

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL LOPEZ,

APPELLANT

APPELLATE CASE NO. 2013-000903

RECORD ON APPEAL

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STATE'S EXHIBIT #7 (DEPUTY MCBEE'S PATROL CAR VIDEO)**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,

vs.

DANIEL JESUS LOPEZ,
DEFENDANT.

COURT OF GENERAL SESSIONS

2005-GS-23-01956

2005-GS-23-01957

ORIGINAL

TRANSCRIPT OF RECORD

VOLUME I

October 12 and 13, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: Good morning.

I understand that we have some pre-trial motions.

How do y'all want to proceed with the motions.

MR. MACKENZIE: I would say that it might be best to address the motion for severance and the suppression of the search. Because that -- depending on how that goes, we might not need --

THE COURT: Okay. Solicitor, let's do the severance motion first.

And who's the moving party on it?

MR. MACKENZIE: It's really Mr. Scalzo, but I would, also, join in that motion.

THE COURT: All right.

MR. SCALZO: So I would officially move to sever, Judge. Primarily, my client is not present. There is a bench warrant. It's been an active bench warrant. It's -- 2008, I believe, is when the bench warrant may have been issued.

So, I mean, my first motion would be that you wait until he's found to try him so that he, obviously, could be present.

THE COURT: Well, I guess then what we need to do is do the hearing on the notice.

MS. MONTS: Yes, Your Honor.

1 THE COURT: All right. Let's do that first.

2 MS. MONTS: Your Honor, the State would call my
3 investigator, Ms. Sonia Bass.

4 THE CLERK: Please place your left hand on the Bible
5 and raise your right hand.

6 WHEREUPON,

7 SONIA RENEE BASS,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Please state your full name for the record.

12 THE WITNESS: Sonia Renee Bass.

13 DIRECT EXAMINATION

14 BY MS. MONTS:

15 Q Ms. Bass, did you send out bond cards to Mr. Daniel
16 Jesus Lopez in regards to the trial that is on today's
17 trial docket?

18 A Yes.

19 Q Can you, please, tell the Court what addresses you
20 sent those to?

21 A Yes. All right. The first address was 4059 Burnside
22 Lane in Lilburn, Georgia, 30043. The second address,
23 which is the same address reflected on his bond sheet that
24 he gave the Court, was 1202 Summer Ridge Lane,
25 Lawrenceville, Georgia, 30044. An additional address was

1 provided: 1644 Cannon Ball Court in Lawrenceville,
2 Georgia, 30044.

3 Q And do you have a copy of the bond sheet?

4 A I do.

5 Q And what is the address on that bond sheet?

6 A That was the 1202 Summer Ridge Lane.

7 MS. MONTS: Your Honor, we'd move that these
8 documents be Court's exhibits.

9 THE COURT: All right. Put them in as Court's
10 Exhibits.

11 (WHEREUPON, Court's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 MS. MONTS: And, Your Honor, I would point out that
14 the bond sheet does have a sentence in there stating that
15 if -- that the trial may continue in the Defendant's
16 absence.

17 THE COURT: All right.

18 MS. MONTS: That would be the State's --

19 THE COURT: Mr. Scalzo.

20 CROSS-EXAMINATION

21 BY MR. SCALZO:

22 Q Ms. Bass, you said "bond cards"?

23 A Yes.

24 Q And you used U.S. postal?

25 A I believe that's what they stamp it with, yes.

1 Q And you never sent the subpoena?

2 A No. We use bond cards.

3 Q And you did not contact Georgia or the Sheriff's
4 Department in any of the counties in Georgia to have a
5 subpoena sent to him?

6 A No.

7 MR. SCALZO: That's all I have.

8 THE COURT: Let me see the exhibit, please.

9 (Pause.)

10 THE COURT: All right. Anything else, Mr. Scalzo?

11 MR. SCALZO: Just that it was not a subpoena.

12 There's no proof that he received it from any of those
13 addresses. That bond card is not a subpoena. It's not an
14 official court document. It's a convenience that the
15 Solicitor's Office uses.

16 So, on that basis, I would move that there be a
17 continuance until he's contacted.

18 THE COURT: Thank you.

19 You can step down.

20 MR. MACKENZIE: And, Your Honor, if I may. The
21 reason that we're joining in the motion to sever is that
22 the co-defendant gave a statement against my client that
23 tends to incriminate Mr. Nelson. And we believe that the
24 statement is inaccurate and not truthful.

25 So we would like to move -- join in the motion to

1 sever. And if that cannot be done, we would ask that
2 the --

3 THE COURT: All right. Let me rule first on the --

4 MR. MACKENZIE: Okay.

5 THE COURT: All right. I'm looking at Court's
6 Exhibit No. 1.

7 Solicitor, the -- on the acknowledgement by the
8 Defendant, it shows an address of 1202 Summer Ridge Lane
9 in Lawrenceville, Georgia. The notices that were sent out
10 were to him at 4059 Burnside Lane, Lilburn Georgia.

11 MS. MONTS: Your Honor, I believe it was sent to
12 several addresses, including the Summer Ridge Lane.

13 THE COURT: All right. I see that. And it does
14 contain the language that he would be tried in his absence
15 if he failed to appear.

16 Mr. Scalzo, your motion is denied.

17 So let's move on to the motion to sever.

18 What's the basis for --

19 MR. MACKENZIE: Thank you, Your Honor.

20 Mr. Lopez gave a statement against my client that
21 incriminates him. And my client denies what is alleged in
22 that statement. I have a copy of it. So we move to sever
23 based on that ground.

24 And we would, also, just add that if it cannot be
25 severed that we would like to have the statement redacted.

1 All right. What else do we have now?

2 MR. SCALZO: We would have Mr. Lopez's motion to
3 suppress the drug evidence. And there's a weapon as well.

4 MR. MACKENZIE: And we would like to join in that,
5 too.

6 THE COURT: Okay.

7 MR. SCALZO: And I would include that there's a
8 statement, obviously, that's been the subject of what's
9 been discussed and is connected to this motion to
10 suppress.

11 THE COURT: Okay.

12 MS. MONTES: Your Honor, I apologize. Did -- what
13 motion did Mr. Scalzo --

14 THE COURT: Motion to suppress.

15 MS. MONTES: Of the car stop?

16 MR. SCALZO: Yes.

17 MS. MONTES: And, Your Honor, the State's position
18 would be that the Defense has to state with specificity
19 what his objection is to --

20 THE COURT: All right. Mr. Scalzo.

21 MR. SCALZO: The car stop was a violation of the
22 Fourth Amendment. There's no warrant. It was a traffic
23 stop without a warrant.

24 MS. MONTES: Your Honor, I believe that the Defense
25 has to be more specific than that.

1 THE COURT: I agree with that.

2 Be more specific.

3 MR. SCALZO: Well, Judge, I'll be specific. He was
4 driving on the highway. The police pulled him over for
5 speeding. That was the only thing they pulled him over
6 for. There was a warning ticket issued. And the police
7 detained his car and tried to get consent out of him. At
8 first, he said, no. They detained his car. And then he
9 said, yes. And I think that's a violation of --

10 THE COURT: What's wrong with that?

11 MR. SCALZO: Well, the -- he only had -- the police
12 officer only had the authority to pull him over and detain
13 him for the ticket -- the traffic ticket, which was
14 speeding. That -- once that was completed, the U.S.
15 Supreme Court and the state court has said that you can't
16 hold him any longer.

17 Once he tried to gain consent and my client said, no,
18 I'm not going to give consent, the police officer then
19 tried to seize him by detaining his car. The man is from
20 out of state. And they, basically, pulled him over. And
21 in seizing the car -- and he's seizing the person. That
22 taints any consent that he gave. And that's the only
23 basis for them to ever search the car.

24 THE COURT: Solicitor.

25 MS. MONTS: Your Honor, the officer developed

1 articulable suspicion of a crime in progress during the
2 stop. And that's what led to him asking for consent and
3 not getting it, and then running the drug dog, Your Honor.

4 THE COURT: All right. So you're going on consent?

5 MS. MONTS: No, Your Honor. I'm sorry. That
6 articulable suspicion --

7 THE COURT: Right.

8 All right. Do you have something, Mr. Mackenzie?

9 MR. MACKENZIE: I mean, I was just going to add this
10 is a warrantless search situation. Of course, there are
11 exceptions to the warrantless search -- warrant
12 requirement. But I would take the position that the State
13 has the burden of going forward on that to prove that
14 there is an exception, or some kind of exigent circumstance.

15 THE COURT: All right. Do you need any testimony?

16 MR. SCALZO: Yes, sir. I believe testimony --

17 MR. MACKENZIE: Yes --

18 THE COURT: All right. Solicitor, you may proceed.

19 MS. MONTS: Your Honor, the State would call Chris
20 Hines.

21 THE CLERK: Mr. Hines, if you can put your things
22 down. And I'll put you under oath.

23 WHEREUPON,

24 CHRIS HINES,
25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your full name for the record.

4 THE WITNESS: Chris Hines, H-I-N-E-S.

5 DIRECT EXAMINATION

6 BY MS. MONTS:

7 Q Officer, please, state for the Court where you're
8 employed, and how long you've worked there?

9 A Greenville County Sheriff's Office, 12 years.

10 Q And what were your duties on January 21st, 2005?

11 A I was assigned to the traffic division, also, as a
12 K-9 officer to do traffic reports on Interstate 85 in
13 Greenville County.

14 Q And can you describe some of your training and
15 experience in this field?

16 A Through the course of my duties at the Sheriff's
17 Office, I've received over 1,400 hours of actual criminal
18 patrol, drug and -- highway drug investigation classes,
19 interdiction/highway terrorism training, hands-on and
20 actual classroom training. And, at the time,
21 approximately 600 hours of actual K-9 handler training,
22 including a 400-hour handler certification course with
23 myself and the K-9, Angie, who was my partner at the time.

24 Q And are you and your dog -- were you certified
25 together in January of '05?

1 A That's correct.

2 Q And, please, describe what happened late in the
3 afternoon on January 21st, '05. Where were you working?

4 A I was assigned Interstate 85 in Greenville County.
5 At approximately 2:30 on January 21st, I was turning
6 around at the county line on Interstate 85 and Highway
7 153, Exit 40.

8 As I'm turning around, there's a gas station on the
9 northbound side of the interstate, which is a Breakers gas
10 station. As I pulled through the parking lot there, I
11 observed a gentleman on the phone -- on a pay phone and a
12 white Dodge Intrepid parked at the pay phone at the corner
13 of the parking lot. At the time, I didn't think much
14 about it. I pulled back on the interstate and was sitting
15 on the side of the road looking over some stuff in my
16 vehicle when I saw the same Dodge Intrepid pass by at a
17 high rate of speed.

18 From that point, I tried to measure his speed with
19 radar. As he came by so fast, I didn't have the
20 opportunity to do that at the time. I attempted to
21 overtake the vehicle. And as I was approaching him coming
22 up on Exit 44, which is in Greenville County, the White
23 Horse exit on I-85 northbound, he made a lane change and
24 exited off on to White Horse Road, Exit 44 --

25 Q Explain that lane change. What brought your

1 attention to it?

2 A It was -- he was, actually, in the number one lane
3 and, actually, came across -- I'm sorry. He was,
4 actually, in the number three lane. And as he was coming
5 up on the exit, there was an abrupt change like he was
6 about to miss his exit is kind of what I took. But he was
7 still traveling. At that point, he exited --

8 Q How many lanes did he cross?

9 A At that point, he was in number three lane. So he,
10 actually, just jerked it over on to the shoulder there --
11 or, actually, on to the exit ramp. And I measured his
12 speed at 72 miles an hour with the police radar. It was a
13 60 miles an hour zone on the interstate. I am a certified
14 radar operator of the South Carolina Criminal Justice
15 Academy.

16 Q And what is the speed on the off ramp?

17 A It's a suggested 45 is what I believe DOT suggests
18 the off-ramp speed once they exit off. But the actual
19 interstate speed is 60 miles an hour.

20 Q Please continue. What happened? What did you do?

21 A As he exited off, he got on to White Horse Road. I
22 turned my blue lights on and siren to engage in a traffic
23 stop. We went, actually, up to the red light at 85 and
24 White Horse. And he made a left hand turn. And we,
25 actually, went north on Highway 25, which is the White

1 Horse Road area.

2 And he stopped on the bridge. I walked up to him on
3 the passenger side and introduced myself, and gave him the
4 reason for the traffic violation, which was speeding.

5 Q What tag, if you recall, was the car --

6 A It was registered out of Georgia. The Georgia
7 registration, I believe, was displayed. It was Georgia
8 AFD 8621, which was what was displayed on the car at the
9 time.

10 As I'm -- as soon as I, you know, explained why I
11 stopped him, he apologized for that. And I immediately
12 looked down and I saw a cell phone sitting on the
13 passenger seat, which appeared to be on.

14 And then I, also, observed --

15 Q Well, why did that alert your attention?

16 A Well, this gentleman was just on the pay phone at the
17 exit -- at Exit 40 standing on the pay phone. And then I
18 observed another cell phone in the back, which was --
19 struck me as odd. He's got two cell phones. One of them
20 is, actually, in the -- appeared to be in the on position.
21 And he is talking on a pay phone -- standing on the side
22 of the road, basically, talking on a pay phone when you've
23 got two phones in your possession already.

24 Q And, please, continue. What did you say?

25 A I asked for his license and his paperwork. And while

1 he retrieved that information, I asked where he was going,
2 just making conversation while I was getting his
3 paperwork. At which point, he told me he was going home
4 to Georgia. However, he's, actually, traveling the
5 opposite way going northbound toward North Carolina,
6 instead of, actually, going toward Georgia.

7 I asked him where he was coming from. And he replied
8 he was visiting his boy in North Carolina, who was in the
9 Army -- or, actually, coming -- had been in North Carolina
10 visiting his boy. So he's, actually, going toward North
11 Carolina, instead of coming from North Carolina.

12 At this point, I turned to check his driver's
13 license. He provided me a Louisiana driver's license. He
14 gave me a registration with an address of Gainesville,
15 Georgia, and he had an insurance -- the vehicle was in his
16 name. The insurance was in his name. And he had another
17 address of, I believe, Lawrenceville, Georgia.

18 Q So were the addresses on his driver's license, the
19 car registration, and the insurance all different?

20 A Two different states and three different addresses at
21 this point. And through the course, he, actually,
22 provided, I believe, a fourth address to me as well.

23 Q Was that separate than the other three?

24 A That's correct. I'm trying to get that exact --
25 yeah, when I asked him to verify his address, he provided

1 a Lawrenceville, Georgia address. So he's got Tucker,
2 Georgia on the insurance; Lawrenceville, Georgia is what
3 he, actually, provided that he was living there;
4 Gainesville, Georgia was on the registration; and Kenner,
5 Louisiana is on the driver's license, which immediately --
6 and the registration and the insurance paperwork normally
7 are issued, at least, yearly.

8 So if you've got several addresses within the year,
9 which I -- it kind of raised a red flag. In my training,
10 this guy doesn't have a steady place where he's laying his
11 head at night.

12 Anyway, I told him I was going to write him a warning
13 for the speeding. And, at that point, he began to engage
14 in casual conversation. He asked if we had been busy.
15 And then he told me he worked for Gwinnett County. I
16 asked him what he did for the county. He told me he was a
17 bouncer and that he told on people. He was kind of trying
18 to befriend me is what I took this as.

19 Q When you told him that you were only going to write
20 him a warning, what did you notice about his behavior?

21 A That's -- at that point, it's still nervous chatter.
22 Like I say, he started trying to befriend me. He
23 mentioned that he worked for Gwinnett County, trying to
24 insinuate, in my mind, that he was a law enforcement
25 officer or had affiliation with law enforcement.

1 As I began writing -- he kept -- I mean, he kept his
2 hands in his pocket still, you know, with nervous chatter.
3 I, again, asked him where he was going. He said he was
4 going home to Georgia. But he said he was stopping to get
5 something to eat. I confirmed again what part of North
6 Carolina -- or where he was coming from in North Carolina.
7 And he began to stutter.

8 And I have in my report that he said, Fort, Fort --
9 he's in the Army. He, basically, couldn't provide where
10 he was coming from in North Carolina. He then stated his
11 baby's mother was in North Carolina, and the baby was
12 sick.

13 Q Was that in response to any of your questions?

14 A No. At this point, he starts, basically, trying to
15 kind of ad lib a story is kind of the way it appeared to
16 me. So I asked him how old his son was. And then he said
17 it was his friend's son. Then he changed and stated that
18 his friend had a daughter.

19 So, at this point, I was confused. And I asked him
20 if the daughter was his. And he said he had a daughter
21 that was six that lived in California. So his story is
22 just -- it was kind of all over the place about where he
23 was going and where he was coming from.

24 Q What was his demeanor?

25 A Nervous, you know, kind of stumbling upon his words.

1 Q Would he make eye contact with you?

2 A Not directly. He kept on -- 'I mean, he kept on
3 avoiding eye contact with me. I went back to check the
4 male in the car, and that's when I observed a Gwinnett
5 County police department patch taped to the dash by the
6 VIN, which, once again, I thought was kind of odd
7 considering most law enforcement agencies don't employ
8 bouncers per se as a job title, which is what he was
9 claiming to be for the county.

10 And then I asked him about where he was going to eat.
11 And then that's when he looked up and he said, McDonald's,
12 which I found was kind of odd since there was a McDonald's
13 at Exit 40 where he had just come from. There's one at
14 that exit as well.

15 So, at this point, he's all over the place.
16 Obviously, I feel, based on my training, that this guy
17 is -- I'm not exactly sure where the gentleman lives.
18 He's got his story where he's going, where he's coming
19 from is not adding up. The direction of travel to -- of
20 his story as -- he says he's going to Georgia, coming from
21 North Carolina. He's going totally the wrong way as far
22 as interstate travel. He's on a cell phone -- I mean,
23 he's got two cell phones. He was stopped talking on a pay
24 phone. In my mind, I felt that there was some type of
25 criminal activity afoot here.

1 Q And was there any significance to the fact that this
2 occurred on I-85?

3 A I-85 is a pipeline between the Atlanta, Georgia area
4 up to Charlotte, North Carolina, and the Raleigh-Durham
5 area. Based on statistics provided by the DEA, it is a
6 trans-shipment point for illegal narcotics up the east
7 coast up into Charlotte, Greensboro, Raleigh-Durham, and
8 on up into the -- up north into the New York area. So,
9 yeah, I-85 is a -- based on statistics and my experience,
10 it is a main pipeline for drug trafficking.

11 Q And is there any significance to the fact that
12 several of his addresses were from Lawrenceville and
13 Tucker?

14 A Yeah. All these are -- every address, minus his
15 driver's license, are all, basically, in and around the
16 Atlanta metro area, which is -- like I say, once again,
17 Atlanta is a known city for drug trafficking, or
18 origins of drug trafficking and -- are coming from that
19 area.

20 Q And, based on all your hours of training and your
21 experience in this field, what did these items lead you to
22 believe?

23 A Based on his demeanor -- like I said, when you put
24 all this together, I felt for sure there was some type of
25 criminal activity afoot. In my mind, based on my

1 training, specifically, some type of drug trafficking
2 activity.

3 He was very nervous. Even after I told him I was
4 going to write him a warning, he was still -- his nervous
5 level still remained constant, more so than the public
6 that we deal with every day. After they, you know,
7 realize they're going to get a warning -- if you tell them
8 they're going to get a ticket -- you know, after they
9 realize what's coming, they -- you know, their sense of
10 nervousness drops. His remained the same throughout the
11 whole traffic stop.

12 So, I mean, at that point, you know, I made up my
13 mind I was going to, at least -- I was going to ask him
14 for consent to search the vehicle, and try to do it the
15 least intrusive way from that point, and then see what his
16 response was to those -- to that -- or to those questions
17 concerning the consent.

18 Q Okay. And did you believe you had enough
19 information, at this point, to articulable suspicion to
20 run the drug dog?

21 A Yes, I did.

22 MS. MONTS: Thank you.

23 I have no further questions.

24 THE COURT: Mr. Scalzo.

25 MR. SCALZO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCALZO:

Q So you pulled him over for a speeding ticket;
correct?

A A speeding violation, yes, sir.

Q A speeding violation. And you said that you were on
I-85. And when you were tracking him to figure out how
fast he was going, you were trying to catch up with him.
So you were some distance from him?

A Yeah. He, originally, passed -- I was sitting on the
side of the road after I had saw him at the pay phone
before. And he passed me traveling at a high rate of
speed. At which point, I tried to -- the vehicle, yes.

Q Okay. And then you describe that you had not turned
on your lights at this point, and he's still on the
highway; correct?

A That's correct.

Q That he jerked the wheel to get off the exit. And
you described it as it looked like he thought he was going
to miss his exit?

A That's correct.

Q And if he had gotten off at that exit, gone up the
ramp, gone over and around, he could have gotten back on
I-85 north; correct -- I mean south; is that right?

A That's a possibility, yes, sir.

1 Q And, now, he would have been going in the correct
2 direction to go back to Georgia; is that right?

3 A But the exit he was at prior, he could have made that
4 a lot easier.

5 Q But that wasn't my question. My question was, if he
6 jerked the wheel, got off, and went all the way around,
7 he'd be going back to Georgia?

8 A Yes, sir.

9 Q In the direction of Georgia, I should say.

10 A Right.

11 Q And he'd, also, be going back in the direction of
12 McDonalds as well; isn't that right?

13 A Toward which -- the one at Exit 40? Is that the one
14 you're referring to?

15 Q Right. You had said that he was at Exit 40, and
16 there was a McDonald's there; correct?

17 A That's correct.

18 Q And, now, when he gets back on the highway --

19 A Right.

20 Q -- and he's driving, and then he jerked the wheel to
21 get off. If he had turned around and gotten on the other
22 side of the highway, he would be going back to Atlanta in
23 the direction of Atlanta and back in the direction of
24 McDonalds; isn't that correct?

25 A Well, there's, also, a McDonalds at Exit 44, which he

1 had -- which, at that point, he said that's where he was
2 going. He was going to eat at McDonalds. There's a
3 McDonalds on about every exit on 85. So that's -- why
4 he's going to that one McDonalds...

5 Q You're saying he says, I'm going to that McDonalds?

6 A Yes. He, actually, pointed, I mean.

7 Q You didn't say that earlier. You just said he said
8 he was going to McDonalds.

9 A He looked -- insinuated he was going to that
10 McDonalds.

11 Q All right. So, now, you pulled him over. And I
12 think you described that he stopped -- is it on the actual
13 bridge, the overpass?

14 A It's, actually, right past -- he, actually, stopped
15 right past the exit to get on 85 southbound --

16 Q Okay.

17 A -- to go back toward Georgia. So, actually, the
18 direction -- if he had kept going, he would have been --
19 he did not try to get back on Interstate 85 southbound.
20 He stopped right past that pull off there kind of on the
21 shoulder.

22 Q But you had turned your lights off; right?

23 A That's correct.

24 Q So he exits. You exit. You turn your lights on, and
25 so he pulls over?

1 A Yeah. The lights were, actually, turned on on the
2 exit ramp getting on at White Horse Road from 85 north.
3 So he, actually, got to the right light, made a left,
4 proceeded past the exit ramp back to southbound, and
5 stopped right there.

6 Q Okay. And so, now, essentially, he's stopped at an
7 exit off the side of the road?

8 A He's on the shoulder of the side of the road, yes,
9 sir.

10 Q Okay. Then you come up to him. And like a regular
11 traffic stop, you're getting his license, registration,
12 that kind of information?

13 A That's correct.

14 Q Which he provided you the documents?

15 A Yes.

16 Q And you, ultimately, gave him a warning ticket --

17 A That's correct.

18 Q -- isn't that right?

19 A That's correct.

20 Q And he had -- you took the VIN number. You,
21 actually, were able to look at the car and you saw the VIN
22 number on the car; is that right?

23 A To make sure it matched up to the insurance and the
24 registration.

25 Q Which it did?

1 A That's correct.

2 Q And the car was registered to him in his name?

3 A Yes.

4 Q Insured under his name?

5 A That's correct, all different addresses.

6 Q Different addresses, but still in his name?

7 A That's correct.

8 Q And the car was not -- did not come up in your
9 computer as being stolen?

10 A Not to my knowledge.

11 Q No warrants or anything came up showing for him that
12 were outstanding?

13 A Nothing local, no, sir.

14 Q Nobody was looking for him that you're aware of at
15 that point on the side of the road?

16 A At that point, no, nothing.

17 Q And I'm assuming -- you didn't testify to this. But
18 I'm assuming what you did is you went back to your car to
19 run all that information, and then came back with a
20 warning ticket to give to him?

21 A I went back and got my warning book out of the car,
22 yes.

23 Q Okay. But you -- what I'm saying is you got his
24 information, did what you needed to do, wrote the warning
25 ticket, and then brought the warning ticket back to him?

1 A No, sir.

2 Q Okay. What did you do?

3 A My standard policy or procedure is to get the
4 information. We have a mobile data terminal in the car.

5 Q Right.

6 A I return to my vehicle, make sure the license is
7 valid, and make sure the registration is valid. At which
8 point, I return and have the driver -- either prior to
9 doing that, I'll have them come back and exit out of the
10 vehicle where I can keep an eye on them. Or once I've
11 completed that, if they're not already out of the vehicle,
12 I'll walk back up and have the driver exit out of the
13 vehicle and, actually, stand to the front right of my car
14 while I'm writing the warning.

15 Q All right. And that's, in fact, what you did in this
16 case?

17 A Yes.

18 Q He wasn't out when you were in your car running your
19 checks; correct?

20 A One moment, please.

21 Q Sure.

22 A That's correct.

23 Q And so when you decided that you now were going to
24 give him a warning ticket, I assume, you went to the car
25 and got him out to bring him to the back of his car and

1 the front of your car?

2 A Right. Normally, I just motion for them to step
3 back.

4 Q Okay. Is that what you did here?

5 A That's correct.

6 Q But you got him out of the car?

7 A That's correct.

8 Q And do you have your actual book as you're writing
9 standing there in front of him, or do you go back to your
10 car and write it in the car?

11 A No. We stand right there and I write it as we talk.

12 Q And you're telling him what you're doing as you're
13 writing it, essentially?

14 A Normally, like I said, we'll just either --
15 basically, make small talk while I'm writing it, or, you
16 know, tell him I'm writing him a warning, which, in this
17 case, he knew I was writing a warning.

18 Q Right. So you indicated to him, I'm writing you a
19 warning ticket. You were finishing up; is that fair?

20 A Well, once I completed the actual warning, from that
21 point, yes, sir.

22 Q All right. And then you finished the actual writing
23 the warning and you give him the warning, you give him the
24 paper, don't you?

25 A Eventually, yes.

1 Q Well, at what point do you give him the warning, the
2 piece of paper?

3 A I mean, after I asked -- you know, asked several --
4 you know, trying to confirm the story during this whole
5 time asking several questions concerning the story and
6 then about where he was going to eat. I mean, while I'm
7 writing that -- as I was completing it, you know, I asked
8 him, specifically, if he had any drugs in the car.

9 Q Right. So you're talking to him while you're
10 preparing the warning?

11 A That's correct.

12 Q After you finish talking with him about some of
13 these -- where he's going, what was he doing questions,
14 then you, actually, give him the warning; correct?

15 A Once I finish writing it, that's correct.

16 Q And I believe what you have in your report is, I
17 issued him the warning, and returned all of his paperwork,
18 and asked if he understood the warning, and if he had any
19 questions?

20 A That's correct.

21 Q And that's what you did?

22 A About the questions about the warning, that's
23 correct.

24 Q And when you -- what you would have told him about
25 the warning was, hey, this is just a warning. It's not an

1 actual ticket. You're not going to have to come to court,
2 essentially, is what you're trying to get him to
3 understand, you're not going to have to pay a fine or
4 anything like that; right?

5 A Right, for this violation.

6 Q For this violation?

7 A That's correct.

8 Q All right. And he did not have any questions for
9 you, he said he understood the warning?

10 A Yes. That's correct.

11 Q Did you have any other tickets for him at that point?

12 A No. At that point, I didn't. At that point, I went
13 and asked if I could search his vehicle.

14 Q Okay. We're going to talk about that in one second.
15 Did you have a K-9 in your car?

16 A Yes.

17 Q All right. You had not gotten your K-9 out at this
18 point?

19 A That's correct.

20 Q And did you call for backup when you originally
21 pulled him over?

22 A No. I believe it was, actually, a little later in
23 the stop.

24 Q Okay. And let's talk about the consent issue.

25 You've given him the warning ticket, you're on the side of

1 the highway -- the side of the road. And we've already
2 established he is not from South Carolina; correct?

3 A That's my knowledge, yes.

4 Q All right. And you asked him if you could search his
5 car?

6 A That's correct.

7 Q And he, basically, says he doesn't want -- he shrugs
8 his shoulders, I don't really want to do that. He wants
9 to leave; isn't that right?

10 A He doesn't really answer either "yes" or "no." He
11 doesn't give an answer either way.

12 Q Well, then you asked him -- he shrugged. He didn't
13 answer. And you said, is that a "yes" or a "no." And he
14 said he just wanted to leave; isn't that right?

15 A That's correct.

16 Q Okay. And what you told him was, hey, you're free to
17 go, but I'm going to hold your car?

18 A That's correct.

19 Q And, at this point, he's on the side of the road?

20 A At this point, yeah. That's the statement I made to
21 him. And the reasoning behind that --

22 Q Well, hold on. We'll talk about it in a second.

23 A Okay.

24 Q But you're detaining -- you just, basically, said,
25 I'm going to keep your car here. Because you want to run

1 your dog around his car?

2 A That's correct. Yeah, based on what the -- what's
3 been observed thus far in the traffic stop.

4 Q All right. Did you ask him about the use of the pay
5 phone versus the fact that he had a cell phone, at this
6 point I'm talking about?

7 A I don't recall.

8 Q All right. So you did not have an explanation that
9 you requested from him to explain why he might have used a
10 pay phone, instead of one of the cell phones he had; is
11 that correct?

12 A That's correct.

13 Q And when you were standing at the car when you first
14 pulled him over, I'm assuming you were able to see inside
15 the car?

16 A Yes.

17 Q And you didn't see any contraband, you didn't see any
18 drugs, guns, anything like that?

19 A Just several cell phones, which -- I mean, which I
20 found was kind of odd, especially when he's, actually --
21 one of them was on. And he's already stopped and paid
22 somewhere to, actually, use the phone.

23 Q Right. You said that. And you didn't ask him about
24 the other cell phone that was in the car, whether or not
25 it even worked at that point?

1 A No.

2 Q And, in fact, the phone that you said was on, you
3 didn't ask him whether or not that was, actually, working
4 or in service. It was on, but you don't know if it,
5 actually, had service connected to it, did you?

6 A I did not reach in there and check the phone, no,
7 sir.

8 Q Now, at the point at which you say to him, You're
9 free to leave, but I'm going to keep your car, do you go
10 to get your dog at that point? What do you do?

11 A At that point, I believe I've already called for
12 Deputy McBee to -- as a backup officer. His behavior --
13 he's nervous. He -- I don't know -- this guy is,
14 obviously, not telling the truth about something. I don't
15 know what his -- what's going on in his mind.

16 So I'm trying to put him at ease letting him know,
17 hey, he may be free to go. So he thinks in his mind, hey,
18 you know, I'm not going to cause any trouble.

19 So, at that point --

20 Q Now, when you say you called for backup, do you call
21 right there standing there? Do you take your radio and
22 call for backup?

23 A Yes.

24 Q So he could hear you calling for backup?

25 A Well, we have codes. I mean, he don't -- he's not

1 going to know what codes.

2 Q But he can hear you get on your radio?

3 A Which I've probably done several times during the
4 traffic stop, yes.

5 Q And then before you start with your dog, another
6 deputy shows up?

7 A Yeah. Prior to running the dog, Deputy McBee shows
8 up.

9 Q Okay. And he gets out?

10 A That's correct.

11 Q And he's standing with the Defendant while you're
12 searching the car with your dog?

13 A That's correct. I believe he, actually, at that
14 point -- when I told him that, he said -- he told me he
15 could -- I told him I was going to run the vehicle [sic]
16 around the dog [sic]. He said that, at that point, I
17 could run my K9 around his car.

18 Q Right.

19 A He was still hanging around.

20 Q And, at that point, when he says, yeah, you can do
21 it, this is after you've indicated to him that you're
22 going to keep his car, so you can do it; right?

23 A I'm sorry.

24 Q When he says, sure, you can run the dog, that's only
25 after you had said to him, I'm going to keep your car here

1 so I can run my dog around it?

2 A Right. At that point, I felt I had reasonable
3 suspicion that some type of criminal activity -- based on
4 my training and experience, from what I've seen, what --
5 his demeanor, questions, responses that I was going to
6 detain him and his car.

7 Q All right. So but really you had decided that long
8 before that had come up. When you asked for consent, what
9 you're saying is you weren't really asking for his
10 consent, you were just trying to make him feel good about
11 the fact that you were going to search his car; isn't that
12 right?

13 A No. We were doing it in the least intrusive manner
14 asking for consent. If not, then we'll run the dog. If
15 the dog doesn't run [phonetic] the car, then he'd be on
16 his way.

17 Q I think you've got to figure out which position
18 you're going to take. Either --

19 MS. MONTS: Objection, Your Honor --

20 BY MR. SCALZO:

21 Q You were --

22 THE COURT: Hold on.

23 MS. MONTS: I don't think this is proper questioning
24 for the officer.

25 THE COURT: Just ask him questions.

1 MR. SCALZO: Okay.

2 BY MR. SCALZO:

3 Q You were either trying to obtain consent because you
4 thought you needed consent to search the car, or you were
5 trying to make him feel better about it or in a least
6 intrusive way. You weren't trying to do both; correct?

7 A We always -- if situations like that -- arise like
8 this, we always ask for -- try to ask for consent and --
9 A, to see what their response is, and makes them try to
10 feel at ease, give them like -- you know, like he has a
11 say so in it.

12 Q All right. But what you're telling us is he didn't
13 have a say so at that point?

14 A At this point, yeah, I was going to run the dog
15 around the car. That's correct.

16 Q Which is why you told him you were going to hold the
17 car so you could do that; correct?

18 A That's correct.

19 Q Now, as far as -- you talked about I-85 being a
20 pipeline for drug activity, and that was factoring into
21 your suspicion, and why you wanted to hold him and search
22 the car; is that right?

23 A No. I mean, 85 is a known drug corridor.

24 Q All right. Well, what I'm asking you is that --
25 you're saying that that was part of what you were

1 factoring in as to why you were detaining the car?

2 A Not that one specific thing, no.

3 Q But it was part of it --

4 A We stop dozens of people daily. And it doesn't --
5 and the innocent motoring public doesn't act like this. I
6 mean, that's -- you know, they're pretty consistent with
7 their behavior. And, at this point, based on what we've
8 seen -- or my experience that -- but based on this and
9 that 85 is a drug corridor, yeah, that played a part into
10 it.

11 Q Well, I'll just ask two questions. One, had you ever
12 met him before?

13 A No.

14 Q So his demeanor was not something you'd ever
15 encountered before as far as him personally?

16 A And we deal with nervous people every day out there.

17 Q Okay.

18 A I mean, if somebody gets stopped by the police,
19 obviously, you know, most people is [sic] going to be
20 nervous. This continued. Most people don't have to
21 fabricate stuff as it appeared he was doing in this --

22 Q Well, it appeared he had been fabricating. But that
23 was your opinion about whether he was fabricating. At
24 that point, you had no proof that he, actually, fabricated
25 anything?

1 A Well, when he -- he goes from having a son to not
2 having a son, to having a daughter. I mean, you know,
3 ages change. I think that speaks for itself.

4 Q One question would be, did you turn on your recording
5 device in your car?

6 A Yeah. I do have the -- yeah, I have a videotape of
7 it.

8 Q Was that recording while you were talking to him?

9 A I would assume so.

10 Q All right. And does anything about whether he had a
11 son, or didn't have a son, or whether the son -- whether
12 he was lying about the age of the son, what does that have
13 anything to do with drugs?

14 A Well, this whole thing is a matter of more or less
15 being deceiving, not forthcoming, trying to distance
16 himself, what he's, actually, doing. Because his whole
17 premise really was he's coming from North Carolina. I was
18 just trying to ask where he was coming from. At that
19 point, he's having to make up another story. It's lie
20 after lie after lie, basically.

21 Q Well, you say lie after lie after lie. But, in fact,
22 he said fort something, something. He couldn't remember
23 the name of the fort that he had gone to is what you knew.
24 You were assuming that he was lying.

25 A It -- well, most people, if their son is in the

1 military, are going to know where they're stationed is the
2 way I look at it.

3 Q Perhaps, perhaps. But he might have just gone there
4 and didn't remember the name of the fort as well.

5 A I find that hard to believe.

6 THE COURT: Just ask him questions. Don't testify
7 yourself.

8 MR. SCALZO: Okay.

9 BY MR. SCALZO:

10 Q Now, in order for somebody to get from Atlanta to
11 North Carolina, essentially, they've got to drive on I-85?

12 A No, sir.

13 Q If he's going to North Carolina, he can take another
14 highway to North Carolina; correct?

15 A That's correct.

16 Q 90 percent of the people that are going from Atlanta
17 to North Carolina are not going to take the other highway.
18 They're most likely going to drive I-85. It's one of the
19 busiest highways in the country --

20 A Not necessarily. I-20 has as much traffic coming out
21 of Atlanta going to North Carolina as I-85 does.

22 Q Right. It just depends on where he's going in North
23 Carolina?

24 A That's correct.

25 Q Okay. So the fact that he was on I-85 and it is this

1 drug corridor, you had no indication that he was driving
2 it because it was a drug corridor?

3 A No.

4 Q You were just -- in your mind, you're saying you were
5 suspicious about what he had said. But you didn't have
6 anything that you could say, okay, this specific thing
7 means he's probably carrying drugs?

8 A That's right. You put them altogether and it paints
9 the big picture.

10 Q It paints the big picture that you were suspicious of
11 him.

12 A It raises reasonable suspicion. I didn't say I had
13 probable cause that he had -- at that time had drugs in
14 the car.

15 Q But you're saying you were suspicious of drug
16 activity, or you were just suspicious. Because you
17 said --

18 A Of criminal activity from -- and from based on my
19 experience, yeah.

20 Q Okay.

21 A There's a high probability it's going to be drug
22 related.

23 Q But it was a high probability based on other things.
24 It wasn't a high probability based on things you had
25 learned from him; correct?

1 A That's correct.

2 Q Okay. Now, just to be clear. Once you've searched
3 the car and you end up finding --

4 MS. MONTS: Objection, Your Honor, --

5 BY MR. SCALZO:

6 Q -- some drugs --

7 THE COURT: Hold on. Hold on.

8 What's your objection?

9 MS. MONTS: We're just here to decide whether or not
10 the search was valid --

11 THE COURT: Right.

12 MR. SCALZO: And, Judge, where I'm going is I think I
13 just need to connect that, ultimately, the -- to talk to
14 him was part of the suppression and would be any
15 statements that come out of this.

16 THE COURT: No. I disagree.

17 MR. SCALZO: All right. Then I don't have any
18 further questions of him.

19 MR. MACKENZIE: Can I just briefly?

20 MS. MONTS: Your Honor, we would say that Mr. Nelson
21 does not --

22 THE COURT: What basis do you have?

23 All right. Anything else, Solicitor?

24 MS. MONTS: No, Your Honor.

25 THE COURT: Thank you.

1 Step down.

2 All right. Anything else?

3 MS. MONTS: That would be the only witness, Your
4 Honor.

5 THE COURT: Do you have anything to present,
6 Mr. Scalzo?

7 MR. SCALZO: I don't have any evidence to present,
8 but I would like to make an argument, Judge.

9 THE COURT: Well, you've already made your argument.

10 MR. SCALZO: Well, I do want to point out some case
11 law that supports the argument.

12 THE COURT: All right.

13 MR. SCALZO: Your Honor, there's several different
14 cases. But, primarily, I want to point out State v.
15 Williams, which is an appellate court case from 2002.
16 It's 351 S.C. 591. In that case, it was a car stop. The
17 police officer -- I believe it was in Spartanburg --
18 pulled the person over. And, eventually -- again, it was
19 a kind of simple traffic stop that the police officer then
20 sort of extended the stop.

21 And the appellate court -- the Court of Appeals
22 decided that that was not a reasonable stop. And one of
23 the important things that they point out is, it says,
24 Before you leave, let me ask you a few questions. That
25 was what the police officer said to the driver.

1 And what the Court of Appeals said is, look, in our
2 review, this statement indicated that the driver wasn't --
3 he wasn't free to leave based on the -- what the police
4 officer was telling him and the other circumstances of the
5 case, which were that there were other officers present.
6 We have a very similar circumstance here.

7 Another case I'll point out would be State v.
8 Pichardo, 367 S.C. 84. In that case, the Court of
9 Appeals, again, they hold that this being nervous does not
10 equal reasonable suspicion. Because the person is nervous
11 does not rise to the level of meeting a reasonable
12 suspicion that he might be committing a serious offense.
13 And I think that's the distinction. There have got to be
14 articulable facts that the officer can point out to you
15 that would raise the issue to be a serious offense, not
16 just an everyday offense.

17 Another case I would point to is the State v. Jones,
18 Court of Appeals. It's 364 S.C. 51. That is a reference
19 to the Williams case I cited, as well as Caballes, which
20 is Illinois v. Caballes. It is the U.S. Supreme Court
21 case which talked about detaining somebody so that you
22 can use a K9 to search the car, do an air sniff of the
23 car.

24 And, basically, what Jones does is it recognizes
25 Caballes in South Carolina. And what you have is the U.S.

1 Supreme Court saying you cannot -- an officer cannot
2 detain somebody for a regular traffic stop longer than is
3 necessary for the traffic stop in order to search the car
4 using the K9. You can do it if -- while you're doing the
5 speeding ticket or the warning ticket. If you run the dog
6 around and the dog alerts, that's fine. But you can't
7 detain them longer than it takes to do the stop.

8 Well, that's what you have going on here. He pulled
9 him over for speeding. He's writing him the warning
10 ticket. He gets him out of the car. He doesn't even
11 leave him inside the car. He finishes up and says, hey,
12 you're ready to go, then asks for consent. He doesn't
13 give consent.

14 The only point at which he gives consent is when the
15 officer says, I'm not going to let you go because I'm
16 going to keep your car, which I think is the same as
17 saying, before you leave, let me ask you a few questions.
18 It's, actually, even more serious, I think. The man is
19 from another state. He can't get back. He can't leave
20 the side of the road. At that point, I think that's an
21 illegal detention to continue to hold him. He's finished
22 his --

23 THE COURT: Well, how about State v. Rogers, which is
24 a Court of Appeals '05 case?

25 MR. SCALZO: Let me see if I have that case.

1 THE COURT: I said -- it's, actually, Reyes,
2 R-E-Y-E-S.

3 MR. SCALZO: Reyes, I don't have that.

4 What is the Court concerned --

5 THE COURT: Well, I think that's -- I'm going to deny
6 your motion to suppress. And I'm basing it on State v.
7 Reyes, which is -- I don't have the citation. It's case
8 decision number 4036 by the Court of Appeals on October
9 31st, '05.

10 MR. SCALZO: And could I ask the Court what the
11 ruling was?

12 THE COURT: And I'm reading from that case. It says,
13 Once the underlying basis for the initial traffic stop has
14 concluded, it does not automatically fall that any further
15 detention or questioning is Unconstitutional. Lengthening
16 the detention for further questioning beyond that related
17 to the initial stop is permissible in two circumstances.
18 First, the officer may detain the driver for questioning
19 unrelated to the initial stop if he has an objectively
20 reasonable and articulable suspicion that illegal activity
21 has occurred, or is occurring.

22 And I find from this officer's testimony that that is
23 the case. He had objectively, reasonable, and articulable
24 suspicion of illegal activity.

25 Second, Further questioning unrelated to the initial

1 stop is permissible if the initial detention has become a
2 consensual encounter. And, in this case, I find that your
3 client consented.

4 So your motion to suppress is denied.

5 MR. SCALZO: And I just want to make my argument
6 clear for the record. One, I don't think he articulated
7 anything that raises that. And, two, any consent he gives
8 if he illegally detains him is then, obviously, tainted.

9 THE COURT: All right. You're protected.

10 What else do we have?

11 MR. MACKENZIE: Your Honor, I guess the next motion
12 would be regarding the lost evidence. This is one --

13 THE COURT: Hold on just one minute.

14 MR. MACKENZIE: Oh, yes, sir.

15 THE COURT: We've got a jury panel.

16 What else do we have besides that?

17 MR. MACKENZIE: There's this one motion. There was
18 the motion regarding the confidential informant's file.
19 And I -- just a brief little motion about some mention of
20 some other drugs that were found that were not charged.

21 THE COURT: Okay. Well, I think I'm going to excuse
22 the panel until 2:30.

23 MR. MACKENZIE: Yes, sir.

24 THE COURT: Just tell them to be back at 2:30, and
25 we'll select a jury then.

1 unusual to most people. So we just go over it and make
2 sure they understand.

3 Q Okay. When was he, actually, booked and put into the
4 jail?

5 A That, I don't know. Because --

6 Q Would it have been before this? After this?

7 A Oh, it would have been after this.

8 MR. SCALZO: That's all I have.

9 THE COURT: Thank you.

10 Step down.

11 THE WITNESS: Thank you, sir.

12 MS. MONTS: Nothing further, Your Honor.

13 THE COURT: I understand your client is not here.

14 Do you have anything else to present?

15 MR. SCALZO: No. I don't have any evidence to
16 present, Judge, because he's not here. So I would renew
17 my prior motions.

18 THE COURT: All right. With respect to the written
19 statement, I find that he was properly advised of his
20 Constitutional rights under Miranda, that thereafter he
21 freely and voluntarily gave a statement to the law
22 enforcement officers. And that under the totality of the
23 circumstances, it was voluntarily made, not the result of
24 any coercive police tactics. And, therefore, it will be
25 admitted.

1 MR. SCALZO: Your Honor, can I just -- for the
2 record, my objection -- or my motion to suppress, that
3 would be based on the fact that my original motion, which
4 is once it's an illegal stop, any consent they would have
5 gotten after that, everything is tainted from that point
6 forward. And that's -- I want to make that clear for the
7 record.

8 THE COURT: Okay. That's fine.
9 Now, you said you had an oral statement.

10 MS. MONTS: Your Honor, just anything that Mr. Lopez
11 said after he was Mirandized at the scene and that was not
12 in response to a question of the officer, we would say it
13 was not in violation of Miranda.

14 THE COURT: Is that on the basis of anything he said
15 after that was a voluntary statement by him?

16 MS. MONTS: Yes, Your Honor.

17 And then after Miranda -- yes, he was -- had been
18 advised of his rights.

19 THE COURT: Okay. Mr. Scalzo, any problem with that?

20 MR. SCALZO: Well, I -- not necessarily. But I would
21 like to be clear about what statements we're talking about
22 because it's a -- you know, it's a flowing...

23 THE COURT: All right. Can you tell Mr. Scalzo what
24 that is?

25 MS. MONTS: Your Honor, I would -- if this is the

1 THE COURT: Mr. Mackenzie, I, certainly, understand
2 the situation you're in now. But these cases allegedly
3 occurred back in January of '05.

4 MS. MONTS: Yes, Your Honor.

5 THE COURT: I'm sorry, sir. But I've got to deny
6 your motion.

7 All right. Are you ready to make your opening
8 statements to the jury?

9 MS. MONTS: Yes, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:35 a.m.)

13 THE COURT: Good morning.

14 All right. Solicitor, brief opening statement.

15 OPENING STATEMENTS

16 MS. MONTS: Ladies and gentlemen, again, my name is
17 Joyce Monts. I work with the Thirteenth Circuit
18 Solicitor's Office.

19 It's my job here to prove to you beyond a reasonable
20 doubt that the Defendants -- there's two Defendants in
21 this case, Mr. Daniel Lopez and Mr. Octavius Nelson, that
22 they are each guilty of the crimes that they are charged
23 with. And they are independently charged.

24 The two charges that Mr. Nelson has are trafficking
25 in crack cocaine and trafficking in cocaine. What

1 Mr. Lopez has is trafficking cocaine and possession of a
2 weapon with an obliterated or filed-off serial number.

3 Now, you're going to hear a case. And you're going
4 to hear witnesses from the witness stand. You're going to
5 have physical evidence, items to take back in the jury
6 room with you when you're deliberating and look at. So
7 you're going to have two different kinds of evidence, the
8 verbal, and physical that you can look at.

9 You're going to hear a story of what happened. On
10 January 21st of 2005, Mr. Lopez was coming from Atlanta.
11 He was stopped on I-85 -- or just pulling off I-85 in
12 Greenville County. Officers will tell you what happened
13 at that stop. In that vehicle was found a gun with an
14 obliterated serial number and over 400 grams of cocaine --
15 actually, over 500. But the statute -- the highest
16 statute is over 400. That person, Mr. Lopez, then agreed
17 to assist the police and continue with the delivery here
18 in Greenville to who he was supposed to deliver those
19 drugs to.

20 So the second spot after the highway is the Waffle
21 House on I-85 and Augusta Road. At that location, the
22 vice unit arrives. They're waiting for the person and go
23 to find the person who the delivery is supposed to be to.
24 And that person that the State has charged is Octavius
25 Nelson.

1 Now, the trafficking cocaine that Mr. Nelson is
2 charged with is for his conspiracy in picking up the 400
3 grams that was in Mr. Lopez's car.

4 The third scene is that after the Waffle House,
5 officers go to [REDACTED] here in Greenville
6 County, the address where his parents live and
7 Mr. Nelson -- excuse me, where Mr. Nelson's parents live.
8 And Mr. Nelson resides there from time to time. They get
9 consent to search. They find crack cocaine and other
10 items that you'll hear about, trafficking weight crack
11 cocaine. It was over 28 grams.

12 So you're going to have -- it's kind of a long story.
13 And in this case, it's kind of different because we have
14 three separate locations, but it all pieces together from
15 the delivery to the reception to the processing.

16 And, ladies and gentlemen, the State appreciates your
17 time, appreciates the attention you're going to pay,
18 appreciates the attention that you're going to pay to the
19 witnesses. And, at the end of the trial, we believe that
20 the verdict that you should come up with on these four
21 charges on these two Defendants is guilty.

22 Thank you.

23 THE COURT: Mr. Mackenzie.

24 MR. MACKENZIE: Thank you, Your Honor.

25 May it please the Court.

1 Good morning everybody. I'm Andrew Mackenzie. I
2 represent Octavius Nelson, who's seated right here at
3 counsel table. I practice law here in South Carolina.

4 Octavius is 29 years old. He's a Greenville native.
5 He works at a place called the List Company and, also,
6 Frito Lay.

7 He pleads not guilty to these charges. Octavius did
8 not aid, or conspire, or possess any drugs in this case.
9 And he did not aid or conspire with anybody to do so. He,
10 certainly, did not do so knowingly. If his actions can
11 somehow be construed as conspiring or aiding in a drug
12 transaction, he did not do so knowingly.

13 Now, I'm here to remind you that sometimes people in
14 criminal cases who are innocent are charged with crimes.
15 That happens from time to time. Sometimes, innocent
16 people are charged. And we see that from time to time in
17 the media about people who were charged with crimes,
18 originally suspected to be guilty, and later are
19 exonerated, such as Richard Jewel, the Olympic bomber, or
20 the Duke lacrosse players, or Hurricane Carter, and people
21 like that. It does happen. I suggest to you that this is
22 one of those cases.

23 We believe the evidence will show that he's not
24 guilty of any of these charges. I believe the evidence
25 will show that, at best, he was a unwitting dupe, or a

1 patsy, or an unwitting pawn in an illegal drug
2 transaction.

3 Now, I believe you're going to hear some evidence of
4 a plan, or an attempted drug transaction. And you're
5 going to hear some evidence that Octavius was present.
6 But I don't believe you're going to hear any evidence that
7 he knew or realized what he had gotten himself into, or
8 knew what was going on. And I think that's going to be
9 one of the key issues in this case.

10 Octavius pleads not guilty. That means the burden is
11 on the State to prove him guilty beyond a reasonable
12 doubt. That means they have to -- it's not just a matter
13 of whether there might be some evidence, or maybe he's
14 guilty under certain circumstances. The evidence must be
15 that you're firmly convinced of his guilt before you can
16 convict him.

17 Now, I want to ask you to try to keep an open mind in
18 this case. The State gets to go first. They get to
19 present all their witnesses and evidence before we have a
20 chance to do so. So, please, try to keep an open mind
21 until you've heard from everybody. And then once you've
22 heard all the evidence in the case, you'll then return to
23 the jury room to deliberate and return a verdict that
24 speaks the truth in this case.

25 Thank you.

1 THE COURT: Mr. Scalzo.

2 MR. SCALZO: Thank you, Your Honor..

3 Good morning. My name is Chris Scalzo.. I'm an
4 assistant public defender here in Greenville. And I
5 represent Daniel Lopez.

6 And I'm going to state the obvious, that there isn't
7 anybody sitting next to me. That's an unusual -- this is
8 an unusual case. One, because there isn't a defendant
9 sitting next to his attorney; two, there's a co-defendant,
10 who, actually, is present with his attorney. And that's
11 going to be a naturally unusual thing in this case that,
12 obviously, is going to come to the forefront of your mind.
13 The Judge is going to instruct you on some of the law that
14 pertains to that throughout the trial and, particularly,
15 at the end of the trial.

