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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2023-001978

THE STATE,

Appellant,

vs.

JOSHUA FELIPE SIMMONS,

Respondent.

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
COURT’S EXHIBIT 2 (ENGLES, BIANCHI’S, AND PRESTON’S BODY-CAM CLIPS).**

State of South Carolina	)	Court of General Sessions
County of Charleston	)	Ninth Judicial Circuit
	)	
STATE OF SOUTH CAROLINA,	)	Case Number:
	)	2018-GS-10-05434
Plaintiff,	)	
	)	
vs.	)	
	)	
JOSHUA F. SIMMONS,	)	JURY TRIAL
	)	
Defendant.	)	TRANSCRIPT OF RECORD
_____	)	

December 11-14, 2023
Charleston, South Carolina

B E F O R E:

The Honorable Deadra Jefferson

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

MS. KELLY E.M. BARBER
and MR. DANIEL COOPER,
Assistant Solicitors,
for the Plaintiff;

MR. JOHN J. KOZELSKI
and MR. W. TED SMITH,
Assistant Public Defenders,
for the Defendant.

Jamie Bickett
Official Court Reporter

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EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>EV</u>
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1 (Proceedings began at 12:10 p.m., Monday, December 11,
2 2023, outside the presence of the prospective jurors.)

3 THE COURT: Okay. Now, the first case on the docket is
4 Joshua Felipe Simmons. He has shadow counsel, Mr. Ted Smith.
5 Correct?

6 MR. SMITH: Yes, your Honor.

7 THE COURT: And I got -- we got an e-mail on Friday at
8 12:47 where Mr. Simmons is seeking a continuance. That
9 e-mail reads as follows. And I assume everybody has a copy
10 because they were copied on it. Maybe not.

11 MR. BARBER: I received it, your Honor.

12 THE COURT: Yeah, you received it.

13 MS. BARBER: Yes, ma'am.

14 THE COURT: "Attached is a motion for continuance due to
15 the fact I received new withhold evidences yesterday on
16 December 7, 2023, even though I been requested multiple times
17 throughout the year since 2018. On December 7, 2023, I
18 myself, including Ms. Barber Kelly (verbatim) and others,
19 watched the BWC" -- I assume that's body-worn camera --
20 "footage together. Upon leaving, Ms. Barber gave me two CDs
21 copy of the BWC, one from Sergeant" -- I assume that's
22 Sergeant, "Stg," -- "Engles," E-N-G-L-E-S, "and the other one
23 from Officer Preston. Somehow I received two copies of
24 Sergeant Engles" -- and it's E-G-A-L-E-S; I assume that's a
25 scrivener's error -- "and no copy of Preston. I am asking

1 respectfully a copy of Officer Preston BWC footage ASAP.
2 Also for a continuance for my hearing date for more time for
3 preparation for a jury trial. I have attachments below."

4 And I assume that is his handwritten request for a
5 continuance. What is this date -- well, let me hear from
6 Mr. Simmons.

7 Mr. Simmons, what is your basis of the motion for a
8 continuance?

9 THE DEFENDANT: Me?

10 THE COURT: Yes, sir.

11 THE DEFENDANT: The reason why I need a continuance
12 is so I have more --

13 THE COURT: I need you to speak up for me, please.

14 THE DEFENDANT: The reason why I need more -- the reason
15 why I'm asking for a continuance is so I have more time to
16 prepare for myself for jury trial in light of the evidence
17 and --

18 THE COURT: Which evidence? Because you've already had
19 the other evidence, haven't you?

20 THE DEFENDANT: Yes. But the --

21 THE COURT: The only thing you were lacking was this
22 body-worn camera, correct?

23 THE DEFENDANT: Body-worn camera. But I didn't know it
24 existed, and I kept on asking for it so --

25 THE COURT: I got that. But other than the body-worn

1 camera, what else would you -- you already had all the other
2 evidence, correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And I also got an e-mail saying something
5 about amending the indictment from a trafficking to a
6 possession with the intent to distribute. That changes the
7 range of penalty, doesn't it?

8 MR. COOPER: Yes, ma'am, it does. It reduces --

9 THE COURT: That changes it from the mandatory minimum
10 to a suspendable sentence, correct?

11 MR. COOPER: It's actually a first offense so it would
12 be zero to 15 years.

13 THE COURT: Okay. Have y'all made any offers to
14 Mr. Simmons in light of that request to amend that
15 indictment?

16 MS. BARBER: Yes, ma'am. So since requesting to amend
17 that indictment, Mr. Simmons was aware that we intended to
18 move forward on a PWID as opposed to the trafficking.

19 THE COURT: Mm-hmm.

20 MS. BARBER: And at the time that we did extend an offer
21 to Mr. Simmons, he was well aware of that and rejected that
22 offer.

23 THE COURT: When did he reject the offer?

24 MS. BARBER: The offer was rejected in June of this
25 year. And he gave me just the --

1 THE COURT: But when did you formally seek to amend the
2 indictment other than the e-mail that I was sent on this
3 morning at 7:45 a.m.?

4 MS. BARBER: This morning, your Honor.

5 THE COURT: Okay. So you're saying he knew you were
6 going to move to amend the indictment before this morning?

7 MS. BARBER: No, ma'am, not the --

8 THE COURT: So --

9 MS. BARBER: He knew that we were moving forward --

10 THE COURT: Yeah.

11 MS. BARBER: -- on the possession as opposed to the
12 trafficking.

13 THE COURT: So my question is have you extended an offer
14 to him since you are asking the Court to amend the
15 indictment?

16 MS. BARBER: We have not.

17 THE COURT: And is that something you think y'all need
18 to explore?

19 MS. BARBER: No, your Honor.

20 THE COURT: Does your client have any interest in
21 pleading straight up in light of the fact that he's moved
22 from a mandatory penalty to a suspendable penalty? You want
23 to talk to him about that?

24 I mean, not your client. I know you're standby counsel.

25 MR. SMITH: Yes, ma'am.

1 THE COURT: But I think that he should, if he is
2 inclined, to take advantage of your years of experience.
3 Y'all want to step out in the hallway right quick and talk
4 about that.

5 MR. SMITH: Yes, ma'am.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Does he have -- well, before you do that,
8 does he have any record, Ms. Barber?

9 MS. BARBER: Yes, ma'am. Give me just a moment.

10 Mr. Simmons' record consists of a simple assault and
11 battery that he acquired in 2008, a possession of marijuana
12 charge from 2009, public disorderly conduct from 2009, a
13 breach of peace charge from 2011, a possession of marijuana
14 charge from 2011, possession of marijuana from 2011, another
15 possession of marijuana charge from 2011, and one last
16 possession of marijuana from 2011.

17 THE COURT: Say that one more time. In 20--?

18 MS. BARBER: 2011.

19 THE COURT: Are any of those going to be enhancements to
20 what he's pleading -- er, the PWID?

21 MS. BARBER: They are not, your Honor.

22 THE COURT: I didn't think so. I just wanted to ask.

23 Is that conference room right there open, Deputy, so
24 they can talk in there? I don't want to run the risk of the
25 jury overhearing them in the hallway.

1 (Court's Exhibit Number 1 marked for the record.)

2 (Pause in proceedings.)

3 THE COURT: While they're re-entering the courtroom, I
4 want to ask another question.

5 Mr. Simmons has several other indictments that are
6 pending. What do y'all plan to do with those?

7 MS. BARBER: Since the rejection that Mr. Simmons --
8 since Mr. Simmons rejected the offer that I made back in the
9 summer in June, your Honor, we plan to proceed trying them
10 one at a time.

11 THE COURT: Are the victims in the domestic violence
12 claims compliant?

13 MS. BARBER: One wavers back and forth. One does not.

14 THE COURT: Have y'all thought about offering him
15 something that would include all of these charges?

16 MS. BARBER: The State --

17 THE COURT: Or did y'all ever offer him anything that
18 included all these charges?

19 MS. BARBER: Yes, ma'am. That was the initial offer,
20 and it --

21 THE COURT: What was --

22 MS. BARBER: -- covered everything.

23 THE COURT: -- the initial offer?

24 MS. BARBER: Yes, ma'am.

25 THE COURT: What was the initial offer?

1 MS. BARBER: I'm pulling it up.

2 THE COURT: I'm sorry. I didn't --

3 MS. BARBER: That's okay.

4 THE COURT: I apologize.

5 MS. BARBER: So the State offered that if Mr. Simmons
6 pled to PWID cocaine first, possession of cocaine first, and
7 an unlawful carrying of a pistol charge, that the State would
8 then -- it was a negotiated offer for three years probation,
9 to include random drug and alcohol testing. If he pled to
10 those three, the State was offering to dismiss the remainder
11 of Mr. Simmons's charges.

12 THE COURT: If he pled today, would y'all be willing to
13 dismiss any of those other charges which as -- based on your
14 own representations, you don't think you could prosecute them
15 and be sure of the outcome?

16 MS. BARBER: Yes, ma'am. There are challenges with
17 those cases.

18 THE COURT: All right. What do you want to do, sir?

19 THE DEFENDANT: I would like to continue.

20 THE COURT: I need you to take your hands out of your
21 pockets. It makes the deputy nervous.

22 THE DEFENDANT: I would like to continue.

23 THE COURT: Okay. And what's the basis of the
24 continuance again? And I need to know when you got all of
25 the other discovery or evidence against you in this case

1 other than the body-worn camera.

2 THE DEFENDANT: I basically need more time to --

3 THE COURT: That's not my question. My question is when
4 did you get all of the other discovery from the State
5 regarding your case other than the body-worn camera.

6 THE DEFENDANT: I got it December 7, 2023.

7 THE COURT: You're telling me you got all the discovery
8 in this case on one day?

9 THE DEFENDANT: Oh, when I got it?

10 THE COURT: I need you to listen to my question.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: When did you get all the evidence the State
13 has against you in this case other than the body-worn camera?

14 THE DEFENDANT: I got it in 2022. I'm not sure which
15 month, but I know it was in like June or July.

16 THE COURT: And you got the body-worn camera on Friday
17 -- well, Thursday. What was the 8th? What's this e-mail
18 say?

19 MS. BARBER: I think that was Friday.

20 THE COURT: On the 7th. The motion for continuance was
21 filed on the 8th. When did y'all watch these videos?

22 THE DEFENDANT: Last Thursday.

23 THE COURT: So that was the 7th then, correct?

24 THE DEFENDANT: And I got the full discovery when I
25 relieved counsel around June 2022. That's correct.

1 THE COURT: And so without divulging any confidences
2 regarding your investigation or any privileged conversations,
3 what exactly do you need to investigate regarding the
4 body-worn camera?

5 THE DEFENDANT: I have to look at the affidavits; the
6 body-worn camera, look at the footage; and also what the
7 State are providing clips -- certain clips they're going to
8 put in. I just have to analyze all this together so I can
9 defend myself fairly.

10 THE COURT: This case has been pending for a long time.
11 It's been pending since I was chief judge the last time,
12 because I got my notes from -- yeah, I got my notes from the
13 last status conference we had on this case. And it's been
14 circling for a long time. Matter of fact, the last thing I
15 had on this case was a -- was it a motion to revoke his bond?
16 Yeah. I heard a motion to revoke his bond back on 11/8 of
17 2022.

18 Mr. Smith, do you think that it is in his best interest
19 to push forward with this? Do you think there's any
20 good-faith basis for a motion for continuance?

21 MR. SMITH: Judge, it would certainly be a situation
22 where a lawyer with that body camera probably could have been
23 prepared if they worked the entire weekend on it.

24 THE COURT: Mm-hmm.

25 MR. SMITH: A person serving as their own lawyer pro se,

1 like Mr. Simmons is, I think it would be fairly difficult to
2 be supplied with the clips that are going to be used --
3 although I think the clips kind of encompass things that the
4 jury should not hear in the body-worn camera.

5 THE COURT: What parts of the clips do y'all plan to
6 use?

7 MS. BARBER: Yes, ma'am. So the clips that are being
8 provided are ones that encompass the finding of the cocaine
9 in the side panel of the vehicle in which Mr. Simmons was
10 driving the night of the incident. We also plan to play a
11 clip that shows the alcohol that was found in that video.
12 During the full body cam --

13 THE COURT: Why would the alcohol come in? How is that
14 relevant to anything?

15 MS. BARBER: Yes, ma'am. So the stop was initially made
16 because of a traffic stop.

17 THE COURT: Uh-huh.

18 MS. BARBER: Thereafter, in plain view, the officers see
19 the alcohol bottles through the window. As a result of them
20 seeing that through window, they then arrest him for the
21 alcohol bottles. An inventory search is conducted as a
22 result of them calling the tow company. That inventory
23 search is what led to the charge that we're here on.

24 THE COURT: So they said they saw the alcohol bottles in
25 plain view, which is a violation of the open container

1 statute. Then they searched him incident -- well, they
2 didn't search him incident to arrest. They did an inventory
3 search of the vehicle and they found this other stuff.

4 What was the reason for the stop initially?

5 MS. BARBER: Officers reported that Mr. Simmons
6 continuously hit the yellow line in the road and he failed to
7 maintain his lane, and so they pulled him over to inquire as
8 to why he --

9 THE COURT: Where was it at?

10 MS. BARBER: On Savannah Highway.

11 THE COURT: Whereabouts?

12 MS. BARBER: Near Carolina Bay. They don't give an
13 exact address.

14 THE COURT: Why did it take y'all so long to get him the
15 body-worn camera?

16 MS. BARBER: Yes, ma'am. So as Mr. Simmons stated
17 earlier, this summer he decided to represent himself, at
18 which point he made our office aware that he did want to know
19 if there was any body-worn camera or dash-cam footage. Our
20 office also wanted to know that, so we reached out to the
21 Charleston Police Department.

22 THE COURT: Mm-hmm.

23 MS. BARBER: My investigator e-mailed. He received an
24 e-mail back stating that only one body-worn camera existed at
25 that point and that the others they couldn't find; they were

1 deleted for whatever reason; and that we have one body-worn
2 camera of an officer. They produced that footage. I
3 provided it to Mr. Simmons.

4 Thereafter, in preparation for this trial, I had another
5 meeting with Officer Engles. That meeting took place on
6 Thursday -- this past Thursday, on December 7. In speaking
7 with him, he alerted our office that he watched his body-worn
8 camera. I questioned him on that because I assumed that he
9 maybe confused it and that he watched the initial video that
10 was provided to Mr. Simmons earlier this year. He stated no,
11 that he had his own body-worn camera, and that the body-worn
12 camera of Officer Preston should exist somewhere as well. At
13 that point, I had told him to send that over to our office.

14 I got back to my desk, saw an e-mail from Mr. Simmons.
15 He inquired as to whether we were still having our meeting
16 later that day for him to review physical evidence. In that
17 same e-mail of me confirming our meeting, I alerted him of
18 these videos' existence.

19 THE COURT: So that's of Officer Engles and Officer --

20 MS. BARBER: Engles and Preston.

21 THE COURT: Preston. Okay.

22 MS. BARBER: Yes, ma'am.

23 And after alerting him of this, I also offered that he
24 could watch that body-worn camera in our office with me for
25 the first time, just as I was seeing it for the first time.

1 We did that. Present was Mr. Simmons, his mother, Mr. Smith,
2 Mr. Cooper, my investigator, and myself.

3 THE COURT: So it wasn't a delay on y'all's part. You
4 gave -- turned it over to him as soon as you received it and
5 became aware of it.

6 MS. BARBER: Yes, ma'am.

7 THE COURT: Okay. So what is your position regarding
8 his request for a continuance?

9 MS. BARBER: Your Honor, it's the State's position that
10 a continuance is not necessary given that the body-worn
11 camera that we did recover, in fact, that depicts the same
12 things that are viewed in Officer Bianchi's body-worn camera,
13 just from a different point of view. There's no newfound
14 information within those two subsequent body-worn cameras.
15 There are no new witnesses. And Mr. Simmons had time to
16 review both these body-worn camera -- the footage from both
17 these body-worn cameras I know at least once because we
18 watched it together.

19 Your Honor, there's no reason for a continuance. It may
20 be an inconvenience. I understand that he would have liked
21 more time. So would the State. But given that this is a
22 2018 case, like your Honor stated, we don't need to delay it
23 any further.

24 THE COURT: I guess my quandary is what exactly is there
25 to be gleaned other than watching the video? I mean, what

1 other investigation would there be? It's not like this is
2 new to him. He knew that this was the evidence the State had
3 against him. In other words, it was their position that
4 there was probable cause for the stop based on traffic
5 infractions that they observed; and that they had a plain
6 view of alcohol in the vehicle; and as a result of an
7 inventory search, they found the drugs.

8 These videos only serve to corroborate what he already
9 knew. So I'm trying to figure out what additional
10 investigation would there be other than watching the videos?
11 There is no analysis to do of the videos unless you're saying
12 somehow they were hypothecated, which I have not heard any
13 evidence of.

14 I'm concerned that this case is from 2018. It's old.
15 And he's got some other old cases. He needs to have a
16 hear-to-heart with you about where his life is headed and
17 make some real hard decisions, because they're going to try
18 every one of these things one by one. That means they got a
19 one-in-seven shot.

20 And even though your domestic violence victims, one has
21 said she doesn't want to comply, one waffles, they don't need
22 their cooperation to try you, especially if there are other
23 witnesses. And to quote Mark Twain, "History doesn't repeat
24 but it definitely rhymes." So you might want to have a
25 conversation about what you really want to do.

1 Because even if I grant this continuance, you're just
2 putting off what's going to turn and come right back around
3 the first week of this year -- of next year, 2024. Because
4 these cases -- I'm taking over as chief judge, and this case
5 is going to get tried. They're old. And they ain't going to
6 take but a day to do it.

7 THE DEFENDANT: I understand.

8 THE COURT: To pick the jury and try it will take right
9 at, give or take, maybe a day.

10 THE DEFENDANT: I understand that, your Honor.

11 THE COURT: And I want to be fair to you, but at the
12 same time, I have to weigh whether this is dilatory or not
13 because the State just got them as well. And it's
14 commendable that they made sure you got them as soon as they
15 got them. And it wasn't anybody's fault they weren't turned
16 over.

17 But other than watching the videos, I'm really sort of
18 at a loss as to what you can glean -- other than watching
19 them, what would be accomplished by delaying the trial.

20 THE DEFENDANT: By that, your Honor, the first tape,
21 it's basically showing the officer as -- it's, like, a dash
22 cam.

23 THE COURT: Mm-hmm.

24 THE DEFENDANT: As far as not -- I'm not hearing what
25 I'm seeing. I'm not hearing what the officer -- you can't

1 hear what the officer is saying.

2 THE COURT: It doesn't matter.

3 THE DEFENDANT: None of that.

4 THE COURT: Tell me what matters -- as a matter of fact,
5 that inures to your benefit --

6 THE DEFENDANT: That true.

7 THE COURT: -- because you wouldn't want these
8 statements against your interests.

9 THE DEFENDANT: That's true. That's why I was more
10 comfortable before.

11 THE COURT: Oh, you mean with Bianchi's --

12 THE DEFENDANT: Yes.

13 THE COURT: -- body-worn camera. Okay.

14 THE DEFENDANT: Once I got that one, I have issues
15 saying, "Hey, I didn't open the door." This did not happen.
16 He went back and searched. When you open that door, that's
17 basically a search. So if --

18 THE COURT: They can base a search on probable cause on
19 what's in plain view.

20 THE DEFENDANT: I understand.

21 THE COURT: They don't need a warrant.

22 THE DEFENDANT: Exactly, your Honor. And what shows in
23 the first tape --

24 THE COURT: Mm-hmm.

25 THE DEFENDANT: -- it shows two different sides on the

1 other tapes. So I need to look at it more closely. I'm not
2 a lawyer presently myself, and that doesn't matter to --

3 THE COURT: Which is a whole 'nother conversation.

4 THE DEFENDANT: Exactly.

5 THE COURT: You really should be represented on this.
6 Yeah.

7 THE DEFENDANT: I'm not saying that's the reason why I
8 should get it, but I need more -- I need the time so I can
9 look at it clearly so I can more represent myself fairly.
10 That's the only reason why.

11 THE COURT: I think you need to reconsider representing
12 yourself.

13 THE DEFENDANT: And that's my thing too.

14 THE COURT: I think you got a very seasoned lawyer
15 sitting next to you that you really need to take advantage of
16 his experience.

17 THE DEFENDANT: Okay, your Honor. When --

18 THE COURT: And his knowledge of the law.

19 THE DEFENDANT: And Ted is great.

20 THE COURT: He is.

21 THE DEFENDANT: My whole thing is, to fight this case, I
22 do need someone to speak for me.

23 THE COURT: You do. I agree.

24 THE DEFENDANT: And I agree with that. But my whole
25 thing is, Ted is great. He's told me maybe I need to go back

1 to John Kozelski. He did say that. But my whole thing, when
2 I was asking John Kozelski about certain things -- "Hey, I
3 see that you -- I didn't see a tape for three days" -- I
4 asked him, the officers did have body cameras.

5 THE COURT: Yeah, but the officers didn't even -- the
6 State didn't even know they existed until the officer told
7 them.

8 THE DEFENDANT: I knew they --

9 THE COURT: So the State didn't do anything --

10 THE DEFENDANT: I knew they existed because I kept on
11 asking her for --

12 THE COURT: Yeah, but the State didn't do anything
13 nefarious.

14 THE DEFENDANT: No.

15 THE COURT: I have no reason to doubt Ms. Barber. Her
16 license would be on the line if she lied to me. And my
17 experience with her is that she's never misled this Court.
18 If she tells me that when they sat down to -- and this
19 happens.

20 THE DEFENDANT: Yeah.

21 THE COURT: It's just a part of what happens in the
22 legal process.

23 THE DEFENDANT: Mm-hmm.

24 THE COURT: When she tells me that when she sat down
25 with the officer, he goes, "Oh, yeah, we do have the videos,"

1 I'm sure she was stunned too and said, "I want them
2 immediately." And as soon as she got them, what is ethically
3 required of her was to turn them over to you, and that's what
4 she did. So even though I have no doubt Mr. Kozelski asked
5 for them, according to Ms. Barber, she didn't know they
6 existed until the day she notified you, which happens.

7 THE DEFENDANT: Mm-hmm.

8 THE COURT: So it would be different if the State had
9 had them for three years and they just never turned them over
10 to you, but that's not what happened.

11 THE DEFENDANT: Right.

12 THE COURT: So I think you need to make a full
13 assessment of your situation and you need to make some hard
14 choices. And really, it was foolish of you to turn down the
15 offer that was extended to you. I'm really direct; Mr. Smith
16 will tell you that.

17 THE DEFENDANT: Your Honor, I --

18 THE COURT: I don't believe in misleading people. I
19 just believe you just tell them straight up what's going on.

20 THE DEFENDANT: I understand that, your Honor.

21 THE COURT: And, you know, it's that old adage: You've
22 got to live to fight another day. Because if you get
23 convicted on any of these, you're facing jail time.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Significant jail time.

1 So Mr. Smith, you said as an officer of the court, even
2 as a lawyer, you think it would take more time to look at
3 these videos than looking at them on Thursday? Is that --
4 and I didn't mean to interrupt you but --

5 MR. SMITH: Well, ma'am, I think as a lawyer, I might
6 have been able to pull it together if I spent the entirety of
7 the weekend --

8 THE COURT: Mm-hmm.

9 MR. SMITH: -- looking at these and dissecting it --

10 THE COURT: Mm-hmm.

11 MR. SMITH: -- had a lawyer been involved from the very
12 beginning of the case because --

13 THE COURT: So who would take over to represent him if
14 he was amenable to having legal counsel?

15 MR. SMITH: So what I've talked about with Mr. Simmons
16 is, based on the policy of our office, the case would go
17 back --

18 THE COURT: To the original lawyer.

19 MR. SMITH: -- to Mr. Kozelski. But I'm glad to remain
20 involved in the case as a second chair and facilitate
21 whatever I can to make this move forward.

22 THE COURT: Mm-hmm.

23 MS. BARBER: And your Honor, if I may?

24 THE COURT: Yes, ma'am.

25 MS. BARBER: I think it is worth noting that those

1 videos, they're only 30 minutes each.

2 THE COURT: Mm-hmm.

3 MS. BARBER: So it doesn't require that much time to
4 watch those videos. And so if Mr. Simmons did need more time
5 and your Honor was inclined to grant that continuance,
6 there's another case that's ready to go that will probably
7 take a day and a half, two days. I think that's enough time
8 for Mr. Simmons to view these videos.

9 THE COURT: Mm-hmm.

10 MS. BARBER: And then --

11 THE COURT: That is an interesting option I hadn't
12 thought about. Because while we're trying this other case,
13 you could be reviewing those videos and talking with
14 Mr. Smith and Mr. Kozelski, if he wants to be involved, about
15 whether there's anything.

16 But I think in the -- while -- you should take advantage
17 of this break to talk about all of your cases, and you need
18 to take advantage of legal counsel to help them -- help you
19 negotiate something. Because you're also charged with a burg
20 first, which carries life. You need to be having a
21 conversation. And assault and battery second degree and
22 another PWID cocaine and a gun charge.

23 I think you need to revisit, if the State is willing,
24 what they offered you originally, if they're amenable to it.
25 Because they're willing to acknowledge the deficits in these

1 DV cases. I know that's not up to them necessarily at this
2 point because of their policy in their office, but they may
3 perceive it differently if you were inclined to re-engage
4 counsel.

5 So what I'm going to do is I'm going to pick the jury
6 for both cases, if I can -- if I have time without sending
7 the jury out to lunch. So we're going to pick your jury.
8 I'm not going to swear them. I'm not -- I'm going to take
9 under advisement the request for a continuance, and I'm going
10 to give you time to review the video. Because based on what
11 I -- what I'm hearing is it merely corroborates what you
12 already knew, which is that they had a plain view of some
13 items in the vehicle, which gave them probable cause for an
14 arrest and then an inventory search of the vehicle. Okay.

15 Okay. Bring in the jury for me, please.

16 MR. COOPER: Your Honor, before you do that, do you want
17 to hear our motion to change the charge?

18 THE COURT: Well, are y'all consenting to the amendment
19 of the indictment, which is a lesser charge than the
20 trafficking? It's up to him.

21 MR. SMITH: Yes, he is consenting, Judge.

22 THE COURT: Okay.

23 MR. COOPER: And Judge, if you want -- for the record,
24 would your Honor like me to read it?

25 THE COURT: Not right this minute because the jury's

1 coming in.

2 MS. BARBER: Thank you, Judge.

3 THE COURT: You're welcome.

4 (Potential jurors entered the courtroom at 12:48 p.m.)

5 THE COURT: Does he wish to have a formal arraignment,
6 Mr. Smith?

7 MR. SMITH: Judge, I believe he waives the formal
8 arraignment.

9 THE COURT: Okay.

10 Do we have everybody?

11 THE BAILIFF: Yes, your Honor.

12 THE COURT: Or are we missing anyone? Please double
13 check for me and make sure. Make sure nobody's in the
14 restroom or wandered off.

15 If y'all could count for me and make sure we have 60
16 people sitting in the gallery.

17 MS. BARBER: Your Honor?

18 THE COURT: I'm talking to the bailiffs.

19 MS. BARBER: Oh.

20 THE COURT: Please double check and count for me and
21 make sure we have 60 people sitting in the gallery.

22 THE BAILIFF: Yes, your Honor.

23 THE COURT: Ladies and gentlemen, we appreciate your
24 patience. We had some matters of law we needed to take up
25 prior to jury selection. So please know we do not take your

1 time for granted.

2 THE BAILIFF: All here, your Honor.

3 THE COURT: We got everybody?

4 THE BAILIFF: Yes, ma'am.

5 THE COURT: Perfect.

6 Ladies and gentlemen, we're going to select a jury for
7 the case of the State of South Carolina versus Joshua Felipe
8 Simmons, Indictment 2018-GS-10-5434. That is an indictment
9 for possession with the intent to distribute cocaine.

10 Before we begin that process, I'm going to have counsel
11 for the State to introduce themselves and tell us the names
12 of the lawyers in their office and counsel -- well, and
13 Mr. Smith, as well as Mr. Simmons, stand and face the panel.

14 And Mr. Smith, to the best of your knowledge, if you
15 could tell us the names of the members of your office, that
16 would be helpful.

