MR. BELL: Your Honor, I wasn't prepared to argue
3 but I think you sufficiently -- for clarification, did you
4 find there also was reasonable suspicion of criminal
5 activity to pull the vehicle over or was the ruling solely
6 on the probable cause of the stop?

7 THE COURT: I think it was both.

8 MR. BELL: Your Honor, on those issues the State
9 has nothing further. As to the issue of the audio which
10 Mr. Mauldin brought up earlier, the State would redact that
11 portion from the audio.

12 THE COURT: All right. And as to the drugs, does
13 that take care of that motion Mr. Mauldin?

14 MR. MAULDIN: Yes, that's just something I wanted
15 to cover was to redact all the audio on the of video upon
16 your review as to inadmissibility, upon playing it in the
17 courtroom or if the jury could hear better than we can.

18 THE COURT: All right. And then there's another
19 motion?

20 MR. MAULDIN: Yes, sir, Your Honor. The State
21 intends to call an expert on drugs to talk about how drugs
22 are packaged and other indicators of drug interdiction.
23 This is a trafficking case. In the State versus Robinson,
24 396 S.C. 577 that was allowed over objection in a
25 possession with intent to distribute case. And the finding

1 was relevant to possession with intent to distribute rather
2 than a simple possession and the trafficking case. I
3 believe all the State has to prove is possession of the
4 drug and that the drug weighed so much and I don't think
5 that the testimony of an expert would be relevant under
6 Rule 702; and I believe that such an expert could confuse
7 the jury on the issues prejudicially and deny a fair trial
8 under the U.S. Constitution and the State Constitution and
9 due process under the Fifth and Fourth Amendments and
10 Article one of the State Constitution.

11 THE COURT: All right. Solicitor?

12 MR. BELL: Thank you, Your Honor. For
13 transparency's sake, the State is planning to call Justin
14 Rogers with the highway patrol. We do concede that we do
15 intend to qualify him as an expert as it relates to
16 trafficking cocaine, and specifically the street value of
17 cocaine. We would base that on the State versus Jamison
18 372 S.C. 649.

19 THE COURT: Tell me that cite again.

20 MR. BELL: 372, South Carolina 649.

21 THE COURT: Okay. Thank you.

22 MR. BELL: That's a South Carolina Court of Appeals
23 case and the Court in that case essentially says that drug
24 knowledge is not common knowledge as for purposes such as
25 how much 137 grams of cocaine is worth, as it will be in

1 this case, is very useful whether somebody possessed it for
2 themselves or whether it was trafficking for instance.
3 Additionally we would also seek to qualify our expert in
4 trafficking for the purposes of discussing based on this
5 extensive interdiction that rented vehicles are very
6 commonly used to traffic and it's because, obviously, if a
7 vehicle is in someone else's name than that of the driver
8 they can try to hide behind that if they want to put a
9 bunch of dope in and drive down the interstate.

10 THE COURT: I don't think I can rule on the
11 testimony until I've heard it. I take it Lieutenant Gunter
12 and Trooper Roger are not present.

13 MR. BELL: They won't be present until the morning.

14 THE COURT: I'll do that as the case unfolds
15 outside the presence of the jury.

16 Any other motions, Mr. Mauldin?

17 MR. MAULDIN: I have none at this time, Your Honor.

18 THE COURT: I notice there was a Rule 6 motion.

19 MR. MAULDIN: Yes, sir, Your Honor.

20 THE COURT: Is that resolved?

21 MR. MAULDIN: If they provide the witnesses for the
22 chain.

23 MR. BELL: I believe that's a standard motion from
24 the public defender and we do intend to establish chain.

25 The State would have one additional motion Your

1 Honor.

2 THE COURT: Yes, sir.

3 MR. BELL: We anticipate a defense of third-party
4 guilt to the receipt in the vehicle which indicated who
5 rented the vehicle. We would seek to exclude that
6 testimony under the Gregory language.

7 THE COURT: Under what?

8 MR. BELL: The State versus Gregory language; old
9 Gregory case which my understanding looking at case law
10 still relies on Gregory on third-party guilt. We don't
11 believe that the single receipt with an individual's name
12 on it amounts to evidence that would be strong enough and
13 do any more than bear conjecture. In addition, the
14 evidence of third-party guilt should be limited to such
15 facts as are inconsistent with the defendant's own guilt,
16 and to such facts as to raise to a reasonable inference or
17 presumption as to his own innocence under Gregory.

18 Also -- well, Your Honor, Gregory requires before
19 third-party guilt would be admissibility this has -- the
20 connection with the crime charged such as a chain facts and
21 circumstances as would tend to clearly point out the other
22 person as the guilty party. Additionally we do not believe
23 that a receipt with another person's name on it would not
24 be sufficient evidence under Gregory.

25 THE COURT: Mr. Mauldin?

1 MR. MAULDIN: Your Honor, if I ask to have leave to
2 revisit this in the morning?

3 THE COURT: Of course.

4 Interesting reading. I won't even take it under
5 advisement until I hear from you.

6 MR. MAULDIN: Yes, sir.

7 THE COURT: Anything further, Solicitor?

8 MR. BELL: Your Honor, Both the State and the
9 defense have wishes to review it or can we just provide it
10 in the morning.

11 THE COURT: I'm going to look at it in the morning.

12 MR. BELL: At 9:30?

13 THE COURT: All right. Thank y'all, thank you all
14 very much.

15 MR. BELL: Thank you, Your Honor.

16 MR. MAULDIN: Thank you, Your Honor.

17 (This trial was in recess until the following
18 morning.)

19 **WEDNESDAY, MAY 18, 2016**

20 THE COURT: All right, Solicitor. You may call
21 your next case for trial.

22 MR. BELL: Thank you, Your Honor. At this time,
23 the Lexington County Solicitor's Officer would call the
24 case of State v. Ronald Michaux to trial by Indictment
25 2014-GS-32-2606, indictment for trafficking cocaine.

1 THE COURT: All right. Thank you.

2 Mr. Mauldin, you represent Mr. Michaux?

3 MR. MAULDIN: Yes, sir, Your Honor.

4 THE COURT: Is he present in the courtroom?

5 MR. MAULDIN: Yes, he is, Your Honor.

6 THE COURT: And you're ready for trial?

7 MR. MAULDIN: Yes, sir, Your Honor.

8 THE COURT: Do I have the indictment?

9 MR. BELL: May I approach, Your Honor?

10 THE COURT: Yes, yes, sir. Thank you.

11 **JURY VOIR DIRE**

12 THE COURT: Ladies and gentlemen, the State has
13 called for trial Indictment Number 2014-GS-32-2606. It is
14 entitled the The State v. Ronald Douglas Michaux, Jr.

15 We're going to go through a process whereby we
16 qualify the jury panel to serve as members of a trial jury
17 on this specific case. You've already been generally
18 qualified to serve as jurors in this court and now we'll go
19 through this process to qualify you to serve as jurors in
20 this specific case.

21 Momentarily I will publish or read to you this
22 indictment. The indictment is not evidence. The
23 indictment is the formal charging document by which an
24 individual is placed on notice of charges that have been
25 brought against him or her. It's a notice document. It

1 contains mere allegations and is in no sense, evidence of
2 the allegations contained therein. The reason that I
3 publish or read it to you is because of certain questions
4 that I will thereafter ask concerning your qualifications
5 to serve as members of this jury.

6 You were placed under oath yesterday morning by the
7 clerk for general qualifications. I would ask you to
8 please consider yourselves still under oath as to the
9 questions that I will put to you during this process.

10 The indictment reads, ladies and gentlemen, that
11 Ronald Douglas Michaux, Jr. did in Lexington County, South
12 Carolina, on or about March 20th, 2014, knowingly,
13 intentionally, willfully, and unlawfully sell, cultivate,
14 manufacture, deliver, purchase or bring into this state; or
15 did provide financial assistance or otherwise aid, abet,
16 attempt or conspire to sell, manufacture, cultivate,
17 deliver, purchase, or bring into this state; or was
18 knowingly or intentionally in actual or constructive
19 possession of or did knowingly and intentionally attempt to
20 become in actual or constructive possession of cocaine, a
21 controlled substance under the provisions of 44-53-110 of
22 the South Carolina Code of Laws, as amended, in a quantity
23 of 100 grams or more, but less than 200 grams in violation
24 of 44-53-370(e)(2)(c) of the Code of Laws of South
25 Carolina, 1976, as amended.

1 That is an indictment of trafficking in cocaine 100
2 grams or more, but less than 200 grams.

3 The State is represented by assistant solicitors
4 with the Eleventh Judicial Circuit Solicitor's Office.

5 If y'all would please stand introduce yourselves to
6 the jury panel, Solicitor.

7 MR. BELL: Thank you, Your Honor. My name is Gill
8 Bell. I am Assistant Solicitor here in the Eleventh
9 Circuit. I work for your elected Solicitor, Donald G.
10 Myers. With me as co-prosecutor, is Bradley Pogue, also
11 Assistant Solicitor in the office. Seated one row back is
12 Investigator Kevin Wilson, who assisted in the preparation
13 of this case.

14 THE COURT: Mr. Michaux is represented by Mr.
15 Mauldin. Mr. Mauldin, would you please stand, introduce
16 yourself and have your client stand and introduce Mr.
17 Michaux to the jury panel.

18 MR. MAULDIN: My name is David Mauldin and I
19 represent Ronald Michaux.

20 THE COURT: Thank you. Thank you, Mr. Mauldin.
21 Thank you, Mr. Michaux.

22 Is any member of the jury panel related by blood or
23 marriage, personal friends, have any social, business or
24 professional relationship with any of the attorneys: Mr.
25 Bell, Mr. Pogue, Mr. Mauldin or any member of the Lexington

1 County Solicitor's Office staff? If so, please stand.

2 (No one stood.)

3 THE COURT: Is any member of the jury panel related
4 by blood or marriage, have any personal, social, business
5 or professional relationship with Mr. Ronald Douglas
6 Michaux, Jr., who is the defendant, named defendant in this
7 case, and who has been introduced to you? If so, please
8 stand.

9 (No one stood.)

10 THE COURT: Has any member of the jury panel or any
11 member of your immediate family ever been a party to a
12 lawsuit or a trial case in which one of the attorneys, Mr.
13 Bell, Mr. Pogue, or Mr. Mauldin, either represented you or
14 your family member or represented the opposing party in the
15 lawsuit or criminal matter? If so, please stand.

16 (No one stood.)

17 THE COURT: The indictment alleges trafficking in
18 cocaine of a certain amount great -- more than 100 grams,
19 less than 200 grams that occurred on or about March 20th,
20 2014, in Lexington County. Does any member of the jury
21 panel have any knowledge about this case? If so, please
22 stand.

23 (No one stood.)

24 THE COURT: And I'm going to somewhat hyphenate
25 this next question. Does any member of the jury panel have

1 any bias or prejudice towards the parties, be it either the
2 State or Mr. Michaux or towards the subject matter, that
3 being illegal drugs, the war on drugs, is there something
4 that you hold, say an opinion for or against it in any of
5 your personal beliefs; none of which are wrong, they're
6 your personal beliefs, in fact they're all right, whatever
7 your personal beliefs are; but do you have any personal
8 opinions such about that, drugs, illegal drugs, the war on
9 drugs, such that you cannot be a fair and impartial juror
10 in the trial of this case for both Mr. Michaux and the
11 State? If so, please stand.

12 (Juror stood.)

13 THE COURT: Your number and name please?

14 THE JUROR: 220, Robin Williams.

15 THE COURT: All right. Will you step up to my
16 Court Reporter for me please?

17 (The following bench conference took place outside
18 of the hearing of the jury venire.)

19 THE COURT: Tell me your number again please.

20 THE JUROR: 220.

21 THE COURT: And tell me your name again, please.

22 THE JUROR: Robin Williams.

23 THE COURT: Ms. Williams, okay. And tell me --
24 tell me your response to that question.

25 THE JUROR: I have a daughter that's been on drugs

1 for years and I couldn't even -- she's --

2 THE COURT: You think as a result of that, you
3 cannot be a fair and impartial juror in the trial of this
4 case.

5 THE JUROR: Yes.

6 THE COURT: Speak up a little for me.

7 THE JUROR: I'm raising her daughter.

8 THE COURT: All right. I'll set you aside for the
9 trial of this case. Do not say anything to your fellow
10 jurors. All right. Thank you.

11 THE JUROR: Go sit back down?

12 THE COURT: Yes, ma'am. Go back and have a seat.
13 Thank you. Thank you, Ms. Williams.

14 220 is set aside for the trial of this case.

15 (The bench conference ended.)

16 THE COURT: Has any member of the jury panel or any
17 member of your immediate family ever been so affected by
18 illegal drugs that it would create a bias or prejudice in
19 your mind for or against the State or for or against Mr.
20 Michaux? If so, please stand.

21 (No one stood.)

22 THE COURT: Is any member of the jury panel
23 presently or in the past, a member of, financial supporter
24 of or otherwise involved or connected with any organization
25 that demands stricter enforcement of laws such as Mothers

1 Against Drunk Driving, MADD; Students Against Driving
2 Drunk, SADD; Citizens Against Violent Crime, CAVE, or any
3 such similar organization? If so, please stand.

4 (Juror stood.)

5 THE COURT: Your number and name please?

6 THE JUROR: 123, Carrie Larson.

7 THE COURT: And what organization?

8 THE JUROR: MADD.

9 THE COURT: Are you a member or contributor?

10 THE JUROR: Volunteer.

11 THE COURT: All right. Given that fact, can you be
12 a fair and impartial juror in the trial of this case for
13 both Mr. Michaux and the State?

14 THE JUROR: I believe so, yes.

15 THE COURT: And when you say you believe so, that
16 may just be semantics.

17 THE JUROR: Yes.

18 THE COURT: All right. Thank you. Thank you very
19 much. I believe you can stay with us.

20 Any others?

21 (No one stood.)

22 THE COURT: Does any member of the jury panel
23 related to or have a close personal friend who is employed
24 by the State of South Carolina Highway Patrol or the State
25 Law Enforcement Division or the Lexington County Sheriff's

1 Department? If so, please stand.

2 (Several jurors stood.)

3 THE COURT: All right. Yes, ma'am, in the -- well,
4 yes, ma'am, tell me your number and name please?

5 THE JUROR: 154, Elizabeth Anne Odom, sir.

6 THE COURT: All right. And tell me the
7 relationship?

8 THE JUROR: My brother-in-law is a member of the
9 Charleston Highway Patrol.

10 THE COURT: Given that fact, can you be a fair and
11 impartial juror in the trial of this case for both Mr.
12 Michaux and the State?

13 THE JUROR: Yes.

14 THE COURT: Thank you. I believe you can stay with
15 us.

16 Yes, sir, your number and name please?

17 THE JUROR: Lawrence Brooks, Number 28.

18 THE COURT: Relationship?

19 THE JUROR: One of my better friends is an ICE
20 Agent in Greer.

21 THE COURT: ICE?

22 THE JUROR: Yes, sir. Directly related to drugs.

23 THE COURT: All right. Given that fact, can you be
24 a fair and impartial juror in the trial of this case for
25 both Mr. Michaux and the State?

1 THE JUROR: Yes, sir.

2 THE COURT: Well, I didn't ask about ICE, number
3 one, but step up here for me please.

4 (A bench conference was held out of the hearing of
5 the jury venire.)

6 THE COURT: Tell me -- tell me your number and name
7 again please.

8 THE JUROR: Number 28, Lawrence Brooks.

9 THE COURT: All right. And you're saying -- tell
10 me -- explain to me your answer again.

11 THE JUROR: One of my best friends is an
12 Immigration Customs Enforcement Agent in Greer, South
13 Carolina and he's heavily involved in preventing the influx
14 of drugs and trafficking in drugs. And that coupled with
15 some of your previous questions, I believe I've got too
16 much of a bias for this.

17 THE COURT: All right. Thank you. Thank you very
18 much. I'll set you aside for the trial of this case. Do
19 not say anything to your fellow jurors.

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you. All right. Yes, ma'am, if
22 you would step up here for me please, lady in the, I'm
23 going to call it pink. I don't know, coral, whatever color
24 you call it, will you step up here for me.

25 And young lady, you can also come and just wait at

1 the rail for me a moment.

2 Good morning.

3 THE JUROR: Hey.

4 THE COURT: Will you tell me your number and name?

5 THE JUROR: I'm 86, Sharron Gleaton.

6 THE COURT: All right. Tell me the relationship?

7 THE JUROR: Well I have a cousin who is employed or
8 who recently was hired for the South Carolina Highway
9 Patrol and I have a brother who works with the City of
10 Columbia Police Department and a cousin who is Chief of
11 Police in Bamberg.

12 THE COURT: Given those facts, can you be a fair
13 and impartial juror in the trial of this case for both Mr.
14 Michaux and the State?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: All right. Thank you. I believe you
17 can stay with us.

18 Yes, ma'am?

19 THE BAILIFF: Juror 104, Your Honor.

20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: And tell me your name please?

23 THE JUROR: Terry Hunt.

24 THE COURT: And tell me your relationship.

25 THE JUROR: The way you stated the question, Rudy

1 Bauknight, that is an officer here and he also works in the
2 courthouse, my mother was married to him and so I'm very --
3 we're friends with the family. However, I haven't seen him
4 in a couple of years just until the other day. But just
5 the way you stated it, I wanted to let you know.

6 THE COURT: Y'all want to vote on whether or not
7 someone that knows Rudy Bauknight and admits it on the
8 record --

9 THE JUROR: Well, if somebody saw me on camera
10 hugging him the other day, it might have been a give away.

11 THE COURT: -- is qualified?

12 Given the fact -- given those facts, can you be a
13 fair and impartial juror in the trial of this case for both
14 Mr. Michaux and the State?

15 THE JUROR: Yes, Your Honor, I can.

16 THE COURT: I believe you can stay with us. Thank
17 you. Thank you very much.

18 THE JUROR: Thank you.

19 THE BAILIFF: Juror Number 133, Your Honor.

20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: Tell me your name?

23 THE JUROR: Jondy Loveless.

24 THE COURT: All right.

25 THE JUROR: My step-son works for the magistrate in

1 West Columbia.

2 THE COURT: All right. And what does he do?

3 THE CLERK: He's a clerk.

4 THE COURT: Clerk? Let's see, the magistrate in
5 West Columbia --

6 THE CLERK: A long time ago it was --

7 THE COURT: Matt -- Matt -- Matt, which was the
8 Chief in Spring --

9 THE JUROR: He's young.

10 THE CLERK: Matt Johnson.

11 THE COURT: Matt Johnson.

12 THE CLERK: Now, he's the Oak Grove Magistrate.

13 THE COURT: Oak Grove?

14 THE CLERK: Uh-huh (affirmative response).

15 THE COURT: I don't know who's in West Columbia
16 anymore, but given that fact, can you be a fair and
17 impartial juror in the trial of this case --

18 THE JUROR: Yes, sir.

19 THE COURT: -- for both the State --

20 THE JUROR: Yes, sir.

21 THE COURT: You know it may be Judge Dooley.

22 THE CLERK: I was fixing to say it is.

23 THE JUROR: I absolutely do not know.

24 THE COURT: Thank you. I believe you can stay with
25 us. Thank you so much.

1 THE JUROR: Thank you.

2 THE COURT: Yes, ma'am.

3 THE BAILIFF: Juror Number 85, Your Honor.

4 THE COURT: Good morning. Again.

5 THE JUROR: Good morning.

6 THE COURT: Now, tell me your name again.

7 THE JUROR: Mary Giles.

8 THE COURT: All right.

9 THE JUROR: I got a second cousin that's on the
10 Chapin Police Department.

11 THE COURT: Which police department?

12 THE JUROR: Chapin.

13 THE COURT: Chapin. Given that fact, can you be a
14 fair and impartial juror in the trial --

15 THE JUROR: I believe I could.

16 THE COURT: When you say you believe you could,
17 that wouldn't influence you, you can make your decision
18 based on what you hear in court?

19 THE JUROR: Based on what I hear, uh-huh
20 (affirmative response).

21 THE COURT: I believe you can stay with us.

22 THE JUROR: Okay.

23 THE COURT: Thank you.

24 Any others.

25 MR. MAULDIN: Your Honor, may I put something on

1 the record.

2 THE COURT: Of course. My question of course was
3 originally for anybody related to any kind of law
4 enforcement, and Your Honor didn't limit the question to
5 the law enforcement agencies involved and there was an
6 individual, the first one that stood up that mentioned a
7 different agency and said he could not be fair and
8 impartial. So I think the limitation of the question is
9 not valid and perhaps if you just did a general law
10 enforcement -- I know that some people came up that went
11 beyond the scope of the question, but I think there are
12 some --

13 I don't mind asking it. Typically I just ask the
14 agency involved.

15 MR. MAULDIN: Particularly since an individual --

16 THE COURT: However, he should have stood up
17 before, Mr. Brooks. That's why I made him come up here.

18 MR. MAULDIN: Yes, sir.

19 THE COURT: Because of the other questions that was
20 asked --

21 MR. MAULDIN: Yes, sir.

22 THE COURT: -- that should have put some bulb in
23 his mind. I don't think he was not being forthright with
24 the Court, and obviously he followed it up, but I don't
25 mind asking the question.

1 MR. MAULDIN: Yes, sir.

2 THE COURT: We'll see what happens.

3 MR. MAULDIN: Yes, sir.

4 (The bench conferences ended.)

5 THE COURT: Ladies and gentlemen, you may recall,
6 if you can hear me, that I asked a question whether or not
7 you're related by blood or marriage or close personal
8 friends with any member of the South Carolina Highway
9 Patrol, State Law Enforcement Division or the Lexington
10 County Sheriff's Department. A number of you did come
11 forward with other relationships to individuals that were
12 employed by other law enforcement agencies.

13 Given that fact, I'm going to expand my question.
14 Is there any member of the jury panel, that has not stood
15 up previously, that is related by blood or marriage, or
16 close personal friends of a member of any law enforcement
17 agency; if so, please stand?

18 (Jurors stood.)

19 (The following bench conferences took place out of
20 the hearing of the jury venire.)

21 THE COURT: All right. We just have two.

22 All right. Y'all come forward for me please.

23 MR. MAULDIN: Or were prior law enforcement
24 themselves.

25 THE COURT: Was that on the thing?

1 MR. MAULDIN: It is.

2 THE BAILIFF: Juror Number 156.

3 THE COURT: Good morning. Tell me your name.

4 THE JUROR: Travis Ouzts.

5 THE COURT: All right. And relationship?

6 THE JUROR: First cousin to a deputy in Greenwood
7 County.

8 THE COURT: Greenwood County?

9 THE JUROR: Yes, sir. And a second cousin that
10 works at the City Police Department.

11 THE COURT: In Greenwood?

12 THE JUROR: Yes, sir.

13 THE COURT: Given that fact, can you be a fair and
14 impartial juror in the trial of this case for both the
15 State and the Defense?

16 THE JUROR: Yes.

17 THE COURT: Thank you. I believe you can stay with
18 us. Thank you. Thank you very much.

19 THE BAILIFF: Juror Number 82.

20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: Tell me your name, please?

23 THE JUROR: Cynthia Gearon.

24 THE COURT: Relationship?

25 THE JUROR: Husband is with Cayce.

1 THE COURT: Mike?

2 THE JUROR: Yes, sir.

3 THE COURT: Given that fact, can you be a fair and
4 impartial juror in the trial of this case --

5 THE JUROR: Yes, sir.

6 THE COURT: -- for both the State and the defense?

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you. I believe you can stay with
9 us. Thank you.

10 THE JUROR: Thank you.

11 THE BAILIFF: Juror Number 92, Your Honor.

12 THE COURT: Good morning.

13 THE JUROR: Good morning, sir.

14 THE COURT: You're number and name?

15 THE JUROR: 92, Zachary Gutknecht.

16 THE COURT: All right.

17 THE JUROR: And I have a cousin who's a lieutenant
18 in Sumter.

19 THE COURT: Given that fact, can you be a fair and
20 impartial juror in the trial of this case for both the
21 State and the defense?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you. I believe you can stay with
24 us.

25 THE BAILIFF: Juror Number 14, Your Honor.

1 THE COURT: Good morning.

2 THE JUROR: Good morning, sir.

3 THE COURT: Your name please?

4 THE JUROR: Timothy Bennett.

5 THE COURT: All right.

6 THE JUROR: My brother works for the Department of
7 Homeland Security in -- for West Virginia. He's just a
8 training officer for that. Since he works for that
9 division, I thought I would mention that.

10 THE COURT: All right. Given that fact, can you be
11 a fair and impartial juror in the trial of this case for
12 both the State and the defense?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you. I believe you can stay with
15 us.

16 THE BAILIFF: Juror Number 16, Your Honor.

17 THE COURT: Good morning.

18 THE JUROR: Good morning.

19 THE COURT: And your name please?

20 THE JUROR: Brittney Bing.

21 THE COURT: All right. And your relationship?

22 THE JUROR: My dad is a Correction Officer.

23 THE COURT: South Carolina?

24 THE JUROR: Yes, sir.

25 THE COURT: Given that fact, can you be a fair and

1 impartial juror in the trial of this case for both the
2 State and the defense?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you. I believe you can stay with
5 us.

6 THE BAILIFF: Juror Number 89, Your Honor.

7 THE COURT: Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Your name.

10 THE JUROR: Linda Green.

11 THE COURT: Green?

12 THE JUROR: Yes.

13 THE COURT: Okay.

14 THE JUROR: I have a godson with Columbia Police
15 Department.

16 THE COURT: Given that fact, can you be a fair and
17 impartial juror in the trial of this case for both the
18 State and the defense?

19 THE JUROR: Yes.

20 THE COURT: Thank you. I believe you can stay with
21 us.

22 Any others?

23 (No one stood.)

24 THE COURT: Thank you.

25 (The bench conferences ended.)

1 THE COURT: Is there any member of the jury panel
2 who has formerly been a law enforcement officer vested with
3 the power of arrest? If so, please stand.

4 (No one stood.)

5 THE COURT: I'm going to call a list of names of
6 potential witnesses in the trial of this case. I would
7 advise you that the witnesses are not required to be
8 present during this proceeding. However, I would ask if
9 any of the witnesses are present, when your names are
10 called if you'd please stand and face the jury panel.

11 The question of course is, is any member of the
12 jury panel related by blood or marriage, have any social,
13 business or professional relationship with any of the
14 witnesses whose names I call and/or who stand before you
15 and I would ask you, if you do to please stand.

16 Michael Harrison, South Carolina Highway Patrol.

17 This is Trooper Harrison to my front right.

18 Thank you. Thank you, Trooper.

19 Justin Rogers, South Carolina Highway Patrol; Brad
20 Dowis, did I pronounce that correctly?

21 MR. DOWIS: Yes, Thank you.

22 THE COURT: South Carolina Highway Patrol. Thank
23 you.

24 Phillip Odom, South Carolina Highway Patrol; Doris
25 "Dotie" Yarbrough, State Law Enforcement Division; Jennifer

1 Aycock, State Law Enforcement Division; Douglas Robinson,
2 Agent Robinson, State Law Enforcement Division.

3 (Mr. Robinson stood.)

4 THE COURT: Thank you. Thank you, Agent Robinson.
5 Samuel Gunter, Lexington County Sheriff's
6 Department.

7 Again, the question is, is any member of the jury
8 panel related by blood or marriage, have any social,
9 business or professional relationship with any of those
10 individuals whose names I called and/or who stood before
11 you? If so, please stand.

12 (No one stood.)

13 THE COURT: Any additional requested voir dire from
14 the defense, Mr. Mauldin.

15 MR. MAULDIN: No, Your Honor.

16 THE COURT: From the State, Mr. Bell?

17 MR. BELL: None, Your Honor.

18 THE COURT: All right. And finally, ladies and
19 gentlemen, you know our purpose in this proceeding is
20 select a jury panel that would be fair and impartial jurors
21 to serve in the trial of this case for both Mr. Michaux and
22 the State. You know generally what the case is about.
23 I've read the indictment, I've asked you a series of
24 questions and you know yourselves best. Does any member of
25 the jury panel know of any reason whatsoever why you feel

1 like you could not serve as a fair and impartial juror in
2 the trial of this case for both Mr. Michaux and the State?
3 Is so, please stand?

4 If it concerns you, it concerns me. I want to
5 address it now and not when you're a member of the jury
6 panel.

7 All right. No one stands. I find our panel is
8 qualified with the exception of those I set aside, was it
9 two? Two?

10 THE CLERK: Yes, sir. There was only one set
11 aside.

12 THE COURT: No, I set aside 220 and I set aside 28.

13 THE CLERK: I apologize.

14 THE COURT: Is that right, two?

15 THE CLERK: Yes, sir.

16 THE COURT: It's like concentration, I was trying
17 to remember, Ms. Williams and Mr. Brooks, I think.

18 THE CLERK: Yes, sir.

19 THE COURT: All right. Do I win a prize? Do I
20 come back as defending champion?

21 THE CLERK: You've got to hit three.

22 THE COURT: All right. Thank you.

23 Madam Clerk, if you'd get us a jury panel please.

24 Strikes, Solicitor?

25 MR. BELL: Five and five, Your Honor.

1 THE COURT: You agree, Mr. Mauldin?

2 MR. MAULDIN: Yes, sir.

3 THE COURT: Five for the State and five for the
4 defense.

5 Thank you. Thank you very much.

6 This is the panel? How did you get that so quick?

7 THE CLERK: Magic.

8 THE COURT: Thank you.

9 THE CLERK: Your Honor, may I approach?

10 (There was a bench conference out of the hearing of
11 the jury venire and the court reporter.)

12 THE COURT: All right. I'm going to tell the
13 attorneys. There are several jurors from random selection
14 well down the list that I have granted protection for
15 Thursday and Friday. Although their names are on the list
16 they will not be called.

17 Any objections to that, Solicitor?

18 MR. BELL: None from the State, Judge.

19 THE COURT: Mr. Mauldin?

20 MR. MAULDIN: No, Your Honor.

21 THE COURT: And the Clerk informed me she advised
22 you of the juror I believe it was 180 that had the medical
23 issue this morning that I excused.

24 MR. BELL: Yes, Judge.

25 THE COURT: Is that right, Mr. Maudlin?

1 MR. MAULDIN: Yes, sir.

2 THE COURT: All right. Any objections?

3 MR. MAULDIN: No, Your Honor.

4 MR. BELL: No objections.

5 THE COURT: All right. Thank you.

6 Thank you. Madam Clerk, if you would give us a
7 panel please.

8 THE CLERK: As I call your juror number and name,
9 please come forward and stand right here where Tommy is
10 standing and remain there until I give you further
11 instructions on whether to sit in the jury box or to return
12 to your seat.

13 **JURY SELECTION**

14 THE CLERK: Number 192, Rodney Spangler (white
15 male).

16 What say ye for the State?

17 MR. BELL: Please present the juror.

18 THE CLERK: What say ye for the defense.

19 MR. MAULDIN: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 Number 156, Travis Ouzts (white male).

22 What say ye for the State?

23 MR. BELL: Please present the juror.

24 THE CLERK: What say ye for the defense?

25 MR. MAULDIN: Please excuse the juror.

1 THE CLERK: Return to your seat please, sir.
2 58, Douglas Drenten (white male).
3 What say ye for the State?
4 MR. BELL: Please present the juror.
5 THE CLERK: What say ye for the defense?
6 MR. MAULDIN: Please seat the juror.
7 THE CLERK: Have a seat in the jury box, sir.
8 61, Kimberly Dunlap (black female).
9 What say ye for the State?
10 MR. BELL: Please excuse the juror.
11 THE CLERK: Return to your seat please, ma'am.
12 32, Sylvia Brown (black female).
13 What say ye for the State.
14 MR. BELL: Madam Clerk, would you please repeat the
15 number.
16 THE CLERK: 32.
17 MR. BELL: Please present the juror.
18 THE CLERK: What say ye for the defense?
19 MR. MAULDIN: Please seat the juror.
20 THE CLERK: Have a seat in the jury box, ma'am.
21 92, Zachary Gutknecht (white male).
22 What say ye for the State?
23 MR. BELL: Please excuse the juror.
24 THE CLERK: Return to your seat please, sir.
25 Number 142, Jesse Merritt (white male).

1 What say ye for the State?

2 MR. BELL: Please present the juror.

3 THE CLERK: What say ye for the defense?

4 MR. MAULDIN: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, sir.

6 Number 114, John Kahler (white male).

7 What say ye for the State?

8 MR. BELL: Please present the juror.

9 THE CLERK: What say ye for the defense?

10 MR. MAULDIN: Please seat the juror.

11 THE CLERK: Have a seat in the jury box, sir.

12 154, Anne Elizabeth Odom (white female).

13 What say ye for the State?

14 MR. BELL: Please present the juror.

15 THE CLERK: What say ye for the defense?

16 MR. MAULDIN: Please excuse the juror.

17 THE CLERK: Return to your seat please, ma'am.

18 196, Randall Stewart (white male).

19 What say ye for the State?

20 MR. BELL: Please present the juror.

21 THE CLERK: What say ye for the defense?

22 MR. MAULDIN: Please seat the juror.

23 THE CLERK: Have a seat in the jury box, sir.

24 183, Nicholas Simons (white male).

25 What say ye for the State?

1 MR. BELL: Please present the juror.
2 THE CLERK: What say ye for the defense?
3 MR. MAULDIN: Please seat the juror.
4 THE CLERK: Have a seat in the jury box, sir.
5 89, Linda Green (black female).
6 Back up just a little more for me. There you go.
7 What say ye for the State?
8 MR. BELL: Please present the juror.
9 THE CLERK: What say ye for the defense?
10 MR. MAULDIN: Please excuse the juror.
11 THE CLERK: Return to your seat please, ma'am.
12 143, Bruce Mike (white male).
13 What say ye for the State?
14 MR. BELL: Please present the juror.
15 THE CLERK: What say ye for the defense?
16 MR. MAULDIN: This is 143?
17 THE CLERK: Yes, sir.
18 MR. MAULDIN: Please seat the juror.
19 THE CLERK: Have a seat in the jury box, sir.
20 188, Kayla Smith (white female).
21 What say ye for the State?
22 MR. BELL: Please excuse the juror.
23 THE CLERK: Return to your seat please, ma'am.
24 214, Taylor Webb (white female).
25 What say ye for the State?

1 MR. BELL: Please present the juror.
2 THE CLERK: What say ye for the defense?
3 MR. MAULDIN: Please seat the juror.
4 THE CLERK: Have a seat in the jury box, ma'am.
5 198, Amanda Storey (white female).
6 What say ye for the State?
7 MR. BELL: Please present the juror.
8 THE CLERK: What say ye for the defense?
9 MR. MAULDIN: Please seat the juror.
10 THE CLERK: Have a seat in the jury box, ma'am.
11 166, Tyler Raymond (white male).
12 What say ye for the State?
13 MR. BELL: Please excuse this juror.
14 THE CLERK: Return to your seat, sir.
15 149, Leigh Murphy (white female).
16 What say ye for the State?
17 MR. BELL: Please present the juror.
18 THE CLERK: What say ye for the defense?
19 MR. MAULDIN: Please seat the juror.
20 THE CLERK: Have a seat in the jury box, ma'am.
21 147, Carola Morand (white female).
22 What say ye for the State?
23 MR. BELL: Please present the juror.
24 THE CLERK: What say ye for the defense?
25 MR. MAULDIN: Please excuse the juror.

1 THE CLERK: Return to your seat please, ma'am.
2 169, Rebecca Riley (white female).
3 What say ye for the State?
4 MR. BELL: Please present the juror.
5 THE CLERK: What say ye for the defense?
6 MR. MAULDIN: Please seat the juror.
7 THE CLERK: Have a seat in the jury box, ma'am.
8 Alternates, Your Honor?
9 THE COURT: Will one be sufficient, Solicitor and
10 Mr. Mauldin?
11 MR. MAULDIN: Yes, Your Honor.
12 MR. BELL: Yes, sir.
13 THE COURT: All right. One alternate. You know
14 the strikes.
15 THE CLERK: 96 Sharon Hawes (white female).
16 What say ye for the State?
17 MR. BELL: Please present the juror.
18 THE CLERK: What say ye for the defense?
19 MR. MAULDIN: Please excuse the juror.
20 THE CLERK: Return to your seat please, ma'am.
21 195, Brenda Stalzer (white female).
22 What say ye for the State?
23 MR. BELL: Please present the juror.
24 THE CLERK: What say ye for the defense?
25 MR. MAULDIN: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, ma'am.

2 That's the alternate, Your Honor.

3 THE COURT: Any motions regarding the jury
4 selection process from the State?

5 MR. BELL: None from the State, Judge.

6 THE COURT: The defense?

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury panel, momentarily I'm going to have you step to your
10 new temporary home, your jury room. During this recess and
11 throughout the trial of the case, I will advise you, you
12 may not discuss this case with anyone, that includes your
13 fellow jurors or anyone else. You would not be authorized
14 to discuss the case until you've heard all of the evidence,
15 all the testimony presented from the witnesses testifying
16 under oath from this witness stand, closing arguments by
17 the attorneys, and the instruction on the law by the Court
18 and then instructed by the Court to begin your
19 deliberations with your fellow jurors in your jury room.

20 I'm going to give you one assignment, however, as a
21 jury during this brief recess. If you would please select
22 one among your number from the primary twelve jurors to
23 serve as the foreperson of the jury panel. It cannot be
24 Juror Number 195, Ms. Stalzer; did I pronounce that
25 correctly?

1 Although I'm sure she would make a fine jury
2 foreperson, right now she is in the status of an alternate
3 juror, so she could -- she could not be selected for that
4 position. But anyone of your number, you can use whatever
5 criteria you deem appropriate, whether it's prior jury
6 service or no prior jury service or what -- what have you,
7 whatever your good judgement and your common sense, things
8 think would be appropriate for selecting a foreperson of
9 the jury panel.

10 Once you've made that selection if you'll knock on
11 the jury room door, advise the bailiff, we will have you
12 right back here in the courtroom. We're going to take --
13 well, why don't I just say 10:30. It's about an eighteen
14 minute recess. I'll be back out here by 10:30, that should
15 give you some time to make that selection and -- and take a
16 break.

17 All right. Any questions?

18 All right. Thank you. Thank you very much. You
19 may now go with your bailiff, Mr. Humphries, to your jury
20 room.

21 The jury left the courtroom at 10:13 a.m.)

22 THE COURT: Solicitor, will you step up here on a
23 scheduling matter. You're certainly welcome also, Mr.
24 Mauldin.

25 (There was a bench conference out of the hearing of

1 the jury and the court reporter.)

2 (The balance of the jury venire was released.)

3 THE COURT: All right. Sheriff, Mr. Michaux is in
4 custody.

5 THE OFFICER: Yes, sir.

6 THE COURT: We'll take about a 15 minute recess.

7 Thank you. Thank you very much.

8 (A brief recess was observed.)

9 MR. BELL: Judge, may we approach?

10 THE COURT: Yes, sir.

11 (There was a bench conference out of the hearing of
12 the court reporter.)

13 THE COURT: All right. Mr. Michaux is back present
14 in the courtroom.

15 Mr. Mauldin?

16 (There was a pause in the proceedings.)

17 THE COURT: All right. You have a motion, Mr.
18 Mauldin.

19 THE DEFENDANT: May I speak, Judge.

20 THE COURT: Wait just a minute. I didn't address
21 that question to you.

22 I said do you have a motion, Mr. Maudlin?

23 MR. MAULDIN: No, Your Honor. While in the back,
24 Mr. Michaux was upset that he was taken into custody and he
25 indicated to me that he wished to have me dismissed as

1 counsel.

2 THE COURT: Well, I take all defendant's into
3 custody once the case is called for trial.

4 Do you have a motion, Mr. Michaux? Speak up where
5 I can hear you. Come around to the microphone, to the
6 podium where I can hear you, Mr. Michaux.

7 All right. What do -- what do you want to
8 address -- what do you want to tell the Court?

9 THE DEFENDANT: You know, I'm from Fayetteville,
10 North Carolina. I didn't bring no family or nothing down
11 here today. He didn't tell me I was been going into
12 custody or I would have brought my family with me. You
13 know what I'm saying. This has been going on over two
14 years and some change. I've been to every court date. I
15 drove down here three hours every time and when I came
16 today, I wasn't -- I wasn't know -- I didn't know this,
17 excuse me. I didn't know this was going on. I came down
18 here by myself. I didn't bring no family, no nothing
19 because I didn't know I was going in custody.

20 THE COURT: All right.

21 THE DEFENDANT: See what I'm saying, I didn't know
22 nothing about that, but I paid my bond; I've been out on
23 bond over two-and-a-half years. I mean I don't owe the
24 bonds people nothing.

25 THE COURT: Bond is ended when the case is called

1 for trial. I always take defendants into custody during
2 the course of the trial. If at the end of the trial,
3 obviously if a defendant's found not guilty, they're
4 immediately released --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- but they remain in custody --

7 THE DEFENDANT: Yeah, this is what I'm saying
8 because if it goes on after today, he said I got to remain
9 in custody, but my family -- I don't have no family or
10 nothing down here that came. I mean, I didn't know this
11 was going on. I'm not telling you -- I mean your judgement
12 is your judgment, but I didn't know I was being brought in
13 custody when I came down here this morning and I'd have
14 brought somebody with me. I mean I did -- I mean I didn't
15 know none of this was going on. And I was in the blind
16 about all this, you know, I really didn't know -- and when
17 I go in the back, he's just not telling me this when they
18 put the shackles on me that I'm going into custody.

19 I'm like what am I going into custody for because I
20 didn't know. You know, sir, I didn't know. And I still
21 got -- and I got kids and I didn't know what was going on,
22 sir. I really honestly did not know this was going on.
23 I'm not from here, I'm not -- I mean I think y'all law is a
24 whole lot different from North Carolina law. So I mean I
25 don't, I don't, I'm really in the blind about all this, you

1 know what I'm saying. When I leave here, I might hear from
2 him but as far as this case what's been going on, I mean,
3 it's just been like, I mean every time I come and get my
4 new date, I go home. I don't hear nothing. You see what
5 I'm saying, I haven't seen no progress in this case. I got
6 my motion discovery, it's 32 pages and all that stuff
7 that's coming out at court ain't nothing that's in my
8 motion for discovery, see what I'm saying? I don't
9 understand it and don't know how y'all's laws is but in
10 Fayetteville, North Carolina, all the evidence go in the
11 motion discovery, everything, you know what I'm saying?

12 I don't know how y'all law is now, but it wasn't
13 none of this stuff that they sent that's in my motion and I
14 don't know what's going on. So I turned the plea down, you
15 see what I'm saying. I don't know what's going on.

16 THE COURT: Well, what do you want to do?

17 THE DEFENDANT: I mean, I don't -- I want to go
18 home, you see what I'm saying, but I don't -- I don't know
19 what's going on. I ain't got no reason to run, Judge, I've
20 been coming to court the whole time. I understand what you
21 saying, but I ain't missed a court date yet. I'm driving
22 three hours every time. If that's the case, I wouldn't
23 have came this morning. You see what I'm saying; I don't
24 know what's going on. I'm not no absconder. I just want
25 to be with my family before -- if I do got to do some time,

1 I mean that's what's going to happen, I just want to be
2 with my family and kids. I got two more kids on the way,
3 so I really was totally in the blind about this.

4 I have no reason to run, you understand, I'd have
5 been run if I was going to run and I wouldn't have come to
6 court period. I've come to court every time. I even came
7 this morning by myself, you see what I'm saying; I don't
8 know what's going on. I'm just in the blind about this
9 custody stuff. I don't know what's going on, but I got no
10 reason to run, Your Honor. I come to court every time.
11 I'll come tomorrow if I got to, but I got kids and family
12 and stuff going on. I don't know what's going on, I came
13 here by myself, you see what I'm saying? So I'm like lost.

14 THE COURT: The best I can tell you right now, I'll
15 think about it.

16 THE DEFENDANT: Then that's all I got --

17 THE COURT: There's never been -- Mr. Michaux,
18 there's never been a criminal defendant, when the case has
19 been called for trial that I have not taken into custody
20 during the course of the trial.

21 THE DEFENDANT: I see -- I'm seeing that now. I
22 didn't know that. See I didn't know that or I would have
23 brought my family or something. I did not know that I was
24 going in custody. You see what I'm saying?

25 THE COURT: Well, I'll think about it. Okay. You

1 got anything else you want to say?

2 THE DEFENDANT: I mean I apologize. I mean I
3 really need to call somebody to come get my car. I mean,
4 I'm not saying you going to say I'm going to go home, or
5 you going to put me in custody, but I really need somebody
6 here with me while I'm going through this.

7 THE COURT: Sheriff, can you make arrangements
8 during the luncheon recess for him to make a phone call?

9 THE OFFICER: Yes, sir.

10 THE COURT: Can y'all do that for me?

11 THE OFFICER: Yes, sir.

12 THE COURT: Anything else, Mr. Michaux?

13 THE DEFENDANT: I mean there ain't nothing -- I
14 don't know what else to do.

15 THE COURT: Now, you said earlier, besides going
16 home, what do you want to do about this trial?

17 THE DEFENDANT: I mean -- I mean if it's --

18 THE COURT: None of this under whatever that case
19 is up in Fayetteville.

20 THE DEFENDANT: What I want to do? I mean like I
21 said, I mean the whole case is crazy, sir. I mean I knew
22 what he looked like to you, but I ain't got no drugs. I
23 don't know nothing about no drug being in that car. I mean
24 if he found drugs, I ain't -- I'm not denying that, but
25 it's not mine. I don't know nothing about it being there;

1 I didn't put it there. I was just using somebody's car to
2 come here and come back. I mean I ain't had not charges in
3 I don't know how long, you see what I'm saying. I ain't
4 had no drugs.

5 I mean I didn't take a plea because I didn't have
6 no drugs. I just I don't do that stuff. I don't do, you
7 see what I'm saying. I didn't know what to do because I
8 didn't have no drugs in the car. It's like I didn't take
9 the plea that the Solicitor offered me because I don't
10 have -- I didn't have no drugs. I didn't know they was in
11 the car. That's why I came this far. But now they looking
12 at me and I don't know really what -- what's going on. I
13 mean I don't know. I really don't know, Your Honor. I
14 really don't know.

15 I mean I tried to explain to him, you know I get to
16 talk to him, I just can't talk to the Solicitor so I ain't
17 never -- like in North Carolina you talk to the DA.

18 THE COURT: Well, you can't -- the -- the attorney
19 can't talk to an opposing party that is represented by an
20 attorney. It's the ethical rules. The Solicitor can talk
21 with your lawyer. It's not that they don't want to talk to
22 you, but ethically they can't talk with you. You
23 understand what I'm saying?

24 THE DEFENDANT: Yeah, I see what you're saying.

25 THE COURT: It's nothing -- it's not personal.

1 It's kind of strictly business so to speak. It's ethical
2 business; do you understand what I'm saying.

3 THE DEFENDANT: You see I don't understand y'all
4 laws. In North Carolina the DA can come to the county jail
5 and talk to you and -- I didn't know that. I ain't never
6 talked to him and I see why now because I mean I don't
7 know, I guess I couldn't, but just the only reason I'm
8 saying something about this here today is because, I mean
9 I'm not seeing no cooperation, no help or nothing in the
10 case. I mean, I don't want to fire him and then I got to
11 go to jail by myself, you know what I'm saying, because
12 they ain't -- I ain't got anything to hire another lawyer.
13 So it's not -- it's like I'm dead meat; I don't know what
14 to do.

15 THE COURT: Well, Mr. Maudlin is -- Mr. Mauldin is
16 a good lawyer. He's appeared before me in many cases both
17 in plea court and in trial court. He's experienced both in
18 the presentation of evidence and in the motion hearings,
19 he's very adept in law, very professional and very
20 competent.

21 THE DEFENDANT: I mean I'm just saying that just in
22 this case here I haven't been -- I mean I don't -- it's
23 like there should have been more progress or something
24 going on with this case and then I'm not -- he's not
25 letting me know until the last minute and so now I'm like,

1 I don't know what's going on. I mean I ain't -- I would
2 have been fired -- I would have been fired him, you know
3 what I'm saying, if I really wanted to fire him. But it's
4 just like all this stuff is popping out new. I don't know
5 nothing about none of this because I was never notified
6 that I was going to be taken to jail. You see what I'm
7 saying, I came by myself and I would have knowed -- I
8 wouldn't have did none of this if I had knowed all this was
9 going to happen. I understand if I didn't come before. If
10 you're going to lock me up, but I ain't missed court any
11 time. I ain't got no reason to run, but like I said, I
12 don't want to do 0 to 15 plea because I didn't have no
13 drugs and I don't plea to something I don't do.

14 Now, there was drugs in the car they found, but
15 they wasn't mine. I don't know where they come from. I
16 didn't -- it's a rental car. I done found guns and all
17 kind of stuff in the tire well of rental cars. There's
18 really no telling who had the car. You see what I'm
19 saying, but, I was told I need to plead down and I didn't
20 because I didn't have no drugs. So now I'm in the middle
21 of this now. I be going into custody and I ain't got no
22 kind of way to know because just like -- it's like too much
23 at one time.

24 I don't have no reason to run because I came this
25 far, I'd have been ran if I felt like I was guilty, I would

1 have been ran, Your Honor. I know people tell you that all
2 the time. I'm three hours away. I came driving this far
3 all this time down here just to come and just taken into
4 custody. I would have been ran if that was the case. I
5 would have been gone a long time ago, but I showed up by
6 myself and I ain't got no family or nothing with me. Just
7 you know, I didn't know this was going on, honestly I
8 didn't know. So --

9 THE COURT: Well, as you -- as you do know now,
10 they've selected a jury panel for the trial of this case.

11 THE DEFENDANT: I saw that.

12 THE COURT: So you want -- you want a jury trial?

13 THE DEFENDANT: It's just to the point of well, you
14 know, I'm just tired of being tied up in trouble all my
15 life, I'm just tired of it. But, honestly I didn't do
16 nothing this time and that's why I wasn't willing to let
17 you give me 25 years or let me go home. I wouldn't have
18 came this far if I was guilty.

