VOLUME I OF II

RECEIVED
Aug 30 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Thomas W. Cooper, Circuit Court Judge

Appellate Case No: **2023-001288**

The State of South Carolina,

Respondent,

v.

Steven Daniel Brown

Appellant.

RECORD ON APPEAL

Dayne C. Phillips, Esq.

SC Bar No. 77712
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234

Jason T. Yonge, Esq.

SC Bar No. 102869
WILLIAMS, STITELY, & BRINK, PC
PO Box 39
Lexington, SC 29071
(803) 359-9000

ATTORNEYS FOR APPELLANT

Alan Wilson
Attorney General

Ambree Muller
Assistant Attorney General

PO Box 11549
Columbia, SC 29211
(803) 734-3727

S. R. Hubbard, III
Solicitor, Eleventh Judicial Circuit

205 East Main St.
Lexington, SC 29072

ATTORNEYS FOR RESPONDENT

PAGES 1 – 500

INDEX

INDEX i

TRIAL TRANSCRIPT 1
DATED AUGUST 7-10, 2023

JURY SELECTION 7

PRE-TRIAL MOTIONS 40

MOTION TO SUPPRESS

JOHN GIETZ (IN-CAMERA)
Direct Examination by Ms. Oppenheimer 42
Cross Examination by Mr. Yonge 47
Redirect Examination by Mr. Smith 67

GREGORY SHROPSHIRE (IN-CAMERA)
Direct Examination by Mr. Smith 73
Cross Examination by Mr. Yonge 87
Redirect Examination by Mr. Smith 111

JACKSON V. DENNO

JOHN GIETZ (IN-CAMERA)
Direct Examination by Ms. Oppenheimer 127

OPENING STATEMENT BY MS. OPPENHEIMER 161

OPENING STATEMENT BY MR. WILLIAMS 165

TESTIMONY

JOHN GIETZ
Direct Examination by Ms. Oppenheimer 171
Cross Examinatino by Mr. Williams 203
Redirect Examination by Ms. Oppenheimer 216

GREGORY SHROPSHIRE
Direct Examination by Mr. Smith 225
Cross Examination by Mr. Williams 249
Redirect Examination by Mr. Smith 268
Recross Examination by Mr. Williams 270

JACOB ATWOOD
Direct Examination by Mr. Smith....272
Cross Examination by Mr. Yonge....285
Redirect Examination by Mr. Smith....301

JURY MATTER....305

GERRY SCOTT (IN-CAMERA)
Examination by the Court....360
Examination by Mr. Williams....361

OTIS LEE PARIS (IN-CAMERA)
Examination by the Court....362
Examination by Ms. Oppenheimer....363

TESTIMONY (CONTINUED)

DEREK APPLEGATE
Direct Examination by Mr. Smith....371
Cross Examination by Mr. Yonge....384
Redirect Examination by Mr. Smith....386

MARGARET WALKER
Direct Examination by Ms. Oppenheimer....390
Voir Dire Examination Mr. Williams....392
Continued Direct Examination by Ms. Oppenheimer....393
Cross Examination by Mr. Williams....422
Redirect Examination by Ms. Oppenheimer....449

MICHAEL PHIPPS (IN-CAMERA)
Direct Examination by Ms. Oppenheimer....467

MICHAEL PHIPPS
Direct Examination by Ms. Oppenheimer....471
Cross Examination Mr. Williams....489
Redirect Examination by Ms. Oppenheimer....495
Recross Examination by Mr. Williams....496

JOHN GEITZ
Direct Examination by Ms. Oppenheimer....501
Voir Dire Examination Mr. Williams....505
Continued Direct Examination by Ms. Oppenheimer....508
Cross Examination by Mr. Williams....517
Redirect Examination by Ms. Oppenheimer....524

OBJECTIONS AND MOTIONS RENEWED....526

MOTION FOR A DIRECTED VERDICT....526

MOTION FOR MISTRIAL....527

CLOSING ARGUMENT BY MR. SMITH....542

CLOSING ARGUMENT BY MR. WILLIAMS....551

CHARGE OF THE COURT....558

VERDICT....580

MOTIONS RENEWED....587

MOTION FOR A NEW TRIAL....588

SENTENCING....597

COURT'S EXHIBIT NO. 8 (JUROR NOTE)....600

DEFENDANT'S MOTION TO SUPPRESS....602
FILED JULY 6, 2021

MEMORANDUM IN SUPPORT OF MOTION FOR SUPPRESSION OF EVIDENCE INCLUDING EXHIBIT 4....605
FILED AUGUST 7, 2023

INDICTMENT AND SENTENCING SHEET....616

NOTICE OF APPEAL....620

CERTIFICATE OF COUNSEL....622

THE FOLLOWING EXHIBITS ARE ON FILE WITH THE LEXINGTON COUNTY CLERK OF COURT'S OFFICE: COURT'S EXHIBIT #1 – #3 (CLIPS)

State of South Carolina) Court of General Sessions
County of Lexington) Eleventh Judicial Circuit

State of South Carolina,) Transcript of Record
)
vs.) 2020-GS-32-01970
)
Steven Daniel Brown,)
)
Defendant.)

August 7th-10th, 2023

Lexington, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Jr., Judge; and a Jury

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

Kelly Oppenheimer, Assistant Solicitor
Kyle E. Smith, Assistant Solicitor
On behalf of the State of South Carolina

Robert "Theo" Williams, Sr., Esquire
Jason T. Yonge, Esquire
On behalf of the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

I N D E X

WITNESSES	PAGE
Jury Selection	7
Pretrial Matters	40
Motion to Suppress	41
John Gietz (In-Camera)	
Direct Examination by Ms. Oppenheimer	42
Cross-Examination by Mr. Yonge	47
Redirect Examination by Ms. Oppenheimer	67
Gregory Shropshire (In-Camera)	
Direct Examination by Mr. Smith	73
Cross-Examination by Mr. Yonge	87
Redirect Examination by Mr. Smith	111
Jackson v. Denno	
John Gietz (In-Camera)	
Direct Examination by Ms. Oppenheimer	127
Brady/Rule 5 Motion(s)	135
Opening Statement	
By Ms. Oppenheimer	161
By Mr. Williams	165
John Gietz	
Direct Examination by Ms. Oppenheimer	171
Motion for Mistrial	174
Continued Direct Examination by Ms. Oppenheimer	179
Cross-Examination by Mr. Williams	203
Redirect Examination by Ms. Oppenheimer	216
Brady/Rule 5 Motion(s) Renewed	220
Gregory Shropshire	
Direct Examination by Mr. Smith	225
Cross-Examination by Mr. Williams	249
Redirect Examination by Mr. Smith	268
Recross Examination by Mr. Williams	270

Jacob Atwood
Direct Examination by Mr. Smith 272
Cross-Examination by Mr. Yonge 285
Redirect Examination by Mr. Smith 301

Jury Matter 305

Jurors Examined by the Court (In-Camera) 306

Gerry Scott (In-Camera)
Examination by the Court 360
Examination by Mr. Williams 361

Otis Lee Paris (In-Camera)
Examination by the Court 362
Examination by Ms. Oppenheimer 363

Derek Applegate
Direct Examination by Mr. Smith 371
Cross-Examination by Mr. Yonge 384
Redirect Examination by Mr. Smith 386

Margaret Walker
Direct Examination by Ms. Oppenheimer 390
Voir Dire Examination by Mr. Williams 392
Continued Direct Examination by Ms. Oppenheimer 393
Cross-Examination by Mr. Williams 422
Motion for Mistrial 429
Redirect Examination by Ms. Oppenheimer 449

Michael Phipps (In-Camera)
Direct Examination by Ms. Oppenheimer 467

Michael Phipps
Direct Examination by Ms. Oppenheimer 471
Cross-Examination by Mr. Williams 489
Redirect Examination by Ms. Oppenheimer 495
Recross Examination by Mr. Williams 496

John Gietz
Direct Examination by Ms. Oppenheimer 501
Voir Dire Examination by Mr. Williams 505
Continued Direct Examination by Ms. Oppenheimer 508
Cross-Examination by Mr. Williams 517
Redirect Examination by Ms. Oppenheimer 524

Objections and Motions Renewed 526

Motion for Directed Verdict 526

Motion for Mistrial		527
Closing Argument		
By Mr. Smith		542
By Mr. Williams		551
Charge of the Court		558
Verdict of the Jury		580
Motions Renewed		587
Motion for New Trial		588
Sentence of the Court		597
Certificate of Reporter		599

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
C-1	Video Clip	40	
C-2	Video Clip	40	
C-3	Video Clip	40	
C-4	Video Clip	40	
C-5	LPR Alert/Memo	62	
C-6	Case Law	149	
C-7	Case Law	149	
C-8	Juror Note	305	
C-9	Principal Juror Selection	368	
S-1	Photograph	134	181
S-2	Photograph/Map	134	185
S-3	Photograph/Map	134	189
S-4	Photograph	134	196
S-5	Photograph	134	196
S-6	Cell phone	134	201
S-7	Box w/containers of methamphetamine	134	471
S-8	Shropshire Dash Cam Video	134	234
S-9	Shropshire Body-worn Camera Video	134	245
S-10	Atwood Body-worn Camera Video	134	281
S-11	Container with Methamphetamine	447	450
S-12	Container with Methamphetamine	447	452
S-13	Container with Methamphetamine	447	453
S-14	Text Messages	455	482

6

S-15	WhatsApp Chain	455	488
S-16	WhatsApp Image	445	488
S-17	Cell phone extraction CD	445	

(The following proceedings were held August 7, 2028, beginning at 12:26 PM.)

THE COURT: Good afternoon, ladies and gentlemen, and thank you very much for your patience in this process.

My name is Tommy Cooper. I'm a retired active circuit judge from down in Manning. I still work one week a month in retirement, and this is my week to work, and I've been assigned at my request to come back to Lexington where over the last thirty years as a circuit judge I've had the opportunity to come and work with the people of this county on many occasions and I'm always glad to come because you-all have a fine court system here, good lawyers, good court personnel, and, of course, now you have a wonderful, beautiful court facility. I tried many cases in the old courthouse right across the street for years before this one, but it's always a pleasure for me to come and work here with the fine people of the county and it gives me a chance to meet folks like you that I would not have otherwise had a chance to meet except for my continued service in retirement.

As you know, you-all have been summoned here to serve this week potentially as jurors in the Court of Common Pleas, and some of you have sat through that

8

process this morning, Judge McCaslin is trying the civil cases this week, and also the Court of General Sessions, criminal court, and that's what we're doing in this courtroom.

And cases are disposed of in the criminal court by guilty pleas and by trials. The reason you've been out there in the hall waiting for about an hour or however long you've been out there is because we handled a guilty plea of someone who was prepared to plead guilty to his crimes and was to going to ask for a trial at your hands. It took a while to do that. It was a lengthy trial -- a lengthy process, I should say, for many reasons, but we had to work through it in order to accomplish that fact and complete the guilty plea on that particular matter, and now we're about to select a jury in the trial of the case which you-all, some of you, will be involved as jurors in the trial of.

I'll go through that process in just a moment with you and I'm gonna ask you some questions, much as you have heard asked earlier today, to determine your qualifications to serve as jurors in this particular case. Once a jury has been selected in this case, then we will stand you as the trial jury in this case aside until tomorrow morning and we'll start the trial tomorrow morning at 9:30 and the rest of you will be

given instructions to call back, of course, and you're already familiar with those instructions. You heard some of those earlier today already.

All right. Thank you.

Madam Solicitor or Mr. Solicitor, you can call your case.

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: The State calls Steven Daniel Brown to trial. Indictment Number 2020-GS-32-01970, the State of South Carolina versus Steven Daniel Brown, an indictment for trafficking methamphetamine.

THE COURT: Thank you.

Ladies and gentlemen, as you have heard, the State has called the case of the State versus Steven Daniel Brown, charged with trafficking methamphetamine. And the indictment accuses him here in Lexington County on or about June the 29th of 2020 being in possession of a quantity of methamphetamine in violation of the law sufficient to give rise to a charge of trafficking methamphetamine because the allegations are that he was in possession of a quantity of 400 grams or more of methamphetamine in violation of the law.

Now, ladies and gentlemen, the indictment, which I just read to you, is not evidence, nor is it proof of

10

the charges that it contains. It is simply a charging document, a document that tells you or me or anybody else who reads it, what this case is all about.

To the charges contained in the indictment, Mr. Brown has entered a plea of not guilty and has asked for a jury trial at your hands.

Mr. Brown, would you please stand and face the jury behind you.

(Defendant stands.)

THE COURT: Thank you. You can be seated.

Ladies and gentlemen, I need to know if any of you-all are related by blood or connected by marriage to Mr. Steven Daniel Brown or are you a friend of his or a business associate of his, a casual acquaintance of his or a person who has any direct or indirect contact with Mr. Steven Daniel Brown. If so, would you please stand.

Thank you.

Ladies and gentlemen, potential witnesses who will be testifying in the trial of this case, and I'm gonna read a list of witnesses to you, and I'm gonna ask you the same thing about these potential witnesses that I asked you about Mr. Brown. I'm gonna want to know if you're kin to him by blood or by marriage or if you're friends or have any association with him, direct or

otherwise.

Potential witnesses who may testify in the trial of this case are: Gregory S. Shropshire of the South Carolina Highway Patrol. Jacob T. Atwood of the South Carolina Highway Patrol. John T. Gietz, G-I-E-T-Z, of the Lexington County Sheriff's Department. William Patterson of the Lexington County Sheriff's Department. Gregory Love of the sheriff's department. Austin Sanner, S-A-N-N-E-R, of the sheriff's department. Rosalie Herberger of the Bureau of Alcohol, Tobacco and Firearms. Derek Applegate of the sheriff's department. Kelly Still. Mike Phipps of the sheriff's department. Margaret Walker of the sheriff's department. Candy Kyzer of the sheriff's department. Sandra Black of the sheriff's department.

I need to know now if any of you-all are related by blood or connected by marriage to any of those potential witnesses or friends or casual acquaintances or people who have any direct or indirect contact with any of those potential witnesses. If so, please stand.

Thank you.

The lawyers who will be involved in the trial of the case on behalf of the State, the case will be presented by Kelly Oppenheimer and Kyle Smith, assistant solicitors from the Eleventh Circuit Solicitor's Office, who sit

12

here at counsel table over here.

And Mr. Steven Daniel Brown is represented by Mr. Robert "Theo" Williams and Jason Yonge of the firm of Williams, Stitely and Brink here in Lexington.

I need to know if any of you-all are related by blood or connected by marriage to any of these lawyers or if you're friends of theirs or business associates of theirs or casual acquaintances of theirs or if you've ever been represented by any of them in the past or sued by any of them in the past. If so, would you please stand.

Thank you.

Ladies and gentlemen, I have read to you the allegations in the indictment reminding you that they are not evidence or proof of the charges, but they tell us what the case is all about so that you can tell me now if you know anything about this case.

If you have any knowledge about this case from any source at all, would you please stand.

Now, ladies and gentlemen, the indictment contains allegations of trafficking in methamphetamine. The charges in this particular case arose out of a traffic stop or a moving violation of a vehicle on the Interstate and it resulted in a search of the vehicle and the charges arose as a result of that search, and so I need to know

if any of you-all have any experience in your personal or your private lives or anything in your background that would make it difficult for you to serve as a juror in a case involving those types of allegations? If so, would you please stand.

Thank you.

Now I need to know if any of you or any members of your immediate family have ever been involved in a crime of a serious nature or a crime of violence or crime of trafficking or distribution of drugs either as a defendant or a witness or in the case of a crime of violence as a victim.

So the question applies not only to you, it applies to any members of your immediate family, and the crime involves not only trafficking or distribution of drugs, but any crime of personal violence that would have required you or your family member to become involved in the criminal process of your courts.

If that applies to anybody, would you please stand.

(Potential jurors stand.)

POTENTIAL JUROR: My husband was --

THE COURT: Okay. Right this minute I'm just gonna get your name and number --

POTENTIAL JUROR: I'm sorry.

THE COURT: -- and then I'll ask you more questions

14

privately about it, okay?

I'll bring you down individually to talk about your situation, all right?

First of all, we'll start -- if you will stand please and let me get your name and your number and identify you further.

Yes, ma'am. Your name and number, please, ma'am.

POTENTIAL JUROR: My name is Nicole Dillon and my number is 57.

THE COURT: Your number's what?

POTENTIAL JUROR: 57.

THE COURT: 67?

POTENTIAL JUROR: 57. 5-7.

THE COURT: Thank you. I apologize. I'm real hard of hearing despite of the fact that I have both hearing aids in this morning that just doesn't work.

Nicole Dillon. Ms. Dillon. All right. Thank you, ma'am. I'll get you down and talk with you about your situation, okay?

POTENTIAL JUROR: Okay.

THE COURT: Yes, ma'am. Your name in the center, please?

POTENTIAL JUROR: Tracie McGahee, Number 174.

THE COURT: Ms. McGahee? Did I say that right?

POTENTIAL JUROR: (Nods head.)

15

THE COURT: Okay. Thank you, ma'am.

Yes, ma'am. Your name, ma'am?

POTENTIAL JUROR: My name is Christine Orofino, Juror Number 194.

THE COURT: Okay. Ms. Orofino, thank you, ma'am. We'll get to you in just a moment.

Yes, ma'am. Your name and number, please?

POTENTIAL JUROR: My name is Larissa Driggers. Juror 61.

THE COURT: Is it Ms. Driggers?

POTENTIAL JUROR: Yes.

THE COURT: Thank you, Ms. Driggers.

All right. Folks, if I could ask you-all please, the four of you, to -- to form a line in that center aisle and I'll bring you down individually.

Thank you.

MR. SMITH: There's one more.

THE COURT: There's another one back there. I'm sorry.

POTENTIAL JUROR: Christian Stegmaier, 249.

THE COURT: Number 249?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you.

Thank you, sir. If you will, likewise, be a part of that line, thank you, and I'll bring you down to the

16

court reporter and talk you with individually.

Thank you.

(The following proceedings were held at the bench out of the hearing of the jury panel.)

THE COURT: Yes, ma'am. If you will come forward, please.

BAILIFF: 61.

THE COURT: Ms. Driggers, was it you or a family member that was involved?

POTENTIAL JUROR: A family member.

THE COURT: And what was the relation to you, please, ma'am?

POTENTIAL JUROR: My father and a cousin.

THE COURT: Was this a single event or two separate events?

POTENTIAL JUROR: Two separate.

THE COURT: Okay. Let's start with your father first of all. What was his involvement?

POTENTIAL JUROR: Honestly, I don't keep in contact with him very often. He has many charges, some of which I do believe are possession charges.

THE COURT: Okay. Were they charges that arose here in Lexington County?

POTENTIAL JUROR: Yes, sir.

THE COURT: Are they recent charges?

17

POTENTIAL JUROR: Honestly, probably.
THE COURT: Okay. Were you involved in any way in -- with your father during this time either in the prosecution of these cases or otherwise?
POTENTIAL JUROR: No, sir.
THE COURT: Okay. And your cousin, tell me about your cousin.
POTENTIAL JUROR: She was charged a few years ago for trafficking methamphetamine in Lexington County.
THE COURT: All right. Your father's name, first of all, would you share that with us?
POTENTIAL JUROR: John Allen Davis.
THE COURT: Baker?
POTENTIAL JUROR: Davis.
THE COURT: Davis. I'm sorry.
POTENTIAL JUROR: That's okay.
THE COURT: And your cousin?
POTENTIAL JUROR: Kendall Marie Hancock.
THE COURT: Okay. Would the fact that your relatives have been involved in crimes perhaps somewhat similar to this in the past make it difficult for you to serve fairly and impartially as a juror on this trial?
POTENTIAL JUROR: No, sir.
THE COURT: Could you set aside your family's experience in this regard and decide this case based on

18

what you would hear in court without regard to your own experience?

POTENTIAL JUROR: Yes, sir.

THE COURT: Would you do that, please, ma'am?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you, ma'am. You can go back and have seat.

BAILIFF: Your Honor, 174.

THE COURT: Thank you.

Ms. McGahee, will you'll stand right there and speak so that she can hear, please, ma'am.

Was it you or a family member who was involved?

POTENTIAL JUROR: A family member.

THE COURT: And what was the relation to you?

POTENTIAL JUROR: Son.

THE COURT: And tell me what his involvement was.

POTENTIAL JUROR: He's a recovering drug addict and was involved in domestic violence.

THE COURT: And how long has he been in recovery?

POTENTIAL JUROR: Seven years.

THE COURT: Oh, good. Where does he live?

POTENTIAL JUROR: Pardon me?

THE COURT: Where does he live?

POTENTIAL JUROR: In Long -- Myrtle Beach, South Carolina.

19

THE COURT: Did he have any drug charges that arose out of Lexington County?

POTENTIAL JUROR: No.

THE COURT: Okay. Was he ever prosecuted for his drug issues?

POTENTIAL JUROR: No.

THE COURT: All right. Thank you, ma'am. We're delighted that he's seven years in recovery.

Would that fact make it difficult for you to be fair and impartial as a juror in this trial?

POTENTIAL JUROR: Yes, it would.

THE COURT: It would?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. We appreciate that and I'm gonna stand you aside as a juror in this case. Please don't discuss your son's situation with anybody else that's on the jury while we're trying to get this seated. You can go back and have a seat. I'm sorry we had to ask you to relive this.

POTENTIAL JUROR: Okay.

THE COURT: Juror Number 174 will be stood aside as a juror in this case.

BAILIFF: Your Honor, 194.

THE COURT: Thank you.

Ms. Orofino, if you will speak so that she can hear

20

you, please, ma'am. Was it you or a family member that was involved?

POTENTIAL JUROR: A family member.

THE COURT: And what was the relation to you?

POTENTIAL JUROR: My son.

THE COURT: And what was your son's involvement?

POTENTIAL JUROR: Two years ago he sold drugs at school.

THE COURT: Okay.

POTENTIAL JUROR: And he went through -- I guess it's called arbitration or family diversion.

THE COURT: Right.

POTENTIAL JUROR: And those charges are no longer.

THE COURT: Like pretrial intervention or something like that?

POTENTIAL JUROR: Yes. He never went to court.

THE COURT: Did he go through drug counseling and drug testing in that regard?

POTENTIAL JUROR: Yes.

THE COURT: How's he doing now?

POTENTIAL JUROR: Fine. He's gonna go to college in the next few weeks.

THE COURT: Good for him. How old is he now?

POTENTIAL JUROR: Eighteen.

THE COURT: Good for you and good for him.

21

Would your experience through your son in that regard make it difficult for you to be fair and impartial as a juror in this case?

POTENTIAL JUROR: It would be fine.

THE COURT: Could you set aside your own experience and decide this case based on what you would hear in court?

POTENTIAL JUROR: Yes.

THE COURT: Would you do that, please, ma'am?

POTENTIAL JUROR: Yes.

THE COURT: Thank you, ma'am. If you'll go back and have a seat. We're glad about your son.

POTENTIAL JUROR: Thank you.

BAILIFF: Your Honor, 249.

POTENTIAL JUROR: Christian Stegmaier.

THE COURT: Mr. Stegmaier, how are you doing?

POTENTIAL JUROR: I figured in fairness to Mr. Williams I'd rather disclose than not disclose.

THE COURT: That's good. Is it you or a family member?

POTENTIAL JUROR: It was a family member.

THE COURT: And what was the relation to you?

POTENTIAL JUROR: My wife's grandmother. In 2005 in Lancaster County, my wife's grandmother was killed in a home invasion involving ultimately drugs. They broke

22

into the house for purposes of stealing to be able to sell for drugs. It was an adult and a minor. They pled ultimately. My part in all this is I was providing -- since I'm a lawyer, I was providing counsel to the family. The solicitor elected to take an Alford plea, which I was against.

THE COURT: Right.

POTENTIAL JUROR: But none of this has any impact on my ability to be fair, but I figured I'd better disclose than not disclose.

THE COURT: And you're right. And so -- I think you've answered this, but let me ask it a different way. Would your involvement through your family, your wife's grandmother, make it difficult for you to be involved as a juror in the trial of this case?

POTENTIAL JUROR: No, sir.

THE COURT: You could set aside that experience and decide this case based on what you would hear in court without regard to that experience?

POTENTIAL JUROR: Yes, sir.

THE COURT: And you'll do that, sir?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you, Mr. Stegmaier.

POTENTIAL JUROR: Thank you.

BAILIFF: Your Honor, 57.

THE COURT: Hey, Ms. Dillon. If you'll speak so that she can hear you. Was it you or a family member that was involved?

POTENTIAL JUROR: My husband.

THE COURT: Your husband. And what was his involvement?

POTENTIAL JUROR: He's law enforcement, so he's been in multiple cases over twenty-five years now.

THE COURT: I reckon so. Twenty-five years. What's your husband's name?

POTENTIAL JUROR: Michael Dillon.

THE COURT: And where does he serve as a law enforcement officer?

POTENTIAL JUROR: Currently he's with SLED.

THE COURT: All right. Would that involvement as you have just described it through your husband over twenty-five years make it difficult for you to be fair and impartial as a juror in this case?

POTENTIAL JUROR: I would like to be. I need to be honest, so I need to say that.

THE COURT: And you're under oath, so I know you'll be honest.

POTENTIAL JUROR: I don't think I can be. I'm sorry. I want to be.

THE COURT: I know you do, but we don't want you

24

to have to answer to your husband for a not guilty vote on the verdict at the end of the day. I appreciate your candor in that regard, Ms. Dillon, and we appreciate your husband's service, and I'm gonna excuse you as a juror in this trial.

POTENTIAL JUROR: Thank you. And I wish -- I wish I could be on it.

THE COURT: All right. Is there anyone else?

(Potential juror stands.)

THE COURT: Yes, ma'am. Your name and number, please?

POTENTIAL JUROR: Janice Lynch, L-Y-N-C-H.

THE COURT: Come forward, please, ma'am.

POTENTIAL JUROR: Number 162.

THE COURT: What's her name again?

MS. OPPENHEIMER: Janice Lynch.

THE COURT: Ms. Lynch, is it?

POTENTIAL JUROR: Yes.

THE COURT: If you'll stand right there and speak so she can hear you. Was it you or a family member that was involved?

POTENTIAL JUROR: Not involved. My son is a sergeant at Pine Ridge Police Department.

THE COURT: That's your son?

POTENTIAL JUROR: Yes, sir.

25

THE COURT: Pine Ridge?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. How long he's been there?

POTENTIAL JUROR: Two years.

THE COURT: Oh, good. How old is he?

POTENTIAL JUROR: Thirty-three.

THE COURT: Before that was he a law enforcement officer somewhere?

POTENTIAL JUROR: Yes, sir. Horry County. Conway PD.

THE COURT: All right. Well, good. Would you -- your son's involvement as a law enforcement agent and yours through him make it difficult for you to be fair and impartial as a juror in this case?

POTENTIAL JUROR: No.

THE COURT: Could you set aside your son's experience in that regard and decide this case based on what you would hear in court without regard to that?

POTENTIAL JUROR: Yes, sir.

THE COURT: Would you do that, please?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you, Ms. Lynch. You can go back and have a seat.

Okay. Let me see if I can -- need to ask any more of these questions from down here.

26

(The following proceedings were held in open court.)

THE COURT: Ladies and gentlemen, does any member of the jury panel have a close business or personal connection with the individuals who own B&L Auto?

Where is that located?

INVESTIGATOR GIETZ: West Columbia.

THE COURT: In West Columbia.

All right. Have any of you formed in your own mind or expressed to anybody else any opinion as to the guilt or the innocence of Mr. Brown? If so, please stand.

Are any of you conscious of; that is to say, aware of any bias or prejudice for or against the State or for or against the defendant, Mr. Brown? If so, please stand.

Do any of you then know of any reason of any kind whatsoever that would keep you from serving fairly and impartially as a juror in this trial? If you know of such reason, would you please stand.

Thank you.

Other than previously noted, any additional questions from the State? Mr. Smith? Ms. Oppenheimer?

MR. SMITH: Nothing from the State, Your Honor.

THE COURT: Other than previously noted, Mr. Williams, Mr. Yonge, anything from the defense?

MR. WILLIAMS: Nothing from the defense, Your Honor.

27

THE COURT: Thank you.

All right. Madam Clerk, you can give us a jury. The strikes will be five and five. We'll select two alternates. As to each alternate, the strikes will be one for the State, two for the defense, okay?

Ladies and gentlemen, the process now we're going through is the computer over here is generating a list at random from which the jury will be drawn. Some of your names will be on that list and some of them will not be on that list and even if your names are on that list, that doesn't mean you're gonna be on the jury yet. We have to go through that process as well.

Years ago when I started practicing law, longer ago than I'm going to let you know, and even thirty years ago when I began as a trial judge, we had a real archaic but flowery presentation of this selection. All of your names were on little slips of paper and were placed in capsules and they were placed in a big old rotunda and they would shake it like that kind of like, then a blind person -- if that's not enough, a blind person or a child under the age of seven according to statute would look into that thing -- or not look into it, reach into it and pull out the names and then the names would be called and people would come forward. And places like Lexington could afford a real nice brass thing like that. In my hometown

28

of Manning, in Clarendon County, it was a Price Albert cigar box, but now -- we're now on par with Lexington County. We've got a computer, too, that works just like this.

And so in just a moment that list will be generated and from that list names will be called and as the names are called you will pay attention to the instructions that will be given to you by the clerk and respond to those instructions.

Thank you.

Madam Clerk.

THE CLERK: When I call your name, please come forward and stand facing back out up here at the podium, please.

Juror 165, Brian Maddox.

(Whereupon, Brian Maddox, a black male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

BAILIFF: Bring all your stuff with you.

THE CLERK: Juror Number 24, James Brewer.

(Whereupon, James Brewer, a white male, was called

29

forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please seat this juror.

THE CLERK: For the defense?

MR. WILLIAMS: I'm sorry, that number again?

THE CLERK: Number 24.

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror number 160, Todd Lowman.

(Whereupon, Todd Lowman, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the jury.

THE CLERK: Please have a seat in the jury box.

Juror Number 162, Janice lynch.

(Whereupon, Janice Lynch, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please excuse the juror from the trial of this case.

THE CLERK: Please return back to your seat.

30

Juror Number 149, Joy Krause.

(Whereupon, Joy Krause, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please excuse the juror from the trial of this case.

THE CLERK: Please return back to your seat.

Juror Number 120, Aaron Howley.

(Whereupon, Aaron Howley, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please excuse the juror from the trial of this case.

THE CLERK: Please return back to your seat.

Juror Number 29, Gracyn Burgess.

(Whereupon, Gracyn Burgess, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

31

THE CLERK: Please have a seat in the jury box.
Juror Number 184, Shelby Minges.
(Whereupon, Shelby Minges, a white female, was called forward.)
THE CLERK: What say you for the State?
MR. SMITH: Please present this juror.
THE CLERK: For the defense?
MR. WILLIAMS: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 226, Reyes Bryan Santoyo.
(Whereupon, Reyes Bryan Santoyo, a Hispanic male, was called forward.)
THE CLERK: What say you for the State?
MR. SMITH: Please present this juror.
THE CLERK: For the defense?
MR. WILLIAMS: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 186, Gloria Moore.
(Whereupon, Gloria Moore, a white female, was called forward.)
THE CLERK: What say you for the State?
MR. SMITH: Please present this juror.
THE CLERK: For the defense?
MR. WILLIAMS: Please swear the juror.
THE CLERK: Please have a seat in the jury box.

32

Juror Number 196, Dustin Owens.

(Whereupon, Dustin Owens, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please excuse this juror from the trial of this case.

THE CLERK: Please return back to your seat.

Juror Number 209, Kelly Proffitt.

(Whereupon, Kelly Proffitt, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 53, Stephen Davis.

(Whereupon, Stephen Davis, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 211, Susan Queen.

(Whereupon, Susan Queen, a white female, was called

33

forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 139, Therese Joye.

(Whereupon, Therese Joye, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please excuse the juror from the trial of this case.

THE CLERK: Please return back to your seat.

THE COURT: The State has exercised one strike and the defense has exercised four strikes.

THE CLERK: Juror Number 65, Marcus East.

(Whereupon, Marcus East, a black male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

34

Juror Number 111, Garrett Heinley.

(Whereupon, Garrett Heinley, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please excuse this juror from the trial of this case.

THE CLERK: Please return back to your seat.

Juror Number 254, Russell Stott.

(Whereupon, Russell Stott, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

THE COURT: Madam Clerk, we'll go now to alternates. The strikes will be one for the State in each and two for the defense as to each alternate.

THE CLERK: Juror Number 61, Larissa Driggers.

(Whereupon, Larissa Driggers, a white female, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please excuse this juror.

THE CLERK: Please return back to your seat.

Juror Number 137, Rashard Jones.

35

(Whereupon, Rashard Jones, a black male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present this juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 292, Scott Wise.

(Whereupon, Scott Wise, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present the juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please excuse the juror from the trial of this case.

THE CLERK: Please return back to your seat.

Juror Number 20, Edward Billingsley.

(Whereupon, Edward Billingsley, a white male, was called forward.)

THE CLERK: What say you for the State?

MR. SMITH: Please present the juror.

THE CLERK: For the defense?

MR. WILLIAMS: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Your Honor, that's the alternates.

36

THE COURT: Thank you.

Are there any matters of law regarding the jury selection process from the State, Mr. Smith?

MR. SMITH: Nothing from the State, Your Honor.

THE COURT: Okay. From the defense?

MR. WILLIAMS: Nothing from the defense, Your Honor.

THE COURT: Thank you.

Folks, I want to thank you for your cooperation throughout the day, and those of you who were not selected as jurors in either of the two trials, I'm gonna let you go now and ask that you please call the new number that you were given today early this morning after 6:00 today to get instructions about your activities tomorrow, all right?

If both of the trials are underway, we won't need you back tomorrow, but between now and then we want to be sure that things are running smoothly so that we don't need you. Call that number after 6:00 this afternoon, please.

Thank you very much for your patience with us, folks. You are free to go now. Call the number after six.

(Whereupon, the jury panel was excused at 1:04 PM.)

THE COURT: Now, ladies and gentlemen, those of you who were selected as jurors for the trial of this

37

case, as I've told you we've got some matters that we need to deal with this afternoon outside of your presence that do not require your decision or your input in any way, so I'm gonna let you go now and ask that you be back in the morning at 9:30 to begin the trial of this case.

When you leave here, they will show you where to go to, to the jury room, and you'll report to that jury room tomorrow morning at 9:30.

Before we start the trial tomorrow, I will give you some instructions about things that you can and cannot do as jurors during your service as jurors, but to keep you from mistakenly doing some of those things that you really don't know you're not supposed to do between now and then, let me give you some preliminary instructions.

You're not allowed to talk with anybody about this case at any time during the trial of the case, even among yourselves, until the trial of the case is over. Then, of course, as jurors in your deliberations you can take as much time as you want to to talk about it, but not until that time.

And so if anybody should try to talk with you about this case, just tell them that you're a juror in the case and you can't discuss it with them. I'm pretty sure that will end the discussion at that time.

38

And you can't try to find out anything on your own about this case from any source at all outside of the courtroom. You can't go home and get that computer that knows everything in the world and type in the names of these folks and try to find out -- there's got to be something somewhere online about this case, I need to know about that. I'm a juror.

Well, as practical matter, ladies and gentlemen, everything that you need to know about this case in order to render a verdict, in fact, everything that you are allowed to know about this case in order to render a verdict, you will learn from this courtroom right here, from this witness stand right here, and from the charge and the instructions on the law that I will give you after the testimony has been completed.

Everything that we've been doing so far, all the questions that I've been asking and the responses that you and the other members of the jury panel have been giving throughout the morning during the time that you have spent with us have been designed to assure that once we've got fourteen of you folks, people in that jury box, we're gonna have folks just like you, people who didn't know anything about this case, who don't know anything about the people in this case, don't have any connection with the facts of this case or the lawyers or

39

the witnesses or anything else about this case so that you come to your service as jurors with a completely open mind and a blank chart really from which what you know about this case will be written on that blank chart and in that mind that is open right now without having made any preconceived ideas or any opinions about this case whatsoever.

If you try to find out something on your own about this case, then you'll upset everything that has been done and you've been doing and that everybody else has been doing to make sure we have folks just like you.

And, like I said, when the trial is over you can talk about this case as much as you want to among yourselves as long as you want to, and you will know all you need to know at that point in time to render a verdict, but please not until that time.

So have a save trip home, but even with you, I want you to call that number after 6:00 today. You've still got that card that has the number on it? Okay. I want you to call that number when you get home today and you'll hear instructions about the jurors generally and you'll also hear a set of instructions about the -- this is for the jurors in the case of the criminal case that's being tried, and that's you, you're the jurors in the criminal case, and you'll hear that and you'll follow

40

those instructions, which in all probability are gonna tell you what I've already told you. Be in the jury room at 9:30 tomorrow morning.

Does everybody understand all of that?

Okay. Thank you, folks. Have a safe trip home and I'll see you tomorrow morning at 9:30.

(Whereupon, the jury was excused for the day at 1:09 AM.)

THE COURT: Folks, what about 2:15? That's an hour and five minutes. Is that enough time for lunch and to get ready for the motions?

MR. SMITH: Yes, Your Honor.

MR. WILLIAMS: Yes, sir.

THE COURT: All right. We'll take a break right now and we'll start back at 2:15, that's an hour and five minutes, and we'll take care of the matter of the pre-trial motions at that time.

Thank you.

(Whereupon, a luncheon recess was taken at 1:10 PM.)

(Court's Exhibit Numbers 1 through 4 were marked for identification.)

BAILIFF: Court will come to order. The Honorable Judge Thomas Cooper presiding.

THE COURT: Thank you, folks. Please be seated.

Good afternoon.

41

All right, folks. We are ready to proceed now with pre-trial motions in the State versus Brown?

And, Ms. Oppenheimer, you indicated that you had a brief Jackson v. Denno, and Mr. Yonge has the motion to suppress.

Any particular order you-all want to take those in?

MR. SMITH: Your Honor, we think we should probably -- the motion to suppress needs to be heard first.

THE COURT: Okay. All right. Good.

All right. You-all have read the -- have read the motion and it's a part of the record obviously and I'll be glad -- now the motion having been made and articulated the grounds within, it comes to the State to introduce evidence contra to the motion.

Is that everybody's understanding of the process?

MR. YONGE: Yes, Your Honor.

THE COURT: Okay.

All right. Mr. Smith? Ms. Oppenheimer?

MR. SMITH: Your Honor, we'll be proffering some testimony for our motion.

THE COURT: Okay. Yes.

MS. OPPENHEIMER: The State would call Investigator John Gietz.

THE COURT: Come forward, please, Investigator, and

be sworn.

(Whereupon, John Gietz was duly sworn by the Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: It's Senior Investigator John Gietz, and that's G-I-E-T-Z.

JOHN GIETZ,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. OPPENHEIMER:

Q. Investigator Gietz, you are an investigator with the Lexington County Sheriff's Department; is that correct?

A. That is correct, ma'am.

Q. And you are assigned to the narcotics unit?

A. That is correct.

Q. How long have you been in that unit?

A. I've been on the NET Team for over six years.

Q. All right. And as a narcotics investigator, do you often have specific targets or individuals you believe who may be involved in the trafficking of illicit narcotics?

A. Yes, ma'am.

Q. Can you tell us whether or not Steven Daniel Brown was ever a target of one of your investigations?

A. He was, ma'am.
Q. And that is the defendant we're all here for today; is that correct?
A. Yes, ma'am.
Q. About how long did your investigation into the defendant last?
A. There were several investigations, but the last one that culminated in 2020 had gone previously from 2018.
Q. Okay. And can you tell us whether or not as a narcotics officer you typically obtain tips from various sources?
A. That is correct.
Q. Did you receive tips regarding the defendant at all?
A. Yes, ma'am. Several.
Q. Several. What was the nature of those tips?
A. That Steven Daniel Brown was trafficking narcotics. Methamphetamine to be specific.
Q. Specifically methamphetamine?
A. Specifically methamphetamine.
Q. Can you tell us whether or not you received detailed information about the defendant's source of supply in 2020?
A. Yes, ma'am. We received information that Steven Daniel Brown was going to Georgia to pick up large quantities of methamphetamine to bring back to South Carolina.

Q. Okay. And did you know where specifically in Georgia the defendant was going to pick up these large quantities of methamphetamine?
A. Not the exact location; however, it was on the other side of Augusta, Georgia.
Q. Okay. Can you tell us what you did with this information when you received it?
A. I researched his information through several databases, one of those to include South Carolina DMV, where I was able to obtain tags that were associated with his customer number and/or DL number. One of the tags was a white F-350 bearing South Carolina tag [redacted]. Investigator --
Q. And let me stop you real quick. Why do you run an individual's vehicle information through the DMV when you're investigating them for trafficking narcotics?
A. The tip in this instance was that he was driving a vehicle to Georgia and then back to South Carolina with large -- large quantities of methamphetamine.
Q. And can you tell us once you ran the defendant's vehicle information and got this tag for this large pickup truck, what did you do with that?
A. The tag was placed in an LPR reader system run by the DEA called DEASIL. Investigator Sanner put that tag in there, there was instances where trips had been made to

Georgia, and then he put a tracking alert on that to notify any time the vehicle went to Georgia and made me the co-case agent for that.

Q. Okay. So you would receive these hits whenever the defendant's tag was read on a -- and what is an LPR?

A. A license plate reader. Excuse me.

Q. Okay. And you would receive those tips as well as Investigator Sanner?

A. Yes, ma'am.

Q. All right. Can you tell us the general area of where this LPR is?

A. The other side of Augusta, Georgia.

Q. Is it on a specific highway?

A. I-20 -- there's one on I-20 east and westbound, but the one that is located on the other side of Augusta, Georgia is westbound.

Q. Okay. Can you tell us whether or not you received a hit on the defendant's vehicle going past that LPR on the morning of June 29, 2020?

A. Yes, ma'am, I did. At approximately 8:00 in the morning.

Q. Okay. And as a result of -- well, what did you do when you saw that hit?

A. I confirmed the hit to make sure. DEASIL provides you a photograph of the actual vehicle with the tag and

when it was run or when the hit actually occurred. I was able to confirm that it was an accurate hit. I viewed the photograph, which was of the white F-350 bearing South Carolina tag [redacted] and then I rallied a team together. I contacted the South Carolina Highway Patrol and made contact with several individuals there where I was placed in contact with the South Carolina Highway Patrol interdiction team. I spoke to now Sergeant Atwood with the South Carolina Highway Patrol, provided him the information, as well as photographs of what I obtained, and that information was passed to Trooper Shropshire.

Q. Okay. What specific information did you give to Sergeant Atwood?

A. That the vehicle was the subject of an investigation and we had received tips that Steven Daniel Brown was making trips to Georgia to pick up methamphetamine and bring it back to South Carolina using that I-20 route and that his tag had hit that morning and we suspected that he would return shortly.

Q. Okay. So to clarify, you told the troopers the identity of the individual you were investigating; is that correct?

A. Yes, ma'am.

Q. The vehicle that he was driving; is that correct?

A. Yes, ma'am.

47

Q. The fact that you had information that the defendant was going to and from Georgia; is that correct?
A. That is correct.
Q. The fact that he would be trafficking large quantities of methamphetamine?
A. That is correct.
Q. And that his vehicle had hit on an LPR?
A. Yes, ma'am. That is all correct. And in addition to that, I provided them with a photograph of the vehicle.
MS. OPPENHEIMER: I beg the Court's indulgence.
No further questions. Please answer any questions that Mr. Yonge may have of you.
THE COURT: Mr. Yonge, you may cross-examine.
MR. YONGE: Thank you, Your Honor.

CROSS-EXAMINATION (In-Camera)

BY MR. YONGE:
Q. Investigator Gietz?
A. Yes, sir.
Q. Hey, I'm Jason Yonge. How are you today? How are you doing?
A. Good.
Q. All right. So you're doing an investigation on Steven Brown from 2018 to 2020?
A. That is correct.
Q. And you've got information that Steven's trafficking

methamphetamines?
A. That is correct.
Q. Okay. And how's he doing that again?
A. He was driving a vehicle from South Carolina to Georgia and then returning with the same vehicle.
Q. Okay. And at some point you enter him into a license plate reader?
A. Yes. A database that collects license plate reader data.
Q. Okay. And what's the name of that again?
A. DEASIL. It's D-E-A-S-I-L.
Q. Walk me through how you go ahead and enter that information in there.
A. So you provide the information that you need to. There's -- you can check ahead of time, which is what we did. We checked for prior hits in Georgia using the tag and then you've got to provide a reasonable suspicion on why you are putting that tag in there. Ours was a tip for large sums of cash or drugs being trafficked from state to state.
Q. Okay. And when you're -- when you're submitting that reasonable suspicion that you mentioned there --
A. Uh-huh.
Q. -- is that a written thing that you submit to them?
A. It's not.

49

Q. No?
A. It's just a tab that you select on why you're running the tag.
Q. Okay. So you're doing all of this through some preformatted website?
A. The database, yes.
Q. Okay. And so at some point you've got to click a button that says I have reasonable suspicion?
A. That is correct.
Q. And then you type that reasonable suspicion in?
A. No, you just click the dropdown on what it fits on why you're running the tag.
Q. And what dropdown did you select on this?
A. Trafficking methamphetamine.
Q. And so your reasonable suspicion that you entered into the database was that you suspected him of trafficking methamphetamines?
A. Well, that we had received a tip that he was trafficking methamphetamine.
Q. Okay. So the reasonable suspicion that you're entering in on that website is I received a tip that he's trafficking methamphetamines?
A. I clicked the dropdown that said trafficking methamphetamine on it.
Q. So --

A. Trafficking narcotics I should say.
Q. And there won't be any record of this anywhere?
A. No, there's a record of it I'm sure.
Q. Okay. And where would you go to get that record?
A. Probably the DEA. I don't know if they still maintain that stuff, but at one point in time there was a record of that.
Q. Okay. Do you have a copy of that record now?
A. Not on me.
Q. Did you think it would be necessary to have a copy of that record for this case?
A. There were e-mails provided that stated when the tag was put in and when the hits were received.
Q. Okay. How many e-mails?
A. I'm not sure.
Q. No? And the only reasonable suspicion that you enter in there is trafficking narcotics, correct?
A. That I put in there?
Q. Right.
A. You're asking if that's the only thing that I put in there or is that the only thing that you can select?
Q. What was your role in entering this into the license plate reader?
A. Well, I didn't personally enter it, Investigator Sanner entered it, but it was for trafficking narcotics.

51

Q. Okay. How do you know that?
A. Because we received several tips saying that Steven Daniel Brown was trafficking methamphetamine.
Q. No, and I apologize. That's my fault. I'm asking how do you know what Detective Sanner entered into that database?
A. Because that's what he told me.
Q. So based on what he told you, you know what he selected in a dropdown menu?
A. That's what he told me he selected.
Q. You weren't sitting there watching him do it?
A. No, I was not.
Q. Okay. Is Detective Sanner in the courthouse today?
A. He's not.
Q. Okay. So just based on your information of what he told you that he entered in a dropdown menu, that's what we're establishing here is what was entered into that database?
A. I don't know if that's the only thing, but he's the one that entered it and selected that dropdown -- or he advised that's what he selected.
Q. And there would have been a record at some point of it that existed?
A. Yes.
Q. But it was never gathered by your office?

A. No.
Q. Okay. Did you only ever get hits on June 29th from that database?
A. No.
Q. Okay. What other hits did you get?
A. I got another hit from a previous date that was delayed and then there were the prior hits. Like I said, you do the research and it will -- it will give you prior hits prior to when we entered him into DEASIL.
Q. Okay.
A. So you run a query.
Q. Okay. How do you run the query?
A. The way that I said before where you put it in there.
Q. Okay. Did you run the query?
A. I did not run the query.
Q. Do we have a record of that query?
A. Probably not.
Q. Okay. Why not?
A. I couldn't answer that question. Investigator Sanner was the one that put it in the database.
Q. So your only knowledge of this whole database is getting a hit on June 29th?
A. No.
Q. Okay.
A. No, I use the system all the time.

Q. And when you run a query, you don't save the query?
A. No.
Q. Why?
A. There's -- there's no need to.
Q. Why?
A. I don't know. I don't understand what you're trying to get to. There's -- there's no reason to save the query. You have your -- your reason for it and then you run the query and then it will show that they're saved or whatever, that there -- there has been a hit.
Q. Okay. And it's saved where?
A. I'm sure in a DEA database somewhere.
Q. Okay. So you come in here today and you allege this conspiracy running from 2018 to 2020, but we don't have any of the documentation to show all these queries?
A. That's correct.
Q. Okay. Got it. Now you contacted the highway patrol at some point on June 29, 2020, right?
A. I did.
Q. All right. And how did you do that?
A. By phone.
Q. You called them?
A. That's correct.
Q. At what phone number?
A. I'm gonna have to ask -- I'm going to have to access

my phone here real quick, but [redacted]-4825.
Q. Okay. And that was Atwood?
A. Sergeant Atwood, yes.
Q. Okay. What time did you call him?
A. I don't know the exact time.
Q. Approximately.
A. Very shortly after receiving the hit. Probably within thirty minutes.
Q. When did you receive the hit?
A. Around 8:00.
Q. All right. So within thirty minutes of that? Around 8:30, 8:45?
A. Sure.
Q. All right. And why did you know to contact Sergeant Atwood?
A. Because I contacted the South Carolina Highway Patrol.
Q. And you just wound up with Sergeant Atwood by chance?
A. I spoke to a supervisor with them and he suggested -- I knew that South Carolina Highway Patrol had a very good interdiction team, so I made contact with them and I received Sergeant Atwood's phone number. I contacted Sergeant Atwood and advised him of all of the details that I said before.
Q. Okay. Would that be written down anywhere, anything about that conversation with Sergeant Atwood?

A. No.
Q. At some point in preparing to testify here today, did you speak with the solicitor's office?
A. Yes.
Q. Okay. And did you go over what your testimony was gonna be?
A. What do you mean? They had my incident report.
Q. Okay. And so everything you're saying here today is in your incident report?
A. Probably not everything.
Q. Okay. But just the major things?
A. Yeah.
Q. The most important things are in your incident report?
A. I think it's a pretty fair and accurate representation of the events that unfolded that day.
Q. Okay. Now if I looked through your incident report, am I gonna see anything about you contacting the highway patrol interdiction team? Do you have a copy of it up there?
A. I'm sure there's something in there about contacting highway patrol.
Q. Perfect. Let's run through it then.
A. If you're referring to the phone call, there's no documentation of the phone call in the report.
Q. Okay. How about any indication in your report at all

that you were the one who alerted highway patrol to go pull over Steve Brown that day?
A. No, it's not gonna be in there.
Q. Why?
A. It's an investigative technique that we use in narcotics. It's called the whisper stop. We use another agency to stop, marked units and people on patrol, just as an investigative tool. We -- we typically don't like providing the details of the LPR system, but in this case we were forced to.
Q. Okay. Would you agree with me that nothing in our discovery up to this point that we received from the solicitor's office says anything at all about you contacting highway patrol before this traffic stop occurred?
A. I'm sorry, can you repeat the question?
Q. I can. Would you agree with me that nothing we received from the solicitor's office at this point has said anything about you contacting highway patrol for this traffic stop?
A. I don't believe so.
Q. You don't believe what?
A. That there's anything in this report about me contacting prior to the stop about my phone call to Sergeant Atwood.

57

Q. Okay. But you've told the solicitor's office this before here today?
A. That's correct.
Q. Okay. When?
A. I don't know for sure.
Q. How many times?
A. I don't know. How many times have we had this teed up to go to trial? I mean, it's been several times, so during that -- those conversations we've had that discussion numerous times.
Q. All right. And you've told the solicitor's office each time that I called Sergeant Atwood and I set this whole thing up?
A. Yes.
Q. Okay. Now would you agree with me that that information has never been relayed to my office?
A. What? No.
Q. You wouldn't? Okay. When was it?
A. When was what?
Q. That information relayed to my office.
A. You would have to ask the solicitor's office. I've never spoken to any of you guys personally other than maybe Theo. I know that I've had personal discussions with Theo about, you know, notifying highway patrol and he was aware of the LPR system. I also knew that the solicitor's

office advised me that they had advised your office of the information about highway patrol.

Q. But you would agree that information is not gonna be written down anywhere because it's an investigative technique?

A. That's correct.

Q. Okay. And that the only time you're gonna reveal that is up here on the stand today?

A. About the investigative technique?

Q. Yeah.

A. Yeah.

Q. You would never tell us about that before getting up there today?

A. Well, no. That's not -- I feel like you asked two questions there and only one of them was relevant.

Q. Okay. Which one was relevant?

A. You asked if I would -- I'm sorry, can you repeat the question?

Q. I just want to know at what point we were notified that this is what you were gonna say here today?

A. I don't know the exact date.

Q. But you've told the solicitor's office on multiple occasions whenever we teed this thing up for trial?

A. That's correct.

Q. Okay. And so if it's not been relayed to us, do you

59

think that would be fair?
A. I do think it's been relayed to you.
Q. Okay. When?
MS. OPPENHEIMER: Your Honor, asked and answered.
I mean, he doesn't know exactly when the solicitor's office relayed that information multiple times to Mr. Williams.
THE COURT: Then I think the defense -- if that is what you're saying is a fact, then the appropriate answer is I don't know.
MS. OPPENHEIMER: Correct, Your Honor.
THE COURT: That's an acceptable answer. I haven't heard it yet.
MS. OPPENHEIMER: He said it multiple times.
THE WITNESS: I have been.
THE COURT: All right. Go ahead.
BY MR. YONGE:
Q. Okay. At one point you had a personal conversation with Theo Williams you said?
A. Uh-huh.
Q. And in that conversation you relayed all of this to him?
A. Well, I told him that we -- I notified highway patrol of the stop. He knew that.
Q. Okay. When did you have that conversation with Theo

Williams?
A. I don't know the exact date. I've had several interactions with Mr. Williams. We've had several other cases.
Q. Where were you when you had that conversation?
A. I don't know the exact place and I don't know the exact date or time.
Q. So at some unknown place and time you had a private conversation with Theo Williams where you told him all this information you're telling us now on the stand?
THE COURT: Ask the next question.
MR. YONGE: Okay.
BY MR. YONGE:
Q. Were you communicating on the radio with highway patrol at all?
A. I was not.
Q. No? Okay. And so your entire communication was one phone call to Atwood -- Sergeant Atwood?
A. No, it was multiple phone calls.
Q. Okay. When did you make the second phone call?
A. We were in constant communication. We would hang up, things would get handled to prepare for the stop and then I would make contact with him again. Pictures were sent. I don't know the exact times.
Q. Was he -- was there constant communication during the

61

stop?
A. Just prior to, yes.
Q. Okay. Were you talking to him while he was driving to the stop?
A. No.
Q. Okay. So how long before the stop were you talking with him?
A. Before the stop?
Q. Uh-huh.
A. Minutes before the stop.
Q. Okay. And did you communicate directly with Trooper Shropshire?
A. Not -- not directly.
Q. All right. Do you know whether Sergeant Atwood communicated directly with Trooper Shropshire?
A. He told me he did.
Q. He told you he did?
A. Uh-huh.
Q. Okay. Are you aware of any record that would show that?
A. No.
Q. Okay.
MR. YONGE: Bear with me for one moment.
THE COURT: Yes, sir.
THE WITNESS: You're fine.

(Court's Exhibit Number 5 was marked for identification.)

BY MR. YONGE:

Q. Investigator Gietz, I'm handing you a document marked Court's Exhibit 5. Would you please take a look at that for me? Let me know if you know what that is.

A. It looks like an LPR note from DEASIL. The alert I should say.

Q. All right. And did they send that hit to you by e-mail?

A. I see Investigator Sanner on here and me, yes.

Q. Okay. Is that how you became aware of the license plate reader hit on June 29th?

A. That is one of the ways, yes.

Q. What does it say there in Category? Category 2, do not interdict; is that right?

A. Oh, yeah.

Q. What does that mean?

A. It means that we're working an active investigation on him. So if there was a higher category that needed to be done, it would be everybody interdict. It would go out to anybody ran DEASIL. It would send the alert to anybody that works interdiction and needs to know that. This was a separate investigation, so it was a do not interdict.

Q. Okay. What does do not interdict mean?

A. It just means don't send it out to everybody. It doesn't -- it says that these people are working this investigation, myself and Investigator Sanner. Sergeant Hodges is included on the bottom of it.
Q. Okay. So it does not mean don't go get him?
A. No, it means that I'm working the case and Investigator Sanner's working the case and Sergeant Hodges is working the case, so we will conduct the interdiction stop.
Q. Okay. Did you tell anybody else in your department that you were gonna go interdict at this traffic stop?
A. Yes, several people.
Q. Okay. Who did you tell?
A. Investigator Holt, Sergeant Hodges. The list can go on and on. This was an active investigation throughout all of NET.
Q. And when you go do that, do you have any paperwork that you're supposed to fill out?
A. No.
Q. Okay. But you did fill out a report in this case?
A. I did do a post-incident, yes.
Q. And do you have that report with you up there?
A. I do.
Q. Would you mind taking a look at page 4 for me?
A. Okay.