17 MR. SMITH: Yes, ma'am.

18 THE COURT: You may proceed, Ms. Barber.

19 MS. BARBER: Good afternoon, members of the jury. My
20 name is Kelly Barber. I currently work in the Ninth Circuit
21 Solicitor's Office. To my right is my cocounsel, Daniel
22 Cooper. He'll be assisting me in this trial. I will now
23 list all of the attorneys who currently work in our office.

24 Solicitor Scarlett Wilson, Jennifer Shealy, Marian
25 Askins, Jessica Baldwin, Elliott Barrow, Sara Bozarth,

1 Cassity Brewer, Ashleigh Brown, Sharita Cannon, Kelsey Davis,
2 Timmy Finch, Jason Finley, Lauren Frierson, Catherine Fries,
3 Jewell Gearding, Joseph Guerriero, Mallory Haliena, Amy
4 Harrell, Nicholas Harris, Durham Hill, Tiffany Izer,
5 Stephanie Linder, Daniel Martin III, Denton Matthews, Andrew
6 McCallister, John Mullen, Marianella Namlick, Jordan Norvell,
7 Ana Outten, Charlie Patrick, Hunt Russell, Nina Savas, Chad
8 Simpson, Tyler Whitaker, Lemuel Zeigler, Kenneth Murphy,
9 Shawn Barfield, Anne Seymour, and Savannah Morgan.

10 THE COURT: Thank you.

11 MS. BARBER: Yes, ma'am.

12 THE COURT: Sir, if you would stand and face the panel.
13 And also, Mr. Smith, if you could provide us with that
14 same information.

15 THE DEFENDANT: My name is Joshua Felipe Simmons. I'm
16 the defendant.

17 MR. SMITH: I'm Ted Smith. I'm a deputy public defender
18 here in Charleston. The attorneys in my office are Rachael
19 Arora, Karen Barker, Caroline Bickley, Cameron Blazer -- who
20 is the Ninth Circuit public defender, Kaitlin
21 Cornwell-Goulouze, Taylor Currin, Nick D'Angelo, Brendan
22 Daniels, Rodney Davis, Mary Ford, Patrick Goodwin, Tammy
23 Green, Christopher Hamilton, Alyssa Harmke, Doug Henley,
24 Renate Hohman, Jason King, John Kozelski, Lyndsay Luthringer,
25 Benjamin Mack, Kate Mangan, Karla Martinez, Amanda Monaco,

1 Martha Runey, Claire Schulmeister, Kelly Solar, Cassandra
2 Woosley, and Jeffrey Yungman.

3 THE COURT: Thank you.

4 Ladies and gentlemen, the indictment in this case
5 alleges as follows: that the defendant, Joshua Felipe
6 Simmons, did on or about July 28 of 2018 in Charleston
7 County, South Carolina, manufacture, distribute, dispense,
8 deliver, purchase, aid, abet, attempt, or conspire to
9 manufacture, distribute, dispense, deliver, or purchase or
10 possessed with the intent to manufacture, distribute,
11 dispense, deliver, or purchase cocaine, a Schedule II
12 controlled substance narcotic, alleging that to be a
13 violation of Code Section 44-53-370(b)(1) of the South
14 Carolina Code of Laws as amended.

15 We're going to go through a process called voir dire,
16 which is simply a legal term meaning that I'm going to ask
17 you some questions so that the attorneys can more effectively
18 exercise their peremptory challenges in jury selection. If a
19 question applies to you, please stand and in a loud and clear
20 voice tell me your name, your juror number, an answer to the
21 question if applicable, and remain standing until the Court
22 has completed questioning you.

23 Is there any member of the panel related by blood or
24 marriage to Joshua Felipe Simmons? If so, please stand.

25 Does any member of the panel have a close personal or

1 social relationship with Joshua Felipe Simmons? If so,
2 please stand.

3 The following are a list of potential witnesses in this
4 case. Please listen carefully.

5 Lieutenant Sean Engles and Linda Wilson, both of the
6 Charleston Police Department; Agent David Bianchi, Federal
7 Bureau of Investigations; Officer Aaron Preston, United
8 States Alcohol, Tobacco, and Firearms; Brian Hinton, I would
9 assume of the Charleston Police Department as well; Renee
10 Hilton, lab manager for the Charleston Police Department;
11 Amber Horn, drug analyst; and Matthew Scelfo, S-C-E-L-F-O,
12 Enterprise Rent-A-Car.

13 Is there any member of the panel related by blood or
14 marriage to any of the people that I've just listed, or does
15 anyone have a close personal or social relationship with any
16 of these individuals? If so, please stand at this time.

17 Has any member of the panel ever been represented by any
18 of the attorneys involved in this case or any of the lawyers
19 in their offices? If so, please stand at this time.

20 Is there any member of the panel related by blood or
21 marriage to or have a close personal or social relationship
22 with any of the lawyers, any of the lawyers in their offices,
23 or any person employed in any capacity in any of these
24 offices? If so, please stand at this time.

25 Yes, sir. Tell me your name and your juror number.

1 POTENTIAL JUROR: Roger Dixon, 68.

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: I worked for the public defender's
4 office and I am friends with them and socially with both
5 solicitors and public defenders.

6 THE COURT: As a result of this experience, do you feel
7 that you can remain fair and impartial and render a fair and
8 impartial decision in this case based solely on the evidence
9 as it will be presented and on the law as the Court will
10 instruct?

11 POTENTIAL JUROR: I can.

12 THE COURT: Thank you, sir. You may take your seat.

13 Does any member of the panel have any personal knowledge
14 of the alleged facts and circumstances of this case? If so,
15 please stand at this time.

16 Has any member of the panel read, watched, or listened
17 to any media accounts about this case, whether that be on the
18 newspaper, radio, television, or internet? If so, please
19 stand at this time.

20 Has any member of the panel formed or expressed an
21 opinion about any issue or matter involved in this case? If
22 so, please stand at this time.

23 Is there any member of the panel aware of any bias or
24 prejudice toward either the State or the defense in this
25 case? If so, please stand at this time.

1 Is there any member of the panel that was a member of
2 the grand jury which issued the indictment in this case? If
3 so, please stand at this time.

4 Is there any member of the panel who is a member of or
5 contributor to any group which has as its primary concern the
6 promotion of law enforcement or victims' rights? These
7 groups would include but are not limited to Mothers Against
8 Drunk Driving, Students Against Drunk Driving, Citizens
9 Against Violent Crime, People Against Rape, Parents Empowered
10 to Save Teens, or any type of community watch group. If so,
11 please stand at this time.

12 Is there any member of the panel has a moral,
13 philosophical, or religious opposition to sitting in judgment
14 of a fellow human being?

15 Is there any member of the panel who has a moral,
16 philosophical, or religious opposition to the use of illicit
17 substances? If so, please stand.

18 Is there any member of the panel who has had what you
19 would characterize as an unpleasant experience with law
20 enforcement such that it would affect your ability to be fair
21 and impartial? If so, please stand at this time.

22 Is there any exception to the State's Number 7,
23 Mr. Smith?

24 MR. SMITH: No exception, your Honor.

25 THE COURT: Is there any member of the panel who is a

1 member of any organization or otherwise has a philosophical
2 position regarding the legalization of marijuana or any other
3 controlled substance? If so, please stand at this time.

4 Is there any member of the panel or immediate member of
5 your family ever been the victim of a violent crime? If so,
6 please stand at this time.

7 If you would tell me your name and your juror number and
8 whether it was you or a family member and remain standing.

9 Yes, ma'am, on the first row.

10 POTENTIAL JUROR: Juror 29. It was my first cousin.
11 She was murdered.

12 THE COURT: I don't need to know the details.

13 POTENTIAL JUROR: Okay.

14 THE COURT: Thank you. I don't mean to be curt; that's
15 not my intention. But I don't want any response to have any
16 possible potential to taint the rest of the panel based on
17 sympathy, passion, or prejudice.

18 Yes, sir. Tell me your name and juror number.

19 POTENTIAL JUROR: Jon Chism, Number 44. Murder over
20 drugs, as well as gang-related activities.

21 THE COURT: Okay. Again, please don't give me the facts
22 or circumstances.

23 And was it you or a family member?

24 I need you both to remain standing.

25 POTENTIAL JUROR: Family member.

1 THE COURT: How close in proximity?

2 POTENTIAL JUROR: First cousin.

3 THE COURT: Thank you, sir. Remain standing for me.

4 Yes, ma'am, in the gray sweater.

5 POTENTIAL JUROR: 53. I was robbed at --

6 THE COURT: I'm sorry. Name and juror number.

7 POTENTIAL JUROR: Lenora Crawford, 53.

8 THE COURT: And it was you that was a victim, correct?

9 POTENTIAL JUROR: Yes.

10 THE COURT: Thank you, ma'am. Remain standing.

11 Ma'am, in the -- I think it's a burgundy or wine-colored
12 top.

13 POTENTIAL JUROR: Sakinah Green, 106.

14 THE COURT: Was it you or a family member, ma'am?

15 POTENTIAL JUROR: Both. And it was my mother.

16 THE COURT: It was your mother? Thank you.

17 And sir, in the --

18 POTENTIAL JUROR: 219, Joseph Reynard. It was me.

19 THE COURT: And ma'am, in the -- I think that's wine
20 colored. My eyesight might be failing as well. Tell me your
21 name and juror number.

22 POTENTIAL JUROR: Jennifer Krizan, 144. It was me.

23 THE COURT: And ma'am, all the way to the back, was it
24 you or -- well, tell me your name and juror number.

25 POTENTIAL JUROR: Callista Lamb, 147. My aunt and

1 cousin.

2 THE COURT: Did I get everyone or did I miss anyone?

3 As a result of these experiences -- oh, I'm sorry, sir.

4 Tell me your name and your juror number.

5 POTENTIAL JUROR: Marques Smalls, 253.

6 THE COURT: And was it you or a family member?

7 POTENTIAL JUROR: Family member.

8 THE COURT: And which family member?

9 POTENTIAL JUROR: My son.

10 THE COURT: As a result of these experiences, do you all
11 feel that you can remain fair and impartial and render a fair
12 and impartial decision in this case based solely on the
13 evidence as it will be presented and on the law as the Court
14 will instruct? If your answer is yes, please take your seat.

15 Let the record reflect that all answered yes with the
16 exception of Number 29.

17 Is that correct, ma'am?

18 POTENTIAL JUROR: Yes, ma'am.

19 THE COURT: You would be excused from the trial of this
20 case only. You may take your seat.

21 And Number 44, is that correct, sir?

22 POTENTIAL JUROR: Yes, ma'am.

23 THE COURT: You'll be excused from the trial of this
24 case only. You may take your seat.

25 Number 106, correct?

1 POTENTIAL JUROR: Yes, ma'am.

2 THE COURT: You'll be excused from the trial of this
3 case only, ma'am. You may take your seat.

4 The Court appreciates your candor.

5 Is there any member of the panel who is not currently,
6 but formerly employed in law enforcement? If so, please
7 stand at this time.

8 You don't have to stand, ma'am.

9 POTENTIAL JUROR: Okay.

10 THE COURT: I've excused you from the panel. I
11 appreciate your candor, though, Number 29.

12 Is there any member of the panel who has an immediate
13 family member who is employed in law enforcement? If so,
14 please stand at this time.

15 Starting with you, ma'am, yes, tell me your name and
16 your juror number and which family member it is and what
17 agency.

18 POTENTIAL JUROR: Elena Flowers, 88. Charleston City
19 Police Department.

20 THE COURT: And which family member?

21 POTENTIAL JUROR: First cousin.

22 THE COURT: If would remain standing for me.

23 Yes, ma'am, with the yellow tag.

24 POTENTIAL JUROR: Charnique Williams, Juror Number 288.
25 My sister works for North Charleston Police Department.

1 THE COURT: And if you would remain standing for me.

2 Yes, sir.

3 POTENTIAL JUROR: Chris Keenan, 137. NYPD, first
4 cousin.

5 THE COURT: And sir, with the orange tag that matches
6 your shirt, coincidentally.

7 POTENTIAL JUROR: Jeff Yates, Number 299.

8 THE COURT: Yes, sir.

9 POTENTIAL JUROR: First cousin, North Charleston Police
10 Department.

11 THE COURT: All right. Did I get everyone?

12 As a result of this experience, do you all feel that you
13 can remain fair and impartial and render a fair and impartial
14 decision in this case based solely on the evidence as it will
15 be presented and on the law as the Court will instruct? If
16 your answer is yes, please take your seat.

17 Let the record reflect that all answered yes, with the
18 exception of -- you are 137, correct? No.

19 POTENTIAL JUROR: 288.

20 THE COURT: 288. With the exception of 288.

21 Ma'am, you'll be excused from the trial of this case
22 only. You may take your seat.

23 Does any member of the panel know of any reason
24 whatsoever why he or she should not serve as a juror in this
25 case, with particular emphasis being placed on your ability

1 to be fair and impartial to both the State and the defense?

2 If so, please stand at this time.

3 Any additional questions from the State?

4 MS. BARBER: Yes, your Honor. We --

5 THE COURT: Tell me a number.

6 MS. BARBER: Number 11.

7 THE COURT: I don't have a Number 11.

8 MS. BARBER: Your Honor, I apologize. You asked if
9 there were any additional questions?

10 THE COURT: Yes.

11 MS. BARBER: Yes, ma'am. We do have one additional
12 question.

13 THE COURT: Is it on your list?

14 MS. BARBER: It is not.

15 THE COURT: Okay. Then approach and tell me what it is.

16 MS. BARBER: Yes, ma'am.

17 (The following was had on the record at the bench in the
18 presence of the potential jurors but outside the hearing of
19 the potential jurors.)

20 THE COURT: Mm-hmm.

21 MS. BARBER: Your Honor, we may have one rebuttal
22 witness, Ms. Dominique Johnson. And we would like to ask the
23 jury -- potential jurors if they know her.

24 THE COURT: I would assume y'all don't have any problem
25 with that.

1 Where is she employed?

2 MS. BARBER: I'm not sure where she's employed.

3 THE COURT: She's just a fact witness?

4 MS. BARBER: Yes, ma'am.

5 THE COURT: Okay. Any exception?

6 MR. SMITH: No, your Honor.

7 THE COURT: All right. Thank you.

8 MS. BARBER: Thank you, Judge.

9 THE COURT: You're welcome.

10 (The following was had in open court in the presence and
11 hearing of the potential jurors.)

12 THE COURT: Is there any member of the panel who is
13 related by blood or marriage or have a close personal or
14 social relationship with Dominique Johnson? If so, please
15 stand at this time.

16 Are there any additional questions from the defense?

17 MR. SMITH: No, your Honor.

18 THE COURT: All right. Strikes will be five and five.

19 Ladies and gentlemen, the clerk is going to prepare for
20 us a random listing of your names. The numbers that we --
21 you will hear us using have absolutely no correlation to your
22 actual juror numbers. She's going to prepare that strike
23 list, after which we will then begin jury selection.

24 If your name is called, I will need you to stand where
25 you are. Don't -- we normally would have people come up to

1 be presented, but we will not do that just because crawling
2 over people just doesn't make a whole lot of sense. So if
3 you would just stand up if your name is called until you're
4 either seated or excused as a juror. Again, we appreciate
5 your patience.

6 Let us know when you're ready, Madam Clerk.

7 And one alternate, correct from the State?

8 MS. BARBER: Yes, ma'am.

9 THE COURT: From the defense? Mr. Simmons, is one
10 alternate sufficient?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you.

13 Ladies and gentlemen, if you would give the clerk your
14 attention.

15 CLERK OF THE COURT: Ladies and gentlemen, just like the
16 judge said, I'm going to call your name. Please stand right
17 where you are already sitting. Just make sure if I do call
18 your name and you are selected, to grab your belongings and I
19 will instruct you to go into the jury box.

20 Juror Number 99.

21 THE COURT: It's 299.

22 CLERK OF THE COURT: Sorry. 299. Thanks, Judge.

23 THE COURT: You're welcome. It's been a long morning.

24 CLERK OF THE COURT: What say you for the State?

25 MS. BARBER: Please seat this juror.

1 CLERK OF THE COURT: What say you for the defendant?

2 THE DEFENDANT: Please excuse the juror.

3 CLERK OF THE COURT: Sir, you've been excused in the
4 trial of the case. You can remain seated.

5 Juror 137.

6 What say you for the State?

7 MS. BARBER: Please seat this juror.

8 CLERK OF THE COURT: What say you for the defendant?

9 THE DEFENDANT: Please seat the juror.

10 CLERK OF THE COURT: Sir, you've been selected in the
11 trial of this case. If you'll grab your belongings and take
12 a seat in the jury box for me.

13 Juror 219.

14 What say you for the State?

15 MS. BARBER: Please seat this juror.

16 CLERK OF THE COURT: What say you for the defendant?

17 THE DEFENDANT: Your Honor, we can excuse this juror.

18 CLERK OF THE COURT: Sir, you've been excused in the
19 trial of this case. You can remain seated.

20 Defendant has exhausted two of five strikes.

21 Juror Number 12.

22 What say you for the State?

23 MS. BARBER: Please seat this juror.

24 CLERK OF THE COURT: What say you for the defendant?

25 THE DEFENDANT: Your Honor, please excuse this juror.

1 CLERK OF THE COURT: Sir, you've been excused in the
2 trial of this case. Please remain seated.

3 Juror 189.

4 What say you for the State?

5 MS. BARBER: Please seat the juror.

6 CLERK OF THE COURT: What say you for the defendant?

7 THE DEFENDANT: Your Honor, please seat this juror.

8 CLERK OF THE COURT: Sir, you've been selected in the
9 trial of this case. Please grab your belongings and take a
10 seat in the jury box.

11 Juror Number 90.

12 What say you for the State?

13 MS. BARBER: Please seat this juror.

14 CLERK OF THE COURT: What say you for the defendant?

15 MR. SMITH: Could you repeat the number?

16 CLERK OF THE COURT: Number 90.

17 MR. SMITH: Number 90.

18 THE DEFENDANT: Your Honor, please excuse this juror.

19 CLERK OF THE COURT: Ma'am, you've been excused in the
20 trial of this case. Please remain seated.

21 THE COURT: The defendant has exhausted four strikes.

22 CLERK OF THE COURT: Yes, ma'am.

23 Juror Number 122.

24 What say you for the State?

25 MS. BARBER: Please seat this juror.

1 CLERK OF THE COURT: What say you for the defendant?

2 THE DEFENDANT: Your Honor, please seat this juror.

3 CLERK OF THE COURT: Ma'am, you've been selected in the
4 trial of this case. Please collect your belongings and have
5 a seat in the jury box.

6 Juror Number 220.

7 What say you for the State?

8 MS. BARBER: Please seat this juror.

9 CLERK OF THE COURT: What say you for the defendant?

10 THE DEFENDANT: Please seat this juror.

11 CLERK OF THE COURT: Ma'am, you've been selected in the
12 trial of this case. Please grab your belongings and have a
13 seat in the jury box.

14 Juror Number 207.

15 What say you for the State?

16 MS. BARBER: Please seat this juror.

17 CLERK OF THE COURT: What say you for the defendant?

18 THE DEFENDANT: Your Honor, please seat this juror.

19 CLERK OF THE COURT: Ma'am, you've been selected in the
20 trial of this case. Please grab your belongings and have a
21 seat in the jury box.

22 Juror 277.

23 What say you for the State?

24 MS. BARBER: Please seat this juror.

25 CLERK OF THE COURT: What say you for the defendant?

1 THE DEFENDANT: Your Honor, please seat this juror.

2 CLERK OF THE COURT: Sir, you've been selected in the
3 trial of this case. Please grab your belongings and have a
4 seat in the jury box.

5 Juror 165.

6 What say you for the State?

7 MS. BARBER: Please seat this juror.

8 CLERK OF THE COURT: What say you for the defendant?

9 THE DEFENDANT: Please seat this juror.

10 CLERK OF THE COURT: Ma'am, you've been selected in the
11 trial of this case. Please grab your belongings and have a
12 seat in the jury box.

13 Juror 238.

14 What say you for the State?

15 MS. BARBER: Please seat this juror.

16 CLERK OF THE COURT: What say you for the defendant?

17 THE DEFENDANT: Please seat this juror.

18 CLERK OF THE COURT: Ma'am, you've been selected in the
19 trial of this case. Please grab your belongings and have a
20 seat in the jury box.

21 Juror 129.

22 What say you for the State?

23 MS. BARBER: Please seat this juror.

24 CLERK OF THE COURT: What say you for the defendant?

25 THE DEFENDANT: Please seat this juror.

1 CLERK OF THE COURT: Sir, you've been selected in the
2 trial of this case. Please grab your belongings and have a
3 seat in the jury box.

4 Juror 157.

5 MR. SMITH: You said 157?

6 CLERK OF THE COURT: Yes, sir.

7 What say you for the State?

8 MS. BARBER: Please seat this juror.

9 CLERK OF THE COURT: What say you for the defendant?

10 THE DEFENDANT: Please seat this juror.

11 CLERK OF THE COURT: Sir, you've been selected in the
12 trial of this case. Please grab your belongings and have a
13 seat in the jury box.

14 Juror Number 63.

15 What say you for the State?

16 MS. BARBER: Please seat this juror.

17 CLERK OF THE COURT: What say you for the defendant?

18 THE DEFENDANT: Please seat this juror.

19 CLERK OF THE COURT: Sir, you've been selected in the
20 trial of this case. Please grab your belongings and have a
21 seat in the jury box.

22 Juror 133.

23 What say you for the State?

24 MS. BARBER: Please seat this juror.

25 CLERK OF THE COURT: What say you for the defendant?

1 THE DEFENDANT: Please seat this juror.

2 CLERK OF THE COURT: Ma'am, you've been selected in the
3 trial of this case. Please grab your belongings and have a
4 seat in the jury box.

5 THE COURT: Strikes are one and two for the alternate.

6 CLERK OF THE COURT: Juror Number 237.

7 What say you for the State?

8 MS. BARBER: Please seat this juror.

9 MR. SMITH: Could you repeat the number, please?

10 CLERK OF THE COURT: 237.

11 What say you for the defendant?

12 THE DEFENDANT: Please seat this juror.

13 CLERK OF THE COURT: Ma'am, you've been selected as an
14 alternate in this case. Please grab your belongings and have
15 a seat in the jury box.

16 Your Honor, we have our jury.

17 THE COURT: Thank you.

18 Ladies and gentlemen, I'm going to send you with the
19 bailiff into the jury room. I need you to give them all the
20 information they're seeking, including your cell phone
21 numbers.

22 Give us about five minutes, and then I'm going to let
23 you know what we'll be doing for the remainder of the day.
24 During this break, please do not discuss the case in any
25 manner whatsoever. Please don't speculate about what you

1 think it may or could be about.

2 If you would indulge us and go with the bailiff, please.

3 (The jury exited the courtroom at 1:27 p.m.)

4 (The following proceedings were had outside the presence
5 of the jury but in the presence of the remaining potential
6 jurors.)

7 THE COURT: Ladies and gentlemen, here are our options.
8 We need to pick another jury, which will take about the same
9 amount of time we just took, about 15 minutes. However, I
10 can send you to lunch and bring you back. I'll give you all
11 the option. What is your preference? And this saves me from
12 bringing you back tomorrow.

13 So is that the consensus that we push forward and select
14 the second jury, which I anticipate we will -- we may begin
15 that jury today -- well, we'll begin that jury today, so I
16 appreciate it. I'm sort of -- I'm hungry too, if it's any
17 consolation. Sometimes things take a little longer than we
18 anticipate.

19 Does anyone need to go to the restroom? Anyone want to
20 stretch their legs?

21 Okay. Go to the restroom and then come back when you're
22 done. I appreciate it.

23 (Off the record at 1:29 p.m.)

24 (Back on the record outside the presence of the jury at
25 2:17 p.m.)

1 THE COURT: We're resuming the record on State of South
2 Carolina versus Joshua Felipe Simmons.

3 Are there any motions regarding the selection of the
4 jury from the State?

5 MS. BARBER: No, your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: Nothing from the defense, your Honor.

8 THE COURT: Okay. You may take your seats.

9 What kind of bond does your client have, Mr. Smith? And
10 I know he -- you're standby counsel and technically he isn't
11 your client.

12 MR. SMITH: It's a surety bond, Judge. I honestly don't
13 know the amount.

14 THE COURT: I'm sorry. Say that for me one more time.

15 MR. SMITH: Judge, it's a surety bond, but I am not sure
16 of the amount.

17 THE COURT: Is he on a monitor?

18 MR. SMITH: I don't believe he is, Judge.

19 MS. BARBER: He is not, your Honor.

20 THE COURT: I'm sorry. Say that for me again.

21 MS. BARBER: No, ma'am, he's not on a monitor.

22 THE COURT: Okay. Normally, sir, I would call your bond
23 and take you into custody, but since I've not sworn the jury
24 yet, I'm not going to do that. However, you need to be
25 prepared to be taken into custody when you return for the

1 trial of your case. Your bond is only guaranteed until your
2 case is called. Your bonding company has no obligation to go
3 look for you after that unless you post a separate bond with
4 them and have a separate bonding obligation.

5 I need to advise you that while I've not yet sworn the
6 jury, that I anticipate we will begin this case on Wednesday.
7 I need to advise you that you -- Mr. Smith -- you need to
8 make sure your phones are all in operating condition so that
9 Mr. Smith can notify you when you need to be back for the
10 trial of this case. But I anticipate it will be Wednesday at
11 9:30.

12 I need to advise you that if you fail to appear, that we
13 will go forward with the trial. You will be tried in your
14 absence. And if you fail -- er, if found guilty, the Court
15 will sentence you. It will be sealed. A bench warrant will
16 be issued for your arrest, after which you will be returned
17 to court and sentenced.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay. All right. So that should give y'all
21 sufficient time to look over those videos. I suggest y'all
22 -- I need you to stay in place because I'm going to send the
23 jury.

24 Mr. Hall, could you get that other jury for me, please?

25 THE BAILIFF: Yes, ma'am.

1 THE COURT: The one for Mr. Simmons.

2 THE BAILIFF: Okay. The first one?

3 THE COURT: Yes, sir.

4 That should give y'all sufficient time to get some lunch
5 and look at the videos.

6 MR. SMITH: Yes, ma'am.

7 THE COURT: But I anticipate with this time, that you
8 should have sufficient time to do what you need to do
9 regarding reviewing the videos. And also, I would strongly
10 encourage you to take some time to initiate some
11 conversations with the State about your situation to see if
12 y'all can come up with some resolution, and if not, whether
13 you want to plead straight up to any of these offenses.

14 Yes, ma'am?

15 MS. BARBER: And Judge, just so I'm clear, is
16 Mr. Simmons going to continue to represent himself or is
17 he --

18 THE COURT: I don't know.

19 MS. BARBER: -- going to be represented by counsel?

20 THE COURT: He can make that decision in the interim.

21 MS. BARBER: Yes, ma'am. Thank you.

22 THE COURT: You're welcome. But I think it would be
23 wise that he reconsider representing himself.

24 (The jury entered the courtroom at 2:21 p.m.)

25 THE COURT: Okay. Ladies and gentlemen -- oh, you may

1 be seated.

2 Ladies and gentlemen, you've been selected for the case
3 of the State versus Simmons. We will not begin this case on
4 today. I'm going to excuse you all for the remainder of the
5 afternoon. We have your cell phone numbers. We will be in
6 touch with you when we will begin this case. I anticipate we
7 will begin it on Wednesday morning at 9:30. That could
8 change. It's a very short trial. And even if we start it on
9 Thursday morning, we should be able to conclude it by Friday
10 morning. Or maybe Thursday afternoon. It just depends. You
11 know, you have to sort of take these things as they come.

12 I would instruct and ask that you abide by the Court's
13 instructions that you have no contact with anyone in or about
14 the courthouse when you return.

15 The bailiffs will give you instructions as to how you
16 will re-enter the courthouse. When you return for this
17 trial, you will be allowed to park next door, so you won't
18 have to go to Cumberland. They will give you instructions
19 regarding that as well, and again, how you will re-enter the
20 building for your jury service.

21 Please do not read, watch, or listen to any media
22 accounts about this case, if there are any. Please also do
23 not post on any social networking sites regarding your jury
24 service. We would not want an innocent comment to be
25 misinterpreted.

