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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICO GREEN,

APPELLANT

APPELLATE CASE NO. 2013-000441

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2011-GS-29-01228 to 1230
5

6 State of South Carolina

7 vs.

8 Rico Green
9
10

11 Lancaster, South Carolina

12 February 11, 2013 Motion Hearings

13 Before the Honorable Brooks P. Goldsmith
14

15 APPEARANCES

16 For the State: Bill Nowiki

17 For the Defendant: William Frick
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
25

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1 MR. NOWIKI: Your Honor, this is State versus Rico
2 Green, it is a 2011-GS-29-1227, trafficking in cocaine base
3 ten to 28 grams. We have 2011-GS-29-1228, which is
4 trafficking in cocaine ten to 28 grams, and then
5 2011-GS-29-1229 is a possession of a firearm during the
6 commission of a violent crime, and 2012-GS-29-1230 which is
7 possession of a firearm by a person convicted of a violent
8 crime. We have two motions from the defense, one being a
9 suppression hearing and the other being a Jackson v. Denno
10 hearing. And the State is prepared to go forward.

11 THE COURT: Mr. Frick?

12 MR. FRICK: And Your Honor, I don't know how you want
13 to proceed on that. Just to give you a little idea of what
14 happens is there is a traffic stop, a passenger in the
15 vehicle runs out of the vehicle, not my client, he's the
16 driver. The passenger is caught soon thereafter, has some
17 drugs and a gun on him and then my client gives a statement
18 that claims the drugs but not the gun so that's why we're
19 talking about a suppression hearing and then a Denno
20 hearing. I think they may be two separate matters, I think
21 if we went forward on the suppression hearing then the Denno
22 hearing would be moot, that's my logic on it. If I'm not
23 successful on the suppression hearing I think he would then
24 need a Denno hearing. Out of judicial economy if you want
25 to do both of them at the same time I don't know that I have

1 a strong objection to that but I'm just saying in my mind I
2 think they are two separate matters.

3 THE COURT: Solicitor, as far as your presentation does
4 it make any difference to you?

5 MR. NOWIKI: No, it doesn't. We can do -- we can start
6 with the suppression hearing, and -- but, I mean, it's
7 basically the same officers.

8 MR. FRICK: It is, and that's where I understand --

9 THE COURT: Why don't we just do it all at one time,
10 then we will rule on it separately.

11 MR. NOWIKI: Okay.

12 MR. FRICK: Okay.

13 The witness, TONY BOWERS, was first duly sworn
14 and testified as follows, on:

15 DIRECT EXAMINATION

16 BY MR. NOWIKI:

17 Q. Will you state your full name, please?

18 A. Tony Bowers.

19 Q. And where are you employed?

20 A. I work for the Lancaster County Sheriff's Office in the
21 drug task force.

22 Q. And how long have you been doing that?

23 A. I've been in the sheriff's office since 2001, been
24 working narcotics since 2007.

25 Q. Now, on August 4th of 2011 did you have an opportunity

TESTIMONY OF TONY BOWERS

1 to be involved with defendant Rico Green?

2 A. I did.

3 Q. And can you tell us how that started, or how it came
4 about that you got involved with him?

5 A. I received a phone call about some possible drug
6 activity going on at Good Time Charlie's on West Meeting
7 Street in Lancaster.

8 Q. What phone -- what was the phone -- or let me go back,
9 who was the call from?

10 A. I got a call from a gentleman named Phillip Jones.

11 Q. And what did you learn from that conversation?

12 A. Just some basic information. His wife was employed at
13 Good Time Charlies as a bartender, that there was a
14 gentleman there from out of town that had a large amount of
15 cocaine in his possession.

16 Q. Based on that information what did you do?

17 A. I notified the rest of the drug task force, at that
18 time Investigator Rollins and Lieutenant McLemore, of the
19 phone call I received, went to the area and set up
20 surveillance just to kind of watch the bar.

21 Q. What was the name of the bar?

22 A. Good Time Charlies.

23 Q. Do you know where that is located?

24 A. It's at the intersection of Memorial Park Road and West
25 Meeting Street just inside the city limits of Lancaster.

TESTIMONY OF TONY BOWERS

1 Q. In Lancaster County, right?

2 A. Yes.

3 Q. How long were you doing surveillance?

4 A. I wasn't there long. I did notice when I initially
5 pulled up to do surveillance there were three cars in the
6 parking lot and I got the license plate off two of them, one
7 of the cars didn't have a license plate. The two that did
8 have a license plate I ran them, one came back to a Crystal
9 Jones, the bartender, the initial source of information that
10 was passed on. The other car came back from McAdenville
11 Motors out of Gastonia, a North Carolina plate so I assumed
12 it belonged to the other person that was there. While
13 watching the location I saw a white male subject come out,
14 white T-shirt, shorts, flip flops, on the phone, he came out
15 twice I think it was, went back into the door. There didn't
16 appear to be anybody else inside, I couldn't see anything
17 but based on the vehicles in the parking lot it didn't
18 appear that anybody else was there. I saw a black Charger
19 pull into the parking lot.

20 Q. Well, that's good. You had mentioned that the white
21 male, he had went in a couple of times?

22 A. Yes. He came out, was on his cellphone and went back
23 in and he came back out a second time and went back in.

24 Q. And then a black Charger came up?

25 A. Yes.

TESTIMONY OF TONY BOWERS

1 Q. Do you know like a timeframe from when the white male
2 went in from the last time until he came out?

3 A. Maybe five minutes.

4 Q. I'm sorry, before the Charger shows up.

5 A. About five minutes.

6 Q. All right. Once -- what happened when the black
7 Charger got there?

8 A. There were two black males occupying the Charger,
9 driver and passenger, the driver made contact with the white
10 male that I saw come out of the bar. They met in the
11 parking lot, had some short conversation and went inside
12 together and the passenger stayed inside the Charger and
13 never got out.

14 Q. What time did this all occur?

15 A. It was around 6:30 p.m.

16 Q. Was the white male and the black male, did they go in
17 the main entrance of the bar?

18 A. They did.

19 Q. And did they come out of that entrance?

20 A. They did.

21 Q. What happened after that? Did the black male and the
22 white male come out or just the black male?

23 A. I just remember the driver of the Charger coming back
24 out. He stayed in there about ten minutes when he and the
25 white male went inside of the building.

TESTIMONY OF TONY BOWERS

1 Q. All right. Well, when he came out what did he do?

2 A. He got back in the Charger and pulled out of the
3 parking lot, I followed him, I notified the rest of the drug
4 team that I saw him leave the location and I followed him
5 down Memorial Park Road.

6 Q. How long were you behind him?

7 A. I followed him down Memorial Park Road to where
8 Timeouts was located, he was making a left on Springdale
9 Road when I made the traffic stop.

10 Q. Why did you initiate a traffic stop?

11 A. I made a stop on the vehicle for a license plate
12 violation, it had a white tag on the back of the car that
13 said -- it was a paper tag and I believe it had Carolina
14 Rent A Car written on it. I initiated a stop because the
15 statute says there has to be a expiration date on a newly
16 purchased or acquired vehicle written on the tag and there
17 was no expiration date, there was no temporary plate issued
18 by a dealer.

19 Q. Did the black Charger immediately stop?

20 A. It rolled -- I blue-lighted him at the red light, we
21 made a left turn onto Springdale, it rolled about 100 yards
22 and took a right on Small Street. I could see the driver,
23 it appeared to me he was passing stuff off to the passenger.
24 It stopped at the parking lot, I'm not sure of the name of
25 the place, it's a lube and oil on the corner of Small Street

TESTIMONY OF TONY BOWERS

1 and Springdale Road, it pulled up to the edge of it and the
2 passenger jumped out of the vehicle in an effort to run.