19 I'm 35 years old, I'll be 60 years old when I get
20 out and I've got a 17 year old daughter. I got three
21 daughters and two on the way. I don't have time to mistake
22 in my life when I'll be 60 years old when I get out. You
23 know this is serious, you understand? It's real serious.
24 I didn't come here -- it's just hard to explain, Your
25 Honor. It's hard to explain.

1 THE COURT: Freedom is always serious. Serious to
2 you, serious to everybody in this courtroom. All our
3 freedom is serious.

4 THE DEFENDANT: I'm just tired of going to prison.
5 I just don't want to go back to prison, you know,
6 especially for something I didn't do. I didn't have no
7 drugs. So that's why I came this far and didn't do the
8 plea. I mean 0 to 15; I don't know what I'd have got, but
9 it's just common sense? It'd be better than 25 years, you
10 see what I'm saying; but I ain't got no drugs. I don't
11 know what to do. I don't want to go back to prison for
12 something I didn't have and go to trial and get found
13 guilty and do 25 years. I mean I don't know.

14 THE COURT: Well, I can't predict what the jury is
15 going to do either.

16 THE DEFENDANT: Me neither.

17 THE COURT: I can't predict the future. I can
18 predict anything but the future.

19 THE DEFENDANT: I mean I been stuck in this long
20 and I didn't have no drugs, so that's why I came to trial.
21 I didn't take the plea because I didn't want no more time,
22 plus I didn't have no drugs. I mean 0 to 15 and I don't
23 know what the judge would have gave me. You understand?
24 I'd have been going for nothing and that's why I didn't
25 take the plea. That's why I'm here now facing 25 years

1 because I ain't got no drugs. So now I'm beat because I
2 don't know what to do. So I don't know. I'm frustrated.

3 THE COURT: Sir?

4 THE DEFENDANT: Yeah, I said I was frustrated, I
5 don't know what to do. It's like I'm deadbeat. If I take
6 the time, I still got to go to prison. I ain't got no
7 drugs. If I go to trial I get 25 years. I mean I don't
8 know what to do; it's like a death. I lose either way.
9 The way I see it the trial ain't even started yet and I
10 still feel like they going to me not guilty -- I mean,
11 they're going to find me guilty. I don't know.

12 I mean now I feel like I should have took the plea,
13 but I didn't have no drugs so I turned it down. I mean
14 that's what people do, I'm not using it. I just don't plea
15 out to something I didn't do so I didn't take it. I mean I
16 ain't want to go back to prison because I ain't got no
17 drugs so what was I supposed to do. That's why I'm here
18 and now I feel like the trial is like -- I mean I don't
19 know what to do.

20 THE COURT: Only you can make that decision.

21 THE DEFENDANT: I know it -- it's like so hard to
22 admit because --

23 THE COURT: That's your decision; that's your call
24 to make. Do you need a few minutes to compose yourself
25 before I bring the jury back in?

1 THE DEFENDANT: Yeah.

2 THE COURT: All right. I'll give you about 10
3 minutes. You can talk to your attorney and get yourself
4 composed before you come back in here, okay?

5 All right. We'll take about 10 more minutes.

6 (A brief recess was observed.)

7 THE COURT: All right. Court will come to order.
8 Would you get Mr. Michaux out for me please?

9 All right. Mr. Mauldin, is the defense ready for
10 the jury?

11 MR. MAULDIN: Yes, sir, Your Honor.

12 THE COURT: The State?

13 MR. BELL: The State's ready, Your Honor.

14 (The jury entered the courtroom at 11:14 a.m.)

15 THE COURT: Madam Clerk, will you swear our jury
16 please.

17 THE CLERK: Yes, sir, Your Honor.

18 (The jury was sworn at 11:15 a.m.)

19 THE CLERK: Have a seat please. Is there anyone in
20 the panel not able to take the oath as it was administered?

21 Jurors are under oath, Your Honor.

22 THE COURT: Thank you. As an immediate matter, I
23 apologize for the delay, ladies and gentlemen of the jury
24 panel. I assure you that was not caused by either of the
25 parties. They were out here working very diligently on the

1 recess. Quite frankly, it was a matter I should have
2 addressed yesterday outside of your presence and I
3 didn't -- I didn't take the opportunity yesterday to
4 address the matter. Your time is very important to me and
5 I will try to manage it more efficiently.

6 And also, Mr. Drenten?

7 MR. DRENTEN: Yes, sir.

8 THE COURT: Thank you very much for serving as
9 foreperson of our jury.

10 **OPENING REMARKS BY THE COURT**

11 THE COURT: Ladies and gentlemen of the jury, the
12 case we're about to try is the case of the State v. Ronald
13 Douglas Michaux, Jr., seated to my front left. What I now
14 say is intended to serve as an introduction to the trial of
15 this case. These remarks are not an instruction on the
16 law. I will instruct you on the law applicable to the case
17 at the end of the trial before you retire to consider your
18 verdict. This is merely an explanation of the procedure
19 that we will follow during the trial so that you may better
20 understand what may be happening.

21 Mr. Michaux is charged by this indictment filed
22 with this Court for the crime of trafficking in cocaine 100
23 grams or more but less than 200 grams, the element of which
24 will be explained to you later. Again, ladies and
25 gentlemen, the indictment is simply the charge by which the

1 case is brought into court and it is not in any sense,
2 evidence of the allegations that it contains.

3 The defendant has pled no guilty to the indictment.
4 The State, the party to my front right, therefore has the
5 burden of proving each of the elements of the indictment
6 beyond a reasonable doubt and it will be your duty, ladies
7 and gentlemen, to decide whether or not the State has met
8 that burden. A criminal defendant in South Carolina,
9 regardless of the seriousness of the offense that may be
10 charged, is always presumed to be innocent and has no
11 burden whatsoever to prove himself or herself innocent.

12 Your purpose as jurors is to find and determine the
13 facts. You, ladies and gentlemen, are the sole judge of
14 the facts of this case. If at any time I make any comment
15 regarding the facts, you must disregard it. You are to
16 determine the facts from the testimony you hear and any
17 other evidence introduced in Court. It is up to you to
18 determine what inferences you think may properly be drawn
19 from the evidence. It is especially important that you
20 perform your duty of determining the facts diligently and
21 conscientiously because ordinarily, there is no way to
22 correct an erroneous determination of the facts by the
23 jury.

24 On the other hand, and with equal emphasis, the
25 same law that makes you the judges of the facts make me the

1 judge of the law. The law as given by the Court is the
2 only law you may consider. You must accept it and follow
3 it even though you may disagree with it. I cannot tell you
4 what the facts are; you cannot disagree with me about what
5 the law is or what the law should be. Your job is to take
6 the law as I give it to you, apply it to the facts as you
7 find them to be from the testimony of the witnesses and any
8 other evidence that is introduced.

9 After doing that, you will then render your
10 verdict, a true and just verdict, under the solemn oath
11 that you have just taken as jurors. Until I advise you to
12 begin your deliberations, you must not discuss this case
13 with anyone. That includes your fellow jurors, family,
14 friends, or anyone else. After the case has been submitted
15 to you, you must discuss it only in your jury room with
16 your fellow jurors.

17 During the trial, should there be any, do not read,
18 listen to, or watch any news reports about the case. This
19 includes anything that may be in the newspapers, on the
20 internet, radio, and television. You must not consider
21 anything that you may have read or heard about the case
22 outside of the courtroom, whether it was before or during
23 the trial. It is important that you keep an open mind and
24 not decide any issue in the case until all of the evidence
25 has been presented, the parties have made their closing

1 arguments, and I have instructed you on the law in this
2 case. It is your solemn responsibility to determine the
3 guilt or innocence of the defendant and your verdict must
4 be based solely on the evidence that is presented to you
5 during this trial and on the law as I instruct you during
6 and at the close of the trial.

7 In just a moment, the solicitor will make what is
8 called an opening statement in which the solicitor will
9 explain to you the issues in the case or at least what the
10 solicitor thinks the issues are in the case.

11 Mr. Maudlin, Mr. Michaux's attorney, may also make
12 an opening statement, although he is not required to do so.
13 He is not required to do so because a criminal defendant in
14 South Carolina is always presumed to be innocent,
15 regardless of the serious nature of whatever the charge may
16 be.

17 Now, ladies and gentlemen, what the attorneys tell
18 you during the opening statements is not evidence in the
19 case. It is only their contention as to what the issues
20 are. What they say in their closing arguments is not
21 evidence in the case. Their questions are not evidence in
22 the case. That's the framework by which the evidence is
23 extracted from the mouths of the sworn witnesses testifying
24 under oath. That is the evidence in this case and any
25 other evidence that may be introduced.

1 From time to time during the trial, you may hear
2 one of the attorneys say something like, Your Honor, I
3 believe we have a question of law or a matter of law to
4 discuss with you; or Your Honor, may we approach the bench;
5 and I say that and advise, I don't call myself, Your Honor,
6 I do it from the written word that I use, the only thing
7 Honor is this, the law; not the person that perhaps it
8 robes.

9 Sometime I, myself, might find it necessary to
10 excuse you from the courtroom for a short while so the
11 attorneys and I can discuss a matter of law. The reason I
12 do this is not to hide anything from you, but it's because
13 you're the judges of the facts in the case. And sometimes,
14 when I'm discussing matters of law with the attorneys, it
15 may be necessary for me to make some comment as to the
16 facts in connection with ruling whether or not a particular
17 law applies. I'm not supposed to tell you what I think the
18 facts are, so I will excuse you from the courtroom while
19 these discussions take place so that in no way will you be
20 influenced by anything that I might say or do in connection
21 with the facts.

22 In determining what the true facts are, you must
23 decide whether or not the testimony of a witness is
24 believable. It is my responsibility to rule as a matter of
25 law as to whether certain testimony is admissible at all or

1 not. In other words, whether or not you get to hear it
2 under our laws. But once the testimony is admitted,
3 whether or not you believe it is solely for you to
4 determine.

5 In deciding whether to believe a witness, you have
6 the right to consider the interest of any witness, the bias
7 of any witness, the prejudice of any witness, the
8 opportunity for the witness to have seen the matters and
9 things about which the witness may testify; and the
10 demeanor or the way a witness acts on the witness stand.
11 You may determine -- you may also determine if a witness's
12 testimony is corroborated, made stronger by another witness
13 or not corroborated or if it's inconsistent within itself.
14 You may use anything within your good judgment and your
15 common sense to determine the believability, the
16 credibility of the witnesses that will testify before you.
17 You have the right to consider anything in the record that
18 will help you evaluate the witness's testimony. That means
19 it will be your duty to pay close attention to the
20 witnesses, to observe them, to listen to them, to pay close
21 attention to the attorneys and to the Court.

22 Don't let your thoughts wonder but give strict
23 attention to the testimony in this case so that at the end
24 of all the testimony, after the closing arguments by the
25 attorneys and the instruction on the law by the Court, you

1 will then be in that position to determine what the true
2 facts are and to apply the law to those facts and thus
3 render that true and just verdict.

4 It will be your added responsibility, Mr.
5 Foreperson, to preside in the jury room and be the jury's
6 spokesperson here in court. It will also be your duty to
7 write the verdict, but I will give you further instructions
8 about that at the conclusion of the case.

9 Administratively, ladies and gentlemen, just a
10 couple of issues, as far as any, if any, physical items of
11 evidence is introduced or if there is any diagrams or what
12 have you; I don't know if there will be photographs; I have
13 no idea. Sometimes, of course, in the day of electronics
14 many times they're displayed, but in my time, they were
15 handed to jury foreperson and passed among members of the
16 jury while you were in the courtroom.

17 If I allow an item into evidence, you may look at
18 it all you wish while you're in the courtroom. Keep in
19 mind, if it's in evidence, you'll have it with you in your
20 jury room at the time of the deliberation. So it won't be
21 the only opportunity you have to do that.

22 From time to time, you may see me on my computer.
23 I tell you this because a juror complained, I couldn't
24 imagine. I don't tweet, repeat. I don't know what snap
25 talk, retalk, I don't have Facebook; I'm faceless. I focus

1 on the trial. These are very good experienced trial
2 attorneys and I may see what I think is a legal issue
3 lurking around the bend in the dusty distance and I will
4 do -- I'll do some research or may have my law clerk do the
5 heavy lifting on the research stuff, but that's all. I
6 stay -- I stay focused. If it is distracting to you,
7 please -- please let me know and I will make other
8 arrangements.

9 Seating, I need the foreperson to always maintain
10 the seat he now maintains and I need the alternate to
11 always maintain that seat. The rest of you may sit
12 anywhere you would like in the jury box. I have observed
13 over the course of time that many jurors are very
14 territorial. They like to sit in the same seat each and
15 every time and they like the same view of the witness stand
16 in the courtroom. I always sit up here. So you're welcome
17 to sit wherever you would like within the jury box except
18 if you're my foreperson or alternate, or you may maintain
19 that same seat, whichever you prefer.

20 And finally, ladies and gentlemen, what am I really
21 in charge of. At the end of the day, I'm in charge of
22 taking breaks. That's what I'm in charge of and I have
23 real simple rules. When I want to take a break, we all
24 take a break. This is an important case. It's important
25 to Mr. Michaux. It's important to the State of South

1 Carolina. If you sit out here too long, your thoughts may
2 wander. You're probably not the only one. If you need a
3 break, please raise your hand. This is not a judicial
4 marathon. Regardless of whatever the length of the case
5 is, it doesn't make it any less important. So if at any
6 time any of you need a break, just please raise your hand
7 and get my attention or the attention of one of our fine
8 bailiffs and we'll take a break.

9 All right. Any objections to anything I've told
10 the jury from the State, Solicitor?

11 MR. BELL: No, sir, Your Honor.

12 THE COURT: Defense, Mr. Mauldin?

13 MR. MAULDIN: No, Your Honor.

14 THE COURT: All right. Thank you.

15 Solicitor, you may address the jury.

16 **OPENING STATEMENTS**

17 MR. POGUE: Thank you, Your Honor, may it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. POGUE: As you heard, this case is about
21 trafficking cocaine. On March 20th, 2014, Lance Corporal
22 Harrison with the South Carolina Highway Patrol was at mile
23 marker 42, which is on Interstate 20 here in Lexington
24 County. He was sitting on the right-hand side of the road
25 just observing traffic and looking for some traffic

1 violations that are coming eastbound heading towards
2 Lexington. Around noon, Lance Corporal Harrison saw in his
3 mirror the defendant approaching in a white Volkswagon
4 Passat. As soon as he saw the car, he immediately saw the
5 car get on the brake extremely hard. So hard, in fact,
6 that he claims that the 18 wheeler that was behind the
7 Volkswagon that the defendant was driving had to actually
8 maneuver around to avoid potentially colliding into the
9 back of his Passat.

10 This obviously piqued Officer Harrison's attention
11 and at that point, he decided to pursue that particular
12 vehicle. While in pursuit, he sees that the defendant is
13 driving the car very erratically, all over the road within
14 his lane of traffic. And this is one he notices, you know,
15 there's a number of things that come to his attention as
16 far as: Is this driver impaired. At that point, he pulls
17 over the -- the defendant.

18 When the defendant pulls over, he gets out of the
19 car, approaches the side passenger window or the front
20 passenger window. As he's approaching the vehicle, he
21 notices a little bar code that's on rental cars and
22 suspects that this is most likely a rental car. When he
23 makes contact with the actual defendant himself, he smells
24 a very strong odor of marijuana coming from the vehicle,
25 it's emitted from the vehicle.

1 And he also immediately noticed through his 16
2 years of training and experience as a South Carolina
3 Highway Patrolman that the defendant has an unusual
4 heightened sense of nervousness; and I think you can kind
5 of pick up on that pretty easily more so than on a normal
6 average citizen would be for a traffic violations. At that
7 point, Mr. -- excuse me, Officer Harrison also notices that
8 there is air fresheners all throughout the car. He also
9 notices that there is a cigar wrapper and tobacco shavings
10 in the car in plain view as well.

11 At that point, he let's the defendant know why he's
12 pulled him over. He asked the defendant to come back to
13 the rear of the car -- in front of his patrol car off to
14 the side. And he begins questioning the defendant in
15 regard to, you know where's come from, where he's going,
16 just typical conversation that you would ask somebody who
17 was, you know, a member of the motoring public.

18 The defendant gave him very generalized answers,
19 didn't really tell him exactly where he was coming from.
20 At that point, the officer is starting to suspect there's
21 potential criminal activity, but he calls for backup and
22 when backup arrives, he lets the defendant know that he's
23 going to -- he smells marijuana and that he's going to
24 search his vehicle and very quickly into the search of the
25 vehicle as you will see in the video, he finds a rather

1 large quantity of cocaine, around 137 grams of cocaine in
2 fact.

3 The reason why you're here today is because the
4 defendant has been charged with trafficking cocaine. Now
5 what does that mean? In South Carolina, trafficking -- to
6 prove a defendant guilty of trafficking cocaine, we, the
7 State, what we have to prove is one -- well actually there
8 are two things. One, we have to prove that the amount of
9 cocaine involved actually exceeds 10 grams of -- in weight
10 and the second element that we have to prove in that case;
11 there's only two, is that the defendant was knowingly in
12 actual or constructive possession of that cocaine.

13 In regard to the first element, the evidence in
14 this case will clearly show that the -- that the amount of
15 cocaine involved was far -- it far exceeded 10 grams, the
16 threshold amount. In fact, it was like thirteen times that
17 amount. And also in regards to the second element, that he
18 was knowingly and -- and in actual possession or
19 constructive possession of the cocaine. The evidence will
20 also clearly show that he was in constructive possession of
21 the cocaine that was in his rental vehicle. He was the
22 only occupant of that rental vehicle.

23 We have to also prove these elements to you folks
24 beyond a reasonable doubt. Well, what does that mean; what
25 does beyond a reasonable doubt mean? Beyond a reasonable

1 doubt under South Carolina Law is doubt that leaves you
2 firmly convinced of the defendant's guilty. There are very
3 few things that we know in this world that we know with
4 absolute certainty. The only thing that I know with
5 absolute certainty is that my little six-month-year-old son
6 has me wrapped around his finger. We do not have to
7 overcome or prove to you beyond all possible doubts. The
8 law does not require that.

9 Okay. Any doubt must be reasonable. In fact, you
10 are -- it is your duty as a jury to return a verdict in
11 this particular case. Your verdict is actually derived
12 from Latin and it means to speak the truth and the truth in
13 this case is that the defendant is guilty of trafficking
14 cocaine.

15 When you came into this courtroom, you were already
16 equipped with the only thing or the main thing, the most
17 significant thing that you need to be able to determine and
18 render a verdict that speaks the truth in this case and
19 that's your common sense. The reason why we chose you for
20 this particular jury was because you struck us as people
21 who possess good old common -- good old-fashioned common
22 sense. We urge you to utilize that when you go back in the
23 jury room. If you do, we're confident after hearing all
24 the evidence and all the testimony in this particular case,
25 that you will render a verdict which speaks the truth and

1 that you find the defendant guilty of trafficking cocaine
2 in South Carolina. Thank you.

3 THE COURT: Thank you. Thank you, Solicitor.
4 Mr. Mauldin.

5 MR. MAULDIN: Thank you, Your Honor.

6 Ladies and gentlemen, Solicitor Pogue is wrong
7 about a great many things. The first thing he's wrong
8 about is the elements they have to prove in this case. Mr.
9 Michaux is charged with trafficking between 100 and 200
10 grams. There's no 10 grams in there. They have to prove
11 that it's over a 100 but less than 200. That's wrong.
12 It's meaningless. When the Judge charges the law, there
13 won't be 10 grams in there.

14 And he talked about actual and constructive
15 possession. Actual possession where you've got it on your
16 person, in your pocket. Constructive possession is where
17 basically they want you to guess from the facts they're
18 presenting that whatever they found belonged to the
19 defendant and when you view the facts, you have to
20 determine beyond a reasonable doubt whether or not Mr.
21 Ronald Michaux had dominion and control over the item and
22 most importantly, number two, whether he knew it was there.

23 Now, do you remember that movie, The Matrix, where
24 they froze time and the person would be frozen and the
25 camera would go all around and basically you could see from

1 every angle just that short moment in time; it's just
2 frozen. That's almost what a trial looks like because
3 you're basically going to hear about the 15 to 30 minute
4 encounter with the police. The State's not going to be
5 able to prove anything that happened before that frozen
6 moment of time.

7 And the facts will show that Lance Corporal
8 Harrison is on the road facing towards Columbia. He's
9 looking in his side-view mirror at cars going from Augusta
10 toward Columbia, sees whatever he says he sees and ends up
11 pulling over Mr. Michaux for whatever he ends up pulling
12 him over for. He says he smells marijuana. He doesn't
13 find any marijuana. He says he's nervous.

14 Well everybody is nervous when they're dealing with
15 the police. It's a rent-a-car. Mr. Michaux doesn't own
16 it. Mr. Michaux's name is not on the rental agreement. We
17 don't have that point in time before the frozen moment or
18 frozen several minutes to know what happened in that car
19 before the encounter with the police.

20 The report doesn't indicate finding any money. No
21 money was found on the defendant, no money was found in the
22 car, but then they're going to tell you that they did find
23 money.

24 It's your duty as jurors to hold the State to their
25 burden of proof. Not what you think is true or what might

Brad Dowis - Direct Examination by Mr. Bell

1 be true or whatever is true, it's holding the burden of
2 proof beyond a reasonable doubt. When you listen to these
3 facts today, this frozen moment in time, you're going to
4 find that they did not meet that burden and Mr. Michaux is
5 innocent of these charges.

6 THE COURT: Thank you. Thank you, Mr. Mauldin.

7 Solicitor, you may call your first witness.

8 MR. BELL: Thank you, Your Honor. The State calls
9 First Sergeant Brad Dowis to the stand.

10 THE COURT: Come around and be sworn for us please.

11 BRAD DOWIS,

12 having been duly sworn, testified as follows:

13 THE CLERK: Have a seat, sir. Once you're seated,
14 please state your full name spelling your last on the
15 record.

16 THE WITNESS: Brad Dowis with the South Carolina
17 Highway Patrol, and the last name is D-O-W-I-S.

18 **DIRECT EXAMINATION**

19 BY MR. BELL:

20 Q Good morning, First Sergeant.

21 A Good morning.

22 Q Who are you employed by?

23 A South Carolina Highway Patrol.

24 Q How long have you been with them?

25 A I've been with the patrol since 2000.

Brad Dowis - Direct Examination by Mr. Bell

1 Q And are you still currently employed by the same
2 division?

3 A Yes, sir.

4 Q And where are you currently assigned?

5 A My duties -- I'm assigned to Troop 8 and we have
6 troopers all over the State of South Carolina, so I'm
7 not -- I'm not in a -- I'm not in a regular troop like most
8 troopers are.

9 Q And where are you supposed to be this week?

10 A As soon as I leave here, I'll be headed to Myrtle
11 Beach for the Bike Weeks.

12 Q Now, March 20th of 2014, do you recall responding
13 to mile marker 43 off of I-20?

14 A Yes, sir.

15 Q And do you recall why you responded to that
16 location?

17 A I think it was in order to backup Lance Corporal
18 Harrison. We were all out there performing our traffic
19 duties and Lance Corporal Harrison had stopped a vehicle
20 and it made a seizure and I went out there to assist him.

21 MR. MAULDIN: Your Honor, at this time, I would
22 renew my objection at the pretrial hearings.

23 THE COURT: All right. Yes, sir, and I would renew
24 my previous pretrial rulings. Thank you.

25 You may continue, Solicitor.

Brad Dowis - Direct Examination by Mr. Bell

1 MR. BELL: Thank you, Judge.

2 BY MR. BELL:

3 Q And upon arrival, who did you make contact with?

4 A I would -- I would say I had to make contact with
5 Lance Corporal Harrison.

6 Q Was he the lead trooper or a backup trooper for
7 this investigation or this traffic stop?

8 A I believe Lance Corporal Harrison actually made the
9 traffic stop on this case.

10 Q And were you ultimately made aware whether or not
11 any evidence had been seized?

12 A Yes.

13 Q And what evidence was indicated to you?

14 A They told me that they had found a quantity of
15 cocaine.

16 Q And did you have any interaction with that
17 evidence?

18 A I did.

19 Q And what was your role in handling that evidence?

20 A I took the evidence from Lance Corporal Harrison.
21 In order to take it to our Central Evidence Facility, which
22 is located on Shop Road in Columbia.

23 Q And how did you transport it there?

24 A I transported it in my patrol car.

25 Q And was anybody else in the vehicle with you?

Brad Dowis - Direct Examination by Mr. Bell

1 A No, sir.

2 Q And where in your vehicle do you typically store
3 evidence in transport?

4 A Well I -- we, typically when we're seizing drugs or
5 currency or whatever the case may be, when we're taking it
6 to Central Evidence, on a case like that, we will -- we'll
7 take it immediately to CEF so it would have remained either
8 right beside me in my front seat or in a lock box in the
9 back of my patrol car.

10 Q Anybody else have access to your cruiser or your
11 vehicle?

12 A No, sir.

13 Q And did you take it over to CEF the same day?

14 A I did.

15 Q And at any point in time did you leave the vehicle
16 unattended or unlocked?

17 A No, sir.

18 Q Were there any signs of tampering with your vehicle
19 as if someone may have entered it?

20 A No, sir.

21 Q Do you believe that you had sole care, custody and
22 control of that evidence as you transported it to CEF.

23 A I did.

24 Q And upon getting to CEF, what did you do with it
25 then?

Brad Dowis - Direct Examination by Mr. Bell

1 A I turned it over to an evidence custodian and I'm
2 not sure I think Custodian Odom took possession of the
3 cocaine at that point.

4 Q And what else did you do with the evidence prior to
5 handing it off?

6 A We have to put -- we have to fill out a what they
7 call a BEST Kit and it's basically a kit that South
8 Carolina Law Enforcement Division has, I guess they've made
9 up this kit so that they can utilize it to analyze the
10 drugs and so we fill out that form for SLED.

11 Q And did you, in fact, fill out a BEST kit?

12 A I did.

13 Q And what did you place inside of that BEST kit?

14 A The cocaine.

15 Q And was it packaged in anything?

16 A It was.

17 Q What was it packaged in?

18 A If I remember correctly, it was packaged in a maybe
19 a black -- a black plastic bag.

20 Q Without holding this item up at this time --

21 (State's Exhibit Number 1 was marked for
22 identification.)

23 BY MR. BELL:

24 Q I'm handing you what has been marked for
25 identification only as State's 1. Would you take a look at

Brad Dowis - Direct Examination by Mr. Bell

1 that item?

2 A Yes, sir.

3 Q Do you recognize that item?

4 A I recognize my signature on the bag.

5 Q And what is the item that you have up there with
6 you?

7 A It looks like a package of cocaine that was taken
8 on the day that Lance Corporal Harrison made the traffic
9 stop on I-20.

10 Q And what is it packaged within?

11 A The BEST kit from South Carolina Law Enforcement
12 Division.

13 Q Is that the same kit that you mentioned to us
14 earlier?

15 A Yes, sir.

16 Q And does that BEST kit have a unique identifier
17 attached to it?

18 A It does.

19 Q What is that called?

20 A It's a control number.

21 Q Okay. And what is that control number?

22 A 242887.

23 Q And do you see your initials present on that BEST
24 kit?

25 A I do.

Brad Dowis - Direct Examination by Mr. Bell

1 Q And did you properly seal that BEST kit?

2 A I did.

3 Q And ultimately, once again, who did you hand that
4 BEST kit off to?

5 A Lance Corporal Odom.

6 Q Please answer any questions defense may have for
7 you?

8 THE COURT: Thank you, Solicitor.

9 Mr. Mauldin.

10 MR. MAULDIN: I have no questions for this witness,
11 Your Honor.

12 THE COURT: Thank you. Thank you very much. Thank
13 you for being with us, Sergeant. You may step down and you
14 may be excused.

15 Solicitor, you may call your next witness.

16 MR. BELL: Thank you, Your Honor. At this time,
17 the State would call Lance Corporal Michael David Harrison
18 to the stand.

19 THE COURT: All right. Mr. Harrison, if you'd come
20 around and be sworn for us please?

21 MICHAEL D. HARRISON,
22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat, sir.

24 THE WITNESS: Thank you.

25 THE CLERK: Once you're seated, state your full

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1 name and spell your last for the record please.

2 THE WITNESS: My name is Michael David Harrison,
3 Jr. Last name is H-A-R-R-I-S-O-N.

4 **DIRECT EXAMINATION**

5 BY MR. BELL:

6 Q Sir, who are you employed by?

7 A South Carolina Highway Patrol.

8 Q How long have you been with the highway patrol?

9 A I'm in my 16th year.

10 Q And what all divisional experience have you had
11 with the highway patrol?

12 A When I started in 2000, I was assigned to Oconee
13 County as a road trooper. I worked there until 2004 before
14 coming to the H-Team which is Troop 8 nowadays out of
15 Columbia and I've been doing that essentially full time
16 interdiction work.

17 Q When you say interdiction work, what does that
18 mean?

19 A Anything criminal; stolen property, drugs, guns,
20 fugitives, bootleg merchandise, any -- anything criminal
21 related.

22 Q On March 20th, 2014, what capacity were you working
23 with South Carolina Highway Patrol?

24 A 2014, at that time, I became a K-9 handler for the
25 unit. That day in particular I was working Interstate 20

Michael D. Harrison - Direct Examination by Mr. Bell

1 in Lexington County around the 42 mile marker.

2 Q And you're certain that mile marker is within
3 Lexington County?

4 A To my knowledge, yes, sir.

5 Q What were you doing at that mile marker?

6 A That day, like any other day, monitoring traffic
7 observing trying to seek out traffic violations in order to
8 protect the motoring public.

9 Q And on March 20th of 2014, did you witness anything
10 out of the ordinary?

11 A I did.

12 Q Tell us about that.

13 A While sitting stationary in my fully marked
14 Chevrolet Tahoe, I was observing traffic eastbound toward
15 Columbia. I was positioned on the right emergency shoulder
16 of the road where we commonly sit to monitor traffic, run
17 radar, et cetera. I don't recall the exact time, but while
18 utilizing my left-side mirror, I observed a white mid-sized
19 sedan, later I discovered it was a Volkswagon Passat.

20 As he observed me, I noticed the vehicle slow down
21 abruptly. That's a very noticeable thing on the
22 interstate. It's a very dangerous move on the interstate.
23 I felt that it was so abrupt, it was such a noticeable
24 action at the time that the tractor trailer that I had also
25 observed following this white vehicle had to swerve into

Michael D. Harrison - Direct Examination by Mr. Bell

1 the passing lane to avoid striking the rear of the
2 Volkswagon.

3 Q Now you mentioned you were looking out of your
4 side-view mirror; why were you looking out of that mirror?

5 A My rearview mirror inside the truck is useless
6 because I have a kennel for my assigned K-9. So it's
7 either my left or right-side mirror.

8 Q And do you have good visibility out of your
9 side-view mirrors?

10 A I do. With it being a Tahoe, it's a larger
11 vehicle, larger mirrors similar to a truck.

12 Q Does a tractor trailer sit higher than a Volkswagon
13 Passat?

14 A Much, yes.

15 Q And were you able to see that tractor trailer
16 traveling behind the vehicle, the white Volkswagon?

17 A Clearly.

18 Q Any -- any doubt in your mind that you saw that
19 tractor trailer swerve as a result of the white car?

20 A There is no doubt whatsoever.

21 Q Was it at that time you initiated your blue lights?

22 A No, sir.

23 Q What happened next?

24 A Upon seeing the white Volkswagon essentially jam on
25 his brakes, it piqued my suspicions that something wasn't

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1 right; that's not normal, not in my experience working the
2 highways for 16 years. I entered the interstate in order
3 to observe the vehicle traveling further down the road. As
4 I was catching up to the vehicle, I noticed that the
5 vehicle was not maintaining his lane of travel and what I
6 mean by that is, he wasn't driving in the center most
7 portion. He was to the left, he was to the right, he was
8 back and forth. He never went outside of his lane;
9 however, he's weaving within his lane.

10 Q Now, do drivers that you see on a day-to-day basis
11 tend to stay in the dead center of their lane?

12 A No.

13 Q So what stood out about this vehicle?

14 A Basically the two things that I observed back to
15 back, first of all his reaction to my presence on the
16 interstate and then secondly, as I'm catching up to the
17 vehicle to watch his driving, he's going side to side.

18 Q Once again, in your 16 years, what kind of things
19 go through your head when you see a driver driving in such
20 a fashion?

21 A Now a days, cell phones are so prevalent, I'm
22 thinking first and foremost maybe they're on the phone;
23 secondly, they're traveling the interstate; I did notice it
24 was an out-of-state tag and maybe he was tired; and then
25 thirdly, maybe he's under the influence; fourth, he could

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1 possibly be having a medical condition. We do encounter
2 people that have problems with diabetes that a lot of times
3 you will think are someone that is under the influence and
4 it ends up being a medical condition. So there's a few
5 different things.

6 Q And in those situations that you just listed, are
7 those situations or scenarios that you would typically
8 initiate a traffic stop?

9 A Yes, sir, I would.

10 Q And while you were following this vehicle, at that
11 time, were you able to make out gender or race of the
12 occupant?

13 A No, sir.

14 Q Any idea about age of the occupant?

15 A No, sir.

16 Q Did you ultimately initiate your blue lights?

17 A I did.

18 Q And did the vehicle stop?

19 A Yes.

20 Q And as you pulled up, how did you approach the
21 vehicle?

22 A I always make a passenger-side approach. That's
23 what we're taught nowadays. It's much safer than being on
24 the driver side with our backs to traffic.

25 Q Upon approach to the vehicle, did anything stand

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1 out to you?

2 A Yes, I immediately noticed that the vehicle itself
3 appeared to be a rental car. The reason being, the tag was
4 brand new, it was out of New York. You typically don't see
5 New York tags down here, not that often. Secondly, the car
6 was very clean which is normal for rental cars, but because
7 when someone rents a car and turns it in, the first thing
8 that happens is they clean it and inspect it for damage
9 from the prior renter. Another thing I noticed was there
10 were barcodes, barcode stickers on the rear windows. Those
11 are used by rental car companies to be scanned in to be
12 scanned out. It's time saving and tracking thing that
13 these rental car companies now use.

14 Q Now in and of itself, is pulling over a rented
15 vehicle anything to be alarmed about?

16 A No.

17 Q As you approached the passenger side of this
18 vehicle, did you ultimately make contact with the occupant?

19 A I did.

20 Q How many occupants were in the vehicle?

21 A Just the driver.

22 Q And what was the gender and race of the occupant of
23 the vehicle?

24 A It was a black male.

25 Q And did he provide identification of any sort to

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1 you?

2 A He did. He handed me a North Carolina
3 Identification Card.

4 Q And what was the name listed on that identification
5 car?

6 A Ronald Michaux, Jr.

7 Q And is the individual that you saw on that card
8 that day in the courtroom?

9 A He is.

10 Q Is he seated at the defense table?

11 A Yes, sir, he is.

12 Q Now, as you made your initial contact with the
13 occupant, what things popped out to you?

14 A My initial contact with the driver, Mr. Michaux, I
15 did my standard thing where I ask for your driver's license
16 and a registration. He handed me the ID for North
17 Carolina. I immediately thought that was strange because
18 it was an identification card and not a driver's license so
19 I'm already thinking he doesn't have a license. The second
20 thing I noticed was I could see two bottles of a spray type
21 air freshener in the vehicle and I also noticed as Mr.
22 Michaux was handing me his driver's, or excuse me, his
23 identification card, I never take that driver's license or
24 identification card immediately because in order for me to
25 do my job safely and make it home at night, I'm looking at

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1 everyone that I deal with, everyone I have contacted with
2 and their level of nervousness so I know where to be during
3 that traffic stop. His hand was trembling. His hand was
4 shaking almost to a point where I thought he was going to
5 drop his identification card before he handed it to me. I
6 also observed in the console there was tobacco shavings
7 that appeared to come out of a cigar.

8 Also at that time, I could smell air freshener
9 coming from the rental car, but more so, I could smell the
10 overwhelming odor of marijuana. It's very unmistakable.
11 It was coming from within the rental car.

12 Q Now, you mentioned that you saw a air freshener in
13 the vehicle. Why does that stand out to you?

14 A In a normal vehicle it's not such an issue, but in
15 my mind with a rental car that is typically a new vehicle
16 or newer vehicle. It's a vehicle that gets cleaned when it
17 is returned. There shouldn't be any reason to have air
18 freshener or spray air freshener, much less two bottles of
19 spray air freshener unless someone has something that
20 really stinks or there's an odor they really need to try to
21 cover up.

22 Q In your 16 years of law enforcement, have you
23 smelled marijuana before?

24 A Many times.

25 Q And are you certain that is the smell that was

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1 emanating from that vehicle?

2 A Yes.

3 Q After seeing the air freshener and smelling those
4 odors, how did you proceed?

5 A After -- after all the indicators that I observed,
6 obviously the smell of marijuana, once I got Mr. Michaux's
7 ID and a rental agreement for the Volkswagen, I did a quick
8 look -- did a quick look at his name, where he's from and
9 also the rental agreement. I noticed that the rental
10 agreement did not match -- or excuse me, the rental
11 agreement did not have his name on it; it had another
12 person's name on it. So we consider that a third-party
13 rental. That renter was not present.

14 With all the indicators at that time and smelling
15 the marijuana, I decided it was a good time to get Mr.
16 Michaux out from behind the wheel and have him come back to
17 my patrol car.

18 Q Did you ever radio for backup?

19 A I did. When I was still at the window, I think it
20 was maybe less than two minutes into the traffic stop, I
21 radioed for Lance Corporal or excuse me, Corporal Rogers.

22 Q And why did you radio for backup?

23 A Due to the smell of marijuana.

24 Q Why does marijuana make you think you need backup?

25 A Why did I need backup when I smell marijuana?

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1 Q Why does smelling marijuana trigger you to call
2 backup?

3 A Well number one, our policy with the highway patrol
4 is we can't perform any kind of searches by ourself; we
5 have to have another trooper or officer around. Secondly,
6 I've been doing this long enough to know that violence goes
7 along with narcotics. It's a very dangerous business. I
8 want to make sure that I'm protected, the public is
9 protected, and Mr. Michaux is protected to.

10 Q And once again, were there any additional factors
11 as to why you pulled Mr. Michaux from the vehicle?

12 A Yes, in my experience doing this work, it's always
13 best to separate the driver from that vehicle. We see it
14 on the news all the time, someone who is faced with
15 possible time or a charge, a drug charge, sometimes they
16 like to flee and I'm not one for starting a chase when I
17 can go ahead and cut that off at the pass; and again,
18 that's not just to protect the innocent motor public,
19 that's also to protect Mr. Michaux from getting hurt.

20 Q And given the surrounding circumstances, was
21 removing Mr. Michaux from the vehicle consistent with your
22 training?

23 A Yes, sir.

24 Q Where did you take Mr. Michaux outside the vehicle?

25 A We stood at the right front of my patrol car.

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1 Q And do you have a dash camera in your video -- of
2 your cruiser?

3 A I do.

4 Q And was his position at the center of your dash cam
5 video?

6 A No, sir.

7 Q Why not?

8 A We prefer to move to the right front of our patrol
9 cars for protection. The area between my patrol car's
10 front bumper and the rear bumper of the violator I have
11 stopped, is commonly referred to in law enforcement as the
12 kill zone. You don't want to be standing there if someone
13 runs out of the road and hits your patrol car.

14 Q As you're standing outside of your vehicle with Mr.
15 Michaux, do you have any conversation with him?

16 A I do.

17 MR. MAULDIN: Your Honor, at this time, I renew my
18 objection.

19 THE COURT: All right. Yes, sir, and I renew my
20 previous pretrial rulings. Thank you. Thank you, Mr.
21 Mauldin.

22 BY MR. BELL:

23 Q And did you have any indication that the
24 conversation you were having with Mr. Michaux was anything
25 but consensual?

Michael D. Harrison - Direct Examination by Mr. Bell

- 1 A No, I felt it was consensual.
- 2 Q Did he at any time ask to stop speaking to you?
- 3 A No, he did not.
- 4 Q Were you holding your pistol at him?
- 5 A No, sir.
- 6 Q Were you threatening him in any way?
- 7 A No, sir.
- 8 Q As you conversed with him, what sort of questions
- 9 did you ask him?
- 10 A The questions that I asked Mr. Michaux were
- 11 essentially the same questions I would ask anybody through
- 12 our state from another state. I'm a talker. I like to
- 13 talk a lot and I like to ask people -- I like to know where
- 14 you're coming from; where you're going. Sometimes I'll ask
- 15 what kind of work you do. These are the same questions
- 16 that I asked Mr. Michaux and that's -- that lets the public
- 17 know that we're not robots.
- 18 Q Did you ever ask him where he was coming from?
- 19 A I did.
- 20 Q And how did he respond to that question?
- 21 A He had a very generic, general response. He
- 22 basically stated that he was coming from a female cousin's
- 23 house. He come down to visit. I asked where the female
- 24 cousin lived and he turned around and pointing back to the
- 25 direction from where he was coming from and you know,

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1 basically coming from that way; that's what I got out of
2 it, nothing specific.

3 Q Did he ever give you the name of his female cousin?

4 A He did not.

5 Q Did he mention how long he had been staying at his
6 female cousin's?

7 A He did.

8 Q And how long was that?

9 A Two days.

10 Q Did you ever talk to him about the rented vehicle?

11 A I did.

12 Q What did he have to say about that?

13 A I asked him -- I was curious as to who rented the
14 vehicle. It appeared to be a female's name again. The
15 renter wasn't present. Mr. Michaux stated to me that a
16 girlfriend had rented it for him.

17 Q Now, did he specifically say for him?

18 A Yes.

19 Q And did you document that in your report?

20 A I did.

21 Q During this conversation, was he forthright with
22 his answers?

23 A I didn't feel like he was, no.

24 Q Why?

25 MR. MAULDIN: Objection, Your Honor.

Michael D. Harrison - Direct Examination by Mr. Bell

1 THE COURT: Rephrase the question.

2 BY MR. BELL:

3 Q Did he immediately answer all of your questions?

4 A No, he did not, no.

5 Q Explain that?

6 A When I asked these general question to Mr. Michaux,
7 he would, at the end of me asking that question, he would
8 say, What. What that is, in my experience, and with the
9 training I have, is a stall technique. Essentially he's
10 getting time to think about how he's going to answer that
11 question.

12 Q Now, was it just one question that he said what
13 after?

14 A It was all of them.

15 Q Was he consistent; did he consistently say what
16 after every question?

17 A He did, yes.

18 Q Aside from saying what, what else could you deduce
19 about the demeanor during your conversation with them?

20 A Again, I noticed from the time that I stopped the
21 vehicle, he was -- he appeared to be extremely nervous.
22 When I deal with the public on every car stop, every day
23 that I work, there's always a certain level of nervousness
24 to be expected. Everyone is nervous. I haven't been
25 pulled over in a long time, but the last time I was pulled

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1 over, I was nervous and I'm in law enforcement. I know
2 what's going on. So I expect nervousness on every stop.

3 That's not a big deal, but Mr. Michaux, even after
4 I'd gotten him out of the vehicle, his nervousness never
5 subsided; it never went down. If anything, in my opinion,
6 it was getting worse and worse and worse. I could see his
7 pulse in the pit of his neck, okay, that's the first place
8 I look on every person I deal with, whether it's a car stop
9 or a hitch hiker on the road. What that does for me
10 personally, and all of us operate different in law
11 enforcement, what that does for me personally is that lets
12 me know where that subject's at. If I can see your heart
13 pounding in your neck here, there's something else besides
14 the fact that I stopped you for speeding.

15 Q And you said everybody operates differently, but
16 have you received any training specific to what you just
17 testified to?

18 A Yes.

19 Q And what kind of training is that?

20 A It's basically a body language and connect class
21 that was taught by and I don't remember the name of the
22 trooper, but it's a retired Texas trooper who has now went
23 into the field of basically body language and -- and what
24 certain things our bodies do, what that means.

25 Q So is a pulse in the pit of your neck something

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1 you've been trained to keep an eye on?

2 A Yes.

3 Q After this nervousness and statements and the
4 conversation that you had with Mr. Michaux, how did you
5 proceed?

6 A I continued my enforcement action. At the time, it
7 was a warning for the traffic violations, the weaving, the
8 erratic driving. I checked his identification cards
9 through dispatch, which our dispatch a few minutes later
10 confirmed his license was revoked out of North Carolina.
11 At this time, Corporal Rogers had arrived on the scene for
12 backup and I finished out the enforcement action.

13 Once I finished the warning, I returned to Mr.
14 Michaux, who was still standing at the right front of my
15 patrol car, issued him the warning. As I handed him the
16 warning, I'm explaining it, asking if he has any questions.
17 He states no and then I ask about the smell of marijuana.
18 He stated there's no -- no one that's smoked marijuana,
19 there's no marijuana in the car.

20 Q Let me stop you there with anything else that he
21 may have said. How did you proceed after issuing that
22 warning?

23 A Once that was finished, due to the smell of
24 marijuana, I advised Mr. Michaux that I'd be searching the
25 vehicle and I proceeded to the Volkswagen.

Michael D. Harrison - Direct Examination by Mr. Bell

1 Q And is searching the vehicle under the
2 circumstances surrounding the stop normal based on your
3 training?

4 A Yes.

5 Q And did you ultimately conduct a search on this
6 vehicle?

7 A I did.

8 Q Tell us about your search.

9 A Once I searched the Volkswagen, I typically start
10 my search on the right front passenger department. I
11 didn't this day because that door was locked, so I went
12 around to the driver's side where I started my search. As
13 I checked the console where I had seen the tobacco
14 shavings, I located more tobacco shavings in a cup. I also
15 located some cigar packages, they typically come two to a
16 pack, looking for marijuana. As I'm looking over, when I
17 get finished searching the console, I'm looking over to the
18 right rear floorboard in the back, I can see a black
19 plastic bag with a knot tied in it. It's like a really
20 thin smaller trash bag; that's the best way I can describe
21 it.

22 Once I finished my search in the front passenger
23 compartment of the vehicle, I opened the left rear door of
24 the Volkswagen, reached over to get the black plastic bag
25 with the knot tied in it. As I picked it up, it felt to me

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1 that it was, the way it was falling and shaping into my
2 hand and also the weight, it felt to me like it was going
3 to be a powdery substance. With my training and
4 experience, with everything I've seized, everything, all
5 the cars I've stopped, it appeared to me without looking at
6 it, without even opening the bag, that it was going to be
7 narcotics. I thought it was probably cocaine or heroin.

8 It was at that point, I returned to Corporal
9 Rogers, who was standing by with Mr. Michaux and I gave him
10 the sign that it was -- he needed to put Mr. Michaux in
11 handcuffs.

12 Q Now, when you found that black bag that's tied up
13 that you said there was some sort powdery substance in, did
14 you have to dig around to locate it?

15 A No, I did not.

16 Q Was it under anything?

17 A It was even with the right front passenger seat.
18 It was as the seat back goes down to the floor, it was
19 sitting right there at the bottom of it.

20 Q Would you consider it hidden?

21 A No.

22 Q Is it likely or unlikely that anybody looking in
23 the back part of that vehicle would have seen that item on
24 the floor?

25 A You could have seen it, yes.

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- 1 Q Was a field test conducted in this case?
- 2 A Yes.
- 3 Q What is a field test?
- 4 A A field test is a name that applies as something
- 5 that we can do on the fly or outside of the laboratory
- 6 setting which we're obviously not trained to test drugs in
- 7 a laboratory, but these are small test kits that have
- 8 instructions printed on the pack. You put a sample of the
- 9 evidence in question in the kit and you basically squeeze a
- 10 couple, few glass ampoules to have a re-agent or a chemical
- 11 that will cause a reaction if that drug is present, if that
- 12 chemical is present.
- 13 Q And were you present for the field testing of that
- 14 item?
- 15 A Yes.
- 16 Q And what were the results of that field test?
- 17 A It was positive for cocaine.
- 18 Q Did you conduct any testing related to the weight
- 19 of the item that you had seized?
- 20 A It was also weighed on the roadside.
- 21 Q And do you recall your roadside field weight?
- 22 A It was approximately five ounces of powder.
- 23 Q Was Mr. Michaux ultimately placed under arrest?
- 24 A Yes.
- 25 Q And what were you placing him under arrest for?

Michael D. Harrison - Direct Examination by Mr. Bell

1 A At that time, it was for the discovery of the
2 illegal substance that we found in the rear of the
3 Volkswagen.

4 Q Did you ultimately obtain an arrest warrant?

5 A I did.

6 Q And what is the titling on your arrest warrant?

7 A As far as the charge?

8 Q What is the charge?

9 A Trafficking in cocaine.

10 Q Based on your 16 years, did you know that the
11 weight of 5 ounces would be trafficking weight?

12 A I did.

13 Q Did you feel it would be borderline?

14 A No, I did not.

15 MR. BELL: Permission to approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 (State's Exhibit Number 2 was marked for
19 identification.)

20 BY MR. BELL:

21 Q Lance Corporal, I'm handing you what is marked for
22 ID as State's 2. Would you take a look at that item and
23 what does that item appear to be?

