

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMEL RASHOND DANIELS,

APPELLANT

APPELLATE CASE NO. 2013-001210

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SC Court of Appeals

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT #1 (DVD)**

State of South Carolina) In the Court of General Sessions
County of Greenwood) Eighth Judicial Circuit
2012-GS-24-1515

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Jermel Rashond Daniels,)
Defendant.)

May 13 - 15, 2013
Greenwood, South Carolina

B e f o r e:

The Honorable Frank R. Addy, Jr., Judge; and a jury

A p p e a r a n c e s:

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Circuit Court Reporter

1 TRIAL DAY 2 - 05/15/13

2 (Whereupon, the proceedings were resumed at 9:27 a.m.)

3 THE COURT: Okay. We're going to go back on the
4 record on 12-GS-24-1515, the *State v. Jermel Rashond Davis*
5 -- or -- sorry -- *Daniels*. The defendant is present with
6 Mr. Callison; the state is here.

7 It's my understanding that we need to proceed with a
8 *Jackson v. Denno* before the jury gets here. If you could,
9 Solicitor, kind of fill me in on exactly what the statement
10 is and what the background -- where the statement was
11 given, what that entails.

12 MS. ODOM: Yes, sir. That night when the stop
13 occurred and the defendant was pulled out of the car, a bag
14 of cocaine was placed on the trunk of the car and the
15 defendant swallowed the bag. The trooper was telling him,
16 "Spit it out; spit it out." The defendant leans over as if
17 he's having trouble swallowing the bag and then when he
18 leans back up, he says something to the effect of, "It was
19 just a little cocaine. Now y'all don't have any evidence."

20 THE COURT: Okay. All right. The defense is wanting
21 a *Jackson Denno* on that, I assume?

22 MR. CALLISON: Yes, Your Honor. You know, we'd move
23 to exclude that. And there are a few other facts that --
24 that go to the matter. First of all, when we say "It's a
25 little bag of cocaine," we don't know what it was. It was

1 never tested. It was gone, lost, whatever.

2 Secondly, when he was pulled out, he was handcuffed
3 with his hands behind his back. And so there's no question
4 that from -- from that standpoint, he would be in custody,
5 even though it was a traffic stop. He was still in custody
6 as his -- his -- his hands were handcuffed behind him.

7 And then, as the tape indicated, after he is alleged
8 to have swallowed this bag of whatever it is, the officer
9 did say, "Spit it out; spit it out," but also said and
10 questioned, "You think this is going to help you?" That
11 was the question, and it's on the tape. "You think this is
12 going to help you?"

13 Now, he was not given his Mirandas at that time. He
14 was asked the question, "You think this is going to help
15 you?" And in a drunken, intoxicated state, he said -- or
16 is alleged to have said what the officer indicated, which
17 is, "It was just a small bag of cocaine, and now you have
18 no evidence."

19 And that's -- that's kind of how it came up. Of
20 course, now, he doesn't know because he was intoxicated.
21 You know, we -- we already have pled to disorderly conduct,
22 possession of alcohol, and position of marijuana in regard
23 to that. So we would move to exclude any testimony, any
24 evidence, as to any statement he made along those lines and
25 would ask that the video be silenced.

1 THE COURT: All right. Solicitor, do you want to
2 begin with the video so that I have kind of a feeling of
3 the context, or do you want to start with the testimony of
4 the officers? Or if they can describe it accurately
5 without me having to look at the video. I don't know how
6 you want to proceed, but I'm not going to tell you how to
7 try the case.

8 MS. ODOM: I would like you to watch the video. If
9 you want to hear from the officer first, it -- or just
10 watch the video first.

11 THE COURT: Six of one, half-dozen ---

12 MR. CALLISON: It doesn't ---

13 THE COURT: --- of the other ---

14 MR. CALLISON: --- it doesn't ---

15 THE COURT: --- as far as I'm ---

16 MR. CALLISON: --- matter. No.

17 THE COURT: All right.

18 MR. CALLISON: And I ---

19 THE COURT: However you ---

20 MR. CALLISON: --- think it's ---

21 THE COURT: --- want to proceed.

22 MR. CALLISON: --- you'll find that at about 6:40.

23 THE COURT: 6:40? All right.

24 MR. TAYLOR: And -- and just for ---

25 MR. CALLISON: On that ---

1 MR. TAYLOR: --- you're ---

2 MR. CALLISON: --- tape.

3 MR. TAYLOR: --- you're talking about mute just that
4 part, not the entire video?

5 MR. CALLISON: I'm talking about the -- the muted part
6 where -- to mute the part where the alleged statement ---

7 MR. TAYLOR: Got you.

8 MR. CALLISON: --- took place. I'm not moving to
9 exclude the entire video.

10 THE COURT: All right.

11 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

12 (Off the record briefly.)

13 (Whereupon, a portion of video was played.)

14 MR. TAYLOR: Judge, that's -- that's the end of that
15 portion.

16 THE COURT: All right. Ms. Odom, you want to call a
17 witness?

18 MS. ODOM: Yes, sir, Your Honor. I'm going to call
19 Trooper Cody Bishop.

20 THE COURT: I'll swear him.

21 MR. TAYLOR: Judge, I'm going to get it all the way
22 back to the beginning, just so we can ---

23 THE COURT: That's fine.

24 CODY BISHOP, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. ODOM:

3 Q All right. Can you state your name?

4 A Yes, ma'am. It's William Cody Bishop.

5 Q And what is your job?

6 A I'm a South Carolina state trooper, South Carolina
7 Highway Patrol ---

8 Q And how long ---

9 A --- Department of Public Safety.

10 Q And how long have you been there?

11 A I've been with the South Carolina Highway Patrol for 5
12 1/2 years.

13 Q Okay. And before that where did you work?

14 A Greenwood County Sheriff's Office.

15 Q Okay. And do you have training as far as identifying
16 drugs go?17 A Yes, ma'am. I have multiple classes under my belt:
18 South Carolina interdiction; advanced criminal-enforcement
19 interdiction through the South Carolina Highway Patrol;
20 North Carolina and Georgia highway-interdiction drug
21 identification.22 Q And going back to the night in question, when the
23 defendant made the statement -- you know, we've just
24 watched this video. Right before he makes a statement
25 about the cocaine, you say something to him to the effect

1 of, "Why'd you do that?"

2 A Yes, ma'am.

3 Q Can you talk about that a little? Were you
4 questioning him ---

5 A No, ma'am.

6 Q --- then?

7 A I -- I wasn't questioning him at all. I was -- I was
8 merely making the statement or advising him of how dumb the
9 action he just took was. I -- I was merely trying to tell
10 him and explain to him that that -- that -- that was
11 stupid; that was -- that was a dumb idea; that was -- that
12 was a -- not a smart move.

13 Q Okay. So you weren't trying to interrogate him or ask
14 him what it was or anything like that?

15 A No, ma'am. It was kind of in the heat of the moment
16 thing. I -- I wasn't looking for a response. I -- I was
17 just basically explaining to him that the move or the --
18 the decision he just made was -- was not a wise one.

19 Q Okay. And was he -- had he been arrested at that
20 point when he made that statement?

21 A No, ma'am.

22 Q Okay. So did -- and again, I know we've just watched
23 the video. But did you make him any promises or threaten
24 him in any way to -- for him to make a statement?

25 A No, ma'am. Absolutely not.

1 Q So he just made it on his own?

2 A Yes, ma'am. I -- I -- I didn't -- I never once asked
3 him what the substance was. I just -- I asked him if he
4 thought that was a -- a good idea, if he thought that was
5 going to help him.

6 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

7 Q Now -- and after you made the comment to him, you
8 know, "Why'd you do that?" I mean, was there some time
9 between, even if it was a short time -- time between you
10 making the statement, you know, "Why'd you do that, man?"
11 and his statement of saying it was cocaine?

12 A Yes, ma'am. The -- the -- there was a -- a brief time
13 period there. My main concern was that the substance was
14 contained in a -- in a baggie. And I was -- I was scared
15 he was choking on the baggie. So there -- there was a time
16 frame there before he made the -- the statement and I asked
17 him was it a good idea what he just did.

18 Q And then, after you said that, you asked a different
19 trooper to call EMS?

20 A Yes, ma'am, I did.

21 Q So your statement to him of, "Why'd you do that?" like
22 that had ended; you asked the other trooper to call EMS;
23 and then, once the defendant leaned up, he made the
24 statement on his own, admitting that it was ---

25 A Yes, ma'am.

1 Q --- crack ---

2 A He -- he -- he voluntarily made that statement on his
3 own. Yes, ma'am.

4 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

5 Q Now, once you did place him under arrest, did you
6 Mirandize him?

7 A Yes, ma'am. The -- there was a lot going on. We had
8 multiple suspects. We had EMS in route. His safety was --
9 I was -- was of our concern. Once he was placed in my
10 patrol vehicle -- EMS had got there; did an evaluation --
11 he was advised of his Miranda warnings.

12 Q Okay. And did he make any statements then about ---

13 A No ---

14 Q --- the -- did -- did you try to ---

15 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

16 Q Let -- let me start over. You didn't coerce him or
17 intimidate him to make any statement before or after
18 Miranda?

19 A No, ma'am.

20 Q All right. Did you see any other officers?

21 A No, ma'am. The -- the -- it was minimal contact
22 between Mr. Daniels and the other two officers once he had
23 been placed in my patrol car. The only contact -- the only
24 persons who had contact with him at that time was myself
25 and EMS personnel.

1 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

2 Q All right. If you will, answer any questions Mr.
3 Callison has for you.

4 A Yes, ma'am.

5 THE COURT: Mr. Callison?

6 MR. CALLISON: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. CALLISON:

10 Q Trooper, let -- let me ask you this: Mr. Daniels was
11 -- appeared to be highly intoxicated, didn't he?

12 A Yes, sir.

13 Q Okay. And when he was taken out of the back of the
14 vehicle, he was handcuffed, correct?

15 A Not immediately. But yes, sir. He was eventually
16 handcuffed.

17 Q He was handcuffed before any of this statement took
18 place?

19 A Yes, sir, he was.

20 Q Okay. And actually, he was handcuffed -- I believe,
21 the -- it indicated he was properly handcuffed behind his
22 back.

23 A That's correct. He was handcuffed behind his back.

24 Q Okay.

25 A Yes, sir.

1 Q Now, you say that a -- a bag with white substance
2 believed to be cocaine was found. How big was that bag?

3 A I would say it was -- it was quarter-sized.

4 Q A quarter-sized bag?

5 A Yes, sir.

6 Q Okay. And ---

7 A If I had to approximate.

8 Q That bag, then, was placed on -- on the trunk of the
9 car?

10 A Originally, it was placed on the -- on the top of the
11 vehicle.

12 Q And I believe you said he tried to grab it or grabbed
13 it at that time?

14 A Yes, sir. He did.

15 Q Okay.

16 A He grabbed it at that time. It was taken ---

17 Q Okay.

18 A --- from him a second time.

19 Q Okay.

20 A And I placed it on the trunk.

21 Q You placed it on the trunk in front of where he was
22 standing?

23 A Yes, sir.

24 Q I mean, is that normal protocol to put the drugs in
25 front of the person being arrested?

1 A Well, there's -- there's -- there's no protocol to it
2 at all. The only other -- point at that time I had to put
3 it would been in my pocket. And I wasn't going do that.
4 So that was the first place. I had ---

5 Q Okay.

6 A --- multiple suspects in the vehicle. I had to work
7 with what -- what I had to work with at that time. And the
8 trunk was the -- the best place I had to put it.

9 Q So going to the statement, he was intoxicated; he was
10 handcuffed. And I believe that there was a -- solicitor
11 mentioned a question, "Why did you do that?" That wasn't a
12 question -- that is a question, is it not?

13 A I -- I ---

14 Q "Why did you do that?"

15 A I -- I guess it determines on -- on -- on who's
16 eliciting the response. You know, I -- I kind of was
17 insinuating as a statement, you know: Why did you do that?
18 That was dumb, so on and so forth. That was stupid.

19 Q And then, that was -- you also, I -- I think, on the
20 -- on the video it showed at least two occasions where the
21 question -- where a question was asked: "Do you think
22 that's going to help you?" Do you recall that?

23 A I do. Yes, sir.

24 Q All right. And that was asked at least two times, was
25 it not?

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP

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1 A I -- I can't confirm how many times. But it was
2 asked. Yes, sir.

3 Q Okay. So we have at least that question, and we have
4 a question of "Why did you do that?" And then, after
5 asking those questions, that's when an intoxicated Mr.
6 Daniels said -- allegedly said, "It was cocaine -- just a
7 little cocaine, but now you have no evidence," correct?

8 A His exact words were: "It was just a little coke.
9 Hell."

10 Q Okay. Just a little coke, what?

11 A Hell.

12 Q All right. So he didn't say that it -- now you have
13 no evidence?

14 A And then he said, "Now you have no evidence."

15 Q Okay.

16 A Yes, sir. It's ---

17 Q All right.

18 A --- all there ---

19 Q I did ---

20 A --- on tape.

21 Q I -- that's why I was ---

22 A Yes, sir. I'm sorry.

23 Q --- that's just -- I saw your report.

24 A Yes, sir.

25 Q I wanted to make sure we were on the same ---

1 A Yes, sir.

2 Q --- page.

3 A I apologize. Yes, sir.

4 Q Okay. All right. So we have that series of
5 questions, and that's three questions. That's actually a
6 series of questions asked and he had not been given his
7 Miranda warnings, had he?

8 A No, sir. Not at that time.

9 Q Okay.

10 A If I could elaborate on that for -- for one second?

11 Q Yes, sir.

12 A The -- the reason that he was -- he was placed in
13 cuffs is -- is for officer-safety issues. He was very
14 fidgety inside the car; kept reaching after he was advised
15 not to be reaching around, at which point he pulled away
16 from Trooper J.C. Ashley, which point I walked around to
17 the -- to the passenger side of the vehicle and placed him
18 in cuffs -- for not only my safety, my partner's safety,
19 but Mr. Daniels' safety.

20 Q I understand that.

21 A Yes, sir.

22 Q I understand that. And that -- and that's -- I -- I
23 understand why ---

24 A Yes, sir.

25 Q --- that was done. So -- so don't get me wrong on

REDIRECT EXAMINATION BY MS. ODOM - CODY BISHOP

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1 that. The only -- only question I have, the -- the fact of
2 the matter was he was handcuffed behind his back at that
3 time?

4 A Yes, sir. You are correct.

5 Q All right. And then he was asked that series of
6 questions without the Mirandas, and then he gave an answer?

7 A I -- I -- I can't say that -- that if he was asked
8 questions or -- or not. I -- I perceived them as -- as
9 making statements. But it was -- it was in a question
10 form. Yes, sir.

11 Q Okay. All right.

12 MR. CALLISON: Your Honor, that's all I have. I'd
13 move to exclude any statements -- his testimony or evidence
14 concerning those statements.

15 THE COURT: All right. No cross -- or no redirect,
16 rather?

17 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

18 MS. ODOM: Just real, real brief, Your Honor.

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MS. ODOM:

22 Q The -- the questions you asked, would you categorize
23 them as just rhetorical questions? Like, were you really
24 wanting a response?

25 A No, ma'am. I -- I -- I wasn't eliciting a response.

1 I -- I was merely making statements in the heat of a moment
2 that -- that I -- I guess could be perceived as a question.
3 But I -- I wasn't looking for a response at all.

4 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

5 Q And, I mean, do you think he was so intoxicated that
6 he didn't understand what was ---

7 MR. CALLISON: Your Honor ---

8 Q --- going ---

9 MR. CALLISON: --- I object to the question as to what
10 Mr. Daniels thought: You think he was so intoxicated he
11 couldn't respond?

12 MS. ODOM: I can rephrase.

13 THE COURT: All right. If you want to lay a
14 foundation, that's fine.

15 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

16 Q Based on his behavior, based on your training, based
17 on the previous cases you've made, did he appear to be
18 intoxicated?

19 A No, ma'am. Not to the point where he -- he wouldn't
20 know what was going on.

21 Q Did -- after he made the statement that it was just a
22 bag of coke, the next series of statements he made -- after
23 he made the statement "it's just a bag of coke," you then
24 said, "It's on video." What was his next statement? Did
25 he change his story then?

RECROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 40

1 A Yes, ma'am. After -- after I advised -- after the
2 statement was made that it was just a bag of coke, I
3 advised Mr. Daniels that -- that everything that he said
4 and was doing was on my in-car video camera, at which point
5 he changed his statement and said, "I didn't say anything.
6 I didn't say anything. I didn't say that."

7 Q So it appeared to you that he understood you when you
8 told him he was on camera?

9 A Yes, ma'am.

10 Q And he did change his story then?

11 A Yes, ma'am. It -- it appeared to me that he was -- he
12 was very familiar with -- with what situation he had just
13 been placed in.

14 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

15 MS. ODOM: Your Honor, I have no further questions.

16 THE COURT: All right.

17 MR. CALLISON: Just -- just one question.

18 RECROSS-EXAMINATION

19 BY MR. CALLISON:

20 Q You know, looking at the incident report and talking
21 about intoxication, it states: "Mr. Daniels appeared to be
22 extremely intoxicated." Now, was that -- you just said he
23 didn't seem so intoxicated, but yet the report says that he
24 was extremely.