3 Q. Did you go after the passenger?

4 A. I didn't. Investigator Rollins and Lieutenant McLemore
5 he went after the passenger, he didn't go far, maybe ten
6 yards. I approached the driver of the vehicle and got him
7 out of the car.

8 Q. And who was the driver?

9 A. Rico Green.

10 Q. Now, did you hear anything or were you -- let me go
11 back. Who was the passenger?

12 A. I believe his name was -- his last name is Jowers.

13 Q. Now, was he already apprehended before you got to speak
14 with Mr. Green?

15 A. This is all going on at about the same time, as they're
16 approaching the passenger I'm going to the driver to get him
17 out of the vehicle.

18 Q. Was there a -- do you know what was found on the
19 passenger?

20 A. I do. It was crack cocaine, cocaine and a gun.

21 Q. Do you know what kind of gun?

22 A. It was a nine millimeter handgun.

23 Q. And do you know the amount of drugs that was found on
24 him?

25 A. I think the preliminary amounts that are in the report

TESTIMONY OF TONY BOWERS

1 that were on the report, not the SLED amounts, was
2 approximately 14.2 grams of crack cocaine and 25.1 grams of
3 powdered cocaine.

4 Q. Now, did you hear Mister -- you said Jowers, right, the
5 passenger?

6 A. Yes, sir.

7 Q. Did you hear him say anything?

8 A. When I got Mr. Green out of the vehicle I put him in
9 investigative custody and handcuffed him because the
10 passenger fled and we were trying to secure the situation
11 and make sure it was safe. When he was apprehended, he
12 looked at me and said, "I found drugs." I looked at
13 Mr. Green and he said something to the effect, "I can't let
14 him take the fall for that, that's my stuff."

15 Q. Okay. Now, was Mr. Green mirandized at that point?

16 A. I don't believe he was, he wasn't under arrest. The
17 report says I asked him where did it come from or where did
18 that dope come from or where the drugs came from and he
19 stated that's mine, I bought it from the guy at the bar and
20 at that time he was placed under arrest.

21 Q. Okay. All right. So you placed him under arrest. And
22 at any point in time did you read him his Miranda?

23 A. Referring to the report it didn't say I read him
24 Miranda at the scene. He was read Miranda later on that
25 night.

TESTIMONY OF TONY BOWERS

1 Q. Later on that night?

2 A. Yes.

3 Q. Okay. And do you know when that was?

4 A. I think it was going to be around 11:00 that evening.
5 I got him out of the detention center, gave him a Miranda
6 form, he signed it, we went over it that he understood it
7 and took the statement from him.

8 Q. All right. Can you just tell me what that is?

9 A. That's a Lancaster County Sheriff's Office memoranda
10 warning form for Rico Green.

11 Q. Who is -- is that your signature on it?

12 A. It is my signature on the bottom. Beside each number
13 as I read them to Mr. Green I asked that he initial that he
14 understood them, and then I read him the waiver of rights
15 and asked him if he understood then to sign at the bottom
16 and he did.

17 Q. And you saw him sign it?

18 A. Yes, sir.

19 MR. NOWIKI: At this time I will have this introduced
20 as State's Exhibit 1.

21 MR. FRICK: No objection.

22 THE COURT: All right.

23 (The Miranda form was received as State's 1.)

24 Q. Let me show you this again. Did you go over each one
25 of those items?

TESTIMONY OF TONY BOWERS

1 A. Yes.

2 Q. Can you just go through them now?

3 A. It also has a time on it, I started at 11:06 p.m.

4 Q. So this is -- the Miranda is taken care of. And he did
5 give a written statement?

6 A. Yes, sir.

7 Q. I'm going to show you what has been marked for
8 identification as State's Exhibit 2. Can you tell me what
9 that is?

10 A. That's the statement I took from Rico Green?

11 Q. Does it have a date on it?

12 A. 8-4-2011. It also has a case number that coincides
13 with the case number of the sheriff's office.

14 Q. Did he sign it?

15 A. He did.

16 Q. Did you sign it?

17 A. I did.

18 MR. NOWIKI: I would like to have this introduced as
19 Exhibit 2 for the State.

20 MR. FRICK: No, objection Your Honor.

21 (The statement was received as State's 2.)

22 Q. Now, as far as the statement, did it basically
23 reiterate what you had told us before, that he admitted to
24 the drugs?

25 A. Yes, sir.

TESTIMONY OF TONY BOWERS

1 Q. Now, when you took the statement he knew you were law
2 enforcement, right?

3 A. Yes, sir.

4 Q. You read him his rights. And where did the interview
5 or the statement, where was that taken?

6 A. At the drug task force office in my office.

7 Q. And was he coerced into giving the statement?

8 A. No, sir, he was very cooperative.

9 Q. Anything promised to him?

10 A. No, sir.

11 Q. No force used against him?

12 A. No, sir.

13 Q. Did he ask for anything?

14 A. No, sir.

15 Q. Was he denied anything, use of a phone or --

16 A. No, sir.

17 Q. -- anything like that. And again, the reason for the
18 traffic stop was the tag?

19 A. Yes, sir.

20 MR. NOWIKI: Okay. One moment, Your Honor.

21 (Break in proceedings.)

22 Q. Let's go back to when you're on the street with Rico
23 Green when you made the stop. Did he just blurt out that
24 all of this stuff was his?

25 A. He did. Basically when Lieutenant McLemore notified me

TESTIMONY OF TONY BOWERS

1 that he had found the drugs Mr. Green became -- he just
2 started talking, he said, "That's mine, I can't let him take
3 the fall for that, that's mine." And referring to the
4 report once he was placed in Investigator Rollins' vehicle
5 he said the same thing to him.

6 Q. Did you ask him any other questions at the stop?

7 A. I may have asked him where it came from and he referred
8 to the white guy at Goodtime Charlies.

9 Q. Was that the only thing?

10 A. I believe it was.

11 Q. Okay. And going back to the initial call you got
12 from -- was it a Jones?

13 A. Yes, sir.

14 Q. Can you just say again, I don't know if you did or not
15 I apologize, about the specifics of the phone conversation
16 you had with him as far as what he told you he told?

17 A. He called me, he said that his wife worked at Goodtime
18 Charlies and that she had some information about somebody
19 there had a large amount of cocaine, that it was a white guy
20 from out of town.

21 Q. Later you learned who that was, right?

22 A. Yes.

23 Q. But that was the only thing from the conversation?

24 A. Yes.

25 MR. NOWIKI: That's all of questions I have at this

TESTIMONY OF TONY BOWERS

1 time.