1 I'm trying to make sure I'm not leaving anything out.

2 Y'all have been so indulgent and so patient with us
3 today. Please know that we do not take your time for
4 granted. We try to get as much done on Monday as we can so
5 that we don't have to pull you back and forth. We had the
6 ability to pick another jury, and the rest of your jurors
7 opted to just push forward and not break for lunch.

8 So again, we truly appreciate your indulgence. Some
9 days -- some Mondays we get this done a whole lot quicker.
10 We just had a few hiccups this morning that -- and into the
11 afternoon that sort of delayed us moving as expeditiously as
12 I would have liked. But again, you will hear me say this
13 over and over, and it really is sincere, that we do not take
14 your time for granted. We truly appreciate your service and
15 your indulgence and your patience with us.

16 Have a wonderful rest of the afternoon. We'll be in
17 touch as to when we will start this case. You don't have to
18 call the jury information line after 6:00. We'll be in touch
19 with you as soon as possible to give you enough lead time to
20 know when you will need to be back for the trial of this
21 case. Have a great afternoon. If you would go with the
22 bailiffs.

23 (The jury was released for the day and exited the
24 courtroom at 2:23 p.m.)

25 (The following proceedings were had outside the presence

1 of the jury.)

2 THE COURT: Sir, you're excused with the Court's
3 instructions regarding trial in your absence. Return as soon
4 as you're notified. Please make sure that all your phones
5 and otherwise are in working order.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay?

8 THE DEFENDANT: Thank you, your Honor.

9 THE COURT: Thank you, sir.

10 MR. COOPER: Thank you, Judge.

11 THE COURT: You're welcome. Thank y'all.

12 (Proceedings recessed at 2:24 p.m., to resume at a date
13 and time to be determined.)

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1 (Proceedings resumed at 9:57 a.m., Tuesday, December 12,
2 2023, outside the presence of the jury.)

3 THE COURT: All right. So I signed an order appointing
4 you to represent Mr. Simmons yesterday. Are you going to be
5 ready to go forward?

6 MR. KOZELSKI: Whatever your Honor needs. I mean, I can
7 be. It's a traffic stop. It's a pretty simple case.

8 THE COURT: Yeah. I mean, and you represented him
9 before, right?

10 MR. KOZELSKI: I have. I mean, maybe a little issue
11 that I have is that I wasn't here for jury selection.

12 THE COURT: Yeah. Mr. Smith was, though.

13 MR. KOZELSKI: Yeah, he was.

14 THE COURT: Yeah.

15 MR. KOZELSKI: I wouldn't be ready to try it today.

16 THE COURT: No, no, no. I'm thinking we may finish this
17 today maybe, at the latest in the morning, and then we can
18 start yours. I really don't think it will take more than --
19 I mean, we might start yours -- boy, I'm losing track of what
20 day it is. Today is Tuesday. We might start it Wednesday
21 afternoon, like after lunch.

22 MR. KOZELSKI: Okay.

23 THE COURT: I used to do that all of the time, have a
24 jury out and start another one, until I started needing stuff
25 played back and then I quit doing it. The minute you don't

1 -- like, I have, like, two juries out and working on a third
2 one and everybody needs something played back, and the poor
3 court reporter would be like, "I can't be but one person."

4 So we'll just take it as it comes. But in the meantime,
5 I think y'all should talk now that he has wise counsel.

6 MR. KOZELSKI: We have talked, your Honor. I don't know
7 if they are even willing to give back the offer that they had
8 originally offered.

9 MS. BARBER: We are not.

10 THE COURT: Does he have an extensive record?

11 MR. KOZELSKI: No.

12 MS. BARBER: He does not.

13 THE COURT: He can always plead straight up.

14 MR. KOZELSKI: All right.

15 THE COURT: Talk about it.

16 MR. KOZELSKI: Thank you, Judge.

17 MS. BARBER: Thank you, Judge.

18 THE COURT: I'll keep you posted.

19 (Proceedings recessed at 9:58 a.m.)

20 (Proceedings resumed at 4:16 p.m. outside the presence
21 of the jury.)

22 THE COURT: Okay. What's going on?

23 MS. BARBER: So our case agent, he was originally going
24 to be here Monday through Wednesday, tomorrow evening at
25 around 6:50.

1 THE COURT: Mm-hmm.

2 MS. BARBER: He has a sick child at home who's
3 progressively gotten worse.

4 THE COURT: Oh, my goodness.

5 MS. BARBER: We were going to switch his flight until
6 later in the week, but he --

7 THE COURT: I would think -- is he even going to be able
8 to get out with that weather?

9 MS. BARBER: You mean tomorrow? Or later in the week?

10 THE COURT: No. I mean, is that your witness that's
11 coming from --

12 MR. COOPER: Milwaukee.

13 MS. BARBER: Well, that's --

14 THE COURT: -- where the storm is?

15 MS. BARBER: -- another one.

16 THE COURT: Oh.

17 MS. BARBER: This is Milwaukee.

18 THE COURT: Oh, okay.

19 MS. BARBER: We were previously --

20 MR. COOPER: And he's here.

21 MS. BARBER: -- dealing with our main witness.

22 THE COURT: Mm-hmm.

23 MS. BARBER: That witness that I'm speaking about now,
24 he's here.

25 THE COURT: Oh, yeah. He's stuck here.

1 MS. BARBER: Yes, ma'am.

2 THE COURT: Yeah. Mm-hmm.

3 MS. BARBER: We were making arrangements for him to stay
4 later in the week --

5 THE COURT: Mm-hmm.

6 MS. BARBER: -- but he called me and asked if he could
7 still go back on his original flight, which is tomorrow.

8 THE COURT: Okay.

9 MS. BARBER: We just wanted to make the Court aware of
10 his situation with the sick child and kind of --

11 MR. COOPER: If we're starting tomorrow.

12 MS. BARBER: -- to gauge where we are with this one.

13 THE COURT: I have no idea of --

14 MR. COOPER: He'd be our first witness.

15 THE COURT: -- when we're going to finish.

16 MS. BARBER: Okay.

17 THE COURT: We just finished one witness.

18 MS. BARBER: I heard. That's why I was kind of --

19 THE COURT: I don't know what we're going to do.

20 MS. BARBER: Okay.

21 THE COURT: I doubt we're going to finish tomorrow.

22 MS. BARBER: Really?

23 THE COURT: Are you even ready?

24 MR. KOZELSKI: I'll be ready.

25 THE COURT: You sure?

1 MR. KOZELSKI: Yeah.

2 THE COURT: Y'all didn't talk?

3 MR. KOZELSKI: Huh?

4 THE COURT: Y'all didn't talk?

5 MR. KOZELSKI: Oh, we talked. Ms. Barber and I talked
6 for months and months and months about this case.

7 THE COURT: I mean, y'all didn't talk recently?

8 MR. KOZELSKI: No. I mean, I think that they suggested
9 they -- they weren't willing -- they don't -- now that it's
10 at a trial and it's on the trial docket --

11 THE COURT: Mm-hmm.

12 MR. KOZELSKI: -- when they do that, they can't give an
13 offer. So you know --

14 THE COURT: Are y'all really going to pursue them DV
15 charges and the burglary?

16 MS. BARBER: Maybe. I spoke to the higher-ups, and
17 we're in discussion and we're giving it a second, third,
18 fourth, fifth look.

19 THE COURT: Well, I -- you don't really need a victim.

20 MS. BARBER: Right.

21 THE COURT: As a matter of fact, in Lexington -- and the
22 year I can't remember -- I tried the first four cases with
23 the AG back to back with recalcitrant victims and got
24 verdicts on every single one of them.

25 MS. BARBER: And that's what --

1 THE COURT: So --

2 MS. BARBER: Yeah.

3 THE COURT: Which was a -- it was like a test pilot.
4 But they had -- they all had eyewitnesses. And they had the
5 -- the victims got on the stand and basically didn't say it
6 didn't happen. They just said they were still in love with
7 their partner.

8 MS. BARBER: And see, that's where it gets tricky.

9 THE COURT: But they had eyewitnesses on all four of
10 them. And I tried them -- Jenna was my girl's name. She
11 died from -- she had an asthma attack and she died. She was
12 such a good lawyer. She was very outdoorsy. She and her
13 husband were hiking, and she had an asthma attack. I'm
14 looking at her face just clear as a bell, but I can't think
15 of her name off the top of my head right now.

16 So they really don't need the victim. But I mean, I
17 just don't think we're going to finish. I mean, do you have
18 any -- I guess y'all are asking me for a continuance.

19 MS. BARBER: Oh, no.

20 MR. COOPER: We just want to make --

21 MS. BARBER: I was not.

22 MR. COOPER: We're trying to see the Court's position
23 on, even if this case goes a little longer, whether we're
24 starting that trial this week.

25 THE COURT: I don't know. It depends.

1 MR. KOZELSKI: I don't imagine --

2 THE COURT: I can't make a decision right now.

3 MR. KOZELSKI: -- this taking more than a day.

4 THE COURT: Yeah, but I'm not going to be here Friday
5 night. Neither is a jury.

6 MR. KOZELSKI: No.

7 THE COURT: It's basketball season.

8 MS. BARBER: Well, can I ask you this? Should they --

9 THE COURT: And it's Christmas.

10 MS. BARBER: Should they finish tomorrow around noon --

11 THE COURT: I'm not making --

12 MS. BARBER: -- could we start?

13 THE COURT: They ain't going to finish tomorrow by noon.

14 MS. BARBER: You don't think?

15 THE COURT: They still got five witnesses.

16 MS. BARBER: Five?

17 MR. COOPER: But I thought they had five total.

18 MS. BARBER: I thought they had --

19 THE COURT: No. They've got more.

20 MR. COOPER: Mostly today what we're trying to figure
21 out is flights for him and our main witness. We've got her
22 on an early morning flight.

23 THE COURT: They've got three more witnesses.

24 MS. BARBER: Okay.

25 THE COURT: And at the rate we're going, we ain't going

1 to finish by lunch. We still got to have closing argument
2 and instruction.

3 MS. BARBER: Yeah.

4 MR. COOPER: We've got our main witness --

5 THE COURT: So the earliest we'd be able to start would
6 be Thursday. But you got a sick -- you got a -- how you
7 going to get your witness here if they have a sick child?

8 MS. BARBER: He's here.

9 MR. COOPER: He's here.

10 THE COURT: No. You said you have --

11 MS. BARBER: He wants to go home.

12 THE COURT: -- a witness with a sick child.

13 MS. BARBER: Yes, ma'am.

14 THE COURT: Yeah.

15 MS. BARBER: That's the one that's already here.

16 THE COURT: Oh, I misunderstood. I thought it was the
17 one you were flying in.

18 MS. BARBER: He wants to fly back.

19 THE COURT: I don't blame him.

20 MS. BARBER: I don't either.

21 MR. COOPER: He wants to fly back tomorrow night.

22 THE COURT: I'd want to be with my child.

23 MR. COOPER: And his wife's already giving him some
24 gripes for being out of town.

25 THE COURT: So y'all going to have make that choice

1 about what you want to do with your client, but I'm not
2 making any assurances. I just have to take this as it comes.
3 I mean, who knows when it'll finish? But no, we ain't going
4 to finish today. It's 4:21. They got three more witnesses.
5 Worst-case scenario --

6 MR. COOPER: What would your instruction to the jury
7 be -- our jury? Coming back tomorrow afternoon?

8 THE COURT: I haven't decided yet. Yeah.

9 MS. BARBER: Okay.

10 THE COURT: I'm going to make a decision this evening
11 once I finish with this case.

12 MS. BARBER: Yes, ma'am.

13 MR. COOPER: Would that be for them to call in, like we
14 can call that number too and check?

15 THE COURT: No. I'm calling them individually. That's
16 why I got their cell numbers.

17 MS. BARBER: Thank you.

18 THE COURT: I wish I were clairvoyant. I'm not. We're
19 going to have to take as it comes. I doubt we'll start
20 before Thursday.

21 MR. COOPER: Okay. Thank you, Judge.

22 THE COURT: You're welcome.

23 I forget how many -- how many witnesses do y'all have?

24 MS. BARBER: We have seven witnesses that we plan to
25 call, with a possibility of a rebuttal witness, just

1 depending.

2 THE COURT: How many witnesses you got?

3 MR. KOZELSKI: None, your Honor.

4 MR. COOPER: Half of ours are chain, Judge.

5 MR. KOZELSKI: I won't call a single person.

6 THE COURT: Okay. So let me look at this real quick.

7 Because if we can't finish it on Thursday and closing charge
8 on Friday morning -- you have to be able to assure me that.
9 I don't close and charge after 3:00 because you don't know
10 how long a jury's going to be deliberating.

11 MR. KOZELSKI: If we start on Thursday --

12 MR. COOPER: We'll finish. If we start Thursday
13 morning, we'll finish. Half our witnesses are chain.

14 MR. KOZELSKI: We have a short, short pretrial.

15 THE COURT: Pretrial on what?

16 MR. KOZELSKI: Just a suppression issue.

17 THE COURT: On what?

18 MR. KOZELSKI: On the search.

19 THE COURT: Are you going to have to call witnesses?

20 MR. KOZELSKI: Well, I think the State -- I have the
21 search warrant here, so it's --

22 MS. BARBER: Right.

23 MR. KOZELSKI: But I think we can get through it very
24 quickly.

25 THE COURT: I have on here nine witnesses.

1 MR. COOPER: One's rebuttal.

2 MS. BARBER: Oh, right. We listed nine.

3 THE COURT: Mm-hmm. So who --

4 MS. BARBER: One I'm quite certain I'm not calling.

5 That's the Enterprise representative.

6 THE COURT: Okay.

7 MS. BARBER: The last witness we incorporated,
8 Ms. Johnson, she's our rebuttal witness -- our possible. But
9 the other seven I'm thinking we'll be calling.

10 THE COURT: So you're calling -- and how long do you
11 think it's going to take you to present all of them?

12 MS. BARBER: No more than two and a half hours. And
13 that's --

14 THE COURT: For your whole case?

15 MS. BARBER: Mm-hmm. Yes, ma'am.

16 THE COURT: Oh.

17 MS. BARBER: I don't think --

18 MR. COOPER: If we start Wednesday --

19 MS. BARBER: Wait, wait, wait, wait.

20 MR. COOPER: -- we'll finish Thursday.

21 THE COURT: Okay.

22 MS. BARBER: I didn't incorporate body cam. Hold on.
23 We'll have to play some body cam, so maybe like three and a
24 half.

25 THE COURT: Y'all get together about your exhibits and

1 stuff.

2 MS. BARBER: Okay.

3 THE COURT: And then how many witnesses are you going to
4 need on the suppression hearing? And how long is that going
5 to take?

6 MR. KOZELSKI: Shouldn't probably be very long.

7 MS. BARBER: I don't think it would take long.

8 MR. COOPER: It was an inventory search.

9 MS. BARBER: Right.

10 MR. COOPER: It shouldn't be long at all. And you want
11 us to elicit testimony or just argue on that?

12 MS. BARBER: I was just going to argue it. That's what
13 I planned to do. But I can.

14 MR. COOPER: We can put them on the stand for a couple
15 questions.

16 MR. KOZELSKI: Yeah, they can put them on for a couple
17 questions. I think it's --

18 THE COURT: Well, I don't think we can start it before
19 Thursday morning --

20 MS. BARBER: Okay.

21 THE COURT: -- because we're not going to finish this
22 one. It depends on how long it takes us to finish tomorrow.
23 I don't close and charge after 3:00.

24 MR. COOPER: If they do finish tomorrow, are you
25 planning to still call the jury back Thursday morning to

1 start?

2 THE COURT: Mm-hmm.

3 MR. COOPER: Okay.

4 THE COURT: That was the original plan for Wednesday,
5 but this just took a lot longer than I imagined. Not that
6 I'm complaining. I mean, it is what it is.

7 Okey-dokey. We'll be in touch.

8 MS. BARBER: Thank you.

9 MR. KOZELSKI: Thank you, your Honor.

10 THE COURT: You're welcome.

11 (Proceedings recessed at 4:23 p.m., to resume at a date
12 and time to be determined.)

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1 (Proceedings resumed at 2:54 p.m., Wednesday,
2 December 13, 2023, outside the presence of the jury.)

3 THE COURT: Do y'all have any exhibits y'all need to
4 premark for this hearing for the court reporter?

5 MR. COOPER: Judge, I was going to ask, so both motions
6 I think we would say there's about 30 minutes of clips that
7 we've compiled from body cams that we think would be good for
8 your Honor to watch with --

9 THE COURT: You put them all on one jump drive?

10 MR. COOPER: I have them all on one thumb drive.
11 They're marked. If we use them for trial and in case we edit
12 them, we just have them on a thumb drive here in case your
13 Honor allows the edits to move forward. So should we play
14 them off our thumb drive?

15 THE COURT: I can watch them -- I need a thumb drive so
16 I can watch them. Or do y'all plan to utilize them with a
17 witness? -- I guess is what I'm asking. Or do I just need to
18 watch them?

19 MS. BARBER: You just need to watch them. Yes, ma'am.

20 THE COURT: Yeah, you have a copy, don't you,
21 Mr. Kozelski?

22 MR. KOZELSKI: I do.

23 THE COURT: Okay. I guess the quicker question to ask
24 is do you have any exceptions to those clips?

25 MR. KOZELSKI: I do, your Honor. And I've talked to

1 them about it. There's -- we're really essentially -- my
2 client did file a motion to suppress statements.

3 THE COURT: Yeah, I'm going to go through all his
4 motions, so you don't have to make argument right now. I'll
5 go through everything and then we'll see where we are.

6 MR. KOZELSKI: Well, this is a car stop. It's about 30
7 minutes in length. We have about three body cameras. All
8 three are about 30 minutes in length. The State seeks to
9 introduce certain clips from all three body cameras. Our
10 main argument to keeping some of this stuff out is that
11 immediately upon the traffic stop, the officer who is coming
12 to the driver's side of the door opens the door, asks my
13 client to get out of the car, which my client complies with.
14 I think at that point he is detained, but I understand that
15 they have to ask him investigatory questions about --

16 THE COURT: It depends. Was it a Terry? Was it
17 investigatory? Was it --

18 MR. KOZELSKI: I think at that point it is investigatory
19 in nature. But about 7 minutes and 50 seconds into the
20 video, Lieutenant Engles -- I don't know if he's a lieutenant
21 or not, but Officer Engles sees something in the car and
22 immediately goes to my client and puts handcuffs on him and
23 says, "You're under arrest." Okay? At that point, none of
24 these officers that are at the scene give my client his
25 Miranda warning.

1 THE COURT: But is anything asked that would inculcate
2 him other than his name?

3 MR. KOZELSKI: Yes.

4 THE COURT: I'll watch it.

5 MR. KOZELSKI: Yeah. There are several statements that
6 are made. They're trying to get him to work -- they're
7 trying to get him to admit to what's in the car. I mean, it
8 is a custodial interrogation. There's no doubt about that in
9 my mind. So I'd ask that anything after that point --

10 THE COURT: Does any of it inculcate your client?

11 MR. KOZELSKI: Well, I don't know. I think that he's
12 being honest with the officers. He is answering their
13 questions. But I think some may think that he does inculcate
14 himself; some may not think that he inculpates himself. But
15 I do think that it is a custodial interrogation in which he
16 has not been given his Miranda warnings. He tells him that
17 he's under arrest.

18 THE COURT: Mm-hmm.

19 MR. KOZELSKI: And then he does -- they continue to ask
20 him questions about, "Hey, you know, if you help us out,
21 we'll help you out. Just sort of tell the truth about what's
22 happening." My client is sort of standing there silent most
23 of the time, but he's, you know, saying things like, "Y'all
24 done me wrong here, making me get out of the car and doing
25 all this stuff."

1 THE COURT: Let's just say for argument's sake, I guess
2 what -- why -- are you intending to show some portion of this
3 that is after he is placed in cuffs and not Mirandized?

4 MR. COOPER: Yes, ma'am.

5 THE COURT: For what purpose would you be offering it?
6 And why would it be admissible once he is in custody if any
7 of the questions were designed to inculcate him?

8 MR. COOPER: Certainly, Judge. Just by way of just a
9 little bit of background --

10 THE COURT: Mm-hmm.

11 MR. COOPER: -- they stopped him because he's not
12 maintaining his lane. They have concern about maybe
13 potentially he could be intoxicated or impaired. They
14 initially place him in handcuffs because they've located open
15 containers of beer.

16 THE COURT: Got that.

17 MR. COOPER: He's in handcuffs for several minutes for
18 that before they locate the drugs in the car. So there's one
19 or two questions asked of him immediately after they place
20 him in handcuffs that's just, "We're going to search the car.
21 Let us know if there's anything in there."

22 THE COURT: Yeah, but that's --

23 MR. COOPER: And also the officers would testify --

24 THE COURT: Yeah, that's inculpatory: "Let me know if
25 there's anything in the car."

1 MR. COOPER: There is an exception, Judge, pursuant to
2 the United States Supreme Court Case *New York v. Quarles*.
3 The citation would be 467 U.S. 649 from 1984. It talks about
4 the safety exception: public safety or officer safety.

5 THE COURT: That's not why they were asking him about
6 that. They were asking him about that because they wanted to
7 know if there were drugs. It was going to save them having
8 to toss it.

9 MR. COOPER: And that's part of it, Judge, but they will
10 testify too. As officers of the court, we've spoken to them.
11 Part of it too is what -- is there razor blades? Is there
12 fentanyl in this day and time? So they don't get injured
13 then is part of the reason they asked. He does not inculcate
14 himself. He does not admit to anything.

15 THE COURT: Then why do you need to play it?

16 MR. COOPER: Part of it, Judge, I believe is we have his
17 -- the way he acts and his mannerisms, you know, before and
18 after I think would help the trier of fact, the jury,
19 understand what is going on to see him in that moment, to see
20 him before he's arrested, to see him after he's arrested, to
21 see him in his answering. And some of it is, Judge, him not
22 answering questions. And I think that --

23 THE COURT: His silence can't be used against him.

24 MR. COOPER: Well, Judge, pursuant to *United States v.*
25 *Doyle* and the progeny of those cases, if someone is not given

1 their Miranda warnings, then we can use their postarrest
2 silence against them. And I can -- there's also a state
3 Supreme Court case I have that I can file.

4 THE COURT: I'll do some research. But, you know, when
5 you look at cases and their holdings, it's all factually
6 driven.

7 MR. COOPER: Yes, ma'am.

8 THE COURT: So I don't know if these are the exact
9 facts --

10 MR. COOPER: Yes, ma'am.

11 THE COURT: -- as the cases you're citing.

12 MR. COOPER: That is why the State would offer it is to
13 -- and again, some of the things he says are statements he
14 brings up. He inquires about an open container. He inquires
15 about where they found the drugs. Things like that. And
16 again, I think where --

17 THE COURT: Spontaneous statements are different than
18 statements elicited pursuant to questioning.

19 MR. COOPER: Yes, ma'am.

20 THE COURT: Once you place somebody in handcuffs -- we
21 know that there are demarcation lines.

22 MR. COOPER: Yes, ma'am.

23 THE COURT: If you tell somebody they can't leave. When
24 you put me in handcuffs I certainly cannot leave.

25 MR. COOPER: Yes, ma'am.

1 THE COURT: That is usually the barometer of the fact
2 that you're under arrest and you aren't leaving.

3 MR. COOPER: Certainly.

4 THE COURT: The safer course of action is to Mirandize
5 someone --

6 MR. COOPER: Yes, ma'am. I understand.

7 THE COURT: -- when you know that you have impaired
8 their free flow of any ability, their free movement. So it
9 is problematic. But I need to look at the video myself --

10 MR. COOPER: Yes, ma'am.

11 THE COURT: -- and see what it's all about. Is that the
12 entirety -- well, let me go backwards. I got a little ahead
13 of myself.

14 From this State's witness -- the witness list, is the
15 State calling Sergeant -- Lieutenant Engles?

16 MS. BARBER: Yes, ma'am.

17 THE COURT: Are you calling Agent Bianchi?

18 MS. BARBER: Yes, ma'am.

19 THE COURT: Are you calling Aaron Preston?

20 MS. BARBER: Yes, ma'am.

21 THE COURT: Are you calling Linda Wilson?

22 MS. BARBER: And just to clarify, Judge, are you
23 speaking for the entirety of the trial or for purposes of the
24 pretrial hearing?

25 THE COURT: I'm talking for the trial.

1 MS. BARBER: Yes, ma'am.

2 THE COURT: Linda Wilson?

3 MS. BARBER: Yes, ma'am.

4 THE COURT: Brian Hinton?

5 MS. BARBER: Yes, ma'am.

6 THE COURT: Renee Hilton?

7 MS. BARBER: Yes, ma'am.

8 THE COURT: Amber Horn?

9 MS. BARBER: Yes, ma'am.

10 THE COURT: You told me you were not calling Matthew
11 Scelfo.

12 MS. BARBER: I am not.

13 THE COURT: And Dominique Johnson, who is that? You
14 said you were potentially calling her as a rebuttal witness.

15 MS. BARBER: Right. Just if the defendant decides to
16 take the stand and just dependent upon what he says while
17 he's on the stand.

18 THE COURT: And who is she?

19 MR. KOZELSKI: She's currently in the courtroom, your
20 Honor. She's here in support of my client.

21 THE COURT: Who is she?

22 MR. KOZELSKI: She's my client's girlfriend.

23 THE COURT: Okay.

24 MS. BARBER: Yes, ma'am. And just to give you a little
25 more context, your Honor -- well, I don't think it's

1 necessary.

2 THE COURT: Okay.

3 MR. KOZELSKI: But I would ask, your Honor, since they
4 are calling her as a potential rebuttal witness -- we don't
5 intend to put on any case. I know that that can change, but
6 I don't see there being any reason for us to be putting on a
7 case, especially in a case like this. So I would ask that
8 she be allowed to stay in the courtroom.

9 THE COURT: Well, your client made the motion to
10 sequester, not them.

11 MR. KOZELSKI: I know he did, your Honor.

12 THE COURT: Yeah.

13 MR. KOZELSKI: But at that time, I don't --

14 THE COURT: I can't sequester some and not sequester
15 all.

16 MR. KOZELSKI: Well, I don't believe she was on the list
17 at the time.

18 THE COURT: I don't think it matters. Sequester is
19 sequester. A fact witness is a fact witness. It's not
20 driven by who's going to be testifying.

21 MR. KOZELSKI: Well, I agree, your Honor. And again, I
22 did not make that motion at the time where we knew that
23 Dominique Johnson was going to be on that. But she is here
24 in support. We do not plan on putting on a case. I -- you
25 know, I don't know if the State objects to her being in here.

1 I'm just not sure.

2 THE COURT: Yeah. We're getting a little ahead of
3 ourselves.

4 MR. KOZELSKI: Yeah.

5 THE COURT: Let me go through all the motions that we
6 have.

7 Is your client withdrawing the motion for continuance?

8 MR. KOZELSKI: Yes, your Honor.

9 THE COURT: Because he's now had since Monday to look at
10 the videos, correct?

11 MR. KOZELSKI: He has.

12 THE COURT: Then he filed some other motions. They're
13 dated 12/8 but I don't have the actual filed date on these.
14 He had a motion for empanelment documents. He's not entitled
15 to those. Is he still seeking those?

16 MR. KOZELSKI: No, your Honor.

17 THE COURT: Okay. So that is withdrawn.

18 He had a motion to suppress tainted evidence. I guess
19 that's what we're dealing with right now. So it was filed
20 June 27, 2023.

21 MR. KOZELSKI: I believe so, your Honor. That --

22 THE COURT: It's a handwritten motion --

23 MR. KOZELSKI: It was a handwritten motion, and --

24 THE COURT: -- to request body-cam videos. I think we
25 already got those.

1 MR. KOZELSKI: Yes, your Honor.

2 THE COURT: So this actually is moot. You want to
3 withdraw that one as well?

4 MR. KOZELSKI: We can withdraw that one. I think that
5 was also maybe a hybrid representation motion.

6 THE COURT: And then we have a motion to suppress that
7 he -- I don't have a file date and it's not signed, so I
8 don't know when this was submitted. Basically, it's what
9 we're talking about right now.

10 MR. KOZELSKI: Okay.

11 THE COURT: Then there was a motion in limine regarding
12 statements of the defendant. Are there any statements y'all
13 would seek to introduce that would be subject to a Denno
14 hearing?