25 A Yes, sir.

1 Q He was -- he was -- he -- he was tore up, wasn't he?

2 A Extremely intoxicated is -- is -- I -- I'm -- I'm not
3 here to say whether he was so intoxicated he couldn't make
4 a rational thought on his own. Extremely intoxicated is he
5 smelled of marijuana; he smelled strongly of alcohol; his
6 eyes were bloodshot; he spoke in a slurred voice; so on and
7 so forth.

8 Q All right. That's -- that's -- that's all I have.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 THE WITNESS: Okay. Thank you.

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: All right. No additional witnesses?

14 MR. TAYLOR: None from the state, Your Honor.

15 THE COURT: All right. Anything else, in terms of
16 argument, from either side?

17 MR. TAYLOR: Judge, just -- just a few comments:
18 Whether you -- you buy the fact that the trooper said they
19 were rhetorical statements/questions that really weren't
20 eliciting a response, he did make the -- did ask those
21 questions. There was no response from the defendant. And
22 I'd -- estimating ten to fifteen seconds later, he's --
23 then leans up, stands up, and makes that admission: "It
24 was just some coke, man, not a big deal. You don't have
25 any evidence."

1 I think, Judge, the analysis is was there -- whether
2 it was voluntary. Was his will overborne; was he coerced;
3 was he intimidated. I know Miranda wasn't read to him. I
4 don't think we would argue that he -- he was definitely in
5 custody. I mean, he was in cuffs; he was investigative
6 detention.

7 And, Judge, this is from *State v. Thompson*. South
8 Carolina Supreme Court says: We conclude that the Miranda
9 safeguards come into play whenever a person is in custody
10 and is subjected to either express questioning or its
11 functional equivalent. That is to say that the term
12 "interrogation under Miranda" refers not only to express
13 questioning, but any words or actions on the part of
14 police, other than those normally attendant to arrest and
15 custody, that the police should know are reasonable likely
16 to elicit an incriminating response from suspect."

17 I think even rhetorical questions -- and he responds
18 -- I think that falls into -- to that category. Having
19 said that, again, there was this ten/fifteen seconds where
20 he doesn't say anything. He stops asking the rhetorical
21 questions and he makes this statement.

22 And, Judge, one other case that -- just very quickly,
23 *U.S. Supreme Court Rhode Island v. Innis*, it says: The
24 fundamental import of the privilege while an individual is
25 in custody is not whether he is allowed to talk to the

1 police without the benefit of warnings and counsel, but
2 whether he can be interrogated.

3 Again, Judge, I don't think he was even interrogated.
4 So I think the two different ways you can look at it: It
5 wasn't interrogation. He asked rhetorical questions. And
6 then, on the other end, even if it was an interrogation,
7 the interrogation ended and Mr. Daniels made these
8 voluntary statements on his own, a statement against
9 interest and made an admission.

10 We're asking, Judge, based on that -- you saw the
11 video; you heard the -- the officer, what he said. And
12 we're asking for those to be allowed to come into evidence
13 during the trial.

14 THE COURT: All right. Mr. Callison, anything
15 further, sir?

16 MR. CALLISON: Yes, Your Honor. I think it's clear,
17 obviously -- and -- and the solicitor agrees -- that he was
18 in custody, handcuffed, highly intoxicated; asked a series
19 of questions: "Why did you do that? Do you think that's
20 going to help you? Do you think that's going to help you?"
21 several "Spit it out; spit it out" as they're holding him.
22 You know, if that's not interrogation, I mean, that --
23 that's -- that's -- that's about as -- you know, as
24 interrogating as you can get.

25 And then, he makes the statement after he's asked

1 those series of questions. And we would move to exclude
2 those on the basis he was not given his warnings. I think
3 it fits right in on these cases. It's exactly what we're
4 talking about. That's all I can say on that.

5 THE COURT: All right. All right. I have had an --
6 an opportunity to review the video, as well as to consider
7 the testimony that's been offered. I will be allowing the
8 statements into evidence for the following reasons: First
9 of all, it's clear to me, from the video, as well as from
10 the testimony, that the officer's reaction to the defendant
11 swallowing the items was merely rhetorical -- Why'd you do
12 that? Why'd you do that? -- along the lines of making the
13 statement: How could you be so stupid? You're putting
14 your health in danger, something to that effect.

15 That's what the officer intended by making that
16 statement. It may have been formed as a -- the -- or the
17 question may have been in form of a question, but it was
18 more of a declaratory statement by the officer, as opposed
19 to an effort to elicit information by way of questioning.

20 Obviously, Miranda applies to focused custodial
21 interrogation. Along those lines, the questions that were
22 asked did not amount to interrogations. They were,
23 instead, merely the officer's statement.

24 After a passage of a good piece of time -- I can't say
25 exactly how long, but I would agree that it's maybe between

1 -- as the solicitor stated, maybe between eight to fifteen
2 seconds -- the defendant then gives his statement without
3 any further questioning: "It was just a little coke. Now
4 you've got no evidence" -- or words to that effect.

5 On the question of whether he was in custody, I'm not
6 even sure I need to reach that question. Certainly,
7 reasonable minds could disagree as to whether he was in
8 custody at that point. But clearly, based on the testimony
9 of the officer, he was being taken into investigatory
10 detention due to the motion in the car that he witnessed
11 the defendant doing, as well as the other problems at the
12 scene at that particular scene. So clearly, an
13 objectively reasonable person may conclude he was not in
14 custody.

15 So for those reasons, I -- I do find that the
16 statements given did not require Miranda warnings at that
17 particular point in time. They were made voluntarily, and
18 they were made freely, but not in response to any
19 questions.

20 That's where we stand on that.

21 Any other issues before we -- before we ---

22 MR. CALLISON: Your Honor, I do have a couple --
23 couple ---

24 THE COURT: Certainly.

25 MR. CALLISON: --- matters.

1 OPENING STATEMENT BY MS. ODOM

2 MS. ODOM: Thank you. Good morning, everyone.

3 JURORS: Good morning.

4 MS. ODOM: As I said Monday, my name is Shannon Odom.
5 I'm the prosecutor that's going to be representing the
6 state in this case. And you may have noticed when you came
7 in there's no news cameras outside; you know, this isn't a
8 -- a huge media blitz. But it doesn't mean the case isn't
9 important. It's important to the defendant, Jermel
10 Daniels, but it's also important to us. It's important to
11 the troopers.

12 And -- and I'm going to ask you to -- to pay attention
13 closely during the trial. And again, it -- it won't -- we
14 won't be here weeks and weeks, which is definitely a good
15 thing. But, you know, I do ask you to pay attention to
16 what's going on and to just, you know, keep in mind this --
17 this case is important.

18 And the basic allegations here -- what happened is on
19 May 31st of 2012, here in Greenwood County, a trooper with
20 the highway patrol pulled over a vehicle. And during that
21 stop one of the occupants of the car had some drugs on him.
22 Those drugs were placed on the back of the vehicle. And
23 the defendant got hold of those drugs and swallowed them.
24 That's basically what happened.

25 Now, the charge is obstruction of justice. So I won't

1 really get into what that is until the closing. But it's
2 going to be clear-cut. And so, you know, in the end, like
3 the judge said, he's going to tell you what the law is,
4 tell you what the requirements are; I'll have a opportunity
5 to speak to you like this one more time during my closing.
6 And I'll tell you exactly why the defendant committed --
7 I'll tell you the elements -- every element; check them
8 off; every element is met that he committed this crime.

9 And you'll go back there and deliberate. The standard
10 is beyond a reasonable doubt. You've got to be sure that
11 he did it, which you will be sure. It's firmly convinced.
12 You will be beyond a reasonable doubt, firmly convinced,
13 that the defendant committed the crime, and you'll all vote
14 guilty. And that's what I'll ask you to do after you view
15 the evidence.

16 And, you know, just as you paid attention to me, I'm
17 going to ask you to listen to -- to Mr. Callison during his
18 opening. And then we'll get started.

19 THE COURT: All right. Thank you, Ms. Odom. Mr.
20 Callison, you're recognized, sir.

21 MR. CALLISON: May it please the Court?

22 THE COURT: Yes, sir.

23 OPENING STATEMENT BY MR. CALLISON

24 MR. CALLISON: Solicitor, Mr. Foreman, ladies and
25 gentlemen of the jury, good morning.

1 JURORS: Good morning.

2 MR. CALLISON: Introduced myself the other day. Just
3 suffice it to say that I am Callison. My office is across
4 the street. And I'm representing Jermel Daniels in this
5 case.

6 And I think Judge Addy gave you the outline of -- of
7 what your role is in this case. And that is to be the
8 finders of facts; to determine what the facts of this case
9 really are, not what facts are alleged, not what may be
10 accused, but what the facts really show. And those facts,
11 ladies and gentlemen, will come from the witness stand,
12 from the video that you're going to get to see. And there
13 may be other evidence.

14 But that's how you decide facts. The fact that
15 someone has been charged with something does not mean
16 they're guilty. Only you can find Jermel Daniels guilty.
17 And you have to base on the evidence, and you have to
18 determine that beyond a reasonable doubt. That is the
19 highest standard of proof of any case: beyond a reasonable
20 doubt.

21 Just to give you an idea, in a civil case, where
22 people are suing about money or car accidents and that kind
23 of thing -- contracts, the burden of proof is what we call
24 a "preponderance of the evidence," which basically means
25 that when you come in the courtroom, everything's equal.

1 It's all even.

2 Now, at the end of the civil case, if the scales tip
3 just a little bit -- I'm talking just a little bit -- then
4 that side wins. That's not this case.

5 This case is beyond a reasonable doubt, the highest
6 standard of proof that we have in our court system. And
7 see, the -- the reason we have that -- that's tied into the
8 presumption of innocence. An individual, Jermel Daniels
9 sitting right here, is presumed to be innocent. That's
10 fundamental in every democracy in this world: presumed
11 innocent; has to be proved guilty beyond a reasonable
12 doubt. You have to base your decision on the facts.

13 I will also say this and go ahead and address this
14 point: Because Jermel is presumed innocent, he doesn't
15 have to prove anything. He has to prove nothing. He
16 doesn't have to testify. If he doesn't testify, you cannot
17 hold that against him. Because he doesn't have to prove
18 anything. He may or may not testify. We'll have to see
19 what happens in the court -- see what kind of evidence we
20 have, and then we'll -- we'll make a decision on that
21 later. Don't have to decide that now.

22 Now, what are the facts going to show? And I will --
23 I will tell you -- and I mentioned a video. You're going
24 to see a video of the stop of a car. Mr. Daniels was a --
25 was not driving. He was a passenger in that vehicle. And

1 he was -- after the stop he was taken out of the -- out of
2 the car. And at some point he was handcuffed -- here, not
3 here -- here.

4 He was then taken to the rear of the car. The officer
5 will testify -- or the trooper will testify that he found a
6 -- a -- a bag of -- of something. It was never tested, but
7 something. And he placed it on the trunk of the car in
8 front of Jermel Daniels with his hands behind his back.

9 Then says that Jermel, while he's there, was able,
10 with his hands behind his back, to lean all the way down --
11 with three troopers there, now, mind you, one of them right
12 behind him -- was able to lean down, pick this bag of
13 whatever it was in his mouth, and somehow swallow right
14 there. I'm going to tell you this: Look at the videotape.
15 You make your decision based on the evidence in the case.
16 Look at the videotape and see if that goes down to the car.
17 See if you think that's real.

18 Now, evidence will also show that after this occurred,
19 EMS was brought in and Jermel denied swallowing anything.
20 But they didn't look anywhere else to find it. He was
21 taken to the hospital; given an IV; never passed it.
22 That's what we have in this case.

23 Ladies and gentlemen of the jury, I just simply as
24 this: Give my client -- give Jermel Daniels a fair, true,
25 and just trial. I know you will. Thank you.

1 THE COURT: Thank you, Mr. Callison. Ms. Odom, call
2 your first witness, please.

3 MS. ODOM: Thank you, Your Honor. The state calls
4 Trooper Ashley.

5 THE COURT: All right. Sir, if you'll come forward
6 and be sworn, please.

7 (Whereupon, the witness came forward.)

8 J.C. ASHLEY, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. ODOM:

12 Q All right. Trooper Ashley, can you tell me where
13 exactly you're employed?

14 A I am employed by the South Carolina Department of
15 Public Safety, South Carolina Highway Patrol.

16 Q And how long have you been a trooper?

17 A Over seven years.

18 Q And I want to -- we're going -- just going to dive
19 right into it. I'm going to take you back to May the 31st
20 of last year, 2012. Did you have the opportunity to assist
21 another trooper on a traffic stop that night?

22 A I did.

23 Q And where -- where was that traffic stop located?

24 A It occurred on U.S. 25 Bypass almost in front of Kmart
25 here in Greenwood County.

DIRECT EXAMINATION BY MS. ODOM - J.C. ASHLEY

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1 Q So kind of between the Walgreens and the Kmart?

2 A Yes, ma'am.

3 Q And what trooper did you assist that night?

4 A Trooper Cody Bishop.

5 Q Okay. Tell me a little bit about that. You arrived
6 and then what -- what happened?

7 A I was called to assist. He -- he asked for assistance
8 over the radio. I arrived on scene. Trooper Bishop was
9 speaking with the driver of the vehicle. I made an
10 approach on the passenger's side because there was multiple
11 occupants inside the vehicle. I shine my light inside the
12 -- the back rear ---

13 Q So -- so this was at nighttime?

14 A Yes. Yes, ma'am.

15 Q Okay. And so when -- when you shined your light to
16 the -- was there someone in the backseat?

17 A Yes, ma'am.

18 Q Okay.

19 A There was -- there was three -- well, total of three
20 occupants in the car. There was a male driver, a female
21 front-seat passenger, and a -- a rear male passenger.

22 Q So he was behind the female, the back-passenger side?

23 A That's correct.

24 Q Okay. So you came up on the car on his side?

25 A Yes, ma'am.

1 Q Okay. And pick back up when you shined your
2 flashlight into the vehicle.

3 A I was shining it -- my flashlight inside the vehicle,
4 just to get an idea of, you know, everybody's hands, just
5 for safety's reasons. Once I shined my light in the back-
6 rear passenger's seat, that's when I seen a -- a white
7 Styrofoam cup. At that point I asked him to step out -- or
8 I opened the -- the rear-passenger door and retrieved the
9 cup to see if it contained liquor, which it did.

10 And at that point after that, I did notice in plain
11 view a clear baggie that was located between the rear-
12 passenger door and Mr. -- and the defendant, Mr. Daniels.
13 Retrieved that baggie; it had a -- a white, powdery
14 substance in it. Once I obtained that, I placed on top of
15 the -- the roof of the vehicle; asked Mr. Daniels to exit
16 the vehicle; and began to try to pat him down, make sure he
17 had no weapons or anything like that on him.

18 Q Okay. And can you kind of describe his demeanor?

19 A As I was patting him down, he -- he continued to kind
20 of, I guess, wiggle and struggle a little bit; attempted to
21 try -- kind of pulled away from me. At that point Trooper
22 Bishop come over to assist, and we did place handcuffs on
23 the subject.

24 Q Okay. So I just want to kind of get back into -- you
25 said the -- the white, powdery substance ---

DIRECT EXAMINATION BY MS. ODOM - J.C. ASHLEY

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1 A Yes, ma'am.

2 Q How -- how big was that?

3 A It was probably about that size.

4 Q And ---

5 A It was ---

6 THE COURT: Let the record reflect he's indicating
7 about the size of a dime ---

8 MR. CALLISON: Your Honor ---

9 THE COURT: --- or a nickel.

10 MR. CALLISON: --- I'm sorry. I couldn't -- I
11 couldn't see what size you're talking.

12 THE WITNESS: Yeah. Roughly around ---

13 THE COURT: Show him ---

14 THE WITNESS: --- maybe ---

15 THE COURT: --- again.

16 THE WITNESS: --- say, about a dime or a -- or a
17 nickel size. It was ---

18 MR. CALLISON: Okay.

19 THE WITNESS: --- wasn't a very large bag. It was,
20 you know, kind of small baggie.

21 Q And when you picked it up, you said you placed it on
22 top of the vehicle?

23 A Yes, ma'am. I retrieved it. It -- tried to obtain --
24 see what it was, because I wasn't exactly really sure when
25 I first grabbed it, but then seen it was -- it appeared to

1 be cocaine. I then placed it on top of the -- the vehicle.

2 Q And you got him out of the vehicle?

3 A Yes, ma'am.

4 Q You're patting him down?

5 A Yes, ma'am.

6 Q And before Trooper Bishop came over to you, did the
7 defendant make any types of movements or anything?

8 A Well, like I said, he -- he kept kind of squirming,
9 like he didn't want to be patted down, and -- and did try
10 to kind of pull away from me. Because I had his hands kind
11 of behind his back to try to contrain (phonetic) -- contain
12 control of him. And at that point he did try to pull away
13 from me.

14 Q Okay. Did he -- did he reach for anything?

15 A Not at that point. He had -- his hands were up on top
16 of the roof before then, before I, you know, got his hands
17 behind his back.

18 Q Okay. And when Trooper Bishop came over, were the
19 drugs still on top of the vehicle?

20 A At that point no, they were not. They weren't up
21 there anymore.

22 Q Okay. Where were they?

23 A They were in possession of Mr. Daniels again.

24 Q And how did that happen? How did they go from when
25 you put them on top of the vehicle to -- back to Mr.

1 Daniels?

2 A As I was attempting to gain control of his hands to
3 get them behind his back, that when he reached and grabbed
4 it, when it was on the roof. Because like I said, his
5 hands were in proximity to -- to the drugs at that point.
6 And he did, I guess, reach and grab it.

