

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERICK E. HEWINS,

APPELLANT

APPELLATE CASE NO. 2012-210306

RECORD ON APPEAL

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 STATE OF SOUTH CAROLINA,)
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 vs.)
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 ERICK ETON HEWINS,)
)
 DEFENDANT.)
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COURT OF GENERAL SESSIONS
 2010-GS-23-02660

TRANSCRIPT OF RECORD

ORIGINAL

March 12 and 13, 2012
 Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

JOYCE K. MONTS, ESQ.
 Assistant Solicitor

RANDALL L. CHAMBERS, ESQ.
 Attorney for the Defendant

HOLLIE M. JENKINS
 Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 THE COURT: This is the State v. Erick Hewins. He's
3 present with his counsel, Mr. Chambers. This is case
4 2010-GS-23-002660.

5 Yes, ma'am, Ms. Monts.

6 MS. MONTS: Your Honor, I believe the State is ready
7 to call the case. I know Mr. Chambers has a suppression
8 motion. I didn't know if you wanted to draw the jury
9 first, or do the hearing.

10 THE COURT: Mr. Chambers.

11 MR. CHAMBERS: That is correct, Your Honor. I have a
12 suppression motion.

13 THE COURT: All right. How long do you think it will
14 take to conduct the suppression motion?

15 I don't know how many witnesses you have.

16 MR. CHAMBERS: Your Honor, the issue involves the
17 seizure of the alleged crack cocaine in this particular
18 case. It was a traffic stop and, subsequently, a small
19 amount of what was alleged to be crack was found in my
20 client's car.

21 Our position is that the seizure of that particular
22 evidence was illegal. And I can get more into my argument
23 if you want me to, but that's our position.

24 THE COURT: Well, let's go ahead and pick a jury.

25 Bring the jury on up.

1 Thank you.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: Yes, sir, Mr. Chambers.

4 MR. CHAMBERS: Your Honor, I have a motion to
5 suppress the evidence that was seized in this case. Our
6 position is that the search and subsequent seizure of the
7 drugs were both unlawful. The reason for that is I
8 believe that the facts in this case will show -- at least,
9 the facts that have been provided to me through discovery
10 is that at about 11:47 p.m. on September 15th, 2009, that
11 the arresting officer in this case, Officer Cothran,
12 stopped my client after he made an illegal turn from East
13 Park Avenue onto North Main Street.

14 Apparently, what Erick did was that he didn't get
15 into the turn lane, but he made a turn from the non-turn
16 lane, and he was stopped. We don't dispute that it was a
17 legal stop, and that the police officer had probable cause
18 to stop Mr. Hewins. Once he made the stop, he made
19 inquiry of my client and noted that he was nervous, and
20 this, and that. But the police officer opted to write a
21 warning citation, and he gave a warning citation to
22 Mr. Hewins.

23 Our position, based on case law that's well
24 established in this case, Your Honor, is that once he made
25 the decision to give a warning citation -- in fact, gave a

1 warning citation that the traffic stop had concluded, and
2 my client should have been free to leave. But what,
3 actually, happened, at that point, is he asked Erick to
4 give him permission to search the vehicle. Erick declined
5 to give him permission to search the vehicle. And, at
6 that point, essentially, saying Erick Hewins appeared
7 nervous. He made the decision to get my client out of the
8 car and do a stop and frisk.

9 He further decided that he had reasonable suspicion
10 to believe that some sort of criminal activity was taking
11 place, and that he was going to go ahead and have the drug
12 dog, who for some reason had been called prior to my
13 client refusing consent to search the car, go around the
14 car. The drug dog allegedly alerted on the car. Then
15 they did a search and found a substance, which was
16 allegedly crack cocaine.

17 I mean, I can get further into the argument, Your
18 Honor, or we can wait until we hear testimony. But,
19 essentially, what the Court has held in State v. Tindall,
20 698 S.E.2d 293 -- and I have copies for the Court, as well
21 as for the Solicitor.

22 THE COURT: Thanks.

23 MR. CHAMBERS: On Page 4 of that opinion, Your Honor,
24 the Court said that the question, therefore, becomes
25 whether the officer reasonably suspected a serious crime

1 at the point in which he chose not to conclude the traffic
2 stop, despite his stated intention to issue a warning
3 ticket and, instead, opted to continue his questioning.
4 The officer in that particular case said that Tindall, who
5 was the Defendant in that case, was driving to Durham to
6 meet his brother, that Tindall was driving a rental car
7 that he had rented the previous day and was supposed to be
8 returned to Atlanta. That Tindall did what, at least, in
9 some police circles is referred to as a felony stretch
10 where when you get out of the car, you stretch, which,
11 apparently, indicates that you've got something to hide
12 and that Tindall, the Defendant in this case, was nervous.
13 And, based on that, the officer said that he had
14 reasonable suspicion that a crime was afoot. So he
15 continued the detention beyond the time that he was going
16 to issue the warning citation, and continued with that.

17 And, in that particular case, Your Honor, the Court
18 ruled that this nervousness alone wasn't reasonable
19 suspicion, that that wasn't enough to allow this detention
20 to continue, that this wasn't enough for a police officer
21 to reasonably believe that some sort of criminal activity
22 was afoot.

23 By comparison's sake, Your Honor, in State v.
24 Morris -- and, again, I will give a copy to the Solicitor,
25 and I have one for the Court. The Court in that case --

1 the Court of Appeals, using Tindall as its guide, ruled
2 that the continued detention was permissible. But what
3 the Court said -- pointed out there is beyond any
4 nervousness, the police officer there, actually, smelled
5 an odor of marijuana. So there was a concrete basis for
6 the police there to continue the detention.

7 In this case, Your Honor, we believe the evidence
8 would show, at least, again, what's been given to us by
9 discovery, these are the things that the officer cited.
10 This was prior to giving him the warning citation. He
11 said that -- in talking about Mr. Hewins, his voice
12 quivered when speaking with me. In addition, his breath
13 was labored and rapid.

14 Now, at that point, he didn't ask him to get out of
15 the car. He didn't seem to think anything was wrong. And
16 he continued and told him, I'm going to give you a warning
17 for the turn offense. He then says that Erick remained
18 unsettled. Basically, it comes down to him saying that
19 this person who had been stopped by the police was
20 nervous, and that's it.

21 So our position is, Your Honor, that once he gave a
22 warning citation, he should have been free to leave. It
23 was concluded. And he didn't have the basis, as I've
24 already discussed, to continue the detention and do the
25 subsequent search of the car.

1 THE COURT: All right. Thank you.

2 Yes, ma'am.

3 MS. MONTS: Your Honor, the State's position is
4 first.-- and I'll hand up the case and give one to the
5 Defense attorney, it's State v. Snowden. In this case, it
6 says that the Defense is precluded from arguing the
7 search, because the Defendant has already been convicted
8 of a related case from the same stop, and that is the open
9 container violation.

10 And I do have Ms. Sizemore, from the City Clerk's
11 Office, to introduce this as a record. But this shows
12 that the Defendant was convicted of the open container
13 charge that the Defendant received from this incident.
14 And Snowden says the Defendant is then precluded from
15 challenging the search, because he already had the
16 opportunity to have done that and it is now waived. And
17 I'll let you rule on that. And if I need to proceed, I
18 will.

19 MR. CHAMBERS: Your Honor, I would just say in
20 response to Snowden, first of all, I don't know whether my
21 client, actually, entered a guilty plea or not. He says
22 that he didn't. So I think it's probably something that
23 occurred in his absence, certainly, without the benefit of
24 counsel.

25 And, secondly, we're talking about open container.

1 That's a completely different matter. And it's probably
2 something that would have been visible from the -- just
3 looking into the vehicle itself. But, you know, Snowden
4 is not going to apply in this case, because my client
5 wasn't even present. He didn't plead guilty.

6 MS. MONTS: Your Honor, the open container and crack
7 were next to each other in the center console. And I can
8 have Ms. Sizemore testify about this prior conviction in
9 city court.

10 THE COURT: Okay.

11 MS. MONTS: Your Honor, the State calls Ms. Sizemore.

12 THE CLERK: Ma'am, if you'll place your left hand on
13 the Bible and raise your right hand.

14 WHEREUPON,

15 SALLY FELICIA SIZEMORE,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 Please state your full name for the record.

20 THE WITNESS: Sally Felicia Sizemore.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MONTS:

24 Q Ms. Sizemore, where are you employed?

25 A City of Greenville Municipal Court.

1 Q And did you provide a certified -- excuse me, what
2 are your duties at city court?

3 A Currently, I'm in charge of record retention.

4 Q I'm going to hand to you what states at the top
5 "Uniform Traffic Ticket." Is this from your office?

6 A Yes, it is.

7 Q Is it a certified copy?

8 A Yes, it is.

9 Q Is it certified by an employee of your office?

10 A It is certified by me with our Clerk of Court, Pamela
11 Larsons.

12 MS. MONTS: Your Honor, I'd move this in as a State's
13 Exhibit.

14 MR. CHAMBERS: No objection.

15 (WHEREUPON, State's Exhibit No. 1 marked for
16 identification and was admitted into evidence.)

17 BY MS. MONTS:

18 Q Can you tell me who the Defendant is on this
19 ticket?

20 A Erick Hewins.

21 Q And what is the charge?

22 A Open container.

23 Q What happened with that charge?

24 A From looking at the paper, it says that he had a
25 court date of October the 8th, 2009. He was present in

1 the courtroom. He was found guilty, and given time served
2 on October 9th, 2009.