15 MR. COOPER: Judge, I do think that's what you'll watch
16 on the video. I don't think they'd be subject to a Denno
17 because we are -- he was not given Miranda warnings. The
18 State does not contest that. We also continue --

19 THE COURT: Well, I don't think it's confined -- I don't
20 think *Jackson versus Denno* is confined to Miranda.

21 MR. COOPER: That's why --

22 THE COURT: That's one of the arms of it, prongs of it,
23 but that's --

24 MR. COOPER: We think, your Honor, we need to have a
25 pretrial with your Honor, but it may not necessarily classify

1 itself as a Denno. But it certainly is about the statements
2 that he made and the statements he didn't make that we seek
3 to introduce. But I think it will be easier for your Honor
4 once you watch the video.

5 THE COURT: Does he have any record?

6 MS. BARBER: Yes, ma'am, a minimal one.

7 THE COURT: I'm listening.

8 MS. BARBER: Mr. Simmons's record consists of a simple
9 assault and battery charge in 2008, a possession of marijuana
10 charge from 2009, a public disorderly conduct charge from
11 2009, shoplifting 2010, breach of peace 2011, a possession of
12 marijuana charge from 2011, a second possession of marijuana
13 charge from 2011.

14 I apologize your Honor. I'm just assuring that those
15 are all within -- some of his charges are out of state, so
16 the rap sheet's a little bigger.

17 And that's the entirety of his record, your Honor.

18 THE COURT: Okay. Does the State intend to seek to
19 introduce any testimony of prior bad acts, or is this a moot
20 motion?

21 MS. BARBER: I think that it is moot, your Honor. We
22 don't intend to do that. But there was some discrepancy in
23 the video as it pertains to Mr. Simmons admitting to a
24 traffic accident that was caused by him texting. We didn't
25 deem that to be a prior bad act, but I know the defense has

1 some concerns about that.

2 THE COURT: Well, it's a prior bad act not the subject
3 of a conviction. It could be a reckless or a careless
4 driving.

5 MS. BARBER: Yes, ma'am.

6 THE COURT: If he was charged with it.

7 MS. BARBER: Yes, ma'am. And the State's fine with not
8 having that played.

9 THE COURT: Because prior bad acts deals with
10 convictions and uncharged conduct that could be criminal
11 activity.

12 MS. BARBER: Yes, ma'am. We'll exclude that portion.

13 THE COURT: Admission of prior convictions. Are there
14 any -- and usually I do this when I advise the defendant of
15 his right to testify. I would imagine you all would -- did
16 y'all give any notice of introducing any convictions older
17 than ten years old against him?

18 MS. BARBER: We did not, your Honor.

19 THE COURT: Are y'all going to be seeking to use any of
20 his record to impeach him?

21 MS. BARBER: No, your Honor.

22 THE COURT: Okay. So then that's a nonissue as well.

23 And there was his motion to sequester witnesses. What's
24 the State's position on that?

25 MS. BARBER: The State is fine with sequestering all

1 witnesses, your Honor, aside from our case agent, who
2 possibly won't be here for the entirety of the trial anyway.
3 But we're fine with that.

4 THE COURT: Mr. Kozelski?

5 MR. KOZELSKI: Yeah, your Honor. I think there are
6 really only three witnesses in this case, which are going to
7 be the three officers. That's going to take up, I think, a
8 vast majority of the time in this trial.

9 THE COURT: Mm-hmm.

10 MR. KOZELSKI: The other witnesses are going to be
11 fairly quick. They're chain witnesses. So as long as those
12 three aren't together and talking about the case, I think
13 we're good.

14 MS. BARBER: And Judge --

15 THE COURT: So are you withdrawing your motion to
16 sequester witnesses?

17 MR. KOZELSKI: No. I would like them to be sequestered
18 in the sense that they have a court order not to be talking
19 about the case as it pertains to their testimony, if they're
20 on the stand or what they have testified to.

21 THE COURT: And on Monday, your client consented to the
22 indictment being amended.

23 MS. BARBER: From trafficking to PWID.

24 MR. KOZELSKI: Oh.

25 THE COURT: From trafficking to PWID.

1 MR. KOZELSKI: I thought it was originally indicted as a
2 possession with intent.

3 THE COURT: It was indicted as a trafficking on
4 October 1 of 2018.

5 MR. KOZELSKI: Okay.

6 THE COURT: But it needs to be amended to a PWID
7 cocaine.

8 MR. KOZELSKI: Okay.

9 THE COURT: Yeah. And he at the time, with the
10 assistance of Mr. Smith, indicated that he had no objection
11 to that.

12 MR. KOZELSKI: Correct.

13 THE COURT: All right. So are there any witnesses on
14 the only outstanding motion, which is the suppression?

15 MS. BARBER: Yes, ma'am. We intend to call one witness.

16 THE COURT: And that is?

17 MS. BARBER: Lieutenant Engles.

18 THE COURT: And does the defense have any witnesses?

19 MR. KOZELSKI: No, your Honor.

20 THE COURT: I'm sorry. I didn't hear you.

21 MR. KOZELSKI: No, your Honor.

22 THE COURT: Is it Engle or Engles?

23 MS. BARBER: Engles.

24 THE COURT: E-N-G-L-E-S.

25 MS. BARBER: Yes, ma'am.

1 THE COURT: And your client has other outstanding
2 indictments, correct? 2022-GS-10-3479, which is domestic
3 violence second degree from April 29, 2020; domestic violence
4 second degree, 2022-GS-10-3483, from March 22, 2020; domestic
5 violence first degree, 2022-GS-10-3486, from October 25,
6 2021; burglary first degree, 2022 ending in 3488, arising out
7 of October 25, 2021.

8 Who's with him here today? Dominique Johnson?

9 MR. KOZELSKI: Yes, your Honor.

10 THE COURT: So those are these two offenses. Are y'all
11 still going to proceed on this?

12 MS. BARBER: We're discussing it now, your Honor. I've
13 been discussing it with both my team litigators and Solicitor
14 Wilson, and we're still in the air on whether or not we're
15 going --

16 THE COURT: Y'all got independent witnesses?

17 MS. BARBER: No. Not at this time, no.

18 THE COURT: Yeah. Because she's here with him, so that
19 gives you an indication of where the wind's blowing.

20 Assault and battery second degree, 2022-3496, May 28,
21 2021; and PWID cocaine, 2021-00004, from January 6, 2019; and
22 unlawful carrying of a pistol, January 6, 2019. All of these
23 have been indicted on -- let's see -- June -- June 2022.

24 Yeah, all these were indicted either June 29 or June 6
25 or 8 of -- well, one's June 8, 2021. The current case was

1 indicted October 10, 2018, and the others were indicted
2 June 29, 2022, or June 6, 2022.

3 All right. Have y'all had a full discussion about what
4 y'all might want to do to resolve this case -- these cases,
5 plural?

6 MR. KOZELSKI: Your Honor, we've talked over the years.
7 Obviously, this is five and a half years after this initial
8 instance and --

9 THE COURT: Well, these current ones ain't five and a
10 half years.

11 MR. KOZELSKI: They're not, your Honor, but we've been
12 in court a number of times. You know, we've had several bond
13 revocation motions. We've had several statutory bond
14 settings. And I think in every one of those cases, the
15 alleged victims in those cases have come. They've spoken to
16 the judges that have been presiding over those hearings.
17 They've said what was contained --

18 THE COURT: Let's skip over the TBDs. I'm talking about
19 this gun charge and this PWID cocaine charge. The domestic
20 violences can go either way. I'm sure you know that whether
21 the victims are compliant or not, they can be called as
22 witnesses. And the more they -- what's the word Shakespeare
23 uses? If they protest too much, the more juries don't
24 believe them.

25 MR. KOZELSKI: I get --

1 THE COURT: I've seen it go both ways. I've seen juries
2 acquit people because they feel like it's none of our
3 business if they want to drop the charges. I've seen them
4 convict people where they feel like the person's just being
5 dishonest and they just rub them the wrong way and they
6 convict him on it regardless. And I've had them where you
7 have independent witnesses, that being where the police come
8 on the scene and the body cam records the aftermath behavior
9 or in-the-course-of behavior or has the ability to, without
10 body cam or with body cam, see bruises, you know, swollen
11 lips, busted eyes, you know, the gamut of independent
12 objective evidence of what may or may not have happened.

13 MR. KOZELSKI: Right. And I understand that, your
14 Honor. There have been several global plea offers that have
15 been made.

16 THE COURT: Mm-hmm.

17 MR. KOZELSKI: I would say my --

18 THE COURT: The last of which was quite foolish to have
19 rejected.

20 MR. KOZELSKI: Well, here's the issue, your Honor. My
21 client is a very hard worker. One of his jobs is working at
22 the port.

23 THE COURT: Mm-hmm.

24 MR. KOZELSKI: He doesn't want to lose his TWIC card by
25 getting a felony.

1 THE COURT: So if you're on -- I know a lot of people
2 working on the port on probation, especially on drug
3 charges --

4 MR. KOZELSKI: With a felony conviction?

5 THE COURT: -- and they're still working every day.

6 MR. KOZELSKI: He'd absolutely plead to possession if
7 that wasn't a felony charge.

8 THE COURT: Oh, you're saying a felony keeps him from
9 being on the port.

10 MR. KOZELSKI: Exactly.

11 THE COURT: How long has he been working at the port?

12 MR. KOZELSKI: Years, your Honor. Since 2018. So
13 he's --

14 THE COURT: So if he gets -- because I know they changed
15 the rules and they buckled down a little more, because it
16 used to be no matter what you did if you worked out there.
17 But it became a liability issue with all that heavy equipment
18 and everything. And I know they changed the rules.

19 MR. KOZELSKI: It's the felony conviction that he's --

20 THE COURT: So a felony would preclude him from working
21 on the port?

22 MR. KOZELSKI: Yes, your Honor.

23 THE COURT: What does he do on the port?

24 MR. KOZELSKI: Um --

25 THE COURT: Does he actually work for the ILA or does he

1 work for some subsidiary business --

2 MR. KOZELSKI: I think he's a contractor.

3 THE COURT: -- that goes onto the base?

4 MR. KOZELSKI: He's a contractor that does that. He
5 also has --

6 THE COURT: So he isn't employed by the ILA.

7 MR. KOZELSKI: He's attempting to be employed by the
8 ILA.

9 THE COURT: But he's not.

10 MR. KOZELSKI: Yeah. This is what's --

11 THE COURT: You're saying --

12 MR. KOZELSKI: This is what's holding him up.

13 THE COURT: So you're saying that the felony precludes
14 him from traversing the property.

15 MR. KOZELSKI: Yes, your Honor. That's what he's told
16 me.

17 THE COURT: Because he does deliveries for who?

18 MR. KOZELSKI: I know he worked for Honeywell for a long
19 period of time. He was working at Honeywell when this
20 incident occurred.

21 THE COURT: Mm-hmm. Is he still with Honeywell?

22 MR. KOZELSKI: No.

23 THE COURT: Who is he with now?

24 MR. KOZELSKI: He owns his own business detailing cars
25 and tinting -- window tinting.

1 THE COURT: So if I was -- so I'm trying to figure out
2 so what are we talking about the port then if he has his own
3 detail business?

4 MR. KOZELSKI: Well, he still has his TWIC card, and he
5 is applying to be part of the ILA. It's just that this is --
6 a felony conviction would prevent him from doing that. And
7 that's sort of been the holdup this entire time. You know,
8 he's -- I think he's been through a couple of different
9 solicitors. At one point Assistant Solicitor Ashley Brown
10 had it.

11 THE COURT: Mm-hmm.

12 MR. KOZELSKI: You know, we were -- we were sort of --
13 you know, she was saying he could plead to the PWIDs to time
14 served, but he just didn't want a felony conviction.

15 THE COURT: Mm-hmm.

16 MR. KOZELSKI: So that was -- you know, she gave the
17 sort of option of he can plead to these two PWIDs with time
18 served or he can plead to one for probation, and we just
19 couldn't get over the felony conviction.

20 THE COURT: All right. Are we ready to proceed?

21 MS. BARBER: Yes, ma'am. The State's ready to proceed.

22 THE COURT: Defense ready to proceed?

23 MR. KOZELSKI: We are, your Honor.

24 MR. COOPER: I have the videos for you, Judge. But do
25 you think for both motions to watch beforehand --

1 THE COURT: If you need to play them --

2 MR. COOPER: Yes, ma'am.

3 THE COURT: -- then you -- you need to play them with
4 the witness?

5 MS. BARBER: No.

6 MR. COOPER: I would think with your Honor -- it would
7 be better for your Honor to watch them beforehand.

8 THE COURT: I'm going to watch them by myself in my
9 office. I've got a great memory. Thank you.

10 Do you need that for evidentiary purposes when you try
11 your case, that jump drive?

12 MS. BARBER: No, ma'am.

13 THE COURT: Okay. Well, we're going to give it back to
14 you.

15 All right.

16 MS. BARBER: And which motion will we be proceeding on
17 first?

18 THE COURT: There's only one motion. He's made a motion
19 to suppress. All the others have been resolved or withdrawn.

20 MS. BARBER: Thank you, Judge.

21 THE COURT: You're welcome.

22 And then y'all need to talk about whether Ms. Johnson's
23 going to be sequestered or not.

24 MS. BARBER: The State doesn't have an issue with
25 Ms. Johnson's sitting in support of Mr. Simmons.

1 THE COURT: All right. Then that's resolved.

2 MS. BARBER: Yes, ma'am.

3 THE COURT: All right. Are we ready?

4 MS. BARBER: The State calls Lieutenant Engles to the

5 stand.

6 THE COURT: Sir, if you would come forward to be sworn.

7 CLERK OF THE COURT: Raise your right hand for me.

8 (Witness sworn.)

9 CLERK OF THE COURT: Okay. If you would please take a

10 seat.

11 State your full name, spelling your last name for the

12 record.

13 THE WITNESS: Sean Engles, E-N-G-L-E-S.

14 THE COURT: Spell your first name as well, sir.

15 THE WITNESS: Sean, S-E-A-N.

16 THE COURT: Thank you.

17 You may proceed.

18 MS. BARBER: Thank you, Judge.

19 THE COURT: You're welcome.

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1 SEAN ENGLES,
2 called as a witness on behalf of the State, being first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BARBER:

6 Q. Lieutenant Engles, can you please tell the judge where
7 it is that you currently work?

8 A. I'm with the Charleston Police Department.

9 Q. And how long have you been employed by the Charleston
10 Police Department?

11 A. Sixteen years.

12 Q. What is your current occupation with the Charleston
13 Police Department?

14 A. I am lieutenant over special operations.

15 Q. And you mentioned that you've been there for 16 years.
16 What position did you start in?

17 A. Patrol officer.

18 Q. And do you recall what position you were in back in
19 2018?

20 A. Yes. Sergeant of the quick response squad.

21 Q. Lieutenant Engles, do you recall being involved in the
22 case we're discussing here today, State v. Joshua Simmons?

23 A. I do.

24 Q. And how were you involved in that case?

25 A. I was one of the officers that initiated a traffic stop

1 on Mr. Simmons.

2 Q. And after you initiated that traffic stop, what
3 occurred?

4 A. So the traffic stop occurred on Savannah Highway. I got
5 out of my vehicle after initiating my blue lights and sirens.
6 Mr. Simmons pulled over to the side of the road. I
7 approached on the driver's side. A partner of mine
8 approached on the passenger side. We had made contact with
9 Mr. Simmons, let him know that he was pulled over for failure
10 to maintain his lane of travel. He had drifted from one side
11 of the lane, touching the yellow line, so we were concerned
12 about his driving behavior.

13 We let him know that. And just in conversation, we
14 noticed that he appeared nervous. We were also -- in being
15 on the side of the highway with cars going by pretty fast,
16 with those two things combined, we decided, "Hey, let's ask
17 Mr. Simmons to step to the rear of the vehicle."

18 Q. Lieutenant Engles, when a traffic stop is made, what is
19 the usual protocol to follow that by officers?

20 A. So if a violation is observed, I put that out on the
21 radio to let the dispatcher know my unit is involved with a
22 traffic stop, the location, description of the vehicle. Make
23 contact with the driver, let them know who I am -- well,
24 after they've pulled over for blue lights and sirens. But
25 introduce myself, state the violation, ask for their

1 documentation.

2 Q. And so you mentioned that you asked Mr. Simmons to step
3 outside of the vehicle. When he stepped out of the vehicle,
4 what did you specifically do next?

5 A. I followed him to the rear of the vehicle, and he and my
6 partner and I just continued to talk about just general
7 things. We noticed some nervous behavior, and we were asking
8 about that.

9 Q. And so after stepping out of the vehicle and speaking
10 with Mr. Simmons, did you ever return back to the vehicle?

11 A. Yes. Shortly thereafter, my partner, Officer Preston,
12 he was engaged in a conversation with Mr. Simmons, so I used
13 that opportunity to walk back to the driver's side of the
14 vehicle. I used my flashlight to do a plain-view search,
15 just kind of looking inside the windows, looking inside the
16 open window. So yes, I did re-approach the vehicle.

17 Q. And when you looked inside of that vehicle, did you
18 notice anything in particular?

19 A. Yeah. I noticed two open containers of alcohol -- one a
20 liquor bottle and one a beer bottle -- that were hanging in,
21 like, a transparent handbag.

22 Q. And after you noticed those open containers, how did you
23 proceed that evening?

24 A. I turned around, went back to my partner and where
25 Mr. Simmons were. And at that point, we detained Mr. Simmons

1 in handcuffs and let him -- you know, told him that we found
2 the open containers in the car and we knew he was lying to
3 us.

4 Q. What happened to the vehicle after Mr. Simmons was
5 detained?

6 A. So he was placed under arrest. The vehicle was towed.

7 Q. And what protocol did you take or what measures did you
8 use moving forward after the vehicle was towed or when you
9 decided that it should be towed?

10 A. So we fill out a tow form, and we conduct an inventory
11 of the vehicle.

12 Q. And why do you conduct an inventory search of the
13 vehicle?

14 A. To document any possessions of value that are inside the
15 vehicle, just so that there can't be a claim against us or
16 the tow company that -- once the vehicle is returned, that
17 any items had gone missing.

18 Q. And is a search of that vehicle in connection with
19 towing the vehicle a part of CPD police protocol?

20 A. Yes.

21 Q. And is that why you decided to search the vehicle this
22 particular day?

23 A. Yes.

24 Q. As an officer of the Charleston Police Department, are
25 you trained on how to search a vehicle?

1 A. Yes.

2 Q. Did you use those measures in this instance?

3 A. I did, yes.

4 Q. Are you trained on where to search the vehicle if an
5 incident like the one that occurred that day happens?

6 A. Yes.

7 Q. And did you use that training on this specific day?

8 A. Yes.

9 Q. Did you find -- were any items found on this particular
10 day after conducting that search?

11 A. Yes. In the driver's side door panel, I located three
12 and a half grams of white powder that I ended up -- it ended
13 up field testing as cocaine.

14 Q. And when you find items as a result of your search, what
15 do you do with those items?

16 A. Those items get put in our property management system,
17 and they get submitted into our evidence department.

18 Q. And is that what occurred in this case?

19 A. It is, yes.

20 Q. When you find items in those vehicles, how do you keep
21 track of what was found?

22 A. An inventory is completed.

23 Q. And you mentioned that you found a bag of a white powder
24 substance in the side panel. Are you aware of any other
25 items that were found?

1 A. Yeah. There was a digital scale on the floorboard,
2 driver's side. And then there was, in the sunglass case,
3 there was an additional amount of white powder.

4 Q. And who found the powder that was in the sunglasses
5 case?

6 A. Officer Bianchi.

7 Q. To your knowledge, was that evidence preserved just as
8 the other powder substance was?

9 A. Yes.

10 Q. And who found the digital scale?

11 A. I saw it.

12 Q. And was that also preserved?

13 A. Yes.

14 MS. BARBER: I have nothing further for this witness at
15 this time, your Honor.

16 THE COURT: Mr. Kozelski?

17 MR. KOZELSKI: Thank you, your Honor. May it please the
18 Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. KOZELSKI:

22 Q. Detective Engles, you said you were patrolling this area
23 of Highway 17 on July 28, 2018?

24 A. Yes.

25 Q. And is this a proactive patrol?

1 A. Yes.

2 Q. Okay. And at the time -- this was shortly before
3 midnight?

4 A. I believe so.

5 THE COURT: I'm sorry. Please speak up.

6 THE WITNESS: Yes.

7 BY MR. KOZELSKI:

8 Q. You stated that you saw my client touching the yellow
9 line?

10 A. Yes.

11 Q. While driving --

12 A. Failing to maintain the lane.

13 Q. Okay. And at that point, you initiated your blue
14 lights?

15 A. That's correct.

16 Q. Normally when an officer initiates his blue lights, that
17 would initiate the in-car camera; is that correct?

18 A. If the vehicle were equipped with one, yes.

19 Q. Okay. And your car wasn't equipped with one?

20 A. That's correct.

21 Q. Okay. Are you trained in DUI detection as an officer?

22 A. We do receive DUI detection training, yes.

23 Q. Okay. And you know as part of your DUI detective
24 training, if you were to pull someone over with a -- for a
25 DUI, that you have to have that in-car camera, right?

1 A. For the -- for it to -- to pull somebody over, no, you
2 don't need it. But if you're administering field testing, at
3 that point you would request a unit that has an in-car camera
4 to document that.

5 Q. Okay. And you never requested a car with an in-car
6 camera to come to this scene?

7 A. That's correct. I did not.

8 Q. Okay. But you did have your body cam on?

9 A. I did, yes.

10 Q. And what triggers your body cam to turn that on?

11 A. It's a push button, so it's manually -- I do it.

12 Q. Okay. You turn it on or turn it off whenever you are
13 interacting with a suspect, I guess?

14 A. Yes.

15 Q. Okay. And I just want to talk to you a little bit about
16 your training on DUI detection. You're aware that there are
17 two different sets of clues when detecting DUI, correct?
18 There's the prestop and then there's poststop clues, right?

19 A. Okay. Yes.

20 Q. So when somebody's driving erratically, there's certain
21 clues that you can look to to see whether or not you think
22 somebody's driving under the influence, right?

23 A. Yes.

24 Q. And in this case, you're saying it was touching the
25 yellow line?

1 A. Yes. Failure to maintain lane.

2 Q. Okay. But you didn't see any other indicators of drunk
3 driving?

4 A. No.

5 Q. Okay. No speeding or braking problems or anything like
6 that?

7 A. No.

8 Q. And when you put on your blue lights, Mr. Simmons pulled
9 over immediately?

10 A. Yes.

11 Q. There was no chase or anything like that?

12 A. That's correct. No.

13 Q. And he fully pulled over to the side of the road,
14 correct?

15 A. He did, yes.

16 Q. So there were no stopping problems on the side of the
17 road?

18 A. No.

19 Q. Okay. Now, when you do get Mr. Simmons stopped, you and
20 your partner sort of tag team going up to his car, right?

21 A. Yes, sir.

22 Q. And you tell Officer Preston to sort of take the lead on
23 the passenger side, right?

24 A. Yes.

25 Q. And you go to the driver's side of the car, correct?

1 A. Yes.

2 Q. And both you and Officer Preston are, you know, shining
3 your lights inside the car?

4 A. Yes.

5 Q. And part of the reason you do that is for officer
6 safety, right?

7 A. Yes.

8 Q. And another reason that you might look in somebody's car
9 is to see if they have any sort of illegal substances, right?

10 A. Sure.

11 Q. So anything that you can see with your flashlight to
12 indicate there's some sort of criminal activity, right?

13 A. Yes.

14 Q. And you approached Mr. Simmons on the driver's side,
15 correct?

16 A. Yes.

17 Q. And Officer Preston is talking to him from the passenger
18 side window?

19 A. Yes.

20 Q. And you just testified that you -- you said that
21 Mr. Simmons looked nervous to you; is that correct?

22 A. I did, yes.

23 Q. Are there typically many people that you pull over at
24 night that are not nervous with the blue lights behind them?

25 A. Yeah, there are some for sure.

1 Q. Okay. So I want to get to the poststop clues that we're
2 talking about as far as a DUI is concerned. Because that is
3 the reason you pulled him over, right?

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

5 Q. Is the -- you're trying to assess whether he's driving
6 under the influence?

7 A. I'd like to investigate further, yeah.

8 Q. Okay. And so when you got up to his front seat and
9 Officer Preston was talking to him, you decided to get him
10 out of the car, right?

11 A. Yes.

12 Q. You opened the door for him?

13 A. Yes.

14 Q. Okay. And when you opened the door for him, you didn't
15 see any bottles or whatnot on the floorboard?

16 A. Not immediately, no.

17 Q. Okay. And then you escorted Mr. Simmons to the back of
18 the car?

19 A. Yes.

20 Q. And Mr. Simmons didn't have any difficulty exiting the
21 vehicle?

22 A. No.

23 Q. He wasn't repeating any questions or comments?

24 A. I don't recall that.

25 Q. Okay. He wasn't swaying unsteadily or having any

1 balance issues?

2 A. No. Not that I noticed.

3 Q. He wasn't leaning on the vehicle?

4 A. No.

5 Q. There was no slurred speech?

6 A. I don't recall slurred speech.

7 Q. Okay. At one point you make him open up his mouth to
8 see if there's anything in there, right?

9 A. Right.

10 Q. And he complied with that, right?

11 A. He did, yeah.

12 Q. I mean, he was very compliant with you when you were
13 asking him questions, correct?

14 A. Yes.

15 Q. He didn't give you a false name or anything like that?

16 A. No, he did not.

17 Q. He didn't have the odor of an alcoholic beverage on him?

18 A. I did not notice that, no.

19 Q. He didn't have the odor of marijuana on him?

20 A. No.

21 Q. Okay. And you and Officer Preston were asking him,
22 essentially, "Where you coming from? Where you going?"
23 Right?

24 A. Yes.

25 Q. And he told you that he was coming from his girl's house

1 on Dorchester Road, right?

2 A. Yes.

3 Q. He gave you specific directions as to how to get there
4 on Dorchester Road by International Boulevard, correct?

5 A. I don't remember that part, but I'm not disagreeing.

6 Q. Okay. And he told you he was going to his mom's house
7 on Johns Island, right?

8 A. Yes.

9 Q. Which was the direction that he was heading?

10 A. Yes.

11 Q. Okay. And at this point, you nor Officer Preston felt
12 the need to give him standardized field sobriety tests,
13 right?

14 A. I did not give him standardized field sobriety tests.

15 Q. Okay. But you are trained in standardized field
16 sobriety tests, correct?

17 A. I personally am not.

18 Q. Okay. So you don't know what the three standardized
19 field sobriety tests that are administered during a DUI
20 checkpoint?

21 A. I have knowledge of their names, but I'm not certified
22 to administer them.

23 Q. Okay. But you did do DUI training, you said earlier,
24 right?

25 A. Yes.

1 Q. Okay. But there was no indication to you as you were
2 speaking to Mr. Simmons that he was too inebriated to drive?

3 A. Correct. I didn't get that impression.

4 Q. And as Officer Preston continued to talk with
5 Mr. Simmons, you then go back to Mr. Simmons's car?

6 A. Yes.

7 Q. And you're shining a light in it again?

8 A. Yes.

9 Q. And eventually you say you see a bottle under the seat?

10 A. It was kind of draped off of like a shifter, so it was
11 kind of hanging at leg level. Not laying -- it wasn't under
12 the seat.

13 Q. Are you saying it's hanging from the steering wheel?

14 A. No. I think it was the shifter. Like, the handles of
15 the bag were over the shifter, allowing the bag to drop onto
16 the driver's side.

17 Q. I'm sorry. I'm confused at what you mean by "the
18 shifter." What's that? It could be a generational thing,
19 but what's a shifter? Like for shifting gears?

20 A. Yeah. If I recall, it was like a center console.

21 Q. Oh, center console. Okay. All right. And right when
22 you see whatever you see, you immediately go to Mr. Simmons
23 and put him in handcuffs, correct?

24 A. Yes.

25 Q. And you nor Officer Preston administer any sort of

1 Miranda warnings to him after you put him under arrest?

2 A. Correct. I did not.

3 Q. And neither you now nor Officer Preston nor Officer
4 Bianchi write him any sort of citation for failure to
5 maintain lane?