16 It is an important thing to recognize that you're
17 going to hear the State's version. It's going to be their
18 version. There isn't going to be any other version.
19 There aren't any other witnesses that the Defense is going
20 to present. Certainly, Mr. Lopez is not going to testify
21 in this case. And your challenge, to the best of your
22 ability, is going to be to try to figure out what happened
23 with only one side.

24 Now, I recognize that that's technically okay. In
25 other words, there's no rule that says that that can't

1 happen, that you could not convict simply because only one
2 side presented. In fact, the law that the Judge is going
3 to tell you is that the Defense is not required to put
4 anything in. But your duty is to try to figure out what
5 happened, and try to figure out whether or not the State
6 has proven its case beyond a reasonable doubt.

7 Now, whether or not you feel that more evidence needs
8 to come in, whether or not from the State's side, whether
9 or not the State, actually, told you or you feel that the
10 State gave you all the information it could have or should
11 have, that all still exists. That's all part of your duty
12 as far as jurors in this case.

13 And I just want to lay it out there upfront that it
14 is an unusual thing for there not to be somebody else
15 sitting at the table. And I want you to understand that
16 going forward, you will only hear State witnesses from
17 Mr. Lopez's side, obviously. I don't know what Mr. Nelson
18 is going to do. I can't speak on his behalf.

19 So, to the best of your ability, keep in mind that
20 you're evaluating the State's evidence. And, at the end
21 of the trial, we'll talk about whether or not the State's
22 evidence really helps you resolve the issue that you have
23 to resolve. Does it leave open questions or things that
24 you want to know or need to know? I just ask you to keep
25 that in mind as the trial progresses.

1 THE COURT: All right. Solicitor.

2 MS. MONTS: Your Honor, the State calls Deputy Chris
3 Hines.

4 THE CLERK: Place your left hand on the Bible and
5 raise your right hand.

6 WHEREUPON,

7 CHRIS HINES,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Please state your full name for the record.

12 THE WITNESS: Chris Hines, H-I-N-E-S.

13 DIRECT EXAMINATION

14 BY MS. MONTS:

15 Q Deputy, please, tell the jury where you're employed,
16 and how long you've worked there.

17 A The Greenville County Sheriff's Office for 12 years.

18 Q Can you explain some of your training in working at
19 the Sheriff's Office?

20 A I've had -- upon starting my career, the basic
21 Criminal Justice Academy. I graduated as a distinguished
22 honor grad. From then on, I've been assigned to the
23 traffic division and assigned to Interstate 85. During
24 that course of time, I've received approximately 1,400
25 hours of traffic-related courses, specifically, dealing

1 with criminal patrol on the roadways to include terrorist
2 interdiction, drug interdiction, and other criminal
3 interdiction along the roadways.

4 I, also, was, at the time, a K9 handler and received
5 400 hours initial handler course training for the K9, and
6 then several hundred hours of actual hands-on training,
7 and other certification classes with the K9 program.

8 Q Okay. Regarding the K9, can you describe what
9 education and training you've received weekly, monthly,
10 yearly?

11 A Prior to starting with the K9, we go through a
12 400-hour handler course with a handler like myself and my
13 K9 partner at the time, which was a female German Shepherd
14 named Angie, which during the course, basically, training
15 the handler and the dog to become a police K9 unit to work
16 together.

17 Upon the completion of that training, we go through,
18 at least, weekly training and reiterating what we have
19 learned previously to include training and detection of
20 illegal drugs. She was trained in marijuana, cocaine, the
21 detection of crack cocaine, methamphetamine, Ecstasy, and
22 heroin. And we conducted that training weekly while we
23 were paired together, in addition to receiving national
24 certifications for narcotics detection.

25 Q And can you describe the national certification

1 process?

2 A Yeah. There's a -- at this -- the North American
3 Police Dog Work Association has a national program, which,
4 basically, is a standard set for certifying a dog in
5 narcotics detection throughout the country. And we would
6 go usually once a year to a national certification with
7 handlers from all over the country, and test on these
8 certain standards to make sure that our K9s met the
9 national certification level.

10 Q And did Angie and you get certified?

11 A Yes.

12 Q And did you continue to get certified?

13 A Yes. At least, yearly we went through, at least, one
14 certification with a national agency.

15 Q And was this prior to January 21 of 2005?

16 A That's correct.

17 Q And describe how you keep up-to-date, or if you keep
18 up-to-date with the training.

19 A We, also, have in-house training, which I mentioned,
20 which we go through and run different scenarios with
21 placing an illegal substances that the K9 is trained on.
22 And during our training, we run them on vehicles, houses,
23 open areas, and through different types of training
24 scenarios for the dogs weekly. And we keep a training log
25 of the training that we perform with the K9.

1 Q Okay. Is there a certain percentage that they
2 have -- that Angie and you have to pass in order to be
3 certified?

4 A Yes. Through the North American Police Work Dog
5 Association, at the time, I believe -- I'd have to go back
6 and look at the exact records. I think there was 30 hides
7 of illegal narcotics of the one -- of the trained sources.
8 And you would have to find, I believe, 28 of the 30 to
9 make the national certification.

10 Q And did you and Angie pass that?

11 A That's correct. We did.

12 Q And, at the time of this case, how long had you and
13 Angie worked together?

14 A We started in October of 2003. So we'd been together
15 a little over two years.

16 Q And how often would you work with Angie?

17 A Weekly -- at least, weekly in a training scenario.
18 Like I said, we were together every day. So
19 occasionally -- we'd do some sort of training activity
20 pretty much on a daily basis.

21 Q And did she live with you?

22 A Yes.

23 Q And going to the incident date, January 21, 2005. At
24 that time, what were your duties with the Sheriff's
25 Office?

1 A At that time, I was assigned to the traffic division
2 and, also, as a K9 handler assigned to Interstate 85 to
3 conduct traffic enforcement along 85.

4 Q And late that afternoon, do you know where on I-85
5 you were working?

6 A We were, generally, assigned to the whole Interstate
7 85 area of Greenville County. At approximately 2:30, on
8 the 21st, I was turning around at the county line, which
9 is Highway 153, which was common practice. That's the
10 last -- that's the -- it's right there at the county line.
11 So it's normal that we would turn around.

12 I was turning around to go back -- come back into
13 Greenville County. There was a gentleman at a pay phone
14 at the Breakers gas station, which is located on the
15 northbound side of 153. It was a white Dodge Intrepid
16 sitting in the corner of the -- at the pay phone. A
17 gentleman was talking on the pay phone. And I didn't
18 think much about it. I proceeded back on to 85 and pulled
19 over on the side of the interstate and was reviewing some
20 stuff in my car.

21 A short time later, I saw this white Dodge Intrepid
22 pass by at a high rate of speed. At that point, it was
23 obvious that he was exceeding the posted speed limit. I
24 didn't have my radar currently set up to measure his speed
25 from what I was doing. So I attempted to overtake his --

1 the vehicle and to catch up to him.

2 As I was approaching him, I began to approach him on
3 White Horse Road. He was in the number three lane, which
4 is the slow lane. He was still running at a high rate of
5 speed. As he came up to the White Horse Road exit, he
6 abruptly exited off on the exit ramp. It appeared to me
7 maybe he had missed his exit. At which point, I measured
8 his speed at 72 miles an hour. It's a 60-mile hour zone
9 on the interstate. The suggested ramp speed is 45 miles
10 an hour.

11 At that point, I engaged my blue lights and siren to
12 initiate a traffic stop on him. He exited off on to White
13 Horse Road and made a left on White Horse Road going
14 northbound and, finally, stopped right past the exit ramp
15 to get on to southbound Interstate 85.

16 Q Is that location in Greenville County?

17 A Yes. That is in Greenville County.

18 Q What did you do once his vehicle stopped?

19 A At that point, I approached the vehicle on the
20 passenger side, which is standard for my procedure of how
21 I approach vehicles. I explained the reason for the stop.
22 I immediately noticed a cell phone was in the on position
23 sitting on the passenger seat. I, also, noticed another
24 cell phone sitting in the -- on the rear seat of the
25 vehicle.

1 The plate -- the car was out of Georgia. It had
2 Georgia -- it was a white Dodge Intrepid with a Georgia
3 tag of AFD 8621, which was the same car I had seen before
4 with the gentleman standing talking on the pay phone at
5 Exit 40.

6 He was the only person in the car. I explained to
7 him why I had stopped him. He immediately apologized for
8 the speeding. And I went and asked for his paperwork,
9 license, registration, insurance information. And I asked
10 him where he was going.

11 At that point, he told me he was going to Georgia,
12 which I found kind of odd since he was going northbound on
13 85. If he was going to Georgia, he should have been going
14 southbound.

15 During the course of the -- of getting his paperwork,
16 I asked him where he was coming from, which he replied he
17 was coming from North Carolina from visiting his boy in
18 the Army. Once again, his direction of travel in relation
19 to his story is not matching up. He's, actually -- if he
20 was coming from North Carolina, he should have been in the
21 southbound lane of 85, instead of the northbound lane.

22 He, actually -- from where he stopped, he could
23 have -- he was past the actual southbound entrance ramp
24 for White Horse Road. So although I was behind him with
25 my blue lights on, it wasn't indicative that he was going

1 to get back on to go southbound.

2 Q Did you have an opportunity to check his driver's
3 license and paperwork?

4 A I did. It was -- when I ID'd the gentleman
5 identified as Daniel Lopez, he had a Louisiana driver's
6 license. The car was registered to him out of Georgia.
7 It was registered to a Gainesville, Georgia address. The
8 insurance, which was in his name, had a Tucker, Georgia
9 address.

10 Q Was this unusual?

11 A In my mind, yes. Based on my training, he's got
12 three different locations -- three different addresses,
13 the Georgia -- two Georgia addresses. The Lawrenceville
14 and Tucker, Georgia address are both close to the Atlanta
15 area. The car registration and the insurance are issued
16 yearly. So that told me right there, in addition to his
17 out of state driver's license from another state outside
18 of Georgia, that the vehicle is registered to -- he was
19 provided three different addresses in the matter of a
20 year, which I found kind of odd.

21 I went back to check his driver's license and the
22 registration. I went back to him to confirm what address
23 he had -- where he, actually, was living. And he,
24 actually, provided a fourth address, which was a
25 Lawrenceville, Georgia address, which, again, is a suburb

1 of the Atlanta metropolitan area.

2 Q Did you tell him how you were going to proceed with
3 the car stop?

4 A Yeah. At that point, like I said, he had apologized.
5 He was apologetic. I had asked him -- I had explained to
6 him I was going to write him a warning for the speeding.
7 And at which point after I checked his driver's license --
8 I had him exit the vehicle. So he was, actually, standing
9 at the rear of his vehicle and the front right corner of
10 my vehicle. And he kind of -- he had a nervous demeanor
11 as I -- after I told him I was going to write him a
12 warning for the speeding, he kind of made some nervous
13 chatter.

14 He stated that -- he asked me, he said -- if we had
15 been busy. And he told me that he worked for Gwinnett
16 County, which I kind of indicated that he was trying to
17 pass himself as a law enforcement officer in Georgia.

18 So I asked what he did for them. And he told me he
19 was a bouncer, that he told on people, which I kind of
20 thought as odd, because not too many police officers --
21 agencies have actual bouncer as a job description. It
22 sounded more like maybe he was -- basically, he was
23 insinuating that he was giving information to the police,
24 but didn't, actually, work for them.

25 He still had a nervous demeanor. He kept his hands

1 in his pockets just kind of chattering nervously, you
2 know, about the -- where -- about being the bouncer. I
3 confirmed again that he was going home to Georgia. And he
4 told me that, yeah, that he had stopped to get something
5 to eat.

6 So I'm still trying to figure out exactly what --
7 where he's coming from, what's going on with this guy. I
8 mean, obviously, he's being deceptive about where he's
9 going, what he's doing.

10 So I asked him what part of North Carolina he was in
11 and -- or his boy was in. He hesitated. And he said,
12 Fort, fort -- then he said he was in the Army, which I
13 immediately thought, you know, somebody's son is in the
14 military -- if my son is in the military, I'm going to
15 know exactly what base he's at. I found that as being
16 deceptive, or odd, to say the least.

17 Then he changed his story and said his baby's mother
18 was in North Carolina, and the baby was sick. I asked him
19 how old the -- his son was. And then he said that it was
20 his friend's son. And then he changed his story again and
21 said, no, his friend had a daughter.

22 I'm still trying -- now, I'm confused. I don't
23 know -- I mean, he's changing his story minute by minute,
24 I mean, as every sentence comes out of his mouth. So I
25 asked him if it's his daughter. And he says, no, that he

1 has a daughter that was six that lived in California.

2 I'm not sure -- obviously, in my mind, based on what
3 I've seen before, this guy is not consistent with the
4 normal innocent motoring public that we deal with daily.
5 I mean, he's, obviously -- in my mind, there's something
6 going on here.

7 Q At this point, have you checked his vehicle
8 identification number?

9 A No. At that point, I kind of let him sit for a
10 minute. I walked up to check the VIN on the car to make
11 sure it does match the registration and insurance.

12 Q Describe what the VIN is.

13 A The VIN is, basically, the serial number for the car
14 located at -- the most clearly visible place for it is the
15 left front dash area of the vehicle. You can see it most
16 of the time visible from looking over the driver's side on
17 the -- through the windshield on the driver's side right
18 in front of the steering wheel. There's several other
19 locations, but that's normally the easiest place to check
20 the VIN.

21 A lot of times -- we always check the VIN just to
22 make sure it matches up to the paperwork. People can get
23 a car or a tag -- can steal a tag off a car that may not
24 have been reported stolen. It could be off a similar type
25 car. So we try to make sure that the paperwork -- the

1 vehicle registration matches the actual VIN that's on the
2 vehicle to make sure that that car is not stolen and that
3 it's, actually -- everything matches up.

4 When I walked to look at the VIN, there's a Gwinnett
5 County Police Department patch that's, actually, taped
6 right in front of the VIN, which, once again, I thought
7 was odd that he's got a police department patch taped
8 there, which, in my mind, was like he's trying to befriend
9 law enforcement to make a -- I guess to kind of get off
10 easier, or get on his way a little bit quicker.

11 But, you know, based on his story so far, I mean,
12 obviously -- and, now, he's got this police patch up
13 there. I'm not -- there's something going on that, in my
14 mind, is not -- some type of criminal activity is taking
15 place that he's involved with.

16 After checking that, I asked where he was going to
17 eat. And he looked up and said, McDonalds. Well, yeah,
18 there's a McDonalds at the White Horse Road, Exit 44.
19 There's, also, a McDonalds located off the exit that he
20 just came from. As with, you know, the majority of the
21 exits along 85, there's McDonalds, which, you know, I
22 found that as kind of odd. Why not if you're already
23 stopped at an exit where there's a -- using a pay phone,
24 why not drive on that exit and go to a McDonalds?

25 Q Could you see the -- a McDonalds from where you had

1 stopped him?

2 A There's a -- when you get off the exit ramp, there's,
3 actually, the little signs on the side that show the
4 restaurants. So I know it's listed on there. I'm not a
5 hundred percent sure if you can, actually, see the actual
6 McDonalds. In fact, they do have the golden arches that
7 sticks up above that's kind of -- it's a little bit of a
8 curve off of 153. There's signs that say there's a
9 McDonalds on that exit. It's pretty obvious signs that
10 when you exit that you know there's a McDonalds located
11 there.

12 At that point, as I was finishing writing the warning
13 ticket, I asked if there were any guns in the car. And he
14 looked down and broke eye contact and said, No. I asked
15 him about any marijuana or cocaine. And he had a
16 serious -- his face kind of tensed up. And he said, No.
17 I asked him if there were any bomb or terrorist devices.
18 At that point, he eased up and kind of laughed and said,
19 No. His demeanor changed when I asked, you know, about
20 the bombs or terrorist devices. I went ahead and issued
21 him a warning and asked him if he had any questions, which
22 he said he didn't.

23 At that point, I went and asked for consent to search
24 his vehicle. Even though I have a K9 in the car, this
25 guy's behavior was abnormal, in my opinion. I didn't know

1 what -- at this point, I was still on the roadside and
2 didn't have a backup officer there at that point. So I
3 was trying to do the least intrusive method with him, and
4 kind of keep him at ease a little bit. He wouldn't --
5 when I first asked him, he didn't give me a -- he just
6 kind of shrugged his shoulders and didn't say yes, didn't
7 say no. I had Deputy McBee on the way as a backup
8 officer.

9 Then he told me he just wanted -- he needed -- he was
10 ready to go. When I tried to ask him, you know, give me
11 a -- you know, ask for a yes or no answer, he really
12 wouldn't answer. Finally, he just asked if he could go.

13 At that point, you know, trying to make -- waiting on
14 Deputy McBee to arrive, I told him, I said, well, I was
15 going to detain his car. I was going to run my K9 around
16 the vehicle. If the K9 alerted, then we would, obviously,
17 search the vehicle. That would give us the probable cause
18 we needed to search the vehicle.

19 At that point, I told him that he was free to leave,
20 trying to keep him at ease. Because, at this point, like
21 I said, I don't know what he's up to. Obviously, there's
22 something going on.

23 Shortly thereafter, Deputy McBee pulls up. And I
24 begin to get K9 -- Angie, who's my K9, out of the vehicle
25 and run her around the vehicle. As I stated earlier,

1 Angie was certified through the national -- North American
2 Police Work Dog Association weekly training. She was
3 certified in the odors of marijuana, cocaine, crack
4 cocaine, methamphetamine, heroin, and Ecstasy.

5 Q Where did Mr. Lopez go while you --

6 A At this point, he's standing on the side of the road.
7 He, actually, told us -- told me I could run the dog on
8 the car. He's, actually, standing probably about 30 feet
9 away from the car on the side of the road, away from the
10 roadway, away from the flow of traffic. Deputy McBee goes
11 and stands with him as I run Angie down the car.

12 As a standard practice, I run -- I always start on
13 the driver's side front of the vehicle and work down the
14 driver's side to the rear, around the back, and then back
15 around the front of the vehicle. As we came down the
16 driver's side, she was doing her free air sniff. We got
17 to the left rear door seam area of the vehicle, a
18 four-door -- a Dodge Intrepid, a four-door vehicle.

19 At that point, she stopped and went back, started
20 breathing heavily and started scratching. Based on our
21 training, I -- that was a -- my -- she was telling me that
22 she's smelling one of the odors that she's trained in.

23 Q Do all drug dogs scratch when they alert?

24 A It's different. It's usually -- that's called an
25 aggressive alert. There's usually an aggressive alert,

1 which is a scratch. Some of them, actually, sit down. It
2 really depends on the way they were trained. She was
3 trained to scratch. But some of them will, actually, sit
4 down at the -- where they smell the odor that they're
5 trained in.

6 I continued to work her around the backside of the
7 vehicle. When we got around to the back to the rear tire
8 well -- the right rear tire well, the breathing changed.
9 She began sniffing intently, and then started scratching
10 kind of up in the tire well. So, at that point, she's
11 indicating to me, once again, that she was smelling the --
12 one of the trained odors that she was trained in.

13 Q Does her action of scratching tell you where she is
14 smelling this item?

15 A Based on the wind patterns of the car -- I mean,
16 you've got car -- you've got -- the car is on the side of
17 the road. Normally, it will give you a general area. You
18 know, in a sterile environment, the dogs can pretty
19 much -- can pinpoint a lot of times the odor -- the actual
20 source of where the odor is coming from.

21 In this type of environment, you've got cars going
22 by. You're out there, actually, kind of on a -- right off
23 an overpass. The wind is blowing. So you can, actually,
24 take the odor and swirl it around, or push it from one
25 direction of the car to the other.

1 At this point, I was pretty certain, based on what
2 she's told me, that the odor is coming from somewhere in
3 the rear of the vehicle. At that point, I placed her in
4 the car and began searching the vehicle.

5 When I opened the trunk, there was several different
6 items. There was a bag of tools, an old printer, computer
7 parts, a grocery bag of clothes that had a gold -- a
8 cognac bottle box in there. I kind of briefly just
9 searched it and then went back to the front of the car.

10 And, at that point, I -- when I went to the front, in
11 the center console, I located a loaded H&K USP 9mm
12 handgun. When I began to look at it, I immediately
13 noticed the serial numbers had been scratched off the
14 weapon.

15 The serial number -- every firearm has a serial
16 number. They're required by law to have a serial number
17 when they're manufactured. Normally, if somebody -- in my
18 experience, if a firearm serial number is missing or
19 scratched off, as it appeared in this case, there's a good
20 possibility it could have been used in a crime, and/or a
21 stolen firearm, or they didn't want the registered owner
22 traced back to that firearm.

23 Q And, Deputy Hines, I'm going to hand you an item. If
24 you'll wait just a second.

25 A Okay.

1 (WHEREUPON, State's Exhibit No. 3 was marked for
2 identification only.)

3 BY MS. MONTS:

4 Q I'm going to hand you what's been marked for
5 identification as State's Exhibit No. 3. Can you, please,
6 identify this, and any components there?

7 A Yes. That's, actually, the firearm that was in the
8 glove compartment. At the time, it was, actually -- it
9 has the actual magazine in the handle here, which contains
10 the bullets. The bullets in this case -- for evidence
11 purposes, we -- it was packaged separately. So we're not
12 allowed to store or put into evidence a loaded firearm.

13 But, at the actual time that it was located, there
14 was ammunition. It was a loaded firearm in the glove
15 compartment of the car with the serial number area -- on
16 this model, it's on the bottom, which was -- had been
17 obliterated, scratched off. I was unable to make out any
18 serial number of the weapon.

19 Q And did you ask for testing to be done on that gun?

20 A That's correct. We put -- standard practice, when we
21 put in a firearm into our evidence, we -- they check --
22 normally, check the ballistics. There's a series of
23 tests. They normally check. We have technicians that do
24 that in our forensics division. And it was submitted for
25 testing.

1 Q And I'll continue with your chain on that. But,
2 please, continue with what -- your search of the car.

3 A At that point, I went back to my vehicle for about a
4 moment. I even ran a criminal history on Mr. Lopez, in
5 addition to the firearm being altered, or in this case
6 totally scratched off, to see if he could even legally be
7 in possession of a firearm, even though this one was there
8 and had a scratched off serial number.

9 I was in the vehicle a short time and then went back
10 out. I began searching the car again for additional
11 contraband. I went back to the trunk area and started
12 detailing. I went -- kind of just briefly went through
13 everything in the trunk. I didn't open anything up. I
14 just kind of moved some things around to see if
15 anything -- if I saw anything obvious. I went back and
16 did a detailed search of the trunk. I looked at the
17 printer, the monitor they had in there, and went through
18 the bag of tools.

19 There was a blue grocery bag of clothes and the
20 cognac bottle. I pulled that out. And when I opened --
21 actually, the cognac bottle was, actually, closed up on
22 top of it. I opened it up and --

23 Q If you can wait just a second.

24 A Okay.

25 Q -- I will show you an item.

1 (WHEREUPON, State's Exhibit No. 4 was marked for
2 identification only.)

3 BY MS. MONTS:

4 Q Deputy, I'm going to hand you what's been marked for
5 identification as State's Exhibit No. 4. Can you, please,
6 identify this?

7 A Yeah. That's the actual -- the cognac bottle I was
8 referring to that was located in the trunk of the vehicle.
9 This is, actually, the one -- it still has my initials on
10 it and the case number from when I, actually, placed that
11 into evidence. But it has a -- still has the lid and at
12 the bottom -- at that time, it was, actually, closed up
13 like it was -- come off the shelf.

14 So, at that point, I opened up the bottle -- or
15 opened up the box and saw some plastic in there, which, at
16 that point, I really -- I immediately recognized it wasn't
17 a bottle of cognac. I pulled it out. And there was
18 several -- plastic wrap, but covered in what appeared to
19 be -- have some kind of a dish detergent smell, which is a
20 common masking agent for -- it's a common thing they'll do
21 to try to mask the odor of illegal drugs.

22 Q Would you go ahead with the scissors and just -- and
23 maybe half cut the top and show us the open box, please?

24 A Okay. Do you want me to pull the stuff --

25 Q Yes.

1 MR. SCALZO: Judge, I want to make an objection.
2 It's not been moved into evidence yet.

3 THE COURT: That's right. Don't show it until it's
4 in evidence.

5 THE WITNESS: Okay. Yes, sir.

6 BY MS. MONTIS:

7 Q Please continue. What did you do at the scene with
8 this box?

9 A I pulled this plastic out. And I unwrapped it. And
10 then I saw a block of a white powder substance, which was
11 field-tested. It field tested positive for cocaine with a
12 field weight of 518.5 grams.

13 At that point, Mr. Lopez was secured in handcuffs. I
14 advised him of his Miranda warnings -- of his Miranda
15 rights. And we, actually, called Deputy Ruddy, who had
16 the transport vehicle, to come and place Mr. Lopez in the
17 vehicle for transport.

18 MS. MONTIS: I'd like to have this marked.

19 (WHEREUPON, State's Exhibit No. 5 was marked for
20 identification only.)

21 BY MS. MONTIS:

22 Q Deputy Hines, I'm going to hand you what's been
23 marked for identification as State's Exhibit No. 5. Can
24 you, please, identify any marks or writing on this?

25 A Yeah. The original bag of the white powder substance

1 from when I placed it in P&E is in there with the case
2 number, my initials. When this was submitted to our
3 property and evidence, it was submitted for testing as
4 well to confirm that it was -- actually, just to confirm
5 that it was cocaine and the actual amount.

6 Q And can you, please, identify the other item with
7 it --

8 MS. MONTS: I'd like to have this marked.

9 (WHEREUPON, State's Exhibit No. 6 was marked for
10 identification only.)

11 BY MS. MONTS:

12 Q Deputy, this is State's Exhibit No. 6 for
13 identification. Can you, please, identify that?

14 A This is the actual final packaging that the -- the
15 white powder substance, the cocaine -- which we
16 field-tested for cocaine was placed in. This, actually,
17 had the other plastic wrap wrapped on top of it. But this
18 was, actually, separated when it went to the lab by the
19 lab tech, and was placed in that. And it was sealed up.
20 And that's the actual plastic -- final plastic bag that it
21 was in as we found it on the roadside in that box.

22 Q And, please, describe with these items the -- State's
23 Exhibit Nos. 3, 4, 5, and 6, where did you put those
24 items?

25 A At that point, I secured all the items in my vehicle.

1 And they remained in my possession until I placed them
2 into our property and evidence drop box at the conclusion
3 of this -- our investigation with this case.

4 Q And describe the drop box at the property and
5 evidence room.

6 A After hours, the -- or during normal business hours,
7 we have a -- property and evidence technicians that are
8 there to receive evidence we drop in, or turn in from a
9 case. After hours, we have a secured lock box that you,
10 actually, fill the paperwork out, and label it on there as
11 you put it in the drop box.

12 And then you -- it's, basically, a one-way drop. You
13 can drop it in, but you're not able to retrieve anything
14 out of it. Only the lab -- or the evidence technicians
15 have access to come retrieve the stuff out and,
16 actually, enter it into the lockers down in property and
17 evidence.

18 Q Did you ever go back and retrieve these items for any
19 reason?

20 A These -- no. These were -- once I turned these into
21 evidence, no.

22 Q And going back to the crime scene, what did you do
23 after you found the white powder substance?

24 A Like I said, at that point, Mr. Lopez was handcuffed.
25 I advised him of his Miranda warning -- or rights. Deputy

1 Ruddy arrived on the scene. He's got a -- my car was a K9
2 vehicle. So the backseat of my car is, actually, a K9
3 kennel. So I can't transport any person that I place
4 under arrest. Deputy McBee's car, at the time, was, also,
5 a K9 vehicle, so he couldn't transport anyone.

6 Deputy Ruddy arrived. And Mr. Lopez was placed in
7 his car. We called for a wrecker for the -- for
8 Mr. Lopez's car. And Deputy McBee came to me and said
9 that Mr. Lopez was wanting to cooperate, and indicated
10 that the actual drugs were coming to Greenville.

11 So, at that point, I called my supervisor, who, in
12 turn, called our vice and narcotics unit. We moved just
13 across off the roadway to a car wash off of White Horse
14 Road near Interstate 85. At that -- and, at that point,
15 some of our vice and narcotics deputies came and spoke
16 with Mr. Lopez.

17 Shortly thereafter, we took him down to southern area
18 command. And they conducted an investigation as to where
19 this -- where these drugs were coming to Greenville.

20 Q Did you do a field-test on the white powder?

21 A I did, yes.

22 Q What was the result?

23 A It field-tested positive for cocaine.

24 Q Where did you and Officer McBee go after you left the
25 car stop?

1 A We went all -- we all went down to southern command.
2 And Mr. Lopez -- at that -- we, basically -- -- he was
3 turned over to the vice and narcotics unit. Because he
4 was wanting to cooperate with the investigation as to the
5 delivery of these drugs.

6 Q Did you talk to Mr. Lopez anymore after you left that
7 scene?

8 A No. Once they -- we moved over to the car wash, I
9 don't recall having hardly any other interaction with
10 Mr. Lopez. Our vice and narcotics unit pretty much took
11 it over from there.

12 The only other action I had in this case was after he
13 wanted to make a delivery to whoever -- the person that
14 was getting these drugs, I assisted with the takedown of
15 that once that delivery was arranged.

16 Q Did you sign any warrants on Mr. Lopez?

17 A I did. I went -- during the second part of the
18 investigation while -- after the -- a controlled delivery
19 type case was made, I then went and signed warrants on
20 Mr. Lopez for the cocaine and for the firearm.

21 Q And was Mr. Lopez subsequently arrested on those
22 charges?

23 A He was. And he was placed in -- -- he was taken to
24 the detention center by the officers of our vice and
25 narcotics unit.

1 Q And the -- where was the location that you went to to
2 continue the delivery of this?

3 A After southern command, I know a phone call was made
4 by Mr. Lopez. I wasn't -- I don't know the nature of that
5 phone call. All I was told is that we were going to the
6 Waffle House at Augusta Road and 85, and that they were
7 going to meet a guy in a dark-colored truck.

8 Mr. Lopez was not, actually, involved. We, actually,
9 had one of our vice and narcotics units take Mr. Lopez's
10 car. And he acted as the undercover during this.

11 Q And was this cocaine that you just described that was
12 found in Mr. Lopez's car taken to that scene?

13 A It was in my -- it remained in my possession at all
14 times.

15 Q Was it in a locked compartment?

16 A It was -- yes, secured in my trunk.

17 Q And where -- describe where you parked at the Waffle
18 House.

19 A We were -- there were several units in the area. We
20 were being advised via radio by -- of kind of what was
21 going on, and when to come in. We were, actually, a
22 street behind the Waffle House when we got the signal that
23 they were trying -- that our officer had made contact with
24 a gentleman in the truck, and had motioned for him to
25 follow him is what the -- we went in to takedown the

1 vehicle.

2 I pulled up on the driver's door area of a
3 dark-colored Ford Ranger pickup. I believe it had -- with
4 the tag 822 RRB. I got out of the vehicle, pointed my
5 service weapon at him. I didn't know if he was armed
6 based on what we had just -- gotten a gun off of
7 Mr. Lopez. There was a high probability this gentleman
8 may be armed.

9 One of the vice and narcotics officers and some other
10 deputies went in and, actually, arrested the driver, who
11 was later identified as Octavius Nelson. Once he was
12 secured in a vehicle, that's when I went back and did my
13 paperwork on Mr. Lopez.

14 Q And, at the original scene, was your car equipped
15 with a video recorder?

16 A Originally, it was. That's correct.

17 Q And do you have a video from that scene?

18 A There is -- there was a video. Since this time,
19 our -- I transferred in '06 out of the traffic unit into
20 our aviation unit. Our policy in the traffic division
21 then -- because cameras were just limited pretty much to
22 our traffic division and a few other cars. The
23 supervisors kept a locked video vault in their office,
24 which we kept all of our videos from our traffic stops.
25 Upon me transferring out, my videos remained in that vault

1 under the traffic supervisor's -- he was the one that had
2 access to it.

3 Approximately a year after being out of the unit,
4 they had a supervisor change down there. And I was
5 directed -- was told to come get -- pick my videos up from
6 southern command out of the vault. When I got down there,
7 there was a box of videos that had my name on them. And I
8 was told that's what -- as I took them -- and I've noticed
9 since this time that that was, actually -- turned out to
10 be about half of the videos I had in there. The other
11 half I don't know as to what happened, if they were
12 disposed of, thrown away, or what. But not all of the
13 videos that I had in that vault were turned back over to
14 me where I keep secure now at my office.

15 Q And who was your backup officer on that day?

16 A Deputy McBee was my first backup officer.

17 MS. MONTS: Your Honor, I'd move State's Exhibit
18 No. 4 into evidence at this time.

19 THE COURT: Any objection, Mr. Mackenzie, or,
20 Mr. Scalzo?

21 MR. MACKENZIE: No, sir, Your Honor.

22 MR. SCALZO: My objection is based on my prior
23 pre-trial motion.

24 THE COURT: All right. Subject to your former
25 motion, put it in.

1 (WHEREUPON, State's Exhibit No. 4 was admitted into
2 evidence.)

3 MS. MONTIS: Thank you.

4 I have no further questions.

5 THE COURT: All right. Mr. Scalzo.

6 Mr. Mackenzie, are you going first?

7 MR. MACKENZIE: I'll go first.

8 CROSS-EXAMINATION

9 BY MR. MACKENZIE:

10 Q Deputy Hines, were you tipped off in any way to be on
11 the lookout for this particular car?

12 A No, sir.

13 Q And, now, all this that took place on the highway, of
14 course, Mr. Nelson wasn't present for any of that; is that
15 correct?

16 A That's correct.

17 Q And Mr. Lopez had a loaded gun in his glove
18 compartment?

19 A In the center console, yes, sir.

20 Q Center console?

21 A Yes, sir.

22 Q And, in your experience as a police officer, is that
23 unusual in this type of case?

24 A To find guns and drugs, no. That's a -- a lot of
25 times that's a common element.

1 Q And you stated that Mr. Lopez was very nervous, you
2 felt like, when you were talking to him?

3 A Yes, sir, when I was talking with him.

4 Q And Mr. Lopez had -- was in possession of two mobile
5 phones; is that right?

6 A That's correct.

7 Q And one -- the number for one of those phones -- do
8 you know the number for it?

9 A No, sir, I do not.

10 Q You mentioned that he -- Mr. Lopez was on the phone
11 at the Breakers gas station?

12 A That's correct.

13 Q Do you know the number for that phone?

14 A No, sir.

15 Q Lopez was from Georgia?

16 A He's got Georgia addresses, Louisiana addresses.

17 Where he's, actually, from I do not know.

18 Q The driver's license was from Louisiana?

19 A That's correct.

20 Q Everything else was from Georgia?

21 A That's correct.

22 Q At the Waffle House, Mr. Nelson, you said he -- when
23 he got there, he went inside and got some food; is that
24 correct?

25 A That, I do not know. I wasn't -- what was, actually,

1 going on -- we were kind of being advised via the radio.
2 We were not -- I was not, actually, in the parking lot. I
3 didn't arrive in the parking lot until they said that they
4 were -- gave us the sign to take him down, that they were
5 leaving the parking lot.

6 Q Okay. And Deputy Grounsell was acting as a -- in an
7 undercover capacity, he was driving the white car to the
8 Waffle House?

9 A That's correct.

10 Q It is clear that Mr. Nelson did not know the person
11 in the white car, did he?

12 A That, I do not know.

13 Q Well, the person in the white car was an undercover
14 police officer. So isn't it fair to assume that
15 Mr. Nelson, obviously, did not know the person who drove
16 up in the white car?

17 A I can't answer that.

18 Q There's no evidence that he -- that Mr. --

19 THE COURT: Now, he said he couldn't answer it,
20 Mr. Mackenzie.

21 BY MR. MACKENZIE:

22 Q Mr. Nelson did not speak to the other person in the
23 white car?

24 A Like I said, I wasn't there when their interaction
25 took place. Because we were a street behind there. Until

1 they got in their vehicles to leave the parking lot -- the
2 only information I was told prior to going there was --

3 Q Well, I'm not asking you to repeat what anybody said.

4 A Right.

5 Q You're saying you didn't even see Mr. Nelson. Did
6 you see him go into the Waffle House?

7 A No.

8 Q Did you see him come out of the Waffle House?

9 A The only interaction I had with Mr. Nelson was -- he
10 was in the vehicle when they were leaving. And we got the
11 sign -- or the go ahead to go in and make the arrest.

12 And I pulled up to the dark-colored Ford Ranger
13 pickup that was identified that they had told us -- one of
14 our -- I believe one of our other vice and narcotics
15 vehicles blocked him in the front. Another one -- we had
16 several vehicles that was all around. I was one of many.
17 And they got him out and handcuffed him. And that was my
18 involvement. Outside of what happened, actually, at the
19 Waffle House, I was not -- I was a block away from the
20 Waffle House.

21 Q Okay. And Mr. Nelson was not in possession of a gun
22 in that truck, was he?

23 A That, I do not know.

24 Q He had no money on him, did he?

25 A That, I do not know.

1 Q But he did have a cell phone; is that correct?

2 A I do not know that either.

3 MR. MACKENZIE: Thank you.

4 THE COURT: All right. Mr. Scalzo.

5 MR. SCALZO: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. SCALZO:

8 Q Deputy Hines, I guess let's talk about your stop of
9 Mr. Lopez. You said you were -- you first encountered him
10 at the Pumpers?

11 A At the Breaker gas station.

12 Q Breakers. I'm sorry.

13 A I didn't encounter him. I just observed him standing
14 there on the pay phone, which is kind of away from the
15 parking lot in the corner. And I just happened -- where I
16 turned around, actually, coming out of the exit, he was
17 right there as I was pulling out.

18 Q All right. Now, I'm assuming that that's something
19 you remember later on when you write the report. It's not
20 something that -- you didn't know to pay attention to him
21 when he was at the Breakers?

22 A Well, I saw him standing there. And I observed the
23 tag out of Georgia, a Georgia-plated vehicle. He was
24 standing there at that time, you know. You don't see a
25 whole lot of people using a pay phone these days. But, I

1 mean, he was in a position that was away from the
2 building. So when I'm checking for traffic, I see the
3 vehicle. At that particular moment, it didn't really --
4 you know, it was just an observation.

5 Q All right. Well, you said you noticed the tag, that
6 it was from Georgia --

7 A Yes. But, at the time, I couldn't tell you exactly
8 what the tag was. I just remembered --

9 Q Okay. At that point, you notice it was a Georgia
10 tag, but you didn't write down the tag number, or anything
11 like that?

12 A That's correct.

13 Q All right. Then you get on the highway?

14 A That's correct.

15 Q And you said you pulled over for a stationary --

16 A That's correct.

17 Q And so what you're doing is you're observing traffic?

18 A At that point, I was, actually, finishing up some
19 paperwork -- or looking over some paperwork in my car. So
20 I didn't have the radar. I wasn't going into it -- at
21 that point, I wasn't running radar. That's correct.

22 Q Okay. And you -- as you testified, you've got Angie,
23 the K9, in your car with you?

24 A That's correct.

25 Q And from that, I gather that, essentially, what your

1 role was was drug interdiction?

2 A We do -- in addition to traffic enforcement, we do
3 criminal patrol. We detect various crimes, whether it be
4 drug interdiction, terrorist interdiction, you know,
5 looking for stolen property. 'I mean, we do a role of
6 various...

7 Q Right. And I understand you're talking about your
8 unit; is that right, that your unit's role is to do those
9 various thing?

10 A Well, that's what -- I mean, I -- yeah. I personally
11 would look -- you know, would do stuff, yes.

12 Q But, obviously, primarily, you were concerned with
13 drugs. Because your dog is trained only to the scent of
14 drugs, narcotics; isn't that right?

15 A At this point, we don't -- to my knowledge, there's
16 not a -- the other crimes I mentioned, there's not a
17 drug -- a dog that would be available to sniff out a
18 terrorist at this time. So, yeah, I mean, really...

19 Q We know that. But you have dogs that are trained to
20 smell guns; right?

21 A Well, carrying a gun in and of itself is not illegal.
22 So outside of the schools, the Sheriff's Office doesn't
23 have any dogs that do actual gun -- sniffs for guns.

24 Q Yes or no, there are dogs trained that Greenville
25 County uses to smell for guns, weapons?

1 A We have a -- the only thing -- we have one bomb
2 detecting dog. And I don't believe he, actually, sniffs
3 for crime.

4 Q I'm not sure if you answered my question or not, so
5 I'm going to ask it again.

6 If you're trying to find a weapon and you're using a
7 dog, there are dogs that are trained to smell for weapons;
8 is that correct?

9 A Yes.

10 Q And there are dogs who are trained to smell for bomb
11 material?

12 A That's correct.

13 Q Okay. Your dog was not trained for that, for those
14 smells?

15 A That's correct. Because, like I said, carrying a
16 weapon in and of itself in a vehicle is not -- there's
17 legal ways to carry a firearm, so.

18 Q Well, I understand that. That's not what I was
19 asking. And the reason is they don't -- you don't like to
20 cross train the dog; correct? You want him to look for
21 drugs only, or you only want him to look for weapons, or
22 bomb-making materials. You don't want to have a dog that
23 does both; isn't that correct?

24 A That's correct.

25 Q Okay. And, in this case, you had a dog that was,

1 specifically, trained for drugs?

2 A That's correct.

3 Q Okay. And so when you're saying what you're looking
4 for is a lot of these various crimes, maybe your unit is,
5 but particularly you -- specifically, you, you're looking
6 for drug interdiction because you have a dog that's
7 trained for drugs; isn't that right?

8 A Well, the dog is a tool. I mean, it's -- you know, I
9 carry mace on my belt. I don't walk around spraying
10 everybody with mace. I mean, it's just -- it's a tool I
11 have to use when it's needed. It's not something that's
12 used all the time.

13 Q And my point is that your focus is on -- your primary
14 focus on that day was drugs?

15 A With this car stop, yes.

16 Q Correct.

17 A After the -- after talking with Mr. Lopez, it turned
18 into that focus, yes.

19 Q Well, you say after, but really you were interested
20 in that from the point probably when you saw him speeding
21 and he had a Georgia license; isn't that right?

22 A No, sir. There's hundreds of cars on 85 with Georgia
23 license you see everyday. I mean, that's not the case.

24 Q Well, and you pulled him over?

25 A That's correct.

1 Q And at the point in which you said you were going to
2 pull him over, you -- it looked like he had missed -- you
3 said it looked like he had missed his exit; isn't that
4 correct?

5 A That's correct.

6 Q Because you don't turn your lights on until you,
7 actually, get on to the exit ramp?

8 A Yeah. I'm still trying to catch up to the vehicle at
9 this point.

10 Q Because you're stationary and he had driven by?

11 A That's correct.

12 Q And, at this point, you talked about him being in the
13 northbound lane of I-85?

14 A That's correct.

15 Q And he gets off, goes up. Is it a light at the exit?

16 A Yeah. You, actually, get off, and there's, actually,
17 a light at the end of the ramp.

18 Q And he makes a left-hand turn?

19 A That's correct.

20 Q And that's on to White Horse Road?

21 A That's correct.

22 Q And, essentially --

23 A It's going north on White Horse. That's correct.

24 Q And, essentially, he's going across to the other side
25 of the highway.

1 A That's correct.

2 Q And if he had gotten on the highway, he would have
3 been getting on the highway for southbound I-85?

4 A Actually, when he stopped, actually, he went right
5 past the exit to get on to southbound 85.

6 Q Well, that's because you were pulling him over. What
7 I'm asking you is, if he had gone all the way around, he
8 would have gotten on to southbound?

9 A There's a possibility.

10 Q Okay. Because you testified that some of -- you kept
11 saying, obviously, he was lying to you, and things like
12 that. And one of the reasons you said you were relying --
13 you were making that judgment was that he said he was
14 going to Georgia, but was going in -- you said the wrong
15 direction. Isn't that what you testified to?

16 A That's correct, yeah. He, basically, had gone almost
17 five miles in the wrong direction when he was at Exit 40,
18 which he could have easily gotten on and gone southbound
19 then. I mean, it's -- if he was going south on 85 to
20 begin with, he would know, okay, I need to get back on
21 south 85.

22 Q He might -- you said he was from Georgia. You first
23 saw him from -- at Exit 40; is that correct?

24 A That's correct.

25 Q You didn't see what side of the highway he was on,

1 because he was already at the Breakers?

2 A Well, the Breakers is, actually, on the northbound
3 side. There's two gas stations that would have been much
4 easier to get to if he had got off on the southbound side.

5 Q Okay. If he was -- if he had inadvertently got on
6 the northbound side, or he got on the northbound side
7 because he wanted to go to a specific place, and then go
8 to Atlanta, it wouldn't have changed the fact that he
9 wanted to go to Atlanta; isn't that correct?

10 A Ultimately, if he was wanting to go to Atlanta, I
11 mean, how -- I'm not quite following your train of thought
12 there. That's kind of -- in my opinion, that's not
13 logical.

14 Q Let's break it down. Let's say you intended by the
15 end of today to go back to your house --

16 MS. MONTS: Objection, Your Honor. I believe we're
17 off track with this questioning.

18 THE COURT: Let's move on.

19 MR. SCALZO: All right.

20 BY MR. SCALZO:

21 Q Isn't it possible that when you asked him where he
22 was going, he was telling you his end destination,
23 Atlanta?

24 A It's possible.

25 Q All right. Now, whether he might have gotten off on

1 northbound, or went to make a phone call, when he says I'm
2 going to Atlanta, that's, ultimately, where I'm going.
3 That doesn't mean he's lying to you. That just means he's
4 telling you where he's going to end up; isn't that
5 correct?

6 A If I say I'm going on vacation, that doesn't -- and I
7 go six months from now, it's kind of the same thing. I'm
8 not -- there's a lot of gray area in between that needs to
9 be kind of clarified.

10 Q And what I'm pointing out is that you said several
11 times in your testimony earlier that, obviously, in other
12 words, you had drawn the conclusion that because he was in
13 the northbound and you asked him where he was going, and
14 he said Atlanta, ultimately, you didn't clarify whether or
15 not he was going to Atlanta later on today, he was trying
16 to get to Atlanta right at that moment. You immediately
17 said in your mind, obviously, he's lying to me?

18 A I tried to figure out where he was going and where
19 he -- you know, at this point, where he was coming from.
20 And, you know, he wouldn't give me a -- his story,
21 obviously, was -- it appeared to me -- like I said, it was
22 all over the place.

23 If you're coming from business somewhere in North
24 Carolina, if you come down 85, you go to Exit 40. It
25 makes no sense to turn around and go almost five miles

1 back up the interstate to go to a McDonalds.

2 Q And you didn't ask him that question, though, did
3 you? You didn't say, when he said, I'm going to Atlanta,
4 hey, sir, it doesn't make any sense that you're going to
5 Atlanta, but you stopped here, or you didn't stop at
6 that -- you didn't ask him that question, did you?

7 A No.

8 Q Okay. And one of the things that is in your mind --
9 you've got a hunch is really what you've got, don't you?
10 That's what you're working off of?

11 A Well, I mean, like I say, he's already provided four
12 different addresses, which from my experience is a -- is
13 common for somebody that doesn't want anyone to know where
14 to be tracked down. He, obviously, hasn't -- doesn't know
15 where -- want me to know exactly where he's going and
16 where he's coming from. He makes up a story about his
17 son, a daughter, whatnot. I mean, he's making stuff up as
18 he goes. I mean, that was pretty obvious. I mean,
19 there's...

20 Q It was obvious to you, at least, that's what you're
21 saying. But that wasn't my question --

22 A I think to a reasonable person that it would be
23 obvious.

24 Q My question was, you were really operating off a
25 hunch. You have a hunch of what you thought was going on?

1 A I think this is clear signs of deceptive behavior,
2 you know, based on my training that there's some type of
3 criminal activity that he's involved with.

4 Q Okay. And you testified to that earlier. Let's talk
5 about the criminal activity. First of all, you talked
6 about the different addresses. Now, you ran a criminal
7 history on him; correct?

8 A Later, yes.

9 Q You ran the VIN number off of the car, didn't you, to
10 try to see if it was stolen?

11 A Well, I ran the actual registration.

12 Q The registration.

13 A It matched up. That's correct.

14 Q You had insurance information?

15 A Uh-huh.

16 Q The insurance information was valid?

17 A That's correct.

18 Q The driver's license was valid. In other words, it
19 didn't come back, this guy has a suspended license, this
20 guy -- this person doesn't even exist. It was a valid
21 driver's license?

22 A That's correct.

23 Q The registration was valid?

24 A Correct.

25 Q It matched the car?

1 A Correct.

2 Q So let's talk -- put the drug issues all of that
3 aside for a second. Aside from the warning ticket or the
4 speeding ticket you might have given him, there wasn't
5 anything else that you could have charged him with with
6 regard to the car. You couldn't have charged him -- he
7 wasn't driving a stolen car; right?

8 A No. The car was not stolen.

9 Q He wasn't driving without a valid license?

10 A Well, yeah. It was valid in the state, but, you
11 know, he hasn't registered, obviously, in Georgia to have
12 a valid Georgia driver's license.

13 Q Okay. But he was driving with a valid license is the
14 answer; isn't that right?

15 A Yes.

16 Q Okay. And he had insurance on the car?

17 A Correct.

18 Q And it was the proper insurance for that car?

19 A To my knowledge, yes.

20 Q Then you talked about the address of -- two of the
21 addresses were in the Atlanta suburban area?

22 A Actually, three of them.

23 Q Three of them. I'm sorry.

24 A That's correct.

25 Q All right. So this wasn't -- aside from the

1 Louisiana address, basically, everything was in Georgia?

2 A Yeah. At various locations in Georgia -- in and
3 around the Atlanta area.

4 Q All right. What you did not have was any evidence
5 that he had stolen the car; correct?

6 A Like I said, the car was registered to him.

7 Q You had no evidence -- you didn't smell any marijuana
8 in the car. He hadn't just been using any drugs in the
9 car that you could smell?

10 A That's correct.

11 Q You didn't see any drugs in the car?

12 A Like I said, the only thing I observed in the car was
13 the two cell phones.

14 Q All right. And we'll talk about the two cell phones
15 in just a second. And you, also, didn't see like a pipe
16 or anything like that in the car?

17 A I never indicated that.

18 Q But that's something, in your experience, you've seen
19 before. You've seen that with people having a pipe
20 driving -- or smelling of marijuana in the car?

21 A Most people that smoke marijuana -- or have a pipe,
22 you're probably referring to a methamphetamine or a crack
23 pipe, most of those aren't your ones that's trafficking
24 large amounts of drugs.

25 Q But we're not talking about -- again, we haven't

1 gotten to the point where you found the drugs yet. This
2 is all the point before. You don't know anything, other
3 than this information. You haven't found any drugs yet.
4 You haven't even run your dog yet; isn't that correct?

5 A That's correct.

6 Q And so you kept saying, obviously. And I asked you
7 whether or not you, basically, had a hunch. And you say
8 you're pointing to this very specific things. So I'm
9 trying to understand the specific things and what they're
10 telling you.

11 And, at this point, the things that you've got that
12 you're, specifically, pointing to are really telling you
13 I'm a little suspicious, but you don't have anything
14 that's telling you he's driving -- trafficking cocaine
15 yet, because you haven't found any cocaine yet; isn't that
16 right?

17 A At that point, no, the cocaine had not been found.

18 Q All right. And he's in his car at first?

19 A That's correct.

20 Q And then you decide to get him out of his car?

21 A Which we do -- I do with all the traffic stops. I
22 get them out because it's easier, especially on the
23 interstate and that environment, it's so hard to hear with
24 cars going by. So we'll get out and have them stand,
25 actually, away from traffic at a safer location than,

1 actually, me leaning up in the car trying to talk to
2 someone. So, yeah, for communication and it's a safety
3 factor for both myself and the person that's stopped.

4 Q Okay. And in getting him out of the car, you didn't
5 get the sense that -- from the sort or physical standpoint
6 that he was somehow going to be difficult to contain. He
7 was cooperative with you?

8 A Outside of his, you know, nervous behavior -- I mean,
9 just -- I know what this guy was going to do.

10 Q But you, obviously, felt secure enough that he wasn't
11 going to just run and charge at you, or you didn't feel
12 that he was going to run away by getting him out of the
13 car and put -- change the dynamics of having him outside
14 the car versus inside the car?

15 A Well, I mean, when I asked him out, like I said, this
16 was pretty early on in the traffic stop. And it was
17 really before we got into a lot of this other questioning.
18 But, I mean, it's when his nervousness really starts to
19 show.

20 Q All right. And you had decided -- I'm not sure at
21 what point, and maybe you can tell us. But you had
22 decided you were going to give him a warning ticket for
23 the speeding?

24 A That's correct.

25 Q And when you get him out and you bring him to the

1 back of his car and you're kind of in front of your car,
2 is that location wise where you're at?

3 A We're, actually, kind of off to the right, the right
4 of the car.

5 Q And you're -- you've got your ticket book out, your
6 warning ticket book out. And you're writing the warning
7 ticket as you're talking to him?

8 A That's correct.

9 Q And explaining -- I'm assuming you're explaining what
10 the warning is?

11 A Well, I'll explain the whole warning -- what the
12 warning is at -- once I'm finished with it.

13 Q And what the warning, essentially, is is I'm not,
14 actually, giving you a ticket where you'll have to pay a
15 fine; correct?