3 Q And can you tell what the incident date is of that
4 open container charge on that ticket?

5 A It appears to be September 16, 2009.

6 MS. MONTS: Thank you.

7 I have no further questions.

8 MR. CHAMBERS: If I could see that.

9 CROSS-EXAMINATION

10 BY MR. CHAMBERS:

11 Q You said it indicates he was found guilty?

12 A Yes, sir.

13 Q Okay. I don't see anywhere on here where it
14 indicates he was present in the courtroom.

15 A Right here, sir. It is Defendant appeared or not
16 appeared. And it is X'd beside appeared.

17 Q Is there anywhere on here for the Defendant to sign
18 to indicate that he was present?

19 A No.

20 Q And it simply says on there, Guilty; is that correct?

21 A It says, Guilty.

22 Q Okay. So it's not an indication about whether it was
23 a plea, or whether it was a trial; correct?

24 A It was a bench trial. And when a defendant
25 approaches our podium, he is asked, Do you plead guilty or

1 not guilty?

2 Q Okay. So this was a bench trial?

3 A Correct.

4 MR. CHAMBERS: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. MONTS:

7 Q Ms. Sizemore, when he walked up to the bench, did he
8 say whether he wanted to plead guilty or not guilty?

9 A He was asked if he pled guilty or not guilty.

10 Q And what was his response?

11 A There is no indication on this ticket, nor is it on
12 any of our tickets their plea.

13 Q Did you have the occasion to look at your computer
14 records on this case?

15 A Yes, I did.

16 Q And what did you find from doing that?

17 A That he pled guilty.

18 MS. MONTS: Thank you.

19 No further questions.

20 RE CROSS-EXAMINATION

21 BY MR. CHAMBERS:

22 Q Are there instances where defense counsel will appear
23 for their clients and enter guilty pleas?

24 A Yes..

25 MR. CHAMBERS: That's all the questions I have.

1 MS. MONTS: Your Honor, I have no further questions
2 of this witness.

3 THE COURT: Thank you, Ms. Sizemore.

4 MS. MONTS: Your Honor, can she be excused at this
5 time to possibly come back later in the trial?

6 THE COURT: Is there any objection?

7 MR. CHAMBERS: No, Your Honor, not at all.

8 And, Your Honor, in light of that testimony, I would,
9 again, argue two things. First of all, it's not clear
10 from the evidence that they have given and what they've
11 chosen to put into evidence that my client was, actually,
12 present. Even though it does indicate on there that he
13 was present, she even said it could have been a defense
14 lawyer there on his behalf, or whether he was guilty or
15 found guilty by Judge Hawley or whoever the judge was that
16 day.

17 But, moreover, and I think more importantly, Your
18 Honor, we're not talking about the drugs that were found
19 in this case. We're talking about an open container.
20 It's a completely separate case. And I feel quite
21 certain, and I haven't heard anything to the contrary,
22 that nobody at any point counseled my client that he would
23 in any way be doing anything that would later collaterally
24 estop him from raising any Constitutional issues he might
25 have in this case.

1 So, for all of those reasons, we don't believe
2 Snowden applies in this case. To do so would be grossly
3 unfair. And we believe the motion, whether it's granted
4 or not granted, should be based on the facts and law in
5 this case, and not on any prior circumstance where he may
6 have entered a guilty plea. We don't even know that he
7 did.

8 THE COURT: May I see the exhibit?

9 Thank you.

10 MS. MONTS: Your Honor, the witness's testimony was
11 that the Defendant was present, and that he did plead
12 guilty.

13 MR. CHAMBERS: Your Honor, she doesn't have any
14 firsthand knowledge of that. She says, although we
15 haven't seen or heard anything other than her testimony,
16 that she looked on the computer and found that out. She's
17 simply the record custodian. She wasn't present in the
18 courtroom. She doesn't know what happened.

19 THE COURT: All right. Based on the Snowden case, I
20 believe I would be constrained to find that he is
21 collaterally estopped from raising it. I mean, in that
22 case, the Defendant pled guilty to breach of peace in
23 magistrate's court. During his arrest, marijuana was
24 discovered on his person. And, later, in circuit court,
25 he tried to challenge the introduction of the marijuana

1 and suppress it on the basis that it was the fruit of a
2 search following an illegal arrest made without probable
3 cause.

4 The Court of Appeals stated that he couldn't do that
5 because he had already pled guilty to breach of peace.
6 And the issue of whether there was probable cause to
7 arrest him for that offense was necessarily determined in
8 a magistrate court proceeding and, therefore, the
9 collateral estop prevented him from raising that issue at
10 the marijuana trial.

11 MR. CHAMBERS: Your Honor, I would -- again, to
12 distinguish that situation from this, we're not talking
13 about an illegal arrest. We're talking about a search.
14 He wasn't arrested. He was given a warning citation for
15 the illegal turn. And then, subsequently, his vehicle was
16 searched because they -- you know, the officer believed he
17 had a reasonable suspicion to believe my client was
18 involved in criminal activity. It wasn't an arrest. This
19 wasn't a search that was subject to arrest. So I believe
20 it is distinguishable in that way.

21 THE COURT: Well, certainly, that is a distinction,
22 but I don't find it's material. The Fourth Amendment is
23 still where all this is based on and whether it's a
24 seizure, or an arrest, or a search, I think the same
25 principle would apply. So -- and it may not be fair, but

1 it's the law and I'm required to follow it.

2 So I would grant the State's motion that he's
3 collaterally estopped from challenging the search based on
4 the Snowden case.

5 Anything else before we bring the jury in?

6 MR. CHAMBERS: No, Your Honor, not from the Defense.

7 MS. MONTS: Your Honor, I just wanted to make sure
8 that we would be -- to alert the Court that we would be
9 mentioning this -- the charge on this ending result in the
10 trial in front of the jury, because it all happened at the
11 same time.

12 (Pause.)

13 MR. CHAMBERS: What?

14 THE COURT: Do y'all need some time to talk?

15 MR. CHAMBERS: We may. My client is telling me he
16 doesn't understand a whole lot of things.

17 THE COURT: All right. We'll take a break then.
18 We'll be in recess.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Are you all ready for the jury?

21 MR. CHAMBERS: Yes, Your Honor.

22 THE COURT: Now, Ms. Monts, you made a statement
23 right before we adjourned that I don't think Mr. Chambers
24 heard about you intended, I believe, to refer to this
25 State's Exhibit No. 1.

1 MS. MONTS: Yes, Your Honor.

2 As the -- to show the entire process and that the
3 Defendant was charged with both the crack cocaine and the
4 open container that were next to each other inside the
5 vehicle, we do intend to bring that up.

6 MR. CHAMBERS: Your Honor, I am having trouble
7 understanding how the two are related. I mean, he's
8 already pled guilty to that charge. He's not being tried
9 today for open container. I mean, it's whether or not he
10 possessed the drugs that were in the car.

11 THE COURT: What's the relevance of it?

12 MS. MONTS: Your Honor, the whole issue is
13 possession. And part of the evidence that he possessed
14 the crack is that he possessed the alcohol container --
15 the open container that was right next to the crack
16 cocaine container. I think that goes a long way to show
17 the possession.

18 MR. CHAMBERS: Your Honor, they're two separate
19 items. I mean, I, certainly, can see that he possessed
20 one and didn't possess the other, you know. It's clear
21 that what they have alleged is crack cocaine was found in
22 his car. The only thing that I think bringing something
23 else in does is prejudice my client. I don't -- there
24 doesn't seem to be a whole lot of probative value, in my
25 opinion.

1 MS. MONTS: Your Honor, we think res gestae would
2 show that we need to show the entire picture of what was
3 transpiring.

4 THE COURT: What does the subsequent conviction have
5 to do with res gestae?

6 MS. MONTS: Your Honor, just so the jury -- not -- it
7 was an incident at the same time. That one was just taken
8 care of in city court, which moves faster than we do up
9 here, prior to us today. So the fact that he's pled
10 guilty to an item that was next to the crack cocaine
11 bottle is evidence of possession. And it's a court
12 record. We believe it should be allowed -- we should be
13 allowed to go into it in this trial.

14 THE COURT: Well, I understand your argument. I
15 don't believe it fits within the res gestae definition.
16 That the existence of the container and its location at
17 the time of his arrest would fit into that. But what he
18 did sometime after in terms of pleading guilty to the
19 charge of open container would not fit within the res
20 gestae, because it happened months later.

21 But, nevertheless, I do think it's admissible. I
22 don't think its prejudicial value outweighs its probative
23 value. I think it could be highly relevant to the
24 possession argument, given its location next to the
25 contraband of marijuana. So, in that instance, I don't

1 think Rule 403 is violated.

2 All right. You can bring the jury on in.

3 Thank you.

4 (WHEREUPON, the jury came into open court at
5 approximately 2:15 p.m.)

6 MS. MONTS: Your Honor, may Mr. Chambers and I
7 approach?

8 THE COURT: Sure.

9 MR. CHAMBERS: Your Honor, may I have a few minutes?
10 I'm sorry.

11 THE COURT: Ladies and gentlemen, before you sit
12 down, I'm going to ask you to go back to the jury room. I
13 don't think we are quite ready as I had previously been
14 informed. So just go back to the jury room.

15 Thank you.

16 I'm sorry for the inconvenience.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 2:16 p.m.)

19 THE COURT: Mr. Chambers.

20 MR. CHAMBERS: Your Honor, for the record, my client
21 has expressed to me for the first time, as far as I
22 know -- and I've met with him on, at least, three
23 different occasions in preparation, one meeting, he didn't
24 show up for -- that because of the way the rulings went on
25 the motions in this case, he doesn't feel like I'm

1 adequately prepared and he has reservations about me
2 representing him.

3 He indicated to me that Larry Crane had represented
4 him in the past, and that Crane really had a handle on
5 things and was very much able to make things go his way.
6 And he's not satisfied with me at this point. So I did
7 want to put that on the record. I have indicated to him
8 that I am prepared to try the case, and I am ready to go
9 forward. But I felt like the Court needed to know the
10 situation.

