

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM OCONEE COUNTY
Court of Common Pleas

S.C. Supreme Court

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 13-CP-37-290

TIMOTHY WALLACE, 3222985 Petitioner,

v.

STATE OF SOUTH CAROLINA Respondent.

APPENDIX

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STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA.) SESSIONS
)
COUNTY OF OCONEE) INDICTMENT NO: 2006-GS-37-175

STATE OF SOUTH)
CAROLINA)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL -- VOLUME I OF II
) PAGES 1 THROUGH 105
-VS-)
)
TIMOTHY L. WALLACE,)
)
DEFENDANT.)

SEPTEMBER 17TH, 2007
WALHALLA, SOUTH CAROLINA

B E F O R E:

HONORABLE J. C. BUDDY NICHOLSON, JR., JUDGE; AND A
JURY.

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

BLAIR STOUDEMIRE, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
LINDSEY S. SIMMONS
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

SUZANNE EARLE, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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17 EXHIBITS

18 NO. DESCRIPTION

ID. EV.

19

20

21 NO EXHIBITS WERE INTRODUCED.

1 ***** START OF REQUESTED TRANSCRIPT *****

2 JURY VOIR DIRE:

3 THE COURT: SOLICITOR, CALL YOUR CASE.

4 MR. STOUDEMIRE: YOUR HONOR, THIS IS THE
5 STATE VERSUS TIMOTHY LAMAR WALLACE, INDICTMENT NUMBER
6 2006-GS-37-175.

7 THE COURT: THANK YOU, SIR.

8 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY
9 PANEL, WE ARE GETTING READY TO DRAW THE JURY ON THE CASE
10 OF THE STATE VERSUS TIMOTHY LAMAR WALLACE. THE
11 INDICTMENT IS NOT EVIDENCE IN THE CASE, IT'S MERELY THE
12 MEANS BY WHICH A DEFENDANT IS BROUGHT TO COURT FOR
13 TRIAL.

14 AND THE FIRST THING I'M GOING TO DO IS TO
15 CALL OUT A LIST OF NAMES. I'M GOING TO ASK YOU IF YOU
16 KNOW THE INDIVIDUAL INVOLVED, IF YOU ARE RELATED BY
17 BLOOD OR MARRIAGE, OR HAVE YOU HAD ANY CONTACT WITH THE
18 INDIVIDUAL WHOSE NAMES I CALL OUT. AND WHEN I SAY
19 MARRIAGE, I'M TALKING ABOUT PAST MARRIAGES AS WELL AS
20 PRESENT MARRIAGES. I HAD ONE PARTICULAR JUROR THAT DID
21 NOT WANT TO REVEAL THAT SHE WAS DIVORCED FROM ONE OF THE
22 WITNESSES. SO I'M TALKING ABOUT PAST MARRIAGES AS WELL
23 AS PRESENT MARRIAGES OR FUTURE MARRIAGES IF YOU HAVE ONE
24 IN THE IMMEDIATE HORIZON.

25 THE FIRST NAME IS SERGEANT DALE COLEGROVE.

1 IS ANYBODY RELATED BY BLOOD OR MARRIAGE TO SERGEANT DALE
2 COLEGROVE? DOES ANYBODY KNOW SERGEANT DALE COLEGROVE?
3 IF SO, PLEASE STAND. (NO RESPONSE.)

4 THE NEXT NAME IS SERGEANT PATRICK MERCK.
5 DOES ANYBODY KNOW SERGEANT PATRICK MERCK OR IS ANYBODY
6 RELATED BY BLOOD OR MARRIAGE? BOTH OF THEM WORK AT THE
7 OCONEE COUNTY SHERIFF'S OFFICE. IF SO, PLEASE STAND.

8 YES, MA'AM, YOUR NAME?

9 POTENTIAL JUROR CAPPOLA: ELIZABETH CAPPOLA.

10 THE COURT: DO YOU KNOW YOUR NUMBER?

11 POTENTIAL JUROR CAPPOLA: I DON'T KNOW MY
12 NUMBER.

13 THE COURT: PARDON?

14 POTENTIAL JUROR CAPPOLA: I DON'T KNOW IT,
15 SIR.

16 THE CLERK: SHE'S NUMBER 123.

17 THE COURT: YES, MA'AM, MS. CAPPOLA. HOW DO
18 YOU KNOW PATRICK MERCK?

19 POTENTIAL JUROR CAPPOLA: HE HAS BEEN A
20 CUSTOMER AT THE BANK OF WESTMINSTER WHERE I AM EMPLOYED.

21 THE COURT: HOW OFTEN DO YOU SEE HIM?

22 POTENTIAL JUROR CAPPOLA: NOT VERY OFTEN.

23 THE COURT: DO YOU SEE HIM JUST IN A
24 BUSINESS RELATIONSHIP?

25 POTENTIAL JUROR CAPPOLA: YES.

1 THE COURT: WOULD THAT RELATIONSHIP
2 INTERFERE WITH YOUR ABILITY TO SIT ON THIS JURY?

3 POTENTIAL JUROR CAPPOLA: NO, SIR.

4 THE COURT: CAN YOU BE FAIR TO BOTH THE
5 STATE AND THE DEFENDANT?

6 POTENTIAL JUROR CAPPOLA: YES.

7 THE COURT: CAN YOU BASE YOUR DECISION ON
8 THE TESTIMONY YOU HEAR IN THE COURTROOM?

9 POTENTIAL JUROR CAPPOLA: YES, SIR.

10 THE COURT: THANK YOU, MS. CAPPOLA, JUROR
11 NUMBER 123.

12 THE NEXT NAME IS CORPORAL TOMMY CROMPTON.
13 DO YOU WANT TO STAND AND FACE THE JURY,
14 PLEASE?

15 (CORPORAL CROMPTON STOOD AND FACED THE JURY
16 PANEL.)

17 THE COURT: THANK YOU VERY MUCH.

18 IS ANYBODY RELATED BY BLOOD OR MARRIAGE TO
19 CORPORAL TOMMY CROMPTON? DOES ANYBODY KNOW TOMMY
20 CROMPTON? IF SO, PLEASE STAND.

21 YES, SIR, YOUR NAME?

22 POTENTIAL JUROR MOON: THOMAS MOON.

23 THE COURT: DO YOU KNOW YOUR NUMBER?

24 THE CLERK: HE'S NUMBER 64.

25 THE COURT: YES, SIR, MR. MOON. HOW DO YOU

1 KNOW TOMMY CROMPTON?

2 POTENTIAL JUROR MOON: FROM GETTING PULLED
3 OVER.

4 THE COURT: HOW LONG AGO WAS THIS?

5 POTENTIAL JUROR MOON: IT'S BEEN OVER THREE
6 YEARS.

7 THE COURT: IT'S BEEN OVER THREE YEARS? DO
8 YOU WANT TO COME AROUND, SIR, PLEASE? AND THE ATTORNEYS
9 CAN JOIN ME UP HERE.

10 (POTENTIAL JUROR MOON APPROACHED THE BENCH
11 AND CONFERRED WITH THE COURT, AS FOLLOWS:)

12 THE COURT: WHAT DID HE PULL YOU OVER FOR?

13 POTENTIAL JUROR MOON: I DON'T...

14 THE COURT: WHAT DID HE CHARGE YOU WITH?

15 POTENTIAL JUROR MOON: I DIDN'T GET CHARGED.

16 THE COURT: WHAT DID HE STOP YOU FOR? WHAT
17 WERE YOU DOING?

18 POTENTIAL JUROR MOON: I WAS HAVING A SEXUAL
19 ENCOUNTER WITH SOMEONE.

20 THE COURT: WAS THAT WHILE YOU WERE GOING
21 DOWN THE ROAD?

22 POTENTIAL JUROR MOON: NO, NOT AT ALL; WE
23 WERE PULLED OVER.

24 THE COURT: SO YOU WERE STOPPED IN YOUR CAR?

25 POTENTIAL JUROR MOON: YEAH.

1 THE COURT: AND HE CAME UP BESIDE YOU?

2 POTENTIAL JUROR MOON: YEAH.

3 THE COURT: BUT HE DIDN'T CHARGE YOU?

4 POTENTIAL JUROR MOON: NO.

5 THE COURT: DO YOU HAVE ANY BIAS OR
6 PREJUDICE TOWARDS HIM, THE OFFICER, FOR INTERFERING WITH
7 YOUR SEXUAL ENDEAVORS?

8 POTENTIAL JUROR MOON: NO.

9 THE COURT: NOT AT ALL? DO YOU HAVE ANY
10 BIAS OR PREJUDICE FOR OR AGAINST HIM?

11 POTENTIAL JUROR MOON: NO.

12 THE COURT: DO YOU THINK IT WOULD INFLUENCE
13 YOUR DECISION SERVING AS A JUROR IN THIS CASE?

14 POTENTIAL JUROR MOON: NOT AT ALL.

15 THE COURT: YOU DON'T THINK IT WOULD HELP,
16 IT WOULD INTERFERE WITH YOUR ABILITY SINCE HE DIDN'T
17 CHARGE YOU?

18 POTENTIAL JUROR MOON: NO, SIR.

19 THE COURT: NOT AT ALL?

20 POTENTIAL JUROR MOON: NO.

21 THE COURT: NO? CAN YOU BE FAIR TO BOTH THE
22 STATE AND THE DEFENDANT?

23 POTENTIAL JUROR MOON: YES, I CAN.

24 THE COURT: CAN YOU BASE YOUR DECISION ON
25 THE TESTIMONY YOU HEAR IN THE COURTROOM?

1 **POTENTIAL JUROR MOON:** YES, SIR.

2 **THE COURT:** ANY QUESTIONS FROM THE STATE?

3 **MR. STOUDEMIRE:** NO, YOUR HONOR.

4 **THE COURT:** ANY QUESTIONS FROM DEFENSE?

5 **MS. EARLE:** NO, YOUR HONOR.

6 **THE COURT:** THANK YOU, MR. MOON; I
7 APPRECIATE YOUR HONESTY.

8 (THE COURT REPORTER CONFERRED WITH THE COURT
9 OFF THE RECORD.)

10 **THE COURT:** ALL RIGHT. THE NEXT NAME IS
11 SPECIAL AGENT MICHAEL MILLER OF THE ANDERSON COUNTY
12 FORENSICS LAB. IS ANYBODY RELATED BY BLOOD OR MARRIAGE
13 TO MICHAEL MILLER OR DOES ANYBODY KNOW MICHAEL MILLER?
14 IF SO, PLEASE STAND. (NO RESPONSE.)

15 **MRS. EARLE,** IF YOU WOULD STAND AND INTRODUCE
16 YOURSELF, PLEASE, MA'AM.

17 **MS. EARLE:** I'M SUZANNE EARLE, I'M AN
18 ATTORNEY HERE IN WALHALLA.

19 **THE COURT:** IS ANYBODY BEING REPRESENTED BY
20 MRS. EARLE, EITHER PRESENTLY OR IN THE PAST? IF SO,
21 PLEASE STAND. (NO RESPONSE.)

22 SOLICITOR STOUDEMIRE?

23 **MR. STOUDEMIRE:** I'M BLAIR STOUDEMIRE, I'M
24 ONE OF THE ASSISTANT SOLICITORS HERE IN WALHALLA; ALSO
25 WITH ME TODAY IS LINDSEY SIMMONS, ALSO AN ASSISTANT

1 SOLICITOR IN OUR OFFICE; DEPUTY TOMMY CROMPTON YOU HAVE
2 BEEN INTRODUCED TO; AND WE WORK FOR YOUR ELECTED
3 SOLICITOR, MS. CHRISSY ADAMS.

4 THE COURT: ALL RIGHT. DOES ANY MEMBER OF
5 THE JURY PANEL HAVE A CLOSE RELATIONSHIP WITH EITHER
6 SOLICITOR STOUDEMIRE, SOLICITOR SIMMONS, OR ANYONE ELSE
7 IN THE SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

8 YES, MA'AM, YOUR NAME?

9 POTENTIAL JUROR THOMPSON: MY NAME IS
10 BRIDGETTE THOMPSON, I'M JUROR NUMBER 128.

11 THE COURT: 128. YES, MA'AM, MS. THOMPSON.
12 DO YOU WANT TO COME AROUND?

13 (POTENTIAL JUROR THOMPSON, NUMBER 128,
14 APPROACHED THE BENCH AND CONFERRED WITH THE
15 COURT, AS FOLLOWS:)

16 THE COURT: HOW DO YOU KNOW HIM?

17 POTENTIAL JUROR THOMPSON: MY FIRST COUSIN
18 IS MARRIED TO CHRISSY ADAMS, AND I KNOW CHRISSY VERY
19 WELL.

20 THE COURT: HOW OFTEN DO YOU SEE THEM?

21 POTENTIAL JUROR THOMPSON: USUALLY AT LEAST
22 ONCE OR TWICE A YEAR BECAUSE WE HAVE CHILDREN.

23 THE COURT: OKAY. DID YOU HELP HER WITH HER
24 CAMPAIGN WHEN SHE WAS RUNNING FOR OFFICE AT ALL?

25 POTENTIAL JUROR THOMPSON: YES, SIR.

1 THE COURT: WERE YOU ACTIVELY INVOLVED WITH
2 PUTTING UP SIGNS AND ALL THAT KIND OF STUFF?

3 POTENTIAL JUROR THOMPSON: YES, SIR.

4 THE COURT: OKAY. WHAT KIND OF PROBLEMS DO
5 YOU THINK THAT WOULD CAUSE YOU SITTING ON A JURY?

6 POTENTIAL JUROR THOMPSON: I DON'T THINK I
7 WOULD HAVE A PROBLEM WITH IT, BUT THEY MIGHT.

8 THE COURT: MY CONCERN IS, WE ALL HAVE OUR
9 BIASES AND PREJUDICES, OKAY?

10 POTENTIAL JUROR THOMPSON: YES, SIR.

11 THE COURT: I HAVE THEM, YOU HAVE THEM, WE
12 ALL HAVE THEM. MY CONCERN IS THE RELATIONSHIP WITH
13 CHRISSY, WHO IS THE SOLICITOR FOR THIS CIRCUIT, WHY THIS
14 WOULD NOT INTERFERE WITH YOUR ABILITY TO BE FAIR AND
15 IMPARTIAL. IT SEEMS TO ME THAT IT WOULD SKEW YOU
16 TOWARDS THE PROSECUTION.

17 POTENTIAL JUROR THOMPSON: I WOULD THINK SO,
18 TOO. I TRY NOT TO.

19 THE COURT: WE ALL TRY NOT TO. I HAVE MY
20 PREJUDICES, TOO; I TRY NOT TO LET IT COME OUT, SOMETIMES
21 THEY DO.

22 POTENTIAL JUROR THOMPSON: I JUST DIDN'T
23 WANT TO GET A MISTRIAL.

24 THE COURT: I UNDERSTAND AND I APPRECIATE
25 IT. THANK YOU SO VERY MUCH. HAVE A SEAT.

1 DEFENSE MOTION?

2 MS. EARLE: I ASK THAT SHE BE EXCUSED FOR
3 CAUSE.

4 MR. STOUDEMIRE: NO OBJECTION.

5 THE COURT: 128 IS EXCUSED.

6 ALL RIGHT. THIS CASE, AS THE SOLICITOR
7 STATED, IS CONCERNING COCAINE. DOES ANY MEMBER OF THE
8 JURY PANEL HAVE A PRE-FORMED OPINION, OR EXPRESSED AN
9 OPINION ABOUT DRUGS AND SOMEONE CHARGED WITH DRUGS? IN
10 OTHER WORDS, ARE YOU PREDISPOSED TO FIND SOMEONE GUILTY
11 JUST MERELY BECAUSE THEY WERE CHARGED WITH DRUGS? IF
12 YOU FEEL THAT WAY OR THINK THAT WAY, PLEASE STAND.

13 YES, MA'AM, YOUR NAME?

14 POTENTIAL JUROR MARINA: SHIRLEY MARINA
15 (PHONETIC).

16 THE COURT: DO YOU KNOW YOUR NUMBER?

17 POTENTIAL JUROR MARINA: NO, I'M SORRY.

18 THE CLERK: SHE'S NUMBER 118.

19 THE COURT: 118.

20 YES, SIR, YOUR NAME?

21 POTENTIAL JUROR JUSTICE: CLAY JUSTICE.

22 THE COURT: DO YOU KNOW YOUR NUMBER?

23 POTENTIAL JUROR JUSTICE: 44.

24 THE COURT: 44?

25 MS. MARINA, DO YOU WANT TO COME FORWARD,

1 PLEASE, MA'AM?

2 (POTENTIAL JUROR MARINA APPROACHED THE BENCH
3 AND CONFERRED WITH THE COURT, AS FOLLOWS:)

4 **THE COURT:** MS. MARINA, BASED ON THE
5 QUESTIONS I ASKED YOU, I'M GOING TO EXCUSE YOU FROM
6 SERVICE ON THIS PARTICULAR JURY, OKAY? YOU ARE ENTITLED
7 TO YOUR OPINION, AND I THINK YOU ARE BEING VERY HONEST
8 ABOUT IT.

9 YOU SAID YOU WERE A SCHOOLTEACHER. YOU'RE
10 PROBABLY WORRIED ABOUT IT, YOU PROBABLY DEAL WITH YOUNG
11 CHILDREN A LOT. A LOT OF PEOPLE THAT DIDN'T STAND
12 PROBABLY FEEL THE SAME WAY, BUT YOU HAD ENOUGH GUTS TO
13 STAND UP AND ANNOUNCE IT. THANK YOU VERY MUCH.

14 (POTENTIAL JUROR NUMBER 118 WAS EXCUSED FROM
15 SERVING ON THE TRIAL OF THIS CASE.)

16 **THE COURT:** YES, SIR.

17 (A POTENTIAL JUROR APPROACHED THE BENCH AND
18 CONFERRED WITH THE COURT, AS FOLLOWS:)

19 **THE COURT:** BASED ON THE QUESTION I ASKED
20 ABOUT DRUGS AND YOUR POSITION ON DRUGS, I'M GOING TO
21 EXCUSE YOU FROM SERVICE ON THIS JURY, OKAY? I JUST
22 DIDN'T WANT TO DO IT IN FRONT OF THE WHOLE CROWD.

23 **POTENTIAL JUROR:** THANK YOU.

24 **THE COURT:** IS ANY MEMBER OF THE JURY PANEL
25 AWARE OF BIAS OR PREJUDICE TOWARDS EITHER THE STATE OR

1 THE DEFENDANT IN THIS PARTICULAR CASE? IF SO, PLEASE
2 STAND. (NO RESPONSE.)

3 HAS ANY MEMBER OF THE JURY PANEL HEARD
4 ANYTHING ABOUT THIS CASE, EITHER OUTSIDE THE COURTROOM,
5 IN THE COURTROOM, IN THE HALLS, NEWSPAPER, RADIO, T.V.
6 OR ANYWHERE, HAVE YOU HEARD ANYTHING ABOUT THIS CASE
7 OTHER THAN WHAT I'VE TOLD YOU VERY BRIEFLY THIS MORNING?
8 IF SO, PLEASE STAND. (NO RESPONSE.)

9 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
10 A MEMBER OR A CONTRIBUTOR TO ANY GROUP WHICH HAS AS A
11 PRIMARY CONCERN THE PROMOTION OF LAW ENFORCEMENT OR
12 VICTIMS' RIGHTS? THESE GROUPS WOULD INCLUDE M.A.D.D.,
13 S.A.D.D., C.A.V.E. OR C.A.D.R.E. ANYBODY WHO
14 CONTRIBUTES TO THOSE ORGANIZATIONS OR IS A MEMBER OF
15 THOSE ORGANIZATIONS, PLEASE STAND.

16 THE CLERK: WE HAVE ONE STANDING, JUDGE.

17 THE COURT: YES, SIR, YOUR NAME?

18 POTENTIAL JUROR KOLLAR: OTTO KOLLAR
19 (PHONETIC).

20 THE COURT: PARDON?

21 POTENTIAL JUROR KOLLAR: OTTO KOLLAR.

22 THE COURT: DO YOU KNOW YOUR NUMBER?

23 POTENTIAL JUROR KOLLAR: NUMBER 50.

24 THE COURT: WHICH ORGANIZATION ARE YOU A
25 MEMBER OF?

1 **POTENTIAL JUROR KOLLAR:** I'VE CONTRIBUTED TO
2 MOTHERS AGAINST DRUNK DRIVING IN THE PAST.

3 **THE COURT:** DO YOU WANT TO COME AROUND?

4 (POTENTIAL JUROR KOLLAR APPROACHED THE BENCH
5 AND CONFERRED WITH THE COURT, AS FOLLOWS:)

6 **THE COURT:** HOW LONG HAVE YOU BEEN
7 CONTRIBUTING TO M.A.D.D.?

8 **POTENTIAL JUROR KOLLAR:** ABOUT FOUR YEARS OR
9 FIVE YEARS.

10 **THE COURT:** ABOUT FOUR OR FIVE YEARS? WHY
11 DID YOU DO THAT?

12 **POTENTIAL JUROR KOLLAR:** BECAUSE I BELIEVE
13 DRUNK DRIVING IS A PROBLEM IN THIS COUNTRY AND IT NEEDS
14 TO BE ADDRESSED.

15 **THE COURT:** OKAY. SO YOU FELT LIKE YOU WERE
16 JUST DOING -- IT WAS A PERSONAL, THE RIGHT THING TO DO
17 TO JOIN M.A.D.D.? AND IT'S A FINE ORGANIZATION, I'M NOT
18 SAYING IT'S NOT. I'M JUST TRYING TO DECIDE, DETERMINE
19 HOW IT'S GOING TO AFFECT YOU, THAT'S WHAT I'M TRYING TO
20 DETERMINE, SITTING ON THIS JURY, IS WHAT I'M TRYING TO
21 DETERMINE. HAVE YOU EVER HAD ANYBODY INJURED BY A DRUNK
22 DRIVER?

23 **POTENTIAL JUROR KOLLAR:** I'VE HAD A RELATIVE
24 KILLED.

25 **THE COURT:** WHO WAS THE RELATIVE?

1 POTENTIAL JUROR KOLLAR: IT WAS MY NIECE.

2 THE COURT: HOW LONG AGO?

3 POTENTIAL JUROR KOLLAR: ABOUT 30 YEARS AGO.

4 THE COURT: 30 YEARS AGO?

5 POTENTIAL JUROR KOLLAR: YES.

6 THE COURT: BUT YOU JOINED FOUR YEARS AGO.

7 WHAT PRECIPITATED JOINING FOUR YEARS AGO?

8 POTENTIAL JUROR KOLLAR: MY WIFE AND I JUST
9 DECIDED TO CONTRIBUTE.

10 THE COURT: DO YOU CONTRIBUTE TO ANY OTHER
11 ORGANIZATIONS SUCH AS THAT?

12 POTENTIAL JUROR KOLLAR: NO. THAT'S THE
13 ONLY ONE IN THAT -- THAT DOES THAT KIND OF WORK.

14 THE COURT: OKAY. HOW DO YOU FEEL THAT
15 WOULD AFFECT YOU SITTING HERE?

16 POTENTIAL JUROR KOLLAR: I DON'T THINK IT
17 WOULD, AND I'VE SAT ON JURIES FOR DRUNK DRIVINGS IN THE
18 PAST.

19 THE COURT: WELL, HOW DID YOU VOTE IN THOSE
20 PARTICULAR JURIES? WERE THEY CONVICTED OR ---

21 POTENTIAL JUROR KOLLAR: THEY WERE
22 CONVICTED.

23 THE COURT: THEY WERE CONVICTED? WHY DON'T
24 YOU THINK THAT WOULD AFFECT HOW YOU WOULD LOOK AT THE
25 DEFENDANT IN THIS CASE? BECAUSE YOU PREJUDGED IN FAVOR

1 OF LAW ENFORCEMENT ALONG WITH YOUR CONTRIBUTIONS TO
2 M.A.D.D.

3 **POTENTIAL JUROR KOLLAR:** I DON'T AGREE WITH
4 THAT. I DON'T PREJUDGE BASED ON MY CONTRIBUTING TO THAT
5 ORGANIZATION.

6 **THE COURT:** WHY NOT? IF YOU FEEL STRONGLY
7 ENOUGH TO BELONG, IT'S BOUND TO SKEW YOUR JUDGMENT
8 SOMEWHAT.

9 **POTENTIAL JUROR KOLLAR:** THAT MIGHT BE YOUR
10 OPINION, IT'S NOT MINE.

11 **THE COURT:** I ASKED YOU, WHY IS THAT YOUR
12 OPINION?

13 **POTENTIAL JUROR KOLLAR:** I DON'T MAKE THE
14 CONNECTION. I MEAN, THE PURPOSE OF CONTRIBUTING TO
15 M.A.D.D. IS SO THAT THEY COULD INFLUENCE OUR LEGAL
16 SYSTEM TO TRY TO IMPROVE THE SITUATION.

17 **THE COURT:** INFLUENCE OUR LEGAL SYSTEM ON
18 HOW TO IMPROVE WHAT SITUATION?

19 **POTENTIAL JUROR KOLLAR:** TO MAKE SURE THAT
20 DRUNK DRIVING IS ADDRESSED AND THE LAWS ARE PROPERLY
21 STRUCTURED TO GET DRUNK DRIVERS OFF THE ROAD.

22 **THE COURT:** I THINK THEY KILLED PROBABLY
23 50,000 LAST YEAR, SOMEWHERE IN THAT NEIGHBORHOOD, DRUNK
24 DRIVERS. THE MEDICAL PROFESSION CAME UP WITH 90,000.
25 DOES IT MAKE YOU MAD ABOUT THAT? IS IT BECAUSE YOU ARE

1 CONCERNED WITH DEATH ON THE ROADS OR ARE YOU JUST -- WHY
2 DON'T YOU THINK IT WOULD AFFECT YOU?

3 POTENTIAL JUROR KOLLAR: I THINK I COULD
4 MAKE A FAIR DETERMINATION.

5 THE COURT: OKAY. YOU THINK YOU COULD BE
6 FAIR TO BOTH THE STATE AND THE DEFENDANT?

7 POTENTIAL JUROR KOLLAR: YES.

8 THE COURT: COULD YOU BASE YOUR DECISION ON
9 THE TESTIMONY YOU HEAR IN COURT?

10 POTENTIAL JUROR KOLLAR: ABSOLUTELY.

11 THE COURT: ANY QUESTIONS FROM THE STATE OR
12 THE DEFENDANT? (NO RESPONSE.)

13 THANK YOU VERY MUCH.

14 HAS ANY MEMBER OF THE JURY PANEL HAD A
15 MEMBER OF THEIR FAMILY OR A PERSONAL FRIEND PROSECUTED
16 BY THE SOLICITOR'S OFFICE HERE IN THE 10TH CIRCUIT,
17 OCONEE COUNTY OR ANDERSON COUNTY? IF SO, PLEASE STAND.

18 ALL RIGHT. ALL RIGHT. DO YOU ALL WANT TO
19 LINE UP OUT HERE, PLEASE?

20 (POTENTIAL JUROR MOON APPROACHED THE BENCH
21 AND CONFERRED WITH THE COURT, AS FOLLOWS:)

22 THE COURT: ALL RIGHT, MR. MOON. WHO GOT
23 PROSECUTED?

24 POTENTIAL JUROR MOON: OH, LET'S SEE.
25 DEMECUS (PHONETIC) MOON.

1 THE COURT: IS THAT YOUR COUSIN?

2 POTENTIAL JUROR MOON: I REALLY DON'T EVEN
3 KNOW HIM TOO GOOD.

4 THE COURT: WHY WAS HE PROSECUTED?

5 POTENTIAL JUROR MOON: NARCOTICS.

6 THE COURT: NARCOTICS?

7 POTENTIAL JUROR MOON: YEAH.

8 THE COURT: HOW LONG AGO?

9 POTENTIAL JUROR MOON: IT'S BEEN 10 YEARS.
10 HE JUST GOT OUT.

11 THE COURT: WERE YOU INVOLVED IN IT?

12 POTENTIAL JUROR MOON: NO, NO, NO.

13 THE COURT: NOT AT ALL?

14 POTENTIAL JUROR MOON: NO. I WAS SEVEN OR
15 EIGHT.

16 THE COURT: DO YOU HAVE AN OPINION AS TO
17 WHETHER HE SHOULD HAVE BEEN PROSECUTED?

18 POTENTIAL JUROR MOON: HE SHOULD HAVE BEEN.

19 THE COURT: OKAY. YOU THINK HE SHOULD HAVE
20 BEEN?

21 POTENTIAL JUROR MOON: YES.

22 THE COURT: YOU DON'T HAVE A PROBLEM WITH
23 IT?

24 POTENTIAL JUROR MOON: NO.

25 THE COURT: OKAY. YOU DON'T HAVE ANY BIAS

1 OR PREJUDICE TOWARDS OR AGAINST THE SOLICITOR'S OFFICE
2 FOR PROSECUTING YOUR COUSIN?

3 POTENTIAL JUROR MOON: NO. MY COUSIN
4 PROSECUTED MY COUSIN.

5 THE COURT: I MEAN IN THIS CASE, DO YOU
6 THINK YOU CAN BE FAIR TO BOTH PARTIES?

7 POTENTIAL JUROR MOON: YES.

8 THE COURT: THANK YOU, MR. MOON.

9 MS. EARLE: JUDGE, MAY I ASK A QUESTION?

10 THE COURT: YES, MA'AM.

11 THE COURT REPORTER: EXCUSE ME, I CAN'T
12 HEAR.

13 MS. EARLE: HE HAPPENED TO MENTION IN HIS
14 ANSWER TO THE JUDGE THAT HE IS RELATED TO LIEUTENANT KEN
15 WASHINGTON, WHO IS THE HEAD OF NARCOTICS FOR THE
16 SHERIFF'S DEPARTMENT.

17 THE COURT: DO YOU WANT TO ASK HIM A
18 QUESTION?

19 MS. EARLE: AND JUST WOULD THAT AFFECT YOUR
20 ABILITY TO BE FAIR ---

21 POTENTIAL JUROR MOON: NO. IF HE DIDN'T DO
22 IT RIGHT, HE DIDN'T DO IT RIGHT.

23 MS. EARLE: OKAY, THANK YOU.

24 THE COURT: THANK YOU VERY MUCH.

25 (A POTENTIAL JUROR APPROACHED THE BENCH AND

1 CONFERRED WITH THE COURT, AS FOLLOWS:)

2 THE COURT: YES, MA'AM, MS. SIMPSON?

3 POTENTIAL JUROR SIMPSON: DEBRA SIMPSON.

4 THE COURT: DO YOU KNOW YOUR NUMBER?

5 POTENTIAL JUROR SIMPSON: 75.

6 THE COURT: NUMBER 75. WHO WAS PROSECUTED
7 THAT YOU KNOW?

8 POTENTIAL JUROR SIMPSON: IT WAS TWO PEOPLE:
9 JOHN DENSING (PHONETIC) ---

10 THE COURT: YOUR RELATIONSHIP TO THEM?

11 POTENTIAL JUROR SIMPSON: HE WAS DATING MY
12 DAUGHTER.

13 THE COURT: HE WAS DATING YOUR DAUGHTER.
14 OKAY. AND WHAT WAS HE PROSECUTED FOR?

15 POTENTIAL JUROR SIMPSON: DRUGS.

16 THE COURT: WHAT KIND OF DRUGS?

17 POTENTIAL JUROR SIMPSON: HE HAD COCAINE, HE
18 HAD METH.

19 THE COURT: HOW LONG AGO WAS THIS?

20 POTENTIAL JUROR SIMPSON: HE'S IN ALABAMA
21 RIGHT NOW.

22 THE COURT: OKAY. WAS HE PROSECUTED IN
23 ALABAMA?

24 POTENTIAL JUROR SIMPSON: NO. HERE, IN THE
25 ABBEVILLE/ANDERSON AREA.

1 THE COURT: WERE YOU INVOLVED IN THAT
2 PROCESS?

3 POTENTIAL JUROR SIMPSON: YES, I WAS.

4 THE COURT: WHAT WAS YOUR INVOLVEMENT WITH
5 THIS INCIDENT?

6 POTENTIAL JUROR SIMPSON: I HAD TO GIVE
7 TESTIMONY THAT THE CHILD HAD BEEN WITH US FOR A WHILE.

8 THE COURT: WAS THE TESTIMONY FOR HIM OR FOR
9 THE STATE?

10 POTENTIAL JUROR SIMPSON: FOR HIM. AND MY
11 DAUGHTER WAS PROSECUTED BY -- SHE WAS BROUGHT UP HERE
12 FOR NEGLIGENT CHILD ABUSE.

13 THE COURT: BY THE OCONEE COUNTY SOLICITOR'S
14 OFFICE?

15 POTENTIAL JUROR SIMPSON: YES.

16 THE COURT: DO YOU HAVE ANY BIAS OR
17 PREJUDICE TOWARDS PROSECUTORS IN GENERAL AS A RESULT OF
18 THAT CASE?

19 POTENTIAL JUROR SIMPSON: AS A RESULT OF MY
20 DAUGHTER'S, YES; I THINK THEY DIDN'T INVESTIGATE IT.

21 THE COURT: YOU DON'T THINK SHE SHOULD HAVE
22 BEEN PROSECUTED?

23 POTENTIAL JUROR SIMPSON: NO.

24 THE COURT: WHAT WAS THE RESULT OF THE
25 PROSECUTION?

1 POTENTIAL JUROR SIMPSON: IT WAS DROPPED.

2 THE COURT: IT WAS ULTIMATELY DROPPED?

3 POTENTIAL JUROR SIMPSON: YES.

4 THE COURT: SO THE SOLICITOR'S OFFICE
5 DROPPED IT?

6 POTENTIAL JUROR SIMPSON: YES.

7 THE COURT: HOW LONG AGO WAS THIS?

8 POTENTIAL JUROR SIMPSON: ABOUT A YEAR AGO.

9 THE COURT: THREE YEARS AGO?

10 POTENTIAL JUROR SIMPSON: NO. ABOUT A YEAR
11 AGO.

12 THE COURT: A YEAR AGO. ALL RIGHT. HOW
13 WOULD THAT AFFECT YOUR SITTING ON THIS JURY?

14 POTENTIAL JUROR SIMPSON: SITTING ON THIS
15 JURY, I'M NOT SURE THAT IT WOULD. I BELIEVE THE
16 GENTLEMAN IS WHERE HE BELONGS.

17 THE COURT: LIKE YOU SAID, YOU WOULD HAVE
18 PREJUDICE AS A RESULT OF THAT?

19 POTENTIAL JUROR SIMPSON: WELL, WE'RE STILL
20 GOING THROUGH THE COURT CASE WITH THAT, GETTING CUSTODY
21 OF HER CHILDREN BACK.

22 THE COURT: SO THAT'S STILL PENDING, YOU ARE
23 STILL INVOLVED IN THAT?

24 POTENTIAL JUROR SIMPSON: YES.

25 THE COURT: GO HAVE A SEAT.

1 ANY MOTIONS?

2 MR. STOUDEMIRE: I ASK SHE BE EXCUSED FOR
3 CAUSE. SHE SAID SHE HAD A BIAS AGAINST THE PROSECUTION.

4 THE COURT: MS. EARLE, WHAT IS YOUR
5 POSITION?

6 MS. EARLE: I THINK SHE WOULD BE FINE.

7 THE COURT: I'LL EXCUSE HER FOR CAUSE.

8 (A POTENTIAL JUROR APPROACHED THE BENCH AND
9 CONFERRED WITH THE COURT, AS FOLLOWS:)

10 THE COURT: YES, SIR, YOUR NAME?

11 POTENTIAL JUROR JUSTICE: GARY JUSTICE.

12 THE COURT: YES, SIR, MR. JUSTICE.

13 POTENTIAL JUROR JUSTICE: MY COUSIN WAS
14 PROSECUTED IN SOUTH CAROLINA.

15 THE COURT: HOW LONG AGO?

16 POTENTIAL JUROR JUSTICE: IT WAS SEVERAL
17 YEARS AGO.

18 THE COURT: WERE YOU INVOLVED IN IT?

19 POTENTIAL JUROR JUSTICE: KENNY JUSTICE,
20 FIVE OR SIX YEARS AGO.

21 THE COURT: WHAT WAS YOUR INVOLVEMENT?

22 THE COURT REPORTER: I'M SORRY, I CAN'T
23 HEAR. (NO RESPONSE.)

24 THE COURT: WERE YOU SATISFIED WITH THE
25 PROSECUTION? DO YOU THINK IT WAS DONE RIGHT? DO YOU

1 THINK IT WAS DONE WRONG?

2 POTENTIAL JUROR JUSTICE: I THINK HE GOT
3 WHAT HE DESERVED.

4 THE COURT: YOU THINK HE GOT WHAT HE
5 DESERVED?

6 POTENTIAL JUROR JUSTICE: I CERTAINLY DO.

7 THE COURT: YOU DON'T HAVE ANY BIAS OR
8 PREJUDICE TOWARDS THE POLICE OR THE SOLICITOR'S OFFICE
9 AS A RESULT OF THE FILING OF THAT PROSECUTION?

10 POTENTIAL JUROR JUSTICE: I HAVE PREJUDICE
11 TOWARDS ANYTHING TO DO WITH DOPE. I SAID THIS TIME AND
12 TIME AGAIN. I SEE MY TWO CHILDREN. IF ANYBODY EVER
13 PUSHES DRUGS ON THEM, THEY WOULD NEVER MAKE IT TO THE
14 JUDGE. I WOULD DEAL WITH THEM BEFORE IT EVER CAME TO
15 COURT.

16 THE COURT: YOU'LL DEAL WITH THEM BEFORE IT
17 WENT TO COURT?

18 POTENTIAL JUROR JUSTICE: YES, SIR.

19 MS. EARLE: YOUR HONOR, I REPRESENTED
20 MR. JUSTICE'S COUSIN, KENNETH.

21 THE COURT: I'LL EXCUSE HIM FOR CAUSE.
22 YOU CAN GO HAVE A SEAT. THANK YOU VERY
23 MUCH.

24 (A POTENTIAL JUROR APPROACHED THE BENCH AND
25 CONFERRED WITH THE COURT, AS FOLLOWS:)

1 POTENTIAL JUROR MATTOX: BRIAN MATTOX
2 (PHONETIC), JUROR 54.

3 THE COURT: WHO WAS PROSECUTED?

4 POTENTIAL JUROR MATTOX: MY WIFE'S SON WAS.

5 THE COURT: HOW LONG AGO WAS THAT?

6 POTENTIAL JUROR MATTOX: THREE OR FOUR YEARS
7 AGO.

8 THE COURT: WHAT WAS HE PROSECUTED FOR?

9 POTENTIAL JUROR MATTOX: BREAKING AND
10 ENTERING AND ASSAULT.

11 THE COURT: DID YOU AGREE WITH THE
12 PROSECUTION OR DISAGREE?

13 POTENTIAL JUROR MATTOX: I AGREED.

14 THE COURT: DID YOUR WIFE AGREE WITH YOU?

15 POTENTIAL JUROR MATTOX: I GUESS SHE DID.

16 HE ACTUALLY ADMITTED WHAT HAPPENED, SO ---

17 THE COURT: HE ADMITTED WHAT HAPPENED. SO
18 YOU HAVE NO HANG-UPS TOWARDS THE SOLICITOR'S OFFICE ---

19 POTENTIAL JUROR MATTOX: NO, SIR, NOT AT
20 ALL.

21 THE COURT: HOW ABOUT YOUR WIFE, DID SHE ---

22 POTENTIAL JUROR MATTOX: I DON'T THINK SO.

23 THE COURT: DID HE CATCH ANY TIME OR GO TO
24 JAIL?

25 POTENTIAL JUROR MATTOX: YES, SIR, HE'S IN

1 PRISON NOW. HE WENT TO ALLENDALE FOR A WHILE AND NOW
2 HE'S IN SPARTANBURG.

3 THE COURT: HE'S IN SPARTANBURG?

4 POTENTIAL JUROR MATTOX: YEAH. I THINK HE'S
5 GOT TEN YEARS ON A 15-YEAR SENTENCE.

6 THE COURT: CAN YOU SET THAT ASIDE AND BE
7 FAIR IN THIS CASE?

8 POTENTIAL JUROR MATTOX: YES, SIR, I CAN.

9 THE COURT: YOU CAN BE FAIR TO BOTH THE
10 STATE AND THE DEFENDANT?

11 POTENTIAL JUROR MATTOX: YES, SIR.

12 THE COURT: THANK YOU, MR. MATTOX.

13 YES, SIR.

14 (A POTENTIAL JUROR APPROACHED THE BENCH AND
15 CONFERRED WITH THE COURT, AS FOLLOWS:)

16 THE COURT: YOUR NAME?

17 POTENTIAL JUROR MYERS: ANDREW MYERS.

18 THE COURT: ANDREW MYERS.

19 THE CLERK: NUMBER 16.

20 THE COURT: YES, SIR, MR. MYERS.

21 POTENTIAL JUROR MYERS: MY MOM WAS TRIED AND
22 CONVICTED OF MANSLAUGHTER ABOUT 15 YEARS AGO.

23 THE COURT: WAS IT PROSECUTED HERE?

24 POTENTIAL JUROR MYERS: YES, SIR.

25 THE COURT: WAS YOUR MOM FOUND GUILTY?

1 POTENTIAL JUROR MYERS: YES, SIR.

2 THE COURT: WERE YOU INVOLVED IN IT AT ALL?

3 POTENTIAL JUROR MYERS: NO, SIR, I WASN'T
4 INVOLVED. I WAS LITTLE.

5 THE COURT: YOU DON'T REMEMBER ANYTHING
6 ABOUT IT?

7 POTENTIAL JUROR MYERS: I JUST REMEMBER A
8 LITTLE BIT ABOUT IT.

9 THE COURT: HOW MUCH TIME DID SHE SERVE?

10 POTENTIAL JUROR MYERS: SHE WAS SENTENCED TO
11 30, SHE SERVED 15.

12 THE COURT: IS SHE OUT NOW?

13 POTENTIAL JUROR MYERS: YES, SIR.

14 THE COURT: DO YOU HAVE ANY BIAS OR
15 PREJUDICE AS A RESULT OF YOUR MOTHER BEING PROSECUTED?

16 POTENTIAL JUROR MYERS: NO, SIR.

17 THE COURT: NONE AT ALL?

18 POTENTIAL JUROR MYERS: NONE.

19 THE COURT: CAN YOU BE FAIR TO BOTH PARTIES
20 AND MAKE YOUR DECISION BASED ON JUST WHAT YOU HEAR IN
21 COURT?

22 POTENTIAL JUROR MYERS: YES, SIR.

23 THE COURT: THANK YOU, MR. MYERS.

24 (A POTENTIAL JUROR APPROACHED THE BENCH AND
25 CONFERRED WITH THE COURT, AS FOLLOWS:)

1 POTENTIAL JUROR GLENN: WAYNE GLENN

2 (PHONETIC), JUROR NUMBER 50.

3 THE COURT: 50. MR. GLENN, HOW ARE YOU
4 DOING?

5 POTENTIAL JUROR GLENN: JUST FINE. I LOST A
6 BROTHER TO AN OVERDOSE ---

7 THE COURT: HOLD ON A SECOND. WHAT NUMBER?

8 THE CLERK: HE'S NUMBER 30, YOUR HONOR.

9 POTENTIAL JUROR GLENN: NUMBER 30. I'M
10 SORRY.

11 I LOST A BROTHER TO AN OVERDOSE OF COCAINE.
12 I'VE GOT A NEPHEW ---

13 THE COURT: HOW LONG AGO WAS THAT?

14 POTENTIAL JUROR GLENN: THAT WAS IN '92.

15 THE COURT: '92?

16 POTENTIAL JUROR GLENN: I'VE GOT A NEPHEW
17 THAT'S IN JAIL RIGHT NOW BECAUSE OF IT.

18 THE COURT: COCAINE?

19 POTENTIAL JUROR GLENN: (NODDED HEAD.) AND
20 I JUST -- I THINK I COULD. BUT THE TRIAL, IF IT WAS
21 SOMEBODY DISTRIBUTING, AS FAR AS I'M CONCERNED, THEY'RE
22 GUILTY. THAT'S JUST THE WAY I LOOK AT IT.

23 THE COURT: THANK YOU VERY MUCH. I'LL
24 EXCUSE YOU, OKAY?

25 (POTENTIAL JUROR GLENN, NUMBER 30, WAS

1 EXCUSED FROM SERVICE ON THE TRIAL OF THIS
2 CASE.)

3 (A POTENTIAL JUROR APPROACHED THE BENCH AND
4 CONFERRED WITH THE COURT, AS FOLLOWS:)

5 THE COURT: WHAT'S YOUR HUSBAND DOING IN
6 NASSAU?

7 POTENTIAL JUROR: HE GETS IN THESE TANKS AND
8 TEACHES PEOPLE HOW TO BREATHE UNDERWATER.

9 THE COURT: OH, REALLY? THEY'RE TEACHING
10 SCHOOL DOWN THERE?

11 POTENTIAL JUROR: YEAH.

12 THE COURT: WELL, WAS IT A VOLUNTARY
13 SEPARATION OR INVOLUNTARY?

14 POTENTIAL JUROR: VOLUNTARY. I JUST HAD TO
15 LET HIM GO.

16 THE COURT: YOU JUST HAD TO LET HIM GO.
17 WHAT WAS YOUR NAME?

18 POTENTIAL JUROR PENNERMAN: BIRTIE
19 PENNERMAN.

20 THE COURT: DO YOU KNOW YOUR NUMBER?

21 MS. EARLE: SHE'S NUMBER 74, YOUR HONOR.

22 THE COURT: 74. ALL RIGHT. WHO WAS
23 PROSECUTED?

24 POTENTIAL JUROR PENNERMAN: WELL, MY SON
25 WASN'T PROSECUTED, BUT MY SON, ABOUT FOUR YEARS AGO, HE

1 DID HAVE TO COME TO COURT BECAUSE HE DIDN'T PAY CHILD
2 SUPPORT AND HE HAD TO COME TO JAIL FOR SIX MONTHS. I
3 DON'T KNOW IF IT WAS THIS COURT OR WHAT COURT.

4 THE COURT: THAT WOULD HAVE BEEN IN FAMILY
5 COURT, NOT IN THIS COURT.

6 POTENTIAL JUROR PENNERMAN: NO.

7 THE COURT: WOULD THAT AFFECT YOU TOWARDS
8 THE POLICE OFFICER OR THE SOLICITOR?

9 POTENTIAL JUROR PENNERMAN: NO.

10 THE COURT: DO YOU AGREE WITH HIM BEING PUT
11 IN JAIL?

12 POTENTIAL JUROR PENNERMAN: I THINK I DID --
13 WELL, AT THE TIME I DIDN'T BECAUSE IT WASN'T REALLY HIS
14 FAULT; IT WAS HIS GIRLFRIEND'S FAULT, BECAUSE I TOOK
15 CARE OF THE KIDS, AND SHE GOT MAD AT HIM BECAUSE HE
16 DIDN'T WANT ANYTHING TO DO WITH HER ANYMORE, AND SHE
17 JUST TOOK HIM TO COURT FOR CHILD SUPPORT. BUT I STILL
18 SUPPORT THE KIDS.

19 THE COURT: HOW ARE THEY DOING NOW?

20 POTENTIAL JUROR PENNERMAN: GOOD.

21 THE COURT: HAVE YOU STILL GOT THE KIDS?

22 POTENTIAL JUROR PENNERMAN: WELL, ONE OF
23 THEM I DO, I STILL GOT THE 17-YEAR-OLD.

24 THE COURT: YOU'VE GOT THE CHILD FULL-TIME?

25 POTENTIAL JUROR PENNERMAN: NO, JUST

1 TEMPORARILY.

2 THE COURT: ANYBODY ELSE YOU KNOW OF WENT TO
3 JAIL?

4 POTENTIAL JUROR PENNERMAN: NOT THAT I KNOW
5 OF.

6 THE COURT: CAN YOU BE FAIR IN THIS CASE?

7 POTENTIAL JUROR PENNERMAN: I CAN BE FAIR.

8 THE COURT: THANK YOU VERY MUCH,
9 MS. PENNERMAN.

10 POTENTIAL JUROR PENNERMAN: OKAY, THANK YOU.

11 THE COURT: HAS ANY MEMBER OF THE JURY PANEL
12 BEEN A VICTIM OF A CRIME OR A MEMBER OF THEIR IMMEDIATE
13 FAMILY BEEN A VICTIM OF A CRIME? IF SO, PLEASE STAND.

14 MR. MOON, YOU CAN HAVE A SEAT.

15 COME ON AROUND, PLEASE, MA'AM.

16 (A JUROR APPROACHED THE BENCH AND CONFERRED
17 WITH THE COURT, AS FOLLOWS:)

18 THE COURT: YES, MA'AM, YOUR NAME?

19 POTENTIAL JUROR HOLBROOKS: DONNA HOLBROOKS.

20 THE COURT: HOLBROOKS. HOW ARE YOU DOING,
21 MS. HOLBROOKS?

22 POTENTIAL JUROR HOLBROOKS: FINE, THANK YOU.

23 THE COURT: WHO WAS PROSECUTED?

24 POTENTIAL JUROR HOLBROOKS: HIS NAME WAS
25 DOYLE GRUBER (PHONETIC), MY EX-BOYFRIEND.

1 THE COURT: BOYFRIEND?

2 POTENTIAL JUROR HOLBROOKS: YES.

3 THE COURT: WHAT WAS HE PROSECUTED FOR?

4 POTENTIAL JUROR HOLBROOKS: CRIMINAL
5 DOMESTIC VIOLENCE.

6 THE COURT: AGAINST YOU?

7 POTENTIAL JUROR HOLBROOKS: YES.

8 THE COURT: DID IT MAKE YOU HAPPY?

9 POTENTIAL JUROR HOLBROOKS: NOT REALLY,
10 BECAUSE I REALLY DON'T THINK HE ---

11 THE COURT: YOU WANTED THEM TO DROP THE
12 CHARGES?

13 POTENTIAL JUROR HOLBROOKS: NO. HE WANTED
14 TO.

15 THE COURT: YOU WANTED HIM TO SERVE MORE
16 TIME. WERE YOU MAD BECAUSE HE DIDN'T GET ENOUGH TIME?

17 POTENTIAL JUROR HOLBROOKS: RIGHT.

18 THE COURT: WHO WERE YOU MAD AT?

19 POTENTIAL JUROR HOLBROOKS: HIM.

20 THE COURT: HIM? WERE YOU MAD AT THE
21 PROSECUTOR OR THE POLICE OFFICERS?

22 POTENTIAL JUROR HOLBROOKS: NO. I KNOW THEY
23 WERE JUST DOING THEIR JOB.

24 THE COURT: JUST DOING THEIR JOB?

25 POTENTIAL JUROR HOLBROOKS: UH-HUH.

1 THE COURT: YOU DON'T HAVE ANY BIAS OR
2 PREJUDICE AS A RESULT OF THAT?

3 POTENTIAL JUROR HOLBROOKS: NO.

4 THE COURT: YOU CAN BE FAIR TO BOTH PARTIES
5 IN THIS CASE?

6 POTENTIAL JUROR HOLBROOKS: YES.

7 THE COURT: ANY FURTHER QUESTIONS FROM
8 EITHER THE STATE OR THE DEFENDANT? (NO RESPONSE.)

9 ALL RIGHT, THANK YOU, MS. HOLBROOKS.

10 (A POTENTIAL JUROR APPROACHED THE BENCH AND
11 CONFERRED WITH THE COURT, AS FOLLOWS:)

12 THE COURT: YES, SIR, YOUR NAME?

13 POTENTIAL JUROR MOORE: JACK MOORE.

14 THE COURT: HOW ARE YOU DOING, MR. MOORE?

15 POTENTIAL JUROR MOORE: GOOD, THANKS.

16 THE CLERK: HE'S JUROR NUMBER 119.

17 THE COURT: WHAT NUMBER?

18 THE CLERK: 119.

19 THE COURT: YES, SIR, MR. MOORE. HOW LONG
20 HAVE YOU BEEN DOING HARDWOOD FLOORS? THAT'S A TOUGH
21 JOB.

22 POTENTIAL JUROR MOORE: 17 YEARS.

23 THE COURT: 17 YEARS?

24 POTENTIAL JUROR MOORE: THAT'S COLLECTIVELY
25 ABOUT 25 OR 30.

1 THE COURT: COLLECTIVELY ABOUT 25 OR 30?

2 POTENTIAL JUROR MOORE: YEAH.

3 THE COURT: I'LL BET YOU'VE DONE A LOT OF
4 THEM, HUH?

5 POTENTIAL JUROR MOORE: YES, SIR, A LOT OF
6 THEM.

7 THE COURT: WHO'S BEEN THE VICTIM OF A
8 CRIME?

9 POTENTIAL JUROR MOORE: I'VE BEEN THE VICTIM
10 OF A CRIME. A FORMER EMPLOYEE GOT ON TO METH, AND I
11 FIRED HIM ONE TIME, HIRED HIM BACK AND TRIED TO GET HIM
12 STRAIGHTENED UP. I FIRED HIM A SECOND TIME, AND WHEN I
13 WOULDN'T HIRE HIM BACK, HE BROKE IN MY HOUSE ON A SUNDAY
14 WHILE I WAS AT CHURCH AND HE STOLE MY WIFE'S JEWELRY AND
15 ALL MY RIFLES.

16 THE COURT: DID YOU GET THEM BACK?

17 POTENTIAL JUROR MOORE: I GOT MY RIFLES
18 BACK, NONE OF THE JEWELRY. AND HE HAD SOME OTHER
19 CRIMINAL CHARGES AGAINST HIM, SOME CHILD MOLESTATION
20 CHARGES; AND SO HE'S BEEN PUT AWAY FOR ABOUT -- HE HAS
21 TO SERVE 12 YEARS BEFORE HE'LL COME UP TO PROBATION; AND
22 IF HE HADN'T HAVE MADE A DEAL WITH THE SOLICITORS, IT
23 WOULD HAVE BEEN LIFE BECAUSE IT WAS A THIRD OFFENSE.

24 THE COURT: DO YOU HAVE ANY BIAS OR
25 PREJUDICE AS A RESULT OF THAT?

1 **POTENTIAL JUROR MOORE:** NO, I DON'T. I
2 MEAN, YOU KNOW, I JUST THINK IT'S AN AWFUL WASTE FOR
3 SOMEBODY TO LET DRUGS OR SOMETHING DESTROY THEIR LIVES.
4 THAT'S THE ONLY OPINION I HAVE ABOUT THAT.

5 **THE COURT:** HOW DO YOU FEEL ABOUT SOMEONE
6 CHARGED WITH A DRUG OFFENSE?

7 **POTENTIAL JUROR MOORE:** I JUST HATE TO SEE A
8 PERSON CONTROLLED BY A SUBSTANCE, BUT I DON'T HAVE ANY
9 BIASES, OTHER THAN I JUST FEEL SORRY FOR THEM.

10 **THE COURT:** DO YOU THINK YOU CAN BE FAIR TO
11 BOTH PARTIES IN THIS CASE?

12 **POTENTIAL JUROR MOORE:** YES, SIR.

13 **THE COURT:** CAN YOU BASE YOUR DECISION ON
14 THE TESTIMONY YOU HEAR IN THIS COURTROOM?

15 **POTENTIAL JUROR MOORE:** YES, SIR.

16 **THE COURT:** THANK YOU, MR. MOORE.

17 **POTENTIAL JUROR MOORE:** YES, SIR.

18 (A POTENTIAL JUROR APPROACHED THE BENCH AND
19 CONFERRED WITH THE COURT, AS FOLLOWS:)

20 **THE COURT:** YES, MA'AM, WHAT'S YOUR NAME?

21 **POTENTIAL JUROR HOWELL:** DELORES HOWELL
22 (PHONETIC), NUMBER 38.

23 **THE COURT:** 38.

24 **POTENTIAL JUROR HOWELL:** OKAY. MY HOUSE WAS
25 BROKEN INTO WHEN WE LIVED UP IN HILLSIDE, NEW JERSEY.

1 THE COURT: HOW LONG AGO WAS THIS?

2 POTENTIAL JUROR HOWELL: ABOUT 17, 18 YEARS
3 AGO.

4 THE COURT: WAS HE CAUGHT, EVER PROSECUTED?

5 POTENTIAL JUROR HOWELL: NO. THEY JUST TOOK
6 A LOT OF THINGS.

7 THE COURT: HE WAS NEVER PROSECUTED? I'M
8 SURE THAT WAS VERY TRAUMATIC FOR YOU.

9 POTENTIAL JUROR HOWELL: YEAH.

10 THE COURT: HOW WOULD THAT AFFECT YOU
11 SITTING ON THIS JURY?

12 POTENTIAL JUROR HOWELL: IT'S BEEN SO LONG
13 AGO, I DON'T THINK SO.

14 THE COURT: YOU THINK YOU COULD BE FAIR TO
15 BOTH PARTIES AND BASE YOUR DECISION ON THE TESTIMONY YOU
16 HEAR IN THE COURTROOM?

17 POTENTIAL JUROR HOWELL: UH-HUH.

18 THE COURT: ALL RIGHT, THANK YOU,
19 MS. HOWELL.

20 (A POTENTIAL JUROR APPROACHED THE BENCH AND
21 CONFERRED WITH THE COURT, AS FOLLOWS:)

22 POTENTIAL JUROR CLAYTON: I'M ANGELA
23 CLAYTON, JUROR 13.

24 THE COURT: MRS. CLAYTON, JUROR 13. YES,
25 MA'AM.

1 **POTENTIAL JUROR CLAYTON:** WHEN I WAS 13 WE
2 WENT THROUGH FAMILY COURT. I WAS RAPED. AND IT'S NOT
3 AN ISSUE FOR ME, AND IT'S NOT ANYTHING THAT WOULD ---

4 **THE COURT:** SO YOU WERE RAPED WHEN YOU WERE
5 13?

6 **POTENTIAL JUROR CLAYTON:** BY MY MOTHER'S
7 DOMESTIC PARTNER.

8 **THE COURT:** WAS THIS IN CRIMINAL COURT?

9 **POTENTIAL JUROR CLAYTON:** YEAH.

10 **THE COURT:** I KNOW YOU WERE INVOLVED IN IT.
11 HOW DO YOU THINK THAT WOULD AFFECT YOU SITTING ON THIS
12 JURY?

13 **POTENTIAL JUROR CLAYTON:** IT WOULDN'T.

14 **THE COURT:** CAN YOU BE FAIR TO BOTH PARTIES
15 IN THIS CASE?

16 **POTENTIAL JUROR CLAYTON:** UH-HUH.

17 **THE COURT:** BASED ON THE TESTIMONY YOU HEAR
18 IN THIS COURT?

19 **POTENTIAL JUROR CLAYTON:** UH-HUH.

20 **THE COURT:** THANK YOU, MS. CLAYTON.

21 (A POTENTIAL JUROR APPROACHED THE BENCH AND
22 CONFERRED WITH THE COURT, AS FOLLOWS:)

23 **POTENTIAL JUROR DAILY:** RORY DAILY.

24 **THE COURT:** JUROR NUMBER 17.

25 **POTENTIAL JUROR DAILY:** ABOUT THREE OR FOUR

1 YEARS AGO I HAD FIVE OR TEN TRAILERS STOLEN OUT OF THE
2 BACK OF MY YARD. INSURANCE SETTLED IT UP.

3 THE COURT: DID THEY EVER CATCH ANYBODY?

4 POTENTIAL JUROR DAILY: THEY CALLED AND SAID
5 THEY THOUGHT THEY HAD SOMEBODY.

6 THE COURT: THEY NEVER DID CATCH HIM,
7 THOUGH?

8 POTENTIAL JUROR DAILY: NO.

9 THE COURT: HOW WOULD THAT AFFECT YOU
10 SITTING ON THIS JURY?

11 POTENTIAL JUROR DAILY: IT WOULDN'T.

12 THE COURT: YOU CAN BE FAIR AND IMPARTIAL?

13 POTENTIAL JUROR DAILY: YES, SIR.

14 THE COURT: YOU CAN BE FAIR TO BOTH PARTIES?

15 POTENTIAL JUROR DAILY: YES, SIR.

16 THE COURT: COULD YOU BASE YOUR DECISION ON
17 THE TESTIMONY YOU HEAR IN THE COURTROOM?

18 POTENTIAL JUROR DAILY: YES, SIR.

19 THE COURT: THANK YOU VERY MUCH. I
20 APPRECIATE IT.

21 DOES ANY MEMBER OF THE JURY PANEL HAVE ANY
22 REASON, PERSONAL OR OTHERWISE, AS TO WHY THEY CANNOT
23 SERVE ON THIS JURY? IF SO, PLEASE STAND. (NO
24 RESPONSE.)

25 ANY FURTHER QUESTIONS FROM THE STATE?

1 MR. STOUDEMIRE: NONE, YOUR HONOR.

2 THE COURT: ANY FURTHER QUESTIONS FROM THE
3 DEFENDANT?

4 MS. EARLE: NONE, YOUR HONOR.

5 THE COURT: IS THE STATE READY TO STRIKE?

6 MR. STOUDEMIRE: WE ARE, YOUR HONOR.

7 THE COURT: IS THE DEFENSE READY TO STRIKE?

8 MS. EARLE: YES, YOUR HONOR.

9 JURY SELECTION:

10 THE COURT: MADAM CLERK, IF YOU WOULD GIVE
11 US A JURY WHEN YOU ARE READY, PLEASE.

12 THE CLERK: LADIES AND GENTLEMEN, AS WE CALL
13 YOUR NAME, IF YOU WOULD PLEASE COME FORWARD. AND YOU
14 MAY WANT TO BRING WHATEVER, IF YOU HAVE PURSES OR
15 WHATEVER MATERIALS YOU HAVE, IF YOU WILL BRING THOSE
16 WITH YOU WHEN YOU COME.

17 IF YOU WILL JUST COME AND STAND IN FRONT OF
18 THE STATE AND THE DEFENDANT'S TABLE AS MR. BIBB, OUR
19 BAILIFF, IS DOING NOW.