24 A This is a copy of my in-car video system.

25 Q And how do you know that is a copy from this

Michael D. Harrison - Direct Examination by Mr. Bell

1 particular incident?

2 A This is a my initials, also the defendant's name,
3 Ronald Michaux, and it's labeled Dash Cam Video.

4 Q And do the contents of that video fairly and
5 accurately represent what your dash cam would have captured
6 on this particular day?

7 A Yes.

8 MR. BELL: Your Honor, at this time, we would seek
9 to move State's 2 into evidence?

10 THE COURT: All right. Mr. Mauldin?

11 MR. MAULDIN: No objection, Your Honor.

12 THE COURT: State's 2 is in evidence without
13 objection.

14 (State's Exhibit Number 2 was entered into
15 evidence.)

16 MR. BELL: I beg the Court's indulgence?

17 (There was a pause in the proceedings.)

18 MR. BELL: Permission to publish State's 2, Your
19 Honor.

20 THE COURT: Yes, sir, you may publish.

21 (The video was played for the Court and the jury.)

22 (The video was stopped.)

23 BY MR. BELL:

24 Q Lance Corporal, is that the vehicle that you pulled
25 over on March 20th?

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1 A It is.

2 Q And is this, in fact, the video from this traffic
3 stop?

4 A It is.

5 Q Now, as I hit play and let a couple of seconds run,
6 one thing I notice is that there's no audio. Why is that?

7 A The audio system that we use for our in-car video
8 cameras are -- the body mics are run on rechargeable
9 battery. There's no indication whatsoever on our screen
10 that the microphone's going dead. This week here or this
11 day here was a week that I had worked essentially three or
12 four days down here in the Columbia area straight. Again,
13 there's no way for us to know when that thing goes dead and
14 the best I can figure, that's why there's no audio.
15 There's only partial audio from the inside.

16 Q Did you intentionally turn your volume mic off?

17 A No, sir.

18 (The video was playing.)

19 (The video was stopped.)

20 BY MR. BELL:

21 Q I'm going to back it up a few moments. What is
22 this going on here or appear to be; are you able to see
23 through that back window as you approach?

24 A Yes, sir.

25 Q Did you notice anything occurring inside of the

Michael D. Harrison - Direct Examination by Mr. Bell

1 vehicle?

2 A It appeared that he was jostling around, yes, sir.

3 Q What did you pull out of your holster or out of
4 your belt?

5 A That is my handheld radio. That's the moment where
6 I called for backup from Corporal Rogers.

7 Q So to clarify, in the -- this video has been
8 running for approximately one minute and forty seconds as
9 of right now. Within that span of time you approached that
10 vehicle, you were already calling for backup?

11 A I did.

12 Q And why did you call for backup?

13 A The smell of marijuana.
14 (The video was playing.)

15 BY MR. BELL:

16 Q What is the white item in your hand here?

17 A That is the rental agreement and his ID card.
18 (The video is stopped.)

19 BY MR. BELL:

20 Q The kill zone as you called it earlier that you
21 indicated -- Lance Corporal, I'm going to hand you this
22 laser pointer. Would you indicate what you consider as
23 being a kill zone?

24 A Yes. Essentially this area right here.

25 Q And once again, why do you call it that?

Michael D. Harrison - Direct Examination by Mr. Bell

1 A The numerous times that officers have been hurt,
2 injured or killed and also other motorists from being
3 crushed between the two vehicles after a wreck happens.

4 (The video was playing.)

5 (The video is stopped.)

6 BY MR. BELL:

7 Q Lance Corporal, I'm going to try to fast forward
8 here. During all of this, nobody on the camera, what is
9 occurring?

10 A At this time I'm continuing my enforcement action,
11 just running his ID number through dispatch, waiting on
12 dispatch, typing out the warning in an effort to bring or
13 as not to extend the traffic stop.

14 Q And what is Mr. Michaux doing?

15 A He's waiting, basically standing with Corporal
16 Rogers.

17 (The video is playing.)

18 BY MR. BELL:

19 Q At this point in time, what are you doing?

20 A I'm beginning my search on the driver's side.

21 Q I'm going to slow it back to real time speed.

22 Where did you begin your search?

23 A The driver's side front seat in the middle console
24 area.

25 Q What door was opened up on the left hand side?

Michael D. Harrison - Direct Examination by Mr. Bell

1 A The left rear passenger door.

2 (The video was stopped.)

3 BY MR. BELL:

4 Q By my watch it was about 30 or so seconds from the
5 time that you went in the rear passenger side until what
6 happened?

7 A That's when I was able to actually get to the
8 package in the rear floorboard that I viewed from the front
9 part of the car. I picked it up in my hand and just kind
10 of, you know, letting it fall where it may and that's when
11 I made a determination that this was most likely a powdered
12 narcotic of some sort.

13 Q Did it take you a lot of time to locate that item?

14 A No.

15 Q Now, we just saw you pull what out of your holster?

16 A That's my taser device.

17 Q And why did you pull your taser out?

18 A To control the suspect in the -- in the event that
19 he wanted to resist, run, flee. I have in my experience,
20 I've had suspects charged with various crimes that tried to
21 run across the interstate.

22 Q Did you have to discharge in this case?

23 A I did not, no.

24 Q Other than that particular moment, did you ever
25 take your taser out of your holster again?

Michael D. Harrison - Direct Examination by Mr. Bell

1 A No, sir.

2 (The video was playing.)

3 (The video was stopped.)

4 BY MR. BELL:

5 Q And was this item that you just held up and
6 dropped?

7 A That's the black plastic bag containing the powder
8 substance that I discovered during my search.

9 (The video was playing.)

10 BY MR. BELL:

11 Q Lance Corporal, I'm going to skip ahead. Who is
12 this in the middle?

13 A That's Corporal Justin Rogers.

14 Q And what is he doing with the evidence?

15 A He's going to visually inspect it, identify it, and
16 then he's -- he's going to actually take a very small
17 portion in an effort to test it to do that field test.

18 Q Were you present for that?

19 A Yes.

20 (The video was stopped.)

21 BY MR. BELL:

22 Q And what is he doing right there?

23 A He is shaking it to activate the chemicals that
24 either will or will not give that positive for the
25 substance.

Michael D. Harrison - Direct Examination by Mr. Bell

1 Q And what was the result of that test?

2 A It was positive for cocaine.

3 (The video is playing.)

4 BY MR. BELL:

5 Q What's he doing now?

6 A He is now fixing or -- you know, fixing the package
7 back so that we can bag it up for evidence and get it
8 turned in, transported and turned in.

9 (The video was stopped.)

10 BY MR. BELL:

11 Q Once again, second time, I want to skip to one more
12 spot. What are you doing here?

13 A I am counting money.

14 Q And where did you locate that money?

15 A That would have come from the person of or about
16 the person of Mr. Michaux.

17 Q Did you get to take that home with you?

18 A No.

19 Q Where did it go?

20 A That went to his property once he was booked at the
21 detention center here in Lexington.

22 Q And do you recall the amount of cash that you
23 seized?

24 A No, I do not.

25 Q Were you present for the booking?

Michael D. Harrison - Direct Examination by Mr. Bell

1 A I was.

2 Q And would you have helped fill out a booking sheet?

3 A If I remember correctly, I think the employees at
4 the detention center filled that paperwork out.

5 Q After all of this had occurred, did you transport
6 Mr. Michaux?

7 A I did.

8 Q And where did you transport him to?

9 A To the detention center here in Lexington County.

10 Q Now, one thing I do want to address, where was the
11 marijuana?

12 A I didn't locate any.

13 Q Have you ever smelled marijuana in a vehicle before
14 and been unable to locate any marijuana?

15 A Many times.

16 Q Why does that happen?

17 MR. MAULDIN: Objection, Your Honor, speculation.

18 THE COURT: I'm sorry?

19 MR. MAULDIN: Objection to speculation.

20 THE COURT: Overruled. You may respond.

21 THE WITNESS: In my experience, marijuana has a
22 very distinct and a very strong odor especially nowadays
23 with the special strains of marijuana that are grown. That
24 odor can linger. That odor is just like cigarette smoke
25 from someone who has smoked a cigarette, it's going to

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 penetrate fabric and it's going to hang around.

2 BY MR. BELL:

3 Q Ultimately that black bag containing that white
4 powder substance, what did you do with it?

5 A The day of?

6 Q Correct.

7 A That was immediately placed in an evidence bag.
8 First Sergeant Dowis, through the chain, took possession of
9 it and ordered to transport it to our centralized evidence
10 facility in Columbia.

11 Q After you passed that evidence off to First
12 Sergeant Dowis, did you ever have any more interaction with
13 it?

14 A I did not.

15 Q Have you ever seen it again prior to today?

16 A No, sir.

17 Q Please answer any questions defense may have for
18 you?

19 THE COURT: Thank you. Mr. Mauldin?

20 MR. MAULDIN: One moment, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. MAULDIN:

23 Q Thanks, Corporal Harrison?

24 A Yes, sir.

25 Q Did you do any kind of work before you were on the

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 highway patrol?

2 A Of course.

3 Q What did you do?

4 A I was manager of a McDonald's Restaurant for about
5 four years and also worked in construction about nine
6 months.

7 Q Did you ever manage a Rent-a-Car Company?

8 A No, I did not.

9 Q Okay. And you said that you worked in Oconee for a
10 while and you were assigned to Team 8 out of Columbia; is
11 that right?

12 A Troop 8, yes, sir.

13 Q Troop 8.

14 A Uh-huh (affirmative response).

15 Q Doing interdiction work. And that's -- and you
16 said that deals with criminal things like drugs and
17 trafficking counterfeit items and things of that nature?

18 A That's correct.

19 Q And on this day on March 20th, 2014, you're out
20 there doing traffic enforcement; is that right?

21 A Yes.

22 Q And you're on Highway 20 headed east from Augusta
23 to Columbia; you're on that side of the highway?

24 A Yes.

25 Q The outside --

Michael D. Harrison - Cross-Examination by Mr. Mauldin

- 1 A Eastbound, yes, sir.
- 2 Q And you're also on the right side --
- 3 A Right.
- 4 Q -- of the highway strip that's headed, well
- 5 travelers head from west to east?
- 6 A I was traveling eastbound, right, on the right
- 7 shoulder.
- 8 Q Now, I notice when I'm driving and you see a police
- 9 car, sometimes they're faced against the highway, sometimes
- 10 they're faced with the highway, sometimes they're in the
- 11 median, sometimes on the right side. What -- what led you
- 12 to pick that particular location and wait?
- 13 A Why I was parked the way that I was parked?
- 14 Q Yes.
- 15 A That's standard.
- 16 Q And did you have your radar running?
- 17 A I did.
- 18 Q Is that a gun that you have to point or is it --
- 19 have they gone passed that now where it's fixed in the car,
- 20 or --
- 21 A I now have both. At the time I just had my in car.
- 22 Q Okay. And what direction does that face?
- 23 A Front and rear.
- 24 Q Front and rear?
- 25 A Uh-huh (affirmative response).

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 Q And -- and I believe that you were unable to -- you
2 may have noticed the speed at the time, but you don't
3 remember what the speed the Volkswagen was going or the
4 tractor trailer was going?

5 A No, sir.

6 Q Okay. And you were unable to tell how far the
7 tractor trailer was behind the Volkswagen when you saw it
8 begin to slow down; is that correct?

9 A That's correct.

10 Q Okay. Now, we were watching the video there,
11 the -- the interaction with the Volkswagen and the tractor
12 trailer, that's not on the video; is that right?

13 A That's correct.

14 Q And the description of you following behind him and
15 him weaving within his lane, that's not on the video
16 either, correct?

17 A That's correct. Would you like for me to explain
18 that.

19 THE COURT: You may explain your answer.

20 THE WITNESS: Thank you, Your Honor. The reason
21 being is the -- the camera records, starts recording at the
22 time that I hit the blue lights. Once I pulled out onto
23 the interstate to catch up to Mr. Michaux's car, I didn't
24 have my blue lights on. I was more or less still
25 investigating why he jammed on his brakes to begin with.

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 So there was no need to have my blue lights on at that
2 point.

3 BY MR. MAULDIN:

4 Q It is possible to activate the camera before the
5 blue lights are on?

6 A It is. Yes.

7 Q And you didn't do that?

8 A No, sir.

9 Q Now, I'll admit that I do it, but I don't know if
10 most people would, but whenever I see a police car, I tend
11 to slow down a little bit and just get caught up in -- is
12 that a common occurrence for people to slow down when they
13 see a police car or they see you coming, you see people
14 slow down?

15 A Sure.

16 Q Now in viewing the video, you walked down to the
17 passenger side of the car and you pull out your radio and
18 you made that call pretty soon; is that correct?

19 A Yes.

20 Q Okay. And when you were testifying before with
21 Solicitor Bell that it seemed to me, didn't you testify
22 that you didn't do that until after your conversation with
23 Mr. Michaux?

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

25 Q Well, it seemed before they showed the video and

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 you were talking with Solicitor Bell that you said you
2 didn't even make that call until after you'd had the
3 conversation with Mr. Michaux?

4 A Which conversation are you referring to, my initial
5 contact or after he was removed from the car?

6 Q After he was removed from the car and off to the
7 right?

8 A No, sir, it's been my intention all along that when
9 I called for backup, it was during the first minute, minute
10 and a half of the stop. It was never after I talked to Mr.
11 Michaux about where he was coming from.

12 Q And when you had your conversation with Mr. Michaux
13 outside of the vehicle, that wasn't on the camera either
14 because it wasn't in the kill zone?

15 A That's correct.

16 Q So there's no video evidence of him acting nervous
17 or any video evidence of any heart beating in his throat or
18 anything like that; is that correct?

19 A No, sir, the camera is not going to pick that up.

20 Q And because your body mic there is really no good
21 evidence of -- of what the conversation is other than your
22 recollection; is that correct?

23 A That's correct.

24 Q And it's my understanding that -- that when you
25 were testifying, it's your recollection of the conversation

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 is that you're kind of paraphrasing what was said and
2 you're not like word for word like a court reporter would
3 do, saying exactly what he said; is that correct?

4 A It's paraphrased; that's correct.

5 Q Okay. And -- and when you said the girlfriend, it
6 could have been another word like home girl or anything
7 like that; it's possible?

8 A It's possible, I took it as a girlfriend.

9 Q So your understanding of home girl is to mean
10 girlfriend?

11 A I really don't know what home girl means.

12 Q Okay. You're not the only one.

13 Now -- now you prepared a report after you arrested
14 Mr. Michaux; is that correct?

15 A I did.

16 Q Okay. And the purpose of this report is to help
17 you remember later on because often things don't go to
18 court until sometime later after a trial; you know a trial
19 could occur maybe a couple of years after an arrest or even
20 after several months it may be difficult to remember. You
21 do a lot of interdiction and a lot of stops; is that
22 correct?

23 A That's correct.

24 Q Okay. And it's important that you get everything
25 accurate in that report?

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 A That's correct.

2 Q So that later on if there's an issue, it helps jog
3 your memory as far as what went on that day?

4 A Certainly.

5 Q And when you wrote that report, you didn't put
6 anything in there about taking any money; is that correct?

7 A Which report are you referring to, the ACE form or
8 the actual narrative?

9 Q The ACE form?

10 A Yes, the ACE form is an inter-department form that
11 we fill out to basically let our chain of command know the
12 cliff notes version of what we we're involved with and as
13 you'll see on that report where it asks if there is money
14 on the subject, I put no. When it asked if there was money
15 seized I also checked no. I always do no and no if we
16 don't take the money and the money that Mr. Michaux had
17 that day did not meet the highway patrol's policy, did not
18 meet the threshold, which is \$1,000 or more, which would
19 signify basically that that money was proceeds or was
20 directly related to the drugs.

21 MR. MAULDIN: I beg the Court's indulgence?

22 THE COURT: Yes, sir, certainly.

23 (There was a pause in the proceedings.)

24 BY MR. MAULDIN:

25 Q Now, you testified that the rental agreement did

Michael D. Harrison - Cross-Examination by Mr. Mauldin

1 not have Mr. Michaux's name on it; is that correct?

2 A That's correct.

3 Q It was a female's name you testified?

4 A Yes.

5 Q Did you ever investigate that person or contact
6 them regarding the items found in the car?

7 A I did not.

8 Q Basically after your arrest of Mr. Michaux and
9 confiscation of the items, your -- your investigation was
10 completed; is that right?

11 A On my part it was, if I could explain that.
12 Basically working with patrol, our job functions are to be
13 in that car and be on the highway every day answering calls
14 for service, stopping cars, directing traffic, et cetera,
15 et cetera. We -- while we are State Law Enforcement, we do
16 not always have the means and the resources to take this
17 traffic stop further. And this car, and I would assume
18 that this lady that rented it was also from North Carolina.
19 I don't have any contacts that I can call, no magic way to
20 get a phone number for this person. So as far as the
21 State's concerned, once that evidence is found and the
22 traffic stop has been concluded, that's where it ends.

23 Q Now the rental agreement has the rental agency on
24 it, doesn't it?

25 A It has a -- yes.

Michael D. Harrison - Redirect Examination by Mr. Bell

1 Q It has the agency that rented the car?

2 A The agency, yes.

3 Q Is it magic to pick up the phone and call the
4 rental agency --

5 A No, I can --

6 Q To gather the information?

7 A No, I can certainly call the rental agency. I was,
8 again, as I explained, I don't have a magic way to find a
9 phone number or cell phone number for the lady that rented
10 it and rental car companies, in my experience, are not very
11 forthright or not obligated to give you that information
12 just because I call and identify as a State Trooper.

13 Q But you didn't try; is that correct?

14 A Not at this time, no, sir.

15 Q No further questions.

16 THE COURT: Redirect, Solicitor?

17 **REDIRECT EXAMINATION**

18 BY MR. BELL:

19 Q When transporting an individual to the detention
20 center, do you ever fill out what's called a receipt of
21 personal property form?

22 A Yes.

23 Q And who is that partially filled out by?

24 A I have half the responsibility.

25 Q So if you transported somebody to the detention

Michael D. Harrison - Redirect Examination by Mr. Bell

1 center, such as Michaux, would you have filled out such a
2 form?

3 A Yes.

4 MR. BELL: Permission to approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. BELL:

7 Q Lance Corporal, I'm handing you a document, what is
8 that document titled?

9 A Lexington County Detention Center Receipt of
10 Personal Property.

11 Q And do you see your signature anywhere on that
12 document?

13 A I do.

14 Q And what does that signature indicate?

15 A That I was the transport officer.

16 Q And are there any monies mentioned on that form?

17 A Yes.

18 Q How much?

19 A It looks like \$521 paper money.

20 Q And who is that money attached to?

21 A Ronald Douglas Michaux, Jr.

22 Q Is that the same money you would have seized --

23 MR. MAULDIN: Objection, Your Honor.

24 THE COURT: Overruled. What's the basis of your
25 objection?

Michael D. Harrison - Recross-Examination by Mr. Mauldin

1 MR. MAULDIN: It's hearsay, but I had to go into
2 the form, Your Honor.

3 THE COURT: Overruled.

4 BY MR. BELL:

5 Q Is that the same money you would have seized from
6 Mr. Michaux on the day of the traffic stop?

7 A Are you asking if that's the money that I was
8 counting on the video?

9 Q Correct.

10 A Yes, it was.

11 MR. BELL: No further questions, Your Honor.

12 THE COURT: Recross, Mr. Mauldin?

13 MR. MAULDIN: Thank you.

14 **RECROSS-EXAMINATION**

15 BY MR. MAULDIN:

16 Q Now on this ACE form you're talking about there's a
17 block about whether money is found in the car, right?

18 A Uh-huh (affirmative response).

19 Q And there's a block about -- and that's yes or no?

20 A Uh-huh (affirmative response).

21 Q And there's another block about whether money was
22 found on the defendant; that's yes or no?

23 A Correct.

24 Q And then there's a third block about whether or not
25 the money was going to be seized or forfeited; is that

Michael D. Harrison - Recross-Examination by Mr. Mauldin

1 right?

2 A Right.

3 Q And that's a yes or no?

4 A Right.

5 Q And that forfeiture, that's a separate box that
6 whether the money is found in the car or on the defendant;
7 is that right?

8 A Yes.

9 Q So it seemed to me that there would need to be
10 separate answers for each box; is that right, depending on
11 the circumstances?

12 A I guess outside looking in, yes.

13 Q And you put no for the defendant having it on him.

14 A I did.

15 Q No further questions.

16 THE COURT: Thank you. Thank you very much,
17 Corporal. You may step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. I believe now would be a
20 good time to take our luncheon recess, ladies and
21 gentlemen. I'll remind you during this luncheon recess do
22 not discuss this case with others and that includes your
23 fellow jurors, lunch mates, family, friends or anyone else.
24 Do not -- you may of course use your computer or cellular
25 phone or any other electronic device with communication

Michael D. Harrison - Recross-Examination by Mr. Mauldin

1 capability during the luncheon recess. However, you may
2 not use those devices to obtain or disclose information
3 about the case which is prohibited.

4 Information about the case which is prohibited
5 includes, but is not limited to the following; information
6 about a party, an attorney, a witness or court officer,
7 news accounts about the case, past or present, should there
8 be any, information collected through juror research on any
9 topic raised or testimony offered by any witness or
10 information collected through juror research on any other
11 topic the juror might think would be helpful in deciding
12 the case. Remember, do not read, watch or listen to any
13 news reports about the case, should there be any.

14 With that being said, we'll take our luncheon
15 recess. I would ask you to please back at 2:15, let's say
16 2:15, I'll give you an extra 15 minutes to sit in Lexington
17 traffic.

18 All right. I hope y'all have a pleasant lunch,
19 I'll see you promptly at 2:15.

20 (The jury left the courtroom at 12:54 p.m.)

21 THE COURT: All right. Anything from the State
22 before we take our recess?

23 MR. BELL: Your Honor, I do understand I did not
24 object during the cross-examination from defense. I
25 would -- I guess I would renew my motion I made yesterday

1 regarding the inclusion of third-party inferences.

2 Certainly for later on or any further questioning and in
3 closing arguments, we would renew that motion.

4 MR. MAULDIN: Your Honor, I think the Solicitor in
5 his direct examination elicited the fact that there was a
6 rental agreement that Mr. Michaux's name wasn't on it and
7 during direct, he testified it was a female's name on it
8 from North Carolina. He elicited that information and
9 that's in evidence and I just merely expounded on that once
10 he had opened the door to that information.

11 And it's my understanding, Your Honor, that the --
12 the prohibition against third-party guilt is the admission
13 of evidence at the trial; it's not arguments made to the
14 jury as far as inferences of the evidence, it's as far as
15 the evidence presented at trial.

16 Additionally, Your Honor, I mean it's already out
17 there, one. Two, it's not admission of evidence and
18 argument to the jury; and third, Your Honor, I think a rule
19 of third-party guilt, obviously, it stems all the way from
20 State v. Gregory, modified sometime in the future by State
21 v. Gay.

22 THE COURT: Gay was forensic evidence.

23 MR. MAULDIN: Right.

24 THE COURT: That's a forensic case.

25 MR. MAULDIN: Yes, sir, Your Honor. It was reply

1 at that point in time to include the weight of the evidence
2 to the State and then that was overruled by Holmes.

3 THE COURT: The Gregory case.

4 MR. MAULDIN: Gregory was not overruled by Holmes,
5 but the Gay portion of it was overruled by Holmes, which is,
6 of course 126, Supreme Court 17-27 --

7 THE COURT: And Gay still wasn't overruled.

8 MR. MAULDIN: But -- but -- but the test, the test
9 as far as the balancing test.

10 THE COURT: I agree.

11 MR. MAULDIN: Here's a copy of those, Your Honor.
12 And anyway, the Holmes case, when they're talking about the
13 third-party guilt rule and the case of State v. Gregory
14 they say the intent of, you know, of the rule is to focus
15 the trial on the central issues by eliciting evidence that
16 only has a very weak logical connection to the central
17 issue. Okay. That, you know, the evidence doesn't serve a
18 legitimate purpose.

19 But here, Your Honor, the issue that this evidence
20 goes towards is actually the element of the crime beyond
21 any third-party guilt. The element of the crime of
22 possession is knowledge and if half the State's proof as
23 far as the defendant's knowledge, the fact that the vehicle
24 had been rented by another person, I believe is very
25 probative and there's a legitimate purpose to go into that.

1 The probative value is extremely high.

2 Also to inquire as far as the sufficiency of the
3 State's investigation of the case as far as whether he had
4 contacted that person or made any investigations for that.
5 I think it is probative and very high.

6 It's not just saying -- it's not like a burglary or
7 anyone saying Joe Blow did the burglary and not me and
8 that's tenuous here; they have to prove knowledge and the
9 fact the vehicle was rented by another person together with
10 the fact that maybe Mr. Michaux did not have knowledge of
11 what was in the vehicle at the time or under the seat or in
12 the seat because he was not the one who rented the vehicle.

13 And so because it goes towards the element of the
14 crime, I believe that -- that doing so would even if we
15 chose the right to present a defense under the Sixth
16 Amendment of the U.S. Constitution, Article 1, Section 14
17 of the State Constitution and under the Fourteenth
18 Amendment for due process.

19 THE COURT: Thank you.

20 Solicitor?

21 MR. BELL: Judge, I -- Mr. Mauldin kind of already
22 did it for me. He mentioned himself that knowledge being
23 an element and the fact that there was another individual
24 who rented the car could mean they have knowledge of it.
25 The Gregory case explicitly says it has to be more than

1 just mere conjecture or something that would arise to bare
2 suspicion. It goes on to say there's got to be such proof
3 and there's got to be sort of a train of circumstances. In
4 fact, we do not have any sort of train of circumstances and
5 facts. We have one receipt, we have the rental vehicle and
6 I think that -- I apologize, Your Honor.

7 (There was a disturbance in the hallway.)

8 THE COURT: Sheriff, will you see what that is
9 please?

10 Go ahead, Solicitor, I'm sorry.

11 MR. BELL: And, Your Honor, I think that limiting
12 testimony is entirely different from altering it altogether
13 and it's necessary for the State to essentially proffer the
14 testimony about it being a rental vehicle because those are
15 facts. For us to simply say it was his vehicle would
16 almost be lying to the jury. So we understand that sort of
17 limiting testimony is what we're asking for, not changing
18 testimony altogether. I understand I can't unring the bell
19 now, the testimony from Lance Corporal, but I would ask
20 that no further witnesses be questioned about this
21 potential third party.

22 THE COURT: Well, there's several rules. First the
23 rule of completeness which I think is 106 maybe, I don't
24 have my rule book.

25 MR. MAULDIN: 106, 107.

1 THE COURT: 106, whatever, State v. Jackson, but
2 here's another issue and I think these go hand in hand.
3 The case cited yesterday, State v. Jamison, 372 South
4 Carolina 649, the proposition that I should allow an expert
5 witness to testify as to the money or to the street value
6 of drugs. In that defense, quote, in his defense, Jamison
7 claimed the drugs belonged to someone else, possibly one of
8 his employees who had access to the truck.

9 We agree with the trial court that jurors typically
10 do not know the current street prices of illegal drugs.
11 Brown sells evaluation of the drugs based on his years of
12 law enforcement experience allowed the jury to better
13 determine whether a person would reasonably leave expensive
14 narcotics unguarded and disguised as trash in a truck
15 allegedly used by numerous people.

16 Now, I realize this case is stating that Jamison
17 testified to that and I don't know whether Mr. Michaux
18 would or would not, but you do have a rental vehicle that
19 is rented in a third party's name. At this point, I don't
20 know that whoever names it's rented in is his girlfriend or
21 his home girl or none of the above. I don't know that.
22 There's no testimony as to his girlfriend or home girl is
23 except by his statement.

24 You want to throw it all out or do you want it all
25 to come in; y'all want me to make that decision; I think

1 it's admissible. I think it's a reasonable inference that
2 can properly be drawn from the evidence. Now, if I were a
3 drug dealer and had my drugs in a rental car and turned
4 that rental car in, I wouldn't leave my drugs in that
5 rental car, but who knows; that's what Mr. Jamison argues,
6 somebody left the drugs of a certain value in a truck.

7 So I think it's admissible. I think it's an
8 argument that can be made and it's already before the jury,
9 that it was a rented vehicle and it was rented by a third
10 party. So I think -- I think that's a dot. I don't know
11 if there's a missing dot that can be connected or not.

12 All right. Anything further, Solicitor.

13 MR. BELL: Your Honor, in the beginning you briefly
14 mentioned it and we did have an objection yesterday or a
15 motion to exclude testimony related to drug value. The
16 expert who I intend to proffer as an expert, Corporal
17 Rogers, excuse me, is that correct?

18 THE POTENTIAL WITNESS: Yes.

19 MR. BELL: Corporal Rogers is here with us today if
20 you wanted to go ahead and hear that testimony now or if
21 you want to wait until the proper time.

22 THE COURT: No, I'll wait.

23 MR. BELL: Thank you, Judge.

24 THE COURT: I think it's admissible, both sides.

25 MR. MAULDIN: Well, I had some more --

1 THE COURT: I'm sorry?

2 MR. MAULDIN: I did a little bit more research into
3 the Jamison case and the underlying rationale behind it.

4 THE COURT: I think it's admissible whether it's
5 PWID or trafficking. Robinson was PWID and I think it's
6 admissible under Robinson. I think it's admissible.

7 MR. MAULDIN: Your Honor?

8 THE COURT: Yes, sir.

9 MR. BELL: If I might just flesh out the Jamison
10 case is a trafficking case. The Robinson case was a
11 possession with intent to distribute case. The rationale
12 in the Jamison case, the Jamison case was that the Fourth
13 Circuit was cited. There are many Fourth Circuit cases
14 cited about the Fourth Circuit allowed such testimony in
15 trafficking cases. And when you look at the footnotes on
16 the Jamison case, on footnote 2 they mention U.S. v.
17 Gastiaburo but that was a possession with intent to
18 distribute case. And they also mentioned U.S. v. Johnson
19 which was a conspiracy type case involving distributions by
20 many people over a great period of time which led me to
21 wonder what is exactly the Federal Law in trafficking; is
22 it analogous to our law in trafficking.

23 THE COURT: They also mentioned in the paragraph in
24 the next footnote State v. McCoy ruling a law enforcement
25 officer's testimony on the street value of cocaine was

1 properly admitted in the defendant's trial for trafficking
2 in cocaine because the testimony was both helpful and
3 relevant in showing the defendant's intent.

4 MR. MAULDIN: And, Your Honor, that's a North
5 Carolina case.

6 THE COURT: North Carolina the last I heard was in
7 the Fourth Circuit also, wasn't it?

8 MR. MAULDIN: Yes, sir, Your Honor. But what I'm
9 saying is I think our trafficking statute is different in
10 that there's no element of intent to distribute. The only
11 thing I can find in Federal that's close to trafficking is
12 21 U.S. CA 41 and that language is very much like our PWID
13 statute in addition to an amount level. I think --

14 THE COURT: Well, what are you asking me to do, Mr.
15 Maudlin; I don't mean to be short, but just -- just get to
16 the point of what you're asking me to do?

17 MR. MAULDIN: I'm asking you to exclude the expert.
18 I believe that the Federal cases they relied on in Jamison
19 to make that ruling were dealing with cases where intent to
20 distribute was an element. I believe intent to distribute
21 is an element in the Federal level of trafficking or what
22 they mentioned as trafficking. It's not an element in
23 trafficking in South Carolina; and therefore, I believe
24 that the expert should be in under 702, because there is no
25 intent to distribute.

1 THE COURT: Well, obviously it was admitted in
2 South Carolina under State v. Jamison. I mean so what am I
3 supposed to do? Just say -- I don't -- I shouldn't follow
4 South Carolina Law?

5 MR. MAULDIN: I understand, Your Honor, but from my
6 going behind the cases that they mentioned --

7 THE COURT: Footnoted.

8 MR. MAULDIN: Yes, sir.

9 THE COURT: Yes, sir, they footnoted cases
10 concerning qualifications of an expert in various drug type
11 of offenses. Look, I'm letting y'all both try your case.

12 MR. MAULDIN: Yes, sir.

13 THE COURT: And now, quite frankly, I hate to
14 cliché but you want your -- it can't be cake, it's got to
15 be like you want your filet mignon and something else too,
16 I don't know, surf-n-turf, I don't know what it is. He
17 doesn't want third-party guilt; you don't want the expert.
18 If y'all want to gut your case, I'll gut it. I'll gut it
19 on both sides, but you can't have one without the other one
20 under rule of completeness.

21 Read Jamison. It's almost on point. I was
22 shocked. I came in early to read it. Who knew I didn't
23 have to because it was so on point. I'm going to follow
24 State v. Jamison. Thank you. Thank you very much.

25 MR. MAULDIN: Thank you, Your Honor.

1 MR. BELL: Thank you, Judge.

2 (A recess for lunch was observed.)

3 THE COURT: Mr. Michaux, were you able to make a
4 phone call?

5 THE DEFENDANT: Yes, sir, they're going to come up.
6 They're here already I guess somewhere like 10 minutes
7 away.

8 THE COURT: So they're already -- they're already
9 here?

10 THE DEFENDANT: They said it would take about ten
11 minutes away from the courthouse.

12 MR. MAULDIN: I had my paralegal call in the
13 meantime.

14 THE COURT: So your family members, some of your
15 family members will be here this afternoon?

16 THE DEFENDANT: My sister and my brother should be
17 coming up. They stay about 10 minutes away.

18 THE COURT: Okay. All right. Anything from the
19 State before we bring in our jury?

20 MR. BELL: No, Your Honor.

21 THE COURT: Defense?

22 MR. MAULDIN: No, Your Honor.

23 THE COURT: Bring in the jury.

24 (The jury entered the courtroom at 2:20 p.m.)

25 THE COURT: All right. Y'all confusing me, you've

Phillip Odom - Direct Examination by Mr. Pogue

1 changed seats. That's not the same pattern of blouses and
2 shirt colors and stuff like that. So we have seat changes.

3 Welcome back, ladies and gentlemen. I hope y'all
4 had a pleasant lunch. As you may recall, we're continuing
5 the trial of the case by the presentation of evidence and
6 testimony by the State in its case in chief, if you'd
7 please continue to give the parties your complete and
8 undivided attention as you have done throughout the trial
9 of this case.

10 Solicitor, you may call your next witness.

11 MR. POGUE: Thank you, Your Honor. The State calls
12 Phillip Odom to the stand.

13 THE COURT: All right. Yes, sir, if you'd come
14 around and be sworn for us please?

15 PHILLIP ODOM,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat, sir. Once you're seated,
18 state your full name spelling your last on the record
19 please?

20 THE WITNESS: My name is Phillip Morris Odom. Last
21 name, O-D-O-M.

22 DIRECT EXAMINATION

23 BY MR. POGUE:

24 Q Thank you, I appreciate that. Officer Odom, where
25 are you currently employed?

Phillip Odom - Direct Examination by Mr. Pogue

1 A I'm with the South Carolina Department of Public
2 Safety with the State Transport Police Division currently
3 assigned to Central Evidence Facility.

4 Q And how long have you been there?

5 A October will be 7 years with Central Evidence; with
6 the State I've been since 1999.

7 Q Now you kind of touched on it, but what is your
8 position there?

9 A Right now we are -- we handle all the evidence for
10 Department of Public Safety statewide. So anything that
11 comes in, crash evidence, anything that needs to be taken
12 to SLED, we pre-log all of the evidence and we take it to
13 SLED and what can be disposed, we'll actually -- we're the
14 ones that dispose of it ultimately.

15 Q And what is the typical procedure by which drug
16 evidence is received by you and submitted for testing?

17 A Usually the trooper that took the evidence or his
18 supervisor, depending on the chain of custody, they'll
19 receive exactly like this case right here. The trooper on
20 the side of the road will take the evidence either himself
21 or his supervisor, according the chain of custody, will
22 bring the evidence to us, we'll log it in to our secured
23 location and we'll do the pre-log paperwork to take it to
24 SLED for the analysis and then we'll take it to SLED.

25 Q And did you handle drug evidence in this particular

Phillip Odom - Direct Examination by Mr. Pogue

1 case?

2 A Yes, sir, I did.

3 Q And can you explain that to the jury?

4 A I mean just according to the chain or what are you
5 looking for?

6 Q In regard to the drug evidence, did you bring the
7 drug evidence with you today?

8 A Yes, sir, I did.

9 Q Okay. Is it -- Officer Odom -- Officer Odom, I'm
10 handing you what's premarked as State's 1 for ID purposes,
11 do you recognize that item?

12 A Yes, sir, it's the BEST kit.

13 Q Is that -- is that the items of drug evidence that
14 you handled in this particular case?

15 A Yes, it is.

16 Q And does it appear to be in the same or potentially
17 the same condition that you received it?

18 A Yes, sir, with the exception of this outer SLED
19 bag. We receive it in the BEST kit, sealed, and then we'll
20 do our paperwork and take it to SLED. They'll analyze it
21 and then this is how we receive it after the SLED's done
22 their analysis.

23 Q And is that typical when you receive drugs back
24 from being tested by a chemist, typically. Obviously, they
25 would have to be opened in your experience, and that's why

Phillip Odom - Direct Examination by Mr. Pogue

1 it comes back different?

2 A Yes, sir, it's never in the exact same packaging
3 the way we send it to them because they have to open it and
4 analyze it.

5 Q I understand. And who did you receive the drugs
6 from in this particular case?

7 A On this particular case, I received the drugs from
8 First Sergeant Dowis on 3/20/2014.

9 Q Okay. And how -- at what point did you
10 transport -- transfer the drugs out of your custody?

11 A The way our facility works, the centralized
12 evidence facility is centralized in the state, so you can
13 access it pretty much from three hours anywhere in the
14 state.

15 Once we receive the evidence, we'll -- we have
16 several steps of security in our building. We're a five
17 person unit. We're the only ones authorized in the state
18 in that facility unsecured. Besides video and monitoring,
19 we have different levels of security.

20 Once I receive it, I put it in our safe slash
21 warehouse after I log it in and then I take it and that's
22 where it stays until it goes to SLED. I took it the
23 following day on the 21st.

24 Q Okay. And from the time you received it from Dowis
25 to the time that you put it into the safe, was it in your

Phillip Odom - Direct Examination by Mr. Pogue

1 sole care, custody, and control that entire time?

2 A Yes, sir.

3 Q Was it in anyway manipulated by you or anybody
4 else?

5 A No, sir, it was in the SLED BEST kit.

6 Q Was it possible that could have been manipulated in
7 any way?

8 A Not when we received it. I mean we're -- we only
9 take it if it's sealed. We adopt our procedures like SLED.
10 They won't receive evidence unless it's sealed so to make
11 it easier on us, we adopted the same policy.

12 Q And is there an identifying number of some sort on
13 the BEST kit that you're able to connect it back to this
14 particular case?

15 A Yes, sir. Each BEST kit is -- that we receive from
16 SLED, they have a generated number in the top right-hand
17 corner and we make sure, or we try to tell our officers, to
18 always write that on the chain of custody just to follow it
19 and in this case it is the exact same numbers, B242887.

20 Q Thank you, Office Odom. So I believe you said the
21 next day you took it out of the safe, then transported it
22 to SLED for testing?

23 A Yes, sir, on the 21st.

24 Q Who did you transfer custody and that particular
25 point in time?

Phillip Odom - Cross-Examination by Mr. Mauldin

1 A Ms. Yarbrough, Dotie Yarbrough.

2 Q That was on what date and time?

3 A 3/20 -- 3/21/2014.

4 Q And from the time that you removed it from the safe
5 and transported it to SLED, was it in the entire time, your
6 sole care and custody and control?

7 A Yes, sir, I actually take it out of our secured
8 location, I will document it on our chain of custody safe
9 to myself and then myself to the individual that I'm
10 dropping it to at SLED. So it doesn't leave my possession
11 until I drop it off and someone signs for it.

12 Q And who you handed it personally to Ms. Yarbrough?

13 A I did.

14 Q Please answer any questions the defense has.

15 THE COURT: Mr. Mauldin.

16 **CROSS-EXAMINATION**

17 BY MR. MAULDIN:

18 Q Other than the handling of evidence, you have no
19 other involvement in this case; is that correct?

20 A That's correct.

21 Q And you mentioned the BEST kit has a number on it;
22 is that correct?

23 A Yes, sir.

24 Q Did you mark the BEST kit in any way with your own
25 markings or initials or anyway that you could specifically

Phillip Odom - Cross-Examination by Mr. Mauldin

1 identify that as the same kit that you transported to SLED
2 back March 21, 2014?

3 A On the actual BEST kit itself, no, sir, but when we
4 take it to SLED, they reseal it again in a heat sealed
5 pouch and that's when you have to sign, initial, and date
6 as well.

7 Q When you receive it back?

8 A No, sir, when I'm taking it to SLED. I'll take the
9 BEST kit to SLED, it'll sign saying they received it,
10 they'll put it in a sealed pouch and then I'll have to
11 initial their pouch as well as they'll sign it as well.

12 Q So the number is the sole thing that you're basing
13 your -- your recollection on?

14 A Correct.

15 Q No further questions.

16 THE COURT: Redirect, Solicitor?

17 MR. POGUE: Nothing further.

18 THE COURT: Thank you. Thank you very much for
19 being with us. You may step down. Any objections to the
20 officer being excused?

21 MR. MAULDIN: No, Your Honor.

22 MR. BELL: None from the State.

23 THE COURT: All right. Thank you, You may be
24 excused. I appreciate you being with us.

25 THE WITNESS: Thank you.

Doris Yarbrough - Direct Examination by Mr. Pogue

1 THE COURT: All right. Solicitor?

2 MR. POGUE: Thank you, Your Honor. The State would
3 now call Doris Yarbrough to the stand.

4 THE COURT: All right. Yes, ma'am, if you'd come
5 around and be sworn for us please.

6 DORIS YARBROUGH,
7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat, ma'am. Once you're
9 seated, state your full name spelling your last please?

10 THE WITNESS: My name is Doris Yarbrough.
11 Y-A-R-B-R-O-U-G-H.

12 **DIRECT EXAMINATION**

13 BY MR. POGUE:

14 Q Thank you, Ms. Yarbrough. Where are you currently
15 employed?

16 THE COURT: Can you speak up a little bit for me
17 please?

18 MR. POGUE: I apologize, Your Honor.

19 THE COURT: That's all right.

20 BY MR. POGUE:

21 Q Where are you currently employed, Ms. Yarbrough?

22 A I'm employed with the South Carolina Law
23 Enforcement Division, also known as SLED.

24 Q And how long have you been employed there?

25 A This is my 8th year.

Doris Yarbrough - Direct Examination by Mr. Pogue

1 Q And what is your current role or duty there at
2 SLED?

3 A I'm a Forensic Technician in the Evidence Control
4 Department. We receive evidence from law enforcement
5 agencies throughout the State of South Carolina that need a
6 forensic analysis.

7 Q What is the typical procedure for receiving drugs
8 for analysis there at SLED?

9 A The submitting agency will bring their items for
10 submission along with the paperwork. In this case it was a
11 BEST kit and it has a unique number that is -- that it has
12 before it ever arrives to us and we just try to make sure
13 that that unique number matches the paperwork they're
14 submitting with it.

15 Q And in this particular case, you indicated that you
16 did receive drugs regarding this particular case?

17 A Yes, sir.

18 Q Okay. And did you -- do you typically at SLED do
19 you generate business reports that keep track of the chain
20 of custody of drugs when you receive them at SLED?

21 A It's an electronic monitoring system that has a
22 unique bar -- each case receives a unique barcode that's
23 generated by our computer system. We put that barcoded
24 label on the evidence and it is tracked from each person
25 that has custody of it.

Doris Yarbrough - Direct Examination by Mr. Pogue

1 Q In this particular case, did you receive drugs from
2 Officer Odom personally?

3 A I did.

4 Q Okay. And what did you do with the drugs after you
5 received them?

6 A Once I have logged them in and given them their
7 barcode label, they are transferred to the evidence -- the
8 drug evidence intake section of our secure evidence room
9 and that's where it will stay until it's requested for
10 analysis.

11 Q Yes, ma'am. I'm actually -- I'm actually handing
12 up to you what's pre-marked as State's Exhibit 1 for ID
13 purposes. Do you recognize that item?

14 A I can identify it by the yellow barcode label that
15 it receives once it's been submitted to our laboratory.

16 Q Well what does that indicate to you?

17 A That's the lab number. The L and the number 14 is
18 for the year 2014 and then the number that goes with that
19 is -03715.

20 Q And that matches with the BEST kit number when you
21 track the chain of custody; is that correct?

22 A Correct.

23 Q In this particular case and in your ordinary course
24 of business there at SLED, do you generate chain of custody
25 records for all the drug evidence that you receive?

Doris Yarbrough - Direct Examination by Mr. Pogue

1 A The chain of custody is generated through our
2 computer system.

3 Q And was a report or a chain of custody report
4 generated in this particular case?

5 A It was. We do have a prepared for release chain of
6 custody, yes, sir.

7 Q And did you -- did you happen to bring a report
8 with you to court today for this particular case?

9 A I brought my copy, sir.

10 (State's Exhibit Number 3 was marked for
11 identification.)

12 BY MR. POGUE:

13 Q Okay. And I'm going to hand you back your report
14 what's marked as State's ID 3.

15 Would you please tell me the separate transactions
16 in regard to the chain of custody regarding your portion of
17 the chain?

18 A On March 21st of 2014, at 10:50 in the morning, I
19 received from P.M. Odom of South Carolina Department of
20 Public Safety, this BEST kit.

21 Q Okay. And what is the Lab Number again at the top
22 of that report?

23 A It's L-14-03715.

24 Q Which is the same as the Lab Number that's on the
25 BEST kit, correct?

Doris Yarbrough - Cross-Examination by Mr. Mauldin

1 A That matches this yellow label, yes, sir.

2 Q And from the time that you took possession of the
3 drugs from Officer Odom, were they in your sole care,
4 custody, and control until you stored them in the evidence
5 room?

6 A That is correct.

7 MR. POGUE: No further questions, Your Honor.

8 And please answer any questions that the Defense
9 may have.

10 MR. MAULDIN: I'm just going to take a look at
11 what's been pre-marked and handed to the witness.

12 **CROSS-EXAMINATION**

13 BY MR. MAULDIN:

14 Q Ms. Yarbrough, other than the handling of the
15 evidence that you mentioned, you had no other involvement
16 in this case; is that correct?

17 A No, sir, I do not.

18 Q And you're basing your recollection as far as that
19 being the item you handled off the -- the BEST kit number
20 on the case and the SLED number that you attributed to it
21 later on?

22 A That would be correct.

23 Q No further questions.

24 THE COURT: Redirect?

25 MR. POGUE: No, sir, Your Honor.

Jennifer L. Aycock - Direct Examination by Mr. Pogue

1 THE COURT: Thank you. Thank you very much for
2 being with us this afternoon, Ms. Yarbrough. You may step
3 down.

4 Any objection to Ms. Yarbrough being excused.

5 MR. BELL: None from the State.

6 MR. MAULDIN: No, Your Honor.

7 THE COURT: Then you may be excused.

8 All right. Solicitor?

9 MR. POGUE: The State would now call Jennifer
10 Hancock -- excuse me, Jennifer Aycock to the stand.

11 THE COURT: All right. Come around for me please
12 and be sworn.

13 JENNIFER AYCOCK,

14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat, ma'am. Once you're
16 seated, state your full name spelling your last on the
17 record?

18 THE WITNESS: Jennifer Leslie Aycock. A-Y-C-O-C-K.

19 **DIRECT EXAMINATION**

20 BY MR. POGUE:

21 Q Thank you, Ms. Aycock, and where are you currently
22 employed?

23 A I work for South Carolina Law Enforcement Division,
24 also known as SLED.

25 Q And how long have you been there?

Jennifer L. Aycock - Direct Examination by Mr. Pogue

1 A I have been there for 2 years now.

2 Q And what are your current duties there?

3 A I am a forensic technician. I'm assigned to the
4 Evidence Control Department.

5 Q And you were present in the courtroom for Ms.
6 Yarbrough's testimony, correct?

7 A Yes, sir.

8 Q Okay. I'm actually going to go ahead and hand up
9 to you a report that she brought with her to court today
10 that's pre-marked as State's ID 3, and could you please
11 identify the transactions in the chain where you actually
12 handled the drug evidence in this particular case?

13 A Yes, sir. According to the chain of custody in Lab
14 Number L-14-03715, I received a request from our analyst,
15 Douglas Robinson, with SLED for evidence. I went into the
16 evidence room, retrieved the evidence May 29th, 2014, at
17 10:39 a.m. From there it was transferred -- once we
18 receive evidence from our evidence room -- it's a secured
19 room, I transferred that evidence into my name to reflect
20 the chain of custody and whose hands it has traveled
21 through.

22 After that transaction it was transferred to
23 Douglas Robinson with our Drug ID Department.

24 Do you want me to continue on past when I received
25 it back?

Jennifer L. Aycock - Cross-Examination by Mr. Mauldin

1 Q That would be fine.

2 A Okay. Because it's again a unique situation where
3 one person has great dealing with it. I received the drugs
4 back from Douglas Robinson after analysis on 6/26/2014, and
5 I placed them back into our secured evidence room that same
6 date.

7 Then again that particular BEST kit came back into
8 my custody on 7/8/2014 at 10:58 in the morning and I
9 returned it back to South Carolina Department of Public
10 Safety that same date 7/8/2014.