11 THE COURT: Okay. Thank you very much.

12 Anything else before we bring the jury in?

13 MR. CHAMBERS: No, Your Honor.

14 MS. MONTS: Your Honor, the State -- the drugs in
15 this case, as the Defense knows, have been -- are not here
16 to be introduced into evidence. I intend to ask the
17 officer on the stand why they're not here. The reason
18 he's going to say is the paperwork he got from property
19 and evidence about destroying evidence had the ticket
20 number for the open container, but it had possession of
21 cocaine next to it. So -- and he checked off to have that
22 destroyed. So that's a clerical error. But I wanted to
23 let you know that we're going to be going into that.

24 MR. CHAMBERS: I was aware that it had been
25 destroyed, Your Honor. I mean, I don't know that he's the

1 proper -- I guess if he's the person that, actually, told
2 them to destroy it, he's the proper person to testify to
3 that. So I guess I can't really object to that.

4 THE COURT: Okay. Thank you very much.

5 Bring the jury in.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:22 p.m.)

8 INTRODUCTORY REMARKS

9 THE COURT: Good afternoon, ladies and gentlemen.

10 We are going to begin the case of the State v. Erick
11 Hewins. And, before we start the case, I just want to
12 give you some preliminary instructions.

13 First of all, I want to thank you for your service
14 this week. I know we're taking you away from your jobs,
15 and your families, and other important aspects of your
16 life and asking you to come up here and serve this week
17 for your fellow citizens. I know you find that
18 inconvenient, in part. But I, also, know you're here, in
19 part, because you respect and understand and recognize
20 that the right to a jury trial is a fundamental right that
21 we all enjoy. And that it was a right that was so
22 important to the founders of our country that they put it
23 not only in the Constitution, but in three of the first 10
24 Amendments, or the Bill of Rights. So you do have
25 everyone's gratitude for making your justice system work

1 you ought to get an opportunity, at some point, to view
2 the evidence in the case, to look to see what they have.
3 Again, I told you, they control what you get to see and
4 hear. If they don't bring you something, that's on them.
5 That's on them. They're going to be held responsible for
6 that.

7 I can tell you that Mr. Hewins is glad you're here.
8 This is an allegation that's been lingering over his head
9 for some time, and it's going to be decided today. This
10 is an important day. This is his case. We appreciate all
11 of you being here. We look forward to hearing what the
12 Solicitor has or doesn't have to give you in this case.
13 Basically, based on what I know about the case, we believe
14 that the proper verdict in this case is going to be not
15 guilty. But I'll get an opportunity to talk to you at the
16 end of the trial, and we'll talk some more about that.

17 Thank you very much.

18 THE COURT: Ms. Monts, you may call your first
19 witness.

20 MS. MONTS: The State calls Charles Cothran.

21 THE CLERK: Please place your left hand on the Bible
22 and raise your right hand.

23 WHEREUPON,

24 CHARLES KEATON COTHRAN,
25 after first having been duly sworn, testified as follows:

1 THE CLERK: Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: Charles Keaton Cothran.

4 DIRECT EXAMINATION

5 BY MS. MONTS:

6 Q Detective, please, tell the jury where you're
7 employed.

8 A I am, currently, employed with the Greenville Police
9 Department here in Greenville, South Carolina.

10 Q And how long have you been employed with the police
11 department?

12 A Six years -- a little over six years.

13 Q What is your current position with the police
14 department?

15 A Currently, I'm a criminal investigator in the
16 property crimes unit. I investigate burglaries, auto
17 break-ins, larcenies, those type of things.

18 Q On September 15th, 2009, what were your duties at the
19 police department?

20 A On September 15th, 2009, my primary job
21 responsibility was uniform patrol. And that is -- I was
22 assigned a marked vehicle. I was a uniform officer. I
23 had designated areas that I patrolled and was responsible
24 for patrolling to ensure to protect the life and property
25 of the citizens of Greenville.

1 Q What type of training did you receive in law
2 enforcement?

3 A I attended the Law Enforcement Academy here in South
4 Carolina. I completed it. I've had numerous trainings
5 involving drug interdiction, narcotics identification.
6 I've had other training with radar, alcohol detection, and
7 other criminal investigation techniques.

8 Q On September 15th of 2009, were you working alone, or
9 was there someone else in your vehicle with you?

10 A I was alone.

11 Q And describe -- what did you observe, and where were
12 you at approximately 11:45 that evening?

13 A At 11:45 that evening, I was patrolling the area of
14 Main Street and East Park Avenue in the city limits of
15 Greenville. I observed a 1995 model Cadillac, gold in
16 color, turn left onto Main Street off of -- I believe it
17 was Stone Avenue. There's a turn lane designated to turn
18 left off of Stone onto Main. And the vehicle, actually,
19 made a turn in a non-turning lane. And I went up and
20 conducted a traffic stop.

21 Q Did the vehicle, actually, cross over the turn lane
22 to make the turn?

23 A To some degree, yes. When he, initially, turned,
24 he -- when you come to a turn lane, you've got that break
25 off in the median where you can get out of the primary

1 lanes of travel to prevent, obviously, traffic congestion.
2 He kind of went more than halfway past where you would
3 enter into the turn lane and then started to turn.

4 Q And what did you observe once you -- excuse me. Did
5 you put on your blue lights?

6 A Yeah. I got behind him. I turned on my blue lights
7 probably within 100 feet of the intersection there. And
8 Mr. Hewins pulled into the Bi-Lo at 505 North Main Street,
9 which is probably about an eighth of a mile to a quarter
10 of a mile from where I had, initially, turned my lights
11 on.

12 Q Was there any stopping locations prior to that?

13 A No. No indication that he was aware that I was
14 behind him. I don't believe he was attempting to flee.
15 He drove slowly, you know, just kind of slow to stop.
16 Most people -- there's plenty of opportunity between where
17 I turned my lights on and where we stopped. There was a
18 median there at the time. There's other locations that's
19 well lit. He was just a little slow to stop.

20 Q And was this location in Greenville County?

21 A It is in Greenville County within the city limits of
22 Greenville.

23 Q Describe how many people were at this location where
24 the car was stopped.

25 A At the time, it was approximately 11:45 when I

1 conducted the traffic stop. It's at the Bi-Lo right there
2 on Main Street. The parking lot was lit. The Bi-Lo was
3 closed. There wasn't anybody else in the parking lot.
4 Initially, it was just myself and Mr. Hewins.

5 Q Was there anyone else in the vehicle?

6 A No. It was just Mr. Hewins.

7 Q What did you do when you approached the vehicle?

8 A I walked up to the vehicle to request the standard
9 paperwork. State law requires that upon stop, you have to
10 provide driver's license, insurance, and registration. I
11 requested those items. And he handed me his driver's
12 license without any issue. And he had some difficulty
13 locating -- well, he never located his insurance or
14 registration.

15 And I noted, initially, upon that initial contact
16 with Mr. Hewins that he was extremely nervous to the point
17 that his voice, actually, was -- the best way I can
18 describe it is it quivered, kind of shook, rattled to some
19 degree, and that his breathing was very deep, and heavy,
20 and very rapid. And I stood beside his vehicle for a
21 while.

22 And due to his extreme nervousness, I asked for an
23 additional unit, which was another officer. And I stood
24 beside his vehicle for a short period of time.

25 Q Excuse me. Where in the vehicle did he look for the

1 paperwork?

2 A He looked in his glove box. He shuffled papers
3 around in his glove box. I noticed when he opened his
4 glove box and would move papers that his hands would --
5 the papers would shake violently. He never located any
6 insurance or registration in the glove box. He didn't
7 check anywhere else in the vehicle for it. He only looked
8 in the glove box for the insurance and registration.

9 Q Was there a center console area?

10 A There is -- in this particular Cadillac, there's an
11 armrest that has a -- it's got like a compartment in it.

12 Q Did he ever look in there?

13 A No.

14 Q In the city, how close, generally, is backup to you?

15 A It can vary depending on how busy we are. But,
16 typically, on a normal night, it can be anywhere from
17 approximately a minute to five minutes.

18 Q And without having the insurance and registration,
19 were you able to discover who the car was registered to?

20 A Yes. We have -- MDT is our -- at this time, I had an
21 MDT, which it's, basically, a computer that you have in
22 your vehicle. I went back to my vehicle after waiting a
23 short period of time for him to locate the documents I had
24 requested. And you can run driver's license and vehicle
25 registration. I ran his license and vehicle registration

1 and determined that he was the owner of the vehicle.

2 Q And is a person driving on the streets of South
3 Carolina supposed to have insurance, as well?

4 A Yes. Upon stop, state law requires that you furnish
5 your registration and proof of insurance.

6 Q Did the Defendant state where his documents were?

7 A I had asked him upon that initial contact, you know,
8 Do you know where they are? Because he was going -- you
9 could tell he was kind of flustered trying to find the
10 paperwork in his glove box. And he said he wasn't sure,
11 that he may have left them at home.

12 Q And you never saw them, did you?

13 A No. He never provided them for me.

14 Q Did you receive backup?

15 A Yes. Officer Loftis arrived as a backup unit.

16 Q At what point in the stop did Officer Loftis arrive?

17 A He arrived -- I had already returned to my vehicle,
18 and I was doing my standard checks. For officer safety
19 reasons, I like to know who the person is that's in the
20 vehicle. I like to know what kind of background they
21 have, if they're a violent person, if they're non-violent
22 for my safety.

23 So I returned to my vehicle. I started doing my
24 basic checks, warrant checks, driver status where I can
25 see if their license is valid and, also, checking a

1 national data base to make sure --

2 Q And when you asked for Officer Loftis to come, how
3 long did it take him to arrive?

4 A Approximately two minutes.

5 Q And had you asked the Defendant out of the vehicle at
6 this point?

7 A No, I had not.

8 Q Had you seen this vehicle earlier in the evening?

9 A Yeah. The area that I was primarily responsible for
10 patrolling was Laurens Road, the Greenline area, also,
11 Nicholtown. And I had observed Mr. Hewins driving that
12 Cadillac in what is known to me by my experience and other
13 officers as high drug areas.