20 NUMBER 56, CASSANDRA MARSHALL.

21 WHAT SAYETH THE STATE?

22 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

23 THE CLERK: WHAT SAY DEFENSE?

24 MS. EARLE: PLEASE SEAT THE JUROR.

25 THE CLERK: MA'AM, IF YOU WOULD PLEASE TAKE

1 A SEAT IN THE JURY-BOX.

2 NUMBER 121, DENNIS PARKER.

3 WHAT SAYETH THE STATE?

4 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

5 THE CLERK: WHAT SAY THE DEFENSE?

6 MS. EARLE: PLEASE EXCUSE THE JUROR.

7 THE CLERK: SIR, YOU HAVE BEEN EXCUSED FROM
8 THIS CASE, YOU MAY BE SEATED.

9 NUMBER 69, ANDREW MYERS.

10 WHAT SAYETH THE STATE?

11 MR. STOUDEMIRE: PLEASE EXCUSE THE JUROR ON
12 THIS CASE.

13 THE CLERK: SIR, YOU HAVE BEEN EXCUSED FROM
14 THIS CASE, YOU MAY BE SEATED.

15 NUMBER 68, JOSHUA MOSS.

16 WHAT SAYETH THE STATE?

17 MR. STOUDEMIRE: PLEASE EXCUSE THE JUROR ON
18 THIS CASE.

19 THE CLERK: SIR, YOU HAVE BEEN EXCUSED ON
20 THIS CASE, YOU MAY BE SEATED.

21 NUMBER 13, ANGELA CLAYTON.

22 WHAT SAYETH THE STATE?

23 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

24 THE CLERK: WHAT SAY DEFENSE?

25 MS. EARLE: PLEASE EXCUSE THIS JUROR.

1 THE CLERK: MA'AM, YOU HAVE BEEN EXCUSED
2 FROM THIS CASE, YOU MAY BE SEATED.

3 NUMBER 74, BIRTIE PENNERMAN.

4 WHAT SAYETH THE STATE?

5 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

6 THE CLERK: WHAT SAY THE DEFENSE?

7 MS. EARLE: PLEASE SEAT THE JUROR.

8 THE CLERK: MA'AM, YOU MAY HAVE A SEAT IN
9 THE JURY-BOX, PLEASE.

10 NUMBER 29, ERICA GILLESPIE.

11 WHAT SAYETH THE STATE?

12 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

13 THE CLERK: WHAT SAY THE DEFENSE?

14 MS. EARLE: PLEASE EXCUSE THIS JUROR.

15 THE CLERK: MA'AM, YOU HAVE BEEN EXCUSED
16 FROM THIS CASE, YOU MAY BE SEATED.

17 NUMBER 64, THOMAS MOON.

18 WHAT SAYETH THE STATE?

19 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

20 THE CLERK: WHAT SAYETH THE DEFENSE?

21 MS. EARLE: PLEASE SEAT THE JUROR.

22 THE CLERK: SIR, IF YOU WOULD PLEASE TAKE A
23 SEAT IN THE JURY-BOX.

24 NUMBER 65, JEREMY MOORE.

25 WHAT SAYETH THE STATE?

1 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

2 THE CLERK: WHAT SAYETH THE DEFENSE?

3 MS. EARLE: PLEASE SEAT THE JUROR.

4 THE CLERK: SIR, IF YOU WOULD PLEASE TAKE A
5 SEAT IN THE JURY-BOX.

6 NUMBER 109, WESLEY CHAMBERS.

7 WHAT SAYETH THE STATE?

8 MR. STOUDEMIRE: PLEASE EXCUSE THE JUROR
9 FROM THIS CASE.

10 THE CLERK: SIR, YOU HAVE BEEN EXCUSED FROM
11 THIS CASE, YOU MAY BE SEATED.

12 NUMBER 71, SHELLY NICHOLS.

13 WHAT SAYETH THE STATE?

14 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

15 THE CLERK: WHAT SAYETH THE DEFENSE?

16 MS. EARLE: PLEASE SEAT THE JUROR.

17 THE CLERK: MA'AM, IF YOU WOULD PLEASE TAKE
18 A SEAT IN THE JURY-BOX.

19 NUMBER 119, JACK MOORE.

20 WHAT SAYETH THE STATE?

21 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

22 THE CLERK: WHAT SAY THE DEFENSE?

23 MS. EARLE: PLEASE EXCUSE THIS JUROR.

24 THE CLERK: SIR, YOU HAVE BEEN EXCUSED FROM
25 THE THIS CASE, YOU MAY BE SEATED.

1 NUMBER 18, KENNETH ELLER.

2 WHAT SAYETH THE STATE?

3 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

4 THE CLERK: WHAT SAYETH THE DEFENSE?

5 MS. EARLE: PLEASE SEAT THE JUROR.

6 THE CLERK: SIR, IF YOU WOULD PLEASE TAKE A
7 SEAT IN THE JURY-BOX.

8 NUMBER 123, ELIZABETH CAPPOLA.

9 WHAT SAYETH THE STATE?

10 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

11 THE CLERK: WHAT SAY THE DEFENSE?

12 MS. EARLE: PLEASE EXCUSE THIS JUROR.

13 THE CLERK: MA'AM, YOU HAVE BEEN EXCUSED
14 FROM THIS CASE, YOU MAY BE SEATED.

15 NUMBER 112, SAVANNAH DURHAM.

16 WHAT SAYETH THE STATE?

17 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

18 THE CLERK: WHAT SAY THE DEFENSE?

19 MS. EARLE: PLEASE SEAT THE JUROR.

20 THE CLERK: MA'AM, IF YOU WOULD PLEASE TAKE
21 A SEAT IN THE JURY-BOX.

22 NUMBER 106, ELLEN ZUERCHER.

23 WHAT SAYETH THE STATE?

24 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

25 THE CLERK: WHAT SAYETH THE DEFENSE?

1 MS. EARLE: PLEASE EXCUSE THIS JUROR.

2 THE COURT: HOLD ON. SHE'S ALREADY HAD
3 FIVE.

4 THE CLERK: IS IT FIVE AND FIVE?

5 THE COURT: COME AROUND, MA'AM.

6 MS. EARLE: I APOLOGIZE, YOUR HONOR.

7 THE COURT: NO PROBLEM. HAVE A SEAT.

8 THE CLERK: NUMBER 17, RORY DAILY.

9 WHAT SAYETH THE STATE?

10 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

11 THE CLERK: WHAT SAYETH THE DEFENSE FOR
12 CAUSE?

13 MS. EARLE: PLEASE PRESENT THE JUROR.

14 THE CLERK: NUMBER 113, BARTON HARRIS.

15 WHAT SAYETH THE STATE?

16 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

17 THE CLERK: WHAT SAY THE DEFENSE FOR CAUSE?

18 MS. EARLE: PLEASE SEAT THE JUROR.

19 THE CLERK: SIR, IF YOU WOULD PLEASE TAKE A
20 SEAT IN THE JURY-BOX.

21 NUMBER 49, GLENDA KEPLAR.

22 WHAT SAYETH THE STATE?

23 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

24 THE CLERK: WHAT SAYETH THE DEFENSE FOR
25 CAUSE?

1 MS. EARLE: PLEASE SEAT THE JUROR.

2 THE CLERK: MA'AM, IF YOU WOULD PLEASE BE
3 SEATED.

4 NUMBER 104, LULA WRIGHT.

5 WHAT SAYETH THE STATE?

6 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

7 THE CLERK: WHAT SAYETH DEFENSE FOR CAUSE?

8 MS. EARLE: PLEASE SEAT THE JUROR.

9 THE CLERK: MA'AM, IF YOU WOULD PLEASE TAKE
10 A SEAT IN THE JURY-BOX.

11 THE COURT: ONE ALTERNATE, TWO AND ONE, ONE
12 ALTERNATE.

13 THE CLERK: NUMBER 36, DONNA HOLBROOKS.

14 WHAT SAYETH THE STATE?

15 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

16 THE CLERK: WHAT SAY THE DEFENSE?

17 MS. EARLE: PLEASE EXCUSE THIS JUROR.

18 THE CLERK: NUMBER 58, LEZLIE MCALLISTER.

19 WHAT SAYETH THE STATE?

20 MR. STOUDEMIRE: PLEASE PRESENT THE JUROR.

21 THE CLERK: WHAT SAYETH THE DEFENSE?

22 MS. EARLE: PLEASE SEAT THE JUROR.

23 THE CLERK: MA'AM, IF YOU WOULD PLEASE TAKE
24 A SEAT IN THE JURY-BOX.

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN

1 OF THE JURY, WHAT I'M GOING TO ASK YOU TO DO IS GO TO
2 THE JURY ROOM, I WANT YOU TO ELECT A FOREMAN OR A
3 FORELADY. YOU MAY ELECT ANYBODY EXCEPT THE ALTERNATE,
4 MRS. MCALLISTER. AFTER YOU'VE DONE THAT, WRITE THE NAME
5 DOWN, GIVE IT TO THE BAILIFF, AND I'LL GET YOU BACK INTO
6 THE COURTROOM SHORTLY THEREAFTER.

7 PLEASE DON'T DISCUSS THE CASE AMONGST
8 YOURSELVES AND THE BAILIFF WILL TAKE YOU TO THE JURY
9 ROOM. I'LL BE WITH YOU SHORTLY.

10 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
11 12:43 P.M.)

12 **THE COURT:** ANY MOTION FROM THE STATE ON
13 DRAWING THE JURY?

14 **MR. STOUDEMIRE:** NONE, YOUR HONOR.

15 **THE COURT:** ANY FROM THE DEFENDANT?

16 **MS. EARLE:** NONE, YOUR HONOR.

17 (WHEREUPON, THE COURT CONFERRED WITH THE JURY
18 PANEL OFF THE RECORD, AFTER WHICH THE JURY
19 PANEL WAS EXCUSED AT 12:42 P.M.)

20 //

21 //

22 //

23 //

24 //

25 //

1 AFTERNOON PROCEEDINGS

2
3 SUPPRESSION HEARING:

4 THE COURT: ALL RIGHT, MS. EARLE, YOU FILED
5 A MOTION TO SUPPRESS. IT'S YOUR BURDEN TO SHOW A PRIMA
6 FACIE CASE AND THEN IT'S THE STATE'S BURDEN TO PROVE IT
7 WAS A CONSTITUTIONAL STOP AND SEARCH.

8 MS. EARLE: ALL RIGHT. YOUR HONOR, THE
9 BASIS OF MY MOTION TO SUPPRESS IS THAT THE OFFICER IN
10 HIS REPORT SAYS THAT HE STOPPED MY CLIENT FOR CROSSING
11 THE CENTERLINE ON INTERSTATE 85. AND AFTER VIEWING THE
12 VIDEOTAPE, THE STOP WAS MADE AT 12:10. AT 12:22 THE
13 OFFICER HAS WRITTEN HIS TICKET OUT, READS IT TO THE
14 DEFENDANT, ASKED HIM IF THERE IS ANYTHING ILLEGAL IN THE
15 VEHICLE OR IF HE OR HIS PASSENGER HAVE ANY WARRANTS
16 OUTSTANDING ON THEM; AND THEN HE ASKS THE DRIVER IF HE
17 HAS AN OBJECTION TO THE SEARCH OF HIS VEHICLE.

18 THE DRIVER TELLS THE OFFICER THAT HE NEEDS A
19 WARRANT TO SEARCH A VEHICLE.

20 AND THE OFFICER SAYS: NO, I DON'T NEED A
21 WARRANT. HANG TIGHT. I'M GONNA GET THE CANINE DOG.

22 AT THAT POINT THE TRAFFIC STOP ENDED AND
23 THIS TURNS INTO ANOTHER TYPE OF STOP WHERE THE OFFICER
24 HAS TO HAVE SOME SORT OF A REASONABLE AND ARTICULABLE
25 SUSPICION OF CONTINUING CRIMINAL ACTIVITY.

1 AND IN HIS REPORT, THE ONLY BASIS ACCORDING
2 TO THE REPORT IS THAT BOTH THE DRIVER OF THE VEHICLE,
3 WHO IS MY CLIENT, MR. WALLACE, AND THE PASSENGER WERE
4 NERVOUS AND THAT THEIR HANDS WERE SHAKING, AND THEY --
5 AND THAT WHEN HE ASKED THE PASSENGER WHY THEY HAD --
6 WHERE THEY HAD BEEN AND WHY THEY HAD BEEN THERE, THE
7 ANSWER WAS THEY HAD BEEN TO ATLANTA TO A BABY SHOWER,
8 AND HE RECALLED THAT THE DRIVER DID NOT MENTION A BABY
9 SHOWER.

10 IT IS OUR POSITION THAT THAT DOES NOT RISE
11 TO A REASONABLE SUSPICION OF CRIMINAL ACTIVITY IN ORDER
12 TO JUSTIFY A CANINE SEARCH OF THE VEHICLE OR FOR THE
13 OFFICER TO SEARCH THE VEHICLE; THAT ONCE THE TICKET HAD
14 BEEN WRITTEN AND THE DRIVER DECLINED CONSENT TO SEARCH
15 THE VEHICLE, THAT THAT SHOULD HAVE ENDED THE STOP AT
16 THAT POINT.

17 **THE COURT:** OKAY. I'D BE GLAD TO HEAR FROM
18 YOU.

19 **MR. STOUDEMIRE:** YOUR HONOR, FIRST WITH
20 REGARD TO THE LAWFULNESS OF TRAFFIC STOP, I THINK STATE
21 *VERSUS LESLIE* (PHONETIC) IS CONTROLLING IN THAT
22 INSTANCE. THE DRIVER WAS IMMEDIATELY NOTIFIED OF THE
23 REASON HE WAS STOPPED. HE WAS STOPPED BECAUSE ---

24 **THE COURT:** I DON'T THINK SHE CONTESTS THE
25 STOP. SHE SAID HE WENT AND CROSSED THE CENTERLINE ---

1 MR. STOUDEMIRE: OKAY.

2 THE COURT: --- AND HE WAS STOPPED.

3 I THINK SHE CONTESTS WHETHER THERE WAS
4 REASONABLE SUSPICION TO SEARCH THE CAR ONCE THEY HAD
5 PROBABLE CAUSE TO STOP THE CAR. I DON'T THINK THE --

6 THE QUESTION OF PROBABLE CAUSE WAS THE STOP;
7 IS THAT CORRECT?

8 MS. EARLE: THAT'S CORRECT, YOUR HONOR.

9 MR. STOUDEMIRE: I MISUNDERSTOOD, YOUR
10 HONOR.

11 THE COURT: THE QUESTION WAS GOING FORWARD
12 WITH THE SEARCH.

13 MR. STOUDEMIRE: YES, SIR.

14 YOUR HONOR, FIRST, THE LENGTH OF THE TRAFFIC
15 STOP, IT STARTED AT AROUND 12:10. THE TRAFFIC STOP
16 ITSELF TOOK APPROXIMATELY 12 MINUTES. WE WOULD CONTEND
17 THAT THAT'S THE NORMAL LENGTH OF A TRAFFIC STOP. WHEN
18 HE ASKED TO -- HE GAVE THE DOCUMENTS BACK TO
19 MR. WALLACE, HE THEN ASKED FOR CONSENT TO SEARCH THE
20 VEHICLE.

21 MR. WALLACE WAS THE DRIVER OF THE VEHICLE,
22 HE HAD A PASSENGER IN THE VEHICLE, AND THE VEHICLE WAS
23 OWNED BY A THIRD PARTY THAT WAS NOT PRESENT.

24 AT THAT POINT, YOUR HONOR, MR. WALLACE SAID:
25 NO, YOU DON'T HAVE CONSENT TO SEARCH THE VEHICLE.

1 OFFICER CROMPTON THEN EXPLAINED TO
2 MR. WALLACE THAT HE COULD GIVE CONSENT TO SEARCH THE
3 VEHICLE, HE HAD CONTROL OF THE VEHICLE AT THAT
4 PARTICULAR TIME, AND THAT A SEARCH WARRANT WAS NOT
5 NECESSARY AND THAT HE COULD GIVE CONSENT.

6 MR. WALLACE ARTICULATED, SAYING THAT IF IT
7 WAS HIS CAR HE WOULD GIVE CONSENT, BUT SINCE IT WASN'T
8 HIS CAR, HE COULDN'T GIVE CONSENT.

9 AT THAT POINT, YOUR HONOR, I THINK ILLINOIS
10 VERSUS CABALES CONTROLS, WHICH BASICALLY SAYS THAT IF HE
11 WANTS TO RUN THE DOG -- THAT ILLINOIS VERSUS CABALES
12 BASICALLY SAYS THAT IF HE WANTS TO RUN THE DOG, HE HAS
13 THE RIGHT TO BE ABLE TO RUN THAT DOG. HE DOESN'T NEED A
14 SEARCH WARRANT TO RUN THAT DOG. IT IS NOT AN INVASION
15 OF MR. WALLACE'S PRIVACY TO DO AN EXTERIOR SEARCH OF THE
16 VEHICLE WITH A CANINE UNIT.

17 THE COURT: SO YOU ARE SAYING THAT HE
18 DOESN'T HAVE REASONABLE SUSPICION TO BRING THE DOG OUT,
19 IS THAT YOUR POSITION?

20 MR. STOUDEMIRE: NO, I THINK HE DOES HAVE A
21 REASONABLE SUSPICION TO BRING THAT DOG OUT.

22 THE COURT: PLEASE TELL ME WHAT THE
23 REASONABLE SUSPICION IS TO BRING THE DOG OUT.

24 MR. STOUDEMIRE: YOUR HONOR, SEVERAL,
25 SEVERAL FACTORS THAT TAKE PLACE DURING THE STOP THAT I

1 THINK WOULD GIVE RISE TO REASONABLE SUSPICION. YOUR
2 HONOR, FIRST, WHEN THE INITIAL STOP OCCURS, THE BLUE
3 LIGHTS GET ACTIVATED. IN A NORMAL STOP THE PERSON WOULD
4 IMMEDIATELY BRAKE AND IMMEDIATELY PULL OVER TO THE SIDE.

5 MR. WALLACE DEPRESSES HIS BRAKES, THEN LETS
6 OFF OF HIS BRAKES, AND THEN RIGHT AS HE APPROACHES THE
7 EXIT, THEN DEPRESSES HIS BRAKES AND PULLS OVER TO THE
8 SIDE, WHICH IS VERY OUT OF THE ORDINARY FOR A NORMAL
9 TRAFFIC STOP.

10 SECOND, WHEN OFFICER CROMPTON APPROACHES THE
11 VEHICLE, THERE IS A FUMBLING AROUND OF DOCUMENTS, IT
12 TAKES QUITE SOME TIME FOR THE DRIVER TO BE ABLE TO COME
13 UP WITH THE DOCUMENTS TO GIVE TO THE OFFICER.

14 THIRD, THE DOCUMENTS SHOW THAT NEITHER OF
15 THE OCCUPANTS IS THE OWNER OF THE VEHICLE. THE OWNER OF
16 THE VEHICLE IS NOT PRESENT.

17 THE COURT: DO THE DOCUMENTS MATCH UP WITH
18 THE TAG?

19 MR. STOUDEMIRE: THE DOCUMENTS DO MATCH UP
20 WITH THE TAG, YES, SIR.

21 THE COURT: OKAY.

22 MR. STOUDEMIRE: ALSO, YOUR HONOR, DURING
23 THE ENTIRE TRAFFIC STOP THE PASSENGER OF THE VEHICLE,
24 MR. HOOD, IS DISPLAYING PHYSIOLOGICAL INDICATORS OF
25 NERVOUSNESS, HE IS SWEATING PROFUSELY, WON'T LOOK AT

1 ANYBODY, KEEPS LOOKING STRAIGHT AHEAD, WON'T HELP
2 MR. WALLACE LOOK FOR THE DOCUMENTS.

3 LATER ON, WHEN OFFICER CROMPTON ---

4 THE COURT: DID HE FIND THE DOCUMENTS?

5 MR. STOUDEMIRE: YES, SIR, HE DID FIND THEM.

6 THE COURT: WHERE DID HE FIND THEM?

7 MR. STOUDEMIRE: I ASSUME THE DRIVER FOUND
8 THEM SOMEWHERE IN THE VEHICLE.

9 THE COURT: OKAY.

10 MR. STOUDEMIRE: ALSO, YOUR HONOR, OUR
11 TRAVEL IN THIS PARTICULAR CASE IS FROM ATLANTA TO
12 CHARLOTTE, NORTH CAROLINA, WHICH IS IN DRUG INTERDICTION
13 TERMS A SOURCE CITY, BASICALLY; I-85 IS A KNOWN CORRIDOR
14 FOR DRUG TRAVEL.

15 MR. HOOD GIVES ONE ACCOUNT FOR THEIR VISIT,
16 WHERE THEY ARE, HOW LONG THEY ARE GOING TO BE THERE.

17 WHEN MR. WALLACE IS ASKED SEPARATELY ABOUT
18 WHERE THEY ARE, WHAT THEY HAD BEEN DOING, THE ITINERARY
19 IS A LITTLE BIT DIFFERENT, SO THAT GIVES SOME CONCERN TO
20 THE OFFICER THAT THE TRAVEL PLANS DON'T MATCH UP BETWEEN
21 TWO PEOPLE WHO HAVE EVIDENTLY BEEN TO THE SAME PLACE AND
22 HAVE BEEN DOING THE SAME THING.

23 ALSO, YOUR HONOR, WITH MR. WALLACE, HE
24 STARTS OFF THE TRAFFIC STOP VERY, VERY CALM, VERY
25 TOGETHER, AND AS THE TRAFFIC STOP GOES ON, WHEREAS YOU

1 WOULD NORMALLY SEE NERVOUSNESS DISSIPATE DURING THE
2 STOP, ESPECIALLY AFTER HE GETS THE DOCUMENTS BACK,
3 MR. WALLACE BEGINS TALKING NERVOUSLY ABOUT NOT DRINKING,
4 THAT HE WAS ON THE CELL PHONE, THAT'S WHY HE CROSSED THE
5 CENTERLINE, AND HIS NERVOUSNESS SEEMS TO ACTUALLY
6 ESCALATE THE FURTHER THE TRAFFIC STOP GOES ON.

7 FURTHERMORE, WHEN HE WAS ASKED TO SEARCH THE
8 VEHICLE, OFFICER CROMPTON SAID THAT HE, MR. WALLACE
9 WON'T LOOK AT HIM AT THIS POINT, HE KEEPS LOOKING OUT
10 THE WINDOW AND IN OTHER DIRECTIONS, BASICALLY LIKE HE
11 WANTS TO BE ANYWHERE BUT IN THAT CAR AT THAT PERIOD OF
12 TIME.

13 AND ALL THOSE FACTORS, TAKEN TOGETHER AS A
14 WHOLE, MAY BE CONSISTENT -- ALONE, ANY OF THOSE FACTORS
15 IS CONSISTENT WITH INNOCENT TRAVEL. BUT WHEN YOU TAKE
16 THOSE FACTORS AS A WHOLE, BASICALLY WHAT THEY ADD UP TO
17 IS THEY ADD UP TO A REASONABLE SUSPICION OF CRIMINAL
18 ACTIVITY.

19 AND THOSE FACTORS -- IN MY OPINION THOSE
20 FACTORS, WE WOULD CONTEND THAT THOSE GIVE RISE TO A
21 LAWFUL SEARCH AND RUNNING OF THE DOG AND A LAWFUL SEARCH
22 OF THAT VEHICLE.

23 THE COURT: WHAT KIND OF VEHICLE WAS IT?

24 MR. STOUDEMIRE: YOUR HONOR, IT IS A PURPLE
25 MITSUBISHI, I DON'T KNOW THE PARTICULAR YEAR, BUT IT WAS

1 A PURPLE MITSUBISHI SEDAN, I BELIEVE A FOUR-DOOR. AND,
2 YOUR HONOR, WE WOULD BE HAPPY TO OFFER THE OFFICER'S
3 TESTIMONY AND THE SHOWING OF THE VIDEOTAPE AT ANY TIME
4 THE COURT WOULD SEE FIT.

5 THE COURT: WHAT'S THE VIDEOTAPE CONSIST OF,
6 MRS. EARLE, DO YOU KNOW? I MEAN, IS THAT NECESSARY AS
7 FAR AS WHETHER THERE WAS REASONABLE SUSPICION OR NOT,
8 BASED ON WHAT HE SAID?

9 MS. EARLE: I BELIEVE THAT IF YOU WATCH THE
10 VIDEOTAPE, YOUR HONOR, YOU WILL SEE THAT THE SOLICITOR'S
11 OFFICE HAS MISCHARACTERIZED SOME OF THIS INFORMATION.
12 THE STOP TOOK PLACE AT 12:10. AT 12:12 THE DRIVER WAS
13 OUT OF THE VEHICLE WITH HIS DOCUMENTATION. THAT'S ONLY
14 TWO MINUTES. THAT'S NOT A EXTENDED FUMBLING OF TIME
15 TRYING TO OBTAIN DOCUMENTS.

16 IT WAS AT 12:15 THAT THE PASSENGER WAS ASKED
17 FOR IDENTIFICATION. AT 12:18 THE OFFICER INFORMED MY
18 CLIENT WHY HE WAS BEING GIVEN A TICKET. AT 12:22 HE
19 READS HIM THE TICKET. THEN, AFTER HE READS HIM THE
20 TICKET IS WHEN HE STARTS QUESTIONING HIM ABOUT OTHER
21 ACTIVITIES AND WANTING TO KNOW, IS THERE ANYTHING
22 ILLEGAL IN THE CAR, WILL YOU GIVE US CONSENT TO SEARCH
23 THE VEHICLE?

24 IT IS VERY CLEAR THAT MY CLIENT SAYS: NO, I
25 WILL NOT GIVE YOU CONSENT TO SEARCH THE VEHICLE.

1 NOW, *ILLINOIS VERSUS CABALES* DOES SAY THAT
2 IT IS ACCEPTABLE TO USE A DRUG DOG DURING A TRAFFIC
3 SEARCH. HOWEVER, THEY SAY THAT IT WAS DURING -- I'M
4 SORRY, DURING THE TRAFFIC STOP. HOWEVER, THEY DO SAY
5 THAT, IN AN EARLIER CASE INVOLVING A DOG SNIFF THAT
6 OCCURRED DURING AN UNREASONABLY PROLONGED TRAFFIC STOP,
7 THE ILLINOIS SUPREME COURT HELD THAT (READING):

8 THE USE OF THE DOG AND THE
9 SUBSEQUENT DISCOVERY OF CONTRABAND WAS A
10 PRODUCT OF AN UNCONSTITUTIONAL SEIZURE.

11 WE MAY ASSUME THAT A SIMILAR RESULT WOULD BE
12 WARRANTED IN THIS CASE IF THE DOG SNIFF IS THEN
13 CONDUCTED WHILE THE RESPONDENT WAS BEING UNLAWFULLY
14 DETAINED.

15 THE OFFICER DID NOT OFFER TO DO A DOG SNIFF
16 OF THE VEHICLE UNTIL AFTER MY CLIENT DECLINED TO LET THE
17 VEHICLE BE SEARCHED.

18 THE COURT: YOU THINK THAT DISTINGUISHES
19 *ILLINOIS VERSUS CABALES*?

20 MS. EARLE: I DO. BECAUSE IN *ILLINOIS*
21 *VERSUS CABALES* THE SUPREME COURT SAID (READING):

22 HAD THE DOG SNIFF OCCURRED AFTER
23 AN EXTENDED TRAFFIC STOP AND WHILE THE
24 RESPONDENT WAS BEING UNLAWFULLY DETAINED,
25 THEY WOULD HAVE UPHELD THE ILLINOIS

1 SUPREME COURT IN SUPPRESSING THE
2 EVIDENCE.

3 AND IN CABALES THE DOG SNIFF TOOK PLACE
4 WHILE THE OFFICER WAS WRITING A TICKET.

5 THE COURT: SO YOU'RE SAYING THAT -- YOU'RE
6 TRYING TO SAY IF THE OFFICER ASKED FOR CONSENT AND THEY
7 DENY IT AND THEY BRING THE DOG OUT AND THE DOG REACTS,
8 THEN YOU CAN'T DO IT; BUT IF THEY BRING THE DOG OUT AND
9 THE DOG REACTS AFTER ASKING CONSENT, THAT'S OKAY. IS
10 THAT WHAT YOU ARE TELLING ME?

11 MS. EARLE: WHAT I'M SAYING IS, HAD THEY RUN
12 A DOG AROUND THE VEHICLE WHILE THE TICKET WAS BEING
13 WRITTEN, IT WOULD FALL WITHIN ILLINOIS VERSUS CABALES.
14 BUT TO USE A DRUG DOG AFTER CONSENT HAS BEEN DENIED, IT
15 IS A WARRANTLESS SEARCH THAT WOULD REQUIRE AN
16 ARTICULABLE SUSPICION ---

17 THE COURT: SUSPICION FOR THE SEARCH.

18 MS. EARLE: RIGHT -- AND HAVING SOMEONE BE
19 NERVOUS WHEN YOU'VE GOT FLASHING BLUE LIGHTS, UNIFORMED
20 OFFICERS WITH WEAPONS AND A CANINE DOG AND AN OFFICER
21 SAYING, "HOLD TIGHT, STAY HERE WHILE I SEARCH YOUR CAR"
22 WOULD CAUSE ANYONE TO BE NERVOUS.

23 THE COURT: WELL, UNDER THAT UNITED STATES
24 VERSUS FOREMAN, I MEAN, THEY SAY HEAVY SWEAT AND
25 BREATHING, ARTERY PULSATING, I MEAN, THEY ADDRESS THAT

1 ISSUE ON THE NERVOUSNESS AS ONE OF THE FACTORS THAT SHOW
2 SUSPICION.

3 MS. EARLE: AND ---

4 THE COURT: PLUS THE DRUG CORRIDOR.

5 MS. EARLE: WELL, YOUR HONOR, IT MAY BE THAT
6 IT'S A DRUG CORRIDOR. BUT WHEN YOU LIVE IN CHARLOTTE
7 AND YOU HAVE RELATIVES IN ATLANTA AND YOU TRAVEL BACK
8 AND FORTH TO VISIT, IT DOESN'T MAKE YOU SUSPICIOUS OF
9 DRUG ACTIVITY, OR IT SHOULDN'T MAKE YOU SUSPICIOUS OF
10 DRUG ACTIVITY. IF YOU WANT TO LIVE SOMEWHERE AND VISIT
11 YOUR FAMILY, JUST BECAUSE DRUG TRAFFICKERS USE THE SAME
12 HIGHWAY DOESN'T MEAN THAT YOU ARE A DRUG TRAFFICKER.
13 AND MR. WALLACE LIVES IN GASTONIA, WHICH IS JUST OUTSIDE
14 OF CHARLOTTE, AND BOTH HE AND HIS PASSENGER SAID THEY
15 HAD BEEN TO VISIT A RELATIVE IN ATLANTA.

16 NOW, WE HAVE A CASE HERE IN SOUTH CAROLINA
17 THAT'S VERY SIMILAR TO THIS CASE, *STATE V. WILLIAMS*.
18 THE MAIN DIFFERENCE IN THESE TWO CASES ---

19 THE COURT: WHAT DATE IS THAT?

20 MS. EARLE: THAT IS 351 S.C. 590, AND IT WAS
21 DECIDED IN 2002. I HAVE A COPY OF THAT IF YOU WOULD
22 LIKE.

23 THE COURT: YES, MA'AM, YOU CAN HAND IT UP.

24 MS. EARLE: IN THIS PARTICULAR CASE, YOUR
25 HONOR, THE MAIN DIFFERENCE BETWEEN THIS CASE AND OURS IS

1 THAT IN WILLIAMS THE PASSENGER OR THE DRIVER ACTUALLY
2 CONSENTED TO THE SEARCH; AND THEN ONCE THEY HAD
3 CONSENTED TO THE SEARCH, THE PASSENGER OPENED THE
4 SUITCASE WHERE THE DRUGS WERE FOUND. AND IN THAT CASE
5 THE SUPREME COURT SAID (READING):

6 EVEN THOUGH IT WAS -- THERE WAS A
7 CONSENT, IT WAS AN INVOLUNTARY CONSENT
8 BASED -- BECAUSE THE TRAFFIC STOP HAD
9 ENDED AND THERE WAS NO ARTICULABLE
10 SUSPICION TO JUSTIFY THE SEARCH, SO THE
11 CONSENT WAS INVALID.

12 IF THE EVIDENCE IN A CASE WHERE CONSENT WAS
13 GIVEN HAS TO BE SUPPRESSED, THEN YOU HAVE TO SUPPRESS
14 EVIDENCE WHEN CONSENT WAS NEVER GIVEN.

15 AND IN THAT PARTICULAR CASE THE FACTS ARE
16 VERY, VERY SIMILAR TO THE ONE IN FRONT OF US TODAY WITH
17 THE NARCOTICS DOG.

18 THE COURT: HOW MUCH OF THIS VIDEO DO YOU
19 WANT ME TO LOOK AT? OR DO YOU WANT TO TAKE THE
20 OFFICER'S TESTIMONY FIRST?

21 MR. STOUDEMIRE: YOUR HONOR, PERSONALLY WHAT
22 I WOULD PREFER ---

23 THE COURT: BECAUSE SHE SAID THAT THEY HAD
24 THE RECORDS OUT WITHIN TWO MINUTES, AND I BELIEVE YOU
25 SAID 12 MINUTES. I DON'T KNOW WHICH ---

1 **MR. STOUDEMIRE:** YOUR HONOR, IT TOOK 12
2 MINUTES FROM THE TIME THE STOP TOOK PLACE UNTIL OFFICER
3 CROMPTON ASKED IF THERE WAS ANYTHING ILLEGAL IN THE CAR.
4 HE DID GET THE RECORDS OUT WITHIN A COUPLE OF MINUTES.

5 **THE COURT:** OKAY.

6 **MR. STOUDEMIRE:** WE'LL WATCH HOWEVER MUCH
7 YOU SEE FIT, JUDGE.

8 **THE COURT:** I DON'T WANT TO WATCH IT UNLESS
9 YOU THINK IT'S NECESSARY.

10 **MR. STOUDEMIRE:** YOUR HONOR, SHE SAYS IT'S
11 NECESSARY. IF WE SHOW THE VIDEO, THAT'S FINE. BUT I
12 THINK THAT AFTER WE SHOW THE VIDEO, I THINK THAT OFFICER
13 CROMPTON NEEDS TO TESTIFY BECAUSE THERE CERTAINLY ARE
14 THINGS THAT TOOK PLACE DURING THAT STOP ---

15 **THE COURT:** SOLICITOR, WHAT'S THE MEANING OF
16 THE VIDEO GOING TO SHOW ME AS FAR AS WHETHER THE OFFICER
17 HAD A REASONABLE SUSPICION TO SEARCH THE VEHICLE?

18 **MR. STOUDEMIRE:** YOUR HONOR, I THINK ---

19 **THE COURT:** LET ME BACK UP AND ASK YOU
20 ANOTHER QUESTION BEFORE YOU ANSWER THAT, IS, DO YOU
21 AGREE WITH MRS. EARLE THAT ONCE THE CONSENT TO SEARCH
22 WAS DENIED, THEN THEY HAD TO HAVE A REASONABLE SUSPICION
23 TO USE THE DOG? SHE MAKES A DISTINCTION THERE THAT IF
24 THEY HADN'T ASKED FOR THE CONSENT AND BEEN DENIED, THAT
25 THE DOG COULD HAVE DONE A WALK-AROUND AND THEN REACTED

1 AND THAT WOULD GIVE A REASONABLE SUSPICION. I THINK I
2 UNDERSTAND THAT'S WHAT SHE SAID.

3 DO YOU AGREE WITH THAT?

4 MR. STOUDEMIRE: NOT NECESSARILY, YOUR
5 HONOR. I THINK ONCE, I THINK ONCE REASONABLE SUSPICION
6 IS ESTABLISHED, IF WE ENTER INTO A SECOND DETENTION AT
7 THAT POINT, AS MS. EARLE STATED ---

8 THE COURT: RIGHT.

9 MR. STOUDEMIRE: --- THEN I DON'T THINK WITH
10 THAT SECOND DETENTION YOU'VE GOT REASONABLE SUSPICION,
11 AT THAT POINT OFFICER CROMPTON CAN GO AND SEARCH THE CAR
12 WITH THE DOG OR WITHOUT THE DOG.

13 THE COURT: RIGHT.

14 MR. STOUDEMIRE: HE'S ABLE TO ARTICULATE
15 REASONS WHY THAT SEARCH SHOULD TAKE PLACE.

16 THE COURT: AND WHAT'S THE -- THE QUESTION I
17 ASKED YOU FIRST: WHAT IS THE VIDEO GOING TO SHOW THE
18 COURT AS FAR AS REASONABLE SUSPICION FOR THE OFFICER TO
19 SEARCH THE VEHICLE, WHETHER HE DID IT PERSONALLY OR
20 WHETHER HE USED THE DOG? I THINK THAT'S IMMATERIAL.

21 MR. STOUDEMIRE: YOUR HONOR, I THINK THE
22 REASONABLE SUSPICION IS GONNA BE BETTER ARTICULATED BY
23 THE OFFICER'S TESTIMONY THAN IT IS BY THE USE OF A
24 VIDEO.

25 THE COURT: THEN LET'S CALL THE OFFICER.

1 **MR. STOUDEMIRE:** CERTAINLY.

2 **THE COURT:** UNLESS YOU KNOW SOME PARTS OF
3 THE VIDEO THAT'S GOING TO HELP YOUR REASONABLE
4 SUSPICION. I'D BE HAPPY TO LOOK AT IT. I JUST DON'T
5 WANT TO LOOK AT THE WHOLE VIDEO UNLESS IT'S GOING TO
6 SHOW A -- THE PARTS ARE GOING TO JUSTIFY OR UNJUSTIFY
7 YOUR REASONABLE SUSPICION ARGUMENT.

8 **MR. STOUDEMIRE:** CERTAINLY. YOUR HONOR,
9 I'LL BE HAPPY TO CALL THE OFFICER.

10 **THE COURT:** I'LL LOOK AT WHATEVER YOU WANT
11 ME TO LOOK AT, MS. EARLE, OKAY? BUT THEY JUST SAID THAT
12 HE HAD IT OUT WITHIN A COUPLE MINUTES. SO LET'S LISTEN
13 TO THE OFFICER. AND AFTER WE LISTEN TO THE OFFICER,
14 WHATEVER PARTS OF THE VIDEO YOU WANT ME TO LOOK AT, I'LL
15 BE HAPPY TO LOOK AT, OKAY? I'LL LEAVE IT UP TO YOU
16 BECAUSE IT'S YOUR MOTION.

17 **MS. EARLE:** YES, YOUR HONOR.

18 **MR. STOUDEMIRE:** YOUR HONOR, WE WOULD CALL
19 OFFICER TOMMY CROMPTON.

20 **THE COURT:** ALL RIGHT. COME AROUND AND BE
21 SWORN, OFFICER.

22 (WHEREUPON, THE WITNESS WAS SWORN BY THE
23 CLERK.)

24 //

25 //

1 WHEREUPON,

2 TOMMY CROMPTON,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION BY MR. STOUDEMIRE:

6 Q. STATE YOUR NAME, PLEASE.

7 A. THOMAS CROMPTON.

8 Q. AND IS IT CORPORAL CROMPTON?

9 A. YES.

10 Q. AND, CORPORAL, WHERE ARE YOU EMPLOYED?

11 A. OCONEE COUNTY SHERIFF'S OFFICE.

12 Q. AND HOW LONG HAVE YOU WORKED THERE?

13 A. SINCE JANUARY THE 24TH OF 2000.

14 Q. DID YOU WORK IN LAW ENFORCEMENT PRIOR TO COMING
15 TO THE SHERIFF'S DEPARTMENT?

16 A. I DID.

17 Q. WHERE DID YOU WORK THEN?

18 A. I STARTED OUT AT SENECA POLICE DEPARTMENT, I WENT
19 FROM THERE TO ANDERSON COUNTY SHERIFF'S OFFICE, AND I
20 CAME OVER TO OCONEE IN JANUARY OF 2000.

21 Q. SO TOTAL HOW LONG HAVE YOU SPENT IN LAW
22 ENFORCEMENT?

23 A. TEN YEARS.

24 Q. ALL RIGHT. AND IN THAT TEN YEARS, HAVE YOU HAD
25 TRAINING AND EDUCATION INVOLVING DRUGS?

1 A. YES, SIR.

2 Q. AND DRUG INTERDICTION?

3 A. YES, SIR.

4 Q. OKAY. WHAT TYPE OF TRAINING AND THINGS HAVE YOU
5 HAD?

6 A. I STARTED WITH, TRAINING WITH THE A.C.E. TEAM,
7 SOUTH CAROLINA HIGHWAY PATROL. I'VE HAD TRAINING WITH
8 BIG TRANSFER TRUCKS, THAT SORT OF THING. AND SEVERAL
9 OTHER DRUG CLASSES THROUGH -- EVERY YEAR WE'VE GOT SOME
10 TRAINING THAT WE HAVE TO DO THAT THEY HAVE BEEN TRAINING
11 THERE, SO...

12 Q. OKAY. DO YOU CONTINUALLY HAVE TO KEEP GOING TO
13 TRAINING?

14 A. YES, SIR. YES, SIR.

15 Q. WHAT TYPE OF THINGS DO YOU DO IN THE COURSE OF
16 YOUR DUTY WITH THE SHERIFF'S DEPARTMENT?

17 A. RIGHT NOW I WORK ON OUR TRAFFIC DIVISION, I'VE
18 BEEN ASSIGNED TO THAT SINCE 2002. WITH THAT I LOOK FOR
19 IMPAIRED DRIVERS, BE IT DRUGS OR ALCOHOL; AND I TRY TO
20 KEEP TRAFFIC FLOWING AROUND THE COUNTY, WORKING SPEEDING
21 TICKETS AND ANY OTHER THING LIKE THAT; AND THEN
22 OCCASIONALLY I DO ANSWER CALLS.

23 Q. OKAY. IS THE OCONEE PORTION OF I-85 PART OF THE
24 AREA YOU PATROL?

25 A. YES, SIR.

1 Q. OKAY. WERE YOU ON PATROL ON THE DATE OF
2 SEPTEMBER 14TH, 2005?

3 A. YES, SIR.

4 Q. AND WHERE WERE YOU ON PATROL ON THAT DATE?

5 A. I-85.

6 Q. OKAY. ON THAT DATE, AROUND 12:10 THAT DAY, A
7 LITTLE BIT AFTER NOON, DID YOU HAVE OCCASION TO STOP A
8 PURPLE MITSUBISHI?

9 A. YES, SIR, I DID.

10 Q. OKAY. AND WHAT DID YOU STOP THAT VEHICLE FOR?

11 A. DRIVING LEFT OF CENTER.

12 Q. OKAY. AND DESCRIBE DRIVING LEFT OF CENTER. HOW
13 DID THE DRIVER DRIVE LEFT OF CENTER?

14 THE COURT: I DON'T THINK YOUR QUESTION IS
15 AS TO PROBABLE CAUSE. LET'S GO TO REASONABLE SUSPICION,
16 PLEASE, SIR.

17 MR. STOUDEMIRE: YES, SIR.

18 BY MR. STOUDEMIRE:

19 Q. WAS THE VEHICLE IN OCONEE COUNTY?

20 A. YES, SIR.

21 Q. ALL RIGHT. WHEN YOU ACTIVATED YOUR BLUE LIGHTS,
22 WHAT DID THE VEHICLE DO?

23 A. WHAT SPARKED MY ATTENTION FIRST, THE VEHICLE -- A
24 NORMAL TRAFFIC STOP, ESPECIALLY ON 85, ONCE YOU HIT YOUR
25 BLUE LIGHTS, MOST OF YOUR PEOPLE ARE GOING TO

1 IMMEDIATELY HIT THEIR BRAKES AND PULL TO THE SIDE OF THE
2 INTERSTATE.

3 THIS VEHICLE DIDN'T DO THAT. THE VEHICLE HIT HIS
4 BRAKES, THEN HE LET OFF HIS BRAKES AND GOT RIGHT AT THE
5 EXIT AT THE EXIT RAMP AND THEN HIT HIS BRAKES AGAIN, AND
6 THEN DROVE HALFWAY UP THE EXIT RAMP BEFORE HE DECIDED TO
7 GET ON THE SHOULDER OF THE ROAD.

8 THAT BY ITSELF, IT KIND OF, KIND OF STARTED
9 SPARKING MY ATTENTION THAT THERE MIGHT BE SOMETHING ELSE
10 GOING ON HERE, BECAUSE, LIKE I SAID, MY NORMAL -- A
11 NORMAL TRAFFIC STOP, YOU STOP SOMEBODY FOR LEFT OF
12 CENTER, SPEEDING, WHATEVER, FOLLOWING TOO CLOSE,
13 IMMEDIATELY THEY'LL HIT THE SHOULDER.

14 Q. AND ONCE YOU GOT THE CAR STOPPED, DID YOU
15 APPROACH THE VEHICLE?

16 A. I DID.

17 Q. OKAY. AND WHAT DID YOU DO THEN?

18 A. I ASKED THE DRIVER FOR HIS LICENSE, REGISTRATION
19 AND PROOF OF INSURANCE; AND HE STARTED JUST KIND OF
20 FUMBLING AROUND WITH PAPERWORK, AND IT TOOK HIM -- IT
21 SEEMED LIKE IT TOOK FOR, YOU KNOW, A GOOD WHILE, LONGER
22 THAN WHAT A NORMAL STOP WOULD HAVE TAKEN.

23 AND ANOTHER THING, WHAT CAUGHT MY ATTENTION, THE
24 PASSENGER, HE JUST SAT IN HIS SEAT AND JUST LOOKED
25 STRAIGHT AHEAD. HE DIDN'T, HE DIDN'T REALLY KNOW THAT I

1 WAS THERE OR NOTHING. AND THAT KIND OF MADE ME KIND OF,
2 KIND OF SUSPICIOUS THAT SOMETHING MIGHT BE GOING ON,
3 BECAUSE A NORMAL STOP WOULD, THE PASSENGER WOULD BE
4 LOOKING IN THE DASH, LOOKING FOR THE REGISTRATION, PROOF
5 OF INSURANCE, ASKING THE DRIVER: IS THIS IT? IS THIS
6 IT?

7 YOU KNOW, THE PASSENGER DIDN'T DO THAT. HE JUST,
8 HE JUST STARED STRAIGHT AHEAD AND DIDN'T, DIDN'T EVEN
9 ACKNOWLEDGE THAT I WAS THERE. AND THE DRIVER, HE JUST
10 KEPT FUMBLING WITH STUFF AND FUMBLING WITH STUFF.

11 Q. OKAY. WHAT HAPPENED AFTER THAT? DID YOU ASK THE
12 DRIVER TO STEP OUT OF THE VEHICLE?

13 A. I DID. I DID. I ASKED HIM TO GET OUT OF THE
14 VEHICLE. ONE, THAT'S SOMETHING THAT I PRACTICE BECAUSE
15 I DON'T LIKE MY, THE BACKSIDE OF ME TO BE EXPOSED TO
16 TRAFFIC. I LIKE TO TAKE THE DRIVER OUT OF THE VEHICLE
17 AND MOVE HIM TO THE REAR OF THE VEHICLE IN BETWEEN MY
18 VEHICLE AND THE VEHICLE THAT I STOP BECAUSE IT GIVES ME
19 AN OPPORTUNITY TO WATCH TRAFFIC GO BY AND KIND OF
20 PROTECT ME AND HIM.

21 Q. OKAY. AND WHEN YOU STEPPED TO THE REAR OF THE
22 VEHICLE, DID YOU TALK WITH THE DRIVER AT THAT POINT?

23 A. I DID. THEN WE SPOKE JUST, JUST BRIEFLY. AND I
24 KNOW, DUE TO THE TRAFFIC VOLUME THAT'S ON 85, YOU CAN'T
25 REALLY HEAR GOOD. I'M LEANING OVER INTO HIS, HIS SPACE,

1 HE'S HAVING TO LEAN OVER INTO MY SPACE FOR US TO HEAR
2 EACH OTHER TALK, SO WE JUST SPOKE BRIEFLY.

3 AND I THEN I ASKED HIM TO HAVE A SEAT IN THE
4 PASSENGER'S SIDE OF MY PATROL CAR. THAT WAY WE DIDN'T
5 HAVE ANY KIND OF NOISE INTERFERENCE, AND ALSO IT'S A
6 SAFETY THING BECAUSE I DON'T HAVE TO LOOK OVER MY
7 SHOULDER TO -- IF THERE'S A PASSENGER, I DON'T HAVE TO
8 LOOK OVER MY SHOULDER TO SEE WHAT THE PASSENGER IS
9 DOING. I REALLY DON'T HAVE TO WORRY ABOUT TRAFFIC GOING
10 BEHIND OR IN FRONT OR ANYTHING. I CAN SEE THE WHOLE
11 PICTURE. I KNOW WHERE THE DRIVER IS AND ALSO WHAT THE,
12 WHAT THE PASSENGER IS DOING, IF HE'S MAKING ANY KIND OF
13 ABRUPT MOVEMENTS OR ANYTHING LIKE THAT.

14 Q. MR. WALLACE, THE DRIVER OF THE VEHICLE, HOW DID
15 HE APPEAR TO YOU AT THIS POINT?

16 A. WHEN IT FIRST STARTED, HE, HE WASN'T NO MORE
17 NERVOUS THAN YOU'D SAY A REGULAR STOP WOULD HAVE BEEN.
18 I ASKED HIM TO SIT DOWN IN THE SEAT AND HE APPEARED TO
19 BE JUST LIKE ANYBODY ELSE THAT WOULD HAVE BEEN DRIVING
20 LEFT OF CENTER.

21 NOW, THE PASSENGER, LIKE I SAID, HE WOULDN'T
22 ACKNOWLEDGE ME, HE WOULDN'T REALLY, REALLY LOOK OVER
23 TOWARDS ME OR ANYTHING LIKE THAT. AND THEN I STARTED
24 TALKING TO, TO THE DRIVER, WHICH TURNED OUT TO BE
25 MR. WALLACE THERE, AND ASKED HIM, YOU KNOW, WHERE THEY

1 HAD BEEN, WHERE THEY WERE COMING FROM. HE SAID ATLANTA.
2 AND HE COULDN'T -- AS THE CONVERSATION WENT ON, HE
3 COULDN'T TELL ME WHAT DAY OR HOW MANY DAYS THEY SPENT.
4 AND IT GOT TO THE POINT THAT HE SAID ONE DAY, THEN HE
5 SAID TWO DAYS, AND THEN HE SAID TWO DAYS AND HALF A
6 NIGHT OR IT WAS SOMETHING LIKE THAT, OR TWO DAYS AND A
7 NIGHT.

8 SO THAT THEN, INSTEAD OF, INSTEAD OF KIND OF
9 GOING TO, IF IT WAS A NORMAL STOP, SOMEONE, IF I'M
10 SITTING THERE TALKING TO THEM, YEAH, THEY'RE GONNA BE
11 NERVOUS BECAUSE OF THE POLICE OFFICER -- BECAUSE OF
12 BEING PULLED OVER AND SO ON, BUT IT USUALLY GOES DOWN,
13 THE PERSON STARTS CALMING DOWN.

14 MR. WALLACE DIDN'T START CALMING DOWN, HE STARTED
15 GOING UP.

16 I RAN HIS LICENSE, GOT BACK THAT HE DID HAVE AN
17 ALCOHOL, PRIOR ALCOHOL VIOLATION. AND INSTEAD OF JUST
18 ANSWERING THE QUESTION, MR. WALLACE STARTED GOING INTO A
19 DETAILED EVENT THAT HAPPENED, WHY HE DOESN'T DRINK
20 ANYMORE, THAT HE WAS PROBABLY ON THE PHONE AND THAT'S
21 WHY HE WAS LEFT OF CENTER, THAT HE DIDN'T DRINK ANYMORE
22 BECAUSE HE BLEW A POINT 09. HE WAS GIVING ME THIS -- I
23 JUST LOOKED AT IT AS NERVOUS CHIT-, JUST CHITTER, AND
24 THAT KIND OF SPARKED MY INTEREST THERE.

25 SO AT THAT TIME I GOT OUT OF THE VEHICLE AND WENT

1 AND SPOKE TO THE PASSENGER, WHICH WAS HERMAN HOOD. WHEN
2 I WAS TALKING TO HIM, AS SOON AS I WALKED UP TO THE, TO
3 THE DOOR, THE PHONE STARTED RINGING, THE CELL PHONE
4 STARTED RINGING. THAT, TOO, AGAIN IS CONSISTENT WITH
5 SOME SORT OF ILLEGAL BEHAVIOR.

6 WHEN I HEARD THAT, I STARTED TALKING TO MR. HOOD.
7 MR. HOOD AGAIN WOULD NOT -- HE WOULDN'T HARDLY LOOK AT
8 ME, HE WAS SWEATING. AND IT WAS A SEPTEMBER DAY,
9 EVERYBODY WAS IN SHORT-SLEEVED SHIRTS, BUT I WASN'T
10 SWEATING AND I WEAR A BULLETPROOF VEST AND EVERYTHING
11 ELSE, YOU KNOW. HE WAS SWEATING.

12 HE HANDED ME HIS I.D., AND HIS I.D. WAS ACTUALLY
13 MOVING UP AND DOWN IN A RAPID MANNER. HE TOLD ME THAT
14 THEY WERE -- HIS WORDS WERE THEY HAD WENT TO A-T-L,
15 SO -- AND THEY WERE DOWN THERE FOR A BABY SHOWER.
16 MR. WALLACE NEVER SAID ANYTHING ABOUT A BABY SHOWER, AND
17 HE SAID THEY WERE THERE FOR ONE DAY. SO WHEN I LEFT
18 THERE -- DO YOU WANT ME TO CONTINUE?

19 Q. (NODDED HEAD.)

20 A. WHEN I LEFT, WHEN I LEFT FROM TALKING TO
21 MR. HOOD, I WENT BACK TO MY CAR AND I SPOKE TO
22 MR. WALLACE AGAIN. AND AT THAT TIME THAT'S WHEN HE TOLD
23 ME THAT HE DIDN'T REALLY KNOW WHAT, HOW MANY DAYS -- OR
24 HE -- I TOOK IT THAT HE DIDN'T KNOW HOW MANY DAYS HE
25 STAYED. HE TOLD ME ONE, THEN HE TOLD ME TWO, THEN TWO

1 DAYS AND ONE NIGHT.

2 LET'S SEE. AS I WAS SPEAKING TO MR. WALLACE IN
3 THE CAR, AGAIN I NOTICED THAT HE, HIS NERVES, HE STILL
4 WASN'T, HE STILL WASN'T CALMING DOWN. AND THEN I GAVE
5 HIM, I DID WRITE A TICKET AND I EXPLAINED TO HIM WHAT,
6 WHAT THE TICKET WAS, WHAT I WAS CHARGING HIM WITH. AND
7 THAT I ALSO TOLD HIM THAT I WOULD HELP HIM OUT IF HE
8 CAME, IF HE CAME TO COURT. I ASKED HIM WHERE HE LIVED,
9 HOW FAR IT WAS, TO SEE HOW LONG IT WOULD TAKE HIM TO GET
10 BACK.

11 I ASKED HIM -- BUT RIGHT BEFORE THAT I ASKED HIM
12 ABOUT THE ATLANTA TRIP AGAIN, AND HE SAID, WELL, THAT
13 ACTUALLY WASN'T ATLANTA. HE TOLD ME ATLANTA BEFORE, AND
14 THEN HE SAID IT WASN'T ACTUALLY ATLANTA. AND I DON'T
15 KNOW -- I COULDN'T MAKE OUT LIVONIA OR LITHONIA. HE
16 TOLD ME IT DEFINITELY WASN'T ATLANTA.

17 SO ANYWAY, I WROTE HIM THE TICKET AND I EXPLAINED
18 THE TICKET TO HIM. AND THEN, DUE TO HIS ACTIONS AT THE
19 TIME AS I WAS TALKING TO HIM, HE WAS ACTUALLY LOOKING
20 OUT THE WINDOW TOWARDS THE WOOD LINE LIKE HE DIDN'T --
21 HE DEFINITELY DIDN'T WANT TO BE AROUND ME. IT WAS
22 ALMOST TO THE POINT THAT IF HE COULD HAVE GOT OUT OF THE
23 CAR, HE WOULD HAVE BEEN, HE WOULD HAVE BEEN GONE.

24 AND HE -- AFTER I GAVE HIM THE TICKET, HE GOT
25 REAL DEFENSIVE. HE AUTOMATICALLY THREW A WALL UP WHEN I

1 STARTED ASKING ABOUT IF THERE WAS ANYTHING ILLEGAL IN
2 THE CAR. HE JUST, HE WOULDN'T LOOK AT ME, HE THREW A
3 WALL UP AND THAT WAS IT. AND THAT'S WHEN HE MADE THE
4 STATEMENT THAT IF THE VEHICLE WAS HIS, HE WOULD GIVE ME
5 PERMISSION TO SEARCH IT; BUT DUE TO THE VEHICLE NOT
6 BEING HIS, THEN HE WASN'T, HE COULDN'T GIVE THAT TO ME.

7 THEN I EXPLAINED TO HIM THAT HE WAS IN CONTROL OF
8 THE VEHICLE AND THAT HE COULD GIVE ME THE CONSENT TO
9 SEARCH IF HE WANTED TO. AND AGAIN HE SAID THAT IF THE
10 VEHICLE HAD BEEN HIS, HE WOULDN'T LET ME SEARCH IT; BUT
11 IT WASN'T HIS SO HE WASN'T GOING TO.

12 AND THAT'S WHEN I TOLD HIM JUST TO HANG TIGHT
13 JUST A SECOND. THAT'S WHEN I GOT MY CANINE PARTNER OUT
14 AND RAN HIM AROUND THE VEHICLE.

15 Q. OKAY. YOU MENTIONED EARLIER, CORPORAL, ABOUT THE
16 CELL PHONE RINGING WHEN YOU WERE TALKING WITH MR. HOOD.
17 IS THERE A REASON THAT THAT'S ODD?

18 A. THAT DAY IT WAS, IT WAS ODD, AND IT IS CONSISTENT
19 FOR, IN INTERDICTION WORK, TO THE SUSPECT HAVING SEVERAL
20 CELL PHONES AND CELL PHONES WHEREVER THE ILLEGAL
21 SUBSTANCE IS GOING TO, WHOEVER IT'S GOING TO, TO BE
22 CHECKING IN WITH WHOEVER IS DRIVING IT, PERIODICALLY.
23 IT COULD BE EVERY FIVE OR TEN MINUTES, WHATEVER THEY
24 CHOOSE TO BE.

25 BUT THAT DAY IT WAS KIND OF ODD BECAUSE, AS WE

1 WERE SITTING THERE, THERE WAS A BLACK B.M.W. THAT PULLED
2 UP WITH A HISPANIC MALE IN THERE; AND AS SOON AS I SEEN
3 THAT CAR COME UP, THAT'S -- I SEEN THE CAR. THEN WHEN I
4 WENT BACK UP TO TALK TO MR. HOOD, THEN THE PHONE STARTED
5 RINGING; SO THAT DEFINITELY SPARKED SOME OF MY INTEREST
6 INTO TAKING THE STOP A LITTLE BIT FURTHER.

7 Q. OKAY. ALSO, YOU WERE ASKING BOTH MR. WALLACE AND
8 MR. HOOD ABOUT THEIR TRAVEL ITINERARY. WERE YOU ABLE TO
9 DETERMINE WHERE THEY WERE TRAVELING TO? YOU SAID THEY
10 WERE TRAVELING FROM ATLANTA, OR THAT AREA.

11 A. THEY WERE GOING TO NORTH CAROLINA, BACK TO NORTH
12 CAROLINA. THEY SAID THAT THEY WERE, THEY WERE GOING
13 TO -- THEY BOTH DID SAY THAT THEY HAD BEEN AT MR. HOOD'S
14 BROTHER'S HOUSE, BUT ONE SAID ONE -- HERMAN HOOD SAID
15 ONE DAY, AND THEN, LIKE I SAID, MR. WALLACE SAID ONE
16 DAY, THEN HE SAID TWO DAYS AND TWO AND A HALF -- OR, I'M
17 SORRY -- TWO DAYS AND ONE NIGHT.

18 Q. OKAY. AND I-85, IS THAT CONSIDERED IN
19 INTERDICTION WORK A DRUG CORRIDOR?

20 A. YES, SIR, IT IS.

21 Q. OKAY. AND ARE THERE SUCH THINGS AS SOURCE
22 CITIES?

23 A. YES.

24 Q. WHAT ARE SOURCE CITIES?

25 A. SOURCE CITIES IS WHERE PEOPLE WILL TAKE THE

1 NARCOTICS OR SO ON, ILLEGAL GUNS, ILLEGAL NARCOTICS,
2 WILL TAKE IT TO THAT CITY, AND THEN IN RETURN
3 INDIVIDUALS WILL COME TO THAT CITY AND THE ILLEGAL
4 SUBSTANCES OR ITEMS WILL BE DISTRIBUTED OUT THROUGHOUT
5 WHEREVER. ATLANTA IS, THEY'RE ACTUALLY CALLING ATLANTA
6 A HUB CITY NOW, A SOURCE CITY.

7 THE COURT: THEY CALL IT A WHAT?

8 THE WITNESS: A HUB, THAT'S WHERE THE STUFF
9 IS COMING TO.

10 BY MR. STOUDEMIRE:

11 Q. OKAY. SO DO WE HAVE SOURCE CITIES, SOURCE CITY
12 TRAVEL IN THIS PARTICULAR INSTANCE?

13 A. OH, YES, SIR; YES, SIR. ATLANTA AND NORTH
14 CAROLINA.

15 Q. OKAY. IS YOUR REASONABLE SUSPICION IN THIS CASE
16 BASED ON A TOTALITY OF THE CIRCUMSTANCES?

17 A. YES, SIR. ANYTHING, LIKE YOU SAID BEFORE,
18 ANYTHING BY ITSELF, THE CELL PHONE RINGING -- NO, NOT
19 ALL THAT. BUT WHAT REALLY STARTED IT WAS HOW LONG IT
20 TOOK HIM TO STOP; HIS, MR. WALLACE'S NERVOUSNESS JUST
21 ESCALATING INSTEAD OF DEESCALATING; MR. HOOD BEING, I
22 MEAN, JUST TORE UP FROM THE START. HE NEVER WENT
23 NEITHER WAY. HE JUST -- I MEAN, HE JUST STAYED KIND OF
24 FRANTIC ALMOST. AND THEN THE SOURCE CITIES, THE CELL
25 PHONE RINGING AND SO ON.