11 Q Thank you, Ms. Aycock. I appreciate it. No more
12 questions. Please answer any questions the defense may
13 have?

14 THE COURT: All right. Mr. Mauldin?

15 MR. MAULDIN: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. MAULDIN:

18 Q Ms. Aycock, you handled some other evidence in this
19 case; is that correct?

20 A May I refer to my notes please?

21 Q Yes, ma'am.

22 A Yes, sir, I did.

23 Q And you handled the black plastic bag that went
24 along with the narcotic evidence in this case; is that
25 correct?

Jennifer L. Aycock - Cross-Examination by Mr. Mauldin

1 A According to the chain of custody, yes, sir, I
2 handled Item 1.1.

3 Q And you took that bag to Latent Evidence; is that
4 correct?

5 A No, sir, I didn't take the item anywhere. We do
6 not take evidence anywhere. People who actually request
7 evidence from us have to come to our room just to get that
8 evidence.

9 Q But on June 5th of 2014, you transferred the bag to
10 Latent's Evidence Intake?

11 A Correct, and that's within our department, it's
12 within our evidence room. It's just a different location
13 within our evidence room.

14 Q And latent evidence, that means fingerprint
15 evidence?

16 A Yes, sir.

17 Q And that's a department with SLED as well as the
18 drug testing?

19 A Yes, sir.

20 Q No further questions.

21 THE COURT: Redirect, Solicitor?

22 MR. POGUE: No, sir, Your Honor.

23 THE COURT: Thank you. Thank you very much for
24 being with us this afternoon, Ms. Aycock.

25 THE WITNESS: Yes, sir. Thank you.

Douglas Robinson - Direct Examination by Mr. Bell

1 THE COURT: You may step down.

2 Any objections to Ms. Aycock being excused?

3 MR. BELL: None, Your Honor.

4 MR. MAULDIN: No, Your Honor.

5 THE COURT: Thank you very much.

6 All right. Solicitor.

7 MR. BELL: Thank you, Your Honor. At this time,
8 the State would call Douglas Robinson to the stand.

9 THE COURT: All right. If you'd come around and be
10 sworn for us please.

11 DOUGLAS ROBINSON,

12 having been duly sworn, testified as follows:

13 THE CLERK: Have a seat please, sir. Once you're
14 seated, state your full name spelling your last on the
15 record please?

16 THE WITNESS: My name is Douglas Robinson. Last
17 name, R-O-B-I-N-S-O-N.

18 **DIRECT EXAMINATION**

19 BY MR. BELL:

20 Q Mr. Robinson, do you go by agent or what sort of
21 title do you go by?

22 A My official title is Forensic Chemist.

23 Q Okay. We'll stick with Douglas for now.

24 A Sure.

25 Q How long have you been with SLED?

Douglas Robinson - Direct Examination by Mr. Bell

1 A Just over 9 years.

2 Q And in what capacity do you work for SLED?

3 A I'm a forensic chemist assigned to the Drug
4 Analysis Department.

5 Q Okay. Now, forensic chemist is a fancy term. What
6 all do you do as part of that job?

7 A My primary duty is the analysis and identification
8 of controlled substance submissions. We take unknown
9 samples varying from plant material, powders, crystal,
10 liquid and analyze these for possible presence of
11 controlled substances.

12 Q What all training and education goes in with that
13 kind of job?

14 A I received my Bachelor of Science in Chemistry from
15 the University of South Carolina and after graduating, I
16 spent approximately 3 years performing chemical analysis in
17 Environmental Computer Field. On being hired at SLED, I
18 received Law and Legal Training from the South Carolina
19 Criminal Justice Academy as well as in-house training in
20 the analysis of controlled substances through the Drug
21 Analysis Department at SLED. I've also attended the Drug
22 Enforcement Administration Forensic Chemist Seminar.

23 Q Have you ever been qualified as an expert in the
24 related field before?

25 A Yes, sir.

Douglas Robinson - Direct Examination by Mr. Bell

1 Q How many times?

2 A Twenty-two.

3 Q And have you testified in such a capacity before?

4 A Yes, sir.

5 MR. BELL: Your Honor, at this time, we'd seek to
6 move Douglas Robinson in as an expert in chemical analysis?

7 THE COURT: Chemical analysis?

8 MR. BELL: Yes, Your Honor, or Forensic Science;
9 whatever Your Honor prefers.

10 THE COURT: No, offer him and just tell me I
11 always --

12 MR. BELL: Chemical analysis, Your Honor.

13 THE COURT: Mr. Mauldin, any voir dire?

14 MR. MAULDIN: No, sir, Your Honor.

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury, normally a person cannot give
17 opinion testimony. Normally when a person testifies, they
18 must testify as to what they saw, heard or sensed by smell
19 or something of that nature. However, there is an
20 exception when someone is qualified because of their
21 education, training, and experience in a particular art,
22 science, profession, craft, or field if the Court qualifies
23 them that way.

24 This witness, Forensic Chemist Douglas Robinson,
25 will be qualified in the area of chemical analysis to give

Douglas Robinson - Direct Examination by Mr. Bell

1 opinion testimony in that area. That does not mean that
2 you must accept the opinion, but it is evidence for you,
3 the jury, to use in any way you deem appropriate.

4 Thank you. Thank you very much. You may continue.

5 MR. BELL: Thank you, Judge.

6 Permission to approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. BELL:

9 Q Mr. Robinson, I'm handing you an item marked as
10 State's 1 for ID purposes, would you take a look at that
11 item? Do you recognize that item?

12 A Yes, sir.

13 Q And how do you recognize it?

14 A My initials are in various locations throughout the
15 evidence.

16 Q And what is that item that you're holding?

17 A The outer package is what we refer to as a K-Pack.
18 It's simply a heat sealable plastic bag. This is what we
19 use to secure the evidence after analysis is complete.
20 This is what we send the evidence back to the submitting
21 agency in. That would be the first place my initials would
22 appear, D.R. along with 6/5/14 is across where the heat
23 seal is and this is the date the bag was sealed. This
24 would be the date I performed the actual bench work for the
25 analysis.

Douglas Robinson - Direct Examination by Mr. Bell

1 Within that bag, the other package is what's been
2 referred to as a BEST kit several times. BEST stands for
3 Best Evidence Sample Testing. It's a specific type of
4 packaging we issue out to submitting agencies as a way to
5 ensure the evidence has not been tampered with throughout
6 the chain of custody. If you note on three of the sides,
7 you see a blue swirl pattern. This is a tamper evidence
8 system where if someone was to try to stretch the bag, tear
9 the bag, cut the bag, it would be readily apparent. Those
10 swirl patterns follow all the way across the perimeter of
11 the package. So if anyone was to try to get into it, it
12 would be very obvious.

13 On the reverse side is a Ziplock bag with the case
14 number, item number, my initials and the words bag added.
15 Again this is my handwriting. Bag added simply signifies
16 that I added this -- this particular bag to the evidence.
17 This is a way to secure the powder so that it doesn't
18 cross-contaminate within all the other packaging.

19 Also on the BEST bag are the word seal intact with
20 my initials and the date. This is to signify that I did
21 check the seal before I started the analysis and all the
22 seals were, in fact, intact and had not been tampered with.

23 Q Is there a control number attached to the BEST kit
24 that you have in your possession?

25 A There is.

Douglas Robinson - Direct Examination by Mr. Bell

1 Q And can you read that aloud please?

2 A The control number printed on the bag is B242887.

3 MR. BELL: Your Honor, at this time, the State
4 would move State's 1 into evidence?

5 MR. MAULDIN: Subject to prior objection, Your
6 Honor, and chain of custody.

7 THE COURT: And what?

8 MR. MAULDIN: Chain of custody.

9 THE COURT: State's 1 is in evidence subject to
10 previous objection.

11 (State's Exhibit Number 1 was entered into
12 evidence.)

13 BY MR. BELL:

14 Q Now, Mr. Robinson, upon retrieving what is now
15 marked and entered as State's 1, when you typically receive
16 a BEST kit over at SLED, what do you do with it?

17 A Again, in order to retrieve the evidence, I will
18 send an e-mail. I usually pick up several cases at a time,
19 but it will -- the e-mail will go to our Evidence
20 Technicians. I retrieve the evidence in person, bring it
21 up and store these cases in our secured vault within the
22 department until time for analysis. When I pull the
23 specific case for analysis, I will move it from a manila
24 envelope, it's just an outer packaging that's transferred
25 with the case until analysis. The first thing I would do

Douglas Robinson - Direct Examination by Mr. Bell

1 is ensure that the seal is still intact and again make note
2 of that on the BEST kit.

3 Q And do you recall what date you retrieved that BEST
4 kit?

5 A May I refer to my notes?

6 Q Yes, please.

7 A I retrieved the evidence in this case on May 29th,
8 2014.

9 Q Can you recall who you retrieved it or how you
10 retrieved them?

11 A Again, I sent the e-mail down. Jennifer Aycock
12 responded to the e-mail and pulled the evidence for me out
13 of their evidence intake storage facility and I received
14 them personally from her.

15 Q After taking ownership or possession of that BEST
16 kit, did you take it with you to the lab?

17 A Yes, sir, it was brought up to our department,
18 which is a secure -- a secure laboratory within the
19 building and then it was placed within a secure vault
20 inside of the department.

21 Q Ultimately, did you conduct any testing on the
22 substances contained within that bag?

23 A Yes, sir.

24 Q Can you tell us a little bit about the testing
25 process?

Douglas Robinson - Direct Examination by Mr. Bell

1 A Certainly. After ensuring the seals are intact, I
2 will cut the bottom of the BEST bag to retrieve the
3 evidence from the packaging. At this point, I would
4 inventory the evidence, itemize accordingly. In this
5 particular case, there was a single item within the case.
6 The controlled substance or suspected controlled substance
7 would be removed from all packaging, a weight would be
8 taken prior to analysis. That way we record it and then a
9 sample would be taken for initial presumptive or indicative
10 testing and based on the results of the indicative testing,
11 a confirmatory followup test would be performed to identify
12 the substance to the exclusion of all known compounds.

13 Q In the ordinary course of your business, do you
14 generate a report that documents your findings of your
15 testing?

16 A Yes, sir.

17 Q And did you bring a copy of that report with you
18 today?

19 A Yes, sir.

20 Q May I please see a copy or your original?

21 (State's Exhibit Number 4 was marked for
22 identification.)

23 BY MR. BELL:

24 Q I'm handing you back what's been marked as State's
25 4. In the middle right-hand column of that report, there

Douglas Robinson - Direct Examination by Mr. Bell

1 appears to be handwriting; whose handwriting is that?

2 A That's mine.

3 Q Is that report something that you would typically
4 rely on for testimony in court?

5 A It is. This is a copy of the report that we
6 issued. The official hard copy is in our data base at
7 SLED, but this is a hard copy that I'm referring to testify
8 on in court, yes.

9 Q Now --

10 MR. BELL: Your Honor, at this time the State would
11 move State's 4 into evidence.

12 MR. MAULDIN: Subject to prior objections, Your
13 Honor.

14 THE COURT: State's 4 is in evidence subject to
15 previous objection.

16 (State's Exhibit Number 4 was entered into
17 evidence.)

18 BY MR. BELL:

19 Q Mr. Robinson, referring to State's 4 in front of
20 you, would you please walk us through your findings?

21 A Yes, sir. Item 1.1 described as evidence bag
22 containing a black plastic bag containing plastic sandwich
23 bag, containing plastic sandwich bag, containing compressed
24 powder substance, cocaine C-2 found in the sample tested,
25 one tested; net weight 137.43 plus or minus 0.01 grams,

Douglas Robinson - Direct Examination by Mr. Bell

1 2,120.81 plus or minus 0.15 grains; confidence level for
2 the weight is 99.7 percent.

3 Q Now, you mentioned in the description there was
4 some additional packaging. Do you know why the packaging
5 wouldn't be present in that BEST kit today?

6 A Yes, sir. When the evidence was received, there
7 were two analysis requests on it; one was for drug
8 analysis, the other was for latent print analysis. In
9 order to perform that, the drug evidence had to be removed
10 first, so it would come to us. I removed that packaging,
11 repackaged it and sent it back down to our Evidence Control
12 Department to be rerouted to the Latent Print Department
13 for analysis. After my analysis was over, the drug
14 evidence was resealed inside of the K-Pack that I referred
15 to. So, of course, the packaging had been separated out
16 and would be in another container.

17 Q And you mentioned cocaine C-2; what does C-2 mean?

18 A C-2 is a reference to the control status within the
19 South Carolina Law Code of the substance. A C-2 is a drug
20 that has a current medical use or medical use with severe
21 restrictions. It is a substance that is highly prone to
22 abuse and it's a substance that abuse of that substance can
23 lead to severe physical or psychological dependence.

24 Q You mentioned the weight as 137.43. How confident
25 are you in that result?

Douglas Robinson - Direct Examination by Mr. Bell

1 A I -- simply put; very confident. We have a -- a
2 range that we have a measurement of uncertainty and this
3 uncertainty takes into account any kind of human factor,
4 environmental factors and we apply that to every case. In
5 this case for a single weight on the scale that was used to
6 take this weight, that range of uncertainty was 0.01 grams.

7 Q After conducting your testing and generating this
8 report, what did you then do with the narcotic evidence?

9 A Once the initial prep work is done, the evidence is
10 sealed at that point. The further instrumental analysis
11 will take place at a later date. As soon as I'm done
12 physically handling the evidence, it's resealed and placed
13 back into the secure vault within our department that I
14 spoke of. I, at some point, once the case is completed and
15 a report has been issued, I will personally take the
16 evidence back down to the Evidence Control Department.

17 Q For clarity sake, would you please read into the
18 record the BEST kit number located on your drug report?

19 A The BEST kit control number is B242887.

20 Q And would you also please read the SLED Lab Number
21 located on your report?

22 A Yes, sir. The number is L-14-03715.

23 Q Please answer any questions defense may have for
24 you.

25 THE COURT: Thank you, Solicitor.

Douglas Robinson - Cross-Examination by Mr. Mauldin

1 Mr. Mauldin.

2 MR. MAULDIN: Thank you.

3 **CROSS-EXAMINATION**

4 BY MR. MAULDIN:

5 Q Mr. Robinson, how is your test different than say a
6 field test?

7 A Yes, sir. A field test is basically a presumptive
8 test that I talked about. This is actually how we start
9 our analysis is doing a presumptive test. Presumptive
10 tests do not identify compounds exclusively, but can give
11 you an idea of a possible drug or type of drugs you may be
12 dealing with. We use this to guide further analysis in our
13 confirmatory process. The field test is essentially that;
14 it's a presumptive test to give you an idea of what you
15 could be dealing with.

16 Q The field test is where a small amount is placed
17 in -- in a liquid to see if some kind of reaction occurs;
18 is that correct?

19 A That's one type of presumptive test, yes.

20 Q And the test that you finally used in regard to
21 this substance, what -- how did you do that, and how is it
22 different than placing it in the liquid and seeing the
23 reaction?

24 A Well, for example, in this particular case, the
25 type of presumptive test I used was a chemical spot test

Douglas Robinson - Cross-Examination by Mr. Mauldin

1 that gives a color reaction. The color reaction for a
2 positive cocaine in this case is a -- it's a two-part test
3 that gives you a blue and then the blue remains on addition
4 of the second chemical. That's considered a positive test
5 for cocaine hydrochloride.

6 Based on that we do a specific extraction, run that
7 on instrumentation in this case it's Gas Chromatography
8 Mass Spectrometry, GCMS.

9 THE COURT: Did you get that, Brenda?

10 Say that again.

11 THE WITNESS: Gas Chromatography Mass Spectrometry,
12 it's GCMS for short. Running it on this instrumentation
13 gives us essentially a molecular fingerprint. It gives us
14 a breakdown of the chemical structure that's unique to
15 cocaine in this particular case. It's just like a human
16 fingerprint in that they're specific to individual people.
17 No other compound is going to give us the same fingerprint
18 as cocaine would. So we can identify it specific to
19 cocaine and exclude other compounds.

20 BY MR. MAULDIN:

21 Q And how much of the sample did you use in your
22 test?

23 A We take an initial weight; we do not take a final
24 weight. So I don't have a specific number. It's a very
25 small amount though, somewhere in the neighborhood of

Douglas Robinson - Cross-Examination by Mr. Mauldin

1 probably 10 milligrams. So it's a very sensitive
2 instrument.

3 Q And -- and you talk about milligrams, your report
4 has grams and grains and grams is a metric measurement and
5 grains is like Old English measurement; is that correct?

6 A That's correct.

7 Q Kind of like meters versus yards?

8 A Well again, like you said, grams is a metric unit
9 that's generally practiced today. Grains is more in a
10 reference to Old English Common Law. It's still in law and
11 still used in weight thresholds for certain compounds. So
12 we include it in all of our reports.

13 MR. MAULDIN: No further questions, Your Honor.

14 THE COURT: Redirect, Solicitor?

15 MR. BELL: None, Your Honor.

16 THE COURT: Thank you. Thank you very much, Agent
17 Robinson, for being with us this afternoon.

18 Any objections to the officer being excused,
19 Solicitor?

20 MR. BELL: None from the State.

21 THE COURT: Mr. Mauldin?

22 MR. MAULDIN: No, Your Honor.

23 THE COURT: Again, thank you. Thank you for being
24 with us.

25 THE WITNESS: Thank you, Your Honor.

Justin Rogers - Direct Examination by Mr. Pogue

1 THE COURT: All right. Solicitor, you may call
2 your next witness.

3 MR. POGUE: Thank you, Your Honor. The State now
4 calls Justin Rogers to the stand.

5 THE COURT: All right. If you'll come up and be
6 sworn for us please.

7 JUSTIN ROGERS,
8 having been duly sworn, testified as follows:

9 THE CLERK: Have a seat please, sir. Once you're
10 seated, state your full name, spelling your last.

11 MR. MAULDIN: And, Your Honor, I do object to this
12 officer's testimony based on the previous objections.

13 THE COURT: All right. I would renew my previous
14 trial rulings. Thank you.

15 All right. Solicitor.

16 MR. POGUE: Did you say --

17 THE WITNESS: Justin Rogers. R-O-G-E-R-S.

18 **DIRECT EXAMINATION**

19 BY MR. POGUE:

20 Q Thank you, Corporal. Where are you currently
21 employed?

22 A I'm currently employed with the South Carolina
23 Highway Patrol.

24 Q And how long approximately have you been there?

25 A Approximately 10-and-a-half years.

Justin Rogers - Direct Examination by Mr. Pogue

1 Q And what are your -- what is your current
2 assignment or duties there at the highway patrol?

3 A My current assignment, I was assigned Corporal over
4 the Target Zero Team in the Upstate which includes all
5 Upstate counties and there are a lot of them. I got
6 promoted to Corporal in December of 2015.

7 Q And on the date that this incident occurred with
8 the defendant on March the 20th, 2014, what were your
9 current assignment or duties on that particular day?

10 A At that time, I was a Lance Corporal assigned to
11 the ACE Team which was the Upstate interdiction team
12 essentially. We were primarily tasked with highway --
13 highway drug interdiction, criminal patrol, to include drug
14 trafficking, money laundering, terrorists, weapons
15 violations, wanted fugitives, stolen vehicles, that
16 criminal element that basically utilizes the interstates in
17 this state.

18 Q And how did you initially become involved in this
19 particular case?

20 A We were in the Columbia area assigned to the I-20
21 corridor.

22 Q I apologize, when you say we, who are you referring
23 to?

24 A I'm sorry. Myself, Lance Corporal Harrison. We
25 also have a Low State Team that were out on the interstate

Justin Rogers - Direct Examination by Mr. Pogue

1 that day. I don't think they responded, but they were --
2 they were in the area. Myself and Lance Corporal Harrison
3 responded out to do traffic enforcement on the I-20
4 corridor. No specific direction as far as east or west, we
5 just came down to -- to do traffic enforcement on that
6 area.

7 Q When Lance Corporal Harrison pulled over the
8 defendant in this particular case, were you radioed or
9 contacted at all?

10 A I was. I don't -- I don't remember my exact mile
11 marker. I know I was headed westbound about where Lance
12 Corporal Harrison was pulled over was about the time that
13 we would typically start working. The unique thing with us
14 as a group, you know, with 6 years of doing this, we travel
15 as a group, we don't work outside of a five-mile radius,
16 just based on statistically through -- through the country.

17 What we do is more harmful than being a normal post
18 because we're looking for stuff that most people don't want
19 to find. So we always, it's pretty much within our unit,
20 we were only five miles away from each other, but I was
21 headed westbound when he radioed for me that day. He had a
22 car stopped and needed my assistance.

23 Q And why did Lance Corporal Harrison radio you?

24 A To come back him up, you know, and that's -- that's
25 pretty much par for the course as far as common with us.

Justin Rogers - Direct Examination by Mr. Pogue

1 Upon initial approach of the violator, sense any awareness
2 as far as extreme nervousness, odor of any type of illegal
3 narcotic, we're going to radio -- radio in for our closest
4 backup. That way we can at least have two, three, however
5 many working that day, most of the time we'll all respond
6 to the scene.

7 Q And when you arrived on the scene with Lance
8 Corporal Harrison and the defendant, what did you observe?

9 A Lance Corporal Harrison had the defendant outside
10 of the car back at his patrol vehicle positioned over to
11 the right, at the right-front fender.

12 Q And at that point, when you arrived on scene, did
13 you overhear or observe any dialogue or discussion that
14 took place between Lance Corporal Harrison and the
15 defendant?

16 A Not to my recollection, I don't recall anything
17 that -- that stood out.

18 Q What happened when you arrived on the scene?

19 A As backup, you know, I'm going to stay as far away
20 from him as far as Lance Corporal Harrison and his
21 conversation, roadside, you know having a conversation
22 whatever he has to explain as far as conducting his
23 business. I'm there to provide backup just in case
24 something goes wrong. I'm not necessarily going to get
25 involved in their conversation.

Justin Rogers - Direct Examination by Mr. Pogue

1 Q And what did Lance Corporal Harrison do next when
2 you arrived on the scene and you made contact?

3 A Once I arrived on scene, he pretty much concluded
4 his traffic stop and then proceeded to go ahead with a
5 probable cause search based on the odor of marijuana.

6 Q And did you observe Corporal, Lance Corporal
7 Harrison perform the search of the vehicle?

8 A Yes, sir, I did.

9 Q Okay. Lance Corporal Harrison have anything in his
10 hand when he initially approached the car or anything that
11 looked like that he could have possibly had on his person
12 that looked like the ID recovered from that particular
13 vehicle?

14 A No, sir.

15 Q Okay. When he actually -- did you actually see
16 Lance Corporal Harrison remove the article of drugs from
17 the actual car?

18 A Yes, sir, I did. There again, another element
19 with -- with us as the ACE Team, we have small hand
20 gestures where we spend so much time with each other, I
21 think we automatically know what we're thinking. So I
22 immediately knew when he come -- when he came out of the
23 back of the car and gave his sign, I knew that he had -- he
24 had found something that wasn't supposed to be there. The
25 reason we do that is just as far as officer safety. I want

Justin Rogers - Direct Examination by Mr. Pogue

1 to know what's going on just in case because if I'm
2 standing back there with the violator. So at that time,
3 when he gave me the signal, went ahead and placed him in
4 handcuffs.

5 After we secured him, he went back to the vehicle
6 and removed the contraband that was located in a plastic
7 bag, brought it back and presented it to the camera as far
8 as the roadside cameras as we always do.

9 Q At that particular point, did -- are you aware when
10 he brought these drugs to the hood of the car, were the
11 drugs ever field tested?

12 A No, sir.

13 Q You don't know whether the drugs were actually
14 tested on the scene?

15 A Yes, sir. Yes, sir, they were. I apologize.

16 Q Who tested the drugs?

17 A I field tested the powder substance which
18 field-tested positive for cocaine.

19 Q And after you field-tested the cocaine, at that
20 point, did you ever do any other search of the car, an
21 inventory search of any sort or did you ever observe the
22 contents of the vehicle itself?

23 A Myself, no. I did not, not to my recollection. I
24 know I field-tested the cocaine. There was a field weight
25 done.

Justin Rogers - Direct Examination by Mr. Pogue

1 Q Do you recall ever seeing any female articles of
2 clothing or effects or anything of that nature in the car
3 that you could see?

4 A No, sir, I didn't.

5 Q All right. Corporal, what is your background with
6 the South Carolina Highway Patrol and law enforcement in
7 general regarding trafficking in narcotics?

8 A I spent -- I came out of Patrol School in 2006. I
9 was assigned to the ACE Team in 2010, completed -- I had a
10 lot of training once I became an interdiction officer. I
11 had training in criminal organization, gang awareness,
12 criminal patrol training that was through the South
13 Carolina Criminal Justice Academy.

14 I had 32 hours of advanced highway patrol
15 interdiction through Desert Snow which is nationally
16 recognized specifically in dealing with highway drug
17 interdiction, 24 hours commercial motor vehicle training
18 through Atlanta HIDTA which is High Intensity Drug
19 Trafficking Association, it's a government entity. I had
20 investigation, 23 hours of investigation into Mexican Drug
21 Cartels in 2010, 30 -- 30 hours of training in state
22 proactive criminal patrol techniques through National
23 Criminal Enforcement Association, Law Enforcement Ethics
24 Training, 32 hours of advanced commercial motor vehicle,
25 commercial criminal interdiction through DIE, which is

Justin Rogers - Direct Examination by Mr. Pogue

1 another DOJ funding Department of Justice through the
2 Federal Government. I have 72 hours of associate
3 instruction throughout the State of South Carolina to
4 basically teach how to complete traffic stops to other
5 police departments and that was within the highway patrol.

6 I was recognized as an expert witness in the field
7 of drug trafficking in 2012 before The Honorable Judge
8 McIntosh of the Tenth Judicial Circuit here in South
9 Carolina. 31 hours proactive patrol techniques, criminal
10 investigation in hidden compartments through NTA. I was
11 recognized again as an expert witness in the field of drug
12 trafficking before The Honorable Judge Sharrett in the
13 Sixth Judicial Circuit of the Commonwealth of Virginia in
14 April of 2013. 2014 more proactive patrol techniques in
15 hidden compartments, 16 hours of completing traffic stops
16 in hidden compartments that was done by Sheriff Mike Lewis
17 out of Maryland.

18 I was a graduate in Narcotics Commander School
19 posted or assigned to the U.S. Attorney's Office in HIDTA
20 Group in 2015. Seizures primarily cocaine and crack,
21 ecstasy, heroin, money, vehicles, cumulative numbers there's
22 a lot there.

23 Q I appreciate it, Corporal Rogers. That's quite a
24 background. I believe you touched on this, but you said
25 you have been qualified as an expert before in trial?

Justin Rogers - Direct Examination by Mr. Pogue

1 A Yes, sir, I have.

2 Q In what particular areas was it again that you were
3 actually qualified?

4 A Drug trafficking.

5 MR. POGUE: Your Honor, at this time, the State
6 would move to have Corporal Rogers qualified as an expert
7 in the area of narcotics trafficking?

8 THE COURT: All right. Mr. Mauldin?

9 MR. MAULDIN: I have no objections to the
10 qualification, Your Honor, but I would have the continuing
11 objection as to the subject.

12 THE COURT: All right. Again, ladies and
13 gentlemen, you recall normally a person cannot testify to
14 opinion testimony. They cannot give an opinion. Normally
15 a person has to testify as to what they either saw, heard,
16 sensed by smell, something of that nature. However, the
17 witness can be qualified. There is that exception for
18 witnesses who are called expert witnesses if they have
19 sufficient training, experience in a particular art,
20 science, profession, field or craft.

21 This witness, Corporal Rogers, will be qualified as
22 an expert witness in the field of drug and narcotic
23 trafficking to give opinion testimony in that area and the
24 basis for those opinions. That does not mean you must
25 accept the opinion. However, it is evidence for you, the

Justin Rogers - Direct Examination by Mr. Pogue

1 jury, to use in any way you deem appropriate.

2 Thank you. Solicitor, you may continue.

3 MR. POGUE: Thank you, Your Honor.

4 BY MR. POGUE:

5 Q Corporal Rogers, in your experience, are cars --
6 are rental cars commonly used in drug trafficking?

7 A Yes, rental cars are commonly used primarily
8 because of the distance factor. It's what we kind of look
9 at as far as the deniability factor. What you have there
10 is I think the mentality is if it's rented by somebody and
11 they're driving it, then they don't know anything about
12 what's in the car. So they have that deniability factor
13 from the get go.

14 You also have the -- the other thing that comes
15 into the equation there is -- there's no way that they're
16 going to lose their property as far as personal property.
17 We're not going to seize a rental car because it doesn't
18 belong to them. So particularly you're not going to see an
19 individual, whether that's a rental car or whether that's a
20 personal POV, which would be somebody's personal vehicle.
21 The majority of the time, they're not -- they're not going
22 to be operating those.

23 Q Thank you. Under South Carolina Law --

24 THE COURT: Speak up a little bit for me please,
25 sir?

Justin Rogers - Direct Examination by Mr. Pogue

1 MR. POGUE: Thank you, Your Honor.

2 BY MR. POGUE:

3 Q Under South Carolina Law, are you aware of whether
4 cars that are involved in drug trafficking can be seized in
5 certain cases?

6 A Yes, in certain cases, absolutely, depending on
7 what -- on the threshold.

8 Q But if a drug trafficker uses a rental car, would
9 that car be able to be seized?

10 A No.

11 Q Okay. Is it -- have you found it in your past
12 experience, it to be a common occurrence that the actual
13 person who is arrested for drug trafficking was the person
14 who rented the rental car is your past experience?

15 A I -- my experience of 6 years, no. I would say a
16 small percentage, very small percentage of the individuals
17 that -- that myself or anyone on the team has cross paths
18 with as far has signed their name on the dotted line for
19 the car.

20 Q And you were present in the courtroom when Agent
21 Robinson testified, the Chemical Analyst, testified to the
22 weight of the cocaine that was recovered from the car?

23 A Yes, sir.

24 Q And I believe Agent Robinson testified it was a
25 137.43 grams of cocaine?

Justin Rogers - Direct Examination by Mr. Pogue

1 A Yes, sir.

2 Q Are you familiar with wholesale and retail values
3 of cocaine in this particular area of the country?

4 A Yes, sir, in the Southeast Region, I am and that is
5 a lot depending upon the area that we're in. We are
6 looking at especially the I-20 corridor and I-85 corridor,
7 which is what we primarily deal with out of the Upstate
8 Team. Prices are going to vary coming -- coming from where
9 they come from.

10 Q What -- what would be in your estimation the
11 wholesale value of the cocaine that was recovered in this
12 particular case?

13 A Wholesale value, you know, you could -- you could
14 safely say if you broke it down by the ounce anywhere from,
15 you know, 800 to 1500. Most of the time, when you're --
16 when you're dealing with -- that's the thing about the drug
17 trade, every step you go somebody's got to make some money
18 and it's what we refer to as hookups; the more you buy the
19 cheaper we can get it to you in bulk, so low side for 5
20 ounces in this area around 4,000.

21 Q And what would the street value of this particular
22 amount of cocaine that was recovered in the defendant's
23 car?

24 A All depending upon how it's broke down. There
25 again, there's a lot of things that come into factor.

Justin Rogers - Direct Examination by Mr. Pogue

1 You're talking about almost 5 ounces, maybe 3 grams short
2 of 5 ounces. It's going to be -- it's going to be cut, so,
3 you know, the profit -- the profit margin is high.

4 Q Cut, what does that mean?

5 A Based on when you take a purity level of cocaine,
6 which as far as it being cut, it's a one-to-one ratio. So
7 you've got the one ounce of cocaine; that means that you
8 could possibly potentially cut it with one ounce of a -- of
9 a non-cocaine substance that they're still going to get the
10 effects of the cocaine, but you just basically doubled your
11 profit. There again, if you do the breakdown of if that 5
12 ounces is going to be sold in primarily 5 ounces, is it
13 going to be broken down into half ounces? Is it going to
14 be broken down into quarters?

15 Street level most commonly 8 balls, which are 3.5
16 grams or if you break it down into grams. If you break it
17 down and you sell 5 ounces or 137 grams at -- by the gram,
18 you know, high side you're talking about over \$14,000 that
19 you stand to, you know, so you're -- you're roughly
20 profited about 10 grand.

21 Q What is the basis for these numbers that you --
22 that you come up with or that you're familiar with; like
23 how do you --

24 A All the numbers are based -- they're based on, you
25 know, we, as far as drug enforcement administration, and I

Justin Rogers - Direct Examination by Mr. Pogue

1 think I left that out too, because I'm titled to the DEA
2 and Homeland Security, I serve as a task force officer for
3 both of those federal agencies, but DEA Atlanta Field
4 Office, which is our southeastern region is what we base
5 all of our -- as far as southeastern region prices.

6 In this case, this instance, whether we're on I-20
7 or I-85 those are kind of off the board. The next stop
8 it's going to make is going to be Atlanta and then from
9 Atlanta, it's going to be on north. The further north it
10 goes, the greater the price increases whether that's for
11 the street level dealer or whether that's for the
12 wholesaler. These -- these prices are based off of the
13 Atlanta Office standards. They reflect the best estimates
14 of the analysis in that Atlanta Field Division.

15 The prices are estimates based primarily on field
16 reports, interviews with law enforcement agencies
17 throughout the division, the height of drug and non-drug
18 intelligence sources and seizure analysis. So, you know,
19 and especially on those post-seizure analysis, a lot of the
20 information comes back to us inside law enforcement from
21 the subjects that are arrested.

22 Q Let me ask you this, Corporal Rogers, in your
23 experience and your background, do drug traffickers
24 typically leave what you estimated on a conservative level
25 at street value of \$10,000 worth of cocaine lying around in

Justin Rogers - Cross-Examination by Mr. Mauldin

1 the back of a rental car, unguarded and unaccounted for?

2 A No, it doesn't happen. I -- I, you know, it
3 doesn't happen. You know, you're talking about somebody
4 that will guard your life, you know, for 5 grams of it. So
5 to have a 137 grams sitting in the floorboard of a car;
6 it's not going to happen.

7 Q Are you aware of what was ultimately charged in
8 this particular case?

9 A Yes.

10 Q What was that?

11 A The trafficking of cocaine greater than 100 grams.

12 Q And you saw the cocaine on -- on the side of the
13 road. Did that appear to you to be a little bit of cocaine
14 or was that a large amount?

15 A It's a substantial amount.

16 Q No further questions. Please answer any questions
17 that the defense Counsel may have.

18 THE COURT: Thank you, Solicitor.

19 Mr. Mauldin.

20 MR. MAULDIN: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. MAULDIN:

23 Q Now, everybody that rents a car is not a drug
24 dealer, right?

25 A No, sir.

Justin Rogers - Cross-Examination by Mr. Mauldin

1 Q And everybody that drives a rental car is not a
2 drug dealer?

3 A No, sir.

4 Q Now, is the cocaine in this case, you testified
5 about value. You have no idea how pure that cocaine is, do
6 you?

7 A No, sir, I don't have the purity levels.

8 Q So it could be 100 percent pure possibly?

9 A Doubtful but --

10 Q Doubtful or it could -- it could have been cut
11 several times already; you have no idea?

12 A Due to it being in powder form, you know, that
13 would be hard to say as far as if it has been cut.

14 Q So you have no idea what the purity level -- you
15 have no idea of what the percentage of cocaine is in that
16 bag versus stuff that is cut; is that correct?

17 A No, I do not have the purity levels.

18 Q And so you're just guesstimating as to how much
19 that would be worth based on the pure cocaine status first
20 and then the higher number, the 14,000 after it had been
21 cut or --

22 A No, sir, I'm basing that off of the total weight
23 that was tested through SLED because I'm sure that he
24 doesn't know the purity level or whoever had the cocaine.

25 MR. MAULDIN: Objection to that, Your Honor.

Justin Rogers - Cross-Examination by Mr. Mauldin

1 THE COURT: Just -- I'll strike that from the
2 record. You didn't make that motion. That was not
3 prejudicial in any manner, but I'll strike that from the
4 record.

5 Which means ladies and gentlemen, do not consider
6 that remark, he doesn't know, in your deliberations and
7 your determination of the guilty or innocence of the
8 defendant in this case.

9 All right. You may ask your next question.

10 MR. MAULDIN: I believe that's all the questions I
11 have?

12 THE COURT: Redirect, Solicitor?

13 MR. POGUE: No, sir, Your Honor.

14 THE COURT: Thank you. Thank you very much,
15 Corporal, for being with us this afternoon. I appreciate
16 it. You may step down.

17 Any objections to this officer being excused if he
18 needs to be?

19 MR. BELL: None, Your Honor.

20 THE COURT: Mr. Mauldin, any objection to Corporal
21 Rogers being excused?

22 MR. MAULDIN: No, Your Honor.

23 THE COURT: All right. Thank you.

24 All right. Solicitor, you may call your next
25 witness.

1 MR. BELL: Your Honor, at this time the State would
2 rest its case.

3 THE COURT: All right. Thank you. Thank you very
4 much.

5 All right. Ladies and gentlemen, as you've heard,
6 the State has now rested. Perhaps now would be a good time
7 for us to take a little respite. So we'll take about a 20
8 minute recess. I would ask you to please step into your
9 jury room. Do not discuss the case during this brief
10 recess. Thank you. Thank you very much.

11 (The jury left the courtroom at 3:19 p.m.)

12 THE COURT: All right. Motions, Mr. Mauldin?

13 **MID-TRIAL MOTIONS**

14 MR. MAULDIN: Thank you, Your Honor. At this time,
15 on Mr. Michaux's behalf, I'd move for a directed verdict in
16 this case, taking the evidence in the light most favorable
17 to the State, they have not submitted a case to be able to
18 present it to the trier of the fact. And I also would base
19 the motion on all of my previous objections.

20 THE COURT: All right. As to your previous
21 objections, I would renew all my prior trial rulings and
22 pre-trial motions and evidentiary ones.

23 All right. Solicitor, you care to respond to the
24 motion for directed verdict?

25 MR. BELL: Your Honor, I believe the State has put

1 forth both physical evidence as well as testimonial
2 evidence that does provide enough of a factual basis for a
3 jury to consider the guilt or innocence of the accused, we
4 do not believe this should come to a directed verdict.

5 THE COURT: Thank you. Anything in response, Mr.
6 Mauldin?

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: Thank you. Thank you very much.

9 At this stage, on a motion for directed verdict,
10 the trial court is concerned with the existence of the
11 evidence, not with its weight. When the evidence presented
12 merely raises a suspicion of the accused guilt, the trial
13 court should not refuse to grant the directed verdict
14 motion. However, the trial court must submit the case to
15 the jury if there is any substantial evidence which
16 reasonably tends to prove the guilt of the accused or from
17 which his guilt may be fairly and logically deduced.

18 In ruling on the motion for directed verdict, the
19 trial court must view the evidence in the light most
20 favorable to the State. My duty is not to weigh the
21 plausibility of explanations, rather assess whether in the
22 light most favorable to the State, there was substantial
23 circumstantial evidence from which the jury could infer the
24 defendant's guilt.

25 This particular case occurred in Lexington County

1 on 20 March, 2014. The defendant, Mr. Michaux, was stopped
2 properly by an officer of the South Carolina Highway
3 Patrol. Among other factors, the Court considers the odor
4 of marijuana, the smell of marijuana, the air fresheners,
5 the tobacco shavings, the nervousness -- and extreme
6 excited nervousness of Mr. Michaux. Upon searching the
7 vehicle, the officer found Mr. Michaux not only being the
8 driver, but the sole occupant, the officer found a package
9 in a black plastic small trash bag containing therein what
10 he thought or felt would be some type of powdery substance,
11 perhaps cocaine or heroin. It was field tested cocaine.
12 It was presumptive tested by SLED, cocaine and affirmed
13 tested by SLED, cocaine, 137.43 grams.

14 Based on the totality of all the evidence and the
15 circumstances, I would respectfully deny the motion for a
16 directed verdict.

17 Any other motions, Mr. Mauldin?

18 MR. MAULDIN: No, Your Honor.

19 THE COURT: All right. Mr. Michaux, if you'd come
20 around to the podium for me please?

21 MR. MAULDIN: Could I take a brief break.

22 THE COURT: Sir?

23 MR. MAULDIN: Could I take a brief break?

24 THE COURT: I'm going to sit right here while you
25 take it.

1 MR. MAULDIN: Yes, sir.

2 THE COURT: Thank you.

3 (There was a pause in the proceedings.)

4 THE COURT: All right. Mr. Michaux, would you come
5 around here to the podium for me please. I believe Mr.
6 Mauldin has returned.

7 Madam Clerk, will you place Mr. Michaux under oath.

8 THE CLERK: Yes, Your Honor.

9 RONALD DOUGLAS MICHAUX, JR.

10 having been duly sworn, testified as follows:

11 THE COURT: Mr. Michaux, I need to go over a few
12 things with you. I do this with everyone who is on trial
13 and I always have their responses under oath. We've
14 reached the stage of the trial where the State has rested
15 and your side, the defense, now has the opportunity to
16 present evidence for the jury to consider.

17 Do you understand where we are at in the trial?
18 Speak up for me please?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In that regard, you -- you may call
21 witnesses to testify on your behalf. If you choose to
22 testify yourself, you may do so; do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: No one can force you to testify. You
25 have the absolute right to remain silent and if you choose

1 not to testify, I will tell this jury that they cannot hold
2 your silence against you in any way whatsoever. I will
3 tell them they are not to even discuss that in the jury
4 room; do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If your side offers no evidence at all,
7 in other words, if neither you or anyone on your behalf
8 testifies or offers any exhibits, then your attorney, Mr.
9 Mauldin, will get to make the last argument to the jury.
10 Otherwise, the prosecutor gets to make the last argument;
11 do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Mauldin, Solicitor, does Mr.
14 Michaux have a prior criminal history that would subject
15 him to impeachment under Rule 609.

16 MR. BELL: I beg the Court's indulgence for one
17 moment.

18 Your Honor, in 2000 he pled to common law robbery
19 and breaking and entering and in 2007 has a possession of
20 stolen vehicle conviction. All other convictions on his
21 record are narcotic related. However, should the door be
22 opened, we certainly would attempt to impeach with the
23 three prior charges mentioned.

24 THE COURT: So are you suggesting that the 2000
25 common law robbery and the 2007 possession of a stolen

1 motor vehicle are admissible?

2 MR. BELL: I do believe they would qualify as
3 dishonesty, Your Honor, and Your Honor, it does fall
4 outside of the 10-year window. However, we do feel that it
5 would be more probative than prejudicial.

6 THE COURT: I thought that was a pretty well shut
7 window, Mr. Mauldin?

8 MR. MAULDIN: I believe so, Your Honor. I believe
9 so, Your Honor. I believe the 2000 convictions that he
10 mentioned would be too remote according to the rule and no
11 written notice was given as far as them seeking to use
12 convictions outside of the 10-year prohibition and the rule
13 the use of prior convictions.

14 The 2007 stolen motor vehicle, this being 2016 does
15 fall within the 10 years. However, I would move that that
16 be excluded as being remote and I believe the State is
17 conceding that the drug charges, the prejudice would
18 outweigh the probative value of them.

19 THE COURT: Did you receive notice, Mr. Mauldin?

20 MR. MAULDIN: No, sir.

21 MR. BELL: The State will stipulate we did not
22 serve notice on this issue.

23 THE COURT: All right. As far as the common law
24 robbery from 2000, I would find that it would not be
25 admissible under 609(b). What is that, I want to say

1 Kojak; what is it, Broadnax, Judge Cooper's case in
2 Richland County on the armed robbery analysis?

3 MR. BELL: The name escapes me.

4 THE COURT: I know it's not Kojak. I think it's
5 Broadnax, but I'm not sure. What is that analysis where
6 they decided -- didn't they decide armed robbery wasn't a
7 crime of dishonesty?

8 MR. MAULDIN: I believe so.

9 THE COURT: Who knew that, I mean, who didn't know.
10 Who didn't know? Let me see if I can find it.

11 I'm trying to figure the analysis of the possession
12 of a stolen motor vehicle versus grand larceny. I don't
13 know the answer to that question: Is it a crime of
14 dishonesty. Let's see how they handled that in this -- if
15 I can.

16 I'm going to move on with some other questions of
17 Mr. Michaux and then I'm going to come back to settle your
18 record.

19 Looking at the Court of Appeals decision and the
20 Supreme Court decision 779 S.E. 2d 789 and Broadnax was
21 armed robbery. They overruled a case called Ahlamean and
22 state that exception contained in Rule 609(a)(2) which
23 permits the automatic admission of certain prior
24 convictions swallows the rule contained in 609.1 in which
25 discretion regarding the admission of prior conviction

1 rests with the trial judge. Thus we hold that for
2 impeachment purposes crimes of dishonesty or false
3 statement are crimes in the nature of *crimen falsi*
4 c-r-i-m-e-n, first word, f-a-l-s-i, that bear upon a
5 witness's propensity to testify truthfully.

6 So I think I have to analyze it under 609(a)(1)
7 where it talks about (a)(2) the whole set of rules that one
8 who had been convicted of a crime belonging to that class
9 of crimes known as *crimen falsi* was said to infamous and
10 incompetent to testify. I think of course the Court of
11 Appeals talked about there had to be more than just the
12 fact of the conviction itself.

13 The Court of Appeals said they were factors one
14 could look at citing State v. Ryan. The impeachment value
15 of the prior crime, the point in time of the conviction and
16 the witness's subsequent history, the similarity of the
17 past crimes to the charged crime, and the importance of the
18 defendant's testimony and the centrality of the credibility
19 issues.

20 It's within my discretion, the 2007 possession of a
21 stolen motor vehicle that the probative value of admitting
22 that would not outweigh the prejudicial effect. So I will
23 not allow the possession of a stolen motor vehicle. The
24 other is out of the time frame. So does that leave any
25 record? Impeachment records?

1 MR. BELL: Not unless the door is opened, Your
2 Honor.

3 THE COURT: Thank you.

4 All right. Next, Mr. Michaux, the decision about
5 whether you testify or not is your decision to make and
6 yours alone. I expect that you have conferred with your
7 attorney and perhaps others whose opinions you value on
8 life's important decisions, but the decision about whether
9 you testify or not is your call to make, your decision; do
10 you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anyone exercised any undue
13 influence over you to get you to testify or not testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you suffer from any physical or
16 mental problems that affect your thinking today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have any questions you would
19 like to ask me about your right to testify or not testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. We're going to take about a
22 10 minute recess. You can talk with your attorney during
23 that recess and upon our return, I'll ask you what your
24 decision is, okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Thank you.

2 Court will be in recess for 10 minutes.

3 (A brief recess was observed.)

4 THE COURT: All right. Mr. Michaux, if you can
5 come back around to the podium for me please, you and Mr.
6 Mauldin.

7 Have you had an opportunity to speak with your
8 attorney concerning the matter of your right to testify or
9 not testify.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you made a decision?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that decision made of your own free
14 will and accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is it your decision?

17 THE DEFENDANT: Yeah, mine.

18 THE COURT: And yours alone? And yours alone?

19 THE DEFENDANT: Yeah.

20 THE COURT: All right. And what is your decision?

21 THE DEFENDANT: I ain't going to testify.

22 THE COURT: All right. All right. Thank you.

23 Thank you very much.

24 Mr. Mauldin, does the defense intend to present any
25 evidence or testimony?

1 MR. MAULDIN: No, Your Honor.

2 THE COURT: All right. Then I intend to bring the
3 jury out and advise them -- well I'll tell them you have a
4 right to and ask you if you are; you don't have to prove
5 anything and things like that. Do y'all want to argue and
6 charge today?

7 MR. BELL: I'm at the Court's will, Your Honor.

8 MR. MAULDIN: I'd prefer to do it tomorrow morning
9 and truthfully, Your Honor, it's four o'clock and we don't
10 know how late it's going to be and how late the jury will
11 be.

12 THE COURT: All right. Well I let trial lawyers
13 try their cases. Have you had any updates on Mr. Michaux's
14 bond?

15 MR. MAULDIN: No, we have to call Ms. Wilson, my
16 paralegal, regarding that.

17 THE COURT: Speak to your lawyer and -- speak to
18 your lawyer.

19 MR. MAULDIN: Let me go check with my paralegal or
20 do you care to do the jury first?

21 THE COURT: No, no. You can go on and check
22 because that's -- that's going to be a decision I'm going
23 to have to make momentarily.

24 (There was a pause in the proceedings.)

25 THE COURT: I tell you what, let me go on and take

1 care of the jury --

2 MR. MAULDIN: Yes, sir.

3 THE COURT: -- rather than...

4 (The jury entered the courtroom at 3:59 p.m.)

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen of the jury, as you heard before the break, the
7 State has rested. You've heard all the evidence and all
8 the testimony you're going to hear in the trial of this
9 case from the State in its case in chief.

10 The defense, Mr. Michaux, certainly has the right
11 to present evidence and testimony on his behalf if he
12 chooses to do so. As you recall previously, I informed you
13 that a criminal defendant has no burden of proving himself
14 or herself innocent. A criminal defendant, regardless of
15 the seriousness of whatever the charge may be, is always
16 presumed to be innocent of the crime charged in South
17 Carolina. However, they may present evidence and testimony
18 if they choose to do so.

19 So we will turn our attention to Mr. Mauldin and
20 ask, does the defendant intend to present any evidence or
21 testimony in this case, Mr. Mauldin?

22 MR. MAULDIN: Your Honor, at this time, the defense
23 would rest.

24 THE COURT: All right. The defense has now rested.
25 You have now heard all the evidence and all the testimony

1 you're going to hear in the trial of this case.

2 We are at the point in the proceedings of the
3 closing arguments by the attorneys and the instruction on
4 the law by the Court and then the submission of the case to
5 the jury for its deliberation and its verdict. Our Supreme
6 Court frowns, and I don't think I use that term very
7 lightly when I say frowns, upon trial judges starting
8 closings and the arguments and the charge and submission of
9 the case to the jury after four o'clock, after 1600 hours.