14 Q How many times had you seen it that evening?

15 A Twice.

16 Q What did you do once Officer Loftis arrived?

17 A Once Officer Loftis arrived, I issued a warning -- or
18 I was in the process of issuing a warning when he arrived.
19 I completed that.

20 And, during my initial contact, I had, actually, told
21 Mr. Hewins that I was going to give him a warning because
22 he was so nervous. And, typically, what happens is, you
23 know, nobody likes getting pulled over. I mean, we all
24 know that. So when I pulled him over -- you know,
25 thinking it would calm him -- and, in my experience, when

1 you tell someone, listen, I'm just going to give you a
2 warning, it won't take but a second to get this knocked
3 out, they calm down, they relax.

4 But Mr. Hewins, in this particular occasion, he still
5 stayed nervous, very amped up. He didn't -- I can -- the
6 best way I can say it is he didn't decompress and kind of
7 relax.

8 Q Were you, actually, finished with your stop when you
9 told him you were going to give him a warning, or why did
10 you do that?

11 A Primarily because, like I said, he was so unsettled,
12 nervous, the behaviors, the breathing. All of these
13 things I thought in my mind and in my experience that when
14 you tell someone that, it helps kind of -- it helps them
15 kind of just decompress and relax some knowing that I'm
16 not getting a ticket. I'm just going to get kind of
17 fussed at a little bit, and that's that.

18 Like I said, he never calmed down in spite of that.
19 I had not yet, at that point, even went back and performed
20 my regular checks or even issued -- had a chance to write
21 the warning.

22 Q And would you have allowed him to leave without the
23 insurance or registration?

24 A No. I can detain the car as long as need be until
25 insurance is provided. And, at this particular time of

1 night, it's hard to verify that you have insurance.

2 Q Did you ask the Defendant to get out of the car once
3 Officer Loftis arrived?

4 A I did. Once Officer Loftis arrived and I had
5 completed writing the warning, I walked up to the
6 vehicle -- and since he was so nervous and had not calmed
7 down in spite of me telling him you're not getting a
8 ticket, I felt like, for my safety, I needed to have him
9 step out of the car so I could see him better.

10 I had him step out of the vehicle. And I conducted a
11 pat down of his outer clothing to make sure he didn't have
12 guns or any other type of instruments that could hurt me
13 or other officers. When I asked him out of the car, I,
14 initially, explained what the warning was for. I still
15 had it in my hand. I said, you know, you made an improper
16 turn. You need to make sure you get in the turning lane
17 before you make a turn.

18 And I went right into, do you have any guns, drugs,
19 or explosives? And he was really quick to answer I don't
20 have any drugs. I mean, it was very quick, very
21 noticeable that I don't have any guns -- or drugs, but
22 didn't reply at all to guns or explosives.

23 Q Who was the person you were speaking to?

24 A Mr. Hewins. He's sitting over here at the Defense
25 table.

1 Q Where was Officer Loftis while you were speaking with
2 Mr. Hewins?

3 A He was out of his vehicle standing beside me, or near
4 me. He -- like I said, he had arrived relatively quickly.

5 Q And what type of officer is Officer Loftis?

6 A He is a K-9 officer.

7 Q Please continue with -- well, what did you do once
8 Officer Loftis was there?

9 A After I had Mr. Hewins step out of the car and I
10 explained, you know, you got a warning for making an
11 improper turn, I asked him the question about drugs, guns,
12 or explosives. And, based off of his response and quickly
13 answering, specifically, to the drugs, I found that to be
14 an unusual thing. And, from my training and experience,
15 people will, typically, respond to the thing that they're
16 attempting to hide not -- any other traffic stop, if I ask
17 someone if they have drugs, guns, or explosives and they
18 laugh and say, man, I don't have explosives, that type of
19 thing.

20 But he was very quick to mention drugs, which raised
21 my suspicion level up to another level. And then, based
22 off of that and the fact that when I was talking to him,
23 he kept looking away from me, looking down, looking up.
24 He wouldn't maintain any eye contact for any length of
25 time. And based off of his nervous behaviors, his

1 reaction about me asking him about was there drugs, guns,
2 or explosives in the vehicle, I asked him for consent to
3 search the car.

4 Q And what did he say?

5 A He paused and kind of thought about it for a minute,
6 and then refused.

7 Q And what did you ask, if anything, of Officer Loftis?

8 A I then asked Officer Loftis if he could get his dog
9 out -- or his K-9 out and walk the dog around the vehicle.

10 Q And did he do that?

11 A Yes, he did.

12 Q And how long approximately did that take?

13 A Approximately, somewhere between two and five minutes
14 would be my estimate. One thing that kind of concerned me
15 is that when Officer Loftis got his dog out of the car,
16 obviously, for Mr. Hewins safety, and my safety, and
17 anyone else -- I'm not a dog handler. Dogs make me
18 nervous, too.

19 So I asked Mr. Hewins to, please, step back with me,
20 you know, don't get too close, let the dog run your car.
21 Mr. Hewins was extremely alert to Officer Loftis walking
22 his dog around his vehicle to the point to where I had to
23 ask him multiple times, hey, stay back here with me, don't
24 get too close to the dog. He was very overly concerned
25 about the K-9's presence.

1 Q And what happened after Officer Loftis finished
2 running the K-9?

3 A Officer Loftis got his dog out and started to walk
4 the dog around the car. Mr. Hewins kind of -- his
5 posture -- his shoulders dropped, his head dropped. He
6 just deflated to some degree. And after Officer Loftis
7 had run his dog around the car, he put the dog up. He
8 came back and said the dog had, actually, alerted on the
9 vehicle.

10 Q And what did you do based upon that?

11 A Basically, in police terms, that means to me that the
12 dog had detected the presence of some type of contraband.
13 And I conducted a search of the vehicle.

14 Q And where did you look, and what did you find?

15 A When I search a vehicle, I do it methodically. I
16 start at the top and work my way down. Inside the
17 passenger department, I always start at the front.

18 When I got to the armrest, the center armrest we were
19 talking about earlier that Mr. Hewins hadn't, actually,
20 opened to try to find his insurance or registration, I
21 located a Smirnoff vodka bottle. It was a mini bottle
22 that was opened and partially drank. And I, also, located
23 a small Tylenol bottle, the ones that are about this big,
24 and about that big around. The ones like you can get at
25 the gas station that have like 10 capsules in it.

1 And, based on my experience, I knew that in those
2 bottles, a lot of times people hide contraband. I popped
3 the top of the Tylenol bottle, looked down inside, and
4 there were two small rock-like white pebbles down in the
5 bottom of it. And I immediately recognized it to be crack
6 cocaine, or cocaine base.

7 Q And once you found these two items, what did you do?

8 A I went back and placed Mr. Hewins in custody. I
9 handcuffed him. And Officer Loftis searched my vehicle --
10 the back of my vehicle. We always search our vehicles
11 before we put somebody in the back, and then search it,
12 subsequently, after they're taken out.

13 I put Mr. Hewins in the back of the vehicle. Then I
14 retrieved a cocaine swab. It's like a little napkin.
15 It's like a wet wipe is the best way I can describe it.
16 But it reacts to the presence of cocaine and turns things
17 blue. So when I wiped that, the two pebbles that I had
18 located in the Tylenol bottle indicated blue, which is the
19 presence of cocaine.

20 Q Was it after midnight at this point?

21 A Yeah. It probably would have been close to after
22 midnight at this point.

23 Q And did you write any warnings or tickets at the
24 scene?

25 A No. Once we had placed him under arrest for being in

1 possession of the cocaine base substance and the mini
2 bottle, we have to tow the vehicle. I would have waited
3 on a vehicle -- or a wrecker to get there for the vehicle.
4 And I believe I wrote a ticket at the detention center for
5 the open container. I wrote him a ticket at some point
6 after midnight.

7 Q Did you give him a warning for the illegal lane
8 change?

9 A At that point -- after he had been placed under
10 arrest, yes, I never, actually, handed him the warning
11 until after the entire sequence of events that transpired.

12 Q And what did you do with the Smirnoff bottle?

13 A I poured it out and would have disposed of it.

14 Q And did you have a video in the car?

15 A At the time, I didn't. My car was not equipped with
16 a camera.

17 Q And what did you do with the two white rocks you
18 retrieved?

19 A I took those to property and evidence. And based on
20 the hour of the day, I have to put it in what's called a
21 drop box. It's a secure site where -- I would have put
22 the Tylenol bottle -- I would have separated the Tylenol
23 bottle from the white pebbles. I put the white pebbles in
24 a separate bag, signed, initialed, dated, and sealed it.

25 Q That is heat sealed?

1 A It is heat sealed. I would have done the same thing
2 with the Tylenol bottle, secured it in a manila folder and
3 dropped it into the secure site where only people that
4 work in property and evidence have access to.

5 Q Describe the lock box.

6 A The lock box is, actually, a space in a door similar
7 to a mail slot. It's behind -- the door's locked. You
8 cannot get in it unless you have access, which property
9 and evidence personnel are the only ones that do. You
10 pull the handle down. You put the bag in and close it.
11 And it fell down into wherever it goes from there.

12 Q And why did you have to do this and not hand it to a
13 property and evidence custodian?

14 A Because of the time of night, there was no one
15 working.

16 Q Did you request a lab test?

17 A I did. Any time we seize any type of contraband,
18 being drugs, we're required to submit for laboratory
19 analysis. And I did do that.