Q. All right. And so just from the top on here, what does that say?
A. On 6-29-2020?
Q. Correct.
A. I responded to the 41 mile marker of I-20 eastbound in Lexington County, South Carolina.
Q. Sure. Can you keep going, please?
A. How far do you want me to read?
Q. Just keep going.
MS. OPPENHEIMER: Your Honor, certainly he could introduce the report into evidence so that we don't have to have Gietz read his pages of long report into the record. It's just kind of a waste of time.
THE COURT: I don't -- I don't know how long it is, how long it will take, but I'm gonna imagine Mr. Yonge has got a point that he wants to emphasize and I'll let him get to it as long as it doesn't create a lot of any extraneous information getting there.
BY MR. YONGE:
Q. Well, I'll tell you what. I apologize. I'll read it and then you can tell me -- answer some questions for me, okay?
A. (Nods head.)
Q. All right. And let me know if it sounds accurate to what happened that day.

A. Okay.
Q. So on 6-29-2020, I, being you, Investigator Gietz, correct?
A. Correct.
Q. Responded to the 41 mile marker of I-20 eastbound in Lexington County, South Carolina. "If", would be mean in reference, correct?
A. Yep.
Q. All right. In reference to a traffic stop on a white Ford F-350 bearing SC tag [redacted] by South Carolina Highway Patrol.
A. That's correct.
Q. So far accurate?
A. Yeah, other than the spelling error -- or the grammatical error.
Q. I have them, too. I'm not --
A. Yeah. Yeah.
Q. But accurate substantively?
A. Yes.
Q. Okay. From previous investigations I knew the owner of that vehicle to be Steven Daniel Brown, a/k/a Steve-O, a validated member of the Warlocks MC Capital Crew. Also, through previous investigations, I had obtained information that Steve Brown was trafficking methamphetamine from Georgia to his residence in South Carolina using that

vehicle.

Does that say anything about you contacting highway patrol beforehand?

A. It does not.

Q. Was that intentional?

A. Yes.

Q. That you would not include that?

A. Yes.

Q. Okay. On the stop, I met with Trooper Shropshire, who advised that he stopped the vehicle Steven Brown was driving for improper lane use and following too close. Trooper Shropshire stated that the violation occurred in Lexington County, South Carolina, correct?

A. Correct.

Q. I did then met with Trooper Atwood who advised his K-9 indicated that there were narcotics in the vehicle. Trooper Atwood also advised he read Steven his Miranda advisement and Steven stated there was something in the vehicle. Trooper Atwood and Trooper Shropshire also advised that body cameras were activated during the stop, correct?

A. Correct.

Q. What time did you arrive at the stop? Let's do this if you don't mind.

A. Sure.

Q. Had the -- the traffic stop had already been initiated and the dog sniff had already been performed at that time?
A. I believe that's accurate, yes.
Q. Okay. At no point did you speak directly with Trooper Shropshire before you arrived on the scene that day, right?
A. No, I don't believe I had.
Q. You had not spoken to him?
A. I had not, yes.
MR. YONGE: One moment, please.
No further questions.
THE COURT: Thank you. Redirect?
MS. OPPENHEIMER: Very briefly, Your Honor.

REDIRECT EXAMINATION (In-Camera)

BY MS. OPPENHEIMER:
Q. Investigator Gietz, as a narcotics officer you receive anonymous tips, correct?
A. That's correct.
Q. Now why don't you always put in your investigative report, your initial report, who gave you that tip, when they gave you that tip and what the information was?
A. For the -- the safety and the security of the person providing the tip. It would be dangerous to provide that information or put that in any kind of immediately discoverable paperwork.
Q. Well, how would that be dangerous?

A. So there could be some form of retaliation, witness tampering, all -- all kinds of things related to that, especially drug traffickers and --
Q. It's common for people doing bad things to potentially harm those who are ratting them out; is that correct?
A. That's correct. Yes.
Q. But, in fact, you did mention in your initial report that you had obtained information that the defendant was trafficking methamphetamine from Georgia to his residence in South Carolina using his Ford F-350; is that correct?
A. That's correct.
Q. And you've been involved in a number of trial prep meetings with myself and Mr. Smith and is it fair to say that as trials like this proceed you are aware that more details are given to the defense?
A. Yes.
Q. And, in fact, aren't you aware that the identity of this particular tipster was given to the defense?
A. I am very aware of that, yes.
Q. And I believe Mr. Yonge pointed out this e-mail that was an LPR hit e-mail that you got on June 29, 2020?
A. Uh-huh.
Q. Now he made a fuss about Cat 2, do not interdict. That just means that any other agency shouldn't necessarily pull him over because the Lexington County Sheriff's

69

Department Narcotics Enforcement Team is investigating this individual?

A. That's correct.

Q. And you, in fact, had a plan to pull over the defendant when you were able to; isn't that correct?

A. Yes, ma'am.

Q. And you executed that plan on June 29th of 2020?

A. Yes, ma'am.

Q. And that involved not only your agency, but the highway patrol, correct?

A. Yes, ma'am.

Q. And information, is it fair to say that it's often shared between law enforcement agencies?

A. Yes, ma'am. There were several agencies, not only including them. The ATF was also involved in this case.

Q. And, again, it's an investigative tool not to necessarily show your entire hand at the outset of a case, isn't it?

A. Yes, ma'am. That is accurate.

Q. And DEASIL is just an investigative tool that you use, correct?

A. Yes, ma'am.

Q. And if you will take a look at that. Is it still up there with you?

A. Yes, ma'am.

Q. If you will go to page 2, remarks, can you read that statement for me?
A. Steven Brown is involved in methamphetamine trafficking from Atlanta, Georgia to Lexington, South Carolina.
Q. So that would have been the information that Investigator Sanner put in when he entered the defendant's license plate into DEASIL, correct?
A. It appears that that's additional. Other than the dropdown, that is additional remarks that he put in manually.
Q. All right. And can you look at the next line, notification history, times reported. How many times was this -- had this vehicle hit?
A. That would be six, ma'am.
Q. Okay. And if you'll also look at the top of the page for me, right here, you did not put that headstamp on there, did you?
A. I did not.
Q. And how about the footer, did you put that in there? Right there.
A. No, ma'am.
Q. But can you read the footer for us, please?
A. Additional discovery.
Q. Okay. Additional discovery, and what case name is it?

A. State v. Brown.
Q. Okay. And on the top right-hand corner is there a date?
A. March 2, 2022.
Q. Can you tell us prior to this traffic stop on June 29, 2020, were you able to independently verify certain aspects of the tip from the tipster in this case?
A. Yes.
Q. What were you able to verify?
A. That he was, in fact, driving the vehicle that we pulled off of his SC DMV. It was also that there were prior trips made to Georgia from South Carolina or vice-versa, back and forth. And then on the last page, as you can see, there's -- it says images. There was an image, front and back, of the vehicle. So you could see the front of the vehicle, as well as the back of the vehicle, so I could confirm that that was, in fact, the vehicle.
Q. Okay. And do those images stay with the hit forever?
A. No, they don't.
Q. They expire?
A. No, that would be -- the database would have to carry too much data. You've got to think there's thousands, maybe hundreds of thousands of vehicles that travel that route every single day. That would be exhaustive for the

day to keep track of.
Q. Okay. And can you tell us -- the remarks that he's trafficking methamphetamine from Atlanta, Georgia, if you're travelling to Atlanta, Georgia from Lexington, South Carolina, what route do you typically take?
A. Typically I-20.
Q. I-20 westbound or eastbound?
A. You would take westbound and then return on the eastbound.
Q. And is it fair to say that the vehicle hit going westbound on I-20 on June 29, 2020?
A. Yes. It hit -- it hit westbound and eastbound.
Q. All right. And do you know about how long that trip takes?
A. I don't know the exact details. I want to say about three hours.
Q. Okay. Did you use that information in determining when you should set this stop up?
A. Yes, ma'am.
Q. Okay. And can you tell us based on your recollection and the CAD did the times pretty much line up?
A. Yeah. We did a -- we did a Google trip from Atlanta to South Carolina or Lexington where we were at and it gave us the approximate times. It all matched up.
MS. OPPENHEIMER: Thank you, Investigator Gietz.

No further questions.

THE COURT: Any follow-up on this, Mr. Yonge?

MR. YONGE: Nothing else, Your Honor.

THE COURT: Thank you. You can step down, Investigator.

(Witness excused.)

MR. SMITH: Your Honor, the State calls Master Trooper Gregory Shropshire.

THE COURT: Trooper, come forward and be sworn.

(Whereupon, Gregory Shropshire was duly sworn by the Clerk of Court.)

THE CLERK: Thank you. Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: Master Trooper Gregory Shropshire, S-H-R-O-P-S-H-I-R-E.

GREGORY SHROPSHIRE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MR. SMITH:

Q. Trooper Shropshire, how long have you been with the South Carolina Highway Patrol?

A. About nine years.

Q. And during those nine years, have you ever been tasked with performing criminal interdictions?

A. Yes, sir.
Q. Approximately how many of those have you done in your career?
A. Several hundred.
Q. Can you tell me a little bit about how a criminal interdiction stop works?
A. As far as a criminal interdiction stop, it usually consists of conducting high volume traffic stops and using that to -- during that time spending most of your time interviewing and -- and rapidly assessing the situation to determine if the person is involved in any type of criminal activity.
Q. And are those stops typically performed only with your agency, are they performed with other agencies? How do those work?
A. We normally perform work independently as a solo agency, so we'll go out on our normal day-to-day operations and conduct enforcement actions in our particular zone and every once in a while if any other agency, whether a state, Federal or local agency, needs our assistance, we'll assist them.
Q. Okay. Now on July 29, 2020, were you called to assist another agency?
A. I was.
Q. For what reason?

A. They advised me -- I was advised by Sergeant Atwood who contacted me and told me that Lexington County wanted us to stop a vehicle. It was a white Ford --
Q. If I could stop you there. So you -- so Trooper Atwood was a part of your team, criminal interdiction?
A. He's my K-9 handler.
Q. For every interdiction that you did, was Trooper Atwood with you?
A. Yes, for the most part.
Q. Okay. So any information that would have been received, you would have received it from Trooper Atwood?
A. It depends on -- it depends on where we got it from or anything like that. Sometimes our -- at the time there was -- Captain English was over us at the time. He may have contacted us if another agency needed us or another agency may have contacted him or ourselves.
Q. Okay. So let's -- let's go back in. What information did Trooper Atwood relay to you on July 29, 2020?
A. That Lexington County wanted us to stop a white Ford F-350 that was going to Georgia and picking up a large quantity of methamphetamine and returning back.
Q. You heard testimony just a minute ago about a license plate reader. Were you-all advised of that?
A. Yes, sir. We knew about that.
Q. What did you know about that?

A. We knew that the license plate reader was in Georgia in the Martinez area. We knew that they were using that to track him and we were told that they was expecting him back in a short amount of time.
Q. And did they tell you why they were tracking him?
A. Yes, he was transporting illegal narcotics. Methamphetamine.
Q. So after you got this call, you got this briefing, what did you do then?
A. I then got dressed. I was home that day. I got dressed and started making my way into Lexington County and I met up with Sergeant Atwood in Exit 39 in Lexington County.
Q. Was there anyone with you besides Trooper Atwood?
A. At the time it was just me and Sergeant Atwood.
Q. Do you recall approximately when you were informed that the defendant was headed your way?
A. It was maybe about thirty minutes after I got there, so sometime afternoon-ish.
Q. And did you make visual contact with that vehicle?
A. I did. I observed the vehicle.
Q. Did it match the description you were given from the sheriff's department?
A. Yes, sir.
Q. What did you do then?

A. Once I saw the vehicle and got a visual -- on visual observation saw that that was the vehicle that was involved. And also Sergeant Atwood actually relayed to me and let me know that, yes, that was the vehicle. I then entered onto the interstate and made contact with that vehicle because I already had a traffic violation prior to the stop.

Q. What was that traffic violation?

A. Following too closely, sir.

Q. While you were following this vehicle, did you observe any other traffic violations?

A. Yes, sir. I observed -- the vehicle actually began to have a change in driver behavior. The vehicle actually began to fail to maintain his lane and started riding the white line, the fog line.

MR. SMITH: I beg the Court's indulgence one moment.

THE COURT: Yes, sir.

BY MR. SMITH:

Q. All right. So after you observed these violations, what did you do then?

A. Once I observed those violations, I advised Blythewood communications that I was stopping a vehicle, blue lights were activated, and I began to pull the vehicle onto the shoulder.

Q. And the location where you pulled him over, that was

in Lexington County?
A. Yes, sir. At the 41 mile marker.
Q. All right. So what did you do then?
A. Once I advised Blythewood of the information and I exited my patrol vehicle, I made sure all my cameras and body camera information was already on and I then made contact with the vehicle on the passenger side.
Q. Did you identify the driver of the vehicle?
A. Yes, sir, I did.
Q. Who was it?
A. Mr. Steven Brown.
Q. All right. So walk me through then. Tell me what you do -- what you do during the course of a traffic stop. What happened here?
A. During the course of a traffic stop, I usually make contact with them. I introduce myself and I advise them the reason why I'm stopping them and at that point I'm observing them inside the vehicle at that point to make a rapid decision if I'm gonna have them exit the vehicle from there to conduct additional enforcement action.
Q. Did you pull the defendant out of the vehicle?
A. I did have him exit the vehicle.
Q. Was anybody else in the vehicle with him?
A. No, sir. He was the sole occupant.
Q. All right. So what did you do after you pulled him

79

out of the vehicle?
A. I had him -- once I had him exit the vehicle, I made -- then advised Blythewood communications to start running his driver's license information to verify there were no active warrants or that his license was also clear and it wasn't suspended.
Q. Okay. And do you have a conversation with the defendant at this point?
A. Yes, sir. At that point I started having a general conversation. I explained to him why I stopped him and proper driving techniques and getting a little bit safer way of driving. I also had a conversation about where he was coming from and general information from there based on what he says.
Q. And what did he tell you -- what did he tell you at this point?
A. He told me that he was coming from Georgia. I then asked him again where in Georgia he was coming from and he stated he was coming from around the Augusta area. I then ask him well, what city were you coming from around the Augusta area and he said he wasn't able to tell me that, he wasn't sure. He said he was down there visiting a friend and finding work.
Q. Uh-huh. And while you're having this conversation, are you comparing what he's telling you with information

you've already been given?
A. Well, at that point, yes, I had that in my backhand, but I'm also rapidly assessing on my own, determining if there's any type of deception that may be involved during the course of that traffic stop.
Q. Would you tell us a little about that? What are you looking for? What sort of behaviors are you trying to assess?
A. Well, I'm looking at his physical appearance, how he's reacting to me, how he's reacting to being out there on the side of the roadway. By bringing him out there onto the side of the roadway and speaking with him, it's gonna make it an even playing field as well for me because some people are scared and nervous about being in front of law enforcement. That allows them to relax if there's nothing that's going on from my training and my experience. This allows me to see how they react, but it also allows me to get them out of their comfort zone as far as being inside the vehicle. While speaking with him and asking those questions, I'm looking at how he answers the questions and how he responds to the -- responds to how I ask the questions and how his demeanor changes or any type of difference of breathing or anything of that nature.
Q. So, again, let's go back a little bit. You were briefed beforehand that he'd been in Georgia?

A. Uh-huh.
Q. He confirmed during your conversation that he had, in fact, been in Georgia?
A. Yes, sir.
Q. Did you have -- you told -- you said that you were informed about the license plate reader. Do you have any -- do you have independent knowledge yourself of where that license plate reader is located?
A. I know the westbound one is down towards the scale house in Georgia. It is down near the Martinez area.
Q. And if we're going west on I-20, is Martinez past Augusta?
A. It is.
Q. Okay. So at some point during the stop did you ask defendant if he had any narcotics in his vehicle?
A. I did.
Q. Now why did you do that?
A. During that time it allows me to assess his reactions to the different questions about narcotics. It also -- I've already built up at that point my reasonable articulable suspicion of why I got to that point to ask him the questions.
MR. SMITH: I beg the Court's indulgence for a moment, Your Honor.
THE COURT: Yes, sir.

MS. OPPENHEIMER: Sorry, Judge. To make it easier, we're gonna use the defense's exhibits for pre-trial. They're the exact same ones we have.

THE COURT: Okay.

BY MR. SMITH:

Q. Now before we play this, Trooper Shropshire, when you asked defendant if he had any narcotics in his vehicle, are you watching his demeanor?

A. I am.

Q. Why?

A. I wanted to gauge how he responds to the stimulus that I'm giving him as far as the questions. So I may ask him the question, I may wait a few seconds to gauge how he responds to that. Because some people, they do rehearse saying no, but then you're watching how they respond to you after they said their no because they've already made up their mind they're gonna say no and then you would gauge it from there on how they respond after the fact. They may do certain things. People look down, what have you. Every person's different.

Q. And, again, by this point you've already been briefed that he's been to Georgia that day and had tracked him for suspected meth trafficking; is that correct?

A. That's correct, sir.

Q. Okay.

(Video clip played.)

MR. SMITH: For the record, we will be skipping forward to approximately minute marker 8 on this vehicle -- on this body cam. I apologize.

THE COURT: Okay.

MR. SMITH: Your Honor, let the record reflect that we are resuming this video at 7 minutes and -- let the record reflect that we are resuming this video at marker 7 minutes and 24 seconds.

(Video clip played.)

THE COURT: Okay. Thank you.

MR. SMITH: We're stopping the video at 8 minutes and 52 seconds.

BY MR. SMITH:

Q. Trooper Shropshire, what did you observe there?

A. When I asked him the questions, he did give an audible no to everything thing. Once I got to methamphetamine, you could tell that he was anticipating having to answer that question. It looked like he took a deep breath and said no in a very low tone, raised up his head and looked down.

Q. And a little bit further back, I noticed you asked the defendant what he had been doing and he said he'd been in Augusta. Was he able to provide you any specific details about where he was or what he was doing?

A. He said he was looking for work and supposed to be

meeting a friend there. As far as -- you know, he wasn't able to tell me where in Augusta he was going or what city they was in and when I asked him again -- you know, I think we got to the point where I was asking him and he said he does carpentry work or construction work and we got on that conversation. I asked him, you know, was that what he was doing with his friend and he said that yeah, him and his friend were building a deck for a lady who was in a wheelchair and when he was saying that he was -- you could tell it was almost as if he was trying to think of what next to say because it wasn't something that he was prepared for. It wasn't in the compartmentalization of his conversation with me.

Q. And, again, you're aware that the license plate reader he hit on is in Martinez, Georgia?

A. Yes, sir.

Q. All right. So after you asked him these questions about narcotics in his vehicle, what did you do then?

A. I explained to him the warning. I advised him, you know, of safe driving distances and everything else. It wasn't a traffic ticket and at that point, once I made sure he got back his license, registration and insurance paperwork and I began to hand him the warning and I asked him for consent to search the vehicle.

Q. Why did you do that?

A. Because I had enough reasonable articulable suspicion on my part, as well as my knowledge of him transporting narcotics across state line, to ask for consent to search.
Q. Did he grant consent to search the vehicle?
A. After waffling a little while, we took it as a no, he said no, so, therefore, I had advised to have Sergeant Atwood deploy his K-9 Parker around the exterior of the vehicle and the dog gave positive indications to search from there.
Q. Were Sergeant Atwood and Parker already on-scene with you?
A. They were.
Q. So let me ask you this, Trooper. If Sergeant Atwood and Parker were already on the scene with you, why didn't you go ahead and run them earlier?
A. That's now how we operate. We -- for one, it's my stop, and then the thing is I need to be able to develop my reasonable suspicion. You know, if he forced the dog around the exterior of the vehicle, that would tend to shut some people down and they're not able to give any further information on why we got to that point or to be able to show compartmentalization in the trained craft he's using to be deceptive to being involved in drug trafficking.
Q. So is it fair for me to say then that you want to make sure you're going through the proper steps and do the

whole investigation?
A. Correct. Don't put the cart before the horse basically.
Q. Okay. And do you know -- do you know approximately how long it took from beginning of the stop to the 9-K deploying?
A. Ten or twelve minutes.
Q. Okay. And after the K-9 was deployed, what happened?
A. Then Sergeant Atwood, you know, let us know that the dog did indicate to the vehicle that there was possibly narcotics in the vehicle. So, therefore, I went and got treated gloves so I could go ahead and start searching the vehicle and as I went up to the vehicle, I was advised that -- prior to that that there was, in fact, narcotics in the vehicle.
Q. Now at this time once you started to search the vehicle, were other law enforcement officers on-scene?
A. Yes.
Q. Who?
A. Investigator Gietz was that. There was a couple other Lexington County deputies and two of our partners that work adjacent to us on our team showed up.
Q. Did any of those officers assist you in searching the vehicle?
A. Sergeant Gietz did and I believe some of the others

87

may have came up there after the fact, but initially it was just Sergeant Gietz -- not Sergeant Gietz, sorry, Investigator Gietz. I don't mean to promote you already, but...

Q. And what did you find in the vehicle?

A. Methamphetamine.

MR. SMITH: I beg the Court's indulgence, Your Honor.

THE COURT: Okay.

BY MR. SMITH:

Q. Based on the tip you had received prior and all of the information that you gathered during the stop, did you believe you had probable cause to search the vehicle prior to asking for consent?

A. I believed I had reasonable articulable suspicion, yes, sir, to ask for consent to search.

MR. SMITH: No further questions at this time, Your Honor.

Trooper, please answer any questions defense has.

THE WITNESS: Yes, sir.

THE COURT: Mr. Yonge.

MR. YONGE: Thank you, Your Honor.

CROSS-EXAMINATION (In-Camera)

BY MR. YONGE:

Q. Good afternoon, Trooper Shropshire.

A. Good afternoon.
Q. Is it master trooper? Is that --
A. Just a pay bump. You can say Trooper Shropshire.
Q. All right. Since we've already got this pulled up, this video, I think we've got it as Exhibit 1, let's go ahead and run through this traffic stop real quick.
And I'm just gonna have you watch it and then I'm gonna stop periodically and I'm gonna ask you some questions, okay?
A. Sure. Go ahead, sir.
(Court's Exhibit Number 1 was played.)
Q. All right. And so we're paused here at minute 1 and 21 seconds.
A. Yes, sir.
Q. Is this the first time you've ever met Steven Brown?
A. That is correct.
Q. All right. And do you have his driver's license at this point?
A. Yes, I have his license.
Q. And you've asked him to step out of the truck?
A. Uh-huh.
Q. What was the purpose of that?
A. Well, as I stated before, you know, in order for me to be able to assess what the situation is I always have the individual step out, but prior to that when he was

sitting in the vehicle he had -- he appeared to be very stressed out, had rapid respiration and also a very stiff posture, he appeared very nervous at that point, so, in other words, to have him exit out of the vehicle allows me to actually evaluate him and actually talk to him a little bit more and continue my enforcement action.

Q. Sure. Is it just safer to have him out of the vehicle?

A. Sure, because, I mean, they're inside their vehicle. You know, you don't know if there's weapons or not inside the vehicle. It allows me to have a normal conversation with a person without having to compete with the engine of their vehicle when we're standing between both of our vehicles.

Q. Do you think he was nervous at this point?

A. He appeared -- he appeared to be stressed by that time. Yes, sir.

Q. Are people generally pretty nervous when you pull them over?

A. Well, everybody's nervous, but at that point he seemed more nervous than an average person.

Q. In what way?

A. It seemed like was a more heightened nervous like he had a little bit more stress than the average. So in order for me to be able to ascertain that and figure out that,

I have him exit the vehicle to be able to conduct my enforcement action, but also get a general read on him during that time.
Q. So you're not sure. You think he's nervous, but you're not sure?
A. No, I'm sure.
Q. Sorry?
A. No, I'm sure he's nervous. I'm trying to figure out how -- if that nervousness is going to subside or if it's going to continue to still be at an elevated rate.
Q. At this point in the stop do you feel like you have probable cause to search his truck?
A. No, I was just stopping the vehicle and I would develop my reasonable suspicion once I had him outside of the vehicle if there's -- if it leads up to that point.
Q. So it would be improper to go ahead and just run through that truck and look for stuff at this point?
A. No, I'm not gonna run through his vehicle. I conduct my investigation and my reasonable suspicion from there.
Q. Okay. Let's go ahead and watch a little bit more. It's not gonna go on forever. It's only like twelve or thirteen minutes.
A. That's fine.
(Court's Exhibit Number 1 playing.)
Q. All right. We're stopping here at 2 minutes and

91

42 seconds.
A. Uh-huh.
Q. What are you saying into the radio right there?
A. I'm just running his driver's license. I'm actually trying to get dispatch to pay attention to me because for some reason -- they didn't answer me for some reason and then I'm running his information to verify, again, if his license is suspended or if he has any active warrants out possibly.
Q. Two follow-up questions based on what you just said. So, one, you said dispatch wasn't paying attention to you for some reason?
A. I called into dispatch. I guess they didn't hear me or what have you, I'm not really sure, but I called in and called again, so.
Q. Is there any heightened expectation that they're gonna pay attention to you if this is supposedly a drug interdiction stop?
A. Well, they don't know. They just think I'm out just stopping vehicles. They don't know -- they're responsible for everybody in that area, so on that particular day that dispatcher may have Lexington County -- Lexington Highway Patrol, Richland Highway Patrol patched on the channel, you've got multiple people talking at one time or what have you and they may or may not have heard me at that point.

Q. Are these drug interdiction stops generally a little more dangerous?
A. Any traffic stop is dangerous.
Q. Okay. I noticed you didn't pat him down there on the video.
A. Okay.
Q. Did you pat him down at all?
A. No.
Q. Why not?
A. I'm building a rapport with him and I didn't feel the need to pat him down at that point.
Q. Okay. But at this point according to your testimony you have information that he's trafficking methamphetamine from Atlanta back to South Carolina and that doesn't create any heightened thought in your mind that this is gonna -- he might have a weapon?
A. Well, it's a possibility he could have a weapon. When I asked him did he have one, he said he didn't have one on him, but at the same time if I have him exit out of the vehicle it takes away that possibility there could be one inside that vehicle at that point. I'd already looked down. It appeared he didn't have one on him. I could see from where I was standing at that he possibly didn't have one on him and if it got to that point in the situation, I would have dealt with it from there.

Q. Who's that walking up to talk to you right there on the video?
A. That's Sergeant Atwood. He's my K-9 handler.
Q. Okay. And he's the person who called you in to do this stop, right?
A. Yeah, he told me about this.
Q. After you perform a drug interdiction stop, do you fill out any paperwork?
A. As far as?
Q. Saying this was a drug interdiction stop?
A. No, sir. I'm not really understanding what you're talking about. You're talking about for every stop I -- every vehicle I stop?
Q. Well, let's just use this case as an example. You get a call from Sergeant Atwood, correct?
A. Sure.
Q. And he says we're gonna go intercept this truck that's coming from Atlanta.
A. Oh, okay. You're saying that if I talk to him did we fill out any paperwork saying this is gonna be an interdiction stop, no, we don't do that.
Q. What about after the whole stop's over?
A. What, filling out that we did an interdiction stop, that we got a phone call about an interdiction stop? No, sir, we don't do that.

Q. So there won't be anything in the paper trail saying this was an interdiction stop?
A. No, sir, because we don't fill out that type of paperwork for that. You know, if we seize narcotics and it's our case, then we'll do our normal paperwork, but if we're assisting another agency we may do a synopsis of what we saw and pass it onto them, but that is about what we saw on the stop.
Q. Would you normally include that in your regular traffic stop report?
A. We don't do reports for regular traffic stops.
Q. Did you prepare a report in this case?
A. I did a synopsis right here.
Q. Okay. And did you include in that synopsis anything about this being a drug interdiction stop?
A. No, sir, because I am giving that from the perspective of what I saw on the side of the road.
Q. Okay. Now at this point standing there with Mr. Brown, do you have probable cause to search his truck?
A. I don't.
THE COURT: Could we -- the are we doing probable cause or reasonable suspicion?
MR. YONGE: At this point probable cause to search the truck is what I'm asking.
THE WITNESS: Probable cause, no. At this point

95

I'm trying to develop my reasonable suspicion as I go.
BY MR. YONGE:
Q. Okay. Now would you agree that in your report you described -- or in your synopsis. I apologize. That's what you called it?
A. Yes, sir.
Q. You described Steve Brown has extremely nervous?
A. Correct. To me, he was.
Q. At this point was he behaving extremely nervous?
A. Yes, he was nervous. Yes, sir. To me, he was.
Q. Okay. I'm just gonna go back a little and then you tell me where you see the extreme nervousness.
A. Okay.
Q. Let's start over here. Just tell me to stop when you see it.
(Court's Exhibit Number 1 playing.)
A. You can pause it.
Q. You said pause it right here?
A. Yes, sir.
Q. Okay.
A. Well, there was a couple of things, okay? One, he has the paperwork in his hands. The reason why I give him back the paperwork in his hands is I'm giving him back something into his hands so he could -- it's kind of like a blanket. So, therefore, if he has it in his hands, he's

usually shuffling it and it's gonna create some type of soothing or comfort for him. Not only that, he keeps looking back towards the back back there where my partner is standing at and where there's possibly other vehicles are parked back there and he -- you can tell that he is nervous at that point. He's doing quick rapid breathing through his nostrils, so you can tell it's very quick and rapid, and that's what led me to that point.

Q. Okay. So quick rapid breathing through his nostrils and fumbling with paperwork?

A. Correct.

Q. Okay. And would you -- so another thing you said in that report was labored breathing?

A. Correct.

Q. Would that be --

A. That's part of the quick rapid breathing.

Q. Okay. And you said he was standing with a bladed stance; is that correct?

A. Correct.

(Court's Exhibit Number 1 playing.)

A. That's a bladed stance. That's not facing towards me in a normal stance. Most people when they have a conversation with an individual, they'll stand towards them and have a full conversation with them. And actually if you keep going on, we'll be able to see that, and we'll

97

go with it from there.
Q. Okay. But we can see all of this at this point at 1:59 in the video?
A. Yes, sir. He's bladed off right here.
Q. Is he shuffling away from you at this point?
A. He will in a minute.
Q. Okay. And at this point is he holding his breath and swallowing hard?
A. Well, we haven't got to any conversation, so we haven't got to that point.
Q. Okay. And we'll just go from here. We're at 1:59.
(Court's Exhibit Number 1 playing.)
Q. I apologize ahead of time. I would fast-forward, but it's been glitching, so.
A. No, that's fine.
(Court's Exhibit Number 1 playing.)
Q. All right. Stopping here at three minutes. You've just spoken to Trooper or Sergeant Atwood?
A. That's correct.
Q. And he asked you if you were by yourself, correct?
A. Uh-huh.
Q. And then you said -- what did you tell him?
A. Yeah. I said I'm by myself.
Q. And did he ask you what all those cars were doing there?

A. Yes, sir. Because whenever we do a traffic stop like that when we're assisting another agency, we try to make the traffic stop seem as normal as possible. So with that, we're trying to calm him down and trying to throw off and not think about the stuff that's back there and concentrate on what we're doing at hand. Normally it's just me and him. This time there were other agents and other vehicles were standing back there at a little bit of distance as you can see.

Q. So this was all an orchestrated act to put him at ease?

A. Well, it was supposed to be a normal traffic stop. It was supposed to be made to seem like it was a normal traffic stop.

Q. Okay. We'll watch a little bit more.

(Court's Exhibit Number 1 playing.)

A. You can pause right there.

Q. I apologize. What did you say?

A. When I shifted just a little bit right here, you can see him actually shift to the side right there. That's part of the movement. I gave a little bit of a movement right there. It may have been a little bit subtle, but you can see where he shifted himself right there.

Q. Okay. And that would be between about 3:10 and 3:15 on the video?

A. That's correct.
Q. And that would be one of those signes of extreme nervousness?
A. Well, it's part of the whole part where I said that he -- whenever I made a move towards him, he shuffled a bit towards -- away at that moment.
Q. Understood. And I love that. Keep stopping me as you see it.
(Court's Exhibit Number 1 playing.)
Q. Okay. I'm stopping here at four minutes now. What did you learn about Steve during that conversation?
A. Well, as I was asking him the questions about where he was coming from and everything else, when I asked him about coming -- where he was coming from, he said he was coming from Georgia. When I asked about with where, he said Augusta. At that point that's where he took a swallow and began to say what he was gonna say. When I asked him where about in Georgia -- or where about around the Augusta area, excuse me, he said -- I'm not really sure if you can tell, but he's trying to search for the answer and at that point that's when he had took another swallow and he was trying to spit out what he was trying to go with and he stated in a lower audible tone than normal.
Q. Okay. And just to backtrack just briefly, I remembered the second part of my two-part question that I

forgot to ask you.
A. Yes, sir.
Q. A little earlier you had said that you had to run his driver's license?
A. Correct. That's to verify the information and to make sure that he doesn't have any active warrants or any -- that his license is clear and make sure he was not suspended.
Q. You weren't made aware of any of that information before you performed this interdiction stop?
A. As far as on the stop, I knew that he was transporting illegal narcotics across state lines. I knew that he was coming back from Georgia and that was the extent of it. And who he was and what type of vehicle he was driving.
Q. And that was the entire extent of the information you had?
A. That's correct.
Q. We're gonna go to 4 minutes and 44 seconds. It might help to know ahead of time.
(Court's Exhibit Number 1 playing.)
Q. All right. Trooper Shropshire, can you tell me what was off about his behavior there?
A. Well, I was explaining to him the reason why I stopped him and trying to go over about safer driving distances. What that does is it allows me to re -- one, I have to

101

reiterate why I stopped him, give him better driving practices, but it also allows them to deescalate or come down from their nervousness if they're extremely nervous. Right now he's still at the same nervous level. He understood and he was talking back and forth about it, so, therefore, that's where we were at that point.

Q. Okay. At this point did you already decide you were gonna run the K-9 around the truck?

A. I haven't decided anything yet. No, sir.

Q. It's all based on the information you're gonna get from here on out and what he does?

A. It's the totality of the circumstances, yes, sir.

Q. From the beginning to the end of this?

A. From point to point, yes, sir.

Q. Okay. But right now at this point in the video at 4 minutes and 44 seconds, you have not decided to run the K-9 around the truck, correct?

A. I'm still developing my reasonable articulable suspicion, sir.

Q. Okay. Let's go to 5. We'll watch from there.

(Court's Exhibit Number 1 playing.)

Q. Stopping here at 5:29.

A. Yes, sir.

Q. What did you notice about his behavior during that clip?

A. Well, when I'm asking him about the question -- I believe it was the question about, you know, what he was doing back down in the Augusta area. He was trying explain to me when I asked him well, was that -- you know, what that -- did you find work down there, he pretty much was saying I was working with my -- you know, my friend for his mom, putting in a wheelchair ramp, we were gonna do a wheelchair ramp. You can tell when I was -- after I asked him that, he was trying to figure out what he was going to say next, okay? So he took a deep breath -- you could tell he was taking a breath and trying to spit out what he was gonna say from there, from that point.

Q. Okay. Why were you gonna check the VIN number on the truck?

A. It was just to verify the information and documentation that's on the paperwork matches the vehicle.

Q. At this point had you decided to run the K-9 around the truck?

A. I'm still developing my reasonable articulable suspicion.

(Court's Exhibit Number 1 playing.)

Q. Okay. I'm stopping at 6:22. What did you just learn on the radio there?

A. His license was clear.

Q. His license was clear?

A. Yes, sir.
Q. Did you also learn that he didn't have any warrants?
A. Yes.
Q. Okay. And, I apologize, what's a Signal 24?
A. I'm not sure. It could be a validated gang member or protection order or something like that. I'm not really sure. You know, I don't normally use those codes that often, so I'm not really sure.
Q. Are you sure it would be gang member?
A. It's either or. I'm not really sure. It's one of those codes. You have it. A protection order or something like that.
Q. Does sex offender sound right?
A. I don't use those codes that often.
Q. So you couldn't tell me what Signal 24 means?
A. They didn't say he had an active valid warrant, so I wasn't concerning myself with it.
Q. Okay.
(Court's Exhibit Number 1 playing.)
Q. Stopping here at 7:21, what was going on with his behavior now?
A. It was just a general conversation I had with him by talking with him about his truck and he ended up going onto his motorcycle. I gave him something that he was confident in and something he liked answering, so it allows them to

bring themselves down and now he should be able to speak the normal speaking with me and now he was able to give me that basic information right offhand.

Q. Okay. So at this point he doesn't seem nervous?

A. I wouldn't say he didn't seem nervous. I'm just saying it allows me to bring them down from their high level to down to normal and give them something else to think about other than what was going on at that point.

Q. Okay. Well, let's just run through that list of things you put in your report again and you tell me if any of them apply during this clip.

A. Certainly.

Q. Did he seem extremely nervous?

A. Still, yes.

Q. Okay. And was he exhibiting labored breathing?

A. At that point, no, sir, but prior to that, yes.

Q. Okay. Was he standing with a bladed stance?

A. At that point, no, because I'm standing in front of him. I purposely put myself there.

Q. Was he shuffling away from you?

A. At that point, no, because I'm talking to him about a particular conversation, but he did shuffle away from me prior.

Q. Was he holding his breath and swallowing hard?

A. Not at that point because then we're speaking about

105

something that he's interested in such as his motorcycle and his vehicle.

Q. Okay. What was the temperature out there that day?

A. Oh, it was warm. It was warm.

Q. 90's?

A. I'm not really sure. It was hot. It was June.

Q. As hot as it is today?

A. I'm not really sure. It was not.

Q. Okay. We'll resume the video.

(Court's Exhibit Number 1 playing.)

Q. All right. Just stopping here at 8:10 for a second, at this point have you -- do you feel like you've established reasonable suspicion to go ahead and run that drug dog around the car?

A. I feel that I -- with the totality of the circumstances because I'm completing my stop, I felt that I had reasonable articulable suspicion along with the prior knowledge that I had to complete the search, so, therefore, I'm getting back information and then I'm going get into a bit more questions.

Q. Okay. So at this point is when you have it?

A. Correct.

(Court's Exhibit Number 1 playing.)

Q. Just stopping here at 9:10 real quick.

A. Uh-huh.

Q. That was quite the list of things you went over with him there.
A. Yes, sir.
Q. Do you do that list with a lot of traffic stops?
A. If I have reasonable articulable suspicion to believe that there's more to the stop, that they're involved in some type of criminal activity, in particular, smuggling, whether it's drug smuggling, then, yes, I do have reasonable suspicion.
Q. Have you ever caught anyone with hand-grenades?
A. Actually, yes.
Q. Really?
A. Yeah, years ago.
Q. Okay. Bombs?
A. No.
Q. And at this point you've written the warning?
A. Yes.
Q. And we're at 9:10 in the video. And you've handed it to him?
A. Uh-huh.
Q. Okay.
(Court's Exhibit Number 1 playing.)
Q. Pausing here at 4:92. Why did you ask him if you could search the vehicle?
A. Because I had enough reasonable articulable suspicion

107

that I had developed during the course of the traffic stop, as well as prior knowledge.

Q. The prior knowledge being?

A. The prior knowledge prior to the stop that he was involved in -- alleged to be involved in transporting illegal narcotics across state lines.

Q. Okay.

(Court's Exhibit Number 1 playing.)

Q. Stopping here at 10 minutes and 12 seconds. So you feel like you have reasonable suspicion to run the dog around the car?

A. I have reasonable suspicion to ask for consent to search, he denied, so, therefore, I did as Sergeant Atwood to deploy K-9 Parker on the exterior of the vehicle.

Q. Did you have -- did you feel like you had probable cause to search the truck?

A. I had reasonable suspicion to ask for consent to search.

Q. Yes, but at this point where you're having the dog -- you're telling him the dog sniff's gonna happen, right?

A. Okay.

Q. Yes or no, sir?

A. Yes. I told him that we're gonna deploy -- that Sergeant Atwood's gonna deploy K-9 Parker. Yes, sir.

Q. Okay. And did you feel like you had probable cause

to search the truck?
A. I had reasonable articulable suspicion to ask for consent to search the truck. Yes, sir.
Q. Right, but you know that's not what I'm asking though, right?
A. Well, if he denies consent, I cannot search because he does have a right under the Fourth Amendment to refuse said search. Now having said that, because he does have a right, even though I have the reasonable articulable suspicion as well as the prior knowledge, I can ask Sergeant Atwood, who was a K-9 handler at that time, to deploy his dog around the exterior of the vehicle and if the dog indicates to the odor and presence of narcotics, then I have probable cause to search the vehicle.
Q. Okay. So I think we're saying the same thing then. You felt like -- correct me if I'm wrong. I just --
A. I don't know now.
Q. It's not a trick, but if you think it is, tell me, all right? You have reasonable articulable suspicion based on what you saw during the stop and your prior knowledge --
A. That's correct.
Q. -- to run the K-9 around the truck?
A. Yes, sir. Well, I have reasonable articulable suspicion to ask for consent to search the vehicle. You're asking me do I have reasonable articulable suspicion to

109

deploy the K-9. I asked for consent. Do you get what I'm saying? Do you understand?

Q. I don't, but I think we're going to get there.

A. Okay.

Q. So you have reasonable articulable suspicion onto ask for consent to search the vehicle?

A. That is correct. Yes, sir.

Q. You do not have probable cause to actually search the vehicle at this point?

A. That is correct because all I have is a reasonable articulable suspicion off of what I learned during the stop, as well as prior knowledge.

Q. So you can't search the truck unless the K-9 indicates on it?

A. If the K-9 indicates to the odor and presence after his refusal, then, yes, I do have probable cause.

Q. But not before?

A. He refused, so, no, I do not have probable cause to search that vehicle at that point.

Q. Thank you. And we've got about a minute left of what I want to watch, okay?

A. Yes, sir.

(Court's Exhibit Number 1 playing.)

Q. All right. I'm stopping the video at 11:05.

A. Yes, sir.

Q. And in that clip there you inform Steve Brown that if the dog didn't indicate, he would be free to go, right?
A. Yes. Our policy is if the dog does not indicate, we're not searching the vehicle, so, therefore, our stop is over.
Q. Okay. So he was not free to go at this point?
A. No, he was not. I had developed enough reasonable articulable suspicion at that point, as well as prior knowledge, to hold him there longer.
Q. To what?
A. To hold him there longer, sir.
Q. Okay. Why didn't you run the K-9 while you were writing that warning?
A. Well, I'm not a K-9 handler. That's one part. I'm not trying to be funny, but that's -- I'm not a handler. Secondly, as I stated before, it gives -- that's not how we operate. You know, during that time I'm developing my reasonable suspicion during that time when I'm interviewing whoever it is that I'm stopping at that point and when you deploy a K-9 that can ruin the rapport that I have with the individual at that point.
Q. Okay. Bear with me for one moment.
MR. YONGE: That's all the questions I have.
Thank you, Trooper Shropshire.
THE WITNESS: Thank you, sir.

THE COURT: Redirect, Mr. Smith?

MR. SMITH: Briefly, Your Honor.

REDIRECT EXAMINATION (In-Camera)

BY MR. SMITH:

Q. Trooper Shropshire, you mentioned earlier it's like -- when you perform an interdiction stop, there's no special or particular paperwork you fill out before or afterwards.

A. No, sir.

Q. Why is that?

A. As far as a traffic stop, any traffic stop can turn into an interdiction stop depending on the circumstance. As far as any particular paperwork, we just don't do that because that's part of our normal day activities, it's just a traffic stop, and until it leads to reasonable suspicion or probable cause is developed during that timeframe and if it gets to that point and items are found, then we deal with it from there.

Q. Okay. And you stated that during the course of these stops you want it to look as much like a normal traffic stop as can be, correct?

A. If I'm doing it for another agency, we want it to seem as if it's a normal traffic stop. Yes, sir.

Q. Okay.

A. That way it allows us to gauge it in a proper manner without anything seeming different than what is normal from

what we go out there and do on a normal day to day basis.
Q. And a part of that is utilizing all these -- this other questioning trying to develop articulable -- this reasonable suspicion before you run the dog, correct?
A. That is correct, sir.
Q. And when you have -- even when you feel like you've already developed reasonable suspicion during a traffic stop, do you continue your investigation to either confirm or dispel that?
A. Yes, sir.
Q. So even after you feel like you've established reasonable suspicion in this stop, you still asked him for consent to search, correct?
A. Yes, sir.
MR. SMITH: I beg the Court's indulgence.
THE COURT: Yes, sir.
BY MR. SMITH:
Q. And at that point running the dog was, again, one more way to either confirm or dispel that suspicion; is that correct?
A. Yes, sir.
MR. SMITH: Nothing further, Your Honor.
THE COURT: Any follow-up on those narrow points, Mr. Yonge?
MR. YONGE: No, sir, Your Honor.

THE COURT: Thank you.

Trooper, you may step down.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: All right.

MR. SMITH: Your Honor, that's the first ground raised in defense's motion to suppress. We are prepared to present our argument.

THE COURT: All right. Let me find out if there's any evidence that the defense wishes to offer at this point in time before we go to argument.

MR. YONGE: No, Your Honor.

THE COURT: All right. Good.

All right. Mr. Smith.

MR. SMITH: Your Honor, the basic framework that we're dealing with here is set out by our Supreme Court in United States versus Rodriguez, which gives us the proposition that it is unlawful for us to extend or otherwise complete a traffic stop to conduct further investigation or a dog sniff absent the establishment of reasonable suspicion.

Your Honor, may I approach?

THE COURT: Yes, sir.

MR. SMITH: I have copies of my caselaw prepared for your review.

114

So then, Your Honor, the question is have we established reasonable suspicion? Has Trooper Shropshire established a reasonable suspicion to run the dog, and the answer is yes. So in their motion defense does not concede -- does not contest that the traffic stop on Mr. Brown's vehicle was legitimate. Therefore, so if the traffic stop is legitimate, then our next question we've got to establish is did we have reasonable suspicion or have we established consent. There's no question consent was not granted.

I'm passing Your Honor up a copy of United States versus Hill.

Your Honor, the Federal courts and our state courts in a number of cases have given -- gone into great lengths discussing what reasonable suspicion means.

I beg the Court's indulgence for one moment.

Starting with, the key thing to consider in making this argument, is that facts known to a law enforcement officer at the time the stop begins can give rise to reasonable suspicion.

Further, I'm passing up a copy of Kansas versus Glover.

So information that a law enforcement officer possesses at the beginning of the traffic stop can give rise to reasonable suspicion. At the start of this

115

traffic stop, Trooper Shropshire would now have been briefed that the Lexington County NET Team has been conducting an investigation into defendant, into Mr. Brown. They followed up on numerous tips. They know on multiple occasions he's been going to and from Georgia and they've been provided information that he is using his vehicle to go to and from Georgia trafficking large amounts of methamphetamine.

They do their investigation. They put his information into the license plate reader. On the day of this incident Steve-O's license -- Steven Brown's license plate number hits on that reader going I-20 westbound near Martinez, Georgia, which notably is on the far side of Augusta, Georgia, going towards Atlanta.

The troopers are made aware of this. They're made aware of that license plate hit, so when Trooper Shropshire asks him during the course of this traffic stop where have you been today, I've been in Augusta all day, he already knows at this point that defendant's not giving him the whole story.

Further, Your Honor, from Kansas versus Glover we get into a discussion of what exactly reasonable suspicion -- or what sort of burden, what sort of standard is it. It's not probable cause. It's not even preponderance of the evidence, Your Honor. It is a low bar to clear.

116

And, further, courts reviewing whether reasonable suspicion exists in traffic stops have to give officers leeway to make common sense judgments and inferences based on human behavior.

Further, Your Honor, I'm passing up a copy of United States versus Williams. Again, that reasonable sus -- reasonable articulable suspicion, the common sense, nontechnical judgment relies on the judgment of experienced law enforcement officers and is considered in light of the totality of the circumstances.

So, again, Your Honor, this is not just a blind traffic stop. Defense's motion wants to narrow this solely to Trooper Shropshire's traffic stop and pretend that there's no further information, no bigger picture here to look at. We know from testimony that's not true. We know what information Investigator Gietz provided with our troopers prior to.

Now from our own courts, Your Honor, State versus Taylor, our Supreme Court, again, in 2011, has stated that the courts have to look at the cumulative information that is available to the officers during the stops. You can't take it apart piece by piece to try and refute the reasonable suspicion. You have to examine it as a whole picture together.

And we heard testimony in questioning, Your Honor,

117

about why -- why if the K-9 unit was on-scene from the get-go, why didn't they go ahead and run the dog.

In State v. Provet from 2013, our court -- our Supreme Court has stated that -- I beg the Court's indulgence -- that during a stop an officer's investigative methods should be the least intrusive means reasonably available to that officer.

That's what Trooper Shropshire testified to. When he's doing an interdiction stop, he doesn't want to immediately call out the dog and tip off the person being investigated as to what's -- we wants this to look like as normal of a traffic stop as possible. He's going through all the normal steps of an investigation. He's asking the same questions he would ask at any traffic stop to see if he can develop his reasonable suspicion without calling the dog.

And, again, Your Honor, as our courts have restated over and over and over again, that reasonable suspicion is based, you know, on common sense judgments without any inferences about human behavior. I think, Your Honor, from my research the best caselaw I have on this that says that most succinctly is State versus Morris.

Our Supreme Court in State versus Morris states that reasonable suspicion does not entail bright line legal rules, but rather it's, again, common sense,

118

nontechnical conceptions that deal with factual and practical considerations of everyday life on which the reasonably prudent person acts, not legal technicians.

I beg the Court's indulgence.

THE COURT: Okay.

MR. SMITH: Reasonable articulable suspicion. And, again, under State versus -- a recent case, State vs. Frasier, that reasonable suspicion is not rigid, it's not formulated, but it does require more than mere hunch or un-particularized suspicion. We have that here.

Your Honor, this was a lawful traffic stop that Trooper Shropshire validly extended based on the information he had going into the stop from the Lexington County NET Team. Your Honor, I would argue that he had reasonable suspicion to run the stop from the get-go. He's already verified that this is a vehicle that Lexington County has -- has advised us about. We've confirmed it's him. We've been briefed that he's trafficking methamphetamine from the State of Georgia. And during the stop every question he asks, every action he takes is only further strengthening that reasonable suspicion. And that tip, plus the observations gathered during the stop, clearly satisfy the reasonable suspicion standard.

Your Honor, and I would end this argument by saying

119

this is not -- it is not some fishing expedition or -- you know, our troopers, Lexington County, they didn't just luck into finding defendant with seven pounds of meth. This is the result of a thorough investigation that was coordinated with our sheriff's department, with the highway patrol, and they took all the proper and necessary steps to establish reasonable suspicion to call the dog, which then indicated, and gave them probable cause, and which led them to the methamphetamine.

And, further, the dog in this case was already on-scene, so we do not have an unreasonable delay in waiting for the dog to arrive.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Mr. Yonge.

MR. YONGE: Thank you, Judge.

So I would start -- I guess Mr. Smith is conceding that the stop was extended, so I think we can jump right to reasonable suspicion at this point.

THE COURT: I'm sorry?

MR. YONGE: I apologize. I think -- I think Mr. Smith is conceding that the stop was extended and only focussing entirely on reasonable suspicion, so I won't get too much into whether or not there's an extension beyond the warning here other than to say the

120

last point he made about not being an unreasonable extension. That's not really the standard. The standard is just whether there was an extension, so even a de minimus few second counts.

So I think there was an extension and so if we move onto reasonable suspicion, I would ask the Court to focus -- he's correct on the traffic stop itself and not whether or not this is an interdiction, and the reason for that is we were never given that information nowhere in the discovery. What you will find in the discovery is information that there was an investigation of Steve Brown, we have some of that, that Lexington County was looking at him. We have nothing in there linking Investigator Gietz and Sergeant Atwood, who we did not hear from during this pre-trial motion, and nothing in the evidence that we've received links Gietz to Shropshire. So we were never given this. That's the reason it doesn't appear in my memo is I didn't know that was what this case was gonna be when I showed up here this morning.

So I would ask the Court to focus exclusively on the stop itself and if you look at the stop, despite what Trooper Shropshire says in there, I just don't see the things he's talking about. I don't see the flaring nostrils, I don't see the bladed stance. He doesn't

121

appear to be shuffling away from someone. He looks like someone who's standing in the heat on the side of the interstate during a traffic stop answering questions. I just do not see what he's describing as this extremely nervous behavior.

And in any event, our Court, I think in Frasier, had quoted some previous Supreme Court cases saying nervousness in itself is not sufficient. Everyone is nervous during a traffic stop, so there's got to be something more. If we're looking at just Trooper Shropshire pulls him over, walks up to him, gets him out of the truck, he shuts the tool box and they have a conversation, without anything more there, I can't see the suspicion -- the reasonable suspicion. I can only see the hunch.

So that would be my argument for the seizure portion of our motion to suppress, Your Honor.

THE COURT: All right. Thank you.

Let me take just a few minutes if I could step down and review some of these cases. I have studied some of them in advance, I'm familiar with some of them, and I've got some more in the outline I have here, but I need to look at a couple of these just to make sure that they are well within the decision I need to make.

So if you'll give me about ten minutes. So let's

122

start back at 4:30.

MR. SMITH: Your Honor, if I could offer one point of clarification very briefly. If you continue to watch Trooper Shropshire's body cam and dash cam, you will see Investigator Gietz clearly come on the scene and be visible in that video. Your Honor, this has been a multiple-involved agency case from the beginning.

THE COURT: All right.

Yes, sir. You were standing, Mr. Yonge. I'm sorry.

MR. YONGE: Yes, and I apologize. I thought about this after I already said no to evidence, but we never did let you see the dog video. I don't think you've actually been able to view it. We can put it in. I think it's a consent Court's exhibit. It's on this flash drive here.

THE COURT: It is. And if it's relevant to my ruling in this, I'll look at it.

MR. YONGE: It's part of the second argument.

Thank you.

THE COURT: All right. It is in the packet. I tried opening it again during the lunch hour and I couldn't do it. I'm sorry.

All right, folks. We'll take about ten minutes and start back.

(Recess taken at 4:19 PM.)

(Back on the record at 4:38 PM.)

BAILIFF: Court's back in order. Take your seats.

THE COURT: Thank you, folks, for your patience.

The motion to suppress is respectfully denied.

At the outset, let me say that without the -- the information regarding the tip, the license plate reader information and all of that that had been accumulated over the time of the investigation, this is a much, much closer case than it is without that information.

And I'm sympathetic to the fact that Mr. Yonge did not know about that and I -- and I don't get involved into the why's and wherefore's of that as to whether there was information given the extent of this whole investigation and all the agencies that were involved they should have put somebody on notice or not.

And, frankly, other than to simply introduce evidence that none of that existed, I'm not sure what the advance information would have done, although I'm sure, Mr. Yonge, as well as your brief was written you would have found some way to address it, that it was there, and the officer had a right to rely on it and it came into the record of this particular case, and so -- and it is supported, that information. That type of information is supported by the caselaw.

The Kansas versus Glover case, 140 Supreme Court

124

1183, specifically says that facts known to a deputy at the time he stopped the vehicle that gave rise to a reasonable suspicion that he was driving in violation of the law, et cetera, and so the information from the -- the multiagency investigation was an appropriate thing to be considered by this Court, as it was by the officer himself.

Our South Carolina Supreme Court, State versus Taylor, T-A-Y-L-O-R, 401 South Carolina 104, a 2013 case, says that reasonable suspicion can arise from an anonymous tip and so forth, and so that is well-settled law, and what that does in my view and how it entered into my consideration here is that it is -- it is a heightened level than -- of examination, a heightened level of attention brought to these various elements, which are justifiably considered under that light. The officer is -- is entitled to rely on those and our whole line of cases talk about the totality of the circumstances and an officer may after issuing a traffic ticket determine whether to continue to detain a driver if he has reasonable suspicion of a serious crime, and it goes into reasonable suspicion is a common sense, nontechnical conception that deals with the factual and practical considerations of everyday life, et cetera, citing State versus Wallace, 392 South Carolina 47,

125

and going onto say that it is entirely appropriate for courts to credit the practical experience of officers who observe on a daily basis what transpires on the street and, furthermore, the Court must consider, must consider, the totality of the circumstances, and so there when I view the evidence in that light, then the case is much clearer for the denial of the motion to suppress. Without that, quite frankly, the testimony about the nervousness is not nearly as marked, not nearly as pronounced in that case. And the testimony about bladed stance, I've got an idea what a bladed stance is, but I'm not too sure about that and I'm not sure how -- how it indicates the guilt of somebody. I suppose bladed stance must be the current terminology that has replaced felony stretch. Some of us are old enough to remember the cases that dealt with felony stretch because somebody got out of their car one time and stretched like that and by, George, that was it, he's guilty, and so I give that same amount to a bladed stance, but there are other inclinations.

And, frankly -- and then the State verses Provet, P-R-O-V-E-T, 405 South Carolina 101, sort of focuses on the distinction between -- or inconsistencies in the statements made by the defendant about where he was going, where he was coming from, what he was doing in

126

those cases, which occurred in this case as well, which are proper elements for the trooper's consideration.