1 Q. AND WOULD THE TRAVEL PLANS ALSO BE OF CONCERN TO
2 YOU IN THIS CASE? WOULD THAT BE A FACTOR FOR YOUR
3 SUSPICION?

4 A. I DON'T UNDERSTAND WHAT YOU ARE SAYING.

5 Q. THE TRAVEL PLANS FROM ATLANTA TO CHARLOTTE, IS
6 THAT A ---

7 A. OH, PLANS. I THOUGHT YOU SAID LANES, I'M SORRY.
8 YES.

9 Q. OKAY. ALSO, WHEN YOU WERE LOOKING AT
10 MR. WALLACE'S DOCUMENTS THAT HE GAVE YOU WITH THE STOP,
11 WERE YOU ABLE TO DETERMINE WHO OWNED THE VEHICLE?

12 A. THERE WAS A -- IT WAS A FEMALE. IT WAS A
13 THIRD-PARTY CAR, THAT THE THIRD-PARTY-OWNED VEHICLE, IT
14 WAS OWNED BY A FEMALE.

15 Q. AND WAS THE OWNER OF THAT VEHICLE PRESENT?

16 A. NO, SIR.

17 Q. OKAY. WAS THAT A CONCERN TO YOU, AS WELL?

18 A. YES, SIR. YOU SEE THAT QUITE OFTEN. YOU SEE IT
19 IN RENTAL VEHICLES AND IN OWNED VEHICLES, IT'S COMMON
20 FOR A FEMALE TO HAVE RENTED A VEHICLE AND A MALE TO BE
21 DRIVING IT. THAT MALE MAY NOT BE LISTED ON THE RENTAL
22 AGREEMENT. IT'S COMMON IN THIS CASE HERE THAT THE
23 VEHICLE BE OWNED BY SOMEONE ELSE THAT'S NOWHERES NEAR
24 THE TRAFFIC STOP ITSELF.

25 Q. AND, TO CONCLUDE, JUST SO I UNDERSTAND

1 EVERYTHING, CAN YOU ARTICULATE FOR ME THE CONCERNS YOU
2 HAD THAT GAVE RISE TO YOUR REASONABLE SUSPICION IN THIS
3 CASE?

4 A. YES, SIR. FIRST OF ALL, HOW LONG IT TOOK ---

5 THE COURT: WE'VE BEEN OVER IT ONCE, MAYBE
6 TWICE. IS THERE ANYTHING YOU WANT TO HIGHLIGHT? I'VE
7 GOT 12 THINGS DOWN HE CALLED REASONABLE SUSPICION.

8 MR. STOUDEMIRE: NO, SIR.

9 THE COURT: ANYTHING YOU WANT TO HIGHLIGHT?
10 I DON'T WANT TO REPEAT EVERYTHING.

11 MR. STOUDEMIRE: CERTAINLY. NOTHING ELSE
12 FROM THE STATE, YOUR HONOR.

13 THE COURT: ALL RIGHT. TELL ME ABOUT THIS
14 BLACK B.M.W. WHERE WAS IT AND HOW LONG DID IT STAY
15 THERE AND HOW FAR WAS IT FROM WHERE YOU WERE?

16 THE WITNESS: THE BLACK B.M.W. PULLED UP
17 BEHIND US ---

18 THE COURT: HOW FAR BEHIND YOU?

19 THE WITNESS: --- ALONG THE SIDE OF THE
20 ROAD.

21 I DON'T KNOW. 75 YARDS, SOMETHING LIKE
22 THAT. IT WAS IN VIEW THAT I COULD, I COULD TELL WHO,
23 WHAT TYPE OF PERSON WAS DRIVING THE VEHICLE, IT WAS A
24 HISPANIC MALE. THEY DIDN'T STAY THERE REALLY NO TIME AT
25 ALL AND THEN HE DROVE AWAY.

1 THE COURT: CROSS-EXAMINATION?

2 MS. EARLE: YES, YOUR HONOR.

3 CROSS-EXAMINATION BY MS. EARLE:

4 Q. IN REGARDS TO THIS BLACK B.M.W. THAT YOU SAID
5 PULLED UP BEHIND YOU, EXACTLY WHAT DO YOU MEAN PULLED UP
6 BEHIND YOU? DID HE COME UP ON THE SHOULDER OF THE
7 ROAD ---

8 A. YES, MA'AM, HE DID ---

9 Q. --- AND STOP?

10 A. --- ON THE SHOULDER.

11 I'M SORRY TO INTERRUPT YOU. YES, MA'AM. HE WAS
12 STOPPED ON THE SHOULDER OF THE ROAD.

13 Q. ALL RIGHT. AND HOW LONG DID HE STAY STOPPED
14 THERE?

15 A. LIKE I SAY, I MEAN, HE DIDN'T STAY THERE A LONG
16 TIME, BUT HE STAYED THERE LONG ENOUGH FOR IT TO BE
17 NOTICED.

18 Q. WELL, A MINUTE, FIVE MINUTES, TEN MINUTES?

19 A. NO, I WOULDN'T SAY THAT. A COUPLE MINUTES.

20 Q. OKAY. AND IN YOUR EXPERIENCE IN PATROLLING THE
21 INTERSTATE, DO PEOPLE EVER PULL OFF ON THE SHOULDER OF
22 THE ROAD FOR REASONS THAT ARE NOT ILLEGAL?

23 A. YES, MA'AM.

24 Q. ALL RIGHT. NOW, YOU SAID THAT WHEN YOU TURNED ON
25 YOUR BLUE LIGHTS, THAT MR. WALLACE HIT HIS BRAKES, AND

1 WHEN HE GOT TO THE EXIT RAMP, HE HIT THE BRAKES AGAIN
2 AND WENT PARTWAY UP THE RAMP AND THEN ONTO THE SHOULDER.
3 NOW, HOW FAR FROM THIS EXIT WERE YOU WHEN YOU TURNED
4 YOUR BLUE LIGHTS ON? WERE YOU A MILE AWAY?

5 A. NO, MA'AM. THE EXIT WAS IN VIEW. YOU COULD SEE
6 DISTANCE WISE A HUNDRED YARDS, MAYBE A LITTLE MORE.

7 Q. ALL RIGHT. SO YOU ARE APPROXIMATELY A HUNDRED
8 YARDS ---

9 A. SOMETHING LIKE THAT.

10 Q. --- FROM THE EXIT RAMP WHEN YOU INDICATED THAT
11 YOU WANTED HIM TO STOP?

12 A. YES, MA'AM.

13 Q. SO, AND YOU FIND IT SUSPICIOUS THAT HE CHOSE TO
14 PULL ONTO THE EXIT RAMP TO STOP?

15 A. NO, MA'AM. NO, MA'AM. WHAT I FOUND SUSPICIOUS
16 WAS HE HIT HIS BRAKES, THEN HE LET OFF OF HIS BRAKES,
17 AND THEN ONCE HE GOT TO THE EXIT RAMP, HE HIT HIS BRAKES
18 AGAIN LIKE, ALMOST LIKE WHEN WE WERE GOING DOWN THROUGH
19 THERE, HE WAS ALMOST THINKING ABOUT MAYBE HE SHOULDN'T
20 STOP. THAT'S THE WAY I TOOK IT. HIM TAKING THAT EXIT
21 RAMP, THAT'S FINE, I WOULD PREFER THAT ANYWAY.

22 Q. THAT'S A SAFETY ISSUE. IT'S SAFER TO STOP
23 SOMEONE ON THE EXIT RAMP THAN RIGHT ON THE INTERSTATE?

24 A. YES, MA'AM. YES, MA'AM.

25 Q. ALL RIGHT.

1 A. BUT WHAT I'M SAYING, THE WAY OUR EXIT RAMPS ARE
2 SET UP, THERE'S NO NEED TO DO WHAT HE DONE. HE COULD
3 HAVE KEPT HIS SPEED IF HE HAD CHOSE TO TAKE THAT EXIT
4 RAMP, TOOK THAT EXIT RAMP AND THEN STARTED GOING TO THE
5 SHOULDER OF THE ROAD. WHAT HE DONE, I THOUGHT IT WAS
6 SUSPICIOUS.

7 Q. SO WHEN A POLICE OFFICER IS BEHIND SOMEONE WITH
8 THE LIGHTS FLASHING, YOU DON'T EXPECT THEM TO BE NERVOUS
9 AND MAYBE HIT THE BRAKES A FEW TIMES BEFORE THEY
10 ACTUALLY GET THE VEHICLE PULLED OVER AND STOPPED?

11 A. NOT THAT WAY. NERVOUS, JUST LIKE I SAID BEFORE,
12 IT'S VERY COMMON FOR SOMEONE TO, ONCE THEY GET STOPPED,
13 OR EVEN IF THEY SEE AN OFFICER BEHIND THEM, TO GET
14 NERVOUS. BUT THE WAY HE DONE IT, AND THE VIDEO SHOWS
15 THAT IT'S JUST NOT NORMAL.

16 Q. ALL RIGHT. AND THEN YOU ALSO SAID THAT ONE OF
17 YOUR SUSPICIONS WAS THE FACT THE PASSENGER SAT QUIETLY
18 IN HIS SEAT AND DIDN'T OFFER ANY ASSISTANCE TO THE
19 DRIVER. DID YOU TALK TO THE PASSENGER DURING THIS TIME?

20 A. NO, MA'AM, I DID NOT.

21 Q. ALL RIGHT. AND SO YOU DON'T KNOW THAT PERHAPS HE
22 FELT LIKE IT WASN'T HIS CAR, IT WASN'T HIS STOP, MAYBE
23 HE SHOULD STAY OUT OF IT?

24 A. HE COULD HAVE. THAT'S ---

25 Q. AND THAT WOULD LEAD YOU TO BELIEVE THAT THERE'S

1 CRIMINAL ACTIVITY GOING ON IN THE VEHICLE BECAUSE HE
2 CHOOSES TO SIT QUIETLY?

3 A. THE WAY HE WAS SITTING. YOU CAN SIT QUIETLY AND
4 BE, AND BE INTERESTED IN WHAT'S GOING ON. THE WAY
5 MR. HOOD WAS SITTING THERE, IT WAS LIKE THERE WAS
6 NOTHING GOING ON. HE DIDN'T WANT TO BE A PART OF
7 ANYTHING. IT'S LIKE HE COMPLETELY TOOK HIMSELF OUT OF
8 THE WHOLE STOP. HE JUST, HE JUST STARED STRAIGHT AHEAD.

9 WE'VE ALL BEEN IN THE PASSENGER'S SEAT IN A CAR
10 THAT'S BEEN STOPPED. AND I, I WANT TO KIND OF SEE
11 WHAT'S GOING ON, I WANT TO KNOW. AND EVEN IF IT'S NOT
12 MY VEHICLE, I'M STILL GONNA ASK, YOU KNOW, WHERE IS IT
13 AT? ESPECIALLY WHEN SOMEONE IS FUMBLING AROUND WITH
14 SOME PAPERWORK, IF I COULD HELP. I SEE THAT A LOT MORE
15 THAN JUST SOMEBODY JUST SITTING THERE ---

16 Q. HAD YOU EVER SEEN A PASSENGER THAT DIDN'T ASSIST?

17 A. I, I PULL OVER A LOT OF CARS, SO I COULDN'T SAY.
18 YEAH, PROBABLY SO. PROBABLY SO, BUT...

19 Q. ALL RIGHT. AND YOU FOUND OUT LATER THAT THIS
20 PARTICULAR PASSENGER HAD BEEN IN TROUBLE IN THE PAST FOR
21 ASSAULTING A POLICE OFFICER?

22 A. YES, MA'AM.

23 Q. AND THAT COULD GIVE RISE TO HIM WANTING TO STAY
24 OUT OF EVERYTHING?

25 A. POSSIBLY.

1 Q. ALL RIGHT. NOW, YOU ALSO SAID THAT A CELL PHONE
2 RINGING IS CONSISTENT WITH ILLEGAL ACTIVITY. I'D LIKE
3 FOR YOU TO EXPLAIN THAT.

4 THE COURT: I THINK HE SAID IN CONJUNCTION
5 WITH THE B.M.W. STOPPING.

6 MS. EARLE: WELL, THAT ---

7 THE COURT: THAT'S WHAT I UNDERSTOOD HIM TO
8 SAY.

9 MS. EARLE: --- THAT WAS, THE B.M.W. CAME
10 INTO PLAY LATER.

11 THE COURT: HE SAID THE B.M.W. ---

12 MS. EARLE: HE SAID ---

13 THE COURT: --- HAD PULLED UP, AND SHORTLY
14 AFTER, THE PHONE RUNG. HE SAID THE PHONE HAD RUNG, AND
15 I AGREE WITH YOU. BUT LATER ON I THINK HE TALKED
16 ABOUT ---

17 MS. EARLE: HE DID SAY ---

18 THE COURT: --- THE B.M.W. STOPPING AND THE
19 PHONE RINGING.

20 BY MS. EARLE:

21 Q. WELL, ALL RIGHT. INITIALLY YOU SAID WHEN YOU
22 WENT UP TO THE PASSENGER, THE CELL PHONE STARTED
23 RINGING, AND THAT IN YOUR EXPERIENCE THAT WAS CONSISTENT
24 WITH ILLEGAL ACTIVITY. NOW, HAVE YOU EVER HAD A TRAFFIC
25 STOP WHERE CELL PHONES RANG?

1 A. OF COURSE.

2 Q. AND DO YOU ALWAYS THINK THIS IS IN CONNECTION
3 WITH ILLEGAL ACTIVITY?

4 A. IF I HAD, IF I HAD OTHER THINGS, JUST LIKE I HAD
5 AT THIS STOP, I WOULD HAVE.

6 Q. ALL RIGHT. SO THE FACT THAT PEOPLE TALK ON THEIR
7 CELL PHONES GIVES RISE TO SUSPICION THAT THERE'S ILLEGAL
8 ACTIVITY GOING ON IF YOU THINK THEY'RE -- IF THEY'RE
9 NERVOUS, IF THEY'RE NOT WANTING TO INTERACT WITH YOU?

10 A. YES, MA'AM. I WOULD DEFINITELY -- THAT WOULD
11 DEFINITELY SPARK MY INTEREST. THAT BY ITSELF, NO,
12 MA'AM. I WOULD THINK ABOUT IT AND I WOULD ASK, AND THIS
13 IS SOMETHING THAT I PRACTICE. I TRY TO MAKE PEOPLE GET
14 OFF THE PHONE WHEN I'M ON A TRAFFIC STOP ANYWAY BECAUSE
15 I DON'T WANT NO, NO OTHER THING THAT'S GOING ON TO, MY
16 ATTENTION TO BE TOWARDS THAT.

17 IF THEY'RE SITTING THERE TALKING ON THE PHONE,
18 WHO COULD THEY BE TALKING TO? SAY THERE IS SOME ILLEGAL
19 ACTIVITY THAT'S GOING ON AND THERE'S A CAR, A DECOY CAR
20 THAT'S AHEAD OF THEM OR BEHIND THEM, THEY COULD COME BY,
21 THEY COULD DO WHATEVER.

22 Q. WELL, YOU SAID THE PHONE WAS RINGING. DID HE
23 ANSWER IT?

24 A. NO, MA'AM.

25 Q. ALL RIGHT. SO JUST THE CELL PHONE RINGING, HE

1 DIDN'T PICK IT UP AND ANSWER IT?

2 A. NO, HE DID NOT.

3 Q. ALL RIGHT.

4 A. BUT IT'S JUST LIKE I SAID A WHILE AGO. THAT'S
5 ALSO CONSISTENT WITH PEOPLE TRAFFICKING ILLEGAL ITEMS,
6 ILLEGAL NARCOTICS, GUNS OR ANYTHING TO WHEREVER THAT'S
7 GOING, FOR WHOEVER IT BELONGS TO, TO CONSISTENTLY BE
8 CALLING THEM, SO THAT BY ITSELF.

9 Q. AND IN YOUR EXPERIENCE PEOPLE WHO ARE NOT ENGAGED
10 IN CRIMINAL ACTIVITY DON'T GET CELL PHONE CALLS WHILE
11 THEY'RE TRAVELING FROM VISITING FAMILY TO HOME?

12 A. I GUESS THEY DO. I WOULD THINK SO. BUT ALL THE
13 THINGS THAT ---

14 Q. BUT IN YOUR OPINION THE MAJORITY OF CELL PHONE
15 CALLS MADE TO PEOPLE TRAVELING ON THE INTERSTATE ARE
16 CONNECTED WITH CRIMINAL ACTIVITY?

17 A. NO, MA'AM, I'M NOT SAYING THAT. I'M NOT SAYING
18 THAT.

19 Q. NOW, WHEN -- HOW FAMILIAR ARE YOU WITH THE
20 ATLANTA AREA?

21 A. I KNOW IT'S A BUNCH OF CARS RUNNING AROUND. I
22 MEAN, I'M NOT TOO FAMILIAR, NO.

23 Q. IT'S A MAJOR METROPOLITAN AREA, ISN'T IT?

24 A. IT'S A BIG PLACE.

25 Q. IT ALSO CONSISTS OF A LOT OF SMALL TOWNS THAT

1 PEOPLE REFER TO AS ATLANTA WHEN IT'S NOT REALLY ATLANTA.
2 ARE YOU AWARE OF THAT?

3 A. NO, MA'AM. BECAUSE THE WAY I LOOK AT IT, IF I GO
4 TO ATLANTA, I KNOW I'M IN ATLANTA. IF I GO TO STONE
5 MOUNTAIN, I KNOW I'M IN STONE MOUNTAIN. AND IF I GET
6 STOPPED AND SOMEBODY ASKS ME WHERE I'M COMING FROM, IF I
7 GO TO LITHONIA, THEN I KNOW I'VE BEEN TO LITHONIA. IF I
8 GO TO DOWNTOWN ATLANTA AND RIDE THE M.A.R.T.A. TO THE
9 SUPERDOME, I KNOW I WENT TO ATLANTA AND WENT TO THE
10 SUPERDOME.

11 Q. ALL RIGHT. SO YOU'VE NEVER TALKED TO PEOPLE THAT
12 ARE FROM THE ATLANTA AREA THAT REFER TO MOST OF METRO
13 AREA AS ATLANTA? THEY DON'T SAY "I WAS IN DECATUR."
14 YOU THINK IT'S SUSPICIOUS FOR SOMEONE TO SAY THEY HAVE
15 BEEN IN ATLANTA WHEN, IN FACT, THEY MAY HAVE BEEN IN
16 LITHONIA, LIVONIA, DECATUR, SNELLVILLE, ALPHARETTA,
17 ROSWELL, ANY OF THE SURROUNDING AREAS THAT COMPRISE
18 METRO ATLANTA?

19 A. NO. BECAUSE I KNOW I WOULD BE -- I WOULD HAVE
20 BEEN IN SNELLVILLE OR WHEREVER. I KNOW I WOULD HAVE
21 BEEN ---

22 Q. BUT YOU WOULD BE MORE PARTICULAR IN YOUR ANSWERS,
23 BUT SO IT'S SUSPICIOUS WHEN SOMEONE TELLS YOU THEY'VE
24 BEEN TO ATLANTA AND THEN LATER CLARIFIES AND SAYS, WELL,
25 IT'S REALLY LITHONIA, WHICH IS PART OF METRO ATLANTA?

1 A. YEAH. BECAUSE I KNOW I WOULD HAVE BEEN -- IF
2 SOMEBODY HAD SAID THAT -- I MEAN, IF HE'D HAVE SAID I'VE
3 BEEN TO ATLANTA, BUT IT'S LITHONIA, THAT WOULD HAVE BEEN
4 OKAY. I MEAN ---

5 Q. ALL RIGHT. AND WHEN YOU CHECKED MR. WALLACE'S
6 DRIVER'S LICENSE, WHERE DID IT SHOW THAT HE WAS A
7 RESIDENT?

8 A. GASTONIA.

9 Q. ALL RIGHT. SO HE LIVES IN NORTH CAROLINA?

10 A. YES, MA'AM.

11 Q. AND WHAT IS THE BEST ROUTE TO YOUR KNOWLEDGE TO
12 TRAVEL FROM GASTONIA TO ATLANTA?

13 A. 85.

14 Q. ALL RIGHT. AND ARE THERE PEOPLE WHO TRAVEL 85
15 WHO ARE NOT ENGAGED IN ILLEGAL DRUG ACTIVITY?

16 A. YES, MA'AM.

17 Q. AND WHAT PERCENTAGE OF THE PEOPLE WOULD YOU SAY
18 ARE ENGAGED IN ILLEGAL DRUG ACTIVITY?

19 A. I WOULDN'T HAVE ANY CLUE. I WOULDN'T HAVE A
20 CLUE. WITHOUT LOOKING THAT UP, I COULDN'T TELL YOU
21 THAT. I COULDN'T TELL YOU THAT AT ALL. I KNOW THERE'S
22 A LOT OF PEOPLE OUT THERE, SO...

23 Q. ALL RIGHT. AND ONCE YOU READ MR. WALLACE THE
24 TRAFFIC TICKET AND TOLD HIM WHAT HE WAS CHARGED WITH,
25 YOU IMMEDIATELY THEN STARTED ASKING HIM QUESTIONS ABOUT

1 OTHER ACTIVITIES?

2 A. YES, MA'AM.

3 Q. DID YOU AT ANY POINT TELL HIM THAT HE WAS FREE TO
4 GO ---

5 A. NO, MA'AM.

6 Q. --- THAT YOU HAD WRITTEN HIM HIS TICKET, THE
7 PURPOSE OF THE STOP WAS OVER, HE COULD LEAVE?

8 A. NO, MA'AM. I DID NOT TELL HIM HE WAS FREE TO GO.
9 I DID NOT.

10 Q. ALL RIGHT. DO YOU THINK HE FELT LIKE HE WAS FREE
11 TO GET OUT OF YOUR VEHICLE, GO BACK TO HIS AND DRIVE
12 AWAY?

13 A. I COULDN'T ANSWER THAT. IF I GAVE HIM THE TICKET
14 BACK ---

15 Q. IF HE HAD GOTTEN OUT OF YOUR VEHICLE AND WALKED
16 BACK TO HIS VEHICLE, WOULD YOU HAVE STOPPED HIM?

17 A. YES, MA'AM, I WOULD HAVE.

18 Q. AND WHY WOULD YOU HAVE DONE THAT?

19 A. BECAUSE GIVEN ALL THE THINGS THAT I SAID A WHILE
20 AGO, THAT'S WHY I WOULD HAVE DONE IT.

21 Q. BECAUSE HE WAS NERVOUS BEING STOPPED, HIS
22 PASSENGER WAS NERVOUS, THEY HAD BEEN TO ATLANTA ---

23 A. DIFFERENT STORIES.

24 Q. --- WERE GOING -- WELL, DIFFERENT STORIES. THEY
25 BOTH SAID THEY HAD BEEN TO MR. HOOD'S BROTHER'S HOUSE.

1 MR. WALLACE NEGLECTED TO MENTION A BABY SHOWER. PERHAPS
2 HE THOUGHT YOU WEREN'T REALLY INTERESTED WHY HE HAD BEEN
3 TO ATLANTA AND WHAT ACTIVITIES HE HAD ENGAGED IN WHILE
4 HE WAS THERE. DID YOU SPECIFICALLY ASK HIM: WHAT DID
5 YOU DO WHILE YOU WERE THERE, DETAIL FOR ME EVERYTHING
6 THAT YOU DID?

7 A. I DIDN'T SAY IT LIKE THAT, BUT I DO BELIEVE I DID
8 ASK HIM WHAT HE DONE IN ATLANTA.

9 Q. ALL RIGHT. AND DID THAT HAVE ANY PURPOSE IN
10 DEALING WITH THE TRAFFIC STOP?

11 A. TO KNOW WHERE HE WAS GOING AND WHAT HE'D BEEN
12 DOING, I DON'T THINK SO.

13 Q. IN FACT, WHEN YOU STOP SOMEONE FOR A TRAFFIC
14 VIOLATION, DOES IT MATTER WHERE THEY WERE GOING AND WHAT
15 THEY DID WHILE THEY WERE WHERE THEY WERE, DOES THAT HAVE
16 ANY RELATION TO THE TRAFFIC STOP?

17 A. IT COULD.

18 Q. AND HOW DOES THAT RELATE TO DRIVING LEFT OF
19 CENTER?

20 A. WELL, ONCE AGAIN, YOU KNOW, HE SHOWED ME SIGNS OF
21 BEING -- NOT BEING SO NERVOUS, AND THEN ESCALATING,
22 WHICH ISN'T NORMAL, IT SHOULD GO THE OTHER WAY AROUND.
23 MR. HOOD DOING WHAT HE WAS DOING. THE CELL PHONE. THE
24 WAY HE STOPPED HIS VEHICLE. THE SOURCE CITIES. THE
25 INCONSISTENT STORIES: ONE SAYING THEY'D BEEN THERE FOR

1 ONE NIGHT, OR ONE DAY; AND THE OTHER ONE SAYING THEY'D
2 BEEN THERE FOR TWO DAYS AND ONE NIGHT. YOU KNOW, THEY
3 WERE TOGETHER. THEY KNOW HOW MANY DAYS AND STUFF THAT
4 THEY HAD BEEN THERE. ONE SAYING THAT THEY HAD BEEN AT A
5 BABY SHOWER. I'M A MAN, I'VE BEEN TO A COUPLE BABY
6 SHOWERS; I KNOW WHEN I'VE BEEN TO A BABY SHOWER.

7 Q. BUT JUST, WHEN YOU ASK THEM WHERE HAVE YOU BEEN,
8 AND HE TOLD YOU HE HAD BEEN IN ATLANTA, WAS IT NECESSARY
9 AT THAT POINT FOR HIM TO ELABORATE ON EVERYTHING HE DID
10 IN ATLANTA, TO TELL YOU WHERE HE WENT TO EAT, WHERE HE
11 STOPPED FOR GAS?

12 A. NO, IF YOU PUT IT THAT WAY, NO.

13 Q. ALL RIGHT. AND I'M A LITTLE CONCERNED ABOUT THIS
14 SOURCE CITY. SO IS IT AN INDICATOR AND REASONABLE
15 SUSPICION FOR ANY PERSON WHO'S DRIVING BETWEEN ATLANTA
16 AND CHARLOTTE ON INTERSTATE 85 THAT GETS PULLED OVER FOR
17 A TRAFFIC VIOLATION AND YOU ASK THEM, MAY I SEARCH YOUR
18 VEHICLE, AND THEY SAY NO, BECAUSE THEY ARE SOURCE CITIES
19 AND A HUB, THAT YOU HAVE THE RIGHT TO SEARCH THEIR
20 VEHICLE?

21 A. I WOULDN'T JUST USE THAT BY ITSELF TO ASK THEM TO
22 SEARCH THEIR VEHICLE.

23 Q. BUT DO YOU REGULARLY ASK PEOPLE YOU STOP ON
24 TRAFFIC STOPS IF YOU CAN SEARCH THEIR VEHICLE?

25 A. IF I HAVE A REASONABLE SUSPICION, I DO, YEAH. IF

1 I HAVE REASONABLE SUSPICIONS, I WOULD.

2 Q. AND HOW MANY TIMES DOES THAT OCCUR?

3 A. HOW MANY TIMES DO I SEARCH A VEHICLE?

4 Q. HOW MANY TIMES DO YOU REQUEST PERMISSION TO
5 SEARCH A VEHICLE?

6 A. WELL, IN ANY GIVEN VEHICLE STOP, I'M GONNA TALK
7 TO SOMEONE AND I'M GONNA SEE WHERE THEY'RE GOING, WHERE
8 THEY'RE COMING FROM. AND IF STUFF DOESN'T START ADDING
9 UP, YOU KNOW, AND I START GETTING INDICATORS, THEN I GO,
10 I GO A LITTLE BIT FURTHER IN THE STOP AND THAT'S WHAT I
11 DONE WITH THIS ONE. TO TELL YOU HOW MANY TIMES I DO
12 THAT, I DON'T KNOW.

13 Q. ALL RIGHT. AND HAS ANYONE EVER REFUSED TO LET
14 YOU SEARCH THEIR VEHICLE?

15 A. YES, MA'AM.

16 Q. AND IN THOSE CASES, WHAT PERCENTAGE OF THOSE
17 CASES DO YOU GO AHEAD AND SEARCH THE VEHICLE?

18 A. IF I'VE GOT -- TAKING THIS FOR AN EXAMPLE, IF
19 I'VE GOT ALL OF THIS, THEN I'M GONNA GET MY CANINE
20 PARTNER OUT, AND IF HE ALERTS TO THE VEHICLE, I'M GONNA
21 SEARCH THE VEHICLE.

22 Q. BUT IN THE NUMBER OF CASES ---

23 A. I DON'T KNOW HOW MANY TIMES ---

24 Q. --- WHERE SOMEONE SAYS, NO, YOU MAY NOT SEARCH MY
25 VEHICLE, WHAT PERCENTAGE OF THOSE CASES DO YOU GO AHEAD

1 AND SEARCH THE VEHICLE? IS IT HALF OF THEM, 75 PERCENT
2 OF THEM?

3 A. I DON'T REALLY KNOW. WITHOUT LOOKING BACK, I
4 DON'T KNOW HOW MANY IT WOULD BE. I MEAN, YOU'RE KIND OF
5 STUMPING ME WITH THAT QUESTION. I REALLY DON'T KNOW
6 WHAT YOU'RE LOOKING FOR.

7 Q. WELL, I'M JUST TRYING TO FIND OUT IF SOMEONE
8 REFUSES TO LET YOU SEARCH THEIR VEHICLE, HOW OFTEN YOU
9 GO AHEAD AND SEARCH THE VEHICLE.

10 A. IF I'VE GOT EVERYTHING THAT I'VE GOT, JUST LIKE
11 THIS CASE HERE, PLUS ---

12 THE COURT: MR. CROMPTON, SHE DIDN'T ASK YOU
13 THAT. SHE JUST ASKED YOU OUT OF THE NUMBER OF PEOPLE
14 THAT REFUSE TO GIVE CONSENT TO SEARCH, HOW MANY TIMES DO
15 YOU GET THE DOG OUT TO SNIFF OR SEARCH THE VEHICLE?
16 THAT'S THE QUESTION. IF YOU DON'T KNOW, FINE.

17 THE WITNESS: I DON'T KNOW.

18 BY MS. EARLE:

19 Q. IF TEN PEOPLE SAID NO ---

20 A. I DON'T KNOW.

21 Q. --- WOULD YOU SEARCH IT FIVE TIMES, EIGHT TIMES?

22 A. I DON'T KNOW.

23 MR. STOUDEMIRE: OBJECTION, YOUR HONOR.

24 THE COURT: OVERRULED, WHATEVER YOUR
25 OBJECTION WAS. HAVE A SEAT.

1 BY MS. EARLE:

2 Q. YOU STATED ORIGINALLY THAT MR. HOOD SAT IN THE
3 VEHICLE VERY CALMLY AND QUIETLY AND JUST ACTED LIKE
4 NOTHING WAS HAPPENING, THAT HE WASN'T EVEN THERE. THEN
5 AT A LATER POINT YOU SAID HE WAS FRANTIC. AT WHAT POINT
6 DID HE BECOME FRANTIC?

7 A. WHEN I SAY -- I DON'T THINK I EVER SAID HE WAS
8 SITTING IN THERE CALMLY. FROM THE POINT THAT THE
9 TRAFFIC STOP STARTED UNTIL WE CAME TO THE POINT THAT THE
10 NARCOTICS WAS FOUND, MR. HOOD WAS NERVOUS THROUGHOUT THE
11 WHOLE TIME. HE DIDN'T, HE DIDN'T -- FRANTIC AS IN,
12 MAYBE THAT WAS THE WRONG WORD. HE WASN'T JUMPING UP AND
13 DOWN AND CUTTING CARTWHEELS, HE WASN'T DOING THAT.

14 BUT, I MEAN, HE WAS SWEATING, I TOLD YOU HIS I.D.
15 WAS BOUNCING UP AND DOWN. THAT'S NOT NORMAL. WHEN I
16 GIVE YOU MY I.D., IF I'M A LITTLE NERVOUS, YOU KNOW,
17 IT'S SHAKING A LITTLE BIT, BUT FOR ME TO ACTUALLY NOTICE
18 THAT I.D. IS JUMPING UP AND DOWN, THERE'S SOMETHING
19 WRONG THERE. THAT'S JUST NOT NORMAL.

20 Q. HAD YOU KNOWN THAT HE HAD BEEN IN PRISON FOR
21 ASSAULTING AN OFFICER, WOULD THAT HAVE MADE YOU FEEL
22 MORE COMFORTABLE ABOUT WHY HE WAS SO NERVOUS DEALING
23 WITH A POLICE OFFICER?

24 A. NO, MA'AM.

25 Q. HOW MANY OFFICERS CAME OUT ON THIS STOP?

1 A. MYSELF, SERGEANT COLEGROVE, AND HE HAD A
2 GENTLEMAN THAT WAS TRAINING WITH HIM THAT WORKS FOR
3 ANDERSON COUNTY. CRAIG. I CAN'T REMEMBER WHAT CRAIG'S
4 LAST NAME IS. BUT HE WAS ACTUALLY RIDING WITH SERGEANT
5 COLEGROVE. SO THAT WAS THREE OF US.

6 Q. OKAY. SO YOU HAD TWO VEHICLES WITH FLASHING
7 LIGHTS, THREE UNIFORMED POLICE OFFICERS? WAS EVERYBODY
8 IN UNIFORM?

9 A. YES. YOU COULD TELL THEM FROM -- I WOULDN'T SAY
10 SO MUCH AS A UNIFORM, BUT YOU COULD DEFINITELY TELL THEM
11 FROM A CIVILIAN.

12 Q. OKAY. SO EVERYONE WAS EASILY IDENTIFIABLE AS
13 BEING LAW ENFORCEMENT?

14 A. YES, MA'AM.

15 Q. AND WHERE WAS YOUR CANINE PARTNER DURING THIS
16 WHOLE TIME?

17 A. MY DOG WAS BEHIND ME.

18 Q. IN THE VEHICLE.

19 A. YES, MA'AM.

20 Q. WHERE MR. WALLACE WAS SITTING?

21 A. HE WAS SITTING IN THE FRONT.

22 Q. MR. WALLACE WAS IN THE FRONT AND YOUR CANINE WAS
23 IN THE BACK SEAT OF THE SAME VEHICLE?

24 A. HE'S GOT A KENNEL, IT'S SECTIONED OFF. HE CAN'T
25 GET TO IT OR ANYTHING.

1 Q. BUT THE DOG IS IN THE VEHICLE ---

2 A. BUT HE WAS IN THE BACK.

3 Q. --- WITH YOU AND MR. WALLACE?

4 A. YES, MA'AM.

5 Q. ALL RIGHT. AND THE INITIAL TRAFFIC STOP, FROM
6 THE TIME YOU STOPPED MR. WALLACE UNTIL YOU GAVE HIM THE
7 TICKET, WAS APPROXIMATELY 12 MINUTES?

8 A. I THINK SO.

9 Q. ALL RIGHT. AND IS THAT A TYPICAL LENGTH OF TIME
10 FOR A TRAFFIC STOP FOR YOU?

11 A. YES, MA'AM. GIVE OR TAKE A MINUTE OR TWO, BUT
12 YES, MA'AM.

13 Q. BUT, WELL, DO MOST OF YOUR TRAFFIC STOPS TAKE
14 FIVE MINUTES, AN HOUR OR ---

15 A. NO. I WOULD SAY, I WOULD SAY TEN, TEN, 12
16 MINUTES.

17 Q. TEN TO 15 MINUTES?

18 A. THAT'S NORMAL.

19 Q. AND THEN AFTER YOU GAVE HIM THE TICKET, THEN YOU
20 EXTENDED THE TRAFFIC STOP EVEN FURTHER?

21 A. YES, MA'AM.

22 Q. ALL RIGHT.

23 MS. EARLE: I HAVE NO FURTHER QUESTIONS AT
24 THIS TIME.

25 THE COURT: REDIRECT?

1 **MR. STOUDEMIRE:** NOTHING FOR THIS WITNESS,
2 YOUR HONOR.

3 **THE COURT:** YOU MAY STEP DOWN. THANK YOU
4 VERY MUCH.

5 (WHEREUPON, THE WITNESS LEFT THE WITNESS
6 STAND.)

7 **THE COURT:** ANY OTHER WITNESSES?

8 **MR. STOUDEMIRE:** NONE, YOUR HONOR.

9 **THE COURT:** MRS. EARLE, IS THERE ANYTHING ON
10 THE VIDEO YOU WOULD LIKE FOR ME TO LOOK AT? I HAVEN'T
11 SEEN IT SO I DON'T KNOW WHAT'S ON IT, YOU HAVE. IF
12 THERE'S ANYTHING ELSE THAT YOU THINK I NEED TO LOOK AT
13 ON THE VIDEO, I WOULD BE HAPPY TO LOOK AT IT, BUT I
14 DON'T WANT TO LOOK AT THE WHOLE THING IF IT'S NOT
15 NECESSARY.

16 **MS. EARLE:** I UNDERSTAND THAT, YOUR HONOR.
17 YOUR HONOR, THE MAJORITY OF -- WELL, THE VIDEOTAPE IS
18 FROM THE FRONT OF THE OFFICER'S VEHICLE TO THE REAR OF
19 MY CLIENT'S VEHICLE. MY CLIENT IS SITTING IN THE CAR
20 MOST OF THE TIME. SO ALL OF THE THINGS THAT YOU HAVE
21 HEARD ABOUT FROM THE OFFICER ARE NOT EVIDENT ON THE
22 VIDEOTAPE, THE PERCEIVED NERVOUSNESS AND ALL OF THAT IS
23 NOT ON THE VIDEOTAPE.

24 **THE COURT:** ALL RIGHT.

25 **MS. EARLE:** SO THE ONLY THING THAT I THINK

1 YOU MAY NEED TO SEE WOULD BE WHERE THE DEFENDANT REFUSES
2 THE SEARCH AND THEN THE OFFICER'S STATEMENTS AFTER THAT.

3 THE COURT: OKAY, THAT'S FINE.

4 MS. EARLE: AND THAT WOULD BE THE PRIMARY
5 FOCUS OF -- THAT'S THE PRIMARY FOCUS OF MY MOTION.

6 THE COURT: OKAY, ALL RIGHT. CAN YOU FIND
7 THAT ON THE VIDEO?

8 MR. STOUDEMIRE: YOUR HONOR, I THINK YOUR
9 CLERK PROBABLY HAS THE REMOTE, BUT WE CAN FIND THAT ON
10 THE VIDEO.

11 THE COURT: WELL, WHILE YOU FIND IT, WE'RE
12 GOING TO TAKE A BREAK, OKAY? IS IT IN THE MIDDLE PART,
13 THE END OF IT OR WHAT?

14 MS. EARLE: IT'S THE -- IT BEGINS AT
15 APPROXIMATELY 12:22 ON THE TAPE, YOUR HONOR.

16 THE COURT: HOW ABOUT FINDING THAT ON THE
17 TAPE, BECAUSE I'M SURE ROBIN NEEDS TO TAKE A BREAK,
18 WE'VE BEEN GOING ALL AFTERNOON. WE'LL TAKE ABOUT A
19 TEN-MINUTE BREAK AND THEN I'LL LOOK AT THE VIDEO.

20 DO YOU HAVE ANY OTHER WITNESSES?

21 MR. STOUDEMIRE: I DON'T, YOUR HONOR.

22 THE COURT: ARE YOU GOING TO CALL ANY
23 WITNESSES?

24 MS. EARLE: NO, YOUR HONOR.

25 (WHEREUPON, A RECESS WAS TAKEN.)

1 THE COURT: HAVE YOU GOT IT READY TO GO?

2 MR. STOUDEMIRE: I BELIEVE WE HAVE IT HERE,
3 SIR.

4 THE COURT: THANK YOU, SIR. LET'S GET IT
5 GOING.

6 MR. STOUDEMIRE: ASSUMING THERE'S NO OTHER
7 WAY TO OPERATE IT, I THINK ALL YOU HAVE TO DO IS PRESS
8 THAT.

9 (OFF-THE-RECORD DISCUSSION.)

10 (WHEREUPON, A PORTION OF THE VIDEOTAPE WAS
11 PLAYED FOR THE COURT.)

12 MS. EARLE: YOUR HONOR, THAT'S THE PORTION
13 OF IT I WANTED YOU TO SEE (VIDEOTAPE STOPPED PLAYING).

14 THE COURT: YES, MA'AM.

15 MS. EARLE: YOUR HONOR, AT THE POINT WHERE
16 MR. WALLACE TOLD THE OFFICER THAT HE NEEDED A SEARCH
17 WARRANT, THAT HE COULD NOT SEARCH THE VEHICLE, THE
18 OFFICER ASKED TWO MORE TIMES, AND EVERY TIME HE ASKED
19 MR. WALLACE REFUSED. THEN THE OFFICER TOLD HIM THAT HE
20 DID NOT NEED A SEARCH WARRANT TO SEARCH THE VEHICLE AND
21 FOR HIM TO HANG TIGHT.

22 AT THAT POINT THEN I BELIEVE IT DID BECOME
23 AN ILLEGAL DETENTION WITH AN ILLEGAL SEARCH, AND AS I
24 SAID, IT'S ALMOST IDENTICAL TO THE SITUATION IN STATE V.
25 WILLIAMS WHERE THE SUPREME COURT ON PAGE 602 GOES

1 THROUGH THE CIRCUMSTANCES OF THE STOP AND SAY THAT THESE
2 CIRCUMSTANCES WERE SUFFICIENTLY INTIMIDATING SUCH THAT
3 WILLIAMS COULD REASONABLY HAVE BELIEVED HE WAS NOT FREE
4 TO DISREGARD THE POLICE PRESENCE AND GO ABOUT HIS
5 BUSINESS.

6 THE COURT: WHERE ARE YOU READING FROM?

7 MS. EARLE: PAGE 602. YES, SIR. WHERE THE
8 COURT SAYS, FURTHERMORE, THE FOLLOWING CIRCUMSTANCES.

9 THE COURT: I'M WITH YOU. GO AHEAD.

10 MS. EARLE: AT THAT POINT THEY SAY THAT
11 WILLIAMS COULD REASONABLY HAVE BELIEVED HE WAS NOT FREE
12 TO DISREGARD THE POLICE PRESENCE AND GO ABOUT HIS
13 BUSINESS. THE CIRCUMSTANCES OUTLINED THERE ARE ALMOST
14 IDENTICAL TO THE CIRCUMSTANCES IN THIS STOP. AND THEN
15 WILLIAMS DID GIVE CONSENT TO SEARCH THE VEHICLE AND THE
16 SUPREME COURT SAID THAT CONSENT WAS NOT VALID BECAUSE OF
17 THE CIRCUMSTANCES INVOLVED.

18 MR. WALLACE GAVE NO CONSENT, AND THE
19 OFFICERS SEARCHED THE VEHICLE ANYWAY, AND I WOULD SAY
20 THAT BASED ON STATE V. WILLIAMS, THAT THIS STOP WAS A
21 DETENTION THAT WENT TOO FAR AND THAT THE JUSTIFICATION
22 IS NOT THERE FOR THE OFFICER TO HAVE SEARCHED THE
23 VEHICLE, THAT THERE WAS NO REASONABLE SUSPICION OF A
24 SERIOUS CRIME OR ILLEGAL ACTIVITY THAT WOULD LEAD HIM TO
25 BE ALLOWED TO SEARCH THE VEHICLE, AND SO ALL THE

1 EVIDENCE THAT WAS OBTAINED AS A RESULT OF THAT SEARCH
2 SHOULD BE SUPPRESSED.

3 THE COURT: OKAY. THANK YOU, MA'AM.

4 MR. STOUDEMIRE: FIRST, VERY BRIEFLY,
5 WILLIAMS IS EASILY DISTINGUISHED BECAUSE WHEREAS THIS
6 WAS A 12-MINUTE STOP FROM THE TIME THE VEHICLE ACTUALLY
7 PULLED TO A STOP UNTIL THE TIME THE TICKET WAS WRITTEN
8 AND CONSENT TO SEARCH WAS ASKED FOR, WILLIAMS WAS A
9 45-MINUTE STOP PRIOR TO CONSENT BEING ASKED FOR.

10 FURTHERMORE, WILLIAMS DEALT WITH A PERSON
11 WHO WAS STOPPED SOLELY FOR PRIOR DRUG OFFENSES. THAT'S
12 NOT THE CASE HERE. OFFICER CROMPTON WAS ABLE TO
13 ARTICULATE A REASON WHY MR. WALLACE WAS PULLED OVER. I
14 THINK THIS SITUATION IS MUCH MORE ANALOGOUS TO THE CASE
15 OF CORTEZ FOREMAN. THE FACTORS IN THIS CASE ARE
16 DECIDEDLY SIMILAR TO THOSE IN FOREMAN. AND I THINK THAT
17 FOREMAN -- YOUR HONOR SAID THAT YOU COUNTED 12 FACTORS
18 THAT OFFICER CROMPTON ARTICULATED.

19 I WOULD RELY ON FOREMAN, WHICH SAYS
20 BASICALLY THOSE FACTORS WHEN TAKEN BY THEMSELVES MAY
21 ACCOUNT FOR INNOCENT TRAVEL, BUT WHEN TAKEN AS A WHOLE,
22 THE CELL PHONE, THE SOURCE CITIES, THE DRUG CORRIDOR,
23 THE INCONSISTENT STATEMENTS, THE ESCALATION OF
24 NERVOUSNESS, ON AND ON. ALL THOSE WHEN TAKEN TOGETHER
25 GIVE CORPORAL CROMPTON AN ARTICULABLE REASONABLE REASON

1 TO CONTINUE THAT DETENTION AND TO SEARCH THAT VEHICLE,
2 AND WE OPPOSE THE DRUGS BEING SUPPRESSED IN THIS CASE.

3 **THE COURT'S RULING ON MOTION TO SUPPRESS:**

4 **THE COURT:** OKAY. ALL RIGHT. THANK YOU
5 VERY MUCH. ALL RIGHT. TAKING THE EVIDENCE, IN LOOKING
6 AT THE TOTALITY OF THE CIRCUMSTANCES, I'M GOING TO DENY
7 YOUR MOTION TO SUPPRESS THE DRUGS.

8 I UNDERSTAND WE NEED TO HAVE A JACKSON V.
9 DENNO HEARING; IS THAT CORRECT?

10 **MR. STOUDEMIRE:** YOUR HONOR, YES, SIR. THE
11 OFFICER WE WOULD NEED FOR JACKSON V. DENNO IS OFFICER
12 COLEGROVE. WE WOULD MOVE UNDER JACKSON V. DENNO TO HAVE
13 SOME STATEMENTS MADE BY MR. WALLACE AFTER MIRANDA WAS
14 GIVEN ADMITTED, BUT OFFICER COLEGROVE IS NOT HERE. WE
15 WOULD PREFER TOMORROW MORNING.

16 **THE COURT:** WELL, FIRST OF ALL, LET ME ASK
17 MS. EARLE: ARE YOU GOING TO WANT A JACKSON V. DENNO
18 HEARING ON THE -- WAS THERE A WRITTEN CONFESSION, AN
19 ORAL CONFESSION, OR WHAT WAS IT?

20 **MS. EARLE:** IT IS OUR CONTENTION THERE WAS
21 NO CONFESSION.

22 **THE COURT:** OKAY. WELL, DO YOU WANT A
23 JACKSON V. DENNO.

24 **MS. EARLE:** WELL, THEY CONTEND THAT HE DID.

25 **THE COURT:** I KNOW. BUT THEY ARE NOT

1 ENTITLED TO IT. YOU MAY BE IF YOU WANT IT.

2 MS. EARLE: YES, SIR. YES, SIR, WE DO WANT
3 ONE.

4 THE COURT: ALL RIGHT. DO YOU CONTEST THAT
5 THE MIRANDA RIGHTS WERE GIVEN OR DO YOU JUST CONTEST
6 WHETHER IT WAS A VOLUNTARY STATEMENT GIVEN, OR BOTH?

7 MS. EARLE: NO. THE MIRANDA WARNINGS WERE
8 GIVEN AFTER CERTAIN INTERROGATIONS WERE MADE, AND SO I
9 WOULD CONTEND THAT THE MIRANDA WARNING WAS NOT VALID,
10 YES.

11 THE COURT: OKAY. WAS THIS AT THE SCENE ON
12 THE INTERSTATE ---

13 MS. EARLE: YES, SIR.

14 THE COURT: --- OR WAS THAT AT THE POLICE
15 DEPARTMENT.

16 MS. EARLE: NO, SIR. EVERYTHING TOOK PLACE
17 ON THE INTERSTATE.

18 THE COURT: WHAT WAS IT THAT YOUR CLIENT
19 ALLEGEDLY SAID?

20 MS. EARLE: I'M SORRY?

21 THE COURT: WHAT DID HE SAY? WHAT'S THE
22 ALLEGED CONFESSION?

23 MS. EARLE: ACCORDING TO -- WELL ---

24 THE COURT: YOU SAID YOU DIDN'T THINK IT WAS
25 A CONFESSION. I JUST SAID, WHAT DID HE SAY?

1 **MS. EARLE:** WELL, MY CONTENTION IS IT'S NOT
2 HIM THAT YOU ARE HEARING ON THE VIDEOTAPE, WHEREAS THE
3 OFFICER SAYS IT IS MY CLIENT THAT YOU HEAR ON THE
4 VIDEOTAPE CLAIMING THE DRUGS AS BEING IN HIS BAG.

5 **THE COURT:** OKAY.

6 **MS. EARLE:** THERE IS -- AT ONE POINT YOU
7 HEAR HIM SAY THAT IT'S NOT HIS BAG. AND THEN AN OFFICER
8 DOES ASK -- THEN OFFICER ASKED HIM IF HE COULD HELP --
9 IF HE COULD DELIVER THE DOPE TO HELP HIMSELF; IF NOT,
10 HE'S ON HIS OWN; THAT THE OFFICER IS IN A POSITION TO DO
11 SOMETHING TO HELP HIM AT THIS TIME IF HE WILL HELP THEM.
12 AND HELPING THEM DEPENDS ON WHAT HE'S GONNA BE ABLE TO
13 DO AS TO WHETHER OR NOT THEY CAN HELP HIM, AND THAT MY
14 CLIENT SAYS HE WAS TAKEN TO SOMEONE ELSE.

15 MY CLIENT SAYS THAT'S NOT HIM ON THE TAPE
16 THAT MAKES THAT COMMENT.

17 MY CONTENTION WOULD BE THAT THIS WAS NOT A
18 CONFESSION, BUT AN ANSWER TO QUESTIONS FOR HIM TO TRY TO
19 FIGURE OUT WHETHER OR NOT HE SHOULD TRY TO HELP THE
20 OFFICERS.

21 **THE COURT:** AND MIRANDA RIGHTS WERE NOT
22 GIVEN PRIOR TO THAT STATEMENT?

23 **MS. EARLE:** NO. THE MIRANDA RIGHTS --
24 MIRANDA HAD BEEN GIVEN BY SOMEONE, BUT I'M NOT SURE
25 WHICH OFFICER WAS DOING WHICH, BECAUSE THEY'RE NOT ON

1 THE VIDEOTAPE; YOU HEAR VOICES.

2 THE COURT: ALL RIGHT. WHEN ARE YOU
3 PLANNING ON PUTTING THIS IN DURING THE COURSE OF THE
4 TRIAL? BECAUSE I WOULD LIKE TO HEAR IT BEFORE -- I
5 DON'T NECESSARILY NEED TO HEAR IT FIRST THING IN THE
6 MORNING, BUT AT SOME POINT IN TIME BEFORE YOU GET INTO
7 IT.

8 MR. STOUDEMIRE: CERTAINLY. MY INTENTION
9 WITNESS LIST WISE WOULD BE TO HAVE OFFICER CROMPTON
10 TESTIFY ABOUT EVERYTHING HE DID DURING THE STOP, AND
11 THEN THE MIRANDA WARNING AND THE STATEMENTS THAT
12 MS. EARLE WAS TALKING ABOUT WERE MADE BY, THE MIRANDA
13 WARNING WAS GIVEN BY OFFICER COLEGROVE, HE WOULD BE MY
14 FIRST WITNESS.

15 THE COURT: HE WOULD BE YOUR SECOND. DID HE
16 GIVE THE STATEMENT TO OFFICER COLEGROVE?

17 MR. STOUDEMIRE: YES, SIR.

18 THE COURT: ALL RIGHT. WHENEVER YOU CALL
19 HIM AND BEFORE WE GET INTO IT, WE'LL JUST TAKE A BREAK
20 AND WE'LL DO IT AT THAT TIME. OKAY?

21 MR. STOUDEMIRE: THAT WOULD BE FINE.

22 MS. EARLE: YES, YOUR HONOR.

23 THE COURT: ANYTHING ELSE?

24 MR. STOUDEMIRE: NOTHING FROM THE STATE,
25 YOUR HONOR.

1 MS. EARLE: YOUR HONOR, I WOULD LIKE TO HAVE
2 PLACED ON THE RECORD THAT MY CLIENT WAS OFFERED A PLEA
3 AGREEMENT BY THE SOLICITOR'S OFFICE AND REJECTED THAT
4 OFFER, AND THAT IT WAS HIS VOLUNTARY CHOICE TO GO TO
5 TRIAL ON THESE CHARGES.

6 THE COURT: OKAY. DO YOU WANT TO PUT ON THE
7 RECORD WHAT WAS OFFERED AS FAR AS A RECOM- -- I ASSUME
8 IT'S A RECOMMENDATION?

9 MS. EARLE: THERE WAS A RECOMMENDATION.

10 THE COURT: WHAT WAS THE RECOMMENDATION?

11 MS. EARLE: OF A GUILTY PLEA TO FOUR YEARS.

12 THE COURT: FOUR YEARS?

13 MS. EARLE: YES, YOUR HONOR.

14 THE COURT: YOUR CLIENT REJECTED THAT; IS
15 THAT CORRECT?

16 MS. EARLE: YES.

17 THE COURT: MR. WALLACE, IS THAT CORRECT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: ALL RIGHT. ANYTHING ELSE?

20 MR. STOUDEMIRE: YOUR HONOR, ONE OTHER
21 THING. THE STATEMENT ---

22 THE COURT: MR. WALLACE, YOU UNDERSTAND WHAT
23 YOU ARE CHARGED WITH HAS A MANDATORY MINIMUM OF 25
24 YEARS?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: OKAY.

2 MR. STOUDEMIRE: YOUR HONOR, WE WOULD BE
3 MOVING FOR THE TAPE TO BE ENTERED INTO EVIDENCE THROUGH
4 CORPORAL CROMPTON. THE MIRANDA WARNING AND THE
5 SUBSEQUENT STATEMENTS, ALL THOSE ARE ON THE VIDEO.

6 THE COURT: LET'S DON'T PLAY THE TAPE TO THE
7 JURY, AT LEAST THE PART ABOUT THE CONFESSION, OKAY,
8 UNTIL WE HAVE THE JACKSON V. DENNO HEARING.

9 MR. STOUDEMIRE: YES, SIR, THAT'S FINE.

10 THE COURT: ARE YOU PLANNING ON PLAYING THE
11 TAPE WITH OFFICER CROMPTON?

12 MR. STOUDEMIRE: MOST LIKELY, YES, SIR.

13 THE COURT: PARDON?

14 MR. STOUDEMIRE: YES, SIR.

15 THE COURT: STOP IT BEFORE WE GET TO THE
16 CONFESSION, AND WE'LL TAKE THAT UP.

17 MR. STOUDEMIRE: WE CAN DO THAT.

18 THE COURT: UNLESS YOU WANT TO DO IT BEFORE.

19 MR. STOUDEMIRE: WHATEVER IS EASIER, YOUR
20 HONOR.

21 THE COURT: IT DOESN'T MATTER TO ME. YOU
22 CAN DO IT WHEN YOU CALL OFFICER CROMPTON OR THE OTHER
23 OFFICERS OR WHENEVER YOU WANT TO DO IT. BUT JUST DON'T
24 GET INTO IT BEFORE WE HAVE THE HEARING.

25 MR. STOUDEMIRE: YES, SIR.

1 MS. EARLE: THANK YOU, YOUR HONOR.

2 THE COURT: ANYTHING ELSE?

3 MS. EARLE: NO, SIR.

4 THE COURT: ALL RIGHT. WE'LL ADJOURN UNTIL
5 9:30 IN THE MORNING.

6 MR. STOUDEMIRE: YES, SIR.

7 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
8 STATE OF SOUTH CAROLINA VERSUS TIMOTHY
9 WALLACE WAS ADJOURNED AT 5:30 P.M. ON
10 SEPTEMBER 17TH, 2007, TO RESUME AT
11 APPROXIMATELY 9:30 A.M. ON SEPTEMBER 18TH,
12 2007.)

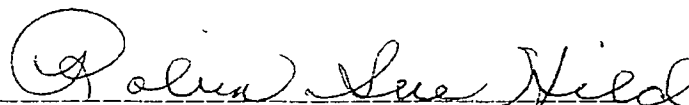
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE
VOLUME I, SEPTEMBER 17, 2007, PAGES 1 THROUGH 104,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
OCONEE COUNTY, SOUTH CAROLINA, ON THE 17TH DAY AND 18TH
DAY OF SEPTEMBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MARCH 8, 2008


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

ORIGINAL

STATE OF SOUTH
CAROLINA

COUNTY OF OCONEE

) IN THE COURT OF GENERAL
) SESSIONS

) INDICTMENT NO: 2006-GS-37-175

STATE OF SOUTH
CAROLINA

PLAINTIFF,

-VS-

TIMOTHY L. WALLACE,

DEFENDANT.

)
)
) TRANSCRIPT OF RECORD
) TRIAL -- VOLUME II OF II
) PAGES 106 THROUGH 248

SEPTEMBER 18TH, 2007
WALHALLA, SOUTH CAROLINA

B E F O R E:

HONORABLE J. C. "BUDDY" NICHOLSON, JR., JUDGE; AND A
JURY.

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

BLAIR STOUDEMIRE, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
LINDSEY S. SIMMONS, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

SUZANNE EARLE, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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1 ***** START OF REQUESTED TRANSCRIPT *****

2 (WHEREUPON, THE TRIAL OF THE STATE OF SOUTH
3 CAROLINA VERSUS TIMOTHY WALLACE RESUMED, AS
4 FOLLOWS:)

5 MS. EARLE: SINCE THE JURY HASN'T YET BEEN
6 SWORN, YOUR HONOR, I WOULD JUST ASK THAT YOU ASK THEM
7 THIS MORNING IF THEY'VE HEARD ANYTHING ABOUT IT ON THE
8 RADIO, AND THEN I WOULD NOT ASK YOU TO REPEAT THAT TO
9 THEM AGAIN.

10 THE COURT: OKAY. BRING IN THE JURY.

11 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
12 9:38 A.M.)

13 (STATE'S EX. # 1, VIDEOTAPE OF TRAFFIC STOP,
14 WAS MARKED FOR IDENTIFICATION.)

15 (STATE'S EX. # 2, COCAINE, WAS MARKED FOR
16 IDENTIFICATION.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN
18 OF THE JURY, YESTERDAY I INSTRUCTED YOU NOT TO READ OR
19 HEAR ANYTHING. HAS ANYBODY READ ANYTHING IN THE PAPER
20 OR HEARD THE RADIO IN THIS CASE? (NO RESPONSE.) LET
21 THE RECORD REFLECT THAT NO ONE RAISED THEIR HAND.

22 MADAM CLERK, IF YOU WOULD SWEAR THE JURY.

23 (WHEREUPON, THE JURY WAS SWORN.)

24 THE COURT: SOLICITOR?
25

1 OPENING STATEMENT ON BEHALF OF THE STATE:

2 MR. STOUDEMIRE: GOOD MORNING, LADIES AND
3 GENTLEMEN. MY NAME IS BLAIR STOUDEMIRE, AND I AM ONE OF
4 THE ASSISTANT SOLICITORS HERE IN WALHALLA FOR THE TENTH
5 CIRCUIT. I HAVE THE PLEASURE OF WORKING FOR YOUR
6 ELECTED SOLICITOR, MS. CHRISSY ADAMS. I WAS BORN AND
7 RAISED HERE IN WALHALLA, I'VE LIVED HERE ALL MY LIFE,
8 AND I CAME BACK TO WORK UP HERE.

9 WHAT WE'VE GOT TODAY IS WE HAVE A CASE
10 INVOLVING TRAFFICKING OF COCAINE, AND THE DEFENDANT,
11 MR. WALLACE OVER HERE, WHO IS CHARGED WITH TRAFFICKING
12 COCAINE. IT IS TRAFFICKING IN EXCESS OF 400 GRAMS AND
13 THAT'S WHAT WE'RE GONNA HAVE TO PROVE TO YOU.

14 PART IS THAT THE COCAINE WAS OVER 400 GRAMS.
15 IN FACT, I BELIEVE THE EVIDENCE IN THIS CASE IS GOING TO
16 SHOW THAT THE WEIGHT OF THE COCAINE WAS IN EXCESS OF 750
17 GRAMS, ALMOST TWICE 400 GRAMS. YOU ARE GOING TO HEAR, I
18 BELIEVE, FROM TWO OFFICERS ABOUT A TRAFFIC STOP MADE
19 HERE IN OCONEE COUNTY AGAINST MR. WALLACE FOR DRIVING A
20 VEHICLE AND FOR NOT MAINTAINING HIS LANE.