16 A That's correct.

17 Q And I'm just literally warning you for the next time
18 that you shouldn't be speeding?

19 A Correct.

20 Q And you're going to be free to go?

21 A Well, yeah, at -- when the actual warning is issued,
22 yeah, there's no further -- that violation has been
23 explained. And he's given a warning. And, at that point,
24 that warning is complete.

25 Q And then you asked him if he understood that?

1 A Right.

2 Q He said he did understand that. And before he
3 leaves, you ask him if you could search his car?

4 A That's correct.

5 Q And you said he didn't really say yes or no?

6 A That's correct.

7 Q But, eventually -- and you wanted him to say yes or
8 no. You wanted him to give you a specific answer?

9 A Well, I mean, yeah. I like to have a specific
10 answer.

11 Q Okay. Me and you both. You then say to him, give me
12 a specific answer. And he says, well, I really would like
13 to just leave?

14 A That's correct.

15 Q And you took that as a no. He didn't say no, but you
16 took it to mean that he didn't want you to search the car?

17 A That's correct.

18 Q And what you told him was that -- you're on the side
19 of the highway, he could go, but his car was going to
20 stay?

21 A Right. I had a backup unit coming. He is -- his
22 behavior -- I don't know if he's going to try to fight,
23 what his intentions are. So I want him to feel that I'm
24 as least a threat to him at this -- right now until I get
25 somebody else there to help keep an eye on this guy, and

1 make sure we control the situation.

2 Q So you're telling us that the tactic you were using
3 was you wanted to search the car, but you wanted to put
4 him at enough ease that you wouldn't have to rely -- you
5 wouldn't need to handle him while you're, also, trying to
6 search the car?

7 A Well, we're not going to search a car without a
8 backup officer there. But, you know, in that process,
9 Deputy McBee was on the way, you know. I wanted him to be
10 at as much ease as -- you know, to take his mind off of
11 any type of maybe violent thoughts, I mean, that -- or
12 anything that would put me in jeopardy.

13 Q But you had him outside of the car. You didn't take
14 him and put him in your car at that point; right?

15 A At that point, I didn't place him in my car. That's
16 correct. And I could sit there at -- I mean, at a safe
17 distance, you know, and watch this -- watch somebody --
18 you know, you try to keep them at ease. You try to -- you
19 know, you try to comfort them. That way, they're emotion
20 level is not as -- he doesn't get too excited, you know,
21 and do something that could hurt himself or me.

22 Q What you wanted to do was search the car and you
23 wanted his consent. And you figured the easiest way to do
24 it, you know, honey instead of vinegar gets you more
25 flies.

1 So you said, I'll try to make him feel better about
2 it. I'll give him a warning ticket for the speeding.
3 I'll then ask him politely can I search the car. When he
4 said no, you were then faced with trying to figure out,
5 well, he's now not going to give me consent, now, how do I
6 get into the car? That's another way to look at it, isn't
7 it?

8 A Well, the warning ticket and the whole car search
9 issue doesn't come up just because I stopped the guy for
10 speeding. We stop hundreds of people monthly out there.
11 And a small percentage of those that show -- that have
12 behavior like this, yeah, we may ask for a consent to
13 search. There may be other indicators of some type of
14 activity going on. We're not stopping everybody for
15 speeding and searching everybody. A very small
16 percentage, actually, get searched out there.

17 This gentleman was not consistent with 95 plus
18 percent of the people that we stop daily, which, yeah, led
19 me to believe that during the course of the traffic stop
20 the more this went on, yeah, he's up to some type of
21 criminal activity.

22 Q Some type of criminal activity --

23 A More specifically --

24 Q -- but you couldn't put your finger on what it was?

25 A Yeah, based on this through the training and

1 experience out there, I mean, this type of behavior
2 probably was going to be some type of drug violation in my
3 mind --

4 Q Okay.

5 A -- at this point when we come to ask to search the
6 vehicle.

7 Q All right. So, again, that brings us back to what's
8 going on there. You -- are you saying that you got a
9 hunch that this is drug activity at the point at which
10 you're asking him to search the car?

11 A I think I have reasonable suspicion that there's some
12 type of criminal activity. The probability is pretty high
13 that it's going to be some type of illegal drug activity.

14 Q So you're saying that you have that in your mind at
15 the point at which you ask for consent?

16 A That's correct.

17 Q So what you didn't do is say, if I've got this
18 reasonable suspicion, which means I believe I can just
19 detain him and his car so I can search it. Instead, you
20 just said, can I search it?

21 A No. At that point -- like I said, prior to running
22 the dog, you know, I didn't see anything in plain view
23 that would give me the probable cause to go out there and
24 just straight into a search, you know, though he's --
25 what's going on, you know. I've got the reasonable

1 suspicion that something is going on.

2 At this point, I'm trying to make it in the least
3 intrusive manner, hey, I'll ask him if I can search his
4 car, you know. If he says no, then, obviously, I'm going
5 to run the police dog.

6 Q Right. Because you had decided that you believed
7 what was going on was drugs; correct?

8 A At this point, yes.

9 Q All right. And you know that in order -- you've
10 completed the warning ticket and you've given it back to
11 him; right? Are you on the same page with me?

12 A Right.

13 Q You would know that you would need what you could
14 call reasonable suspicion to further detain him and search
15 his car if you didn't have consent; isn't that true?

16 A As far as -- rephrase that for me.

17 Q I may have asked too many questions at once.

18 If you've got consent to search somebody's car, you
19 don't need any other legal authority if they gave you
20 authority to search their car; correct?

21 A Yeah. But we don't just ask --

22 Q Well, that's not what I asked you --

23 A -- everybody we stop.

24 Q That's not what I asked you. I asked you if you
25 walked up to me and said, can I search your car? And I

1 said, yes, you wouldn't have any -- I gave you consent,
2 and you can search; isn't that correct?

3 A We don't -- that's not how we operate.

4 Q I know you're not going to do that. But I'm saying
5 in that situation, you could do that.

6 A There's got to be some basis to ask for consent to
7 search.

8 Q By your policy. But, legally, you can just ask
9 somebody if you can search. And if they say yes, you can
10 search, can't you?

11 A To some degree, yes.

12 Q All right. Now, in this situation, if he had said
13 yes, you can search my car when you asked him that first
14 time, you could have just searched the car. You wouldn't
15 have needed any other reasonable suspicion or probable
16 cause; isn't that right?

17 A If he gives us consent at that point, yes, we can
18 search his car.

19 Q All right. But if he does not give you consent to
20 search, you now have to have some other justification, at
21 least, reasonable suspicion or probable cause; isn't that
22 right?

23 A Probable cause.

24 Q In order for you to take your dog out to run him
25 around the car, you need something more than --

1 A Yeah. To run the dog, yes, I need some type of
2 reasonable suspicion at that point.

3 Q All right. But you're saying you had reasonable
4 suspicion when you asked him for consent to search the
5 car?

6 A That's correct.

7 Q I think that's what you said; right?

8 A Yeah, correct.

9 Q You then get Angie out of the car to run her around
10 the Intrepid?

11 A That's correct.

12 Q And you said that there's training and so forth that
13 you and Angie had gone through together; is that right?

14 A Correct.

15 Q You said that in order for her to be certified -- I
16 guess it was a national certification, you said something
17 about there were 30 attempts, and she had to have 28; is
18 that correct?

19 A Yeah. I believe -- I'd have to refer to the exact --
20 and that was off of memory. I would have to refer to the
21 actual certification rule. Let me see if I have that with
22 me.

23 Q All right. And what I'm curious about that you
24 didn't testify to was false positives, the issue being
25 when the dog -- you're trying to search an area, does the

1 dog indicate that something is there, but it turns out
2 there really isn't something there? And, in training, I'm
3 assuming you might find -- you try to find those
4 situations out and, perhaps, correct the behavior; isn't
5 that right?

6 A That's correct. There have been instances where a
7 dog will alert that there, actually, may not be physical
8 drugs there at that time, but the odor from where they
9 were there still remains in that area.

10 Q That's your belief, but you don't have any really way
11 of knowing whether or not the dog is smelling the odor, or
12 just scratching, or doing whatever they do to alert?

13 A We do it off of what we've trained with them based on
14 the behavior. It's not -- the dog doesn't just randomly
15 walk down and scratch just a scratch because there's --
16 obviously, there's -- you know, you watch the dog's
17 behavior.

18 And it's almost like, you know, smelling popcorn. If
19 you see -- smell popcorn coming through the door, you
20 start sniffing, sniffing more intently. If you want to
21 try to track it down, you start kind of sniffing with your
22 nose and work toward it. It's kind of the same thing with
23 a dog. A dog comes in. There's some behavioral change
24 and breathing change with the sniffing. And then when the
25 dog, actually, kind of gets in the -- based on the

1 training is when we normally -- the dog will begin to
2 scratch.

3 Q Except that the difference between us as humans'
4 smelling that popcorn and the dog is we know what we want
5 to do. We want to find that popcorn. The dog doesn't
6 want to find the drugs just to find the drugs. The dog
7 wants to find the drugs because you're going to give the
8 dog a reward. That's how you train him.

9 A We have the little rubber hose, I believe, as -- or a
10 burlap little sack as a reward, yes. It's all a game to
11 the dog.

12 Q Exactly. It's a game to the dog. And what's going
13 on is when -- it's a she I'm assuming, Angie is a female?

14 A That's correct.

15 Q That when she alerted, you're going to -- at some
16 point, you're going to reward her for alerting, for doing
17 a successful job?

18 A That's correct.

19 Q And what I'm getting at is when you're training when
20 there are false positives, if the dog alerts but there
21 really isn't something there, walk me through the steps
22 you go through and at a what point you, actually, reward
23 the dog.

24 A As far as -- I'm kind of confused exactly what steps
25 you're referring to.

1 Q Okay. What you didn't describe when the Solicitor
2 was questioning you was when the -- you walked the dog
3 around in this case?

4 A That's correct.

5 Q Angie around the car?

6 A That's correct.

7 Q She alerted, you said, in two places, one on the left
8 side and one on the right side?

9 A Correct.

10 Q You didn't describe rewarding her, but I'm assuming
11 you did reward her.

12 A That's correct.

13 Q At what point did you reward her?

14 A Well, the first -- normally, in a situation like
15 that, she doesn't get rewarded until the very end. She'll
16 get praised. She doesn't get her toy usually until
17 what -- you know, until I'm done working the car. That's
18 my -- the way I do.

19 Q Okay. And when you say "working the car," what does
20 that mean? What's entailed in working the car?

21 A Well, until I'm done, you know, walking around the
22 car or feel that, you know, I'm done with the search of
23 the vehicle, the free air sniff.

24 Q The free air sniff search; right? That doesn't
25 include you opening the car and looking through the car?

1 A That's correct.

2 Q So what happens is you walk her around. When you
3 feel that you've finished your sniff, or the dog has
4 finished her sniff, you then take her -- do you bring her
5 to your car?

6 A That's correct.

7 Q You're going to reward her at the car or before you
8 put her back in the car for doing the sniff?

9 A No, no. You walk her around -- when she alerts --
10 she alerted to the left side.

11 Q Right.

12 A Instead of giving her her toy right then, I give her
13 a praise -- a praise reward for the dog.

14 Then we continue working around. When she gets to
15 the second side -- to the right side and alerts, at that
16 point, I didn't get any behavior change at the front of
17 the vehicle coming down. I've already got an alert on the
18 left side. She alerts on the right rear.

19 At that point, you know, she would get her toy.
20 Because I feel, you know, based on what she's said there
21 that, hey, she's getting an odor from the rear of this
22 vehicle.

23 Q Okay. But you reward her before you search the car?

24 A That's correct, before --

25 Q Before you physically search the car?

1 A That's correct.

2 Q And that's what you -- and that's the method you
3 would always use, even in training. Because, obviously,
4 you're going to train her for that method?

5 A Well, yeah. But in training, we do cars that may
6 have one or two hides. They may run five cars that have
7 zero hides. So it's, you know, based on the actual dog
8 doing the right thing.

9 Q Maybe. Let's ask a couple more questions and let the
10 jury figure that part out, whether it's the right thing.

11 But my question is, after you have searched the car
12 and you found what you believed to be drugs; right?

13 A Right.

14 Q You've already rewarded the dog?

15 A That's correct.

16 Q All right. And, in fact, if you had done one of
17 those situations where there was no -- there weren't any
18 drugs in the car, you would have rewarded the dog before
19 you searched the car to find it?

20 A I'm sorry.

21 Q If you would have -- in a situation -- you described
22 a situation where the dog would run through and they would
23 find drugs in some cars, because there were drugs in some
24 cars, or in some areas. There's another area where there
25 wouldn't be any drugs. Because that's part of training --

1 or testing of the dog?

2 A That's correct.

3 Q What you're describing is when the dog does that free
4 air sniff, in those instances where there were no drugs in
5 the area that the dog was searching, the dog still would
6 have been rewarded prior to you going and finding whether
7 or not there were drugs in that area because of your
8 method?

9 A She gets praised. She doesn't get her toy at that
10 point, no.

11 Q She doesn't get her toy at what point?

12 A You know, if -- in training, if we run a car and
13 there's -- you know, that's what we consider a blank car
14 where there's nothing in it, you know. If you run around
15 and, you know, she does alert, she gets praised because
16 she did a good job. But she doesn't get her toy unless
17 there's an actual, you know, alert on the vehicle, or
18 location.

19 Q Unless she alerts?

20 A Right.

21 Q Right. So it's the alerting that you're rewarding;
22 correct?

23 A Correct.

24 Q You opened the trunk of the car and you -- after you
25 put Angie back. And you searched -- you're now searching

1 the contents of the trunk?

2 A I did a brief check of the trunk, yes.

3 Q And, at first, you didn't open anything up. You
4 didn't see anything that stood out to you?

5 A It was just a bunch -- it looked like there was a
6 bunch of junk back there, an old computer monitor,
7 printer, some clothes, a bag of tools.

8 Q Okay. And then you decided you were going to search
9 the interior of the car?

10 A Yeah. Normally, when I search a car, we usually do
11 what we call just a quick search where I make sure that
12 there's nothing obvious before we do a detailed search. I
13 didn't see anything in the trunk. I go check the glove
14 box, the center console, under the seats, you know, areas
15 that are known for -- are common areas for easy
16 concealment of contraband, or weapons and make sure -- and
17 then once we've done that, we'll go back and do a detailed
18 search of the actual -- the whole vehicle.

19 Q All right. You find the gun within the center
20 console. And, now, you're going back to the trunk after
21 you do that; right?

22 A Yeah, a short time later, yes.

23 Q Okay. So, now, you're looking -- you're determining
24 to look more in detail into the trunk?

25 A Right. And I, actually, go through the items that

1 are in the trunk.

2 Q Now, when you have the cognac bottle, you didn't get
3 Angie to sniff the cognac bottle?

4 A No.

5 Q Or the box, I should say.

6 A That's correct.

7 Q Okay. And the cognac bottle is in the trunk. Are
8 the boxes in the trunk?

9 A Yes. Actually -- yeah. It was kind of up towards
10 the backseat, but it's, actually, in the trunk
11 compartment, yes.

12 Q So if you're facing the trunk and you open the trunk,
13 where is the cognac box?

14 A It's, actually -- it was in a plastic bag with some
15 clothes, kind of almost in the center more or less of the
16 trunk up against the back. I believe it was, actually,
17 behind the printer or the monitor in a bag of clothes, the
18 actual bag it was in. It wasn't sitting loose as you see
19 it there. It was, actually, in another bag.

20 Q All right. And you said Angie alerted. But she
21 scratched on the right side, or the left side of car?

22 A Yeah. The actual left -- I believe the door -- rear
23 door seal, and then the right tire well -- rear tire well.

24 Q And she did not alert to the back of the trunk, or
25 any other location of the vehicle?

1 A That's correct.

2 Q Bear with me one moment.

3 When Mr. Lopez provides you -- or provides the police
4 with a phone number to contact some other person who he
5 was supposed to bring this cognac box to -- right? You're
6 aware that that took place?

7 A That's correct.

8 Q You described what develops through the team that's
9 now going to finish delivering the cognac box.

10 A I had a limited part in that.

11 Q Right. You had a limited role in that. But you're
12 aware of kind of what -- some of the things that had been
13 going on?

14 A That's correct.

15 Q And you testified that, I guess, Investigator
16 Grounsell was the undercover person that was going to
17 drive the car?

18 A That's correct.

19 Q And Mr. Mackenzie asked you if the co-defendant,
20 Nelson, knew the driver, and you said you didn't know?

21 A I don't know if he knew -- if they had ever seen each
22 other face-to-face or not. I can't testify to that.

23 Q Okay. I understand that. Now, what you're talking
24 about is you didn't know if Mr. Nelson had seen Mr. Lopez?

25 A That's correct.

1 Q But you know that he never saw Investigator
2 Grounsell?

3 A I'm assuming so.

4 MR. SCALZO: No further questions, Your Honor.

5 THE COURT: All right. Mr. Mackenzie, do you have
6 any recross now?

7 MR. MACKENZIE: No, sir, Your Honor.

8 THE COURT: All right. Any redirect?

9 MS. MONTS: No, Your Honor.

10 THE COURT: Thank you.

11 You can step down.

12 All right. Take the jury out for a short recess.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 11:05 a.m.)

15 THE COURT: All right. We'll take a short recess.

16 MR. MACKENZIE: Your Honor, can I -- Mr. Nelson needs
17 his blood pressure medicine.

18 Is that okay if --

19 THE COURT: Sure.

20 MR. MACKENZIE: -- he can get it?

21 THE COURT: Where is it?

22 DEFENDANT NELSON: My mother has it.

23 THE COURT: Sure.

24 MR. SCALZO: Judge, how long is the recess?

25 THE COURT: About 10 minutes.

1 MS. MONTES: Your Honor, may Officer Hines be excused?

2 THE COURT: Any objection to excusing this officer?

3 MR. SCALZO: I don't --

4 MR. MACKENZIE: No, sir, Your Honor.

5 THE COURT: Thank you.

6 You're excused.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Bring the jury in.

9 MR. SCALZO: Judge, before the jury comes in --

10 THE COURT: Hold on.

11 MR. SCALZO: I just want to remake my motion to
12 suppress because that particular officer testified again.
13 And to preserve the record, I want to remake my objection.

14 THE COURT: All right. Subject to your objection.

15 MR. MACKENZIE: Can I raise one issue?

16 THE COURT: Sure.

17 MR. MACKENZIE: I think this is already covered. And
18 I think this is already understood. But I just want to
19 make it clear that I'm objecting to any testimony from --
20 or statements from Mr. Lopez that would identify
21 Mr. Nelson, based on my previous -- I think that's
22 understood.

23 MS. MONTES: It was -- and --

24 MR. MACKENZIE: Based on the Bruton issue.

25 MS. MONTES: There was something said yesterday I

1 noticed you were surprised about. Do you recall what that
2 was?

3 MR. MACKENZIE: We've got the statement covered. But
4 I'm talking about any oral statements from Mr. Lopez that
5 I may not be aware of.

6 THE COURT: Well, if there are none --
7 Do you know of any statements by Lopez?

8 MS. MONTS: Your Honor, basically, the information
9 that was in the statement was told by the officer and is
10 in his report. But that's the only --

11 THE COURT: Okay.

12 MS. MONTS: And we've redacted that to not use the
13 name Tay.

14 THE COURT: All right.

15 MS. MONTS: But the rest of the information in the
16 statement will be mentioned.

17 THE COURT: Yes, it will.

18 All right. Bring the jury in.

19 (WHEREUPON, the jury came into open court at
20 approximately 11:31 a.m.)

21 THE COURT: All right.

22 MS. MONTS: Your Honor, may we approach?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: You may proceed.

1 MS. MONT'S: Your Honor, the State calls Officer Chris
2 McBee.

3 THE CLERK: Well, the Bible is rather covered, but if
4 you could move the things over.

5 Place your left hand on the Bible and raise your
6 right hand.

7 WHEREUPON,

8 CHRISTOPHER THOMAS MCBEE,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Please be seated.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION

14 BY MS. MONT'S:

15 Q Officer, please, tell the jury where you're employed,
16 and how long you've worked there.

17 A My name is Christopher Thomas McBee. And I work for
18 the Greenville County Sheriff's Office. This year will be
19 15 years.

20 Q Can you explain some of your experience and training
21 with the Sheriff's Office and in law enforcement?

22 A Sure. I, of course, received the basic training that
23 all officers receive. As a result of my tenure at the
24 Sheriff's Office, I've been fortunate to receive
25 approximately 1,000 hours of additional training to

1 include specific training in traffic enforcement, and
2 criminal drug investigations, and so on.

3 I, now, am assigned to the K9 services unit. And, in
4 that unit, I've handled two dogs. I have personally about
5 2,500 hours of training between the two dogs. And I
6 currently handle a Belgian Malinois named Barry.

7 Q And back on January 21 of 2005, what unit were you
8 assigned to, and what were your duties?

9 A I was assigned to the traffic enforcement unit. I
10 was one of Chris Hines partners working the interstate,
11 I-85. And I was partners with a black female German
12 Shepherd name Cipher [phonetic].

13 Q And, specifically, on January 21st, what area would
14 you have worked, and what were you working?

15 A My main area of responsibility was criminal patrol on
16 I-85 within Greenville County.

17 Q And at approximately 2:30 that afternoon, do you
18 recall receiving a call to go anywhere -- or where did you
19 go?

20 A At about 2:30, I received a call from Deputy Hines
21 requesting backup on a traffic stop, which is fairly
22 common. I responded to the area of White Horse Road on
23 the overpass off the northbound side.

24 Q What did you observe when you got to that location?

25 A When I got to that location, I noticed that Deputy

1 Hines had a Dodge Intrepid stopped. There was an
2 individual, who was later identified as Daniel Lopez,
3 standing on a concrete median that was sort of shaped like
4 a triangle. It was at one of the exit points. He was
5 standing there. I pulled up behind Deputy Hines' vehicle.
6 And he asked me to stand by with the individual who was on
7 the side of the road.

8 Q Is this location in Greenville County?

9 A It is.

10 Q What did you observe Officer Hines do?

11 A Almost immediately, as I pulled up and was with
12 Mr. Lopez, Deputy Hines then got his K9, Angie, and began
13 to work the vehicle that he had pulled over.

14 Q Did you and Officer Hines receive your training
15 regarding K9's from the same company?

16 A All our training is done in-house. All our dogs come
17 in green. We're responsible for all the training.
18 Yearly, they're certified through the North American
19 Police Work Dog Association, if that's what you're
20 referring to, yes, the same certification.

21 Q And what did you observe? How long did this
22 situation take with the K9?

23 A It was fairly quick. I couldn't tell you the
24 exact -- I noticed he worked the exterior of the car. I
25 noticed he was fairly quick.

1 Q And did you talk to Mr. Lopez while this was going
2 on, or afterward?

3 A I did.

4 Q What -- please, describe that location.

5 MR. SCALZO: And, Judge, I'm going to renew my prior
6 objection.

7 THE COURT: All right. Subject to your objection.

8 THE WITNESS: And I'll explain to you why I was
9 speaking to him. In that capacity as a backup, I'm
10 responsible for a couple of things. One is the safety of
11 my partner and, also, my safety, but, also, the safety of
12 the people we have pulled over, because of traffic and
13 anything else that may occur at that point.

14 Obviously, at that point, Deputy Hines was using his
15 drug detector dog. I wasn't exactly sure of the
16 circumstances. But it was, also, part of my job, at that
17 point, to sort of ease any tension that may have been
18 coming from Mr. Lopez at that time.

19 So, basically, at the very onset of what was
20 happening, I was having general conversation with him
21 about the weather, where he was coming, and so forth.

22 BY MS. MONTIS:

23 Q And, please, describe -- did you notice anything
24 about Mr. Lopez's demeanor?

25 A What was unusual to me is as Deputy Hines worked the

1 exterior of the car with the K9, Angie, and then later
2 went in to a search of the vehicle, I continued to have
3 this conversation with Mr. Lopez. It was very generalized
4 stuff, nothing major.

5 And what I found completely unusual is that as we
6 spoke, he was almost entranced at watching his vehicle and
7 watching what Deputy Hines was doing to the point that I
8 was having problems maintaining eye contact. He was
9 almost oblivious to my presence there, if that helps
10 you -- helps me describe what I was seeing. I'd have to
11 try to redirect his attention to me just to be able to
12 talk to him. But he was almost -- it was like I wasn't
13 even there as Deputy Hines was doing what he was doing
14 with the K9, Angie.

15 Q Did you find out from your conversation where
16 Mr. Lopez was from, or where he had been?

17 A He told me that he was coming from Fort Bragg.

18 Q And did you observe Officer Hines search the vehicle?

19 A I did.

20 Q What did you observe?

21 A I observed him search the trunk of the vehicle very
22 quickly. Then he did an interior search of the vehicle.
23 And he -- at one point, he advised me that he had found a
24 firearm inside the vehicle. I then, also, witnessed him
25 work -- search the trunk of the vehicle. And, again,

1 after he searched the interior, he advised me that he had
2 found an amount of cocaine inside the vehicle.

3 Q And regarding the gun, did you see this?

4 A Yes.

5 Q What did you observe about it?

6 A He -- I can't tell you exactly when he showed it to
7 me, but I did observe the gun to see that the serial
8 number on the gun was obliterated. Because, obviously --
9 that's what he told me. Otherwise, it would have been
10 legally possessed in the car where it was. And he
11 showed me that the serial number was obliterated at that
12 point.

13 Q And describe what you saw regarding the trunk.

14 A The trunk was, as he said -- I can't tell you exactly
15 what was in there. I do remember a computer monitor, sort
16 of disheveled clothing, and tools, and so forth. It
17 wasn't very neat.

18 Q Did Officer Hines, subsequently, show you what he
19 found in the trunk?

20 A He did.

21 Q What did you observe?

22 A He showed me a gold-colored box that would contain a
23 cognac bottle. Inside the box was a substance wrapped in
24 plastic that he told me field tested positive for cocaine.

25 Q And did you see the substance?

1 A Yes.

2 Q What did it look like?

3 A It's a whitish powder. Some of it was still part
4 packed, not like crack cocaine, but as if something had
5 caused the cocaine to be under pressure. But most of it
6 was in a packed form.

7 Q And was Mr. Lopez handcuffed?

8 A He was.

9 Q Was he placed under arrest?

10 A He was.

11 Q Was he read his Miranda rights?

12 A Deputy Hines read him his Miranda warnings.

13 Q Did you or somebody else take the -- Mr. Lopez
14 somewhere from that scene?

15 A Yes. Deputy Ruddy was called to transport Mr. Lopez.
16 Deputy Hines and I, as he told you earlier, we both have
17 dogs. We're not allowed to transport with the dogs,
18 obviously, for obvious reasons. Also, we're not allowed
19 by policy to transport prisoners in the front seat of our
20 vehicle.

21 So, at that time, we called for Deputy Ruddy. He
22 responded. And he was placed in the cage portion of his
23 car.

24 Q Was your car equipped with a video recording device?

25 A It is. It is now, and it was then, yes.

1 Q And did you have a recorder going on from when you
2 pulled up at the scene?

3 A I did.

4 MS. MONT'S: I'd like to have this marked.

5 (WHEREUPON, State's Exhibit No. 7 was marked for
6 identification only.)

7 BY MS. MONT'S:

8 Q Deputy, I'm going to hand you what's been marked
9 as State's Exhibit No. 7. Would you, please, identify
10 this?

11 A It's a DVD of the original recording that was taken
12 on the scene from that date.

13 Q Was that provided by you?

14 A Yes, it was.

15 MS. MONT'S: Your Honor, we'd move this into evidence
16 at this time.

17 THE COURT: Any objection?

18 MR. MACKENZIE: No, sir, Your Honor.

19 MR. SCALZO: Nothing, other than the basic running
20 objection.

21 THE COURT: All right. Put it in.

22 (WHEREUPON, State's Exhibit No. 7 was admitted into
23 evidence.)

24 MS. MONT'S: Your Honor, we would ask to be able to
25 publish the video.

1 THE COURT: Yes.

2 (WHEREUPON, a portion of State's Exhibit No. 7 was
3 played in open court.)

4 MS. MONT'S: Your Honor, the sound is not working.
5 We're trying to get somebody over here to get the sound to
6 work on this.

7 THE COURT: Are you going to have to play it over?

8 MS. MONT'S: Yes, Your Honor.

9 THE COURT: Well, why don't you stop it until you get
10 somebody up here and get it fixed.

11 MS. MONT'S: It's fixed, Your Honor.

12 THE COURT: It's fixed?

13 MS. MONT'S: Yes.

14 (WHEREUPON, a portion of State's Exhibit No. 7 was
15 played in open court.)

16 MS. MONT'S: Your Honor, may we approach?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Take the jury out for a minute, please.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 11:50 a.m.)

22 THE COURT: All right. Get it fixed.

23 (WHEREUPON, a break was taken.)

24 MS. MONT'S: Your Honor, I believe we're ready.

25 THE COURT: Bring the jury in, please.

1 (WHEREUPON, the jury came into open court at
2 approximately 12:20 p.m.)

3 THE COURT: All right. Solicitor, you may proceed.

4 MS. MONTIS: I'll continue with the video.

5 (WHEREUPON, State's Exhibit No. 7 was played in open
6 court.)

7 MS. MONTIS: Your Honor, there's about four minutes
8 left. We can -- the sound is going to be out now, so we
9 can just fast forward for the last four minutes.

10 THE COURT: All right. That's fine.

11 (WHEREUPON, State's Exhibit No. 7 continued to be
12 played in open court.)

13 BY MS. MONTIS:

14 Q Deputy McBee, on the -- at the end of the stop with
15 Mr. Lopez, where did you go?

16 A After we cleared the traffic stop location, we went
17 to the car wash, as you saw in the video, which is just up
18 the road on White Horse Road on the left side.

19 Q And who, if you recall, met you there?

20 A Myself and Deputy Hines went there. Our supervisor
21 was there and, also, units from the vice and narcotics
22 unit were there.

23 Q How long did you stay there before you went to
24 another scene?

25 A I couldn't give you the exact time. It wasn't very

1 long. It was a few minutes.

2 Q And can you explain where the microphones are on you
3 and in the car when you're recording?

4 A Sure. There's one that's, typically, in the back to
5 record the sound from the interior of the vehicle. And
6 then the other is, actually, on the -- on our belt that we
7 carry on a daily basis, just like that.

8 Q And what would possibly cause the sound to go in and
9 out on that?

10 A Wind blowing causes a lot of that interference. If
11 it's close up to something else, it gets a lot of reverb
12 into the microphone.

13 Q And does the radio transmission inside the car affect
14 the other microphone at all?

15 A Sometimes, it can.

16 Q And was Mr. Lopez arrested at that time?

17 A He was.

18 Q And where did you go when you left that scene?

19 A I went to southern area command, which is one of our
20 offices off of -- down in the Donaldson industrial park.

21 Q And I may need you to speak into the microphone a
22 little bit.

23 A I'm sorry.

24 Q Who all met you there, if you recall -- or just name
25 some of the people.

1 A I couldn't give you everybody that was there.
2 Obviously, the folks that were on the scene originally and
3 then other units and investigators within the vice and
4 narcotics unit.

5 Q And what were your duties now?

6 A Basically, it was logistical support. I wasn't privy
7 to any of the interview of Mr. Lopez. But I was given a
8 support role in what was to come very shortly.

9 Q And where did you go in that support role?

10 A I was given the information that there's possibly
11 going to be an exchange occur in an attempt to find out
12 who this cocaine was going to at a Waffle House that is no
13 longer there. At the time, it was still in operation on
14 Augusta Street near I-85.

15 I was placed very near where Deputy Hines was, about
16 a block away from the actual location. I didn't,
17 actually -- I was not, actually, able to see anything that
18 was going on at the Waffle House. My function was there
19 for support. I had radio communication with other units
20 to include investigators with the vice and narcotics unit.
21 And they were going to tell me when I needed to come in
22 and to attempt to takedown this other party involved in
23 this operation.

24 Q And were you given a signal to come into the scene?

25 A I was.

1 Q And what did you do, and what did you see?

2 A Beforehand, I was told that a blue Ford Ranger was
3 possibly going to be involved, and the individual inside
4 was who we were looking for. Once I was told to come in
5 to help with the takedown, as I pulled into the back
6 portion of the parking lot of the Waffle House, I did
7 witness this blue Ford Ranger with a black male occupant
8 in the driver's seat.

9 Q Were there other sheriff's deputies vehicles there?

10 A Yeah. There was quite a few.

11 Q Were any of them marked or with lights?

12 A Yes. We did have -- mine was unmarked, but I had
13 lights. There was a K9 unit there that was fully marked
14 with lights, and numerous other vehicles.

15 Q And where did your vehicle go, and where did the blue
16 truck go -- or the dark truck go?

17 A The dark truck was attempting to leave. And that's
18 why we were called in. It was stopped. I pulled into the
19 parking lot, exited my vehicle, and approached the Ford
20 Ranger.

21 Q And what did you observe when you approached?

22 A I -- as I approached, I observed the driver and the
23 sole occupant of the vehicle to be a black male, who was
24 later identified as Mr. Nelson. I assisted in taking --
25 getting him out of the vehicle, taking him to the ground,

1 handcuffing him, and securing him.

2 Q Was Deputy Wannemacher there?

3 A He was.

4 Q Describe what he did -- or what you observed.

5 A Deputy Wannemacher, one of our other K9 units, was
6 there, with his patrol dog, Roscoe. He assisted just in
7 logistics as well with the dog. He brought the dog onto
8 the scene. He called out to the individual in the car to
9 comply. Because, oftentimes, with the dog there, that's
10 an extra bit of assurance that the folks we're dealing
11 with aren't compliant.

12 He moved towards the car, called out to him as we
13 were approaching as well. He told him if he did not
14 comply with the arrest that he'd be bitten by the dog.
15 The occupant complied fully and was taken out, and
16 handcuffed, and identified as Mr. Nelson.

17 Q Was there any vehicles behind the pickup truck as it
18 was trying to exit?

19 A There was. I couldn't tell you exactly which one it
20 was. If I'm not mistaken, it was an unmarked vehicle at
21 that time.

22 Q What did you do once Mr. Nelson was arrested?

23 A Once Mr. Nelson was arrested, I was advised that this
24 ongoing operation and investigation was going to continue
25 to another residence in Greenville County.

1 Q Do you know what that residence was?

2 A Yeah. I'll check the address. I believe it was [REDACTED]
3 [REDACTED]. Let me make sure the numbers are right.

4 Yeah, [REDACTED]

5 Q Is that location in Greenville County?

6 A It is.

7 Q And is that Waffle House at I-85 and Augusta Road in
8 Greenville County?

9 A It is.

10 Q And what did you observe at [REDACTED]
11 Were there any other officers there when you arrived?

12 A Yes, there were. Myself -- let me read them out to
13 you. Myself and Investigator Tony Rogers with the vice
14 and narcotics unit were some of the first officers there.
15 Also, Investigator Craig Moore and Investigator
16 Kerian [phonetic] were there at the onset.

17 Q And what did you do when you arrived?

18 A I assisted Deputy Rogers -- Investigator Rogers with
19 anything that he needed. At that time, he spoke to the --
20 he and I spoke to the occupants of the home, who
21 identified themselves as the occupants and owners of the
22 home, who, also, identified themselves as the mother and
23 stepfather of Mr. Nelson.

24 Q Besides those two, was there anyone else in the home?

25 A There was. There was, also, an individual identified

1 as his brother, who they described as invalid and was
2 bedridden at the time in a bedroom that was attached to
3 the kitchen.

4 Q And was there anybody else that you recall?

5 A Not that I recall.

6 Q And did you observe a consent to search?

7 A I did. Investigator Rogers requested a written
8 consent to search at the time that we contacted the
9 residents of the home, and at which time he did acquire
10 that from the residents.

11 Q And were you a witness on that document?

12 A I couldn't tell you. I feel like I am. I'd have to
13 look at the document to be able to tell you. But I
14 believe I was -- I, actually, did sign and witness the
15 document.

16 Q And can you describe the house?

17 A I can describe the area that I was responsible for
18 searching.

19 Q Okay.

20 A The house was kind of laid out in an odd fashion. My
21 area of responsibility for search was the kitchen area,
22 which was directly off of a larger living room area, and
23 the bedroom that was connected to the kitchen.

24 Q How large of a house was this? Was it one story?
25 Two story?

1 A It was a ranch-style house probably 1,500, 1,600
2 square feet. That's not exact, but it kind of gives you
3 an idea.

4 Q And describe what you observed when you went in these
5 rooms that you went in?

6 A First of all, my goal was to systematically search
7 those two areas. Obviously, other folks were there
8 searching as well, the Sheriff's Office with the vice and
9 narcotics unit.

10 I began with the kitchen area and began a systematic
11 search of the cabinets, and refrigerator, and everything
12 that was inside the kitchen space.

13 Q What did you observe in the bedroom off of the
14 kitchen?

15 A In the bedroom off the kitchen was a bed. And there
16 were, also -- it was the brother of Mr. Nelson in the bed.
17 At which time, we had to help him from the bed into a
18 wheelchair that moved from his bedroom into the common
19 area of the living area.

20 Q What approximate age was this person?

21 A I couldn't tell you. I couldn't tell you.

22 Q Was he a child, or --

23 A No. He was an adult male. To -- it would be a
24 complete guess as to what his exact age was at the time.

25 Q And could he move himself into the wheelchair, or how

1 did that --

2 A The term that the family used was invalid. And he
3 was non-ambulatory in my summation. We, actually, had to
4 help him into the wheelchair to get him into the other
5 room.

6 Q Was the doorway big enough for a wheelchair to get
7 through?

8 A I believe it was. I don't remember if we, actually,
9 had the wheelchair in his room, or if it was in the
10 kitchen. But it was in that small area is where we,
11 actually, helped him into the wheelchair.

12 Q And describe the rooms that you searched. What was
13 in either of these rooms, what furniture?

14 A I believe there was a -- I can't recall if there was
15 a table or not in the kitchen. The kitchen was just
16 typical stuff on the counter as far as appliances that had
17 food [sic], and so forth. There may have been a table,
18 but I can't say for sure.

19 In the bedroom, there was a single-size bed on the --
20 that -- whose back went to the far wall. It was kind of
21 partially to the right of the bedroom. It was more
22 centered than not, a chest of drawers, a small table with
23 a stereo, stereo speakers, miscellaneous clothing, and
24 boxes, and, also, a closet to the left when you walked
25 into the bedroom.

1 Q And did you -- describe the process. What were you
2 supposed to do if you found an item?

3 A As I searched, if I found anything that was of
4 evidentiary value as far as illegal items or items as far
5 as paperwork or miscellaneous effects, I was to take them
6 directly from me to Investigator Rogers, who was filling
7 out what's called a return on the consent to search. The
8 return is nothing more than the documentation of what was
9 searched, and what was seized by the Sheriff's Office.

10 Q And did you find items in these rooms?

11 A I did.

12 Would you like me to tell you what I found?

13 Q Yes, please.

14 A Okay. I'm going to refer to my report so I can tell
15 you exactly what was found.

16 As I began my search in the kitchen, I moved to a
17 cabinet that was about chest high to me, maybe chest or
18 neck high. It was your typical kitchen cabinet that was
19 just to the left of the refrigerator. So if you can
20 imagine the refrigerator here, and then I opened the
21 kitchen cabinet here as I faced it.

22 I opened that kitchen cabinet and inside is what I
23 found, the following items: A large amount of an
24 off-white rock-like substance in baggies that appeared to
25 be crack cocaine, a Pyrex measuring cup containing an

1 off-white rock substance, two spoons covered in white
2 powder that appeared to be cocaine, a large digital scale
3 covered in white powder, brown packing tape, and plastic
4 wrapping coated in white powder, and numerous baggies in
5 that same cabinet area.

6 Q Describe again how -- the height of that cabinet.

7 A As I was standing -- as I face you, you would,
8 actually, be behind the cabinet or refrigerator. The
9 refrigerator was to my right. To my head, the
10 refrigerator was approximately this high. Just to the
11 left of that was the cabinet. The bottom edge of the
12 cabinet was probably around my chest to my upper neck
13 area, typical height of a cabinet in a kitchen. I
14 would have to -- you'd have to stand up to reach to get
15 it.

16 Q And how tall are you?

17 A I'm 6'5".

18 MS. MONT'S: I'd like to have these marked.

19 (WHEREUPON, State's Exhibit Nos. 8 and 9 were marked
20 for identification only.)

21 BY MS. MONT'S:

22 Q Deputy, I'm going to hand you what's been marked for
23 identification as State's Exhibit Nos. 8 and 9. Can you,
24 please, identify these?

25 A These are items that were seized from the cabinet, a

1 cookie form of what -- what's called a cookie form of
2 crack cocaine, and a baggie with -- or baggies with white
3 residue on them.

4 Q And describe State's Exhibit No. 9, and what form
5 that was in when you found it.

6 A Can you clarify that for me, so I answer correctly,
7 please?

8 Q If it would refresh your memory to review your report
9 for that item that you seized --

10 A All right. The plastic was what was seized from the
11 brown packing tape. And plastic that is coated with the
12 white powder is what, based on my experience and training,
13 is, typically, known as a kilo wrapper. Kilo being a
14 street term for a kilogram of cocaine. In the compressed
15 form, they are shipped, wrapped tightly to maintain the
16 compressed form until -- for distribution.

17 The -- in the form that I found it, the packing tape
18 was, actually, helping hold the form of the plastic. So
19 you could visualize the void that was there and almost see
20 the -- where the compressed powder cocaine would have
21 gone. And, in my training and experience, it was really
22 obvious to me that that's what that had contained.

23 MS. MONTS: I'd like to have this marked.

24 (WHEREUPON, State's Exhibit Nos. 10 and 11 were marked
25 for identification only.)

1 BY MS. MONTIS:

2 Q Deputy, I'm going to hand you what's been marked for
3 identification as State's Exhibit Nos. 10 and 11. Can
4 you, please, identify these items?

5 A State's Exhibit No. 10 is the Pyrex dish that I found
6 in the cabinet with the residue and, also, the two spoons
7 bearing the same residue as it was seized that day.

8 Let me look at State's Exhibit No. 11.

9 State's Exhibit No. 11 contains the digital scales
10 that were seized bearing the white residue, and, also, a
11 grinder.

12 Q And describe their location to each other, please.

13 A All in the same area. They were on the middle shelf,
14 I guess, of that cabinet, not the bottom, but the middle
15 in very close proximity to one another all in the same
16 general area.

17 MS. MONTIS: I'd like to have this marked.

18 (WHEREUPON, State's Exhibit No. 12 was marked for
19 identification only.)

20 BY MS. MONTIS:

21 Q Deputy, I'm showing you State's Exhibit No. 12. Can
22 you, please, identify this?

23 A Sure. This was the packing tape and saran wrap
24 plastic that was around the other plastic with the white
25 powder residue that I identified that -- that I believed

1 to be the kilo wrapper.

2 Q And where did you continue to search?

3 A After that, I did not find any other contraband in
4 that area. At that time, I moved to the bedroom that was
5 attached to the kitchen.

6 Q Were there any other officers assigned to those rooms
7 that you were searching?

8 A I don't think so. I can't say for sure, but I was
9 the main one searching those areas. There may have been
10 somebody assisting me, but I don't have it documented.

11 Q What room did you go to next?

12 A The bedroom belonging to the Defendants's brother
13 that was attached directly to the kitchen. The only way
14 in and out of it was, actually, from the kitchen.

15 MS. MONTIS: I'd like to have these marked.

16 (WHEREUPON, State's Exhibit Nos. 13 and 14 were marked
17 for identification only.)

18 BY MS. MONTIS:

19 Q I'm handing you what's been marked as State's Exhibit
20 Nos. 13 and 14. Can you, please, identify these?

21 MR. MACKENZIE: And, Your Honor, I object to this
22 one. And it's for reasons previously stated. And I don't
23 have anything to add.

24 THE COURT: All right. Subject to your objection.

25 THE WITNESS: These are both items that were found in

1 the bedroom. I'll refer to my report to give you exact
2 locations. These were in a cigar box marked "Phillies
3 Blunt" on the outside in the top portion of the closet
4 that I described to you that's on the left in the bedroom.
5 This is a bag of round-scored pills with a smiley face on
6 one side that I identified visually as Ecstasy -- or what
7 was commonly described as Ecstasy. A small round ball, or
8 round-shaped object that was believed to be hashish at
9 that time was, also, taken out of that box.

10 BY MS. MONTIS:

11 Q And describe the relationship to each of these items
12 that you found in that bedroom off the kitchen.

13 A These were, actually, in the same Phillies Blunt box
14 right beside each other in the top portion of the closet,
15 the upper portion of the closet there in that bedroom.

16 Q And who did you take these items to?

17 A All the items that were seized by me during the
18 search were taken to Investigator Rogers for
19 documentation.

20 Q And what did he do with those items -- or what did
21 you see him do with those items?

22 A I saw him on the return portion of the written
23 consent documenting them by writing them down as where
24 they were taken from. And, also, at that point, he was
25 organizing them for transport and eventual placement into

1 our property and evidence.

2 Q And how high up in that bedroom closet were these
3 items?

4 A Again, it was just above my head, maybe head level or
5 higher where I don't have to reach up and into the closet
6 to get them.

7 Q And where was the man that had been in the bed prior
8 to you entering? Was he watching while you searched?

9 A No. When we first came in the house, he was,
10 actually, in the bed lying down. And, later on, he was
11 helped to the wheelchair and taken to the living room
12 area.

13 Q Regarding State's Exhibit No. 11, can you describe
14 what this is, and what it's used for?

15 A Sure. State's Exhibit No. 11 contains two digital
16 scales bearing white powder residue on them. Based on my
17 training and experience, the digital scales bearing the
18 white powder are what are often used to measure amounts of
19 illegal drugs, specifically, in this case, cocaine for
20 sales or packaging.

21 Q What did you see elsewhere [sic] -- elsewhere in the
22 house? Did you see other officers?

23 A Yes. There were other officers that -- some were
24 with the family standing by with them. Obviously,
25 Investigator Rogers was preparing the paperwork and

1 evidence that was obtained. And other officers were
2 searching the rest of the residence.

3 Q What did you do once you finished searching these two
4 rooms?

5 A Once I finished searching the two rooms that I was
6 in, obviously, I took all the evidence that I found and
7 gave them to Investigator Rogers. And then I was there
8 logistically for security of the area, and to help with
9 anything else that may have arisen as far as paperwork, or
10 anything -- it was an ongoing investigation.

11 Q Do you have an approximation of how long you were at
12 the house?

13 A I couldn't tell you. I couldn't tell you, unless I
14 saw it on a watch.

15 Q And when you left the scene, where did you go?

16 A As I left the scene, I think I went back to southern
17 area command to finish up any paperwork that I may have
18 had.

19 MS. MONTS: No further questions.

20 THE COURT: Mr. Mackenzie.

21 MR. MACKENZIE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MACKENZIE:

24 Q Deputy McBee, when you were out on the roadway with
25 Mr. Lopez, he was -- you said he was very much focused on

1 the car and the search of the car; is that correct?

2 A At the onset, yes, sir. The dog and then the search,
3 yes, sir.

4 Q And did he appear to be pretty nervous to you at that
5 point?

6 A The word is -- I think I used was oblivious, just
7 absolutely not even aware I was there, yes, sir.

8 Q And there were two cell phones found in his car; is
9 that correct?

10 A I did not find them.

11 Q Okay. Did you -- I don't guess you participated
12 really in the search of his car at all, did you?

13 A No, sir.

14 Q Okay. When you -- there was a certain time when you
15 were standing out on the roadway with Mr. Lopez, y'all
16 were having a conversation; is that correct?

17 A Yes, sir.

18 Q Isn't it true that he made statements to you to the
19 effect of, I work for --

20 MR. SCALZO: Your Honor --

21 BY MR. MACKENZIE:

22 Q -- the police --

23 THE COURT: Hold on --

24 MR. SCALZO: -- I'm going to object with my
25 continuing objection.

1 THE COURT: All right.

2 BY MR. MACKENZIE:

3 Q Did he make a statement to you to the effect of, I
4 work for the police?

5 A Do you want me to publish exactly what was said?

6 Q If you can.

7 A He said, I work for you guys.

8 Q What does "you guys" mean?

9 A I assumed that meant the police.

10 Q Isn't it true he made a statement to you to the
11 effect of, I know people who move dope?

12 A Yes, he did.

13 Q Didn't he say at one point, I smoke weed?

14 A He did.

15 Q When y'all were at southern area command for the
16 first time before the search of the house, did you hear
17 any verbal statements that Mr. Lopez made at that point?

18 A No, sir. I wasn't privy to any of those.

19 Q Okay. When you were at the Waffle House, did I hear
20 you say you did not, actually, see anybody -- the person
21 arrive? Mr. Nelson, did you see him arrive at the Waffle
22 House?

23 A No, sir, I did not.

24 Q Okay. You did participate in the arrest?

25 A Yes.

1 Q Okay. And all of the police cars that were there for
2 the arrest were unmarked cars; is that correct?

3 A No. There was some marked. There was, at least, one
4 marked.

5 Q Where was the marked car?

6 A It was, also, in the parking lot. It was the K9
7 unit.

8 Q The K9 unit we saw on the video?

9 A No. There was another K9 unit on duty in a marked
10 vehicle. Deputy Wannemacher and his dog, Roscoe, also,
11 responded in the same capacity as I did at that moment.

12 Q Was that car involved in the arrest, or the takedown?

13 A In as far as he brought his dog out as support to
14 challenge the suspect as we all moved in and supported
15 with his K9, yes.

16 Q Some of the cars, actually, drove in behind and in
17 front of the truck; is that correct?

18 A Yes. I remember -- I can't give you the exact
19 placement. But, as far as I can remember, there,
20 actually, was a vehicle behind Mr. Nelson.

21 Q All right. Those were unmarked cars; right?

22 A Yes, I believe so.

23 Q When Mr. Nelson was arrested, he was searched,
24 obviously?

25 A I did not search him. I didn't see him be searched.

1 Q You did not see the search?

2 A No.

3 Q Were you involved in the search of the truck?

4 A No.

5 Q Now, when Mr. Nelson was arrested at the Waffle
6 House, no money was found on him, was there?

7 A I don't know if there was or not, sir.

8 Q When the -- when you and the other deputies were
9 searching the house, you were looking, at least, in part,
10 for money, weren't you?

11 A Anything contraband, yes, sir.

12 Q I mean, anything having to do with contraband?

13 A Sure, absolutely.

14 Q All right. The owners of the house were Kathleen
15 Nelson and Charles Burns; is that correct?

16 A I don't have that information. I couldn't tell you.

17 Q I mean, didn't you testify earlier that you spoke
18 with the owners?

19 A I spoke with the owners, who identified themselves as
20 the mother and stepfather.

21 Q Okay.

22 A And that's what I have indicated in my report. I did
23 not indicate their names.

24 Q The mother and the stepfather were the owners of the
25 house?

1 A That's -- they indicated that, yes, sir.

2 Q Octavius Nelson was not the owner of that house, was
3 he?

4 A I don't know.

5 Q There were -- the persons present were the mother,
6 the stepfather, and the brother?

7 A Yes, sir.

8 Q The brother was in one of the bedrooms?

9 A He was.

10 Q In the bed?

11 A Yes, sir.

12 Q It appeared to you that that was his bedroom; isn't
13 that correct?

14 A They identified it as his bedroom, yes.

15 Q Octavius Nelson was not present at this time; is that
16 correct?

17 A No. He was in custody.

18 Q No money was found in that house?

19 A I don't know. I did not find any money.

20 Q Are you aware of any money being found in that house?

21 A No.

22 Q No mobile phones were seized from the house, were
23 they?

24 A I couldn't tell you. I did not find any mobile
25 phones.

1 Q All right. And you're saying the crack was found in
2 the kitchen?

3 A That's correct.

4 Q Not in the bedroom?

5 A No, sir, the crack cocaine was not.

6 Q Items were seized from all throughout the house,
7 though, weren't they?

8 A There were other items that were taken into evidence.
9 I couldn't tell you where or what, other than what I was
10 involved in personally.

11 Q The tablets and the suspected hashish were found in
12 the brother's bedroom?

13 A That's correct.

14 Q The cookies and the paraphernalia -- all of the
15 paraphernalia related to the cookies were found in the
16 kitchen cabinet; is that correct?

17 A Yes, sir.

18 Q They were all together in one place?

19 A Yes, generally, in the cabinet, yes, sir.

20 Q And the cabinet was closed?

21 A That's correct.

22 Q They were not in plain view?

23 A No, sir.

24 MR. MACKENZIE: Thank you.

25 That's all I have.

1 THE COURT: Do you know if the lunch is here?

2 THE BAILIFF: It's here. They just brought it.

3 THE COURT: All right. We'll take a recess at this
4 time for lunch.

5 And then you can cross after lunch, Mr. Scalzo.

6 Take the jury out.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 1:21 p.m.)

9 THE COURT: You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: We'll recess at this time.

12 Now, please, be ready to start back at -- let's say
13 at 2:00.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Come back around. You're still under
16 oath, Mr. McBee.

17 Bring the jury in.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:16 p.m.)

20 THE COURT: Mr. Scalzo.

21 MR. SCALZO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SCALZO:

24 Q Deputy McBee, I will try to be brief and to the
25 point.

1 A All right.

2 Q Basically, just two topics I want to talk to you
3 about. First, when we were looking at the video, it set
4 some of the scene. And I'm going to ask you to help us
5 maybe get a little more detail about it.