I will say this for Trooper Shropshire. He has -- he is well-versed on the distinction between reasonable suspicion and probable cause. He has been well-trained in that regard and he applies that standard I think appropriately in this particular case and stayed within the lines in doing that.

The other cases which Mr. Smith cited in his argument, I adopt those and the elements of the holdings of those particular cases, which he has put in the record as additional sustaining grounds for my decision to deny the motion to suppress.

All right. I have considered whether or not in the ruling of that, Mr. Yonge, in that ruling whether or not the fact that the -- that the K-9 officer tapped on the vehicle at certain portions around the truck itself as he was conducting his investigation. I don't think that that gets into the level of the cases that you've cited in your brief about the dog actually getting into the truck themselves and physically occupying the truck. I don't think it rises to that level, which is a concern in part two of your -- in part two of your brief, and I accepted, quite frankly, for purposes of my ruling the fact that the tape showed exactly what you said it would

show, but it would make no difference in my opinion.

Any questions about that from the State or the defense?

MR. SMITH: Nothing from the State, Your Honor.

THE COURT: Mr. Yonge?

MR. YONGE: Nothing from the defense, Your Honor.

THE COURT: All right.

Okay, folks. That -- do we have any other motions we need to take care of today?

MS. OPPENHEIMER: Your Honor, the Jackson v. Denno might take five minutes if you'd like to go ahead and get that out of the way.

THE COURT: Let's go ahead and get it done, okay?

MS. OPPENHEIMER: Would you like the State to call its first witness?

THE COURT: Please.

MS. OPPENHEIMER: Investigator Gietz.

THE COURT: Investigator, if you'll resume the stand. You're still under oath.

JOHN GIETZ,

having been previously sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. OPPENHEIMER:

Q. Investigator Gietz, you arrived to this traffic stop shortly after the K-9 indicated that there was something

in the vehicle, correct?
A. That's correct.
Q. And when you approached, was the defendant already in custody?
A. He was detained.
Q. Was he in handcuffs?
A. Not to my knowledge.
Q. Okay.
THE COURT: He was in custody. I can tell you from the information. Let's don't quibble about that. He was in custody.
MS. OPPENHEIMER: Yes, Your Honor. We are willing to concede that point.
BY MS. OPPENHEIMER:
Q. Do you know whether or not he had been Mirandized at that point?
A. I don't think he had been Mirandized yet.
Q. Okay. And did you ask him any questions as you walked up to the vehicle?
A. No, ma'am.
Q. Can you tell us whether or not he said anything to you?
A. Yes, ma'am. I said hi to him and he said -- without any questions being asked, he said it's on the floorboard. Or he said it's on the floor, on the floorboard, something

along those lines.
Q. Were you trying to warrant a response by saying hi to the defendant?
A. No, ma'am.
Q. And, in fact, where was this approximately seven pounds of meth found?
A. On the passenger side floorboard of the vehicle.
MS. OPPENHEIMER: No further questions.
THE COURT: Thank you.
Cross-examination?
MR. YONGE: No questions, Your Honor.
THE COURT: Thank you.
(Witness excused.)
THE COURT: Any additional evidence from the State or from the defense on the admissibility of the statement?
MS. OPPENHEIMER: Nothing from the State, Your Honor.
THE COURT: Thank you.
Mr. Yonge, anything further from the defense as a matter of evidence in that regard?
MR. YONGE: Nothing for evidence, Your Honor. Just the question of whether this would be included in your Fourth Amendment suppression ruling.
THE COURT: Yeah, that's a good point.

130

MR. YONGE: But that's all, Your Honor.
THE COURT: Yeah, I would -- it would not necessarily be encompassed in my Fourth Amendment ruling. It stands alone, I think, under the Fifth Amendment. It was not custodial questioning as I understand it, therefore, he's not entitled to the Miranda warnings according to my understanding.
Does that address your concern about that or I'll be glad to hear argument on that point?
MR. YONGE: Am I jumping ahead in --
THE COURT: No. My ruling in the absence of evidence to the contrary is that Jackson v. Denno applies to in custodial interrogation. He was in custody. There's no doubt about that, but it was not an interrogation, so his statement was a spontaneous statement made without -- no interrogation of any sort, so it becomes admissible then on that basis along.
Does that make sense?
MR. YONGE: Yes, Your Honor. My only argument is just that I have no -- I'm not contesting it under the Fifth Amendment. I was just asking for a ruling saying I would have asked for this to be suppressed under the Fourth Amendment as it was an unconstitutional seizure.
THE COURT: I see. I get you. I will include this for that purpose. If I ruled incorrectly on the -- on

131

the issue of the -- of the search and things of that nature, I will allow this if I can do it. I might can't undo it and that's why we have a record, but you should not be precluded on that basis for -- from arguing this if you have to do it on the basis of the fact that I did not rule correctly on the Fourth Amendment issues.

Does that make any sense at all?

MR. YONGE: That works for me, Your Honor.

THE COURT: Okay.

All right. Thank you.

I'm sorry I was not bright enough to see where you were headed with that initially, Mr. Yonge. I should have seen it at that point.

All right. So, folks, we will -- unless somebody's got something else for us to do in this case, we will recess and come back and be ready at 9:30 in the morning.

Is that --

MR. WILLIAMS: I'm rearing my ugly head at this point.

THE COURT: Oh, no. Please. Not at all.

MR. WILLIAMS: Only for an abundance of caution, and that is there were several motions that we had filed which we wanted to make a record of that we were in agreement in regards to this.

THE COURT: Oh, please do. Let's do it.

132

MR. WILLIAMS: There was a motion to sequester witnesses and I think that was agreed to on behalf of the State.

THE COURT: Good.

MR. WILLIAMS: In addition -- I'll wait. Go ahead.

MR. SMITH: No, go ahead.

MR. WILLIAMS: And there also was a motion to exclude statements regarding gangs and any mention of that in front of the jury, so I think that is the only motion that we have.

THE COURT: All right. Thank you.

MS. OPPENHEIMER: Your Honor, the only way the gang information would come up would be if the defense opened that door and I don't -- Mr. Williams certainly doesn't plan on doing that.

MR. WILLIAMS: I don't.

THE COURT: All right. Okay.

All right. So then there's no argument about those and certainly, as he said, the gang won't come in unless the door swings open.

The motion to sequester is granted. It will be in effect at the conclusion of the opening statements. After the opening statements are made, then the motion to sequester will apply.

MR. WILLIAMS: Thank you, Your Honor.

133

THE COURT: All right. Anything further?

MR. SMITH: Your Honor, given the nature of the charges on trial here and Your Honor's ruling denying the motion to suppress, we would move that the defendant be taken into custody pending the resolution of the trial.

By statute this is a violent and serious offense and it does carry a mandatory minimum of twenty-five years.

MR. WILLIAMS: Your Honor, I don't know if you noticed, but David Crawford was in here earlier who runs A-Plus Bail Bonding, and he will provide whatever you need for him to stay out. The jury has not been sworn yet.

THE COURT: They're not. And if the bondsman is willing to stay on his bond, then I will allow him to stay out overnight.

MR. WILLIAMS: I'll have their office contact your clerk, I guess, Your Honor.

THE COURT: Okay. Do that.

I'm sensitive to your concern, Mr. Smith. He's had this hanging over his head now for a long time and I'm trusting that he's not gonna lose the confidence in his lawyers as he's expressed so far and he'll be here tomorrow.

134

MR. SMITH: Yes, Your Honor.
MR. WILLIAMS: Thank you, Your Honor.
THE COURT: If not, the bondsman has probably got enough on the hook to go get him.
MR. WILLIAMS: He probably does, Your Honor.
THE COURT: All right. Thank you. 9:30 tomorrow, folks.
MR. SMITH: Thank you, Your Honor.
(Whereupon, the proceedings were concluded for August 7, 2023, at 4:53 PM.)
(The following proceedings were held August 8, 2023, beginning at 9:50 AM.)
(State's Exhibit Number 1 through 10 were marked for identification.)
BAILIFF: Court is now in session. The Honorable Judge Thomas Cooper presiding.
THE COURT: Thank you, folks. Please be seated.
Good morning.
Madam Reporter, here is the Defendant's exhibits -- evidence that was attached to their motion yesterday. If you'll make sure the record has that.
Folks, I understand that we have a motion that we need to deal with before the jury is brought in this morning.
Is that right, gentlemen?

135

MR. YONGE: Yes, Your Honor.

THE COURT: All right.

MR. YONGE: I apologize we didn't bring it up yesterday. I honestly didn't think of it until this morning.

THE COURT: I understand the nature of the things and the timing of things. We'll deal with it now.

Mr. Yonge, let me hear from you.

MR. YONGE: So in light of the new information that was disclosed yesterday during the pretrial suppression hearing, we would request that this Court find that the State has failed to disclose material evidence pursuant to Brady v. Maryland, 373 U.S. 83, and Kyles v. Whitley, 514 U.S. 419, and Rule 5, South Carolina Rules of Criminal Procedure.

THE COURT: And the specific information that is the subject, I think I know what it is, but the record needs to reflect it.

MR. YONGE: Yes, Your Honor.

So we were given information pretrial that Steve Brown was under investigation by the Lexington County Sheriff's Department for trafficking between -- right here in Lexington. That's not in dispute. And we also received information that he'd been -- triggered a license plate reader on the date of the stop as well,

136

but what we did not get was anything linking that information to the traffic stop itself. We did not have anything about Investigator Gietz contacting Sergeant Atwood or that this was an orchestrated drug interdiction stop. All we had was two separate pieces of information that were unlinked.

So we think the material evidence that was -- that that is material evidence that was not disclosed to us because it effects our ability to properly cross-examine the witnesses that will testify during this trial, and so we have a confrontation clause issue.

And, you know, I'm always happy if we can have something showing that we did receive this information. I'll apologize and pull my motion. I just have not been able to find anything about it.

THE COURT: Okay.

MR. YONGE: Thank you, Your Honor.

THE COURT: All right. Mr. Smith, Ms. Oppenheimer, let me hear from you.

MS. OPPENHEIMER: Yes, Your Honor.

I think this is kind of the classic reason why you don't bring an attorney into a case that has been prepped up multiple times and it's been pending for three years.

Mr. Williams has been in verbal communication with myself, Mr. Smith, Agent Gietz, Judge McLeod. We've all

137

had meetings about this case specifically for years. We have disclosed the identity of the tipster. We have given -- in fact, they knew about that back in 2020, months after this stop happened. We gave them information about Investigator Gietz's narcotics investigation into the defendant. There are multiple conversations, e-mails, phone calls, text messages, et cetera, in-person meetings, about this information.

And, further, Your Honor, it's self-evident from the body cam video and dash came video that this was more than just an ordinary stop. Mr. Williams has always known that this was a whisper stop. It is obvious when Trooper Shropshire turns away from the defendant's truck at a point in the video and you don't just see Trooper Atwood, you see another line of law enforcement vehicles. You see Lexington County K-9 officers. You see Investigator Gietz walk up within seconds of that dog indicating on the defendant's truck. This is no surprise whatsoever that this was a big deal. That this was more than just your ordinary traffic stop, which is why we told Mr. Williams years ago that this all resulted from a tip. We gave him the identity of the tipster. We gave him Federal proffers that that tipster gave not only about the defendant, but about other targets as well.

138

We have gone above and beyond and, quite frankly, if it's to be believed that they had no idea that this wasn't a big deal, that other agencies weren't involved, then Trooper Shropshire must be the most entertaining trooper on the highways in South Carolina because no one has five plus law enforcement vehicles at an ordinary traffic stop.

It is self-evident from all of the discovery that has been provided and we have told Mr. Williams that they did have conversations that morning. That there was a rally of these individuals to get them all together. It was quick, but also we're not talking about just one agency that everything can be documented via radio on a CAD. We're talking about a different agency that doesn't have access to Lexington County Sheriff's Department radio channels. To document every single thing, phone calls that every officer has with another officer, would be practically impossible and it would be unreasonable. They might as well leave their body cams on all day long and never turn them off, and that's just completely unreasonable, Your Honor.

So we have disclosed this information and would ask that you deny their request for a mistrial.

THE COURT: The specific information that Mr. Yonge raised, the point was evidence disclosed, the link

139

between all of this and this particular hit, I guess, or this particular stop, I guess that's what the -- the specific reference was to, and -- and your response to that, Ms. Oppenheimer, was, as you said, the whole panoply of evidence, the number of troopers and number of agencies involved, lends itself to that type of disclosure or was there some specific disclosure that the license plate reader led to all of this and had it all tied together?

You tell me.

MS. OPPENHEIMER: We did provide all of that information to Mr. Williams, Your Honor. We provided the hit itself, we provided letters, we provided every information that Investigator Gietz had about this -- this stop. We told Mr. Williams that hey, Investigator Gietz communicated with the troopers that morning before this stop was planned and conducted. All of that has been turned over, Your Honor.

THE COURT: All right.

MS. OPPENHEIMER: And there's nothing in the rules or the law that says everything has to be written down.

THE COURT: Right.

MS. OPPENHEIMER: And, again, if Mr. Williams failed to communicate that to Mr. Yonge, it's unfortunate. There have been a lot of conversations about this case

140

for three years. Nothing has been hidden.

THE COURT: All right. Thank you.

Mr. Yonge.

MR. YONGE: Well, just to address the point that this is so obvious because of the traffic stop itself, I mean, we had Trooper Shropshire up there yesterday explaining that. Of course they're trying to convince everybody that this is a regular traffic stop. He's -- Trooper Atwood's walking up and saying hey, what's going on here, I don't -- why do you have so many cars and he's like I don't know what's going on. So this idea that it's so obvious that everyone should know about it, but at the same time it's all a trick and a deception to convince the person that it was just a regular traffic stop doesn't register to me. That doesn't convince me that, you know, that should have shown me that there was some link there.

I could always guess that there's a link. I could maybe try to figure that out, but I have nothing even close to what they said yesterday to help me prepare to defend Mr. Brown in this case.

And there's no text messages, no e-mails about any conversations up to this point? I find that hard to believe that it was just told to him in passing or at some meeting without otherwise being disclosed.

141

THE COURT: I think the -- the reference to the implication or the conclusion that this was just a routine task -- or routine stop was Trooper Shropshire's relationship and discussions with the defendant in this particular case, I think, which I got the impression that he was trying to get him to believe it was a routine stop so as to, in his words, perhaps release some of the nervousness that he might be feeling otherwise with a stop of this nature, but that after that point, from that point on and for the purposes of pretrial discovery, then my understanding was -- is what Ms. Oppenheimer was saying it was, that it was obvious from that point on that there were multiple agencies involved and communications back and forth between those agencies tying Mr. Brown to the drugs and to this particular shop.

I'm not sure specifically what -- what type of information you are claiming was withheld from you that you needed to know or should have been able to know under Brady or Kyles versus Whitley or any of those cases.

Can you help me with that?

MR. YONGE: Anything making this a drug interdiction stop. Up until this point reviewing all the discovery that we have, which I've brought on a flash drive, it looks like a traffic stop where perhaps Investigator Gietz was pulling up to the scene afterwards or he's been

142

tracking him and he just happens upon this traffic stop where he's been tracking Mr. Brown, but that wouldn't affect Trooper Shropshire's reasonable suspicion or probable cause to -- reasonable suspicion to extend the stop or probable cause to search the truck and all of a sudden it becomes a completely different case when we show up for trial and it changes from, oh, a traffic stop, you know, Investigator Gietz is here, he's gonna take over the case, to Investigator Gietz is the puppet master of the entire case in orchestrating this whole thing.

We aren't prepared to cross-examine him on any of the stuff. We find out yesterday that Detective Sanner is the one entering all of this into a license plate reader. What we have is an e-mail saying there was a hit on the vehicle, but now I'm finding out that, oh, here's how you enter this stuff into the license plate reader and Detective Sanner is the one who did it and he did a dropdown menu. I -- I couldn't even prepare for that. I felt like I was taking a deposition without discovery up there, so that -- that is where the problem lies.

THE COURT: All right. Ms. Oppenheimer, what do you say to that?

MS. OPPENHEIMER: Your Honor, there is a letter in

143

our file dated October 15, 2020, addressed to Mr. Williams that says Theo, it has come to my attention that the -- in the above-referenced case law enforcement received information about Mr. Brown's methamphetamine trafficking activities from a tipster. Law enforcement used that information in furtherance of its investigation into Mr. Brown's activities, including his purchase of methamphetamine in Georgia and trafficking it back to the West Columbia, South Carolina area.

Your Honor, I don't know how more clear Mr. Yonge wants us to be. It's -- it's self-evident by the video and we have always said, and you can look at the hit itself, the e-mail is right in front of the court reporter, it says Austin Sanner, it says John Gietz and it says Thomas Hodges. Those are the three people that the hit was supposed to relay to it and the way that the hit works or how you put it in, that's -- there's no prejudice there. We have always said that the information was put into DEASIL that a license plate reader hit. We went above and beyond to disclose everything to Mr. Williams. We have given him every inkling of information that we had about this case.

And, again, if anyone watches that video and thinks that it's an ordinary traffic stop like Your Honor said, of course Trooper Shropshire's going to try and ease

144

Mr. Brown. Of course he is. He doesn't want him to know that he's been investigated for years for trafficking narcotics. You don't want to tip off a suspect to either run or he could have become violent, Your Honor. Obviously Trooper Shropshire was trying to avoid both of those things, but it is obvious that there are multiple law enforcement vehicles there. That there is no question that this was not just an ordinary stop. There's no prejudice to the defendant whatsoever. Everything has been laid out on the table for years.

THE COURT: All right. Thank you.

All right. Mr. Yonge, I'll give you the last word here. It's your motion.

MR. YONGE: Thank you, Your Honor.

Just addressing that piece of discovery that was disclosed to us doesn't actually address the thing I'm talking about here, which is the length between the investigation and the traffic stop.

Thank you.

THE COURT: All right. Thank you.

You referred to a letter or an e-mail or something that is up here that I have not seen.

Can you help me with that?

COURT REPORTER: (Handing.)

THE COURT: Thank you.

145

Ms. Oppenheimer, you were saying that Court's Exhibit Number 5 was disclosed to the defense? Is that what you're saying?

MS. OPPENHEIMER: Absolutely, Your Honor. That header is from our office and the date on the top is the date that we disclosed it, which was over a year ago.

THE COURT: Okay.

MS. OPPENHEIMER: And, again, just because Mr. Williams failed to communicate the information to Mr. Yonge, that doesn't make it the State's burden to make sure that co-counsel communicates amongst each other.

THE COURT: Oh, no. I don't think that's the contention. You don't have that responsibility. You just have to disclose it to the other side.

MS. OPPENHEIMER: Yes, Your Honor.

THE COURT: All right. Thank you.

All right. I find that there is no Brady violation in this particular case or Kyles v. Whitley violation; that the totality of the information disclosed, specifically Court's Exhibit Number 5, which indicates what it indicates, the nature and the extent of this investigation and how the investigation itself and the agencies involved are targeting Mr. Brown for methamphetamine trafficking from Atlanta to Lexington

146

in this regard is sufficient to put the defense on notice of at least the scope -- the breadth of this investigation and the involvement of other agencies in it.

It is not necessary, as I understand that rule, that every individual and every step that is being taken to tie these things together has to be disclosed under the caselaw or under the rules.

The motion -- the Brady motion in that regard is respectfully denied.

All right.

MR. WILLIAMS: Your Honor, I have one additional motion. I guess it's probably something to make a record of as opposed to a disposition by the Court at this time.

THE COURT: Okay.

MR. WILLIAMS: Your Honor, as we have viewed the evidence which has come out, there's great placement, if you will, on this license plate reader, Your Honor.

THE COURT: Right.

MR. WILLIAMS: Your Honor, I would call the Court's attention to a case which was passed upon by the Supreme Court recently, and it was the case which was the South Carolina Public Interest Foundation and John Sloan on behalf of -- individually and on behalf of others versus

147

South Carolina Law Enforcement Division and Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division.

The Supreme Court refused to make a decision on this matter, and Your Honor may be aware of this particular case, because they felt that the case had to work its way through the circuit courts to make a decision if it was proper.

THE COURT: Right.

MR. WILLIAMS: The argument is essentially that -- that SLED's retention of these license plate matters is not authorized. It needs to be by law as opposed to underneath some agency requirement.

THE COURT: Right.

MR. WILLIAMS: And I have a copy that I'd just like to mark as an exhibit, Your Honor, but what has -- the reason it's of some importance today --

THE COURT: Right.

MR. WILLIAMS: -- is that this case, in accordance with the Supreme Court's decision, the attorneys on that particular case, it was -- James Carpenter filed an action in Richland County on or about April the 11th of 2023, which simply mirrors the accusations and the lack of powers to do this license plate reader. And we all know that it's been used throughout the State of South

148

Carolina, so I don't intend to pull some slick rug over somebody's head --

THE COURT: Right.

MR. WILLIAMS: -- but we would -- because if the Supreme Court should come back at some point in time and determine that, indeed, that they not have the power, and I'll note that there was an action which was filed in the Legislature by -- I think it was Senator -- the senator from Richland County who had some things that were -- that touched upon this, but it's still floating around out there, but there has been no -- there's no state law that allows it --

THE COURT: All right.

MR. WILLIAMS: -- and the argument is always if you don't have a state law that authorizes the use of it, then it has to done by the powers underneath an agency agreement.

So if we could just ask that those two particular lawsuits be marked as a possible exhibit for consideration at some point in time, Your Honor.

THE COURT: Certainly.

MS. OPPENHEIMER: If we could just note for the record the caveat that this is an LPR run by the DEA, which is a Federal agency, and the LPR is not in the state of South Carolina.

149

THE COURT: All right. I'll note that. Whether it applies will, of course, be for another day. Certainly you can make the notation, yes, sir.

MR. WILLIAMS: Thank you, Your Honor.

(Court's Exhibit Number 6 and 7 were marked for identification.)

THE COURT: Thank you.

All right, folks. Are there any other matters that we need to deal with before we bring the jury in from the State, Mr. Smith, Ms. Oppenheimer?

MR. SMITH: We would just ask for a brief five-minute break, Your Honor, before we begin.

THE COURT: Okay. All right.

For the defense, Mr. Williams or Mr. Yonge?

MR. WILLIAMS: I think we're ready, Your Honor, but we can take five minutes. Whatever they want to do.

THE COURT: Okay. Thank you.

Who'll open for the State?

MS. OPPENHEIMER: I will, Your Honor.

THE COURT: And for the defense?

MR. WILLIAMS: I will open, Your Honor.

THE COURT: Thank you.

Okay, folks. We'll take a -- there's no such thing as a five-minute break. Why don't we start back at 10:30, okay? Fifteen minutes.

150

MR. SMITH: Thank you, Your Honor.
THE COURT: Thank you-all.
(Recess taken at 10:14 AM.)
(Back on the record at 10:31 AM.)
BAILIFF: Court's back in session.
THE COURT: Thank you. Be seated.
All right, folks. The jury will be brought in and I'll appoint a foreperson and the jury will be sworn. I'll make some brief introductory remarks and then turn it over to you-all for opening.
Are both the State and the defense ready to go?
MR. SMITH: The State is ready, Your Honor.
MR. WILLIAMS: The defense is ready, Your Honor.
THE COURT: All right. Thank you.
If you will bring in the jury.
(Whereupon, the jury enters the courtroom at 10:33 AM.)
THE COURT: All right, folks. You-all can be seated. Thank you.
Ladies and gentlemen, at the outset let me apologize for the length of time it's taken for us to get you out this morning. We had some matters that we had to deal with once again before we could bring you out, some pretrial matters. We dealt with some of these yesterday, but there were some left over until this morning, and I

151

didn't know about those yesterday, so that's the reason.

We are conscious of the value of your time and we all try not to waste it and I think we will be able to run a little more smoothly from this point in time once we get things running and get some momentum built up.

The order of things today I'll explain to you in just a few moments. Before I get to that, let me take just a moment or two to tell you who some of these folks are that you will be dealing with.

First of all, Mr. Davis, I've asked you to serve as the foreperson of the jury. That means you will be the jury's spokesman here in court. When the trial is over, you'll be responsible for writing the verdict of the jury, but I'll tell you more about that before you have to do it. You don't have to worry about that now. You've just got a reserved seat. You'll occupy that chair throughout the trial of the case.

Mr. Jones, Mr. Billingsly, as the alternate jurors -- where are the alternate jurors? There we go. You'll -- well, as long as you understand that you're alternate jurors and don't go into the jury room for deliberations at the end, you can sit wherever you want to. Normally you have reserved seats, but we'll leave you right there unless the bailiff sits you somewhere else. The rest of you, gentlemen and ladies, just get the best seat you

152

can when you come in from time to time.

You're gonna be sworn in now as jurors. I want you to pay particular attention to the oath that you're about to take. It is a time-honored oath, an artfully worded oath. It explains to you very completely, but at the same time very concisely what your responsibilities as jurors are in this case. I'm gonna be reminding you during the trial and after the trial as to what you're sworn to do, so please listen to the clerk now as she administers the oath.

Madam Clerk.

THE CLERK: Please stand and raise your right hand.

(Whereupon, the jury was sworn by the Clerk of Court.)

THE CLERK: Please respond by saying I do.

(Jury responds.)

THE CLERK: Was there anyone not able to take the oath?

Thank you. Please be seated.

THE COURT: Okay. Thank you.

Ms. Irby, you've just met her. She's the deputy clerk who's in the courtroom. She is the clerk's spokesperson. She's in charge of keeping things orderly here and maintaining all of the records that result from this -- from this trial except for the record of

153

the trial itself, and that's the responsibility of Ms. Johnson, who is the court reporter, who sits right here in front of us. She is the court reporter who keeps up with the exhibits and with the trial testimony. She has the responsibility of writing down everything that is said. It is a word for word verbatim record that has to be kept, and so she does that. And she's done it for quite a while. I've had the chance to work with her over the years quite often.

I have a law clerk up here, which is a luxury for me, Mr. Will DuBose. He's a lawyer and he is actually the law clerk for Judge McLeod. Judge McLeod is on vacation this week, so he has loaned me his law clerk, and I'm delighted to have that luxury. For fifteen years when I was a full-time judge, I always had a law clerk, and they were a great help in keeping up with the records and doing research and things of that nature and doing some mundane things as well that are not really important for a law clerk's education, but are helpful to a judge, and -- and the older I get the more I appreciate the young ears and young lawyers like this who can -- who can hear things a lot cleaner and they have a sharper ear and a sharper mind than I do.

I've got that luxury this week with Mr. DuBose. He will be leaving Judge McLeod's employ shortly. Law

154

clerks work generally from August to August and he's going to go into private practice with a lawyer in Columbia, and he's gonna do a good job there.

There are bailiffs in the courtroom. Mr. Scott, who's over here, he's the chief bailiff. He calls us to order and things of that nature. You've met Mr. Paris. He's -- he's in charge of you-all and so you'll get a chance to know him during the course of this trial.

The -- the security folks are about here, and I'm sorry I didn't get their names today, but I will and introduce you to them. They're important to us as well.

And all of these folks are an integral part of the system who are sort of on the sidelines and you don't get to pay any attention to them because you don't have to, but the rest of us do because they are key components of what we're all about.

Now the real key components are you-all, so let me tell you what your responsibilities are gonna be during the trial of this case.

In just a moment when I finish talking to you, Ms. Oppenheimer, on behalf of the State is going to stand before you and make a brief opening statement and in that opening statement, she's going to outline for you in something of a preview fashion what this case is all about from the State's point of view and she may

155

even indicate to you some of what the State intends to offer by way of proof in support of the charges which it has brought in this indictment.

And after she has finished making the opening statement on behalf of the State, then Mr. Williams, on behalf of the defendant, has a right to make an opening statement. He's under no obligation to do that, and I'll tell you why in a moment, but he has the responsibility -- or has the opportunity to do that if he so chooses.

And after the opening statements have been made, then you will actually begin to see and hear the presentation of evidence in this case. Evidence for the most part will take the form of testimony of witnesses who will take an oath and sit right in this chair and answer the questions that the lawyers from both sides will put to them, and it may also take the form of documents, photographs, videotapes, all these sorts of things that can come into evidence in the course of a trial of this nature.

The State will put in its evidence and testimony first and after it has finished offering evidence and testimony, if the defendant wishes to offer evidence and testimony, he has the chance to do it, but, once again, he doesn't have to.

And after all of the evidence and testimony has

156

been introduced, then you will actually see the lawyers again as they appear before you and make their closing arguments. Closing statements they're sometimes called. And in those closing statements, they're allowed to summarize the evidence and to submit to you conclusions that they claim you should draw from the evidence that you have seen and heard. Obviously conclusions that support their side of the case.

And after the final arguments have been made, then I will instruct you as to what the law is and then you will go into your jury room and finally begin to talk about this case among yourselves, to deliberate and to reach a verdict.

I remind you again not until then. Don't talk about it among yourselves until then. You might take a break and when you go back there and something you heard interests you about it and you want to talk about it then, right then while it's fresh in my mind, and you tell me I can't talk about it? No, you can't do it then. You can take all the time you want to when the trial is over, but not until then, and the reason is this.

Once you start talking about this case among yourselves, you're gonna start to make up your mind about the case. You're gonna start to draw conclusions based on those discussions and what you've heard. It

157

might be, I don't know whether it will or not, but it might be that during the trial later on you hear something that's different from what you've already heard and started to talk about, but you're not likely to receive that later testimony with an open mind because you've already started to make up your mind, and that's the reason we ask you don't do that, and that makes sense to you and I'm sure you'll appreciate that and you won't do that.

And, of course, as I've said, the -- the extent of those deliberations, the length of them, from that point on is entirely up to you. You took an oath to well and truly try this case and render a true verdict according to the evidence so help you God.

Evidence. Now I told you I'm the judge of the law. I will tell you what the law is at the conclusion of this case because that's my job, but when it comes to evidence, you all are the judges. I'm the judge of the law, you're the judge of the evidence. That tag says juror, but if it's gonna be specific and correct, when it comes to evidence it should say judge.

You have the right to believe or disbelieve what you hear. You have the responsibility to assign weight to it, responsibility to it. You have to decide what you find to be credible about what you have seen and

158

heard in this case. You are well-able to do that. You don't go to school to become a juror. We don't have any specific schools in that. It's the school of life that enables you to be a juror because the types of decisions that you make every day in getting through life, raising your family, if you have a family, and doing your job, if you have a job, and just getting through life. You make the same type of decisions that we ask you to make in this courtroom, so that's all we ask of you; to bring in your abilities, your common sense, your experiences in life and all of those things that you all have and you individually bring from your individual and separate walks of life to bear on what you hear in this courtroom, and you'll be able to decide what's credible and what's believable. So just apply what you do outside of the courtroom to what you do inside of the courtroom and you'll be able to sufficiently discharge your oath to be the judges of the evidence in this particular case.

A few moments ago I told you that the defendant does not have to make an opening statement, does not have to offer evidence in the case, and the reason for that is, as you know, Mr. Brown has pled not guilty to the charges in this case and under the law when somebody pleads not guilty to the charges in a case he is presumed in law to be not guilty. He's presumed, in fact, to be

159

innocent of the charges.

You've heard -- if you can go back to your seventh grade civics classes, you've heard innocent until proven guilty. That's all I'm talking about right now. Under our law a person who pleads innocent or pleads not guilty is presumed to be not guilty. That means he doesn't have to take that stand and try to convince you he didn't do the things he was accused of doing. He doesn't have to bring in other witnesses to try to make you believe he's innocent of these charges. He is presumed to be innocent.

So the burden of proof then is not on the defendant to prove his innocence. The burden is on the State not just in this case, but in every case like this, to prove that the defendant is guilty by evidence that satisfies you of his guilt beyond a reasonable doubt.

Now when the trial is over, I will instruct you as to what I mean and what the law means by proof beyond a reasonable doubt, but for our purposes right now in these brief remarks let me tell you that proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. And so after you hear everything that's gonna be said about this case, if you go back into your jury room and deliberate and your collective decision is that the State has proven that he

160

firmly -- that he is guilty of these charges beyond a reasonable doubt, the State has met its burden of proof and the State would be entitled to a verdict of guilty at your hands. But, on the other hand, after you've heard it all if you find that there's still a real possibility that he is not guilty, then the State has not met its burden of proof and in that case the defendant would be entitled to a verdict of not guilty at your hands.

So you're gonna be listening for that. You're gonna listen to the witnesses, the lawyers, listen to me, and then when you've heard everything out here that you need to listen to, you'll go back into the jury room and you'll listen to each other as you discuss this case and deliberate it among yourselves, and in your deliberation you will discuss whether or not the State has met its burden of proof and you will express your opinion as to whether or not the State has met its burden of proof by writing a verdict of guilty if you find that you are firmly convinced that he is guilty or not guilty if you find that there's a real possibility that he's not guilty.

So listen now to the lawyers, ladies and gentlemen, as they make their opening statements and thank you for your attention to these remarks.

161

Ms. Oppenheimer.

MS. OPPENHEIMER: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. OPPENHEIMER: Good morning. Why are we all here today? We're here today because the defendant, Steven Daniel Brown, is a drug trafficker. And he's not just any ordinary drug trafficker, he's a meth trafficker.

On June 29, 2020, the defendant was pulled over by highway patrol on I-20 eastbound here in Lexington County. Now you would think this is any ordinary traffic stop, but it's not. You're going to hear that Investigator Gietz with the Lexington County Sheriff's Department Narcotics Enforcement Team actually opened an investigation into the defendant back in 2018. He received multiple tips about the defendant's behaviors that were consistent with trafficking methamphetamine. You're going to hear that at some point in 2020 he actually received a tip that the defendant was going down to Atlanta, Georgia to pick up large quantities of methamphetamine and bringing it home right here in Lexington County. To your homes.

You're going to hear that with this information Investigator Gietz researched all of the vehicles that were registered to the defendant. He had a big pickup truck. What does he do? He puts that license plate

162

number in a database that the Federal government and all law enforcement agencies use that would hit if the defendant were to pass called a license plate reader.

Well, on the morning of June 29, 2020, Investigator Gietz is getting ready for work like any other day. He's getting ready to go to a team meeting that they have every week, but he sees this hit and it says that the defendant's truck was seen on I-20 westbound going towards Atlanta, past Augusta, Georgia, and so what does Investigator Gietz do? He calls the rest of his team members from the county and he calls highway patrol. He does this so that they can conduct a stop, a traffic stop, should the defendant commit any traffic violations.

They're all set up on I-20. They have their different points. There's a lookout down in Aiken County who notifies everyone hey, I see his truck. The troopers who, let's all be honest, what is a trooper's job, notices traffic violations. I'm sure we've all been pulled over before. They know the defendant's truck. They know about Investigator Gietz's investigation.

So they're somewhere on I-20 and when they get the notice that the defendant's truck is coming their way, they get on the highway and they observe two traffic violations, so they pull him over.

Again, you would think this is any ordinary stop.

163

It's not. It's pretty evident, but you're gonna see those traffic violations. You're going to see the steps that Trooper Shropshire goes through with the defendant. You're going to see how the defendant is acting. Ask yourselves does his story make sense? It changes. He can't give any specific details about where he is. So ask yourself is he acting nervous? If this is just an ordinary day and he's not doing anything wrong, why is he acting the way that he's acting?

You're going to hear the trooper ask him about different substances that could have been in his truck. And, again, the trooper knew about this investigation. The trooper goes through a litany of questions. Hey, do you have any heroin? Do you have any weed? Do you have any pills? No. No. No. Well, how about any methamphetamine? You're going to see and you're gonna hear the defendant's response. You might be able to hear the defendant's response so well because he kind of mutters no. It's not a resounding no like the rest of them as he answers to the other narcotics.

You're going to see that the troopers make a decision to run a dog around the car. You're gonna get to see that beautiful little baby dog, who is an officer, and you're going to see within two minutes that he hits and indicates that there's something in that vehicle and

164

seconds later Investigator Gietz walks up and you're gonna see the defendant's demeanor change. He's defeated. He knows he's caught red-handed. He tells Investigator Gietz it's on the floorboard. As quick as day he tells him exactly what he will find. And it takes him two seconds to find it. About seven pounds of methamphetamine in three clear plastic totes right there in the defendant's truck. He's the only one in there. He knows it's in there. He tells Investigator Gietz exactly where it is. He knows he's caught red-handed.

Now, ladies and gentlemen, there's a couple of different types of trafficking methamphetamine, trafficking narcotics. One is bringing the narcotics into the state. Well, we know the defendant was in Georgia and we know he came back to South Carolina. That's trafficking. We also know that he's in possession of it. It's his truck. He has knowledge of it. He has control over it. That's also trafficking.

The judge talked to you a little bit about reasonable doubt. Again, it's firmly convinced. You don't have to be a hundred percent sure. You just need to be firmly convinced of the defendant's guilt. You keep that in mind throughout this trial. Ask yourselves how is he behaving? Does he know about these drugs in his truck? Is what the defense is telling you, is that

165

reasonable? Ask yourself that throughout this trial. You get to use your common sense. You did not leave it out in that gallery as soon as you took your oath. You brought it with you.

And, ladies and gentlemen, as long as you listen to the testimony, you look at the evidence and you follow the law, your job will be easy, and I assure you that at the end of this trial when Mr. Smith gets up and asks that you find the defendant guilty of trafficking methamphetamine, you will be able to do so. He is a drug trafficker and all of the evidence points that way.

Thank you.

THE COURT: Thank you, Ms. Oppenheimer.

Mr. Williams.

MR. WILLIAMS: May it please the Court?

THE COURT: Yes, sir.

MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of the jury, I really thank you for being here because a lot of people try to get out of stuff like this, but I think if you listened to Judge McCaslin she told you that this will probably be the one of the most enjoyable learning experiences that you've ever had and that you really will appreciate doing it.

The one thing you don't know and probably you don't know it because you're not professional jurors and you

166

don't get to sit on but maybe one jury in your lifetime, is that you have the pleasure of having one of the most experienced judges on the bench. You probably picked up on it by his instruction, and I'm not just saying that. He's -- he's been around for a while and his instructional ability is wonderful. So you get to learn from one of the best judges in terms of the instruction on what the law is, and he has a very important job to do and he does it well, but let's don't forget you twelve or fourteen people have a job to do, too.

You know, you probably watched the process go a little bit and you said well, I don't really understand why these lawyers are picking certain people or striking certain people. Well, it's all an attempt to find unbiased people, people who don't have prejudices in their minds or people who they think would be fair and impartial because that's what both sides should be looking for is fair and impartial people because the jury is supposed to determine the facts in the case, so that's where everybody's looking at.

If you'll look around -- and the first thing I noticed is that when I was looking at you twelve or fourteen people is that you-all look different. It's just like there's no -- I mean, you-all look different. Each and every one of you look different from the other

167

person. Some are old, some young, some male, some are females, some are ethnic. You all look different, but you're all the same to a certain extent, and that's what I think is important is that you-all possess something which is the same, and that is that good common sense. You-all have experiences of some kind.

And when -- years ago when we set up the system to evaluate and to judge people, we decided that we would use a jury system in the United States, and that's part of the Bill of Rights, you know, you have the right to trial by jury, but I was curious because I'm always curious about something, and that is that why do we have twelve jurors? Because in some places you have six jurors, sometimes you just have a judge, so I began to research that issue because it was kind of interesting. I just wanted to know why you've got twelve.

It turns out that there was a decision back in 725 by a Welsh king by the name of Morgan who said that he thought that you should have twelve jurors because you should have -- just like the apostles, the twelve apostles of Christ, and I said well, that's as good an answer as any, but he said he was looking for wise men. That's why he had that.

Well, the importance of you twelve people in this case is great and I expect and hope that you-all will be

168

wise men and women in this case because it requires it. It requires it because you have a task, which is even though you may not think it's that important, it is extremely important. Because you hold the decision in this case. I'd like to say it's my silver tongue in arguing to you or the solicitor or the judge, but it's not. It's you twelve people who make the decisions in this case.

Now having said that, the other thing I wanted to talk about, you see unfortunately for a defense lawyer I always hate it when you have a very good judge on the bench because he will say all of those things that you want to say in your opening argument and you would sound silly if you just repeated all those things, and I'm sure it's some sort of conspiracy to keep defense lawyers from saying too much in front of a jury, but he has said much of what I would normally tell you, and that is what a juror's rights and what their obligations are, but I did think about one other thing that I would ask that you consider because you see these kinds of stuff in today's headlines all the time, and that's artificial intelligence.

You're probably saying he's lost his mind. Why he's talking about artificial intelligence? You see, we're taking the human out of everything. Well, the one thing

169

they can't take out of you twelve people is the humanity that you possess and your ability to reason, your ability to look at evidence. Because the burden of proof is, indeed, on the State to prove beyond a reasonable doubt the guilt of the person charged. So if they can't do that, then they're not guilty, and that's what the system is built all upon. So you must find that the evidence that you're looking at is persuasive, that it convinces you, that leaves you firmly convinced of the person who is charged.

I liken it to the change in the atmosphere where you went from Huntley and Brinkley to television stations that tell you exactly what you're supposed to believe. Well, this time you make the decisions. You look at the facts. You become your own television station and determine what you believe to be the truth based on what you see. Is it capable of being -- of standing on its own? That's all we really ask is that you apply the law as the judge gives that information to you.

I'll sit down, but I neglected to tell you who is seated at my table. And Steve Brown, he's the gentleman who's charged, and he is hoping, expecting as we all should, that he receives a fair and impartial trial.

And the other young man over there, he's probably gonna get tired of me saying this over the years, he's

170

actually my son-in-law. He's married to my daughter, who is a partner in my firm. And my wife, who is also a partner in the firm, so we're a bunch of lawyers, but I would ask you do your job as being good jurors, fair jurors. You make the State prove beyond a reasonable doubt that my client violated the law, that he had criminal intent, that he knew what he was doing and that he's guilty of these charges. If you do that, then we can have no qualms and you should not have any qualms because I think you'll have an interesting and instructive day when the judge gives you the charge.

Thank you.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Williams.

Ms. Oppenheimer, you can call your first witness.

MS. OPPENHEIMER: The State calls Investigator John Gietz.

THE COURT: Investigator Gietz, come forward please and be sworn.

(Whereupon, John Gietz was duly sworn by the Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: Senior Investigator John Gietz,

G-I-E-T-Z.

JOHN GIETZ,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. Good morning, Investigator Gietz. How are you doing?

A. I'm well.

Q. Can you tell us where you're presently employed?

A. The Lexington County Sheriff's Department.

Q. And in what capacity?

A. I'm a senior investigator on our narcotics enforcement team.

Q. Can you tell us a little bit about the narcotics enforcement team?

A. So it's comprised of several different units within narcotics investigations and we have a crime reduction unit as well and a fugitive apprehension team. I'm assigned to Team 1 and we investigate narcotics offenses, tips, complaints of narcotics distribution. Generally anything related to the illicit sale, trafficking and distribution of narcotics.

Q. And I believe you mentioned a little bit about this, but can you tell us some of the investigative tools you use as a narcotics officer?

A. Sure. We use normal citizens of Lexington County

who give us tips and -- and if you -- if anybody's had any issues with somebody possibly dealing narcotics in their neighborhood or anything like that, we receive those tips and we work those complaints. We also meet with confidential informants. We'll purchase narcotics using confidential informants or in an undercover capacity. We also will use various databases, investigative tools. We meet with Federal entities quite often to work if there's any conjunction between a case that we're working or if it's a case that they're working.

Q. You mentioned tips.

A. Yes, ma'am.

Q. Can you tell us whether or not it's common for you to receive tips about the trafficking and distribution and sale of narcotics?

A. Yes. Absolutely. Almost daily we receive tips from different people about the sale and use. We actually actively go out and try to cultivate this information as well. It's part of our job.

Q. Okay. And when you receive a tip, what exactly do you do with that information?

A. There's various different investigative tools that we would use. Again, databases and stuff like that. Say if somebody was trafficking narcotics, we would take that information and research it through DMV or another database

that we have is CLEAR and we can research through there. We also utilize license plate reader systems that is run by DEASIL -- or, excuse me, run by the DEA that's called DEASIL. We have internal databases and -- and then we go talk to other tipsters and informants.

Q. Is it fair to say that you don't just solely rely on a tip?

A. Oh, absolutely. We -- we never. That would -- that's just the start of an investigation.

Q. Okay. Turning your attention to Steven Daniel Brown, can you tell us whether or not you opened an investigation into narcotics on this individual?

A. Yes, ma'am, I did.

Q. And do you see Steven Daniel Brown in this courtroom today?

A. Yes, ma'am, I do.

Q. Can you please identify him for the jury?

A. He's sitting right over there in the middle seat.

Q. At the defense table?

A. Yes, ma'am.

Q. And can you tell us the nature of that investigation?

A. It was -- it was a narcotics investigation.

Q. Can you tell us approximately when that investigation began?

A. Approximately 2018.

Q. Now without telling us anything specific, can you tell us whether or not you received any tips in reference to the defendant?
A. Yes, ma'am, I did. We received multiple tips from several sources that he was trafficking narcotics.
THE COURT: Wait. Wait. Wait. Wait. Wait.
MS. OPPENHEIMER: He's discussing the general nature of the tips, Your Honor.
THE COURT: My understanding was he's testified that he received tips that he was trafficking narcotics, right?
MS. OPPENHEIMER: Correct.
MR. WILLIAMS: Your Honor, I have a motion to make not in the presence of the jury.
THE COURT: Yeah, we -- ladies and gentlemen, go to your jury room for just a moment, please. I need to take up some matters out of your presence. Please do not discuss this case among yourselves at this time.
Thank you.
(Whereupon, the jury retires to the jury room at 11:05 AM.)
THE COURT: All right, Mr. Williams.
MR. WILLIAMS: Your Honor, I would move for a mistrial. Your Honor stopped the examination of the prosecutor by saying wait, wait, wait, which obviously

175

it was the correct thing to do, because what has just happened is that we now have heard that the defendant -- that they were investigating whether or not the defendant is involved in more than the one case that we're dealing with right now. So there is a -- they're bringing up the fact that he is guilty of other offenses for which he's not being tried for. So that, Your Honor, is improper and we would move for a mistrial on that basis.

THE COURT: All right. We're dealing with a quintessential 404(b) question about other bad acts or evidence and, of course, 404(b) says on the face of it that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake, accident or intent, which, of course, I take it as it is the exception of the rule that the State is offering this information for.

The question is that -- that caselaw seems to indicate that at some point in time I, as the trial judge, am required to conduct some sort of an analysis as to whether or not the prejudicial impact outweighs the probative value of this and, of course, the deeper

we get into the specifics as we were headed right here, we've got a whole bunch of other complaints about him doing this same thing, is what seems to me to be an area that I need to inquire some further about.

Of course, it seems to be fair game obviously under the rules, so, yeah, we were conducting an investigation about -- about Mr. Brown. That's right. There's nothing wrong with that.

MS. OPPENHEIMER: Right. Your Honor, I was just offering it for Investigator Gietz to explain what his investigation into the defendant was about, not anything specific about any other tips.

THE COURT: Really -- really all you need from Investigator Gietz is the fact that you were investigating him and that you had tips that led you to believe he was gonna be on the road trafficking drugs. You don't need all this other about the numbers of tips that you've gotten --

MS. OPPENHEIMER: I can --

THE COURT: -- where they came from and how many times you've run this down. That -- we really need to be taking about this event and -- and the investigation that deals with it completely. How many times have you heard a trial judge when an officer has a -- or, excuse me, an officer on the stand says we've been knowing about

Mr. So and So for a long time, he's been selling drugs for a long time, and it's a mistrial right there out and running, you know.

MS. OPPENHEIMER: Right. I apologize, Your Honor. I was just talking about the general nature. I can certainly narrow it down.

THE COURT: That's what you were talking about.

Mr. Gietz may have -- you know, he was the one who was going beyond what you were talking about. That's the problem. It's the answer that creates the problem and -- and I was trying to put the brakes on it before we got too far along.

MS. OPPENHEIMER: And I think Your Honor did that. You stopped it very quickly.

THE COURT: Well, you're exactly right, but except for that the horse was out and running and there's no stopping once we get too far down this road and that's the reason I was trying to put the brakes on it.

I note the motion for a mistrial, Mr. Williams.

I'm trying to figure out what sort of curative instruction at this juncture to give before this -- before this matter just runs completely away and -- and I'll instruct the jury that they're to disregard the last comments of the investigator regarding any matters not related to the stop that is the subject of this

particular lawsuit -- or this trial, and I don't know whether that helps a bit or not. It's the best that I can do under the circumstances. Trying to get the toothpaste back in the tube is an impossibility, but at the same time I think we're early enough in the trial of this case to -- to try to get it back on track without running completely afoul of 404(b) and creating any more of an appellate issue than has already been created to this particular point.

Mr. Williams, the motion for mistrial is respectfully denied. I will instruct the jury in some benign way and hopefully they will have forgotten what was said by the time they get back in here and the subsequent instructions of the Court at the conclusion maybe hopefully will clear that up.

That's the best I can do. The motion's denied.

MR. WILLIAMS: Thank you, Your Honor.

MS. OPPENHEIMER: Thank you, Your Honor.

THE COURT: Bring us the jury.

(Whereupon, the jury return to the courtroom in at 11:14 AM.)

THE COURT: Thank you, folks.

Ladies and gentlemen, I told you a little earlier I'm the judge of the law, and that's my job, is trying to keep the -- the law properly applied and sometimes I

179

have to take steps as the trial -- as the traffic court, I suppose, when it comes to that in deciding things that are admissible and are not admissible.

You are to disregard any testimony offered by the investigator that goes beyond the scope of this case when it comes to the investigation of the defendant in this particular case. There's a -- he's on trial for one offense and it's included in the indictment. You're to disregard any testimony regarding the scope of this investigation beyond that particular event.

And now we will try to get this thing back on track.

Ms. Oppenheimer.

MS. OPPENHEIMER: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. You testified earlier that you opened a narcotics investigation into the defendant. Turning your attention to 2020, can you tell us without being specific about anything anyone told you, the general nature of information that you received in 2020?

A. Yes. That Investigator Sanner received a tip.

MR. WILLIAMS: Objection to hearsay, Your Honor.

THE COURT: Yes, that would be.

BY MS. OPPENHEIMER:

Q. Without telling us what anyone said, the general nature.
A. That Steven Daniel Brown was trafficking methamphetamine from Georgia to South Carolina.
Q. All right. And with that information, what investigative tools did you use?
A. South Carolina DMV. I looked up Mr. Brown's vehicles, his customer vehicles. I was able to identify one vehicle in particular, South Carolina tag [redacted] which was a white F-350 that belonged to Mr. Brown. I also was linked to a hit confirmation through an LPR system known as DEASIL.
Q. Let me stop you right there, Investigator Gietz. You said that you ran the defendant's DMV information and you got information on a pickup truck; is that correct?
A. Yes, ma'am.
Q. What kind of truck was it?
A. It was a white F-350.
Q. What was the license plate on it?
A. [redacted]
MS. OPPENHEIMER: Your Honor, may I approach the witness?
THE COURT: Yes.
BY MS. OPPENHEIMER:
Q. I'm handing you what's been marked as State's Exhibit Number 1. Can you tell me if you recognize that?

A. Yes, ma'am. That's the defendant's vehicle.
Q. And is it an accurate representation of the defendant's vehicle?
A. Yes, ma'am, it is.
MS. OPPENHEIMER: Your Honor, at this time I'd move State's Exhibit Number 1 into evidence.
MR. WILLIAMS: Your Honor, the objection goes to time and place where this photograph was taken. He hasn't restricted it to a particular fact.
THE COURT: Do you have any idea when that image was lifted?
THE WITNESS: Yes, sir. That was from the traffic stop on June 29th of 2020.
MR. WILLIAMS: No objection to that, Your Honor.
THE COURT: Okay. Thank you. State's 1 -- did you say State's 1?
MS. OPPENHEIMER: Yes, Your Honor.
THE COURT: State's 1 without objection.
(State's Exhibit Number 1, a photograph, was admitted into evidence.)
MS. OPPENHEIMER: Permission to publish, Your Honor?
THE COURT: Yes, ma'am.
BY MS. OPPENHEIMER:
Q. All right. Investigate Gietz, State's Exhibit Number 1, can you tell us what we're looking at here?

A. Yes, ma'am. That's a vehicle belonging to Steven Daniel Brown. That's the vehicle with the tag [redacted]

Q. And can you tell us whether or not you personally observed the defendant driving this vehicle?

A. Yes, ma'am, I did.

Q. All right. Now with the information on this vehicle, what, if anything, did you do?

A. So with that vehicle I monitored the -- the DEASIL hits. While -- I'm sorry?

Q. What -- what is DEASIL?

A. Oh, it's an LPR system run by the DEA. It's D-E-A-S-I-L, so DEASIL.

THE COURT: Will you tell the folks what the LPR is.

THE WITNESS: Yeah. It's a license plate reader and what it does is it will track and monitor license plate tags. So as you pass the reader, it will take a picture of your vehicle on the front side as you approach and on the rear side as well, and it will create a digital record of that.

BY MS. OPPENHEIMER:

Q. And can you tell us whether or not the defendant's tag for this truck was placed into DEASIL?

A. Yes, ma'am, it was.

MR. WILLIAMS: Objection to that, Your Honor, unless he's the one that did it.

183

MS. OPPENHEIMER: He has personal knowledge that it was done, Your Honor.

THE COURT: I'll allow it if can testify about that. He has to have some foundation for knowing how it's done.

BY MS. OPPENHEIMER:

Q. Did you instruct an individual to put his tag into DEASIL?

A. Yes, I was notified that the -- the tag was placed into DEASIL and that I was listed as a co-agent for it.

Q. Okay. So you would have gotten any information pertaining to the defendant's vehicle on --

MR. WILLIAMS: Same objection to that, Your Honor.

THE COURT: All right.

MS. OPPENHEIMER: What was the objection?

THE COURT: That it's not firsthand knowledge I guess is what it is.

Right?

MR. WILLIAMS: It is.

MS. OPPENHEIMER: He testified he received the hits, Your Honor. He was listed as a co-agent. That's been thoroughly discussed.

THE COURT: The testimony was that he got information that the tag was placed in the system and that he was notified of it being in the system and would receive information from that. I think that that's

sufficient to tie him to the system. I'll allow it.

MS. OPPENHEIMER: Thank you, Your Honor.

BY MS. OPPENHEIMER:

Q. Investigator Gietz, do you have personal knowledge as to whether or not there are any license plate readers on I-20?

A. Yes, ma'am, there are.

Q. Can you tell us the general area of where those are located?

A. So there's one in Georgia on the far side of Augusta and there is -- and that is going to be westbound, and then on the eastbound side there's one in South Carolina.

Q. Okay. Can you tell us whether or not you received any hits on June 29, 2020, as it relates to the defendant's vehicle?

A. Yes, ma'am, I did.

Q. Approximately what time?

A. Approximately eight in the morning.

MS. OPPENHEIMER: I beg the Court's indulgence.

Your Honor, may I approach?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:

Q. Investigator Gietz, I'm handing you what's been marked as State's Exhibit Number 2. Can you tell me whether or not you recognize that?

A. Yes, ma'am.
Q. What is it?
A. It's a map of the area around the SC/Georgia border and an icon of a truck where the license plate reader would have been.
Q. Can you tell us where that image of the truck is on the vehicle is that substantially where the LPR is located based on your personal knowledge?
A. Yes. Yes, ma'am. Based on my personal knowledge, that is the approximate area where the license plate reader is located.

MS. OPPENHEIMER: Your Honor, at this time I move State's Exhibit Number 2 into evidence.

THE COURT: Any objection?

MR. WILLIAMS: No objection, Your Honor.

THE COURT: Without objection, State's 2 in evidence.

(State's Exhibit Number 2, a photograph/map, was admitted into evidence.)

MS. OPPENHEIMER: Permission to publish?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:
Q. All right. Investigator Gietz, looking at this map, can you tell us where we are in the world basically?
A. Do you mean the icon of the truck, ma'am?
Q. Well, I see the Georgia/South Carolina border. Where

are we? Just where does this map show?
A. Oh, the border of South Carolina and Georgia along the route of I-20, which is located there, and if you pass through it's past Georgia and where the vehicle would have hit on the LPR system is located by the icon of the white truck.
Q. Okay. So the white truck is in what direction? Or what was the direction of travel?
A. That would have been westbound, ma'am.
Q. Headed towards what city?
A. Towards, Atlanta.
Q. And can you tell us whether or not this is past Augusta?
A. Yes, ma'am, that's past Augusta.
Q. All right. And this is the location of where you would have received the hit when the defendant's vehicle passed on the morning of June 29th?
A. Yes, ma'am.
Q. When you received that hit, what did you do?
A. I contacted the team that I work with, which, again, involves several different units within the narcotics enforcement unit. I notified everyone that was on the team that I'd received the tip. We, as a group, had actively been working this at this point that he was trafficking methamphetamine from Georgia to South Carolina and then I

187

reached out to the South Carolina Highway Patrol to get in contact with their interdiction team to conduct what we call a whisper stop, which is to pretend like it's a normal traffic stop when in reality we know exactly what we're stopping and why we're stopping the vehicle.