6 A. A warning. A written warning.

7 Q. You wrote him a warning?

8 A. Yes.

9 Q. Okay. Did you give that warning to the solicitor's
10 office?

11 A. I did not.

12 Q. Okay. You didn't include it with the other tickets that
13 you wrote him?

14 A. No, I did not.

15 Q. Okay. And just to be clear, Mr. Simmons never consented
16 to you searching his car, correct?

17 A. Correct.

18 Q. And the basis of your search of this vehicle was seeing
19 the beer bottle, right?

20 A. So twofold, but as I said, he was under arrest for the
21 open container and the car had to be towed, so the car was
22 inventoried. But the twofold part is that having the open
23 container in a motor vehicle would lead us to believe that
24 there could be another open container or other contraband,
25 and that would initiate a probable cause search of the

1 vehicle.

2 Q. So you inventoried the vehicle?

3 A. Yes.

4 Q. Okay.

5 MR. KOZELSKI: No further questions, your Honor.

6 THE COURT: Any redirect of the witness?

7 MS. BARBER: No redirect, your Honor.

8 THE COURT: Officer, why did you ask him to step out of
9 the car? Why did you open -- I need clarity as to what
10 happened right after the stop. Did you ask him to step of
11 the car, or did you just voluntarily open his car door and
12 have him step out?

13 THE WITNESS: He was asked to step out of the car. Just
14 upon contact, noticed that his hands were shaking. And
15 Officer Preston was engaged in conversation with him, and
16 Officer Preston picked up some indicators of nervousness.
17 And combined with us being alongside the highway, at that
18 point I decided to have him step out of the car and I opened
19 the door for him to step out.

20 THE COURT: So don't let me put words in your mouth.
21 You're telling me you asked him to step out for safety
22 reasons?

23 THE WITNESS: As well. So twofold, ma'am. Twofold.
24 One being safety reasons; the other to have an opportunity to
25 take a look at Mr. Simmons face to face, gauge any other

1 nervousness or any other nervous indicators we might see by
2 having him outside the car.

3 THE COURT: For what purpose?

4 THE WITNESS: To see if there was anything else going
5 on. I mean, we're very limited with our knowledge.

6 THE COURT: Again, don't let me put words in your mouth.
7 To see what's going on with him what? To see if he's sick?
8 To see if he's impaired? To see if he's -- to observe what?

9 THE WITNESS: To see if he's being deceptive towards us.

10 THE COURT: And so why would -- I guess I'm a little
11 confused as to why would that justify you having somebody
12 step out of their car to see if they're being deceptive.

13 THE WITNESS: It just gives us a -- the justification?

14 THE COURT: Mm-hmm.

15 THE WITNESS: I believe there is --

16 THE COURT: Does that have --

17 THE WITNESS: -- case law that allows us to do that, and
18 it allows us the opportunity to, again, just speak to them in
19 a different setting.

20 THE COURT: Are you saying that ties into safety?

21 THE WITNESS: It does tie into safety, yes.

22 THE COURT: Okay. That's what I'm trying to get clarity
23 on.

24 THE WITNESS: Oh. I see.

25 THE COURT: I'm sorry if I'm asking it inartfully.

1 Normally, when somebody's stopped for an open container
2 they're arrested?

3 THE WITNESS: That's at the officer's discretion.

4 THE COURT: So is it also your discretion to give him a
5 ticket?

6 THE WITNESS: Yes. There is an option to give him a
7 citation and release him.

8 THE COURT: Mm-hmm. So what made -- what was the
9 assessment as to arrest him versus giving him a citation?

10 THE WITNESS: The fact that he hadn't been honest and he
11 was deceptive with us, not letting us know that that was
12 there.

13 THE COURT: You're talking about the bag that was
14 hanging from the gearshift?

15 THE WITNESS: Yes. The open alcohol.

16 THE COURT: Why did you go back to the car with the
17 flashlight after you had him at the foot of the car to speak
18 with him?

19 THE WITNESS: At that point, Officer Preston was with
20 him speaking with him, and because of the nervous behavior, I
21 wanted to see if I had overlooked something in that initial
22 approach. So from the outside of the car, I just walked back
23 up towards the driver's side with my flashlight, took a few
24 extra seconds to look at the car from the outside.

25 THE COURT: And was that for officer -- again, don't let

1 me put words in your mouth. I'm gleaning from what you're
2 saying that was for officer safety as well? Or -- and again,
3 don't let me put words in you mouth. Tell me why you felt
4 that was necessary.

5 THE WITNESS: I felt it was necessary because the -- I
6 just didn't get the impression that Mr. Simmons was being
7 forthright and honest with us. I wanted to see -- to walk
8 back up to the car to see if I could see if there was any
9 reason in plain view that that might be the case where --

10 THE COURT: Any questions as a result of the Court's
11 questions from the State?

12 MS. BARBER: Just a few, your Honor.

13 THE COURT: You may proceed.

14 REDIRECT EXAMINATION

15 BY MS. BARBER:

16 Q. Lieutenant Engles, Judge Jefferson asked you about the
17 reason of why y'all asked Mr. Simmons to step out of the
18 vehicle. What was that -- can you clarify that reason as it
19 pertains to safety?

20 A. The safety side is that for us, we were all alongside
21 the highway, so cars going by us at a high rate of speed. By
22 asking him and myself to go back to more off the roadway, it
23 just prevents -- it lessens the chance of being hit by a car.

24 Q. And Lieutenant Engles, safety was also referenced as the
25 reason that you looked inside the vehicle. Can you clarify

1 who that safety precaution was being made for?

2 A. Myself and my partner. You know, if someone -- if a
3 driver were to re-enter the vehicle and the officers were to
4 stay back, at that point they're in an environment where
5 we're not in control and we don't know someone's intentions.

6 MS. BARBER: Nothing further, your Honor.

7 THE COURT: Any questions as a result of the Court's
8 questions, Mr. Kozelski?

9 MR. KOZELSKI: Yes, your Honor.

10 THE COURT: You may proceed.

11 RECROSS-EXAMINATION

12 BY MR. KOZELSKI:

13 Q. I want to dive into this officer safety issue. Okay?
14 You pulled up behind him, correct?

15 A. Yes.

16 Q. And you're in an SUV?

17 A. Yes.

18 Q. And it's got flashers on the back?

19 A. Yes.

20 Q. And so the car traffic that is oncoming can see your
21 flashers on the side of the road?

22 A. Yes.

23 Q. And Officer Preston, who you told to take the lead from
24 the passenger side, is asking my client questions from the
25 passenger side of the car, correct?

1 A. Yes.

2 Q. And Officer Preston is not in the roadway at any point?

3 A. Correct.

4 Q. And you mentioned that you wanted him to get out because
5 he was being dishonest with you, correct?

6 A. We noticed some nervous behavior that we wanted to
7 discuss further, as well as remove myself and Mr. Simmons
8 from being alongside the highway.

9 Q. Well, you just testified earlier that you thought he was
10 not being honest with you; is that correct?

11 A. Yes.

12 Q. Okay. And what was it that he said that you believed he
13 was not being honest about before you had him step out of the
14 car?

15 A. So before he stepped out of the car, it was that I
16 noticed nervous behavior.

17 Q. Okay. So he didn't say anything to you that would
18 indicate any sort of deception before you asked him to step
19 out of the car?

20 A. Not with my conversation, but I understand -- or I
21 noticed some nervous behavior.

22 Q. Okay. And he told you he was nervous, right?

23 A. He did, yes.

24 Q. And you said he gave you the correct name -- his correct
25 name, correct?

1 A. He did.

2 Q. He told you where he was coming from and where he was
3 going?

4 A. Yes, he did.

5 Q. And there was nothing that he told you then that you
6 believed was deceptive, did you?

7 A. To that point, no, I didn't -- I don't feel I was lied
8 to.

9 Q. And he fully complied with everything you were asking
10 him to do, correct?

11 A. I think that we asked for the documents for the car.

12 Q. Mm-hmm.

13 A. I don't think that was produced.

14 Q. Okay. He said he didn't have it and it was a rental
15 car, right?

16 A. Right.

17 Q. And he didn't have the rental agreement in the car?

18 A. Right.

19 Q. And I want to get back to this officer safety thing
20 because he's sitting there talking with Officer Preston,
21 correct?

22 A. Yes.

23 Q. And y'all are both in full uniform, right?

24 A. Yes.

25 Q. You both got guns strapped to your hip, right?

1 A. Yes.

2 Q. And he's standing outside the back of his vehicle,
3 right?

4 A. Yes.

5 Q. And so that's when you go back and search his car with
6 your flashlight?

7 A. From the outside, yeah.

8 Q. Okay.

9 A. Yes.

10 Q. Because you felt unsafe?

11 A. No. I felt he was being deceptive.

12 Q. Okay. Again, you felt he was being deceptive with what?
13 What did he say that you felt he was being deceptive about?

14 A. I don't recall specifically.

15 Q. Have you reviewed your body cam?

16 A. I did.

17 Q. Okay. In reviewing your body cam in preparation for
18 this trial, did you see him make any sort of deceptive
19 comments to you?

20 A. I don't remember them.

21 MR. KOZELSKI: No further questions, your Honor.

22 THE COURT: Where on 17 was this?

23 THE WITNESS: Near Carolina Bay. The road's called
24 Marginal Road, and it was southbound.

25 THE COURT: Any questions as a result of the Court's

1 question regarding the location of the vehicle from the
2 State -- I mean location of the stop from the State?

3 MS. BARBER: No questions, your Honor.

4 THE COURT: From the defense?

5 MR. KOZELSKI: No, your Honor.

6 THE COURT: All right. Any exception to the witness
7 being excused for purposes of this hearing?

8 MS. BARBER: No, your Honor.

9 MR. KOZELSKI: No, your Honor.

10 THE COURT: Sir, you're excused.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Subject to being recalled, of course.

13 You're welcome.

14 (Witness excused.)

15 THE COURT: Anything further from the State?

16 MS. BARBER: Beg the Court's indulgence for a moment,
17 your Honor.

18 THE COURT: Mm-hmm.

19 MS. BARBER: We have no further witnesses at this time,
20 your Honor.

21 THE COURT: Does the defense have any witnesses?

22 MR. KOZELSKI: No, your Honor.

23 THE COURT: Glad to hear any argument.

24 MR. KOZELSKI: Thank you, your Honor. At this time, we
25 would move to suppress these drugs for an illegal search.

1 As he testified, this was a stop -- what I would
2 consider a pretextual stop but for hitting the yellow line.
3 There was no other indicators of driving under the influence
4 or any --

5 THE COURT: You're saying they can't stop me if I'm
6 speeding or if I'm erratic in my driving?

7 MR. KOZELSKI: No. They absolutely can.

8 THE COURT: Mm-hmm.

9 MR. KOZELSKI: And I do think this was a pretextual
10 stop, but they were well within their --

11 THE COURT: And it says you can do that, right?

12 MR. KOZELSKI: Absolutely.

13 THE COURT: Mm-hmm.

14 MR. KOZELSKI: As long as there's reasonable suspicion
15 that that's happening. That's not what we're contesting.
16 What we are contesting is the prolonged nature of this stop
17 and how it went down and essentially tag-teaming my client,
18 opening the door, forcing him out of the car, telling him to
19 get out of the car.

20 THE COURT: Well, is that what he testified to?

21 MR. KOZELSKI: He said he opened the door.

22 THE COURT: He said, "I asked him to get out" --

23 MR. KOZELSKI: And he had opened --

24 THE COURT: -- "and then I opened the door because of
25 the" -- and we all know that traffic through there is bad.

1 Well, I don't know if you drive that way, but that -- there
2 really is no -- what's the word that I'm looking for?
3 There's no safety lane. That's why I asked where it was at
4 because when you're -- there's nothing but grass. There is
5 no real grass because it's more like a --

6 MR. KOZELSKI: Soggy. Yeah.

7 THE COURT: It's more like a --

8 MR. KOZELSKI: It's a ditch.

9 THE COURT: -- a drop. Yeah, it's more like a ditch.

10 MR. KOZELSKI: It's a ditch.

11 THE COURT: So there really -- and people do -- and
12 trucks -- fly through there like --

13 MR. KOZELSKI: And I understand that.

14 THE COURT: -- when they run the lights all the way --
15 actually, a drag -- from what I understand, they drag race
16 down there too, but that's not here nor there. But it is a
17 very -- I think we could all concede it is a very dangerous
18 stretch. And it's dark.

19 MR. KOZELSKI: It is.

20 THE COURT: So --

21 MR. KOZELSKI: And I will --

22 THE COURT: His testimony is that he asked him to get
23 out because it was -- to continue the conversation with him
24 seated in the car was dangerous to them and their safety.

25 MR. KOZELSKI: Yeah. He also said he felt like he was

1 being deceptive, but he didn't know what he was being
2 deceptive about or he can't remember it even though he's
3 reviewed his body camera. Because there is no deception,
4 your Honor. My client fully complied with what he was asking
5 him to do. And what they are assessing is whether or not he
6 is safe to drive. And how long does it take to assess
7 whether somebody's safe to drive? They talked to him for
8 five minutes. He answered all their questions. He told
9 them --

10 THE COURT: Well, I don't know because nobody asked that
11 question. Nobody asked how long was it from the time he
12 stopped to when he got out of the car --

13 MR. KOZELSKI: It's all on video, your Honor.

14 THE COURT: -- to when -- yeah, I'm going to watch it,
15 but nobody asked that question.

16 MR. KOZELSKI: Right.

17 THE COURT: Nobody asked how long -- you know, what time
18 did you activate your lights? What time did he stop? What
19 time did you ask him -- so I don't know. I don't know
20 whether it's 30 seconds into the stop, whether it's 30 -- you
21 know, ten minutes into -- which, as we know, makes a
22 difference.

23 MR. KOZELSKI: So from the time that he is stopped to
24 the time that he's arrested, it's about a little less than
25 eight minutes. Okay?

1 THE COURT: From the time he's stopped till he's
2 arrested?

3 MR. KOZELSKI: Yes. To the time he is put in handcuffs.

4 THE COURT: So it that really the definition of a
5 prolonged stop?

6 MR. KOZELSKI: Well, it is -- the definition that the
7 Court has given is that it takes no longer than what it takes
8 to write the ticket and to --

9 THE COURT: That usually takes about 30 minutes.

10 MR. KOZELSKI: -- be on their way. I don't think it
11 takes 30 minutes to write --

12 THE COURT: I've been stopped. It takes 30 minutes.

13 MR. KOZELSKI: I, unfortunately, have been stopped
14 several times myself, your Honor, and I'm usually out of
15 there within five minutes.

16 THE COURT: I was in college, but it took -- I mean, I
17 was sitting on the side of that road for about 30 minutes
18 waiting for them to check my tags, check my insurance, check
19 that I was who I said I was. Actually, I got a warning. I
20 didn't get a ticket. I got stopped. But it took them that
21 long to find out who I was, what my car -- you know, whether
22 I was insured, whether -- you know, all that stuff they ask
23 you. They take all your stuff. They go back to their car.
24 They run -- it takes a little more than eight minutes for
25 them to give you a ticket. Or a warning, for that matter.

1 MR. KOZELSKI: Well, they're determining whether or not
2 he's safe enough to drive. And they conduct that inquiry,
3 and they have no indicators that he is too intoxicated to
4 drive. He just testified to that. There was no odor of
5 alcoholic beverage. There was no difficulty exiting the
6 vehicle. He wasn't repeating questions. No swaying, unsafe
7 balance. He wasn't leaning on his vehicle. No slurred
8 speech. No slow response. He was effectively sober.

9 THE COURT: I'm sorry. Repeat that again.

10 MR. KOZELSKI: He was effectively sober when talking to
11 these officers. There was no --

12 THE COURT: Say the word you said again. I lost you.

13 MR. KOZELSKI: Sober?

14 THE COURT: Sober. Yeah. I thought you said something
15 else. I couldn't hear you. Yeah. I was like, is there a
16 new word that I -- you know, because I'm old and I don't know
17 it.

18 But go ahead.

19 MR. KOZELSKI: He testified that there were no poststop
20 clues that indicated he was under the influence of anything.

21 But that's not -- once they figured that out, he goes
22 back to the car to search it. And he's saying he's searching
23 it for officer safety, but there is no officer safety issue
24 here, your Honor. He's standing -- my client is standing
25 outside his car with another officer. There's nothing within

1 arm's reach that he can get or grab or do to this officer to
2 harm him. The officers's got a Taser on him. He's got a gun
3 on him. He's in full uniform. There's two of them.

4 I don't think the safety issue is -- the Court should
5 give credence to that at all. He's in there looking for any
6 signs of anything so that he can get in that car. And you
7 can see that in the video. It's very clear that they just
8 want to get in that car under any pretext necessary, and the
9 pretext that they gave was an open container. And as your
10 Honor pointed out --

11 THE COURT: But doesn't the law --

12 MR. KOZELSKI: -- he doesn't even arrest him for an open
13 container.

14 THE COURT: Doesn't the law -- well, I guess what I'm
15 asking is, isn't there a line of cases -- as long as the
16 traffic stop was valid -- which there's no indication the
17 traffic stop wasn't valid. I have no reason to doubt that
18 what they said was he continued to cross the line.

19 MR. KOZELSKI: Well, he said "touched" the line.

20 THE COURT: Same difference. You're supposed to
21 maintain your lane of travel.

22 MR. KOZELSKI: You're right, your Honor.

23 THE COURT: And if you don't -- if there's an
24 indication --

25 MR. KOZELSKI: I think that --

1 THE COURT: -- they think you're distracted --

2 MR. KOZELSKI: -- crossing the line and touching the
3 line is --

4 THE COURT: I think it's all the same soup, different
5 bowl. You need to maintain your lane of travel. There
6 should be enough room on this side and enough room on that
7 side for you to be traversing your lane.

8 And there are many things that cause people not to do
9 that. One, they're texting. They're taking selfies. There
10 are, as we know, people who are inebriated. They drive very
11 slow. They brake a lot. They swerve. But distracted people
12 can do the same things. Either way, you don't have to be
13 inebriated to violate traffic -- people can be distracted
14 with their kids. They just get on their nerves and making
15 too much noise. Somebody hitting somebody. They could turn
16 around to take care of that and they swerve. Police can stop
17 them for that.

18 I don't think there's anything -- you know, as many
19 magistrate appeals as I've heard, people have a myriad
20 reasons of why they feel they should never have been stopped
21 for a traffic citation. It doesn't make the stop
22 unwarranted, you know, legally. Because, you know, most
23 people say, "It was subjective. Everybody sped by me and
24 they stopped me and they didn't stop the other five cars," or
25 "Other people were swerving and they didn't stop them, but

1 they stopped me."

2 So I don't think that invalidates, you know, there being
3 an appropriate reason to have stopped him. So I think we can
4 concede that police had a right to stop him.

5 So where we go from that point is the reason why -- and
6 I'm just trying to figure out if eight minutes really falls
7 into the category of -- because my first notes to myself
8 was -- and that's why I asked the questions that I asked. I
9 very rarely do that. But where it's not clear to me what has
10 happened, I will ask questions.

11 And my first note to myself was, "Why was the stop
12 prolonged?" But now I know it's eight minutes. So that --
13 you know, because in my head, as he was testifying I didn't
14 know whether it was ten minutes, twenty minutes, forty
15 minutes --

16 MR. KOZELSKI: Well, there's no --

17 THE COURT: -- an hour.

18 MR. KOZELSKI: -- set number, your Honor.

19 THE COURT: You know, I just wasn't sure.

20 MR. KOZELSKI: There is no hard line. It's not ten
21 minutes. It's not -- there's no hard line. But it is --

22 THE COURT: Well, it's indicative --

23 MR. KOZELSKI: I think the language --

24 THE COURT: You know, if you got somebody --

25 MR. KOZELSKI: -- that the Court has said --

1 THE COURT: -- sitting out on the highway for no reason
2 and you just haven't -- you know, I think the case law is
3 kind of clear about certain parameters.

4 MR. KOZELSKI: It's however long it takes to effectuate
5 the traffic stop and write a --

6 THE COURT: Mm-hmm. Which is subjective.

7 MR. KOZELSKI: It is subjective. But here, they're
8 trying to find out why he's failing to maintain his lane.
9 They get him out of the car. They talk to him. They see
10 that he has no signs of impairment whatsoever. But that's
11 not what they're interested in. They're interested in going
12 and searching his car, so they come up with a pretextual
13 reason to search his car.

14 And that's why I think it's prolonged, because once they
15 find out that he is not impaired, then I don't think that
16 they should be able to go search through his car.

17 THE COURT: I don't think they said that's why they
18 stopped him. They said -- he said he wasn't trained in
19 giving field sobriety tests. He said he wasn't trained in
20 administering field sobriety tests. I didn't hear him say
21 that they -- or did I miss something?

22 MR. KOZELSKI: He did say that, your Honor. He said
23 that he had hit the yellow line --

24 THE COURT: Yeah.

25 MR. KOZELSKI: -- so that they --

1 THE COURT: Well, they were -- their initial concern was
2 whether he was inebriated, but he --

3 MR. KOZELSKI: Yeah.

4 THE COURT: Not necessarily with alcohol, but, you know,
5 lately it could be any substance.

6 MR. KOZELSKI: Or texting. Or, you know, his --

7 THE COURT: Yeah. There could be any reason to be
8 distracted. I agree.

9 MR. KOZELSKI: Right. But once they found out that,
10 okay, he's not inebriated, then that should be sufficient for
11 them to finish the traffic stop, allow him to get back in his
12 car, give him his license back, give him his IDs back, and
13 let him be on his way. Write him a warning citation, which I
14 haven't seen, your Honor. I didn't get any warning citation
15 with any of this stuff.

16 THE COURT: I don't know that they keep record of
17 warning citations. I don't think they're even necessarily
18 documented. I don't think they keep those. I think they
19 keep -- and this is, again, from my knowledge of hearing
20 magistrate appeals. I don't think they -- I think they only
21 keep traffic citations. I don't know that they keep warning
22 tickets for any -- I don't know that they even catalog them
23 or keep them because they don't have any statistical purpose.
24 They don't have any effect on your insurance. They don't
25 have any effect on your driving record. It's not like they

1 preclude you from doing anything. It's not that you have to
2 show up for anything. I don't know that they keep a record
3 of them.

4 MR. KOZELSKI: I understand. It's usually listed in the
5 incident report. An officer would say that they had given a
6 warning citation for the thing. I didn't see any of that in
7 there. But regardless, as soon as they find out he's not too
8 inebriated to drive, he should be able to get his license
9 back, get back in his car --

10 THE COURT: Well, that's the other rub.

11 MR. KOZELSKI: -- and go.

12 THE COURT: Did he have the proof of the car
13 ownership -- which is a problem -- and did he have insurance?
14 Because you're not only required to give your license, you're
15 -- in this state, insurance is mandatory. So you've got to
16 have your insurance card, your registration, and your
17 license.

18 MR. KOZELSKI: It was a rental car.

19 THE COURT: Mm-hmm.

20 MR. KOZELSKI: They had asked for the rental agreement.
21 He said it's his girlfriend's rental.

22 THE COURT: Mm-hmm.

23 MR. KOZELSKI: She has the rental agreement. All that's
24 in the car, as far as that, is a receipt.

25 THE COURT: I don't think they said it was in the car.

1 I think his testimony was he couldn't locate it.

2 MR. KOZELSKI: Yeah. It was not in the car. He said it
3 was not in the car.

4 THE COURT: That's problematic. They can keep you for
5 that because they can't let you drive -- they can't let you
6 get back in the car and drive.

7 MR. KOZELSKI: So your Honor, I know that -- well, they
8 have his ID. They hold onto his ID --

9 THE COURT: Mm-hmm.

10 MR. KOZELSKI: -- even after he has talked with them and
11 complied with them. And I think that's also a factor of a
12 prolonged stop is if an officer has your ID because you
13 cannot get it back; and if you cannot get it back, then you
14 cannot leave. So keeping of the ID is a --

15 THE COURT: But there was no testimony that they had his
16 ID. Nobody asked that question. And that's why I sort of
17 temper how many questions I ask because there are a lot of --

18 MR. KOZELSKI: Well, I think --

19 THE COURT: -- questions in my mind that were not being
20 asked.

21 MR. KOZELSKI: Because I asked him about his honesty. I
22 said, "He gave you his proper name."

23 THE COURT: Yeah, but you didn't ask --

24 MR. KOZELSKI: And he gave Officer Preston his ID.

25 THE COURT: But you didn't ask how long he had it.

1 You're now expecting me to extrapolate --

2 MR. KOZELSKI: I'm not, your Honor.

3 THE COURT: -- that he had his license, that he was
4 holding it hostage and didn't give it back to him by now.

5 MR. KOZELSKI: And you certainly have those body-cam
6 videos back there --

7 THE COURT: I'm going to watch it.

8 MR. KOZELSKI: -- to aid you in seeing exactly what
9 happened here. But I think that the general vibe of those
10 videos is they wanted to get in his car.

11 THE COURT: Mm-hmm.

12 MR. KOZELSKI: They wanted to see what was in there.
13 You know, I've never had this happen to me. I've never had a
14 cop ask me to get out of my vehicle. I've never asked -- had
15 a cop ask me to search my vehicle. So I don't know what
16 that's like, but I would certainly be nervous if I got asked
17 to --

18 THE COURT: Well, he conceded that. He said most -- I
19 mean, if a blue light pulled up behind me, I would be
20 nervous.

21 MR. KOZELSKI: Well, I think most people would.

22 THE COURT: I'm nervous even when the fire trucks and
23 the police cars and the -- I mean, I just immediately pull
24 over to the -- because it --

25 MR. KOZELSKI: I do too.

1 THE COURT: -- unnerves me, just the sound of it. I
2 mean, it's unnerving. So I would imagine that that's a
3 natural response.

4 MR. KOZELSKI: Well, he testified that most people
5 aren't nervous.

6 THE COURT: No, that's not what he said. He said that's
7 a natural -- because I made a notation of when he said that.
8 Because they asked if he was nervous, and he said, "Yeah.
9 That's a normal reaction." That was his response. That's
10 what I wrote in my notes.

11 MR. KOZELSKI: Okay.

12 THE COURT: My notes are usually pretty accurate. Now,
13 sometimes I paraphrase what people say and use my own
14 verbiage, but that's the gist of it, what he said.

15 MR. KOZELSKI: I think I specifically asked him if most
16 people were nervous when they get pulled over by blue lights
17 and --

18 THE COURT: He conceded it.

19 MR. KOZELSKI: -- I thought he said no, but --

20 THE COURT: Huh-uh. He conceded it. He said, "No.
21 That's normal."

22 MR. KOZELSKI: Well, you know, I don't think that that
23 -- then that should be considered a factor in prolonging this
24 traffic stop. Once they evaluate the situation, see that he
25 is sober to drive, then they write the warning ticket and go

1 off. But they go far beyond that. They go into searching
2 his car. They go into looking through it. And I, you
3 know --

4 THE COURT: Is that what they did? Or did they take the
5 flashlight for officer safety to look to see if there was any
6 weapons or other instrumentalities in the vehicle that would
7 affect their safety?

8 MR. KOZELSKI: Well, they've already looked through it
9 by --

10 THE COURT: What do you mean they "already looked
11 through it"?

12 MR. KOZELSKI: By when they first appeared.

13 So there's two different searches here, Judge. When he
14 first approaches the vehicle, they're looking through the
15 vehicle. And I said that that was -- I understand that that
16 could be for officer safety because you have a person in the
17 car who can reach a weapon within reach. They do not know
18 where a weapon may be.

19 But that safety risk ceases when you get that person out
20 of the car, behind the vehicle, standing and talking to an
21 armed officer. It just does. There's nothing that he can do
22 to reach in his car to grab a weapon. So I think the cases
23 have sort of delineated against this, saying, you know, it
24 ceased to become a safety issue when you have this person
25 detained behind the car and not able to reach any type of a

1 weapon. So I wouldn't --

2 THE COURT: They don't put the cuffs on him, though,
3 until they see the open container, correct? Did I
4 misunderstand the --

5 MR. KOZELSKI: That is correct. They do not put the
6 cuffs on him until --

7 THE COURT: So you're arguing two separate things now.
8 You're saying that anything that happened -- that he said
9 after he was cuffed should be suppressed; is that my
10 understanding?