2 CROSS EXAMINATION

3 BY MR. FRICK:

4 Q. Mr. Jones wasn't in the bar.

5 A. No, sir.

6 Q. Hadn't seen anybody in the bar.

7 A. No, sir.

8 Q. He gets a phone call from his wife?

9 A. Yes, sir.

10 Q. And she said there's a white guy selling drugs.

11 A. Yes, sir.

12 Q. A white guy from out of town selling drugs.

13 A. Basically.

14 Q. That's all y'all got.

15 A. That's about it.

16 Q. She didn't say it was a white guy wearing shorts and
17 flip flops, just a white guy.

18 A. Right.

19 Q. And I think we can say Mr. Green is not a white guy.

20 A. That's right.

21 Q. Then y'all get in place, y'all are observing from some
22 other location, correct?

23 A. Yes, sir.

24 Q. No one is in the bar?

25 A. Right.

TESTIMONY OF TONY BOWERS

1 Q. No one sees a transaction between Mr. Green and the
2 white guy.

3 A. Correct.

4 Q. Mr. Green comes back out of the bar after a few
5 minutes, gets in the car and drives off.

6 A. That's right.

7 Q. Y'all follow it.

8 A. Yes, sir.

9 Q. And pull him over for a paper tag.

10 A. Yes, sir.

11 Q. Do you recall, did the paper tag have any name on it?

12 A. Paper tag had Carolina Rent A Car written on it, it
13 didn't have a website or a physical location.

14 Q. Did it say what state Carolina Rent A Car was in?

15 A. It didn't.

16 Q. Didn't say this car was purchased from, just said
17 Carolina Rent A Car on it?

18 A. Just plain white tag, it had Carolina Rent A Car, I
19 believe it was in black letters just written across it.

20 Q. So if that car would have come from North Carolina
21 would that have been legal in North Carolina?

22 A. I'm not sure.

23 Q. Now, getting on to the talking. Y'all executed a
24 traffic stop on the car, that's when the passenger pops out.

25 A. It is.

TESTIMONY OF TONY BOWERS

- 1 Q. And someone went in pursuit of him?
- 2 A. They did.
- 3 Q. What was going on with Mr. Green?
- 4 A. As they were pursuing the passenger I approached the
- 5 car and asked him to step out of the car.
- 6 Q. Clearly you're a law enforcement officer, right?
- 7 A. Yes, sir.
- 8 Q. You've got a blue light going somewhere.
- 9 A. I do. I have a vest on that says sheriff across the
- 10 front.
- 11 Q. Was Mr. Green free to go? If he said he didn't want to
- 12 talk or stay there, would you have let him drive off?
- 13 A. No, sir, he was in investigative detention.
- 14 Q. But not under arrest at that time?
- 15 A. No, sir.
- 16 Q. He gives the statement after his codefendant is caught.
- 17 A. Yes.
- 18 Q. Okay. And some radio traffic comes across that drugs
- 19 are found.
- 20 A. No. We're talking simultaneously from the time he
- 21 exits the car and gets the cuffs on him, the passenger is
- 22 apprehended maybe 10 yards in front of the car. It's all in
- 23 the line of sight, it is all right there together.
- 24 Q. I thought you said something about --
- 25 A. No, we could see each other. Lieutenant McLemore

TESTIMONY OF TONY BOWERS

1 looked at me and said, "I found drugs."

2 Q. So it was audible enough Mr. Green heard that.

3 A. Yes.

4 Q. To your knowledge. I know you can't say what he heard,
5 you would think that he heard it. You heard it.

6 A. Yes.

7 Q. At that point he makes the statement basically that
8 that stuff is mine.

9 A. Yes.

10 Q. Then what happened to Mr. Green?

11 A. I believe at that point he is put in Investigator
12 Rollins' vehicle.

13 Q. Under arrest?

14 A. Well, he is told he is under arrest, he was searched
15 incident to arrest.

16 Q. Find anything on him in the search?

17 A. Marijuana.

18 Q. Placed in handcuffs, put in the Rollins' car?

19 A. Yes.

20 Q. Transported to the jail to be booked?

21 A. Transported by Deputy David Wilkes.

22 Q. And y'all talked to him when he got back to the
23 detention center?

24 A. We talked to him later after the rest of the case was
25 taken care of, went back and I pulled him out of the

TESTIMONY OF TONY BOWERS

1 detention center.

2 Q. The arrest or the traffic stop and the arrest happened
3 about what time?

4 A. I want to say around 6:30 or 6:45, in that ballpark.

5 Q. And it looks like y'all talked to him about 11:00 that
6 night?

7 A. Yes, sir.

8 Q. How do you do your statements? I can't remember, are
9 you one of those that type while he's talking?

10 A. I do.

11 Q. Ask a question, he answers it, you type it?

12 A. Yes.

13 Q. Is there any other videotape or audio recordings from
14 the conversation or anything?

15 A. No.

16 Q. This memorialized the entire conversation?

17 A. No, sir. This is the only statement he gave to law
18 enforcement concerning the case.

19 MR. FRICK: Thank you, sir. I think that's all I've
20 got.

21 THE COURT: Anything else, Solicitor?

22 REDIRECT EXAMINATION

23 BY MR. NOWIKI:

24 Q. Did you talk to DeVaughn Jowers?

25 A. I did.

TESTIMONY OF TONY BOWERS

1 Q. Did you take a statement from him?

2 A. I did.

3 Q. Did he ever say anything about a handgun?

4 A. I would have to refer to the statement. I don't have a
5 copy of the statement, I just have a statement in the
6 sheriff's office report saying I met with him, mirandized
7 him and he gave a written statement concerning his
8 involvement in the case.

9 Q. All right. Do you have any notes or anything from your
10 conversation with him other than the statement?

11 A. No.

12 Q. You've reviewed it?

13 A. I have.

14 Q. Is there anything in there mentioning about a handgun?

15 A. There is.

16 Q. How did Mr. Jowers get the handgun?

17 A. Mr. Jowers, I asked him a question what happened in the
18 vehicle, what did Rico Green do when I initially hit blue
19 lights for the traffic stop. And he stated that he handed
20 him drugs and a gun and he dropped them in his pocket to
21 keep them from falling out.

22 MR. NOWIKI: That's all of the questions I have.

23 THE COURT: Thank you, sir, you may step down.

24 MR. NOWIKI: State will call Brandon Rollins.

25 The witness, BRANDON ROLLINS, was first duly

TESTIMONY OF BRANDON ROLLINS

1 sworn and testified as follows, on:

2 DIRECT EXAMINATION

3 BY MR. NOWIKI:

4 Q. Will you state your full name, please?

5 A. Brandon Rollins.

6 Q. Where are you employed?

7 A. Lancaster County Sheriff's Office.

8 Q. How long have you been employed there?

9 A. Since 2001.

10 Q. And at present time what is your title?

11 A. Currently I'm a training sergeant for the department.

12 Q. At the time of this incident what was your title or
13 responsibility?

14 A. I was an investigator with the drug task for?

15 Q. And you did have an opportunity to become involved with
16 Mr. Rico Green.

17 A. Yes, sir.

18 Q. And on August 4th of 2011.

19 A. Yes, sir.

20 Q. And did you receive any sort of -- were you part of an
21 investigation with Investigator Bowers?

22 A. Yes, sir.

23 Q. Were you present during the surveillance?

24 A. Yes, I was.

25 Q. Were you in your own vehicle?

TESTIMONY OF BRANDON ROLLINS

1 A. I was in my issued vehicle, my sheriff's office issued
2 vehicle, yes, sir.

3 Q. Did you have any part in the traffic stop?

4 A. Yes, sir.

5 Q. What was your role in that?

6 A. Once Investigator Bowers told us that the black Charger
7 had left the location, Goodtime Charlies, we started -- we
8 were sitting in three separate areas and we all started
9 towards him to assist him during the traffic stop. Upon
10 turning at the stop light on Springdale Road Investigator
11 Bowers initiated a traffic stop and I was right behind him
12 when the car pulled over and stopped.

13 Q. Did the vehicle stop -- you were already there when the
14 vehicle had stopped?

15 A. Yes, sir.

16 Q. What did you observe?

17 A. I observed the passenger exit the vehicle and start
18 running up Springdale back towards Highway 200.

19 Q. Were you the one who apprehended him?

20 A. Yes, myself and Lieutenant McLemore, he was pulling up
21 just behind us. I began chasing the passenger, Lieutenant
22 McLemore was right behind me, and as Investigator Bowers
23 said, the passenger ran 10 yards, I ordered him onto the
24 ground and he laid down on the ground at that point in time
25 and was handcuffed.

TESTIMONY OF BRANDON ROLLINS

1 Q. At that point -- let me ask you this, after he was
2 handcuffed what did you do?

3 A. After he was handcuffed we stood him up, he was laying
4 on his stomach on the ground, we immediately stood him up
5 and at that time Lieutenant McLemore observed the handle of
6 the firearm sticking out of his pocket.

7 Q. After the handgun was observed what did you do? Did
8 you search him any or --

9 A. Lieutenant McLemore continued to pat Mr. Jowers down, I
10 was just standing there, and at that time Lieutenant
11 McLemore located the plastic bag sticking out of his other
12 pants pocket and that's when the drugs were found.