Q. Did you provide the troopers with a little bit of the information from your investigation?

A. Yes, ma'am, I did.

Q. Can you tell us whether or not you directed certain officers to be at certain points on the travel back from Georgia?

A. Yes, ma'am. So the team that I work with, we rallied up and we all took a spot along I-20 coming eastbound into South Carolina; one of those units being placed outside of our jurisdiction, but as a -- kind of a lookout for the vehicle with anticipation that he would continue into Lexington County, and then we had several units placed along that route to include highway patrol, which was placed at the 39 mile marker of I-20 eastbound, and then I maintained my spot at the 44 mile marker of I-20 for fear that my truck might be noticed.

Q. Approximately what time of day was this that you were instructing other officers to be along I-20 eastbound?

A. Midday. Approximately midday.

Q. And can you tell us how could you possibly have known

that the defendant might be showing up if he was hit -- if his vehicle hit going westbound?
A. So we -- we calculated the time that it would take to get to approximately Atlanta from Lexington County or from where the hit was in Georgia and then the amount of time it would take to return from approximately the Atlanta area back to Lexington County and then we also received an additional hit on the eastbound side, which is in South Carolina.
Q. Okay.
MS. OPPENHEIMER: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.
BY MS. OPPENHEIMER:
Q. Investigator Gietz, I'm handing you what's been marked as State's Exhibit Number 3. Can you tell me if you recognize that?
A. Yes, ma'am.
Q. What is it?
A. It's a map of the South Carolina/Georgia border and I-20, both the east and westbound, with the locations of where -- excuse me, not the South Carolina/Georgia border, but the Lexington County/Aiken border, and then where different people were located to include Investigator Holt at the Exit 33, troopers Shropshire and Atwood, which were

189

at the 39 mile marker, and then where the traffic stop was conducted at the 41 mile marker and then where I was located at the 44 -- Exit 44 on I-20.

Q. Is this an accurate representation of where you instructed law enforcement agents to be on the morning of June 29, 2020?

A. Yes, ma'am.

Q. Or I believe you testified that it was about noon-ish?

A. Yes, ma'am.

MS. OPPENHEIMER: Your Honor, at this time I'd move State's Exhibit 3 into evidence.

MR. WILLIAMS: No objection.

THE COURT: Without objection State's 3 in evidence.

(State's Exhibit Number 3, a photograph/map, was admitted into evidence.)

MS. OPPENHEIMER: Permission to publish, Your Honor?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:

Q. All right. So, Investigator Gietz, again, what part of the world are we looking at?

A. South Carolina, ma'am, and that is the Aiken County border and Lexington County border.

Q. Okay. So to the left of this red line, what county is this?

A. Aiken.

Q. And to the right?
A. Lexington County.
Q. Okay. Who was at Exit 33?
A. Investigator Adam Holt.
Q. And what unit is he assigned to?
A. The crime reduction unit, which falls underneath the narcotics enforcement unit.
Q. All right. And who was at Exit 39 in Lexington County?
A. That would be Master Trooper Shropshire and then Sergeant Atwood with the South Carolina Highway Patrol.
Q. All right. I'm gonna move this down a little bit. Where are you located?
A. The 44 Truck Top at Exit 44 of I-20.
Q. Okay. And why are you -- or I guess as part of your investigation is it fair to say that you were kind of the point man?
A. Yes, ma'am. I acted as a -- what's like a command center speaking with units within the Lexington County Sheriff's Department, as well as South Carolina Highway Patrol. Our radios don't work great together, so to avoid unnecessary radio traffic on any of our channels I spoke to Trooper Atwood on the phone while speaking to Lexington County units over the radio.
Q. Now without telling us anything specific that anyone

191

else said, can you tell us whether or not the defendant's vehicle was able to be seen travelling on I-20 eastbound?
A. Yes, ma'am, it was. It was identified at the Exit 33 where Investigator Holt was. He notified us over the radio --
MR. WILLIAMS: Objection to hearsay, Your Honor.
THE COURT: Right. I think beyond that. He said he was noted at the 33. I'll allow it.
BY MS. OPPENHEIMER:
Q. And with that information that the defendant's vehicle was seen at mile marker 33, did you relay that information to anyone else?
A. I did. I relayed it to Sergeant Atwood with the South Carolina Highway Patrol.
Q. Okay. And are you aware of what happened next?
A. Yes, ma'am. So Trooper Shropshire observed the vehicle pass him. He entered the --
MR. WILLIAMS: Your Honor, objection to that. That's certainly speculation.
THE COURT: I will --
MS. OPPENHEIMER: I'll rephrase.
THE COURT: I'll sustain the objection as to that. I think that he can testify as to what happened next, you know, without getting into what the officer may have observed or said.

BY MS. OPPENHEIMER:

Q. Can you tell us whether or not you're aware if anything happened to the defendant's vehicle?

A. Yes, there was a traffic stop conducted on the vehicle at the 41 mile marker of I-20 eastbound.

Q. Is that in Lexington County?

A. Yes, ma'am, that is in Lexington County.

Q. Is that indicated on State's Exhibit Number 3?

A. Yes, ma'am, it is.

Q. Where the little stop sign is?

A. Yes, ma'am.

Q. So you were not involved in pulling the defendant's vehicle over; is that correct?

A. Not directly, ma'am.

Q. Can you tell us whether or not you responded to that traffic stop?

A. Yes, ma'am, I did.

Q. And can you tell us what vehicle was pulled over?

A. A white F-350 bearing license plate [redacted] driven by Steven Daniel Brown.

Q. Can you tell us whether or not that vehicle was the same one you observed in the hit the morning of June 29, 2020?

A. Yes, ma'am. It's the same vehicle.

Q. And can you tell us whether or not the individual

driving the vehicle was the same individual that's the subject of your investigation?
A. Yes, ma'am.
Q. All right. Can you tell us when you responded to the traffic stop, had -- were you aware that a K-9 had already been run around the vehicle?
A. Yes, I was advised that as I arrived.
Q. Okay. And where was the defendant when you walked up to this traffic stop?
A. He was outside of the vehicle near Trooper Shropshire's police cruiser.
Q. Okay. And can you tell us whether or not you asked him any questions at that time?
A. No, ma'am, I did not ask him any questions.
Q. Can you tell us whether or not anything was said to you by the defendant?
A. Yes, ma'am. I -- I said hello cordially and without any questions he advised me it's on the floorboard in the back.
Q. All right. And can you tell us whether or not you looked into the back floorboard of the defendant's vehicle?
A. I did.
Q. And did you find anything?
A. Yes, ma'am.
Q. What did you find?

A. Seven pounds of methamphetamine in a yellow liquor box.

MS. OPPENHEIMER: Your Honor, may I approach the witness?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:

Q. I'm handing you State's Exhibit Number 4 and 5. Can you tell me whether or not you recognize these?

A. Yes, ma'am, I do.

Q. And what are they photographs of?

A. They're photographs of the methamphetamine that was located in Mr. Brown's vehicle exactly where he said it would be.

Q. And is that how you -- in State's Exhibit Number 4, can you tell us is that how you observed the methamphetamine on June 29, 2020?

A. Yes, ma'am, that's exactly how it was observed.

Q. And can you tell us whether or not you pulled the suspected narcotics out of the defendant's vehicle to take a photograph of it?

A. Yes, ma'am, I did.

Q. And can you tell us --

MR. WILLIAMS: Your Honor, we would -- we would place at this time on the record the objection to this, in that there have already been motions dealing with the

195

search, and we'd ask that it be noted at this particular time.

THE COURT: All right. The last part -- I couldn't hear the last part, your voice dropped, and I'm sorry, Mr. Williams.

MR. WILLIAMS: I'm sorry. That motions have been made in regards to the search and we would ask that they be noted at this particular point in time.

THE COURT: Yes. I'll note that the testimony regarding the search itself, consent of the search and results of the search were subject to objections made in pretrial matters and are preserved for the record in that regard.

MR. WILLIAMS: And an additional objection to the comment about meth because he's not a chemist and it wasn't tested at this time.

MS. OPPENHEIMER: I apologize. We'll use suspected methamphetamine.

THE COURT: All right.

BY MS. OPPENHEIMER:

Q. Can you tell us whether or not these are accurate depictions of the manner in which you found the suspected methamphetamine on June 29, 2020?

A. Yes, ma'am.

MS. OPPENHEIMER: Your Honor, at this time I'd move

State's Exhibit Number 4 and 5 into evidence.

THE COURT: Subject to objection, 4 and 5 are admitted.

(State's Exhibit Number 4 and 5, photographs, were admitted into evidence.)

MS. OPPENHEIMER: Permission to publish, Your Honor?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:

Q. I'm showing you State's Exhibit 4. Can you tell us what we're looking at here?

A. It's a yellow liquor box in the back of Mr. Brown's vehicle. It looks like cellophaned crystal-like substance that I know through my training and experience to be methamphetamine.

Q. Okay. Can you tell us where the defendant instructed you to look?

A. In the back floorboard.

Q. And this is in the back floorboard?

A. Yes. He said, quote unquote, it's on the back floorboard.

Q. I'm showing you State's Exhibit Number 5. Can you tell us you what that is a picture of?

A. That's a photo that I took of the crystal-like substance that I know through my training and experience to be methamphetamine outside of the box placed on the

rear of Mr. Brown's vehicle.
Q. Outside of the liquor box?
A. Outside of the liquor box, yes, ma'am.
Q. Was it originally in these three clear plastic totes?
A. Yes, ma'am.
Q. And I believe you testified there was cellophane around that?
A. Yes, ma'am.
Q. And can you tell us whether or not you obtained a field weight of this suspected methamphetamine?
A. Yes, ma'am.
Q. And what was that field weight?
A. Approximately seven pounds.
Q. Can you tell us whether or not seven pounds of meth is for personal use based on your training and experience as a narcotics investigator?
A. Based on my training and experience as a narcotics investigator, there is absolutely no way that that could be personal use.
Q. Do you know approximately how many grams seven pounds of meth would have been?
A. Yes, ma'am. Approximately 3,200 grams of methamphetamine.
Q. Now can you tell us what you did with this suspected methamphetamine?

A. I seized them to submit to the Lexington County evidence center and to conduct testing on it.
Q. All right. And when you seized it, this is a large quantity of meth, did you use a BEST kit?
A. Oh, no. There's -- it's far too large of a quantity to fit inside of a BEST kit, so I had to package it in a box.
Q. And is that standard procedure for large quantities of suspected narcotics?
A. Yes, ma'am, it's standard practice.
Q. Did you seal that box?
A. Yes, ma'am. I sealed the box and initialled anywhere I could find a gap.
MS. OPPENHEIMER: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.
BY MS. OPPENHEIMER:
Q. I'm showing you State's Exhibit Number 7 for ID only at this time. Can you tell us whether or not you recognize this item?
A. Yes, ma'am. That's the box I submitted with my signature and the date that it was submitted.
Q. Okay. How do you know that it has your signature and the date?
A. Because it's my signature and it's the date that I

199

wrote it.
Q. And you recognize that?
A. Yes, ma'am. I wrote it.
Q. Can you tell us whether or not it's in multiple places on this box?
A. Yes, ma'am.
Q. There's also another date up here.
A. Yes, ma'am.
Q. Can you tell us why another date is on there?
A. Because that's the date that it was opened and prepped for trial.
Q. And did it look like it was in substantially the same condition as it was on June 29, 2020?
A. Yes, ma'am.
Q. Can you tell us based on your training and experience as a narcotics officer about how much seven pounds of meth costs?
A. Greater than $30,000.00.
Q. And can you tell us whether or not you seized anything else from the defendant's truck on June 29, 2020?
A. Yes, ma'am, a cell phone.
MS. OPPENHEIMER: Your Honor, may I approach?
THE COURT: Yes, ma'am.
BY MS. OPPENHEIMER:
Q. I'm showing you -- well, hold on. I'm handing

Investigator Gietz State's Exhibit Number 6. If you could open that package and tell us whether or not you recognize the item inside.

A. Yes, ma'am. Yes, I recognize it.

Q. How do you recognize it?

A. It has my signature -- or my initials, the date that it was sealed, and I remember it from seizing it on the date of the incident.

Q. And what is it?

A. It's a cell phone belonging to Steven Daniel Brown.

Q. And he was the only occupant of the vehicle at that time?

A. That's correct. He was the only occupant of the vehicle.

Q. And is it in substantially the same condition as it was on June 29, 2020?

A. Yes, ma'am.

MS. OPPENHEIMER: Your Honor, at this time I move State's Exhibit Number 6 into evidence.

MR. WILLIAMS: If I could see it, Your Honor.

MS. OPPENHEIMER: Sorry.

THE COURT: Okay.

MR. WILLIAMS: Your Honor, the objection would be that the -- that if there is a chain of custody dealing with a cell phone, we don't feel like it has been

completed at this particular point in time, particularly noting that there is a notation that it has been opened before, I think. Yes, that it has been opened. We don't know where it's been, Judge. We don't know who's kept. We don't know who's had access to it.

THE COURT: Well, for the purposes of having it admitted as being the one that he picked up that day, I will allow it. As to what relevance it might have in other matters, that would have to be for somebody else to determine.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Thank you.

(State's Exhibit Number 6, a cell phone, was admitted into evidence.)

BY MS. OPPENHEIMER:

Q. Investigator Gietz, can you tell us what was done with this cell phone on June 29, 2020?

A. Yes, ma'am. I submitted it into evidence and then I obtained a search warrant for the phone to do a cell phone extraction.

Q. And why are cell phone extractions done?

A. That's to provide additional evidence and other information pertaining to the case that can be pulled off the phone.

Q. And can you tell us whether or not that was done in

this case?
A. Yes, ma'am, it was done.
Q. And were you provided the results of that extraction?
A. Yes, ma'am. I was provided a disk of the extracted data.
Q. And did you have an opportunity to review that extracted data?
A. Yes, ma'am, I did.
Q. Investigator Gietz, can you tell us whether or not you had a phone number associated with the defendant's phone on June 29th of 2020?
A. Yes, ma'am.
Q. What was that phone number?
A. I don't recall the number, ma'am. I'll have to look through my notes.
Q. I believe it's on your report.
MR. WILLIAMS: Objection to leading.
THE COURT: Well, it is. If she says it, it's leading. She can point to him where it might be in the record.
BY MS. OPPENHEIMER:
Q. Investigator Gietz, when you do your initial report, do you typically provide all of the identifying information of a suspect?
A. Yes, ma'am.

Q. And if you'd look at page 7 --
A. Oh, found it.
Q. Did you find it?
A. Yes, ma'am.
Q. All right. Can you tell us what phone number you had associated with the defendant on June 29, 2020?
A. [redacted] 3666.
MS. OPPENHEIMER: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. OPPENHEIMER: I have no further questions at this time. If you'll answer any questions that Mr. Williams may have of you.
THE COURT: Mr. Williams, cross-examine.
MR. WILLIAMS: May it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. So I'll kind of pick up with the -- I think you said that you had some sort of hit process that was sent directly to you notifying you that the vehicle that was driven -- that allegedly was driven by my client had crossed into Georgia, is that correct, on or about what date?
A. Well, the hit was well into Georgia that we received and it was on June 29th of 2020.

Q. And what was the time you received it?
A. Approximately 8:00 in the morning.
Q. And when you received the hit -- were you at home when you received the hit?
A. Yes, I was.
Q. And when you say you received a hit, did it -- did it designate something on your cell phone or a computer or how was that done?
A. Yes, I received a text message and an e-mail from DEASIL notifying me that the vehicle hit in Georgia.
Q. Okay. And the nomenclature on that was, I think you've already pointed it out, it was on the other side of Augusta; is that correct? When it was first pointed out; is that correct?
A. That's correct.
Q. So if I show this right here, did you prepare this document, which is marked as State's Exhibit Number 2?
A. No, sir.
Q. All right. Do you were you present when it was prepared?
A. No, sir.
Q. And is it your testimony that the vehicle which is shown on this map is supposedly my client's vehicle at 8:00 on the morning of June 29th of 2020?
A. I'm sorry, can you repeat the question?

205

Q. Is it your suggestion that my client's vehicle on June the 29th of 2020 at 8:00 in the morning would be at the location that's reflected on this map?
A. Yes, approximately.
Q. All right. And when you say approximately, you're saying that because some sort of monitor is placed up there that records the time in which the plate passes by it? Is that what you're saying?
A. That is correct.
Q. All right. And have you been to that location to see if there is a monitor there?
A. Yes, sir, I have.
Q. All right. And on that particular date, it went to -- that notification went to who -- whom?
A. To Investigator Sanner and myself and a sergeant over our unit, Sergeant Hodges.
Q. All right. Now you don't maintain that particular item, do you? Whatever this picture is that reflects when people cross over something like that, you don't maintain that piece of instrument, do you?
A. No, sir, I don't.
Q. So you don't have any indication as to the inner workings of that whether or not the times are correct on that or not correct on that. It is something that's printed out and given to you as being the Gospel, and we

had mentioned the Gospel earlier. Is that essentially what it is?
A. I would say to an extent; however, it's been accurate every other time that I've used it.
Q. So -- and I guess we all know the point I'm trying to make is that there's a time reflection on something that is sent to you. Since you don't maintain this particular item, you don't know if the timing is set up on this particular item accurately or not?
A. Well, I trust the DEA and their ability to maintain an LPR.
Q. And has your -- I don't know, the power gone off at your house before and come back on at a different hour because of an electrical storm or power surge or what have you?
A. Yes, that's happened before.
Q. Okay. So since you don't maintain it, you can't say that it's properly maintained; that it's accurate as we change from Eastern Standard Time or what have you in reference to that?
A. I cannot.
Q. Thank you. So you say you got this information at 8:00 in the morning, it was sent out at the same time to two or three other locations at the same time, right?
A. It was sent to the two or three other people.

207

Q. All right. Well, you can't just send it to people. You have to send it to an instrument, so unless they were sitting next to you in your room it would be sent to their computers or wherever they were, right?
A. I would assume so, yes.
Q. All right. So each and every one of those would have the same date and time that it was received by you?
A. That it was received by me or when the -- because they're all gonna receive the hit with the timestamp as it passes the LPR. It has no bearing whatsoever on what the other person's phone says. It's just what the LPR would say.
Q. Do you know when they received it?
A. Do I know when Investigator Sanner and Sergeant Hodges --
Q. They would have to testify to that, wouldn't they?
A. I would assume so.
Q. Okay. So when you received it, did you communicate with them? Is it true that you said you would call them up on your cell phone and communicate that with them saying you had received that information or did you just assume they knew?
A. Yes, I contacted them. They were part of my team.
Q. Okay. And when you contacted them, do you know what time you called?

A. I don't know the exact time. It would be within thirty minutes of receiving the hit.
Q. Who did you call first?
A. I don't know.
Q. What did you tell them that you were going to do?
A. That I was going to get a team together and I was gonna contact the highway patrol and make contact with their interdiction team because in my opinion they're the best interdiction team that we have in South Carolina.
Q. So what did you instruct these other two individuals to do at that point in time?
A. I didn't instruct them to do anything. Sergeant Hodges is my boss and I wouldn't tell him what to do and then Investigator Sanner, I mean, we spoke.
Q. So you didn't instruct him to do anything?
A. Not to my knowledge.
Q. Okay. So basically you communicated and said you had a hit and you were gonna do something about it, correct?
A. No, I received the tip and we already had a team placed together to go handle that information that we had received.
Q. All right. Then you contacted highway patrol?
A. That is correct.
Q. Who did you talk to at highway patrol?
A. A supervisor at highway patrol who put me in contact

209

with Sergeant Atwood, who at the time was part of an interdiction team that they had, along with Master Trooper Shropshire.

Q. So you called Atwood first, right?

A. Yes, sir.

Q. What time did you call him?

A. I don't know the exact time, but it would have been within half an hour.

Q. And what about Shropshire? What time did you call him?

A. I didn't call Trooper Shropshire.

Q. That's hard to say, isn't it?

A. What?

Q. I'm sorry. You did not call him?

A. No, I did not call him. I did not contact Trooper Shropshire directly. Sergeant Atwood advised that all information was being relayed to him.

Q. So you didn't communicate with Shrop -- Shropshire?

A. Not directly.

Q. When did you first communicate with him directly?

A. At the traffic stop.

Q. That's the first time you talked to him that morning or that afternoon or that day? Let's bring it down to that day. That's the first time you talked to him that day?

A. The information that I received I passed to Trooper

Shropshire who he advised was being -- excuse me.
Q. I'm not asking you --
A. I passed to Sergeant Atwood that he advised that it would be passed to Shropshire, so not directly did I talk to Trooper Shropshire.
Q. Okay. So the only person to know what was transmitted to him would be Sergeant Atwater, right?
A. No, sir.
Q. I'm sorry?
A. Trooper Atwood.
Q. Trooper Atwood?
A. Who's now Sergeant Atwood, yes, sir.
Q. Okay. I'll call him what he was. And he was the dog handler back then, right?
A. Yes, sir.
Q. Okay. Did you tell Trooper Atwater where -- Atwood or Atwater?
A. It's Atwood, sir.
Q. Did you tell him where you wanted him to go?
A. Yes, sir.
Q. And where did you tell him to go?
A. The 39 mile marker of I-20 eastbound.
Q. But since you didn't have a conversation with Shropshire, he just happened to show up on that or somebody told him to be at the 39, right?

A. Sergeant Atwood advised that he told Trooper Shropshire to be with him at the 39 mile marker.
Q. Now looking at this State's Exhibit Number 3, you have designated those two particular troopers to be at Exit 39 and you've given the designation of 44 as being where you are; is that correct?
A. That is correct, sir.
Q. All right. And that's where the truck stop is at 44?
A. Yes, sir.
Q. And at 39, were both troopers on the side of the highway or were they off the Interstate?
A. I couldn't testify to their exact specific location, but I knew that they were both at the 39 mile marker.
Q. In that location, correct?
A. Yes, sir.
Q. So you really didn't have any conversation until you arrived on the scene where my client was stopped after that particular conversation, right, that you had with Atwood?
A. No, sir, that's not true. I had -- I had conversation with Sergeant Atwood.
Q. I said after you talked to Atwood, right? Did you talk to anybody else other than Atwood before you got to the stop?
A. Yes, sir. Numerous members on my team.
Q. And who was that?

A. Investigator Holt, there was several K-9 handlers, K-9 Handler Love, and then also my sergeant at the time, Sergeant Zwolak, and I'm not sure who else was in there. I can look it up for you if you'd like.
Q. Sure.
A. Investigator Patterson as well. K-9 Handler Love.
Q. Anybody else?
A. Sergeant Burt.
Q. Is that Mike Burt?
A. Yes, sir. Investigator Holt.
Q. I've already got him. Is that it?
A. I'm sure there were other people out there, but I think that adequately covers the people that were out there.
Q. All right. And did you assign their locations just as you say that these are assigned here? Did you assign those individuals on where to be?
A. Yes. However, some of them due to the fact that they were not gonna be directly involved in the actual traffic stop due to the nature that we were using, a technique we call a whisper stop, their location was not nearly as important.
Q. Do you know where they were?
A. No, sir, I don't.
Q. So you talked to them, but you didn't know where they

were and you told them that you were going to do something, but they didn't have anything to do on the particular stop?
A. Oh, I knew they were gonna be on I-20 eastbound within Lexington County.
Q. You commented that there was somebody who was a lookout on this particular occasion; is that correct?
A. Yes, sir.
Q. Who was that?
A. Investigator Adam Holt.
Q. Would he have been near the license plate reader as you come into South Carolina or would he have just been in Lexington County?
A. He was not in Lexington County. He was in Aiken County at the 33 mile marker.
Q. Aiken County?
A. That's correct.
Q. And is that where the license plate reader is?
A. No, sir.
Q. Is there a license plate reader which reads persons who are coming into South Carolina?
A. Yes.
Q. But was anybody there at that location?
A. No, sir.
Q. So there was no individual who was present at either one of where these locations where the license plate

readers was?
A. No, sir.
Q. So all of this information is based on whatever documentation you received electronically from these two particular readers?
A. That's correct.
Q. Are there pictures taken of the vehicle?
A. Yes, sir.
Q. And did you have the day by -- did you have the minute by minute progress of this truck or could the truck have gone any number of locations during that time span that you have of, what, 8:00 in the morning until what time he was stopped?
A. No, sir. I mean, we don't have constant surveillance on the vehicle.
Q. Okay. So you don't know who else had been in the vehicle or anything like that, do you?
A. I knew Steven Daniel Brown was in the vehicle.
Q. When he was stopped?
A. That's correct.
Q. You don't know who else had been in the vehicle that day from 8:00 until when was he stopped?
A. That was a question?
Q. Yes.
A. I thought it was rhetorical.

Q. Well, I wanted you to say it.
A. Approximately 1:00 give or take.
Q. So for five hours you don't know who was in the -- who was in the vehicle and who did what with the vehicle, correct?
A. That's correct. I did not have constant surveillance of the vehicle.
MR. WILLIAMS: I beg the Court's indulgence for one minute, Your Honor.
THE COURT: Yes, sir.
BY MR. WILLIAMS:
Q. So we were just talking about the hit that you said you got when it was coming eastbound into South Carolina. That was in -- where was that camera located again? In Augusta -- or, I'm sorry, in Aiken County?
A. I'm sorry, can you repeat the question?
Q. The hit on the eastbound lane, where was that camera located?
A. Within South Carolina.
Q. Where in South Carolina?
A. I don't have the exact GPS coordinates. It's just entering into South Carolina.
Q. Is it in South Carolina?
A. That's correct.
Q. Okay. And you got the hit on that?

A. Yes, sir.
Q. And when did you get the hit on that?
A. Shortly before the traffic stop.
Q. You don't know the time you got that hit?
A. I don't.
Q. But now if you've got the same information from the hit going into Georgia with the documentation of 8:00 in the morning, then you would have had some kind of documentation that you're talking about when you got into South Carolina, right?
A. I believe so. Yes, sir.
Q. But you don't know what time it was?
A. I don't know the exact time.

MR. WILLIAMS: That's all the questions I have, Your Honor.

THE COURT: Thank you.

Redirect, Ms. Oppenheimer.

MS. OPPENHEIMER: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. OPPENHEIMER:
Q. You said that when you receive a hit pictures are taken of the vehicle; is that correct?
A. Yes, ma'am. Of the front and rear of the vehicle.
Q. Did you personally view the photographs taken with this hit the morning of June 29, 2020?

A. Yes, I did, and I was able to confirm that it was the vehicle, in fact, we were looking for.
Q. It was this vehicle in State's Exhibit Number 1 that the defendant was driving on June 29, 2020, and is registered to him; is that correct?
A. Yes, ma'am. In the hit, you can actually see that the -- the tool box is slightly open as well.
Q. All right. And these pictures, do they last forever?
A. No, ma'am, they don't.
Q. But you personally saw it?
A. I did personally observe the photographs sent to me by DEASIL.
Q. Now the defense asked you you don't know exactly where the defendant was going. Did you have a GPS tracker on his truck?
A. No, ma'am, I didn't.
Q. Okay. Can you tell us whether or not based on your review of the data collected from his cell phone you had an idea of where he went?
A. Yes, ma'am, I did.
MR. WILLIAMS: Objection. Speculation, Your Honor.
THE COURT: And it is speculation and the answer comes as speculation, so the jury can give that whatever weight it chooses to give it.
Go ahead.

BY MS. OPPENHEIMER:
Q. Can you tell us whether or not the defendant seemed surprised by this seven pounds of meth in the truck?
MR. WILLIAMS: Objection. That's --
THE COURT: I sustain that objection.
Thank you.
BY MS. OPPENHEIMER:
Q. Where did the defendant tell you the suspected methamphetamine would be?
A. To -- to quote the defendant, it's on the back floorboard.
Q. And what was on the back floorboard as depicted in State's Exhibit Number 4?
A. A yellow liquor box with three plastic containers cellophaned wrapped of a crystal-like substance that I know through my training and experience to be methamphetamine that had a field weight of approximately seven pounds.
Q. Did you have to tell him where this was?
A. No, ma'am. He told me.
Q. Did you force him to tell you where this was?
A. I didn't even ask him a question. He told me without a question where exactly it was located.
MS. OPPENHEIMER: No further questions.
THE COURT: Thank you.
Any follow-up on those narrow questions?

MR. WILLIAMS: No follow-up, Your Honor.
THE COURT: Thank you.
You can step down, Investigator.
THE WITNESS: Thank you, sir.
(Witness excused.)
MS. OPPENHEIMER: Subject to recall, Your Honor.
THE COURT: Surely. He won't be released from any subpoena you might have.
MS. OPPENHEIMER: Thank you, Your Honor.
THE COURT: Okay.
MR. WILLIAMS: We do have a matter for the record, Your Honor.
THE COURT: Okay. Do we need to send the jury out for that?
MR. WILLIAMS: We probably should. We probably should. Yes, sir. I'm sorry. No probably. We should. I was being evasive. I should have said should, no probably. Meaning that we should.
THE COURT: Okay. Ladies and gentlemen, I think that we need to deal with a matter of law outside of your presence.
I did understand that right; is that right, Mr. Williams?
MR. WILLIAMS: That is correct, Your Honor.
THE COURT: All right. Let me send you to your

220

jury room for just a moment, folks, and we'll get you to continue the morning's work. If it takes a long time out here, I will send in word to start our lunch hour early. Normally we try to break for lunch around 1:00 and take an hour and fifteen minutes or thereabouts, so we'll try to squeeze in another witness if possible between now and the lunch hour.

Please don't talk about this case among yourselves while you're in the jury room.

Thank you.

(Whereupon, the jury retires to the jury room at 12:06 PM.)

THE COURT: Mr. Williams.

MR. WILLIAMS: Your Honor, in that Mr. Yonge is the one who brought the objection to Rule 5 and Brady, there are three items that he would like to bring up at this time which were not provided in discovery, but I think he can do it better than I.

THE COURT: Yes, Mr. Yonge. Go ahead.

MR. YONGE: Just to put it all on record, Your Honor, we would just renew our Brady and Rule 5 motions based on the new testimony we got from Investigator Gietz. We now know that there's an eastbound hit on I-20 that we were not aware of up until this point. We don't have the same e-mail we had during the pre-trial

221

motion regarding that eastbound hit and he also said there were -- he gets a text message about it, which we have never seen, and then he explained that he had communicated via radio traffic or he had used a radio to communicate with Lexington County while he was calling Sergeant Atwood, so we don't have the -- those radio communication stuff either. So just to renew our motions based on that evidence, Your Honor.

THE COURT: All right. The eastbound hit, the text messages and the radio traffic, is that the three? Did I get those right?

MR. YONGE: Yes, sir, Your Honor.

THE COURT: All right. I'll note that those have been added as additional sustaining -- grounds seeking the sustaining of the Brady motion so the record is complete in that regard.

All right. Who's the next witness gonna be, Ms. Oppenheimer?

MS. OPPENHEIMER: It's Trooper Shropshire, Your Honor. He might be fairly lengthy. I don't know. We're gonna show several videos with him and I imagine the cross will be quite lengthy.

THE COURT: Okay.

All right. I'm gonna send the -- I'm gonna send the jury out for an early lunch and get them back at

222

1:30 because I don't want them to be looking at their watches during the testimony of Trooper Shropshire.

Does that create a problem with anybody?

MR. WILLIAMS: No, Your Honor.

MR. SMITH: No, Your Honor.

THE COURT: Okay. Go ahead and bring us the jury, please.

(Whereupon, the jury returns to the courtroom at 12:10 PM.)

THE COURT: Thanks, folks. You can all be seated when you come in, if you'd like.

Folks, it didn't take very long for us to deal with that brief matter of law, but during that break I did inquire about the next witness to see if we had the chance of working that in before lunch. The next witness is gonna be a lengthy witness. Master Trooper Shropshire will be the next witness. He is the witness who initiated the stop. There are some videotapes which will be shown to you, the result of which that testimony and cross-examination will go well into the lunch hour, and so we'll break a little early in order to accommodate the fact that we don't want to interrupt that testimony for the lunch hour.

So we'll just take our lunch hour early. And I trust that that won't offend anybody. Not nearly as

223

much as you'd be offended if you had to sit there and miss your lunch while the testimony is ongoing.

I want you back in the jury room at 1:30. That's an hour and twenty minutes. That's a little bit longer than we normally take, but that will accommodate the time. I could say 1:25, but we're not gonna be here until 1:30 anyway, so.

I remind you as always not to talk about the case among yourselves or with anybody else. Enjoy your lunch and I'll see you back at 1:30.

Thank you.

(Whereupon, the jury was excused for lunch at 1:12 PM.)

THE COURT: Anything else before we break for lunch, Ms. Oppenheimer, from the State?

MS. OPPENHEIMER: Nothing from the State, Your Honor.

THE COURT: Mr. Williams, from the defense?

MR. WILLIAMS: Nothing from the defendant, Your Honor.

THE COURT: Thank you, folks. 1:30. I'll see you then. Enjoy your lunch.

(Whereupon, a luncheon recess was taken at 12:13 PM.)

(Back on the record at 1:37 PM.)

224

BAILIFF: Court is back in session.

THE COURT: Thank you, folks. You-all can be seated. Good afternoon.

All right, folks. Are we ready for the jury?

MR. SMITH: The State's ready, Your Honor.

MR. WILLIAMS: The defense is ready, Your Honor.

THE COURT: Okay. Let's bring in the jury.

(Whereupon, the jury returns to the courtroom at 1:39 PM.)

THE COURT: Good afternoon, folks, and thank you for your prompt return from lunch.

We're ready now to continue the trial of the case as the State continues to offer evidence and testimony.

Ms. Oppenheimer. Mr. Smith.

MR. SMITH: Your Honor, the State calls Master Trooper Gregory Shropshire with the South Carolina Highway Patrol.

THE COURT: Come forward, Trooper Shropshire, and be sworn.

(Whereupon, Gregory Shropshire was duly sworn by the Clerk of Court.)

THE CLERK: Would you please have a seat in the jury box. State your full name and spell your last for the record, please.

THE WITNESS: Master Trooper Gregory Shropshire.

That's S-H-R-O-P-S-H-I-R-E.

GREGORY SHROPSHIRE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Master Trooper Shropshire. Real quick, do you mind if I just call you trooper while you're testifying?

A. Yeah, that's fine.

Q. Trooper Shropshire, how long have you been employed with the highway patrol?

A. Nine years.

Q. What sort of -- what is your role with the highway patrol currently?

A. My current role is conducting enforcement, as well as criminal enforcement, for the State of South Carolina, the South Carolina Highway Patrol.

Q. Do you have any law enforcement experience outside of the highway patrol?

A. Yes, I do.

Q. Where would that be?

A. I have five and a half years' experience prior with the City of Columbia Police Department.

Q. Okay. And any other work experience aside from that?

A. I've worked numerous jobs. I worked -- I was at

CarMax, FedEx, stuff like that prior to that.
Q. Okay. So you were employed with the highway patrol on June 29, 2020?
A. That's correct.
Q. What specific unit or team were you assigned to on that day?
A. On that particular day, I was assigned to the South Carolina Highway Patrol's criminal interdiction unit.
Q. What is criminal interdiction?
A. Criminal interdiction is conducting a high volume amount of traffic stops with the purpose of rapidly assessing each traffic stop to determine if there's any type of criminal activity that's occurring during that time in order to interdict any type of drug trafficking, human trafficking, weapons trafficking, sex trafficking, anything like that going on in the state of South Carolina.
Q. And how long have you performed criminal interdictions with the highway patrol?
A. A total of five years.
Q. Could you estimate for me approximately how many of those criminal interdictions you've performed?
A. Hundreds of traffic stops.
Q. So during a criminal interdiction, are those only performed in-agency? How are those normally performed and carried out?

227

A. Our predominate role is we work independently. At that time we worked as a two-man team assigned to each group, but every once in a while if another agency requests us, we will assist them whether it's state, local or federal agencies.

Q. Okay. Now let me back you up there for just a second. You said you had someone with you. Who was your partner?

A. My partner at that time was Sergeant Atwood.

Q. Was he your partner for every criminal interdiction you performed for the highway patrol?

A. Yes, sir. For the most part.

Q. So when you perform criminal interdiction with another law enforcement agency, can you tell us a little bit about how that works?

A. Usually whenever we do any type of what they call a whisper stop for another agency, that agency may contact us and they may give us various information; who the person is, where they're coming from, what it is they're allegedly supposed to have, any type of pertinent information that we may need for that stop at that time.

Q. So what was the purpose of -- you mentioned that you always had a partner during your indiction stops. What was the purpose of you having a partner?

A. Well, my partner, Sergeant Atwood, is our K-9 handler, so he is to provide backup for me. I'm also as well

supposed to provide backup for him, but also by him being a K-9 handler if we were to receive a refusal, we would deploy our department-issued K-9 on the vehicle for a free-air sniff around that vehicle for the -- to see if the dog was to give a positive indication for the odor or presence of narcotics.

Q. And, again, when you're performing criminal interdiction, you stated that you're trying to rapidly assess the situation to see what's going on. What sort of -- what are you analyzing? What sort of behaviors are you looking for during a criminal interdiction?

A. Well, there's multitude of things. No specific individual is ever the same. Every person reacts differently to a new type of stimuli that may be put in front of them. So if you introduce me, another person may do something different than this person. This person may, you know, have a -- what they call a felony stretch. So it's numerous amounts of nervousness or anything like that. Another person may cross their arms in front of their chest and may close you off. It all depends on what's going on. I may ask them questions about where they are, where they're coming from, where they're headed to, what they're doing, no different than I'd ask any normal person out there on a traffic stop, but I'm rapidly assessing during that timeframe to determine if there's something more to

229

that stop than what the actual violation was for the initial stop.

Q. Were you asked to perform a criminal interdiction on June 29, 2020?

A. That's correct.

Q. Who asked you to do that?

A. I was contacted by Sergeant Atwood. He called me and said that Lexington County --

MR. WILLIAMS: Objection to hearsay, Your Honor.

THE COURT: I think he said -- I'll sustain as to what Sergeant Atwood may have told him. The question was who contacted him. He said Sergeant Atwood. That's okay. Beyond that the conversation would be hearsay.

BY MR. SMITH:

Q. Without going specifically into what you were told or who told you anything, what information were you provided on this day?

A. We were provided the name of the individual they wanted us --

MR. WILLIAMS: Objection to hearsay, Your Honor.

THE COURT: The fact that he was directed in a certain way, provided a name of an individual, it's part of the res gestae that gets them to wherever they need to be. Now as to whether we get too far into matters which are truly hearsay for the truth of the matter asserted,

I'll deal with those.

Mr. Smith, I'm gonna let you lead Master Trooper Shropshire around those issues to avoid hearsay.

Go ahead.

MR. SMITH: So --

THE COURT: Were you given the name of an individual that you were looking for on that day?

THE WITNESS: That's correct.

THE COURT: Okay. Good. Now.

BY MR. SMITH:

Q. And, again, who contacted you on June 29, 2020, about performing this interdiction?

A. You're talking about the person who called me?

Q. Yes, sir.

A. That was Sergeant Atwood.

Q. And prior to going on-scene to perform this stop, to perform this interdiction, what information did you have?

A. That the individual was heading to Georgia to pick up a large quantity of methamphetamine and that they had already had him westbound on I-20 and that he had already tripped the LPR system.

MR. WILLIAMS: Your Honor, I'm gonna object again to that being hearsay.

THE COURT: All right. Once again, I think it lays -- it lays a foundation as to why he was, where he was

and what he was doing. I think those are the appropriate matters that he's allowed to testify to under these circumstances as long as he is doing it in a relatively innocuous way as far as real specifics are concerned.

I'll note your objection, but overrule it. Thank you.

Go ahead.

THE WITNESS: That he was travelling westbound, LPR's had been tripped and that he was -- they were expecting him back shortly.

BY MR. SMITH:

Q. Trooper Shropshire, I'm gonna show you what's already been admitted into evidence as State's Number 2.

MR. SMITH: I beg the Court's indulgence for a moment, Your Honor.

THE COURT: Okay.

BY MR. SMITH:

Q. So you mentioned that you were informed about the defendant hitting on a license plate reader on I-20. We've introduced this into evidence with this marker showing the approximate location of where that license plate reader is.

A. Uh-huh.

Q. Prior to this stop, did you -- were you independently aware of where this license plate reader was located on I-20?

A. I knew it was westbound on I-20 outside of the Augusta area in the Martinez area.
Q. Thank you.
All right. So you've been called, you've been given your briefing -- or information beforehand. What did you do then?
A. At that point we -- both myself and Sergeant Atwood were off, so, therefore, I proceeded to get myself ready and came into work and began to make my way towards Lexington County to Exit 39 inside Lexington where me and Sergeant Atwood staged up.
Q. Okay. And, again, a little bit redundant, but the location where you and Sergeant Atwood were located, is that location in Lexington County?
A. That is correct.
Q. I'm showing what's already been admitted as Exhibit 3. So, again, Trooper, where it says here troopers GS and JA at Exit 39, that would have been you and Trooper Atwood -- Sergeant Atwood?
A. Yes, sir.
Q. Okay. And as we've noted, that location is within Lexington County lines.
Approximately when were you informed that the defendant was headed your way on I-20?
A. About thirty minutes after I arrived out there to the

Exit 39.
Q. Do you recall what time that would have been?
A. Sometime after noon.
Q. And once you were informed that the defendant was headed your way, what did you do then?
A. At that point we sat upon the ramp at an advantageous point so we could actually see the highway and wait for him.
Q. Do you recall at what point that day you saw defendant's vehicle?
A. A little after 1:00.
Q. Now, Trooper Shropshire, is your vehicle equipped with any sort of recording devices?
A. It is.
Q. Was that device working that day?
A. It was.
Q. Was it turned on?
A. It was.
Q. Did it generate a recording?
A. It did.
Q. All right.
MR. SMITH: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. SMITH:
Q. I'm showing you what's been premarked as State's

Exhibit Number 8. Do you recognize this item?
A. I do.
Q. What is it?
A. That is the dash cam. A copy of the dash cam.
Q. And how do you recognize that item?
A. It has my signature, as well as the date.
Q. Okay. And does it appear to have been significantly altered or tampered with since the last time you saw it?
A. No.
MR. SMITH: Your Honor, at this time I'd move State's Exhibit Number 8 into evidence.
MR. WILLIAMS: No objection, Your Honor.
THE COURT: Thank you.
With no objection State's 8 is in evidence.
(State's Exhibit Number 8, a dash cam video, was admitted into evidence.)
MR. SMITH: Permission to publish for the jury?
THE COURT: Yes, sir.
BY MR. SMITH:
Q. Okay. What I want to do now, Trooper Shropshire, is we're gonna play a little bit of your dash cam. Not the whole thing all at once. We're gonna go through some segments and I want you to tell me what we're seeing on this video, okay?
A. Yes, sir.

Q. Before we continue, were you given a description of defendant's vehicle?
A. I was.
Q. What was that description?
A. It was a white Ford F-350.
MR. SMITH: Please continue, Kelly.
(State's Exhibit Number 8 playing.)
MR. SMITH: I'll note for the record, Your Honor, we stopped the video at 1 minute and 29 seconds.
BY MR. SMITH:
Q. All right. Trooper Shropshire, walk us through. What did we just see here?
A. All right. At this point I'm making a -- effecting a traffic stop for one on the white Ford F-350.
Q. What -- what traffic violations did you obvious?
A. Initially I had whenever they passed the ramp where we were at, he was following too closely to a silver sedan. Upon entering onto the interstate and catching up to the vehicle, I observed an actual change in driving behavior where the vehicle began -- appeared to create a little bit of distance between him and that vehicle and began to hug white fog line, which was failure to maintain lane.
Q. And does this vehicle that we see on your dash cam, does it match the description of the vehicle you were given?

A. It is.
Q. What sort of vehicle is this we see on your dash cam?
A. That is a white Ford F-350.
Q. Okay. So at this point the truck's been pulled over. What did you do then?
A. After calling in the traffic stop, I proceeded to exit my vehicle and make sure all my equipment was working, make sure my body cam was working and on at the time, and then I made a passenger side approach and made contact with the driver.
Q. And after you made contact with the driver, what did you do?
A. I introduced myself, gave him the reason for the stop and asked him for his information.
Q. Were you able to identify the driver?
A. I was.
Q. And who was the driver?
A. Mr. Steven Daniel Brown.
Q. And is the person you identified during this traffic stop here in the courtroom today?
A. He is.
Q. Could you please point him out for the jury?
A. He's over there.
Q. Thank you.
All right. So -- so we've begun the traffic stop.

237

Tell me what is your typical procedure when you perform a traffic stop.
A. Well, you have to call it into our communications. For us, Blythewood TCC, Blythewood Telecommunication Center, and let them know the basic information of the vehicle, vehicle description, my location, what the tag information is for the vehicle, and that's the simple gist of it. Make sure that all my equipment is on and the vehicle is stopping.
Q. So you've already told us about the information you received prior to this traffic stop. How would -- how is this traffic stop different from a normal run of the mill traffic stop you would have performed?
A. Well, we had prior knowledge there was a possibility of something there, whereas illegal narcotics trafficking going on, being transported across state lines, so there was that in there as well, but at this point I need to develop my reasonable articulable suspicion from there.
Q. Okay. Note for the record we are moving ahead to 4 minutes and 30 seconds in the video.
Before we play the video, Trooper, why do you have him pulled out of the vehicle?
A. One -- when I have him exit the vehicle, one, it allows me to put that individual, whoever it is, on an even playing field. A lot of people are nervous when they

have contact with law enforcement and for me in order for me to be able to rapidly assess what the situation is, having him exit the vehicle it allows them to have a one on one conversation with me, a person speaking to another person, but also another aspect is the possibility of the unknown that's inside vehicle, which is the possibility of weapons in there.

Q. So you've already told you us about your prior knowledge. Everything we're seeing so far, this looks like a normal run of the mill traffic stop. Why is that?

A. Well, it's supposed to look that way. Whenever we have a situation like this, you're supposed to make it look as normal as possible for the individual so you can get a proper gauging of the reaction for them whenever I ask them certain questions that may be a stimulus to them during that conversation.

Q. Okay.

(State's Exhibit Number 8 playing.)

MR. SMITH: It appears at the moment our technology is not --

(State's Exhibit Number 8 playing.)

MR. SMITH: I beg the Court's indulgence for a moment, Your Honor.

THE COURT: Okay.

BY MR. SMITH:

239

Q. Trooper, you got him out of the vehicle. You're going about this like it's a normal traffic stop?
A. Correct.
Q. What sort of conversation are you and the defendant having at this point?
A. Whenever I have a conversation with an individual, it's no different a conversation than I would have with any normal -- innocent normal public that's out there, so it's usually just general conversation. Hey, how you doing? Where are coming from? Where you're headed to? Once you ask him a little bit more questions would be to ask to -- appeal to the cover and concealment and also the level of clandestine activity that he is using in order to be -- in order to be -- for me to detect an involvement in an aspect of drug trafficking or smuggling.
Q. Where did defendant tell you he'd been that day?
A. He said initially when I asked him that he had been to Georgia.
Q. Did he tell you where in Georgia?
A. Well, when I asked him where at in Georgia, he said around the Augusta area.
Q. What did he tell you he had been doing?
A. He said initially that he had went to see a friend and that he was attempting to find work.
Q. And how did that information compare with the prior

knowledge that you already had?
A. Well, with the prior knowledge that I had, I knew that the vehicle had tripped the Martinez LPR, which is different from where he said that he had been and what he said he was doing, but also during the conversation when asking him those questions it seemed as if he was trying to search for the answer and come up with what's next outside of the basic where I am or where I'm coming from. When you ask somebody where they're coming from, they're usually able to give you basic information as far as where they'd gone, where they're going to, what they did when they were down there, and he seemed more or less as if he trying to search for the answer and trying to figure out what next to say.
Q. What about his demeanor during this interaction stood out to you?
A. To me, it seemed like he was very -- he was extremely nervous. Again, everybody exhibits nervousness in a different way. He -- I handed him the paperwork to him and he was holding it close to his chest in a manner --
(State's Exhibit Number 8 playing.)
A. I guess it caught up. But he was holding it in a matter that's consistent with if you give somebody something in their hand, whenever I hand somebody something in their hand, it allows me to see and gauge what their

241

reaction is with it. Where somebody that maybe has something that's going on, they use that as almost like a comforting moment or a blanket to keep themselves calm during that time, so you would see that from time to time he may rub the paperwork, he may shuffle through it in that timeframe. Some people may close themselves off. In this case, he was standing at a bladed stance a bit where he was -- where I had him stand there, he was standing at an angle where he wasn't necessarily facing me and opening himself up to me to have a conversation. So whenever -- say if me and you were having a conversation on the side of the road, most people will turn themselves to you. Even if they're standing in that position, you'll have more openness towards that person.

(State's Exhibit Number 8 playing.)

Q. So, again, Trooper Shropshire, what did you -- again, what did you notice during this interaction?

A. During that timeframe, I was -- again, some of the same similar stuff I was stating as far as how he was standing and everything else. Even when I asked him -- I asked him clarifying questions. Even after I explained to him the reason for the stop and we'd got an understanding of why you have to have safe driving distances and stuff like that, when I asked him where -- again, to clarify where he was coming from, he said somewhere around the

Augusta area, he wasn't sure.

We then got on the conversation about what he does for a living. I asked him and he said that he does construction or carpentry work. We had a general conversation because I have a family member who does, you know, drywall work. He says he builds decks and stuff like that, and then I asked him well, is that what you're doing with your friend down there and he proceeded to say yes, they were looking at doing a ramp for his -- I guess it was his mother or an older lady for a wheelchair ramp down there, which is a little bit different from what -- initially what he was saying where he was saying that he needed to look for a job and he further said that he needed to go back down there in order to do the work for that, so there was inconsistencies as far as from my standpoint that seemed odd and different from what he initially said.

Q. Okay.

MR. SMITH: Your Honor, I'm moving forward to 8:15 on the video.

(State's Exhibit Number 8 playing.)

BY MR. SMITH:

Q. Now I know that's a little bit difficult to hear at some times, but tell us what we just saw there, Trooper Shropshire.

A. Well, when we were initially standing there, initially

I had had a conversation with him about his truck. The reason being is that when you have a conversation about a truck or something like that, it allows them to talk about something that they're comfortable speaking on. As you can see, whenever I had the conversation with him about that he was able to easily talk about the truck. He seemed very confident, a little bit more loose about it to me. He was able to talk about that, as well as the fact that he rides motorcycles and that he recently had just gotten a new -- he had recently gotten another motorcycle, I believe, and he was still riding when I asked him did he miss riding because I believe he had wrecked his bike. I then asked him to clarify again where at -- if he knew where at in Augusta he had been and he wasn't able to give me a direct answer on that one. He pretty much said I don't know. I then proceeded to go through the whole spiel about narcotics or anything in possession.

Q. Let me -- let me stop there you there for just a second. Why did you ask him if he had all sorts of different narcotics in his car?

A. Well, that allows me to gauge the reaction off of that. Some people have prepared themselves to be able to answer, but -- to give a direct answer about it. If they're prepared for it, they'll automatically want to say no, but it allows me to ask a question, wait a few and then

ask the next one to gauge their reaction off of it. In this case, when I went through the -- each narcotic you could see there was a bit of a buildup for him where you could tell that his breathing had changed a little bit more, he began to appear to hold his breath a bit and take a deep breath and say -- when we got to the methamphetamine and he said no, you couldn't even hear it, that it wasn't audible, he looked downward and instead shook his head, but he was able to say no on the other stuff and you could clearly hear.

Q. Trooper, were you also equipped with a body-worn camera on this day?

A. That's correct.

Q. Was it in proper working order on this day?

A. It was.

Q. Was it equipped?

A. It was.

Q. Did you have it turned on?

A. Yes.

Q. And did it produce a recording?

A. It did.

MR. SMITH: Permission to approach, Your Honor?

THE COURT: Yes, sir.

BY MR. SMITH:

Q. All right. Trooper Shropshire, I'm showing you what's

been marked as State's Number 9. Do you recognize that?
A. Yes.
Q. What is it?
A. This is the body-worn camera.
Q. And how do you recognize it?
A. My signature.
MR. SMITH: Your Honor, at this time the State would introduce State's Exhibit Number 9 into evidence.
THE COURT: Any objection?
MR. WILLIAMS: Without objection, Your Honor.
THE COURT: Thank you.
That will be State's 9.
(State's Exhibit Number 9, a body-worn camera video, was admitted into evidence.)
MR. SMITH: Permission to publish to the jury?
THE COURT: Yes, sir.
MR. SMITH: I believe, Your Honor, the jury will have an opportunity also to take the disk back with them into the jury room and they should be able to view the material on a better speaker.
THE COURT: Certainly.
(State's Exhibit Number 9 playing.)
BY MR. SMITH:
Q. And, Trooper Shropshire, just to be clear, that's the same interaction with defendant we saw on your dash cam,

but from your body cam, correct?
A. That's correct.
Q. So after this point, you've asked about all the narcotics in the vehicle, what did you do next?
A. At that point I handed back -- made sure he had back all his personal property as far as his driver's license, registration and insurance and began to explain the written warning that he was being issued for both citations, explained to him there was no court costs and about safer driving distance and driving behavior out there on the roadway, and at that point I then asked for consent to search his vehicle while handing him the warning.
Q. Why did you ask for consent to search his vehicle?
A. Because I had developed my reasonable articulable suspicion that -- to believe that there was some type of crime that he was involved in, believing that he was involved in drug smuggling, as well as the prior knowledge about him being involved -- alleged to be involved in the legal trafficking and transport of narcotics across state lines.
Q. Were you granted consent to search the vehicle?
A. After we -- a little bit of me walking back and forth for a little bit, at that point it was determined that he said no, he said no to me, and at that point I then advised him that Sergeant Atwood was on-scene and he was going to

247

deploy his department-issued K-9, K-9 Parker, around the exterior of the vehicle, and the dog gave positive indication to the odor or presence of narcotics and we were gonna search it.

Q. How long was Sergeant Atwood and Parker on-scene with you?

A. Not too long after I stopped the vehicle.

Q. So if they were already there, why didn't you go ahead and run the dog during the traffic stop?

A. That's not how we work. In order for us to -- we want to be able to gain our reasonable articulable suspicion if we believe that there's some type of smuggling going on and the last thing we want to do is deploy a K-9 around the exterior of the vehicle in order to ruin any type of rapport or level of rapport that me and that person have gotten at that point in time during the stop and the last thing you want to do is introduce the dog and the person shuts down and not wanting to talk to you or speak to you anymore to prove what you've seen during that point -- up to that point.

Q. And approximately how long was it from the beginning of this traffic stop till you deployed the K-9?

A. About ten or twelve minutes.

Q. And then what happened?

A. Sergeant Atwood advised me that K-9 --

MR. WILLIAMS: Objection to hearsay, Your Honor.
BY MR. SMITH:
Q. Were you advised --
THE COURT: Well, go ahead.
MR. SMITH: I'll rephrase, Your Honor.
BY MR. SMITH:
Q. Were you advised if the K-9 alerted to the presence of narcotics?
A. I was advised that the dog was, in fact, indicating.
Q. So once you were advised of that report, what did you do then?
A. I believe I retrieved some gloves to put on my hands and then I proceeded to head towards the vehicle to conduct a search of the vehicle.
Q. Were there any other law enforcement officers on-scene by this time?
A. At that point Lexington County Sheriff's Department was there on-scene, Investigator Gietz was there, as well as couple of other troopers that was a part of our team was also there.
Q. Were there any other officers that assisted you in searching this vehicle?
A. Investigator Gietz assisted me initially and I believe some other officers then helped out later on.
Q. And what did you find inside the vehicle?

A. Inside the vehicle methamphetamine was found.
Q. Where did you find it?
A. It was in the rear passenger compartment.
MR. SMITH: I beg the Court's indulgence.
THE COURT: Okay.
MR. SMITH: Trooper Shropshire, I have no further questions for you at this time. Please answer defense's questions.
THE WITNESS: Thank you.
THE COURT: Mr. Williams.
MR. WILLIAMS: May it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. So let me take you back to -- what was the date that all this stuff happened on?
A. I believe it was June 29th.
Q. Say again.
A. June 29th.
Q. Of what year?
A. 2020.
Q. And I believe you said that you worked in a unit with Sergeant Atwood; is that right?
A. That's correct, sir.
Q. So when you got up that morning, you had a phone call

from Sergeant Atwood; is that correct?
A. He called me. Yes, sir.
Q. All right. Now is Sergeant Atwood gonna testify in this trial?
A. He should. Yes, sir.
Q. And he would be the one that was involved in -- is he the dog handler? He's the dog handler, right?
A. He was the K-9 handler at that time.
Q. Okay. And he also has a video showing exactly how the dog reacts around the truck, correct?
A. He has his body cam on. Yes, sir.
Q. He has a body cam which shows exactly what the dog does when the dog is around the truck and he'll be able to testify in regards to what he told you; is that correct?
A. He'll be able to testify.
MR. SMITH: Objection, Your Honor. These questions would be properly put to Sergeant Atwood, not Trooper Shropshire.
THE COURT: I think that's what he's asking.
MR. WILLIAMS: That's exactly what I'm asking.
BY MR. WILLIAMS:
Q. So he will be here to answer those questions?
A. That's correct, sir.
Q. Okay. So you were at home when you took off that morning, correct?