6 In the video, it's your car facing Deputy Hines' car,
7 that's the perspective we have; right?

8 A Yes.

9 Q And to the far right of that screen, there's a little
10 green sign that has "ATL," the letters on it. Is that a
11 sign for Atlanta?

12 A Yes.

13 Q And the -- it looked like a little triangle --
14 concrete triangle area where that sign was?

15 A Yes.

16 Q It looks like when you exit your car, you walk over
17 to that area?

18 A That's correct.

19 Q And it appears that's where Mr. Lopez is standing?

20 A Yes.

21 Q And it's off screen.

22 A Uh-huh.

23 Q That triangle area, you've got the entrance way to
24 get on to I-85 south?

25 A If I'm not mistaken, that is coming from southbound

1 on to White Horse Road.

2 Q Right. So if you have the -- if you're looking at
3 the triangle over here, you see a car sitting at the
4 light. That's what you're talking about; right?

5 A That's correct.

6 Q Then you have White Horse Road --

7 A That's correct.

8 Q -- which is, obviously, the traffic going by on the
9 left side of the cars?

10 A Right.

11 Q And then what you can't see out of the camera is that
12 that's the entrance way to I-85 south?

13 A That's correct.

14 Q Okay. And where Mr. Lopez, obviously, pulled over
15 was just past where that entrance way would have been?

16 A That's correct.

17 Q Okay. And the White Horse Road portion that we see
18 there, is it four lanes on each side in each direction?

19 A I believe it's six there if I'm not -- may two and a
20 turning lane. So probably six there, including the
21 turning lane.

22 Q It's a very big road?

23 A Yeah.

24 Q A dangerous road --

25 A Sure.

1 Q -- to be standing in the roadway; right?

2 A I'd agree.

3 Q You talked about and you said it a couple of times
4 that when you were speaking with Mr. Lopez, he was
5 watching Deputy Hines search the car?

6 A That's correct.

7 Q And you used the word he was.-- seemingly, he was
8 oblivious to you talking to him, because he was watching
9 what Deputy Hines was doing?

10 A Right.

11 Q And -- but he did say, because you were engaging him
12 in a conversation -- I'm not sure if we could hear what
13 you asked him. But you did say that he told you he was
14 coming from Fort Bragg?

15 A That's correct.

16 Q And this would have been during the time in which
17 he's -- Deputy Hines is searching the car, and he's
18 watching the car, but you're kind of talking to him?

19 A Uh-huh.

20 Q Okay. And he was advising you he was coming from
21 North Carolina and saying Fort Bragg; is that fair?

22 A Yes.

23 Q Okay. And you did not ask him to explain the
24 confusion about where he said he was coming from, and the
25 direction that he was found traveling on the highway?

1 A Yeah. I wasn't aware of any of the conversation that
2 he and Deputy Hines had had prior to that.

3 Q All right. And then you did not observe when you
4 were present Deputy Hines do the same, try to clarify any
5 discrepancy?

6 A Right, I didn't.

7 MR. SCALZO: That's all I have, Judge.

8 THE COURT: All right. Any redirect, Solicitor?

9 MS. MONTS: No, Your Honor.

10 THE COURT: Any recross?

11 MR. MACKENZIE: No, sir, Your Honor.

12 THE COURT: Thank you, sir.

13 You can step down.

14 Now, do you need to excuse Mr. McBee?

15 MS. MONTS: Yes, Your Honor.

16 THE COURT: Any objection to excusing him?

17 MR. MACKENZIE: No objection.

18 MR. SCALZO: No, sir.

19 THE COURT: Thank you.

20 MS. MONTS: The State calls Officer Maxwell.

21 THE CLERK: Sir, please, place your left hand on the
22 Bible and raise your right hand.

23 WHEREUPON,

24 JEFF MAXWELL,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 THE WITNESS: Thank you.

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Jeff Maxwell.

7 DIRECT EXAMINATION

8 BY MS. MONTS:

9 Q Officer, please, tell the jury where you're employed,
10 and how long you've worked there?

11 A I'm employed with the Greenville County Sheriff's
12 Office. And I've been there since May of 1997.

13 Q And what is your experience and training in law
14 enforcement?

15 A I just -- I graduated from the basic Criminal Justice
16 Academy. I went on to receive detective certifications,
17 also, drug investigations, criminal patrol, various
18 narcotic classes after that.

19 Q And what unit have you been assigned -- units have
20 you been assigned to at the Sheriff's Office?

21 A Since I've been at the Sheriff's Office, I worked in
22 uniform patrol for about seven years. I worked in vice
23 and narcotics for two years. I then moved to the violent
24 crimes unit. I worked there about a year and a half. And
25 I'm currently assigned to financial crimes where I've been

1 there about two years.

2 Q And on January 21st of 2005, what unit were you
3 assigned?

4 A Vice and narcotics.

5 Q And on January 21st of 2005, what was your
6 assignment or duties for that day?

7 A Actually, I don't really remember what I was doing,
8 specifically, that day. I do remember we were pretty
9 busy. This, actually, came up, as you saw, from the car
10 stop sort of unexpectedly. And I was called in to assist
11 with this investigation.

12 Q Where is the first place you went to regarding this
13 investigation?

14 A I went to our office, which is based in -- we call it
15 southern area command. It's our office at Donaldson
16 Center.

17 Q And when you got there, what was your assignment?

18 A I was asked to assist with the interview of
19 Mr. Lopez. He was already there with two of our other
20 investigators.

21 Q And who were those other investigators?

22 A One was Investigator Charlie Blackburn, and the other
23 was Investigator Keith Grounsell.

24 Q And is Officer Blackburn still employed with the
25 Sheriff's Office?

1 A No, he's not.

2 Q Where is he now?

3 A He is employed with the FBI, the Federal Bureau of
4 Investigations. And he's stationed, last I heard, in
5 South Dakota.

6 Q And where did you, and these other officers, and
7 Mr. Lopez meet up?

8 A We have an interview room at our office. It's,
9 basically, just a standard interview room you might see on
10 television. It's just a bare room with a desk and three
11 or four chairs, which we can speak with people in a kind
12 of controlled environment.

13 Q And do you recall if Mr. Lopez was handcuffed at this
14 time?

15 A I don't recall. But if we had him in our interview
16 room, it's typical that we'll -- he's already been
17 searched, made sure there's no weapons, or any kind of
18 contraband on him at that time. So it would be normal for
19 us to unsecure him and take the handcuffs off. But I
20 don't remember, specifically, if when I got there if he
21 was unsecured or not.

22 Q And describe the furniture in the room, please.

23 A It's just a standard desk, three or four chairs,
24 depending on how many people are in there.

25 Q And do you have any forms that you go over with

1 somebody that you're about to speak with?

2 A Yes. We have a Miranda form, which contains,
3 basically, your Miranda rights when you're in custody and
4 we're questioning you.

5 Q I'm going to hand you what's been marked for
6 identification as State's Exhibit No. 1. Can you, please,
7 identify this document?

8 A Yes, ma'am. This is the waiver of rights signed by
9 Mr. Lopez, Investigator Blackburn, and myself.

10 Q And can you describe any handwriting on that
11 document, and who wrote on there?

12 A Sure. At the very top is the case number, which is
13 assigned to this investigation. That's what all your
14 property and evidence and other forms would have on it to
15 identify it belongs to this case. It's entitled "Your
16 Rights," Sheriff's Office, Greenville, South Carolina.
17 The date is handwritten, 1/21/05. The time is 1738, which
18 is 5:38 p.m.

19 The next section here is the paragraph, Before we ask
20 you any questions, you must understand your rights. There
21 is an initial, "DL," which would have been made by
22 Mr. Daniel Lopez. And it's signed at the bottom there.
23 You have a little "X." And the writing here, the little X
24 is Investigator Blackburn's handwriting. So he would
25 have, basically, indicated these little X's for after we

1 went over the form for Mr. Lopez to sign if he understood
2 it, and that sort of thing.

3 But the first line, Before we ask you any questions,
4 you must understand your rights, initial "DL." You have
5 the right to remain silent. The second line, Anything you
6 say can and will be used against you in court -- excuse
7 me, Anything you say can be used against you in court.
8 It's, also, initialed "DL." You have the right to talk to
9 a lawyer for advice before we ask you any questions, and
10 to have him with you during questioning. That's
11 initialled "DL." If you have no money to pay a lawyer's
12 fee, the Court will appoint one to represent you without
13 cost, if you wish. That's initialed "DL." If you decide
14 to answer questions now without a lawyer present, you will
15 still have the right to stop answering at any time. You,
16 also, have the right to stop answering at any time until
17 you talk to a lawyer. That's, also, initialed "DL."

18 Down here, it says "Waiver of Rights." This is,
19 basically, indicating that he has -- we have read this.
20 He has read it. He's had a chance to ask us any
21 questions,
22 or clarify anything. And this would be a waiver of these
23 rights that we just went over.

24 It says, I have read the statement of my own rights.
25 And I understand what my rights are. I am willing to make

1 a statement and answer questions. I do not want a lawyer
2 at this time. I understand and know what I'm doing. No
3 promises or threats have been made to me, and no pressure
4 or coercion of any kind has been used against me. And
5 that's initialled right here "DL."

6 Also, the word -- I don't know if you can see it from
7 there, but it -- "coercion" is circled. We do that to go
8 over that word with the person. Coercion, you know, means
9 force, that we're not forcing the person to talk to us, or
10 we're not twisting their arm, or something like that.
11 That's, also, initialled "DL" beneath it.

12 And then the last line, you have the signature line.
13 And it's signed by Daniel Lopez. Over here, you have a
14 witness line that's signed by Investigator Blackburn, his
15 unit number. The second witness line is my signature, my
16 unit number at the time. And then the time is 1604, which
17 would be 6:04 p.m.

18 Q Are you sure about that time?

19 A Oh, excuse me, 4:04 p.m.

20 Q And did you observe Mr. Lopez sign this document?

21 A Yes.

22 MS. MONTIS: Your Honor, we'd move this exhibit,
23 State's Exhibit No. 1, into evidence.

24 THE COURT: All right. Any objection?

25 MR. MACKENZIE: No objection.

1 MR. SCALZO: Subject to my pre-trial motions.

2 THE COURT: Subject to your objection, it's in.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into
4 evidence.)

5 BY MS. MONTIS:

6 Q Officer Maxwell, did Mr. Lopez acknowledge in any
7 manner that he understood his rights?

8 A He did.

9 Q How did he do that?

10 A Well, he told us he understood. He didn't have any
11 questions, or anything like that.

12 Q Did you ask him if he had any questions?

13 A Yes. That's a standard procedure.

14 Q And, please, continue. What did you do after you
15 went over this form with him?

16 A After that, we took a typed statement from Mr. Lopez.
17 That's a -- a statement form that we use. And we, also,
18 went over that with him.

19 MS. MONTIS: I'd like to have this marked.

20 (WHEREUPON, State's Exhibit No. 2 was marked for
21 identification only.)

22 BY MS. MONTIS:

23 Q Officer, I'm going to hand you what's been marked for
24 identification as State's Exhibit No. 2. Can you, please,
25 identify this form?

1 A This is a statement -- this is a copy of the
2 statement that he provided myself and Investigator
3 Blackburn.

4 Q And who typed this form?

5 A Investigator Blackburn would have typed this.

6 Q And where did the information on the form come from?

7 A Mr. Lopez.

8 Q And were you present when that information was given?

9 A That's correct, I was.

10 Q And are there signatures on this form?

11 A Yes, there are.

12 Q Whose signatures?

13 A Again, same format as the waiver of rights. You
14 would have Mr. Lopez's signature here. Also, beneath it,
15 it states, I have received a copy of this statement. His
16 name is there, also. Again, witness block, Investigator
17 Blackburn's signature. And then my signature beneath it.

18 MS. MONTS: Your Honor, we'd move State's Exhibit
19 No. 2 into evidence.

20 MR. MACKENZIE: And I object, Your Honor, based on
21 the reasons stated previously.

22 THE COURT: I understand. Subject to your objection,
23 it's in evidence --

24 MR. SCALZO: And I renew my objection.

25 THE COURT: Put it in.

1 (WHEREUPON, State's Exhibit No. 2 was admitted into
2 evidence.)

3 BY MS. MONTS:

4 Q Officer, can you, please, explain the rights that are
5 at the top of this form?

6 A Yes, ma'am. At the top, you have, State of South
7 Carolina, County of Greenville. Again, the case number.
8 The rights are, basically, what I just read to you and
9 are, also, at the top of this.

10 It states, I, Daniel Jesus Lopez, do hereby give
11 freely and voluntarily this statement to Investigator C.P.
12 Blackburn --

13 THE COURT: You can turn around and read it. You
14 don't have to hold it up.

15 THE WITNESS: Okay. And Investigator J. Maxwell, who
16 have identified themselves to me to be deputies of the
17 Greenville County Sheriff's Office, Greenville, South
18 Carolina. I have, also, been advised that I do not have
19 to make this or any other statement. And that what I say
20 can be used against me in a court of law. I have been
21 advised that I have the right to counsel with an attorney
22 of my choice. If I am financially unable to obtain an
23 attorney, the Court will appoint an attorney to represent
24 me. I have not been threatened or promised any reward to
25 make this statement.

1 BY MS. MONTES:

2 Q And what personal information is there about
3 Mr. Lopez?

4 A Okay. It says, I am 34 years old. And I reside at
5 1202 Summer Ridge Lane, Lawrenceville, Georgia, 30044. I
6 have a 13-grade education. And I can read and write.

7 Q Is the -- are the next three paragraphs information
8 that was given to you and to Investigator Blackburn?

9 A Yes, by Mr. Lopez. That's correct.

10 Q Was -- once this document was typed up and signed --
11 or prior to him signing it, was he given an opportunity to
12 make any changes?

13 A That's correct. We ask them do you want to read over
14 it, make sure that it's true and correct in your words.
15 If you want to make any additions, changes, deletions, let
16 us know at this time and we'll do that.

17 Q And did Mr. Lopez want to make any changes or
18 corrections prior to him signing this document?

19 A No, he did not.

20 Q Please read what the information is in the document.

21 A Okay. It states, I have been living in Atlanta for
22 about four or five years. I met a guy who I'll call
23 Candela about six months ago. Candela is Spanish for
24 flame. Candela is a Dominican, who is about 30 years old.
25 He lives in some apartments in DeKalb County, Georgia, on

1 Chamblee Tucker Road. His apartment is on the third
2 floor.

3 While I was giving this statement, I used a phone and
4 got the following information about where he lives.
5 Candela lives in Apartment ■ in Building ■. I have his
6 cell numbers stored in my cell phone. They are 44 --
7 excuse me, ■ and ■1.

8 Today, Candela called me and told me to come over to
9 his house for a favor. I told him, okay, because I owe
10 him \$300. When I got there, we started talking. And
11 Candela told me that he had three kilos in the apartment.
12 I saw a gallon-size Ziploc bag that was about three
13 quarters full of crack.

14 Candela told me that he wanted me to go to Greenville
15 to deliver something. He handed me a box and a piece of
16 paper with some numbers on the paper. Candela told me to
17 get off at Exit 42-B, to go to the Waffle House, call the
18 numbers, and give the box to the guys I was supposed to
19 meet. Candela told me I was going to follow whoever I was
20 supposed to met and collect the money. Candela told me to
21 come back to his house with the money.

22 When I got into Greenville, the police pulled me over
23 and found the cocaine. I showed them the piece of paper
24 with the names of the people I was supposed to give the
25 box of cocaine to. I told the police that I would call

1 the number and tell him that I was in town and ready to
2 meet. I called and told him that I missed the exit, but
3 would turn around and come back. He told me that he was
4 in a blue truck. And I told him that I was in a white
5 Intrepid. He told me to meet at the Waffle House, and the
6 exit number is 46. So I guess Candela had the wrong exit
7 number.

8 And then beneath that, it says, I have read the above
9 statement of one page and it is true and correct, as best
10 I recall.

11 Q And what took place once you finished this statement
12 and Mr. Lopez signed it?

13 A At that point, we would have turned him over to other
14 deputies to be transported to detention. And I went to
15 assist with the search warrant.

16 Q And where did you go to assist with the search?

17 A I believe it's [REDACTED]

18 Q And who was present when you arrived?

19 A There was already other investigators on the scene,
20 Investigator Rogers, Investigator Moore, Deputy McBee, and
21 Mr. Nelson's stepfather, mother, and invalid brother.

22 Q And did you see this brother in the house? Where was
23 he when you saw him?

24 A I believe he was already in the kitchen area in the
25 wheelchair.

1 Q Can you describe the house?

2 A It's a single-level ranch style house. It's about
3 1,500 square feet. It has a carport off to the side,
4 which is where I entered through. And you went
5 immediately into the kitchen area. There's a bedroom off
6 the kitchen. And then it wraps -- through the kitchen, it
7 wraps around to the living room. If you continue through
8 the living room, there's like a little foyer for the front
9 door. And then there's a hallway that led back into the
10 back part of the house where the bedrooms, and the
11 bathrooms, and that sort of thing would be.

12 Q Do you know if -- was there any rooms right off of
13 the kitchen?

14 A Well, there was the back bedroom where the disabled
15 brother was staying.

16 Q And did you search anywhere in the house?

17 A Yes. I searched the living room, which, basically,
18 was converted into a -- more less a bedroom. There was a
19 bed, basically, in the middle of the living room, clothes,
20 and magazines, and that sort of thing just sort of laying
21 about in the living room like someone had been living
22 there.

23 Q And describe where you searched.

24 A I searched the entire living room. That was the
25 section that had not been covered by the other officers on

1 the scene. And I worked my way -- I started almost like
2 in a clock fashion. I started on one side and worked my
3 way around, and then I sort of went to the middle of the
4 room, which the bed was, basically, in the middle of the
5 room. So that was one of the last things I searched.

6 I looked -- first looking at the bed, I -- there
7 really wasn't anything unusual. Then I think it had
8 some -- a sheet, or a bed spread, or something like
9 someone
10 had been sleeping there. And I moved it and there was a
11 handgun laying on top of the bed.

12 Q Describe how you came across it, please.

13 A Basically, just moving the covers. And that's how I
14 found it. It wasn't readily visible. I mean, you had to
15 remove whatever bedding was on the bed to find it.

16 Q What did you do with it. And what were you supposed
17 to do with anything once you found something?

18 A At that point, I told our -- what we call "scribe."
19 That is the person that, actually, fills out the return
20 section of the search warrant. And, basically, he
21 documents what is found and later a copy of what is found
22 is delivered to the occupants of the house.

23 But I told him I had found a handgun. I took it to
24 him. And he recorded it on the return section of the
25 search warrant.

1 MS. MONTIS: I'd like to have these marked.

2 (WHEREUPON, State's Exhibit Nos. 15, 16, and 17 were
3 marked for identification only.)

4 BY MS. MONTIS:

5 Q Officer, I'm going to hand to you what's been marked
6 for identification as State's Exhibit Nos. 15, 16, and 17.
7 Can you, please, identify these?

8 A This would be the handgun that I found underneath the
9 bed covers in the living room on the bed.

10 MR. SCALZO: Judge, can I get him to tell us what
11 items they're talking about?

12 THE COURT: Sure.

13 Tell him what you're --

14 THE WITNESS: Okay. This is State's Exhibit No. 16,
15 a Taurus pistol. It has a holster, State's Exhibit
16 No. 15. And then when I found the pistol, I checked to
17 see if it was loaded. And it was. And it had five
18 bullets, which are marked State's Exhibit No. 17. It
19 contained five bullets.

20 BY MS. MONTIS:

21 Q Officer, was the gun loaded when you found it?

22 A That's correct. It was.

23 Q And how many bullets does that gun hold?

24 A I believe it holds five. Let me check.

25 It does. It holds five.

1 Q And have you seen this gun since you turned it over
2 to Investigator Rogers?

3 A No, ma'am.

4 Q In the living room, was there any other furniture
5 that you recall?

6 A The living room was cluttered. I'm sure there was
7 furniture. I can't tell you, specifically, what was
8 there. I just remembered it was pretty disorganized,
9 pretty disheveled. Like I said, it looked as if someone
10 was staying in the living room. There was a bed, and
11 clothes, and that sort of thing just laying around like a
12 typical bedroom would be.

13 Q Did you happen to look in any other -- in any of the
14 other bedrooms in the house?

15 A I walked back in the hallway. But, like I said,
16 there were other officers that were already working that
17 area of the house. So I didn't go into those rooms. I
18 just remember the whole back of the house scene was just
19 covered in mold from -- the roof had caved in from an
20 apparent fire in one of the rooms in the back of the
21 house. So the whole back of the house was sort of covered
22 in like a mold.

23 Q Do you know if the room that you saw that in had any
24 furniture?

25 A I don't recall.

1 MS. MONTES: Thank you.

2 I have no further questions.

3 THE COURT: All right. Mr. Mackenzie.

4 MR. MACKENZIE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MACKENZIE:

7 Q Deputy Maxwell, when y'all were at the southern area
8 command, Mr. Lopez, also, gave some verbal -- or oral
9 statements to y'all in addition to his written statement;
10 is that correct?

11 A I don't recall if he did.

12 Q You were not involved in that?

13 A No.

14 Q He had two phones with him; is that correct -- or do
15 you know whether or not he had two telephones?

16 A I don't know. Basically, when I got to him, he'd
17 already been secured. And all his property would have
18 been outside of the room that I was in.

19 Q And in his statement, he says that he is from
20 Georgia; is that correct?

21 A He gave his address at that time as being
22 Lawrenceville, Georgia, yes, sir. That's correct.

23 Q And that he says that Mr. Candela is, also, from
24 Atlanta, Georgia?

25 A Well, he stated that Candela lives in an apartment.

1 Q Okay. He lives in DeKalb County, Georgia, on
2 Chamblee Tucker Road. That's what he said; right?

3 A Yes, sir. That's correct.

4 Q Now, you were not involved with what took place at
5 the Waffle House?

6 A No, sir.

7 Q At the house on Dorchester Boulevard, one of the
8 things y'all were looking for was money; is that correct?

9 A Yes, sir. That would have been typical for a drug
10 investigation.

11 Q But no money was found?

12 A I didn't recover any money.

13 Q Are you aware of any money being found?

14 A There's a lot of things -- there was other
15 investigators there. I can't tell you if there was money
16 that was found or not.

17 Q Okay. The persons present were Mr. Nelson's mother,
18 his stepfather, and his brother; is that correct?

19 A Yes, sir.

20 Q You didn't find any mobile phones in the house, did
21 you?

22 A No, sir.

23 Q You -- the crack was found in the kitchen; is that
24 correct?

25 A Based on prior testimony, I would have to say yes.

1 Although I -- like I said, I didn't -- my area was the
2 living room. So I can't really say what happened in the
3 other parts of the house.

4 Q I believe you stated that you -- when you were in the
5 kitchen, you observed the -- Mr. Nelson's brother in the
6 kitchen; is that right?

7 A I believe he was somewhere, yes, in that area.

8 Q There were items seized by the Sheriff's Office from
9 all throughout the house; is that correct?

10 A That's my understanding, yes.

11 Q That gun, the Taurus revolver, was not submitted for
12 any kind of fingerprint analysis, was it?

13 A Not by me. I don't know from --

14 Q Are you aware of it being subjected to any sort of
15 fingerprint analysis?

16 A No. I'm not aware, no.

17 Q There's nothing illegal about that gun in and of
18 itself, is there? For example, there's no -- the serial
19 number isn't rubbed off or anything like that; is that
20 correct?

21 A That's correct. It's -- nothing as it sits is
22 illegal about it.

23 MR. MACKENZIE: Thank you.

24 That's all I have.

25 THE COURT: Mr. Scalzo.

1 MR. SCALZO: Thank you, Your Honor.

2 Before I start questioning, one thing I'd like to
3 clarify, Judge, State's Exhibit No. 15 was the
4 Defendant -- Mr. Lopez's statement. And I think State's
5 Exhibit No. 15 was marked, also, as the holster. I don't
6 know if I'm confused about that, but that's how I have it
7 in my notes. So I just wanted to point that out for the
8 Court.

9 THE COURT: Well, let's clarify it.

10 MS. MONTIS: Your Honor, the holster is States's
11 Exhibit No. 15. The gun is State's Exhibit No. 16. And
12 the bullets are State's Exhibit No. 17.

13 THE COURT: All right.

14 MR. SCALZO: I just heard them say that the statement
15 was State's Exhibit No. 15. That was right before we did
16 the gun and the holster, Your Honor.

17 THE COURT: What is the statement?

18 MS. MONTIS: State's Exhibit No. 2 is the statement.

19 MR. SCALZO: All right. I'm sorry.

20 THE COURT: Okay. Does that clarify it, Mr. Scalzo?

21 MR. SCALZO: Yes. I'm sorry.

22 CROSS-EXAMINATION

23 BY MR. SCALZO:

24 Q Investigator Blackburn, the first thing I want to ask
25 you --

1 A Maxwell.

2 Q Maxwell, I'm sorry.

3 A Yes, sir.

4 Q Is State's Exhibit No. 1, which you have up there --

5 A Yes, sir.

6 Q -- that's the waiver form --

7 A Yes, sir.

8 Q -- that was talked about?

9 Help me to understand. There's two different times
10 on there. The top right-hand corner, it says, Time 1738,
11 which would be 5:38; right --

12 A That's correct.

13 Q -- in the evening?

14 And then at the bottom left-hand corner is 1604,
15 which you talked about earlier was before. Can you
16 explain what do those two times mean, and what's the
17 discrepancy?

18 A Okay. Basically, the time -- that would be the time
19 that the interview began with the suspect.

20 Q Which one?

21 A At the top.

22 Q At the top right?

23 A Right.

24 Q Okay.

25 A The 1738, down at the bottom would be the time it

1 concluded.

2 Now, as far as -- it's in military time. 1738 would
3 be 5:38 p.m. This down here, actually, should be 1804.
4 Because 1604 would be 4:04 p.m., which, obviously, you saw
5 on the traffic stop this, I think, occurred around 4:00,
6 or 5:00, something like that. So that's a mistake there,
7 basically, a typographical-type error. It should be 1804.

8 Q Okay. Thank you for helping me understand that
9 discrepancy.

10 A Yes, sir.

11 Q Let's talk about the statement and what you were --
12 well, let me back up a little it.

13 Mr. Candela -- and I think that's the only portion
14 where he's named that you have; correct?

15 A Correct.

16 Q He is not here?

17 A Correct.

18 Q You did not investigate a person named Candela, or
19 connect that name with anybody else, did you?

20 A I did not.

21 Q Okay. And I'm not aware of any reports. Are you
22 aware of any reports regarding Mr. Candela in this case,
23 besides this information you've already testified to?

24 A I'm not aware of any, no, sir.

25 Q Okay. And the obvious thing is that Mr. Candela is

1 not going to -- you don't anticipate him coming in to
2 testify what he told Mr. Lopez when they met with each
3 other; right?

4 A As far as my --

5 Q As far as your knowledge.

6 A Well, I have a limited role in this case. So I'm not
7 the case agent. So, you know, I can't really explain, you
8 know, all the in's and out's of the investigation.

9 Q Right. Well, I'm not asking you to explain. I'm
10 just saying, to your knowledge, you don't have any
11 information that anybody has developed information about
12 what Mr. Candela told Mr. Lopez?

13 A No, sir.

14 Q Okay. And that brings me to the statement, which is
15 State's Exhibit No. 2, not State's Exhibit No. 15, but
16 State's Exhibit No. 2. You testified that what
17 Mr. Blackburn typed out, because that's what this is, this
18 is typed out by Deputy Blackburn?

19 A That's correct.

20 Q And this is the only recording of it; correct?

21 A Correct.

22 Q There isn't an audio or a video recording of the
23 conversation between you, Mr. Blackburn, and Mr. Lopez?

24 A That's correct.

25 Q All right. And what is typed by Deputy Blackburn in

1 that second paragraph is that he -- referring to this
2 Candela guy -- handed me -- referring to Mr. Lopez -- a
3 box and a piece of paper; correct?

4 A Correct.

5 Q And the piece of paper had some numbers on it?

6 A Correct.

7 Q And he, basically, tells you that his instruction was
8 to take the box -- and, presumed, the box we're talking
9 about here is this cognac box that's been referred to?

10 A I would have to say yes, that' --

11 Q That was your understanding of what the conversation
12 was?

13 A Correct.

14 Q Okay. The box -- the cognac box, are you aware of
15 any fingerprint analysis, any forensic analysis done to
16 that cognac box?

17 A Again, it's getting a little bit out of the scope of
18 my involvement --

19 Q Well, I'm just asking you what you're aware of. You
20 don't have to tell me what other people know, just what
21 you know.

22 A No, not that I'm aware of.

23 Q Okay. And, based on what you told Mr. Mackenzie,
24 what is typed out here are the words that Mr. Lopez gave
25 to you and Deputy Blackburn, there isn't any supplemental

1 extra words that he verbally gave to you that didn't end
2 up on here --

3 A No, sir.

4 Q -- on this statement; is that correct?

5 A Yes, sir.

6 MR. SCALZO: That's all I have, Judge.

7 THE COURT: Any redirect, Solicitor?

8 MS. MONTES: No, Your Honor.

9 THE COURT: Thank you.

10 You can step down.

11 MS. MONTES: Your Honor, we ask that this witness be
12 excused.

13 THE COURT: Any objection to excusing Mr. Maxwell?

14 MR. MACKENZIE: No, objection.

15 MR. SCALZO: No, sir.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you.

18 MS. MONTES: Your Honor, the State calls Officer
19 Marchi.

20 THE CLERK: Sir, please, place your left hand on the
21 Bible and raise your right hand.

22 WHEREUPON,

23 CHRISTOPHER DOUGLAS MARCHI,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: Investigator Christopher Douglas
4 Marchi.

5 DIRECT EXAMINATION

6 BY MS. MONT'S:

7 Q Investigator, please, tell the jury where you're
8 employed, and how long you've worked there.

9 A Currently, I'm an investigator with the Greenville
10 County Sheriff's Office. I was first hired in 1989. And
11 I have worked continuously with two exceptions of overseas
12 service.

13 Q And, please, explain some of your training and
14 experience in law enforcement.

15 A I've taken numerous classes throughout the years,
16 both in narcotics, patrol, warrant service, technical
17 surveillance, for example, basic and advanced narcotics
18 investigations, various classes over the years.

19 And as far as case wise, I've probably been involved
20 in several hundred drug investigations that would be
21 anywhere between search warrants, surveillance, drug
22 arrests, other types of investigations.

23 Q And were you on duty on January 21st, 2005?

24 A Yes, I was.

25 Q What was your assignment on that afternoon?

1 A I was asked by the supervisor to initiate a follow-up
2 investigation on a drug interdiction stop that occurred on
3 the interstate.

4 Q And what was your first -- where did you first meet
5 and learn about what your assignment was?

6 A I was quickly briefed by the deputies involved in the
7 car stop, Deputy Hines primarily, and McBee. I was
8 introduced to Daniel Lopez.

9 Q Do you recall where that took place?

10 A Down at southern area command.

11 Mr. Lopez -- I was advised that Mr. Lopez was
12 interested in talking to us, assisting us, and, perhaps,
13 continuing the investigation as far as the local drug
14 connection where these drugs that was obtained from the
15 stop were going to.

16 Q And were there any other officers working with you at
17 that time?

18 A The majority of the vice and narcotics investigators,
19 I think, were on duty at that time.

20 Q And did you receive information from Mr. Lopez?

21 A Yes. I did a very brief -- I would say maybe a
22 10-minute verbal interview with Mr. Lopez, basically,
23 getting some quick facts as to who he was, where he was
24 from, where he was going to in Greenville, and primarily
25 where these drugs were supposed to go to.

1 Q And what plan did you make, and what transpired in
2 order to pursue this?

3 A Well, after briefly talking to the officers that were
4 down at southern command, we decided that we would attempt
5 to make a phone call. Mr. Lopez had described to us that
6 he had a telephone number in which he was supposed to call
7 when he got into Greenville County. Once he made that
8 call, he was to meet with an individual who he would turn
9 the drugs over to. And then he would receive a sum of
10 money for that.

11 Q And was all that supposed to take place at one
12 location, or do you know?

13 A He gave me the impression that it would be at one
14 location.

15 Q And, at this point, had you spoken with Investigator
16 Maxwell to find out what information he had received?

17 A Off and on. We were very crunched for time.
18 Mr. Lopez advised us that he was already -- had already --
19 was several minutes late. And he was concerned that if we
20 didn't move quickly or expediently that we possibly could
21 not try to deliver these drugs.

22 So the time was really of the essence. So I was
23 taking most of my information really from him in the
24 verbal interview, and trying to organize the different
25 elements of our unit to try to arrange this meeting.

1 Q And what about the statement in Mr. Lopez's statement
2 that he was supposed to follow whoever he was supposed to
3 meet and go collect the money?

4 A I don't think I learned about that until, perhaps,
5 afterward. A lot of that formal debrief was kind of going
6 on after I had left from southern command.

7 Q Did you pursue having the phone call made?

8 A Yes. We did make the phone call from Mr. Lopez's
9 cell phone.

10 Q And what was Mr. Lopez's cell phone?

11 A His number was a 404 area code number, 513-1345, an
12 Atlanta area code.

13 Q Could that be 2345?

14 A I'm sorry, 2345.

15 Q And what number was he to call?

16 A He gave me a number that -- which was a local
17 Greenville number. And that was area code 864, 303-8568.

18 Q Were you present when this phone call was made?

19 A Yes, I was.

20 Q Please describe what -- was there any other officers
21 present, if you recall?

22 A I know there were some other officers there. I
23 can't, specifically, say who was with me at the time.
24 There was a lot of interaction going on. We were trying
25 to get units out to the area where we hoped that this

1 meeting would take place. So I know there was, at least,
2 one or two, but I can't say who was exactly...

3 Q Was this call recorded?

4 A Yes, it was.

5 Q Did you listen to the call?

6 A I did.

7 Q And where, pursuant to this call, were you supposed
8 to --

9 MR. MACKENZIE: Your Honor, I object to that based on
10 reasons previously stated, Your Honor.

11 THE COURT: On what, sir?

12 MR. MACKENZIE: The recording.

13 THE COURT: I'm not sure I understand your objection.

14 MR. MACKENZIE: It's based on the objection I had
15 made yesterday. I'll be glad to approach.

16 THE COURT: Yes, approach.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: Subject to your objection.

19 MR. MACKENZIE: Thank you, Your Honor.

20 BY MS. MONT'S:

21 Q Investigator Marchi, please, continue. What
22 information did you learn, and what did you do to pursue
23 the information you received from the phone call?

24 A We made the phone call. And Mr. Lopez was talking to
25 an individual trying to explain that -- trying to justify

1 the delay. And he was saying how he had gotten lost on
2 the interstate and missed his exit. And he was trying to
3 come back around.

4 We were trying to arrange a particular spot where we
5 could get both surveillance units and enough units that
6 could do a takedown in the safest possible manner.
7 Eventually, after a little bit of back and forth
8 conversation, from what I recall, it was agreed upon the
9 Waffle House at Augusta Road and I-85 would be the meeting
10 location.

11 Q Do you recall the approximate time of that phone
12 call?

13 A I believe the approximate time was 3:52.

14 Q And what did you do to get his help to do this
15 takedown?

16 A Well, after we made the phone call, I turned
17 Mr. Lopez back over to Investigator Blackburn and Maxwell.
18 I then proceeded to make contact with several other
19 officers to try to get what we call a perimeter team,
20 which would be a team that could both get visual
21 surveillance on a particular location, and be available
22 for the actual arrest.

23 We had multiple units out there. And, also, I had to
24 arrange the marked units. Typically, when you're doing a
25 situation like that, you want to have a marked unit

1 available. So I had coordinated with two of the deputies
2 to arrange that.

3 I, also, had to coordinate with an undercover officer
4 that worked in the unit at the time, Investigator
5 Grounsell, who would, in essence, play the role of
6 Mr. Lopez in this situation. And the reason for that
7 primarily is Mr. Lopez had just been taken into custody.
8 For safety reasons, for fear of possible escape, and that
9 sort of situation, it wasn't the sort of thing I could put
10 him in a car and send him by himself to this meeting
11 location.

12 So we decided that we would ask Investigator
13 Grounsell to pose as Mr. Lopez. And that primarily worked
14 out because Mr. Lopez had stated that these people,
15 supposedly, had never seen him before. So we arranged to
16 have Investigator Grounsell take Mr. Lopez's car and drive
17 to the meeting location.

18 Q Did the person you were going to -- or Mr. Grounsell
19 was going to meet know what vehicle he would be in?

20 A Yes. We did discuss vehicles -- or Mr. Lopez
21 discussed vehicles on the phone and told him what he was
22 driving, the white Intrepid. And he was told that -- by
23 the person on the other end that they would be coming in a
24 dark pickup truck.

25 Q And did you go to the location at the Waffle House?

1 A I did. We arranged several different -- two to three
2 man teams in different vehicles. And we got in areas that
3 we could keep both visual surveillance on the parking lot,
4 but, also, north and south of the location just in case
5 something kind of went mobile and got out of the parking
6 lot. But the plan was to try to keep it contained to the
7 parking lot.

8 Q And is that -- where's the -- what's the address of
9 that Waffle House?

10 A (There was no response.)

11 Q Or what street is it on?

12 A It's on Augusta and 85. I'd have to look to see what
13 the exact number -- it's not in business anymore, though.

14 Q And is that -- I'm sorry. It's not in business
15 anymore?

16 A No, no. The building is still there, but it's not in
17 business.

18 Q And is that in Greenville County?

19 A Yes, it is.

20 Q And what did you observe when you got there, and did
21 you arrive prior or after Investigator Grounsell?

22 A I believe I arrived either at the same time or maybe
23 a few minutes before. My duties, at that time, would be
24 to control the communication amongst the officers to make
25 sure that everyone would be in place, and to call out

1 their positions to make sure that our undercover officer,
2 when he gets in there, is covered properly in case
3 something -- an emergency-type situation were to happen,
4 we could get units to assist him.

5 Q Did you observe any vehicles in the parking lot?

6 A After Investigator Grounsell arrived -- I can't tell
7 you exactly how many minutes it could have been. It
8 seemed like a while. But I'm sure it was probably between
9 five to 10 minutes. There was a dark-colored pickup truck
10 that did pull into the parking lot.

11 Of course, there are a lot of dark-colored pickup
12 trucks. So just because one pulls in, that does not
13 necessarily mean that that's the one we're looking for.
14 But I did try to take note of that pickup truck, because
15 that's the only one that had come in similar to the one we
16 were looking for.

17 Q What did you need besides the description of the
18 vehicle in order to know who you were looking for?

19 A Well, that would have been the tough part. Because
20 we didn't really have a description of the person who
21 would arrive, other than in all probability a male
22 subject. All we knew for sure was that it was probably a
23 male subject, and it was probably going to be a
24 dark-colored pickup truck.

25 Q So what would you need in order to further your

1 investigation?

2 A Well, we were hoping that when the vehicle they were
3 looking for came in that there would be some sort of
4 contact initiated between the individual in the vehicle --
5 or individuals and our undercover officer, who was, again,
6 posing as Mr. Lopez. And we were hoping that because we
7 gave the vehicle description of Mr. Lopez's car -- or he
8 did to the individual.

9 So they should be looking for our guy, just like we
10 would be looking for them. And we were hoping that there
11 would be some sort of interaction to indicate this was the
12 person.

13 Q Did you observe how many people were in that vehicle?

14 A That particular vehicle, there was one person.

15 Q What did you observe them do?

16 A That individual parked the vehicle -- if you're
17 facing the Waffle House, my recollection was he parked on
18 the left-hand side of the parking area. He then went
19 inside, stayed maybe a minute or two. He came back out.
20 He had a -- like a Waffle House plastic bag in his hand.
21 Apparently, he picked something up from there. He came
22 out the front door.

23 And, at that point in time, he just stopped. And I
24 would say it was maybe 10 feet or so in the front door,
25 kind of in the parking area, but going to his vehicle.

1 Once he stopped, he just began looking around, which was
2 somewhat unusual. And I think, at that point in time, is
3 when he saw the white Intrepid.

4 Q And how many surveillance officers were there at this
5 time, if you recall?

6 A I think we had, at least, four mobile units. Those
7 mobile units are individual cars. But they may have
8 contained one to two officers apiece. I know I was with
9 then-Sergeant Burris. And I pretty much had a visual on
10 the parking lot from my position. But there were other
11 units scattered about, two-man teams primarily, plus the
12 marked units that were kind of hidden off.

13 Q And describe what you observed after this person
14 stopped and looked around.

15 A Once he stopped -- and Investigator Grounsell had
16 parked the vehicle he was in more towards the back part of
17 the parking lot. If the building is here, the truck is
18 here, Investigator Grounsell's vehicle is like about here.
19 And, of course, I'm about here. He made some motion with
20 his arm in the direction of Investigator Grounsell.

21 Now, there was some vehicles kind of obstructing my
22 view somewhat. But I could see some sort of arm movement
23 from him towards Investigator Grounsell's direction.

24 Q Did Investigator Grounsell do anything at that time?

25 A He was communicating with us at that time as well.

1 So we had communication between both the mobile units and
2 Investigator Grounsell.

3 Q What is that communication through?

4 A Radio.

5 It was never our intention to let Investigator
6 Grounsell really get one-on-one interaction between the
7 person and him. Investigator Grounsell is not a
8 Hispanic -- of ethnicity. So if he saw Investigator
9 Grounsell, he would know within a few seconds, hey, this
10 is not a guy named Lopez. So we had to make sure that
11 there was not actual close visual contact.

12 So what Investigator Grounsell did, at that time, was
13 to start to back his vehicle up or, at least, have the
14 backing lights on so he would kind of maneuver out in the
15 parking lot giving an indication that he was going to come
16 to him.

17 Q Did you observe the person who got out of the pickup
18 truck get back in the pickup truck?

19 A Once Investigator Grounsell started moving, he went
20 back to the truck, got in the truck. And within probably
21 seconds, he was backing his truck into the parking lot.

22 Q What did he -- what did you and Officer Burris do
23 once you saw this person get back into his pickup truck?

24 A Well, our situation was a little dicey at that point.
25 Because we weren't set up and didn't have the manpower to

1 do a mobile type of surveillance. Mobile surveillance is
2 going to be following the person from point A to point B.
3 There were not enough units really for that. So we knew
4 from the start it'd have to be, basically, an arrest in
5 the parking lot.

6 So, basically, at that point in time, when I was
7 comfortable that this was the individual that was going to
8 meet Investigator Grounsell, posing as Mr. Lopez, that we
9 were going to do the takedown in the parking lot of the
10 Waffle House.

11 Q Was the motioning vivid enough for you to see to
12 determine that this was the correct person?

13 A In my mind, yes. But, also, remember, I was, also,
14 in communication with Investigator Grounsell, who had kind
15 of a better view than I did. He could see straight
16 through the parking area from his vehicle to the truck.
17 So he knew, yes, this man is motioning to me. This man is
18 wanting me to follow him. And he indicated that to me on
19 the radio, which confirmed, basically, what I saw.

20 Q And, please, describe what signal you gave, and what
21 the officers did.

22 A Well, we give a typical takedown signal, which is
23 just verbally on the radio telling units to move in. The
24 key to it is get in there promptly, but get in there
25 safely. Primarily, you need to block the vehicle, which

1 Sergeant Burris and myself had that primary
2 responsibility. Because we were in our -- the biggest
3 vehicle we have, which was a Dodge Ram pickup truck.

4 Q I'm sorry. What?

5 A A Dodge Ram pickup truck is what we were in.

6 And we maneuvered around to the front of the entrance
7 to block that dark pickup truck from, actually, leaving.
8 So we were probably the first unit to maneuver around to
9 that front parking lot.

10 I believe, also, while we were doing that,
11 Investigator Grounsell maneuvered his car towards the back
12 bumper end -- or close to the bumper end of the truck to
13 keep it from backing up. So, in essence, what you have
14 are two blocking vehicles. And then you have the other
15 vehicles coming in to -- as best they can to support the
16 arrest team, which ended up being primarily, I believe,
17 myself, and Deputy McBee, and probably Sergeant Burris.

18 Q Describe what you did, and when you exited your
19 vehicle.

20 A As soon as we maneuvered around and got to the front
21 of the dark pickup truck, I was on the passenger side. So
22 I got out and went to the driver's side, as I recall, of
23 the dark vehicle. I had my service weapon out pointed in
24 the direction of the vehicle. And I ordered the male
25 subject to show his hands, first off.

1 Q Was Investigator -- or excuse me, Officer Wannemacher
2 there as well?

3 A I believe he came in about that same time.

4 Q Okay. Please continue.

5 A And there were other supporting elements, too, at
6 that time. But as soon as I got to the driver's side and
7 opened the door covering the driver, verbally, I ordered
8 him out several times. And it took a few seconds, but he,
9 eventually, did come out of the vehicle.

10 Q Why did you order him several times?

11 A It just seemed to take one or two chops to get the
12 point across to exit the vehicle.

13 Q So, please, continue. After you ordered him out
14 several times, what took place?

15 A We handcuffed the driver. We did a quick pat down
16 for weapons, and then secured him away from the vehicle
17 and more or less got all the cars -- our vehicles off the
18 street and kind of out of the way, so there were no
19 traffic hazards at that point.

20 Q Was there any contact with Investigator Grounsell's
21 vehicle?

22 A I didn't know this until later, but, apparently, when
23 Sargent Burris and I maneuvered to the front, the truck --
24 the driver of the truck put it in reverse, whether that
25 was a -- what his frame of mind was, at that point, I

1 can't say. But he did put it in reverse and ended up
2 ramming into the front of the Dodge Intrepid.

3 Q Do you know where Investigator Grounsell was when you
4 got the driver out of the pickup?

5 A No. I really can't say. There was quite a few
6 people around. And I'm sure he was probably more out of
7 the way. That would be the standard way that an
8 undercover officer would react would be to -- more to exit
9 the scene. He's not marked. There's no Sheriff's Office
10 clothing on the undercover officer, whereas all the other
11 officers are either going to be uniform officers, or are
12 going to have some marking on us.

13 So to avoid the possibility of friendly on friendly,
14 you get the UC officer out --

15 Q What do you mean "friendly on friendly"?

16 A Well, mistaking someone who's not marked as a
17 Sheriff's Office deputy as some sort of aggressor. In the
18 confusion of an arrest like that, that could happen. So
19 the undercover officer is naturally going to try to exit
20 out of the scene so he doesn't get wrapped up in that.

21 Q And are you talking about gun fire?

22 A Well, it could be all sorts of situations. It --
23 there have been cases of gunfire in those sort of
24 situations. There have been cases of uses of force, be it
25 handcuffing, throwing down on the ground, just different

1 things. You just try to avoid it.

2 Q And, please, describe, were there any blue lights?

3 A Yes. We had two vehicles with blue lights, to the
4 best of my recollection. One was a marked vehicle. And I
5 believe that was Deputy Wannemacher's vehicle. And the
6 other vehicle was, I believe, Deputy McBee's, which was an
7 unmarked patrol vehicle. But it did have blue lights and
8 siren.

9 Q Please continue. Where did you go once you had the
10 person exit the vehicle?

11 A I then took the driver kind of off to the side just
12 away from his vehicle. I gave a quick verbal Miranda.
13 And, at that point, I asked him if he wanted to speak to
14 us about the situation that we were in with him. He
15 immediately said, no, he didn't want to talk to us. So
16 that more or less ended the interaction I had with him as
17 far as speaking to him.

18 Q What steps did you take to identify who this person
19 was?

20 A I was able to find a wallet that the driver had on
21 his person. He had a driver's license with a name and an
22 address on it, as well as some other -- I'm sure other
23 forms of identification. But the driver's license was the
24 primarily thing I was, initially, looking for.

25 Q You said his driver's license and there were other

1 forms of --

2 A I think he had like bank cards, and things like that.

3 Q Was there a picture on the driver's license?

4 A Yes, there was.

5 Q Did you compare it to the person?

6 A Yes, I did.

7 Q Was it the same individual?

8 A It was.

9 Q And what was the name and the address on the driver's
10 license?

11 A The name was Octavius Nelson, and an address of 226
12 West Dorchester, which is in Greenville.

13 Q Was a tag -- was the tag on the pickup truck run?

14 A Yes. I'll have to refer to my notes on the tag. But
15 it was checked. And it did come back to the same address
16 on the license. I believe the tag was -- it was a Ford
17 Ranger pickup truck with a tag of 822 RRB.

18 Q Was Octavius Nelson arrested at that time?

19 A, Yes, he was.

20 Q And is the person that was in that pickup truck that
21 was arrested at that time in the courtroom today?

22 A Yes, he is.

23 Q Where is he seated?

24 A The Defendant.

25 Q Did he have a cell phone on his person?

1 A Yes.

2 Q Did you take possession of that?

3 A I did take possession of it.

4 Q What was the number on that phone?

5 A The number was a local number with an 864 area code.

6 And it was 303-8566.

7 Q What did you do with that phone once you took
8 possession of it?

9 A It remained in custody with us.

10 Q And did you look in that phone?

11 A Yes. On scene of the arrest, I did look in the
12 phone.

13 Q And did you get some information off the phone?

14 A Yes. Typically, most mobile phones are going to have
15 an address book, recent calls. Some phones will have sort
16 of direct-connect communication, depending on what kind of
17 phone it is. And it's sort of like -- the phone is like a
18 walkie talkie of sorts, text messages, different things
19 like that is what I would, typically, look for.

20 Q And during this -- during the arrest of Mr. Nelson,
21 was there a direct-connect attempt made?

22 MR. MACKENZIE: Your Honor, I'm going to object. I
23 don't know that this witness is qualified to answer these
24 types of questions.

25 THE COURT: What's your question?

1 MS. MONTS: Your Honor, whether there was --
2 whether -- when the officer was looking in the phone after
3 the Defendant's arrest, whether there was a direct-connect
4 attempt made to the cell phone while the Defendant was
5 being arrested.

6 THE COURT: I'll allow that.

7 Go ahead.

8 THE WITNESS: Yes, there was.

9 BY MS. MONTS:

10 Q And what was the number from that direct-connect
11 attempt?

12 MR. SCALZO: I'm going to object, Your Honor. It
13 sounds like hearsay to me. He's reading off of something
14 that's not in evidence. He's trying to give testimony
15 about what it is.

16 THE COURT: No. I'll allow that.

17 Go ahead.

18 THE WITNESS: The direct connect was made at 4:56.
19 And it was to the phone that we, actually, called prior to
20 the operation.

21 BY MS. MONTS:

22 Q And what was that number?

23 A The area code was 864, 303-8568.

24 Q And the call -- the direct-connect attempt was from
25 that phone to the phone in Mr. Nelson's possession; is

1 that correct?

2 A That's correct.

3 MS. MONTS: I'd like to have this marked.

4 (WHEREUPON, State's Exhibit No. 18 was marked for
5 identification only.)

6 BY MS. MONTS:

7 Q Officer, I'm going to hand you what's been marked for
8 identification as State's Exhibit No. 18. Can you
9 identify this?

10 A Yes. It's the phone I took off of the Defendant
11 after his arrest.

12 Q Did you have it in your custody for sometime?

13 A I did.

14 Q Did you, subsequently, turn it into the property and
15 evidence room?

16 A Yes, ma'am.

17 Q And did you pick it up and bring it to court today?

18 A I did.

19 MS. MONTS: Your Honor, we'd move the telephone into
20 evidence at this time.

21 THE COURT: Any objection?

22 MR. MACKENZIE: No objection.

23 THE COURT: Put it in.

24 (WHEREUPON, State's Exhibit No. 18 was admitted into
25 evidence.)

1 BY MS. MONT'S:

2 Q Officer, once you had the phone in your custody, did
3 you, subsequently, get subscriber information for the
4 phone?

5 A I did.

6 MS. MONT'S: Your Honor, Mr. Mackenzie and I have a
7 stipulation that we'd like to enter.

8 THE COURT: All right. Are you going to read it?

9 MS. MONT'S: Yes, Your Honor.

10 Your Honor, regarding cell phone numbers 864-303-8566
11 and 864-303-8568, it is stipulated by Defense Counsel Drew
12 Mackenzie and Assistant Solicitor Joyce Monts that the
13 authenticity of the cell phone records, and the owner of
14 the accounts being Octavius Louis Nelson is established.
15 The testimony of the custodian of records from the cell
16 phone company will not be required.

17 And we'd move this into evidence.

18 THE COURT: Yes.

19 (WHEREUPON, State's Exhibit No. 19 was marked for
20 identification and admitted into evidence.)

21 (WHEREUPON, State's Exhibit No. 20 was marked for
22 identification only.)

23 BY MS. MONT'S:

24 Q Officer, I'm handing you State's Exhibit No. 20. Can
25 you, please, identify this?

1 A Yes, ma'am. This is Sprint subscriber information.

2 Q Did you obtain this?

3 A Yes, ma'am.

4 MS. MONTIS: Your Honor, we'd move this into evidence
5 at this time.

6 THE COURT: All right. It's in evidence.

7 (WHEREUPON, State's Exhibit No. 20 was admitted into
8 evidence.)

9 BY MS. MONTIS:

10 Q Can you, please, identify the owner of the phone
11 numbers, and the addresses?

12 A Both numbers, the numbers that we read out earlier
13 came back to Octavius Nelson, [REDACTED]
14 Boulevard in Greenville. And the account establish date
15 was 12/17/2004.