13 Q. Do you know if he was legally -- do you know if that
14 was his handgun?

15 A. At that point in time he denied ownership of anything
16 that he had on him at that point in time.

17 Q. While you were dealing with -- you were able to
18 determine it was Mr. Jowers; is that right?

19 A. Yes, sir, DeVaughn Jowers.

20 Q. While you were dealing him did you have the opportunity
21 to hear Mr. Green say anything?

22 A. I did hear Mr. Green state that he couldn't let him go
23 down for that, it was his drugs and his gun, he stated that
24 to Investigator Bowers.

25 Q. Do you know if any other questions were asked of

TESTIMONY OF BRANDON ROLLINS

1 Mr. Green at the scene?

2 A. No, sir, not at that point I do not.

3 Q. Did you ever ask Mr. Green any questions at any time?

4 A. No, sir. Mr. Green was placed in my vehicle and we
5 stood by there until the wrecker came and until the other
6 transport vehicle came, and again while seated in my vehicle
7 Mr. Green stated that it was his drugs and his gun.

8 Q. Was he mirandized at that time?

9 A. Not at that point.

10 Q. Any other conversations with him?

11 A. No, sir, not that I recall.

12 Q. Does he say anything other than that?

13 A. No, sir.

14 Q. Do you know when he was mirandized for the first time?

15 A. I believe it was during the questioning later that
16 night once the rest of investigation was concluded and
17 Investigator Bowers spoke with him and interviewed him.

18 Q. Were you present during that?

19 A. I don't recall. I don't believe I was at that point in
20 time.

21 Q. So when Mr. Green basically claimed that all of this
22 stuff was his as far as the dope, were any questions being
23 asked of him?

24 A. No, sir.

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

TESTIMONY OF BRANDON ROLLINS

1 CROSS EXAMINATION

2 BY MR. FRICK:

3 Q. What happened to the car, Rico Green's car?

4 A. It was towed by Lancaster Motor Company.

5 Q. Did anybody determine whose car it was?

6 A. Yes, sir. During an inventory of the vehicle for tow
7 inventory I located a rental agreement and it was rented
8 from Carolina Rent A Car in Charlotte.

9 Q. Charlotte? So it was --

10 A. I believe so, yes, sir.

11 Q. So it was from North Carolina?

12 A. I know it was from North Carolina.

13 Q. It ain't from Lancaster?

14 A. No, sir.

15 Q. Not even South Carolina. You were involved in the
16 surveillance; is that correct?

17 A. Yes, sir. I was sitting down the road, yes, sir.

18 Q. But as far as receiving the tip and whatnot, you're not
19 involved with that.

20 A. No, sir.

21 Q. Executing the traffic stop other than catching the
22 passenger, I think you were the guy that did that, right?

23 A. Well, me and Lieutenant McLemore.

24 Q. But you weren't the one who cut on the blue light to
25 pull the car over, right?

TESTIMONY OF RYAN MCLEMORE

1 A. No, sir.

2 MR. FRICK: Thank you, sir, that's all of the questions
3 I have.

4 THE COURT: Thank you, you may step down.

5 The witness, RYAN MCLEMORE, was first duly
6 sworn and testified as follows, on:

7 DIRECT EXAMINATION

8 BY MR. NOWIKI:

9 Q. Can you state your full name, please?

10 A. Ryan McLemore.

11 Q. And what is your -- where are you employed?

12 A. Lancaster County Sheriff's Office.

13 Q. And how long have you been employed there?

14 A. Since 1997.

15 Q. What is your current position?

16 A. I'm the supervisor, the lieutenant over the narcotics
17 division.

18 Q. How long have you been doing that?

19 A. I have been in narcotics since 1999, I have been a
20 supervisor for approximately five and a half years.

21 Q. And on August 4th of 2011, did you have an opportunity
22 to get involved with the defendant, Rico Green?

23 A. Yes, I did.

24 Q. And were you part of the surveillance team with
25 Investigator Bowers and Investigator Rollins at that time?

TESTIMONY OF RYAN MCLEMORE

1 A. I was.

2 Q. Were you in your own vehicle?

3 A. I was in the sheriff's office issued vehicle.

4 Q. And were you part of the surveillance on the bar?

5 A. I was in the area. I was actually parked and staged at
6 the Crown Cinema Movie Theater which was right down the road
7 so I didn't actually have visual of the location. I was
8 right close in the vicinity but I couldn't see the bar.

9 Q. And were you involved with the traffic stop of Mr.
10 Green?

11 A. I was a few cars behind him as the traffic stop was
12 made, by the time I pulled up to the traffic stop the
13 passenger had jumped from the vehicle and was being pursued
14 by Sergeant Rollins.

15 Q. Did you observe the passenger get out of the car and
16 run?

17 A. I did. As I was coming around the corner the stop was
18 being made, or the car had actually stopped and I was
19 probably several hundred yards or a block or so away and I
20 actually saw the passenger door open and the guy jump out
21 and run. So I kind went around with my vehicle and jumped
22 out and by that time he had laid down on the ground.

23 Q. Were you ever informed of the reason for the traffic
24 stop?

25 A. Yes.

TESTIMONY OF RYAN MCLEMORE

1 Q. And that reason was?

2 A. As far as I'm concerned, Tony had stated that the
3 vehicle had a tag on it that didn't have any kind of
4 expiration or anything, a issue date to that source, it was
5 just a plain tag stating it was a rental car.

6 Q. And you observed Investigator Rollins with Mr. Jowers,
7 the passenger.

8 A. I did. We got -- he had -- I guess Brandon had given
9 him orders, he had laid down on the ground, by the time I
10 got to him Brandon was putting handcuffs on him and we were
11 both picking him up. When we picked him up I saw the butt
12 of a handgun sticking out of his right pocket.

13 Q. At that time did you ever ask him any questions?

14 A. No.

15 Q. Mr. Jowers?

16 A. No, I was securing the gun.

17 Q. Was he being placed under arrest for that?

18 A. Yes.

19 Q. Did you ever hear Mr. Green say anything?

20 A. I could hear a conversation between he and Investigator
21 Bowers. Once I found the gun I could also see in the left
22 pocket I could see the baggy sticking out. Of course, when
23 I saw the baggies sticking out I went ahead and secured
24 those, it ended up being two bags of what appeared to be
25 cocaine and crack cocaine. I think I held them up and told

TESTIMONY OF RYAN MCLEMORE

1 Investigator Bower, "I found the dope," or, "I've got the
2 dope." At that time I think that's when Rico said, "I can't
3 let him go down for that, that's mine." And at the same
4 time Jowers was pretty much saying, "That's not mine, that's
5 not mine."

6 Q. But that was just something that Mr. Green had just
7 blurted out.

8 A. Yes, sir.

9 Q. No questions were being asked of him or anything.

10 A. No. This had all been happened pretty much within
11 seconds after the stop.

12 Q. And do you know if there were any other questions --
13 I'm sorry. Were there any -- after he blurted that out do
14 you know of any questions that were asked of him?

15 A. The only question that was asked -- I know once I
16 secured the stuff I had I think he was sat back down in
17 Investigator Rollins' vehicle, I can't testify that there
18 were any questions asked, I wasn't there so I don't know if
19 anymore questions were asked. Once I walked back to the
20 vehicle Mr. Green stated, "I want to cooperate, I need help,
21 I just got the dope from the bar." That's when I left and
22 went back to the bar and secured that location.

23 Q. Again, was that something he blurted out?

24 A. From my understanding. I was not back at the vehicle
25 and I can't -- from my understanding he was back there

TESTIMONY OF RYAN MCLEMORE

1 talking saying, "I need help, I need help."