A. Yes, sir.
Q. And I think you got that call -- what time did you say you got a call about this possible drug interaction or whatever you want to call it?
A. Sometime midmorning.
Q. Midmorning?
A. Yes, sir.
Q. All right. So midmorning to you is what time?
A. Midmorning could be anything between 9 AM and 11 AM.
Q. All right. So say 10:00, 10:15? That's right in the middle. 10:15?
A. If that's where you want to put it.
Q. I'm just trying to figure out when it is. I don't know what your midmorning is. You said between 9 and, what, 11?
A. Between 9 and 11. Yes, sir.
Q. All right. So you got a call in the middle of all that, which is 10 maybe?
A. Uh-huh.
Q. And you were still at home, correct?
A. (Nods head.)
Q. And what time were you supposed to go on duty?
A. I was off that day.
Q. Okay. You were off.
All right. So when you're off, do you normally have

your patrol car with you at home?
A. Yes, sir. We're issued vehicles.
Q. It was issued to you, so you don't have to go anywhere to pick it up?
A. Correct.
Q. So when you received the phone call, you discussed what time you were gonna be working that day; is that right?
A. No.
Q. But you were off?
A. That's correct.
Q. I guess I'm trying to -- on this particular day, was -- it was kind of a busy day with cars out there on the road, wasn't it?
A. It's a weekday.
Q. It's a weekday. What day of the week was it?
A. I'm not really sure.
Q. Okay. Are you normally off on a weekday?
A. From time to time I am.
Q. But on this particular day it was a weekday and you were off?
A. Uh-huh.
Q. And had you made any plans to stay home that day?
A. I was off.
Q. So you had had no plans and you'd had no discussions

that would require you to plan being at work on this particular day; is that right?
A. I was scheduled off for that day. Yes, sir.
Q. So you had no plans to do anything on that particular day; is that correct?
A. Sir, it's been three years. I'm not sure what I had planned that day. All I know is I was off that day.
Q. Okay. So I assume what you did was you had to put your uniform on because you were going to do this drug intervention. Is that what you call it?
A. I had to get dressed after I spoke with Sergeant Atwood to actually conduct a whisper stop for Lexington County Sheriff's Department.
Q. You call it a whistle stop?
A. Whisper.
Q. Why do you call it a whistle stop?
A. Whisper stop.
Q. Whisper stop. I'm sorry. My years are little old and you're a little soft-spoken. So it's a whisper stop?
A. Yes, sir.
Q. So say a little bit after 10 maybe you -- you get the call. You take a shower and put your clothes on; is that right?
A. Uh-huh.
Q. About what time do you leave your house?

A. I'm not really sure. It usually takes me a little over an hour to get there.
Q. To get to where?
A. To wherever we're working that day in particular. They had us -- with that we had to go to Lexington County, so I live two counties away.
Q. So you actually live -- what county do you actually live in?
A. Kershaw.
Q. And that's normally where you do your work, out there in Kershaw County, don't you?
A. No, I'm on a statewide team, so I go multiple places.
Q. Okay. But you're not normally assigned a particular area?
A. Only wherever the supervisor has us for that particular day.
Q. So you received your notations on a day by day basis?
A. It's on a schedule. Yes, sir.
Q. So where were you the week before?
A. I'm not really sure.
Q. But it's on a schedule somewhere whenever you have to go out?
A. It's three years ago, sir.
Q. I'm really not trying to trip you. I just kind of want to know how you got from Kershaw County where you

255

live all the way over here to work with somebody on your day off. That's all.
A. I drive.
Q. Okay. I didn't think you ran. That's a long way.
A. That would be very amazing.
Q. Yeah. So you -- you got a call and you got dressed, it took you about an hour, and that would be about 11:00. And did you know where you were supposed to meet anybody that day?
A. We decided to meet up at that Exit 39.
Q. All right. So you had a conversation with -- he wasn't a sergeant then, but --
A. He was a lance corporal at the time.
Q. All right. So you had a conversation and the two of you-all decided to go to that location?
A. That's correct.
Q. Now you don't recall if you were working in Lexington County that week before or the week after?
A. I might have been. I don't know. I work multiple counties, sir.
Q. How did you decide where in Lexington County you were going?
A. Well, sir, on that particular day I was off. Lexington County Sheriff's Department contacted Sergeant Atwood, therefore, he contacted me about assisting in

that stop. So, therefore, on that day we were working in Lexington County.
Q. Okay. So had you worked I-20 before in Lexington County?
A. I have.
Q. All right. So you knew about 44 Truck Stop, you knew about Exit 39, you knew about Exit 41. You knew about all those areas, right?
A. I'm familiar with all those highways.
Q. Highways?
A. Correct.
Q. Okay. So you had talked -- you were not on the highway when you first noticed something going down the road. You were at an exit, you were at an overpass, when you observed something; is that correct?
A. U.S. 78 is a highway.
Q. Okay.
A. That's pretty much a highway to be exact and the Interstate ramp is actually part of the highway system.
Q. Okay. So you were there at the overpass on the highway?
A. The ramp.
Q. On the ramp?
A. Yes, sir.
Q. That's the bridge, right?

A. The ramp.
Q. Okay. So you were on the ramp. Is that the ramp which goes onto the Interstate at I-20?
A. That's correct.
Q. Okay. So were you in the roadway or were on the -- I guess what you're distinguishing is that you were not on the bridge or anything. You were on a ramp that goes onto the Interstate, right?
A. Yes.
Q. Okay. Which is a flat area as opposed to an elevated area, correct?
A. That area is elevated.
Q. It's a flatter area than coming off the top of a bridge, right?
A. I'm not aware of what you're speaking of.
THE COURT REPORTER: Judge, can I have a minute?
THE COURT: Yes.
(Pause in proceedings.)
THE COURT: Mr. Williams.
MR. WILLIAMS: Thank you, Your Honor.
BY MR. WILLIAMS:
Q. All right. We were talking about that you were on the ramp and this was at Exit --
A. 39.
Q. -- 39 and if we were facing towards Lexington County,

you would have been on the right-hand side of the ramp; is that correct?
A. Eastbound side. Yes, sir.
Q. Because that's how you get on the Interstate there at the -- on the right-hand side?
A. Okay. Yes.
Q. And so since it's a ramp, it's not as high as the bridge?
A. Yes.
Q. So you were watching the traffic go by; is that correct?
A. That's correct.
Q. And you were on alert watching for this white truck and is that when you decided to pull off of the ramp into the Interstate of I-20? Since you say the ramp is a part of the highway, is that when you decided to get on the Interstate?
A. Once I entered onto the entrance ramp, if that's what you're asking --
Q. That is.
A. -- once I confirmed visually and we confirmed that was, in fact, the vehicle, yes, I did enter on especially after I had determined and also saw that he was also following too close to another car.
Q. So I guess what we're really getting around to, you

259

have the -- you have video on your car --
A. Uh-huh.
Q. -- which is that -- does that run constantly when you're driving your vehicle down the road or do you have to hit blue lights or something to make your video work?
A. Once you turn your blue lights on, it backs up thirty seconds prior.
Q. So when you -- when you pulled onto the ramp -- when you left the ramp area into I-20, was your camera functioning at that point in time?
A. The camera's on.
Q. The camera's on?
A. Uh-huh.
Q. Okay.
A. Are you asking is it recording, like actual recording to a disk? No. It's recording, but it's not recording to a disk.
Q. That's all I care is if it's on and whether -- what you record on this disk is kind of up to you, but I guess what I'm asking is does this disk include everything that happened once you pulled onto the Interstate and your camera was running?
A. It has everything thirty seconds prior to me stopping him.
Q. Thank you.

MR. WILLIAMS: Yeah, if you'll come run that for me, Jason.

(State's Exhibit Number 8 playing.)

BY MR. WILLIAMS:

Q. Now stop it right here. So you said that this came on thirty seconds ahead of --

A. That's correct.

Q. -- when your blue lights come on?

A. It has a thirty second prerecord prior to me turning my blue lights on, so I --

Q. Are your blue lights -- I'm sorry. Are your blue lights on right here?

A. No.

Q. All right. So as we watch this --

A. Uh-huh.

Q. -- tell me when your blue lights come on.

(State's Exhibit Number 8 playing.)

A. Right there where you hear my mic turn on.

Q. All right. So what happens when you turn the blue lights on is it actually -- you can actually hear sound and video when your blue lights come on?

A. That's correct.

Q. And if it were nighttime, we'd get to see all the blue lights flashing around. So thirty seconds before this sound begins, you're actually recording; is that right?

A. Thirty seconds prior.
Q. Before? Prior? I don't know. So it's on and does this show this car that you said that my client was following too closely on?
A. You can see it right there, but you can also see -- prior to me turning my blue lights on, you can see the changes in his driving behavior where that vehicle actually begins to actually create a separation between him and that vehicle and he actually rides the white fog line.
MR. WILLIAMS: Jason, can you back that up for me, please?
MR. YONGE: It's doing that buffering thing again.
(State's Exhibit Number 8 playing.)
BY MR. WILLIAMS:
Q. So you were able to see him following too closely to some car on that video just now?
A. I saw it on the ramp. Yes, sir.
Q. On the ramp?
A. Yes, when I was sitting on the ramp there waiting.
Q. Oh, so it's -- I thought you said you had it on the video, too. So you're saying that you -- you don't see it on your video once you get on the Interstate, but you observed it on the ramp; is that right?
A. As you can see right there, you can see the change in driving behavior that he has and the other vehicle actually

creates a distance between him and that other vehicle and his vehicle begins to hug the white fog line creating a secondary violation.

Q. So -- so the car that you said he was following too closely, you can see that car on this video and you saw him following too closely on this video?

A. That's what I saw. Yes, sir.

Q. All right. And obviously everybody else can see what you see if this video's accurate, right?

A. Yes.

Q. Okay. And the fog line that you're talking that he's -- he's touching, for the -- for the jurors' edification that fog line you're talking about is this little white line on the right-hand side that's known as a fog line, but is that the touching of the white line that you say he touched the fog line?

A. He's not maintaining the centermost portion of his lane. Yes, sir.

Q. Okay. Is there a ticket violation that you can get for touching a fog line?

A. You can be cited for failure to maintain your lane, which --

Q. If you touch the fog line?

A. For failure to maintain your lane.

Q. I don't know why you won't answer my question.

A. I am answering your question.
Q. So if you touch the fog line, is that a -- is that a ticket that you can receive?
A. You can write it. Yes, sir. You can write a uniform traffic ticket for it.
Q. As a matter of fact, you wrote him two warning tickets, didn't you?
A. No, I only wrote one.
Q. You only wrote him one warning ticket?
A. Correct.
Q. And you handed that to him, didn't you?
A. Correct.
Q. And then you took it back?
A. (Nods head.)
Q. He never got full control of the ticket. You -- you handed the ticket and then you pulled it back in all this, didn't you?
A. Okay.
Q. True?
A. Yes, I still maintained control of it.
Q. You still have the warning ticket with you, don't you?
A. Correct.
Q. So you never gave him a warning ticket?
A. He was advised that he was issued a uniform warning and he was given a warning.

Q. Well, you never released the ticket to give him the warning ticket, did you?
A. Well, at that point if you're -- if you're asking about when I handed you -- handed him the warning, he was asked for consent to search. At that point he denied consent, so, therefore, the stop's not over. So, therefore, he was held there for longer for the K-9 deployment.
Q. And you never gave him the warning ticket?
A. He was given a warning.
Q. Well, when we refer to a warning ticket, we're talking about a piece of paper, aren't we?
A. Uh-huh.
Q. So he was -- he never had sole possession of a piece of paper which says warning ticket on it, did he?
A. I handed it to him, he touched it, and when you're -- when he denied consent to search -- denied for a consent to search, I held onto the warning ticket because, therefore, the traffic stop is not finished at that point.
Q. Okay. Why were you holding onto it? Why didn't you just give it to him?
A. Because, therefore, it's a detention at that point for further investigation of facts and for K-9 deployment.
Q. Are you saying that -- that once you release the warning ticket he is in detention or before he releases the

warning ticket?
A. Well, the traffic stop in itself is technically by state law custodial arrest. So, therefore, it's my determination on if I want to write a ticket or a warning. So, therefore, until I advise him that -- he is given everything and he is on his way, the stop is not done.
Q. So if he had been quicker pulling that ticket out of your hand, then it would be different; is that right?
A. Repeat that again. I'm not --
Q. If he were quicker pulling that ticket out of your hands that both of you were holding onto -- it's like pulling a pulley bone. If he were able to pull that pulley bone out before you did, then --
A. What's a pulley bone? I'm not --
Q. You don't know what a pulley bone is?
A. No.
Q. There you go. No need of explaining it.
But there is significance to you the fact that you were able to hold onto it and he did not achieve sole possession of this warning ticket?
A. Okay.
Q. That's true?
A. I'm not understanding what you're saying. Repeat that.
Q. Well, let me ask you this. This warning ticket which

you issued to him, that came out of a ticket book, didn't it?
A. The warning? Yes, sir. A warning book.
Q. All right. And there are copies issued in this warning book, this ticket book, which allows you to -- to go back in time to look and see what warning tickets you have issued?
A. Uh-huh.
Q. And do you know what the number of that warning ticket was?
A. Not offhand.
Q. And the purpose of a warning ticket is to acknowledge that somebody -- that you have stopped somebody on the road and you have given them a warning and they -- correct?
A. Go ahead.
Q. And they take that warning ticket with them to make sure that they understand what they did wrong so that they don't do it again. That's the purpose of a warning ticket, right?
A. (Nods head.)
Q. True?
A. True. Yes, sir.
Q. Okay. Now is --
MR. WILLIAMS: I beg the Court's indulgence. I beg the Court's indulgence.

THE COURT: Yes, sir.

BY MR. WILLIAMS:

Q. If you will, because we just kind of -- we just kind of hit sections of it, we're just gonna play the rest of the video and then -- to show the entire period of what's going on, him on the side of the road, your -- how you react to him.

A. Okay.

Q. And then I'm gonna ask you some questions.

(State's Exhibit Number 8 playing.)

Q. So the fog line touching that you were referring to was not right there when the blue lights came on and he was pulling off and he was hitting those rough things on the side of the highway. That's not the reference to touching the fog line that you're concerned about?

A. Well, I was effecting a traffic stop at that point, so I was not -- when I observed him actually committing the violation, it started back in the traffic prior to me turning my blue lights on.

(State's Exhibit Number 8 playing.)

Q. Let me ask you a question. Atwood is standing by the car when he's looking in that direction and then you go off to the front of the truck; is that correct?

A. Yes, sir.

Q. Okay.

(State's Exhibit Number 8 playing.)

MR. WILLIAMS: That's all the questions I have, Your Honor.

THE COURT: Thank you.

Redirect.

MR. SMITH: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Trooper Shropshire, where were you when the recording from the vehicle started on this day?

A. Where was I when the recording began?

Q. Uh-huh. Yes, sir.

A. I was at Exit 39.

Q. Right, but specifically like when this recording -- let me rephrase the question.

A. What mile marker?

Q. No, sir. When this recording began, had you already entered onto the highway off of the ramp?

A. (Nods head.)

Q. And you stated -- at that point had you already observed the defendant following too closely behind a vehicle?

A. I did.

Q. And at that point when you observed defendant he had already passed Exit 39 on the highway?

269

A. That is correct.
Q. And during the video that we just watched again, did the defendant acknowledge to you that he had been following the vehicle in front of him too closely?
A. Yes, sir.
Q. And you mentioned that the citation is for a failure to maintain lane?
A. Correct.
Q. Elaborate on that for me.
A. Under state law it states that you must drive in a manner that's reasonable and prudent under that. As a driving instructor, because I'm a certified DMV instructor, we always instruct our students to drive in the centermost portion of your lane to avoid unnecessary collisions whether it's when a vehicle is travelling from the opposite direction or from the shoulder of the roadway. As a collision reconstructionist, we see a lot of collisions that occur from vehicles either sideswiping a vehicle that's sitting on the side of a highway or another vehicle that may be in that lane next to it causing unnecessary collisions.
Q. So is it fair of me to say then that you don't necessarily have to be all the way over a line to catch that ticket?
A. No, sir.

Q. Would you have pulled Mr. Brown over on this day if you hadn't observed any traffic violations?
A. No, sir.
MR. SMITH: I beg the Court's indulgence.
Nothing further.
MR. WILLIAMS: Just one question on redirect {sic}.
THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. WILLIAMS:
Q. Clearly the tape that we just saw does not include those driving issues that you just referenced, does it?
A. It does show the driving issue of failure to maintain lane. You can also see the driving distance decrease between -- excuse me, increase between him and the other vehicle into the change of driving behavior that he had.
Q. And when you were asked on cross-examination, you had already passed Exit 39 when you observed the driving violation?
A. I had not passed Exit 39.
Q. You were on Exit 39?
A. On Exit 39.
Q. Because on the highway you've got an entrance ramp on Highway 39 and you have another ramp going up on the highway, so you were seated on the -- parked on this area. So what you had -- would have seen would have been somebody

that would have been gotten -- depending on how you reference it, he was already past 39 before you even pulled back on?

A. Well, 39 is a mile long exit as far as the mile marker; hence, the name mile. So Exit 39 in itself is one mile long in its distance. So, therefore, he passed within the exit -- passed by the itself, but I was sitting at the top of the entrance -- sitting on the entrance ramp itself where I had a clear vantage point of the roadway.

MR. WILLIAMS: I don't have any other questions.

THE COURT: Thank you.

Any follow-up?

MR. SMITH: No, Your Honor.

THE COURT: All right. Thank you.

Trooper you can step down. Thank you.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: Okay. You can call your next witness.

MR. SMITH: The State calls Sergeant Tyler Atwood. Jacob Atwood. I apologize, Your Honor.

THE COURT: Okay.

Sergeant Atwood, come forward, please, sir, and be sworn.

THE WITNESS: Yes, sir.

(Whereupon, Jacob Atwood was duly sworn by the

Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last on the record.

THE DEFENDANT: The first name is Jacob, J-A-C-O-B. Last name Atwood, A-T-W-O-O-D.

JACOB ATWOOD,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Sergeant Atwood. How long have you been with the South Carolina Highway Patrol?

A. This January will be ten years.

Q. Do you have any law enforcement experience outside of the highway patrol?

A. I do not.

Q. So you were employed with the highway patrol on June 29, 2020?

A. I was.

Q. What was your role there at the time?

A. I was a K-9 handler for our interdiction team during the 2020 year.

Q. Were you always -- approximately how long were you a K-9 handler?

A. I got certified in August of 2018 at Alabama K-9

Institution in Northport, Alabama, and I was still a K-9 handler in 2020.

Q. And what was the name of your K-9 partner at the time?

A. Parker.

Q. How long?

A. From the beginning. I was issued him in August of 2018.

Q. So did you and Parker undergo your training and certification together?

A. We did, yes, sir.

Q. If you can recall approximately how many hours' training did you undergo together?

A. The course I took was anywhere from four to six weeks and approximately 240 hours. It just depends on how fast you bonded with the dog and got certified. You had to complete a course before you were actually issued your certification.

Q. And was this -- was this your initial training and certification?

A. Yes, sir.

Q. Did you undergo any training after your initial training certification?

A. Yes, sir. We did monthly training through our agency and then we also had to recertify at the institution at Alabama K-9 every year.

Q. And did this training continue throughout your entire time with Parker?
A. Yes, sir, it did.
Q. So we heard Trooper Shropshire testify just a little while ago that for criminal interdiction with the highway patrol a K-9 unit is always present. Were you present with -- the entire time that you were a K-9 handler, would you have been present with Trooper Shropshire during an interdiction?
A. As long as no unforeseen circumstances, but, yes, that was the idea of the team; that me and him would work together as a partner setup.
Q. And were you involved in a criminal interdiction on defendant's vehicle on June the 29th, 2020?
A. I was.
Q. So, again, why were you on-scene with Shropshire?
A. I was assisting Trooper Shropshire with a traffic stop, whether it be just as a backup officer for safety concerns or if he did need a K-9, I was also there for that role as well.
Q. Now were you provided any information prior to this traffic stop?
A. I was.
Q. What was that information?
A. I spoke with Officer Gietz by phone about a subject

coming back from the Atlanta area with an unknown quantity of narcotics. It was actually our day off, so then I called Shropshire on the phone and explained to him the situation, it was his day off as well, and then we met up on I-20.

Q. Was the vehicle described to you?

A. It was.

Q. Do you recall what the vehicle description was?

A. It was a white pickup truck and they had the tag number as well. It was in a license plate reader.

Q. And this information that you were given prior to the stop, did you relay that information to Trooper Shropshire?

A. I did. All the information I had I relayed to Trooper Shropshire.

Q. Your partner Parker, what breed of dog is he?

A. He was a mix breed. He was a Belgian Malinois and Shepard mix. So he looked like a Shepard, but he had the attitude of a Belgian Malinois, so he was a little more excited, happy.

Q. Do you know what specific narcotics he's imprinted on?

A. I do. He was imprinted on five narcotics. It would be marijuana, meth, MDMA, cocaine, crack cocaine and heroin.

Q. And what does it mean when you -- what does it mean to say that those are the substances he's imprinted on?

A. So when we went to Alabama K-9, those are the things that he was certified in. So when he got his certification, those were the narcotics that we trained with for him to be certified in.
Q. So just not this specific stop, but any time you deploy Parker during a stop what are you looking for during that inter -- during that sniff, during that interaction?
A. With the dog?
Q. Yes, with the dog. I'm sorry.
A. That's okay. So I would be looking for a change of behavior, which we would call an alert. That would be a natural change of behavior. And then I would also be looking for an indication. That would be the final behavior. For Parker, that would be a sit, a lay down or a pinpoint stare. So that would be like his final rest. Once he did that, that would end the sniff.
Q. So you mentioned two different things. Is a change of behavior something that is taught to the dog?
A. No, that is a natural behavior. For Parker, it would be a rapid respiration, a change of body posture, something that comes natural to him. Something that when he smells something he's going to naturally change his behavior. It's nothing that is taught. It's whatever he decides -- whatever he decided during training that he was going to do.

277

Q. So what about then -- I believe you called it a final response. Is that a behavior that's taught to the dog?
A. The indication is a taught final response. So dogs naturally do an aggressive indication, which is scratching. People don't like their car's scratched or their property scratched, so we -- they were trained to not scratch things and to either sit, lay down or pinpoint stare.
Q. And what is Parker's -- let me make sure I'm using the correct word here -- indication?
A. Yes, sir.
Q. And what is his taught indication?
A. Any of the three. He sits, lays down or a pinpoint stare. Just depending on the surface we are searching. If it's something very low, he may lay down. He's trying to get as close to the source as he can where the odor is permeating out.
Q. So we heard testimony earlier from Trooper Shropshire. Were you on-scene the entire time during this stop?
A. Not the entire time. I think I came about three, four, five minutes in. It was somewhere -- not immediate, but I did respond quickly.
Q. But you would have been there for a substantial portion of this stop?
A. Yes. Yes. Most of it I was on-scene for. I did not assist in pulling him over though.

Q. So why didn't -- were you -- during the stop were you requested to perform a free-air sniff of the vehicle?
A. At the -- at the conclusion of the stop, yes.
Q. Who requested that?
A. Trooper Shropshire.
Q. Okay. But you were on-scene before the conclusion of the stop. Why didn't you go ahead and run the dog?
A. A few different reasons. One's a safety concern. We're on the side of I-20, traffic's moving at seventy miles per hour. If the dog would happen to get off leash or maybe jump out of the truck, we don't want to use any tools unnecessarily, so there's other ways to go about asking for consent to search, admittance of narcotics in the vehicle. There's a plethora of other ways to search a vehicle than just the K-9. I call it a tool. It's a tool on my belt. I don't use every tool the same way every time, so the way we use the K-9 is we ask for consent first and if they deny consent, then we would use the K-9.
Q. Where did you start the free-air sniff of defendant's vehicle?
A. I started on the back bumper of the pickup truck.
Q. Do you always start free-air sniffs in the same location on every vehicle?
A. Approximately the same location. As long as the road conditions allow it, yes.

279

Q. And do you recall approximately how many times you led Parker around the truck?
A. About one and a half times.
Q. And, again, if you would, while the sniff is going on, what sort of behaviors are you looking for from Parker?
A. Any kind of change in behavior than his day to day normal interactions with him and any kind of indication, which would be a sit, a lay down or a pinpoint stare.
Q. Sergeant Atwood, on this day were you equipped with a body-worn camera?
A. I was.
Q. Was it in proper working order?
A. It was.
Q. Was it turned on?
A. Yes, sir.
Q. Was it recording?
A. It was.
Q. And it was equipped to you?
A. Yes, sir. It was on my belt.
Q. Did it generate a recording?
A. It did.
THE COURT: Sergeant Atwood, where is Parker today?
THE WITNESS: So I have been promoted twice since that time, Your Honor. He has been issued to another K-9 handler. I still get to see him frequently, but we

-- he still is in use.

THE COURT: Okay. That's good. That's good.

Is he gonna -- is Parker gonna come here today to testify?

THE WITNESS: He could come in the courtroom, Your Honor, but you might should put him in the hall for now.

(Off the record discussion.)

THE COURT: Go ahead. I'm sorry for that interruption.

MR. SMITH: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. SMITH:

Q. Sergeant Atwood, I'm showing you what's already been marked as State's Number 10 for identification. Do you recognize this?

A. I do.

Q. What is it?

A. It appears to be my body cam footage.

Q. And how do you recognize that?

A. I put the date on it and my initials.

Q. Does that disk appear to have been altered or tampered with since you last seen it?

A. It does not.

MR. SMITH: Your Honor, at this time we'd move State's Number 10 into evidence.

THE COURT: What says the defense?

MR. YONGE: Without objection.

THE COURT: Thank you. State's 10 without objection.

(State's Exhibit Number 10, body-worn camera video, was admitted into evidence.)

MR. SMITH: Permission to publish to the jury?

THE COURT: Yes, sir.

BY MR. SMITH:

Q. We're gonna go through this. I'm gonna stop it at a couple of points to ask you some questions, all right?

A. Yes, sir.

Q. Or we may just let it play through.

THE COURT: All right.

(State's Exhibit Number 10 playing.)

Q. All right. Sergeant Atwood, I notice at the beginning of this video, of course, we redacted out some portions where you were going to retrieve the dog and take him back to the vehicle. Why did you ask defendant if there was any sort of substance in the vehicle? What's the purpose of that?

A. Again, just a safety concern. I'm sure you guys have heard about Fentanyl. Fentanyl is very, very strong. It takes a very small amount. If it's in the air, anybody that smells it, it can put you down very quickly. So

Fentanyl is one thing. Any kind of bombs. Some of that stuff is very toxic to dogs. Dogs have a very sensitive nose. Much more sensitive than ours.

Q. So when we move forward, I noticed during this video that you are, you know, tapping high and low on the truck and kind of snapping in some places. What are you doing there?

A. I'm just casting the dog, just keeping them moving.

Q. Briefly, if I could slow you down for a second, can you explain what you mean by casting?

A. A dog is supposed to smell where I am casting to after every cast and casting means pointing to where I want him to smell. The only time he can break that cast is when he's within an odor of narcotics.

Q. And why are you -- these specific spots that you're casting him to, why are you casting to those spots?

A. Different things. Door jambs. That would be one way maybe something can be released from vehicles, where door handles are, residual odors from narcotics. Anywhere low, depending on how a vehicle is set up. Just different areas that I would believe that an odor could escape from.

Q. Okay. Had you been on any other calls that day?

A. I had not. Like I said earlier, it was my and Trooper Shropshire's day off.

Q. Had your hands come into contact with any substances

283

that may have left a lingering odor?
A. No, sir. Not any kind of illegal odor.
Q. All right. So during your body cam, did you notice what -- what alerts, if any, did you notice from Parker?
A. I noticed a rapid respiration and what I mean by that is when you watch the video you can kind of see his mouth is open at some points. At the end of the video just before he sits, he closes his mouth and he kind of -- he's breathing very shallow with his nose. He's constantly (demonstrating), so that, to me, is rapid respiration. He's not opening his mouth and taking deep breaths. He's trying to locate the source of an odor, which is an alert. He also had a change of body posture. You can kind of see with his head he starts to trace up the side of the truck up to the front bumper where he stops.
Q. And did you notice -- during this video did Parker give an indication?
A. He did. He showed an indication by sitting right at the front bumper area.
Q. And what does that mean when he indicates?
A. That is his final rest, so that would be saying this is as close as he thinks he can get to the narcotics that he believes are in this area.
Q. Sergeant, we've heard testimony today that a crystal-like substance believed to be methamphetamine was

located in the back floorboard of the defendant's vehicle. I notice during this video that Parker gave an indication and sat at the front right bumper. Can you explain why would he have indicated somewhere away from where the narcotics are located?

A. I can explain that by permeation. Smells expel. They continually go out and depending on if the A/C was running or if the motor was running or if the fans were running, anything like that beforehand, sucking air of the truck, blowing it back out or constantly pulling the air. It's no different than you walking into your house and you can smell that your spouse is cooking beef stew on the oven. Even though you're not in the kitchen, you can still smell it.

Q. And what did you do after Parker gave that indication?

A. I came over to him. So Parker does not get a reward unless narcotics are actually found, so that's why you saw me praise him up. He is actually looking for his toy, but he does not get his toy unless narcotics are actually found, so I praised him up and put him back up in the truck.

(State's Exhibit Number 10 playing.)

MR. SMITH: I beg the Court's indulgence for a moment.

THE COURT: Yes, sir.

BY MR. SMITH:

Q. Sergeant Atwood, at that point when we see that you've arrested defendant and read him his Miranda rights, had the suspected methamphetamine been located?

A. I believe it's being pulled out of the truck.

Q. And do you know where it was located?

A. In the back floorboard.

MR. SMITH: No further questions at this time, Sergeant Atwood. Please answer any questions from the defense.

THE WITNESS: Yes, sir.

THE COURT: Mr. Yonge, you may cross-examine.

MR. YONGE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. YONGE:

Q. Good afternoon, Sergeant Atwood.

A. Good afternoon.

Q. How are you today?

A. Good. How are you?

Q. I'm all right.

A couple of things, but before I forget right there at the end you said that at the point where you Mirandized him and you're handcuffing him and arresting him, the suspected methamphetamine has been found already; is that right?

A. I believe so, yes.
Q. Okay. So, I guess, let's just take a look at the video. Bear with me. I want to attempt to move it further.
(State's Exhibit Number 10 playing.)
Q. All right. So we're here at 3:20. Pausing here at 3:47 on the video. What are you putting on your hands there?
A. Gloves.
Q. Okay. In order to do what?
A. To search the vehicle.
Q. Okay. So had the search of the vehicle been performed yet?
A. At this moment, no. As I'm walking away, I hear Mr. Brown say it's in the floorboard.
Q. Okay. So has the suspected methamphetamine been discovered at this point?
A. At this moment the door's about to open. As you see Trooper Shropshire's about to open it, so at this exact moment, no.
Q. Okay. And -- so if we play it again.
(State's Exhibit Number 10 playing.)
Q. All right. So now you're placing him under arrest?
A. Yes, sir.
Q. All right. Has methamphetamine been -- suspected

287

methamphetamine been discovered at this point?
A. I believe so.
Q. Okay.
A. It was in plain view in the back -- in the back floorboard, sir.
Q. The suspected methamphetamine was in plain view on the floorboard?
A. Of the backseat, yes.
Q. Okay.
A. So all Trooper Shropshire had to do was open the door.
Q. And it was just sitting there?
A. It was, yes.
Q. There was nothing to disguise it?
A. No, sir. Not that I recall.
Q. Okay. You said that K-9 Parker is trained to either sit, lay down or do a pinpoint stare as his final response; is that correct?
A. His indication, yes, sir.
Q. As an indication?
A. Yes, sir.
Q. Okay. What's the final response?
A. That would be the indication.
Q. So final response equals indication?
A. Yes.
Q. So as his indication he's taught to sit, lay down or

pinpoint stare?
A. Yes.
Q. When does he choose to lay down?
A. It just depends on the scenario. If it was something very low, maybe we're searching like a pallet from like a tractor-trailer maybe, he would lay down. I don't tell him which one to do. He does whichever one he wants to do.
Q. Okay. Let's watch this again and take a look at -- I don't know how this video thing jumps, so I'm gonna try to find the spots.
(State's Exhibit Number 10 playing.)
Q. All right. So stopping right here at 52 seconds on State's Exhibit -- or Exhibit 10, this tapping that you're doing on the truck, is that casting?
A. Yes, sir.
Q. Okay. And the purpose of casting is to do what?
A. Have the dog's nose follow.
Q. So you choose where the dog sniffs, correct?
A. Yes.
Q. And is that performed in accordance with your training from Alabama?
A. Yes, sir.
Q. All right. So they train you that you cast on the vehicle and the K-9 should be trained as well to go where you cast?

289

A. That's correct.
Q. And one thing you mentioned was that people don't like their property scratched, correct?
A. That's correct.
Q. And you specifically train the dogs not to scratch the vehicles?
A. As an indication, no, sir.
Q. Right. So -- because that would cause damage to the vehicles?
A. I don't think it causes damage, no, but some people don't like it. The appearance of it.
Q. Okay. So you train them not to scratch as part of their indicator?
A. Yes, that they should not -- it's called an aggressive indication.
Q. Okay. But that same training doesn't apply to the casting and smelling; is that right?
A. When I'm talking about aggressive indication, I mean like a dog digging a hole on the side of a car, not jumping up to smell a high space.
Q. Okay. And so let's watch you go around the car and follow up.
(State's Exhibit Number 10 playing.)
Q. All right. Stopping here at 1:35. At this point you've gone around the truck one time, correct?

A. Yes, sir.
Q. And has K-9 Parker indicated at all?
A. He has not.
Q. No. Now you mentioned you were looking for -- before you get to that indicator or that final response, you're looking for some change in behavior?
A. An alert, yes, sir.
Q. An alert. All right. So you're looking for an alert which can be what again?
A. There's many different alerts. For K-9 Parker it was normally a change of body posture and a change of rapid respiration.
Q. All right. What was his standard body posture?
A. His standard body posture?
Q. Sure. Like when he's not performing a sniff?
A. He's a happy-go-lucky dog.
Q. Okay. And what's his body posture like when he's performing a sniff?
A. When he's performing a sniff?
Q. Uh-huh.
A. He's following my cast. His mouth is closed when he's smelling objects.
Q. And what would his body posture be like if you see a change in behavior?
A. Like I testified to, he changes. He closes his mouth.

291

He's not breathing out of his mouth anymore, he's breathing through his nose. He starts to kind of trace a scent, so he's kind of doing his head movement back and forth, and he's working the source. He's working the narcotic odor.

Q. And so salivating is part of this?

A. Salivating?

Q. I don't know the right term to use. Excessive moisture coming from his mouth.

A. For a change of body posture or in general?

Q. For a change in body posture.

A. No, sir. It was 110 degrees that day. Probably it was just hot.

Q. Would that also cause him to increase his respiration?

A. Because he's hot? Yes, sir.

Q. Okay. So how do you distinguish between the change in behavior that you would see exhibited when he smells narcotics versus the change in behavior because of the temperature and activity you're performing?

A. Because he closed his mouth.

Q. Because he closed his mouth?

A. And because I had worked with him for two years and I -- I can tell a change of his posture and I can tell a change of his breathing. He lived with me for two years straight, so I can tell the difference.

Q. What did you-all do together when you were off-duty?

A. It depends. Some days we'd just sit in the backyard and throw a tennis ball, maybe go on a run, exercise, do some hides, things like that.
Q. What is a hide?
A. Like a narcotics hide. Hide some narcotics somewhere.
Q. And you were off that day?
A. I was.
Q. Was K-9 Parker with you that day?
A. He was.
Q. At your house?
A. Yes.
Q. Okay. Do you live with anyone else?
A. My wife.
Q. Okay. And what were you-all doing that day before you went out to do this interdiction?
A. Hanging out. He had an outdoor kennel, so that's where he -- he lived. He lived in the outdoor kennel, so it's not like he was in my house running around. He stayed in his outdoor kennel unless I was outside with him.
Q. That's fair.
All right. Let's go ahead and finish your search around the truck.
(State's Exhibit Number 10 playing.)
Q. All right. Now right before we get to the conclusion of it, what is the purpose of casting so high up onto the

truck?
A. It just gives the dog two different areas to smell. You cast them low and you cast them high.
Q. Okay. And it help them -- it creates a better opportunity for him to catch a scent; is that right?
A. It just keeps the dog moving. But, yes, I am presenting areas that I think maybe odor could be released from.
Q. Okay. So getting him to -- casting it up high, having him jump up there, would that -- is it more likely that he'll be able to catch smells that way than he would just walking around the exterior of the truck without actually casting onto the truck?
A. I don't know. I've never done it the other way. I was trained to cast.
Q. And you always cast when you do these?
A. I do, yes.
Q. Okay. And let's go ahead and finish this off.
(State's Exhibit Number 10 playing.)
Q. What were you doing right there?
A. So in training scenarios or if we knew there were narcotics in there for sure, we would have somebody else throw a toy in because that is ultimately what Parker is looking for. He is not distinguishing narcotics. He's ultimately playing a game of hide and go seek, so what I'm

doing there is you would present the area that he indicated on and then another individual would be back behind Parker and then he would throw the toy in so that it would appear that the source that he sat or indicated on popped the toy out magically. That's what he's saying. He's playing a game of hide and go seek. So right here I am presenting what he indicated on, but, again, he does not get a toy unless we actually find narcotics in the vehicle. That way he's not falsely sitting or indicating in any other scenario.

Q. So he's hoping for a trap door and a toy?

A. Yes, he's hoping for a magic trick.

Q. Okay. Let's see what else is on the video.

(State's Exhibit Number 10 playing.)

Q. What's going on here?

A. I'm just praising him up. Telling him he's a good boy.

Q. Do you consider that to be a reward?

A. I mean, he gets good boy's all the day, so, yes. I mean, I guess. I mean, now in his eyes he's looking for a toy, so in his eyes, no, that's not a reward. In my eyes, yes, I mean, I'm praising him up.

Q. Sure. But if he had not done the final response or the indicator, would he still receive the good boy and the pats?

295

A. Oh, absolutely. He worked. I mean, it's like you going out there in a fur coat and exhibiting a lot of force on something and then telling you ah, do a better job next time. So he gets a good boy whether he indicates or not.
Q. Okay.
(State's Exhibit Number 10 playing.)
Q. Now I apologize. This was very abrupt on the video. There was a portion of the video missing here, right?
A. Yes. I had to walk him back to the truck.
Q. That's not to say anything's hidden. I'm asking during that time period what was going on?
A. I was putting him back in the truck, putting the leash away, maybe getting him some water. I haven't watched that portion of the video recently. Sometimes, you know, I would go ahead and give him some water because it is hot outside, but pretty much just putting the dog away.
Q. So nothing really of value for this case?
A. Not that I -- not that I think.
Q. Okay.
(State's Exhibit Number 10 playing.)
Q. All right. And K-9 Parker indicated on the front right bumper?
A. Yes.
Q. All right. You had mentioned some reasons why that

would be when the suspected methamphetamine is in the back seat. What were those reasons?
A. Can you ask me again? I'm sorry.
Q. Yeah. It was probably not well-spoken.
So why would he indicate on the front bumper if what you were looking for is in the back floorboard.
A. It would be something called permeation. It would be the odor travelling.
Q. Could it be from Interstate traffic along the highway there?
A. Like the wind?
Q. Yeah. Sure. Or the wind created by a truck going by?
A. Are you talking about like the odor that Parker smelled?
Q. Yes.
A. It would be highly unlikely at seventy miles per hour.
Q. No, no, no. I'm not asking you whether the scent came from a truck.
A. Oh, okay. That's why I was asking can you repeat it. I'm sorry.
Q. No. I apologize. So I'm asking you whether if there's a smell back here, a truck comes by, could that waft the smell forward on the vehicle?
A. Technically, yes.

297

Q. But you wouldn't expect that?
A. I don't know. I couldn't smell it.
Q. Okay. But you gave some reasons, which would include the inner workings of the vehicle, the air-conditioner was on?
A. Yeah. Again, I'm just -- just like you said, it could happen. I don't know why it happened, but permeation, smells expand. They come out of unknown places.
Q. Okay.
THE COURT: Mr. Yonge, the jury has been in here now two hours. I'm gonna send them out for an afternoon recess. I realize you might have more to do and we have redirect even after that.
So, ladies and gentlemen, we're gonna go ahead and take the afternoon recess at this time. We'll take a full break. We'll get you back at 4:00. That's twenty minutes.
Please do not discuss this case among yourselves while you're in the jury and we'll resume at 4:00, okay?
Thank you.
(Whereupon, the jury retires to the jury room at 3:40 PM.)
THE COURT: Sergeant Atwood, you can step down during the break, but you cannot discuss your testimony

with anybody while you're off the stand, okay?

THE WITNESS: Yes, sir. Thank you. I just want to stretch my legs if that's okay.

THE COURT: Refresh yourself if you need to. You just can't talk about your testimony.

All right, folks. We'll take twenty minutes.

MR. SMITH: Your Honor, if we could, I just wanted to briefly discuss the scheduling for the remainder of the day. I know we're coming back at four. We should finish up with Atwood -- Sergeant Atwood. Our next witness is going to be Sergeant Derrick Applegate from the sheriff's department and we do intend to offer him as an expert in K-9 sniffs and the like. If -- if it suits Your Honor, we believe that once we finish with Sergeant Atwood today, that would probably be a good time to adjourn for the day and we can start with Sergeant Applegate first thing in the morning.

THE COURT: Okay. Who does that leave us with after Sergeant Applegate?

MR. SMITH: Then we'll have Mike Phipps with the sheriff's department. Margaret Walker, our chemist, and Sergeant Gietz -- Investigator Gietz is subject to recall.

THE COURT: Okay.

All right. I'm trying to just calculate what

299

time we might conclude the State's case so that I can factor that in and the court reporter has a doctor's appointment in the morning. She's been struggling here for some time with congestion and things of that nature and we want to get her well, and she's got a doctor's appointment very early tomorrow. I'm planning to start back tomorrow at probably 10:30 in the morning.

Is that okay? Does that give you enough time, Madam Reporter?

THE COURT REPORTER: Oh, yes. That's fine.

THE COURT: Okay.

MR. SMITH: Your Honor, I fully expect the State will rest its case tomorrow.

THE COURT: Okay.

All right. So that will be the plan.

In view of that, then there's no harm to be done and recessing for the day after Sergeant Atwood finishes his testimony.

Does that create a problem for you, Mr. Yonge or Mr. Williams?

MR. YONGE: No, Your Honor.

THE COURT: Okay.

All right. That will be the plan then.

4:00, folks.

MR. SMITH: Thank you, Your Honor.

(Recess taken at 3:42 PM.)

(Back on the record at 4:01 PM.)

BAILIFF: Court will come to order. Keep your seats.

THE COURT: Thank you, folks. Please be seated.

Mr. Yonge, you look ready to resume; is that right?

MR. YONGE: Let do it, Your Honor.

THE COURT: Is the State ready?

MR. SMITH: The State's ready, Your Honor.

THE COURT: Good.

You can bring the jury.

(Whereupon, the jury returns to the courtroom at 4:03 PM.)

THE COURT: We're now ready to resume cross-examination of Sergeant Atwood.

Mr. Yonge.

MR. YONGE: Thank you, Your Honor. I actually checked my notes during the break and I don't have any other questions.

THE COURT: All right. Well, good. It was time well-spent then.

MR. YONGE: Thank you, Sergeant.

THE WITNESS: Thank you.

THE COURT: Redirect, Mr. Smith.

MR. SMITH: I'll be very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Sergeant Atwood, during Parker's free-air sniff, did you observe the types of change in behavior that you know Parker to exhibit --

A. Yes, sir.

Q. -- when he's tracking an odor?

A. Yes, sir. I saw alert behavior and a final indication.

Q. And did you -- and did Parker give the final indication that he was trained -- a final indication he was trained to perform?

A. Yes, sir. He sat.

Q. And after that indication were suspected narcotics located in defendant's vehicle?

A. Yes, sir.

MR. SMITH: Thank you, Sergeant Atwood.

THE COURT: Mr. Yonge, any follow-up on that narrow issue?

MR. YONGE: No, Your Honor.

THE COURT: Thank you.

Sergeant Atwood, you can step down.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: Ladies and gentlemen, during the break

302

we've also discussed for planning purposes the schedule. The next witness is going to be a quite lengthy witness or the potential for being a quite lengthy witness. He's gonna be sought to be qualified as an expert in a certain field and it could go past -- well past 5:00.

So normally we would keep on working until later in the day except we don't need to do that in this case. The State has assured me that they will be able to complete their trial testimony tomorrow and so we can do -- two matters of delay. First of all, we can put that witness off until tomorrow and then, secondly, some of the folks -- one of the folks who's involved in the trial of this case has a commitment in the morning that cannot be avoided, so we're not gonna start until 10:30 tomorrow morning.

So I'm letting you off early today and we start late tomorrow, so that's government work. That's the way they work. And so -- well, in this case that's true, but there are good reasons for it and it's not gonna prolong the trial of this case in any event in order to accommodate those two issues and so I'm gonna let you go now ahead of the 5:00 traffic and have a safe trip home.

One thing I -- it occurred to me as you-all have been coming back and forth for the most part, I told you that you can sit wherever you want to and no reserved

303

seats except for the foreperson and -- but most of you go back to an assigned seat almost as if your name was on it and that leads me to believe that you must be a Presbyterian. I'm a Presbyterian and back in the days when the Presbyterian church used to be full of people and you had to really get there early for a seat, everybody had their own seat and if anybody sat in it, you know it, they'd get frowned at. And now if you come to the Presbyterian church you can sit wherever you want to, but...

So, anyway, whichever church you belong to, and you can sit wherever you want to in here, and I appreciate the good humor that you have put up with our schedule throughout. We'll start back tomorrow morning at 10:30. Have a save trip home. Thank you.

Don't discuss the case among yourselves or with anybody.

(Whereupon, the jury was excused for the day at 4:07 PM.)

THE COURT: Anything further from the State before we break for the day?

MR. SMITH: Nothing from the State at this time, Your Honor.

THE COURT: Thank you.

From the defense?

304

MR. WILLIAMS: Nothing from the defense, Your Honor.

THE COURT: All right, folks. We'll start back at 10:30 in the morning.

Thank you.

MR. SMITH: See you in the morning, Judge.

THE COURT: Thank you.

Mr. Brown, one more thing. I'm gonna let you continue to stay out. You've been out so far and you've honored that and your bondsman has assured us of his willingness to stay on the bond and, of course, you know that we're gonna start the trial of the case back tomorrow at 10:30 and if you're here, we're gonna start it and if you're not here, we're gonna start it. You need to be here with your lawyers. You understand that?

THE DEFENDANT: I'll be here.

THE COURT: All right. See you-all at 10:30 tomorrow morning.

Thank you.

(Whereupon, the proceedings were concluded for August 8, 2023, 4:10 PM.)

(The following proceedings were held August 9, 2023, beginning at 10:34 AM.)

BAILIFF: Court is now in session. The Honorable Judge Thomas Cooper presiding.

THE COURT: Thank you, ladies and gentlemen. Please

305

be seated.

Good morning.

Madam Reporter, if you'll mark this, please, as Court's Exhibit next.

THE COURT REPORTER: Okay. That will be Number 8.

(Court's Exhibit Number 8 was marked for identification.)

THE COURT: Ladies and gentlemen, in chambers I met with counsel and have disclosed to them what was made known to me by the bailiffs. In closing -- in cleaning up the jury room yesterday after we had dismissed for the day and the notepads, which the jurors have, one of them -- it was facedown on the table, when they turned it over found that there was some doodling on it and some writing on it. Some of it rather innocuous, some of perhaps not so innocuous that I need to deal with individually.

I'm going to call in the jurors individually to inquire about any connection that they have with the note itself. Is it -- if they have seen it, if they know anything about it or discussed it in the jury room. If all -- if all of those turn out to be negative responses, then I will send that juror one by one after they have been individually voir dire'd into a separate -- I think they've got a room downstairs or somewhere we

306

can keep them separate from each other.

Once I've determined who wrote the note, then I will ask that person if he or she has shown that to anybody else or discussed it with anybody else. If those answers are likewise negative, I will excuse that juror and -- and place the -- the alternate in place. If it has been discussed with someone else, then I'll have to follow up on that inquiry and see where this leaves us, okay?

Everybody understand that?

MR. SMITH: Yes, Your Honor.

THE COURT: I'll be glad to hear from you-all, from counsel, at the conclusion of this inquiry depending upon what it reveals because right now we don't know.

Mr. Bailiff, we will bring in the jurors individually in the order in which they were called, beginning with Juror Number 165.

BAILIFF: Yes, sir.

THE COURT: I will show them from a distance just the half of the note that appears to be innocuous so they'll at least know what I'm talking about, if they do know anything about it. If they don't, it won't mean anything to them and they will not see the opinion of the -- of the author.

(Whereupon, Juror Number 165 enters the courtroom.)

THE COURT: Mr. Maddox, if you'll have a seat right

307

there please in that chair. Let me tell you, we're not picking on you individually. I'm gonna talk with all the members of the jury to discuss a matter that was revealed to us after we broke yesterday.

The bailiffs discovered on the notepads that were left in there that somebody had been writing some scribbling, which is fine really. That's what the notepads are in there for; however, one note caused a little concern. I'm just gonna show you a portion of it to see if you have seen it or know anything about it.

Does this look familiar to you?

JUROR NUMBER 165: Yes, sir. I saw that.

THE COURT: Okay. And where did you see it?

JUROR NUMBER 165: In the jurors' room.

THE COURT: All right. And do you know who wrote it?

JUROR NUMBER 165: I don't. I don't know who wrote it.

THE COURT: How was -- was it just laid out on the -- on the table there face up or --

JUROR NUMBER 165: Yeah, it was on the table face up.

THE COURT: All right. And was it late yesterday or during the day yesterday that you saw this or when did you see it?

308

JUROR NUMBER 165: During the day at some point.

THE COURT: Okay. So that the note had been out there and had been apparent to anybody who wanted to look at it, they could see it; is that right?

JUROR NUMBER 165: Yes, sir.

THE COURT: Okay. Did you hear anyone discussing the contents of this note?

JUROR NUMBER 165: Not at all.

THE COURT: Okay. And I think you've already answered this. I want to be sure. Do you have any idea who the author of the note was, who wrote it?

JUROR NUMBER 165: No, sir.

THE COURT: All right. Were you impacted in any way by what you saw on the note, the doodles, the comments and whatever else you saw? Were you impacted or in any way persuaded by it or in any way affected in your -- in your thought process by what you saw in the note?

JUROR NUMBER 165: No, sir.

THE COURT: All right. You can continue to be fair and impartial in this case without regard to what you saw on the note?

JUROR NUMBER 165: Yes, sir.

THE COURT: And you can continue to abide by your oath to decide this case based on the evidence that you will hear without regard to the scribblings on this note?

309

JUROR NUMBER 165: Yes, sir.

THE COURT: And you'll do that, won't you?

JUROR NUMBER 165: Yes, sir.

THE COURT: Thank you, sir, Mr. Maddox. We're gonna send you -- while we're talking with the other jurors, I'm gonna send you into a separate jury room just so that when you go back in there and they'd say what did they want to know, and that will put you in an uncomfortable position. So we'll send you downstairs. for the moment you'll have your own private jury room, but other others will be joining you separately as they come.

JUROR NUMBER 165: Yes, sir.

THE COURT: I'd appreciate it when they do join you if you will not discuss anything that you have seen or anything that you know about this note as well, okay?

JUROR NUMBER 165: Absolutely.

THE COURT: Thank you, Mr. Maddox.

JUROR NUMBER: 165: Yes, sir.

THE COURT: I appreciate it.

(Whereupon, Juror Number 165 was excused from the courtroom.)

THE COURT: What says the State or the defense in regard to that inquiry?

First of all, what says the State, Ms. Oppenheimer,

310

Mr. Smith?

MR. SMITH: Your Honor, we believe that Mr. Maddox clearly answered that while the note was visible there's been no discussion. He's indicated it hasn't affected his thought process and he remains able to be fair and impartial and decide this case properly based on the facts and the law.

THE COURT: I got you.

Mr. Williams, what says the defense?

MR. WILLIAMS: Obviously, Your Honor, I think the fact that he admitted that it was in an open area where all jurors could see it, that that in itself constitutes a problem in the continuation of the trial. I note for the Court's benefit that he was not sworn at the time that he gave his responses. Not meaning any disrespect to the Court.

THE COURT: Well, here's my --

MR. WILLIAMS: I'll retract that. He was sworn to at the beginning of the trial, Your Honor, so --

THE COURT: Yes, sir. Not only that --

MS. OPPENHEIMER: Hold on.

THE COURT: Wait just a second, sir.

I'm sorry, Mr. Brewer. We'll get to you in a minute.

My understanding, and I was not present for voir

311

dire, but as a matter of course that every juror is sworn in the voir dire process as put under oath.

Am I incorrect in that regard? If so, I'll swear them when they come in here.

THE CLERK: It's a general oath that they take.

THE COURT: I mean, does every juror stand in the jury room downstairs and they say ladies and gentlemen, do you solemnly swear or affirm that you'll give truthful answers to the questions put to you so help you God?

MR. SMITH: Yes.

THE COURT: And I just need to know yes or no. If it's not, I'll take care of it now.

THE CLERK: I'm gonna show it to you. That way you can read it and --

THE COURT: Okay. Thank you.

THE CLERK: The top half is during voir dire --

MR. WILLIAMS: I caught myself, Judge, halfway into that statement, so I may be incorrect.

THE CLERK: -- and then the bottom half of it is what they're --

THE COURT: I'm sorry. I can only listen to one.

MR. WILLIAMS: You're right.

THE COURT: All right. Thank you.

Yes, ma'am. Again?

THE CLERK: The top half is the oath that they're

312

given during voir dire and then the bottom half is what they're given whenever they come in as they're picked as the actual jury panel.

THE COURT: Yes, I understand that.

It's the top oath in particular that I was talking about, that they're put under oath to answer all the questions, et cetera, put by the Court or speak the truth and so forth, and so I find that that -- if that oath is satisfactory to carry throughout, the jury does not have to be re-sworn or put under oath thereon.

And so I'm sorry, Mr. Williams, I didn't understand what you were telling me while she was telling me that, so I'll be glad to hear from you.

MR. WILLIAMS: And I was -- sometimes -- I suffer sometimes with talking when other people are talking. I don't mean to. It's my brain is so slow --

THE COURT: That's all right.

MR. WILLIAMS: -- and I realized after I'd said that well, of course, they are sworn at the beginning, and I was trying to stop that statement, but it was already out.

THE COURT: Okay. I will remind them of the oath when they come in here just to be sure.

MR. WILLIAMS: But the short answer on this, Judge, is I think the mere fact that he saw it --

313

THE COURT: That's right.

MR. WILLIAMS: -- that that itself puts enough question in the minds of the fairness of the jurors and -- and there's no other way. I don't doubt that there's any other way to handle this process than bringing them out one at a time, but that in itself creates maybe an issue for them.

THE COURT: All right.

Okay. We'll continue to deal with that as they come in.

If you'll ask Number 24, Mr. Brewer, to come in please.

(Whereupon, Juror Number 24 enters the courtroom.)

THE COURT: Is this Mr. Brewer?

JUROR NUMBER 24: Yes, sir.

THE COURT: Mr. Brewer, if you'll have a seat right there, please, sir. I apologize for sending you back out. We had some stuff that we were still discussing about the prior individual.

Mr. Brewer, I remind you that you're still under oath throughout this process as is everybody else that I'm gonna be inquiring with.

Yesterday after court was dismissed, the bailiffs were cleaning up the jury room, as is their practice every day, and they were going through the notes that

314

were on the table in there that -- on your-all's notepads that they have in there and they noticed some scribbling on some of those, which is fine. As I say, the notepads are given to you-all to scribble on, but they noticed some writing on one of the -- one of the notes that gave them some concern and they have shown it to me and I have shown it to the lawyers and I'm trying to inquire further who else has seen it and if it has any bearing on what we're trying to decide.

I show you a part of the note on there, half of the note, to see if you are familiar with this, if you have seen it before and saw it in the jury room or at any other time.

JUROR NUMBER 24: That doesn't stand out to me, sir.

THE COURT: Sir?

JUROR NUMBER 24: That does not stand out to me. I don't recognize that.

THE COURT: You don't recall having seen this?

JUROR NUMBER 24: No, sir.