20 Q And did the -- did you take the Defendant to the law
21 enforcement center -- to the detention center?

22 A Yes. He was placed in the Greenville County
23 Detention Center.

24 Q Did he have any cash on him?

25 A He did. He had \$581 in cash.

1 Q Was the Defendant, subsequently -- did he,
2 subsequently, obtain a conviction on the open container
3 for the Smirnoff bottle?

4 A In municipal court, he was convicted of that, yes.

5 Q And did you, subsequently, based upon that, authorize
6 the destruction of any evidence?

7 A I did. The way it works is we get disposition sheets
8 from property and evidence. Because, obviously, we can't
9 keep all the property forever. When I received that, down
10 at the bottom, it said, Disposition, which is how he pled.
11 He pled guilty, a bench trial. I saw that. And then out
12 beside it, it said, Possession of cocaine. And so I went
13 ahead and marked it for destruction.

14 Q And is that how you normally would process these
15 items?

16 A Yes -- well, drugs are destroyed.

17 MS. MONTS: Thank you.

18 No further questions.

19 THE WITNESS: Thank you.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. CHAMBERS:

23 Q Officer, you indicated that you had seen Mr. Hewins
24 several times that night before you stopped him; is that
25 right?

1 A On, at least, two other occasions, yes.

2 Q And you indicated that you saw him in what you
3 believed and you said the officer described as a known
4 drug activity area; right?

5 A Correct.

6 Q So you kind of had him on your mind, I guess, when
7 you saw the car?

8 A I found it unusual to see Mr. Hewins in two different
9 locations that are known by both officers and by public
10 repute to be known drug areas, high drug areas.

11 Q Some people live in what you refer to as known drug
12 areas, don't they?

13 A Yes. There's a lot of good people that live in those
14 areas.

15 Q And there are reasons that people would be in these
16 places you call known drug areas for reasons other than
17 they would be engaging in drug activity, wouldn't that be
18 fair to say?

19 A It's possible, yes.

20 Q And one of the things you do because you know, at
21 some point, you're going to be going to court and you
22 don't have this phenomenal memory, unless you're one of
23 the people that's blessed, is you make a report; isn't
24 that correct?

25 A That's correct.

1 Q And you write down everything that's relevant,
2 because you anticipate that you're going to have to go to
3 court; correct?

4 A Correct. An incident report is a summary. It's not
5 a complete, detailed -- perfectly detailed synopsis, but
6 it's a summary.

7 Q But it's prepared pretty much -- I mean, do you have
8 your report in front of you?

9 A I do.

10 Q You prepared your report on the same day you made
11 this arrest; correct?

12 A I did.

13 Q So that would, obviously, be when things were
14 freshest in your mind?

15 A Correct.

16 Q So any testimony that you're giving here today is
17 going to be based on recollections, and based on going
18 back and re-reading your summary?

19 A Correct. I recall this incident, yes, sir.

20 Q But you don't say anything in your report, if you
21 look at it, about having seen him several times that
22 night; correct?

23 A No, I did not.

24 Q Okay. In fact, what you say in the report is that
25 the sole reason for making the stop was that you saw him

1 make this, I guess, illegal turn?

2 A That was the reason for the traffic stop, yes.

3 Q Now -- but you've said here today, of course, that,
4 at least, in your mind -- I mean, I think it would be fair
5 to say the inference you want drawn is that he's hanging
6 out in these known drug areas, and was involved in drug
7 activity or you wouldn't have told the jury that.

8 Wouldn't that be fair to say?

9 A I'm not trying to infer anything. I'm just stating
10 my observations that evening.

11 Q No. I'm saying that would be what you would imply,
12 and what they would infer; is that correct?

13 A I find it to be an important fact in the case, yes.

14 Q But not important enough to put in the report you
15 made?

16 A Like I said, my report is a summary.

17 Q Because that would lead someone to believe that -- if
18 you put that in your report, that would, certainly, lead
19 someone to believe that the reason for the stop wasn't
20 just because he was making an illegal turn, but because
21 you wanted to stop him. Would that be fair to say?

22 A I had no foregone conclusion on locating Mr. Hewins
23 that evening after observing him and conducting a traffic
24 stop.

25 Q I, also, noticed that when you testified a little bit

1 earlier, you indicated that he made a left turn from Stone
2 Avenue onto North Main. And you said it took him a little
3 bit longer than you would have expected to stop down there
4 at the Bi-Lo, but that he did stop. Is that your
5 testimony?

6 A Yeah. He was slow to stop, but he did stop.

7 Q Well, again, Officer, when I look at your report,
8 which was prepared the night you made this stop, you
9 indicated that he made a left turn from East Park Avenue
10 onto North Main Street. That's very different, isn't it?
11 That's, at least -- that's a good block away?

12 A The East Park Avenue and Main is where the Bi-Lo is
13 located. I selected that as my incident location because
14 that's where he was arrested, in that general
15 intersection. If you look at the warning I issued, it,
16 actually, says Stone Avenue.

17 Q Well, let me read the report, and correct me on any
18 part of this that's wrong, because that's very different
19 than what you just said. I was on patrol when I observed
20 the above-listed suspect turn left onto North Main Street
21 from East Park Avenue. Now, that's not catching up with
22 him on East Park, that's him turning off of East Park onto
23 North Main?

24 A That's a clerical error I made. It should say Stone
25 Avenue.

1 Q It's not a clerical error. That's what you wrote --

2 A Right.

3 Q -- on the night that you made this arrest?

4 A Right. It's an error in my report. But --

5 Q I mean, that's pretty important, wouldn't you say?

6 Because if you turned off of East Park, I mean, that Bi-Lo
7 is right there. So if you made a left off of East Park
8 onto North Main, you would immediately make a turn into
9 the Bi-Lo, which would have meant that he immediately
10 stopped?

11 A Right. And if that were the case, as I said, the
12 incident -- the warning indicates that he turned off of
13 Stone, which he did, onto Main. There is no turning lane
14 on Park. He turned off of Stone Avenue, failing to use
15 the turn lane properly. And the documentation on the
16 report, as I said, yes, it should say Park. I have no
17 other answer other than it should say Park -- Stone.

18 Q So you're saying here today, some two and a half
19 years after, when you say Stone Avenue, it's where he
20 turned from -- that that's where he turned from and not
21 East Park Avenue, which is what you indicated on the
22 evening when you, actually, arrested him?

23 A Correct. The warning indicates the correct location
24 where he made the improper turn.

25 Q You knew at some point you were going to have to come

1 to court; right?

2 A I did.

3 Q I mean, this is kind of sloppy, wouldn't you agree
4 with that?

5 A Sloppy, no. Clerical error, yes.

6 Q Well, again, you use that term clerical error, but
7 this is you writing this.

8 A I wrote it. I made a mistake.

9 Q And you try to make sure you get this stuff accurate,
10 because somebody is looking at a criminal conviction if
11 you get things wrong. Wouldn't that be fair to say?

12 A That's correct.

13 Q Okay. So then you stopped -- and wherever it was
14 that he turned, either from Stone Avenue or East Park, as
15 you indicated back in September, and you were upset about
16 the fact that he was nervous; right?

17 A He was nervous beyond a normal or typical traffic
18 stop.

19 Q You said when you walked up and his voice was
20 quivering and stuff, you took note of that. But you
21 didn't ask him to get out of the car, did you?

22 A No. For my safety, I didn't want him out of the car
23 without backup.

24 Q Would it be safer to have him out where you could see
25 him if you were that concerned about him, as opposed to in

1 the car where he could reach for a weapon, or do something
2 that could hurt you?

3 A Well, as long as he's in the car and I can see his
4 hands on the steering wheel, I feel like I'm pretty safe.
5 The only time I'm going to get him out of a vehicle, for
6 my safety, is when I've got an additional officer there.

7 Q But then you say later that you got him out for your
8 safety?

9 A I did. But, at that point, after -- when I got him
10 out of the vehicle, Officer Loftis was present.

11 Q But you had already indicated to him -- at least,
12 what you testified to and put in your report, you
13 indicated to him, basically, this is no big deal, I'm
14 going to give you a warning?

15 A I did that to help calm his nerves.

16 Q So that wasn't your intent, you were just telling him
17 that?

18 A No. I intended to give him a warning. But my point
19 of doing that was to let him know, you can relax, I
20 understand you're nervous, but I'm just giving you a
21 warning.

22 Q Don't most people get nervous when they're stopped by
23 the police?

24 A Most people do, but not to the level he was. And
25 they, typically, will calm down. 100 percent of the time

1 when you tell someone, I'm going to write you a warning
2 for speeding, improper turn, tag light out, whatever,
3 people calm down. They relax to some degree. Contact
4 with police makes people --

5 Q You can't say it's 100 percent of the time. People
6 come from different walks of life, and different
7 backgrounds, and react differently to being stopped by the
8 police, don't they?

9 A Yeah. People react differently, but they decompress.

10 Q I mean, are you aware of the fact -- and I want to be
11 delicate in the way I say this, but I think it's a factor
12 that has to be considered, especially somebody in your
13 line of work, that young African-American men sometimes
14 have, perhaps, a reasonable fear of being stopped,
15 particularly late at night, by the police? Are you aware
16 of that?

17 A If they do, that's something I can't speak to.

18 Q So you don't think there's any justification in that
19 at all?

20 A I don't see any justification in any particular race
21 fearing being stopped by the police.

22 Q You've never heard anybody use the phrase --

23 MS. MONTS: Objection, Your Honor. He's calling for
24 speculation.

25 MR. CHAMBERS: She doesn't even know what I'm going

1 to say, Your Honor.