21 DURING THAT STOP THE COCAINE WAS FOUND IN
22 THE CAR THAT HE WAS DRIVING. I BELIEVE THE EVIDENCE
23 WILL SHOW THAT. YOU ARE ALSO GOING TO HEAR FROM A
24 FORENSIC CHEMIST WHO TESTED THE SUBSTANCE FOUND IN HIS
25 CAR, FOUND IT TO BE COCAINE, AND WEIGHED IT AND FOUND IT

1 TO BE IN EXCESS OF 750 GRAMS OF COCAINE.

2 AT THE CONCLUSION OF THE CASE I WILL BE BACK
3 BEFORE YOU AND I WILL BE ASKING YOU TO FIND MR. WALLACE
4 GUILTY AT THAT TIME OF TRAFFICKING COCAINE.

5 I APPRECIATE YOUR BEING HERE THIS MORNING.
6 I ASK YOU TO PAY ATTENTION. I KNOW THAT YOU WILL. AND
7 LISTEN TO THE EVIDENCE AND GIVE IT ALL THE CONSIDERATION
8 IT DESERVES. THANK YOU.

9 THE COURT: MS. EARLE?

10 OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

11 MS. EARLE: GOOD MORNING, LADIES AND
12 GENTLEMEN. I'M SUZANNE EARLE, AN ATTORNEY IN WALHALLA.
13 I, LIKE MR. STOUDEMIRE, I ALSO GREW UP HERE IN WALHALLA,
14 SO I'M ONE OF THE FEW NATIVES LEFT, I THINK.

15 I AM HERE TODAY REPRESENTING MR. TIMOTHY
16 WALLACE. MR. WALLACE HAS BEEN CHARGED AS THE SOLICITOR
17 TOLD YOU.

18 NOW, THIS IS THE PART OF THE CASE THAT
19 ALWAYS MAKES ME THE MOST NERVOUS IS HAVING TO TALK TO
20 YOU BEFORE THE TRIAL STARTS AND BEFORE YOU HAVE HEARD
21 ANY OF THE TESTIMONY. YOU ARE GONNA HEAR FROM POLICE
22 OFFICERS WHO ARE GONNA TELL YOU HOW THEY STOPPED HIS
23 VEHICLE AND FOUND COCAINE IN THE VEHICLE.

24 WHAT MR. STOUDEMIRE DID NOT TELL YOU IS THAT
25 THERE WAS SOMEONE ELSE IN THE CAR WITH HIM, THAT THE CAR

1 DID NOT BELONG TO MR. WALLACE. AND SO I WOULD ASK YOU
2 TO KEEP AN OPEN MIND, TO LISTEN TO ALL THE TESTIMONY
3 THAT YOU HEAR TODAY BEFORE YOU MAKE UP YOUR MIND AS TO
4 WHETHER OR NOT MR. WALLACE IS GUILTY OF THE CRIME HE'S
5 BEEN CHARGED WITH.

6 THE STATE HAS TO PROVE TO YOU BEYOND A
7 REASONABLE DOUBT ON EACH AND EVERY ELEMENT OF THE CRIME
8 THAT HE IS GUILTY OF WHAT HE IS CHARGED WITH. THEY HAVE
9 TO SHOW THIS BEYOND A REASONABLE DOUBT. ONE OF THE
10 ELEMENTS IS A KNOWING POSSESSION OF THE COCAINE. THEY
11 DON'T HAVE TO SHOW THAT HE SHOULD HAVE KNOWN, THAT HE
12 OUGHT TO HAVE KNOWN, THAT HE PROBABLY KNEW, BUT THEY
13 HAVE TO SHOW YOU BEYOND A REASONABLE DOUBT THAT HE DID
14 KNOW AND THAT IS AN IMPORTANT ELEMENT IN THIS CASE
15 TODAY. ON ALL THE OTHER ELEMENTS THEY ALSO HAVE TO SHOW
16 YOU BEYOND A REASONABLE DOUBT.

17 A DEFENDANT DOESN'T HAVE TO PROVE ANYTHING
18 TO YOU. THEY COME INTO COURT PRESUMED TO BE NOT GUILTY,
19 AND THE STATE HAS TO GIVE YOU THE EVIDENCE TO SHOW THAT
20 THEY ARE GUILTY BEYOND A REASONABLE DOUBT BEFORE YOU ARE
21 ALLOWED TO CONVICT THE DEFENDANT.

22 IT'S VERY, VERY DIFFICULT AND SOMETIMES
23 IMPOSSIBLE TO PROVE THAT YOU DIDN'T DO SOMETHING OR THAT
24 YOU DIDN'T KNOW SOMETHING. THERE ARE A LOT OF THINGS
25 THAT YOU CAN ACCUSE PEOPLE OF THAT THEY DIDN'T DO AND

1 THEY CAN'T PROVE THEY DIDN'T DO IT, WHICH IS WHY THE
2 BURDEN IS ON THE STATE TO PROVE THEY DID DO IT.

3 AND I WOULD SIMPLY ASK YOU TO KEEP AN OPEN
4 MIND AND DON'T -- SPECIFICALLY ABOUT THE EVIDENCE THAT
5 IS SHOWN AND THE JUDGE CHARGES YOU ON THE LAW AND APPLY
6 THAT LAW TO THE FACTS THAT YOU HAVE HEARD IN MAKING YOUR
7 DECISION AT THAT TIME.

8 AND I APPRECIATE YOUR TAKING THE TIME OUT OF
9 YOUR BUSY SCHEDULE TO BE HERE TODAY.

10 **THE COURT:** CALL YOUR FIRST WITNESS, PLEASE.

11 **MR. STOUDEMIRE:** THE STATE WOULD CALL
12 CORPORAL TOMMY CROMPTON, YOUR HONOR.

13 (WHEREUPON, THE WITNESS WAS SWORN BY THE
14 CLERK.)

15 **THE CLERK:** SIR, IF YOU WOULD PLEASE STATE
16 YOUR FULL NAME FOR THE RECORD, SPELLING YOUR LAST NAME.

17 **THE WITNESS:** TOMMY CROMPTON,
18 C-R-O-M-P-T-O-N.

19 WHEREUPON,

20 **TOMMY CROMPTON,**

21 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS:

DIRECT EXAMINATION BY MR. STOUDEMIRE:

23 Q. OFFICER CROMPTON, WHERE YOU DO YOU WORK?

24 A. OCONEE COUNTY SHERIFF'S OFFICE.

25 Q. HOW LONG HAVE YOU WORKED THERE?

1 A. SINCE JANUARY 24TH OF 2000.

2 Q. DID YOU WORK ANYWHERE ELSE IN LAW ENFORCEMENT
3 PRIOR TO THAT TIME?

4 A. YES, SIR. I STARTED OUT AT SENECA POLICE
5 DEPARTMENT. I WENT FROM THERE TO ANDERSON COUNTY
6 SHERIFF'S OFFICE, AND I CAME OVER TO OCONEE IN JANUARY.

7 Q. SO IN TOTAL HOW LONG HAVE YOU BEEN EMPLOYED IN
8 LAW ENFORCEMENT?

9 A. TEN YEARS.

10 Q. AND DURING THOSE TEN YEARS HAVE YOU HAD ANY
11 TRAINING OR EDUCATION?

12 A. YES, SIR.

13 Q. OKAY. IN WHAT AREAS?

14 A. I HAD BASIC LAW AT THE CRIMINAL JUSTICE ACADEMY;
15 I COMPLETED IT. EVERY YEAR WE HAVE UPDATES, LEGAL
16 UPDATES AND SO ON. I'VE HAD SOME ADVANCED CLASSES ON
17 DRUGS AND IMPAIRED DRIVING, SUCH AS THE A.C.E. CLASS
18 GIVEN BY THE HIGHWAY PATROL. I HAD SEVERAL CLASSES
19 PERTAINING TO INTERDICTION WORK AND ALSO VEHICLES WITH
20 INTERDICTION WORK AND ALSO TRANSFER TRUCKS INTERDICTION.

21 Q. WHAT IS INTERDICTION?

22 A. WHEN YOU -- SIMPLY IT'S GETTING OUT AND WORKING
23 AN AREA, IT COULD BE ANY KIND OF AREA, LOOKING FOR ANY
24 KIND OF CRIMINAL ACTIVITY SUCH AS NARCOTICS, ILLEGAL
25 TRANSPORTATION OF WEAPONS, ALCOHOL, AND SO FORTH.

1 Q. AND WHAT UNIT ARE YOU ASSIGNED TO RIGHT NOW WITH
2 THE SHERIFF'S DEPARTMENT?

3 A. I'M A CORPORAL FROM THE TRAFFIC SAFETY UNIT.

4 Q. AND SO YOU DRIVE AROUND IN AN OCONEE COUNTY
5 SHERIFF'S VEHICLE, I ASSUME?

6 A. YES, SIR.

7 Q. IS THAT VEHICLE EQUIPPED WITH VIDEOTAPE
8 EQUIPMENT?

9 A. YES, SIR.

10 Q. OKAY. I'M GOING TO TAKE YOU TO SEPTEMBER 14TH,
11 2005. WAS YOUR CAR EQUIPPED WITH VIDEO EQUIPMENT THAT
12 DAY?

13 A. YES, SIR.

14 Q. AND ON THAT DATE DID YOU MAKE A STOP AROUND 12:15
15 P.M.?

16 A. YES, I DID.

17 Q. WAS THE VIDEOTAPE OPERABLE AT THAT TIME?

18 A. YES, SIR.

19 Q. I'M GONNA SHOW YOU WHAT'S BEEN PREMARKED AS
20 STATE'S EXHIBIT NUMBER ONE. CAN YOU IDENTIFY THAT FOR
21 ME, PLEASE?

22 A. YES, SIR. IT'S A COPY OF THE VIDEO FROM A
23 TRAFFIC STOP THAT I MADE ON THAT DAY.

24 Q. OKAY. AND HAVE YOU HAD AN OPPORTUNITY TO VIEW
25 THIS VIDEO AND THE CONTENTS OF IT?

1 A. YES, SIR.

2 Q. AND TO YOU DOES IT APPEAR TO BE A FAIR AND
3 ACCURATE REPRESENTATION OF THE TRAFFIC STOP MADE IN
4 SEPTEMBER 2005?

5 A. YES.

6 Q. WAS THAT STOP MADE IN OCONEE COUNTY?

7 A. YES, SIR, IT WAS.

8 Q. OKAY. HAS THAT TAPE BEEN IN YOUR CARE AND
9 CONTROL SINCE THE DATE OF THAT STOP?

10 A. I TURNED IT OVER TO YOU GUYS. I DUBBED THE TAPE
11 MYSELF AND I BROUGHT IT TO THE SOLICITOR'S OFFICE.

12 Q. DOES IT APPEAR TO BE IN THE SAME CONDITION IT WAS
13 IN AT THE TIME THE STOP WAS MADE?

14 A. YES, SIR.

15 MR. STOUDEMIRE: YOUR HONOR, WE WOULD MOVE
16 TO ADMIT STATE'S EXHIBIT NUMBER ONE INTO EVIDENCE.

17 THE COURT: ANY OBJECTION?

18 MS. EARLE: YOUR HONOR, I WOULD OBJECT TO
19 THE PORTION OF THE TAPE THAT WOULD BE THE SUBJECT OF MY
20 PREVIOUS MOTION.

21 THE COURT: I SAID A PORTION OF THE TAPE WAS
22 NOT ADMISSIBLE.

23 MS. EARLE: THE PORTION THAT YOU RULED ON TO
24 HAVE SUPPRESSED.

25 THE COURT: THAT'S FINE. WHEN HE PLAYS THE

1 TAPE, WE'LL SKIP THROUGH THAT PART.

2 LADIES AND GENTLEMEN OF THE JURY, WHAT I'M
3 TALKING ABOUT IS WE HAVE RULES OF EVIDENCE TO GO BY, AND
4 THE ATTORNEYS OCCASIONALLY MAKE OBJECTIONS WHEN THEY
5 DON'T THINK A PIECE OF EVIDENCE IS ADMISSIBLE. IT'S MY
6 JOB TO RULE WHETHER IT IS OR NOT, AND I HAVE MADE THE
7 DETERMINATION THAT A PORTION OF THIS TAPE IS NOT
8 ADMISSIBLE.

9 AND WHAT WE WILL DO IS WHEN WE GET THERE, WE
10 WILL STOP THE TAPE AND START IT AND RUN IT AGAIN. THE
11 ATTORNEYS AREN'T TRYING TO HIDE ANYTHING FROM YOU. WE
12 HAVE CERTAIN RULES TO GO BY, AND I HAVE RULED THAT
13 PORTION INADMISSIBLE. SO WHENEVER HE STOPS AND RUNS IT
14 FORWARD, THAT'S THE PORTION THAT'S NOT ADMISSIBLE.

15 SUBJECT TO YOUR OBJECTION I ADMIT IT INTO
16 EVIDENCE.

17 (STATE'S EXHIBIT # 1 WAS RECEIVED IN
18 EVIDENCE.)

19 MR. STOUDEMIRE: THANK YOU, YOUR HONOR. AT
20 THIS TIME I WOULD MOVE TO PUBLISH THE VIDEO.

21 THE COURT: DO YOU KNOW WHAT MINUTE YOU ARE
22 SUPPOSED TO STOP IT ON AND WHAT MINUTE YOU ARE SUPPOSED
23 TO START IT ON?

24 MR. STOUDEMIRE: YES, SIR. WE DO NEED TO
25 REWIND IT TO THE BEGINNING.

1 (VIDEOTAPE PLAYED FOR JURY.)

2 (COUNSEL CONFER.)

3 (VIDEOTAPE STOPPED.)

4 BY MR. STOUDEMIRE:

5 Q. CORPORAL CROMPTON, WHAT WAS THE MITSUBISHI
6 STOPPED FOR THAT DAY?

7 A. DRIVING LEFT OF CENTER.

8 Q. AND WHEN YOU APPROACHED THE VEHICLE AFTER THE
9 STOP WAS MADE -- WELL, FIRST LET ME BACK UP A LITTLE
10 BIT.

11 WHEN YOU FIRST ACTIVATED YOUR BLUE LIGHTS, WHAT
12 HAPPENED AT THAT POINT?

13 A. WELL, WHAT, WHAT INITIALLY STARTED STRIKING MY
14 ATTENTION ON THE VEHICLE, USUALLY ON THE INTERSTATE WHEN
15 YOU -- OR ANYWHERE, WHEN YOU STOP A VEHICLE, ONCE THE
16 PERSON ACKNOWLEDGES THAT YOU ARE THERE, SEES YOU BEHIND
17 THEM, THEY IMMEDIATELY HIT THEIR BRAKES AND THEN THEY GO
18 TO THE SHOULDER.

19 MR. WALLACE IN THIS CASE, HE HIT HIS BRAKES. WE
20 WAS APPROXIMATELY A HUNDRED YARDS FROM THE EXIT. HE HIT
21 HIS BRAKES, HE LET OFF OF HIS BRAKES, COASTED A LITTLE
22 BIT MORE. THEN, RIGHT BEFORE HE GOT TO THE EXIT, BEFORE
23 HE GOT OFF ON THE EXIT RAMP, HE HIT HIS BRAKES AGAIN.
24 THEN HE DROVE UP APPROXIMATELY HALFWAY UP THE RAMP
25 BEFORE HE REALLY DECIDED TO GET UP ON THE SHOULDER OF

1 THE ROAD.

2 Q. OKAY. AND AFTER THE VEHICLE WAS STOPPED, WHEN
3 YOU APPROACHED THE VEHICLE WERE YOU ABLE TO DETERMINE
4 WHO WAS DRIVING THE VEHICLE?

5 A. YES, SIR.

6 Q. WHO WAS DRIVING THE VEHICLE?

7 A. TIMOTHY WALLACE.

8 Q. IS HE IN THIS COURTROOM TODAY?

9 A. YES, SIR.

10 Q. CAN YOU POINT HIM OUT?

11 A. YES, SIR. HE'S SITTING UP THERE WITH THE WHITE
12 BUTTON-UP SHIRT.

13 Q. THAT'S MR. WALLACE AT THE DEFENSE TABLE?

14 A. YES, SIR.

15 Q. DID YOU ASK MR. WALLACE FOR ANYTHING WHEN YOU
16 APPROACHED THE CAR?

17 A. YES, SIR. WHEN I APPROACHED THE CAR, I ASKED FOR
18 HIS LICENSE, REGISTRATION AND PROOF OF INSURANCE. AND
19 WHEN I DID THAT, MR. WALLACE STARTED FUMBLING AROUND, IT
20 TOOK HIM A LONG WHILE TO GET ALL THAT INFORMATION.

21 AS I WAS STANDING THERE WATCHING HIM, I WAS
22 WATCHING THE PASSENGER, AND THE PASSENGER, INSTEAD OF
23 HELPING HIM GET THE INFORMATION, LIKE ANYBODY WOULD, HE
24 JUST SAT THERE JUST BASICALLY STARING STRAIGHT AHEAD,
25 LIKE HE DIDN'T EVEN ACKNOWLEDGE THAT I WAS THERE AT ALL.

1 Q. AND THIS PASSENGER, WHAT'S HIS NAME?

2 A. HERMAN HOOD.

3 Q. AND DOES MR. HOOD HAVE ANYTHING PENDING RIGHT
4 NOW?

5 A. YES, SIR.

6 Q. AND WHAT'S THE STATUS OF THAT?

7 A. IT'S ONGOING, IT'S STILL OUTSTANDING.

8 Q. OKAY. ALL RIGHT. AFTER YOU GOT THE DOCUMENTS
9 FROM MR. WALLACE, WHAT HAPPENED NEXT?

10 A. I PUT MR. WALLACE IN MY VEHICLE IN THE PASSENGER
11 FRONT OF MY VEHICLE FOR A FEW REASONS. ONE, YOU CAN
12 HEAR A LOT BETTER, JUST LIKE YOU GUYS CAN SEE.

13 TWO, ONCE I PUT HIM IN MY CAR, I KNOW EXACTLY
14 WHERE HE IS. I CAN WATCH THE PASSENGER, SO IF HE WERE
15 TO MAKE ANY KIND OF BIG MOVEMENTS OR WHATEVER, I COULD
16 TELL WHAT'S GOING ON THERE. AND AS A SAFETY ISSUE, I
17 DON'T HAVE TO WORRY ABOUT THE TRAFFIC HITTING ME OR
18 ANYONE ELSE OUTSIDE THE VEHICLE, SO IT WORKS WELL TO DO
19 THAT.

20 Q. OKAY. AND WHAT DID YOU TALK TO MR. WALLACE ABOUT
21 IN YOUR VEHICLE?

22 A. I EXPLAINED TO HIM WHY I STOPPED HIM AND ASKED
23 HIM WHERE HE HAD BEEN, HOW LONG HE HAD STAYED THERE,
24 WHERE THE GUYS WERE GOING NOW AND WHERE THEY WERE COMING
25 FROM.

1 Q. WITH REGARD TO THE DOCUMENTS HE GAVE YOU, WERE
2 YOU ABLE TO DETERMINE WHO OWNED THE CAR?

3 A. YES, SIR, IT WAS A FEMALE OWNER THAT WASN'T
4 PRESENT AT THE SCENE.

5 Q. ALL RIGHT. AND AFTER YOU DID ALL THAT,
6 EXPLAINING TO MR. WALLACE WHAT YOU HAD STOPPED HIM FOR,
7 WHAT DID YOU DO THEN?

8 A. I GOT OUT OF MY VEHICLE. WELL, I RAN
9 MR. WALLACE'S INFORMATION, HIS LICENSE AND STUFF. I
10 ASKED IF HE HAD ANY PRIORS, AND HE HAD STATED THAT HE
11 DID HAVE A PRIOR, AN ALCOHOL VIOLATION.

12 AND AT THAT TIME HE, INSTEAD OF -- ON A TRAFFIC
13 STOP IT'S NORMAL FOR A PERSON TO BE A LITTLE NERVOUS
14 ONCE YOU MAKE CONTACT WITH THEM, BUT AS YOU TALK TO THEM
15 AND STUFF THEIR NERVOUSNESS KIND OF GOES AWAY, IT STARTS
16 DEESCALATING. MR. WALLACE DIDN'T DO THAT. HE STARTED
17 ESCALATING, HE STARTED GETTING MORE NERVOUS.

18 SO I GOT OUT OF MY VEHICLE AND I WENT OUT AND
19 STARTED TALKING TO MR. HOOD AND I ASKED HIM BASICALLY
20 THE SAME QUESTIONS: WHERE ARE YOU GUYS HEADED TO?
21 WHERE THEY WERE COMING FROM, IF HE HAD HIS I.D.

22 WHEN HE HANDED ME HIS I.D., HIS I.D. WAS ACTUALLY
23 MOVING UP AND DOWN. HE COULDN'T CONTROL HIS HAND FROM
24 SHAKING. HE WAS SWEATING REAL BAD, HE DIDN'T REALLY
25 WANT TO TALK TO ME. HE DIDN'T WANT TO LOOK AT ME. HE

1 HAD TOLD ME THAT THEY HAD BEEN IN ATLANTA ONE DAY, THAT
2 THEY HAD WENT TO A BABY SHOWER.

3 SO WHEN I GOT ALL THAT INFORMATION, I WENT BACK
4 AND WAS TALKING TO MR. WALLACE AGAIN. HE NEVER TOLD ME
5 ABOUT THE BABY SHOWER. HE HAD TOLD ME THAT THEY HAD
6 BEEN GONE FOR ONE DAY, I BELIEVE; THEN IT WAS TWO DAYS,
7 THEN IT WAS BACK TO TWO DAYS AND ONE NIGHT. HE WAS
8 NEVER CONSISTENT WITH THAT.

9 Q. ALL RIGHT. AND WHAT HAPPENED FROM THAT POINT?

10 A. I WENT AHEAD AND WROTE MR. WALLACE A TICKET AND
11 GAVE IT TO HIM. I EXPLAINED IT TO HIM. I EVEN TOLD
12 MR. WALLACE THAT -- I ASKED HIM HOW FAR OUT GASTONIA WAS
13 WHERE HE SAID HIS ADDRESS WAS, AND THAT IF HE WOULD COME
14 BACK TO COURT, I WOULD HELP HIM OUT, AND WE WOULD TALK
15 TO THE JUDGE ABOUT HELPING HIM OUT SOME.

16 AFTER I DONE ALL THAT, I GAVE HIM THE TICKET AND
17 EVERYTHING. GIVEN ALL THE INDICATORS THAT I HAD, I
18 ASKED MR. WALLACE IF HE HAD ANYTHING ILLEGAL IN THE
19 VEHICLE. HE AUTOMATICALLY -- HE WENT FROM A LOT OF
20 JUST, JUST MEANINGLESS CHATTER TO THROWING A WALL UP
21 BETWEEN US. HE GOT KIND OF DEFENSIVE. HE SAID NO. I
22 ASKED FOR A CONSENT TO SEARCH THE VEHICLE. HE DENIED ME
23 CONSENT TO SEARCH.

24 I EXPLAINED TO HIM, BECAUSE HE SAID THAT THE
25 VEHICLE WASN'T HIS, AND A LOT OF PEOPLE DON'T KNOW THAT

1 IF THEY ARE IN CONTROL OF THAT VEHICLE, THEY CAN GIVE
2 CONSENT TO SEARCH THAT VEHICLE, AND I WANTED HIM TO
3 UNDERSTAND THAT. BUT HE KEPT GETTING DEFENSIVE WITH ME.
4 SO AS THAT ROCKED ON, I JUST TOOK THAT AS A NO. I ASKED
5 HIM: SO YOU ARE SAYING NO? AND HE SAID NO.

6 SO THEN I GOT MY CANINE PARTNER OUT OF THE CAR, I
7 RAN MY CANINE PARTNER AROUND THE VEHICLE, WHO DID ALERT
8 ON THE VEHICLE, AND THEN I DID SEARCH IT.

9 Q. LET'S TALK JUST A LITTLE BIT ABOUT YOUR CANINE
10 PARTNER. WHAT'S THE DOG'S NAME?

11 A. DASHER.

12 Q. HAVE YOU OR DASHER RECEIVED ANY SPECIALIZED
13 TRAINING?

14 A. YES, SIR. DASHER, WHEN I GOT DASHER, HE WAS
15 CERTIFIED THROUGH CHARLIE KIRCHNER (PHONETIC), OUT OF
16 INMAN, IN NARCOTICS, TRACKING, AND AGGRESSION. HE SPENT
17 SOME TIME IN HUNGARY DOING SOME OF HIS AGGRESSION WORK.
18 HE CAME TO THE STATES WITH MR. KIRCHNER AND DONE HIS
19 DRUGS AND HIS TRACKING WORK, I BELIEVE THAT WAS 12
20 WEEKS. AND THEN I CAME TO MR. KIRCHNER AND I STARTED
21 TRAINING WITH THE DOG, THE DOG AND ME TRAINED FOR
22 ANOTHER ADDITIONAL TWO WEEKS ON TOP OF THAT.

23 Q. AND WHAT TYPE OF DRUGS IS DASHER TRAINED TO
24 SEARCH OUT OR IDENTIFY?

25 A. COCAINE, MARIJUANA, HASH, METH, AND MARIJUANA.

1 Q. AND WHAT TYPE OF INDICATORS DOES DASHER GIVE WHEN
2 HE DETECTS ONE OF THOSE DRUGS YOU JUST MENTIONED?

3 A. HE'S AN AGGRESSIVE ALERT DOG.

4 Q. WHAT DOES AGGRESSIVE ALERT MEAN?

5 A. IT CAN GO FROM HIM SCRATCHING TO HIM BITING AT
6 IT, TRACKING, LITERALLY TRYING TO GET TO THE ILLEGAL
7 DRUGS.

8 Q. ON THIS PARTICULAR STOP, TAKE US THROUGH HOW YOU
9 GOT DASHER READY TO RUN THE PURSUIT.

10 A. FROM OUT OF MY VEHICLE, THE WHOLE PROCESS?

11 Q. YES.

12 A. WELL, WHAT WE DO IS, ONCE I GET THE DOG OUT, I'M
13 TRAINED TO LET THE DOG BREAK, LET HIM USE THE BATHROOM
14 IF HE HAS TO OR WHATEVER. I GOT HIM OUT OF THE BACK
15 SEAT OF MY CAR. THE WHOLE BACK SEAT IS A KENNEL. I
16 TOOK HIM OUT OF THAT, I BROKE HIM, I LET HIM USE THE
17 BATHROOM, AND I BROUGHT HIM TO THE VEHICLE.

18 AND WHAT I PRACTICE IS, IF THE VEHICLE IS
19 RUNNING, I ASK PERMISSION TO TURN THE VEHICLE OFF
20 BECAUSE OF SAFETY CONCERNS FOR THE DOG WITH THE EXHAUST,
21 THE EXHAUST PIPE; THAT WAY IF HIS NOSE TOUCHES IT, IT
22 WON'T BURN HIM AND YOU WON'T HAVE TO WORRY ABOUT ANY
23 KIND OF FUMES OR ANYTHING. SO I DONE THAT --

24 AND DO YOU WANT ME TO GO THROUGH THE WHOLE THING,
25 THE WHOLE RUNNING AROUND THE CAR AND EVERYTHING?

1 Q. PLEASE.

2 A. ONCE I GOT PERMISSION TO TURN THE VEHICLE OFF, I
3 FOUND IT KIND OF FUNNY. USUALLY HE'LL BE LOOKING AROUND
4 AND SEEING WHAT'S GOING ON AND EVERYTHING. THIS TIME HE
5 ACTUALLY WANTED TO JUMP UP ON THE SIDE OF THE CAR AS I
6 WAS TURNING THE CAR OFF. SO I MADE HIM GET DOWN. HE
7 DONE THAT TWICE.

8 I TURNED THE VEHICLE OFF. I BROUGHT HIM TO THE
9 FRONT OF THE CAR AND I STARTED MY RUN WITH THE DOG. HE
10 WENT DOWN THE SIDE, JUMPED ON THE DRIVER'S SIDE, WENT ON
11 AROUND, COME BACK AROUND. HE DONE THAT AGAIN ON THE
12 DRIVER'S SIDE. AND THEN ONCE HE GOT TO THE REAR OF THE
13 VEHICLE, HE ACTUALLY JUMPED ONTO THE TRUNK OF THE CAR
14 AND GAVE TWO SCRATCHES, BROUGHT HIMSELF DOWN, AND THEN
15 WE FINISHED THE OUTER SNIFF.

16 Q. WHEN HE JUMPED ON THE SIDE OF THE CAR ON THE
17 DRIVER'S SIDE AND ON THE TRUNK, DID THAT INDICATE
18 ANYTHING TO YOU?

19 A. YES, SIR, I DID CONSIDER THAT AS AN ALERT. HE
20 ACTUALLY -- HIS HEAD ACTUALLY WENT INSIDE THE VEHICLE ON
21 THE DRIVER'S SIDE, AND THEN HE ACTUALLY DONE WHAT HE'S
22 TRAINED TO DO, HE ACTUALLY MADE TWO SCRATCHES ON THE
23 TRUNK OF THE VEHICLE.

24 Q. OKAY. FIRST, WITH REGARD TO THE TRUNK -- OR
25 EXCUSE ME -- WITH REGARD TO THE DRIVER'S SIDE, WAS

1 ANYTHING FOUND BASED ON THAT ALERT?

2 A. AS I WAS TURNING THE VEHICLE OFF, IT LOOKED LIKE
3 TO ME THERE WERE MARIJUANA RESIDUE AND SEEDS ACTUALLY IN
4 THE FLOORBOARD THAT I COULD SEE. THERE WAS A LOT OF IT
5 IN THE DRIVER'S SIDE FLOORBOARD.

6 Q. OKAY.

7 A. AND THAT WAS IN OPEN VIEW.

8 Q. ALL RIGHT. AND WHAT ABOUT ANYWHERE ELSE THE DOG
9 ALERTED YOU TO, DID YOU FIND ANYTHING ANYWHERE ELSE?

10 A. I...

11 Q. AFTER YOU SAW THAT IN THE DRIVER'S SIDE -- LET ME
12 PHRASE IT ANOTHER WAY -- DID YOU THEN OPEN UP THE TRUNK?

13 A. AFTER HE ALERTED TO THE VEHICLE?

14 Q. YES.

15 A. I'D OPENED -- I THINK I WENT TO THE DRIVER'S SIDE
16 FIRST AND THEN I WORKED MY WAY AROUND TO THE TRUNK, YES,
17 SIR, I DID. I DID OPEN THE TRUNK AFTER I PUT MY DOG AND
18 EVERYTHING UP.

19 Q. AND WHAT DID YOU DO WHEN YOU GOT TO THE TRUNK?

20 A. I STARTED LOOKING THROUGH THE TRUNK, PULLED OUT A
21 COUPLE OF CASES OF WATER. THEN AT THAT POINT, TO ME IT
22 WAS KIND OF FUNNY. YOU HAD A THIRD-PARTY-OWNED VEHICLE,
23 TWO GUYS THAT ARE ACTING REALLY, REALLY NERVOUS. SO I
24 WANTED TO CHECK JUST TO MAKE SURE THE CAR WASN'T STOLEN,
25 SO I CALLED MR. HOOD BACK UP AND ASKED HIM IF HE KNEW

1 THE OWNER OF THE VEHICLE.

2 AND THEN AFTER THAT I TRIED TO RUN THE V.I.N.
3 NUMBER, BUT OUR DISPATCH WAS, I GUESS THEY MIGHT HAVE
4 BEEN A LITTLE BUSY OR WHATEVER, SO I CONTINUED SEARCHING
5 THE VEHICLE. WHEN I DONE THAT, I WENT TO THE BACK OF
6 THE VEHICLE, OPENED UP THE BACK DOOR, AND I STARTED
7 GETTING BAGS OUT.

8 WHEN I STARTED GETTING THE BAGS OUT, I WANTED TO
9 KNOW EXACTLY WHO, WHO BELONGED TO WHAT BAG, OR WHAT BAG
10 BELONGED TO WHO. I WOULD PICK A BAG UP AND ASKED WHO IT
11 BELONGED TO.

12 MR. WALLACE WAS SITTING IN MY CAR, MR. HOOD WAS
13 STANDING OUTSIDE. THEY I.D.'D THE BAG -- AS I WAS
14 GETTING THE BAGS OUT, THEY I.D.'D THEM AS BEING THEIRS
15 OR NOT THEIRS. I WORKED MYSELF AROUND TO THE
16 PASSENGER'S SIDE.

17 I GOT OUT ANOTHER BAG AND ASKED. NOBODY CLAIMED
18 THE BAG AT FIRST. THEN FINALLY AT THAT TIME SERGEANT
19 COLEGROVE WAS WITH ME. SERGEANT COLEGROVE MADE THE
20 STATEMENT THAT HE CLAIMED IT AND ---

21 MS. EARLE: OBJECTION, YOUR HONOR. I WOULD
22 OBJECT TO ---

23 THE COURT: I'LL SUSTAIN THE OBJECTION.
24 DON'T STATE WHAT THE OTHER OFFICER SAID.

25 THE WITNESS: AT THAT TIME THE BAG WAS

1 CLAIMED BY MR. WALLACE. I SET THE BAG DOWN AND I
2 STARTED SEARCHING THE BAG. I FOUND A SILVER, JUST A BAG
3 LIKE YOU WOULD GET AT A, JUST A PLASTIC BAG, A SILVER
4 PLASTIC BAG THAT WAS TIED UP. I UNTIED THE BAG, I
5 LOOKED INSIDE OF IT, AND I FOUND A WHITE POWDER
6 SUBSTANCE IN IT THAT I BELIEVED TO BE COCAINE AT THE
7 TIME.

8 BY MR. STOUDEMIRE:

9 Q. OKAY. AND WHY DID YOU PICK THAT PARTICULAR BAG
10 TO SEARCH FIRST?

11 A. NOBODY CLAIMED IT. AT FIRST IT WAS JUST LIKE A
12 BAG THAT WAS IN THE CAR. AND THEN FINALLY, AFTER
13 SEVERAL TIMES OF ASKING WHOSE BAG IT IS, POINTING AT THE
14 BAG, WHOSE IS IT, FINALLY MR. WALLACE, HE CLAIMED THE
15 BAG, AND I JUST STARTED THERE.

16 TO ME THAT SOUNDED -- THAT WAS JUST -- THAT
17 WASN'T NORMAL. YOU KNOW -- IF YOU TRAVEL, YOU KNOW WHAT
18 BAGS YOU TRAVEL WITH, AND I DON'T HAVE A PROBLEM SAYING
19 "THAT'S MY BAG" UNLESS THERE WOULD BE SOMETHING ILLEGAL
20 WITH IT, OR IN THE BAG.

21 MR. STOUDEMIRE: YOUR HONOR, MAY I APPROACH?

22 THE COURT: YES, SIR.

23 MR. STOUDEMIRE: THANK YOU.

24 BY MR. STOUDEMIRE:

25 Q. OFFICER, I'M GONNA SHOW YOU WHAT HAS BEEN

1 PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER TWO. CAN YOU
2 IDENTIFY THAT FOR ME, PLEASE?

3 A. YES, SIR. THIS IS THE SUBSTANCE THAT WAS FOUND
4 IN THE SILVER BAG THAT DAY.

5 Q. AND HOW DO YOU KNOW THAT THAT'S THE SUBSTANCE YOU
6 FOUND IN THE CAR THAT DAY?

7 A. BECAUSE THAT SUBSTANCE WAS TAKEN FROM THAT BAG
8 AND PLACED INTO EVIDENCE, AND THIS WAS BROUGHT INTO
9 COURT TODAY FOR TRIAL HERE TODAY.

10 Q. IS THERE ANYTHING ON THAT CONTAINER THAT
11 SIGNIFIES THAT YOU WERE THE ONE THAT OBTAINED THAT
12 PARTICULAR BAG?

13 A. OTHER THAN HAVING MR. WALLACE'S NAME HERE -- OH,
14 I'M SORRY -- IT'S GOT MY NAME ON IT ON THE OTHER SIDE --
15 I APOLOGIZE -- AND THE DAY THAT I SEALED IT.

16 Q. OKAY. AND WHAT DATE WAS THAT?

17 A. SEPTEMBER 14TH, 2005, AND ALSO THE CASE NUMBER.

18 Q. AND AFTER YOU GOT THIS BAG, SEALED IT AND SIGNED
19 IT, WHAT DID YOU DO WITH IT THEN?

20 A. I PLACED IT INTO EVIDENCE FOR OUR EVIDENCE TECH.

21 Q. OKAY. AND THE EVIDENCE TECH IS WHO?

22 A. SERGEANT PATRICK MERCK.

23 Q. OKAY. AND YOU TURNED IT OVER TO PATRICK MERCK?

24 A. YES, SIR.

25 MR. STOUDEMIRE: CORPORAL, THAT'S ALL THE

1 QUESTIONS THAT I WOULD HAVE AT THIS TIME. PLEASE ANSWER
2 ANY THAT MS. EARLE HAS.

3 THE COURT: CROSS-EXAMINATION?

4 CROSS-EXAMINATION BY MS. EARLE:

5 Q. ALL RIGHT. OFFICER CROMPTON, YOU SAID THAT YOU
6 STOPPED THIS VEHICLE FOR DRIVING LEFT OF CENTER.
7 EXACTLY WHAT DID THIS VEHICLE DO?

8 A. CROSSED THE CENTERLINE.

9 Q. AND JUST CHANGING LANES OR ---

10 A. NO, NO, MA'AM. HE ACTUALLY WENT ACROSS THE
11 CENTERLINE AND THEN BROUGHT IT BACK INTO THE LANE OF
12 TRAVEL THAT HE WAS IN AT THE BEGINNING.

13 Q. AND HOW LONG WAS HE ACROSS THE CENTERLINE?

14 A. I COULDN'T SAY. A COUPLE SECONDS.

15 Q. HOW LONG DID YOU OBSERVE THE VEHICLE?

16 A. A COUPLE MILES, A MILE.

17 Q. ALL RIGHT. AND WERE YOU TRAVELING BEHIND THE
18 VEHICLE, BESIDE IT, IN FRONT OF IT?

19 A. BEHIND THE VEHICLE.

20 Q. ALL RIGHT. AND YOU SAID YOU TRAVELED FOR A
21 COUPLE OF MILES BEHIND IT?

22 A. IT WAS SOMETHING LIKE THAT.

23 Q. ALL RIGHT. AND HOW MANY TIMES DID THIS VEHICLE
24 CROSS THE CENTERLINE?

25 A. ONE TIME, AND THEN HE ALMOST DONE IT TWO MORE

1 TIMES.

2 Q. WHAT DOES ALMOST MEAN?

3 A. HE DIDN'T ACTUALLY CROSS THE LINE.

4 Q. BUT HE WAS STILL IN HIS LANE OF TRAVEL?

5 A. YES, MA'AM.

6 Q. ALL RIGHT. AND IS THERE ANYTHING ILLEGAL ABOUT
7 DRIVING CLOSE TO THE CENTER OF THE LINE?

8 A. SWERVING INSIDE YOUR LANE COULD BE CONSISTENT TO
9 AN IMPAIRED DRIVER.

10 Q. ALL RIGHT. AND THEN, WHEN YOU STOPPED HIM, DID
11 YOU FIND HIM TO BE IMPAIRED?

12 A. AS I WAS TALKING TO HIM, NO, MA'AM, I DIDN'T.

13 Q. ALL RIGHT. AND IN YOUR EXPERIENCE, DO
14 NON-IMPAIRED PEOPLE SOMETIMES LOSE CONCENTRATION AND
15 DRIFT FROM SIDE TO SIDE WITHIN THEIR LANE?

16 A. THEY COULD.

17 Q. AND THAT'S NOT INDICATIVE OF IMPAIRED DRIVING,
18 IT'S NOT INDICATIVE OF CRIMINAL ACTIVITY OF SOME SORT?

19 A. I DON'T UNDERSTAND WHAT YOU ARE REALLY SAYING.

20 Q. WELL, MY QUESTION IS: IF A PERSON IS DRIFTING
21 FROM SIDE TO SIDE WITHIN THEIR LANE, FOR LACK OF PAYING
22 ATTENTION, IS THAT INDICATIVE OF IMPAIRED DRIVING OR
23 INDICATIVE OF CRIMINAL ACTIVITY?

24 A. IT COULD BE, YES, MA'AM.

25 Q. AND ARE THERE TIMES WHEN IT'S NOT CRIMINAL

1 ACTIVITY?

2 A. YES, MA'AM.

3 Q. THANK YOU.

4 NOW, YOU SAID THAT THE WAY HE STOPPED HIS VEHICLE
5 WAS SUSPICIOUS?

6 A. YES, MA'AM.

7 Q. AND WHAT, HOW CLOSE TO THE OFF RAMP, TO THE EXIT
8 RAMP WERE YOU AT THE TIME THAT YOU STOPPED THIS VEHICLE?

9 A. WHEN I INITIATED MY LIGHTS, APPROXIMATELY A
10 HUNDRED YARDS, SOMEWHERE IN THERE.

11 Q. AND HE DROVE ONTO THE RAMP RATHER THAN PULLING
12 OFF ON THE SIDE OF THE INTERSTATE?

13 A. YES, MA'AM, HE DID EXIT ON THE RAMP.

14 Q. AND IN YOUR EXPERIENCE IS IT MORE SAFE TO STOP ON
15 THE SHOULDER OF AN INTERSTATE HIGHWAY OR TO PULL OFF ON
16 THE SHOULDER OF A RAMP?

17 A. THE RAMP WOULD BE SAFER.

18 Q. ALL RIGHT. AND SO THAT IS WHAT HE, IN FACT, DID?

19 A. YES, MA'AM. BUT THE WAY HE DONE IT IS WHAT I WAS
20 TALKING ABOUT.

21 Q. THE FACT THAT HE TAPPED HIS BRAKES MORE THAN ONCE
22 AND DIDN'T PULL OVER IN THE MANNER THAT YOU FELT HE
23 SHOULD HAVE?

24 A. THAT WAS NORMAL TO ANY OTHER TRAFFIC STOP THAT I
25 MADE, YES, MA'AM.

1 Q. SO YOU HAVE NEVER HAD ANOTHER DRIVER MAKE A STOP
2 THAT YOU CONSIDERED TO BE ODD?

3 A. NO, MA'AM. I HAVE.

4 Q. ALL RIGHT. AND WHAT SORT OF TRAINING HAVE YOU
5 HAD AS AN OFFICER TO DETERMINE WHAT NORMAL DRIVING STOPS
6 WOULD BE?

7 A. WE WENT OVER THAT IN THE INTERDICTION CLASS THAT
8 I'VE TAKEN. JUST FOR EXAMPLE, HIM DOING WHAT HE DONE
9 WOULD BE CONSISTENT TO SOMEONE WHO'S DEBATING ON WHETHER
10 OR NOT TO STOP AT ALL. WHY ---

11 Q. OFFICER, LET ME INTERRUPT FOR JUST A MINUTE. DO
12 YOU HAVE THE ABILITY TO TELL WHAT OTHER PEOPLE ARE
13 THINKING?

14 A. NO, MA'AM.

15 Q. ALL RIGHT. AND SO -- AND DO YOU KNOW THE DRIVING
16 HABITS OF ALL THE PEOPLE THAT YOU STOP?

17 A. NO, MA'AM.

18 Q. SO IS IT INCONSISTENT WITH BEING NERVOUS TO TAP
19 YOUR BRAKES?

20 A. IT COULD BE. IT COULD BE.

21 Q. NOW, ONCE YOU STOPPED HIM, YOU SAID IT TOOK A
22 LONG WHILE FOR HIM TO FIND THE INFORMATION. IN
23 ACTUALITY, IT ONLY TOOK THAT TWO MINUTES FOR HIM TO COME
24 UP WITH THE LICENSE, REGISTRATION, AND PROOF OF
25 INSURANCE; IS THAT CORRECT?

1 A. YES, MA'AM.

2 Q. AND DID HE PROVIDE YOU WITH ALL THAT INFORMATION
3 THAT YOU REQUESTED?

4 A. YES, MA'AM, I BELIEVE SO.

5 Q. DID HE TRY TO HIDE ANY OF IT FROM YOU?

6 A. NO.

7 Q. ALL RIGHT. AND YOU CONSIDERED IT SUSPICIOUS
8 BECAUSE HIS PASSENGER DIDN'T ASSIST HIM IN LOOKING FOR
9 THIS INFORMATION?

10 A. YES, MA'AM.

11 Q. AND DURING YOUR TRAFFIC STOP DID YOU DETERMINE
12 WHO THIS VEHICLE BELONGED TO?

13 A. YES, MA'AM. IT WAS A ---

14 Q. DID IT BELONG TO EITHER THE PASSENGER OR THE
15 DRIVER?

16 A. NO, MA'AM.

17 Q. AND IS IT POSSIBLE THAT ONE OF -- THAT THEY DID
18 HAVE TO LOOK FOR THE PROOF OF INSURANCE AND THE
19 REGISTRATION SINCE IT WAS A VEHICLE THAT DID NOT BELONG
20 TO THEM?

21 A. YES, MA'AM. IT WAS OBVIOUS THAT HE HAD TO LOOK
22 FOR IT. HE WAS FUMBLING AROUND WITH A LOT OF PAPERWORK.

23 Q. AND WHAT YOU CHARACTERIZE AS FUMBLING IS SOMEONE
24 SEARCHING FOR THE PAPERWORK THAT YOU'VE ASKED FOR?

25 A. YES, MA'AM.

1 Q. AND THE PASSENGER SAT QUIETLY AND DIDN'T
2 INTERFERE WITH ANYTHING YOU WERE TRYING TO DO; IS THAT
3 CORRECT?

4 A. YES, MA'AM.

5 Q. AND THIS PASSENGER YOU IDENTIFIED AS MR. HERMAN
6 HOOD?

7 A. YES, MA'AM.

8 Q. DO YOU KNOW WHERE HE IS NOW?

9 A. NO, MA'AM, I DO NOT.

10 Q. AND THEN WHEN YOU PUT MR. WALLACE IN YOUR
11 VEHICLE, DID HE COOPERATE WITH YOU?

12 A. YES, MA'AM.

13 Q. WHEN YOU RAN HIS DRIVER'S LICENSE, DID IT COME
14 BACK SUSPENDED?

15 A. NO, MA'AM.

16 Q. DID YOU RUN THE TAG ON THE VEHICLE?

17 A. I DON'T BELIEVE I DID. I DON'T THINK I DID.

18 Q. BUT YOU WERE SUSPICIOUS THAT THE CAR MAY BE
19 STOLEN AND YOU DIDN'T ASK FOR THE TAG TO BE RUN?

20 A. AS THE STOP PROCEEDED, YES, I WAS, AND I WAS
21 GOING TO RUN THE V.I.N. NUMBER.

22 Q. WHY NOT RUN THE TAG? WOULD THAT NOT TELL YOU ---

23 A. I COULD EITHER WAY, IT DOESN'T REALLY MATTER. I
24 WAS OUTSIDE THE VEHICLE. I CHOSE TO RUN THE V.I.N.
25 NUMBER.

1 Q. ALL RIGHT. AND THEN YOU SAID IN A NORMAL STOP A
2 PERSON BECOMES LESS NERVOUS. HOW DO YOU DETERMINE IF
3 SOMETHING IS NORMAL, IF A STOP IS NORMAL, IF A PERSON IS
4 NORMAL? HOW DO YOU DETERMINE ---

5 A. WELL, SAYING A NORMAL STOP, IF YOU ARE RIDING
6 WITH SOMEONE, AND YOU HAVE BEEN WITH THAT PERSON
7 THROUGHOUT YOUR WHOLE TRIP, YOU'RE GONNA KNOW HOW MANY
8 DAYS YOU STAYED AT THAT PLACE ---

9 Q. MR. CROMPTON, I'M NOT ASKING THAT ---

10 MR. STOUDEMIRE: YOUR HONOR, SHE'S NOT
11 LETTING HIM FINISH HIS ANSWER.

12 THE COURT: DON'T INTERRUPT HIM. YOU ASKED
13 HIM A QUESTION, LET HIM ANSWER IT. IF HE'S NOT BEING
14 RESPONSIVE TO YOUR QUESTION, ASK ME AND I'LL TELL HIM TO
15 BE RESPONSIVE. BUT DON'T INTERRUPT HIM, OKAY?

16 MS. EARLE: ALL RIGHT. YOUR HONOR ---

17 THE COURT: YOU ASKED A QUESTION, HE'S GONNA
18 ANSWER IT.

19 PLEASE ANSWER THE QUESTION.

20 MS. EARLE: --- HE'S NOT BEING RESPONSIVE TO
21 THE QUESTION THAT I ASKED.

22 THE COURT: OKAY. ASK YOUR QUESTION.

23 MS. EARLE: OKAY.

24 BY MS. EARLE:

25 Q. I ASKED, IN A NORMAL STOP -- HOW DO YOU DETERMINE

1 WHAT IS NORMAL NERVOUSNESS?

2 A. I WAS GOING TO EXPLAIN THAT TO YOU.

3 AS THE STOP, IF YOU ARE IN A STOP, WHEN YOU FIRST
4 MAKE CONTACT WITH AN INDIVIDUAL DRIVING, OF COURSE
5 THEY'RE GONNA BE NERVOUS. YOU'VE GOT A POLICE OFFICER
6 THERE, YOU'VE GOT FLASHING LIGHTS BEHIND YOU. OF
7 COURSE. BUT AS THE STOP GOES ON, AND YOU GIVE THEM A
8 WARNING TICKET OR A TICKET, THEN THAT PERSON, AS YOU ARE
9 TALKING TO THEM, THEY'RE GONNA START CALMING DOWN.

10 IF YOU ARE TRYING TO HIDE SOMETHING, YOU'RE NOT
11 GONNA DO THAT. YOU'RE GONNA START -- BECAUSE YOU DON'T
12 WANT TO BE THERE, YOU'RE GONNA START GETTING MORE
13 NERVOUS, AND THAT'S WHAT MR. WALLACE DONE.

14 Q. ALL RIGHT. AND SO IS IT YOUR TESTIMONY THAT
15 NORMAL PEOPLE WHO HAVE NOTHING TO HIDE WANT TO BE THERE
16 AND THEREFORE THEY'RE NOT GONNA BE NERVOUS?

17 A. NOBODY WANTS TO BE STOPPED BY THE POLICE BUT -- I
18 MEAN, I'M NOT SAYING THAT THEY WANT TO BE THERE, BUT I'M
19 SAYING THAT AS THE STOP PROCEEDS, THEY'RE EITHER GONNA
20 GET A TICKET OR THEY'RE NOT GONNA GET A TICKET OR
21 THEY'RE GONNA GET A WARNING ONE WAY OR THE OTHER. THEIR
22 NERVOUSNESS IS GONNA START CALMING DOWN. I MEAN, YOUR
23 AVERAGE PERSON.

24 Q. ALL RIGHT. DID YOU WRITE A TICKET TO
25 MR. WALLACE?

1 A. YES, MA'AM, I DID.

2 Q. AND IN YOUR EXPERIENCE WHEN SOMEONE GETS A
3 TICKET, DOES THAT USUALLY MAKE THEM CALM?

4 A. I'VE HAD PEOPLE SAY "THANK YOU" WHEN I GIVE THEM
5 A TICKET, SO, I MEAN, YES, MA'AM.

6 Q. HAVE YOU HAD OTHER PEOPLE THAT WEREN'T SO CALM
7 ABOUT GETTING A TICKET?

8 A. OH, OF COURSE. OF COURSE. BUT AT THAT POINT
9 IT'S NOT SO MUCH BEING NERVOUS BECAUSE I'M BACK THERE,
10 NOW THEY'RE MAD BECAUSE THEY GOT A TICKET, SO IT GOES
11 INTO A WHOLE DIFFERENT, WHOLE DIFFERENT THING.

12 Q. AND AFTER YOU GAVE HIM THE TICKET, THEN YOU ASKED
13 HIM IF YOU COULD SEARCH HIS VEHICLE?

14 A. YES, MA'AM.

15 Q. IS THAT CORRECT?

16 A. YES, MA'AM.

17 Q. AND WOULD THAT TEND TO CONCERN MOST PEOPLE, DO
18 YOU THINK, TO HAVE AN OFFICER SUSPECT THAT THERE MAY BE
19 SOMETHING IN THEIR VEHICLE, WOULDN'T THAT MAKE EVEN A
20 PERSON WITH NOTHING TO HIDE NERVOUS?

21 A. I'VE SEEN THAT GO BOTH WAYS. I'VE ASKED FOR
22 CONSENT TO SEARCH A VEHICLE AND PEOPLE JUST, "YEAH, GO
23 HAVE AT IT. I'LL OPEN THE TRUNK FOR YOU. I'LL OPEN THE
24 DOORS FOR YOU." AND THEN I'VE HAD PEOPLE GET MORE
25 NERVOUS, LIKE WHAT YOU ARE SAYING, YES, MA'AM.

1 Q. AND SOMETIMES PEOPLE GET NERVOUS WHEN THEY HAVE
2 NOTHING IN THE VEHICLE; IS THAT CORRECT?

3 A. YES, MA'AM.

4 Q. AND SOMETIMES PEOPLE OPEN THEIR TRUNK, OPEN THEIR
5 SUITCASES AND SHOW YOU THEIR ILLEGAL ITEMS, DON'T THEY?

6 A. YES, MA'AM.

7 Q. SO THAT'S NOT NECESSARILY INDICATIVE OF HAVING
8 ANYTHING TO HIDE. IT COULD JUST BE THAT SOME PEOPLE GET
9 NERVOUS AROUND POLICE OFFICERS.

10 A. IT COULD BE.

11 Q. HOW MANY POLICE OFFICERS WERE PRESENT DURING THIS
12 STOP?

13 A. THREE.

14 Q. AND YOUR CANINE DOG; IS THAT CORRECT?

15 A. YES, MA'AM.

16 Q. AND ALL OF THEM WERE IN UNIFORM?

17 A. WELL, THEY WERE IDENTIFIED AS POLICE OFFICERS,
18 YES.

19 Q. EVERYONE DRESSED SO THAT YOU WOULD KNOW THEY WERE
20 A POLICE OFFICER?

21 A. YES, MA'AM.

22 Q. AND WITH WEAPONS?

23 A. YES, MA'AM.

24 Q. FLASHING BLUE LIGHTS?

25 A. MY VEHICLE WAS; THAT WAS THE ONLY ONE WITH THE

1 LIGHTS ON.

2 Q. OKAY. AND THEN, WHEN YOU GOT OUT YOUR, THE DRUG
3 DOG, DASHER, YOU SAID THAT HE IS AN AGGRESSIVE ALERT
4 DOG ---

5 A. YES, MA'AM.

6 Q. --- AND THAT HE BITES AND SCRATCHES TO INDICATE
7 THAT SOMETHING IS PRESENT?

8 A. YES, MA'AM.

9 Q. IS THAT CORRECT?

10 A. YES, MA'AM.

11 Q. ALL RIGHT. NOW, I NOTICED ON THE VIDEO THAT YOU
12 WERE DOING HAND SIGNALS WITH HIM. AND WHAT SORT OF
13 SIGNALS ARE THOSE?

14 A. WELL, IT'S NOT A SIGNAL. WHAT I'M DOING IS
15 PRESENTING WHERE I WANT HIM TO SMELL. IF YOU NOTICED, I
16 WOULD DO IT ACROSS THE SEAMS OF THE DOOR AND STUFF AND
17 THAT'S HOW HE'S TRAINED. I WOULD PRESENT AN ITEM TO HIM
18 AND THAT'S WHAT HE SMELLS.

19 Q. ALL RIGHT. SO WHEN YOU DO THIS (DEMONSTRATING)
20 AND HE JUMPS TOWARDS YOUR HAND, THAT'S AN ALERT?

21 A. NO, MA'AM. NO, MA'AM. I DIDN'T COUNT NONE OF
22 THAT AS AN ALERT, NO, MA'AM.

23 Q. OKAY. WHEN YOU ---

24 A. THAT'S JUST SOMETHING THAT I DO, THAT I JUST, I
25 MAKE SURE THAT HE'S FOCUSED IN ON ME, AND THEN I'LL

1 PRESENT THE VEHICLE, A CABINET, OR WHATEVER I WANT HIM
2 TO GO CHECK.

3 Q. ALL RIGHT. SO WHEN YOU ARE AT THE TRUNK OF THE
4 VEHICLE AND YOU DO YOUR HAND LIKE THIS (DEMONSTRATING)
5 AND HE JUMPS ON THE TRUNK, YOU CONSIDER THAT AN ALERT
6 WHEN YOUR HAND IS GOING THIS WAY (DEMONSTRATING) AND
7 THAT'S WHERE HE'S GOING?

8 A. WHEN I PRESENTED THE TRUNK TO HIM, HE JUMPED ON
9 THERE, YES, MA'AM, AND THEN HE GAVE TWO SCRATCHES. I DO
10 CONSIDER THAT AS AN ALERT.

11 Q. NOW, YOU ALSO SAID THAT WHEN YOU WERE TURNING THE
12 VEHICLE OFF, THAT YOU FOUND MARIJUANA RESIDUE AND SEEDS
13 ON THE FLOORBOARD OF THE VEHICLE?

14 A. WHAT LOOKED LIKE IT, YES, MA'AM.

15 Q. ALL RIGHT. AND WHERE ARE THOSE TODAY?

16 A. I DID NOT COLLECT NONE OF THOSE.

17 Q. WHY DID YOU NOT COLLECT ANY OF THAT?

18 A. I JUST DIDN'T, I DIDN'T DO IT.

19 Q. DO YOU TYPICALLY LEAVE ILLEGAL ITEMS IN VEHICLES?

20 A. NO, MA'AM.

21 Q. DURING YOUR SEARCH OF THE VEHICLE DID YOU FIND
22 ANYTHING ILLEGAL IN THE TRUNK OF THE VEHICLE?

23 A. NO, MA'AM, I DID NOT.

24 Q. AND WHAT HAPPENED TO THE ITEMS THAT WERE IN THE
25 TRUNK OF THE VEHICLE?

1 A. EVERYTHING EXCEPT FOR THE COCAINE WAS PLACED BACK
2 INTO THE VEHICLE.

3 Q. AND DO YOU STILL HAVE THE VEHICLE?

4 A. I -- I DON'T KNOW. I'D HAVE TO CHECK ON THAT.
5 I'M NOT SURE. IF WE DO, IT WOULD BE IN OUR IMPOUND LOT.
6 ALL THAT GOT TURNED OVER TO EVIDENCE AND LIEUTENANT
7 WASHINGTON, BUT I WOULD HAVE TO CHECK WITH THEM TO SEE
8 IF THE VEHICLE IS ACTUALLY STILL IN OUR IMPOUND.

9 Q. OKAY. WHEN YOU IDENTIFIED THIS BAG OF COCAINE,
10 YOU HAD SOME DIFFICULTY DETERMINING HOW YOU KNEW IT WAS
11 THE COCAINE THAT YOU CLAIMED TO HAVE FOUND IN THIS
12 VEHICLE. WHAT'S YOUR STANDARD PROCEDURE WHEN YOU
13 RECOVER DRUGS? WHAT DO YOU DO WITH -- WHEN YOU FIND
14 DRUGS IN A VEHICLE, WHAT DO YOU DO WITH THEM?

15 A. I DO THE -- I DO ALL THE PAPERWORK THAT NEEDS TO
16 BE DONE WITH IT. IF IT NEEDS TO BE SENT OFF, WE DO A
17 B.E.S.T. PACK, AND ALL THAT GETS TURNED OVER TO AN
18 EVIDENCE TECH OR AN EVIDENCE LOCKER.

19 Q. AND WHAT DO YOU DO TO IDENTIFY THOSE DRUGS?

20 A. THE ONLY THING I DIDN'T DO THIS TIME, I WAS
21 LOOKING AT ONE SIDE AND I DIDN'T FLIP IT OVER. AND THEN
22 ONCE I FLIPPED IN OVER AND STUFF, THEN I SEEN MY NAME IN
23 THE B.E.S.T. PACK THAT IT WAS IN.

24 Q. ALL RIGHT. BUT IS IT STANDARD PROCEDURE THAT YOU
25 PUT YOUR NAME AND THE DATE ON THE PACKAGE OR WAS THAT

1 UNUSUAL?

2 A. THE PACKAGE THAT I GAVE THE EVIDENCE TECH, YES,
3 MA'AM. THE PACKAGE THAT COME BACK TO ME HAD A LABEL
4 THAT, I'VE NEVER SEEN THAT LABEL THAT WAS PUT ON THERE I
5 TAKE IT FROM THE CHEMIST. I'VE NEVER SEEN THAT LABEL.
6 LIKE I SAID, THE ONLY THING THAT I DIDN'T DO, IT TOOK ME
7 A COUPLE SECONDS, I JUST FLIPPED IT OVER AND I SEEN THAT
8 THE ACTUAL NARCOTICS, THE ACTUAL COCAINE WAS STILL IN
9 THE BAG THAT I HAD SENT.

10 Q. AND WOULD YOU CONSIDER THAT YOU HAVING TO FLIP IT
11 OVER AND LOOK FOR THAT TO BE FUMBLING ON YOUR PART?

12 A. ME FLIPPING IT OVER? I GUESS YOU CAN SAY FUMBLE,
13 I SAY FLIP. I DON'T KNOW.

14 Q. ALL RIGHT.

15 A. I MEAN, NO, I WASN'T FUMBLING. I CONSIDER
16 FUMBLING AS ACTUALLY GOING THROUGH AND DOING THIS AND
17 DOING THAT. I DON'T CONSIDER THAT FUMBLING, NO, MA'AM.
18 YOU COULD.

19 MS. EARLE: THANK YOU. I DON'T HAVE ANY
20 FURTHER QUESTIONS.

21 THE COURT: ANY REDIRECT?

22 MR. STOUDEMIRE: JUST A COUPLE THINGS, YOUR
23 HONOR.

24 REDIRECT EXAMINATION BY MR. STOUDEMIRE:

25 Q. CORPORAL, YOU WERE ASKED ON CROSS-EXAMINATION

1 ABOUT THE REASON YOU STOPPED MR. WALLACE. DID
2 MR. WALLACE EVER CONTEST THE REASON YOU STOPPED HIM?

3 A. NO, SIR. HE ACTUALLY SAID THAT HE WAS PROBABLY
4 ON THE PHONE.

5 Q. OKAY. ALSO, YOU WERE ASKED ABOUT MR. WALLACE'S
6 BEHAVIOR. I BELIEVE YOU SAID IT ESCALATED. HOW DID IT
7 ESCALATE?

8 A. LIKE I SAID BEFORE, HE STARTED GETTING MORE
9 NERVOUS, AND THEN WHEN I ACTUALLY GAVE HIM THE TICKET
10 AND STUFF, HE -- AND I ASKED HIM IF THERE WAS ANYTHING
11 ILLEGAL IN THE CAR, HE AUTOMATICALLY GOT, YOU KNOW,
12 DEFENSIVE. AS WE WERE SITTING IN THERE AND I WAS
13 EXPLAINING THE TICKET AND EVERYTHING TO HIM, MR. WALLACE
14 ACTUALLY WAS LOOKING OUT OF THE PASSENGER'S SIDE WINDOW,
15 HE WASN'T EVEN LOOKING AT ME. ALMOST TO THE POINT THAT
16 HE DEFINITELY DID NOT WANT TO BE IN THE VEHICLE WITH ME.