2 Q. Do you know or were you aware if he was ever mirandized
3 while he was in the vehicle?

4 A. No, sir.

5 Q. You don't know?

6 A. No, sir.

7 Q. Well, were you aware that Mr. Green gave a written
8 statement to Investigator Bowers?

9 A. Yes.

10 Q. Were you present for that?

11 A. No, sir. I was in the office but I wasn't present just
12 for the actual interview itself, I was present at the
13 interview that was conducted with him at a later date.

14 Q. Did you have any other involvement in this case other
15 than we're talking about right now?

16 A. No, sir.

17 MR. NOWIKI: No other questions at this time.

18 CROSS EXAMINATION

19 BY MR. FRICK:

20 Q. You had no view of what was going on at the bar?

21 A. No, sir.

22 Q. And did you receive the tip?

23 A. No, I didn't receive the tip. I was advised by
24 Investigator Bowers once he received the tip what was told
25 to him, but I didn't received the tip.

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1 Q. And just to clarify, I think I heard you right, you
2 secured the gun and the drugs off of Mr. Jowers?

3 A. Yes.

4 MR. FRICK: Thanks you, sir. That's all of the
5 questions I have.

6 THE COURT: Thank you, sir.

7 MR. NOWIKI: That's all from the State.

8 THE COURT: All right. Anything from the defense?

9 MR. FRICK: Nothing from the defense, Your Honor, other
10 than argument.

11 THE COURT: Argument?

12 MR. FRICK: Well, Your Honor, I know it's my motion but
13 I think it's one of those situations where the State must
14 prove that they had sufficient reasons to make the stop.
15 And I'm going to pass forward two cases, I have given a
16 copy -- it was in an email to the solicitor, I think he has
17 them. The first one I'll up is Alonzo Green, it is
18 341SC214, it deals with tipsters, I'll talk about it in just
19 a second. And the other one I'll hand up is State versus
20 Butler, it's 343SC198 and it talks about paper tags. Your
21 Honor, the Green case tells you basically that a mere
22 tipster is not enough, there has got to be some indicia of
23 reliability. In this case you don't have the tipster,
24 Mr. Jones called and says my wife says. Judge, that
25 wouldn't be admissible in this courtroom, that is hearsay in

ARGUMENTS

1 and of itself. I understand we're not dealing with that
2 level in this hearing but that's the level of reliability
3 you have on this tip, and the tip is there's a white guy
4 from out of town selling drugs, not there's a white guy
5 wearing shorts, not there's a white guy with flip flops,
6 there's a white guy selling drugs. So they go set up
7 surveillance and there are two other cars in the parking
8 lot, we don't worry about them. The black Charger pulls up
9 that has got Mr. Green and somebody else in it, the white
10 guy talks to them, they go in the bar and they talk for a
11 minute and they decide they want to pull over the Charger.
12 No one said anything about a black guy in a black Charger
13 buying anything from anybody or selling anything from
14 anybody, they see this car and decide to go after it for
15 whatever reason. That in and of itself is not enough, Your
16 Honor, and I think you can suppress it right there. That is
17 not enough reliable information, you have no idea who this
18 person is that had to have this tip. There's no indication
19 of what the heck is going on and he's -- they say he's
20 selling drugs but that's all you've got, nothing other than
21 that. I think in Green, Alonzo Green that you have, they
22 determined that that tip was not reliable enough and they
23 had a whole lot more information than this. So I think you
24 can stop the analysis right there. If you decide for some
25 reason that they can go to the car you can't pull over a car

ARGUMENTS

1 pursuant to the Butler case because it has got a paper tag
2 even if it's just -- that's what it says, Your Honor, you
3 cannot pull over a car simply because it's got a paper tag.
4 What it says -- look at the very end of it, it is one of the
5 last paragraphs on the -- it says, "We cannot sanction the
6 random stop of each and every car bearing a temporary tag
7 leaving in the hands of law enforcement freedom to detain
8 whoever they desire without having to justify why they chose
9 to stop one motorist over another." Judge, in fact the
10 testimony is that it's a North Carolina car we determined,
11 it's a rental car, which our statute that they're going to
12 show you here in a second doesn't talk about rental cars
13 with paper tags, it talks about if you bought a car with a
14 paper tag. And then I asked Investigator Bowers would this
15 have been legal in North Carolina and the answer is I don't
16 know. So it's a North Carolina tag and we're going to ask
17 it to apply potentially to South Carolina law but it is
18 still a rental car.

19 THE COURT: He didn't know it was a rental car at the
20 time.

21 MR. FRICK: I disagree with that but I understand
22 that's what his testimony was. I think it's pretty clear it
23 said Carolina Auto Rentals.

24 THE COURT: Did it say Carolina Auto Rentals or
25 Carolina Auto?

ARGUMENTS

1 MR. FRICK: It might have said Carolina Auto. But,
2 Your Honor, pulling it over for a paper tag is not
3 sufficient according to the Butler case. Now, you may
4 believe that it is and there may be law contradicting what
5 I'm telling you and the solicitor may be about to show you
6 that in just a second, but Your Honor, it doesn't even get
7 to that point. For them to get to the point where they need
8 to suspect this car they've got to have more than there's a
9 white guy from out of town doing something at Goodtime
10 Charlies. There is no reason really for them to even set up
11 surveillance, they can sit around and look at whatever they
12 want to but --

13 THE COURT: Once they saw the tag that they thought was
14 not lawful aren't they in business?

15 MR. FRICK: There's nothing that says it's not lawful,
16 that's the problem.

17 THE COURT: Doesn't have a date on it.

18 MR. FRICK: And tell me where in Butler it says that
19 that is something that allows you to pull over the car.

20 THE COURT: Well, it says this is a 45 day tag.

21 MR. FRICK: Yes, sir, and the statute says nothing.

22 THE COURT: This tag didn't have a date on it.

23 MR. FRICK: But the statute says nothing about the
24 rental car, so what's he supposed to do? I mean, I go to
25 rent a car, they hand me the keys and it has got a paper tag

ARGUMENTS

1 on it, about all I can do is say, "Hey, is that all right,"
2 and he says, "Yeah," how am I supposed to know? Is he
3 supposed to know the law in North Carolina and South
4 Carolina?

5 THE COURT: We charge people from North Carolina for
6 violating our laws all of the time.

7 MR. FRICK: With a license plate, not a paper tag.

8 THE COURT: All right, go ahead.

9 MR. FRICK: That's the soul of my argument, Your Honor.
10 One, they did not have a enough of a tip, it's a mere
11 tipster and it's a secondhand mere tip, so there's no reason
12 to even attempt to conduct a stop. The testimony you heard
13 was not that we suspected that Rico Green was doing anything
14 wrong, we see this car leave this place where we heard this
15 tip from and he has got a paper tag, and I still submit that
16 that Butler case tells you that that is not sufficient. The
17 second step of my argument is even if you agree that there
18 was enough tip that the paper tag prevents any further
19 search but I don't concede that that gives up the case. I
20 don't think there should have been any pursuit of the car in
21 the first place. There was no reason to have surveillance,
22 there was no reason -- if he would have been driving past
23 Goodtime Charlies not pulling into the parking lot with this
24 illegal paper tag he would still be driving around right
25 now.

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1 THE COURT: Maybe at 6:30 p.m. but what if it would
2 have been 2:30? Anyhow let me hear from the solicitor.

3 MR. NOWIKI: Your Honor, it is a tip and law
4 enforcement acted on it and set up surveillance and they did
5 end up following the charger. There is a statute, section
6 56-3-210C which addresses that if you do have a paper tag it
7 has to be -- the expiration date has to be visible and it
8 goes through all of that criteria add this vehicle did not
9 have that. And it's the State's position that it was lawful
10 for them to make a traffic stop for that and it is --
11 according to the statute it is a misdemeanor for that. And
12 the other thing is that when the vehicle came to a stop the
13 passenger just took off and they went after the passenger,
14 that's when the drugs were found. But our position is they
15 could have made a stop, and to tell you the circumstances,
16 you got the tip, they set up surveillance and the vehicle
17 left and they followed the vehicle.