2 THE COURT: Overruled.

3 BY MR. CHAMBERS:

4 Q Have you ever heard anybody use the phrase, Stopped
5 for driving while black?

6 A No. I have not heard that one.

7 Q So you're not familiar with that at all?

8 A No.

9 Q So you don't think there would be any reason for
10 Erick Hewins to be nervous about being stopped by you?

11 A No.

12 Q Okay. But that's you. You don't know what's in his
13 mind, do you?

14 A I can't answer for him, no.

15 Q And you said you called for backup. And, strangely
16 enough, the backup that you called for just so happened to
17 be a K-9 unit with a drug sniffing dog?

18 A Correct.

19 Q Is that just a coincidence, or is that who you wanted
20 out there?

21 A Well, based off of his nervousness and his breathing,
22 his voice quivering, the way he behaved, observing him in
23 two known drug areas, albeit he may have been visiting
24 family, I felt like it would be good to have a K-9 there.

25 Q The truth of the matter is you believed when you

1 stopped him -- this was all about you wanting to stop this
2 car from the beginning?

3 A It was not a pretextual stop, no.

4 Q And you already had it in your mind that you were
5 going to do whatever you needed to do to look for drugs in
6 this man's car when you stopped him?

7 A That is not the case. But if it were the case, case
8 law does support that.

9 Q I mean, you indicated, but you didn't put in your
10 report, that he was hanging out in these known drug areas?

11 A I saw him -- I didn't indicate in testimony that he
12 was hanging out. I observed his vehicle and him driving
13 it.

14 Q You called backup for somebody with a drug sniffing
15 dog. You even told him you were stopping him for a
16 traffic stop, and you even told him you going to give him
17 a warning; right?

18 A That's correct.

19 Q And then you testified -- you tell us that you found
20 these things in his car, the Smirnoff vodka bottle, and
21 you just destroyed that, didn't you?

22 A I poured the alcohol out, and disposed of the bottle.

23 Q I mean, you talk about it today, but it's not in
24 evidence. You didn't take it into evidence and hold it so
25 you could later show a jury this is what I found in the

1 car?

2 A No, I didn't, but he pled guilty to that.

3 Q And then when you had somebody come in and give you a
4 form asking you whether or not you wanted the drugs to be
5 destroyed, you had them destroyed?

6 A Right. And, like I said, the reason I did that is on
7 that form, it says -- it has Mr. Hewins name, and his
8 birth date. And then out beside it, it gives the
9 description of the charge, which says, Possession of
10 cocaine. And then beside that, it says, Disposition,
11 guilty, bench trial, credit for time served. When I read
12 that and saw the charge, it was my assumption that this
13 case had already been adjudicated. I circled disposed of
14 prematurely, and signed off on it.

15 Q Well, the bottom line is, Officer, I mean, you don't
16 have those drugs here today to show these people to say
17 you know what, this is what I found in this man's car so
18 they can take a look at it and judge for themselves? You
19 don't have that?

20 A I don't. I only have the lab analysis.

21 Q And that's because you had it destroyed?

22 A Correct.

23 Q And you did put on this property and evidence
24 sheet -- you listed on there what it is you say you got
25 out of the car; right?

1 A Correct.

2 Q And then you say that you then dropped that in a box
3 and sent it off to be tested?

4 A Correct.

5 Q And you, also, indicated that you didn't have a video
6 camera in the car?

7 A Correct. My department, at the time, did not have a
8 video camera in the vehicle that I was assigned to.

9 Q So you're telling me that the City of Greenville in
10 this day and age, as long as we've had videos in cars,
11 that you didn't have a video in your car that night?

12 A I did not have a video camera in my vehicle that
13 night.

14 Q And the reason for video cameras is -- I mean,
15 they're very helpful. You could sit right in here --

16 A I agree.

17 Q -- and you can play to the jury what happened out
18 there that night and they can see it?

19 A I wish that night I had a video camera.

20 Q And they wouldn't have to take your word for it.

21 A I wish I had one.

22 Q Because, as we look back on what you've got to say
23 today and what you've got in your report, I mean, there's
24 some stark differences, aren't there?

25 A The only difference was the clerical error.

1 Q You keep calling it a clerical error. But you've got
2 him turning a block different, claiming that it took him a
3 long time to pull over, when if he did what you said he
4 did in your report, he pulled over immediately. And
5 you're, also, talking today about him running around drug
6 areas, and you had seen him two or three times that night,
7 and you don't put that in your report, but you tell us
8 about that today?

9 A An incident report is a summary, as I said before.

10 Q So believe what you say today, not what you wrote
11 before?

12 A That's a decision the jury has to decide.

13 Q Believe me, even though I destroyed all the evidence?
14 Believe me, even though I didn't have a camera to show you
15 what happened?

16 A I can't answer for the jury.

17 Q In other words, ignore all the mistakes I made?

18 A I did make a mistake on the East Park. I admit I
19 made that mistake. And I think by me admitting that I am
20 in no way perfect in writing this report, or in writing
21 about disposing of the evidence. However, I do believe
22 there's evidence to support the testimony I'm giving, the
23 warning being written properly from Stone Avenue. Also,
24 North Main Street and East Park Avenue, granted, it is an
25 error in the narrative portion of my report. It is the

1 incident location where he was arrested. So the
2 confusion for the actual intersection, I believe, is
3 justifiable.

4 Is it okay? No. The report should have been
5 betterly [sic] written. I admit that. At the time, I had
6 three years on. I've learned a lot about report writing
7 since. And, as far as the evidence destruction, I wish I
8 did have the evidence here to present to the jury so they
9 could, actually, see a physical tangible item. However,
10 as I explained, the possession of cocaine charge and the
11 fact that the sheet said that he had received time
12 served -- credit for time served and a bench trial, I
13 believed that this case had already been disposed of by
14 the Court. And that's the reason I marked for that
15 evidence to be destroyed.

16 Q The container that you said you found, the Tylenol
17 bottle that you say you found the white rock-like
18 substance in, before it was destroyed, did you ever have
19 it checked for fingerprints?

20 A No.

21 Q Had you done that and if this gentleman had,
22 actually, ever had his hands on that bottle, you probably
23 would have been able to tell that, wouldn't you?

24 A I'm not an expert. But, based on my experience -- I
25 worked vice and narcotics for two years. One of the

1 things that the Solicitor's Office has asked us to do in
2 narcotics was to separate packaging drugs from packaging,
3 regardless of the type of packaging. And out of hundreds
4 of cases that I made and other detectives made in
5 narcotics, we got one fingerprint back that matched a
6 suspect. So it's highly unlikely.

7 Q And it's completely unlikely if you don't even get it
8 done, wouldn't that be fair to say?

9 A Correct.

10 MR. CHAMBERS: All right. Thank you.

11 THE COURT: Redirect?

12 MS. MONTS: No, Your Honor.

13 THE COURT: Thank you, sir.

14 You can step down.

15 You may call your next witness.

16 MS. MONTS: The State calls the Derrick Loftis.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 MICHAEL DERRICK LOFTIS,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You may be seated.

24 State your name for the record.

25 THE WITNESS: Michael Derrick Loftis.

DIRECT EXAMINATION

1

2

BY MS. MONTS:

3

Q Officer, please, tell the jury where you're employed.

4

A The Greenville Police Department.

5

Q And how long have you worked there?

6

A I've worked at the Greenville Police Department
7 approximately five years.

8

Q Can you describe your prior law enforcement
9 experience?

10

A Yes, ma'am. I have a total of 12 years experience
11 between Spartanburg County and Anderson.

12

Q And what are your duties at the police department?

13

A I'm assigned to the K-9 division.

14

Q And how long have you been assigned to them?

15

A Approximately five years.

16

Q And, please, describe your training in the -- with --
17 in law enforcement and with K-9 usage.

18

A I started my law enforcement career in 1999. I
19 attended the Criminal Justice Academy in Columbia. After
20 graduating, at the time, I was employed with the
21 Spartanburg County Sheriff's Office. I completed a
22 12-week training program before I was on my own. Between
23 that time and now, I've attended numerous training classes
24 from drug interdiction to basic investigation to
25 interrogation and reading body language. I've been to

1 numerous classes.

2 As far as K-9 is concerned, I've been a K-9 handler
3 for approximately seven years. I've had three dogs. My
4 current dog's training -- with him alone was 600 hours
5 initial, 600 hours of training. And then we train 10
6 hours a week, so 40 -- we continuously train 40 hours a
7 month. And then we're required to be certified through an
8 outside organization and the National Police Drug Dog
9 Association. It brings a certified instructor in or we go
10 to them, whichever the case may be. And they certify our
11 dog in all aspects that it's trained to do.

12 Q And when you do the K-9 training, do you and the dog
13 train as a unit?

14 A Yes. We're a unit.

15 Q Describe how that works. Specifically, are you
16 tested together?

17 A Yes. We're tested together. Everything a dog does
18 has to be with the handler that takes care of the dog. So
19 the handler has to be able to look at the dog and read
20 what the dog is doing before he reacts to either a person
21 or a substance.

22 Q And what type of alert is your dog trained to do?

23 A My dog is aggressive alert, which means he scratches
24 at the odor. At the odor of narcotics, he will scratch.
25 You either have an aggressive dog, which scratches like

1 mine does, or a passive dog that sits.

2 Q And, on September 15th of 2009, which dog did you
3 have?

4 A My current dog, which his name is Nemo.

5 Q And what type of dog is he?

6 A He's a Dutch shepherd.

7 Q And was he certified at that time?

8 A Yes, ma'am, he was.

9 Q And how often are you certified and recertified?

10 A We're certified yearly.

11 Q And, besides running the K-9, what are your duties at
12 the Sheriff's Office -- excuse me, the city police
13 department?

14 A My main duties are to support other officers with the
15 dog, using it as a tool for backing up on calls, traffic
16 stops, burglaries, large crowd fights, any violent crime.
17 I normally don't respond to calls for service, such as a
18 911 hang up, a shoplifter, et cetera. I focus on being a
19 backup officer. And when I'm not doing that, I'm usually
20 working the highways or interstate with the drug
21 interdiction.