17 MS. EARLE: OBJECTION, YOUR HONOR.

18 THE COURT: WHAT'S YOUR LEGAL OBJECTION?

19 MS. EARLE: MY OBJECTION IS THAT HE CAN'T
20 KNOW THE STATE OF MIND AND WHY THE DEFENDANT WAS LOOKING
21 OUT THE WINDOW.

22 THE COURT: I'LL SUSTAIN THE OBJECTION.

23 DISREGARD HIS COMMENT AS FAR AS WHAT HE
24 THOUGHT THE MAN WAS THINKING. HE HAS NO WAY OF KNOWING
25 THAT.

1 PLEASE PROCEED.

2 BY MR. STOUDEMIRE:

3 Q. AND WHEN MR. WALLACE WAS ACTING THE WAY YOU
4 DESCRIBE, WERE ANY OFFICERS THERE OTHER THAN YOURSELF?

5 A. NO, SIR, JUST ME.

6 Q. OKAY.

7 MR. STOUDEMIRE: THAT'S ALL I WOULD HAVE.
8 THANK YOU.

9 THE COURT: ANY RECROSS?

10 RECROSS-EXAMINATION BY MS. EARLE:

11 Q. AT WHAT POINT DID THE OTHER OFFICERS ARRIVE?

12 A. I CAN'T TELL YOU EXACTLY, EXACTLY WHAT TIME, BUT
13 IT WAS RIGHT BEFORE I GOT OUT OF THE VEHICLE AND WENT
14 TO -- RIGHT BEFORE I RAN THE DOG, SERGEANT COLEGROVE GOT
15 THERE AND THE VIDEO SHOWS ME I WAS TELLING HIM THAT THE
16 GUY INSIDE THE VEHICLE HAD JUST GOT OUT OF PRISON FOR
17 ASSAULTING A POLICE OFFICER. I WANTED HIM TO KNOW THAT.

18 Q. SO WHEN YOU WERE ASKING MR. WALLACE IF YOU COULD
19 SEARCH THE VEHICLE IS WHEN OTHER OFFICERS ARRIVED?

20 A. SHORTLY IN THERE. LIKE I SAID, I CAN'T TELL YOU
21 EXACTLY WHAT TIME HE GOT THERE, I CAN'T DO THAT. BUT IT
22 WAS SHORTLY THEREAFTER, AT THAT TIME, YES, MA'AM.

23 Q. THANK YOU.

24 A. BUT THE WINDOW ON THE PASSENGER'S SIDE WAS ROLLED
25 UP.

1 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.
2 THANK YOU VERY MUCH.

3 CALL YOUR NEXT WITNESS.

4 (WITNESS LEAVES STAND.)

5 **MR. STOUDEMIRE:** YOUR HONOR, COULD WE TAKE A
6 SHORT BREAK BEFORE OUR NEXT WITNESS?

7 **THE COURT:** COME UP HERE.

8 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
9 CONFERRED WITH THE COURT OUT OF THE PRESENCE
10 OF THE COURT REPORTER AND THE JURY.)

11 **THE COURT:** OKAY. LADIES AND GENTLEMEN OF
12 THE JURY, I'M GOING TO HAVE TO ASK YOU TO GO TO THE JURY
13 ROOM. I NEED TO TAKE UP SOME EVIDENCE QUESTIONS OUT OF
14 YOUR PRESENCE. AND THE REASON I DO THAT IS SO I'LL BE
15 FREE TO COMMENT ON THE FACTS. I'M NOT ALLOWED TO
16 COMMENT ON THE FACTS IN THE CASE. AND IN MAKING A
17 DECISION ON WHETHER SOME EVIDENCE IS ADMISSIBLE OR NOT
18 ADMISSIBLE, OCCASIONALLY I'LL WANT TO COMMENT ON THE
19 FACTS, SO I'LL ASK YOU TO LEAVE THE COURTROOM SO I MAY
20 COMMENT ON THE FACTS.

21 PLEASE DON'T DISCUSS THE CASE AMONGST
22 YOURSELVES, AND I'LL GET YOU BACK JUST AS SOON AS I MAKE
23 A DECISION ON THE EVIDENCE THAT IS GOING TO BE
24 PRESENTED. THANK YOU VERY MUCH.

25 (WHEREUPON, THE JURY LEFT THE COURTROOM AT

1 10:51 A.M.)

2 JACKSON V. DENNO HEARING:

3 THE COURT: DO YOU WANT TO CALL YOUR WITNESS
4 ON THE JACKSON V. DENNO HEARING?

5 MR. STOUDEMIRE: YOUR HONOR, WE WOULD CALL
6 OFFICER DALE COLEGROVE.

7 (WHEREUPON, THE WITNESS WAS SWORN BY THE
8 CLERK.)

9 WHEREUPON,

10 DALE COLEGROVE,
11 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
12 FOLLOWS:

DIRECT EXAMINATION BY MR. STOUDEMIRE:

13 Q. OFFICER COLEGROVE, WHERE DO YOU WORK?

14 A. OCONEE COUNTY SHERIFF'S OFFICE.

15 Q. HOW LONG HAVE YOU WORKED THERE?

16 A. GOING ON 14 YEARS.

17 Q. WERE YOU WORKING ON SEPTEMBER 14TH, 2005?

18 A. YES, SIR.

19 Q. AND DID YOU, WERE YOU AT THE STOP IN QUESTION
20 WITH MR. WALLACE?

21 A. YES, SIR.

22 Q. OKAY. ARE YOU FAMILIAR WITH MIRANDA WARNINGS?

23 A. YES, SIR.

24 Q. OKAY. AND ON THAT DATE AT THAT STOP DID YOU HAVE
25 OCCASION TO GIVE SUCH A WARNING TO THE DEFENDANT,

1 MR. WALLACE, IN THIS CASE?

2 A. YES, SIR, I DID.

3 Q. HOW WAS HE ADVISED?

4 A. I CARRY A MIRANDA RIGHTS CARD IN MY WALLET THAT I
5 READ OFF OF EVERY TIME.

6 Q. OKAY. AND IN THIS PARTICULAR CASE YOU READ OFF
7 THAT CARD?

8 A. YES, SIR.

9 Q. AND WHERE WAS MR. WALLACE WHEN THIS WAS DONE?

10 A. AT THAT TIME HE WAS OUTSIDE OF THE VEHICLE, OF
11 CORPORAL CROMPTON'S CAR.

12 Q. AND DID HE RESPOND TO YOUR QUESTIONS WHEN YOU
13 ASKED HIM FROM THE CAR?

14 A. ONCE I, ONCE I READ HIS MIRANDA, HE ADVISED ME
15 THAT HE WOULD SPEAK TO ME WITHOUT AN ATTORNEY PRESENT,
16 AND THEN I WENT INTO ASKING HIM SOME QUESTIONS REGARDING
17 THE COCAINE.

18 Q. OKAY. DID HE APPEAR TO UNDERSTAND EVERYTHING
19 THAT YOU ASKED HIM?

20 A. YES, SIR.

21 Q. AND WAS HIS SPEECH COHERENT, EASY TO UNDERSTAND?

22 A. YES, SIR.

23 Q. OKAY. WERE YOU ASKING QUESTIONS OF MR. WALLACE
24 OR MR. HOOD?

25 A. I WAS ASKING QUESTIONS OF MR. WALLACE.

1 Q. OKAY. AND DID HE RESPOND TO YOUR QUESTIONS?

2 A. YES, SIR.

3 Q. OKAY. AND IN RESPONSE TO YOUR QUESTIONS, DID HE
4 GIVE YOU ANY INDICATION REGARDING THE COCAINE AND WHOSE
5 IT WAS?

6 A. YES, SIR, HE DID.

7 Q. WHAT DID HE TELL YOU?

8 A. HE STATED TO ME THAT HE HAD PICKED THE COCAINE UP
9 AND WAS DELIVERING THE COCAINE TO NORTH CAROLINA. AND
10 AT THAT TIME, AND IT'S SOMETHING THAT I DO, I TRY TO
11 PROCEED WITH THE DELIVERY OF THE SUBSTANCE, WHATEVER IT
12 MAY BE, AND WE TRIED AND WE ACTUALLY FAILED TO MAKE THE
13 DELIVERY.

14 BUT WE ACTUALLY LEFT THE SCENE, COME BACK TO OUR
15 INVESTIGATOR'S OFFICE AT THE SHERIFF'S OFFICE AND
16 ATTEMPTED TO MAKE SOME PHONE CALLS AND TO CORROBORATE
17 WHAT HE WAS TELLING US IN AN ATTEMPT TO MAKE A DELIVERY
18 OF THE COCAINE, BUT IT WAS UNSUCCESSFUL, BUT HE DID
19 ATTEMPT TO DO THAT.

20 Q. OKAY. WAS HE DENIED ANYTHING DURING THIS
21 QUESTIONING?

22 A. NO, SIR.

23 Q. IF HE ASKED FOR A DRINK OF WATER OR TO GO TO THE
24 BATHROOM, ANYTHING LIKE THAT?

25 A. I DON'T REMEMBER IF HE ASKED TO GO TO THE REST

1 ROOM OR ANYTHING OF THAT NATURE. BUT IT'S JUST
2 PRACTICE. I MEAN, IF SOMEONE IS COOPERATING, OF COURSE
3 YOU WANT THEIR COOPERATION, SO I WOULD NEVER REFUSE
4 SOMEBODY THAT.

5 MR. STOUDEMIRE: JUDGE, AT THIS POINT WE
6 WOULD LIKE YOU TO VIEW THE PORTION OF THE TAPE THAT
7 CONTAINS THE STATEMENTS THAT OFFICER COLEGROVE IS
8 TALKING ABOUT IN MR. WALLACE'S CONFESSION JUST TO
9 DETERMINE ITS ADMISSIBILITY.

10 THE COURT: HAVE YOU GOT ANYTHING ELSE ON
11 IT?

12 MR. STOUDEMIRE: I DON'T THINK SO.

13 THE COURT: CROSS-EXAMINATION?

14 CROSS-EXAMINATION BY MS. EARLE:

15 Q. AT WHAT POINT DID YOU GIVE THESE MIRANDA RIGHTS?

16 A. AFTER THE COCAINE WAS FOUND.

17 Q. OKAY. SO AT THE POINT WHERE YOU WERE ASKING WHO
18 THE BAGS BELONGED TO, THE DEFENDANT HAD NOT BEEN ADVISED
19 OF HIS RIGHT TO REMAIN SILENT AT THAT TIME?

20 A. NO. IT WAS JUST BASICALLY, WE WAS TRYING TO GAIN
21 KNOWLEDGE OF WHO THE ITEMS IN THE VEHICLE BELONGED TO,
22 AND ACTUALLY THE CORPORAL WAS THE ONE POINTING BASICALLY
23 WITH THE BAG, HOLDING THE BAG, AND THEN POINTING AT BOTH
24 OF THE SUSPECTS AND THEY WOULD NOD THEIR HEAD "YES" OR
25 NOD THEIR HEAD "NO."

1 Q. AND YOU WERE PRESENT AT THAT TIME?

2 A. YES.

3 Q. ALL RIGHT. NOW, YOU SAID THAT THE DEFENDANT TOLD
4 YOU HE HAD PICKED UP THE COCAINE AND WAS DELIVERING IT
5 AND THAT YOU ACTUALLY TRIED TO DELIVER THE COCAINE.
6 THAT'S THE FIRST I'VE HEARD OF THIS. WHEN DID YOU TRY
7 TO DELIVER THE COCAINE?

8 A. ONCE HE WAIVED MIRANDA, WE WENT BACK, LIEUTENANT
9 KEN WASHINGTON, WHO IS HEAD OF NARCOTICS, AND HE WAS
10 TAKEN BACK AND SPOKE WITH THE SUBJECTS, AND I WANT TO
11 SAY MR. HOOD. I DIDN'T DEAL WITH MR. HOOD, BUT I DON'T
12 THINK HE WAS COOPERATIVE AT ALL, BUT MR. WALLACE WAS.
13 AND I WANT TO SAY THAT THERE WAS CONVERSATION, TELEPHONE
14 CONVERSATION ATTEMPTS MADE, BUT IT WAS UNSUCCESSFUL.

15 Q. AND WHERE DID THIS TAKE PLACE?

16 A. THERE WAS A COUPLE LOCATIONS. ONCE WE SECURE THE
17 SCENE, OF COURSE, TO MAKE SURE THAT EVERYBODY IS ALL
18 RIGHT, THERE'S NO TRAIL CARS OR ANYTHING OF THAT NATURE
19 TO BE HARMFUL TO US, WE EITHER COME UP TO THE SHERIFF'S
20 OFFICE OR GO TO DIFFERENT SPOTS OFF THE INTERSTATE. I
21 REALLY DON'T WANT TO SAY THOSE UNLESS I HAVE TO JUST FOR
22 OFFICER SAFETY REASONS, BUT WE HAVE CERTAIN LOCATIONS
23 THAT IS OFF THE INTERSTATE AND IN PRIVATE AREAS WHERE WE
24 WILL BASICALLY MEET AND TAPE-RECORD THOSE CALLS AND
25 ACTUALLY SEE WHAT TRANSPIRES OUT OF THEM.

1 Q. AND DID YOU DO THAT IN THIS CASE?

2 A. YES.

3 MS. EARLE: YOUR HONOR, WE HAVE ANOTHER
4 ISSUE THEN AT THIS POINT BECAUSE I HAVE NOT BEEN
5 PROVIDED WITH ANY INFORMATION CONCERNING WHAT THE
6 OFFICER JUST TESTIFIED TO. THIS IS THE FIRST I'VE
7 HEARD.

8 THE COURT: WELL, I MEAN, WHAT'S THAT ISSUE?
9 I ASSUME YOU FILED A RULE 5 AND A BRADY MOTION.

10 MS. EARLE: I DID.

11 THE COURT: ALL RIGHT. AND WHAT HAVE THEY
12 NOT PRODUCED UNDER RULE 5 OR BRADY THAT YOU THINK YOU
13 ARE ENTITLED TO?

14 MS. EARLE: ALL THIS INFORMATION THAT MY
15 CLIENT HAS ---

16 THE COURT: HAS IT BEEN REDUCED TO WRITING,
17 TO YOUR KNOWLEDGE?

18 MS. EARLE: I'M SORRY?

19 THE COURT: HAS IT BEEN REDUCED TO WRITING?

20 MS. EARLE: HE JUST SAID THEY TAPE-RECORDED
21 EVERYTHING.

22 THE COURT: THEY TAPE-RECORDED THE
23 CONVERSATION ---

24 MS. EARLE: THAT'S THE OFFICER'S TESTIMONY.

25 THE COURT: --- WHEN THEY WERE TRYING TO

1 DELIVER THE DRUGS?

2 MS. EARLE: THAT'S WHAT THE OFFICER JUST
3 TESTIFIED TO, YOUR HONOR.

4 THE COURT: OKAY. DO YOU ALL HAVE THE TAPE?

5 MR. STOUDEMIRE: NO, YOUR HONOR, WE DO NOT
6 HAVE THE TAPE.

7 THE COURT: OKAY. WHEN WERE YOU MADE AWARE
8 OF THE TAPE?

9 MR. STOUDEMIRE: YOUR HONOR, MY
10 UNDERSTANDING IS THAT THERE BASICALLY IS NO TAPE. THEY
11 ATTEMPTED TO MAKE CONTACT BUT WERE UNABLE TO DO SO.

12 THE WITNESS: THAT'S CORRECT.

13 MR. STOUDEMIRE: SO THE TAPE IS BASICALLY
14 GONNA BE A PHONE RINGING AND NOTHING ELSE.

15 THE WITNESS: THAT'S CORRECT.

16 MR. STOUDEMIRE: IF THERE IS A TAPE.

17 MS. EARLE: AND, WELL, I WOULD OBJECT TO THE
18 OFFICER BEING ALLOWED TO INTRODUCE ANY OF THAT INTO
19 TESTIMONY. EVEN IF YOU ---

20 THE COURT: WELL, I DON'T KNOW IF THEY ARE
21 GONNA OFFER THE TAPE; IF THERE'S NOTHING ON THE TAPE,
22 THERE WOULDN'T BE A REASON TO OFFER IT.

23 MS. EARLE: NO. BUT I WOULD OBJECT TO THE
24 OFFICER TESTIFYING AS TO MY CLIENT'S EFFORTS AS TO AN
25 ATTEMPT TO DELIVER, BECAUSE HAD I KNOWN SOME OF THIS

1 ADDITIONAL INFORMATION THAT'S NOW BEING PROVIDED, I
2 COULD HAVE PROVIDED DIFFERENT ADVICE TO MY CLIENT BEFORE
3 WE GOT TO TRIAL.

4 THE COURT: WELL, I UNDERSTAND. SO YOU ARE
5 OBJECTING TO THIS WITNESS TESTIFYING ABOUT TRYING, TO
6 THE COOPERATION THAT YOUR CLIENT GAVE TO THEM. IS THAT
7 MY UNDERSTANDING?

8 MS. EARLE: I'M OBJECTING TO THAT AT THIS
9 POINT BECAUSE OF THE TIME THAT THE MIRANDA WARNINGS WERE
10 GIVEN, AND I'M ALSO GOING TO OBJECT TO THE
11 IDENTIFICATION OF THE BAG BY MY CLIENT BECAUSE HE WAS
12 BEING INTERROGATED IN A CUSTODIAL SITUATION ---

13 THE COURT: WELL, FIRST LET ME BACK UP.
14 HAVE YOU FINISHED CROSS-EXAMINATION?

15 MS. EARLE: YES, SIR.

16 THE COURT: YOU STOPPED IN THE MIDDLE OF
17 CROSS AND I WASN'T AWARE OF -- YOU ARE THROUGH WITH
18 CROSS?

19 MS. EARLE: YES, SIR. I'M THROUGH ASKING
20 QUESTIONS OF THIS OFFICER.

21 THE COURT: ALL RIGHT. YOU HAVE GIVEN ME
22 MULTIPLE THINGS YOU OBJECT TO. LET'S DEAL WITH THE
23 FIRST ONE, I.E., THE TAPE WHEN THEY TRIED TO DELIVER THE
24 GOODS; IS THAT CORRECT? YOU ARE ASKING FOR THAT
25 TESTIMONY TO BE STRICKEN; IS THAT CORRECT?

1 MS. EARLE: ANY TESTIMONY REGARDING ---

2 THE COURT: OR NOT ALLOW THAT TESTIMONY TO
3 THE JURY?

4 MS. EARLE: YES, SIR.

5 THE COURT: NOW, WHAT PORTION OF THAT
6 TESTIMONY ARE YOU REFERRING TO? ALL OF IT, OR...

7 MS. EARLE: ANYTHING HAVING TO DO WITH WHAT
8 HAPPENED AFTER THE TRAFFIC STOP WAS COMPLETED, BECAUSE I
9 WAS NEVER TOLD THAT THEY CONTINUED QUESTIONING OF MY
10 CLIENT AFTER THAT POINT. I WAS PROVIDED WITH NO
11 INFORMATION TO INDICATE THAT ANYONE EVER TALKED TO MY
12 CLIENT AFTER THE ROADSIDE STOP ENDED.

13 THE COURT: OKAY. WHAT'S THE STATE'S
14 POSITION?

15 MR. STOUDEMIRE: YOUR HONOR, WE HAVE NO
16 PROBLEM NOT GOING INTO THAT. THAT'S NOT REALLY A
17 CONCERN TO US.

18 THE COURT: THEY SAY THEY ARE NOT GOING INTO
19 IT. THAT RESOLVES THE FIRST ISSUE. WHAT ARE THE
20 OTHERS?

21 MS. EARLE: ALL RIGHT. MY NEXT ISSUE IS I
22 WOULD OBJECT TO THE STATEMENT THAT MY CLIENT IDENTIFIED
23 THE BAG AS BEING HIS. THOSE ARE CUSTODIAL QUESTIONS,
24 INTERROGATIONS MADE OF MY CLIENT WITHOUT ANY MIRANDA
25 WARNINGS HAVING BEEN GIVEN. THIS OFFICER TESTIFIED THAT

1 HE DID NOT GIVE ANY MIRANDA WARNINGS UNTIL AFTER THOSE
2 QUESTIONS HAD BEEN ASKED AND THE BAG HAD BEEN SEARCHED.

3 MR. STOUDEMIRE: OFFICER CROMPTON HAS
4 ALREADY TESTIFIED THAT MR. WALLACE IDENTIFIED THE BAG.
5 THE VIDEO HAS ALREADY BEEN SHOWN. I THINK ALL OF THAT
6 IS ALREADY INTO EVIDENCE. IF THAT OBJECTION WAS GOING
7 TO BE MADE, IT NEEDED TO BE MADE WHEN OFFICER CROMPTON
8 WAS UP HERE, WHEN HE WAS TALKING ABOUT ABOUT THAT, NOT
9 NOW.

10 MS. EARLE: I THINK I HAVE THE RIGHT TO
11 RAISE THE OBJECTION AT THIS POINT, YOUR HONOR.

12 THE COURT: YOU DON'T WANT THIS OFFICER
13 TESTIFYING ABOUT THE BAG IDENTIFICATION; IS THAT
14 CORRECT? BECAUSE OFFICER CROMPTON HAS ALREADY TESTIFIED
15 TO IT. IT WAS ALSO ON VIDEO.

16 NOW, WHAT'S YOUR OBJECTION, OR WHAT
17 TESTIMONY ARE YOU ASKING ME NOT TO ALLOW, SPECIFICALLY
18 WHAT TESTIMONY FROM THIS OFFICER WHO IS ON THE WITNESS
19 STAND? I CAN'T DO ANYTHING ABOUT SOMETHING THAT'S
20 ALREADY HAPPENED.

21 MS. EARLE: I WOULD ASK THAT THIS OFFICER
22 NOT BE ALLOWED TO TESTIFY AS TO ANYTHING THAT WAS MADE
23 PRIOR TO A MIRANDA WARNING, ANY STATEMENTS MADE PRIOR TO
24 THE MIRANDA WARNINGS.

25 THE COURT: ALL RIGHT. WHAT'S THE STATE'S

1 POSITION?

2 MR. STOUDEMIRE: YOUR HONOR, I THINK
3 ANYTHING HE SAYS THAT HAPPENED PRIOR TO THAT MIRANDA
4 WARNING BEING GIVEN AT THAT POINT IS SIMPLY GONNA BE
5 REITERATED WHAT OFFICER CROMPTON HAS ALREADY TESTIFIED
6 TO. I THINK IT'S ALREADY INTO EVIDENCE.

7 THE COURT: I UNDERSTAND, BUT NOW SHE'S MADE
8 THE OBJECTION FROM THIS WITNESS.

9 MR. STOUDEMIRE: I UNDERSTAND.

10 THE COURT: WHAT'S YOUR POSITION AS TO ---

11 MR. STOUDEMIRE: I'M SORRY, YOUR HONOR?

12 THE COURT: WHY DO YOU THINK IT'S
13 ADMISSIBLE?

14 MR. STOUDEMIRE: I DON'T THINK IT'S AN
15 INTERROGATION, FIRST OF ALL. I THINK AT THIS POINT ALL
16 OFFICER COLEGROVE WOULD BE DOING, IF HE SAYS MR. WALLACE
17 IDENTIFIED THE BAG, HE WOULD SIMPLY BE REITERATING WHAT
18 OFFICER CROMPTON HAS ALREADY TESTIFIED TO.

19 THE COURT: THIS IS BASICALLY AFTER THE
20 SECOND DETENTION, IF YOU WANT TO CALL IT THAT, AFTER THE
21 SEARCH AND BEFORE THE ARREST AND DURING THE
22 INTERROGATION WHEN THEY WERE ASKING QUESTIONS; IS THAT
23 CORRECT?

24 MS. EARLE: YES, SIR. THE QUESTIONING ---

25 THE COURT: IS THAT CORRECT?

1 **MR. STOUDEMIRE:** YOUR HONOR, I DON'T KNOW
2 THAT THAT'S AN INTERROGATION. ALL THE OFFICER WAS
3 ASKING FOR WAS: WHO HAS THIS BAG? I DON'T KNOW THAT
4 THAT'S AN INTERROGATION.

5 **THE COURT:** WELL, HAD THEY ALREADY FOUND THE
6 DRUGS IN THE BAG WHEN THEY ASKED THE QUESTION?

7 **MR. STOUDEMIRE:** NO, SIR.

8 **THE COURT:** THEY JUST ASKED WHOSE BAG IT
9 WAS?

10 **MR. STOUDEMIRE:** YES, SIR.

11 **THE COURT:** ALL RIGHT. I'LL OVERRULE THE
12 OBJECTION.

13 WHAT'S THE THIRD OBJECTION YOU HAD TO THIS
14 OFFICER'S TESTIMONY? YOU HAD THREE OF THEM. YOU WERE
15 SPOUTING THEM ALL OUT AT ONE TIME AND I DON'T REMEMBER
16 ALL THREE OF THEM. I'M SORRY.

17 **MS. EARLE:** NO, SIR. I THINK WE COVERED ALL
18 MY OBJECTIONS.

19 **THE COURT:** NOW, WE HAD THIS JACKSON V.
20 DENNO HEARING ON THE BASIS THAT I NEED TO MAKE A
21 DECISION WHETHER THE MIRANDA WARNINGS WERE PROPER AND
22 FREELY AND VOLUNTARILY ENTERED TO. DO YOU WANT TO
23 ADDRESS THAT ISSUE? OR DO YOU WANT TO AGREE THAT THE
24 MIRANDA WARNINGS WERE GIVEN AND THAT IT WAS FREELY AND
25 VOLUNTARILY ENTERED INTO?

1 **MS. EARLE:** WELL, YOUR HONOR, IF THE OFFICER
2 HAS TESTIFIED THAT HE GAVE THE WARNINGS AND THAT HE GAVE
3 THEM TO MY CLIENT ---

4 **THE COURT:** RIGHT. DO YOU HAVE ANYTHING TO
5 DISPUTE THAT?

6 **MS. EARLE:** NO, SIR. WELL, OTHER THAN MY
7 CLIENT'S WORD.

8 **THE COURT:** WELL, I'LL BE HAPPY FOR YOUR
9 CLIENT TO TAKE THE STAND AND TESTIFY ABOUT THE MIRANDA
10 RIGHTS. I'M NOT GOING TO LET THE SOLICITOR
11 SELF-INCRIMINATE HIM, BUT HE'S FREE TO TESTIFY ABOUT THE
12 MIRANDA RIGHTS IF YOU WANT TO CONTEST THAT. NOW, THAT'S
13 UP TO HIM AND IT'S UP TO YOU. BUT AT THIS POINT IN TIME
14 I NEED TO KNOW WHAT YOUR OBJECTION IS AS TO MIRANDA AND
15 THE VOLUNTARINESS OF THE STATEMENT.

16 (THE DEFENDANT CONFERRED WITH MS. EARLE OFF
17 THE RECORD.)

18 **MS. EARLE:** THEN, YOUR HONOR, I WOULD ASK
19 THAT MY CLIENT TESTIFY ONLY ON THE MIRANDA WARNING
20 ISSUE.

21 **THE COURT:** THAT'S FINE. YOU CAN DO THAT.

22 **MS. EARLE:** YES, SIR.

23 **THE COURT:** BECAUSE RIGHT NOW I DON'T SEE
24 WHERE THERE'S ANY ISSUE ON WHETHER THE MIRANDA WARNINGS
25 WERE GIVEN OR NOT GIVEN.

1 MS. EARLE: RIGHT, YES, YOUR HONOR.

2 THE COURT: DO YOU UNDERSTAND?

3 MS. EARLE: YES, SIR.

4 THE COURT: ALL RIGHT. OFFICER, YOU MAY
5 STEP DOWN.

6 (WITNESS LEAVES STAND.)

7 THE COURT: MR. WALLACE, PUT YOUR LEFT HAND
8 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

9 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
10 CLERK.)

11 WHEREUPON,

12 TIMOTHY WALLACE,
13 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
14 FOLLOWS:

15 DIRECT EXAMINATION BY MS. EARLE:

16 THE CLERK: YOU MAY BE SEATED.

17 THE COURT: SOLICITOR, I WANT TO MAKE IT
18 CLEAR, THE ONLY THING WE ARE GOING INTO IS MIRANDA.

19 MR. STOUDEMIRE: YES, SIR.

20 THE COURT: OKAY? HIS VERSION OF WHAT
21 TRANSPIRED ON THE MIRANDA ON THE JACKSON V. DENNO
22 HEARING.

23 PLEASE PROCEED.

24 MS. EARLE: ALL RIGHT.

25 //

1 DIRECT EXAMINATION BY MS. EARLE:

2 Q. MR. WALLACE, YOU'VE HEARD THE OFFICER TESTIFY
3 THAT WHEN YOU WERE STOPPED FOR THIS TRAFFIC VIOLATION,
4 THAT AFTER THE DRUGS WERE FOUND IN THE VEHICLE, THAT HE
5 GAVE YOU MIRANDA WARNINGS. DO YOU REMEMBER THE OFFICER
6 DOING THAT?

7 A. NO, MA'AM, I DO NOT.

8 Q. AT ANY POINT DID THE OFFICER GIVE YOU MIRANDA
9 WARNINGS?

10 A. AFTER WE LEFT THE HIGHWAY, THEY LET ME READ THE
11 MIRANDA WARNINGS ON A SHEET OF PAPER.

12 Q. WHERE WERE YOU WHEN THAT HAPPENED?

13 A. WE WERE AT THE JAIL.

14 Q. SO YOU WERE NO LONGER ON THE SIDE OF THE ROAD AT
15 THAT POINT?

16 A. NO, MA'AM.

17 Q. AND DID THEY ASK YOU QUESTIONS ON THE SIDE OF THE
18 ROAD AFTER THEY FOUND THE DRUGS?

19 A. DID THEY ASK ME QUESTIONS?

20 Q. YES.

21 A. NO, MA'AM.

22 Q. DID THEY ASK MR. HOOD QUESTIONS?

23 A. I BELIEVE SO.

24 Q. ALL RIGHT. DID YOU MAKE ANY STATEMENTS TO THE
25 OFFICER ONCE THE DRUGS HAD BEEN FOUND?

1 A. NOT THAT I COULD RECALL.

2 Q. ALL RIGHT. NOW, ONCE YOU WERE BACK AT THE JAIL,
3 THEN THE OFFICER GAVE YOU A SHEET OF PAPER WITH MIRANDA
4 ON IT?

5 A. YES, MA'AM.

6 Q. AND DID YOU READ THAT?

7 A. YES, MA'AM, I DID.

8 Q. DID YOU SIGN IT?

9 A. YES, I DID.

10 MS. EARLE: I HAVE NOTHING ELSE, YOUR HONOR.

11 THE COURT: CROSS-EXAMINATION?

12 WELL, BEFORE YOU GO THERE, DO WE HAVE A
13 SIGNED WAIVER OF RIGHTS SOMEWHERE OR HAS THAT NOT BEEN
14 PRODUCED, EITHER?

15 MR. STOUDEMIRE: YOUR HONOR, THE MIRANDA
16 WARNING THAT WAS GIVEN IS ACTUALLY ON THE VIDEO.

17 THE COURT: PARDON?

18 MR. STOUDEMIRE: IT'S ON VIDEO.

19 THE COURT: WELL, I UNDERSTAND. THAT'S NOT
20 THE QUESTION I ASKED YOU. MY QUESTION IS: DO YOU HAVE
21 A SIGNED WAIVER OF RIGHTS?

22 MR. STOUDEMIRE: NO, SIR, WE DO NOT.

23 THE COURT: HE JUST TESTIFIED HE SIGNED ONE.
24 DO YOU HAVE ONE?

25 MR. STOUDEMIRE: YOUR HONOR, MY

1 UNDERSTANDING OF WHAT HE TESTIFIED TO IS THAT HE SAID HE
2 WAS GIVEN ONE TO READ. I DON'T HAVE ANYTHING THAT HE
3 SIGNED.

4 THE COURT: OKAY. DOES THE OFFICER HAVE
5 ANYTHING HE SIGNED?

6 MR. STOUDEMIRE: NO, SIR.

7 THE COURT: OKAY. ALL RIGHT.

8 CROSS-EXAMINATION.

9 CROSS-EXAMINATION BY MR. STOUDEMIRE:

10 Q. SO ARE YOU SAYING THAT THE ONLY PERSON ADVISED OF
11 THEIR MIRANDA WARNINGS AT THE SCENE OF THIS TRAFFIC STOP
12 WAS HERMAN HOOD AND NOT YOU?

13 A. THAT'S CORRECT.

14 Q. OKAY. WERE YOU THERE WITH HERMAN HOOD?

15 A. I WAS IN THE VEHICLE BEHIND MR. CROMPTON'S
16 VEHICLE.

17 MR. STOUDEMIRE: JUDGE, THAT'S ALL I WOULD
18 HAVE ON CROSS-EXAMINATION.

19 THE COURT: THANK YOU VERY MUCH.

20 ANYTHING ON REDIRECT?

21 MS. EARLE: NO, YOUR HONOR.

22 THE COURT: OKAY. YOU MAY STEP DOWN. THANK
23 YOU VERY MUCH, MR. WALLACE.

24 (DEFENDANT LEAVES STAND.)

25 THE COURT: ALL RIGHT. NOW, YOU SAY THE

1 READING OF THE RIGHTS IS ON THE VIDEO?

2 MR. STOUDEMIRE: YES, SIR.

3 THE COURT: HAS IT BEEN PLAYED ALREADY?

4 MR. STOUDEMIRE: NO, SIR, IT HAS NOT BEEN
5 PLAYED. WE STOPPED IT BEFORE ALL THAT.

6 THE COURT: OKAY, ALL RIGHT.

7 SO YOUR OBJECTION IS THE MIRANDA RIGHTS WERE
8 NOT READ; IS THAT CORRECT?

9 MS. EARLE: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: PRIOR TO INTERROGATION, PRIOR TO
11 FINDING THE DRUGS?

12 MS. EARLE: THAT'S CORRECT, YOUR HONOR. AND
13 ON THE VIDEOTAPE YOU DO HEAR AN OFFICER GIVING MIRANDA.
14 HOWEVER, THERE IS NO VIDEO OF WHO WAS PRESENT AT THE
15 TIME AND WHO THE WARNINGS ARE BEING GIVEN TO.

16 THE COURT: OKAY, ALL RIGHT.

17 MS. EARLE: AND AS MY CLIENT HAS TESTIFIED,
18 HE WAS IN THE SECOND VEHICLE THAT WAS BEHIND THE INITIAL
19 VEHICLE WHILE THE MIRANDA WARNINGS WERE APPARENTLY
20 GIVEN.

21 THE COURT: ALL RIGHT. WHAT'S YOUR POSITION
22 AS FAR AS HIS VOLUNTARY STATEMENT ACKNOWLEDGING THAT THE
23 DRUGS WERE HIS? HE ALSO TESTIFIED THAT HE IDENTIFIED
24 THE DRUGS AND THAT WAS HIS BAG. WHAT'S YOUR POSITION ON
25 THE VOLUNTARINESS OF THAT AS FAR AS JACKSON V. DENNO IS

1 CONCERNED?

2 **MS. EARLE:** WELL, OUR POSITION IS THAT WAS
3 NOT MR. WALLACE MAKING THAT STATEMENT ON THE TAPE AND
4 THAT MR. WALLACE DID NOT ACKNOWLEDGE THAT, THAT THAT WAS
5 MR. HOOD.

6 **THE COURT:** OKAY. THANK YOU VERY MUCH.
7 ARE YOU GOING TO PLAY THE REST OF THIS
8 VIDEO?

9 **MR. STOUDEMIRE:** YOUR HONOR, ALL WE WANTED
10 TO PLAY OF THE VIDEO WAS JUST THAT ONE PORTION WHERE HE
11 ADVISES HIM OF HIS RIGHTS. I THINK THEY SPEAK BRIEFLY
12 AFTER THAT.

13 **THE COURT:** ALL RIGHT. WELL, LET'S HEAR IT.
14 (OFF-THE-RECORD DISCUSSION.)

15 **THE COURT:** ALL RIGHT. LET ME SEE THE TAPE
16 OR HEAR THE TAPE.

17 (COURT VIEWS VIDEOTAPE.)

18 **MR. STOUDEMIRE:** I THINK AT THIS POINT THEY
19 SEARCHED THE REMAINDER OF THE BAGS AND NOTHING WAS SAID
20 FOR A COUPLE OF MINUTES.

21 **MS. EARLE:** I BELIEVE AT APPROXIMATELY
22 12:38.

23 **OFFICER CROMPTON:** I THINK IT'S BEFORE THAT.
24 (VIDEOTAPE CONTINUES PLAYING.)

25 **THE COURT:** OKAY. ANYTHING ELSE ON YOUR

1 ARGUMENT?

2 MS. EARLE: NO, YOUR HONOR.

3 THE COURT'S RULING ON JACKSON V. DENNO:

4 THE COURT: ALL RIGHT. I'M GOING TO FIND
5 THAT THE, AFTER LISTENING TO THE TESTIMONY AND LISTENING
6 TO THE TAPE, THAT THE STATEMENT WAS VOLUNTARILY ENTERED
7 INTO AND THE MIRANDA RIGHTS WERE PROPERLY GIVEN AND I'M
8 GOING TO ALLOW THE STATEMENT INTO EVIDENCE.

9 (STATE'S EXHIBIT # 1 WAS RECEIVED IN EVIDENCE
10 FOR PURPOSES OF THE JACKSON V. DENNO
11 HEARING.)

12 THE COURT: AND YOU CAN PLAY THE PORTION OF
13 THE VIDEO THAT'S APPROPRIATE TO THE JURY WHENEVER WE GET
14 TO THAT POINT.

15 MR. STOUDEMIRE: AND, YOUR HONOR, BY MY
16 COUNT, LOOKING AT THE TAPE, HE ADMITS THAT HE HAS A
17 PRIOR DRUG CONVICTION AT APPROXIMATELY 12:39 AND 18
18 SECONDS. AND THEN THE NEXT QUESTION WHERE HE ADMITS
19 HE'S TAKING THE DRUGS TO SOMEBODY OCCURS AT
20 APPROXIMATELY 12:40 BETWEEN 12 AND 25 SECONDS. I'M
21 ASSUMING WE DON'T WANT TO TALK ABOUT THE PRIOR
22 CONVICTION IN FRONT OF THE JURY, SO WE NEED TO I GUESS
23 EITHER MUTE OR FAST-FORWARD DURING THAT TIME.

24 THE COURT: YOU ARE GOING INTO ALL THIS
25 ABOUT HIM TRYING TO DELIVER THE DRUGS?

1 MR. STOUDEMIRE: NO, SIR. IT ---

2 THE COURT: BECAUSE THAT WAS AFTER THE
3 MIRANDA.

4 MR. STOUDEMIRE: RIGHT.

5 THE COURT: THAT'S FINE. YOU KNOW WHEN TO
6 CUT IT OFF?

7 MR. STOUDEMIRE: AS LONG AS THE MUTE BUTTON
8 WORKS. WE MAY WANT TO PRACTICE IT A TIME OR TWO TO SEE
9 BECAUSE I DON'T KNOW IF IT'S EVEN ON THAT REMOTE.

10 (OFF-THE-RECORD DISCUSSION.)

11 (WHEREUPON, A RECESS WAS TAKEN.)

12 THE COURT: ANYTHING ELSE BEFORE WE BRING
13 THE JURY IN?

14 MR. STOUDEMIRE: NO, SIR, YOUR HONOR.

15 MS. EARLE: NO, YOUR HONOR.

16 THE COURT: BRING THEM IN, MR. BIBB.

17 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
18 11:35 A.M.)

19 MR. STOUDEMIRE: YOUR HONOR, WE WOULD CALL
20 OUR NEXT WITNESS, SERGEANT DALE COLEGROVE OF THE
21 SHERIFF'S DEPARTMENT.

22 (WHEREUPON, THE WITNESS WAS SWORN BY THE
23 CLERK.)

24 WHEREUPON,

25 DALE COLEGROVE,

1 AFTER FIRST HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED
2 AS FOLLOWS:

3 **DIRECT EXAMINATION BY MR. STOUDEMIRE:**

4 Q. SERGEANT COLEGROVE, WHERE ARE YOU EMPLOYED?

5 A. OCONEE COUNTY SHERIFF'S OFFICE.

6 Q. AND HOW LONG HAVE YOU WORKED THERE?

7 A. APPROXIMATELY 14 YEARS.

8 Q. DID YOU WORK IN LAW ENFORCEMENT PRIOR TO COMING
9 TO THE SHERIFF'S DEPARTMENT?

10 A. YES, SIR, FOR SIX MONTHS WITH SENECA POLICE
11 DEPARTMENT.

12 Q. AND WHAT ARE YOUR DUTIES WITH THE SHERIFF'S
13 DEPARTMENT?

14 A. I'M A SERGEANT UNDER THE ROAD PATROL, AND WHAT I
15 DO IS WORK HIGH CRIME AREAS INSIDE OCONEE COUNTY.
16 MEANING IF WE HAVE A LOT OF BREAK-INS IN CERTAIN SPOTS,
17 A LOT OF THAT STUFF, OF COURSE, IS DRUG RELATED, AND
18 ALWAYS PEOPLE BREAKING IN HOMES TO SELL ITEMS, GUNS,
19 THAT TYPE STUFF. I JUST SATURATE THOSE AREAS, AND A LOT
20 OF THAT WORK HAPPENS TO BE ON INTERSTATE 85 IN JUST
21 NUMEROUS SPOTS IN OCONEE.

22 Q. DID YOU HAPPEN TO BE ON DUTY WITH THE SHERIFF'S
23 DEPARTMENT ON SEPTEMBER 14TH, 2005?

24 A. YES, SIR, I WAS.

25 Q. AND WHERE WERE YOU ON DUTY ON THAT DAY?

A. INTERSTATE I-85.

1 Q. DID YOU ASSIST CORPORAL TOMMY CROMPTON AT A
2 TRAFFIC STOP THAT DAY?

3 A. I DID.

4 Q. AND DID THAT TRAFFIC STOP INVOLVE THE DEFENDANT,
5 MR. TIMOTHY WALLACE?

6 A. IT DID.

7 Q. WHAT WAS YOUR INVOLVEMENT IN THE TRAFFIC STOP
8 THAT DAY?

9 A. I WAS A BACKUP OFFICER. ANYTIME WE STOP A
10 VEHICLE AND WE GO TO SEARCH A VEHICLE, IF YOU ARE THAT
11 PRIMARY OFFICER THAT MAKES THE STOP, YOU NEVER WANT TO
12 SEARCH ALONE, SO WE HAVE KIND OF A STANDARD THAT YOU
13 NEVER SEARCH ALONE, YOU ALWAYS GET ANOTHER OFFICER THERE
14 TO WATCH YOUR BACKSIDE, BASICALLY, SO THAT'S WHAT I WAS
15 DOING ON THAT DATE, I WAS THERE AS BACKUP TO HIM.

16 Q. AND WERE YOU IN THE COURTROOM WHERE THE PORTION
17 OF THE TAPE WAS SHOWN WHERE THE DRUGS WERE FOUND IN THE
18 BAG?

19 A. YES, SIR.

20 Q. DO YOU RECALL BEING AT THE SCENE AT THAT TIME?

21 A. YES, SIR.

22 Q. WHAT DID YOU DO IMMEDIATELY AFTER THE DRUGS WERE
23 FOUND IN THE BAG IN MR. WALLACE'S CAR? WHAT DID YOU DO?

24 A. WHEN THE DRUGS WERE FOUND, CORPORAL CROMPTON
25 APPROACHED THE SUBJECT THAT WAS OUTSIDE THE VEHICLE,

1 WHICH WAS MR. HOOD. I THEN FOCUSED ON MR. WALLACE THAT
2 WAS STILL SITTING INSIDE OF CORPORAL CROMPTON'S
3 PASSENGER FRONT SEAT. SO BASICALLY WHEN HE FOUND THE
4 DRUGS, I GOT MR. WALLACE, GOT HIM OUT OF THE VEHICLE AND
5 BASICALLY HANDCUFFED HIM.

6 Q. AT THAT POINT DID YOU ADVISE HIM OF HIS MIRANDA
7 RIGHTS?

8 A. AT EXACTLY THAT POINT, NO. IT WAS A COUPLE OF
9 MINUTES, IT WAS A COUPLE MINUTES LATER, ONCE THE VEHICLE
10 WAS SEARCHED, AND BASICALLY WE MADE SURE THAT PRETTY
11 MUCH THERE WAS NO WEAPONS IN CASE SOMETHING WERE TO, IN
12 LAYMEN'S TERMS, GO SOUTH OUT THERE, THAT IF THERE WAS
13 ANY WEAPONS INSIDE THE VEHICLE, THAT IF WE HAD THOSE, WE
14 BASICALLY WERE SECURE.

15 AT THAT POINT IN TIME, ONCE CORPORAL CROMPTON
16 MADE SURE OF THAT, I PULLED OUT A MIRANDA WARNINGS CARD
17 THAT I ALWAYS KEEP ON MY PERSON IN A WALLET AND I
18 PERSONALLY READ MR. WALLACE HIS MIRANDA WARNINGS AT THAT
19 PLACE AND TIME.

20 Q. OKAY. AND WHAT HAPPENED AT THAT POINT?

21 A. HE WAIVED, MEANING THAT ONCE I ADVISED HIM OF
22 WHAT HIS RIGHTS WERE, THAT HE DIDN'T HAVE ANY PROBLEMS
23 IN SPEAKING WITH ME ABOUT THE INCIDENT WITHOUT HAVING AN
24 ATTORNEY THERE.

25 Q. OKAY. WERE YOU ABLE TO ASK HIM QUESTIONS?

1 A. YES, SIR, I DID. OF COURSE, IT WAS PRETTY
2 RELEVANT WHAT WAS GOING ON, THE COCAINE HAD BEEN FOUND.
3 AND THEN WHAT I LIKE TO DO AT THAT POINT IS TO TRY TO
4 ATTEMPT TO FIND OUT THE OWNERSHIP OF THE DRUGS, WHERE HE
5 PICKED THEM UP, WHERE HE WAS GOING WITH THEM; BASICALLY
6 PUT EVERYTHING TOGETHER AS BEST WE CAN AND SEE WHAT WE
7 CAN TURN UP WITH IT.

8 Q. DID MR. WALLACE MAKE ANY ADMISSIONS TO YOU
9 REGARDING THE COCAINE?

10 A. YES, SIR. HE SAID THAT HE HAD PICKED THE DRUGS
11 UP IN ATLANTA AND WAS HEADED BACK TO NORTH CAROLINA WITH
12 THEM, THAT HE WAS DELIVERING THE COCAINE TO NORTH
13 CAROLINA.

14 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
15 ALREADY AS STATE'S EXHIBIT NUMBER TWO, AND CORPORAL
16 CROMPTON HAS IDENTIFIED THAT AS THE COCAINE FOUND IN THE
17 CAR. DO YOU RECOGNIZE IT, AS WELL?

18 A. IT IS COCAINE.

19 Q. OKAY. DO YOU HAVE TRAINING AND EXPERIENCE
20 SUFFICIENT THAT WOULD GIVE YOU THE ABILITY TO GIVE US AN
21 APPROXIMATE STREET VALUE OF THIS AMOUNT OF COCAINE?

22 A. YES, SIR. JOB EXPERIENCE BEING WHAT WE CALL
23 CRIMINAL PATROL WORK, I'VE BEEN DOING THAT FOR ALMOST
24 SIX YEARS NOW; AND ALSO I AM AN INSTRUCTOR ON CRIMINAL
25 PATROL ASPECTS, INDICATORS THAT I'VE TAUGHT SEVERAL

1 CLASSES ON. AND JUST DEALING, JUST LIFE SITUATIONS,
2 DEALING WITH IT, KNOWING WHAT IT GOES FOR ON THE STREET,
3 AND BASICALLY WHAT PEOPLE BUY FOR IN ATLANTA IN
4 DIFFERENT QUANTITIES.

5 Q. OKAY. WELL, WITH THAT AMOUNT OF COCAINE, CAN YOU
6 TELL US WHAT THE APPROXIMATE STREET VALUE WOULD BE?

7 A. IT GOES FOR ABOUT A HUNDRED DOLLARS A GRAM STREET
8 VALUE, SO ABOUT 75,000.

9 Q. OKAY.

10 MR. STOUDEMIRE: YOUR HONOR, AT THIS POINT
11 WE WOULD ASK TO PUBLISH THE PORTION OF THE TAPE.

12 THE COURT: OKAY.

13 (VIDEOTAPE PLAYED FOR JURY.)

14 BY MR. STOUDEMIRE:

15 Q. NOW, SERGEANT COLEGROVE, JUST SO WE ARE CLEAR --
16 THAT AUDIO CAN BE KIND OF HARD TO UNDERSTAND -- WHAT DID
17 YOU ASK MR. WALLACE?

18 A. IF THE COCAINE BELONGED TO HIM OR IF HE WAS
19 TAKING IT TO SOMEONE.

20 Q. OKAY. AND WHAT WAS HIS RESPONSE TO THAT
21 QUESTION?

22 A. HE WAS DELIVERING THE COCAINE TO SOMEONE.

23 Q. OKAY. NOW LET ME BACK UP JUST A LITTLE BIT IN
24 THIS TRAFFIC STOP. DO YOU RECALL WHEN OFFICER CROMPTON
25 WAS TAKING THE BAGS OUT OF THE CAR AND ASKING EITHER

1 MR. HOOD OR MR. WALLACE TO SAY WHICH ONE WAS THEIRS?

2 A. YES, SIR. I THINK HE WAS ACTUALLY POINTING AT
3 THEM; ONCE HE HELD THE BAG UP, HE WOULD POINT TO
4 EITHER/OR.

5 Q. ALL RIGHT. AND WHERE WERE YOU STANDING IN
6 RELATION TO MR. WALLACE AT THAT POINT?

7 A. I WAS OUTSIDE THE DOOR OF CORPORAL CROMPTON'S CAR
8 ON THE PASSENGER'S SIDE WHERE MR. WALLACE WAS SITTING
9 INSIDE THE PATROL CAR.

10 Q. OKAY. AND WHEN CORPORAL CROMPTON GOT TO THE BAG
11 WHERE THE COCAINE ENDED UP BEING FOUND, WHO CLAIMED THAT
12 BAG AS THEIRS?

13 A. MR. WALLACE.

14 Q. OKAY.

15 MR. STOUDEMIRE: THAT'S ALL I HAVE. THANK
16 YOU.

17 THE COURT: CROSS-EXAMINATION?

18 CROSS-EXAMINATION BY MS. EARLE:

19 Q. OFFICER COLEGROVE, WHEN YOU FIRST CAME UP TO THIS
20 SCENE, WHAT DID YOU DO, WHERE DID YOU PULL YOUR VEHICLE
21 INTO?

22 A. IT WOULD HAVE BEEN TO THE BACKSIDE OF CORPORAL
23 CROMPTON AND BEHIND HIM.

24 Q. APPROXIMATELY HOW FAR BEHIND HIS VEHICLE DID YOU
25 STOP?

1 A. IT'S TYPICALLY PROBABLY BETWEEN FIVE TO TEN FEET,
2 AND ON AN ANGLE MORE SO. PROBABLY THE PASSENGER'S --
3 OR, I'M SORRY -- THE DRIVER'S SIDE OF MY TAHOE WOULD
4 HAVE PROBABLY SPLIT THE BACK OF HIS TRUNK.

5 Q. OKAY. SO YOU WERE WELL OFF THE ROADWAY?

6 A. YES, MA'AM.

7 Q. DO YOU HAVE FLASHING LIGHTS ON YOUR VEHICLE?

8 A. YES, MA'AM.

9 Q. AND DID YOU HAVE THEM ACTIVATED?

10 A. NO, MA'AM.

11 Q. AND YOU SAID YOU DRIVE A TAHOE?

12 A. YES, MA'AM.

13 Q. DO YOU HAVE A CANINE UNIT?

14 A. YES, MA'AM.

15 Q. WAS YOUR CANINE UNIT WITH YOU THAT DAY?

16 A. YES, MA'AM.

17 Q. OKAY. AND WHAT'S YOUR CANINE UNIT'S NAME?

18 A. AT THAT TIME IT WAS ZENO.

19 Q. AND DID YOU HAVE ANYONE ELSE WITH YOU IN YOUR
20 VEHICLE?

21 A. I DID.

22 Q. AND WHO WAS THAT?

23 A. IT'S CORPORAL MIZE (PHONETIC) WITH ANDERSON
24 COUNTY, HE WAS ACTUALLY DOING SOME IN TRAINING WITH ME
25 ON THE INTERSTATE.

1 Q. WHAT TYPE OF TRAINING WERE YOU DOING AT THAT
2 TIME?

3 A. BASICALLY IT WAS LIKE A CRIMINAL PATROL CLASS,
4 SHOWING INDICATORS. BASICALLY CASE IN POINT WAS THIS
5 HERE WAS A PERFECT EXAMPLE FOR HIM BEING ON THE
6 INTERSTATE THE FIRST TIME. YOU HAVE A REGISTERED OWNER
7 NOT PRESENT IN THE CAR. THERE ARE CERTAIN THINGS THAT
8 WE LOOK FOR.

9 WE MAKE A LEGAL TRAFFIC STOP, YOU TALK TO THE
10 PEOPLE, LOOK FOR THE NERVOUS INDICATORS THAT WE HAVE ALL
11 BEEN TAUGHT. HE GOT TO ACTUALLY SEE A PRETTY GOOD STOP
12 HERE. HE SAW EVERYTHING DISPLAYED FROM BEHAVIOR OF THE
13 SUBJECTS INSIDE THE CAR, TO THE PAPERWORK NOT MATCHING,
14 TO THE USE OF THE DOG, AND FROM THAT POINT.

15 Q. AT WHAT POINT DURING THIS TRAFFIC STOP DID YOU
16 ACTUALLY ARRIVE?

17 A. IT WAS RIGHT -- IT WAS RIGHT BEFORE TOMMY RAN HIS
18 DOG ON THE VEHICLE.

19 Q. WHERE WAS THE PASSENGER OF THE VEHICLE WHEN YOU
20 ARRIVED, WAS HE STILL IN THE STOPPED VEHICLE?

21 A. YES. AT THE TIME I ARRIVED, YES, MA'AM.

22 Q. ALL RIGHT. AND THEN -- AND THE DRIVER OF THE
23 VEHICLE YOU WERE TOLD WAS THE PERSON SITTING IN OFFICER
24 CROMPTON'S CAR?

25 A. YES, MA'AM.

1 Q. AND THEN ONCE YOU ARRIVED ON THE SCENE, WHAT DID
2 YOU DO?

3 A. ONCE I GOT THERE, TOMMY, OR CORPORAL CROMPTON HAD
4 ADVISED ME THAT THE SUBJECT IN THE PASSENGER'S SEAT OF
5 THE CAR HAD JUST BEEN RELEASED OR I THINK SERVED TIME
6 FOR SOME TYPE OF AN ASSAULT ON A POLICE OFFICER. OF
7 COURSE, WE TAKE THAT VERY SERIOUS RIGHT OFF THE BAT. I
8 APPROACHED THE PASSENGER AND BASICALLY PATTED HIM DOWN
9 TO BE SURE THAT HE WASN'T CARRYING ANYTHING HARMFUL TO
10 US.

11 FROM THAT POINT I BROUGHT HIM BACK, HAD HIM TO
12 STAND AWAY FROM THE VEHICLE. AND I KIND OF, I KIND OF
13 CROSS-HAIRED, AND IT MAY NOT MAKE A LOT OF SENSE TO YOU,
14 BUT I PUT MYSELF TO WHERE, WHILE OFFICER CROMPTON IS
15 RUNNING HIS DOG BASICALLY ON THE VEHICLE TO DO WHAT HE
16 HAS TO DO.

17 THERE ARE A LOT OF THINGS GOING ON. YOU'VE GOT
18 TRAFFIC COMING BY. THERE'S A LOT OF SAFETY CONCERNS OUT
19 THERE THAT REALLY WE HAVE TO BE AWARE OF AT ALL TIMES.
20 AND I HAD MYSELF IN BETWEEN MR. WALLACE INSIDE THE CAR,
21 AND THE PASSENGER WAS OUTSIDE OF THE CAR TO WHERE I
22 BASICALLY COULD SEE BOTH OF THOSE IN THE SAME, SAME
23 VIEW.

24 Q. AND APPROXIMATELY HOW FAR AWAY FROM THE VEHICLE
25 WAS THE PASSENGER?

1 A. FROM WHICH VEHICLE?

2 Q. FROM THE OFFICER'S VEHICLE.

3 A. HE WAS PROBABLY TEN FEET.

4 Q. ALL RIGHT. NOW, JUST SO I CAN UNDERSTAND THIS,
5 YOU'VE GOT THE DRIVER SITTING IN THE PASSENGER'S SEAT OF
6 THIS OFFICER'S CAR?

7 A. YES, MA'AM.

8 Q. AND THEN YOU ARE STANDING OUTSIDE OF THE VEHICLE?

9 A. I'M STANDING PROBABLY RIGHT WHERE THE DOOR HANDLE
10 OF -- IT'S A FORD CROWN VIC -- RIGHT WHERE THE DOOR
11 HANDLE WOULD BE ON THE PASSENGER'S SIDE WHERE YOU WOULD
12 OPEN THE DOOR FROM THE EXTERIOR.

13 Q. ALL RIGHT. AND WAS THE DOOR OPEN OR CLOSED?

14 A. IT WAS CLOSED.

15 Q. ALL RIGHT. AND THEN THE PASSENGER OF THE VEHICLE
16 WAS ---

17 A. HE WOULD HAVE BEEN TO MY RIGHT ABOUT TEN TO 15
18 FEET.

19 Q. SO HE WAS APPROXIMATELY STRAIGHT ACROSS FROM YOU?

20 A. AT AN ANGLE TO WHERE I COULD SEE HIM.

21 Q. MORE TOWARD THE VEHICLE ---

22 A. TOWARD THE WOODS.

23 Q. --- THAT HAD STOPPED?

24 A. NO. MORE TOWARD THE WOODS, NOT TOWARD THE
25 VEHICLE, BUT ON AN ANGLE AWAY FROM THE SUSPECT CAR, BUT

1 MORE TO AN ANGLE OF TOMMY'S PATROL CAR, CORPORAL
2 CROMPTON'S PATROL CAR.

3 Q. OKAY. AND WAS THE WINDOW ON THE PASSENGER'S SIDE
4 ROLLED UP?

5 A. AT THAT POINT IT WAS ROLLED DOWN.

6 Q. DO YOU KNOW AT WHAT POINT IT GOT ROLLED DOWN?

7 A. WELL, ANYTIME THAT WE LEAVE A PERSON IN A CAR
8 UNOCCUPIED, WE NEVER LEAVE A WINDOW ROLLED UP, BECAUSE
9 ALL HE HAS TO DO, OF COURSE, IS JUMP OVER AND TAKE OFF
10 IN THE PATROL CAR. SO WE WANT TO BE SURE THAT WE
11 HAVE -- YOU KNOW, IF THIS GUY WERE TO TRY TO DO THAT, I
12 COULD GRAB AHOLD OF HIM AND TRY TO RESTRAIN HIM FROM
13 DRIVING OFF IN OUR PATROL CAR. THAT'S JUST PRACTICAL
14 STUFF THAT WE USE.

15 Q. WAS THE WINDOW UP OR DOWN WHEN YOU FIRST
16 APPROACHED THE VEHICLE?

17 A. IT WOULD HAVE BEEN UP WHEN I FIRST APPROACHED.
18 WHEN I ARRIVED ON SCENE, IT WOULD HAVE BEEN UP.

19 Q. AND THEN AT THAT POINT WAS IT ROLLED DOWN?

20 A. BEFORE HE STARTED HIS SEARCH OF THE CAR.

21 Q. AND THEN WHEN WE'RE WATCHING THE VIDEOTAPE, WE
22 CAN'T SEE THE INDIVIDUALS. AT SOME POINT YOU GET THEM
23 BOTH HANDCUFFED; IS THAT CORRECT?

24 A. SPECIFICALLY, CORPORAL, ONCE HE LOCATED THE
25 COCAINE, WENT DIRECTLY TO THE PASSENGER BECAUSE HE WAS,

1 OF COURSE, OUTSIDE THE VEHICLE. MY CONCERNS BECAME THE
2 PERSON THAT WAS INSIDE THE POLICE VEHICLE BECAUSE I WAS
3 RIGHT THERE FOR HIM. SO I ACTUALLY TOOK CONTROL OF
4 MR. WALLACE AND CORPORAL CROMPTON TOOK CARE OF THE OTHER
5 SUSPECT.

6 Q. DID YOU TAKE MR. WALLACE OUT OF THE VEHICLE?

7 A. YES, I DID.

8 Q. AND THAT'S WHEN YOU HANDCUFFED HIM?

9 A. THAT IS CORRECT.

10 Q. THEN WHERE DID YOU PLACE HIM?

11 A. I LEFT HIM OUTSIDE THE VEHICLE BECAUSE HE WAS IN
12 HANDCUFFS AT THAT TIME.

13 Q. OKAY. SO BOTH INDIVIDUALS WERE OUTSIDE OF THE
14 VEHICLE?

15 A. UH-HUH. AT THAT TIME, YES, MA'AM.

16 Q. ALL RIGHT. AT SOME POINT WERE THEY NOT BOTH
17 OUTSIDE OF THE VEHICLE?

18 A. CORPORAL HAD HIS SUSPECT TO SIT ON THE GROUND,
19 WENT BACK AND STARTED SEARCHING THE CAR FOR WEAPONS,
20 BASICALLY FOR STUFF THAT COULD BE HARMFUL. I KEPT
21 MR. WALLACE WITH ME BECAUSE I HAD FIRST MADE THE INITIAL
22 CONTACT, ONCE THE COCAINE WAS FOUND, WITH HIM.