THE COURT: Okay. And nobody in your presence has discussed anything about this note? It was there where other jurors could have seen it had they been in proximity to it, you know, so I want to be sure that perhaps if somebody else saw it and was talking about it in your presence, are you aware of that?

315

JUROR NUMBER 24: No, sir.

THE COURT: Okay. So whatever the note says, you don't know what it says, and is it safe to say that it would have no bearing in any event on your ability to continue to serve fairly and impartially?

JUROR NUMBER 24: No, sir.

THE COURT: Okay.

All right. Thank you, Mr. Brewer. I'm gonna send you down to a separate jury room while we talk with the other jurors because I have to ask every one of them the same questions I'm asking you, and -- and ask that you not disclose the contents of this with anybody else because, frankly, you don't know anything about it other than what I've told you, all right?

Thank you.

(Whereupon, Juror Number 24 was excused from the courtroom.)

THE COURT: Any concerns about Mr. Brewer from the State?

MR. SMITH: No, Your Honor.

THE COURT: Okay. Defense?

MR. WILLIAMS: Your Honor, obviously we can't quibble with what his remarks were. If it was open and maybe he doesn't recall it now or whether he did see it or didn't see it, he's obviously saying on this particular

316

occasion he doesn't recall seeing it, which is a problem with memory, Your Honor.

THE COURT: I understand. All right, sir.

MR. SMITH: Your Honor, if I may briefly, I would ask that -- Mr. Brewer did just indicate that he's not familiar with the note. It indicates to me that even if the note were face up, it appears not everyone in the jury room has seen it and perhaps some of the jurors saw it that were in proximity to whoever wrote this note, but still we have no indication of any discussion about this. He's indicated he can be fair and impartial and it's had no impact on his thought process regarding this case.

THE COURT: I think that would be what he's told me.

MR. SMITH: Yes, Your Honor.

THE COURT: I heard that. Thank you.

All right. Juror Number 160.

(Whereupon, Juror Number 160 enters the courtroom.)

THE COURT: Mr. Lowman, how are you?

JUROR NUMBER 160: Good. How are you, sir?

THE COURT: Mr. Lowman, I'll remind that you're still under oath as you were placed under oath before this process began.

JUROR NUMBER 160: Yes, sir.

THE COURT: And yesterday as the bailiffs were cleaning out the jury room, they were rearranging the

317

notepads, which you-all have to take notes, and they noticed some scribbling on some of those, and there's no problem with that, that's why they're there, but one of the scribblings caused them some of concern and they have revealed the contents of to me and I have shared it with the lawyers, and I need to know if any of you-all on the jury have seen the note or if you wrote the note and I just want to find out what impact, if any, the note or its contents might have on the decisionmaking process in this regard.

I show you just a portion of the note, not anything -- there's nothing terribly harmful about this other than apparently the writer doodles like we all do. Some of us write neat, some of us not. You can see what it is.

JUROR NUMBER 160: Yes, sir.

THE COURT: Have you seen this note before?

JUROR NUMBER 160: No, sir, I have not.

THE COURT: Okay. It was present in the jury room where others in the proximity of it could have seen it had they looked at it. Of course, you're scattered in there. And so I need to know did you hear anybody else who may have seen it, although you did not, who may have seen it, discussing anything on it, commenting anything on it, making any comments about the contents of it in any way whatsoever?

318

JUROR NUMBER 160: No, sir. It's very quiet in there.

THE COURT: Okay. Is it?

JUROR NUMBER 160: Yeah.

THE COURT: Well, good.

All right. So I take it then that since you don't know anything about the note, you have not heard anybody else talking about the note, you don't know the contents of it, am I putting words in your mouth if I say that it would not have any impact on your ability to continue to be fair and impartial in this case?

JUROR NUMBER 160: No, sir, you're not.

THE COURT: Would you give it any weight whatsoever when you finally decide what to do in this case?

JUROR NUMBER 160: No, sir.

THE COURT: All right.

Thank you, Mr. Lowman. I appreciate your candor.

We're gonna send you down to another jury number while I continue to talk with everybody else on this. Please don't discuss our colloquy or what this is all about with anybody else, okay?

JUROR NUMBER 160: Yes, sir.

THE COURT: Thank you, sir.

JUROR NUMBER 160: Thank you.

(Whereupon, Juror Number 160 was excused from the

319

courtroom.)

THE COURT: All right. His comments speak for themselves. I don't need to belabor that or have them repeated unless they cause come concern or heartburn for some of you-all that you would like to raise any additional issues about it. Otherwise, I'll proceed to Ms. Burgess, Juror Number 29.

(Whereupon, Juror Number 29 enters the courtroom.)

THE COURT: Ms. Burgess, thank you for having a seat right there.

Ms. Burgess, I remind you, as I'm reminding all of the jurors as I talk to you individually, that you're still under oath as you were administered on Monday before you began your service.

Yesterday as the jurors were leaving, after they left, the bailiffs in cleaning out the jury room were going through the notepads that you-all have there to scribble on or write on whatever you want to, and they noticed some scribbling on several of them I would imagine, and that's fine, there's nothing wrong with that, but on one of the notes they saw some writing that caused them some concern, and so they have shared it with me and I've shared it with the lawyers. I'm just trying to find out what impact, if any, that note might reveal or have on -- on this process.

320

I show you just a part of the note right here to see if you have seen this or -- or know anything about this note in the jury room.

JUROR NUMBER 29: I saw a couple of the other jurors scribbling, but I don't know whose it was.

THE COURT: Do you know which jurors were scribbling?

JUROR NUMBER 29: I honestly don't know their names. I could describe what they looked like, but I don't know their names.

THE COURT: All right. How would you describe them?

JUROR NUMBER 29: One is a younger Hispanic male and the other is a younger black male.

THE COURT: Okay. Did you see either of these or anybody else discussing any of the scribblings that were on the note?

JUROR NUMBER 29: No.

THE COURT: Okay. The notes themselves -- or the note itself was visible to anybody else who was in the immediate vicinity, they could have seen it, you know, and so you told me that you have not seen the note. Am I correct in that?

JUROR NUMBER 29: I didn't see the exact drawings on it. I just saw the two I described scribbling.

THE COURT: And what do you recall seeing on the

321

note itself? Any words, any figures, anything like that?

JUROR NUMBER 29: No, sir. I didn't really pay it too much attention. I just noticed that they were scribbling.

THE COURT: Okay. Did you hear any discussion among these two or anybody else, quite frankly, about the note, the contents of the note or what it may have contained?

JUROR NUMBER 29: No, sir.

THE COURT: Okay. Would that limited exposure that you have had, as you have described it to me, make it difficult for you to continue to be fair and impartial as a juror in the trial of this case?

JUROR NUMBER 29: No, sir.

THE COURT: Would you take any of these things that you saw in the jury room in connection with the note or anything that I've discussed with you, would that have any bearing on your decisionmaking in this process?

JUROR NUMBER 29: No, sir.

THE COURT: Okay. You can continue to be fair and impartial?

JUROR NUMBER 29: Yes, sir.

THE COURT: Thank you, ma'am.

Ms. Burgess, I'm gonna send you down to the -- to another jury room while we're continuing in this

322

discussion and I'll ask that you not discuss with the other jurors who are in that room now anything that you and I have talked about, okay?

JUROR NUMBER 29: Yes, sir.

THE COURT: Thank you, ma'am.

JUROR NUMBER 29: Yes, sir.

(Whereupon, Juror Number 29 was excused from the courtroom.)

THE COURT: The young Hispanic male would be Juror Number 226. We will inquire of him shortly. There are two black males. We've already talked with one of them. The other Juror Number 65, Mr. East, is 41 years of age. Mr. Maddox, who has already been questioned, is 34. We've already got the benefit of his information so that I can inquire further. Obviously Ms. Burgess has no information about this process that would be harmful in my view, so we move onto next to Ms. Shelby Minges, Juror Number 184.

(Whereupon, Juror Number 184 enters the courtroom.)

THE COURT: Ms. Minges, good morning.

JUROR NUMBER 184: Good morning.

THE COURT: I remind you that you're still under oath as you were administered the oath Monday before we started.

JUROR NUMBER 184: (Nods head.)

323

THE COURT: Yesterday the bailiffs in cleaning out the jury room after you-all had left were going through the notepads and the scribbling notes -- or scribbling pads that you-all have in there and they saw some information on one of them that caused them some concern to share with us and I shared with the lawyers, and so I'm trying to find out if that note is -- has any bearing on the decisionmaking process that you-all will be engaged in at the conclusion of the trial.

I show you a portion of the note right here just so you can identify it and tell me if you have seen it or know about it or if you wrote it or whatever.

JUROR NUMBER 184: No, sir, I have not seen that.

THE COURT: Have not seen it?

JUROR NUMBER 184: No.

THE COURT: All right. The note was there in view of those folks who were write close to it. They could have seen it, so that might -- or it could mean that somebody else had seen it and perhaps was discussing it, even though you did not see the note itself. Did you hear anybody else discussing anything like this or the note or the contents of it or was it just a nonissue as far as you're concerned? How would you describe it?

JUROR NUMBER 184: To me, it seems like a nonissue. There has been zero discussion of the case. There's been

324

mostly silence in the room.

THE COURT: Okay.

All right. So as far as this particular note, you've got no information about it. Is that fair? I don't want to put words in your mouth.

JUROR NUMBER 184: That's fair to say, Your Honor. Yes.

THE COURT: Okay. And so my talking with you about some innocuous note, you don't even know what it says, I take it -- is that gonna have any bearing on your continued ability to be fair and impartial in this trial?

JUROR NUMBER 184: No, sir.

THE COURT: All right. Ms. Minges, we're gonna send you down to a separate jury room so that we can keep all of you-all whom I've talked with separate from everybody else involved until I've gone through this process with all the jurors, so I ask that you not discuss this with any of them, okay?

JUROR NUMBER 184: Okay. Sounds good.

THE COURT: Thank you, ma'am.

JUROR NUMBER 184: Go out this way?

THE COURT: Yes, ma'am.

(Whereupon, Juror Number 184 was excused from the courtroom.)

THE COURT: Mr. Santoyo, Juror Number 226.

325

(Whereupon, Juror Number 226 enters the courtroom.)

THE COURT: Ms. Santoyo, have a seat right there, please, sir.

I remind you that you're still under oath in the oath that you were administered on Monday. The bailiffs in cleaning out the jury room yesterday after everybody had left for the day and in going through the notepads, which you-all have been scribbling on them, you've been scribbling on, everybody's been scribbling on, and that's fine. That's what they're there for.

They found one of the notepads had some writing on it that they thought that I needed to see and to share with the lawyers, and so I have done that. The only purpose I'm trying to decide is if the note itself is going to have any impact on the outcome of this case, anybody's gonna take it into account or if it indicates any opinions about this case that we need to know about at this juncture.

So I show you a portion of the note to see if, first of all, did you write this note? You're familiar with it?

JUROR NUMBER 226: Oh, yes, sir.

THE COURT: Did you write it?

JUROR NUMBER 226: Yes, sir.

THE COURT: Okay. And so did you discuss the

326

contents of this note with anybody else?

JUROR NUMBER 226: Oh, no. It was just for fun drawing. I was just writing it.

THE COURT: Right. Now, of course, it has on it, the back of it, an expression of guilty, which I take it is part of what you wrote down?

JUROR NUMBER 226: Yes, sir.

THE COURT: Okay. And you -- as I said -- or as you said, you did not discuss this with anybody else?

JUROR NUMBER 226: No, sir.

THE COURT: And it's your opinion, which you're entitled to your opinion without a doubt. There's nothing that I can comment about that. I'm glad that jurors have to make up their minds about these things and not me. The only inquiry which I need to be engaged in in that regard is whether you have shared that opinion with anybody else on the jury?

JUROR NUMBER 226: No, sir.

THE COURT: All right. And you have not discussed the contents of this with anybody else in the jury room?

JUROR NUMBER 226: No, sir.

THE COURT: Okay.

All right. Mr. Santoyo, I appreciate your candor in this regard, and I thank you for that. As I indicated at the beginning of the trial yesterday, as a

327

matter of fact, I said that we ask the jurors to keep an open mind throughout the entire process and I'm -- I don't fault you for writing this down and you have committed no wrong in doing that. It's the sort of thing, however, that we need to know and we need to take it into account in what we do, and so since it does indicate an opinion before the conclusion of the trial, I'm going to excuse you from any further involvement in the trial of this case. Do you understand that?

JUROR NUMBER 226: Yes, sir.

THE COURT: I tell you once again that that is not to indicate any wrongdoing on your part since you didn't discuss it with anybody else. It is your opinion and you have a right to that. You've not discussed it with anybody else as I've asked you not to do. So based on that, I'm confident that this is not going to impact the outcome of the trial of this case, but because it does involve your thought process before the trial is over, I'm going to excuse you from any further involvement, okay?

JUROR NUMBER 226: Yes, sir.

THE COURT: I'm gonna ask you to not share your opinion in this regard with anybody else who's on the jury.

Do you have any personal effects in the jury room?

328

JUROR NUMBER 226: No, sir. Just my phone outside.

THE COURT: Okay. They can give that to you.

JUROR NUMBER 226: Yes, sir.

THE COURT: Mr. Santoyo, I'm sorry. I wish we could have had your continued service in this regard. Maybe you'll get to serve again at some other time, but I'm gonna have to excuse you for reasons I hope you understand.

JUROR NUMBER 226: Yes, sir.

THE COURT: I'm sorry. Thank you.

Okay. You're free to go.

(Whereupon, Juror Number 226 was excused from the courtroom.)

THE COURT: Okay. That limits my inquiry. From now I'll be able to identify the author of the note for everybody else that I talk about -- that I talk to I should say and maybe give a little more specificity to at least the origin of the note so that those folks can take that into account.

Now any further comments or remarks concerning Mr. Santoyo from the State?

MR. SMITH: No, Your Honor. We think his excusal was proper --

THE COURT: All right.

MR. SMITH: -- out of an abundance of caution and

329

we do believe that he was forthcoming and candid in his answers.

THE COURT: Okay.

All right. Mr. Williams?

MR. WILLIAMS: Obviously, Your Honor, as I understand it, you're still gonna inquire of all the other jurors as to what communication they had with him being the juror that admitted to that note. And I note that one of the jurors has already mentioned that there were at least two notes -- that she saw two people writing notes, so obviously I'm still concerned about what's on the other note and I'm further concerned about how we don't have that other note because that indicates that somebody either didn't want somebody else to see the other note or it just, I don't know, disappeared. I don't know how to draw a conclusion from that.

THE COURT: All right. Well, when we have concluded our voir dire of the individual jurors, I will put the bailiffs under oath and ask them if they have any other notes that they have not shared with us, okay?

All right. We move now to Juror Number 186, Ms. Moore.

(Whereupon, Juror Number 186 enters the courtroom.)

THE COURT: Ms. Moore, good morning.

JUROR NUMBER 186: Hello.

330

THE COURT: All right. I noted your background. You worked for the education department. Were you a teacher?

JUROR NUMBER 186: I was.

THE COURT: What did you teach?

JUROR NUMBER 186: Elementary.

THE COURT: Elementary. Well, bless you. I was a teacher. I taught high school English for five years and I -- and I loved teaching.

JUROR NUMBER 186: I did it thirty-three.

THE COURT: Goodness. Well, five years, I don't even register on your radar.

Ms. Moore, yesterday as the bailiffs were cleaning up the jury room they -- of course, there's notepads that you-all have in there that you've been scribbling on, and on one of the notepads there were some notes that were written that they were concerned about and they've shared it with me and I've shared it with the lawyers, and we've term determined that the scribbling, such as it was, was done by Mr. Santoyo. He said he wrote it. It's nothing to be ashamed of in that regard. No wrong has been done, but there were some comments upon that that could have -- it could possibly impact the impartiality of everybody who's involved.

So the first thing I need to ask you, have you

331

seen this? Mr. Santoyo was writing it. I don't know whether you were sitting close to him in the jury room.

JUROR NUMBER 186: I was not and I did not see it.

THE COURT: Okay.

JUROR NUMBER 186: No.

THE COURT: Okay. Some of the other jurors did see the note. I'm not sure that they knew what it said, but they did see the note, which means that there could have been some discussions away from where you were involving the content of the note itself. Could you tell me if you heard anybody else discussing any -- this note or any other note or any other aspects of the trial of the case, including any opinions that anyone might have about the outcome of the case?

JUROR NUMBER 186: No, I heard nothing, nothing inappropriate, and I heard nothing about a note.

THE COURT: Okay. Thank you, ma'am. And I appreciate that and I'm happy it has not gone beyond where it started and so you've given me the information that I need.

I'm gonna send you downstairs to another jury room where all the other people that we've been taking out of your jury room and they haven't been coming back in and so now you folks who were still in that jury room who were going well, I wonder what happened to those other

332

folks, they take them out of here and we never see them again, well, you'll find out right now it's downstairs. We're just keeping you-all apart while we're going through this process. And please don't discuss any of this stuff. It's a nonissue and so there's no need to try to make something out of it or wonder about it. You've told me all I needed to know.

JUROR NUMBER 186: Okay.

THE COURT: Thank you, ma'am.

(Whereupon, Juror Number 186 was excused from the courtroom.)

THE COURT: All right. Once again, Ms. Moore's comments speak for themselves.

THE COURT: Juror Number 209, Mr. Proffitt -- or Ms. Proffitt.

(Whereupon, Juror Number 209 enters the courtroom.)

THE COURT: Good morning, Ms. Proffitt.

JUROR NUMBER 209: Good morning.

THE COURT: Ms. Proffitt, I remind you that you're still under oath as you were administered the oath on Monday before we began this process.

Let me get right to what we're here about. Yesterday as the bailiffs were cleaning out the jury room after you-all left for the day, they were going through the notepads, the scribbling pads that you-all

333

have in there to write on, and one of the notepads had some scribbling on it that caused them a measure of concern, and so they shared it with me and I've shared it with the lawyers, and we're just trying to find out if there's anything about this that causes any concern to the process.

The note, the scribbling, was written by Mr. Santoyo, who's a young Hispanic male who is on the jury, and he said yeah, he wrote it, and there's nothing wrong with that, there's no wrongdoing in that, but it just expressed some opinions that we need to make sure have not otherwise tainted the jury.

So I show you the note or at least a portion of the note right now that he has written to see if you know anything about it, if you've ever seen it or heard anything about this note?

JUROR NUMBER 209: (Shakes head.) No.

THE COURT: It doesn't mean anything to you?

JUROR NUMBER 209: No, sir.

THE COURT: All right. Some other folks on the jury who may have been sitting close to Mr. Santoyo have seen this and so I need to know if you heard anybody else talking about this note or making any comments about the trial itself or any opinions about the trial that may have been expressed in this note itself.

334

JUROR NUMBER 209: No, sir.

THE COURT: So is it fair for me to say that as far as you're concerned the note is a nonissue?

JUROR NUMBER 209: Yes, sir.

THE COURT: Would it have any impact on your ability to be fair and impartial as a juror in this trial?

JUROR NUMBER 209: No, sir.

THE COURT: Okay. Thank you, ma'am.

So you didn't see it and you don't know anything about it, haven't heard about it?

JUROR NUMBER 209: No, sir.

THE COURT: Okay. Thank you, ma'am.

Ms. Proffitt, I'm gonna send you down to another jury room. I just told Ms. Moore a moment ago that some of you may be concerned about the fact that we're calling people out of your jury room and you don't see them anymore and you might be wondering what happened to them. Well, we send you to another jury room so that we can keep you-all separate while we're trying to discuss this with everybody.

Please don't talk about this issue. You don't know anything about. There's no good that can come out of a conversation when nobody knows anything about the conversation, okay?

JUROR NUMBER 209: Right.

335

THE COURT: Thank you, Ms. Proffitt.

JUROR NUMBER 209: Yes, sir.

THE COURT: Thank you. You're free to go.

(Whereupon, Juror Number 209 was excused from the courtroom.)

THE COURT: Juror Number 53. Mr. Davis.

(Whereupon, Juror Number 53 enters the courtroom.)

THE COURT: Mr. Davis, have a seat here, please, sir.

Good morning.

JUROR NUMBER 53: Good morning, Your Honor.

THE COURT: Mr. Davis, I remind you and the other jurors that the oath that you took on Monday before we started still applies to any questions and answers we share in this process.

And let me get right to the heart of the matter. Yesterday the bailiffs, in cleaning out the jury room after you-all left for the day, in going through the scribbling notepads that you have to scribble on, which is fine, that's what they're there for, saw some scribbling on one of the notepads that caused some concern, and so we've been inquiring with everybody else now and have got to your name on the list to determine if you know anything about the note or if it has any impact on your continued ability to be fair and

336

impartial.

The note was written by Mr. Santoyo. He -- he said that he wrote it --

JUROR NUMBER 53: Yes, sir.

THE COURT: -- and he acknowledged it, and there's no wrongdoing in connection to that. He hasn't committed any wrong or any violation in writing his notes with his thoughts on it.

My concern, first of all, I wanted to know if you had seen the note or if you had heard Mr. Santoyo talking about the note or its comments.

First of all, have you seen the note or do you have any knowledge about the note? And here's -- here's a part of it.

JUROR NUMBER 53: Yes, Your Honor. I was sitting next to the gentleman and I saw him doodling and then I did notice that he had written some words on there as well.

Your second part of the question I think, Your Honor, was that does it have any impact on me as --

THE COURT: Yeah, let me inquire, first of all, a little bit deeper into the first part and then we'll get to the second part.

JUROR NUMBER 53: Yes, sir.

THE COURT: You saw -- and whether you paid any

337

attention to it or not, I'm not sure, but it did express his opinion as to the outcome of this case. Did you see what his opinion was in that regard?

JUROR NUMBER 53: I did.

THE COURT: Okay. And did he discuss that with you or with anybody else?

JUROR NUMBER 53: No, sir.

THE COURT: Okay. Did his opinion in any way impact your ability to be fair and impartial as a juror in the trial of this case?

JUROR NUMBER 53: Not at all.

THE COURT: Okay. Could you continue to be open-minded about this without regard to an opinion that you saw that he had expressed, open-minded about this, and continue to decide this case based on the evidence that you would hear in this courtroom without regard to a scribbled opinion of a fellow juror?

JUROR NUMBER 53: Without a doubt. Yes, Your Honor.

THE COURT: And you'll continue to do that?

JUROR NUMBER 53: I will.

THE COURT: All right. Thank you.

Have you discussed the note or his opinion with anybody else or did you hear Mr. Santoyo discuss the note or his opinion with anyone else?

JUROR NUMBER 53: I did not.

338

THE COURT: All right. Was anybody else that you might know of close enough to you and to Mr. Santoyo to see the same note that you saw?

JUROR NUMBER 53: I cannot -- it doesn't appear that that was the case. I don't think anybody else paid attention to it. I just happened to be standing very close to where I could see the scribbling.

THE COURT: One of the other jurors said that he had seen it, but that it was not -- I'm not sure that he read it or that it had any impact on him, and that's the only concern that we have, of course.

JUROR NUMBER 53: Sure.

THE COURT: As I say, there's no wrongdoing in this as long as he didn't openly share it and start talking about the case among the jurors, which would be wrong, but since he has not done that and since this appears to be his own opinion that he has expressed to himself and not to anybody else, there's nothing that -- any wrong that he has committed in that regard. We have, of course, excused him from any further involvement in the trial of this case. That will be obvious when you come back into the jury room if he's not here, but you've answered my question.

The second part, that what he has expressed would have no bearing on your ability to continue to be fair

339

and impartial about this and you're not going to be swayed by what you read on it; is that fair to say?

JUROR NUMBER 53: Yes, sir.

THE COURT: All right. We're gonna send you downstairs to another jury room where all of the other folks who've been coming in here have been sent. They haven't been coming back into that jury room and I can tell you we have not sent them off somewhere into some nether land. They're just downstairs in another jury room.

Please don't discuss these comments with anybody else and since you know more about this note than most of the other folks do, don't share that with anybody, okay?

JUROR NUMBER 53: Yes, sir. I understand.

THE COURT: Thank you, Mr. Davis.

JUROR NUMBER 53: Thank you.

(Whereupon, Juror Number 53 was excused from the courtroom.)

THE COURT: All right. What says the State now in regard to Mr. Davis?

MR. SMITH: We have no concerns of Mr. Davis, Your Honor. He has indicated that he saw the note and that he did see what was written on it; however, he's indicated there's been no discussion between himself

340

and Mr. Santoyo, there's been no discussion amongst the jury as a whole. He indicates that -- under oath he's able to remain fair and impartial. We have no concerns.

THE COURT: All right.

And what says the defense?

MR. WILLIAMS: Your Honor, I have a somewhat different attitude. I think -- I think seeing the note, knowing what the words are on the sheet, constitutes a discussion. I don't know that one has to have a discussion verbally. I think one can have a discussion written. Whether it -- so in true terms of discussion prior to -- prior to it being rendered to the jury there was some discussion which was carried out within the jury room prior to the close of all the testimony by his reading or seeing the opinion of another juror and it may -- and it may affect how he views things in the past and/or in the future.

THE COURT: All right. The case is Church of Holy Cross versus Terminix Exterminating Company. The Supreme Court in that case held that the question is whether the misconduct of a juror taints the process itself or renders it unfair and deprives both sides of a fair and impartial juror.

Holy Cross is a case that we discussed in chambers. It was a post-verdict case. The misconduct was revealed

341

after -- after the trial was over when there was no opportunity to correct by removing anybody or by curative instructions or anything else of that sort, but the holding was in that case does the admitted misconduct of a juror who had taken part in the deliberations, and the misconduct of the juror and the bias of the juror was on the prevailing side in that particular case, which meant that in that particular case the -- the church, the losing party, didn't have twelve impartial jurors, it had eleven impartial jurors.

In this particular case, knowing of the conduct, and at this point in time I don't necessarily call it misconduct because it is his opinion, which he has not shared with anybody else and he's entitled to his opinion in spite of the fact that they're asked not to reach their opinion until they've heard everything, we're not delusional about how closely those instructions are followed, but in any event his -- his opinion that he held if we -- if we consider that to be misconduct has up until this point not revealed that it has any impact on the decisionmaking process.

Mr. Santoyo's a 23-year-old young man. I'm not sure what he does for a living. The jury information doesn't reflect that. Mr. Davis, who I selected as the foreperson of the jury because of demeanor, his attitude

342

and his approach to the jury service, is 58 years old. He's retired from service of some nature. The likelihood that this 58-year-old person retired from a lifetime of, I take it, meaningful service is going to be swayed by the scribbled opinion of a 23-year-old that is not going to be involved in the discussions of this case from this point on, I find they're so remote as not to require that he be excused.

I note the exception in that regard. I'll overrule that and allow Mr. Davis to continue to serve as a juror in this case.

All right. Let's move on now to Ms. Susan Queen, Juror Number 211.

(Whereupon, Juror Number 211 enters the courtroom.)

THE COURT: Ms. Queen.

JUROR NUMBER 211: Yes.

THE COURT: Have a seat on the witness stand.

JUROR NUMBER 211: On the witness stand?

THE COURT: There you go. Thank you. That's just so you're close and I won't have to shout at you and you won't have to shout at me.

Ms. Queen, let me cut right to the matter at hand. The bailiffs yesterday in cleaning up the jury room and going through the notepads, the scribbling pads, that you-all have back there to write whatever you want to

343

write on it, saw some scribbling on one of the notes that caused them some measure of concern or at least that they thought that we needed to inquire about a little bit further, and so that's what I've been doing with the other jurors, and now, including you.

The notepad that caused the concern was Mr. Santoyo's, a young Hispanic male, who's on the jury, and he's the one who wrote it and he said he wrote it. And he didn't do anything wrong in that regard. There's no misconduct in that regard. He has a right to express his opinion and to scribble on the notes like everybody else does as long as he doesn't share any opinions with anybody else because we've asked you not to do that, of course, during the course of the trial.

So the first thing I need to know is knowing that Mr. Santoyo is the one who wrote the note, I show it to you to see if you remember seeing it.

JUROR NUMBER 211: He was doodling. I just -- now we were at opposite tables -- opposite sides of the table. I just noticed him doodling.

THE COURT: I see. So he was across from you?

JUROR NUMBER 211: Right.

THE COURT: Okay. So do you have any idea what it says?

JUROR NUMBER 211: No.

344

THE COURT: Okay. Did you hear him discussing the contents of the note with anybody else?

JUROR NUMBER 211: No.

THE COURT: And -- and you yourself didn't discuss it, I take it, because you didn't know anything what about it says?

JUROR NUMBER 211: No, sir.

THE COURT: All right. What we're trying to figure out -- as I said, as long as he doesn't share his opinion about this with anybody else, then there's no wrongdoing and the process has not been impeded by whatever he was doing on the notepad itself.

So just to reaffirm, and I remind you you're still under oath, I tell everybody that, I don't mean to be condescending when I remind everybody of that, but you don't recall him discussing this with anybody else or anybody else who may have seen this note while sitting by him over there --

JUROR NUMBER 211: No, sir.

THE COURT: -- or discussing it with him?

JUROR NUMBER 211: No, sir.

THE COURT: All right. Thank you, ma'am.

Would all of this discussion that we've had or whatever you saw in the jury room have any impact on your ability to continue to be fair and impartial?

345

JUROR NUMBER 211: No, not at all.

THE COURT: Thank you, ma'am.

I'm gonna send you downstairs to the other jury room where we've been sending everybody else since we've been bringing them out and you'll join the rest of that crowd so that you'll know that they're fine, we haven't done anything with them and they're gathering there, and we'll get you back shortly to continue the trial of this case.

Please don't discuss these discussions with anyone, okay?

JUROR NUMBER 211: Thank you, sir.

THE COURT: Thank you, ma'am.

(Whereupon, Juror Number 211 was excused from the courtroom.)

THE COURT: All right. She says she saw it across the table, so I'll be glad to hear any comments regarding Ms. Queen's limited involvement in this from the State or the defendant.

The State first.

MR. SMITH: She has no idea what was written on the paper, Your Honor. We have no concerns.

THE COURT: Okay.

All right. Mr. Williams?

MR. WILLIAMS: Your Honor, obviously what I'm

346

doing is keeping a list of all the jurors who admit that they have seen the note, but independent of that one particular person I'm not sure as a single person that I can say much about whether or not she did or didn't because she said that she didn't see the note, so I can't say much about her one way or the other.

THE COURT: All right. Thank you.

Juror Number 65, Mr. Marcus East.

(Whereupon, Juror Number 65 enters the courtroom.)

THE COURT: Mr. East?

JUROR NUMBER 65: Yes.

THE COURT: Good morning.

JUROR NUMBER 65: Good morning.

THE COURT: Mr. East, I remind you that you're still under oath, the same oath that you took before we started the trial or before you started your service. I try to tell everybody that before I inquire further.

Let me just tell you what we're here about. The bailiffs yesterday in cleaning out the jury room after everybody left, going through the notepads that you-all have in there to take notes, noticed some scribbling on one of the notes that caused them some concern and so they shared it with us, I've shared it with the lawyers, and that's what we've been asking all the other folks about.

347

The scribbling was on the pad that Mr. Santoyo was taking. It was on his notepad. I show you a part of it right now. As you can see, it's rather innocuous, just his scribblings, and that's what the notepad was for.

I tell you that he has not committed any misconduct by doing what he was doing in this regard, but depending upon how much of this he shared with anybody else, it could create some issues, and that's what we're trying to find out now.

So the first thing I need to know is have you seen this note before knowing that Mr. Santoyo was the one who wrote it and acknowledged that he wrote it? And I don't know whether you were sitting close to him in the jury room or not. Do you know anything about it?

JUROR NUMBER 65: No, sir.

THE COURT: Haven't seen it?

JUROR NUMBER 65: No, sir.

THE COURT: Okay. Some others who were in the jury room saw the note. They didn't know anything else about it other than they saw at that, so that could lead to the conclusion that maybe somebody else who saw it may have been discussing it among themselves.

So did you hear anybody else talking about this note with anybody?

JUROR NUMBER 65: No, because I don't even know who

348

that person is.

THE COURT: Mr. Santoyo? I'll tell you that he's a young Hispanic male who was -- I can't remember where he was sitting. Anyway, but if you don't -- it doesn't matter really if you didn't see him or anybody else writing the note or know anything about the note, and that's what you're telling me, right?

JUROR NUMBER 65: Right, sir.

THE COURT: Okay. So can I gather from that -- or you can tell me. With what little bit you know about the note and our discussions here today in this limited context, would that have any impact on your ability to continue to be fair and impartial as a juror in this trial?

JUROR NUMBER 65: No, sir, it don't.

THE COURT: Could you set aside all that stuff and decide this case based on what you would hear in this courtroom from that witness stand right there, in other words, and not pay any attention to any discussion about a note that somebody might have found?

JUROR NUMBER 65: Yes, sir.

THE COURT: And you will do that?

JUROR NUMBER 65: Yes, sir.

THE COURT: Thank you so much, Mr. East. They're gonna take you down to another jury room where everybody

349

else has been gathering. Don't talk about this with any of the others. It's a nonissue and so there's no point in trying to conjecture on that.

JUROR NUMBER 65: Yes, sir.

THE COURT: Thank you, Mr. East.

JUROR NUMBER 65: Thank you.

(Whereupon, Juror Number 65 was excused from the courtroom.)

THE COURT: Juror Number 254, Mr. Stott. S-T-O-T-T.

(Whereupon, Juror Number 254 enters the courtroom.)

THE COURT: Mr. Stott, good morning.

JUROR NUMBER 254: Good morning.

THE COURT: Let me remind you as I've been reminding all the others that you're still under oath. The oath that you took when you started service on Monday still applies.

What we're here about is that yesterday the bailiffs in cleaning out the jury room and going through the notepads that were left in there, the scribbling notepads, discovered some scribbling on one of those notepads that caused them some concern that they thought that we needed to know about just to inquire further to see if it has any impact on the impartiality and the fairness of the trial.

I'll tell you that the scribbling on the notepad,

350

it was done by Mr. Reyes Bryan Santoyo. It was his notepad and he acknowledged that he wrote it, and there's nothing wrong, there's no misconduct in that, except there's some opinions expressed on that that if he shared them with anybody else, then that would be a problem up until now. That's what we're inquiring about.

I'll show you a portion of the notepad itself right here so that you can, first of all, say -- tell me if you know anything about this, if you have seen this note.

JUROR NUMBER 254: No.

THE COURT: Okay. Some others in the jury room have seen this, although whether they -- what they know about it, what they read about it is limited, but that could have led to some discussions among other people, not you, but you could have been perhaps hearing somebody else talk about it even though you have no independent knowledge of it.

So even though you haven't seen it and don't know what it says, did you hear anybody else talking about this note, the notepad, or any opinions that might be expressed?

JUROR NUMBER 254: No.

THE COURT: Okay. So from that I gather, that whatever's on the note, whatever opinion is expressed

351

on it, is not gonna have any bearing on your ability to be fair and impartial; is that fair to say?

JUROR NUMBER 254: That is fair to say.

THE COURT: All right. So you'll -- can you set aside all of these discussions and this questioning about all of this and decide this case based on what you would hear in court without regard to this note issue?

JUROR NUMBER 254: Yes, I could.

THE COURT: And would you do that, please, sir?

JUROR NUMBER 254: Yes, sir.

THE COURT: Thank you, Mr. Stott.

I'm gonna send you now to the other jury room and get you all back in here shortly to start the morning, okay?

JUROR NUMBER 254: Thank you.

THE COURT: Thank you.

(Whereupon, Juror Number 254 was excused from the courtroom.)

THE COURT: Juror Number 137, Mr. Jones.

(Whereupon, Juror Number 137 enters the courtroom.)

THE COURT: Mr. Jones, if you'll have a seat right there, please, sir.

Mr. Jones, I remind you and everybody else that you're still under oath from the oath that you took before you started as a juror.

352

Let me cut right to the chase. The bailiffs yesterday in cleaning out the jury room found some scribblings on some of the notepads that you-all have been given to scribble on, that's what they're there for, and there's some comments on one of these notes that caused them some concern, they shared it with us, I've shared it with the lawyers, and that's what we've been talking with everybody else about for purposes of trying to find out if the scribblings have any impact on anybody's impartiality and fairness as jurors in the trial of this case.

The scribbling was done by Mr. Santoyo, the young Hispanic male, who had his notepad and he scribbled, and he said this is what he did, he did it himself. There's no misconduct in connection with that. He expressed some any opinions on this, but as long as he didn't share those opinions with anybody, he's entitled to those opinions. He shouldn't share them with anybody else and we understand that he says he didn't share them with anybody else, so I'm trying to find out if anybody else saw this and know what is on it and if they would be impacted by the contents of this note.

So I show you, first of all, a portion of the note itself so that you can look at it, and I'll tell you Mr. Santoyo is the one who wrote. He said he wrote it.

353

I need to know if you have seen this yourself and if you have any idea of what it contains and what's on it.

JUROR NUMBER 137: No. No, sir. I didn't see it.

THE COURT: Okay. You haven't seen it.

Some other folks in the jury room saw it because they were sitting close enough to him to see it, so it's possible that somebody else could have seen it and talked about it. I need to know if you had heard anybody else talking about the contents of this note here in my hands?

JUROR NUMBER 137: No.

THE COURT: Got any idea what it's all about?

JUROR NUMBER 137: No, sir.

THE COURT: That's good. So I take it that whatever's on this note is not gonna affect your ability to be fair and impartial as a juror in this trial?

JUROR NUMBER 137: No, sir.

THE COURT: You can continue to decide this case based on what you would hear in the court without regard to whatever this note might contain?

JUROR NUMBER 137: Yes, sir.

THE COURT: And you'll do that, please, Mr. Jones?

JUROR NUMBER 137: Yes, sir.

THE COURT: Thank you, sir.

I'm gonna send you down to the other jury room

354

where everybody else has been gathering and we'll get you back in here shortly to start the trial of this case, okay?

JUROR NUMBER 137: Thank you.

THE COURT: Don't share these discussions with anybody else, please, sir. Thank you.

(Whereupon, Juror Number 137 was excused from the courtroom.)

THE COURT: Juror Number 20, Mr. Billingsly.

(Whereupon, Juror Number 20 enters the courtroom.)

THE COURT: Mr. Billingsly, have a seat right there, please, sir. I remind you that you're still under oath.

JUROR NUMBER 20: Yes, sir.

THE COURT: I guess you were wondering. You're the last one left in there, right?

JUROR NUMBER 20: The sole survivor.

THE COURT: Well, let me tell you that the rest of them are alive and well, so you'll join them shortly.

Here's what we've been doing, Mr. Billingsly. The bailiffs yesterday in cleaning out the jury room after you-all had left and going through the scribbling notepads that you have in there discovered some scribblings on one of those notepads that caused them some concern. They shared it with us, I shared it with the lawyers, and we're trying to discover whether or not

355

that has any impact on the decisionmaking process of the jurors in the trial of this case, and so I've been inquiring of each of you to see whether you have any knowledge about the note and whether it has any impact, if you have knowledge about it, that would impact your decisionmaking process.

I tell you that the note itself that's in question was Mr. Santoyo's note. The young Hispanic male, 23. He was the one who did it and he said yeah, it was his note, he did it, and there's nothing wrong with that. There's no misconduct. He's not in trouble as a result of that. It expresses his opinions, however, and if he shared his opinions with somebody, that could be an issue, but he didn't share those with anybody according to what he's told us and we just need to make sure that if anybody else saw the note or saw what was written on it that we need to know if that would have any bearing on their ability to serve fairly and impartially.

So, first of all, I'll show you the note itself. Or at least a part of the note.

JUROR NUMBER 20: I saw the other side yesterday.

THE COURT: You saw it? You saw it when he writing it?

JUROR NUMBER 20: When he was scribbling, yes.

THE COURT: Yeah, that's right. Did you see what

356

his opinion was?

JUROR NUMBER 20: I saw what he wrote and it has no bearing or any opinion on me -- or from me at all.

THE COURT: Okay.

All right. And we skipped to the second part of the question, and that is knowing that this note expresses his opinion based on what little bit he knew about the case I guess at the time he wrote it, would his opinion have any bearing on your opinion about the outcome of this case?

JUROR NUMBER 20: No.

THE COURT: Would you be able to set aside, disregard, what you know about his opinion being scribbled on this notepad --

JUROR NUMBER 20: Yes.

THE COURT: -- and decide this case based on what you would hear in the courtroom and in making up your own mind about it without regard to anything that he may have said about it?

JUROR NUMBER 20: Yes.

THE COURT: Would you be able to set aside then his note and decide this case based on your understanding of the evidence and the law?

JUROR NUMBER 20: Yes, sir.

THE COURT: And would you do that, please, sir?

357

JUROR NUMBER 20: Yes, sir.

THE COURT: Thank you, sir.

And I may have asked this question already, but did you hear anybody else discussing this note among themselves?

JUROR NUMBER 20: No.

THE COURT: Okay.

All right. We're gonna send you down and let you gather with the balance of the jury at this time so you will know they've not been mistreated. They have been well taken care of. I'll ask you not to discuss this with anybody, of course, while you're -- until the trial is over, okay?

Thank you, sir.

JUROR NUMBER 20: Thank you.

(Whereupon, Juror Number 20 was excused from the courtroom.)

THE COURT: He saw it. Before I could even ask him the question, he had told me that it would not have any bearing on his ability to be fair and impartial and make a decision in this regard. He is -- he is one of two alternates. Either Mr. Jones, Juror Number 137, or Mr. Billingsly, Number 20, is now going to become a principal alternate -- a principal juror I should say.

Mr. Billingsly, according to this he's a court

358

reporter, self-employed -- or his wife is. Anyway, he's 59 years old. I share that with you. You already know because, of course, you-all have got this information.

Now while we're talking about Mr. Billingsly since he is an alternate, I'll just go ahead and -- and discuss the process. There is a different method of replacing a principal juror in the Common Pleas Court and the Court of General Sessions. Replacing a juror in the Common Pleas Court is governed by rule and it says that the first alternate selected will be the first alternate who takes the place. In the Court of General Sessions, the selection of a replacement juror to a principal juror who has been dismissed is done by statute and it's done by casting of lots or drawing of names, and so what we would do in this particular case is put these two numbers in a hat and draw -- and draw them out. Unless you-all agree. Unless you-all agree, given the circumstances, that in this particular case you choose to follow the Common Pleas method, and that is select Mr. Jones, Number 137, as the alternate to replace the principal juror.

What says the State?

MR. SMITH: We would agree to seat Mr. Jones as the replacement principal.

THE COURT: What says the defense?

MR. WILLIAMS: Your Honor, I'm old school. I go

359

by whatever the rules are. The luck of the draw, I guess, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: I would like the opportunity to embrace a further argument since we've now completed with the jurors.

THE COURT: Well, I haven't talked with the bailiffs yet.

MR. WILLIAMS: Okay. You're right. I'm sorry.

THE COURT: That's okay. I remembered that. I wasn't gonna skip that point. I just wanted to deal with the alternate stuff while we still had it fresh in our mind.

MR. WILLIAMS: Everything in life is a matter of luck, I guess, Your Honor.

THE COURT: All right.

Mr. Scott, let me start with you. If you'll come around and sit in this witness chair and let me -- Madam Clerk, if you want to swear Mr. Scott. And while you've got him under oath, you can ask him anything you want to ask him.

(Whereupon, Gerry Scott was duly sworn by the Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last

for the record.

THE WITNESS: Gerry, G-E-R-R-Y. Scott, S-C-O-T-T.

GERRY SCOTT,

having been duly sworn, testified as follows:

EXAMINATION (In-Camera)

BY THE COURT:

Q. Okay. Mr. Scott, you're one of the bailiffs in the courtroom in the trial of this case and was it you or Mr. Paris who discovered the note?

A. It was Mr. Paris.

Q. Okay. Do you know where it was?

A. It -- I do.

Q. Did you see it?

A. I did.

Q. Okay. Were you helping him in cleaning up the other notepads that were in there?

A. I was.

Q. All right. Were there any other scribblings on any of the other notes of any significance that you-all saw as you were going through that?

A. They were all clean with the exception of that one pad.

Q. It was the only one?

A. (Nods head.)

THE COURT: Okay. Thank you, sir.

Any questions from the State?

MR. SMITH: No, Your Honor.

THE COURT: From the defense?

MR. WILLIAMS: One question.

EXAMINATION (In-Camera)

BY MR. WILLIAMS:

Q. And obviously those were the pads that were left in the jury room that you were able to examine. You weren't able to examine pads that were not in the jury room, were you?

A. No.

MR. WILLIAMS: That's all.

THE COURT: Thank you, Mr. Scott. You can step down.

(Witness excused.)

THE COURT: Mr. Paris, if you'll take the stand, please, sir, and be sworn.

MR. PARIS: Yes, sir.

(Whereupon, Otis Lee Paris was duly sworn by the Clerk of Court.)

THE CLERK: Thank you. Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: Okay. Otis Lee Paris, Junior. P-A-R-I-S.

OTIS LEE PARIS,

having been duly sworn, testified as follows:

EXAMINATION (In-Camera)

BY THE COURT:

Q. Mr. Paris, you are the other bailiff. You've been sort of in charge of the jury during the trial of this case; is that right?

A. That's right, Your Honor.

Q. And you were the one who actually collected the note?

A. I did.

Q. Could you describe how that was done and where it was done?

A. As we were getting ready for the next day, I was collecting the -- the tablets and I saw that -- I saw the tablet on the left-hand side of the table, so I didn't immediately see it, then as I walked around that's when I noticed the note.

Q. Okay. Were there any other tablets left on the table that did not have scribblings on them?

A. No, sir.

Q. Okay. So this was the sole tablet on the table that had scribbling on it?

A. That is correct.

Q. And is this -- we're talking about Court's 8?

A. That is correct.

Q. Okay. All right. Okay. No other scribblings?
A. No other scribblings.
THE COURT: All right. Thank you, Mr. Paris.
THE WITNESS: Yes, sir.
THE COURT: Any questions from the State?
EXAMINATION (In-Camera)
BY MS. OPPENHEIMER:
Q. Mr. Paris, you couldn't see it from afar, from across the room, correct?
A. I could not tell, no.
Q. All right. And you don't have any information that any of these jurors have discussed any opinion, whether it be an opinion or not?
A. None whatsoever.
Q. And so as far as you know, everything else has been proper? While the judge has said this is not misconduct, but you have no information that there was anything improper going on?
A. None whatsoever.
MS. OPPENHEIMER: Thank you.
THE COURT: All right. Mr. Williams?
MR. WILLIAMS: No questions, Your Honor.
THE COURT: Thank you, Mr. Paris. You may step down.
(Witness excused.)

364

THE COURT: Mr. Scott, Mr. Paris, gentlemen, you can thank us for not contacting your significant others while we had you under oath to find out if they had any questions they wanted us to put to you, so we have spared you all that.

All right. Now the inquiries are complete from everybody who was supposed to know anything about it, so, Mr. Williams, now I'll be glad for to you add whatever you want to add to the mix.

MR. WILLIAMS: Thank you, Your Honor.

And by way of summary, I'll just give the juror numbers. 165 saw it. 29 saw a couple of other jurors scribbling notes. And I use the word more than one, a couple. 226 was the person who was excused -- the juror who was excused who wrote the note.

THE COURT: Right.

MR. WILLIAMS: 209 does not remember the note. I cite significance in that in that every other juror was either like yes or no. It's kind of like the guy stopped on the side of the road, yes or no, but he said he does not remember. 211 saw the notes. 53, of some significance, saw the opinion. Number 20 saw what he wrote.

So, I guess, by going through the numbers, you have one who acknowledged that he had an opinion before the

365

jury deliberated. You saw at least two jurors who actually saw the opinion, acknowledged they saw the opinion, and -- and I still go back to the note itself is -- constitutes discussion. I don't know that there is -- I don't know that we can say that merely writing down the note is not transmitting ideas. I mean, that's what stop signs are all about. That's what instructions are all about. It's a discussion.

THE COURT: Right.

MR. WILLIAMS: I think that this infringes upon the possibility of my client receiving a total -- a totally fair and impartial jury. And I realize that we can only give him the best we can give him, but when we have the opportunity to do it again and do it right, I see no -- I would ask that he be given that chance.

THE COURT: I understand.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Thank you, Mr. Williams.

I renew my earlier rulings and discussions at some point in time during this voir dire and find that even if this rises to the level of misconduct, and I will accept for the purposes of argument that it does, that it -- that it is discussion for those purposes, that under these circumstances the fact that we've inquired of all of the other jurors and whatever the discussion

366

was they were not impacted by it. He will not be present from this point on in the trial to share these opinions with anyone else and so I think that we've done -- certainly we've done all that we can do under these circumstances, but I think it's more than just -- it's not like it's just close enough for government work. It is thorough enough in my view to satisfy the process itself and to assure that the process goes forward untainted given the affirmations of each these jurors.

The question always, of course, is not whether even a prospective juror has reached an opinion himself in the trial of the case, the question is whether or not that juror could set aside an opinion previously held by that juror and decide the case based on the evidence itself and not on that preconceived opinion.

So we go a step beyond that and we don't have preconceived opinions or ideas among any of the jurors at this point, so I think that the process, although not perfect, granted, Mr. Williams, I think it's as close to perfect as we can have any process to assure a fair and impartial juror in the trial of the case. I respectfully note your -- your exceptions in that regard.

So now the next matter is to put Juror Number 137 and Juror Number -- a piece of paper with Number 137 and Number 20 in a -- in a hat somewhere or a cup, a

367

Styrofoam cup, hopefully one that does not have any coffee in it, and we'll let the clerk draw the number to determine whether or not 137 or 20 will be the principal juror.

As I told the jury yesterday when we were selecting them, this is my wheelhouse here. Give them a scrap of paper and write their number down and throw it in a box somewhere and snatching it out and let that computer just lie idle in that other room unimpeded.

All right. Shake them up real good.

All right. Thank you.

In the absence of a blind person or a 6-year-old child, Ms. Mariah, you will have to do.

THE CLERK: Thanks.

Do I just tell you which number it is?

THE COURT: You can tell me what number.

THE CLERK: 20.

THE COURT: Number 20, Mr. Billingsly, will be the principal juror and you can give that Number 20 to the court reporter and mark it as another court's exhibit right behind the note itself.

Somebody one of these days if they have to look at this is gonna say what does all this trash on this record reflect.

(Discussion off the record.)

368

THE COURT: All right. It's been put on the record, Mr. Williams, and you've built a record of it, that this matter will be thoroughly examined by an appellate court if the need should arise, okay?

All right, folks. We'll need a break. We were prepared to go at 10:30 and knock this thing right out, but we'll take about ten more minutes to give us a chance and let's try to start at -- is that enough time? Twenty after the hour? Does anybody need twenty minutes? 12:30?

MR. WILLIAMS: Ten minutes is good.

THE COURT: Is ten minutes enough?

MR. SMITH: I think that should be enough, Your Honor.

THE COURT: Okay. Ten minutes, folks.

(Court's Exhibit Number 9 was marked for identification.)

(Recess taken at 12:14 PM.)

(Back on the record at 12:32 PM.)

BAILIFF: Court is back in session. Please have a seat.

THE COURT: Thank you.

Thank you, folks. You can be seated.

Folks, I note that the lunch hour is almost upon us, but given the fact that we've been delayed I didn't

369

want to delay the start of this any longer than I could. We'll get in a half hour or forty-five minutes or something like that and at least get a start on this and -- and then go from there.

Is the State ready for us to proceed?

MR. SMITH: We're ready, Your Honor.

THE COURT: Good.

It the defense ready?

MR. WILLIAMS: The defense is ready, Your Honor.

THE COURT: Thank you.

Bring us the jury, please.

(Whereupon, the jury enters the courtroom at 12:35 PM.)

THE COURT: Thank you. Folks, I'm aware of the fact that we are starting two hours later than we had planned on starting this morning and the lunch hour is almost on us, but I felt, as I told the lawyers, we need at least to get started on the morning's work rather than delay the beginning any longer. Obviously I don't need to explain the reasons for the delay as you were all a part of the process that we've been working through, and I hope that even though we've all been frustrated by the starting time being postponed that the importance of assuring the fairness of any trial is more important than the schedule and the timing of it, and that's what we've

370

been working on, as you know, all morning.

A couple of housekeeping matters. To begin with, Mr. Billingsly, you are now a principal juror. You are number -- you will take the place of the juror who's been excused.

Mr. Jones, you will continue as an alternate juror unless we need to move you into the principal's seat at some point in time in the future.

And one other matter. I had told you a day or so ago that I had not introduced the security folks to you, and they're an important part.

Mr. Young and Mr. Clevenger in the back, they are important parts of the process as well. We count on them and they're wonderful at maintaining order whenever that's necessary and normally their presence alone is enough to maintain order, and we appreciate what they do.

We'll continue now with the presentation of evidence and testimony in this case as the State calls its next witness.

Mr. Smith.

MR. SMITH: Thank you, Your Honor.

The State calls Sergeant Derek Applegate with the Lexington County Sheriff's Department.

THE COURT: Sergeant Applegate, come forward please and be sworn.

(Whereupon, Derek Applegate was duly sworn by the Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: My name's Derek Applegate. A-P-P-L-E-G-A-T-E.

DEREK APPLEGATE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Sergeant Applegate. How long have you been employed with our sheriff's department?

A. A few days shy of thirty-one years.

Q. And what specific unit or division are you with in the sheriff's department?

A. I'm currently the supervisor for the K-9 unit.

Q. And how long have you been there in that capacity?

A. Well, at the sheriff's department I was appointed the K-9 coordinator in 2002, which was an ancillary duty, but I was responsible for all the patrol and detection dogs. In 2006, the sheriff's department started a full-time unit.

Q. Could you estimate for me -- so one of your primary duties is to work with law enforcement dogs. What sort of purposes does the sheriff utilize dogs for?

A. So at Lexington County Sheriff's Office, we have dogs for certain tasks. We have dual purpose dogs, which are dogs that do two different tasks. We have single purpose dogs, which are trained to perform one task. Currently we have a single purpose bloodhound that's trained in only human tracking. We have a single purpose -- or a dual purpose German shorthaired pointer. He is trained in tracking and narcotics odor detection. We have a dual purpose EOD dog, which is an explosive detection dog. We have five dogs that are trained in patrol, narcotics and tracking.

Q. So let's focus in on the dogs used for narcotics detection. Can you estimate for me how many training exercises you've done with dogs for narcotics detection?

A. Tens of thousands.

Q. And have you ever performed free-air sniffs with those dogs?

A. I have performed free-air sniffs with my -- with dogs that I've worked, yes, sir.

Q. And can you estimate how many of those you've done in your career?

A. Thousands.

Q. Where were you certified as a K-9 handler?

A. So I started working my first dog on the street in 1995. I started working in training with police dogs in

1993. I've been certified through the National Narcotic Dog Detector Association. I've been certified through a company prior, which was CCTA, Cross Creek K-9 Training Academy. I've been certified through NLEKO, which is the National Law Enforcement K-9 Organization. I've been certified through South Carolina Police K-9 Association, and that's all the different groups I've been certified with.

Q. And briefly to follow on that, how -- how often are you certified? And what I mean by that is, is it a one-time certification, is it continuing? How often is that done?

A. So the industry standard is that you're certified prior to working the road or the street with your dog and then you recertify annually with your dog.

Q. As part of your job, Sergeant, are you involved in training these dogs for Lexington County?

A. Yes, sir, I am. Since 2002 to date I've been responsible for fifty-one different dog teams.

Q. Are you also involved in training their handlers?

A. Yes. Well, any time you're training with a dog, the K-9 team -- the K-9 team is the dog and the handler.

Q. So it's fair of me to say then that they're never separate in their training?

A. No, sir.

Q. Do you receive these dogs already trained? Do you train them from puppyhood? Where do you start there?
A. So typically at the sheriff's department we do buy our dogs already trained. So we pay the vendor to train the dogs and then we send our handlers to school and the handlers go to school for -- depending on what type of dog and the handler's previous experience, it could be two to twelve weeks. We have trained some dogs that weren't puppies, but they were young. In the field we call them green dogs and so we have trained dogs from being green, but predominately we train dogs that we purchase already trained.
Q. Can you tell us then what does the training for the dog and handler look like? What sort of -- what process are they put through?
A. At the handler's school or when they are back here at the sheriff's office working?
Q. Let's do both. Let's start with handler's school and then let's circle back to once they return.
A. Okay. Typically when an officer goes to the handler's school they get partnered with their dog and they do exercises. The trainer there teaches the handlers what to look for in the change of behaviors of the dog, what the dog does when it gets an odor, how to properly reward the dog and then how to work the dog in different

environments, whether it be a house or a motor vehicle or working packages or luggage.

So when the handlers come back, in my opinion two weeks to twelve weeks is not long enough to build that team's reliability. And I also look at it like somebody coming from the academy to the sheriff's department. You have to spend more time with them. So there we try to make more real world environments for the dog out of training, so we'll throw in masking odors, we'll throw in different odors for the dog other than narcotics, and then we also do a lot of searches where there are no narcotics.