22 Q And are there other times you act as a backup officer
23 without utilizing your K-9?

24 A Yes, daily.

25 Q And what do you recall, if anything, at approximately

1 11:45, 11:47 on the night of September 15th of '09?

2 A I remember Officer Cothran stopping a vehicle on Main
3 Street there at the Bi-Lo.

4 Q And where were you located?

5 A I was located at our office, which is at 426 North
6 Main Street, which is less than a block away from that
7 incident location.

8 Q And did you respond to that?

9 A Yes, I did.

10 Q Why did you?

11 A Officer Cothran asked for another unit to back him
12 up. And I was, like I said, less than a block away, so I
13 was close to him.

14 Q And how long did it take you to get there?

15 A Probably two minutes, or less. I was, actually, in
16 the office, so just the time to walk out to the car and
17 get there.

18 Q What did you see when you arrived?

19 A I saw Officer Cothran had the Defendant pulled over.
20 He was driving a Cadillac. There in the parking lot, the
21 Defendant was still in the car, and Officer Cothran was in
22 his car running his checks on the computer.

23 Q And what did you do when you arrived?

24 A I went to Officer Cothran and checked to see what he
25 needed and what he had.

1 Q Did you have video in your car?

2 A No, I did not.

3 Q What did you observe after you arrived?

4 A After I arrived, I talked with Officer Cothran. And
5 he told me the reason for the stop about the -- he made an
6 illegal turn. And he told me that he had reasonable
7 suspicion at that time that he -- that the Defendant was
8 involved in some type of criminal activity, based on his
9 behaviors?

10 Q And were you asked to run the K-9?

11 A Yes, I was.

12 Q How long was it after you arrived until that
13 happened?

14 A I would say less than five minutes probably.

15 Q And how long did it take you to run the K-9?

16 A It takes me approximately on a car less than a
17 minute, usually.

18 Q And, in this case, describe how you went around the
19 car.

20 A Well, the way I always run cars is in a pattern,
21 which I start at the headlight -- the passenger side
22 headlight and I work in a clockwise direction around the
23 car. And then when I get back to my starting point, I do
24 a counter clockwise direction.

25 And the reason for that is the flow of air through a

1 vehicle, or the flow of air through anything. If I walk
2 one way, the air may -- the wind might be blowing to the
3 left and I may not catch the odor, or the dog may not
4 catch the odor. When I flip him around and come back and
5 the wind is still blowing the same way, the odor is going
6 to come out of the car, out of the seams of the doors, the
7 trunk, et cetera, and the dog will catch the odor.

8 Q And, based on being outside the car, can you tell
9 where inside the car the dog is alerting?

10 A No, ma'am.

11 Q And describe, in this case, if you recall, where the
12 dog alerted.

13 A Yes, ma'am. The dog alerted to the driver's side
14 door.

15 Q And what did you do? Did you talk to or say anything
16 to Detective Cothran at that point?

17 A Not at that point. I was still dealing with the dog
18 and getting him put up before I spoke to him about what
19 the dog detected, or what he told me.

20 Q Did you, eventually, tell him?

21 A Yes. I mean, directly after I put the dog up, I told
22 Officer Cothran that the dog had alerted to the car, and
23 he had probable cause based on the dog alert to search the
24 vehicle.

25 Q And you and Nemo have been certified every year; is

1 that correct?

2 A Yeah, every year. He's nine years old now. So for
3 the past eight years, we've been certified every year.

4 MS. MONTS: Thank you.

5 No further questions.

6 CROSS-EXAMINATION

7 BY MR. CHAMBERS:

8 Q So what is your dog, specifically, trained to sniff
9 for?

10 A To -- on the -- we have dual purpose dogs, so they do
11 multiple tasks. But for drug work, it's marijuana,
12 cocaine, methamphetamine, and heroin.

13 Q Anything other than drugs?

14 A (There was no response.)

15 Q In other words, your dog, does he sniff for anything
16 other than drugs?

17 A Yes.

18 Q What?

19 A Anything a human may have discarded, anything that's
20 got human odor on it, and humans.

21 Q So to track human beings?

22 A Track or, say, for instance, you had a gun and you
23 threw it down, then he would be able to find the gun.

24 Q But that's based on -- when you say, Gun, that's
25 based on the human scent?

1 A Yes.

2 Q So your dog is not a dog that, for example, sniffs
3 for explosives, or anything like that?

4 A No.

5 Q He's trained, specifically, for drugs?

6 A Yes, sir.

7 Q So when you got the call for backup, you, the fellow
8 with the drug-sniffing dog, is the one that responded to
9 that incident location; correct?

10 A That's correct.

11 Q And when you got there, at that point, was Mr. Hewins
12 already out of the car, or did he get out of the car after
13 you got there?

14 A He was still in the car.

15 Q Okay. So then he got out of the car. Do you
16 remember when -- were -- the doors on his car, were they
17 closed or open?

18 A They were closed.

19 Q And were the windows up or down?

20 A I do not recall.

21 Q You don't remember. So you took the dog and you
22 started him from the front right passenger side
23 headlights, walked around clockwise, and turned around and
24 walked around counter clockwise?

25 A That's correct.

1 Q All right. And what you say the dog alerted on,
2 although you don't know where in the car, it wasn't in a
3 specific place in the car. Was -- well, you indicated he
4 alerted on the car?

5 A Yes, sir, the driver's door.

6 Q And we heard testimony earlier that what was found
7 was -- I believe it was a couple of rock-like substances
8 inside a sealed Tylenol bottle; is that right?

9 A It was inside a Tylenol bottle.

10 Q And the testimony was that it was inside a console
11 that was closed?

12 A That's correct.

13 Q Which was then inside the car with all the doors
14 closed?

15 A Yes, sir.

16 MR. CHAMBERS: That's all the questions I have for
17 you.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MS. MONTS:

21 Q Officer, when you're getting a dog to track or look
22 for an item, how -- is your signal to the dog on what his
23 job to do is different from if he's looking for drugs?

24 A Yeah. His commands are different for a drug search.
25 His command is find it. For an article, say, a gun or

1 whatever it may be, his command is sook [phonetic].

2 Q And describe how strong the dog's sense of smell is
3 compared to humans, or any other comparison?

4 A A dog's nasal receptacles are 20 -- are approximately
5 20 million versus a human's is five million.

6 MS. MONTS: Thank you.

7 I don't have any further questions.

8 MR. CHAMBERS: Just one last question.

9 RE CROSS-EXAMINATION

10 BY MR. CHAMBERS:

11 Q Given what you testified to earlier about your dog's
12 capabilities and you weren't searching for a human being,
13 I mean, clearly, when you walked the dog around, y'all
14 were looking to see if there were drugs in the car; right?

15 A Yes, sir.

16 MR. CHAMBERS: That's all the questions I have.

17 MS. MONTS: Nothing further, Your Honor.

18 THE COURT: Ladies and gentlemen, we're going to take
19 a short recess. Don't talk about the case. And continue
20 to keep an open mind. We'll take a short recess.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 3:32 p.m.)

24 THE COURT: Is the State going to have any more
25 witnesses?

1 MS. MONTS: Your Honor, we just have a property and
2 evidence witness, and the chemist.

3 THE COURT: What time do you have to --

4 MR. CHAMBERS: I probably need to leave hear, say,
5 like 4:10 maybe.

6 THE COURT: Okay. Well, we'll just take about a
7 five-minute break.

8 Thanks.

9 (WHEREUPON, a break was taken.)

10 THE COURT: Anything before we bring the jury back
11 in?

12 MS. MONTS: No, Your Honor.

13 MR. CHAMBERS: No, Your Honor.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:45 p.m.)

16 THE COURT: Yes, ma'am, Ms. Monts. You may call your
17 next witness.

18 MS. MONTS: The State calls Tabitha Fricks.

19 THE CLERK: Ma'am, please, place your left hand on
20 the Bible and raise your right hand.

21 WHEREUPON,

22 TABITHA FRICKS,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 Please be seated.

1 Q Where do you go, and how do you check out drugs?

2 A They have a counter where there is a pull-down
3 window. I go to the counter and tell them I would like
4 some cases. They bring me a box. And I go through the
5 box and retrieve the items I wish to test.

6 Q And, in this case, 02-2009-076757, did you analyze
7 the item?

8 A Yes, ma'am, I did.

9 Q Did you produce a report?

10 A Yes, ma'am, I did.

11 Q I'm going to hand you State's Exhibit No. 2. Could
12 you, please, identify this?

13 A Yes, ma'am. This is a copy of my lab report
14 generated for case #02-2009-076757.

15 Q And did you sign this report?

16 A Yes, ma'am, I did.

17 MS. MONTS: Your Honor, we'd move this report into
18 evidence.

19 MR. CHAMBERS: No objection, Your Honor.

20 THE COURT: It's in evidence.

21 (WHEREUPON, State's Exhibit No. 2 was marked for
22 identification and admitted into evidence.)

23 BY MS. MONTS:

24 Q Mr. Armstrong, please publish the results of your
25 testing on this substance.

1 A Item CKC1, I described it as a rock substance. I
2 found that rock substance to contain cocaine base. The
3 weight was 0.24 grams, a Schedule II controlled substance.

4 Q And describe the condition of an item, particularly,
5 this one, when it is checked out from the property and
6 evidence room. How secure is that?

7 A When I receive an item, I make sure the item is,
8 actually, heat sealed or, at least, has some kind of
9 evidence or tamper-resistant seal. And I make sure the
10 integrity is intact. If it is not securely sealed, I will
11 make a note of that and put it on the property and
12 evidence sheet, as well as tell the property clerks that
13 there is a problem with the case, and have the officer
14 come and deal with it.