23 Q. ALL RIGHT. AND THEN WHILE -- WHEN YOU WERE
24 READING THE MIRANDA RIGHTS, WHERE WAS MR. HOOD?

25 A. HE WAS STILL WHERE CORPORAL CROMPTON HAD PLACED

1 HIM ON THE GROUND.

2 Q. AND WHERE WERE YOU?

3 A. I WAS WITH MR. WALLACE.

4 Q. WHICH WAS WHERE?

5 A. BESIDE THE PATROL CAR.

6 Q. WITHIN HEARING DISTANCE?

7 A. OF?

8 Q. OF EVERYONE WHO WAS THERE.

9 A. SURE. YEAH. I MEAN, THERE WAS A LOT GOING ON
10 FOR THOSE TWO.

11 Q. YOU HAD NOT WALKED 20, 30 FEET AWAY, YOU WERE
12 STILL ---

13 A. SURE, I WAS RIGHT THERE AT THE CAR.

14 Q. YOU WERE STILL RIGHT THERE AT THE CAR?

15 A. SURE.

16 Q. WHEREAS WE SAW ON THE VIDEOTAPE YOU HAD BEEN
17 TALKING BACK AND FORTH WITH THE OTHER OFFICER.

18 A. I'M SORRY, I DON'T RECALL THAT. BUT I WOULD HAVE
19 BEEN AT THE PASSENGER'S SIDE DOOR OF THE POLICE CAR IS
20 WHERE I WOULD HAVE BEEN.

21 Q. WITH THE DEFENDANT?

22 A. YES.

23 Q. ALL RIGHT. AND IS IT YOUR TESTIMONY THAT YOU DID
24 NOT TALK TO MR. HOOD AT ALL?

25 A. MR. HOOD SHUT DOWN. I DO REMEMBER THEM

1 ATTEMPTING TO TALK, BUT I CAN'T TESTIFY THAT IT WASN'T
2 ME PERSONALLY, BUT I CAN TELL YOU THAT MR. HOOD TOTALLY
3 JUST CLAMMED UP.

4 Q. DID YOU AT ANY POINT TALK TO MR. HOOD?

5 A. NO, I DID NOT.

6 MS. EARLE: I DON'T BELIEVE I HAVE ANY OTHER
7 QUESTIONS. THANK YOU.

8 THE COURT: REDIRECT?

9 MR. STOUDEMIRE: NONE, YOUR HONOR.

10 THE COURT: OFFICER COLEGROVE, YOU MAY STEP
11 DOWN. THANK YOU VERY MUCH.

12 THE WITNESS: YES, SIR.

13 (WHEREUPON, THE WITNESS LEFT THE WITNESS
14 STAND.)

15 THE COURT: LADIES AND GENTLEMEN OF THE
16 JURY, NORMALLY WE RUN TO 1:00 BUT I'M GOING TO HAVE TO
17 BREAK TODAY AT 12:00 BECAUSE I HAVE AN APPOINTMENT AT
18 12:00, IN FIVE MINUTES. SO DON'T DISCUSS THE CASE
19 AMONGST YOURSELVES. BE BACK IN THE JURY ROOM AT 2:30
20 AND WE'LL GET STARTED AT THAT TIME. DON'T DISCUSS THE
21 CASE WITH ANYBODY, DON'T READ ANYTHING IN THE PAPER OR
22 DON'T LISTEN TO ANYTHING ON THE RADIO ABOUT THE CASE.
23 I'LL SEE YOU AT 2:30. COME STRAIGHT TO THE JURY ROOM
24 WHEN YOU COME TO THE COURTHOUSE. I'LL SEE YOU AT 2:30.

25 (WHEREUPON, THE JURY LEFT THE COURTROOM AT

1 11:56 A.M.)

2 THE COURT: ALL RIGHT. ANYTHING BEFORE WE
3 BREAK FOR LUNCH?

4 MR. STOUDEMIRE: NOTHING FROM THE STATE,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT. I'LL SEE YOU AT
7 2:30.

8 MR. STOUDEMIRE: YOUR HONOR, MAY SERGEANT
9 COLEGROVE BE EXCUSED?

10 THE COURT: IS THERE ANY OBJECTION?

11 MS. EARLE: NO, SIR.

12 THE COURT: OFFICER COLEGROVE, YOU MAY BE
13 EXCUSED.

14 THE WITNESS: THANK YOU, YOUR HONOR.

15 (A LUNCHEON RECESS OCCURRED, AFTER WHICH THE
16 COURT CONSIDERED OTHER MATTERS, AFTER WHICH
17 THE TRIAL RESUMED, AS FOLLOWS:)

18 //
19 //
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1 AFTERNOON PROCEEDINGS

2 THE COURT: ANYTHING BEFORE WE BRING THE
3 JURY?

4 MS. EARLE: YES, YOUR HONOR. WE ARE WILLING
5 TO STIPULATE AS TO THE CHAIN OF CUSTODY SO THAT OFFICER
6 MERCK WILL NOT HAVE TO TESTIFY; AND THAT WOULD BE THE
7 CHAIN OF CUSTODY FROM OFFICER CROMPTON TO THE EVIDENCE
8 TECHNICIAN, FROM THE EVIDENCE TECHNICIAN TO THE CHEMIST,
9 AND FROM THE CHEMIST BACK TO THE EVIDENCE TECHNICIAN.

10 THE COURT: THE ONLY PERSON WHO WOULD
11 TESTIFY WOULD BE AGENT MILLER?

12 MR. STOUDEMIRE: THAT'S MY UNDERSTANDING.

13 THE COURT: DO YOU WANT TO STATE THE
14 STIPULATION TO THE JURY WHEN WE GET THEM IN THE
15 COURTROOM?

16 MR. STOUDEMIRE: WE CAN.

17 THE COURT: WHICH ONE WANTS TO DO IT?

18 MR. STOUDEMIRE: I'LL BE HAPPY TO STATE IT.

19 THE COURT: ANYTHING ELSE?

20 MS. EARLE: THE ONLY OTHER THINGS I'LL HAVE
21 WILL BE AT THE CLOSE OF THE STATE'S CASE.

22 THE COURT: DO WE HAVE ALL THE JURY?

23 THE SHERIFF'S DEPUTY: THEY'RE HERE, SIR.

24 THE COURT: OKAY. WOULD YOU BRING THEM IN,
25 PLEASE.

1 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
2 2:36 P.M.)

3 THE COURT: SOLICITOR, CALL YOUR NEXT
4 WITNESS, PLEASE.

5 OR I BELIEVE THE PARTIES HAVE A STIPULATION,
6 LADIES AND GENTLEMEN. A STIPULATION IS THAT THE PARTIES
7 HAVE AGREED THAT A CERTAIN FACT IS CORRECT, AND I WOULD
8 INSTRUCT THE ATTORNEYS GIVE YOU A STIPULATION THE
9 PARTIES HAVE MADE, AND I WOULD ASK YOU TO ACCEPT THAT AS
10 IF IT WAS A FACT.

11 SOLICITOR?

12 MR. STOUDEMIRE: YOUR HONOR, MY
13 UNDERSTANDING OF THE STIPULATION IS THAT THE COCAINE
14 CURRENTLY MARKED AS STATE'S EXHIBIT TWO, WE ARE
15 STIPULATING THAT THE EVIDENCE WAS RECEIVED FROM TOMMY
16 CROMPTON TO PATRICK MERCK OF THE OCONEE COUNTY SHERIFF'S
17 DEPARTMENT; THAT PATRICK MERCK THEN DELIVERED THE DRUGS
18 TO AGENT MIKE MILLER; AND MIKE MILLER AFTER ANALYSIS
19 RETURNED THE DRUGS TO PATRICK MERCK FOR KEEPING AT THE
20 OCONEE COUNTY SHERIFF'S DEPARTMENT IN THE EVIDENCE
21 LOCKER.

22 THE COURT: OKAY. IS THAT CORRECT?

23 MS. EARLE: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: LADIES AND GENTLEMEN, BEFORE --
25 WHENEVER THERE ARE ANY TESTS RUN ON ITEMS SUCH AS DRUGS

1 OR ANYTHING ELSE WHERE TESTS ARE RUN, THE STATE IS
2 REQUIRED TO PROVE A CHAIN OF CUSTODY, WHICH MEANS YOU'VE
3 GOT TO PROVE WHO HANDLED ALL OF THE ITEMS THAT'S BEEN
4 TESTED. AND THEY ARE REQUIRED TO PROVE THE CHAIN OF
5 CUSTODY OF THESE DRUGS FROM THE TIME THEY WERE OBTAINED,
6 FROM THE TIME THE TESTS WERE MADE UNTIL THE TIME THEY
7 COME INTO THE COURTROOM, AND BASICALLY THE PARTIES HAVE
8 AGREED BY STIPULATION TO A CHAIN OF CUSTODY THAT WAS
9 PROPER AND CORRECT.

10 CALL YOUR NEXT WITNESS.

11 MR. STOUDEMIRE: YOUR HONOR, WE WOULD CALL
12 AGENT MIKE MILLER.

13 WHEREUPON,

14 MIKE MILLER,

15 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17 DIRECT EXAMINATION BY MR. STOUDEMIRE:

18 Q. AGENT MILLER, WHERE DO YOU WORK?

19 A. I AM CURRENTLY THE DIRECTOR OF THE
20 OCONEE/ANDERSON REGIONAL FORENSICS LABORATORY.

21 Q. AND WHAT'S REQUIRED TO BE DIRECTOR OF THAT
22 LABORATORY?

23 A. I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY,
24 I'M CERTIFIED BY THE AMERICAN CHEMICAL SOCIETY -- WHICH
25 I RECEIVED FROM THE COLLEGE OF CHARLESTON. GRADUATE
WORK AT CLEMSON UNIVERSITY IN MEDICINAL AND SYNTHETIC

1 ORGANIC CHEMISTRY.

2 I'VE BEEN TRAINED AND CERTIFIED AS A FORENSIC
3 CHEMIST IN THE ARENA OF FORENSIC DRUG ANALYSIS BY THE
4 SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION, WHICH
5 MOST PEOPLE IN THIS STATE KNOW AS S.L.E.D.

6 I'VE ALSO BEEN TRAINED AS A FORENSIC CHEMIST BY
7 THE UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT
8 ADMINISTRATION.

9 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

10 A. NOVEMBER WILL COMPLETE MY 11TH YEAR.

11 Q. WHERE HAVE YOU BEEN EMPLOYED?

12 A. FROM AUGUST OF 2000 IN MY CURRENT CAPACITY AS
13 DIRECTOR OF THE ANDERSON/OCONEE REGIONAL FORENSICS LAB.
14 PRIOR TO THAT I WAS A SPECIAL AGENT/FORENSIC CHEMIST
15 WITH S.L.E.D.

16 Q. WHAT ARE YOUR DUTIES THERE?

17 A. IN ADDITION TO THE ADMINISTRATIVE
18 RESPONSIBILITIES OF RUNNING A MULTI-JURISDICTIONAL
19 FORENSICS LABORATORY, I'M ALSO THE CHIEF DRUG CHEMIST
20 THERE WHERE WE RECEIVE EVIDENCE AND TEST IT FOR
21 CONTROLLED OR SUSPECTED CONTROLLED SUBSTANCES.

22 Q. AND HOW OFTEN DO YOU ANALYZE SUBSTANCES FOR THE
23 PRESENCE OF COCAINE OR CONTROLLED SUBSTANCES?

24 A. IT WOULD BE DAILY.

25 Q. CAN YOU ESTIMATE HOW MANY TIMES OVER THE COURSE

1 OF YOUR CAREER YOU HAVE DONE THIS?

2 A. WELL OVER A HUNDRED THOUSAND.

3 Q. AND HOW MANY TIMES WOULD YOU ESTIMATE THAT YOU
4 HAVE TESTIFIED IN COURT AS AN EXPERT IN THIS FIELD?

5 A. THIS WOULD BE MY 42ND TIME.

6 MR. STOUDEMIRE: YOUR HONOR, AT THIS TIME WE
7 WOULD MOVE TO HAVE AGENT MILLER DECLARED AN EXPERT IN
8 FORENSIC DRUG CHEMISTRY.

9 THE COURT: ANY OBJECTION?

10 MS. EARLE: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. THE COURT SO FINDS.
12 BY MR. STOUDEMIRE:

13 Q. MR. MILLER, I'M GOING TO SHOW YOU WHAT HAS BEEN
14 PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER TWO. CAN
15 YOU IDENTIFY THIS?

16 A. YES. THIS WAS A CASE THAT CAME TO OUR LABORATORY
17 FROM THE OCONEE COUNTY SHERIFF'S OFFICE FOR ANALYSIS.

18 Q. AND HOW DO YOU IDENTIFY THAT?

19 A. EVIDENCE COMES INTO OUR LABORATORY IN WHAT'S
20 KNOWN AS A DRUG EVIDENCE SUBMISSION KIT, AND YOU CAN SEE
21 THAT IT'S SEALED INSIDE THIS BAG HERE. THESE KITS ARE
22 PROVIDED BY OUR LABORATORY TO SURROUNDING LAW
23 ENFORCEMENT AGENCIES WHO USE OUR SERVICES.

24 WHEN IT COMES IN, WE RECORD THE CONTROL NUMBER
25 THAT'S LISTED HERE AND THEN WE ALSO ISSUE A LABORATORY

1 CASE NUMBER. THIS LABORATORY CASE NUMBER IS IN MY
2 HANDWRITING, SIGNED BY ME, INITIALED THAT IT'S BEEN
3 SEALED, AND IT WAS RECEIVED ON OCTOBER 4TH OF 2005.

4 Q. OKAY. WAS IT MARKED THAT SAME DAY?

5 A. IT WAS.

6 Q. AND FROM WHOM DID YOU RECEIVE IT?

7 A. THIS CASE WAS RECEIVED FROM SERGEANT PATRICK
8 MERCK OF THE OCONEE COUNTY SHERIFF'S OFFICE.

9 Q. DID THIS ITEM REMAIN IN YOUR CUSTODY, CARE AND
10 CONTROL UNTIL YOU ANALYZED IT?

11 A. YES, SIR.

12 Q. AND LOOKING AT IT NOW, HAS THAT ITEM STAYED IN
13 SUBSTANTIALLY THE SAME CONDITION AS THE DAY YOU RECEIVED
14 IT?

15 A. IT IS IN THE EXACT CONDITION AS WHEN I GAVE IT
16 BACK TO THE OCONEE COUNTY SHERIFF'S OFFICE AFTER
17 ANALYSIS.

18 Q. AND FOR WHAT PURPOSE DID IT COME INTO YOUR
19 POSSESSION?

20 A. EVIDENCE COMES INTO OUR LABORATORY TO BE ANALYZED
21 FOR SUSPECTED CONTROLLED SUBSTANCES AND THAT'S WHY THIS
22 CASE CAME IN.

23 Q. AND IN DOING THAT DO YOU WEIGH THE ITEMS AS THEY
24 COME IN?

25 A. WE DO. CONTROLLED SUBSTANCE LAWS IN THE STATE OF

1 SOUTH CAROLINA, SENTENCING IS USUALLY MANDATED BY THE
2 AMOUNT OR THE WEIGHT OF DRUG THAT'S PRESENT, SO ALL
3 SUSPECTED CONTROLLED SUBSTANCES GET WEIGHED WHEN WE WORK
4 THE CASE.

5 Q. AND CAN YOU TELL ME WHAT THE PARTICULAR WEIGHT OF
6 THESE DRUGS WAS?

7 A. THE WEIGHT ASSOCIATED WITH THIS CASE WAS 752
8 GRAMS.

9 Q. 752. WHEN DID YOU CONDUCT THE CHEMICAL ANALYSIS?

10 A. THE ANALYSES WERE CONDUCTED ON OCTOBER 18TH OF
11 2006.

12 Q. AND CAN YOU TELL US BRIEFLY HOW THAT WORKS?

13 A. CERTAINLY. WE PERFORM A SERIES OF INDEPENDENT
14 ANALYSES ON EACH ITEM THAT COMES IN. SPECIFICALLY WITH
15 CONTROLLED SUBSTANCES WE PERFORM FOUR TYPES OF TESTING:
16 TWO SCREENING TESTS TO GIVE US AN IDEA OF THE TYPES OR
17 FAMILY OF DRUGS OR COMPOUNDS WE MAY BE DEALING WITH, AND
18 THEN TWO SEPARATE INDEPENDENT CONFIRMATIONAL TESTS TO
19 ACTUALLY DETERMINE IF THE CONTROLLED SUBSTANCE IS
20 PRESENT.

21 Q. AND FROM YOUR TESTING WERE YOU ABLE TO FORM AN
22 EXPERT OPINION AS TO WHAT EXHIBIT NUMBER TWO CONTAINS?

23 A. YES, WE WERE.

24 Q. WHAT IS THAT OPINION?

25 A. THIS OPINION, OR OUR REPORT STATES THAT THIS

1 SUBSTANCE IS COCAINE.

2 Q. OKAY. AND WHAT IS THAT OPINION BASED ON?

3 A. IT IS BASED ON THE RESULTS OF ALL FOUR TESTS THAT
4 WE PERFORMED ON THIS EVIDENCE.

5 MR. STOUDEMIRE: YOUR HONOR, AT THIS TIME
6 THE STATE WOULD MOVE TO HAVE EXHIBIT TWO PLACED INTO
7 EVIDENCE.

8 THE COURT: ANY OBJECTIONS?

9 MS. EARLE: JUST SUBJECT TO THE PREVIOUS
10 OBJECTIONS MADE THAT WERE OVERRULED.

11 THE COURT: ON THE MOTIONS?

12 MS. EARLE: YES.

13 THE COURT: ALL RIGHT. YOUR OBJECTION IS
14 OVERRULED.

15 (STATE'S EXHIBIT # 2, COCAINE, WAS RECEIVED
16 IN EVIDENCE.)

17 BY MR. STOUDEMIRE:

18 Q. AGENT MILLER, I'M NOW GOING TO SHOW YOU WHAT'S
19 PREVIOUSLY BEEN MARKED AS STATE'S EXHIBIT NUMBER THREE.
20 CAN YOU IDENTIFY WHAT THAT IS FOR ME, PLEASE, SIR?

21 A. YES. THIS IS THE OFFICIAL REPORT ISSUED BY MY
22 HAND FROM OUR LABORATORY WITH RESPECT TO THIS CASE.

23 Q. OKAY. AND ARE THOSE TYPES OF REPORTS REGULARLY
24 PREPARED BY YOUR OFFICE IN CONJUNCTION WITH THE TEST
25 THAT YOU DO?

1 A. YES. EACH CASE THAT IS ANALYZED IN OUR
2 LABORATORY HAS AN OFFICIAL LABORATORY REPORT ISSUED AND
3 IS SIGNED BY THE ANALYST WHO ISSUES IT.

4 Q. WHAT DOES THAT REPORT CONTAIN?

5 A. THIS REPORT CONTAINS THE NAME OF THE OFFICER THAT
6 THE REPORT IS GOING TO BE MAILED TO BACK TO THE
7 SUBMITTING AGENCY. IT CONTAINS THE SUBMITTING AGENCY'S
8 CASE NUMBER AS WELL AS ALL THE CASE IDENTIFIERS
9 ASSOCIATED WITH OUR LABORATORY. IT ALSO INCLUDES THE
10 RESULTS THAT ARE ISSUED HERE AS WELL AS MY OFFICIAL
11 SIGNATURE.

12 MR. STOUDEMIRE: YOUR HONOR, AT THIS TIME WE
13 WOULD MOVE TO HAVE STATE'S EXHIBIT THREE MOVED INTO
14 EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MS. EARLE: IS THAT THIS -- MAY I SEE WHICH
17 ONE THAT IS?

18 MR. STOUDEMIRE: CERTAINLY (HANDING).

19 (COUNSEL CONFER.)

20 MS. EARLE: NO OBJECTIONS, YOUR HONOR.

21 THE COURT: STATE'S EXHIBIT NUMBER THREE IS
22 ADMITTED WITHOUT OBJECTION.

23 (STATE'S EXHIBIT # 3, DRUG ANALYSIS REPORT,
24 WAS MARKED FOR IDENTIFICATION AND RECEIVED IN
25 EVIDENCE.)

1 MR. STOUDEMIRE: AGENT MILLER, THOSE ARE ALL
2 THE QUESTIONS I HAVE.

3 CROSS-EXAMINATION BY MS. EARLE:

4 Q. MR. MILLER, I HAVE A FEW QUESTIONS FOR YOU. YOU
5 SAID THAT THESE, THIS ITEM WAS DELIVERED TO YOU ON
6 OCTOBER 4TH, 2005?

7 A. YES, MA'AM, THAT'S CORRECT.

8 Q. AND THEN I BELIEVE YOU TESTIFIED THAT YOU TESTED
9 IT ON OCTOBER 18TH?

10 A. OF 2006, YES, MA'AM.

11 Q. OF 2006?

12 A. THAT'S CORRECT.

13 Q. IS THAT A TYPICAL DELAY?

14 A. YES, MA'AM, UNFORTUNATELY IT IS, WITH THE NUMBER
15 OF DRUG CASES WE HAVE, AND AT THE TIME WE HAD ONE
16 WORKING DRUG CHEMIST, WHICH WAS MYSELF.

17 Q. AND WHERE WAS IT KEPT DURING THE TIME THAT IT'S
18 AWAITING TESTING?

19 A. IT'S IN A LIMITED ACCESS VAULT; ONLY I HAD ACCESS
20 TO THOSE CASES.

21 Q. NOW, YOUR REPORT IS DATED 10-26. IS THAT THE
22 DATE OF THE REPORT OR THE DATE THAT THE TEST WAS
23 ACTUALLY DONE?

24 A. THAT WOULD BE THE DATE THAT THE REPORT WAS
25 SIGNED.

1 Q. BUT THERE'S NOTHING ON HERE TO INDICATE THE EXACT
2 DATE THE TEST WAS CONDUCTED?

3 A. NO, MA'AM.

4 Q. AND DO YOU KEEP NOTES, IS THAT HOW YOU KNOW THE
5 DATE THAT THE TEST WAS DONE?

6 A. YES, MA'AM. THE DATES ON THE REPORT ARE WHEN THE
7 ANALYSIS IS OFFICIAL. THAT'S THE REASON THAT DATE IS
8 DIFFERENT FROM WHEN THE ACTUAL ANALYSES ARE CONDUCTED.

9 Q. I'M A LITTLE CONFUSED. IT'S NOT OFFICIAL ---

10 A. NO, MA'AM.

11 Q. --- PRIOR TO ---

12 A. NO, MA'AM. WE HAVE A 100 PERCENT PEER REVIEW
13 PROCESS IN OUR LABORATORY, SO THAT AFTER I WORK THE
14 CASE, IT THEN GOES TO SOMEONE WHO IS EQUALLY AS
15 QUALIFIED TO PERFORM THE SAME TYPE OF ANALYSIS SO THAT
16 THE ENTIRE CASE GETS REVIEWED. PRIOR TO THAT REVIEW THE
17 CASE DOES NOT GET SIGNED.

18 Q. NOW, WHEN YOU ARE TESTING THE SUBSTANCE, DO YOU
19 KNOW WHAT YOU ARE LOOKING FOR BEFORE YOU START TESTING
20 IT?

21 A. NO, MA'AM.

22 Q. AND SO YOU SAID YOU RUN PRELIMINARY TESTS TO GIVE
23 YOU AN IDEA OF SPECIFIC TESTS THAT NEED TO BE DONE?

24 A. YES, MA'AM, THAT'S CORRECT.

25 Q. AND IN DOING THAT DO YOU ALSO TEST FOR

1 CONTAMINANTS?

2 A. YES, MA'AM, WE DO.

3 Q. AND DID YOU FIND CONTAMINANTS?

4 A. I'LL HAVE TO CONSULT MY NOTES ON THIS CASE
5 BECAUSE THEY DON'T, CONTAMINANTS DON'T GET REPORTED.

6 Q. ALL RIGHT.

7 A. NO, MA'AM, THERE IS NO INDICATION OF ANY OTHER
8 TYPE OF ADULTERANTS OR CONTAMINANTS.

9 MS. EARLE: NO OTHER QUESTIONS. THANK YOU.

10 THE COURT: REDIRECT?

11 MR. STOUDEMIRE: I HAVE NO FURTHER
12 QUESTIONS, YOUR HONOR.

13 THE COURT: AGENT MILLER, YOU MAY STEP DOWN.
14 THANK YOU VERY MUCH.

15 (WITNESS LEAVES STAND.)

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MR. STOUDEMIRE: YOUR HONOR, THE STATE
18 RESTS.

19 THE COURT: LADIES AND GENTLEMEN OF THE
20 JURY, PLEASE GO TO THE JURY ROOM BECAUSE I HAVE TO
21 LISTEN TO CERTAIN MOTIONS THAT I NEED TO HEAR AT THIS
22 TIME, AND I'LL GET YOU BACK IN HERE AS SOON AS I CAN.
23 PLEASE DON'T DISCUSS THE CASE AMONG YOURSELVES.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 2:48 P.M.)

1 THE COURT: ALL RIGHT. ANY MOTIONS FROM THE
2 STATE?

3 MR. STOUDEMIRE: NONE, YOUR HONOR.

4 THE COURT: ANY FROM THE DEFENDANT?

5 MS. EARLE: YOUR HONOR, I WOULD MAKE A
6 MOTION THAT THE CHARGES BE DISMISSED AGAINST MY CLIENT;
7 THAT THE -- I WOULD RENEW MY MOTION FOR SUPPRESSION.

8 I WOULD ALSO ARGUE THAT YOU HEARD FROM MY
9 CLIENT DURING THE JACKSON V. DENNO HEARING THAT IT WAS
10 NOT HIM THAT IDENTIFIED THE COCAINE AS HIS, THAT HE WAS
11 NOT THE ONE THAT MADE THOSE STATEMENTS, THAT HE DID NOT
12 RECEIVE HIS MIRANDA WARNINGS ON THE DAY IN QUESTION, AND
13 I WOULD ASK THAT THE CHARGES AGAINST HIM BE DISMISSED
14 BASED ON THAT.

15 THE COURT: ANYTHING ELSE?

16 MS. EARLE: THAT'S THE MOTION.

17 THE COURT: DENIED.

18 MS. EARLE: AND PRIOR TO PRESENTING OUR
19 CASE, I HAVE TALKED TO MY CLIENT AND EXPLAINED TO HIM
20 THE PITFALLS OF TESTIFYING, THAT HE DOES HAVE THE RIGHT
21 TO REMAIN SILENT. HE HAS TOLD ME THAT HE WANTS TO
22 TESTIFY. I HAVE ALSO EXPLAINED TO HIM THAT ANY PRIOR
23 CRIMINAL HISTORY CAN COME IN IF HE DOES TESTIFY.

24 THE COURT: WHAT IS HIS PRIOR CRIMINAL
25 HISTORY?

1 MS. EARLE: HE HAS A CONVICTION IN 1996 THAT
2 I WOULD ASK NOT BE ALLOWED IN ---

3 THE COURT: WHAT IS IT?

4 MS. EARLE: IT WAS AN UNLAWFUL CARRYING OF A
5 PISTOL, IT WAS A MISDEMEANOR CHARGE IN CALIFORNIA. AND
6 THEN HE HAS A CONVICTION FOR CONSPIRACY TO TRAFFIC
7 COCAINE IN FEDERAL COURT.

8 THE COURT: WHEN?

9 MS. EARLE: AND -- WELL, IN READING THE RAP
10 SHEET THAT WAS PROVIDED TO ME, IT'S SOMEWHAT DIFFICULT
11 TO TELL EXACTLY WHEN. IT APPEARED TO ME THAT IT WAS
12 2000. MY CLIENT TELLS ME HE WAS ARRESTED IN '98 AND
13 CONVICTED IN '99.

14 THE COURT: THAT WAS CONSPIRACY TO ---

15 MS. EARLE: TO TRAFFIC COCAINE.

16 (WHEREUPON, THE DEFENDANT CONFERRED WITH
17 COUNSEL OFF THE RECORD.)

18 MS. EARLE: NO, I'M SORRY, IT WAS CONSPIRACY
19 TO DISTRIBUTE COCAINE. I APOLOGIZE.

20 THE COURT: IS THAT THE ONLY ---

21 MS. EARLE: THAT'S THE ONLY PRIOR CONVICTION
22 OTHER THAN THE WEAPONS VIOLATION.

23 THE COURT: ALL RIGHT. SOLICITOR, WHAT'S
24 YOUR POSITION ON UNLAWFUL CARRYING OF THE PISTOL?
25 THAT'S OUTSIDE, I BELIEVE, OF THE TEN YEARS. ARE YOU

1 PLANNING ON TRYING TO GO INTO THAT?

2 MR. STOUDEMIRE: YOUR HONOR, THE ONLY CHARGE
3 I INTENDED TO IMPEACH HIM ON IS THE COCAINE CHARGE THAT
4 HE PLED GUILTY TO IN 1999.

5 THE COURT: HE PLED TO IT IN '99?

6 MR. STOUDEMIRE: YES, SIR.

7 THE COURT: OKAY. ALL RIGHT.

8 DOES YOUR CLIENT UNDERSTAND THAT ONCE HE
9 TAKES THE STAND, HE WOULD BE REQUIRED TO ANSWER
10 QUESTIONS?

11 MS. EARLE: YES, SIR.

12 THE COURT: HE CAN'T TAKE THE FIFTH
13 AMENDMENT ONCE HE TAKES THE STAND. HE WILL EITHER HAVE
14 TO TAKE THE FIFTH AMENDMENT AND NOT TESTIFY, OR TAKE THE
15 STAND AND FULLY ANSWER ALL QUESTIONS. DOES HE
16 UNDERSTAND THAT?

17 MS. EARLE: I WILL EXPLAIN THAT IF HE TAKES
18 THE STAND, HE HAS TO ANSWER QUESTIONS AND HE HAS TO
19 ANSWER THEM TRUTHFULLY.

20 COURT'S QUESTIONING OF DEFENDANT RE TESTIFYING:

21 THE COURT: MR. WALLACE, YOU HAD PREVIOUSLY
22 BEEN SWORN THIS MORNING WHEN YOU TESTIFIED CONCERNING
23 THE MIRANDA RIGHTS. I'M GOING TO ASK YOU SOME MORE
24 QUESTIONS, OKAY, BEFORE WE BRING THE JURY BACK.

25 I WOULD ADVISE YOU THAT UNDER THE FIFTH

1 AMENDMENT OF THE CONSTITUTION AND UNDER THE SOUTH
2 CAROLINA CONSTITUTION, NO ONE CAN REQUIRE YOU TO TESTIFY
3 AGAINST YOURSELF. DO YOU UNDERSTAND?

4 THE DEFENDANT: RIGHT.

5 THE COURT: IT'S COMMONLY REFERRED TO AS THE
6 FIFTH AMENDMENT RIGHTS, THE RIGHT AND THE PRIVILEGE NOT
7 TO TESTIFY AGAINST YOURSELF. DO YOU UNDERSTAND?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: NOW, IF YOU CHOSE NOT TO
10 TESTIFY, I WOULD INSTRUCT THE JURY THAT'S NOT AN
11 INFERENCE OF GUILT, AND YOUR FAILURE TO TESTIFY CANNOT
12 BE CONSIDERED BY THE JURY IN ITS DELIBERATIONS. DO YOU
13 UNDERSTAND?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: AND, AS I SAID EARLIER, IF YOU
16 ELECT TO TESTIFY AND WAIVE YOUR FIFTH AMENDMENT RIGHTS,
17 YOU WILL ASSUME THE ROLE OF A WITNESS AND YOU WILL HAVE
18 TO ANSWER ALL THE QUESTIONS. IT'S NOT LIKE ON
19 TELEVISION WHERE YOU TAKE THE FIFTH AMENDMENT RIGHT TO
20 ONE QUESTION AND NOT THE OTHER. DO YOU UNDERSTAND?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: AND ALSO, ONLY YOU CAN GIVE UP
23 YOUR RIGHT TO TESTIFY AND TESTIFY. THAT'S YOUR DECISION
24 AND YOUR PERSONAL DECISION. DO YOU UNDERSTAND?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: NOBODY ELSE BUT YOU. DO YOU
2 UNDERSTAND?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: HAVE YOU HAD AMPLE OPPORTUNITY
5 TO TALK TO YOUR ATTORNEY ABOUT YOUR RIGHT TO TESTIFY?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: HAVE YOU UNDERSTOOD THE
8 DISCUSSIONS THAT YOU HAVE HAD WITH YOUR ATTORNEY?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: DO YOU UNDERSTAND WHAT I HAVE
11 EXPLAINED TO YOU ABOUT YOUR RIGHT TO REMAIN SILENT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: DO YOU NEED FURTHER TIME TO TALK
14 TO YOUR ATTORNEY ---

15 THE DEFENDANT: NO, SIR.

16 THE COURT: --- ABOUT YOUR RIGHT TO TESTIFY?

17 THE DEFENDANT: NO, SIR.

18 THE COURT: DO YOU UNDERSTAND THAT YOUR
19 CONVICTION IN '99 OF CONSPIRACY TO DISTRIBUTE COCAINE
20 WILL BE BROUGHT OUT TO THE JURY, EITHER BY YOUR ATTORNEY
21 OR THE STATE'S ATTORNEY, I DON'T KNOW WHICH, BUT DO YOU
22 UNDERSTAND IT WILL BE BROUGHT OUT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: YOU UNDERSTAND THIS?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: ALL RIGHT. KNOWING ALL THAT, DO
2 YOU WANT TO TESTIFY?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

5 I FIND THAT HE'S FREELY, VOLUNTARILY,
6 KNOWINGLY AND INTELLIGENTLY MADE THE DECISION TO TESTIFY
7 BASED UPON HIS CONVERSATIONS WITH HIS ATTORNEY AND THE
8 QUESTIONS THAT I JUST POSED TO HIM.

9 ALL RIGHT. ANYTHING ELSE BEFORE WE BRING
10 THE JURY?

11 MR. STOUDEMIRE: NOTHING FROM THE STATE.

12 THE COURT: DEFENDANT?

13 MS. EARLE: NOTHING.

14 THE COURT: HOW MANY WITNESSES ARE YOU GOING
15 TO HAVE?

16 MS. EARLE: THAT'S IT.

17 THE COURT: OKAY. BRING US A JURY, PLEASE.

18 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
19 2:55 P.M.)

20 THE COURT: MS. EARLE, CALL YOUR FIRST
21 WITNESS, PLEASE, MA'AM.

22 MS. EARLE: ALL RIGHT. WE WOULD CALL
23 MR. TIMOTHY WALLACE.

24 //

25 //

1 WHEREUPON,

2 TIMOTHY WALLACE,

3 AFTER FIRST HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED
4 AS FOLLOWS:

4 DIRECT EXAMINATION BY MS. EARLE:

5 Q. WILL YOU TELL THE JURY YOUR NAME, PLEASE?

6 A. TIMOTHY WALLACE..

7 Q. MR. WALLACE, WHERE ARE YOU FROM?

8 A. GASTONIA, NORTH CAROLINA.

9 Q. AND WHAT TYPE OF WORK DO YOU DO?

10 A. I WORK FOR THE SIGMA (PHONETIC) NETWORK, I DRIVE
11 A TRUCK.

12 Q. DO YOU HAVE ANY CHILDREN?

13 A. YES, I DO.

14 Q. HOW MANY?

15 A. TWO.

16 Q. WHAT ARE THEIR AGES?

17 A. THIRTEEN AND EIGHT.

18 Q. NOW, MR. WALLACE, YOU HAVE BEEN HERE AND LISTENED
19 TO ALL THE TESTIMONY TODAY. WERE YOU DRIVING THE
20 VEHICLE THAT WAS STOPPED BY OFFICER CROMPTON?

21 A. YES, MA'AM.

22 Q. AND WHERE WERE YOU TRAVELING FROM AND TO?

23 A. WE WERE TRAVELING FROM ATLANTA TO GASTONIA.

24 Q. AND WHO WAS WITH YOU?

25 A. HERMAN HOOD.

1 Q. AND WHO IS MR. HOOD?

2 A. HE'S MY COUSIN.

3 Q. WHY HAD YOU BEEN TO ATLANTA?

4 A. HIS BROTHER WAS HAVING A BABY SHOWER -- THIS IS
5 MY COUSIN ONSLO (PHONETIC). OKAY. WE WENT DOWN TO SEE
6 HIS BROTHER AND FOR THE BABY SHOWER.

7 Q. SO YOU HAD GONE TO VISIT FRIENDS OR TO VISIT
8 FAMILY?

9 A. FAMILY.

10 Q. AND YOU WERE ON YOUR WAY HOME?

11 A. YES, MA'AM.

12 Q. AND THE VEHICLE THAT YOU WERE TRAVELING IN, DID
13 IT BELONG TO YOU?

14 A. NO, MA'AM, IT DID NOT.

15 Q. DID IT BELONG TO MR. HOOD?

16 A. NO, MA'AM.

17 Q. AND WHEN Y'ALL HAD MADE YOUR PLANS TO GO TO
18 ATLANTA, WHERE DID YOU GET THIS VEHICLE?

19 A. HE HAD A VEHICLE FROM A FRIEND OF HIS.

20 Q. AND DID HE OWN A VEHICLE OF HIS OWN?

21 A. YES, MA'AM, HE DID.

22 Q. WHY DID YOU NOT TAKE IT?

23 A. BECAUSE HIS WASN'T RELIABLE, AND I WASN'T GONNA
24 TAKE MINE BECAUSE HE ASKED ME TO GO WITH HIM DOWN THERE.

25 Q. SO HE PROVIDED THE TRANSPORTATION?

1 A. YES, MA'AM, HE DID.

2 Q. AND WHY WERE YOU DRIVING THE VEHICLE?

3 A. 'CAUSE WE TOOK TURNS SWAPPING OUT JUST, YOU KNOW;
4 AND IF HE WAS TIRED, THEN I WOULD DRIVE, AND IF I WAS
5 TIRED, HE WOULD DRIVE.

6 Q. AND WHEN THE OFFICER PULLED YOU OVER, WHEN YOU
7 SAW THE BLUE LIGHTS FLASHING, WHAT DID YOU DO?

8 A. I SAW THE EXIT RAMP. INSTEAD OF ME PULLING OVER
9 TO THE SIDE OF THE ROAD, I DECIDED TO PULL OVER ON THE
10 EXIT RAMP.

11 Q. AND WHEN HE ASKED YOU TO PROVIDE YOUR
12 IDENTIFICATION TO HIM, YOUR DRIVER'S LICENSE, YOUR
13 INSURANCE INFORMATION AND REGISTRATION, DID YOU DO THAT?

14 A. YES, MA'AM, I DID.

15 Q. DID YOU HAVE TROUBLE FINDING ANY OF IT?

16 A. I HAD TROUBLE FINDING THE REGISTRATION AND PROOF
17 OF INSURANCE.

18 Q. AND WHERE DID YOU FIND IT?

19 A. IN THE GLOVE COMPARTMENT.

20 Q. NOW, MR. WALLACE, WHILE YOU WERE IN ATLANTA,
21 WHERE DID YOU STAY?

22 A. AT HIS BROTHER'S HOUSE, AND MY COUSIN -- MY
23 COUSIN'S HOUSE AND HIS BROTHER'S HOUSE.

24 Q. ALL RIGHT. AND HOW MANY OTHER PEOPLE WERE IN
25 THAT HOUSE?

1 A. QUITE A FEW PEOPLE.

2 Q. AND WHILE YOU WERE THERE, DID YOU TAKE, DID YOU
3 HAVE SUITCASES WITH YOU OR DUFFELBAGS OR SOME SORT OF
4 CONTAINERS WITH YOUR PERSONAL BELONGINGS IN THEM?

5 A. YES, MA'AM.

6 Q. DID YOU TAKE THEM INTO THE HOUSE?

7 A. YES, MA'AM.

8 Q. DID YOU KEEP THEM WITH YOU AT ALL TIMES?

9 A. NO, MA'AM.

10 Q. WHO HAD ACCESS TO THEM WHILE YOU WERE THERE?

11 A. ANYBODY IN THE HOUSE.

12 Q. AND WHEN YOU GOT READY TO LEAVE, WHO PUT THE BAGS
13 IN THE VEHICLE?

14 A. I GRABBED MY TWO BAGS AND MY COUSIN GRABBED HIS
15 TWO BAGS.

16 Q. AND THEN THEY WERE ALL PUT INTO THE CAR?

17 A. YES, MA'AM.

18 Q. BEFORE YOU PUT THEM INTO THE CAR, DID YOU SEARCH
19 THEM?

20 A. NO, MA'AM, I DID NOT.

21 Q. DID YOU HAVE ANY REASON TO BELIEVE THERE WAS
22 ANYTHING ILLEGAL IN ANY OF THEM?

23 A. NO, MA'AM.

24 Q. NOW, YOU HEARD THE OFFICER TESTIFY THAT YOU
25 IDENTIFIED THE BAG THAT THE COCAINE WAS FOUND IN AS

1 BEING YOUR BAG. DID YOU DO THAT?

2 A. NO, MA'AM, I DID NOT.

3 Q. WHO IDENTIFIED IT AS BELONGING TO THEM?

4 A. HERMAN HOOD DID.

5 Q. AND WHO IDENTIFIED THE COCAINE AS BELONGING TO
6 HIM?

7 A. NOBODY. BUT HERMAN HOOD CLAIMED THE BAG THAT THE
8 COCAINE WAS FOUND IN.

9 Q. AND WHERE IS MR. HOOD?

10 A. I HAVE NO IDEA.

11 Q. WHEN WAS THE LAST TIME YOU SAW HIM?

12 A. EARLY 2006.

13 Q. AND HAVE YOU HEARD FROM HIM SINCE THEN?

14 A. NO, MA'AM, I HAVE NOT.

15 Q. AND AFTER YOU WERE ARRESTED, DID YOU SEE HIM AT
16 ANY POINT AFTER THAT?

17 A. AFTER WE WERE ARRESTED ON THESE CHARGES?

18 Q. YES.

19 A. YES, MA'AM, I DID.

20 Q. DID YOU SEE HIM SEVERAL TIMES OR JUST ONCE OR
21 TWICE?

22 A. MAYBE A FEW TIMES.

23 Q. ALL RIGHT. AND YOU HAVE NOT SEEN HIM SINCE EARLY
24 2006?

25 A. NO, MA'AM, I HAVE NOT.

1 Q. TO YOUR KNOWLEDGE HAS ANYBODY IN YOUR FAMILY BEEN
2 IN TOUCH WITH HIM?

3 A. NO, MA'AM.

4 Q. MR. WALLACE, DID YOU PICK UP THIS COCAINE IN
5 ATLANTA AND PUT IT IN YOUR BAG TO DELIVER TO SOMEONE IN
6 NORTH CAROLINA?

7 A. NO, MA'AM, I DID NOT.

8 Q. DID YOU HAVE ANY KNOWLEDGE AT ALL THAT IT WAS IN
9 YOUR VEHICLE?

10 A. NO, MA'AM.

11 Q. MR. WALLACE, HAVE YOU EVER BEEN CONVICTED OF
12 ANYTHING?

13 A. YES, MA'AM, I HAVE.

14 Q. AND WHAT HAVE YOU BEEN CONVICTED OF?

15 A. CONSPIRACY TO DISTRIBUTE COCAINE.

16 Q. AND WHEN WAS THAT?

17 A. IN '99.

18 Q. AND WHERE WAS THAT?

19 A. THAT WAS IN NORTH CAROLINA.

20 Q. DID YOU HAVE A TRIAL ON THAT CHARGE?

21 A. NO, MA'AM. I PLED GUILTY.

22 Q. WHY DID YOU PLEAD GUILTY TO THAT OFFENSE?

23 A. BECAUSE I WAS GUILTY.

24 Q. AND WERE YOU SENTENCED?

25 A. YES, MA'AM.

1 Q. DID YOU SERVE ANY TIME IN PRISON?

2 A. YES, MA'AM, I DID.

3 Q. AND ARE YOU CURRENTLY ON PROBATION?

4 A. WELL, NOT AT THE MOMENT, BUT MY PROBATION RAN OUT
5 JUNE 6TH OR JUNE 19TH OF 2006.

6 Q. AND DURING THE TIME, OTHER THAN THIS ARREST, HAVE
7 YOU BEEN IN ANY OTHER TROUBLE SINCE THAT ARREST, SINCE
8 THAT CONVICTION?

9 A. NO, MA'AM.

10 Q. HAVE YOU HAD A TRAFFIC TICKET SINCE THEN?

11 A. YES, MA'AM.

12 Q. ALL RIGHT. AND WHAT WAS THAT FOR?

13 A. I HAD GOT A D.U.I. CHARGE, BUT I WAS FOUND NOT
14 GUILTY ON THAT CHARGE.

15 Q. YOU WENT TO TRIAL ON THAT?

16 A. YES, MA'AM, I DID.

17 Q. AND YOU WERE FOUND NOT GUILTY?

18 A. YES, MA'AM.

19 Q. HAVE YOU HAD ANY OTHER PROBLEMS SINCE THEN?

20 A. NOT SINCE THIS RIGHT HERE.

21 Q. WERE YOU EMPLOYED?

22 A. YES, MA'AM, I WAS.

23 Q. HAVE YOU STAYED EMPLOYED?

24 A. EXCUSE ME?

25 Q. HAVE YOU STAYED EMPLOYED UP UNTIL THE TIME YOU

1 WERE INCARCERATED?

2 A. YES, MA'AM, I DID, YES, MA'AM.

3 MS. EARLE: ALL RIGHT. I HAVE NO OTHER
4 QUESTIONS. THANK YOU.

5 THE COURT: CROSS-EXAMINATION.

6 CROSS-EXAMINATION BY MR. STOUDEMIRE:

7 Q. MR. HOOD, YOU ARE SAYING THAT THE COCAINE ---

8 MS. EARLE: EXCUSE ME. THIS IS MR. WALLACE.
9 BY MR. STOUDEMIRE:

10 Q. MR. WALLACE, YOU WERE SAYING THAT THIS COCAINE
11 THAT IS STATE'S EXHIBIT NUMBER TWO, THAT WAS FOUND IN A
12 CAR YOU WERE DRIVING, IN BAGS THAT Y'ALL TOOK TO
13 ATLANTA, BUT YOU DON'T KNOW ANYTHING ABOUT IT?

14 A. THAT'S CORRECT.

15 Q. SO SOMEBODY AT A HOUSE WHERE YOU WERE STAYING
16 THAT YOU DIDN'T KNOW PUT \$75,000 WORTH OF COCAINE IN A
17 BAG JUST TO GET RID OF IT?

18 A. LIKE I SAY, I DON'T KNOW ANYTHING ABOUT IT. I
19 DON'T KNOW WHO PUT IT IN THERE OR WHY THEY PUT IT IN
20 THERE OR WHO IT BELONGED TO, BUT IT DIDN'T BELONG TO ME.

21 Q. BUT SOMEBODY FELT LIKE JUST GETTING RID OF
22 \$75,000 WORTH OF STUFF?

23 A. I DON'T KNOW.

24 Q. OKAY. NOW, YOU WERE HERE WHEN OFFICER CROMPTON
25 TESTIFIED AND SAID THAT HE ATTRIBUTED THE BAG TO YOU,

1 CORRECT?

2 A. EXCUSE ME?

3 Q. YOU WERE IN THE ROOM WHEN OFFICER CROMPTON HERE
4 TESTIFIED AND SAID THAT YOU IDENTIFIED THE BAG THE
5 COCAINE WAS IN WAS YOURS?

6 A. YEAH, I WAS IN THE ROOM.

7 Q. AND YOU WERE HERE WHEN SERGEANT COLEGROVE
8 TESTIFIED TO THE SAME THING?

9 A. YES, SIR.

10 Q. OKAY. BUT YOU ARE JUST SAYING THAT BAG IS NOT
11 YOURS?

12 A. CORRECT.

13 Q. WHEN YOU WERE BEING QUESTIONED BY SERGEANT
14 COLEGROVE, WHERE WERE YOU?

15 A. I NEVER GOT QUESTIONED BY SERGEANT COLEGROVE.

16 Q. SO YOU ARE SAYING WHAT WE SAW ON THE VIDEO AND
17 WHAT WE HEARD ON THE VIDEO WASN'T YOU TALKING ABOUT
18 COCAINE, IT WASN'T YOU SAYING IT WAS YOURS, IT WAS ALL
19 HERMAN HOOD?

20 A. CORRECT.

21 Q. AND HERMAN HOOD IS CONVENIENTLY NOT HERE TODAY?

22 A. CORRECT.

23 Q. SO BASICALLY YOU DON'T KNOW MUCH OF ANYTHING
24 ABOUT ANYTHING EXCEPT THAT YOU WENT TO ATLANTA AND WERE
25 DRIVING BACK HOME?

1 A. CORRECT.

2 Q. OKAY.

3 MR. STOUDEMIRE: THAT'S ALL I HAVE. THANK
4 YOU.

5 THE COURT: REDIRECT?

6 MS. EARLE: NO, YOUR HONOR.

7 THE COURT: MR. WALLACE, YOU MAY STEP DOWN.
8 (WITNESS LEAVES STAND.)

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MS. EARLE: THAT WOULD BE IT, YOUR HONOR; WE
11 WOULD REST.

12 THE COURT: LET ME SEE THE ATTORNEYS UP HERE
13 JUST A SECOND.

14 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
15 CONFERRED WITH THE COURT OUT OF THE PRESENCE
16 OF THE COURT REPORTER AND THE JURY.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN
18 OF THE JURY, MR. FOREMAN, LADIES AND GENTLEMEN, I ASK
19 YOU TO GO TO THE JURY ROOM AGAIN. PLEASE DON'T DISCUSS
20 THE CASE AMONGST YOURSELVES. I NEED TO HEAR SOME
21 MOTIONS AT THIS TIME AND I'LL GET YOU BACK HOPEFULLY
22 VERY SHORTLY.

23 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
24 3:06 P.M.)

25 THE COURT: ALL RIGHT. ANY MOTIONS FROM THE

1 STATE?

2 MR. STOUDEMIRE: NONE, YOUR HONOR.

3 THE COURT: ANYTHING FURTHER FROM THE
4 DEFENDANT?

5 MS. EARLE: NO, YOUR HONOR.

6 THE COURT: DO YOU WANT TO RENEW YOUR
7 MOTIONS?

8 MS. EARLE: WELL, I WOULD RENEW MY MOTIONS.

9 THE COURT: SINCE YOU RENEW YOUR MOTION,
10 MOTION DENIED, OKAY?

11 ALL RIGHT, LET ME SEE THE ATTORNEYS UP HERE
12 JUST A SECOND, ALL OF THEM.

13 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
14 CONFERRED WITH THE COURT OUT OF THE PRESENCE
15 OF THE COURT REPORTER.)

16 THE COURT: MRS. EARLE, ANYTHING BEFORE WE
17 BRING THE JURY? ARE YOU READY FOR CLOSING ARGUMENTS OR
18 DO YOU NEED SOME MORE TIME OR...

19 MS. EARLE: NO, YOUR HONOR, I'M READY FOR
20 CLOSING ARGUMENTS.

21 THE COURT: IS THE STATE READY?

22 MR. STOUDEMIRE: WE'RE READY, YOUR HONOR.

23 THE COURT: I UNDERSTAND YOU'RE GOING TO
24 WAIVE OPENING; IS THAT CORRECT?

25 MR. STOUDEMIRE: THAT'S CORRECT, YOUR HONOR.

1 MS. EARLE: YES, YOUR HONOR.

2 THE COURT: OKAY.

3 MS. EARLE: OH, YOUR HONOR?

4 THE COURT: YES, MA'AM.

5 MS. EARLE: THERE'S JUST ONE MATTER OF
6 HOUSEKEEPING, I SUPPOSE, PRIOR TO SENDING THE JURY OUT.
7 THE EVIDENCE THAT WAS INTRODUCED, I WOULD ASK THAT THE
8 VIDEOTAPE NOT GO TO THE JURY BECAUSE OF THE PARTS THAT
9 THEY WERE NOT ALLOWED TO SEE.

10 THE COURT: WELL, IF THEY WANT TO LOOK AT
11 IT, I'LL HAVE TO FIND OUT THE PART THAT THEY WANT TO
12 SEE, AND THEY WILL SEE IT IN THE COURTROOM.

13 MS. EARLE: THAT WILL BE FINE, YOUR HONOR.

14 THE COURT: IF THEY WANT TO LOOK AT IT, I'LL
15 JUST HAVE TO BRING THEM BACK HERE, AND YOU-ALL WILL HAVE
16 TO CRAWL OVER THE BENCH HERE TO FIND THE PART THAT THEY
17 WANT, AND WE'LL JUST GO FROM THERE, OKAY?

18 MS. EARLE: THAT'S FINE, YOUR HONOR. I JUST
19 DON'T WANT IT GOING TO GO JURY ROOM WITH THEM WITH A
20 TELEVISION.

21 THE COURT: THEY DON'T HAVE ANYTHING IN
22 THERE ANYHOW, THEY HAVE TO COME IN HERE TO DO IT.

23 MS. EARLE: OKAY, THAT'S FINE, YOUR HONOR.

24 THE COURT: BRING US A JURY, PLEASE.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT

1 3:45 P.M.)

2 THE COURT: MRS. EARLE?

3 MS. EARLE: THANK YOU, YOUR HONOR.

4 CLOSING STATEMENT ON BEHALF OF DEFENDANT:

5 MS. EARLE: LADIES AND GENTLEMEN, THIS IS
6 THE END OF THE CASE, AND YOU ARE GOING TO HEAR CLOSING,
7 WHAT WE CALL CLOSING ARGUMENTS OR CLOSING STATEMENTS
8 FROM ME AND THE PROSECUTOR, AND THEN THE JUDGE IS GONNA
9 TELL YOU WHAT THE LAW IS.

10 NOW, WHAT I TELL YOU AND WHAT THE PROSECUTOR
11 TELLS YOU ISN'T EVIDENCE, WE ARE HERE JUST TO SUMMARIZE
12 AND TELL YOU WHAT OUR POSITIONS ARE AND TO TRY TO
13 CONVINCE YOU TO SEE THE EVIDENCE THAT WAS INTRODUCED IN
14 THE SAME LIGHT THAT WE SEE IT.

15 NOW, TODAY YOU HAVE HEARD TESTIMONY FROM
16 SEVERAL POLICE OFFICERS AND YOU HEARD FROM THE
17 DEFENDANT. AND, AS I TOLD YOU IN MY OPENING STATEMENT,
18 ONE OF THE MAIN THINGS IN THIS CASE THAT THE STATE HAS
19 TO PROVE TO YOU BEYOND A REASONABLE DOUBT IS THE KNOWING
20 ELEMENT OF THE OFFENSE. THE DEFENDANT IS BEING CHARGED
21 WITH KNOWING POSSESSION OF COCAINE.

22 NOW, YOU HEARD FROM THE OFFICERS THAT THEY
23 STOPPED THE VEHICLE. AFTER THE TRAFFIC STOP THEY DID
24 THE SEARCH, THEY FOUND THE DRUGS, AND YOU HEARD THE
25 OFFICER TELL YOU THAT MY CLIENT, MR. WALLACE, CLAIMED

1 THE BAG WAS HIS.

2 YET WHILE YOU ARE WATCHING THE VIDEOTAPE,
3 YOU DON'T HAVE THE PEOPLE ON THE TAPE, ALL YOU JUST HAVE
4 IS THE ONE OFFICER WITH THE BAGS, AND YOU HEAR VOICES,
5 AND IT'S VERY DIFFICULT TO TELL FROM LISTENING TO THOSE
6 VOICES WHO IS SAYING WHAT.

7 NOW, MY CLIENT HAS TESTIFIED, AS YOU HEARD
8 HIM SAY, THAT HE WAS NOT THE ONE THAT YOU HEAR ON THE
9 VIDEOTAPE, THAT IT WAS HIS CODEFENDANT. YOU WILL HEAR
10 I'M SURE FROM THE SOLICITOR THAT IT'S VERY CONVENIENT
11 THAT THE CODEFENDANT IS NOT HERE. WE WOULD LOVE TO HAVE
12 HIM HERE, BUT HE'S GONE, NOBODY KNOWS WHERE HE IS. SO
13 ALL YOU HAVE TO GO BY TODAY IS WHAT YOU HEARD HERE
14 TODAY.

15 YOU HEARD FROM THE OFFICERS THAT THE
16 PASSENGER, MR. HOOD, WAS VERY NERVOUS, THAT HE WAS THE
17 ONE THAT AVOIDED EYE CONTACT WITH THEM, THAT HE WAS
18 NERVOUS AND SHAKING; THAT HE WAS THE ONE THAT REALLY
19 TRIGGERED A LOT OF HIS CONCERNS THAT THERE MAY BE
20 SOMETHING IN THE VEHICLE, ESPECIALLY WHERE HIS HAND WAS
21 SHAKING SO HARD THAT HE COULD BARELY HOLD HIS I.D. FOR
22 HIM.

23 NOW, THE OFFICER TESTIFIED THAT IT WAS
24 SUSPICIOUS THE WAY THAT MR. WALLACE WAS DRIVING THE
25 VEHICLE AND THAT HE TOOK TIME IN FINDING THE INFORMATION

1 THAT HE HAD REQUESTED FROM HIM AS FAR AS HIS DRIVER'S
2 LICENSE, INSURANCE INFORMATION AND REGISTRATION. YOU
3 ALSO HEARD THAT IT WASN'T HIS VEHICLE. THAT HE DID PULL
4 OVER IN A SAFE MANNER, THAT HE PULLED OVER ON A RAMP,
5 WHICH IS MUCH MORE SAFE THAN PULLING OFF JUST ON THE
6 SIDE OF THE INTERSTATE. THAT HE DID COOPERATE WITH HIM,
7 THAT HE DID PRODUCE ALL OF THE INFORMATION.

8 AND AS WATCHING ON THE VIDEOTAPE SHOWS, IT
9 ALL TOOK LESS THAN TWO MINUTES FROM THE TIME HE PULLED
10 OVER AND STOPPED AND PROVIDED ALL OF THIS TO THE
11 OFFICER. IN A TRAFFIC STOP I DON'T CONSIDER THAT
12 UNUSUAL, I DON'T CONSIDER THAT TO BE SUSPICIOUS.

13 THE DEFENDANT TESTIFIED THAT THEY WERE IN A
14 BORROWED CAR, THAT THAT WAS BECAUSE HIS COUSIN HAD ASKED
15 HIM TO GO WITH HIM TO ATLANTA. HE DIDN'T HAVE RELIABLE
16 TRANSPORTATION, SO HE SECURED A VEHICLE FROM A FRIEND
17 AND THAT WAS THE VEHICLE THEY WERE TRAVELING IN.

18 THEN, WHILE THEY WERE IN ATLANTA, THE BAGS
19 WERE LEFT IN THE HOUSE WHERE ANYONE COULD HAVE HAD
20 ACCESS TO THEM. MR. HOOD DID HAVE ACCESS TO THEM.
21 MR. HOOD WAS IN THE VEHICLE AND NOT JUST THE DEFENDANT.

22 NOW, IT'S YOUR JOB TO DECIDE WHO'S CREDIBLE
23 AND WHO ISN'T, WHAT THE TRUTH OF THE MATTER IS AND WHAT
24 ISN'T THE TRUTH. MR. WALLACE HAS TOLD YOU THAT HE
25 DIDN'T KNOW ANYTHING ABOUT IT, THAT HE'S AN INNOCENT

1 BYSTANDER. YOU MAY THINK, WELL, HE'S BEEN CHARGED WITH
2 DRUGS BEFORE, HE'S NOT SO INNOCENT. BUT HE WAS CHARGED
3 WITH CONSPIRACY, AND THAT WAS JUST A CONSPIRACY, NOT
4 POSSESSION, HE WAS NOT CHARGED WITH ACTUALLY HAVING
5 DRUGS IN HIS POSSESSION, IT WAS JUST WITH A CONSPIRACY.
6 HE ADMITTED TO THAT, HE PLED GUILTY TO THAT AND HE HAS
7 SERVED HIS SENTENCE ON THAT.

8 YOU CAN'T CONVICT SOMEONE JUST BECAUSE THEY
9 HAVE MADE A MISTAKE IN THE PAST. HAVING MADE A MISTAKE
10 IN THE PAST, HE'S MORE LIKELY AT THIS TIME TO BE TRYING
11 TO STAY CLEAN BECAUSE HE HAS A FAMILY THAT HE'S
12 CONCERNED ABOUT AND HE IS TRYING TO TAKE CARE OF THEM.

13 HE WAS VISITING FAMILY DURING THIS TIME. HE
14 WAS WITH HIS COUSIN. HE DIDN'T HAVE ANY REASON TO
15 SUSPECT THAT HE MIGHT NEED TO SEARCH EVERYTHING THAT WAS
16 PUT IN THE VEHICLE BECAUSE HE WASN'T ANTICIPATING ANY
17 SORT OF ILLEGAL ACTIVITY TAKING PLACE. IT ALL CAME AS A
18 BIG SURPRISE TO HIM.

19 AND HE CAN'T BE CONVICTED UNLESS YOU FIND
20 BEYOND A REASONABLE DOUBT, ON ALL THE ELEMENTS OF THE
21 CRIME, THAT HE ACTUALLY KNEW WHAT WAS GOING ON AND THAT
22 HE WAS, IN FACT, IN POSSESSION OF THESE DRUGS.

23 AND I WOULD ASK YOU TO TAKE EVERYTHING INTO
24 CONSIDERATION AND COME BACK WITH A VERDICT OF NOT GUILTY
25 FOR MR. WALLACE. THANK YOU.