10 I do not want you to think that I extended y'all's
11 recess to get to four o'clock or 1600 hours. There were
12 certain matters I have to take up at certain points in the
13 trial outside of your presence in order to track the time
14 they may take. With that being said, we're going to take
15 our evening recess and start back in the morning promptly
16 at 9:30 with closing arguments by the attorneys,
17 instruction on the law by the Court, and submission of the
18 case to you for your deliberation and your verdict.

19 I would remind you, do not discuss this case with
20 anyone, your fellow jurors, family, friends or anyone else.
21 Do not read, watch, or listen to any news reports about the
22 case, should there be any. Do not do any independent
23 research or any research on the internet or otherwise. You
24 decide the case based on evidence and testimony heard in
25 the courtroom and the law I tell you the law is. I'm sure

1 all of you can repeat that back to me by now.

2 With that being said, you're excused until 9:30 in
3 the morning. I hope you have a pleasant evening. Thank
4 you. Thank you very much. You're now excused.

5 (The jury left the courtroom at 4:04 p.m.)

6 THE COURT: Any specific requests to charge,
7 Solicitor?

8 MR. BELL: I don't believe so, Your Honor.

9 THE COURT: Mr. Mauldin?

10 MR. MAULDIN: Mere presence, Your Honor.

11 THE COURT: Mere presence usually goes hand in hand
12 with -- I didn't mean this as a pun, but hand in hand with
13 the hand of one is the hand of all. That's usually
14 imbedded in -- mere presence is typically imbedded in the
15 hand of one hand of all charge. You want a separate and
16 distinct mere presence charge; wouldn't that be covered by
17 active or constructive possession?

18 Give me a copy of the charge you want; just e-mail
19 it to my law clerk and let me look at it.

20 MR. MAULDIN: Yes, sir, I will do that.

21 THE COURT: I'll look at it and I'll let you know.

22 And have you been able to -- I know you have been
23 out the courtroom, you been able to follow up on his bond;
24 I saw you writing something, I saw one of the family
25 members go out I thought.

1 (The defendant starts speaking to the Court.)

2 THE COURT: Speak to your attorney. I don't mind
3 talking to you, Mr. Michaux, but the law requires that
4 there's really no hybrid-representation and I have to speak
5 with your attorney. I'm not trying to be disrespectful to
6 you in any manner whatsoever.

7 MR. MAULDIN: I've got another phone number from
8 the company. I'd like to try that, Your Honor.

9 THE COURT: All right. You may step down.
10 And, Solicitor, y'all may be excused, unless you
11 want to wait. I'm going to address his bond issue.

12 MR. BELL: Thank you, Your Honor.

13 THE COURT: If he can get a bond in place, I'm
14 going to address it.

15 MR. BELL: Yes, sir.

16 (There was a pause in the proceedings.)

17 THE COURT: Okay. All right. You got an update,
18 Mr. Mauldin?

19 MR. MAULDIN: Yes, Your Honor. Mr. Michaux was
20 originally bonded out by Metro Bonding Company with Diane
21 Carillo, who is a Bondsman in North Carolina and affiliated
22 with down here. She has since separated from Metro, the
23 local company, but she is still on Mr. Michaux's bond. I
24 was able to contact her by phone and she said that she's
25 willing to stay on his bond and she also sent an e-mail to

1 my paralegal that says the same that they do not oppose him
2 to remain on bond with the company. He's kept in contact
3 with them on a regular basis and informs them of any
4 changes with his address or phone numbers.

5 And I will state, Your Honor, he has, even being in
6 North Carolina, has come to any appearance dates and showed
7 yesterday -- Monday and yesterday and today.

8 THE COURT: All right. Solicitor?

9 MR. BELL: No objection, Your Honor, so long as Mr.
10 Michaux understands that if he does fail to return that we
11 will continue in his absence.

12 THE COURT: All right. Mr. Michaux, stand up for
13 me please.

14 Do you understand where we're at in the trial of
15 this case?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Closing arguments tomorrow and
18 instructions on the law by the Court and then the verdict;
19 you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand if you don't return
22 tomorrow, the trial is going to continue in your absence?

23 THE DEFENDANT: They give me a paper a while ago
24 saying if I didn't -- that's why I've been to court every
25 time they told me I needed to come.

1 THE COURT: I just want you to understand.

2 THE DEFENDANT: Yeah, I understand.

3 THE COURT: If you do not -- if you're not here by
4 9:30 in the morning, the trial will proceed in your absence
5 and if the jury were to return a guilty verdict, I would
6 sentence and seal that sentence in your absence; do you
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So what time you going to be here by in
10 the morning?

11 THE DEFENDANT: Nine o'clock. The same time I was
12 here this morning, Nine o'clock.

13 THE COURT: And I'm amending the bond and the
14 amendment of the bond is you are ordered not to leave the
15 State of South Carolina. So you're going to have to stay
16 somewhere locally tonight. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And I assume you'll do that on your own
19 rather than me putting you up in the Lexington County
20 Detention Center, correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So if you leave the State of South
23 Carolina tonight, that will be a violation of your bond; do
24 you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. This don't happen often.

2 THE DEFENDANT: I mean you told me, sir.

3 THE COURT: Don't you let me down. You be here in
4 the morning.

5 THE DEFENDANT: I'll be here at Nine o'clock.

6 THE COURT: All right. All right. Thank you.

7 Thank you very much.

8 Anything further, Mr. Mauldin?

9 MR. MAULDIN: No, Your Honor.

10 THE COURT: Solicitor?

11 MR. BELL: No, Judge.

12 THE COURT: All right. Court will be in recess
13 until 9:30 in the morning. Thank you.

14 (Court was in recess for the evening.)

15 **THURSDAY, MAY 19, 2016**

16 THE COURT: All right. Mr. Mauldin, give me an
17 update on Mr. Michaux?

18 MR. MAULDIN: I attempted his phone number, Your
19 Honor, and it went straight to voicemail and the voice
20 mailbox was full. I called my office and tried to have
21 them attempt to contact him as well and I have not heard
22 back from the office.

23 THE COURT: Do you know whether he stayed locally
24 last night?

25 MR. MAULDIN: No, sir.

1 THE COURT: Do you have his phone number?

2 MR. MAULDIN: Yes, sir.

3 THE COURT: Madam Clerk, issue a Bench Warrant for
4 Mr. Michaux's arrest.

5 Sheriff, find out if Shannon Dykes is working.

6 THE OFFICER: Yes, sir.

7 THE COURT: If he is, radio a member of the
8 fugitive task force and I would like him over here.

9 THE OFFICER: Yes, sir.

10 THE COURT: When they get that cell number, they
11 can get an order for me to sign to track that phone.

12 THE OFFICER: Yes, sir.

13 THE COURT: You know all about that.

14 THE OFFICER: Yes, sir.

15 THE COURT: Whoever -- whoever's working on the
16 fugitive task force.

17 THE OFFICER: Yes, sir.

18 THE COURT: Have them to come up here and have them
19 to go on and do that warrant.

20 THE OFFICER: Yes, sir.

21 THE COURT: Will you provide that number or I'll
22 put it to you like this. I'm ordering you to provide that
23 number.

24 MR. MAULDIN: Yes, sir, Your Honor. Court Order.

25 THE COURT: Yes, sir. All right. Thank you.

1 Now the next thing is, you want to proceed with
2 closings?

3 MR. MAULDIN: Well, Your Honor, at this time the
4 defense would request a mistrial and that the bench
5 warrant -- Your Honor has issued a bench warrant for the
6 trial to proceed. Second, I think Mr. Michaux's presence
7 would important for his right to a jury trial under the
8 Sixth Amendment to the U.S. Constitution, Article 1,
9 Section 14 of the State Constitution.

10 THE COURT: Well, a mistrial is based on manifest
11 necessity. It's not based on a self-inflicted wound. Mr.
12 Michaux was clearly informed of his duties and
13 responsibilities. I allowed him to remain out on bond
14 against my gut instincts, not as to Mr. Michaux
15 specifically, but generally as to individuals facing that
16 serious amount of punishment. So I would deny the motion
17 for a mistrial.

18 MR. MAULDIN: Your Honor, I would request an
19 instruction to the jury that the jury is not to infer
20 anything negative from his absence.

21 THE COURT: All right. Solicitor?

22 MR. BELL: No objection on that, Your Honor.

23 MR. MAULDIN: And that they're not to discuss it in
24 deliberation.

25 THE COURT: All right. This goes in the category

1 of no good deed goes unpunished.

2 How long do y'all need to argue, Solicitor?

3 MR. BELL: Your Honor, I think 20 minutes would be
4 sufficient.

5 THE COURT: Mr. Mauldin?

6 MR. MAULDIN: Probably either that or less.

7 THE OFFICER: Ye, sir, I spoke with Lieutenant
8 Blackmon; he's with Sergeant Sellers. They're working on
9 it now. He says they'll be over here in just a little bit.

10 THE COURT: All right. Thank you. Thank you,
11 Sheriff.

12 THE OFFICER: Yes, sir.

13 THE COURT: All right. Bring us our jury.

14 MR. MAULDIN: Your Honor, may I actually provide
15 them with the phone number now so they don't have to come
16 to the courtroom?

17 THE COURT: Sure.

18 THE CLERK: Your Honor, I've got the Solicitor's
19 Office drafting up the bench warrant. As soon as they get
20 it, Jerry's going to bring it up here to me.

21 THE COURT: All right. Let's see, the form that we
22 follow is you close -- the Solicitor closes, and then Mr.
23 Mauldin; is that correct?

24 MR. BELL: Yes, Your Honor.

25 MR. MAULDIN: Yes, sir.

1 THE COURT: When does that new rule go into effect?

2 MR. BELL: Your Honor, I believe it was actually
3 struck down.

4 THE COURT: Oh really; it didn't go through the
5 Legislature.

6 MR. BELL: Correct, Judge.

7 THE COURT: Cool. I didn't know that ever
8 happened. Wonder if that's ever happened in the past? I
9 thought it was kind of rubber stamped. I guess some of the
10 trial lawyers over there didn't like it.

11 MR. BELL: I think it was more than a few, Judge.

12 THE COURT: Well, there's not too many over there
13 though. I mean, trial lawyers, there's not too many
14 lawyers in the legislature any more. I didn't -- I didn't
15 realize that. I didn't track it.

16 MR. BELL: I think both prosecutors and defense
17 attorneys were both against it. I think it was kind of a
18 unified front.

19 THE COURT: It would have kicked up a lot of
20 appellate issues probably, I thought.

21 Sheriff, if Mr. Michaux should come in or be seen
22 around the courthouse, take him into custody.

23 THE OFFICER: Yes, sir.

24 (The jury entered the courtroom at 9:40 a.m.)

25 THE COURT: Welcome back. I apologize for the

1 delay. As you recall, both parties have rested. Now,
2 we're at the stage of the closing arguments by the
3 attorneys. I would advise -- advise you that Mr. Michaux
4 is not present. I would charge or instruct you, you're to
5 draw no inference whatsoever neither for nor against Mr.
6 Michaux nor for or against the State of South Carolina
7 based on his absence in court today. I further advise you
8 would not even discuss that issue in the jury room.

9 All right. With that being said, we will go into
10 our closing arguments. I would ask you to please give the
11 attorneys your complete and undivided attention.

12 Solicitor.

13 MR. BELL: Thank you, Your Honor and Mr. Maudlin.
14 May it please the Court.

15 THE COURT: Yes, sir.

16 **CLOSING ARGUMENTS**

17 MR. BELL: An unfortunate series of events. That's
18 what the defense is trying to sell you, that all of this is
19 just an unfortunate series of events leading to Mr. Michaux
20 being at the wrong place at the wrong time. The problem
21 with that, when you buy into what they're selling, you've
22 got to give away your common sense. Give it away.

23 What is common sense; you hear it all the time.
24 Every day you use it, but what exactly is it? Well,
25 there's a little story that I used to hear growing up to

1 help me understand it and I'm going to give you a little
2 bit of background. I did a good bit of my growing up in
3 Kingstree, South Carolina. Right outside of that, a little
4 area called Cedar Swamp as it's belovedly known by the
5 locals.

6 Now, my granddaddy grew up over there and I spent a
7 good bit of time visiting him; and as grandparents tend to
8 do, they seem to have a story about every darned situation
9 you could find yourselves in. This is the story that he
10 told me. One day he was driving down the road heading
11 toward the Kingstree Market to sell some produce when all
12 of a sudden, pow, he realized that he had popped a tire and
13 it's gone flat. Now he struggles to pull that heavy piece
14 of metal over to the side of the road with no power
15 steering and when he finally comes to rest, he realizes he
16 stopped beside the Williamsburg County Mental Institution.

17 Now he looks around and he sees the fenced in area
18 and a few patients moseying around; he doesn't think a
19 whole lot about it. So he goes about his business. He
20 goes and looks at his flat tire, starts cussing, pops those
21 lug nuts off the tire, puts them in the hubcap as we've all
22 seen in the movies and probably done ourselves once or
23 twice; goes and puts that spare tire back on. As he goes
24 to reach back for those lug nuts, he smacks that hubcap on
25 accident and he spins those things firing them off into the

1 wheat field across the street never to be seen again.

2 Well, he goes back to cussing, cussing up a
3 storm -- my momma prayed for him a lot -- and as he's
4 cussing, he finally calms down just enough to exclaim out
5 loud, What in the heck am I going to do now? About that
6 time he hears (sound), someone clear their throat behind
7 him, looks and realizes that one of those patients from the
8 mental hospital was leaning up against the fence watching
9 the whole ordeal.

10 That patient says, sir, you know, if you take one
11 lug nut off your other three tires, that will give you
12 three lug nuts on all four of your tires, enough to get
13 into town and buy some new lug nuts. Granddad thought for
14 a second and said, Well darn, that's clever. Say, why in
15 the world are you in a mental institution? Without
16 skipping a beat, that man looked at my granddaddy in the
17 eye and he said, sir, I'm crazy; I ain't stupid.

18 That's common sense. I came to find out later,
19 there's no such thing as the Williamsburg County Mental
20 Institution, but I realize he was teaching me what common
21 sense is and it stuck with me. That's what you have to
22 give away to buy into what they're selling; to buy in that
23 this is all just an unfortunate series of events placing
24 him at the wrong place at the wrong time. So let's talk
25 about those things.

1 I guess it's unfortunate that on March 20th, 2014,
2 Mr. Michaux had car trouble and someone had to rent a car
3 for him, his girlfriend or his home girl; I don't know, and
4 that for a couple of days, he was driving that vehicle.
5 And I guess it's unfortunate that he had a bout of amnesia
6 and he couldn't remember exactly where he was coming from,
7 just that it was up the interstate somewhere. And on top
8 of that, he couldn't remember the name of his female cousin
9 as he told the trooper. He doesn't remember who he met
10 with or where he was coming from. That is unfortunate.

11 And I guess it's also unfortunate that as he was
12 driving down I-20 without a license, he commits a traffic
13 violation, and he gets pulled over by Lance Corporal
14 Harrison. I guess it's also unfortunate that whoever
15 rented that car before him must have just smoked a lot of
16 marijuana and he just happened to rent it after them and
17 that's why all that air freshener was in there and the odor
18 of air freshener was in there. It wasn't him; it was the
19 person before him, I'm sure.

20 And I guess it's also unfortunate that he must just
21 be a hyper-kind of person and that's why he was so nervous
22 when talking to the trooper. The trooper told you, he goes
23 to specific training courses as part of law enforcement to
24 teach you to detect people who are more nervous than the
25 typical motorist getting a speeding ticket. He told you

1 all the different little details that stood out to him, how
2 nervous he was. Then how unlucky, based on all of those
3 things, the trooper has probable cause to do a search and
4 he goes to search that vehicle as he's trained to do. How
5 unlucky that in that car a 137 grams of cocaine.

6 This may not look like a lot to you, but you heard
7 our drug trafficking expert testify that when it comes to
8 cocaine, this is a golden goose or at least the egg it
9 laid. Over \$10,000 of profit from selling this once it's
10 broken down to street value. I don't know. If I had about
11 \$10,000 worth of dope in a bag, I probably wouldn't leave
12 it in a car I was lending out to somebody. I sure wouldn't
13 leave it in a rental after I turned it in.

14 I think your common sense will tell you the person
15 whose dope this was, they're going to stay right close to
16 it. Crazy, but not stupid.

17 Now I want to talk a little bit about the law.
18 You've heard that trafficking cocaine means -- essentially
19 means possession of cocaine over a certain weight. You
20 heard that possession can be actual or constructive.
21 You're going to hear more about that from the Judge in a
22 moment. This is an actual constructive -- this isn't an
23 actual possession case; I won't waste your time with that.
24 It's constructive.

25 What is constructive possession? Well it means

1 that even though it's not on your person, that even though
2 it's not in your hand, that as long as I can assert
3 dominion or control over it, it's still in my possession
4 even if it's not in my hand. Now, why would our government
5 come up with such a concept? Well, I wager so that Mr.
6 Michaux can't rent a car or have a car rented for him and
7 then just put it in the back floorboard and say not mine; I
8 didn't do it. Crazy, but not stupid.

9 The weight, you heard our expert chemist talk about
10 the weight, 137 grams and some change. You have the drug
11 report to look at if you want to. I asked him how
12 confident are you in your results? His response in short,
13 extremely confident. This piece of paper says 99.7 percent
14 confident. When it comes to cocaine, 37 grams isn't barely
15 over 100; it's a big old chunk over 100. Clearly passed in
16 between 100 to 200 grams as indicted.

17 Now when it comes to thinking about drug
18 trafficking, we don't usually think it's just one person,
19 maybe somebody else is involved, but Mr. Michaux or Mr.
20 Michaux knew that he was transporting those drugs and
21 intended to profit. It still makes him a drug trafficker
22 because under the indictment read to you by the judge,
23 under the law of South Carolina, if you aid, abet, or
24 conspire to traffic, it is just the same as trafficking
25 itself. And Mr. Michaux is a drug trafficker. Crazy, but

1 not stupid.

2 I want to talk to you on a few more things. You
3 saw the video. You can watch it again back in the jury
4 room during deliberations. You're going to notice and we
5 talked about there's no audio. So you have to take Lance
6 Corporal Harrison's word as to what he heard from Mr.
7 Michaux that day and that can be tough for a jury to do, to
8 trust someone you've never met until you've seen them on
9 the stand. The judge is going to tell you, you are the
10 sole judge of the facts, of the credibility of the
11 witnesses you hear from. A 16-year veteran with the
12 highway patrol. One of the most elite law enforcement
13 agencies in our state.

14 You heard his testimony, his training, his
15 qualifications, his confidence in what he told you. I'm
16 sure he wishes that his body mic was working properly, but
17 it wasn't. But he didn't know Mr. Michaux from Adam when
18 he pulled him over for a traffic violation that day. He
19 had no reason to lie about what happened when he got him
20 out of the car and talked to him that day. He certainly
21 didn't place that 137 grams in the car after talking to Mr.
22 Michaux that day. Lance Corporal's testimony, if you think
23 about it, I think you'll find he's exceptionally credible
24 and believable.

25 MR. MAULDIN: Objection to vouching, Your Honor.

1 THE COURT: Again, ladies and gentlemen, you are
2 the sole judges of the facts in the case and what the
3 attorneys tell you during their closing is not evidence. I
4 would advise you, you rely on your recollection of the
5 evidence and testimony.

6 Thank you. Thank you, Mr. Mauldin.

7 You may continue.

8 MR. BELL: Thank you, Your Honor.

9 Ladies and gentlemen, you have great power in this
10 courtroom. In a few moments, you'll be sent back to
11 deliberate on this case and I don't mean insult by it, it's
12 just a saying, but I hope that at the end of the day,
13 you're able to proudly exclaim as well that while I may be
14 crazy, I'm not stupid and Ronald Michaux is guilty of
15 trafficking cocaine over a hundred grams in Lexington
16 County. Thank you.

17 THE COURT: Thank you. Thank you, Solicitor.
18 Mr. Maudlin?

19 MR. MAULDIN: Thank you, Your Honor.

20 This case is all about reasonable doubt. And what
21 is reasonable doubt? It's a doubt that causes a person to
22 hesitate to act, to hesitate to issue a guilty verdict.
23 Well, what would cause a person to hesitate to act? Both
24 the idea that there's a real possibility that Mr. Michaux
25 is not guilty, that there's a real possibility that someone

1 either left or put those drugs in the car, a real
2 possibility that he did not know that they were there.

3 Now, they had their expert come and testify about
4 his estimation of the value of the drugs and he doesn't
5 know what percentage of this is cocaine and what percentage
6 is cut. We really don't know the value, but it does have
7 some value, whether it's 10,000 or 4,000 or less than that
8 if it's cut. We don't know. But we can say that it does
9 have some value and the solicitor would have you believe
10 that it's not a real possibility that people lose or
11 misplace valuable items.

12 I worked at a movie theater when I was in college
13 and all the time, I would find people's pocketbooks,
14 wallets, wads of cash that had hundreds of dollars in them.
15 People misplace valuable things. Even the news you hear
16 about a homeless guy or a man down on his luck that finds a
17 bag that has an extraordinary amount of money in it. You
18 know, common sense will tell you people -- that people do
19 lose it and common sense and reality tells you that people
20 do leave things, do misplace things, do not think that is a
21 real possibility.

22 It's also a real possibility the person that rented
23 the car knew Mr. Michaux, knew where he was going, maybe
24 knew his friends or knew people that he was going to see
25 and used him as a dupe and just placed that in the car and

1 knew he would drive it and wherever he was going, somebody
2 would be in the car with him and just pick up whatever it
3 was. That was a real possibility. But the State would
4 have you believe that those are not real possibilities.
5 They want you to believe that Mr. Michaux, who is driving
6 down the highway, blazing away with weed or whatever,
7 marijuana, would have this, which would subject him to so
8 much trouble, in an area of the car where it could be
9 easily found.

10 Whether it's just behind the seat in plain view in
11 a bag or whether they're saying it will be in the front
12 seat and he somehow jimmied it behind there. If it's worth
13 that much and he would be in so much trouble if it was
14 found, wouldn't he have tried to hide it somewhere in the
15 car where it was unlikely they would find it? But they
16 would have you believe that that's not true. Now the real
17 possibility is that either somebody put it there or it was
18 left there, it would be magic, magic for them to
19 investigate that. Well let's see what magic happened
20 during the investigation.

21 Sitting on the highway, looking in a side-view
22 mirror, he magically sees some kind of braking when the
23 brake lights are in the back of the car. That's not on
24 video and we would understand that because the video is on
25 the front of his car I guess, but then he follows the car.

1 He says that he's weaving within his lane, but
2 magically that's not on the video either. He could have
3 cut it on before he cut his blue lights on, but he didn't
4 do that. And then he pulls over Mr. Michaux for what; he
5 issues him a warning, there's no tickets issued, there's no
6 magic ticket like a Willy Wonka Ticket. And he smells
7 marijuana. He searches the car and it's an overwhelming
8 odor of marijuana, overwhelming.

9 But when he searches the car, he doesn't find any.
10 Magically, the marijuana is gone. He has a conversation
11 with Mr. Michaux, but magically, that's not on the video
12 either. He takes him off to the side so you can't observe
13 the conversation. Magically, his mic is not working so you
14 can't hear the conversation. And he eventually searches
15 the car and they play through the video and they show you
16 when he went into the back of the car and supposedly pick
17 up this item that was right there outside of the backseat,
18 he could see it from the front seat. And I believe the
19 solicitor said he counted by his watch, it took about
20 thirty seconds and the officer agreed with him that it took
21 30 seconds for him to reach in like this, pick up the
22 thing, manipulate it and throw it back down.

23 I get five seconds right there. Now we're at 15,
24 20, 25, 30. I believe those drugs were a little bit more
25 under the seat than the trooper would have you believe, but

1 magically, he didn't take a picture of where it was found
2 despite the fact that he has a radar on the front of his
3 car, the back of the car, camera.

4 Those are all magical things, but he would have you
5 believe it would be magical for him to further investigate
6 or the other officer who responded to the scene that had
7 all that training and experience in the investigation of
8 narcotics, it would be magical for them to pick up the
9 phone and call a car rental company.

10 Well, sometimes they don't cooperate. Well, I
11 guess he could have gotten a magical search warrant or a
12 magical subpoena or done some other kind of magical
13 investigation that law enforcement normally does, but that
14 was not done.

15 The drugs were sent off to SLED, they were tested.
16 They're contained. We have no dispute with that. But what
17 else was sent off to SLED to be tested, the bag the drugs
18 were in. You heard Jennifer Aycock testify that she took
19 the bag to the Latent Print Division, but where is the
20 Latent Print Examiner that would have examined this bag for
21 latent prints? Ta-da, he's disappeared. Where is he?

22 Well, I think you can infer from that that Mr.
23 Michaux's fingerprints weren't on the bag, that they had no
24 evidence to tie him to it and that's why they didn't call
25 him.

1 Ladies and gentlemen, they have not excluded the
2 real possibility that somebody could have left those drugs
3 in the car or that they could have placed those drugs in
4 the car. There is a real possibility that Mr. Michaux is
5 not guilty of this crime and you should find him not
6 guilty.

7 THE COURT: Thank you. Thank you very much, Mr.
8 Mauldin.

9 **JURY CHARGE**

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, it is now my duty and responsibility
12 to instruct you on the law that applies to the facts of
13 this case. I would advise you the way I instruct the law
14 is I charge the general criminal law that applies to all
15 cases in South Carolina first. Thereafter, I will charge
16 specifically the offense involving the trafficking of
17 cocaine of more than 100 grams less than 200 grams and
18 finally, I will charge you the form of the verdict.

19 When I change from one subject matter to the next,
20 I will give you the caption of the particular area I'm then
21 going to cover. I would advise you, this is very well
22 scripted. Therefore, it's not necessarily easy to listen
23 to. I will certainly try to change the inflection and tone
24 of my voice as much as possible.

25 Charge, arrest, indictment is not evidence: The

1 indictment charges the defendant with trafficking cocaine
2 100 grams or more but less than 200 grams. I remind you
3 that the fact that the defendant was arrested, charged and
4 indicted in this case is not evidence in the case and
5 cannot be considered by you as evidence of guilt in this
6 case, nor does it create any presumption or inference of
7 guilt. The indictment is simply the formal written
8 instruments which contains the charge made against the
9 defendant. It is a formal document by which this case is
10 brought before the court.

11 Presumption of innocence: The defendant has pled
12 not guilty to the indictment and that plea puts the burden
13 on the State to prove the defendant guilty. A person
14 charged with committing a criminal offense in South
15 Carolina is never required to prove himself innocent. I
16 instruct you that it is an important rule of the law that a
17 defendant in a criminal trial, no matter what the
18 seriousness of the charge may be, will always be presumed
19 to be innocent of the crime for which the indictment was
20 issued unless guilt has been proven by evidence satisfying
21 you of that guilt beyond a reasonable doubt.

22 The presumption of innocence does not end when you
23 begin your deliberations, but it accompanies the defendant
24 throughout the trial until you reach a verdict of guilt
25 based on evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 The presumption of innocence has been said to be
3 like a robe of righteousness placed about the shoulders of
4 a defendant which remains with a defendant until it has
5 been stripped from the defendant by evidence satisfying you
6 of the defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory, it is not just a legal phrase, it is a substantial
9 right to which every Defendant is entitled unless you the
10 jury are satisfied from the evidence of the defendant's
11 guilt beyond a reasonable doubt.

12 So next, what is a reasonable doubt? A reasonable
13 doubt in the law is the kind of doubt that would cause a
14 reasonable person to hesitate to act. The State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt. Some of you in the past may have served as jurors
17 in civil cases where you were told that it is only
18 necessary to prove that a fact is more likely true than not
19 true, such as by the greater weight or the preponderance of
20 the evidence. In criminal cases, the State's proof must be
21 more powerful than that; it must be beyond a reasonable
22 doubt. Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.

24 Ladies and gentlemen, there are very few things in
25 this world that we know with absolute certainty and in

1 criminal cases, the law does not require proof that
2 overcomes every possible doubt. If based on your
3 consideration of the evidence, you are firmly convinced
4 that the defendant is guilty of the crime charged, you must
5 find the defendant guilty. If, on the other hand, you
6 think there is a real possibility that the defendant is not
7 guilty, you must give the defendant the benefit of that
8 doubt and find him not guilty.

9 Duties of trial jury and trial judge: I remind you
10 that during this trial, you and I have certain distinct,
11 specific duties to perform. As the trial judge, it is my
12 responsibility to preside over the trial of this case and I
13 also have the duty to rule on the admissibility of evidence
14 offered during this trial. You are to consider only the
15 competent evidence before you. If there was any testimony
16 ordered stricken from the record in this case during the
17 trial, you must disregard that testimony. You are to
18 consider only the testimony which has been presented from
19 the witness stand and any exhibits which have been made a
20 part of the record in this case.

21 I have the additional duty to instruct you on the
22 law applicable to this case. As the presiding judge, I am
23 the sole judge of the law of this case and it is your duty
24 as jurors to accept and apply the law as I now state it to
25 you. If you already have any idea as to what the law is or

1 what the law ought to be and it does not agree with what I
2 now tell you the law is, you must abandon your idea,
3 because you are sworn to accept the law and apply the law
4 exactly as I state it to you.

5 In every case tried in this court before a jury,
6 the jury becomes the sole and exclusive judge of the facts
7 in a case.

8 A trial judge cannot intimate, state, comment on,
9 or make any statement to a trial jury about the facts in a
10 case. Since you, the jury, are the sole judge of the facts
11 in this case, you are not to infer from what I have said
12 during the progress of this trial in ruling upon the
13 admissibility of evidence or otherwise or anything that I
14 say now during the course of this instruction to you that I
15 have any opinion about the facts in this case. The law,
16 our law, does not allow me to have an opinion about the
17 facts in this case. That is solely a matter for you, the
18 jury, to determine. As jurors, it is your duty to
19 determine the effect, the value, the weight, and the truth
20 of the evidence that has been presented during the trial.

21 Direct and circumstantial evidence: There are two
22 types of evidence which are generally presented during a
23 trial; direct evidence and circumstantial evidence. Direct
24 evidence is the testimony of a person who claims to have
25 actual knowledge of a fact; for example, an eyewitness or

1 an ear witness. It is evidence which immediately
2 establishes the main fact to be proven.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a fact.
5 It is evidence which immediately establishes a collateral
6 fact from which the main fact may be inferred.

7 Circumstantial evidence is based on inference and
8 not on personal knowledge or observation. The law makes
9 absolutely no distinction between the weight or the value
10 to be given to either direct evidence or circumstantial
11 evidence, one is just as good as the other. Nor is there a
12 greater degree of certainty required of circumstantial
13 evidence than of direct evidence.

14 You should weigh all the evidence in the case.
15 After weighing all of the evidence, if you are not
16 convinced of the guilt of the defendant beyond a reasonable
17 doubt, you must find the defendant not guilty. If after
18 weighing all the evidence, you are convinced of the guilt
19 of the defendant beyond a reasonable doubt, you must find
20 the defendant guilty.

21 Credibility of witnesses: Necessarily you must
22 determine the credibility of the witnesses who have
23 testified before you in this case. As you all know,
24 credibility simply means believability. It becomes your
25 duty as jurors to analyze and to evaluate the evidence and

1 determine which evidence convinces you of its truth using
2 your individual and collective good judgment and common
3 sense.

4 In determining the believability of the witnesses,
5 you may believe one over several, several over one. You
6 may believe a part of the testimony of a witness and reject
7 the remaining part of the testimony of that same witness.
8 You may believe the testimony of a witness in its entirety
9 or reject the testimony of a witness in its entirety. You
10 may consider whether any witness has exhibited to you any
11 interest, bias, prejudice, or other motive in this case.

12 You can also consider the appearance, the demeanor
13 or the manner of a witness while on the witness stand. As
14 I told you in the beginning, you can consider if there is
15 an internal consistency within the testimony of a witness.
16 You can consider whether one witness's testimony
17 corroborates another witness's testimony or does not
18 corroborate; and therefore, weakens another witness's
19 testimony. You can use all those things that we use with
20 our common sense and our good judgement in our everyday
21 life to determine the truthfulness of what is being said to
22 us.

23 Expert witnesses: The Rules of Evidence, you heard
24 me say, ordinarily do not permit a witness or witnesses to
25 testify as to opinions or conclusions. An exception to the

1 rule exists for witnesses we call expert witnesses. A
2 witness who by education and experience has become an
3 expert in some art, science, profession, or calling may
4 state an opinion and the basis of that opinion. You should
5 consider any expert opinion received in evidence like any
6 other evidence and give it the weight you think it
7 deserves. If you decide the opinion of an expert is not
8 based on sufficient education or experience or if you
9 conclude that the reasons given for the opinion are not
10 sound or that the opinion is outweighed by other evidence,
11 you may disregard the opinion in its entirety.

12 An expert witness's testimony is to be given no
13 greater weight than that of any other witness simply
14 because the witness is labeled an expert. Further, you are
15 not required to accept an expert opinion even though it is
16 not contradicted.

17 I instruct you and emphasize that the fact that the
18 defendant did not testify is not a factor to be considered
19 by you in any way in your deliberation and in your
20 consideration on the question of the guilt or the innocence
21 of the defendant. It must not be considered by you in any
22 manner whatsoever. A defendant has the constitutional
23 right to remain silent and the assertion of that right must
24 not be considered by you in your deliberations. I repeat,
25 under your oath, you are to draw no conclusion whatsoever

1 from the fact that the defendant in this case did not
2 testify. The fact that he did not testify should not even
3 be discussed in the jury room. The burden of proof as I
4 have stated to you is on the State. The defendant is not
5 required to prove his innocence. The burden of proof
6 remains on the State to prove guilt beyond a reasonable
7 doubt.

8 Now, ladies and gentlemen, that is the general
9 criminal law in South Carolina and I assure you the end is
10 in sight for you having to continue listening to me.

11 Next I will charge specifically trafficking in
12 cocaine. The defendant is charged with trafficking in
13 cocaine. The State must prove beyond a reasonable doubt
14 that the defendant knowingly sold, manufactured,
15 cultivated, delivered, purchased, brought into this state,
16 provided financial assistance, or otherwise aided, abetted
17 or conspired to sell, manufacture, cultivate, deliver, or
18 purchase, or bring into the state, or was knowingly in
19 actual or constructive possession, or knowingly attempting
20 to become in actual or constructive possession of cocaine.
21 There's some words in there that we'll further define that
22 are defined under our law, actual possession or
23 constructive possession.

24 Actual possession means that the cocaine was in the
25 actual, physical custody of the defendant. Constructive

1 possession means that the defendant had dominion and
2 control or the right to exercise dominion or control over
3 either the cocaine itself or the property on which the
4 cocaine was found. Mere presence at the scene where the
5 drugs were found is not enough to prove possession. The
6 defendant's knowledge and possession may be inferred when a
7 substance is found on the property under the defendant's
8 control.

9 However, this inference is simply an evidentiary
10 fact to be taken into consideration by you, the jury, along
11 with the other evidence in the case and to be given the
12 weight you decide it should have.

13 Next the State must also prove beyond a reasonable
14 doubt that the amount of the cocaine or any mixture
15 containing cocaine was 100 grams or more but less than 200
16 grams.

17 That is the charge of trafficking in cocaine,
18 knowing or actual or constructive possession of cocaine in
19 the amount of more than 100 grams but less than 200 grams.

20 And finally, ladies and gentlemen, the form of the
21 verdict. Regarding the charge of trafficking in cocaine,
22 there are two possible verdicts which you may find in this
23 case; guilty or not guilty. Without putting no
24 significance whatsoever on the order in which I just stated
25 those possible verdicts.

1 Mr. Foreman, ladies and gentlemen, you'll have this
2 verdict form in the jury room during your deliberations.
3 It's very self-explanatory. It's got the caption of the
4 case, the indictment number and such and it lists
5 indictment number, so and so as to trafficking cocaine, We
6 the jury, unanimously find the defendant and it's got the
7 word guilty or the word not guilty and lines to the left of
8 both.

9 If after your determination of the facts, that you
10 find the facts to be, applying them to the law as I have
11 instructed you the law is, you find that the State has met
12 its burden of proving its case beyond a reasonable doubt,
13 and your verdict is unanimous, all twelve of you must
14 agree.

15 I would ask you, Mr. Foreman, to check to the left
16 of the word guilty, circle both your check marks and the
17 word guilty, sign the form as presiding juror and the date.

18 If after your determination of the facts of the
19 case, applying the facts of the law as I've told you the
20 law is, you find the State has failed to meet its burden of
21 proving beyond a reasonable doubt and your verdict is a
22 unanimous one of not guilty, check to the left of the two
23 words, not guilty, circle your check marks, circle the two
24 words, sign as presiding juror and date.

25 As I have stated, your verdict must be a unanimous

1 one. All twelve of you must agree. Mr. Foreman, when the
2 jury reaches that unanimous verdict and you have completed
3 the form, if you would then knock on the jury room door,
4 inform the bailiff that you have reached that verdict, at
5 that time, we will receive you back into the courtroom for
6 your verdict. If during the course of your deliberations,
7 Mr. Foreman, you or any member of the jury have any
8 questions whatsoever, if you would just write me out a
9 note, knock on the jury room door and the bailiff will be
10 posted outside, he will give it to me and I will certainly
11 try to respond.

12 I would ask you, all thirteen of you to go to your
13 jury room just momentarily. The law requires I meet one
14 final time with the attorneys outside of your presence in
15 case I have to give you any further instructions or amend
16 anything I may have said to you. If I do not have to bring
17 you back out, everybody looks great today, and so if I do
18 not have to bring you back out, our alternate would come
19 out of the jury room, the items of evidence, was it State's
20 1 through 4?

21 THE COURT REPORTER: 1, 2 and 4.

22 THE COURT: All right. State's 1 through 4?

23 THE COURT REPORTER: 1, 2 and 4.

24 THE COURT: State's 1, 2 and 4, three items of
25 evidence will be delivered to you. As I said, our

1 alternate will come out and you will then be informed by
2 the clerk to begin your deliberations. I believe State's 2
3 is a video?

4 THE COURT REPORTER: Yes, sir.

5 THE COURT: State's 2 is a video. If you need the
6 equipment, just write me and I'll make arrangements for the
7 video to be presented to you.

8 Thank you. Thank you very much for your attention
9 throughout the trial of this case. You may now go with
10 your bailiff.

11 (The jury left the courtroom at 10:23 a.m.)

12 THE COURT: Any exceptions to the charge?

13 MR. BELL: None from the State, Judge.

14 MR. MAULDIN: None from the defense.

15 THE COURT: All right. Thank you. Thank you very
16 much. Take 1, 2 and 4 and the Form of Verdict also.

17 THE BAILIFF: Permission to take the evidence.

18 THE COURT: Take it.

19 THE BAILIFF: Judge, I'll bring the alternate out
20 to you, sir.

21 THE COURT: Yes, sir. I'll be out in a minute.
22 Thank you.

23 (Court was in recess awaiting the verdict of the
24 jury.)

25 (It was reported that a verdict was reached at

1 10:51 a.m.)

2 THE COURT: All right. I understand we have a
3 verdict.

4 (The jury entered the courtroom at 10:53 a.m.)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen of the jury panel.

7 Madam Clerk.

8 **VERDICT**

9 THE CLERK: Mr. Foreman, have you reached a
10 verdict?

11 THE FOREPERSON: Yes, ma'am, we have.

12 THE CLERK: Please pass it up by the bailiff.

13 THE COURT: All right. The verdict appears to be
14 in proper form, signed by our presiding juror, and dated.

15 Madam Clerk, will you publish our verdict please.

16 THE CLERK: Indictment 2014-GS-32-02606, State v.
17 Ronald Douglas Michaux, as to the trafficking in cocaine
18 100 grams or more but less than 200 grams, we, the jury,
19 unanimously find the defendant guilty. And it is so signed
20 by the foreman, Douglas Trenton, May 19th, 2016.

21 Mr. Foreman, ladies and gentlemen of the jury, if
22 this is your verdict, please indicate each of you by
23 raising your right hand?

24 All hands raised, Your Honor.

25 THE COURT: Thank you. Thank you very much.

1 Anything further for the jury from the State.

2 MR. BELL: None from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. MAULDIN: No, Your Honor.

5 THE COURT: Thank you. Thank you very much.

6 Mr. Foreman, ladies and gentlemen of the jury,
7 thank you. Thank you very much for your service this week
8 generally and for your service in this case specifically.
9 I realize, we all realize the disruption it causes to your
10 personal and professional lives. These -- these fine
11 attorneys and many, many others both in this courthouse and
12 all the courthouses throughout South Carolina could not be
13 about the very important business of administering our,
14 mine and your, civil and criminal justice system without
15 the participation of citizens just like yourselves week in
16 and week out in all of those counties.

17 Our staff is just wonderful people to work with, we
18 have an excellent court reporter; Madam Clerk -- it's so
19 refreshing the courthouses I go to always, there's always a
20 female in charge that tells me exactly what to do. I am
21 very grateful for that and they teach us so much; and some
22 of our bailiff's are remarkable.

23 There's one in Florence, just real quickly, got
24 drafted when he was 18 in World War II and went through --
25 went through North Africa with Patton, went through Italy

1 with Patton, got transferred to England and landed in
2 Normandy. He's 95 years old and still works every day.
3 Just delightful people and we find that throughout South
4 Carolina.

5 As to Mr. Michaux, me and him had some colloquy
6 between us with his attorney and I actually -- generally my
7 rule is, I have someone taken into custody when the case is
8 called to trial if they're out on bond. I -- I allowed Mr.
9 Michaux, who is from North Carolina to remain out on bond
10 and we had some colloquy in the courtroom between us and of
11 course, I indicated to him for him to be back at nine
12 o'clock this morning and amended his bond that he could not
13 leave the State of South Carolina and he disappointed me.

14 As I told the attorneys earlier, that goes in the
15 category of no good deed goes unpunished, but the task
16 force will find Mr. Michaux. I'll sentence him in his
17 absence and whenever he's arrested, he'll go before me or
18 some other judge and it will be opened and he will be
19 sentenced.

20 But thank you. Thank you very much for your
21 service. It's my honor and privilege to be with the
22 citizens in whatever courtroom I'm in. Thank you very
23 much. You're excused for the remainder of the week; you
24 don't have to call back, don't have to come back. Sooner
25 or later you'll get that \$15 a day check plus .52 cents a

1 mile.

2 THE CLERK: Yes, sir, round trip.

3 THE COURT: Round trip. Okay. Thank y'all. Thank
4 y'all so much.

5 THE CLERK: Mr. Foreman, I need to get you to sign
6 the indictment please.

7 (The jury left the courtroom at 10:59 p.m.)

8 THE COURT: All right. Give me an update on Mr.
9 Michaux. Do we have one?

10 THE OFFICER: I will call and find out.

11 THE COURT: Anything further, Mr. Mauldin?
12 Motions?

13 MR. MAULDIN: Your Honor, just I understand it's a
14 mandatory sentence of 25 years, but I will go into a little
15 bit of Mr. Michaux's background that I have. He is 33
16 years old. He's from Fayetteville, North Carolina. He
17 doesn't have ties to South Carolina. He has -- maybe down
18 in Aiken, just passing through. He's done restaurant work
19 in the past. He had a self-employed business doing
20 landscaping in 2010 to his arrest and more recently he's
21 been working with fellows who have a pressure washing
22 business.

23 He is not married, but he has three children in
24 North Carolina ages 17, 14, and 11, and he says he has two
25 children on the way. He has a 125 days jail credits.

1 THE COURT: And tell me his prior criminal history,
2 Solicitor?

3 MR. BELL: Your Honor, in 2000 he was convicted of
4 common law robbery and breaking and entering. He received
5 10 months on those charges. In 2007, he was convicted of
6 possession of a stolen vehicle and possession with intent
7 to distribute cocaine. He received 8 months on those
8 charges. In 2009, he was convicted of felony possession of
9 cocaine, possession with intent to distribute cocaine and
10 possession with intent to distribute a Schedule II
11 substance. He received 6 months on those charges. In 2014
12 he was convicted of possession with intent to distribute
13 cocaine. He received 8 months on that charge, Your Honor.

14 THE COURT: Well, what drug offense is this?

15 MR. BELL: It is a technical third, Your Honor, but
16 as to weight which is before the Court is simply a 25 year,
17 even as a first offence.

18 THE COURT: All right. Do you have a sentencing
19 sheet?

20 **SENTENCE SEALED**

21 MR. BELL: May I approach, Your Honor?

22 THE COURT: Yes, of course.

23 Madam Clerk, I've never -- I've never had a case
24 where the defendant was absconded during the course of the
25 trial. On TIA you just seal the sentence. Do I do that in

1 this case; does anybody know that?

2 THE CLERK: Yes, sir, you have to seal the sentence
3 because it's not officially been imposed on the defendant.

4 THE COURT: All right. Thank you.

5 **POST-TRIAL MOTIONS**

6 MR. BELL: Your Honor, in the event of an Eighth
7 Amendment appeal, may I protect the record on one
8 additional issue?

9 THE COURT: Yes, sir.

10 MR. BELL: The State did offer a possession with
11 intent to distribute cocaine first offense charge that
12 would have carried 0 to 15. That was -- that expired
13 December 2015 when the defendant refused to plead. After
14 pretrial motions on Tuesday this week, the defense asked
15 for another offer. The State did extend an offer of 7 to
16 25 years which was also rejected.

17 THE COURT: All right. Thank you. All right.
18 Madam Clerk, if you would seal the sentence for me please.

19 All right. Anything further, Mr. Mauldin?

20 MR. MAULDIN: Yes, sir, at this time, the defense
21 would move for a new trial. We base that on our prior
22 motions and objections and particularly stopping the
23 vehicle which led to the search and the arrest.

24 THE COURT: All right. I would respectfully deny
25 that motion and renew all my previous trial, evidentiary

1 and pre-trial rulings in that regard.

2 Thank you. Thank you, Mr. Mauldin. Thank you for
3 taking this very important assignment.

4 Solicitor, my pleasure.

5 MR. BELL: Thank you, Your Honor.

6 THE COURT: All right. Thank you. Thank you very
7 much.

8 * * * * * END OF TRANSCRIPT * * * * *

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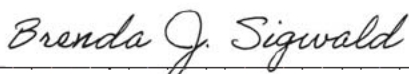
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1	State of South Carolina	)	
2	County of Aiken	)	Certificate of Reporter
3			
4			
5			
6	I, THE UNDERSIGNED, Brenda J. Sigwald, Official		
7	Court Reporter for the Eleventh Judicial Circuit of the		
8	State of South Carolina, do hereby certify that I reported		
9	the proceedings in the captioned case in the Court of		
10	General Sessions in and for the State of South Carolina on		
11	the 17th through the 19th days of February, 2016.		
12	I FURTHER CERTIFY that the foregoing pages		
13	constitute a true, accurate and complete transcript of said		
14	hearing.		
15	I FURTHER CERTIFY that I am neither kin, counsel,		
16	nor of interest to any party hereto.		
17	IN WITNESS WHEREOF, I have hereunto set my hand and		
18	seal at Aiken County, this 3rd day of January, 2017.		
19			
20			
21			
22	 Brenda J. Sigwald, Court Reporter and Notary Public For the State of South Carolina My commission expires January 4, 2020		
23			
24			
25			

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

CIRCUIT COURT
2014-GS-32-02606

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 RONALD DOUGLAS MICHAUX, JR.,
7 Defendant.

8
9 Heard on Thursday, August 25, 2016

10 Lexington, South Carolina

11
12 BEFORE:

13 THE HONORABLE WILLIAM P. KEESLEY

14
15 APPEARANCES:

16 Counsel on Behalf of the State:
17 Lester McGill Bell, Jr., Esq.

18 Counsel on Behalf of the Defendant:
19 David M. Mauldin, Esq.

20
21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29804-5232

25

EXHIBITS INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON THURSDAY, AUGUST 25, 2016 AT 11:17 A.M.:

2 THE CLERK: Ronald Michaux.

3 2014-GS-32-2606, the State versus Ronald
4 Michaux, Jr. He was tried and convicted on May
5 19th, 2016, and this is his sentence that was
6 sealed by Judge McMahon.

7 THE COURT: You're Ronald Douglas -- how do
8 you pronounce your last name?

9 THE DEFENDANT: Mish-Shaw.

10 THE COURT: You're Ronald Douglas Michaux,
11 Jr.?

12 THE DEFENDANT: Yes, sir.

13 (Defendant placed under oath.)

14 THE COURT: Anything y'all need to put on the
15 record before I open this?

16 MR. BELL: Your Honor, very briefly.

17 When this case first came we originally
18 offered PWID cocaine first. That's zero to 15.
19 That was rejected. We went to trial, began it,
20 pretrial, finished. The Judge asked another offer
21 to be put on the table. The State did offer, I
22 believe, the seven to 25-year range. That was
23 rejected. We went through trial and a guilty
24 verdict was rendered.

25 THE COURT: Anything need to be put on the

1 record before I open the sentence?

2 MR. MAULDIN: Not before you open the
3 sentence, Your Honor.

4 THE COURT: I got an envelope which is
5 sealed. On the outside it reads State versus
6 Ronald D. Michaux Jr., May 19, 2016, verdict,
7 guilty, sentence sealed by Judge McMahon, reporter
8 Brenda Sigwald.

9 Inside the envelope is a sentence sheet dated
10 May 19, 2016, and an order dated June 21, 2016.
11 The order is an administrative order. It reads
12 that this matter comes before this Court pursuant
13 to a request made by SLED. SLED is seeking the
14 Court's assistance in expediting the above-named
15 Defendant, that being Mr. Michaux, from the State
16 of North Carolina.