15 Q And was there any indication of that in this case?

16 A No, ma'am, there was not.

17 Q And when you are finished analyzing the substance and
18 producing your report, what do you do with the substance?

19 A Once I finish my analysis, the item is heat sealed
20 with my initials and the date, and double heat sealed.
21 Then I take the evidence back to the property and evidence
22 room for storage.

23 Q And is that, again, in a secured area?

24 A Yes, ma'am, it is.

25 MS. MONTS: Thank you.

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(WHEREUPON, the proceedings were recessed at approximately 10:31 a.m.)

THE COURT: I understand we have a verdict. Anything before we bring the jury in?

MR. CHAMBERS: No, Your Honor.

MS. MONTS: No, Your Honor.

THE COURT: Okay. You can bring them on in. Thank you.

(WHEREUPON, the jury came into open court at approximately 11:34 a.m.)

THE COURT: Mr. Foreman, has the jury reached a unanimous verdict, sir?

JUROR #72, MICHAEL FALLIN: Yes, sir, we have.

THE COURT: If you'd hand it to Mr. Fuller, we'll receive it and publish it.

Thank you.

VERDICT

THE CLERK: Your Honor, in the case of 2010-GS-23-2660, the State of South Carolina v. Erick Hewins, as to the charge of possession of cocaine base, we, the jury, unanimously find the Defendant, Erick Hewins, guilty. This is signed by our Foreman.

Ladies and gentlemen, if you agree this is the verdict you reached in your deliberation room, would you, please, raise your right hand?

1 MS. MONTS: And, Your Honor, we just want to give you
2 his prior record.

3 THE COURT: Sure. Yes, ma'am.

4 MS. MONTS: Your Honor, 1992, trespassing; 1993,
5 possession of crack cocaine; also, in 1993, assault and
6 battery with intent to kill; 1995, distribution of crack
7 cocaine; also, in 1995, threatening a judge or juror;
8 also, in 1995, possession of crack cocaine; 2000,
9 disorderly conduct; 2001, operating uninsured vehicle and
10 assault; 2003, indecent exposure; 2005, two counts of
11 criminal domestic violence; also, 2003, in Tennessee,
12 aggravated assault.

13 THE COURT: Okay. Mr. Chambers.

14 MR. CHAMBERS: Your Honor, as you can hear from his
15 record, it's been nearly 20 years since my client has been
16 convicted of any drug charge. So, you know, you're
17 looking at really a long period of his history where there
18 are no drug convictions to speak of.

19 And this was a simple possession case. It involved
20 two rocks of crack cocaine that were found in his car.
21 There was nothing aggravated about the circumstances, or
22 under the influence, or anything like that.

23 And I would ask the Court -- we believe that he
24 should get the benefit of the new sentencing law. We
25 would ask for a suspended sentence with no active jail

1 time considering all the circumstances in the case.

2 THE COURT: Thank you.

3 Anything you want to say, Mr. Hewins?

4 DEFENDANT HEWINS: If you could be as lenient as
5 possible. Right now, I'm shocked. I can't speak right
6 now. But I ask that you be as lenient as possible.

7 THE COURT: So the last incident he had was in 2003;
8 is that right?

9 MS. MONTS: Yes, Your Honor.

10 He went to SCDC in 2003. He was released from there
11 in 2004. And I'm not sure about the date of the charge in
12 Tennessee. I just know the conviction was in 2003.

13 THE COURT: What has he been doing? I mean, is he
14 working or --

15 MR. CHAMBERS: I'll have to let him answer that
16 question.

17 MS. MONTS: And, Your Honor, the Defendant does have
18 other pending charges in this office.

19 MR. CHAMBERS: Stand up and talk to the Judge. He
20 wants to know what you've been doing.

21 DEFENDANT HEWINS: Just doing daily jobs here and
22 there. And I've been receiving my disability. That's why
23 I hadn't been doing too much work.

24 THE COURT: All right, sir. And can you -- is there
25 anything else you want to tell me about yourself, or about

1 these circumstances?

2 MR. CHAMBERS: Your Honor, I can tell you, he's
3 having a hard time kind of gathering his thoughts. He
4 does have a family that he helps provide for with his
5 disability payments. He helps provide for them
6 physically, and emotionally, and every other way. He's
7 got some of his family here with him today. His wife
8 would have been here today, but she told me she had to go
9 to work. I spoke to her. So, you know, he does have
10 commitments and people that, you know, he's responsible
11 to. And he, certainly, would like to be able to continue
12 to be there for them.

13 SENTENCE

14 THE COURT: All right. Taking into account his
15 record and the fact that, as Mr. Chambers pointed out,
16 there was nothing aggravated about this, still, it puts
17 you in a position, sir, where you have to reckon with your
18 past and continuing to break the law.

19 So the sentence is you be committed to the Department
20 of Corrections for a period of one year.

21 Thank you.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

73

WITNESSES

Charles Cothran

Greenville Police Department

9/16/2009

C. Cothran

ARREST WARRANT NUMBER

M380592

ACTION OF GRAND JURY

TRUE BILL

Ann Swerette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-002660

WIB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2010

3-13-12

THE STATE

vs.

ERICK ETON HEWINS

DL SUSPENDS

Did Clerk receive driver's license?

YES _____ NO _____

If no, explain _____

Defendant _____

✓ 3016
3009

Indictment for

POSSESSION OF COCAINE BASE

VIOLATION § 44-53-0375

RECEIVED

MAR 26 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
POSSESSION OF COCAINE BASE**

At a Court of General Sessions, convened on

MAY 04 2010

the Grand Jurors of Greenville

County present upon their oath:

That ERICK ETON HEWINS did in Greenville County, on or about the 15th day of September, 2009, willfully and unlawfully have in his possession and under his control a quantity of Cocaine Base (Crack), a controlled substance. This is in violation of §44-53-0375 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.

A. H. [Signature]
SOLICITOR

Form 6-438
Rev. 12/08

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenville VERSUS

FIRST NAME ERICK MIDDLE NAME Eton LAST NAME Hewins

STREET AND NO. Taylor St CITY Greenville STATE SC ZIP CODE 29607

STATE LICENSED SC DRIVER'S LICENSE NO. D COL. D DR. LIC. CLASS D

VEH. LIC. NO. EGV 294 STATE SC MAKE OF VEH. CAD YEAR 75 COAL VEH. NO ALCOHOL NO MOTOR VEH. NO DOM. NO

HAZ. MT. NO MOPED NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER HADLEY STREET AND NO. 426 n main st

DATE OF TRIAL 10/8/09 TIME OF TRIAL 8 am CITY Greenville STATE SC ZIP CODE 29607

VIOLATION - COURT APPEARANCE REQUIRED - YES NO NO VIOLATION SECTION NO. 617-6-4080

OWNER OF VEHICLE open container DATE OF ARREST 9/16/09

ADDRESS OF OWNER SAME DATE OF VIOLATION 9/16/09

BAIL DEPOSITED NO NAME OF ARRESTING OFFICER Cottrick RANK PFC

DESCRIPTION OF ACCUSED open container COUNTY Greenville NUMBER 23

DATE BAIL RECD. BY 10/8/09 BADGE 163

CASE BEFORE: MAGISTRATE JAIL COURT TIME OF VIOLATION 2347 DISTRICT 1

CIRCUIT COURT FAMILY COURT FEDERAL COURT NAME OF TRIAL OFFICER HADLEY DISTANCE IN FEET FROM INTERSECTION OF main st

DEFENDANT: DID NOT APPEAR APPEARED AND PAID

DISPOSITION: NOLLS PROSSED GUILTY FINE 100 MILES 0 E 0 S 0 W 0

FORFEIT BOND FILED: NOLLO CONTENDERE TRIAL BY: TRIAL OFFICER JURY CITY Greenville

VERDICT OF TRIAL: GUILTY DATE OF TRIAL IF ANY 10/8/09 NOT GUILTY Let. 0

JAIL 0 SUSPEND 0 FINE 100 AMT. COLLECTED 0 SUSPENDED 0 Long 0

COMMITTED TO: Paul OFFENSE CODE 94 B.A. LEVEL 1

CERTIFIED CORRECTION Paul DATE 10/8/09 97463 EU

TRIAL OFFICER'S COPY 10/9/09 262.50

This is to certify that this is a true copy.

date 2-21-12
Pamela A. Larsen
Clerk Of Court 53





County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

DRUG ANALYSIS REPORT

Department: Greenville Police Department
 Officer: Cothran, C.
 Subject: Hewins, Erich Eton

Case Number: 02-2009-076757
 Report Number: 1
 Incident Date: 09/16/2009
 Received From: Property & Evidence
 Received Date: 10/08/2009

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

*James M. Dorriety, Assistant County Administrator
 Department of Public Safety*

EXAMINATIONS CONDUCTED

CHEMICAL TEST MICROSCOPIC INFRARED SPECTROSCOPY
 ULTRAVIOLET SPECTROSCOPY GAS CHROMATOGRAPHY MASS SPECTROSCOPY

ITEMS OF EVIDENCE:

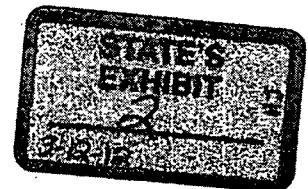
Item CKC1: Rock substance.

Results: Cocaine base found, 0.24 grams C-II

I am a Criminalist employed by Greenville County to perform chemical and physical examinations on evidence submitted by law enforcement agencies in criminal cases, and to testify in courts of record in the state of South Carolina on such examinations.

James W. Armstrong
 James W. Armstrong

10/13/2009



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 1st, 2013



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

OCT 01 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

RECEIVED

OCT 1 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ERICK E. HEWINS,

APPELLANT

APPELLATE CASE NO. 2012-210306

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of October, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2013.

Laura Hendrix (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.