1 THE COURT: MR. STOUDEMIRE?

2 CLOSING STATEMENT ON BEHALF OF THE STATE:

3 MR. STOUDEMIRE: WELL, LADIES AND GENTLEMEN,
4 WHEN WE STARTED THIS MORNING, I TOLD YOU WE WERE GONNA
5 TALK ABOUT TRAFFICKING COCAINE. I TOLD YOU I THOUGHT
6 THE EVIDENCE WAS GONNA SHOW THAT THERE WERE
7 APPROXIMATELY 750 GRAMS OF COCAINE. I TOLD YOU THAT I
8 THOUGHT THE EVIDENCE WAS GOING TO SHOW THAT WE HAD TWO
9 OFFICERS WHO WERE GOING TO SAY THAT MR. WALLACE OVER
10 HERE WAS THE PERSON WHO HAD THE COCAINE, THAT IT WAS IN
11 HIS BAG.

12 LADIES AND GENTLEMEN, WITH TRAFFICKING
13 COCAINE THERE ARE CERTAIN ELEMENTS WE HAVE TO PROVE TO
14 YOU. ONE OF THOSE ELEMENTS IS POSSESSION. NOW, THE
15 DRUGS, THERE'S NO QUESTION THAT THE DRUGS WERE FOUND IN
16 THE CAR BEING DRIVEN BY MR. WALLACE.

17 THE QUESTION IS: DID HE KNOW THE DRUGS WERE
18 THERE? WELL, YOU SAW ON THE VIDEO FOR YOURSELF THAT
19 WHEN OFFICER CROMPTON STARTED PULLING BAGS OUT OF THE
20 CAR, WHO WAS THE ONE THAT SAID THAT THE BAG WAS THEIRS?
21 MR. WALLACE SAID THE BAG WAS HIS.

22 NOT ONE OFFICER SAID THIS, BUT TWO; TWO
23 OFFICERS WITH COMBINED MORE THAN 20 YEARS EXPERIENCE IN
24 LAW ENFORCEMENT. THEY ARE NOT GONNA PUT THEIR
25 REPUTATION AND THEIR JOBS ON THE LINE TO COME INTO COURT

1 AND TELL YOU SOMETHING THAT'S NOT TRUE, LADIES AND
2 GENTLEMEN; THEY'RE NOT GONNA DO IT.

3 ON TOP OF THAT, YOU'VE GOT OFFICER COLEGROVE
4 WHO TESTIFIED THAT HE ASKED MR. WALLACE STRAIGHT OUT:
5 ARE THE DRUGS YOURS OR ARE YOU TAKING THEM TO SOMEBODY?

6 AND MR. WALLACE RESPONDED HOW? HE RESPONDED
7 BY SAYING: I'M TAKING THEM TO SOMEBODY.

8 LADIES AND GENTLEMEN, MR. WALLACE SITS UP
9 HERE AND TELLS YOU: THAT WASN'T ME. THAT WAS HERMAN
10 HOOD.

11 THAT'S FINE. BUT TAKE INTO ACCOUNT SERGEANT
12 COLEGROVE'S TESTIMONY. HE WAS ABLE TO TELL YOU EXACTLY
13 WHERE EVERYBODY WAS SITTING THE ENTIRE TIME HE WAS AT
14 THAT SCENE. HE WAS ABLE TO TELL YOU WHERE OFFICER
15 CROMPTON WAS, HE WAS ABLE TO TELL YOU WHERE HERMAN HOOD
16 WAS LOCATED, HE WAS ABLE TO TELL YOU WHERE MR. WALLACE
17 WAS LOCATED. HE KNOWS WHO HE TALKED TO. HE KNOWS WHAT
18 WAS SAID AND HE KNOWS TO WHOM IT WAS SAID.

19 LADIES AND GENTLEMEN, MR. WALLACE IS TRYING
20 TO CONFUSE YOU, HE'S TRYING TO CONFUSE THE ISSUE WITH
21 BLAMING ALL THIS ON SOMEBODY ELSE. SIMPLY DO NOT LET IT
22 HAPPEN. HE HAD POSSESSION OF THESE DRUGS; THEY WERE IN
23 HIS CAR, THEY WERE IN HIS BAG.

24 NOW, HE DOESN'T ACTUALLY HAVE TO OWN THESE
25 DRUGS TO HAVE POSSESSION OF THEM. IT IS ENOUGH FOR HIM

1 TO HAVE DOMINION OR CONTROL OVER THESE DRUGS. THEY
2 DON'T HAVE TO BE SITTING IN HIS LAP ALL THE WAY FROM
3 ATLANTA UP TO GASTONIA, NORTH CAROLINA. IF THEY'RE IN
4 AN AREA OF THE CAR, OR THE CAR WHERE HE HAS CONTROL OF
5 IT, THEN HE'S DEEMED TO HAVE POSSESSION OF THAT.

6 LADIES AND GENTLEMEN, HE GOT UP HERE AND
7 TESTIFIED THAT HE WAS DRIVING THE CAR. THEY WERE FOUND
8 IN HIS BAG. THAT'S POSSESSION, PLAIN AND SIMPLE
9 POSSESSION.

10 WE ALSO NEEDED TO PROVE TO YOU, LADIES AND
11 GENTLEMEN, ONE OF THE ELEMENTS IS THAT THE COCAINE HAS
12 TO BE IN EXCESS OF 400 GRAMS. YOU ARE GOING TO HAVE A
13 DRUG REPORT BY AGENT MILLER WHICH SAYS THAT THE WEIGHT
14 OF THE COCAINE FOUND WAS 752 GRAMS, NOT 400, NOT 401,
15 BUT 752 GRAMS.

16 LADIES AND GENTLEMEN, AND YOU ALSO HEARD
17 TESTIMONY ABOUT THE COCAINE ITSELF, THE STREET VALUE,
18 \$75,000. I MEAN, MR. WALLACE WOULD HAVE YOU BELIEVE
19 THAT SOMEBODY IS JUST GONNA MAGICALLY PUT THAT AMOUNT OF
20 COCAINE IN A BAG IN HIS CAR AND JUST LET HIM DRIVE OFF
21 WITH \$75,000 WORTH OF COCAINE.

22 LADIES AND GENTLEMEN, THERE ISN'T A COCAINE
23 FAIRY, IT JUST DOESN'T MAGICALLY APPEAR IN PLACES.
24 SOMEBODY HAS TO PUT IT THERE, AND I WOULD SUBMIT TO YOU
25 THAT MR. WALLACE IS THE ONE THAT PUT IT IN HIS BAG, PUT

1 THE BAG IN HIS CAR, AND HE WAS THE ONE THAT TOOK THE
2 RESPONSIBILITY FOR THAT BAG. HE HAD IT.

3 NOW, ABOUT THE STOP ITSELF. IT WAS A LAWFUL
4 STOP, PLAIN AND SIMPLE. OFFICER CROMPTON WENT, HE
5 PULLED HIM OVER FOR VEERING OFF, VEERING OUT OF HIS
6 LANE. MR. WALLACE NEVER, EVER DENIED THAT. HE ACTUALLY
7 ADMITTED, YES, I WAS PROBABLY TALKING ON MY PHONE.
8 THAT'S NOT AN ISSUE. HE HAD A REASON TO STOP HIM.

9 DURING THAT STOP, WHILE EVERYBODY ELSE WOULD
10 HAVE BEEN CALMING DOWN, WHETHER YOU ARE BEING WRITTEN A
11 TICKET OR WHETHER YOU ARE BEING WRITTEN A WARNING, YOU
12 KNOW THAT THERE'S AN END IN SIGHT. YOU'RE GONNA BE
13 CALMING DOWN SO YOU CAN GO ABOUT YOUR WAY..

14 NOT MR. WALLACE. HE STARTED GETTING MORE
15 NERVOUS THE LONGER THIS WENT ON. AND WHEN OFFICER
16 CROMPTON GOT OUT OF THE CAR AND SPOKE TO THE PASSENGER,
17 HE CAME BACK AND MR. WALLACE SEEMED TO BE A LITTLE MORE
18 NERVOUS. THAT RAISES OFFICER CROMPTON'S SUSPICION. AND
19 THE LONGER THIS GOES ON, THE MORE NERVOUS HE GETS.

20 YOU HEARD OFFICER CROMPTON TESTIFY THAT AT
21 SOME POINT WHEN HE ASKED HIM IF HE COULD SEARCH THE CAR,
22 MR. WALLACE JUST PUT UP A WALL. THAT WAS IT. HE DIDN'T
23 WANT TO BE THERE ANYMORE. HE WAS LOOKING EVERYWHERE BUT
24 AT OFFICER CROMPTON. HE DIDN'T WANT HIM SEARCHING THAT
25 CAR. HE KNEW WHAT WAS IN THAT CAR. HE KNEW THAT

1 COCAINE WAS IN THAT CAR THAT HE WAS DRIVING:

2 LADIES AND GENTLEMEN, THIS IS A CASE OF
3 COMMON SENSE, PLAIN AND SIMPLE. THIS IS OCONEE COUNTY.
4 OUR LIVES REVOLVE AROUND COMMON SENSE EVERY DAY. T.V.
5 IS ALL WELL AND GOOD. THE CLOSEST THING WE HAVE BEEN
6 ABLE TO SHOW YOU ABOUT CSI HAS BEEN AGENT MILLER, AND HE
7 IS AS SKILLED AS ANYONE YOU WILL EVER SEE IN ANY
8 COURTROOM, NO QUESTION IN MY MIND ABOUT IT.

9 BUT LADIES AND GENTLEMEN, YOU KNOW THE
10 COCAINE WAS THERE, YOU KNOW IT WAS IN A BAG, YOU KNOW
11 FROM THE TESTIMONY OF NOT ONE BUT TWO SWORN OFFICERS,
12 WITH MORE THAN 20 YEARS' COMBINED EXPERIENCE, THAT
13 MR. WALLACE HAD THIS COCAINE IN A BAG THAT HE CLAIMED
14 WAS HIS. HE DIDN'T WANT TO CLAIM IT INITIALLY, BUT HE
15 FINALLY FESSED UP, HE CLAIMED THAT IT WAS HIS, AND THAT
16 THE WEIGHT OF THAT COCAINE WAS 752 GRAMS, MORE THAN
17 \$75,000 WORTH OF COCAINE.

18 LADIES AND GENTLEMEN, THERE'S ONLY ONE
19 REASONABLE VERDICT YOU CAN REACH IN THIS CASE AND THAT'S
20 GUILTY. SO PLEASE GO BACK TO THE JURY ROOM AND FIND
21 TIMOTHY WALLACE GUILTY OF TRAFFICKING IN COCAINE. THANK
22 YOU.

23 **THE COURT'S CHARGE TO THE JURY:**

24 MR. FOREMAN AND MEMBERS OF THE JURY, THE
25 STATE OF SOUTH CAROLINA CHARGES THE DEFENDANT, TIMOTHY

1 LAMAR WALLACE, WITH TRAFFICKING IN COCAINE. I WILL GIVE
2 YOU A COPY OF THESE INSTRUCTIONS IN WRITTEN FORM DURING
3 YOUR DELIBERATIONS, AND YOU MAY REFER TO YOUR
4 INSTRUCTIONS TO GUIDE YOUR DECISION MAKING. YOU MUST
5 CONSIDER THE INSTRUCTIONS AS A WHOLE, AND NOT FOLLOW
6 SOME AND IGNORE OTHERS. PLEASE RETURN THE INSTRUCTIONS
7 TO THE COURT AFTER YOU HAVE REACHED A VERDICT.

8 NOW, TO THESE INDICTMENTS THE DEFENDANT HAS
9 ENTERED A PLEA OF NOT GUILTY, WHICH PLACES THE BURDEN
10 UPON THE STATE OF PROVING THE DEFENDANT GUILTY. A
11 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
12 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
13 INNOCENT. I CHARGE YOU THAT IT IS A VITAL IMPORTANT
14 RULE OF LAW OF EVIDENCE THAT A DEFENDANT IN A CRIMINAL
15 TRIAL, NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSE
16 WITH WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED
17 INNOCENT UNTIL HIS GUILT HAS BEEN PROVEN BEYOND A
18 REASONABLE DOUBT.

19 THIS PRESUMPTION OF INNOCENCE REMAINS WITH
20 THE DEFENDANT AT ALL TIMES: FROM THE MOMENT OF HIS
21 APPEARANCE IN THIS COURT, THROUGHOUT THE TRIAL, UNTIL
22 YOU, THE JURY, UPON THE TESTIMONY AND EVIDENCE PRESENTED
23 HAVE REACHED A VERDICT OF GUILTY BEYOND A REASONABLE
24 DOUBT. IT IS THE SOLEMN DUTY OF THE JURY, IF NOT
25 THOROUGHLY CONVINCED OF HIS GUILT BEYOND A REASONABLE

1 DOUBT, TO ACQUIT THE DEFENDANT. SO THE BURDEN OF PROOF
2 IS UPON THE STATE IS TO ESTABLISH BY EVIDENCE TO YOUR
3 SATISFACTION HIS GUILT BEYOND A REASONABLE DOUBT.

4 WHAT IS REASONABLE DOUBT? A REASONABLE
5 DOUBT IS THAT KIND OF DOUBT THAT WOULD CAUSE A
6 REASONABLE PERSON TO HESITATE TO ACT. IF YOU HAVE SUCH
7 A DOUBT AS TO THE GUILT OF THE DEFENDANT, HE WOULD BE
8 ENTITLED TO A VERDICT OF NOT GUILTY.

9 REASONABLE DOUBT MAY ARISE FROM EVIDENCE
10 WHICH IS IN THE CASE OR THE ABSENCE OR LACK OF EVIDENCE
11 IN THE CASE. YOU ALONE MUST MAKE A DETERMINATION AS TO
12 WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE
13 DEFENDANT.

14 THE TERM REASONABLE DOUBT SHOULD BE GIVEN
15 ITS EVERYDAY PLAIN AND ORDINARY MEANING. PROOF BEYOND A
16 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
17 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW
18 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
19 CERTAINTY.

20 IN A CRIMINAL CASE THE LAW DOES NOT REQUIRE
21 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON
22 YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
23 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
24 CHARGED, YOU MUST FIND HIM GUILTY.

25 ON THE OTHER HAND, IF YOU THINK THERE'S A

1 REAL POSSIBILITY HE'S NOT GUILTY, YOU MUST GIVE HIM THE
2 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

3 THE EVIDENCE FROM WHICH YOU ARE TO DECIDE
4 WHAT THE FACTS CONSIST OF ARE THE SWORN TESTIMONY OF THE
5 WITNESSES, BOTH ON DIRECT EXAMINATION AND
6 CROSS-EXAMINATION, REGARDLESS OF WHO CALLED THE WITNESS,
7 THE EXHIBITS THAT HAVE BEEN RECEIVED INTO EVIDENCE, AND
8 ANY FACTS TO WHICH THE LAWYERS HAVE STIPULATED.

9 CERTAIN THINGS ARE NOT EVIDENCE AND YOU MAY
10 NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE, AND I
11 WILL LIST THEM FOR YOU: ARGUMENTS AND STATEMENTS BY
12 LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT
13 WITNESSES. WHAT THEY HAVE SAID IN THEIR OPENING
14 STATEMENTS, CLOSING ARGUMENTS AND AT OTHER TIMES IS
15 INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS
16 NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER
17 FROM THE WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY
18 CONTROLS.

19 QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT
20 EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO
21 OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER
22 THE RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY
23 THE OBJECTION OR BY THE COURT'S RULING ON THE OBJECTION.

24 TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN
25 OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD IS NOT

1 EVIDENCE AND MUST NOT BE CONSIDERED. ANYTHING THAT YOU
2 HAVE SEEN OR HEARD WHEN COURT IS NOT IN SESSION IS NOT
3 EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE
4 EVIDENCE YOU RECEIVED IN THE TRIAL.

5 UNDER THE CONSTITUTION AND CODE OF LAWS ONLY
6 YOU, THE JURY, CAN MAKE A FINDING OF FACT IN THIS CASE.
7 I AM NOT PERMITTED TO INDICATE TO YOU HOW I MAY FEEL
8 ABOUT THE TESTIMONY AND EVIDENCE WHICH HAS BEEN
9 PRESENTED. THROUGHOUT THE TRIAL IT HAS BEEN MY
10 INTENTION TO BE FAIR AND IMPARTIAL TOWARDS EACH OF THE
11 PARTIES INVOLVED.

12 TO DETERMINE THE FACTS OF THE CASE YOU WILL
13 HAVE TO EVALUATE THE CREDIBILITY, WHICH MEANS THE
14 BELIEVABILITY OF EACH WITNESS.

15 SOME OF THE THINGS YOU MAY CONSIDER AS YOU
16 DECIDE WHETHER OR NOT TO BELIEVE A WITNESS'S TESTIMONY
17 ABOUT A PARTICULAR MATTER INCLUDE:

18 FIRST, WHAT WAS THE MANNER AND APPEARANCE OF
19 THE WITNESS WHO TESTIFIED? WAS HE OR SHE
20 STRAIGHTFORWARD OR HESITANT IN ANSWERING?

21 SECOND, WAS THE TESTIMONY OF A WITNESS
22 CONSISTENT OR INCONSISTENT?

23 HOW DID THE WITNESS COME TO KNOW THE FACTS
24 THAT HE OR SHE TESTIFIED TO? WAS THE PERSON PRESENT
25 DURING THE INCIDENT OR DID THEY HAPPEN ON THE SCENE

1 AFTER IT OCCURRED?

2 IS THERE SOME REASON A WITNESS WOULD WANT TO
3 GIVE TESTIMONY WHICH WOULD HELP OR HURT ONE SIDE OR THE
4 OTHER? IN OTHER WORDS, WAS THE WITNESS BIASED OR
5 PREJUDICED?

6 WAS THE TESTIMONY OF THE WITNESS
7 STRENGTHENED OR WEAKENED BY OTHER TESTIMONY?

8 YOU CAN BELIEVE AS MUCH OR AS LITTLE OF EACH
9 WITNESS'S TESTIMONY AS YOU THINK PROPER. YOU MAY
10 BELIEVE THE TESTIMONY OF A SINGLE WITNESS AGAINST THAT
11 OF MANY OR JUST THE OPPOSITE. OF COURSE, YOU DO NOT
12 DETERMINE THE TRUTH BY MERELY COUNTING THE NUMBER OF
13 WITNESSES PRESENTED BY EACH SIDE.

14 THROUGHOUT THIS PROCESS YOU HAVE BUT ONE
15 OBJECTIVE: TO SEEK THE TRUTH REGARDLESS OF ITS SOURCE.

16 THE RULES OF EVIDENCE ORDINARILY DO NOT
17 PERMIT WITNESSES TO TESTIFY AS TO THEIR OPINIONS OR
18 CONCLUSIONS. AN EXCEPTION, HOWEVER, TO THIS RULE DOES
19 EXIST AS TO THOSE CALLED EXPERT WITNESSES. EXPERT
20 WITNESSES ARE WITNESSES WHO BY EDUCATION AND EXPERIENCE
21 HAVE BECOME EXPERTS IN SOME ART, SCIENCE, PROFESSION OR
22 CALLING. THESE WITNESSES MAY STATE THEIR OPINION AS TO
23 RELEVANT AND MATERIAL MATTERS IN WHICH THEY PROFESS TO
24 BE AN EXPERT AND THEY MAY ALSO STATE THEIR REASONS FOR
25 THE OPINION.

1 YOU SHOULD CONSIDER EXPERT OPINION RECEIVED
2 IN EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU
3 THINK IT DESERVES. IF YOU DECIDE THE OPINION OF THE
4 EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION OR
5 EXPERIENCE, OR IF YOU SHOULD CONCLUDE THE REASON GIVEN
6 IN SUPPORT OF THE OPINION ARE NOT SOUND OR ARE
7 OUTWEIGHED BY OTHER EVIDENCE, YOU SHOULD DISREGARD THE
8 OPINION ENTIRELY.

9 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH
10 ARE GENERALLY PRESENTED DURING A TRIAL: CIRCUMSTANTIAL
11 EVIDENCE AND DIRECT EVIDENCE. DIRECT EVIDENCE IS THE
12 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE
13 ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.

14 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
15 OF FACTS AND CIRCUMSTANCES TO INDICATE THE EXISTENCE OF
16 A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
17 THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
18 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
19 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
20 DIRECT EVIDENCE.

21 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE
22 CASE, AND A CONTESTED FACTUAL ISSUE MAY HAVE SOME DIRECT
23 EVIDENCE AND SOME CIRCUMSTANTIAL EVIDENCE. TO DETERMINE
24 THE FACTS IN THIS CASE YOU WILL HAVE TO EVALUATE THE
25 CREDIBILITY, WHICH MEANS THE BELIEVABILITY OF EACH

1 WITNESS.

2 THE SAME CONSTITUTION AND LAWS WHICH
3 DESIGNATE AND MAKE YOU THE FINDERS OF THE FACTS, AS I
4 JUST EXPLAINED, ALSO MAKE ME THE SOLE INSTRUCTOR OF THE
5 LAW. YOU SHOULD ACCEPT THE STATEMENTS OF THE LAW AS I
6 GIVE THEM TO YOU. THE ATTORNEYS ARE NOT THE INSTRUCTORS
7 OF THE LAW. YOU MUST BASE YOUR DECISION MAKING ON WHAT
8 THE LAW IS AND NOT WHAT YOU THINK THE LAW SHOULD BE.

9 THE DEFENDANT IS CHARGED WITH TRAFFICKING IN
10 COCAINE. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
11 THAT THE DEFENDANT KNOWINGLY SOLD, MANUFACTURED,
12 CULTIVATED, DELIVERED, PURCHASED, BROUGHT INTO THE
13 STATE, PROVIDED FINANCIAL ASSISTANCE, OR OTHERWISE
14 AIDED, ABETTED, ATTEMPTED TO CONSPIRE TO SELL,
15 MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO
16 THIS STATE, WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE
17 POSSESSION OR KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL OR
18 CONSTRUCTIVE OR ACTUAL POSSESSION OF COCAINE. THE STATE
19 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE AMOUNT OF
20 COCAINE OR ANY MIXTURE CONTAINING COCAINE WAS TEN GRAMS
21 OR MORE.

22 THE STATE HAS CHARGED THE DEFENDANT WITH
23 VIOLATION OF TRAFFICKING OF A CONTROLLED SUBSTANCE.
24 YOU, THE JURY, MUST DECIDE WHETHER OR NOT THE DEFENDANT
25 IS GUILTY OF TRAFFICKING COCAINE OR WHETHER THE

1 DEFENDANT IS NOT GUILTY. IF YOU HAVE A REASONABLE DOUBT
2 AS TO WHETHER THE STATE HAS PROVED HIM GUILTY OF
3 TRAFFICKING, YOU SHOULD NOT CONVICT THE DEFENDANT OF
4 TRAFFICKING UNLESS THE STATE HAS ESTABLISHED HIS GUILT
5 BEYOND A REASONABLE DOUBT.

6 YOUR FIRST STEP IS TO DECIDE WHETHER THE
7 DEFENDANT IS GUILTY OF TRAFFICKING COCAINE AS HE WAS
8 CHARGED. TO PROVE TRAFFICKING IN COCAINE THE STATE MUST
9 SHOW THAT THE DEFENDANT HAD ACTUAL OR CONSTRUCTIVE
10 POSSESSION OF TEN GRAMS OR MORE OF COCAINE AND THAT HE
11 KNEW HE HAD SUCH POSSESSION. THE STATE MUST PROVE EACH
12 OF THE ELEMENTS BEYOND A REASONABLE DOUBT.

13 ANY PERSON WHO IS KNOWINGLY IN ACTUAL OR
14 CONSTRUCTIVE POSSESSION OF TEN GRAMS OR MORE OF COCAINE
15 SHALL BE GUILTY OF TRAFFICKING COCAINE. THEREFORE, YOU
16 CANNOT FIND THE DEFENDANT GUILTY OF TRAFFICKING COCAINE
17 UNLESS YOU FIND THERE WERE TEN GRAMS OR MORE OF COCAINE.
18 THIS IS WHY I WILL ASK YOU TO SPECIFICALLY DETERMINE THE
19 NUMBER OF GRAMS OF COCAINE THE STATE HAS ESTABLISHED IF
20 YOU FIND THE DEFENDANT GUILTY OF TRAFFICKING.

21 I SIMPLY GIVE THIS TO YOU BY WAY OF
22 INSTRUCTION. OBVIOUSLY, I'M NOT COMMENTING ON THE
23 EVIDENCE. IT'S UP TO YOU TO MAKE THE DETERMINATION AS
24 TO GUILT OR INNOCENCE.

25 ACTUAL POSSESSION IS, WHEN A PERSON IS

1 CHARGED WITH POSSESSION, THAT HE HAS ACTUAL PHYSICAL
2 CUSTODY OF THE THING. CONSTRUCTIVE POSSESSION IS WHEN A
3 PERSON HAS DOMINION OR CONTROL OVER EITHER THE OBJECT OR
4 THE PREMISES WHERE IT'S LOCATED.

5 POSSESSION MAY BE INFERRED FROM
6 CIRCUMSTANCES; IN OTHER WORDS, POSSESSION OF AN OBJECT
7 ON PREMISES OR IN AN AUTOMOBILE GIVES RISE TO AN
8 INFERENCE THAT THE PERSON CHARGED HAD BOTH THE POWER AND
9 INTENT TO CONTROL THE USE OF THE OBJECT.

10 THE MERE PRESENCE OF A PERSON IN AN AREA
11 WHERE AN OBJECT IS FOUND IS NOT ENOUGH IN AND OF ITSELF
12 TO GIVE RISE TO THE NECESSARY INFERENCE. THE
13 DEFENDANT'S KNOWLEDGE AND POSSESSION OF THE CONTROLLED
14 SUBSTANCE MAY BE INFERRED IF THE SUBSTANCE WERE FOUND ON
15 THE PREMISES UNDER HIS CONTROL.

16 YOU AS JURORS ARE FREE TO ACCEPT OR REJECT
17 THIS INFERENCE OF KNOWLEDGE AS FINDERS OF THE FACT IN
18 VIEW OF THE TESTIMONY AND EVIDENCE.

19 PROOF OF POSSESSION REQUIRES MORE THAN PROOF
20 OF MERE PRESENCE AT THE PLACE WHERE THE DRUGS WERE
21 FOUND. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
22 THAT THE ACCUSED HAD BOTH THE POWER, THAT IS ACTUAL OR
23 CONSTRUCTIVE CONTROL, AND THE INTENT TO CONTROL ITS
24 DISPOSITION OR USE.

25 ACTUAL CONTROL OCCURS WHEN A CONTROLLED

1 SUBSTANCE IS FOUND TO BE IN THE ACTUAL PHYSICAL
2 POSSESSION. CONSTRUCTIVE CONTROL OCCURS WHEN A PERSON
3 CHARGED WITH POSSESSION HAS DOMINION AND CONTROL OVER
4 THE CONTROLLED SUBSTANCE. THE DOMINION OR CONTROL COULD
5 BE EITHER OVER THE COCAINE ITSELF OR THE PROPERTY IN
6 WHICH THE COCAINE WAS FOUND. THE LAW SAYS THAT
7 CONSTRUCTIVE CONTROL EXISTS WHEN THE ACCUSED HAS THE
8 RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE
9 CONTROLLED SUBSTANCE. CONSTRUCTIVE CONTROL MAY BE
10 ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE AS WELL AS DIRECT
11 EVIDENCE AND IT MAY BE JOINTLY SHARED BY TWO OR MORE
12 INDIVIDUALS.

13 ACTUAL KNOWLEDGE OF THE PRESENCE OF A
14 CONTROLLED SUBSTANCE IS STRONG EVIDENCE OF THE INTENT TO
15 CONTROL ITS DISPOSITION. HOWEVER, ACTUAL KNOWLEDGE OF
16 THE PRESENCE OF A CONTROLLED SUBSTANCE ARE NOT THE ONLY
17 CIRCUMSTANCES FROM WHICH THE INTENT MAY BE INFERRED.

18 CONSTRUCTIVE POSSESSION OCCURS WHEN THE
19 PERSON HAS DOMINION AND CONTROL OVER THE OBJECT OR THE
20 PREMISES WHERE IT IS LOCATED, WHEREAS POSSESSION MAY BE
21 INFERRED FROM SURROUNDING CIRCUMSTANCES. THE MERE
22 PRESENCE OF A PERSON IN AN AREA WHERE AN OBJECT IS FOUND
23 IT NOT ENOUGH IN ITSELF TO GIVE RISE TO THE NECESSARY
24 INFERENCE.

25 THE WORD DOMINION MEANS THE PERSON IS

1 DETERMINING AND DIRECTING THE ACTIONS OR GOVERNING THE
2 PARTICULAR PLACE OR LOCATION. DOMINION HAS AN
3 OVERRIDING INFLUENCE. DOMINION IS A PERFECT AND
4 COMPLETE OWNERSHIP OF ANY THING AND EXERCISE OF CONTROL
5 OVER THE OBJECT. CONTROL MEANS THE AUTHORITY TO
6 REGULATE, GOVERN AND DIRECT THE EXERCISE OF CONTROL AND
7 RETAINING A DIRECT INFLUENCE OVER THE OBJECT.

8 A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE
9 DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE.
10 WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS
11 ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE
12 DECISION WHETHER OR NOT THE DEFENDANT MADE THE
13 STATEMENT.

14 YOU MUST DETERMINE WHETHER THE STATEMENT
15 THAT WAS MADE BY THE DEFENDANT WAS VOLUNTARY AND OF HIS
16 OWN FREE WILL; THAT HIS STATEMENT WAS NOT CAUSED BY
17 PRESSURE, FORCE, FEAR, THREATS, COERCION OR
18 INTIMIDATION; OR BY HOPE OR A PROMISE OF LENIENCY OR
19 REWARD OF ANY KIND.

20 TO DETERMINE WHETHER THE STATEMENT IS
21 VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS
22 OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING.
23 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE AGE
24 OF THE DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OF
25 EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY,

1 THE DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
2 BACKGROUND AND ENVIRONMENT; THE PLACE AND LENGTH OF
3 DETENTION, THE NATURE OF THE QUESTIONING, AND THE ADVICE
4 OR LACK THEREOF TO THE DEFENDANT OF HIS OR HER
5 CONSTITUTIONAL RIGHTS, INCLUDED BUT NOT LIMITED TO THE
6 RIGHT TO REMAIN SILENT, AND ANY STATEMENT COULD BE USED
7 AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A
8 LAWYER PRESENT; IF HE COULD NOT AFFORD A LAWYER, A
9 LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT COST;
10 AND HE COULD STOP MAKING THE STATEMENT AT ANY TIME.

11 YOU MUST CAREFULLY CONSIDER ALL OF THE
12 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO
13 THE STATEMENT. THE STATE HAS THE BURDEN OF PROOF BEYOND
14 A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS
15 VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE
16 STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM
17 PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE
18 GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE
19 ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY
20 STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE
21 STATEMENT AT ALL.

22 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
23 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS
24 IN THIS CASE; WHEN YOU COMPLY WITH YOUR OATH TO DO SO,
25 NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, YOU

1 WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU ARE
2 TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU
3 HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG
4 WITH OTHER EVIDENCE INTRODUCED.

5 I CHARGE YOU AS JURORS THAT YOU MUST DECIDE
6 THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
7 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE
8 GOVERNED BY SYMPATHY, BY PREJUDICE, BY PASSION, BY
9 PUBLIC OPINION OR BY ANY OTHER ARBITRARY FACTOR. BOTH
10 THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT
11 THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER
12 ALL THE EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW
13 THE LAW AS I HAVE EXPLAINED IT TO YOU.

14 NOTHING THAT I MAY HAVE SAID OR DONE DURING
15 THE COURSE OF THIS TRIAL HAS BEEN IN ANY WAY INTENDED TO
16 EXPRESS OR SUGGEST TO YOU THAT I HAVE AN OPINION AS TO
17 ANY OF THE FACTS, THE WEIGHT OF THE EVIDENCE OR THE
18 CREDIBILITY OF WITNESSES. IF MY ACTIONS OR WORDS SEEM
19 TO INDICATE THAT, YOU ARE TO DISREGARD SUCH AND FORM
20 YOUR OWN OPINIONS.

21 NOW, LADIES AND GENTLEMEN, MR. FOREMAN, I
22 HAVE PREPARED A VERDICT FORM. IT HAS THE NAME OF THE
23 CASE, *THE STATE OF SOUTH CAROLINA VERSUS TIMOTHY LAMAR*
24 *WALLACE*, AND THE NUMBER OF THE CASE. IT SAYS: WE, THE
25 JURY, FIND THE DEFENDANT, TIMOTHY LAMAR WALLACE, GUILTY

1 OF TRAFFICKING CRACK [SIC] COCAINE. THEN IT SAYS, ONLY
2 IF YOU, THE JURY, FIND THE DEFENDANT GUILTY, FILL IN THE
3 BLANK WITH THE APPROPRIATE AMOUNT.

4 IT SAYS: WE, THE JURY, FIND THAT BLANK
5 GRAMS OF COCAINE WERE IN THE POSSESSION OF THE
6 DEFENDANT, TIMOTHY LAMAR WALLACE. THEN IT SAYS: WE,
7 THE JURY, FIND THE DEFENDANT, TIMOTHY LAMAR WALLACE, NOT
8 GUILTY OF TRAFFICKING COCAINE.

9 THERE'S A PLACE FOR THE FOREMAN TO SIGN AND
10 DATE IT.

11 MR. FOREMAN, MEMBERS OF THE JURY, YOUR
12 VERDICT MUST BE UNANIMOUS, ALL 12 OF YOU MUST AGREE. I
13 WOULD TELL YOU THAT IT'S A GROUP PROCESS. I WOULD ASK
14 YOU TO DISCUSS THE CASE AMONGST YOURSELVES, RESPECT EACH
15 OTHER'S OPINIONS, LISTEN TO EACH OTHER'S OPINIONS, AND
16 ARRIVE AT A JUST AND FAIR VERDICT BASED UPON THOSE
17 DISCUSSIONS.

18 NOW, MR. FOREMAN, I'M GOING TO ASK YOU TO GO
19 TO THE JURY ROOM; HOWEVER, I DON'T WANT YOU TO START
20 YOUR DELIBERATIONS UNTIL THE BAILIFF BRINGS TO YOU THE
21 VERDICT FORM, THE CHARGE BOOK, AND THE EXHIBITS THAT
22 HAVE BEEN ADMITTED INTO EVIDENCE. AND THE REASON I SAY
23 THAT IS I HAVE TO GO OVER MY CHARGE WITH THE ATTORNEYS
24 AND MAY HAVE TO BRING YOU BACK, DELETE SOMETHING OR ADD
25 SOMETHING TO THE CHARGE, AND I WANT YOU TO WAIT TO BEGIN

1 YOUR DELIBERATIONS UNTIL I HAVE THE OPPORTUNITY TO TAKE
2 UP MY CHARGE WITH THE ATTORNEYS.

3 SO MR. FOREMAN, LADIES AND GENTLEMEN OF THE
4 JURY, JUST FOLLOW THE BAILIFF TO THE JURY ROOM, PLEASE.
5 EVERYBODY BUT THE ALTERNATE, PLEASE; THE ALTERNATE CAN
6 JUST KEEP YOUR SEAT.

7 (WHEREUPON, THE JURY, EXCEPT FOR THE
8 ALTERNATE, LEFT THE COURTROOM AT 4:15 P.M.)

9 **THE COURT:** ANY EXCEPTIONS FROM THE STATE?

10 **MR. STOUDEMIRE:** JUDGE, JUST WITH REGARD TO
11 THE JURY FORM. IF I HEARD YOU CORRECTLY, I THINK YOU
12 STATED WHEN YOU WERE READING THE FORM, I HEARD YOU STATE
13 "GUILTY OF TRAFFICKING IN CRACK."

14 **THE COURT:** ALL RIGHT. ANYTHING FROM THE
15 DEFENDANT?

16 **MS. EARLE:** I WOULD AGREE WITH THAT. THAT'S
17 THE ONLY EXCEPTION I HAVE.

18 **THE COURT:** OKAY. I'LL BRING THEM BACK AND
19 MAKE SURE THEY UNDERSTAND THAT.

20 TELL HIM TO BRING THE JURY BACK.

21 **THE SHERIFF'S DEPUTY:** MR. BIBB, BRING THE
22 JURY BACK.

23 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
24 4:17 P.M.)

25 **THE COURT:** MR. FOREMAN, MEMBERS OF THE

1 JURY, I THINK WHEN I WAS EXPLAINING TO YOU THE VERDICT
2 FORM, I INADVERTENTLY SAID TRAFFICKING IN CRACK COCAINE.
3 I MEANT TRAFFICKING COCAINE, AND THAT'S WHAT THE VERDICT
4 FORM REFLECTS.

5 YOU MAY GO TO THE JURY ROOM. THANK YOU VERY
6 MUCH.

7 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
8 4:18 P.M.)

9 THE COURT: ANY EXCEPTIONS FROM THE STATE AS
10 TO THAT CHARGE?

11 MR. STOUDEMIRE: NONE, YOUR HONOR.

12 THE COURT: ANY FROM THE DEFENDANT?

13 MS. EARLE: NONE, YOUR HONOR.

14 THE COURT: ALL RIGHT. IF YOU WOULD, COME
15 LOOK AT THE EXHIBITS, MAKE SURE THEY ARE ALL PRESENT,
16 PUT ON THE RECORD THE EXHIBITS ARE PRESENT, AND THEN
17 WE'LL SEND THE EXHIBITS BACK AND TELL THE JURY TO BEGIN
18 THEIR DELIBERATIONS.

19 (OFF-THE-RECORD DISCUSSION.)

20 THE COURT: HAVE YOU GOT EVERYTHING?

21 BAILIFF: UH-HUH, YES.

22 THE COURT: WHERE'S THE TAPE? TELL THEM IF
23 THEY WANT TO HEAR THE TAPE, THEY NEED TO WRITE A NOTE
24 AND WE'LL BRING THEM BACK INTO THE COURTROOM AND WE'LL
25 LET THEM HEAR IT IN THE COURTROOM, OKAY? LET ME JUST

1 KEEP THAT UP HERE.

2 MS. EARLE: AND, YOUR HONOR, I HAVE ONE
3 THING THAT I NEED TO PUT ON THE RECORD.

4 THE COURT: ALL RIGHT.

5 (COUNSEL CONFER.)

6 THE COURT: MS. EARLE, YOU SAID YOU WANTED
7 TO PUT SOMETHING ON THE RECORD?

8 MS. EARLE: YES, YOUR HONOR. MR. WALLACE
9 WAS ALSO CHARGED WITH CONSPIRACY TO TRAFFIC COCAINE ON
10 INDICTMENT 2006-GS-37-174, AND WITH DRIVING LEFT OF
11 CENTER ON TRAFFIC TICKET 59897 D-A, AND IT'S MY
12 UNDERSTANDING FROM THE SOLICITOR'S OFFICE THAT THOSE
13 CHARGES ARE NOT GOING TO BE PURSUED AND WILL BE
14 DISMISSED.

15 THE COURT: IS THAT CORRECT?

16 MR. STOUDEMIRE: YES.

17 THE COURT: THAT IS CORRECT?

18 MR. STOUDEMIRE: THAT'S CORRECT, YOUR HONOR.

19 MS. EARLE: THANK YOU.

20 THE COURT: THANK YOU. ALL RIGHT. IT'S
21 4:25. I'M GOING TO LET THE JURY PROBABLY DELIBERATE
22 UNTIL ABOUT 5:30, 6:00, AND IF THEY HAVEN'T REACHED A
23 VERDICT, I'M GOING TO LET THEM COME BACK TOMORROW.

24 IS THAT AGREEABLE WITH THE DEFENDANT?

25 MS. EARLE: YES, YOUR HONOR.

1 **THE COURT:** IS THAT AGREEABLE WITH THE
2 STATE?

3 **MR. STOUDEMIRE:** YES, YOUR HONOR.

4 **THE COURT:** WE'LL STAND AT EASE AWAITING THE
5 JURY'S VERDICT.

6 (THE JURY BEGAN THEIR DELIBERATIONS AT 4:25
7 P.M.)

8 (THE JURY ALTERNATE WAS EXCUSED BY THE
9 COURT.)

10 (THERE WAS A NOTE FROM THE JURY AT
11 APPROXIMATELY 5:06 P.M.)

12 **THE COURT:** LET ME SEE THE ATTORNEYS UP
13 HERE.

14 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
15 CONFERRED WITH THE COURT OUT OF THE PRESENCE
16 OF THE COURT REPORTER.)

17 (COURT'S EX. # 1, NOTE FROM JURY, WAS MARKED
18 FOR IDENTIFICATION.)

19 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
20 5:14 P.M.)

21 **THE COURT:** MR. FOREMAN, WE'RE GOING TO PLAY
22 THE PORTION OF THE VIDEO THAT YOU REQUESTED.

23 (PORION OF VIDEOTAPE PLAYED FOR JURY.)

24 **THE COURT:** MR. FOREMAN, IF YOU NEED TO
25 LISTEN TO ANY MORE OF IT, LET ME KNOW AND WE'LL SET IT

1 UP.

2 THE FOREMAN: THANK YOU, SIR.

3 THE COURT: YOU MAY GO BACK TO THE JURY
4 ROOM.

5 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
6 5:17 P.M.)

7 THE COURT: OKAY. THANK YOU VERY MUCH.

8 MS. EARLE: YOUR HONOR, A PORTION OF WHAT
9 WAS PLAYED TO THE JURY WAS NOT PLAYED DURING THE TRIAL
10 AND WAS NOT ENTERED INTO EVIDENCE.

11 THE COURT: WHICH PORTION? I COULDN'T HEAR
12 THE THING FROM WHERE I AM; I COULD NOT HEAR WHAT WAS
13 SAID FROM WHERE I'M SITTING.

14 MS. EARLE: ABOUT THE FIRST 45 SECONDS TO A
15 MINUTE WAS THE OFFICER ASKING HIM IF HE HAD PRIOR
16 CONVICTIONS, AND IT'S THAT PORTION THAT WAS NOT ALLOWED
17 TO BE SHOWN TO THE JURY DURING THE TRIAL.

18 THE COURT: WELL, THAT MAY BE, BUT ALL THAT
19 WAS BROUGHT OUT BY YOURSELF, OKAY? SO WHAT'S YOUR
20 MOTION?

21 MS. EARLE: WELL, I OBJECT TO THE JURY
22 SEEING THAT PART OF IT BECAUSE THAT WAS NOT EVIDENCE AT
23 TRIAL.

24 THE COURT: I DIDN'T HEAR WHAT WAS SAID. I
25 CAN'T HEAR IT FROM WHERE I'M SITTING. IT'S ALL BLURRED.

1 **MR. STOUDEMIRE:** YOUR HONOR, I THINK THE
2 PORTION THAT MS. EARLE IS TALKING ABOUT IS THE PORTION
3 THAT WE MUTED DURING SERGEANT COLEGROVE'S TESTIMONY
4 WHICH DEALT WITH MR. WALLACE TALKING ABOUT HIS --
5 SERGEANT COLEGROVE ASKED HIM: DO YOU HAVE ANY PRIORS?
6 AND HE TALKED ABOUT ONE PRIOR DRUG CONVICTION.

7 I THINK NOW THAT'S PERFECTLY FINE TO SHOW
8 IT. MR. WALLACE GOT UP ON THE STAND AND TESTIFIED THAT
9 HE HAD A PRIOR DRUG CONVICTION, AND I THINK THAT WAS
10 BROUGHT OUT BY HIM.

11 **MS. EARLE:** HE MAY HAVE TESTIFIED TO THAT,
12 BUT YOU ARE ADDING EVIDENCE TO THE JURY AFTER THE CLOSE
13 OF EVIDENCE BY ALLOWING THAT IN AT THIS TIME.

14 **THE COURT:** WHAT'S YOUR MOTION?

15 **MS. EARLE:** I MAKE A MOTION FOR A MISTRIAL,
16 YOUR HONOR.

17 **THE COURT:** ALL RIGHT. I'M GOING TO DENY
18 YOUR MOTION, AND I'M GOING TO TAKE THE POSITION THAT THE
19 TESTIMONY FROM YOUR CLIENT WAS CONCERNING THE
20 CONVICTION. EVEN THOUGH IT WAS PLAYED IN ERROR AT THIS
21 TIME, I'M GOING TO DENY YOUR MOTION SINCE THE JURY IS
22 ALREADY AWARE OF THAT INFORMATION. EVEN THOUGH WE HAD
23 MUTED IT WHEN THEY FIRST HEARD IT IN THE STATE'S CASE,
24 BUT THEN YOUR CLIENT TOOK THE STAND AND TESTIFIED ABOUT
25 THE CONVICTION. THEREFORE, AT THIS POINT IN TIME I

1 THINK THE ERROR IS HARMLESS SINCE IT WAS ALREADY
2 REVEALED TO THE JURY, AND I'M GOING TO DENY YOUR MOTION
3 FOR A NEW TRIAL. THANK YOU VERY MUCH. BUT THANK YOU
4 FOR ASKING.

5 ALL RIGHT. WE'LL STAND AT EASE AWAITING THE
6 JURY'S VERDICT.

7 NEXT TIME DON'T BRING THE TAPE IN HERE
8 WITHOUT IT -- WHAT DO YOU CALL IT -- EDITED. OKAY?

9 MR. STOUDEMIRE: YES, SIR.

10 THE COURT: ESPECIALLY WITH THIS ANTIQUATED,
11 PIECE-OF-JUNK SYSTEM WE'VE GOT.

12 IF THEY HADN'T HEARD ABOUT IT, I WOULD HAVE
13 GRANTED YOUR MOTION.

14 MS. EARLE: I UNDERSTAND, YOUR HONOR.

15 THE COURT: DO YOU UNDERSTAND? OKAY?

16 MS. EARLE: YES, SIR, I DO UNDERSTAND.

17 THE COURT: AND I GUESS WE'VE GOT TO SET
18 THIS THING UP WHERE YOU CAN HEAR WHAT'S GOING ON HERE,
19 BECAUSE I CAN'T HEAR IT, IT'S JUST BLURRY.

20 MR. STOUDEMIRE: UNLESS YOU ARE SITTING IN
21 THE JURY-BOX, IT'S VIRTUALLY IMPOSSIBLE TO HEAR IT.

22 THE COURT: I CAN'T HEAR IT FROM WHERE I'M
23 SITTING. CAN YOU-ALL HEAR IT FROM THERE?

24 MS. EARLE: JUST BARELY.

25 THE CLERK: I CAN'T HEAR IT UP THERE AT ALL,

1 YOUR HONOR.

2 THE COURT: IT'S JUST AN ABSOLUTE BLUR FROM
3 HERE; IT'S JUST A BUNCH OF MUMBLING WORDS.

4 MS. EARLE: IT'S JUST YET ANOTHER ADDED
5 PROBLEM, INCLUDING THE FACT THAT I CAN'T SEE THE WITNESS
6 WHEN THEY'RE SITTING ON THE WITNESS STAND.

7 THE COURT: WELL, I'VE BEEN TRYING TO GET
8 THEM TO GET ME A CHAIN SAW AND I CAN SOLVE THAT PROBLEM.

9 (OFF-THE-RECORD DISCUSSION.)

10 (THE JURY CONTINUED THEIR DELIBERATIONS FROM
11 5:21 P.M. UNTIL 5:26 P.M., AT WHICH TIME THE
12 JURY REACHED A VERDICT.)

13 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
14 5:30 P.M.)

15 VERDICT OF THE JURY:

16 THE COURT: MR. FOREMAN, I UNDERSTAND YOU
17 HAVE REACHED A VERDICT; IS THAT CORRECT?

18 THE FOREMAN: YES.

19 THE COURT: IF YOU WOULD HAND THE VERDICT
20 FORM TO THE BAILIFF, PLEASE.

21 THANK YOU, SIR.

22 MADAM CLERK, IF YOU WOULD PUBLISH THE
23 VERDICT, PLEASE, MA'AM.

24 THE CLERK: IN THE MATTER OF THE STATE OF
25 SOUTH CAROLINA VERSUS TIMOTHY LAMAR WALLACE,

1 2006-GS-37-175, THE VERDICT OF THE JURY IS WE FIND -- WE
2 FIND -- WE, THE JURY, FIND THE DEFENDANT, TIMOTHY LAMAR
3 WALLACE, GUILTY OF TRAFFICKING COCAINE.

4 WE, THE JURY, SPECIFICALLY FIND THE
5 FOLLOWING: 752 GRAMS OF COCAINE WERE IN THE POSSESSION
6 OF TIMOTHY LAMAR WALLACE. THIS WAS SIGNED BY RORY
7 DAILY, FOREPERSON.

8 LADIES AND GENTLEMEN, IF WAS THIS YOUR
9 VERDICT AND IF IT'S STILL YOUR VERDICT, WOULD YOU PLEASE
10 INDICATE BY THE RAISING OF YOUR RIGHT HAND.

11 (ALL JURORS RAISED THEIR RIGHT HANDS.)

12 THE CLERK: LET THE RECORD REFLECT ALL
13 JURORS ARE RAISING THEIR RIGHT HAND.

14 THE COURT: THANK YOU, MA'AM.

15 ALL RIGHT. ANY MOTIONS FROM THE STATE AS TO
16 THE JURY?

17 MR. STOUDEMIRE: NONE, YOUR HONOR.

18 THE COURT: AND ANY FROM THE DEFENDANT AS TO
19 THE JURY?

20 MS. EARLE: NONE, YOUR HONOR.

21 THE COURT: LADIES AND GENTLEMEN OF THE
22 JURY, I WANT TO THANK YOU FOR YOUR SERVICE, AND I'VE
23 ENJOYED WORKING WITH YOU THIS WEEK.

24 DOES ANYBODY HAVE A SENTENCING SHEET?

25 MR. STOUDEMIRE: (HANDING).

1 THE COURT: THANK YOU, SIR.

2 MR. STOUDEMIRE: YES, SIR.

3 THE COURT: MR. FOREMAN, I HAVE FILLED IN ON
4 THE INDICTMENT "GUILTY" AND DATED IT TODAY, SEPTEMBER
5 THE 18TH, 2007, AND I WILL GIVE IT TO THE BAILIFF AND
6 ASK YOU TO PLEASE SIGN.

7 (OFF-THE-RECORD DISCUSSION.)

8 THE COURT: THANK YOU.

9 THE BAILIFF: YES, SIR.

10 SENTENCE OF THE COURT:

11 THE COURT: ALL RIGHT, MR. WALLACE, I WOULD
12 BE GLAD TO HEAR FROM YOU AND YOUR ATTORNEY CONCERNING
13 SENTENCING. AS I TOLD YOU AT THE BEGINNING OF THE
14 TRIAL, MY UNDERSTANDING IS IT'S A MANDATORY MINIMUM OF
15 25 YEARS. I CANNOT GIVE YOU ANYTHING LESS THAN 25 YEARS
16 ON THIS PARTICULAR CHARGE. I WOULD BE GLAD TO HEAR FROM
17 YOU AND YOUR ATTORNEY CONCERNING SENTENCING. DO YOU
18 HAVE ANYTHING YOU WOULD LIKE TO SAY?

19 THE DEFENDANT: NO.

20 MS. EARLE: YOUR HONOR, I WOULD ASK THAT YOU
21 SENTENCE HIM ONLY TO THE MINIMUM AND NOT TAKE ANY
22 ADDITIONAL TIME ON THIS CHARGE.

23 THE COURT: ALL RIGHT, MR. WALLACE. NUMBER
24 175, TRAFFICKING IN COCAINE MORE THAN 400 GRAMS, YOU ARE
25 SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A

1 PERIOD OF 25 YEARS. THANK YOU VERY MUCH.

2 DO YOU HAVE ANY MOTIONS OR DO YOU WANT TEN
3 DAYS TO FILE YOUR MOTIONS?

4 MS. EARLE: YOUR HONOR, I WOULD LIKE TO GO
5 AHEAD AND MAKE A MOTION FOR A NEW TRIAL AT THIS TIME.

6 THE COURT: ALL RIGHT. I WOULD BE GLAD TO
7 HEAR ANY MOTIONS YOU WOULD LIKE TO MAKE, OR I'LL BE
8 HAPPY TO GIVE YOU THE TEN DAYS TO FILE THEM IN WRITING.
9 IT'S YOUR CHOICE.

10 MS. EARLE: I'LL GO AHEAD AND MAKE THE
11 MOTION FOR A NEW TRIAL NOW AT THIS TIME, YOUR HONOR.

12 THE COURT: OKAY.
13 MOTION FOR NEW TRIAL ON BEHALF OF DEFENDANT:

14 MS. EARLE: I WOULD MAKE A MOTION FOR A NEW
15 TRIAL BASED ON THE ORIGINAL MOTION TO SUPPRESS BEING
16 DENIED AND FOR THE ADDITIONAL EVIDENCE BEING PLAYED FOR
17 THE JURY AFTER THE CLOSE OF EVIDENCE. AND THOSE WOULD
18 BE MY TWO GROUNDS FOR MY MOTION FOR A NEW TRIAL.

19 THE COURT: OKAY. ANYTHING THE STATE WOULD
20 LIKE TO ADD?

21 MR. STOUDEMIRE: NOTHING, YOUR HONOR.

22 THE COURT: ALL RIGHT. I'LL DENY THOSE
23 MOTIONS. ANY OTHER MOTIONS?

24 MS. EARLE: NO, YOUR HONOR, THANK YOU.

25 THE COURT: OKAY. THANK YOU.

1 LADIES AND GENTLEMEN OF THE JURY, AS I SAID,
2 I ENJOYED WORKING WITH YOU THIS WEEK. THANK YOU SO VERY
3 MUCH FOR YOUR SERVICE. AND THE BAILIFF WILL SHOW YOU
4 THE WAY OUT. AND WE ARE THROUGH FOR THE WEEK AS FAR AS
5 YOUR JURY SERVICE IS CONCERNED. HAVE A GOOD WEEK. THE
6 BAILIFF WILL SHOW YOU OUT.

7 EVERYBODY ELSE STAY SEATED.

8 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
9 5:36 P.M.)

10 THE COURT: ALL RIGHT. IF EVERYBODY WOULD
11 JUST WAIT A FEW MINUTES TO GIVE THE JURY A CHANCE TO GET
12 OUT OF THE COURTHOUSE. OKAY?

13 MS. EARLE: YES, SIR.

14 MR. STOUDEMIRE: YES, SIR.

15 THE COURT: MR. WALLACE, I BELIEVE THE
16 DEPUTY WILL TAKE YOU INTO CUSTODY.

17 WE'LL ADJOURN. I ENJOYED WORKING WITH BOTH
18 OF YOU. THANK YOU VERY MUCH.

19 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
20 STATE OF SOUTH CAROLINA VERSUS TIMOTHY LAMAR
21 WALLACE WAS CONCLUDED AT 5:56 P.M. ON THE
22 18TH DAY OF SEPTEMBER, 2007.)

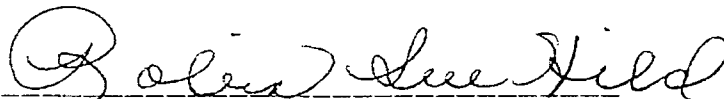
23 ***** END OF REQUESTED TRANSCRIPT *****
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, VOLUME II, SEPTEMBER 18TH, 2007, PAGES 106 THROUGH 248, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR OCONEE COUNTY, SOUTH CAROLINA, ON THE 17TH DAY AND 18TH DAY OF SEPTEMBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MARCH 6, 2008



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

FORM 5

FILED OCOFEE, SC
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Oconee

Timothy L. Wallace #222935,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2013-CP-37.00290

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC at Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court for Oconee County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-37-175
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 17, 2007 (Twenty-five years)
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Petition for Writ of Certiorari granted by S.C. Supreme Court.
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The Court of Appeals affirmed the conviction
- ii. The S.C. Supreme Court denied the Writ
- iii. _____
- (c) the date of each such result:
- i. March 2, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Wallace, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Prosecutor's misconduct
- (b) Ineffective assistance of trial Counsel
- (c) Ineffective assistance of trial Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) see attached Memorandum of Law
- (b) u
- (c) u

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. u
- iii. u
- iv. u
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. u
- iii. u
- iv. u
- (c) the disposition thereof:
- i. N/A
- ii. u
- iii. u

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. ll
- iii. ll
- iv. ll
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. ll
- iii. ll
- iv. ll
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. ll
- iii. ll
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. ll
- iii. ll
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) All the grounds must first be raised in PCR proceeding
- (b) ll
- (c) ll
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Suzanne Earle
- ii. Kathrine H. Hudgins, P.O. Box 11589, Columbia, S.C. 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of Conviction for a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Oconee)

2013 CP. 31. 00290

I, Timothy L. Wallace, #222935
being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timothy L. Wallace

SWORN to and subscribed before me this 3rd
day of April, 2013.

Patricia Buchanan (L.S.)
Notary Public

My Commission Expires: 4-26-2020

FILED OCOFEE, SC
DEVERLY WHITEFIELD
2013 APR 12 AM 11:15

2013-CP-37-00290
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Timothy L. Wallace, #122935

I, ✓, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Timothy L. Wallace
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of April, 2013.

Patricia Buchanan
Notary Public

My Commission Expires: 4-26-2020

FILED
CLERK OF COURT
BEVERLY H. HIGHT
2013 APR 12 AM 11:15

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Timothy L. Wallace)
SCDC No.222935)
)
Applicant,)
)
)
)
v.)
)
)
The State,)
)
Respondent.)
)
)

IN THE COURT OF COMMON PLEAS
Case No. 2013 CP 37-00240

MEMORANDUM OF LAW IN
SUPPORT OF APPLICATION
FOR POST-CONVICTION
RELIEF

FILED OCONEE, SC
JAN 12 12 11:15
2013

COME NOW, the applicant, above named, presents the Memorandum of Law in Support of application for Post-Conviction Relief (PCR) and would show unto the Honorable Court the following.

STATEMENT OF THE CASE

In January of 2006, the Oconee County Grand Jury indicted the applicant for Trafficking Cocaine over 400 grams, indictment No. 2005-GS-37-175. On September 17, 2007, he proceeded to jury before the Honorable J.C. Buddy Nicholson. He was represented by Attorney Suzanne Earle. The jury found him guilty and Judge Nicholson sentenced him to 25 years imprisonment.

A timely appeal was filed on his behalf. He was represented on direct appeal by Kathrine H. Hudgins of the SC Appellate Defender's Office. On November 3, 2010, the South Carolina Court of Appeals heard arguments in the case. On March 2, 2011, the Court of Appeals affirmed his conviction. State v. Wallace, 392 S.C.47, 707 S.E.2d 451 (Ct.App.2011). A petition for rehearing was filed and denied on April 21, 2011. The State filed a return June 29, 2011. The S.C. Supreme Court granted the petition for writ of certiorari on April 5, 2012.

The S.C. Supreme Court denied the writ of certiorari on 12-19-12.

ARGUMENT

The applicant has discovered after his trial that the solicitor used perjured testimony to unlawfully convict him.

The applicant submits that the Uniform Post-Conviction Act provides that a claim may be based on a conviction or sentence in violation of the U.S. Constitution or State Law, evidence of material facts not previously present that requires vacating the conviction or sentence in the interest of justice, or allegations of errors subject to other traditional forms of collateral attacks. S.C. Code Ann. §17-27-20 (a)(1),(4),(6)(Law Co-Op-2000). He further submits that by an interpretation of this statute, our Supreme Court has recognized prosecutorial misconduct as grounds for PCR, notwithstanding the absence even of a claim of ineffective assistance of counsel. See Gibson v. State, 514 S.E.2d 320,323-27 (1999)(setting aside applicant's guilty plea, and granting new trial, because of prosecutor's Brady violation).

Likewise the applicant submits that his counsel filed discovery motions pursuant to Rule 5, S.C.R.Crim.P., and Brady. In response, the solicitor provided him a Affidavit by its Forensic Chemist Mike Miller, showing that he was currently by Sled as a Forensic Chemist in the area of Forensic Drug Analysis. Based on this disclosure and testimony by Miller, the courts declared Miller an expert to identify the drugs found in applicant's alleged possession as cocaine. Tr. p.186-p. 187; see also copy of Miller's Affidavit attached hereto as Exhibit A.

After his trial, the applicant contacted SLED to inquire about Miller's certification as a forensic chemist by its Division. SLED responded that Miller certification as a forensic chemist by its Division had expired when he resigned in August 2000 and that he had not been recertified since the time of his resignation. See copy of SLED's Letter attached hereto as Exhibit B. Nevertheless, to obtain relief on the basis of subornation and perjury, and applicant must show (1) that the witness made a false statement, (2) the false statement was material, and (3) The false statement was knowingly employed by the prosecution. See Beasley . Holland, 649 F.Supp. 561 (S.C.V.Va. 1985); Thomas v. Garrison. 516 F.2d 986 (4th Cir. 1978, citing Napue v. Illinois. 79 S.Ct. 1173 (1959).

For corroborative proof of his claim, the applicant that (1) the SLED Letter shows that Miller's testimony

¹ Brady v. Maryland, 373 U.S. 83,83 S.Ct. 1194 (1963)

about being currently certified by SLED was false, (2) Miller's false testimony was material since certification by SLED to test drugs is mandated by S.C. Code §23-3-15 and Rule 6, S.C. R.Crim.P., for testing and admission of drug evidence, (3) the solicitor had to have known about Miller's certification from his own contemporary record since Miller was a county government employee. In Brady the Court held that "suppression by prosecution of evidence favorable to an accused upon request violates due process when evidence is "material either to guilt or punishment , irrespective of good or bad faith of the prosecution". 375 U.S. 87, 83 S.Ct. at 1195.

In Kyles v. Whitley, 115 S.Ct. 1555 (1995), the Courts held that in determining whether evidence that government failed to disclose to defendant satisfies the "materiality test" of Brady, question is not whether defendant would have more likely than not have received a different verdict with the evidence, but whether in its absence he "received a fair trial", understood as a trial resulting in a verdict worthy of confidence; a reasonable probability of a different result is accordingly shown when government's evidentiary suppression undermines

confidence in the outcome of trial. Citing United States v. Bagley, 105 S.Ct. 3375 (1985), Id. at 1556.