18 THE COURT: Thank you, Solicitor.

19 MR. FRICK: Your Honor, just briefly. The statute that
20 the solicitor alludes to -- I understand it's the statute
21 they're relying on -- doesn't say one thing about a rental
22 car. It says 45 day tags for a car that have been sold to a
23 car lot and somebody or between persons, it doesn't
24 contemplate a rental car at all. I understand they're not
25 going to know the difference but that's exactly what the

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1 Butler case says, it says you can't just pull people over
2 under the suspicion that they've got a paper tag, they must
3 be doing something wrong, that's exactly what Butler says.

4 THE COURT: But didn't the officer say that's not why
5 he pulled him over? He says he pulled him over because the
6 tag was inappropriate.

7 MR. FRICK: Then what's the appropriate tag if it's a
8 rental car?

9 THE COURT: I don't know.

10 MR. FRICK: That's the issue. And that's what the case
11 contemplates. The case says the legislature needs to come
12 up with a better scheme and until they do that you cannot
13 pull people over for a paper tag. You cannot pull people
14 over for a paper tag. It illudes to that there needs to be
15 a better scheme.

16 THE COURT: Anything else, Solicitor?

17 MR. NOWIKI: Your Honor, if I'm not mistaken I think
18 the statute was enacted after the case, I just noticed on
19 the history that it was.

20 THE COURT: I think at the time Green was decided there
21 was no requirement for a -- that's what I think -- for a
22 date on it.

23 MR. FRICK: I will concede that point, that Green was
24 decided in 2002 and subsequent to that the legislature
25 enacted the 45 day. My argument is -- I mean Butler --

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1 Butler said they didn't have a statute at all and that may
2 or may not have been the case, I can't remember. They did
3 enact a 45 day statute, they still ain't done nothing with
4 the cars in this situation and that's what Butler is talking
5 about.

6 MR. NOWIKI: The only thing, Your Honor, as far as law
7 enforcement, they had no idea about that tag.

8 THE COURT: I find that under the circumstances of this
9 case that the officer making the stop did have a minimal
10 level of objective justification for detention and thus
11 probable cause.

12 MR. FRICK: Based on the tip? Just to clarify --

13 THE COURT: No, based on the tag.

14 MR. FRICK: So the tip has got nothing to do with it?
15 I just want to -- I'm not trying to sound as argumentative
16 as that sounded but --

17 THE COURT: No. I don't think the tip gave them
18 probable cause to stop the car, no.

19 MR. FRICK: All right.

20 THE COURT: The tag gave them probable cause is my
21 ruling.

22 MR. FRICK: Okay. I understand.

23 THE COURT: All right. And now?

24 MR. FRICK: I don't know, solicitor and I probably need
25 to chat real quick.

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1 THE COURT: Is there another motion relating to
2 anything else?

3 MR. FRICK: Not that I'm aware of. I think the only
4 matter I saw in this matter is the Denno hearing and I think
5 you probably need to rule on the Denno at this time.

6 THE COURT: Well, we've got two different statements
7 made by the defendant, right?

8 MR. FRICK: Actually the way I think they said it it
9 was three different statements. The guy is -- the
10 codefendant is stopped and he goes, I don't want him to --
11 "I'll take the rap for that." Then I think they said there
12 was another statement when he got in Brandon Rollins' car
13 and then the mirandized statement, I think that is -- are we
14 on the same page with that?

15 MR. NOWIKI: Yeah.

16 MR. FRICK: Obviously the one statement is mirandized,
17 he's in custody, I doubt I will make any headway on arguing
18 against that. The second time when he's in Brandon
19 Rollins's car, clearly custodial, he is clearly in the back
20 of the car and in handcuffs and I think Tony said he was
21 under -- he'd been placed under arrest at that time but I
22 did not hear that any Miranda had been read at that time so
23 I think that would be a Miranda situation. And then the
24 first one, while I understand everybody is going to say it's
25 a spontaneous statement, the man is in -- I think in

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1 custody. You've been pulled over by law enforcement, your
2 passenger at this time has been thrown to the ground, the
3 testimony was if Mr. Green had decided he didn't want to be
4 hanging around the scene they were not going to let him
5 drive off. He's clearly in custody. I think that's a
6 custodial statement and the rules should apply at that point
7 as well.

8 THE COURT: It wasn't the result of any questioning by
9 law enforcement, was it?

10 MR. FRICK: I dealt with this same situation almost a
11 week ago in Fairfield. And while I understand there was no
12 statement with a question mark at the end of it, I submit to
13 you that if a police officer with a sidearm and blue lights
14 had come up there's an inferred question and I think any
15 statement you've got probably you should be advised of your
16 rights, but --

17 THE COURT: That's pretty good. I disagree. I think
18 that statement number one and statement number two are
19 admissible and the reason being that he was -- the first one
20 he was in, as described by the officer, investigative
21 detention and the statement was blurted out as a result of
22 no questioning by any law enforcement officer. The second
23 statement was shortly thereafter as best I can tell shortly
24 after he was put in the back of the vehicle, that that
25 detention was not long enough for the Court to -- let me

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1 back up. First it wasn't the result of any questioning, and
2 secondly it wasn't the result of any kind of coercion and I
3 find it was voluntarily made and therefore will admit all
4 three statements. Anything else the Court needs to rule on?

5 MR. FRICK: Nothing from defense at this time.

6 THE COURT: Anything else?

7 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Lancaster County, South Carolina, on the 11th day of
8 February, 2013.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

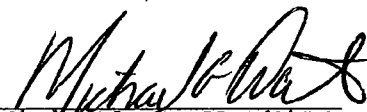
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August 4, 2013

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Michael C. Watkins
Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2011-GS-29-01228 to 1230
5

6 State of South Carolina

7 vs.

8 Rico Green
9
10

11 Lancaster, South Carolina
12 February 11, 2013 Guilty Plea Hearing
13 Before the Honorable Brooks P. Goldsmith
14

15 APPEARANCES

16 For the State: Bill Nowiki

17 For the Defendant: William Frick
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
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1	Guilty Plea:	3
2	Sentencing:	12
3	Certificate:	13
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1 MR. NOWIKI: Your Honor, this is case number
2 2011-GS-29-1227, State versus Rico Green, indictment for
3 trafficking in cocaine base ten to 28 grams. The second
4 offense -- and my understanding he is going to plead guilty
5 to that. Also 2011-GS-29-1228, which is trafficking in
6 cocaine ten to 28 grams, and again my understanding is he is
7 going to be pleading guilty to that, and it will also be a
8 second offense and. The State -- the recommendation is a
9 sentence range of ten to 15 years.

10 THE COURT: And Mr. Frick, have you explained to your
11 client the charges contained in the indictments, the
12 possible punishments and have you explained to Mr. Green his
13 constitutional rights?

14 MR. FRICK: Your Honor, I have.

15 THE COURT: Do you believe Mr. Green has understood the
16 discussions you've had with him?

17 MR. FRICK: Yes, sir.

18 THE COURT: Based on your investigation of the facts
19 and circumstances of these cases, do you believe it likely
20 the State could convince a jury of his guilt on each of
21 these charges beyond a reasonable doubt?