17 On May 19, 2016, the Defendant was tried in
18 his absence and a jury returned a verdict of
19 guilty. This Court sentenced the Defendant and
20 then sealed the sentence in accordance with the
21 applicable trial procedures when a defendant is
22 absent.

23 It now appears that SLED requires three
24 certified copies of this sealed sentence in order
25 to further assist SLED in expediting the Defendant

1 to South Carolina.

2 And Judge McMahon ordered that the sealed
3 sentences be momentarily unsealed in order to allow
4 the Court to produce certified copies of the
5 sentence sheet. And the original sentence was then
6 to be resealed and this was dated June 21st, 2016,
7 with a note that the sentence was resealed on June
8 22nd, 2016. Copies made pursuant to the order.

9 Case Number is 2014-GS-32-02606. The offense
10 is trafficking in cocaine 100 grams or more but
11 less than 200 grams.

12 THE SENTENCE IS THAT THE DEFENDANT BE
13 COMMITTED TO THE SOUTH CAROLINA DEPARTMENT OF
14 CORRECTIONS FOR A PERIOD OF 25 YEARS.

15 HE'S GIVEN CREDIT FOR TIME SERVED PURSUANT TO
16 SECTION 24-13-40 TO BE CALCULATED AND APPLIED BY
17 THE DEPARTMENT OF CORRECTIONS, signed by Judge
18 McMahon.

19 All right.

20 MR. MAULDIN: Your Honor, after the
21 conviction I did move for a new trial on behalf of
22 Mr. Michaux.

23 At this time, again, I would move for a new
24 trial on behalf of Mr. Michaux in particular
25 stating the fourth amendment issues that were ruled

1 against us on pretrial and the State had offered an
2 expert on the value of the drugs and we objected to
3 that. And those are the two bases.

4 I would like to emphasize we also would move
5 for a new trial based on all other motions and
6 objections that we made during the trial.

7 THE COURT: State have anything?

8 MR. BELL: Nothing further, Your Honor.

9 THE COURT: Motion will be denied. Anything
10 else?

11 MR. MAULDIN: No, Your Honor.

12 THE COURT: What about the sentence? Any
13 request related to the sentence?

14 MR. BELL: No, Your Honor

15 MR. MAULDIN: It's a mandatory sentence, Your
16 Honor.

17 THE COURT: All right. Now, Mr. Michaux, if
18 you wish to file any type of appeal you understand
19 it's a very short time frame for filing it.

20 MR. MAULDIN: We will be filing an appeal on
21 this, and the appellate defense will handle it.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: 10 days or something like
24 that.

25 THE COURT: And you instructed Mr. Mauldin to

1 file an appeal on your behalf?

2 THE DEFENDANT: Yeah.

3 THE COURT: All right. Then the sentence is
4 confirmed.

5 MR. BELL: Thank you, Judge.

6 END OF CASE: 11:25 A.M.

7 ** **

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1
2 CERTIFICATE OF REPORTER

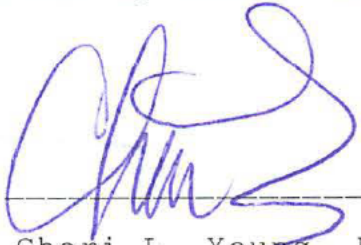
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5 I, Cheri L. Young, Registered Professional
6 Reporter and Official Court Reporter for the State
7 of South Carolina, Second Circuit-At Large, do
8 hereby certify that the foregoing proceedings were
9 written stenographically by me using computer-aided
10 translation; further, that the foregoing is a true,
11 accurate and complete record, to the best of my
12 skill and ability, of all the proceedings had and
13 evidence introduced in the hearing of the captioned
14 case, relative to appeal, in the Court of General
15 Sessions for Lexington County, on the 25th day of
16 August, 2016.

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

19 I have hereunder set my hand this 1st day of
20 November, 2016.

21
22
23 
24 Cheri L. Young, RPR
25 Official Court Reporter

WITNESSES

S.C. Highway Patrol Headquarters

M D Harrison

Law Enforcement Case #:

GB

ARREST WARRANT NUMBER

2014A3210200450

ACTION OF GRAND JURY

TRUE BILL

Stemela Baker
Foreperson of Grand Jury
Date: 7/13/2015

VERDICT

GUILTY

DOUGLAS DRENTEN

Donna Drenten
Foreperson of Petit Jury
Date: 5/19/16

DOCKET NO. 2014GS3202606

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2015

THE STATE

vs.

Ronald Douglas Michaux Jr

CDR #: 0280

Indictment for

Trafficking Cocaine (100g or more but less
than 200g)

§ 44-53-0370(e)(2)(c)

DONALD V. MYERS, SOLICITOR

ATRUE COPY
Lex. Co. C.D.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

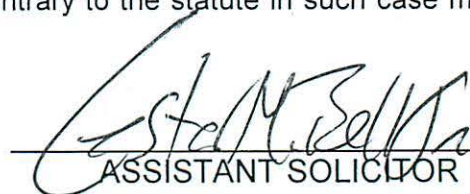
INDICTMENT FOR
Trafficking Cocaine (100g or more but less than
200g)

§ 44-53-0370(e)(2)(c)

At a Court of General Sessions, convened on August 2014, the Grand Jurors of Lexington County present upon their oath:

That **Ronald Douglas Michaux Jr** did in Lexington County, South Carolina on or about March 20, 2014 knowingly, intentionally, willfully, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of cocaine, a controlled substance under the provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of one hundred (100) grams or more but less than two hundred (200) grams, in violation of § 44-53-370 (e)(2)(c), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

A TRUE COPY
JUL 20 2014
CLERK OF COURT

276

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Ronald Douglas Michaux Jr

AKA:

Race: Black Sex: M Age: 33DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] Edgecomb AveCity, State, Zip: Fayetteville, NC 28301DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

in violation of § 44-53-0370(e)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0280

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTENT:

Gester M Bell Sr.

Solicitor

100621

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years/or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk Court Reporter:

SCCA/217 (03/2011)

25 yrs & \$50,000
 IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3202606A/W#: 2014A3210200450Date of Offense: 3/20/2014S.C. Code § : 44-53-0370(e)(2)(c)CDR Code #: 0280

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP
 days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:
Lex. Co. C.C.P., G.S. & F.C.

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge Judge Code: 145Sentence Date: 19 MAR 16

FILED

2019 JUN -4 AM 9:11

STATE OF SOUTH CAROLINA

County of LexingtonLISA M. COMET
CLERK OF COURT
JULY 1, 2019

In the Court of Common Pleas

Ronald Douglas Michaux Jr. 369511

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

2019-CP-32-Q 2208

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention ~~Lexington County Prison~~ Broad River
Correctional Institution, 4460 Broad River Rd., Columbia, S.C. 29210
- Name and location of Court which imposed sentence Lexington County Judicial Courthouse,
205 E. Main Street, Lexington, South Carolina 29072
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 2014-BS-32-2606 Trafficking Cocaine (100 or more but less than 200)
 -
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - Thursday May 19, 2015 25 years 85%
 -
 -

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓ _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list:

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals _____
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. Submitted 10-1-2018 Filed 12-5-2018 _____
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel _____
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See attached sheets _____
 (b) _____
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Can only raise issues collaterally
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. David M. Mauldin Assistant Public Defender
407 W. Main Street, Lexington, S.C. 29072
- ii. Taylor D. Gilliam, Appellate Defender, Post Office Box 11589
Columbia, South Carolina 29211-1589
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. David M. Mauldin - trial & sentencing
- ii. Taylor D. Gilliam - on appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

REVERSE, REMAND, & VACATE Sentence & Conviction

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lexington

I, Ronald Douglas Michaux Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____

day of _____, 19 _____

(L.S.)
Notary Public

My Commission Expires: _____

FILED
2019 JUN -4 AM 9:11
CLERK OF COURT
LEXINGTON COUNTY SC

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Ronald Douglas Michaux Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Applicant

SWORN or affirmed to and subscribed before me this

14th day of May, 2019
Jennifer Washington
Notary Public

My Commission Expires: March 8, 2028

(10) a. Trial counsel was ineffective for failing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause in contravention of the Fourth and Fourteenth Amendment, State constitution and statute. 4th U.S. Const. Amend.; 14th U.S. Const. Amend.; S.C. Const. Art. 1910; and S.C. Code Ann. § 17-13-14D.

Facts - The affidavit failed to set forth any facts as to why officer Harrison believed X committed the alleged crime. See Exhibit A. The affidavit did not contain a detailed account of the facts uncovered by the traffic stop, the source of the facts, or any other information the magistrate needed to evaluate the reliability of the officer's sources. The underlying affidavit consisted of only seven (7) sentences. It sets forth officer Harrison's conclusions that X committed Trafficking (100g or more, but less than 200g), but discloses none of the underlying facts that led officer Harrison to reach this conclusion. See Exhibit A. The officer did not witness me commit a traffic violation, I was not on any video/audio device committing a traffic violation, nor did he state within the underlying affidavit that he observed me committing a Trafficking offense. See Exhibit A. I was not issued a traffic citation. See Exhibit

B Tr. p. 25 line 23 - p. 26 line 10; Tr. p. 17 lines 2-8. The affidavit failed to include any facts or underlying reasons concerning the informant's veracity. Moreover, there was nothing on the face of the affidavit from which the magistrate could have assessed the veracity and basis of know-

ledge. To further substantiate this allegation, it is unclear from this record whether oral testimony concerning the reliability of the informant was given to the magistrate. See Exhibit C Tr.p. 6 line 22 - p. 30 line 17; Tr. p. 112 line 6 - p. 152 line 15. Had trial counsel objected and moved to suppress on these grounds, all evidence seized by the Lexington County Highway Patrol and all statements and testimony intended to be used by the State at trial would have been suppressed and excluded.

(b) Trial Counsel failed to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions.

Facts - S.C. Code Ann. § 14-9-210 is jurisdictional in nature and requires that all criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions. My bill of indictment prints that it was returned,

"At a Court of General Sessions, convened on August 2014, the Grand Jurors of Lexington County present upon their oath:" (See Exhibit B) The indictment is signed by the Assistant Solicitor, and sealed with a True Billed stamp.

Furthermore, the title page of State's Indictment prints that it was published at a Court of General Sessions Term during July 2015. However, the terms of the Court of General Sessions for Lexington County are fixed by S.C. Code Ann.

§ 14-5-760, which DOES NOT offer provisions for a Court to be open on August 2014. Moreover, my indictment was TRUE BILLED stamped on July 13, 2015. The terms of Lexington County General Sessions Court

201 be held at Lexington on: 1) the 3rd Monday in January for 2 weeks; 2) 4th Monday in May for two weeks; and 3) the Tuesday following the first Monday in September for 2 weeks.

C) Trial Counsel failed to request a Batson hearing after the State exercised all peremptory challenges to strike all but one black juror in contravention of Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

Facts - During the out-set of trial, there were only three (3) black jurors who were selected for jury duty. Out of those three who were called, only one was selected. See Exhibit C Tr.p. 70 lines 12-20. All three potential jurors were black females. See Exhibit C Tr.p. 70 lines 8-20; Tr.p. 72 lines 5-10. The State struck the first black female juror. Tr.p. 70 lines 8-11. And trial counsel struck the other black female juror. Tr.p. 72 lines 5-10. To further substantiate this allegations, I did not advise my trial counsel to strike these black jurors, he never informed me that he was gonna strike these black jurors, nor did I agree to strike the potential black jurors. Moreover, I was denied a fair and impartial jury because not only did I have an all-white jury, but all of the jurors were senior citizens, over the age of 50 years old.

Ronald Douglas Michaux Jr. 369511

June 28, 2019

Broad River C.I. / WA-#165

4460 Broad River Rd.

Columbia, S.C. 29210

FILED

2019 JUN 26 PM 4:03

LISA H. CORNER
CLERK OF COURT
LEXINGTON SC

Honorable Lisa M. Corner

Clerk of Court

205 E. Main Street

Lexington, S.C. 29072

Re: Ronald Douglas Michaux Jr. v. State of South Carolina

Civil Action Number 2019 - CP - 32 - 02208

Dear Ms. Corner,

Enclosed for your file is an original copy of Applicant's Amendment

To Original PCR Application, along with a:

- 1) Proof of Service;
- 2) Exhibit C (trial transcript)

Respectfully,

s/ Ronald D Michaux

Please send me a stamp-filed copy once your office receives this.

State of South Carolina) In The Court of Common Pleas
County of Lexington)
Eleventh Judicial Circuit
Ronald Douglas Michaux Jr., 369511) Case Number 2019-CP-32-02208
Applicant,)
v.) Applicant's Amendment To
State of South Carolina,)
Respondent) Original PCR Application

Applicant, Ronald Douglas Michaux Jr., hereby puts this Honorable Court on notice that the following allegations have been amended to his Original PCR Application:

Issue 1 - Exhibit C (trial transcript)

Issue 2 - Trial Counsel failed to effectively argue Miranda violation.
Tr.p. 40 lines 1-7.

Facts - At the out-set of trial, officer Harrison admitted that he detained Applicant. Tr.p. 25 lines 1-5. However, he failed to issue a Miranda. Tr.p. 25 lines 6-10. He stated Applicant was "not free to leave" but "was not under arrest." Tr.p. 14 lines 17-23; Tr.p. 15 lines 12-18; Tr.p. 36 lines 17-19. Officer Harrison testified that a warning

Citation was issue Tr.p. 15 line 19 - p. 16 line 4; Tr.p. 25 line 23 - p. 26 line 10; however, a citation was never issued Tr.p. 25 line 23 - p. 26 line 10; Tr.p. 17 lines 2-8. Moreover, Applicant was never Mirandarized after being placed in handcuffs Tr.p. 198 line 1 - p. 199 line 6. 287

Issue 3 - Trial Counsel failed to effectively argue that Officer Harrison did not have probable cause to stop Applicant for a Terry stop without submitting sufficient facts to the judge.

Facts - Officer Harrison never utilized his In-Car Video, his body camera, admitted there was no speed violation Tr.p. 8 lines 6-12; never issued a citation Tr.p. 17 lines 2-8; Tr.p. 25 line 23 - p. 26 line 10, nor was any other facts presented to the judge to substantiate his allegations of probable cause.

Columbia, South Carolina

Dated: June 19, 2019

Respectfully,

S/ Ronald D. Michael

State of South Carolina	)	In The Court of Common Pleas
County of Lexington	)	Eleventh Judicial Circuit
Ronald Douglas Michaux Jr. 369511	)	Case Number 2019-CP-32-02208
Applicant,	)	
v.	)	
	)	Proof of Service
State of South Carolina,	)	
Respondent	)	

I certify that I have served this Applicant's Amendment To Original PCR Application on the Honorable Lisa M. Comer, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on June 19, 2019, addressed to her office at, 205 East Main Street, Lexington, South Carolina 29072.

/s/ Ronald D Michaux 369511
 Ronald D. Michaux Jr.
 Broad River C.Y. / WA-#1165
 4460 Broad River Rd.
 Columbia, S.C. 29210

(10) a. Trial counsel was ineffective for failing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause.

Facts -

FORM 5

ORIGINAL

SC

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

)

2019-CP-32-02208

Ronald Douglas Michaux, Jr., 369511)

)

Full name and prison number (if any) of Applicant.)

)

AMENDED

v.)

)

APPLICATION FOR

State of South Carolina, Respondent.)

)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.
2. Name and location of Court which imposed sentence Lexington County General Sessions
3. Name(s) of co-defendant(s) (if any) none

Revised 3/2003

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 LISA M. COMER
 CLERK OF COURT
 LEXINGTON SC

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 32 2606 Trafficking Cocaine (100 or more but less than 200)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 19, 2015 - 25 years
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 12/05/2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Court of Appeals Unpublished Opinion - 2018-UP-440 (2016-001797)

ii. ____

iii. ____

9. If you answered “no” to (7), state your reasons for not so appealing:

(a) n/a

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial counsel.

(b) Ineffective assistance of appellate counsel.

(c) Failure of the State to adequately comply with the rules of discovery.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case; Trial counsel failed to request a continuance in order to allow counsel to properly investigate the case and prepare an adequate defense; Trial counsel failed to properly move for the suppression of testimony and evidence; Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal; Trial counsel failed to effectively cross-examine the State's witnesses during the trial; Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary; Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury. Trial attorney failed to properly explain, convey, and advise client on the issues in the case, plea offers, and potential for various outcomes sufficiently for the Applicant to make informed decisions as to whether to enter a plea or proceed to trial, or to testify at trial; Failed to properly convey, review and advise as to the charges, potential sentences and the evidence; (See also any attachments); Applicant further incorporates herein by reference all allegations submitted in his prior application, attachments and amendments as if fully set forth herein verbatim.

(b) Appellate counsel failed to properly raise and argue viable issues on appeal.

(c) The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents.

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. n/a
 - ii.
 - iii.
 - iv.
 - (b) the name and location of the Court in which each was filed:
 - i. n/a
 - ii.
 - iii.
 - iv.
 - (c) the disposition thereof:
 - i. n/a
 - ii.
 - iii.
 - iv.
 - (d) the date of each such disposition:
 - i. n/a
 - ii.
 - iii.
 - iv.

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. n/a
 - ii.
 - iii.
 - iv.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. n/a
 - ii.
 - iii.
 - (b) the proceedings in which each ground was raised:
 - i. n/a
 - ii.
 - iii.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Issues raised herein are proper for PCR.
 - (b)
 - (c)
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or

applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. David M. Mauldin, Asst. Public Defender, 407 W. Main St., Lexington, SC

29072.

ii. Taylor D. Gilliam, Appellate Defender, POB 11589, Columbia, SC 29211-1589

iii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal

iii. PCR

19. State clearly the relief you seek in filing this application:

Reversal of the conviction and a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

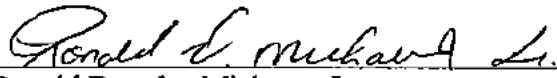
)
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VERIFICATION

County of Lexington

)

I, Ronald Douglas Michaux, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


 Ronald Douglas Michaux, Jr.

SWORN to and subscribed before me this 14th
 day of November, 2019.


 _____ (L.S.)
 Notary Public

My Commission Expires: October 18, 2029

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert Antwon Wright, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ronald Douglas Michaux, Jr.

SWORN or affirmed to and subscribed before me this
14th day of November, 2019.

Notary Public

My Commission Expires: _____



ALAN WILSON
ATTORNEY GENERAL

January 7, 2020

The Honorable Lisa M. Comer
Clerk of Court, Lexington County
205 East Main Street, Suite 128
Lexington, South Carolina 29072

Re: Ronald Douglas Michaux, Jr., #369511 v. State of South Carolina
2019-CP-32-02208

Dear Ms. Comer:

Enclosed please find the original **Return, and Motion for a More Definite Statement** in the above-captioned case for filing in your office.

Sincerely,

Lillian L. Meadows
Assistant Attorney General

LLM/ch
Enclosure

Cc: J.Falkner Wilkes, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Ronald Michaux, Jr., SCDC #369511,	)	
	)	Case No. 2019-CP-32-02208
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	(COUNSEL RETAINED)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Ronald Douglas Michaux, Jr. (Applicant) on June 6, 2019, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on March 12, 2014, for drugs recovered during a traffic stop and subsequent search of Applicant's vehicle. During its July 2015 term, the Lexington County Grand Jury indicted Applicant for trafficking in cocaine, one hundred to two hundred grams—first offense (2014-GS-32-0206)

On May 17, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. David Mauldin, Esquire (Counsel) represented Applicant. Assistant Solicitors Lester Bell, Jr. and Bradley Pogue prosecuted the case.

A. Summary of Evidence Adduced at Trial

Lance Corporal Michael Harrison with the South Carolina Highway Patrol operated as part of the interdiction team in Lexington County. On March 20, 2014, he was stationed on I-20 in Lexington County. (R. 6–7). He observed a white sedan travelling in front of a tractor-trailer. (R.

7–8). When the driver of the white sedan observed Trooper Harrison on the side of the road, he abruptly slowed in a dangerous and noticeable action requiring the tractor-trailer to swerve into the other lane to avoid hitting the sedan. (R. 8, 83–84). Trooper Harrison indicated he saw the driver “essentially jam on his brakes,” which was not a normal course of action for a driver based on the Trooper’s 16 years of experience. (R. 84–85).

As a result of seeing the driver abruptly brake, Trooper Harrison pulled out and followed the driver. As he pulled into the interstate, Trooper Harrison noticed the vehicle unable to maintain the center of his lane driving to the left side of the lane and then to the right side of the lane. (R. 84–85). Trooper Harrison indicated he was “weaving” within his lane. (R. 8, 85). Trooper Harrison decided to activate his blue lights and pull the driver over because he was concerned about his condition. (R. 8, 85–86).

Trooper Harrison approached the vehicle after he pulled it over and noticed it was a newer vehicle with an out-of-state license plate. (R. 9, 87). Trooper Harrison approached on the passenger side and noticed the driver was the only occupant. He also noticed the vehicle had a bar code sticker on the window indicating the car was likely a rental car. (R. 87). He asked the driver for his license and registration, while at the same time noticing two cans of air fresheners inside the vehicle. (R. 9, 87–88). Trooper Harrison noticed some cigar shavings from the inside of a cigar and immediately smelled the overwhelming smell of marijuana, even over the smell of the air fresheners. (R. 10, 89). He radioed for backup who ultimately arrived at scene. (R. 90). The driver did not provide a license, and instead provided a North Carolina Identification Card with the name Ronald Douglas Michaux. (R. 10–11, 88–89). Applicant provided the rental agreement for the vehicle, and the name on the agreement did not match Applicant. (R. 90). The renter of the vehicle was not present. (R. 14, 90).

Trooper Harrison had Applicant exit the vehicle and move beside the Trooper's vehicle to talk. Trooper Harrison asked Applicant where he was coming from and he received a generic response about Applicant coming from his cousins. When Trooper Harrison asked where the cousin lived, Applicant "turned back from the direction he was coming from and basically pointed back down the interstate and said [I'm coming] from that way" instead of giving a specific answer. (R. 12–13, 93–94). Trooper Harrison also asked Applicant about his license and Applicant admitted it was suspended in North Carolina.¹ (R. 13).

Trooper Harrison gave Applicant a warning for his driving and explained he would be searching the vehicle based on the smell of marijuana. (R. 17). As Trooper Harrison returned to the vehicle to perform the search, Applicant stated "there's no marijuana in the vehicle." (R. 18). Trooper Harrison located some additional tobacco shavings and cigar packages, which he explained people hollow out and use to smoke marijuana. (R. 18). Additionally, Trooper Harrison found a black plastic bag with a knot tied in it which contained a powdered substance. (R. 18–19). He explained the bag likely contained cocaine or heroin. (R. 19). The substance in the bag field tested positive for cocaine. (R. 100).

B. Verdict & Sentencing

The defense rested on the afternoon of May 18, 2016. (R. 192). However, despite Judge McMahon's warning that the trial would proceed in his absence if he did not appear in court the following day, Applicant failed to appear. (R. 196–198). Judge McMahon issued a bench warrant, and the trial continued in Applicant's absence. (R. 199). The jury found Applicant guilty as indicted that same day. (R. 228). At that time, Judge McMahon sealed Applicant's sentence to be imposed once found and arrested. (R. 232–233).

¹ Trooper Harrison ultimately explained Applicant's driver's license was revoked in North Carolina, so he was illegally driving without a license. (R. 20–21).

On Thursday, August 25, 2016, Applicant appeared before the Honorable William P. Keesley for sentencing. (R. 235). Upon unsealing the sentence, Judge Keesley imposed a sentence of twenty-five years' imprisonment. (R. 239).

C. Direct Appeal

On August 31, 2016, Counsel filed a timely notice of appeal. Appellate Defender Taylor Gilliam perfected Applicant's appeal by briefing the following issues for the Court of Appeals:

- I. Whether the trial judge erred in denying Appellant's motion to suppress evidence found as the result of an unconstitutional traffic stop that was initiated without probable cause where law enforcement could have issued a warning ticket and concluded the stop but instead continued to investigate without reasonable suspicion in violation of the Fourth Amendment of the United States Constitution and the South Carolina Constitution?
- II. Whether the trial judge erred in allowing officer qualified as an expert witness in narcotics trafficking to testify about the value of cocaine when the testimony did not assist the jury in understanding the evidence or determining a fact in issue, when the testimony was unnecessary and cumulative, and when the testimony's probative value was substantially outweighed by the danger of unfair prejudice?

On December 5, 2018, the Court of Appeals affirmed Applicant's conviction in an unpublished opinion. *State v. Michaux*, Op. No. 2018-UP-440 (S.C. Ct. App. filed Dec. 5, 2018). When no petition for rehearing was filed with the Court of Appeals, the remittitur was issued on December 27, 2018.

On February 15, 2019, Applicant filed pro se "notice of appeal," seeking the Supreme Court's review of the decision of the Court of Appeals. On March 13, 2019, the Supreme Court issued an order dismissing the pro se filing because no petition for rehearing had been filed or ruled upon by the Court of Appeals. *State v. Michaux* (S.C. Sup. Ct. filed March 13, 2019). The Supreme Court remitted the case back to the circuit court on April 1, 2019.

Applicant commenced this PCR action on June 4, 2019.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of trial counsel
 - a. “[F]ailing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause in contravention of the Fourth and Fourteenth Amendment, State constitution, and statute.”
 - a. “[F]ailing to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions.”
 - b. “[F]ailing to request a *Batson*² hearing after the State exercised all preemptory challenges to strike all but one black juror.”

On November 14, 2019, Applicant, through PCR counsel, filed an amended PCR application, raising the following issues:

1. Ineffective assistance of trial counsel
 - a. Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case;
 - b. Trial counsel failed to request a continuance in order to allow counsel to properly investigate the case and prepare an adequate defense;
 - c. Trial counsel failed to properly move for the suppression of testimony and evidence;
 - d. Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal;
 - e. Trial counsel failed to effectively cross-examine the State’s witnesses during the trial;

² *Batson v. Kentucky*, 476 U.S. 79 (1986), holding modified by *Powers v. Ohio*, 499 U.S. 400 (1991).

- f. Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary;
 - g. Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury;
 - h. Trial attorney failed to properly explain, convey, and advise client on the issues in the case, plea offers, and potential for various outcomes sufficiently for the Applicant to make informed decisions as to whether to enter a plea or proceed to trial, or to testify at trial;
 - i. Failed to properly convey, review and advise as to the charges, potential sentences and the evidence.
- 2. Ineffective assistance of appellate counsel
 - a. Appellate counsel failed to properly raise and argue viable issues on appeal.
 - 3. Failure of the State to adequately comply with the rules of discovery
 - a. The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents.

Applicant requests relief as follows:

“reverse, remand, and vacate sentence and conviction”

Attached herewith and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records, including the trial transcript,³ and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

³ Because jury selection is not included in the record on appeal, and because Applicant raises a *Batson* issue, the State attaches and incorporates by reference the full trial transcript in addition to the record on appeal.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing

professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional

assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant

must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant first claims Counsel was ineffective for failing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause. Specifically, Applicant alleges Trooper Harrison never witnessed him committing a traffic violation. This allegation is meritless because Counsel raised this exact issue in his motion to suppress, which

included *in-camera* testimony from Trooper Harrison. (R. 5–33). Counsel specifically questioned Trooper Harrison about the circumstances surrounding the stop and subsequent search. (R. 21–27, 29–30). The trial court found credible Trooper Harrison’s testimony regarding Applicant’s failure to maintain proper control of the vehicle, which was ultimately the reason for the stop. (R. 33–38).

To the extent Applicant argues Counsel should have challenged the contents of the affidavit in support of the arrest warrant, Counsel was not deficient in this regard. *See State v. Porch*, 417 S.C. 619, 627–28, 790 S.E.2d 440, 444 (Ct. App. 2016) (internal citations and quotation marks omitted) (noting that the mere fact that the affiant did not list every conceivable conclusion does not taint the validity of the affidavit and mere recording the facts relevant to a probable cause determination is not enough). Counsel chose to challenge the officer’s probable cause regarding the stop and search instead of the probable cause articulated in the arrest warrant after the search had already been conducted. *See State v. Lynch*, 412 S.C. 156, 179, 771 S.E.2d 346, 358 (Ct. App. 2015) (“A party attempting to demonstrate information was intentionally or recklessly omitted from an affidavit bears a heavy burden of proof.”).

Applicant next argues Counsel was ineffective for failing to object to the indictment on the grounds that the State “unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions. This allegation is without merit because a grand jury may meet at any time ordered by a circuit judge. *See* S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); *see also* Order No. 2011-02-04-01 (S.C. Sup. Ct. Order dated Feb. 4, 2011) (authorizing chief judge for administrative purposes to “determine the dates for the convening of the grand jury in the various counties within the judicial circuit”). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as

provided for in sections 14-5-620 to -820. *See State v. Jeffcoat*, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”).

Applicant next claims Counsel should have “requested a *Batson* hearing after the State exercised all preemptory challenges to strike all but one black juror.” Applicant further claims that he “was denied a fair and impartial jury because not only did [he] have an all-white jury, but all of the jurors were senior citizens over the age of 50 years old.” Applicant cannot show any resulting prejudice from Counsel’s failure to challenge the solicitor’s preemptory strikes because Applicant would not have prevailed in a *Batson* hearing. The transcript indicates only three black females were randomly selected during venire and presented for jury selection. (Tr. 69–75). One of these black females was stricken from the jury by the State, one was stricken by the defense, and one was a member of the petit jury. (Tr. 70; 8–19, Tr. 72; 4–10).

To prevail in a *Batson* hearing, the burden is “on the defendant who alleges discriminatory selection of the venire to prove the existence of purposeful discrimination.” 476 U.S. at 93 (internal citations and quotation marks omitted). Applicant simply cannot meet this burden when the State only struck one of three black females from the jury. *See Id.* at 85 (“The State denies a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded.”).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's remaining claims of ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct are without merit. However, it is impossible for the State to adequately respond to any allegations set forth in Applicant's amended application because Applicant has completely failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921

(S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP. *See also* Rules 15(a)-(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

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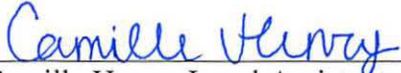
January 7, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2019-CP-32-02208
	)	
RONALD D. MICHAUX, JR., #369511	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601

DATED this the 7th day of January, 2020.


 Camille Henry, Legal Assistant
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Eleventh Judicial Circuit
County of Lexington	)	Case No. 2019-CP-32-02208
	)	
Ronald D. Michaux, Jr.,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

April 12, 2022
Lexington, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

J. Falkner Wilkes, Esquire
Attorney for the Applicant

Taylor Smith, Esquire
Attorney for the Respondent/State

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said
[inaudible]		unable to hear or understand due to audio volume or quality

1 APRIL 12, 2022

2 (WHEREUPON, the proceedings began at 2:39 p.m.)

3 MR. SMITH: May it please the Court. This is the case of
4 Ronald Michaux versus State. The case number is 2019-CP-32-
5 02208.

6 Mr. Michaux is serving out a sentence in the South
7 Carolina Department of Corrections. He was arrested on March
8 12th, 2015, when drugs were recovered during a traffic stop
9 and a subsequent search of a rental vehicle that he was
10 driving. The Lexington County Grand Jury indicted him for
11 trafficking in cocaine, 100 to 200 grams, first offense.

12 In May of 2016, he was tried before a jury with Judge
13 McMahon presiding, and Mr. Michaux was tried partially in his
14 absence. The jury found him guilty as indicted, and Judge
15 McMahon issued a sealed sentence, which was unsealed once Mr.
16 Michaux was back in custody before Judge Keesley on August
17 25th, 2016. Judge Keesley read the sentence of 25 years
18 imprisonment.

19 Mr. Michaux's trial lawyer filed a notice of appeal, and
20 the appellate lawyer argued two issues, the first concerning
21 the trial judge's denial of the motion to suppress evidence
22 from the traffic stop, and the second issue was concerning the
23 qualification of testimony from a law enforcement officer who
24 testified as an expert in narcotics trafficking. The Court of
25 Appeals affirmed the convictions -- conviction in an

1 unpublished opinion. When no petition for rehearing was filed
2 with the Court of Appeals, a remittitur was issued in December
3 of 2018.

4 Mr. Michaux then filed a *pro se* notice of appeal in the
5 South Carolina Supreme Court. In March of 2019, the Supreme
6 Court issued an order dismissing the *pro se* filing because no
7 petition for rehearing had been filed in the Court of Appeals.
8 The case was remitted back to the circuit court and the
9 application followed.

10 Mr. Wilkes, who represents Mr. Michaux, has filed at
11 least one amendment. We've communicated a good deal back and
12 forth about the case, and it's my understanding that they will
13 present the following claims today.

14 One, trial counsel was ineffective for giving poor advice
15 regarding plea negotiations and the State's plea offers.

16 Two, trial counsel was ineffective for giving poor advice
17 about the chance of success at trial.

18 Three, trial counsel was ineffective for not raising a
19 *Batson* motion.

20 Four, trial counsel was ineffective for not informing Mr.
21 Michaux that he would be taken into custody and the trial
22 would begin on the first day.

23 Five, trial counsel was ineffective for not arguing that
24 the arrest warrant affidavit was insufficient to support a
25 finding of probable cause.

1 Six, trial counsel was ineffective for not arguing that
2 the grand jury was impaneled outside of a General Sessions
3 term.

4 Seven, trial counsel was ineffective for not rejecting
5 testimony from the State's expert witness that a drug dealer
6 would not leave drugs behind in a rental car.

7 And eight, that appellate counsel was ineffective for not
8 arguing that the trial court erred in admitting Mr. Michaux's
9 roadside statements to the officers.

10 Other than that, the State is ready, Your Honor.

11 THE COURT: Yes, sir.

12 Mr. Wilkes?

13 MR. WILKES: That's it, Your Honor. We are ready to
14 proceed.

15 THE COURT: All right, sir.

16 MR. WILKES: We would call Mr. Michaux as our witness.

17 THE COURT: All right. Mr. Michaux, come around, please.
18 Mr. Michaux, is that how you say your name? Michaux?

19 THE APPLICANT: Yes, sir.

20 THE COURT: Mr. Michaux, do you swear or affirm today,
21 sir, to tell the truth and nothing but the truth, so help you
22 God?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. Proceed, sir.

25 MR. WILKES: Thank you, Your Honor. Mr. Michaux -- for

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 the record, I'm Jeff Wilkes. I represent Mr. Michaux in this
2 case.

3 RONALD D. MICHAUX, JR., being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILKES:

7 Q: Mr. Michaux, tell me how you came about retaining the
8 lawyer that represented you at trial?

9 A: I think it was court appointed.

10 Q: Court appointed? Okay.

11 A: Well, a public defender or however they call it.

12 Q: Okay. And when was your first contact with your trial
13 lawyer?

14 A: I think in the Lexington County jail, if I ain't
15 mistaken.

16 Q: While you were still incarcerated --

17 A: I think so.

18 Q: -- on the charges? Okay. Did you later get out on bond?

19 A: Yes, sir.

20 Q: Okay. While you were in jail, did you meet more than
21 once? One time? How many times did you meet with your trial
22 lawyer?

23 A: When I was free?

24 Q: No. When first incarcerated.

25 A: I think I might have seen him once or twice.

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 Q: Okay. And after you had a bond hearing, you were
2 released on bond. Do you remember how long that was after you
3 were arrested?

4 A: I think 125 days later.

5 Q: Okay. Now, while you were out on bond, did you meet with
6 the lawyer?

7 A: Every court date. If not every court date, when I --
8 when I -- when I came to South Carolina to the court, I might
9 go see him at his office every now and then.

10 Q: Okay.

11 A: Or I seen him in court.

12 Q: Okay. How many times do you think you met with your
13 attorney?

14 A: Maybe five, six times.

15 Q: And how many of those times did you go over the evidence
16 in the case?

17 A: Maybe twice before trial.

18 Q: How far before trial did you go over the evidence in the
19 case?

20 A: Well, I mean, I was out for, like, two and a half years
21 maybe. So not many times before trial.

22 Q: Say again?

23 A: Not -- not many times before. I mean, I can't give you
24 an exact number because it's been so long. I can't give you
25 exact, but it weren't that many times.

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 Q: Okay. But give me an idea as far as how close to trial
2 was it before you sat down and went over the case?

3 A: Not long before trial.

4 Q: Okay. When you went over the case and discussed the
5 evidence and the law, tell me a little bit about that.

6 A: What law?

7 Q: Tell me what you talked about with your lawyer. What did
8 he inform you of when you met?

9 Q: You know, what I was -- I guess what I was facing, and we
10 talked about trying to, you know, see what would happen about
11 it. Like, I don't know South Carolina law. So I had to -- he
12 had to explain it to me --

13 Q: Okay.

14 A: -- a little bit about the sentencing and stuff like that.

15 Q: Okay. Where are you from?

16 A: I'm from Fayetteville, North Carolina.

17 Q: All right. And you were living there at the time of
18 this?

19 A: Yeah. I've never lived in South Carolina, no.

20 Q: Okay. When you discussed the charges and the evidence,
21 what impression did your lawyer give you?

22 A: Well, like, maybe trial was the best thing.

23 Q: Okay. Why? Why was that? Did he tell you that a trial
24 would be a good idea?

25 A: I mean, we discussed it.

1 Q: Okay.

2 A: I was --

3 Q: And what about going to trial made sense to you. What --
4 what did your trial lawyer explain to you as far as your
5 defenses or possible outcome?

6 A: Well, like, the -- what they would call, like, a -- like,
7 a legal search of a seizure and violation of Fourth Amendment
8 rights, if I ain't mistaken, something like that.

9 Q: Okay. And did you believe that you might win if you went
10 to trial?

11 A: Yeah.

12 Q: Were there plea offers in your case?

13 A: While I was in trial, there was a -- I think a 7 to 25
14 violent.

15 Q: Okay.

16 A: Which I turned down.

17 Q: Okay. Why did -- why did you turn down a plea offer?

18 A: Because I thought I could win the case.

19 Q: Okay. Was there a plea offer before the trial?

20 A: Not that I remember.

21 Q: Okay. There wasn't a plea offer when you were still
22 incarcerated, still in jail?

23 A: No.

24 Q: Okay. So at what stage of the trial did you receive a
25 plea offer?

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 A: I got a chance to stand up and talk to the judge myself.
2 So after I talked to the -- to Knox McMahon with everything,
3 when I talked to him, he called -- I guess he called a -- when
4 they tell them to come up to the --

5 Q: Uh-huh.

6 A: They took me in the back room and when I came back out, I
7 stood up and he was, like, I guess the solicitor or whoever
8 has an offer for 7 to 25 years violent.

9 Q: Okay.

10 A: And I turned it down.

11 Q: All right. Now, tell me what your thought process was in
12 turning down a plea offer at that point. Did you talk to your
13 attorney about the plea offer?

14 A: I mean, it was, like, a spirit of moment thing. They
15 just came with it in the middle of the trial. So, I mean, I
16 denied it. When I -- when I came back out, I told them I
17 didn't want to take it, but it was told to me in the
18 courtroom, not like behind doors or nothing. They offered it
19 to me in front of -- the judge really the one that said it,
20 that the solicitor was offering the 7 to 25, violent.

21 Q: All right.

22 A: So I told him I ain't want to take it.

23 Q: All right. And if you -- would you have turned it down
24 if you'd have believed the chances of being convicted were
25 substantially high, tremendously high?

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 A: Would I have turned the plea down?

2 Q: Yeah. If your lawyer would have explained to you that
3 your chances of success at trial were --

4 A: Slim to none?

5 Q: -- slim to none, would you -- would that have changed
6 your decision and taken a plea offer?

7 A: Yeah.

8 Q: Okay. Now, at any time during this -- you had said
9 several times in the record --

10 MR. WILKES: On page, I believe, around 87, Your Honor.

11 BY MR. WILKES:

12 Q: You had said numerous times that you were not guilty.
13 Did your trial lawyer ever explain to you that you could take
14 a plea offer? If the State's agreeable, you can take a plea
15 offer and still say, I didn't do it, but I believe I'm going
16 to be convicted, and I don't want to take that chance at
17 trial? Did he ever explain that, what's called an *Alford*
18 plea?

19 A: No.

20 Q: Okay. If he would have explained that and the State
21 would have offered an *Alford* plea, would you have taken an
22 *Alford* plea where you actually don't have to say you're
23 guilty?

24 A: I mean, depending on what the plea was.

25 Q: Okay.

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 A: But I probably would have thought about it more than
2 going to trial and getting 25 years.

3 Q: All right. Now, you had indicated, I believe, in your
4 application that you had no say in the selection of the jury.
5 You're aware that during the jury selection, a black person
6 was struck off of the jury panel or the jury and was not
7 seated in your case? You're aware of that; correct?

8 A: Yeah. A few. Correct, yeah.

9 Q: Did you have any say in whether or not that person would
10 be struck or any person would be struck? Did you have any
11 input whatsoever into the selection of the jury?

12 A: No.

13 Q: Did you have any say in the issues that were argued on
14 appeal?

15 A: What you mean?

16 Q: From your appellate lawyer. Did you have any input on
17 that?

18 A: As far as, like, what?

19 Q: Did you ask the appellate lawyer to raise any issues on
20 appeal that you can recall?

21 A: The only issues I knew were the ones that was already
22 raised, but they said they couldn't raise them again because I
23 guess they already had been used or it couldn't be reused
24 again. So I didn't know any other issues to raise.

25 Q: Tell me what was your -- what was your major complaint as

1 far as representation in the case? As far as your lawyer
2 goes, where do you think it would have made a difference had
3 it been done differently?

4 A: Well, a lot of issues weren't raised, and the issues that
5 were raised, the judge just struck them down like they didn't
6 mean anything. So --

7 Q: And what issues were not raised that you believe should
8 have been raised?

9 A: I mean, at the time, I really couldn't tell you because,
10 you know, I didn't know the law of South Carolina. I just
11 looked at the trafficking law myself, but like the -- the
12 issues that was already raised about the -- the blue ticket,
13 which -- or the -- the warning ticket. They said it was
14 wrote, but that never showed up in court. The not being read
15 my Miranda rights and prolonging the traffic stop and stuff
16 like that. I mean, that's all I really knew.

17 Q: All right. Mr. Michaux, other than deficiencies of your
18 trial counsel, what other complaints do you have about the
19 prosecution in your case?

20 A: I'm not understanding what you're saying. What do you
21 mean by that?

22 Q: Well, I've covered the issue of your trial lawyer, as you
23 say, not effectively representing you, in other words, not
24 advising you properly on the law or the facts; right?

25 A: Uh-huh.

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 Q: Not giving you good advice on the plea, but what else is
2 there in the case other than that that doesn't appear in the
3 record that you need to tell the Court that I have not asked
4 you about?

5 Q: Well, when I read my transcript, they said it was a zero
6 to 15 plea offer, which I never heard about.

7 Q: Okay. Tell me about that.

8 A: I mean, I read it in the trial transcript, but you know I
9 was tried in my absence. So when I finally got the paperwork
10 --

11 Q: Okay.

12 A: -- during the end of the -- I can't remember what page.
13 It was during the end. It said it was a lesser, something
14 about being the trafficking dropped to a lesser charge and it
15 being a zero to 15 nonviolent plea, but the solicitor never
16 offered me that.

17 Q: And did your trial attorney ever tell you about that plea
18 offer?

19 A: I don't recall it. I just remember the 7 to 25 that was
20 offered to me in the middle of the trial.

21 Q: Okay. If they had offered you -- if you had been made
22 aware of a zero to -- what did you say?

23 A: I think it was zero to 15, nonviolent.

24 Q: Zero to 15. If you'd have been informed of a zero to 15
25 plea offer and your lawyer advised you that the chances of

1 success were slim, what would you have done?

2 A: I mean, I probably -- I would have took the nonviolent
3 plea because I would have about did the time.

4 Q: Okay. Very good. Is there anything else that I have not
5 asked you about?

6 A: I can't really say offhand because I didn't know I was
7 coming to court today, so I really hadn't --

8 Q: I've got issues that I can address with the Court. It's
9 in the record. They're in the record. And I'll just ask you,
10 the testimony by the trooper that there's no way that somebody
11 could -- what was your defense at trial?

12 A: Mine?

13 Q: Yeah. What was your defense?

14 A: I didn't get on the stand during it. I didn't -- I
15 didn't -- I didn't get on the stand.

16 Q: Right. But early on was not your -- was your claim that
17 the drugs were not yours?

18 A: Right.

19 Q: Okay. And you heard the testimony or you've seen the
20 testimony of the trooper. You may have been there for that
21 part where the trooper testified that nobody would leave drugs
22 in a car accidentally?

23 A: Right.

24 Q: Okay. And I believe your lawyer did not object to that
25 testimony. Do you remember that?

RONALD D. MICHAUX, JR. - DIRECT BY MR. WILKES

1 A: (No response.)

2 Q: If you don't, that's okay. It's in the record.

3 MR. WILKES: Judge, that's all the questions I need to
4 ask Mr. Michaux.

5 THE COURT: Yes, sir.

6 MR. WILKES: The other issues I have, I believe, are
7 appearing from the trial record, and if I can just point those
8 out, I think that'll --

9 THE COURT: Yes, sir.

10 MR. WILKES: -- suffice for the record.

11 THE COURT: Yes, sir.

12 Any cross?

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q: Mr. Michaux, Mr. Mauldin told you that your trial would
16 start on May 17th, 2016, didn't he?

17 A: Say it again?

18 Q: He told you your trial was starting?

19 A: He told me what day to be in court for trial.

20 Q: Okay. Back in 2016?

21 A: Yeah, I believe so.

22 Q: Okay. And isn't it true that when Mr. Mauldin tried to
23 talk to you about your case, you'd shout things at him and
24 just say stuff about get the drugs suppressed, profanities,
25 and that kind of stuff?

RONALD D. MICHAUX, JR. - CROSS BY MR. SMITH

1 A: That's not -- I've never cursed him. I've never had no
2 argue with him about nothing like that. That's not true.

3 Q: Okay. So you deny that?

4 A: Yeah. I ain't never had no argument, cursing him out
5 about no drugs.

6 Q: Okay. And isn't it true that he gave you multiple plea
7 offers from the solicitors and you turned them all down?

8 A: That's not true. What plea? I only got one plea in the
9 middle of the trial. There was no multiple pleas.

10 Q: Okay. So you deny you turned down plea offers?

11 A: I turned down the 7 to 25.

12 Q: Okay. All right.

13 MR. SMITH: That's all my questions. Thank you.

14 THE COURT: All right. Mr. Wilkes?

15 MR. WILKES: No further questions of Mr. Michaux.

16 THE COURT: Mr. Michaux, thank you, sir.

17 Any other witnesses, sir?

18 MR. WILKES: No, sir. But I have --

19 THE COURT: If you want.

20 MR. WILKES: -- several issues appearing from the record
21 --

22 THE COURT: Okay.

23 MR. WILKES: -- that I'd like to address.

24 THE COURT: Yes, sir. Please.

25 MR. WILKES: Judge, at the -- in the record from, I

1 believe, page 207 to 208, the testimony of the highway
2 patrolman in this case was something to the effect that nobody
3 could leave -- no drug dealer would ever by accident leave
4 drugs in a rental vehicle. And I believe Mr. Michaux's
5 defense at the time was they're not his drugs, and I believe
6 that was his statement at the time of arrest.

7 The trooper's testimony exceeded that which would be
8 allowed by an expert witness, and it bore directly on the
9 issue of guilt because it just ruled out any possibility of a
10 defense for Mr. Michaux, and it's not something that an expert
11 testifies to, that it's impossible for his defense to be
12 viable, which was I didn't know they were there.

13 The trooper's testimony -- I noticed that, I think, the
14 Court referred to *Jameson* in upholding it. *Jameson* gives
15 pretty broad latitude to the expert witness and what they can
16 testify to and especially in drug trafficking cases, but the
17 theory behind *Jameson* is that the expert is allowed to testify
18 to things that will aid the trier of fact, being the jury in
19 this case, in understanding the complexities of the drug trade
20 that wouldn't otherwise be known to the common person.

21 That would be -- and it's been applied most commonly in
22 expert witnesses testifying to code talk. In other words,
23 listening to the recordings or statements and saying this is
24 what that word means. This is what that is. That's been
25 allowed numerous times because that's within an expert's

1 scope, I think under Rule 702.

2 But in this case, the trooper just completely negated any
3 defense that Mr. Michaux had that he was unaware that there
4 were drugs in the vehicle by testifying that no drug dealer
5 would ever leave drugs in a vehicle by accident. And he said,
6 no, that just wouldn't happen.

7 And that is just -- that is a factual statement. It's
8 not an expert witness opining on some meaning or something
9 that aids the jury. It is directly on the issue of whether or
10 not he knew that they were there, and that exceeds *Jameson*,
11 and it exceeds all of the case law, I believe, on expert
12 witnesses, although I know that the Ninth Circuit had some --
13 one case that kind of touched on that, but it didn't deal with
14 the admissibility of that statement. It dealt with the impact
15 of the statement once it had been introduced. So looking at
16 the case law, I would submit that that statement is a
17 statement on the facts that is outside the purview of what's
18 allowed for an expert witness.

19 THE COURT: Okay.

20 MR. WILKES: The Fourth Circuit has been consistent in
21 saying that experts can explain things that are necessary for
22 the jury to understand that they would not understand just
23 because they're not connected to drug trade, firearms, or
24 tools of the drug trade, things like that, but not to be able
25 to say there's no way Mr. Michaux could have had drugs in his

1 car and not know it, which is essentially what the trooper
2 said, which is absolutely outside the scope.