16 Q Officer, what did you do after Mr. Nelson was
17 arrested at the Waffle House?

18 A As to my recollection, I believe I had one or two
19 officers secure Mr. Nelson. And then I went over to the
20 home address. Prior to that, I asked a couple other
21 officers to go ahead and go to the Dorchester Boulevard
22 address and try to make contact with somebody there.

23 Q Is the Waffle House and the Dorchester address, [REDACTED]
24 [REDACTED] in Greenville County?

25 A Yes, ma'am, it is.

1 Q What did you observe when you got to the residence?

2 A Two or three of our officers had already made contact
3 with some -- what we later found out to be family members
4 of Mr. Nelson, and had obtained a consent to search of the
5 residence. And we were in the process of trying to
6 organize a search team to make a search of the house.

7 Q And once you got there, what was your role?

8 A Primarily, at that point, I just assisted in the
9 search of the residence.

10 Q Please describe the house.

11 A Ranch style, probably mid-size, 1,300 to 1,500 square
12 feet. Typical layout of a ranch style house. It had an
13 open garage, kitchen, living room, and some bedrooms.

14 Q What did you observe about the rooms in the house?

15 A When I went into the kitchen, I noticed there was a
16 room off to the side of the kitchen. It may have been a
17 converted room into a bedroom. There was, also, a living
18 room that appeared to be -- someone was, actually,
19 sleeping in there like a bed made up in the living room.

20 There was, also, two other bedrooms to the far part
21 of the house. One, apparently, had been occupied, but it
22 was quite obvious no one was living in there at that point
23 in time, because of some -- apparently, there had been a
24 fire at some point. And you could, actually, see a fairly
25 large hole in the roof. So it was quite clear it was not

1 really habitable, that room.

2 Q Was there any furniture in that room?

3 A Yes. Chest of drawers, the typical type of things
4 that a bedroom would have if you live in it, but, of
5 course, no one did.

6 Q Can you describe the living room area?

7 A It was a small living room, kind of a bed-couch type
8 combination, clothing, magazines kind of all spread out.
9 I want to say there was a -- some end tables and a TV in
10 the living room.

11 Q Did you notice anything on the TV?

12 A Yes. There was a note on the TV about this wide, and
13 yeah tall taped to the television with some handwriting on
14 it.

15 MS. MONT'S: I'd like to have this marked.

16 (WHEREUPON, State's Exhibit No. 21 was marked for
17 identification only.)

18 BY MS. MONT'S:

19 Q Investigator, I'm going to hand you what's been
20 marked as State's Exhibit No. 21 for identification. Can
21 you, please, tell the jury what this is?

22 A This was the handwritten note that I just described
23 to you that was on the TV.

24 Q And did you take custody of this form?

25 A I did.

1 Q And, at some point, did you turn it into property and
2 evidence?

3 A I did.

4 Q And did you bring it to court today?

5 A Yes.

6 MS. MONT'S: Your Honor, we'd move State's Exhibit
7 No. 21 into evidence.

8 THE COURT: Any objection?

9 MR. MACKENZIE: No objection.

10 (WHEREUPON, State's Exhibit No. 21 was admitted into
11 evidence.)

12 BY MS. MONT'S:

13 Q Officer, please, publish the note.

14 A It says, Mom and Charles, I'm taping the fight on
15 HBO, love Tay, spelled T-A-Y. I'm going to check on
16 junior and senior. And it is handwritten on the paper.

17 Q What else did you observe about the room, or what
18 else did you, perhaps, find?

19 A I believe I found some Pyrex mixing cups, a box of
20 baking soda, kind of a fork -- like a typical fork that
21 you would use to eat with, and two scales. I mean, that
22 was from the -- what I call the bedroom, the burnt out
23 looking bedroom.

24 MS. MONT'S: I'd like to have this marked.

25

1 (WHEREUPON, State's Exhibit No. 22 was marked for
2 identification only.)

3 BY MS. MONTIS:

4 Q Officer, I'm going to hand you what's been marked as
5 State's Exhibit No. 22. Can you identify these?

6 A Yes, ma'am. These are the two scales, the Pyrex cup,
7 the baking soda, and the fork.

8 Q And describe where you found these.

9 A I believe they were in the closet that was in the
10 bedroom. To the best of my recollection, the closet was
11 pretty full. So it was, I think, on top of a -- the top
12 portion of the closet on a shelf.

13 Q I'm sorry. I can't hear you.

14 A To the best of my recollection, it was like on a top
15 portion of the closet on a -- like a closet shelf.

16 Q And which bedroom is this?

17 A That would be the burnt out looking bedroom.

18 Q Was there any possibility someone was living in that
19 room?

20 A Could someone be living in it? Of course,
21 physically, yes. But I very much doubt it. It didn't
22 look to have been lived in for quite sometime.

23 Q And what about the hole in the roof?

24 A My recollection was it was pretty large. If it was
25 raining, you wouldn't want to be in there for too long.

1 Q Did you find anything else around the house?

2 A Various paperwork, different things that I kind of
3 took note of, primarily paperwork that would be connected
4 to Mr. Nelson.

5 MS. MONTES: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 23 was marked for
7 identification only.)

8 THE COURT: Take the jury out for a recess.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 3:34 p.m.)

11 THE COURT: All right. We'll take a short recess.

12 (WHEREUPON, a break was taken.)

13 THE COURT: I've got a note here from Teresa Sanders,
14 who's one of our jurors. And she says, I'm a close friend
15 with Charlie Blackburn's mother.

16 He's not listed as a witness. I think his name was
17 mentioned.

18 MS. MONTES: That's right, Your Honor. He was an
19 officer who used to work at the Sheriff's Office, who
20 was -- who helped get the statement, Lopez's statement.

21 THE COURT: I understand. I'm going to bring her out
22 and see if that presents any problem.

23 Bring Ms. Sanders out for me.

24 (WHEREUPON, Juror #231, Teresa Sanders, entered the
25 courtroom.)

1 (WHEREUPON, the jury came into open court at
2 approximately 3:50 p.m.)

3 THE COURT: Solicitor, you may proceed.

4 BY MS. MONTS:

5 Q We were talking about what was in the -- what you
6 found in the house. I'm going to hand you State's Exhibit
7 No. 23. Can you tell me what this is?

8 A Yes, ma'am. This was the paperwork that I referenced
9 to that was throughout the house in different locations.

10 Q Can you, please, describe what the item is?

11 A The first piece of paperwork is an envelope with a
12 letter. It's addressed to a Tay Nelson, [REDACTED]
13 [REDACTED], Greenville, South Carolina, from a
14 Cory Shell with a Spartanburg address.

15 The second item is a BB&T bank balance sheet with the
16 name Octavius Nelson with a P.O. Box 6935 in Greenville.
17 The statement date is 12/26/01.

18 Q And, if you could, speak up just a little bit,
19 please.

20 A I'm sorry. The statement date was 12/26/01.

21 The next is a balance sheet from Wachovia Securities
22 in the name of Octavius Nelson with a P.O. box of 6935 in
23 Greenville. No date from what I can tell on this one.

24 Next piece of paper is a State of South Carolina
25 Employment Security Commission questionnaire, I believe,

1 with the name of Octavius L. Nelson, [REDACTED]
2 [REDACTED] in Greenville.

3 The next piece of paper is handwritten. And it
4 states, Your P.O. box rent is past due. Mail will be
5 returned on 6/10/96. And there's some handwritten notes,
6 phone numbers, first names on the back of this piece of
7 paper.

8 The last thing is an envelope from State Farm
9 Insurance. And it is addressed to Octavius L. Nelson, [REDACTED]
10 [REDACTED] in Greenville. In it, it has
11 State Farm Mutual automobile insurance company paperwork
12 with the name Octavius L. Nelson and an account number,
13 and, I believe, \$54.90 due.

14 Q Did you take custody of these items?

15 A Yes, ma'am.

16 Q And did you, subsequently, turn them into the
17 property and evidence room at the law enforcement
18 center?

19 A I did.

20 Q And did you bring them to court today?

21 A I did.

22 MS. MONTS: Your Honor, we'd move State's Exhibit
23 No. 23 into evidence at this time.

24 THE COURT: Any objection?

25 MR. MACKENZIE: There's no objection.

1 (WHEREUPON, State's Exhibit No. 23 was admitted into
2 evidence.)

3 BY MS. MONTIS:

4 Q Investigator, did you take custody -- excuse me, did
5 you bring items to court with you today?

6 A I did.

7 Q Can you, please, describe where you went to get the
8 items to bring to court today?

9 A This morning, I went to the law enforcement center
10 off of 4 McGee Street, and went to the property and
11 evidence room, which is in the downstairs part of the LEC,
12 and met with the property and evidence clerks.

13 Q And describe the procedure for checking items in and
14 out there, please.

15 A Every item that goes in has a -- what they call a P&E
16 sheet where the chain of custody is and a description of
17 the item. And it's identified by case number and other
18 such things. But on the bottom of that sheet is a
19 sign-off portion where if I were to put something in or
20 pick up something for court or for examination, different
21 things, then I would, actually, print my name, and sign
22 it, put why I'm taking it and the date and time.

23 Q And who has access to this property and evidence
24 room?

25 A Certified law enforcement officers will meet with the

1 property and evidence technicians, three or four, on any
2 given first or second shift that, actually, work down
3 there. To go in there, since it's a secured facility,
4 you, actually, have to get with whatever evidence clerk is
5 on duty and sign a sign-in sheet.

6 But, normally, you don't even go in. You just go to
7 the window and tell them what you're there for. And for
8 court, for example, they will review all the evidence
9 that's under my case number -- under the case number of
10 this case. And they'll pull all the evidence associated
11 with that case number and bring it to me. I'll then
12 review the P&E sheets item by item. I sign for it. I
13 take the P&E sheets and the evidence, take it to court
14 and, of course, I will bring it back and sign it back in.

15 Q And did you, in fact, bring every item regarding this
16 case to court today?

17 A Yes, ma'am. Every item in P&E associated with this
18 case is here.

19 MS. MONTES: Thank you.

20 No further questions.

21 THE COURT: Mr. Mackenzie.

22 MR. MACKENZIE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MACKENZIE:

25 Q Deputy Marchi, there's a stipulation regarding the

1 phone records, and you've already testified to -- can you
2 identify these two documents?

3 MR. MACKENZIE: I'm sorry. Let me have them marked
4 for identification.

5 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
6 marked for identification only.)

7 BY MR. MACKENZIE:

8 Q These are Defendant's Exhibit Nos. 1 and 2. Could
9 you identify those for us?

10 A Yes, sir. These are phone totals to two separate
11 numbers, I believe.

12 Q Are they telephone records?

13 A Yes, sir, they are.

14 Q From phone numbers 864-303-8566 and 8568?

15 A That would be correct.

16 MR. MACKENZIE: I'd like to move those into evidence
17 at this time.

18 THE COURT: Any objection?

19 MS. MONTS: No, Your Honor.

20 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
21 admitted into evidence.)

22 BY MR. MACKENZIE:

23 Q I want to take you back, first of all, to the -- what
24 was going on at this southern area command. You talked
25 about Mr. Lopez and his cooperation. He made some verbal

1 statements to you before or approximately at the same time
2 that he gave his written statement; is that correct?

3 A That would be correct.

4 Q And isn't it true that he told you that he was going
5 to purchase the drugs for \$10,500?

6 A Well, I wouldn't say -- quite put it that way. From
7 my recollection, it was --

8 THE COURT: Can you pull a little closer to the
9 microphone, please?

10 THE WITNESS: My recollection was that he was to
11 deliver a half kilo, and then pick up money and take it
12 back to someone in Atlanta.

13 BY MR. MACKENZIE:

14 Q I'm not asking you who he was buying it from -- or,
15 excuse me, who he was selling it to. But what I'm asking
16 you is, he gave you a figure on the purchase price for the
17 powder cocaine, didn't he?

18 A Yes, sir, he did.

19 Q And what was that figure?

20 A \$10,500.

21 Q Thank you.

22 Now, Mr. Lopez had two telephones; is that correct --
23 I mean, excuse me -- yes. Mr. Lopez had two telephones;
24 is that correct?

25 A I only recall one, but he could very well have two.

1 Q Okay. At the Waffle House, are you saying that
2 Mr. Nelson arrived at about 4:45 p.m.? Is that correct?

3 A Mr. Nelson didn't go to -- I'm sorry. I believe we
4 had Mr. Nelson in custody at 4:45. So I would guess that
5 he probably arrived at about 4:39, 4:40, somewhere like
6 that.

7 Q And he went -- when he got there, he went inside and
8 got some to go -- a to-go box and a cup; is that right?

9 A I just remember something in a Waffle House bag. I'm
10 assuming it was food.

11 Q Now, he never came over and, actually, spoke to
12 Investigator Grounsell in any way?

13 A No. He did not speak to him.

14 Q He did not come over and shake his hand and say, how
15 are you doing, I haven't seen you in a long time?

16 A No. He did not do that.

17 Q The cars that moved in to intercept Mr. Nelson, those
18 were unmarked cars, weren't they?

19 A Well, it was really a mix of unmarked, and one marked
20 car, and one car that had blue lights, but was not marked.

21 Q Where was the marked car?

22 A To the best of my recollection, I believe the marked
23 car, perhaps, was somewhere near the Holiday Inn. I'm
24 working off of memory. But if you can think where the
25 Waffle House is right on Augusta Road, the interstate

1 being north, the Holiday Inn is a fairly large portion of
2 that intersection.

3 So I could be mistaken. But, for some reason, I'm
4 thinking they were kind of back in there kind of out of
5 sight..

6 Q Okay. I mean, normally, you wouldn't use a marked
7 car in an undercover operation?

8 A In a takedown, yes, you would. In a physical arrest,
9 you would -- if you could have a marked car.

10 Q But this car wasn't, actually, involved with the
11 takedown itself. It was over in another location nearby.

12 Is that what you're saying?

13 A I'm not quite sure I understand what the question is.

14 Q How far away was the marked car?

15 A Maybe 500 yards, give or take. It was within
16 response-time distance.

17 Q Okay. And then you said that Mr. Nelson was arrested
18 promptly; is that correct?

19 A He was promptly taken into custody, yes, sir.

20 Q Now, there was something about the car had backed up,
21 but there was no damage done to any of the cars; is that
22 correct?

23 A I don't recall any significant damage to the cars,
24 no.

25 Q When Mr. Nelson was arrested, he was searched; is

1 that correct?

2 A A search incident to arrest, yes, sir.

3 Q He did not have a gun, did he?

4 A I don't recall him having a gun on his person, no.

5 Q He did not have any drugs on his person either, did
6 he?

7 A Not on his person.

8 Q He didn't have any money on him either?

9 A No, not on his person.

10 Q His truck was searched; is that correct?

11 A Yes.

12 Q There was no gun in the truck?

13 A Not to my recollection.

14 Q There were no drugs in the truck?

15 A There may have been some prescription medications.

16 Q All right. Well, you did not testify to that
17 earlier, did you?

18 A I haven't testified at all as far as the car stop.
19 What was found in the car, I haven't testified to at all.

20 Q Up to this point, we have not heard anything about
21 any drugs in the truck, have we?

22 A No. I have not testified previous to that.

23 Q There was no \$10,000 in the truck either, was there?

24 A No, there was not.

25 Q Okay. The one phone that's in evidence, that's the

1 one that ends 8566; is that correct?

2 A Yes.

3 Q The one ending 8568 was never recovered, was it?

4 A No. It was not recovered.

5 Q You went to [REDACTED] based on
6 the address on the license?

7 A Correct.

8 Q That was the only basis for going to that address; is
9 that correct?

10 A Correct.

11 Q One of the things you were looking for on Dorchester
12 Boulevard was the money; isn't that correct?

13 A That would be correct.

14 Q The money was never found?

15 A Correct.

16 Q The owners of that house, [REDACTED]
17 Boulevard, were Kathleen and Charles Burns -- Kathleen
18 Nelson and Charles Burns; is that correct?

19 A I believe so, yes.

20 Q That is Mr. Nelson's mother and stepfather; correct?

21 A I believe so, yes.

22 Q Mr. Nelson was not the legal owner of that house, was
23 he?

24 A When you say "legal owner," the one paying the
25 mortgage?

1 Q Yes.

2 A I've never seen anything indicating that he paid any
3 mortgage or owned the house, no.

4 Q Kathleen, his mother, was, also, the owner of that
5 blue truck, wasn't she?

6 A My recollection is that the vehicle was registered to
7 a Charles Burns, I believe.

8 Q It was not registered to Octavius Nelson, was it?

9 A No, it was not.

10 Q The persons present at the house were the mother, the
11 stepfather, and the brother; is that correct?

12 A I believe so, yes.

13 Q And you testified that there was only one real
14 bedroom -- working bedroom, actual bedroom. And then
15 there was another bed it looked like set up in the living
16 room; is that correct?

17 A Well, there were -- you'd probably say two working
18 bedrooms. Because one room, I think, off the kitchen was
19 kind of converted into some sort of bedroom of sorts, I
20 think. And then you had another bedroom on the other side
21 of the house. And then you had the burned out room, to
22 the best of my recollection, and, of course, the living
23 room that was converted.

24 Q So how many bedrooms did you have that, actually,
25 looked like they were being used?

1 A Probably two.

2 Q Two, but maybe one is what you're saying?

3 A Well, I would say probably two.

4 Q Okay. It appeared when y'all got there that the
5 brother lived in that house?

6 A Yes. It appeared to me that he did.

7 Q Now, when y'all obtained search to consent -- consent
8 to search the house, you did not ask Octavius Nelson for
9 his consent to search the house, did you?

10 A No, I did not.

11 Q The hard rock-like substance was found in the
12 kitchen; is that correct?

13 A I believe it was. I'll refer to the supplemental.

14 Yes, sir.

15 Q But there were -- the items that were seized from the
16 house were found all throughout the house; is that
17 correct?

18 A That would be reasonable to say.

19 MR. MACKENZIE: Thank you.

20 That's all I have.

21 THE COURT: All right. Mr. Scalzo.

22 MR. SCALZO: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SCALZO:

25 Q Investigator Marchi, I've got to get you all the way

1 back to -- it's been a while since you got on the stand --

2 A That's all right.

3 Q -- the first -- when you first got up on the stand,
4 you were describing your role. Do you remember that?

5 A Yes.

6 Q And I think you described that you were assigned to
7 do some follow-up investigation to Deputy Hines' original
8 stop?

9 A That would be correct.

10 Q Okay. And what it sounded like from your
11 description -- and tell me if I'm wrong -- but it sounded
12 like from your description was you became sort of the lead
13 investigator kind of putting all these pieces together
14 for, at least, this set up for the exchange of the
15 cocaine, and the money, and, ultimately, the takedown, and
16 the search. It sounds like you were kind of coordinating
17 a lot of what was going on. Is that fair to say?

18 A That would be fair to say.

19 Q Okay. And let's get a little bit back to kind of the
20 time line about what things -- when things were happening.
21 You were describing, when Ms. Monts was questioning you,
22 that you were trying to put together the contact with the
23 buyer, and you were trying to put together a team that
24 could pose as Mr. Lopez to complete the transaction?

25 A Yes, sir.

1 Q Okay. And that develops right on the heels of Deputy
2 Hines and Deputy McBee taking Mr. Lopez into custody?

3 A That would be correct.

4 Q All right. And I think you had said that you were
5 working under a time crunch. That was the term that you
6 used.

7 A That would be correct.

8 Q And that was because Mr. Lopez was indicating that,
9 hey, the person is waiting on me and it's been a while
10 since he's been waiting?

11 A Yes. And there was, also, the other person in
12 Atlanta that was, we thought, possibly being in contact
13 with the person in Greenville. And if -- that person in
14 Atlanta, obviously, could estimate the time of travel.
15 And if there was a significant delay, there could be some
16 phone calls made.

17 Q And so, at that stage, you were very concerned about
18 timing and making sure the timing didn't get away from you
19 and kind of blow what was about to happen?

20 A That would be correct.

21 Q All right. And when you were having your
22 conversation with Mr. Lopez, this is during that kind of
23 time crunch; right?

24 A Yes, sir, down at southern command.

25 Q And so this isn't really like a debriefing of him.

1 This is, look, give me the quick skinny. Who am I
2 supposed to meet with? Where am I supposed to go? Give
3 me the kind of quick background about what's going on
4 here; isn't that right?

5 A That would be fair to say. But, at the same time, we
6 did have other officers assigned to a more formal
7 debriefing to give us a little more detail, historically
8 speaking --

9 Q Right. But I'm talking about your conversation with
10 Mr. Lopez --

11 A Yes.

12 Q -- specifically, at that time crunch period that
13 we're talking about?

14 A That would be correct.

15 Q Okay. And it would be fair to say, because of that
16 time crunch, you weren't really trying to figure out all
17 the details about how it developed between this Candela
18 guy and Mr. Lopez. All the details of what happened, at
19 that point, weren't as important as finding out, where am
20 I supposed to go to meet this person, who am I supposed to
21 meet. The real important thing was that at that point?

22 A The local connection was our immediate concern at
23 that time.

24 Q At that particular point?

25 A Correct.

1 Q And this takes place -- this quick conversation
2 between you and Mr. Lopez takes place before he meets with
3 Investigator Maxwell for his formal statement? Let me --

4 A My recollection was that, yes, I did my quick debrief
5 before. And then as -- and it may have been kind of
6 intermixed possibly, but I think it was more before.

7 Q Well, I think you were just testifying when
8 Mr. Mackenzie was questioning you about the timing of when
9 you, actually, arrested Mr. Nelson and you did that
10 takedown. And, one, you testified on direct with the
11 State that the phone call that you got Mr. Lopez to make
12 was about 3:52 p.m., I think was the time that you gave
13 us?

14 A About that, yes.

15 Q And I'm looking in my notes to see when -- if you
16 gave a time for when you, actually, did the arrest -- or
17 conducted the arrest of Mr. Nelson. Do you know what time
18 that was?

19 A I think we physically took him into custody at about
20 4:45.

21 Q Okay. And I don't know if State's Exhibit No. 1 is
22 up here. It looks like every other piece of evidence is
23 up here. Yes, here it is.

24 If you look at State's Exhibit No. 1, again,
25 Investigator Maxwell talked about the times on that form?

1 A Yes, sir.

2 Q And you're familiar with this kind of form, you've
3 used it before?

4 A I am familiar.

5 Q And 1738 at the top-right corner, he indicated that
6 would have been when they started their interview?

7 A Well, it could be -- I didn't write it, so I can't
8 say for certain.

9 Q Right. I understand.

10 A But it could either be, actually, flip flopping the
11 start and end times. 1604 could have been the start time,
12 and 1738 could have been the end time. But I'm
13 speculating on that.

14 Q Okay. But if you take what Deputy Maxwell said,
15 which was he had said he believed it started at 1738, and
16 he thought that 1604 really should have been 1804 -- that
17 was what he testified to.

18 A It's altogether possible.

19 Q Okay. My point being is that the more detailed
20 "debriefing" of Mr. Lopez really takes place after you get
21 the real skinny from him about who you're supposed to meet
22 and what you're supposed to do?

23 A It's very possible.

24 Q Okay. And in your follow-up investigation either
25 that day or even since, you have not had contact with a

1 person that you believe to be Candela, or the person that
2 is Candela -- or Candela?

3 A No, I have not.

4 MR. SCALZO: That's all I have, Judge.

5 THE COURT: Any redirect?

6 MS. MONTS: No, Your Honor.

7 THE COURT: Thank you.

8 Step down.

9 MS. MONTS: The State calls Keith Grounsell.
10 May we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held.)

13 THE CLERK: Sir, if you'll, please, place your left
14 hand on the Bible and raise your right hand.

15 WHEREUPON,

16 KEITH PHILLIPS GROUNSELL,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 Please state your full name for the record.

21 THE WITNESS: Keith Phillips Grounsell.

22 DIRECT EXAMINATION

23 BY MS. MONTS:

24 Q Mr. Grounsell, please, tell the jury your background
25 in law enforcement.

1 A My name is Keith Phillips Grounsell. I've been in
2 law enforcement since 1998. Prior to law enforcement, I
3 received my bachelor of science degree from Lander
4 University, sociology with an emphasis in criminal justice
5 was the degree name.

6 From there, I went to the South Carolina Criminal
7 Justice Academy in 1998. I graduated from the nine-week
8 academy and received 394 hours of general training at the
9 police academy there in Columbia, South Carolina.

10 From there, I was a police officer at Mauldin City
11 Police Department. I spent three years with the Mauldin
12 City Police Department.

13 And from there, I left the Mauldin City Police
14 Department in 2001, and was employed with the Greenville
15 City Police Department. From day one with the Greenville
16 City Police Department, my primary responsibility was to
17 work undercover. I started working undercover narcotics.
18 And I spent approximately one year with the Greenville
19 City Police Department before I went to the Sheriff's
20 Office.

21 Once I was at the Sheriff's Office, within six
22 months, I was promoted into the position of narcotics
23 investigator. I spent approximately three years working
24 narcotics investigations. The primary emphasis was
25 undercover narcotics.

1 In 2005, I left the Sheriff's Office and was employed
2 with the Drug Enforcement Administration as a special
3 agent with the DEA. And I was stationed in Garden City,
4 Kansas. I spent a couple years there working cases --
5 undercover cases, again, Title 3 investigations, which are
6 federal wire taps and other conspiracy cases with the Drug
7 Enforcement Administration.

8 And then I resigned my position there and have been
9 currently in Afghanistan for the last two years. I'm,
10 currently, back home on workman's comp from an injury I
11 received over in Afghanistan.

12 Q And what are your duties over in Afghanistan?

13 A I was a supervisor. Initially, I was a supervisor
14 over two national programs, one was ANCOP. It stands for
15 the Afghan National Civil Order Police, which is,
16 basically, a 5,000-man special forces unit. We train them
17 in close quarters battles, SWAT tactics, different things
18 like that. We -- the general who was over the 5,000-man
19 unit, I was one of his personal mentors. In addition to
20 that, I was a personal mentor to the personnel chief of
21 staff of that unit.

22 The last four months I was there before I was
23 injured, I had -- I commanded my own camp, which is on the
24 Pakistan border in Jalalabad, Afghanistan, and had
25 approximately 80 guys at the camp with me. We went out to

1 multiple locations throughout the region and covered, I
2 think, three provinces, several districts. And we,
3 basically, built police departments from scratch from the
4 ground up and mentored the generals, and the commanders,
5 and the low-level soldiers on how to do their jobs.

6 Q And going back to your training and experience with
7 narcotics in the United States, can you describe the types
8 of cases you made, and the number of cases you made?

9 A Yes. I've personally been involved in over 500 drug
10 investigations myself. That's at the state and the
11 federal levels. Personally, I have done undercover
12 deals -- successful undercover deals in over 160 cases.

13 I've, also, been involved in the execution of over
14 300 search warrants. As a result of this throughout my
15 tenure of working narcotics, specifically, in the field of
16 undercover tactics, I received over 1,320 hours of
17 training. That's at the federal and the state levels.

18 I've received an 80-hour course in basic narcotics
19 investigation, interim to investigations; also, a 92-hour
20 course in undercover investigations, a 40-hour course in
21 meth and other clandestine lab investigations; RAVE and
22 club drug investigations; air smuggling techniques; drug
23 stash house narcotics building entry; narcotics officer
24 safety training; drug interdiction investigative
25 techniques; risk management in violence and undercover;

1 drugs in America; and drug identification; explosive booby
2 traps and bomb threats on drug cases.

3 I'm certified in the field-testing of illegal drugs
4 and narcotics through the federal school, the Regional
5 Counter Drug Task Force Association. I've, also, been
6 asked and paid as a guest instructor to teach at a federal
7 undercover school in Mississippi where it's a 92-hour school.

8 I've, also, received training in analytical
9 investigations; intro to advanced criminal enforcement,
10 basic asset forfeiture, which is a 40-hour school put on
11 by the Drug Enforcement Administration; gangs and
12 narcotics training; basic telecommunications exploitations
13 program training; intro to controlled drug investigation
14 courses; intro to clandestine lab investigations; drug
15 identification, an additional 16-hour course; intro to
16 high world drug investigations; surveillance operations;
17 ethical issues and decision making in law enforcement,
18 specifically, in the field of narcotics; intro to
19 conspiracy investigation cases --

20 THE COURT: Solicitor, let's move on, please, if you
21 don't mind.

22 MS. MONTIS: Okay.

23 BY MS. MONTIS:

24 Q Mr. Grounsell, have you ever been qualified in either
25 state or federal courts as an expert in drugs?

1 A Yes, I have.

2 Q How many times?

3 A Seven times in state court, and one time in federal
4 court.

5 Q And, specifically, what areas do these include?

6 A Street-level narcotics, identifying components of
7 methamphetamine labs, drug prices, wholesale prices versus
8 retail prices, exploiting how -- potential profits made
9 from drug sales.

10 MS. MONTS: Your Honor, we would move
11 Mr. Grounsell -- move that he be qualified as an expert in
12 the financial value of street-level drugs, as well as the
13 manufacture of street-level drugs.

14 THE COURT: Any voir, Mr. Mackenzie, or, Mr. Scalzo?

15 VOIR DIRE EXAMINATION

16 BY MR. MACKENZIE:

17 Q Do you hold any special licenses?

18 A All those courses that I was reciting, which is 1,320
19 hours, were specialized training courses. I've, also,
20 graduated from a 640-hour course the Drug Enforcement
21 Administration put on, which was a four-month live-in
22 course in order to become a special agent with the Drug
23 Enforcement Administration. So I'm a certified special
24 agent with the DEA.

25 Q Have you ever taught?

1 A Basic undercover school, yes, sir. I've taught that.
2 It's a 92-hour course in Meridian, Mississippi. In
3 addition to that, while I've been in Afghanistan, I've,
4 also, been a personal mentor to the drug section of the
5 provincial headquarters located across the street in
6 Jalalabad, Afghanistan, where I've commanded the general
7 on how to run his narcotics unit.

8 Q Have you ever published anything?

9 A Published anything? Currently, I'm in the process.
10 I've got 380 pages completed in a book that I'm fixing to
11 publish.

12 Q That you're working on?

13 A Yes, sir, an undercover narcotics book.

14 Q Are you going to be testifying as to any sort of
15 scientific theory or principle that you used in this case?

16 A No, sir, basic street narcotics.

17 Q Well, have your opinions about street narcotics ever
18 been subject to any sort of peer review, or anything like
19 that?

20 A Can you rephrase that? I don't quite understand.

21 Q Have your opinions about street narcotics ever been
22 experimentally verified as being true?

23 A Yes, sir. I've been investigating narcotics for
24 multiple years. I've personally been involved in over 500
25 narcotics investigations.

1 MR. MACKENZIE: All right. Thank you.

2 THE COURT: Mr. Scalzo.

3 VOIR DIRE EXAMINATION

4 BY MR. SCALZO:

5 Q The Solicitor said that you -- or requested that you
6 be acknowledged as an expert in the financial value of
7 street-level drugs --

8 A Yes, sir.

9 Q -- and what I'd like to know is where do you acquire
10 the expertise on the financial value? How are you going
11 to determine the value?

12 A Good question. Based upon my experience of working
13 undercover and purchasing drugs over 160 times and working
14 on 500 investigations, in addition to that, I'm certified
15 through the Drug Enforcement Administration as a special
16 agent.

17 So I'm very familiar with drug prices. I've worked
18 drug cases not only in South Carolina, but in Kansas,
19 which, also, went into Mexico. I've worked in different
20 countries, and, also, in California. So I've worked drugs
21 east coast to west coast. I can tell you the different
22 prices.

23 Q Now, the way you're describing acquiring the
24 information that you're going to rely upon to make your
25 opinion --

1 A Yeah.

2 Q -- is that -- you're strictly coming from the law
3 enforcement side, obviously; right? You're a law
4 enforcement officer getting involved --

5 A I understand what you're saying. But a lot of my
6 information comes from the street.

7 Q Right. But you're doing undercover buys and things
8 of that nature is what you're -- where you're getting --

9 A As an operative for the government, yes, sir.

10 Q Okay. And in a law enforcement undercover buy, you
11 do have a certain level of control over the price?

12 A I can negotiate with them --

13 Q Right.

14 A -- which I tend to do. And I can give a ballpark
15 figure. I can't give an exact figure of what a drug will
16 be worth, except for in a small amount. When it gets to a
17 larger amount, obviously, that price varies.

18 Q Okay. And your testimony with regard to anything
19 related to the financing of drugs is going to come from
20 your personal experience with making drug sales?

21 A My personal experience in addition to the training
22 that I've received.

23 Q Now, the training that you've been referring to, is
24 that training, like Mr. Mackenzie asked you about, peer
25 review? And, for instance, if you were an economist, you

1 might do a study into a certain item that is sold across
2 the United States, let's say. And you might do an
3 analysis of that and that may not include things that you,
4 actually, have sold, but you would analyze it?

5 A I understand.

6 Q And you'd do a study that you might have a peer and
7 another economist evaluate your study to see if you do a
8 good job, were you accurate, those kind of things?

9 A We discuss drug prices prior to doing most buys when
10 we have the time to discuss them amongst the guys within
11 the unit. There's guys in the unit that have 20-plus
12 years experience.

13 In addition, I've been able to compare drug prices
14 and learn that the prices on the east coast aren't
15 necessarily reflective of what's in the mid-west or on the
16 west coast. So I've been able to see that throughout my
17 career and to determine what the exact prices are of drugs
18 in this region of the United States.

19 Q And that is not an analysis that you've done. That's
20 something you're acquiring as you're kind of going along?

21 A It's that in addition to what I've been supplied with
22 by the Drug Enforcement Administration, the prices that
23 they, generally -- you can get them off their website, the
24 basic drug prices.

25 MR. SCALZO: That's all I have, Judge.

1 THE COURT: All right. He's qualified.
2 Proceed.

3 MR. SCALZO: I would note my objection that if you
4 can qualify him as an expert, I think he should be allowed
5 to talk about his personal experience --

6 THE COURT: I'm qualifying him as an expert to
7 testify as to the value of street -- street value of
8 narcotics.

9 MR. MACKENZIE: Can I be heard on that real quick?

10 I mean, I would object to any testimony about the
11 street value of drugs in this case when we've already had
12 testimony from the State's witness establishing --

13 THE COURT: Your objection goes to weight, not to
14 admissibility.

15 MR. MACKENZIE: Yes, sir.

16 THE COURT: Proceed, Solicitor.

17 CONTINUED DIRECT EXAMINATION

18 BY MS. MONTES:

19 Q Mr. Grounsell, in January of '05, where were you
20 employed?

21 A With the Greenville County Sheriff's Office as a
22 narcotics investigator.

23 Q And on January 21st, 2005, what was your assignment?

24 A I was assigned to the narcotics unit as a narcotics
25 investigator. My primary function was to work in an

1 undercover capacity.

2 Q Did you receive direction from a supervisor that
3 afternoon to act in that capacity?

4 A I had received information that there was a suspect
5 who was pulled over, and who would potentially cooperate
6 and give us some information. And it was received to me,
7 basically, that I could potentially work in an undercover
8 capacity on this case. I didn't know the facts at the
9 time.

10 Q Where did you go to meet with anyone to learn about
11 the case?

12 A The suspect, who was later identified as Lopez, came
13 down to the southern area command, which is our office at
14 the Donaldson Center.

15 Q When you arrived there, who was present?

16 A There were several investigators going in and out.
17 It was a rather busy day. We were working, I think, three
18 different investigations. We were working on three
19 different things. And we were getting pulled in all
20 different directions. We were working several cases. And
21 we had previous cases we had been working.

22 So I would say -- I couldn't say exactly who was
23 there. I know Hines and McBee were both there, the
24 deputies who did the traffic stop, and subject Lopez was
25 there, and, also, Investigator Marchi.

1 Q And what instruction did you receive? Did you have
2 to change your clothing?

3 A When I found out that I could potentially do an
4 undercover transaction, be involved in one, I wanted to
5 get further details on it. I personally spoke to Lopez
6 and determined that I needed to change my clothing. The
7 attire that I was wearing wasn't appropriate for the
8 situation I was about to encounter.

9 Q What did you wear to proceed?

10 A I, basically, just went in and tried to look as much
11 as I could like the suspect -- or the individual who was
12 supposed to deliver the drugs. Baggy clothing. At the
13 time, I had long hair, which was long and in a ponytail..
14 So I, actually, put it up in a beanie cap and pulled it
15 down low over my eyes. I just, basically, tried to -- I
16 want to say dress down somewhat from what I was dressed
17 like that day.

18 Q And did you know where you were to go?

19 A Initially, you know, I was gathering information and
20 the facts of what I knew. I found out later that I was
21 supposed to go to the Waffle House located off Augusta
22 Road near Interstate 85, which is now closed, actually.

23 Q And what were you supposed to drive there?

24 A I was going to drive suspect Lopez's vehicle, which
25 was a white in color Dodge Intrepid.

1 Q Why would you drive that vehicle?

2 A Because that was the vehicle that the person that we
3 were supposed to be delivering the drugs to was looking
4 for. We didn't want to do anything out of the ordinary to
5 spook them any further since we were already late to do
6 the transaction.

7 Q Explain that. Why would being late spook --

8 A When you're doing a deal such as this, we're
9 delivering a large quantity of drugs, a half kilo of
10 cocaine, it's got a high street value. When there's a set
11 time when you're supposed to meet somebody, if that time
12 is off, sometimes, a dealer won't even show up. Because
13 they're in fear that something happened that could
14 potentially lead to them being arrested, such as what
15 occurred in this situation, the police pulled him over,
16 the subject cooperated, and we did a controlled
17 delivery -- attempted --

18 Q And did you have any other information about what you
19 were supposed to do when you arrived at that location?

20 A I was told to look for a --

21 MR. MACKENZIE: I object, Your Honor, based on
22 hearsay and my client's right to confront the witnesses
23 against him.

24 THE COURT: I'm going to allow the basic information
25 he was furnished.

1 Go ahead.

2 THE WITNESS: I was told to look for a black male in
3 a dark in color pickup truck.

4 BY MS. MONTES:

5 Q When you arrived at the scene, did you notice if
6 there were any other officers present?

7 A Just prior to arriving, I was notified via my Nextel
8 cell phone that there was a dark in color pickup truck
9 that was parked in the rear of the Waffle House parking
10 lot, which was indicated to me through the surveillance
11 team through Investigator Marchi, who was the lead on the
12 case.

13 Q And where did you park?

14 A I parked directly across from that truck, but I did
15 not back into the parking space. This pickup truck was,
16 actually, backed into the parking space. I pulled
17 directly across from it, so I could see the pickup truck
18 out of my left side mirror and my rearview mirror, the
19 main rearview mirror. But I adjusted all my mirrors so I
20 could see all around me. And I did that as to not give
21 myself away.

22 A lot of police officers tend to want to back into a
23 parking space. Working undercover, any little thing you
24 can do that's not an indicator of a possible police
25 officer, I tried to do that. So that's what I did. I put

1 myself at a tactical disadvantage. I put my back to the
2 suspect -- potential suspect's vehicle. Nobody was
3 located in the vehicle at the time.

4 Q What were you supposed to do when you did contact
5 whoever this person was?

6 A Initially, what I was supposed to do was go to the
7 location and meet with this unknown subject. And we were
8 going to drive to another unknown location and do the
9 transaction. That was all I knew at the time.

10 But our plans were not to go that far with it due to
11 officer safety issues. We did not have a lot of planning
12 time. I was not wearing a body wire. We had surveillance
13 that just got out there on the scene. They hadn't been
14 set up too long. And, normally, we like to control the
15 whole entire environment.

16 So when I got out there, our plan was once it was
17 identified 100 percent that that's our guy and he gives me
18 the indicators to go with him to whatever location we're
19 going to go to, I was to notify our team and they were
20 going to come in and effect an arrest.

21 Q What did you observe while you were sitting there
22 parked in the parking lot?

23 A Well, I was parked in the parking lot. Like I said,
24 I had my back to the vehicle, the dark in color -- which
25 was later identified as a dark blue Ford Ranger pickup

1 truck. I had my back to that. I saw a black male subject
2 later identified as Mr. Nelson in the courtroom today walk
3 out of the Waffle House. I assume he came out of the
4 Waffle House, because he had a Waffle House cup and a
5 to-go box.

6 And when he first came in my visual out of that --
7 one of my side mirrors, my right side mirror, I observed
8 him come. And I'm looking up in my mirror adjusting my
9 mirror to see if this is possibly him. There were no
10 other cars parked in that rear section of the parking lot.

11 So I was watching him as he was giving me head nods.
12 But I wanted to make sure a hundred percent that that was
13 him. He gave me two head nods. And then he went over to
14 his vehicle. And I was assuming he was giving me head
15 nods at the time because he had his hands full. He had a
16 cup and a to-go box in his hands. He couldn't motion with
17 his hands properly.

18 He went over to the driver's side of the vehicle that
19 was backed in. All this time, I'm observing him between
20 my rearview mirror, and my left side mirror, and my
21 driver's side mirror. He opens -- puts the stuff on top
22 of the vehicle, the to-go box and the cup, unlocks the
23 car, opens the car, sits down in the car with those two
24 items and places them in the car. He has one foot still
25 sticking out of -- which we call the apex, which is where

1 the door frame -- the door opens. He has one foot
2 sticking out. So he's not a hundred percent seated in the
3 vehicle.

4 And, at that time, he points over at me with his left
5 hand, points and motions like this. Well, I was a little
6 bit confused at first. I knew he was pointing at me, but
7 I wasn't sure, does he want me to come over to him, or is
8 he telling me to follow him. Because that's where the
9 exit was, actually, also.

10 So I, actually, at that time, I turned around in my
11 seat completely all the way around just so I could see him
12 not through the mirrors anymore. I wanted to make sure.
13 At that point, he stood up outside in the apex of the door
14 and the frame of the car. He stood up and pointed at me
15 and motioned to follow him.

16 At that time, I knew what he was talking about. So I
17 touched my parking brake as to indicate, okay, I got you,
18 I understand what you're saying. So he sat down in his
19 vehicle. I put my car into reverse as he started to pull
20 out. I backed up as slow as I could. Because I wanted to
21 give time for our takedown team to let them know, hey -- I
22 had to talk on my Nextel radio under my breath -- or not
23 under my breath, but out loud holding my radio down so he
24 couldn't see me while I'm trying to back up at the same
25 time and let my team know what's going on.

1 So as he -- as I'm backing up and he's pulling out,
2 he stops at the entrance where it's -- he's free to go.
3 He could take a left and go outside. He stops, turns
4 around in the pickup truck, and looks back to make sure
5 that I'm coming.

6 At that time, I'm backing up. And I stop and put it
7 in drive. When I do that, one of our takedown vehicles
8 was a silver in color Dodge Ram pickup truck. I believe
9 Sergeant Burris was driving it with Investigator Marchi in
10 the seat with him. He pulls up on the front nose of the
11 suspect, Mr. Nelson's pickup truck.

12 At that point, a marked patrol car comes up and pulls
13 on the opposite side. It's a pretty wide entrance-exit
14 area. So the patrol car squeezed in. I remember seeing
15 the lights on the patrol car at the time. And I was
16 looking. There's two exits to get out of the Waffle
17 House. And I noticed that the other exit, nobody was
18 coming up there to block in case to prevent a potential
19 chase.

20 So I decided at that time to pull my vehicle up
21 directly behind the suspect's vehicle. Normally, as an
22 undercover, you do not get involved in any kind of
23 takedown or anything like that due to the fact that they
24 believe you're a suspect -- they believe you're a bad guy,
25 you're one of them. They don't think you're a police

1 officer. And I didn't want to get involved in the
2 takedown and they believe that I'm, actually, somebody
3 trying to rob them.

4 So what I did is I parked my vehicle approximately
5 three feet behind the rear bumper of his car. He was at a
6 dead stop. When I parked it there, I see that he's
7 looking -- he's kind of looking forward now. He had
8 turned back around in the seat. So he, obviously, saw
9 what was in front of him. And that's when the vehicle
10 reverse lights came on. And his vehicle backed up and
11 struck the front of my vehicle. Well, I had already had
12 my brake applied. I was still in drive at the time.

13 So what I did is when he struck it, he did not
14 continue to press the gas, or anything like that. He
15 struck my vehicle and stopped from there. The police
16 officers are yelling commands.

17 So I threw my vehicle immediately into park, jumped
18 out of the vehicle and took off running around the
19 backside of the Waffle House. And I did that as to
20 prevent getting myself out of a potential line of fire if
21 there was any gun fire, or anything like that. I was not
22 marked as a police officer. And I wanted to get out of
23 the way as fast as I could.

24 Q Can you describe how many officers were there, and
25 what they were wearing?

1 A All the -- what we call plain clothes police
2 officers --

3 THE COURT: Solicitor, what's the relevance of this?

4 MS. MONTES: To -- Your Honor, to show what the
5 Defendant would have seen as far as that these are marked
6 officers.

7 THE COURT: Go ahead.

8 THE WITNESS: All the narcotics investigators who
9 were involved in this case were, generally, plain clothes
10 officers. But we have raid vests that are just,
11 basically, tactical nylon vests that you throw over. They
12 have big Sheriff's Office markings on the front. They're
13 properly marked. A lot of the guys wear a badge around
14 their necks in addition to the big Sheriff's Office logo
15 on the front and on the rear.

16 In addition to that, the blue lights were going from
17 the marked patrol car there. And there were patrol
18 officers coming out in uniform. It --

19 MR. MACKENZIE: I'll object, Your Honor. I mean,
20 he's not alleged to have fled the scene or anything.

21 THE COURT: Move on, please, Solicitor.

22 BY MS. MONTES:

23 Q When did you get back in your vehicle?

24 A After -- I waited, I'd say, approximately 15, 20
25 seconds behind the corner of the building. I kind of

1 peeped around to make sure everything was secure.

2 When I saw that the scene was secure, I immediately
3 walked up, looked at the vehicles to make sure there was
4 no damage, first off. Because it wasn't my vehicle that I
5 was driving. I didn't notice any damage on the vehicles.
6 The vehicles were approximately three inches apart at that
7 time. I jumped back in my vehicle at that time and drove
8 it back to the southern area command, which is our office.

9 Q Did you see where Mr. Nelson was taken?

10 A No.

11 Q Did you have any more personal dealings with either
12 Mr. Lopez or Mr. Nelson?

13 A With Mr. Nelson, no.

14 Mr. Lopez, I was, initially, in on the interview with
15 Investigator Blackburn. I was called off to do something
16 else. And I wasn't in there but a couple of minutes. And
17 then Investigator Maxwell came in and took my place and
18 conducted the interview.

19 Q And going back to the amount of drugs that you were
20 supposedly delivering to the person at the Waffle House,
21 describe the dollar value of the cocaine.

22 MR. SCALZO: And I'll renew my objection, Judge.

23 MR. MACKENZIE: As will I.

24 THE WITNESS: Okay. I was supposed to be delivering
25 a half a kilo of cocaine. A half a kilo -- a kilo is 2.2

1 pounds. A half a kilo, if you want to get into gram
2 quantities, is 500 grams.

3 Now, the way it appeared was that, based upon the
4 information I received of the potential price of these
5 drugs, this was going to -- from a wholesale purchase,
6 basically, which means it wasn't a street-level purchase.
7 They were buying it from a wholesaler. And whatever
8 happened after that was going to bring it down to the
9 street level.

10 So, in my opinion, you know, if you're purchasing
11 500 -- which I believe it equvalted out to 504.48 grams
12 total, it's valued approximately wholesale between 9,000
13 and 12,500, in that general area on the east coast here.

14 BY MS. MONTES:

15 Q And what would be the retail of that?

16 A Now, this is where it gets somewhat confusing. Now,
17 if that quantity of drugs were taken and they were broken
18 down into street-level sales quantities, which is normally
19 like a user purchasing one gram -- they might even
20 purchase less than a gram. And, sometimes, they might
21 purchase what they refer to as an eight ball, which is 3.5
22 grams, or upwards of an ounce. It just depends who this
23 person is selling to.

24 If they were selling all street level, this quantity
25 of drugs without it being diluted or cut up to bulk up the

1 quantity of the drugs, just in its -- 504 grams, it would
2 be valued at \$50,448.

3 Q Do drug dealers bulk up the cocaine?

4 A It's very common for drug dealers, especially when
5 you're buying kilo quantities that are pressed amounts of
6 cocaine -- not in every case, but, generally speaking, a
7 lot of times pressed cocaine means that it's in a little
8 more pure form. I'm not saying that's a definite
9 indicator of that. Because there's other people who can
10 cut up cocaine and recompress it.

11 But if you're buying it in the kilo form, it,
12 generally, has not hit the -- hit down on the street
13 levels where it's been cut up by multiple levels of
14 dealers in order for them to disperse it and make more and
15 more profit off of it. So even --

16 Q What is added to it to make it --

17 A It can be many different substances, anything from
18 some sort of powdered vitamins that you might buy at
19 GNC or a health store --

20 THE COURT: All right. Now, Solicitor, he's
21 testified to the value of it. Let's move on to something
22 else, please.

23 BY MS. MONTS:

24 Q Let's move on to the crack cocaine. What would be
25 the value of the crack cocaine?

1 A The value of the crack cocaine is a little bit
2 different. When you're dealing with cocaine and crack
3 cocaine, they're both based upon cocaine. But what it
4 is --

5 MR. MACKENZIE: Could I just note my objection for
6 the record? I still don't understand the relevance of
7 this.

8 THE COURT: Well, it's relevant.

9 What's the value of the crack? Just give us a --

10 THE WITNESS: The value of 39.18 grams of crack
11 cocaine wholesale is, generally, about 1,500 to 1,800, if
12 you're purchasing it wholesale. Now, if it was resold and
13 in small quantities, which crack cocaine is, generally,
14 sold in what they call \$20 rocks, which is one-tenth of a
15 gram.

16 So a gram of crack is valued at \$200 per gram versus
17 cocaine is \$100 per gram on the street. Okay. Because
18 it's sold in much smaller quantities. It's sold valued at
19 \$7,836. So there's a potential profit of anywhere from
20 \$6,000 to \$6,300 something.

21 Now, getting back with the cocaine. There's a
22 potential profit margin of --

23 THE COURT: Move on, please, Solicitor.

24 MS. MONTIS: Thank you.

25 I have no further questions.

1 THE COURT: All right. Mr. Mackenzie.

2 CROSS-EXAMINATION

3 BY MR. MACKENZIE:

4 Q Before this day, January 21st, '05, you had never
5 seen Octavius Nelson before in your life, had you?

6 A I don't believe so.

7 MR. MACKENZIE: Thank you.

8 That's all I have.

9 THE COURT: All right. Mr. Scalzo.

10 MR. SCALZO: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SCALZO:

13 Q You just talked about after you did your undercover
14 work, you went back to southern command.

15 A Yes, sir.

16 Q And, initially, you were going back to participate in
17 the interview debriefing -- or the further interview of
18 Mr. Lopez?

19 A That was not my initial intent. My initial intent
20 was to not really be involved too much further in that, to
21 go ahead and write down the facts of what happened out
22 there with me.

23 Q Right. But, initially, you kind of got called into
24 that interview?

25 A Yes. We were pretty busy.

1 Q And, during that interview, you did not have any
2 conversations or ask questions of Mr. Lopez about the
3 value of the cocaine?

4 A I knew what the value of the cocaine -- what he was
5 supposed to be selling it for.

6 Q But what I'm saying is, you didn't have a
7 conversation with him to figure out did he even know what
8 that was, did he know what you just testified to, the --
9 that it went from 9,000 to 12,500. In other words, you
10 had no conversation with him to evaluate what he,
11 actually, knew?

12 A I knew that he knew he was supposed to deliver a half
13 a kilo of cocaine.

14 Q But whether or not he understood what that really
15 translated into as far as what you've testified to, you
16 have no knowledge. He didn't give you any information
17 about that?

18 A I overheard that he quoted a price -- a wholesale
19 price. That's all I heard was the 10,500 wholesale price.

20 Q Now, he didn't use wholesale. That was your --

21 A That's my analogy of exactly what it is. It is a
22 wholesale price.

23 Q So when -- his words would have been, I was
24 instructed to go pick up -- give this box, get \$10,500?

25 A He was --

1 Q That's the information you got --

2 A The way I understood it was, he was instructed to
3 meet with somebody. They were going to go to another
4 location. And that's an unknown location. And that's
5 where the money was going to be, which we don't know where
6 that location is.

7 Q Okay. And the wholesale and all the finances of it,
8 that's something that you apply your knowledge to come up
9 with what you just testified to?

10 A Based upon my training, experience, and knowledge,
11 yes.

12 Q It was not from a conversation you had with Mr. Lopez
13 is my point.

14 A Oh; no. No, sir.

15 Q And when you were in the interview before you get
16 called out for something else, how long were you in there
17 for?

18 A I would say -- and this is -- I don't know exactly.

19 Q Sure.

20 A I would say approximately less than five minutes.

21 Q Okay. And how far into the interview --

22 A It really wasn't into the interview at all.

23 Q Okay.

24 A It was more along the lines of -- what we, generally,
25 do when we bring somebody in is -- especially if we're

1 working undercover, I try and get down to their level,
2 just small talk with them about unrelated things --

3 Q Okay.

4 A -- where are you from, you know.

5 Q You were trying to build a rapport?

6 A Build a rapport is all I was trying to do, get him a
7 drink, make sure he wasn't handcuffed, all those things.

8 Q Okay. And so as far as the contents of that written
9 statement that was moved in, you weren't present for
10 any --

11 A I was not present.

12 MR. SCALZO: That's all I have.

13 Thank you, Judge.

14 THE COURT: Any redirect?

15 MS. MONTS: No, Your Honor.

16 THE COURT: Thank you.

17 Step down.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Ladies and gentlemen, we'll
20 suspend at this time. We'll pick back up tomorrow morning
21 at 9:00.