22 MR. FRICK: Yes, sir.

23 THE COURT: Mr. Green, how old are you, sir?

24 THE DEFENDANT: Thirty-six, sir.

25 THE COURT: Thirty-six?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you married?

3 THE DEFENDANT: No, sir, I'm engaged.

4 THE COURT: And what kind of work have you normally
5 done?

6 THE DEFENDANT: I used to do landscaping but I've been
7 in and out of prison.

8 THE COURT: The last time you would have been in
9 criminal court would have been approximately how long ago?

10 THE DEFENDANT: 2004.

11 THE COURT: And in 2004 when you were in court what
12 happened as a result of you being in court?

13 THE DEFENDANT: I pleaded out for drugs.

14 THE COURT: Did you get probation or did you do time
15 or --

16 THE DEFENDANT: I got a mandatory six.

17 THE COURT: Have you ever been treated for the abuse of
18 alcohol, abuse of drugs or treated for any mental illness?

19 THE DEFENDANT: No, sir.

20 THE COURT: In the past 24 hours have you taken any
21 medication, any drugs or have you consumed any alcohol?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you aware today of any physical,
24 nervous or emotional problem you might have that would
25 interfere with your ability to understand what is going on

1 here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Mr. Green, your attorney and the solicitor
4 both tell me they believe you wish to plead guilty to these
5 two charges, is that your understanding?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I'm going to ask the solicitor to give me a
8 few facts on each of the charges, please listen carefully.

9 MR. NOWIKI: Your Honor, the incident occurred on
10 August 4th of 2011 and started out where law enforcement got
11 a tip and set up surveillance at Goodtime Charlies here in
12 Lancaster County. Officers did end up setting up
13 surveillance, and there was a black Charger that went into
14 the parking lot and a black male, which is the defendant,
15 walked into the location with a white male, came out, got
16 back in the vehicle. As the vehicle left the parking lot
17 law enforcement, and specifically Investigator Bowers, had
18 gotten behind the Charger, did notice it had an improper tag
19 and initiated a traffic stop. And the passenger, who was
20 the codefendant, DeVaughn Jowers, ended up running from the
21 passenger's side and was apprehended just a short distance
22 and they found -- law enforcement found approximately
23 14.2 grams of crack cocaine and approximately 25.1 grams of
24 powdered cocaine in the passenger's pocket. When law
25 enforcement said that they found the dope Mr. Green had

1 indicated that -- admitted it was his and later on did end
2 up being Mirandized giving a statement admitting the same
3 thing. And I apologize but I do not have Mr. Green's
4 record, I believe someone from our office is going to get
5 that, it was my fault, I left it in my office so I can't go
6 over that right yet. Okay. I'm being provided with one.
7 In 2000 it looks like possession of crack cocaine with
8 intent to distribute. I'm sorry, he did not get convicted
9 of that. 2004 had it looks like a PWID cocaine where he got
10 six years. 2002 was possession of marijuana. 2004 was
11 resisting arrest where he got six months. 2004 was another
12 it looks like a distribution of crack cocaine, he got six
13 years.

14 THE COURT: That was 2004 you say?

15 MR. NOWIKI: Yeah. There were two -- there was a
16 distribution and PWID in 2004.

17 THE COURT: Okay.

18 MR. NOWIKI: And then on I believe in 1997 had a
19 distribution of cocaine base and received I think -- I
20 believe 39 months and three years supervision, and I believe
21 that was a federal charge, I believe a PWID cocaine as well
22 with that. I believe that's what I have as his record.

23 THE COURT: All right. Thank you, Solicitor.

24 Mr. Green, you heard the solicitor's statement of facts
25 concerning these two trafficking charges that you indicated

1 you wished to plead guilty to, do you agree with what he
2 told me about these two charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you guilty of both charges?

5 THE DEFENDANT: Yes, sir, it was mine.

6 THE COURT: Has your attorney explained to you your
7 right to have a jury trial on these charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you ever had a jury trial?

10 THE DEFENDANT: No, sir.

11 THE COURT: Bear with me just a minute. If you were to
12 have a jury trial, and I need to tell you even as you stand
13 there right now you're still entitled to one, but if you
14 were to have a jury trial among other things the Court would
15 instruct the jury that you are presumed innocent, that the
16 burden would be upon the State to prove your guilt to a jury
17 beyond a reasonable doubt. You would have a right to cross
18 examine witnesses that the State might call to testify
19 against you, you could have your own witnesses testify for
20 you and you could testify yourself or not, and if you
21 decided not to testify the Court would instruct the jury
22 that they could not hold that against you because you have a
23 constitutional right not to testify. Despite the fact of
24 the Court's ruling earlier today about the admissibility of
25 your statements and these drugs, you still would have the

1 legal right to challenge the State's right to use that
2 evidence and/or argue to the jury that those statements were
3 not freely and voluntarily given. You understand you have
4 all of these rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand by pleading guilty
7 you're giving up those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is that what you wish to do?

12 THE DEFENDANT: That's what I wish to do.

13 THE COURT: Have you had enough time to discuss these
14 matters with your attorney?

15 THE DEFENDANT: Yes, sir, he came out there and
16 explained it to me.

17 THE COURT: Has he answered all of your questions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied with his services?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Green, has anyone threatened you or
22 coerced you in any way to make you or cause you to plead
23 guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone promised you anything or held

1 out any hope of reward, other than the recommendations I
2 guess in this case by the State, other than that has anyone
3 promised you anything or held out any hope of reward as an
4 inducement to get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty freely and
7 voluntarily?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you pleading guilty to these charges
10 because you are guilty of these charges?

11 THE DEFENDANT: Yes, sir, it was mine.

12 THE COURT: The Court finds there is a substantial
13 factual basis for both pleas and the decision to enter the
14 pleas have been made freely and voluntarily with the advice
15 of an attorney with whom the defendant states he is
16 satisfied and the Court accepts the plea.

17 MR. FRICK: Your Honor, Mr. Green is 36 years of age,
18 he told you he had been working on and off, does have a
19 couple of children that he wants to get back to as soon as
20 he can. Has a fiance' who I know cares a great deal about
21 him, has been contacting our office about this case. He has
22 been in our detention center now for 558 days, I ask you to
23 credit him appropriately. This is one that has caused me
24 some frustration for some time because it is one of those
25 that we hear continually that it's going to be indicted

1 federally and it's almost two years later and Mr. Green is
2 still sitting in our detention center. We did ask for it to
3 go forward, the solicitor did put it together and this was
4 the case that was up for trial in the morning, that's why
5 the necessity to go ahead and enter this plea was important.
6 Your Honor, Mr. Green was cooperative at the time, he
7 admitted what he had done. He, in fact, led -- law
8 enforcement got to arrest the white guy at the bar because
9 of Mr. Green, he told them who it was, they were able to
10 obtain a search warrant based on his information and went
11 back and I think found more stuff at the bar and that person
12 is awaiting trial as well. So Your Honor, Mr. Green while
13 not doing right himself has come forward and accepted
14 responsibility from the very get-go when the blue lights
15 were put on him and the codefendant was found with the stuff
16 in his possession, I ask you to take that into
17 consideration. I ask you -- while it is trafficking this is
18 certainly not the highest level of trafficking. Mr. Green
19 is just looking to put this behind him. And we discussed
20 what he would be potentially facing at trial, and to avoid
21 all of that -- and, of course, as I've told Mr. Green as I
22 went out to the jail and talked to him as we were preparing
23 for previous bond hearings and as we inched closer to trial
24 and this hearing today, trafficking is a whole lot like a
25 possession case, it's just a bigger amount and it carries a

1 whole lot more time. But if the drugs can be placed on you,
2 and in this case not only are they placed on him he stated
3 three times that they were his so we felt like we had no
4 other recourse once our motion was denied other than to go
5 forward with this plea. We just ask for whatever additional
6 mercy you can show.

7 THE COURT: Thank you. Mr. Green, anything you want to
8 say?

9 THE DEFENDANT: Yes, sir. I've been doing drugs off
10 and on all of my life. The situation what happened, it was
11 mine and I didn't want to see no innocent man go to jail for
12 that. I have been sitting in jail for 18 months and I'm
13 clean and I've done give my life back to God and I know
14 right now at 36 I'm trying to get no 25 years so I'm just
15 trying to get it behind me and get home and see my family.