3 So I would submit that that is impermissible. It could
4 certainly have had a significant impact on the jury.
5 Difficult to tell, but when an expert witness says it's
6 impossible for him not to know the drugs are in his car,
7 that's got to have an impact. It just has to.

8 That issue was not objected to. Although there were
9 objections to the testimony of the trooper, there was no
10 objection on that issue. It was, therefore, not briefed by
11 appellate counsel, and I would submit that there should have
12 been.

13 There was also no voir dire of the scope of the expert's
14 area of expertise to exclude some kind of crazy statement like
15 that that would be on the facts. So we -- we would contend
16 that that was a significant factor in the conviction and,
17 therefore, counsel would be ineffective for not having
18 combated that from happening.

19 And if I can have just a second, I want to make sure that
20 I don't have to cover anything else.

21 THE COURT: Yes, sir.

22 MR. WILKES: We've reviewed the evidence on the issue
23 involving the grand jury, being indicted outside the term of
24 the grand jury. The attorney general has presented the
25 documentation showing that it was, in fact, in a legitimate

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1 term for the grand jury and, therefore, that is a non-issue.

2 And we have also considered the issue that Mr. Michaux
3 said he was unaware that he would be taken into custody in
4 trial, but we have no evidence to show how that would
5 prejudice if it had not been so.

6 THE COURT: Yes, sir.

7 MR. WILKES: So that too would be legally a non-issue,
8 and I believe that would suffice for my case on the record.

9 THE COURT: All right. Anything from the State, sir?

10 MR. SMITH: Your Honor, I'd like to maybe argue the
11 points, but I'd rather hold -- hold back on that until after
12 we have some evidence in.

13 THE COURT: All right.

14 MR. SMITH: So I'd call Mr. David Mauldin as my first
15 witness.

16 THE CLERK: Do you solemnly swear or affirm the statement
17 you're about to give to be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated in the witness
21 stand.

22 THE COURT: All right, sir.

23 DAVID MAULDIN, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

DAVID MAULDIN - DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q: Mr. Mauldin, what's your full name?

3 A: David Mauldin, M-a-u-l-d-i-n. David Michael Mauldin.

4 Q: Okay. When were you admitted to practice in South
5 Carolina?

6 A: 1997.

7 Q: Can you give me a summary of your professional experience
8 since you were admitted?

9 A: I worked for George Sink for about a year and a half in
10 Charleston, decided that that wasn't for me. I applied at a
11 public defender and solicitor's office, ended up getting hired
12 in Aiken in April of '99, I believe. I was there until the
13 end -- at the public defender's office, I was there until
14 about 2008. I moved over here to Lexington, was a public
15 defender until early 2012, when I just took a break for about
16 ten months, and then I went back to the public defender's
17 office, where I've been ever since.

18 Q: Okay. How did you come to be involved in Mr. Michaux's
19 criminal case?

20 A: I believe our office was appointed sometime in late April
21 or early May. He was interviewed. He was arrested in March.

22 Q: Of what year?

23 A: '14, 2014.

24 Q: Okay. On how many occasions did you meet with Mr.
25 Michaux?

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1 Q: Well, I could go through it all. Let's see. Our initial
2 meeting was on June 6th of '14. Let's see. He was excused
3 from roll call. There were some phone contact in between. We
4 had a bond reduction hearing sometime after June, but before
5 the end of July, where he was -- bond was lowered and he was
6 out of jail.

7 Q: And this was all still in 2014?

8 A: 2014. Let's see, he was from out of state. So there
9 were some issues with him showing up, and the solicitor -- he
10 was excused from a roll call in July. That's when I had the
11 prelim that day and the offer was made. I called him by phone
12 on August 12th of '14 and relayed the plea offer.

13 He had a court appearance or a roll call on 8/22 of '14,
14 and he said he wasn't going to take the offer. They had
15 another appearance on September 12th where we were given
16 notice of a potential trial on October 20th of '14, but they
17 hadn't had the drug results back by then. So it was a little
18 ambitious of the solicitor to -- to do so.

19 On October 1st of '14, I called him and left a voicemail
20 regarding the fact that the -- the plea offer was going to be
21 extended because originally they said it was null and void
22 when he didn't want to take it, that it was going to be
23 extended. I never talked to him. I left a voicemail, and
24 then I got some messaging where I ended up calling a fellow
25 named Andre Hogan, who informed me that Mr. Michaux had been

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1 locked up in North Carolina. So, obviously, we didn't have
2 any kind of trial. I explained that to the solicitor and no
3 failed to appear bench warrants were issued despite the fact
4 that he had been incarcerated elsewhere.

5 Eventually, he got out of North Carolina and the
6 solicitor called me and I let him know that. The roll call
7 process or appearance, whatever you want to call it, began
8 again on September 4th of '15. Apparently, the plea offer was
9 still open at that time. Mr. Michaux said he needed time to
10 think about it.

11 They were going to set a tentative court date for some
12 time in October of '15. That's when we had that big flood or
13 that 100-year flood or whatever, and we didn't have court in
14 October '15, so nobody came out. The solicitor let it sit a
15 while, then sent a letter out that he needed to show up to
16 court on January 20th of '16.

17 At that time, which was, you know, court where a judge is
18 on the bench, he said that he still needed time to think about
19 the plea offer. He was given a February 9th of '16 date to
20 come back where it's going to be a drop dead. At that time,
21 Mr. Michaux had asked me to see if they would talk about -- if
22 they could negotiate a specific number or something along that
23 lines, at which time the solicitor had informed me that he's
24 not going to negotiate a number, but he's going to ask the
25 judge for some prison time. I let Mr. Michaux know that and

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1 on the 9th, when he came back from North Carolina, he said he
2 wanted a trial because the solicitor was going to ask for
3 time.

4 April 6th of '16, had a phone call with the client and
5 discussed the drug results had come in positive, and I think
6 they had come in September the year before or something, and
7 he had some issue because it wasn't provided with the original
8 discovery, but it takes time for them to do the drug results,
9 and discovery comes in batches, unfortunately.

10 And then I think April 25th of '16, he signed a notice
11 for a trial on May 6th, '16, but then the trial didn't
12 actually start until the 17th. During the trial is when, you
13 know, they had revoked all plea offers because he said he
14 wasn't going to plea to that zero to 15, and Judge McMahon
15 kind of came in and said is this something we really need to
16 try? Is it something that can be worked out? And they
17 offered the 7 to 25 level because what he was charged with was
18 an automatic 25 because of the -- the weight and --

19 Q: Well, let's --

20 A: Oh, yeah.

21 Q: -- stop there for a minute and let's go into work in the
22 case to decide what to do with it. So --

23 A: Right.

24 Q: Tell me what you remember about the State's evidence?

25 A: Well, it was a traffic stop because he was going too slow

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1 or some such and -- and they pulled him over and they found
2 drugs in the trunk eventually and they charged him with the
3 drugs. Mr. Michaux's position was that it was an illegal
4 search and if I was going to do my job, I'd get those drugs
5 suppressed and that's all I needed to know about the case is
6 to get the drugs suppressed.

7 Q: Okay. At that time, what was your evaluation of the
8 strength of the State's case?

9 A: Well, if the drugs weren't suppressed, it's not a
10 terribly great case for him. I mean, it's a rental car. I
11 think I argued in my closing that a lot of people use rental
12 cars. Somebody could have left that in the trunk, despite
13 what the highway patrolman said.

14 But basically, if the drugs weren't suppressed, it wasn't
15 going to be that great, but I could never guarantee if the
16 drugs would get suppressed or not. That's a judge's decision.
17 And if the judge decides wrong, then there's a court of
18 appeals that would decide whether or not the judge is wrong.

19 Q: Did you tell Mr. Michaux your opinion of the merits of
20 his case?

21 A: I never tell people that they've got a winner or a solid
22 loser because it goes either way, but I mean, he's the only
23 person in the car. I've told him that you're the only one in
24 the car. The drugs are in the car, it's leaning towards you.
25 Nothing's a hundred percent, but I never tell people that, oh,

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1 yeah, you're going to win or you're going to lose.

2 He was very emphatic that the drugs would be suppressed.

3 He thought I could get the drugs suppressed even before I had
4 the discovery. It just doesn't work that way, but --

5 Q: Did you tell him, hey, there's a chance here these aren't
6 going to be suppressed?

7 A: Well, I did, especially with that offer that had been on
8 the table for a good long time. I said even if the judge does
9 the worst on this, it would be better than the best outcome at
10 trial. Fifteen at nonviolent would be better than 25 at 85
11 percent. So even the worst on that would be better than the
12 best at trial, but I always leave it up to them because it's
13 their decision as far as whether to plea or go to trial.

14 Q: Did you tell him the chance of success you saw in having
15 the motion to suppress granted?

16 A: I can say he had some issues. I don't -- you know, if
17 he's not going below 40 -- I mean, there's a minimum 45 and
18 that kind of thing, but there's never a red line where I draw
19 where I'm like, oh, yeah, you're getting this thrown out.
20 It's -- it's up in the air type thing. And I apologize for
21 letting him know I don't have a crystal ball or I can't --

22 Q: Right.

23 A: But, you know, it's an issue. It's an issue to argue. I
24 can't say whether it's a win or a lose.

25 Q: Right.

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1 A: But -- but there is an issue to argue.

2 Q: Okay. So, I mean, did you give him -- did you try to
3 convey a sense that it was generally a high chance of success
4 or a low chance?

5 A: Well, my opinion was that offer of PWID first was a good
6 way to hedge his bets.

7 Q: Right.

8 A: As far as rather than taking chances at trial.

9 Q: Okay. Do you happen to have a copy of the trial
10 transcript with you?

11 A: No, I do not.

12 Q: Okay.

13 MR. SMITH: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. SMITH:

16 Q: If I can, I'm going to hand you this. Can you confirm
17 that this is the record on appeal for Mr. Michaux's trial?

18 A: Yeah.

19 Q: And if you would look at page 128 of the original trial
20 transcript, and since I've handed you the record on appeal,
21 you'll be looking at the number that is not bolded.

22 A: Okay. Yes, sir.

23 Q: Okay. And if you'll read down at the bottom for me and
24 just confirm where the officers found the drugs in the car?

25 A: Let's see. Let's see.

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1 Q: It's starting about halfway down.

2 A: Okay. The rear door of the Volkswagen.

3 Q: So it was in the passenger compartment in the back?

4 A: Yeah, in the back.

5 Q: Okay. Not the trunk?

6 A: Not the trunk, but in the back, yeah.

7 Q: Okay. All right. I just wanted to make sure.

8 A: But it wasn't anywhere near him. It was behind him.
9 Yeah.

10 Q: Did you tell Mr. Michaux that he had any potential
11 defenses other than getting the drugs suppressed?

12 A: Well, any attempt I had to discuss with Mr. Michaux, like
13 where he was coming from, where he was going, anything like
14 that, he just told me you just need to get those drugs
15 suppressed. I mean, basically, he kind of inferred it was
16 none of my business, that my job was to get those drugs
17 suppressed.

18 Q: Did he give you anything to work with in his defense?

19 A: No. I mean, no.

20 Q: Okay.

21 A: I mean, other than argue that he didn't know it was in
22 the car.

23 Q: Okay.

24 A: But --

25 Q: How many times did you try to discuss with him -- discuss

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1 the case with him?

2 A: The other -- the initial time. I mean, any time we
3 talked about the plea offer, but basically, you know, being
4 told you just need to get those drugs suppressed.

5 Q: Right.

6 A: And, I mean, I can't tell you how many times I made the
7 attempt, but I --

8 Q: How many times did --

9 A: I had been given that emphatic instruction so many times
10 that at some point I just stopped asking.

11 Q: Can you put a number to the number of times he said that?

12 A: At least four or five.

13 Q: Okay. Did he say it politely or --

14 A: It depended on the time.

15 Q: Okay.

16 A: Sometimes yes, sometimes no.

17 Q: Okay. Did Mr. Michaux give you any reason to think he
18 was having trouble understanding your advice on that point?

19 A: No. Like I said, plea offers were relayed and,
20 basically, he didn't like the prospect of not knowing how much
21 prison time he would get as far as on the zero to 15. The
22 second plea offer made at the beginning of the trial was that
23 7 to 25, like I was talking about, and Judge McMahon inferred
24 in the back or kind of said that he would err more towards the
25 7 than the 25, which you still don't exactly know what that

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1 means unless you cut it in half, but -- and I let Mr. Michaux
2 know that. And he said that he'd take four nonviolent and he
3 wasn't taking that, and that's why he rejected that plea
4 offer, because he thought it was too much time.

5 Q: So how many plea offers did the solicitors offer?

6 A: Well, it was an initial offer of PWID first, which is
7 generous, and then that second one at trial and Judge McMahon
8 was trying to say is this something that really needs to be
9 tried, you know.

10 Q: Okay.

11 A: What can you offer?

12 Q: In that -- that first offer, were they making a time
13 recommendation?

14 A: They were recommending time, but they weren't saying a
15 specific number. They were just saying he should get some
16 prison time, but they would not negotiate a number with us or
17 tell me how much time.

18 Q: Okay.

19 A: So, basically, they'd just say to the judge, well, we
20 think this merits prison time, and leave it up to the judge.

21 Q: All right. So the first offer was PWID first?

22 A: That's correct.

23 Q: The second offer was trafficking?

24 A: It was a reduction. I don't know either an amount or the
25 -- the number. Well, obviously not the number because the

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1 weight you get 25, no matter whether it's your first, second,
2 or third, but it was a level of trafficking where the range
3 was 7 to 25. I can't remember --

4 Q: Okay.

5 A: -- which offense or which weight it was, but that's --
6 you know.

7 Q: And is that second one the one that was offered at the
8 beginning of trial?

9 A: Yes.

10 Q: Okay. Did the State extend any plea offer that you did
11 not share with Mr. Michaux?

12 A: No.

13 Q: Okay.

14 A: Not to me anyway.

15 Q: Okay. And at trial when Judge McMahon asked Mr. Michaux
16 about the plea offer, Mr. Michaux rejected it and told Judge
17 McMahon he was rejecting it because he was innocent? Do you
18 remember that?

19 A: If that was -- if that was on the record, then you could
20 cite that for the judge. Sure. It sounds familiar, but I
21 couldn't tell you a hundred percent.

22 Q: Okay. Do you remember Mr. Michaux rejecting plea offers
23 on the record at his trial?

24 A: I believe so.

25 Q: Okay. Okay. Will you turn to page 263 for me?

1 A: Yeah.

2 Q: I took it from you.

3 A: Yeah, you took it from me.

4 Q: And do you agree with me on that page that Solicitor Bell
5 tells Judge McMahon that you had asked at the beginning of
6 trial for them to extend another offer, and that Mr. Michaux
7 rejected that after they did?

8 A: Let's see. That's at the sentencing and that was Judge
9 Keesley, and he just let the judge know that the -- the -- the
10 series of plea offers, the two plea offers that they had made,
11 the initial one and then the one -- I don't know if we
12 necessarily asked for another offer, as Mr. Bell said, or if
13 it was all kind of a conference in the back, and I relayed
14 whatever was made to Mr. Michaux.

15 Q: Okay. Did you take a look at the arrest warrant
16 affidavit?

17 A: I probably did at some point in time.

18 Q: Okay. Did you have any reason to -- do you remember
19 seeing anything that caused you to question whether it was
20 sufficient for a finding of probable cause?

21 A: Well, arrest warrants are kind of subsumed by the
22 indictments as far as the charging document.

23 Q: Okay.

24 A: So, I mean, as far as a trial objection, you know,
25 objecting to the body of a warrant really doesn't get you

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1 anywhere.

2 Q: Okay. Did you see any benefit in arguing that there was
3 no probable cause for the arrest on the basis of this warrant
4 after the judge made probable cause findings at trial?

5 A: Well, obviously, you know, the warrant was obtained after
6 he was arrested and put in jail. Probably they typed it up or
7 whatnot.

8 Q: Okay.

9 A: I don't think there was any evidence obtained from him
10 after he was put in jail that was used against him at trial
11 and so, therefore, I wouldn't have made objections about
12 probable cause of the warrant because that -- that's -- you
13 know.

14 Q: Right. Okay. Tell me your understanding of the case of
15 *Batson v. Kentucky*, 476 U.S. 79.

16 A: Well, the proposition is that any party to trial is not
17 supposed to strike jurors based on a suspect class, like race
18 or sex, those sorts of things.

19 Q: Okay. Do you remember any particulars about jury
20 selection from Mr. Michaux's trial?

21 A: Not off of the -- not -- but after we discussed it, I had
22 some memory. I think one black female juror had been struck
23 by the State, but I think I had seen that they had sat at
24 least one or two other African-American or black people on the
25 jury. So that's probably why I didn't object to it because

1 they didn't strike every black person.

2 Q: Okay. Do you have any knowledge about the circumstances
3 surrounding the -- the black juror that the solicitors struck?

4 A: No, I didn't know.

5 Q: Okay.

6 A: I learned something later on, but that might be hearsay
7 or whatever, but --

8 Q: Okay. Did you see any reason at the time to raise a
9 *Batson* issue?

10 A: No. Like I said, unfortunately, in Lexington our jury
11 pool is super minority black. Like, it didn't even reflect
12 the population in the county, and you'd be lucky to get five
13 on a whole pool.

14 Q: Right. Okay.

15 A: By black people. It's getting a little better.

16 Q: If you had seen something that raised your suspicion that
17 the solicitor was taking race into account in jury selection,
18 would you raise a *Batson* issue?

19 A: Yes.

20 Q: Okay. And I --

21 A: And usually, it takes not just one juror. Like, if it's
22 a pattern, that's usually when I object, when I see a pattern
23 of it.

24 Q: Okay. So what was your trial strategy here?

25 A: Well, number one, try to get the drugs suppressed. And

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1 then if they didn't get suppressed, just try to argue that he
2 had no idea that they were in the car, that they couldn't
3 establish that prong of the constructive possession.

4 Q: Okay. Do you recall objecting to the law enforcement
5 officer's expert testimony at trial?

6 A: I objected to that. He shouldn't be able to testify at
7 all, I reckon.

8 Q: Okay. Have you been involved in cases where officers
9 have given expert testimony on the street value of drugs, that
10 sort of thing, before?

11 A: Once or twice.

12 Q: Okay.

13 A: A handful, maybe.

14 Q: Okay. Did you see -- did you find it objectionable when
15 Cpl. Rogers testified that -- well, I guess, so if you'll turn
16 to page 200 for me? I think the transcript reflects that you
17 did not object to the witness's qualifications to give expert
18 testimony?

19 A: No.

20 Q: Why did you decide not to object to his qualifications?

21 A: Let's see.

22 Q: If you'll look at page 200?

23 A: Oh, is that the little number or the big number?

24 Q: The number that's not bolded.

25 A: Okay. Let's see. I don't know if I'm mixing up trials

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1 or not. Let's see. At that point in his testimony where they
2 switched over from -- let's see. Okay. I objected to the
3 subject, how that referred to probably a prior objection that
4 I made. I'm not sure what --

5 Q: Do you remember seeing anything in his testimony about
6 his background that would lead you to believe that he was not
7 qualified? Do you remember any feeling about that at the
8 time?

9 A: No. I mean, I thought he could talk about street values
10 and that kind of thing, but as far as making any other
11 opinions, I think I objected to that, if I -- if I recall
12 correctly.

13 Q: Okay. And if you look at page 207 and 208, you see there
14 when the solicitor asked Cpl. Rogers if based on his
15 background and experience a drug trafficker would leave
16 \$10,000 worth of cocaine behind in a rental car and Cpl.
17 Rogers said, no, that that would not happen, did you find that
18 statement objectionable?

19 A: Well, I'll tell you, I just -- at the time, no, I thought
20 he was giving his opinion. If there's a legal basis where it
21 is objectionable, I will admit I did not object to it, but I
22 thought it was kind of patently ridiculous to say that people
23 don't accidentally leave stuff somewhere. I think I argued
24 that in my closing maybe, that I talked about that people lose
25 lottery tickets or something along those lines all the time,

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1 but then again --

2 Q: But you -- but you did object to his testimony on the
3 subject as a whole?

4 A: Right. I objected to some portion of it. I could go
5 back to it, but I think I had no objection to him testifying
6 about, like, dollar amounts of the thing, but -- but other
7 matters I didn't think he could testify to.

8 Q: Okay. So I'd like to loop back around, and I want to ask
9 you some specific questions about things that came up during
10 Mr. Michaux's testimony. Do you know the number of times that
11 you discussed the evidence with Mr. Michaux?

12 A: Well, I mean, it's not a complex case factually. You
13 know, a vehicle stop. There's a search. They find drugs in
14 the car. That's about all the evidence there is.

15 Q: Okay.

16 A: You understand about -- now, you know, then you can get
17 into the reasons for the stop and then you might could go for
18 another 2 or 3 minutes.

19 Q: Right.

20 A: But I mean, it's not the most complex case in the world
21 with a lot of, like, DNA evidence, multiple witnesses.

22 Q: Right.

23 A: Phone records.

24 Q: And Mr. Michaux was --

25 A: Shell casings. I mean, it's --

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1 Q: -- had been stopped and officers took the drugs out of
2 his car?

3 A: Right.

4 Q: Okay. How far in advance of trial did you have that
5 discussion with Mr. Michaux?

6 A: Well, we had discussed his case beginning on June 6th of
7 '14 when he told me about the stop and that they found the
8 drugs in the car, and then probably a minute discussion or
9 whatever, but like I said, it wasn't really a complicated
10 case.

11 Q: Right.

12 A: And like I said, his directions were I should get the
13 drugs suppressed, and he had no interest in talking about how
14 he came to be there, how he got the car, anything of that
15 nature.

16 Q: Did you tell Mr. Michaux that the trial -- that going to
17 trial was the best thing for him?

18 A: No, I never said that.

19 Q: Okay. Did you ever discuss with him the option of
20 entering an *Alford* plea?

21 A: No, I had not. His -- his discussions at most of the
22 points in time were -- as far as rejecting plea offers were
23 that he wasn't satisfied with the amount of time he was
24 looking at or the fact that he would get time, or that it was
25 -- he had never suggested that he wasn't pleading just because

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1 he was innocent. It was all based on the potential penalty
2 that he was facing or what he might get. I think he threw
3 that out in front of Judge McMahon. He never told me whether
4 he was guilty or not. All he said was you need to get those
5 drugs suppressed.

6 Q: Okay. So did he give you any reason to think that an
7 *Alford* plea would be a suitable resolution?

8 A: Well, like I said, he wasn't interested in pleading
9 because of the penalties that he thought he might get, not
10 because I'd love to take that, but I'm not guilty. If he had
11 said something along those lines, I might have gone into it.

12 Q: Do you normally involve your clients in jury selection
13 decisions?

14 A: Usually, they're sitting next to me. I tell them, you
15 know, we can't strike anybody because they're, you know, black
16 or white or male or female and that kind of thing. So -- and
17 usually, I take notes and I go -- sometimes, you know, I go
18 over with them and that kind of thing. Some don't want to be
19 involved, some want to be overly involved. Usually, if they
20 have a gut feeling or something, they might let me know and
21 I'll strike the jury and I try to get a reason out of them,
22 and I may or may not.

23 Q: Okay.

24 A: I can't remember this one in particular, but I never shut
25 anybody out unless they say I'm not interested, I'm just going

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1 to leave it in your hands.

2 Q: Do you remember feeling any concern about the length of
3 the traffic stop?

4 A: I can't recall. I can look at my notes about the traffic
5 stop. Let's see if I can find them. Let's see.

6 Q: Can I also direct you to page 20 of the transcript?

7 A: Okay. Let's see. It was a 15-minute traffic stop,
8 according to the trooper. I was trying to look at my notes.

9 Q: Okay. If you'd like to, go ahead.

10 A: I don't think they brought in a drug dog or anything, but
11 from my recollection, I mean, if I thought it was overly long,
12 like they just have him sitting on the highway waiting for a
13 drug dog to come or something like that, I would have.

14 Q: And they -- they didn't do that -- correct me if I'm
15 wrong -- because the officer felt like the drugs were in plain
16 view in the -- through the floorboard?

17 A: It was somewhere in the -- like, I think it was in the
18 car door. I don't know. It was somewhere in the rear of the
19 car and, you know, they didn't have to tear up the car to find
20 it.

21 Q: Okay.

22 MR. SMITH: Give me just one second. Okay. No more
23 questions. Thank you.

24 THE WITNESS: All right.

25 MR. SMITH: I'll let you hold on to my transcript too.

DAVID MAULDIN - CROSS BY MR. WILKES

1 THE WITNESS: Okay.

2 THE COURT: Yes, sir.

3 MR. WILKES: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WILKES:

6 Q: Mr. Mauldin, would you agree that it is, under the case
7 law, impermissible for the State to strike even one juror
8 based on race?

9 A: If they didn't have a race neutral or sex neutral reason,
10 then yes.

11 Q: Okay.

12 A: But oftentimes, they have people's prior records up there
13 that I'm not privy to, and I have objected in the past and
14 usually that's what they come up with.

15 Q: In this case, they struck a minority juror?

16 A: That's correct.

17 Q: And you, I believe, testified that you were unaware of
18 any basis for the strike at that time?

19 A: Yes, sir.

20 Q: And you did not object?

21 A: No, I did not.

22 Q: Okay. And if they did not have a race neutral reason,
23 then that would have been a prohibited action on their part?

24 A: Possibly, depending on how the judge ruled and how the
25 appeals court ruled.

DAVID MAULDIN - CROSS BY MR. WILKES

1 Q: Okay. If the Court ruled consistent with case law?

2 A: Well --

3 Q: We'll assume that the Court rules --

4 A: That's why we're all still here, I reckon.

5 Q: So in talking about the advice to Mr. Michaux, I believe
6 you said that you didn't have a crystal ball on the
7 suppression motion and told him that, yes, that's an issue we
8 can argue?

9 A: Yes.

10 Q: Okay. Would you agree with me that to make a knowing,
11 intelligent, and informed decision on a plea, the client needs
12 to have some more than just being told we have an issue we'll
13 argue on the suppression motion?

14 A: Well, I can't -- like I said, he was very emphatic that
15 those drugs were going to be suppressed. Do you understand
16 that?

17 Q: I do.

18 A: And I told him that there's a good chance -- I'm not a --
19 well, there was a chance. I can't remember if I said good or
20 whatever, but I'm never a hundred percent on anything and I
21 never -- I always qualify it. Like, I can't tell you a
22 hundred percent anything. I mean, I told him there was a
23 chance, but there's a chance it wouldn't be.

24 And even if -- and I usually tell people that even if the
25 judge rules against you in a trial and a higher court finds

DAVID MAULDIN - CROSS BY MR. WILKES

1 for you, you could end up sitting in jail for 2 or 3 or 4
2 years before that happens, and sometimes the plea is even less
3 time than they would have spent to see that they were right in
4 the conclusion. And it depends on, you know, people's
5 priorities, whether or not they want to serve time or how much
6 time they want to serve, versus the fact that I want to be
7 found innocent or something. I mean, those are two different
8 priorities.

9 Q: Right. But in this case, if he is so invested in the
10 belief that these drugs are going to be suppressed --

11 A: Well, I told him that they might --

12 Q: -- would that not require some reality check based on
13 what the facts and the law are as far as probability?

14 A: Well, I told him that it might not be, and his response
15 to that would be very emphatic that I needed to do my job.

16 Q: Okay. Blue lights generally in this state come on or the
17 camera comes on with blue lights as a general rule?

18 A: Generally, yeah.

19 Q: This case, as in most cases, there's no evidence, there's
20 no video of Mr. Michaux following too close or slowing down
21 too quickly or changing lanes too quickly?

22 A: Unfortunately, I find that the -- any kind of -- even if
23 -- even if it's a valid traffic violation, it's not shown on
24 the video because the officer doesn't flick the blue lights on
25 until after the violation has passed.

1 Q: Exactly. And that --

2 A: Or the non-violation has passed, depending on your point
3 of view.

4 Q: Exactly. So in this case, you -- you can say to a client
5 that this is the word of the highway patrolman or the officer
6 in this case. Based on his word, there's not going to be a
7 video, there's not going to be anything else, it's just the
8 officer's word that he saw something that allowed him to pull
9 Mr. Michaux over?

10 A: Right.

11 Q: Right? Okay. There's not much way to challenge that in
12 a suppression motion, is there?

13 A: No.

14 Q: Okay.

15 A: I mean, it's -- it's a common thing that the officer is
16 going to testify, and the judge usually, as far as that, goes
17 along with what the officer testifies to unless it's very
18 absurd or outrageous.

19 Q: Now, again, if an officer says I smelled marijuana, no
20 video of that; right?

21 A: Right.

22 Q: No objective evidence --

23 A: Right.

24 Q: -- other than the officer's testimony?

25 A: Well, there was that case, you know, where the officer

DAVID MAULDIN - CROSS BY MR. WILKES

1 said he smelled it and they brought the drug dog and the dog
2 didn't smell it, but they held -- upheld the search because
3 they said, well, the officer smelled it.

4 Q: The officer smelled it. So in this case, if the officer
5 said, which I believe he did, that there was an odor of
6 marijuana, that's a justification for prolonging a traffic
7 stop; right?

8 A: Well, to search a vehicle.

9 Q: To -- and to search a vehicle?

10 A: Right.

11 Q: So, again, nothing there to launch a suppression motion
12 on?

13 A: Not on the search. The whole thing was revolving around
14 the stop of the vehicle to begin with.

15 Q: Okay.

16 A: Because even his stated reasons seemed --

17 Q: Right.

18 A: -- a little suspect.

19 Q: But again, no evidence to the contrary?

20 A: Right.

21 Q: Drugs on the -- on the back of the floorboard in the back
22 seat; right?

23 A: Somewhere back there. I can't remember if it was inside
24 the door pocket.

25 Q: Right.

DAVID MAULDIN - CROSS BY MR. WILKES

1 A: You know, the doors have those little pockets or whatever
2 is in the floorboard.

3 Q: Where is any substantial -- where is any real chance of a
4 suppression motion working on those facts?

5 A: Well, as far as the search of the car, no, but on the
6 stop of the vehicle, just -- I have seen a case where, you
7 know, the officer testified he was going slow. I think it was
8 in front of Judge Barber and -- and Judge Barber goes, so the
9 guy was just going less than the speed limit and you pulled
10 him over, and he -- it wasn't my case. I was watching it, but
11 he threw the drugs out in that case.

12 Q: Sure.

13 A: And the case was dismissed.

14 Q: But in this case, there was some driving problem? He had
15 moved away, swerved around an 18-wheeler or he had stopped
16 suddenly maybe?

17 A: I think some of that had come up during the trial and not
18 in the actual discovery.

19 Q: But --

20 A: It's some embellishment during the trial.

21 Q: In the discovery, there was clearly a reason stated for
22 the stop. It was based solely on --

23 A: Right. And I discussed with Mr. Michaux the fact that,
24 you know, we have a motion to suppress. A judge could rule
25 for you or against you.

DAVID MAULDIN - CROSS BY MR. WILKES

1 Q: I understand that, and that's the coin toss, but my
2 question is specific to a plea offer in such a case that
3 carries 25 years mandatory.

4 A: I recommended that he take the PWID. I recommended that
5 he take the other one, but I said if you want to go to trial,
6 I'm happy to do that too.

7 Q: When you recommended it, did you tell him more than the
8 suppression hearing could go either way?

9 A: I don't recall what my exact words, but I thought it
10 would be a good idea, especially on that first one where the
11 worst that could happen would be way better --

12 Q: Right.

13 A: -- than the best that could happen after a trial.

14 Q: But simply saying I think you should is different than
15 explaining that the whole dispelling his myth -- mythical
16 belief that somehow there's a basis for a suppression hearing.

17 A: Well, I think that would be two different -- you're
18 arguing two different ways. If I thought the case was so good
19 and told him he needed to go to trial, why would I tell him to
20 take the plea?

21 Q: I understand, but he's firmly attached to the prevailing
22 in a suppression hearing?

23 A: That's correct.

24 Q: And if you say I don't have a crystal ball, I can't tell
25 you how that's going to come out?

DAVID MAULDIN - CROSS BY MR. WILKES

1 A: Well, I'm not going to say that there's no chance of
2 getting it suppressed, I mean.

3 Q: I'm not saying that you would say there's no absolute
4 chance whatsoever, but realistically, to divest him of his
5 hopeful, unfounded belief that this is going to get suppressed
6 in reality to the facts that are presented?

7 A: Well, I said a chance. I didn't say how strong a chance
8 or how weak a chance.

9 Q: Okay. The attorney general asked you about the warrant.
10 The warrant was defective, wasn't it? It did not mention any
11 unlawful drugs. It just said a white powder substance;
12 correct?

13 A: Right. And usually at the time of the warrant or at the
14 time of the prelim, they don't have drug results yet.

15 Q: There would have been a field test, wouldn't there? For
16 probable cause?

17 A: Sometimes yes, sometimes no. For a period of time, they
18 were so worried about fentanyl and touching fentanyl that they
19 weren't even doing field tests. I don't know if this was
20 during that period of time or not.

21 Q: But it didn't say that even the drugs were illegal. It
22 didn't say anything. It just said he had a white powder
23 substance. That -- that's not sufficient for probable cause
24 on a warrant?

25 A: Well, that's an arrest warrant. So, I mean, judges often

DAVID MAULDIN - CROSS BY MR. WILKES

1 allow them to fill in gaps at prelims. I don't know if you've
2 done any prelims, but they're pretty fast and loose.

3 Q: Yes, they are, but the warrant was insufficient?

4 A: And unfortunately, there's no way to appeal a prelim.

5 Q: A little bit about the testimony of the trooper. You did
6 not object when the trooper said -- and the defense as you
7 took it to trial was basically, as I understand, it wasn't his
8 drugs, he didn't know about them?

9 A: Right.

10 Q: Okay. And do you -- do you see or do you not see the
11 trooper's statement that that's impossible, essentially that
12 that's impossible being outside the scope of what an expert
13 would testify to going straight to the facts?

14 A: Well, I think in the end, he was probably making a
15 closing argument for this. When you think about it, he's
16 making a closing argument for the State, but that was his
17 opinion that no drug dealer would do that. But then again, if
18 I'm wrong, I'm wrong. I didn't --

19 Q: Right.

20 A: -- object to it, and I'll admit to that. I just thought
21 it was kind of ridiculous because people mistakenly leave
22 stuff all the time. They lose their cars in parking lots,
23 they lose lottery tickets, and all that. I thought it was
24 patently ridiculous for him to say that.

25 Q: And I agree. And the point being if a jury doesn't know

DAVID MAULDIN - CROSS BY MR. WILKES

1 it's patently ridiculous, if a jury has been told by the judge
2 that this is an expert witness, even though it may be patently
3 ridiculous, the judge has said, ladies and gentlemen of the
4 the jury, this is an expert witness. Now, you can believe him
5 or not believe him, but it's an expert witness. Patently
6 ridiculous, it's coming from an expert. It's not challenged
7 or objected to. Could that have affected the jury's decision?

8 A: I couldn't tell you whether it affected this jury's
9 decision or not. I will tell you I didn't object to it, and
10 if I should have, I didn't.

11 Q: Okay.

12 A: Okay.

13 Q: Is it something --

14 A: I can't speculate as to whether --

15 Q: If it came up again, would you object to it or would you
16 let it slide?

17 A: Possibly. I don't know.

18 Q: Wait. Possibly which?

19 A: Well, I mean, if I catch it. I mean, trials go -- things
20 go by.

21 Q: Yes.

22 A: And that kind of thing.

23 Q: Agreed. But if it happened again in a trial and you saw
24 it, would you object to that?

25 MR. SMITH: Objection, Your Honor. The standard is what

DAVID MAULDIN - REDIRECT BY MR. SMITH

1 counsel knew or thought at the time of the trial, based on the
2 circumstances of the case.

3 THE COURT: All right.

4 MR. SMITH: I don't think it goes to trial.

5 THE COURT: Well, the bottom line is I think he's
6 answered it. He has not given you the answer you want.

7 MR. WILKES: Very good, Your Honor.

8 THE COURT: Okay.

9 MR. WILKES: That's all we have, Your Honor.

10 THE COURT: All right. Any redirect?

11 MR. SMITH: A few, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SMITH:

14 Q: Mr. Mauldin, you testified that when you were telling Mr.
15 Michaux that you -- that you thought he should take the plea
16 deal, that you -- I think you said you recommended it?

17 A: Yeah, I recommended it.

18 Q: You said that he emphatically rejected it. What does
19 that mean? What does it mean that he was emphatic?

20 A: I mean, he was -- no. I mean, it wasn't -- he wasn't
21 hemming and hawing. He wasn't crawfishing around. A couple
22 of times he said he wanted more time, but when it came to it
23 at the end, he was very definite in his decision.

24 Q: Okay. Did he tell you why he did not want to take a plea
25 offer?

DAVID MAULDIN - REDIRECT BY MR. SMITH

1 A: Oh, it was regarding the possible prison time that he
2 would get or that he was facing.

3 Q: Okay. Will you look at page 87 of the transcript for me?
4 Again, not the bold numbers.

5 A: I see it.

6 Q: Okay. Will you agree with me that Mr. Michaux tells
7 Judge McMahon that he rejected the plea offer of zero to 15
8 years because it did not have a guaranteed sentence?

9 A: Let's see. Well, I mean, if you want me to just read it,
10 let's see.

11 Q: Sure. Go ahead.

12 A: Are you at the top or the bottom?

13 Q: I'm not entirely sure.

14 A: Well, I mean, he just says he's tired of going to prison.
15 He doesn't want to go back to prison, especially for something
16 he didn't do. He didn't have any drugs. So that's why I came
17 this far and didn't do the plea. I mean, zero to 15. I don't
18 know what I'd have got, but it's just common sense it'd be
19 better than 25 years. Do you see what I'm saying? So he
20 seems to indicate that he knew about a zero to 15 plea at the
21 trial. I don't want to go back to prison for something I
22 didn't have and go to trial and get found guilty and do 25
23 years. I mean, I don't know.

24 Q: Okay. When you told Mr. Michaux that you recommended
25 that he take the plea deal, did you tell him why that was your

DAVID MAULDIN - REDIRECT BY MR. SMITH

1 recommendation?

2 A: Well, I told him there was no guarantee that the drugs
3 would get suppressed and that the facts of the -- I mean, if
4 there were, like, four people in the car, that would have been
5 better facts for him, but the fact that he was the only person
6 in the car and the drugs were found in the car is not -- you
7 know, I mean.

8 Q: So it was a -- you said your advice to him was expressed
9 in the language of it avoiding exposure to more prison time?

10 A: In our discussions, not on the record, he would never --
11 he never told me whether he knew the drugs were there or he
12 didn't know the drugs were there. I had a client that passed
13 that would verbally say I'm not telling you if I did it and
14 I'm not telling you if I didn't. He didn't verbally say that,
15 but basically the tone of our conversation would go back to
16 you need to get the drugs suppressed.

17 So he never had any discussion about whether he was --
18 had -- knew the drugs were there or had the drugs or not.
19 Basically, the discussion was I need to get the drugs
20 suppressed, and the discussions about plea offer, the fact
21 that "I didn't do it" never entered into the discussion. The
22 fact that I did do it or didn't do it didn't enter into the
23 discussion. It was just about how much time he was going to
24 get, and he didn't think he had to do that much time.

25 Q: Okay. So when you would advise him to take the offer

DAVID MAULDIN - REDIRECT BY MR. SMITH

1 because it would limit his exposure, correct me if I'm wrong,
2 but you were communicating that to him that way because that
3 was what he was expressing to you, his concern about exposure?

4 A: Right.

5 Q: Okay. And the officer's testimony, again, about no one
6 would do this, he didn't say that nobody would forget
7 anything. He was talking about narcotics traffickers would
8 not forget \$10,000 worth of cocaine?

9 A: Well, you know, you hear people talk. I mean, you see
10 people get killed over, like, \$500 worth of drugs and that
11 kind of -- and I'm sure he's seen that and a lot of narcotics
12 officers have seen that. But just -- just to deal in
13 absolutes is kind of ridiculous, at least in when you're
14 dealing with people.

15 Q: Okay.

16 A: Maybe not math, but -- but with people, dealing with
17 absolutes is kind of weird.

18 Q: All right.

19 MR. SMITH: That's -- that's the end of it. Thank you.

20 MR. WILKES: Nothing further.

21 THE COURT: You can step down, sir.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. SMITH: Your Honor, next I would call Mr. Taylor
25 Gilliam.

TAYLOR GILLIAM - DIRECT BY MR. SMITH

1 THE CLERK: Please raise your right hand. Do you
2 solemnly swear or affirm the statement you're about to give to
3 be the truth, the whole truth, and nothing but the truth, so
4 help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Please be seated in the witness
7 chair.

8 THE COURT: All right, sir.

9 MR. SMITH: Okay.

10 TAYLOR GILLIAM, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q: Mr. Gilliam, when were you admitted to the South Carolina
15 Bar?

16 A: November of 2014.

17 Q: Can you tell me your professional experience since then?

18 A: Like Mr. Mauldin, I did a little bit of civil work before
19 deciding that wasn't for me either. And then in May or June
20 of 2016, I started at appellate defense, and I've been there
21 ever since.

22 Q: Okay. How did you come to be involved in Mr. Michaux's
23 criminal appeal?

24 A: A notice of appeal was filed following his trial. I
25 believe he was indigent, and that meant he was appointed to

TAYLOR GILLIAM - DIRECT BY MR. SMITH

1 our office. The Chief Appellate Defender assigned me the
2 case.

3 Q: What issues did you raise on appeal?

4 A: I filed a two-issue merits brief on behalf of Mr.
5 Michaux, and those issues were, one, that the trial judge
6 erred in denying the motion to suppress, and then secondly,
7 that the trial judge erred in allowing the officer to testify
8 or be qualified as an expert witness in narcotics.

9 Q: How did you decide what issues to raise for Mr. Michaux?

10 A: Anytime I get a new appeal, whether it be a direct or a
11 PCR, I review the transcript or transcripts in their entirety,
12 take notes, mark them up. As you can see, I put a lot of tabs
13 on the transcripts, highlighted, performed legal research to
14 determine whether motions or objections that were made by
15 trial or PCR counsel resulted in what I believed to be an
16 incorrect decision by the judge of the lower court.

17 Q: Okay. In this case, why did you decide to raise the
18 issues that you did raise?

19 A: The first issue, the motion to suppress, this struck me
20 as a fishing expedition. The justification behind the stop
21 seemed flimsy. Although the law would disagree, I thought it
22 was worth raising. It was weaving within the lane, and there
23 was something to do with the braking, and I thought the
24 officer didn't have a great vantage point.

25 And then after the stop, he -- the officer continued to

TAYLOR GILLIAM - DIRECT BY MR. SMITH

1 search for other reasons and then claim to have smelled
2 marijuana, although none was in the vehicle, and as a result I
3 argued that there was no reasonable suspicion to continue the
4 stop on the side of the road. After the initial stop had
5 occurred, the reason being this swerving and/or braking, it
6 was determined that Mr. Michaux, I believe, had an expired or
7 invalid driver's license, and it was my position that the
8 officer could have issued a citation and let him on his way.

9 The second issue was one that I've raised before in
10 another case. The State cited the *Jameson* opinion at trial
11 and the Court of Appeals cited the *Jameson* opinion in
12 affirming. So that was simply based on me not thinking the
13 officer should be allowed to testify about that, although the
14 Court of Appeals concluded differently.

15 Q: Okay. So the Court of Appeals issued merits findings on
16 both of your issues; right?

17 A: That's correct. In an unpublished opinion that was filed
18 on December 5th, 2018.

19 Q: Okay. Did you consider arguing -- let me rephrase. Did
20 you see anything that made you think that you should raise an
21 argument that the judge erred in admitting Mr. Michaux's
22 statement to law enforcement officers?

23 A: I did not conclude that that was a meritorious issue
24 worthy of inclusion in the brief.

25 Q: Okay. If you had seen that, would you have raised that

1 argument?

2 A: Yes, of course.

3 Q: Okay. Have you made arguments on Miranda violations
4 before?

5 A: Yes. The Court of Appeals issued an opinion last week in
6 *State v. Philip Lowery*, reversing my client's conviction in
7 that case and remanding based on custodial interrogation and a
8 Miranda violation.

9 Q: Okay. And that case was -- that decision was based in
10 part on the fact that the officers were searching for someone
11 after getting a 9-1-1 call from a -- or that they had been
12 informed of a -- I'm sorry. Was it a crash?

13 A: I believe it might have been a hit and run.

14 Q: Okay.

15 A: If that's what's reflected in the opinion.

16 Q: And the officers in that case were responding to a call
17 about an accident? Do you recall?

18 A: That sounds right, yes.

19 Q: Okay. When you look at cases to decide whether to raise
20 an argument about a Miranda issue, what sorts of things do you
21 look for?

22 A: The hallmark of Miranda cases and potential violations
23 tends to revolve around reasonableness and voluntariness, and
24 so you're looking for an individual that is in custody and
25 whether there is custodial interrogation, whether there is a

TAYLOR GILLIAM - DIRECT BY MR. SMITH

1 potential waiver, if no Miranda warnings were given.

2 Q: Okay. Do you remember what statements from Mr. Michaux
3 were admitted at trial?

4 A: I do not remember all of them offhand, to be honest, but
5 I have a trial transcript and can speak to some of them.

6 Q: Do you remember the judge's findings on the statements?
7 Can you look at page 40 and 37? It probably would make more
8 sense to look at 37 first.

9 A: I'm looking at page 40. The trial judge remarked that
10 there was no marijuana in the car. This is line -- beginning
11 on line 8. There's a response by the defendant that there was
12 no marijuana in the car. So there's no custodial
13 interrogation and it is not a confession.

14 Q: Okay.

15 A: I recall that that was the statement that Mr. Michaux
16 made to the officer at the roadside stop as the officer walked
17 away, that there was no marijuana in the vehicle.

18 Q: Okay. If you could look at page 37, would you agree with
19 me that Judge McMahon found that Mr. Michaux's statement was a
20 spontaneous statement?

21 A: Yes, sir.

22 Q: Okay.

23 MR. SMITH: No more questions. Thank you.

24 THE COURT: Mr. Wilkes?

25 MR. WILKES: Thank you, Your Honor.

TAYLOR GILLIAM - CROSS BY MR. WILKES

CROSS-EXAMINATION

1
2 BY MR. WILKES:

3 Q: Why no petition for certiorari?

4 A: When the Court of Appeals issues an opinion affirming a
5 conviction of one of my clients, my standard procedure is to
6 review the briefs filed by both parties, the notes that I have
7 taken, and the opinions cited by the Court of Appeals. And in
8 this instance, I unfortunately did not disagree with the Court
9 of Appeals opinion.

10 Q: The Court of Appeals -- would you agree that the Court of
11 Appeals basis in this case was pretty well founded in
12 established law?

13 A: Yes, Your honor. Not Your Honor. Apologies. Yes.

14 Q: Okay. That's a first.

15 A: You're looking spiffy.

16 Q: Thank you. So, under the rules, the error preservation
17 rules require a contemporaneous objection for you to be
18 enabled to raise an issue; correct?

19 A: For the most part. Yes, Your Honor.

20 Q: And in this case, there was no -- and I appreciate that.
21 You can continue to do that.

22 A: I've got an oral argument tomorrow morning at ten.

23 Q: I understand that.

24 A: And I'm in oral argument prep mode.

25 Q: So in this case, I think you were behind me when we were

TAYLOR GILLIAM - CROSS BY MR. WILKES

1 talking about the extension of *Jameson*. Were you? Did you
2 hear any of that?

3 A: No, sir.

4 Q: Okay. So there was a comment by the highway patrolman.
5 I think it was a highway patrolman talking about in his expert
6 testimony that it just couldn't happen that a drug trafficker
7 could leave their drugs in a rental car. Do you recall that?

8 A: I didn't know that to be the extension of *Jameson*, but I
9 was sitting behind you when y'all talked about that. Yes,
10 sir.

11 Q: Well, I'll say an improper extension of *Jameson* by the
12 trial court in this case. So there was no contemporaneous
13 objection to that, was there?

14 A: Correct. There was not.

15 Q: And without a contemporaneous objection to that, you
16 would not be able to argue that that statement by an expert
17 witness exceeded the scope of what's allowed under 702?

18 A: I could argue it, but likely not successfully.

19 Q: Right. Without issue preservation, you're not going far
20 with that?

21 A: That would probably be the first counterargument by the
22 Attorney General's Office would be issue preservation. Yes,
23 sir.

24 Q: Okay. Very good. If there had been an objection to that
25 under Rule 702 and the argument that it far exceeded *Jameson*

TAYLOR GILLIAM - CROSS BY MR. WILKES

1 as far as expert -- you're familiar with that experts can
2 testify to some of the drug trafficking lingo and drug weight,
3 amount, value, that sort of thing?

4 A: Yes, sir.

5 Q: Okay. If there had been a timely objection to that and
6 it had been posed to the trial judge that that was improper
7 under Rule 702 as just being something patently ridiculous and
8 outside of what an expert would say, would that have been an
9 issue that you could have researched, formulated an argument
10 on, and briefed?

11 A: Yes, sir. Definitely.

12 MR. WILKES: Thank you. That's all I have.

13 THE COURT: The State?

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q: Mr. Gilliam, at the time that you filed your initial
17 brief and your final brief, you thought that the issue was
18 arguable; right?

19 A: What issue?

20 Q: The issues you raised in your appeal.

21 A: Yes.

22 Q: Okay. And it was after seeing the Court of Appeals
23 opinion that you felt like that was a correct decision?

24 A: Correct, meaning their opinion carries much more weight
25 than mine, and it didn't seem worth it to continue on with a

TAYLOR GILLIAM - REDIRECT BY MR. SMITH

1 petition for rehearing, yes.