22 Now, please, remember the admonition that I read to
23 you yesterday, the order from the Chief Justice. When you
24 leave and when you come back in the morning, please, have
25 your badges on. I ask that you do that so that everyone

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2005-GS-23-01956

2005-GS-23-01957

ORIGINAL

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

DANIEL JESUS LOPEZ,)
DEFENDANT.)

VOLUME II

October 14, and 15, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

1 yesterday that was not made a Court's Exhibit.

2 Could I just make that --

3 THE COURT: Sure.

4 MR. MACKENZIE: Thank you.

5 (WHEREUPON, Court's Exhibit No. 3 was marked for
6 identification and admitted into evidence.)

7 MR. SCALZO: And, Judge, I guess since we have some
8 down time, I was, obviously, going to renew a motion to
9 suppress when the drugs get re-presented. Based on some
10 of the cross-examination, I do have some additional
11 grounds. I could put them on the record now --

12 THE COURT: That would be good.

13 MR. SCALZO: -- before we kind of bring people in and
14 out.

15 Is that all right?

16 THE COURT: Sure. Certainly.

17 MR. SCALZO: My additional grounds, Judge, would be
18 that both Deputy Hines and Deputy McBee testified that
19 when they encountered Mr. Lopez that they never tried to
20 sort out any inconsistencies that they perceived him to
21 have. This whole idea that he was driving from North
22 Carolina to Atlanta, they never got him to explain that.
23 I think that gets pulled into the fact that they're
24 creating -- they're trying to create a reasonable
25 suspicion without ever making the simplest effort to kind

1 of get a reasonable answer from the person.

2 This was not something that, obviously, was an
3 admission of some sort of crime. It was only part of a
4 suspicion. And the fact that they didn't inquire further,
5 I think, goes to the fact that they really didn't have the
6 level of reasonable suspicion that they thought that they
7 had.

8 So I would want to add that as some of the basis.

9 THE COURT: All right. That's fine.

10 Bring the jury in, please.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:08 a.m.)

13 THE COURT: Good morning.

14 All right. Solicitor, you may proceed.

15 MS. MONTIS: Your Honor, the State calls Officer Craig
16 Moore.

17 THE CLERK: Good morning, sir.

18 Please place your left hand on the Bible and raise
19 your right hand.

20 WHEREUPON,

21 CRAIG MOORE,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 Please state your full name for the record.

1 THE WITNESS: Craig Moore.

2 DIRECT EXAMINATION

3 BY MS. MONTS:

4 Q Deputy, please, tell the jury where you're employed,
5 and how long you've worked there.

6 A The Greenville County Sheriff's Office, 22 years.

7 Q Can you explain some of your experience and training
8 in law enforcement?

9 A I've been a deputy for 22 years. I worked in vice
10 and narcotics for -- from 1992 until 2008. I've had
11 extensive training in drugs, search warrants, writing
12 affidavits. I spent some time in violent crimes, training
13 in homicide, armed robbery.

14 Q And what unit were you assigned to on January 21st of
15 2005?

16 A The narcotics unit.

17 Q And were you on duty that afternoon?

18 A Yes, ma'am.

19 Q Do you recall receiving an assignment late that
20 afternoon regarding the entire unit?

21 A I do.

22 Q What was your assignment?

23 A My assignment was to help conduct surveillance in the
24 Augusta Road-Interstate 85 area, particularly the -- where
25 the Waffle House was located on Augusta Road. We had a

1 drug investigation taking place. And we were expecting an
2 arrest to be made.

3 Q And where did you go, and did you park your vehicle?

4 A I was positioned back behind the Waffle House in the
5 Holiday Inn parking lot. There is a common drive off of
6 Augusta Road. And there was an entrance into the Waffle
7 House off that common drive to the Holiday Inn.

8 Q Could you see the Waffle House parking lot from that
9 location?

10 A Initially, where I was parked at, I could not. I was
11 positioned and waiting on the signal over the radio to
12 move in to the Waffle House area.

13 Q And who were you to get the signal from, if you
14 recall?

15 A I believe the signal was coming from either
16 Investigator Marchi or possibly Sergeant Burris at the
17 time.

18 Q And what did you do once you received this message?

19 A I moved up to the Waffle House parking lot.

20 Q What did you observe when you got there?

21 A By the time I got there, there were already units on
22 the scene. There was several of our unmarked vice and
23 narcotics vehicles that had a small Ford Ranger pickup
24 truck blocked in and along with an unmarked police vehicle
25 with flashing lights, and a marked police vehicle with

1 flashing lights on.

2 Q Did you ever exit your vehicle at that location?

3 A I did exit my vehicle. But I did not -- the scene
4 was already secure. So I did not approach where the
5 arrest had taken place.

6 Q Did you have an assignment after that to go to
7 another location?

8 A Yes, ma'am. I was told to go to [REDACTED]
9 Boulevard.

10 Q What did you observe when you got to that location?

11 A We went over there, there was some surveillance being
12 conducted on the residence. There was some radio traffic
13 about someone leaving the residence. And they were later
14 stopped.

15 By the time I got there, the units had stopped the
16 car leaving the residence, and had already arrived back
17 and were exiting and walking back up to the residence.

18 Q Was that the mother?

19 A Yes. It turned out to be the mother of Mr. Nelson
20 that they had stopped leaving the residence.

21 Q And describe what other officers were there when you
22 arrived.

23 A Investigator Rogers was there. Officer McBee,
24 another officer, Kerian [phonetic] -- Investigator
25 Kerian [phonetic] was there on scene.

1 Q Did you go inside the house?

2 A Yes, ma'am, later. We, initially, got out. And we
3 started talking to Ms. Burns. Mr. Burns, the husband,
4 came out of the house. We talked to both of them and
5 explained to them the situation that was going on and the
6 arrest of Mr. Nelson.

7 We explained to them that we would like to obtain
8 consent to a search of their residence. Because we
9 believed there may be other evidence of drug involvement
10 by Mr. Nelson in the residence. And, at that time, they
11 granted consent to search of their home.

12 Q And can you describe the house when you went inside?

13 A It was a single story, I guess, a ranch-style home,
14 probably between 1,200, 1,400 square feet. In the living
15 room area, there was a bed that they advised that
16 Mr. Nelson had been sleeping in --

17 MR. MACKENZIE: I'm going to object to hearsay, Your
18 Honor.

19 THE COURT: Just tell us what you saw. Don't tell us
20 what anybody said.

21 THE WITNESS: There was a bed in the living room, a
22 kitchen area, a bedroom off the kitchen area, another
23 bedroom at the front of the house that was not being used
24 due to some type of damage, maybe possibly some fire
25 damage, or termite damage. And then the Burns' bedroom.

1 BY MS. MONTIS:

2 Q And the bedroom off of the kitchen, was there anybody
3 in that room?

4 A Yes, ma'am. There was a subject in there that we
5 were advised was the brother of Mr. Nelson, who was
6 bedridden, living in that bedroom.

7 Q Were -- was he exited from that room?

8 A Yes, ma'am. He was assisted into a wheelchair. And
9 he was wheeled out to one of the common areas of the
10 house.

11 Q And what was your assignment at that scene?

12 A My assignment was to assist in the search of the
13 residence.

14 Q And what areas did you search?

15 A I searched the living room area. It's kind of a
16 combination living room-dining room area off the kitchen.
17 And then I, also, searched the bedroom in which the
18 brother came out of.

19 Q And describe what you found during the search.

20 A I, first, located a small, clear sandwich-type bag
21 that contained plant material from a china hutch in the
22 living room -- or in the dining room, rather, the
23 dining-living room combo. I later found a semi-automatic
24 pistol, which was loaded with seven bullets from the back
25 bedroom where the brother was living at.

1 And then I later found a box of 9mm ammunition in the
2 china hutch, also, in the dining room.

3 Q And describe in that bedroom off of the kitchen,
4 where was the gun?

5 A The gun was in the closet. (It was located in the
6 closet.

7 Q Do you recall where in the closet?

8 A It was in the upper shelf of the closet.

9 Q If you were standing up, how high would that shelf
10 be?

11 A Probably between six and seven foot.

12 MS. MONTIS: I'd like to have this marked.

13 (WHEREUPON, State's Exhibit No. 24 was marked for
14 identification only.)

15 BY MS. MONTIS:

16 Q Deputy, I'm going to hand you what's been marked for
17 identification as State's Exhibit No. 24. Can you,
18 please, identify this?

19 A Yes, ma'am. This is the bag of plant material that I
20 found in the china hutch.

21 Q How was -- what was its appearance at the time? How
22 many of these bags were around it, or what was the --
23 describe the condition it was in when you found it.

24 A It was just encased, as I recall, in a -- just a
25 regular sandwich-type bag. It was packaged in it.

1 Q And where did you take it once you found it?

2 A I turned it over to Investigator Rogers, who was
3 logging in everything that was found, documenting
4 everything that was found.

5 MS. MONTS: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 25 was marked for
7 identification only.)

8 BY MS. MONTS:

9 Q I'm going to hand you what's been marked for
10 identification as State's Exhibit No. 25. Can you
11 identify this?

12 A Yes, ma'am. This is the box of 9mm ammo that I found
13 in the china cabinet.

14 MS. MONTS: I'd like to have these marked.

15 (WHEREUPON, State's Exhibit Nos. 26 and 27 were
16 marked for identification only.)

17 BY MS. MONTS:

18 Q Deputy, I'm going to hand you what's been marked for
19 identification as State's Exhibit Nos. 26 and 27. Can
20 you, please, identify these items?

21 A Yes, ma'am. This is the semi-automatic pistol that
22 was located on the shelf in the closet where in the --
23 where the brother's bedroom was. And this is the magazine
24 and the ammo that was contained in the magazine loaded
25 into the pistol.

1 Q And what did you do with those last two exhibits,
2 State's Exhibit Nos. 26 and 27?

3 A These were, also, turned over to Investigator Rogers
4 for documentation purposes.

5 Q And what was the condition of the handgun when you
6 found it?

7 A It was loaded.

8 Q And have you seen these items since you turned them
9 over to Investigator Rogers that night?

10 A No, ma'am.

11 MS. MONTS: Thank you.

12 No further questions.

13 THE COURT: Any questions, Mr. Mackenzie?

14 MR. MACKENZIE: Just a few, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MACKENZIE:

17 Q You didn't find any money in the house, did you?

18 A No, sir, I did not.

19 Q You stated that there was one bedroom that did not
20 appear to be used; is that correct?

21 A That's correct.

22 Q And then were there two bedrooms in addition to that,
23 or one in addition?

24 A Two more in addition, I believe.

25 Q All right. And one -- the brother was in one?

1 A Uh-huh.

2 Q And then the other appeared to be used by the
3 parents?

4 A The parents.

5 MR. MACKENZIE: Thank you.

6 That's all I have.

7 THE COURT: Any questions, Mr. Scalzo?

8 MR. SCALZO: No questions, Judge.

9 THE COURT: Thank you.

10 Step down.

11 MS. MONTES: Your Honor, we ask that this witness be
12 excused.

13 THE COURT: Any objection?

14 MR. MACKENZIE: No objection.

15 MR. SCALZO: No, sir.

16 MS. MONTES: Your Honor, the State calls Tony Rogers.

17 THE CLERK: Mr. Rogers, please, place your left hand
18 on the Bible and raise your right hand.

19 WHEREUPON,

20 TONY H. ROGERS,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Tony H. Rogers.

DIRECT EXAMINATION

BY MS. MONT'S:

Q Investigator, please, tell the jury where you're employed, and how long you've worked there.

A I'm employed by the Greenville County Sheriff's Office. I've been working there since 1981.

Q And, please, describe some of your experience and training in law enforcement areas.

A I, initially, started my career in law enforcement with the Town of Williamston in 1975 where I was certified. As I said, I moved to Greenville County in '81. 1987, during that time, I worked the road.

I went to numerous schools pertaining to financial crime enforcement, credit cards. Then I did some classes on blood drops, violent crimes. I went to the fingerprint evaluation class and the basic investigator's class.

And then I moved into investigations in the narcotics unit in 1987. And since that time, I've been to -- on two different occasions assigned to the DEA task force, and gone through DEA's two-week task force agent school and their basic narcotics school.

I've been to the South Carolina Criminal Justice Academy basic narcotics. I've been to interview and interrogation in Lanco [phonetic], Georgia, a two-week course. I've been to basic lab investigations and

1 clandestine lab investigations in Mississippi, just
2 hundreds of hours of training.

3 Q How many years have you been in vice and narcotics?

4 A Since '87, you know, 21.

5 Q And in January of -- on January 21st of 2005, were
6 you given any assignment that afternoon with the unit?

7 A That afternoon, yes, I was. I was called. I was, at
8 that time, assigned over at the DEA office and was
9 assigned to the DEA task force. And I believe Sergeant
10 Burris called me.

11 (Interruption in the courtroom.)

12 THE WITNESS: Excuse me, Your Honor.

13 But Sergeant Burris called me and asked me if I could
14 come over and assist them with this case.

15 BY MS. MONTS:

16 Q And where were you asked to go?

17 A Well, when I got there, they had everything -- I
18 mean, it was pretty chaotic. Things were moving pretty
19 fast. I'm -- I walked in and was immediately sent to the
20 Waffle House.

21 Q Where was the first place you went to meet up?

22 A To the Waffle House.

23 Q Where did you meet with Officer -- Sergeant Burris?

24 A Sergeant Burris, at southern command.

25 Q Okay.

1 A I walked in. And, like I said, everybody was going.
2 And he said, look, this is what's going on. I was given a
3 quick briefing by him and Investigator Marchi. And they
4 asked if I could go over there to the Waffle House. I
5 did. I went straight down to the Waffle House and pulled
6 in to the lower end of the Waffle House parking lot, just
7 off of Augusta.

8 Q And what did you observe when you got there?

9 A I hadn't been there long when Mr. Nelson came in in a
10 dark-colored Ford Ranger truck. He parked -- backed into
11 the parking place and walked into the Waffle House. He
12 went to the counter. I could see him from where I was
13 at --

14 Q Does the Waffle House have windows?

15 A Yes. It's got windows all the way around the front
16 of it. And I was able to observe him walk up to the
17 counter. And he was just in there momentarily. And he
18 came back out with a to-go bag and a cup in his hand.

19 I was, also, monitoring Investigator Grounsell on the
20 thing. And I -- as he come across the parking lot, I --
21 it looked like he, as Grounsell said, made a couple of
22 head motions towards him. And then Investigator Grounsell
23 confirmed that that's what he was seeing, too, over the
24 Nextel.

25 I couldn't see him when he, actually, got to the

1 car -- or to the truck. And as he started pulling out,
2 Investigator Grounsell advised that, you know, he was
3 going to follow him. He was moving out.

4 And then Investigator Marchi started advising all
5 units to move in for the takedown. I waited until
6 Investigator Marchi and Sergeant Burris --

7 (Interruption in the courtroom.)

8 THE WITNESS: -- pulled in front of him in the truck.
9 And then when they pulled in front of him, I pulled up on
10 the side of him. I was in a pickup truck, too.

11 (Interruption in the courtroom.)

12 BY MS. MONTS:

13 Q Describe how many cars were in the parking lot?

14 (Interruption in the courtroom.)

15 THE BAILIFF: Whose phone is that? Whose phone is
16 ringing?

17 THE WITNESS: That is mine. I forgot to turn it off.
18 Can you take it outside? Will you turn it off?

19 I'm so used to having it on. I forgot to cut it off
20 this morning.

21 THE BAILIFF: I can't cut it off.

22 THE WITNESS: Just put it out in the hall until I get
23 through, please.

24 I'm sorry, Your Honor.

25 And where were we?

1 BY MS. MONTS:

2 Q What did you observe in the parking lot?

3 A As -- Lieutenant Burris pulled in, then McBee pulled
4 in in his unmarked car. And Doug Wannemacher --

5 Q Did his unmarked car have blue lights?

6 A Yes, it did. He had --

7 Q Were they on?

8 A -- his blue lights on. Yes, they were.

9 And Investigator -- Doug Wannemacher pulled in. He
10 had a marked unit. And he pulled in with his car and got
11 out with his dog.

12 Q Did Wannemacher have blue lights on?

13 A Yes, he did.

14 Q And, please, continue. What did you observe?

15 A Investigator Marchi went around and got Mr. Nelson
16 out of the car, and placed him under arrest. Shortly
17 after that, he advised of the address that was on his
18 license. And it came back to the address that -- the same
19 address as the pickup truck.

20 So myself, Investigator Kerian [phonetic], and McBee
21 went to that address and set up surveillance on it.

22 Q Do you recall if you were the first ones to go to the
23 [REDACTED] address?

24 A Yes, we were.

25 Q And who was present when you arrived?

1 A At the address?

2 Q Yes, sir.

3 A We had no idea. We just went over there and set up.
4 I was above the house, if I remember correctly. And
5 Investigator Kerian [phonetic] was below the house on the
6 street watching. And when Ms. Brown [sic] came out and
7 started down the street, one of us advised. And she was
8 stopped then by McBee. He was back. He was a street over
9 out of sight. He wasn't sitting right out on the street
10 with us.

11 Q And did you speak to anybody?

12 A I spoke with her when they -- we went -- she was just
13 down the street a little ways. She was stopped, brought
14 back to the house. McBee asked her to come back. And she
15 came back up there. And we were in the yard talking with
16 her. We just had arrived back at the yard when
17 Investigator Moore showed back -- showed up over there.

18 And then he and I spoke with her. She advised us
19 that her husband was there. We asked who was in the
20 house. She said -- or we were advised that her husband
21 was there. We asked him to come out.

22 And sometime during the conversation, as
23 Mr. Brown [sic], came out, we were advised, also, that
24 there was an invalid son, as well as an infant niece, I
25 believe, in the house. And we talked to both of them.

1 They advised they owned the home together. We asked if
2 they would give us consent. And Mr. Brown [sic] signed
3 the consent. And myself and --

4 Q Do you mean Mr. Burns?

5 A Burns. I'm sorry. Mr. Burns. I'm sorry.

6 After he signed it, it was witnessed by myself and
7 McBee.

8 Q And did you enter the house?

9 A Yes, we did.

10 Q What did you observe when you went inside?

11 A We went inside. There was a kitchen and like a
12 common area like a dining room between the kitchen and the
13 living room. The living room had a bed kind of sitting in
14 the middle of it. There was a bedroom off to the right of
15 the kitchen. I had told them that I would take care of
16 the scribe duties on the consent.

17 And so I cleared off a spot on the table right there
18 in the little common area in front of a china hutch and
19 everything. And I got set up to start taking evidence as
20 it was found around the house.

21 Q And as the -- what is that duty called, and what
22 exactly do you write down?

23 A All right. As someone finds something, they bring it
24 to me, advise where it was found at. I make a notation
25 usually on a pad, but I, also, noted on the consent, or we

1 have an inventory sheet that goes with a search warrant.
2 We -- and I noted on those what -- the evidence sheet that
3 I'm using the inventory for the search warrant are this
4 thing. And I placed the evidence into a storage bag,
5 marked it with an item number, THR. I usually use my
6 initials, and a number then.

7 And when we get through, I take all of it to property
8 and evidence for storage. All the narcotics or drug
9 evidence is then weighed by me. And when you weigh it,
10 you make a note of the weight, the date, the case number.
11 And you put your initials inside the bag that you place it
12 into. And then it's all turned over to a property and
13 evidence technician, if there's one available, or it's
14 placed in the drop box, if there's not one available.

15 Q Did you happen to search the bedroom in the living
16 room?

17 A No, I didn't.

18 Q Do you know which officer did?

19 A I can refer to my notes.

20 Agent Moore, as he testified to a little earlier, was
21 in the bedroom, in the dining room area. I believe from
22 the testimony yesterday, Maxwell searched the living room.

23 Q How do you package up the items that are given to you?

24 A It depends on what it is. Some stuff is placed into
25 these type of envelopes here. Drug evidence, generally,

1 goes into the plastic envelopes that can be sealed.

2 They're heat-sealed at the property and evidence room and
3 placed into P&E.

4 Q And can you list us the letters, and the THR for your
5 initials, and the numbers of the items that you took
6 custody of and took to property and evidence?

7 A Yes, I can. THR-1 was a white bag on clear --

8 THE COURT: Will counsel approach, please?

9 (WHEREUPON, a bench conference was held.)

10 BY MS. MONTS:

11 Q Officer, once you took all the items that you took
12 custody of on the night of January 21st, 2005, and took
13 them to the drop box at the law enforcement center, have
14 you seen those items since that date?

15 A Not until they started being introduced into evidence
16 here in the courtroom.

17 MS. MONTS: Thank you.

18 No further questions.

19 THE COURT: Any questions, Mr. Mackenzie?

20 MR. MACKENZIE: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MACKENZIE:

23 Q Deputy Rogers, there was a question about -- you
24 mentioned that Wannemacher was in what kind of car at the
25 Waffle House?

1 A He was driving a Crown Vic with -- it was a fully
2 marked Crown Vic.

3 Q I mean, is it a regular Greenville County Sheriff's
4 Office --

5 A Yes, sir.

6 Q -- marked car?

7 A Yes, sir, at that time. Now, the dog handlers just
8 about all of them -- we still have some that are in the
9 Crown Vic's. But most of them now are in the Chevy
10 Tahoe's.

11 But, at that time, the dog unit was kind of still in
12 its infancy. And they had not transitioned into those
13 vehicles yet. And just about everybody was still
14 driving regular patrol cars with the back seats
15 modified.

16 Q Okay. Did you find any money in the house?

17 A No, sir, we did not.

18 Q Okay. And did you find any mobile phones in the
19 house?

20 A No, sir.

21 MR. MACKENZIE: Thank you.

22 That's all I have.

23 THE COURT: Any questions, Mr. Scalzo?

24 MR. SCALZO: No, sir.

25 THE COURT: Step down.

1 MS. MONTES: Your Honor, I can wait until after I
2 either put up the property and evidence person to
3 move these items into evidence, or I can do it at this
4 time.

5 THE COURT: Is there any objection?

6 MR. MACKENZIE: The only objection I have is the one
7 previously stated that's already been ruled on. And I
8 don't have anything else to add.

9 THE COURT: All right. Then they're in evidence.

10 MS. MONTES: Your Honor, just to be certain, every
11 piece of evidence that's been marked so far --

12 THE COURT: Yes.

13 (WHEREUPON, State's Exhibit Nos. 3, 5, 6, 8, 9, 10,
14 11, 12, 13, 14, 15, 16, 17, 22, 24, 25, 26, and 27
15 were admitted into evidence.)

16 MS. MONTES: The State would call Dar Shaw.

17 THE CLERK: Please place your left hand on the Bible
18 and raise your right hand.

19 WHEREUPON,

20 DARWIN SHAW,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your name for the record.

25 THE WITNESS: Darwin Shaw, S-H-A-W.

DIRECT EXAMINATION

BY MS. MONTIS:

Q Mr. Shaw, please, tell the jury where you're employed.

A With the forensic division, Department of Public Safety, Greenville, South Carolina.

Q And is one of your duties in that position to attempt to lift latents off of items that have been turned into property and evidence by officers?

A That's correct.

Q And can you briefly tell us what a latent print is?

A A latent print is a fingerprint that's been deposited on some type of an object where you have to use some type of a process, whether it be fingerprint powder or chemicals, to enhance that fingerprint to make it visible.

Q And did you attempt to process items in this case, 2005-014204?

A I did.

Q And did you lift any prints off of any of the items?

A Yes, I did.

Q And when I say "print," does that mean it is a complete print, or what is it that you lift?

A What I'm looking for is ridge detail that I feel might be sufficient enough to make an identification, whether it be a latent print or a patent print.

Q And do you check the items out from property and

1 evidence and, after your analysis or your attempt, return
2 them back to property and evidence?

3 A That's correct, I do.

4 Q And who, actually, analyzes or compares what you have
5 lifted?

6 A It goes to -- any prints that I lift for comparison,
7 they are sent up to our latent division and there are
8 examiners there who do the examinations.

9 MS. MONTIS: Thank you.

10 No further questions.

11 THE COURT: Any questions, Mr. Mackenzie?

12 CROSS-EXAMINATION

13 BY MR. MACKENZIE:

14 Q What items did you send for analysis?

15 A There were pieces of packing tape that had patent
16 prints on them, which were visible to the naked eye. And
17 there was, also, a piece of, I believe, a stretch wrap
18 that had a fingerprint. After I fumed it with super glue
19 and examined it, I found what looked like a latent print
20 and that was, also, sent up.

21 MR. MACKENZIE: Thank you.

22 MR. SCALZO: I don't have any questions, Judge.

23 THE COURT: Step down.

24 MS. MONTIS: Your Honor, the State calls Renee
25 Sherbert.

1 Your Honor, may this witness be excused?

2 THE COURT: Any objection?

3 MR. MACKENZIE: No, sir.

4 MR. SCALZO: No, sir.

5 THE COURT: Thank you.

6 THE CLERK: Ma'am, please, place your left hand on
7 the Bible and raise your right hand.

8 WHEREUPON,

9 RENEE FOSTER SHERBERT,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 Please state your full name for the record.

14 THE WITNESS: Renee Foster Sherbert.

15 DIRECT EXAMINATION

16 BY MS. MONT'S:

17 Q Sergeant Sherbert, please, tell the jury where you're
18 employed.

19 A I'm employed by the Greenville County Department of
20 Public Safety Forensic Division.

21 Q And in that capacity, is one of your duties to
22 compare latent prints that have been lifted by other
23 employees such as Mr. Shaw?

24 A Yes, ma'am. I receive latent prints from our own
25 crime scene unit and other agencies in and around the

1 upstate of South Carolina.'

2 Q And, in this case, 1-2005-14204, did you compare any
3 items or analyze any items that were presented to you by
4 Mr. Shaw?

5 A Yes. I received a latent print list from Sergeant
6 Shaw in the latent print section.

7 Q And were you able to make a match on those?

8 A I made no matches to the latents that were submitted
9 to me.

10 Q What was the quality of these latents?

11 A Individually, some of them were comparable, you know.
12 They could be identified if you had the right person,
13 basically. And others were a little more marginal. But
14 for the most part, they were comparable.

15 Q And, again, you found no matches?

16 A That is correct, no matches.

17 MS. MONTS: Thank you.

18 No further questions.

19 THE COURT: Mr. Mackenzie?

20 MR. MACKENZIE: Just briefly.

21 CROSS-EXAMINATION

22 BY MR. MACKENZIE:

23 Q You analyzed certain evidence from this case; is that
24 correct?

25 A What I analyzed were latent lifts submitted to me by

1 Sergeant Shaw from items that he had processed..

2 Q All right. And who did you compare those
3 against? Whose fingerprints did you compare those
4 against?

5 A In this case, I compared an Octavius Nelson, a Daniel
6 Lopez, and a James Goodman.

7 Q You found no matches?

8 A That's correct. There were no matches.

9 MR. MACKENZIE: Thank you.

10 THE COURT: Thank you.

11 Step down.

12 MR. SCALZO: No questions.

13 MS. MONTS: Your Honor, we ask that this witness be
14 excused.

15 THE COURT: Any objection?

16 MR. MACKENZIE: No, sir, Your Honor.

17 MR. SCALZO: No, sir.

18 THE COURT: Thank you.

19 MS. MONTS: Your Honor, I believe we have one witness
20 left. And I'll go see if he's in the hallway.

21 THE COURT: All right.

22 (Pause.)

23 MS. MONTS: Your Honor, I believe he's on his way.

24 THE COURT: Please take the jury out for a short
25 recess.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 9:44 a.m.)

3 THE COURT: Has he left the law enforcement center?

4 MS. MONTS: Yes, Your Honor.

5 THE COURT: Okay. We'll take a break.

6 (WHEREUPON, a break was taken.)

7 (WHEREUPON, State's Exhibit Nos. 28 and 29 were
8 marked for identification only.)

9 THE COURT: Okay. Bring the jury in, if they're
10 ready.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:09 a.m.)

13 THE COURT: Solicitor, you may proceed.

14 MS. MONTS: Your Honor, the State calls James
15 Armstrong.

16 THE CLERK: Sir, please, place your left hand on the
17 Bible and raise your right hand.

18 WHEREUPON,

19 JAMES WILLIAM ARMSTRONG,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 Please be seated.

23 Please state your full name for the record.

24 THE WITNESS: James William Armstrong.

25

DIRECT EXAMINATION

BY MS. MONT'S:

Q Mr. Armstrong, please, tell the jury where you're employed.

A I'm employed with the Greenville County Department of Public Safety Forensic Division Crime Laboratory.

Q Can you, please, give us the extent of your education?

A Yes, ma'am. I have a Bachelor's Degree in Chemistry from Erskine College. I have trained in the area of drug identification approximately one year under the direction of our lab supervisor. I've attended numerous instrumental analysis schools concerning the instruments I use in my analysis for drug identification. I have been through the Drug Enforcement Administration -- there's a forensic chemist seminar in Washington, DC, sponsored by the DEA. I have testified as an expert in the area of drug identification no fewer than 119 times in federal, state, and local courts.

As another form of my responsibilities, I'm, also, a firearms examiner where I've received numerous training where I've trained as an apprenticeship-type style training under the direction of a retired firearms examiner from the Philadelphia PD. I've attended -- or visited and toured 11 different firearm manufacturing

1 facilities, watched the product being made from raw
2 material to the end product.

3 I've been through three ammunition manufacturing
4 facilities to see the same process from raw material to
5 the end -- finished product. I've attended schools
6 sponsored by the Alcohol -- Bureau of Alcohol, Tobacco,
7 and Firearms to learn how to identify firearms, how to
8 restore serial numbers, and do proper identification for
9 projectiles comparing those to weapons as well. And I've
10 testified in that area of expertise, at least, 18 times in
11 federal and state courts.

12 MS. MONT'S: Your Honor, the State would move to admit
13 Mr. Armstrong as an expert in both the field of chemical
14 drug analysis and in firearms identification and
15 ballistics.

16 THE COURT: Any voir dire?

17 MR. MACKENZIE: No, sir, Your Honor.

18 MR. SCALZO: No, sir.

19 THE COURT: He's qualified.

20 BY MS. MONT'S:

21 Q Mr. Armstrong, I'm going to hand you what's in
22 evidence as State's Exhibit No. 5. Can you, please,
23 identify this for the jury, and explain any markings?

24 A Yes, ma'am, I can. The outer most bag has my
25 initials and the date, which I sealed it with a double

1 heat seal: On the inner bag, it, also, has my initials
2 and date where I had opened a sealed container. And then
3 another where it's opened again for another separation
4 process. And then it, also, has the item number with my
5 initials and the weight on a bag which contains the white
6 powder substance.

7 Q Did you check this out of the property and evidence
8 room at the law enforcement center in order to test it?

9 A Yes, ma'am, I did.

10 Q Did you do a test on this substance?

11 A Yes, ma'am, I did.

12 Q Did you make a report based on your analysis?

13 A Yes, ma'am, I did.

14 Q I'm going to hand you what's been marked for
15 identification as State's Exhibit No. 28. Can you,
16 please, identify this?

17 A Yes, ma'am. This is a copy of my lab report that
18 corresponds with this item.

19 Q Is that your signature on the form?

20 A It's a copy of my signature, yes, ma'am.

21 MS. MONTS: Your Honor, we move State's Exhibit
22 No. 28 into evidence.

23 THE COURT: Any objection?

24 MR. SCALZO: No objection to State's Exhibit No. 28.

25 MR. MACKENZIE: No objection, Your Honor.

1 THE COURT: I didn't -- what did you say, Mr. Scalzo?

2 MR. SCALZO: I said no objection to State's Exhibit
3 No. 28. I think that's just the report.

4 THE COURT: Okay. Subject to your objection.
5 Go ahead.

6 (WHEREUPON, State's Exhibit No. 28 was admitted into
7 evidence.)

8 MS. MONT'S: And, Your Honor, I believe State's
9 Exhibit No. 5 is already in evidence.

10 THE COURT: It is.

11 BY MS. MONT'S:

12 Q Can you, please, publish the results from testing,
13 State's Exhibit No. 5.

14 A Item A, I found it to be a bag containing a powder
15 substance. I found that bag to contain cocaine with a
16 weight of 504.48 grams.

17 Q Mr. Armstrong, I'm going to hand you State's Exhibit
18 No. 3 entered into evidence. Can you, please, identify
19 this item?

20 A Yes, ma'am, I can.

21 Q Did you check this item out from the property and
22 evidence room and perform a test on it?

23 A Yes, ma'am, I did.

24 Q What test did you perform on this item?

25 A This one I tested for function and operability of the

1 firearm, as well as the serial number restoration process.

2 Q Describe what that is.

3 A The serial number on the firearm is located on the
4 frame portion. And when I received the firearm, it,
5 actually, had mechanical abrasions and some impression
6 marks, which were hiding the serial number. So it was an
7 obliterated serial number, so it could not be read. So it
8 identified the ownership of that firearm.

9 Q And what did you do on that item?

10 A When I received it, I checked it for operability to
11 make sure it functioned first. Then I removed the slide
12 from the frame.

13 Next, I did a chemical restoration process where we
14 grind the metal down to get it to a smooth surface. And
15 then we use chemicals or different acids to etch that
16 metal where -- because that metal has been changed when
17 they, actually, stamped the serial number into the metal.
18 When it's stamped, the area underneath the stamp becomes
19 harder.

20 So our chemicals that we use will, actually, eat the
21 harder metal first. And then it will restore the serial
22 number and let us read it. When we put those chemicals
23 on, it etches that little part and it lets us read the
24 number for a few seconds so we can record it and then go
25 from -- go on from there to do an identification of that

1 firearm.

2 Q And is the serial number now, based on your
3 procedures that you performed, more visible than it was
4 when you first obtained it?

5 A It still cannot be read today.

6 Q But it's in a different form than when you first
7 obtained it?

8 A Yes, ma'am.

9 Q Mr. Armstrong, I'm handing you what's been entered
10 into evidence -- I'll hand you two at a time, State's
11 Exhibit Nos. 24 and 13. Can you, please, identify these
12 items?

13 A State's Exhibit No. 13, again, has an outer bag with
14 my initials and the date where I sealed. And the inner
15 bag, also, has my initials and the date. It, also, has
16 another bag with the item number, and my initials, and the
17 weight of the substance. And that is item THR-2A.

18 State's Exhibit No. 24, once again, the outer bag
19 with my initials and the date where I sealed, along with
20 my initials and the date on the inside where I cut the
21 bags open, and the ones with item numbers, and my
22 initials, and the weights of the items as well.

23 Q Did you check these items out of the property and
24 evidence room and perform tests on them?

25 A Yes, ma'am, I did.

1 Q And did you reseal them and take them back to the
2 property and evidence room?

3 A Yes, ma'am, I did.

4 Q I'm, also, going to hand you what's entered into
5 evidence as State's Exhibit Nos. 8, 12, and 14. Can you,
6 please, identify these?

7 A Yes, ma'am, I can. Once again, all the outer bags
8 are with my initials and the dates on those. This State's
9 Exhibit No. 12, it has my signature and the date, which I
10 had, actually, separated some packaging.

11 Q And did you perform a test on these three items?

12 A On State's Exhibit Nos. 8 and 14, I did, yes, ma'am.
13 State's Exhibit No. 12 is the packaging, which I removed
14 from another item, which is THR-6.

15 Q Did you return these items back to property and
16 evidence after you analyzed the ones that you analyzed?

17 THE COURT: Now, there's no issue about that,
18 Solicitor.

19 BY MS. MONTS:

20 Q Did you produce a report once you analyzed this?

21 A Yes, ma'am, I did.

22 Q I'm going to hand you what's been marked as State's
23 Exhibit No. 29 for identification. Can you, please,
24 identify this, and did you sign it?

25 A Yes, ma'am, I can. It's a copy of my lab report with

1 my signature for these items.

2 MS. MONT'S: Your Honor, we'd move State's Exhibit No.
3 29 into evidence.

4 THE COURT: Any objection?

5 MR. MACKENZIE: Only what I've previously stated,
6 Your Honor.

7 THE COURT: All right. Subject to your objection.

8 (WHEREUPON, State's Exhibit No. 29 was admitted into
9 evidence.)

10 BY MS. MONT'S:

11 Q Mr. Armstrong, please, publish your results.

12 A THR-1 was two bags containing plant material. I
13 found that to be marijuana with a weight of 27.07 grams.

14 Item THR-2A, I found it to be a bag containing plant
15 material. And no marijuana was found.

16 Item THR-2B, it was a bag containing 32 white
17 tablets. I found that to contain methylene dioxy
18 methamphetamine with a weight of 6.25 grams.

19 Item THR-5, two bags containing a rock substance. I
20 found that to contain crack cocaine, which is, also, known
21 as cocaine base with a weight of 39.18 grams.

22 Item THR-6, two bags and plastic with residue. I
23 found those to contain cocaine and no weight.

24 Q Is there another term for methylene dioxy
25 methamphetamine?

1 A It's slang term is known as Ecstasy.

2 Q And is crack cocaine the same thing as cocaine base?

3 A Yes, ma'am, it is.

4 Q Is there any difference?

5 A No, ma'am.

6 Q Is there any difference between cocaine base/crack
7 cocaine and cocaine?

8 A Yes, ma'am, there is.

9 Q What is the difference?

10 A Cocaine is a salt form. And the cocaine base is the
11 base form. The -- you have to take -- it takes cocaine --
12 you have to take and add some, basically, baking soda or a
13 base to it, dissolve it in water, and then it separates
14 out once it is cooked or goes through a heating process.

15 So, basically, it just changes the -- it takes the
16 salt off of it and forms a base form, which is more
17 suitable for smoking then. Basically, it's like an apple
18 in apple pie. You have to take something and add to the
19 apple to generate an apple pie. And it's the same
20 process. It's just a small addition and then it,
21 actually, makes a different product.

22 MS. MONT'S: Thank you.

23 No further questions.

24 THE COURT: All right. Any questions, Mr. Mackenzie?

25 MR. MACKENZIE: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. MACKENZIE:

Q The lab reports, do you still have those?

A Yes, sir.

Q Let me ask you about this one. This is State's Exhibit No. 28. This is the one regarding the cocaine?

A Yes, sir.

Q The subject -- the name for the subject is a Daniel Lopes; is that correct?

A That's correct.

Q That's the only name listed under "Subject" --

A Yes, sir.

Q -- is that correct?

A That's correct.

Q Okay. And then under the other -- this is State's Exhibit No. 29 --

A Yes, sir.

Q -- regarding the other substances found. The only name listed under "Subject" is confidential --

A Yes, sir.

Q Is that correct?

A That's correct.

MR. MACKENZIE: Thank you.

That's all I have.

MR. SCALZO: Thank you, Your Honor.

CROSS-EXAMINATION

1

2

BY MR. SCALZO:

3

Q Mr. Armstrong, what you just described both for the weapons as well as the drugs is you perform, basically, a scientific application of some sort of testing?

4

5

6

A Yes, sir.

7

8

Q And part of what you're doing is you're applying a method -- or a scientific method that can be reproduced at another date?

9

10

A Yes, sir.

11

Q Correct?

12

A Correct.

13

14

Q And so you're relying on methods that can be reproduced that other people have used before that say that they're reliable?

15

16

A That's correct.

17

18

Q All right. Can you explain for me if you look at, I guess, that first lab report with Mr. Lopez --

19

A Okay.

20

21

Q Well, before I ask you about that, I guess I have to ask you one other question. Part of the scientific method, as we just discussed, is that it could be verified --

22

23

24

A Yes, sir.

25

Q -- is that fair to say?

1 A That's true.

2 Q And one of the ways of verification is having
3 somebody else to verify what's been done?

4 A That's true.

5 Q Okay. Now, looking at that report, explain to me
6 what is meant by this sentence, These examinations were
7 conducted under your assurance that no examinations of
8 evidence submitted in this case have been or will be
9 conducted by any other laboratory or agency. And that's
10 in your report --

11 A Yes, sir.

12 Q Can you explain that? It seems like it's saying
13 don't have it reviewed by anybody else.

14 A Oh, no, sir. This is, actually, a statement for the
15 officers so they're not going out and searching for an
16 answer. They submit it. We give them our findings.
17 They're not going out and submitting it to different labs
18 until one lab gives them an answer they may want.

19 Q Okay.

20 A We're only -- we present our report. That's our
21 report. And our data is, also, peer reviewed. So there's
22 more than one chemist, actually, looking at the evidence
23 as well. So when all that is processed from their -- from
24 our notes, the report is generated. Then that report goes
25 out with that statement stating that we understand that

1 you did not send this to someone else to try to get the
2 results you're looking for.

3 Q Okay. So, in other words, what you're saying is
4 before you accept that item to be processed, you want them
5 to say, look, we didn't send this to anyplace else?

6 A Correct.

7 Q But what it's not saying is that once you analyze it,
8 they can't go have it analyzed by somebody else --

9 A Oh, if someone else needs to analyze it from --
10 especially from a defense prospect, that's no problem
11 whatsoever.

12 Q All right. I wanted to make sure I understood what
13 that meant.

14 A No problem.

15 Q My other question would be, the method by which you
16 analyze the drugs -- and let's talk about the report on
17 Mr. Lopez with regard to -- I guess it's State's Exhibit
18 No. 5 -- yes, State's Exhibit No. 5?

19 A Yes, sir.

20 Q Am I correct in saying that when you're analyzing to
21 figure out what a substance is, if it's what you believe
22 it to be, you take a sample? How do you do that? Can you
23 explain how you do that?

24 A Yes, sir. When I first receive the item, I inventory
25 the contents. If it's in a bag, I make a note that it's a

1 bag containing, and then whatever is inside. We then -- I
2 then take that substance and weigh just the substance, not
3 weighing the bag, not our container, just weigh the
4 substance. Then we take a small sample off of there and
5 do a chemical spot test, and then an instrumental test for
6 confirmation. And then we seal that item back and take it
7 back to property and evidence.

8 Q When you say a "small sample," how much of a sample
9 are we talking about?

10 A Thousandths of a gram.

11 Q Thousandths of a gram. And is it always measured, or
12 do you just take a little piece out?

13 A It's really like a little speck of residue. If we
14 just -- you can't really see -- and put on our chemical --
15 our instrumentation to do the analysis.

16 Q All right. And do you do more than one of those
17 samples, or only one sample?

18 A We just do one, if everything looks to be in a
19 uniform manner.

20 Q And when you say it "looks to be," you're saying with
21 your eyes and looking at it, it all looks to be --

22 A All looks to be the same.

23 Q -- a white powder, so to speak?

24 A Yes, sir.

25 Q Okay. And without a chemical analysis, you can't

1 necessarily visually say that's cocaine and that's -- that
2 other white powder is not cocaine?

3 A Right. They have to be tested.

4 MR. SCALZO: All right. Thank you.

5 THE COURT: Thank you, sir.

6 Step down.

7 MS. MONTS: Your Honor, we ask that this witness be
8 excused.

9 THE COURT: Any objection?

10 MR. MACKENZIE: No objection.

11 MR. SCALZO: No, sir.

12 THE COURT: Thank you, sir.

13 THE WITNESS: Thank you.

14 MS. MONTS: Your Honor, that would be the State's
15 case.

16 THE COURT: Take the jury out for a minute, please.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 10:27 a.m.)

19 MOTIONS

20 THE COURT: All right. Any motions, Mr. Mackenzie?

21 MR. MACKENZIE: Thank you, Your Honor.

22 I want to make a motion for directed verdict on the
23 charge of trafficking in crack cocaine. There's been no
24 proof offered by the State that Mr. Nelson was in actual
25 or constructive possession of the crack.

1 think it all is enough to give the jury a question for
2 them to decide upon.

3 MR. MACKENZIE: There's more to the Heath case, if I
4 may.

5 That's proof that he had access to the house. The
6 Supreme Court of South Carolina says, It is arguable the
7 appellant merely had right of access to the area where the
8 crack was found, not actual dominion and control of the
9 property. That's what we have here.

10 In the Heath case, it was proven that the man,
11 actually, lived in the house. And that wasn't enough.
12 And we don't have that here. And there's no proof
13 that he was ever even at the house on the day in
14 question.

15 THE COURT: I deny your motion. I think there's
16 sufficient evidence to go forward.

17 MR. MACKENZIE: Thank you.

18 THE COURT: All right. Mr. Scalzo.

19 MR. SCALZO: Judge, two issues. When State's Exhibit
20 No. 28 was moved in, the lab report on the drugs that are
21 related to my client, I said without objection. I want to
22 make it clear I still object to the drugs, though, if --
23 for the record, I don't want that to waive somehow that
24 issue --

25 THE COURT: I understand.

1 MR. SCALZO: -- or my objection to the drugs. I,
2 obviously, will renew my prior motions on suppression.
3 And to the extent that it's necessary to make a motion for
4 a directed verdict to preserve any of those motions, I'll
5 make that at this point, too.

6 THE COURT: All right. I deny that.

7 Now, you have some testimony?

8 MR. MACKENZIE: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:35 a.m.)

12 THE COURT: Mr. Mackenzie.

13 MR. MACKENZIE: Thank you, Your Honor.

14 Ruthie Tate.

15 THE CLERK: Ms. Tate, if you'll come forward, please.
16 Pause at the end of the bench.

17 Please place your left hand on the Bible and raise
18 your right hand.

19 WHEREUPON,

20 IDA RUTH TATE,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Ida Ruth Tate.

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DIRECT EXAMINATION

BY MR. MACKENZIE:

Q Ms. Tate, where do you work?

A Tate Real Estate.

Q And what is Tate Real Estate?

A It's a real estate company that does property management and, also, works with the buying and selling of homes.

Q And do you lease apartments to people?

A Yes.

Q What's your position there?

A Property manager and broker in charge.

Q And what are some of your duties there?

A Collect rent, help people find homes, take applications, screen applications, interview perspective tenants.

Q Do you have -- do you rent some property located on [REDACTED] in Mauldin?

A Yes.

Q What is that property?

A It's a condo.

Q And did you ever lease that apartment to Mr. Octavius Nelson?

A Yes.

Q Excuse me. It's a condo?

1 A Yes.

2 Q And when was that? Do you remember approximately?

3 A I believe it was in 2002.

4 Q And as part of your business practices there at Tate
5 Real Estate, do you keep certain records about who your
6 tenants are?

7 A We do.

8 Q Do you keep copies of rental agreements, and things
9 like that?

10 A We do.

11 Q Do you keep copies of receipts for rent paid, and
12 things like that?

13 A Yes.

14 Q And are those the sort of things that you keep on a
15 regular basis?

16 A Yes.

17 Q Those sorts of records?

18 A Yes.

19 Q And are those the sort of records that you keep
20 during the normal course of business?

21 A Yes.

22 Q Did you have a rental agreement with Mr. Octavius
23 Nelson?

24 A Yes.

25 MR. MACKENZIE: I'd like to have this marked.

1 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
2 identification only.)

3 BY MR. MACKENZIE:

4 Q Ms. Tate, this has been marked as Defendant's Exhibit
5 No. 3. Can you identify those documents?

6 A This is a renewal of residential rental agreement
7 with Octavius. And it's dated April 5 of '05. The
8 original agreement was in 2003. I think he lived there in
9 '02. I would have to check the receipts.

10 Q Okay. This is a rental agreement signed by
11 Mr. Octavius Nelson?

12 A Yes, as far as I know.

13 Q Does it have his name on it?

14 A Yes.

15 MR. MACKENZIE: I'd like to offer this into evidence
16 at this time, Your Honor.

17 THE COURT: Any objection?

18 MS. MONTS: No, Your Honor.

19 THE COURT: Without objection, it's in.

20 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
21 into evidence.)

22 BY MR. MACKENZIE:

23 Q And, Ms. Tate, do you -- I believe you already
24 testified that you keep records of receipts for rent paid
25 from your tenants; is that correct?

1 A Yes.

2 Q And did you keep receipts of rent paid by
3 Mr. Octavius Nelson?

4 A Yes.

5 MR. MACKENZIE: I'd like to have this marked.

6 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
7 identification only.)

8 BY MR. MACKENZIE:

9 Q This is Defendant's Exhibit No. 4. Can you identify
10 that?

11 A This is a letter that I sent to you back in 2007, at
12 which point you requested the rental receipts for
13 Octavius. And I sent you a list of the rents that he had
14 paid from 2002 all the way up to 2006. And along with
15 that, I, actually, sent you copies of the receipts.

16 MR. MACKENZIE: Thank you.

17 I'd like to offer that into evidence at this time,
18 Your Honor.

19 THE COURT: Any objection?

20 MS. MONTS: No, Your Honor.

21 THE COURT: Without objection, it's in.

22 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
23 into evidence.)

24 BY MR. MACKENZIE:

25 Q So Octavius was a tenant from the year 2002 to 2006;

1 is that correct?

2 A Yes.

3 MR. MACKENZIE: Thank you.

4 I don't have any other questions.

5 THE COURT: Do you have any questions, Mr. Scalzo?

6 MR. SCALZO: No, sir.

7 THE COURT: All right. Solicitor.

8 CROSS-EXAMINATION

9 BY MS. MONTS:

10 Q Ms. Tate, who were the tenants listed on that
11 agreement?

12 A Octavius Nelson and Bobby Nelson.

13 Q And did you know Octavius Nelson and Bobby Nelson?

14 A Yes. I knew them both.

15 Q Did you -- how often would you see them there?

16 A I would see -- I don't know. I really can't answer
17 that question very definitely. Sometimes, Octavius would
18 come, sometimes Bobby would come and pay the rent. It's
19 not atypical for the population that I serve for other
20 people than the lease holders to pay the rent.

21 Q And was the rent paid in cash?

22 A Yes.

23 Q Every month for all those years?

24 A Yes.

25 Q And so you -- give me a rough idea of how often you

1 would see Octavius and Bobby?

2 A Well, the rent is due monthly. So they would come in
3 monthly and pay the rent. Sometimes, I was there
4 sometimes, I wasn't. If you look on the receipts, some --
5 most of the receipts were signed by my assistant most of
6 the time.

7 Q So would you see them on a weekly basis?

8 A No, monthly.

9 Q So you only saw them once a month?

10 A Right, only when the rent was due. And the rent was
11 due the first of the month.

12 MS. MONTS: Thank you.

13 Nothing further.

14 MR. MACKENZIE: Just briefly.

15 REDIRECT EXAMINATION

16 BY MR. MACKENZIE:

17 Q Is the business office at the same location as the
18 apartment?

19 A No, it's not.

20 Q Where is the business office?

21 A It's 128 East Broad Street.

22 Q In downtown Greenville?

23 A Yes.

24 Q The apartment is in Mauldin?

25 A Yes.

1 MR. MACKENZIE: Thank you.

2 THE COURT: Thank you.

3 Step down.

4 Do you want to excuse this witness?

5 MR. MACKENZIE: Yes, sir, Your Honor.

6 MR. SCALZO: No objection, Judge.

7 MS. MONTS: No objection.

8 THE COURT: Okay.

9 MR. MACKENZIE: Kathleen Nelson [sic].

10 THE CLERK: Ma'am, please, place your left hand on
11 the Bible and raise your right hand.

12 WHEREUPON,

13 KATHLEEN S. BURNS,
14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 Please be seated.

17 Please state your full name for the record.

18 THE WITNESS: Kathleen S. Burns.

19 DIRECT EXAMINATION

20 BY MR. MACKENZIE:

21 Q Ms. Burns, I think I called you Ms. Nelson.

22 Are you Octavius' mother?

23 A Yes.

24 Q Do you live here in Greenville?

25 A Yes.

1 Q And do you work?

2 A No, I don't. I --

3 Q Are -- I'm sorry. Go ahead.

4 A I'm sorry. I resigned from my job in '04 to take
5 care of my son, Bobby, who deceased the other day.

6 Q I'm sorry for your loss.

7 A Thank you.

8 Q And are you married to Charles Burns?

9 A Yes, I am.

10 Q Now, did you used to live at [REDACTED]

11 [REDACTED]?

12 A Yes, I did.

13 Q Who owned that house in January of 2005?

14 A Charles and I.

15 Q What neighborhood is that in?

16 A Belle Meade.

17 Q When did you purchase that house?

18 A 1993.

19 Q How long did you live there?

20 A About 14 years, 13 or 14 years.

21 Q Were you and Charles the legal title owners to that
22 house?

23 A Yes, we were.

24 Q Were you the legal title owners in January of 2005?

25 A Yes, we were.

1 Q Why did y'all leave that house?

2 A Well, in the event that I resigned from my job and
3 there was one income -- and I was taking care of my son,
4 we no longer could afford to make the note.

5 Q Did the mortgage company foreclose?

6 A Yes, they did.

7 Q And then the house was sold?

8 A Yes, it was.

9 MR. MACKENZIE: I'd like to have this marked.

10 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
11 identification only.)

12 BY MR. MACKENZIE:

13 Q Ms. Burns, this is Defendant's Exhibit No. 5. Can
14 you identify what that is?

15 A Yes.

16 Q Can you tell us what it is?

17 A This is a real estate deed and title of the property.

18 Q Is that the title to your house at [REDACTED]

19 [REDACTED]?

20 A Yes, it is.

21 MR. MACKENZIE: I'd like to offer that into evidence
22 at this time.

23 THE COURT: Any objection?

24 MS. MONTS: No, Your Honor.

25 THE COURT: Without objection, it's in.

1 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
2 into evidence.)