7 Q Okay. Now, once Trooper Bishop came over, what
8 happened next?

9 A Like I said, we -- I -- as I was trying to gain
10 control of his hands, Trooper Bishop came over and -- and
11 placed the handcuffs on him to try to -- to, I guess, keep
12 control of him because of the situation. Because it'd been
13 -- we'd been -- at that point he was taken to the rear of
14 the vehicle.

15 Q Okay. All right. Let's -- let's go a little further.
16 So they're at the back of the vehicle now. What do you do
17 after that?

18 A At that point, after he was taken to the rear of the
19 vehicle, I explained to Trooper Bishop that he had the
20 substance in his possession again. And -- and they had him
21 at the rear of the vehicle. At that point I went up to the
22 -- the front-right-seat passenger and began speaking with
23 that subject.

24 Q Okay. And did -- did you hear a commotion or anything
25 ---

1 A I did ---

2 Q --- while you were speaking to ---

3 A I did. After -- as I was speaking with the front-seat
4 passenger, I heard a commotion and I turned around and
5 looked. And -- and that's when I heard Trooper Bishop
6 saying, "Spit it out; spit it out," and had him kind of
7 around his neck, trying to prevent him from swallowing
8 whatever it was he -- he put into his mouth.

9 Q And can you -- we keep referring to the defendant,
10 Jermel Daniels. Is he in this courtroom today?

11 A He is.

12 Q Can you point him out?

13 A He's sitting right there.

14 THE COURT: All right. The record will reflect that
15 the witness has identified Mr. Daniels.

16 Q All right. So when Trooper Bishop's saying, "Spit it
17 out; spit it out," you know, you were right there. Can you
18 tell us what else he said?

19 A As far as?

20 Q Well, trooper -- you said Trooper Bishop's saying,
21 "Spit it out; spit it out." What happened next? Did --
22 did Trooper Bishop tell you anything?

23 A I can't remember if he -- if he said he was -- he
24 swallowed it or -- or to that effect. I can't remember. I
25 do remember I -- I came over to help him try to prevent the

1 subject from swallowing.

2 Q Okay. Do you remember if Trooper Bishop said anything
3 to the defendant after he swallowed the substance?

4 A At that point, no. There was nothing said to him just
5 for a few -- until a few minutes later.

6 Q Okay. What -- what was that?

7 A I think he -- he was asking him, you know, "Why did
8 you swallow it?" or -- or things of that effect.

9 Q Okay. And -- and then you said Trooper Bishop had
10 asked you to call ---

11 A Yes, ma'am. We -- we contacted EMS, just for -- for
12 safety precautions.

13 Q Okay. All right. Okay. After that happened, did you
14 hear the defendant say anything?

15 A I can't remember if I heard him mention anything else
16 after that, because I was dealing -- there -- like I said,
17 there was other subjects in the car. And we were trying to
18 control the situation. There was EMS there ---

19 Q Okay.

20 A --- things like that.

21 Q Now, I kind of want to take you -- take you back to
22 when first were speaking with Mr. Daniels. You know, in --
23 in your ---

24 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

25 Q All right, Trooper Ashley. I've changed my mind. I

1 have -- I'm just going to ask you now to answer any
2 questions Mr. Callison has ---

3 A Okay.

4 Q --- for you.

5 THE COURT: All right.

6 MS. ODOM: Thank you.

7 THE COURT: Mr. Callison?

8 MR. CALLISON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CALLISON:

11 Q All right. You're a lance corporal; is that correct?

12 A That's correct.

13 Q And I believe you -- you testified you were called as
14 backup; is that right?

15 A That's correct.

16 Q Okay. Trooper Bishop was the investigating officer,
17 the one that initially made ---

18 A Yes, sir.

19 Q --- the stop?

20 A He -- he is the one that made the -- made the traffic
21 stop ---

22 Q He made the ---

23 A --- on the vehicle.

24 Q --- traffic stop and -- and you came on the scene
25 after that; is that correct?

1 A That's correct.

2 Q Okay. So when you got there, you walked up to the
3 passenger's side; is that correct?

4 A That's correct.

5 Q And that's where Mr. Daniels was -- was seated, on the
6 passenger's side. Was he on the back -- in the back or ---

7 A He was in the backseat.

8 Q He was in the backseat on the passenger's side. And I
9 think there was a -- a female in the -- in the front? Is
10 that right or ---

11 A I believe so. Yes. Yes, sir.

12 Q Okay. And then, we have the driver. So we have the
13 driver, a female, Mr. Daniels in the back?

14 A (Nodded head up and down.)

15 Q Now, you removed him from the car?

16 A (Nodded head up and down.)

17 Q And you said you pulled a cup out?

18 A Yes, sir.

19 Q And -- and did you smell that?

20 A Yes, sir.

21 Q And did it appear to have alcohol in it?

22 A Yes, sir, it did.

23 Q Okay. And Mr. Daniels appeared to be intoxicated, did
24 he not?

25 A Well, I was -- it hadn't -- hadn't got to that point

1 or -- I hadn't spoken with him or anything. All I did was
2 see the cup, and then we went from that point on.

3 Q Okay. Well -- well, when you pulled him out, did he
4 smell like alcohol or ---

5 A He did.

6 Q He did?

7 A (No audible response.)

8 Q Unsteady on his feet?

9 A Well, he was in the doorway. We weren't really
10 walking around or anything but ---

11 Q So then, you took this bag that you found ---

12 A Yes, sir.

13 Q --- correct?

14 And put it on the roof of the car, and Mr. Daniels is
15 like this?

16 A Yes, sir.

17 Q All right. And you patted him down, right?

18 A Yes, sir. We attempted to.

19 Q All right. And he didn't have any weapons on him?

20 A No, sir.

21 Q Okay. And you say he reached and grabbed the --
22 apparently, it was close enough where he could just reach
23 it; is that right?

24 A Yes, sir.

25 Q So this contraband, which was not tested; is that

1 correct?

2 A That's correct.

3 Q And it was not field-tested either, was it?

4 A That's correct.

5 Q All right. This contraband, this -- this little
6 baggie was set up there right by his hand and he reached
7 and grabbed it, and you were able to get it from him?

8 A Yes, sir. After ---

9 Q Okay.

10 A --- we -- you know, like I said, after the cuffs were
11 placed on him ---

12 Q All right.

13 A --- it was retrieved again. I think it was in his
14 pocket, if I remember correctly.

15 Q All right. So then, he was handcuffed with his hands
16 behind his back?

17 A Yes, sir.

18 Q Did you cuff him, or did Trooper Bishop cuff him?

19 A Trooper Bishop.

20 Q Okay. All right. So he was cuffed, hands behind his
21 back, and taken to the rear of the car; is that correct?

22 A That's correct.

23 Q All right. And did you have the bag of contraband at
24 that time? Did you put it on the trunk of the car, or did
25 Trooper Bishop put it there?

1 A No, sir. I informed Trooper Bishop that he had gotten
2 the substance from the -- from the top of the vehicle ---

3 Q Okay.

4 A --- at that point.

5 Q Okay. But it was -- apparently, then was it located?

6 A Yes, sir, it was located again.

7 Q All right. And at that point it was put on the trunk
8 of the car?

9 A I believe so.

10 Q Okay. So it's put on the trunk of the car. Daniels
11 is sitting -- standing here with his hands handcuffed
12 behind his back -- his back. And I believe you said you
13 went to check on the other person in the vehicle?

14 A Yes, sir. I walked up to speak with the front-seat
15 passenger.

16 Q And then you said you heard a commotion and heard
17 Trooper Bishop saying, "Spit it out; spit it out; spit it
18 out"?

19 A Yes, sir.

20 Q Okay. So you actually did not see Jermel Daniels take
21 anything in his mouth, did you?

22 A Did I see him personally put it into ---

23 Q Yeah.

24 A --- his mouth? I -- I did not see him -- I had ---

25 Q Well ---

- 1 A --- my back turned to them.
- 2 Q Right. You had your back turned to them?
- 3 A Yes, sir.
- 4 Q You -- you couldn't see him. You didn't see him put
5 anything in his mouth, did you?
- 6 A That's correct.
- 7 Q Okay. You didn't see anything in his mouth, did you?
8 You didn't see the baggie in his mouth, did you?
- 9 A He would not open his mouth.
- 10 Q Well, that ---
- 11 A I could ---
- 12 Q --- that ---
- 13 A --- not get ---
- 14 Q --- that wasn't my -- or that was not the question.
15 My question was: Did you ---
- 16 A No, I ---
- 17 Q --- see ---
- 18 A --- did not -- no, I did not.
- 19 Q You did not?
- 20 A (Nodded head up and down.)
- 21 Q Okay. Did you stay there until EMS arrived?
- 22 A We did. I did.
- 23 Q Did you hear Mr. Daniels tell EMS that he did not
24 swallow anything?
- 25 A I don't think I had any interaction with him after --

1 at that point.

2 Q Okay. So you don't know if he said that or not?

3 A I don't.

4 Q Did you accompany Mr. Daniels to the hospital?

5 A I did not.

6 Q So you don't know what occurred in the hospital, what
7 he ---

8 A I ---

9 Q --- was given, or ---

10 A No, sir.

11 Q --- whether or not he passed this ---

12 A No, sir.

13 Q --- bag that he allegedly swallowed?

14 Okay. Let me ask you this: When you first took him
15 out, didn't you tell him or ask him, "Did you -- what did
16 you swallow?" Before any of this happened, hadn't you
17 already asked something about, "Did you swallow something?"
18 Do you recall?

19 A I don't believe so. I don't recall.

20 Q If you did, it would be on this tape, wouldn't it?

21 A Yes, sir.

22 Q Okay. And you didn't charge Mr. Daniels, did you?

23 A No, sir. I did ---

24 Q Yeah. And ---

25 A --- not have ---

CROSS-EXAMINATION BY MR. CALLISON - J.C. ASHLEY

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1 Q --- I mean, that wasn't your ---

2 A Yes, sir.

3 Q --- role.

4 A I did ---

5 Q I understand.

6 A --- I did not ---

7 Q That wasn't your role. That was Trooper Bishop's
8 role?

9 A That's correct.

10 (Whereupon, Mr. Callison and the defendant conferred.)

11 Q Okay. Just to make sure: When this activity took
12 place at the trunk of the car, you had your back turned, so
13 you didn't see Mr. Daniels grab anything?

14 A Not after the -- the drugs were retrieved out of his
15 -- I think it was in his pocket ---

16 Q Right. When ---

17 A --- you know ---

18 Q --- when -- after ---

19 A --- for a second time.

20 Q --- they were placed on the trunk, where it's alleged
21 that he bent down and put it in his mouth, you didn't see
22 ---

23 A Again ---

24 Q --- him grab ---

25 A --- I -- I had my back turned to him, so I -- I didn't

1 see him.

2 Q That's all.

3 MR. CALLISON: Thank you, Your Honor.

4 THE COURT: Anything on redirect?

5 MS. ODOM: Yes, sir, Your Honor, just briefly.

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION

8 BY MS. ODOM:

9 Q Did you hear the defendant mention anything about coke
10 or cocaine?

11 A I think he did make an utterance of that.

12 Q I mean, could you ---

13 A I did -- yes, ma'am.

14 MR. CALLISON: Your Honor, I object to that. He's
15 already testified that he could not hear the defendant say
16 anything.

17 MS. ODOM: I ---

18 THE COURT: I -- I'll let you have another go.

19 MR. TAYLOR: Judge, my understanding, that was during
20 the ---

21 THE COURT: Go -- go ahead.

22 MR. TAYLOR: --- EMS phase.

23 THE COURT: Go ahead. Go ahead.

24 Q I'm -- I'm not talking about the EMS.

25 A Uh-huh.

RECROSS-EXAMINATION BY MR. CALLISON - J.C. ASHLEY 80

1 Q I'm just saying: At any time did you hear the
2 defendant say anything about coke or cocaine?

3 A Yes, ma'am.

4 Q And what did he say?

5 A I think he made a statement to -- and, like I said, as
6 -- as Trooper Bishop had him -- I think they were at the
7 back -- was asking him why did he swallow it; why did he
8 swallow it. He -- he made a statement: "It was just a
9 little cocaine," or something to that effect.

10 Q Okay. And Mr. Callison asked you if the drugs were
11 tested, and you said no. Can you tell me why they weren't
12 tested, or ---

13 A Because ---

14 Q --- why the ---

15 A --- the -- he -- he had ingested the -- the substance.
16 We -- we couldn't test anything.

17 Q Okay. All right. Thank you.

18 MR. CALLISON: Just -- just a couple.

19 RECROSS-EXAMINATION

20 BY MR. CALLISON:

21 Q After this activity took place at the back of the car
22 that you did not see, did you look around on the ground,
23 shine under the car, or look anywhere around looking for
24 this little baggie of -- on the ground?

25 A No, sir. I don't believe that we did. Well, I know I

1 didn't.

2 Q All right. Thank you.

3 THE COURT: All right. Thank you, sir. You can step
4 down.

5 THE BAILIFF: (To the witness) Watch your step.

6 MS. ODOM: Ms. Odom, call your next witness, please.

7 (Whereupon, the witness exited the witness stand.)

8 MS. ODOM: Your Honor, the state calls Trooper Cody
9 Bishop.

10 THE COURT: All right. If you'll come forward please,
11 sir.

12 (Whereupon, the witness came forward.)

13 CODY BISHOP, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. ODOM:

17 Q All right. Trooper Bishop, can you tell me where
18 you're employed?

19 A Yes, ma'am. I'm employed by the South Carolina
20 Department of Public Safety, South Carolina Highway Patrol.

21 Q And how long have you worked there?

22 A Five and a half years..

23 Q Before you were a trooper, where did you work?

24 A The Greenwood County Sheriff's Office.

25 Q And how long were you there?

DIRECT EXAMINATION BY MS. ODOM - CODY BISHOP

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1 A Approximately five years.

2 Q All right. So your total amount of law enforcement
3 experience is ten years ---

4 A Yes, ma'am.

5 Q --- that you've been a police officer?

6 Can you tell me about what your duties are now, what
7 your job description is?

8 A Yes, ma'am. My -- my main job description at the --
9 at the time of the incident was -- took place was to stop
10 impaired drivers, intercept the transportation of illegal
11 narcotics and/or weapons, and to remove any impaired
12 driver, whether they be under the influence of drugs,
13 alcohol, or the combination of both off the streets to keep
14 the motoring public safe in the state of South Carolina.

15 Q So most of the time you're at work, you are out on the
16 roads?

17 A Yes, ma'am.

18 Q Could you give me an estimate of how many stops you've
19 made over the years?

20 A I really wouldn't know to -- where to begin.
21 Thousands.

22 Q And have you received any types of awards or
23 commendations while you've been with the highway patrol?

24 A Yes, ma'am. I received the trooper-of-the-year award
25 three separate times. I received the Mark Coates award,

1 which is recognition in drug seizures within the state of
2 South Carolina. Mark Coates was a trooper who was killed
3 in the line of duty while doing drug interdiction.
4 Received that award twice.

5 Q So they must think very highly of you.

6 A I -- I would like to think so. Yes, ma'am.

7 Q All right. Can you tell me about any specialized
8 training you've had, as far as identifying drugs?

9 A Yes, ma'am. I've -- I've had multiple classes in
10 South Carolina, Georgia, as well as North Carolina, in drug
11 recognition, as well as different advanced drug-
12 interdiction and highway-interdiction-type classes through
13 multiple agencies and multiple different states.

14 Q And as part of those classes, did -- it was just
15 teaching you how to identify drugs or ---

16 A Yes, ma'am. But -- but basically, what they do is --
17 is -- is bring different types of drugs that may not be
18 common to the area that you work into the class. You have
19 a chance to, you know, look at them, examine them, feel
20 them, so on and so forth.

21 Q Getting to this incident, you know, do you -- you
22 remember May 31st, 2012, last year?

23 A Yes, ma'am.

24 Q And is that the date that this case had happened?

25 A Yes, ma'am. That's -- that's the date that -- which

1 the vehicle stopped that Mr. Daniels was a passenger of the
2 vehicle.

3 Q Okay. And can you just tell me a little bit about
4 that from the -- the very beginning when you first spotted
5 the vehicle?

6 A Yes, ma'am. I was traveling northbound on U.S. 25 in
7 -- in Greenwood County, which would be towards Ware Shoals.
8 Verizon Wireless was on my left; Kmart was on my right.
9 And I was traveling northbound, at which point I meet a
10 vehicle that's traveling southbound back towards the 25
11 bypass. And I noticed the vehicle was unable to maintain
12 its lane; he's swerving from left to right, left to right.

13 I turn around on the vehicle; get behind the vehicle.
14 And the vehicle actually catches the red light at Verizon
15 Wireless. Verizon Wireless at this time would be on our
16 right; Kmart would be on our left. And we're southbound.

17 As the driver's sitting behind the light, I noticed
18 that none of the occupants inside the vehicle had their --
19 had their seat belts on; noticed that everybody's extremely
20 fidgety, moving around, so on and so forth. I wait -- and
21 this is within Greenwood County. I wait till the light
22 turns green. I don't like to stop a vehicle while we're
23 sitting at a red light because it -- it kind of confuses
24 everybody. They don't know at that point if you're trying
25 to get through the red light.

1 So I wait for the light to turn green. As the light
2 turns green, the vehicle makes a left turn on 25 Bypass.
3 At this point Kmart's on the left; Walgreens is on the
4 right. I initiate my emergency equipment, my lights.

5 The vehicle travels approximately 100 -- 150 yards and
6 pulls into the median. The entire time the vehicle was
7 starting to pull over into the median, I noticed that the
8 rear-seat passenger is extremely fidgety. He's doing
9 something in the floorboard. There's a lot of movement
10 going on. I could actually see the -- the vehicle shaking.

11 At that point I picked up my radio and asked Lance
12 Corporal Ashley if he could respond to the scene due to
13 multiple occupants inside the vehicle. And -- and due to
14 all the -- the movement with inside the vehicle, I wasn't
15 exactly sure what was going on. So I went ahead and had
16 him ease that way.

17 Q So that -- that was kind of for your safety, as well
18 as the occupants' safety?

19 A Yes, ma'am. I mean, it -- just like anything else
20 that you do, sometimes you get this feeling that something
21 just ain't quite right. That night I -- I had that feeling
22 something just -- just wasn't quite right. That -- you
23 know, so it's not unordinary for people to move inside of a
24 car. I mean, it's -- it's a car. People move inside of a
25 car.

1 But it was so much movement, it -- it made me a little
2 nervous. So I went ahead and had him ease that way.

3 Q And once the car pulled over and you approached the
4 vehicle, what did -- did you observe then?

5 A I -- I approached the vehicle; made contact with the
6 driver of the vehicle. As I was speaking with the driver,
7 I noticed that the right-rear passenger, which was Mr.
8 Daniels, was reaching into the floorboard, constantly was
9 moving his hands, at which point I lean into the vehicle
10 and tell Mr. Daniels to -- to stop moving from the -- you
11 know, I -- I needed him to hold his hands up so I could see
12 his hands. He -- he then comes back with -- with a
13 response. I can't remember his exact words.

14 And then again I respond to him, "Don't tell me what
15 you wasn't doing. I'm -- I'm sitting here watching you. I
16 need to see your hands."

17 Q Okay. And so what -- what happened after that point?

18 A About that time as I was continuing to speak with the
19 driver, continuing to keep my eyes on the other two
20 passengers, Lance Corporal Ashley arrived on scene. He
21 exited his vehicle; made a -- a passenger-side approach,
22 which is -- you know, that's -- that's the way that -- that
23 we're taught through the South Carolina Criminal Justice
24 Academy, as well as -- as trooper patrol school.

25 If I'm already on the driver's side, I cover my side.

1 He makes a passenger-side approach to -- to cover his side
2 so we have -- we -- we can see -- I can see everything that
3 he can't see and he can see everything I can't see.

4 Lance Corporal Ashley approaches the right-rear door,
5 at which point I kind of holler over to Lance Corporal
6 Ashley that the rear-seat passenger is extremely fidgety
7 and he continues to fumble around on the floorboard.

8 Q Kind of giving him a warning to make ---

9 A Yes, ma'am. Be -- just watch him; watch his hands.
10 Yes, ma'am.

11 Q Okay. So you continued to speak with the driver at
12 this point?

13 A Yes, ma'am. I -- I continued to speak with the
14 driver. The driver didn't have any -- didn't have a South
15 Carolina identification or a driver's license. As I was
16 continuing to speak with the driver, I -- the questions
17 that I was asking, I didn't feel as if the driver was
18 giving me the correct information. I had no other way I --
19 of identifying the driver, at which point Lance Corporal
20 Ashley asked Mr. Daniels to exit the vehicle.

21 Q Okay. And just to clarify: What time of night was
22 this?

23 A It was -- it was late. I can't remember the exact
24 time. I want to say it was around two or three o'clock in
25 the morning.

1 Q So it was -- depending on how you look at it, really
2 late at night or really early in the morning?

3 A Yes, ma'am.

4 Q Okay. And you said there's three people in the
5 vehicle?

6 A Yes, ma'am.

7 Q And after -- at what -- tell me about the point in
8 time when you came and spoke with -- came around to Mr.
9 Daniels.

10 A Okay. As I was continuing to speak with the driver, I
11 was also focused on my partner, whose safety is obviously a
12 -- a great concern of mine. And I noticed, as Lance
13 Corporal Ashley was -- was speaking with Mr. Daniels and
14 asking him to do specific things, Mr. Daniels would do it:
15 would put his hands where you asked to display and -- and
16 then remove his hands. Then at once -- one point, he
17 attempts to turn or pull away from Lance -- Lance Corporal
18 Ashley.

19 I leave the driver's-side portion of the vehicle; come
20 around the rear bumper; meet up with -- with both of the --
21 Lance Corporal Ashley and Mr. Daniels, the right-rear-
22 passenger-side door and place Mr. Daniels in handcuffs for
23 my safety, for Mr. Daniels' safety, as well as my partner,
24 Lance Corporal Ashley's, safety.

25 Q Okay. And can you tell me: You know, is that unusual

1 or that kind of common practice?

2 A Yes, ma'am. It's -- it's -- it's very common. You
3 know, anytime a -- a subject's out of the car, he's not
4 doing exactly what he's asked to do, then, of course, it
5 makes us nervous. Their hands and feet, of course, are --
6 are personal weapons, which point I -- I think -- thought
7 that he needed to be restrained and detained while the
8 investigation continued.

9 Q Okay. And at that point were -- were you able to kind
10 of get an idea of -- of his demeanor? Can you kind of tell
11 me what was going on with him, how he was acting?

12 A Yes, ma'am. He -- he was -- he was acting a bit
13 strange. He was -- he smelled of alcohol. He had alcohol
14 coming from his breath. The interior of the vehicle also
15 smelled highly of -- of marijuana.

16 Mr. Daniels eyes were -- were red and bloodshot. And
17 he -- he -- he spoke in a -- in an abnormal voice. It --
18 it wasn't clear and concise. It was -- it kind of put me
19 in the mind of somebody's tongue being kind of thick. It
20 was -- it was kind of slurred.

21 Q Okay. Now, tell me about when you take Mr. Daniels
22 from Trooper Ashley.

23 A Whenever I take Mr. Daniels from Trooper Ashley, what
24 I'm doing is I'm removing Mr. Daniels from the eastbound --
25 eastbound traffic. They're on the eastbound side of the

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1 vehicle; 25 runs east and west. West is towards Abbeville;
2 east is towards Lake Greenwood -- or -- or towards
3 Reynolds. I take him from the east side of the vehicle,
4 because that's the side that their traffic's on, and I
5 bring him to the rear of the vehicle. That way none of us
6 are on the side the traffic's coming. It kind of puts us
7 in a -- in a safe location. Because as you can see on the
8 tape, there's several tractor-trailers that go by.

9 So I remove us from one side; put us behind the car.
10 As I do that, Lance Corporal Ashley tells me -- I can't
11 remember the exact words that he says, but something into
12 that -- to the aspect is -- is: The substance on the roof
13 is gone; he has it in his hand.

14 Q Okay. And did you pat him down?

15 A I did. I patted him down again and located the
16 substance in his pocket. I removed the substance, which
17 was a clear baggie containing a white, powdery substance.
18 And I placed it on the -- on the trunk of the vehicle.

19 I placed it on the trunk of the vehicle because I
20 didn't have anywhere else to put it at that time. I wasn't
21 going to take the substance and place it in my pocket. It
22 was placed on the trunk because that's what I had available
23 at three o'clock in the morning while traffic's going by,
24 multiple suspects in the vehicle. That's where it was
25 placed: on the trunk of the vehicle.

1 Q But before you put it up there, you got a good look at
2 it?

3 A Absolutely.

4 Q And to your belief, just through your experience as a
5 law enforcement officer, through everything, that it was
6 cocaine?

7 A I -- I absolutely believe it was cocaine. I've --
8 I've made several traffic, as well as possession-of-cocaine
9 charges, in my career. And that's exactly what I perceived
10 it to be.

11 Q Okay. Once you placed it on the trunk, what happened?

12 A Once I placed it on the trunk, Mr. Daniels was indeed
13 handcuffed behind his back. And he was -- he was facing
14 me. So his back would've been towards the car, and he was
15 facing me, at which point Mr. Daniels, from behind his
16 back, grabs the substance off the vehicle in one quick
17 motion.

18 As he grabs the substance, he turns to his left or his
19 right. I can't remember, and we'll see it on the video.
20 And he places it in his mouth, which point I seen him place
21 it in his mouth. I grabbed him from the rear and tell him
22 to, "Spit it out; spit it out; spit it out."

23 I tell him multiple times to -- to spit out the
24 substance. He doesn't spit out the substance. I then
25 advised him to -- to sit down. I actually try to place him

1 on the ground at one point, at which point he starts to
2 choke on whatever it is he put in his mouth, the white,
3 powdery substance.

4 Q So you saw him take hold of the -- the contraband, the
5 drugs, and place it in his mouth?

6 A Yes, ma'am. He did not bend over. He did not grab it
7 off the trunk with his mouth. He removed that substance
8 off the trunk of the vehicle or the vehicle in which he was
9 riding in with his hands, bent over, placed it in his
10 mouth, and I observed everything, every bit of it.

11 Q And even though he was handcuffed, he was able to do
12 that?

13 A Absolutely he was. Yes, ma'am. We was within inches
14 apart. We was standing -- I was standing directly in front
15 of him when he done it.

16 Q And even though it was in the early morning or the
17 middle -- the middle of the night, can you tell me about
18 the lights?

19 A Yes, ma'am. There -- there's several business there.
20 There's -- there's Ruby Tuesdays; there's Kmart, which is a
21 well-lit parking lot. There's Walgreens, which is a well-
22 lit parking lot. I have might flashlight. Trooper Ashley
23 has his flashlight. We actually have a -- a new guy, a
24 rookie that was there. He had his flashlight. Everything
25 was well-lit. I could see -- I ---

1 Q And ---

2 A --- I know exactly what I seen.

3 Q Your blue lights are on, and that ---

4 A My ---

5 Q --- kind of helped ---

6 A My blue ---

7 Q --- you see ---

8 A --- lights were ---

9 Q --- as well?

10 A --- going. My headlights were on wig-wag, which they
11 go from bright to dim, bright to dim. Headlights were on,
12 facing us. And my vehicle was probably less than 15 yards,
13 which would've been -- Mr. Daniels would've been facing my
14 car; I would've had my back to my patrol car.

15 Q Okay. So after you see him swallow the drugs, you're
16 telling him, "Spit it out; spit it out." You know, what --
17 what happens next?

18 A I advised him several times -- I can't tellⁿ you exact
19 number of how many times -- I advised him to spit whatever
20 substance was that he put in his mouth out. He doesn't. I
21 then advise him several times to sit on the ground;
22 actually attempt to place him on the ground one time. He
23 stands up, and he starts to cough where -- he starts to
24 making noise deep down in his throat, at which point I'm
25 perceiving as if he is choking on the cellophane.

1 He pops up real quick. Mr. Daniels -- I asked him --
2 Mr. Daniels -- actually, I tell him how stupid that the
3 move he just did was; that it was -- it was dumb; wasn't a
4 wise idea. And he pops up and he says to me, "It was just
5 a little coke. Hell, now you don't have any evidence."

6 Q Now, when somebody swallows evidence or swallows
7 drugs, does that kind of prevent you or obstruct you from
8 carrying out your investigation?

9 A Yes, ma'am. Absolutely. Once something's been placed
10 in their mouth and swallowed, we -- we don't have the
11 substance to -- to test. We first field-test it and then
12 send it off to SLED analysis. But if the substance has
13 been ingested, we don't -- we don't have any substance to
14 test.

15 Q And you mentioned earlier about how he kind of
16 appeared intoxicated: you know, red eyes and slurred and
17 everything. But is there any question in your mind whether
18 he did this on purpose or not?

19 A No, ma'am. I -- I think 110 percent that -- that he
20 knew exactly what he was doing, even with the admission
21 that he gave me that "you have no evidence." It clearly
22 stated to me that -- that he wanted to get rid of whatever
23 the substance -- the substance that I believed -- that I
24 perceived to be cocaine. He didn't want me to know exactly
25 what it was.

1 And he clearly states that on my -- my video camera,
2 that "Now you have no evidence; it's gone," which he was
3 right. I didn't.

4 Q So he intentionally did this to -- to kind of obstruct
5 you from doing your job?

6 A That's the way I perceived it. Absolutely. Yes,
7 ma'am.

8 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

9 Q All right. Now, after -- after he says, you know, "It
10 was just coke; now you don't have any evidence," what do
11 you say?

12 A Well, first, my -- my concern is for Mr. Daniels: Is
13 he choking? I'm not exactly sure exactly how much of the
14 white, powdery substance it was. So his -- so his health
15 is a concern. I looked over to Lance Corporal Ashley, and
16 I advised Lance Corporal Ashley to contact EMS.

17 Q Okay. And does the defendant then change his story?

18 A Yes, ma'am. There's a conversation between Mr.
19 Daniels and I at which point I advised him how dumb the
20 move he just made was; that it was stupid. Then he -- he
21 tells me something into the aspect of he didn't -- he
22 didn't say anything; he didn't say anything about -- about
23 any cocaine; that he didn't have any cocaine, at which
24 point that I reminded Mr. Daniels that everything that I do
25 is being recorded from a -- a body mic, which I have on my

1 belt, as well as my in-car video system.

2 He continues to advise me that -- that he doesn't know
3 anything of what I'm talking about; he didn't say anything
4 about cocaine.

5 Q So he goes from saying, you know, it's coke to I
6 didn't say anything?

7 A Yes, ma'am.

8 Q So ---

9 A He -- he -- he actually went on -- after he said that
10 it was a little bit of coke, he went on to state -- which
11 is on my -- my camera as well -- about he didn't want to go
12 back to prison.

13 Q Now, moving on after that you -- you keep referencing
14 the -- the video.

15 MS. ODOM: Your Honor, may I approach?

16 THE COURT: Please.

17 Q Do you recognize what -- what this is?

18 A Yes, ma'am. That's -- that's a DVD from my in-car DVD
19 player. The front is a -- it's handwritten. It says
20 "Jermel R. Daniels" in my handwriting and my signature on
21 the bottom.

22 Q Okay. And you've watched that; you made the copy?

23 A Yes, ma'am, I did. I made the copy as well as watched
24 it.

25 Q So -- and that's the true and accurate representation

1 of what happened that night?

2 A Exactly how it happened. Yes, ma'am.

3 Q And it hasn't been altered or changed in any way?

4 A No, ma'am. Not at all.

5 (Whereupon, Ms. Odom and Mr. Taylor conferred.)

6 MS. ODOM: Your Honor, I'd -- the state moves to
7 introduce the video as State's Exhibit 1.

8 THE COURT: Without any objections?

9 MR. CALLISON: I don't have any objection.

10 THE COURT: Very good. In evidence as State's 1.

11 (Whereupon, State's Exhibit 1 was entered into
12 evidence.)

13 MS. ODOM: Your Honor, I'd like to -- to publish it to
14 the jury now.

15 THE COURT: Without objection, you can proceed.
16 Solicitor, about how long is that video?

17 MS. ODOM: The total length is 40 minutes.

18 THE COURT: Forty minutes? Ladies and gentlemen, I
19 assume that we -- you're going to play the entire video ---

20 MS. ODOM: That's my ---

21 THE COURT: --- start to finish?

22 MS. ODOM: --- intention.

23 THE COURT: All right. We're going to go ahead and
24 take a brief break, then, so that we don't have to
25 interrupt the video midway through if it's going to take 40

DIRECT EXAMINATION BY MS. ODOM - CODY BISHOP

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1 minutes. It might be that some of us need to use the
2 facilities. Don't talk about the case yet. We'll be at
3 ease for about five or ten minutes. I'll get you back out
4 here after that. So we'll take a brief break. And when we
5 return, if you'll take your seat, Mr. Foreman, thank you
6 very much.

7 (To the witness) You can step down.

8 THE WITNESS: Thank you.

9 (Whereupon, the jury exited the courtroom at 11:12
10 a.m.).

11 (Off the record from 11:12 a.m. until 11:25 a.m.)

12 THE COURT: All right. Let -- if we may, we'll go
13 ahead and go back on the record. The defendant is present
14 with counsel. At this point -- I can have Mr. Bishop come
15 back up here while we play the video. But at the same
16 time, we could just play it and let him be comfortable back
17 there, if that's acceptable ---

18 MR. CALLISON: That ---

19 THE COURT: --- to you.

20 MR. CALLISON: --- that -- there's no need.

21 THE COURT: Okay.

22 MR. CALLISON: There's no need for him ---

23 THE COURT: All right. Anything before we bring them
24 out?

25 MR. CALLISON: No, sir.

1 THE COURT: Let's go ahead and have them out, please.

2 MR. CALLISON: Let -- Your Honor ---

3 THE COURT: Oh, wait.

4 MR. CALLISON: --- during -- during cross-examination,
5 of course, I want him up there while the video ---

6 THE COURT: By all means.

7 MR. CALLISON: --- is available ---

8 THE COURT: Sure.

9 MR. CALLISON: --- to play. Yeah.

10 THE COURT: Sure. But if it's going to take 40 ---

11 MR. CALLISON: But right ---

12 THE COURT: --- minutes ---

13 MR. CALLISON: --- now, we'd just -- if we can turn
14 the lights down ---

15 THE COURT: All right. Very good.

16 MR. CALLISON: --- and watch the video.

17 THE COURT: Let's have the jury back out, please.

18 (Whereupon, the jury entered the courtroom at 11:25
19 a.m.)

20 THE COURT: Okay. Let the record reflect that the
21 jury is back and they are getting seated. Ladies and
22 gentlemen of the jury, we're about to play the video. As
23 you can tell from the renovations, we're going to sooner or
24 later get a big-screen TV right over here. But at -- at ---
25 at this point, we just have that screen on the wall.

DIRECT EXAMINATION BY MS. ODOM - CODY BISHOP

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1 If you need to get up and move in order to get a
2 better vantage point, don't feel like you have to stay
3 glued to your seat. Feel free to stand up and move so that
4 you can see the video a little bit better.

5 Solicitor, you can proceed.

6 THE BAILIFF: Get the lights?

7 THE COURT: Kill the lights, if you would. Thank you.

8 THE BAILIFF: (Complied.)

9 (Whereupon, the entire video was played in the
10 courtroom.)

11 THE COURT: All right. Solicitor, any other
12 questions?

13 MS. ODOM: Yes, sir, just a few.

14 (Whereupon, the witness entered the witness stand.)

15 DIRECT EXAMINATION

16 Q All right, Trooper Bishop. We just got done watching
17 the video. When Mr. Daniels asked you what he was charged
18 with, one of things you listed was possession of cocaine.

19 A Yes, ma'am.

20 Q And did you end up charging him with that?

21 A No, ma'am, I didn't.

22 Q And why didn't you charge that?

23 A I actually -- I actually was -- was trying to debate
24 it. And I -- I called the assistant solicitor at that
25 time, Andrew Hodges, and asked him, you know, which --

1 which would be the -- the better choice to go with.

2 Q Okay. So what you're saying, you didn't charge the
3 possession of cocaine, but you did charge ---

4 A --- obstruction of justice.

5 Q --- obstruction of justice?

6 A Yes, ma'am.

7 Q Okay. And one last thing: We've discussed the
8 defendant several times. But can you just point him out in
9 the courtroom, who ---

10 A Yes, ma'am.

11 Q --- we've been discussing.

12 A Mr. Daniels is sitting there in the white-striped
13 shirt.

14 THE COURT: All right. The record will reflect ---

15 Q All right. Please ---

16 THE COURT: --- that the witness has identified the
17 defendant.

18 Q Thanks. Please answer any questions Mr. Callison has.

19 A Yes, ma'am.

20 THE COURT: Mr. Callison?

21 MR. CALLISON: Thank you, Your Honor. May it please
22 the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. CALLISON:

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 102

1 Q Mr. Daniels, Jermel, appeared to be extremely
2 intoxicated, didn't he?

3 A Yes, sir. He's -- he did.

4 Q All right. You charged Jermel with not just the --
5 the charge we have in this trial. And this -- by the way,
6 this trial is only on obstruction of justice; is that
7 correct?

8 A Yes, sir, it is.

9 Q Okay. You charged him with disorderly conduct,
10 correct?

11 A Yes, sir.

12 Q You charged him with simple possession of marijuana,
13 correct?

14 A Yes, sir.

15 Q You charged him with open container, correct?

16 A Yes, sir.

17 Q And he pled guilty to possession of marijuana,
18 disorderly conduct, and open container, did he not?

19 A Yes, sir.

20 Q And I -- in listening to -- to the testimony today,
21 it's -- it's -- from what I gather, Jermel was taken out of
22 the backseat of the car, correct?

23 A Yes, sir.

24 Q And this contraband that we don't have that's --
25 that's gone was placed on top of the car?

- 1 A Originally. Yes, sir.
- 2 Q And he grabbed it then?
- 3 A There was a -- there was a time lapse then. It was
- 4 placed on top of the car. At some point during Lance
- 5 Corporal Ashley's pat down, he grabbed it.
- 6 Q All right.
- 7 A Lance Corporal Ashley testified to that.
- 8 Q All right. And then you got it back?
- 9 A Yes, sir.
- 10 Q And you put it on the trunk?
- 11 A Yes, sir.
- 12 Q And he got it again?
- 13 A Yes, sir.
- 14 Q All right. Now, I apologize. I -- I apparently was
- 15 mistaken. Because I thought that he had his -- his
- 16 handcuffs -- he had handcuffs on him?
- 17 A He did.
- 18 Q Behind ---
- 19 A Yes, sir.
- 20 Q --- his back?
- 21 A Yes, sir.
- 22 Q And -- and in looking at the video, I was under the
- 23 impression that he leaned down and picked it up with his
- 24 mouth. But that's not what you're saying happened, is it?
- 25 A No, sir. That's -- that's not what happened.

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 104

1 Q All right. You're saying that he was turned around
2 backwards, got the cocaine, grabbed it off the trunk of the
3 car?

4 A Absolutely.

5 Q With three troopers standing beside him?

6 A Yes, sir.

7 Q With you holding onto his arm for most of the time,
8 weren't you?

9 A I can't say. I can't confirm or deny whether I was
10 holding him at that time or not.

11 Q But reached down and got it; then was taken, you know,
12 and turned back around ---

13 A No, sir. That's ---

14 Q --- then ---

15 A --- incorrect.

16 Q Well, I -- you turned him around, correct?

17 A Yes, sir. At -- at which point I seen him putting
18 something in his mouth, I immediately turned him ---

19 Q I'm not at that point yet. What I'm at -- the point
20 I'm at is that you're saying that when he was brought
21 around to the back of the car to avoid the traffic ---

22 A Yes, sir.

23 Q --- correct?

24 To avoid this traffic, he was handcuffed behind him,
25 and then his back was placed to the trunk of the car?

1 A Absolutely. Yes, sir.

2 Q Okay. All right. And at that time he reached with
3 his handcuffs and grabbed the contraband?

4 A Yes, sir. Just like you see on the tape.

5 Q I'm -- I'm -- I'm just -- I'm just -- I'm just asking.
6 We're ---

7 A Yes, sir.

8 Q --- going go over the tape.

9 And then he turned around and was facing the trunk,
10 correct?

11 A At some point. Yes, sir. I -- I can't -- can't
12 recall exactly what the time difference was. But at some
13 point. Yes, sir.

14 Q All right. And it was at this time when he's facing
15 the trunk that you say that he had the contraband in his
16 hands behind his handcuffed back ---

17 A It was ---

18 Q --- correct?

19 A --- all one motion.

20 Q Well, not -- no. No. No. I'm -- I'm saying he's
21 standing here first, right?

22 A No, sir. It was all one motion.

23 Q He did it while he was turning around?

24 A Absolutely.

25 Q And you're saying he was able to get his handcuffed

1 hands up to his mouth?

2 A Yes, sir.

3 Q Did you look around the car to see if it was maybe on
4 the ground?

5 A There was a -- there was a lot going on. I don't
6 actually remember looking up underneath the car or nothing
7 like that. No, sir.

8 Q But you're clear on this that with his handcuffed
9 hands -- how -- how far apart are the hands when you
10 handcuff him like that?

11 A I wouldn't have any idea ---

12 Q I'm -- I mean ---

13 A --- to be honest ---

14 Q --- it's not ---

15 A --- with you.

16 Q --- a long chain or anything?

17 A No. No, sir.

18 Q I mean, they are sitting out like this.

19 A These are the ---

20 Q Okay.

21 A --- exact handcuffs.

22 Q That was going be my next question, if you had these.

23 A Yes, sir.

24 Q And so that far apart, that's how far apart his hands
25 are?

1 A Yes, sir. I've seen women take those handcuffs and
2 put them in the front from the back.

3 Q Okay. Well, he didn't. He had them in his back,
4 right?

5 A That's correct. Yes, sir.

6 Q He had these this far apart on his back. That's where
7 his hands were?

8 A Yes, sir.

9 Q Okay. Thank you.

10 A Yes, sir.

11 Q And with that there you're telling me he was able to
12 somehow reach around and put this contraband in his mouth?

13 A Yes, sir, I am.

14 Q Let's -- let's take a look at this. Because I
15 apologize for being wrong, because I thought he had to bend
16 down to be able to get it in his mouth.

17 (Whereupon, Mr. Callison and Mr. Taylor conferred.)

18 (Whereupon, a portion of the video was played.)

19 Q All right. So he's got his back to the car, correct

20 ---

21 A Yes, sir.

22 Q --- handcuffed?

23 Now, is that when he -- when he got this is in his
24 hands, you're saying?

25 A No, sir. If -- if you keep playing, it'll -- it'll

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 108

1 show it.

2 Q Okay.

3 (Whereupon, a portion of the video was played.)

4 Q Yet?

5 A No, sir.

6 (Whereupon, a portion of the video was played.)

7 Q Yet?

8 A No, sir.

9 Q Now, wait a minute. I thought you said he got it when
10 his back was turned to the car.

11 A Yes, sir. At -- at -- at some point right in here is
12 -- is whenever he gets it. So if -- if his back is not
13 turned again to the car, it was at some point during that
14 duration.

15 Q Okay. Now, I just want to be clear: You said that he
16 is -- his back was turned to the car when he got it in his
17 hands; is that correct? Is that what you testified to,
18 trooper?

19 A It is. Yes, sir.

20 Q Okay. All right. But now you've looked at this and
21 you say that he hadn't picked up anything yet, has he?

22 A I -- I can't confirm or deny. At some point during
23 the last couple seconds that you played and the -- the next
24 upcoming seconds, he grabs it, places it in his mouth, and
25 turns.

1 Q Okay. He places it in his mouth and turns where?

2 A Well, he -- he kind of -- you -- you'll see his head.
3 I believe that that would be his right shoulder. His head
4 kind of goes to his shoulder, and he kind of goes down in a
5 little motion, at which point I grabbed him.

6 Q But if he's facing forward, how in the world at this
7 point -- if he doesn't have it in his hands and you said --
8 and he's -- you said he didn't, how in the world can he get
9 it in his hands now?

10 A Reach around to the side of him, sir.

11 Q And then bend down with his hands cuffed and put it in
12 his mouth?

13 A Yes, sir. Absolutely.

14 Q Sure you didn't look around on the ground at that --
15 for this -- for this contraband?

16 A My -- my -- my camera is pretty high-definition. You
17 can see everything into the car, up to probably about a
18 foot up underneath the car.

19 Q Okay.

20 A If anything would fallen to the ground, I believe we'd
21 see it now.

22 Q A little clear-plastic, white baggie?

23 A Yes, sir. I believe white -- that white substance on
24 that blacktop would -- would show out pretty substantial.

25 Q All right.

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 110

1 (Whereupon, a portion of the video was played.)

2 Q Now, you've got his arm, don't you?

3 A Yes, sir. At this point I -- I believe I'm touching
4 his right arm. And I'm examining the substance.

5 Q Thank you. So you've got handcuffs behind him; you've
6 got your -- your arm on him?

7 A Yes, sir. So at -- to -- just to make a
8 clarification: At this point he doesn't have the
9 substance. Because as you see, I kind of have my hand on
10 his right shoulder. In my right hand I'm examining the
11 substance, and I place it back on the trunk. And -- and
12 you'll see it right now. So I just want to clarify.

13 (Whereupon, a portion of the video was played.)

14 Q Is that where you say he took it?

15 A Absolutely. If you look close enough to the right,
16 that would be my right hip. If you look close -- very
17 close to my right hip, you actually see his hand come
18 around him and grab that substance off that trunk.

19 Absolutely.

20 (Whereupon, a portion of the video was played.)

21 (Whereupon, Mr. Callison and Mr. Taylor conferred.)

22 (Whereupon, a portion of the video was played.)

23 A Right there. Right there you seen his hand go up.

24 Q I'm trying to get it back a little bit. I apologize.

25 (Whereupon, a portion of the video was played.)

1 Q All right. Didn't you have your hands on his behind
2 his back?

3 A My hand on his hands ---

4 Q Yeah.

5 A --- behind his back? No, sir.

6 Q You were standing right behind him, weren't you?

7 A Yes, sir. Can we replay it again?

8 Q Sure. Be glad to.

9 (Whereupon, Mr. Callison and Mr. Taylor conferred.)

10 (Whereupon, a portion of the video was played.)

11 Q How far down did his head bend right there? I mean,
12 it's on video.

13 A I -- I would have no idea.

14 Q How far down would his head had to have gone to be
15 able to reach his hands behind his back in handcuffs?

16 A I would have no -- I wouldn't know how to answer that
17 question.

18 Q Well ---

19 A Everybody's ---

20 Q --- I mean, you didn't ---

21 A Everybody's built a little different. His arms are
22 definitely longer than mine, and somebody else's may --
23 arms may be shorter than mine. I have no idea.

24 Q Isn't it true, though, that if -- if -- the -- the
25 video shows him basically going like this?

CROSS-EXAMINATION BY MR. CALLISON - CODY BISHOP 112

1 A The -- the video shows his hand comes around his hip,
2 which you obviously see on the video; his head goes down;
3 something goes into his mouth.

4 (Whereupon, a portion of the video was played.)

5 Q We'll try -- we're going look at this one more time;
6 then I'm going to wrap it up. I apologize.

7 (Whereupon, a portion of the video was played.)

8 Q Now, after all this happened, EMS came to the scene,
9 did it -- did it not?

10 A Yes, sir, they did.

11 Q Okay. And I believe that Jermel Daniels told EMS
12 there was nothing wrong with him; that he had not swallowed
13 anything, didn't he?

14 A Yes, sir, he did.

15 Q All right.

16 THE COURT: All right. Hold on one second, Mr.
17 Callison. We've got some feedback happening here
18 somewhere.

19 (Off the record briefly.)

20 Q And then he was taken to the hospital, correct?

21 A Yes, sir.

22 Q And he remained in the hospital, I think, for one day,
23 something -- in that range? I know it was late when he got
24 there, so it might not have been a full day because it was
25 the ---

1 A Yes, sir. I -- I was wanting to say two days, but I

2 ---

3 Q Two days?

4 A --- I can't really remember.

5 Q All right.

6 A Yes, sir.

7 Q Yes, sir. I understand. One or two days ---

8 A Yes, sir.

9 Q --- something like that?

10 A Yes, sir.

11 Q And during that time he -- as far as you know, he
12 never passed this bag that he was to have swallowed?

13 A Cannot confirm or deny.

14 Q Okay.

15 A Have no knowledge.

16 Q Okay. Thank you.

17 MR. CALLISON: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Whereupon, Mr. Callison and the defendant conferred.)

20 Q Thank you, trooper. No further questions.

21 THE COURT: Anything on redirect?

22 MS. ODOM: One question.

23 REDIRECT EXAMINATION

24 BY MS. ODOM:

25 Q Did you see him swallow the drugs?

REDIRECT EXAMINATION BY MS. ODOM - CODY BISHOP 114

1 A Yes, ma'am.

2 MS. ODOM: Nothing further.

3 THE COURT: All right. Thank you, sir. You can step
4 down.

5 THE WITNESS: Yes, sir. Thank you.

6 THE BAILIFF: (To the witness) Watch your step.

7 THE WITNESS: Yes, sir. Thank you.

8 (Whereupon, the witness exited the witness stand.)

9 THE COURT: All right. Solicitor, if you'll call your
10 next witness, please.

11 MS. ODOM: Your Honor, at this point the state's going
12 to rest.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, there's a few matters I need to take up with the
15 attorneys. If you would, just adjourn to the jury room for
16 a few moments. I hope to have you back out here in about
17 five or ten minutes. Make yourselves comfortable, but
18 don't discuss the case yet. I'll have you back out here in
19 a minute.

20 (Whereupon, the jury exited the courtroom at 12:28
21 p.m.)

22 THE COURT: All right. The record should reflect that
23 the jury is out. At this point in time, Mr. Callison, any
24 motions, sir?

25

1 THE COURT: (To the bailiff) Let's have the jury out,
2 please.

3 (Whereupon, the jury entered the courtroom at 1:58
4 p.m.)

5 THE COURT: All right. Let the record reflect that
6 the jury is back and seated. Ladies and gentlemen, we are
7 resuming with the case of the *State v. Jermel Daniels*. At
8 this point, Mr. Callison, your case, sir.

9 MR. CALLISON: Thank you. May it please the Court,
10 Your Honor?

11 THE COURT: Yes, sir. Any witnesses, Mr. Callison?

12 MR. CALLISON: No, sir.

13 THE COURT: All right. Defense rests?

14 MR. CALLISON: Yes, sir.

15 THE COURT: All right. Very good.

16 MR. CALLISON: Defense rests.

17 THE COURT: Ladies and gentlemen of the jury, we're
18 now at the point of the trial where we will receive the
19 closing arguments of counsel for the state and for the
20 defense. I'll remind you that what the attorneys say
21 during their closing arguments, of course, is not evidence
22 in this case. It's merely their contention as to what has
23 been proven or has not been proven. Even though it's not
24 evidence, you should still pay attention to what they have
25 to say to you because, again, it is your role, ultimately,

1 to judge the facts in this particular case. And their
2 closing summations may assist you in this regard.

3 With that, the way we'll proceed is that the attorney
4 for the state, Ms. Odom, will go first, to be followed by
5 Mr. Callison. With that, Ms. Odom, you are recognized for
6 your closing, ma'am.

7 MS. ODOM: Thank you, Your Honor.

8 CLOSING ARGUMENT BY MS. ODOM

9 MS. ODOM: "Just a little bit of coke. Now you don't
10 have any evidence." That's what he said. It's on the
11 video. You heard Trooper Bishop say it on the stand:
12 "Just a little bit of coke. Now you don't have the
13 evidence." That's what this case comes down to: a little
14 bit of coke.

15 What he's charged with, obstruction of justice, I
16 didn't get into it my opening, but I'm going to break it
17 down. Obstruction of justice is the intentional doing of
18 any act which prevents, obstructs, impedes, or hinders the
19 administration of justice. So basically, is he doing
20 something that's keeping the troopers from doing their job?
21 Yes. It's clear -- so clear.

22 Let's break it down. The first part, intentional
23 doing: Did he intentionally swallow the -- those drugs?
24 Did he intentionally do it? Yes. When Trooper Ashley
25 first had him out of the car, he reached for the drugs when

1 they were on the hood; didn't get them that time; didn't
2 swallow them that time.

3 When he went around to the back of the car with
4 Trooper Bishop, he did get them. And see it on the video.
5 I think you watched that part about five times. And
6 Trooper Bishop went over it, went over it, went over it.

7 He saw the defendant swallow the drugs. And you heard
8 Trooper Bishop say that they were drugs. And think about
9 it. Why would he swallow them if they weren't drugs? Why
10 would he swallow them?

11 And you heard Mr. Callison say, "Well, he didn't
12 swallow them." Well, where'd they go? And you heard Mr.
13 Callison say, "Well, they could've went on the ground or
14 under the car." And you heard him say, "Did -- did you
15 look for the drugs?"

16 You can see it on the video. You can watch that
17 video. There's no drugs under that car.

18 And another point: If he didn't swallow them, why
19 wouldn't he open his mouth? Heard Trooper Bishop say,
20 "Spit it out; spit it out; spit it out." The defendant
21 would not open his mouth.

22 Then he hunched over. Trooper Bishop had the
23 ambulance called. He was choking on something. There had
24 to be something in there if he was choking on it.

25 And then he admits to it. He admits: "It was just a

1 little coke. Now you don't have any evidence."

2 You've got a law enforcement officer who's been an
3 officer for over ten years; been trooper of the year; gone
4 through these classes; knows how to recognize drugs. He
5 sees him swallow the drugs. He sees it.

6 You can judge his credibility. You've seen him on the
7 stand. He was up there probably about a hour. You saw him
8 for about 40 minutes on the video: you know, professional,
9 polite, gets the job done. He saw it. He saw it.

10 And the -- you know, use -- use your common sense
11 here. Do you think a defendant swallowing drugs is going
12 to hinder an investigation? Is it going to obstruct the
13 officer from doing his job? You saw the video. What do --
14 what do you think? Certainly, it is.

15 You know, and not only -- I mean, this age we live in,
16 videos are great -- absolutely great. You can watch it
17 over and over again. If you've got any question about it,
18 you can pause it. Every time you watch that video of the
19 -- the precise moment when the defendant reached around and
20 grabbed the drugs and swallowed them, you can see not only
21 Trooper Bishop run up and start, you know, hollering, "Spit
22 it out; spit it out," but you see the other officer, the
23 younger -- the new officer, Trooper Robinson. He runs up
24 before Trooper Bishop even says "Spit it out."

25 I mean, why is an officer going to lunge forward at a

1 defendant if nothing happened? Does that make any sense
2 for the troopers to kind of descend on him if he hadn't
3 done anything? It doesn't, not at all.

4 I mean, you got to weigh the evidence in this case.
5 But you've got a seasoned law enforcement professional
6 seeing a defendant swallow a bag of drugs. He's charged
7 with obstruction of justice. He intentionally grabbed the
8 drugs. That was the act, him grabbing them. And he
9 prevented them from carrying out the administration of
10 justice.

11 Now, that last part, the justice part, I don't want
12 you to get hung up on that. You might think, Well, what
13 does that really mean, justice? That's what they do every
14 day: They carry out justice. Every day when they go to
15 work, that's what they do.

16 You heard Trooper Bishop describe his duties. You
17 know, he's out there. Every day he goes to work. He
18 patrols; he makes arrests; he writes tickets. If he stops
19 somebody and nothing's warranted, they leave. That's
20 justice: him carrying out his job.

21 And one step further, justice is what you're
22 responsible for today. Once I get done speaking and Mr.
23 Callison gets done speaking, the judge is going to, you
24 know, tell you what I've told you. He's going to tell you
25 what the elements are. He's going to -- we call it

1 "charging." But he's just telling you what to do, giving
2 you some instructions. And your responsibility is to go
3 back there and make sure justice is served in this case.

4 Mr. Callison also hit on a couple other points. And
5 I'm going to go ahead and -- and talk to you about them
6 because you won't hear from me again. Once I sit down,
7 I'll be sat down. Mr. Callison will have his turn. So I
8 just want to go ahead and cover everything.

9 He asked -- I believe it was Trooper Ashley -- "Were
10 the drugs tested?" No, they weren't tested. But they
11 testified to that. They weren't tested. It's because they
12 were swallowed. You can't -- they were swallowed; they're
13 gone. You know, they couldn't get him with possession if
14 the drugs are not there.

15 Trooper Bishop had first -- you know, he was going to
16 charge him with the possession of cocaine. He couldn't.
17 The drugs were gone. Someone had obstructed him --
18 obstructed justice. You know, he could not carry out his
19 job because this guy swallowed the drugs.

20 You know, Trooper Bishop was just trying to do his job
21 that night. That's all he was trying to do. You can see
22 it on the video. You can rewatch it as many times as you
23 need. But it's never going to change.

24 You're going to see the defendant reach for the drugs,
25 make the movement, swallow the drugs. You're going to hear

1 Trooper Bishop say, "Spit it out; spit it out; spit it
2 out." You're going to hear him, just in -- he -- shock
3 almost, exasperation, saying, "Man, why'd you do that?"

4 He -- he's not angry at him. He's thinking, You know,
5 that's dangerous. Why did you just swallow a bag of drugs,
6 a plastic bag of drugs? That's not healthy. You know,
7 why'd you do that?

8 You can clearly see the defendant's having some kind
9 of trouble. He's bent over; he's hunched over. And then
10 you can -- can hear him on the video, especially if you
11 listen closely: "It was just a bag of coke. Now you ain't
12 got no evidence."

13 Trooper Bishop testified to that: just a bag of coke.
14 There should be no doubt in your mind. This should be a
15 guilty. This is a guilty.

16 And the judge is also going to talk to you about the
17 standard, about the -- the weight. What kind of weight do
18 you use? How sure do you have to be?

19 The standard is beyond a reasonable doubt, which means
20 you got to be firmly convinced. Are you firmly convinced
21 he did this: obstructed justice, tried to keep a --
22 Trooper Bishop, Trooper Ashley from doing their jobs? Are
23 you firmly convinced he did it?

24 The testimony, the video -- there's -- I want you to
25 keep your eye on the ball on this one. When Mr. Callison

1 gets up, he's going to try to pick at what he sees as
2 weaknesses; try to just pick a little away; break you down.
3 Keep your eye on the ball.

4 You've got the video. You got the testimony. The
5 evidence is there. Keep your eye on the ball. Don't get
6 distracted by, you know, Well, where did the drugs go?
7 They went in his stomach. Don't get distracted and say,
8 you know, "I -- I couldn't see all angles."

9 Well, it's a video camera. You see the angle it's set
10 at. You know, don't get distracted. Keep your eye on the
11 ball. He swallowed the drugs. It's obstruction of
12 justice.

13 He's caught red-handed: hand in the cookie jar,
14 cookie in his mouth -- drugs in his mouth. And Mr.
15 Callison said, "Well, he -- he denied it to EMS." That's
16 another interesting point.

17 As soon as he says, "It was just a little coke; now
18 you don't have any evidence," Trooper Bishop said, "Are you
19 kidding? I've got it on video."

20 Immediately changes his story. Immediately starts
21 saying, "I didn't say that. I didn't say that. I didn't
22 swallow no coke."

23 When they get in the car, immediately: "What coke are
24 you talking about?" Oh, he says, "What crack are you
25 talking about?"

1 Trooper Bishop says, "I didn't say crack. I said
2 cocaine."

3 "Oh. What cocaine? Where's the evidence?" He harps
4 on it: "Where's the evidence?" He swallowed it. It's in
5 his stomach.

6 I started out with a quote from the defendant. I'm
7 going to end with a quote from the defendant. On the video
8 he said, "Camera catches everything." That's right. It
9 did.

10 Once Mr. Callison gets done and the judge gets done
11 and it's time for y'all to deliberate, I'm going to ask you
12 to find a verdict of guilty. It's the only verdict you can
13 find in this case: guilty. Thank you.

14 THE COURT: All right. Thank you, Ms. Odom. Mr.
15 Callison, you're recognized sir.

16 MR. CALLISON: Please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 MR. CALLISON: Solicitor, I'm going to need this video
19 fired up, if we could do that.

20 (Whereupon, Mr. Callison, Ms. Odom, and Mr. Taylor
21 conferred.)

22 CLOSING ARGUMENT BY MR. CALLISON

23 MR. CALLISON: We'll get to that in a second, ladies
24 and gentlemen. Before I really get into things, I want to
25 make sure that something is absolutely clear: What Jermel

1 Daniels is on trial for is obstruction of justice for
2 swallowing -- allegedly swallowing a bag of contraband.
3 Now, that's what the charge is: that he swallowed this;
4 and by doing so, prevented the officers from being able to
5 investigate their case.

6 That's what you have to find has been proven by the
7 prosecution beyond a reasonable doubt; not just that Jermel
8 is intoxicated or that he had some weed on him or that he
9 was disorderly. Because he was charged with all of those
10 things, and he pled guilty to them because he was guilty of
11 them. Pled guilty; said I did it; I had that marijuana; I
12 had an open container; I was disorderly; I'm guilty.

13 But we're here on obstruction of justice for
14 swallowing this contraband that disappeared. And I agree
15 with this: The video shows it. Watch it.

16 Now, I was wrong. And I apologize. I -- I was. I
17 was -- I was wrong when I started this case. Because I had
18 seen the video. And I had seen where he, you know, leaned
19 down or something and -- and the officer started saying,
20 "Spit it out; spit it out." I thought the only thing they
21 could possibly be saying is that while his handcuffs were
22 behind his back, that he leaned over and picked this stuff
23 up in his mouth somehow. That was the only way I could
24 figure it.

25 But then, it came out that what they're saying is that

1 while his hands were handcuffed behind his back and -- I
2 mean, you saw the handcuffs. I mean, they aren't long
3 apart. I mean, your hands are right here. Go -- go try.
4 It's really unbelievable, to be honest with you. I tried
5 all during lunch to see what I could do.

6 He's saying he -- he reached around, picked it up in
7 his hand, and somehow put it in his mouth. Let's take a
8 look. Well, for me to do that, I have to get these reading
9 glasses, to be honest with you. I want to be able to see
10 it.

11 Now, as we watch this -- and I understand, okay? I
12 understand the officer say, "Spit it out; spit it out; spit
13 it out." I -- I know that, okay? I mean, it's -- it's
14 there.

15 "Why did you do this?" I understand that. "Do you
16 think this is going to help you?" I understand that.

17 But that doesn't put it in his mouth. Even him saying
18 something like -- it doesn't put it in his mouth, because
19 we're talking about an intoxicated guy that's standing
20 behind there.

21 And just think about this: For him to be intoxicated
22 -- highly intoxicated, as the evidence shows, for him to be
23 able to pick this up in the back of his -- in the back here
24 and somehow get it to his mouth is unbelievable. You would
25 have to be maybe a member of the Fantastic Four or Plastic

1 Man or something to be able to do this.

2 Let me see if I can -- ah, there it is.

3 (Whereupon, a portion of video was played.)

4 MR. CALLISON: All right. Let me back it up just a
5 little, and y'all can watch this. Okay.

6 (Whereupon, a portion of video was played.)

7 MR. CALLISON: Now, as we go through this, I want you
8 to remember the testimony of Trooper Bishop, okay? He was
9 -- Jermel was handcuffed behind and was facing his back to
10 the car when the got the drugs. And that was the first
11 testimony from him that that's what he did.

12 (Whereupon, a portion of video was played.)

13 MR. CALLISON: Back to the car. That's the time he's
14 got his back there.

15 (Whereupon, a portion of video was played.)

16 MR. CALLISON: All right. He's turned around. He's
17 had his back to the car. He's now turned around. He
18 doesn't have anything on him at this point.

19 And that was the testimony. So that was wrong
20 initially. His back wasn't to the car when he was alleged
21 to have taken it. Now he's turned back around.

22 And you watch this. And you watch and see if -- and
23 when he -- right before the officer starts saying "Spit it
24 out," you tell me -- and look at how far he bends down --
25 you tell me if it would be possible with your hands cuffed

1 behind your back to have been able to reach, take this, and
2 then put it in your mouth.

3 (Whereupon, a portion of video was played.)

4 MR. CALLISON: Notice the trooper has his arm -- right
5 now he's got his left -- left hand on Jermel's right arm.

6 (Whereupon, a portion of video was played.)

7 MR. CALLISON: Look where his head is, his hands
8 behind his back. How in the world, unless he can somehow
9 toss it up in the air and catch it in his mouth, could he
10 possibly put anything in his mouth? Impossible.

11 He didn't even -- he didn't bend down. And even if
12 you did, with your hands cuffed like that, there's no way
13 he could get it in his mouth.

14 (Whereupon, a portion of video was played.)

15 MR. CALLISON: And you saw how he was grabbed. You
16 know, and I know the officer's trying to prevent him, in
17 case something happened -- and I -- I appreciate that and
18 understand that. But perhaps that might have something to
19 do with the choking or a little bit -- or having a hard
20 time swallowing.

21 But I'm going to leave it with you on the video. And
22 -- and what we're talking about, he's accused of swallowing
23 the drugs in order to prevent the investigation or hinder
24 -- of swallowing the drugs; not doing anything else, of
25 swallowing. And you tell me if he could've done that, if

1 that was even feasible, even possible. If it's not,
2 there's reasonable doubt all over that. It's doubt, doubt,
3 doubt. Come back not guilty.

4 Just a couple of things that I mentioned previously:
5 presumed innocent until found guilty beyond a reasonable
6 doubt, the highest standard we have for proving guilt or
7 innocence over anything else in a court of law. In this
8 case there's doubt. There's doubt that is reasonable.
9 There's doubt that you, as the jury, determine the facts of
10 this case -- there's doubt that you can assign a reason to
11 -- that you can give a reason to.

12 And all you have to do is look at the video. Think
13 about the testimony and the ability to be able to put this
14 in your mouth with your hands cuffed behind your back.

15 I don't know what happened to what they found. I'm
16 not saying there's anything wrong. I just -- you know, I
17 don't know where it went. Did it go on the ground? Did it
18 go someplace else? It wasn't Jermel's responsibility to
19 keep up with it.

20 But he did not swallow it. He couldn't have. You can
21 see.

22 Ladies and gentlemen, you're going to be given this
23 sheet, a verdict form. Your verdict in this case has to be
24 unanimous. You all have to agree. You all -- to find
25 Jermel Daniels guilty, you all would have to agree, every

1 one of you, that the case has been proven beyond a
2 reasonable doubt that he swallowed this. You would have to
3 disregard the impossibility of that basically happening.

4 I would ask you, when you take this verdict form back,
5 that you state, as is written here: We, the jury, find
6 Jermel Daniels not guilty -- not because you might want to
7 find him guilty, not because you're speculating about
8 things, but because it hasn't been proven beyond a
9 reasonable doubt -- just has not. And I thank you for your
10 time.

11 THE COURT: Thank you, Mr. Callison.

12 CHARGE OF THE COURT

13 THE COURT: All right. Now, ladies and gentlemen, it
14 becomes my responsibility at this point in time to instruct
15 you on the law that applies in this case. And let me just
16 mention a few things at the outset. First of all, I think
17 the only exhibits that were introduced into the record in
18 this case were, in fact -- or was, in fact, a video.

19 Because there's no way to play that back in the jury
20 room, if, for some reason, y'all should want to see that
21 video again or portions of it, simply send me a note out.
22 We'll reboot that video for you out here. We'll bring you
23 back out and let you see it again if you need to or desire
24 to see that.

25 At this point in time, ladies and gentlemen, all

1 evidence is in. So I cannot reopen the record to bring in
2 additional witnesses or give you additional facts. You
3 have all the facts that you're going to have in order to
4 reach a decision on this particular case.

5 If, however, you have any questions about these
6 instructions, I'll be more than happy to answer a question
7 of law. I can do that; simply send me a note out; let me
8 know what you're having trouble with or what you're
9 struggling with. And I'll try and give you a better
10 explanation of the law that applies.

11 You'll also have a copy of these instructions in
12 written form in the jury room. In the event that you need
13 to refer to them, I ask that you not pay attention to only
14 part of the instructions and disregard the rest, but please
15 pay attention to the instructions as a whole. And once
16 you're done deliberating, please return these to the Court.

17 Now, ladies and gentlemen, again, in this case this
18 indictment charges the defendant, Mr. Daniels, with the
19 offense of obstruction of justice. And I instruct you that
20 the fact that Mr. Daniels was arrested, charged, and
21 indicted in this case is not evidence and can't be
22 considered by you as evidence, nor does it create any
23 inference of guilt. An indictment is merely the formal
24 written instrument which contains the charge made against
25 Mr. Daniels. It's the formal document by which a charge is

1 brought into this court.

2 Mr. Daniels has pled not guilty to this charge. And
3 again, that plea puts the burden on the state to prove his
4 guilt. A person charged with committing a criminal offense
5 in this state is never required to prove himself innocent.
6 I instruct you that it's an important rule of law that a
7 defendant in a criminal trial, no matter what the
8 seriousness of the charge may be, will always be presumed
9 to be innocent of the crime for which the indictment was
10 issue, unless guilt has been proven by evidence satisfying
11 you of his guilt beyond a reasonable doubt. This
12 presumption of innocence does not end when you begin your
13 deliberations, but it accompanies the defendant throughout
14 the trial of the case until you reach a verdict of guilt
15 based on evidence satisfying you of Mr. Daniels' guilt
16 beyond a reasonable doubt.

17 Ladies and gentlemen, the presumption of innocence is
18 like a -- a robe of righteousness. It's placed about the
19 shoulders of the defendant, and it remains with him
20 throughout the trial and during your deliberations until it
21 has been stripped from him by evidence satisfying you of
22 his guilt beyond a reasonable doubt.

23 The presumption of innocence is not merely a legal
24 theory. It's not just a legal phrase. It's a substantial
25 right to which every citizen is entitled unless you, the

1 jury, are satisfied of the state's proof that he is guilty
2 beyond a reasonable doubt.

3 Well, what is reasonable doubt in the eyes of the law?
4 A reasonable doubt is the kind of doubt that would cause a
5 reasonable person to hesitate to act. Now, the state has
6 the burden of proving him guilty beyond a reasonable doubt.
7 And some of you may have served in -- as jurors in civil
8 cases, where you were told that it's only necessary to
9 prove that a fact is more likely true than not true, such
10 as by the preponderance, or the greater weight, of the
11 evidence. In criminal cases the state's proof must be much
12 stronger than that. In this case the state's proof must be
13 proof beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the defendant's guilt. Now, there
16 are very few things in this world that we know with
17 absolute certainty. And in criminal cases the law does not
18 require proof that overcomes every possible doubt. If,
19 based on your consideration of the evidence, you're firmly
20 convinced that the defendant is guilty of the crime
21 charged, you should find the defendant guilty. If, on the
22 other hand, you think there's a real possibility that the
23 defendant is not guilty, you should give the defendant the
24 benefit of the doubt and find him not guilty.

25 Now, ladies and gentlemen, I instruct you and

1 emphasize that the fact that the defendant did not testify
2 is not a factor for you to consider in any way during your
3 deliberations and in your -- and in your consideration of
4 the question of the guilt or the innocence of the
5 defendant. It must not be considered by you in any -- in
6 any manner whatsoever.

7 A defendant has the constitutional right to remain
8 silent. And the assertion of this right must not be
9 considered by you in your deliberations. I repeat, under
10 the oath that you have taken, you're to draw no conclusion
11 whatsoever from the fact that the defendant in this case
12 did not testify.

13 The fact that he didn't testify should not even be
14 discussed in the jury room. The burden of proof, as I have
15 stated to you, is on the state. The defendant is not
16 required to prove his innocence. The burden of proof
17 remains on the state to prove guilt beyond a reasonable
18 doubt.

19 Now, ladies and gentlemen, I remind you that during
20 this trial, you and I have certain duties to perform. And
21 as the trial judge, it's my responsibility to preside over
22 the trial and to rule on admissibility of evidence.

23 You're to consider only the competent evidence before
24 you. You're to consider only the testimony which has been
25 presented from the witness stand, as well as any exhibits

1 which have been made a part of the record in this case, as
2 well as any stipulations of counsel.

3 I have the duty also to charge you the law applicable
4 in this case. And as the presiding judge, I'm the sole
5 judge of the law. As I stated earlier, it is your duty to
6 accept and apply the law as I now state it to you, even if
7 you disagree with it or even if you have any -- some idea
8 as to what the law is or what the law should be. Again,
9 you must abandon any such idea because you're sworn to
10 accept and apply the law as I now state it to you.

11 Now, ladies and gentlemen, in every case tried in this
12 Court before a jury, the jury becomes the sole and
13 exclusive judge of the facts in a case. A trial judge
14 cannot intimate, state, comment on, or make any statement
15 to a trial jury about the facts in a case. Since you, the
16 jury, are the sole judges of the facts, you're not to infer
17 from what I said during the progress of this trial or
18 otherwise or anything that I say now during the course of
19 these instructions to you, that I have any opinion about
20 the facts in this case.

21 Ladies and gentlemen, the law does not permit me to
22 have an opinion about the facts. This is a matter solely
23 for you, the jury, to determine. As jurors it's your duty
24 to determine the effect, value, weight, and truth of the
25 evidence presented during this trial.

1 Now, ladies and gentlemen, there are typically two
2 types of evidence presented during a trial: direct
3 evidence and circumstantial evidence. Direct evidence is
4 the testimony of a person who claims to have actual
5 knowledge of a fact, such as an eyewitness. It's evidence
6 which immediately establishes the main fact to be proven.

7 Circumstantial evidence is proof of a chain of facts
8 and circumstances indicating the existence of a fact. It
9 is evidence which immediately establishes collateral facts
10 from which the main fact may be inferred. Circumstantial
11 evidence is based on inference and not on personal
12 knowledge or observation.

13 Now, the law makes absolutely no distinction between
14 the weight or the value to be given to either direct or
15 circumstantial evidence, nor is a greater degree of
16 certainty required of circumstantial evidence than of
17 direct evidence. You should weigh all the evidence in this
18 case. And after weighing all the evidence, if you're not
19 convinced of the defendant's guilt beyond a reasonable
20 doubt, you must find him not guilty.

21 Now, necessarily, you must determine the credibility
22 of witnesses who have testified. Credibility simply means
23 believability. It becomes your duty as jurors to analyze
24 and to evaluate the evidence and determine which evidence
25 convinces you of its truth.

1 In determining the believability of witnesses who have
2 testified, you may believe one witness over several or
3 several witnesses over one witness. You may believe a part
4 of the testimony of a witness and reject the remaining part
5 of the testimony of that same witness. You may believe the
6 testimony of a witness in its entirety or reject the
7 testimony of a witness in its entirety. You may consider
8 whether the witness has exhibited to you any interest,
9 bias, prejudice, or other motive in this case. And you may
10 also consider the appearance and manner of a witness while
11 on the witness stand.

12 Now, ladies and gentlemen, in order to establish
13 criminal liability, criminal intent is required. For
14 example, the mental state required to be proved by the
15 state for a particular crime might be purpose, intent,
16 knowledge, recklessness, or criminal negligence. Criminal
17 intent must be proven by the state beyond a reasonable
18 doubt.

19 Criminal intent is always a matter that must be
20 determined by the jury from the circumstances surrounding
21 the situation. Now, ladies and gentlemen, there is no way
22 to prove intent to a mathematical certainty because there's
23 no way medical science can dissect a person's brain and
24 determine what that person had in mind. So the law says
25 that criminal intent may be inferred from the circumstances

1 shown to have existed.

2 This is how you make a determination of whether or not
3 the element requiring intent was present. It's not
4 necessary to establish intent by direct and positive
5 evidence. But intent may be established by -- by inference
6 in the same way as any other fact, taking into
7 consideration the acts of the parties and all the facts and
8 circumstances of the case.

9 Criminal intent is a mental state. It's a conscious
10 wrongdoing. It's up to you to determine what the defendant
11 intended to do -- to do based on the circumstances shown to
12 have existed.

13 I instruct you that criminal intent can arise from
14 action or failure to act. It may arise from negligence,
15 recklessness, or an indifference to duty or to consequences
16 that is considered by the law to be the equivalent of
17 criminal intent.

18 Now, ladies and gentlemen, in this case the defendant
19 is charged with the offense of obstruction of justice. In
20 order to convict the defendant, the state must first prove
21 beyond a reasonable doubt that the defendant committed and
22 act which prevented, obstructed, impeded, or hindered the
23 administration of justice. The state must also prove
24 beyond a reasonable doubt that the defendant did the act
25 with the intent to obstruct justice.

1 The defendant does not have -- does not have to
2 succeed in the effort to obstruct justice. It's enough if
3 some act is done in furtherance of the attempt to obstruct
4 justice.

5 Now, ladies and gentlemen, there are two possible
6 verdicts which you can reach in this case. And I have
7 prepared this verdict form, Mr. Foreman, to help guide your
8 deliberations while y'all are back there talking about
9 this. It basically makes a statement: We, the jury, in
10 the above-captioned case, on the charge of obstruction of
11 -- of justice, unanimously find the Jermel Rashond Daniels
12 -- and then, there are two options here, not guilty and
13 guilty. There's no significance whatsoever to the order
14 that I state these verdicts. It's simply that one has to
15 be stated first, okay?

16 Now, if the -- if the jury unanimously finds that the
17 state has failed to meet its burden of proving the
18 defendant guilty beyond a reasonable doubt, Mr. Foreman, it
19 would be your duty to initial here next to "not guilty,"
20 sign your name, knock on the door, let Mr. Willingham know,
21 and we'll get you back in here in the courtroom.

22 If, on the other hand, you find that the state has met
23 its burden of proving the defendant's guilt beyond a
24 reasonable doubt, Mr. Foreman, you would initial next here
25 -- here next to "guilty," sign your name, knock on the

1 door; we'll get you back in here.

2 Ladies and gentlemen, I remind you that you have no
3 enemies to punish in this case. You have no friends to
4 reward. Again, your verdict has to be unanimous, meaning
5 all twelve of you have to agree on the verdict.

6 Now, I'm going to ask that you go back into the jury
7 room, but don't start talking about the case yet. Your cue
8 to begin your deliberations will be receipt of these
9 instructions and the verdict form back there. I'm going to
10 keep the DVD out here, since there's no way for you to play
11 it anyway. And that's the only other evidence that's been
12 introduced in this case. And again, if you happen to need
13 to see that again or you feel like that might be useful,
14 just let me know by way of a note and we'll boot that back
15 up for you, okay?

16 So adjourn for a few moments and don't start talk
17 about the case. Madam Forelady, you go with them one more
18 time. I'll let y'all know in a second.

19 (Whereupon, the jury exited the courtroom at 2:37
20 p.m.)

21 THE COURT: All right. The jury is out.
22 Exceptions/additions from the state?

23 MS. ODOM: No, sir, Your Honor.

24 THE COURT: Mr. Callison?

25 MR. CALLISON: Nothing, Your Honor.

1 THE COURT: All right. Very good. I am correct that
2 the DVD was all that was introduced, right?

3 MR. CALLISON: Yes, sir.

4 THE COURT: Okay. Let me sign off on these, and then
5 we will send them in.

6 (Off the record briefly.)

7 (Whereupon, the jury began deliberating at 2:39 p.m.)

8 THE COURT: Okay. We'll be at ease until the jury
9 returns a verdict.

10 (Off the record from 2:39 p.m. until 3:13 p.m.)

11 (Whereupon, Court's Exhibit 1 was marked for
12 identification while off the record.)

13 THE COURT: Okay. If we may, let's go back on the
14 record on the *State v. Daniels*. I've received a
15 communication from the foreperson. It asks: "Can we -- we
16 -- can we rewatch the video, the part where admits
17 cocaine?"

18 I'm assuming that that's like the first about maybe
19 six minutes of the video?

20 MR. TAYLOR: Judge ---

21 MR. CALLISON: It begins at like six minutes and goes
22 to about eight minutes.

23 THE COURT: Okay.

24 MR. TAYLOR: Judge, I have it geared up on that part,
25 so it'll be ready to go.

1 THE COURT: All right. You know which part he's
2 referring to?

3 MR. CALLISON: I'm -- I'm -- I'm -- I know what part
4 it's referring to.

5 THE COURT: Okay. You're okay with just that part or
6 ---

7 MR. CALLISON: I -- I ---

8 THE COURT: --- do you ---

9 MR. CALLISON: --- think that we should start it right
10 around six minutes and play through that whole period where
11 -- where he's alleged to have taken. And then it goes on
12 to that point where he -- he ---

13 THE COURT: Okay.

14 MR. CALLISON: --- says ---

15 MR. TAYLOR: I -- I can back it up a little bit.

16 MR. CALLISON: It's -- it's all part of the same.

17 THE COURT: All right. Take it to about five minutes,
18 thirty seconds if you can. And then, we're going to play
19 to what part, about ten minutes?

20 MR. CALLISON: It's probably -- not to -- I'm sure
21 it's not over ten minutes.

22 THE COURT: All right. Okay. But is it -- so about
23 five minutes of footage? Is that what you're thinking?

24 MR. CALLISON: I think so. Yes, sir.

25 MR. TAYLOR: It's right at 5:27, Judge.

1 (Whereupon, Mr. Callison, Ms. Odom, and Mr. Taylor
2 conferred.)

3 THE COURT: Let's just bring them out. And what I'll
4 do is I'll watch and listen for that part and I'll let it
5 go a little bit past that. And if -- I'll look at you guys
6 when I'm about to stop it and kind of give you the high
7 sign that I'm about to tell him to ---

8 MR. CALLISON: Yes, sir. Okay.

9 THE COURT: --- kill it, okay?

10 MR. CALLISON: Yes, sir.

11 THE COURT: (To the bailiff) Let's have the jury back
12 out, please.

13 (Whereupon, the jury entered the courtroom at 3:16
14 p.m.)

15 THE COURT: All right. Let the record reflect that
16 the jury is back. Mr. Foreman, I've been told that you
17 want to see that -- a -- a portion of the video. And what
18 we've done is we're starting at about the five-minute,
19 thirty-second part. I think I know the -- the point that
20 y'all are referring to. And so we're going to let it play.

21 If you would, Mr. Willingham, go ahead and cut off the
22 lights, if you don't mind, sir. And, Mr. Taylor, if you'll
23 go ahead and play that whenever you're ready.

24 (Whereupon, a portion of video was played.)

25 THE COURT: All right. Mr. Foreman, is that the

1 portion that y'all were needing to see again, do you think,
2 or is it -- is there an additional part that y'all were
3 needing to see? Did that cover it?

4 FOREPERSON: Yes, sir.

5 THE COURT: Okay. If you will return, continue your
6 deliberations. Let us know when you've reached a verdict,
7 please.

8 (Whereupon, the jury exited the courtroom at 3:21
9 p.m.)

10 THE COURT: All right. We'll remain at ease.

11 (Off the record from 3:21 p.m. until 3:53 p.m.)

12 THE COURT: All right. Let's, if we could, go back on
13 the record in Mr. Daniels' case. I've received another
14 communication from the jury, where they ask: "Can we
15 please watch the video where he is first out of the car and
16 the contraband is on the roof of the car until the
17 handcuffs?"

18 So what I've asked Mr. Taylor to do is simply take it
19 back to the point where the stop is effected. And we'll
20 roll with that until such time as he's cuffed. And I think
21 that's what they're asking to see.

22 The second part of the communication is what's causing
23 me a little bit more trouble. It asks, quote: On the
24 charge of obstruction of justice, is it -- it -- is it at
25 any point in the video, question mark, end quote.

1 And I really don't know what to make of that. It's
2 almost as if -- it's almost as if they're asking the Court
3 to pinpoint what part of the video the state believes would
4 constitute the final accomplishment of the obstruction of
5 justice. So I'm all ears as far as suggestions on how to
6 do it -- deal with that second part. Part of me is
7 inclined to simply tell them that I cannot instruct them on
8 the facts and they should judge whether or not the state
9 has met its burden of proof based on the totality of the
10 evidence, the video, and the testimony that's been
11 presented. And if I can be of further service, let me
12 know. That's kind of what I'm inclined to tell them on
13 that.

14 MR. CALLISON: Let me make ---

15 THE COURT: Do you have any suggestion?

16 MR. CALLISON: May it please the Court: I don't -- I
17 don't think that's a question that you can answer in -- in
18 the sense that they're asking for because it would be
19 asking the Court to comment on the facts and give direction
20 on their factual interpretation. So I would agree that it
21 would need to be something to the effect of what you said,
22 that all the evidence is in; they have to make their
23 decision based on the evidence and whether or not the state
24 has proven the case beyond an amazing burden of proof.

25 THE COURT: All right. I'm going to instruct them

1 along those lines and then tell them that if there's -- if
2 I'm misinterpreting their question, to let me know and I'll
3 try and do a better job of answering whatever legal
4 question they may have.

5 (To the bailiff) Let's have them back out, please.

6 (Whereupon, the jury entered the courtroom at 3:53
7 p.m.)

8 THE COURT: All right. Let the record reflect that
9 the jury is back and seated. Ladies and gentlemen, I've
10 received your communication. And what we're going to do is
11 address the first half of the communication, first, where
12 you ask to see the video where he's first out of the car.
13 I've instructed Mr. Taylor to go to the part of the video
14 where the car is initially stopped by the trooper, and
15 we'll simply roll forward to the point where Mr. Daniels is
16 placed in handcuffs.

17 So, Mr. Taylor, if you'll go ahead and play the video.

18 (Whereupon, a portion of video was played.)

19 THE COURT: All right. I assume that's the portion
20 that y'all were interested in seeing? Is that right, Mr.
21 Foreman?

22 FOREPERSON: Yes, sir.

23 THE COURT: All right. The second part of your
24 communication with me is -- is sort of what I'm struggling
25 with. It asks: "On the charge of obstruction of justice,

1 is it at any point in the video?"

2 I'm -- I'm not entirely sure how to -- I'm not
3 entirely sure what you're asking of me on that. And I'll
4 -- I'll tell you ladies and gentlemen that, of course, in
5 this case you've received all the evidence and I cannot
6 instruct you what the facts are in this case, as I
7 mentioned earlier.

8 So I -- I cannot make any comment on or instruct you
9 as to any of the facts in the case. You have to judge this
10 case based solely on the evidence that has been presented:
11 namely, the testimony and the video. And you have to
12 determine whether or not the state has met its burden of
13 proof beyond a reasonable doubt based upon that evidence as
14 submitted to you.

15 If I can give you any further clarification as to the
16 law that applies, certainly, I am happy to do that. But I
17 really don't know how to respond to that second question.
18 If you want to go back there and talk about this some more
19 and -- and perhaps phrase that question in a different way,
20 maybe I can assist you. But again, the law does not permit
21 me to have any opinion concerning the facts of this
22 particular case. And I cannot, by -- by law, comment on
23 any of the facts or suggest to you what the facts are in
24 any way, shape, or form.

25 So with that, if you need further instructions on the

1 law, I can help you with that. Feel free to send me
2 another note if you need help along those lines.
3 Otherwise, I'll ask that y'all continue your deliberations
4 at this point. Thank you.

5 (Whereupon, the jury exited the courtroom at 4:01
6 p.m.)

7 (Whereupon, Court's Exhibit 2 was marked for
8 identification.)

9 THE COURT: All right. The jury is out. Exceptions
10 to my additional comments a few moments ago, Mr. Callison?

11 MR. CALLISON: No, sir. I think -- I think that
12 covered it.

13 THE COURT: All right. Very good. None from the
14 state?

15 MS. ODOM: No, sir.

16 THE COURT: Very good.

17 (Off the record from 4:02 p.m. until 4:34 p.m.)

18 THE COURT: All right. We'll go ahead and go back on
19 the record. I've got another request from the jury. They
20 request that we be able to show them the entire video
21 again. Mr. Taylor has backed it up to the -- to the
22 beginning of the video. They all -- also ask if it's
23 possible to slow the motion down. And Mr. Taylor informs
24 me that it is not. So I'm going to tell them simply that
25 we can't slow it down or advance the frames in a slower way

1 than it's currently configured. So that's what I will do.

2 (To the bailiff) Let's have them back out, please.

3 (Whereupon, Court's Exhibit 3 was marked for
4 identification.)

5 (Whereupon, the jury entered the courtroom at 4:34
6 p.m.)

7 THE COURT: All right. The record should reflect that
8 the jury is back and seated. I received the request. And
9 what we're going to do is play the entire video for the
10 jury from start to finish. Mr. Taylor has it booted up to
11 begin at the very beginning.

12 The second part of the note asks if it's possible to
13 slow down the video and let y'all see a -- the part where
14 the officer approaches the passenger side until he's --
15 until the defendant is sat on the ground. And Mr. Taylor
16 tells me that it's not possible to slow the video down,
17 unfortunately. So that's kind of where we are, from a
18 technical standpoint.

19 And if you need to see that portion again, just let us
20 know. But we're going to play the whole thing again for
21 you from start to finish, since that's your request.

22 Mr. Taylor, go ahead, please, sir.

23 (Whereupon, the entire video was played in the
24 courtroom.)

25 THE COURT: All right. If you'll go back to the jury

1 room, please, and resume your deliberations. Thank you.

2 (Whereupon, the jury exited the courtroom at 5:20
3 p.m.)

4 THE COURT: All right. We're at ease again.

5 (Off the record from 5:20 p.m. until 5:33 p.m.)

6 THE COURT: All right. Let's go back on the record,
7 if we may in the *State v. Mr. Daniels*. I've been informed
8 by the bailiff that the jury has reached a verdict.

9 Anything before we bring the jury back in from the state?

10 MS. ODOM: No, sir.

11 THE COURT: From the defense?

12 MR. CALLISON: No, sir.

13 THE COURT: Very good. (To the bailiff) Let's have
14 the jury, please.

15 (Whereupon, the jury entered the courtroom at 5:34
16 p.m. to deliver its verdict.)

17 THE COURT: Thank you very much.

18 THE BAILIFF: Yes, sir.

19 THE COURT: All right. Mr. Foreman, I'm told that the
20 jury has reached a verdict; is that correct, sir?

21 FOREPERSON: Yes, sir.

22 THE COURT: All right. And all twelve of y'all agree
23 on what the verdict is?

24 FOREPERSON: Yes, sir.

25 THE COURT: All right. If you would, hand the verdict

1 form, please, to Mr. Willingham. Thank you.

2 FOREPERSON: (Complied.)

3 THE COURT: All right. Madam clerk, if you'll
4 publish, please.

5 VERDICT OF THE JURY

6 CLERK OF COURT: (As read): State of South Carolina
7 in the county of Greenwood, General Sessions Court Case
8 2012-GS-24-1515, the State of South Carolina v. Jermel
9 Rashond Daniels, we, the jury, in the above-captioned case,
10 on the charge of obstruction of justice, unanimously find
11 Jermel Rashond Daniels guilty. Signed, foreperson, Eddie
12 Yeldell.

13 Ladies and gentlemen of the jury, if this is still
14 your verdict, will you please raise your right hand?

15 (Whereupon, all jurors raised right hand.)

16 THE COURT: All right. Let the record reflect that
17 all twelve jurors did, in fact, raise their right hand.

18 Ladies and gentlemen, this will conclude your jury
19 service for this week. I want to thank you ahead of time
20 for your patience and your dedication and for your
21 attention today and on Monday.

22 Remember what I told you on Monday: that if you're
23 summoned for jury duty again in the next three years, you
24 can let the clerk of court know that you came in here and
25 you had jury duty in -- in general sessions court for this

1 particular week. So just make a mental note of this week,
2 and she'll automatically excuse you. You won't have to
3 come in on Monday.

4 Again, I want to thank you for your service here. You
5 will receive a letter from me, probably on Friday or
6 Saturday, thanking you again for your jury service. The
7 primary purpose of the letter is to also solicit feedback.
8 Is -- if there's anything that I did that you did not like
9 or anything that you didn't like about jury service,
10 please, definitely let me know. If there's something you
11 liked, let me know that too.

12 But if -- if -- if there's something in particular
13 that you did not like that you think we could do better
14 here, let me know. I can't promise you I'll change you.
15 But I can promise you I'll try to change it. Okay?

16 With that, I will tell you, you do get paid for jury
17 service. It's not a lot of money. Your check is in the
18 proverbial mail. You will probably get that sometime
19 Friday or Saturday too. Please spend it all in once place.
20 And I hope to see you all again. Take care. And again,
21 thank you so much for your attention and your service.

22 THE BAILIFF: Come this way, please.

23 THE COURT: Oh, Mr. Foreman -- Mr. Foreman, I need you
24 to sign the verdict on the actual indictment. I forgot to
25 ask you to do that, sir.

1 FOREPERSON: (Complied.)

2 (Whereupon, the jury exited the courtroom at 5:36
3 p.m.)

4 (Off the record briefly.)

5 THE COURT: All right. Mr. Callison, any posttrial
6 motions, sir?

7 MR. CALLISON: Your Honor, under Rule 29 I believe I
8 have ten days to make any. I'm not sure what we're going
9 after. I would -- I would ask for that time.

10 THE COURT: All right. Very good. All right. If you
11 would care to present your client for sentencing, Mr. ---

12 MR. CALLISON: Okay. All right.

13 THE COURT: --- care to present Mr. Daniels for
14 sentencing. And, Solicitor, if you would, go ahead and let
15 me know what his criminal history looks like, please.

16 MS. ODOM: Yes, sir, Your Honor. In 1999 a petit
17 larceny; in 2000 a false name to police and criminal
18 domestic violence conviction; 2001, public disorderly
19 conduct; 2002 burglary, third-degree, second offense that
20 he received five years on; pointing and presenting firearms
21 that he received five years; another burglary, third-
22 degree, second offense, that he received five years;
23 throwing bodily fluids on an employee of a prison in 2004;
24 2005, criminal domestic violence, second.

25 (Whereupon, Mr. Callison and the defendant conferred.)

1 MS. ODOM: 2005, criminal domestic violence, third;
2 and another throwing bodily fluids on an employee of a
3 prison, three-year sentence; 2008, criminal domestic
4 violence, second offense; 2008, possession of marijuana;
5 2009, assault on a corrections employee. Your Honor, and
6 that's the extent of his criminal history.

7 THE COURT: All right. Out of curiosity, Solicitor,
8 what's the most time that it appears he's been sentenced to
9 previously?

10 MS. ODOM: It looks like five years.

11 THE COURT: All right.

12 MS. ODOM: And, Your Honor, he does have another
13 pending CDV charge. And then, while he's been
14 incarcerated, he's picked up a threatening-a-public-
15 official charge from where he threatened one of the
16 employees in the jail.

17 THE COURT: All right. He has not been convicted of
18 the CDV, however, or the threatening public official?

19 MS. ODOM: That's correct.

20 THE COURT: All right. I won't -- I will not be
21 taking those into account, then, for purposes of
22 sentencing. And I'm correct, I believe, that this carries
23 up to ten years; is that right, Solicitor?

24 MS. ODOM: Yes.

25 THE COURT: You would agree?

1 MR. CALLISON: Zero to ten.

2 THE COURT: All right. Happy to hear from you on
3 behalf of Mr. Daniels and certainly ---

4 MR. CALLISON: Please ---

5 THE COURT: --- anything that ---

6 MR. CALLISON: --- the Court ---

7 THE COURT: --- he may want to say.

8 MR. CALLISON: And first of all, we appreciate the
9 opportunity to try the case before the jury ---

10 THE COURT: Certainly.

11 MR. CALLISON: --- and to at least, you know, have the
12 day in court and be able to present our side.

13 I will point out also that Mr. Daniels did plead
14 guilty to the three other offenses, which were minor
15 offenses; recognize that. Understand that he's -- have --
16 has some history and has had time of five years before.
17 But you need to look at the nature of those charges
18 prepared [sic] to this, as opposed to analyzing it just
19 from the standpoint, Well, he did five years before; he
20 needs to get more this time.

21 Different charges -- this -- I understand this charge.
22 I understand it carries up to ten years. But under the
23 circumstances of this case, given the fact that he was a
24 highly intoxicated individual and what occurred there at

1 the scene, I would ask the Court to be -- to use its
2 discretion to sentence Mr. Daniels to somewhere in the
3 range of two to three years, something along that line.

4 I think that he's already been sitting in jail for
5 nine months. And I'd ask -- actually, nine months and then
6 have 30 days before that, so ten months of -- of total
7 time, which I'd ask the Court apply to his sentence.

8 THE COURT: All right.

9 MR. CALLISON: I believe he was incarcerated October
10 21. Prior to that time he did 30 days before you were let
11 out on bond, I believe.

12 THE COURT: All right. So you -- you have ten months,
13 is what you're ---

14 MR. CALLISON: Yes, sir.

15 THE COURT: --- calculating?

16 MR. CALLISON: Yes, sir.

17 THE COURT: All right. Mr. Daniels, anything that you
18 want to say, sir?

19 THE DEFENDANT: Yes, sir. I would like to thank the
20 Courts for taking time out and also you to hear -- to hear
21 my case. Even though that I did not put nothing in my
22 mouth and it showed it on the camera, I just ask that you
23 show some lenient [sic] and have some lenient on me and
24 don't judge me from off of my past record and judge me for
25 the situation and the case that it was, that it's still

1 yet. It never was shown that I put anything in my mouth
2 and that the -- that the -- just the -- the officer was --
3 wasn't committed and stated and stated different things off
4 of the camera was shown. I just ask for you to show some
5 lenient and have some lenient on me, Your Honor.

6 THE COURT: All right. Thank you, Mr. Daniels.

7 All right. Well, Mr. Daniels, I've certainly taken
8 into account the nature of this particular offense. And to
9 your credit I hear some of the problems that you've had in
10 SCDC with -- with correctional officers. And I did have a
11 chance to review the video. And at least to your credit,
12 you -- you didn't take a swing at -- at one of the
13 officers, even though you were clearly intoxicated. And I
14 know that they respect that. And -- and I think that that
15 definitely mitigates somewhat against you getting the full
16 ten years.

17 In all candor, though, Mr. Daniels, I mean, the
18 problem that you -- that -- that you honestly have, sir, is
19 that you come into here with some baggage. All right? And
20 I just have to tell it like it is.

21 And I understand your attorney's argument -- and it's
22 a valid argument -- that the other incidents were
23 burglaries. And I -- I do think that that's a serious
24 crime. At the same time, obstruction of justice, I -- I
25 feel that that's a serious crime. And -- and I appreciate

1 the fact that you don't feel like you swallowed something.
2 I viewed the video. I heard the testimony. I -- I'm
3 convinced that the jury has reached a proper conclusion in
4 this particular case.

5 SENTENCE OF THE COURT

6 THE COURT: The sentence that I've come up with, Mr.
7 Daniels, that -- that in mind is fair is that you're
8 committed to the Department of Corrections for seven years.
9 You're to receive credit for ten months that you've served
10 in jail. I wish you luck, sir.

11 THE DEFENDANT: Is it nonviolent?

12 THE COURT: It would be nonviolent. Yes, sir.

13 MR. CALLISON: Yeah. Uh-huh.

14 THE COURT: Good luck.

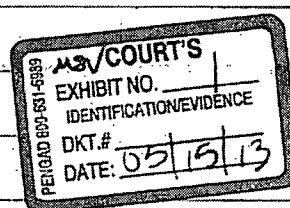
15 THE DEFENDANT: All right.

16 (Whereupon, the proceedings were concluded at 5:46 p.m.)

17 --- END OF TRANSCRIPT OF RECORD ---
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e

Can we re-watch the video
--the part where admits cocaine

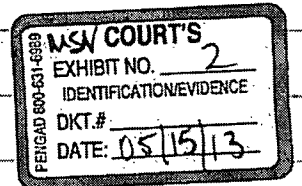


ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Can we please watch the video where
he is first out of the car and the
contraband is on roof of car?

Until the handcuffs

~~ABOL 00000000~~

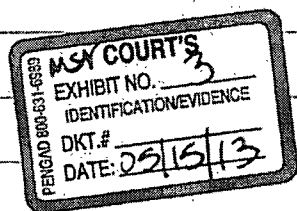


On the charge of obstruction of justice
is it at any point in the video?

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Can we watch the entire video?

Is it possible to slow motion the video? (the part where the officer approaches the passenger side until he is ~~handed~~ sat on the ground)



ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

D J Bron
S C Highway Patrol

WARRANT NUMBER

M079513

True Bill

Melanie Dain

Foreman of the Grand Jury

Date: 8/3/12

VERDICT

Guilty

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS24-1515

THE STATE

vs.

Jermel Rashond Daniels

**INDICTMENT FOR
OBSTRUCTION OF JUSTICE**

THE STATE OF SOUTH CAROLINA

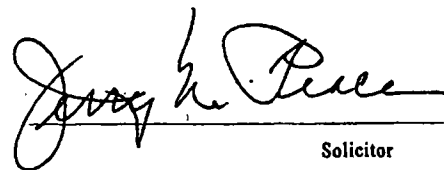
COUNTY OF GREENWOOD

**INDICTMENT FOR
OBSTRUCTION OF JUSTICE**

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Jermel Rashond Daniels, did in Greenwood County, state aforesaid, on or about the 31st day of May, 2012 willfully and unlawfully commit any act which prevented, obstructed, impeded, or hindered the administration of justice, to wit: that the said defendant did conceal evidence by swallowing a bag of Cocaine, in violation of the Laws of the State of South Carolina.

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


Solicitor

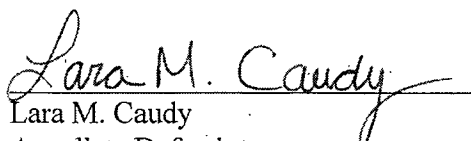
ATTEST A TRUE COPY

ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 11th, 2014


Lara M. Caudy
Appellate Defender

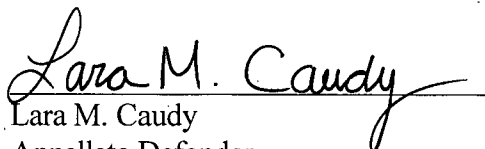
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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June 11th, 2014


Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Greenwood County

Frank R. Addy, Circuit Court Judge

RECEIVED

JUN 11 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

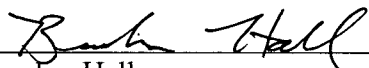
JERMEL RASHOND DANIELS,

APPELLANT

APPELLATE CASE NO. 2013-001210

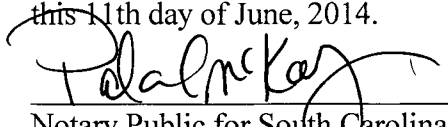
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of June, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of June, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.