16 THE COURT: I hope you're able to keep that monkey off
17 your back, Mr. Green. Solicitor, anything?

18 MR. NOWIKI: Your Honor, I believe Mr. Bowers would
19 like to address the Court, Investigator Bowers.

20 SPEAKER: Judge, we just from the sheriff's office
21 point of view would just like the Court to know that Rico
22 Green has been a repeat offender with us, I've dealt with
23 him several times over the years. We know there's a ten to
24 15 agreement that has been reached and we would like to see
25 the 15 years.

1 THE COURT: Anything else?

2 MR. FRICK: We would like to see the ten. If he's
3 going to ask for the 15 I would like to see the ten.
4 Obviously we would like to see less than that but
5 understanding what the range is.

6 THE COURT: The last time, Mr. Green, you got six
7 years?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Ten years, Mr. Green, concurrent, credit
10 for time served. Recommend the Addiction Treatment Unit.

11 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Lancaster County, South Carolina, on the 11th day of
8 February, 2013.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

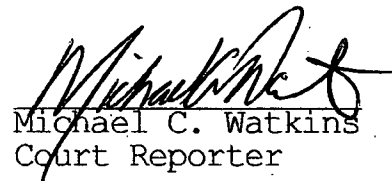
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August 4, 2013

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Michael C. Watkins
Court Reporter

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WITNESSES

Bowers - LCSO #11-24916

R. C. Bowers

ARREST WARRANT NUMBER/DOA

M165597 (DOA-8-5-11)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

NOV 10 2011

VERDICT

[Signature]
Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-29-1228

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

THE STATE

vs.

Rico Bernard Green

[Signature]
[Signature]

Indictment for

Trafficking in Cocaine
10 to 28 Grams

SC Code: § 44-53-370(e)(2)(a)
CDR Code: 0278
Class: Felony, E

FILED
CLERK OF COURT
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2011 NOV 11 A 9:41

CLERK OF COURT
LANCASTER, SC

CERTIFIED TO BE A TRUE COPY

[Signature]

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)

INDICTMENT

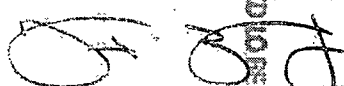
COUNTY OF LANCASTER)

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

TRAFFICKING IN COCAINE 10 TO 28 GRAMS

That Rico Bernard Green did in Lancaster County on or about August 4, 2011, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this state or knowingly actually or constructively possess ten grams or more but less than 28 grams of cocaine, a controlled substance, in violation of § 44-53-370(e)(2)(a), *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.


Douglas A. Barfield, Jr. SOLICITOR

WITNESSES

Bowers - LCSO #11-24916

E.C. Bowers

ARREST WARRANT NUMBER/DOA

M165596 (DOA-8-5-11)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

Date: **NOV 10 2011**

VERDICT

[Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-29-1227

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

THE STATE

vs.

Rico Bernard Green

[Signature]
Jury Foreperson

Indictment for

**Trafficking in Cocaine Base
10 to 28 Grams**

SC Code: § 44-53-375(C)(1)

CDR Code: 0450

Class: Felony, E.

FILED
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CLERK OF COURT
LANCASTER, SC

CERTIFIED TO BE A TRUE COPY

[Signature]

**JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

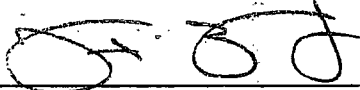
INDICTMENT

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

TRAFFICKING IN COCAINE BASE 10 TO 28 GRAMS

That Rico Bernard Green did in Lancaster County on or about August 4, 2011, knowingly sell, manufacture, deliver, purchase, or bring into this state or provide financial assistance or otherwise aid, abet, attempt, or conspire to do the same or actually or constructively possess or knowingly attempt to actually or constructively possess ten grams or more but less than twenty-eight grams of cocaine base in violation of Section 44-53-375(c) (1) of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
 THE STATE,)
)
 VS.)
)
 Rico Green,)
)
 Defendant.)

IN THE SOUTH CAROLINA
 COURT OF APPEALS

STATEMENT OF APPELLANT'S COUNSEL
 REGARDING REQUEST FOR APPEAL
 OF GUILTY PLEA

RECEIVED

FEB 22 2013

SC Court of Appeals

FILED
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 2013 FEB 21 PM 3:45
 CLERK OF COURT
 LANCASTER, SC

Appellant's Statement of Facts

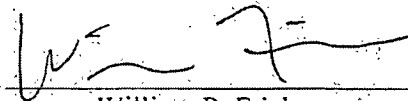
The defendant was charged in Lancaster County General Sessions Court with Trafficking Cocaine in Lancaster County on or about August 4, 2011. On that date, agents with the Lancaster County Sheriff's Department Narcotics Unit received information that a white male was selling cocaine from a bar know as Good Time Charlie's. Acting on this tip, law enforcement conducted surveillance of the parking lot of the bar. At one point, a black Dodge Charger with two black male occupants stopped at the bar. The driver of the vehicle exited the car and entered the bar for about ten minutes. When the Charger departed the parking lot, law enforcement began following the car. Law enforcement believed that the vehicle had an invalid paper tag and executed a traffic stop on the car. As the car stopped, the passenger jumped out of the vehicle and began to run. A short time later the passenger was apprehended and was found to be in possession of cocaine and a handgun. Subsequent to the capture of the passenger, the driver of the car, Rico Green, stated that the drugs found on the passenger were his. Mr. Green was placed under arrest and booked at the Lancaster County Detention Center.

The defendant move for suppression of the drugs found in the search as an illegal seizure and search. At the suppression hearing law enforcement stated that they had received no information alleging Mr. Green's involvement in the sale of drugs and that information they had was that a white male from out of town was at the bar selling drugs. Additionally, law enforcement stated that there was no other reason for stopping the black Charger other than what was believe to be an illegal paper tag. The defendant cited State v. Butler 539 S.E.2nd 414, 343 S.C. 198, in supporting the position that the paper tag violation was not a sufficient reason to

stop the vehicle and opined that the finding of the drugs was the fruit of the poisonous tree and should be suppressed. The judge denied the defendant's request for suppression. After consultation with his attorney, as a result of the denial of the motion to suppress the drug evidence, the defendant entered a guilty plea to the charge of Trafficking Cocaine (2nd Offense) and was sentenced to the South Carolina Department of Corrections for a term of 10 years.

Issues on Appeal

Subsequent to his guilty plea, the defendant requested his counsel to file an appeal regarding this plea. Pursuant to Rule 203(b)(2) and(d) SCACR, defendant's counsel is filing this appeal. The grounds for requesting an appeal is the erroneous denial of the suppression of the drug evidence. According to law enforcements testimony at the suppression hearing, there was no other reason for a stop of the defendant's vehicle except for the perceived paper tag violation. As stated in State v. Butler 539 S.E.2nd 414, 343 S.C. 198, this did not in and of itself give reason enough to execute a traffic stop and search of the vehicle. Therefore, any illicit drugs found subsequent to the traffic stop are fruit of the poisonous tree and should be suppressed.

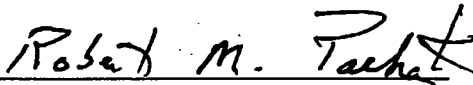


William P. Frick
SC Bar Number 69739
Assistant Public Defender
6th Judicial Circuit
PO Box 1809
Lancaster, SC 29721
Phone (803) 285-5585
ATTORNEY FOR APPELANT

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."

January 13, 2014


Robert M. Pachak
Appellate Defender

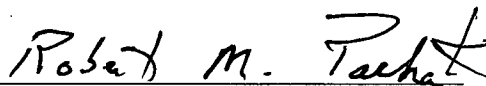
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

January 13, 2014



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County,

Brooks P. Goldsmith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICO GREEN,

APPELLANT

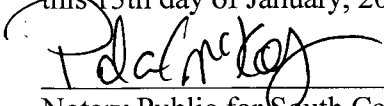
APPELLATE CASE NO. 2013-000441

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of January, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.