3 BY MR. MACKENZIE:

4 Q Who lived at that house with you and Charles?

5 A My invalid son, Bobby, Jr.

6 Q Did Octavius live there?

7 A No.

8 Q Did he ever live there?

9 A At a time, a younger age.

10 Q Was he living there in January of 2005?

11 A No.

12 Q Did he still receive some mail there?

13 A Yes, he did.

14 Q Who had bedrooms in that house?

15 A My son, Bobby, and my husband and I.

16 Q Did Octavius have a bedroom in the house?

17 A No.

18 Q Was there some sort of bed on the living room floor,
19 or something?

20 A There was.

21 Q Okay. What was the purpose of that?

22 A Because Octavius would come by from time to time.

23 And he would help me take care of his brother. And in the
24 event, we put a bed in the living room when he would come
25 by for him to rest. Sometimes, Bobby would be coming in

1 late from dialysis. And Tay would be there to help him --
2 to assist him in the house.

3 Q Where did Octavius live?

4 A He lived on [REDACTED] with his dad.

5 Q In Mauldin?

6 A In Mauldin, South Carolina.

7 Q How often would Octavius come by the house?

8 A About twice a week.

9 Q Did he have a key to the house?

10 A Yes, he did.

11 Q Did he have his own room?

12 A No.

13 Q Did he leave a lot of belongings and stuff there?

14 A No, no more than the games he played while he was
15 there, video games.

16 Q Video games. Now, I want to take you back to the
17 morning of January the 21st of 2005, the day when all this
18 happened. Who was present in your house that morning?

19 A Charles, and my grandbaby, and I.

20 Q What about Octavius' brother?

21 A That's what I said, his brother, Bobby.

22 Q Okay. But was Octavius present?

23 A Yes, he was.

24 Q Was there -- did anybody else come over to the house
25 that day?

- 1 A A friend of Tay's.
- 2 Q All right. Who was that?
- 3 A That was Mr. Goodman.
- 4 Q Okay. James Goodman?
- 5 A Yes.
- 6 Q How long --
- 7 A But I didn't know him at that time as Mr. Goodman.
- 8 Q How long had Octavius been there?
- 9 A I really don't know. Because I had just come in with
- 10 my grandbaby. And Tay was there on the bed asleep. And
- 11 Mr. Goodman came in behind me.
- 12 Q And so what was everybody doing at the house that
- 13 day?
- 14 A My husband was in the room -- the bedroom. And I
- 15 just came in. And Tay was asleep. And I woke him up.
- 16 Q Your husband was in which bedroom?
- 17 A In our bedroom, the back bedroom.
- 18 Q Is that the one at the front of the house, or the
- 19 back of the house?
- 20 A The back of the house.
- 21 Q And where was Bobby?
- 22 A Bobby was in his bed.
- 23 Q Is that the bedroom at the front of the house?
- 24 A The back of the house across from mine.
- 25 Q Were there any drugs in the house?

1 A Not that I know of.

2 Q What was Octavius doing?

3 A He was asleep.

4 Q What was Mr. Goodman doing?

5 A He was standing there waiting for me to wake up Tay.
6 And he was sitting down.

7 Q Where was he? What room was he in?

8 A He was in the living room -- living room, but first
9 in the dining room.

10 Q Was he over in the kitchen?

11 A Not to my knowledge.

12 Q Did you see him using the telephone?

13 A No.

14 Q I'm talking about Mr. Goodman, not Octavius.

15 A No.

16 Q So how long did you stay at the house that day?

17 A Probably about an hour. And I forgot my baby's apple
18 juice, along with a lot of other things. And I was going
19 to go back to the store.

20 Q And did you go to the store?

21 A Yes. I didn't get -- I didn't make it to the store.

22 Q What happened?

23 A Well, I was pulled over by an unmarked car.

24 Q When you left the house, was Mr. Goodman still at the
25 house?

1 A No. He had left.

2 Q He left earlier than you?

3 A Yes, he did.

4 Q Do you remember how much earlier?

5 A About 15 minutes.

6 Q When you left the house, was Octavius still at the
7 house?

8 A No. He had went to get him some lunch at the Waffle
9 House. He asked my husband and I did we want anything.
10 And we told him, no.

11 Q All right. So what happened after you got pulled
12 over?

13 A Well, the officer asked me to return to the house,
14 which I did. And when I drove in the driveway and got out
15 of the car, then several officers came in my driveway.
16 And one of them asked me that -- we have your son. You
17 have a son named Octavius. We have your son. Do you know
18 that he was selling drugs? I said, no, my son do [sic]
19 not sell drugs.

20 Q Did they ask you for consent to search the house?

21 A Yes, they did. They asked me could they look in the
22 house. I said, sure, because there are no drugs.

23 Q And did they search the house?

24 A Yes, they did.

25 Q Now, you've been here throughout the course of this

1 trial; right?

2 A Yes.

3 Q Now, the State has presented several items into
4 evidence that allegedly were taken from your house. Have
5 you heard that testimony?

6 A Yes, I did.

7 Q All right. There's been evidence that there was some
8 drugs, and some guns. What do you have to say about those
9 items being in your house?

10 A Well, first of all, I did not know that they were in
11 my house. Because I do not believe that my son sells
12 drugs. And I do believe that if he did, he would have
13 told me. And the fact of that, the only thing that I --

14 MS. MONTS: Objection, Your Honor, to any
15 speculation.

16 THE COURT: Yes.

17 Hold on just a minute.

18 Mary, call down and tell Judy to tell them to quit
19 drilling. They must be in the mail room.

20 THE CLERK: Okay.

21 THE COURT: I sustain the objection.

22 Move on, please.

23 BY MR. MACKENZIE:

24 Q Who did those items belong to?

25 A I do not know.

1 MR. MACKENZIE: All right. Thank you.

2 That's all I have.

3 THE COURT: Do you have any questions, Mr. Scalzo?

4 MR. SCALZO: No, sir.

5 THE COURT: All right. Solicitor.

6 CROSS-EXAMINATION

7 BY MS. MONT'S:

8 Q Ms. Burns, how often did you go through your house?
9 Would you go through every room in the house or where --
10 when you would come home -- you said you weren't working.
11 You were home taking care of Bobby. And Bobby lived in
12 the -- or was his bedroom the one off of the kitchen?

13 A Yes, it was.

14 Q And so you were home all day -- or how much of the
15 day were you home?

16 A Well, I was in and out. And my main focus was Bobby.
17 And I didn't do an inventory on my home. There was young
18 folks at our house all the time --

19 Q Okay, okay. That's enough. Did you ever go in the
20 kitchen?

21 A Yes, I did.

22 Q Did you ever go in Bobby's room?

23 A Yes, I did.

24 Q What was Bobby's condition? Could he move around by
25 himself?

1 A No, baby.

2 Q And --

3 A He needed assistance.

4 Q And how often would you go in the living room where
5 the bed was that Octavius would occasionally sleep in?

6 A Well, I would go in there sometimes just passing
7 through it.

8 Q And would you ever go into the room that there was
9 some damage in?

10 A No. We kept that door shut.

11 Q And how often would your grandbaby be at the house?

12 A She came every weekend.

13 Q Would she be in the room -- in the living room?

14 A Sometimes.

15 Q Would she be in the kitchen?

16 A Sometimes.

17 Q And what items were kept in the china hutch in the
18 dining room area?

19 A My china, my crystal, and my silverware.

20 Q And didn't Octavius keep some of his mail there?

21 A Yes, he did.

22 Q And how often would Tay come over to help with his
23 brother, or to watch video games?

24 A About twice a week.

25 Q And you said Bobby had been living with you since

1 approximately 2004. Is that -- maybe I said that wrong.

2 How long had he been living there?

3 A Bobby always lived with me.

4 Q Bobby always lived with you?

5 A Uh-huh.

6 MS. MONTS: Thank you.

7 Nothing further.

8 MR. MACKENZIE: Can I -- just briefly?

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. MACKENZIE:

12 Q You said on cross that there were young people at the
13 house all the time?

14 MS. MONTS: Your Honor, that was unresponsive.

15 THE COURT: Hold on.

16 What's the question?

17 MR. MACKENZIE: I asked her -- she had made a
18 statement about -- on cross, she said that -- words to the
19 effect that there were young people at the house all the
20 time. I was going to ask her to explain that.

21 THE COURT: Go ahead.

22 BY MR. MACKENZIE:

23 Q Would you, please, explain that?

24 A They were friends of Bobby's and Tay's. They would
25 come by often to visit Bobby, and to visit with Tay. They

1 would play games, video games, and just relax, and just do
2 the stuff that young folks do.

3 Q Did you see any of these people using illegal drugs
4 in your house?

5 A No, sir.

6 Q Did you see --

7 A They were respectable adults, and young adults.

8 Q Did you see them manufacturing any illegal drugs?

9 A No.

10 MR. MACKENZIE: Thank you.

11 THE COURT: Step down.

12 MR. MACKENZIE: Octavius Nelson.

13 THE CLERK: Sir, place your left hand on the Bible
14 and raise your right hand.

15 WHEREUPON,

16 OCTAVIUS LOUIS NELSON,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 State your full name for the record.

21 THE WITNESS: Octavius Louis Nelson.

22 DIRECT EXAMINATION

23 BY MR. MACKENZIE:

24 Q Octavius, how old are you?

25 A 29.

1 Q How old were you when this incident occurred?

2 A 25.

3 Q Do you live here in Greenville?

4 A I stay in Conestee.

5 Q Conestee?

6 A Yes, sir.

7 Q Kathleen is your mother; is that correct?

8 A Yes.

9 Q Your father is Bobby?

10 A Yeah. He passed away last year. And my stepfather,
11 Charles Burns, is present right now.

12 Q How far did you go in school?

13 A I just recently graduated from ECPI in February with
14 an Associates of Science Degree in Computer Electronics
15 Engineering Technology. And I worked two jobs trying to
16 make it.

17 Q What is ECPI?

18 A It's a school of technology. They, also, have a
19 medical course right down -- off of 85 across from Chiefs.

20 Q And so where are you working now?

21 A I work for a place called the List Company/Quick
22 Candles. And I work for Frito Lay part-time in the
23 afternoons.

24 Q What do you do at those jobs?

25 A Well, for Quick Candles, I ship, pack, receive, do

1 quality checks, fill orders. And at Frito Lay, I prep
2 trucks, load them and unloaded them, check for quality.

3 Q I want to ask you about the house located at [REDACTED]
4 [REDACTED] That's your mother's house; right?

5 A Right, my mother and my stepfather.

6 Q Did you used to live there?

7 A Yeah, when I was much younger like my middle school
8 years. I had left the house around about 18 dating and
9 stuff, and caught myself living with, you know, females or
10 whatever. But I didn't stay after then. That's why I
11 always kept my address there, because I be [sic] gone.
12 And that way, I could check it. My mom might call me and
13 let me know if I had some mail, or something.

14 Q Did you live there in the year 2005, in January?

15 A No, I did not, sir.

16 Q All right. But you said you still received mail
17 there; is that correct?

18 A Right. Because when I had moved to the apartment in
19 Mauldin, we were getting our mailbox broken into. Even
20 the mail courier advised us, you might not want to send
21 your mail here.

22 So I just left it there and never ever changed it.
23 I've had that address since I got my permit and my license
24 when I was 15. So I never just thought about changing it,
25 I mean.

1 Q Okay. There were some papers and so forth that were
2 entered into evidence that I'd like to ask you about.

3 This -- I'm referring to State's Exhibit No. 23. These
4 were some papers that were found at the house.

5 A Right.

6 Q Now, here is one from the Employment Security
7 Commission --

8 A Right.

9 Q -- that is addressed to Octavius Nelson, [REDACTED]
10 [REDACTED] in Greenville; is that correct?

11 A Yes, sir.

12 Q So why did you have this mail coming to your house --
13 I mean, to the [REDACTED] house?

14 A Because, like I said, the mailbox in Mauldin kept
15 getting -- the whole box was getting vandalized. So I
16 just kept it there. Some of those -- that mail is,
17 actually, from '01, and even further than that.

18 Q All right. Here is another piece of paper from
19 Wachovia Securities that has your address listed as P.O.
20 Box 6935?

21 A Yeah. That's when we got an alternate box, because
22 we started getting a few problems around the house where
23 my mother lived at. So we got that. That's when I,
24 actually, caught myself getting some stocks and stuff,
25 trying to learn about the stock market.

1 Q So you, also, had a post office box where you --

2 A No. That was my mother's. I just used it. We had
3 some people messing with the mailbox in the neighborhood.

4 Q Now, here is another statement from BB&T addressed to
5 you at your P.O. box. What's the date of that statement?

6 A December 26, '01. That's when I was currently
7 employed at Best Buy.

8 Q That's dated 2001?

9 A Yes.

10 Q Here is a letter addressed to you at [REDACTED]
11 [REDACTED] from a Cory Shell.

12 A Yes, sir.

13 Q What's the date on that letter?

14 A 2001.

15 Q Now, what was the address on your driver's license in
16 the year 2005?

17 A It was [REDACTED]

18 Q Okay. Now, I want to ask you a little bit about the
19 house. Did you have a room at the house in 2005?

20 A No, I did not.

21 Q Did you sometimes come around to the house?

22 A Oh, yeah, to check on my brother about twice a week.
23 Because he started having real bad sugar level spikes. We
24 had to rush him to the hospital. It would get like 600,
25 close to 700. And he had a bad ulcer on his foot.

1 So them nights, I would spend the night, if it got
2 real bad. See, a lot of times, I had friends that would
3 come around all the time. They'd be there sometimes when
4 I wasn't there. Because the ramp going into the house --
5 he was in a wheelchair -- it was too steep for my mother
6 to push it to let him in. I had two that stay down the
7 street and couple of them used to come by, including
8 Mr. Goodman.

9 Q Did you sometimes spend the night at the house?

10 A Yes. When the sugar levels got real, real high and
11 they had to go rush him to the hospital, I would come back
12 and stay and watch over him.

13 Q And so when you stayed at the house, where did you
14 sleep?

15 A I would rest on the air mattress in the living room.

16 Q How long did you live at [REDACTED] in Mauldin?

17 A From April 2002 to about September 2006. That's when
18 me and my father got a house in Conestee.

19 Q And Ms. Tate came to see us and showed us rental
20 agreements, and some rent receipts. Have you seen these
21 items before?

22 A Yeah. When I go pay the -- you know, I seen the
23 lease agreement. I had to keep signing them. And the
24 receipts, I seen them because you have to sign off on
25 them.

1 Q This is Defendant's Exhibit No. 3. Is that the lease
2 agreement that you signed?

3 A Yes.

4 Q And a renewal?

5 A Yes.

6 Q And you've seen these rental receipts?

7 A Yes. Because she didn't charge me for the last month
8 when we moved to Conestee.

9 Q Who paid the rent, you or Bobby?

10 A I did. For a few times that I wasn't employed, he
11 paid for it. But, other than that, I paid for it.
12 Because he was getting disability, so he would help out.
13 Because it was my place.

14 And my father, he got hurt. And about a year later,
15 he moved in with me. But I had put him on the lease just
16 in case. Because she asked me any persons you might think
17 I need to know about. He had to have hip surgery in 2005,
18 around the time I was locked up.

19 Q This apartment in Mauldin, is that where you lived?

20 A Yes.

21 Q Is that where you slept every night?

22 A Other than the few times we rushed my brother to the
23 hospital.

24 Q Now, you said you came around [REDACTED] Road about a
25 couple times a week?

1 A Yeah. A couple times a week, unless it was just they
2 needed for me to come sooner than that.

3 Q Did you have a key to the house?

4 A Yes, I did.

5 Q Did you have your own room in the house?

6 A No, I did not, sir.

7 Q Did you leave a lot of belongings there and stuff?

8 A No. Just like a change of clothes. If I came and
9 spent the night, a change of clothes and stuff like that.

10 Q All right. So I want to take you back to January the
11 21st of 2005. Where were you that day?

12 A That day, I was in there laying down. Because my
13 brother had another spike in his sugar last -- that night
14 before. And we got up to go to the hospital. We had to
15 rush him to the hospital.

16 And my mom had came waking me up. And James Goodman
17 was standing right there. And he was like, Get on up,
18 boy. I got on up. My mom walked on back to the bedroom.

19 Q All right. Let me stop you right there. Who is
20 James Goodman?

21 A He was an old friend of mine, who I thought was a
22 friend.

23 Q All right. Who else was present?

24 A Just me and him. My brother was in his bedroom. My
25 stepdad was in the back with my daughter. She's not my

1 biological daughter, but, you know, I've been in her life
2 since she was five months old.

3 Q All right. So about -- was this in the morning? In
4 the afternoon?

5 A I don't really -- I think about lunchtime. I'm
6 really not sure of the exact time.

7 Q Were there any drugs present in the house?

8 A No, not as I know of.

9 Q All right. So what did you do that day?

10 A Well, I had got up. And I seen what time it was. I
11 take blood pressure medicine. So I needed to get me
12 something to eat and take my medicine.

13 And then by that time, he got on the phone and he
14 was talking to somebody --

15 Q Let me stop you right there. Are you talking about
16 Mr. Goodman?

17 A Yes, Mr. Goodman.

18 Q All right. What was your relationship with him?

19 A Just friends. I mean, we were all friends. We would
20 all hang out and stuff, play video games, just, you know,
21 kick the breeze and stuff. Back then, I was smoking
22 marijuana. We'd sit outside and smoke a blunt or
23 something like that. But that was it.

24 Q Now, did you have a cellar telephone, or a mobile
25 phone?

1 A Yes, I did.

2 Q Did Mr. Goodman have a phone?

3 A Yes, he did.

4 Q Did you have two accounts?

5 A No. I had one account with two lines on it.

6 Because, at the time, he asked me, he said, Well, man, I
7 come and help out with your brother. He asked me about a
8 phone.

9 I said, Man, I ain't got no money for that.

10 He said, I'll get you one. Because the person I had
11 one with last time didn't pay the bill on time.

12 So I was like, okay. I took the phone. That's how I
13 had my cell phone. Because all I did was just call back
14 to my mama's house, and talk to my daddy, and stuff like
15 that, and a little friends.

16 Q All right. So are you saying you got a cellar phone
17 account for Mr. Goodman?

18 A Yeah. I got it, yeah. He said he would pay for the
19 bill. So I got the phone.

20 Q You had one -- you had two accounts, one for yourself
21 and one for Mr. Goodman; is that what you're saying?

22 A One account with two lines on it.

23 Q What were the two lines?

24 A Well, my number was 303-8566, and his was 303-8568.
25 And it says on the bill whose name is on what bill.

1 Because we had to go up there when we got the lines.

2 Q All right. Now, why did you get a cellar phone line
3 for Mr. Goodman?

4 A Because he said he was trying to help by getting me a
5 phone so I could call him in case my brother needed help
6 into the house. And, like I say, I had other neighbors
7 down the street that would do the same thing. But I could
8 call them.

9 Q What were you and Mr. Goodman doing that morning or
10 that afternoon at [REDACTED] Road?

11 A We were just talking. As soon as I got up, he said,
12 Where are you going?

13 I said, I'm going to get me something to eat.

14 He said, Where are you going?

15 I said, I'm going to the Waffle House.

16 So he said, Hold on a second.

17 He was on the phone then. And he said, Where are you
18 going?

19 I said, I'm going right down the street.

20 He said, Could you bring my friend back to me?

21 I said, No problem.

22 As far as I know what he did for a living, he used to
23 gamble a lot, shoot pool, shoot dice. I would go to the
24 Palace and watch him shoot pool and didn't think nothing
25 of it. And then, sometimes, he would meet his friend

1 girl. Because he lived with a woman on the side. So I
2 had did it before and didn't think nothing of it. I never
3 seen no drugs, nothing like that, no cocaine, no crack,
4 nothing.

5 Q All right. You mentioned he was on the telephone?

6 A He was on the telephone.

7 Q His cellar phone?

8 A Right.

9 Q Where was he? Where were y'all in the house?

10 A We was right there in the living room. And he walked
11 back towards the kitchen and came back. Because there
12 would be many times that I would come and he'd be already
13 there like if my mama was gone when she still did work.

14 Q And so why were you going to the Waffle House?

15 A To get me something to eat.

16 Q What did he ask you to do?

17 A He said, I've got a friend who's coming to see me.
18 Could you bring him back to me?

19 I said, No problem.

20 I didn't think nothing of it.

21 Q Did he explain who this friend was?

22 A No. He didn't say nothing.

23 Q Did he say anything about illegal drugs?

24 A No, he did not.

25 Q Did he say anything about any money?

1 A No, he did not.

2 Q Who is this person you were supposed to go meet?

3 A I don't have a clue. He never told me. I didn't
4 ask.

5 Q Well, how were you supposed to meet up with him?

6 A Because he called me -- well, he, actually, chirped
7 me when I was sitting down eating at the Waffle House. He
8 had told me the car that was supposed to be there. I
9 said, Okay.

10 So I was sitting down eating. And then halfway
11 through my meal, I seen the car pull in. So I asked the
12 waitress to give me a box to go. And I got it to go. And
13 I came on out.

14 Q You said "he chirped me." Who chirped you?

15 A Goodman did on the phone, on the Nextel phone.

16 Q What's a chirp?

17 A A walkie-talkie.

18 Q Is that like a direct-connect call?

19 A Yeah, direct connect.

20 Q All right. So what did you do then?

21 A Like I said, I came out of the Waffle House. I
22 looked over there to the car. I went and sat in the
23 truck. I just nodded my head to him. When he looked back
24 at me, I nodded again. He put his car into motion. And
25 that's when I got ready to pull out.

1 Q Did you go over and talk to him?

2 A No, I did not. I did not wave at him. I just nodded
3 my head to him.

4 Q Did you know -- did you recognize the person?

5 A No. I didn't have a clue.

6 Q There's been testimony in this case about a person
7 named Daniel Jesus Lopez.

8 A I never heard of him until all this happened.

9 Q Have you ever seen him before?

10 A No. I haven't, sir.

11 Q Have you ever talked to him on the telephone?

12 A No. I have not, sir.

13 Q When you went to the Waffle House, did you have a
14 gun?

15 A No. I didn't have nothing, other than the money to
16 get my food.

17 Q How much money are we talking about?

18 A Probably \$8 or \$10, something like that. It's what I
19 had left from my change, and I tipped the waitress.

20 Q Did you have \$10,500?

21 A Shoot, no, I ain't never.

22 Q Did Mr. Goodman have -- did you ever see Mr. Goodman
23 with \$10,500?

24 A No, I have not.

25 Q Why did you just -- why did you do what Mr. Goodman

1 asked you to do?

2 A Because, like I said, I never thought nothing of it
3 before. And, like I say, I had watched him shoot pool and
4 stuff, or shoot dice, or play cards. He used to gamble,
5 or go to the Palace. And like other times, he'd meet a
6 friend girl because he lived with a woman. So I didn't
7 think nothing of it. It wasn't nothing usual. There
8 wasn't no -- I wasn't -- if he met somebody, he'd take off
9 and he'd tell me the next day if he -- if he was with some
10 girl. He would call me later on when his girlfriend was
11 gone from the house and tell me about, you know, what him
12 and the girl did. That was it.

13 Q All right. So what happened as you walked out of the
14 Waffle House?

15 A I walked back to the truck. I got inside the truck.
16 And I nodded my head. I did it twice. The dude looked
17 back at me and nodded. And then he put his car in
18 reverse. And I was pulling out.

19 Q All right. So then what happened?

20 A By that -- when that happened, a truck pulled in
21 front of me. And, first, he came right there. And I
22 said, Go ahead. And then he pulled in front of me. Then
23 they came -- and the white car came in the back of me, the
24 one that, I guess, the undercover officer was driving.
25 And they all surrounded me. And they were like, Put your

1 hands up. Put your hands on the steering wheel. Put your
2 hands up.

3 I said, Man, just don't shoot, just don't shoot.

4 He said, Well, stop the car.

5 I said, I can't.

6 Because the car was hard to go into gear.

7 I told him, I said, it's going to roll back when I
8 get out.

9 It -- when one cop got my arm through the door, the
10 other one came and opened the door. I said, Man, just
11 don't shoot me.

12 And then they got me down on the ground. And then
13 the car did roll back. They got in -- another cop got in
14 there. I said, You've got to push it in hard.

15 So he pushed it harder. And the car stopped. They
16 handcuffed me. They picked me up. When they picked me
17 up, they put me in the front seat of a -- I think an
18 Explorer and took me straight down to Donaldson Center.

19 Q All right. Let me stop you right there. What -- was
20 there something wrong with the car?

21 A Yeah. It had a gear shift problem. Later, it got
22 fixed. You had to really push it hard to get it in gear.

23 Q And did you say -- did I hear you say that that's
24 what caused the car to roll back?

25 A Yes. That's exactly what happened. Because it

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1 didn't hit the car hard. Because he pulled right up on
2 me.

3 Q Well, what was your reaction when all this --

4 A Man, I was scared to death. I didn't have a clue
5 what was going on. That's why I said, Please don't shoot.
6 They ran up on me with guns and stuff. I was like, Man,
7 just don't shoot. I didn't have a clue what was going on,
8 even at that time.

9 Q Did the police ever ask for your consent to search
10 the house?

11 A No, they did not. They asked me where I lived at
12 when they pulled my license out of my wallet. And I told
13 them I stayed in Mauldin. I told them the exact address.
14 And they put -- they kept my wallet when they got my
15 phone. Because the officer right there was present at the
16 time. And there was a heavy-set tall dude with long hair.
17 They were both the main ones talking to me.

18 Q Now, Octavius, you've been here throughout the whole
19 trial. Now, you've seen all this evidence that was
20 introduced into these proceedings and was allegedly taken
21 from the house on [REDACTED] Road.

22 Now, do you have any knowledge of these guns, and
23 illegal substances, and scales, and powder, and things
24 like that?

25 A No, I do not. This is my first time seeing it.

1 That's why I was in shock when I seen all that stuff. I
2 was like, man, where did this stuff come from? And I even
3 told you from day one, I don't know what they're talking
4 about. I didn't know it was severe until after I was
5 sitting in jail and I had called him through my
6 ex-girlfriend. He was crying on the phone.

7 And I said, What are you crying for?

8 He was like, I'm sorry. I'm sorry --

9 MS. MONTS: Objection, Your Honor.

10 THE COURT: I sustain the objection.

11 BY MR. MACKENZIE:

12 Q Try not to repeat anything somebody else said.

13 A Okay.

14 Q Well, Octavius, where did all this stuff come from?

15 A I don't know. It had to be from him. After I had
16 checked his RAP sheet --

17 MS. MONTS: Objection, Your Honor.

18 THE WITNESS: -- and everything --

19 THE COURT: Hold on.

20 Now, I sustain the objection.

21 Move on, please, sir.

22 BY MR. MACKENZIE:

23 Q Let me ask you this. Why -- what was your reasoning
24 going to the Waffle House?

25 A To get me something to eat.

1 Q Did you have any knowledge about a conspiracy to
2 distribute powder --

3 A No, I did not, sir. I didn't know nothing about none
4 of that.

5 Q Did you know about the crack cocaine that was in the
6 kitchen cabinet?

7 A No, I did not.

8 MR. MACKENZIE: Thank you.

9 That's all I have.

10 THE COURT: All right. Mr. Scalzo, any questions?

11 CROSS-EXAMINATION

12 BY MR. SCALZO:

13 Q You said you'd never met or talked to Daniel Lopez?

14 A No. I did not, sir.

15 Q That's prior to that day, that day, or since --

16 A Never in my life.

17 MR. SCALZO: I don't have any further questions.

18 THE COURT: All right. Solicitor.

19 CROSS-EXAMINATION

20 BY MS. MONTS:

21 Q Mr. Nelson, how long did it take you to get from [REDACTED]

22 [REDACTED] to the Waffle House?

23 A Probably a couple of minutes. It wasn't too far.

24 Q Like two or three minutes, or --

25 A I guess, something like that. It wouldn't take long

1 at all.

2 MS. MONTS: Thank you.

3 Nothing further.

4 THE COURT: Thank you.

5 Step down.

6 MR. MACKENZIE: Your Honor, that's the --

7 Mr. Nelson's case.

8 THE COURT: Now, Mr. Scalzo, do you have anything to
9 present?

10 MR. SCALZO: I don't have any witnesses.

11 So the Defense rests.

12 THE COURT: Anything in reply, Solicitor?

13 MS. MONTS: No, Your Honor.

14 THE COURT: Take the jury out, please.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 11:19 a.m.)

17 MOTIONS

18 THE COURT: Any further motions, Mr. Mackenzie, or,
19 Mr. Scalzo?

20 MR. MACKENZIE: I just want to renew my motion for
21 directed verdict on the one charge. I understand your
22 ruling. I assume you're not going to change it at this
23 point.

24 THE COURT: And, again, I would deny that motion.

25 MR. SCALZO: And I'll just renew my prior motions,

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CLOSING ARGUMENTS

MR. MACKENZIE: Thank you, Your Honor.

May it please the Court.

I want to thank you all for your time and attention during this trial. When I was thinking about this trial last night as I was thinking about what I want to talk to y'all about, I was thinking about my mailman. Some of you probably know that in this country sometimes drugs are illegally distributed and delivered by the United States mail. Now, that didn't happen in this case. Nobody is alleging that. But that does happen sometimes. And, sometimes, the drugs go through from one location to another. And they get through sometimes. There's an attempted delivery, and the drugs are intercepted. And when that happens, the people that are responsible are arrested.

But when that happens, the mailman is not arrested, or the UPS man, or the Federal Express man who delivers the drugs is not arrested. And do you know why that is? That is because he didn't have knowledge. He didn't know that what he was delivering was illegal drugs. It would be absurd to arrest the mailman when he's got so many packages to deliver and he doesn't know what the contents of the packages are.

Now, that's not a perfect analogy to what's going on

1 here, except on the element of knowledge. I think that's
2 a very good analogy on that one element. Judge Pyle is
3 going to charge y'all on the law. He's going to tell you
4 what the law is, and how it applies to this case. He is
5 the authority on that. You must accept the law as he
6 gives it to you. Okay. He is the authority.

7 But I believe that he is going to charge you that
8 regarding the trafficking of the powder cocaine charge; in
9 order to find the Defendant guilty, you have to find that
10 he knowingly -- the key word knowingly -- aided or
11 conspired to deliver, or bring into this state over 400
12 grams of powder cocaine. On the trafficking in crack
13 charge -- trafficking in crack cocaine, I believe that he
14 will charge you words to the effect that you must find in
15 order to convict that the Defendant knowingly possessed
16 over 10 grams of crack cocaine.

17 Now, the State hasn't proven certain things in their
18 case. What the State has proven is that there was a
19 conspiracy. There was a conspiracy. The State has proven
20 that the mysterious Mr. Candela from the Atlanta area, and
21 Mr. Lopez, and Mr. James Goodman conspired to distribute
22 or deliver powder cocaine, over 400 grams. Candela was
23 the source. Lopez brings it up. Goodman is the buyer.
24 That's what was proven.

25 They have, also, proven that somebody possessed crack

1 cocaine at the house at [REDACTED]
2 But what the State has not proven is that Octavius Nelson
3 knowingly conspired or knowingly aided in any of that, or
4 that he knowingly possessed actually or constructively any
5 crack cocaine.

6 Octavius' position is that he did not know why
7 Goodman sent him to the Waffle House, or why Goodman was
8 asking him to do -- to meet somebody as Octavius was
9 already going to the Waffle House. He didn't know --
10 Octavius' position is that he did not know he was being
11 asked to participate in illegal activities. It is, also,
12 his position that he did not knowingly possess any crack
13 at the house on [REDACTED] Boulevard.

14 Now, I want to make it clear to you. It's not a
15 matter in this case of what he should have known, or what
16 I would have known, or what somebody, you know, down the
17 hall might have known. It's a matter of what did he know.

18 I think that there are certain evidence -- pieces of
19 evidence, certain testimony that we have heard during this
20 case, certain points that were made that showed that what
21 he is saying is the truth. And I want to go over --
22 that's what I want to talk to you about. First of all,
23 I'm going to talk about the powder cocaine, and then I'm
24 going to talk about the crack cocaine.

25 First of all, I think it's very significant that

1 Mr. Nelson did not know Mr. Lopez. He did not know him at
2 all. Now, I think that this was an issue that the
3 deputies were a little reluctant to have to admit in the
4 beginning. But, eventually, it came out and was confirmed
5 by Deputy Marki -- Marchi, as some people call him. He
6 confirmed that there was -- it appeared that Octavius did
7 not know Mr. Lopez.

8 Lopez -- I believe there was some testimony to the
9 fact that Lopez himself had confirmed that through the
10 deputy. That's why Officer Grounsell -- Deputy Grounsell
11 goes undercover. They're not concerned that the person
12 who's going to meet him at the Waffle House will recognize
13 this isn't the right person and the whole thing won't
14 work. They're not worried about that. They know it will
15 go through because Octavius, they know, doesn't know who
16 he's going to meet.

17 Now, I'm sure the State will tell you that it's
18 possible to conspire to do something illegal to somebody
19 that you don't know, and that's true. But that doesn't
20 really fly in this case. Because there's no evidence that
21 Octavius had knowledge of the powder that he was allegedly
22 conspiring to deliver.

23 Another important issue that came up during this case
24 is Octavius, when he goes to the Waffle House, is not
25 armed with a weapon. He doesn't have a gun. I submit to

1 you that nobody goes to a drug deal with 500 grams of
2 powder cocaine without a gun. I think that is evidence
3 that he did not know what he was getting into. There was
4 not a gun on him. There was not a gun on his truck -- in
5 his truck anywhere.

6 There were some firearms found at the house at [REDACTED]
7 [REDACTED]. Again, that is not Octavius' house. He
8 goes there from time to time. That's not his house. No
9 prints are taken off the gun. Those guns are not
10 connected to him in any way.

11 It's interesting to note that Mr. Lopez did have a
12 gun. He knew what time it was. He -- as a matter of
13 fact, he had a loaded gun with the serial numbers erased
14 so the gun couldn't be traced.

15 Another important issue in the case is Octavius
16 didn't have any money. He had like \$8 or \$10. I can't
17 remember what he said. But he didn't have \$10,500.
18 That's the missing -- that's the real missing piece of the
19 puzzle in this case is where is the money. If there's
20 going to be a drug deal, where's the money? That's one of
21 the main reasons the officers are searching the house.
22 They're looking for the \$10,500. The money is never
23 found. Octavius didn't have it, which proves that
24 Octavius is not the buyer.

25 I don't know who the buyer is. One theory is it

1 could be Mr. Goodman. That's not proven. But, certainly,
2 it's not Octavius, because he doesn't have the money.
3 Something else is going on here. Either the State is not
4 telling us, or they simply don't know about it.

5 Now, I'm sure that the State will try to say, well,
6 that may be true. But, see, what really happened is he
7 was attempting to aid the buyer. He was just helping the
8 buyer. That's why he didn't have the money. But, again,
9 that doesn't fly in this case. That's not really enough
10 to convict. Because there's no knowledge. There's really
11 no knowledge in this case that Octavius knew what the deal
12 was.

13 The only real evidence we have on that is his
14 testimony saying, I was going to the Waffle House to get
15 something to eat. Goodman asked me to meet this guy and
16 bring him back. That testimony is corroborated by the
17 fact that he goes in, he gets a bag, and he gets a to-go
18 cup.

19 I think another thing to consider in this case is
20 Octavius' reaction when he is taken down when he's
21 arrested. Now, there was some testimony about the cars
22 and whether they were unmarked. I think this is another
23 issue that the deputies were a little reluctant to come
24 fully forward on.

25 Deputy Moore, I believe it was, this morning

1 testified that all of them were unmarked. And then there
2 was some testimony, also, this morning that the pickup
3 truck was marked. And there was some testimony yesterday
4 that there was a car that was marked, but it was parked
5 over at the hotel. But Moore said this morning, unless
6 I'm mistaken, that all the cars were unmarked. So then
7 the cops jumped out on him. And Octavius is understandably
8 startled.

9 He says there's something wrong with the gear lever.
10 He tries to tell them, if I let go, it's going to roll
11 back. And that's exactly what happens. And so the car
12 rolls back, but no damage was done. The point is, it's
13 not as if he was trying to flee. He didn't break out of
14 the door and take off on foot.

15 Another thing to consider is the telephone records in
16 this case. And all of it is in evidence. Octavius had
17 two accounts -- I'm sorry, excuse me. He had one account
18 for the two lines, one for himself one for this fellow
19 Goodman, who he thinks is his friend.

20 Octavius' number is 864-303-8566, which is this one
21 right here. James Goodman's line is 864-303-8568. And
22 that's this one right here. This is Defendant's Exhibit
23 No. 2. It says right on here, James. This is Octavius'.
24 They both have Octavius' name at the top as the account
25 holder. But then they go on to say one is Octavius, one

1 is James. And you will have all these records to look at.
2 Octavius carried the one that has his name on it. James
3 Goodman carried the other one.

4 Candela, we know his telephone number because it's in
5 Lopez's confession or statement. It's right here
6 404-455-8686, 404-348-3141. Those are in evidence.
7 Lopez, we know his phone number. Marchi testified to it,
8 404-513-2345. Just remember that number, 2345. It's an
9 easy number to remember.

10 If you look at Octavius' phone records, this is the
11 phone that he said he carried. And this is the phone that
12 was recovered from him, 8566, at the Waffle House. This
13 is his phone. There's no question about it. If you look
14 at these phone records, you will not see these other phone
15 numbers. You will not see Candela's number. You will not
16 see Lopez's number, 2345. It's not on here. These are
17 the records from the day of the incident.

18 You will, also, not see James Goodman's phone number.
19 It's not on here either. He's not talking to Candela, or
20 Goodman, or Lopez on the date of the incident.

21 If you look at James Goodman's phone records, you
22 will see these numbers. They're all on here. They're all
23 over here. You will not see Octavius' number. But you
24 will see Candela at -- line 180 is the 3141; 181, 3141.
25 These are Candela. 188, line 202, 215, 219 through 221,

1 226, 231, 233, and 236. That's how many times James
2 Goodman is talking to Candela, the mysterious Mr. Candela
3 from Atlanta.

4 You will, also, see when you inspect these phone
5 records that Goodman is talking to Lopez on the day in
6 question. This is 2345, remember. Remember that number,
7 2345 on lines 218 and 227. James Goodman is talking to
8 Lopez, who's not here. These are all calls from the
9 morning and afternoon of January 21st, 2005.

10 There was a direct-message call. There was testimony
11 there was a direct call, walkie-talkie function -- I'm not
12 sure what you call it -- from Goodman to Octavius on the
13 day in question. That's the only communication between
14 them. As Octavius explained, he was calling to see had I
15 gotten the guy, had I met the guy yet. Again, there's
16 still no proof that Octavius knows what's going on.
17 Candela, Goodman, and Lopez are conspiring. It can't be
18 proven. And it's not true -- it simply isn't true that
19 Octavius was in the loop, that he knew.

20 Now, regarding the crack cocaine. There's, also,
21 evidence in this case showing that Octavius didn't know
22 and, certainly, didn't possess. Actually, there's no
23 evidence that he possessed that crack cocaine. This is
24 the house of his mother and Charles Burns. They're the
25 legal owners. You've got the titles. There's no question

1 about that. We know who lived there. We know who did not
2 live there.

3 Octavius used to live there when he was younger. He
4 doesn't -- remember, he -- Octavius was only 25 when this
5 happened. He was a young man when this happened. He used
6 to live there. And he's still got some of his mail there.
7 I submit to you that is not unusual for a 25-year-old
8 male -- person, boy to continue to receive mail at his
9 mother's house. Even though he's not living there, I
10 submit to you, that is not unusual at all.

11 The papers don't prove anything. All these papers
12 and everything that -- some of them have his address on
13 them, and some of them don't. And some of them have a
14 P.O. box. And some of them are dated from the year 2001,
15 which is pretty irrelevant. I don't know that those prove
16 anything at all.

17 Ms. Ruthie Tate came to see us today. She showed us
18 the rent receipts. You've got those, too. Octavius has
19 been living in Mauldin since 2002 through 2006. He,
20 originally, signed the lease back in 2002. It was later
21 renewed. You've got all the receipts for all those years
22 showing that he lived in Mauldin at this apartment.
23 Received from Octavius Nelson, received from Octavius
24 Nelson. His name is all over it. I don't think there's
25 any question as to where he lived.

1 Now, he did have some contact with Dorchester.
2 There's no question about that. He came by a couple times
3 a week, whatever, to help with Bobby, his brother, who's
4 an invalid.

5 But there's no proof that Octavius had dominion and
6 control over that house. He's not the boss of that house.
7 That's not his house. He doesn't pay the bills at that
8 house. He had a key. But he didn't have his own room
9 there. He didn't keep many belongings there. He does not
10 have authority over that house. He does not have
11 dominion.

12 I think Judge Pyle will charge you about dominion and
13 control. He did not have dominion and control over that
14 house. Therefore, he did not have possession of the
15 drugs -- the crack that was found hidden in the kitchen
16 cabinet.

17 There's, also, no evidence that Octavius was present
18 when the crack was present. It could be that it was just
19 in the kitchen cabinet and he didn't know about it. There
20 were some firearms found that were talked about earlier.
21 There was no evidence linking those to him, no
22 fingerprints, or anything like that.

23 I'm not going to try to beguile you into thinking
24 that there wasn't something going on at that house over
25 there. Something was going on. I can't tell you what it

1 is. I don't believe that Ms. Monts knows what was going
2 on at that house either. Something was going on.
3 Somebody was doing something illegal at that house. I'm
4 not going to try to mislead you on that. But there's no
5 proof that Octavius was involved. There's, certainly, no
6 proof that he was knowingly involved.

7 The fingerprints, remember that? The fingerprints
8 were done on the crack, the crack that was found hidden in
9 the kitchen. That was the fingerprint analysis.
10 Octavius' prints were not on there. Mr. Goodman's weren't
11 either, I admit that. Octavius' prints weren't on there.
12 Octavius -- there's no proof that Octavius himself ever
13 actually or constructively possessed the crack or powder.

14 I respectfully request you to return a verdict of not
15 guilty on both counts. And I really want to thank you for
16 your time and attention.

17 THE COURT: All right. Mr. Scalzo.

18 MR. SCALZO: Good afternoon. I was going to say good
19 morning, but we're five minutes into the afternoon.

20 My wife and I have two friends who were born in
21 Japan. And we had dinner with them last week. And we
22 were talking. And the wife told me a story about when she
23 first came to America. She went to a grocery store. And
24 she was checking out. And the person said, Paper or
25 plastic. She said, What? Paper or plastic? She kept

1 saying, What, what? Paper or plastic? What happened
2 was -- what was lost in the context, because she's from a
3 different country at that point is, in America, a lot of
4 times, we cut off. So we do a lot of shorthand. He was
5 really asking her, Do you want paper or plastic bags? But
6 because he just said, Paper or plastic, she didn't know.
7 And she needed clarification on what he was asking her.

8 Now, I think that's applicable to what's been going
9 on. I've been trying to ask those kinds of questions
10 throughout the trial. We had the situation with Deputy
11 Maxwell, when he was talking about getting this Waiver of
12 Rights form from my client, Mr. Lopez. And we talked
13 about the time difference, you know, how could it be that
14 the time he signed it was so different than the time that
15 he started it? There was this discrepancy.

16 And Deputy Maxwell gave a reasonable explanation when
17 I posed the direct question to him. Well, it probably
18 should have been 1804, instead of 1604. Okay. But unless
19 I pose the question to him, that's left there to just sit
20 going what did he mean? Did he write it inadvertently,
21 1604? Was the other number wrong? You don't know the
22 answer, unless you ask the question directly, though.

23 Well, another example is Deputy Hines. He made a big
24 deal and used the word "obviously" several times
25 throughout his testimony that Mr. Lopez was lying to him

1 about certain things. And what he never did is he never
2 asked him a direct question to clarify whether it was a
3 lie, or whether he was misunderstanding. Are you going to
4 North Carolina from -- are you going to Georgia from North
5 Carolina? Are you simply making a stop? What exactly are
6 you doing? Is that your final destination? If you
7 thought he was lying, why not ask the next question? And
8 those are two small examples of a lot of what has been
9 going on in the case.

10 It just occurred to me sitting there listening to
11 Mr. Mackenzie that I don't know if you realize this, but
12 January 21st, 2005, is, literally, the only day this case
13 was investigated. Think about that from the State's
14 standpoint. We don't know -- other than, I guess, the
15 analysis of the evidence that was collected on the 21st,
16 has the State brought you anything that they've done since
17 that day to develop more evidence to further explain
18 what's going on in the case? No.

19 There's a problem -- or potentially a problem in
20 doing what we would normally do in everyday life in acting
21 as jurors and kind of doing the same thing. Assumptions
22 can be okay sometimes. They're not -- they don't cause
23 too many problems. They could. But lot of times they
24 don't in everyday life. Assuming somebody understands
25 English in saying paper or plastic is not going to cause

1 that big of a problem. You would be able to correct that
2 one. Criminal cases are not like that.

3 Your job as jurors, while it is to do justice, is
4 within a certain parameter. You have a role here. Your
5 role is to make sure that the State is doing its job, that
6 the State is bringing evidence that sufficiently proves
7 beyond a reasonable doubt what it alleges. That's why the
8 rule is the Defendant doesn't have to present any
9 evidence.

10 In this case, you have one Defendant who presented
11 evidence, and one Defendant who could not and did not.
12 But there's no burden on the Defendant. It's a very
13 important principle. You don't have that in everyday
14 life. You might not have that scenario when you were
15 trying to figure something out. But it's very important
16 because you're a check on the State. That's your role.

17 So while you're going to be charged to do justice,
18 you're not charged to do justice outside of your role as a
19 check on the State. And the way the State brings criminal
20 cases is they go out and they investigate. And whatever
21 evidence they bring, it needs to support their theory
22 beyond a reasonable doubt. So that gets us into the very
23 unique scenario that you find yourselves in now.

24 So there aren't any assumptions. They can't -- it's
25 not a situation where you're going to say it is proof

1 beyond a reasonable doubt, but I'm not sure about this
2 very important part of it. You can't assume the parts of
3 it. You have to be -- I think the language the Judge will
4 use is firmly convinced, certain. It's not mathematical
5 certainty. It's not, you know, scientific in the sense
6 that you have to have a scientist come in here and prove
7 to you all the elements scientifically down to the .01
8 degree. But it's not an assumption. It's a certainty.

9 You've got to feel secure and firm about each element
10 or part of what the State has to prove to you. That's
11 their job. And what -- so it's very easy and we don't
12 think about it to fall back into what we would do outside
13 of this courtroom. But inside the courtroom, it's a much
14 more difficult position that you find yourselves in.

15 Now, throughout the discussions with Mr. Lopez -- and
16 you'll have the statement that he gave to Mr. Maxwell and
17 Mr. Blackburn, who didn't testify, with you. And I think
18 it's important, one, it was not recorded either with an
19 audio recording device or a video recording device. It
20 could have been. It was not. It is not even written by
21 Mr. Lopez. It's not in his handwriting. It's not typed
22 by him. It's a telephone game for lack of a better way of
23 saying it. I tell you, you process it through your mind,
24 and you write it out.

25 Now, I understand what they're going to say is, well,

1 you know, he had a chance to look at it, and he could
2 correct it, and all that. Well, we all know that a lot of
3 times you just read something and you get -- basically, it
4 gets the gist of what it was. Think about it, he's
5 nervous. He's not going to sit there probably and look at
6 every word.

7 What's lost is the context of the conversation.
8 What's lost is, what did the officer say? Do you really
9 think that Mr. Lopez sat on one side, the two officers sat
10 on the other, and they said, Go. And Mr. Lopez said,
11 blah, blah, blah. They typed, and that was it. No.
12 There was a conversation going on. There was a back and
13 forth.

14 Mr. Grounsell doesn't spend his time and all of his
15 training of other people to just say, sit down, and say,
16 duh, and they write down what the guy says. There's a
17 conversation going on. And in that conversation, I think
18 it's important to look at the first paragraph and at the
19 second paragraph in the statement. I realize there are
20 three main paragraphs. But I'm really talking about the
21 first -- well, I guess it would be the second and third
22 paragraph on the applicable form.

23 The language changes. I promise you I'll let the --
24 have it in a minute. The language changes. It goes from
25 talking about the box. And then the officer starts --

1 shifts and talks about crack -- I mean cocaine. And if
2 you didn't look at it, it would be subtle -- and we all
3 know what's kind of gone on here. And in shorthand, paper
4 or plastic, we start saying box equals cocaine. Because
5 we get so comfortable with the story that it's become just
6 shorthand; right? Not in a jury trial in a criminal case.

7 Mr. Mackenzie started talking about something that I
8 was interested in talking to you about, knowing -- the
9 language is going to be knowingly. The Judge is going to
10 read you -- tell you the law, the statute. Mr. Lopez is
11 charged with trafficking in cocaine. He's not charged
12 with possession. He's charged with possession, plus.
13 It's got to be more than just being in possession. He's
14 got to be in possession of something that weighs more than
15 10 grams. And in this case, it's going to be 400 grams or
16 more. And pay attention to what he reads to you -- or
17 tells you.

18 There are three places in this statute where the word
19 knowingly is used, three. And they've got to prove he
20 knew what he was doing. Part of knowing what he was doing
21 is proving that he knew what he was getting himself into.
22 Was he getting himself into bringing a box that had -- and
23 this is not the same thing, but it's a similar size --
24 that much cocaine, or that much cocaine. What did he
25 know? And we could have had a real simple answer to that.

1 Mr. Candela. They had his address and his phone number.
2 There isn't any evidence of him past the 21st of January,
3 2005.

4 Mr. Lopez is sitting there. He, clearly, was
5 cooperating with them. He spilled his guts and told
6 them -- was telling them what was going on. He's
7 clearly -- and I want to make sure we don't lose this
8 point. He's entirely unsophisticated at what he had
9 himself involved in. He was nervous beyond belief that a
10 police officer pulls him over for speeding. He nervously
11 gets himself stopped, prolonged. I mean, he just keeps
12 walking into it more and more and more. Calm, cool, and
13 collected never entered Mr. Lopez's conduct in this case.
14 He, clearly, is not the level of a drug dealer,
15 trafficker, whatever you want to call it, to move the
16 weight of drugs we're talking about, the amount of money
17 we're talking about.

18 Now, he knows something is up. There's some evidence
19 that he knows something is up. He does say he went there
20 and saw the guy had a couple of kilo's. But that's not
21 the end of the inquiry. Again, that becomes -- you're
22 getting into guessing, you're getting into assumptions.

23 The question is, in the police's investigation, what
24 do they develop? Where do they go? And what do they then
25 bring into court to prove to you what he knew? Did he

1 know he was transferring a box that contained 500 grams of
2 cocaine? It would seem from his statement in that first
3 paragraph that he really was talking about a box that the
4 police would kind of interchange cocaine. But it was
5 never directly asked. And it was never directly
6 clarified. And I don't think that's by accident.

7 As a lawyer, I personally ask questions for a living.
8 I don't think that's an accident. If you ask a question,
9 you may not get the right answer, unless you know the
10 answer.

11 So you've got to be careful. If they ask him, did
12 you know what you were transporting? And he says, I don't
13 know what I'm transporting. I may have thought it was a
14 gram of cocaine, or I may have thought -- they don't know
15 what he's going to say. It's so much better to leave it
16 kind of vague and just say, we'll, ultimately, find out
17 how much it weighs, and then that's it. He knew what was
18 in there. I don't know.

19 Let's look at the evidence to suggest whether he knew
20 what was in there or not. Knowingly. Remember, he's got
21 to know it. If it's in that box in plastic and it's
22 contained -- I guess dipped or something in some detergent
23 is what was described. And I guess that was an effort to
24 disguise the odor that might come out of it.

25 Well, one, none of Mr. Lopez's fingerprints are on

1 anything that have been presented, certainly, not the box
2 and the drugs. Clearly, that was a fairly sophisticated
3 way of putting together this package that was to be
4 transported.

5 Another thing, think about his unsophistication in
6 the overall scheme of things. Would it really have made
7 sense for this Candela guy, who he had his phone number
8 and address for, to say, here, take this box, go bring it
9 to this guy. And then he's going to package the box
10 himself. He's going to make sure that all of this gets
11 inside here. He's going to make sure it's more -- you
12 don't want to ask too many questions in those situations.
13 You don't want -- he doesn't want to probably give a whole
14 lot of information. He probably would rather not know a
15 lot.

16 So the question being what he knew was in there is
17 pretty important when you're investigating a trafficking
18 in cocaine case, which is possession, plus, proving the
19 amount. And the first question you don't ask is how much
20 have you got? The police didn't -- apparently, didn't ask
21 him that. They talked about it as if it was a foregone
22 conclusion, but they didn't prove it. Why?

23 Well, go back to the testimony. And it's perfectly
24 understandable maybe, perhaps, at that moment, but they
25 were rushed. They kept saying, well, you know, we don't

1 want to lose the guy who might buy it. We don't want to
2 lose -- we don't want Candela to get all panicky. It's
3 perfectly reasonable things to do. And there isn't a
4 question in my mind that that was the right thing to do at
5 that moment.

6 But this is done before they ever talk to -- they
7 take the statement from Mr. Lopez. Remember the timing of
8 everything. Grounsell is in there for the statement just
9 before he gets pulled out. It's over with. The time --
10 the expediency, the need to have it done real quick is
11 gone at the point in which they're talking to Mr. Lopez.
12 And it's important. That's part of the evidence of what
13 they've got to do, prove that he knew. Prove the -- to
14 prove conspiracy isn't just, hey, buddy, can you take this
15 package over to that guy? You've got to know what's going
16 on.

17 And the mailman example, I guess, is a pretty good
18 one. He's not in a conspiracy with the person sending the
19 drugs, because he wasn't let in on what was, actually, in
20 there. We don't catch people by accident in a criminal
21 case. Accident is not part of the language you get in
22 criminal -- it's not part of the law that is required.
23 They've got to prove what he knew. And, for four years,
24 there's isn't any other evidence to prove that he knew it.

25 Now, if you were just talking about a possession and

1 it didn't require these other elements to it, that might
2 be a different story. But the elements of the parts that
3 make up a trafficking charge, which the Judge is going to
4 tell you, are possession of the drugs. Some of these
5 other things that might follow, the aiding, the abetting,
6 the conspiracy side of things. Weight is relevant in
7 trafficking, 10 grams or more. In this case, he's charged
8 with 400 grams or more. Those are pieces of what make up
9 the criminal offense.

10 What might start making you nervous is does the State
11 get to come in and just say, well, you know, it all works.
12 It all comes out in the wash. He had this amount. We
13 later measured it to be this weight, sort of just kind of
14 a processing along, you know, just keep going. Don't ask
15 too many questions because you might get bad answers.

16 Well, we'll stop it. Because that's what a trial is
17 about. That's why we ask those questions. We've got to
18 get the answers. And they may have been rushed early on,
19 but they, certainly, had the luxury of time to figure out
20 the answer to some of these questions.

21 Because think of the allegation. The allegation is
22 more than you just had it in your hand. The allegation is
23 a complex piece of a big puzzle. I'll contrast that with
24 the gun. Why? Because he was clear about the gun. Not
25 only was it his car -- they asked him. He told them on

1 the side of the road, I have a gun in the console. The
2 question of whether it would be obvious that the serial
3 number was scratched off, that's obvious. The serial
4 number is scratched off. That's a whole entirely -- it's
5 not packaged. It's not hidden from him. He didn't say he
6 got that from Candela. That's easy. I mean, he's guilty
7 of that.

8 And there are parts to that. The parts that make up
9 that offense that the State has to prove beyond a
10 reasonable doubt are that it was a handgun. Okay. Well,
11 there's a handgun. You had an expert come in here and say
12 that's a gun. Was it stolen or obliterated? Well, there
13 isn't any evidence that it's stolen. But the serial
14 numbers are obliterated. They're trying to hide it.
15 They've proven that beyond a reasonable doubt.

16 Was he selling it? No. Buying it? No. But he
17 possessed it. It was in his car. He acknowledged it was
18 his. Done. We close that up. They've proven that beyond
19 a reasonable doubt. But have they proven the other parts
20 of their second offense.

21 And my encouragement to you is to pay attention to
22 what the Judge tells you the law is. If you can, figure
23 out the parts. Sometimes, that's hard. But the parts are
24 you have to have possession of something. There are these
25 other elements, aiding, abetting, conspiracy, other ways

1 that you can further something to be trafficking, as
2 opposed to just having it.

3 And then you have the 400 grams, the weight of it,
4 which I thought was interesting when I asked the question
5 about how he weighs it. They just kind of take a little
6 part out. It's kind of a strange way to test it. But,
7 nonetheless, an element you have to figure out is what --
8 you know, how much it weighed.

9 And did he know? Knowing something and being certain
10 about what you're about to do is the key point and the key
11 difference between a criminal case and just anything else.
12 You've got to know what you're doing. We're not here
13 interested in punishing people for mistakenly doing
14 something, or planning to do something that they don't
15 realize they're doing like the mailman. That's a great
16 example.

17 Go through the elements. Go through the evidence,
18 and try to figure out what did he know he was getting
19 involved in. Because while there are several parts to the
20 offense, it is not the case where you can check box A and
21 B, and not check box C and D. In a criminal case, you've
22 got to check all of them. And they all have to meet the
23 same standard. Did you prove beyond a reasonable doubt?
24 Are you firmly convinced? Are you certain that it is what
25 the State is telling you it is?

1 So I would ask you to analyze it in the proper way,
2 in the very technical way that we ask you to do it as
3 jurors. And be conscious of the fact that it is not how
4 you view things in your everyday life. It's an increase.
5 It's a more in depth analysis than you do in your everyday
6 life.

7 Thank you.

8 THE COURT: Will you check and see if the jurors
9 lunch is here?

10 THE BAILIFF: It's here.

11 THE COURT: All right. We'll take a recess so the
12 jury can have their lunch. And then we'll pick back up
13 after lunch.

14 Take the jury out.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:22 p.m.)

17 THE COURT: We'll take a recess for lunch.

18 I neglected to tell jury not to discuss this case
19 during lunch.

20 Is there any objection to my bringing the Foreperson
21 in and just tell her not to...

22 MS. MONTS: Not from the State, Your Honor.

23 MR. SCALZO: No, sir.

24 MR. MACKENZIE: That's fine.

25 THE COURT: Bring the Forelady back in for me.

1 (WHEREUPON, Juror #277, Twana Walton, entered the
2 courtroom.)

3 THE COURT: Ms. Walton, I forgot to tell the jury,
4 during the lunch recess, don't talk about this case. You
5 don't do that until I've charged you and all the arguments
6 are complete.

7 So just talk about the weather, or something else.
8 Just don't --

9 JUROR #277, TWANA WALTON: We all understand.

10 THE COURT: Okay. Thank you.

11 (WHEREUPON, Juror #277, Twana Walton, exited the
12 courtroom.)

13 THE COURT: Please be ready to start back about
14 12:15.

15 MR. SCALZO: Do you mean 1:15?

16 THE COURT: I mean 1:15.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Bring the jury in, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:22 p.m.)

21 THE COURT: All right. Solicitor, you may proceed.

22 CONTINUED CLOSING ARGUMENTS

23 MS. MONTS: Madam Forelady, ladies and gentlemen of
24 the jury, drug dealing is a business. It's a business
25 like any other business. There are roles. There are jobs

1 involved. Compare it to, say, a grocery store. There's
2 someone at the top, the owner, who's got money. There's
3 the manager. There's all the staff inside the store, the
4 deli manager, the meat cutter, the produce manager.
5 There's the bag boy, the cashier, the person that pushes
6 your groceries out to the store -- I mean out to your car.

7 And then it can go back even further. Because for
8 the stuff to get to the grocery store, you've got to have
9 a farmer. You've got to have a truck driver to get the
10 stuff to the store. You've got to have a gas line to get
11 to the truck to get the stuff to the store. It's an
12 entire business.

13 Drug dealing is the same way. There are different
14 jobs, different roles. And without every single role, the
15 drugs won't get from South America or wherever they came
16 from, processed, shipped, sent to certain cities, driven,
17 gotten to certain cities from the major source cities,
18 dealt out to individuals to change the cocaine into crack
19 when necessary. And then it's sent down the line to the
20 individual who stands on the street corner and sells a
21 rock of crack cocaine. It's the same thing, a business.
22 And without each of those roles, the business doesn't make
23 money. And businesses are meant to make money.

24 What do we know about this case? And let me explain
25 some of the charges to you. Because that is a -- very

1 confusing. This is a huge case. Each Defendant is
2 charged with two charges. Mr. Lopez, he is charged -- and
3 he is represented by Mr. Scalzo. He is charged -- and I'm
4 going to abbreviate -- with trafficking cocaine more than
5 400 grams. He is, also, charged with possession of a gun
6 with an obliterated serial number.

7 The cocaine that he's charged with, you heard the
8 information from the officers that stopped Mr. Lopez
9 coming off of I-85 at the White Horse Road exit. Inside
10 the cognac box in his trunk was found over 504 grams of
11 cocaine. How do you know it's really cocaine? Because
12 Mr. James Armstrong, who was qualified as an expert in
13 chemical and drug analysis, testified to it. You will
14 have his lab report back with you. 504.48 grams. This
15 was on -- excuse me. It was in the cognac bag -- box in
16 Mr. Lopez's trunk.

17 What else do we know about Mr. Lopez? Once he was
18 stopped by the police, he agreed to cooperate with them.
19 What did he do? He was -- initially, had verbal
20 communication with officers. He gave them some
21 information. And then, later, they changed it to a
22 written form and got it down in writing.

23 You've got the Waiver of Rights form where
24 Mr. Lopez -- and you'll have these all back with you to
25 look at during your deliberation once His Honor gives you

1 that opportunity. There's the Waiver of Rights form
2 saying he understands his rights, and his statement giving
3 details about what he was doing, that he's bringing 504
4 grams, half a kilogram, to Greenville. That's his role.
5 Mr. Lopez's role is to bring it from Atlanta to
6 Greenville, to get the cash, and go back to Atlanta.

7 Now, the statute for trafficking has many different
8 roles. In fact, some of those are delivering or bringing
9 into the state of South Carolina an illegal substance, in
10 this case, cocaine. You can, also, provide financial
11 assistance or otherwise aid, abet, attempt, or conspire to
12 sell, manufacture, deliver, or bring into the state or
13 knowingly being in actual or constructive possession, all
14 the roles in this business. Any role you have in this
15 drug dealing business, you are guilty of trafficking in
16 that illegal substance.

17 So if you find Mr. Lopez was in possession of this,
18 if you find that he brought it into the state, if you
19 found that he aided, abetted, conspired with anybody else
20 to bring this here, he is guilty of trafficking in
21 cocaine. And you know the weight is over 400 grams,
22 because of the lab report from Mr. Armstrong.

23 What's the other charge? Possession of a weapon with
24 an obliterated serial number. And you'll have the gun
25 that was in the center console of Mr. Lopez's car. And

1 James Armstrong is, also, an expert in ballistics. And he
2 testified that the -- he had to do some chemical stuff on
3 there, but that the serial number was obliterated or
4 scratched off.

5 And the officer, Mr. Hines, who stopped the Defendant
6 originally, Mr. Lopez, also, said when he saw the gun that
7 the serial number was obliterated or scratched off. So
8 the Defendant is -- Mr. Lopez is guilty of both of those.

9 You've got the statement. You've got the officer's
10 testimony from the car stop. And you've got your common
11 sense, background experiences, knowledge to use when
12 you're back there deliberating.

13 What's Mr. Nelson charged with? Mr. Nelson is
14 charged with two counts of trafficking. He is charged
15 with trafficking cocaine more than 400 grams, and
16 trafficking crack cocaine more than 28 grams. This 400
17 grams is the same -- excuse me, over 400 grams is the same
18 400 grams that Mr. Lopez is charged with. Why? Because
19 it takes more than one person to do a drug business. Many
20 people are involved. And many people who are involved
21 including this --on the streets are guilty of trafficking.

22 Now, what is Mr. Nelson's role in the trafficking of
23 the 400 grams, and what is his role in trafficking crack?
24 The trafficking crack is the 39.18 grams that are the two
25 quarter cookies. You can -- you'll have this back in the

1 jury room when you're deliberating to look at. These are
2 the two quarter cookies that were found in the kitchen
3 cabinet at [REDACTED] You will have
4 the lab report back with you with that amount on it as
5 well.

6 And there are some other items here. There's an
7 amount of marijuana, an amount of methylene dioxy
8 methamphetamine, which is Ecstasy -- and I'll go over these
9 in a minute -- the crack cocaine, and then, also, the
10 cocaine that was found in the kitchen cupboard in the kilo
11 wrapper. And there was just some residue in there.

12 But the lab, through James Armstrong, tested the
13 kilogram wrapper. I believe Mr. -- Officer McBee
14 testified about the shape. It was in the shape of a
15 kilogram. And it still had some powder in it that was
16 enough to be tested. And it says, no weight, but it was
17 definitely cocaine.

18 Now, the trafficking crack, as I said, is the 28 --
19 39 grams in the house. The trafficking cocaine is the 400
20 grams from Mr. Lopez's car. Because Mr. Lopez was
21 bringing it to Greenville, and somebody is going to do
22 something with it here in Greenville.

23 Now, what do we know? And you can use your
24 backgrounds, experiences in education. But the -- you can
25 use circumstantial evidence or direct evidence.

1 Circumstantial evidence is when you derive your conclusion
2 from facts that are proven. It means it's not that
3 somebody said it or that you saw it, but facts that are
4 proven to you to lead you to your conclusion.

5 What do we know in this case? We know that
6 Mr. Nelson showed up at the Waffle House on I-85 and
7 Augusta Road at approximately 4:40 in the afternoon on
8 January 21st, 2005.

9 What else do we know? We know that Mr. Lopez said
10 the person I am to meet is going to be in a blue pickup
11 truck. The officers were there. They observed only one
12 pickup truck that matched that description. They didn't
13 go forward because they knew they needed more than just
14 that he was in a blue pickup truck. They needed the fact
15 that he made some sort of communication or attempt to
16 communicate with the person in that vehicle who, again,
17 remember, was not Mr. Lopez.

18 Now, Officer Grounsell, at the time, got into
19 Mr. Lopez's white Intrepid and went to the location spot.
20 Once he got there, he waved and motioned to Mr. Grounsell
21 to let him know to follow him. And the Defendant even
22 testified he was there. He was to meet someone. So
23 there's -- I believe there's no misunderstanding about
24 that.

25 But what a coincidence. The deal was set up. The

1 call from Lopez at the Sheriff's Office via his cell phone
2 to the phone number with the last two digits 68 was at
3 3:52. At that point, officers knew we are going to the
4 Waffle House, and we are looking for a blue pickup truck
5 at 3:52.

6 Apparently -- and this evidence is from the Defense.
7 But, apparently, per the Defense, Mr. James Goodman shows
8 up at Octavius' parents house where Octavius happens to be
9 sleeping in the bed in the living room at the time. And
10 Mr. Octavius Nelson gets up. And he's going to go to the
11 Waffle House. And Mr. Goodman says, Where are you going?

12 And he says, To the Waffle House.

13 He says, Oh, if you're going there, can you meet a
14 friend?

15 Ladies and gentlemen, what a huge coincidence. It is
16 not a coincidence, because that's not the way it happened.
17 Mr. Nelson is involved in this drug operation. There are
18 many roles in this drug operation. And his role -- and we
19 will go through the rest of this evidence to show you some
20 more evidence towards it. But his role is involved in his
21 relationship, as he said it, to Mr. Goodman.

22 The fact that many of these drug items were found in
23 the house at [REDACTED] where he had access to,
24 where he had a bed in the living room that he slept in
25 because the one bedroom was burned out, that he had an

1 invalid brother there that he would go and help out. So
2 he was there on a somewhat regular basis.

3 What else do we know about the relationship between
4 Mr. Goodman and Mr. Nelson? Mr. Nelson put a phone in his
5 name -- Mr. Nelson's name for the use of Mr. Goodman.
6 That is -- shows quite a close relationship. The --
7 you'll have the phone records back there, the bills for
8 these phones -- for both of the phones go to [REDACTED]
9 [REDACTED] in Greenville. They're both in
10 Mr. Nelson's name. But one is being used by Mr. Goodman,
11 the other is being used by Mr. Nelson. That shows a close
12 relationship.

13 What else do we know? That Mr. Nelson testified they
14 were friends. They hung out together. They played video
15 games together. They knew some of the same people.
16 Mr. Goodman came over to the house at [REDACTED]
17 and hung out with him.

18 What else do we know? The street value of 504 grams
19 of cocaine was the purchase price, \$10,500. Once you
20 split that over -- the five times over, as Grounsell
21 testified, this turns into over \$50,000.

22 Ladies and gentlemen, in order to be dealing with
23 \$50,000, which is more than most people make in, at least,
24 a year, or two, or three, you have to trust somebody.
25 Because you don't want to lose this. You lose this, the

1 people above you are not going to be happy. And you are
2 going to be in a bad situation.

3 What else do we know about the relationship between
4 Goodman and Nelson? Mr. Nelson trusted him so much that
5 he said he needed to give him the phone so that he could
6 call him to help -- that he could call him if his sick
7 brother needed help. That is quite the close person if
8 you feel comfortable enough to call them up and say,
9 please, go to my parents house and help out my sick
10 brother. That is a close friend. Someone you know a lot
11 about if you are going to trust them with somebody you
12 care about like that. Yes, he knows what type of person
13 Mr. Goodman is. He knows him. He's involved with him.
14 You're not going to be involved in a \$50,000 deal --
15 Mr. Goodman is not if he doesn't trust the person he is
16 sending to go pick this up.

17 What do we know about the direct-connect call? As
18 Officer Marchi testified, the direct-connect call, it's
19 not a regular phone call. It's direct to the phone. So
20 it's not going to be on the phone records. But he checked
21 the direct connect. And at 4:56, there was a
22 direct-connect call from the phone supposedly in the hands
23 of Mr. Goodman to the phone that was on the Defendant,
24 Mr. Nelson.

25 There was no answer. Because, at this point,

1 Mr. Nelson was under arrest. But why did that call come
2 through? Because Mr. Nelson had not met up with them,
3 with the person that had this much drugs. Do you think he
4 called him up to say, hey, how are your eggs from the
5 Waffle House? Why aren't you back yet? No, he called to
6 keep up with these drugs.

7 What else are you going to find out? The phone
8 records show from Atlanta to the second phone, the 68
9 number, calls. Why? As we said, there are separate roles
10 in the drug business. There's got to be somebody with the
11 connections. And that person in this case is whoever had
12 that second phone that -- from the Defense that second
13 person was Mr. Goodman. The State put forward no
14 evidence. We don't know who had that second phone. But
15 whoever had that second phone was the connection to the
16 drug dealer in Atlanta. And that phone was in the name of
17 Octavius Nelson.

18 What else do we know? That when Mr. Nelson -- excuse
19 me, Mr. Nelson was at the [REDACTED] address
20 sleeping that afternoon when his mother came home with the
21 baby. Remember, there was a baby here at the house. She
22 came home. Octavius -- Tay is asleep in that bed in the
23 living room.

24 What else do you know? What did Officer Maxwell find
25 under the cloth in the bed in the living room? A

1 revolver, loaded.

2 What else do we know? At the scene, there was no
3 money found on Mr. Nelson. But what else do we know?
4 You've got to think through the entire process. The deal
5 was not to be finished or completed at the Waffle House.
6 The deal was for somebody to bring Mr. Lopez to another
7 location to make the deal. Why? As Mr. Grounsell
8 testified, you're not going to do a drug deal for this
9 much money -- at this point, supposedly, \$10,500 -- in an
10 open area.

11 What else? Somebody could get robbed, either the
12 buyer or the seller. In this case, you could get robbed
13 of the drugs, or the other person could get robbed of the
14 money. So they go to a separate location to do that.

15 What other information do we have about Mr. Nelson?
16 The house, [REDACTED] we know that he has
17 access, that he's there a lot, that his brother was sick,
18 that he was there a lot for that, that he had a bed in the
19 living room that he slept in, that he had a key. He had
20 access at any time. That he would be there to watch video
21 games, hang out.

22 There was a note on the TV that you'll have back
23 there, Mom and Charles, I'm taping the fight on HBO, love,
24 Tay. I'm going to check on junior and senior showing that
25 he does have access and does go to that house. And why

1 does that matter? Because somebody had 39.18 grams of
2 crack cocaine. And somebody had all these other items
3 that I'm going to go into in that house, and knew they
4 were there.

5 What else do we know about these items? They were
6 spread out in four separate locations. It wasn't somebody
7 running in the door and stashing something, oh, my gosh,
8 someone is chasing me, I'm going to stash something. Four
9 separate locations. We've got the burnt-out bedroom,
10 there were a few items. The invalid brother's bedroom
11 that -- and as you heard the testimony, he could not move
12 around. And these items were high up on a shelf. In the
13 kitchen were many of these items. They were high -- as
14 McBee said, they were about shoulder length to him. He's
15 6'5". So high enough up that you have to be standing up
16 to get to those items. And the other location was in the
17 living room. Four separate locations.

18 What else do you know about these items? They are
19 items for cooking. What do you need to cook crack
20 cocaine? Cocaine, and you need additives, baking soda.
21 What do you need? Pyrex, forks. What do you need to
22 grind up the hard parts of the cocaine? You need a
23 grinder.

24 What else do you need to weigh it out into smaller
25 amounts? Scales. We have three scales in this case from

1 different locations in the house, digital scales, not
2 scales to mail -- to maybe weigh a letter or something.
3 This is where production is occurring. You've got the
4 kilo wrapper from the kitchen, along with the residue.
5 There had been cocaine here.

6 What do you know? I mean, this is cocaine, but it's
7 just not a weighable amount. You've got the crack cocaine
8 itself that has been cooked in that house.

9 What do you know about who's in that house?
10 Ms. Burns -- or Ms. Nelson, who testified, her husband,
11 the invalid brother, who was in the room -- bedroom right
12 off the kitchen, and a baby. Ms. Nelson said she doesn't
13 know anything about guns. She doesn't know anything about
14 drugs, never saw them. The invalid brother, obviously,
15 had no ability to run a drug business. The baby had no
16 ability to run a drug business, or be a part of the drug
17 business, not necessarily run it, but be a part of it, be
18 one of the spokes in the wheel.

19 But Mr. Octavius Nelson was able to do these things.
20 He did have access to the house. He did spend time in
21 this house. He did have access to these four different
22 locations. He was sleeping in the bed with the
23 revolver -- where the revolver was found just moments
24 after his arrest when they went to the house right after
25 his arrest at the Waffle House.

1 I want to point out what items were found in which
2 locations. And you will have these items in the back with
3 you to look over. There was some marijuana found in
4 the -- the green plant material, which was analyzed as
5 marijuana and it's on the lab report, was found in the
6 china hutch in the dining room area. What else was found
7 in there? As his mother testified -- as Mr. Nelson's
8 mother testified, I said, Didn't he leave some mail in
9 that location?

10 She said, Yes. He left mail in the china hutch.

11 What else was found in the china hutch?
12 Cartridges -- 9mm cartridges. And the dining room was off
13 of the living room. What else? The living room, a
14 handgun loaded in the living room on the bed under the
15 cover.

16 What about the closet in the bedroom of the invalid
17 brother? There were 32 methylene dioxy methamphetamine
18 pills, also known as Ecstasy, in that closet high up. So
19 the invalid brother was not able to reach that. Also, in
20 that closet was the other pistol. The other pistol was in
21 that closet where the brother -- the invalid brother could
22 not reach it.

23 So there are two guns in this house. There's a baby
24 in this house. And, again, that -- this gun was, also,
25 loaded, if you remember the testimony of the officers, two

1 loaded guns in that house.

2 In the kitchen, you've got the kilo wrapper with the
3 residue. You've got the 39.18 grams that the chemist
4 analyzed as being crack cocaine, which is cooked cocaine
5 using the additives that were, also, found in the house,
6 the baking soda, and the scales, everything else that
7 would be needed to produce crack cocaine.

8 And in the burned out bedroom was found a Pyrex
9 measuring cup, the baking powder, a fork, and two of the
10 scales in that burned out room in the closet. Officer
11 Marchi had found those. So, again, four separate
12 locations, two guns, methamphetamine, crack, cocaine
13 residue, marijuana. And nobody knows how it got there.
14 Nobody knows how it got there. There are the parents.
15 There are the invalid brother. And there's Mr. Nelson.

16 And, again, talking about the roles. There are roles
17 in the drug business. What did Mr. Nelson do? He went to
18 pick up the drugs. Do you believe his story? That's up
19 to you. The 12 of you are back there deliberating to
20 decide whether you believe his story. But look at the
21 inconsistencies. Look at the entire picture. Look at the
22 circumstantial evidence. And add up the pieces together
23 to come up with your conclusions.

24 There was no money at the scene. As I said before,
25 the officers testified there wouldn't be money at the

1 scene. Number one, they were already -- it was already
2 known they were going to a separate location.

3 What do you know? Mr. Goodman was not at [REDACTED]
4 [REDACTED]. If he was there before -- again, there was no
5 evidence from the State that he was there. But if he was
6 there, he wasn't there when the police arrived shortly
7 after the arrest at the Waffle House to go try to get a
8 consent to search at that house.

9 Why? Because he tried to direct connect with
10 Octavius Nelson at 4:56. And there was no response. He
11 knew there was something wrong. So he did not stay at
12 that location. Or the second reason is he already was on
13 his way to the second location with the money to make the
14 exchange.

15 Ladies and gentlemen, Mr. Lopez is charged with
16 trafficking cocaine, and possession of a gun with an
17 obliterated serial number. Mr. Nelson is charged with
18 trafficking cocaine because he was the connection. He was
19 the person going to pick it up.

20 He knows Mr. Goodman, per him. Per his testimony, he
21 knows Mr. Goodman. He knows what kind of person he is.
22 He spends time with him. He knows what he does. This is
23 up to \$50,000 in value. It's not something you just say,
24 hey, if you're going to pick up some food, bring this guy
25 over. You're not going to trust someone with this much

1 dope with that much value without having them in your
2 trust and in your circle.

3 And, as you heard, there was trust there. Because,
4 supposedly, the cell phone was in his name and given to
5 Mr. Goodman so that he could come over and assist with the
6 invalid brother, if he needed it.

7 Ladies and gentlemen, you add up all the pieces in
8 this, all the pieces, the pieces from the cocaine coming
9 from Atlanta, the delivery at the Waffle House, all the
10 evidence of the cooking going on to make crack cocaine at
11 [REDACTED] You add in that Ms. Nelson
12 testified she had never seen a gun and never seen all
13 these things in four different places in the house.
14 There's two explanations for that. One, she really
15 didn't, or, number two, she put on blinders.

16 What do we know? The house is in foreclosure. They
17 have a son who needs medical attention. Either way, she
18 was not charged with this. The invalid brother was not
19 charged with this. Octavius -- or Tay Nelson was charged
20 with trafficking the crack cocaine.

21 If you have over 28 grams -- in this case, over 28
22 grams of crack cocaine, you either possess it, deliver it,
23 distribute it, or conspire, which means in agreement. A
24 conspiracy is an agreement with someone else to,
25 eventually, commit an illegal act, a conspiracy in any

1 manner what you're role is. And over 28 grams is
2 trafficking.

3 Also, possession is included. That can be actual in
4 your possession like in my pocket, or constructive that
5 it's at my home and I have the ability to go and control
6 it. Mr. Nelson did have the ability to go to that house
7 and control any of these items.

8 Ladies and gentlemen, look at the circumstantial
9 evidence. Look at the direct evidence. Look at the value
10 of the dope. \$50,000 was this -- was the cocaine that
11 hadn't been broken down yet. And as Investigator
12 Grounsell told you, this, at retail value, would be 1,500.
13 And the other way, it would be up to \$7,800. Because this
14 is cut down into crack rocks about .10 grams each. Many
15 crack rocks out of this and what appears to be a small
16 amount, 39.18 grams is over 28 grams.

17 Any role that this Defendant, Mr. Nelson, had
18 regarding this stuff, whether he went to pick it up,
19 whether he allowed the cooking to be going on in his
20 house, whether he assisted in any manner, providing the
21 home, providing a safe place where no one is going to
22 watch or say you can't do that here. He didn't have to
23 have the connections in Atlanta. He didn't have to have
24 the money.

25 Remember the grocery store. Any one of those people

1 who works in the store, brings the supplies there is
2 involved in the business. It's the same thing with the
3 drug business. Any person involved in that chain --

4 MR. SCALZO: I'm going to object, Your Honor. I
5 think it's an incorrect statement on the law --

6 THE COURT: She can argue any way she wants to. I'll
7 charge the law.

8 -- Wrap it up, please, Solicitor.

9 MS. MONTS: Ladies and gentlemen, I appreciate your
10 time and your attention. The Defendant had a role in this
11 drug business.

12 Thank you.

13 MR. SCALZO: Your Honor, I think she raised a new
14 issue with regard to trying to say that the grower in
15 Mexico to the street person --

16 THE COURT: Okay. I'll charge the law.

17 MR. SCALZO: Well, I would request that we make a
18 rebuttal on that --

19 THE COURT: No, sir.

20 No one in or out of the courtroom during my charge.
21 So if anyone needs to leave, now is the time to do so.

22 CHARGE ON THE LAW

23 THE COURT: Now, as you know, ladies and gentlemen,
24 both Defendants in this case are charged with trafficking
25 cocaine. Mr. Nelson, in addition, is indicted for

1 trafficking crack cocaine. And Mr. Lopez is indicted for
2 , possessing a firearm with an obliterated serial number.

3 First, now, with respect to trafficking these illegal
4 substances, I charge you that our statute pertaining to
5 illegal drugs provides in part as follows: A person who
6 knowingly sells, manufactures, cultivates, delivers,
7 purchases, or brings into this state, or who provides
8 financial assistance or otherwise aids, abets, attempts,
9 or conspires to sell, manufacture, cultivate, deliver,
10 purchase, or bring into this state, or who is knowingly in
11 actual or constructive possession, or who knowingly
12 attempts to become in actual or constructive possession of
13 400 grams or more of cocaine and/or 28 grams or more of
14 crack cocaine is known as trafficking in cocaine and crack
15 cocaine.

16 Now, ladies and gentlemen, it is the amount of these
17 illegal drugs which constitutes the criminal act that
18 triggers the trafficking statute. Now, this distinguishes
19 trafficking as distinguished from mere simple possession
20 or with possession with intent to distribute. So it is
21 the amount of possession that triggers this statute. Now,
22 if the amount of these illegal drugs is 400 grams or more
23 with respect to cocaine, or 28 grams with respect to crack
24 cocaine, then the trafficking statute I read to you is
25 applied.

1 So what are the elements of this offense which the
2 State must prove to your satisfaction beyond a reasonable
3 doubt? First of all, the State must prove that the
4 substances in question are cocaine and crack cocaine.
5 And, secondly, the State must prove that these Defendants
6 knowingly possessed these illegal substances. Now,
7 knowingly means with knowledge. That is something
8 consciously done.

9 And, third, the State must prove that 28 grams or
10 more of crack cocaine and 400 grams or more of cocaine was
11 possessed by the respective Defendants. And by that, I
12 mean that Mr. Nelson would have to be in possession of 400
13 grams or more of cocaine and more than 28 grams of crack
14 cocaine. With respect to Mr. Lopez, 400 grams of cocaine.

15 Now, under the statute I read to you, ladies and
16 gentlemen, possession may be actual or it may be
17 constructive. A person has possession of a substance
18 within the meaning of our law when he has both the power
19 and the intent to control its disposition or its use.

20 Now, where a substance is found on the property, or
21 the premises, or the place under the control of a person,
22 this fact in and of itself gives rise to an inference of
23 knowledge and possession on the part of that person.
24 Therefore, possession of a substance may be inferred from
25 the circumstances. And the substance is deemed to be in

1 the constructive possession of a person controlling the
2 property, the premises, or the place where it is located.
3 Possession of drugs may be imputed to anyone who has the
4 power and the intent to control the disposition or use of
5 that drug.

6 Now, this inference is one of fact and not of law.
7 It is evidentiary in nature and is not conclusive and
8 should, therefore, be taken into consideration by you, the
9 jury, along with all the other evidence in the case, and
10 is to be given such weight as you determine it should
11 receive.

12 Now, ladies and gentlemen, as I said, actual
13 possession of a substance occurs when the substance is
14 found to be in the actual physical possession of a person
15 charged. Constructive possession, on the other hand,
16 occurs when the person charged with possession has
17 dominion and control over the substance itself or the
18 property, the place, or the premises upon which it was
19 found, or where he was a joint participant in the
20 committing of the offense.

21 Now, I charge you, ladies and gentlemen, that proof
22 of possession requires more than proof of mere presence at
23 the scene of a crime. Again, the State must prove that
24 these Defendants had dominion and control over the
25 substances allegedly possessed, or that they had the right

1 to exercise dominion and control over them.

2 Now, also, in determining whether or not a substance
3 is possessed, you may consider the amount of the substance
4 alleged to have been possessed, the manner in which it was
5 allegedly possessed, the place where it was allegedly
6 possessed, and any other factor which you consider to be
7 important provided, of course, that the factor is
8 supported by evidence.

9 Now, Mr. Lopez is indicted, as I told you, with
10 possessing a pistol on which the serial number had been
11 obliterated. This is a statutory offense. And Section
12 16-23-30 of our Code of Laws provides in part as follows:
13 A person shall not knowingly possess a handgun from which
14 the original serial number has been removed or
15 obliterated. Now, again, I tell you that the word
16 knowingly means with knowledge, that is something
17 consciously done.

18 So with respect to this charge, what the State must
19 prove beyond a reasonable doubt is that Mr. Lopez
20 possessed this pistol and that it had its serial number
21 removed or obliterated. Ladies and gentlemen, I charge
22 you that if two or more people in pursuance of a common
23 design to commit an unlawful act set out together and each
24 takes a part agreed upon or assigned to him if the
25 unlawful act is committed, then the act of one is the act

1 of all, and all would be guilty.

2 In other words, if two or more people agree or
3 conspire to commit a crime, each of those persons is
4 criminally responsible for the acts or act of his
5 confederates which are done in furtherance of the common
6 purpose for which they combined. In other words, all who
7 are present either actually or constructively and
8 participating in the unlawful common design, all would be
9 guilty.

10 Ladies and gentlemen, in the trial of a case, the
11 State may rely on direct evidence, on circumstantial
12 evidence, or on a combination of the two. Direct evidence
13 proves the existence of a disputed fact by using one or
14 more of our five senses without the aid of any inference.
15 For example, the testimony of a person who asserts or
16 claims to have actual knowledge of a fact, in other words,
17 an eyewitness. That is direct evidence.

18 Circumstantial evidence, on the other hand, is where
19 certain facts known through using one or more of our five
20 senses produces a logical inference that other facts exist
21 without directly proving those facts. Circumstantial
22 evidence is the proof of a chain of facts and
23 circumstances indicating the existence of a fact.

24 Now, as I have said, the State may rely on either or
25 both of this type evidence, direct or circumstantial. And

1 either -- neither is inferior to the other. The one is
2 equally as good as the other if equally convincing to you,
3 the jury. Each is entitled to the same weight. Now, you
4 should weigh all of the evidence in this case. And after
5 doing so, if you're not convinced of these Defendants
6 guilt beyond a reasonable doubt, then you must find them
7 not guilty.

8 Ladies and gentlemen, I charge you that no statement
9 may be considered by a jury, unless it finds beyond a
10 reasonable doubt that the statement under the totality of
11 the circumstances was freely and voluntarily given. And
12 if given while the Defendant was in custody, it was given
13 after an explanation of his Miranda rights, which must
14 have been understood by him. In other words, I charge you
15 that a statement of a defendant cannot be considered
16 against him unless he was first advised of his right to
17 counsel, of his right to remain silent, and of the fact
18 that any statement could be used against him, all of which
19 must have been understood by him.

20 A statement cannot be considered against a defendant
21 if it was made through force, or fear, or under duress, or
22 compulsion of any kind, or if it was induced by any
23 promise of leniency or reward of any kind.

24 Now, the statement admitted into evidence in this
25 case must be disregarded by you and not considered against

1 Defendant Lopez, unless the State has satisfied you from
2 the testimony beyond a reasonable doubt that it was,
3 actually, made by him. And even if you find it was made
4 by him, it still must be disregarded by you and not
5 considered against him, unless the State has, also,
6 satisfied you from the evidence that it was not extorted
7 by force or fear, or induced by promise. And, of course,
8 in order to constitute any evidence, the statement must be
9 believed by you, the jury.

10 Now, ladies and gentlemen, I am the judge of the law
11 in this case. You are the judges of the facts. The
12 Constitution of our state does not allow me to charge you
13 on the facts of this case, or to discuss the facts with
14 you, or in any way or manner let you know what my personal
15 feelings, if any, are about this case. That is because
16 you and you alone are the judges of the facts. Therefore,
17 if during the course of this trial or if during the course
18 of my charge, you have a feeling or you have been left
19 with the impression that I have a personal feeling about
20 this case one way or another, then you disregard that
21 feeling or that impression.

22 Now, it is your duty and your duty alone to weigh the
23 testimony and evidence presented in this case and to pass
24 upon the credibility or the believability of the witnesses
25 you heard testify. In this connection, you have the right

1 to believe all that a witness told you, or you can
2 disbelieve all a witness told you. You can believe a part
3 of what a witness told you, and disbelieve a part of what
4 a witness told you. You can believe one witness as
5 against several, or you can believe several as against
6 one. You, also, have the right to take into consideration
7 any bias, or prejudice, or interest you feel a witness in
8 the case might have.

9 Now, with respect to witnesses. Our rules of
10 evidence ordinarily do not permit them to testify as to
11 opinions or conclusions. Now, an exception to this rule
12 exists as to those whom we call expert witnesses.
13 Witnesses who by education and/or experience have become
14 an expert in some art, science, profession, or calling may
15 state an opinion as to relevant and material matter in
16 which they profess to be an expert. And they, also, may
17 give their reasons for their opinions.

18 Now, you should consider any expert opinion received
19 into evidence in this case and give it such weight as you
20 think it deserves. If you should decide that the opinion
21 of an expert witness is not based upon sufficient
22 education and/or experience, or if you should conclude
23 that the reasons given in support of that opinion are not
24 sound, or that the opinion is outweighed by other
25 evidence, you may disregard the opinion in its entirety.

1 An expert's testimony is to be given no greater
2 weight than that of other witnesses simply because that
3 person has been declared to be an expert. You're not
4 required to accept a purported expert's opinion, even
5 though it may be uncontradicting.

6 Now, as I told you earlier, it is my duty to charge
7 the law which is applicable to the facts in this case.
8 It's not a question of what you feel the law might be or
9 what it should be. It is not necessarily what the
10 attorneys may have told you it is. Because, under your
11 oath, you are required to take the law as I give it to
12 you, apply that law to the facts as you determine those
13 facts to be, and to write your verdict accordingly.

14 It is, also, my duty to see that this trial is
15 conducted according to the rules of court and the rules of
16 evidence applicable to the admissibility of testimony and
17 evidence as I understand those rules to be. And,
18 therefore, you are not to consider in any way or manner
19 testimony or evidence that was ruled out by me as being
20 not admissible.

21 Now, in this case, as in all criminal cases, these
22 Defendants come into this courtroom presumed to be
23 innocent. And this presumption continues and carries
24 through the entire trial until and unless it is removed by
25 evidence that satisfies you of their guilt beyond a

1 reasonable doubt. The burden is on the State in this case
2 to prove these Defendants guilty, and to prove each and
3 every element of the offenses with which -- of which
4 they've been charged beyond a reasonable doubt.

5 Now, some of you may have in the past served on civil
6 cases. And, if so, you were most likely told that it was
7 only necessary to prove that a fact was more likely true
8 than not true. But, in criminal cases, the State's proof
9 must be more powerful. As I told you, it must be beyond a
10 reasonable doubt.

11 Now, proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of these Defendants guilt.
13 There are very few things in this world that we know with
14 absolute certainty. And, in criminal cases, our law does
15 not require proof that overcomes every possible doubt.

16 If, based on your consideration of the evidence in
17 this case, you are firmly convinced that these Defendants
18 are guilty, then you must find them guilty. If, on the
19 other hand, you think there is a real possibility that
20 they're not guilty, then you must give them the benefit of
21 that doubt and find them not guilty.

22 Now, ladies and gentlemen, our law does not compel a
23 defendant in a criminal case to take the witness stand and
24 testify. And no presumption of guilt may be raised, and
25 no inference of any kind may be drawn from the Defendant

1 Lopez's decision not to participate in his case and
2 testify or, otherwise, present evidence.

3 Our law never imposes upon a defendant in a criminal
4 case the burden or duty of calling any witnesses, or
5 producing any evidence, or of testifying. Therefore, the
6 decision of this Defendant not to participate in his trial
7 should not be taken, held, discussed, or considered
8 against him in any manner whatsoever.

9 Under the oath you took in this case, ladies and
10 gentlemen, you swore to try this case based only and
11 solely on the testimony and evidence presented in this
12 case. I tell you that it is your duty to lay aside all
13 outside opinions, bias, prejudice, or sympathy you may
14 have in reaching your verdict. The word verdict is taken
15 from the Latin word "veredicto." It means to speak the
16 truth. Ladies and gentlemen, you have no friends to
17 reward in this case or enemies to punish. I charge you to
18 abide by your oath and return verdicts that speak the
19 truth.

20 Now, you'll have in the jury room with you the
21 indictments in these cases. These indictments do not
22 constitute evidence. They simply set forth the
23 allegations by the State. These indictments are the legal
24 documents by which the case is brought into this courtroom
25 and presented to you for your determination.

1 Now, with respect to each indictment, there are one
2 of two possible verdicts, guilty or not guilty. And
3 whatever that verdict is, ladies and gentlemen, it must be
4 unanimous, that is all 12 of you must agree.

5 Madam Foreperson, whatever the unanimous verdict of
6 the jury is on each indictment, you'll find a place on the
7 back of the indictment which says "Verdict." Write out
8 that unanimous verdict, and then sign your name on the
9 line where it says, "Foreperson of the petit jury."

10 All right. At this time, I'm required go over my
11 charge with the lawyers. I need you to go back into your
12 jury room. But don't begin deliberating until I send word
13 in for you to do so.

14 Thank you.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:15 p.m.)

17 THE COURT: Anything further from the State?

18 MS. MONTS: Yes, Your Honor.

19 We believe that the charge should include as far as
20 the trafficking cocaine and trafficking crack the other
21 ways to prove trafficking besides possession to include
22 the selling, manufacturing, delivering, or bringing into
23 the State, knowingly providing financial assistance or
24 otherwise aiding, abetting, attempting, or conspiring.

25 THE COURT: I charged that.

1 (WHEREUPON, the jury came into open court at
2 approximately 2:10 p.m.)

3 THE COURT: Madam Forelady, if you've reached a
4 verdict, would you hand it to the bailiff, please, ma'am.
5 Okay. Please publish the verdicts.

6 VERDICT

7 THE CLERK: Your Honor, in the case of
8 2005-GS-23-1957, the State v. Daniel Jesus Lopez, who is
9 indicted for trafficking cocaine, the verdict is guilty.
10 In the case of 2005-GS-23-1956, the State v. Daniel Jesus
11 Lopez, indicted for possession of a firearm with an
12 obliterated serial number, the verdict is guilty.

13 In the case of 2005-GS-23-1953, the State v. Octavius
14 Louis Nelson, indicted for trafficking cocaine, the
15 verdict is not guilty.

16 These are all signed by our Forelady.

17 Ladies and gentlemen of the jury, if you agree these
18 are the verdicts you reached in your deliberation room,
19 would you, please, raise your right hand.

20 (WHEREUPON, all jurors raised their hand.)

21 THE CLERK: Thank you.

22 THE COURT: Anything further from the jury, Counsel?

23 MS. MONTS: No, Your Honor.

24 MR. MACKENZIE: No, sir, Your Honor.

25 THE COURT: Thank you, ladies and gentlemen, for your

1 service on this case. And thank you for your service this
2 week.

3 And so far as you're concerned, you're through. You
4 don't have to come back tomorrow.

5 I want to take this opportunity to thank you for
6 coming and serving. We know it's difficult for you to
7 take off time from your jobs and families and serve it
8 with us on jury duty. But I do hope you understand the
9 importance of being here this week. For without your
10 presence, we could not get off from our docket the cases
11 that we do. It is a very important service you have
12 performed. And I thank you for that service.

13 Now, if you'll report downstairs to the jury assembly
14 room, Judy will have a voucher to give to you for your
15 service this week. And attached to that voucher will be a
16 slip for you to give to your employer, should you need
17 that. I've enjoyed working with you.

18 Thank you so much.

19 You're free to go.

20 (WHEREUPON, the jury was excused at approximately
21 2:12 p.m.)

22 MOTIONS

23 THE COURT: Mr. Scalzo, any motions?

24 MR. SCALZO: Yes, Judge. I'll renew my pre-trial
25 motions. And I'll, also, make a motion for a new trial.

1 THE COURT: And those motions are denied.

2 MR. SCALZO: And I presume, Judge, you'll enter a
3 sentence under seal?

4 THE COURT: It will be sealed.

5 Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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1 STATE OF SOUTH CAROLINA)
2) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) 2005-GS-23-1956, 1957
3)
4)
STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Daniel Jesus Lopez)

8
9 May 7, 2013
Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE LETITIA VERDIN, Judge.

12 A P P E A R A N C E S

13 Joyce Montz, Esquire
14 Assistant Solicitor
Attorney for the State

15 Christopher Scalzo, Esquire
16 Attorney for the Defendant

17
18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

(There were no exhibits or witnesses presented).

State versus Lopez

P R O C E E D I N G S

MS. MONTZ: If it please the Court, Your Honor, the State calls case of the State versus Daniel Jesus Lopez. There are two indictments 2005-1956 for possession of a firearm with an obliterated serial number and 2005-1957 for trafficking in cocaine over 400 grams. Your Honor, this was a trial back in 2009. Mr. Scalzo represented him. It was a trial in absence. The defendant was convicted by the jury and there is a sealed sentence and I believe Mr. Scalzo has a motion.

MR. SCALZO: If it please the Court, Your Honor, in talking with Mr. Lopez this morning, he has a motion to have me relieved that I thought would be appropriate before we deal with the sentencing. So I would turn it over to you as far as the motion goes.

THE COURT: Tell me, Mr. Lopez, why would you want a different attorney other than the one that's been appointed to you, that's one of the very best in the State?

MR. LOPEZ: I just don't feel like he's been helping. I don't much of the law but --

THE COURT: Mr. Lopez, if I had to guess and I guess I have to at this point, if I were to guess, I would say that you probably want a different attorney because you think it might slow this process down or

State versus Lopez

1 something like that. Well, let me say something,
2 Mr. Scalzo is, in fact, and I was not kidding when I said
3 that, one of the finest attorneys in the entire state and
4 you just got the good fortune of being appointed
5 Mr. Scalzo.

6 I'm not going to grant your motion and we
7 will proceed at this time. Okay.

8 Yes, ma'am.

9 MS. MONTZ: Your Honor, do you need the facts
10 on the case? I know the sealed sentence was put in.

11 THE COURT: I don't guess I need that but
12 this appears to be a trial date of October 12th through
13 the 15th of 2009 and this was the sealed sentence from
14 Judge C. Victor Pyle.

15 It appears, Mr. Lopez, that on 2005-GS-
16 23-1956, the jury found you guilty and the Court gave you
17 a sentence of five years and concurrent to that on
18 2005-GS-23-1957 the jury also found you guilty on that.
19 That is trafficking and the Court sentenced you to 25
20 years and a fine of \$200,000. Good luck to you, sir.

21 MR. SCALZO: And those are concurrent
22 sentences; Your Honor?

23 THE COURT: They are concurrent sentences.
24 Thank you.

25 MR. MONTZ: Thank you, Your Honor.

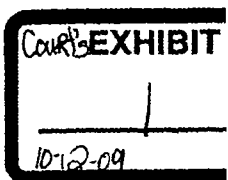
State versus Lopez

1 I, the undersigned, Caroline Hiskell, the
2 Official Court Reporter for the Thirteenth Judicial
3 Circuit of the state of South Carolina, do hereby certify
4 that the foregoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the Court of General Sessions
8 Court, South Carolina, 7th day of May, 2013.

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

11
12
13 

14 Caroline Hiskell
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25



STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE OF SOUTH CAROLINA

IN THE

Ticket or Warrant No. G 803972
G 803973
() COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF TAYLOR

5609
12/20/05

Daniel Jesus Lopez
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged:

Trafficking Cocaine / Poss of W/ Altered Ser#

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
Thus determination was based upon the following findings of fact

(Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$_____. The defendant will be obligated to the State in the full amount of \$_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 5,000.

3. That the defendant shall appear at (check one)

- ☒ the term of the court of general sessions beginning on [Date] when notified at [Time] _____ o'clock, _____ M., at [Place] Greenville County Courthouse and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of magistrate/municipal (circle one) court beginning on [Date] _____ at [Time] _____ o'clock, _____ M., at [Place] _____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant

DL

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Signature of Judge

Date

1-22-05

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both, if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Address

1202 Sunset Ridge Ln

City/State/Zip

Lawrenceville, Ga 3004

Social Security Number/Telephone No.

() 256-0239

Signature of Defendant

Date

Daniel Lopez
1-22-05

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.

Original copy for the Trial Court - Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

SPECIAL CONDITIONS OF RELEASE

- a ☐ Placement in custody The defendant is placed in the custody of _____

 Name of person or organization
- _____ Address _____ City _____ State/Zip _____ Telephone _____
 who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.
- _____ Signature of Custodian (If Appointed) _____ Date _____
- b ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions

- c ☐ Part-time Release The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on _____ on condition that he return to the custody of _____ as designated.
- d ☐ Other Conditions. The defendant will comply with the following other conditions of release

APPEARANCE RECOGNIZANCE WITH SURETY

On the 22 day of JAN., 2005 personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 55,000 such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein over all his debts and liabilities, and exclusive of property exempt from execution.

Name of Surety (Printed or Typed) 109 MC BEE ST.

Address of Surety GREENVILLE, SC 29601

City/State/Zip Tel: 211-2245

Signature of Surety [Signature]

Signature of Judge [Signature]

Date 1-22-05

418 .

SOLICITOR, 13TH Judicial Circuit

GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

DANIEL JESUS LOPEZ

is ordered to appear in **GENERAL SESSIONS**

COURT, GREENVILLE COUNTY COURTHOUSE

Greenville, SC on MONDAY

the 12TH day of OCTOBER

2009 at **8:30 AM**

PLEASE BRING THIS CARD WITH YOU AND ASK FOR

JLK/Sonya Bass

Failure to appear may result in trial being conducted in
the defendant's absence and/or a bench warrant being
issued for defendant's arrest. 9/25/2009

TO.

Daniel Lopez
4059 BURNSIDE LN
LILBURN GA 30043

SOLICITOR, 13TH Judicial Circuit

GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

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LILBURN GA 30043

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TO:

Daniel Lopez
1202 SUMER RIDGE LN
LAWRENCEVILLE GA 30044

SOLICITOR, 13TH Judicial Circuit

GREENVILLE COUNTY COURTHOUSE
305 E North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS: ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

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TO:

Daniel Lopez
1202 SUMER RIDGE LN.
LAWRENCEVILLE GA 30044

420

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E. North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS. ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

DANIEL JESUS LOPEZ

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issued for defendant's arrest. 9/25/2009

TO:

Daniel Lopez
1644 Cannon Ball Court
Lawrenceville GA 30044

SOLICITOR, 13TH Judicial Circuit
GREENVILLE COUNTY COURTHOUSE
305 E North Street, Suite 325, Greenville, SC 29601
(864) 467-8647

AS: ATTORNEY FOR/BONDSMAN FOR/DEFENDANT

DANIEL JESUS LOPEZ

is ordered to appear in **GENERAL SESSIONS**
COURT, GREENVILLE COUNTY COURTHOUSE

Greenville, SC on MONDAY

the 12TH day of OCTOBER

2009 at **8:30 AM**

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JLK/Sonya Bass

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TO:

Daniel Lopez
1644 Cannon Ball Court
Lawrenceville GA 30044

421

WITNESSES

Christopher Hines

PERROUS

Greenville County Sheriffs Office

1/21/2005

ARREST WARRANT NUMBER

G803972

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-23-

JLK

001957

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2005

THE STATE

vs.

DANIEL JESUS LOPEZ

Indictment for

0281

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

116

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on MARCH 15, 2005 the Grand Jurors of Greenville
County present upon their oath:

That DANIEL JESUS LOPEZ did in Greenville County, on or about the 21st day of January, 2005, knowingly
sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance
or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver or bring into the State or was
knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-
53-370 of the South Carolina Code of Laws (1976) as amended.

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

Gayle J. Monte
SOLICITOR

423

WITNESSES

HINES

PERRO-15

GCSO

01/21/05

ARREST WARRANT NUMBER

G 803973

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2005-GS-23-

JLK

001956

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2005

THE STATE

vs.

DANIEL JESUS LOPEZ

Indictment for

2364

POSSESSION OF FIREARM WITH
OBLITERATED SERIAL NUMBER

VIOLATION § 16-23-30

115

INDICTMENT FOR
POSSESSION OF FIREARM WITH OBLITERATED
SERIAL NUMBER

At a Court of General Sessions, convened on MARCH 15, 2005 the
Grand Jurors of Greenville County present upon their oath:
That DANIEL JESUS LOPEZ did in Greenville County, on or about the 21st day of January,
2005, knowingly and unlawfully buy, sell, transport, pawn, receive, or possess a pistol from
which the original serial number has been removed or obliterated. This is in violation of §16-23-
30 of the Code of Laws of South Carolina (1976) as amended.

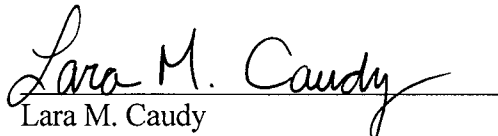
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jay K Monte
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 7th, 2014


Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED

JUL 07 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

RECEIVED

JUL 07 2014

SC Court of Appeals

V.

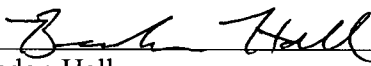
DANIEL LOPEZ,

APPELLANT

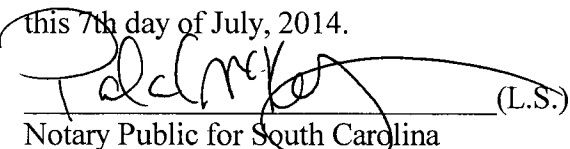
APPELLATE CASE NO. 2013-000903

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of July, 2014


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2014.


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