Finally, in addressing the use of perjured testimony by prosecution, the U.S. Supreme Court has held that a conviction must be set aside if there is a reasonable probability that the testimony could have affected the outcome of the trial. Bagley, infra. Finally, the Court has held that no conviction can be justified in a state case where the prosecution knowingly use perjured testimony with the express intent to deliberately misrepresent the facts to obtain an unlawful conviction. See, e.g., Miller v. Pate, 87 S.Ct. 785 (1962)

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to move for suppression of drug evidence based on the state's Rule 5 and Brady violation of failing to disclose and documented records of its drug dog's training and certification to support the police probable cause to search his car based on its drug dog's alert.

To establish a claim of ineffective assistance of counsel, an applicant must show that counsel's performance was deficient and that he was prejudiced by such deficiency of counsel. Strickland v. Washington, 104 S.Ct. 2052 (1984). Specifically

, when an applicant claim that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, he must show that claim is meritorious and that the verdict would have been different absent evidence that should have been excluded. Kimmelman v. Morison, 105 S.Ct. 2574 (1986)

The applicant conceded there was probable cause for his traffic stop and issuance of a traffic citation. The State also conceded that he was detained a second time while Officer Crompton used a drug dog named "Dasher" to sniff his car for drugs. Officer Crompton testified on direct by the solicitor that his dog alerted to the "driver's side and trunk" of applicant's car. Crompton further testified that he did not find anything on the driver's side or trunk of applicant's car where the dog had alerted. Tr. p. 126, L.15-25. As a result of his dog's alert to establish probable cause to search applicant's car, Crompton opened the back door of the car--where the dog never alerted--and pulled out bags, searched them, and found cocaine in one of them. Tr. p. 127, L. 1-7.

With regards to the use of drug sniffing dogs, in United States v. Place, 103 S.Ct. 2637 (1982), the Court characterized the sniff of a narcotic-seeking dog as "sui generis" (of its-own kind) under the Fourth Amendment, and held that a dog's sniff was not a search. Id. 103 S.Ct. 2637. The Court's classification rested not only upon the limited nature of the intrusion, but on a further premise that experience had shown to be untenable, the assumption that "well-trained (certified) sniff dog" do not err. Conversely, in Illinois v. Caballes, 125 S.Ct. 834 (2005), the Court held that the infallibility dog, recognized in Place, is a creature of legal fiction claimed, and that once the dog's fallibility is recognized that ends the justification claimed in Place for treating the dog sniff as sui generis under the Fourth Amendment for probable cause to conduct a search for drugs.

In reliance on Caballes for an assessment of the fallibility of the dog used in applicant's case, it will be enlightening to review Officer Crompton's testimony on cross-examination by defense counsel concerning the reliability of his drug sniffing dog "Dasher" who alerted to applicant's car, as follows:

Q: When you got out your dog "Dasher" you said he was an aggressive alert dog?

A: Yes Ma'am.

Q: ...And that he bites and scratches to indicate that something is present?

A: Yes Ma'am.

Q: All right. Now, I notice on the video that you were doing hand signals with him, (dog), and what sort of hand signals are those?

A: Well, it's not signals. What I'm doing is presenting where I want him to smell. If you notice, I would do it across the seam of the door and stuff and that's how he's trained. I would present an item to him and that's what he smells.

Q: All right. So when you do this (demonstrating hand signals) and he would jump toward your hand, that's an alert?

A: No, Ma'am...I don't count none of that as an alert, no Ma'am.

Q: Okay, when you...?

A: That's just something that I do, that I just...make sure that he's focused in on me, and then I'll present the vehicle, a cabinet, or whatever I want him to check.

Q: All right, so when you are at the trunk of the car and you do your hand like this (demonstrating hand signals) AND he jumps on the trunk, you consider that an alert when your hand is going this way (demonstrating hand signals) and that's where he is going?

A: When I present the trunk to him, he jumped on there, yes Ma'am and then he gives two scratches, I consider that an alert.

Tr. p. 140, L. 2--p. 141, L. 10.

For a judicial review of the "hand signals, or cues" used by Officer Crompton for his dog's alert, in U.S. Kennedy, 131 F.3d 1371 (10th Cir. 1997), a case addressing the proper training and certification for drug dog's alert, the court found that a school named "Global Training Academy" had trained and certified a dog named "Bobo" who received a 96% success rating. It further found that the "Global Training Manual" instructed the dog handler, Officer LuJan, to keep proper records of Bobo's activities and to periodically field train

him to ensure his continued reliability. The Mail further instructed that over time, if not properly monitored, a drug dog may fall out of its trained behavior and begin to "respond to handler's cue (hand signals)" rather than to actual detection of narcotic odor; that a dog will lose its effectiveness in the field and may revert to old bad habits if not continually trained; that accurate record keeping is essential to ensure the dog's reliability.

Moreover, a review of judicial opinions regarding the use of dogs to establish probable cause for searches shows that a positive reaction by a "properly trained and certified"

narcotic dog can establish probable cause for presence of drugs to support searches, U.S. v. Berry, 90 F.3d 148 (6th Cir. 1996); the training and reliability of the dog must be established when a dog sniff is used for probable cause to search, U.S. v. Diaz, 25 F.3d 392(6th Cir. 1994); an alert of a "trained and certified" narcotic-detection canine, by itself, can provide probable cause under the Fourth Amendment to support a search, U.S. v. Wood, 915 F.Supp. 1126 (D.Kan.-1996); When the documentation of a dog's training and certification is absent or incomplete, no proper evaluation of dog's reliability can take place when determining whether his alert establishes probable cause for a search, U.S. v. Florez, 871 F.Supp. 1411(D.N.M. 1994).

Accordingly, given Officer Crompton's "use of hand signals, or cues" for his drug dog's responses, coupled with the state's failure to disclose any documented records of its drug dog's training and certification pursuant Rule 5, - S.C.R.Crim.P., and Brady violation, to establish probable cause for its drug dog's alert to search applicant's car, the applicant contends that his counsel's failure to move for suppression of the drug evidence against him was ineffective assistance that was prejudicial insofar as the results of his trial would have been different absent the evidence against him. Strickland, Supra, Morrison, Supra.

the applicant was denied the right to effective assistance of trial counsel's failure to object to the State's admission of hearsay testimony in violation of the Confrontation Clause of the Sixth Amendment.

To establish a claim of ineffective assistance of counsel, PCR applicant must prove that counsel's representation fell below an objective standard of reasonableness and, but for counsel's error there is a reasonable probability results at trial would have been different: a reasonable probability is a probability sufficient to undermine the confidence in the trial. Strickland, Supra.

During applicant's trial, the solicitor proffered the following testimony by Officer Crompton to establish the training and certification of his drug sniffing dog, Dasher:

Q: Let's talk a little bit about your canine, what's his name?

A: Dasher.

Q: Have you and Dasher received any specialized training?

A: Yes, Sir. When I got Dasher, he was certified through Charlie Kirchner, out of Inman, in narcotic, tracking, and aggressive work. He spent some time in Hungary doing some of his drug and tracking work. I believe that was 12 weeks...

Q: And what kind of drugs is Dasher trained to search out or identify?

A: cocaine, marijuana, hash, meth.

Tr.p.123,L.10-25.

The applicant accordingly contends that the proffer of Officer Crompton's testimony by the solicitor was hearsay that violated his right to confrontation under the Sixth Amendment of the U.S. Constitution.

In relevant part, the S.C. Rules of Evidence defines hearsay as: an oral or written assertion, or nonverbal conduct of a person, if it is intended by the person as an assertion; it defines hearsay as a statement, other than one made by the declarant while testifying at trial...offered in evidence to prove the truth of the matter asserted; and it defines a statement which is not hearsay as a statement by a witness who is subject to cross-examination concerning the statement. Hearsay Rule 801 (a),(b),(d).

Here, the solicitor's proffer of testimony by Crompton qualifies as nonverbal conduct by Kirchner offered to prove the truth of the matter that his dog, Dasher, had in fact been trained and certified to detect drugs. A hearsay ~~statement~~ includes nonverbal conduct of a person, if it is intended by the person as an assertion. See State v. Roach, 613 S.E.2d 791(S.C.App. 2005). An out-of-court statement by someone other than the person testifying which is used to prove the truth of the matter constitutes hearsay and is inadmissible

unless it falls under an exception, State v. Rice, 652 S.E. 2d 409 (S.C. 2007).

Nevertheless, the violation of the Sixth Amendment right is not per se reversible error, but depend on a host of factors, including the important of the witness's testimony in the prosecution's case, whether the testimony by the witness was cumulative, the presents or absence of corroborating or contradicting testimony by the witness, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. State v. Sierra, 523 S.E.2d 187 (S.C.App. 1999).

The applicant submits that Crompton's testimony was critical to establish the training and certification of the drug dog for admission of the drug evidence, no other testimony corroborated Crompton's testimony about the training and certification of his drug dog, applicant was denied any opportunity to cross-examine Charlie Kirchner who allegedly trained and certified the drug dog, and the state's case against applicant depended entirely on the testimony of Crompton and the action of his drug dog. Sierra, infra.

The applicant thus contends that counsel's failure to object to the solicitor's admission of Crompton's hearsay testimony that violated his Sixth Amendment right to confront a material witness--Charlie Kirchner who allegedly trained and certified the drug dog--was ineffective assistance that was per se prejudicial since it deprived him of a fundamental right to a fair trial. Strickland, Supra.

The applicant was denied the right to effect assistance of trial counsel by counsel's direct examination of the applicant of his prior drug conviction.

To establish a claim of ineffective assistance of counsel, a PCR applicant must prove that counsel's performance fell below a objected standard of reasonableness and that, but for counsel's error, there is a reasonable probability that the results at trial would have been different; a "reasonable-probability" is a probability sufficient to undermine confidence in the outcome of the trial. Edmond v. State, 534 S.E.2d 682 (S.C. 2000).

During the hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), the court ruled that applicant's statement on the video traffic that he had a "prior drug conviction" would not be admitted against him during trial. Tr. p. 166, L. 15-167, L. 9. Conversely, prior to presenting the defense's case, applicant's counsel informed the judge that she had explained to the applicant that he could be impeached with his prior "conspiracy to distribute cocaine" drug conviction. Tr. p. 195, L. 19-23. In conjunction, the court informed the applicant that his prior drug conviction could be brought out by either or the solicitor. Tr. p. 199, L. 18-22.

Consequently, during the presentment of his defense before the jury, applicant's counsel questioned him about his prior "conspiracy to distribute cocaine" conviction. Tr. p. 206, L. 11-25. Here, applicant submits, counsel's error was twofold. First, counsel failed to request an official ruling by the court as to whether the probative value of admitting applicant's prior drug conviction outweighed the prejudicial effect of its own admission. See Rule 609 (a)(1), SCRE; and Green v. State, 527 S.E.2d 98 (S.C. 2000). Second, the introduction of this evidence had the prejudicial tendency to raise a legally spurious presumption or inference of guilt in the mind of the jury. See, e.g., State v. Bright, 473 S.E.2d 851 (S.C.App. 1996).

Moreover, evidence of applicant's prior drug conviction was inadmissible for impeachment purpose in his trial for "trafficking cocaine". The prior drug charge had nothing to do with his credibility, and introduction of this evidence was obviously more prejudicial than probative, especially in light of his charged offense, See, e.g., State v. Bryant, 633 S.E.2d 152 (S.C. 2006).

For the court's review of a different outcome of his trial absent counsel error, the applicant submits that during its deliberation the jury requested to view the video tape of applicant's traffic stop. During its viewing of the traffic video, the jury was inadvertently shown the part of the video where applicant had admitted that he had a prior drug conviction.

based on this error! counsel move the court to grant a mistrial. The court denied counsel's motion and informed counsel that had she not erroneously brought out the fact of applicant's prior drug conviction "he would have granted counsel motion for a mistrial". Tr.p.241, L.7-24, L.13. Therefore, it is obviously evidence by the judge's ruling that but for counsel's error the results of applicant's trial would have been different. Edmond, Supra, Green, Supra.

Applicant was denied the right to effective assistance of trial counsel's failure to object to solicitor's improper vouching for credibility of state witnesses.

Trial counsel is constitutionally ineffective if (1) counsel's performance was deficient or fell below an objective standard of reasonableness, and (2) this deficient performance prejudice the case so that the defendant is deprived of a right to a fair trial. Riley v. South Carolina, 82 F.Supp.2d 474 (D.S.C. 2000).

In this case, during closing argument, the solicitor impermissibly vouched for the credibility of the police officers who arrested the applicant, as follows:

Solicitor: The question is: Did he (applicant) know the Drugs were there? Well, you saw on the video for yourself that when officer Crompton started pulling bags out of the car. Who was the one that said that the...bag was theirs? Mr. Wallace said the bag was his.

Not one officer said this, but two; two officers with combined more than 20 years experience in law enforcement. "They are not gonna put their reputations and their jobs on the line to come to court and tell you something that is not true. Ladies and gentleman; they're not gonna do it".

Tr.p.217, L.22--P.218, L.2.

The Court has held that improper vouching occurs when the solicitor places the government's prestige behind a witness by making personal assurances of a witness's veracity by indicating that he has information not presented to the jury that supports the witness's testimony. See, e.g., State v. Shuler, 545 S.E.2d 805 (2005). Because a jury must make its own assessment on credibility of witnesses, it is inappropriate for government to assure jury of witness credibility. State v. Kelly, 540 S.E.2d 351 (2001).

It should be particularly noted that the applicant had denied claiming ownership of the drugs during his testimony at trial; therefore, credibility was a crucial issue in his trial because the jury's verdict could well have been affected by credibility

The applicant was denied the right to effective assistance of trial by counsel's failure to move for suppression of drug evidence discovered as a result of an illegal search of his car in violation of Fourth Amendment requirements.

As previously shown, to establish an ineffective assistance of counsel claim, an applicant must satisfy the two prong of Strickland, Supra; and specifically, when an applicant claims counsel's failure to raise and argue a Fourth Amendment violation he must show that claim is meritorious and that the outcome of trial would have been different absent the evidence that should have been suppressed. Kimmelman, Supra.

For a showing of this claim, the applicant submits that during the solicitor's direct examination of Officer Crompton, who conducted the drug dog's sniff of his car, Crompton testified as follows regarding the details of the drug sniff by his dog:

Q: When he, dog, jumped on the side of the car on the driver's side and on the trunk, did that indicate anything to you?

A: Yes, Sir. I did consider that an alert. He (dog) "actually--his (dog) head actually went inside the vehicle on the driver's side", and then he done what he's trained to do. He actually made two scratches on the trunk of the vehicle.

Tr.p.125,L.15-23.

In Place, Supra, the Court held that the sniff of a narcotic seeking dog was not a search. The court's decision rested, in part, upon the limited nature of the dog's sniff on the exterior of a car, bag or container, which did not implicate any legitimate privacy interest to violate Fourth Amendment requirements.

With respect to the above dog sniff of applicant's car conducted by officer Crompton, the U.S. Supreme Court has held that no probable cause was necessary for a dog sniff outside of a vehicle, as merely amplifies the human olfactory capacity that would have been a search under the Fourth Amendment. See U.S. V. Thomas, 787 F.Supp.668 (S.D.Tex.1992), citing Place, infra. Thus, by implication, the placing of a dog inside the trunk and passenger compartment of a car must be considered an invasive search requiring probable cause. Just as an officer cannot enter the passenger compartment or trunk of a car to conduct a search without probable cause, neither can a canine (drug dog) be placed inside a car on less than this standard under the Fourth Amendment. See United States v. Lovell, 848 F.2d 910, 914 (5th Cir. 1988).

Here, Officer Crompton admittedly placed his drug dog inside applicant's car without consent or probable cause to do so; thereby, this was an unlawful search for, and seizure of, drugs

that violated applicant's Fourth Amendment right against an unreasonable search and seizure of drug evidence. As a result, the applicant contends that counsel's failure to move for suppression of the drug evidence was ineffective assistance; and as the drug evidence was the only evidence against him, the outcome of his trial would have been different absent the drug evidence. See Strickland, Supra, Morrison, Supra, Sikes, Supra.

CONCLUSION

WHEREFORE, for the foregoing reasons, the applicant pray the Honorable Court reverse his conviction for a new trial.

Respectfully Submitted,

/s/ Timothy L Wallace
Timothy L Wallace #222935
Perry Correctional Institution
430 Oaklawn Road-Q3A/
Pelzer, S.C. 29669

Dated: 4-3 -, 2013

Dated: 4-3-, 2013

Clerk of Court, Oconee County
P.O. Box 678
Walhalla, South Carolina 29691

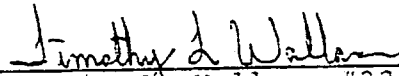
RE: PCR Application
Timothy L. Wallace, #222935 v. State

FILED OCONEE, SC
RECEIVED
APR 12 11:16

Dear Clerk,

Enclosed please find the original Application for Post-Conviction Relief (PCR) and Memorandum of Law in Support of PCR Application for filing with your office. Also, I have enclosed a self-addressed envelope for your return to me clocked-stamped copies of these documents for my records.

Sincerely,


Timothy L. Wallace, #222935
Perry Correctional Inst.
430 Oaklawn Road-Q3B/
Pelzer, S.C. 29669

cc: I/M's file

0271

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) Case No. 2013-CP-37-290

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was filed on Applicant's behalf. The Supreme Court granted certiorari on April 5, 2012. The South Carolina Supreme Court dismissed the appeal as improvidently granted State v. Wallace, Op. No. 27203 (S.C. Supreme Court filed December 19, 2012).

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, the transcript of the proceeding against Applicant, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
 - a. Failure to move for suppression of dug evidence.
 - b. Failure to object to admission of State's hearsay evidence.
 - c. Denied effective assistance of counsel by trial Counsel's direct examination of Applicant regarding prior drug conviction.
 - d. Failure to object to Solicitor's improper vouching of State's witnesses.
2. Prosecutorial Misconduct;
 - a. Failure to disclose Brady materials.
 - b. Use of perjured testimony to obtain an unlawful conviction.

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

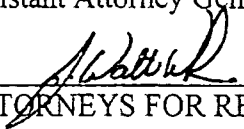
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 2nd, 2013

County of Oconee

Timothy L. Wallace,

Applicant,

2013-CP-37-290

-VS-

September 16, 2014

State of South Carolina,

Respondent.

Transcript of Record

The Honorable R. Lawton McIntosh, Judge

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney the State

0279

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing.</i>		
A-2			
A-3			

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:12 a.m.)

4 MR. WHITMIRE: May it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir.

7 MR. WHITMIRE: The last item before the Court
8 today is Timothy Wallace v. State of South Carolina, case
9 number 2012 -- 13-CP-37-290. Mr. Wallace filed a timely
10 application for post-conviction relief April 12th, 2013.
11 Mr. Wallace was indicted for trafficking. The State
12 called the case for trial. Mr. Wallace was represented
13 by Suzanne Earle. Mr. Wallace was found guilty as
14 indicted. Judge Nicholson sentenced Mr. Wallace to
15 twenty-five years imprisonment.

16 Timely notice of appeal was filed and perfected by
17 Kat Hudgins of the Office of Appellate Defense. The
18 South Carolina Court of Appeals affirmed Mr. Wallace's
19 conviction in a published opinion, State v. Wallace,
20 Opinion Number 480 -- I mean 4800. Petition for Cert was
21 filed with the Supreme Court. It was granted. The
22 Supreme Court cited that it was improvidently granted.

23 Mr. Wallace is present and represented by Hugh
24 Welborn at this hearing. For the record, Your Honor, I
25 believe Mr. Wallace's allegations are prosecutorial

1 misconduct, improperly stating a SLED chemist's
2 qualifications, ineffective assistance of counsel,
3 deficient performance in the suppression hearing,
4 challenge of proximate cause. And for challenging the K-
5 9 search, ineffective assistance of counsel for failure
6 to object to hearsay from the K-9's trainer. Ineffective
7 assistance of counsel for failure to keep out Defendant's
8 prior convictions when he testified. And last,
9 ineffective assistance of counsel for failure to object
10 to the State's closing, improper closing.

11 Your Honor, I would like to make a motion to dismiss
12 the claims related to the search. Those were reserved
13 for appeal, and that would be addressed by the Court of
14 Appeals and the Supreme Court.

15 THE COURT: The search?

16 MR. WHITMIRE: Yes, sir.

17 THE COURT: Okay. Now, let me ask you this.
18 In meeting with both of you guys and planning for today,
19 I thought that the issue that was being raised by the
20 Applicant had to do with certification of the State's
21 expert chemist. Am I -- is that incorrect?

22 MR. WELBORN: Judge, that was -- that is an
23 issue, and he did attach it to his application. It is
24 properly filed, and it wasn't a hybrid-type
25 representation. But there were other issues he's also

1 listing. It was the new issue that I thought was new
2 because it wasn't stated in the return as an issue, but
3 it is in his application.

4 THE COURT: I got you. Okay. So what is the
5 issue again, Mr. Whitmire, that you're objecting to so I
6 can make sure I understand?

7 MR. WHITMIRE: Sufficient performance in the
8 suppression hearing relating to probable cause for the
9 arrest. The reasonable suspicion that supported the
10 inevitable arrest was challenged on appeal and decided on
11 appeal and properly preserved by Ms. Earle in the
12 suppression hearing and renewed throughout the trial. So
13 that's not an issue before this Court.

14 THE COURT: Do you disagree with that, Mr.
15 Welborn?

16 MR. WELBORN: No, sir.

17 THE COURT: All right. I'll grant that part of
18 that aspect of the State's motion.

19 All right. Mr. Whitmire -- Mr. Welborn, are you
20 ready to proceed?

21 MR. WELBORN: Yes, sir.

22 THE COURT: Okay. Would you call your first
23 witness?

24 MR. WELBORN: If it please the Court, we would
25 call Timothy Wallace.

1 (WHEREUPON, the witness was duly sworn.)

2 MR. WELBORN: Your Honor, before we get
3 started, if it please the Court.

4 THE COURT: Yes, sir.

5 MR. WELBORN: Just so the Court would know, I
6 have a cough due to medication. I'm fine and I'm
7 drinking more water for that.

8 THE COURT: Sure.

9 MR. WELBORN: If the Court would bear with me
10 when I have a little cough, I'll resume as soon as that
11 ---

12 THE COURT: Do you want a mint?

13 MR. WELBORN: No. I'm fine.

14 THE COURT: Okay.

15 MR. WELBORN: May it please the Court.

16 **TIMOTHY WALLACE,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. WELBORN:

20 Q. You're Timothy Wallace?

21 A. Yes.

22 Q. Mr. Wallace, you were previously before this Court
23 and represented by Ms. Earle who was present. And you
24 were convicted of trafficking in cocaine from a January
25 2006 term of indictment of this court; is that correct?

1 A. Yes.

2 Q. And you were sentenced to twenty-five years
3 imprisonment for trafficking more than four hundred
4 grams; is that correct?

5 A. Yes.

6 Q. And you filed this application timely with the Clerk
7 of Court. And I'm going to go over some allegations in
8 that application and ask you some questions about it.
9 First of all, you've alleged that your attorney was
10 ineffective for failing to object to some testimony from
11 a chemist that you later alleged in your application was
12 not certified. And basically his testimony would have
13 been considered to be perjured because there was no
14 questions about whether or not he was certified. And
15 I've read the transcript.

16 MR. WELBORN: And just for the record, Ms.
17 Earle testified or stipulated to the chain of custody but
18 not to any certification.

19 Q. So attached to your application, you've got a letter
20 from SLED that says that this agent who was there as a
21 chemist to talk about the cocaine had not been with SLED
22 since August of 2000, and they had no certification or
23 training of Mr. Miller since that time. I want you to
24 tell the Court how you feel that that particular
25 situation prejudiced you in how the jury received it and

1 your conviction.

2 THE COURT: Where is that letter from SLED?

3 MR. WELBORN: It's the very last document
4 attached to his application.

5 THE COURT: I've got it.

6 MR. WELBORN: The very last page. Do you see
7 it, Your Honor?

8 THE COURT: I've got it. Okay.

9 MR. WHITMIRE: In regards to the letter, Your
10 Honor, I'm going to object to it's admissibility. There
11 is no foundation for it. No one from SLED is here to
12 testify to the authenticity of it.

13 THE COURT: All right. Thank you, sir.
14 Overruled.

15 MR. WELBORN: I'm sorry, Your Honor.

16 THE COURT: I overruled his objection.

17 Q. Go ahead. Mr. Wallace, you can tell about this
18 situation and your position on it.

19 A. Okay. Well, first of all, if the drug chemist
20 wouldn't have been certified to test the drugs, then the
21 drugs is -- it's tainted evidence because he's not
22 certified in that field to test the drugs or analyze the
23 drugs. So therefore, the drugs would have been thrown
24 out if we'd have known at that time that he was not
25 certified or trained by SLED due to -- and he said he

1 was. But according to the letter that I got from SLED,
2 it says he wasn't.

3 Q. Now, he testified, I believe, in court that he was
4 -- had been qualified as an expert witness a number of
5 occasions; is that correct?

6 A. Yes.

7 Q. Now, do you have a copy of the transcript in front
8 of you?

9 A. No.

10 Q. Okay. And you're not aware if indeed he stated I
11 was certified at that particular time?

12 A. Well, I have -- I also wrote him also. And he sent
13 me a letter, the same letter that I have in my motion for
14 discovery.

15 MR. WHITMIRE: Objection, hearsay.

16 Q. Let me ask you this. I'm going to rephrase my
17 question to you, Mr. Wallace.

18 A. Okay.

19 Q. If the question was not asked in court about his
20 certification ---

21 A. Yeah.

22 Q. --- is that what you're objecting to, that the
23 question wasn't asked so who knows whether he was
24 certified or not. Is that your objection?

25 A. Correct.

1 Q. Okay. Now, do you believe that if it had been found
2 that he was not certified, that that testimony would have
3 been excluded at the trial?

4 A. Yes, sir.

5 Q. And there would have been no one testifying about
6 whether or not it was cocaine or not?

7 A. Right.

8 Q. Okay. Are you asking for a new trial on that
9 particular issue?

10 A. Yes, sir.

11 MR. WELBORN: And for the Court's edification,
12 these allegations with Mr. Miller start on page 186 of
13 the transcript, and he testifies through like 190 or 191,
14 I believe. 191 -- 192, excuse me.

15 Q. Now, you've also alleged that the trial counsel
16 allowed in your prior drug conviction or did not object
17 to it; is that correct?

18 A. Well, before I testified, I asked her should I
19 testify. And she had told me I was going to get found
20 guilty whether I testify or don't testify. So I took it
21 upon myself to testify, not knowing that the prior
22 conviction is what really got me found guilty.

23 Q. How do you know that the prior conviction is the
24 thing that really got you found guilty?

25 A. Because when I brought -- when they asked me was I

1 -- have I ever been convicted of a crime, I said, yes, a
2 prior drug federal conviction. And then after the
3 closing arguments the jury couldn't come up with the
4 deliberation. So they come out of the deliberation room.
5 And they showed them a part of the videotape that was
6 inadmissible, saying that I had a prior drug conviction.
7 Q. Now, just for the Court's knowledge and as an
8 officer of the Court, on page 199 of your trial
9 transcript on line 18, the court, with your being present
10 says, quote, "Do you understand your conviction in '99 of
11 conspiracy to distribute cocaine will be brought out to
12 the jury either by your attorney or the State's attorney?
13 I don't know which one. But do you understand it will be
14 brought out?" And your answer was, "Yes, sir." The
15 court said, "Do you understand this?" And your answer
16 was, "Yes, sir." Do you still take the same position you
17 just testified to?
18 A. Excuse me?
19 Q. Did you hear what I just said?
20 A. Yes, sir.
21 Q. Did you hear what I read out of here?
22 A. Yeah. I heard what you read, yeah.
23 Q. Do you still stand by the allegation then that you
24 were unaware that your prior drug conviction would be
25 brought out if you testified?

1 A. No, I'm not saying I was unaware. That's not what
2 I'm saying. I'm saying that due to the fact that prior
3 drug history was brought out, and when the jury saw the
4 part of the videotape that was inadmissible, me saying
5 that I have a prior drug conviction, that's what got me
6 found guilty.

7 Q. Are you saying that Ms. Earle did not tell you you
8 didn't have to testify?

9 A. Correct. Correct.

10 Q. And would you have not testified had you known that
11 your prior drug conviction would come out?

12 A. But if she would have told me -- if she would have
13 advised me not to testify, then I wouldn't have
14 testified. But she -- like I said before, she said I was
15 going to get found guilty if I did testify or if I didn't
16 testify.

17 Q. Mr. Wallace, just for your own edification and the
18 Court's knowledge, you understand that you have a right
19 to testify ---

20 A. Right.

21 Q. --- and it's your decision.

22 A. Right. Right.

23 Q. Okay. Did you make that decision yourself?

24 A. Yeah, I made the decision myself.

25 Q. And your decision was to testify?

1 A. Yeah.

2 Q. Okay. Are you still then alleging, as you put in
3 your application, that she didn't advise you about this?

4 A. Right.

5 Q. Okay. Now, you also allege in your application that
6 the -- there was a failure for your lawyer to object to
7 the solicitor's improper vouching of state's witnesses.
8 Now, more specifically in a closing argument, and on page
9 217 of the trial transcript, do you recall the prosecutor
10 telling the jury regarding the officers, two officers --
11 and I'm quoting from line 23 at the bottom of the page.
12 "Two officers with combined more than twenty years
13 experience in law enforcement, they are not going to put
14 their reputation and their jobs on the line, come into
15 court and tell you something that's not true, ladies and
16 gentlemen. They're not going to do it." That's at the
17 top of page 218. Is that your allegation of improper
18 vouching?

19 A. Yes.

20 Q. Okay. And you're saying then that that's one of the
21 allegations, that had Ms. Earle objected you might have
22 had a different outcome?

23 A. Right.

24 Q. And you think there should have been, at the very
25 bare minimum, a curative instruction of that from the

1 court?

2 A. Yes, sir.

3 MR. WHITMIRE: Objection, Your Honor. It's
4 improper opinion testimony. The witness is not an
5 attorney.

6 THE COURT: Overruled.

7 MR. WELBORN: I'm sorry, Your Honor.

8 THE COURT: I overrule the objection.

9 MR. WELBORN: All right. If the Court will
10 bear with me, please.

11 Q. You also alleged in your application -- it's
12 attached to it -- that the issue that Ms. Earle did not
13 move to suppress the drug-sniffing dog because there was
14 no certification by anyone to support the fact that this
15 dog was even properly trained at this particular point in
16 time; is that correct?

17 A. True.

18 THE COURT: Was that an issue on appeal to the
19 Court of Appeals?

20 MR. WHITMIRE: No, Your Honor.

21 THE COURT: Okay.

22 MR. WHITMIRE: Just the foundation for the dog
23 making the positive I.D. at the traffic stop.

24 THE COURT: Okay. Go ahead.

25 Q. Is that your position, Mr. Wallace?

1 A. Yes.

2 Q. Do you think that had Ms. Earle objected to that, as
3 you requested, that the dog perhaps would have been left
4 out and the evidence would have been suppressed?

5 A. True.

6 Q. And again, you've attached all of this to your
7 application, the case law; is that correct?

8 A. Yes, sir.

9 Q. Now, Mr. Strickland -- I'm sorry. Mr. Wallace, I've
10 reviewed what you've listed on here, and I think I've
11 asked you those questions. Do you want to look -- do you
12 have your application in front of you?

13 A. No, sir.

14 MR. WELBORN: May I approach the Applicant?

15 THE COURT: Yes, sir.

16 Q. I want you to review -- I want to make sure I've
17 covered the things you wanted me to cover and I think
18 that I have.

19 (WHEREUPON, Mr. Welborn handed document to the
20 witness.)

21 A. You forgot the hearsay.

22 Q. Well, I'm not going to go into that. You want me to
23 ...

24 A. Yes.

25 Q. Okay. Hand it back to me. You're talking about the

1 dog?

2 A. About the hearsay testimony, the confrontation
3 clause about the officers testifying who trained the dog,
4 and the guy was not there in court.

5 Q. All right. Let's talk about the dog a little bit,
6 Mr. Wallace. You allege that there was some hearsay
7 testimony about this dog receiving some specialized
8 training. And you've quoted from the transcript. And
9 you quoted from page 123, lines 10 through 25. And I'm
10 going to quote that. "Let's talk a little bit about your
11 K-9. What's his name? Answer, "Dasher." Question,
12 "Have you and Dasher received any specialized training?"
13 Answer, "Yes, sir. When I got Dasher, he was certified
14 through Charlie Kirchner out of Inman in narcotic
15 tracking and aggressive work. He spent some time in
16 Hungary doing some of his drug and trafficking work. I
17 believe that was twelve weeks. Question, "What kind of
18 dog is Dasher?"

19 THE COURT: Let me stop you right there for a
20 second, Mr. Welborn. There is a personal matter we have
21 to have somebody take care of right quick. It's going to
22 take about five minutes. Let's take about a five-minute
23 break. I am so sorry to interrupt you.

24 MR. WELBORN: Yes, sir.

25 THE COURT: But we'll be right back in about

1 five minutes.

2 MR. WHITMIRE: Thank you, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. WELBORN: And I won't talk to my client.

5 THE COURT: Right. Thank you. You can't talk
6 to anybody, Mr. Wallace.

7 (WHEREUPON, court stood at recess for a short
8 break.)

9 THE COURT: Mr. Welborn, are you ready to
10 proceed? Excuse the interruption.

11 MR. WELBORN: Yes, sir, Your Honor. May it
12 please the Court.

13 Q. All right. Mr. Wallace, a little while ago, I was
14 reading some lines from the transcript that you have
15 alleged constitute hearsay. They're very brief. And I
16 was to the last line. I'm going to reread those lines
17 again. You've alleged that your lawyer failed to object
18 to the State's admission of hearsay testimony regarding
19 talking about this dog, the drug-sniffing dog. And I'm
20 quoting now from page 123 of the transcript starting at
21 line 10. "Let's talk a little bit about your K-9.
22 What's his name?" Answer, "Dasher." Question, "Have you
23 and Dasher received any specialized training?" Answer,
24 "Yes, sir. When I got Dasher, he was certified through
25 Charlie Kirchner out of Inman in narcotic tracking and

1 aggressive work. He spent some time in Hungary doing
2 some of his drug and tracking work. I believe that was
3 twelve weeks." Question, "And what kind of drugs is
4 Dasher trained to search out or identify?" Answer,
5 "Cocaine, marijuana, hash and meth." Are you alleging in
6 this particular colloquy here that this is non-verbal
7 conduct by Mr. Kirchner that would constitute hearsay,
8 talking about Mr. Kirchner trained this dog; is that
9 correct?

10 A. Correct.

11 Q. And are you alleging then that that prejudiced your
12 case as well?

13 A. Correct.

14 Q. Now, we're almost through, Mr. Wallace. We've
15 talked about the improper vouching by the solicitor at
16 closing argument. And there was no objection to that.
17 These things that you have alleged that are attached to
18 your application that have cases quoted, are you alleging
19 that your lawyer was ineffective for failing to properly
20 object or deal with those issues?

21 A. Correct.

22 Q. And are you alleging that that ineffectiveness led
23 to a jury verdict that prejudiced you because of that
24 particular performance or lack of performance by your
25 lawyer?

1 A. Yes.

2 Q. Are you asking the Court for a new trial on those
3 issues?

4 A. Yes, I am.

5 Q. Thank you. Answer anything that the State may have.

6 CROSS-EXAMINATION

7 BY MR. WHITMIRE:

8 Q. Good morning, Mr. Wallace. Regarding your first
9 allegation ...

10 MR. WHITMIRE: I beg the Court's indulgence.

11 Q. Do you recall Mike Miller, the SLED chemist ---

12 A. Yes, sir.

13 Q. --- testified that he had been trained by the
14 Department of Justice at your trial?

15 A. I don't recall that, no.

16 Q. Do you recall him also testifying that he ran a SLED
17 facility?

18 A. Yeah.

19 Q. Do you recall that he testified that he had, well,
20 been an expert in court over forty times?

21 A. Yes. I believe it was thirty-nine times.

22 Q. It was forty-two. We're on page 187. And did Ms.
23 Earle review the State's evidence with you prior to
24 trial?

25 A. Yes.

1 Q. And you were driving the car that the cocaine was
2 found in; is that correct?

3 A. Correct.

4 Q. Do you recall just how much cocaine was found?

5 A. No.

6 Q. The value? Wasn't it seventy-five thousand dollars
7 worth of cocaine found?

8 A. I guess.

9 Q. And didn't you tell the police that the cocaine was
10 yours?

11 A. No.

12 MR. WHITMIRE: Your Honor, let the record
13 reflect.

14 THE COURT: What page?

15 MR. WHITMIRE: It's Officer Colegrove's
16 testimony at 171.

17 Q. And you had already been mirandized at this point;
18 is that correct?

19 A. I can't quite remember.

20 Q. And didn't you tell Officer Colegrove that you were
21 delivering the cocaine from Atlanta to North Carolina?

22 A. No.

23 Q. But didn't Officer Colegrove testify to that at
24 trial?

25 A. He testified to that, yeah.

1 Q. And didn't your attorney cross-examine you -- cross-
2 examine Officer Colegrove on that?

3 A. Yes.

4 Q. Do you also recall the officer testifying at trial
5 that a black B.M.W. stopped behind your car during the
6 traffic stop?

7 A. Yeah.

8 Q. Do you recall that B.M.W. driving off really fast?

9 A. I mean ---

10 Q. Testimony to that effect?

11 A. We was on 85, so everybody's driving fast.

12 Q. I mean, the one that had pulled over behind you in
13 the middle of a traffic stop?

14 A. I don't remember if it pulled off slow or fast. I
15 don't know.

16 Q. And it was your version or your story that the
17 occupant in the car owned that bag; is that correct?

18 A. No.

19 Q. So where did the cocaine come from? What did you
20 tell Ms. Earle?

21 A. I don't know. I don't know where it came from.

22 That's what I told her.

23 Q. You didn't notice that seventy-five thousand dollars
24 in cocaine affected the weight of the bag at all?

25 A. I didn't carry the bag.

1 Q. But at trial didn't you testify the cocaine came
2 from your passenger, your cousin, Herman?

3 A. No, I never testified to that, no.

4 Q. And did Ms. Earle explain to you that when SLED
5 witnesses testify, when they're going through their
6 qualifications, that's to protect you?

7 A. Excuse me?

8 Q. Didn't she tell you that when those SLED agents are
9 testifying about all of their education and history,
10 that's to protect you?

11 A. No.

12 Q. So no one can come off the street and test those
13 drugs? That's not correct?

14 A. No. She never -- no, she never explained that to
15 me, no.

16 Q. Do you recall Ms. Earle advising you to pursue a
17 favorable guilty plea?

18 A. Yes.

19 Q. Do you recall the terms of that guilty plea offered?

20 A. Yeah. I think it was four years, I believe.

21 MR. WHITMIRE: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 Q. And wasn't there a dash-cam?

24 A. Yeah.

25 Q. And the jury saw this dash-cam; is that correct?

1 A. Yeah.

2 MR. WHITMIRE: No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 MR. WELBORN: No, sir.

6 THE COURT: Okay. Thank you, sir. You may
7 step down.

8 MR. WELBORN: That's our case.

9 THE COURT: Okay, sir.

10 Mr. Whitmire, call your first witness, please.

11 MR. WHITMIRE: Your Honor, the State calls Ms.
12 Earle.

13 **SUZANNE EARLE,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. WHITMIRE:

17 Q. Good morning, Ms. Earle.

18 A. Good morning.

19 Q. Do you recall the circumstances that led to you
20 being appointed on this case?

21 A. I received a letter, I believe, from the Public
22 Defender's office telling me that I had been appointed to
23 represent Mr. Wallace.

24 Q. And did Mr. Wallace give you his version of the
25 facts that led to his arrest?

1 A. He did.

2 Q. Can you share those?

3 A. It will take me a minute to find my notes. I
4 apologize. Well, I am not able to find my notes at this
5 time.

6 Q. That's all right.

7 A. However, I can tell you that what he testified to in
8 court was pretty much what he had told me when we had
9 discussed the case. His testimony did not vary from what
10 he told me out of court and what he testified to in
11 court.

12 Q. Did you file for discovery on behalf of Mr. Wallace?

13 A. I did.

14 Q. Do you recall formulating a suppression strategy for
15 his case?

16 A. I did. There were quite a few issues, I thought,
17 with the stop, with the length of the stop, with the dog
18 being called out to do the search after Mr. Wallace
19 refused to give permission. And after reviewing the
20 videotape and all the evidence that was provided to me, I
21 did make a motion to suppress and covered the majority of
22 my points in that motion.

23 Q. Now, Ms. Earle, did you advise Mr. Wallace what's
24 required to prove guilt for possession and control?

25 A. I believe I did.

1 Q. And wasn't Mr. Wallace driving the vehicle that got
2 pulled over during the traffic stop?

3 A. Yes, he was.

4 Q. Do you recall the confession that Mr. Wallace gave?

5 A. It was my contention that there was no confession.

6 Q. And you presented this to the jury in cross-
7 examination?

8 A. I did. I presented it to the judge and then to the
9 jury.

10 Q. Was the issue around voice identification from the
11 dash-cam, if you recall?

12 A. Yeah. During the conversation on the dash-cam, you
13 could not tell who was responding to the questions. And
14 it was our contention that it was not Mr. Wallace that
15 was making the comments to the officers concerning
16 ownership of the bag and where the cocaine had come from.

17 Q. Did you advise Mr. Wallace this would be an issue of
18 fact for the jury?

19 A. I believe I did.

20 Q. And Ms. Earle, can you briefly describe the plea
21 negotiations you pursued on behalf of Mr. Wallace?

22 A. In talking with the solicitor, he had agreed to
23 reduce the charge to a level such that the twenty-five
24 years mandatory minimum would not be in place. If Mr.
25 Wallace pled guilty, he would recommend a sentence of

1 four years.

2 Q. In preparing Mr. Wallace's case, did you notice any
3 issues relating to the use of the K-9 dog?

4 A. Yes.

5 Q. Well, outside of suppression. Just the
6 qualification of the dog.

7 A. I did.

8 Q. And did you bring those out during cross-
9 examination?

10 A. Prior to trial, I had made some notes on issues
11 regarding the training and the fact that certain
12 information had not been provided to me. But then
13 immediately prior to trial, the certifications were
14 provided to me, and I made a choice not to pursue that as
15 an issue at trial.

16 Q. And the issue you pursued at trial, that was the
17 potential false identification; is that correct? The
18 false trigger?

19 A. Yes.

20 Q. And regarding the SLED chemist, did you see any
21 potential issues with his testimony or with his analysis?

22 A. I did not. He had provided -- or I had been
23 provided in discovery the forensics lab drug report that
24 included an affidavit showing his qualifications. And at
25 that time, I had no reason to question the truthfulness

1 of the affidavit.

2 Q. And regarding advising Mr. Wallace on his right to
3 testify, did you advise him that his past conspiracy
4 conviction could be used against him potentially?

5 A. I did. I explained to him that he did have the
6 right to remain silent and if he chose to testify that
7 his prior criminal history could be brought out.

8 Q. But didn't you object to other convictions he had
9 that would not have met the evidentiary requirements?

10 A. I did.

11 Q. And whose decision was it to testify?

12 A. It was Mr. Wallace's.

13 Q. A few more questions, Ms. Earle. And in your
14 opinion, did Mr. Wallace make a good trial witness?

15 A. He did.

16 Q. And did you represent Mr. Wallace to the best of
17 your ability?

18 A. At that time I felt that I did.

19 Q. And how much experience do you have in criminal law,
20 Ms. Earle?

21 A. Well, I have been licensed to practice law for more
22 than thirty years, and I have spent over half of that, I
23 would say, in criminal, in the criminal area.

24 Q. You preserved all the objections you thought were
25 necessary; is that correct?

1 A. I preserved as many as I could think to preserve at
2 the time. In hindsight, there's always things you could
3 have done better.

4 MR. WHITMIRE: I beg the Court's indulgence
5 just one moment.

6 THE COURT: Yes, sir.

7 Q. One more matter, Ms. Earle. Regarding the
8 solicitor's closing argument, do you think any of that
9 argument constituted improper vouching or bolstering?

10 A. At the time it must have not occurred to me because
11 I did not object to it. In going back and reading the
12 transcript, it does sound that way. As I said, at the
13 time it didn't strike me as being bolstering.

14 Q. As a matter of practice, do you routinely object
15 during closing arguments or opening arguments?

16 A. Only when what is being done is so blatant that you
17 can't ignore it. I try not to interrupt arguments, but I
18 have made objections during openings and closings.

19 Q. Didn't the trial judge, Judge Nicholson, instruct
20 the jury that closing arguments do not constitute
21 evidence?

22 A. Yes, he did.

23 MR. WHITMIRE: No further questions, Your
24 Honor.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION

2 BY MR. WELBORN:

3 Q. Ms. Earle when you received this affidavit from this
4 chemist, Mr. Miller, did it have on there any
5 certifications that my client says were critical?

6 A. Yes.

7 Q. It did?

8 A. Yes.

9 Q. And what was he certified in?

10 A. Well, according to the drug analysis report, he
11 signs that he is a forensic chemist certified by SLED as
12 a chemical analyst, qualified to perform testing and
13 analysis. And then on his Form A Affidavit, he lists
14 numerous certifications.

15 Q. You are aware of the application of my client that's
16 been admitted into evidence, including this letter from
17 SLED that says he resigned in August of 2000 and they've
18 provided no certification or training to him since that
19 period of time. You're familiar with that letter, aren't
20 you?

21 A. I saw that, yes.

22 Q. And what's your response to that letter versus the
23 affidavit that he gave?

24 A. As I said, at the time of the trial and at the time
25 I received the discovery that contained this, I had no

1 reason to believe he was lying about being certified by
2 SLED. He was the -- if I remember correctly, the
3 Director of the Anderson/Oconee Regional Forensics Lab.
4 And I felt that had -- if there was an issue of
5 certification, the lab would certainly not have made him
6 director.

7 Q. Was there any -- did you send off any letters to any
8 of these agencies that he's listed in his affidavit to
9 verify whether or not he was actually certified?

10 A. I did not.

11 Q. And you just -- you didn't because you thought,
12 well, he wouldn't put that in an affidavit and mislead
13 anybody about it. Would that be fair to say?

14 A. Yes.

15 Q. Would you agree though that his non-certification,
16 if that's indeed the truth as alleged, would be an issue
17 for -- that could have possibly kept him from testifying
18 if that had come out?

19 A. Yes.

20 Q. And if he didn't testify, there might have been a
21 different result?

22 A. I feel there would have been a very different result
23 if he had not been qualified to render an opinion as to
24 what was found in the car.

25 Q. Thank you. That's all I have.

1 THE COURT: Redirect?

2 MR. WHITMIRE: May it please the Court. One
3 quick moment.

4 REDIRECT EXAMINATION

5 BY MR. WHITMIRE:

6 Q. Regarding this SLED expert, didn't he testify that
7 their results had been peer reviewed?

8 A. He did.

9 Q. And you testified that you were familiar with his
10 work and his abilities in the area? You're familiar with
11 his role in running a regional lab?

12 A. I knew that he was the director, yes.

13 Q. Did you have any reason to doubt the inevitable
14 analysis that the white substance was, in fact, cocaine?

15 A. At the time of trial, no, I did not.

16 Q. In representing Mr. Wallace, you make the most
17 strategic decisions available with your time; is that
18 correct?

19 A. I do.

20 MR. WHITMIRE: No further questions, Your
21 Honor.

22 THE COURT: All right. May this witness be
23 excused?

24 MR. WHITMIRE: Yes, Your Honor.

25 MR. WELBORN: Yes, sir.

1 THE COURT: All right. Thank you, ma'am. You
2 may be excused.

3 Any further witness testimony?

4 MR. WHITMIRE: None, Your Honor.

5 THE COURT: All right. Anything in reply?

6 MR. WELBORN: No, Your Honor.

7 THE COURT: All right. Let me make sure I
8 understand the issues before me. According to my notes,
9 number one, ineffective assistance for failing to object
10 to the chemist's testimony because his lack of
11 certification as evidenced by SLED's letter attached to
12 the petition. Number two, failing to object to evidence
13 of prior drug conviction. Three, failure to object to
14 vouching by the State of its officers who testified by
15 the solicitor in closing. Four, failure to move to
16 suppress drug-sniffing dog because no certification of
17 the dog. And also, failure to object to hearsay
18 testimony, which would have been the dog's certification
19 by Mr. Kirchner.

20 Is there anything further? Any other issues I've
21 not addressed?

22 MR. WELBORN: None.

23 THE COURT: That's it?

24 MR. WELBORN: Yes, sir.

25 THE COURT: Okay. All right. This will be my

1 ruling. Number one, failing to object to the chemist's
2 testimony. Number one, the letter from SLED attached to
3 petition is dated January 18, 2013, under F.O.I. filed by
4 the Petitioner. While it does say that Mr. Miller has
5 not been certified by SLED since 2000, if you'll look
6 through the drug -- look through the testimony in the
7 transcript, Mr. Miller testifies at length as to his
8 expertise. And that begins on page 185, 186 through 187.
9 And so he did -- there is evidence in the record that
10 says he was qualified as an expert to testify. Further,
11 and in the P.C.R. application the Defendant has the
12 burden of proving his case. He's presented no evidence
13 as to the lack of certification other than the SLED
14 testimony which is inconclusive of lack of certification
15 by Mr. Miller. So I'm going to deny your grounds on that
16 -- on that issue.

17 Failing to object to prior drug evidence. On page
18 199 and 200 of the transcript and based on the law as it
19 was at that point in time, number one, I can understand
20 -- and I don't think it's deficient, number one. Let me
21 say it more appropriately that Ms. Earle would say that
22 that would come in. I think that was coming the way
23 everybody interpreted the cases at that point. But
24 further, on page 199 and 200 where Judge Nicholson was
25 going over the Fifth Amendment rights with the Defendant,

1 he knew and made a voluntary choice to go forward with
2 his plea [sic]. Therefore, I'm going to deny your
3 grounds on that. It was his own choice to testify. And
4 further, my understanding of the interpretation of the
5 prior conviction and all at that point was consistent
6 with the advice given by Ms. Earle -- I want to be clear
7 on that -- at the time.

8 Number four, I'm going to go over vouching.

9 Did not move to suppress any drug-sniffing dog
10 because certifications was an issue. Number one,
11 certification evidence was placed in the record on page
12 123. That testimony does not constitute hearsay.
13 Therefore, I'm denying both those issues.

14 A little more troubling is the failure to object to
15 vouching. That clearly, in my view, at page 217 and 218
16 -- and it may be even another location -- appears to be
17 vouching on behalf of the solicitor of the officers
18 involved in the case. So to the extent it wasn't
19 objected to by Ms. Earle, that could be seen as being
20 deficient.

21 However, there's overwhelming evidence of this
22 gentleman's guilt in the record. And so there's no
23 prejudice that he has suffered as a result of that. The
24 evidence is clear and overwhelming of his guilt in this
25 matter. So therefore, I'm denying your petition for post

1 conviction relief.

2 Mr. Wallace, you will have thirty days to appeal my
3 decision. Okay, sir?

4 Have I addressed all the issues from both sides of
5 the case to everybody's satisfaction? Not that you liked
6 the ruling, but just all the issues are properly
7 addressed?

8 MR. WELBORN: Yes, sir.

9 MR. WHITMIRE: Yes, Your Honor. I'll get you a
10 proposed order when I get back to Columbia.

11 THE COURT: Very good. Thank you. Have a good
12 day.

13 MR. WELBORN: Thank you.

14 THE COURT: Thank you, gentlemen.

15 (WHEREUPON, the hearing ended at approximately 11:17
16 a.m.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 16th day of September 2013.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

February 5, 2012

Renee H. Tollison

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Timothy L. Wallace,
S.C.D.C. No. 222985,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2013-CP-37-290

ORDER OF DISMISSAL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2013-SEP 16 P 1:48

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 12, 2013. Respondent made its Return on August 2, 2013. An evidentiary hearing into the matter was convened on September 16, 2013 at the Oconee County Courthouse. The Applicant was present and was represented by Hugh Welborn, Esq. The Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant and trial counsel testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. Applicant was indicted by the Oconee County Grand Jury at the January 2006 term of the Court of General Sessions for Oconee County for trafficking in cocaine, more than 400 grams (2006-GS-37-175). He was represented by Suzanne Earle, Esquire. The State called its case to trial on September 18, 2007. Applicant was represented by Suzanne Earle, Esq. He was found guilty as indicted. The Honorable J.C. Nicholson, Jr., sentenced Applicant to twenty-five years imprisonment for trafficking in cocaine, more than 400 grams.



A timely Notice of Appeal was filed on Applicant's behalf. Katherine Hudgins, Esq., of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Wallace, Op. No. 4800 (S.C. Ct. App. filed March 2, 2011). A Petition for a Writ of Certiorari with the South Carolina Supreme Court was filed on Applicant's behalf. The Supreme Court granted certiorari on April 5, 2012. The South Carolina Supreme Court dismissed the appeal as improvidently granted State v. Wallace, Op. No. 27203 (S.C. Supreme Court filed December 19, 2012).

At the PCR hearing, the Applicant alleged he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Plea Counsel:
 - a. Failure to investigate and advise on the applicability of self-defense;
 - b. Failure to advise Applicant to forego an immunity hearing and pled guilty.
 - c. Failure to advise Applicant on the impact of collateral federal charges.
 - d. Failure to file a notice of appeal.
2. Involuntary Guilty Plea:
 - a. Applicant did not understand the charges or the waiver of his constitutional rights.
 - b. 3. Violation of Due Process: Applicant was not ensured a fair jury

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

I.

This Court finds trial counsel's testimony credible and Applicant's testimony not credible. Applicant testified to several alleged instances during the trial where he alleged trial counsel was deficient for not making an objection. Trial counsel testified she vigorously defended Applicant and was competent in her performance. Trial counsel testified that after she reviewed the State's evidence, she advised Applicant to accept a favorable plea offer. Although trial counsel expressed dismay in the Court of Appeals ruling in affirming Applicant's conviction and sentence, trial counsel asserted that any change in her performance would not have resulted in a favorable outcome at trial for the Applicant.

A.

This Court summarily dismisses Applicant's allegations regarding trial counsel's performance in challenging the arrest and search seizure of the narcotics from the vehicle that Applicant operated. This Court finds trial counsel challenged the arrest and made a thorough motion to suppress the narcotics. (TT: pp.47-101). Furthermore, trial counsel properly preserved her objection to the admissibility of the narcotics at trial. See State v. Wallace, 392 S.C. 47, 707 S.E.2d 452 (Ct. App. 2012). Therefore, this Court summarily denies and dismisses this allegation.

This Court finds Applicant's allegation that trial counsel was ineffective for failure to object hearsay testimony from Officer Crompton regarding the police canine's qualification in narcotics detection is without merit. The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted. Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001). At the PCR hearing, Applicant testified trial counsel did not object when Crompton referenced prior international training from the canine. This Court disagrees and finds the testimony in question was foundational and offered in the context to show continued steps

made by Crompton to ensure the propriety of the canine's use. See State v. White, 382 S.C. 265, 272, 676 S.E.2d 684, 687 (2009) ('While foundational requirements vary, "an overwhelming number [of jurisdictions] allow admission of dog tracking evidence in a criminal case to prove identity.'). Therefore, this allegation is denied and dismissed.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for erroneously allowing Applicant's prior conviction to be brought out during Applicant's trial testimony. This Court finds Applicant's testimony not credible. At the PCR hearing, Applicant testified he discussed the matter with trial counsel. Applicant testified that trial counsel advised him the benefits of testifying outweighed the detriments at the juncture in the trial. Trial counsel testified she discussed the matter with Applicant along with the trial judge advising Applicant of the exposure in testifying. This Court finds Applicant made a knowingly, intelligent, and voluntary decision to testify. Applicant's defense was mere presence although he operated the vehicle from which nearly two pounds of cocaine were discovered. This Court finds trial counsel's advice concerning Applicant's prior convictions did not influence Applicant's decision to testify. Therefore, this allegation is denied and dismissed. See State v. Heller, 399 S.C. 157, 731 S.E.2d 312 (2012).

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for failure to object to the solicitor's comments during the closing argument. At the PCR hearing, Applicant contended the solicitor improperly bolstered the arresting officer's experience and credibility. (TT pp.217). A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. *Id.* A solicitor has a right to state his

version of the testimony and to comment on the weight to be given such testimony. Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id. During closing argument, the solicitor stated,

Not one officer said this, but two; two officers with combined more than 20 years experience in law enforcement. They are not gonna put their reputation and their jobs on the line to come into court and tell you something that's not true, ladies and gentleman, they're not going to do it.

(TT. p.217, line 22—p.218, line 2). At the PCR hearing, trial counsel testified it did not occur to her make an objection after the solicitor made the above mentioned comments. Trial counsel testified that although in retrospect she finds the comments improper, the comments in question were not blatantly improper. This Court finds the comments here constituted improper bolstering. See State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). This Court finds that any deficient performance by trial counsel here in not objecting did not the trial with unfairness. First, the dash-cam video recording of Applicant's arrest was submitted at trial. (TT. P.173). The recording captured the substance of the traffic stop and arrest. The jury was able to view the conduct and demeanor of the officers in assessing the credibility of the State's witnesses. (TT pp.172-173). Second, Applicant's conviction was supported by overwhelming evidence of guilt. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to prove his allegation of prosecutorial misconduct. A

conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (2006) (citing U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)). At the PCR hearing Applicant alleged State's expert witness, Mike Miller, misrepresented his qualifications. Applicant alleged Miller misrepresented his certification and referenced a document attached to his Application for PCR that stated Miller was not certified by SLED at the time of trial. Trial counsel testified she was familiar with the Miller. Trial counsel testified Miller supervised the SLED regional forensics laboratory and had testified in local circuit courts. Trial counsel testified Miller had testified as an expert in his field on at last forty previous occasions Trial counsel further testified she had no valid basis to believe Miller's credentials or his analysis of the cocaine was in dispute. At trial, Miller testified to the following qualifications as a forensic chemist at trial:

I've been trained and certified as a forensic chemist in the area of forensic drug analysis by the South Carolina State Law Enforcement Division, which most people in this State know as S.L.E.D. I've also been trained as a forensic chemist by the United States Department of Justice.

(TT p.186). First this Court finds Applicant failed produce credible evidence to support this allegation. Applicant referenced a document attached to his PCR Applicant that lacked authentication. See State v. Anderson, 378 S.C. 243, 662 S.E.2d 466 (Ct. App. 2008). Second, this Court finds Miller's trial testimony and trial counsel's testimony presented ample evidence that Miller was sufficiently competent to testify as an expert at trial. See Rule 702, SCRE. Therefore, this allegation is denied and dismissed.

II.

This Court finds Applicant also failed the second prong of Strickland – that he was prejudiced by trial counsel's performance. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial.) Applicant was the driver of the vehicle pulled over by police pursuant to valid traffic stop. Furthermore, Applicant claimed ownership of the bag found in the vehicle that contained over seventy-five thousand dollars of cocaine. Evidence was presented at Applicant's trial that showed Applicant was being acting in concert he trafficking drugs from a source city along an interstate passage notorious for narcotics trafficking. Subsequent to arrest, Applicant confessed his guilt and implicated his source. Applicant's story that he had no knowledge of the cocaine lacks any scintilla of credibility. Applicant has waived in casting blame on his passenger cousin to unknown sources for the cocaine ending up in his possession at the time of arrest.

III.

Except as discussed above, this Court finds that the Applicant affirmatively abandoned the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

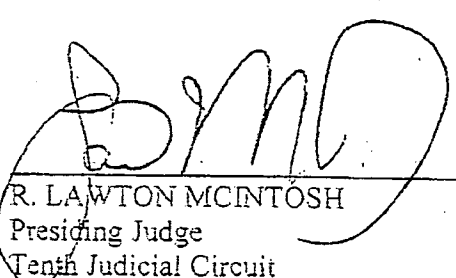
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

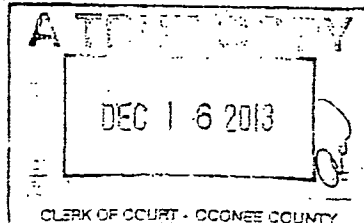
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 26 day of Nov, 2013.


R. LAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit

Anders, South Carolina



FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 DEC 16 P 1:48

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE v TIMOTHY LAMAR WALLACE

AKA: _____

Race/Sex: B M Age: 30

DOB: 09/18/74 SSN: _____

Address: 621 WINDY HILL DRIVE

City, State, Zip GASTONIA NC 28052

DL# 0085266

SID: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

20 06 -GS-37-175

A/W#: H984553

Date of Offense: 09/14/05

S.C. Code: 44-53-0370

CDR Code #: 281

CASE RESTORED ☐

SENTENCE ☐ PLEA

☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

TRAFFICKING IN COCAINE MORE THAN 400 GRAMS

in violation of 44-53-370 of the S.C. Code of Laws, bearing CDR Code #: 01218111

☐ NON-VIOLENT

☒ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,

☐ County Detention Center, for a determinate term of 25 days/months/years or

☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject of South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____

☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections

240 days
SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

PTUP _____ time served pursuant to S.C. Code 24-13-40 to

Obtain GED _____ days/hours Public Service Employment

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

*Fine..... \$ _____

14-1-206 - Assessments (107.5%) \$ _____

14-1-211 (A)(1) Conv. Surcharge \$100 \$ 100.00

14-1-211 (A)(2) DUI Surcharge \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

35.13 (Public Def/Prob) \$500 \$ _____

73.3, 13 TP (Law Enforce. Funding) \$25 \$ 25.00

33.7, 13 TP (Drug Court Surcharge) \$100 \$ 100.00

50-21-114 (BUI Breath Test Fee) \$50 \$ _____

56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% County(if paid in Installments) \$ 6.75

TOTAL \$ 231.75

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Presiding Judge

Judge Code: 21117

Sentence Date

9/18/07

Court Reporter

Robin Hild

0324

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 13-CP-37-290

TIMOTHY WALLACE, 3222985 Petitioner,

v.

STATE OF SOUTH CAROLINA Respondent.

APPENDIX

ELIZABETH FRANKLIN-BEST

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Counsel for Respondent