11 MR. KOZELSKI: That is -- I think that goes along with
12 Miranda's progeny of once he's arrested and continued to be
13 questioned by police without giving his Miranda warnings,
14 then that --

15 THE COURT: What does he say after he's handcuffed that
16 inculcates him?

17 MR. KOZELSKI: You know, I think it's a -- like, what
18 Mr. Cooper is saying is the general demeanor that they're
19 trying to get in, which I think would be a statement.

20 THE COURT: Wait a minute. Say that one more time.

21 MR. KOZELSKI: If you're talking about analyzing
22 somebody's demeanor, analyzing, you know, how they look. I
23 mean, he talked about his silence, that he wanted to get into
24 his silence. Silence is a statement. And I will say that in
25 one of those videos that you have back there, and one of the

1 clips that they want to go in, you have Officer Bianchi
2 saying, you know -- er, I think it's Officer Preston who's
3 saying, "Man, you know, just -- you help us out and we're
4 going to help you out. Just help us out and we're going to
5 help you out." My client says, "I don't want to talk to you.
6 I don't want to talk to you."

7 THE COURT: I'm sorry. He doesn't want to what now?

8 MR. KOZELSKI: "I don't want to talk to you. I don't
9 want to talk to you."

10 THE COURT: Which is his right to remain silent.

11 MR. KOZELSKI: Exactly. It's in there.

12 THE COURT: He doesn't have to inculcate himself.

13 MR. KOZELSKI: It's in there. And I don't think that
14 should be in there either because you're --

15 THE COURT: Tell me what part of the video that you're
16 good with.

17 MR. KOZELSKI: Huh?

18 THE COURT: Tell me what part of this body-cam video you
19 have no exception to.

20 MR. KOZELSKI: I do not have an exception of anything up
21 to 7 minutes and 45 seconds, before he is arrested. Anything
22 after that we would have an objection to --

23 THE COURT: So you have --

24 MR. KOZELSKI: -- except for Bianchi's because he
25 doesn't involve talking to my client.

1 THE COURT: So you have no objection to the beginning of
2 the video until the 7:45 mark.

3 MR. KOZELSKI: Until he is put in handcuffs.

4 THE COURT: I'm asking the time.

5 MR. KOZELSKI: I think -- well, there's -- I think most
6 of the times match all three of the body cameras, because
7 they're all about the same time. One's 30 minutes. I think
8 two are 27 minutes.

9 THE COURT: Mm-hmm.

10 MR. KOZELSKI: So they're all right around the same
11 time.

12 THE COURT: So basically the demarcation line -- you're
13 telling me you have no exception to the beginning of the body
14 camera until he's actually handcuffed. And then after that,
15 it's a custodial stop and you feel that his liberty has been
16 impinged, his freedom restrained, and that nothing should be
17 admissible in terms of statements after that demarcation
18 line.

19 MR. KOZELSKI: There's that, your Honor. And, you know,
20 with these body cams, there are other issues. You know,
21 there's improper opinions that are stated throughout.

22 THE COURT: But is that at the point that -- is that
23 after the --

24 MR. KOZELSKI: That's after that. So, you know, he -- I
25 think it's Officer Engles said something like, "Oh, you said

1 you were swerving, so I'm going to go look in your car." My
2 client never said that. I mean, there's just some things
3 that are said that I don't think should come in. I think
4 there's also some improper opinions.

5 I don't have -- I told them I don't have an issue with
6 Officer Bianchi's because he doesn't have any interaction
7 with my client. It's just him reaching under the front
8 passenger seat to pull out this beer bottle and the Crown
9 Royal bottle from under the seat. And I understand that
10 that's what they're using as the probable cause to do the
11 inventory search. So I don't have any objection --

12 THE COURT: Well, actually, they used Officer Engles'
13 testimony that he saw the bag hanging from the gearshift with
14 the open containers in it that justified the arrest for open
15 container, which is discretionary on their part. They could
16 have given him a citation for it --

17 MR. KOZELSKI: Correct.

18 THE COURT: -- or arrested him. And then after that,
19 they didn't need probable cause. They just needed an
20 inventory search. So the purpose of the search was not to
21 inculcate your client, but to make sure any valuables in the
22 vehicle were documented. And they did that. They searched
23 it to inventory it in case -- you know, people leave all
24 kinds of things in their car, which is amazing to me. I
25 guess that's why people target cars to steal from them. I

1 mean, people leave copious amounts of money in their center
2 console. They leave electronics in their console. They
3 leave electronics in their trunks. They leave -- I mean, you
4 know --

5 MR. KOZELSKI: And I'm not --

6 THE COURT: I mean, your car is almost like your second
7 house, really to some extent, especially if, you know, you're
8 a working person. But people leave all kinds of things in
9 their cars. And I think we know the public policy that's
10 articulated for an inventory search.

11 MR. KOZELSKI: I understand the inventory search
12 exception very well, your Honor, but I don't think it should
13 have gotten to that point. It shouldn't have gotten to that
14 point. They shouldn't have gone searching through my
15 client's car to begin with after they had realized that he
16 was safe to drive. Once they realized he was safe to drive
17 and he complied with all their demands, then they should
18 have --

19 THE COURT: What indication did they have he was safe to
20 drive?

21 MR. KOZELSKI: He testified that he had no indicators
22 that he was intoxicated. No poststop indicators that he was
23 intoxicated. None. He didn't smell like alcohol. He didn't
24 slur his speech. He didn't -- he wasn't swaying or unsteady.
25 He wasn't leaning on his car. I mean, these are all things

1 that I asked him that are postcue DUI detection methods
2 for --

3 THE COURT: But it doesn't have to be alcohol. It can
4 be other substances. And people often are -- when they're
5 taking other types of -- you know, it doesn't have to be
6 alcohol for it to be a driving while impaired. It could be
7 you took too much of your medication and you're about to pass
8 out. It could be -- people are diabetic. They have other
9 conditions. There are lots of reasons the police would need
10 to observe you not just for their safety, but for the safety
11 of others on the highway. I mean, some people leave
12 dialysis, erratic driving.

13 MR. KOZELSKI: Right.

14 THE COURT: There are cases replete in case law where
15 people have passed out while they're driving. I think that
16 there are myriad reasons the police can stop you for their
17 safety and for the safety of those driving on the public
18 highways of this state. I don't think you have to have -- be
19 impaired with alcohol.

20 MR. KOZELSKI: I understand that.

21 THE COURT: A lot of times people are nervous, they're
22 shaking because, you know, they're using lots of -- you know,
23 there are a lot of substances, both prescription and
24 nonprescription, that cause those effects.

25 MR. KOZELSKI: Well, he testified he did not believe he

1 was impaired. He did not believe he --

2 THE COURT: Well, actually, on your cross-examination,
3 this is what he testified to. After you asked him about
4 opening the door, he didn't see the bottles immediately, no.
5 He didn't have any difficulty getting out of the car. He
6 didn't have balance issues, no slurred speech. He opened his
7 mouth to see if there was anything in it. He was very
8 compliant. No odor of alcohol. No marijuana odor.

9 I don't ever recall him saying he didn't not think he
10 was impaired. You asked all those questions leading up to
11 that, but no one ever asked him, "Was he impaired?"

12 MR. KOZELSKI: I believe I did ask him if he was -- if
13 he believed there was no signs of impairment. There was no
14 signs of --

15 THE COURT: He said there was no impression that he was
16 too inebriated to drive, which implies alcohol but not other
17 substances.

18 MR. KOZELSKI: I think inebriation can be any sort of --

19 THE COURT: Inebriation is -- I think if you look at the
20 Webster definition, inebriation -- let's look it up.

21 MR. KOZELSKI: I think it might have to do with --

22 THE COURT: I'm curious.

23 MR. KOZELSKI: -- might have to do with anything you can
24 be inebriated on.

25 THE COURT: Yeah, you've now made me curious now. And

1 now I got to remember how to spell inebriated.

2 "Drunk, intoxicated." That's the definition of
3 inebriation.

4 MR. KOZELSKI: So intoxicated --

5 THE COURT: So that clearly indicates alcohol, but not
6 other substances. What is the difference --

7 MR. KOZELSKI: I think you can be --

8 THE COURT: -- being drunk and inebriated?

9 MR. KOZELSKI: -- intoxicated on any substance.

10 THE COURT: Inebriated is just a fancy way of saying
11 you're drunk, according to Webster.

12 MR. KOZELSKI: Or intoxicated. And I think you can be
13 intoxicated on several substances. It's a toxicology sort of
14 definition of --

15 THE COURT: I think we're -- I think the common
16 layperson's understanding of inebriation is alcohol. That's
17 usually what we use it in connection with.

18 MR. KOZELSKI: Well --

19 THE COURT: But I understand your point.

20 MR. KOZELSKI: Yeah. He didn't indicate to the contrary
21 that he thought he was under the influence of anything
22 whatsoever. So, you know --

23 THE COURT: Well, that's not the question he was asked.
24 He was asked about --

25 MR. KOZELSKI: He was --

1 THE COURT: He was -- but nobody ever asked that
2 question. And I restrained myself from asking it because I
3 felt like I wasn't going to get into the weeds of it. But,
4 you know, the things that I needed clarity on I did ask. But
5 nobody -- I mean, you sort of danced around it and asked the
6 typical questions you would ask in a DUI prosecution, but
7 nobody asked about -- nor do I necessarily believe -- nobody
8 asked whether he had the training and experience to know the
9 difference. You know, I don't know.

10 Anything further, Mr. Kozelski?

11 MR. KOZELSKI: Nothing further.

12 THE COURT: What relief are you seeking from the Court?

13 MR. KOZELSKI: Your Honor, we're asking that the drugs
14 that they found pursuant to the search be suppressed.

15 THE COURT: Does the State have any further argument in
16 response to Mr. Kozelski's presentation to the Court?

17 MS. BARBER: Yes, your Honor.

18 THE COURT: You may proceed when you're ready.

19 MS. BARBER: Thank you.

20 THE COURT: You're welcome.

21 MS. BARBER: Your Honor, the State respectfully asks
22 that you deny the defense's motion to suppress the cocaine
23 found in this case.

24 Your Honor, first addressing Mr. Kozelski's assertion
25 that the initial -- asking Mr. Simmons to get out of the car

1 was inappropriate, when he asked him to get out of the car,
2 as Sergeant Engles did testify on the stand, he asked him to
3 do this for safety reasons. I think it got kind of --

4 THE COURT: Well, that isn't all he said, though, was
5 it? He said, "I even asked him if he's nervous to get out of
6 the car."

7 MS. BARBER: Right. So there's --

8 THE COURT: "There's law that allows me to do that." I
9 think that was statement.

10 MS. BARBER: Yes, ma'am. The nervousness and the
11 safety.

12 As it pertains to the safety precaution, this is a busy
13 highway, as your Honor previously stated. There is no
14 emergency lane on the side for them to pull over. As a
15 result -- and I regret not requesting the Court watch those
16 videos prior to now because there were some questions that
17 Mr. Kozelski and I, I think, failed to ask to clarify or
18 paint a full picture of what occurred on --

19 THE COURT: I'm going to watch them in just a second.

20 MS. BARBER: Oh, great. Oh, yes, ma'am.

21 THE COURT: I don't think I'm at a deficit for not
22 having watched it before he testified.

23 MS. BARBER: Yes, ma'am. And in watching those videos,
24 certain things will become apparent.

25 But after asking Mr. Simmons to step out of that

1 vehicle, Sergeant Engles did repeatedly state that he thought
2 that Mr. Simmons seemed nervous. Thereafter, he does go with
3 the flashlight and looks inside of the vehicle to just scan
4 the area, as you would with any other traffic stop. Officers
5 walk up and look inside of these vehicles, and that's what he
6 did in this case.

7 Now, in terms of the eight minutes that ensued over this
8 point of time, there are three officers involved in this
9 case. Officer Bianchi was running his plate information and
10 his personal information as it related to his identification.
11 Again, I wish that we'd asked more questions, and it will
12 become apparent in the video, but they do ask him for
13 identification, at which point he supplies an ID but not his
14 driver's license. They're battling with that, looking him up
15 in the system.

16 Officer Preston's standing with Mr. Simmons as Sergeant
17 Engles does canvass the car. Now, in looking in the car, he
18 doesn't search the vehicle at that point. Instead, he's only
19 looking in and getting a plain-view image of what could be in
20 there, at which point he does find the alcohol bottles. The
21 alcohol bottles are what lead to the arrest of Mr. Simmons.
22 A search is not conducted at that point, nor is this a
23 prolonged period of time in which Mr. Simmons is being
24 detained at that point.

25 Your Honor, the search is the result of the tow that

1 occurred thereafter. Officers, in accordance with CPD
2 policy -- as Sergeant Engles stated, it is a part of their
3 policy that when they arrest someone and when that person is
4 in the car alone, they do in fact tow those vehicles in order
5 to get the car off the side of the road. And in towing those
6 vehicles, they search the vehicle as a result, in accordance
7 with police policy.

8 Now, the South Carolina Supreme Court stated in *State v.*
9 *Miller* that this is something that is an exception to having
10 a search warrant. It does not violate someone's Fourth
11 Amendment rights. That's what has occurred here. That's
12 what has occurred here. A search was conducted as a result
13 of the tow, and as a result of that search, cocaine was found
14 in that vehicle, your Honor.

15 In terms of also the arrest, Mr. Kozelski outlined the
16 point of Officer Engles opening the door and asking
17 Mr. Simmons to get out of the car. He himself said that his
18 client was compliant. I agree that he was compliant after
19 watching these videos. At no point was he forced to get out
20 of the vehicle. He instead was asked. They asked him for
21 the rental agreement. As your Honor stated, he couldn't
22 supply that. They asked him for his license. He didn't
23 supply that either.

24 Again, not a prolonged search. The search was a result
25 of the towing. And for those reasons, your Honor, in

1 compliance with the South Carolina Supreme Court, we do ask
2 that you deny the defense's motion.

3 (Pause in proceedings.)

4 MS. BARBER: Your Honor?

5 THE COURT: Yes?

6 MS. BARBER: I hate to interrupt, but do I have a moment
7 to go to the restroom?

8 THE COURT: You do.

9 MS. BARBER: Thank you.

10 THE COURT: You're welcome.

11 Do y'all have a copy of the warning ticket to provide
12 that to Mr. Kozelski?

13 MR. KOZELSKI: Your Honor, he has a ticket for the open
14 container, but not for the --

15 THE COURT: So there was no warning; it was a ticket for
16 the open container?

17 MR. KOZELSKI: For the open container it wasn't a
18 ticket. It was an arrest.

19 THE COURT: Okay. No, I mean --

20 MR. KOZELSKI: So I mean, he got ticketed for sure.

21 THE COURT: Oh, but there was another --

22 MR. KOZELSKI: There was the failure to maintain lane.
23 He was -- I wasn't aware of --

24 THE COURT: He got a warning for that.

25 MS. COOPER: I think the Court was correct in that they

1 probably don't keep a copy of that, but I can inquire real
2 quick.

3 THE COURT: I don't think they keep copies of warnings,
4 yeah. They don't have --

5 MR. KOZELSKI: And it doesn't -- in the incident
6 report --

7 THE COURT: I think for statistical purposes they keep a
8 record of the number they've written, but I don't think they
9 actually keep a record of who they've given them to.

10 MR. COOPER: Would you like me to inquire of the
11 officer?

12 THE COURT: Nah, I don't think it's that important. I
13 just wanted to make sure if there was something they needed
14 to be provided a copy of that it was given to them.

15 You said that you did not have any objection to Officer
16 Bianchi's; is that what you told me? Or did you tell me?

17 MR. KOZELSKI: Yeah, no, your Honor. That's -- he has
18 no interaction -- it's --

19 THE COURT: Is that Bianchi 19582229MD4? That's the
20 only one with --

21 MR. COOPER: That is the only clip --

22 THE COURT: That's the only one with Officer Bianchi?

23 MR. COOPER: Yeah, that's it.

24 MR. KOZELSKI: I think that's just him finding the -- I
25 think it's --

1 MS. BARBER: Officer Bianchi has a body-worn cam in its
2 entirety. We just intended to play that small clip if we
3 were permitted to play the clips from the other body cams.
4 But I'm not sure if Mr. Kozelski is saying he doesn't object
5 to Bianchi in its entirety or just that clip.

6 MR. KOZELSKI: Oh, just the clip. The clip that they
7 intended --

8 THE COURT: That's all I have here, right?

9 MR. COOPER: Yes, ma'am.

10 MR. KOZELSKI: Yeah.

11 MS. BARBER: Yes, ma'am.

12 MR. KOZELSKI: It's just him finding the bottles under
13 the seat.

14 MR. COOPER: What I would say too, Judge, just for the
15 Court's edification, I think it is Officer Bianchi's clip
16 where there's about -- if I have the right officer -- about
17 six seconds -- it's either that or it's Officer Engles' body
18 cam. There's about six seconds where they mention a prior
19 trafficking charge. The State did mute that. So your -- one
20 of your videos you'll have this six-second gap.

21 THE COURT: It's not Officer -- I don't think it's
22 Officer Bianchi's.

23 MR. COOPER: No, but we have muted that out.

24 THE COURT: Mr. Kozelski, are you representing him on
25 these other charges?

1 MR. KOZELSKI: I would think so, your Honor.

2 THE COURT: I mean, were you appointed on all of them to
3 begin with?

4 MR. KOZELSKI: I was appointed to represent him on all
5 of these. I was relieved on all of these --

6 THE COURT: Oh.

7 MR. KOZELSKI: -- but I'm happy to take them back.

8 THE COURT: Well, when I signed the order appointing
9 you, you know, I don't --

10 MR. KOZELSKI: It could have been just for this one.

11 THE COURT: I really did not look at the top of the
12 order to see what numbers were on it.

13 MR. SMITH: Judge, I think they were included.

14 MS. BARBER: It had all of them.

15 MR. KOZELSKI: Okay.

16 THE COURT: Okay. Then that answers my question. I
17 just signed --

18 MR. KOZELSKI: I didn't even know that I was assigned,
19 your Honor.

20 THE COURT: Yeah, I looked -- yeah, I signed it on
21 Monday.

22 MR. KOZELSKI: Okay.

23 THE COURT: No. Was that Monday, Mr. Smith, y'all
24 talked to -- or was it Tuesday? Whatever day y'all came in
25 and told me he wanted representation was the day I signed it.

1 MR. SMITH: I think it was Tuesday.

2 THE COURT: Well, then yeah, I think that's when I
3 signed it. It's downstairs. I didn't bring it up here with
4 me. I don't think I did.

5 (Pause in proceedings.)

6 THE COURT: Are y'all -- y'all want to use all these
7 clips?

8 MS. BARBER: Yes, ma'am.

9 MR. COOPER: Yes, ma'am.

10 THE COURT: Are you all also prosecuting the rest of
11 these cases?

12 MS. BARBER: I cannot say that with certainty, your
13 Honor.

14 THE COURT: No. I mean are you the person. I know you
15 don't --

16 MS. BARBER: Oh, me personally, am I assigned to them?

17 THE COURT: Are you assigned to these cases?

18 MS. BARBER: I am.

19 THE COURT: Now, what did y'all offer him initially?

20 MS. BARBER: Initially we offered him three years -- a
21 negotiated sentence of three years probation, to include drug
22 and alcohol testing, if he pled to one count of PWID coke,
23 one count of possession coke, and an unlawful carrying --

24 THE COURT: Which one is being reduced to the
25 possession?

1 MS. BARBER: Initially it was this one, before I dug
2 further into it, and then the North Charleston case was going
3 to be a PWID. But since then -- well, that doesn't matter.
4 But that was the case.

5 THE COURT: What are the alleged circumstances of the
6 PWID case from this other indictment?

7 MS. BARBER: I know that it's a vehicle stop. I haven't
8 looked at it in a few months. Give me just a moment, your
9 Honor.

10 THE COURT: Can you look at it while I'm watching the
11 video? Yeah. I want -- I'd like to know what the alleged
12 facts are for that case.

13 MS. BARBER: Oh. And do you mind if I just recite them?

14 THE COURT: That's fine.

15 MS. BARBER: Thank you.

16 On January 6 of 2019, a traffic stop was conducted on a
17 Chevrolet Tahoe at the cross section of Fellowship Road and
18 Dewsbury Road in Charleston, South Carolina. When officers
19 approached, they smelled a strong scent of marijuana.
20 Officers then asked if there was anything illegal in the car,
21 at which point the defendant stated that there was a gun.

22 A search was conducted thereafter. That search yielded
23 41.5 grams of a white powdery substance. And for your
24 Honor's knowledge, they did lab test it. It was reduced from
25 a trafficking to a PWID because the powder substance that was

1 found was not all cocaine.

2 THE COURT: So what was the amount of it that was
3 cocaine?

4 MS. BARBER: I don't have that file with me, but it --

5 THE COURT: But it was reduced from a trafficking to a
6 PWID?

7 MS. BARBER: Yes, ma'am. It was between about 4 and 5
8 grams.

9 THE COURT: So it went from 41 to 4.5?

10 MS. BARBER: Yes, ma'am.

11 THE COURT: And when are y'all going to set that for
12 trial? Because that's an old case too.

13 MS. BARBER: Fairly soon. I haven't sent in my
14 suggested cases for the new year.

15 THE COURT: Mm-hmm.

16 MS. BARBER: But I may place that one on as well.

17 THE COURT: And Mr. Kozelski, are you ready to go
18 forward on that trial as well? I mean, not right this
19 minute. I'm sorry.

20 MR. KOZELSKI: I --

21 THE COURT: I just have not been artful --

22 MR. KOZELSKI: Give me till Friday, Judge.

23 THE COURT: No, I haven't been artful in the way I've
24 been saying things lately. I think it's because it's the end
25 of the year and my brain is just fatigued. But I think you

1 understand the gist of what I'm saying. Not tomorrow, not
2 this week, but just in general, you're -- you've had all of
3 his cases, right?

4 MR. KOZELSKI: I've had all of these cases. I'll be
5 honest, I have not looked at that one in particular.

6 THE COURT: Mm-hmm.

7 MR. KOZELSKI: I don't even know if I have the body
8 cameras or anything on that. I remember this one.

9 THE COURT: From 2019?

10 MR. KOZELSKI: From 2019. So I remember this one. And
11 we only had Engles' body-worn camera until, I guess, they
12 just got --

13 THE COURT: Well, until they interviewed him. And I
14 believe Ms. Barber when she says that when she was talking to
15 him, he was like, "Oh, yeah, we got it."

16 MR. KOZELSKI: Yeah.

17 THE COURT: And she was like, "Oh, wow. I need it." So
18 he sent it over to her, and then she immediately contacted --

19 MR. KOZELSKI: Right.

20 THE COURT: -- your client so that he could -- and they
21 watched -- she says -- and again, I have no reason to doubt
22 what she's telling me --

23 MR. KOZELSKI: Right.

24 THE COURT: -- as an officer of the court. She said she
25 and him watched it together for the first time together.

1 MR. KOZELSKI: Yeah.

2 THE COURT: It was her first time seeing it and his
3 first time seeing it. And I have no reason to doubt what
4 she's telling me, which would not be unusual. You know, it's
5 not unusual.

6 MR. KOZELSKI: So I -- I got these two cases in this
7 same packet of discovery, and they're almost kind of
8 identical in a way.

9 THE COURT: It sounds like a traffic stop, and this
10 one's a little more solid over the marijuana.

11 MR. KOZELSKI: But I have not seen the video. I don't
12 imagine it's going to take me very long to prepare.

13 THE COURT: No, I was just curious if you knew enough
14 about it to have an intelligent conversation --

15 MR. KOZELSKI: I do not.

16 THE COURT: -- with your client about it.

17 MR. KOZELSKI: I do not at this time. I don't remember
18 getting a lab report or anything about that. Because like
19 you said, it went down from 47 to 5.

20 THE COURT: Which would justify the PWID, depending on
21 what -- well, no. Is this the one you're going to do the
22 possession on? Or was this the one you were doing PWID on?

23 MS. BARBER: This was -- the North Charleston case --

24 THE COURT: Mm-hmm.

25 MS. BARBER: -- which is the one --

1 THE COURT: I assume that's the North --

2 MS. BARBER: Yes, ma'am.

3 THE COURT: It's the one we're not talking -- that's in
4 this pack that we're not talking about.

5 MS. BARBER: Yes, ma'am. That one was going to be -- he
6 was going to plead -- or I was offering for him to plead to
7 PWID on that case. This particular case is the one --

8 THE COURT: Possession.

9 MS. BARBER: -- I was reducing as a part of the plea
10 negotiation.

11 THE COURT: And then what where you going to do with the
12 other cases?

13 MS. BARBER: I was going to dismiss them.

14 MR. KOZELSKI: Sounds like we're almost there, Judge.
15 We're close. We're close.

16 THE COURT: Close in how?

17 MR. KOZELSKI: Just if we can get them to the
18 misdemeanors and first offenses --

19 THE COURT: They're not going to -- yeah.

20 MR. KOZELSKI: I mean, I --

21 THE COURT: Tell me what supports it being a PWID. And
22 if he was smart, he would have asked them if they would let
23 him do it under the YOA so he could get it expunged and then
24 he still salvages his life.

25 MR. KOZELSKI: Yeah.

1 THE COURT: If he were a thinking person, that's what
2 he'd do.

3 MR. KOZELSKI: He's 28 now.

4 THE COURT: Huh? Oh, he's beyond it.

5 MR. KOZELSKI: Yeah. He's 28.

6 THE COURT: Yeah. I don't know; he looks so young. I
7 apologize. I didn't mean to -- what's the word I'm looking
8 for? I mean, he just looked like he was in his early 20s.
9 Yeah, so I thought he was going to -- could have had a YOA,
10 but that's not an option. And there would be no other way
11 for this to be expungeable, would it?

12 MS. BARBER: Not that I know of.

13 THE COURT: Yeah, I just don't know that I would gamble
14 my freedom on something that might or might not happen. He
15 can still get a good job other places.

16 MR. KOZELSKI: Judge, it is not my decision.

17 THE COURT: Yeah. But, you know, I'm just --

18 You know, Mr. Simmons, you don't know me, but these --
19 all these people in this room know me real well. I'm real
20 direct. I'm not like most women. I don't dance around
21 things. I just tell it -- I straight -- what y'all say?
22 "Straight no chasers; keep it 100; no cap"? I'm learning all
23 these new terms. Which to me, I think, how does "capping"
24 have anything to do with a lie? That to me, it just, like,
25 does not resonate in my head.

1 MS. BARBER: Maybe it goes --

2 THE COURT: Maybe I'm just too logical and I think, how
3 does that have any -- but then that would tell my age, right?
4 I'm like, "Capping"? What in the world does that have to do
5 with a lie?

6 But anyway, I digress. I -- because I do this all the
7 time and I've been doing it for over 28 years and I kind of
8 see where this train is headed, because even he -- you know,
9 even if this gets suppressed, he's still got to live to fight
10 another day. And this ain't going nowhere. And I don't know
11 the facts and circumstances of this, but the odor of
12 marijuana paired with a legitimate stop is, for you, the most
13 problematic.

14 MR. KOZELSKI: Well, I --

15 THE COURT: But I don't -- I ain't seen the video on
16 that one.

17 MR. KOZELSKI: If we take care of one of these, maybe
18 they'll be willing to go down on the other.

19 THE COURT: That's not been my experience. That has not
20 been -- and I think you know that that won't be the
21 experience.

22 MR. KOZELSKI: I understand, your Honor.

23 THE COURT: Although that may defy --

24 MR. KOZELSKI: I think --

25 THE COURT: I just don't think that's going to be the

1 solution.

2 MR. KOZELSKI: And I think a lot of the problem is --
3 and I know that Ms. Barber's sort of hamstrung in herself
4 because of her office policy of not extending offers once on
5 the trial docket. And I understand that, and it's not
6 Ms. Barber's fault. And we've worked on this when I had the
7 case for a long time about getting this done, and we thought
8 we were very close to getting it done.

9 THE COURT: Mm-hmm.

10 MR. KOZELSKI: But it -- I mean, we just have that
11 additional hurdle that --

12 THE COURT: He probably should have been represented. I
13 would think -- and I would ask that you all would prevail
14 upon those who are -- have the authority to make decisions in
15 your office to take into consideration he was not represented
16 by counsel when he rejected the offer.