2 Q: Okay. But you had thought it was arguable before then;
3 right?

4 A: Yes.

5 Q: Okay. If you look at page 159 of the transcript, will
6 you agree with me that Mr. Mauldin moved to exclude expert
7 testimony from the officer about the value of drugs?

8 A: I don't know that our page numbers match up.

9 Q: Okay. So I'm looking at the original page numbers
10 instead of the --

11 A: I am too. What page again? Sorry.

12 Q: 159.

13 A: I see Mr. Mauldin speaks there at the bottom at line 25.

14 Q: But you will agree that he did move to exclude that;
15 right?

16 A: Yes. That's --

17 Q: Okay.

18 A: That's why I briefed it.

19 Q: Okay. Then when the officer begins testifying as an
20 expert, he renews that objection. Do you remember that?

21 A: That sounds right.

22 Q: Okay.

23 MR. SMITH: Thank you. No more questions.

24 MR. WILKES: None, Your Honor.

25 THE COURT: Okay. You may step down, sir.

BRADLEY POGUE - DIRECT BY MR. SMITH

1 THE WITNESS: Thank you --

2 THE COURT: Thank you so much.

3 THE WITNESS: -- Your Honor.

4 MR. SMITH: All right. Your Honor, my last witness is
5 Mr. Bradley Pogue.

6 THE COURT: Okay. Good luck tomorrow, sir.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Do you want to do it or do you want me to do
9 it?

10 THE CLERK: I can.

11 THE COURT: Okay.

12 THE CLERK: Please raise your right hand. Do you
13 solemnly swear or affirm that the statement you're about to
14 give to be the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you.

18 THE COURT: Proceed, sir.

19 BRADLEY POGUE, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q: Mr. Pogue, where do you work now?

24 A: The Eleventh Circuit Solicitor's Office.

25 Q: How did you come to be involved in Mr. Michaux's criminal

BRADLEY POGUE - DIRECT BY MR. SMITH

1 case?

2 A: I was a second -- excuse me. I was a second chair
3 prosecutor in that trial for the primary prosecutor, the
4 solicitor -- or at the time Assistant Solicitor Gill Bell.

5 Q: Okay. And how involved were you in the trial
6 preparation?

7 A: I was involved in every step.

8 Q: Okay.

9 A: Or just about every step.

10 Q: Before Mr. Michaux's trial, did you and Mr. Bell extend
11 any formal plea offers to Mr. Mauldin?

12 A: We did multiple times. Yes, sir.

13 Q: Okay. Do you remember what those offers were?

14 A: I believe there was an offer of PWID, which is -- I think
15 that the PWID that we offered I think was -- carried zero to
16 15. I think it was the first level offense.

17 Q: Okay. And what did Mr. Mauldin tell you about Mr.
18 Michaux's decisions?

19 A: He indicated that he had relayed it to him and that he
20 rejected it.

21 Q: Okay. Can you tell me about any off-the-record bench
22 conferences or in-chambers meetings that you had with Judge
23 McMahon before or during Mr. Michaux's trial?

24 A: Well, as a policy generally, when a case is on a trial
25 roster, there are no more plea offers. So there would have

BRADLEY POGUE - DIRECT BY MR. SMITH

1 been a rejection of the plea offer prior to that being placed
2 on the trial roster as a general policy, and our elected
3 solicitor back then I believe was Solicitor Donnie Myers, but
4 we still have that same policy here today, which is that once
5 a policy -- excuse me. Once a trial is on the trial roster,
6 not always, but generally as a policy, we don't make any more
7 plea offers after that. It just -- what -- the case is what
8 it is at that point.

9 However, when we met back in chambers with Judge McMahon,
10 he indicated that, you know, he'd like to see -- you know,
11 seeing the amount of time that this particular defendant would
12 be looking at should he be convicted that he get one more bite
13 at the apple, so to speak, that he get another chance to -- to
14 contemplate a plea offer. We went back and discussed that
15 with our senior solicitors, and we agreed to put the -- I
16 believe it was a -- I can't remember if it was a reduced
17 trafficking charge or a PWID charge at the time of the day of
18 trial, but I remember we did offer a reduction for him to
19 consider.

20 Q: Okay. Was that the one discussed on the record at trial?

21 A: I assume so. Yes, sir.

22 Q: Okay. So that was an exception to your office policy?

23 A: That's correct.

24 Q: Okay. Did Mr. Michaux accept that deal?

25 A: He did not.

BRADLEY POGUE - DIRECT BY MR. SMITH

1 Q: Okay. Tell me what your understanding is of *Batson v.*
2 *Kentucky*.

3 A: I mean, essentially, I mean, that's the seminal case that
4 establishes that, you know, peremptory strikes can only be
5 used for, you know, non-racial reasons or non-sexual reasons.
6 In this case it was non -- non-race. So essentially you can
7 use a strike as long as you have a race neutral or sex neutral
8 -- neutral reason for using that particular strike. Then it's
9 not unconstitutional.

10 Q: Okay. Does the Eleventh Circuit Solicitor's Office or do
11 you have any sort of general practice or policy on how to
12 handle juror selection aligned with *Batson*?

13 A: We never strike a juror -- at least from my policy and
14 the policy that I'm aware of with all of the employees of our
15 office, we don't ever strike a juror for any race-based
16 reason. It's always a reason that has to do with something
17 founded other than race.

18 Q: Okay. Were you present when Mr. Bell exercised the jury
19 strikes in jury selection?

20 A: I was. Yes, sir.

21 Q: Okay.

22 MR. SMITH: I believe Mr. Mauldin took my transcript, so
23 I'll get me another copy. He's returned it now. Your Honor,
24 may I approach the witness?

25 THE COURT: Yes, sir.

BRADLEY POGUE - DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q: Okay. Will you confirm for me that this is the trial
3 transcript from Mr. Michaux's trial? And if we're looking at
4 page 69, do you see on there where Mr. Bell strikes Juror
5 Number 61, Kimberly Dunlap?

6 A: I see 156 and 192 that were called on page 69. I don't
7 see Juror 62. I'm sorry. Next page, page 70, I see Kimberly
8 Dunlap, Juror 61. Yes, sir.

9 Q: Okay.

10 A: Yes, I see where Mr. Bell has struck Juror 61, Kimberly
11 Dunlap.

12 Q: And that's page 70?

13 A: Page 70 on this transcript. Yes, sir.

14 Q: Okay. And then also on page 70, is -- correct me if I'm
15 wrong, but Juror Number 32, who's identified as a black
16 female, was also seated?

17 A: Correct.

18 Q: Okay. And then if you look at page 72, would you agree
19 with me that Mr. Mauldin struck Juror 89, who was a black
20 female?

21 A: Yes, sir.

22 Q: Okay. Is there any indication in your file for the
23 reason that Mr. Bell struck Juror Number 61, Ms. Dunlap?

24 A: When I went back and looked and found the jury list and
25 the notes that our office puts on the jury list for that

BRADLEY POGUE - DIRECT BY MR. SMITH

1 particular term, I recognized that there was some notation
2 beside Juror 61, Kimberly Dunlap, and I can't recall exactly
3 what that notation was, but I believe that she had recently
4 either had a trial or a plea where she was either guilty or
5 not guilty to a -- I believe it must have been a magistrate or
6 municipal level offense that was fairly recent, and that would
7 have been the basis for the strike is that she may have some
8 -- may have some prejudice, either -- you know, against a
9 prosecutor's office for having just been put in jeopardy on a
10 criminal offense herself.

11 MR. SMITH: Okay. May I have this marked as State's
12 Exhibit 1 for identification only?

13 BY MR. SMITH:

14 Q: Okay. Mr. Pogue, I've handed you State's Exhibit 1.
15 Would you look at that and tell me the name of the defendant
16 identified on that document?

17 A: The name of the defendant is Kimberly Rena Dunlap.

18 Q: Okay. And correct me if I'm wrong, but that's the
19 document showing the outcome of a criminal case you had in
20 Lexington County; right?

21 A: Correct.

22 Q: Okay. What information does it show about that case, the
23 disposition?

24 A: It shows that she has a criminal domestic violence, first
25 offense, that was either dismissed or nolle prossed by the

BRADLEY POGUE - DIRECT BY MR. SMITH

1 prosecuting agency.

2 Q: Okay. Does it show what the date of that disposition
3 was?

4 A: It looks like December 5th, 2008.

5 Q: Okay.

6 MR. SMITH: Okay. Your Honor, at this time, I would
7 offer this into evidence as State's Exhibit 1.

8 MR. WILKES: Your Honor, I would object to the document.
9 The solicitor hasn't testified that this is a document that he
10 had or was aware of. He's testified to another document that
11 we don't have. So I'm not sure that this is relevant on the
12 issue of knowledge. It's relevant perhaps on the truth that
13 she did have something pending, but it's not necessarily
14 relevant to actual knowledge and -- unless this is a document
15 that they had in their possession.

16 MR. SMITH: Your Honor, Mr. Pogue's testimony was that he
17 remembered from looking in his file that they had some note
18 indicating they had a reason that they struck her dealing with
19 a past criminal case. I think this goes to show what that
20 would have been.

21 THE COURT: I'll allow it. Respectfully overruled.

22 (WHEREUPON, State's Exhibit Number 1, criminal
23 disposition document, was admitted into evidence.)

24 MR. SMITH: I could also -- I mean, if I need to, I could
25 ask Mr. Pogue to get his file and pull the note where he had

BRADLEY POGUE - DIRECT BY MR. SMITH

1 written it down.

2 THE COURT: That's up to you.

3 MR. SMITH: Mr. Pogue, do you mind doing that?

4 THE WITNESS: I can. I can go print off our email
5 exchanges.

6 MR. WILKES: Your Honor, I'll stipulate that if counsel
7 testifies that it is there and it was known at the time, I'm
8 not going to require he go get his file.

9 THE COURT: Yes, sir.

10 MR. SMITH: Yeah.

11 THE COURT: All right.

12 THE WITNESS: That is correct. There was a --

13 THE COURT: Go ahead.

14 THE WITNESS: That's correct. There was a note on the
15 jury list that we had next to hers, and when I went back and
16 found it, there was actually an email exchange that I had with
17 -- with the PCR attorney. And we -- I believe I attached that
18 particular document with that notation on it, but there was a
19 notation of a criminal -- again, I couldn't remember which one
20 it was, but I remember that there was some sort of criminal
21 charge that she had had on her record, which would have been
22 the basis for our strike.

23 MR. SMITH: Okay.

24 THE COURT: All right.

25 BY MR. SMITH:

BRADLEY POGUE - DIRECT BY MR. SMITH

1 Q: Okay. So explain to me the concern you would have during
2 jury selection of having someone seated on the jury who had
3 been acquitted at trial before?

4 A: We always take into account any prejudice, whether it be
5 founded or unfounded, in the prospective juror's mind as to
6 whether they could consider the evidence with an open mind and
7 render a jury -- excuse me -- render a verdict based upon just
8 strictly that -- that evidence. And as a policy, you know,
9 that I have personally and I know that in my conversations
10 with Mr. Bell, when he was a prosecutor, I believe he had that
11 same -- same position is that, you know, if you have a
12 potential juror who has had interactions with the criminal
13 justice system in the past, we have no basis to know how they
14 may feel about those interactions with the justice system. So
15 our -- you know, from a precautionary standpoint, we usually
16 strike those -- those -- those jurors.

17 Q: Okay. That's out of precaution that they may harbor some
18 resentment?

19 A: That's correct.

20 Q: Okay. Do you have any reason to believe that striking
21 Ms. Dunlap was a departure from that indication?

22 A: Not at all.

23 Q Okay. And without looking at your notes, you're not sure
24 if this is the exact criminal defense -- criminal case
25 discussed?

BRADLEY POGUE - DIRECT BY MR. SMITH

1 A: That's correct. Without looking at my notes, I couldn't
2 tell you, but I do recall that she had some experience, again,
3 some charge -- criminal charge on her record that --

4 Q: Okay.

5 A: -- we had found in our search and had notated on the jury
6 list next to her name.

7 Q: If you had done a criminal search for Ms. Dunlap, would
8 you have expected to find something on there like what's
9 described in State's Exhibit 1?

10 A: Yes. Unless she had -- between then and -- and now had
11 somehow had it expunged or removed from her record. I believe
12 even then sometimes it still shows up on NCIC rap sheets. So,
13 yes, I would expect for it to show up.

14 Q: Okay.

15 MR. SMITH: Thank you.

16 MR. WILKES: Nothing further.

17 THE COURT: You may step down, sir. Thank you.

18 THE WITNESS: Thank you, Judge.

19 MR. SMITH: Your Honor, that's the State's case. The
20 State rests.

21 THE COURT: Okay. As I stated yesterday at the end of
22 the hearing, I take lots of notes. I'm listening intently. I
23 know where each one of you are coming from or trying to go to.
24 However, if you want to make a few comments, I'd be glad to
25 hear it, sir.

1 MR. WILKES: Your Honor, I believe that the biggest
2 argument I had was the legal on the expert. I believe I
3 articulated --

4 THE COURT: Yes, sir.

5 MR. WILKES: -- that well enough. I don't need to -- I
6 don't feel I need to do that again unless Your Honor wants.

7 THE COURT: You did highlight that, sir. You said that.
8 Anything from the State, sir?

9 MR. SMITH: Yes, Your Honor.

10 On the first issue, I believe there's enough evidence on
11 the record to show that the State made multiple plea offers to
12 Mr. Michaux, and that Mr. Mauldin communicated those to Mr.
13 Michaux and that Mr. Michaux made a decision to reject them
14 because, one, is he told Judge McMahon he was innocent. And
15 number two, I think the record and the testimony shows that he
16 was concerned with the prison exposure, and so we think that
17 there's no issue of him not being given plea offers.

18 In terms of success at trial, I think there's enough
19 evidence on the record for Your Honor to see that Mr. Mauldin
20 informed Mr. Michaux about the risks of trial as best he
21 could, considering Mr. Michaux was a difficult client who, you
22 know, made it difficult to communicate with him about the case
23 and frequently refused to speak with Mr. Mauldin.

24 As far as the *Batson* motion goes, Mr. Mauldin testified
25 he had no reason to think that he should raise a *Batson* --

1 Batson issue. As a matter of fact, he himself struck a black
2 female from the jury pool, and Mr. Bell, who did strike Ms.
3 Dunlap, the juror identified in the application, also seated a
4 black female.

5 And I have State's Exhibit 1, which I think goes to show
6 that they were concerned about something on her record,
7 although he was not able to identify without his notes
8 specifically whether this was the issue on the record. It
9 does prove that she had some past involvement with the justice
10 system, and they gave a reasonable explanation for why that
11 would cause concern in any juror, whether they were white,
12 black, or whatever. And so I think the *Batson* issue should
13 fail.

14 In terms of the arrest warrant affidavit issue, Mr.
15 Mauldin felt, in light of the fact that they were at trial and
16 there were superseding findings on the record at trial that
17 there was no reason to have some issue about the arrest
18 warrant affidavit.

19 Additionally, the issue of probable cause and reasonable
20 suspicion were settled by the Court of Appeals on appeal, and
21 there's also case law, *State v. Crane*, 296 S.C. 336, that an
22 arrest warrant that is insufficient in itself may be
23 supplemented before a magistrate by sworn oral testimony, and
24 I think there's every reason to think that would have happened
25 here. Even if it didn't, that was all settled on trial and

1 appeal.

2 Mr. Mauldin testified that he didn't really see a reason
3 to object to the qualifications of the expert witness, and I
4 think the trial record bears out that even if he had objected,
5 the expert would have been qualified. In terms of the topic
6 of the testimony that a drug trafficker would not leave
7 \$10,000 worth in profit of drugs in the car is -- I think is
8 -- is in line with *Jameson*. It's all about giving the jury
9 information about drug trafficking.

10 And I think although it's not necessarily exactly the
11 same testimony given in *Jameson*, it's, I think, covered by the
12 same rationale. I'll point out that there's two footnotes in
13 *Jameson*, and one of them cites Fourth Circuit precedent and
14 United States precedent dealing with expert testimony on drug
15 trafficking. And there's a -- and the case I look at is
16 giving some information about cases where expert testimony on
17 drugs have been affirmed and -- and the courts have said that
18 -- that that testimony can be used to give the jurors
19 information about drug traffickers that they would not
20 otherwise know. Most people don't know much about drug
21 trafficking. And so I think even if Mr. Mauldin had objected,
22 that -- that's not something that would have been reversed on
23 appeal, especially since the Court of Appeals cited *Jameson* in
24 its opinion.

25 The issue of whether Mr. Gilliam should have cited --

1 should have raised some argument about the admissibility of
2 the statements, I'll cite to the case of *Berkemer v. McCarty*,
3 468 U.S. 420, which says that a traffic stop is more like a
4 *Terry* stop than an arrest, and that persons temporarily
5 detained pursuant to such stops are not in custody for
6 purposes of *Miranda*.

7 The trial transcript shows that the officers stopped Mr.
8 Michaux, that the stop was legal, according to the Court of
9 Appeals. Then the officers, based on questioning him in line
10 with the *Berkemer* case, came to believe that they needed to
11 search his car. The search of his car was legal, according to
12 the Court of Appeals, and when the officers -- they gave him
13 warnings for his traffic violation and then told him they were
14 going to search his car. At that point, he made a statement
15 that there's no marijuana in the car.

16 So, as Judge McMahon found, his statement was a voluntary
17 statement. It was spontaneous. The officers had not given
18 him *Miranda* warnings because they were not subjecting him to
19 custodial interrogation. There's no reason to do that.

20 And that's the State's case, Your Honor.

21 THE COURT: All right.

22 MR. SMITH: Thank you.

23 THE COURT: Folks, y'all have been very patient with me.
24 I appreciate that. I get to be where I need to be here
25 shortly, but I don't want either one of you to feel like you

1 were rushed. This comes first. It always does.

2 But I think you were both very thorough and precise,
3 which is good. I'm going to have to take this one under
4 advisement, folks, and do some more reading.

5 MR. WILKES: Thank you, Your Honor.

6 MR. SMITH: Thank you.

7 THE COURT: Thank you very much.

8 (WHEREUPON, the proceedings ended at 4:30 p.m.)

9

10 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 80, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 12th day of April, 2022, to the best of my ability based upon the audio and notes provided.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

November 27, 2023

I. FACTUAL & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on March 20, 2014, for drugs recovered during a traffic stop and subsequent search of Applicant's vehicle. During its July 2015 term, the Lexington County Grand Jury indicted Applicant for trafficking in cocaine, one hundred to two hundred grams—first offense (2014-GS-32-0206). Applicant was offered plea opportunities, which he rejected. On May 17, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. David Mauldin, Esquire represented Applicant. Assistant Solicitors Lester Bell, Jr. and Bradley Pogue prosecuted the case.

A. Summary of Evidence Adduced at Trial

In 2014, Lance Corporal Michael Harrison with the South Carolina Highway Patrol operated as part of the Patrol's H-team doing interdiction work. (R. 6-7).¹ On March 20, 2014, he was stationed on I-20 in Lexington County. (R. 7). He observed a white sedan travelling in front of a tractor-trailer. (R. 7-8). When the driver of the white sedan observed Trooper Harrison on the side of the road, he abruptly slowed in a dangerous and noticeable action requiring the tractor-trailer to swerve into the other lane to avoid hitting the sedan. (R. 8, 83-84). Trooper Harrison indicated he saw the driver "essentially jam on his brakes," which was not a normal course of action for a driver based on the Trooper's 16 years of experience. (R. 84-85).

As a result of seeing the driver abruptly brake, Trooper Harrison pulled out and followed the driver. As he pulled into the interstate, Trooper Harrison noticed the vehicle unable to maintain the center of his lane driving to the left side of the lane and then to the right side of the lane. (R.

¹ Cites to the Record on Appeal are noted "R."; cites to the transcript of the post-conviction relief hearing are noted "PCR".

84-85). Trooper Harrison indicated he was "weaving" within his lane. (R. 8, 85). Trooper Harrison decided to activate his blue lights and pull the driver over because he was concerned about his condition. (R. 8, 85-86).

Trooper Harrison approached the vehicle after he pulled it over and noticed it was a newer vehicle with an out-of-state license plate. (R. 9, 87). Trooper Harrison approached on the passenger side and noticed the driver was the only occupant. He also noticed the vehicle had a bar code sticker on the window indicating the car was likely a rental car. (R. 87). He asked the driver for his license and registration, while at the same time noticing two cans of air fresheners inside the vehicle. (R. 9, 87-88). Trooper Harrison noticed some cigar shavings from the inside of a cigar and immediately smelled the overwhelming smell of marijuana, even over the smell of the air fresheners. (R. 10, 89). He radioed for backup who ultimately arrived at scene. (R. 90). The driver did not provide a license, and instead provided a North Carolina Identification Card with the name Ronald Douglas Michaux. (R. 10-11, 88-89). Applicant provided the rental agreement for the vehicle, and the name on the agreement did not match Applicant. (R. 90). The renter of the vehicle was not present. (R. 14, 90).

Trooper Harrison had Applicant exit the vehicle and move beside the Trooper's vehicle to talk. Trooper Harrison asked Applicant where he was coming from and he received a generic response about Applicant coming from his cousins. When Trooper Harrison asked where the cousin lived, Applicant "turned back from the direction he was coming from and basically pointed back down the interstate and said [I'm coming] from that way" instead of giving a specific answer. (R. 12-13, 93-94). Trooper Harrison also asked Applicant about his license and Applicant told him it was suspended in North Carolina.² (R. 13).

² Trooper Harrison ultimately learned Applicant's driver's license was revoked in North Carolina, so he was illegally driving without a license. (R. 20-21).



Trooper Harrison gave Applicant a warning for his driving and explained he would be searching the vehicle based on the smell of marijuana. (R. 17). As Trooper Harrison returned to the vehicle to perform the search, Applicant stated “there’s no marijuana in the vehicle.” (R. 17-18). Trooper Harrison located some additional tobacco shavings and cigar packages, which he explained people hollow out and use to smoke marijuana. (R. 18). Additionally, Trooper Harrison found a black plastic bag with a knot tied in it which contained a powdered substance. (R. 18-19). He explained the bag likely contained cocaine or heroin. (R. 19). The substance in the bag field tested positive for cocaine. (R. 100).

B. Verdict & Sentencing

The defense rested on the afternoon of May 18, 2016. (R. 192). However, despite Judge McMahon’s warning that the trial would proceed in his absence if he did not appear in court the following day, Applicant failed to appear. (R. 196-198). Judge McMahon issued a bench warrant, and the trial continued in Applicant’s absence. (R. 199). The jury found Applicant guilty as indicted that same day. (R. 228). At that time, Judge McMahon sealed Applicant’s sentence to be imposed once he was located and taken into custody. (R. 232-233).

On Thursday, August 25, 2016, Applicant appeared before the Honorable William P. Keesley for sentencing. (R. 235). Upon unsealing the sentence, Judge Keesley imposed a sentence of twenty-five (25) years’ imprisonment. (R. 239).

C. Direct Appeal

On August 31, 2016, Counsel filed a timely notice of appeal. Appellate Defender Taylor Gilliam perfected Applicant’s appeal by briefing the following issues for the Court of Appeals:

- I. Whether the trial judge erred in denying Appellant’s motion to suppress evidence found as the result of an unconstitutional traffic stop that was initiated without probable cause where law enforcement could have issued a warning ticket and concluded

the stop but instead continued to investigate without reasonable suspicion in violation of the Fourth Amendment of the United States Constitution and the South Carolina Constitution?

- II. Whether the trial judge erred in allowing officer qualified as an expert witness in narcotics trafficking to testify about the value of cocaine when the testimony did not assist the jury in understanding the evidence or determining a fact in issue, when the testimony was unnecessary and cumulative, and when the testimony's probative value was substantially outweighed by the danger of unfair prejudice?

On December 5, 2018, the Court of Appeals affirmed Applicant's conviction in an unpublished opinion. *State v. Michaux*, Op. No. 2018-UP-440 (S.C. Ct. App. filed Dec. 5, 2018). When no petition for rehearing was filed with the Court of Appeals, the remittitur was issued on December 27, 2018.

On February 15, 2019, Applicant filed a *pro se* "notice of appeal," seeking the Supreme Court's review of the decision of the Court of Appeals. On March 13, 2019, the Supreme Court issued an order dismissing the *pro se* filing because no petition for rehearing had been filed or ruled upon by the Court of Appeals. *State v. Michaux* (S.C. Sup. Ct. filed March 13, 2019). The Supreme Court remitted the case back to the circuit court on April 1, 2019.

D. PCR Filings and Proceedings

Applicant commenced this PCR action on June 4, 2019 by filing an Application for Post-Conviction Relief in the Lexington County Court of Common Pleas. In that Application, Applicant alleged he is being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of trial counsel
 - a. "[F]ailing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause in contravention of the Fourth and Fourteenth Amendment, State constitution, and statute."



- a. “[F]ailing to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions.”
- b. “[F]ailing to request a *Batson*³ hearing after the State exercised all preemptory challenges to strike all but one black juror.”

On November 14, 2019, Applicant, with assistance of PCR counsel, filed an Amended Application for Post-Conviction Relief raising the following issues:

- 1. Ineffective assistance of trial counsel
 - a. Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case;
 - b. Trial counsel failed to request a continuance in order to allow counsel to properly investigate the case and prepare an adequate defense;
 - c. Trial counsel failed to properly move for the suppression of testimony and evidence;
 - d. Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal;
 - e. Trial counsel failed to effectively cross-examine the State’s witnesses during the trial;
 - f. Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary;
 - g. Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury;
 - h. Trial counsel failed to properly explain, convey, and advise client on the issues in the case, plea offers, and potential for various outcomes sufficiently for the Applicant to make informed decisions as to whether to enter a plea or proceed to trial, or to testify at trial; and
 - i. Trial counsel failed to properly convey, review and advise as to the charges, potential sentences and the evidence.

³ *Batson v. Kentucky*, 476 U.S. 79 (1986), holding modified by *Powers v. Ohio*, 499 U.S. 400 (1991).

2. Ineffective assistance of appellate counsel
 - a. Appellate counsel failed to properly raise and argue viable issues on appeal.
3. Failure of the State to adequately comply with the rules of discovery
 - a. The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents.

Applicant requested relief as follows: “reversal of the conviction and a new trial.” (Amendment to Application for Post Conviction Relief, 11/14/2019.)

Respondent State of South Carolina filed a return January 7, 2020, seeking summary dismissal of Applicant’s claims regarding an alleged *Batson* violation; the sufficiency of probable cause in the arrest warrant; and the alleged unlawful empanelment of the Grand Jury, for failure to state a cognizable claim under the Uniform Post-Conviction Relief Act (the Act). On the remaining claims, Respondent’s return requested an evidentiary hearing to fully resolve the issues.

An evidentiary hearing was held April 12, 2022 before this court. At the outset of the hearing, the following issues were presented as being before the Court:

1. Trial counsel was ineffective for giving poor advice regarding plea negotiations and the State’s plea offers.
2. Trial counsel was ineffective for giving poor advice about the success of the trial.
3. Trial counsel was ineffective for not raising a *Batson* issue.
4. Trial counsel was ineffective for not informing Mr. Michaux that he would be taken into custody and the trial would begin the first day.
5. Trial counsel was ineffective for not arguing that the arrest warrant affidavit was insufficient to support a finding of probable cause.
6. Trial counsel was ineffective for not arguing that the grand jury was impaneled outside of a General Sessions term.
7. Trial counsel was ineffective for not rejecting testimony from the



State's expert witness that a drug dealer would not leave drugs behind in a rental car.

8. Appellate counsel was ineffective for not arguing that the trial court erred in admitting Mr. Michaux's roadside statement to the officers.

PCR Tr.p. 5-6.

Materials before this Court and incorporated by reference are the Lexington County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal; the transcripts of Applicant's May 17-19, 2016 trial and August 25, 2016 sentencing; and the records of the current PCR action.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Standard of Review

The grounds for relief on which Applicant proceeded at the evidentiary hearing pertain to alleged ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient

to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

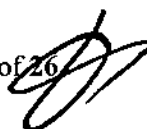
Strickland "does not guarantee perfect representation[—] only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an

adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's



representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

B. Allegations before the Court

As stated above, at the evidentiary hearing, Applicant proceeded on the following claims, which are individually addressed below:

Trial counsel was ineffective for:

1. giving poor advice regarding plea negotiations and the state’s plea offers;
2. giving poor advice about the chance of success at trial;
3. not raising a *Batson* motion;
4. not informing Applicant that he would be taken into custody and the trial would begin on the first day;
5. not arguing that the arrest warrant affidavit was insufficient to support a finding of probable cause;
6. not arguing that the grand jury was impaneled outside of a General Sessions term; and
7. not rejecting testimony from the State’s expert witness that a drug dealer would not leave drugs behind in a rental car; and
8. Appellate counsel was ineffective for not arguing that the trial court erred in admitting Applicant’s roadside statements to the officers.

PCR, p. 5, l. 12 – p. 6, l. 14.

C. Findings as to Claims Raised

Claim 1: Counsel was ineffective for giving poor advice regarding plea negotiations and the State’s plea offers.

Applicant first alleges trial counsel was ineffective for giving poor advice regarding plea

negotiations and the State's plea offers. This Court finds that the Applicant has failed in his burden of proof to show that counsel was deficient or that he was prejudiced under *Strickland*. A review of the trial transcript, supplemented by Counsel's credible testimony at the evidentiary hearing, establishes the case was not a complex one and that Counsel understood the case well. (PCR, p. 39) ("[I]t's not a complex case factually. You know, a vehicle stop. There's a search. They find drugs in the car. That's about all the evidence there is.") It was based on Counsel's understanding of the case, the main issues in the case, and his understanding that the offense Applicant was accused of required the Court impose a mandatory 25-year sentence upon a finding of guilt, that led Counsel to recommend Applicant plead guilty and limit his exposure, rather than risk being convicted. (PCR, p. 26, l. 24- p. 29, l.6; *see also Id.* at p. 49, l. 4-13).

Applicant was offered two pleas throughout the case's history. (R. 237, l. 16-24). The first was the chance to plead guilty to possession with intent to distribute cocaine ("PWID") first, with no recommendation by the State, and face a sentence of zero to fifteen years. (*Id.*; *see also* PCR, p. 32, l. 12-17). This offer was initially extended to Counsel by the Solicitor in July 2014. (PCR, p. 24, l. 8-12). Following Counsel's initial meeting with Applicant on June 6, 2014, Applicant's bond had been lowered and he had been released from jail and traveled back to his home state of North Carolina. (PCR, p. 24). As a result, Counsel relayed the first offer to Applicant via telephone on August 12, 2014. *Id.* Applicant then had a court appearance on August 22, 2014 and said he was not going to take the offer. *Id.*

Following Applicant's first rejection of the offer, the Solicitor had originally indicated the offer was void but then it (the original offer) was extended or re-extended. *Id.* The plea offer remained open as of September 4, 2015 and Applicant was aware it was still available, as evidenced by his telling Counsel on that date that he "needed more time to think about it." (PCR,



p. 25). In January 2016, Applicant remained aware of the offer, again not declining it but, instead, telling Counsel he still needed time to think about the plea offer. *Id.* Applicant was given a February 9, 2016 date to decide or the offer would be considered dead. *Id.* At that time, Applicant requested Counsel see if a specific sentence could be negotiated, at which time the Solicitor both said he was not going to negotiate a specific sentence and that he was going to ask the judge for jail time. *Id.* When Counsel let Applicant know that, on February 9th, 2016, Applicant told Counsel he wanted a trial. (PCR, pp. 25-26).

More communications between Applicant and Counsel continued and, ultimately, following Applicant's refusal of the first offer because "he said he wasn't going to plea to that, zero to fifteen," on the morning of the day Applicant's trial was to be called there was no longer any offer on the table. *Id.* Thereafter, the trial court suggested another offer be made, and the Solicitor agreed, though it was not the standard practice of his office. (PCR, p. 67, l. 10- p. 68, l. 25). Thereafter, the offer of trafficking with a penalty of seven to twenty-five years was made. (PCR, p. 11). Applicant testified at the PCR hearing that he rejected this offer as well. (PCR, p. 11). Based on the testimony of the Applicant and Counsel, I find the offers the Solicitor made were communicated with Applicant.

Counsel also credibly testified he recommended Applicant accept the offers. Taking them in order, Counsel first recommended that Applicant take the first offer. (PCR, p. 53, l. 14-17; PCR, pp. 27-29; PCR, p. 49, l. 4-13.) Counsel testified he felt this was good advice because "I never tell people that they've got a winner or a solid loser because it goes either way, but I mean, he's the only person in the car. I've told him that you're the only one in the car. The drugs are in the car. It's leaning towards you." (PCR, p. 27, l. 21-25). Counsel indicated that Applicant emphatically rejected the offer, "[Applicant] was very definite in his decision." (PCR, p. 53, l. 18-23). Applicant

did not like the possible prison time he was facing and was “emphatic that [Counsel] needed to get the drugs suppressed... .” (PCR, p. 28; PCR, p. 27, l. 3-6) (“[Applicant’s] position was that it was an illegal search and if I was going to do my job, I’d get those drugs suppressed and that’s all I needed to know about the case is to get the drugs suppressed.”)

This Court also finds credible counsel’s testimony on why he recommended Applicant take the plea offer. Counsel specifically told Applicant there was no guarantee that the drugs would be suppressed given the facts of the case, which included that Applicant was the only person in the car with the drugs when they were found. (PCR, p. 55, l. 1-7). Counsel both let Applicant know there was a chance the drugs would not be suppressed and further told him (regarding the first offer) “even if the judge does the worst on this, it would be better than the best outcome at trial. Fifteen at nonviolent would be better than 25 [years] at 85 percent.” (PCR, p. 28, l. 4-13; *see also* PCR, p. 29, l. 2-8) (“[M]y opinion was that offer of PWID first was a good way to hedge his bets.”). Counsel, who had over a dozen years criminal defense trial experience and whose testimony demonstrates his understanding of the issues involved, recommended to Applicant that the offer be accepted. (PCR, p. 23, l. 4-23; *see also, generally*, PCR, pp. 22-57). After making the recommendation, Counsel left it up to Applicant to accept or reject the plea and Applicant rejected it. *Id.* (“[I]t’s their decision as far as whether to plea or go to trial.”)

A second plea offer was made during pre-trial motions just prior to the start of trial. This offer was for a plea to trafficking with a potential sentence of seven to twenty-five years. (PCR, p. 31, l. 21- p. 32, l. 4; *see also* R. 233, l. 10-16). Applicant was notified of the offer and, against Counsel’s recommendation, he rejected this offer as well. (*Id.*; *see also* PCR, p. 49, l. 4-6).

Applicant has not established Counsel failed to convey either plea offer to him and also has not established Counsel’s conduct regarding the offers was “unreasonable” as required by

Strickland. *Strickland*, 466 U.S. at 689.

This Court further finds as to the second prong of *Strickland* that he similarly failed in his burden of proof. The Applicant claims that prejudice was shown by his testimony that had counsel advised him about the likelihood of acquittal was “slim to none” and explained the impact of an *Alford* plea that he probably would have thought about a guilty plea more depending on the specifics of the offer than going to trial and getting 25 years. PCR Tr.p. 11-12. However, this Court did not find Applicant’s testimony credible in light of the record before it and the conditions that he placed upon it during the PCR hearing, as well as the fact that no *Alford* plea was ever offered. This is supported by counsel’s testimony that he did not discuss an *Alford* type plea with the Applicant. Tr.p. 40. The Applicant was adamant at the outset of the trial he was not going to plead guilty when he claimed he did not have the drugs. Trial Tr.p. 87-88. The Court further find that he had failed to prove that the State either offered or was willing to agree to an *Alford* plea during its negotiations. See Trial Tr.p. 263; PCR Tr.p. 67-68. Further, Applicant has failed to show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In fact, in hindsight, the record establishes Applicant would have received less time if he had taken Counsel’s advice regarding the initial offer and, worst case, no additional time if the second offer was accepted. Because Applicant has not met the burden of either *Strickland* prong, this claim is denied and dismissed with prejudice.

Claim 2: Counsel was ineffective for giving poor advice about the chance of success at trial.

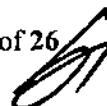
Applicant next alleges trial counsel was ineffective for giving poor advice about Applicant’s chances of success at trial. A primary ground for the charge against Applicant was cocaine found in the car he was driving and was the sole occupant of at the time of the stop. (R.

100-101). Applicant had prior convictions for possession of cocaine with intent to distribute, and didn't want to go back to prison."⁴ (R. 232, R. 54). Applicant was very emphatic that the drugs in car were to be suppressed. (PCR, p. 44). Counsel testified he told Applicant that there was a chance that they would be, but there also was a chance they would not be suppressed. (PCR, p. 44; *see also* PCR, p. 44, l. 14-15) ("I [Counsel] told him that it might not be, and his response was that I needed to do my job.").

The testimony at the hearing was clear that (1) Applicant was told Counsel was making a motion to suppress and that "[a] judge could rule for or against [Applicant] and that (2) "I [Counsel] recommended he take the PWID. I [also] recommended that he take the other [offer], but I said if you want to go to trial, I'm happy to do that too." (PCR, pp. 48-49). Applicant did not reveal any defense to Counsel nor suggest a defense that Counsel should put forth beyond arguing for suppression. (PCR, pp. 30-31). Counsel testified that because he could not guarantee the drugs in the car would be suppressed and the facts for suppression, in terms of Applicant being the only person in the car were not good, Counsel recommended Applicant take the pleas offered, especially the first one, limiting Applicant's exposure to 15 years. Applicant responded he was tired of going to prison and rejected the offer. (PCR, p. 53, l.14- p. 55, l.7).

Applicant has not established Counsel's conduct, in terms of giving advice regarding Applicant's chance of success at trial, was "unreasonable" as required by *Strickland*. *Strickland*, 466 U.S. at 689. As found earlier in the initial allegation, this Court finds that the Applicant failed to prove with credible evidence that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C.

⁴ Applicant's prior criminal history included at least three prior convictions for possession with intent to distribute cocaine (2007, 2009, and 2014), as well as other charges, and reflected four periods of incarceration. (R. 232). The offense he was charged with in the present case was a technical third offense. However, as to weight, the charge was a twenty-five year charge, even as a first offense. *Id.*



at 117-18, 386 S.E.2d at 625. Because Applicant has not met either burden required of him pursuant to *Strickland*, this claim is denied and dismissed with prejudice.

Claim 3: Counsel was ineffective for not raising a *Batson* motion

Applicant next alleges trial counsel was ineffective for not raising a *Batson* motion after the State struck a black female during jury selection. On this point Counsel David Mauldin, who was an experienced defense attorney with over a dozen years trial practice, testified that he was familiar with *Batson* and summarized his understanding of the case. (PCR, p. 35). His recollection of Applicant's case was that one black female juror had been struck by the State, but that the State had sat at least one or two other black people on the jury. (PCR, p. 35). He testified that he saw no reason to raise a *Batson* issue and, further, that if he had seen something that raised his suspicion that the Solicitor was taking race into consideration in jury selection, he would have raised the issue. (PCR, p. 36).

Assistant Solicitor Bradley Pogue testified on the matter as well, testifying he understood the premise of *Batson* ("preemptory strikes can only be used for, you know, non-racial or non-sexual reasons") and that "in this case, it was non-race." (PCR, p. 69). He further testified "we don't ever strike a juror for any race-based reason." (PCR, p. 69). Of the three black females that were presented, the State struck just one, and it was because she had a criminal charge on her record—that was the basis for the strike. (PCR, pp. 70-75). The Solicitor testified that such a strike would be keeping with standard office practice. (PCR, p. 74). This Court finds the testimony of the prosecutor that the strike was based upon the existence of the criminal charge on her record which the State reasonably felt could harbor resentment against the State. See PCR Tr.p. 71-75.

To prevail in a *Batson* hearing, the burden is "on the defendant who alleges discriminatory selection of the venire to prove the existence of purposeful discrimination." 476 U.S. at 93 (internal



citations and quotation marks omitted). Applicant has not met this burden by presenting testimony, as required to prevail on the claim. Accordingly, Applicant has not shown that counsel was ineffective in failing to raise the claim at trial. Further, Applicant has failed to show prejudice resulted from the failure of this one juror to be seated when the State put forth all of the remaining black female jurors who were selected as possible jurors. For these reasons, Applicant's claim is denied and dismissed with prejudice.

Claim 4: Counsel was ineffective for not informing Applicant the trial would begin the first day and he would be taken into custody at the trial's start.

Applicant next alleges trial counsel was ineffective for not informing Applicant that he would be taken into custody and the trial would begin on the first day. On this point, when asked at the hearing if his attorney told him when to be in court for trial, Applicant agreed Counsel had told him when to show up. (PCR, p. 17). Further, Applicant showed up for the first day of trial. Upon showing up, Applicant was informed that it is standard practice for Defendants to be taken into custody for the period of the trial. (R. 48, l. 2-3). At this Applicant stringently objected, claiming he had not been advised of this in advance. (R. 48, l. 9-12). Whether or not to take a Defendant into custody for the period of his trial is a trial court matter. In this case, the trial court ultimately chose to not require Applicant to continue to be held in custody throughout his trial and, after the second day, Applicant was told he would not be held in custody but, that if he failed to return for the third or any subsequent day, he would be tried in his absence. (R. 195-198).

Though the majority of claims allowed pursuant to the Act fall under ineffective assistance of counsel, not all claims do. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal



cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Applicant’s claim here, that he was not told he would be taken into custody, is not a cognizable claim under the Act. See S.C. Code Ann. § 17-27-20 (grounds for actions pursuant to the Act). For this reason alone, this claim fails. Going further, Applicant has not shown Counsel’s conduct in failing to notify him (if this was the case, which has not been established) was not within the wide range of reasonable professional actions or that prejudice of any type, and especially prejudice “sufficient to undermine confidence in the outcome” resulted from any such failure to notify him in advance that his bond condition may change. Accordingly, this allegation is denied and dismissed with prejudice.

Claim 5: Counsel was ineffective for not arguing the arrest warrant lacked probable cause.

Applicant next alleges trial counsel was ineffective for failing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause.⁵ Counsel testified at the hearing that he had seen the arrest warrant affidavit and that he did not see any benefit in arguing the affidavit lacked probable cause. (PCR, pp. 54-55). In this case, the warrant was obtained after the Applicant was in jail, the Applicant having been arrested on the side of the

⁵ In the March 20, 2014 affidavit, the following basis was set out for Trafficking in Cocaine 100 g. or more, but less than 100 g.:

On 3/20/2014 at 1240 hours while in Lexington County, I made a lawful traffic stop on a 2014 Volkswagen Jetta for improper lane use. I identified the driver as Arnold D. Michaux by his North Carolina ID card. I smelled of marijuana coming from the vehicle. I had Mr. Michaux exit the vehicle. A search of the vehicle was conducted and a black bag was found in the rear floorboard that contained 5 oz of a white powder substance. Mr. Michaux was placed under arrest...

road after, among other things, the officer smelled marijuana in the car, determined Applicant was driving without a valid license, and found a small black bag that field tested for cocaine in the car. (PCR, p. 35, 1.2-13; R. 88-90; R. 100-101). Counsel's point was the evidence used against Applicant at trial had already been obtained by the time of Applicant's arrest and it was sufficient for conviction (implying the evidence was sufficient for arrest). (PCR, p. 35). Counsel made the additional point, "arrest warrants are kind of subsumed by the indictments as far as the charging document." (PCR, p. 34).

In the present case, Counsel chose to challenge the officer's probable cause regarding the stop and search, instead of the probable cause articulated in the arrest warrant after the search had already been conducted. In this case, Counsel's conduct was within the acceptable range of professional assistance. *Butler*, 286 S.C at 445, 334 S.E.2d at 816. Further, Applicant has not shown prejudice resulting from Counsel's failure to argue the affidavit. In light of the indictment returned by the grand jury in this case, and the jury verdict, it is not surprising Applicant has been unable to show prejudice, particularly prejudice "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 690. For these reasons, this ground is denied and dismissed with prejudice.

Claim 6: Counsel was ineffective for not arguing that the grand jury was impaneled outside of a General Sessions term.

Applicant next raised that Counsel was ineffective for not arguing that the grand jury was impaneled outside of a General Sessions term. Applicant chose to abandon this claim at the evidentiary hearing. (PCR, pp. 21-22) (PCR counsel testified "[w]e've reviewed the evidence on the issue involving the grand jury, being indicted outside the term of the grand jury. The attorney general has presented the documentation showing that it was, in fact, in a legitimate term for the grand jury and, therefore, that is a non-issue.") Because this claim has been abandoned and, further,



there has been no meeting of either prong of *Strickland*, this claim is denied and dismissed with prejudice.

Claim 7: Counsel was ineffective for not rejecting testimony from the State's expert witness that a drug dealer would not leave drugs behind in a rental car.

Applicant next alleges trial counsel was ineffective for not rejecting testimony from the State's expert witness that a drug dealer would not leave drugs behind in a rental car. The specific testimony that it is alleged Counsel should have objected to occurred when the Solicitor asked Corporal Rogers, a full-time member the South Carolina Highway Patrol interdiction team, and someone who had been qualified as an expert in the field of drug trafficking if, based on his background and experience, a drug trafficker would leave \$10,000 worth of cocaine behind in a rental car and Corporal Rogers responded "no, that would not happen." (R.165, 172-173, 177-178).

On this point Counsel testified, first, that while he did have some objections regarding Corporal Rogers' testimony, there was nothing in Corporal Rogers background that would lead him to believe Rogers was not qualified to give expert testimony regarding drug trafficking. (PCR, p. 37, l. 4-19). Second, Counsel testified he did not object to Rogers saying that in his experience a drug trafficker would not leave \$10,000 worth of cocaine behind in a rental car because he did not find the statement objectionable. (PCR, p. 38). "I thought he was giving his opinion." *Id.* Counsel added "I thought it was kind of patently ridiculous to say that people don't accidentally leave stuff somewhere. I think I argued it in my closing maybe, that I talked about how people lose [things] all the time." *Id.*

Counsel articulated two reasons at the hearing for not objecting to the Corporal's testimony, both of which I find to be the result of reasonable professional judgment. Further, there

is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. Applicant, who has the burden of proof, must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Here the Applicant has not done so. Further, Applicant has not established prejudice, in terms of establishing that, but for Counsel’s failure to object, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Here, where the jury saw the cocaine that was found in the backseat, and heard testimony regarding Applicant being the sole occupant of the car at the time of stop, as well as other factors, Applicant has not established that there is a reasonable probability that, if the statement had been objected to, the outcome of the trial would have been different. The probability of a different outcome minus the statement is not sufficient “to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Since applicant has met neither of the required *Strickland* prongs to prevail, this claim is denied and dismissed with prejudice.

Claim 8: Appellate Counsel was ineffective for not arguing that the trial court erred in admitting Applicant’s roadside statements to the officers.

Applicant next alleges Appellate Counsel Taylor Gilliam was ineffective for not arguing that the trial court erred in admitting Applicant’s roadside statements to the officers. At the hearing Appellate Counsel Gilliam testified regarding the issues he raised on appeal in the present case, as well as how he decided what issues to raise. (PCR, p. 58). He testified that he reviews the transcripts in their entirety, takes notes, marks them up, tabs them and preforms legal research to determine whether motions or objections that were made by trial or PCR counsel resulted in what he believed to be an incorrect decision by the judge of the lower court. *Id.* In the present case he filed a two-issue merits brief on behalf of Applicant, which included a motion to suppress the

traffic stop, which “struck [Appellate Counsel] as a fishing expedition.”⁶ *Id.*

Appellate Counsel went into detail regarding the suppression issues and demonstrated his knowledge in this area of the law. (PCR, pp. 58-61). When asked if he saw anything that made him think he should raise an argument that the judge erred in admitting Applicant’s roadside statement to law enforcement, he responded he did not. (PCR, p. 59, l. 19-24) (“I did not conclude that that was a meritorious issue worthy of inclusion in the brief.”) If he had thought it was a worthy argument, he would have raised it. (PCR p. 59, l. 25- p. 60, l. 2). Appellate Counsel is experienced in raising *Miranda* violations; articulated how such violations tend to revolve around reasonableness, voluntariness, and custody; and testified that just the week before he had had a conviction overturned based on custodial interrogation and a *Miranda* violation. (PCR, pp. 58-61). The statement made by Applicant to law enforcement – that “there was no marijuana in the car”—was neither a custodial interrogation nor a confession, and something Appellate Counsel did not find objectionable as a matter of law. (PCR, p. 61; R. 40). Appellate Counsel agreed with the Circuit Court’s finding that the statement was a spontaneous statement. *Id.*

Applicant has failed to meet his burden of showing Appellate Counsel was ineffective for failing to argue the trial court erred in admitting Applicant’s roadside statements to officers. An Applicant making a claim of ineffective assistance must overcome a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. Applicant has not done this on this claim. Further, to prevail Applicant must also show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C.

⁶ The Court of Appeals issued merits findings on both of the issues in an unpublished opinion filed December 18th, 2018. The issues are not before this Court.

at 117-18, 386 S.E.2d at 625. Applicant has not met his burden on this prong either.

Accordingly, this claim is denied and dismissed with prejudice.

CONCLUSION

After careful consideration of Applicant's Amended Application for Post-Conviction Relief, the Record of the case, the arguments of PCR Attorney Wilkes and Assistant Attorney General Smith, and the testimony of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of *Strickland*, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 16th day of May, 2024.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina