

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH ODELL JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-212700

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Kenneth Odell Jackson,) 2012-GS-42-824-827
7 Defendant.) July 23, 2012
8) Spartanburg, South Carolina
9
10

11 B E F O R E:
12 HONORABLE ROGER L. COUCH, JUDGE; and a jury
13
14

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1 (Proceedings July 23, 2012)

2 THE COURT: Any objections from the state --

3 MR. SPIVEY: None from the state, Your Honor.

4 THE COURT: -- or from the defense for the proposed
5 voir dire?

6 MR. HARRIS: Your Honor, I would object to the state's
7 request No. 2 as we are not listing any witnesses.

8 THE COURT: Well, I would intend to just ask blanket
9 about all the witnesses I identify, and I do not identify
10 them as to whether they're state or defense witnesses.

11 MR. HARRIS: Very good.

12 THE COURT: That will care of that.

13 MR. HARRIS: Yes, sir, it will. And, Your Honor, as
14 that portion of state's request No. 8 about, asking
15 about --

16 THE COURT: Well, it's similar to your request No. 4,
17 and so I plan to word that my way but ask a similar
18 question that will take care of that I think.

19 MR. HARRIS: Okay. That's all, Your Honor.

20 THE COURT: I understand what you're saying.

21 MR. HARRIS: That's all, Your Honor.

22 THE COURT: All right. Any -- apparently no
23 objections from the state.

24 You've answered one of my questions, I believe, Mr.
25 Harris. That is you do not intend to call any other

1 potential witnesses other than those who have been
2 identified.

3 MR. HARRIS: No, Your Honor.

4 THE COURT: All right. Is the state ready to select a
5 jury?

6 MR. SPIVEY: Yes, Your Honor.

7 THE COURT: Is the defense ready to select a jury?

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: All right. As soon as the jury's ready
10 bring them in.

11 I believe the strikes will be five and five. We will
12 pick one alternate in the case with one and two strikes.

13 Any objection to that, Mr. Spivey?

14 MR. SPIVEY: None, Your Honor.

15 THE COURT: Mr. Harris?

16 MR. HARRIS: No.

17 THE COURT: All right. I'm assuming your client has
18 been arraigned on the charges, is that correct?

19 MR. HARRIS: Your Honor, the -- he was admitted to
20 bond on warrants that relate, I think, to each of the
21 charges.

22 Now, in terms of a direct indictment I have to be
23 honest though in saying I wasn't aware that there was a
24 direct indictment until just now, so.

25 THE COURT: All right. Well, do you want to have him

Jury qualification

1 arraigned on that charge before we proceed?

2 MR. HARRIS: Your Honor, what indictment number is it?

3 MR. SPIVEY: I don't have the number. It's the one
4 for possession with intent to distribute methamphetamine.

5 THE COURT: Let me find it. That's number --

6 MR. SPIVEY: 827.

7 THE COURT: -- 827.

8 MR. HARRIS: Well, Your Honor, I'll just state for the
9 record then on behalf of Mr. Jackson. He is present. And
10 as to the true-billed indictment for 12-GS-42-0827 charging
11 the defendant with possession with intent to distribute
12 methamphetamine, he enters a plea of not guilty and
13 requests trial by a jury.

14 THE COURT: As he has on all of the charges.

15 MR. HARRIS: That's correct.

16 THE COURT: That's correct. All right. Thank you
17 very much.

18 MR. HARRIS: Thank you.

19 (The following takes place in the presence of the jury
20 venire.)

21 THE COURT: All right. Ladies and gentlemen, we are
22 about to begin the trial of the State of South Carolina vs.
23 Kenneth Odell Jackson.

24 I'm going to go through a similar process that we just
25 went through to qualify you as jurors as it relates

Jury qualification

1 specifically to this case. That is I'll be asking you some
2 questions that relate to this case. And again I'll be
3 asking you if the question applies to you that you stand.
4 We'll go through the same process as far as receiving
5 answers. That is I'll need your name and number first, and
6 then we'll discuss any response you may have to the
7 questions that I'm about to ask.

8 Now, before I begin to ask those questions we're going
9 to give you a little bit of information because you need
10 some information with which to be able to fully answer the
11 questions that I'm about to ask.

12 Now, the cases that are involved in this particular
13 trial are cases Nos. 2012-GS-42-0824, 0825, 0826 and 0827.
14 So there are four indictments before the Court at this
15 point in time. That means there are four separate charges
16 to be tried in this case.

17 Now, all of these indictments -- and let me explain to
18 you an indictment is the charge that brings the case before
19 this court. It informs this court of the charges to be
20 tried. It informs the defendant of the charges that have
21 been lodged against the defendant.

22 I'm going over them with you simply to give you some
23 information so that you might more fully answer my
24 questions as I've indicated.

25 The first indictment that I will go over with you is

Jury qualification

1 case No. 2012-GS-42-0824. It's an indictment for
2 possession with the intent to distribute cocaine.

3 The indictment states that Kenneth Odell Jackson did
4 in Spartanburg County on or about November 29 of 2011
5 manufacture, distribute, dispense, deliver, purchase, or
6 otherwise aid, abet, attempt or conspire to manufacture,
7 distribute, dispense, deliver or purchase or possess with
8 the intent to manufacture, distribute, dispense, deliver or
9 purchase a quantity of cocaine, a Schedule II controlled
10 substance or controlled substance analogue in violation of
11 code section 44-53-370 of the Code of Laws of South
12 Carolina, 1976 as amended, against the peace and dignity of
13 the state and contrary to the statute in such case made and
14 provided.

15 The next indictment is case number -- same beginning
16 numbers. It's 0825. This is an indictment for possession
17 with intent to distribute. And in this case the drug is
18 hydrocodone.

19 I'm not going to read the entire indictment to you. I
20 will tell you it alleges the same date and it alleges the
21 same conduct concerning a quantity of hydrocodone, a
22 controlled -- a Schedule III controlled substance, or a
23 controlled substance analogue.

24 And that was done in violation it is alleged of code
25 section 44-53-370 of the Code of Laws of South Carolina,

Jury qualification

1 1976 as amended.

2 The third indictment is in case number -- same
3 beginning numbers -- 826. It is for the possession with
4 the intent to distribute. And in this case the drug is
5 clonzap -- clonazepam. Excuse me. It's a schedule IV
6 controlled substance or control substance analogue. And,
7 again, that's in violation of code Section 44-53-370 of the
8 Code of Laws of South Carolina, 1976 as amended.

9 The final indictment is case No. 827. The drug
10 alleged in this case is methamphetamine.

11 Again, it alleges the possession with the intent to
12 distribute methamphetamine, a Schedule II controlled
13 substance, under the provisions of 44-53-375 of the Code of
14 Laws of South Carolina, 1976 as amended.

15 Those are the four charges that are before the Court.
16 And I'll give you additional information concerning those
17 charges again.

18 Suffice it to say though the fact that a defendant has
19 been charged, indicted or arrested in a case is not
20 evidence in the case and cannot be used by a jury in any
21 manner in determining the guilt or innocence of the
22 defendant. Those are simply the documents that bring the
23 case before this court.

24 Now, before I begin to ask you questions I will ask
25 that the attorneys that are involved in this case introduce

Motion

1 that time. You're free to go. The bailiffs will show you
2 where to come back.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Okay. It's my understanding the parties
6 may have pretrial motions.

7 Any from the state?

8 MR. SPIVEY: None, Your Honor.

9 THE COURT: All right. From the defense?

10 MR. HARRIS: Yes, Your Honor. Thank you.

11 THE COURT: Yes, sir.

12 MR. HARRIS: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. HARRIS: Your Honor, as to the four indictments
15 which are before the Court the defendant moves to suppress
16 the results of a search of an automobile which the
17 defendant was driving on the date alleged in the
18 indictment.

19 Your Honor, there are two separate and distinct
20 grounds for the suppression motion that we make.

21 The first ground is that the initial stop and
22 detention of the defendant and the vehicle that the
23 defendant was driving was without reasonable articulable
24 suspicion or probable cause.

25 And beyond that should the Court determine that the

Motion

1 state can justify the initial stop of the vehicle, that the
2 scope and duration of the detention of the defendant for
3 the purpose of writing a traffic citation for a tag light,
4 a supposed tag-light violation, was improperly done and
5 therefore illegal -- illegal in the sense that the
6 detention was both extended in duration and was
7 unreasonable in the manner of its execution.

8 THE COURT: All right.

9 MR. HARRIS: Your Honor, some factual background for
10 the motion --

11 THE COURT: Yes, sir.

12 MR. HARRIS: -- as we know it from discovery. We have
13 received by way of discovery incident reports written by
14 officers allegedly involved in the investigation of the
15 case, as well as Deputy Andy Daniel who actually made the
16 traffic stop.

17 We have also been privy to and have reviewed a video
18 tape that I believe was made by Deputy Daniel to effectuate
19 the stop and to record to at least some degree the
20 interaction that the various officers involved in the case
21 had with the defendant which led to the ultimate search of
22 the vehicle he was driving.

23 Your Honor, on November 29th of 2011 at approximately
24 8:35 p.m., according to the discovery, investigators Swad
25 and Luther had left the county jail on California Avenue.

Motion

1 when they reached the intersection of California
2 Avenue and Asheville Highway they allegedly observed a gray
3 2005 Dodge Magnum vehicle, tag No. , setting at the
4 Kangaroo Express at 1245 Asheville Highway. I think the
5 Kangaroo Express is right there at that major intersection
6 where California Avenue and Asheville Highway meet.

7 It, the report, goes on to state that the vehicle was
8 parked back in an area to the side of the store. There is
9 an allegation that this is a location known for drug
10 activity but without detail.

11 As the investigators described, as they drove past the
12 vehicle they observed a black male in the driver's seat
13 talking on a mobile phone. They, the investigators, Swad
14 and Luther, further state that they drove around the block
15 and passed by several times watching the vehicle.

16 So at this point we take it from that that
17 investigators Swad and Luther were, in essence, surveilling
18 the vehicle that was parked at the Kangaroo Express. But
19 at this point nothing more than an individual talking on a
20 phone had been observed.

21 The investigators continued to say, "We pulled in a
22 parking lot across the street to observe the subject to see
23 if he met someone." They then state that they called
24 Deputy Andy Daniel to stand by in case they wanted to stop
25 the vehicle for investigative purposes.

Motion

1 I will say at this point that I'm aware of no
2 allegation, at least that the individual in the vehicle had
3 done anything other than sit there and talk on the mobile
4 phone, had met no one, and nothing else had happened.

5 "Within a few moments of us parking, the subject in
6 the Magnum pulled out of the Kangaroo parking lot. Deputy
7 Daniel had just reached the traffic light at California
8 Avenue and Asheville Highway." It is alleged that he
9 observed the vehicle with no tag light and that he
10 initiated the traffic stop.

11 In putting together the report of Deputy Daniel in the
12 matter he states that he received a call that investigators
13 Swad and Luther were watching a vehicle at the Kangaroo
14 Express and that they wanted him to find a reason to stop
15 the vehicle so they could search it.

16 He stated that he did, in fact, find a reason by
17 alleging -- and this -- at this point when Deputy Daniel
18 gets involved we have a video tape.

19 At this point Deputy Daniel follows a vehicle --
20 speeds up to follow a vehicle down the Asheville Highway
21 going toward Hearon Traffic Circle. Deputy Daniel in radio
22 contact with investigators Swad and Luther is stating that
23 he's following or trying to follow.

24 At that point in time it is heard -- and it's not
25 clear who said it on the radio -- but someone said on the

Motion

1 radio, "I don't think he's got a tag light, get him," at
2 which point in time Deputy Daniel nearly immediately
3 activates his blue light and pulls the defendant over in
4 the middle of the road on Asheville Highway near the
5 Northtown Shopping Center up there just before Hearon
6 Traffic Circle.

7 So at this point in time the allegation is that -- the
8 evidence that we have is that the officers had no
9 reasonable articulable suspicion of any criminal activity,
10 no objective basis to stop the vehicle for alleged criminal
11 activity.

12 They had called a traffic officer in to effect a
13 traffic stop for the purpose of gaining access to the
14 driver of the vehicle and the vehicle. The stated purpose
15 of the traffic stop was a traffic violation, that is either
16 no tag light or a tag light that was not, quote, bright
17 enough. But the stop of the vehicle is based solely on an
18 alleged traffic violation, no tag light or an
19 insufficiently bright tag light.

20 Once the traffic stop was made, that's when the second
21 part of our motion would kick in.

22 So, Your Honor, with the Court's permission I'd like
23 to stop here just to briefly state what our concerns are
24 about the initial stop and then go further.

25 THE COURT: Okay.

Motion

1 MR. HARRIS: The defendant's tag light was working.
2 When Deputy Daniel approached the defendant's vehicle he
3 can be heard to say on the video tape something to the
4 effect -- and some of the sound -- there's traffic. It's a
5 little hard to make out. But the best we can make it out
6 from the defense side of is -- he says, "Your tag light's
7 out. That's why I pulled you over. It's not bright
8 enough."

9 So, in fact, it's our assertion that the defendant's
10 tag light was working. But there is an assertion on Deputy
11 Daniel's part that the tag light was, quote, not bright
12 enough.

13 Assuming -- we assume, and then later in the video
14 there's some discussion about this -- that there's an
15 allegation that the defendant's tag light was not
16 sufficiently bright to be able to be seen from a distance
17 of 50 feet behind.

18 However, when the defendant's vehicle was parked at
19 the Kangaroo Express, Deputy Luther and Deputy --
20 investigators Luther and Swad called in the tag number.
21 They saw the tag in the parking lot.

22 On the video tape it can be heard that Deputy Daniel
23 radios in the tag light -- the tag number before he stops
24 the defendant.

25 So obviously investigators Swad, Luther and later

Motion

1 Deputy Daniel all could read the tag because they called
2 out the tag number, but yet they say in order to justify
3 stopping the vehicle -- because they had no other reason to
4 stop it under the law -- no reasonable articulable
5 suspicion -- they are alleging a traffic violation but not
6 that the defendant's tag light is out. But supposedly it
7 can't be -- it's not legible from 50 feet as the tag-light
8 statute requires.

9 The tag-light statute, by the way -- and the defendant
10 did ultimately get a blue traffic citation for no tag
11 light. The tag-light statute says that there should be no
12 particular form of illumination of the tag light other than
13 that it should be illuminated by whatever manner of
14 lighting of the vehicle sufficiently to be legible at a
15 distance of 50 feet.

16 The statute does not refer to any circumstance where
17 the tag can be seen with the aid of other lights or
18 anything like that.

19 It's our contention that the traffic stop for
20 improperly illuminated tag light is not objective enough of
21 a basis to stop the vehicle as is contemplated by all of
22 the case law that's been developed in the area of car stops
23 for investigative detentions.

24 Tracing the progeny of those cases all the way back to
25 Terry vs. Ohio, that a car stop in and of itself can only

Motion

1 be made under two circumstances legally so as not to
2 violate the 4th Amendment.

3 One is that the state can prove that there was
4 reasonable articulable suspicion that criminal activity was
5 afoot, that on an objective basis the stop was justified.

6 The second circumstance in which a vehicle may be
7 stopped is if a traffic violation has been observed. But
8 the same criteria is to be applied to the stopping of that
9 vehicle for a traffic violation.

10 There has to be more than simply an officer stating a
11 personal or professional opinion that a violation has
12 occurred when the violation requires objective criteria
13 such as a tag-light violation does.

14 It can't be just a matter of opinion unsupported by
15 other facts. Here -- and if we put together the underlying
16 reason for stopping the vehicle, although pretextual stops
17 have not been out and out banned by the United States
18 Supreme Court or our state Supreme Court. And although
19 subjective intentions, quote, unquote, subjective
20 intentions of officers, is not the focus of a 4th Amendment
21 inquiry about investigative stops or detentions, I think it
22 can be taken into consideration that if an officer -- if
23 you will -- is stretching beyond objective criteria to make
24 a subjective opinion that would justify a traffic stop.

25 If we look at the fact that investigators Swad and

Motion

1 Luther could see the tag, obviously see the tag, prior to
2 it even leaving Kangaroo Express well enough to call the
3 tag number in and if Deputy Daniel could see it well
4 enough --

5 THE COURT: Kangaroo Express is a fairly well-lit
6 parking lot, isn't it?

7 MR. HARRIS: Well, it may or may not be. I don't know
8 what proof they can have of it.

9 THE COURT: I don't either. I just -- what time of
10 day was this?

11 MR. HARRIS: It was at 8:30 at night.

12 THE COURT: What time of the year?

13 MR. HARRIS: November the 29th.

14 THE COURT: Okay.

15 MR. HARRIS: I mean, it was dark.

16 THE COURT: It was dark obviously.

17 MR. HARRIS: But the -- I simply point out, because
18 all of the circumstances are to be considered in a case
19 like this.

20 THE COURT: Oh, certainly. But I was just -- I've
21 been to the Kangaroos in different locations. Usually
22 they're fairly well-lit parking lots. But I don't know
23 about this one.

24 MR. HARRIS: Well -- well, they could see. Obviously,
25 somebody could see the tag. Now, the statute itself, you

Motion

1 know, there again, doesn't state that it has to be seen
2 unaided.

3 THE COURT: It says clearly legible, is what the
4 statute says.

5 MR. HARRIS: Yes, yes, sir. But that -- I mean,
6 obviously, there's going to be other traffic. It doesn't
7 mean that you have to somehow test it and see that you
8 can't see it. It has to be legible on its own. It has to
9 be legible.

10 well, if it was legible, under all of the
11 circumstances there's no violation of the statute. It is
12 legible if it can be read, and it obviously was read twice.
13 That's my point.

14 Further, Your Honor, on the first -- the first part of
15 our motion for suppression that the stop itself was
16 unlawful, the evidence is further that what happened was a
17 lengthy detention of the defendant and the vehicle while
18 the police waited for drug dogs to come to the scene after
19 questioning the defendant not about the tag light but about
20 whether he had any drugs or contraband in the car and
21 whether he would give consent for them to search the car,
22 which he refused.

23 After a lengthy detention the defendant's car was
24 ultimately searched and drugs were found in compartments of
25 the vehicle, and the defendant was arrested for that

Motion

1 violation.

2 He was also given a citation for violation of the
3 tag-light statute, but to my knowledge -- and here I have
4 to rely on discovery -- to my knowledge the vehicle
5 which -- which allegedly had detective equipment -- all
6 right -- if we believe that there was a violation, the
7 vehicle that allegedly had defective equipment in violation
8 of the law was not taken into custody by the police. Only
9 the defendant was taken into custody.

10 The vehicle left the scene, we believe, because
11 Mr. Jackson was arrested. We believe that Mr. Jackson's
12 sister was allowed to come and drive the vehicle away from
13 the scene, a vehicle that the police allege --

14 THE COURT: You're not alleging, Mr. Harris, that the
15 police generally confiscate vehicles with lights out on
16 them?

17 MR. HARRIS: What -- what I'm saying is two things in
18 that regard. No. 1, that the police typically confiscate
19 vehicles that they allege have facilitated the unlawful
20 possession of drugs, and particularly they're claiming in
21 this case --

22 THE COURT: They're not required to do that.

23 MR. HARRIS: Well, I'm not saying they're required to
24 do it, but I'm saying they typically do it as evidence.
25 They didn't do it in this case though.

Motion

1 THE COURT: Well, I understand that.

2 MR. HARRIS: And, secondly, I'm saying that it would
3 not be typical for a police officer to permit a vehicle to
4 be driven on the public highways with defective equipment.

5 The only reason I say this, because there was no
6 defective equipment, and they knew it. They had
7 accomplished their purpose and they simply didn't want to
8 take for whatever reasons -- I don't know their reasons --
9 they didn't want to keep the car. So they just gave it,
10 let somebody drive it away.

11 I'm just saying that bears as the circumstance, and
12 the totality of the circumstances bears on the question of
13 whether there was, in fact, a tag-light violation.

14 THE COURT: I understand.

15 MR. HARRIS: Your Honor, the -- that is essentially
16 the factual circumstances that go with the traffic stop
17 itself that we're saying was unlawful.

18 Your Honor, I don't know if the state wants -- would
19 care to do it. Of course I do not have the original video,
20 D.V.D. video, of the -- that was taken from Deputy Daniel's
21 vehicle.

22 I do want in connection with our suppression motion in
23 total to offer this, the video, as evidence to this motion.
24 I can offer my copy, but I can't vouch for it because it's
25 what they gave me. Or I can invite the state to mark the

Motion

1 original.

2 THE COURT: Do you have a copy, Mr. Spivey?

3 MR. SPIVEY: I won't object to it. I believe that
4 copy is authentic.

5 THE COURT: Okay.

6 MR. SPIVEY: You haven't tampered with it in any way.

7 MR. HARRIS: No, other than look at it several times.

8 MR. SPIVEY: No, Your Honor. It's a copy of what we
9 have.

10 THE COURT: You can mark it and make it an exhibit for
11 purposes of the hearing without objection.

12 (D.V.D. marked Defendant's Exhibit 1.)

13 MR. HARRIS: Your Honor, now, as to the second part,
14 were the Court to find that the initial stop of the
15 defendant's vehicle was lawful, it is the defendant's
16 position that the contraband that was allegedly found as a
17 result of the ultimate search of the vehicle the defendant
18 was driving should be suppressed because the detention of
19 the defendant for a traffic violation exceeded both the
20 scope and the duration.

21 THE COURT: How long did it last?

22 MR. HARRIS: The -- by my view of the video tape the
23 entire traffic stop from the inception of the stop -- that
24 is -- and I'm saying that would be from when the blue
25 lights were activated and the defendant actually stopped

Motion

1 and there was the initial interaction of Deputy Daniel with
2 the defendant at his vehicle -- lasted from two minutes and
3 22 seconds into the video tape that has now been marked
4 until the ultimate search of the defendant's vehicle which
5 I have as being at -- the door was opened at 1713 into the
6 tape, so between the time Deputy Daniel first spoke with
7 the defendant at his car until the driver's door was
8 opened. So access was gained to his vehicle by virtue of
9 the drug dogs, was it looks to me roughly 15 minutes.

10 The -- what happened in those 15 minutes though is
11 what's important. And the tape is probably the best
12 evidence of that, although not perfect evidence, because
13 some of it's hard to hear.

14 THE COURT: But my understanding of what happened at
15 the traffic stop is the traffic stop is -- and I'm not
16 deciding this at this point in time because we're going to
17 hear testimony, I would assume, but if the traffic stop
18 were considered to be a valid traffic stop, then the
19 suspicion to prolong the traffic stop can spring from
20 something that occurs during the stop.

21 MR. HARRIS: That -- some of the cases say that, and
22 I -- I understand that the cases say that, but that's not
23 what happened in this case.

24 THE COURT: Well, I don't know. I'm just saying --

25 MR. HARRIS: Well, I -- well, that's what I was

Motion

1 getting to. I'm saying that --

2 THE COURT: But you're characterizing the only thing
3 that they had was the tag light being out.

4 MR. HARRIS: It is.

5 THE COURT: Well, and I guess we need to hear from
6 them and see what they say.

7 MR. HARRIS: Well, I mean, they -- I'm sure they have
8 -- our position is, and as the tape reveals is, that little
9 or no time was spent on gathering the information necessary
10 and doing the things necessary to write a citation for a
11 traffic violation.

12 Almost all of the time that was spent between the time
13 that the defendant's -- the vehicle was initially stopped
14 and the ultimate search of the vehicle was spent on
15 questioning the defendant about drugs, whether he had drugs
16 in the car and whether he would give consent to search the
17 car, which the defendant refused to give consent.

18 From the very beginning all of the time was taken with
19 trying to get the defendant to admit that he had drugs,
20 trying to get him to consent to a search and in arranging
21 for drug -- the drug dog to come to the scene.

22 So if we look at the case law, which says that when a
23 vehicle is stopped for a routine traffic violation the
24 scope and duration has to be strictly tied to the purpose
25 for which the vehicle was stopped in the Pichardo case,

Motion

1 which is a South Carolina Court of Appeals decision that's
2 often cited in the car-stop cases, the Court describes that
3 what is permissible is for the officer to get the driver's
4 license and the other credentials from the driver, to run a
5 records check if that's deemed necessary and to issue a
6 citation.

7 The Pichardo case itself specifically uses language --
8 and if I may -- that once --

9 THE COURT: I'm aware of it. I've been reading it
10 while you're talking. I've read all of that.

11 MR. HARRIS: Well, what I want to say --

12 THE COURT: Yes, sir.

13 MR. HARRIS: -- clearly is the language in Pichardo
14 and in other cases as well is any further detention for
15 questioning is beyond the scope of the stop and therefore
16 illegal unless the officer has a reasonable suspicion of a
17 serious crime.

18 THE COURT: That's what I was saying. You can stop --
19 you can stop somebody, and then as the -- as the stop
20 develops -- depending on what is observed, what they see,
21 smell, hear -- I don't know what they're going to say.

22 MR. HARRIS: Well, if you look at that video tape.

23 THE COURT: Well, I can't smell on video tape.

24 MR. HARRIS: Well, there's -- I can just say, Your
25 Honor, from all that has been told to me and all that's

Motion

1 been provided to me that there --

2 THE COURT: I understand your motion. I'm just saying
3 let's get on to it.

4 MR. HARRIS: That there was nothing -- there was
5 nothing to provide further suspicion.

6 THE COURT: We're going to find out.

7 MR. HARRIS: Your Honor, and I do have at the
8 appropriate time -- I know the Court's familiar with the
9 cases -- but I do have a set of cases that I want the Court
10 to consider if I could just hand them up.

11 THE COURT: Certainly. I'll be glad to take a look at
12 them. Pass them up.

13 MR. HARRIS: Your Honor, what I'm handing up just for
14 clarity in the record -- what I'm handing up in support of
15 the motion, the Illinois vs. Caballes case, the State vs.
16 Pichardo case, which is a Court of Appeals case from South
17 Carolina, Florida vs. Royer, which is another United States
18 Supreme Court opinion, and State vs. Tindall, which is an
19 opinion of the Supreme Court of South Carolina.

20 THE COURT: All right.

21 MR. HARRIS: Thank you, Your Honor.

22 THE COURT: Does the state wish to call witnesses on
23 the motion?

24 MR. SPIVEY: Yes, Your Honor. Thank you. The State
25 would call at this time Paul Norris.

Paul Anthony Norris (In-camera)
Direct examination by Mr. Spivey

1 THE COURT: Come forward, sir, and be sworn.

2 PAUL ANTHONY NORRIS, having
3 been first duly sworn, testified as follows:

4 THE COURT: Have a seat, please, sir. State your
5 name.

6 THE WITNESS: It's Paul Anthony Norris.

7 THE COURT: You may proceed, Mr. Spivey. Your
8 witness.

9 MR. SPIVEY: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. SPIVEY

11 Q Mr. Norris, please state your name and rank.

12 A Paul Anthony Norris. I'm an investigator with the
13 sheriff's office.

14 Q Tell me just very briefly what your experience and
15 training is.

16 A Back prior -- right now I'm an investigator with the
17 property-crimes division.

18 Before that I was an investigator in narcotics for six
19 years. I had training in basic narcotics, also in
20 methamphetamine-lab certifications. I also have a 9-week
21 certification from the South Carolina Criminal Justice
22 Academy.

23 Q Back in August of 2011 did you work with the narcotics
24 division?

25 A I did.

Paul Anthony Norris (In-camera)
Direct examination by Mr. Spivey

1 Q Okay. Tell me about an investigation you did there
2 with Mr. Jackson.

3 A Around August, I believe it was, of 2011 started an
4 investigation in reference to what may be a controlled buy
5 of hydrocodone from Mr. Jackson.

6 Q Okay. Tell me the details.

7 MR. HARRIS: Your Honor, I realize we don't have a
8 jury here, but I object to evidence about a case that's
9 unrelated to this case, an arrest or an investigation that
10 was done that is totally unrelated to this case.

11 THE COURT: Overruled.

12 You may proceed.

13 MR. SPIVEY: Thank you, Your Honor.

14 BY MR. SPIVEY

15 A In reference to that case it was myself and
16 Investigator Beck. We met the C.I. and placed a phone
17 call. C.I. was instructed to meet Mr. Jackson. Instructed
18 the C.I. to meet him at the Wendy's parking lot on South
19 Pine Street.

20 We were actually at the Y.M.C.A. when we made the
21 phone call, which is next door. I searched the C.I.,
22 provided the C.I. with the recording equipment. At that
23 time it was a -- I believe it was a shirt and a thob [sic].

24 I gave the C.I. the money for the buy. We drove by
25 the parking lot and watched the C.I. walk up to the parking

Paul Anthony Norris (In-camera)
Direct examination by Mr. Spivey

1 lot of the Wendy's -- would be on our left-hand side. We
2 parked diagonally across the street, across from the Spinx
3 gas station. So we were sort of sitting at an angle
4 looking straight across at the parking lot of the Wendy's.

5 watched the C. I. walk up to the charcoal gray Magnum
6 with black male sitting in it. We watch a transaction take
7 place from that distance.

8 The C.I. then leaves, walks back to -- is instructed
9 to walk right back to the Y.M.C.A. parking lot. We then
10 followed the Y -- C.I. back to the parking lot.

11 Before that C.I. gets there we actually intercept the
12 C.I., and the C.I. is instructed to get back to my vehicle
13 which I was driving at the time. The C.I. was then
14 debriefed about the situation, about the buy. And C.I. was
15 then searched.

16 Q Okay. Did -- you said there was a video that you gave
17 the informant?

18 A Correct.

19 Q Okay. Did you watch that video?

20 A I did.

21 Q Did you recognize the defendant?

22 A Yes.

23 Q Okay. Who was that -- excuse me. Did you recognize
24 that person on the video?

25 A Yes, I did.

Paul Anthony Norris (In-camera)
Direct examination by Mr. Spivey

1 Q Okay. And who was the person who sold the
2 hydrocodone?

3 A It was Kenneth Jackson.

4 Q Okay. Is he sitting in this courtroom today?

5 A He is.

6 Q Would you point to him, please?

7 A He's the gentleman in the white shirt with glasses.

8 Q Thank you.

9 I ask you to take a look at this and see if you can
10 identify it.

11 A Yes, sir. That is the vehicle in which Mr. Jackson
12 drove up to the Wendy's parking lot in that day.

13 Q What kind of car is that?

14 A It is a charcoal-colored Magnum. I'm not sure what
15 year it is. It had rims on it as well, not stock vehicle
16 or standard rims on the vehicle.

17 Q Okay. After your investigation in that August did you
18 tell your superiors about this particular investigation?

19 A Yes, sir. It's very common for us to inform our
20 supervisors on ongoing investigations that we have.

21 I spoke with my lieutenant, Cooper, and talked also to
22 Sergeant Pharis in reference to the buys that took place on
23 that date.

24 Q Thank you.

25 MR. SPIVEY: No further questions.

Paul Anthony Norris (In-camera)
Cross-examination by Mr. Harris

1 THE COURT: Mr. Harris.

2 CROSS-EXAMINATION

3 BY MR. HARRIS

4 Q What was the tag number of the vehicle in your
5 investigation?

6 A In reference to this one, that car drove off in the
7 opposite direction, and then we went -- we went to the left
8 and it went to the right. So we didn't obtain a tag at
9 that point in time.

10 Q So you know it was a gray Magnum, but you don't know
11 if it was the same gray Magnum.

12 A That's correct.

13 Q And you can't say if it had a tag light or if the tag
14 light was bright enough on that occasion.

15 A No, sir. It was during the daytime.

16 Q It was during the daytime. Okay. Thank you.

17 THE COURT: Anything further from the state?

18 MR. SPIVEY: Nothing, Your Honor.

19 THE COURT: You may step down.

20 MR. SPIVEY: The state calls Andy Daniel.

21 ANDREW DANIEL, having been
22 first duly sworn, testified as follows:

23 THE COURT: Have a seat, sir. State your name for me.

24 THE WITNESS: My name is Andrew Daniel, and I work at
25 the Spartanburg County Sheriff's office.

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey.

1 DIRECT EXAMINATION BY MR. SPIVEY

2 Q Mr. Daniel, what's your rank there?

3 A Master deputy.

4 Q What is your current role or duty?

5 A I work on the R.S.U. team.

6 Q What is that?

7 A It's a street crime unit.

8 Q Okay. Were you working on that unit on November the
9 29th --

10 A Yes, sir.

11 Q -- 2011? Okay. Tell us about November 29th of 2011.
12 How did you get involved with the investigation?

13 A I was leaving the jail, and I received a call from
14 Sergeant Luther. He was telling me they were surveilling a
15 car at the gas station at Asheville Highway and California
16 Avenue. And he asked me to follow it and see if I could
17 find a reason to stop it.

18 Q Okay. Before you found a reason to stop it did you
19 see -- put it this way. Did the car behave in any certain
20 manner after you were following?

21 A As I was following it it swerved to the left and
22 failed to maintain its lane like the driver may have been
23 reaching over to the right and leaning over.

24 Q Can you identify that, what I just handed you?

25 A Yes, sir. That's the car I was following on the

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 Asheville Highway.

2 Q Okay. Can you tell me what you see in the photo?

3 A He's driving left of center.

4 Q Okay. So that would be the point where he's swerving?

5 A Yes, sir.

6 Q Okay.

7 MR. SPIVEY: Your Honor, without objection, we'd like
8 to move this particular photograph into evidence for
9 purposes of this hearing only.

10 THE COURT: Any objection?

11 MR. HARRIS: I don't know what the photo is.

12 THE COURT: Do you want to show him the picture?

13 MR. SPIVEY: Yes, Your Honor.

14 THE COURT: Thank you.

15 MR. HARRIS: Your Honor, it does -- it appears that it
16 may be part of the video tape that's in evidence. I don't
17 object to the photograph, but it is cumulative to the
18 video.

19 THE COURT: Well, I'm going to allow him to put it in
20 for purposes of the hearing. You'll have it marked.

21 MR. SPIVEY: Yes, Your Honor.

22 THE COURT: Give her a minute to do that, please.

23 (Photograph marked State's Exhibit No. 1.)

24 Q Deputy Daniel, can you identify that particular
25 document?

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 A Yes, sir. That's when I turned my head lights off --
2 I was probably about a car length in between that, me and
3 the car in front of me -- to see if the light from the tag
4 light would illuminate the tag.

5 Q Okay. Is that a still shot from the video?

6 A Yes, sir.

7 Q Okay. What's the time on that the video reads?

8 A The tape time is 4233 --

9 Q Okay.

10 A -- so we're talking about --

11 Q Can you see the tag?

12 A No, sir.

13 Q Okay. How many feet is that?

14 A That's probably about between 30 and 35 feet. I mean,
15 it's about a car length, give or take a couple of feet.

16 It's less than 50 feet.

17 Q Less than 50 feet?

18 A Yes, sir.

19 MR. SPIVEY: The state would move this into the
20 evidence for the purposes of this hearing only.

21 MR. HARRIS: I object. It looks to be part of the
22 video.

23 THE COURT: All right. It'll be admitted and marked.
24 (Photograph marked State's Exhibit No. 2.)

25 THE COURT: You may proceed, Mr. Spivey.

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 MR. SPIVEY: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. SPIVEY

4 Q I hand you this. See if you can identify it for me.

5 A Yes, sir. This is another still shot from my in-car
6 camera.

7 Q What's the time on the tape?

8 A 4244 is the tape time.

9 Q What -- what happened around that particular point in
10 the video?

11 A I believe that's when I turned my blue lights on.

12 Q Okay. Take a look at that particular photo.

13 A Yes, sir. That's where we stopped there at Asheville
14 Highway just before Hearon Circle. The entrance to the
15 right is where you go to the Bi-Lo grocery store.

16 Q Okay. And that's all in Spartanburg County.

17 A Yes, sir.

18 Q Okay. The time on the tape for that particular image?

19 A 4247.

20 Q Okay. I'm sorry. This time down here that's on the
21 video.

22 A Oh, okay. I'm sorry. I thought you told me tape
23 time. 156.

24 Q That's one minutes and 56 seconds into the video.

25 A Yes.

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 Q Okay. I hand you one last photo. Take a look at
2 that. Can you tell me what that is?

3 A That's a picture of -- looks like Investigator Swad,
4 Mr. Jackson, and I believe it's Sergeant Luther in front of
5 my in-car camera. And I believe that's the canine sitting
6 at the rear or the side, the passenger side, of the car.

7 Q Okay. How many minutes into the video is that picture
8 taken?

9 A It says 1631. The camera tape number is 4440.

10 Q Okay. All right.

11 MR. SPIVEY: Your Honor, without objection, we move
12 these three photographs into evidence for purposes of this
13 hearing.

14 THE COURT: Any objection?

15 MR. HARRIS: No.

16 THE COURT: Without objections, they'll put into the
17 record and marked.

18 (Photographs marked State's Exhibit No. 3.)

19 Q Mr. Daniel, after you -- after you stopped the car did
20 you ask him for his I.D.?

21 A Yes, sir.

22 Q Did he hand you I.D.?

23 A Yes, sir.

24 Q Did he have a license?

25 A Yes. He had a provisional license.

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 Q A provisional license. And what is strange or a
2 suspicion about him having a provisional license?

3 A Well, the time of --

4 MR. HARRIS: Objection to the leading.

5 THE COURT: Overruled.

6 A The time of night.

7 Q Okay. This was around 8:30?

8 A Yes, sir.

9 Q Okay. So at 8:30 it's strange to have a provisional
10 license?

11 MR. HARRIS: Your Honor, I object to the solicitor
12 testifying by way of questions. That's not what the
13 witness said.

14 THE COURT: Ask him a question. That last one was a
15 statement.

16 MR. SPIVEY: Thank you, Your Honor.

17 BY MR. SPIVEY

18 Q Is the -- is the provisional license suspicious?

19 A Yes, sir, because normally it's used just to drive
20 back and forth from work, to church, doctor's office and
21 stuff like that.

22 Q Okay. Did you ask him if he had any narcotics in the
23 car?

24 A Yes, sir.

25 Q What kind of response did he give you?

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 A He looked away as soon as I started talking about
2 drugs.

3 Q When you say he looked away, what does that mean?

4 A He broke eye contact with me.

5 Q Okay. Did you ask him if you could search his
6 vehicle?

7 A Yes, sir.

8 Q What did he say when you asked him if you could
9 search?

10 A What do I want to search for.

11 Q Okay. Did you see an air freshener in the car?

12 A Yes, sir.

13 Q Okay. What time did he see the air freshener in the
14 car?

15 A As soon as I walked up and made initial contact. It
16 was hanging from the rear-view mirror.

17 Q Were there one or two? Do you remember?

18 A I believe there was two.

19 Q Two.

20 A I think they were black.

21 Q Okay. Who was the car registered to?

22 A I don't recall.

23 Q Was it registered to Mr. Jackson?

24 A No, sir.

25 Q Okay. So you do not remember who, but it wasn't

Andrew Daniel (In-camera)
Direct examination by Mr. Spivey

1 registered to him.

2 A No, sir.

3 Q Okay. After you questioned him and called the canine
4 unit -- I'm sorry. Did you -- did you call a canine unit?

5 A I called for a uniform patrol canine, and they were
6 busy.

7 Q Okay. So after your question -- after you asked him
8 to search and he responded -- what did you do then?

9 A That's -- that's when I called for a dog, go back to
10 my car and started my computer checks and writing the
11 ticket, Spillman check, warrant check, driver's license
12 check, registration and vehicle check.

13 Q How long did that stuff take?

14 A Probably about between ten and 12 minutes.

15 Q Did you write a ticket?

16 A Yes, sir.

17 Q What did you write the ticket for?

18 A Improper tag light.

19 Q When did you hand the defendant that ticket?

20 A I believe -- I don't remember exactly when I handed it
21 to him.

22 Q Did it occur before or after the search began?

23 A It was after.

24 Q After the search began?

25 A If I remember correctly, yes.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 Q So about how many minutes would you say?

2 A Between 15 and 17 minutes.

3 MR. SPIVEY: Your Honor, I don't have any further
4 questions of this witness.

5 THE COURT: Mr. Harris.

6 CROSS-EXAMINATION

7 BY MR. HARRIS

8 Q Deputy, without -- it's without question, would you
9 agree, that you received a call from investigators Swad and
10 Luther that they wanted you to find a reason to stop this
11 car?

12 A Yes, sir.

13 Q They had no reason, correct?

14 A I don't know.

15 Q Or at least if they did have a reason, they couldn't
16 give it to you then. And they didn't, did they?

17 A No.

18 Q So it's not like they said we believe this person is
19 suspicious, so we want you to stop him on suspicion of
20 carrying drugs. They didn't tell you that, did they?

21 A No, sir.

22 Q They just said find some reason to stop this car,
23 correct?

24 A That's what they asked, yes, sir.

25 Q And did you yourself know why they wanted you to find

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 some reason to stop the car?

2 A No, sir.

3 Q You just know that they wanted the car to get stopped
4 and they didn't have a reason to do it themselves, correct?

5 A Correct.

6 Q So you found a reason, didn't you?

7 A Yes, sir.

8 Q As a matter of fact, on this video tape you're
9 talking -- you can be heard saying while you're waiting
10 around for the drug dogs they told me they wanted me to
11 find a reason, and I found one.

12 A I don't recall.

13 Q You were kind of bragging about it -- I found a
14 reason. You don't remember saying that?

15 A No, sir. I don't recall.

16 Q Okay. All right. And so is it correct that when you
17 were following the vehicle that you called in the tag?

18 A Yes, sir.

19 Q You radioed in the tag.

20 A Yes, sir.

21 Q And you did that because you could read the tag,
22 correct?

23 A Because of the brake lights.

24 Q Well, I'm not asking you why. I'm asking -- you could
25 read the tag, couldn't you?

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A Yes, sir. Because of my headlights.

2 Q All right. And you did read the tag, and you called
3 it in.

4 A Yes, sir.

5 Q Now, when you stopped Mr. Jackson did you take any
6 time to inspect his vehicle before you commenced a drug
7 investigation?

8 A Inspect his vehicle?

9 Q Yes, inspect his vehicle. You had stopped him, after
10 all, for the purpose of defective equipment allegedly,
11 right?

12 A Yes, sir.

13 Q Did you inspect his vehicle --

14 A No, sir.

15 Q -- to gather evidence about the defective condition of
16 his tag lights?

17 A No, sir.

18 Q So you -- and very clearly in your reports and in your
19 testimony you admit the sole reason for stopping
20 Mr. Jackson was allegedly a defective tag light.

21 A Yes, sir.

22 Q Not for going in another lane or any such thing. Your
23 reason for stopping Mr. Jackson was the tag light.

24 A Yes, sir.

25 Q All right. And that being your reason, you would have

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 conducted an investigation necessary in order to gather
2 evidence about that violation and write a citation if you
3 felt it was necessary, is that right?

4 A Yes. And I did that. When I turned my headlights off
5 travel, that's when I could tell the tag light was not
6 working properly.

7 Q Well, I'm asking you. Did you go and inspect
8 Mr. Jackson's vehicle to determine if he had tag lights?

9 A Not after I stopped him, no.

10 Q And so then you can't say whether his tag lights were
11 working but dim or not working.

12 A I can say they weren't working properly.

13 Q You were heard to say you didn't think -- in your
14 opinion they weren't, quote, bright enough, is that
15 correct?

16 A Correct.

17 Q But they were bright enough for you to read his tag
18 number, right?

19 A Because of my headlights, not because of his tag
20 light.

21 Q But you didn't do any investigation to ascertain why
22 it was that Mr. Jackson's tag lights weren't bright enough,
23 did you?

24 A Not after I stopped him, no.

25 Q Well, that was the reason you stopped him, right?

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A Correct.

2 Q At that point in time you had no other reason to stop
3 him, correct?

4 A The tag light.

5 Q I mean, you didn't have any suspicion of any other
6 criminal activity.

7 A No, sir.

8 Q And you've have already stated in your testimony that
9 investigators Luther and Swad didn't have any reasonable
10 articulable suspicion to stop him.

11 A well, I suspected that they were doing surveillance.
12 That's why they asked for my help.

13 Q well, surveillance doesn't make -- their surveillance
14 hadn't added up to any reasonable articulable suspension at
15 that point they asked you to get involved, had it? Because
16 that's why they asked you to find a reason to stop him.

17 MR. SPIVEY: Objection, Your Honor. That calls for a
18 legal conclusion.

19 THE COURT: It actually may call for speculation
20 unless he can establish some communication as to what their
21 knowledge was at any given time. In any case, I'll sustain
22 the objection.

23 BY MR. HARRIS

24 Q But just to be clear, investigators Luther and Swad
25 never relayed to you any information about any alleged

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 criminal activity afoot involving the vehicle of
2 Mr. Jackson, did they?

3 A I don't recall.

4 Q So when you stopped the vehicle for the tag light is
5 it correct that you went to the driver's-side door and
6 stated your tag light's out, that's why I pulled you over,
7 it's not bright enough? Do you remember saying that?

8 A Yes, sir.

9 Q And then you asked Mr. Jackson for his driver's
10 license, and he produced a temporary license, is that
11 right?

12 A Yes, sir.

13 Q And you asked him why he had a temporary license, and
14 he explained he had had a D.U.A.C. violation, is that
15 right?

16 A I think so.

17 Q And at this point in time you had done nothing else to
18 investigate the tag-light violation, right?

19 A No, sir.

20 Q But you had received within a minute Mr. Jackson's
21 driver's license and asked him about why he had a temporary
22 license, correct?

23 A I believe so.

24 Q And then instead of going back to your vehicle to run
25 a license check or a records check or to write a citation

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 you had Mr. Jackson exit the vehicle, is that right?

2 A Yes. I believe to show him why I stopped him and to
3 get out of traffic.

4 Q Okay. Well, is it correct that you stated to
5 Mr. Jackson, "Get out of the vehicle for a minute"?

6 A I don't recall exactly what I said.

7 Q And as soon as you got him out of the vehicle you made
8 him walk toward your vehicle, is that right?

9 A Yes, sir.

10 Q And you immediately started asking him questions about
11 whether there were any drugs in his car.

12 A I asked him about drugs, yes.

13 Q All right. And what does that have to do with not
14 having a bright enough tag light?

15 A It has nothing to do with the tag light, but I was
16 suspicious -- I suspected it because I was asked for help
17 that it was a drug investigation. And my knowledge of the
18 area, the gas station he was in, I know that's an area used
19 for drug transactions.

20 Q Okay. But you immediately started asking him about
21 did he have drugs in his car. And you admit that has
22 nothing to do with the tag light.

23 A Well, I believe I shared why I was stopping him first.

24 Q Well, sir, I understand that. I'm asking you about
25 questioning him about drugs in the car. You concede, don't

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 you, that that has nothing whatsoever to do with a
2 tag-light violation?

3 A No, sir. It doesn't.

4 Q And you asked him permission to search his car.

5 A Yes, sir.

6 Q And that has nothing to do with a tag-light violation,
7 does it?

8 A No.

9 Q You called for drug dogs to come out. That has
10 nothing to do with a tag-light violation, does it?

11 A No, sir.

12 Q You asked him if he would consent to a search of the
13 vehicle, and he refused, correct?

14 A Yes, sir.

15 Q So nothing about this was consensual.

16 A He didn't consent to search.

17 Q In fact, you asked Mr. Jackson at one point if he was
18 cold, if he'd like a jacket, is that correct?

19 A Yes, sir.

20 Q And he sort of shrugged, and you took that as you
21 could look in the back seat of the vehicle for a jacket, is
22 that right?

23 A I went and got a jacket for him, yes.

24 Q And you retrieved a jacket from the car.

25 A Uh-huh.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

- 1 Q And you saw no drugs.
- 2 A I wasn't looking for drugs. I was getting his jacket.
- 3 Q Well, I understand. But you saw no drugs.
- 4 A No. I saw no drugs.
- 5 Q You saw nothing that would further any suspicion you
- 6 may have had about drugs.
- 7 A Not at that point.
- 8 Q All right. And at that point in time having gone
- 9 inside the vehicle and seeing nothing to further your
- 10 suspicion, you again said let's get Joe out here, let's get
- 11 the drug dogs out here, right?
- 12 A I requested the drug dogs.
- 13 Q Although you had no reason to do that.
- 14 A Yes. I had a reason to do that.
- 15 Q What was the reason?
- 16 A His reactions when I -- when I was speaking with him.
- 17 Q That --
- 18 A When I observed -- the reason why I requested the drug
- 19 dog is from the time I was asked to help the area he was
- 20 coming from, the fact that he swerved over, I thought maybe
- 21 he was hiding something, he had air fresheners hanging from
- 22 his rear-view mirror when I question him, my knowledge of
- 23 the area and drug activity, when I questioned him about
- 24 drugs his reactions raised my suspicion.
- 25 Q And that's just a hunch on your part?

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

- 1 A Just it raised my suspicion.
- 2 Q Well, was it just like a police hunch?
- 3 A What's a police hunch?
- 4 Q Well, like, you know, somebody is -- you're asking
- 5 somebody questions, and they don't know why you're asking
- 6 the questions or anything else. And they supposedly look
- 7 away from you like they're looking back toward the car.
- 8 It's on the video.
- 9 A May be suspicious.
- 10 Q It's on the video tape, isn't it? Should be.
- 11 A Okay.
- 12 Q Okay. And so at this point you've spent minutes doing
- 13 nothing having to do with writing a citation for a
- 14 tag-light violation, correct?
- 15 A I don't know how long it was.
- 16 Q But would you deny, I mean, it was several minutes?
- 17 A Maybe a minute.
- 18 Q And you could have been using that time to write a
- 19 citation, correct?
- 20 A Correct.
- 21 Q But you chose not to do that because you wanted to
- 22 investigate something else, is that right?
- 23 A No.
- 24 Q Well, you didn't do it. You didn't write a citation,
- 25 right?

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A I was doing my normal traffic stops.

2 Q Okay. And is it correct that you knew and your plan
3 was that you were going to take ever what time it took to
4 write a citation in order for the drug dogs to get there?

5 A No. That's not correct.

6 Q You're under oath, may I remind you?

7 A Yes, sir.

8 Q Is it correct --

9 A No.

10 Q -- that it was your intention to take so much time as
11 would be necessary to write the citation to get the drug
12 dogs there?

13 A No. That wasn't my intent.

14 Q What was your intent then by not writing the citation
15 right away in a sequence, logical sequence, of events?

16 A I was conducting my traffic stop.

17 Q You were doing what?

18 A Conducting my traffic stop. I was speaking with
19 Mr. Jackson.

20 Q You're saying that on the video tape if we watch it
21 that from roughly seven -- 652 into the tape when you asked
22 Mr. Jackson who the car belonged to and he stated his
23 wife -- that from seven -- from 652 into the tape until the
24 drug dogs came you were doing things related to the traffic
25 stop for the tag light.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A Yes, sir.

2 Q Well, what were those things?

3 A From what I observed during the stop before I actually
4 made contact with him, what I observed when I met -- made
5 contact with Mr. Jackson, that's when my suspicion raised.
6 That's why I asked those questions about the drugs.

7 Q Well, sir, that's not my question. Let me state it
8 again.

9 From roughly 652 into the tape when you asked
10 Mr. Jackson who the car belongs to and he responded to his
11 wife -- from that time until the drug dogs came, what
12 specific actions did you undertake in furtherance of writing
13 a citation for no tag light?

14 A Waiting. I ran a Spillman check, which is our
15 computer system, a driver's license check to check his
16 status, a wanted check. And if I remember correctly, I ran
17 the tag on my D.M.V. computer.

18 Q Okay.

19 A And wrote the citation.

20 Q All right. And you're saying that took all of that
21 time?

22 A Yes, sir.

23 Q And do you know how long it was?

24 A About ten or 15 minutes.

25 Q All right. And so when did you start writing the

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

- 1 ticket?
- 2 A When I got back to my car.
- 3 Q Well, when was that?
- 4 A Do you want an exact time?
- 5 Q Well, yes, I do.
- 6 A I didn't see the time.
- 7 Q That's why I'm asking you. You don't know?
- 8 A No. I didn't look at the clock.
- 9 Q The -- is there any objective documentation of what
- 10 you did by doing these checks? Do you have any proof you
- 11 can bring to the court today?
- 12 A That I did these checks?
- 13 Q Yes.
- 14 A No, sir.
- 15 Q You don't. Okay. Is it correct that the dogs did
- 16 come and entry was made into Mr. Jackson's vehicle?
- 17 A One dog came.
- 18 Q A dog came. Okay. Is that correct?
- 19 A Yes.
- 20 Q Okay. And you were there for that.
- 21 A Yes.
- 22 Q Okay. And is it correct that Mr. Jackson was
- 23 subsequently handcuffed and arrested for what was found in
- 24 the car?
- 25 A Yes.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 Q All right. And is it correct that you took
2 Mr. Jackson to jail?

3 A Yes.

4 Q You yourself took him to jail while he was in custody.

5 A Yeah. I believe I transported him.

6 Q All right. And what happened to the car?

7 A I believe his girlfriend or wife come and picked it
8 up.

9 Q And who arranged for that?

10 A I don't recall.

11 Q You don't. You don't know if it was you or somebody
12 else?

13 A I think it was me but I'm not -- I don't recall.

14 Q Okay. And so there is a vehicle that is alleged that
15 a large quantity of drugs, and several drugs, were found
16 in, correct?

17 A Correct.

18 Q And had defective equipment sufficient to cite someone
19 for a violation of a traffic law, is that correct?

20 A Correct.

21 Q And you decided that you would just let Mr. Jackson's
22 relative -- sister or whoever it was -- just come and drive
23 the car away.

24 A Correct.

25 Q So the car wasn't taken for evidence.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A No, sir.

2 Q So there's no physical evidence that we have available
3 to us today by virtue of your investigation to substantiate
4 whether there was, in fact, any defective equipment on the
5 car.

6 A I believe we have photos.

7 Q Well, I'm saying physical.

8 THE COURT: May I see that photograph?

9 MR. SPIVEY: Which one?

10 MR. HARRIS: There's a stack.

11 THE COURT: Help me. I want to see the one where he
12 turned his headlights off.

13 Go ahead, Mr. Harris.

14 BY MR. HARRIS

15 Q Now, so you just let -- let sister or whoever just
16 take the car.

17 A I believe it was his wife that came and got it.

18 Q His wife. Okay. The owner of the car?

19 A I believe she was the owner, yes.

20 Q Ms. Andrea Jeter?

21 A I believe that's who it was, yes.

22 Q Okay. Thank you, sir.

23 MR. HARRIS: Nothing further.

24 THE COURT: Mr. Spivey.

25 MR. SPIVEY: Just a few short questions.

Andrew Daniel (In-camera)
Redirect examination by Mr. Spivey

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. SPIVEY

4 Q The tag light, was it legible? Was the tag light
5 legible?

6 A No.

7 Q And how far away were you from the car?

8 A Around 30 feet.

9 Q Do you need to do any further investigation to
10 determine that?

11 A No, not in my opinion.

12 Q If you write a person a ticket for defective equipment
13 do you seize those cars?

14 A No, sir.

15 Q Do you write them a warning or a ticket and say go get
16 this fixed?

17 A Yes, sir.

18 Q Okay. When you asked for the I.D., what kind of I.D.
19 did he give you?

20 A Provisional I.D.

21 Q Did you see a -- when he swerved the car what did you
22 notice?

23 A Said it looked like he was leaning down to the right.

24 Q Okay. What did you think he was doing?

25 A Hiding something.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 Q Okay. What would he be hiding?

2 A Could be anything.

3 Q Okay. And when you asked him those questions about --
4 about whether he had narcotics in his car or whether or not
5 you could search the car, was that traffic stop still
6 ongoing at the time?

7 A Yes.

8 Q Okay. That's the traffic stop for the tag light.

9 A Yes.

10 MR. SPIVEY: No further questions, Your Honor.

11 MR. HARRIS: Nothing else, Your Honor.

12 THE COURT: All right, sir. You may step down.

13 The state wish to call any other witnesses?

14 MR. SPIVEY: Yes, Your Honor. We need to call just a
15 few more witnesses.

16 THE COURT: Sure.

17 MR. SPIVEY: It should be short. Dan Swad.

18 DAN SWAD, having been first
19 duly sworn, testified as follows:

20 THE COURT: Have a seat, please, and state your name
21 once you are seated.

22 THE WITNESS: My name is Dan Swad.

23 THE COURT: You may proceed, Mr. Spivey.

24 DIRECT EXAMINATION BY MR. SPIVEY

25 Q Please state your training and experience.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 A I've been with the sheriff's office about 30 years.
2 About 15 of that's been in narcotics investigations. I've
3 been to the basic academy, basic narcotics investigations,
4 advanced investigative schools all through the years.

5 Q Tell me about that gas station, that Kangaroo gas
6 station.

7 A It's fairly common knowledge in the narcotics
8 investigative unit that that corner is used to facilitate
9 drug transactions.

10 while most Mini Marts are well-lit in the business
11 area of it where the gas pumps are in the front area, the
12 particular area if you're facing the store to the right is
13 very dim. There, in fact, is a light post there that is
14 not working.

15 There are two pay phones, actual working pay phones,
16 still there that I guess are used to facilitate drug
17 transactions even though we have a lot of mobile phones
18 now.

19 Q And tell me about your personal experience with that
20 station. You said that was common knowledge.

21 A Yes. Prior to being moved back to narcotics in July
22 of last year I would work part time at the jail after my
23 shift. I was in training at the sheriff's office.

24 And I would leave the jail about midnight and pull up
25 to the red light there. I'd be on California going to turn

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 right on Asheville Highway.

2 And I would always notice people going over there and
3 meeting each other. Kind of strange. You'd have a moped
4 go up and meet a guy sitting on the curb right there.
5 They'd get up and transact, and then they'd move on.

6 The red light there was fairly extended, and I'd sit
7 there for a while. And just knowing that corner is being
8 used for drug transactions.

9 Q Tell me about the night on November the 29th. What
10 did you observe?

11 A Myself and Sergeant Luther had just left the jail.
12 I'm not real sure of the reason we went there -- to meet
13 somebody, talk to somebody.

14 But as we pulled out I was driving. I was just
15 telling Sergeant Luther that we needed to make time to come
16 up here and sit in one of these parking lots and watch that
17 corner, a lot of drug dealing is going on there.

18 And I was looking at the pay phones, and I said, you
19 know, there'll be cars and stuff sitting there.

20 Sergeant Luther said do you mean like that one, and he
21 pointed in the shadows. I really didn't even see it even
22 though I was talking about that area. But he pointed to
23 the Dodge Magnum that was backed in and was facing out
24 towards Asheville Highway. California would have been on
25 the driver's side of it.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 It was -- the windows were fairly well tinted on the
2 car. I drove on across Asheville Highway, and we were
3 looking into it. I said, "well, it's just sitting there."
4 He said no, there's somebody in it. He could see in it a
5 little better than I could -- and he's talking on the
6 phone.

7 well, it was -- I think we'd been working all day. He
8 wanted to get home. I said, well, I said I know you want
9 to get home, I said, but I'm turning around. We're going
10 to watch this car and see if it meets somebody.

11 We drove past it a couple of times trying to find a
12 suitable location to watch it and not fill out of place.
13 We finally picked a spot across. And I think it's either
14 an alternator repair place -- it's near the stereo place --
15 and pulled in there and started trying to find a unit to
16 help us -- help watch the car.

17 We felt like it was involved based on our knowledge of
18 the area and just sitting off to the side. It wasn't in an
19 area where you would park to go visit the store.

20 Q Okay. And did you notice the specific make and model
21 of the car?

22 A It was a Magnum. It was fairly distinct. We did not
23 see the tag. In my report I write the tag to clarify which
24 vehicle it is, but we could not see the tag. It was backed
25 in away from us, but it was a dark-colored Dodge Magnum.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 Q So when you write, "I see the Dodge Magnum with tag"
2 so and so, you wrote that just for clarification purposes
3 and not to suggest that you called it in.

4 A No, sir. I did not. We didn't have the tag at that
5 time.

6 Q Okay. Let's move on just a little bit. After he
7 pulls out, what happened?

8 A We had not been situated very long, although maybe a
9 couple of minutes in the area watching it while roving. We
10 kinda felt like maybe our movement and him seeing us so
11 much may have what we call spooked him, you know, alerted
12 him.

13 So we'd just gotten in touch with Deputy Daniel. And
14 he had been at the jail himself, so he was in the area
15 close.

16 It pulled off and went up Asheville Highway, and
17 Sergeant Luther did say, you know, "Andy, can you see? Can
18 you find a reason to stop that car?"

19 MR. HARRIS: Objection to the hearsay. I object to
20 the hearsay.

21 THE COURT: Sustained.

22 BY MR. SPIVEY

23 Q Okay. Did you get on the radio to talk to Deputy
24 Daniel?

25 A We were communicating with Nextels.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 Q Okay.

2 A Phones.

3 Q Okay. What did you note about the defendant's
4 behavior, if anything?

5 A Up to that point just the area where he was parked and
6 sitting there on the phone and, you know, my knowledge of
7 the area, known drug area.

8 Q All right. Your car -- what kind of car were you in?

9 A It was a Dodge Durango, I believe.

10 Q It was unmarked.

11 A Yes, sir, unmarked.

12 Q Did it have a siren and blue lights?

13 A I believe it does.

14 Q Okay.

15 A Not -- it's not one -- we use it in our drug
16 operations. It's not one we normally use for traffic stops
17 though.

18 Q Okay. So is that the reason why you requested some
19 help?

20 A A marked unit, yes, sir.

21 Q Okay, okay. Once the car was pulled over, what did
22 you notice, if anything, about the defendant's behavior?

23 A Just very nervous. We were parked behind Deputy
24 Daniel.

25 Q Okay. Describe specifically how he was nervous.

Dan Swad (In-camera)
Direct examination by Mr. Spivey

1 A Well, like Deputy Daniel described, just non -- I
2 guess -- confrontational with the -- when he asked a
3 question, he looked away and stuff like that.

4 Q Okay. At what point did you learn that there was a
5 prior investigation regarding this defendant?

6 A I believe when Sergeant Pharis called me and said --
7 said, "Dan, what do y'all have?"

8 And I told him who it was. Told him it was Kenneth
9 Odell Jackson.

10 He asked. He said, "Well, what kind of car is he
11 driving," or he said, "Is he driving a Dodge Magnum?" And
12 he informed me that -- he said, "I believe Investigator
13 Norris made undercover buys from him in the recent past."
14 But that's when -- that's the time he informed me that we
15 had investigation going on Odell -- Kenneth Odell Jackson.

16 Q Okay. Do you remember who called? Just Sergeant
17 Pharis to begin with?

18 A Yes. Sergeant Luther called and asked was he close,
19 if he had his dog with him.

20 Q Thank you.

21 MR. SPIVEY: No further questions at this point, Your
22 Honor.

23 THE COURT: Mr. Harris, your witness.
24
25

Dan Swad (In-camera)
Cross-examination by Mr. Harris

1 CROSS-EXAMINATION

2 BY MR. HARRIS

3 Q So you basically were watching to see if the person in
4 the Dodge Magnum met anybody.

5 A Yes, sir. That's what we were hoping to ultimately
6 gain, if that would reveal more about the investigation,
7 yes.

8 Q But he didn't meet anybody, did he?

9 A No, sir.

10 Q And you say this convenience store is a high crime
11 area.

12 A The area to the right of it is, yes, known to
13 facilitate drugs.

14 Q And how many arrests have been made from there?

15 A I'm not sure. I didn't look up those stats.

16 Q Would it be none that you're --

17 A Sir?

18 Q Would it be absolutely none you're aware of?

19 A That I'm aware of?

20 Q Yeah.

21 A Well, I couldn't give you a specific case number, no,
22 sir.

23 Q That's right. So none that you're aware of. No
24 arrests that you're aware of from that location, correct?

25 A That's correct. I cannot give you a specific number.

Dan Swad (In-camera)
Cross-examination by Mr. Harris

1 Q Okay. And has anybody from the Spartanburg County
2 Sheriff's Department had any communication with the owners
3 of that store to make them aware that it's supposedly a
4 high crime area?

5 A I don't know of that.

6 MR. SPIVEY: Your Honor, objection. Speculation.

7 MR. HARRIS: I'm just asking if he knows.

8 THE COURT: You asked if he knew, and he can answer
9 that question.

10 BY MR. HARRIS

11 Q Okay. So you don't know if the owners of the business
12 that you say is a high crime area even know that it is.

13 A Do I know that?

14 Q Yeah. Do you know that? I'm just asking what you
15 know.

16 A I have not communicated with them myself, no, sir.

17 Q Because you say you know it's a high crime area. And
18 the only reason that you've stated in your testimony is
19 that whenever -- from time to time when you get off work
20 you see a lot of people meeting over there. That's the
21 basis of your opinion.

22 A I have seen that, yes, sir.

23 Q But you've never actually investigated any of those
24 meetings.

25 A This was one of them.

Dan Swad (In-camera)
Cross-examination by Mr. Harris

- 1 Q well, there was no meeting here, correct?
- 2 A That's what I was investigating.
- 3 Q There was no meeting in this case.
- 4 A I did not see Mr. Jackson meet anybody at that moment.
- 5 Q And you say that there's been other meetings, but
- 6 you've never investigated any of those, have you?
- 7 A I'm sorry. Could you repeat that?
- 8 Q You say that there had been lots of meetings that you
- 9 had seen at this place, but you've never investigated any
- 10 of those either.
- 11 A Yeah. I saw -- I have seen those, yes.
- 12 Q Well, have you investigated any of them --
- 13 A No, sir.
- 14 Q -- since there are supposedly crimes going on? Aren't
- 15 you a police officer?
- 16 A Yes, sir.
- 17 Q Okay. So you've seen crimes that you let go.
- 18 A I saw transactions.
- 19 Q That you let go. You saw a crime, a drug crime, take
- 20 place, and you did nothing about it.
- 21 A No, sir.
- 22 Q well, what did you do about it?
- 23 A I saw transactions. I don't know what they were,
- 24 whether they're drug transactions or what.
- 25 Q And in this case you didn't even see a transaction.

Dan Swad (In-camera)
Cross-examination by Mr. Harris

- 1 A No, sir.
- 2 Q Okay. So it couldn't -- would you concede then it's
- 3 not much of any evidence to support the idea this was a,
- 4 quote, high crime area?
- 5 A Sir?
- 6 Q Would you concede that there's not much of any
- 7 evidence to support your allegation this is a high crime
- 8 area?
- 9 A Well, my information is that, yes, a lot of drug
- 10 transactions take place in this from people that we have on
- 11 the streets.
- 12 Q Yeah. But nothing's ever been done about it.
- 13 A We're working on it.
- 14 Q And no arrests have been made there.
- 15 A I don't know.
- 16 Q Okay.
- 17 A I told you I didn't know the number.
- 18 Q Okay. All right. And is it correct that you got in
- 19 touch with Deputy Daniel in this case to find a reason to
- 20 stop this vehicle? Because you had no reason --
- 21 A Yes, sir.
- 22 Q -- correct? You had no reason to stop the vehicle.
- 23 A We were conducting an investigation.
- 24 Q Yeah. But you hadn't found anything though.
- 25 A That's correct. There is -- it's an ongoing process,

Dan Swad (In-camera)
Cross-examination by Mr. Harris

1 an investigation is.

2 Q Yeah. And so Deputy Daniel stops the vehicle. And
3 after Mr. Jackson refused to give consent to search the
4 vehicle you decided to call in the dogs.

5 A Once we found out who Mr. -- who was driving the
6 vehicle.

7 Q Okay. And is it correct that Mr. Jackson has never
8 been convicted of a drug crime?

9 A I don't know. All I was made aware of was that he had
10 had some undercover buys made off of him.

11 Q Yeah. Well, there -- there was an incident where he
12 was accused of distribution of Lortab in August of 2011.
13 That's what you're referring to?

14 A Yes, sir.

15 Q That one time, that one arrest.

16 A Yes, sir.

17 Q And that case is still pending in court --

18 A Yes, sir.

19 Q -- where he's presumed innocent, would you agree?

20 A That's what the law states, yes, sir.

21 Q And you say you've investigated Mr. Jackson. So I ask
22 you again. Are you aware of Mr. Jackson ever being
23 arrested for a drug violation prior to that time, or since?

24 A No, sir, not prior to that -- until that night when I
25 got that information.

Dan Swad (In-camera)
Cross-examination by Mr. Harris

1 Q And did you even check to see if at the time and date
2 involved in this case if Mr. Jackson had ever in his life
3 been convicted of a drug violation?

4 A I'm sure I ran his criminal history, but we don't --
5 that can change from day to day. So we don't -- I didn't
6 charge him with, I don't believe, second offense at that
7 time.

8 Q So, in essence, what was going on here this night was
9 out of curiosity you were conducting a fishing expedition
10 to see if you could get inside the car Mr. Jackson was
11 driving.

12 A I don't consider it a fishing expedition based upon my
13 experience and training.

14 Q That you -- in this case would it be correct that you
15 had conducted surveillance on a vehicle, found no evidence
16 to support the idea that there was any crime afoot, so you
17 decided to get a traffic officer to make a traffic stop so
18 you could search the vehicle anyway? Was that about the
19 size of it?

20 A We were looking at it from the information that we had
21 on that area being a drug trafficking area.

22 Q Yeah. But the case is about Mr. Jackson, see. I'm
23 asking you about --

24 A Mr. Jackson.

25 Q Is it true that your surveillance of Mr. Jackson

Dan Swad (In-camera)
Redirect examination by Mr. Spivey

1 revealed no evidence to support any objective conclusion
2 that he was involved in criminal activity?

3 A Just the observations we made where he was parked.

4 Q That you thought he would meet somebody but he didn't,
5 correct?

6 A Yes, sir.

7 MR. HARRIS: No further questions.

8 THE COURT: Mr. Spivey.

9 MR. SPIVEY: Just a few short questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SPIVEY

12 Q You testified a minute ago that you do not remember
13 the number of arrests made at that location.

14 A I don't have that information. I don't --

15 Q But that's not -- you were not saying that there were
16 none.

17 A No, sir. I don't have any case numbers on that.

18 Q Okay. At the point in time in which the car-stop was
19 made, the factors that led to your reasonable suspicion was
20 just it was a high crime area?

21 A That was our main -- you know, that he's sitting
22 there, blacked out, parked, backed in in a dark area,
23 nothing like a customer at the store would be. They would
24 be parked around front.

25 Q So the --

Roger Luther (In-camera)
Direct examination by Mr. Spivey

1 A We didn't see him come and go out of the store.

2 Q Okay. So the other factors were developed as the
3 traffic stop went on?

4 A Yes, sir.

5 Q Okay. And those would have been shortly after the
6 stop?

7 A Yes, sir.

8 Q Within the first few minutes.

9 A Right.

10 MR. SPIVEY: No further questions, Your Honor.

11 MR. HARRIS: Nothing else of this witness, Your Honor.

12 THE COURT: You may step down.

13 MR. SPIVEY: Roger Luther.

14 THE COURT: Come forward, sir.

15 ROGER LUTHER, having been
16 first duly sworn, testified as follows:

17 THE COURT: State your name, please, sir.

18 THE WITNESS: Roger Luther.

19 THE COURT: Your witness.

20 MR. SPIVEY: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. SPIVEY

22 Q What is your training and experience?

23 A Twenty-five years of law enforcement of which 12 has
24 been involved in narcotics investigation and/or
25 street-level drug enforcement.

Roger Luther (In-camera)
Direct examination by Mr. Spivey

1 Q Okay. And just very quickly, you were with Mr. Swad
2 this night?

3 A I was.

4 Q Okay. Did you see and hear everything he did
5 basically?

6 A Yes, sir.

7 Q Okay. What part in this investigation did you take
8 for your role?

9 A Assisting Investigator Swad --

10 Q Okay.

11 A -- with the surveillance and just more or less kind of
12 functioning in the background as the car-stop progressed.

13 Q Did you call Joe Pharis?

14 A I did.

15 Q Okay. When did you call him?

16 A I called him soon after we had learned that Andy had
17 requested a uniform patrol dog. A patrol dog responded.
18 They were busy. And as soon as I learned that I called Joe
19 to see if he was close enough to where he could assist me.

20 Q And he said he was close enough?

21 A Yes, sir.

22 Q Okay. Did he share any information with you?

23 A As far as the vehicle?

24 Q Yeah.

25 A I -- at that point I still wasn't sure who we had. He

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 may have already spoken to Investigator Swad because we
2 were both on our phones back and forth.

3 Q Okay.

4 MR. SPIVEY: I don't have any further questions of
5 this witness, Your Honor.

6 THE COURT: Mr. Harris.

7 MR. HARRIS: Nothing from the witness, Your Honor.

8 THE COURT: You may step down.

9 MR. SPIVEY: Joe Pharis.

10 JOSEPH LATHAN PHARIS, having
11 been first duly sworn, testified as follows:

12 THE COURT: State your name once you are seated, sir.

13 THE WITNESS: Joseph Lathan Pharis.

14 THE COURT: Mr. Spivey, your witness.

15 MR. SPIVEY: Thank you, Your Honor.

16 DIRECT EXAMINATION BY MR. SPIVEY

17 Q Please state your experience and training.

18 A I have just a little over 17 years in law enforcement.
19 I spent five and a half years, roughly five and a half
20 years, at the city of Spartanburg, which roughly three of
21 those years were in narcotics.

22 I come to the sheriff's office. I've been in
23 narcotics pretty much my whole stint in the sheriff's
24 office except maybe a year in the major crime unit, and
25 that was around 2005. Now I'm supervisor or one of the

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 supervisors in the narcotics unit as a sergeant.

2 Q Okay. Are you a canine handler?

3 A I am.

4 Q Tell me about your canine.

5 A October of 2010 myself and my canine, Sawyer, finished
6 up training at Wilmington at the enforcement canines. We
7 were assigned to the narcotics unit.

8 I come back. Certified through NAPWDA, which is the
9 National -- I mean, National Police Canine -- Working
10 Canine Association through five narcotics, which is
11 cocaine, marijuana, crack cocaine, methamphetamine and
12 heroine. We obtained our certification, and we keep that
13 updated yearly. And we do four to six hours of training a
14 week.

15 Q Okay. Tell me about your particular dog. How does he
16 work?

17 A My canine is a black lab, and he is a passive-alert
18 canine, which means as I detail the areas which I will want
19 him to sniff, instead of biting or scratching he will sit,
20 which is what we consider a passive alert. I also look for
21 changes in his breathing and changes in his behavior. And
22 of course his final response is a sit.

23 Q Okay. And when he sits, what does that mean?

24 A To me when he sits he is in the presence of an odor of
25 a narcotic.

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 Q Not the actual drug but the odor.

2 A The odor, yes, sir.

3 Q Okay. Let me show you a picture. Can you identify
4 that photo?

5 A Yes, sir. This is from the Asheville Highway stop.

6 And it's a little blurry, but in the background that would
7 be canine Sawyer in his sit position.

8 Q So he's alerting then.

9 A Yes, sir.

10 Q Okay. What point in the night did you get a phone
11 call in regards to this particular stop?

12 A I remember getting a phone call from Sergeant Luther
13 who is another supervisor in the narcotics unit. He asked
14 if I was available to bring my canine to a traffic stop,
15 and I said I was.

16 At that point I was driving on John B. White, Sr.
17 Boulevard right about Daniel Morgan Avenue. But for a
18 landmark, it'd be there around the Beacon. He told me they
19 was -- had a car stopped on Asheville Highway. I told him
20 I was headed straight to them.

21 Q Okay. Let me show you another photo. Do you
22 recognize that?

23 A Yes, sir. This is going to be the dark gray Dodge
24 Magnum.

25 Q Okay. What date and time?

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 A September the 10th of 2011.

2 Q Okay.

3 A Time is 9:10.

4 Q Okay. Does that appear consistent with the car that
5 you saw?

6 A Yes, sir.

7 Q Okay. Do you know why that particular photograph was
8 taken or where it came from?

9 A Yes. This appears to be the photograph from an
10 earlier buy that Investigator Paul Norris done.

11 Q And who was the target of that buy?

12 A It'd be Mr. Jackson.

13 Q Okay. And how do you know about that?

14 A Being one of the supervisors in the narcotics unit,
15 one is to -- when the investigators need money to make buys
16 myself or Lieutenant Cooper will open up the safe and give
17 them money and let them sign the money out.

18 And also once their buy is complete we take in the
19 receipts to sign off that that money was spent on that buy.
20 And then at that point once the investigator gets their
21 case file together on their buy, once they look at the
22 videos and make still photos from it, we over -- we look
23 through the case file and make sure there are videos in
24 there, there are still photos in there, information about
25 their suspect is in there, their reports is in there before

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 it gets scanned to the solicitor's office.

2 MR. SPIVEY: Your Honor, at this point I'd like to
3 move this particular picture into evidence for the purpose
4 of this hearing.

5 MR. HARRIS: I object to relevance. It has nothing to
6 do with this case.

7 THE COURT: Other than he said -- I think he testified
8 that it was a picture of the car that he saw the evening in
9 question.

10 Isn't that what he testified?

11 MR. HARRIS: No. At the earlier time in August.

12 THE COURT: Well, let's clear that up. Ask him if
13 that's the photo of the car he saw that evening as well.

14 BY MR. SPIVEY

15 Q This -- on the November the 29th incident do you
16 remember what kind of car Mr. Jackson was driving?

17 A Yes, sir. It was a Dodge Magnum dark in color.

18 Q Okay. The same color as that car.

19 A Yes, sir.

20 Q The same make as that car.

21 A Yes, sir.

22 MR. HARRIS: My point is -- I'm not sure why -- I
23 don't know what the relevance is. They're trying to say
24 that it's the same car as an undercover buy was made from
25 several months prior to this case -- was the car that was

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 involved in this case. But that doesn't prove any issue.

2 THE COURT: I'm going to sustain the objection.

3 Go ahead.

4 I believe the issue here, gentlemen, is whether or not
5 there was probable cause to stop the car. I'm not sure
6 whether it was identified in a previous transaction has
7 anything to do with it.

8 MR. SPIVEY: Yes, sir.

9 THE COURT: The purpose of the stop was the taillight
10 being out, I mean, the tag light being out.

11 MR. SPIVEY: Yes, Your Honor.

12 We would argue that that is correct and that during
13 the amount of time it took for Deputy Daniel to write that
14 ticket and search the information he needed to write that
15 ticket and ask the questions he needed that the car was
16 searched in that amount of time.

17 But in the event that you decide that he took too long
18 doing that or asked one or two questions he shouldn't have,
19 I mean, we would argue that there was, in fact, reasonable
20 suspicion within that small timeframe which would allow
21 them to extend the scope and duration of the stop. One of
22 those factors is that --

23 THE COURT: Well, I understand your position. Go
24 ahead.

25 MR. SPIVEY: Yes, sir.

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 THE COURT: The fact that there was a car that was
2 used in a drug buy that fit the description of the car that
3 stopped that night, without something to identify it
4 specifically as the car -- I would suspect they made a lot
5 of Dodge Magnums that color that year.

6 MR. SPIVEY: Yes, sir, Your Honor. But I
7 believe that --

8 THE COURT: Is there something that identifies that
9 car that would tell you that's it, I mean, like a dented
10 fender or a --

11 MR. SPIVEY: I think here's the driver. It has --
12 Mr. Jackson is driving on both occasions.

13 THE COURT: Mr. Harris.

14 MR. HARRIS: Well, the reason I asked the prior
15 witness did they -- did you get the tag for the August
16 situation --

17 THE COURT: Oh, I understand. I was listening.

18 MR. HARRIS: And they said, no, there's no way they
19 can know that.

20 well, the fact that someone is driving similar cars, I
21 mean, you know, people can have two Chevrolets, two
22 Mercedes or anything else.

23 I mean, as a matter of fact, the evidence has been in
24 this hearing that the car didn't belong to Mr. Jackson, it
25 belonged to Andrea Jeter.

Joseph Lathan Pharis (In-camera)
Direct examination by Mr. Spivey

1 MR. SPIVEY: That is correct, Your Honor, but he's
2 driving on both occasions within a few months of each
3 other. We argue that that shows possession of the car. It
4 is the same car.

5 THE COURT: All right. I'll let it in. I'll let it
6 in for that purpose.

7 MR. SPIVEY: Thank you, Your Honor.

8 THE COURT: All right.

9 (Photograph marked State's Exhibit No. 4.)

10 Q After your dog alerted what -- you indicated what?

11 A After he come to his final response in the sit
12 position on the passenger side, I then walked him around,
13 back around, to the front and into the vehicle on the
14 driver's side.

15 Q After that what occurred?

16 A After I let Cantasory [sic] into the vehicle and gave
17 him the find command he began searching around the center
18 console area.

19 He then turned around facing me and sat in the
20 passenger seat after placing his nose on the center
21 console.

22 when he sat, gave me that final response that I look
23 for, I then rewarded him and brought him out of the vehicle
24 and came back and let the -- Investigator Swad and
25 Investigator-Sergeant Luther and I believe Andy Daniels --

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

1 let them know that the alert was there and where he alerted
2 in the vehicle.

3 Q was the car searched after that?

4 A Yes, sir, it was.

5 MR. SPIVEY: No further questions at this time, Your
6 Honor.

7 MR. HARRIS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. HARRIS

10 Q As far as this dog, is it trained only to detect
11 narcotics?

12 A He is just a narcotic detection dog.

13 Q And is it correct that according to your testimony
14 when you came out to the scene that Mr. Jackson was
15 basically being -- standing in front of Deputy Daniel's
16 patrol car?

17 A Yes, sir. He was.

18 Q And that was how far away from the Dodge Magnum?

19 A Within roughly ten feet of his Dodge Magnum.

20 Q As far as from me to you?

21 A Roughly, yes, sir.

22 Q And how many officers were on the scene?

23 A I know there was of course Deputy Daniels,
24 Investigator Dan Swad and Inv -- Sergeant Luther. And if I
25 remember, there was two gentlemen in one car from patrol

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

1 that had rode by the area and stopped.

2 Q So there were several police officers there.

3 A Yes, sir.

4 Q All right. And is it correct that when you arrived
5 there -- is it fair to say that Mr. Jackson was -- was
6 being detained in custody for the purpose of having this
7 search take place?

8 A He was standing outside Deputy Daniel's vehicle. I
9 actually approached him.

10 Q Oh, I mean, was it your impression that he was just
11 free to leave if he wanted to?

12 A He was not cuffed; he was not detained.

13 Q That wasn't my question. My question to you was was
14 he free to leave if he wanted to, just walk off, get back
15 in his car and go?

16 A He was not detained, so.

17 Q I -- that's not my question. My question to you is
18 was he free to get back in his car and just leave.

19 A From my aspect of the car stop with me just arriving
20 there, I would say yes.

21 Q So he could have done that.

22 A I don't know what you're --

23 Q According to you. And what would you have done?

24 A Sir?

25 Q What would you have done if he tried to do that?

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

- 1 A I was there to run a canine. I was handling the
2 canine.
- 3 Q That's not my question.
- 4 A Okay.
- 5 Q My question is had Mr. Jackson when you arrived there
6 with the dog just walked over to his car and got in and
7 tried to leave, what would you personally have tried to do?
- 8 A If the traffic stop was not completed?
- 9 Q I'm asking you what you would have done. If you don't
10 have any idea what you'd do, just say so.
- 11 A well, I would need more information before I'd make a
12 decision like that.
- 13 Q You'd need more information.
- 14 A Yes, sir.
- 15 Q I see. But so you took the dog. And is it correct
16 that -- and according to you -- the dog passively alerted
17 by sitting down outside the closed-up car.
- 18 A Yes, sir. That is passive alert.
- 19 Q Okay.
- 20 A He sits.
- 21 Q And -- and what does that tell you?
- 22 A That tells me he is in the -- he is in the presence of
23 a narcotic odor.
- 24 Q And he can smell things that humans can't smell.
- 25 A Yes, sir, he can.

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

1 Q All right. But you don't know where it's coming from,
2 right?

3 A After he placed his nose outside the vehicle and I
4 detailed the vehicle with my hand and I run him on the
5 seam -- and when his nose passed the seam he gave his final
6 response as an alert.

7 Q Which is what?

8 A A sit.

9 Q Okay. So that tells you that he smells something
10 outside of the car.

11 A Yes.

12 Q Not inside the car.

13 A He is in the presence of odor. It could be coming
14 from inside the car.

15 Q Could be coming from anywhere, couldn't it?

16 A Well, we're detailing the car.

17 Q Well, I understand you want it to be the car, but I'm
18 asking you as a matter of -- if this is science -- the odor
19 could be coming from anywhere.

20 A Like --

21 Q Correct?

22 A -- where?

23 Q Anywhere. The free air.

24 A What do you mean? I mean, where would that be? Where
25 would the odor come from?

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

1 Q I ask the questions here.

2 A Okay.

3 Q The free air.

4 A I say the odor is coming from the vehicle with my
5 training.

6 Q Okay. Do you have anything to prove that? Do you
7 have any scientific background to know that, or is that
8 just your police hunch?

9 A Through my training with my canine. After my canine
10 smelled the seam of the car, through my training it is my
11 experience that the odor is coming from the vehicle.

12 Q To the exclusion of anywhere. It couldn't have been
13 coming from anywhere else. You can exclude every other
14 place on the face of the earth but the interior of that
15 car.

16 A Through my training on that night that odor come from
17 that vehicle.

18 Q All right. So I just want to be clear that it is your
19 sworn testimony that your training dictates to you that the
20 odor that allegedly the dog could detect outside the car,
21 the closed-up car, couldn't have been coming from no other
22 place but that car that Mr. Jackson had been driving.

23 A Through my training after I detailed the car with my
24 canine and he alerted after passing a seam -- it is through
25 my training. My opinion is that odor come from that

Joseph Lathan Pharis (In-camera)
Cross-examination by Mr. Harris

1 vehicle.

2 Q It is your opinion. And so --

3 A My training.

4 Q And so you without consent entered into the interior
5 of the car with the dog based on just that opinion.

6 A No, sir. That is not correct.

7 Q Then what would have -- what objective facts would
8 have justified you actually physically opening the door and
9 sending the dog inside the car?

10 A You stated that me along with my canine entered the
11 vehicle. I never entered the vehicle. I sent my canine in
12 the vehicle.

13 Q well, all right. You -- then this opinion about the
14 odor could have been coming from nowhere other than the
15 interior of the car. And that opinion alone is why you
16 opened the door and sent the dog inside the car.

17 A Yes, sir.

18 Q All right. Thank you very much.

19 MR. HARRIS: No other questions.

20 THE COURT: Anything further from this witness?

21 MR. SPIVEY: Nothing, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Any other witnesses?

25 MR. SPIVEY: No. No further witness, Your Honor.

1 THE COURT: Mr. Harris, do you wish to call any
2 witnesses?

3 MR. HARRIS: No, Your Honor.

4 THE COURT: All right. Then you may argue your case,
5 Mr. Harris. I think you already have, but I'll hear you
6 again.

7 MR. HARRIS: Your Honor, the cases that I've handed up
8 state, I believe, the relevant principles of law involved.
9 And I just want to make it very clear for the record that
10 we are challenging both the initial stop of the vehicle and
11 the subsequent detention which led to the search.

12 We do not -- just to be clear in terms of the Caballes
13 case, we don't take the same position in that case as the
14 defendant there did.

15 We're aware that free-air dog sniffs if properly -- if
16 the proper foundation is laid would not implicate a
17 4th Amendment concern. We're not concerned here with that.
18 That -- if we have to have a trial later we may be, but not
19 now.

20 There are two situations that are described in all of
21 the case law, the cases I handed up and many others. And
22 in those cases the police have to have in order to stop a
23 car -- which is a seizure within the meaning of the
24 4th Amendment -- reasonable articulable suspicion based on
25 objective facts that criminal activity is afoot to justify

1 a stop. We do not have that here.

2 Secondly, there must be a traffic violation, an
3 observed traffic violation. We don't believe that the
4 state has met its burden of proof that that has happened
5 here.

6 There's -- if we get to the point in our country where
7 the 4th Amendment gets trumped by let's find a reason to
8 stop him and so we'll claim that there's a tag-light
9 violation even though there's nothing whatsoever done to
10 substantiate that in a traffic stop, then we don't have the
11 4th Amendment.

12 There has to be an objective basis for a traffic stop.
13 And given the evidence that's been presented here today
14 there's no objective basis of it.

15 They could read the tag number. They called it in.
16 They checked it out. That's the whole point of the
17 tag-light statute. If you can read the tag light, you can
18 read it. If you can't read it, you can't read it. They
19 can read it.

20 But that wasn't what they were concerned about. There
21 is -- they had absolutely no objective reason, no
22 reasonable, articulable suspicion to ask questions about
23 drugs, to seek consent to search a vehicle, to call drug
24 dogs in or any of the like. And all of that time -- and
25 it's on the video -- all of that time spent doing that is

1 time that should have been spent accomplishing the purpose
2 of the traffic stop.

3 All of that time that was spent not accomplishing the
4 purpose of issuing a citation for a tag light -- if that's
5 what they were going to do -- by virtue of the nature of
6 time extends the duration of the stop.

7 This is an unusual case in terms of the fact patterns
8 of other cases. It's unusual in the sense that in most of
9 these cases a traffic stop is made. Things are done to
10 accomplish writing the ticket for the traffic stop. And
11 then a so-called second detention occurs by further
12 questioning. Well, we don't have that here.

13 What we have here is not even a pretense of trying to
14 write a ticket for a tag light. We have a straightforward
15 from the beginning drug investigation taking place that is
16 so intertwined with whatever might be done to accomplish
17 the purposes of writing a citation for a tag light that
18 has -- by its very nature extends the duration of the stop.

19 It only extends the duration. That's not the only 4th
20 Amendment concern, as is indicated by the language in the
21 Florida vs. Royer case and also in some of the language of
22 Justice Ginsburg's dissent in the Caballes case.

23 But it's not a matter of controversy. This is a
24 well-established principle of law that the investigative
25 detention must be temporary and last no longer than is

1 necessary to effectuate the purpose of the stop.

2 Here is the important point I want to make, Your
3 Honor. Similarly, the investigative methods employed
4 should be the least intrusive means reasonably available.

5 So when we talk about the scope and duration -- and I
6 think this is something that's overlooked in these car-stop
7 cases. When we talk about the scope and duration of the
8 investigative detention we're not only talking about
9 minutes of time, but we are talking about what is being
10 done there in those minutes.

11 A short -- a relatively short-duration stop can be
12 invalid if most of the time spent during the short duration
13 is employing investigative techniques or means which are
14 well beyond the purpose of the stop.

15 THE COURT: which case says that?

16 MR. HARRIS: The Royer case.

17 THE COURT: what year is that?

18 MR. HARRIS: It's 1983, I believe, Your Honor. It is
19 cited in the Caballes opinion. It's cited in many of these
20 cases.

21 THE COURT: I'm just looking at 2009, State vs.
22 Rivera. And Judge Pieper's descent talks about the
23 duration of a traffic stop, how long it should last.

24 Everybody is in agreement in the cases I've been
25 reading, and I haven't read them all. I will before I

1 finish. I've been doing some of my own research up here.
2 The -- all of the cases talk about the fact that the moment
3 at which a traffic stop concludes is a difficult legal
4 question to answer.

5 Everybody says you've got a right to stop them, you
6 can get them out of the car. There's nothing wrong with
7 that. You have the right to run a license check, a
8 registration's check. And in this case that's what the
9 officer said he did.

10 Now, I haven't heard any argument to indicate that
11 perhaps that results of that test or that check came in any
12 sooner than he testified, which was 15 minutes. I think it
13 was a maximum of 15, a minimum of 12, I think is the range
14 of time that he gave for that -- that to come in.

15 And all of the cases say if you stop somebody for a
16 valid traffic stop -- and I know you challenge whether the
17 traffic stop is valid or not -- but if you do, then you've
18 got a right to do your normal checks before you issue the
19 ticket and let them go.

20 And the normal checks include -- I'm reading what he
21 says here. He says the appropriate constitutional inquiry
22 is whether the detention lasted longer than was necessary
23 for its purpose.

24 So, and he talks about the fact in there that you have
25 a right to do the things that this gentleman said he was

1 doing -- the officer said he was doing, which was to call
2 in the registration, look into the temporary license, that
3 sort of thing.

4 And then what goes on during that stop, I'm having a
5 hard time finding recent cases that say that you can't ask
6 some questions.

7 MR. HARRIS: Well, Your Honor, for instance, in the
8 Pichardo language, which is the most concise statement of
9 it I can find, it says, "In carrying out the stop, an
10 officer may request a driver's license, vehicle
11 registration, run a computer check and issue a citation."

12 THE COURT: Exactly.

13 MR. HARRIS: But this -- this has to do with how they
14 do it. "However, any further detention for questioning is
15 beyond the scope of a stop and therefore illegal."

16 THE COURT: Well, you have the Tindall case, and the
17 Tindall case in 2008 said, "Length in detention, once the
18 initial traffic stop is completed," and by completed what
19 they're saying is that you've gotten the checks, the
20 results of the check, back. You've written the ticket.

21 I had a case recently where the officer had obviously
22 written a ticket and had it in his book and just wouldn't
23 tear it out and hand it to the fellow. He kept asking
24 questions before he handed it to him. Now, I had a case
25 that came up like that.

1 But the Tindall case says lengthy detention once the
2 initial traffic stop is completed is permissible in two
3 situations. The officer has an objective -- objectively
4 reasonable and articulate suspicion illegal activity is
5 occurring or about to occur or the initial detention has
6 become a consensual encounter.

7 MR. HARRIS: And neither one is the case here.

8 THE COURT: Well, but what happened here -- what
9 happened here appears, Mr. Harris, to me that the sniff
10 took place before the stop was completed.

11 MR. HARRIS: Not correct, Your Honor. I disagree.

12 THE COURT: Well, tell me how -- tell me what proof
13 you have of that.

14 MR. HARRIS: What happened here was an immediate drug
15 investigation. There was no investigation of the
16 traffic -- of the reason for the traffic stop. That's the
17 whole point. My whole --

18 THE COURT: Now -- now, Mr. Harris, I'm -- Mr. Harris,
19 I'm talking.

20 MR. HARRIS: Well, trying to answer you, Your Honor.

21 THE COURT: Let me say something. This is my
22 courtroom.

23 MR. HARRIS: Yes, sir. I was just trying to answer.
24 I'm sorry if I stepped on it.

25 THE COURT: The -- the officer testified that he had

1 called in this information and was waiting on it to come
2 back.

3 Is there any evidence to the contrary that that
4 occurred?

5 MR. HARRIS: Yes, sir.

6 THE COURT: Tell me what that is.

7 MR. HARRIS: The video tape is proof positive, and
8 also the admissions on the stand. But the video tape is
9 proof positive.

10 And this is part of the point here about what was
11 done, both the means and the duration. There never was a
12 traffic-stop investigation. There never was a true traffic
13 stop. From the very beginning it's a drug investigation.
14 The traffic stop is incident to the drug investigation.

15 You know, in these other cases at least they make a
16 pretense of investigation, investigating a traffic
17 violation, and a drug investigation occurs incidentally to
18 that.

19 Here there was just an out-and-out drug investigation.
20 That's what they did. That's what they spent all of their
21 time doing.

22 There's been no proof that they did anything but that.
23 If you look at that video it'll be clear. That's all they
24 did. They immediately did a drug investigation.

25 THE COURT: Mr. Harris, answer my question. You never

1 answered it. Listen to my question carefully.

2 What proof do you have that the results of his traffic
3 investigation had been completed before the sniff took
4 place?

5 Now, his traffic investigation -- and I know you don't
6 want to recognize it. This is what I heard. That he
7 stopped the gentleman; that he got his paperwork -- the
8 license, registration; and that he went and called it in.
9 That's the traffic investigation.

10 Now, I realize that he started asking him questions
11 about drugs then or shortly thereafter. I understand that.
12 But my question was what evidence do you have that the
13 traffic investigation -- in other words, the results were
14 back. All he had to do was write the ticket and hand it to
15 him occurred -- that that occurred before the sniff took
16 place.

17 MR. HARRIS: Your Honor, my answer is I don't agree
18 that -- I don't agree with what the Court's question
19 suggests, that the purpose of the traffic stop had been
20 accomplished only at the point where a citation was
21 actually handed to the defendant.

22 At the point in time where it was determined that a
23 tag-light violation had occurred and that a citation was
24 going to be written, that is the end of the traffic stop.
25 That is the end of the traffic stop.

1 And the problem the state has here is even graver than
2 in some of the other cases because they don't even make a
3 pretense at it.

4 There was -- it was immediately determined there's a
5 tag-light violation, but that was of no concern. They --
6 at that point it was just a drug investigation.

7 So you can't -- you can't have the state spend
8 75 percent of all of the time that they are holding a
9 defendant for investigative detention doing things that are
10 completely and utterly unrelated to the purpose of the
11 traffic stop and then at the end you go, oh, and here's
12 your ticket. Actually that's exactly what happens on the
13 tape.

14 He kind of waits. The officer sort of waits. Eats a
15 sandwich. He eats his lunch in the patrol car while he's
16 waiting for the drug dogs to finish up and then gets out
17 and says I'm going to give him this ticket and stuffs it in
18 his pocket while he's handcuffing him.

19 I mean that -- I -- here it's not a second detention.
20 The detention itself just took the form of a complete drug
21 investigation without reasonable articulable suspicion.
22 That's -- and I -- that's the point that we make here, is
23 when -- when there's no pretense at anything other than an
24 unrelated investigation -- something -- an investigation
25 unrelated to the initiation of the traffic stop, then all

1 of the time spent doing that is an extended-duration
2 stop -- all of the time spent doing that.

3 That's why we would say that all of the language in
4 the cases say that what the police do -- not only the time
5 it takes but what they actually do -- has to be strictly
6 tied to the purposes of the stop unless --

7 THE COURT: Which case says that?

8 MR. HARRIS: All the cases I've handed up.

9 THE COURT: No, they don't. I'm reading them.

10 MR. HARRIS: Well.

11 THE COURT: I mean, tell me one that says when you
12 stop somebody for a -- a traffic stop that you can only
13 talk about the traffic ticket. I don't see that anywhere.

14 The question is prolonging the stop and continuing the
15 investigation into a second stop. They talk about the
16 first stop and the second stop. But I don't see a thing in
17 these cases.

18 In fact, one of these cases a guy was driving from
19 Durham. They asked him about whose car it was, which
20 direction he was going, who rented the car, all of that
21 sort of stuff. They were asking a lot of different
22 questions, and that didn't have anything to do with the
23 traffic stop itself. But that all went on and was not
24 found to be illegal.

25 MR. HARRIS: Your Honor, I'm familiar with the case.

1 And what the Court said in that case as I recall it was
2 that those questions were tangentially related to the
3 traffic violation of where have you been, where are you
4 going about the driving.

5 Here they don't even come close. I mean, they just
6 did a drug investigation. These questions about --
7 immediate questions about do you have cocaine in your car,
8 do you have this, this and this in your car, can we have
9 permission to search and it's not tangentially --

10 THE COURT: well, at some period -- I am very troubled
11 with the fact that the -- that they called somebody in to
12 stop a car so they can search it. That bothers me. Don't
13 get me wrong.

14 MR. HARRIS: Yes, sir.

15 THE COURT: That's not what traffic stops are intended
16 to do. I have a problem with that.

17 But I also have a problem with something saying that
18 they can't ask questions while the traffic stop is not
19 being lengthened by doing that.

20 And here I'm looking into the question of the length
21 of time it took for the traffic stop. Let's just look at
22 that. And I am trying to figure out that the questioning
23 length of that traffic stop -- and that's the reason I was
24 asking you as to whether or not the stop was lengthened by
25 those questions. And the testimony I heard was that what

1 they were waiting on was the report to come back that they
2 had called in.

3 MR. HARRIS: Your Honor, my question to Deputy
4 Daniel -- I believe it was -- was isn't it true that before
5 you ever attempted to run a license check isn't -- didn't
6 you ask all of these questions about drugs and seek to get
7 consent and call in the drug dogs. You did all of that
8 before you attempted to complete gathering information
9 about the driver record. And he answered yes. And if you
10 look at the video it's very plain that's exactly what
11 happened.

12 THE COURT: Well, I'm going to sit down and watch the
13 video.

14 MR. HARRIS: And so --

15 THE COURT: Let me move on and hear what Mr. Spivey
16 has to say.

17 MR. SPIVEY: Thank you, Your Honor.

18 Just to check, do you have a copy of the statute --
19 the taillight?

20 THE COURT: Yes, sir. I've already -- I've read it.
21 It's very short.

22 MR. SPIVEY: It's -- it's very short. It says it has
23 to be clearly legible from a distance of 50 feet.

24 Both Officer -- excuse me -- Deputy Daniel and Deputy
25 Swad or Investigator Swad both said that they could see

1 that the tag light was not lit or was so dim that they
2 could not see the tag from 50 feet. That is through either
3 a subjective standard or an objective standard that meets
4 the violation. And there is no doubt there can be a
5 violation.

6 THE COURT: Well, there's no doubt you --

7 MR. SPIVEY: It may be pretextual.

8 THE COURT: I would say there's no doubt you could
9 allege that.

10 MR. SPIVEY: They at least allege it. There's proof
11 from the video. They can see it from other aids they've
12 got.

13 In fact, when he pulled up behind him you -- they've
14 got the headlights right on it, and so the rest of the
15 video you'll see. And they've got -- they even point a
16 spotlight at the car. So you've got a lot of light shining
17 on there, so you can see it to call it in. And so a lot
18 has been made of the fact that they saw it to call it in,
19 but that was not done by any light source on the car. It
20 was done by extra light sources.

21 Our statute says you have to have a tag light on your
22 car or a lamp of some other sort, but it must be white
23 light and it must --

24 THE COURT: White light. I read it.

25 MR. SPIVEY: And clearly legible.

1 Your Honor, one case, State vs. Jihad, it is a 2001
2 case. It was a case which supported a trafficking
3 marijuana conviction.

4 The car had three brake lights. I believe it was two
5 on the side and one in the middle. And the one in the
6 middle was out, and they argued that, look, he had brake
7 lights. He had two on the side. And you could see the
8 brake lights.

9 But, in fact, our Supreme Court said that that reason,
10 and that reason alone, that extra brake light at the top,
11 was plenty of reason to pull a stopped car over. And if
12 you ran a drug dog around the car in that time everything's
13 okay. There's no problem there. I would agree with
14 you that --

15 THE COURT: Have you got a copy of that case?

16 MR. SPIVEY: Yes, sir, Your Honor. And I'll hand that
17 case up to you.

18 The subjective intent of the officers -- they both
19 testified. Deputy Swad and Deputy Daniel both said that
20 they wanted to pull this car over because they suspected
21 drug activity. I will not disagree with that.

22 THE COURT: No question.

23 MR. SPIVEY: But our law says that the subjective
24 intent of the officer is irrelevant in the Fourth Circuit
25 analysis. It's completely irrelevant, and it's all.

1 objective.

2 Therefore, there's some other reason, i.e., probable
3 cause for a no-tag light, then that you can stop the car
4 for no tag light. And so just because you have some other
5 ulterior motive doesn't necessarily mean the defendant's
6 rights have been trampled in any way. Only if you go
7 outside of the scope or duration of the stop do you have a
8 problem.

9 THE COURT: And what he's saying is that your guy did
10 all of the drug investigations before he ever started the
11 traffic stop investigation. Is that true?

12 MR. HARRIS: That's true.

13 MR. SPIVEY: Yes and No, Your Honor. It happens
14 during the same time. And I would argue that the questions
15 he asked were tangentially related, at least as defined by
16 our Court. The State vs. Provet. That's another case I'll
17 hand up to you.

18 THE COURT: I've got it on my computer right now.

19 MR. SPIVEY: Decided after Tindall. It's a case in
20 which they, in fact, asked questions by the officer
21 conducting the traffic stop where the defendant was coming
22 from, where the hotel was located, his employment status,
23 duration of stay in town, vehicle's third-party
24 registration.

25 They go into other questions. He doesn't have to go

1 up and say how long has that tag light been out. Well, as
2 it -- do you know it has to be white? He doesn't have to
3 ask questions specifically in regard to that. He can ask
4 questions about his identity, why he's driving at night
5 with a provisional license.

6 So even if you -- even if you say, yes, it wasn't
7 involved -- specifically, he didn't ask a question about
8 the tag light because by Deputy Daniel's own admission he
9 didn't need to. All he has to do is look with his own two
10 eyes at the very beginning before he pulls the car over and
11 can see immediately, hey, those tag lights are out.

12 There's no -- you don't have to go trace the wiring or
13 check the fusebox. It's -- it's plain as day, so to speak.

14 Your Honor, even if -- even if you say that's going to
15 be outside of the scope of the questioning you can have, I
16 would still argue that a case -- U.S. vs. Place -- U.S. vs.
17 Brantley. Excuse me. It's the last case I'll hand up to
18 you, Your Honor. Thank you.

19 This case is actually very, very similar to the case
20 we have in hand. It is a drug investigation. They see a
21 car. They perform a traffic stop on it. And observing a
22 traffic violation provides a sufficient justification for
23 the police officer to detain as many people for as long as
24 it takes to perform that incidence of a routine stop.

25 They can request driver's license, vehicle

1 registration, run the computer tech and issue a citation.

2 Deputy Daniels is doing all of that stuff. And his
3 testimony actually was it took longer than the amount of
4 time to do that stuff than for Joe Pharis to get there and
5 run his dog around it and sit, indicating probable cause to
6 search the car. All of that happened in the amount of
7 time.

8 But even if you say that he somehow impermissibly
9 extended it or he writes too slow or asks questions too
10 slow, I think this case gives us reasonable suspicion.

11 And here's why. You've got several factors that all
12 happened within the first three or four minutes of the
13 traffic stop.

14 No. 1, he's sitting in a high crime area. No. 2, he
15 swerves. And Deputy Daniel says it looks like he's trying
16 to hide something. He gets up there and he sees an air
17 freshener. In this case he says air freshener by itself is
18 nothing but coupled with other factors could be -- could
19 lead to reasonable suspicion.

20 Your Honor, he says that, well, excuse me --
21 Deputy-Investigator Swad says that he gets information that
22 this car and this defendant, or at least a car that looked
23 very similar to this, the same make, model and color, are
24 involved in a prior drug buy just a few months earlier. So
25 we've got this defendant selling drugs in a car almost

1 exactly like this one, but they can't say for sure, in the
2 same, you know -- in this situation.

3 So what they're doing is basically by the time --
4 within a few -- he said he learned that within a few
5 minutes of the car being stopped.

6 So certainly by the time -- in the amount of time he
7 could have investigated the stop and written that ticket,
8 which let's say 15 minutes was too long. Let's say he
9 should have done it in five. They've still got that, all
10 of that, information within those five minutes. They've
11 got all of those factors for reasonable suspicion -- his
12 nervous behavior. He's swerving. He's got air fresheners.
13 He's sitting in a high crime area. He's known to sell
14 Lortab in that car.

15 Judge, this case says that even if you say he's
16 outside the scope of that there's reasonable suspension and
17 you can extend the stop to then run the dog around the car.

18 THE COURT: The sniff occurred before the computer
19 search had come back?

20 MR. SPIVEY: That's what the deputy said. He said he
21 waited and he wrote the ticket. And, in fact, he handed
22 the ticket within two minutes after the sniff occurred. So
23 it happened very close. It's not much longer, but it is
24 actually longer than --

25 THE COURT: Well, I'm going to take a look at the

1 cases you submitted, and I'll make a decision.

2 Anything further, Mr. Harris? Any other motions?

3 MR. HARRIS: Well, Your Honor, there -- should the
4 suppression motion fail there would be some matters
5 relating to evidence.

6 THE COURT: Well, we're within an hour of getting the
7 jury back in here. I wish I'd known how long this was
8 going to take. It has taken all afternoon.

9 MR. HARRIS: I mean, I was concerned. That's why I
10 was asking for some more time.

11 THE COURT: All right. Well, I'm going to go get some
12 lunch, so we'll be in recess and start back at
13 3:00 o'clock.

14 MR. SPIVEY: Thank you, Your Honor.

15 (Whereupon, a recess was taken.)

16 THE COURT: Mr. Spivey, I am going to recall the
17 arresting officer to the stand.

18 MR. SPIVEY: Yes, sir, Your Honor.

19 Your Honor, I think he's -- he's the officer who
20 effectuated the stop. I think technically Officer Swad is
21 the arresting officer.

22 THE COURT: Well, I'm interested in the gentleman --

23 MR. SPIVEY: Yes, sir.

24 THE COURT: -- who effectuated the stop and the
25 traffic stop.

Andrew Daniel (In-camera)
Examination by the court

1 He's under oath. I'll remind him of that.

2 Have a seat. Is it Daniels? Is that right?

3 THE WITNESS: Daniel, yes, sir.

4 ANDREW DANIEL, having been
5 previously duly sworn, testified as follows:

6 THE COURT: All right. Mr. Daniel or Officer Daniel,
7 you testified that you had called in some inf -- or
8 requested some information concerning the driver's license
9 and registration and things of that nature. And I was
10 watching the video of the stop. I did not hear that
11 happen.

12 THE WITNESS: I ran it on the computer.

13 THE COURT: Okay. Tell me how you -- tell me how that
14 works. Tell me how that --

15 THE WITNESS: The --

16 THE COURT: First of all -- well, go ahead and tell me
17 how that works.

18 THE WITNESS: You have Spellman, which is our county
19 files. And we have where we can get -- have access to
20 D.M.V. for tags and licenses.

21 THE COURT: So tell me what you did in this case.

22 THE WITNESS: Just type it in.

23 THE COURT: Okay. And how long does it take for that
24 to come back? You indicated it was 15 minutes or so before
25 you got information back, and I'm trying to figure out. I

Andrew Daniel (In-camera)
Examination by the court

1 was listening to hear you call it in to somebody, and then
2 I was listening to hear them call back. I didn't hear any
3 of that, so that's what I'm trying to figure out.

4 THE WITNESS: I meant the whole thing took about 10 or
5 15 minutes -- writing the ticket and doing all of that
6 because --

7 THE COURT: So the information would have come back
8 quicker than that?

9 THE WITNESS: It all depends. I can't remember how
10 fast it comes back. Sometimes it comes back slow and
11 sometimes it comes back fast.

12 THE COURT: Well, at what time during this process did
13 those events occur?

14 THE WITNESS: When did I run the --

15 THE COURT: When did you run it out and when did you
16 get the information back and when did you write the ticket?

17 THE WITNESS: I walked back to my car after requesting
18 the dog. I did all of that and then started writing the
19 ticket.

20 THE COURT: Okay. So did you have the ticket written
21 when you got back out of the car?

22 THE WITNESS: I think I finished the ticket right
23 after Joe got there with the dog. The dog --

24 THE COURT: So you had not finished writing the ticket
25 until the dog had arrived.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 THE WITNESS: I believe so.

2 THE COURT: No. I need for you to testify on that
3 point.

4 THE WITNESS: I can't remember exactly when, what
5 time, I finished writing the ticket.

6 THE COURT: Yes, sir.

7 THE WITNESS: I mean, doing all of that probably
8 took --

9 THE COURT: So you're saying that when the dog arrived
10 you were still in the process of writing the ticket, or
11 just finishing writing the ticket?

12 THE WITNESS: I believe I was still in the process of
13 writing it.

14 THE COURT: Any other questions, Mr. Spivey?

15 MR. SPIVEY: I have none, Your Honor.

16 THE COURT: Mr. Harris, I'll give a chance to
17 re-reexamine him.

18 MR. HARRIS: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. HARRIS

21 Q Deputy Daniel, you asked Mr. Jackson who owned the
22 car. Do you remember that?

23 A Yes, sir.

24 Q And he immediately responded to you that his wife
25 owned the car, is that right?

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 A Yes, sir.

2 Q And at that point -- that occurred, I'd say to you for
3 purposes of this question, at roughly three minutes and
4 eight seconds into the video or this tape. Would that seem
5 that -- to you that it happened in that timeframe?

6 A Yes, sir.

7 Q So at that point in time you began instead of going --
8 you had all of the information you needed except for
9 perhaps running -- getting tag and call -- you know, doing
10 this information, getting this registration information,
11 checking for warrants and that thing, is that correct?

12 A Yes. I had his license and registration.

13 Q You had his license and you had inquired about the
14 nature of his license, correct?

15 A Yes, sir.

16 Q You had asked him who owned the car, is that right?

17 A Yes, sir.

18 Q You'd asked him if -- you had even asked him had he
19 ever been arrested for anything before, correct?

20 A Yes, sir.

21 Q And he told you he had been arrested for D.U.A.C. and
22 a long time ago domestic violence.

23 A Yes, sir.

24 Q All right. And so at that point in time, at three
25 minutes and eight seconds into the video that you made, you

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 had obtained all of the information necessary to write a
2 citation for no tag light except for checking this
3 database, is that correct?

4 A Correct.

5 Q But you did not immediately proceed to checking the
6 database, did you?

7 A When I got back to my car I checked it.

8 Q Well, isn't it correct that the very next thing that
9 you did was began -- was that you requested -- that
10 Mr. Jackson got out of the car, and you began asking him a
11 series of questions about whether he had drugs in his car.

12 A Yes, sir.

13 Q And you asked him for permission to search his car.

14 A Yes, sir.

15 Q And he refused, correct?

16 A Yes, sir.

17 Q And you decided to call the drug dogs, is that right?

18 A Yes, sir.

19 Q Okay. And so none of that was related to writing the
20 citation.

21 A No, sir.

22 Q So, but you were taking the time to ask all of those
23 questions.

24 A My suspicion had raised.

25 Q Well, I understand. I'm not asking about your

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 motivation. You had taken -- instead of just going and
2 getting -- accessing the database and writing a ticket, you
3 had taken that period of time to do things totally
4 unrelated to writing a ticket for a tag light, correct?

5 A Yes, sir.

6 Q Ever how long that took. You could have been in your
7 car typing in the information to access the database,
8 correct?

9 A Correct.

10 Q But you didn't do that, correct?

11 A Correct.

12 Q And is it correct that on the tape from that point in
13 time you were having various discussions with other
14 officers about different things? Do you remember talking
15 about someone being wanted for burglary?

16 A I don't remember.

17 Q And discussing a Mr. Ron Cantrell with the city?

18 A There was another officer, yeah. I remember talking
19 to another officer.

20 Q Yes, yes.

21 A But I don't remember exactly what we talked about.

22 Q Yes. And that you were discussing -- the other
23 officers arrived, is that correct?

24 A I believe some uniform patrol officers driving by
25 stopped.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 Q All right. And that took approximately seven minutes.

2 A I don't know how long it took.

3 Q Okay. So I'm asking you during that period of time.

4 Were you accessing the database while you were having this
5 conversation with these other officers?

6 A In my car, yes.

7 Q You remember clearly that's what you were doing.

8 A If I was in my car I was doing the computer stuff.

9 Q Well, do you have a -- an actual recollection, or are
10 you just saying what you think you would have done?

11 A No. I remember when I walked back to my car I began
12 doing my checks.

13 Q All right. And when you accessed this database --
14 it's via computer, internet, is that correct?

15 A I don't know if it's internet or what. It's Spillman.

16 Q And what does it report back to you?

17 A If you run driver's license it reports back the
18 history, whether it's suspended or not.

19 Q Uh-huh.

20 A If you do a tag it brings back who it belongs to,
21 their address. If you run Spillman if they're in our
22 system it brings up their information and their involvement
23 and stuff like that.

24 Q All right. And when you put -- when you input this
25 information into -- I guess, some unit you have in your

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 car, is that right?

2 A Yes, sir.

3 Q And you hit some button or you hit some link to
4 transmit the information to make the request for
5 information?

6 A Yes, sir.

7 Q All right. And you get -- does it give you a printout
8 or a -- just a monitor display?

9 A Through the monitor.

10 Q Okay. And does it -- in this case how long did it
11 take?

12 A I don't recall how long it took.

13 Q You don't know. Did you document it?

14 A How long it took?

15 Q Yes.

16 A No, sir.

17 Q Did you document doing the request?

18 A No, sir.

19 Q Is there any record that you could access to show when
20 you did that?

21 A I don't know.

22 Q You don't know. What did you get back?

23 A I got back his license, the vehicle registration and
24 the fact that he wasn't wanted, N.C.I.C., and -- or wanted
25 locally.

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 Q Okay. And can you say precisely what time that
2 occurred?

3 A No, sir, I can't.

4 Q You cannot. All right. So there's essentially no way
5 that from your testimony that we can determine at what
6 precise point in time you, in fact, attempted to access the
7 database or receive the information back.

8 A No.

9 Q Okay. And so therefore we can't know at what point in
10 time you would have been in a position to just simply write
11 a citation and delivered it.

12 A The exact time, no.

13 Q All right. And you were though just having several
14 minutes during this entire time of conversations with other
15 officers on the scene, is that right?

16 A Yes, yes.

17 Q And all of that was happening while you were waiting
18 for the canine to come that you had called.

19 A Yes.

20 Q Is that right?

21 A Yes.

22 Q The bottom line is did you have any intention of
23 giving Mr. Jackson a citation and allowing him to leave the
24 scene before the canine arrived that you had called for.

25 A I felt because of what I observed -- my training,

Andrew Daniel (In-camera)
Cross-examination by Mr. Harris

1 experience, what I observed his actions -- that he was
2 detained for further investigation.

3 Q So you -- you admit now on the stand, No. 1, that you
4 had no intention of completing a writing a citation and
5 allowing Mr. Jackson to leave without first having the dogs
6 arrive.

7 A Yes.

8 Q Ever how long that was going to take.

9 A He was -- I felt like that investigation escalated,
10 and he was detained.

11 Q So therefore you would admit on the stand that the
12 reason for the initial traffic stop -- that is the
13 tag-light violation -- basically no longer existed. I
14 mean, that had been fulfilled. You were beyond that to a
15 second investigative detention based on reasonable
16 articulable suspension.

17 A Repeat that, please.

18 Q You'll -- will you now admit on the stand that you --
19 you did go beyond what was strictly necessary to write a
20 ticket for a tag light and that you had commenced as you've
21 said in your words another detention based on in your mind
22 reasonable articulable suspension.

23 A Yes. He was detained for further investigation.

24 Q And so there was no way Mr. Jackson was going to be
25 allowed to leave before the drug dogs came, no matter how

Andrew Daniel (In-camera)
Cross-examination by Mr. Spivey

1 long that took.

2 A He was detained.

3 Q Well, he wasn't -- he was detained, therefore he was
4 not going to be allowed to go on his way --

5 A No, sir.

6 Q -- no matter what time you completed writing the
7 ticket.

8 A No, sir.

9 Q Thank you.

10 MR. HARRIS: Nothing further.

11 THE COURT: You may ask questions, counsel.

12 CROSS-EXAMINATION

13 BY MR. SPIVEY

14 Q Deputy Daniel, you said a minute ago that you were, in
15 fact, diligently checking those systems in your car.

16 A Yes, sir.

17 Q Despite what you intended to do to detain him further,
18 had those checks come back to allow you to write the ticket
19 prior to the jail arriving?

20 A The -- I believe most -- I believe they all did, yeah.

21 Sometimes -- I can't remember how slow D.M.V. was that
22 night. Sometimes they're slow; sometimes they're not.

23 I'm a slow writer. So when I write a ticket it's --

24 you know, I write neat and slow so the ladies downstairs

25 can read my handwriting. So to say whether -- how long it

Andrew Daniel (In-camera)
Recross-examination by Mr. Harris

1 took for this stuff to come back on the computer, I can't
2 say. I can't remember if D.M.V. was slow or if it was
3 fast.

4 Q Okay. Let me ask you this question. Did you
5 deliberately delay at any time writing that ticket?

6 A No, sir.

7 Q Okay. Did you deliberately delay at any time entering
8 the computer information?

9 A No, sir.

10 Q Did you deliberately delay coming back or reading it?

11 A No, sir.

12 Q So you the entire time are working towards writing
13 that ticket.

14 A Yes, sir.

15 Q You never stopped or stretched it out on purpose --

16 A No, sir.

17 Q -- just because you were going to detain him.

18 A No, sir.

19 Q Thank you.

20 MR. SPIVEY: No further questions.

21 THE COURT: Anything else?

22 RECROSS-EXAMINATION

23 BY MR. HARRIS

24 Q Is it true basically that you don't really remember
25 how fast or how slow the database responded because you

Andrew Daniel (In-camera)
Recross-examination by Mr. Harris

1 weren't in a race? You knew that no matter if it took ten
2 hours y'all were going to stay there until the dogs came,
3 right?

4 A I never keep track of how fast the system is.

5 Q Well, I -- sir, that wasn't my question, with all due
6 respect.

7 I'm saying is it true that you may not remember
8 precisely how fast the databases responded because you knew
9 you would stay there for ever how long it took for those
10 dogs to get there? You weren't leaving and Mr. Jackson
11 wasn't either until that happened.

12 A Probably, but I really don't understand. Are you
13 saying that I didn't care how long it took back -- took for
14 the computer system to get back?

15 Q I'm saying is perhaps the reason you don't have a good
16 recall of how long it may have taken for the databases to
17 respond is in your mind it didn't matter to you. You were
18 going to stay there for as long as it took for those dogs
19 to get there.

20 A I never keep track of how long the system takes, you
21 know. Yes, I believe Mr. Jackson was detained. But I
22 never keep track of whether it's slow, is it fast, does it
23 take 30 seconds, 40 seconds, two minutes. I never keep
24 track of that.

25 Q But he wasn't being detained and you don't claim he

1 was being detained for the tag light at that point. He was
2 being detained in order for the dogs to arrive.

3 A Correct.

4 MR. HARRIS: No further questions.

5 THE COURT: All right, sir. You may step down.

6 All right. Gentlemen, I'm going to review the case
7 from the point of view of the -- whether or not there was a
8 reasonable suspicion at this point in time after hearing
9 that testimony.

10 Anything else you'd like to go over with me on that,
11 Mr. Harris?

12 MR. HARRIS: Your Honor, I just say on reasonable
13 suspicion the case that I have handed up -- Tindall -- goes
14 through several factors of -- many of which mirror the
15 factors enumerated that I believe the state would enumerate
16 in this case. And our South Carolina Supreme Court said
17 that that didn't amount to reasonable suspicion.

18 And I would just say, Your Honor, that among those
19 factors -- nervousness, lack of cooperation, even things
20 such as having committed a minor traffic violation or there
21 being some out of the ordinary -- some out-of-the-ordinary
22 circumstance with the driver's license, I think those were
23 many of the things that were not considered by the Supreme
24 Court enough to make out a reasonable suspicion.

25 And reasonable suspicion -- of course the test is

1 reasonably, but that -- those suspicions is as to the
2 language in many of the cases. And I think Pichardo has
3 this language, and many others, that the suspicion has to
4 be based on objective facts and not hunches or what's
5 sometimes called inchoate suspicion.

6 And the suspension must also be particularized,
7 meaning that it -- you can't ascribe a general
8 characteristic to a -- an investigative subject and say
9 this subject, you know, is doing something suspicious
10 because everybody that does that is doing something
11 suspicious. It has to be individualized, particularized
12 suspicion justified by all of the circumstances.

13 Your Honor, here it's the defendant's position that
14 there is really nothing. And although a pretextual stop is
15 not in and of itself a basis for a 4th Amendment violation,
16 the fact of how this all happened and it being blatantly
17 pretextual -- I mean, they admit -- they admit in their
18 reports, they admit on the stand, on the tape, that they
19 had surveilled this vehicle.

20 At the time, Your Honor, they didn't -- the testimony
21 I believe was they didn't know who was in the vehicle.
22 They were surveilling the vehicle -- and that none of their
23 suspicions about the vehicle panned out, that they
24 surveilled the vehicle thinking that there would be a
25 meeting. But there was none.

1 The very -- if the police at that point in time when
2 the vehicle left the Kangaroo convenience store -- if there
3 had been reasonable articulable suspicion to stop the
4 vehicle they could have done it without finding, quote, a
5 reason to do it. The fact that they had to find a reason
6 means they had no reason. And that continued.

7 Once the stop was effectuated -- and the tape bears
8 this out -- although the officer says that the defendant
9 demonstrated some degree of nervousness, which the cases
10 say is not enough anyway, it's not borne out by the
11 evidence, in fact.

12 It -- there's -- the officer went into the vehicle and
13 saw no drugs. There's an allegation that there were air
14 fresheners, but no documentation of it. But there's no
15 allegation that at any time any officer smelled any
16 controlled substance.

17 There's simply, I think, a desire on the part of the
18 police -- and a rather overwhelming desire -- to stop this
19 vehicle and search it.

20 They attempted to get the defendant to admit the
21 presence of drugs, and he didn't. They attempted to get
22 the defendant to give consent, and he wouldn't.

23 They contrived something about going in and getting a
24 jacket so they could get a plain-view look, but they didn't
25 see anything that justified a search.

1 So at that point they called the dogs in, and there,
2 as this officer has now said, he was going to wait for the
3 dogs to get there not because he had reasonable articulable
4 suspicion by the standard that the law would say is
5 necessary but because he had been frustrated completely in
6 his attempts to gather facts that would justify a search
7 otherwise.

8 I think that's the case we have, and because of that I
9 think there -- on the issue of whether there was reasonable
10 suspicion to wait until the cows come home for the drug
11 dogs to get there is not justified and is -- should be
12 prohibited by the 4th Amendment.

13 THE COURT: Yes, sir, Mr. Spivey.

14 MR. SPIVEY: Your Honor, I think here that the --
15 while I do understand the State Supreme Court has said in
16 U.S. vs. Tindall that the facts in that particular case
17 there was not reasonable suspicion -- I don't think our
18 facts mirror the Tindall case. I think they -- in the
19 sense that they go beyond that. We have more factors here
20 leading to reasonable suspicion.

21 If you look at the U.S. vs. Branch on page -- it's
22 page ten of what I've given you, but it's actually headnote
23 26 -- they run through a list of what it took. And they
24 said they learned all of these -- in fact, at the beginning
25 of the traffic stop they didn't know any of this. They

1 learned it all after the traffic stop. So it can happen
2 within the first few minutes of the traffic stop, and
3 that's okay. There's nothing wrong with that.

4 I think one thing I do agree with Mr. Harris in what
5 he said is at the time they pulled that car over they did
6 not have reasonable suspicion. At that point they only had
7 him in a high crime area and that he swerved and the
8 officer in his belief thought he could be hiding something.
9 That's all they knew at the time. They learned later --

10 THE COURT: Didn't know who the driver was.

11 MR. SPIVEY: That's right. They didn't know who the
12 driver was; they didn't know there was an air freshener in
13 the car; they didn't know that that driver had been -- at
14 least alleged to have sold Lortab in the same car just a
15 few months prior. And so they learn all of that
16 information in the first few minutes.

17 U.S. vs. Branch says that as long as it's -- as you're
18 learning stuff in the first few minutes of a valid traffic
19 stop -- so we've got a valid traffic stop where the light's
20 out -- the subjective intent of the officer does not
21 matter. You can detain because you have additional
22 reasonable suspicion and to extend the scope and duration
23 of the stop.

24 Here and just to list what they had, the officer knew
25 it was the same vehicle he'd pulled over less than a month

1 ago in an area well known for drug trafficking. The
2 driver's hand was shaking when he turned over the license
3 and registration. Neither the driver nor the passenger
4 would make eye contact with the officer. The vehicle
5 contained multiple air fresheners that was commonly used to
6 mask the smell of narcotics. The vehicle was not
7 registered to the driver or passenger. And the officer was
8 informed by a fellow officer the driver was a well-known
9 drug dealer.

10 Those are basically what we have here. We've got Paul
11 Norris who tells his supervisor that this guy's a drug
12 dealer and he deals drugs in this car. That supervisor
13 happened to be running a dog that night and said who do you
14 have pulled over, we've got the same guy, oh, by the way,
15 we know he sold Lortab a few -- just a few months ago. So
16 we've got that particular fact.

17 I think you can get into the -- I think what you can
18 do is you can go down this list, and you can probably with
19 the exception of one or two -- like he sold Lortab in the
20 past -- look at them and go those are perfectly innocent.
21 But that's not what the law says we have to do. The law
22 says we have to look at the cumulative information known to
23 the officers at the time prior to the end of the traffic
24 stop.

25 Before all of that questioning even happens within the

1 first three minutes of the stop we know all of this
2 information.

3 I don't think you can make an argument that that first
4 three minutes was an unreasonable amount of time and that
5 the no-tag-light ticket should have been written in three
6 minutes. I think that's too short of a period of time.

7 THE COURT: I don't think there's any bright-line test
8 as to how long a traffic stop should last.

9 MR. SPIVEY: Yes, sir.

10 THE COURT: But cases clearly say that you can't
11 extend one unless there's reasonable suspicion --

12 MR. SPIVEY: My --

13 THE COURT: -- upon which to do so.

14 MR. SPIVEY: Yes, Your Honor.

15 THE COURT: And the testimony now is apparently the
16 intention was to extend it.

17 MR. SPIVEY: Yes, Your Honor.

18 THE COURT: The question is was there a reasonable
19 suspicion.

20 MR. SPIVEY: Yes, Your Honor.

21 THE COURT: And I'm going to take a look at those
22 cases. I have not read those from that point of view
23 because I was looking at it from the question of whether or
24 not the stop had been unduly extended. I don't think
25 that's an issue now. So I will -- why don't we be here at

1 8:45 in the morning? I will have taken a look at
2 everything, and we should be in a position to make a ruling
3 and do whatever we need to do based on that ruling. Thank
4 you very much. 8:45 in the morning in this courtroom.
5 Thank you.

6 MR. HARRIS: Thank you, Your Honor.

7 MR. SPIVEY: Thank you, Your Honor.

8 THE COURT: And I will caution the defendant on the
9 record.

10 Sir, we're going to begin the trial of your case at
11 8:45 in the morning. If you fail to appear if I decide to
12 go forward with the case I will try you in your absence if
13 you fail to appear.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: All right. Thank you very much.

17 END OF REQUESTED TRANSCRIPT OF RECORD
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1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 KENNETH ODELL JACKSON,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

2012-GS-42-824 - 827

9
10 July 24th and 25th, 2012
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

17 SCOTT SPIVEY
18 ASSISTANT SOLICITOR
Attorney for the State

19 RICKY HARRIS
20 ESQ.
Attorney for the Defendant

21
22
23
24 PAMELA E. GREEN
Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: On yesterday we had a hearing concerning the motion by the defense to suppress the evidence that was gathered by way of a dog sniff and search of an automobile driven by the defendant on, out on the Asheville Highway.

As the testimony developed yesterday it appeared that the police took the position that their stop was, would of been extended or was extended for the purpose of conducting this sniff. The original reason for the stop was a failure to have a properly illuminated tag light.

I've reviewed the cases that were presented by counsel on the issue, and have also reviewed several cases by our Court of Appeals and Supreme Court on the subject. It's been a heavily litigated subject in the recent past, within the last five years, and there's still no bright line test issued by any of the Courts as to what would constitute a reasonable suspicion for extending a stop.

I -- all of the cases seem to develop based on a case-by-case basis, and upon the facts that are presented during the hearings. I don't think there's anything in particular you can look for because the cases do say that you should take the totality of the circumstances in light of the information that you had at that time.

In this case the police officers had information that

1 this defendant and that car, and, again, it's possibly that
2 car because there was no tag number for that car that was
3 obtained from the original sale and purchase of a controlled
4 buy of drugs that occurred I believe at a Wendy's location
5 involving this automobile and this defendant, and, of
6 course, at this time the officers were not aware who was
7 driving the car when they made the original stop.

8 However, none of the cases require that the reasonable
9 suspicion has to exist at the time of the stop. It appears
10 that that suspicion can be developed as information is
11 gathered as the stop proceeds, and, in this particular case,
12 in reviewing the video, it does appear that the tag of the,
13 of the defendant on his vehicle was not illuminated as it
14 should of been. When the police officer following him cut
15 off his headlights, it does appear that it would have been
16 impossible, if not totally difficult, to have read the, the
17 numbers on that tag. I realize that the video is very
18 grainy, but -- and I looked at it as carefully as I could to
19 see if there was an ability to, if you had the ability to
20 read it. Certainly you didn't from the video, and it did
21 appear that the light, the tag was either not lit or very
22 dimly lit when the officer cut off his headlights and
23 followed the vehicle.

24 So, it does appear that there was a reason to stop.
25 Even though that reason may have been pretextual in nature,

1 there's nothing in the law that says a police officer can't
2 find a car, pick it out, and if that car's violating the
3 law, stop the car. So, in this particular case the stop did
4 occur.

5 As the stop proceeded, the factors that were cited by
6 the police officer that gave rise to a reasonable suspicion
7 included such factors in, according to his testimony, which
8 was not controverted by other testimony, that the defendant
9 appeared to be overly, overly nervous. As the stop began,
10 that it appeared that the defendant attempted to hide
11 something under his seat, and noted that, when that
12 occurred, that the car veered from his lane of travel,
13 crossed the white line, and then veered back into a lane of
14 travel, and the video does confirm that that did occur.

15 Also, the police officer indicated that the defendant
16 appeared nervous as he approached the car and talked to him
17 in the car. Then he removed him from the vehicle. I did
18 not notice any nervousness as he stood in front of the
19 vehicle although I did note that the defendant had
20 difficulty in following the instructions of the officer
21 since he told him to stand directly in front of the patrol
22 car, and on several occasions the defendant attempted to
23 walk from that position or into the other lane of traffic,
24 traffic and the, the police officer had reminded him as to
25 whether he ought to be and where he ought to stand.

1 Other factors include multiple air fresheners that were
2 hanging from in, in the vehicle, which is a factor that was
3 noted in one of the other cases that I, that I read. Also,
4 this vehicle was not registered to the defendant who was
5 driving the vehicle, and, which, again, was another factor
6 that was noted in some of the cases that I read about,
7 factors that would give rise to a reasonable suspicion.

8 So, taking the totality of the circumstances, you have
9 a vehicle which matches the description of a vehicle that
10 had been used in a controlled drug buy recently. You had it
11 in an area which the officers considered to be a crime, high
12 crime area. There was unusual driving as the vehicle was
13 being stopped, which may have given an indication that there
14 was a hiding of something in the passenger cabin taking
15 place. You had nervousness testified to under, which was
16 unconverted at the stop, multiple air fresheners, a vehicle
17 not registered properly, and then behavior of the defendant
18 at the scene.

19 Given all of those factors, I will find that the police
20 did have a reasonable suspicion to continue the stop and
21 will not suppress the evidence at this time.

22 Other motions from the defense?

23 MR. HARRIS: Your Honor, yes. The defendant makes a
24 motion in limine to prevent the State from presenting
25 evidence about a, what's described in the discovery as a

1 this case based solely upon the evidence and the law, and
2 the evidence will be the testimony of the witnesses and what
3 comes in through that testimony.

4 So, with that caution I'll allow the State to proceed
5 with its opening statement.

6 Mr. Spivey.

7 SOLICITOR SPIVEY: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 SOLICITOR SPIVEY: May it please the Court?

10 THE COURT: Yes, sir.

11 SOLICITOR SPIVEY: Good morning.

12 I wanted to start out by thanking you each, each and
13 every one of you for your service here today. This is
14 important. The judge has instructed you that he is innocent
15 until proven guilty, and it will be your job to find the
16 fact of whether or not he is innocent or guilty.

17 I want to make that clear. That is your job. It's,
18 it's, it's a, it's a very hefty responsibility, and we have
19 confidence that you'll be able to do it. Again, thank you
20 for your time.

21 We're gonna give you some evidence. But first of all I
22 want to tell you a little bit about what that evidence is
23 suppose to prove. He's charged with four crimes, as the, as
24 the judge told you. They're all drug crimes. They're,
25 they're all the same with the exception of what the drug is.

1 For instance, he's charged with possession with intent
2 to distribute methamphetamine. That it because there were
3 green tablets found in the car driven by the defendant that
4 weighed 8.39 pounds --- 8.39 grams. Excuse me.

5 There's also a little bit of cocaine found in the car.
6 That's actually found up near some sunglasses. It weighed a
7 little bit over a gram. There's also numerous pills. I
8 believe they're 80 Hydrocodone pills. Hydrocodone is a, is
9 a drug. It goes by the street name of Lortab. You may be
10 more familiar with Lortab than Hydrocodone.

11 There's also 55 Clonazepam pills. That's also a
12 controlled substance, and they, and they were found in the,
13 again, in the console.

14 Some of the other elements of this crime, not only are
15 they drugs, they have to be controlled substances and they
16 have to be that controlled substance. You'll have to hear
17 today that he possessed those drugs.

18 How do we prove possession?

19 In this case, it's called, what we call constructive
20 possession. He is driving a car and in that car in the
21 center console right beside him are the drugs, and there's
22 some more evidence to indicate that he had those drugs.

23 What is that evidence?

24 Well, we have indications that he drives this car, has
25 been known to drive this car, or like it in the past. So,

1 it's not just someone else's car. We, we know that this --
2 that he has a large sum of cash in his pocket, and that's,
3 that's important for two reasons.

4 Number one, it shows that he's, he's -- number one, it
5 shows that he, he may or may not have a bank account. But,
6 more importantly, it shows that we believe that he is using
7 that cash and has received that cash for exchanging these,
8 these drugs for money, and that also goes into the second
9 element or, or third element, which if, if you'll follow me,
10 the fact that it was a controlled substance, he had to
11 actually have possession of them, and then he intended to
12 distribute it. So, the cash, the amount of cash in his
13 pocket, he's been distributing. He had distributed some of
14 it.

15 The other factor, and this is a, a huge piece of
16 evidence in here, there is a, there is a document found in
17 the car. It's actually a spiral notebook and on the first
18 page of that notebook there's a list of names. Some of the
19 names includes, in fact, a, a, the name Pill Lady. Beside
20 each of those names is a number. Beside that number, on a
21 few lines you'll, you'll be able to see, there's the word
22 Tab and finally beside one of them there is the word Perk.

23 In addition, on one of the -- after one of the numbers
24 it says a number and then says in pills. You'll hear
25 evidence from the officers that they say this is commonly

1 what's known as a ledger. It's a document used to keep up
2 with drug transactions whether he owes somebody that or they
3 owe him or they want to order this.

4 So, it's intent to distribute. Just to recap, I'll --
5 I, I thank you again for your time and service, and we'll
6 try to keep this as short and possible. They'll be some
7 times when it's, it could be a little boring to you and I
8 apologize for that. There's, there's necessary reasons for
9 that. But we'll do our best to keep it short and sweet
10 and -- cause we think that your time is valuable.

11 Again, there's three elements to this particular crime,
12 possession, of controlled substance, and intent to
13 distribute it.

14 Please pay attention to the defense attorney and to the
15 evidence that you hear in this case. At the end of the
16 trial, again, the judge will charge you as he's instructed,
17 and you will be called upon to make a decision. We ask that
18 you use your common sense when you listen to the evidence,
19 and think about what it means.

20 Does it add up or does it not add up?

21 At the end, we think you'll make an appropriate
22 determination.

23 Thank you again.

24 THE COURT: Mr. Harris, for the defense.

25 MR. HARRIS: Yes. Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. HARRIS: Ladies and gentlemen of the jury, please
3 allow me to introduce myself once again. When things --
4 when you're brought into the courtroom as you were
5 yesterday, and jury selection takes place, and you're having
6 a lot of questions thrown at you, and you're having to think
7 and respond appropriately, and it's hot, thankfully it's a
8 little less warm in here today than it was yesterday, when
9 all of that is going on, you're in an unfamiliar
10 environment, anyway, I think often times things go by so
11 quickly that you don't quite catch everything, and, and I'd
12 like to, to, in agreement, with something His Honor, Judge
13 Couch, said to you just a few moments ago, but I think it's,
14 it's very important not only to recognize it, but to
15 understand it's okay that justice is best served when we
16 slow things down, when we don't have to rush here, get here,
17 go in a big line, sit down, have a bunch of questions thrown
18 at you.

19 You don't even know what the case is about except for a
20 brief introduction. Justice is best served when we slow
21 down and we take our time as much time as we need. If we go
22 over things again and again and again, if that's what it
23 takes, that's what we have to do.

24 So, let's just start at a proper beginning. My name is
25 Ricky Harris. My office is a couple of blocks over on 145

1 North Church Street in the Business Technology Center office
2 building. I've practiced law there for many many years.
3 Sometimes it surprises me how long I've been at this, but I
4 have to tell you, ladies and gentlemen, that it's been the
5 great privilege of my life, other than my children, to stand
6 before juries such as you and defend the rights of ordinary
7 citizens.

8 Now, I know you may say to yourself, if you're a little
9 jaded by the world today, that sounds a little corny. That
10 sounds a little hoakie in a way. Maybe even saying the word
11 hoakie is old fashioned. I don't know. But there's nothing
12 corny or hoakie about protecting an every day citizen's
13 Constitutional rights, and at the very basis of what you are
14 engaged in here today, just like His Honor told you a few
15 minutes ago, the very heart of your endeavor, your role
16 individually and collectively here today is to protect the
17 rights of a fellow citizen of Spartanburg County, of the
18 State of South Carolina, of the United States of America.

19 And by doing so, you're protecting the rights that we
20 all enjoy as citizens. Every one of us in this country
21 should enjoy these rights.

22 Yes, an accusing finger has been pointed at Mr. Kenneth
23 Jackson, the gentleman seated over there in the light
24 colored shirt. The State of South Carolina formally has
25 pointed an accusing finger at a citizen of this country. In

1 this case it happens to be Ken Jackson.

2 When the State appoints, points an accusing finger it
3 has to be pointed by people though, by individuals acting in
4 their roles as government agents, and there's a lot of them
5 sitting over there. You may hear from some of them on the
6 witness stand. They're all government agents employed, I
7 believe, by the Spartanburg County Sheriff's Department, and
8 they're the ones that point the accusing finger at
9 Mr. Jackson.

10 And what happens in a criminal trial when the State,
11 when the police point an accusing finger?

12 Well, His Honor is already told you what happened. A
13 jury must be instructed, as you have been, and as you will
14 be again, before this trial is over, a jury such as
15 yourselves must be instructed clearly that the very starting
16 point of how you consider this case is that Mr. Jackson is
17 presumed innocent of the accusations that have been leveled
18 against him in this case, presumed innocent of the charges
19 against him, presumed innocent of the allegations contained
20 in the four indictments that bring the charges to this
21 Court.

22 Mr. Jackson can not be found guilty of any crime, no
23 matter who points the finger and no matter how they say what
24 they believe -- and we'll talk about this believing versus
25 proving something in a minute. As the assistant solicitor

1 has referred to, they believe they have some evidence. The
2 presumption of innocence, according to the United States
3 Constitution and the Constitution of the State of South
4 Carolina, the highest law in the land and in the State, the
5 presumption of innocence can not be taken away from Ken
6 Jackson no matter who does the accusing and how loudly they
7 do it and how much belief they do it with until and unless a
8 jury, you, unanimously finds that evidence, not belief, not
9 speculation, not hope, but solid hard unmistakable proof is
10 presented to you and what level of proof is required in a
11 criminal case, what level is proof is required.

12 Not just any old proof. The highest standard that we
13 call it, burden of proof, in our legal system. The evidence
14 must convince this jury unanimously beyond a reasonable
15 doubt. A reasonable doubt often described as the kind of
16 doubt that would make a reasonable person hesitate to act.
17 That's the kind of strong and powerful evidence that must be
18 presented to you in this case.

19 Do not, I beg of you, lose sight of those sacred
20 Constitutional principles.

21 They guide you and inform you at every step in this
22 case, and by keeping those things in the front of your minds
23 and never forgetting them, and actually believing in them
24 and applying them in this case, as you will, as you have
25 been and will be again instructed to do by His Honor, by

1 doing that you will be doing what?

2 You will be protecting the rights of Ken Jackson, and
3 you'll be protecting the rights afforded to every citizen of
4 the United States.

5 Now, what is the accusation in this case?

6 As His Honor has said, the cases come to this Court by
7 way of what are called indictments. I have copies of them.
8 These are not the originals. I just brought them up here
9 for an illustration purpose.

10 In thinking about this case, ladies and gentlemen, and,
11 and trying to figure out well, what's really going on here,
12 it, it struck me that, that the title of each indictment is
13 the State of South Carolina versus Kenneth Odell Jackson,
14 the man sitting over there. But it struck me that perhaps
15 and probably, almost certainly, the, the real title of the
16 case, the best description of the State's case, as I can
17 understand it, is, should be the State versus one gray Dodge
18 Magnum vehicle.

19 The State believes, not, they don't have any evidence
20 of this, but they believe that a gray Dodge Magnum vehicle
21 possessed these drugs. They believe that, in certain hidden
22 compartments of this gray Dodge Magnum vehicle, these drugs
23 that were enumerated in the assistant solicitor's opening
24 remarks to you were found. They believe that this Dodge
25 gray Magnum vehicle had other pieces of what they believe

1 is, could be taken as, if you looked at it in a concern way,
2 evidence of the accusations, the, what they've pointed the
3 finger at Mr. Jackson about. They believe these things.
4 But you'll be instructed that you have to have evidence in a
5 criminal case in order to take the presumption of innocence
6 away from a citizen.

7 Now, you would have to find, and the State has to
8 prove, and the State has to prove by solid evidence, not
9 belief and speculation, and please see it our way, you have
10 to believe, beyond a reasonable doubt, the following: That
11 Mr. Jackson himself, the person, you know the flesh and
12 blood human being, Mr. Jackson, had possession of drugs
13 without legal authority to have them.

14 Now, what is possession, just as a way of giving you an
15 orientation?

16 Possession can be in two forms in a case like this.
17 Actual possession and constructive possession. Actual
18 possession means that drugs are found on you. I should --
19 Mr. Jackson. That Mr. Jackson would have, in his pocket or
20 in a jacket or in his shoes or wherever else, he would have
21 on his physical self drugs, and it is undisputed in this
22 case that there is no proof that Mr. Jackson actually
23 possessed drugs of any description.

24 You know -- and I have to say this. There's actually
25 no belief that he did either. The State, I believe it will

1 be the case, would intend to try to -- well, they believe
2 that they have a case, or as the assistant solicitor just
3 said, as constructive possession.

4 Now, constructive possession is, in a nut shell, it
5 will be more clearly explained to you later by the judge,
6 but constructive possession is when drugs are not actually
7 found in a person's possession, but they are found in a
8 place that is owned by or under the control of a person, and
9 what would be necessary to show is that the person they
10 claim controls this location had knowledge of the presence
11 of the drugs, that would be knowledge of four different ones
12 in this case, knowledge of the drugs and, requires both, and
13 the intent to control the disposition of the drugs or the
14 right to do so.

15 Now, I know that's a lot of words. But it's necessary
16 that you understand.

17 Now, because the state doesn't even have a belief that
18 Mr. Jackson himself, you know the person that's named here,
19 that they're pointing the finger at, because they don't have
20 even any belief that Mr. Jackson himself had any drugs on
21 him, and they're going on, they have to go on this
22 constructive possession theory, their case is entirely
23 circumstantial.

24 Now, you can prove a criminal case with circumstantial
25 evidence if you have any proof. Circumstantial evidence

1 that actually rises to the level of being evidence that you
2 can believe beyond a reasonable doubt. There's nothing
3 wrong with it in a criminal case, but you got to have it.
4 You got to have more than a belief.

5 Now, they also, in this case, have gone further. Not
6 only do they claim that Mr. Jackson had constructive
7 possession of whatever was in the gray Dodge Magnum, but
8 that he had the intention of distributing the drug, every
9 one of them apparently they claim, they believe, to
10 somebody. Don't know who. They can't say who. Somebody.

11 well, they have to prove that by the same standard.
12 They believe that was the case. It remains to be seen
13 whether or not this jury will find that they actually have
14 proof, you know, evidence of it.

15 The evidence will be Mr. Jackson was not the owner of
16 this vehicle. Some other person owned the vehicle.

17 Now, apparently they believe that they might be able to
18 piece together some thread of something to show that Mr.
19 Jackson might have driven this car in the past, which means
20 what to this case?

21 I mean it's -- they don't -- I guess they believe it
22 means something, but you have to decide whether it's
23 evidence.

24 I think you get the idea here, ladies and gentlemen.
25 I'm not going to go on and on, but thank you for allowing me

1 to slow it down enough and to take enough time here in my
2 opening remarks to you to really let you know what's going
3 on in this case, and what the problem is in this case with
4 finding Mr. Jackson guilty.

5 You can't prove guilt with hope and speculation and let
6 me throw out a theory about something to the exclusion of
7 every other reasonable interpretation. You can't prove a
8 criminal case like that. At least you shouldn't be able to.
9 No jury in this country ought to allow that, and I hope you
10 won't.

11 So, let's get on with this State versus the Dodge car,
12 and we'll hear the State's evidence, and they'll be
13 cross-examination. I ask you to keep an open mind for when,
14 when myself and the other attorney ask the questions. Slow
15 down, think about it, consider it, and always remember Ken
16 Jackson, the person, is presumed innocent, and, at the
17 appropriate time, at the end of this case, I'm going to come
18 back before this jury and I'm going to ask you for a verdict
19 of not guilty.

20 Thank you very much.

21 Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 The State may call its first witness.

24 SOLICITOR SPIVEY: Thank you, Your Honor.

25 Paul Norris.

Paul Norris - Direct examination
by Solicitor Spivey

1 THE COURT: Come forward, sir, to my left and be sworn.

2 PAUL NORRIS, having been first
3 duly sworn, testified as follows:

4 THE COURT: Have a seat in the witness stand. Once
5 you're seated, state your name for me.

6 WITNESS: It's Paul Anthony Norris.

7 THE COURT: Mr. Spivey, it's your witness.

8 SOLICITOR SPIVEY: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY SOLICITOR SPIVEY:

12 Q Mr. Norris, please state your rank at the Sheriff's
13 Office.

14 A I'm an investigator with the Sheriff's Office.

15 Q What's your training and experience?

16 A I have a four degree in marine science from the
17 University of South Carolina. I have a nine week
18 certification in law enforcement from the South Carolina Law
19 Enforcement Academy. I worked 12 and a half years with the
20 Spartanburg County Sheriff's Office. I was assigned with
21 uniform patrol car breaking task force, property crimes, or
22 the white collar division, crime division. Six years in
23 narcotics, and I'm currently an investigator in property
24 crimes.

25 Q Are you familiar with the defendant?

Paul Norris - Direct examination
by Solicitor Spivey

1 A Yes, sir.

2 Q Do you know what kind of car he drives?

3 A He drives a charcoal gray Dodge Magnum.

4 Q You've seen him driving that car?

5 MR. HARRIS: Objection to leading.

6 THE COURT: I'll ask you to not ask a question that
7 suggests an answer.

8 Q Have you seen him driving a car?

9 A Yes, sir.

10 Q What kind of car?

11 A A charcoal gray Dodge Magnum.

12 Q Do you know what year that car was?

13 A I'm not sure. It's a 2000 model. I'm not sure exactly
14 what year it was.

15 Q Okay. Are you familiar with a person named Andrea
16 Geter?

17 A I am.

18 Q Are you familiar with the type of car she drives?

19 A Yes, sir, I am.

20 Q What kind of car is that?

21 A It's a Pontiac Grand Am.

22 Q Have you seen her driving that car?

23 A I have.

24 Q Do you know what year that car was?

25 A I want to say it's a 2001 model. I'm not a hundred

Paul Norris - Direct examination
by Solicitor Spivey

1 percent sure about that though.

2 Q What color is it?

3 A I believe it was silver.

4 Q Do you believe that, that Ms. Geter drives that
5 particular car on a regular basis?

6 MR. HARRIS: Objection. I don't know how it's relevant
7 what the witness believes. I mean if he has facts that are
8 supported by observation.

9 THE COURT: I'll ask you to rephrase the question.
10 Perhaps lay a foundation as to how often he may of seen
11 that, that activity and what he bases his belief upon, and
12 then perhaps the belief might be admissible depending on his
13 testimony.

14 You may proceed.

15 Q Have you observed Ms. Jeter driving that car on more
16 than one occasion?

17 A No, sir.

18 Q Okay. Mr. Jackson, have you observed him driving the,
19 the charcoal Dodge Magnum on more than one occasion?

20 A Yes, sir.

21 Q And about how many times?

22 A It will be two occasions.

23 Q What time period did you see him driving that car?

24 A It was in the afternoon. I'm not sure what exactly
25 what date it was, but it was in the day time.

Paul Norris - Direct examination
by Solicitor Spivey

1 Q Okay. Was it -- do you know, know about what day it
2 was?

3 A It's August 2011.

4 SOLICITOR SPIVEY: Your Honor, at this time I have no
5 further questions of this witness.

6 THE COURT: Mr. Harris, you may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. HARRIS:

9 Q What kind of car do you drive?

10 A I drive a 2000 Ford Ranger, my personal vehicle, if
11 that's what you're asking me.

12 Q Your personal vehicle?

13 A Yes, sir.

14 Q Okay. And do, do you have other vehicles in your
15 household?

16 A I do.

17 Q And do you ever drive any of those?

18 A Yes, sir, I do.

19 Q Okay. So, I might could see you out in more than one
20 vehicle that you own or have a right to drive?

21 A Yes, sir.

22 Q Is that correct?

23 A That would be correct.

24 Q Thank you. No questions.

25 THE COURT: Anything further, Mr. Spivey?

Andy Daniel - Direct examination
by Solicitor Spivey

1 SOLICITOR SPIVEY: No, sir.

2 THE COURT: You may step down.

3 SOLICITOR SPIVEY: State calls Andy Daniel.

4 THE COURT: Come forward, sir to my left and be sworn
5 in please.

6 ANDY DANIEL, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please, sir. State your name
9 once you're seated.

10 WITNESS: My name is Andrew Daniel.

11 THE COURT: Mr. Spivey, your witness.

12 SOLICITOR SPIVEY: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY SOLICITOR SPIVEY:

15 Q Please tell me your experience and training.

16 A I've got nine weeks at the police academy. I've been
17 to COP schools. I've been to several interdiction schools.

18 Q What are COP schools?

19 A Community Oriented Policing Schools.

20 Q And what's the goal of something like that?

21 A I attended those schools while I worked at Spartanburg
22 City, and I was to work with the community in neighborhoods
23 to make it safer.

24 Q Okay. What are interdiction -- what's interdiction
25 training?

Andy Daniel - Direct examination
by Solicitor Spivey

1 A I've been to criminal interdiction, package
2 interdiction, commercial vehicle interdiction. Basically it
3 teaches you how to look for criminals and as you work on the
4 road.

5 Q Okay. How long have you worked at the Sheriff's
6 Office?

7 A Since 2003.

8 Q Okay. And before that did you work in another police
9 agency?

10 A Yes, I worked at Spartanburg City from '98 to 2003.

11 Q And you've been a, with the Sheriff's Office since
12 2003?

13 A Yes, sir.

14 Q Okay. What role -- in the Sheriff's Office, what, what
15 is your assignment?

16 A I'm on the RSU Team. It's a street crime team.

17 Q What is RSU stand for?

18 A Regional Support Unit.

19 Q What are some of your duties in that, in that role?

20 A I work close with the region lieutenants. When they
21 have a hot area, we go out there and try to curb crime,
22 develop information who's committing crimes, and lower
23 crime.

24 Q On November 29th, were you working that night?

25 A Yes, sir.

Andy Daniel - Direct examination
by Solicitor Spivey

1 Q okay. Tell me a little bit about that night.

2 A I was leaving the jail. I was contacted by Sergeant
3 Luther. He told me they were observing a suspicious vehicle
4 on the side of a gas station at Asheville Highway and
5 California Avenue, and they asked me if I could find a
6 reason to stop it.

7 Q Are you familiar with that gas station?

8 A Yes, sir.

9 Q What kind of gas station is it?

10 A It's a Kangaroo Gas Station.

11 Q Does anything in your mind stand out about that gas
12 station?

13 A It -- there's a lot of activity there, criminal
14 activity.

15 Q Criminal activity?

16 A Yes, sir.

17 MR. HARRIS: Objection. Leading.

18 THE COURT: Overruled.

19 You may proceed.

20 Q What type of criminal activity?

21 A It actually falls in the -- our crime analysis does
22 mass, but that area actually falls into a corridor that is
23 just high criminal activity. Any from prostitution, drugs,
24 public drunk, trespassing, larcenies.

25 Q okay. Once you got that phone call, what happened

Andy Daniel - Direct examination
by Solicitor Spivey

1 next?

2 I'm sorry. Was it a phone call?

3 A It was on Nextel, yes, sir.

4 Q Okay. What did -- what happened next?

5 A I got behind the vehicle, and I turned my headlights
6 out and I noticed the tag light wasn't working properly.

7 Q All right. When you say wasn't working properly, what
8 do you mean by that?

9 A It wasn't bright enough to see.

10 Q Okay. So, you could not read the tag number, correct?

11 A Correct.

12 Q How far away from the car were you?

13 A I was about 30 feet away.

14 Q How many feet away do you have to be by law?

15 A Fifty feet.

16 Q Okay. So, you were within 30 feet?

17 A Yes, sir.

18 Q Okay. You couldn't see his tag?

19 A Yes, sir.

20 Q Okay. Did you notice anything else about that car?

21 A He swerved to the left, I could observe with my
22 headlights on the vehicle. The driver was leaning to the
23 right a little bit, and I believe that's why he swerved to
24 the left. He was actually in two lanes driving left of
25 center.

Andy Daniel - Direct examination
by Solicitor Spivey

1 Q Okay. Let me show you an item that's marked as State's
2 Exhibit 1 for identification purposes only.

3 Can you describe that, what I've handed you?

4 MR. HARRIS: I object.

5 THE COURT: Okay. You may. He hasn't offered it yet.

6 MR. HARRIS: Well, he's, he's asking the witness to
7 describe what, what it is. And, so, I'm gonna object to
8 that.

9 THE COURT: Well, he has to identify it before he can
10 offer it. So, I'm gonna allow him to identify what it is,
11 and then if he offers it you may object at that time.

12 THE COURT: Go ahead, Mr. Spivey.

13 Q Can you identify that document?

14 A Yes, sir, this is a still picture from my in car camera
15 that shows a Silver Dodge Magnum driving left of center on
16 Asheville Highway.

17 Q Is that the same one that, the incident that you're
18 talking about?

19 A Yes, sir.

20 Q Okay. And does that depict the view from your camera
21 that night?

22 A Yes, sir.

23 Q Okay. Now, describe what the, the picture actually is.
24 What's the substance?

25 THE COURT: Well, if you're gonna do that, I'm gonna

Andy Daniel - Direct examination
by Solicitor Spivey

1 ask you, do you want to offer it into evidence?

2 SOLICITOR SPIVEY: I'll move it into evidence then.

3 THE COURT: Mr. Harris.

4 MR. HARRIS: I object.

5 THE COURT: And the objection is?

6 MR. HARRIS: I, I -- we, we probably need to take the
7 matter up with---

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, I'll ask you to step back to the jury room. Don't
10 begin any discussions until I've asked you to do so.

11 You may retire to the jury room.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Yes, sir, Mr. Harris.

15 MR. HARRIS: Your Honor, the reason I've objected to
16 the, the, the excerpt from the videotape, the photographic
17 excerpt from the videotape is I thought we had an agreement
18 that the solicitor wasn't going to offer any portion of the
19 videotape, and I view it as the same thing as---

20 THE COURT: No, the statement that I understood it was
21 that he wasn't gonna offer the videotape.

22 MR. HARRIS: Well, I've -- I have to say I'm surprised
23 at it because I would think that if you take---

24 THE COURT: Well then I'll allow you to object to it on
25 any basis you'd like to object to it on.

Andy Daniel - Direct examination
by Solicitor Spivey

1 MR. HARRIS: I object to it on, on the grounds of
2 surprise because I felt like that the assistant solicitor
3 represented to me and to the court that he wasn't going to
4 make use of the videotape, and I don't see attempting to
5 offer into evidence photographic stills excerpted from the
6 videotape as being anything different than offering portions
7 of the videotape.

8 The second ground for objection---

9 THE COURT: Excuse me.

10 MR. HARRIS: ---is that the, the still photograph is
11 not representative of what's on the videotape, and to the
12 extent that it's not an accurate representation of, of what
13 is on the tape, I think the state either has to choose to
14 offer the tape in its redacted form or not offer it at all.

15 THE COURT: Can you point out to me how that doesn't
16 show what's on the videotape?

17 MR. HARRIS: I don't think it's a, a, an accurate
18 representation of exactly what's on the tape. I think it's
19 just a grainy photograph---

20 THE COURT: And I asked you to explain to me how it's
21 not.

22 MR. HARRIS: Well, just comparing it.

23 THE COURT: Please do.

24 MR. HARRIS: I, I have compared it.

25 THE COURT: Yes, sir, and is that not an accurate

Andy Daniel - Direct examination
by Solicitor Spivey

1 representation of the frames from the videotape?

2 MR. HARRIS: I don't think the picture shows as clearly
3 the situation as what the videotape does.

4 THE COURT: How?

5 MR. HARRIS: Just looking at it and knowing what's on
6 the tape. Just the appearance.

7 THE COURT: Well, I've looked at the tape too, and I've
8 looked at the still---

9 MR. HARRIS: Well, Your Honor---

10 THE COURT: ---and I don't see that distinction, and
11 I -- if you're gonna make the argument, I'll just ask you
12 to, to tell me how it does not.

13 MR. HARRIS: That's the only argument I have to make
14 about it other than the lack of foundation.

15 THE COURT: Mr. Spivey.

16 SOLICITOR SPIVEY: Yes, Your Honor.

17 As to surprise, we just actually discussed yesterday
18 afternoon that I would not be using the video, but I
19 probably will be using some of those stills, and, in fact,
20 we discussed that some of them were stapled together
21 yesterday, and we talked about maybe necessity, necessity of
22 having to separate those. And, so, as to that ground, I, I
23 just -- I'm not sure about that.

24 As to the second ground of whether it's an accurate
25 representation, we believe it is an accurate representation

Andy Daniel - Direct examination
by Solicitor Spivey

1 of a still shot of the video at that particular point in
2 time. He, as I understand the rules of evidence, he's
3 entitled to, if we enter a portion of something, he can
4 enter the entire part. We'll -- if he wants to enter the
5 video, he's welcome to do that.

6 MR. HARRIS: Well, I haven't heard any foundation yet.

7 THE COURT: I'm sorry.

8 MR. HARRIS: I haven't heard any foundation laid from
9 the witness.

10 THE COURT: As to what?

11 MR. HARRIS: That it is a fair and accurate
12 representation I guess of---

13 THE COURT: Yeah, that's what -- he asked him that
14 question.

15 MR. HARRIS: It's the solicitor saying of a still shot
16 of what is from the video. But I, I want to also say -- I'm
17 sorry. I mean I have to protect the rights of my client. I
18 thought---

19 THE COURT: I have not stopped you from protecting his
20 rights.

21 MR. HARRIS: I thought the assistant solicitor said he
22 wasn't gonna use the videotape, and I view, viewed it---

23 THE COURT: And I indicated that I understood that to
24 mean he was not going to introduce the videotape -- it's not
25 a videotape. It's a disk.

Andy Daniel - Direct examination
by Solicitor Spivey

1 MR. HARRIS: Right.

2 THE COURT: But the recording of the entire stop.

3 MR. HARRIS: That's my objection, Your Honor.

4 THE COURT: Overruled.

5 SOLICITOR SPIVEY: Thank you, Your Honor.

6 THE COURT: I'll let it in:

7 Bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect the
11 jury has returned to the courtroom.

12 I have overruled an objection as to the photo and have
13 admitted it into evidence as marked.

14 (WHEREUPON, State's Exhibit No. 1 was received into
15 evidence at this time.)

16 THE COURT: You may proceed, Mr. Spivey.

17 SOLICITOR SPIVEY: Thank you, Your Honor.

18 At this point, Your Honor, we would move State's
19 Exhibit 1 into evidence.

20 THE COURT: I've admitted it. I indicated that I've
21 admitted it.

22 SOLICITOR SPIVEY: Thank you, Your Honor. I, I
23 apologize.

24 THE COURT: That's quite all right.

25 Go ahead.

Andy Daniel - Direct examination
by Solicitor Spivey

1 CONTINUED DIRECT EXAMINATION

2 BY SOLICITOR SPIVEY:

3 Q Describe the substance of what that still shot shows.

4 A Silver Dodge Magnum driving left of center as it
5 traveled up Asheville Highway.

6 Q So, you said a minute ago the, the car served?

7 A Yes, sir.

8 Q Okay. Is that indicated there?

9 A Yes, sir.

10 Q Okay. I'll ask you to identify that particular
11 document marked for identification purposes only as State's
12 Exhibit 2.

13 A This is a still photo from my in car camera when I was
14 traveling on northbound behind the Dodge Magnum. I turned
15 my headlights off to see if there was any equipment
16 violations. At that point you couldn't see the tag light.

17 Q Is that a fair and accurate representation of what was
18 shown on the video?

19 A Yes, sir.

20 SOLICITOR SPIVEY: Okay. Your Honor, at this point I
21 move State's Exhibit 2 into evidence.

22 THE COURT: Same objections as before?

23 MR. HARRIS: Yes, sir.

24 THE COURT: Same ruling. I'll admit it as marked.

25 (WHEREUPON, State's Exhibit No. 2 was received into

Andy Daniel - Direct examination
by Solicitor Spivey

1 evidence.)

2 THE COURT: You may proceed.

3 Q Describe the substance of what you see in that Exhibit
4 2.

5 A The Dodge Magnum and I'm not able to read the tag cause
6 the tag light's not working properly.

7 Q Okay. Thank you.

8 Once you stopped the car, tell us what happened.

9 A We stopped at, right there by the entrance to where
10 Bi-Lo is there on Asheville Highway and Hearon Circle. I
11 made contact with the driver.

12 MR. HARRIS: Objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HARRIS: I object to any evidence that the State
15 would offer of the, of the stop and substance events.

16 THE COURT: I'll ask the jury to step back to the jury
17 room. Don't begin any discussions until I've asked you to
18 do so.

19 You may retire.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Yes, sir, Mr. Harris.

23 MR. HARRIS: Your Honor, it was, it was my
24 understanding that the witness was starting to relate events
25 that occurred at the point of the traffic stop and beyond,

Andy Daniel - Direct examination
by Solicitor Spivey

1 and, of course, that was part of the suppression motion that
2 the court considered previously in the case. I want to make
3 the objection now that it's being offered as in the State's
4 prima facie case that in order to fully protect and preserve
5 the record and to make clear my continuing objections to
6 that evidence.

7 THE COURT: All right. You're just objecting to
8 anything, any evidence that would come from anything that
9 happened at the stop?

10 MR. HARRIS: Well, yes, and the basis would be that we,
11 we have taken the position, in our suppression motion, that
12 the stop was illegal.

13 THE COURT: I understand and I would make the same
14 ruling and---

15 MR. HARRIS: I understand, Your Honor.

16 THE COURT: ---I'll allow him to testify, and I'll,
17 I'll note that your objection to that evidence will continue
18 throughout this line of questioning.

19 MR. HARRIS: I thank you, Your Honor.

20 THE COURT: All right.

21 SOLICITOR SPIVEY: Thank you, Your Honor.

22 THE COURT: Why don't we take about a five minute break
23 as this point in time?

24 The Court will be in recess for about five minutes.
25 Thank you very much.

Andy Daniel - Direct examination
by Solicitor Spivey

1 I'll caution the witness not to discuss his testimony
2 with anyone during the break.

3 Thank you very much.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. During the break I had a
6 conference with the attorneys in my office. Apparently
7 there is a B.E.S.T. evidence bag that's been sealed that
8 contains a quantity of pills, two prescription bottles, and
9 also apparently some letter which was evidence apparently
10 that was, the State alleges was recovered from the vehicle
11 of the defendant that he was driving that evening, and the
12 defense is asking to be allowed to open that bag and
13 retrieve the letter for review.

14 Is that right, Mr. Harris?

15 MR. HARRIS: That's correct, Your Honor.

16 THE COURT: All right. And the State has indicated
17 they would prefer that the bag be opened only by Beth --?

18 SOLICITOR SPIVEY: Stuart, the chemist.

19 THE COURT: -- Stuart, the chemist. The defense is
20 indicated that they would waive any objection to that bag
21 being opened at this time so as to allow review of the
22 letter that's contained therein.

23 Is that correct, Mr. Harris?

24 MR. HARRIS: That's correct Your Honor.

25 THE COURT: All right. Want to both of you -- if

Andy Daniel - Direct examination
by Solicitor Spivey

1 you'll step up.

2 Let's mark the bag at, for identification purposes in
3 the case please as State's Exhibit whatever the next one
4 will be.

5 (WHEREUPON, the B.E.S.T. bag was marked as State's
6 Exhibit No. 5 for identification purposes only at this
7 time.)

8 THE COURT: All right. Let's mark separately if you
9 don't mind. That is a, that is a document that's separately
10 bagged. Put a separate ID number on that please.

11 (WHEREUPON, the letter was marked as State's Exhibit
12 No. 6 for identification purposes only at this time.)

13 THE COURT: And we'll have that bag kept in the
14 possession of the court reporter until such time as it's
15 testified to.

16 Why don't both of you open it jointly and take a look
17 at it?

18 MR. HARRIS: Okay, Your Honor.

19 THE COURT: It appears to contain an envelope with a
20 return address to --?

21 SOLICITOR SPIVEY: There actually is no return address.
22 There's a cellophane window.

23 THE COURT: No, on the corner. Turn it around.

24 SOLICITOR SPIVEY: Oh, I'm sorry. Spartanburg
25 Department of Motor Vehicles.

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1 THE COURT: Okay. But it's an empty envelope with a
2 glassine opening for an address?

3 SOLICITOR SPIVEY: Yes, Your Honor.

4 THE COURT: Postmarked?

5 What's the postmark on it?

6 SOLICITOR SPIVEY: It's November 4th, 2011.

7 THE COURT: Okay.

8 SOLICITOR SPIVEY: .36 stamp.

9 THE COURT: All right. And an empty plastic, black
10 plastic bag I believe.

11 Is that what else is in there?

12 SOLICITOR SPIVEY: Yes, Your Honor. It says thank you
13 on it.

14 THE COURT: Okay. Place that back in that envelope and
15 then you need to examine it any further, Mr. Harris?

16 MR. HARRIS: No, Your Honor. Thank you.

17 THE COURT: All right. You're welcome.

18 MR. HARRIS: That satisfies my request.

19 THE COURT: Sure.

20 All right. You ready to resume with this witness,
21 Mr. Spivey?

22 SOLICITOR SPIVEY: Yes, Your Honor. Well, Your Honor,
23 one more thing. If we're ever gonna send this back to the
24 jury we need some way to, I think to seal this back up. If
25 you -- just to make sure nothing else goes missing.

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by Solicitor Spivey

1 THE COURT: All right. You ready to proceed, Mr.
2 Spivey?

3 SOLICITOR SPIVEY: Yes, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. HARRIS: Yes, Your Honor.

6 THE COURT: Bring the jury in please.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: The record will reflect that the jury's
10 returned to the courtroom.

11 Mr. Spivey, you may proceed with your examination of
12 the witness.

13 SOLICITOR SPIVEY: Thank you, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY SOLICITOR SPIVEY:

16 Q Just to -- I want to back up just a little bit. Quite
17 frankly I've forgotten exactly where we were.

18 You said you were following the car and it swerved?

19 A Yes, sir.

20 Q Proceed from there.

21 A I believe I then turned my headlights out and noticed
22 that the tag light wasn't working properly, that I couldn't
23 clearly read the tag.

24 Q Okay. What did you do next?

25 A I then informed communications I was conducting a

Andy Daniel - Direct examination
by Solicitor Spivey

1 traffic stop.

2 Q Did you stop the car?

3 A Yes, sir.

4 Q Okay. Where did that stop occur?

5 A Right there on Asheville Highway. I don't remember
6 the -- I think it's Northtown Drive. It goes into Bi-Lo
7 Shopping Center where the Bi-Lo grocery is. It's probably
8 about maybe, roughly a hundred yards south of Hearon Circle.

9 Q Is that in Spartanburg County?

10 A Yes, sir.

11 Q Okay. What did you do next?

12 A I then made contact with the driver. I explained to
13 him why I stopped him and asked him to step out of the car.

14 Q Did you ask him for his ID?

15 A Yes, I asked for his driver's license and his
16 registration paperwork.

17 Q What kind of ID did he have?

18 A He had a South Carolina provisional license.

19 MR. HARRIS: Objection, Your Honor.

20 THE COURT: Yes, sir, I'm listening.

21 MR. HARRIS: May we approach?

22 THE COURT: Certainly.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: All right. Ladies and gentlemen of the

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by Solicitor Spivey

1 jury, I'm gonna ask you to step back to the jury room.
2 Don't begin any discussions until I've advised you to do so.
3 You may retire to the jury room.

4 Thank you very much.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Mr. Harris, state your objection.

8 MR. HARRIS: Okay. Your Honor, I -- my objection to
9 the last question is on the basis that I do not think that
10 the State should be allowed to offer evidence to the jury of
11 the defendant's prior arrest record. The discovery
12 information and the information revealed at the suppression
13 hearing was that the defendant produced a, some kind of
14 temporary license --

15 THE COURT: Yes, sir.

16 MR. HARRIS: -- and that there was questioning
17 concerning why he had a temporary license and he admitted to
18 having a DUAC violation.

19 THE COURT: That was on the tape I believe.

20 MR. HARRIS: Yes, sir, it was.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. HARRIS: And, so, my concern is I don't believe
23 that -- I would object to the State offering evidence that
24 would indicate to the jury that the defendant has a prior
25 arrest record as I don't think that is relevant to any issue

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1 in this case, and that it, it raises issues of character of
2 the defendant.

3 THE COURT: Yes, sir, I -- I agree with you and
4 sustained the motion and I will not allow the State to
5 introduce any evidence of a prior arrest. However, I will
6 allow them to place into the record the status of his
7 driver's license and when it was reviewed, which is a
8 temporary license which is, which can be issued for various
9 reasons.

10 And, so, I'm not gonna allow them to get into the
11 reason why he had that, but I will allow them to state or
12 place into the record that when he checked his license it
13 was a temporary license, and just as I will allow him to put
14 into the record the registration for the vehicle was in
15 someone else's name.

16 MR. HARRIS: All right.

17 THE COURT: Those are all things that a normal traffic
18 stop he would check as the status of someone's license,
19 whatever that status might be, and you would check the
20 registration, insurance documents. Those are all the
21 standard things that are checked in a traffic stop.

22 THE COURT: Thank you, Your Honor, and I understand
23 the, the State will be so limited. The -- at, at the bench
24 conference the assistant solicitor indicated that he
25 intended to inquire of the witness whether the type of

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1 license that the defendant had restricted his driving, and
2 just going on the information I learned at the suppression
3 hearing, because that was really the first time this issue
4 has, has come to the surface, it is -- I do not have a clear
5 understanding, I guess I should say, as to whether or not
6 this witness knows exactly what type, if any, restrictions
7 were, were on the defendant's privilege. My recollection of
8 his testimony with the suppression hearing was that he, was
9 something to the effect of he had some type of temporary or
10 provisional license, and, and that ordinarily people can't
11 drive at certain times and at certain places. But I -- that
12 leads me to believe that the witness does not know and can
13 not state exactly what type of license was presented and,
14 and, therefore, what type of restrictions, if any, were
15 placed on the license.

16 THE COURT: Well, that's speculating as to what he
17 might testify to. I don't know what he's gonna say.

18 MR. HARRIS: Well, I have---

19 THE COURT: Does that somehow -- I'm trying to figure
20 out what the restrictions that were on the license, what
21 prejudice that might have to your client. Maybe you can
22 help me with that.

23 MR. HARRIS: Well, I -- it my -- I, I would think that
24 the State would be attempting to use that information to
25 make an argument that the defendant should not have been

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1 driving at all, and, therefore, must of been up to no good
2 to be there---

3 THE COURT: Well, you know, you'll, you'll -- by your
4 motion you have raised the question as to whether or not
5 there, the officer had reasonable suspicions upon which to
6 continue the stop. So, the question of his driving, driving
7 status and what he could or couldn't do with that license
8 had been placed into controversy by your motion. You have
9 the right to make your motion, but then the State has the
10 right to establish why they may of had a reasonable
11 suspicion to continue the stop.

12 Now, I don't know what he's gonna say either.

13 Make a proffer. Ask him what he's gonna say. Let's
14 find out. Let's quit speculating on, on it, on objections
15 and get down to what he's gonna say.

16 Go ahead, Mr. Spivey.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR SPIVEY:

19 Q What kind of restrictions are on a temporary license?

20 A Normally they're used to drive -- normally what
21 happens, people get a restricted license after their normal
22 license is, has been suspended and they restrict the
23 license, allow them to drive to work, church, grocery store,
24 doctor's appointments, things of that nature.

25 SOLICITOR SPIVEY: Your Honor, that's essentially the

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1 second part of that was what I was trying to get in. The
2 first part about normally they're issued after they're
3 suspended---

4 THE COURT: I will restrict the witness from
5 testifying -- I won't allow him to testify as to, or, or
6 speculate as to why he has a temporary license. He can have
7 a temporary license for various reasons. He may not of paid
8 a ticket and got his license suspended. I don't know what
9 he, why he may not have, may have his temporary license.
10 It's not an issue in this case. But I will allow him to
11 testify what normally people can do with temporary licenses.

12 Do we know specifically if this license had any
13 specific restrictions on it other than it was a standard
14 temporary license?

15 SOLICITOR SPIVEY: That would be---

16 THE COURT: Ask the question.

17 MR. HARRIS: Well---

18 Q Deputy Daniel, was this temporary license that the
19 defendant handed you, was it a standard temporary license
20 or?

21 A Yes, sir, it's got a yellow band up top.

22 Q And it had the standard conditions on it?

23 A I, I assume.

24 THE COURT: Okay. Mr. Harris, anything you want to ask
25 him?

Andy Daniel - Cross-examination
by Mr. Harris

1 CROSS-EXAMINATION

2 BY MR. HARRIS:

3 Q What -- Your Honor, I would ask the witness, did the
4 defendant have a temporary alcohol restricted license, a
5 route restricted license, or a provisional license?

6 A Just a -- I knew it was temporary because the yellow
7 band. I want to say it's a route restricted, but I'm not
8 one hundred percent sure. I'd have to look it up again.

9 Q You don't know and you -- is that correct?

10 A Correct.

11 Q And you recognized that there are essentially three
12 forms of temporary licenses issued by the Highway
13 Department?

14 A I only know of one. I know you have an ID which has a
15 green strip at the top, a normal license, which has a red
16 line, strip at the top, and a temporary, which has yellow.

17 Q Well, the temporary, the temp -- you're not aware that
18 a person, after a DUI -- after -- as a result of an implied
19 consent suspicion can apply for a temporary alcohol license?

20 A Anyone who has their license suspended can apply for
21 it, a temporary license.

22 Q All right. And a temporary alcohol license is a
23 different license than a provisional license, which happens
24 after---

25 THE COURT: We've gone far enough. I'm not gonna let

Andy Daniel - Cross-examination
by Mr. Harris

1 him testify as to any restrictions.

2 MR. HARRIS: All right.

3 THE COURT: I will allow him to testify it was a
4 temporary license.

5 MR. HARRIS: All right. Thank you, Your Honor.

6 THE COURT: Okay.

7 SOLICITOR SPIVEY: Thank you, Your Honor.

8 THE COURT: All right. Bring the jury back.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: The record will reflect the jury has
12 returned to the courtroom.

13 I have made a ruling partially sustaining an objection
14 and restricting the witness' ability to testify on certain
15 subjects.

16 You may proceed, Mr. Spivey.

17 SOLICITOR SPIVEY: Thank you, Your Honor.

18 CONTINUED DIRECT EXAMINATION

19 BY SOLICITOR SPIVEY:

20 Q what kind of license did the defendant give you?

21 A Temporary license.

22 Q okay. After he gave you his license what else
23 happened?

24 A I asked him to exit the vehicle and I tried to show,
25 one, I could show him why I was stopping him, and, two, that

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by Solicitor Spivey

1 I wasn't standing in traffic.

2 Q Okay. why would you of been standing in traffic?

3 A We stopped right there pretty much in the middle of
4 Asheville, Asheville Highway.

5 Q Okay. what occurred, what occurred after that?

6 A I asked him questions about drugs in the car.

7 Q Okay. what, what type questions?

8 A I asked him if there was marijuana in the car, cocaine,
9 crack cocaine, I believe heroin, or any type of illegal
10 pills or stolen property.

11 Q How did he respond?

12 A I noticed when I started questioning him, asking him
13 about drugs, he broke eye contact and looked away from me,
14 which raised my suspicion.

15 Q Okay. what happened then?

16 A I then asked for consent to search the vehicle, and
17 they asked me what I wanted to search for and he denied
18 consent.

19 Q Back up just a second.

20 what was his response to your question?

21 A He stated what do you want to search for.

22 Q I'm sorry.

23 The prior question, when you asked him if there were
24 any narcotics in the car.

25 A Oh, he broke eye contact with me and looked away.

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by Solicitor Spivey

1 Q Did he answer at all?

2 A Not to my knowledge. I think he said no, no, no.

3 Q Okay.

4 A But I'm not one hundred percent sure exactly of his
5 terminology.

6 Q Okay. All right. I'm sorry. Continue on.

7 You said you asked him if you could search.

8 A Yes, sir, I asked if I could have consent to search and
9 he, he asked me what I wanted to search for and, and denied
10 consent.

11 Q Okay. Then what did you do next?

12 A At that time, because he broke eye contact, through my
13 training and experience, I, my suspicion rose at which time
14 I felt I had enough to call for a narcotics dog.

15 Q Okay. Let me ask you the -- let me ask you another
16 question.

17 You said you asked him for his registration.

18 A Yes, sir.

19 Q Was the car registered to him?

20 A No, sir.

21 Q Okay. Let me ask you another question.

22 Did you, did you see any -- did you see an air
23 freshener in the car?

24 A Yes, there were two -- I believe two black looked like
25 trees hanging from the rearview mirror.

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by Solicitor Spivey

1 Q okay. All right. After you, you got back in the car,
2 what did you do then?

3 A I got on my computer system. We have lap tops in our
4 vehicles called Spillman. It comes to a Spillman check,
5 which is a local, excuse me, local history. If someone's
6 been involved with a victim or anything else, they're in our
7 system. Then I conducted a driver's license check to check
8 his status of his driver's license, vehicle registration
9 check.

10 Q okay. What did you do after that?

11 A I began to write a citation.

12 Q Did you ever call for a K-9?

13 A Yes, I did. I called for a uniform patrol K-9, but he
14 was busy on another call.

15 Q okay. All right. What did you do after you called for
16 the K-9 and found out it was busy?

17 A I believe investigators called for their K-9.

18 Q okay. After you run those checks, what did you do?

19 A The last thing I did was begin the citation.

20 Q okay. And beginning the citation, you started writing
21 the ticket?

22 A Yes, sir.

23 Q Did you give him that ticket?

24 A Yeah, I gave him the ticket. I believe I gave him the
25 ticket after the K-9 arrived and conducted what he needed to

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by Solicitor Spivey

1 do.

2 Q Okay. Did you participate in the search of the car?

3 A No, sir.

4 Q After the search of the car was the defendant arrested?

5 A I believe once they found items in the car he was
6 placed under arrest, and that -- I believe I began the
7 booking process, booking paperwork.

8 Q So, you filled out the paperwork?

9 A The booking report. I believe I did.

10 Q What is that form?

11 A It's just pretty much name, date of birth, address,
12 next of kin, what are the charges, case number, a date and
13 time. Just general information.

14 Q After you did, filled out that form, what did you do?

15 A Pretty much everything was said and was done and he was
16 issued his ticket and I transported him to the jail.

17 Q I'm gonna digress for a second. I may have missed it
18 and I apologize if I did.

19 When he swerved the car, did that indicate anything to
20 you?

21 A I felt he may of been trying to hide something.

22 Q What do you mean by that?

23 A Just my experience of seeing people lean over and
24 drivers of a vehicle lean over to the right of a car, they
25 kept one hand on the steering wheel, and they lean. They

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by Solicitor Spivey

1 either, one are hiding something, or, two, trying to gain
2 access to something.

3 SOLICITOR SPIVEY: No further questions at this time,
4 Your Honor.

5 THE COURT: Mr. Harris.

6 MR. HARRIS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. HARRIS:

9 Q Deputy Daniel, do I understand you correctly to say, in
10 your testimony to the assistant solicitor, that you were
11 contacted by other officers with the Sheriff's Department
12 and told to find a reason to stop this gray Dodge?

13 A Yes, sir, I was asked by investigators. They told me
14 they were conducting surveillance on a suspicious vehicle
15 and I was asked by phone to find a reason to stop the car.

16 Q Just make up something?

17 A No, I was not asked to make up.

18 Q You were just asked to find a reason to stop this car
19 because we don't have a reason?

20 A I was asked to find a legal reason to stop the car.

21 Q Well, these investigators, would it be your impression,
22 wanted to stop the -- they didn't have a reason to stop him?

23 A Yes.

24 Q So, they wanted you to find a reason to stop him?

25 A Yes.

Andy Daniel - Cross-examination
by Mr. Harris

1 Q Not because you were worried about a tag light, but
2 because they wanted, by hook or crook, to get inside that
3 car, is that correct?

4 A I don't know what their intentions were. I believe it
5 was an ongoing investigation. That's why I was asked to
6 find a reason.

7 Q And when you stopped the car, the, the Dodge, gray
8 Dodge Magnum, you were going to, by hook or crook, get
9 inside that car?

10 A That wasn't my---

11 Q Is that correct?

12 A ---intentions at the beginning.

13 Q And that's why you called the drug dog, is that right?

14 A I called for a drug dog after seeing actions that
15 raised my suspicions.

16 Q To -- well, you wanted to get inside the car, but you
17 didn't have cause enough to go in it yourself, is that
18 right?

19 A Correct. I had enough to ask for consent, but not
20 probable cause to enter the vehicle.

21 Q Okay. But when you called for the drug dog, you, as a
22 police officer, did not have cause enough to be able to open
23 that door and go in that car without consent, did you?

24 A Not to search the vehicle, correct.

25 Q So, you just decided to make Mr. Jackson wait on, in

Andy Daniel - Cross-examination
by Mr. Harris

1 the middle of the road, for as long as it took for drug dogs
2 to come so they could run around the outside of the car to
3 look for drugs, is that right?

4 A I believe---

5 Q Is that the size of it?

6 A I believe; during the actions I observed, my training
7 and experience, that my suspicion raised that there was
8 criminal activity afoot and that's why I called for a drug
9 dog.

10 Q Well, you knew, from the very beginning, when you got
11 the call about find a reason that the whole purpose of the
12 thing was to get inside the car, didn't you?

13 A I didn't know that was the purpose.

14 Q You didn't?

15 A No, sir, I didn't. No.

16 Q Okay. So, what actually occurred was, you have said,
17 that you saw Mr. Jackson swerve somewhat while you were
18 following him on Asheville Highway, is that right?

19 A Yes, sir.

20 Q And you took that to be suspicious---

21 A Correct.

22 Q ---you've said, is that right?

23 A Correct.

24 Q And it looked like he was leaning over to the right
25 to---

Andy Daniel - Cross-examination
by Mr. Harris

- 1 A Yes, sir.
- 2 Q ---hide something or do something?
- 3 A Yes, sir.
- 4 Q Could you see inside the car?
- 5 A I could see him leaning over.
- 6 Q Does your -- does your photographs that the assistant
7 solicitor's offered show Mr. Jackson inside the car?
- 8 A You can't visibly see it from these photographs, no,
9 sir.
- 10 Q You, you -- your photographic evidence doesn't support
11 your testimony then, correct?
- 12 A No, sir, I believe it does.
- 13 Q You believe it does although it doesn't show Mr.
14 Jackson?
- 15 A No, sir, it shows the Dodge Magnum driving left of
16 center.
- 17 Q Right.
- 18 It shows the car?
- 19 A That Mr. Jackson was operating.
- 20 Q It shows -- your photographs show the car but not the
21 driver, is that correct?
- 22 A Correct.
- 23 Q Yet you say that these photographs are a fair and
24 accurate representation of what you saw?
- 25 A Yes, sir.

Andy Daniel - Cross-examination
by Mr. Harris

1 Q Correct?

2 A Yes, sir.

3 Q But the photographs don't show the driver, correct?

4 A Correct. Not in this photograph.

5 Q Well, those are the ones that have been offered.

6 would you agree?

7 A As -- these -- when the vehicle's driving up the road,
8 the camera is zoomed out. I can zoom it in, but you have to
9 manually do that. It's zoomed out so it picks up everything
10 in front of it and on the sides. It does pick up the
11 vehicle driving left of center, but you can't clearly see
12 who was actually driving the vehicle from the photograph.

13 Q All right. So, the photographs don't support your
14 testimony?

15 A I believe it does.

16 Q Okay. Now, you, you've described that you stopped Mr.
17 Jackson for having a improperly illuminated tag light, is
18 that correct?

19 A Correct.

20 Q And for no other purpose?

21 A For the tag light, correct.

22 Q All right. Not for swerving?

23 A No, sir, not for swerving.

24 Q Okay. Strictly you stopped the vehicle because you
25 supposedly could not clearly read the tag number from the

Andy Daniel - Cross-examination
by Mr. Harris

1 distance of 50 feet?

2 A Yes, sir.

3 Q All right. But you did read the tag number, didn't
4 you?

5 A With my headlights on it, correct.

6 Q Yeah.

7 I mean so you could read the tag number while you were
8 following Mr. Jackson, is that right?

9 A As my headlights were on the tag, yes, sir.

10 Q Okay. All right. Now, when you stopped the, the
11 Dodge, gray Dodge, you say that you went up and you made
12 contact with the driver, is that right?

13 A Yes, sir.

14 Q And you very shortly, after that, asked the driver to
15 get out of the car, is that right?

16 A Yes, sir.

17 Q And at that point in time, although the only reason
18 that you had stopped the car was for a tag light, you began
19 asking repetitive questions about whether there were any
20 drugs or other illegal things in the car?

21 A Yes, sir, and if I could explain why I did that is
22 because, one, I got a call from seasoned narcotics officers.
23 That area that he was coming from, my experience in the
24 area, just natural assumption that there was an ongoing
25 investigation. That's why I asked those questions.

Andy Daniel - Cross-examination
by Mr. Harris

1 Q You assumed there was?

2 A Yes, sir.

3 Q You didn't know that?

4 You just assumed it?

5 A Yes, sir.

6 Q Okay. You believed it?

7 A Yes, sir.

8 Q Okay. Now, you got Mr. Jackson out of the car and he
9 had been stopped for not having a bright enough tag light,
10 right?

11 A Correct.

12 Q All right. And did you inspect the tag light situation
13 on the gray Dodge?

14 A I did not get down, after I stopped the car, and
15 physically inspected it, but when I turned my headlights off
16 and I couldn't see the tag clearly, I felt that was enough.

17 Q Well, just asking you, you know, you've, you've -- the
18 sole purpose for stopping the gray Dodge was the tag light,
19 right?

20 A Correct.

21 Q So, he -- if you, if your testimony is to be believed
22 that the gray Dodge had defective equipment, is that right?

23 A Yes, sir.

24 Q And you can't have defective equipment on a vehicle,
25 can you?

Andy Daniel - Cross-examination
by Mr. Harris

- 1 A Correct.
- 2 Q And, so, didn't you do any investigation to determine
3 exactly what the situation was with the tag light?
- 4 A I would say I did when I turned my headlights out and
5 it wasn't working properly---
- 6 Q Well---
- 7 A ---and I -- that -- did I get down and physically take
8 the tag light apart and inspect it, no, sir, I did not.
- 9 Q Well, no, I mean did you, did you bother to go over
10 there and see if the vehicle was even equipped with tag
11 lights?
- 12 A Why -- I could tell when I turned my headlight off that
13 it wasn't working properly.
- 14 Q Well, I -- no, sir.
- 15 My question is did you go and look to see if the
16 vehicle was even equipped with tag lights?
- 17 A No, sir.
- 18 Q Did you look to see if it was equipped, whether one or
19 both, were not working?
- 20 A No, sir.
- 21 Q But you, you were conducting sole and exclusively a
22 traffic stop for a tag light violation allegedly?
- 23 A Yes, sir.
- 24 Q I mean if it really is true that there was a violation?
- 25 A Yes, sir.

Andy Daniel - Cross-examination
by Mr. Harris

1 Q If it is really true that there was a tag light
2 violation, you didn't do anything to further investigate it,
3 did you?

4 A I believe the fact that I turned my headlights off and
5 it wasn't bright enough where I could read it was enough.

6 Q And is it true that at the very end of all of this,
7 once, once you have accomplished the drug dogs and the car
8 was searched, that you permitted someone else to drive the
9 vehicle off with the defective equipment?

10 A The equipment was a light bulb. It wasn't posing any
11 danger to society. So, instead of towing the car and having
12 them a tow bill, the vehicle was released to I believe the
13 owner.

14 Q Well, was it still posing the problem of not being able
15 to be read clearly at 50 feet?

16 A Yes, sir.

17 Q And that's what got Mr. Jackson stopped, wasn't it?

18 A Yes, sir.

19 Q So, there wasn't really a problem with the tag light?

20 A No, there was a problem, sir.

21 Q But you had been instructed to find a reason to stop
22 the gray car, right?

23 A Yes, sir.

24 Q Now, when you stopped the gray car, you got Mr., what
25 turned out to be Mr. Jackson out of the car, correct?

Andy Daniel - Cross-examination
by Mr. Harris

- 1 A Correct.
- 2 Q You didn't know that you were stopping Mr. Ken Jackson,
3 the flesh and blood person, did you?
- 4 A No, sir, I've never met him before.
- 5 Q You were after the gray car?
6 You were after the gray car?
- 7 A Correct.
- 8 Q You were instructed to find a reason to stop the gray
9 car---
- 10 A Yes, sir.
- 11 Q ---right?
- 12 Okay. It turned out to be Mr. Ken Jackson that was the
13 driver of the car, right?
- 14 A Yes, sir.
- 15 Q Mr. Ken Jackson was gotten out of the car and fairly
16 immediately asked do you have marijuana, cocaine, heroin, et
17 cetera, et cetera, et cetera, all kinds of drugs as you've
18 described, is that right?
- 19 A I wouldn't say immediately asked. I first asked for
20 his driver's license---
- 21 Q All right.
- 22 A ---and vehicle paperwork.
- 23 Q Okay. Would you say within two or three minutes?
- 24 A Yes sir.
- 25 Q Okay. You started asking Mr. Jackson do you have

Andy Daniel - Cross-examination
by Mr. Harris

1 marijuana, do you have heroin, do you have cocaine?

2 How many drugs did you ask about?

3 A Marijuana, cocaine, crack cocaine, pills, stolen
4 property.

5 Q Now, you had absolutely no reason at all, no evidence
6 at all that there were drugs in that car, right?

7 A Like I said before, I believed, because I was contacted
8 by seasoned narcotic's officers, that they were asking for
9 help during an ongoing investigation.

10 Q Even though they themselves had no reason to stop the
11 car, correct?

12 A Correct.

13 Q We already said that.

14 A Correct.

15 Q And you had no more reason than they, other than a tag
16 light supposedly, right?

17 A Correct.

18 Q And Mr. Jackson said no, no, no, no, correct?

19 A I don't remember exactly how many times he said no,
20 but---

21 Q Each time you said do you have a drug in that car he
22 said no, is that correct?

23 A I believe so, yes, sir.

24 Q But that wasn't enough for you. So, you decided that
25 you would ask for permission to search the car.

Andy Daniel - Cross-examination
by Mr. Harris

- 1 Is that right?
- 2 A Correct.
- 3 Q So, you asked for permission and Mr. Jackson said no,
- 4 you can't search the car, right?
- 5 A Correct.
- 6 Q And that was his legal right to do, wasn't it?
- 7 A Yes, sir, it was.
- 8 Q He was exercising his Fourth Amendment right at that
- 9 point, was he not?
- 10 A Yes, sir.
- 11 Q But that, that didn't do too well with you. So, you
- 12 decided to call in the drug dogs, is that right?
- 13 A It was just, it was just one dog.
- 14 Q So, you were -- okay. And you couldn't get that dog.
- 15 So, you had to call in others?
- 16 A Just one more.
- 17 Q Well, okay. So, Mr. Jackson denied knowledge of any
- 18 drugs in the car, is that right?
- 19 A Yes, sir.
- 20 Q Mr. Jackson exercised his legal right not to have you
- 21 search the car for no good reason, is that right?
- 22 A He denied consent, yes, sir.
- 23 Q Okay. But Mr. Jackson was kept out on the middle of
- 24 Asheville Highway for ever so long as it took for the drug
- 25 dog to come, is that right?

Andy Daniel - Cross-examination
by Mr. Harris

- 1 A I believe the actions I observed---
- 2 Q Did you just break---
- 3 A ---training and experience---
- 4 Q Did you just break eye contact with me?
- 5 A I'm looking at the jury, sir.
- 6 Q Okay. I'm just asking.
- 7 A Okay. I believe, because of the actions I observed,
- 8 that Mr. Jackson did -- it raised my suspicion. That's why
- 9 I called for a drug dog and held him.
- 10 Q Uh-huh. (Affirmative).
- 11 And now -- so, a search did, in fact, get done of the
- 12 gray Dodge, is that right?
- 13 A Yes, sir.
- 14 Q And you were there when it was done, is that right?
- 15 A Yes, sir.
- 16 Q Okay. Are you aware of whether there was any liquor
- 17 bottles found in the car?
- 18 A I believe there was.
- 19 Q As a matter of fact, there was -- do you have knowledge
- 20 there was a liquor bottle found under or near the right
- 21 passenger seat?
- 22 A I can't say where exactly it was found cause I didn't
- 23 conduct the search.
- 24 Q Uh-huh. (Affirmative).
- 25 A I was in the vehicle doing my paperwork.

Andy Daniel - Cross-examination
by Mr. Harris

1 Q Yeah.

2 So, would it -- would you admit that it could very well
3 be the case that Mr. Jackson was trying to hide a Hennessy
4 liquor bottle?

5 SOLICITOR SPIVEY: Objection, Your Honor. It calls for
6 speculation.

7 MR. HARRIS: I don't think -- he's, he's already
8 speculated. I'm asking just to go, go ahead and speculate a
9 little more to see if we can put any facts to it.

10 THE COURT: I'll sustain the objection.

11 Q Now, in, in terms of whether or not you, you had
12 anything to do with seeing Mr., in any interaction -- I'm --
13 this, this question will be any, anytime you would of seen
14 Mr. Jackson, okay, on the day, night in question.

15 All right. Is it true that you never saw Mr. Jackson
16 with any drugs in his actual possession?

17 A Correct.

18 Q Is it correct that when you asked Mr. Jackson to exit
19 the vehicle, and you've said you had suspicions when you
20 asked him questions that he may of had drugs, that you never
21 once asked to do a pat down search of him?

22 A I don't recall.

23 Q You don't remember?

24 A No, sir.

25 Q If you -- when, when you, as a police officer, when you

Andy Daniel - Cross-examination
by Mr. Harris

1 get someone out of a car, traffic stop like you've done, and
2 you had any, as a police officer, any kind of belief that
3 that person might be dangerous or have weapons or anything
4 of that nature, you, for your own safety, would be entitled
5 to do a pat down search for weapons, is that right?

6 A Yes, sir.

7 Q If you had any belief at all that this person was, was,
8 in anyway, posed any threat to you or public safety, is that
9 right?

10 A Correct.

11 Q But you never did any kind of pat down search of Mr.
12 Jackson---

13 A I don't---

14 Q ---on the roadside?

15 A I don't recall.

16 Q And that was because you really truly didn't have
17 anything to indicate that Mr. Jackson was any kind of threat
18 to you or the public?

19 A well, I guess then. I don't recall if I conducted a
20 pat down or not.

21 MR. HARRIS: Thank you, Your Honor. No further
22 questions.

23 THE COURT: Any redirect?

24 SOLICITOR SPIVEY: Just a few short questions, Your
25 Honor..

Andy Daniel - Redirect examination
by Solicitor Spivey

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY SOLICITOR SPIVEY:

4 Q Deputy Daniel, when you make a normal traffic stop for
5 defective equipment -- have you made traffic stops for
6 defective equipment in the past?

7 A Yes, sir, I have.

8 Q Describe the types of defective equipment stops.

9 A Brake lights out, cracked windows, windows missing,
10 mirrors broken off, tag lights, tags hanging down.

11 Q Do you write a warning or a ticket as a result of
12 those?

13 A Normally I write a warning---

14 Q Okay.

15 A ---and let people know, you know, when they get the
16 opportunity to get it fixed. I know times are tough.

17 Q Do you seize their car?

18 A No, sir.

19 Q Do you tow it?

20 A No, sir, the only, the only time I tow a car is if it
21 poses a danger to society.

22 Q A tag light is not a danger to society?

23 A No, sir.

24 Q Okay. All right. How long did the, did the stop take?

25 A I believe around 15 minutes.

Andy Daniel - Redirect examination
by Solicitor Spivey

1 Q Okay. So, it was not extremely long?

2 A I wouldn't say so, no, sir.

3 SOLICITOR SPIVEY: No further questions, Your Honor.

4 THE COURT: Mr. Harris.

5 MR. HARRIS: Nothing else, Your Honor.

6 THE COURT: All right. You may step down. Thank you
7 very much.

8 State may call its next witness.

9 SOLICITOR SPIVEY: Roger Luther.

10 THE COURT: Come forward, sir, to be sworn.

11 ROGER LUTHER, having been first
12 duly sworn, testified as follows:

13 THE COURT: Sir, once you're seated, I'd ask that you
14 state your name please.

15 WITNESS: It's Roger Luther.

16 THE COURT: Mr. Spivey, your witness.

17 SOLICITOR SPIVEY: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY SOLICITOR SPIVEY:

20 Q Please state your experience and training for the jury.

21 A Twenty-five years law enforcement experience and prior
22 criminal justice degree, Bachelor of Science, multiple
23 training schools, twelve years of narcotics enforcement
24 including street level drug enforcement.

25 Q Okay. How long have you been with the Sheriff's

Roger Luther - Direct examination
by Solicitor Spivey

1 office?

2 A Twenty-five years.

3 Q Okay. In your 25 years, what kind of jobs have you
4 had?

5 A As I stated, mostly I've worked uniform patrol. I've
6 worked 12 years involved with both the narcotic's unit and
7 the street crimes unit for which Deputy Daniels is employed.

8 Q Okay. And in November of 2011 were you, what role were
9 you in?

10 A I returned back to narcotics as a sergeant.

11 Q Okay. Let me ask your familiarity with the Kangaroo
12 Gas Station on California Avenue.

13 Do you know that gas station?

14 A Yes, sir.

15 Q Okay. It's right there at the corner of Asheville
16 Highway and California Avenue?

17 A Yes, sir.

18 Q Okay. What do you know about that gas station?

19 A During my previous five years working with the regional
20 support unit as a sergeant for that unit we had conducted
21 numerous arrests out of that parking lot considering it was
22 in one of the higher crime areas as related to crime maps
23 given to us by the agency. We have made narcotics arrests.
24 We have made wanted persons arrest, traffic arrest, and up
25 to and including prostitution arrest out of that parking

Roger Luther - Direct examination
by Solicitor Spivey

1 lot.

2 Q Did you personally make any of those arrests?

3 A I was involved in -- at least I know I was there at the
4 prostitution and several of the traffic violations.

5 Q Let me ask you what happened on November 29th.

6 A I was riding around with Investigator Swad. We had
7 observed this gray Dodge sitting in a dark corner in the
8 parking lot. It separated itself from the rest of the
9 traffic, which, based on my experience, is synonymous with
10 criminal activity afoot. We circled the block a few times
11 just to see if the vehicle's gonna remain where it was at,
12 which it did. We set up stationary surveillance across the
13 street and began watching the vehicle.

14 Q Okay. Describe what happened while you were there.

15 A We could observe an occupant inside the vehicle. We
16 couldn't tell who or what, but we knew it was occupied by at
17 least one individual who appeared to be sitting there
18 talking on a cell phone.

19 Q Okay. What time of day was this?

20 A This was nighttime. It was -- it was dark.

21 Q Okay. What, what happened after you set up
22 surveillance?

23 A We just -- we monitored it for a little bit just to sit
24 and watch for any activity coming to or from the vehicle.

25 Q Okay. Did anything---

Roger Luther - Direct examination
by Solicitor Spivey

- 1 A No, sir.
- 2 Q ---like that happen?
- 3 A No, sir.
- 4 Q what happened then?
- 5 A Our suspicions had been raised just because of the
- 6 location of the vehicle at the time of night and basically
- 7 why it was sitting there by itself. Deputy Daniel had just
- 8 left the jail, and he had -- he was very close to where we
- 9 were at surveilling the vehicle. So, we requested him to
- 10 assist us in the potential stop of this vehicle for further
- 11 investigation.
- 12 Q Did he make that stop?
- 13 A He did.
- 14 Q were you near his car when, when that happened?
- 15 A Myself and Investigator Swad pulled in directly behind
- 16 him.
- 17 Q Did you, I guess, follow Deputy Daniel during that
- 18 time?
- 19 A We did.
- 20 Q Okay. Did you observe the, the defendant swerve?
- 21 MR. HARRIS: Your Honor, I object to leading. It's
- 22 just a series of leading questions.
- 23 THE COURT: Leading questions suggest an answer. I
- 24 don't find that that question suggests an answer. He's free
- 25 to answer as he pleases.

Roger Luther - Direct examination
by Solicitor Spivey

1 You may proceed, Mr. Spivey.

2 Overruled.

3 Q Did you observe the defendant swerve?

4 A Myself personally, no. I was on the passenger side of
5 the vehicle. Investigator Swad was diving our vehicle,
6 which would of put him on that side to observe the swerve.

7 Q Okay. Could you see if his tag light was out?

8 A I don't recall if I could or couldn't.

9 Q Okay. Once that car was stopped tell me what, what you
10 did then.

11 A At that point, since Andy Daniel had made the stop, we
12 proceeded to let Andy go ahead and run the stop. We
13 basically sat back and watched as Andy conducted his normal
14 routine of business.

15 Q Okay. What, what occurred then?

16 A Deputy Daniel, at some point in his stop, had requested
17 for a drug K-9, for the uniform patrol, which was a road
18 dog, road patrol dog.

19 Q Okay. What occurred then?

20 A That dog was busy. It was on a call. It was gonna be
21 a extended amount of time for that dog to come. At that
22 point I notified Sergeant Ferris, who was also a K-9 handler
23 for the narcotics unit, to ascertain the status of where he
24 was at.

25 Q What did Sergeant Ferris tell you?

Roger Luther - Direct examination
by Solicitor Spivey

1 A He advised he was close, probably within ten minutes of
2 our location of the car stop.

3 Q Did you interact with the defendant at all?

4 A No, sir.

5 Q Okay. Once Sergeant Ferris got to the scene, what
6 occurred?

7 A I remained as a support function for the entire stop.
8 Sergeant Ferris went ahead and conducted his K-9 activities.

9 Q Okay. Did you observe that or were you paying
10 attention?

11 A I did.

12 Q Okay. You did.

13 See if you can identify just the document for me. Not
14 the substance of it.

15 A This is a photograph. It appears to be from the in car
16 video from Andy Daniel's vehicle.

17 Q Does that fairly and accurately predict, show what that
18 video showed that night?

19 A Yes, sir.

20 SOLICITOR SPIVEY: Okay. Your Honor, at this point I'd
21 move this as State's Exhibit -- I don't know what number
22 we're on.

23 THE COURT: It's already been marked.

24 SOLICITOR SPIVEY: Well, Your Honor, it was marked as
25 part of a group of others.

Roger Luther - Direct examination
by Solicitor Spivey

1 THE COURT: Okay.

2 SOLICITOR SPIVEY: We need to---

3 THE COURT: We'll, we'll let her worry about that. You
4 want to have this introduced.

5 SOLICITOR SPIVEY: Yes, Your Honor.

6 THE COURT: Any objection?

7 MR. HARRIS: Your Honor, I object on previously stated
8 grounds.

9 THE COURT: All right. I'll make the same ruling. It
10 will be admitted and marked by the Court.

11 You want to hand that to her so she can you mark it?

12 THE COURT: Yes, Your Honor.

13 (WHEREUPON, the photograph was marked as State's
14 Exhibit No. 7 and received into evidence at this time.)

15 THE COURT: You may proceed, proceed, Mr. Spivey.

16 Q Now, tell me about the substance of what that
17 photograph shows.

18 A Describe what's in the photograph?

19 Q Yes.

20 A The photograph contains a photograph of Mr. Jackson
21 from behind. This is gonna be Investigator Swad. This is
22 myself. The vehicle's being blocked by Mr. Jackson, and
23 this is gonna be our drug K-9 Sawyer indicating a positive
24 alert on the vehicle.

25 Q Thank you.

Roger Luther - Direct examination
by Solicitor Spivey

1 Did you participate in the search of the car?

2 A I did.

3 Q Okay. Tell me what you did.

4 A I searched the passenger compartment of the vehicle,
5 and I located a quantity of contraband inside the console,
6 center console immediately to the right of the driver.

7 Q Could you identify that photo for me.

8 A This is a photograph of a white powder substance
9 believed to be cocaine at the time. It's located in the
10 overhead console of the, to the right of the driver in the
11 overhead.

12 Q Does that photograph fairly and accurately represent---

13 A Yes, sir.

14 Q ---what actually was there that day?

15 A Yes, sir.

16 SOLICITOR SPIVEY: Your Honor, at this point I'd move
17 it into evidence.

18 THE COURT: Any other objections other than previous
19 objections?

20 MR. HARRIS: No, Your Honor.

21 THE COURT: All right. I'd make the same ruling. It
22 may be admitted.

23 Please have it marked.

24 (WHEREUPON, the photograph was marked as State's
25 Exhibit No. 8 and received into evidence at this time.)

Roger Luther - Direct examination
by Solicitor Spivey

1 Q Take a look at that document for me.

2 Can you identify that document?

3 A Yes, sir.

4 Q And what is that document?

5 THE COURT: Just one second. Let her get it marked.

6 SOLICITOR SPIVEY: I'm sorry, Your Honor.

7 THE COURT: Have you finished now?

8 COURT REPORTER: Yes, sir.

9 THE COURT: Okay. Go ahead.

10 Q This is the contraband that was discovered in the
11 center console and immediately to the right where the driver
12 would be sitting. It's a quantity of pink tablets, two pill
13 bottles, and it's a piece of paper there.

14 Q Does that particular photograph fairly and accurately
15 predict or, excuse me, fairly and accurate represent what
16 was there that night?

17 A Yes, sir.

18 SOLICITOR SPIVEY: Your Honor, I move it into evidence
19 at this point.

20 MR. HARRIS: Same.

21 THE COURT: The same objection?

22 MR. HARRIS: Yes, sir.

23 THE COURT: All right. I'll make the same ruling. It
24 will be admitted and marked.

25 SOLICITOR SPIVEY: Thank you, Your Honor.

Roger Luther - Direct examination
by Solicitor Spivey

1 (WHEREUPON, the photograph was marked as State's
2 Exhibit No. 9 and received into evidence at this time.)

3 THE COURT: You may proceed.

4 Q Can you identify that document for me?

5 A Yes, sir.

6 Q What is?

7 A This is a photograph of additional stuff that was found
8 inside the center console to the right of the driver. It's
9 gonna be a baggy, baggy, some type of plastic bag, a white
10 envelope, and a spiral binder, a spiral binder, notebook.

11 Q Does that fairly and accurately represent what was
12 there that night?

13 A Yes, sir.

14 SOLICITOR SPIVEY: Your Honor, I'd move it into
15 evidence at this point.

16 THE COURT: Any objection?

17 MR. HARRIS: This -- Your Honor, my objection's
18 continued to these.

19 THE COURT: Well, now---

20 MR. HARRIS: Any---

21 THE COURT: ---previous objections had to do with the
22 video.

23 Any -- what are the objections to this?

24 MR. HARRIS: Well---

25 THE COURT: This is not a video photograph.

Roger Luther - Direct examination
by Solicitor Spivey

1 MR. HARRIS: May we come up, Your Honor?

2 THE COURT: Please do.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: All right. Subject to prior objections,
6 same ruling. I'll admit the document. You may have it
7 marked.

8 SOLICITOR SPIVEY: Thank you, Your Honor.

9 (WHEREUPON, the photograph was marked as State's
10 Exhibit No. 10 and received into evidence at this time.)

11 Q Now, look again at that photo.

12 Is there a glove in that photo?

13 A Yes, sir.

14 Q All right. whose glove is that?

15 A That's my glove.

16 Q So, that's your hand in that glove?

17 A That's my hand.

18 Q Okay. Did you find these items that are in that photo?

19 A I found the items that were located in the center
20 console to the immediate right of the driver. The overhead
21 console I believe was actually found by Investigator Ferris.

22 Q Okay. Was a notebook found in that console?

23 A Yes, sir, it's right here.

24 Q Okay. I'm gonna show you what's been marked as State's
25 Exhibit 5. If you could, take a look inside of that outside

Roger Luther - Direct examination
by Solicitor Spivey

1 plastic bag and, and see if you can identify those items
2 inside of there.

3 A These are gonna -- physically identify them as to what
4 they are?

5 Q No.

6 Are those, those items you found in the console?

7 A Yes, sir.

8 Q Okay. And how do you know, how do you know that?

9 A As indicated in the photographs there. This is a
10 quantity of tablets. This is a quantity of tablets, and
11 this is a quantity of tablets, and those are the two pill
12 bottles.

13 Q Thank you.

14 I'll have you open it. Just tear into that envelope
15 for me.

16 A (Witness complies.)

17 Q Can you identify what is, what is in there?

18 A This is gonna be the spiral notebook that's located in
19 this photograph here in the center console to the right of
20 the driver.

21 Q And after you took that notebook, what did you, what
22 did you do with it?

23 A Ultimately it was placed into evidence, but we, we, we
24 looked in it and realized the writing that there was.

25 Q Okay. Did you put it into evidence or did you hand it

Roger Luther - Direct examination
by Solicitor Spivey

1 to somebody else?

2 A Dan Swad recovered the actual contraband from the
3 vehicle and the initial custody of all the contraband from
4 the vehicle.

5 Q So, these pills as well, you didn't put those into
6 evidence?

7 You gave them to---

8 A No, sir, once I located them, I informed Investigator
9 Swad where they were at and he, in turn, photographed where
10 they were laying and he physically took the items into his
11 custody --

12 Q Okay.

13 A -- including the notebook.

14 SOLICITOR SPIVEY: Your Honor, at this point we'd move
15 just the notebook into evidence.

16 THE COURT: Objections?

17 MR. HARRIS: Your Honor, I object on multiple grounds.
18 I, I -- maybe we restate those if the Court pleases or wait
19 till a break and put it on the record or whatever the Court
20 wishes.

21 THE COURT: Well, I'm gonna ask the jury to step back
22 to the jury room. Don't begin any discussions until I've
23 asked you to do so.

24 Thank you very much.

25 (WHEREUPON, the following takes place outside the

Roger Luther - Direct examination
by Solicitor Spivey

1 presence of the jury.)

2 THE COURT: Mr. Harris, you may state your grounds for
3 your objections.

4 MR. HARRIS: Thank you, Your Honor.

5 As to the, what's been referred to as the ledger with
6 writing, Your Honor, there were multiple grounds for
7 objection.

8 First of all, the defendant objects as to the
9 introduction of this item of evidence on 403, Rule 403
10 grounds, that the probative value is substantially
11 outweighed by unfair prejudice. We separately make an
12 objection Under 403 under the language that the evidence
13 would tend to mislead the jury. The purpose for that ground
14 is, at least at this point in time, there's been no evidence
15 presented as to what this item of evidence is, what it
16 constitutes, who wrote, who put the writing in the book,
17 what the writing means.

18 There's been no connection made to this defendant at
19 all. Nobody's ever seen this defendant with this booklet in
20 his possession looking at it, referring to it. There's been
21 nothing that indicated his knowledge of its contents,
22 nothing about the origin of the document itself, and,
23 without that, the jury is left just simply merely to wonder
24 what it is.

25 THE COURT: I'll -- well, Mr. Spivey, tell me what your

Roger Luther - Direct examination
by Solicitor Spivey

1 response is to the objection.

2 SOLICITOR SPIVEY: Yes, Your Honor.

3 Earlier I tried to put in a, a photograph in which I
4 was going to have the officer describe the substance of the,
5 the photograph. You had asked me to actually enter into as
6 a, an exhibit prior to doing that. And, so, I was doing the
7 same here.

8 He's, he's -- our next few questions are gonna be what
9 that means. He's already said it's found in the car with
10 the defendant. I think that ties it to the defendant as,
11 you know, as closely as the drugs are tied to the defendant.

12 THE COURT: All right. Mr. -- well, generally we don't
13 allow a witness to publish the contents of a writing unless
14 the contents is admissible. Otherwise it gets in without
15 being admitted. So, that was the purpose in my handling
16 that in that fashion. I'll be glad to handle that in the
17 same fashion.

18 The way to cure that is with a proffer. So, if you'd
19 like to ask him questions as to the importance of the
20 document or whatever he thinks those indications mean.
21 That's the only way I can properly weigh whether its
22 probative value outweighs its prejudicial effect. So, you
23 may ask him questions and make a proffer concerning the
24 book.

25 SOLICITOR SPIVEY: Thank you, Your Honor.

Roger Luther - Direct examination
by Solicitor Spivey

1 CONTINUED DIRECT EXAMINATION

2 BY SOLICITOR SPIVEY:

3 Q Please take a look at the ledger. Describe it for me.

4 A It's a page containing names, numbers. It's got some
5 peculiarities about it like the words Tabs, Perk, and Pill
6 Lady.

7 Q Okay. I'm gonna ask you to look just at one particular
8 line.

9 Can you read that, that area right there, what that
10 says?

11 A It says Lynn, 150 marked up to 35/Wednesday 125, three
12 or four, 125 in pills.

13 Q 125 in pills.

14 Okay. Let me ask you about, again, about your training
15 and experience as a narcotics officer.

16 In your experiences and training is it common to find
17 documentation of, of drug dealing?

18 A Yes, sir.

19 Q Describe the kinds of documents you would find.

20 A They manage to keep track of their money, their
21 quantity of drugs through written form, media form, on
22 computer, electronic form as a means to account for their
23 product and/or their proceeds from the product.

24 Q Okay. Have you ever found any on notebook paper or a
25 piece of paper that looked similar to that?

Roger Luther - Direct examination
by Solicitor Spivey

1 A Yes, sir, they're usually rather crude.

2 Q Okay. What does the word Tab mean in your experience
3 and training as a law enforcement officer?

4 A It's a street slang for Lortab.

5 Q Okay. What does the word Perk mean in your experience
6 and training as a law enforcement officer?

7 A Street slang for Percodan or Percocet.

8 Q Okay. If you look at some of the names on there, doe
9 any of those appear to be nicknames?

10 A Yes, sir.

11 Q Okay. It is common for drug dealers to deal with
12 people not using their own name?

13 A Yes, sir, it protects their identity.

14 Q Okay. In your opinion as a law enforcement officer,
15 particularly a narcotics officer for numerous years, what is
16 that document?

17 A It's a drug ledger for funds received, ingoing and
18 outgoing, and request for product, contraband.

19 SOLICITOR SPIVEY: Your Honor, that---

20 THE COURT: All right. I'll allow Mr. Harris to
21 cross-examine.

22 CROSS-EXAMINATION

23 BY MR. HARRIS:

24 Q The, the writing that has been produced, it's one page
25 of writing, would you agree?

Roger Luther - Cross-examination
by Mr. Harris

- 1 A Yes, sir.
- 2 Q was there anything else in the booklet?
- 3 A I don't recall without opening the envelope in
4 question.
- 5 Q Okay. well, aside from that, do you know whose
6 handwriting this is?
- 7 A No, sir.
- 8 Q Do you know particularly if it was Mr. Jackson's
9 handwriting?
- 10 A No, sir.
- 11 Q would you agree that there appears to be two different
12 styles of handwriting?
- 13 A Yes, sir.
- 14 Q written in -- one in -- one style of handwriting
15 written in darker colored ink and the other, the, the, in
16 particular the last two entries, in lighter colored ink?
- 17 A Yes, sir.
- 18 Q Do you have any idea who wrote this document---
- 19 A No, sir.
- 20 Q ---who made this writing?
- 21 A No, sir.
- 22 Q Do you know when it was made?
- 23 A No, sir.
- 24 Q Do you know if it was made within ten days of the date
25 it was seized?

Roger Luther - Cross-examination
by Mr. Harris

1 A No, sir.

2 Q Do you know if it was made within five years of the
3 date it was seized.

4 THE COURT: He's already said he doesn't know who wrote
5 it or when it was written. So, let's move along. Ask ten
6 years, 20 years, 50 years, he said he doesn't know when it
7 was written.

8 Q And you are stating an opinion based on some supposed
9 expertise that this has to be documentation of drug
10 transactions or intended drug transactions to the exclusion
11 of every other explanation?

12 A Basing it on my experience in 12 years of drug
13 enforcement, this appears to be a drug ledger.

14 Q All right. As in terms of the four substances that
15 were supposedly found in the, the gray Dodge, do you find
16 any evidence in this list to substantiate that the purpose
17 of this list is connected with the possession of those
18 drugs?

19 A Do you want me to clarify something that a chemist does
20 as far as the actual contraband?

21 Q Well, you believe that there was, there was found four
22 street drugs, is that correct?

23 A Yes, sir.

24 Q I'm asking you does this list have any connection with
25 those substances?

Roger Luther - Cross-examination
by Mr. Harris

1 A Pills were mentioned several times in the list along
2 with Tabs and Perk. Perk is a generic term. That could be
3 percolator.

4 Q Can you find, even in your expertise, can you find
5 anything in this list that would indicate or, or at all a
6 recordation of any transaction in the past or contemplated
7 transaction for the distribution of methamphetamine?

8 A No way of telling as it's written.

9 Q And can you find anything in this list, in your
10 expertise, that would have any relationship to powdered
11 cocaine?

12 A No way of telling as it's written.

13 Q So, it would only -- it would have limited significance
14 to you in your expertise as to prescription drugs that were
15 found in the car?

16 A Prescription drugs are mentioned on here as pills, in
17 the form of pills.

18 MR. HARRIS: That's all I have, Your Honor. Thank you.

19 THE COURT: Anything further?

20 SOLICITOR SPIVEY: None, Your Honor.

21 THE COURT: Mr. Harris, I'll hear from you.

22 MR. HARRIS: Your Honor, under 403, and just as a
23 matter of, of pure relevance to this defendant and the
24 allegations being made against him in the four indictments
25 at trial, we believe that any probative value is far

Roger Luther - Cross-examination
by Mr. Harris

1 outweighed by prejudice. We do believe it, it is the type
2 of evidence that is capable of misleading a jury in the
3 sense that it is alleged to be evidence that somebody at
4 some point in time in the history of the world made some
5 documentation of a past or a contemplated transaction, but
6 we don't know which.

7 So, in the sense that it's so broad and capable of that
8 kind of interpretation, it has, would have the tendency to
9 mislead the jury.

10 Beyond that, Your Honor, it is clear, from the
11 cross-examination of the witness during the proffer, that if
12 it is to be introduced by the State as evidence of intent to
13 distribute, it can only relate, in a limited fashion with
14 this case for the indictments for prescription drugs because
15 the witness admits, even in his---

16 THE COURT: But those are in front of this Court at
17 this time. We're trying those cases.

18 MR. HARRIS: But the -- well, yes, true. But the
19 reason I, I state the grounds is, here again, the jury could
20 be misled because they have to make separate findings based
21 on separate evidence for each of the four indictments, and,
22 and I'm not sure how---

23 THE COURT: I thought your cross-examination clearly
24 spelled out the fact that he admitted it only would have
25 application for prescription drugs.

Roger Luther - Cross-examination
by Mr. Harris

1 MR. HARRIS: Well, we think it's a matter of threshold
2 admissibility. It has too much capability to mislead the
3 jury---

4 THE COURT: I understand that's your position.

5 MR. HARRIS: ---and to confuse the issues.

6 THE COURT: Thank you.

7 MR. HARRIS: Thank you.

8 THE COURT: Hear from the State.

9 SOLICITOR SPIVEY: Yes, Your Honor, I -- and I may of
10 misheard, but I thought he said that he couldn't tell for
11 sure what those other entries were and---

12 THE COURT: He said -- well, he said he couldn't say
13 they were cocaine.

14 SOLICITOR SPIVEY: He can't say it's cocaine or
15 methamphetamine.

16 THE COURT: That's right.

17 SOLICITOR SPIVEY: But he can't exclude it either.
18 It -- we argue that it is extremely probative to show intent
19 to distribute. As to whether they belong to Mr. Jackson or
20 not, they were found in the same console beside the pills.

21 THE COURT: Well, that's gonna be a question for
22 possession of the drugs.

23 SOLICITOR SPIVEY: Yes, Your Honor, and I think---

24 THE COURT: There were no -- this is not a case where
25 drugs were found in his pocket.

Roger Luther - Cross-examination
by Mr. Harris

1 SOLICITOR SPIVEY: Yes, Your Honor, and it's a
2 constructive possession case. I would argue that if, for
3 the same reason that we should be able to present to the
4 jury that he had constructive possession of the pills, we
5 should also be able to say he acted in constructive
6 possession of this ledger.

7 THE COURT: I'm gonna overrule the objection as I, as I
8 have done previously, but now we're based on further
9 testimony, and I will find that the probative value does
10 outweigh any prejudicial effect. Any possible confusion was
11 clearly pointed out to me in the cross-examination that,
12 that this would only specifically refer, only specifically
13 refers to drugs in pill form or tablet form or I'm not sure
14 whether Tabs means Lortabs or tablets. I'm not sure, but
15 anyway. And all, all evidence is arguable as to its
16 importance or its weight, and whether or not it's arguable
17 as to whether or not the defendant even had possession of
18 the drugs or this ledger.

19 Those are all questions that a jury's gonna have to
20 determine. It was found in a location with the drugs and a
21 vehicle under his control. So, I'm gonna allow it in.

22 SOLICITOR SPIVEY: Thank you, Your Honor.

23 THE COURT: Anything further before we bring the jury
24 back from the defense?

25 MR. HARRIS: No, Your Honor.

Roger Luther - Cross-examination
by Mr. Harris

1 THE COURT: From the State?

2 SOLICITOR SPIVEY: Nothing, Your Honor.

3 THE COURT: Bring the jury back.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: The record will reflect the jury has
7 returned to the courtroom.

8 I've overruled the objection.

9 You may proceed.

10 SOLICITOR SPIVEY: Thank you, Your Honor.

11 Did you---

12 THE COURT: I am going to admit the book into evidence.
13 So, if you want to go ahead and have it marked you may.

14 SOLICITOR SPIVEY: Thank you, Your Honor.

15 (WHEREUPON, the notebook was marked as State's Exhibit
16 No. 11 and received into evidence at this time.)

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR SPIVEY:

19 Q Let me ask you a few more questions about your
20 experience and training.

21 How many years did you say you worked in, you worked
22 in, in drug enforcement?

23 A Twelve years.

24 Q Okay. In your experience, did you -- how many drug
25 dealer cases have you dealt with?

Roger Luther - Direct examination
by Solicitor Spivey

1 MR. HARRIS: Objection to the form of the question,
2 Your Honor, it's --.

3 THE COURT: I'll sustain the objection. Ask that it be
4 rephrased.

5 Q Tell me about the types of cases you've worked.

6 A I've worked street level drug cases as far as nickel,
7 dime buys all the way up to the trafficking level cases and
8 hooking, vice.

9 Q In those cases did you ever find anybody who had
10 written down transactions?

11 A Yes, sir.

12 Q Okay. Describe what you would find.

13 A Individuals involved with the trade, through the trade,
14 usually they maintain some type of recordkeeping up with
15 such items such as income, out go as far as currency,
16 amounts on hand, amounts needed, both contraband needed,
17 whatever type of contraband they're involved with.

18 Q Okay. What form did those writings take?

19 A They take crude forms as in a piece of notebook paper,
20 pencil, all the way up to advanced forms, electronic media
21 stored on computer.

22 Q Do people who deal in narcotics, do they use nicknames?

23 A They do.

24 Q Even with the people they deal with, they might not be
25 known by their real name, but a nickname?

Roger Luther - Direct examination
by Solicitor Spivey

1 A Yes.

2 Q Okay. In your experience and training, what does the
3 word Tab mean or Tabs?

4 A Tabs could mean a number of different things. It can
5 be street slang for the term Lortab, which is a Scheduled
6 III controlled narcotic. It could be short for tablet
7 meaning any type of pill.

8 Q Okay. What about the word Perk, P-E-R-K?

9 A P-E-R-K, based on my experience, in my opinion, that
10 would be referred to as either Percodan or Percocet, which
11 is also a controlled substance.

12 Q Okay. Let me ask you to take a look at the exhibit
13 there.

14 Just describe to us what, what it, what it says.

15 A It's a one page document containing names, numbers,
16 number, amounts. It's got some, some nicknames on here, and
17 peculiar items of interest, it has terms such as 34 Tabs, 15
18 Perk, three or four with 125 in pills, and an individual
19 identified here as Pill Lady.

20 Q Okay. In your experience and training, what is that
21 document?

22 A In my opinion that's, that's a drug ledger.

23 Q Okay. And what is, what is a drug lawyer -- ledger
24 like this one?

25 What do you think this keeps a record of?

Roger Luther - Direct examination
by Solicitor Spivey

1 A This is gonna be person, amounts owed, money, owing the
2 dealer money amounts, how many pills they want, how many
3 they're gonna buy, and that's basically it.

4 Q Okay. Thank you.

5 Your Honor, I have no further questions at this time.

6 THE COURT: You may cross-examine.

7 MR. HARRIS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. HARRIS:

11 Q Investigator, it's -- so, it's my understanding that
12 you and Investigator Swad with the Spartanburg County
13 Sheriff's Department were leaving the county jail on
14 California Avenue and going toward the intersection of
15 California Avenue and Asheville Highway when this
16 investigation started, is that right?

17 A We were in the area of that intersection. I don't know
18 if we had just left the jail, but we had circled a couple
19 times. We ended stationary in the parking lot of Advance
20 Auto across the street.

21 Q Uh-huh. (Affirmative).

22 And you were watching a gray Dodge Magnum to see if
23 anything wrong happened?

24 A Yes, sir.

25 Q Any crime occurred, right?

Roger Luther - Cross-examination
by Mr. Harris

- 1 A Yes, sir.
- 2 Q But none did, did it?
- 3 A Nobody approached the vehicle.
- 4 Q Well, no, sir.
- 5 My question is no crime occurred, did it?
- 6 A Did not approach the vehicle. Nothing.
- 7 Q In your trained and vast expertise, you're so sure you
- 8 were going to see a crime happen right in front of your very
- 9 eyes and nothing happened, is that right?
- 10 A Nothing happened.
- 11 Q But that doesn't stop you, did it?
- 12 Did it?
- 13 A No, sir.
- 14 Q So, you were so fascinated with this gray car that you
- 15 took the extraordinary step of calling a deputy sheriff,
- 16 patrol officer, to find whatever reason could be found to
- 17 pull over this car instead of allowing it to go on its way,
- 18 is that right?
- 19 A Yes, sir.
- 20 Q So, you basically just targeted this car for a shake
- 21 down?
- 22 A No, sir.
- 23 Q Is that correct?
- 24 A No, sir.
- 25 Q You deny that?

Roger Luther - Cross-examination
by Mr. Harris

1 A I do.

2 Q That's exactly what happened though, isn't it?

3 A No, sir.

4 Q Now, you, curiously enough, say that you, when you were
5 following in behind Deputy Daniel you didn't see any tag
6 light violation?

7 Do I understand that correctly?

8 A I didn't.

9 Q You did not see a tag light violation, correct?

10 A I did not.

11 Q And you didn't see any swerving either, correct?

12 A Not from my position.

13 Q But you had instructed Deputy Daniel to find a reason
14 to stop the gray car, right?

15 A I did.

16 Q And, so, the gray car was stopped, is that right?

17 A It was.

18 Q Now, during all of this time, apparently you or
19 Investigator Swad had a camera available to you, is that
20 right?

21 A We had a photographic camera. Not a video camera.

22 Q No, I understand.

23 You had a camera?

24 You took some of these photographs that have been
25 marked into evidence, right?

Roger Luther - Cross-examination
by Mr. Harris

1 A Investigator Swad took them.

2 Q Okay. Well, you were with him, right?

3 A I was there.

4 Q Y'all were both doing the surveillance, is that
5 correct?

6 A Yes, sir.

7 Q Did you take any pictures of this suspicious vehicle
8 parked at the Kangaroo Convenience Store?

9 A The camera wouldn't of been equipped to do so.

10 Q Did you take any photographs of any other activities
11 that you say goes on at the Kangaroo---

12 A No, sir.

13 Q ---Store?

14 Have y'all ever told the owners of the Kangaroo Store
15 that they are, you know, basically right in the midst of a
16 crime wave?

17 A I haven't spoken to the owners of the Kangaroo, no,
18 sir.

19 Q So, you, as a Spartanburg County sheriff's
20 investigator, supposedly thinking or believing that the
21 Kangaroo Convenience Store is a hot bed of crime and
22 wouldn't even dare to tell the owner of the business that
23 he's right in the middle of a hot bed of crime?

24 A That would be the regional lieutenants issue. Not
25 mine.

Roger Luther - Cross-examination
by Mr. Harris

1 Q Or could it just be that it's not a hot bed of a crime?

2 A That's a matter of opinion.

3 Q That's right.

4 You believe that is it a "high crime area," is that
5 right?

6 A Yes, sir.

7 Q But you've brought to the court absolutely no facts to
8 document your belief, is that right?

9 A Other than personal experiences on the, on the
10 property.

11 Q Uh-huh. (Affirmative).

12 You think you were involved one time, at some point in
13 time that you can't describe, in a prostitution arrest?

14 Is that, is that your testimony?

15 A That, among other things, yes.

16 Q Uh-huh. (Affirmative).

17 Okay. I think you said some traffic violations?

18 A Yes, sir.

19 Q Yeah.

20 Tag lights?

21 A I don't remember the specifics. You're talking about
22 a---

23 Q Could it be tag lights?

24 A ---five year span.

25 Q Yeah.

Roger Luther - Cross-examination
by Mr. Harris

1 Is there just a, a bad problem in Spartanburg County,
2 high, high incidents of improperly displayed tag lights that
3 you know of?

4 A It's not unusual. It's not unusual.

5 Q Yeah.

6 So, the vehicle gets stopped. You've entered some
7 photographs showing that obviously, at some point, a dog was
8 brought out there for the purpose of searching the car, is
9 that right?

10 A Yes, sir.

11 Q And are you aware that that was because the driver of
12 the car, who turned out to be Mr. Jackson, denied that there
13 were any drugs, that he knew that there were any drugs in
14 the car, is that right?

15 A I knew he had refused consent, yes, sir.

16 Q Well, he, he first was asked and denied that he knew,
17 had any knowledge of drugs in the car, is that correct?

18 A I wasn't present for that.

19 Q And then he was asked can we search the car and he
20 exercised his Constitutional right not to have it searched,
21 is that right?

22 A That had already occurred prior to.

23 Q But that, that didn't stop y'all. Y'all went ahead and
24 just got a dog out there to run around the car to see what
25 you could find, right?

Roger Luther - Cross-examination
by Mr. Harris

1 A At the request of Deputy Daniel I requested our
2 narcotics dog.

3 Q And I'm just curious if, if you were present when
4 supposedly the dog alerted on the car I believe is the words
5 you said.

6 You were present for that, right?

7 A Yes, sir, on the opposite side of this vehicle in this
8 photograph.

9 Q Okay. And you went inside the vehicle, you, yourself?
10 You said you have a glove hand in there, is that right?

11 A Yes, sir.

12 Q Okay. And you've stated that you were retrieved or
13 found some items in, in this console of this vehicle, is
14 that right?

15 A Yes, sir.

16 Q And those items allegedly, as you've said, were in some
17 pill bottles---

18 A They are.

19 Q ---I believe?

20 And whose prescriptions are those?

21 A The -- some of the items were contained in a black
22 plastic bag --

23 Q Uh-huh. (Affirmative).

24 A -- which I don't see in that --

25 Q Okay.

Roger Luther - Cross-examination
by Mr. Harris

1 A -- and an envelope, which I don't see in that bag
2 either.

3 Q Okay. So, the way that you found what was in the
4 console was that at least some of the items, these items
5 that are in this bag here, were actually in a black bag, is
6 that right?

7 A Black plastic bag.

8 Q I mean you couldn't see through the bag to see what was
9 in there?

10 A No, sir.

11 Q They were in a black bag and then they were in some
12 other bags---

13 A In some envelopes.

14 Q ---is that right?

15 Okay. So, there wouldn't be any way to know what's in
16 the black bag unless you looked in the black bag, is that
17 right?

18 A Correct.

19 Q Well, what was in the black bag, what was in the
20 console were, among other things, two prescription pill
21 bottles, is that right?

22 A I can't recall exactly what was in what as far as what
23 was in the envelope, what was in the bag, and where the pill
24 bottles were laying.

25 Q I'm asking you what was in the console.

Roger Luther - Cross-examination
by Mr. Harris

- 1 You said you---
- 2 A The pills.
- 3 Q ---you've got the glove hand in there?
- 4 A The pills, the pill bottles, the black bag, and the
5 envelope.
- 6 Q All right. And whose prescription---
- 7 A Inside the---
- 8 Q Whose prescription are the pill bottles?
- 9 A Andrea Geter.
- 10 Q Andrea Geter.
- 11 Okay. Not Mr. Jackson?
- 12 A No, sir.
- 13 Q And is it correct that the car belonged to Andrea
14 Geter?
- 15 A That's correct.
- 16 Q So, Andrea Geter had, in her car, in the console of her
17 car, wrapped up in a black plastic bag, prescriptions for
18 pills, is that correct?
- 19 A That's an assumption. I can't say that.
- 20 Q You can't say that. I thought you said you found it.
- 21 A I found Andrea Geter's pill bottles.
- 22 Q Okay.
- 23 A I don't know who packaged them.
- 24 Q Well, now, you're a detective, aren't you?
- 25 A Andrea Geter wasn't present on scene.

Roger Luther - Cross-examination
by Mr. Harris

1 Q You're, you're a detective, aren't you?

2 A I am.

3 Q Okay. And you investigate possible crimes, is that
4 right?

5 A Yes, sir.

6 Q And sometimes when you find things that you believe are
7 evidence you follow-up on, to do a thorough investigation,
8 don't you?

9 A Yes, sir.

10 Q Yeah.

11 And, so, did you -- you didn't do any follow-up
12 investigation in this case, did you?

13 A Andrea Geter wasn't present.

14 Q You didn't go to the Walgreen's Pharmacy and look at
15 their records, did you?

16 A No, sir.

17 Q So, you have no way to be able to tell this jury if
18 these are legitimate prescriptions for Andrea Geter or not?

19 A No, sir.

20 Q Because you didn't do any follow-up investigation,
21 right?

22 A Not with the pill bottles, no, sir.

23 Q On your list, the booklet, little booklet, is it --
24 taking your -- just for purposes of the question, taking
25 your testimony that, in your opinion, you believed that this

Roger Luther - Cross-examination
by Mr. Harris

1 could be evidence of either past drug transactions or
2 contemplated drug transaction, is that correct?

3 A Yes, sir.

4 Q But you don't know which one?

5 A No, sir.

6 Q You -- even in your expertise, you can't discern
7 whether these, this writing relates to something that's
8 happened in the past or something that somebody thinks might
9 happen in the future---

10 A That -- no, sir.

11 Q ---is that right?

12 And for that matter, if these things happened in the
13 past, you have no idea how far in the past they may have
14 happened, is that right?

15 A Correct.

16 Q I mean they -- these things could relate to things that
17 happened a year before this search took place, is that
18 right?

19 A There's no way to establish that.

20 Q There's no, no way to know, right?

21 A There's no dates on the pages, no, sir.

22 Q All right. There's -- you don't know -- at least you
23 do not know who wrote this, these things in this book, do
24 you?

25 A No, sir.

Roger Luther - Cross-examination
by Mr. Harris

- 1 Q You don't know when they were written?
- 2 A No, sir.
- 3 Q Is that right?
- 4 And when you say you think, you believe, you believe
- 5 you know what they mean, that's -- you're just going on what
- 6 you believe, is that right?
- 7 A Based on what I've observed in the past 12 years---
- 8 Q Yes, sir.
- 9 A ---investigating narcotics.
- 10 Q You've never been wrong?
- 11 You've never been wrong?
- 12 A I've been wrong.
- 13 Q Yeah.
- 14 So, in this list you've stated various things that --
- 15 you think the word Tabs could relate to Lortab, is that
- 16 right?
- 17 A It could.
- 18 Q Do I understand that correctly?
- 19 A Yes, sir.
- 20 Q Lortab is a pill?
- 21 A It's a pill, yes, sir.
- 22 Q Perk, you -- P-E-R-K you think might refer to a drug
- 23 known as Percocet or Percodan?
- 24 A Yes, sir.
- 25 Q All right. By the way, do you, do you point an

Roger Luther - Cross-examination
by Mr. Harris

1 accusing finger for possession of Percodan in this case?

2 A NO, sir.

3 Q You didn't find anything -- I know you're not a lab
4 person, but you didn't find anything that even you believed
5 was Percodan, is that right?

6 A Based on what we know from lab reports, there was no
7 Percodan or Percocet.

8 Q Okay. There's nothing -- is it true that there's
9 nothing on the list in the book that would be any sort of
10 reference whatsoever to methamphetamine?

11 A No, sir.

12 Q And there's nothing on the list that would be any kind
13 of reference whatsoever to powder cocaine, is that right?

14 A Correct.

15 Q Even taking your belief, the only thing the list refers
16 to are prescription drugs?

17 A Pills, yes, sir.

18 Q Thank you. No further questions.

19 THE COURT: Yes, Mr. Spivey.

20 SOLICITOR SPIVEY: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR SPIVEY:

23 Q Let me ask you about the source of prescription drugs.
24 How do they get into the market plates?

25 A Legally?

Roger Luther - Redirect examination
by Solicitor Spivey

1 Q Illegally?

2 A Illegally, people obtain their prescriptions---

3 MR. HARRIS: Your Honor?

4 Your Honor, I have to object to the relevance of this
5 question. The question was how do you think drugs get into
6 the stream of commerce. I don't---

7 SOLICITOR SPIVEY: May we approach for a moment, Your
8 Honor?

9 THE COURT: Please do.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Objection's overruled.

13 You may proceed.

14 Q How do illegal pills get into the stream of commerce?

15 A They come in in multiple avenues. Most -- I would say
16 99 percent of them are legally obtained, and then turned
17 around and resold by that individual to someone else
18 involved in the actual distribution of them. They can be
19 pilfered through pharmacies through what's called a
20 diversion for people that work inside pharmacies. They
21 basically steal them or they can be stolen during robberies.

22 Q Okay. If they're legally obtained, what does that
23 mean?

24 A They're usually with some sort of or it's gonna be with
25 a doctor's prescription.

Roger Luther - Redirect examination
by Solicitor Spivey

1 Q And, so, you could have that prescription and even a
2 pill bottle and those would be valid, correct?

3 A Excuse me. I don't understand.

4 Q The, the finding someone selling pills with a valid
5 pill bottle or prescription on it, is that out of the usual?

6 A That's rather common.

7 Q Okay. Let me ask you this. Look, look back at the
8 ledger.

9 Look at the entries that do not have pills or Perk or
10 Tab on it.

11 A Uh-huh. (Affirmative).

12 Yes, sir.

13 Q Do they just have a name and a number?

14 We can't tell what those relate to, can we?

15 MR. HARRIS: Objection to leading.

16 THE COURT: Sustained.

17 Q Can you tell what those relate to?

18 A Not in their current form. It's gonna be a name and/or
19 nickname and/or a number.

20 Q It could be any item?

21 A It could be anything.

22 Q Could it be cocaine?

23 A It could be.

24 Q Could it be methamphetamine tablets?

25 A Could be.

Roger Luther - Recross examination
by Mr. Harris

1 SOLICITOR SPIVEY: Your Honor, no further questions at
2 this time.

3 THE COURT: You may recross.

4 RECROSS EXAMINATION

5 BY MR. HARRIS:

6 Q You could of done something to try to trace the source
7 of these prescriptions, but you just didn't do it, did you?

8 A No, sir, I didn't. The prescription bottles were valid
9 in Andrea Geter's name.

10 Q You could of gone to the doctor issuing them, but you
11 didn't do it?

12 A No, sir.

13 Q Could of gone to the pharmacy and asked, but you didn't
14 do it?

15 A No, sir.

16 Q So, there will always be a doubt about it then, right?

17 A No, sir.

18 Q Not in -- you don't believe there is any?

19 A No, sir.

20 Q You don't believe there is?

21 A I have no doubt.

22 Q Okay. Thank you.

23 No further questions.

24 THE COURT: You may step down.

25 The State may call its next witness.

Joe Ferris - Direct examination
by Solicitor Spivey

1 SOLICITOR SPIVEY: Joe Ferris.

2 JOE FERRIS, having been first duly
3 sworn, testified as follows:

4 THE COURT: State your name once you're seated.

5 WITNESS: Joseph Lathum Ferris.

6 THE COURT: Mr. Spivey, your witness.

7 SOLICITOR SPIVEY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR SPIVEY:

10 Q Please state your experience and training.

11 A I have a little over 17 years experience in law
12 enforcement. Of the 17 years, a little over ten years in
13 narcotic investigation. I'm also the K-9 handler for the
14 narcotics unit with the Spartanburg County Sheriff's Office.

15 Q How long have you been at the Sheriff's Office?

16 A February of 2002.

17 Q What did you do---

18 A It was---

19 Q What did you do before then?

20 A Actually worked at the City of Spartanburg, and for
21 roughly five and a half years, and three years of that was
22 in narcotics.

23 Q Okay. Now, how long have you been working in narcotics
24 altogether?

25 A Altogether, roughly a little over ten years.

Joe Ferris - Direct examination
by Solicitor Spivey

1 Q Okay. Tell me about your dog.

2 A Have a black lab. His name is Sawyer. We obtained him
3 through Enforcement K-9's out of Wilmington, North Carolina,
4 which trains police K-9's and military K-9's.

5 Q Okay. Tell me about some of that training.

6 A The training we went through is we are a single purpose
7 narcotics detection team. He is trained to alert on odors
8 of marijuana, cocaine, crack cocaine, heroin, and
9 methamphetamine.

10 Q Tell me about how your dog actually lets you -- how,
11 how -- when you go and work Sawyer, how do you do that?

12 A Several different things I look for when I'm working
13 him. He will give physical clues that he is in odor.
14 Sometimes he'll close his mouth and smell in a rapid
15 fashion. I consider a, like a typewriter. Just a real
16 quick smell. He's actually -- he will actually get in
17 places where he will do what I call a sneeze, and he'll blow
18 out, and, my training, that is telling us he is clearing his
19 noseway to get a better sense of what the odor he is in, and
20 his final response is a sit. He is what we call a passive
21 alert K-9.

22 Q Okay. And what is he alerting to?

23 A The presence of odor, a narcotic odor.

24 Q Because he does it all through his nose?

25 It's all odor?

Joe Ferris - Direct examination
by Solicitor Spivey

1 A Yes, sir.

2 Q Okay. Tell me about your training with Sawyer on a
3 regular ongoing basis.

4 A We get certified through the national, I mean North
5 American Police Working Dog Association once a year. We do,
6 as a K-9 team at the Sheriff's Office, we train every
7 Wednesday, and then I do additional one to two days a week,
8 as case load allow, training. Just me and him and the
9 investigators in our office. Usually it's four to six hours
10 a week in training with him.

11 Q All right. Tell me about the night on November 29th.
12 where were you that evening?

13 A I was driving on John B. White Senior Boulevard
14 approximately right at Daniel Morgan Avenue, which a
15 landmark would be the Beacon.

16 Q Okay. Do you remember what time of night that would of
17 been?

18 A Right around 9:00.

19 Q Okay. And after that time, where, what, what happened?

20 A I got a call from Sergeant Roger Luther, which is
21 another supervisor in the narcotics unit stating that they
22 had a vehicle stop and would like for me to bring my K-9 and
23 do a free air sniff around the vehicle.

24 Q Okay. What did you do then?

25 A Told him I'd be right on the way.

Joe Ferris - Direct examination
by Solicitor Spivey

1 Q Did you proceed to the, to the area?

2 A Directly there.

3 Q Okay. Once you arrived, what did you do?

4 A I actually saw Mr. Jackson standing in front of a
5 police vehicle. I walked up to him and introduced,
6 introduced myself, told him what my duty was there, and
7 asked him if there's any reason my K-9 would alert on the
8 vehicle.

9 Q What did he?

10 A He said no, it should not be.

11 Q Okay. What did you do then?

12 A Went and got my K-9 out of my vehicle, and went to the
13 front of his vehicle and started at that point.

14 Q Okay. Take a look at that exhibit there on the desk.
15 It's been moved into evidence.

16 Can you just describe to us what that is?

17 A This is, of course, the traffic stop on the scene, and
18 just below Mr. Jackson's right arm, as you're looking at it
19 from this direction, you can see my K-9 in the background in
20 the sitting position.

21 Q Okay. What exhibit is that?

22 A Seven.

23 Q Okay. So, that is a picture of your dog sitting?

24 A Yes, sir.

25 Q And what, in your experience and training, does that

Joe Ferris - Direct examination
by Solicitor Spivey

1 mean to you?

2 A That when he---

3 MR. HARRIS: Your Honor, I -- at this time I, I object
4 and renew my objection on the Fourth Amendment grounds to
5 this line of questioning going forward.

6 THE COURT: The objection is noted. My rulings would
7 be the same. I'll allow him to testify.

8 You may proceed.

9 A When K-9 Sawyer comes to his final response, which is a
10 sit position, it tells me that he in the presence of a
11 narcotic odor.

12 Q Okay. Did you participate any, any in the search?

13 A Once I -- from this specific position here in this
14 picture I moved my K-9 around to the driver's door and
15 allowed him inside the vehicle. What I, what that purpose
16 is for is to see if he could pinpoint exactly where the odor
17 was coming from inside the vehicle. At that point I
18 directed him inside that vehicle through the driver's door.
19 He went directly to the center console, started sniffing the
20 center console. He then went over to the passenger seat,
21 turned around, faced me, and come to a final response, which
22 is his sit, and looked at me waiting for his reward.

23 Q Okay. I show you State's Exhibit 8.

24 Can you identify that?

25 A Yes, I can.

Joe Ferris - Direct examination
by Solicitor Spivey

1 Q Okay. And please tell us what it is.

2 A That's gonna be a plastic baggy with a white powder
3 substance that was in the upper sunglass holder right above
4 the center console.

5 Q Okay. Were you the person who found that?

6 A Yes, sir.

7 Q Okay. What did you do with it after you found it?

8 A Left it there, never touched it. I just opened the --
9 you, you can touch the sunglass holder and it just rolls
10 open automatically. I popped it open. When I seen the
11 plastic baggy, I let Investigator Dan Swad know that that
12 was there.

13 SOLICITOR SPIVEY: Okay. Your Honor, at this point I
14 have no further questions.

15 THE COURT: Your witness, Mr. Harris.

16 CROSS-EXAMINATION

17 BY MR. HARRIS:

18 Q So, your testimony is that when you arrived on the
19 scene there were many other police officers there, is that
20 right?

21 A There were other police officers there.

22 Q All right. And you went up to Mr. Jackson, that man
23 there?

24 A Yes, sir.

25 Q And asked him was there any drugs in the car, is that

Joe Ferris - Cross-examination
by Mr. Harris

1 right?

2 A No, sir, I did not ask him that question.

3 Q What did you ask him?

4 A I informed him why am I, why I was there, and then I
5 asked him if there was any reason my K-9 would alert on his
6 vehicle.

7 Q And he said no?

8 A He said there should not be.

9 Q It should not be.

10 A Yes, sir.

11 Q Okay. So, he denied any knowledge of any drugs in the
12 car?

13 A He said it should not be.

14 Q Well, he denied knowledge of any drugs, right?

15 A That was his answer, it should not be.

16 Q Okay. But your dog you say alerted on the passenger
17 side door, correct?

18 A Yes, sir.

19 Q And you took the dog around to the driver's side and
20 opened the door and sent the dog in on the, on the driver's
21 side?

22 A Yes, sir.

23 Q Why didn't you send the dog in on the passenger's side
24 where the, the alert was?

25 A Cause once he alerted on the outside of the vehicle,

Joe Ferris - Cross-examination
by Mr. Harris

1 when he sits and he gives me his final response, and he
2 sits, he's waiting on a reward, I then reward him, which is
3 a -- basically a toy. He works for a toy. Gave him his
4 toy, played with him a little bit basically showing him that
5 responding to his good job of him finding what I believed to
6 be an odor that he come into. And as we're doing that, we
7 move to the front of the vehicle, around out of that part of
8 the odor, and I let him in the driver's side.

9 Q So, my question to you is though, sir, if, if the dog
10 alerted on the passenger side, why didn't you just open the
11 passenger door and send him, send the dog in on that side,
12 on the passenger's side?

13 A And my answer to you, sir, was I started playing with
14 him cause that's his reward is a play. So, once we start
15 playing with him, we moved out of that lane of traffic cause
16 both lanes of traffic were still opened at that time. We
17 moved around to the front of the car. We want a little
18 protection cause it's a toy and it bounces, and we moved
19 around to that side, and I just brought him around to the
20 driver's door to let him out to get him out of that source
21 of odor.

22 Q So, do I take it from your answer that it was not so
23 the camera could show you going in on the driver's side
24 where Mr. Jackson had been driving the car --

25 A I have no control over the camera.

Joe Ferris - Cross-examination
by Mr. Harris

1 Q -- to make it look like there was something on the
2 driver's side rather on the passenger's side.

3 A I had no control over the camera, sir.

4 Q Oh, I know you weren't running the camera.

5 You knew it was there thought, right?

6 A Knew it was there. I didn't have no control where your
7 defendant stood.

8 Q Well, Mr. Jackson was nowhere near the gray Dodge
9 Magnum, was he, when you were doing your dog search?

10 A He was within about ten feet.

11 Q Well, he was being -- he was standing at the very front
12 of Deputy Daniel's car with several other police officers,
13 was he not?

14 A Yeah, within about ten feet of his vehicle.

15 Q So, I mean he wasn't close to his car?

16 A If you consider ten feet close he was close.

17 Q Well, what do you believe is close enough to be able to
18 gain access to the car?

19 What is your belief?

20 A My belief with -- if he was within ten feet of it he
21 was close to his vehicle.

22 Q That's your belief?

23 A Yes, sir.

24 Q And could the jury trust that belief as much as any
25 other opinion you've stated?

Joe Ferris - Cross-examination
by Mr. Harris

1 A They could form their own opinion of how close ten feet
2 is.

3 Q You weren't breaking eye contact with me just then,
4 were you?

5 A I was talking to the jury.

6 MR. HARRIS: Okay. No further questions.

7 THE COURT: Yes, Mr. Spivey.

8 SOLICITOR SPIVEY: Your Honor, I don't have any further
9 questions.

10 THE COURT: Thank you. You may step down.

11 WITNESS: Thank you.

12 THE COURT: State may call its next witness.

13 SOLICITOR SPIVEY: Dan Swad.

14 THE COURT: Come forward, sir, and be sworn.

15 DAN SWAD, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please. Once seated, state
18 your name please.

19 WITNESS: My name is Dan Swad.

20 THE COURT: Mr. Spivey, your witness.

21 SOLICITOR SPIVEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY SOLICITOR SPIVEY:

24 Q Please state your experience and training.

25 A I've been with the Sheriff's Office, Spartanburg County

Dan Swad - Direct examination
by Solicitor Spivey

1 sheriff's Office about 30 years. About 15 of those years
2 were or are as a narcotics investigator. Bachelor's Degree
3 in Business from Carolina, the basic academy, Criminal
4 Justice Academy, and multiple narcotics investigative
5 schools both basic and advanced. Other investigative
6 things, arson, just numerous training.

7 Q How, how many years was it, have you been with the
8 sheriff's Office?

9 A Right around 30 years.

10 Q Okay. How long have you -- how long -- how many of
11 those years were in narcotics?

12 A Right at 15.

13 Q Okay.

14 A In different segments. Five at one time, eight at
15 another, and just about a year ago I went back to narcotics.

16 Q What were you doing before you went back to narcotics?

17 A Immediately before I was, I did about six years in the
18 training division. Basically take on new deputies, come to
19 me on the first day, and until they are ready to be, they
20 were ready to be released on the road by themselves I
21 supervise their training.

22 Q Do you ever do any part-time work?

23 A Yes, sir, during the period when I was in training the
24 jail had a need for more people. They were running short.
25 They allowed deputies to go over there and work after their

Dan Swad - Direct examination
by Solicitor Spivey

1 shift at the Sheriff's Office.

2 Q Where is the jail located?

3 A At 950 California Avenue here in Spartanburg.

4 Q Okay. While you were working part-time in the jail,
5 what were your observations about the Kangaroo Gas Station
6 at the corner of California Avenue and Asheville Highway?

7 A Well, remember I've got prior experience in narcotics
8 and vice investigation years before. When I would leave the
9 jail it would usually be around midnight, eleven, twelve
10 o'clock, whenever they had enough people to staff that
11 shift. I'd pull out of the jail, turn left, go to the
12 intersection of Asheville Highway and California Avenue.

13 The red light there is kind of extended if you're on
14 California Avenue. It lets the traffic on Asheville Highway
15 travel. I would observe activities over this corner at the
16 Kangaroo. I would see people meeting people late at night.
17 There's two pay phones over there, and it's not a very well
18 lit area.

19 The, the parking lot itself over in front of the store
20 is lit where the gas pumps are where people go in and out of
21 the store, but over here on the right-hand side, if you're
22 facing the store, it's dimly lit. Just, you know, I'd leave
23 there two or three times a week, and, you know, every so
24 often I'd see, you know, somebody on a, in a vehicle pull
25 up, meet somebody. There was one time a moped pulled up,

Dan Swad - Direct examination
by Solicitor Spivey

1 the guy was sitting on the curb in front of the pay phones.
2 He stands up, they meet each other, and they park and leave.
3 It's not a regular area of the business for the store.

4 Q Okay. What were your suspicions when those people were
5 meeting each other?

6 A Well, that, and based on prior information, you know,
7 having been in narcotics, this is a, a, a area where drug
8 transactions are facilitated.

9 Q Okay. All right. Tell me about November 29th.

10 A Myself and Sergeant Luther had been to the jail on
11 California Avenue. We went up there to meet somebody or
12 talk to somebody.

13 As we were leaving, I was driving, he was in the
14 passenger seat, and I was telling Sergeant Luther, I says,
15 you know, I have to make time to come up here and sit and
16 watch this area, and I related the incidents that I just
17 related to you-all about what I observed and that I wanted
18 to come up there and sit and watch and see what was going on
19 up there, and I pointed over towards the pay phones, which
20 are closer to the building, but about 30 feet away, he
21 pointed, and he pointed, and he said you mean like that, and
22 he pointed at the Dodge Magnum. I really hadn't even
23 focused on that and didn't see it. He pointed it out to me
24 because it was backed in and sitting in the shadows. You
25 could just really barely see it unless you were looking

Dan Swad - Direct examination
by Solicitor Spivey

1 directly at it.

2 So, instead of turning right to go towards the office I
3 went straight across when the light let us. Went straight
4 across and looked over at it, and Sergeant Luther actually
5 had to point out to me that there was somebody sitting in
6 it. The windows were very tinted. I couldn't even see that
7 there was a person sitting in it, and he said, you know,
8 there's somebody sitting in it and he said they're even on
9 the phone.

10 So, we made a couple laps around the block, different
11 directions coming and going, and finally decided we were
12 gonna sit up in the parking lot and sit there and watch them
13 and see what happened.

14 Q Okay. What happened after that?

15 A Well, shortly after we stopped and parked Sergeant
16 Luther had contacted Deputy Daniel and told him what, you
17 know, we were looking at. The car pulled out and went up
18 the Asheville Highway, and that's when Deputy Daniel stopped
19 the vehicle.

20 Q Okay. Was your car that you and Roger Luther were in,
21 where were you in relationship to Deputy Daniel's car and
22 the defendant's car?

23 A After the stop?

24 Q Prior to---

25 A Prior to---

Dan Swad - Direct examination
by Solicitor Spivey

1 Q ---and after.

2 A Well, we were in a, the alternator shop. There's a
3 little alternator, vehicle alternator vehicle repair shop
4 there and we pulled out after he went by and were behind --
5 we were, we were behind the vehicle.

6 Q Okay. Did you see the, if the tag was light, the tag
7 light was out?

8 A I -- no, I don't recall observing that. I -- we
9 weren't that close. It wasn't like we were bumper to
10 bumper. We were, I don't know, a distance off.

11 Q Okay. Could you see if he swerved?

12 A No, sir, wasn't, wasn't watching for that.

13 Q Okay. After the stop was made, what, what occurred?

14 A Observed Deputy Daniel get the individual out, place
15 him at the front of the vehicle, the vehicle. There was
16 some conversation I overheard on the Nextels. Sergeant Joe
17 Ferris contacted me on the Nextel, and said Dan, what do
18 y'all have, and I told him, I said there's a Mr. Kenneth
19 Odell Jackson. Asked him was he familiar with him.

20 MR. HARRIS: Objection.

21 THE COURT: Yes, sir, I'm listening.

22 MR. HARRIS: I don't think the, what the witness
23 apparently is getting ready to say or was said to him would
24 be relevant evidence.

25 THE COURT: You're objecting on the grounds of

Dan Swad - Direct examination
by Solicitor Spivey

1 relevance?

2 MR. HARRIS: I'm objecting on 403 grounds.

3 THE COURT: Well, I'm not sure what the witness was
4 about to say. I have, don't know how he was gonna answer.
5 So, I'll ask the jury to step back to the jury room and not
6 to begin any discussions until such time as I've asked you
7 to do so.

8 You may retire to the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Your belief as to what the witness is about
12 to say?

13 MR. HARRIS: Well, Your Honor, my -- well, my concern
14 is, is that the question and the answer, and I'm not sure
15 that the answer is responsive to the question necessarily,
16 was that it was -- Officer Ferris was going to say something
17 in response to this officer saying are you familiar with
18 Kenneth Jackson. Well, I, I have no information to know
19 what that's going to be. If they're gonna say oh, yeah, we
20 arrested him earlier or---

21 THE COURT: Well, I don't either. So, let's find out.
22 What was he going to say?

23 SOLICITOR SPIVEY: I believe I asked him what happened
24 next and he -- I really don't know what he was gonna say. I
25 don't want to speculate.

Dan Swad - Direct examination
by Solicitor Spivey

1 Please finish what you---

2 THE COURT: Let's let him complete his answer to the
3 question.

4 SOLICITOR SPIVEY: Yes, Your Honor.

5 A Sergeant Ferris asked what do we have, and I told him,
6 you know, that we have Mr. Kenneth Odell Jackson, and, you
7 know, what, did he know him.

8 Q Okay. What, what happened after that?

9 A Well, we responded back to me.

10 Q And what did he say?

11 THE COURT: What did he say?

12 A He told me, he says, he asked he, he says what is he
13 driving, and I described the car, and he said I believe that
14 Paul, meaning Investigator Norris, has a case against him.
15 Actually I believe his response was he has undercover buys
16 on him.

17 THE COURT: Okay. Well, I'm not gonna allow him to go
18 there obviously.

19 SOLICITOR SPIVEY: Yes, sir, Your Honor.

20 THE COURT: So, I'm gonna ask you to terminate that
21 questioning as to that conversation.

22 SOLICITOR SPIVEY: I didn't intend for it to lead
23 there.

24 THE COURT: About where we are.

25 SOLICITOR SPIVEY: Yes, Your Honor.

Dan Swad - Direct examination
by Solicitor Spivey

1 THE COURT: Okay. I'll sustain the objection.

2 MR. HARRIS: Thank you, Your Honor.

3 THE COURT: Bring the jury back.

4 I'll -- just for your planning, we're gonna go till
5 about one o'clock before we break for lunch. So---

6 SOLICITOR SPIVEY: Okay.

7 THE COURT: ---we got about a half hour left.

8 SOLICITOR SPIVEY: Okay.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: The record will reflect the jury has
12 returned to the courtroom. I have sustained the objection.

13 The State may proceed as instructed.

14 SOLICITOR SPIVEY: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR SPIVEY:

17 Q What occurred after the, the car stop?

18 What did you do?

19 A At one point I was called to the -- well, after
20 Sergeant Ferris arrived and ran the dog around it, they
21 indicated they was substance in the car, Sergeant Luther and
22 Sergeant Ferris searched it and showed me where drugs were
23 or substance, a suspicious substance that I was to recover.

24 Q Okay. Is -- this is State's Exhibit 5.

25 A Uh-huh. (Affirmative).

Dan Swad - Direct examination
by Solicitor Spivey

1 Q See if you can identify, not the larger bag, but what's
2 in the smaller bag.

3 A Yes, sir.

4 Q Okay. What is that?

5 A It appears to be a quantity of pills, various pills,
6 what was recovered from the vehicle that evening.

7 Q And you're the person who recovered those items?

8 A Yes, sir.

9 Q Okay. What else is in that bag?

10 A Well, there's two amber pill bottles that you get from
11 a drug store with medicine in them.

12 Q Do you -- this, this particular bag right here --

13 A Yes, sir.

14 Q -- can you identify what that is and where that might
15 of come from?

16 A Small plastic bag of a white powder substance. It was
17 recovered from the sunglasses holder that's on the roof.
18 It's a, like a roof console.

19 Q Okay. What does that appear to be?

20 A White powder, cocaine.

21 Q Okay.

22 A That's what it appears.

23 Q Once you recovered those items, what did you do with
24 them?

25 A Counted the pills. You get a, a temporary, a

Dan Swad - Direct examination
by Solicitor Spivey

1 preliminary weight on the cocaine or on the powder, and then
2 you package them and seal them in an evidence bag and turn
3 it into evidence at the evidence locker at the Sheriff's
4 office.

5 Q All right. Tell me about that bag.

6 A This particular bag?

7 Q Well, the one that you put them in that day.

8 A Well, we referred to it as a B-E-S-T, B.E.S.T. evidence
9 bag. I'm not really sure what it stands for, but it's all
10 capital letters, and, and then it's sealed with a tamper
11 proof seal.

12 Q Okay. Did you mark it in anyway as, as to identify it?

13 A Well, I write my name on it and initial it. Put the
14 date and time.

15 Q Okay.

16 A I signed that I sealed it.

17 Q Did you put a case number on it?

18 A Yes, sir.

19 Q Okay. Does it match the case number with this
20 particular incident?

21 A Yes, sir.

22 Q Okay. What date is on there?

23 A What date?

24 Q Yeah.

25 What date did you write on there?

Dan Swad - Direct examination
by Solicitor Spivey

1 A 1/29/2011.

2 Q Okay. Once you sealed it in that bag what did you do
3 with that bag?

4 A I take it to our evidence room at the Sheriff's Office.
5 This particular time of night it would of been closed. So,
6 we have a drop box, what we call a drop box, and put it in
7 there.

8 Q Okay. Describe that drop box for me.

9 A Well, it's really the shape of a mailbox. Although --
10 if you're familiar with a bank deposit, night depository,
11 where it has a door that opens up, once you put the package
12 in it and drop it, you open it back up, it's not there, you
13 can't get to it, it's locked up.

14 Q Okay. Are those bags, to the best of your knowledge,
15 do you know if they're tamper proof or not?

16 A They're fairly thick plastic, and if you try to open
17 the seal at the top it will show that it's been tampered
18 with.

19 Q Okay. Those, those substances, are they in the same,
20 substantially the same condition as they were on
21 November 29th?

22 A Yes, sir, the one thing is this, these blue pills here
23 were in a bottle.

24 Q They were in the bottle, the blue pills?

25 A In one of these bottles, yes, sir.

Dan Swad - Direct examination
by Solicitor Spivey

1 Q Okay. I'll hand you that.

2 A Uh-huh. (Affirmative).

3 Q Can you identify that?

4 A Yes, sir, it is a picture of cash, United States
5 currency, and a mobile phone, cell phone.

6 Q I made a mistake.

7 Is there a wallet in that as well or if you can't tell,
8 then---

9 A I can't tell. Let me put my glasses on and see a
10 little better. I believe the wallet's kind of covered up by
11 the paper right here.

12 Q Okay.

13 A It sort of looks like -- you can see the edge of it
14 there.

15 Q Does that photograph accurately depict, fairly and
16 accurately depict what you actually saw that night?

17 A Yes, this is, this is sitting on the front seat of the
18 car. This was in the console, and it was placed on the
19 front seat of the car so I could take a photograph of it.

20 SOLICITOR SPIVEY: Okay. Your Honor, at this point I'd
21 move it into evidence.

22 THE COURT: You -- past objections?

23 MR. HARRIS: Well, Your Honor, and, and an additional
24 objection.

25 THE COURT: Yes, sir.

Dan Swad - Direct examination
by Solicitor Spivey

1 MR. HARRIS: And I need to see the photograph.

2 THE COURT: Oh please. Show it to him.

3 MR. HARRIS: Your Honor, in looking at the photograph
4 and if I'm understanding the witness' testimony, this
5 picture shows certain items that were laid out for
6 photographic display by the police. So, I just want to make
7 certain, for the purpose for which this is offered, not as
8 the, the way things were found when the search took place,
9 but as they were laid out---

10 THE COURT: The witness testified that the items were
11 laid on the seat for the purpose of the photograph. That's
12 what he's already testified to.

13 MR. HARRIS: Well, I just wanted to make certain that
14 the, that the State is offering this as a representation of
15 how the police laid things out. Now how they were when they
16 were first discovered.

17 THE COURT: That's been testified to.

18 MR. HARRIS: All right. I just wanted to make certain
19 of that.

20 THE COURT: Any further objection?

21 MR. HARRIS: With that I have no further objection.

22 THE COURT: All right. It will be admitted and marked
23 please.

24 SOLICITOR SPIVEY: Thank you, Your Honor.

25 (WHEREUPON, the photograph was marked as State's

Dan Swad - Direct examination
by Solicitor Spivey

1 Exhibit No. 12 and received into evidence at this time.)

2 Q Take a look at that exhibit and describe what you see.

3 A Again, it's a picture of cash, United States currency,
4 cash, and there's cell phones, a wallet.

5 Q Do you remember how much currency there, there was?

6 A I'd have to refer to my note here. In this wallet,
7 which was found in the console, there was about \$1140.00.

8 Q Okay. Thank you.

9 Do you remember whose wallet that was remember?

10 Do you remember if there was in it---

11 A Yes, sir, it was Mr. Jackson's, Kenneth Jackson.

12 Q And that wallet was found in the console?

13 A Yes, sir, along with the drugs.

14 Q How did you know that wallet was his?

15 A I -- it had documents in it. You know, credit cards,
16 that kind of thing.

17 Q Okay. Did you arrest Mr. Jackson?

18 A Yes, sir, he was arrested that evening.

19 Q When you arrested him did you find anything on him?

20 A Yes, sir, in his pants pocket he also had an additional
21 sum of cash.

22 Q How much cash was there?

23 A \$846 in his right front pocket.

24 SOLICITOR SPIVEY: Okay. Your Honor, at this point I
25 have no further questions of this witness.

Dan Swad - Cross-examination
by Mr. Harris

1 THE COURT: Your witness, Mr. Harris.

2 CROSS-EXAMINATION

3 BY MR. HARRIS:

4 Q Is it correct that, in the search of the vehicle, there
5 was found a Hennessy liquor bottle?

6 A Yes, sir.

7 Q And the liquor bottle was found under or near the front
8 passenger seat?

9 A Yes, sir. Front, yes, sir.

10 Q All right. Was this wallet taken into evidence?

11 A No, sir.

12 Q Is there a photograph of it in the location you say it
13 was found?

14 A I'd have to look at the photographs.

15 Do you have those with you?

16 Q The, the photograph that's been offered as the last
17 exhibit, State's Exhibit 12 --

18 A Yes, sir.

19 Q -- is a posed, a posed photograph, isn't it?

20 A Yes, sir.

21 Q Meaning---

22 A For clarity, yes, sir.

23 Q Yeah.

24 Meaning that it's not a photograph of where the money
25 and the phone was actually found, correct?

Dan Swad - Cross-examination
by Mr. Harris

1 A Yes, sir.

2 Q It's where the Spartanburg County Sheriff's Office laid
3 it out for the purpose of taking a photograph of it?

4 A Yes, sir.

5 Q There's a phone in the picture?

6 A (Witness nods affirmatively.)

7 Q And -- is that correct?

8 You have to answer out loud.

9 A Yes, sir, actually two phones.

10 Q And it's alleged that the driver of the gray Dodge was
11 talking on the phone at the store --

12 A Yes, sir.

13 Q -- is that right?

14 And were investigative efforts made to determine
15 whether any of the names of contacts in the phone were
16 persons that were interviewed later?

17 A We did not, no, sir.

18 Q Well, would it be fair to say that you didn't really do
19 any follow-up investigation?

20 A Follow-up as to who --

21 Q Yeah.

22 A -- he was talking to on the phone, no, sir.

23 Q Okay. Or to match up the contacts in the phone with
24 these names and nicknames and such in this booklet?

25 A No, we did not. They're---

Dan Swad - Cross-examination
by Mr. Harris

1 Q Or---

2 A Like I say, they're nicknames---

3 Q Or---

4 A ---of most of them.

5 Q Or, or, for that matter, nobody went to the Walgreen's
6 Pharmacy to check on Mrs. Andrea Geter's prescriptions?

7 A Well, I did do a little bit of follow-up on that, but
8 not at the drug store.

9 Q Uh-huh. (Affirmative).

10 And you basically took, found, other than the liquor
11 bottle, all of this was supposedly found in the closed
12 console of the car, correct?

13 A The pills. The cocaine was in the sunglasses---

14 Q And there was a quantity---

15 A ---holder.

16 Q ---of cocaine in the closed sunglasses holder?

17 A Yes, sir.

18 Q All right. Thank you. No further questions.

19 THE COURT: Yes, sir, any further questions,
20 Mr. Spivey?

21 SOLICITOR SPIVEY: Your Honor, I don't have any further
22 questions for this witness.

23 THE COURT: All right, sir. You may step down. Thank
24 you very much. .

25 WITNESS: Thank you.

wednesday, July 25th, 2012

THE COURT: All right. We're back on the record in the case of the State versus Kenneth Odell Jackson.

We've had a couple of conferences in my office concerning this matter. During our last conference I was informed by the State that the State is going to drop prosecution on the two charges involving the prescription drugs, that being the possession with intent to distribute Hydrocodone and the possession with the intent to distribute Clonazepam.

Is that a correct statement, Mr. Spivey?

SOLICITOR SPIVEY: Yes, Your Honor.

THE COURT: All right. And defense's position in regard to that?

MR. HARRIS: Your Honor, we, we certainly would not oppose the State's dismissal of two of the four indictments. We accepted dismissal and understand that we would go forward on the other two.

THE COURT: All right. I will inform the jury that, as a result of our, our motion hearings that I conducted yesterday afternoon, that those two charges have been dismissed, and we're proceeding on the two charges that remain and that I will give them additional instructions concerning that matter during the charge.

1 Any objection to my proceeding in that fashion from the
2 state?

3 SOLICITOR SPIVEY: None, Your Honor.

4 THE COURT: Any from the defense?

5 MR. HARRIS: None, Your Honor.

6 THE COURT: All right. Let's bring the jury in.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect the
10 jury has returned to the courtroom.

11 If any juror has had any difficulty in complying with
12 my instructions concerning your behavior during your absence
13 from the courthouse, please stand.

14 (No response.)

15 THE COURT: It appears that all jurors have been able
16 to comply with my instructions in that regard.

17 I will inform you and I told you at the beginning of
18 the trial there would be occasions when I would ask you to
19 leave the courtroom while I had hearings or discussions with
20 the attorneys concerning matters of the admissibility of
21 evidence and things of that nature. That occurred yesterday
22 afternoon.

23 And as a result of those hearings, I will advise you
24 that two of the indictments involved in this case, that
25 would be Indictment 12-GS-42-0825 for the possession with

1 intent to distribute Hydrocodone and Indictment
2 12-GS-42-0826, that is an indictment for possession with
3 intent to distribute Clonazepam, have been dismissed. So,
4 they are no longer issues before you in this case.

5 However, there are two indictments that remain and are,
6 we're proceeding on the trial in regard to those two
7 indictments. That's concerning the possession of cocaine
8 and the possession of, with intent to distribute
9 methamphetamine. So, those two indictments are going
10 forward in this matter.

11 Now, I will give you further instructions in regards to
12 this matter during my instructions on the law. And, so,
13 I'll go over this with you again at that point in time and
14 instruct you as to how you can treat that.

15 Now, when we broke yesterday for those hearings the
16 state was in the process of presenting its evidence.

17 At this time the State may call its next witness.

18 SOLICITOR SPIVEY: Thank you, Your Honor.

19 Beth Stuart.

20 THE COURT: Come forward, please, ma'am, and be sworn.

21 BETH STUART, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please. Once seated, state
24 your name for me.

25 WITNESS: Mary Elizabeth Stuart.

1 THE COURT: Madam Clerk, you may publish the verdict.

2 CLERK: Yes, sir.

3 Case Number 2012-GS-42-0824 and 0827, the verdict as to
4 the Number Indictment 2012-GS-42-0824 for the offense of
5 possession with intent to distribute cocaine, we, the jury,
6 unanimously find that the defendant, Kenneth Odell Jackson,
7 not guilty. And if the defendant not guilty of possession
8 with the intent to distribute cocaine, how does the jury
9 find the defendant with regards to the lesser included
10 offense of simple possession of cocaine, the verdict is
11 guilty.

12 As to Indictment Number 2012-GS-42-0827, for the
13 offense of possession with intent to distribute
14 methamphetamine, we, the jury, unanimously find the
15 defendant Kenneth Odell Jackson, guilty. Signed by the,
16 signed by the foreperson. Dated July the 25th, 2012.

17 Ladies and gentlemen of the jury, is this your verdict
18 and still your verdict, if so, please raise your right-hand.

19 (WHEREUPON, all jurors hands were raised at this time.)

20 CLERK: So say you-all.

21 THE COURT: Thank you.

22 Anything further from the State before I release the
23 jury?

24 SOLICITOR SPIVEY: No, Your Honor.

25 THE COURT: Anything further from the defense?

1 MR. HARRIS: No, Your Honor.

2 THE COURT: All right.

3 (WHEREUPON, the jury panel was released at this time.)

4 THE COURT: Mr. Spivey, are we ready to proceed?

5 SOLICITOR SPIVEY: Yes, Your Honor, we are.

6 THE COURT: All right. If you'll approach the bar
7 please, Mr. Harris and Mr. Jackson please. Right over here
8 in front of the microphone please, Mr. Jackson, if you don't
9 mind.

10 (Parties comply.)

11 THE COURT: All right. Mr. Jackson, you have been
12 found guilty by a jury of your peers of the offenses of
13 possession of cocaine first. That carries up to three years
14 and/or a fine of up to \$5,000. Also you've been found
15 guilty of possession with intent to distribute
16 methamphetamine first. That carries a potential sentence of
17 up to 15 years and/or a fine of up to \$25,000.

18 I'll be happy to hear from your attorney in mitigation
19 concerning sentencing. Once he's completed discussing those
20 matters with me you will have an opportunity to address
21 your, address the Court.

22 Mr. Harris.

23 MR. HARRIS: May it please the Court, Your Honor.

24 Mr. Jackson, as he stands before you, is 44-years of
25 age. He's lived in Spartanburg County all of his life, and,

1 for the last several years, has lived at in
2 Boiling Springs. He has two children and they are, have a
3 wide range in age. He has a 24-year old daughter, and he
4 has a five year old son, and he -- his son is, lives with
5 him he says.

6 In discussing Mr. Jackson's personal situation, he, and
7 I was aware of this recently, he has applied for disability.
8 He apparently has a number of health problems. I think that
9 it's so that he's been a diabetic for, at least a diagnosed
10 diabetic for over 20 years. He admits that he is heavy. He
11 has barely controlled high blood pressure. He's had some
12 orthopedic problems which cause fluid retention and swelling
13 in his ankle and legs which requires him to take Lasix and
14 that sort of thing. So, it -- he has -- I don't know how
15 his disability claim is gonna go now. But he, he has a
16 number of health problems.

17 Your Honor, in reviewing his record, I do not see any
18 prior drug conviction. If there -- but, to be honest, the
19 criminal histories we're receiving these days are getting
20 harder and harder to, to figure out, to read. But I can't
21 discern that he has any prior drug convictions. He, he does
22 have convictions for non-drug related things, and I think
23 one in Federal Court and some other State Court convictions.

24 Of course, in the course of the trial, the Court
25 learned that he had had a DUI or DUAC, something that

1 rendered him to have a temporary license. I think he's had
2 a domestic violence, a simple domestic violence conviction.
3 I'm not aware that he has -- I think -- I believe this would
4 be his first drug conviction.

5 THE COURT: All right. Mr. Jackson, your opportunity
6 to address the court. I'll be happy to hear from you, sir.

7 DEFENDANT: I -- like he said, I'm gonna miss my son.
8 I'm sorry for everything.

9 THE COURT: Anything else you'd like to say?

10 DEFENDANT: No, I just need a second chance. I went to
11 SMC for two years as a culinary chef, a culinary chef. I
12 plan on going back cause in the mean time I didn't have
13 transportation to continue to go. But once I did, I went to
14 federal prison for two years, for a year actually, for a
15 year, and I started going to school, and immediately after
16 then I accomplished my GED while I was in Ashland, Kentucky
17 in the Federal prison. I was there for ten months.

18 I just want the opportunity to just start all over
19 again. Start my life back over again.

20 THE COURT: Thank you, sir.

21 Prior record.

22 SOLICITOR SPIVEY: Yes, Your Honor.

23 1989, false statement to the South Carolina Employment
24 Security Commission.

25 1990 -- that's '89.

1 1996, failure to comply. 1996, driving under
2 suspension.

3 1998, criminal domestic violence.

4 2000, public disorderly conduct.

5 2001, simple assault and battery. 2001, shoplifting.

6 2003, shoplifting.

7 2008, a Federal possession of a weapon by a convicted
8 felon charge, which I believe he's still on probation for.

9 Your Honor, he also has a couple pending charges in our
10 office. The prior distribution of Lortab charge, which was
11 discussed at the suppression hearing, and there is our child
12 neglect charges. I'm not entirely familiar with the facts
13 of that case, but I---

14 THE COURT: Well, I'm not gonna consider anything that
15 has not been convicted yet. I---

16 SOLICITOR SPIVEY: Yes, Your Honor.

17 THE COURT: I'm aware of the one charge simply because
18 of our hearings during the trial. But I won't consider that
19 in sentencing.

20 SOLICITOR SPIVEY: Yes, Your Honor.

21 THE COURT: Anything else, Mr. Jackson?

22 Anything else you'd like to say to me after hearing
23 what the solicitor had to say?

24 DEFENDANT: No, sir, Your Honor.

25 THE COURT: Do you know how much time he has served on

1 this charge already?

2 I know I had him for a couple days now.

3 Did he serve any before?

4 MR. HARRIS: When he was in -- I haven't checked it,
5 Your Honor.

6 Did you, did you serve anytime when you were first
7 arrested on this charge?

8 DEFENDANT: I think two days at the most.

9 MR. HARRIS: Two days.

10 THE COURT: I'll give credit for four days then.

11 MR. HARRIS: Thank you, Your Honor.

12 THE COURT: Mr. Jackson, it's the Sentence of the
13 Court, on the possession with intent to distribute
14 methamphetamine, the Sentence is ten years suspended to
15 service of four with probation for three. I've given you
16 credit for time served. I've run it concurrent with the
17 other sentence, which is three years run concurrent.

18 Good luck to you, sir.

19 MR. HARRIS: Thank you, Your Honor.

20 SOLICITOR SPIVEY: Thank you, Your Honor.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

23

24

25

12-GS-42-0824

DOCUMENT

FILED

WITNESSES

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

2012 FEB 29 PM 1:53

M. HOPE BLACKLEY

SPTBG CO SHERIFF'S OFFICE

1. SERVICE MADE

2. REPORT FILED

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS
ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

ASSIGNMENT AND

A4756811

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date

FEB 23 2012

VERDICT

Guilty For possession of
cocaine.

Foreperson of Petit Jury
Date 7/25/12

COURT OF GENERAL SESSIONS

TERM

THE STATE
VS.

KENNETH ODELL JACKSON

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE

SC Code: 44-53-370

SEP-04-2012 14:01 From:FILE ROOM

596 3600

To:803 734 1397

P.1/4 279

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

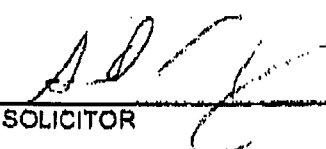
INDICTMENT

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Kenneth Odell Jackson did in Spartanburg County on or about November 29, 2011 manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine, a schedule II controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

P.4/4

To: 803 734 1397

596 3600

SEP-04-2012 14:02 From: FILE ROOM

SPTBG CO SHERIFF'S OFFICE

1. SENTENCE MADE *Compute*

2. REPORT ENDED *Compute*

3. CASE FILES

4. INDEXED ARREST WARRANT NUMBER *Compute*

5. CHECKED WARRANTS DIRECT INDICTMENT *Compute*

6. CHECKED SIGNATURE *Compute*

7. ASSESSMENT AND FINE CARD MADE *Compute*

8. TRAFFIC VIOLATION COPY *Compute*

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

FEB 23 2017

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 7/25/12

DOCKET NO.

12-GS-42-0827

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

KENNETH ODELL JACKSON

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
CRACK COCAINE OR METHAMPHETAMINE

SC Code: 44-53-375

CDR Code:

Class MIS/A

2012 FEB 29 PM 1:54

12-10-12-0011

281

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

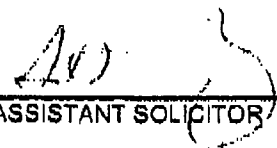
INDICTMENT

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Kenneth Odell Jackson did on November 29, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

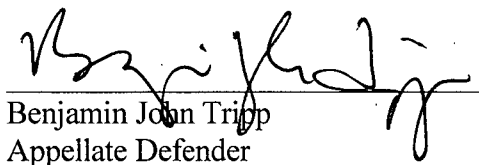


ASSISTANT SOLICITOR

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."

December 9th, 2013



Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED
DEC 09 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

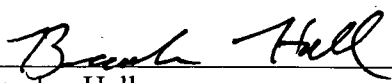
KENNETH ODELL JACKSON,

APPELLANT

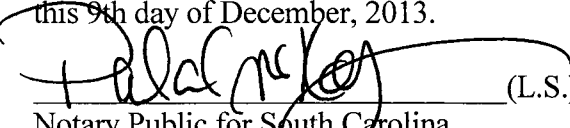
APPELLATE CASE NO. 2012-212700

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.