Q. So tell us then in general why does law enforcement use dogs.

A. The primary reason we use dogs is as a locating tool. Yes, they can do other things for us, but just about everything we do with the dogs is to find something, whether it's narcotics odor, explosives odor, to find a human. They're using their noses.

Q. So let's expand that. What characteristics of a dog make them well suited as a location tool?

A. So most of the dogs that we use in law enforcement are your black Labs, your Belgian Malinois, your German Shepherds, German Shorthaired Pointers. Their receptor cells, the cells that are in there nose collecting odor,

they have 220 million of those. A bloodhound has 300 million. Humans have 600 million {sic} olfactory cells in their nose, so you can see that they right there collect a lot more scent. The other thing about the dog is 18 percent of their brain is geared towards odor recognition.

MR. YONGE: Your Honor, I apologize. Objection. I just -- I just think we may be a little ahead of ourselves. I'm not sure if he's gonna be qualified as an expert at some point because I feel like we've shifted into some opinion testimony.

THE COURT: Well, you're right. He hasn't been qualified yet to render an opinion. I think that's the purpose of where we're getting, but I think -- I tell you the statistics that he just gave or -- the number of olfactory cells and all that sort of stuff is probably not necessarily an opinion as much as it is a scientific fact in the industry I would imagine, but I'm not sure.

Perhaps if you could couch it that way. Are we talking about this witness's opinion, Mr. Smith? Are we talking about what --

MR. SMITH: We're talking about his knowledge in working with these dogs in general. And we -- Mr. Yonge is correct. We are trying to lay the foundation to move

377

towards expert qualifications, so I want to be able to flesh out his knowledge of these topics.

THE COURT: His knowledge and his training certainly.

MR. SMITH: Yes, sir.

THE COURT: All right. I'll allow you do that, to lay the foundation for later true opinion testimony. I take it there's a difference between the knowledge that you're seeking now and the opinion which he's going to render; is that right?

MR. SMITH: Yes, Your Honor.

THE COURT: All right.

BY MR. SMITH:

Q. Sergeant Applegate, also, real quick, can I ask -- I just want to ask you one point for clarification. You stated that human beings have up to -- up to how many smell receptors in our nose? I'm not sure what the exact term you used was.

A. Six million.

Q. Okay. So I just wanted to make sure and clarify because you had said 600 million a couple of minutes ago. I think it was simply a misstatement.

A. I thought I said six million, but humans have six million.

Q. Okay. Thank you.

MR. SMITH: I beg the Court's indulgence for a moment.

THE COURT: Okay.

BY MR. SMITH:

Q. Sergeant Applegate, have you ever been qualified as an expert in K-9 and odor detection dogs?

A. I've been qualified as an expert for police service dogs, yes.

THE COURT: As an expert in what, Sergeant?

THE WITNESS: Police service dogs.

THE COURT: Okay.

MR. SMITH: Your Honor, at this time we would offer Sergeant Applegate as an expert in police service dogs.

THE COURT: All right.

Mr. Yonge, voir dire.

MR. YONGE: No voir dire, Your Honor. No objection.

THE COURT: An expert in police service dogs. Is that it?

MR. SMITH: Yes, Your Honor.

THE COURT: All right.

Okay. So qualified. Thank you.

BY MR. SMITH:

Q. So now we're gonna get into more specifics. You spoke briefly about all the ways these dogs are trained along with their handlers. Can you tell us specifically

379

how these dogs are trained for narcotics detection?
A. So the foundation is pretty much the same, although some trainers do differently. A lot of times they introduce odor and then the dog is rewarded with a toy. Some trainers use food as a reward. Most trainers use a toy as a reward. Some trainers use the cocktail method where all the odors of the narcotics or whatever they're wanting the dog to search for that odor, they put it all together and then they pull out the individual odors. And then it's just repetition and the dogs start to remember. Dogs can remember odor. They have history in their brain for it and you just keep working from there.
Q. When these dogs are being trained for odor detection, you already stated that the handlers and the K-9's go through continuous training during the whole process, training, recertification. When this training is being performed, is it performed in the same fashion every time?
A. No. No, at the sheriff's department we train out in the community. So we set up different training scenarios based upon the needs of each individual dog and then it also depends on what kind of environments we have to work in. A lot of times when I conduct training we don't put any training aids out, so the dog has to search and there's no odor found.
Q. So what are some environmental factors that can affect

a dog during this odor detection process?
A. So there's a lot of factors that affect odor. Odor is just a mysterious thing. Wind affects odor. Humidity. Temperature. All those things affect how odor moves.
Q. So we heard testimony yesterday that Sergeant Atwood deployed his K-9 Parker around defendant's vehicle. At the conclusion of that sniff, Parker indicated at the front right bumper of the vehicle. The suspected narcotics were later located in the back passenger side floorboard of the vehicle. In your experience, is that unusual for a dog to indicate in a location away from where the narcotics are physically located?
A. No, because odor has to fill up whatever container it's in before it starts to seep out and you're not exactly sure where that odor is gonna start to seep out at. And wind also plays a portion into it because it's gonna blow that odor in the direction the wind's going.
Q. And, Sergeant Applegate, in your preparation for this trial, did you also have an opportunity to review yourself the footage of Parker's deployment?
A. Yes, sir.
Q. So before we -- I'm gonna let you review that video briefly, but I have a couple more questions I want to ask. When you deploy a K-9 for narcotics detection, what are you looking for?

381

A. You're looking for a distinct change of behavior in you're dog.
Q. And what is that? What is a change of behavior?
A. It can be -- every dog's different. A lot of times their mouth might close. Sometimes you can actually hear the popping of their nose. A sharp head turn, tail wagging, tail going straight. Every dog's different, but when they get into the odor that they recognize you will see a distinct change in behavior.
Q. And where do those changes in behavior come from?
A. From the dog. It's not taught.
Q. And what is a -- what is a final response?
A. A final response is the dog letting the handler know that he is where that odor is strongest.
Q. And where does a dog's final response -- or I believe it's also called an indication, where does that come from?
A. That is a trained behavior trained by the trainer and there's different final responses. Some dogs sit, some dogs lay down, some dogs go into a stare and just stare at where it's at. Some dogs scratch.
Q. All right. Sergeant, I'm gonna play for you a little bit of what's already been brought into evidence as State's Number 10.
(State's Exhibit Number 10 playing.)
Q. All right, Sergeant. I want to stop there for just

a second. We see in this video that Sergeant Atwood is tapping in various places on the vehicle. In your -- in your experience, what's the purpose of doing that?
A. So he is trying to get his dog in productive areas to sniff where odor could be coming out of productive areas.
Q. What do you mean by a productive area?
A. An area where you believe odor could come out from. If you notice, he tapped up on the toolbox, on the bed -- or in the back of the truck, so there's a place where odor could come out or a substance could be. I noticed he tapped on the door handles. Door handles are a very good area for odor to escape because you have the mechanics of the door handle having to go all the way through so there's nothing blocking, so that's a good place for odor to come out.
Q. So to say that, again, the dog is being -- you bring -- I guess you bring the dog's attention to areas. Why can't you just release the dog around the vehicle and say go sniff?
A. Some -- some can do that. I don't recommend it on the side of the Interstate.
MR. SMITH: Continue please, Kelly.
(State's Exhibit Number 10 playing.)
BY MR. SMITH:
Q. All right. So, Sergeant, you talked to us just a few

minutes ago about changes of behavior and final response or, you know, alerts, indications. Based on your review of this body cam, what did you see here?

A. So I saw the dog working. I saw him follow the handler guide the dog to where he wanted him to check. On the second pass when he was having the dog tap up high, the dog went up high, but then he went down low. You can see the dog's mouth close and then work on its own. You lose perspective and then you see the dog work inside that bumper well and then the dog sits.

Q. And we heard testimony, Sergeant Atwood testified Parker is a Malinois and shepherd mix. Is that one of the breeds that you stated as preferred for odor detection?

A. Yes, sir.

Q. Sergeant Applegate, during your preparation for this trial, did you have an opportunity to review Parker and Sergeant Atwood's training and certification records?

A. Yes, sir.

Q. In your expert opinion and based on that review, would you consider them a reliable K-9 team?

A. Yes, sir.

Q. And in your expert opinion, would you consider them to be adequately and properly certified?

A. Yes, sir.

MR. SMITH: I beg the Court's indulgence for a

moment.

THE COURT: Okay.

MR. SMITH: I don't have any further questions for you right now, Sergeant. Please answer defense's questions.

THE WITNESS: Yes, sir.

THE COURT: Mr. Yonge.

MR. YONGE: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. YONGE:

Q. Good afternoon, Sergeant Applegate.

A. How you doing?

Q. It's nice to meet you.

A. Nice to meet you.

Q. Did you -- so do you see Trooper Atwood sitting there?

A. Yes, sir.

Q. Did you train Sergeant Atwood?

A. No, sir.

Q. Okay. And did you have anything to do with the training of K-9 Parker?

A. No, sir.

Q. I think at one point you said the final response. Is that where the dog indicates on a specific area?

A. The final response is where the dog is notifying the handler that is where the odor is strongest for his senses.

385

Q. Okay. And I believe you mentioned, and correct me if I'm wrong, that it's the handler who trains the dog to do that, correct?
A. No, sir. It's the trainer or -- or the vendor, not the handler.
Q. I got you. So some human being trains the dog to perform that action?
A. Yes, sir.
Q. All right. Is it typical for the dog to have more than one final response?
A. I'm not understanding.
Q. So you listed off a few types of indicators or final responses, I think, which would be sit, lay down, pinpoint stare and scratching?
A. Yes, sir.
Q. All right. Would it be typical for a trained K-9 officer to both sit and do a pinpoint stare as a final indicator?
A. The dog could do that, yes, sir, if it -- if that's what it was trained to do.
Q. And could they do -- for example, could they be trained to do all of them and then the trainer just recognizes that in this instance sitting means it's the final response?
A. No, sir. You normally don't have the passive alert,

which is the sit, the lay down or the stare and the aggressive, which would be the scratch. You normally don't mix any of those up.

Q. So -- and just so I'm clear, the dog could be trained to sit, lay down and stare, but they wouldn't typically also be trained to scratch?

A. Well, no, you would stick with typically one final response.

Q. Okay. That's what I was trying to find out.

A. Okay. Sorry.

Q. And some dogs are trained to scratch at the -- as the indicator?

A. Yes, sir.

MR. YONGE: I believe that's all the questions I have for you. I appreciate it.

THE COURT: Redirect, Mr. Smith?

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Based on your review, Sergeant Applegate, do you have any question as to whether Parker sitting is his final indication?

A. Based on what I've seen, no, through the course of my time as a dog handler. I'm the current president of the South Carolina Police K-9 Association and I certify a lot of dogs that I'm not engaged in their training.

387

MR. SMITH: That's all I have for you, Sergeant Applegate.

MR. YONGE: Nothing else, Your Honor.

THE COURT: Thank you.

All right, Sergeant. You can step down. Thank you, sir.

(Witness excused.)

THE COURT: Ladies and gentlemen, the brevity of that witness has kind of got us back on schedule where we wanted to be at the lunch hour at 1:00.

I'm gonna ask you to be back in the jury room please at 2:15. That's an hour and fifteen minutes.

Does that give you enough time for lunch?

Okay. I'll see you back at 2:15. Remember not to discuss this case among yourselves or with anyone else and don't let anybody talk with you about it.

I'll see you back at 2:15. Thank you.

(Whereupon, the jury was excused for lunch at 1:03 PM.)

THE COURT: Mr. Smith, Ms. Oppenheimer, we still have Mike Phipps and Margaret Walker I think you told me yesterday. Do you anticipate any additional witnesses this afternoon or what's your plan?

MS. OPPENHEIMER: Your Honor, we would more than likely recall Investigator Gietz just to explain some

388

of the things that are going to come out during Mike Phipps's testimony.

THE COURT: All right. And he'll be recalled to address what issues? Can you tell me?

MS. OPPENHEIMER: Your Honor, we plan to introduce a string of text messages between the defendant and who we believe based on the review of those messages is his source of supply down in Atlanta. There's certain terminology that is best, I guess, described and explained by a narcotics officer --

THE COURT: Okay.

MS. OPPENHEIMER: -- which Investigator Gietz is prepared to do.

THE COURT: All right. Thank you, ma'am.

MS. OPPENHEIMER: Thank you.

THE COURT: All right. Anything further from the State before we break?

MR. SMITH: No, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: No, Your Honor.

THE COURT: Okay. 2:15, folks.

(Whereupon, a luncheon recess was taken at 1:04 PM.)

(Back on the record at 2:16 PM.)

BAILIFF: Court is now back in session. The Honorable Judge Tommy Cooper presiding.

389

THE COURT: Good afternoon. Thank you.
MR. SMITH: Good afternoon, Your Honor.
THE COURT: Folks, the jury is all in place.
Is the State ready to proceed?
MS. OPPENHEIMER: We are, Your Honor. We're just grabbing our witness.
THE COURT: Ma'am?
MS. OPPENHEIMER: We're just grabbing our witness from across the hall.
THE COURT: Okay.
Is the defense ready to proceed?
MR. WILLIAMS: The defendant is ready, Your Honor.
THE COURT: Thank you.
Please bring us the jury, Mr. Scott.
(Whereupon, the jury returns to the courtroom at 2:18 PM.)
THE COURT: Thank you, ladies and gentlemen. Once again, thank for your prompt return from lunch.
We're ready now to resume the trial of the case as the State continues to offer evidence and testimony.
Ms. Oppenheimer.
MS. OPPENHEIMER: The State calls Meg Walker.
THE COURT: Ms. Walker, please come forward, ma'am, and be sworn.
(Whereupon, Margaret Walker was duly sworn by the

Clerk of Court.)

THE CLERK: Would you please have a seat in the witness box. State your full name and spell your last for the record.

THE WITNESS: Margaret Walker, W-A-L-K-E-R.

MARGARET WALKER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. Good afternoon, Ms. Walker. Can you tell us where you're presently employed?

A. I'm employed with the Lexington County Sheriff's Department.

Q. And in what capacity?

A. I am the chemist with the drug lab.

Q. Okay. And as the chemist, what are -- what are you assigned to do?

A. My job is to analyze narcotics that are brought in off the road by our deputies, narcotics agents and other Federal agencies.

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

A. Seven years.

Q. Can you tell us a little bit about your education and training that led you to become a chemist with the sheriff's department?

A. I have a degree in forensic chemistry and a minor in criminal justice from York College in Pennsylvania and then I also did about three months' training with the South Carolina Law Enforcement Division, commonly known as SLED.

Q. Okay. About how many drug analyses have you performed throughout your career?

A. I've done about 2500 BEST kits.

Q. Okay. And were those for all kinds of suspected narcotics or just one?

A. This is for everything that I've tested for the sheriff's department.

Q. So would that include marijuana?

A. Yes.

Q. Heroin?

A. Yes.

Q. Methamphetamine?

A. Yes.

Q. All right. And have you ever testified in court before?

A. Yes, I have.

Q. How many times?

A. Ten.

Q. Okay. And have you been offered those ten times as an expert in any field?

A. Yes, I have.
Q. And what field have you been offered as?
A. Drug identification, drug analysis.
Q. All right. And is that in state court?
A. Yes, ma'am.
MS. OPPENHEIMER: Your Honor, at this time I'd offer Ms. Walker as an expert in chemical analysis of suspected narcotics.
THE COURT: Voir dire, Mr. Williams?
MR. WILLIAMS: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. WILLIAMS:
Q. Ms. Walker, you indicated that you had testified ten times as an expert. In those ten times that you were qualified as an expert and testified, which drugs were involved in your testimony?
A. I have done, off the top of my head, recently methamphetamine, heroin, cocaine, marijuana -- cannabis, I'm sorry, and fentanyl.
Q. All right. And when you were qualified as an expert, were you qualified as an expert in any particular speciality dealing with the type of drug that you were testing?
A. No, just general drug analysis or drug identification.
MR. WILLIAMS: All right. That's all I have, Your

Honor. We have no objection.

THE COURT: Thank you.

Eleven times now, Ms. Walker.

THE WITNESS: Thank you, sir.

CONTINUED DIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. All right, Ms. Walker. Turning your attention to the case that we're here for today, were you asked to analyze suspected narcotics in the case of State versus Steven Daniel Brown?

THE WITNESS: Sir, may I refer to my notes, please?

THE COURT: Yes, ma'am.

MR. WILLIAMS: Your Honor, I have a matter of law to take up with the Court that I think it may be fruitful if we could approach the bench?

THE COURT: Okay.

MR. WILLIAMS: I don't know that we need to run anywhere.

(Proceedings held at the bench; not reported.)

THE COURT: Madam Reporter, if you'd note the sidebar conference. We'll memorialize that out of the presence of the jury if we don't have the opportunity to put it on the record in the presence of the jury.

Ms. Oppenheimer.

BY MS. OPPENHEIMER:

Q. Ms. Walker, you were asked to test suspected narcotics evidence in this case; is that correct?
A. Yes, ma'am.
Q. And where did you receive that evidence from?
A. I collected it from the Lexington County Sheriff's Department evidence room.
Q. Can you tell us who has access to the evidence room?
A. Only the evidence custodians has access to any evidence room.
Q. Okay. So can any person off the street access the evidence room?
A. No, ma'am.
Q. What about any deputy with the sheriff's department? Can they?
A. No, they can't. They can be let in by evidence custodians.
Q. Okay. And is this a secure area that these suspected narcotics and evidence are placed into?
A. Absolutely.
Q. Okay. And who specifically did you retrieve them from?
A. Candy Kyzer. She's one of our evidence custodians.
Q. Okay. And can you tell us whether or not she has access to the evidence control room?
A. Yes, she does.

395

Q. And why is that?
A. Because she's an evidence custodian.
Q. All right. And when you retrieved this evidence, can you tell us how it was packaged?
A. It was packaged in a box and then on top of that box there was a BEST kit attached to it.
Q. Okay. You've mentioned it a couple of times. What is a BEST kit. Can you explain to us what that is?
A. A BEST kit stands for Best Evidence Sample Testing. Basically it's a tamperproof bag that narcotics are placed into and then that is turned into evidence for me to complete and for me to do analysis on. In this situation, it was -- the box was the BEST kit itself.
Q. Can you tell us why a box was necessary in this case?
A. There was a fair amount of narcotics in this case.
Q. Can you explain to us a little bit what's the approximate size of a BEST kit?
A. A BEST kit is probably about the size of a sheet of paper.
THE COURT: A what?
THE WITNESS: A sheet of paper.
THE COURT: Okay.
BY MS. OPPENHEIMER:
Q. So about the size of this paper that I'm holding right here?

A. Roughly a little bit bigger than that, but, yes.
Q. In your experience, can three plastic totes fit into a bag of this size?
A. No, ma'am.
Q. Now you said a BEST kit is a tamperproof bag. Can you tell us when you retrieve a box of evidence do you still look to see whether or not that package has been tampered with?
A. I still go over all of the seals that the officer had taped shut. I check to make sure that his initials and dates were properly on the box as well, making sure that there was no way it was opened in the process of being handled.
Q. And did you do that in this case?
A. Yes, I did.
Q. And whose initials did you see on that box?
A. Officer Gietz.
Q. Okay. And he is employed with the Lexington County Sheriff's Department?
A. Yes, ma'am.
Q. And did the seal appear to be intact?
A. Yes.
Q. It had?
A. Yes.
Q. Did it appear to be tampered with at all?

A. No.
Q. Okay. Did it have the proper date on it?
A. Yes.
Q. Do you recall that date?
A. Not off the top of my head.
MS. OPPENHEIMER: Your Honor, may I show the witness the box --
THE COURT: Yes, ma'am.
MS. OPPENHEIMER: -- and see if this refreshes your recollection.
BY MS. OPPENHEIMER:
Q. Can you tell us whether or not you observed the date that Investigator Gietz would have sealed --
MR. WILLIAMS: Objection to that, Your Honor. Calling for hearsay, speculation and a number of things.
If she's -- and I could go further if I can.
THE COURT: Okay. Let's ask her what the date is and whose name appears.
Well, just tell me what's on the box? We'll do that.
THE WITNESS: The date is noted 6-29 of 2020 and the initials that I recognize are Deputy Gietz's.
THE COURT: I'm sorry, the initials are?
THE WITNESS: Deputy Gietz's.
THE COURT: All right. Let me look and see what

you're talking about.

THE WITNESS: Yes, sir. It's -- there's the date, initials, date, initials, date, initials, date, initials. There's some up here and then there's also one down here.

THE COURT: All right. Thank you.

Do you want to -- Mr. Williams, do you want to look at that, what I just saw?

MR. WILLIAMS: Yes, sir. I guess.

THE COURT: Okay.

MR. WILLIAMS: I looked at it, Your Honor.

THE COURT: All right, sir.

You can go ahead. I don't have any rulings to make as far as that's concerned.

BY MS. OPPENHEIMER:

Q. Ms. Walker, approximately how many times did you yourself observe Investigator Gietz's initials and the date of 6-29-2020 on that box?

A. Six times.

Q. Okay. And after you retrieved that box, where did you take it?

A. I took it to the drug lab and placed it into my vault that I have in the lab.

Q. And who has access to your vault?

A. Only I have access to that vault currently.

Q. Okay. And can you tell us whether or not in your

procedure do you open up this box?
A. Yes, I do.
Q. Okay. And without -- we're gonna skip a step a little bit here. When you're done testing the evidence, what do you do with it?
A. Once everything has been sampled and I've done everything that I needed to do to prepare it for testing, I then place everything that I have repackaged back into the box and then tape it shut and then I put my initials and date of when I sealed the box back up.
Q. Did you do that in this case?
A. Yes, I did.
Q. Do you see your initials and the date on this box anywhere?
A. Right here, and I have the case number and the BEST kit number and the item that it is.
Q. And what date did you seal it?
A. I sealed it on 8-25 of 2020.
Q. And that would have been when your testing was completed?
A. Yes.
Q. And all that time did this box either remain in the evidence room or in your vault in your lab at the sheriff's department?
A. Yes, ma'am.

Q. All right.

MS. OPPENHEIMER: Your Honor, at this time I'd move State's Exhibit Number 7 into evidence.

THE COURT: Yes, sir.

MR. WILLIAMS: I have a litany of objections, Your Honor.

THE COURT: Let's go ahead and put -- let's list them. Get started on them.

MR. WILLIAMS: All right. Number one, even though there's been testimony about a date, which is on the box, she wasn't the one that observed anyone write the date on the box and it's -- common sense says that you could -- I could go over there today and write the date on the box. It wouldn't be the date that it was actually put in the evidence log. So, Your Honor, the suggestion is that we would require a witness who could testify as to when and where he placed the box in evidence and to follow the chain all the way through until we see that the evidence has not been tampered with.

MS. OPPENHEIMER: Your Honor -- I apologize, Theo.

MR. WILLIAMS: We're cutting out like a million steps, Your Honor, and that would include -- and obviously there may or may not be any relevance because I don't know what's in that box either, but the short answer, Your Honor, is we haven't traced it from the

-- from the date and time which this box allegedly was found on the road until it was placed into evidence -- into the locker of the evidence room, how it was maintained in the -- because there are a number of people who I assume from what I've observed have touched that box and have at least looked at it, opened it up, did things to it, but she can't just jump from A to Z, Your Honor.

MS. OPPENHEIMER: Your Honor --

THE COURT: Well, the testimony of Investigator Gietz when this was offered for identification was that he had seized it, gave a field weight to it and so forth and took it to the evidence room, put it in a sealed box with his signature and his date on it and that there was another date on it when it was opened for trial preparation at some other point in time. Up until now the testimony is that it was in the evidence room with his name and his date and that is the date which she's testified that she saw it on whatever it was she just read. Then the testimony was that it was in the evidence room. The evidence custodian, Ms. Kyzer, I guess?

Is that right?

MS. OPPENHEIMER: Yes, Your Honor.

THE COURT: Delivered it to Ms. Walker and then she opened it.

Now I don't know -- if what you're asking for is the proof of a negative, that nobody else did anything other than those folks who --

MR. WILLIAMS: Well, Your Honor, I don't have to prove anything, Your Honor.

THE COURT: I know.

MR. WILLIAMS: What I'm suggesting is that the burden of proof is on the State to prove that this -- these items were not, I guess, messed with in any particular way. She's -- she's acknowledged at least one other individual that she said handed it to her.

THE COURT: Right.

MR. WILLIAMS: But she was -- she's incapable of testifying what that individual did with it because they obviously received it at some point in time from the evidence room and then I believe the testimony is she can testify to what this woman does to her -- or hand it to her, but she can't testify in regards to what this other woman has done with the box. And I don't believe Gietz ever testified to the -- to the number of the BEST kit that has been affixed to that box.

THE COURT: I don't think he did either, but...

And so, Ms. Oppenheimer, do you want to address those things?

MS. OPPENHEIMER: Your Honor, I'm not required to

prove every single link in the chain. Investigator Gietz testified yesterday that he collected those drugs, packaged them into this box on June 29, 2020, sealed it, maybe went a little bit overboard with his initials and the date, and put it into evidence. This witness has testified that the only people who have access to the evidence room are the evidence custodians and not any random Joe Schmoe or deputy unaccompanied by an evidence custodian can go into the evidence room. She testified that she was handed this box by an evidence custodian. She testified that she brought it directly to her lab where she put it in her vault and she is the only person who has access to her vault in her lab where it remained until August 25th of 2020 when she put it back into evidence with it being sealed. She also said before she even opened the box she checked to see whether or not it had been tampered with or if the seal had been broken in any way and it certainly had not.

So, Your Honor, we've certainly established that the chain is sufficient, that there are no breaks in the chain, that the box was not tampered with at all, and we have met our burden.

THE COURT: Right.

All right. It's your motion, Mr. Williams. I'll --

MR. WILLIAMS: Your Honor, I don't know that I need

to argue anymore. I've yet to hear anything about the number, which is normally assigned to items that are placed in --

THE COURT: Right.

MR. WILLIAMS: -- because as Your Honor knows because you've been doing this for as long as I have -- well, I don't know if we need to compare, but the -- there's always that special number which is assigned to the test, and that's what I'm concerned about is because whether it's in a box or in a balloon, the test number is what is important because that keeps it separate and apart from anything else that might be tested.

MS. OPPENHEIMER: I can ask her one question to solve that.

MR. WILLIAMS: And there was no testimony from Gietz about that.

THE COURT: Okay. Ms. Oppenheimer.

MS. OPPENHEIMER: I can ask one question and quickly solve that if that's an issue, Judge.

THE COURT: You can do what?

MS. OPPENHEIMER: I can ask one simple question to solve that if that's an issue.

THE COURT: Okay. If you have one simple question, that will be fine. Have at it.

BY MS. OPPENHEIMER:

Q. Ms. Walker, what's the BEST kit number associated with this case?
A. The BEST kit number associated with this case is C017604.
Q. Okay. And is that number reflected on both this box and in your report?
A. Yes, it is.
MS. OPPENHEIMER: Your Honor, I believe that cures any issues that the defense may have.
THE COURT: Has the seal with that number been tampered with?
THE WITNESS: I'm sorry?
THE COURT: Has that -- there's a label with that number, right?
THE WITNESS: The label is right here, it's listed here, and then it is also listed up here, and the BEST kit is what's inside.
THE COURT: Okay. Does it appear that the BEST kit has been tampered with? Is that number disturbed in any way or the date disturbed in any way?
THE WITNESS: No, sir.
THE COURT: Thank you.
I find that the State has met its burden of proof sufficient to establish that the evidence has been in a secured situation since Deputy Gietz stored it on

June 29, 2020, and it has been secured since that time. There's no evidence of tampering. I'm gonna overrule the objections to the chain of custody.

Thank you.

BY MS. OPPENHEIMER:

Q. All right, Ms. Walker. Can we put this in a way that it's not blocking your view?

So you retrieved this box from evidence. Can you tell us what is the first thing that you do after -- well, I guess you've checked the seal?

A. Yes.

Q. And then what do you do?

A. And then -- I then itemize everything in it. I pull everything out of the box itself and then I do what's called a worksheet, so I break it down. So whatever bag, whatever packaging is included, I then go through it, mark it on my worksheet and then I can do a weight of each individual item that is a narcotic and then I repackage it, put it back into the box and then I seal it back up after I've done a sampling of everything.

Q. All right. So what was your description of the evidence in this case?

A. Item 1.0, BEST kit C017604 taped to box containing, no analysis performed.

Q. Okay. So --

407

MR. WILLIAMS: Your Honor, I have one other matter I'd like --

THE COURT: Okay. I couldn't hear everything you said at the conclusion, Ms. Walker. You gave numbers 1.0 and what else was a part of your testimony there?

THE WITNESS: BEST kit C017604 taped to box. Results, no analysis performed.

THE COURT: No analysis performed on what?

THE WITNESS: The physical box.

THE COURT: Okay. The box itself?

THE WITNESS: Yes, sir.

THE COURT: All right.

All right, Mr. Williams. I'm sorry. I interrupted your argument.

MR. WILLIAMS: No, I didn't mean to interrupt what was going on, but I need to make a motion at this particular point in time.

Your Honor, we have a motion to take up with the Court outside the presence of the jury.

THE COURT: All right. Ladies and gentlemen, I'm gonna send you to your jury room for a moment. I've got to take up a matter of law outside of your presence. Please do not discuss this among yourselves while you're in the jury room.

(Whereupon, the jury retires to the jury room at

2:40 PM.)

THE COURT: All right. Mr. Williams.

MR. WILLIAMS: Judge, obviously we had a motion dealing with the search of the vehicle, which Your Honor has already ruled on. I don't know what's inside that box other than there is a box and there may, indeed, be evidence which was secured from the truck inside that, as well as obviously there's gonna be some sort of testimony in regards to what the analysis of those items are.

THE COURT: Right.

MR. WILLIAMS: So, Your Honor, at this time I want to make sure that the record revealed that we renewed our motions in regards to the search --

THE COURT: Right.

MR. WILLIAMS: -- so that it would continue to -- and I don't know if I did -- I did it this early time because I don't know what's in that box and if she's seeking to introduce something that's in that box, I didn't want to -- the reason I sent the jury out was as I talked about the search, which Your Honor's already ruled on.

THE COURT: All right.

MS. OPPENHEIMER: Judge, the whole box is already in evidence.

409

THE COURT: I'm sorry?

MS. OPPENHEIMER: The whole box is already in evidence. It's just the drugs.

THE COURT: Right. The -- the video shows that there were three plastic smaller boxes that were stacked up. Is that what is in this box?

MS. OPPENHEIMER: Yes, Your Honor.

THE COURT: Anything else?

MS. OPPENHEIMER: No. They don't package evidence that way. They keep --

THE COURT: Ma'am?

MS. OPPENHEIMER: They keep everything separate. They wouldn't put everything in one box with suspected narcotics. They don't do that.

THE COURT: I'm just trying to figure out is there anything in this box that was not seized at the scene on the videotape?

MS. OPPENHEIMER: There are bags added that she added herself that she will testify to --

THE COURT: Surely.

MS. OPPENHEIMER: -- but that's it.

THE COURT: All right.

Mr. Williams, does that address your concern or is there something else that we need to --

MR. WILLIAMS: No, sir. I just wanted to make

sure that I was protected in terms of the introduction of any evidence dealing with the search by continuing the objection before these items get placed into evidence in the trial itself.

THE COURT: All right. I note your continuing objection in that regard and allow that as a continuing objection.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: And so with that done, then we can move forward.

See if the jury is ready to -- see if the jury is ready to come back in, Mr. Scott. They might be in the restroom. Don't bring them back in until everybody is ready to come in, okay?

BAILIFF: Yes, sir.

THE COURT: Thank you.

(Whereupon, the jury return to the jury room at 2:44 PM.)

THE COURT: Thank you, folks, for your patience. We'll continue now with the direct examination of Ms. Walker.

Ms. Oppenheimer.

BY MS. OPPENHEIMER:

Q. All right, Ms. Walker. Can you tell us whether or not you inventoried the items inside of the box that you

obtained from evidence?
A. Yes, I did.
Q. And how do you inventory those?
A. I pulled everything out and noted them on my worksheet.
Q. And what did you note?
A. Item 1.0 was the BEST kit C017604 taped to box containing. No analysis performed. Item 1.1, three plastic containers containing crystal substance. And then Item 1.2 was Ziploc bag containing plastic container containing plastic corner bag containing crystal substance.
Q. All right. Now let's start with Item 1.1. What do you do with that item first?
A. I pull it out of the box. I then will note the packaging that it has. Once I've noted the packaging, I will then pull the substance out of the packaging. I will weigh each individual packaging -- or each individual substance on a scale and then I will place it into either its original container or a bag that I'm adding into the case.
Q. Okay. So if there are three plastic containers in Item 1.1, would you do that process for each plastic container?
A. Yes, I would.
Q. And can you tell us why you take the suspected

narcotic out of its original packaging?
A. Because I'm looking to get the raw weight. I'm not trying to include the plastic container, I'm not trying to include a plastic bag because that's not included in the weight when dealing with narcotics. It's just the raw substance itself.
Q. Okay. And you would have -- did you do that with all three of these plastic containers in this case?
A. Yes, I did.
Q. And can you tell us whether or not you received -- well, I guess, do you tare your scale out in between weighing certain substances?
A. What I do is I put the new packaging that I'm introducing onto the scale and then I tare it out equally to zero and then I place the substance inside the bag so that way it's getting only the weight of the substance, not the weight of the new bag and the weight of the substance.
Q. So tare is just a fancy way of saying zero it out?
A. Yes, essentially that's what it is.
Q. Do you combine the weight of those three -- or the substances from those three plastic containers to get an aggregate weight?
A. Yes, I do. So I weigh out each individual item. So in this case it was three plastic containers containing

crystal substance as three weights and then when it comes down to the report time I then add them together to make a total combined weight.

Q. And what was the total combined weight for Item 1.1?

A. 2,917 grams. 45,016.19 grains.

Q. Okay. Why do you put grains in addition to grams?

A. It's part of the law that we are required to add grains, which is another form of weight -- or another measurement of weight I should say. I'm sorry.

THE COURT: And what was the second figure that you gave on the grains?

THE WITNESS: It is 45,016.19.

THE COURT: Okay. 4516.19?

THE WITNESS: 45,016.19.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

BY MS. OPPENHEIMER:

Q. And so that's a little over 2900 grams, I believe. Is that what you said?

A. Yes.

Q. All right. After you weigh Item 1.1, what do you do?

A. Once that item has been handled, I then take a small sample of it to be placed into a test tube to continue onto instrumental analysis and then I take another example for presumptive testing.

Q. Okay. So which do you do first, your presumptive testing or your machine testing, I guess, for lack of a better term?
A. I do presumptive testing. It's -- basically what it is, it's a color test. So it kind of gives me an idea of what I'm looking at. It's like -- it's kind of like I pull -- I basically put a sample in, I do a few drops of a liquid and then it's gonna give me a color. So that color is usually indicative with a certain substance. In this situation, it was orange, which is indicative with methamphetamine.
Q. Did you do that presumptive test with a small sample from each of the substances found in each plastic container?
A. Yes. I only need a small crystal to give me a -- for me to do a spot test on, yes.
Q. And why do you only need a small crystal?
A. The spot test is super sensitive. It doesn't need much.
Q. Okay. And I believe you testified that the color that you got in this case was orange?
A. Yes, ma'am.
Q. And what is that indicative of?
A. Methamphetamine.
Q. Okay. After you do your spot test, what do you do

next?
A. Then the next is I place a small sample into a test tube that's labeled with the BEST kit number, which is our lab number, and then the item number, and in this case it was -- it's either gonna be Item 1.1 parentheses 1, parentheses 2, parentheses 3.
Q. So you take another small sample from the substance found in each of these three plastic containers; is that correct?
A. Yes, ma'am.
Q. All right. And after you've placed the small sample into a test tube, what do you do with that test tube?
A. Based off of the spot test, then that's when I start to do the extraction process. So the next step is to help with -- kind of turn it into a liquid because the instrument itself relies on the liquid.
Q. Okay. How do you do the extraction process?
A. It is with a base methylene chloride extraction and then once that is placed into the test tube I extract the liquid out, I then put it into a small GC-MS vial and then I will start the confirmatory testing with the gas chromatography-mass spectrometer.
Q. Okay. So is that GC-MS? I can never say that word.
A. Yes. Gas chromatography-mass spectrometer is commonly known as the GC-MS.

Q. And did you have any concerns about your GC-MS the day that you tested these substances?
A. No, ma'am.
Q. And was it working properly?
A. Yes, ma'am.
Q. And were you able to get a result from this testing?
A. Yes, I was.
Q. And what was the testing for -- what was the result for Item 1.1?
A. Methamphetamine.
Q. Okay. And is that a scheduled narcotic?
A. Yes, it is.
Q. What schedule is it in?
A. It is a Class 2.
Q. All right. Now after you get your result from the GC-MS, you do this process for, again, a small sample from the substance found in each plastic container; is that correct?
A. Yes, ma'am.
Q. So you did three tests from Item 1.1?
A. Yes.
Q. And were all of them the same result?
A. Yes, they were.
Q. And that result was?
A. Methamphetamine.

Q. All right. After you have finished testing Item 1.1, what do you do with it?
A. Once I've done all of the itemization for Item 1.1 and I've gotten the sampling for the spot test and for the confirmatory test, I then go into Item 1.2, which is a Ziploc bag containing plastic container containing plastic corner bag containing crystal substance.
Q. All right. So before we get into Item 1.2, I'm gonna ask that you open the box in front of you, please.
Do you need gloves?
A. I brought some with me.
Q. And what are you putting down on the witness stand right now?
A. I'm putting what's prep paper down for our lab. It's to make sure that the bench stays clean, so that way the next person that is coming up doesn't get contaminated with it if the substance does happen to leak out.
THE WITNESS: Sir, do you mind if I remove my suit jacket?
THE COURT: No, that's fine.
BY MS. OPPENHEIMER:
Q. And where are you opening it?
A. I'm opening it on the top portion of the box.
Q. Would a knife be easier?
A. Uh-huh.

Q. Let me see if I can get you a knife. I apologize.
(Pause in proceedings.)
BY MS. OPPENHEIMER:
Q. If you'll show us Item 1.1. Now you are holding up three different bags. Did you add those bags after your testing process was complete?
A. Yes, I did. It's noted on the bag where it says bag added.
Q. All right. And the containers that are in the bags themselves, can you tell us were those the original packaging, I guess, that this methamphetamine was found in?
A. Yes, it was.
Q. And what are the plastic containers wrapped in? It appears they're wrapped in something.
A. I believe plastic wrap.
Q. I believe you testified that there was an Item 1.2.
A. Yes.
Q. Can you describe Item 1.2 for us? I apologize. I've made your space a lot smaller up there.
A. It is Ziploc bag containing plastic container containing plastic corner bag containing crystal substance.
Q. All right. Now did you go through your same testing process that you did with Item 1.1?
A. Yes, I did.
Q. And so that first step would have been what?

A. I then -- I pull it out of its original packaging. I itemize it, I do an inventory of it, and then I -- once I'm done with the packaging I then will weigh it individually. The same process. I put it on the scale, I tare it out, then I weigh the substance on it and then I get a weight for it, I place it into new its packaging or it's original packaging. I then will take a sample for a presumptive test, which is a color test, or I put it in the -- and I also get a sample for my confirmatory testing, which is the GC-MS.

Q. All right. So what was the weight of Item 1.2?

A. For Item 1.2, it was 5.22 grams.

Q. All right. And you testified that you did your spot testing. What color did the spot test come back as?

A. It came back as orange as well.

Q. And what is orange indicative of?

A. Methamphetamine.

Q. All right. And you got a confirmatory result as well through your GC-MS; is that correct?

A. Yes, I did.

Q. And what was that result?

A. Methamphetamine.

Q. I'd ask that you show the jury Item 1.2 if you could.

A. (Witness complies.)

Q. Now, Ms. Walker, do you put your findings into --

or do you document your findings in addition to your worksheet?
A. I do. I do create a formal report.
Q. And did you do that in this case?
A. Yes, I did.
Q. All right. And is there any kind of, I guess, checks and balances that go into that report writing for lack of a better term?
A. Once the report has been completed, I do a -- what's called a formal report. Once the formal report has been completed, I combine it with the data that I've received from the GC-MS, my worksheet and the chain of custody that was given with this item, and then I combine it together to create a giant packet and give it to what's called a peer review group. And three other agencies, we meet up, we exchange paperwork, and they will review it to make sure there's no misinformation, I spelled a name wrong, I didn't identify something correctly, that sort of thing.
Q. And was that done in this case?
A. Yes, it was.
Q. And did your report make it past the peer review process?
A. Yes, it did.
Q. Were there any issues with any of your testing?
A. No, ma'am.

Q. All right. Now after you've tested all of these items, you testified that you put them back in the box; is that correct?
A. Yes, ma'am.
Q. And do you seal it back up?
A. Yes, ma'am.
Q. And then where do you take it?
A. Once I have an opportunity and it's been sealed up, I put it into my safe until I'm ready to take it over to evidence. I then will take it over to evidence where they will take it and I will, quote unquote, return it and they'll sign off on a chain of custody saying it has left my lab by me and it's turned into evidence and then they will put it into the drug room.
Q. And does it stay in the drug room until, let's say, this case were to go to trial?
A. Yes. And the drug room is in evidence.
MS. OPPENHEIMER: Ms. Walker, I have no further questions. If you want to go ahead and put all of the drugs back into the box and then answer any questions that Mr. Williams or Mr. Yonge may have of you.
THE WITNESS: Yes, ma'am.
THE COURT: All right. Mr. Williams, cross-examine.
MR. WILLIAMS: May it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Walker, we talked a lot about chain of custody and how you make sure that you're analyzing the proper items that you're gonna testify to and it goes to the time in which these items are seized --

A. Uh-huh.

Q. -- up through whatever protection is afforded those items, correct?

A. Uh-huh.

THE COURT: Say yes or no.

THE WITNESS: I'm sorry, sir.

BY MR. WILLIAMS:

Q. Providing that these items that are seized at a particular location from a particular person and that those items are placed in some sort of protective environment, correct, making sure that those items stay together and that those items go to that particular person and that particular charge that the person is charged with, right?

A. It's placed into the security of evidence, correct.

Q. Right. Because you want to make sure that when you get that evidence and you test that evidence that that evidence that you're testing applies to whatever charge that person is charged with, right? You don't want to have somebody else's evidence used against him, right?

A. No, sir.
Q. Okay. So does your log, your evidence log, does it indicate, if you will, because I know you have access to it, does it indicate when Officer Gietz placed the items into the evidence room?
A. I have a -- the only thing I have is the paper chain of custody. I do not have access to the digital log because that is controlled by evidence.
Q. So you don't have any knowledge in regards to when Gietz placed the item into the evidence room itself because it's digital, right?
A. It's -- the officer is submitting it, but it can be printed out.
Q. All right. So years ago you used to have paper and now you type it in and then you would have evidence, what you typed in, or you could produce it if need be, right?
A. Yes.
Q. All right. Do you have access to that information when Officer Gietz placed those items into evidence?
A. It has to be approved by the evidence custodians and then I would have access to it, but I don't have access when he first does it.
Q. Do you have anything that indicates when these items were placed into evidence and what was actually placed into evidence?

A. What I have is a piece of paper that Officer Gietz had turned in with the BEST kit and it says the date that it was seized and what items that he put into the basket.
Q. Do you have that with you right now?
A. Yes, I do.
Q. Can I see it?
A. Yes, sir.
Q. Would you agree that that paper that you possess does not contain -- give a -- if you don't mind, just give a description, I guess, of how he references this -- these items that he's placing into evidence. What does he call them, a bag? Or what does he say?
A. Plastic containers of a crystal-like substance, parentheses, methamphetamine.
Q. So the only thing that he is designating in this log that he's entering into is that there are plastic containers that he is placing into evidence in the evidence room to be properly secured through the many hands of the Lexington County Sheriff's Department until you get a chance to test it, right? There's nothing else there.
A. No, sir.
Q. So -- and it has a number on it, doesn't it?
A. It has the BEST kit control number.
Q. And what is that number again?
A. C017604.

Q. All right. So that control number is obviously for those plastic containers that contains that substance, right?
A. It is what is placed -- what he deems for the BEST kit.
Q. All right.
A. So whatever he has deemed in that BEST kit in this box has that control number.
Q. On this box that you have here, you have -- the BEST kit number is on -- is stuck on the outside of the box, isn't it?
A. I don't understand your question. I'm sorry.
Q. Okay. You've got a number. I'm just trying to keep up with where the drugs are. You've got a number that you just referred to, which is the control number. That is not on a regular bag because it's too much to put it in a regular bag, it's on the box itself, right?
A. The BEST kit itself is actually in the box.
Q. Can I see the BEST kit?
A. Yes, sir.
MS. OPPENHEIMER: Ms. Walker, do you want another pair of gloves?
THE WITNESS: I'm good. Thank you.
Be careful. There's narcotics on it.
MR. WILLIAMS: Okay. Could I have a glove?

THE WITNESS: They have them, sir.
MR. WILLIAMS: Okay.
BY MR. WILLIAMS:
Q. Now can I see it?
A. Yes, sir.
Q. So is there anything on this BEST kit bag that you have that refers to three plastic containers and then some reference to a sealed bag which has some substance in it -- another substance in it?
A. The correlation is the BEST kit control number, which is noted on the BEST kit bag and noted on the Form B chain of custody, which then correlates over into the plastic containers containing crystal substance.
Q. The point of all this is when you got around to testing items, when did you -- when did you test these items?
A. I tested it on August 25th of 2020.
Q. And when you tested these items, you had something which tested out as -- you designated a C1 number with a weight and you tested -- oh, didn't you give -- you tested two different groups of things, didn't you?
A. Yes, sir.
Q. You have the three containers?
A. Uh-huh. Yes, sir.
Q. And what was -- what was the -- you threw me off with,

427

sir. What was the -- what did you designate those as, C1?
A. Are you -- I'm confused. Are you --
Q. You broke it down. You said there's a plastic bag in there that you tested also which was not part and parcel of those three items that you tested, wasn't there?
A. I'm still a little confused what you're asking.
Q. Okay. You've got three plastic containers that have some substance in it?
A. Yes, sir.
Q. And you tested those by testing a sample from each one of those three plastic containers?
A. Yes, sir.
Q. To prove that whatever the item was in those three plastic containers was consistent with your determination of what the drug allegedly was. Then you tested something else. You tested a plastic bag, which you measured out at -- what did you say, 5 --
A. 5.22.
Q. 1.2 is 5 point what?
A. 1.2 is 5.22 grams.
Q. 5.22 grams. So where did you find this at?
A. Right here.
Q. So this item was not in --
MR. WILLIAMS: Your Honor, I have a matter of law to take up with the Court outside the presence of the

jury.

THE COURT: Before you get to that, I need to have a clarification, Ms. Walker.

THE WITNESS: Yes, sir.

THE COURT: My understanding was that the 1.1 item is the three plastic containers, right?

THE WITNESS: Yes, sir.

THE COURT: And then you took each of those three plastic containers and gave them a sub number, 1.1, 1 in parentheses, 2 in parentheses and 3 in parentheses?

THE WITNESS: Yes, sir.

THE COURT: So is it my understanding then that that accounts for the -- the drugs that are in the three plastic containers?

THE WITNESS: For Item 1.1, yes.

THE COURT: That's right. Item 1.1 is the three plastic containers?

THE WITNESS: Yes, sir.

THE COURT: And the drugs that are in them?

THE WITNESS: Yes.

THE COURT: And 1.1(1) and 1.1(2) and 1.1(3) is the individualized contents of each of those three containers?

THE WITNESS: Yes, sir.

THE COURT: All right. So what then is 1.2 with

429

the 5.22 grams?

THE WITNESS: That is a Ziploc bag containing plastic container containing plastic corner bag containing crystal substance.

THE COURT: Okay. Not the three bags that are in the 1.1? Something different?

THE WITNESS: Yes, sir.

THE COURT: All right. Okay.

All right. Thank you, ma'am.

Ladies and gentlemen, step to your jury room for a moment and let me see what we've got to take up outside your presence.

(Whereupon, the jury retires to the jury room at 3:13 PM.)

THE COURT: Mr. Williams.

MR. WILLIAMS: I have the answer to the question, Your Honor.

THE COURT: Yes, sir.

MR. WILLIAMS: I would move for a mistrial. The answer to the question is that when I was referring to this box which had these cocaine items in it or methamphetamine items in it, it not only possessed those items, but it also possesses that 5 -- what was the amount?

THE WITNESS: 5.22 grams.

MR. WILLIAMS: 5.22 grams. Well, I know, as well as you do, Your Honor, is you note where you find drugs and you put them down where you find the drugs and that's the basis of formulating whether or not you're gonna charge him for possession of drugs over here, you're gonna charge him for possession of drugs over here, and they're two separate events, and on the -- on this bag, which is referenced as Item 4, it says Room Number 2.

Now I don't know -- oh. Now I don't know this to be a hundred percent, but I'm pretty sure that what this Room Number 2 refers to is after my client was stopped on the Interstate and was charged with trafficking cocaine, they secured a search warrant and with that search warrant they went to a house, which is his residence, where they encountered two other females who were in his house and they searched his house and they ended up finding drugs there, and they subsequently charged people who were there with the drugs.

I'm pretty sure that that Room Number 2 that it says there is a reference to the drugs that were found in a separate location in West Columbia where two other people were at where they were also charged with drugs and should not be part and parcel of this particular charge that we're charging.

431

That's why I was raising such a stink, Your Honor, about the chain of custody because I was concerned that there might be some extra drugs that shouldn't be a part of this crime, but I couldn't get into the box.

THE COURT: Right.

MS. OPPENHEIMER: Your Honor --

THE COURT: Hold on just a second. He's not through.

MS. OPPENHEIMER: I'm sorry.

MR. WILLIAMS: All right. So, Your Honor, he's -- what we have actually done is there's a separate crime which would be a -- I guess a possession of methamphetamine, if they were gonna accuse him of possessing those, that he should have been charged with that he's not charged with, and they're attempting to use those drugs to convict him of this trafficking charge. There are at least two other co-defendants who were in the house who could have possessed these drugs that are in his box, which is why it is just -- and you'll note, Your Honor, and we can ask her, but I'd be willing to bet that on the -- on the chain of custody forms that the officer fills out that there is a reference as to where the drugs came from, there's a notation that it was found on the Interstate, and then there's also a reference to a search warrant for all of it.

THE COURT: All right.

MR. WILLIAMS: For all of it. Meaning, the drugs that were found in the truck and anything that was found in the house, so it's kind of like a two-fer. And clearly the seizing of the drugs on the highway was not pursuant to a search warrant. He seized them on the -- on the highway at the time that he made the stop.

THE COURT: Right.

MR. WILLIAMS: The search warrant references a search warrant which he received from a magistrate that allowed him to go into -- he and several other narcotics officers to go into the house and seize other items, and that's why it says search warrant on it. And I think we could probably produce that information, Your Honor.

So, Your Honor, we would move for a mistrial because of all of that.

THE COURT: Because of -- well, let me hear what Ms. Oppenheimer has to say first off.

Ms. Oppenheimer.

MS. OPPENHEIMER: Your Honor, this Form B Rule 6 that Mr. Williams is referring to does, indeed, have methamphetamine attributed to the defendant from both his home and the drugs seized on I-20 Eastbound. They were packaged together. This one co-defendant that was in the house that Mr. Brown -- is Mr. Brown's house had

drugs attributed to her that were in a separate BEST kit.

Certainly the remedy is not a mistrial, it is the suppression of Item 1.2, which we are happy to do. Unfortunately, they are packaged in the same box. They were packaged with the same BEST kit. It's very difficult to separate those out and keep a chain of custody intact, but they are from June 29th of 2020, and I'm happy to offer Form B as an exhibit, Your Honor, that is signed by John Gietz.

THE COURT: Wait a minute. Right at this moment Item 7 -- it was for identification initially. I'm not sure whether it's been ruled into evidence yet or not. I don't -- I don't recall whether that motion has been made or whether we completed it. I don't think it is because I don't think we completed the -- the discussion of the analysis of it just yet, but I was going to suggest, Mr. Williams, if, indeed, this separate cup, and I'll accept what you say and your analysis of that from being from Room 2, wherever that is, and that they're improperly trying to lump all this together to get the weight to whatever they're trying to get to to satisfy the statute in this particular case, that the -- the appropriate remedy to deal with that issue, with the improper introduction of that 1.2, 5.22 grams, is simply

to not allow that into evidence for the reasons that you've already put on the record, but it doesn't seem to disturb the validity of the other evidence in the three plastic containers; 1.1(1), 1.1(2) and 1.1(3).

Can you tell me why that is not an appropriate way to deal with we'll say the improper introduction of the 5.22 grams?

MR. WILLIAMS: Sure. Because the jury sat over there and heard all that testimony about those items and -- and the jury heard about there being this -- the solicitor even elicited testimony about this 1.2 and included it in her testimony -- in her presentation.

THE COURT: Right.

MR. WILLIAMS: So it's like closing the door after the -- after the cow has already leaped out of the barn. And, Judge, you have to give me a fair share on this. I tried to stop it. I tried to stop it.

THE COURT: You did.

MR. WILLIAMS: I really tried hard not to let that happen.

THE COURT: Right, and I appreciate that, and I'm trying to figure out why it did happen when we've been focussing on the three plastic bags since the road stop and then all of a sudden they come up with this flower pot full of drugs that I didn't know anything about,

435

it wasn't part of Officer Gietz's testimony or Office Atwood's testimony or Officer Shropshire's testimony because it wasn't out there where they were.

MS. OPPENHEIMER: Your Honor, they're all packaged together under the same BEST kit throughout this --

THE COURT: I understand that part. I understand they threw them all in the same box.

MS. OPPENHEIMER: Right. And so Item 1.2 --

THE COURT: Wait a minute. Wait a minute. Let's just -- they're all in the same box.

Now the other stuff was on the side of the road, the seizure properly dealt with, all of the evidence regarding a proper seizure of that, like you should have, and I've sustained all -- the introduction of all of that, but now we get this. But until Mr. Williams tells me, I haven't got any idea what it came from. It just shows up in the box. Well, it's in the same. Of course, it's in the same box, but why didn't we know something about -- why didn't I know something about that? He might have had an objection as to whether or not that was proper, whether there was a proper search warrant for that or whatever it happened to have been that he could have raised before now.

Why just now?

MS. OPPENHEIMER: Your Honor, it's been over a year

since we opened that box in preparation for trial. Our initial trial strategy was to not only bring in the three kilos -- about three kilos of meth in the defendant's truck, but also all of the weapons, all of the drugs, all of the money, the drug ledger, the scales, et cetera, found in his home. We decided at Mr. Williams' request to only focus on the traffic stop --

THE COURT: Right.

MS. OPPENHEIMER: -- which did seem to make it simpler than to go into a traffic stop plus the search of a home.

THE COURT: Okay. All right.

MS. OPPENHEIMER: It was an honest mistake. They are packaged together because they are associated with the same defendant. Certainly suppression of Item 1.2 would be the remedy and a curative instruction that the jury is not to give weight to any of that testimony or even regard it whatsoever. It certainly does not affect the 2900 grams of meth found in his truck. We get to 400 grams or more regardless.

THE COURT: I just stated that. I understand that.

MS. OPPENHEIMER: I'm just making my argument just like Mr. Williams, Judge.

THE COURT: That's right.

Okay. I'm beginning to wonder just how clean my

437

curative instructions are going to wash this record of the taints beginning with -- well, the initial statement early on about a whole lot of other drug activity in addition to this June 29th stuff that we're dealing with, and now to ask this jury to further disregard this 5.22 grams of drugs, just forget about that.

Let me take a few minutes, ladies and gentlemen.

Ms. Walker, you can stand down. You cannot talk about your testimony while you're on the stand.

THE WITNESS: Yes, sir. Thank you.

(Recess taken at 3:24 PM.)

(Back on the record at 3:57 PM.)

BAILIFF: Court is back in session. Please take your seats.

THE COURT: The motion has been made for a mistrial. I'll tell you what we all know in this courtroom about the law in that regard. Our Court has held that the granting of a mistrial is an extreme measure that should be taken only when an incident is so grievous that the prejudicial impact can be removed no other way. That's State versus Tisdale, 338 South Carolina 607.

A mistrial should not be granted unless absolutely necessary. Defendant must show error and resulting prejudice. State versus Council, C-O-U-N-C-I-L, 335 South Carolina 1. And, of course, it's the judge's

discretion which controls.

What we're talking about in this case is improperly admitted evidence or improperly proffered evidence sought to be admitted. It is not in evidence yet. State's 7 has been offered for identification and has not been introduced into evidence -- has not been admitted into evidence I should say.

I am struggling with two separate events. First of all, there's the testimony early on by Inspector Gietz about the fact that the defendant was under investigation and had been under for some other -- for some time. There was a reference for more than in this event, which we have dealt with earlier.

Our caselaw creates a bar that it is extremely difficult to meet in order to get a mistrial and I and other trial judges are compelled by the law as it has been handed to us to try to avoid a mistrial if we possibly can and still -- and still ensure a fair trial.

The prior reference of other drug activity has been addressed in other cases, State versus Council again, in which there was some reference to the defendant's prior criminal record, but the State didn't make any attempt to introduce any other evidence of any other crimes in that regard. A single reference to warrants or other charges against the defendant has been held insufficient

439

to grant a mistrial. That's State versus Harris, 340 South Carolina 59.

The more troublesome case that we're confronted with right now is that evidence, that improperly offered evidence in this regard, and I need not repeat again which both sides have alluded to during the argument. Here is evidence that by agreement was not going to be offered in this particular case. Here is evidence that insofar as the arrest is concerned and the circumstances surrounding the arrest, and all of the motions that we took care of in regard to that, was not even mentioned. The photographs on the roadside, the nature of the stop, the nature of the dog search, all of those things, the photographs, the videos that were taken, talked about three plastic containers full of methamphetamine. That's all that Investigator Gietz talked about. That's all that the troopers talked about. That's all that there was.

And then in the course of Ms. Walker's testimony, who was not present obviously for the other and didn't know the background, all she knew is what she had been asked to analyze, and she did and here it is, and she went into great detail that I don't need to belabor any further and having -- and having completed her report. And very specifically. Even I understood it. The 1.1

and the 1.1(1), (2) and (3), I understood that. And then there comes in this 1.2. I was trying to figure out what that was. I hadn't heard about that. Mr. Williams knew about it or he thought he knew about it. He thought he knew what they were talking about and he tried to keep it out. He insisted that he wanted the chain to be completed. He wanted to know what was in the box. He knew exactly what -- what it could have been. He fought to keep it out. I would have thought at that time if I were on the other side and realized now wait a minute, we weren't supposed to be trying this case on anything but the -- but the three plastic containers, but the prosecution forges ahead right through the stop sign, right through the speed bumps and everything else, right onto this 1.2 Ziploc bag containing crystal, weighed separate, tested, 5.22 grams. I was trying to figure out how that factored into the weight that had been given of the three plastic bags and I -- I didn't know because I didn't know what it was until we get to the flower pot or whatever it was that says this is -- this is something else and that, of course, immediately gave rise to the mistrial.

Now -- now I'm confronted with what is obviously overreaching and not accidental. Not to say that it was intentional from the standpoint of luring somebody

441

into a trap in this regard, but to say for some reason, and I don't understand why, the agreement not to bring this very item into evidence was forgotten, and what do I do with it?

Candidly, folks, I wanted to declare a mistrial. I still want to declare a mistrial, but a trial judge doesn't get to do whatever he wants to do just because he wants to do it. I'm bound by the law and our courts have told me in cases even more severe than this that a mistrial should not be granted.

State v. Howard at 269 South Carolina 481. Mr. Howard was on trial for the crime of murder and his co-defendant said during the course of the trial that Howard had committed another murder and the statement was made twice and the Supreme Court said that did not warrant a mistrial when the judge admonished the jury to disregard anything about that and so any error in failing to grant a mistrial in that case was harmless error. Of course, as the trial judge I don't like to commit any error, even a harmless error, but that requires the State to review the -- I mean, the Supreme Court to review the entire record to find out.

A mistrial should not be ordered in every case where incompetent evidence is received and later stricken out. An instruction to disregard objectionable evidence

usually cures any error in its admission. The defendant has to show both error and resulting prejudice. State versus Johnson, 334 South Carolina 78.

State versus Moses, 390 South Carolina 502, when in the course of a trial incompetent statements of witnesses are brought in either from accident or when they might reasonably though erroneously be thought by counsel to be competent, the only remedy that the Court can afford is to grant a motion to strike and instruct the jury to disregard the testimony. The injury resulting from a jury having heard incompetent testimony is regrettable, but the trial cannot be stopped because of such accidents and mistakes likely to occur.

That's the law that I'm confronted with in the face of my gut reaction to grant a mistrial in this case. I don't get to rule on the basis of what my -- pardon my French -- gut reaction happens to be. I'm bound by the law.

And, Ms. Oppenheimer and Mr. Smith, you-all are the beneficiaries of the law in this regard, and you should be. The State should be. Whoever the law benefits under the law I suppose it should be because that's the way the law is intended to be, and so the motion to grant a mistrial is respectfully, yet regrettably, denied.

Now the introduction of 1.2, the 5.22 grams, is

suppressed. It is not admitted. None of the drugs are yet in evidence. The box has been marked for identification. Ms. Walker has been describing the evidence and has been telling about its weight and has been cross-examined, of course, and is in the course of cross-examination by Mr. Williams, which he will continue in just a moment, and depending on whatever else might come up during the course of the cross-examination, there might be other things that Mr. Williams knows about that I don't yet know about that he'll make sure I do know about it if I need to know about it before his examination is over depending on what happens. If nothing happens, then the contents of the three plastic -- the net contents of the three plastic containers will be in evidence, but I'm not gonna rule on that until I've heard all of the testimony regarding the introduction of that cross-examination and the redirect as it will occur.

Does everybody understand all that?

MS. OPPENHEIMER: Can we have a point of clarification? I was looking of the transcript of Ms. Johnson during the break. There was an objection by Mr. Williams when I first offered State's Exhibit Number 7, he had a litany of objections, and then we cured any potential issue that he had about having

Ms. Walker identify the BEST kit number. You overruled that objection and then I believe Mr. Williams then immediately asked for the jury to step out to renew his motion to suppress, which is probably where the -- I thought that the drugs had been entered because you overruled his objections to State's Exhibit Number 7.

THE COURT: At that point in time the focus, as I understand it, was on the box itself, right?

MS. OPPENHEIMER: Well, and the contents because we hadn't opened it yet.

THE COURT: Hadn't opened it.

MS. OPPENHEIMER: But I can certainly mark the three separate bags as State's 11, 12 and 13.

THE COURT: Here's -- here's my recollection of the question. I do remember in regard to the -- to the objection that I -- that I did rule that the box itself with all the marks and so forth on it because that's what the objection was to at that point in time, State's Number 7, Item 1, the BEST kit Number C017604, the box, no analysis. Now it was after that that the box was opened and Ms. Walker got into 1.1, 1.2 and so forth.

Am I incorrect in my recollection of the order of things?

MS. OPPENHEIMER: Right, Your Honor. And it might just be a confusion in the difference in judges. Like

typically we just offer the entire BEST kit into evidence at once and I think because there was some jumbling not only about the objection to the chain and overruling by Your Honor to that objection and then immediately Mr. Williams asked for the jury to be excused, so it could just be because --

THE COURT: And I think that's fair, Ms. Oppenheimer.

My understanding was that what I was ruling on was the objection we had at sidebar about the chain.

MS. OPPENHEIMER: Correct.

THE COURT: I thought that had been satisfied.

MS. OPPENHEIMER: Correct.

THE COURT: It's unlikely that I would have ruled everything in that box in evidence in the absence of the box being opened and in view of the fact that Ms. Walker had testified the box, no analysis.

So I would have -- if I had ruled the drugs into evidence without knowing what they were or the weight of them, I would have -- I shouldn't have done it.

MS. OPPENHEIMER: And that's just different than how I've always done it, so I apologize, Your Honor.

THE COURT: Okay.

All right. Well, nonetheless I'm glad that I did not rule separately into evidence those items because if I had ruled into evidence 1.2, the zip bag in that

particular case, that would have been reversible error.

MS. OPPENHEIMER: Yes, Your Honor. I understand. I just wanted clarification.

THE COURT: All right.

MR. WILLIAMS: Your Honor, if I could speak to that?

THE COURT: Yes, sir.

MR. WILLIAMS: I have a differing opinion from the solicitor and both Your Honor --

THE COURT: All right.

MR. WILLIAMS: -- and the reason -- and the reason I have a differing opinion is because she published those items to the jury to see --

THE COURT: Right.

MR. WILLIAMS: -- and the jury is not allowed to view the evidence until it's placed into evidence.

THE COURT: Right.

MR. WILLIAMS: So the only possible -- well, not the only possible, but the way I would view it would be that when you -- I understood you to say you were putting the box and those items in it because she was talking about them, pulling them out, showing them to everybody, then that certainly would be improper if she was showing it, but I thought maybe -- maybe it was in evidence.

THE COURT: Right. I was trying to deal with the chain of custody stuff that we talked about over here

447

because you'd indicated you were gonna have to object to everything, and I can understand why.

MR. WILLIAMS: And you see that's the reason. That is the very reason why this is so crucial is because this is not a piece of evidence that -- you know, it's already been shown to the jury.

THE COURT: Right. And -- and until your further inquiry and argument in that regard, I had no idea what it was, you know, so I was -- I assumed that it had something to do with the three bags -- three boxes and I don't know why. Well, I know why. Because apparently I was the only one in the courtroom who didn't know that there was another drug stashed somewhere that was taken into account. That would have been good for me to know.

I've already put my ruling on the record and I have put my -- the legal basis for my ruling on the record and I hope I have sufficiently for whatever purpose it might serve to some appellate court looking at this the extreme distaste for which I feel I am required to do what the law mandates.

(State's Exhibit Number 11, 12 and 13 were marked for identification.)

THE COURT: Bring us the jury.

(Whereupon, the jury returns to the jury room at 4:17 PM.)

THE COURT: Thank you, folks.

When we broke some time ago to deal with some matters of law, which obviously took some time to deal with, Ms. Walker was being cross-examined by Mr. Williams.

We pick up at that point now with continued cross-examination of Ms. Walker who you recall analyzed the drugs in this particular case.

Let me tell you that there was a reference to the three plastic containers. There was reference to another zip bag that contained a quantity of drugs that was shown to you. Let me tell you that that -- that last container is not in evidence. It was improperly shown to you. It is not a part of this trial. It has nothing do with the charges that the defendant is facing in this regard. I tell you as strongly as I can that -- forget about that. That has no rule -- no role I should say and nothing for you to consider insofar as it's concerned. It's not a part of the record in this case. You will deal with and give whatever consideration you feel you need to give to the other containers that have been offered in this matter, but nothing to that.

Thank you.

All right. Mr. Williams, you can continue your cross-examination.

MR. WILLIAMS: No questions.

THE COURT: Thank you.

Any redirect?

MS. OPPENHEIMER: Yes, Your Honor. If I may approach the witness?

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. All right, Ms. Walker. We've talked about three plastic containers that you analyzed, right?

A. Yes, ma'am.

Q. I'm showing you State's Exhibit Number 11. Can you tell me if you recognize that item?

A. I do.

Q. And is that the item that you -- one of the items that you tested in this case in reference to this defendant?

A. Yes, ma'am.

Q. And how do you know that?

A. My initials are on the bag.

Q. And is that your handwriting on the bag?

A. Yes, ma'am.

Q. And did -- where did that bag come from?

A. This bag specifically I added into the case.

Q. And the plastic container that's inside that bag, where did that plastic container come from?

A. That plastic container containing the meth that's in

this bag was found in this box.
Q. And that's previously marked as State's Exhibit 7 --
A. Yes, ma'am --
Q. -- that you said had not been tampered with at all?
A. Yes, ma'am.
Q. From the plastic container in Item 1.1(1), can you tell us whether or not that plastic container in and of itself appeared to be tampered with?
A. No, ma'am.
MS. OPPENHEIMER: Your Honor, at this time I'd move State's Exhibit Number 11 in evidence.
MR. WILLIAMS: Subject to my prior objections.
THE COURT: Subject to previous objections.
Now tell me where that came from again.
THE WITNESS: This specific item came from the box.
THE COURT: Is that the third plastic container; is that right?
THE WITNESS: This is the first one that I tested. This is Item 1.1 parentheses 1.
THE COURT: That's one of the three?
THE WITNESS: Yes, sir.
THE COURT: All right. In evidence over objection.
Thank you.
(State's Exhibit Number 11, a container of methamphetamine, was admitted into evidence.)

BY MS. OPPENHEIMER:
Q. I'm showing you what's been marked as State's Exhibit Number 12. Can you tell me if you recognize that item?
A. I do.
Q. And what it is?
A. It's Item 1.1 parentheses 2.
Q. And is that one of the items you tested in this case in reference to this defendant?
A. Yes, I did.
Q. And can you tell us did you add that plastic bag after you were done testing?
A. Yes, I did.
Q. Is it in the same condition as it was when you sealed it?
A. Yes, it is.
Q. And can you tell us that plastic container in the bag, is that what the methamphetamine was found in?
A. Yes, ma'am.
Q. And can you tell us where you obtained that plastic container from?
A. I obtained it from the box that was submitted as C017604.
Q. And that would have been the BEST kit in this case?
A. Yes, ma'am.
Q. And the box that's been previously ID'd as State's

Exhibit Number 7?
A. Yes, ma'am.
Q. And when you removed that plastic container from State's Exhibit Number 7, did it appear to have been tampered with at all?
A. No, ma'am.
MS. OPPENHEIMER: Your Honor, at this time I move State's Exhibit Number 12 into evidence.
THE COURT: Subject to previous objection 12's in evidence.
(State's Exhibit Number 12, a container of methamphetamine, was admitted into evidence.)
BY MS. OPPENHEIMER:
Q. I'm showing you what's been marked as State's Exhibit 13. Do you recognize this item?
A. I do.
Q. And how do you recognize that?
A. It has my initials and the BEST kit and case number on it.
Q. All right. Is that one of the items that you tested in this case in reference to this defendant?
A. Yes, ma'am.
Q. Can you tell us whether or not you added that bag after you were done testing?
A. Yes, I did. It's noted as bag added on the bag.

Q. And the methamphetamine that's inside that bag, where was that originally found?
A. It was found in the plastic container that is in that Ziploc bag.
Q. And where was that plastic container found when you went to go test it?
A. It was found in the same box as the other two prior and it's boxed with the BEST kit C017604 taped to it.
Q. Did that plastic container appear to be tampered with at all?
A. No, ma'am.
MS. OPPENHEIMER: Your Honor, at this time I move State's Exhibit Number 13 into evidence.
THE COURT: Subject to previous objection, 13's in evidence.
(State's Exhibit Number 13, a container of methamphetamine, was admitted into evidence.)
MS. OPPENHEIMER: I beg the Court's indulgence.
BY MS. OPPENHEIMER:
Q. And, Ms. Walker, you tested all three of those bags?
A. Yes, ma'am.
Q. And the results of your test was what?
A. Methamphetamine.
Q. And the aggregate weight of those three bags was what?
A. The 2917 grams, 45,016.19 grains.

MS. OPPENHEIMER: I have no further questions. Thank you, Ms. Walker.

THE COURT: Any followup on those points, Mr. Williams?

MR. WILLIAMS: None, Your Honor.

THE COURT: Thank you.

Ms. Walker, you can step down.

THE WITNESS: Yes, sir.

THE COURT: Let me get -- the initial weight, Ms. Walker -- before you step down, Ms. Walker, give that to me to make sure. I've got the 44,016.9. What was the other weight?

THE WITNESS: It was 2,917 grams, 45,016.19 grains.

THE COURT: I had the 2,917 before as your weight.

Thank you very much. You can step down.

THE WITNESS: Yes, sir. Thank you.

(Witness excused.)

THE COURT: All right. How long will the next witness take, Madam Solicitor?

MS. OPPENHEIMER: That all depends, Your Honor, on cross-examination. I don't think my direct will be that long.

THE COURT: Who is your next witness gonna be?

MS. OPPENHEIMER: Investigator Mike Phipps. He is -- we intend to offer him as an expert in digital

455

forensics.

THE COURT: Okay. Given the fact that we've had to start late, interrupt the case twice already, I think we need to keep on going, so we'll do that.

MR. WILLIAMS: Your Honor, there is one matter that -- since I now know who the next witness is, we might need to entertain outside the presence of the jury.

THE COURT: All right. Folks, can you-all find your way to the jury room?

FOREPERSON: Yes, Your Honor.

THE COURT: Please don't discuss the case among yourselves.

(Whereupon, the jury retires to the jury room at 4:27 PM.)

(State's Exhibit Number 14, 15, 16 and 17 were marked for identification.)

THE COURT: All right. Tell me again, Ms. Oppenheimer, what Mr. Phipps is gonna be testifying to because I want to have a basis for understanding what Mr. Williams' objection is gonna be.

MS. OPPENHEIMER: Your Honor, he did the cell phone extraction in this case from the cell phone that is already in evidence that was identified as the defendant's phone in his truck.

THE COURT: Right.

456

MS. OPPENHEIMER: We intend to offer him as an expert in digital forensics and cell phone extraction. Specifically there's one conversation that we intend to introduce that we have also pared down that would show the plan of the defendant and his source of supply to pick up these drugs from Atlanta, Georgia.

THE COURT: Okay.

All right. Thank you.

Now, Mr. Williams, I'll be glad to hear from you.

MR. WILLIAMS: Your Honor, clearly what they're going to do is as in most cases when the cell phone is seized that at some point in time they secure a search warrant which allows them to go into the cell phone and analyze it.

THE COURT: Right.

MR. WILLIAMS: Your Honor, there was actually a search warrant and what happens in terms of -- I don't know much about the custody of the cell phone, but it was on June 30th, it was placed into evidence, and there was a search warrant which was issued by Gietz -- by the judge pursuant to Gietz's request for a search of the cell phone.

THE COURT: Right.

MR. WILLIAMS: Your Honor, that search warrant was dated June the 30th of 2020 and as is the case with most

457

search warrants, the judge has instructed that the item to be searched is stored at Lexington County Sheriff's Department, and I can present you a copy of this, Your Honor, located at 521 Gibson Road. The item is described as one white LG cell phone with case and it describes the description of the property, which is Steve Brown's cell phone, which was seized on June 29, 2020, then it goes on in the body of the search warrant, to follow the statute, it says that this search warrant shall not be valid for more than ten days from the issuance -- from the date of issuance, which is standard lingo, if you will, Your Honor, in a search warrant.

THE COURT: Right.

MR. WILLIAMS: I have a copy of the extraction summary, which was completed by Mr. Phipps, which clearly indicates that the date and time that he did this would have been -- I think I'm reading this right. Start date, October the 16th of 2020 at 2:51:26 PM, and I can present this to the Court if you need to see it, Your Honor.

THE COURT: No, I'll take your word.

MR. WILLIAMS: It's standard kind of because it tells when he began to do his work to do the search.

THE COURT: Right.

MR. WILLIAMS: Your Honor, a search warrant pursuant

458

to 17.3.140 is an allowance which allows someone to go -- they're authorized basically to break people's privacy and to go into the phone and determine what is in the phone.

THE COURT: Right.

MR. WILLIAMS: It wasn't done within ten days is the short answer, Your Honor. Cell phones are now covered and are required to have search warrants to go into the phones. I'm sure Your Honor knows whatever that California case was --

THE COURT: Right.

MR. WILLIAMS: -- but it's kind of a simple -- kind of a simple argument. I don't know why -- if anybody has ever made the argument before. It just wasn't done within ten days, Your Honor. They're not authorized to go into that cell phone unless the search warrant is within ten days of the date that they performed the extraction --

THE COURT: All right.

MR. WILLIAMS: -- in its simplest terms.

THE COURT: Okay. What says the State?

MS. OPPENHEIMER: Your Honor, I believe Investigator Gietz did seize this cell phone into evidence on the 29th and he hand-delivered it to Investigator Phipps on June 30th, which would have been within the 10-day

459

requirement of this search warrant. Investigator Phipps, obviously a very busy man, has hundreds of cell phones that he needs to obtain extractions from and he was given this phone in June of 2020 at which point that would have been the date that the search warrant was, in fact, executed when it was handed to Investigator Phipps. He did not put it on the software to download everything or extract everything until October of 2020. I don't believe that that would run afoul at all of Judge Reinhart's order. The search warrant was, indeed, executed really the next day, Your Honor.

THE COURT: Can somebody show me a copy of the search warrant?

MR. WILLIAMS: Yes, Your Honor.

MS. OPPENHEIMER: Yes, Your Honor.

MR. WILLIAMS: Here's a copy of the search warrant and this is just showing where Phipps received it and this is the extraction date.

THE COURT: Okay.

MS. OPPENHEIMER: Your Honor, Investigator Phipps did just inform me that on the date that Investigator Gietz handed him the phone, on June 30th, he began his process and attempted to use our software at the sheriff's department, and correct me if I'm wrong, Investigator Phipps, but the software at the sheriff's department was

460

unable to extract anything, which is why we had to go to a different software that allowed access in October of 2020. So the initial attempt to get into the phone was made the day after it was seized, which is well within those ten days.

MR. WILLIAMS: And, Your Honor, I believe the law in regards to search warrant says that if you're not able to execute the search warrant, it's to be returned to the magistrate within those ten days. So the search was not commenced that was used for the extraction until after this date in October.

MS. OPPENHEIMER: Well, actually it was commenced because they did attempt to extract it on June 30th.

MR. WILLIAMS: But no evidence is tantamount to no search.

MS. OPPENHEIMER: Your Honor, sometime these extractions can take months, if not years, depending on the device and depending on how much data is in there.

THE COURT: I'm familiar with that. I'm just trying to decide whether the statute means what it says. The search warrant itself says -- the body of the warrant says a written inventory of all properties seized shall be made to the judge within ten days from the date of the warrant, et cetera. The description of the property from the affidavit itself is the cell phone.

461

Obviously that by implication means whatever information is contained in it, but the matter of reading would just say the cell phone is the property and the cell phone was received within that 10-day period.

State versus Weaver is a case that has come down and held that the failure to complete that and get the return done within ten days is a ministerial act and in the absence of prejudice is not grounds for vacating the search warrant or declaring it invalid. That's State versus Weaver, W-E-A-V-E-R, and the cite is 374 South Carolina 313.

All right. Mr. Phipps, come forward and be sworn.

I'm sorry.

MR. WILLIAMS: Can I add to that? Your Honor, I'm familiar with that case and when it references a ministerial duty what they're referencing is the actual turning over of the form which comes with the search warrant to the magistrate.

THE COURT: Right.

MR. WILLIAMS: So they're not talking about the search, they're talking about the paperwork. So if a police officer fails to turn over the paperwork on the return to the search warrant, therein lies the ministerial duty, but the search is not being conducted within that time period.

462

THE COURT: All right. Let me look at it. I haven't read the whole case.

MR. WILLIAMS: I believe that's what it says, Your Honor.

THE COURT: I just need to know as much about it as you do if I'm gonna rule if I can.

MS. OPPENHEIMER: Your Honor, we can certainly offer testimony from Investigator Phipps if that would help.

THE COURT: Okay. The reading of the case among other things says the failure to list all of the items seized on the return or the failure to make a return is a ministerial error that does not require suppression of the evidence, et cetera, unless there's some prejudice. The fact that the case refers not only to the document itself, that is the return, but also to a listing of whatever was seized during that period of time goes beyond just the mere paperwork to the item that was seized, and in this particular case, of course, that would be the phone and whatever's on it, so.

MR. WILLIAMS: I don't disagree with that, Your Honor, but that's still not the search.

THE COURT: Well, in the case -- in the Weaver case, the items seized would be the result of the search, right?

463

MR. WILLIAMS: The item seized in this particular case for which the search warrant is given would be the authority to go inside the cell phone.

THE COURT: Right. That's right.

MR. WILLIAMS: So it is the power -- if you follow that line of thinking from the California court, it's the power to go inside that cell phone and retrieve that information, and that good for ten days. If they don't go inside the cell phone for those ten days, then they don't have the authority to do it. This deals with authority. It's not talking about the little yellow form that's on the back of the search warrant that says return and you list all the items.

THE COURT: Right.

Yes.

MS. OPPENHEIMER: Your Honor, I believe that, you know, Investigator Phipps will testify that he began his process on June 30th of 2020 and that this entire time before the extraction was complete he was executing that search warrant. I don't think that the spirit of the search warrant or the law would require that every single cell phone extraction be done within ten days. That would just be absurd.

THE COURT: Right.

I agree with that. I think that that would create

464

an impossibility obviously given the nature of the extractions.

I'm respectfully overruling the motion to suppress the warrant and the results of the search of the -- results of the search warrant for those reasons. It began within the 10-day period, it was on-going during that period of time, it was not unduly delayed I take it Mr. Phipps will testify, so the motion is respectfully denied, all right?

MR. WILLIAMS: Your Honor, preempting whether or not that there would be another objection when she attempts to put the statements in, we would object to the introduction of any statements from somebody other than the defendant.

THE COURT: Right. Now I believe that's the kind of thing I can handle.

MR. WILLIAMS: Okay.

THE COURT: All right. Thank you, sir.

Okay. Ms. Oppenheimer.

MS. OPPENHEIMER: Your Honor, based on a reading of this chain of messages, the State does not believe that they fall under the rule of hearsay because they're statements by a co-conspirator. It is very obvious that the defendant and a person by the name of "T" are attempting to exchange money for methamphetamine. It is

465

-- and, Your Honor, I can hand up what we intend to offer so that you can look at it.

It is clear that this is a co-conspirator to this trafficking of methamphetamine, to bring this methamphetamine into this state.

THE COURT: All right.

MS. OPPENHEIMER: Your Honor, there's nothing in the law that says that the co-conspirator needs to be charged. In fact, based on the evidence, it appears that he is in Atlanta, Georgia, so Investigator Gietz would have no jurisdiction to charge him, but I'm sure if he ever came into the state of South Carolina and Lexington County, he would be subject to a charge of trafficking methamphetamine.

I have not been able to find anything in the law that would require a co-conspirator to be charged, but these are statements by a co-conspirator and, therefore, not hearsay.

THE COURT: I think the question is whether or not there is law that says the statements of a co-conspirator are not subject to the hearsay exception -- are not subject to hearsay rules. We should be able to find something about that.

MR. WILLIAMS: We're concerned about confrontation of witnesses and the constitutional deal here and if

466

he's not -- if he's not a co-conspirator, if he cannot become co-conspirator unless he comes into the state of South Carolina, then I think that only buttresses the argument.

MS. OPPENHEIMER: Your Honor, certainly the questions made by this individual named "T" are not offered for the truth of the matter asserted and most of those statements by "T" are, indeed, questions that the defendant responds to. Any statements by the defendant are certainly not hearsay. And, again, we would argue Rule 801(d), I believe, that -- that they're statements by a co-conspirator and, therefore, not hearsay.

THE COURT: Just for my information, Mr. Brown is -- the blue stuff is his and the green stuff is the other guy?

MS. OPPENHEIMER: The green is the defendant and the blue is "T".

THE COURT: Okay. I see. All right.

All right. I'll deal with this when -- we've got a little ways to get to until I look at the -- the scope of the messages and whether or not I'll even deal with those. We need to deal with the process you got it to begin with.

Mr. Phipps, come forward and be sworn, please.

(Whereupon, Michael Phipps was duly sworn by the

Clerk of Court.)

THE CLERK: Would you please have a seat in the jury box. State your full name and spell your last for the record.

THE WITNESS: Michael Phipps, P-H-I-P-P-S.

MICHAEL PHIPPS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. OPPENHEIMER:

Q. Good afternoon, Investigator Phipps.

A. Good afternoon.

Q. You are employed with the Lexington County Sheriff's Department; is that right?

A. That's correct.

Q. Are you also a TFO --

MS. OPPENHEIMER: I imagine this is outside the presence of the jury, correct?

THE COURT: What's that?

MS. OPPENHEIMER: We don't have the jury. That's what you wanted?

THE COURT: We don't have the jury. My understanding is -- well, you tell me. Are we trying to lay some foundation to support him at this juncture or do you want the jury to hear what -- frankly, I've lost sight of what the jury's role is in this and what

mine is.

But you're right. We do need the jury here if this is something that's gonna get past a matter of law to a matter of fact.

MS. OPPENHEIMER: Well, I believe you ruled that the search warrant objection by Mr. Williams would have been overruled and so the extraction would have been proper.

THE COURT: Exactly. Because you said he was going to testify, I believe, that he got this within a certain period of time and that he was on-going with it, and I assume that that's what he's gonna tell me so that I can go ahead and let him talk about what he found.

If that's what he's gonna say, let's get that in the record and then let me get the jury in.

MS. OPPENHEIMER: All right.

BY MS. OPPENHEIMER:

Q. Investigator Phipps, one of your tasks at the sheriff's department is to do cell phone extractions; is that right?

A. Yes, I'm considered a digital forensic analyst.

Q. All right. And were you asked to do one in this case against Steven Daniel Brown?

A. Yes, ma'am.

Q. And what's already been introduced into evidence as

State Exhibit Number 6, was this the cell phone that you were asked to extract data from?
A. Yes, ma'am.
Q. And who did you receive that item from?
A. Detective Gietz.
Q. On what date?
A. June 30th of 2020.
Q. And can you tell us did you begin your extraction process on June 30, 2020?
A. I did. As the device came into the lab, I immediately started to triage it, began to find out where we stood with being able to access the device. At that time it was determined that the phone was PIN locked, so that was gonna require a brute force attack to get around that locked device.
Q. What do you mean by a brute force attack?
A. So in this case, the user of the phone had set up a user lock to prevent anyone from going in the phone. We have software tools that we can mount the phone on and these tools just run a brute force attack on that PIN number trying every variation of all possible number variations for whatever length PIN it is and it takes however as long as it takes. I mean, sometimes we get lucky and someone chose something really simple like all 1's and we may get into the phone the same day. If it's

something complex, it could take months, even years.
Q. All right. And was this a simple phone to get into?
A. We were able to access the phone on October 16th of 2020.
Q. And this entire time between June 30th of 2020 and October 16th of 2020 is your software working attempting to find that PIN number?
A. That's correct.
Q. All right.
THE COURT: All right. Thank you.
The groundwork has sufficiently been laid to deal with the search warrant issue on the basis of that testimony.
Let's get the jury in.
MS. OPPENHEIMER: Thank you, Your Honor.
Would you like him to come down and come back?
THE COURT: You can stay right where you are, Mr. Phipps. I'll let the jury know that you've been sworn outside of their presence.
MS. OPPENHEIMER: Your Honor, you have my printout copy of the messages.
THE COURT: You want this?
MS. OPPENHEIMER: Is that okay? I do have an exhibit sticker on it.
THE COURT: You take that.

471

MS. OPPENHEIMER: Okay.

(State's Exhibit Number 7, an empty BEST kit box, was admitted into evidence.)

(Whereupon, the jury return to the courtroom at 4:53 PM.)

THE COURT: Ladies and gentlemen, Mike Phipps of Lexington County Sheriff's Department, has taken the stand and was sworn in your absence -- I think in your absence. Nonetheless he's now subject to direct examination.

Ms. Oppenheimer.

MS. OPPENHEIMER: Thank you, Your Honor.

MICHAEL PHIPPS,

having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. All right, Investigator Phipps. You are employed with Lexington County Sheriff's Department; is that correct?

A. Yes, ma'am.

Q. What unit are you assigned to?

A. I'm with the crime scene unit and I hold a special job title within our CSI unit, which is forensic technology examiner.

Q. All right. And as a forensic technology examiner, what are you tasked with doing?

A. Trying to extract evidence in criminal investigations from digital devices. It can be anything from vehicles, cars, computers, cell phones, anything electronic that may have evidence that's pertinent to a criminal investigation.
Q. Do you have any special training as it relates to this forensic data analyst analysis?
A. Yes, ma'am. I started training in this field back in 2007. In 2010, I became a member of the South Carolina Electronic Crimes Task Force, which is now called the South Carolina Cyber Fraud Task Force. It's a task force administered by the United States Secret Service. In 2015, I became a full-time task force officer with them and actually sit in their lab and work out of their lab even though I'm employed by the Lexington County Sheriff's Department.
Q. Okay. And you said that extracting data from cell phones is part of your job description; is that correct?
A. It is.
Q. Approximately how many cell phones have you extracted data from throughout your career?
A. I have no way to even estimate, but over a thousand.
Q. All right. And have you testified in court today -- or sorry. Have you testified in court before?
A. I have. Yes, ma'am.
Q. In both state and Federal court?

473

A. I have. Federal court was not for phone-related stuff. It was crimes unrelated to this.
Q. All right. And have you been offered as an expert and qualified as an expert in digital forensics and cell phone extractions before?
A. Yes, ma'am. I've been qualified in various areas of digital forensics many times.
Q. And is there any training that you do annually or quarterly to keep up on the new technology?
A. We do. There's various training seminars and training courses we go to. Additionally, I'm also certified by a vendor of one of our tools, Cellebrite, so I'm certified as a Cellebrite certified operator, Cellebrite certified physical analyst, and Cellebrite certified smart phone analyst.
Q. And how long have you been are certified by Cellebrite?
A. We get certified every three years and I'm on my second rotation now, so coming up on six years.
MS. OPPENHEIMER: Your Honor, at this time I'd offer Investigator Phipps as an expert in digital forensics and cell phone extractions.
MR. WILLIAMS: Without objection, Your Honor.
THE COURT: Thank you.
Without objection Mr. Phipps is so qualified.

BY MS. OPPENHEIMER:
Q. Investigator Phipps, were you asked to extract data from a cell phone in this case?
A. Yes, ma'am.
Q. And I'm handing you what's already in evidence as State's Exhibit Number 6. Can you tell us if you recognize that item?
A. I do. The packaging has my initials and date on it and this is the proper case number and evidence number.
Q. And who did you -- or did you attempt to extract data from that cell phone?
A. Yes, ma'am.
Q. And who did you receive that cell phone from?
A. Detective Gietz with our narcotics unit.
Q. On what date did you receive that cell phone to begin your extraction process?
A. Detective Gietz brought me the phone June 30th of 2020 and I started looking at the phone that -- that same day.
Q. Okay. Can you tell us what your process is in attempting to extract data from a cell phone?
A. Obviously the first thing we do is we take photographs of the evidence within the packaging and then out of the packaging. We take the protective cases off, try to identify the make and model we're dealing with. We remove the SIM card from the phone to isolate it from the network

because at some point we're gonna have to power that up and we don't really want the phone downloading any more additional information, and in this instance when it was powered up it was found to have a PIN lock, so the user had activated a lock so only he could access the phone.

Q. All right. And do you have software in which you can attempt to, I guess, bypass that PIN code? Would that be the appropriate term?

A. Yes, sometimes the -- sometimes the forensic tools can actually just bypass the PIN. In which case, that's sort of -- it's like a boot loader for the phone. It loads a client on the phone, bypasses the main operating systems and it allows you to access the raw memory without having to boot the phone. Alternatively, sometimes we have to do a brute force attack on that PIN; meaning the phone is powered up, it's hooked to the equipment, that equipment just tries virtually every possible combination of PIN number and will eventually find the right PIN number.

Q. And which method did you have to use in this case?

A. I believe in this case it was a brute force attack that we started on that phone.

Q. And what software do you use for that brute force attack?

A. This was Cellebrite. My notes indicate that we used a combination, but ultimately Cellebrite Premium was the

forensic tool that was used.
Q. And were you able to eventually get an extraction from this phone?
A. Yes, we obtained various levels of extraction; a file system and a physical extraction.
Q. Okay. Can you explain the difference between a file system and a physical extraction for us?
A. I can try. A file system would be akin to you looking at your computer and going into file explorer and having the file structure open up as a series of folders. It would be like collecting all of those folders and pulling them out. The physical is not using the operating system, but getting the raw binary data, literally the ones and zeros, out of the memory and then using a secondary tool to reconstruct that into a user readable format.
Q. All right. And did -- I guess you obtain both a file and a physical extraction in this case?
A. We did, yes.
Q. And did you store that anywhere?
A. Yes, we -- it was stored within our forensic lab there where we store all extractions and digital evidence.
Q. All right.
MS. OPPENHEIMER: Your Honor, may I approach the witness?
THE COURT: Yes, ma'am.

477

BY MS. OPPENHEIMER:
Q. I'm showing you what's been marked as State's Exhibit Number 17 for ID only. Do you recognize that item?
A. I do. This is a disk that I previously verified that were the contents of the extraction of this phone.
Q. And how did you verify that it was the extraction of the phone?
A. By looking at the files that are on there and identifying those are the ones that I recovered from the phone.
Q. And did you initial that disk?
A. I did. My initials are up here in the left-hand corner.
Q. And did you put a date on it?
A. I did. August 3, 2023.
Q. And is that disk the entirety of the phone extraction in this case?
A. It's -- yes. It's everything that we got and parsed out. Again, we recover raw data, ones and zeros, which aren't on here because that's not something someone can look at, but as far as the results of that data being processed in the tool, this is everything that came off the phone.
Q. All right, Investigator Phipps.
MS. OPPENHEIMER: Again, Judge, just for ID. It's

the entirety of the extraction.
BY MS. OPPENHEIMER:
Q. Are you able to create smaller reports from -- well, let me back up. Are you able to attribute the data at all in this cell phone to any individual?
A. It's a matter of looking at what is on the phone. Obviously people have accounts that they set up on their phones, so one of the artifacts that this tool will carve out is it will try to go through and identify all accounts that are on the phone, whether you have a Facebook account, a Gmail account, Linked-In account, whatever chat application account, and it will list all of those under one heading for that phone. So sometimes you'll see where, you know, if you handed your phone over to a friend and they log into their Facebook, you may get the odd account listed there, but you can usually determine who is the primary user of the account just by the virtue of the volume of accounts under one person.
Q. Were you able to determine a primary user of this cell phone?
A. Yes.
Q. And who has that individual?
A. I would have to have the printout because I don't have his name memorized.
MS. OPPENHEIMER: I beg the Court's indulgence. I

479

seem to have misplaced the item that I wanted to show Investigator Phipps.

THE COURT: All right.

BY MS. OPPENHEIMER:

Q. Investigator Phipps, would looking at a smaller extraction report help refresh your memory of who the owner of this phone might be?

A. It can. There was a specific accounts document.

Q. I seem to have found it.

MS. OPPENHEIMER: I am so sorry, Your Honor.

THE COURT: That's all right. If you've got it now, we'll show it to him and it should resolve the issue.

BY MS. OPPENHEIMER:

Q. Does this look like the document that would tell you the owner?

A. Yes.

Q. And the various accounts?

A. It does. So under user accounts, there were several, and, of course, with any type of android phone, an android phone has a Gmail account associated with it. In this instance, there were two Gmail accounts identified. One was a BSteveo2323@Gmail.com and let me find the second one. That Gmail account is utilizing -- linked to numerous other accounts as far as the other and the other is BSteveo666@Gmail.com.

Q. All right. Can you tell us whether or not there was a phone number associated with this phone that you were able to obtain?
A. Yes.
Q. What was that phone number?
A. The phone number was area code [redacted] 3666.
Q. All right. Can you tell us whether or not you observed the name associated with a WhatsApp account from your extraction?
A. You wouldn't happen to have the exhibit I prepared, would you?
Q. I do.
MS. OPPENHEIMER: May I approach, Your Honor?
BY MS. OPPENHEIMER:
Q. I'm showing you State's Exhibit Number 14. Is this an exhibit that you prepared for court today?
A. It is.
Q. And did you create that report from the full extraction from this cell phone?
A. I did.
Q. And does it appear to have been altered in any way?
A. It does not.
Q. Can you tell us who the owner of that chat appears to be?
A. Well, the under -- it's a WhatsApp account and the

owner is listed as just Steve and, of course, it has a numerical value for the user account, and that's [redacted]-3666.

Q. And is that the same phone number associated with the phone that was given to you by Investigator Gietz?

A. It is. Yes, ma'am.

Q. And were you asked specifically to look at conversations as it relates to the trafficking of narcotics in creating this report?

A. Yes, I was.

Q. And that is what this report reflects?

A. Yeah, this report is specific to communications between the defendant and one individual specifically for a very specific period of time.

Q. All right. And what was that period of time?

A. Starting on June 20th of 2020 through June 29th of 2020.

MS. OPPENHEIMER: Your Honor, at this time I would move State's Exhibit Number 14 into evidence.

MR. WILLIAMS: Subject to all prior objections made in reference to the search, as well as this item that she's introducing into evidence itself.

THE COURT: All right. Thank you.

Subject to defense's objections in evidence, 14's in evidence.

(State's Exhibit Number 14, text messages, was admitted into evidence.)

BY MS. OPPENHEIMER:

Q. Can you tell us who the two participants of this conversation are?

A. The owner of the phone, listed as Steve with that phone number, and then an individual that's just listed as the letter "T" with a numerical value for his WhatsApp account as well.

Q. Now can you explain to us when these messages are pulled from the full extraction, is there a date and a time associated with those messages?

A. Yes. I mean, the tool basically reconstructs that data just like you kind of see it on the phone with bubbles so you can see, you know, the sender and the receiver for the text communication.

Q. All right. And the time, is that in Eastern Standard Time, is that in Mountain Standard Time? What time zone are we looking at?

A. Well, we correct for it, so usually on a cell phone most things are tracked in UTC or Universal Time Coordinated. It's the old Zulu time. It's just what a lot of computer systems use. In this instance, we know that the individuals were in the Eastern time zone, so we can apply that time offset so what's printed in the report

483

is an accurate time for Eastern Daylight Time when this occurred.

Q. Okay. And can you explain to us, I guess, how do we differentiate between incoming and outgoing messages in that exhibit?

A. So in this particular document, the bubbles that point over to the left are the individual "T", so that's his communication to the owner of the phone, and they're in blue, and then the owner of the phone's are pointing to the right and they're green.

Q. And the owner of the phone was who again?

A. Steve.

Q. And were you able to extract some images that were also sent in this time period between these two individuals?

A. Yes. Like in the chats you'll see the chat and then you'll see a little icon that represents the image of an attachment if there's an image attached to the communication, but it's a very low resolution little icon. So the user would click on it and, of course, it would open up into a larger resolution image. Well, those are also stored on the phone as well. So I went through and identified the corresponding larger file to the little icon images that appear within this chat correspondence in the report.

MS. OPPENHEIMER: Your Honor, may I approach the witness?

THE COURT: Yes, ma'am.

BY MS. OPPENHEIMER:

Q. I'm showing you what's been marked as State's Exhibit Number 15 and 16. If you could look at those and tell me if you recognize those.

A. I do.

Q. And what are they?

A. They are --

MR. WILLIAMS: Your Honor, I'm gonna object to the identification of these two items unless he is able to testify as to who would have taken these images -- the picture of these images.

THE COURT: All right. What are we talking about? These are the icons here?

MS. OPPENHEIMER: These are the images that were included in the messages between "T" and the owner, Steve. He testified that he generated a report of the images alone and --

THE COURT: And do these images also correspond to the same phones that the conversations correspond to?

MS. OPPENHEIMER: They do, Your Honor. They're extracted from these messages that have been introduced in State's Exhibit Number 14.

485

THE COURT: All right. As long as they -- they are identified and connected with either the blue or the green. I'll note your objection, but respectfully overrule it. It seems to me that there's a sufficient connection under the way these things are done to identify them with, one, either "T" or with the owner of the phone.

Is that fair to say, Investigator Phipps?

THE WITNESS: Yes, sir.

THE COURT: Okay. I'll allow it.

MS. OPPENHEIMER: Are they in evidence, Your Honor, or would you like me to add more foundation?

THE COURT: No, they're in evidence now.

MS. OPPENHEIMER: Thank you, Your Honor.

THE COURT: If you'll tell me what they are right. All I know right this minute is that they're 15 and 16 and they're icons, but that's all I know.

BY MS. OPPENHEIMER:

Q. Can you tell us what Exhibit Number 15 is?

A. Fifteen is a targeted report showing slightly larger images for the images that are found within the chats that are depicted in this report, and it's just a little better view, a little clearer view, than what you would see here because this is a little bit larger. They're -- within this report, they're hyperlinked. You can click on and see

even a larger view.

MR. WILLIAMS: Obviously the -- objection.

THE COURT: Hold on a second.

MR. WILLIAMS: Obviously they're not the same as what's in the report. It is a -- the images have been hyperextended or -- it's a word he used, but essentially they're making the pictures bigger than what is viewed in these -- in these images as you would, I guess, download it.

THE COURT: Okay. I think he testified earlier that the original icons are low resolution and that he had to enhance them somehow or another to make them easier to distinguish.

Is that fair to say?

THE WITNESS: No, sir. There's no enhancement. It's like on your phone if someone sends you a photo and it's just a really small image and when you click on it it has already downloaded the full version, but you're only seeing a small icon because it's trying to show you the text and everything else that goes with it. So when you click on it, it just displays to you, even though it's already on your device, the higher resolution version of that. So it's just like when you're on your personal computer and you're looking at a photo file and you can see small versions of the images and then you

487

can go on and click and say I want to see the medium size ones or I want to see the large size ones. They're all on your computer. Nothing changes. We're not enhancing or making them bigger. They're already there. We're just pulling the larger one out so you can see it.

THE COURT: If I use the word "magnify", would that be wrong too?

THE WITNESS: A little bit because the low resolution are degraded, they're pixillated, so you really couldn't magnify the small image to make it bigger. It's just a lower resolution image. And you can have multiple image sizes for the exact same image on your phone and these aren't -- the larger one that's here is not something that we blew up or enhanced, it was there. It just represents the full size view of what the small icon represented.

THE COURT: I don't even know why I'm engaging in this conversation about how a cell phone works, but I'm gonna ask you for my purposes in trying to determine the evidentiary value of that --

THE WITNESS: Yes, sir.

THE COURT: -- is there any significant change between what you show on that -- whatever you've shown and what the little icon is on wherever you get it from? In other words, it doesn't change the character of it,

does it?

THE WITNESS: No, sir. It's the same image. It's just the full resolution of it.

THE COURT: All right. Just as an evidentiary matter, I wanted to be sure that we're talking about the same thing, and I think we are.

Okay. Thank you.

(State's Exhibit Number 15, a WhatsApp chain, and State's Exhibit Number 16, a WhatsApp image, were admitted into evidence.)

BY MS. OPPENHEIMER:

Q. And if you could just briefly describe what State's Exhibit Number 16 is, Investigator Phipps.

A. So 16 is a full size, eight and a half by eleven, print of what would be Item 3 on State's 15, which is an image that was included in the WhatsApp chain. I'll have to find it to see.

So in State's 14, which is the WhatsApp communication between Steve and "T", on June 23rd at 6:26 PM "T" sends a message to Steve and includes the attachment of the image, which is State's 16, blown up to full size.

MS. OPPENHEIMER: Your Honor, permission to publish State's 16?

THE COURT: Yes. Subject to objection previously made and to the possibility of the hearsay objection

being made, I note that these things would come within the exceptions under Rule 801(b), it appears to me -- or 801(d), under our rules.

Go ahead.

BY MS. OPPENHEIMER:

Q. Investigator Phipps, State's Exhibit Number 16 that we're looking at here, it is a low res photo, I believe, as you testified to, but who sent that message?

A. "T" sent that to Steve.

Q. And on what date was that message sent?

THE COURT: 6-23 is what you said earlier.

BY MS. OPPENHEIMER:

Q. I believe you said June 23rd of 2020.

A. That's correct. June 23, 2020, at 6:26 PM.

MS. OPPENHEIMER: Thank you, Investigator Phipps. I have no further questions. If you'll answer any questions that Mr. Williams may have.

THE COURT: Mr. Williams, cross-examine?

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. How you doing, Mike?

A. I'm doing fine, sir. Yourself?

Q. I'm doing fine.

I guess what I'm trying to ask is on State's Exhibit Number 16, and we were discussing about enhancement and

stuff like that, the size on the picture that you pulled off the cell phone -- well, it's about that big, right?
A. Yeah. I found probably -- I don't remember exactly, but there was probably a good four or five variations as far as file sizes of this same image.
Q. But, in essence, there's no way that that picture that size would even fit on a cell phone because a cell phone is only -- even if you have the big size like me that's about that big, so that big sheet of paper, it is enhanced, it's made bigger, it's --
A. It's printed larger than what would have been viewable, yes, sir, on the screen of the cell phone.
Q. You could take a piece of salt and make it look like a stalactite or stalagmite if you wanted to, right?
A. I would imagine. Yes, sir.
Q. Now essentially what you did was run Cellebrite on this phone that you had, right?
A. Yes, sir.
Q. And it took you, what, four months before you did that?
A. We started the process the day it was handed over to identify -- well, to photograph it and determine make and model and try to determine if it was accessible. It was determined immediately that it was PIN locked, which meant we would have to go through an additional process to gain

access to the data on the phone.
Q. Right. So just like any other cell phone, there are different ways to lock your phone. It could be face orientated, it could be fingerprint oriented or it could be some numerical thing as mine is?
A. Or a pattern. Yes, sir.
Q. Or pattern. And because you didn't have -- was his a pattern or what; do you know?
A. It was a PIN code. A numerical value. Yes, sir.
Q. And you didn't know the numbers to unlock it?
A. I did not.
Q. So eventually you-all ran the numbers and you opened it up and then from that information did you go and check out his phone number maybe with the telephone company to see what his phone number was?
A. I mean, we recovered the number that the phone identifies is linked to it, but I did not do any investigation outside of the actual phone as far as cell phone provider records or anything like that.
Q. All right. So what we do know through your investigation is that there is a phone number, which associated with the cell phone, right?
A. Yes, sir.
Q. And you were talking about accounts. There were like how many accounts? Eight accounts?

A. Oh, there were hundreds of accounts as far as different -- I mean, any time you sign up for anything you develop an account basically with that -- that vendor.
Q. And, of course, the number itself doesn't mean that any particular person is using the cell phone to that number. It could be -- I could use that phone if I wanted to, couldn't I, if I had the number to open it up?
A. Yeah, if you -- if you had the PIN code to unlock it, you could use it. Yes, sir.
Q. It certainly doesn't mean that whoever Steve is used that phone, it could be anybody that is sending messages through that phone?
A. That is correct. Anyone that had physical access to the phone could have sent a message.
Q. And in today's age, I guess, people can hack phones and use their numbers, can't they?
A. There are processes that allow you to -- yes. Basically it's called SIM swapping. So you're able to steal basically someone's phone number, preclude them from utilizing it and use it yourself.
Q. So you could -- you could steal whoever Steve is, his phone number, and utilize that phone number for whatever purposes --
MS. OPPENHEIMER: Objection. Calls for speculation. There's been no evidence of --

THE COURT: He's an expert. Go ahead.
BY MR. WILLIAMS:
Q. And use that cell phone and -- and you could be Steve right now?
A. Yes, but then the contents of the communication wouldn't appear on that phone, it would be on someone else's phone.
Q. Well, you mean the receipt of those, but the account which is set up in the name of Steve, which is on there, it would still report on that because that's where you took it from, you took it from the account which is registered with, what, the telephone company?
A. No. So the -- the phone number is on the device. I don't go to a phone provider and ask them what the phone number is and if I were to steal your phone number and start using your phone number to set up accounts, you wouldn't -- your phone would actually go dead. You wouldn't see that stuff populate on your phone, it would only be on my phone now.
Q. So when you hijack a number, are you saying that no one would have access -- you wouldn't be able to know that your phone had been hijacked essentially?
A. You would know your phone was hijacked because you would -- suddenly your phone wouldn't work at all.
Q. So you wouldn't have any evidence that it was being

used is what you're saying?
A. You would know it was being used because you couldn't use your phone for anything. It would be like a dead -- it wouldn't connect to the network, you know, you couldn't make a phone call.
Q. I got you. And if I took your phone and used your phone, it would be all over your phone if I took your phone and used your phone, wouldn't it?
A. Yes, sir.
Q. Tell me the accounts that were on the phone.
A. I would have to -- I mean, there were a lot of accounts and they're listed in the document.
Q. Where -- where are they listed?
A. Under accounts. I don't mean to be smart, but...
Q. Thanks.
A. I don't think it's in a document that's been entered yet as far as -- but there's -- as far as the full listing, they're in the extraction that I provided. I don't think that's been made --
Q. Are there hundreds? You say hundreds of accounts?
A. There was probably around a hundred accounts from various things.
Q. Were they opened at different times?
A. I wasn't looking at the timing. I was looking at, you know, attribution as far as what Gmail account was used and

they were all variations of the Steve, Steve-O showing that he was the primary user of that device. I don't recall how many accounts were just totally not his name --

Q. But there were some that were not his name?

A. Yes, sir, there were.

Q. So that means that somebody else had access to that phone and were running accounts through his phone.

A. It means at some point in time someone used his phone to access their account on his phone, yes, sir.

Q. And use that phone?

A. Yes, sir.

MR. WILLIAMS: That's all I have, Your Honor.

THE COURT: Thank you.

Redirect, Ms. Oppenheimer?

REDIRECT EXAMINATION

BY MS. OPPENHEIMER:

Q. Investigator Phipps, you testified that the primary user was Steve or Steve-O, some variation of that form?

A. That's correct.

Q. Is it fair to say that the majority of the accounts from this extraction were attributed to a Steve or a Steve-O?

A. They were.

Q. And can you tell us was this phone dead?

A. It was not. It was a functioning phone.

Q. So because it wasn't dead would lend us to believe that it had not been hacked based on your testimony, correct?
A. Right. That there was -- in other words, we wouldn't see the communication on the phone if his accounts had been taken over by someone else.
Q. And State's Exhibit Number 16, you didn't alter this photo in any way, did you?
A. I did not.
MS. OPPENHEIMER: No further questions, Your Honor.

RECROSS EXAMINATION

BY MR. WILLIAMS:
Q. So you were asked the question about dead. Well, when you referenced it wasn't dead, what you meant was it still had powering going to it and you could use it?
A. Yes. It was a functioning phone and that phone had communication up to the point where it was seized by law enforcement; meaning, there wasn't a period of time where it was dead and the user would not have been able to use his device.
Q. And it still had other accounts which were reflected on the phone where other persons had used the phone that wasn't Steve-O's account?
A. At some point in time, yes, sir.
MR. WILLIAMS: That's all I have.

497

THE COURT: You've got the last word, Ms. Oppenheimer.

MS. OPPENHEIMER: I have no further questions.

Thank you, Investigator Phipps.

THE COURT: Mr. Phipps, thank you. You've been a -- you've actually made it so that I could understand some of this. I wish I would have brought my phone. I can't -- I lost my Outlook on it. You could probably help me with that.

But thank you for your patience.

THE WITNESS: Yes, sir.

THE COURT: You can step down.

(Witness excused.)

THE COURT: And, folks, thank you for your patience as well. I suppose things went too smoothly yesterday. We should have known this morning when we got here and got delayed for two hours for things beyond everybody's control that we were not gonna be able to go through without some speed bumps along, and we've done that, but you've been patient with us throughout that and you've hung in there, and I think -- how many more witnesses do you have?

MR. SMITH: Just one, Your Honor.

THE COURT: Good.

The State has one more witness and it will complete

498

its testimony in the morning and then we will turn to the defendant. He'll have an opportunity to put in evidence if he chooses and so it looks like there's a light at the end of this tunnel and I thank you for staying with us so far.

It's a little later than -- I let you off early in the day yesterday, so I throw you into the 5:00 traffic today. Be careful on your way home.

9:30 tomorrow morning, folks. Be back in the jury room then. Please don't talk about this case with anybody or let anybody talk to you about it.

I'll see you at 9:30 in the morning.

(Whereupon, the jury was excused for the day at 5:31 PM.)

THE COURT: Is there anything further from the State before we break for the day, Ms. Oppenheimer, Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: All right. Thank you.

Mr. Williams?

MR. WILLIAMS: Nothing from the defendant, Your Honor.

THE COURT: All right, folks. We'll start back at 9:30 in the morning. Have a good evening. Be careful on the way home.

499

(Whereupon, the proceedings were concluded for August 9, 2020, at 5:32 PM.)

(The following proceedings were held August 10, 2023, beginning at 9:34 AM.)

BAILIFF: Court's now in session. The Honorable Judge Thomas Cooper presiding.

THE COURT: Thank you, ladies and gentlemen. Please be seated. Good morning.

Folks, the jury is all in place. Is the State ready for the jury?

MR. SMITH: We are, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Your Honor, I have one matter to take up with the Court prior to the jury and that is that all that meth is sitting out there on the table and I was always of the opinion if you're not using a particular exhibit or publishing to the jury or using it for purposes of the trial, then it normally doesn't have to sit somewhere to, I guess, influence the jury, if you would, Your Honor.

THE COURT: Right.

MR. WILLIAMS: When we left, it was in a box. It remained in the box most of the time, but now it's sitting out all by itself.

THE COURT: And I don't know whether that's gonna

500

be used for the next witness or not, but my experience has been from time to time that the evidence stays out there close at hand so that the lawyers can pull it up in short order without having to go through the scenario of the box or whatever it happens to be in.

So I note that. I don't think -- I don't think that that's prejudicial and I assume that it's out there for some purpose other than for display. In any event, of course, as we know the jury is gonna have all that in the jury room with them at the appropriate time, so I don't find that where it is right this minute creates any additional prejudice beyond that, but evidence, if it is incriminating, always creates some, but not unfairly I don't think.

MR. WILLIAMS: As long as the record reflects my objection to it remaining out there for the duration.

THE COURT: It does. Thank you, sir.

All right. Bring us the jury, Mr. Scott.

(Whereupon, the jury enters the courtroom at 9:38 AM.)

THE COURT: Thank you, ladies and gentlemen, for your prompt return once again this morning as we continue the trial of the case as the State is offering additional evidence and testimony.

Counsel, you can call your next witness.