17 And sometimes the intervention of counsel -- shadow
18 counsel ain't the same. You know, people look at this
19 process and they think "I can represent myself and it's going
20 to be easy." And I watched his face when we started, and it
21 -- the recognition set in that, "No, I can't do this. This
22 is a lot more complicated than I think it is." And I think
23 sometimes we -- for lack of a better word, people place
24 themselves in jeopardy, but also they get punished for just a
25 lack of judgment, just a lack of maturity.

1 I don't think there's anything nefarious involved in it
2 or anything that's -- what's the word I'm looking for? --
3 deliberately -- I just think people just lack judgment. They
4 just -- we tend to look at people and expect them to think
5 like we do. And if they thought like we did, we all wouldn't
6 have jobs. I mean, you know, everybody is equipped with
7 different levels of understanding, maturity, and otherwise.
8 And I think there's enough room for y'all to talk about
9 resolving this.

10 But I'm going to finish watching the videos. But I can
11 tell you from the beginning I'm troubled. Yeah, I'm
12 troubled. But that don't mean even if he gets his way, he's
13 still got to live to fight another day.

14 MR. KOZELSKI: Right.

15 THE COURT: And these other indictments ain't going
16 nowhere.

17 MS. BARBER: I'll certainly relay the message, your
18 Honor. But just to clarify -- and my boss is aware of this
19 as well.

20 THE COURT: Mm-hmm.

21 MS. BARBER: When he rejected the offer, he was
22 represented by counsel.

23 THE COURT: Who was he -- oh, I'm sorry. I
24 misunderstood.

25 MS. BARBER: It was Mr. Kozelski. It was same day that

1 he had --

2 THE COURT: Why did I think it was -- oh, I got him
3 confused with Mr. -- oh, I apologize.

4 MS. BARBER: It's okay.

5 THE COURT: I thought -- yeah, I thought that he had
6 also rejected again last week.

7 MS. BARBER: No, he didn't --

8 THE COURT: I didn't realize. So he rejected, what, in
9 June?

10 MS. BARBER: Yes, ma'am.

11 THE COURT: And so Mr. Kozelski, you represented him
12 then?

13 MR. KOZELSKI: I did, your Honor. It was the same day
14 that I got relieved, or essentially --

15 THE COURT: So y'all wasn't on the best of terms, is
16 what you're saying.

17 MR. KOZELSKI: Well, I'll tell you this, your Honor.

18 THE COURT: Neutral terms at best?

19 MR. KOZELSKI: Josh and I -- I've known Josh for eight
20 years.

21 THE COURT: Mm-hmm.

22 MR. KOZELSKI: And we've always had a good relationship.
23 And I think when it got put on the trial docket -- and, you
24 know, us public defenders are very busy. We're often in
25 court, and we're not there to pick up our phone all the time.

1 And, you know, he's worrying about things like the
2 empanelment documents. He's really into his case.

3 THE COURT: Yeah.

4 MR. KOZELSKI: He wants to be a part of the case. He's
5 very interested and trying to figure out how the system
6 works --

7 THE COURT: Mm-hmm.

8 MR. KOZELSKI: -- and how he can help do it.

9 THE COURT: Mm-hmm.

10 MR. KOZELSKI: And I think he felt that I was giving him
11 the cold shoulder because I wasn't doing everything --

12 THE COURT: Yeah, people --

13 MR. KOZELSKI: -- that he was asking me to do.

14 THE COURT: Lawyers, we ain't the best always at
15 communicating.

16 MR. KOZELSKI: And that's --

17 THE COURT: But sir, especially coming from private
18 practice, I didn't call my clients unless I had something to
19 tell them, because every ten minutes was \$75 and I was going
20 to bill them. So I only called you if I had something to
21 tell you. And that's how lawyers think because we got too
22 much going on. We got too many fires burning. So if we
23 don't have --

24 Especially with COVID, us coming back from COVID. I
25 don't know about y'all, but I've been in court every single

1 -- I don't even have any recollection of what my office looks
2 like. I have been in court every single day. And not till
3 5:00; like 6:00 or 7:00 I'm leaving this building or Berkeley
4 for at least the last six months because everything else is a
5 blur. So I feel certain y'all have been in court as much as
6 I have just trying to get this docket caught up from -- just
7 from COVID, just trying to get caught up. So I understand --

8 MR. KOZELSKI: And I don't have anything --

9 THE COURT: -- that it's frustrating to people.

10 MR. KOZELSKI: I don't have anything to do with next
11 year, because I see your name on the docket pretty much every
12 week.

13 MS. BARBER: For the trials.

14 THE COURT: Oh, I'm -- no, I -- but that's how it always
15 is. We're in court every week unless we're on vacation. And
16 it's a crippling pace that we work at, yeah.

17 MR. KOZELSKI: Well, I think what Court --

18 THE COURT: And I'm not complaining. But I mean, it's
19 just our reality.

20 MR. KOZELSKI: I think what Court Administration fails
21 to see is that, you know, even if we have a plea in, you
22 know, the morning and one in the afternoon, that takes up a
23 whole day.

24 THE COURT: It really does.

25 MR. KOZELSKI: And we don't get to go see our new

1 clients in -- you know, it just piles up. And so --

2 THE COURT: They're under the impression y'all want to
3 have court on the first week of the year. I said, "They do
4 not." They are like, "Lawyers are calling us saying they
5 want court in the first week of the year." I said, "I don't
6 know who y'all talking to, but people coming off of a holiday
7 do not want to have to work during the new year to start
8 court the first week of the year." That means you have,
9 like, no holiday.

10 MR. KOZELSKI: That stretch from July to November where
11 we have about 12 weeks of court in a row is debilitating. I
12 mean, it's so hard.

13 THE COURT: It was a -- I had spoke with another lawyer
14 -- when I go to a small circuit -- and as you know,
15 Charleston, Richland, and Greenville are the busiest
16 circuits. Although, I have had a lot of court in Greenville.
17 I have a lot of court in all those places, but Greenville
18 seems to have more manpower and more judges a week than we
19 do.

20 MS. BARBER: Than us?

21 THE COURT: So it's --

22 MR. KOZELSKI: They dismiss a lot too.

23 THE COURT: Oh, yeah. Let me tell you, when I have
24 pleas in Greenville, they roll in with a cart that's about
25 from here to here, and they -- and I do pleas back to back

1 until I tell them I'm tired and I'm ready to go home. They'd
2 go till 10:00 at night if I let them.

3 But they also have somebody that literally sits in the
4 courtroom and manages every bit of minutiae from the
5 solicitor and the public defender's office to make sure that
6 everything -- and they have a tiered trial system where
7 everything's a date certain so you know. And then, like, if
8 the first case that's five days falls off, you go to the next
9 day, which is a four-day case, and then it's a three-day
10 case, and then it's a two-day case. It's a very interesting
11 system that they have, and it works. It works for them.

12 And then you go to Richland, which is just about as busy
13 as we are, and -- but Charleston is just -- I had a
14 conversation. I'm not going to relay that person's name.
15 Went to a small circuit. She used to be employed in one of
16 these offices I'm not going to say. But she looked at me and
17 said, "I don't know how you do it. In Charleston you work at
18 a sadistic pace. My life is so much better now that I left."
19 And it didn't hit me until she said it, and I said,
20 "Sadistic. That's a strong word." I went and sat in my
21 office and I thought, she might not be wrong. But we're so
22 used to this that, you know -- and then -- we're just used to
23 it, so we -- you know, we do what we have to do.

24 So I would not be -- I believe you just didn't have
25 time. I mean, I wouldn't -- you're just like, "That's more

1 important." You folks, you got an hour to eat -- well, most
2 time you got about 40 minutes to eat and do work and then go
3 back to court. I mean, it's -- you know, I don't know the
4 resolution to it except that we all probably need to pay more
5 attention to our quality of life and our peace of mind.

6 But nonetheless, let's just say for argument's sake --
7 and again, I'm just being really transparent -- that I have
8 concerns about this stuff and I suppress it. Let's just say
9 for argument's sake I do that. The State may decide to
10 appeal it. They certainly can if they want to.

11 I mean, that's three years from now that it will show
12 back up around and may either, you know, decide three, maybe
13 four, three and a half years. But in the meantime, the State
14 has one, two -- what is there, seven more of these? Yeah.
15 And some of them are together. So let's just say --

16 MS. BARBER: I think there are five separate cases.

17 THE COURT: Five separate. They got five more shots at
18 this.

19 MR. KOZELSKI: Right. And we have certainly talked
20 about it.

21 THE COURT: And we know that the odds are --

22 MR. KOZELSKI: And your Honor --

23 THE COURT: -- because they get better and better every
24 time they try -- you know. Because that's all they -- you
25 know, it's just odd.

1 So I guess what I'm saying in an inartful way is I
2 really think there should be enough wiggle room on both sides
3 of this equation to see if y'all could work out something
4 beneficial that makes y'all happy. But he may not get
5 everything he wants. He's between the proverbial rock and
6 hard place. South of the rock and, you know, north of the
7 hard place. He might need to have the -- because sometimes
8 you just -- because even if he gets what he wants today, he's
9 got a lot of exposure.

10 And how old is he?

11 MR. KOZELSKI: Twenty-eight.

12 THE COURT: Twenty-eight. And, you know, I never -- you
13 know, I don't tell grown folk what to do because, you know,
14 it's your life, if you can live with the outcome of it.

15 And who knows what a jury will do? I'm on the edge of
16 my seat every time a verdict comes back. I never know what a
17 jury's going to do. I mean, I feel like I'm at the theater
18 waiting to see, like, what did they do?

19 MR. KOZELSKI: I don't even know who this jury is.

20 THE COURT: We have had -- you know, Charleston is very
21 fortunate. We have a very diverse electorate. And I think
22 we have a pretty -- I mean, I could look at the list and tell
23 you. Mr. Smith was there. He knows who's on the jury.

24 But I just think there's enough room for y'all to have a
25 discussion about it. If y'all want to talk while I'm

1 watching the rest of these videos, because it's 5:04 and I
2 know my court reporter's ready to go home. And I know she's
3 hungry because I'm hungry. But she's such a trooper. She
4 just accommodates and tolerates me.

5 Go ahead.

6 MS. BARBER: I was just going to make your Honor aware
7 we did speak -- I did speak to the higher-ups earlier this
8 week.

9 THE COURT: Mm-hmm.

10 MS. BARBER: I will relay the message that you just gave
11 me to --

12 THE COURT: Well, the week has developed.

13 MS. BARBER: Yes, ma'am.

14 THE COURT: You know, earlier in the week, we were just
15 looking at a continuance. We were dealing with a defendant
16 who was unrepresented. Now we have a defendant who is
17 represented. We're now dealing with the totality of what he
18 faces.

19 MS. BARBER: Yes, ma'am.

20 THE COURT: And, you know, the prospect of y'all having
21 to deal with it, you know, the way you would deal with it.
22 The way the attorney general's office would deal with it,
23 they're having a case in limbo for the next three and a half
24 years. Bird in the hand.

25 MS. BARBER: Okay.

1 THE COURT: So why don't y'all talk for a minute while I
2 watch these other three videos.

3 MS. BARBER: Yes, ma'am.

4 (Pause in proceedings.)

5 THE COURT: Did y'all talk?

6 MS. BARBER: We did talk, and I do not think we can come
7 to a resolution, your Honor.

8 MR. KOZELSKI: Your Honor, I think the State's
9 position --

10 THE COURT: This is off the record.

11 (Off the record at 5:11 p.m.)

12 (Back on the record at 5:17 p.m.)

13 THE COURT: I've watched all the videos. I can tell you
14 preliminarily my decision would be anything after he's
15 handcuffed is out.

16 MS. BARBER: Okay.

17 THE COURT: Clearly his freedom was impinged upon. He
18 was not free to leave. They clearly were asking him
19 questions that were inculpatory. They were telling him to
20 cooperate. I mean, all of that is like classic Denno. Like,
21 you know, promises, rewards, you know, without me going into
22 the minutiae. But once you put handcuffs on somebody, it's
23 clear that they can't leave. They're not free to leave.

24 And not only did he put handcuffs on him, he said,
25 "You're under arrest." That should have been the triggering

1 point for Miranda. And it wasn't. So I think that's
2 clear-cut black letter precedent. That doesn't come in.

3 I'm tired and I'm hungry and I need to get some
4 nourishment and a little bit of rest to think a little more.
5 And I'll tell you my decision regarding the remainder of it
6 in the morning. We will start at 10:00. I have an
7 appointment in the morning, and I think that I would get here
8 by 9:30, but I would rather give my -- you know, give myself
9 a window because I would not want the jury waiting. They've
10 already been advised to be here at 10:00.

11 I have some -- and I had concerns as I listened to the
12 officer's testimony. I'm concerned about -- even though the
13 entire stop took eight minutes, I'm concerned about the
14 extension of the stop beyond license, registration, name.
15 I'm concerned about whether there was pretext about safety,
16 because they could have talked to him from the opposite side
17 window where they were safe. His safety was never in
18 question, as long as you're in a vehicle.

19 Frankly, I think getting out of the car increased all of
20 their -- that stretch of road is dangerous and it is dark.
21 And it would seem to me that you would rather stay --
22 although there's snakes in that grass and some other stuff,
23 some other vermin, and I wouldn't want to take the chance of
24 having an encounter with it, because if you're knee deep in
25 certain places -- but I would think that if that were your

1 concern, you would have just stayed where you were on the
2 passenger side and spoken with him while he was looking for
3 his wallet and all this other stuff.

4 The other concern I have is that whatever was in the
5 vehicle was not in plain view when they were talking to him
6 because he clearly is flashing the flashlight into the car
7 and the bag is not hanging where he testified it was.
8 Although, it was not under the seat where you say it was. It
9 was on the floorboard, and it was hanging out enough for them
10 to clearly see. It's an opaque, you know, plastic bag.

11 And I'm sorry. I've been talking with my head -- and
12 that's the worst thing I tell people not to do and I been
13 doing it. But I kind of got a booming voice, don't I? So
14 you can hear me.

15 But I'm concerned about that. And I'm concerned about
16 whether this -- I think the stop in and of itself was
17 legitimate. I think if somebody's wavering, you can stop
18 them. I don't think you have to -- I think for public safety
19 purposes, you have to make sure that the roadways are
20 maintained and that people who are navigating them are
21 capable of doing that in a safe manner. But once -- you
22 know, once -- and he says very clearly, you know, "Why did
23 you need to get me out of my car? Why was that necessary?"

24 But on the other side of that coin is the fact that he
25 didn't have his license. They could have taken him into

1 custody right at that moment. He was driving without a
2 license.

3 MR. KOZELSKI: He did have one, your Honor. It was in a
4 cup holder. They found it.

5 THE COURT: They found it, but he didn't.

6 MR. KOZELSKI: Right. Because he was looking for it and
7 he --

8 THE COURT: So it required them to go into the car and
9 find it.

10 MR. KOZELSKI: Well, they asked him to get out of the
11 car before he could find it.

12 THE COURT: No. I looked at it. When they asked him
13 for his license, he did not have it. He said, "I just left
14 my girl's house."

15 MR. KOZELSKI: Yeah.

16 THE COURT: He started describing where he's coming
17 from. He never -- they found his license. He didn't have
18 his license. And frankly, they didn't have to go searching
19 through the car to find his license. When he said, "I don't
20 have my license," navigating the roads in this state without
21 a license is a crime. They could have taken him into custody
22 right at that moment because they could not have let him
23 drive away in that vehicle without his license.

24 Now, do they do that? Yeah. Do they cut people slack?
25 All the time. Could he have given them his birth date and

1 them pulled it up on the computer? Yeah. Could they have
2 compared the picture on their computer and him and known it
3 was him? Yeah. I mean, they have a lot of flexibility, a
4 lot of latitude, a lot of discretion in how they conduct
5 business.

6 You know, and they make judgment calls. Would they
7 probably have let me go if I said, "Listen, I was rushing and
8 I left my billfold at home. I don't have my license"? They
9 might have followed me home to make sure I got there safely
10 and probably would have let me, you know -- but maybe not.
11 They might have taken me into custody. Who knows? But they
12 have a lot of discretion when it comes to that.

13 So I'm concerned about the stop going from he was -- and
14 then the officer clear says, you know, "We wanted to know if
15 he was impaired. You know, we're just trying to figure out
16 if you're drunk. You know, we just need to make sure you
17 don't have any open" -- I think he said "open containers in
18 the car." And if I'm wrong, it's late, and y'all count it to
19 my head that I'm mistaking anything.

20 But they said to him, you know, "You went over the
21 yellow line, making sure you're not drunk, not texting and
22 driving." And then he goes into the whole thing about, you
23 know, "I had two accidents because I was texting." And then
24 he clarified, "No, I had one accident because I was texting
25 and talking to my girl," blah, blah, blah. "And then I had

1 another accident because I was just inattentive. And so now
2 I don't do that anymore."

3 And of course, they can do a Terry frisk if they feel
4 their safety is in jeopardy. But I'm just -- I don't know if
5 it's just that -- I just need to think about it. I'm
6 concerned that the stop did not simply stop at license,
7 registration, insurance.

8 And it is problematic that he said, "This is a rental
9 car, and I don't have my papers. My girl has them," because
10 they don't have any independent way to corroborate that. As
11 we know, at that time of night all rental places are closed.
12 And I don't know that they would have taken the time or that
13 they had the affirmative obligation to call Enterprise and
14 see if, in fact, he legitimately had this car.

15 Which could have been a whole 'nother can of worms,
16 because if she rented the car and didn't have him as an
17 authorized person, you know, they could have kept the car off
18 on the side of the road. It wouldn't have had to have been
19 towed because you know they can do all that remotely now.
20 And they will.

21 So, you know, I don't know. I have some concerns, and I
22 need to think about them overnight --

23 MS. BARBER: Yes, ma'am.

24 THE COURT: -- and process that. So I'll see y'all at
25 10:00. Have a good night.

1 MS. BARBER: Thank you.

2 MR. KOZELSKI: Thank you, your Honor. Good night.

3 THE COURT: Good night.

4 Sir, make sure you're here.

5 THE DEFENDANT: Oh, I'm sorry.

6 THE COURT: I will just remind you that I've already
7 advised you regarding your right to be tried in your absence.
8 Do you recall that conversation?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Okay. See you in the morning at 10:00.

11 THE DEFENDANT: See you at 10:00, your Honor.

12 (Proceedings recessed at 5:24 p.m., to resume at
13 10:00 a.m., Thursday, December 14, 2023.)

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1 (Proceedings resumed at 10:28 a.m., Thursday,
2 December 14, 2023, outside the presence of the jury.)

3 THE COURT: You may be seated. Good morning.

4 All right. Anything further from the State?

5 MS. BARBER: Nothing further from the State.

6 THE COURT: Anything further, Mr. Kozelski?

7 MR. KOZELSKI: Your Honor, I did have one pretrial
8 matter that I forgot to address yesterday.

9 THE COURT: I'm listening.

10 MR. KOZELSKI: In this case, there is a white substance
11 that's measured at about 15 grams. It was originally charged
12 as part of the trafficking case. That substance has been
13 tested, and it came back as caffeine or tetracaine. What I'm
14 worried about -- and some of the legal research that I've
15 done since coming onto this case recently is that I --
16 talking to Ms. Barber, she intends to solicit opinion
17 testimony either from Officer Engles or Amber Horn that this
18 substance is a substance that is commonly used to mix or cut
19 with cocaine. I think that that is an expert opinion. We're
20 looking at Rule 701 or 702.

21 THE COURT: I don't even know which witness you're
22 referring to. Which witness are you referring to?

23 MR. KOZELSKI: Amber Horn would be the person who tested
24 the drugs at CPD.

25 THE COURT: Mm-hmm. She was qualified as an expert in

1 the last trial based on her education, training, and
2 experience. She's a chemist.

3 MR. KOZELSKI: I believe that, your Honor. I don't
4 know -- you know, I think that there needs to be some
5 foundation laid.

6 THE COURT: I think that you'll have to make a
7 contemporaneous objection. I don't make rulings like that in
8 advance.

9 MR. KOZELSKI: Right.

10 THE COURT: I don't have enough information.

11 MR. KOZELSKI: And I plan to do that. But the reason
12 why I'm bringing this up now is that I don't want this to be
13 said in opening or whatever without that foundation and
14 without the proper person testifying to it. Some of the case
15 law that I've read, *U.S. versus Johnson*. It's a Fourth
16 Circuit case which -- you know, there's a fine line between a
17 lay opinion and an expert opinion when you're talking
18 about --

19 THE COURT: She, based on my previous experience, was
20 well qualified as an expert and probably will be qualified to
21 elicit that opinion. She does the analysis at the lab. I
22 think she'd know the difference when she's analyzing drugs.
23 But I'm not making any evidentiary decisions in advance of
24 hearing the testimony.

25 MR. KOZELSKI: And I agree. That's what I'm asking for

1 the Court to do. I just don't want them to say that in their
2 opening and then not be able to lay some sort of foundation,
3 because then I think that it would be grounds for a mistrial.

4 THE COURT: Did you talk to her to see if that's what
5 she even intended to do?

6 MR. KOZELSKI: I talked to Ms. Barber, and I believe she
7 intends to elicit it at a --

8 THE COURT: But does she intend to go into it in her
9 opening arguments?

10 MS. BARBER: And your Honor, Mr. Cooper will be doing
11 the opening this morning.

12 MR. COOPER: And Judge, I do intend to mention it. It
13 was found contemporaneous to the traffic stop. It was not
14 ultimately tested to be a narcotic, but it is certainly
15 relevant and involved in the case and --

16 THE COURT: We're only going forward on 2018-GS-10-5434,
17 correct?

18 MR. COOPER: Yes, ma'am.

19 THE COURT: Bear with me one moment.

20 They have to prove trafficking, correct?

21 MR. COOPER: Ma'am?

22 THE COURT: They have to prove trafficking, correct?

23 MR. COOPER: It was trafficking. It's been reduced to
24 PWID based --

25 THE COURT: PWID. Which raises another issue. Have

1 y'all amended this indictment and initialed it, as you would
2 need to, to change the charge from the trafficking to the
3 PWID, which is possession with intent to distribute? And one
4 of the elements of PWID is how things are packaged.

5 MR. KOZELSKI: Right.

6 THE COURT: So it's relevant.

7 MR. KOZELSKI: But this isn't the narcotic, your Honor.

8 THE COURT: Okay. Make it more clear what you're saying
9 to me then.

10 MR. KOZELSKI: This is a separate package --

11 THE COURT: Mm-hmm.

12 MR. KOZELSKI: -- that weighs about 15 grams.

13 THE COURT: Mm-hmm.

14 MR. KOZELSKI: It was -- they said that it originally
15 field tested for cocaine. When it was sent to the lab, it
16 came back as caffeine. So my understanding from what
17 Mr. Cooper is saying is that he plans to talk about that in
18 his opening. He plans to talk about the fact that this is
19 used as a cutting agent for drug dealers. I don't know what
20 witness he's going to get that in under.

21 THE COURT: I don't think he can say he's a drug dealer.
22 I think that would be an inappropriate characterization. He
23 can say that it's a cutting agent for -- actually, in opening
24 he should only be saying what the evidence will show. It's
25 not a closing argument. And since nothing has been admitted,

1 it would be inappropriate to make any type of argument like
2 that. He can say, "What we believe the evidence is going to
3 show in this case," --

4 MR. KOZELSKI: Right.

5 THE COURT: -- which is that the weight -- the elements
6 of possession with the intent to distribute deals with how
7 things are packaged because they have to prove that there was
8 an intention to distribute the substance. And that might
9 well be one of the elements.

10 MR. KOZELSKI: I agree. And this is not one of the --
11 he's not charged with the substance even though he was
12 originally charged with it.

13 THE COURT: He is charged with possession with the
14 intent to distribute cocaine, correct?

15 MR. KOZELSKI: Correct, your Honor.

16 THE COURT: Uh-huh.

17 MR. KOZELSKI: But there is a separate package that is a
18 non-narcotic, which they --

19 THE COURT: I don't know whether that fits into the
20 elements of them proving that he -- all right. I guess
21 before we even entertain this conversation, are you telling
22 me now that you're conceding the suppression issue? Because
23 I need to know. Because you're proceeding as if, you know,
24 you've withdrawn that motion --

25 MR. KOZELSKI: Absolutely not.

1 THE COURT: -- and I need to know if that's your
2 intention.

3 MR. KOZELSKI: No, absolutely not, your Honor.

4 THE COURT: Okay.

5 MR. KOZELSKI: That was the only other pretrial issue
6 that I had. But no, your Honor, we are not conceding that
7 traffic stop issue.

8 THE COURT: Have y'all talked over the evening?

9 MR. KOZELSKI: No, your Honor.

10 MS. BARBER: No, ma'am.

11 Regarding the offer, your Honor?

12 THE COURT: Just talked.

13 MS. BARBER: Not since yesterday.

14 THE COURT: Period, about the totality of the case as we
15 ended on yesterday.

16 MS. BARBER: No, ma'am.

17 THE COURT: I'm having that discussion.

18 MS. BARBER: We have not.

19 MR. COOPER: We edited the body-cam clips pursuant to
20 your ruling about the statements made after arrest. We
21 edited them in that fashion, and we went over that with
22 Mr. Kozelski. So we did talk about that and we have done
23 that pursuant to the Court's order.

24 THE COURT: So you have reviewed the redacted body clip
25 footage?

1 MR. KOZELSKI: I haven't reviewed them, your Honor, but
2 I definitely trust Mr. Cooper -- his word and what he says
3 they did.

4 THE COURT: So I would assume, based on our previous
5 conversation regarding those clips, that what you represented
6 to the Court on yesterday is you have no exception to those
7 clips prior to Mr. Simmons being handcuffed.

8 MR. KOZELSKI: That's correct.

9 THE COURT: Okay. So that's a satisfactory redaction,
10 correct?

11 MR. KOZELSKI: Yes, your Honor.

12 THE COURT: Okay.

13 MR. COOPER: And Judge, I just want to make sure I --
14 for the record. And I think this goes along with your
15 ruling. There are clips that occur after he's in handcuffs,
16 but it shows the officers locating items in the car. It does
17 not show any conversation with the defendant, but it --

18 THE COURT: I said everything after he was handcuffed is
19 out. I think I was clear.

20 MR. COOPER: Your Honor, that involves where the
21 officers locate narcotics inside the car, is what the State
22 needs to show and intends to show. Because that doesn't --
23 it isn't affected by statements played and it shows nothing
24 with the defendant. It's the officers locating the
25 narcotics, which is a part of this case. And I think that's

1 entirely relevant, entirely appropriate.

2 THE COURT: I think it's going to be a moot issue once I
3 rule. So you all can take your seats. Thank you.

4 On yesterday, there was a motion to suppress that was
5 made by the defendant asking and seeking that all fruits of
6 the search of the vehicle be suppressed. The defense's
7 argument is that there was no probable cause to have extended
8 the stop.

9 I think that the defense concedes that there was an
10 appropriate traffic infraction for which the defendant's
11 vehicle was stopped, that being failure to maintain a lane,
12 although nobody really articulated that. But that -- after I
13 thought about it on last evening, that's the only traffic
14 infraction that would have been an appropriate basis for a
15 stop where the testimony is that he continued to touch the
16 yellow line. There was no indication that he crossed the
17 yellow line, which really is technically the definition of
18 failure to maintain a lane.

19 The officers -- and I'm going to go through their
20 testimony very briefly so that we have clarity for purposes
21 of the record.

22 We heard from Lieutenant Engles, who testified that he
23 was a patrol officer. He had been with the Charleston Police
24 Department for a period of 16 years, that he was part of the
25 quick response team, that he was at that time patrolling

1 Savannah Highway. He made a traffic stop on Mr. Simmons'
2 vehicle based on the fact that his vehicle continued to touch
3 the center line. He had concern that he might be impaired,
4 what we would in common parlance call driving under the
5 influence.

6 And so what he indicated, according to his testimony,
7 was that Mr. Simmons failed to maintain his lane of travel,
8 and he was concerned about his driving behavior, that when he
9 stopped him, what he noticed was nervous behavior. And for
10 the safety -- well, what he said was there was busy traffic.
11 They felt it was safer to remove Mr. Simmons from the
12 vehicle.

13 However, on cross-examination, Mr. Kozelski was able to
14 elicit from the officer that he, in fact, opened the door for
15 Mr. Simmons, that he did not see any bottles immediately,
16 that Mr. Simmons had no difficulty in exiting the vehicle,
17 that he didn't have any balance issues and his speech was not
18 slurred. He had him open his mouth to see if anything was in
19 it. He was very compliant.

20 And I think what is more important is that there was no
21 -- when they initially stopped him, nor when he got out of
22 the vehicle, there was no evidence of any odor of alcohol and
23 there was no evidence of any odor of marijuana. There was no
24 administration of any field sobriety tests because he was not
25 trained or certified to administer those. He had no

1 impression that Mr. Simmons was too inebriated to drive.

2 Now, he testified that the bottle was draped off the
3 shifter, which I would interpret to mean the gearshift of the
4 vehicle. But when looking at the vehicles -- when looking at
5 the videos, there is no bag draping from the gearshift in the
6 vehicle. In fact, the alcohol that was retrieved, that being
7 the Crown Royal bottle, was partially under the seat of the
8 car. What was visible were the handles of the bag. And so
9 that was retrieved from the floorboard, driver's side of the
10 vehicle.

11 He indicated that he did not have an in-car camera,
12 although he did have a body camera. He said that Mr. Simmons
13 was not speeding. He was not braking. He pulled over
14 immediately. No chase was involved.

15 And then once they removed Mr. Simmons from the vehicle,
16 his windows were down, and so the officers were really quite
17 honest that they were looking for items in the car. And what
18 is, I think, most telling is that when they stopped
19 Mr. Simmons and the light was shined into the vehicle, there
20 is nothing that is apparent in the car that would give rise
21 or give the impression that there was some evidence of
22 criminal activity being afoot in that vehicle or with
23 Mr. Simmons.

24 It was not until he was removed from the car and
25 basically a search took place that items were found that gave

1 rise to what the officer testified to was a discretionary
2 call that they can gave a citation, a written -- well, they
3 gave him a written warning for other things, but they could
4 have given him a simple citation for the open container or
5 they could have arrested him. They chose to arrest him,
6 which of course triggered a search incident to arrest of the
7 vehicle, which is where they found the substances.

8 What he actually testified to is there was a beer bottle
9 in a transparent handbag that was hanging from the gearshift.
10 But when I looked at those videos, I don't see anything
11 hanging from the gearshift in that vehicle as the lights are
12 being shined into the car. And granted, they are -- those
13 videos are not necessarily the best quality, but the light is
14 shining directly on the gearshift and I'm not able to discern
15 anything hanging from it on either side of that shifter,
16 which was actually the officer's testimony. But, you know,
17 it was a gearshift in the vehicle.

18 Where they found the drugs search incident to arrest was
19 in a door panel and also in a sunglass case. And of course,
20 the video of the body-worn cam does show the sunglass case
21 being found actually before the search incident to arrest.
22 So some search of that vehicle did take place in order to
23 find the sunglass case prior to the inventory search of the
24 vehicle.

25 And basically, in all honesty -- and I have to give the

1 officer credit for his candor -- he testified that he really
2 didn't have any concern about Mr. Simmons being inebriated,
3 that his nervousness is what was his red flag -- my words,
4 not his -- to have him step out of the car and to investigate
5 further, that that really was his sole reason to do it. And
6 again, I credit him for his candor. He said, "The law allows
7 me to do that."

8 He said when he asked him to step out of the car, his
9 hands were shaking, that he felt face to face he would be
10 able to tell if he was being deceptive. And he wanted to
11 look at the car while Mr. Simmons was talking to the other
12 officer. And he wanted to see why the defendant was being
13 dishonest. And this car was stopped near Carolina Bay on
14 Marginal Road southbound. And again, in candor, he admitted
15 most people are nervous, that it is a normal reaction to be
16 nervous when you're stopped by the police.

17 My main concern when I heard this motion -- and I made a
18 note to myself -- was, first, him touching the yellow line is
19 a sufficient reason for the police to have stopped him and to
20 determine if, in fact, he was capable of driving in a safe
21 manner on the highway. But there were no other indicators
22 other than him touching the yellow line. There was no
23 speeding. There was no constant braking or otherwise. But I
24 think -- you know, but theoretically, and giving deference to
25 that subjective observation, he failed to maintain his lane

1 and certainly could have been stopped for that and could have
2 been issued a ticket for that.

3 My concern came and the note that I made to myself is,
4 why was the stop prolonged? And our case law is very clear;
5 someone being nervous is not a reason to prolong a stop from
6 its initial purpose. And our Supreme Court has been very
7 clear and has articulated a two-prong standard that this
8 Court is to employ in making that assessment.

9 The Court has been clear that once a police officer
10 pulls over a motor vehicle for a traffic violation, the
11 officer may order the driver to exit the vehicle without
12 violating his Fourth Amendment proscriptions on unreasonable
13 searches and seizures. And in carrying out a traffic stop,
14 the officer may request a driver's license, vehicle
15 registration, run a computer check, and issue a citation.

16 To prolong or exceed the scope of a traffic stop beyond
17 the initial traffic violation, a police officer must have a
18 reasonable suspicion that criminal activity may be afoot,
19 citing of course the Fourth Amendment. And our courts have
20 also found that reasonable suspicion to prolong or exceed the
21 scope of a traffic stop beyond the initial traffic violation
22 is not susceptible to a rigid formulaic, F-O-R-M-U-L-A-I-C --
23 I didn't pronounce it very well, Madam Court Reporter; I
24 apologize -- approach, but it requires more than a mere hunch
25 or unparticularized suspicion, again citing the Fourth

1 Amendment.

2 Reasonable suspicion to prolong or exceed the scope of a
3 traffic stop beyond the initial traffic violation requires a
4 police officer to have an objective, specific basis for
5 suspecting the person stopped of criminal activity. And of
6 course, reasonable suspicion to prolong or exceed the scope
7 of a traffic stop beyond the initial traffic violation is not
8 a high bar and is a less demanding standard than probable
9 cause to arrest and requires a showing considerably less than
10 a preponderance of the evidence.

11 And inquiry into a reasonable suspicion to prolong or
12 exceed the scope of a traffic stop beyond the traffic
13 violation involves the totality of the circumstances, again
14 citing the Fourth Amendment. And in making that
15 assessment -- that being inquiry into a reasonable suspicion
16 to prolong or exceed the scope of the traffic stop beyond the
17 initial traffic violation -- requires the Court to give due
18 weight to commonsense judgments reached by officers in light
19 of their experience and training.

20 And unlike the cases that have supported suppression --
21 that being which I've already noted: hollowed-out blunt
22 cigarettes, the smell of marijuana, the smell of alcohol, the
23 immediate and plain view of contraband -- those certainly
24 would justify the prolonging of a stop and the officer making
25 additional inquiry. And our courts have been very clear that

1 when a case involving an alleged improper prolonged traffic
2 stop boils down to the flip of a coin, the Fourth Amendment
3 requires the Court to find in favor of the defendant since
4 the State has the burden to demonstrate reasonable suspicion.

5 Our courts have also articulated that warrantless
6 searches are generally per se unreasonable unless they fall
7 within a recognized exception under the Fourth Amendment.
8 However, I don't know that that would necessarily -- well,
9 I'm not certain that the search of the compartment of the
10 vehicle where the alcohol was found was not necessarily an
11 unnecessary way that the stop was prolonged or that a warrant
12 would have been necessary for the search of the interior
13 compartments of the vehicle and the fact that they arrested
14 him in a discretionary manner for the open container. The
15 rub really becomes how did they find the open container such
16 that they were able to do the inventory search of the vehicle
17 when the drugs were found. And of course, in this case
18 consent is not an issue.

19 And throughout the video, Mr. Simmons asked, you know,
20 "Why was it necessary for me to get out of my car? Clearly,
21 you know, I'm not incapacitated in any way." And I'm really
22 not sure I'm persuaded that it was necessary for officer
23 safety. In fact, I think getting out of the car made it an
24 even more dangerous situation, especially on that stretch of
25 17 that's almost pitch dark. There is no real emergency

1 clearance on either side of that highway. It's a grassy
2 area. And it would seem to me it would have been more
3 prudent to continue to talk to him from the passenger side of
4 the vehicle versus having him get out of the vehicle, both
5 for officer safety and for Mr. Simmons' safety.

6 And I think what I found most convincing upon doing some
7 research last night -- I had done some preliminarily, but I
8 stayed and did a little more last night and I did a little
9 more this morning before. That's why we were delayed in our
10 start, and I appreciate your patience while I continued to
11 research this some more.

12 A very recent case -- one of my cases actually that I
13 really had a great deal of consternation about before I made
14 a decision -- the Supreme Court gave us a great deal of
15 clarity regarding how the Court is to judge circumstances of
16 this type and when searches are prolonged and why they are
17 prolonged.

18 And the other thing that was not clear for me is when
19 the warning ticket was actually written to Mr. Simmons. And
20 I don't think anybody ever really gave any clarity on that
21 point. Because our Supreme Court has said that once a
22 warning ticket is written, that that really is a demarcation
23 line where the stop should conclude and there is no further
24 need to prolong a traffic stop.

25 In the interest of brevity, again, he had a -- he was

1 rightfully stopped by the police. My concern is the fact
2 that the stop was prolonged and whether the prolonging of the
3 stop is supported by the Fourth Amendment and not in
4 contravention of the Fourth Amendment in light of all the
5 surrounding circumstances of the incident and whether a
6 reasonable person would have believed -- well, no. Scratch
7 that. I apologize. And whether the officer had a reasonable
8 and articulable suspicion that criminal activity was afoot
9 other than a hunch.

10 And having him exit the vehicle in and of itself is not
11 a violation of the Fourth Amendment or a proscription on
12 unreasonable searches and seizures once the police pull over
13 a motor vehicle for a traffic violation. And they may order
14 the driver to exit the vehicle without violating the Fourth
15 Amendment on unreasonable searches and seizures, citing *State*
16 *versus Pichardo*, which is P-I-C-H-A-R-D-O, and *Pennsylvania*
17 *versus Mimms*, which is 434 U.S. 106, which is a 1977 United
18 States Supreme Court decision. The other is a 2005 Court of
19 Appeals decision from the State of South Carolina.

20 In carrying out the stop, an officer may request a
21 driver's license, vehicle registration, run a computer check,
22 and issue a citation. In order to prolong or exceed the
23 scope of a stop beyond the initial traffic violation, law
24 enforcement must have a reasonable suspicion that criminal
25 activity may be afoot. If during the stop of the vehicle the

1 officer's suspicions are confirmed or further aroused, even
2 if for a different reason than he initiated the stop, the
3 stop may be prolonged and the scope of the detention enlarged
4 as circumstances require.

5 Reasonable suspicion is not a rigid formulaic approach.
6 It requires more than a mere hunch or unparticularized
7 suspicion. In other words, for an officer to have reasonable
8 suspicion, there must be an objective, specific basis for
9 suspecting the person stopped of criminal activity. And
10 reasonable suspicion is not a high bar. It's a less
11 demanding standard than probable cause and requires a showing
12 considerably less than a preponderance of the evidence.

13 The Fourth Amendment requires at least a minimal level
14 of objective justification for making the stop. And this
15 involves, again, a totality-of-the-circumstances inquiry.
16 The Court, of course, must give weight to commonsense
17 judgments reached by officers in light of their experience
18 and training.

19 And courts have been clear of late, especially in the
20 last couple years, to have cautioned that nervousness is
21 typically present with any police encounter and that nervous
22 behavior is a pertinent factor in determining reasonable
23 suspicion. But our Supreme Court -- and I'm quoting -- has
24 become weary with the many creative ways law enforcement
25 attempts to parlay the single element of nervousness into a

1 myriad of factors supporting reasonable suspicion. In this
2 case, there was no evidence of any other evidence such as
3 hollowed out cigars, the smell of marijuana, the smell of
4 alcohol, or otherwise that could be combined with the general
5 observation of nervousness.

6 And again, I credit the officer for being candid and
7 saying that the main reason he felt the stop should have been
8 prolonged was not that he had any real indication that
9 Mr. Simmons was impaired or was not capable of driving the
10 vehicle, but because he was nervous and that alerted him that
11 he felt there was something more afoot, something more in the
12 vehicle.

13 And of course, we know pretextual stops are not illegal,
14 which is what Mr. Kozelski has argued, that this stop was
15 merely a pretext. Our case law is clear that those are not
16 illegal. But where the rub or the problem or the challenge
17 comes is when there's a prolonged stop. There must be an
18 objective basis for concluding that criminal activity may be
19 afoot. Simply put -- and again, I'm quoting from the *Frasier*
20 case -- in law, the ends do not justify the means because the
21 State -- well, and I'll skip that part.

22 My concern about the prolonged nature of the stop was
23 that the only factor that has been articulated by the officer
24 is that Mr. Simmons was nervous. And as a result, that --
25 and he, again, was candid. I give him credit for that. He

1 does not say he prolonged the stop because he was concerned
2 about him being impaired. He says he prolonged the stop
3 because he was nervous and that made him think that there was
4 something more in the vehicle, which is what made him go look
5 in the vehicle when his partner was talking to Mr. Simmons at
6 the foot of Mr. Simmons' vehicle, where they were positioned
7 in between the cruiser and the back end -- the tail end of
8 the car that Mr. Simmons was operating on that evening.

9 The Court finds that there has not been the
10 establishment by the burden of proof that there was an
11 objective, specific basis for suspecting Mr. Simmons, after
12 being stopped, of criminal activity. And while I acknowledge
13 that reasonable suspicion is not a high bar and is a less
14 demanding standard than probable cause and requires a showing
15 considerably less than a preponderance of the evidence, the
16 Fourth Amendment requires at least a minimal level of
17 objective justification for prolonging the stop. And that
18 looks at an inquiry into the totality of the circumstances.

19 And of course, I defer to the commonsense judgment of
20 the officer. And his gut hunch may well have been accurate,
21 as it was in this instance, but our case law demands more
22 than a gut hunch of nervousness to have prolonged the stop.

23 Again, I reinforce that the stop in and of itself was
24 proper. What is troubling is the prolonging of the stop
25 beyond its initial purpose without any additional objective

1 factors that would alert the police that criminal activity
2 was afoot such that an extension of the stop was justified.

3 So in this instance, there was a lack of reasonable
4 suspicion to prolong the traffic stop. And therefore,
5 while -- of course, a search incident to arrest is always
6 appropriate once you have arrested someone. But once the
7 Court finds that the stop being prolonged, that there was no
8 justification for that, there is no need for the Court to go
9 into any additional inquiry. And certainly none was argued,
10 because the argument from the State was that the stop was
11 appropriate, which I agree with them. The stop was
12 appropriate.

13 They argue that the stop being prolonged was appropriate
14 based solely on nervousness, which really is what it amounts
15 to because the officer -- again, in candor I give him
16 complete credit -- he says, "I had no concern about him being
17 impaired. I did not think he was inebriated. I did not
18 think" -- my word, not his -- "I did not -- but I just have
19 -- him being nervous gave me concern, and that's why we
20 prolonged the stop." And our Supreme Court has been very
21 clear that when it's a 50/50 call, it should inure under our
22 United States Constitution and our state constitution to the
23 benefit of the defendant.

24 So this Court's ruling has been based on *State versus*
25 *Michael N. Frasier*, which was heard in 2022, and I do not

1 have -- it is at 437 S.C. 625. It's a Supreme Court -- 2022
2 Supreme Court opinion.

3 Anything further from the State?

4 MR. COOPER: Your Honor, the State would -- we want to
5 make sure it's on the record and the Court is aware that
6 there was argument from the State as well as ample evidence
7 in the body cam, which the Court watched, that the defendant
8 did not provide a rental agreement, the defendant did not
9 provide his driver's license to the officers --

10 THE COURT: That's a ticket. That's a ticket.

11 MR. COOPER: Ma'am?

12 THE COURT: That's not an arrest.

13 MR. COOPER: Your Honor, the State's argument is that he
14 was arrested less than eight minutes into the traffic stop.

15 THE COURT: That's because they searched his car.

16 MR. COOPER: Ma'am?

17 THE COURT: That's because they prolonged it and
18 searched his car.

19 MR. COOPER: And the search was not prolonged because he
20 did not provide information. And the testimony was --

21 THE COURT: When a search is prolonged is when the
22 initial part of why you're stopping him for a traffic
23 infraction, there is a demarcation line, when you go beyond
24 that. It clearly went beyond that. If they stop me, using
25 myself as an example --

1 MR. COOPER: Sure.

2 THE COURT: -- and I don't have my license and I don't
3 have my registration and I don't have my insurance card, they
4 are not going to have me get out of my car because I'm
5 nervous. They're going to give me a ticket for NRV. They're
6 going to give me a ticket for driving without a license. And
7 they're going to give me a ticket for whatever else I'm -- or
8 they may decide to give me a warning. They may say, "Ma'am,
9 I'm going to follow you home to make sure you don't drive on
10 the highway in this car." They may pull me on the side of
11 the highway and say, "We need you to call somebody and come
12 get your car because we can't let you drive because you don't
13 have your license, and you don't have a right to be on the
14 highway without a license."

15 But you and I know, as a practical matter, that ain't
16 going to happen. They're going to give me some tickets, and
17 then I'm going to show up at municipal court two or three
18 weeks later with my license, with my ID, with my insurance,
19 and they're going to dismiss them all. And that's how -- and
20 I may not even have to show up at court. All I've got to do
21 is go to the clerk of court at the municipal court and say,
22 "You know what? I got a ticket the other day. The officer
23 told me if I come up here and I show y'all my license, my
24 insurance, and my registration, that all of this is going to
25 go away." And we know that.

1 There's no reason, when I don't have my license or my
2 registration, for me to have to get out of my vehicle.

3 That's --

4 MR. COOPER: Yes, your Honor.

5 THE COURT: And I've been here -- I've heard a lot of
6 magistrate's appeals where that's the case. I've heard a lot
7 of cases where that's the case. I just am not aware of them
8 making you get out of your car because you don't have your
9 license and your registration.

10 MR. COOPER: Yes, ma'am. I just wanted to make sure the
11 record's clear for any potential appeal from the State --

12 THE COURT: The record's clear because we argued it for
13 two hours yesterday.

14 MR. COOPER: -- that the officers have the ability to
15 verify his information so they can issue those tickets.

16 THE COURT: Mm-hmm.

17 MR. COOPER: The length of the stop was not unduly
18 extended because of that. They were verifying information
19 for --

20 THE COURT: I never said the time of the stop. That's
21 not what the Supreme Court has said. The Supreme Court talks
22 about prolonging of the stop. They don't talk in terms of
23 time. I think the only time they talk in terms of time is
24 when you take, like, 15 minutes to bring a K-9 to a car.
25 That becomes a problem. But our Supreme Court has never

1 articulated that there's some definitive timeline. What they
2 talk in terms of is there's a stop, there's a reason for the
3 stop, and once the reason for that stop has been concluded,
4 prolonging it beyond that. I don't think they put a timeline
5 on that.

6 And I think that's very clear from this case that
7 there's no formulaic approach to how long beyond -- you know,
8 because, I mean, people get nervous in cars. Sometimes
9 they've got to go through their glove compartments and find
10 all -- you know, which, for the life of me, I don't
11 understand why people keep all their documents for their car
12 in their glove compartment, because if somebody steals your
13 car, they can take everything with it. But that's just a
14 habit some people have. They keep everything in there.

15 And sometimes people just get nervous and they forget
16 where they put stuff. But you don't have to get out of your
17 car for us to find all that.

18 MR. COOPER: And we want to make sure that --

19 THE COURT: But I want to make sure that we're not
20 re-arguing this because I've ruled.

21 MR. COOPER: No, ma'am.

22 THE COURT: Yeah.

23 MR. COOPER: I'm just making sure --

24 THE COURT: Because I heard argument yesterday --

25 MR. COOPER: Sure, your Honor.

1 THE COURT: -- and everything you're telling me is what
2 you told me yesterday.

3 MR. COOPER: As well as the safety reasons of being on
4 the side of the highway, according to the officers. I just
5 want to make sure it's on the record for the appeal.

6 THE COURT: It's on the record. You argued it for --
7 weren't we here for about two and a half hours yesterday? I
8 let y'all talk till y'all couldn't talk no more. Yeah.

9 Anything further, Mr. Kozelski?

10 MR. KOZELSKI: No, your Honor.

11 THE COURT: All right. Thank you very much. Have a
12 good day.

13 MS. BARBER: Thank you, your Honor.

14 THE COURT: Well, I need y'all to stay in place for me
15 while I excuse the jury.

16 Please get the jury for me.

17 THE BAILIFF: Yes, your Honor.

18 THE COURT: But I still think y'all need to chat.

19 MR. COOPER: Certainly, Judge, we're not swearing the
20 jury?

21 THE COURT: Why would I swear the jury?

22 MR. COOPER: Just making sure. Just making sure.

23 THE COURT: I'm letting them go home.

24 MR. COOPER: Just making sure.

25 THE COURT: I just don't want them in an empty

1 courtroom.

2 They have to come down the hall. You can sit down until
3 they open the door.

4 MS. BARBER: Thank you.

5 THE COURT: You're welcome.

6 Do y'all want to go ahead, though, and amend this
7 indictment while we're waiting on the jury to come? Because
8 y'all need to -- I would assume -- or do y'all want me to
9 simply write it on here and -- well, the whole body of it
10 kind of -- well, it's just a notice document. Do y'all need
11 me just to write PW -- possession with the intent to
12 distribute?

13 MR. COOPER: Yes, ma'am.

14 MS. BARBER: Yes, your Honor.

15 MR. KOZELSKI: That's fine.

16 MR. COOPER: I've had this issue with you, Judge, where
17 you wrote it on there.

18 THE COURT: I sometimes write it. Sometimes y'all write
19 it for me and initial it.

20 MR. COOPER: I'm fine with you writing it.

21 THE COURT: Are y'all okay with me just writing it and
22 y'all initialing -- me initialing it?

23 MS. BARBER: The State's fine with that, your Honor.

24 MR. KOZELSKI: That's fine, your Honor.

25 MS. BARBER: Thank you.

1 THE COURT: You're welcome. And then I'm going to write
2 on here "Amended without" -- er, "by consent on" whatever
3 Monday's date was.

4 MS. BARBER: Okay.

5 MR. COOPER: I think it was the 11th, Judge.

6 MS. BARBER: Yes.

7 THE COURT: All my days are a blur lately. I thought it
8 was the first week of December the other day, and it was
9 already the second week.

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

11 THE COURT: You may be seated.

12 Ladies and gentlemen, you were selected to try a case
13 this week, but the Court has resolved that case as a matter
14 of law. So I have good news and good news. You are done for
15 the week and you're done for your three years. I know; try
16 not to erupt in applause.

17 Although you all did not have the ability to serve on a
18 jury, I still hope this has been a pleasant, positive, and
19 educational experience for you. We could not try cases
20 without your willingness to really donate your time to us, so
21 we're so appreciative of you all coming and being ready and
22 willing to serve.

23 Does anyone need a work excuse before they leave today?
24 We will make sure you have it. We will make sure all of you
25 have them. Otherwise, they will be mailed to you along with

1 your checks.

2 I hope y'all have a wonderful holiday season. You're
3 excused with the Court's profound thanks.

4 Anybody that needs a work excuse, if you would just stay
5 in the jury room and they'll bring it to you.

6 Wonderful. Take care. Have a good rest of the week.
7 You're excused -- I'm sorry; I should say that -- for the
8 rest of the week.

9 (The jury was released from service and exited the
10 courtroom at 11:16 a.m.)

11 THE COURT: All right. Anything else y'all need? Did
12 you get your exhibits back?

13 MS. BARBER: Um --

14 THE COURT: Or y'all want -- well, no. The exhibits for
15 the pretrial we keep.

16 MS. BARBER: Okay.

17 THE COURT: Do y'all need to give the jump drive you
18 gave us to the court reporter?

19 MR. COOPER: I'm fine making that as a Court's exhibit.

20 THE COURT: We'll do that.

21 MR. COOPER: Please.

22 THE COURT: Yeah, if you would give her that jump drive.
23 (Court's Exhibit Number 2 marked for the record.)

24 THE COURT: And if there's anything you had marked as a
25 trial exhibit that's not a court exhibit from the suppression

1 hearing, you're welcome to have those back. But anything
2 that we had marked for the suppression hearing I need y'all
3 to leave with the court reporter.

4 MS. BARBER: Okay.

5 THE COURT: Thank you.

6 (End of proceedings.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of General Sessions for Charleston County, South Carolina.



Official Court Reporter

Dated this 10th day
of February, 2023.

SBL/0345996
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2018-11240

ARREST WARRANT NUMBER

2018A1010204304

DATE OF ARREST

07/28/2018

ACTION OF GRAND JURY

TRUE BILL

Jennifer Lucier
Foreperson of Grand Jury
Date:

OCT 01 2018

VERDICT

DOCKET NO. 2018-GS-10-05434

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

THE STATE

VS.

JOSHUA FELIPE SIMMONS
B/M DOB 10/03/1989

Indictment for

TRAFFICKING COCAINE

SC Code: § 44-53-0370(c)(2)(a)1
CDR Code: 0278

FILED

10/3/2018 3:55:35 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

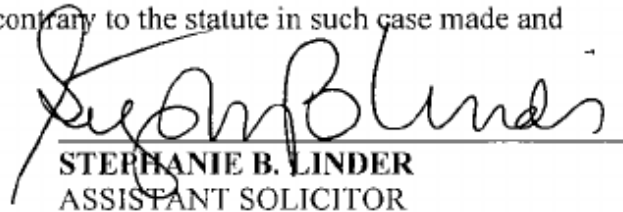
INDICTMENT

At a Court of General Sessions, convened October 2018, the Grand Jurors of Charleston County present upon their oath:

TRAFFICKING COCAINE

The defendant, Joshua Felipe Simmons, did on or about July 28, 2018, in Charleston County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of Cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). All in violation of 44-53-0370(e)(2)(a)1 of the South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SBL/0345996
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2018-11240

ARREST WARRANT NUMBER

2018A1010204304

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Jennifer Lucier
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Date:

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VERDICT

DOCKET NO. 2018-GS-10-05434

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

THE STATE

VS.

JOSHUA FELIPE SIMMONS
B/M DOB 10/03/1989

Indictment for
ok Possession WITH THE INTENT TO DISTRIBUTE ~~TRAFFICKING~~ COCAINE

SC Code: § 44-53-0370(e)(2)(a)1
CDR Code: 0278

FILED

12/15/2023 8:38:23 AM
JULIE J. ARMSTRONG
CLERK OF COURT

ok Amended by
ok Consent
December 11, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

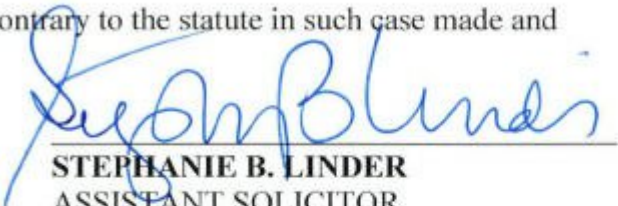
INDICTMENT

At a Court of General Sessions, convened October 2018, the Grand Jurors of Charleston County present upon their oath:

SA POSSESSION WITH THE INTENT TO DISTRIBUTE
~~TRAFFICKING COCAINE~~ COCAINE

The defendant, Joshua Felipe Simmons, did on or about July 28, 2018, in Charleston County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of Cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). All in violation of 44-53-0370(c)(2)(a)1 of the South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

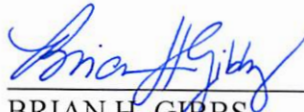
CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

BRIAN H. GIBBS
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SCARLETT A. WILSON
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BRIAN H. GIBBS
Bar # 104137

ATTORNEYS FOR APPELLANT

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January 30, 2025

Grace Sommer

From: Grace Sommer
Sent: Thursday, January 30, 2025 4:19 PM
To: sshipe@sccid.sc.gov
Cc: Brian Gibbs; Warren, Kaylynn
Subject: The State v. Joshua Felipe Simmons (2023-001978)
Attachments: SIMMONS Joshua - ROA.pdf; SIMMONS Joshua - Proposed Transportation Order.pdf

Good Afternoon Ms. Shipe,

Attached please find the Record on Appeal and Proposed Transportation Order in The State v. Joshua Felipe Simmons (2023-001978). These documents will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

Grace Sommer, Legal Assistant
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Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov



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